- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH –

In the Matter of the Application of Rocky Mountain Power for Approval of its Proposed Energy Cost Adjustment Mechanism	DOCKET NO. 09-035-15 ORDER

ISSUED: February 16, 2017

PROCEDURAL HISTORY

On May 20, 2016, the Division of Public Utilities (DPU) filed its Final Evaluation Report of PacifiCorp's Energy Balancing Account (EBA) Pilot Program (Report) with the Public Service Commission of Utah (PSC). The DPU filed the Report pursuant to the requirements of the PSC's March 2, 2011 Report and Order,[1] the June 15, 2012 Report and Order on EBA Filing Requirements and Pilot Program Evaluation Plan in this docket,[2] and the August 29, 2014 Report and Order in Docket No. 13-035-184.[3]

On June 15, 2016, the PSC held a scheduling conference,[4] and thereafter issued a scheduling order and related notices (Scheduling Order).[5] Pursuant to the Scheduling Order, on September 21, 2016, the DPU, the Office of Consumer Services (OCS), and PacifiCorp, filed

[1] *See In the Matter of the Application of Rocky Mountain Power for Approval of its Proposed Energy Cost Adjustment Mechanism* (Report and Order, issued March 2, 2011), Docket No. 09-035-15. *See also id.* (Corrected Report and Order, issued March 3, 2011), and *id.* (Errata to Corrected Report and Order, issued March 16, 2011). As used elsewhere in this order, the aforementioned orders are referred to collectively as the EBA Order.
[2] *See id.* (Report and Order on EBA Filing Requirements and Pilot Program Evaluation Plan, issued June 15, 2012).
[3] *See In the Matter of the Application of Rocky Mountain Power for Authority to Increase its Retail Electric Utility Service Rates in Utah and for Approval of its Proposed Electric Service Schedules and Electric Service Regulations* (Report and Order, issued August 29, 2014), Docket No. 13-035-184. At the DPU's request, on April 18, 2016 the PSC extended the deadline for the DPU to submit its final pilot program evaluation report from April 30, 2016 to May 20, 2016. *See In the Matter of the Application of Rocky Mountain Power for Approval of its Proposed Energy Cost Adjustment Mechanism* (Memorandum Granting Extension of Time, issued April 18, 2016), Docket No. 09-035-15.
[4] *See In the Matter of the Application of Rocky Mountain Power for Approval of its Proposed Energy Cost Adjustment Mechanism* (Notice of Scheduling Conference, issued May 25, 2016), Docket No. 09-035-15.
[5] *See id.* (Scheduling Order, Notice of Hearing, and Notice of Public Witness Hearing, issued June 22, 2016).

direct testimony on September 21, 2016.[6] No additional parties filed for intervention since the filing of the Report. The DPU, the OCS, PacifiCorp, and the Utah Association of Energy Users (UAE) filed rebuttal testimony on November 16, 2016. Additionally, on November 16, 2016, the Utah Industrial Energy Consumers (UIEC) filed comments.[7] The DPU, the OCS, PacifiCorp, and UAE filed surrebuttal testimony on December 15, 2016.

The PSC held a hearing on January 17, 2017 at which the DPU, PacifiCorp, the OCS, and UAE presented testimony. Counsel for UIEC appeared on its behalf.

LEGISLATIVE CHANGES AFFECTING THE EBA

The EBA Order specified that the EBA include a 70-30 percentage sharing (Sharing Band) between customers and shareholders, respectively, of the differences between the forecasted and actual net power costs. PacifiCorp's Electric Service Schedule No. 94 (Schedule 94), Energy Balancing Account (EBA) Pilot Program, included the Sharing Band. [8]

On March 11, 2016, approximately four years after issuance of the EBA Order, the Utah Legislature passed Senate Bill 115 - Sustainable Transportation and Energy Plan Act (S.B. 115), which became effective on May 10, 2016. Relevant to this docket, S.B. 115 added: 1) Utah Code Ann. § 54-7-13.5(2)(d) removing the Sharing Band provision from the EBA; 2) Utah Code Ann. § 54-7-13.5(6) requiring the PSC to report to the Public Utilities and Technology Interim Committee (PUTIC) before December 1, 2017 and 2018 regarding whether the above change is

[6] In addition, the DPU filed supplemental direct testimony on November 8, 2016.
[7] PacifiCorp challenged UIEC's comments with a motion to strike. The PSC denied PacifiCorp's motion to strike UIEC's comments, but granted PacifiCorp's and UIEC's request to treat UIEC's comments as unsworn public comments. *See In the Matter of the Application of Rocky Mountain Power for Approval of its Proposed Energy Cost Adjustment Mechanism* (Order on PacifiCorp's Motion to Strike, issued January 12, 2017), Docket No. 09-035-15.
[8] *See In the Matter of the Rocky Mountain Power Proposed Schedule 94, Energy Balancing Account (EBA) Pilot Program Tariff* (Order, issued May 1, 2012; Order, issued May 31, 2012), Docket No. 11-035-T10.

reasonable and in the public interest; and 3) Utah Code Ann. § 63I-1-254(2) repealing 54-7-13.5(2)(d) (i.e., elimination of the Sharing Band) on December 31, 2019.

The PSC's May 16, 2016 Order (May 2016 Order) in Docket No. 16-035-T05 approved changes to Schedule 94 to make it consistent with these new statutory provisions. [9] In the May 2016 Order, the PSC also concluded that "S.B. 115 requires continued review of the EBA through 2019."[10]

THE DPU'S FINAL EBA REPORT

The Report summarizes the results of the DPU's final evaluation of the EBA Pilot program in accordance with the EBA Filing Requirements and Pilot Program Evaluation Plan approved by the PSC in this docket.[11] The DPU concludes that the benefits of the EBA flow primarily to PacifiCorp. The DPU states that the "improvement in [PacifiCorp's] returns on equity corresponds with the implementation of the EBA"[12] and notes that "[PacifiCorp] is now earning its authorized rate of return."[13] The DPU also concludes that under the EBA ratepayers are worse off due to higher rates as well as a shift in cost recovery risk from PacifiCorp to ratepayers.

According to the DPU, S.B. 115 significantly alters the PSC-ordered EBA pilot program process through elimination of the EBA's 70-30 Sharing Band provision and through the statutory requirements directing the PSC to report to the Legislature in 2017 and 2018.[14] The

[9] *See In the Matter of Rocky Mountain Power's Proposed Revisions to Electric Service Schedule No. 94, Energy Balancing Account* (Order, issued May 16, 2016), Docket No. 16-035-T05.
[10] *Id. at 7.*
[11] *See id.* Report and Order on EBA Filing Requirements and Pilot Program Evaluation Plan, issued June 15, 2012.
[12] *Id.* Report at 31.
[13] *Id. at 8.*
[14] *See id. at 7.*

DPU also points out that the May 2016 Order "seems to accept that the SB 115 legislation effectively extended the EBA pilot program through 2019."[15]

As part of its conclusions, the DPU expresses concern about its annual audit process, characterizing the audits as limited in scope and "not attestations of the material correctness of the Company's EBA filings, but rather representations that [DPU] staff and consultants looked at a few items and did not make an imprudence determination on any of those items not specifically questioned."[16] The DPU states this is due to the insufficient time it has to complete each audit, its limited staffing resources, and the complexity of PacifiCorp's operations. At hearing, the DPU testified that "it cannot attest to the audit results as being a statistically accurate representation of the universe of [net power cost],"[17] and stated that its conclusions can only be applied to the results specifically discussed in its annual EBA audit reports. The DPU adds that it has no evidence that PacifiCorp's reported net power costs (NPC) "are materially inaccurate or imprudent beyond those items specifically called out in the [DPU's] annual audit reports, nor does the Division currently harbor a belief that the Company's reported net power costs may be materially inaccurate or imprudent."[18]

In the Report, and as discussed further below, the DPU makes several recommendations for PSC consideration including: 1) a process for review of the EBA at the conclusion of the pilot program; 2) identification of and a proposed resolution for the misalignment of base EBA forecasts with the most current EBA deferral period; 3) changes to the EBA annual audit review

[15] *Id.*
[16] *Id. at 5.*
[17] Hearing Transcript (348480A) at 13, lines 9–11.
[18] *Id.*, lines 19-24.

period, including use of interim rates; 4) elimination of wheeling revenues in the EBA; and 5) changes to the EBA carrying charge.

DISCUSSION, FINDINGS, AND CONCLUSIONS

PacifiCorp, the OCS, and UAE provided testimony on the DPU's Report and, in addition to the DPU, identified issues and recommendations for PSC consideration concerning the administration, review, and components of the EBA.

I. EBA Evaluation and Reporting

a. Continuity of the EBA

PacifiCorp recommends the EBA should be made permanent and continue after 2019, arguing it needs the EBA for timely recovery of the costs it incurs in providing safe and reliable service to its customers. The DPU, the OCS, and UAE disagree with PacifiCorp's proposal. The DPU argues the objective of the current proceeding is to consider relatively minor adjustments to the current EBA pilot program and that consideration of the question of permanence of the EBA is premature and outside the scope of this process. The DPU recommends that the PSC open a full evidentiary docket near the end of the EBA pilot program in 2019 to consider whether the EBA should be continued or altered. UAE agrees with the DPU's proposal. UAE also argues the Sharing Band, which provided a meaningful incentive for PacifiCorp to manage its costs, should be reinstated if the EBA is extended beyond December 31, 2019. PacifiCorp disagrees, arguing it is premature to make changes to the EBA Sharing Band before the PSC reports to the Legislature at year-end 2017 and 2018.

The OCS argues that the PSC should not address the question of permanency of the EBA until after the PSC's reports to the Legislature, as required by S.B. 115, are complete.

We conclude that S.B. 115 made modifications to the EBA and required reports to the Legislature in 2017 and 2018, facilitating consideration of those reports prior to December 31, 2019. We conclude further that the most appropriate way to fulfill the mandates and responsibilities of S.B. 115 is to extend the EBA pilot period through December 31, 2019.

b. Legislative Reporting and EBA Pilot Review

The OCS notes Utah Code Ann. § 54-7-13.5(6) requires the PSC to report to the PUTIC before December 1 in 2017 and 2018 and requires the PSC to continue to review the EBA through 2019. The OCS recommends the PSC implement a process allowing stakeholders to provide input for these reports. The DPU agrees with this recommendation. The DPU also recommends that as the EBA pilot program nears its end in 2019, the PSC should establish a docket to consider changes to, or elimination of, the EBA.

Our extension of the EBA pilot period, and the reports required by S.B. 115, require further review of the EBA. We intend to allow input and comment with respect to the 2017 and 2018 reports required by S.B. 115 during the EBA dockets for those two years. We anticipate that the scheduling conferences and scheduling orders will provide a process to accommodate that input and that the review we conduct following the December 1, 2018 report will examine whether, and in what form, an EBA should be continued.

II. EBA Components

a. Wheeling Revenues

The DPU recommends removal of wheeling revenues from the EBA. The DPU represents that wheeling revenues are rents PacifiCorp receives from third parties for use of its transmission system and are not related to NPC and are therefore "inappropriately included in the EBA."[19] The DPU would support a proposal to implement a wheeling revenue tracker to true-up wheeling revenues between general rate cases.

PacifiCorp supports including wheeling revenues in the EBA for administrative convenience. PacifiCorp, however, would also support implementation of a separate tracker for related variable costs and revenues such as wheeling revenues, chemical costs, start-up fuel, and production tax credits.

The OCS and UAE disagree with the DPU's recommendation. The OCS cites the EBA Order, in which the PSC concluded that setting power-related rates without recognition of offsetting wheeling revenues violates the matching principle.[20] The OCS testifies that with elimination of the Sharing Band, "having wheeling revenues as an offset to wheeling costs is the only benefit the EBA currently provides ratepayers."[21] UAE argues the inclusion of wheeling revenues in the EBA provides appropriate symmetry with the treatment of wheeling expenses, which are a component of NPC.

[19] *Id.* at 9, lines 23-24.
[20] Rebuttal Testimony of Danny A.C. Martinez, Exhibit OCS – 1R at 4, lines 101-109, filed November 16, 2016.
[21] *See* Hearing Transcript (348480A) at 132, lines 14-16.

In our EBA Order, we found it appropriate to include wholesale wheeling revenues in the EBA. We determined that while not modeled through the Generation and Regulation Initiative Decision Tool (GRID), wheeling revenues have a relationship with NPC in that they form an offset to wheeling expenses in general rates.[22] No new argument or evidence has been advanced to compel us to alter our prior decision on this issue. Further, at hearing, the DPU testified that there would be little difference in outcome from tracking wheeling revenues through either a separate tracking mechanism or the EBA.[23] We conclude that removal of wheeling revenues would constitute a significant change in the EBA and find that it would complicate the review of the EBA at the end of the pilot period. We therefore decline to remove wheeling revenues from the EBA at this time.

b. Additional EBA Components

PacifiCorp proposes to modify the EBA to include chemical costs, start-up fuel, and production tax credits (PTCs). PacifiCorp maintains that these items are either directly correlated with generation output or are closely related to the generation process and fluctuations in these items are generally beyond PacifiCorp's control. PacifiCorp proposes to calculate each of these items separately in the EBA deferral and recommends that these costs should be included in the EBA, beginning with the date the PSC authorizes rates from the next general rate case (GRC).

The OCS conditionally agrees with PacifiCorp's recommendation to include chemical costs and start-up fuel costs in the EBA at the time of the next GRC, with the provision that PacifiCorp provide evidence that the chemical costs correlate with generation output or relate to

[22] *See* EBA Order at 72.
[23] *See* Hearing Transcript (348480A) at 19, lines 12–15.

the generation process as part of the minimum EBA filing requirements. The OCS neither supports nor opposes the inclusion of PTCs in the EBA but notes that PTCs are known and predictable costs, and are generally accounted for in base rates, not NPC.

The DPU and UAE disagree with PacifiCorp's proposal to add additional items to the EBA. The DPU maintains these items are not net power costs and that "expanding the EBA in the manner the Company suggests sets a bad precedent that will only encourage efforts to further expand the EBA."[24] According to the DPU the current inclusion of certain non-net power cost items in the EBA was the result of a settlement stipulation and their inclusion has no precedential value. UAE represents the EBA was adopted to address the perceived problem that material changes in NPC could affect PacifiCorp's financial health between rate cases if changes in costs were to go unrecovered. UAE asserts expansion of the list of EBA-eligible items is not necessary to meet this objective. Like the OCS, UAE also notes that PTCs are not volatile costs but are known and predictable.

We conclude that inclusion at this time of additional costs that are not NPC components would constitute a significant change to the EBA and find that it would complicate our review of the EBA at the conclusion of the pilot period. We decline to include chemical costs, start-up fuel costs, and PTCs in the EBA, but remain open to reconsider the issue either at the conclusion of the EBA pilot period or during the next GRC.

[24] *Id*.at 12, lines 19-22.

III. EBA Administration

a. Mismatch in EBA Forecast Periods

The DPU contends that when an EBA extends beyond the test period of a GRC there is a mismatch between the EBA deferral period and the test period forecast that was used for setting rates. The DPU claims that over time the NPC baseline forecast used to determine the annual EBA deferred amount will become increasingly out of date if not reset in a new GRC. To resolve this issue, the DPU proposes the PSC direct PacifiCorp to file a GRC at least every three years, and as part of that GRC, provide a multi-year NPC forecast for at least three full calendar years past the GRC's estimated rate effective date. The DPU specifically requests the PSC order PacifiCorp to file its next GRC no later than July 1, 2017.

PacifiCorp opposes the DPU's multi-year NPC forecast and the mandatory three-year GRC proposal arguing multi-year forecasts would also grow stale, would not guarantee smaller EBA variances, would require a more complicated review process, and may subject customers to more frequent rate changes. Alternatively, PacifiCorp proposes that, beginning with the next GRC, it would file a new baseline NPC forecast concurrently with its annual EBA using a forecast period that is aligned with the deferral period. The DPU expresses concern that this approach may constitute single-item ratemaking.

The OCS asserts the EBA forecast mismatch issue raised by the DPU is a consequence of the EBA's current design and the only way this problem can be solved is to "fundamentally change the design of the EBA."[25] The OCS supports the DPU's proposal requiring PacifiCorp to

[25] Rebuttal Testimony of Danny A.C. Martinez, Exhibit OCS – 1R at 3, lines 74-75, filed November 16, 2016.

file a GRC every three years with an updated NPC forecast, starting July 2017. In addition, if the PSC adopts PacifiCorp's proposal, the OCS recommends the PSC include a requirement that PacifiCorp file a GRC at a minimum of every three years, starting July 2017.

UAE argues the mismatch issue is not a problem and does not require any change in policy for forecasting base EBA rates. According to UAE, "[t]he objective of the EBA is not to provide perfect forecasting per se, but to allow for an adjustment to revenue recovery when actual NPC deviates from NPC in base rates.[26] UAE opposes the DPU's multi-year forecast recommendation arguing approval of rates "based on such an extended forecast is speculative and sets a bad precedent" [27] and that such an approach would undermine the PSC's objective of setting fair rates for customers. UAE claims that PacifiCorp's proposal to reset base NPC on an annual basis would be tantamount to "subjecting customers to a single-issue rate case every year."[28] Further, UAE argues that under PacifiCorp's proposal, "[p]arties and the Commission would be forced to contend with an annual prospective reset and an annual retroactive true-up, increasing the complexity of what is already a very complicated and time-consuming review process."[29] UAE contends that neither PacifiCorp nor the DPU has demonstrated that their proposals are necessary to protect PacifiCorp's financial health.

UAE also opposes the DPU's proposal requiring PacifiCorp to file a GRC at least every three years. UAE maintains that GRC filings may be appropriate when current rates preclude PacifiCorp from earning a reasonable rate of return or when current rates result in PacifiCorp

[26] Rebuttal Testimony of Kevin C. Higgins, Exhibit 1R.0 at 13, lines 265-267, filed November 16, 2016.
[27] Surrebuttal Testimony of Kevin C. Higgins, Exhibit 1SR.0 at 5, lines 95-96, filed December 15, 2016.
[28] *Id.* at 4, line 72.
[29] *Id.* at 6, lines 99-102 (emphasis removed).

realizing excessive earnings. UAE argues GRCs are burdensome endeavors and are not a reasonable approach to remedy the mismatch issue.

We find that the current EBA allows for an adjustment to revenue recovery when actual NPC deviates from NPC in base rates, and conclude that modifying the EBA to address the mismatch issue would be a fundamental EBA design change. We find the impacts of adjusting EBA baselines if there are no Sharing Band or carrying charge issues to be inconsequential. We conclude that the DPU's and PacifiCorp's proposals represent significant changes to the EBA and decline to make those changes during the pilot period. Additionally, the DPU and the OCS may at any time submit a request for agency action seeking a GRC if the agency can provide evidence sufficient to warrant the request. Absent that showing, we decline to set future GRC schedules at this time.

b. Prior Period Adjustments

The DPU recommends that benefits or costs from prior periods where the EBA deferral amount has been closed or made final by PSC order should not be allowed in future EBA deferral periods. The DPU asserts that when costs or benefits are set in final rates, the PSC has determined them to be just and reasonable and in the public interest. The DPU argues corrections to such final costs or benefits flowing between deferral years violate the Schedule 94 tariff as they are not PSC-accepted or ordered adjustments and constitute retroactive ratemaking, and therefore should be prohibited.

The OCS supports the DPU's position and is concerned that it is possible that with out-of-period adjustments PacifiCorp "could finalize rates for one EBA period, and then try to move

costs from that period into a future EBA period. In effect, parties might have to litigate the same issues in multiple EBA proceedings."[30] The OCS claims such an outcome is contrary to the PSC's August 30, 2012 Order on EBA Interim Rate Process in this docket, which sought to bring finality to the rate-setting process.

In response, PacifiCorp argues that including accounting entries pertaining to operating periods prior to the EBA deferral period is just and reasonable and is permitted under Utah Code Ann. § 54-7-13.5(4)(c).[31] Furthermore, PacifiCorp states Utah Code Ann. § 54-7-13.5(2)(c)(ii)[32] provides for reconciliation of EBA accounts and does not preclude updates when new information becomes available. According to PacifiCorp, the DPU's proposal would disallow prudent NPC amounts booked in accordance with generally accepted accounting principles and cites examples where estimated or accrued costs or benefits from prior periods could not be reconciled with actual costs or benefits until after an audit or until more accurate information became available.

We decline to accept the DPU's recommendation on this issue. We conclude that Utah Code Ann. § 54-7-13.5 permits the accounting treatment we approved previously for the EBA pursuant to this section. Further, consistent with our experience with other balancing accounts, we find that difficulties exist with closing various transactions within the deferral period. We

[30] Rebuttal Testimony of Philip Hayet, Exhibit OCS – 2R at 6, lines 131-133, filed November 16, 2016.
[31] *See* Utah Code Ann. § 54-7-13.5(4)(c) ("An energy balancing account or gas balancing account that is formed and maintained in accordance with this section does not constitute impermissible retroactive rate-making or single-issue ratemaking.").
[32] *See* Utah Code § 54-7-13.5(2)(c)(ii) ("An electrical corporation . . . shall file a reconciliation of the energy balancing account with the commission at least annually with actual costs and revenues incurred by the electrical corporation.").

anticipate further review and evaluation of this issue and its materiality at the conclusion of the EBA pilot period.

c. Forced Outage Policy

The DPU recommends the PSC establish a policy specifying that ratepayers should not be responsible for paying EBA-related costs associated with imprudent plant outages, "whether the imprudence is due to the Company's direct actions or the actions of its agents or contractors."[33] The DPU asserts that under an EBA with a sharing mechanism, "if the Company experiences forced outages that are more frequent or of greater duration than is reasonably projected in rates, the Company shares in the economic consequences of these events."[34] The DPU contends this outcome no longer occurs with removal of the Sharing Band.

The OCS requests the PSC clarify that all proposed imprudence disallowances will be evaluated based on the facts and circumstances of each outage. Specifically, the OCS recommends the PSC "clarify that while there may be other facts and circumstances that result in an outage being considered prudent, the mere fact that the outage was caused by a third party should not be sufficient reason to consider the outage prudent."[35]

In response, PacifiCorp contends each outage has unique circumstances and should be reviewed on a case-by-case basis. At hearing, PacifiCorp testified:

> [PacifiCorp] has never argued that we cannot be held responsible simply because a third party was involved. However, we have argued that the decision to hire a third party -- the selection process, the contract itself, and the management of that contract -- were all prudent decisions, and therefore the outage should not be

[33] Direct Testimony of David Thomson, Exhibit DPU 6.0 DIR at 9, lines 184-185, filed September 21, 2016.
[34] Report at 62.
[35] Surrebuttal Testimony of Philip Hayet, Exhibit OCS – 2S at 4, lines 76-79, filed December 15, 2016.

> deemed imprudent. And the standard for determining prudence is super clear in that a reasonable utility -- knowing what a utility should have known -- would have incurred that cost. ….[36]

According to PacifiCorp, it would be inappropriate for the PSC to make a determination on plant outages at this time.

We conclude that forced outages should be evaluated based on the facts and circumstances of each outage, including the actions of PacifiCorp, its agents or its contractors. We also conclude that PacifiCorp's responsibility for ensuring prudently incurred costs does not end once a contract is executed; it also includes management of the contract, among other things. We find that management of a contract includes administration, monitoring, and any necessary oversight. We conclude that a final determination on outages can only be made on a case-by-case basis with consideration of the factual evidence presented.

d. EBA Carrying Charges

The DPU initially recommended that the EBA carrying charge rate should be reset in this docket but later withdrew its recommendation. Pertaining to this issue, PacifiCorp points out that, pursuant to a prior settlement agreement in Docket No. 14-035-147 (Settlement Stipulation), parties agreed to not seek a change to the current six percent EBA carrying charge rate until the next GRC. [37] PacifiCorp would support a carrying charge rate change consistent with the charges approved in the PSC's January 20, 2016 Order in Docket No. 15-035-69

[36] Hearing Transcript (348480A) at 90, lines 7-17.
[37] *See In the Matter of the Voluntary Request of Rocky Mountain Power for Approval of Resource Decision and Request for Accounting Order* (Redacted Report and Order Memorializing Bench Ruling, issued April 29, 2015), Docket No. 14-035-147.

(Carrying Charge Order) at the time base NPC is set in the next GRC.[38] PacifiCorp maintains that since PacifiCorp must wait more than one year to recover the EBA deferral, a short-term carrying charge rate is inappropriate.

The OCS claims the current six percent EBA carrying charge rate is too high and recommends the EBA carrying charge rate should be set at the 12-month LIBOR interest rate in effect at the end of the EBA deferral period. The OCS argues this rate is more consistent with the short term financing of underlying fuel costs in the EBA and is reflective of the period of time when EBA costs are recovered. According to the OCS the elimination of the Sharing Band justifies a lower carrying charge because PacifiCorp is now poised to recover more costs when under-recoveries occur. The OCS asserts that the Carrying Charge Order designated this docket as the appropriate venue for evaluating EBA carrying charges. If accepted by the PSC, the OCS presumes its carrying charge recommendation would be implemented in the next GRC, which would be consistent with the Settlement Stipulation cited by PacifiCorp.

As noted by the OCS, in our Carrying Charge Order we concluded "PacifiCorp's argument that the EBA carrying charge interest rate should not be changed during the pilot period and should be evaluated during the EBA evaluation, in 2016, is reasonable."[39] The Carrying Charge Order was issued subsequent to the Settlement Stipulation referenced by PacifiCorp, but prior to the passage of S.B. 115, under which we have extended the EBA pilot evaluation period through 2019. Accordingly, we decline to change the current EBA carrying

[38] *See In the Matter of a Request for Agency Action to Review the Carrying Charges Applied to Various Rocky Mountain Power Account Balances* (Order, issued January 20, 2016), Docket No. 15-035-69.
[39] *Id*. at 16.

charge at this time, but intend to reexamine this issue during the final evaluation of the EBA. We encourage additional input on this issue during future evaluation proceedings.

IV. Audit Review Schedule and Interim Rates

a. Parties' Positions

The DPU proposes changes to the EBA audit schedule as follows:

1. PacifiCorp will continue to file its EBA application on or about March 15.
2. The DPU will conduct a preliminary review of PacifiCorp's application and provide a preliminary conclusion if the EBA filing appears to not depart from prior years' filings.
3. On or before May 1, the PSC will approve interim rates with an amortization period through April of the following year, effective May 1.
4. The DPU will then file its audit report on November 15, following which the PSC will set a schedule in the docket.
5. The PSC will hold a hearing on or about February 1, after which a true-up of rates could be ordered.
6. The PSC will issue an order on March 1 of the following year before the next EBA filing is made.
7. Any true-up to the interim rates will go into effect March 1, and be amortized through April 30.

The DPU testifies that interim rates will help minimize carrying charges and help PacifiCorp to recover its expenses or ratepayers to receive refunds more quickly. The DPU emphasizes there are policy and practical benefits of interim rates.

The DPU further testifies that employing interim rates as a means to afford more time for the DPU's review will increase the DPU's confidence in its audit findings and alleviate some of the reservations expressed in prior conclusions and recommendations sections of the DPU's audit reports. The DPU testifies that this should also increase the comfort level of the parties who rely on the DPU's audit.

PacifiCorp supports the DPU's proposed changes to the EBA schedule noted above.

The OCS testifies the DPU's proposal to extend the EBA schedule by four months is reasonable, but OCS does not support the DPU's associated proposal for interim rates because, during this four-month period, carrying charges would either be paid to or by PacifiCorp on the outstanding deferral balance. The DPU responds to the OCS's concern by pointing out that receiving money sooner rather than later (as would be the case if interim rates are employed) is generally better because the recipient(s) may have a different opportunity cost than the carrying charge on the outstanding deferral balance.

Both UAE and UIEC argue that interim rates should not be implemented. UAE concurs with the OCS's recommendation to extend the time to allow the DPU to review PacifiCorp's EBA filing. UAE, however, urges that the PSC's prior decision not to utilize interim rates for EBA purposes should not be disturbed.

UIEC filed comments asserting the PSC should not establish interim rates for EBA cost recovery. UIEC maintains it cannot support the DPU's proposal of implementing interim rates for one year to extend the time for the DPU's audit. UIEC asserts the PSC previously settled this issue after extensive argument by the parties. UIEC continues to maintain that no process exists for authorizing interim rates for EBA cost recovery.

b. Discussion and Conclusions

The DPU and PacifiCorp ask the PSC to allow interim rates as part of the EBA rate-setting process. This is the third time we have considered the suitability of interim rates for the EBA. In doing so, we note changed circumstances surrounding the evaluation of PacifiCorp's

swap transactions, i.e., the cost of its fuel cost hedging program since the 2011-12 time period, influence our decision to allow interim rates going forward. In addition, our decision in this docket is supported both by caselaw and by statute.

1. Our First (i.e., March 2, 2011) Order Allowed Interim Rates, and the Parties Subsequently Stipulated to Include Swap Transactions in PacifiCorp's Net Power Costs.

We approved the EBA pilot program on March 2, 2011 (EBA Order).[40] In doing so, we concurred with PacifiCorp's and the DPU's recommendations to establish an interim rates process that would allow interim rates to go into effect, subject to refund, during the pendency of the DPU's audit. However, we expressly excluded "natural gas and electricity swap[] [transactions]"[41] from the costs that would be part of the EBA, because at the time a great deal of controversy existed regarding swap transactions, including the extent to which the costs of these transactions were recoverable in rates.

On April 18, 2011, PacifiCorp filed a petition for clarification and reconsideration or rehearing on several issues, including whether swap transactions should be included in the EBA mechanism.[42] We granted PacifiCorp's petition for limited rehearing on whether swap transactions should be included in the EBA mechanism[43] and issued a scheduling order establishing deadlines for three rounds of testimony and a hearing date.[44] A hearing on the issue was scheduled for early November 2011.[45]

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[40] *See supra* n.1.
[41] *Id.* (Corrected Report and Order at 81, ¶ 1(d)).
[42] *See id.* (Rocky Mountain Power's Petition for Clarification and Reconsideration or Rehearing, filed April 18, 2011).
[43] *See id.* (Order on Petition for Clarification and Reconsideration or Rehearing and Notice of Scheduling Conference at 1, issued May 9, 2011).
[44] *See id.* (Scheduling Order, issued May 24, 2011).
[45] *See id.* at 1.

Before that scheduled hearing date, on July 28, 2011, the parties filed a settlement stipulation in five dockets, including PacifiCorp's 2010 GRC and the EBA approval docket.[46] The parties reached a compromise, in part, on the issue of including swap transactions in the EBA.[47] Paragraph 23 of the stipulation states: "The Parties have reached a compromise . . . on . . . the issue of inclusion of financial swap transactions in the EBA[.]"[48] In addition, Paragraph 56 states:

> The Parties request that the Commission resolve the issues on rehearing in the ECAM Docket by modifying the EBA Order to remove the language excluding financial swap transactions from the EBA. The Parties agree that broker fees, premiums and settlement costs of financial hedge transactions, including swaps, may be included in the EBA to the extent consistent with (a) prudent risk management and hedging policies and (b) following the completion of the Collaborative Process, any accepted risk management and hedging policies resulting from that process. ….[49]

Further, Paragraph 53 provides:

> The Parties agree to convene a collaborative process (Collaborative Process) to discuss appropriate changes to the Company's hedging practices to better reflect customer risk tolerances and preferences, and the Company agrees to implement appropriate policy changes

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[46] *See In the Matter of the Application of Rocky Mountain Power for Authority to Increase its Retail Electric Utility Service Rates in Utah and for Approval of its Proposed Electric Service Schedules and Electric Service Regulations*, Docket No. 10-035-124; *In the Matter of the Application of Rocky Mountain Power for Approval of its Proposed Energy Cost Adjustment Mechanism*, Docket No. 09-035-15; *In the Matter of the Application of the Utah Association of Energy Users for a Deferred Accounting Order Directing Rocky Mountain Power to Defer Incremental REC Revenue for Later Ratemaking Treatment*, Docket No. 10-035-14; *In the Matter of the Application of the Utah Industrial Energy Consumers for a Deferred Accounting Order Directing Rocky Mountain Power to Defer Incremental REC Revenue for Later Ratemaking Treatment*, Docket No. 11-035-46; *and In the Matter of the Application of the Utah Office of Consumer Services for a Deferred Accounting Order Directing Rocky Mountain Power to Defer all Bonus Depreciation Allowed for 2010 through 2011 by the Small Business Jobs Act as Amended*, Docket No. 11-035-47 (Settlement Stipulation, filed July 28, 2011).

[47] *See id.* (Settlement Stipulation at 6, ¶ 23).

[48] *Id.*

[49] *Id.* at 16, ¶ 56.

> on a going-forward basis that result from agreement in the Collaborative Process or Commission order. The D[PU] shall, and other Parties may, file reports for informational purposes with the Commission within six (6) months of approval of this Stipulation with a general explanation of the results of the Collaborative Process, including a description of any agreements reached and any remaining areas of disagreement. ….[50]

The PSC held hearings in early August 2011, and thereafter approved the stipulation in a memorandum decision.[51] That decision explained that a forthcoming "Report and Order will provide further direction regarding EBA reporting."[52] Our subsequent Report and Order in the docket, issued September 13, 2011, clarified that we were modifying our EBA Order to allow certain prudent financial swap transactions to be included in the EBA per the parties' stipulation.[53] We vacated that part of our earlier order "stating natural gas and electricity swaps are excluded from the approved energy balancing account[.][54]

2. Our Second (i.e., August 30, 2012) Order Concluded that Interim Rates Initially Ordered were No Longer Warranted.

On March 15, 2012, PacifiCorp filed its first request for an EBA rate adjustment, requesting the change on an interim basis, subject to further review, hearing, and possible refund.[55] Then, on March 30, 2012, the DPU filed its report on the collaborative process required by the stipulation, and PacifiCorp filed its first semi-annual hedging report.[56] After considering

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[50] *Id.* at 14, ¶ 53 (internal quotations omitted).
[51] *See id.* (Memorandum Decision, issued August 11, 2011).
[52] *Id.* at 2.
[53] *See id.* (Report and Order, issued September 13, 2011).
[54] *Id.* at 53, ¶ 5.
[55] *See In the Matter of the Application of Rocky Mountain Power to Increase Rates by $29.3 Million or 1.7 Percent through the Energy Balancing Account* (Application to Increase Rates through the Energy Balancing Account, filed March 15, 2012), Docket No. 12-035-67.
[56] *See In the Matter of the Application of Rocky Mountain Power for Authority to Increase its Retail Electric Utility Service Rates in Utah and for Approval of its Proposed Electric Service Schedules and Electric Service Regulations*

the positions of the parties and the arguments raised, and holding a hearing, we determined as follows:

> In our EBA Order, we excluded from the EBA mechanism the financial transactions, i.e., swap transactions, about which UIEC expresses so much concern. We determined such transactions should continue to be reviewed and approved in each general rate case, where the prudence of Company decisions is routinely assessed. In the RMP general rate case that followed the EBA Order, Docket No. 10-035-124, parties filed a Settlement Stipulation executed July 28, 2011 (Stipulation). Among its many terms, the Stipulation provided for the Commission to modify the EBA Order to remove the language excluding financial swap transactions from the EBA. The parties to the Stipulation included all of the parties who filed briefs on the EBA interim rate process now before us. We approved the Stipulation and in so doing changed the EBA mechanism as the parties requested. It is now apparent this change has substantially increased the levels of complexity and controversy pertaining to an examination of EBAC, and an interim rate process is no longer practical or appropriate.
>
> The EBA Statute states, [a]n energy balancing account may not alter: (i) the standard for cost recovery; or (ii) the electrical corporation's burden of proof. While we do not decide in this order how an EBA interim rate process could satisfy these requirements, it is apparent any reasonable process applied to the EBA, in its present form, likely would result in two rounds of litigation of the same controversial issues: first at the hearing to set the interim rates and again after the D[PU]'s audit report is completed. Even RMP concedes the interim rate process should include the opportunity for parties to contest RMP's interim rate showing, through adverse testimony and cross examination. Where, as in this instance, substantial controversy exists concerning at least one major element of the costs in question, i.e., the swap transactions, significant litigation of the same issues is predictable at both the interim and final rate setting stages. Moreover, nothing in the

(Report on the Collaborative Process to Discuss Appropriate Changes to PacifiCorp's Hedging Practices, filed March 30, 2012), Docket No. 10-035-124.

> operation of the EBA Pilot Program to this point justifies this inefficiency.
>
> In light of the foregoing factors, we conclude the interim rate process we initially ordered is no longer warranted. Instead, we will implement a process requiring only one annual rate change, following completion of the D[PU]'s audit. Accordingly, we hereby remove the interim rate process from the EBA Pilot Program and set forth in this order the process by which the $8.9 million proposed for recovery in this docket will be examined and recovered in rates, to the extent it is shown to be a prudently incurred actual cost. We also outline procedural milestones for examining future EBA applications.[57]

In short, after considering the parties' briefs and argument filed, we concluded, "*an interim rate process is not well suited for the EBA, as presently formulated*."[58]

3. Changed Circumstances Now Allow Us to Look More Favorably upon An Interim Rates Process.

Now, over four years later, we re-examine our August 30, 2012 decision that the interim rates process was not warranted for setting EBA rates. Then, adopting interim rates would very likely have resulted in the highly contentious issues associated with PacifiCorp's swap transactions being litigated both when the interim rates were implemented and again when the rates were made final. Circumstances are now much different. Since our August 30, 2012 decision, those who participated in the hedging collaborative have resolved much of the controversy regarding swap transaction costs and have developed a set of principles and

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[57] *In the Matter of the Application of Rocky Mountain Power to Increase Rates by $29.3 Million or 1.7 Percent through the Energy Balancing Account*, Docket No. 12-035-67; *In the Matter of the Application of Rocky Mountain Power for Approval of its Proposed Energy Cost Adjustment Mechanism*, Docket No. 09-035-15; *In the Matter of the Rocky Mountain Power Proposed Schedule 94, Energy Balancing Account (EBA) Pilot Program Tariff*, Docket No. 11-035-T10 ((Order on EBA Interim Rate Process at 12-13) (EBA Interim Rate Order) (footnotes and internal quotations omitted)), issued August 30, 2012).

[58] *Id*. at 11 (emphasis added).

guidelines for PacifiCorp to follow in implementing its hedging program. In 2012 the DPU filed its hedging collaborative report that expresses and explains these principles and guidelines. Since the issuance of that report, PacifiCorp has filed 10 semi-annual hedging reports in which it accounts for the activities associated with its hedging program and its adherence to the agreed-upon principles and guidelines. The semi-annual reports have been accepted without opposition and controversy.[59] With this important background, PacifiCorp's ongoing agreement to adhere to the guidelines and file the semi-annual hedging reports, and parties' ability to review these reports, it appears the EBA costs associated with hedging, i.e., swap transactions, are no longer a matter of extraordinary controversy.

Moreover, the DPU now testifies that due to the voluminous number of EBA-related transactions, it needs an additional time of four months to conduct the type of thorough audit that the EBA costs warrant. Under the DPU's proposal, the DPU would provide a preliminary review and comment regarding the adequacy of PacifiCorp's annual EBA filing and a preliminary conclusion as to whether or not it is consistent with the previous years' filing. The DPU would then complete and file its audit report by November 15. We conclude that when viewed together, the foregoing changed circumstances provide adequate assurance of the need for, and reasonableness of, using an interim rates process in this ratemaking setting.

In addition to the policy considerations expressed above, Utah law supports our decision to allow interim rates in the EBA. We find support for our decision in both caselaw and statute.

[59] In these cases, only the DPU and the OCS have commented on the reports and neither has contested the report results.

i. Caselaw

In 2001, in *Questar Gas v. Utah PSC*, 2001 UT 93, 34 P.3d 218, the Utah Supreme Court recognized our authority to authorize interim rates in the Questar Gas 191 balancing account mechanism.[60] The Court noted there that "[a]ccount 191 is a balancing account through which gas utilities in Utah can recover gas costs directly."[61] PacifiCorp's EBA is in some ways similar to Account 191 inasmuch as it allows PacifiCorp to recover directly "some or all components of the electrical corporation's incurred actual power costs[.]"[62] The Court also observed that "[t]he costs that can be recorded in and recovered through the gas balancing account are recorded in the utility's tariff."[63] The same is true of PacifiCorp's EBA.[64] Accordingly, the similarities drawn from *Questar Gas*, as applied to this docket involving PacifiCorp's EBA, support our decision to allow interim rates.

ii. Statute

Utah Code Ann. § 54-7-12(4)(a)(ii) reads:

> The commission, on its own initiative or in response to an application by a public utility or other party, may, after a hearing, allow any rate increase or decrease proposed by a public utility, or a reasonable part of the rate increase or decrease, to take effect on an interim basis within 45 days after the day on which the request is filed, subject to the commission's right to order a refund or surcharge.

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[60] *See Questar Gas v. Utah PSC*, 2001 UT 93, ¶ 12.
[61] *Id.* at ¶ 4 n.4.
[62] Utah Code Ann. § 54-7-13.5(1)(b) (LexisNexis 2010).
[63] *Questar Gas*, 2001 UT 93, ¶ 9 n.9.
[64] *See* P.S.C.U. No. 50, Rocky Mountain Power Electric Service Schedule No. 94, Energy Balancing Account (EBA) Pilot Program, available at: https://www.rockymountainpower.net/content/dam/rocky_mountain_power/doc/About_Us/Rates_and_Regulation/Utah/Approved_Tariffs/Rate_Schedules/Energy_Balancing_Account_EBA_Pilot_Program.pdf.

Utah Code Ann. § 54-7-12(4)(a)(ii) (LexisNexis 2010). While we note that that the preceding subsection (i.e., § 54-7-12(4)(a)(i)) refers to "a complete filing for a general rate increase or a general rate decrease,"[65] and a "complete filing" by definition means a general rate case (GRC),[66] the above-quoted provision upon which we rely makes no such reference to a GRC.[67]

We read 54-7-12(4)(a)(ii) according to its plain language.[68] In doing so, we do not read into 54-7-12(4)(a)(ii) terms the Legislature did not include. Instead, "[w]hen interpreting [this] statute, we assume, absent a contrary indication, that the [L]egislature used each term advisedly according to its ordinary and usually accepted meaning."[69] Accordingly, we conclude that 54-7-12(4)(a)(ii) authorizes the PSC to establish interim rates in an EBA cost-recovery proceeding.

Importantly, we also conclude that the 45-day provision contained in Utah Code Ann. § 54-7-12(4)(a)(ii) requires that interim rates must go into effect within 45 days after the day PacifiCorp files. Thus, if PacifiCorp wants rates to go into effect May 1, for example, it must calculate and file within the requisite 45 days.

4. Interim Rates True-Up

The DPU includes in its proposed changes to the EBA audit schedule that "[a]ny true-ups to the interim rates would go into effect on March 1 and [would] be amortized through April

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[65] Utah Code Ann. § 54-7-12(4)(a)(i).
[66] *See* Utah Code Ann. § 54-7-12(1)(b)(i) ("′Complete filing′ means an application filed by a public utility that substantially complies with minimum filing requirements established by the commission, by rule, for a general rate increase or decrease.").
[67] See, e.g., *Miller v. State*, 2010 UT App 25, ¶ 13, 226 P.3d 743 ("It would have been easy for the Legislature to have included such language, and thus we presume the Legislature intentionally omitted those requirements[.]").
[68] *See In re R.B.F.S.*, 2012 UT App 132, ¶ 15, 278 P.3d 143 ("Principles of statutory interpretation require us to look [] first to the plain language with the primary objective of giving effect to the [L]egislature's intent.") (alteration in original) (citation and internal quotation marks omitted).
[69] *Hutter v. Dig-It, Inc*., 2009 UT 69, ¶ 32, 219 P.3d 918.

30."[70] At hearing, the DPU testifies that if the incremental changes associated with a true-up were small, such balances could be amortized over a two-month period.[71] We are concerned that such a short period of two months (i.e., from March 1 to April 30) could be problematic. From a regulatory efficiency standpoint, the DPU's proposal would result in multiple rate changes during a short period of time, e.g., in March for the incremental amortization amount and again in May for the interim rates associated with the next EBA. We question whether the DPU's schedule would allow sufficient time for PacifiCorp to develop new rates and revise Schedule 94, and for parties to review these changes.

Notably, the DPU does not define the process the PSC should adopt if the incremental changes associated with a true-up are significant. Under the DPU's proposal, if large amounts are to be amortized over a two-month period, ratepayers may experience sizeable rate changes for a short period of time. This would be inconsistent with the concepts of stability and gradualism in ratemaking.

In order to avoid the issues identified above, we find it appropriate to adjust the DPU's proposed timetable. Accordingly, any true-up to the interim rates will go into effect **May 1, and be amortized through April 30 of the following year.** We also note that this schedule aligns the true-up amortization with the next EBA filing.

ORDER

Based on our findings and conclusions above, we extend the EBA pilot period through December 31, 2019, and we approve the interim rates component of the EBA rate mechanism

[70] Direct Testimony of Charles E. Peterson at 8, lines 167-68, filed September 21, 2016.
[71] *See* Hearing Transcript (348480A) at 10, lines 17-21.

and the Division's proposed annual EBA review schedule consistent with Utah Code Ann. § 54-7-12(4)(a)(ii). Accordingly, we adopt the following procedural schedule proposed by the DPU:

1. PacifiCorp will continue to file its EBA application on or about March 15.
2. The DPU will conduct a preliminary review of PacifiCorp's application and provide a preliminary conclusion if the EBA filing appears to not depart from prior years' filings.
3. Within 45 days after the EBA application is filed, the PSC will act on the DPU's preliminary conclusion. If interim rates are approved they will have an amortization period through April of the following year, effective May 1.
4. The DPU will then file its audit report by November 15, following which the PSC will set a schedule in the docket.
5. The PSC will hold a hearing on or about February 1 of the year following the year in which the EBA application is filed, after which a true-up of rates could be ordered.
6. The PSC will issue an order by March 1 of the year following the year in which the EBA application is filed.
7. Any true-up to interim rates will go into effect May 1, and be amortized through April 30 of the following year.

This order supersedes the final rate component of the EBA rate mechanism in the EBA Interim Rate Order.

DATED at Salt Lake City, Utah, February 16, 2017.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
DW#291767

Notice of Opportunity for Agency Review or Rehearing

Pursuant to §§ 63G-4-301 and 54-7-15 of the Utah Code, an aggrieved party may request agency review or rehearing of this Order by filing a written request with the Commission within 30 days after the issuance of this Order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission does not grant a request for review or rehearing within 20 days after the filing of the request, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a petition for review with the Utah Supreme Court within 30 days after final agency action. Any petition for review must comply with the requirements of §§ 63G-4-401 and 63G-4-403 of the Utah Code and Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on February 16, 2017, a true and correct copy of the foregoing was delivered upon the following as indicated below:

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