

September 16, 2019

VIA ELECTRONIC FILING

Utah Public Service Commission
Heber M. Wells Building, 4th Floor
160 East 300 South
Salt Lake City, UT 84114

Attention: Gary Widerburg
Commission Administrator

RE: **Docket No. 09-035-15**
Application of Rocky Mountain Power for Approval of its Proposed Energy Cost
Adjustment Mechanism
Comments

In accordance with the Request for Comments issued by the Public Service Commission of Utah (“Commission”) on August 1, 2019, in this docket, PacifiCorp (the “Company”) respectfully submits these comments regarding the conclusion or the continuation of the EBA as a pilot program.

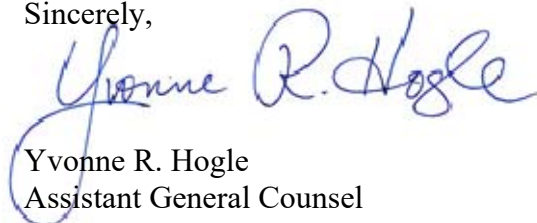
The Company respectfully requests that all formal correspondence and requests for additional information regarding this filing be addressed to the following:

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Sincerely,



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cc: Service List – Docket No. 09-035-15

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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 COMMENTS OF ROCKY MOUNTAIN POWER
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Rocky Mountain Power, a division of PacifiCorp (“Rocky Mountain Power” or the “Company”), respectfully submits these comments in response to the Public Service Commission of Utah’s (the “Commission”) Request for Comments (“Request”) issued in this docket on August 1, 2019.

INTRODUCTION

The Request was issued “[i]n accordance with [the Commission’s] February 16, 2017 Order in this docket as it relates to the Energy Balancing Account (EBA) evaluation period ending December 31, 2019.”¹ The Request seeks comments from interested parties “regarding the conclusion or the continuation of the EBA as a pilot program.” The Request also notes that the Commission “is mindful that many parties have previously provided comments on the EBA pilot

¹ See Request, p. 1.

program in this docket” and states that parties may refer to their prior comments rather than restating them in response to the Request.

Rocky Mountain Power understands that the issue on which the Commission wishes to receive comments is whether Electric Service Schedule No. 94, Energy Balancing Account (the “EBA Tariff”) should continue as a pilot program or become a tariff with indefinite duration. The Company continues to contend that the EBA is in the public interest and the pilot language in the EBA Tariff should be removed.

COMMENTS

A. The EBA Tariff Should No Longer Be a Pilot Program.

The February 16, 2017 Order referenced in the Request² noted that, while the EBA Tariff was in effect as a pilot program through December 31, 2016, the Utah Legislature passed Senate Bill 115 in the 2016 General Session (“SB 115”) mandating that any energy balancing account established before January 1, 2016 must allow recovery of 100 percent of prudently-incurred EBA costs through December 31, 2019.³ The Commission noted that it had extended the EBA Tariff through December 31, 2019 in response to SB 115 in Docket No. 16-035-T05.⁴

One of the questions before the Commission in 2017 was whether the EBA Tariff should continue as a pilot program.⁵ The Company argued that it should be made permanent.⁶ Other parties argued that the Tariff should remain a pilot program.⁷ The Commission concluded that

² Order, *In the Matter of the Application of Rocky Mountain Power for Approval of its Proposed Energy Cost Adjustment Mechanism*, Docket No. 09-035-15 (Utah P.S.C. Feb. 16 2017) (“2017 Order”).

³ *Id.* at 2-3 (discussing SB 115, L. Utah 2016, ch. 393, §§ 4, 14).

⁴ *Id.* at 3. See also Order, *In the Matter of Rocky Mountain Power's Proposed Revisions to Electric Service Schedule No. 94, Energy Balancing Account*, Docket No. 16-035-T05 (Utah P.S.C. May 16, 2016) (“2016 Order”) at 4-5.

⁵ The Company had earlier proposed removal of the pilot program language from the EBA Tariff in Docket No. 16-035-T05. However, the Company later accepted the recommendation of the Division of Public Utilities and the Utah Association of Energy Users at that time that the pilot program language no be removed. See 2016 Order at 4-6.

⁶ *Id.* at 5.

⁷ *Id.* at 5-6.

because the provision in SB 115 requiring recovery of 100 percent of prudently-incurred EBA costs sunset on December 31, 2019 and because SB 115 required the Commission to provide reports to the Legislature on the public interest of 100 percent recovery in 2017 and 2018, the Tariff should remain a pilot program through December 31, 2019.⁸ The 2017 Order further provided that, consistent with SB 115, the Tariff would be subject to review before December 31, 2019, of whether and in what form the Tariff should be continued.⁹ In addition, two separate reports by the Commission stated it was delaying its evaluation of the EBA until the Legislature decided whether or not to allow Subsection 2(b) in SB 115 to sunset.¹⁰ The correlation between the continuity of the EBA and SB 115 is evident.

Since the Commission issued the 2017 Order, the law has changed again. In the 2019 General Session, the Utah Legislature passed Senate Bill 150 (“SB 150”).¹¹ Among other things, SB 150 repealed the sunset provision in SB 115.¹² As a result, the requirement that an EBA allow 100 percent recovery of prudently-incurred EBA costs no longer terminates on December 31, 2019, but is now permanent, absent further action by the Legislature. SB 150 also deleted the requirement that the Commission continue to review EBA tariffs and provide reports to the Legislature on the public interest of 100 percent recovery of EBA costs.¹³

⁸ *Id.* at 6.

⁹ *Id.*

¹⁰ 2017 Report to the Public Utilities, Energy, and Technology Interim Committee in Docket No. 17-035-01 issued November 6, 2017, page 6. 2018 Report to the Public Utilities, Energy, and Technology Interim Committee in Docket No. 18-035-01 issued November 5, 2018, page 5.

¹¹ L. Utah 2019, ch. 88.

¹² See SB 150, § 2 (repealing Utah Code Ann. § 63I-1-254(2)).

¹³ See SB 150, § 1 (amending Utah Code Ann. § 54-7-13.5(6) replacing the previous requirement that the Commission provide reports to the Legislature regarding the public interest of continued 100 percent recovery of prudently-incurred costs under an EBA with a requirement that any electrical corporation with an EBA provide reports to the Legislature every other year regarding its recovery of 100 percent of prudently-incurred EBA costs and any costs that the Commission has deemed imprudent).

Just as the Commission concluded in 2017 that the EBA Tariff should be continued through December 31, 2019 as a result of new legislation, the Commission should now conclude that the Tariff should no longer be considered a pilot program based on new legislation. In these circumstances, it is apparent that the reference to “pilot program” in the EBA Tariff should be eliminated, consistent with the Legislature’s intent.

A pilot program is no longer reasonable for at least two additional reasons. First, a pilot program is in effect only temporarily until a specified date. By or before that date, the Commission considers whether the program remains in the public interest and should be continued with or without modifications or be discontinued. There is no longer a specified date at which the EBA Tariff should be evaluated. The Tariff was originally a pilot program through December 31, 2015. That date was extended by a stipulation of parties approved by the Commission until December 31, 2016.¹⁴ It was further continued by action of the Legislature through December 31, 2019. Now, the Legislature has mandated that 100 percent recovery of prudently-incurred EBA costs should be continued indefinitely. Consistent with that clear direction, the EBA Tariff should no longer be a temporary pilot program.

Second, removing the pilot program language from the EBA Tariff does not affect the ability of the Commission to make refinements to the Tariff. The Commission has authority to review any tariff at any time and to make refinements to the tariff after hearing and based on a finding supported by substantial evidence that the refinements are in the public interest.¹⁵ The only difference between the EBA Tariff and any other tariff is that the Commission may not modify the Tariff to allow less than 100 percent recovery of prudently-incurred EBA costs absent further action by the Legislature.

¹⁴ See 2016 Order at 2.

¹⁵ See, e.g., Utah Code Ann. §§ 54-3-2 and 54-4-4.

B. Industry Practice of an EBA

The EBA is a rate mechanism designed to allow the Company to collect or credit the differences between actual net power costs (“NPC”) and wheeling revenues incurred to serve customers in Utah and base NPC and wheeling revenues in rates. The Company’s NPC represent a significant portion of its total revenue requirement and are subject to day-to-day and annual volatility largely in response to outside influences outside of the Company’s control. First and foremost, customer demand determines the load that the Company must safely and reliably serve. The Company must also react to weather events across both of its balancing authority areas which affect both load and generation from all resources and changes in fuel and energy market prices. In addition, the Company is obligated to purchase the output from all qualifying facilities over which the Company has minimal control. The Company must also consider the influx of renewable resources in the Company’s portfolio and the energy imbalance market when meeting customer demand. All of these variables make it challenging, if not impossible, to accurately forecast NPC in base rates in a general rate.

For these reasons it is industry norm to have an EBA-type mechanism in place that allows full recovery of prudent NPC. Nearly all traditionally regulated and most restructured states in the United States have some form of a mechanism for power cost recovery. Notably, only seven states (out of states with non-structured power markets) have sharing mechanisms built into their respective power cost true-up mechanisms. Of those seven states, only three have sharing mechanisms less than 90 percent.

C. The EBA Tariff Remains in the Public Interest.

The Request indicates that the issue on which the Commission seeks comment is whether or not the EBA Tariff should continue as a pilot program. However, it is possible that other parties

may argue that the Commission should reconsider whether the Tariff remains in the public interest and may argue, as they have in the past, that the EBA is not in the public interest. While Rocky Mountain Power believes that this is not a reasonable issue to consider at this time in light of SB 150, it will briefly comment in anticipation that some parties may take that position.

It should be clear from SB 115 and SB 150 that the Legislature believes that an EBA Tariff allowing 100 percent recovery of prudently-incurred EBA costs is appropriate public policy and in the public interest. The Commission derives its authority from the Legislature.¹⁶ The Commission was established by the Legislature to perform a legislative function, the setting of just and reasonable public utility rates.¹⁷ The focus of reasonable rates is not just risk assignment, but is one of fairness and balanced outcomes. The EBA facilitates the long-held regulatory principle that the utility should be able to recover its prudently-incurred costs for the service it provides to customers. Given that the Legislature has now clearly stated that an EBA should allow recovery of 100 percent of prudently-incurred EBA costs, that public policy position should be honored.

One area of historical contention associated with the EBA's public interest determination is the elimination of the sharing band, which became effective June 1, 2016, in accordance with Utah Code Ann. § 54-7-13.5(2)(d), the Sustainable Transportation and Energy Plan Act. Since June 2016, the Company has made three EBA filings reflecting recovery or refund of 100 percent of the actual costs differential from the base amount, i.e., with no sharing band.

¹⁶ *Heber Light & Power Company v. Utah Pub. Serv. Comm'n*, 2010 UT 27, ¶ 17, 231 P.3d 1203 (“It is well established that the Commission has no inherent regulatory powers other than those expressly granted or clearly implied by statute.”) (quoting *Hi-Country Estates Homeowners Ass'n v. Bagley & Co.*, 901 P.2d 1017, 1021 (Utah 1995) (quoting *Mountain States Tel. & Tel. Co. v. Pub. Serv. Comm'n*, 754 P.2d 928, 930 (Utah 1988)). See also *Interwest Corp. v. Pub. Serv. Comm'n*, 510 P.2d 919, 920 (Utah 1973) (“The Public Service Commission was created by the legislature and . . . can only exercise those powers granted by the legislature.”)

¹⁷ See, e.g., *Prentis v. Atlantic Coast Line Co.*, 211 U.S. 210, 226 (1908) (“The establishment of a rate is the making of a rule for the future, and therefore is an act legislative and not judicial in kind”); *Beaver v. Qwest, Inc.*, 2001 UT 81, ¶ 11, 31 P.3d 1147 (“The legislative branch possesses the police authority to regulate public utilities and the power to fix public utility rates in order to secure for the public just, uniform, and nondiscriminatory rates.”).

The Company has previously provided substantial evidence demonstrating that the EBA Tariff is in the public interest in a variety of dockets. Generally and among other things, the Company has demonstrated that rates are more accurate with an EBA Tariff, and that it has mitigated the need for more frequent rate cases. Consistent with the Commission's suggestion in the Request, the Company will not reiterate all of the substantial evidence in these comments, but rather incorporates it by reference.¹⁸

In addition, the Company notes that throughout the evolution of the EBA, the Company has done its best to provide the Division of Public Utilities, as the auditor of the EBA, with significant and detailed information even before the Company makes its annual EBA filings, including quarterly updates filed during the deferral period. These efforts have allowed the Division to begin its audits even earlier than the procedural schedule in the current EBA Tariff sets forth, which assumes interim rates. The Company expects that the parties in this docket will meet to discuss the procedural schedule considering that interim rates are no longer legal, as well as other potential refinements to the EBA Tariff and will likely, either collectively or individually, make a filing with specific proposals and recommendations to the EBA Tariff.

D. Procedural Schedule

The Utah Supreme Court recently issued an opinion in *Utah Office of Consumer Services, et al. v. Public Service Commission of Utah, et al.*, Case No. 20170364-CA, regarding interim rates in the EBA. Since the EBA was passed by the Utah Legislature in 2009, interim rates in the EBA were first allowed, then revoked, from the period 2011 to 2017. The Commission then reversed its decision that revoked interim rates and set forth a process for implementing interim rates in its February 16, 2017 order in Docket No. 09-035-15. Through that order, interim rates

¹⁸ See the Company's comments and reply comments filed in this docket filed in response to the Commission's requests throughout the evolution of the EBA.

were allowed so long as the procedural schedule was modified to allow intervenors more time to complete their prudency review of the EBA.

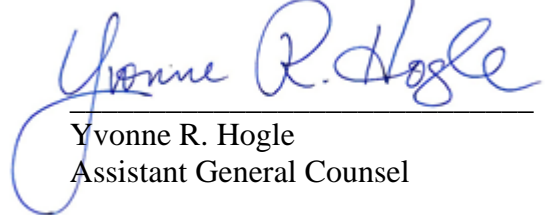
In August 2019, the Company implemented the Court's decision in Case No. 20170364-CA, which removed the use of interim rates in the EBA. Therefore, it is appropriate to revisit the procedural schedule that was originally modified to incorporate the use of interim rates. Following the Commission's determination on the conclusion or continuation of the EBA as a pilot program, the Company would like the opportunity to discuss modifications to the procedural schedule with parties and to file comments pursuant to these discussions.

CONCLUSION

Rocky Mountain Power respectfully requests that the Commission determine the EBA Tariff should continue consistent with SB 150 and should no longer be considered a pilot program. The Tariff has previously been found to be in the public interest by the Commission with the exception of 100 percent recovery of prudently-incurred EBA costs. That provision has now been mandated by the Legislature. Specific proposals to refine the program, including proposals to modify the procedural schedule, will be properly brought before the Commission for consideration at a later date.

Respectfully submitted September 16, 2019.

ROCKY MOUNTAIN POWER



Yvonne R. Hogle
Assistant General Counsel

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of September, 2019, I caused to be served, by e-mail, a true and correct copy of the foregoing Rebuttal Testimony and Workpapers to the following:

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