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Lieutenant Governor

State of Utah
Department of Commerce
Division of Public Utilities

FRANCINE GIANI
Executive Director

CHRIS PARKER
Director, Division of Public Utilities

MEMORANDUM

To: Public Service Commission of Utah
From: Utah Division of Public Utilities
Chris Parker, Director
Artie Powell, Energy Section Manager
Charles Peterson, Technical Consultant

Date: September 16, 2019

Re: **DPU Comments Regarding the Conclusion or the Continuation of the PacifiCorp's EBA pilot program.**

Docket No. 09-035-15

RECOMMENDATION

The Division of Public Utilities (Division) believes that PacifiCorp's Energy Balancing Account (EBA) is not in the public interest. The Division recommends that the EBA be terminated at the end of the current calendar year, 2019. In the event an EBA program continues, the Division is confident parties can reach agreement about a schedule and tariff.

ISSUE/REQUEST

The Public Service Commission of Utah (Commission) has invited comments from interested parties by September 16, 2019 "regarding the conclusion or the continuation of the EBA as a pilot program."¹

¹ The Public Service Commission of Utah, Docket No. 09-035-15, "Request for Comments", issued August 1, 2019.

DISCUSSION

In its request cited above, the Commission stated that it, of course, was aware of the comments (and presumably testimony) previously made by parties in this docket and its preference for parties to refer to their previous filings rather than restate them in new comments here. The Division understands this to mean that the Commission wants these comments to be brief. The Division will be brief but requests that the Commission review the Division's previous filings in this matter, particularly the ones cited below.

While the Division indicated that it was not philosophically opposed to what was originally referred to as an "energy cost adjustment mechanism" (ECAM) in the initial phases of this docket, nevertheless, the Division raised several issues and problems with PacifiCorp's initial ECAM proposal and sought to mitigate those problems with a counter proposal that gave PacifiCorp some of the relief it sought, but (1) protected ratepayers from undue risk shifting from the Utility to its ratepayers, and (2) put structural incentives in place that would provide the Utility with the motivation that it had prior to the implementation of an ECAM to continue to seek to provide electricity "at the lowest reasonable cost" to ratepayers.² The Division also worried that without these incentive structures in place, any audit performed by the Division might provide inadequate protection to ratepayers.³

The energy balancing account (EBA), as the Commission identified the program it approved, contained at least some of the structural protections that the Division believed were appropriate and necessary for it to support such a program—most notably the sharing bands. In May of 2016, S.B. 115, the Sustainable Transportation and Energy Plan Act (Act) became effective. That bill "allows an electrical corporation to recover 100% of the electrical corporation's prudently incurred costs in an energy balancing account" if an energy balancing account is approved. The electrical corporation that the bill currently applies to is PacifiCorp. Prior to the Act, any

² See Docket No. 09-035-15, Direct Testimony of Charles E. Peterson, Phase I, November 16, 2009.

³ *Ibid.*, pages 22-23.

difference between PacifiCorp's base net power costs (NPC) and actual NPCs were passed through the EBA, subject to a 70/30 "sharing band."

With the elimination of the sharing band, the EBA becomes substantially the same program that the Utility originally proposed as an ECAM back in 2009, together with all of the problems and issues the Division, and other parties, identified with the original ECAM proposal. Without at least the re-implementation of the sharing band, the Division cannot support the EBA as being in the public interest. It misaligns incentives for efficient operations. The proper alignment of incentives toward the public interest is a major function of regulating a monopoly utility.

Since 2011 when the EBA went into effect, the Division has gained experience auditing the EBA and investigating the effects of the EBA as directed by the Commission. In addition to the annual audit reports to the Commission, the Division filed two reports evaluating the EBA generally, the latest being filed in May 2016, its "Final Report."⁴ The Final Report provides an extended discussion of the Division's audit experience as well as the significant limitations of the Division's audit. (See Final Report pages 41-45, especially the concluding paragraph on page 45).

The Division filed with the Commission a memorandum on September 18, 2018 in response to the Commission's request for comments for its then-upcoming report to the legislature.⁵ In that memorandum the Division highlighted the issues it has with the removal of the sharing bands and the Commission's own determination that relying solely on prudence reviews—Division audits—"will shift too much of the risk...to customers...."⁶ That memorandum also stated that the Division no longer supported the EBA as being in the public interest.

⁴ Docket No. 09-035-15, "Final Evaluation Report of PacifiCorp's EBA Pilot Program," by the Division of Public Utilities" May 20, 2016.

⁵ Docket No. 18-035-01, "DPU Comments Relating to the Sharing Band in the Energy Balancing Account," September 18, 2018.

⁶ Docket No. 09-035-15, In the Matter of the Application of Rocky Mountain Power for Approval of its Proposed Energy Cost Adjustment Mechanism, March 2, 2011, Report and Order, p. 69

Given the Division's now significant experience with the EBA, and the changes mandated by the Act mentioned above, the Division recommends that the EBA is not in the public interest and should be terminated. The reasons for this have been discussed previously at length in this docket and are summarized below:

- While the EBA has provided significant benefits to the Utility, benefits to ratepayers, if any, are minimal.
- The EBA results in a significant shifting of risk previously borne by the Utility to ratepayers. The Utility was in a much better position to manage that risk than the vast majority of its ratepayers.
- The Division's audits not only are not attestations that the Utility's net power costs are managed by the Utility to result in the lowest reasonable costs, they are inadequate to provide assurance that there is no material imprudence in the costs; the former is likely nearly an impossibility, the latter would require resources far beyond what the Division currently has. With regard to imprudence, the most the Division can say is that its reviews have found few instances, mostly in forced outages, where the Utility attempted to include costs the Division believed were imprudent.

Lastly, there is the philosophical issue of what regulation is supposed to do. It has long been said that regulation of utility monopolies is an attempt by the regulators, through authorized prices and other mechanisms, to act as a surrogate for competition.⁷ The EBA as now constituted substantially guarantees the recovery of the Utility's net power costs, which make up about one-third of its total revenue requirement. In 2016 the Utility attempted to expand the scope of the EBA to add additional costs that it admitted were not net power costs; it even indicated that it would be requesting more costs be added in the future.⁸ Shifting costs to an enhanced cost-

⁷ For a classic discussion of this issue see James C. Bonbright, *Principles of Public Utility Rates* (New York: Columbia University Press, 1961), republished on the web (July 2005): <http://www.terry.uga.edu/bonbright/publications>), Chapter VI.

⁸ See in this docket: PacifiCorp witness testimony "Modification Testimony of Michael G. Wilding," September 2016, lines 20-23, line 48, and lines 127-129; Office of Consumer Services witness testimony "Rebuttal Testimony of Philip Hayet," November 16, 2016, lines 223-225; "Final Report" pages 46-47.

recovery mechanism such as the EBA is expected behavior by the utility. No business operating in the competitive marketplace can go back to its customers months, or years, after the fact and demand after-the-fact price adjustments. But this is essentially what PacifiCorp can do under the EBA, as well as collect interest, currently in excess of its borrowing costs,⁹ on the under billing. This is the antithesis of being a surrogate for competition.¹⁰

Parties have engaged in discussion in recent months concerning the EBA. If the Commission authorizes the continuation of the EBA, it is likely the parties can agree on tariff language outlining the schedule for review, and other related matters.

CONCLUSION

For reasons summarized above, the Division believes that the EBA is not in the public interest and recommends that the Commission terminate it effective at the end of 2019. Without the authority to impose sharing bands, the Commission lacks the tools to create a program in the public interest. The Commission has an adequate record before it to make a decision and no hearing or other process is requested.

Selected Bibliography of Prior Division Filings in this Matter before the Commission

(All internet links were last accessed September 6, 2019)

Docket No. 18-035-01, DPU Comments Relating to the Sharing Band in the Energy Balancing Account, September 18, 2018. Link is provided below:

<https://pscdocs.utah.gov/electric/18docs/1803501/304460CommDPU9-18-2018.pdf>

“Final Evaluation Report of PacifiCorp’s EBA Pilot Program,” by the Division of Public Utilities” May 20, 2016. Link to the redacted public version is below:

<https://pscdocs.utah.gov/electric/09docs/0903515/276850RedacCommfromDPU5-20-2016.pdf>

⁹ The Division suggests that if the EBA is made permanent, that the Commission adjust the carrying charge to better reflect the actual cost of borrowing.

¹⁰ Again, this issue was mitigated by the sharing band, and the other structures the Division had originally suggested.

Docket No. 09-035-15, Direct Testimony of Charles E. Peterson, Phase I, November 16, 2009.
Link is provided below:

<https://pscdocs.utah.gov/electric/09docs/0903515/64379DirTestPerson.pdf>

Docket No. 09-035-15, Direct Testimony of Charles E. Peterson, Phase II, August 4, 2010. Link
is provided below:

<https://pscdocs.utah.gov/electric/09docs/0903515/67984DirTestPeterson8-10-10.pdf>

CC Service List