

Phillip J. Russell (10445)
HATCH, JAMES & DODGE
10 West Broadway, Suite 400
Salt Lake City, UT 84101
Telephone: 801-363-6363
Facsimile: 801-363-6666
Email: gdodge@hjdllaw.com
prussell@hjdllaw.com

*Attorneys for the Utah Association of
Energy Users*

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
--	----------------------

UAE COMMENTS

In consideration of this Commission’s February 16, 2017 Order (“Order”) regarding the Energy Balancing Account’s (“EBA”) evaluation period ending December 31, 2019, and pursuant to the Commission’s August 1, 2019 Request for Comments (“Request”), the Utah Association of Energy Users (“UAE”) files these Comments regarding the conclusion or the continuation of the EBA as a pilot program.

UAE takes note of the Commission’s statement in the Request that “many parties have previously provided comments on the EBA pilot program in this docket,” and its indication that “parties may refer to comments previously filed in this docket rather than restating them as part of their response.” Request at 1.

UAE has previously filed comments and testimony in this docket.¹ Rather than repeat the statements and positions set forth in those filings, UAE references its prior comments and testimony as though fully incorporated herein. For ease of reference, UAE offers the following summary of its position in this matter. In Phase I of this docket, UAE recommended against the adoption of an Energy Balancing Account, asserting that it was not in the public interest. In Phase II of the docket, after the Commission adopted the EBA in its February 8, 2010 Report and Order, UAE recommended that the Commission adopt a risk-sharing mechanism to impose an incentive for Rocky Mountain Power (“RMP” or “Company”) to properly manage its fuel and purchase power costs. UAE proposed a 70/30 sharing mechanism, which the Commission ultimately adopted in its August 1, 2019 Report and Order.

As this Commission noted in its February 16, 2017 Order, the Sustainable Transportation and Energy Plan Act (“STEP Act”), which became effective on May 10, 2016, removed the sharing band provision from the EBA and directed this Commission to report to the Public Utilities and Technology Interim Committee (“PUTIC”) regarding whether such change is

¹ *See, e.g.*, Preliminary Recommendation and Scope of Issues of Utah Association of Energy Users (Jun. 2, 2009); Direct Testimony of Kevin C. Higgins, Phase I (Nov. 16, 2009); Surrebuttal Testimony of Kevin C. Higgins, Phase I (Jan. 5, 2010); UAE’s Memorandum in Opposition to Rocky Mountain Power’s Motion for a Deferred Accounting Order (Feb. 23, 2010); Direct Testimony of Kevin C. Higgins, Phase II (Aug. 4, 2010) Rebuttal Testimony of Kevin C. Higgins, Phase II (Sept. 15, 2010); Surrebuttal Testimony of Kevin C. Higgins, Phase II (Oct. 13, 2010); UAE’s Post-Hearing Brief (Dec. 26, 2010); UAE’s Response to Rocky Mountain Power’s Petition for Clarification or Rehearing (May 2, 2011); Response of UAE Intervention Group to Motion of Rocky Mountain Power for Determination of Ratemaking Treatment of Deferred Accounts (Jun. 20, 2011); Petition of UEIC, Office of Consumer Services and UAE for Reconsideration and Rehearing of Commission Order Issued February 16, 2017 (Mar. 20, 2017); Rebuttal Testimony of Kevin Higgins Regarding Final EBA Report and Testimony (Nov. 16, 2016); Surrebuttal Testimony of Kevin C. Higgins Regarding Final EBA Report and Testimony (Dec. 15, 2016).

reasonable and in the public interest. Subsequent legislative actions have removed automatic sunset provisions for the EBA statute set forth in previous versions of the Utah Code, but the EBA statute continues to provide the Commission authority to determine whether the adoption or maintenance of an Energy Balancing Account remains in the public interest.²

As this Commission is also well aware, the adoption of an interim rate mechanism in the EBA process was a much-debated issue in this docket and one that UAE, the Office of Consumer Services (“Office”), and others opposed. The debate on that issue has now been resolved by the Utah Supreme Court, which has ordered that the EBA statute does not authorize the imposition of interim EBA rates.

In its Request, this Commission has asked stakeholders to comment regarding the conclusion or continuation of the EBA. UAE continues to believe that the EBA, as currently constructed is not in the public interest because it does not contain a sharing mechanism that is essential to mitigating the risks imposed on ratepayers by the adoption of the EBA. For the reasons set forth in its comments and testimony previously filed in this docket, summarized above, UAE recommends that the Commission find that the EBA as currently constructed and without a sharing mechanism is not in the public interest and to order that it is no longer authorized under the EBA statute.

² See Utah Code § 54-7-13.5(2) (noting that the Commission “*may* authorize an electrical corporation to establish an energy balancing account,” and noting that an EBA “shall become effective upon a commission finding that the energy balancing account is (i) in the public interest”); *Id.* § 54-7-13.5(5) (noting that statute “does not create a presumption for or against approval of an energy balancing account.”).

Should the Commission find that the EBA remains in the public interest even without a sharing band and without a mechanism for the collection of interim rates, UAE represents that it has met with various parties regarding a proposed method to modify the EBA tariff (Schedule 94) and to adopt a process and schedule for future EBA filings. Based on those discussions, UAE is reasonably confident that, should the Commission determine that the EBA remains in the public interest—a conclusion with which UAE disagrees for the reasons set forth above—that the parties can present a stipulated proposal regarding the EBA process moving forward.

DATED this 16th day of September, 2019.

Respectfully submitted



By: _____

Phillip J. Russell
HATCH, JAMES & DODGE, P.C.
Attorneys for UAE

Certificate of Service
Docket No. 09-035-15

I hereby certify that a true and correct copy of the foregoing was served by email this day 16th day of September 2019, on the following:

ROCKY MOUNTAIN POWER

Jeff Richards	robert.richards@pacificcorp.com
Yvonne Hogle	yvonne.hogle@pacificcorp.com
Daniel Solander	Daniel.solander@pacificcorp.com
Jana Saba	jana.saba@pacificcorp.com
datarequest@pacificcorp.com	

DIVISION OF PUBLIC UTILITIES

Patricia Schmid	pschmid@agutah.gov
Justin Jetter	jjetter@agutah.gov
Chris Parker	chrisparker@utah.gov
William Powell	wpowell@utah.gov
dpudatarequest@utah.gov	

OFFICE OF CONSUMER SERVICES

Steven Snarr	stevensnarr@agutah.gov
Robert Moore	rmoore@agutah.gov
Michele Beck	mbeck@utah.gov
Cheryl Murray	cmurray@utah.gov

UTAH INDUSTRIAL ENERGY CONSUMERS

F. Robert Reeder	freeder@parsonsbehle.com
William J. Evans	bevans@parsonsbehle.com
Vicki M. Baldwin	vbaldwin@parsonsbehle.com

UTAH OFFICE OF ENERGY DEVELOPMENT

Jeffrey Barrett	jhbarrett@utah.gov
-----------------	--------------------

WAL-MART STORES, INC. & SAM'S WEST

Holly Rachel Smith	holly@raysmithlaw.com
Ryan L. Kelly	ryan@kellybramwell.com
Steve W. Chriss	stephen.chriss@wal-mart.com

WESTERN RESOURCE ADVOCATES

Steven S. Michel	smichel@westernresources.org
Nancy Kelly	nancy.kelly@westernresources.org
Penny Anderson	penny.anderson@westernresources.org

SALT LAKE COMMUNITY ACTION PROGRAM

Betsy Wolf bwolf@slcap.org

UTAH CLEAN ENERGY

Sarah Wright sarah@utahcleanenergy.org
Brandy Smith brandy@utahcleanenergy.org
Kevin Emerson kevin@utahcleanenergy.org

IBEW LOCAL 57

Arthur F. Sandack asandack@msn.com

NUCOR STEEL-PLYMOUTH

Peter J. Mathis pjm@smxblaw.com
Eric J. Lacey ejl@smxblaw.com
Jeremy R. Cook jcook@ck.law

Philip J. Russee
