- 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: November 14, 2019

SYNOPSIS

The Public Service Commission approves the EBA as an ongoing program and directs modifications to Electric Service Schedule No. 94, EBA Pilot Program.

PROCEDURAL HISTORY AND BACKGROUND

On March 3, 2011, the Public Service Commission (PSC) issued a Corrected Report and Order ("2011 Order") in this docket, approving an energy balancing account (EBA) for Rocky Mountain Power (RMP) as a pilot ratemaking program for a four-year period. The EBA was subject to, among other things, a 70-30 customer-shareholder sharing mechanism ("Sharing Band").

In 2016, the Utah Legislature passed Senate Bill 115 ("S.B. 115"), which required: "Beginning June 1, 2016, for an electrical corporation with an [EBA] established before January 1, 2016, the [PSC] shall allow an electrical corporation to recover 100% of the electrical corporation's prudently incurred costs as determined and approved by the [PSC] under this section." Utah Code Ann. § 54-7-13.5(2)(d). We refer to Utah Code Ann. § 54-7-13.5(2)(d) as "Subsection (2)(d)."

Shortly thereafter, in an order dated May 16, 2016, the PSC approved changes to RMP's Electric Service Schedule No. 94, Energy Balancing Account Pilot Program to achieve

consistency with S.B. 115 ("2016 Order").[1] Later, in its February 16, 2017 Order in this docket ("2017 Order"), the PSC concluded 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."[2]

On August 1, 2019, the PSC issued a request for comments seeking stakeholder input regarding the conclusion or continuation of the EBA as a pilot program. On September 16, 2019, RMP, the Division of Public Utilities (DPU), the Office of Consumer Services (OCS), and the Utah Association of Energy Users (UAE) each filed comments.

PARTIES' COMMENTS

RMP

RMP asserts the PSC should conclude the EBA is no longer a pilot program and that the references to "pilot program" in Electric Service Schedule No. 94 – EBA Pilot Program ("Schedule 94") should be eliminated. RMP argues doing so is consistent with the Legislature's intent.

RMP maintains it "should be clear from SB 115 and SB 150[3] 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."[4] RMP contends it has demonstrated that rates are more accurate with an EBA in place and that the EBA has mitigated the need for more frequent rate cases. Further, RMP asserts the "EBA facilitates the long-held regulatory principle

[1] *In the Matter of Rocky Mountain Power's Proposed Revisions to Electric Service Schedule No. 94, Energy Balancing Account*, Docket No. 16-035-T05, Order issued May 16, 2016.
[2] Order issued February 16, 2017 at 6.
[3] This refers to legislation that repealed a sunset date for Subsection (2)(d).
[4] RMP's September 16, 2019 Comments at 6.

that the utility should be able to recover its prudently-incurred costs for the service it provides to customers."[5]

With the implementation of the Utah Supreme Court's decision restricting the use of interim rates in the EBA ("Opinion"),[6] RMP represents it is appropriate to revisit the EBA's procedural schedule. Following the PSC's determination on the conclusion or continuation of the EBA as a pilot program, RMP requests the opportunity to discuss modifications to the procedural schedule with parties and, thereafter, for the PSC to receive comments regarding the schedule.

DPU

The DPU believes that the EBA is not in the public interest and recommends its termination at the end of calendar year 2019. The DPU states that the EBA previously contained "at least some of the structural protections that the [DPU] believed were appropriate and necessary for it to support such a program—most notably the sharing bands."[7] The DPU asserts that without the Sharing Band, the EBA misaligns incentives for efficient operations and argues that "[w]ithout the authority to impose sharing bands, the [PSC] lacks the tools to create a program in the public interest."[8]

The DPU asserts the EBA has provided significant benefits to RMP, but benefits to ratepayers, if any, are minimal. The DPU also asserts the EBA shifts risk previously borne by RMP to ratepayers and that RMP is in a better position to manage such risk than the majority of its ratepayers. Further, the DPU contends its EBA audits are not attestations that RMP manages

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[5] *Id.*
[6] *See Utah Office of Consumer Services v. Public Service Commission*, 2019 UT 26.
[7] DPU's September 16, 2019 Comments at 2.
[8] *Id.* at 5.

its net power costs (NPC) to yield the lowest reasonable costs and are inadequate to provide assurance that there is no material imprudence in the costs. The DPU also expresses concern about the expanding scope of the EBA to include non-NPC and collecting interest in excess of its borrowing costs on the EBA under-billing amount.

According to the DPU, the current EBA inhibits a regulator's ability to act as a surrogate for competition. The DPU argues that shifting costs to an enhanced cost-recovery mechanism such as the EBA essentially provides for after-the-fact price adjustments that would not be possible in a competitive marketplace.

OCS

The OCS "believes that for the [EBA] to continue the [PSC] must make a finding that the continuation of the EBA program is in the public interest."[9] The OCS reasserts by reference arguments it previously provided in numerous comments, written testimony, and hearing testimony submitted during the course of this docket, on many EBA-related issues including those identified below.

The OCS has asserted that, in addition to annual reviews of EBA deferrals for accuracy and prudence, the EBA's Sharing Band was an important and necessary feature to protect customer interests. The OCS has also expressed concern: (1) that the EBA has resulted in a shift in NPC forecast risk from RMP to ratepayers; (2) about the effectiveness of the EBA audit process; (3) about expansion of the EBA to include additional cost elements that RMP deems to be unpredictable and uncontrollable or adjustments to costs that were previously included in

[9] OCS's September 16, 2019 Comments at 2.

prior periods; and (4) that the current six percent annual carrying charge rate for the EBA deferral balance is overstated and should rather be based on short-term debt rates.

In addition, the OCS has previously expressed concern that when an EBA extends beyond the test period of a general rate case (GRC), a mismatch exists between the EBA deferral period and the test period forecast that was used for setting rates and has recommended that the EBA should be altered to better align test periods used to set base rates and the EBA rate effective period.

In the event the PSC finds continuation of the EBA is in the public interest, the OCS states it is confident that parties can agree on tariff modifications to effectuate this finding and the requirements of the Utah Supreme Court's recent Opinion.

UAE

UAE maintains that the current EBA 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."[10] For the reasons set forth in its comments and testimony previously filed in this docket, UAE recommends that the PSC 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."[11]

UAE points out that while Subsection (2)(d) has been permanently codified, under the EBA statute the PSC has the authority to determine whether the adoption or maintenance of an EBA remains in the public interest. Should the PSC find that the EBA is in the public interest,

[10] UAE's September 16, 2019 Comments at 3.
[11] *Id.*

UAE represents that it has met with various parties regarding a proposed method to modify Schedule 94 and to adopt a process and schedule for future EBA filings. UAE states it is reasonably confident that the parties can present a stipulated proposal regarding the EBA process moving forward.

DISCUSSION, FINDINGS AND CONCLUSIONS

a) The PSC Finds and Concludes Continuation of the EBA is in the Public Interest.

Given the expiration of the EBA pilot program on December 31, 2019, we must determine whether it is in the public interest to conclude or continue RMP's EBA in the absence of a Sharing Band. We acknowledge the statute "does not create a presumption for or against approval of an [EBA]." Utah Code Ann. § 54-7-13.5(5). We interpret this to mean the PSC must weigh all the facts and evidence presented by parties to determine whether an EBA is in the public interest and should continue.

In our 2011 Order, we anticipated the Sharing Band would serve "to provide a gradual change from current ratemaking practices."[12] Since that time, RMP points out, the regulatory landscape has changed, as reflected by the increased level of renewable energy and RMP's participation in an energy imbalance market. In our 2011 Order, we also determined that annual reconciliation of deferred EBA balances provided for rate stability and simplicity.[13] Without an annual NPC review, as would be the case absent an EBA, during extended periods between GRC filings customers are at risk for significant rate changes and RMP is exposed to risks attendant to NPC fluctuations.

[12] 2011 Order at 71.
[13] 2011 Order at 77.

The record contains evidence that the annual EBA proceedings provide parties an opportunity to identify and evaluate EBA-related issues, conduct prudence reviews, and to ensure that variances from EBA base rates are reviewed and evaluated in a timely manner, *i.e.*, closer to the period in which they actually occur. This helps ensure RMP's rates reflect prudently-incurred costs and are just and reasonable for the period under evaluation. We find annual review of NPC supports a fair and balanced outcome when considering both customer and RMP's interests, particularly when there are long gaps between GRC filings, as has recently been the case. We do not find that addressing NPC variances using alternative approaches, such as more frequent GRC filings, would achieve the alignment of RMP and customer short-run and long-run interests in a more efficient and less burdensome manner.

In addition, it is reasonable to conclude the experience resulting from the annual EBA reviews, including gaining familiarity with the administration, policies and procedures, and costs associated with the EBA, will bring some efficiencies to the evaluation of NPC during a GRC, potentially increasing analysis of other important non-NPC related issues, to the benefit of customers.

RMP provides convincing testimony regarding risks associated with the volatility of and difficulty in accurately forecasting NPC, arising from issues outside of its control such as fluctuations in load, changes in fuel and energy prices, qualifying facility obligations, influx of renewable energy in RMP's portfolio, and the energy imbalance market. RMP also points out that NPC represents a significant portion of its revenue requirement and asserts that it is the industry norm to have an EBA-type mechanism in place that allows for full recovery of prudent NPC. We find RMP's undisputed concerns regarding NPC forecasting are legitimate,

particularly in light of the level of qualifying facility purchases, RMP's participation in an energy imbalance market, and other issues outside of RMP's control, and that the EBA reasonably serves to mitigate these risks.

Ongoing examination of the EBA has been critical to ensure it is reasonably designed and implemented. Since its inception, the EBA mechanism has not been static. The PSC has approved, as in the public interest, party recommendations and proposals that have altered the EBA mechanism. For example, there have been numerous account additions to Schedule 94 (for example, the inclusion of prudent financial swap transactions) and modifications to methods for allocation of EBA-related costs. Parties have also provided analysis regarding out-of-period adjustments and the appropriateness of certain costs for inclusion in the EBA. Further, the annual reviews have allowed parties the opportunity to identify other EBA-related issues and concerns such as the alignment of EBA deferral periods and GRC test periods, EBA carrying charges, and forced outages. We find this type of EBA evaluation essential going forward, including ongoing prudence review and examination of EBA-related costs, data, modeling, as well as program administration, and the adequacy of audit procedures to ensure the EBA and NPC remain just and reasonable. To the extent a party believes modifications to the EBA or Schedule 94 are warranted, we encourage that party to bring these issues forth in appropriate proceedings.

For the reasons stated above, and in consideration of the robust record of analysis, testimony, and comment that has been amassed during the pilot period, and the continued review we encourage, we find and conclude that the continuation of the EBA is in the public interest with certain modifications we discuss below.

b) We Conclude the Tariff Should No Longer Refer to the EBA as a "Pilot."

RMP requests the EBA no longer be referred to as a "pilot program." As noted above, an EBA mechanism has been in place for over eight years and parties have provided the PSC with ample testimony and comment about issues concerning RMP's EBA mechanism. Based on this past experience and given our determination above, we find RMP's proposal reasonable. We conclude that the "pilot" designation should be removed from Schedule 94 going forward.

c) We Conclude the EBA Carrying Charge Should be Changed to Reflect the Carrying Charge Order.

In the 2017 Order, we declined to modify the current six percent EBA carrying charge with the intention of reexamining it during the final evaluation of the EBA.[14] This decision was consistent with our January 20, 2016 Order addressing carrying charges in Docket No. 15-035-69 ("Carrying Charge Order"). [15]

In the proceeding leading up to our issuance of the 2017 Order, RMP testified that in a prior settlement agreement in Docket No. 14-035-147 ("Stipulation"),[16] parties agreed, subject to certain conditions, that the six percent carrying charge interest rate in Schedule 94 should continue until the rate effective date of RMP's next GRC, at which time RMP would support a

[14] 2017 Order at 16-17.
[15] *In the Matter of a Request for Agency Action to Review the Carrying Charges Applied to Various Rocky Mountain Power Account Balances*, Docket No. 15-035-69, Order issued January 20, 2016.
[16] *In the Matter of the Voluntary Request of Rocky Mountain Power for Approval of Resource Decision and Request for Accounting Order*, Docket No. 14-035-147, Confidential Stipulation filed April 16, 2015 at ¶ 18. The PSC approved this stipulation in an order issued April 29, 2015 in the same docket.

carrying charge rate change consistent with its other account mechanisms.[17] More than four years have elapsed since the PSC approved the Stipulation, but a new GRC has not been filed.

In light of our decisions to maintain the EBA mechanism and to eliminate its pilot status, and the recent infrequency of RMP's GRCs, we find it is reasonable and consistent with our 2017 Order to change the EBA carrying charge interest. We conclude the carrying charge rate in Schedule 94 should be changed to be consistent with the rate the PSC has ordered in the Carrying Charge Order, as amended by the PSC on February 27, 2017.[18] Accordingly, we direct RMP to modify the EBA carrying charge in Schedule 94 to be consistent with the requirements of the Carrying Charge Order, as amended. This change shall apply to the EBA balance prospectively beginning on January 1, 2020.

ORDER

Based on our findings and conclusions above we order as follows:

1. The EBA is approved as an ongoing program.
2. RMP shall file modifications to Schedule 94 to delete the references to a pilot program and to modify the carrying charge as required by this order.
3. Any interested party may file comments on the future procedural schedule for the EBA by **Monday, March 2, 2020**.

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[17] 2017 Order at 15-16.
[18] *In the Matter of a Request for Agency Action to Review the Carrying Charges Applied to Various Rocky Mountain Power Account Balances*, Docket No. 15-035-69, Order issued February 27, 2017.

DATED at Salt Lake City, Utah, November 14, 2019.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#311041

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 PSC 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 PSC 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 PSC'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 November 14, 2019, a true and correct copy of the foregoing was served upon the following as indicated below:

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