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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

<p>In the Matter of the Application of Rocky Mountain Power for Approval of its Proposed Energy Cost Adjustment Mechanism</p>	<p>Docket No. 09-035-15</p>
<p>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</p>	<p>Docket No. 10-035-14</p>
<p>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</p>	<p>Docket No. 10-035-124</p>

**UTAH OFFICE OF CONSUMER SERVICES' RESPONSE TO MOTION FOR  
DETERMINATION OF RATEMAKING TREATMENT OF DEFERRED  
ACCOUNTS**

## I. INTRODUCTION.

Rocky Mountain Power's June 2, 2011 motion asks the Commission to issue a "final determination of the ratemaking treatment" of two deferred balances: (1) incremental net power costs (NPC) and (2) incremental renewable energy credit revenues (REC). The Commission authorized these deferral accounts in its Report and Order on Deferred Accounting Stipulation, July 14, 2010, Docket No. 09-035-15 and Docket No. 10-035-14 (Order on Deferred Accounting). These deferred balances are described in the pleadings from which they originate as follows:

(1) The difference between the forecasted NPC allowed by the Commission's final order in the 2009 general rate case, Docket No. 09-035-23, and the actual net power costs incurred from February 18, 2010 until the Commission issues a final order in the energy balancing account proceeding, Docket No. 09-035-15;

(2) All revenues recovered by Rocky Mountain Power in connection with sales of REC, unbundled or bundled with renewable energy products, in excess of the REC value utilized in Utah rates, from February 22, 2010 until a final ratemaking treatment determination.

In testimony filed May 26, 2011 in Docket No. 10-035-124, the 2011 general rate case, certain parties requested final ratemaking treatment of REC deferrals. Rocky Mountain Power complains that it would be "inappropriate and unfair" to amortize the deferred REC balance but deny recovery of the deferred

NPC balance. The company claims that the Commission's Corrected Report and Order, March 3, 2011, Docket No. 09-035-15 (EBA Order) anticipates both deferral accounts being addressed in the 2011 general rate case. This position is unsupported and incorrect. The EBA Order unmistakably rules that the NPC deferred by the Order on Deferred Accounting shall not be recovered.

## II. THE EBA ORDER REJECTED ROCKY MOUNTAIN POWER'S PROPOSED ADJUSTMENT MECHANISM REQUESTED IN DOCKET NO. 09-035-15, UPON WHICH THE NPC DEFERRAL IS BASED.

Rocky Mountain Power's initial March 16, 2009 application for an energy cost adjustment mechanism, requested that the proceeding conclude and a mechanism be implemented concurrently with the final revenue requirement order in its 2009 general rate case, Docket No. 09-035-23. Rocky Mountain Power expected that this order would be issued on or before February 18, 2010. Motion for a Deferred Accounting Order, February 9, 2010, Docket No. 09-035-15, ¶ 5 (Motion for Deferred Accounting). Based on the Commission's February 8, 2010 decision to proceed with Phase II of the docket, on February 9, 2010, Rocky Mountain Power requested that it be allowed to begin deferring the difference between NPC approved in the 2009 General Rate Case, and actual NPC incurred. "The amount deferred would be calculated as described in the Company's application and testimony in this docket, and deferral would begin coincident with the effective date of new rates from the 2009 General Rate Case." Motion for Deferred Accounting, ¶ 7. In particular, the motion requested that "[a]ll types of

costs and amounts deferred will ultimately be trued-up to align with the Commission's final order in this docket [09-035-15] prior to any future recovery or refund." Motion for Deferred Accounting, ¶ 8.

In the EBA Order, the Commission first ruled: "the Company's ECAM proposal, as filed, is not in the public interest for the reasons described in the record and discussed below. Therefore, without modification, it does not meet the statutory requirements for our approval of an energy balancing account." EBA Order, page 63. The Commission then ruled that with modifications, an EBA could serve the public interest. "Accordingly, **this order** defines and approves this [modified] energy balancing account to be implemented **at the conclusion of the Company's pending general rate case** [10-035-124]." EBA Order, page 64. (Emphasis added.)

### III. THE EBA ORDER EXPRESSLY REJECTS RECOVERY OF DEFERRED NPC.

The EBA Order contains explicit rulings that settle the issue raised by Rocky Mountain Power's motion. The base rates to which the energy balancing account will apply are the rates to be set in the pending 2011 general rate case. The starting date for energy balancing account accruals is the rate effective date in the 2011 general rate case. In addition, the energy balancing deferred account will be annually reconciled and the first reconciliation shall be a partial year; from the rate effective date to December 31, 2011. Finally, the energy balancing account is implemented as a four-year pilot program beginning "on the first day of

the month following our decision in the Company's pending general rate case, filed January 24, 2011, in Docket No. 10-035-124," and terminating December 31, 2015. EBA Order, page 77; Docket No. 09-035-15, Order on Petition for Clarification, May 9, 2011, page 3.

#### IV. THE EBA ORDER PLAINLY DENIES DEFERRED NPC RECOVERY AS REQUESTED IN THE FEBRUARY 9, 2010 MOTION FOR A DEFERRED ACCOUNTING ORDER.

Because of the prospective only structure of the EBA and the date certain beginning and ending of EBA adjustments to base rates to be determined in the 2011 general rate case, recovery of prior period NPC adjustments are conclusively disallowed. This result is required by Utah Code Ann. § 54-7-13.5(2)(b), which conditions the effective date of an EBA upon three exact findings: "[a]n energy balancing account shall become effective upon a commission finding that the energy balancing account is: (i) in the public interest; (ii) for prudently-incurred costs; and (iii) implemented at the conclusion of a general rate case." As to the NPC deferral of which Rocky Mountain Power seeks recovery, there is no approved EBA, the Commission found the adjustment mechanism from which the deferrals originate is not in the public interest, and there has been no consideration of the prudence and no such consideration is possible because it would require prohibited re-litigation of the 2009 general rate case, the base rates used by Rocky Mountain Power.

The Division of Public Utilities' opposition to the February 9, 2010 motion for deferred accounting called attention to the legal and regulatory defects of the very request Rocky Mountain Power now makes. Opposition of Division of Public Utilities to Rocky Mountain Power's Motion for a Deferred Accounting Order, February 24, 2010, Docket No. 09-035-15 (Division Opposition). The foremost defect was that the Commission had yet to approve any EBA, and could only authorize an EBA that is consistent with regulatory accounting principles, works upon detailed, measurable and tracked NPC, and is in the public interest. Not until the EBA Order was there an approved adjustment mechanism and by its terms, operates only prospectively upon rates from the 2011 general rate case. The adjusted NPC cost recovery Rocky Mountain Power requests in its motion is outside of the Commission approved EBA and in fact, precluded by it.

The Division also demonstrated that unlike REC deferrals, “[n]et power costs (NPC) fail to meet the criteria suggested by the Division, which are consistent with regulatory accounting principles.” Division Opposition, page 2 to 3, and Attachment 1. The renewable energy revenues that are the subject of Docket 10-035-14 and the present motion are properly deferred extraordinary and unforeseen revenues with quantified net ratepayer benefit; the NPC that Rocky Mountain Power seeks to recover are plainly not. And as the Division pointed out in its opposition, the NPC at issue in the present motion are calculated by a “universally opposed ECAM design.” Division Opposition, page 4. The EBA

Order has now rejected this design and denies recovery of incremental costs calculated from the design.

#### IV. THE EBA ORDER DOES NOT ALLOW FOR RATEMAKING TREATMENT OF DEFERRED NPC.

On page 5 of the motion, Rocky Mountain Power misleadingly equates the deferred NPC with the deferred REC revenues for the purpose of inclusion in the 2011 general rate case. In paragraph 11 a. on page 5, Rocky Mountain Power quotes out of context the EBA Order as concluding: “We will treat the deferred REC revenues accruing pursuant to any future decision in Docket No. 10-035-14 in a separate proceeding.” In fact, the EBA Order addressed the inclusion of REC in the approved EBA stating:

We are not persuaded the revenue from RECs should be included in the balancing account. It is less directly related to net power costs as delineated in the Energy Balancing Account statute than, for example, wheeling revenues. It is more like SO<sub>2</sub> allowance revenue. Additionally, REC revenues can be banked, which adds further complexity to their regulatory treatment. We conclude REC revenues are better addressed in a general rate proceeding or other appropriate filing. Consequently, we will treat the deferred REC revenues accruing pursuant to any future decision in Docket No. 10-035-14 **in a separate proceeding**. EBA Order, page 72. (Emphasis added.)

In contrast to this plain ruling that the REC deferrals may be addressed in a general rate case, “a separate proceeding”, the Commission stated “[w]e will address the ratemaking issues associated with the stipulation on deferred net power cost **separately from this order.**” EBA Order, page 77. (Emphasis added.)

The motion for ratemaking treatment now before the Commission is a request for that order.

V. CONCLUSION.

For the reasons stated above, the Commission must now enter a ratemaking treatment order that deferred NPC may not be recovered in rates. The ratemaking treatment of deferred REC may be properly determined in Docket No. 10-035-124.

RESPECTFULLY SUBMITTED this 17<sup>th</sup> day of June 2011.

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## CERTIFICATE OF SERVICE

I hereby certify that on June 17, 2011, I caused to be served a true and correct copy of the Response to Motion for Ratemaking Treatment on behalf of the Office of Consumer Services in Docket Nos. 09-035-15, 10-035-14 and 10-035-124 upon the following:

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