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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Rocky Mountain Power Proposed Schedule 94, Energy Balancing Account (EBA) Pilot Program Tariff.	**ISSUES LIST FROM THE UIEC INTERVENTION GROUP** Docket No. 11-035-T10

Pursuant to the Scheduling Order of the Utah Public Service Commission ("Commission" or "PSC"), issued on December 16, 2011, the Utah Industrial Energy Consumers ("UIEC"),[1] hereby submit its list of issues to be considered in this docket.

The paradigm for setting electric rates in Utah for the last several years has been based almost entirely on general rate cases. Only recently did the Legislature approve an energy balancing account ("EBA") for the electric utility, Rocky Mountain Power ("RMP" or "Company"). Accordingly, the language that is used with respect to the EBA authorized by the Commission in the Commission's final EBA Order[2] as well as in the proposed tariff, may have

[1] The individual members of the UIEC are identified in the UIEC's Petitions to Intervene in Docket Nos. 10-035-124 and 09-035-15.

[2] *Corrected Report and Order*, Docket No 09-035-15 (Utah Pub. Serv. Comm'n, Mar. 3, 2011) ("Report and Order" or "Order")

meaning in the context of the general rate case regime that is not entirely accurate when viewed in the context of an EBA. Accordingly, there is ambiguity in the meaning of some of the Commission's final EBA Order. It is UIEC's position that a hearing with sworn testimony will be required to resolve some of the disputes about what the Commission's Order can mean, both legally and equitably. There may also be consequences of how the Company's proposed EBA operates that raise factual questions that were not raised in either the General Rate Case or the EBA Case, and that have only become evident since the proposed tariff was filed. In situations where there is no ambiguity or factual issues, however, the tariff could be treated as a compliance filing.

ISSUES LIST

1. Rate Finality.

Rocky Mountain Power ("RMP" or "Company") insistently proposes that the Energy Balancing Account ("EBA") tariff include a provision specifying a date by which rates set under the EBA process will become final. This is contrary to the statute, Utah case law, and good public policy.

The EBA statute does not provide a time by which rates must become final and appealable. Thus, all EBA rates are interim. Regardless of what language may be in the Commission's order, the Commission cannot by tariff or order declare rates to be final by a date certain when the statute does not grant such authority.

The precedent in this state has always been that balancing account rates are interim.[3] The setting of EBA rates involves a very limited time for adequate discovery, a quick approval and implementation time frame, and it is always uncertain whether rates will over- or under-recover actual fuel and purchased power costs. Thus, they should not be determined final. It should be clear that the EBA rates are interim and there can be no tariff provision for a date by which they become final.

2. Jurisdictional Allocation.

The Commission should consider whether a dynamic allocator should be used to allocate costs from a system-wide level to the Utah state level. The proposed formula for determining the monthly EBA accrual looks at the difference between the system-wide actual fuel and purchased power costs incurred in any month (expressed in megawatt hours) and the system-wide amount of that month's fuel and purchased power costs that are included in base rates.

Some parties have suggested that Utah's portion of these costs could be determined by using a stipulated "Utah allocation scalar," which would be meant to convert total company net power costs per megawatt hour to fully allocated Utah net power costs per megawatt hour. This would only be a speculative resolution, however, and would likely lead to unintended consequences. Changes in load occurring in Utah and in other jurisdictions would not be reflected in the portion of system-wide costs allocated to Utah. Because this could result in significant differences in Utah's allocated share, a dynamic allocator would appear to be a better alternative for determining actual EBA costs that should be allocated to Utah.

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[3] *See, e.g., Questar Gas v. Utah Public Service Comm'n*, 34 P.3d 218 (Utah 2001) (Questar's 191 Account was "interim rate-changing mechanism for recovering certain gas costs").

The Commission's final Order in the EBA case is silent on the issue of whether a fixed or dynamic allocator should be used. It cannot be the Commission's intent that Utah be burdened with more than its share of these costs.[4] Therefore, the issue should be explored in this docket to try to arrive at an allocator that more precisely determines EBA costs to be allocated to Utah.

3. Carrying Charges.

RMP should not be permitted to recover carrying charges on EBA costs that have not yet been expended nor should it be permitted to recover a carrying charge if it is already being compensated through a return on working capital. It will be important to understand the lag involved for payment of fuel and purchased power and how working capital may already compensate for this lag.[5] Otherwise, an adjustment to working capital may be necessary in the future to recognize the additional carrying charges being supplemented to the Company.[6]

The Commission's Order states that the Commission approves "an annual carrying charge" to be applied to the "average balance in the account each month." Report and Order at 75-76. The tariff proposed by the Company states: "an annual rate of 6% simple interest (.50% per month) applied to the monthly balance in the EBA deferral account as described in this electric service schedule." Original Sheet 94.2. Neither the Order nor the tariff specifies when carrying charges should begin to accrue.

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[4] Hopefully, the Commission's decision in the Multi-State Protocol matter did not tie the Commission's hands as to how these costs can be allocated.

[5] Rocky Mountain Power has refused to answer data requests about these issues. Response to UIEC's 22nd Set of Data Requests to Rocky Mountain Power, Docket No 09-035-15.

[6] It is hard to believe that the Company has gone along all this time with no compensation on the money it has been expending for fuel and purchased power before it is paid by its customers. It is more likely that the Company already receives compensation for this in the form of working capital. The Company should bear the burden of showing it needs a carrying charge for incurring costs for which it is not being compensated, either through working capital or because it has not yet actually incurred the costs.

Under the tariff language proposed by the Company, it could book fuel and purchased power costs to the EBA deferred account and begin accruing carrying charges at the time the power is delivered or the fuel expended but before the Company has paid for the power or fuel. In addition, expenses netting for fuel and purchased power may already be recognized within working capital, raising an issue of whether the Company should be allowed to assess carrying charges and also receive a return on amounts that already include the anticipated fuel and purchased power.

Finally, the Company's responses to data requests served since the conclusion of the EBA case indicate that the Company can establish procedures to invoice customers for excess fuel and purchased power costs within one or two months of the time it incurs those costs. As proposed by the Company, the tariff allows the Company to accrue carrying charges on those costs for an entire year until an annual reconciliation proceeding and then to amortize the account balance over the following year, resulting in two years' carrying charges on amounts that could be billed as they are incurred. Did the Commission really intend by its Order that the Company should collect 6% interest for two years on costs that could be billed as they are incurred? There are disputes regarding this issue that should be resolved through sworn testimony.

4. Rate spread.

The Commission's Order states that any EBA balance must be allocated to customers based on "cost of service." Report and Order at 75. The Commission found that "the Company's proposal [during the EBA case] to allocate the balance to customers based only on energy use and indiscriminately to all schedules fails to fully consider our cost of revenue spread

decisions and therefore would be unfair to customers." *Id*. The proposed tariff apparently allocates the EBA annual costs as a percentage increase applied to monthly power charges and energy charges of the customer's applicable electric service schedule.

Although under the proposed tariff the allocation of the annual costs may be spread on "cost of service," it would still be unfair to customers to disregard other cost causation relationships in spreading those costs. It was argued in the EBA case that it would cause "undue complexity" for the Company to spread EBA costs monthly.[7] But, based on the Company's data responses since that time, and on the Commission's Order, it does not appear that a monthly allocation based on cost of service would require any data that the Company is not already required to collect each month.[8] The inconvenience to the Company in doing the monthly accounting should be weighed against the burden to Schedule 9 and other demand-metered customers who, under the Company's tariff proposal, would be overcharged for their share of the EBA costs and would end up paying for costs that they did not cause.[9]

The Commission should consider whether, in light of the Company's monthly accounting obligations, principles of cost causation can be preserved in allocating the EBA balance. This issue would require sworn testimony.

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[7] Post-Hearing Brief of Rocky Mountain Power, Docket No. 09-035-15 (Dec. 20, 2010) at 50-51.

[8] The Commission's Order requires RMP to calculate the EBA deferral each month: "To ensure appropriate billing units are available to calculate the monthly deferrals and to comply with Utah Code § 54-7-13.5(2)(e)(i), all megawatt hours will be equal to Utah retail sales, from actual billing records and from the most recent general rate case as appropriate." Report and Order at 75.

[9] For customers without demand meters, estimates of demand allocation factors will have to be developed from energy usage and historical relationships of class demand and class energy.

5. Completeness of the Filing.

Under the tariff as proposed by RMP, the Company must report EBA costs monthly until the Company files for its annual reconciliation. There is no understanding, however, as to what must be filed monthly, and what must be filed for the annual reconciliation to make it a complete filing. There needs to be enough detailed load information for the regulators and interested parties to effectively review the Company's application for reconciliation within the timetable the Company proposes.

There is nothing in the Order, the tariff or in any related rule or electric service regulation to specify what information the Company will be required to file to support its application and proposed EBA rate. Should the Commission require that tariff be accompanied by a rule or electric service regulation identifying the information that must be filed to support an application for recovery of EBA costs? Should the Company be allowed to assess carrying charges on the EBA account balance before it has made a complete filing? These issues are in dispute and need sworn testimony to explore and resolve.

6. Identification of Costs to be Included in the EBA.

The Commission's Order provides that the Company's Schedule 94 must itemize "each FERC account and subaccount approved for balancing account treatment, similar to the Questar Gas Company gas balancing account tariff." Report and Order at 76. The Company's presently proposed tariff describes the costs to be included as energy balancing account costs as those "typically booked to" certain FERC accounts "with noted clarifications and exclusions." It does not list subaccounts or explain in any detail the types of adjustments the Company intends to make to actual costs booked.

Simply listing general FERC accounts does not allow the Commission or the parties to ascertain what costs and revenues the Company intends to include in the EBA. Nor does it provide the basis for the regulators and parties to examine whether the correct costs and revenues are being included in the EBA.

For example, should sales to municipalities be treated as a credit against EBA costs? When the Company sells system resources at wholesale, what portion of that revenue is wheeling revenue that should be allocated to the energy balancing account? When transmission or system resources are sold at control area border points, what amount is attributable to transmission credits, what amount is attributable to renewable energy credits ("REC"), and what amount is attributable to the EBA account? How does the Company treat these situations (and others) with respect to the EBA, and how are the parties to know how this is done? If the answers to these questions have been determined, then it should be made plain to interested parties what the answers are so that everyone is clear about what should and should not be included.

A similar issue arises because it is not clear from the proposed tariff, or from the identification of FERC accounts listed in the proposed tariff, whether the Company intends to include all of the appropriate transmission revenues in the EBA. For example, revenue collected from the Company's off-system sales of its own resources includes energy costs, demand costs, transmission costs, and may include some component of renewable energy credits. Yet, the Company apparently does not allocate any portion of the revenue from those sales to the EBA account. Thus, wheeling revenue from those sales may be improperly excluded from the energy balancing account.

The Company has suggested that the tariff use net power costs ("NPC"), which it proposes to define as those costs included in the Company's "production cost model," which is currently GRID. However, the statute and the Commission's Order say nothing about the Company's "production cost model." In fact, the Commission noted that wholesale wheeling revenues are appropriate to include in the EBA even "though they are not modeled in through GRID." Report and Order at 72; see Utah Code Ann. § 54-7-13.5(b) (EBA is for "incurred actual power costs"). Furthermore, GRID is an unreliable source. In each general rate case multitudes of adjustments are necessary due to the failure of GRID to accurately model PacifiCorp's system. PacifiCorp often fails to use the proper inputs, and GRID is subject to numerous "bolt-ons" and "work-arounds." NPC is an amorphous, ambiguous term and neither it nor the GRID model should be used in implementing the EBA.

The Company has not adequately identified what it intends to include in the EBA. There are disputes regarding this issue that should be resolved through sworn testimony.

7. Allocation and Billing.

The Commission's Order requires that the "deferral will be calculated each month to determine the amount to be accrued in the balancing account." Report and Order at 75. The amount of Utah MWh must be equal to Utah retail sales, from actual billing records." *Id.* It appears that all of the information necessary to calculate the Company's actual costs of fuel and purchased power, as well as its wheeling revenues, is available each month. Therefore, not only should EBA costs be reported monthly, as ordered by the Commission, but they should be allocated monthly as well. The statute provides that the EBA can be used only to "account for some or all components of [RMP's] incurred ***actual*** power costs." Utah Code Ann. § 54-7-

13.5(1)(b) (emphasis added). There does not appear to be any reason that the Company cannot determine or reasonably estimate each month the *actual* monthly costs for each class of customer.

Rates should be designed so that they cause consumers to consume efficiently. Prices affect demand and demand affects prices. If we are to send clear signals to the consumers to cause efficient consumption, actual power costs must be used rather than average costs. This is in compliance with the statute and ensures clear signals to the ratepayers.

The Commission's Order is clear that a reconciliation of EBA costs is to be filed annually. Report and Order at 77. To ensure accurate signals and rates that are based on actual rather than average power costs, the costs should be allocated monthly and billings can be done quarterly or annually.

This is another area of dispute that should be resolved through sworn testimony.

8. Special Contracts.

The EBA statute states "that the collection of costs related to an energy balancing account from customers paying contract rates shall be governed by the terms of the contract." Utah Code Ann. § 54-7-13.5(2)(f). The Company proposed tariff specifies that Schedule 94 will be applicable to "retail contract customers taking service under the terms of the contract to the extent authorized by and according to the terms of the governing contract." Original sheet 94.1. Although the proposed tariff references the "governing contract," it does not specify how EBA costs are to be allocated to special contract customers. Should allocation to special contract customers be determined as a portion of system average costs? How should those costs be credited against the EBA costs to be collected from other rate schedules?

9. Testimony vs. Comments.

The Utah Administrative Procedures Act requires that the Commission's orders include findings of fact based on the evidence of record or on facts officially noted; conclusions of law and a statement of the reasons for the decision. Utah Code Ann. § 63G-4-208 (Utah Administrative Procedures Act). A determination of many of the issues listed above, as well as those raised by other parties, will require the Commission to review certain data, consider expert opinions about the data and the effect on the EBA costs and rates, much of which will be in dispute, and make certain determinations about whether the resulting charges to customers result in a just and reasonable rate. To ensure that the evidence and record of proceedings satisfy the requirements of the Utah Administrative Procedures Act, the Commission should accept pre-filed testimony in this docket instead of relying merely on unsworn comments of the parties. In situations where there is no ambiguity or factual issues, however, the tariff could be treated as a compliance filing.

DATED this 16th day of December, 2011.

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CERTIFICATE OF SERVICE

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