

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Application of Rocky Mountain Power to Increase Rates by \$29.3 Million or 1.7 Percent Through the Energy Balancing Account	)	<u>DOCKET NO. 12-035-67</u>
	)	
	)	<u>REPORT AND ORDER</u>
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ISSUED: June 12, 2012

SYNOPSIS

The Commission approves a rate increase of \$20 million to recover deferred net power costs found reasonable in a prior Commission order. The Commission defers for further consideration the remaining portion of the requested rate increase.

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By The Commission:

This matter is before the Commission upon the application of PacifiCorp (“Application”), a public utility doing business in Utah as Rocky Mountain Power (“Company”), for authority to increase rates through the Energy Balancing Account (“EBA”). The Company proposes to recover approximately \$28.9 million in total deferred costs and interest comprised of the following two components: 1) \$20.0 million representing the first of three annual installments approved in Docket No. 10-035-124 et al (“2011 General Rate Case”) to recover certain deferred net power costs (“NPC”) for the period prior to October 2011,<sup>1</sup> and 2) \$8.9 million representing 70 percent of the difference between the actual EBA cost (“EBAC”) and the base

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<sup>1</sup> See *In the Matter of the Application of Rocky Mountain Power for Authority to Increase its Retail Electric Utility Rates in Utah and for Approval of its Proposed Electric Service Schedules and Electric Service Regulations*, Docket Nos. 10-035-124, 09-035-15, 10-035-14, 11-035-46, and 11-035-47, Report and Order, September 13, 2011, approving July 28, 2011 Settlement Stipulation.

EBAC in current rates for the period October 1, 2011 through December 31, 2011, plus accrued interest.<sup>2</sup>

On May 14, 2012, the Commission convened a duly- noticed hearing on this Application. At the conclusion of the hearing, the Commission authorized its presiding officer to issue an order on the record approving the requested \$20.0 million rate increase, effective June 1, 2012. In addition, the Commission deferred ruling on the \$8.9 million component of the Application pending the submission of briefs. This order memorializes the oral orders issued at the hearing.

#### PARTIES' POSITIONS

##### Recovery of \$20.0 million of pre-October 2011 deferred NPC

The Company filed the Application on March 15, 2012, noting this is the Company's first request for a rate adjustment under Electric Service Schedule 94, Energy Balancing Account (EBA) Pilot Program ("Schedule 94") which governs operation of the EBA. Schedule 94 was pending when the Application was filed and received qualified Commission approval on May 1, 2012.<sup>3</sup> As noted in the Application, the July 28, 2011 Settlement Stipulation, previously approved by the Commission in the 2011 General Rate Case, specifies recovery of the first \$20.0 million installment of pre-October 2011 deferred NPC will begin on June 1, 2012, as a line item in the EBA surcharge.

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<sup>2</sup> The Application refers to \$9.3 million of fourth quarter 2011 EBAC proposed for recovery; however, in a May 10, 2012 filing, the Company acknowledged two corrections to its EBAC calculations and reduced the EBAC proposed for recovery to \$8.9 million. (See Rocky Mountain Power Comments on Division of Public Utilities Initial Comments and Recommendations, May 10, 2012, pp.5-7.)

<sup>3</sup> See *In the Matter of the Rocky Mountain Power Proposed Schedule 94, Energy Balancing Account (EBA) Pilot Program Tariff*, Order, May 1, 2012, approving the proposed tariff subject to various ordered changes.

On April 27, 2012, the Division of Public Utilities (“Division”) filed comments recommending interim approval of the \$20.0 million of deferred NPC, subject to a final true up at the end of the three year amortization period. At hearing the Division clarified its position stating because the proposed \$20.0 million increase is part of the recovery of NPC the Commission has previously approved, this increase should be considered final, not interim.<sup>4</sup> At the end of the three-year recovery period, the only issue to be determined will be whether the full amount of approved deferred NPC (\$60 million), and only that amount, has been recovered.

On May 10, 2012, the Office of Consumer Services (“Office”) filed comments on the Application. Regarding recovery of the \$20.0 million, the Office only questions one aspect of the Application. The Office asserts the billing determinants the Company uses for rate calculations in this case are different from those agreed to in the Stipulation on Cost of Service, Rate Spread and Rate Design (“Cost of Service Stipulation”), approved by the Commission in the 2011 General Rate Case. Instead, the billing determinants appear to have been drawn from the Company’s current general rate case application, Docket No. 11-035-200, (“2012 General Rate Case”) which is currently under review.<sup>5</sup> The Office believes it is more appropriate to use the billing determinants the Commission has previously approved, as opposed to those currently under review in the 2012 General Rate Case.

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<sup>4</sup> See Transcript of Hearing, May 14, 2012, pp. 44-46.

<sup>5</sup> See *In the Matter of the Application of Rocky Mountain Power for Authority to Increase its Retail Electric Utility Rates in Utah and for Approval of its Proposed Electric Service Schedules and Electric Service Regulations*, Docket No. 12-035-200, filed February 15, 2012.

The Utah Industrial Energy Consumers (“UIEC”) submitted comments on May 10, 2012, recommending, among other things, the Commission grant recovery of the \$20.0 million, in accordance with the Settlement Stipulation.<sup>6</sup>

Recovery of \$8.9 million of Fourth Quarter 2011 EBAC

As noted above, the Company’s Application also requests recovery of \$8.9 million of EBAC incurred between October 1, 2011 and December 31, 2011. The request is made pursuant to Schedule 94 and includes a proposed June 1, 2012 effective date, on an interim basis, subject to further review, hearing and possible refund. The Application includes testimony presented to demonstrate the calculation of EBAC to be recovered and the rate design for such recovery comply with Schedule 94 and prior Commission orders. For reasons described below, that evidence is not summarized in more detail here because a decision on recovery of the EBAC has been deferred pending the Commission’s analysis of certain objections expressed by UIEC to the interim rates process.

The Division’s April 27, 2012 comments include a recommendation the Commission grant interim approval of the \$8.9 million rate increase, subject to the completion of its audit and prudence review. The Division’s comments reference a number of issues it has already identified for examination in its audit.

The Office, in its May 10, 2012 comments, expresses no recommendation regarding recovery of the \$8.9 million. It does, however, raise a number of issues it intends to investigate during the pendency of the Division’s audit.

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<sup>6</sup> See UIEC’s Comments on the Division of Public Utilities’ Initial EBA Comments and Recommendations, Docket No. 12-035-67, May 10, 2012, p.10.

UIEC's May 10, 2012 comments assert a number of objections to interim recovery of the \$8.9 million. UIEC recommends the Commission delay recovery until after the Division has completed its audit, and there has been an evidentiary hearing on whether the requested \$8.9 million is comprised entirely of prudently incurred actual costs and recovery of these costs will produce just and reasonable rates.<sup>7</sup>

In support of its recommendation, UIEC asserts the EBA statute provides only for the recovery of prudently incurred actual costs in excess of revenues collected. Referencing the Division's April 27, 2011 comments, UIEC expresses concern the Company's calculation of the \$8.9 million relies in part on cost estimates, rather than actual costs. UIEC argues only "actual costs" not "estimated costs" are recoverable through the EBA. In UIEC's view, the Company has not sufficiently demonstrated the \$8.9 million the Company proposes to recover includes only actual costs. Additionally, UIEC believes substantial questions exist regarding whether these costs were prudently incurred. UIEC maintains the Commission should not allow even interim recovery of EBAC in the absence of an evidentiary hearing in which the Company demonstrates the costs it proposes to recover are prudently incurred.<sup>8</sup> UIEC also argues the procedural schedule established for this docket does not afford UIEC adequate opportunity to investigate and challenge the \$8.9 million.<sup>9</sup>

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<sup>7</sup> See UIEC's Comments on the Division of Public Utilities' initial EBA Comments and Recommendations, Docket No. 12-035-67, May 10, 2012, p.10.

<sup>8</sup> Id. at 9.

<sup>9</sup> See Transcript of Hearing, May 14, 2012, pp. 18-19. See also Scheduling Order, Docket No. 12-035-67, March 30, 2012, promulgating a schedule developed with UIEC participation at the March 28, 2012 scheduling conference.

The Company contests UIEC's opposition to the implementation of an interim rate to recover the \$8.9 million. The Company argues the Commission order establishing the EBA provides for an interim rate change, pending the Division's audit of the data underlying the annual March 15 application to recover the EBA balance.<sup>10</sup> The Company believes UIEC should have asserted any challenge to an interim rate procedure in that docket. Additionally, the Company argues UIEC should have raised its objections in the 2011 General Rate Case and in the Schedule 94 compliance docket (Docket No. 11-035-T10). The Company notes its intent to implement the annual EBA rate change as an interim rate effective June 1, 2012 was prominently displayed in its proposed Schedule 94. Since UIEC raised no objection to the tariff language in that docket, the Company asserts it is inappropriate for UIEC to challenge the implementation of an interim rate now.<sup>11</sup>

The Company also maintains its evidence in support of the proposed interim rate constitutes prima facie evidence the rate is just and reasonable. The Company represents the rate is consistent with the methodologies and formulas in Schedule 94 and is mathematically correct. The Company reasons that because the EBA process is in the public interest, including its provision for interim rate approval, and the Application data conform to Schedule 94, the proposed interim rate change is just and reasonable. The Company argues all parties will have an opportunity to test the prudence of the EBAC before the \$8.9 million recovery becomes final.<sup>12</sup>

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<sup>10</sup> See *In the Matter of the Application of Rocky Mountain Power for Approval of its Proposed Energy Cost Adjustment Mechanism*, Docket No. 09-035-15, Corrected Report and Order, March 3, 2011, p. 77.

<sup>11</sup> See Transcript of Hearing, May 14, 2012, pp. 8-11.

<sup>12</sup> Id.

The Division joins the Company in contesting the merits of UIEC's arguments. In the Division's view, the interim rate increase requires only a prima facie showing supporting the Company's request. The Division joins the Company in arguing UIEC's position is flawed because UIEC offers no evidence contradicting the Company's showing and because UIEC failed to avail itself of earlier opportunities to oppose the interim rate procedure.<sup>13</sup>

#### DISCUSSION, FINDINGS AND CONCLUSIONS

##### Recovery of \$20.0 million of pre-October 2011 deferred NPC

Based on the evidence presented by the Company and the recommendations of the Division, the Office, and UIEC, the Commission reaffirms its prior order that recovery of \$20 million in pre-October 2011 deferred NPC is just and reasonable. In accordance with the Settlement Stipulation, the requested rate change will take effect on June 1, 2012. This rate change is not interim or subject to refund.

As noted in the 2011 General Rate Case order, the surcharge necessary to accomplish this recovery is to be allocated to bills in a manner consistent with the Cost of Service Stipulation in that case.<sup>14</sup> The Company followed this direction in the Application, except that it applied billing determinants from the test period serving as the basis for its 2012 General Rate Case application. We agree with the Office that consistency in applying the Cost of Service Stipulation data, including the billing determinants, will best serve customers. These data have received the intense scrutiny typical of general rate cases, have been agreed upon by the customer advocates active in the Company's 2011 General Rate Case, and have been approved by the Commission through its acceptance of the Cost of

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<sup>13</sup> Id. at 12.

<sup>14</sup> See Docket No. 10-035-124 et al, Report and Order, September 13, 2011, p. 29.

Service Stipulation. Consequently, we direct the Company to apply the billing determinants approved in the 2011 General Rate Case, in calculating the rate changes approved herein for the various customer classes.<sup>15</sup>

Recovery of \$8.9 million of Fourth Quarter 2011 EBAC

Following the presentation of arguments concerning the propriety of implementing the proposed \$8.9 million interim rate change on June 1, 2012, the presiding officer, at the Commission's direction, ruled that this portion of the Application will be addressed in a separate phase of this proceeding. This new phase involves the filing of briefs on the legal issues raised in the parties' arguments presented at the hearing. The issues to be addressed in briefs include: 1) the Commission's authority to apply an interim rates process as a component of EBA administration, and 2) assuming authority exists, the Company's burden of proof in obtaining interim rate relief.

We recognize UIEC could have raised at several earlier stages its objections to the interim rates process described in our order establishing the EBA. We conclude, nevertheless, under the current circumstances the best course is to evaluate fully UIEC's objections before ruling on the Company's request to recover EBAC through interim rates. As the parties well know, the EBA is a pilot program, and this Application is the first instance of its operation. Since inception of the EBA pilot, we have noted on several occasions that

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<sup>15</sup> Our decision on this issue includes acceptance of the uncontested clarification offered by the Company during the hearing that the rates for Contract Customer 3 will be set by summing the kilowatt hour loads for Contract Customers 3 and 4, as reflected in the Cost of Service Stipulation data. This change is appropriate because, since the preparation of that data, Contract Customers 3 and 4 have combined into one customer, now referred to as Contract Customer 3. (See Transcript of Hearing, May 14, 2012, pp.85-87.)



various associated administrative procedures would be developed during the course of the pilot, as the Commission and parties gain experience with this rate making mechanism. We therefore take this opportunity to examine and further refine the process leading to EBA-related rate adjustments. Following our review of the briefs, we will provide additional guidance regarding the Company's request to recover fourth quarter 2011 EBAC.

ORDER

1. The requested rate increase to recover \$20.0 million, representing the first annual installment of the \$60 million total cost recovery of deferred NPC for the period before October 2011, is approved.
2. The rate increase will take effect on June 1, 2012.
3. The rate increase shall be allocated to customer classes consistent with the rate spread determined in the 2011 General Rate Case.
4. The rate increase for each rate schedule shall be determined by applying the billing determinants used to develop the rates the Commission approved in the 2011 General Rate Case, as described more particularly above.
5. Parties may file briefs on the issues pertaining to the interim rate process for EBAC recovery. As stated in our order at the conclusion of the May 14, 2012 hearing, opening briefs were due May 29, 2012. Closing briefs are due June 13, 2012.

DOCKET NO. 12-035-67

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DATED at Salt Lake City, Utah this 12<sup>th</sup> day of June, 2012.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg  
Commission Secretary  
DH#227583

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the Commission within 30 days after the issuance of the 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 Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission'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 Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12<sup>th</sup> day of June, 2012, a true and correct copy of the foregoing Report and Order was served upon the following as indicated below:

By Electronic Mail:

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