

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of Rocky Mountain Power's
Proposed Revisions to Electric Service
Schedule No. 94, Energy Balancing Account
(EBA)

DOCKET NO. 16-035-T05

ORDER

ISSUED: May 16, 2016

PROCEDURAL HISTORY

On April 14, 2016, PacifiCorp, doing business as Rocky Mountain Power (PacifiCorp), filed Advice No. 16-04 (Filing) with the Public Service Commission of Utah (Commission). PacifiCorp's Filing proposes modifications to its P.S.C.U. No. 50 (Tariff) Sheet Nos. 94.1 and 94.8 of Electric Service Schedule No. 94, "Energy Balancing Account (EBA) Pilot Program" (Schedule 94) and Sheet No. B.1 of the Tariff Index. PacifiCorp states its Filing reflects the newly enacted Utah Code § 54-7-13.5(2)(d).¹ PacifiCorp requests an effective date of June 1, 2016.

Pursuant to the Commission's April 18, 2016 Notice of Filing and Comment Period, the Division of Public Utilities (Division), the Office of Consumer Services (Office), the Utah Association of Energy Users (UAE), and the Utah Industrial Energy Consumers intervention group (UIEC) filed comments on May 2, 2016, and the Office, PacifiCorp, and Utah Clean Energy (UCE) filed reply comments on May 9, 2016. The Office filed supplemental comments on May 10, 2016.

¹ Utah Code Section 54-7-13.5(2)(d) states: Beginning June 1, 2016, for an electrical corporation with an energy balancing account established before January 1, 2016, the commission shall allow an electrical corporation to recover 100% of the electrical corporation's prudently incurred costs as determined and approved by the commission under this section.

BACKGROUND

On March 2, 2011, the Commission issued a Report and Order (Order) in Docket No. 09-035-15² approving PacifiCorp's EBA as a pilot program. The Order specified that the EBA include a 70-30 percentage sharing (Sharing Band) between customers and shareholders, respectively, of the differences between the forecasted and actual net power costs. The Order also includes the requirement to conduct a 4-year pilot program evaluation. On May 1 and 31, 2012, the Commission issued Orders in Docket No. 11-035-T10³ approving Schedule 94, including the sharing band. In a Report and Order in Docket No. 13-035-184⁴ issued on August 29, 2014, the Commission extended the EBA pilot program from December 31, 2015, to December 31, 2016.

On March 11, 2016, the Utah Legislature passed Senate Bill 115 Fourth Substitute (S.B. 115), which became effective May 10, 2016. Relevant to this docket, S.B. 115 added the following three new subparts to Utah Code Title 54 Public Utilities pertaining to energy balancing accounts in general: 1) Utah Code § 54-7-13.5(2)(d) allows an electrical corporation with an energy balancing account established before January 1, 2016, to recover 100 percent of the electrical corporation's prudently incurred costs as determined and approved by the Commission under this section beginning June 1, 2016; 2) Utah Code § 54-7-13.5(6) requires the Commission to report to the Public Utilities and Technology Interim Committee before

² In the Matter of the Application of Rocky Mountain Power for Approval of its Proposed Energy Cost Adjustment Mechanism, Docket No. 09-035-15, Report and Order dated March 2, 2011.

³ In the Matter of the Rocky Mountain Power Proposed Schedule 94, Energy Balancing Account (EBA) Pilot Program Tariff, Docket No. 11-035-T10; Order dated May 1, 2012 and Order dated May 31, 2012.

⁴ 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, Docket No. 13-035-184.

December 1, 2017 and 2018 regarding whether allowing an electrical corporation to continue to recover costs under Subsection (2)(d) is reasonable and in the public interest; and 3) Utah Code § 63I-1-254(2) repeals Utah Code § 54-13.5(2)(d) on December 31, 2019.

PACIFICORP'S FILING

On Sheet No. 94.1 PacifiCorp proposes to delete the words “Pilot Program” in the title of Schedule 94 and the last two sentences of the “Application” section (i.e., “The EBA Pilot Program shall be for a period of approximately four years beginning October 1, 2011, and ending December 31, 2015. This Tariff will also be used to collect the \$20 million dollar of deferred net power cost approved in Docket Nos. 10-035-124 and 12-035-67”⁵). PacifiCorp proposes adding introductory language to the definition of EBA on Sheet No. 94.1 (i.e., “Pursuant to Utah Code Section 54-7-13.5(2)(d) amended in the 2016 general session of the Utah state legislature”⁶). Additionally, in the definition of EBA PacifiCorp proposes to replace the current collection or refund amount, i.e., 70 percent, with 100 percent.

On Sheet No. 94.8, PacifiCorp proposes to delete the 70 percent multiplier from the formula for the EBA deferral and on Sheet No. B.1, PacifiCorp proposes to delete the words “Pilot Program” in the title of Schedule 94. Each revised tariff sheet also includes administrative changes to the sheet name, authority citation, filed date, and effective date.

⁵ PacifiCorp Filing at Sheet No. 94.1, filed April 14, 2016.

⁶ *Id.*

COMMENTS

Parties' comments addressing PacifiCorp's proposed Tariff changes focus on two issues; namely PacifiCorp's deletion of references to the EBA as a pilot program and the absence of identification in the tariff that the current sharing band remains in effect until June 1, 2016.

I. Deletion of references to the EBA as a "Pilot Program"

The Division, the Office, UAE, UIEC, and UCE oppose PacifiCorp's proposed deletion of language referring to the EBA as a pilot program. These parties assert that S.B. 115 did not change the pilot status of the EBA. The parties, however, offer differing interpretations of when the EBA pilot program ends.

The Division interprets the language in § 54-7-13.5(6) pertaining to the Commission's reporting responsibilities "as effectively extending the Pilot Program at least through December 201[9]."^{7, 8} To address this issue, the Division recommends the addition of the following language after PacifiCorp's proposed deletion in the Application section of Sheet No. 94.1: "Pursuant to Utah Code Section 54-7-13.5(6) amended in the 2016 general session of the Utah State Legislature, the EBA Pilot Program shall run until December 31, 2019."⁹ Absent Commission approval of its recommended revision, or similar language, the Division recommends "the Commission suspend the tariff and open a proceeding to investigate and evaluate whether other

⁷ Division Comments at 3, filed May 2, 2016.

⁸ The Commission presumes the Division's reference to 2018 in its May 2, 2016 Comments is a typographical error as it is inconsistent with other language it proposes in the Application section of Sheet No. 94.1.

⁹ *Supra* n.7 at 4.

aspects of the tariff remain in the public interest and how the EBA should be structured in light of SB 115 and the elimination of existing pilot program terms.”¹⁰

The Office supports the following alternative language to reflect the duration of the EBA pilot program currently approved by the Commission: “The EBA Pilot Program shall be for a period of approximately five years beginning October 1, 2011, and ending December 31, 2016.”¹¹

The Office recommends that the evaluation of the pilot program proceed as currently scheduled. The Office notes the Commission’s legislative reporting requirements and suggests the Commission may desire to adjust the pilot program evaluation timeline to better meet its needs in making such future reports. To that end, the Office requests that the Commission provide guidance on the conclusion and evaluation of the EBA pilot program.

UAE maintains that while the EBA pilot program may have been extended by legislative mandate through 2019, the EBA remains a pilot program until the review of the EBA, as contemplated by the Commission, has been completed. UIEC asserts that the issue of whether the EBA should continue beyond 2016 will depend of the result of the currently pending review. UCE maintains that S.B. 115 did not terminate the pilot program or mandate an EBA of permanent or indefinite duration. UCE notes that Utah Code § 54-7-13.5(2)(b) was unchanged by S.B. 115 and continues to require the Commission to find the EBA is in the public interest. UCE believes the review of the

¹⁰ *Id.* at 5

¹¹ Office Comments at 2, filed May 2, 2016.

EBA pilot program should continue as contemplated by Commission orders. UCE supports the tariff revisions proposed by the Office in their May 2 comments.

In its reply comments, PacifiCorp states it does not object to the Division's and UAE's comments and accepts the Division's proposed tariff modifications. PacifiCorp does, however, object to the recommendations of the Office and UIEC that the EBA pilot program may terminate on December 31, 2016. PacifiCorp believes its recommendations are contrary to S.B. 115's legislative intent. PacifiCorp also acknowledges that the EBA evaluation will continue as approved by the Commission.

II. Sharing Band

The Division, the Office, UAE, and UCE do not agree with the Company's proposed modifications replacing references to the sharing band. These parties agree that the Tariff should reflect both the current sharing band and the limited duration of the 100 percent sharing band identified in S.B. 115. The Division points out S.B. 115 does not modify the sharing band until June 1, 2016, and that in the 2017 EBA filing PacifiCorp will seek recovery of five months of accruals under the current sharing band and seven months of accruals at 100 percent (i.e., with no sharing band) consistent with S.B. 115.

To correct perceived errors in the proposed tariff, the Division proposes alternate language to the definition of EBA on Sheet No. 94.1 by replacing the reference to 70 percent with "a specified portion" and adding the following sentence: "Through May 31, 2016, the specified portion is 70 percent (70%); starting June 1, 2016, the specified portion is 100 percent (100%). The use of the 100% specified portion shall remain in

effect until December 31, 2019.”¹² The Division also recommends the inclusion of two EBA deferral formulas on Sheet No. 94.8, one for the pre-June 1, 2016 period and one for the post-June 1, 2016 period, the former using a 70 percent multiplier and the latter using a 100 percent multiplier.

The Office believes the definition of EBA on Sheet No. 94.1 should reflect both the current sharing band through May 31, 2016, and the provisions of S.B. 115 through December 31, 2019. The Office proposes the following language to address the time-limited nature of § 54-13.5(2)(d): “Pursuant to Utah Code Section 54-7-13.5(2)(d) amended in the 2016 general session of the Utah state legislature, accumulated differences beginning June 1, 2016 *through December 31, 2019* will be collected or refunded 100%.”¹³

PacifiCorp accepts the Division’s proposed modifications pertaining to the sharing bands. PacifiCorp states that it was its intent to apply the tariff consistent with the Division’s recommendation and appreciates the clarification.

DISCUSSION, FINDINGS AND CONCLUSIONS

We conclude that deletion of references to the EBA as a pilot program on Tariff Sheets 94.1 and B.1 is not consistent with S.B. 115 because S.B. 115 requires continued review of the EBA through 2019. We find the Company’s deletion of obsolete references in the Application section on Sheet No. 94.1 appropriate and approve it. We find the Division’s recommended changes to Sheet No. 94.1 pertaining to the EBA pilot period, as supported by PacifiCorp, reasonably address the concerns

¹² Division Comments at 4, filed May 2, 2016.

¹³ Office Reply Comments at 1-2, filed May 9, 2016.

of parties and are consistent with S.B. 115, and we approve those changes. We also find that proceeding with the EBA pilot program review as currently scheduled continues to be in the public interest and is consistent with S.B. 115 in that the review will inform our required reports to the Utah Legislature.

For the reasons identified above, we find it appropriate to include references to both the pre- and post-June 1, 2016 sharing bands in PacifiCorp's tariff. Therefore, we approve the Division's proposed modifications to Sheet Nos. 94.1 and 94.8, as supported by PacifiCorp. We also approve the administrative changes to Tariff Sheet Nos. 94.1, 94.8, and B.1.

ORDER

- 1) We approve PacifiCorp's proposed deletion of the last two sentences in the Application section of Tariff Sheet No. 94.1 and the administrative changes to the Tariff Sheet Nos. 94.1, 94.8, and B.1.
- 2) We approve the Division's proposed changes to the Application section and the definition of EBA on Sheet No. 94.1 and the formulas for the calculation of the EBA deferral on Sheet No. 94.8.
- 3) PacifiCorp shall file updated tariff sheets reflecting the decisions in this Order, with an effective date of June 1, 2016, within seven days after the date of this order.

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DATED at Salt Lake City, Utah, May 16, 2016.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
DW#276782

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 Commission 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 Commission 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 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 §§ 63G-4-401 and 63G-4-403 of the Utah Code and Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on May 16, 2016, a true and correct copy of the foregoing was delivered upon the following as indicated below:

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