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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

Investigation of Revenue Requirement)	Docket No. 17-035-69
Impacts of the New Federal Tax Legislation)	
Titled: “An Act to provide for reconciliation)	Docket No. 17-057-26
pursuant to titles II and V of the concurrent)	
resolution of the budget for fiscal year 2018”)	Comments of the Office of
)	Consumer Services in Support of
)	Motion for Orders for Deferred
)	Accounting

The Office of Consumers Services (“Office”) submits these Comments in support of the Utah Association of Energy Users’ (“UAE”) Motion for Orders for Deferred Accounting Treatment of Benefits Associated with U.S. Tax Reconciliation Act (“Motion”). On December 21, 2017, the Utah Public Service Commission (“Commission”) issued a Notice of Comment Period in several dockets, including dockets 17-035-69 relating to Rocky Mountain Power (“RMP”) and 17-057-26 relating to Dominion Energy Utah (“DEU”). Pursuant to this Notice, on or before January 31, 2017, the listed public utilities are to file written comments describing in detail, to the extent practical, the impacts on their respective revenue requirements of the passage of federal tax legislation. On December 22, 2017, the President signed into law H.R.1 – An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution of the budget

for fiscal year 2018, Pub. L. No. 115-97, § 11000, 131 Stat. 2054 (2017). Among the changes made by this legislation is the reduction of the corporate tax rate from 35% of taxable income to 21% of taxable income, a reduction of 40%. *Id.* at § 13001 (b), 131 Stat. 2096. The legislation applies to taxable years beginning after December 31, 2017. *Id.* at § 11000 (c), 131 Stat. 2059.

On January 2, 2018, UAE filed its Motion seeking orders requiring RMP and DEU “to defer for later ratemaking treatment all revenue requirement savings or benefits received or realized by RMP or DEU as a result of recent tax legislation, commencing on January 1, 2018, and ending upon the date that new rates take effect following future ratemaking proceedings.” (Motion at 1.) On January 3, 2018, this Commission issued an additional Notice setting January 12, 2018 for comments on UAE’s Motion and Reply comments to the Motion on January 19, 2018. These Comments are filed pursuant to this Commission’s January 3rd Notice.

The Office supports UEA’s Motion for deferred accounting treatment and agrees with both the legal contention that, although deferred accounting may constitute retroactive ratemaking, an exception to retroactive ratemaking can be justified when unforeseeable circumstances occur that have an extraordinary impact on a utility’s revenue requirement and the factual contention that a 40% decrease in corporate taxes can constitute unforeseeable and extraordinary circumstances. *See MCI Telecommunications Corp. v. Pub. Serv. Comm’n of Utah*, 840 P.2d 765, 772-73 (Utah 1992.)

In *MCI Telecommunications* the Utah Supreme Court reversed a Commission order ruling that the prohibition against retroactive ratemaking prevents the Commission from recouping excess earnings caused by federal tax legislation decreasing the corporate income tax by approximately 25%. *Id.* at 772. In so holding the Court ruled that the rule against retroactive ratemaking “is a sound rate-making principle, but it only applies to missteps in the rate-making

process.” *Id.* (internal quotations omitted). The rule does not apply “where justice and equity require that adjustments be made for unforeseen windfalls or disasters not caused by the utility.” *Id.*

The Supreme Court went on to hold that ordinarily “changes in tax laws are not a sufficient basis for invoking the exception to the general rule. Here, however, the federal corporate income tax was cut by more than one-fourth.” *Id.* The court ruled that a tax change of this magnitude was not foreseeable at the time of the last rate case that used the old tax rate in calculating the utilities revenue requirement. *Id.* In addition, the Court observed that there was evidence that tax legislation “provided an extraordinary decrease in [the utility’s] expenses and a corresponding extraordinary increase in earnings.” *Id.*

The same analysis holds true in the instant case, with greater force. Rather than a mere reduction of 25% in corporate income tax, the instant case presents a reduction of corporate income tax of 40%. Such a reduction was clearly unforeseeable at the time of RMP and DEU’s last rate cases in 2014. *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, Report and Order, (August 29, 2014, Utah P.S.C.); *In the Matter of the Application of Questar Gas Company to Increase Distribution Rates and Charges and Make Tariff Modifications*, Docket No. 13-057-05, Report and Order (February 21, 2014, Utah P.S.C.) It is also self evident that a decrease in tax rates of this magnitude is likely to result in an extraordinary decrease in RMP and DEU’s expenses and therefore an extraordinary increase in earnings leading to rates that were based on the previous tax rates being rendered unjust and unreasonable.

Accordingly, an order of deferred tax treatments is both legally permissible and justified by the present circumstances. *See MCI Telecommunications*, 840 P.2d at 772; Utah Code §§ 54-4-1, 54-4-23; *In the Matter of the Application of Rocky Mountain Power for a Deferred Accounting to Defer the Costs of Loans Made to Grid West Regional Transmission Organization*; *In the Matter of the Application of Rocky Mountain Power for a Deferred Accounting to Defer the Costs Related to MidAmerican Energy Holdings Company Transactions*; *In the Matter of the Application of Rocky Mountain Power for a Deferred Accounting to Defer Costs related to the Flooding of the Powerdale Hydro Facility*, Dockets No. 06-035-163, 07-035-04, 07-035-14, Report and Order, at * 14-15, 23 (January 3, 2008, Utah P.S.C.) (deferred accounting treatment of unforeseen extraordinary costs associated with flooding of power plant).

The Office, therefore, concurs with UEA's Motion for Orders requiring RMP and DEU to defer for later ratemaking treatment all revenue requirement savings or benefits received or realized by these utilities as a result of the Act, commencing on the effective date of the Act, January 1, 2018, and ending on the date the new rates take effect. In issuing these Orders the Commission should insure that the accounting treatment should include impacts on both income tax expenses and deferred income taxes, including the impacts of the Act on accumulated deferred income tax balances and the excess accumulated deferred income taxes that result from the Act.

In sum, the Office supports UAE's Motion and joins in seeking the relief requested in the Motion.

Respectfully submitted,

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