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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

Investigation of Revenue Requirement Impacts of the New Federal Tax Legislation Titled: “An act to provide for reconciliation pursuant to titles II and V of the concurrent resolution of the budget for fiscal year 2018”	Docket No. 17-035-69  <b>UIEC’s Amended Memorandum in Support of UAE’s Motion for Orders for Deferred Accounting Treatment of Benefits Associated with 2018 Tax Reconciliation Act</b>
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Pursuant to R746-1-301 and the Utah Administrative Code and the Notice Regarding the Utah Association of Energy Users’ (“UAE”) Motion for Orders for Deferred Accounting Treatment of Benefits Associated with 2018 Tax Reconciliation Act (“UAE’s Motion”) issued by the Utah Public Service Commission (“PSC” or “Commission”) on January 3, 2018, the “Utah Industrial Energy Consumers”<sup>1</sup> (“UIEC”) hereby file this Memorandum in Support of UAE’s Motion stating as follows.

The UIEC agree with the UAE that the Commission should take immediate action to ensure that benefits associated with the 2018 Tax Reconciliation Act are captured and passed onto Utah ratepayers of Rocky Mountain Power (“RMP” or the “Company”) rather than allowing them to result in a windfall for the shareholders of RMP’s parent company. State regulators across the country are taking steps to ensure the benefits of the federal tax overhaul are passed onto utility customers.<sup>2</sup> Similarly, state attorneys general have asked the Federal Energy Regulatory

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<sup>1</sup> For purposes of this Memorandum, the UIEC is a reference, for convenience only, of Tesoro Refining & Marketing Company LLC, LafargeHolcim Ltd., and Post Consumer Brands, LLC.

<sup>2</sup> See, e.g., SNL Power Daily, Vol. 16, Issue 7 at 5-6 (Jan. 10, 2018).

Commission to take action to do the same with respect to wholesale and transmission utility rates.<sup>3</sup> And some utilities have already filed for decreases in rates effective January 1, 2018.<sup>4</sup> Due to the corporate income tax reductions beginning January 1, 2018, utility customers nationwide, including customers of RMP, are overpaying for their electric service resulting in unjust and unreasonable rates.<sup>5</sup>

Having opened an investigation into the revenue requirement impact of the 2018 Tax Reconciliation Act, the Utah Commission has authority, after hearing and notice, to make findings and orders that are just and reasonable with respect to the investigation.<sup>6</sup> The Commission should not hesitate to exercise its authority to ensure that public interest is served by allowing ratepayers to realize the benefit of the tax reduction as soon as possible by implementing a rate reduction. In the meantime, to preserve its jurisdiction under the investigative statutes, and ensure the full benefit to ratepayers, the PSC should enter an appropriate accounting order as the UAE has requested.

Some may argue that the rule against retroactive ratemaking prohibits the capture of the benefits back to January 1, 2018. However, the exceptions to this rule allow the Commission to capture such benefits in this case.

The Commission was faced with a similar question in consolidated Docket Nos. 06-035-163, 07-035-04, and 07-035-14. In those cases, the Commission considered several requests from

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<sup>3</sup> See, e.g., <https://www.eenews.net/greenwire/sotreis/1060070641>

<sup>4</sup> See, e.g., *Application of Sierra Pacific Power Company d/b/a NV Energy filed under Advice Letter No. 604-E to revise Electric Line Extensions Rule No. 9 to adjust the Tax Gross-up Rate*, PUCN Docket No. 18-01013 (Jan. 2, 2018); *Application of Nevada Power Company d/b/a NV Energy filed under Advice Letter No. 484 to revise Electric Line Extensions Rule No. 9 to adjust the Tax Gross-up Rate*, PUCN Docket No. 18-01012 (Jan. 2, 2018).

<sup>5</sup> A core part of the Commission's statutory mandate is ensuring the rates paid to utilities are just and reasonable. Sections 54-4-2 and 54-4-4 of the Utah Code Annotated ("UCA") authorize the Commission to conduct investigations, hold hearings, make findings, and issue orders, including the establishment of new rates. UCA §§ 54-4-2(1), 54-4-4(1)(2).

<sup>6</sup> UCA § 54-4-2(1)(b)

RMP for accounting orders to capture for future treatment the costs related to past events.<sup>7</sup> The Commission noted that “[w]hile the rule against retroactive ratemaking generally precludes the ratemaking process from being influenced when actual costs or revenues deviate from their estimates made in prior ratemaking proceedings, . . . exceptions to the rule are recognized.”<sup>8</sup> Utah law recognizes an exception to the rule “where future rates can be influenced by ‘unforeseeable and extraordinary’ changes in expenses or revenues.”<sup>9</sup>

Furthermore, in making its decision whether to issue an accounting order, the Commission noted that not only do the “rule against retroactive ratemaking, exceptions to the rule and their underlying rationales have application in considering whether an accounting order should be issued,”<sup>10</sup> but the Commission also ruled that it would “take into consideration the time when the utility becomes aware of events or circumstances and when related expenses occur in relation to the timing of past and future ratemaking proceedings.”<sup>11</sup>

RMP has not filed a general rate case since 2013 (Docket No. 13-035-184). RMP has no statutory obligation to file a rate case and has given no indication that it plans to do so in the near future. Furthermore, just as the Utah Supreme Court recognized in *MCI*, the “extent of the reduction of corporate income tax rates under the Act was clearly unforeseeable when the last general rate case was decided,” and the cut to the corporate income tax rate is significant, making it an exception to the general rule against retroactive ratemaking.

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<sup>7</sup> Report and Order, *In the Matter of the Application of Rocky Mountain Power, a Division of PacifiCorp, for a Deferred Accounting Order to Defer the Costs of Loans Made to Grid West, the Regional Transmission Organization*, Docket No. 06-035-163; *In the Matter of the Application of Rocky Mountain Power for an Accounting Order to Defer the Costs Related to the MidAmerican Energy Holdings Company Transaction*, Docket No. 07-035-04; *In the Matter of the Application of Rocky Mountain Power for an Accounting Order for Costs related to the Flooding of the Powerdale Hydro Facility*, Docket No. 07-035-14 (Jan. 3, 2008).

<sup>8</sup> *Id.* at 15 (internal citations omitted).

<sup>9</sup> *Id.* (quoting *MCI Telecomm. Corp. v. Utah Pub. Serv. Comm’n*, 840 P.2d 765 (Utah 1992)).

<sup>10</sup> *Id.* at 16.

<sup>11</sup> *Id.* at 18.

**Conclusion**

The UIEC supports the UAE Motion. In anticipation of implementing a rate reduction, the Commission should enter the appropriate accounting orders to capture the benefits due to Utah ratepayers effective January 1, 2018, that result from the Tax Reconciliation Act.

DATED this 12<sup>th</sup> day of January 2018

/s/ Vicki M. Baldwin

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**CERTIFICATE OF SERVICE**  
(Docket No. 17-035-69)

I hereby certify that on this 12<sup>th</sup> day of January 2018, I caused to be e-mailed, a true and correct copy of the foregoing UTAH INDUSTRIAL ENERGY CONSUMERS' AMENDED MEMORANDUM IN SUPPORT to:

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/s/ Kathleen Ruff \_\_\_\_\_