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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 Reply Comments in Response to Rocky Mountain Power’s Comments on the 2018 Tax Reconciliation Act</b>
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Pursuant to the Notice of Comment Period issued by the Utah Public Service Commission (“PSC” or “Commission”) on December 21, 2017, and the Order Granting Unopposed Motion to Extend and Amend Procedural Schedule, the “Utah Industrial Energy Consumers”<sup>1</sup> (“UIEC”) hereby file these Reply Comments.

**REPLY COMMENTS**

The Tax Cut and Jobs Act of 2017 (“Act”) implemented significant reductions in federal income tax for corporations, effective January 1, 2018. Income taxes are a major component of Rocky Mountain Power’s (“RMP” or the “Company”) cost of service, and of the rates that it charges to its customers. Because there is a significant reduction in this expense, customers are entitled to the full benefit of this reduction.

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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.

On December 21, 2017, the Commission ordered RMP to “describ[e] in detail, to the extent practical, the impacts [of the Act] on [RMP’s] revenue requirement.” Notice of Comment Period at 1. The Company’s filing falls far short of complying with this order. The Company has not even filed work papers or any type of evidence supporting its filing. Furthermore, the Commission did not ask for the Company’s opinion on rate treatment. The Commission asked for details of the impact of the Act on revenue requirement. A thorough investigation of the impacts with complete supporting evidence should be conducted. Then, once the impacts are understood, the Commission can make a determination as to how to best ensure the benefits are realized by ratepayers. RMP should not be allowed to retain these benefits, or unnecessarily defer recognition of these lower costs in rates.

On page 7 of its February 7, 2018 filing (“Comments”), RMP indicates that it has quantified the impact of the reduction of the federal income tax rate from 35% to 21% on current and deferred income taxes, as well as the repeal of the domestic production activities deduction (“DPAD”). However, RMP also admits that it has not fully quantified the benefits of the Act, and does not even try to quantify the amount of benefit that it has not estimated.

The amount not quantified could be substantial. RMP has accrued on its books deferred income taxes on the basis of a 35% income tax rate. Because the income tax rate is now 21%, RMP has substantial amounts of excess accumulated deferred income taxes. While it may be true, as RMP indicates on page 4 of its Comments, that property-related excess deferred income tax is subject to normalization requirements and must be flowed back according to specific rules, there are no restrictions on the flow-back to customers of excess deferred income taxes that are not subject to normalization requirements. RMP refers to these as the “non-property excess deferred income taxes” (Comments at 5), but it does not provide any estimate of what those amounts might

be, nor does it suggest any period of time over which RMP would propose to flow back to customers these unrestricted excess deferred income taxes. It is clearly within the purview of the Commission to make that determination—but it cannot do so unless it has the necessary information before it.<sup>2</sup>

Despite having calculated a minimum reduction of approximately \$76 million, RMP wants to hold back most of that money “until the next rate case,” and only pass on to customers at the current time a rate reduction of \$20 million—only about one-quarter of the calculated amount. Comments at 8-9. RMP states that it wants to retain the remaining three-quarters of the calculated reduction (which appears to be significantly understated) for some big, indefinite, “longer-term strategy to use the regulatory liability balance to help offset future known cost increases pressures, such as the Deer Creek mine closure costs and other regulatory assets.” Comments at 8. This is unreasonable. RMP has not shown or even claimed it would experience any significant negative impact if it immediately reduced rates to reflect the full extent of the estimated reduction in income taxes. In fact, RMP has provided no evidence supporting its position.

With the reduction in federal tax from 35% to 21%, RMP’s cost of equity will be reduced. RMP makes only a passing reference to a “potential” impact on credit metrics, and does not even attempt to quantify that impact. Comments at 9. Instead, it proposes “deferring part of the reduction to offset future rates increases,” to allow more time “to analyze these impacts and adjust capital structure levels, as appropriate.” Comments at 9

RMP proposes to make an updated filing by mid-June, 2018, using 2017 year-end results of operations “to calculate the final amount of the tax deferral, which would remain in effect until

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<sup>2</sup> The UIEC attempted to discover this information through data requests served to RMP on February 15. The Company has not yet responded.

the next rate case.” Comments at 9. That is unreasonable because RMP may not file a rate case for years. Its last case was filed in 2013, Docket No. 13-035-185, and it is overearning and has no incentive to file another.

The UIEC suggest that, similar to the order issued February 21 in the Dominion Energy case Docket No. 17-057-26, the Commission grant UAE’s motion for a deferred accounting order beginning on January 1, 2018, and issue a notice for a scheduling conference. The Commission should set a schedule for conducting discovery, and should receive input from regulators and interested parties, so that it has a record sufficient to make findings that reliably quantify the impact of the tax reform on revenue requirement and to make conclusions determining the appropriate mechanism for adjusting customer rates. There may be several mechanisms available to flow the benefit back to ratepayers, including a temporary rate reduction with a later true up. But, regardless of the specific mechanism, the regulatory liability for the benefits accruing from January 1, 2018, until rates are reduced should be flowed back to customers over the remaining months of 2018 and no later.

## **CONCLUSION**

The UIEC commends the Commission for holding RMP to account for the benefits of the Tax Reform Act, and urges the Commission to use its authority under Section 54-4-2 to ensure that the full benefits of the Act are properly calculated and passed onto customers as soon as possible. UIEC recommends that the Commission grant UAE’s motion for deferred treatment of the tax benefits from January 1, 2018, and set a scheduling conference so that the full impact of the tax reform bill can be analyzed and quantified, and so that an appropriate remedy can be promptly implemented.

DATED this 23rd day of February 2018

/s/ Vicki M. Baldwin

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**CERTIFICATE OF SERVICE**

(Docket No. 17-035-69)

I hereby certify that on this 23<sup>rd</sup> day of February, 2018, I caused to be e-mailed, a true and correct copy of the foregoing UTAH INDUSTRIAL ENERGY CONSUMERS' COMMENTS IN RESPONSE TO ROCKY MOUNTAIN POWER'S COMMENTS ON THE 2018 TAX RECONCILLATION ACT to:

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