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Division of Public Utilities

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ACTION REQUEST RESPONSE

TO: Public Service Commission

FROM: Division of Public Utilities:
Chris Parker, Director
Artie Powell, Energy Manager
Lane Mecham, Utility Analyst
Jeffrey S. Einfeldt, Utility Analyst

DATE: February 23, 2018

RE: Docket No. 17-035-69, 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

RECOMMENDATION (Create an immediate refund or credit mechanism for tax benefits)

The Division of Public Utilities ("Division") recommends the Commission approve the deferred accounting order requested on January 12, 2018, by Rocky Mountain Power ("the Company") to begin tracking the savings created by the Tax Cuts and Jobs Act ("Tax Act"). We also recommend that a new tariff be created to refund the estimated annual savings of $76,222,011 until the savings can be incorporated into base rates.

BACKGROUND AND DISCUSSION

On December 22, 2017, President Trump signed the Tax Act into law, which made significant changes to the tax code. In particular, the federal corporate income tax rate was reduced from 35% to 21%. The reduction in the tax rate has two significant impacts: First, it reduces the Company's federal income tax expense effective January 1, 2018, and second, it reduces the deferred income tax liability, accounted for on the Company's balance sheet as Accumulated Deferred Income Taxes ("ADIT"). The IRS requires utilities to amortize the adjustment to ADIT using the Average Rate Assumption Method, or ARAM, over the original life of the underlying assets[1].

The Commission issued a Notice of Comment Period on December 21, 2017, initiating this docket to investigate the revenue requirement impacts of the Tax Act and directing the Company to respond by January 31, 2018. The Company sought a one week extension, which was granted by the Commission. On February 7th, 2018, the Company filed its comments regarding the effects of the Tax Act on its revenue requirement.

The Company estimates its revenue requirement will decrease annually by approximately $76.2 million. It has not completed its estimate of the reduction to the Accumulated Deferred Income Tax liability at this time. The Company has proposed to file a more complete analysis using the December 2017 Utah Results of Operations Report, which is currently scheduled to be filed by April 30, 2018, and requested an additional 45 days after that date to perform the analysis.

Of the estimated $76.2 million savings, the Company proposes passing $20 million onto ratepayers beginning May 1, 2018, through a rate reduction. The $20 million pass-through would be allocated to each class based on the allocation of rate base from the most recent annual cost of service study. The remainder would be deferred to offset costs in a future rate case. The Company believes that deferring the remainder will provide better rate stability and gives the

[1] "H.R.1 - An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018." Accessed February 14, 2018. Section 1561(d). https://www.congress.gov/bill/115th-congress/house-bill/1/text

Company time to more fully analyze the impacts and address concerns raised by credit rating agencies[2].

DPU's COMMENTS

The Division agrees with the Company allocating tax savings to rate classes based on the rate base allocation from the most recent annual cost of service study, with the exception of Special Contracts. Special Contracts are negotiated independently and any benefits from the Tax Act will be realized when contracts are renegotiated. The Division also believes the entire estimated annual savings of approximately $76.2 million should be refunded or credited to customers and the adjustments should begin as soon as possible.

This treatment is more appropriate than the Company's proposal for a couple reasons. First, base rates were developed and set based on assumptions that are no longer valid. The sudden shift in the tax rate should mean those reduced expenses get immediately passed on to ratepayers. Second, the Company has publicly pledged not to seek an increase in base rates until at least 2021. That suggests a rate case will be delayed for many years and the benefits of tax reform would not be realized by ratepayers until then. Even then, many ratepayers are likely to have come and gone in the intervening time, resulting in a different set of ratepayers realizing the benefits of today's changes. Therefore, the Division recommends the Commission order the Company to develop a new tariff that will pass-through tax savings until they can be incorporated into base rates.

The Division is opposed to deferring the savings in order to offset future costs. However, should the Company's proposed treatment be approved, the Division has concerns about which specific costs would be offset. In this Docket, 17-035-69, the Company said it would offset costs currently being deferred to a future rate case, citing Deer Creek Mine costs[3]. The Company also proposed to offset costs that exceeded the proposed RTM cap in the Wind Repowering Docket

[2] Comments of Rocky Mountain Power, Docket No. 17-035-69, Filed February 2, 2018, p. 9

(17-035-39)[4]. The savings related to tax reform are finite and the extent to which savings will be able to offset the costs the Company has proposed is unclear. If offsetting other costs with a portion of the tax savings is approved, the Division recommends that the Commission order the Company to specifically identify the costs it intends to offset. If, for example, the Deer Creek Mine costs alone would consume all the benefits of tax reform then there would be nothing left to offset the costs associated with wind repowering as the Company has proposed.

The Division also notes it has opposed the RTM proposed in the wind docket. The Division continues to oppose the RTM either for approval in the wind docket or to offset tax savings.

Furthermore, the Division notes the differences between deferrals such as the Deer Creek Mine costs or proposed RTM and this tax-law change. The tax changes were extraordinary and unforeseeable and beyond the utility's control. Deferring those expenses for a brief time to capture the benefits while determining how to effect the necessary rate changes is appropriate. It is the usual and common method of handling such a change. Indeed, such activity is proceeding in other states.[5] Postponing the realization of those benefits indefinitely is not.

Mechanisms such as the proposed RTM are unlike the tax law changes because these mechanisms seek to avoid established procedures for recovering planned investments. There is nothing extraordinary or unforeseeable about them. Nothing prevents the utility from filing for general rate changes and using a future test year to capture new assets, expenses, or the like. Given the length of time since the Company's last general rate case and its pledge to wait three more years until the next one, creating new ratepayer liabilities to be collected someday is not in the public interest. Giving ratepayers the immediate benefit of relatively certain tax law changes is in the public interest. As the Division noted in the wind docket, should the Company wish to

[4] Supplemental Direct Testimony of Cindy A. Crane, Docket No. 17-035-69, February 1, 2018, Lines 57-61, "… the Company proposes to separately defer the net costs in excess of the cap related to tax law changes, and seek recovery through the offsets to the deferral for the impacts from tax reform that the Commission is addressing in a separate proceeding (Docket No. 17-035-69)."

[5] See, e.g. Nevada Public Service Commission Docket No. 18-02011, filed February 14, 2018 (NV Energy proposing immediate negative rate rider to reflect tax changes).

include other items that are not extraordinary or unforeseeable in customer rates, it should avail itself of the usual mechanism for doing so: a general rate case.

CONCLUSION

The Division recommends the Commission approve the deferred accounting order requested by the Company on January 12, 2018, to track and defer tax savings as of January 1, 2018. It also recommends that a new tariff be created to refund or credit the total estimated annual tax savings of $76,222,011 to ratepayers. The refund could be allocated to the classes based on the allocation of rate base from the most recent cost of service study, excluding Special Contracts. Lastly, if the Commission allows tax benefits to be offset against other costs, we recommend that the Commission order Rocky Mountain Power to specifically identify which costs it would propose to offset.

cc: Michele Beck, Committee of Consumer Services