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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 **UIEC's Responsive Comments on the 2018 Tax Reconciliation Act**

On February 28, 2018, the Utah Public Service Commission ("PSC" or "Commission") issued its Order Granting Motion for Deferred Accounting Order and Notice of Scheduling Conference ("Order"). In that Order, the Commission "conclude[d] deferred accounting treatment is appropriate but the record is not sufficient, at this time, to make findings that quantify the impact of the tax reform on revenue requirement or to make conclusions as to the most appropriate mechanism for redressing any associated imbalance in customer rates."[1] Therefore, the Commission set a time for a scheduling conference and asked participants to "come prepared to discuss a process and schedule for investigating the impact of and adjudicating rate effects associated with the recent change in the federal corporate tax rate on PacifiCorp dba Rocky Mountain Power's ("RMP") revenue requirement."[2]

[1] Order at 2.

[2] *Id.* at 1.

4850-4923-8113v1

Accordingly, a schedule was set, pursuant to which RMP filed a tariff application with supporting workpapers. In accordance with that schedule, the Utah Industrial Energy Consumers[3] ("UIEC") hereby file these Responsive Comments.

RESPONSIVE COMMENTS

The UIEC have reviewed RMP's March 16, 2018 filing in this matter. The UIEC also have reviewed the responses to the data requests submitted by UIEC and those submitted by other parties. After reviewing this information and considering RMP's arguments, the UIEC continue to be of the opinion that the appropriate course of action is to reduce Utah retail rates by at least $76.2 million[4] as soon as possible.

Instead of the $76.2 million reduction in current income tax expense that RMP calculates, RMP wants only to provide customers with a $20 million reduction in rates, while deferring the difference for later use. RMP does not make any specific proposal in its filing for use of these funds, either as to amount or timing, except to note that it has proposed an alternative treatment for some of the Deer Creek mine costs in its current energy balancing account ("EBA") filing. Nor does it propose to flow back to customers any of its excess deferred income taxes. RMP also implies, but does not provide any evidence to support, that it could be subject to weakening credit ratings and potential downgrades if it passes the full benefits along to customers now. This is unsupported speculation[5] and the Commission should not be fooled by RMP's attempts to keep what rightfully belongs to ratepayers.

Benefit from Reduced Income Taxes

In Paragraph 13 of its March 16, 2018 filing, RMP argues that there is such a high level of uncertainty about the revenue requirement impacts of the Tax Cut and Jobs Acts of 2017 ("TCJA")

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[3] 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.

[4] Further evaluation is necessary to determine the total amount that should be returned to rate payers.

[5] This is especially ironic given the fact that PacifiCorp's parent company, Berkshire Hathaway, announced that it realized a gain in 2017 of $29 billion directly as a result of the TCJA. It has been reported that Mr. Buffett is looking for a place to "put" that money.

that it would not be prudent to give customers more than $20 million out of $76.2 million at the present time. While the UIEC acknowledge that perhaps not everything is known with "perfect knowledge and understanding," there are two major factors that militate against RMP's position.

First, the $76.2 million in question is only the beginning. It only addresses the impact on current year operations. It does not recognize (as RMP actually acknowledges in Paragraph 14 of its filing) that RMP has included no component for flowing back to Utah ratepayers the excess deferred income taxes that also are created as a result of reducing the federal income tax rate from 35% to 21%. The amounts at issue are very large, and cannot be ignored. RMP's response to OCS Data Request No. 2.1 states that the revenue requirement impact of the excess deferred income tax is over $2.3 billion on a total company basis. Utah's share is not quantified but could be in the range of 40% of this amount.

Some of the excess deferred income tax is "protected" under normalization rules, and must be flowed back to ratepayers ratably over the remaining life of the underlying assets pursuant to the Average Rate Assumption Method ("ARAM"). RMP has not provided estimates of these amounts and they are not included in the calculation of the impact of TCJA. In addition to the protected excess deferred income tax balances, RMP has unprotected excess deferred income tax balances that are not subject to the same normalization rules. The flow back of these balances are not restricted by the same regulations that apply to the protected balances. The Commission gets to decide how and when the unprotected excess deferred income tax balances are to be returned to Utah ratepayers.

There are important intergenerational equities that must be considered in developing an appropriate return to customers of the unprotected excess deferred income taxes. These balances were collected over many years from ratepayers under the assumption that future reversal of book-tax timing differences would give rise to payment of taxes to the federal government at a 35% rate. As it turns out, those tax differences will be settled at a much lower 21% tax rate. Accordingly, customers paid-in far more money than necessary to fund the future tax obligations of RMP. To the extent possible, the goal should be to return those excess funds as quickly as possible so as to benefit those customers most likely to have paid in these balances—namely, the current customers. Deferring the return of these amounts to customers far into the future would not be equitable. Similar considerations apply to the flow through of the reduction in current income taxes. It would be inequitable to require current customers to continue paying rates that include excessive income tax provisions, only to turn around and give the benefit of those excess collections to future customers, who may not have paid any of the excess taxes.

Given this considerable margin in the numbers as they are known today, there should be no concern about reducing current rates by the full $76.2 million that has been calculated.

RMP's "Other Uses" Argument

At pages 7 and 8 of its filing, in Paragraphs 18 through 22, RMP outlines certain other actual and potential costs that it believes it will be facing, and argues that some of the benefits of the TCJA should be deferred and used to offset these potential cost increases. In Paragraph 22 on page 8 of its filing, RMP discusses the possibility of upward pressure on rates to cover other costs in the event that a larger share of the TCJA benefits is passed on to customers now. What RMP's arguments overlook is the fact that, just as there may be other costs, there could, and most likely would, be other counter veiling or offsetting factors that would reduce this upward pressure. These other potential costs should be reviewed and evaluated separately, on their own merits, in future proceedings.

The mix and match approach proposed by RMP creates other problems as well. RMP's proposal for offsetting some of the Deer Creek mine costs that are currently in the EBA is a prime example of rate misalignment because funds that were intended to cover demand-related costs (income taxes) would be used to offset energy-related costs. These kinds of distortions in the rate structure should be avoided because it results in the misalignment of cost causation and cost recovery between and among customer classes, which could result in rates that are neither just nor reasonable.

In addition, we know that RMP can pass through the entire benefit to customers now without a current negative impact because, before the impacts of the TCJA were known, RMP made statements that it did not anticipate needing to file for additional rate relief before 2021.[6] Since passing through 100% of the benefits of the TCJA to customers does not alter RMP's bottom line earnings, there is no reason not to pass them through fully to customers.

Coverage Ratios and Other Credit Related Factors

Beginning with Paragraph 23 on page 8 of its filing and continuing through Paragraph 26, RMP refers extensively to a report prepared by the Brattle Group. It talks about impact on coverage ratios and cash flow. While it is true that with lower income taxes in the revenue requirement the cash flow and coverages will be reduced somewhat, the real questions are by how much and does it really matter? RMP's comments are short on facts and long on speculation. The words "potential," "may," "likely" are common throughout this discussion. Most notably, RMP does not present any estimates at all of the impact on its coverage ratios if it were to provide 100% of the TCJA benefits to customers. RMP certainly is capable of making these estimates, and the UIEC suspect that RMP would have done so had the results supported its position.

Also notable is the fact that Moody's issued a report on January 24, 2018 in which it lowered the outlook for 24 regulated utilities based on the TCJA's impacts on cash flows. RMP (*i.e.*, PacifiCorp) was not among those utilities that were so impacted. And each of those utilities had already been on a watch list.

Finally, it is important to note that RMP had to reach back to 2012 for a New York Public Service Commission ("PSC") case and to 1983 for a Maine Public Utilities Commission case to support how it wants to handle the tax reduction benefits of the TCJA. Those utilities were also in different, distinguishable positions than is RMP. For a more recent example, we would refer the Commission to Arkansas PSC Docket No. 18-006-U (matter pending) in which Entergy Arkansas is proposing to reduce current rates not only for 100% of the reduction in current income

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[6] Any amount not immediately returned to ratepayers should accrue a 6% carrying charge, similar to that payable on EBA balances.

tax obligations,[7] but also to flow back to customers within two years its $345 million of unprotected excess deferred income taxes. This is fair treatment for ratepayers, unlike that proposed by RMP.

CONCLUSION

Based on the foregoing, the UIEC strongly urge the Commission to order RMP to return the entire $76.2 million reduction in current income tax obligations to Utah ratepayers beginning May 1, 2018.

DATED this 9th day of April, 2018

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[7] RMP's sister companies, Nevada Power Company and Sierra Pacific Power Company, are also voluntarily returning to rate payers 100% of the reduction in current income tax obligations beginning April 1, 2018. *See* Public Utilities Commission of Nevada Docket Nos. 18-02010 and 18-02011.

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

I hereby certify that on this 9th day of April, 2018, I caused to be e-mailed, a true and correct copy of the foregoing UTAH INDUSTRIAL ENERGY CONSUMERS' RESPONSIVE COMMENTS ON THE 2018 TAX RECONCILIATION ACT to:

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