

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”	<u>DOCKET NO. 17-035-69</u>  <u>ORDER</u>
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ISSUED: April 27, 2018

**SYNOPSIS**

The PSC approves the following:

1) an ongoing, annual rate reduction of \$61 million associated with the decrease of the corporate income tax rate and the repeal of the domestic production activities deductions resulting from recent federal tax reform legislation. The rate reduction will be allocated to retail customers and Special Contract customers 1 and 2, effective May 1, 2018. The calendar year 2018 rate reduction will be refunded to customers on a monthly basis over the remaining eight months of calendar year 2018; and

2) a carrying charge applicable to the non-refunded balance equal to the most recently approved customer deposit interest rate, updated annually.

The \$61 million decrease results in an annual bill decrease of approximately 3.45 percent, or \$32, for a residential customer using 700 kilowatt-hours per month. The rate reduction ordered today reflects a substantial portion, but likely not all, of the amount of 2018 rate reduction that should flow from the new corporate income tax rate and other tax law changes. In accordance with a prior PSC order, PacifiCorp will file on or before June 15, 2018 its final calculation of the full revenue requirement impacts of the tax law changes, including the effects related to excess accumulated deferred income taxes. Following an examination of PacifiCorp’s calculations and recommendations, together with those of other parties, the PSC will issue further orders as appropriate.

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**PROCEDURAL HISTORY**

On February 28, 2018, the Public Service Commission of Utah (PSC) issued an Order Granting Motion for Deferred Accounting Order and Notice of Scheduling Conference in this

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docket.<sup>1,2</sup> Thereafter, the PSC held a scheduling conference and on March 7, 2018 issued a Scheduling Order, Notice of Hearing, and Notice of Scheduling Conference (Scheduling Order). The Scheduling Order identified a tariff application deadline of March 16, 2018, and a supplemental tariff filing (Supplemental Filing) deadline of June 15, 2018.

The following parties requested intervention in this docket which the PSC granted during the hearing held on April 18, 2018: the Utah Association of Energy Users (UAE), the Utah Industrial Energy Consumers (UIEC), and US Magnesium, LLC (US Mag). Nucor-Steel Utah's (Nucor) petition to intervene is still pending before the PSC.

Pursuant to the Scheduling Order, on March 16, 2018, PacifiCorp, doing business as Rocky Mountain Power (PacifiCorp), filed an application (Tariff Application) requesting a rate decrease of approximately \$20 million (or 1 percent) as reflected in the proposed new Electric Service Schedule No. 197, Federal Tax Act Adjustment (Schedule 197), of its P.S.C.U. Tariff No. 50 (Tariff). On April 9, 2018, the Division of Public Utilities (DPU), the Office of Consumer Services (OCS), UAE, UIEC, Nucor, and US Mag filed responsive comments. On April 16, 2018, PacifiCorp and the DPU filed reply comments. On April 18, 2018, the PSC held a hearing on this issue.

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<sup>1</sup> The procedural history prior to this order can be found in the PSC's Order Granting Motion for Deferred Accounting Order and Notice of Scheduling Conference (Deferred Accounting Order) issued February 28, 2018.

<sup>2</sup> In the Deferred Accounting Order the PSC concluded deferred accounting treatment was appropriate, but the record was not sufficient 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 impacts on customer rates.

**BACKGROUND**

Previously in this docket, PacifiCorp identified six changes from the federal tax legislation enacted on December 22, 2017<sup>3</sup> (Tax Reform Act) that will affect its revenue requirement.<sup>4</sup> These changes include:

- 1) a reduction in the federal corporate income tax rate from 35 percent to 21 percent;
- 2) a requirement to normalize certain excess deferred income taxes associated with public utility property using the “average rate assumption” method;
- 3) the elimination of the bonus depreciation allowance for public utility property;
- 4) the repeal of the domestic production activities deduction (DPAD);
- 5) the repeal of the exclusion from income contributions in aid of construction (CIAC) received from governments for public purposes; and
- 6) the repeal of the deduction and imposition of certain limitations with respect to certain expenditures.

According to PacifiCorp’s initial estimate, the reduction in the federal corporate income tax rate and the repeal of the DPAD will decrease Utah’s revenue requirement by approximately \$76.2 million (Initial Estimate) based on its June 2017 semi-annual results of operations (ROO) report.<sup>5</sup> PacifiCorp’s Tariff Application addresses the Initial Estimate. PacifiCorp’s Supplemental Filing will address the remaining items of the Tax Reform Act, as well as update the Initial Estimate based on the December 2017 ROO report.

**PACIFICORP’S TARIFF APPLICATION**

PacifiCorp’s Tariff Application, as amended by its reply comments (Amended Tariff Application) requests authorization to refund approximately \$61 million of the Initial Estimate (*i.e.*, 3.1 percent of PacifiCorp’s Utah annual revenue requirement) to customers through

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<sup>3</sup> 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. 115th Congress (2017-2018).

<sup>4</sup> See PacifiCorp’s Comments filed February 7, 2018, at 3.

<sup>5</sup> See *id.* at 7-8.

Schedule 197. PacifiCorp requests an effective date for Schedule 197 of May 1, 2018. PacifiCorp also requests approval: 1) to continue to defer the balance of the PSC-approved regulatory liability,<sup>6</sup> after accounting for the approved rate reduction and for the purpose of offsetting future costs with a carrying charge equal to the most recently approved customer deposit rate updated annually;<sup>7</sup> and 2) for accounting treatment to recover approximately \$17 million for the unamortized balance of the Deer Creek Mine asset approved in Docket No. 14-035-147<sup>8</sup> as an offset to the regulatory liability established in this proceeding (Deer Creek Mine Accounting Treatment). The Tariff Application also proposes minor revisions to Tariff Index Sheet No. B1 reflecting the addition of Schedule 197 and includes workpapers in support of its proposed ratemaking treatment for the refund.

With the exception of Electric Service Schedules 21 and 31,<sup>9</sup> PacifiCorp's Amended Tariff Application proposes to allocate the \$61 million rate reduction to all retail Tariff customers using the rate base allocation factor F101 from its most recent annual cost-of-service study. Also in the Amended Tariff Application, PacifiCorp states it "is not opposed to allocating

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<sup>6</sup> The PSC approved the referenced deferred accounting treatment in its Order Granting Motion for Deferred Accounting Order and Notice of Scheduling Conference issued February 28, 2018.

<sup>7</sup> See Hearing Transcript (456496) at 50, lines 5-8.

<sup>8</sup> See In the Matter of the Voluntary Request of Rocky Mountain Power for Approval of Resource Decision and Request for Accounting Order, Docket No. 14-035-147 (Report and Order Memorializing Bench Ruling, issued April 29, 2015).

<sup>9</sup> Electric Service Schedules 21 and 31 are not addressed in PacifiCorp's 2016 Cost-of-Service Study. At hearing, PacifiCorp testified that these schedules should receive the same ratemaking treatment as Electric Service Schedule 9 and notes their rates are tied to and are similar to Schedule 9 rates (See Hearing Transcript at 54, lines 21-25, and at 55, lines 1-17). According to PacifiCorp's April 16, 2018 Reply Comments, Exhibit 2, Tab Ex B p1 – Rate Spread, it appears that PacifiCorp has assigned to Schedules 21 and 31 the overall percentage decrease, an amount different than the percentage decrease applied to Schedule 9.

an overall percentage decrease to Nucor and US Magnesium.”<sup>10,11</sup> PacifiCorp proposes the adjustment percentages identified in Schedule 197 be applied to customers’ monthly Power Charges and Energy Charges.

PacifiCorp’s Amended Tariff Application results in a revenue requirement decrease ranging from 2.0 percent for public street lighting customers to 4.1 percent for irrigation customers. As presented in PacifiCorp’s Amended Tariff Application, a typical residential customer using 700 kilowatt hours per month will experience a 3.45 percent rate decrease.

PacifiCorp maintains its allocation approach is reasonable because PacifiCorp earns a return on its rate base and is ultimately taxed on that return. PacifiCorp asserts the \$61 million rate reduction will begin to deliver a reasonable portion of the estimated benefits of the Tax Reform Act to customers on May 1, 2018 while PacifiCorp finalizes its calculations of the full revenue requirement impacts from the Tax Reform Act. Amounts above the \$61 million refund will be deferred and will accrue interest. PacifiCorp’s Supplemental Filing will include the final tax calculation of the Tax Reform Act benefits.

While it intends to pass back the entire benefits, PacifiCorp ultimately determined to only refund a portion of the total Initial Estimate for two reasons: 1) to achieve rate stability for customers by applying these benefits to offset current or future costs; and 2) to mitigate the impacts that an immediate refund would have on PacifiCorp’s credit ratings.

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<sup>10</sup> PacifiCorp’s April 16, 2018 Reply Comments at 11.

<sup>11</sup> According to PacifiCorp’s April 16, 2018 Reply Comments, Exhibit 2, Tab Ex B p1 – Rate Spread, Special Contract customers 1 and 2 are allocated their refund using the rate base allocation factor F101 from its most recent annual cost-of-service study rather than the overall percentage decrease.

Further, PacifiCorp states “[a]ny offsets to the deferral balance would be subject to Commission approval and would occur no later than the effective date of approved rates from the Company’s next rate case. Any remaining amount in the deferral balance would be refunded to customers at that time.”<sup>12</sup> While the Tariff Application does not seek a PSC determination on when and how best to use this remaining balance, PacifiCorp requests the PSC set a process for addressing these questions and the ability to seek recovery of offsets to the deferral following its June 21, 2018 scheduling conference.

PacifiCorp asserts its approach strikes a reasonable balance between providing current customers the benefits of tax reform and protecting the financial health of the Company for both near- and long-term customers. In addition, PacifiCorp maintains the regulatory liability can be used to provide near-term rate stability by offsetting known costs until the next general rate case (GRC).

In recognition of the complexities of determining and implementing the impacts of tax reform, PacifiCorp concludes its reply comments by offering an alternative proposal, i.e., to extend the “proposed May 1, 2018 effective date to allow the [PSC] and parties additional time to review, with the possibility of a technical conference to informally discuss before a hearing.”<sup>13</sup>

**RANGE OF ISSUES ADDRESSED IN PARTIES’ COMMENTS**

The parties’ comments on PacifiCorp’s Tariff Application address: 1) the magnitude and timing of the tax savings refund and the use of the balance in the deferred account; 2) the allocation of the tax savings refund; 3) carrying charges applied to the deferred balance; 4)

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<sup>12</sup> PacifiCorp’s March 16, 2018 Application at 3.

<sup>13</sup> PacifiCorp’s April 16, 2018 Reply Comments at 11.

billing treatment for tax savings; and 5) accounting treatment for tax savings. Each of these issues is addressed below.

**I. Magnitude, Timing, and Use of Tax Savings Refund**

**Parties' Comments**

Parties agree that the full extent of the customer refund resulting from the Tax Reform Act is currently not fully known. Parties disagree, however, with PacifiCorp's proposal regarding the amount and/or timing of the Initial Estimate refund. Parties also disagree with PacifiCorp's proposal to continue to defer the balance of the PSC-approved regulatory liability remaining after accounting for the proposed \$61 million rate reduction for Deer Creek Mine Accounting Treatment and other future costs.

The DPU recommends PacifiCorp refund the full \$76.2 million Initial Estimate.<sup>14</sup> The DPU proposes that the accrued balance of tax savings as of April 30, 2018 (estimated at approximately \$25 million) be returned to customers as a one-time refund, effective May 1, 2018.<sup>15</sup> The DPU also recommends that PacifiCorp establish a rate that will credit customers' bills for the remaining portion of the annual \$76.2 million such that this amount will be returned to customers by the end of 2018, consistent with Schedule 197 allocation percentages.<sup>16</sup> The DPU recommends subsequent tax savings continue to be refunded in rates until the next GRC.<sup>17</sup>

The DPU maintains its recommendations will help ensure current rates reflect current costs of service and that cost savings from reduced tax rates are passed on to current customers.<sup>18</sup>

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<sup>14</sup> See Hearing Transcript at 66, lines 6-11.

<sup>15</sup> See *id.* at 62, lines 8-11; at 66, lines 15-22; at 67, lines 9-14.

<sup>16</sup> See *id.* at 62, lines 12-17.

<sup>17</sup> See *id.* at 64, lines 7-10.

<sup>18</sup> See *id.* at 62, lines 4-7.

The DPU also argues its proposal provides PacifiCorp a reasonable amount of time to analyze its cash flows and make adjustments, and does not materially impact the stability of rates because the monthly credit is relatively small.

The DPU contends PacifiCorp's proposal to continue to collect a portion of the difference and to defer it to offset future costs is neither just nor reasonable. The DPU is not persuaded by PacifiCorp's arguments that its approach will provide better rate stability and will mitigate negative impacts on its credit ratings or changes to its cash flow.<sup>19</sup> While the DPU recognizes there are benefits to rate stability, it does not support the creation of a deferral account for the purpose of offsetting future costs.<sup>20</sup>

The DPU asserts many of the costs PacifiCorp cites as creating upward pressure on rates are not yet fully known and have not been adjudicated as being prudent. Further, the DPU asserts PacifiCorp's concerns about the uncertainty of the Initial Estimate and the effect of the refund on its credit rating are unpersuasive. The DPU argues that if a decrease in cash flow jeopardizes PacifiCorp's creditworthiness, it can propose a method to decrease this possibility in its Supplemental Filing.

The DPU also recommends the PSC deny the request for Deer Creek Mine Accounting Treatment. The DPU maintains that if PacifiCorp had proposed a new tariff to implement a rate to offset unknown future costs, the DPU would oppose that idea as it is doing here.

In addition, the DPU suggests that when a customer reviews a bill, the customer should be able to understand that the Energy Balancing Account (EBA) line item is related to net power

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<sup>19</sup> *See id.* at 61, lines 19-25.

<sup>20</sup> *See id.* at 61, line 25; at 62, lines 1-3.



costs and that a line item for tax savings is clearly a refund of tax savings. According to the DPU, if the funds are intermingled, then clear signals are not sent to ratepayers about which costs and savings affect them.

At hearing, the DPU testified it recognizes that some uncertainty exists about the amount of the annual tax savings estimate and is not strongly opposed to PacifiCorp's proposal to refund \$61 million commencing May 1, 2018.<sup>21</sup> However, the DPU recommends the full amount of the refund, once determined, should be returned to customers by the end of 2018.<sup>22</sup>

The OCS recommends PacifiCorp return the full \$76.2 million to customers through a rate reduction effective May 1, 2018, but does not specify how the refund should be returned to ratepayers.<sup>23</sup> The OCS claims that returning the refund as soon as possible best matches the benefit to the appropriate set of ratepayers. The OCS points out PacifiCorp's Initial Estimate addresses only a small portion of the overall impacts of the Tax Reform Act.

The OCS testifies it is open to reviewing PacifiCorp's proposed offsets to future ratepayer liabilities, but asserts that "specific proposals supported with additional information will be necessary to judge the appropriateness of using the remaining tax funds for other purposes, rather [than] returning them directly to [ratepayers]."<sup>24</sup>

The OCS asserts that even if the full Initial Estimate is returned to ratepayers beginning May 1, 2018, additional funds will remain from the deferral of tax-related dollars accrued from January 1, 2018 until May 1, 2018, plus additional funds to be quantified in PacifiCorp's

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<sup>21</sup> See *id.* at 62, lines 20-25.

<sup>22</sup> See *id.* at 63, line 25; at 64, lines 1-5.

<sup>23</sup> See *id.* at 72, lines 1-3.

<sup>24</sup> *Id.* at 71, lines 5-9.

Supplemental Filing. At that time, PacifiCorp will have the opportunity to make the case that tax refunds beyond the Initial Estimate should be used as an offset to future liabilities rather than returned to ratepayers. The OCS states that, depending on the nature of future costs, it may be appropriate to consider the rate stability and mitigation of a potential future rate shock.

At hearing, the OCS clarified that it does not propose that the refund terminate at the end of 2018. The OCS asserts that this is an ongoing rate reduction and is not an interim rate, but rather an annual amount that should continue to be refunded until PacifiCorp files a GRC, an application to revise the tariff, or an application to utilize the funds for some other purpose that will benefit ratepayers.<sup>25</sup>

UAE recommends the PSC direct PacifiCorp to implement a rate reduction through Schedule 197 designed to return at least \$61 million, or 80 percent of the Initial Estimate, to Utah customers during calendar year 2018, effective on or before May 1, 2018. UAE adds the refund amount should later be adjusted to reflect 100 percent of the revenue requirement reduction associated with the lower federal income tax rate and repeal of the DPAD applied to the ROO for the period ending December 31, 2018.

UAE asserts that a final determination of the rate reduction can be addressed subsequent to PacifiCorp's Supplemental Filing after accounting for the December 31, 2017 ROO and deferrals accrued since January 1, 2018. UAE suggests this can be accomplished in an update of the Schedule 197 rate later this year.<sup>26</sup>

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<sup>25</sup> See *id.* at 71, lines 16-25.

<sup>26</sup> See *id.* at 79, lines 18-25.

UAE's proposal reflects the possibility that the December 2017 ROO calculations may yield a result materially less than the Initial Estimate, which was based on the ROO for the period ending June 30, 2017. Given this uncertainty, UAE testifies that it may be reasonable for the initial reduction to be set at a level that is less than the full amount of the Initial Estimate. However, UAE argues the public interest objective should be to reduce customer rates as much as reasonably possible, as soon as reasonably possible, to reflect PacifiCorp's reduction in tax expense.<sup>27</sup> UAE argues that the ultimate reduction in customer rates should be set at 100 percent of the revenue requirement reduction associated with the reduction in tax rates, as calculated using the December 31, 2017 ROO report, and that the income tax recovery in rates should be reduced fully and quickly.

UAE maintains PacifiCorp's proposal to retain overfunded tax payments to be used as a tool for offsetting future costs is not a reasonable public policy option. UAE argues customers are the best stewards of their own money and should not be expected to overpay their electric bills now in order to soften the impact of some potential future unspecified utility cost. UAE adds that a statutory mechanism already exists under the Sustainable Transportation and Energy Plan legislation to build funds toward potential future early thermal plant retirements.<sup>28</sup> Further, UAE states the Initial Estimate does not address excess accumulated deferred income tax (EDIT), for which the associated refund will be significant.

UIEC recommends a reduction of Utah retail rates by at least the Initial Estimate, effective May 1, 2018, or as soon as possible. Other than PacifiCorp's proposal relating to the

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<sup>27</sup> See *id.* at 78, lines 15-23.

<sup>28</sup> See Utah Code 54-7-12.8(5)(b)1.

deferred Deer Creek Mine Accounting Treatment, UIEC notes the Tariff Application contains neither a specific proposal for use of the remaining amount nor a proposal to flow back to customers any of its EDIT.

Like the DPU, UIEC contends PacifiCorp provides no evidence to support its assertion relative to weakening credit ratings and potential downgrades if it passes the full benefits along to customers now. In addition, UIEC points out the Initial Estimate is a starting point as it only addresses the impact on current year operations and does not include a component for flowing back to Utah ratepayers EDIT amounts resulting from the reduction of the federal income tax rate from 35 percent to 21 percent. UIEC asserts PacifiCorp can pass through the entire Initial Estimate to customers now without a negative impact because, before the impacts of the Tax Reform Act were known, PacifiCorp had stated that it did not anticipate needing to file for additional rate relief before 2021. Therefore, since passing through 100 percent of the benefits of the Tax Reform Legislation to customers does not alter PacifiCorp's bottom line, there is no reason not to pass them through fully to customers. At hearing, UIEC stated it agrees with the DPU that all identified rate reductions need to be refunded to customers prior to the end of calendar year 2018.<sup>29</sup>

UIEC maintains PacifiCorp's proposal for Deer Creek Mine Accounting Treatment 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. UIEC asserts this type of rate structure distortion should be avoided because it misaligns cost causation and cost recovery

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<sup>29</sup> See Hearing Transcript at 88, lines 21-24.

between and among customer classes, potentially resulting in rates that are neither just nor reasonable. UIEC argues such costs should be addressed in a broader context where other relevant factors can be considered.<sup>30</sup>

Nucor supports the approach proposed by UAE in its February 23, 2018 comments, in which 80 percent of the estimated savings would initially be passed through to customers.

### **PacifiCorp's Response**

At hearing, PacifiCorp clarified that while it accepts as reasonable UAE's proposal to refund \$61 million to customers now, it is not currently recommending a refund above that amount by the Supplemental Filing date.<sup>31</sup> PacifiCorp testified its proposed refund is an annual rate reduction, beginning May 1, 2018 with the \$61 million amount being refunded over the subsequent 12-month period. This rate reduction represents an interim step that would continue until the next GRC, at which time all of the recently enacted tax law changes would be factored into PacifiCorp's revised rate calculations.<sup>32</sup> PacifiCorp claims refunding amounts too quickly would weaken its credit metrics, potentially resulting in a credit ratings downgrade which, in turn, would result in an increase in debt costs that would be passed on to its customers.<sup>33</sup>

PacifiCorp proposes that once it has prepared and filed its Supplemental Filing, the full impacts of the Tax Reform Act can be carefully reviewed and a plan to reduce customer rates to a sustainable level can be determined. This will also allow time for the credit markets to respond to ensure that PacifiCorp does not receive a credit downgrade as a result of the reduction in cash

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<sup>30</sup> See *id.* at 89, lines 9-15.

<sup>31</sup> See *id.* at 46, lines 17-22.

<sup>32</sup> See *id.* at 49, lines 4-14.

<sup>33</sup> See *id.* at 18, lines 9-17.

flow. PacifiCorp asserts that its recommendation is the most reasonable and appropriate approach and that it harms neither customers nor PacifiCorp.

PacifiCorp disagrees with the DPU's proposal regarding a one-time credit on customer bills and argues that the DPU's proposal lacks detail about how the one-time credit would be calculated and applied. PacifiCorp asserts a one-time credit would exacerbate its credit metrics concerns by reducing cash flow, potentially resulting in a significant reduction in Moody's Funds from Operations to Total Debt metric for PacifiCorp.

PacifiCorp agrees with the OCS that the liability balance accrued as of April 30, 2018 should be evaluated in the context of other cost drivers to provide rate stability and PacifiCorp's health.

PacifiCorp responds to the DPU's suggestion that if PacifiCorp's creditworthiness is affected by a decrease in cash flow it could simply propose corrective actions in the Supplemental Filing. PacifiCorp argues this suggestion is short-sighted since the equity portion of PacifiCorp's capital structure is typically not adjusted outside of the context of a GRC.

PacifiCorp disagrees with parties' comments pertaining to cost pressures. PacifiCorp argues that several known items could be mitigated with the tax deferral before the next GRC, including the regulatory assets for the Deer Creek Mine closure and the Energy Imbalance Market implementation.<sup>34</sup> PacifiCorp adds that other cost drivers, such as the expiration of the

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<sup>34</sup> At hearing, PacifiCorp clarified that the Energy Imbalance Market costs it references represent a separate regulatory asset consisting of fixed administrative costs, the treatment of which would be determined in a future GRC (*See* Hearing Transcript at 58, lines 19-25; at 59, lines 1-6).

Production Tax Credits and its upcoming depreciation study, are known cost pressures that will be reflected in its next GRC.

Regarding PacifiCorp's proposal in its 2018 EBA filing to remove the Deer Creek amortization expense from the EBA and offset it with the tax deferral, PacifiCorp maintains the Deer Creek Mine amortization costs have already been approved and incurred and therefore have no relevance for current price signals to customers for fuel and purchase power. PacifiCorp contends the DPU's unwillingness to use the tax deferral to offset these costs in a manner that provides PacifiCorp the recovery it has been authorized, with no rate impact to customers, is confusing.

#### **Discussion, Findings, and Conclusions**

We find it to be a meaningful possibility that the December 2017 ROO calculations for the tax refund may yield a result materially less than the Initial Estimate, which was based on different ROO (*i.e.*, for the period ending June 30, 2017). Therefore, we find it reasonable to set the initial tax savings reduction at \$61 million, as recommended by UAE and supported by PacifiCorp, until the final revenue requirement impacts can be determined. This approach will allow customers to realize a considerable portion of Tax Reform-related benefits while PacifiCorp finalizes its calculation of the full revenue requirement impacts and they are reviewed.

We acknowledge PacifiCorp's concern that refunding amounts too quickly may negatively impact its credit metrics and recognize PacifiCorp is able to seek regulatory relief at any time if this becomes an issue. In light of parties' testimony: 1) that the Supplemental Filing addressing EDIT will identify additional savings; 2) that the reduction should be implemented as

quickly as possible; and 3) that PacifiCorp's credit metrics concerns may be unwarranted, we conclude that it is in the public interest to implement the refund promptly. Therefore, consistent with UAE's recommendation, we direct PacifiCorp to implement the annual, ongoing \$61 million refund beginning May 1, 2018, with the refund for calendar year 2018 being accomplished over the remaining eight months of calendar year 2018.

We direct PacifiCorp to identify the full amount of 2018 tax savings in the Supplemental Filing and to propose a method to return any amount above \$61 million to customers. We also invite PacifiCorp to propose how the post-2018 revenue requirement impacts should be reflected in rates until the next GRC.

The DPU, UAE, and UIEC raise concerns about offsetting the Deer Creek Mine or other future costs with deferred tax savings identified in the Tariff Filing. We conclude that additional information is required to judge the appropriateness of PacifiCorp's proposal to offset future costs using a regulatory liability and the DPU's testimony that many of the costs mentioned by PacifiCorp have not yet been approved for rate recovery. Therefore, we decline at this time to adopt PacifiCorp's proposal to use deferred tax savings to offset other costs including the Deer Creek Mine costs.

## **II. Allocation of Tax Savings**

### **Parties' Comments**

UAE accepts PacifiCorp's general approach for allocating the benefits of the Tax Reform Act to customer classes as percentage adjustments applied to customers' monthly Power Charges and Energy Charge. UAE states this approach is reasonable and is similar to the rate design in PacifiCorp's EBA and Renewable Energy Credits Balancing Account annual filings. Nucor



generally supports PacifiCorp's approach to allocating the benefits of the Tax Reform Act to customer classes based on each class's allocation of the rate base.

In reply comments, the DPU agrees that any tax refund should include both Nucor and US Mag. The DPU explains its current position is based on its recent conversations with PacifiCorp and US Mag in which certain assumptions relating to contract renegotiations were clarified.

At hearing, US Mag and Nucor agreed with PacifiCorp's proposal to allocate the refund to Special Contract customers 1 and 2. US Mag agrees with PacifiCorp's proposed refund presented in its April 16, 2018 filing Exhibit 2.<sup>35</sup> Nucor testified that while it hadn't conducted a thorough analysis of the appropriateness of the allocation factor used in PacifiCorp's calculation of its applicable annual reduction, the calculation appeared to be in the right "ballpark."<sup>36</sup>

Following discussion at hearing regarding a possible discrepancy in how the refund is allocated to US Mag and Nucor, US Mag's attorney noted that the difference between using the F101 rate base factor and overall percentage decrease of 3.1 percent is small and that US Mag is not opposed to either one. PacifiCorp added that it would review this discrepancy but stated it would be helpful to receive PSC guidance on this issue.

At hearing, PacifiCorp testified Schedules 21 and 31, which are not included in PacifiCorp's cost-of-service studies, will receive the same ratemaking treatment as Electric Service Schedule 9 and noted their rates are tied to and are similar to Schedule 9 rates.<sup>37</sup>

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<sup>35</sup> See Hearing Transcript at 84, lines 14-16.

<sup>36</sup> *Id.* at 99, lines 4-6.

<sup>37</sup> See *id.* at 54, lines 21-25; at 55, lines 1-17.

**Discussion, Findings, and Conclusions**

We approve the unopposed allocation factors presented by PacifiCorp in its reply comments with the exception of Schedules 21 and 31 and Special Contracts 1 and 2. As noted in footnote 9 of this order, it appears PacifiCorp's workpapers allocate the average percentage decrease to Schedules 21 and 31. To ensure consistency with PacifiCorp's clarification at hearing, we approve PacifiCorp's proposal that Schedules 21 and 31 will receive the same ratemaking treatment as Schedule 9.

Regarding the discrepancy of whether to allocate "an overall percentage decrease to Nucor and US Magnesium,"<sup>38</sup> as stated in PacifiCorp's Reply Comments, or use the F101 Rate Base allocation factor, as presented in PacifiCorp's Reply Comments Exhibit 2 – COS Factor Table, we reviewed the surcharge language in the recently approved Special Contracts 1 and 2. Based on this review, and given parties' request for guidance from the PSC and PacifiCorp's language in its amended application, we conclude it is reasonable to approve the overall percentage decrease for US Mag and Nucor.

**III. Billing Treatment for Tax Savings**

The DPU recommends PacifiCorp identify the refund determined in this docket on customers' bills as a separate line item so it is clear to ratepayers what is being refunded and why. The OCS agrees with the DPU's recommendation.<sup>39</sup>

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<sup>38</sup> Amended Tariff Filing at 11.

<sup>39</sup> See Hearing Transcript at 72, lines 3-6.

### **PacifiCorp's Response**

At hearing, PacifiCorp stated it is not opposed to the DPU's proposal and intends to implement this recommendation.<sup>40</sup>

### **Discussion, Findings, and Conclusions**

We approve the unopposed proposal to identify the refund determined in this docket on customers' bills as a separate line item.

### **IV. Carrying Charges**

In contrast to PacifiCorp's carrying charge proposal, at hearing UAE proposed that the carrying charge to be applied to the tax reform reduction regulatory liability should be equal to the weighted cost of capital applied to rate base generally. UAE argues that since the deferrals represent a reduction to rate base, they should receive the same carrying charge applied to rate base items.<sup>41</sup>

### **Parties' Response**

No party responded to UAE's proposal.

### **Discussion, Findings, and Conclusions**

At the DPU's request, in Docket No. 15-035-69 we reviewed the carrying charges applied to various PacifiCorp accounts. At the conclusion of that proceeding, we approved one carrying charge for a variety of PacifiCorp's balancing accounts as well as customer deposits.<sup>42</sup>

We do not find a sufficient basis on which we could conclude that deviating from this prior

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<sup>40</sup> See *id.* at 58, lines 3-6.

<sup>41</sup> See *id.* at 75, lines 22-25; at 76, lines 1-10.

<sup>42</sup> See In the Matter of a Request for Agency Action to Review the Carrying Charges Applied to Various Rocky Mountain Power Account Balances, Docket No. 15-035-69 (Order, issued January 20, 2016).

decision is warranted in this case. Therefore, we approve PacifiCorp's proposal to apply the carrying charge applicable to customer deposits, updated annually.

**V. Supplemental Filing-Related and Issues**

Both UAE and UIEC explain that while the EDIT<sup>43</sup> on public utility property is subject to normalization rules using the average rate assumption method under the Tax Reform Act, the normalization rules do not apply to non-property EDIT, thus the rate at which non-property EDIT is returned to customers is not pre-determined. UAE asserts the normalization provisions governing the return of EDIT to customers creates a significant inter-generational burden on customers to the advantage of utilities. UAE notes that past overpayments of federal income taxes by customers associated with public utility property can only be returned over an extended time period. This inter-generational burden required by statute should not be exacerbated by delaying the return of past customer overpayments any longer than is necessary to comply with the normalization requirements in the law.

Accordingly, UAE requests the PSC to direct PacifiCorp to: 1) quantify all of the EDIT impacts from the Tax Reform Act in its Supplemental Filing; 2) provide an amortization schedule for the Utah jurisdictional share of EDIT in its Supplemental Filing which would return to customers public utility property-related EDIT at the fastest rate possible without incurring a normalization penalty; 3) prepare an amortization schedule in its Supplemental Filing that would return non-property EDIT to customers over a five- to seven-year amortization period; and 4)

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<sup>43</sup> According to UAE, "Excess ADIT represents income tax prepayments by customers that are now greater than the Company's expected future income tax obligations for the associated assets due to the lower tax rate." (UAE's April 9, 2018 Responsive Comments at 6).

reflect the benefit from all of the impacts from the Tax Reform Act, including amortization of EDIT, in its proposed Tariff Schedule 197 at the earliest possible time.

For reasons similar to those presented by UAE, the OCS recommends the PSC require PacifiCorp to provide a breakdown of the EDIT balance on a Utah jurisdictional basis, between protected property-related EDIT, unprotected property-related EDIT, and non-property related EDIT in its Supplemental Filing.

### **PacifiCorp's Reply Comments**

PacifiCorp believes UAE's recommendation that the PSC require PacifiCorp to prepare amortization schedules for EDIT in its Supplemental Filing is premature. PacifiCorp believes that the appropriate time to start discussion on the amortization periods and ratemaking treatment for the non-protected property is after the PSC issues a scheduling order for the Supplemental Filing containing the EDIT calculations.

### **Discussion, Findings, and Conclusions**

We conclude that to require PacifiCorp to prepare amortization schedules for EDIT in its Supplemental Filing is premature. However, since EDIT is a critical aspect of the Supplemental Filing, we find the UAE's and OCS's requests related to identifying and quantifying all forms of EDIT in the Supplemental Filing are reasonable. Therefore, we direct PacifiCorp to provide this information as requested by the UAE and the OCS in the Supplemental Filing.

In PacifiCorp's Tariff Filing it requested the PSC set a process enabling PacifiCorp to seek recovery of offsets to the deferral following its Supplemental Filing scheduling conference. Absent other input on this issue, we direct PacifiCorp to propose a process in its Supplemental Filing.

**ORDER**

1. We approve an ongoing, annual rate reduction of \$61 million to be allocated to retail customers and Special Contract customers 1 and 2 as directed above, effective May 1, 2018. The rate reduction for calendar year 2018 shall be refunded on a monthly basis over the remaining eight months of calendar year 2018.
2. We direct PacifiCorp to provide a full description of all revenue requirement impacts of the Tax Reform Act in the Supplemental Filing, including all impacts associated with EDIT.
3. We direct PacifiCorp to include in its Supplemental Filing its proposals for returning ongoing and additional Tax Reform Act benefits to customers and for seeking recovery of offsets to the deferred account.
4. We approve PacifiCorp's request to continue to defer the balance of our previously approved regulatory liability, and we approve a carrying charge applicable to the deferred account equal to the most recently approved customer deposit carrying charge. We direct PacifiCorp to modify and file its proposed Schedule 197 tariff to address the refunds ordered herein, within one week of the date of this order.

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DATED at Salt Lake City, Utah, April 27, 2018.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg  
PSC Secretary  
DW#301657

Notice of Opportunity for Agency Review or Rehearing

Pursuant to §§ 63G-4-301 and 54-7-15 of the Utah Code, an aggrieved party may request agency review or rehearing of this Order by filing a written request with the PSC within 30 days after the issuance of this Order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the PSC does not grant a request for review or rehearing within 20 days after the filing of the request, it is deemed denied. Judicial review of the PSC's final agency action may be obtained by filing a petition for review with the Utah Supreme Court within 30 days after final agency action. Any petition for review must comply with the requirements of §§ 63G-4-401 and 63G-4-403 of the Utah Code and Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on April 27, 2018, a true and correct copy of the foregoing was served upon the following as indicated below:

By Electronic-Mail:

Data Request Response Center ([datarequest@pacificorp.com](mailto:datarequest@pacificorp.com), [utahdockets@pacificorp.com](mailto:utahdockets@pacificorp.com))  
PacifiCorp

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Division of Public Utilities



DOCKET NO. 17-035-69

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By Hand-Delivery:

Office of Consumer Services  
160 East 300 South, 2nd Floor  
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Administrative Assistant