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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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In the Matter of the Application of Rocky Mountain Power to Increase the Deferred EBA Rate through the Energy Balancing Account Mechanism.	Docket No. 18-035-01 <b>REPLY COMMENTS OF UIEC</b>
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Pursuant to the Scheduling Order issued by the Utah Public Service Commission (“Commission”) in this docket on March 29, 2018, the Utah Industrial Energy Consumers (“UIEC”) intervention group,<sup>1</sup> hereby submits these Reply Comments in response to the Division of Public Utilities’ (“Division”) comments following its preliminary review of the Application of Rocky Mountain Power (“Company” or “RMP”) to Increase the Deferred EBA Rate through the Energy Balancing Account Mechanism.

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<sup>1</sup> In this docket, UIEC is a reference, for convenience only, to Tesoro Refining & Marketing Company LLC, and LafargeHolcim Ltd.

The UIEC offer no comment on the portion of the Division’s report stating that, based on its review of RMP’s Application, it has found that the EBA deferral is calculated consistent with previous years’ calculations, and that the proposed rate spread, rate design and billing determinants are likewise consistent. The UIEC, however, offer the following comments on the implementation of an interim rate based on such findings, and on the Company’s alternative proposal to use \$9.1 million from tax reform benefits to remove the Deer Creek amortization from the EBA.

1. Comment on Interim Rates.

The purpose of the Division’s preliminary review of RMP’s EBA filing was to provide a “preliminary conclusion if the EBA filing appears to not depart from prior years’ filings.”<sup>2</sup> That inquiry is the same one that the Commission ordered in Docket No. 09-035-15, when it considered the Division’s Pilot Program Report and the effect of Senate Bill 115 on the operation of EBA (“Interim Rate Order”).<sup>3</sup> That order established for the first time a procedure allowing RMP interim rate recovery in EBA reconciliation cases, and was first applied in the 2017 EBA case.<sup>4</sup> The UIEC, along with the Office of Consumer Services (“Office”) and the Utah Association of Energy Users (“UAE”), requested reconsideration or rehearing of the Interim Rate Order primarily on the grounds that the Commission lacks authority under the applicable statutes to impose an interim rate in an EBA proceeding, and that the evaluation of whether the current filing does not “depart

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<sup>2</sup> *In the Matter of the Application of Rocky Mountain Power to Increase the Deferred EBA Rate through the Energy Balancing Account Mechanism* (Scheduling Order, Notice of Hearings, and Tariff Status, at 1) Docket No. 18-035-01 (Mar. 29, 2018).

<sup>3</sup> *In the Matter of the Application of Rocky Mountain Power for Approval of its Proposed Energy Cost Adjustment Mechanism*, (Order at 28, ¶2) Docket No. 09-035-15 (Feb. 16, 2017) (“Interim Rate Order”).

<sup>4</sup> *In the Matter of the Application of Rocky Mountain Power to Decrease the Deferred EBA Rate through the Energy Balancing Account Mechanism* (Scheduling Order and Order Suspending Tariff, at 1) Docket No. 17-035-01 (Mar. 23, 2017) (citing the Interim Rate Order at 28, ¶ 2).

from prior years' filings" impermissibly alters the standard of cost recovery in contravention of Section 54-7-13.5(2)(e) of the EBA statute.<sup>5</sup> Upon the Commission's denial of the parties' request for reconsideration,<sup>6</sup> the Office and the UAE timely appealed the Commission's adoption of an interim rate to the Utah Supreme Court, where the matter is currently pending.<sup>7</sup>

The Interim Rate Order has not been stayed pending the appeal. Nonetheless, the Commission's authority to establish an interim rate in EBA reconciliation dockets remains in dispute awaiting determination by the court. The UIEC, therefore, reiterates in the present docket its objection that interim rates in an EBA proceeding are not permissible under current law, and recommends that the Commission refrain from ordering an interim rate until the court has resolved the legal dispute regarding its authority to do so.

## 2. Comment on RMP's Alternative Proposal.

In addition to its report on whether the Company's EBA filing departs from prior years' filings, the Division's Comments address RMP's proposed alternative plan for recovering the Deer Creek mine amortization expense. The Company proposes "to offset the Deer Creek mine amortization expense for 2017 against the regulatory liability established in Docket No. 17-035-69," which was established to investigate the revenue requirement impacts of the recent federal tax legislation.<sup>8</sup> That would entail the allocation of approximately \$9.1 million of the benefit owed

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<sup>5</sup> *In the Matter of the Application of Rocky Mountain Power for Approval of its Proposed Energy Cost Adjustment Mechanism*, (Petition of UIEC, Office of Consumer Services and UAE for Reconsideration and Rehearing of Commission Order Issued February 16, 2017) Docket No. 09-035-15 (filed Mar. 20, 2017).

<sup>6</sup> *Id.* (Order on Petitions for Agency Review or Rehearing at 8-9) (Apr. 7, 2017).

<sup>7</sup> *Utah Office of Consumer Services and Utah Energy Consumers v. Public Service Commission of Utah, et al.* Docket No. 20170364 (Ut. S. Ct. filed May 5, 2017).

<sup>8</sup> *In the Matter of the Application of Rocky Mountain Power to Increase the Deferred EBA Rate through the Energy Balancing Account Mechanism* (Application at 2) Docket No. 18-035-01 (filed Mar. 15, 2018).

to customers from reduced tax rates resulting from the Tax Cut and Jobs Act of 2017 (“TCJA”) to remove the Deer Creek amortization from the EBA.

The Division has recommended that the Commission reject the Company’s proposal because it is premature for the Commission to approve the use of any portion of the benefits. Report at 7. The Division is also “concerned that the EBA has become a device to recover various items between general rate cases,” and states that it “was not intended to supplant a general rate case as a venue for determining appropriate costs and rates.” Report at 7.

The UIEC agree with the Division’s recommendation to reject the Company’s proposal. In Docket 17-035-69, as part of its investigation into the impact of the TCJA on RMP’s revenue requirement, the Commission is currently considering how the benefit resulting from the TCJA will be treated. The disposition of the tax benefit should be decided in that docket, not in the EBA case. The UIEC have submitted Comments in Docket 17-035-69 recommending that, to the extent possible, the goal should be to return excess funds resulting from the decreased tax rate to customers as quickly as possible so that customers who paid the excess tax will receive the benefit.<sup>9</sup> Any other allocation of the tax benefit could create inequities among customers and customer classes.

The UIEC also recommend against using funds resulting from reduced taxes to offset other actual or potential costs incurred by the Company. RMP’s costs should be evaluated in separate proceedings to determine appropriate recovery and to avoid distortions in ratemaking treatment. The proposed Deer Creek offset would create a rate misalignment because funds that were

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<sup>9</sup> *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* (UIEC’s Responsive Comments on the 2018 Tax Reconciliation Act at 3-4) Docket No. 17-035-69 (April 9, 2018).

collected to cover demand-related costs (income taxes), would be used to offset energy related costs. This mismatch between cost causation and cost recovery is likely to result in rates that are neither just nor reasonable. As the UIEC have recommended in Docket 17-035-69, the entire reduction in RMP's current income tax obligations should be returned to ratepayers as soon as possible.

### **CONCLUSION**

The UIEC reiterates its objection to the interim rate process, and supports the Division's recommendation that the Commission reject the Company's proposal to offset the Deer Creek amortization with \$9.1 million in funds that have become available as a result of a reduction in RMP's income taxes.

Respectfully submitted this 19th day of April, 2018.

/s/ William J. Evans

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**CERTIFICATE OF SERVICE**

(Docket No. 18-035-01)

I hereby certify that on this 19th day of April 2018, I caused to be e-mailed, a true and correct copy of the foregoing REPLY COMMENTS OF UTAH INDUSTRIAL ENERGY CONSUMERS to:

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