

Application of Rocky Mountain Power to Increase the Deferred EBA Rate through the Energy Balancing Account Mechanism	<u>DOCKET NO. 18-035-01</u> <u>ORDER</u>
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ISSUED: April 27, 2018

I. BACKGROUND

On March 15, 2018, PacifiCorp, doing business in Utah as Rocky Mountain Power (PacifiCorp), filed an application (Application) with the Public Service Commission of Utah (PSC) for authority to increase rates in Electric Service Schedule No. 94 (Schedule 94), Energy Balancing Account (EBA). In the Application, PacifiCorp proposes to recover approximately \$2.8 million (or 0.1 percent) in total deferred EBA costs incurred in calendar year 2017,¹ on an interim basis, effective May 1, 2018 (2018 EBA). PacifiCorp also proposes alternate accounting treatment for recovery of the Deer Creek Mine amortization expense by offsetting expense for 2017 against the regulatory liability (Alternative Proposal) established in Docket No. 17-035-69² (Tax Reform Docket). PacifiCorp's Application includes proposed modifications to Schedule 94 Sheet Nos. 94.3 through 94.11.

¹ The \$2.8 million includes the following components: (1) a refund of approximately \$4.4 million, the difference between the Actual EBAC and the Base EBAC in current base rates for the period beginning January 1, 2017 through December 31, 2017 (Deferral Period); (2) a credit of approximately \$2.9 million for savings related to the Deer Creek Retiree Medical Obligation; (3) a credit of approximately \$2.8 million related to the settlement of the 2017 EBA; (4) a credit of approximately \$0.1 million in accrued interest; (5) approximately \$4.0 million in costs related to an adjustment for sales made to a special contract customer; (6) a credit of approximately \$0.5 million related to an adjustment arising from a non-generation agreement with a special contract customer; (7) approximately \$9.1 million in costs representing the Utah-allocated Deer Creek Mine amortization expense; (8) approximately \$0.3 million in costs related to the Utah Subscriber Solar program; and (9) approximately \$0.1 million in costs related to an adjustment arising from a settlement agreement with a special contract customer.

² See 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).

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Pursuant to the PSC's March 29, 2018, Scheduling Order, Notice of Hearings, and Tariff Status (Scheduling Order), the Division of Public Utilities (DPU) filed its preliminary review of the Application (Preliminary Review) on April 5, 2018, concluding the Application appears not to depart substantially from prior years' filings. The DPU further recommended the PSC acknowledge the Application as being complete and that interim rates, as proposed in the Application, be approved effective May 1, 2018, to be amortized through April of 2019. The DPU recommends the PSC reject PacifiCorp's Alternative Proposal as it is premature for the PSC to approve the use of any portion of the benefits due to the open Tax Reform Docket. Further, the DPU expresses concern the EBA has become a device to recover various items between general rate cases. The DPU states the EBA was not intended to supplant a general rate case as a venue for determining appropriate costs and rates but was intended to recover actual prudent net power costs.

On April 19, 2018, PacifiCorp, the Office of Consumer Services (OCS), the Utah Association of Energy Users (UAE), and the Utah Industrial Energy Consumers (UIEC) filed reply comments.

In reply comments, the OCS objects to all portions of the DPU's Preliminary Review which reference the imposition of, and the procedures for, the application of interim rates in the EBA mechanism. The OCS notes the February 16, 2017 Order in Docket No. 09-035-15³ (Interim Rate Order), which imposed interim rate procedures into the EBA mechanism, has been

³ See In the Matter of the Application of Rocky Mountain Power for Approval of its Proposed Energy Cost Adjustment Mechanism (Order, issued February 16, 2017), Docket No. 09-035-15.

appealed to the Utah Supreme Court⁴ by the OCS and the UAE (SC Appeal). The OCS concurs with the remaining recommendations and conclusions in the Preliminary Review.

In reply comments, the UAE repeats its assertion, previously made in Docket No. 09-035-15, that interim EBA rates are unlawful. UAE notes the pending SC Appeal and recommends the PSC reject PacifiCorp's Application to the extent it seeks to impose a rate increase on an interim basis. UAE agrees with the DPU's recommendation the PSC decline to adopt the Alternate Proposal and notes two primary reasons. First, it is premature for the PSC to approve in this docket any portion of any relief that may be granted in the Tax Reform Docket. Second, the PSC should ensure the Tax Reform Docket will provide Utah ratepayers with a straightforward and transparent examination of the amounts PacifiCorp has over-collected from ratepayers since the new corporate tax laws went into effect January 1, 2018. The UAE states, permitting PacifiCorp to " earmark " existing ratepayer liabilities against ratepayer relief in the Tax Reform Docket only serves to muddle the issue.

The UIEC notes, given the Interim Rate Order has not been stayed pending the SC Appeal, the PSC's authority to establish an interim rate in EBA reconciliation dockets remains in dispute awaiting determination by the court. The UIEC reiterates its objection that interim rates in an EBA proceeding are not permissible under current law, and recommends the PSC refrain from ordering an interim rate until the court has resolved the legal dispute regarding its authority to do so. Regarding PacifiCorp's Alternative Proposal, the UIEC agrees with the DPU's recommendation to reject the Alternative Proposal. The UIEC states the disposition of the tax

⁴ Utah Office of Consumer Services and Utah Association of Energy Users v. Utah Public Service Commission, Appellate Case No. 20170364-SC.

benefit should be decided in the Tax Reform Docket, not in the EBA. The UIEC also recommends against using funds resulting from reduced taxes to offset other actual or potential costs incurred by PacifiCorp. The UIEC argues PacifiCorp's costs should be evaluated in separate proceedings to determine appropriate recovery and to avoid distortions in ratemaking treatment.

In reply comments, and subject to its reply comments regarding the Alternative Proposal presented below, PacifiCorp agrees with the DPU's recommendation to approve the collection of approximately \$2.8 million on an interim basis. Regarding the Alternative Proposal, PacifiCorp notes the PSC order in the Tax Reform Docket is expected prior to the proposed May 1, 2018 effective date of tax benefit refund. PacifiCorp argues the DPU's recommendation to reject the Alternative Proposal as premature is no longer premature noting the PSC can do so in tandem with its decision in the Tax Reform Docket. PacifiCorp recommends the PSC approve its Alternative Proposal which results in a decrease in the 2018 EBA of \$6.5 million, or 0.3 percent, on an interim basis, effective May 1, 2018. If the PSC rejects the Alternative Proposal, PacifiCorp recommends approval of an increase in the 2018 EBA of approximately \$2.8 million on an interim basis, effective May 1, 2018.

On April 26, 2018, pursuant to the Scheduling Order, the PSC conducted a hearing to address the Application. PacifiCorp, the DPU, the OCS, the UAE, and the UIEC made appearances. The UAE and the UIEC requested intervention in this docket. The PSC granted UAE's request on April 20, 2018 and the UIEC's request during the April 26, 2018 hearing.

At hearing, PacifiCorp reiterated its recommendation for approval of the Alternative Proposal but requested approval of the \$2.8 million rate increase, should the Alternative Proposal

not be approved. PacifiCorp stated that approval of its Alternative Proposal would alleviate the DPU's concerns regarding too many adjustments in the EBA. The DPU reaffirmed its filed comments, including its approval of the \$2.8 million rate increase and rejection of the Alternative Proposal. As a result of questioning by the UIEC, the DPU stated its review was high level, with limited scope, and did not include a prudency review or a review of the accuracy of the costs included. The DPU stated it had reviewed and agrees with the proposed changes to the Schedule 94 tariff sheets included in the Application. The OCS reiterated its objection to interim rates noting the pending status of the SC Appeal. The UIEC and the UAE stated their continued objection to interim rates, noting the SC Appeal, and expressed their objection to the approval of the Alternative Proposal.

DISCUSSION, FINDINGS, AND CONCLUSIONS

Based on the DPU's Preliminary Review, we find the Application does not depart from prior years' EBA filings. We understand the continuing objection of some parties to an interim rate structure, and recognize that the SC Appeal is pending. However, regardless of parties' views on interim EBA rates, the rate increase we approve here is subject to future audit by the DPU and evaluation at hearing by other parties. Therefore, consistent with our Interim Rate Order, we approve PacifiCorp's proposed \$2.8 million rate increase on an interim basis pending the final results of the review of the DPU's audit and a hearing following that audit.

We decline to approve PacifiCorp's Alternate Proposal. We conclude that issues associated with tax benefits resulting from recent federal tax legislation should be addressed in the Tax Reform Docket.

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ORDER

For the reasons expressed above:

- 1) We approve PacifiCorp's \$2.8 million rate increase;
- 2) We approve the modifications to Electric Service Schedule No. 94 as filed, effective May 1, 2018; and
- 3) We do not approve PacifiCorp's alternative accounting treatment for recovery of the Deer Creek Mine amortization expense.

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

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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:

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