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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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** **THE DIVISION OF PUBLIC UTILITIES' RESPONSE TO JOINT PETITION FOR REVIEW OR REHEARING OF OFFICE OF CONSUMER SERVICES AND UTAH ASSOCIATION OF ENERGY USERS**

Pursuant to Utah Code Ann.§§ 54-7-15 and 63G-4-301 and administrative rule R746-1-801, the Utah Division of Public Utilities ("Division") files this Response to the Joint Petition for Review or Rehearing ("Joint Petition") filed by the Office of Consumer Services ("Office") and Utah Association of Energy Users ("UAE") (together "Joint Petitioners") related to the Commission's April 27, 2018 Order in this docket. The Joint Petitioners seek reconsideration or rehearing on the same grounds as their similar petition filed on March 27, 2017 in Docket No. 09-035-15. The Commission should deny the Joint Petition for the same reasons it denied the similar petition in Docket No. 09-035-15.

INTRODUCTION

The Joint Petition seeks review or rehearing regarding the use of interim rates during the review period on the same grounds the Commission previously denied in Docket No. 09-035-15. The only fact of consequence that might distinguish this docket from the prior one is the implementation of an interim rate applying the specific facts in this docket. That small change in circumstances does not warrant review or rehearing. The legal arguments and positions remain the same. The use of the interim rate mechanism should not alter the Commission's conclusion that it has the legal authority to do so, nor that it is appropriate and in the public interest to do so.

The Joint Petition does not belabor the issue by repeating its full legal argument regarding the authority of the Commission. Rather it primarily summarizes its restatement of the legal arguments. Similarly, the Division generally re-asserts the same arguments it provided in support of the interim rates in Docket No. 09-35-15. The Commission should not reverse its prior decision, nor should it reverse the reasoning it relied upon in Docket No. 09-035-15.

ARGUMENT

The Commission has legislative authority to order interim EBA rates. Utah Code Ann. § 54-4-1 states the Commission has "the power and jurisdiction . . . to do all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of such power and jurisdiction."[1] This general grant of jurisdiction is augmented by specific provisions that give the Commission the power to order interim EBA rates. Section 54-4-4.1 provides significant latitude to the Commission including the adoption of "any method of

[1] Utah Code Ann. § 54-4-1.

regulation that is: (a) consistent with this title; (b) in the public interest; and (c) just and reasonable." The method of rate regulation may include "other components, methods, or mechanisms approved by the commission."[2]

Interim rates are a mechanism recognized by the Utah Supreme Court as being available to the Commission.[3] Joint Petitioners argue that application of the broad authority under § 54-4-4.1 would render § 54-7-12(4)(a)(ii) superfluous. The Section that provides the Commission express authority to implement interim rates in general rate cases does not also act to limit the use of interim rates only to that specific type of rate making. This is evident from the structure of the statute. Subsection 54-7-12(1) defines the types of rates that are "base rates," as well as what it means to have a general rate increase or decrease. Subsection (2) sets forth the requirements for general rate increase or decreases. Subsection (3) sets the timeline for Commission action on general rate changes as described in Subsection (2). Subsection (4) at issue here then provides the procedure for the Commission to set interim rates during the subset of general rate increases or decreases. Nothing either implicitly or explicitly excludes the use of interim rates in other proceedings.

In *Questar Gas Company v. Utah Public Service Commission* ("Questar Gas"), the Court said, "We presume, as we did in Utah Department of Business Regulation v. Public Service Commission, 720 P.2d 420 (Utah 1986), a case involving a similar type of account used by Utah Power and Light, that the Commission implemented this rate-changing mechanism under its 'ample general power to fix rates and establish accounting procedures.'"[4] The Questar Gas court continued, stating, "A straightforward reading of the April 3 order reveals that the Commission

[2] Utah Code Ann. §54-4-4.1(2)(e).
[3] *See Questar Gas Company v. Public Service Commission*, 34 P.3d 218 (Utah 2001).
[4] *Questar Gas* at 222.

did not intend for the balancing account to be 'merely' an accounting tool, but created it as a more efficient interim rate-changing mechanism for recovering certain gas costs."[5] The Court then recognized the value of an interim process by stating:

> The operation of the account was intended to replace more frequent rate relief requests by allowing the utility to record in and recover through the account certain costs on a dollar-for-dollar basis without having to go through a lengthy rate-making process.[6]

Interim rates are a permitted Commission-ordered mechanism and are appropriate for the EBA process. It is reasonable to look to gas pass-through cases for guidance.

The Commission has already opined on the burden of proof remaining unchanged where interim rates are used. The Commission stated that "the EBA mechanism (as well as other proceedings that would remain in place) affords the PSC adequate opportunities to assess the prudence of PacifiCorp's actions respecting EBA costs. The potential interjection of an interim rate change while the DPU completes its full examination of the EBA account does not alter this standard."[7] The Commission correctly recognized that the interim rates do not represent a change in the burden of proof.

In fact, by their very nature EBA rates are already interim. The primary mechanism for collection of net power costs is a rate based on forecasts that is trued up after the fact. They are not set based on actual prudent cost review, but rather a projection of the likely prudent costs. Doing so with a review and a true up retains the burden of proof on the utility to prove that its expenses were prudent. Using an interim rate to reduce rate shocks to customers while allowing a more thorough review by the Division provides greater scrutiny in review of the costs. In the same way that EBA rates do not change the burden of proof by truing up net power costs after

[5] *Questar Gas* at 222 (emphasis added).
[6] *Questar Gas* at 222 (emphasis added).
[7] Docket No. 09-035-15 April 7, 2017 Order at p.5.

review of expenses, the temporary use of an interim rate based on a more precise – but not final – set of information also does not change the standard for cost recover or the burden. Interim rates are consistent with § 54-7-13.5(e).

Finally, the EBA statute largely leaves the mechanism to implement the statute's objectives to the Commission. For example, the EBA statute states that "the collection method described in Subsection (2)(C)(i)[8] shall: (i) apply to the appropriate billing components in base rates and (ii) be incorporated into base rates in an appropriate commission proceeding"[9] but the statute does not describe what constitutes such an appropriate proceeding. Indeed, the statute's language clearly contemplates that the Commission will rely on its powers found elsewhere in code, which is perfectly appropriate given the Legislature is the grantor of all the Commission's statutory powers.

Similarly, the EBA statute states that a "surcredit" or a "surcharge" be refunded or collected, respectively, "over a period specified by the commission,"[10] leaving the determination of that period solely to the Commission. The EBA statute does not use the term "final base rates" or "interim base rates." The statute just uses the term "base rates."[11] Accordingly, as illustrated by the examples above, there are no "specific" provisions to override the Commission's otherwise-existing power to establish interim EBA rates. Nothing in a specific statute extinguishes an agency's general powers that do not contradict the specific statute.[12]

[8] Described as "base rates," "contract rates," "surcredits," or "surcharges." See Utah Code Ann. § 54-7-13.5(2)(C)(i).
[9] Utah Code Ann. § 54-7-13.5(f).
[10] Utah Code Ann. § 54-7-13.5(h).
[11] See Utah Code Ann. § 54-7-13.5(2)(c)(i). In that same subsection, the statute also uses the terms "contract rates," "surcredits," and "surcharges."
[12] *See, e.g., Williams v. Public Service Commission*, 754 P.2d 41 (Utah 1988).

CONCLUSION

The Commission should deny the Joint Petition. The Commission has the power and authority to order interim EBA rates and the existence of the EBA statute does not preclude the Commission from exercising its other powers. Furthermore, the application of the specific facts in this docket do not alter the application and analysis concerning the legal theories the Division stated above.

Respectfully submitted this 8th day of June, 2018.

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