



State of Utah

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Public Service Commission

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November 5, 2018

Senator Daniel Hemmert, Chair; Representative Stephen G. Handy, Chair
Members of the Public Utilities, Energy, and Technology Interim Committee

Re: Report from the Public Service Commission of Utah (“PSC”) under Utah Code Ann.
§ 54-7-13.5(6)

Senators and Representatives,

Under Utah Code Ann. § 54-7-13.5(6), the PSC is required to report before December 1, 2017 and 2018 “regarding whether allowing an electrical corporation to continue to recover costs under Subsection [54-7-13.5](2)(d) is reasonable and in the public interest.” On November 6, 2017, the PSC filed its initial report on this matter. This is the PSC’s second report filed pursuant to this statute. For simplicity, this report will refer to Utah Code Ann. § 54-7-13.5(2)(d) as “Subsection (2)(d).” For the convenience of Committee members, this report restates the background information included in the PSC’s initial report.

Energy Balancing Account (“EBA”) Background

In 2009, the Utah Legislature enacted S.B. 75, creating the Energy Balancing Account (“EBA”) statute codified at Utah Code Ann. § 54-7-13.5. The statute authorizes the PSC to establish the EBA, an account to track net power costs incurred by an electrical corporation. Net power costs generally include fuel costs necessary to generate electricity, costs and revenues associated with an electrical corporation’s purchase and sale of electricity, and certain transmission expenses and revenues.

An electrical corporation like Rocky Mountain Power must forecast its net power costs in each general rate case. Prior to the EBA statute, for a year in which Rocky Mountain Power did not file a general rate case, the utility would be able to recover costs from ratepayers only for the previously forecasted net power costs. If actual net power costs were higher than the forecasted costs, utility shareholders were responsible for the difference. If actual net power costs were lower than the forecasted costs, utility shareholders would benefit from the difference.

In March 2011, the PSC issued an order implementing an EBA for Rocky Mountain Power. That order included a risk-sharing mechanism for the difference between actual net power costs and the forecast from the most recent general rate case. Under that risk-sharing mechanism, Rocky Mountain Power was allowed to recover from ratepayers 70% of net power costs that exceeded the forecasted costs, and was required to refund ratepayers for 70% of the net power costs that are lower than the forecasted costs. In the order, the PSC concluded that the risk-sharing mechanism “preserves [Rocky Mountain Power’s] financial incentive to minimize net power cost both in the short-run and long-run.” As shown in Appendix A, Rocky Mountain Power’s share of the risk-sharing mechanism ranged from -0.6 percent to 2.7 percent of total EBA costs.

During the 2016 General Session of the Utah Legislature, S.B. 115, Sustainable Transportation and Energy Plan Act, in addition to authorizing several policy-based utility programs, enacted Subsection (2)(d) which states: “Beginning June 1, 2016, for an electrical corporation with an [EBA] established before January 1, 2016, the [PSC] shall allow an electrical corporation to recover 100% of the electrical corporation’s prudently incurred costs as determined and approved by the [PSC] under this section.” As required by Subsection (2)(d), the PSC discontinued operation of Rocky Mountain Power’s EBA risk-sharing mechanism on June 1, 2016.

S.B. 115 requires this report from the PSC in addition to a parallel report that was submitted in 2017. The bill also provides a sunset date for Subsection (2)(d). Under that sunset date, absent future legislative action, Subsection (2)(d), requiring the PSC to allow an electrical corporation with an EBA established before January 1, 2016 to recover 100% of its prudently incurred costs, is repealed on December 31, 2019.

EBA Dockets

Since the approval of Rocky Mountain Power’s EBA, the utility has filed seven separate dockets with the PSC, seeking to adjust its net power costs. Appendix A summarizes those dockets.

Stakeholder Feedback

In March 2018, the PSC solicited feedback from stakeholders for the PSC’s 2018 report to the Public Utilities, Energy, and Technology Interim Committee, which is required by statute to address whether Subsection (2)(d) “is reasonable and in the public interest.” Pursuant to the PSC’s procedural schedule for this issue, in September 2018, the PSC received initial comments from the following stakeholders: Rocky Mountain Power, the Utah Division of Public Utilities (“Division”), the Utah Association of Energy Users (“UAE”), and the Utah Industrial Energy Consumers (“UIEC”). In October 2018, the PSC received reply comments from Rocky Mountain Power, the Division, the Utah Office of Consumer Services (“Office”), and UAE. In general, Rocky Mountain Power supports the continued elimination of the EBA risk-sharing mechanism while all other parties do not. Those stakeholder comments are summarized below:

Stakeholder Comments

Rocky Mountain Power

Rocky Mountain Power continues to support the elimination of the risk-sharing mechanism from the EBA, allowing a full pass-through of EBA costs, for the following reasons:

- it ensures customers only pay the actual costs for the energy they consume, no more and no less;
- it keeps the net power cost component of rates just, reasonable, and in the public interest;
- it helps to maintain overall customer rate stability by mitigating the need for more frequent general rate cases; and
- it helps ensure customers are served by a financially healthy utility.

In support of those positions, Rocky Mountain Power makes the following additional assertions:

- Utah customers actually have or will receive refunds as a result of the elimination of the EBA risk-sharing mechanism.
- Many of the drivers of EBA variances are outside of Rocky Mountain Power's control due to issues including fluctuations in market prices, weather, and obligations under federal law.
- No evidence has been provided to demonstrate that it is not just and reasonable, and in the public interest, for customers to pay the actual, prudently-incurred costs of the energy they consume, or that the absence of a risk-sharing mechanism inappropriately impacts utility operations.
- Rocky Mountain Power continues to bear the risk that imprudently-incurred costs may be disallowed, incentivizing the utility to efficiently forecast, manage, and account for its power costs.
- The PSC has recently extended the length of time for the Division to conduct its annual EBA audit, and other stakeholders have an opportunity to scrutinize the costs.
- A risk-sharing mechanism does not impact operations.
- Recent emerging competition from self-generation increases the motivation for the utility to keep rates low.
- The EBA enables the utility to avoid more lengthy and costly regulatory proceedings.
- The utility's current authorized return on equity is appropriate without a risk-sharing mechanism.
- Other states with risk-sharing mechanisms have other regulatory processes that mitigate the mechanism.

Utah Division of Public Utilities

The Division argues that the EBA should be eliminated, but that if it is retained, the risk-sharing mechanism should be reinstated to ensure the EBA is in the public interest and that Rocky Mountain Power has the proper incentive to manage its risks rather than passing those risks on to ratepayers. In support of that position, the Division makes the following assertions:

- Without the risk-sharing mechanism, the EBA misaligns the utility's incentives to forecast, manage, and account for costs, and to achieve operational efficiency.
- Electricity rates in Utah have become more volatile since the EBA's inception, and that volatility has been magnified by the elimination of the risk-sharing mechanism.
- Rocky Mountain Power's authorized return on equity has not been modified since the elimination of the risk-sharing mechanism to compensate for reduced risk.
- A prudence review of net power costs does not sufficiently motivate the utility to operate efficiently and reduce costs.
- Comparisons of the EBA to a gas utility's recovery of commodity costs is inappropriate because of significant differences between them.
- No stakeholder representing ratepayer interests has supported the elimination of the risk-sharing mechanism.

Utah Association of Energy Users

UAE supports allowing Subsection (2)(d) to sunset after December 31, 2019 so the PSC will have the authority to approve an EBA sharing mechanism that the PSC determines to be in the public interest. In support of that position, UAE makes the following assertions:

- The risk-sharing mechanism reasonably balances and aligns customer and shareholder interests and incentivizes the utility to manage its net power costs, giving the utility a material stake in each action related to those costs.
- Economic self-interest is a better incentive than after-the-fact prudence audits.
- Widespread stakeholder support exists for the risk-sharing mechanism.
- Most other states that regulate the utility's parent company utilize similar mechanisms, which have not harmed the utility's financial health or ratings.
- Ratemaking is not simply cost reimbursement, but also includes incentive mechanisms and risk sharing.
- No evidence exists that elimination of the risk-sharing mechanism has mitigated the need for frequent general rate cases.

Utah Industrial Energy Consumers

UIEC contends the EBA is not in the public interest, even if the risk-sharing mechanism were to be reinstated, and therefore the EBA should be eliminated. In support of that position, UIEC makes the following assertions:

- The EBA benefits Rocky Mountain Power, with little or no benefit to ratepayers.
- The impracticality of EBA audits provides inadequate incentives for the utility to act prudently.
- In 2011, the PSC identified necessary criteria for the EBA to be in the public interest: fair risk allocation, incentives to operate efficiently, and satisfying the statute.
- Without the risk-sharing mechanism, customers assume all risk, leaving the utility with no incentive to manage that risk.
- Even the risk-sharing mechanism was inadequate to sufficiently incentivize prudent action.

- The current EBA regulatory process does not allow sufficient confidence that only actual, prudently incurred costs are passed through the EBA.
- Rocky Mountain Power's authorized return on equity should be adjusted to compensate for decreased risk resulting from the EBA.

Office of Consumer Services

The Office asserts that the public interest is not best served with the current statute and that Subsection (2)(d) should be allowed to sunset. In support of that position, the Office makes the following assertions:

- The EBA benefits Rocky Mountain Power and shifts risk to ratepayers.
- Rocky Mountain Power should assume a share of cost volatility risk, and is best positioned to manage this risk.
- Because of sharing mechanisms in other states, Utah customers bear more risk than customers in other states served by Rocky Mountain Power's parent company.
- The risk-sharing mechanism resulted in \$40.3 million in benefits to customers.
- Without the risk-sharing mechanism, other mechanisms and incentives are necessary as counterbalancing protections.

Public Service Commission Perspective and Conclusion

In 2011, the PSC concluded that the risk-sharing mechanism “preserves [Rocky Mountain Power's] financial incentive to minimize net power cost both in the short-run and long-run.” Subsection (2)(d) eliminated the risk-sharing mechanism, but the PSC has not yet modified that conclusion. Stakeholder positions in this report are consistent with those from the 2017 report: Rocky Mountain Power supports elimination of the risk-sharing mechanism; all other stakeholders dispute the utility's position for various reasons.

As we noted in our prior report, the Utah Legislature must decide during the 2019 General Session whether to:

- extend or eliminate the sunset date for Subsection (2)(d) which would continue to prohibit the PSC from implementing a risk-sharing mechanism; or
- allow Subsection (2)(d) to sunset, which would authorize the PSC to reinstate a risk-sharing mechanism.

The PSC was neutral during the 2016 General Session on all aspects of S.B. 115. Moreover, we issued an order after the enactment of S.B. 115 delaying our final evaluation of the EBA pilot program until after the Legislature decides whether or not to allow Subsection (2)(d) to sunset. We must examine future EBA proposals on their merits as demonstrated by the record evidence in the appropriate PSC docket. For example, depending on the Legislature's future action, we may be required to decide whether it is in the public interest to continue the EBA in the absence of the risk-sharing mechanism. Additionally, at some point we may be required to determine whether Subsection (2)(d) warrants a change to Rocky Mountain Power's authorized rate of return. Accordingly, to avoid compromising or abandoning our responsibility to adjudicate in the

future these and other related issues, we express no position at this time with respect to whether or not Subsection (2)(d) should be allowed to sunset.

In preparing this report, we have solicited the views of all interested stakeholders “regarding whether allowing an electrical corporation to continue to recover costs under Subsection (2)(d) is reasonable and in the public interest.” Utah Code Ann. § 54-7-13.5(6). We trust we have summarized their positions accurately. The full text of their comments can be found on the PSC’s website: <https://psc.utah.gov/2018/01/02/docket-no-18-035-01/>

We hope this information is helpful. Please reach out to us with any questions or concerns about our administration of the EBA, the previous risk-sharing mechanism, or Subsection (2)(d).

Respectfully submitted,

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Public Service Commission of Utah

Appendix A

Row	PSC Docket/ Date Filed Note: EBA deferral is for the year prior to the date filed	Rate Increase/(Refund) Requested/Approved	Utah Actual EBA Costs	Difference between RMP's Actual and Base EBA Costs (i.e., EBA deferred costs)	70% of Difference, Actual vs. Base EBA Costs	RMP's 30% Share of Difference, Actual vs. Base EBA	70/30 Sharing mechanism in place?	% of Utah Actual EBA Costs Shared by RMP
1.	12-035-67 filed 3/15/12	Requested: \$29,286,005 Approved: \$27,800,000	\$143,437,028 (Oct., Nov., Dec.)	\$12,862,824	\$9,003,977	\$3,858,847	Yes	2.7%
2.	13-035-32 filed 3/15/13	Requested: \$17,394,963 Approved: \$15,000,000	\$613,622,604	\$24,300,033	\$17,010,023	\$7,290,010	Yes	1.2%
3.	14-035-31 filed 3/17/14	Requested: \$28,339,553 Approved: \$25,300,000	\$661,403,752	\$39,454,809	\$27,618,366	\$11,836,443	Yes	1.8%
4.	15-035-03 filed 3/16/15	Requested: (\$14,432,000) Approved: (\$15,539,000)	\$652,877,469	\$41,477,596	\$29,034,318	\$12,443,278	Yes	1.9%
5.	16-035-01 filed 3/15/16	Requested: (\$13,088,000) Approved: (\$15,569,000)	\$627,041,382	\$16,157,578	\$11,310,305	\$4,847,273	Yes	0.8%
6.	17-035-01 filed 3/15/17	Requested: (\$6,542,837) Approved: (\$6,542,837)	\$228,468,432 (1/1/2016 – 5/31/2016) \$364,687,905 (6/1/2016 – 12/31/2016)	(\$4,666,611) (1/1/2016 – 5/31/2016) (\$8,017,258) (6/1/2016 – 12/31/2016)	(\$3,266,628) for costs incurred before 6/1/2016.	(\$1,399,983) for costs incurred before 6/1/2016.	Yes for costs incurred before June 1, 2016. Otherwise no.	(0.6%)
7.	18-035-01 filed 3/15/18	Requested: \$2,766,676 Approved: \$2,766,676 on an interim basis	\$607,451,890	(\$4,435,015)	N/A	N/A	No	N/A

Comments on rows regarding other costs and credits included in the EBA, but not defined as power costs in the EBA Tariff:

1. EBA only represents October, November, and December 2011. Listed 12-035-67 EBA deferred costs do not include: 1) \$282,029 in accrued interest costs and; 2) \$20,000,000 in stipulated amortized net power costs.
2. Listed 13-035-32 EBA deferred costs do not include \$384,940 in accrued interest costs.
3. Listed 14-035-31 EBA deferred costs do not include: 1) a credit of (\$1,128,262) representing additional FERC revenues; and 2) an additional \$1,849,448 in accrued interest costs.
4. Listed 15-035-03 EBA deferred costs do not include: 1) a credit of (\$1,204,554) representing additional FERC revenues; and 2) an additional \$2,641,702 in accrued interest costs.
5. Listed 16-035-01 EBA deferred costs do not include: 1) a credit of (\$2,787,700) representing Deer Creek Mine Closure fuel savings; 2) an additional \$1,326,904 in accrued interest costs; and 3) \$9,098,764 in Deer Creek Mine Amortization costs.
6. Listed 17-035-01 EBA deferred costs do not include: 1) a credit of (\$735,336) for Deer Creek Mine Closure fuel savings; 2) a credit of (\$2,941,860) in Incremental Non-Fuel FAS savings; 3) a Symmetrical Special Contract Customer Deadband adjustment of (\$200,718); 4) a credit of (\$536,443) in accrued interest reductions; and 5) \$9,155,406 in Deer Creek Mine Amortization costs.
7. Listed 18-035-01 EBA deferred costs do not include: 1) a credit of (\$2,906,573) in FAS 106 fuel savings; 2) a Symmetrical Special Contract Customer Deadband adjustment of \$4,033,736; 3) a (\$463,556) Non-Generation Agreement credit; 4) an additional \$257,691 adjustment for the Subscriber Solar Program; 5) a (\$2,800,000) credit for the 2017 EBA settlement; 6) a (\$127,046) credit for accrued interest charges; 7) \$9,059,510 in Deer Creek Mine Amortization costs; and 8) a \$147,930 Special Contract Customer cost, pursuant to a settlement agreement in Docket No. 17-035-54.