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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. 19-035-01
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UAE REPLY COMMENTS

Pursuant to the Commission's March 29, 2019 Scheduling Order, Notice of Hearing, and Tariff Status ("Scheduling Order"), the Utah Association of Energy Users ("UAE") files these Reply Comments regarding the Application filed March 15, 2019 in this docket by Rocky Mountain Power ("RMP" or "Company") and regarding the comments filed April 4, 2019 by the Division of Public Utilities ("Division"). UAE has reviewed the Company's Application in this docket and has reviewed the Division's comments. Without repeating the detailed discussions included in those filings, UAE submits the following reply comments.

UAE CONTINUES TO ASSERT THAT INTERIM EBA RATES ARE UNLAWFUL

In its April 4 comments, the Division recommends that the Commission approve interim EBA rates as requested by the Company in its Application in this docket. UAE repeats its assertion that interim EBA rates are unlawful. UAE and other parties addressed this issue with

the Commission in Docket Nos. 09-035-15 and 18-035-01 in which the Commission imposed interim rates over the objection of UAE and others. UAE and other parties appealed those decisions, and those appeals remain pending before the Utah Supreme Court in Appellate Case Numbers 20170364-SC and 20180536 (together, the “Appeals”). For all of the reasons discussed in Docket Nos. 09-035-15 and 18-035-01 and in the Appeals, UAE continues to maintain, and does not waive, its argument that the Commission is not authorized to impose interim EBA rates. As such, UAE submits that the Commission should reject RMP’s Application in this docket to the extent that it seeks to impose a rate increase on an interim basis.

UAE ALSO OPPOSES THE DIVISION’S “ALTERNATIVE” PROPOSAL TO ADJUST NET POWER COSTS IN BASE RATES

As an “alternative” to the imposition of interim EBA rates, the Division states that “the Commission may wish to find that the net power cost component in base rates is unreasonable because, given past history, it is less likely to match net power costs as well as the amount RMP seeks to include in interim rates.” DPU Comments at 1-2. The Division further proposes that the Commission may impose a charge “to adjust rates in a manner it finds to be just and reasonable until the conclusion of the Division’s audit and related processes allow establishment of final rates.” *Id.* at 2. While UAE appreciates the Division’s efforts to work around UAE’s objections to the imposition of interim rates, UAE opposes the “alternative” proposal for several reasons.

First, the Division’s suggestion that the Commission change a component of base rates is contrary to law. Pursuant to Utah Code § 54-7-12, the Commission may set or adjust base rates only in the context of a general rate case. *See, e.g.*, Utah Code § 54-7-12(1)(c) (defining change in base rates as increase or decrease in general rates); *Id.* § 54-7-12(2) (requiring a “complete filing” for a general rate increase or decrease to adjust base rates). Utah Code § 54-7-13.5(f)

requires that an effort to incorporate costs into base rates must occur in a general rate case. Changes to the EBA rate that occur within the context of the EBA true-up through the imposition of surcredits and surcharges are not changes to “base rates,” and can occur outside of the context of a general rate case. *See id.* § 54-7-12(1)(a)(ii) (noting that “base rates” does not include charges included in a balancing account); *Id.* § 54-7-13.5(2)(h) (noting that EBA true-up is recouped through surcredits and surcharges in balancing account). The distinction between changes to base rates—which can only occur in a general rate case—and the imposition of surcredits and surcharges—which can occur in between general rate cases—is an essential statutory construct in the EBA statute. The Division’s “alternative” proposal, then, is an effort to change a component of base rates, which requires a general rate case filing.

Second, a finding that the current net power cost component in base rates is unreasonable can come only after a hearing, but the April 24, 2019 hearing has not been noticed as a hearing that would address that issue. Utah Code § 54-4-4 requires that, before the Commission adjusts rates, it must first hold a hearing and find that the current rates or charges are unjust or unreasonable. Utah Code § 54-4-4(1)(a). Pursuant to Tariff Schedule 94 (the “EBA Tariff”), the hearing scheduled for April 24, 2019 will address only “whether to approve interim rates with an amortization period through April of the following year, effective May 1.” Electric Service Schedule No. 94 at Sheet No. 94.3. *See also* Scheduling Order at 1 (identifying April 24, 2019 hearing as a “Hearing on interim rates”). The April 24 hearing was not scheduled to address the issue of whether the current net power costs are unjust or unreasonable. Had it been noticed as such, the parties would have been more active in seeking discovery to file comments to address that issue and the parties could have performed an investigation like the one that the Division

will perform later on in this docket. The hearing contemplated by the Division's "alternative" proposal would like the hearing that will follow the Division's investigation. Simply put, the April 24, 2019 hearing will not address the matter of whether the current net power cost component in base rates is unjust or unreasonable.

Third, there is insufficient evidence in this docket for the Commission to conclude that any new rate is "just and reasonable." Utah Code § 54-4-4(1)(b) requires that the Commission may not set a new rate unless it finds that the new rate is "just, reasonable, or sufficient." The Division has not proffered a new rate that would be "just and reasonable." The only new proposed rate found anywhere in the record is the Company's proposed interim EBA rate. But the Company's proposed interim EBA rate is not "just and reasonable" for the same reason that the Division asks the Commission to find that the net power cost components in base rates are unreasonable—because "given past history," it does not match the rate required to allow the Company to recover actual net power costs. In every year in which the Commission has imposed an interim EBA rate, the Company has over-collected from that interim EBA rate and has been required to carry a credit into the following EBA cycle. More importantly, the evidence required for the Commission to find that the Company's proposed interim EBA rate—or any new proposed rate—is "just and reasonable" is not yet in the record and will not be in the record until after the Division has an opportunity to conduct the investigation required by the EBA tariff. UAE acknowledges that RMP has filed an Application and has submitted testimony, but "the mere filing of schedules and testimony in support of a rate increase is insufficient to sustain the [utility's] burden [of proof]. Rate making is not an adversary proceeding in which the applicant needs only to present a prima facie case to be entitled to relief." *Utah Dept. of Bus. Reg.*, 614

P.2d at 1245-46. Instead, “[a] state regulatory commission, whose powers have been invoked to fix a reasonable rate, is entitled to know and before it can act advisedly must be informed of all relevant facts.” *Id.* at 1246. The Utah Supreme Court has ruled that a finding that a change to base rates is just and reasonable “must be supported by substantial evidence concerning every significant element in the rate making components (expense or investment) which is claimed by the applicant as the basis to justify a rate adjustment.” *Id.* at 1250. Neither the Company, nor the Division, nor any other party has provided this Commission with all relevant facts regarding “every significant element in the rate making components” to allow the Commission determine whether a new rate is “just and reasonable,” and the EBA Tariff and Scheduling Order have not permitted the parties an opportunity to develop all such relevant facts.

For these reasons, UAE opposes the Division’s “alternative” proposal suggesting that the Commission could find that current rates are unreasonable and impose a new rate based on its powers found in Title 54, Section 4 of the Utah Code. These same reasons support UAE’s opposition to the imposition of interim EBA rates. UAE, therefore, opposes the imposition of interim EBA rates and the Division’s “alternative” proposal for the reasons set forth herein and in Docket Nos. 09-035-15 and 18-035-01 and in the Appeals.

DATED this 18th day of April 2019.

Respectfully submitted



By: _____

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Certificate of Service
Docket No. 19-035-01

I hereby certify that a true and correct copy of the foregoing was served by email this day 18th day of April 2019, on the following:

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