

PROCEDURAL BACKGROUND

On April 26, 2019, the Commission issued an order that, among other things, imposed a \$23,900,000 rate increase on consumers to be collected through interim rates under the EBA. At the time of the April 26, 2019 order, the Office and UAE had already appealed a previous order, challenging the Commission's authority to impose interim rates into the statutory EBA mechanism. *See In the Matter of the Application of Rocky Mountain Power for Approval of its Proposed Energy Cost Adjustment Mechanism*, Docket No. 09-035-15, Order at 18-25 (February 16, 2017, Utah P.S.C.) In fact, prior to the April 26, 2019 order, the appeal, *Office of Consumer Services and Utah Association of Energy Users v. Utah Public Service Commission*, No. 20170364-SC ("2017 appeal"), had been consolidated with a later filed appeal on the same issue, *Office of Consumer Services and Utah Association of Energy Users v. Utah Public Service Commission*, No. 20180536-SC ("2018 appeal"), these appeals had been fully briefed and argued and were awaiting decision by the Utah Supreme Court.

In order to protect their position in the two previously filed appeals, the Office and UAE filed a Petition for Review or Rehearing on May 13, 2019. On May 29, 2019, the Commission issued an Order denying the Petition for Review. On June 13, 2019, the Office and UAE filed a Joint Petition for Review with the Utah Supreme Court appealing the April 26 and May 29 orders on the grounds that the Commission improperly inserted interim rates into the EBA ("2019 appeal").

On June 27, 2019, the Utah Supreme Court issued its decision on the 2017 and 2018 consolidated appeals holding that the Commission did not have authority to impose interim rates into the EBA. *See Office of Consumer Services v. Public Service Commission of Utah*, 2019 UT 26, ¶ 27, 445 P.3d 464. This decision disposes of all issues in the 2017 and 2018 appeals.

However, although its holding compels the same conclusion in the 2019 appeal, because the 2019 appeal was not consolidated with the 2017 and 2018 appeals, the 2019 appeal remains outstanding.

Accordingly, on July 22, 2019, the Office and UAE filed the Unopposed Motion for Limited Remand with the Utah Supreme Court. The Motion noted that while all parties agreed that the decision in *Office of Consumer Services* requires the Commission to vacate those parts of its April 26, 2019 and May 29, 2019 orders that impose interim rates into the EBA, the Commission lacks the jurisdiction to modify the orders while they are under review by an appellate court. *See, e.g., Career Serv. Review Bd. v. Utah Dep't of Corrs.*, 942 P.2d 933, 943 (Utah 1997) (holding agency lacked authority to modify an order that was under review by an appellate court). Therefore, the Office and UAE requested that the Supreme Court remand the appeal to the Commission for the limited purpose of allowing the Commission to vacate its April 26, 2019 and May 29, 2019 orders, to the extent that these orders authorized interim rates in the EBA. On July 31, 2019, the Supreme Court ruled on the Motion and temporarily remanded the 2019 appeal “to the Public Service Commission for reconsideration of the April 26, 2019 and May 29, 2019 orders.”

Thereafter, the parties met for the purpose of agreeing to tariff modification to, in part, conform Rocky Mountain Power’s tariffs to the Supreme Court’s decision in *Office of Consumer Services*. At these meetings, the parties determined that additional proceedings were necessary to assist the Commission in deciding whether the EBA should be terminated, modified and/or made permanent. On November 14, 2019, after the parties filed comments, the Commission issued an order approving the EBA as an ongoing program and directing modifications to Electric Service Schedule No. 94, EBA Pilot Program. *In the Matter of the Application of Rocky*

Mountain Power for Approval of its Proposed Energy Cost Adjustment Mechanism, Docket 09-035-15, Order at 10 (November 14, 2019, Utah P.S.C.)

On November 21, 2019, Rocky Mountain Power made a Compliance Filing with proposed tariff revisions to conform Electric Service Schedule No. 94 with the Commission's May 14, 2019 order and *Office of Consumers Services*. On December 17, 2019, the Commission issued a Tariff Approval Letter, approving Rocky Mountain Power's proposed tariff revisions as modified in Rocky Mountain Power's reply comments. This leaves only the modification of the April 26 and May 29 orders by this Commission and the dismissal of the 2019 appeal by the Supreme Court to complete the procedures relating to the initial appeal challenging the inclusion of interim rates in the EBA.

ARGUMENT

All parties agree that for the April 26 and May 29 orders to comply with the decision in *Office of Consumer Services* and Rocky Mountain Power's revised tariff Electric Service Schedule No. 94, the portions of these orders approving interim rates must be vacated. Moreover, the April 26 and May 29 orders must be vacated to provide the Supreme Court with a record basis to dismiss the 2019 appeal. Accordingly, the parties request that the Commission modify these orders by vacating the portion of the orders dealing with the inclusion of interim rates in the EBA. This will constitute the penultimate action, leading to the dismissal of the 2019 appeal, to complete the procedures dealing with the appeals challenging the imposition of interim rates into the EBA.

CONCLUSION

For the reasons outlined above, the Office request the Commission to issue an order vacating the portions of its April 26, 2019 and May 29, 2019 orders that deal with the inclusion of interim rates in the EBA mechanism.

Respectfully submitted, January 28, 2020.

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