

1982

Utah Department of Business Regulation, Division of Public Utilities, Committee of Consumer Services v. Public Service Commission of Utah, Brent H. Cameron, Chairman, David R. Irvine, Commissioner, James M. Byrne. Commissioner : Appendix

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- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of UTAH POWER & LIGHT COMPANY to Implement the Company's Energy Balancing Account for the Period September, 1981, through August, 1982.

CASE NO. 82-035-1

ORDER

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UTAH STATE OFFICE OF ATTORNEY GENERAL

By the Commission:

On October 8, 1982, Utah Power & Light Company ("Utah Power" or "Company") filed an application with the Commission seeking an adjustment in its Energy Balancing Account ("EBA") for the period September, 1981, through August, 1982. The Company's evidence showed that its revenues from firm customers for the subject period of time were approximately \$40 million less than anticipated; that a shortfall in the utilization of capacity allocated to firm sales followed resulting in the company, not the firm customers, carrying the costs associated with the shortfall; and that the unused capacity allocated to firm customers, primarily industrial customers, was used to generate energy which was sold to non-tariff customers resulting in a non-tariff sales margin of \$19 million more than projected for the period in question. The Company proposed in light of the circumstances of the case, that two-thirds of the excess non-tariff sales revenue be allocated to the ratepayers and that one-third be allocated to the Company.

The Division of Public Utilities ("Division") argued that although the numbers used by the Company were correctly derived, the adjustment should not be permitted because the Commission has no authority to grant retroactive relief. The Committee of Consumer Services argued that the balancing account itself is contrary to statute and that the relief requested should be denied.

Based upon the testimony of the parties and argument of counsel, the Commission now makes its findings of fact, conclusions and order.

FINDINGS OF FACT

1. Company revenues for the period of September, 1981, through August, 1982, were approximately \$40 million less than presented in the last general rate case.

2. There was a shortfall in the utilization, primarily from industrial customers, of the capacity allocated to firm sales.

3. The carrying costs associated with the shortfall were borne by the Company.

4. The unused capacity allocated to firm customers was used to generate energy which was sold to non-tariff customers.

5. The non-tariff sales margin was \$18 million more than projected for the period in issue.

6. A portion of the increased non-tariff sales margin in the amount of \$6,012,000 resulted from the reduction in jurisdictional sales.

7. The Commission, in the Application of Mountain Fuel Supply Company to Adjust Base Rate for Natural Gas Service in Utah, Case No. 81-057-19, after Mountain Fuel and the Division had stipulated to an adjustment which included, in part, treatment of an off-system sale which is similar to the adjustment sought by Utah Power in this case, allowed the adjustment as part of the total stipulation.

8. The Company's earnings per share were \$2.24 for the twelve months ended August, 1982, a 103% payout ratio; and the return on equity in the Utah jurisdiction is approximately 13% and Company wide approximately 11.77%.

9. The Commission allowed the Company a return on equity of 16.3% in Case No. 81-035-13.

CONCLUSIONS

1. The Commission, in its Report and Order in Case Nos. 78-035-21 and 79-035-03 issued July 20, 1979, established the subject Energy Balancing Account and pursuant to Utah Code Ann. § 54-4-1 et. seq. (1981 Supp.) has authority to amend, alter or permit adjustments to the same.

2. Because of the unusual circumstances existing during the period in question, the deterioration in Company earnings of

late, the fact that the unused capacity allocated to firm customers was sold to non-tariff customers through the aggressive marketing efforts of the Company, the fact that the carrying costs associated with the unused capacity were borne by the Company, and that the Commission has previously allowed similar treatment to Mountain Fuel Supply Company as part of the stipulation presented by Mountain Fuel and the Division, the Commission concludes that the adjustment proposed by the Company is just and reasonable and should be allowed. With respect to the adjustment, the Commission wants the parties to understand that no precedential significance should be placed upon the Commission's decision in this matter and that any future adjustments of the kind involved herein will be prospective in nature. In light of the circumstances of this case and the position of Division witness Compton that the EBA as presently constituted "can be pernicious--amplifying the Company's losses when jurisdictional sales are down relative to the projections and exaggerating the windfall gains when the sales are high" we conclude that consideration should be given by the Company, Division and any other interested party to possible solutions to the results which, as set forth in the facts in this case, occur when Company's sales are significantly different than forecasted.

ORDER

Based upon the foregoing Findings of Fact and Conclusions, it is hereby ordered that:

1. The increased non-tariff sales resulting from the reduction in jurisdictional sales in the amount of \$6,012,000 shall be credited to the Company in 1982 and shall not be reflected in the Company's revenues in the current general rate case No. 82-035-13 or rate cases thereafter.

2. The Division, Company and any other interested party shall consider proposed solutions to the inequitable results which have occurred in this case and which could occur when the Company's sales are significantly different than forecasted and submit the same to the Commission in prefiled testimony submitted in connection with the spread of rates portion of the Company's present general rate case No. 82-035-13.

DATED at Salt Lake City, Utah, this 30th day of December, 1982.

/s/ Brent H. Cameron, Chairman

(SEAL)

/s/ David R. Irvine, Commissioner

Attest:

/s/ Jean Mowrey, Secretary

COMMISSIONER BYRNE DISSENTING, WITH COMMENTS

I respectfully dissent from the Commission's Order in this case.

I am sympathetic with the problem identified by the Company in this proceeding. The balancing account procedure was implemented because, as stated in the Commission's Report and Final Order dated May 27, 1980, in case No. 79-035-15:

This Commission has observed that these items (costs of coal and other generating fuels, energy purchased from other utilities, and surplus energy sales revenue) were directly interrelated and not conducive to accurate estimations such that, following any period for which rates had been in effect, there was usually experienced either a substantial under collection or substantial over collection of those net fuel related expenses when compared to the amounts estimated and included in rates. The energy balancing account was a method developed by the Division of Public Utilities and adopted by the Commission, whereby these expenses would be accounted for over a period of time and rate adjustments could be achieved such that no over or under collection would occur and there would be a better matching of those expenses with the same period in which they occurred so that customers who used the energy paid an amount which more nearly matched the cost of providing the energy.

Revenues associated with surplus energy sales from generating facilities dedicated to the providing of firm jurisdictional service, which facilities would otherwise have been idle, was appropriately considered as an offset to energy costs. At the time of the implementation of the balancing account, no one considered the circumstance which has occurred during 1980. Demand for energy by firm industrial customers was significantly below the expected sales projected by the Company and used as a

basis by this Commission in the determination of rates in Case No. 81-035-13. I believe that it may be appropriate that the Company receive, prospectively, some benefit from the increased off-system surplus sales which occur during such circumstances in order to provide some incentive to the company to maximize these sales. The clear remedy for the problem which is identified in this proceeding is a remodeling of the balancing account procedure and I concur with paragraph two of the Commission's Order that the Company and the Division propose such modifications to the Commission.

However, the Company's application requests not that there be a prospective modification of the balancing account, but that this Commission retroactively award the Company \$6 million as a correction for earnings lost as a result of not foreseeing certain circumstances in designing the energy balancing account. This Commission should not engage in retroactively assisting the Company when earnings are low or in retroactively punishing the Company when earnings are high.

The Company has stated in this proceeding that sales to their firm industrial customers during the past year have been significantly lower than were projected by the Company in its test year data presented to this Commission on which the Company's earnings and rate of return were based. These lower sales allowed for an increase in off-system sales to the benefit of the

energy balancing account. The Company has asked for an adjustment of \$6 million in its earnings because of this differential between actual or historical off-system sales and test year or forecasted sales. In the Company's testimony in Case No. 81-035-13 regarding spread of the rates, it has steadfastly maintained that the Commission should use the Company's test year or forecasted data in its analysis. In its "Memorandum and Statement of Position of Utah Power & Light Company Case Nos. 79-035-12, 80-035-17 and 81-035-13" (post hearing brief) the Company states:

There does not appear to be any logical rationale for the "picking and choosing" of historical and forecast elements of the study. The Company submits that consistency demands that one should either use historical or projected data but not an arbitrary combination of both. The Commission has traditionally allowed the Company to use a projected test year since it represents a "normalized" period over which weather, strikes and other abnormalities can be leveled. The Company submits that this procedure is both equitable and reasonable and should be continued in the interests of rate and revenue stability to both the customer and the Company.

Having so stated in another case currently before this Commission, the Company is now asking that the Commission consider "picking and choosing" in the energy balancing account between historical and forecast elements as they relate to off-system sales only. I believe that the consistency that the Company refers to should be maintained by the Company in concurrent cases before this Commission.

I would reject the Company's proposal for retroactive adjustments in the energy balancing account and concur in the Commission's Order that modifications to the energy balancing account be proposed.

/s/ James M. Byrne, Commissioner