DECISION MEMORANDUM

TO: COMMISSIONER KEMPTON
COMMISSIONER SMITH
COMMISSIONER REDFORD
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL

FROM: NEIL PRICE
DEPUTY ATTORNEY GENERAL

DATE: JUNE 24, 2010

SUBJECT: PACIFICORP'S APPLICATION FOR APPROVAL OF AN ACCOUNTING ORDER RECORDING CERTAIN POST-RETIREMENT PRESCRIPTION DRUG COSTS AS A REGULATORY ASSET, CASE NO. PAC-E-10-04

On April 2, 2010, PacifiCorp dba Rocky Mountain Power ("Rocky Mountain" or "Company") filed an Application with the Idaho Public Utilities Commission ("Commission"), pursuant to *Idaho Code* §§ 61-301, 61-307, 61-622, and 61-623, for approval of an accounting order authorizing the Company to record a regulatory asset associated with tax benefits previously reflected in rates that will no longer be realized for certain costs incurred for post-retirement prescription drug coverage as the result of the Patient Protection and Affordable Care Act ("PPACA"). *Application* at 1.

THE APPLICATION

Rocky Mountain states that its Application was instigated by the passage of the PPACA on March 23, 2010. *Id.* at 2. The PPACA "contains provisions for a federal subsidy for employers offering post-retirement prescription drug coverage to its retirees. . . ." *Id.* at 3. According to Rocky Mountain, "[t]he [PPACA] changes the deductibility of certain costs incurred for post-retirement prescription drug coverage." *Id.* at 2. Prior to the PPACA, employers were allowed "to deduct the entire cost of providing the coverage, even though a portion is offset by the subsidy." *Id.* at 3. The PPACA eliminates the "current rule permitting deduction of the portion of the expense that is offset by the subsidy." *Id.*

As a result, Rocky Mountain requests authorization for the recording of a "regulatory asset to FERC Account 182.3 (Other Regulatory Assets) and a credit to FERC Account 410.1 (Deferred Tax Expense) to recover the Idaho Portion of tax benefits previously reflected in rates that will no longer be realized as the result of the [PPACA]." *Id.* at 4. If Commission approval is granted, the aforementioned regulatory asset would be amortized "over a period of four years beginning January 1, 2011, and reflect the amortization expense in the Company's next general rate case." *Id.* at 2-3.

Rocky Mountain estimates a $30.0 million system-wide OPEB (Other Post-Employment Benefit) related cost associated with the change in the law. *Id.* at 3-4. The Company attributes approximately $11.4 million of that amount to the first quarter of the 2010 calendar year resulting, when amortized and grossed up for tax effects, in a revenue requirement impact of approximately $18.5 million on a total company basis amortized over four years. *Id.* at 4. The Company claims that Idaho's share of the regulatory asset would be approximately $1.0 million. *Id.* Rocky Mountain does not request a final Commission decision regarding rate recovery. *Id.*

STAFF COMMENTS AND RECOMMENDATION

Staff explained that the Medicare Modernization Act ("MMA") of 2003 "provided a 28 percent subsidy to companies that provided a retiree drug discount" because it allowed companies "to deduct 100 percent of the cost of the drug benefit provided to their retirees even though the companies were paying only 72 percent of the benefits." *Staff Comments* at 2.

The PPACA's elimination of that tax subsidy compels companies to "reduce the post-retirement benefit obligation on the balance sheet by the amount of the actuarially-determined subsidy to be received." *Id.* at 3. "[T]he related deferred tax asset was based on the gross benefit obligation before the reduction for estimated future subsidies because the subsidy was tax deductable." *Id.* "[F]uture subsidies receivable will remain non-taxable, but the corresponding amount of OPEB related costs will become non-deductable for income tax purposes." *Id.* "[T]he related deferred tax assets will now be based on the benefit obligation net of subsidy payments expected after 2012." *Id.*

Pursuant to Financial Accounting Standards Board Statement No. 106 (FASB106) (circa 1990), most companies will make a single accounting entry reflecting a liability for "future retiree health costs" during the first quarter of 2010. *Id.* "The reduction in the deferred tax asset will be recorded in earnings from continuing operations in the period including the March 2010 enactment date." *Id.*

Staff supports the creation of a "regulatory asset in FERC Account 182.3 (Other Regulatory Assets) to account for the effect of the PPACA" and the amortization of "the expense over a four-year period beginning January 1, 2011." *Id.* This sort of accounting treatment will provide "a direct benefit to customers by minimizing the rate impact related to the change in accounting procedures." *Id.*

Staff recommends that the Company use separate sub-accounts specifically for these entries in order to facilitate an audit of Rocky Mountain's account activity. *Id.* Staff has not audited or reviewed the financial data provided by the Company. *Id.* Staff intends to review the financial data as part of its financial audit related to general rate Case No. PAC-E-10-07 filed May 28, 2010. *Id.*

Rocky Mountain did not request a carrying charge on the regulatory asset emanating from the revised accounting treatment mandated by the PPACA. Staff believes that it would be inappropriate to include a carrying charge in rate base. *Id.* Finally, Staff recommends that an Order include specific language noting that the Commission will defer any decision regarding rate recovery for "specific dollar amounts recorded in the regulatory assets" to its deliberations concerning the Company's current general rate Case in PAC-E-10-07. *Id.*

COMMISSION DECISION

Does the Commission wish to approve Rocky Mountain's Application for an accounting order authorizing the Company to record a regulatory asset associated with tax benefits previously reflected in rates that will no longer be realized for certain costs incurred for post-retirement prescription drug coverage as the result of the Patient Protection and Affordable Care Act and the amortization of the expense over a four-year period beginning January 1, 2011?

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Deputy Attorney General

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