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Background

APC filed TA835-2 seeking an 18.16 percent permanent rate increase and a 6 percent across-the-board interim rate increase based on a 2012 test year.<sup>1</sup> APC included prefiled testimony from Robert S. Grimm, Michael R. Garrett, Robert C. Caprye, and Thomas M. Zepp in support of the tariff filing. APC supplemented its tariff advice filing upon request from commission staff.<sup>2</sup> On December 4, 2013, we issued public notice of the filing. We received 34 comments objecting to the rate increase.

Discussion

Suspend for Investigation

Under AS 42.05.421, when a utility's tariff filing contains a revised rate, we may, upon written complaint or on our own motion and after reasonable notice, suspend the operation of the tariff and conduct hearings to determine the reasonableness and propriety of the filing. The filings in TA835-2 raise a number of issues that require investigation, including a high cost of capital, which includes a 320 basis point adjustment for additional risk,<sup>3</sup> a high cost of debt involving a swap arrangement whereby its parent company refinanced an existing debt,<sup>4</sup> affiliate transactions with its parent company and multiple subsidiaries,<sup>5</sup> and the pro forma adjustments including but

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<sup>1</sup>TA835-2, filed November 27, 2013; *Prefiled Testimony of Michael R. Garrett* (Garrett Direct), at 4, and Schedule 6-2.

<sup>2</sup>Correspondence from M. Garrett, filed December 3, 2013; *Second Correspondence from M. Garrett*, filed December 3, 2013; *Correspondence from M. Garrett*, filed December 6, 2013.

<sup>3</sup>TA835-2, *Prefiled Direct Testimony of Thomas M. Zepp*, at 6-7.

<sup>4</sup>Garrett Direct at 20-21.

<sup>5</sup>TA835-2, *Pre-filed Testimony of Robert C. Caprye*, at 7, 10-11.

1 not limited to the Coffman Cove loss, the cost of living adjustments as well as review of  
2 the Haines billing error.<sup>6</sup> Accordingly, we suspend TA835-2 for further investigation.

3 Granting Interim and Refundable Rates and Interest on Refunds

4 APC requests an interim across-the-board rate increase of 6 percent.<sup>7</sup>  
5 APC claims that the circumstances described in the prefiled testimonies and the studies  
6 filed in TA835-2 demonstrate the need for the requested interim relief under the  
7 standards set out in *Alaska Public Utilities Commission v. Greater Anchorage Borough,*  
8 *534 P.2d 549* (Alaska 1975) (GAAB). APC's arguments in favor of interim and  
9 refundable rate relief are set forth below:

10 The study accompanying this filing demonstrates that APC is significantly  
11 under-recovering its revenue requirement. In addition to that study I submit  
12 EXHIBIT MRG-7 in my testimony which calculates APC's actual return on  
13 equity in the test year. The calculated return on equity on line 35 is 6.71%. It  
is fairly arguable that this rate of return is confiscatorily low given the last  
approved return on equity for APC is 12.80%[.]

14 APC understands that the generally-applicable suspension period before an  
interim rate equal to the requested rate will go into effect is six months from  
15 the date of the tariff filing. See, AS 42.05.421(a)(1). Here, however, APC's  
last rate filing took over one year to adjudicate. In APC's eyes, its experience  
16 shows the low rates will remain in effect for an unreasonably long time.

17 It is well-settled that Alaskan utilities are prohibited from engaging in  
retroactive rate-making - *i.e.*, they cannot recoup past losses in future rate  
18 adjustments. See, *Alaska Public Utilities Commission v. Greater Anchorage*  
*Area Borough, 534 P.2d at 554; A.J. Industries v. Alaska Public Service*  
19 *Commission, 470 P.2d at 541* (text at n.8). Accordingly, in the absence of  
interim rate relief, APC will certainly suffer irreparable harm.

20 APC could make refunds to affected rate payers or allow for adjustments  
21 against future bills in the event permanent rates were approved lower than  
the interim rates. However given the vast disparity between the requested  
22 interim increase of 6% and the calculated deficiency of 18.16%, there is little  
chance permanent rates resulting from a review of the revenue requirement  
23 study will be lower than interim rates submitted herein.

24 <sup>6</sup>Garrett Direct at 6, 8-17.

25 <sup>7</sup>TA835-2 at 1, 2.

1 As mentioned above, APC demonstrates in its study that it is significantly  
2 under-recovering its revenue requirement. APC has also demonstrated that  
3 its actual return on equity is less than its embedded cost of debt. APC has  
4 also shown that its interim request for a rate increase will be well under the  
5 deficiency calculated in the revenue requirement study. Hence APC has  
6 raised serious and substantial questions and has shown that the magnitude  
7 of the interim rate adjustment sought here is neither frivolous nor obviously  
8 without merit.<sup>8</sup>

9 Without instituting interim and refundable rates, the rates currently in effect  
10 will remain in effect until after the conclusion of this proceeding, which may be more  
11 than one year from now. If we later approve some or all of the proposed rate increase,  
12 the utility would not be able to retroactively collect any increased rates, and may suffer  
13 irreparable harm. Conversely, if we approve interim rates on a refundable basis, the  
14 customers will be protected because the utilities will refund any excess amounts to their  
15 customers. We grant APC's request for an across-the-board rate increase of 6 percent,  
16 on an interim and refundable basis, effective January 14, 2014.

17 APC may place the amounts received by reason of the interim and  
18 refundable rate increase in an interest-bearing escrow account or agree to pay the  
19 interest rate of 10.5 percent per annum, specified by AS 45.45.010(a), on any refunds  
20 that may be required at the conclusion of this proceeding. We require APC to advise us  
21 as to its choice between these options. Interest will begin to accrue when customers  
22 pay bills based on the interim and refundable rates and continue until all refund  
23 amounts, if any, are paid to customers. We require APC to keep an accurate  
24 accounting by customer of all amounts received under the interim and refundable rates  
25 granted in this order and the related interest. If refunds are required at the conclusion of  
26 these proceedings, we will require APC to file a plan for the disbursement of refunds.

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<sup>8</sup>TA835-2 at 3-4 (footnote omitted).

1 Tariff Sheets

2 We approve, as corrected by commission staff,<sup>9</sup> Tariff Sheet Nos. 105,  
3 106, 107, 107.1, and 108 filed November 27, 2013, in TA835-2 by APC, effective  
4 January 14, 2014.

5 Participation by the AG and Petitions to Intervene

6 The commission believes it is in the public interest for the AG to  
7 participate in this proceeding as a party. The chairman therefore invites the AG to do  
8 so.<sup>10</sup>

9 We invite others with an interest in this proceeding to consider filing a  
10 petition for permission to intervene as a party after examining 3 AAC 48.110.

11 Decision Timeline and Suspension Period

12 We are required by AS 42.05.175(c) to issue a final decision not later than  
13 450 days after a complete tariff filing is made regarding a tariff filing that changes a  
14 utility's revenue requirement or rate design. TA835-2 was complete November 27,  
15 2013. Therefore, we will issue a final order in this docket no later than February 20,  
16 2015.

17 We suspend TA835-2 for an initial period of six months until July 13, 2014.  
18 Before that date we will evaluate further suspensions.

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<sup>9</sup>Staff corrected the tariffs sheets to accurately reflect in the margins that APC was seeking increases rather than reductions in rates.

<sup>10</sup>AS 42.04.070(c).

1 Commission Panel

2 The chairman designates Commissioners Paul F. Lisankie, Norman  
3 Rokeberg, and Janis W. Wilson as the commission panel<sup>11</sup> and further designates  
4 Commissioner Lisankie as the commission docket manager.

5 Administrative Law Judge

6 Under AS 42.04.070(b), the chairman appoints Administrative Law Judge  
7 Robert A. Royce to facilitate conduct in this docket. The administrative law judge will  
8 issue procedural orders in this docket, unless the commission docket manager  
9 determines that a particular procedural order should be issued by the commission  
10 panel.<sup>12</sup> Orders issued by the administrative law judge will be considered orders of the  
11 commission for purposes of petitions for reconsideration under AS 42.05.171.

12 ORDER

13 THE COMMISSION FURTHER ORDERS:

- 14 1. The tariff filing, designated as TA835-2, filed November 27, 2013, by  
15 Alaska Power Company, is suspended for further investigation until July 13, 2014.
- 16 2. An interim and refundable rate increase of 6 percent on utility services  
17 provided by Alaska Power Company is granted, effective January 14, 2014.
- 18 3. By January 27, 2014, Alaska Power Company shall file a statement of  
19 its intention either to escrow interim and refundable rates or to pay rate payers 10.5  
20 percent per annum interest on any refunds ordered.

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23 <sup>11</sup>Under AS 42.04.080(a), the chairman designates a commission panel to hear,  
or, if a hearing is not required, to otherwise consider and decide docketed matters.

24 <sup>12</sup>The commission docket manager, after consultation with other members of the  
25 panel, may delegate to the administrative law judge whatever authority to issue  
procedural orders he or she considers necessary or advisable in these dockets.

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4. If Alaska Power Company elects to maintain interim rates collected as allowed by this order in an escrow account, then the interest on those interim and refundable rates paid under that escrow shall be retained in escrow and interest amounts attributed to refunded rates will be refundable to rate payers following an applicable order of the commission.

5. Tariff Sheet Nos. 105, 106, 107, 107.1, and 108 filed November 27, 2013, in TA835-2, are approved, as corrected by commission staff, effective January 14, 2014.

6. By February 12, 2014, any interested person shall file a petition to intervene in accordance with 3 AAC 48.110.

7. Commissioners Paul F. Lisankie, Norman Rokeberg, and Janis W. Wilson are designated as the commission panel.

8. Commissioner Paul F. Lisankie is designated as the commission docket manager.

9. Robert A. Royce is appointed as administrative law judge.

DATED AND EFFECTIVE at Anchorage, Alaska, this 13th day of January, 2014.

BY DIRECTION OF THE COMMISSION

