

Michael D. Rossetti  
Founder  
UCARE – Utah Citizens Advocating Renewable Energy  
13051 Shadowlands Lane  
Draper, UT 84020  
801-879-6453  
solar@trymike.com

August 18, 2014

Public Service Commission of Utah  
Heber M. Wells Building, 4<sup>th</sup> Floor  
160 East 300 South  
Salt Lake City, UT 84114

RE: Rocky Mountain Power's Post-Hearing Brief on Net Metering Facilities Charge –  
Docket No. 13-035-184

Dear Commissioners,

I am writing because of concerns I have, on behalf of UCARE, with Rocky Mountain Power's post-hearing legal brief that they filed on August 8, 2014 for docket 13-035-184.

I am submitting this letter, rather than filing a motion to disallow, due to the lateness of the hour and the imminent decision of the Commission relating to the net metering facilities charge proposed in this docket by Rocky Mountain Power ("RMP"). I beg the Commission's forbearance in considering my words a week after RMP's filing as I was out of town on business this last week and was unable to give proper attention to what I thought would be a straightforward and non-contentious matter.

During the final hour of the hearing on July 29, 2013, Mr. Moscon, representing RMP, said the following:

"...I'm wondering if it would be helpful to the Commission if the parties-- those that wanted to--it would be a voluntary application just like testimony--filed a legal brief-- and I'm thinking of something short and to come, you know, in a short order, limited to those legal topics, because it's been apparent to me throughout these proceedings there's not necessarily consistent agreement among all the parties on those legal issues, much less the factual issues before the Commission."<sup>1</sup>

After a short recess to consider the matter, the Commission, with no objections by any participants, agreed with the proposal and said:

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<sup>1</sup> Hearing Proceedings, Volume II, from page 484, line 19 through page 485, line 2.

“These [legal briefs] will be addressing legal issues. They'll be confined to legal issues, not to arguing the facts that have been presented to us.”<sup>2</sup>

UCARE chose not to submit a legal brief because we believed the attorneys for the other parties were far better qualified to give a legal analysis and that UCARE would add little from a legal analysis point of view.

Upon returning from my business trip, I quickly read over the legal briefs submitted by TASC, Utah Clean Energy, the Department of Public Utilities, the Sierra Club, and RMP. All briefs read like the ‘legalese’ I had expected (I was quite impressed by TASC’s.) until I came to RMP’s, by which I was shocked. Because of my surprise, I then spent more time carefully re-reading all of the legal briefs and was, frankly, quite disappointed at RMP’s blatant disregard for the Commission’s instructions “...not to argu[e] the facts that have been presented...”

I am not going to analyze RMP’s legal brief in detail, I merely suggest that the Commission reconsider RMP’s words on the following pages of that legal brief:

Section II.B.2 (page 9): I started to get a little disappointed at the regurgitated argument detail, particularly in the second and third paragraphs. It was not too bad but little warning flags started to pop at this point.

Section II.D (pages 11–13): This entire section reads to me like an “argument analysis” rather than a “legal analysis”. For instance, from the first paragraph, “This evidence, however, is not persuasive and does not rebut the evidence in favor of the NMFC.” Continuing on, RMP’s words are nothing more than summarizing their take on the various arguments made by parties opposed to RMP’s proposal.

Section II.D (page 11): From UCARE’s perspective, the last sentence on page 11 (“Apart from UCARE’s confusing attempts to question this straightforward calculation, none of the Intervenor attempted to rebut it.”) is clearly intended to demean UCARE’s testimony. In particular, I would argue that this statement alone violates the instructions of the Commission and renders RMP’s entire legal brief filing invalid as there is now no opportunity for UCARE to point out the flaws in RMP’s claim. (Such as the confusing testimony of Ms. Steward when asked to explain line 11 of the spreadsheet—the keystone number to RMP’s entire net metering facilities charge calculation.)

Section II.D (page 13): The final sentence of this section (“Therefore, the Commission may reasonably conclude on the evidence presented in this case that the costs of NM exceed the benefits and that the NMFC is just and reasonable.”) does not legitimize all of the argument regurgitation preceding the lone legalese-oriented statement.

Section II.E (page 15): The final sentence in the top paragraph (continued from page 14) (“The Commission should reject this opportunistic argument.”) does not read like a legal opinion to me. A more ‘legal’ opinion would reference rules and precedence.

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<sup>2</sup> Hearing Proceedings, Volume II, from page 487, lines 16 through 18.

Section II.E (page 15): In the final paragraph of this section, RMP says, “The fact that a comprehensive, demand-side management study of costs and benefits of NM in Utah was not presented in this case is no reason to allow residential NM customers to continue to shift some of their fixed distribution system costs to other residential customers when it is clear, based on the evidence presented in this docket and the Commission’s recent findings in the avoided cost docket, that costs of the program exceed its benefits.” UCARE has specifically rebutted the claim of “cost shifting” and shown that the “straightforward spreadsheet” is flawed but, because RMP has violated the instructions of the Commission, we are now unable to respond to this non-‘legal’ statement.

In summary, UCARE urges the Commission to reject with prejudice RMP’s legal brief for blatantly violating the intention of such a brief by using it as an opportunity for a “summary argument”, an opportunity not extended to UCARE nor any other party to this case.

Sincerely,

A handwritten signature in black ink that reads "Michael D. Rossetti". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Michael D. Rossetti  
Founder, UCARE