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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Investigation of the Costs and Benefits of PacifiCorp's Net Metering Program	Docket No. 14-035-114 **ROCKY MOUNTAIN POWER'S** **LEGAL BRIEF IN ADVANCE OF THE DEADLINE FOR DIRECT TESTIMONY**

Pursuant to the First Order Amending Scheduling Order and Notices of Workgroup Meetings, Hearing and Public Witness Hearing, PacifiCorp dba Rocky Mountain Power ("Rocky Mountain Power" or "the Company") hereby submits this brief regarding the proper legal interpretation and meaning of Utah Code Ann. § 54-15-105.1(1)

ARGUMENT

In this matter, the Commission has asked the parties to submit briefs in advance of the deadline of direct testimony regarding legal issues. Specifically, Commission staff requested briefs on the proper interpretation and meaning of Utah Code Ann. § 54-15-105.1(1). That provision requires the "governing authority" to:

> determine, after appropriate notice and opportunity for public comment, whether costs that the electric corporation or other customers will incur from a net metering program will exceed the benefits of the net metering program, or whether the benefits of the net metering program will exceed the costs

A. Principles of Statutory Construction

Well-established principles of statutory construction guide the proper interpretation of this provision. Under Utah law, the language of a statute should be interpreted to give effect to the intent of the legislature.[1] As the Utah Supreme Court stated in *Anderson v. Bell*:

> Our goal when confronted with questions of statutory interpretation is to evince the true intent and purpose of the Legislature. It is axiomatic that the best evidence of legislative intent is the plain language of the statute itself. But our plain language analysis is not so limited that we only inquire into individual words and subsections in isolation; our interpretation of a statute requires that each part or section be construed in connection with every other part or section so as to produce a harmonious whole. Moreover, the purpose of the statute has an influence on the plain meaning of a statute.

2010 UT 47, ¶ 9, 234 P.3d 1147 (citations and internal quotation marks omitted). Therefore, to discern the statutory intent, one looks to "'the plain language of the statute as a whole[] and interpret[s] its provisions in harmony with other statutes in the same chapter and related chapters.'"[2] "When the plain meaning of the statute can be discerned from its language, no other interpretive tools are needed. . . . '[I]f the language is ambiguous, [one] may look beyond the

[1] *See Wilcox v. CSX Corp.*, 2003 UT 21, ¶ 8; *Nelson v. Betit*, 937 P.2d 1298, 1303 (Utah Ct. App. 1997).
[2] *LPI Servs. and/or Travelers Indem. Co. v. McGee*, 2009 UT 41, ¶ 11 (*quoting Miller v. Weaver*, 2003 UT 12, ¶ 17, 66 P.3d 592).

statute to legislative history . . . to ascertain the statute's intent.'"[3] In interpreting a statute, one must "'presume that the legislature used each word advisedly' and 'read each term according to its ordinary and accepted meaning.'"[4]

A. The Interpretation of § 54-15-105.1.

Applying these principles, it is clear that § 54-15-105.1 in its most simple form requires the Commission to determine whether costs net metering imposes on the Company or its customers outweigh the benefits it provides, or vice versa. Then, based on that weighing of costs and benefits, the Commission must determine what fees, charges, credits or ratemaking structure should apply to net metering customers. In conducting the analysis called for by § 54-15-105.1(1), the statutory language clarifies that the benefits at issue only include those benefits (i) that are capable of being weighed, i.e. an objective, quantifiable benefit that can be measured; (ii) benefits that will be actually enjoyed by or realized by the Company or its customers (i.e., not hypothetical or "potential" benefits); and (iii) the threshold to determine whether something is a benefit is taken from the point of view of the Company or its non-net metered customers, or as stated in the statute, "the electrical corporation" and the "other customers." Indeed, nothing in the language of § 54-15-105.1 indicates that the Legislature intended to task the Commission with the impossible undertaking to quantify the unquantifiable. Nor did it task the Commission with the duty of weighing all benefits that could conceivably result at some point in time from net-metering. Otherwise, the Legislature would not have specified that the costs in play consist only of the costs to the "electrical corporation" and "other customers" as expanded upon below.

1. *Section 54-15-105.1(1) excludes consideration of costs or benefits other than those that are actually incurred by or accruing to the Company and its customers.*

[3] Id. (quoting Martinez v. Media-Paymaster Plus, 2007 UT 44, ¶¶ 46-47) (internal citations omitted).
[4] Martinez, 2007 UT at ¶ 46 (quoting State v. Barrett, 2005 UT 88, ¶ 29 (internal citations omitted).

Because the plain language of § 54-15-105.1(1) only contemplates the weighing of "benefits that the electrical corporation or other customers will incur from a net metering program," it is clear that the statute excludes consideration of external benefits such as global health, social and environmental benefits that could theoretically be bolstered by net metering, but that are not directly enjoyed by the Company or its customers. Similarly, the statute excludes from consideration benefits that are not quantifiable, i.e. benefits that are speculative or not capable of being properly "weighed" in the cost-benefit analysis. This interpretation is entirely consistent with how the Commission has historically addressed benefits in the rate-setting context. For instance, in rejecting attempts to include externalities as an avoided cost in setting rates paid to large QFs, the Commission stated:

> We have a difficult time . . . drawing a correlation between avoided distribution and transmission costs that may be projected and tested with a reasonable degree of certainty (*e.g.*, through transmission studies) and environmental risk factors (*e.g.* costs associated with adapting to changing climate) based upon divergent and speculative projections.[5]

Based on the divergent and speculative nature of the externalities, the Commission refused to make any adjustments for alleged costs associated with those externalities.

More recently, in the Small QF Docket, the Commission approved the removal of an assumed CO2 tax in the estimate of non-fuel variable operation and maintenance costs of the proxy combined cycle combustion turbine for Schedule 37 rates.[6] The Commission based its decision on the fact that "no such tax exists and attempts at legislation to implement this tax have failed."[7] Further, the Commission indicated that although a possibility, "it is highly uncertain

[5] *In the Matter of the Application of Rocky Mountain Power for Approval of Changes to Renewable Avoided Cost Methodology for QF Projects Larger than Three Megawatts*, Docket No. 12-035-100, Report and Order, p. 41 (August 16, 2013).
[6] *In the Matter of Rocky Mountain Power's Schedule No. 37, Avoided Cost Purchases from Qualifying Facilities*, Docket No. 14-035-55, Report and Order (October 21, 2014).
[7] *Id.*, p. 19.

whether a tax will be imposed in the 20-year planning horizon, let alone what the rate of such tax might be."[8] These facts do not change simply because the output is generated by residential distributed generation customers. "[T]o the extent potential costs associated with environmental risks and hedging can be projected and factored into Company decision-making, they should be accounted for in PacifiCorp's IRP modeling and resource portfolio evaluation process where cost, risk and uncertainty are evaluated to identify a least-cost, risk-adjusted, long-term resource."[9]

Given this, the benefits for example to beautify, clean the environment or otherwise achieve societal goals (even where those goals are laudable) are not representative of avoided costs enjoyed by the Company or its customers as required by § 54-15-105.1(1). Likewise, providing societal benefits such as fewer days of missed work or other externalities are not quantifiable and do not help the Company achieve its limited mandate to provide the "lowest cost, risk adjusted" power for customers. Indeed, even if some witness claimed to be able to quantify how many "work days" would be saved via improved societal health, that would not translate to a quantifiable benefit to utility rate payers: how many dollars-per-month offset on an electric bill because of an unmeasurable contribution to "cleaner air?" The quantification at issue must pertain to a measureable benefit enjoyed by a ratepayer or a cost saved from a power bill, even when the external value an intervener wants to quantify is otherwise desirable. The issue to be resolved in the section 105.1(1) analysis is whether the costs shifted to the Company and its other customers by net metered customers' is offset in whole or in part by benefits provided by net metering to the Company or its other customers. If so, what is the measureable impact to the rate or rate structure based on the netting of that analysis?

[8] *Id.*, p. 19-20.
[9] Large QF Order, p. 41.

The same principles which govern the assessment of benefits must also apply to the assessment of costs under the statute. Specifically, § 54-15-105.1(1) requires the Commission to calculate the "costs" of the net metering program. Any other interpretation would lead to an absurd result.[10] If this were not true, § 54-15-105.1(1) would, on the one hand, limit the costs in the analysis to those that quantifiable costs that are actually incurred by the Company and its customers, and simultaneously allow the consideration of unquantifiable (i.e. speculative) benefits that do not actually accrue to the Company and/or its customers. Put otherwise, if costs associated with various environmental risk factors, for example, are merely speculative projections that are not directly related to the Company or its customers, so too would be their alleged benefits. The same is true of health and social costs and benefits — where they cannot be reasonably or reliably quantified *and* are not benefits that accrue to the Company or its customers from net metering, they should not factor into the present rate-making analysis under § 54-15-105.1(1).

This interpretation of the Code corresponds to the opinion expressed by the Commission in its March 9, 2015, Notice regarding externalities, when it stated:

> We expect a party advocating for consideration of a factor that could be defined as an externality to establish that factor's applicability, quantifiable value, and proper placement in an analytical framework or equation. We do not expect a party who is not advocating for the inclusion of a particular factor to establish those issues.

While the Company continues to believe that no externalities should be considered, and the statutory mandate of the Code requires the Commission to focus solely on actual costs avoided by Utah rate payers in their electric service bills as a direct result of net metering, *if* the Commission allows discussion of any externality in testimony, it should enter an

[10] *See McGee*, 2009 UT, at ¶ 11 ("'[A] Court should not follow the literal language of a statute if its plain meaning words an absurd result.'") (quoting *Savage v. Utah Youth Vill.*, 2004 UT 102, ¶ 18).

order at this time, in advance of any testimony or exhibits being filed, that such testimony be limited to quantifiable benefits that accrue directly to Utah rate payers as a direct result of net metering.

2. *Section 54-15-105.1(1) excludes consideration of studies relating to benefits or costs outside of Utah.*

Similarly, a proper interpretation of § 54-15-105.1(1) excludes from the cost-benefit analysis consideration of studies or other information regarding the costs or benefits of net metering programs outside of Utah. This is also highlighted in the Commission's March 9, 2015 Notice:

> However, we expect a party advocating for consideration of a factor that could be defined as an externality to establish that factor's ***applicability*** . . .We do not expect a party who is not advocating for the inclusion of a particular factor to establish those issues. (Emphasis added)

Similarly, as the Division has already pointed out,

> Using data and/or studies from non-residential net metered customers and/or the whole universe of renewable net metering across the Company's system [i.e. customers outside of Utah] will distort and prolong the outcome of this proceeding. Utah residential customers have both unique load and generation profiles from those of other Utah customer classes as well as other residential classes in other areas served by the Company. For example, irradiance levels throughout the year in Utah may differ significantly from those of other geographical areas.

The Company agrees with the determination by the Commission and the view of the Division. Because the cost-benefit analysis under § 54-15-105.1(1) is limited to the impacts that are incurred by or accrue to the Company and its non-net-metered customers, the only appropriate inquiry under the statute is what are the costs and benefits to *this* utility (i.e., the Company) and *these* customers (i.e., its Utah customers). For example, other states have different weather patterns, environmental conditions, risk factors, health considerations, power systems, etc. Other utilities have different types and sizes of facilities, distribution and transmission systems, and etc. As such, giving consideration to studies of costs and benefits in other circumstances from other

states is akin to using the costs of another independent utility in another state to establish the costs of the Company. No one would argue that the Company's NPC should be determined by the financials or operations of another utility in another state. It is likewise improper to use studies from other states to determine the costs and benefits of net metering *in Utah.*

The Company's interpretation of the statute to exclude externalities and to exclude analyses based on other states is also supported by the legislative history of this matter. The sponsor of this legislation, Senator Bramble, clarified in his comments surrounding the legislation, was to make sure that net metered customers do *not* shift any of their fixed costs to other customers or the Company:

> "The challenge is as we expand our solar applications at the residential level, how those customers bear their fair share of the . . . fixed costs of the grid." (Recording of Utah Senate Floor Debates, 2nd Substitute S.B. 208, 60th Leg., 2014 Gen. Sess. (March 5, 2014) (statement of Sen. Bramble), available at http://utahlegislature.granicus.com/MediaPlayer.php?clip_id=16994&meta_id=499144).

Indeed, the Commission can note that costs shifted by net-metered customers to the Company between rate cases are costs incurred "by the electrical corporation" and must also be factored in to the Commission's analysis. But to be clear, the Commission must interpret Utah Code Ann. Section 54-15-105.1(1) as requiring a weighing of direct costs shifted by net metered customers to the Company or other customers, and then to fix a rate or charge to offset those shifts, to ensure that net metered customers "pay their fair share of the . . . fixed costs of the grid" as the Legislature intended.

CONCLUSION

Based on the forgoing, the Company maintains that § 54-15-105.1(1), properly interpreted, requires the Commission to conduct a cost-benefit analysis, weighing the costs that would be actually incurred by the Company and its non-net-metered customers from net metering against the benefits that actually accrue to the Company and its customers from net metering. Because of this, the statute precludes consideration of externalities, or costs or benefits (or studies related to them) that do not directly result from net metering by the Company's Utah customers. In addition, the statute precludes from the analysis consideration of merely hypothetical, speculative or non-quantifiable costs or benefits.

DATED this May 6, 2015.

RESPECTFULLY SUBMITTED,

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