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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** **RESPONSE OF OFFICE OF CONSUMER SERVICES**

Pursuant to the First Order Amending Scheduling Order, Notice of Workgroup Meetings, Hearing and Public Witness Hearing, the Office of Consumer Services ("Office") submits this Response Memorandum to PacifiCorp's, dba Rocky Mountain Power ("Rocky Mountain Power" or "the Company,") May 6, 2016 Legal Brief in Advance of the Deadline for Direct Testimony regarding the proper interpretation of Utah Code Ann. § 54-15-105.1.

PROCEEDINGS

On March 16, 2016, this Public Service Commission ("Commission") convened a Technical, Status and Scheduling Conference in docket 14-035-114, In the Matter of the Investigation of the Costs and Benefits of PacifiCorp's Net Metering Program. At this Conference the parties agreed to amend the existing Scheduling Order to provide for new dates and deadlines for various meetings and filings. Including a May 6, 2015, deadline for the filing of Motions and Supporting Briefs to be Considered in Advance of the Deadline for Direct Testimony. (March 19, 2015, First Order Amending Scheduling Order and Notices of Workgroup Meetings, Hearing and Public Witness Hearing, at pg. 1.) Rocky Mountain Power was the only party to submit a brief.

In its brief, Rocky Mountain Power argued, *inter al.*, that section 54-15-105.1's terms "cost" and "benefits" are both modified by the term "the electric corporation or other customers," that section 54-15-105.1 excludes consideration of costs or benefits other than those that are incurred by the Company or its customers, and that section 54-15-105.1 excludes consideration of studies relating to costs and benefits outside of Utah. (Rocky Mountain Power's May 6, 2016 Legal Brief in Advance of the Deadline for Direct Testimony at pg. 3, 7.) ("Rocky Mountain Power's Brief") The Office submits this Response Brief, supporting the Rocky Mountain Power's ultimate conclusions and offering additional grounds.

ARGUMENT

The instant proceeding's aim is to establish a method for determining the costs and benefits of Utah's net metering program, pursuant to the directive of Utah Code Ann. § 54-15-105.1(1). However, the parties disagree over the proper interpretation of the statute.

Specifically, the parties differ on the scope and breadth of the factors to be considered as costs and, particularly, benefits of the program. This round of briefing seeks to illuminate and/or narrow the factors this Commission should consider in establishing a method for a cost benefit determination.

Rocky Mountain Power's brief asserts that subsection 54-15-105.1(1) terms "costs" and "benefits" are both modified by the phrase "the electric corporation or other customers" and it follows that only economic factors accruing to the Company and its customers should be taken into consideration in a cost benefit determination. (Rocky Mountain Power's May 6, 2015 Legal Brief in Advance of the Deadline for Direct Testimony at pg. 3-7)("Rocky Mountain Power's Brief.") The Office is in accord with the Company's contentions and writes separately only to offer alternative grounds for this conclusion.

The starting point in the parties' analysis is the language of the statute itself, which provides:

> The [Commission] shall:
>
> (1) Determine . . . **whether *costs* that the electrical 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; and
> (2) Determine a **just and reasonable** charge, credit or ratemaking structure, including new or existing tariffs, in light of the costs and benefits.

Section 54-15-105.1 (emphasis added); *see also* Subsection 54-15-102(8)(b).

In their February 6, 2015 comments, the interveners seizes on broad terms such as "benefit" and "just and reasonable," read in isolation, to argue that any societal good that could conceivably be linked to net metering should be considered a "benefit" under the statute. In

doing so, they present arguments concerning the meaning of "benefits" that boarder on the chimerical.

On the other hand, Rocky Mountain Power's central contention is that the determination of whether a factor constitutes 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.'" (Rocky Mountain Power's Brief at pg. 3.) Essentially, Rocky Mountain Power argues that the phrase "electrical corporation or other customers" modifies the term "benefit" as well as "costs." Accordingly, Rocky Mountain Power argues that only financial benefits that accrue to Company and its non-net metered customers should be taken under consideration. (Rocky Mountain Power's Brief at pg. 3.)

There is ample support for this contention. The Utah Supreme Court has held that qualifying terms of a statute can apply to both immediate and more remote provisions. *Day v. Meek*, 1999 UT 28,¶¶ 11-19, 976 P.2d 1202. Moreover, Rocky Mountain Power provides significant support for its position and its arguments do not need to be repeated here.

The Office writes separately only to note that if this Commission concludes that the phrase "the electrical corporation or other customers" modifies only the term "costs" and not "benefits," that conclusion does not lead to the consideration of the wide ranging factors urged upon this Commission by interveners. Other considerations limit the term "benefit" to the type of benefit normally addressed in public utility cases. Under this approach, the qualifying language in subsection 54-15-105.1(1) is best understood as distinguishing between "costs," which by their nature accrue only to the "electrical corporation and other [non-net metering] customers," and "benefits," which accrue generally to the Company and all its customers, both non-net metering and net metering.

However, the fact that the term "benefits" applies to all of the utility's customers does not mean that "benefits" applies to all conceivable factors that may be incidentally impacted by net metering. Established rules of statutory construction compel the conclusion that the term "benefit" only applies to factors normally considered in public utilities cases, i.e., factors affecting the costs of service. *Stewart v. Utah Public Ser. Comm'n*, 885 P.2d 759, 771 (Utah 1994); *see generally, Federal Power Comm'n .v Hope Natural Gas Co.,* 320 U.S. 591, 64 S.Ct. 281, 88 L.Ed. 333 (1944).

In addition, the "interpretation of a statute requires that each part or section be construed in connection with every part of the section so as to produce a harmonious whole." *State v. Maestas,* 2002 UT 123, ¶ 54, 63 P.3d 621; *see also Anderson v. Bell,* 2010 UT 47, ¶ 9, 234 P.3d 1147. Accordingly, the term "benefits" in subsection 54-15-105.1(1) must be harmonized with the language in subsection 54-15-105.1(2) and the language in subsection 54-15-105.1(2) is patently concerned with just and reasonable ratemaking.

Moreover, by employing terms such as "just and reasonable," it must be remembered that the legislature was not writing on a clean slate. "Just and reasonable" is a term of art in public utility law. "When the legislature borrows a term of art . . . it presumably knows and adopts the cluster of ideas that were attached to each borrowed word." *Maxfield v. Herbert,* 2012 UT 33, ¶ 31, 284 P.3d 647 (quotations omitted.) If a phrase is "transplanted from another legal source, whether the common law or other legislation, it brings the soil with it." Felix Frankfurter, *Some Reflections on the Reading of Statutes,* 47 COLUM. L. REV., 527, 537 (1947)(cited in *Maxfield,* 2012 UT at ¶ 31, 284 P.3d at 654.)

Thus, in attempting the harmonize the terms "benefits" and "just and reasonable," the terms must be read in light of the settled meaning they possess in other statutes in Title 54 and

the judicial gloss placed on the terms. *Maxfield,* 2012 UT at ¶ 31, 284 P.3d at 654.) Given this, the employment of terms such as "just and reasonable" in subsection 54-15-105.1.(2) does not swing open the doors to the consideration of any wide ranging factors that could arguably be a "benefit" of net metering. To the contrary, the use of the term of art narrows the meaning of "benefit" to factors consistent with settled public utility's law and settled public utility's law has long recognized that "[j]ust and reasonable rates are necessarily based on cost of service and cost of capital." *Stewart,* 885 P.2d at 771.

In *Stewart,* the court rejected the inclusion of extraneous considerations in determining just and reasonable rates. *Id.* at 773. The court stressed that the guiding principles underlying just and reasonable ratemaking are "the protection of the utility's investors from confiscatory rates and, of equal importance, the protection of ratepayers from exploitive rates." *Id.* at 767. The consideration of factors outside this economic compact between the Company and the ratepayers necessarily runs a foul of the accepted meaning of "just and reasonable" in cases decided under Title 54. *Id*. at 773. Moreover, it must be remembered that this economic compact is between the Company and its customers not the Company and the rest of the world.

In sum, the term "benefit" in section 54-15-105.1(1) must be interpreted in light of the accepted meaning of "just and reasonable" in section 54-15-105.1(2) and the term "just and reasonable" in section 54-15-105.1(2), is solely concerned the impact a particular factor has on the economic relationship between the Company and its customers. Therefore, in determining what factors are proper for consideration in any cost and benefits test under 54-15-105.1(1), this Commission should limit consideration to factors affecting the economic relationship between Rocky Mountain Power and its customers, i.e., factors impacting the costs of service and the costs of cost of capital. *Stewart,* 885 P.2d at 771.

Moreover, the fact that this Commission's must make a determination of costs and benefits pursuant to section 54-15-105.1(1) before addressing the proper "just and reasonable charge . . . or ratemaking structure" pursuant to section 54-15-105.1(2), does not change this result. In fact, it strengthens it. Another settled rule of statutory construction provides that "statutes should be construed . . . so that no part or provision will be inoperative . . . so that one section will not destroy another." *Utah v. Jeffries,* 2009 UT 57, ¶ 9, 217 P.3d 265 (citations, quotations and brackets omitted.) As stated above, the section 54-15-105.1(2) is patently concerned with the traditional notions of ratemaking. Therefore, the term "benefit" in section 54-15-105.1(1) must exclude factors that cannot be useful to traditional methods of ratemaking, i.e., factors that cannot be economically quantified. *Stewart,* 885 P.2d at 771.

In their February 6, 2015, comments, interveners present arguments that this Commission should consider societal factors that are admittedly not capable of being economically quantifiable. Even if these factors could be relevant in a cost benefit determination of the economic impact between the Company and its customers, it is impossible to include these factors in this Commission's determination of the type of economic factors to be considered in determining a "just and reasonable credit . . . or other ratemaking structure." Determinations based on cost or services and cost of capital can only be based on economic factors that are capable to be weighed in a traditional ratemaking procedure. Therefore, the interveners' approach renders the statute inoperable. *Jeffries*, 2009 UT at ¶ 9, 217 P.3d 265.

Finally, the Office notes that while it is clear that only economic consideration affecting the Company and its customers directly impacting the cost of service and cost of capital should be taken in to consideration in determining whether a factor constitutes a benefit under section 54-15-105.1(1), it is nevertheless difficult to interpret a statute in the abstract. Therefore, the

Office urges the Commission to rule on the relief requested but not to foreclose later arguments that a factor is not appropriate for consideration after a more complete factual record is fully developed.

CONCLUSION

Pursuant to the proper interpretation of section 54-15-105.1(1)'s term "benefit" and section 54-15-105.1(2)'s term "just and reasonable," this Commission should only consider quantifiable factors that immediately relate to the economic relationship between the Company and its ratepayers, factors that relate to the costs of services and the cost of capital. In addition, in order for all terms of the statute to remain operable, only factors capable of being economically quantifiable can be considered.