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In the Matter of the Rocky Mountain Power's Schedule No. 37, Avoided Costs Purchases from Qualifying Facilities	)	DOCKET NO. 14-035-55
In the Matter of Rocky Mountain Power's Proposed Revisions to Electric Service Schedule No. 37, Avoided Cost Purchases from Qualifying Facilities	)	DOCKET NO. 14-035-T04 COMMENTS OF THE UTAH DIVISION OF PUBLIC UTILITIES

On January 16, 2015, the Public Service Commission of Utah ("Commission") issued a Notice of Intent to Alter Order on Review and Order Staying Portion of Order on Review ("Notice of Intent"). In its Notice of Intent the Commission invited parties to comment on the Commission's intent to alter the Order on Review with respect to the retention of the capacity and energy payment option.

The Utah Division of Public Utilities ("Division") has commented on the elimination of the capacity and energy payment option on multiple occasions in this docket.[1] The Division remains in favor of a single payment option for Schedule 37. The following comments will summarize the Division's position on the matter and briefly comment on the calculated tariff sheets filed by Rocky Mountain Power Company ("Company").

The Division in its January 26, 2015 Response to RMP's Petition for Reconsideration Review or Rehearing set forth its position retaining two methods that can produce results that differ at all will result in two different "avoided costs" for the same energy. FERC has been clear in its interpretation that "Section 210(b) of PURPA provides that such purchases must be at rates that are… <u>not in excess</u> of 'the incremental cost to the electric utility of alternative electric energy.' Section 210(d) of PURPA, in turn, defines 'incremental cost of alternative electric energy' as 'the cost to the electric utility of the electric energy which, but for the purchase from [the QF], such utility would generate or purchase from another source.'"[2] The intent is to ensure that rate payers are financially indifferent as to whether the electricity is purchased from the QF or another source.

Retaining the capacity and energy payment option does not satisfy the ratepayer indifference standard for avoided costs if the outcomes are different. For the same project a QF will deliver the same energy output under either option. A customer cannot, by definition, be indifferent to two different prices for the same energy. Even if the two results are sufficiently

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[1] *See, In the Matter of: Rocky Mountain Power's Proposed Revisions to Electric Service Schedule No. 37, Avoided Cost Purchases from Qualifying Facilities* Docket No. 14-035-T04, (Prefiled Direct Testimony of Abdinasir M. Abdulle, Ph.D.; Aug. 12, 2014 pp. 8-10, Rebuttal Testimony of Abdinasir M. Abdulle, Ph.D.; Aug. 29, 2014 p. 4, DPU Response to Request for Agency Review, Reconsideration or Rehearing; Dec. 5, 2014 pp. 4-6, DPU Response to RMP Petition for Reconsideration, Review or Rehearing; Jan. 26, 2014 pp. 7-9).

[2] *California Pub. Utilities Comm'n S. California Edison Co. Pac. Gas & Elec. Co. San Diego Gas & Elec. Co.*, 133 FERC ¶ 61059, 61265 (Oct. 21, 2010) (emphasis added).

close that they are not deemed to be *materially* different the rate payer is not indifferent as between them. The ratepayer can only be financially indifferent when the payments are valued equal to what the company avoids by receiving the energy.

It has been claimed that "[r]atepayer indifference, while an important consideration, is by no means the single requirement (nor even the most important component) of PURPA or Utah law implementing PURPA" and that "incremental cost is only one of a group of goals that PURPA and Utah laws look to when setting avoided cost rates."[3] While there may be many goals associated with PURPA's "must buy" requirement for QF energy, incremental cost based pricing is not a goal. It is a mandate. FERC is clear that rates purchases must be at rates that do not exceed avoided costs.[4] It is not flexible and cannot simply be ignored.

Similarity in results does not favor retaining two options. In a hypothetical scenario where the capacity and energy option were to result in the same payment as the volumetric option, there is still no justification for retaining it. In this scenario there is no benefit to the QFs as they will receive the same payment and the retention of the capacity and energy payment option serves only to increase the complexity of the Schedule 37 tariff and may lead to confusion by potential QFs who are not familiar with Schedule 37. Therefore even if the capacity and energy payment option were to produce the same results the option should be eliminated.

The capacity and energy payment option does not result in similar pricing. In his direct testimony, Company witness Mr. Gregory N. Duvall, presented evidence that showed that different prices result from applying the energy and capacity payment method instead of the

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[3] *In the Matter of Rocky Mountain Power's Proposed Revisions to Electric Service Schedule No. 37, Avoided Cost Purchases from Qualifying Facilities* Docket No. 14-035-T04, (Utah Clean Energy and SunEdison LLC's Response in Opposition to RMP's Petition for Reconsideration Review or Rehearing; Jan. 26, 2015 p. 11 (emphasis added)).
[4] *California Pub. Utilities Comm'n S. California Edison Co. Pac. Gas & Elec. Co. San Diego Gas & Elec. Co.*, 133 FERC at ¶ 61265.

volumetric pricing method.[5] He showed that for base load, the difference ranged from a low of $45.46 (volumetric) to $45.90 (energy and capacity) to, for fixed solar, $43.77 (volumetric) to $54.39 (energy and capacity).[6] These differences become greater when "avoided costs" are calculated in accordance with the Order on Review.[7] As shown in Table 3 of the Company's January 9, 2015 Motion for Reconsideration the difference in rates is as great as $26/MWh between the capacity and energy payment option and the volumetric payment option. This is an increase of more than 45%. Rate payers will not be indifferent as between the two options.

Finally, it has further been claimed that longstanding precedent should not be reversed without substantial evidence. Substantial evidence is plainly found in the testimony of Mr. Duvall and the calculated rates in the proposed Schedule 37 tariff sheets. The rates are dramatically different between the two methods.

CONCLUSION

The Commission should eliminate the capacity and energy payment option. PURPA and Utah law implementing PURPA must adhere to the ratepayer indifference standard. Ratepayers cannot be indifferent to two different payments for the same energy. Retaining the capacity and energy payment results in dramatically different pricing for QFs delivering the same energy. Therefore retaining the capacity and energy payment option is inconsistent with PURPA and Utah law. The evidence now before the Commission is clear. The energy and capacity payment option must be eliminated.

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[5] *In the Matter of Rocky Mountain Power's Proposed Revisions to Electric Service Schedule No. 37, Avoided Cost Purchases from Qualifying Facilities* Docket No. 14-035-T04, (Duvall, Direct Testimony; July 11, 2014 Table 1, p. 16).

[6] *Id*.

[7] *See*, *In the Matter of Rocky Mountain Power's Proposed Revisions to Electric Service Schedule No. 37, Avoided Cost Purchases from Qualifying Facilities* Docket No. 14-035-T04 (Tariff Sheets, Exhibit A through Exhibit II, filed with the Company's Petition; Jan. 9, 2015).

Dated this 2nd day of February 2015.

Respectfully submitted,

___/s/ Justin C Jetter__________

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DOCKET NO. 14-035-T04

CERTIFICATE OF SERVICE

I CERTIFY that on the 2nd day of February, 2015, a true and correct copy of the foregoing was delivered upon the following as indicated below:

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