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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of Rocky Mountain Power's Proposed Electric Service Schedule No. 32, Service from Renewable Energy Facilities	**DOCKET NO. 14-035-T02** **Utah Clean Energy – Post-Hearing Brief**

Utah Clean Energy submits this post-hearing brief addressing legal issues in Docket No. 14-035-T02, regarding Rocky Mountain Power's proposed Electric Service Schedule No. 32, Service from Renewable Energy Facilities.

INTRODUCTION

Utah Code Ann. Title 54, Chapter 17, Part 8 creates a unique category of electricity service in which large customers of an electric utility may contract for off-site renewable energy and have it "delivered" to them by Rocky Mountain Power through its transmission and distribution system. The statute outlines the major conditions of service that a "contract customer" must meet in order for them to take advantage of this law. For example, the customer must contract for no less than 2.0 MW of renewable electricity delivery; must pay for the incremental administrative, metering and communication costs associated with this "renewable energy contract" service; and must pay the cost of delivering the renewable energy across the utility's transmission and distribution system. The statute requires the contract customer to bear

all "reasonably identifiable costs" that the utility incurs in delivering the renewable electricity to the customer. There is an overall program cap of 300 MW.

The specifics of implementing 54-17-801, et seq. are left to the Commission. The Commission, for example, is directed to determine the "reasonably identifiable costs" associated with service under this part. Importantly, the statute requires the Commission to determine how to implement the following provision: "a qualified utility that enters a renewable energy contract shall charge a contract customer for all metered electric service delivered to the contract customer, including generation, transmission, and distribution service, at the qualified utility's applicable tariff rates, excluding…any kilowatts of electricity delivered from the renewable energy facility *that coincide with the contract customer's monthly metered kilowatt demand measurement*." Utah Code Ann. Section 54-17-805(3)(b).

The proposal in this case that most closely conforms to this criteria and reasonably accounts for costs is UAE's proposal for an hourly demand or shaping fee that allows a contract customer to receive a pro rata credit for the renewable energy capacity the customer imports during the on-peak period.

ARGUMENT

I. The Commission should give effect to the legislative intent of "Senate Bill 12" (Section 54-17-801, et seq.) by accepting UAE's proposal for an hourly on peak demand or shaping charge.

Both the Company's proposal for a daily demand charge and UAE's proposal for an hourly, on peak demand or shaping charge are a departure from the typical definition of "billing demand" used for full requirements customers, for whom the concept of billing demand as the 15 minutes of highest monthly use was initially created. In establishing a new tariff—Schedule 32—for renewable energy contract customers, pursuant to the statutory direction of Title 54, Chapter

17, Part 8, the Commission must make evidentiary findings and give effect to the purpose of the legislation.

In establishing the definition of billing demand for Schedule 32, the Commission should give effect to the legislative intent of "Senate Bill 12." The Commission also has flexibility in establishing the definition of billing demand applicable to Schedule 32 customers in this docket, as the tariff has not yet been established. Therefore, the Commission should adopt UAE's hourly demand/shaping charge because it most reasonably and fairly accounts for the costs associated with renewable energy contracts.

A. In establishing the definition of billing demand for Schedule 32, the Commission should give effect to the legislative intent of Section 54-17-805(3)(b) by looking to its plain meaning in connection to all of "Senate Bill 12."

In defining the monthly metered kW demand measurement for Schedule 32, the Commission should review Title 54, Chapter 17, Part 8 in order to "evince" the purpose the statute was meant to achieve. Utah case law regarding statutory interpretation provides that one must focus on the plain language of the statute as reflected in the statute as a whole:

> Our goal when confronted with questions of statutory interpretation "is to evince the true intent and purpose of the Legislature." *Duke v. Graham,* 2007 UT 31, ¶ 16, 158 P.3d 540 (internal quotation marks omitted); *Gohler v. Wood,* 919 P.2d 561, 562–63 (Utah 1996). It is axiomatic that the best evidence of legislative intent is "the plain language of the statute itself." *Duke,* 2007 UT 31, ¶ 16, 158 P.3d 540 (internal quotation marks omitted). 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.*'" *Sill v. Hart,* 2007 UT 45, ¶ 7, 162 P.3d 1099 (emphasis added) (quoting *State v. Maestas,* 2002 UT 123, ¶ 54, 63 P.3d 621); *State v. Schofield,* 2002 UT 132, ¶ 8, 63 P.3d 667. Moreover, "the purpose of the statute" has an influence on the plain meaning of a statute. *R & R Indus. Park, L.L.C. v. Utah Prop. & Cas. Ins. Guar. Ass'n,* 2008 UT 80, ¶¶ 23, 36, 199 P.3d 917.

Anderson v. Bell, 234 P.3d 1147, 1150 (Utah 2010).

Utah Code Ann. Section 54-17-805(3) provides, in pertinent part, that "A qualified utility that enters a renewable energy contract shall charge a contract customer for all metered electric service delivered to the contract customer, including generation, transmission, and distribution service, at the qualified utility's applicable tariff rates, excluding…any kilowatts of electricity delivered from the renewable energy facility that coincide with the contract customer's monthly metered kilowatt demand measurement."

"Senate Bill 12," on the whole creates a very unique type of service and a unique type of customer. While there are other "partial requirements" customers (such as those on Schedule 31) and other customers with renewable generation (such as net-metered customers), Senate Bill 12 clearly distinguishes renewable energy contract customers from these (see below). This statute is about customers who want to receive a greater portion of their electricity services from *off-site* renewable energy facilities and so *cause additional renewable energy* facilities to be installed and interconnected with Rocky Mountain Power's system, so that renewable electricity can be *delivered*, via the utility's transmission and distribution systems, from the new renewable facilities to the contract customers.

The statute requires that these contract customers bear the "reasonably identifiable costs" associated with service under the statute, but also requires that specific costs be excluded from contract customers' utility charges, including charges for "any kilowatts of electricity delivered from the renewable energy facility that coincide with the contract customer's monthly metered kilowatt demand measurement." The monthly metered kilowatt demand measurement should be and a means of giving effect to the legislature's intent in passing this legislation, rather than an artifact of rate design for full service customers, or even partial requirements customers with behind-the-meter generation.

i. The statute requires that contract customers take delivery of off-site renewable energy in real time.

The entirety of 54-17-801, et seq. outlines, in general terms, the process and requirements whereby a customer may take delivery of electricity from one or more offsite renewable energy facilities via a qualified utility's transmission and distribution system. In addition to this foundational purpose, the statute makes clear in numerous locations that the service enabled by the statute must be taken in real time and is not to be confused with net metering. For example:

- "The amount of electricity provided to a contract customer under a renewable energy contract may not be less than 2.0 megawatts."[1]
- "The amount of electricity provided in any hour to a contract customer under a renewable energy contract may not exceed the contract customer's metered kilowatt-hour load in that hour at the metered delivery locations under the contract."[2]
- "Electricity generated by a renewable energy facility and delivered to a contract customer under a renewable energy contract may not be included in a net metering program."[3]

There is no automatic or net-metering mechanism written into the statute whereby a contract customer is able to use over-generation from one time to offset under-generation at another time. In other words, the statute contemplates *real time accounting* for the generation coming from the renewable energy facilities. All other electricity from the renewable facility is exported to the grid, and the customer receives no non-coincident offset or credit for it.

Consistent with this "real time" accounting for the renewable generation associated with a contract, a customer sees the value of their investment in a renewable energy contract—as on offset to their utility bill—*solely through the required cost exclusions* found in Utah Code Ann.

[1] Utah Code Ann. Section 54-17-802(4). 2.0 MW is the maximum amount allowed under Utah's net metering law, which is Utah Code Ann. Section 54-15-101, et seq.

[2] Utah Code Ann. Section 54-17-802(5). This distinction precludes any net metering arrangement where excess generation at one time offsets under-generation at another time.

[3] Utah Code Ann. Section 54-17-802(8).

Section 54-17-803. Thus, accounting for costs—and identifying them reasonably, consistent with the direction of the statute—becomes a critical task in ensuring effective implementation of Senate Bill 12.

ii. The statute requires contract customers to bear "reasonably identifiable costs" and specifies cost exclusions that customers shall not be charged.

The statute requires the Commission to reasonably identify costs associated with renewable energy contracts, and exclude specific costs from customers' tariff rates.[4] In that way, a contract customer sees the value of their investment in a renewable energy contract solely through the required cost exclusions found in 54-17-803. Therefore, the Commission must define monthly metered kilowatt demand measurement in a way to account as fully as possible for actual costs and value. To do otherwise would undermine the statutory requirement that "any kilowatts of electricity delivered from the renewable energy facility that coincide with the contract customer's monthly metered kilowatt demand measurement" must be excluded from the customer's utility bill.

Thus, although the daily demand charge proposed by Rocky Mountain Power is a useful concept, it is inadequate for implementing SB 12 because it is not granular enough to exclude required costs from customer rates—that is, it does not recognize or account for the reliable external capacity the renewable energy facility is importing during most of the "on-peak" period. "A more reasonable approach is to make the daily demand charge more granular by converting it into an hourly demand charge… By doing so, the Schedule 32 customer would receive a pro rata credit for the renewable energy capacity the customer imports during the on-peak period."[5]

[4] Utah Code Ann. Section 54-17-805(2).
[5] UAE Exhibit 1.0, lines 92-96.

It would be unreasonable to negate the real capacity benefit associated with Schedule 32 service simply because the legislature directed the Commission to establish a type of service that does not fit squarely with a definition of billing demand used solely, though not exclusively, for full-requirements customers. In practical terms, the Company's daily demand charge proposal will require a contract customer, who contracts with a solar facility, to pay its demand charge for the whole day based on its demand in the final on-peak hour:

> What this means is that a Schedule 32 customer who delivers reliable solar capacity for seven hours out of the eight summer on-peak hours during a summer day will get absolutely zero credit for this capacity against the on-peak demand charge. That is, the daily power charge for this customer *will be the same as if this customer brought absolutely no renewable capacity* at all during the remainder of the day or the earlier part of the day.[6]

This is a fundamentally unreasonable result. The UAE proposal is reasonable because it allows a Schedule 32 customer to receive credit, on a proportional basis, for the external capacity they bring to the system. The credit the customer is able to receive is in direct proportion to actual generation during Rocky Mountain Power's on-peak hours.[7] It is a pro rata credit against the demand charge that applies only to the amount of electricity contracted for through the renewable energy contract.[8]

B. The Commission has flexibility in establishing the "applicable tariff rate" referenced in Section 54-17-805(3).

The Commission can and must define "monthly metered kW demand measurement" for Schedule 32 in the current docket because the tariff does not yet exist. As discussed above, the Commission should do this according to the direction offered by Utah Code Ann. Title 54,

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[6] Transcript, pages 94-95 (Direct Examination of Mr. Higgins by Mr. Dodge) (emphasis added).
[7] UAE Exhibit 1.0, lines 364-368.
[8] Transcript, pages 70-71 (Cross Examination of Mr. Peterson by Mr. Dodge).

Chapter 17, Part 8. Because Rocky Mountain power currently uses a variety of definitions of billing demand for different types of customers, the Commission clearly has the flexibility to select a billing demand measurement that is different than the typical 15 minutes of highest use used for most, though not all, *full requirements* customers.[9]

There is currently no consistently-utilized definition of billing demand in Rocky Mountain Power's tariff. Rocky Mountain Power has departed from the simplicity of a tariff that relies on a single definition of billing demand.[10] Historically, the 15 minutes of greatest monthly use was used, though this increasingly seems to be an artifact of a less complicated era of rate design, before the Company began defining billing demand in different ways for different rate schedules, for different rate design purposes.

Defining billing demand solely in terms of the 15 minutes of greatest use during a month is likely a relic of setting rates for full requirements customers. For example, for partial requirements/back-up power customers, Schedule 31 does not use the monthly maximum definition of billing demand; rather, it uses a daily maximum definition identical to the Company's proposal for Schedule 32's daily power charges in this docket.[11] Interestingly, even full requirements rate schedules have started to depart from the typical definition of billing demand. For example, under Schedule 9, billing demand is based on maximum demand during *on-peak hours* during the month, not all hours.[12]

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[9] *See, e.g.* Electric Service Schedule 31 (with a daily demand charge applied to partial requirements customers with "behind the meter" generation) and Electric Service Schedule 9 (with a monthly demand charge based on on-peak rather than all hours in a month).

[10] *See supra* note 9.

[11] *See supra* note 9.

[12] *See supra* note 9.

Therefore, the Commission should be flexible when defining billing demand in order to meet rate design objectives and satisfy the direction of the legislature. Moreover, it would not be inconsistent with current utility or Commission practice to take the purpose, type or objective of the rate schedule into account in establishing billing demand for a unique type of partial requirements customer.

C. UAE's hourly demand/shaping charge most reasonably and fairly accounts for the costs associated with renewable energy contracts.

In this proceeding, the Company attempted to "unbundle" the components of general service rates (for Schedules 6, 8 and 9)—generation, transmission and distribution (in addition to customer and administrative services)—and reincorporate the costs associated with those services into a new rate schedule for a new kind of partial requirements customer (one who contracts for a portion of their electricity to be served by one or more off-site renewable energy facilities). The objective of this—taking a bundled rate and unbundling it —is to enable the partial requirements customer to pay for the Company's services to the extent they use and rely upon them, but also to allow the customer to avoid paying for services they don't use.[13]

The UAE method built upon this approach, but allows for a fairer accounting of costs, consistent with the "real-time" accounting required by the statute:

> My recommended approach makes sense for the issue at hand: designing fair rates for customers who are bringing renewable energy capacity to the system during on peak hours. The fundamental problem with the Company's approach is that it is an 'all or nothing' proposition." *Under the Company's approach, a Schedule 32 customer who delivers reliable solar capacity for 7 hours out of the 8 summer on-peak hours during a summer day will get ZERO credit against the on-peak demand charge because the*

[13] "Because customers taking Schedule 32 service receive electricity from sources other than Rocky Mountain Power, they may or they may not require all of the Company's services during a given month or on any given days. Therefore, it was necessary to unbundle the current tariff rate that the customers pay to ensure that the customers are paying for those individual services that they receive." Transcript, page 16, lines 13-20 (Direct Examination of Mr. Taylor by Ms. Hogle).

> *Company will be required to provide shaping power for the last on-peak hour of the day (i.e., between 8 and 9 pm).* The demand "penalty" charged to the Schedule 32 customer in this example is not grounded in a valid argument[—]that maintains the customer's imported solar is somehow actually worthless—no party is taking that position—the demand penalty is simply an artifact of the rate design for *full-service* customers. Whether or not the 'all or nothing' characteristic of the on-peak demand charge is reasonable for the full-service customers for whom Schedules 6, 8, and 9 are intended, the on-peak demand charge was *not* designed with customers in mind who would 'bring their own' renewable energy capacity to the table. As the Commission seeks to implement the public policy of the State embodied in Senate Bill 12, the Commission cannot reasonably ignore the glaring shortcoming in the Company's Schedule 32 rate design. My recommended approach overcomes this shortcoming by providing the Schedule 32 customer with pro rata credit for the renewable energy capacity the customer imports during the on-peak period. At the same time, if the Schedule 32 customer provides no capacity during the on-peak period, my approach would charge that customer the full amount of the demand-related costs for that on-peak period.[14]

Both Rocky Mountain Power and UAE created their Schedule 32 proposals to fulfill a "fundamental reasonableness test."[15] That is, do the charges produce the same revenues as the customer's otherwise applicable rate schedule in a month in which the renewable energy resource is unavailable for the entire month?[16] Both proposals pass this test. However, one very important distinction between Rocky Mountain Power's and UAE's proposals is that UAE's proposal, utilizing an hourly demand or shaping charge, "produces more reasonable results when the renewable resource is operating as anticipated and the customer must purchase shaping power on a regular basis."[17] It is telling, if troubling, that the Company's proposal produces unreasonable or unworkable results when a renewable energy facility is fully functional. This indicates that the UAE proposal, while still passing the fundamental reasonableness test, does a better job at fulfilling the purposes of and effectuating SB 12.

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[14] UAE Exhibit 1.0 SR, pages 10-11 (emphasis in original).
[15] UAE Exhibit 1.0, lines 395-401
[16] *Id.*; *see also* Transcript, page 25, lines 14-21 (Direct Examination of Mr. Taylor by Ms. Hogle).
[17] UAE Exhibit 1.0, lines 401-04.

Dated this 16th day of January, 2015.

RESPECTFULLY SUBMITTED,

Utah Clean Energy

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