

November 27, 2018

***VIA ELECTRONIC FILING***

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

Attention: Gary Widerburg  
Commission Secretary

**RE: Docket No. 18-035-39**  
Investigation Re: Expiring Excess Generation Credits under Schedule 135  
*Reply Comments*

On October 10, 2018, the Public Service Commission of Utah (“Commission”) issued a Notice of Docket and Comment Period (“Notice”) requesting comments for the purpose of considering alternative uses of expiring excess generation credits under Schedule 135 (“Expiring Excess Credits”). On November 8, 2018, the Division of Public Utilities (“Division”), the Office of Consumer Services (“Office”), and Utah Clean Energy (“UCE”) each filed comments. On November 7, 2018, AARP Utah, Catholic Diocese of Salt Lake City, Crossroads Urban Center, Utah Coalition of Manufactured Homeowners, and Utahns Against Hunger filed joint comments (“AARP Utah et al”). Consistent with the Notice, Rocky Mountain Power (“Company”) submits reply comments below.

**Summary of Comments**

The Office and UCE continue to advocate for changing the current practice of crediting the Expiring Excess Credits to the Home Electric Lifeline Program (“HELP”) program, to use them to provide additional funding toward the Utah Weatherization Assistance Program (“WAP”). The Division states it is not opposed to a change in the treatment of the Expiring Excess Credits, but declines to support any specific proposal until it obtains more clarity on the current use of funds in the WAP. The comments of AARP Utah et al expressed support for the Office’s WAP proposal.

The Office

The Office states that the WAP proposal is consistent with law, specifically as another use as determined by the governing authority. The Office also states that the WAP is well established with significant oversight and has a waitlist for participation. The Office further claims the WAP offers longer-term benefits beyond one-time bill credits because it can lower ongoing energy costs. Included with the Office’s comments was a letter from Weatherization Program Manager that expressed the program’s capability and willingness to receive the funds for immediate use for participants on the waitlist.

## UCE

UCE aligns with the Office in their support for the proposal and clarifies that their intention is that the Expiring Excess Credits go directly to WAP without consideration as to the specific electric energy savings attributable to the measures installed. UCE points to Utah Code Ann. § 54-15-104(4)(b) which provides the use of the funds for another use as determined by the governing authority. UCE opines on the intent of the legislature, claiming that they “likely delegated the discretion and authority to determine a use for the expired Schedule 135 credits to the Commission in order to ensure that the value of the credits is used to provide incremental low-income assistance.”<sup>1</sup> UCE claims that if legislature’s intent was to accept that the funds may not actually be put to use it would have simply directed the funds to serve the utility’s low-income program under subsection 54-15-104(4)(a), regardless of whether that program could make use of the funds.

## Division

The Division expresses support for the use of the Expiring Excess Credits to go to the WAP as being in the public interest. This support is tempered by the Division’s concern that the funds currently offered to the WAP through Schedule 118 are not fully used. Thus although the Division does not oppose changing the use of the funds, it reserves its support for any specific proposal until it gains a better understanding of the current use of funds.

## **Rocky Mountain Power’s Response**

The Company’s position on the proposal to transfer funds to the WAP has not changed from its comments filed on November 8, 2018 (“Original Comments”). The Office and UCE argue that transferring the funds to the WAP allows them to be used to provide low-income households with ongoing benefits, instead of benefits that are more one-time in nature. Also, parties claim that the WAP is well established, has a participant waitlist, and is subject to significant oversight. Parties further claim the Commission has the authority to transfer the funds to the WAP under Utah Code Ann. § 54-15-104(4)(b). None of these arguments address the Company’s concern with this proposal, which the Company raised in the Original Comments and in reply comments filed in Docket No. 18-035-28 on August 16, 2018. No party has provided support for why it is just, reasonable, and in the interest of the Company’s customers to use electric customers’ funds to support weatherization measures that are targeted at non-electric savings. The Company believes that combining funds in this manner is inappropriate and problematic because allowing cross-subsidization could set bad precedent. Additionally, as discussed in the Company’s Original Comments, it is unclear whether Utah law allows for such cross-subsidization. The Company firmly believes it is in the best interest of electric customers to maintain a separation of costs and benefits between different energy sources unless expressly authorized by law.

The Company’s alternative proposal to transfer the funds to Lend-A-Hand accomplishes most of the objectives argued by the Office and UCE—it provides incremental benefits to low-income household, is well-established, has a participant waitlist, and is subject to oversight by The Salvation Army. The Commission also clearly has the authority to approve this change under

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<sup>1</sup> See UCE Comments, November 8, 2018, p. 5.

Section 54-15-104(4)(b) of the Utah Code. The Company does not dispute that the benefits received from Lend-A-Hand are one-time energy bill assistance, as opposed to the possible longer term non-electric benefits from WAP. However, this small consideration pales in comparison to the possible legal and policy issues the WAP proposal could create due to an inappropriate comingling of funds.

UCE continues to argue that the legislative intent regarding the use of expired Schedule 135 credits is to provide incremental benefits to low-income customers. As the Company indicated in its Original Comments, the net metering statute does not mention “incremental benefits” for low-income customers, and is clear on the use of expiring excess credits. Therefore, the Commission may not consider legislative history or intent when interpreting a statute if “the language of the statute is clear and unambiguous.”<sup>2</sup> The Company reiterates that even if the Commission determines that it has the authority under the net metering statute to transfer funds sourced from electric customers for measures that are targeted towards natural gas savings, this is not proper treatment of those funds.

### Summary

For the reasons set forth in the Company’s November 8, 2018 comments and here, the Company respectfully requests that the Commission:

- Deny the proposal to divert the value of Expiring Excess Credits to the WAP,
- Adopt the Company’s alternative proposal to use the Expiring Excess Credits to fund the Lend-A-Hand program to provide direct and incremental benefits to low-income customers,
- Alternatively, continue to endorse its long-standing policy of using the Expiring Excess Credits to fund the HELP.

Sincerely,

  
Joelle Steward  
Vice President, Regulation

CC: Service List - Docket No. 18-035-39

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<sup>2</sup> Visitor Information Center Authority of Grand County v. Customer Serv. Div., Utah State Tax Com’n, 930 P.2d 1196, 1197 (Utah 1997).

**CERTIFICATE OF SERVICE**

Docket No. 18-035-39

I hereby certify that on November 27, 2018, 2018, a true and correct copy of the foregoing was served by electronic mail to the following:

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