- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Consideration of the Amendment of Title 16 U.S.C. 2621(d) and the Addition of Title 42 U.S.C. 6344 by the U.S. Energy Independence and Security Act of 2007	)))))))	DOCKET NO. 08-999-05 DETERMINATION CONCERNING THE PURPA RATE DESIGN STANDARD

ISSUED: December 16, 2009

SYNOPSIS

The Commission determines prior state actions addressing energy efficiency are equal to or comparable with the PURPA Rate Design Standard and adoption of the standard is not necessary.

By The Commission:

REGULATORY HISTORY AND COMMISSION RESPONSIBILITY

The 2007 Energy Independence and Security Act ("2007 EISA"), signed into law on December 19, 2007, amended the Public Utilities Regulatory Policies Act ("PURPA") by adding the following four new standards to Title 1 Subtitle B of PURPA:[1] integrated resource planning, rate design modifications to promote energy efficiency investments ("Rate Design Standard" or "Standard No. 17"), consideration of smart grid investments, and smart grid information. Herein, we address the Rate Design Standard.

[1] PURPA § 111(d), 16 U.S.C. § 2621(d).

The Commission has previously examined regulatory standards enacted by PURPA.[2] Title 1 Subtitle A of PURPA[3] requires the Commission, with respect to each utility for which it has ratemaking authority, to consider and make a determination whether the standards set forth in PURPA are appropriate to be implemented to carry out the purposes of PURPA, namely: 1) conservation of energy; 2) the efficient use of facilities and resources by electric utilities; and 3) equitable rates to electric consumers. The Commission's consideration must be after public notice and hearing and the Commission's determination must be in writing, based upon findings included in the determination and evidence provided at hearing, and available to the public.

The Commission may choose to implement a standard or adopt a different standard from those described in PURPA. And while nothing prohibits the Commission from determining that it is not appropriate to implement a standard,[4] if the Commission declines to adopt a standard it is required to state in writing the reason for its decision and make that statement available to the public. The Commission, in its consideration and determination of the Rate Design Standard may consider whether: 1) the State has implemented a rate design standard or comparable standard; 2) the Commission has conducted a proceeding to consider implementation of the Rate Design Standard or comparable standard; or 3) the State Legislature has voted on implementation of the Rate Design Standard or comparable standard. Following a

[2] See Docket Nos. 80-999-09, 81-999-01, 81-999-02, 81-999-03, 81-999-04, 81-999-05, 93-999-03, 93-999-04, and 06-999-03.

[3] PURPA § 101, 16 U.S.C. § 2611.

[4] PURPA § 111(a), 16 U.S.C. § 2621(a).

brief procedural history, we address the PURPA requirement to consider and make a determination whether or not it is appropriate to implement the Rate Design Standard to carry out the purposes of PURPA.

PROCEDURAL HISTORY

In a letter dated August 28, 2008, the Commission informed the U.S. Department of Energy that PacifiCorp, doing business in Utah as Rocky Mountain Power ("Company"), is the only electric utility subject to PURPA over which the Commission has ratemaking authority. On September 8, 2008, the Commission issued a Notice of Technical Conference to be held on November 5, 2008, with the purpose of: 1) discussing the four new standards applicable to electric utilities enacted by the 2007 EISA and the requirements for consideration and determination of these standards; 2) identifying existing statutes and programs in place which may potentially address the standards; and 3) setting a procedural schedule.

During this technical conference the Demand-Side Management ("DSM") Rate Design Group, initially formed by stipulation in Docket No. 07-035-93[5] to discuss and investigate rate design proposals to promote conservation and energy efficiency, accepted an assignment to evaluate Standard No. 17.

The DSM Rate Design Group met on November 10, 2008, January 8, 2009, February 5, 2009, February 26, 2009, and March 12, 2009. On May 11, 2009, the DSM Rate

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[5]Docket No. 07-035-93, "In the Matter of the Application of Rocky Mountain Power for Authority To Increase its Retail Electric Utility Service Rates in Utah and for Approval of Its Proposed Electric Service Schedules and Electric Service Regulations, Consisting of a General Rate Increase of Approximately $161.2 Million Per Year, and for Approval of a New Large Load Surcharge." Stipulation in Cost of Service, Rate Spread and Rate Design – Phase II approved by the Commission on November 6, 2008. Condition 10.c. DSM Group.

Design Group filed a report entitled, "Rate Designs that Promote Energy Efficiency and Conservation" in Docket No. 07-035-93. In response to the information received during the DSM Rate Design Group work group meetings and based on further research, on November 19, 2009, the Division filed with the Commission a recommendation pertaining to the Rate Design Standard in which the Division recommended the Commission should not adopt the Rate Design Standard. On November 19, 2009, the Commission issued a Request for Comments on the Division's recommendation with a filing deadline of December 9, 2009, to which the Company and the Office of Consumer Services ("Office") responded. On December 14, 2009, Utah Clean Energy and Southwest Energy Efficiency Project ("Collectively referred to as UCE/SWEEP") filed late comments.

THE RATE DESIGN STANDARD

Section 532 of the 2007 EISA amended Section 111(d) of PURPA and U.S.C. §2621(d) by adding the following standard:

> (17) RATE DESIGN MODIFICATIONS TO PROMOTE ENERGY EFFICIENCY INVESTMENTS.
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> (A) IN GENERAL.— The rates allowed to be charged by any electric utility shall-
> (i) Align utility incentives with the delivery of cost-effective energy efficiency; and
> (ii) Promote energy efficiency investments.
>
> (B) POLICY OPTIONS.— In complying with subparagraph (A), each State regulatory authority and each nonregulated utility shall consider-
> (i) removing the throughput incentive and other regulatory and management disincentives to energy efficiency;
> (ii) providing utility incentives for the successful management of energy efficiency programs;

> (iii) including the impact on adoption of energy efficiency as one of the goals of retail rate design recognizing that energy efficiency must be balanced with other objectives;
> (iv) adopting rate designs that encourage energy efficiency for each customer class;
> (v) allowing timely recovery of energy efficiency-related costs; and
> (vi) offering home energy audits, offering demand response programs, publicizing the financial and environmental benefits associated with making home energy efficiency improvements, and educating homeowners about all existing Federal and State incentives, including the availability of low-cost loans, that make energy efficiency improvements more affordable.

The 2007 EISA Rate Design Standard must be evaluated in terms of the standard itself and the PURPA general requirements. With respect to whether or not it is appropriate to implement the Rate Design Standard, adopt a modified standard, or decline to adopt the standard we consider the parties comments as discussed below in light of the purposes of PURPA.

A. Positions of the Parties

The Division recommends the Commission not adopt the Rate Design Standard and no further actions are required. The Division believes current rate designs and the DSM activities in Utah are in line with the requirements of the Rate Design Standard and any modifications to the current rate designs need to be made in a rate setting case. The Division summarizes the discussions from the DSM Rate Design Group meetings pertaining to rate structures which would encourage energy efficiency for residential, commercial and industrial classes and states the Work Group also discussed the disincentives the Company faces in implementing energy efficiency programs. The Division points out that energy efficiency programs designed to reduce energy usage may make it difficult for the Company to recover all of its fixed costs through volumetric charges as the current rate structures are such that some of the fixed costs are recovered through volumetric charges. The Division asserts that, in general, the work group does not believe collecting fixed costs through high fixed charges is a viable option and that other alternative collection mechanisms require further study.

The Division notes: the Company currently acquires a cost-effective portfolio of energy efficiency and DSM programs in Utah absent the alternative mechanisms; the Company has been able to recover prudently-incurred DSM expenditures in a separate tariff rider; DSM is a cost-effective resource which helps the Company meet a portion of its rapidly growing resource deficit; and the Company has expanded existing Utah programs to target greater participation levels and energy savings. Finally, the Division notes the costs recovered through the tariff rider do not include the revenue loss due to reduced sales. Therefore, the Division believes further analysis and consideration of methods to eliminate or reduce the utility’s financial disincentives associated with investments in energy efficiency programs is needed.

While disagreeing with the Division’s overall conclusions that current rate designs and DSM activities in Utah are “in line” with the requirements of Standard No. 17, the Company does not believe the Commission needs to go as far as adopting Standard No. 17 at this time. Rather, the Company recommends the Commission initiate a docket to remove the disincentives associated with the residential rate design and implement the outcome of such a docket at the time of the next rate change.

The Company maintains the current residential rate design does not properly reflect or adequately recover the fixed costs to serve customers. The low customer charge in this rate design forces the Company to recover a greater percentage of its fixed costs from volumetric charges creating a disincentive for the Company to encourage its customers to use less electricity. The Company asserts that in order to eliminate the utility disincentive, the Commission must either increase the customer charge to reflect the total fixed costs incurred by the Company or establish a decoupling mechanism which ensures the Company has a reasonable opportunity to recover the fixed costs associated with providing services to residential customers. The Company also asserts that due to the revenue loss, there is currently no incentive for the Company to participate in and implement DSM measures in Utah. The Company also discusses the relationship between dampened price signals, utility programs, and investments in energy efficiency measures

The Office agrees with the Division's primary recommendation that the current class rate design and level of DSM investment in Utah comport with the requirements of the Rate Design Standard and no further action is necessary. The Office concurs with the Division's assessment that the Company's existing class rate designs already promote energy conservation and any proposed rate design changes should be examined in rate cases. The Office, however, does not support the Division's recommendation that alternative mechanisms to eliminate or reduce the utility's financial disincentives be further investigated. The Office notes the levels of DSM activity in Utah have rapidly escalated over the past year resulting in the Commission's

August 25, 2009, Order Granting Approval of Phase I Stipulation in Docket No. 09-035-T08[6] which increased the DSM schedule No. 193, “Demand Side Management (DSM) Cost Adjustment” rate from 2.1 percent to 4.6 percent to recover current and projected balances through August 2011.

The Office believes the dramatic increase in DSM activity demonstrates that the Company is aggressively pursuing DSM investment and the investigation of additional incentives or alternative mechanisms would not be good use of regulatory time and resources. The Office recommends the DSM focus should be on the appropriate rate of acquisition and funding of DSM programs, with consideration given to rate stability.

UCE/SWEEP recommends the Commission either adopt Standard No. 17 in its entirety such that the provisions of the Rate Design Standard will be considered in all applicable regulatory decisions, or adopt an equivalent standard stating that the provisions of Standard No. 17 will be considered in all regulatory proceedings. This, UCE/SWEEP believes, will provide a framework for analyzing rate design with respect to advancing energy efficiency. UCE/SWEEP states adoption of the Rate Design Standard is in the public interest and is consistent with the Utah Legislature’s 2009 House Joint Resolution 9 (“HJR 9”).

UCE/SWEEP maintains: current rate recovery mechanisms result in a throughput incentive which is counter to the promotion of energy efficiency; the Company does not have incentives for successful management of its DSM programs; the major reason a residential four-tier rate structure proposed by SWEEP in the DSM Rate Design Group is not favored by some

[6] 09-035-T08, “In the Matter of the Approval of Rocky Mountain Power’s Advice No. 09-08 Schedule 193 Demand Side Management (DSM) Cost Adjustment.”

parties is the fact that it would create a greater risk of cost recovery for the Company because a higher percentage of cost recovery is shifted to the highest tiered blocks; and that opportunities remain for improving rate designs for commercial and industrial customers.

While agreeing with the Division that throughput incentive creates a financial disincentive to energy efficiency, UCE/SWEEP disagrees with the Division that current rate designs are in compliance with the Rate Design Standard. UCE/SWEEP recommends the Commission open a docket as soon as practicable to address utility disincentives and incentives for DSM.

B. Discussion, Findings and Conclusions

For the reasons stated above, neither the Division, the Company, nor the Office recommends adopting the Rate Design Standard. Only UCE/SWEEP recommends adoption of the Rate Design Standard or a modified standard. We agree with the Division, the Company, and the Office that adoption of this standard is not necessary to carry out the purpose of PURPA applicable to the standard, namely conservation of energy supplied by electric utilities, for the following reasons. The Commission has long been an advocate of energy efficiency and DSM (collectively referred to as "DSM") as our consideration of DSM-related activities commenced in 1984 with Docket No. 84-999-19, "In the Matter of the Investigation of Future Supply and Demand for Electric Power in the State of Utah." In addition, our policy toward inclusion of DSM activities in long-range planning was formally adopted in our June 18, 1992, Report and Order on IRP Standards and Guidelines in Docket No. 90-2035-01, "In the Matter of the Analysis of a Least-Cost Power Plan for PacifiCorp."

Further, we have conducted numerous other investigations regarding the treatment of DSM in the regulatory context (e.g., Docket Nos. 90-035-06, 92-2035-04, 02-035-T12,[7] and most recently 09-035-T08). These investigations have resulted in the establishment of the DSM Advisory Group, the development and approval of the current DSM tariff rider, and the approval of more than 20 Company-proposed DSM programs. In addition, in response to the results contained in recent IRPs, the Company's goals for establishing and implementing DSM programs have increased year by year as DSM has been found to be an integral component in its portfolio of resources used to meet the electricity requirements of its customers.

While not mentioned by any party, we find other actions address some of the provisions of the Rate Design Standard. For example, in Docket No. 09-035-36[8] the Company filed for approval of, and the Commission approved, a Strategic Communications and Outreach Program ("Program") for DSM with a proposed Program funding not to exceed $1.5 million per year over an initial three-year period; the Company's Schedule No. 193 DSM tariff rider addresses provisions of the Rate Design Standard pertaining to the timely recovery of energy efficiency-related costs; and the Company's energy efficiency website contains information pertaining to incentives, DSM programs, and the like.

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[7]Docket No. 90-035-06, "In the Matter of the Investigation of the Reasonableness of Allocations and the Rates and Charges for Utah Power & Light Company," Docket No. 92-2035-04, "In the Matter of of Ratemaking Treatment of Demand-Side Resources and the Analysis of Regulatory Changes to Encourage Implementation of Integrated Resource Planning," and Docket No. 02-035-T12, "In the Matter of In the Matter of Demand Side Management Cost Recovery by PacifiCorp dba Utah Power & Light Company."

[8]Docket No. 09-035-36, "In the Matter of the Application of PacifiCorp d/b/a Rocky Mountain Power filing for Approval of a Proposed Strategic Communications and Outreach Program for Demand Side Management."

Also, we find legislative support for the purposes of PURPA applicable to the Rate Design Standard in the form of recent revisions to Utah Code 54-4-4.1 by 2009 Senate Bill 75, 2009 HJR 9, and Utah Code Utah Code 54-3-1. Utah Code 54-4-4.1 now allows the Commission to adopt any method of rate regulation that is: consistent with Utah Code Title 54, in the public interest, and just and reasonable. Accordingly, methods of rate regulation may include: rate designs utilizing volumetric, demand, fixed rate, and variable rate components; rate stabilization methods; decoupling methods; incentive-based mechanisms; and other components, methods, or mechanisms approved by the commission.

As mentioned by UCE/SWEEP, the Utah Legislature's 2009 HJR 9 provides policy direction to the Company, regulators, and others in terms of energy efficiency goals and regulatory mechanisms intended to help remove utility disincentives and create incentives to increase efficiency and conservation, so long as the mechanisms are found to be in the public interest. And Utah Code 54-3-1 specifies that all rules and regulations made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable. This Subsection also specifies that the scope of the definition of "just and reasonable" may include, among other things, the economic impact of charges on each category of customer, the economic well-being of the state of Utah, and means of encouraging conservation of resources and energy.

We also note that in other recent evaluations of PURPA standards applicable to electric utilities,[9] we have declined to adopt standards which mirror existing State laws,

[9] See Docket Nos. 06-999-03, and 08-999-05.

Commission policies, or utility practices as we have found such standards unnecessary to carry out the purposes of PURPA.

Collectively, we find the legislative direction in HJR 9, Utah Code 54-4-4.1 and Utah Code 54-3-1, Commission policy, and Company actions generally address the provisions of the Rate Design Standard and provide equal support for the applicable purposes of PURPA. Therefore, adoption of the Rate Design Standard is not necessary.

Regarding the Company's and UCE/SWEEP's recommendation that the Commission initiate a docket to address certain issues associated with rate design, incentives and disincentives for DSM, we note their concerns regarding these issues and we recognize that rate design is a balancing act which must, among other things, ensure the company collects adequate revenue, ensures stable and predictable revenues, and sends proper price signals. We note residential rate design is currently being addressed in the Company's general rate case in Docket No. 09-035-23.[10] We find this the appropriate regulatory process to conduct a rate design evaluation, whereby all aspects and goals of rate design will be evaluated. In addition, DSM-related issues are currently the subject of and may be considered in Docket No. 09-035-T08. Therefore, we decline to open a docket to address this issue at this time.

Based on the above we find it is not necessary to adopt the Rate Design Standard at this time as provisions exist in Utah Law and Commission Policy which support the goal of the Rate Design Standard. We determine these provisions are equal to and comparable with the

[10] Docket No. 09-035-23, "In the Matter of the Application of Rocky Mountain Power for Authority to Increase its Retail Electric Utility Service Rates in Utah and for Approval of its Proposed Electric Service Schedules and Electric Service Regulations."

intent of the PURPA Rate Design Standard and provide equivalent support for the applicable goals of PURPA.

DETERMINATION

NOW, THEREFORE, IT IS HEREBY determined Utah Law, existing and ongoing Commission orders on DSM, DSM cost recovery, and DSM education, and HJR 9 are equal to and comparable with the intent of the PURPA Rate Design Standard and adoption of the PURPA Rate Design Standard is not necessary.

DATED at Salt Lake City, Utah, this 16th day of December, 2009.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

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