- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Consideration of the Amendment of Title 15 U.S.C. 303(b) by the U.S. Energy Independence and Security Act of 2007	DOCKET NO. 08-999-06 DETERMINATION CONCERNING THE PURPA NATURAL GAS ENERGY EFFICIENCY AND RATE DESIGN STANDARDS

ISSUED: December 15, 2009

SYNOPSIS

The Commission determines prior state actions, state laws and current policies pertaining to energy efficiency and rate design are equal to and comparable with the PURPA Energy Efficiency and Rate Design Standards and adoption of the standards is not necessary.

By The Commission:

REGULATORY HISTORY AND COMMISSION RESPONSIBILITY

The 2007 Energy Independence and Security Act ("2007 EISA" or "EISA"), signed into law on December 19, 2007, amended Section 303(b)[1] of the Public Utilities Regulatory Policies Act of 1978 ("PURPA") by adding the following two new standards applicable to natural gas utilities, as numbered: 5) Energy Efficiency ("Energy Efficiency Standard" or "Standard No. 5"), and 6) Rate Design Modifications to Promote Energy Efficiency Investments ("Rate Design Standard" or "Standard No. 6").

[1] 15 U.S.C. 3203(b))

The Commission has previously examined regulatory standards applicable to natural gas utilities enacted by PURPA.[2] As applicable to the two new standards, the provisions of PURPA specify the Commission shall adopt the standards if, and to the extent, it determines adoption: is appropriate to carry out the purposes of PURPA, namely, 1) conservation of energy supplied by gas utilities; 2) the optimization of the efficiency of use of facilities and resources by gas utility systems; and 3) equitable rates to gas consumers of natural gas; is otherwise appropriate; and is consistent with otherwise applicable State law. In addition, the Commission's consideration must be after public notice and hearing.

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 pursuant to authority under otherwise applicable State law,[3] 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.

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

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[2] See Docket Nos. 79-999-02, 80-999-05 and 93-999-04

[3] 15 U.S.C. § 3203(c).

PROCEDURAL HISTORY

In a letter dated August 28, 2008, the Commission informed the U.S. Department of Energy that Questar Gas Company ("Company") is the only natural gas 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, among other things: 1) discussing the two new standards applicable to natural gas 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.

On January 8, 2008, the Commission issued a Notice of Technical Conference to be held on January 27, 2009, with the purpose of discussing the Energy Efficiency and Rate Design Standards in light of the purposes of the retail policies for natural gas utilities specified in PURPA, prior state actions addressing the Standards and whether they may be considered comparable, recommendations regarding adoption of the Standards, and criteria and measurements to determine utility adherence to the Standards if adoption is recommended. Based upon the comments received during the technical conference and further research, on May 28, 2009, the Division of Public Utilities ("Division") filed with the Commission its evaluation regarding the Energy Efficiency and Rate Design Standards. In its evaluation, the Division recommended the Commission adopt both the Energy Efficiency and Rate Design Standards. On June 2, 2009, the Commission issued a Request for Comments on the Division's recommendation with a filing deadline of July 16, 2009, to which the Company, the Office of

Consumer Services ("Office"), and Utah Clean Energy ("UCE") responded. Next we address the Energy Efficiency and Rate Design Standards separately.

ENERGY EFFICIENCY STANDARD

Section 532(b) of the 2007 EISA amended Section 303(b) of the Public Utility Regulatory Policies Act of 1978 (15 U.S.C. 3203(b)) by adding the following standard:

> (5) ENERGY EFFICIENCY- Each natural gas utility shall--
>
> (A) integrate energy efficiency resources into the plans and planning processes of the natural gas utility; and
>
> (B) adopt policies that establish energy efficiency as a priority resource in the plans and planning processes of the natural gas utility.

The 2007 EISA Energy Efficiency 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 adopt the Energy Efficiency Standard we consider whether its adoption is appropriate to carry out the purposes of PURPA, it is otherwise appropriate, and it is consistent with applicable State law.

A. Positions of the Parties

The Division concludes the Energy Efficiency Standard is consistent with State law and recommends the Commission formally adopt this standard as it is current Commission policy. The Division also references the Utah Legislature's 2009 House Joint Resolution 9 ("HJR 9"), which provides policy direction to the Company, regulators, and others in terms of energy efficiency goals. The Division maintains the Commission has already established standards in the Company's integrated resource planning ("IRP") process which meet the criteria set forth in Subparagraph (A) of the Energy Efficiency Standard. However, regarding

Subparagraph (B) of the Energy Efficiency Standard, the Division suggests that the current IRP standards applicable to the Company do not necessarily identify demand side resources as a priority resource. The Division maintains that because total aggregate spending in all DSM programs has not been limited to budgeted amounts this demonstrates the importance regulators place on cost-effective DSM programs as a priority resource. The Division feels, because EISA requires formal adoption of this standard, the Commission should adopt Standard No. 5, Subparagraph (B).

The Company generally agrees with and supports the Divisions comments and looks forward to the opportunity to further participate in the dialogue related to the implementation of this standard.

The Office agrees with the Division's conclusions that existing statutes, guidelines and regulations are consistent with the Energy Efficiency Standard and that the new 2009 IRP Standards and Guidelines[4] applicable to the Company require equal treatment of demand-side resources, but do not "establish energy efficiency as priority resources." The Office maintains while the Division is correct that demand-side resources are considered an important component in resource planning, being an important component is not the same as being established as priority resources. The Office does not oppose the adoption of Standard No. 5, however it notes that modifications to the Company's 2009 IRP Standards and Guidelines to elevate energy efficiency to "priority resources" would be necessary in order to be consistent

[4]See Docket No. 08-057-02, "In the Matter of the Revision of Questar Gas Company's Integrated Resource Planning Standards and Guidelines," March 31, 2009, Report and Order on Standards and Guidelines for Questar Gas Company.

with the adoption of the Energy Efficiency Standard. Alternatively, the Office proposes the Commission could determine that it is not necessary to adopt Standard No. 5 and instead provide in writing that existing policies and guidelines are sufficient to meet the intent of the EISA. This would eliminate the need for any revisions to the guidelines.

Utah Clean Energy strongly supports the Division's recommendation to adopt the Energy Efficiency Standard and agrees with the Division's assertion that this standard is appropriate for the state of Utah and not inconsistent with State law.

B. Discussion, Findings and Conclusions

First we concur that the Energy Efficiency Standard is consistent with State law, including Utah Code 54-3-1 which specifies that the scope of the definition of "just and reasonable" may include means of encouraging conservation of resources and energy. We also concur with the Division and the Office the IRP Standards and Guidelines applicable to the Company since their inception in 1994 in Docket No. 91-057-09[5] require the Company to integrate energy efficiency into its planning process for meeting growing demand for natural gas.

Further, we observe since the 2006 approval of the Conservation Enable Tariff ("CET") pilot program[6] for cost recovery of demand side management ("DSM") expenses, the Company's progress in implementing DSM programs has accelerated. Indeed, according to the Company's October 1, 2009, Application for Approval of Fourth Year Budget for 2009 Demand

[5]See Docket No. 91-057-08, "In the Matter of the Analysis of an Integrated Resource Plan for Mountain Fuel Supply Company, " September 26, 1994, Final Standards and Guidelines for Integrated Resource Planning for Mountain Fuel Supply.

[6]See Docket No. 05-057-T01, "In the Matter of the Approval of the Conservation Enabling Tariff Adjustment Option and Accounting Orders ," October 5, 2006, Order Approving Settlement Stipulation

Side Management Programs and Market Transformation Initiative in Docket No. 09-057-15, it plans to pursue 978,832 decatherms of cost-effective DSM in 2010, a 145 percent increase over the 2009 DSM program. In addition, in its IRP for Plan Year May 1, 2009, through April 30, 2010 the Company indicated the 2009 energy-efficiency resources were accepted by the SENDOUT model as qualifying and cost-effective resources when compared to other available resources.

We also recognize HJR 9 provides policy direction from the Utah Legislature to state and local governments, natural gas utility corporations, and municipal utilities to recognize energy efficiency and conservation as a priority resource and to promote and encourage all available cost-effective energy efficiency and conservation.

We note, however, the 2007 EISA provides no guidance on the meaning of "a priority resource." Utah is probably a step beyond this Energy Efficiency Standard as our March 31, 2009, Report and Order on Standards and Guidelines for Questar Gas Company in Docket No. 08-057-02 states: "The results of the planning process guide the Company in the selection of the optimal set of resources given expectations relating to costs, risk and uncertainty, safety and other regulatory requirements, and technical feasibility such that present and future customers are provided natural gas energy services at the lowest cost consistent with the Company's duties specified in Utah Code §54-3-1, the fiscal requirements of a financially healthy utility and the long-run public interest." We find this wording superior to simply designating energy efficiency as a priority resource. In addition, while the current IRP Standards and Guidelines applicable to Questar do not necessarily define energy efficiency as a priority

resource, we find this distinction unnecessary to encourage conservation of energy supplied by gas utilities.

We disagree with the Division's interpretation that the 2007 EISA requires formal adoption of the Energy Efficiency Standard Subparagraph (B). PURPA provides that the Commission shall adopt the standard, *if,* and to the extent, it determines such adoption is appropriate to carry out the purposes of PURPA, is otherwise appropriate, and is consistent with applicable state law. Adoption of the Energy Efficiency Standard is not required if we determine that existing laws, policies and actions are carrying out the purposes of PURPA as reflected in the Energy Efficiency Standard.

In recent evaluations of PURPA standards applicable to electric utilities,[7] we have declined to adopt standards which mirror existing State laws, Commission policies, or utility practices as the standards are unnecessary to carry out the purposes of PURPA. In fact, the Division itself in many cases has recommended non-adoption of PURPA standards which duplicate current state law or Commission policy.

Therefore, as proposed by the Office, based on the above, and consistent with our determination in Docket No. 08-999-05 addressing an electric PURPA standard similar to the Energy Efficiency Standard in this proceeding, we find it is not necessary to adopt the Energy Efficiency Standard. We find existing laws, policies and guidelines are equal to and comparable with the intent of the PURPA Energy Efficiency Standard and provide equivalent, if not superior, support for the goals of PURPA.

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

RATE DESIGN STANDARD

Section 532(b) of the 2007 EISA amended Section 303(b) of the Public Utility Regulatory Policies Act of 1978 (15 U.S.C. 3203(b)) by adding the following standard:

> (6) RATE DESIGN MODIFICATIONS TO PROMOTE ENERGY EFFICIENCY INVESTMENTS-
>
> (A) IN GENERAL- The rates allowed to be charged by a natural gas utility shall align utility incentives with the deployment of cost-effective energy efficiency.
> (B) POLICY OPTIONS- In complying with subparagraph (A), each State regulatory authority and each nonregulated utility shall consider--
> (i) separating fixed-cost revenue recovery from the volume of transportation or sales service provided to the customer;
> (ii) providing to utilities incentives for the successful management of energy efficiency programs, such as allowing utilities to retain a portion of the cost-reducing benefits accruing from the programs;
> (iii) promoting 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; and
> (iv) adopting rate designs that encourage energy efficiency for each customer class.

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 adopt the Rate Design Standard we consider whether its adoption is appropriate to carry out the purposes of PURPA, it is otherwise appropriate, and it is consistent with applicable State law.

A. Positions of the Parties

The Division recommends the Commission adopt the Rate Design Standard as it may be interpreted to conform with current Commission practice. This practice includes approval of the CET pilot program and subsequent promotion of the Company's DSM pilot programs in Docket No. 05-057-T01, as well as the focus of on-going rate design issues presented before the Commission in the Company's last general rate case in Docket No. 07-057-

13 ("2007 GRC").[8] The Division maintains the creation of the CET removed a disincentive for the Company to actively pursue offering cost-effective DSM programs to its General Service customers, but does not necessarily encourage or incent the Company to pursue these programs. The Division states the Company's aggressive pursuit of energy efficiency is the result of its commitment to do so in exchange for approval of the CET pilot program.

The Division also maintains the issue of whether the decoupling of rates should include further incentives for Company performance was discussed and considered by the Commission in Docket No. 05-057-T01 as well as the 2007 GRC, however, it does not appear that an "incentive" was considered for the successful management of energy efficient programs as required in the Rate Design Standard Subparagraph (B)(ii). The Division mentions the Company expressed a strong interest in exploring the concept of it being able to retain a portion of the cost-reducing benefits accruing from the DSM programs and refers to the proposed, non-binding HJR 9. The Division states that a key phrase found in Section (B) of the Rate Design Standard, i.e., " . . each State regulatory authority and each non-regulated utility *shall consider* . . . ." forms the basis of the Division's recommendation to adopt the Rate Design Standard.

The Company generally agrees with and supports the Divisions comments and looks forward to the opportunity to further participate in the dialogue related to the implementation of the Rate Design Standard. The Company believes the CET was essential to ensuring its interests and the interests of its customers were properly aligned with respect to energy efficiency. The Company, however, does not believe the CET serves as an "incentive" to

[8]Docket No. 07-057-13, "In the Matter of the Application of Questar Gas Company to File a General Rate Case."

promote energy efficiency, as contemplated by the Rate Design Standard and notes the Division agrees. The Company also welcomes the opportunity to participate in the development and implementation of incentives that are cost effective, just, reasonable and in the public interest.

As with the Energy Efficiency Standard, the Office suggests two alternatives regarding the Rate Design Standard: 1) The Commission could adopt the Rate Design Standard but also specify that Utah law requires that before any proposed rate mechanism or method is adopted it must be found to be in the public interest; or 2) The Commission could determine not to adopt the Rate Design Standard and provide the reasoning that existing law and policies meet the intent of the EISA and also provide additional protection to Utah consumers by requiring that all rate mechanisms and methods must be found to be in the public interest. The Office points out the final version of HJR 9 does not specify any preference for a particular mechanism intended to help remove utility disincentives and create incentives to increase efficiency and conservation, but rather supports a wide range of mechanisms specifying that they must be in the public interest.

The Office also references recent revisions to Utah Code 54-4-4.1(1) enacted by 2009 Senate Bill 75 "Utility Amendments" which provides the Commission the ability to adopt any method of regulation which is consistent with Utah Code Title 54, is in the public interest, and is just and reasonable. While the Rate Design Standard only requires the Commission to consider specific mechanisms, which would be consistent with state law and practice, the Office maintains state law goes further in that it specifies the mechanism and methods must be in the public interest.

Utah Clean Energy strongly supports the Division's recommendation to adopt the Rate Design Standard and agrees with the Division that the Rate Design Standard conforms with current Commission practice relative to the Company's DSM programs and CET, as well as the focus of on-going rate design issues.

B. Discussion, Findings and Conclusions

We concur that the Rate Design Standard is consistent with State law. Regarding Subparagraph (A) of the Rate Design Standard which specifies that in general rates allowed to be charged by a natural gas utility shall align utility incentives with the deployment of cost-effective energy efficiency, we reference the Company's statement above that it " believes the CET was essential to ensuring its interests and the interests of its customers were properly aligned with respect to energy efficiency." As such we find this provision is being addressed by our consideration of the CET pilot program, associated DSM programs, and the DSM cost recovery mechanism.

Regarding the policy options for compliance with Subparagraph (B) of the Rate Design Standard, the Company does not believe the CET serves as an "incentive" to promote energy efficiency as contemplated by this subparagraph. In addition, the Division states the CET does not incent the Company to pursue DSM programs in any particular way. We note that in Docket No. 05-057-T01 the Company stated the purpose of the CET pilot program " . . is to remove the barrier to the Company from aggressively pursuing DSM and allowing the Company an opportunity to collect its allowed revenue during periods of declining customer usage

regardless of the cause."[9] [italics added] Therefore, while not explicitly an incentive, the CET addresses issues above and beyond simply those associated with energy efficiency.

Also, Utah Code 54-4-4.1 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. Collectively, we find the legislative direction in HJR 9, Commission policy, consideration of the CET pilot program, and Utah Code 54-4-4.1 superior to Subparagraph (B) of the Rate Design Standard as they provide both legislative direction and the ability to consider not only the policy options specified in the Rate Design Standard Subparagraph (B), but other policy options as well, provided they are just and reasonable and in the public interest.

In addition, as referenced by the Division, we approved Questar's CET pilot program authorizing revenue decoupling and a suite of company-sponsored DSM programs, the IRP Standards and Guidelines require that energy efficiency must be balanced with other objectives, and our December 22, 2008, Report and Order in Docket No. 07-057-13 provided guidance on rate design which promotes energy efficiency and resource conservation. In short, the State of Utah's efforts regarding rate design to promote energy efficiency, which clearly support the purposes of PURPA, are well underway .

[9]See Docket No. 05-057-T01, Surrebuttal Testimony of Barrie McKay for Questar Gas Company, Dated August 14, 2006, Lines 1484 through 1490.

As indicated above, in recent evaluations of PURPA standards applicable to electric utilities,[10] we have declined to adopt standards which mirror existing State laws, Commission policies, or utility practices as the standards are unnecessary to carry out the purposes of PURPA.

Therefore, as proposed by the Office and based on the above, we find it is not necessary to adopt the Rate Design Standard. We find existing laws, policies, and guidance meet the intent of the PURPA Rate Design Standard. We determine these provisions are equal to and comparable with the intent of the PURPA Rate Design Standard and provide equivalent, if not superior, support for the goals of PURPA.

DETERMINATION

NOW, THEREFORE, IT IS HEREBY determined 2009 Senate Bill 75, 2009 HJR 9, the March 31, 2009, Report and Order on Standards and Guidelines for Questar Gas Company in Docket 08-057-02 "In the Matter of Analysis of an Integrated Resource Plan for Questar," existing and ongoing Commission orders on performance standards, and consideration of the CET pilot program and DSM cost recovery are equal to and comparable with the intent of the PURPA Energy Efficiency and Rate Design Standards and adoption of these Standards is not necessary.

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

DATED at Salt Lake City, Utah, this 15th day of December, 2009.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#64764