

Gary A. Dodge (0897)
Phillip J. Russell (10445)
HATCH, JAMES & DODGE, P.C.
10 West Broadway, Suite 400
Salt Lake City, Utah 84101
Telephone: (801) 363-6363
Facsimile: (801) 363-6666
Email: gdodge@hjdllaw.com
prussell@hjdllaw.com

Counsel for Utah Association of Energy Users (UAE)

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of Utah Administrative Code R746-1, Amendment to Enact Provisions Consistent with the Open and Public Meetings, to Clarify Requirements that Apply to Persons Granted Intervenor Status, and Clarify Requirements that Apply to Attorneys Appearing before the PSC but not Licensed with the Utah State Bar	Docket No. 17-R001-01
---	------------------------------

UAE’S REPLY COMMENTS REGARDING PROPOSED RULE AMENDMENT

The Utah Association of Energy Users (“UAE”) files these comments in reply to the Commission’s Response to Comment and Notice of Reply Comment Deadline in this docket dated September 21, 2017, in connection with the Commission’s proposed rule amendment regarding the filing by parties of comments or legal arguments.

UAE respectfully submits that the portion of the proposed rule amendment restricting comments and legal arguments is not appropriate, necessary or efficient, and will hinder rather than promote the orderly and prompt conduct of Commission proceedings. UAE requests that the Commission revise that portion of the proposed rule to give parties discretion to file comments or legal arguments, in addition to or instead of proper factual and expert opinion testimony, while specifying the time by which such comments must be filed—in most cases perhaps at the same time as prefiled testimony.

Others have argued that the filing of comments or legal arguments by parties is confusing or inappropriate. UAE strongly disagrees and submits that it is both proper and efficient for all parties to be allowed to file testimony, comments and/or legal arguments in whatever form makes the most sense to those parties. The Commission's overriding goal should be to solicit information from as many interested participants as possible, as such information only enhances the Commission's ability to properly perform its statutory duties. A rule designed to artificially restrict parties' ability to submit comments or legal arguments as they determine to be most appropriate is inconsistent with that goal.

The Commission's comments note that the proposed rule amendment imposes only a "modest" responsibility on parties to attend scheduling conferences to advocate for scheduling of comments or arguments, or to petition for an amendment to the scheduling order. UAE respectfully submits that this added burden is not appropriate—particularly as customer group intervenors who do not have the luxury of full time staff/witnesses. It is often not possible for interested groups to know at the very beginning of a docket—often before they have even determined whether to intervene—what form those groups' input should ultimately take. Once those determinations are made, interested groups should not be required to intervene and forego

the opportunity to file comments or legal arguments, or to forego intervention so that they can file comments or arguments. Nor should they then be required to seek to amend the scheduling order. Any such requirements are burdensome and unnecessary. Rather, Commission rules should invite parties to file testimony, comments or legal arguments as they deem appropriate, while imposing deadlines that permit other parties to respond as they deem appropriate.

If the proposed rule amendment is adopted, it may become routine for participants to advocate in most dockets for the right to file policy comments or legal arguments, given that they may later determine that such filings are the most appropriate means of presenting and explaining aspects of their positions. While it is certainly appropriate for Commission rules or scheduling orders to include timing requirements for such comments or arguments, it is not appropriate for the rules to preclude them altogether.

One practical consequence of the proposed rule—and the current practice—is to encourage witnesses who are not qualified legal or policy experts to offer legal and policy arguments in prefiled testimony, as that is often the only practical means of presenting the same to the Commission. UAE submits that this practice is inefficient and inappropriate and puts witnesses, counsel and the Commission in difficult positions.¹ Rather, parties should be permitted to submit policy comments or legal arguments, in addition to proper factual and expert testimony, so that they can properly frame and present all aspects of their positions as they see fit. Other parties should then be free to respond if and as they see fit.

¹ A recent example of this type of difficulty can be found in the net metering docket, 14-035-114. There, UAE was an intervenor but not an active participant, given that the docket focused primarily on residential issues. UAE determined that filing comments in that docket was the most appropriate way to address some legal and policy concerns dealing primarily with the utility's failure to meet its statutory burden sufficient to support any changes to the commercial net metering program. UAE considered having a witness sponsor its comments, but the potential witnesses and counsel for UAE all agreed that asking a witness to file testimony advocating UAE's legal positions was inappropriate. Others elected to do so and, while some parties seemed to have an inexplicably difficult time determining whether and how to respond to UAE's comments, UAE maintains that it responded in the most appropriate manner by filing comments signed by legal counsel rather than forcing a non-legal witness to attempt to present UAE's legal concerns.

UAE respectfully submits that a rule designed to make it more difficult for parties to present proper policy and legal arguments, in addition to proper factual evidence and expert opinion testimony, is inconsistent with the Commission's overriding duty to solicit relevant information and input from a wide variety of participants to aid it in performing its statutory duty to protect the public interest. UAE thus requests that the Commission rule be amended to specify timing requirements for presenting comments and legal arguments, as well as prefiled testimony, without burdening parties with unnecessary obstacles to such presentation.

Submitted this 16th day of October 2017.

HATCH, JAMES & DODGE



/s/ _____
Gary A. Dodge
Attorney for UAE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 16th day of October 2017 on the following:

Utah Public Service Commission
psc@utah.gov

Chris Parker
William Powell
Division of Public Utilities
ChrisParker@utah.gov
wpowell@utah.gov

Michele Beck
Cheryl Murray
Utah Office of Consumer Services
mbeck@utah.gov
cmurray@utah.gov

Patricia Schmid
Justin Jetter
Assistant Attorneys General
pschmid@utah.gov
Jjetter@utah.gov

Robert Moore
Steven Snarr
Assistant Attorneys General
rmore@utah.gov
ssnarr@utah.gov



/s/
