

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Utah Administrative Code R746-1,
Amendments to Enact Provisions Consistent
with the Open and Public Meetings Act, 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

NOTICE THAT PROPOSED RULE
HAS BEEN MADE EFFECTIVE

ISSUED: October 19, 2017

The Public Service Commission of Utah ("PSC") has made effective the Notice of Proposed Rule, DAR File No. 41989, that was published in the August 15, 2017 (Vol 2017, No. 16) Utah State Bulletin ("Proposed Rule"). We recognize that both the Utah Industrial Energy Consumers ("UIEC") and the Utah Association of Energy Users ("UAE") oppose some aspects of this Proposed Rule¹, and we address those concerns in this notice.

We conclude that the Proposed Rule satisfies the requirements of Utah Code Ann. § 63G-3-301(8)(b). We recognize that the comment period, which we extended, has given us the opportunity to further evaluate and clarify the purpose of the Proposed Rule beyond the succinct purpose published contemporaneously with the Proposed Rule. In our view, the comment period has accomplished what it was designed to do, and has given us an opportunity to make an informed decision about whether to make the Proposed Rule effective.

We agree with UIEC and UAE that it would be unreasonable to require potential intervenors to decide in advance of every scheduling conference whether to intervene. The Proposed Rule does not require that outcome. Once a scheduling order has issued, an intervenor

¹ The Division of Public Utilities and Rocky Mountain Power each filed comments supporting the Proposed Rule.

may make the filings (testimony, comments, etc.) outlined in the scheduling order, or may petition for an amendment to the scheduling order.

Every docket is unique, and some docket schedules may require us to adjudicate a petition to amend a scheduling order in an expedited manner. We conclude that both transparency and orderly and prompt conduct are advanced when the parties who participated in the development of a scheduling order have an opportunity to respond to a request to modify it. Fairness is compromised when those parties are required to respond after the fact to an intervenor's divergence from a scheduling order.

PSC dockets run on widely varying schedules. Sometimes an addition to a scheduling order is a simple matter. In other dockets, time is of the essence. It seems intuitive that an intervenor who desires to diverge from a scheduling order would want the PSC to have the benefit of all interested parties' positions on the issue before making a decision. UIEC points to arguments made previously by Rocky Mountain Power that UIEC would consider an inappropriate basis on which to object to a petition to modify a scheduling order. We conclude that such arguments are best handled on a case-by-case basis, which the Proposed Rule will accommodate. Scheduling orders in most of our dockets are developed through consensus. We believe that will continue to be the case, but conclude that the Proposed Rule will enable us to adjudicate any disputed procedural schedule in a more transparent, orderly, and prompt way.

With respect to legal issues, we agree with UAE's observation that addressing legal and policy issues in testimony by individuals who are not legal or policy experts is not ideal. We respond to this insightful observation with two observations of our own: First, in the docket UAE

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cites as an example², there was ample time for UAE to have petitioned for the scheduling order to be modified and for other parties to respond. We conclude that an opportunity to petition and respond is more transparent, orderly, and prompt than allowing an intervenor to make an unexpected filing and expecting parties to decide after the fact whether or how to respond. Second, the Proposed Rule does not impact or modify motion practice, which remains available to every party.

We conclude that our Proposed Rule was published in compliance with the Utah Administrative Rulemaking Act³ and advances the transparent, orderly, and prompt conduct of our dockets. It will enable us to address disputes about procedural schedules in a more transparent way than those issues have been addressed recently. We have made the Proposed Rule effective.

DATED at Salt Lake City, Utah, October 19, 2017.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#297473

² PSC Docket No. 14-035-114, In the Matter of the Investigation of the Costs and Benefits of PacifiCorp's Net Metering Program.

³ Utah Code Title 63G Chapter 3.

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CERTIFICATE OF SERVICE

I CERTIFY that on October 19, 2017, a true and correct copy of the foregoing was served upon the following as indicated below:

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