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Reply Comments

To: Public Service Commission of Utah

From: Utah Division of Public Utilities

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Date: September 10, 2025

Re: **Docket No. 25-R318-01**, Proposed Rulemaking Concerning Utah Code §§ 54-26-101 to -901, Large-Scale Electric Service Requirements.

Summary

The Utah Division of Public Utilities (Division) submits these comments in Docket No. 25-R318-01 (Proposed Rulemaking Concerning Utah Code §§ 54-26-101 to -901, Large-Scale Electric Service Requirements).¹ As the timeline in this docket is compressed, some topics may be postponed until the final round of comments. The Division also makes recommendations for topics that may benefit from discussion at the upcoming Technical Conference.

Issue

On August 28, 2025, Rocky Mountain Power (the Company) filed Rocky Mountain Power's Proposed Rules (the Proposed Rules), which were a product of meetings the Company had with stakeholders. Stakeholders submitted comments on an earlier draft of the Proposed Rules (the early version is the Straw Proposal).² The Division appreciates the Company's efforts in drafting the Straw Proposal and the Proposed Rules. The Division also

¹ Title 54, Chapter 26 of the Utah Code, titled "Large-Scale Electric Service Requirements" (the Act).

² The Proposed Rules are an updated version of the Straw Proposal. The redline edits to the Straw Proposal are shown first in the Proposed Rules, followed by a clean version of the Proposed Rules.



appreciates the input of the other stakeholders. The Division has reviewed the Proposed Rules and stakeholder comments and makes the following recommendations.

Organization/Structure of the Proposed Rules

The Division, along with its counsel from the Attorney General's office, has reviewed the rules and proposes the following change in structure. The Division proposes removing the Company's proposed sub-chapters of the rule (e.g., "R746-XX2 TRANSMISSION AND LARGE-SCALE GENERATOR REQUIREMENTS") and instead organizing the sub-chapters under one overarching rule. One virtue of reorganization is that there will only be one section titled "Authority" and "Applicability," rather than repeating those sections for each rule chapter.³ In addition, it would clarify that the defined terms apply to each section. At the end of this memo, in Appendix A, the Division lists the section headings in the Proposed Rules and an alternate method of dividing the rule into sections.

In the interest of not having competing versions of the Proposed Rules, the Division has not prepared a separate redlined version of the rules with these organizational changes but proposed them so that the Company and other stakeholders can weigh in if desired.

Redlined Version of Proposed Rules

The Division attaches a redlined version of the Proposed Rules with some miscellaneous edits (Attachment B). This redlined version includes some wording changes and additions and deletions that the Division thinks are warranted. In some cases, the edits are discussed in the body of this memo. In other cases, they are suggested edits without further comment.

Large Load Contracts

One of the Division's major concerns is ensuring that when the Company or other entity submits a large load service contract or other information contemplated by the statute, the Commission, the Division, the Office of Consumer Services (OCS), and other parties have sufficient information to determine that: "the large load customer bears all just and reasonable incremental costs attributable to receiving the requested electric service"; and

³ See, e.g., the following sections of the Proposed Rules: R746-XX1-1. Authority; R746-XX1-3. Applicability; R746-XX2-1. Authority; R746-XX2-2. Applicability; etc. at pp. 2, 4.

“existing ratepayers do not bear costs justly and reasonably attributable to providing electric service for the large load customer.”⁴

The Division thinks more specificity in the Proposed Rules is needed. For reference, in section R746-XX1-4(4)(d), the Proposed Rules state that an application:

for approval of a Large-Load Contract or Private Generation Contract shall be accompanied by...

Evidence sufficient to allow the Commission to determine Large Load Incremental Costs necessary for the Large Load Customer to receive electric service, including generation resources, distribution system upgrades, and as applicable, any of the following as approved by the Federal Energy Regulatory Commission

- (i) Transmission system improvements, including network upgrades;
- (ii) Interconnection facilities;
- (iii) Transmission service; and
- (iv) Other necessary infrastructure.⁵

The Division has two types of concerns here: first, how the Incremental Costs will be determined and what categories of costs will be included, and second, whether the “incremental costs” will cover the risk of costs and future cost changes that are not immediately apparent.

Regarding the first concern, the Division would like to hear from the Company and trade groups representing prospective applicants about what categories and types of cost information they plan to submit. What detail of cost information will be “sufficient”? The Division believes more specificity on the categories and format of information may be required in the Proposed Rules. This is especially pertinent given limited time for review.

For the second concern, the Division believes there could be some types of cost or risk shifting that are not considered in a typical incremental cost discussion. For example, when large loads lock in a contract price for a long period of time, there is the risk that changing circumstances may result in a contract price that is much lower (or higher) than the market price in future periods. Therefore, there could be cost-shifting that is not contemplated by

⁴ Utah Code Ann. § 54-26-302(2)(b)-(c).

⁵ Proposed Rules Section R746-XX1-4(4)(d).

the items listed in R746-XX1-4(4)(d). In such circumstances, other ratepayers could be guarantors of rates they had no meaningful role in negotiating.

Other types of cost or risk that could be a consideration are those arising from the acceleration of capital costs or the building of projects that result in “over-sizing.” For example, it is not clear what incremental costs could or should be associated with large-load projects that cause the acceleration of planned projects or cause planned projects to be sized an increment higher than they would have been otherwise (e.g. a step-up in transformer size could result in transformer capacity that is, for a time, underutilized). The Division is unsure of the rate base implications that result from situations like this.

Therefore, the Division recommends a non-exhaustive list of factors that the Commission may consider when determining whether “the large load customer bears all just and reasonable incremental costs attributable to receiving the requested electric service”. We suggest language similar to the following:

When determining whether the large load customer bears all just and reasonable incremental costs attributable to receiving the requested electric service, the Commission may consider the following non-exclusive list of factors:

1. The timing and extent of the relevant generation resources, distribution system upgrades, and the costs mentioned in R746-XX1-4(4)(d)(i) through (iv) that would occur absent the large load contract under consideration
2. The extent to which the large load’s contract will change the costs in (1), including timing of upgrades
3. The extent to which the contract could result in costs to ratepayers resulting from risk-shifting due to long-term contracts
4. How the large load contract might accelerate planned projects or result in temporarily unused capacity due to sizing step issues, and how this might affect rate base and customer rates.

There could be a similar rule requiring the submission of this information in the application.

Note that appropriate consideration of these cost categories informs some of the proposals made by stakeholders. For example, the Utah Association of Energy Users Intervention Group (UAE) suggests that a principle such as the following should be incorporated into the rules: “new transmission customers should not be charged for the capital costs of projects

that RMP has already included in its long-term transmission plan.”⁶ If adopted, this rule should have language stating “except to the extent that the projects in question are upgraded in scope or have accelerated timelines due to the Large Load Customer’s service request.” The Company should also take care to not use other processes (i.e., long-term transmission planning) to influence costs under these large load rules; this would distort the original purpose behind long-term transmission planning. Should long-term transmission planning be altered to affect outcomes in the large load cost arena, the transmission planning purposes might be poorly-served.

NRG Energy (“NRG”) and Tract Capital Management, LP (“Tract”) raise an issue regarding the procedure for approval of large load contracts. They state that the “procedure should permit no response to the application, no interventions, no discovery, and no hearing.”⁷ The Division is not yet certain what intervention and discovery processes are appropriate, but this language should not be adopted. The Division recognizes that the approval timeline is short, but this is an overly restrictive view of the approval procedure. NRG and Tract’s language in their proposed section R746-XX1-5(2) is too categorical. For example, as written it might even restrict the Division and the OCS from asking for supplemental information, except upon a motion; this likely contradicts existing authority for the OCS and the DPU.⁸ Given the Commission’s limited staffing, it is important that the OCS and the DPU have the opportunity to participate in evaluation of large load contracts. This participation need not slow the process or be burdensome.

Transmission Cost Allocation

The Division realizes that the Commission is receiving recommendations from its independent consultant retained under section 54-26-901(1)(b) and so will not provide extensive comments on this subject. We do note that some of the issues discussed in the Large Loads Contracts section of this memo above may also apply to incremental transmission costs (as discussed in section 54-26-901(2)(c)). Therefore, the factors (1)

⁶ Initial Comments of the Utah Association of Energy Users (UAE Initial Comments) at 8-9; UAE Exhibit 3 – UAE Draft Proposal vs. RMP Straw Proposal at 5 (proposed edits to R746-XX2-3(2)(c)).

⁷ Joint Comments of NRG Energy and Tract Capital Management, LP (NRG and Tract Initial Comments) at 8-9.

⁸ See, e.g., Utah Code Ann. Section 54-4a-1(1)(e).

through (4) in the Large Loads Contracts section of this memo may also apply to the rules dealing with transmission cost allocation. However, some issues on this allocation are Federal Energy Regulatory Commission (FERC) jurisdictional.

The Division believes there is some merit to the distinction made by NRG and Tract in their initial comments regarding the difference between FERC-jurisdictional and state-jurisdictional service. NRG and Tract state that:

There are, broadly speaking, two ways that a large-scale generation provider (“LSGP”) or large load customer might arrange for transmission service. First, the LSGP or large load customer might arrange to interconnect with a utility’s FERC-jurisdictional transmission system and wheel power across that system from the generators to the load based on the utility’s FERC jurisdictional rates. [...] As these issues are fully covered by federal law, there is no need for the Commission to establish further rules on this sort of service. [...]

The second way that a LSGP or large load customer might arrange for power to be wheeled from the generator to load is for the load to remain a retail customer of the utility for purposes of delivering the power, while contracting with the LSGP for the generation itself. In this arrangement, the utility would be a Utah-regulated intermediary between the two other entities and the large load customer would pay Commission-regulated rates for its transmission and distribution services.⁹

However, the Division is not convinced that under the first scenario (the LSGP or large load customer interconnects with a utility’s FERC-jurisdictional transmission system and wheels power across the system) there is “no need for the Commission to establish further rules on this sort of service” (underlining added). There could still be a place for some rules, but it is true that the rules should take care to not tread on FERC-jurisdictional issues. Therefore, on that topic it may be best to initially refrain from making any rules under Section 54-26-503(3) on this type of service request. Additional rules on this topic can be added later if appropriate. Experience may illuminate areas for attention, and the Commission’s broad

⁹ NRG and Tract Initial Comments at 4-6. The Division understands Calpine Energy Solutions, LLC (“Calpine Solutions”) to be making a related point regarding FERC jurisdiction in its Initial Comments at 2-5. However, the present docket is not the appropriate forum for dealing with PacifiCorp’s OATT. Therefore, the Division opposes the following Calpine Solutions recommendation: “this Commission should adopt administrative rules that require PacifiCorp to initiate and maintain the necessary OATT provisions to enable seamless use of unbundled retail transmission in a manner that is consistent with Utah’s law.” *Id.* at 7.

authority to act in the public interest allows it to react if issues become apparent in early cases.

Expedited Review

Under Proposed Rule section R746-XX1-5(2), applicants for large load contracts or private generation contracts may seek expedited review. The Division's position is that allowing for expedited review is not necessary. The Commission is directed to approve or disapprove an application within 60 days per Utah Code section 54-26-302(4). This is already a fairly quick turnaround for the Commission, the Division, and OCS. Therefore, in our redline of the Proposed Rules, we have deleted sections R746-XX1-5(2) and (3). Until the first few applications for approval of a large load contract are filed, regulators will not know how extensive the review process will be.

If the Commission does decide to allow expedited review, the Division recommends that there be a threshold described in the rule that the application must meet in order for expedited review to be granted. The Proposed Rules' "good cause" language is insufficient. The Division believes that a more concrete showing should be required.

The Division welcomes comments from other parties at the Technical Conference regarding when and why expedited review would be appropriate and to what degree the 60-day period would be shortened. The Division's recommendation is that if the Commission decides to provide for expedited review, it should only be granted if delay would, by a preponderance of the evidence, jeopardize the project entirely. Mere financial costs resulting from delay should not be sufficient reason to consider a project under expedited review, unless those costs are large enough to jeopardize the project as a whole. Therefore, if the Commission does allow expedited review, the Division recommends more specificity around "good cause," and that the OCS's proposed additional language in section R746-XX1-5 of its "Attachment 1 OCS Redline and Comments" be adopted ("and that adequate review can take place within the compressed time frame").¹⁰ Additionally, at some level of expedition,

¹⁰ OCS Attachment 1 at 5.

the Commission may wish to consider whether Title 63G, Chapter 4, Administrative Procedures Act, allows such treatment or requires legislative change.¹¹

Registration

The Division has not yet come to a comprehensive conclusion regarding the Proposed Rules' treatment of registration. This should be a topic of the Technical Conference. However, we note the following regarding certain proposals on registration.

Some stakeholders objected to certain registration procedures in the Proposed Rules. For example, section R746-XX3-3(3) of the proposed rules states that: "Upon the Commission's review of an application to register, the Commission shall open a docket and establish a schedule to evaluate compliance with Utah Code Ann. §54-26-501." NRG and Tract state in their initial comments:

The straw proposal for registration of LSGPs does not serve the purposes of the statute and goes beyond the registration requirements. [...]

Nowhere does Section 54-26-501 mandate an application or a litigated proceeding as proposed by RMP. The Commission should not adopt rules which create a new litigated proceeding for LSGP registration. New litigated proceedings would slow rather than expedite the process of building new generation in Utah. Rather the Commission should treat LSGP registration as a straight-forward notification process, similar to the Closed Private Generation System certification described above.¹²

NRG and Tract view registration as more "straight-forward notification process" rather than an application process.¹³ However, the Division is not convinced that separate dockets for registration go beyond the statute and the Commission's authority on this topic. Regulators have an interest in seeing that costs are not being shifted to ratepayers, and the public or interest groups may wish to comment on the entities that are proposing to serve as LSGPs. The Division therefore opposes the move away from docketed registration, although it welcomes more input on this topic.

¹¹ See, e.g., Utah Code Ann. Section 63G-4-202.

¹² NRG and Tract Initial Comments at 17.

¹³ *Id.*

UAE proposes a timeline for approval of registrations under section 54-26-501: “UAE suggests that the Commission issue a ruling on such registration applications within 60 days after the day the application is filed.”¹⁴ The Division does not oppose a timeline of this type, so that applicants can have a level of certainty around their registration. However, the Division recommends that the Commission allow itself a safety valve, so that its timeline can be extended if circumstances require more time. Therefore, any time limit should be tempered by language such as “unless the Commission determines that additional time is warranted and is in the public interest.” Hopefully, such extensions would be infrequent.

Accounting Issues

The Division agrees with the OCS’s comments regarding accounting, to the extent that it may be desirable to include rules concerning accounting practices: “Clear methods for cost tracking and crediting, as well as increased specificity about types of costs, are critical to ensure that the terms of large load and private generation contracts do not shift costs to other ratepayers.”¹⁵ Utah Code section 54-26-602 requires that large-scale generation providers and qualified electric utilities obey certain accounting requirements. The Division agrees that more specificity is needed in the accounting requirements, although it feels that input from stakeholders is needed on what specificity will provide enough detail without being burdensome to the Company or to large-scale generation providers. This is another appropriate topic for the Technical Conference. The Division also notes that accounting rules may need to address how to treat large load facilities with respect to rate base in a general rate case.

Large Load Private Generation Contracts

In its initial comments, UAE states that “[a]ny Rules adopted by this Commission to implement the Act should recognize the Act’s different regulatory requirements for Private Generation Contracts and Large Load Contracts and should not impose Commission oversight that ignores these distinctions.”¹⁶ UAE states that in contrast to Large Load

¹⁴ UAE Initial Comments at 6.

¹⁵ Initial Comments from the Office of Consumer Services (OCS Initial Comments) at 2.

¹⁶ UAE Initial Comments at 2.

Contracts, which require approval by the Commission, “the Act does not provide the Commission with approval (or disapproval) authority over Private Generation Contracts.”¹⁷

It is certainly true that many provisions and requirements in the Act apply to large load contracts but not to private generation contracts, and so the distinction should be kept in mind while drafting rules. The Division agrees that the Proposed Rules at times do not reference this distinction, and so some revision is needed. However, section 54-26-102(1)(d) provides that: “The procedures and standards set forth in this chapter shall govern: [...] the review and approval of large load contracts and private generation contracts.” This could be read as meaning that private generation contracts can or must be reviewed and approved by the Commission. On the other hand, the fact that section 54-26-302 does not otherwise mention procedures for Commission approval of private generation contracts probably entails that no such approval is contemplated. Thus, it is not clear to the Division that the wording of section 54-26-102(1)(d) entails that the Commission must approve private generation contracts.

The Division thinks Commission approval of private generation of contracts is probably not intended by the statute; this could be confirmed by stakeholders at the Technical Conference. Accordingly, we have edited out language about Commission approval of these contracts in Attachment B.

Miscellaneous Topics

1. The Division agrees that confidentiality of certain filings should be considered and does not oppose a confidentiality provision in the rules.¹⁸ However, the statute requires an applicant to submit “a copy of the large load contract for which the applicant seeks review and approval.”¹⁹ The Division notes that regulators need to be able to see the entire large load contracts and (possibly) private generation contracts. It may not be immediately apparent which contract provisions are relevant to ensuring that large load customers bear all incremental costs and that existing

¹⁷ *Id.* at 3. See *also* NRG and Tract Initial Comments at 13 (“Private Generation Contracts are not subject to commission approval in S.B. 132”); Enchanted Rock, LLC’s Initial Comments on Proposed Rules Implementing S.B. 132 at 2; Initial Comments of the Interwest Energy Alliance at 3.

¹⁸ See NRG and Tract Initial Comments at 11; UAE Initial Comments at 7.

¹⁹ Utah Code Ann. § 54-26-302(1)(a).

ratepayers do not bear these costs.²⁰ Therefore, the entire contract must be filed, with appropriate confidentiality procedures in the rules.

2. The Division agrees with the OCS that the fees themselves should be established outside the rules, with the Commission, DPU, and OCS consulting.²¹ NRG and Tract propose that a cap on the fees be established; the Division thinks a cap may be appropriate, although is not certain if it can be established in the initial rules.²² The Commission and Division do not yet know the number of applications and the amount of effort that will be required to review proposals in the statutory time frame.
3. The Division believes the definitions of “applicant” and “applications” are not necessary.

Conclusion

The Division presents several recommendations regarding changes to the Proposed Rules and supports or opposes changes proposed by other parties. Based on the questions raised by parties, and the apparent lack of agreement on certain topics, the Division suggests that the Technical Conference include the following non-exclusive topic list:

- The categories and amount of information that will count as “sufficient” under Proposed Rule R746-XX1-4(4)(d), and whether further specificity is required.
- The extent to which discovery and hearings should be allowed in the contract approval process for large load contracts. If discovery is foreclosed, the Commission may wish to address the application of Utah Code Section 63G-4-203(1)(e) to itself, the Division, and the OCS.
- Confirmation by stakeholders that section 54-26-102(1)(d) does not require Commission review and approval of private generation contracts.
- Accounting issues.
- The extent to which registration should be an application process (with a separate docket) vs. a notification process with very limited intervention or hearings

²⁰ NRG-Tract Attachment A – Proposal Redline at proposed edits to section R746-XX1-4(4)(b).

²¹ See OCS Initial Comments at

²² NRG and Tract Initial Comments at 8.

Attachment A

Heading in Proposed Rules

R746-XX1 GENERAL COMMISSION REQUIREMENTS

R746-XX1-1. Authority

R746-XX1-2. Definitions

R746-XX1-3. Applicability

R746-XX1-4. General Requirements for Filing an Application for Approval of a Large Load Contract or Private Generation Contract

R746-XX1-5. Process for Approval of a Large-Load Contract or Private Generation Contract

R746-XX2 TRANSMISSION AND LARGE-SCALE GENERATOR REQUIREMENTS

R746-XX2-1. Authority

R746-XX2-2. Applicability

R746-XX2-3. General Requirements for Allocation of Transmission Costs

R746-XX3 GENERAL COMMISSION REQUIREMENTS FOR LARGE-SCALE GENERATION PROVIDERS

R746-XX3-1. Authority

R746-XX3-2. Applicability

R746-XX3-3. Large-Scale Generation Provider Registration

R746-XX3-4. Large-Scale Generation Provider Registration Notice to Large Load Customers

R746-XX4 CONNECTED GENERATION

R746-XX4-1. Authority

R746-XX4-2. Additional Requirements for Connected Generation with Large-Scale Generation Providers

R746-XX5 CLOSED PRIVATE GENERATION

R746-XX5-1. Authority

R746-XX5-2. Applicability

R746-XX5-3. Additional Requirements for Closed Private Generation Systems with Large-

DPU Suggested Headings

R746-XXX LARGE-SCALE ELECTRIC SERVICE REQUIREMENTS

R746-XXX-1. Authority

R746-XXX-2. Definitions

R746-XXX-3. Applicability

R746-XXX-4. General Requirements for Filing an Application for Approval of a Large Load Contract

R746-XXX-5. Process for Approval of a Large-Load Contract

R746-XXX-6. General Requirements for Transmission Cost Allocation

R746-XXX-7. Large-Scale Generation Provider Registration

R746-XXX-8. Large-Scale Generation Provider Registration Notice to Large Load Customers

R746-XXX-9. Additional Requirements for Large-Scale Generation Provider Service on or through a Connected Generation System

R746-XXX-10. Requirements for Large-Scale Generation Provider Service Through a Closed Private Generation System