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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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

REPLY COMMENTS OF THE UTAH ASSOCIATION OF ENERGY USERS

The Utah Association of Energy Users Intervention Group ("UAE") hereby submits the following reply comments in this docket.

PROCEDURAL BACKGROUND

The Commission opened this rulemaking docket to adopt rules contemplated by Senate Bill 132, which passed during the Utah Legislature's 2025 general session and has been enrolled as Title 54, Chapter 26 of the Utah Code and titled "Large-Scale Electric Service Requirements" (the "Act"). As discussed in UAE's Initial Comments filed August 27, 2025, Rocky Mountain Power ("RMP") drafted a straw proposal ("Straw Proposal"), which it provided to other stakeholders on August 8, 2025 to facilitate discussion. UAE's August 27 initial comments in this docket identified concerns with the Straw Proposal. RMP filed initial comments in this docket that same day and attached a proposed set of rules (the "RMP Initial Proposal") that deviated from the Straw Proposal to address concerns expressed by stakeholders regarding the Straw Proposal.

RMP and other parties filed reply comments on September 10, 2025 responding to the initial round of comments filed August 27, 2025.

The Commission held a technical conference on September 17, 2025, during which parties discussed their positions regarding the proposed rule. The parties also discussed revisions to the schedule to enable additional comments and input from the Commission. The Commission subsequently issued an Amended Scheduling Order and Notice of Retention of Independent Evaluator ("Amended Scheduling Order") which, among other things, established additional deadlines and process in this docket. Consistent with the Amended Scheduling Order, RMP filed a revised version of its proposed rule ("RMP Revised Proposal") on October 10, 2025.

UAE offers the following comments that respond both to RMP's September 10 reply comments and to the RMP Revised Proposal. Certain of UAE's concerns raised in its initial comments have not been resolved by the RMP Revised Proposal and UAE's initial comments on those issues continue to apply. In addition to the comments below, UAE attaches a revised draft rule ("UAE Revised Proposal") as Exhibit 1 hereto. Exhibit 2 hereto shows the changes between the UAE Initial Proposal and the UAE Revised Proposal. Exhibit 3 hereto shows the changes between the RMP Revised Proposal and the UAE Revised Proposal.

UAE REPLY COMMENTS

I. Commission Oversight of Private Generation Contracts Should be Limited

UAE and others have commented on the appropriate role of the Commission in regulating Private Generation Contracts. In its Initial Comments, UAE noted that the Act does not include any provisions requiring that Private Generation Contracts be approved by the Commission and objected to provisions in RMP's Straw Proposal that sought to subject Private Generation Contracts to the same regulatory oversight as the Act requires for Large Load Contracts. RMP

responded to this argument in its reply comments filed September 10, 2025 and argued that Private Generation Contracts are Large Load Contracts and should be treated as such.[1] The RMP Revised Proposal, however, does not seek to treat Private Generation Contracts as Large Load Contracts. While the RMP Revised Proposal contains provisions that would still require Private Generation Contracts be filed with the Commission for approval, it would direct that approval be granted if the Private Generation Contract satisfies the statutory requirements to qualify for treatment as a Private Generation Contract.

In this section, UAE addresses the statutory interpretation argument raised in RMP's reply comments and then responds to the RMP Revised Proposal and its treatment of Private Generation Contracts.

A. The Act Defines "Private Generation Contract" Separately from "Large Load Contract" and Establishes Different Treatment for Each Defined Term.

As noted in UAE's Initial Comments, the Act separately defines Private Generation Contract and Large Load Contract creates separate regimes for regulatory oversight for the two different terms. Both in the Straw Proposal and in the RMP Initial Proposal, RMP sought to subject Private Generation Contracts to the same "approval" requirements as those set forth in the Act for Large Load Contracts. UAE and others criticized this approach in initial comments, noting that the Act's contract approval requirements apply only for Large Load Contracts and do not apply to Private Generation Contracts. In its September 10 reply comments, RMP argues that the Act gives the Commission explicit authority to approve Private Generation Contracts and cites for support Utah Code § 54-26-102(1)(d), which states that "[t]he procedures and standards set forth in this chapter shall govern . . . the review and approval of large load contracts and private generation contracts." RMP's reliance on this provision is misguided. This provision does not, by itself, grant

[1] See, e.g., RMP Reply Comments at 5.

the Commission authority to take any particular action or impose any particular standard—let alone the same standard—for approval either of a Private Generation Contract or a Large Load Contract. It merely states that the review and approval of Large Load Contracts and Private Generation Contracts shall be governed by the provisions in Chapter 26 that follow. If the provisions of Chapter 26 that follow do not impose any particular standard for approval of Private Generation Contracts (and they do not), then this silence on the matter "governs."[2] As discussed below, nothing in Chapter 26 authorizes the Commission to exercise oversight over Private Generation Contract as contemplated by RMP in the RMP Initial Proposal.

The only provision within Chapter 26 that grants to the Commission authority to approve contracts is Utah Code § 54-26-302, titled "Commission Review – Approval of Contracts," which identifies processes and standards for PSC approval of Large Load Contracts *only*. Specifically, subsection (1) of that statute identifies the information that must be included in "an application to the commission for approval of a large load contract."[3] Subsection (2) identifies the circumstances pursuant to which "[t]he commission shall approve a large load contract."[4] Subsection (3), in turn, identifies the standards applicable to "[c]omission review of a large load contract."[5] Utah Code § 54-26-302 contains no provisions that apply to Private Generation Contracts. Neither it nor any other provision in Chapter 26 sets forth any processes or standards for Commission approval of a Private Generation Contract.

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[2] *See, e.g.*, *Arredondo v. Avis Rent A Car Sys., Inc.*, 2001 UT 29, ¶ 12, 24 P.3d 928 ("We will not infer substantive terms into the text that are not already there. Rather, the interpretation must be based on the language used, and [we have] no power to rewrite the statute to conform to an intention not expressed." (alteration in original) (citation omitted) (internal quotation marks omitted)); *Bryner v. Cardon Outreach, LLC*, 2018 UT 52, ¶ 19 n.15, 449 P.3d 1096 ("Nothing is to be added to what the text states or reasonably implies. . . . That is, a matter not covered is to be treated as not covered." (quoting Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 93 (2012)).

[3] Utah Code § 54-26-302(1).

[4] Utah Code § 54-26-302(2).

[5] Utah Code § 54-26-302(3).

Chapter 26 separately defines Private Generation Contracts and Large Load Contracts and creates separate rules for each. A Private Generation Contract is defined as "a contract for the provision of electric service through a closed private generation system" between a large-scale generation provider and a large load customer.[6] The definition of Large Load Contract points to several other definitions, but the combination of those definitions makes clear that a Large Load Contract is a contract for the provision of electric service through a connected generation system to a large load customer by either a large-scale service provider or by the qualified electric utility. A Large Load Contract is defined as either "a large load construction contract or a large load service contract."[7] An examination of the definitions of the terms Large Load Construction Contract and Large Load Service Contract reveals that both are limited to contracts for the provision of service on a connected generation system.

A Large Load Service Contract is defined as "a contract for the provision of electric service for a **large-scale service request** between: (a) a qualified electric utility or a large-scale generation provider; and (b) a large load customer."[8] Chapter 26 makes clear that a Large-Scale Service Request is a request for service on a Connected Generation System. For example, the term Large-Scale Service Request is defined as "a request *submitted to a qualified electric utility*" seeking new or additional electric service of 100 megawatts or greater.[9] The submission of a Large-Scale Service Request triggers the qualified electric utility's obligation to perform an Evaluation,[10] which is defined as an assessment that, among other things, "evaluates the impact of a large-scale service

[6] Utah Code § 54-26-101(13).
[7] Utah Code § 54-26-101(4).
[8] Utah Code § 54-26-101(12) (emphasis added).
[9] Utah Code § 54-26-101(12) (emphasis added).
[10] *See* Utah Code § 54-26-202 (establishing process and standards requiring a qualified electric utility to conduct and complete an Evaluation).

request on a qualified electric utility's systems."[11] A customer seeking service pursuant to a Private Generation Contract on a Closed Private Generation System "is not required to submit a large-scale service request to a qualified electric utility."[12] A Private Generation Contract, therefore, is not "a contract for the provision of electric service **for a large-scale service request**," and is not subject to approval as a Large Load Service Contract pursuant to Utah Code § 54-26-302.

A Large Load Construction Contract is similarly limited to a contract for the provision of service on a connected generation system. A Large Load Construction Contract is "a contract for the construction of large load facilities between: (a) a qualified electric utility or a large-scale generation provider; and (b) a large load customer."[13] "Large Load Facilities," in turn, is defined to mean "facilities and resources reasonably necessary, as determined in an **evaluation**, to provide safe and reliable electric service as requested in a **large-scale service request**."[14] As discussed above, a "Large-Scale Service Request" is "a request *submitted to a qualified electric utility*,"[15] and an "Evaluation" is a an assessment performed by the qualified electric utility that "evaluates the impact of a large-scale service request on a qualified electric utility's systems."[16] A Private Generation Contract, which need not submit such a request to RMP, is not subject to approval as a Large Load Construction Contract under Utah Code § 54-26-302.

A Private Generation Contract is distinct from a Large Load Contract and the statutory requirements requiring approval of a Large Load Contract do not apply to Private Generation Contracts. Despite the fact that Utah Code § 54-26-302 only authorizes Commission approval of

[11] Utah Code § 54-26-101(3) (emphasis added); *see also* Utah Code § 54-26-202 (establishing process and standards requiring a qualified electric utility to conduct and complete an Evaluation).
[12] Utah Code § 54-26-301.5(2).
[13] Utah Code § 54-26-101(5).
[14] Utah Code § 54-26-101(7) (emphasis added).
[15] Utah Code § 54-26-101(12).
[16] Utah Code § 54-26-101(3) (emphasis added); *see also* Utah Code § 54-26-202 (establishing process and standards requiring a qualified electric utility to conduct and complete an Evaluation).

Large Load Contracts and makes no reference to Private Generation Contracts, RMP argues that the statute nonetheless requires Commission approval of Private Generation Contracts. In its reply comments, RMP argues as follows:

> The Company does not dispute that a party to a Private Generation Contract is exempt from submitting a Large-Scale Service Request to the Qualified Electric Utility, but it is not exempt from submitting such a request to the Large-Scale Generation Provider. *Because a Private Generation Contract may still require submission of a Large-Scale Service Request to a Large-Scale Generation Provider, the Private Generation Contract could still be a large load service contract*.[17]

RMP's argument should be rejected both because it ignores the distinction between Large Load Contracts and Private Generation Contracts discussed above and because it ignores the distinction between a "Large-Scale Service Request" and a "private generation service request." RMP's argument that a customer seeking service on or through a Closed Private Generation System may submit a service request to a Large-Scale Service Provider assumes, incorrectly, that such a request qualifies as a Large-Scale Service Request that would ultimately trigger Commission approval requirements. It does not. As noted above, a Large-Scale Service request is defined as a request submitted to a Qualified Electric Utility. Moreover, the Act makes expressly distinguishes between a Large-Scale Service Request and a "private generation service requests" when it establishes that the "procedures and standards set forth" in Chapter 26 "shall govern: . . . . (b) services sought, provided, or received under either a large-scale service request *or a private generation service request.*"[18] As such, a customer's request submitted to an alternate service provider for service on a closed private generation system is termed a "private generation service request" and is not a Large-Scale Service Request that would trigger any Commission approval requirement.

[17] RMP Reply Comments (Sept. 10, 2025) at 5 (emphasis added).
[18] Utah Code § 54-26-102(1)(b) (emphasis added).

A Private Generation Contract cannot be a Large Load Contract. The Commission is not authorized to regulate Private Generation Contracts in the same manner as Large Load Contracts and the Commission should reject the argument to the contrary set forth in RMP's reply comments.

B. Commission Oversight of Private Generation Contracts Should be Limited to a Review of Eligibility Under the Act

UAE supports an approach that would limit Commission regulation of Private Generation Contracts to a review of eligibility under the Act, which is consistent with the position reflected in UAE's proposal. UAE acknowledges the shift in approach in the RMP Revised Proposal on this point. Contrary to the position it took in the Straw Proposal, in the RMP Initial Proposal, and in its September 10 reply comments, the RMP Revised Proposal no longer proposes to subject Private Generation Contracts to the same approval requirements as Large Load Contracts. Instead, the RMP Revised Proposal limits Commission review of a Private Generation Contract to the question of whether the statutory requirements of the Act are satisfied such that the contract qualifies as a Private Generation Contract.[19] While UAE supports this change in RMP's position, UAE objects to certain of the procedural provisions in the RMP Revised Proposal[20] and recommends that the Commission adopt the approach in the UAE proposal.

Any rule adopted by the Commission should acknowledge that the Commission's jurisdiction over a Private Generation Contract is limited. A Private Generation Contract is an agreement between a Large Load Customer and a Large-Scale Service Provider, neither of which is a public utility. The Commission has the "power and jurisdiction to supervise and regulate every public utility in this state, and to supervise all of the business of every such public utility in this state," but that power and jurisdiction does not extend to customers and service providers that are

[19] *See* RMP Revised Proposal at R746-XX2-2 to 2-3, R746-XX6.
[20] See Section II, below.

not public utilities.[21] The Commission has jurisdiction, however, to determine—consistent with Utah law—which utility may sell power to a customer.[22] As such, the Commission has jurisdiction to determine whether a contract satisfies the statutory requirements of a Private Generation Contract and qualifies for treatment as such under the Act. UAE's proposal grants the Commission authority to exercise this limited jurisdiction but goes no further than is necessary to achieve this end.

II. The RMP Revised Proposal Seeks to Impose Improper Filing Requirements that Should Not be Adopted

This section addresses certain provisions in the RMP Revised Proposal that would impose improper filing requirements on applications for review of both Large Load Contracts and Private Generation Contracts, and those provisions should be rejected.

A. Applicants Seeking Commission Approval of Private Generation Contracts and Large Load Contracts Cannot be Required to Submit a Declaration from RMP

The Commission should reject RMP's proposal to require an application for Commission approval of either a Private Generation Contract or a Large Load Contract to include a declaration from RMP because such a requirement would constitute an unlawful delegation of power to RMP and is procedurally unworkable. The RMP Revised Proposal proposes that applications seeking approval of a Private Generation Contract and a Large Load Contract to which RMP is not a party must be accompanied by a declaration from RMP. Specifically, RMP proposes that an application for approval of a Private Generation Contract must include "[a] declaration from the Qualified Electric Utility, including an outline of supporting evidence, that the Closed Private Generation

[21] *See Bear Hollow Restoration, LLC v. Public Service Commission*, 2012 UT 18, ¶ 18, 274 P.3d 956 ("The Public Service Commission has no inherent regulatory powers other than those expressly granted or clearly implied by statute" (cleaned up)); *Hi-Country Estates Homeowners Ass'n v. Bagley & Co.*, 901 P.2d 1017, 1021 (Utah 1995) (Commission's jurisdiction extends only to "the purposes outlined in" Utah Code Title 54, Chapter 4).
[22] *See, e.g.*, *White River Shale Oil Corp. v. Public Service Commission*, 700 P.2d 1088, 1092 (upholding PSC issuance of temporary cease and desist order until the PSC can determine which of two utilities may serve a customer, stating that "the PSC may determine which utility may sell it power.").

System will operate with complete separation from the Qualified Electric Utility's system."[23] Similarly, RMP proposes that an application for approval of a Large Load Contract to which RMP is not a party must include:

> A declaration from the Qualified Electric Utility, including an outline of supporting evidence that :
>
> (i) No electric services will be provided by the Qualified Electric Utility in conjunction with the Large Load Contract, or
>
> (ii) The Large-Scale Generation Provider or Large Load Customer has entered a Large Load Service Agreement for the provision of any necessary electric services from the Qualified Electric Utility in conjunction with the Large Load Contract, and
>
> (iii) The Qualified Electric Utility has had an opportunity to review the Private Generation Contract and has concurred with the findings in the declaration under subpart (a) of this Rule.[24]

These proposed requirements would, if adopted, constitute an improper delegation of authority to RMP, would be procedurally unworkable, and would impose a standard different from those set forth in the Act, and should be rejected.

First, the requirement that an applicant seeking Commission approval of a Private Generation Contract or Large Load Contract must first obtain a declaration from RMP constitutes an improper delegation of authority to RMP. Utah courts have held that the Utah Legislature "cannot constitutionally delegate to private parties governmental power that can be used to further private interests contrary to the public interest."[25] In *Stewart v. Public Service Commission*, the Utah Supreme Court found that a statute authorizing the utility to veto a rate regulation mechanism adopted by the Commission constituted "an unconstitutional delegation of legislative power," and nullified the provision.[26] In *Union Trust Co. v. Simmons*, the Utah Supreme Court found that a

[23] RMP Revised Proposal at R746-XX6-2(1)(e).
[24] RMP Revised Proposal at R746-XX5-1(c).
[25] *Stewart v. Public Service Commission*, 885 P.2d 759, 776 (Utah 1994) *superseded on other grounds* (finding that Utah statute delegating to public utility the ability to veto a regulatory scheme adopted by the PSC constituted an unlawful delegation of legislative power); *see also*
[26] *Id*. at 779.

statute regarding the establishment of branch banks constituted an unconstitutional delegation of authority when it prohibited the bank commissioner from approving the establishment of a branch bank unless competing banks in the community gave the commissioner written consent to consider the application.[27] Much like the statute in *Union Trust Co.*, RMP's proposal would delegate to RMP the authority to bar another private actor from filing an application to the Commission seeking relief that the Commission is authorized to provide. The Commission is authorized to make findings of fact and conclusions of law and may not by rule delegate this authority to a public utility it regulates. This Commission has no greater authority to unconstitutionally delegate power to private actors than does the Utah Legislature and RMP's proposal should be rejected.

Second, in addition to being an improper delegation of power, RMP's proposal should be rejected because it is procedurally unworkable. By failing or refusing to provide the contemplated declaration, RMP could effectively veto any application for approval of a Private Generation Contract or a Large Load Contract in which it is not the service provider. RMP could also unreasonably delay its review of a request to provide a declaration. Parties requesting a declaration from RMP would have no readily-available mechanism to force RMP to timely review the request, to evaluate it in good faith, or to provide the declaration in a timely manner (or at all). The proposal should be rejected.

Third, RMP's proposal imposes substantive standards that are different than those articulated in the Act. The RMP Revised Proposal would require that an applicant seeking approval of a Private Generation Contract secure from RMP a declaration stating that the system "operate with complete separation from" RMP's system, which is different from the terminology

[27] *Union Trust Co. v. Simmons*, 211 P.2d 190, 191 (Utah 1949) (quoting statute as follows: "No branch bank shall be established in any city, town or village in which is located a bank or banks, state or national, regulatory transacting a customer banking business, unless the bank seeking to establish such branch shall take over an existing bank or obtain the consent of all banks therein located . . . .").

in the Act, which requires that a Closed Private Generation System "operate independently from" RMP's system.[28] The phrase "operate independently from" and "operate with complete separation from" are similar but not identical and could be subject to different interpretations. Setting a separate standard than what is articulated in the Act would double down on the concerns raised above by allowing RMP to interpret the term "operate with complete separation from" RMP's system in a way that suits its own interests to the detriment of the applicant and the public interest.

The Commission should reject any proposal that would require an applicant to obtain a declaration from a regulated utility to obtain relief the Commission is authorized to provide.

B. The Revised RMP Proposal Continues to Impose Improper Requirements on Applications for Review of Private Generation Contracts

While the RMP Revised Proposal no longer subjects a Private Generation Contract to all of the same approval requirements as a Large Load Contract, it does seek to impose certain filing requirements on applications for review of a Private Generation Contract that are applicable only to Large Load Contracts. Section R746-XX6-2 of the RMP Revised Proposal sets forth RMP's proposed requirements for applications seeking Commission review of a Private Generation Contract. Section 746-XX6-2(1)(b) seeks to require a Large-Scale Service Provider that would provide service pursuant to a Private Generation Contract to provide "proof that the Large-Scale Generation Provider satisfies all requirements of Utah Code Ann. § 54-26-505(2)." Utah Code Section 54-26-505, titled "Connected Generation Systems" and sets forth the conditions pursuant to which "[a] large-scale generation provider may provide service on or through a connected generation system."[29] The provision cited by RMP in its filing requirements for Private Generation

[28] Utah Code § 54-26-101(1)(a) (defining Closed Private Generation System as "electric generating facilities and associated transmission infrastructure that . . . is not connected to and operates independently from the transmission system of a qualified electric utility, cooperative utility, municipal utility, or other utility.")
[29] Utah Code § 54-26-505(2).

Contracts imposes certain qualification requirements that apply only if a Large-Scale Service Provider seeks to provide service on or through a Connected Generation System. An application for Commission review of a Private Generation Contract should not have to demonstrate compliance with provisions related to a Large Load Contract, and Section 746-XX6-2(1)(b) in the RMP Revised Proposal should be rejected.

III. Cost Allocation Principles for Transmission Service Costs to Provide Service to Large Load Customers on a Connected Generation System

In its Initial Comments in this this docket, UAE stressed the need for the Commission to adopt principles associated with transmission cost allocation to provide guidance to parties engaged in negotiations regarding a Large Load Contract. UAE will not repeat those comments in full here but reiterates its position that the adoption of certain principles will provide much-needed clarity to RMP and to any potential large load customers. UAE continues to support the proposed rules regarding transmission cost allocation included in the UAE Initial Proposal, with certain clarifying edits included as an attachment to these comments, which identify principles that will provide guidance to the parties. UAE addresses RMP's criticisms of those proposed principles below.

A. Response to RMP Reply Comments and the RMP Revised Proposal

In its reply comments filed September 10, 2025, RMP singles out for criticism one principle included in UAE's Initial Comments. RMP objects to UAE's proposal to include in the rules a provision that "the Large Load Customer shall not be charged for the capital costs of projects that a Qualified Electric Utility has already included in its long-term transmission plan at the time of submission of the transmission service request related to the large load customer's load request."[30] The intent of this principle is to provide context for what costs of providing transmission service

[30] RMP Reply Comments at 4 (quoting UAE Initial Proposal at 4-5).

to a large load customer are considered "incremental," which should be fully funded by the large load customer, and which costs are "embedded," which will be paid by all customers (including the large load customer) through transmission service charges. UAE's position is that the "incremental" costs are the costs associated with facilities that are triggered by a transmission service request to facilitate service to the large load customer and that the costs for other existing or planned facilities, including those costs for facilities included in the long-term transmission plan, are "embedded" costs.

RMP's criticism of UAE's position its reply comments states as follows:

> This proposal could result in any number of circumstances that violate the Utah Legislature's express instruction to the Commission and result in unjust and unreasonable burden on the Company and its customers. For example, the Company may have included a project in its transmission plan to benefit the entire system but may now need to expedite or consume the entire availability of that project to meet a specific Large Load Customer's needs. If such a project were reallocated to a single Large Load Customer in response to a transmission service request, under UAE's proposal the Company would be required to pay for the transmission network upgrade to serve the Large Load Customer. In some instances this may require the Company to add an additional replacement project into its long-term plan due to the Large Load Customer consuming the original intent and purpose of the planned line, effectively requiring other customers to pay for two upgrades instead of one.

RMP's argument ignores the impact of other principles advocated by UAE and misconstrues UAE's position. Importantly, UAE's first proposed principle, copied verbatim from the Act, is that "the Large Load Customer shall bear all just and reasonable incremental costs attributable to receiving the requested electric service."[31] This obligation that large load customers bear the just and reasonable incremental costs of receiving service addresses the concerns raised in RMP's reply comments. To the extent that accommodating a transmission service request to

[31] UAE Initial Proposal at 4; *see also* Utah Code § 54-26-302(2)(b) (requiring PSC to approve large load contract if it finds that "the large load customer bears all just and reasonable incremental costs attributable to receiving the requested electric service.").

facilitate service to a large load customer triggers changes to the long-term transmission plan, the costs associated with such changes would be "incremental" costs for which the large load customer could be directly responsible. Additionally, to the extent that the large load customer utilizes existing transmission system assets, it would also be required to pay for non-incremental embedded system costs through the applicable transmission service rates.

RMP also expresses the concern that service to a large load customer "[i]n some instances . . . may require the Company to add an additional replacement project into its long-term plan due to the Large Load Customer consuming the original intent and purpose of the planned line."[32] However, in the example scenario from RMP's reply comments described above, a large load customer would not simply consume the original intent of a planned project. If the planned system upgrades are insufficient to accommodate both the Company's existing planned obligations and the new Large Load Customer, and the Company is required to build additional transmission upgrades, then in UAE's view the cost of the new facility at issue would be "incremental" to the long-term plan and could be directly attributable to the large load customer.

RMP's argument that the large load customer should be directly assigned all costs of facilities identified in a transmission service study is overbroad. A circumstance could arise in which service to a large load customer could utilize a facility that had been included in the long-term transmission plan without triggering any changes to the facility or the timing of its construction and without requiring the inclusion of a replacement facility in the long-term plan. In this circumstance, the facility would be used to serve all customers, including the large load customer, and the large load customer would be required to pay transmission service rates that

[32] RMP Reply Comments at 4.

include the embedded cost of the facilities it uses, thus offsetting the cost for the non-incremental embedded system that is funded by other customers.

Further, a policy that directly assigns to the large load customer all or a pro-rated portion of the incremental new facilities' costs to a large load customer should give consideration to the embedded cost transmission service rates that will also be paid by the customer. For example, if a new large load customer submits a request that triggers a need for the utility to invest in a new 345 kV transmission line to serve that load, and the full cost of this incremental system investment is directly assigned to the new large load customer based on the presumption that the investments exclusively serve that customer (despite the fact that it may provide benefits to all customer on the system), it would not be appropriate to charge the customer both for all incremental facility costs and all existing embedded transmission costs. Imposing the full cost of incremental facilities and transmission service rates that recover the cost of the embedded system facilities would be duplicative and inconsistent with the reality that both the new large load customer and existing customers will utilize both existing transmission infrastructure and the incremental transmission upgrades. A reasonable cost allocation should properly consider the fact that existing customers will benefit from the incremental facilities, similar to how the large load customer would benefit from the non-incremental embedded facilities.

RMP's position that the large load customer should be directly assigned all costs of facilities identified as necessary to provide transmission service to a large load customer, including those facilities that are already part of the Company's long-term transmission plan (i.e., not incremental), is also contrary to the conclusion this Commission reached in Docket No. 24-035-04 when it addressed the question of whether it would be appropriate for RMP to directly assign to a new transmission service customer the costs associated with a project that had been included

in the Company's long-term transmission plan. RMP argued that it should not directly assign to a new large transmission customer the costs of a facility included in its long-term transmission plan when "the network upgrades at issue . . . simply were not triggered by the system impact study conducted in response to the [New Large Customer's] request for service."[33] The Commission agreed, stating that "whether RMP should assign an incremental or embedded rate to a new transmission service or interconnection customer presents a complex question highly dependent on specific facts,"[34] and that, ultimately, "requiring RMP to assume network upgrade costs must be assigned to the new transmission customer under an incremental rate is unreasonable."[35]

The RMP Revised Proposal seeks to codify RMP's position that the cost of facilities that must be constructed to serve a large load customer should be directly assigned to that customer under all circumstances. For the reasons articulated in the Commission's order cited above, RMP's proposal on this point should be rejected. Only those incremental facilities that are triggered by a large load service request should be directly assigned to the large load customer. The Commission's rule should ensure that costs are directly assigned to the large load customer "where a new transmission customer requires upgrades that provide little or no value to the system beyond facilitating the new customer's service."[36] However, where the facility at issue is not triggered by the large load service request because it has already been included in the long-term transmission plan, and the request does not require changes to the long-term plan or replacement facilities, then the costs of the facility are embedded costs that should be paid for by all transmission customers—including the new large load customer—through embedded transmission rates.

[33] Docket No. 24-035-04, Order Issued April 25, 2024 at 96 (citations omitted).
[34] *Id*. at 97.
[35] *Id*. at 98; *see also id*. (noting that direct assignment of costs to the new customer "may not be in retail ratepayers' interests over the long term.").
[36] *Id*. at 97.

B. The Commission Should Consider How Transmission Service Rates Will Apply Under Circumstances in Which Certain Upgrade Costs are Paid by the Large Load Customer or the Large-Scale Service Provider

The RMP Revised Proposal articulates RMP's position that the cost of system upgrades utilized in connection with service to a Large Load Customer should be paid up front by the Large Load Customer or the Large-Scale Service Provider, but this position is not accompanied by any explanation of (or reference to) the impact on applicable transmission service rates. Any facilities that are direct assigned in connection with this rulemaking proceeding should be excluded from rate base in the calculation of transmission service rates to be paid by the Company's transmission customers, the majority of which will be paid for by the Company's retail customers.

In addition, however, FERC's "higher of" Pricing Policy prohibits the imposition of transmission service rates that include the incremental costs of new facilities and the embedded costs of a system. The "higher of" Pricing Policy states that system expansions should be priced at the higher of the embedded cost rate (including the expansion costs) or the incremental cost rate, consistent with the Transmission Pricing Policy Statement issued by FERC on October 26, 1994.[37] The rate may not include both incremental and embedded costs. RMP has previously argued that the imposition of incremental rates to a new large transmission customer, which would prevent the Company from collecting the embedded cost rate from that same customer, is ultimately detrimental to retail customers over the long term.[38]

[37] *See Preventing Undue Discrimination and Preference in Transmission Service*, (FERC Order 890), 72 FR 12266-01, ¶ 870 n.533 (Mar. 15, 2007) ("In Order No. 888, the Commission stated that system expansions should be priced at the higher of the embedded cost rate (including the expansion costs) or the incremental cost rate, consistent with the Transmission Pricing Policy Statement."); *Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act* (Transmission Pricing Policy Statement), 59 FR 55031 at 55032 (Nov. 3, 1994) ("In order to provide new or expanded transmission service, a utility may be required to add expensive transmission assets, which can result in an increase in rolled-in embedded cost rates. To address this possibility, the Commission has allowed a utility to charge transmission-only customers the higher of embedded costs (for the system as expanded) or incremental expansion costs, but not the sum of the two.").

[38] *See* Docket No. 24-035-04, Order issued April 25, 2025 at 95-98.

The RMP Revised Proposal does not mention transmission service rates that may apply to the Large-Scale Generation Provider that provides service to a Large Load Customer. Section R746-XX3-2 of the RMP Revised Proposal sets forth RMP's proposed principles for transmission cost allocation. Subsection (2) of that provision states as follows:

> (2) To the fullest extent allowable under applicable federal law and regulations, all interconnection and transmission-related studies and any identified interconnection upgrades, transmission upgrades, network upgrades, distribution system upgrades and system *upgrades the Qualified Electric Utility or the Large-Scale Generation Provider will incur or pay to provide service to the Large-Load Customer shall be directly assigned to the Large-Load Customer*.[39]

A portion of the above-quoted language is a verbatim restatement of language set forth in Utah Code § 54-26-503(1). The italicized text in the quote above departs from the statutory provision to introduce a new concept, not in the Act, that would impose a requirement for up front payment of incremental costs. The Commission should consider whether this standard would negatively impact retail customers over the long term by limiting the Company's ability to recover the embedded costs of the system from Large-Scale Service Providers or Large Load Customers.

The Act makes reference to federal policy and requires that the Large-Scale Generation Provider or Large Load Customer pay "to the fullest extent allowable under federal law" for:

> (A) any interconnection and transmission-related studies,
> (B) any identified interconnection upgrades, transmission upgrades, network upgrades, distribution system upgrades, or system upgrades; and
> (C) the transmission service rates in the transmission provider's open access transmission tariff.[40]

The underlined text from the Act above regarding transmission service rates is not included in the RMP Revised Proposal. The phrase "the fullest extent allowable" in the provision quoted above must take into account both the capital costs of the upgrades and the transmission service

[39] RMP Revised Proposal, R746-XX3-2(2) (emphasis added).
[40] Utah Code § 54-26-503(1)(b)(i) (emphasis added).

rates that will apply over time. The RMP Revised Proposal is silent on the obligation to pay transmission service rates, which is set forth in the underlined text above. The implications of the RMP Revised Proposal on transmission rates that may be applicable under FERC policies should be better understood before any proposal is adopted.

IV. UAE's Revised Proposal

UAE's proposed rule is set forth in the UAE Revised Proposal, attached as Exhibit 1 hereto. The UAE Initial Proposal was submitted along with its initial comments on August 27, 2025. The UAE Revised Proposal makes revisions to the initial proposal consistent with the comments above. The UAE Revised Proposal also makes formatting revisions to more closely align the format with the format of existing Commission rules. Exhibit 2 hereto shows the changes, in redline, between the UAE Initial Proposal and the UAE Revised Proposal. Exhibit 3 shows the changes, in redline, from the RMP Revised Proposal to the UAE Revised Proposal.

CONCLUSION

UAE appreciates the opportunity to address these complicated issues and looks forward to feedback from the Commission on October 17, 2025. For the reasons set forth herein, UAE proposes the adoption of the rule as set forth in the UAE Revised Proposal.

DATED this 10th day of October, 2025.

Respectfully submitted,

By: 

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Certificate of Service
Docket No. 25-R318-01

I hereby certify that a true and correct copy of the foregoing was served by email this 10th day of October 2025 on the following:

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