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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
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FINAL COMMENTS OF NRG ENERGY AND TRACT

NRG Energy (“NRG”) and Tract Capital Management, LP (“Tract”) (together the “Joint Commenters”), through their undersigned counsel, file these Final Comments pursuant to the Commission’s September 18, 2025, Amended Scheduling Order and in response to the October 17, 2025, Clarification and Guidance Memorandum. The Joint Commenters filed Initial Comments on August 28, 2025, Reply Comments on September 10, 2025, and Additional Comments and Revisions on October 10, 2025. The Joint Commenters are grateful for the opportunity to file these Final Comments to address the Commission’s Clarification and Guidance Memorandum.

I. BACKGROUND

In the last round of Comments, stakeholders addressed Rocky Mountain Power’s October

1, revisions to the proposed rules (“October Proposed Rules”). In response to those comments the Commission issued the Clarification and Guidance Memorandum (the “Guidance”) which contained high level conclusions indicating the Commission’s preliminary findings and requesting further comment on confidentiality. In these Final Comments, the Joint Commenters respond to the Commission’s decision to defer action on cost allocation, provide guideposts and suggestions for terms which appear in the Proposed Rules and in the Guidance, and provide additional input on the necessary confidentiality protections.

II. JOINT COMMENTERS’ FINAL COMMENTS

1. The Commission Must Establish Rules Addressing Transmission Cost Allocation

The Guidance signals that the Commission does not intend to “address any specific matters regarding cost allocation in the initial rule promulgation[,]”¹ because it is currently premature to establish rules on transmission cost allocation. Although the Joint Commenters agree with the Guidance’s conclusion that “the issue is currently hypothetical and could only be addressed on the basis of conjecture[,]”² deferring cost allocation for future resolution ignores the legislature’s mandate. Pursuant to Utah Code Ann. § 54-26-901, the “commission *shall*: conduct a proceeding to establish rules for the allocation of transmission costs between large load customers and retail customers for large load contracts executed on or after January 1, 2026.” (emphasis added). This statutory requirement cannot be waived. Furthermore, while the Joint Commenters agree with many of the guiding principles in Utah Association of Energy Users’ (“UAE”) Comments and revisions,³ guiding principles likewise do not satisfy the statutory requirements for rules on cost allocation. Thus, the Joint Commenters urge the Commission to acknowledge that S.B. 132 authorizes Utah’s large load customers to have retail access to transmission service under the

¹ Guidance at 2.

² *Id.*

³ UAE’s Reply Comments, Exhibit 3 at 5-7; *see also* Joint Commenters’ Reply Comments at 2-3.

Federal Energy Regulatory Commission (“FERC”)-approved open access transmission tariff (“OATT”) and that costs allocated under the OATT constitute just and reasonable incremental cost allocation. The Joint Commenter’s redlines to the proposed rules filed on October 10, 2025, present such an approach.⁴

The Joint Commenters encourage the Commission to adopt a rule that incorporates a FERC OATT for three reasons. First, all rates and charges under an OATT must be “just and reasonable.”⁵ This requirement presumptively satisfies the requirements in SB 132 for the just and reasonable allocation of incremental costs. Second, incorporating the OATT is a method that can be implemented by January 1, 2026. And third, incorporating the OATT effectively implements clear methodology as requested by multiple stakeholders in this rulemaking and required by the legislature.⁶

By confirming large load customers have non-discriminatory access to connect to the transmission system and receive transmission service, the Commission is complying with the statutory deadline. Recognizing that some large load contracts may also require Utah jurisdictional transmission or distribution service, future action is needed to establish additional rules or establish a Utah jurisdictional large load customer transmission and distribution rate or tariff. The OATT, however, can serve as a Utah specific framework until such action occurs, perhaps as part of a Large Load Flexible Tariff proceeding as the Guidance suggests.⁷ The statute is clear that rules on transmission cost allocation must be in place by January 1, 2026. Deferring a decision on cost allocation is simply not an option and given the current hypothetical nature of large load contracts,

⁴ NRG and Tract’s Joint Comments and Proposed Revisions, Attachment A at 6-7.

⁵ 16 U.S.C. § 824d(a) (“All rates and charges made, demanded, or received by any public utility for or in connection with the transmission or sale of electric energy subject to the jurisdiction of [FERC], and all rules and regulations affecting or pertaining to such rates or charges shall be just and reasonable, and any such rater or charge that is not just and reasonable is hereby declared to be unlawful.”).

⁶ “In developing rules under Subsection (1), the commission shall consider ... Federal Energy Regulatory Commission policies and precedents regarding transmission cost allocation.” Utah Code Ann. § 54.26-901(2)(a).

⁷ Guidance at 2.

adopting the OATT is the best approach for complying with this statutory mandate.

2. Clarification on the terms “financial capability,” “technical capability,” and “creditworthiness.”

The Guidance notes that the Commission’s review of closed private contracts will entail evaluation of “the supplier’s technical and financial capacity to deliver on its contractual commitments.”⁸ The Guidance also notes that the Commission’s review of Large-Scale Generation Provider (“LSGP”) registration will include evaluation of “credit worthiness and technical capability.”⁹ Neither S.B. 132 nor the proposed rules define these terms. Importantly, S.B. 132 specifies that technical and financial qualifications for large-scale generation provider registration or financial capability requirements in large load contracts must be reasonable.¹⁰ The reasonableness of technical and financial qualifications necessarily requires case by case assessments and should be sufficiently flexible to promote SB 132’s goals of facilitating the growth of large loads and the electric systems to serve them. Accordingly, the Joint Commenters propose general guidelines and request that the Commission memorialize these guidelines in its rules.

a. Financial Capacity

The Commission should evaluate the financial capacity of a supplier in a private generation contract liberally. As the Joint Commenters previously stated, the Commission should establish reasonable thresholds for the maximum amount of financial capability that a supplier must demonstrate. A maximum threshold is necessary because until service requests have been studied and evaluated, project costs are unknown. Moreover, LSGPs will likely need to register before negotiations with large load customers begin. Therefore, the number of projects, the cost and

⁸ *Id.* at 1.

⁹ *Id.* at 3.

¹⁰ Utah Code Ann §§ 54-26-501(1)(b) & 2(b).

capital deployment timelines of those projects, and the financial capacity a LSGP needs to implement large load contracts remain unknowable at the time of LSGP registration. Accordingly, the financial capacity requirements at the LSGP stage should recognize these uncertainties and provide sufficient flexibility to promote LSGP registration and market participation.

b. Creditworthiness

As the Joint Commenters previously commented, a LSGP should be able to demonstrate creditworthiness if it or its parent has an investment-grade rating. And for those firms below such a rating, creditworthiness should be demonstrated through cash or a guarantee, such as a letter of credit or a surety bond, from an investment grade-rated company. The Joint Commenters request that the Commission adopt these standards.

It is important that the Commission's creditworthiness evaluation avoid triggering delays in project development or discouraging operators from bringing projects to Utah in order to advance Senate Bill 132's overall objectives.

c. Technical Capability

When the Commission evaluates technical capability for its limited review of private generation contracts or the registration of LSGPs, the Commission should take a flexible approach. The technical capability threshold should not foreclose new entrants participating in the market. Rather, technical capability should be holistically evaluated to include both the entity and its market relationships. That is to say that the Commission should accept relevant experience of staff within an entity as well as the entity's relationships with other organizations who have relevant experience. This could also include affiliate experience in other regulated activities. One example could be FERC registered power marketers or private system operators.

3. Confidentiality

The Guidance asks the parties to provide additional input on confidentiality protections for

contracts between LSGPs and their large load customers.¹¹ Preliminarily, there are some categories of contractual information that are purely commercial with no relevance to grid stability and, therefore, should always be confidential. The most obvious of these is pricing. Other contractual provisions, however, may have relevance to both grid stability/reliability and contain commercially sensitive and market competitive information. And remaining provisions may not have obvious implications for market competition but nonetheless have no relevance to Rocky Mountain Power's ("RMP") evaluation of the technical components of a LSGP's system and its impact on the grid. Moreover, even technical drawings and specifications may involve market competitive information, especially in closed systems. The Joint Commenters suggest that the Commission permit a LSGP to use its discretion to redact its filed contracts. RMP should have the burden of proof to show why it needs access to certain contract terms designated as confidential to evaluate the LSGP's effect on the grid. The Commission should then make a determination on a case-by-case basis to grant RMP access to terms the LSGP deemed commercially sensitive.

Additionally, at this early stage it may be hard to preemptively draw a line between technical and commercially sensitive information when the Commission has not yet reviewed any LSGP contracts. Therefore, the Joint Commenters suggest that providing LSGP system schematics and engineering documents, reasonably redacted, to RMP for a facility might be sufficient for RMP's review initially. This information should also, however, be subject to confidential protections from broader public disclosure. If RMP does not have what it believes it needs from these documents, it could then petition the Commission for additional access to contractual provisions related to technical information. RMP must carry the burden of demonstrating that the need for additional information to determine the potential impacts on grid

¹¹ *Id.* at 2.

stability and reliability outweigh the LSGP's and large load customers' confidentiality concerns.

III. CONCLUSION

The Joint Commenters appreciate the opportunity to provide these Final Comments to the Commission.

Respectfully submitted this 24th day of October 2025,

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CERTIFICATE OF SERVICE

I certify that on October 24, 2025, I caused a true and correct copy of the foregoing to be filed with the Public Service Commission via email to psc@utah.gov and served upon the following in Utah Docket No. 25-R318-01 as indicated below:

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