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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Approval of Rocky Mountain Power's Advice No. 09-08 Schedule 193 – Demand Side Management (DSM) Cost Adjustment	**THE UIEC'S PROPOSAL ON SCOPE OF FUTURE DEMAND-SIDE MANAGEMENT PROCEEDING** Docket No. 09-035-T08

Pursuant to the Scheduling Order issued July 28, 2009, by the Utah Public Service Commission ("Commission"), the UIEC respectfully submits its Proposal on Scope of Future Demand-Side Management Proceeding.

I. ALTERNATIVE DSM PARTICIPATION PROVISION

A. Explanation of Issue:

The Commission approved the current DSM tariff, Rocky Mountain Power, Electric Service Schedule No. 193, pursuant to the Electric Energy Efficiency and Conservation Tariff statute ("DSM Statute"). Under that statute:

> (5) The commission may approve a tariff under this section either with or without a provision allowing an end-use customer to receive a credit against the charges imposed under the tariff for electric energy efficiency measures that:

> (a) the customer implements or has implemented at the customer's expense; and
>
> (b) qualify for the credit under criteria established by the Utah Public Service Commission.

Utah Code Ann. § 54-7-12.8(5). It appears that Schedule No. 192 allowing DSM "self-direction" credits was approved under this provision of the DSM Statute. *See* Rocky Mountain Power, Elec. Serv. Schedule No. 192.

However, instead of using criteria established by the Commission, as required by the DSM Statute, the "self-direction" tariff gives Rocky Mountain Power ("RMP" or the "Company") sole discretion for qualifying the eligibility of a customer's energy efficiency measure. Furthermore, instead of allowing the customer to receive a full credit against the charges imposed under the DSM tariff, as suggested by the DSM Statute, the "self-direction" tariff only permits an offset of 80% of a customer's expenses as approved by RMP, with a program limitation of $1.5 million per year. Finally, the "self-direction" tariff sets a time limitation for eligibility not contemplated in the DSM Statute. These restrictions, as well as putting RMP in the position of administrator, adds unnecessary and counter-productive cost and timing burdens to the overall effort, as detailed below. Accordingly, the "self direction" tariff appears to be counter to the language and purposes of the DSM Statute.

Since the DSM Statute was passed in 2002, the Utah legislature has passed the Carbon Emission Reductions for Electrical Corporations Act ("Carbon Statutes" or the "Act"). This Act extends the efforts begun with the DSM Statute to continue Utah's efforts of encouraging the use of renewable energy and energy efficiency measures to reduce the emissions of carbon and other greenhouse gases.

Pursuant to the Carbon Statutes:

> A renewable energy certificate shall be issued for:
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> (a) ***qualifying electricity*** generated on and after January 1, 1995; and
>
> (b) ***the activities of an energy user described in Subsections*** 10-19-102(11)(3) and ***54-17-601(10)(e) on and after January 1, 1995***.

Id. 54-17-603(4) (emphasis added). ***Qualifying electricity*** is defined as:

> ***[E]lectricity generated on or after January 1, 1995 from a renewable energy source*** if:
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> (a) (i) the renewable energy source is located within the geographic boundary of the Western Electricity Coordinating Council; or
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> (ii) the qualifying electricity is delivered to the transmission system of an electrical corporation or a delivery point designated by the electrical corporation for the purpose of subsequent delivery to the electrical corporation; and
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> (b) the renewable energy attributes of the electricity are not traded, sold, transferred, or otherwise used to satisfy another state's renewable energy program.

Utah Code Ann. § 54-17-601(7). Thus, any electricity that has been generated on or after January 1, 1995, from a renewable energy source qualifies for renewable energy certificates under Utah law as long as it passes the statutory criteria set forth in Section 54-17-603(4)(a)–(b).

A renewable energy source is:

> (a) an ***electric generation facility or generation capability or upgrade that becomes operational on or after January 1, 1995*** that derives its energy from one or more of the following:
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> . . .
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> (vi) ***waste gas and waste heat capture or recovery***; or
>
> . . .

(e) any of the following located in the state and owned by a user of energy:

(i) a ***demand side management measure***, as defined by Subsection 54-7-12.8(1), with the quantity of renewable energy certificates to which the user is entitled determined by the equivalent energy saved by the measure;

(ii) a solar thermal system that reduces the consumption of fossil fuels, with the quantity of renewable energy certificates to which the user is entitled determined by the equivalent kilowatt-hours saved except to the extent the commission determines otherwise with respect to net-metered energy;

(iii) a solar photovoltaic system that reduces the consumption of fossil fuels with the quantity of renewable energy certificates to which the user is entitled determined by the total production of the system, except to the extent the commission determines otherwise with respect to net-metered energy;

(iv) a hydroelectric or geothermal facility with the quantity of renewable energy certificates to which the user is entitle determined by the total production of the facility, except to the extent the commission determines otherwise with respect to net-metered energy;

(v) a ***waste gas or waste heat capture or recovery system***, other than from a combined cycle combustion turbine that does not use waste gas or waste heat, with the quantity of renewable energy certificates to which the user is entitled determined by the total production of the system, except to the extent the commission determines otherwise with respect to net-metered energy; and

(vi) ***the station use of*** solar thermal energy, solar photovoltaic energy, hydroelectric energy, geothermal energy, ***waste gas, or waste heat capture and recovery***.

Id. § 54-17-601(10)(a), (e).[1] Under the Carbon Statutes, therefore, the DSM measures of energy users are equivalent to customers' waste gas or waste heat capture or recovery systems, including their station use.[2]

The Federal bill proposed by Waxman and Markey contains a renewable portfolio standard provision that allows energy efficiency measures to be used to offset renewable requirements. Thus, at the federal level, we also have recognition that DSM measures are equivalent to energy efficiency measures.

The Utah legislature has specifically recognized that customer implemented energy efficiency measures are valuable tools for reducing energy usage as well as greenhouse gases. We should have a single, uniform policy in addressing these issues. It follows, therefore, that to encourage all types of measures, a customer should be allowed, as an alternative way to participate in the goals of the DSM Statute, to implement its own energy efficiency measures, and the only time limitation for eligibility should be that they became operational since January 1, 1995. The legislation promotes this type of action, but the existing tariffs ignore this legislative directive.

Energy is a significant expense for industrial customers. Because profitability is directly impacted by a company's expenses, industrial customers are economically motivated to reduce their energy costs for their very survival in the world market. This in itself spurs cost-effective implementation of energy efficiency measures, in direct contrast to costly utility-sponsored

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[1] Subsection 10-19-102(11)(3) referenced in Subsection 54-17-603(4)(b) is the same as Subsection 54-17-601(10)(e), except that it is for the Municipal Electric Utility Carbon Emission Reduction Act.

[2] The UIEC disagrees with the Western Resource Advocates' ("WRA") proposal that the DSM Advisory Group be given authority to consider what WRA has termed "opt-out provisions." The implementation of the DSM Statute and the Carbon Statutes should not be pawned-off to some loosely-defined ad hoc advisory group. The Commission should address this matter under its legislatively mandated authority.

programs burdened by unproductive administrative costs. In some states, where energy efficiency measures are already a part of the renewable portfolio standard statutes, the quantification and verification of energy efficiency measures is done by self-certification, with the customer obligated to maintain an audit trail and provide records to the Commission on request. *See, e.g.*, Nev. Rev. S. 704.7825; Nev. Admin. Code 704.8873, 704.8879. The same should be done in Utah.

The existing "self-direction" tariff includes restrictions that, as discussed above, are not authorized. The tariff, with its limiting terms, does not recognize the type of investments that are generally made by industrial customers, and prohibits recovery for these types of investments. Industrial customers generally make a very large initial investment with a long term payback period. If, for example, a customer were to make a $10 million initial investment to be recovered over ten years, which is not unusual, recovery under the tariff would be prohibited on many fronts. First, the payback is more than five years. Second, 80% of actual costs would be $8 million, which is greater than the program's annual total limitation.

In addition, it is a one-size-fits-all program. No one Self-Direction Administrator can be an expert in all the possible production processes and building operations available. The customer itself is the best one to understand these and how efficiencies can be made in them. Therefore, the tariff cannot achieve the same value that could be achieved if customers were allowed to implement and manage their own energy efficiency programs.

The tariff leaves eligibility to the sole discretion of RMP. There is no reason that RMP should be the gate keeper and funding source. Layers of administration, with application processes, approval processes, and disbursement processes, always add costs. In this case, these

costs are unnecessary as most customers have a very strong self-interest motivation to keep detailed and accurate records of their project cost justifications, construction and implementation costs, and project paybacks. If the energy savings are not going to be realized, the project is not likely to go forward. The same cannot be said about the DSM programs.

The administrative burdens imposed by the tariff also increase the timing of projects, which add to their expense, and serve as a deterrent to their implementation. There is also the risk that because the Self Direction Administrator may not have a good comprehension of the details of a project, more time is spent to get approval, more paperwork must be generated to get approval, and more risk of disapproval is present. These also serve as curbs on implementation.

The program limitation of $1.5 million per year is also a strong disincentive. Why should a customer go through the time and expense of the administrative process with a project only to find at the end that the annual cap has already been reached. If the project is put off for one more year or abandoned altogether, this certainly does not serve the policy interests behind implementation of the DSM Statute and the Carbon Statutes. And, as mentioned above, a good number of industrial projects are considerably more than the entire program limitation.

The current "self-directed" tariff imposes restrictions not contemplated by the Carbon Statutes or the DSM Statute and should be replaced. The Commission should approve a tariff that provides for alternative DSM participation by electricity customers through the implementation of customers' waste gas or waste heat capture or recovery systems, including their station use. Because customer-directed and -managed programs are more cost-effective, quantification and verification of energy efficiency measures should be done by self-certification and audit trails available for Commission review. Also, the programs should be measured on the

actual kilo-watt hours saved by their implementation, not on money spent. The policies behind implementation of the DSM Statute and Carbon Statutes are more concerned with reduction of energy usage and greenhouse gases, not increasing energy costs and encouragement of inefficient spending. Therefore, the cost should be irrelevant. And finally, pursuant to the Carbon Statutes, the only time limitation for eligibility should be that the energy efficiency measures became operational since January 1, 1995.

B. Recommendation:

Industrial customers are and have been implementing energy efficiency measures over the last several years. The Carbon Statutes recognize this and allow credit to be given to projects as far back as January 1, 1995. These customers should not be penalized for their forward thinking and early action. Due to the burdensome, and uncertain requirements of the "self-directed" tariff, potentially eligible customers have been reluctant to participate. These customers are and have been implementing energy efficiency measures that the Utah legislature has deemed equivalent to DSM measures, yet these customers are unfairly paying twice—once in the expense borne entirely by themselves to implement DSM measures, and then again in surcharges imposed under the DSM tariff rider, which was recently increased. Therefore, time is of the essence.

The Commission should continue the current docket to implement a new Alternative DSM Participation tariff. In the scheduling conference currently set for September 9, the Commission should schedule direct testimony by all parties for mid October, rebuttal testimony

by all parties for late October, and a hearing for early November, 2009.[3] Alternatively, pursuant to the UIEC's Protest and Request for Hearing filed on June 23, 2009, in this matter, another docket should be opened, a scheduling conference held, and a schedule set according to that outlined above.

II. COST EFFECTIVENESS OF DSM PROGRAMS

A. Explanation of Issue:

All charges made by RMP must be just and reasonable. Utah Code Ann. 54-3-1. The UIEC is concerned that the DSM charges imposed by RMP are not just and reasonable.

Since 2003, the Company's expenditures for DSM have slowly crept upward. There has been very little in prior proceedings or tariffs that would have apprised customers that the cost of the Company's DSM programs would ever reach the 6% initially proposed in this docket. Therefore, it is appropriate for the Commission to review in this docket whether the cost-effectiveness tests applied to the Company's DSM programs remain valid in the present economic environment.

In fact, the WRA essentially admit this in their scoping proposal filed August 17. In the WRA's filing, they state that it is not clear whether the DSM tariff rider cost recovery mechanism is in need of an overhaul. That is precisely why the programs need to be reevaluated under the auspices of this docket. It is unclear what effect, if any, the DSM programs are having on savings of energy or capacity. There are extensive charges at risk and it must be determined whether they are just and reasonable.

[3] During the scheduling conference held in this matter on July 16, 2009, the Commission's Secretary was requested to hold a hearing date for November 5, 2009, at 8:30 a.m.

The WRA also argues for reliance on the past cost-effectiveness justifications. However, based on information and belief, the plant costs and natural gas and wholesale electricity prices used by RMP to calculate DSM benefits in future years are largely derived from its 2007 Integrated Resource Plan ("IRP"). As a result of the recession and drop in consumer demand in products, there was a 2.7% drop in demand in 2008 over 2007, and there has been a 4.4% decrease in the first half of this year over last year. This has translated into significant drops in overall wholesale power prices and spot prices. Meanwhile, natural gas has fallen from a peak of $12 per million Btus last year to below $4 currently.[4] Therefore, most of the cost-effectiveness assumptions underlying the DSM programs should be reevaluated.

Consideration should also be given to whether alternative rate designs and cost of service studies are more effective for molding customer behavior to promote energy efficiency than surcharges. Based on the current cost of service studies and rate designs, it is impossible to determine what effect the DSM measures really have, and thus, it is impossible to determine who is benefitting from what measures. Are the programs resulting in capacity savings, which costs should probably be borne by all classes, or are they resulting in energy savings, which costs should be borne by those receiving the energy savings. Also, having costs of service studies and rate designs that do little in the way of providing price signals only exacerbates the problem. A cost of service study and rate design should be structured first, and then a cost effectiveness analysis should be done. Without further examination, it is not known whether the current cost of service study and rate designs are contributing to the problems that DSM is meant to resolve.

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[4] Rebecca Smith, *Electricity Prices Plummet*, Wall St. J., Aug. 12, 2009, at A1.

The current DSM methods ignore avoidable long-term costs that have not occurred and may not occur if the need for additional resources is avoided by changes in customer behavior. However, other methods can be used in a manner so as to encourage behavior through price incentives while remaining revenue-neutral for the utility, using the existing technology of automatic meter reading.

In addition, the Commission should reevaluate how RMP currently recovers its DSM expenditures from customers. It appears that these expenditures are not capitalized and they are not depreciated over a multi-year time period. Yet, based on information and belief, the cost-effectiveness assumptions as to the life of the DSM measures are far greater than one year. In fact, it is the UIEC's understanding that the cost-effectiveness assumption for the Residential Home Energy Efficiency Incentive Program, which is the program at issue in this docket, includes a measure life of 45 years. The cost-effectiveness of most of the other DSM programs are based on assumptions including a measure life of at least ten (10) years. When expenditures are justified on the basis of energy savings over this long a period of time, they should not be treated as an expense and recovered over such a short period of time. They should be viewed as long-term assets and capitalized and amortized over a reasonable period of time.

There is also a serious question as to whether these life assumptions made for the cost effectiveness evaluations are even sustainable. Putting insulation in a 50 year-old home cannot seriously be expected to have a service life of 45 years. It is unlikely whether it would have such a service life even if put in a new home. So, the cost effectiveness assumptions should be re-evaluated.

Consideration also needs to be given to the tax effect of a deferred balance and carrying costs. Carrying charges accrued on a deferred balance during a given amortization period are generally not calculated and recovered until the following period. Thus, if there is a one year delay in the deduction of taxes that are collected during a given period, and a corresponding accrual of carrying charges during that same period in which the costs are incurred, the question arises: who benefits from the cost-free capital.

As it appears today, the DSM programs are in need of serious reevaluation to ensure the DSM tariff rider is not imposing unjust and unreasonable rates on RMP's customers.

B. Recommendation:

The Commission should continue the current docket to investigate the cost effectiveness and cost recovery of the DSM programs as outlined above. This could be set concurrently in this docket with the implementation of an Alternative DSM Participation tariff, as outlined above. Alternatively, pursuant to the UIEC's Protest and Request for Hearing filed on June 23, 2009, in this matter, another docket should be opened, a scheduling conference held, and a schedule set to ensure that RMP's DSM tariff does not continue to impose and collect unjust and unreasonable rates.

III. PROGRAM MANAGEMENT

A. Explanation of Issue:

With respect to program management, adjustments to the program and incentives should be made frequently to reflect the conditions of the market. This should not be a case where a program is implemented and then left on its own forever with an assumption that nothing ever changes.

Contrary to the WRA's unsupported assertion, the Commission should take the opportunity in this proceeding to review the prudency of the Company's actions during a period of declining power costs and declining load for implementing DSM programs to the extent it anticipates and at the costs it appears to anticipate. The Company has a responsibility to manage approved programs in a way that accounts for changing conditions. When circumstances occur that might render acquisition of DSM resources imprudent, the Company must respond accordingly by curtailing program spending, perhaps returning to the Commission for review of programs, or otherwise taking steps to ensure that customers are not being charged unjustly or unreasonably.

Furthermore, it does not appear that RMP has taken any measures to prevent cost increases by ensuring that the programs are not abused by contractors or participants. Nor does there appear to be any screening criteria used to determine whether unnecessary, inappropriate or inefficient measures are installed or implemented. It does not appear that RMP has any audit system to audit the billings of contractors installing DSM measures to assure the costs claimed by the contractor are reasonable, nor does it appear that RMP has any criteria for determining whether the amount reimbursed to a contractor is reasonable. It also appears that RMP has no system to identify applicants that reside in municipal electric service territories, or elsewhere outside of RMP's service territory, to assure that costs are not being expended in those areas. In short, RMP does not appear to have in place any checks to prevent fraud or abuse.

B. <u>Recommendation:</u>

The Commission should continue the current docket to investigate the management of the DSM programs as outlined above. This could be set concurrently in this docket with the

implementation of an Alternative DSM Participation tariff, as outlined above. Alternatively, pursuant to the UIEC's Protest and Request for Hearing filed on June 23, 2009, in this matter, another docket should be opened, a scheduling conference held, and a schedule set to ensure that RMP's DSM tariff does not continue to impose and collect unjust and unreasonable rates.

IV. MISCELLANEOUS

On July 10, 2009, the UIEC served data requests on RMP in this open docket. RMP has refused to respond. RMP has no basis upon which to ignore its legal obligations. While the UIEC and RMP are attempting to resolve this issue without resort to relief from the Commission, the UIEC may have additional issues and reserves the right to raise such issues as this matter, or any other matter assigned for the resolution of these issues, proceeds.

CONCLUSION

Based on the foregoing, the Commission should continue the current docket to (a) develop an Alternative DSM Participation tariff; (b) investigate the cost effectiveness of the current DSM programs and their cost recovery; and (c) investigate the program management of the DSM programs. In the scheduling conference currently set for September 9, the Commission should schedule direct testimony by all parties for mid October, rebuttal testimony by all parties for late October, and a hearing for early November, 2009.[5]

Alternatively, pursuant to the UIEC's Protest and Request for Hearing filed on June 23, 2009, in this matter, another docket should be opened, a scheduling conference held, and a schedule set according to that outlined above.

[5] During the scheduling conference held in this matter on July 16, 2009, the Commission's Secretary was requested to hold a hearing date for November 5, 2009, at 8:30 a.m.

DATED this 18th day of August, 2009.

/s/ Vicki M. Baldwin

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CERTIFICATE OF SERVICE
(Docket No. 09-035-T08)

I hereby certify that on this 18th day of August 2009, I caused to be e-mailed, a true and correct copy of the foregoing **THE UIEC'S PROPOSAL ON SCOPE OF FUTURE DEMAND-SIDE MANAGEMENT PROCEEDING** to:

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