

Sophie Hayes (12546)
Utah Clean Energy
1014 2nd Ave.
Salt Lake City, UT 84103
801-363-4046
Attorney for Utah Clean Energy

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of Advice No. 11-13 of Rocky Mountain Power for Approval of Proposed Reduction to the Schedule 193 (the “DSM Surcharge”) Collection Rate Tariff Sheets

DOCKET NO. 11-035-T14

**REPLY OF UTAH CLEAN ENERGY,
SOUTHWEST ENERGY EFFICIENCY PROJECT,
AND WESTERN RESOURCE ADVOCATES TO
RESPONSIVE PLEADINGS**

Utah Clean Energy (UCE), the Southwest Energy Efficiency Project (SWEEP), and Western Resource Advocates (WRA) submit this reply to the responsive pleadings of the following parties in the above-captioned docket: Rocky Mountain Power (the Company), the Division of Public Utilities (the Division), the Office of Consumer Services (the Office), and the Utah Association of Energy Users (UAE).

BACKGROUND

On December 1, UCE, SWEEP, and WRA (Intervenors) petitioned the Commission to intervene in this Docket and to suspend the Company’s proposed reduction in the Demand-Side Management (DSM) tariff rider (Schedule 193) collection rate from 3.6% to 2.4% of monthly bills.

On December 7, the Company hosted a DSM Advisory Group meeting in which members of the Advisory Group, including Intervenors, the Division, the Office, and UAE established a monthly schedule for DSM Advisory Group “subcommittee” meetings to discuss

the following: 1) the sunset of the current DSM tariffs (Schedules 192 and 193) and the future of the Company's DSM cost-recovery mechanism; 2) DSM program cost-effectiveness sensitivity analysis for program review and approval; and 3) DSM program and policy planning.

By December 23, the Company, the Division, the Office, and UAE submitted responses to Intervenors' petition. The Division also submitted its response to the Commission's Action Request regarding Advice No. 11-13, which also addressed Intervenors' petition. UAE supported the petition while the Company, Division, and Office opposed it. This reply will address issues raised in these parties' responses.

I. THE DSM ADVISORY GROUP IS THE APPROPRIATE FORUM IN WHICH TO ADDRESS ISSUES RAISED IN INTERVENORS' PETITION.

In requesting a suspension of the proposed reduction in the DSM tariff collection rate, Intervenors' sought the following: time and a schedule for an investigation of the appropriateness of reducing the DSM collection rate and whether and how it is possible to increase cost-effective DSM expenditures and associated cost-effective energy savings in 2012.

A. Parties' Responses

The Company argued that a Commission-mandated schedule for addressing these issues is unnecessary because a forum already exists within the DSM Advisory Group framework: during the December 7, 2011 Advisory Group meeting, participants discussed the need for a process to identify and develop opportunities for acquiring increasing levels of cost-effective energy efficiency and established a schedule of monthly meetings for such discussions.¹

The Division stated that the DSM Advisory Group was the appropriate forum for raising Intervenors' issues, rather than filing a petition with the Commission. The Division further

¹ Docket No. 11-035-T14, *Response of Rocky Mountain Power to the Petition of Utah Clean Energy, the Southwest Energy Efficiency Project, and Western Resource Advocates* (December 23, 2011), page 3.

explained that over the last two years, efforts to discuss and investigate new DSM projects have had limited results.² In its Action Request Response to the Commission, the Division stated that Intervenors' requested investigation is redundant and accused Intervenors of unfairly choosing to circumvent the Commission-approved DSM Advisory Group forum.³

The Office asserted that the investigation requested by Intervenors' in their petition is unnecessary and duplicative of the efforts underway pursuant to the schedule established at the December 7 DSM Advisory Group meeting. The Office agreed with Intervenors that the Company, regulators, and stakeholders should examine ways in which the overall DSM process can be improved and lead to the acquisition of greater amounts of cost-effective efficiency resources. The Office asserted that assessing how to increase acquisition of cost-effective DSM is an on-going process that the DSM Advisory Group should be continually evaluating. Additionally, the Office stated that, despite the fact that the DSM rider has been in surplus for some time, Intervenors have not brought forth specific ideas for new programs or measures.⁴

UAE, who supported Intervenors' petition, also highlighted the DSM Advisory Group as the forum in which these issues should be discussed.⁵

B. Intervenors' Reply

Intervenors agree that the DSM Advisory Group, assuming it meets on a timely basis and provides opportunities for a full discussion of relevant issues, is the most appropriate forum for a discussion of how to achieve greater levels of cost-effective DSM through Company programs.

² Docket No. 11-035-T14, *Division of Public Utilities' Objection to Utah Clean Energy, Southwest Energy Efficiency Project, and Western Resource Advocates Petition for Suspension of Rocky Mountain Power's Proposed Adjustment to Schedule 193* (December 23, 2011), page 3.

³ Advice No. 11-13, *Division of Public Utilities Action Request Response* (December 22, 2011), page 5.

⁴ Docket No. 11-035-T14, *Office of Consumer Services Response to Utah Clean Energy, Southwest Energy Efficiency Project, and Western Resource Advocates Petition for Suspension of Rocky Mountain Power's Proposed Adjustment to Schedule 193* (December 23, 2011), page 3.

⁵ Docket No. 11-035-T14, *Response of the Utah Association of Energy Users to Petition for Suspension of Adjustments to Schedule 193* (December 22, 2011), page 1.

At the time Intervenors filed their petition in this Docket (on December 1, 2011), there was no firm plan or schedule within the DSM Advisory Group to address the issues of achieving greater levels of energy efficiency and demand response and providing for cost-recovery going into the future. Such a plan and schedule were set at the December 7, 2011 DSM Advisory Group meeting. Intervenors are eager to participate in these subcommittee meetings as a means of creating a sustainable funding mechanism for DSM programs into the future and for achieving higher levels of cost-effective energy savings and peak load reduction.

Given that the recently scheduled DSM Advisory Group subcommittee meetings propose to address the issues raised in our petition, we recommend that the Commission stay its order on our requested investigation, pending the resolution and outcome of these issues in the forthcoming subcommittee meetings.

With regard to allegations that Intervenors have had ample (and unclaimed) opportunity over the last several years to affect Company DSM program spending, we provide the following review of DSM Advisory Group activities over the last two years. In 2010, the Company held three DSM Advisory Group meetings—in January, February, and March.⁶ The following meeting was almost 11 months later. In 2011, the Company held meetings in February, June, October, and December. Advisory Group members did not have access to regular reporting on program-by-program spending and energy savings trends, which provide a good basis for timely recommendations on enhancing program effectiveness. Furthermore, these meetings mostly involved the Company presenting updates to stakeholders rather than a full and open discussion of issues, such as ways to improve DSM program implementation, cost recovery, future energy savings goals, and the like.

⁶ Rocky Mountain Power, *2010 Annual Energy Efficiency and Peak Reduction Report—Utah* (Revised September 1, 2011), page 11.

Due to the limited opportunities provided by DSM Advisory Group meetings in 2010 and 2011,⁷ UCE, SWEEP, and other parties discussed potential program modifications and new programs informally with the Company, including the following:

- UCE, SWEEP, and UBEES/OED proposed the continuation of Utah Home Performance (Home Performance with Energy Star) on several occasions, as a modification to the HES program, including the incorporation of BPI standards;
- UCE and SWEEP also held discussions with both the Company and Questar Gas regarding the addition of a “Zero Energy Home Challenge” to the Company’s new homes incentive program (which has partially been incorporated into the top tier of the new homes program);
- UCE proposed an Energy Star multifamily high rise pilot program, as EPA’s Energy Star program is looking for states/utilities interested in piloting this new program; and
- UCE advocated for community-based social marketing strategies for increasing uptake in existing programs and hosted a conference on such strategies supported by the Company and Questar Gas.

Intervenors understand that the Company’s DSM section was undergoing reorganization throughout this time, and are pleased about the recent and regularly planned future DSM Advisory Group subcommittee meetings. Therefore, as stated above, Intervenors request that the Commission stay its order on our requested investigation of DSM program funding and acquisition levels, pending the resolution and outcome of these issues in the forthcoming subcommittee meetings.

II. SUSPENDING THE PROPOSED REDUCTION TO THE DSM TARIFF COLLECTION RATE IS JUST AND REASONABLE AND IN THE PUBLIC INTEREST.

In our petition, Intervenors requested suspension of the Company’s proposed reduction in the DSM tariff rider collection rate from 3.6% to 2.4% of monthly bills in order to maintain the

⁷ In its May 2011 Comments on the Company’s Home Energy Reporting program proposal, the Office stated, “The Office does not believe that the summary information provided to the DSM Advisory Group in February constitutes the level of review contemplated by the Commission. In fact, the Office is increasingly concerned that the DSM Advisory Group is not being utilized as intended.” Docket No. 08-999-05, *Memo from the Office of Consumer Services regarding Rocky Mountain Power’s “Home Energy Reports” Recommendation* (May 5, 2011).

status quo while parties discussed methods of achieving greater energy efficiency savings through Company programs as well as DSM cost-recovery mechanisms. We argued that suspending the tariff pending such an investigation would not adversely impact the balance between maintaining an acceptable balance in the balancing account while minimizing the number and magnitude of rate adjustments to Schedule 193.

A. Parties' Responses

The Company, Division, and Office argued that a suspension of the tariff adjustment is not consistent with Commission orders approving stipulations concerning the DSM surcharge collection rate, which had the objective of setting a rate that will result in a zero balance by the end of the following annual review period.⁸ This methodology allows consideration only of Commission-approved programs.

The Company stated in its response that it believes its proposed adjustment to the DSM surcharge collection rate is consistent with past Commission direction. The Company further explained that the possibility of having an impact on 2012 DSM program expenditures is small because the DSM program implementation process can take six months or longer. The Company therefore believes that the process proposed by Intervenors will not result in significant increases in DSM program spending and associated savings in 2012.⁹

The Division and Office argued that allowing the DSM balancing account to accumulate a balance of nearly \$23 million by the end of 2012 is not just and reasonable, nor is it in keeping with past Commission orders. The Division argued that suspending the surcharge adjustment is unnecessary for an investigation and that the requested investigation would likely not have any

⁸ In Docket 02-035-T12, the stipulation established factors to consider in setting the DSM surcharge collection rate, including the balance in the Schedule [193] balancing account; a forecast of the next year's expenses for Commission-approved DSM programs; and the current collection amount or rate.

⁹ Docket No. 11-035-T14, *Response of Rocky Mountain Power to the Petition of Utah Clean Energy, the Southwest Energy Efficiency Project, and Western Resource Advocates* (December 23, 2011), page 2.

desired impacts until 2013.¹⁰ The Division views the tariff rider as a “pay-as-you-go scheme” in which the Company recovers costs at the time they are incurred. This, the Division argued, is analogous to the used and useful principle of ratemaking for rate-based assets.¹¹ The Division argued that a just and reasonable tariff should only allow the utility to recover current costs from current customers.¹² Finally, the Division argued that DSM tariff revenues should be used for Commission-approved DSM programs only.¹³

The Office argued that the acquisition of energy efficiency savings will not be hampered by reducing the surcharge and that the long-standing positive balance in the DSM account should not be permitted to increase beyond a just and reasonable rate while the DSM implementation process runs its course.¹⁴ The Office also argued that, until changes to the DSM program are in place, the current methodology (from Docket 02-035-T12) should be adhered to. The Office recognized that minimizing rate adjustments is desirable and therefore, suggested, as an alternative to implementing a DSM collection rate reduction now, implementing the tariff reduction concurrent with a rate increase implemented pursuant to either the Energy Balancing Account taking effect or the next general rate case.¹⁵

UAE supported Intervenor’s petition insofar as it requested a suspension of the tariff adjustment in order to give the DSM Advisory Group and Commission time to evaluate whether

¹⁰ Advice No. 11-13, *Division of Public Utilities Action Request Response* (December 22, 2011), page 5.

¹¹ *Id.* at 6.

¹² Docket No. 11-035-T14, *Division of Public Utilities’ Objection to Utah Clean Energy, Southwest Energy Efficiency Project, and Western Resource Advocates Petition for Suspension of Rocky Mountain Power’s Proposed Adjustment to Schedule 193* (December 23, 2011), page 2.

¹³ *Id.* at 4. The Division mischaracterized a number of Intervenor’s initial arguments without reference to or support from the original petition. Intervenor do not “seek to suspend the proposed decrease in the surcharge so that the excess revenues can be used for exploration and evaluation of future DSM projects and programs,” and have no intent that any of the DSM account balance be used to fund anything other than Commission-approved programs. The Division also framed our justification for seeking a suspension of the tariff adjustment in terms of our wanting to avoid something “time-consuming,” which is inaccurate.

¹⁴ Docket No. 11-035-T14, *Office of Consumer Services Response to Utah Clean Energy, Southwest Energy Efficiency Project, and Western Resource Advocates Petition for Suspension of Rocky Mountain Power’s Proposed Adjustment to Schedule 193* (December 23, 2011), page 3.

¹⁵ *Id.* at 4.

additional highly cost-effective programs and increased incentives for highly cost-effective programs should be adopted, whether a fixed DSM surcharge should be utilized in place of a surcharge subject to adjustment, and other potential changes to existing DSM policies and procedures.¹⁶ UAE argued that it is reasonable and in the public interest to maintain the current surcharge while these issues are being discussed; otherwise, the likely need for a significant increase in the DSM surcharge within the coming months may prove unpalatable to many customers.¹⁷

B. Intervenor's Reply

Parties' opposition to Intervenor's petition generally rely on three arguments: 1) that the projected December 2012 balance in the DSM account is not just and reasonable; 2) that suspending the tariff now will not impact the acquisition of increased DSM expenditures and energy savings in 2012; and 3) that Intervenor's petition is inconsistent with past Commission orders.

1. Suspending the proposed tariff reduction is just and reasonable and in the public interest. The current tariff rider collection rate of 3.6% of monthly bills was considered just and reasonable when it was approved as a means of collecting money dedicated solely to the provision of programs shown to be cost-effective and in the public interest prior to program implementation. The fact that the Company has not yet spent it does not retroactively make the rate unjust and unreasonable. The issue is not whether a potential \$23 million balance is now unacceptable, but rather how we can seize the opportunity afforded by the unspent DSM account balance to achieve greater levels of cost-effective energy savings and peak load reduction that

¹⁶ Docket No. 11-035-T14, *Response of the Utah Association of Energy Users to Petition for Suspension of Adjustments to Schedule 193* (December 22, 2011), pages 1-2.

¹⁷ *Id.* at 2.

are in the public interest. This issue is particularly relevant given the Company's short position with respect to generating capacity in its Eastern states.¹⁸

As the Division noted, Commission approval of a DSM program is a determination that the program is a prudent use of customer dollars.¹⁹ Accordingly, Commission approval of a DSM tariff collection rate is a determination of an appropriate level of DSM investment and represents an expectation that the Company will utilize the funds collected for cost-effective DSM programs.

Clearly, cost recovery mechanisms for DSM resources and rate-based assets are different. For example, rate-based assets are amortized over the life of the asset, while investments in DSM are generally paid at once, despite benefits accruing over many years. Intervenors do not share the Division's views equating principles of rate-base ratemaking, such as the used and useful principle and collecting current costs from current customers, to the current cost-recovery mechanism for Company DSM resources. Analogizing principles of rate-base ratemaking to DSM resource acquisition should be raised in the DSM Advisory Group subcommittee meetings, but as applied here confounds the real issue: with Commission approval of the DSM collection rate came an expectation that the funds collected would, could, and should be used for cost-effective DSM programs; the balance in the DSM account presents the opportunity and responsibility to actively and aggressively acquire low-cost, cost-effective DSM resources without raising rates.

¹⁸ PacifiCorp, *Integrated Resource Plan: Volume 1* (March 31, 2011), page 103, Table 5.3—System Capacity Position Trend.

¹⁹ Docket No. 11-035-T14, *Division of Public Utilities' Objection to Utah Clean Energy, Southwest Energy Efficiency Project, and Western Resource Advocates Petition for Suspension of Rocky Mountain Power's Proposed Adjustment to Schedule 193* (December 23, 2011), page 4.

2. The potential for increased levels of DSM expenditures and associated savings in 2012 justifies at least a temporary suspension of the tariff reduction. The Company is in the process of revising a number of its ongoing DSM programs as well as developing two new programs as explained to the DSM Advisory Group at the December 7, 2011 meeting. The Company indicated that these extensive program changes and new programs will be filed with the Commission in early 2012. Therefore, it is possible that such program modifications will result in additional DSM expenditures and energy savings in 2012. Additionally, other potential new programs or simple modifications to existing, highly cost-effective programs (designed to increase uptake and associated savings) are likely to be suggested in the expanded set of Advisory Group subcommittee meetings that are starting in January 2012.

Given the opportunity afforded by a greater balance in the DSM account to accelerate and increase energy efficiency savings and peak reduction, along with the potential impacts of the DSM Advisory Group subcommittee meetings, it is prudent to suspend the tariff, at least temporarily, in order to facilitate Company efforts to more fully utilize the DSM account for cost-effective DSM resources. For these reasons, Interveners support the alternative recommendation of the Office to postpone a tariff reduction, at least until the rate increase from the forthcoming rate case takes effect. In addition to providing a greater degree of rate stability, this will provide an opportunity for a tariff adjustment to account for program changes and new programs that the Company is planning to introduce in the near future, as well as other possible program enhancements and modifications to highly cost-effective programs resulting from the expanded set of Advisory Group meetings about to commence.

3. Past Commission dockets, current realities, and public interest support a flexible approach to the current DSM collection rate methodology. Commission Orders in Docket Nos. 02-035-T12 and 09-035-T08 approved settlement stipulations. The current DSM tariff collection rate method was agreed to and approved in Docket 02-035-T12. While the objective of the method is to set a rate projected to result in a zero balance by the following annual review period, in both dockets parties agreed to adjustments to the method, specifically with regard to the annual zero-balance objective, to achieve the ultimate settlements. In both cases, parties agreed to overlook the annual zero-balance objective and amortize expenses over two years instead of one.²⁰ The most likely reason for such agreements is that parties wanted to mitigate the magnitude of the rate increases. Given that the current balance owing to customers is dedicated to cost-effective programs, the motive of limiting the magnitude of abrupt rate changes and maintaining stability also applies to the current situation.

The current method of DSM resource cost recovery will be discussed in the DSM Advisory Group subcommittee meetings commencing in January, in large part because the current cost recovery mechanism sunsets in 2014. It is possible that the Company and other parties will agree on a different cost recovery mechanism to recommend to the Commission during these discussions. It is therefore appropriate to suspend the tariff reduction in order to maintain status quo while the DSM funding mechanism is under review.

With regard to the petition to suspend the tariff adjustment, the support of UAE for the petition is compelling. In Docket No. 09-035-T08, UAE objected to increasing the tariff rider

²⁰ Docket No. 02-035-T12, In the Matter of Demand Side Management Cost Recovery by PacifiCorp dba Utah Power and Light Company, *Stipulation* (August 29, 2003), page 4; Docket No. 09-035-T08, In the Matter of the Approval of Rocky Mountain Power's Advice No. 09-08 Schedule 193 – Demand-Side Management (DSM) Cost Adjustment, *Stipulation* (August 3, 2009), page 4. The 2009 Agreement states, "Nothing in this Stipulation prohibits the Company or any other Party from seeking other adjustments to Schedule 193 to reflect changes in ongoing program costs and projections. However, all Parties agree to support amortization over approximately 24 months." *Id.*

line item above a specific percentage. Nevertheless, UAE supports highly cost-effective DSM programs. We agree with UAE that surcharge increases are not palatable to many customers. Intervenors are concerned that reducing the tariff just before commencing a discussion of DSM cost-recovery mechanisms may create a psychological impediment to potentially greater DSM energy savings because parties are unwilling to increase the surcharge, even to a prior level. Because the DSM account carries funds dedicated to the provision of cost-effective, low-cost DSM resources, it is reasonable and in the public interest to leave the existing DSM surcharge in place while parties participate in the DSM Advisory Group subcommittee meetings to evaluate funding mechanisms and whether and how it is possible to increase cost-effective investment in both existing and new DSM programs.

CONCLUSION

Based on the foregoing, Intervenors request that the Commission: 1) stay its Order regarding Intervenors' requested schedule and investigation, pending the resolution and outcome of the forthcoming DSM Advisory Group subcommittee meetings; and 2) suspend any DSM tariff adjustment at least until new rates, pursuant to the forthcoming general rate case, take effect, likely in October 2012.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent by email this 3rd day of January, 2012, to the following:

Carol Hunter
Dave Taylor
Beau Brown
Daniel E. Solander
ROCKY MOUNTAIN POWER
carol.hunter@pacificorp.com
dave.taylor@pacificorp.com
beau.brown@pacificorp.com
daniel.solander@pacificorp.com

Patricia Schmid
Dahnelle Burton-Lee
Assistant Attorneys General
ATTORNEYS FOR THE DIVISION
OF PUBLIC UTILITIES
pschmid@utah.gov
dburton-lee@utah.gov

Chris Parker
Artie Powell
Brenda Salter
Charles Peterson
Tom Brill
DIVISION OF PUBLIC UTILITIES
chrisparker@utah.gov
wpowell@utah.gov
bsalter@utah.gov
chpeterson@utah.gov
tbrill@utah.gov

Paul Proctor
Assistant Attorney General
ATTORNEY FOR THE OFFICE OF
CONSUMER SERVICES
pproctor@utah.gov

Michele Beck
Cheryl Murray
Danny Martinez
OFFICE OF CONSUMER SERVICES
mbeck@utah.gov
cmurray@utah.gov
dannymartinez@utah.gov

Howard Geller
Keith Freischlag
SOUTHWEST ENERGY
EFFICIENCY PROJECT
hgeller@swenergy.org
kfreischlag@swenergy.org

Nancy Kelly
Rob Dubuc
Steve Michel
WESTERN RESOURCE
ADVOCATES
nkelly@westernresources.org
rdubuc@westernresources.org
smichel@westernresources.org

Gary Dodge
Hatch, James & Dodge
ATTORNEYS FOR THE UTAH
ASSOCIATION OF ENERGY USERS
gdodge@hjdllaw.com

Betsy Wolf
SALT LAKE COMMUNITY
ACTION PROGRAM
bwolf@slcap.org

/s/ _____