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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Investigation of the Costs and Benefits of PacifiCorp's Net Metering Program	Docket No. 14-035-114 REPLY COMMENTS RESPONDING TO INTERVENOR COMMENTS RELATED TO APPROPRIATE COSTS AND BENEFITS TEST EQUATIONS AND METRICS TO EVALUATE NET METERING PROGRAM
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Pursuant to the Notices of Comment Period and Scheduling Conference (“Notice”), issued by the Public Service Commission of Utah (“Commission”) November 21, 2014 in Docket No. 14-035-114, PacifiCorp, d.b.a. Rocky Mountain Power (“Rocky Mountain Power” or “Company”) hereby files its reply comments (“Reply Comments”), in response to comments filed by the Office of Consumer Services (“OCS”), the Division of Public Utilities (“DPU”), Utah Clean Energy (“UCE”), the Alliance for Solar Choice (“TASC”), Sierra Club, Utah Citizens Advocating Renewable Energy (“UCARE”), Salt Lake City Corporation and Boulder County Chapter of Colorado Renewable Energy Society filed with the Commission February 5, 2015. In support of the Reply Comments, the Company states as follows.

INTRODUCTION

The Company's owned generating capability is comprised of more than 20 percent renewable energy including wind, solar, and geothermal. The Company's parent was named the largest rate-regulated utility owner of wind resources in the U.S. by the American Wind Energy Association. More than 40,400 Utah customers are currently enrolled in the Company's voluntary Blue Sky renewable energy program. In 2014 alone – Blue Sky customers supported 159 million kilowatt-hours of western region wind energy providing benefits equivalent to planting 2.2 million trees.

As part of its parent company – Berkshire Hathaway Energy – Rocky Mountain Power is a nation-wide leader in the development of renewable energy and, as such, supports customer choice to participate in renewable energy through net metering programs.

Notwithstanding the Company's support for renewable energy, the principles of fairness and reasonableness and Utah's codified energy policy dictate that resources (in this case renewable ones) must be acquired and dispatched in a cost-effective manner to minimize rate impacts on all customers.¹ Just as the Company is accountable for any costs that are imposed on Utah customers, that accountability and responsibility also falls on the Commission; particularly in this case where the net metering ("NEM") statute specifically mandates that the Commission perform a cost/benefit analysis.

The Company supports development of cost-effective renewable energy. But that development must not be at the expense of customers who choose not, or cannot afford, to install distributed generation ("DG"). Moreover, voluntary actions taken by individual customers for their

¹ For example, Utah Code Ann. § 54-17-602 states "*to the extent it is cost effective to do so, beginning in 2025 the annual retail electric sales in this state ... must consist of qualifying electricity or renewable certificates in an amount equal to 20 percent of adjusted gross sales.*"

own personal reasons cannot shift expenses to the utility, as TASC and Sierra now advocate. Customers partially relying on renewable energy and the NEM program must still pay their fair share of the costs to serve them and to provide them with reliable backup power, and to provide them a grid through which they receive credit for their excess generation. As discussed below, the NEM program as currently structured unfairly shifts costs from NEM customers to all other customers.

In addition to ensuring that the NEM program promotes customer choice, the structure of the NEM program should also send accurate price signals to all customers to maximize benefits to the utility's system while, at the same time, protecting non-participating customers from unfair and unexpected cost-shifting. More than 800,000 Rocky Mountain Power customers are currently served in Utah with safe, reliable, and fairly priced electricity. The framework for the NEM program must further retain the integrity of and be consistent with the current regulatory model which does not recognize personal "values" as costs the utility incurs to provide service.

Finally, as the Company further discusses below (1) the Commission must consider the costs and benefits of the NEM program, not just the costs of the "Net Electricity," as several parties contend; (2) the traditional cost-based model requires the exclusion of non-quantifiable, or even speculatively-quantified "values" from cost/benefit analyses; (3) the model and framework for determining the costs and benefits of the NEM program has largely been decided and there is no need to vary from this precedent; (4) the "just and reasonable" standard protects not just NEM customers but *all* customers from unfair, unsupported and unjustified costs and further, as has been interpreted by courts across the country, also protects the utility's ability to earn a fair rate of return; (5) Section 105.1 of the NEM statute does not impose a burden of proof on the Company

to demonstrate both the costs *and* the benefits of the NEM program; and (6) the DSM tests are inappropriate because the NEM program is not an incentive-based program.

ARGUMENT

I. Utah Code Ann. § 54-15-105.1 Requires Consideration of the Costs and Benefits of the “Net Metering Program” (Not Solely of the “Net Electricity”) Which Necessarily Entails the Costs of the Entire Production from Participating Customers’ Distributed Generation (“DG”) Systems

The evaluation of the costs and benefits of the NEM program must necessarily include the costs of the entire production from a participating customer’s DG system, and is not limited to the costs of a customer’s excess generation, consistent with Section 102(12)(a) below.² Once a customer’s system is connected to the Company’s network and the customer expects to use self-generated electricity to offset its bill, the customer is participating in the NEM program and should pay for the costs incurred to participate in the program. The NEM statute intended program costs to include costs associated with the entire production from a participating customer’s DG system, including electricity generated primarily for the customer’s own use plus any excess customer-generated electricity sold back to the utility as expressly set forth in Utah Code Ann. § 54-15-102, which states:

(12) Net metering program means a program administered by an electrical corporation whereby a customer with a customer generation system may:

- (a) generate electricity primarily for the customer’s own use;
- (b) supply customer-generated electricity to the electrical corporation; and
- (c) if net metering results in excess customer-generated electricity during a billing period, receive a credit as provided in Section 54-15-104.

² In addition, under Utah Code Ann. § 54-15-102(11), net metering means “measuring the amount of net electricity for the applicable billing period.” To measure the net electricity necessarily requires two-way power flow, not just the power flow that is customer-generated and sold back to the Company. Thus the costs incurred to be able to serve that customer are included as part of the NEM program.

Utah Code Ann. § 54-15-102 (Emphasis added).

That definition must be read in conjunction with Utah Code Ann. § 54-15-105.1 of the

NEM statute, which provides that:

The governing authority shall:

(1) determine, after appropriate notice and opportunity for public comment, whether costs that the electrical corporation or other customers will incur *from a net metering program* will exceed the benefits of the net metering program, or whether the benefits of the net metering program will exceed the costs; and

(2) determine a just and reasonable charge, credit, or ratemaking structure, including new or existing tariffs, in light of the costs and benefits.

Utah Code Ann. § 54-15-105.1 (2014) (emphasis added).

The plain language of this section of the NEM statute provides the Commission with the mandate and the authority to implement a new or modified tariff should the existing tariffs not sufficiently account for the costs related to support the entire NEM program.

TASC's and UCE's position that the NEM program costs should be limited based on the language in Utah Code Ann. § 54-15-104, "Charges or credits for net electricity" is misplaced. They cite, in particular, Utah Code Ann. § 54-15-104(2) as support for their position, which states "[i]f net metering does not result in excess customer-generated electricity during the monthly billing period, the electrical corporation shall bill the customer for the net electricity, in accordance with normal billing practices."

Section 104 addresses the **billing process** to be used on a monthly basis for both net electricity and excess customer-generated electricity. It does not address the costs incurred to deliver service to the customer, i.e. the generation, administrative, distribution and transmission costs associated with serving the customer. As the Company indicates and explains in detail in Section III.A. below, even if a NEM customer exports no electricity back to the Company, there

are costs that are incurred to serve that customer which would be subsidized by others. These are NEM program costs that should be paid for by NEM customers and recognized in the framework to evaluate the program.

Furthermore, the Legislature adopted Section 105.1 to determine and evaluate what the costs and benefits of the NEM program are, and to implement new tariffs, if necessary if current costs do not sufficiently support the NEM program. Section 104 does not limit the Commission to only consider the costs of the excess production that is sold back to the Company in its analysis under Section 105.1, as suggested by some parties in this case.

Accepted rules of statutory construction support the idea that all of the sections of the NEM statute must be construed together. In *Utah County v. Orem City*, the Utah Supreme Court stated “if it is natural or reasonable to think that the understanding of the legislature or of persons affected by the statute would be influenced by another statute, then those statutes should be construed to be in pari materia, construed with reference to one another and harmonized if possible.”³ TASC and UCE’s comments render certain sections of that statute at odds with other sections, while the Company’s reading of the statutes maintains consistency between them. Assuming a new tariff is implemented and used, in time it will become “normal billing practices” consistent with Utah Code Ann. § 54-15-104. Any other reading of the NEM statute would violate both the language and intent of the new Utah Code Ann. § 54-15-105.1. Unless the full production of a DG system is accounted for, a subsidy will be imposed on non-participating customers.

The Company urges the Commission to adopt a cost/benefit analysis framework consistent with the intent of the larger statute and to avoid the intervenors’ invitation to ignore some provisions while interpreting others.

³ 699 P.2d 707, 709 (Utah 1985).

II. The Traditional Cost-Based Rate Setting Model Requires the Evaluation of the Costs and Benefits of the NEM Program to Exclude “Values” that are Too Speculative and Uncertain to Measure.

Under the traditional cost-based rate-setting model, the Company must justify any increase in rates to ensure its costs were prudently incurred, i.e., that they are least cost, adjusted for risk. This is still the standard under Utah law. The Company’s Integrated Resource Plan follows this same standard or model – its preferred portfolio solves for the least cost, risk-adjusted, long-term resource. Any deviation from this traditional cost-based rate setting formula would compromise traditional cost-based rates.

Because of the inherent uncertainty and subjectivity of some personal “values” posited by some intervenors, such as the unquantifiable avoided costs for healthcare, environmental clean-up or other intangible societal benefits which they believe will accompany more wide-spread use of DG, the Company urges the Commission to act cautiously in assigning costs or benefits to “values” for which all customers are expected to pay. Any costs or benefits assigned to these values must be based on real figures, must be sound and must be quantifiable. Speculative values do not pass rigorous scrutiny because they are based on assumptions, best guessing and judgment calls. While the Company knows with a degree of certainty what its fuel costs are, the same cannot be said for avoided health or environmental impacts from displacement of fossil fuels-based resources. This is the very reason the Commission rejected parties’ recommendations to assign “values” for avoided environmental and health benefits and their recommendations to include CO₂ costs in the Company’s forward price curve in avoided cost dockets, as described in more detail in Section III.B. below. Finally, the Company believes that this is also the reason the Commission expressly indicated in its Order in the 2014 general rate case, Docket No. 13-035-184, that it would consider

“measurable” costs and benefits of the NEM program.⁴ The NEM cost/benefit analysis should be evaluated based on quantifiable, understandable and supportable amounts. Indeed this is the mandate of the statute to this Commission: to *weigh* the costs and benefits of the NEM program. Non-quantifiable values might be appreciated, but they cannot be weighed, as weighing requires exact quantification and comparison.

A. Associated Costs of Displacing Base Load Resources.

While some intervenors discuss the “value” of displacing the Company’s fossil-fuel-based resources, they leave out the associated costs of that displacement. Assuming the costs of DG continue to decrease making it more affordable for some to install DG, there are associated costs of displacing fossil fuels-based resources that equal if not outweigh the benefits of that displacement. If the Commission decides to go down the slippery-slope that certain parties in this case are inviting the Commission to follow, and which the Company strongly urges the Commission not to do, the Commission must not ignore the costs of displacing base load resources.

For example, assuming some intervenors’ arguments to be true (though unproven) that subsidizing DG at the expense of other customers will provide a benefit of reducing the use of fossil fuels, the Commission must necessarily consider such things as loss of jobs, loss of network reliability, and loss of profit margins for small businesses as they grapple with dramatically rising electricity prices, and so forth, *if* the intervenors’ arguments are correct. All of these things would negatively impact the economy. All of these would need to be considered and are probably more quantifiable than the hypothetical societal, health and environmental “benefits” of displacing base load resources. Just like there are studies that claim to “quantify” societal, health and

⁴ *In the Matter of the Application of Rocky Mountain Power for Authority to Increase its Retail Electric Utility Rates in Utah for Approval of its Proposed Electric Service Schedules and Electric Service Requirements*, Report and Order, p. 67 (August 29, 2014).

environmental benefits, as cited by Sierra Club and others in this case, there are studies that attempt to quantify the costs and economic consequences mentioned above.

The calculation of costs and benefits is dependent on the type of resource that is being displaced, the type and capacity factor of the renewable resource that is displacing that base load resource, the type of energy that is being displaced – off-peak energy is less valuable than on-peak energy, for example. Because renewable resources like wind and solar are intermittent, there must be sufficient back-up and integration for these types of resources. The point is that there would be no end to the debate if the Commission were to accept “values” as costs/benefits of displacing fossil-fueled resources as part of the NEM program. The only workable test is one that recognizes measurable, consistent and supportable costs and benefits.

B. All Supply Side Resources Must Be Treated Consistently.

If the Commission was to assign a value to environmental, societal and health benefits attributed to DG output, it must assign the same value of those hypothetical “benefits” to the output of all supply side renewable resources in the Company’s portfolio. The Company owns renewable energy in its portfolio that also provide such hypothetical environmental, societal and health “benefits” to customers which are currently not quantified in rates. The Company also purchases renewable energy from QFs which are compensated based on avoided energy and avoided capacity costs because the Commission rejected arguments that they should be compensated for alleged environmental, fuel hedge and fuel volatility “benefits.” The Commission should be consistent in its treatment of these “values” irrespective of who produces them. There is no reason for compensating NEM customers differently for generation output than the Company or QFs. Rather than accepting parties’ recommendations to assign value to the environmental, societal and health

benefits of the output from DG, the Commission should treat the output from NEM customers the same way it treats the output of other supply side renewable resources.

This treatment is consistent with the intent and language of the NEM statute. This treatment is also consistent with recent Commission orders in which the Commission refused to include environmental and health values as part of avoided costs for QFs as further described below. In addition, this treatment is consistent with current policy that encourages renewable portfolio target sales of electricity in the state of Utah consisting of qualifying electricity (renewable) in an amount equal to 20 percent of adjusted gross sales; *to the extent it is cost effective to do so.*⁵ For these reasons and to avoid parties expending considerable time and expense debating these issues, the Company urges the Commission to reject recommendations to include “values” for environmental, societal and health benefits attributed to the output from DG. Instead the determination of the costs and benefits of the NEM program must be based on measurable and supportable amounts.

III. NEM Program Costs Include the Fixed Costs Shifted to Non-NEM Customers and the NEM Program Benefits Include the Avoided Energy and the Avoided Capacity Costs of Solar Which Have Already Been Determined in Recent Avoided Cost Dockets.

Much of the groundwork to determine the costs and benefits of the NEM program has already been set. The Company urges the Commission to use the work that has already been done to determine and weigh the costs and benefits of the NEM program and avoid cost-shifting from NEM customers to non-participants.

A. The Costs of the NEM Program.

The quantifiable costs of the NEM program include, without limitation:

(1) fixed costs that are shifted to non-NEM customers which NEM customers avoid through the current rate structure to the extent they self-generate. The Commission should

⁵ See Utah Code Ann. § 54-17-602.

disregard several parties unsupported contentions that these fixed costs should not count in the calculation of NEM costs because they are “sunk” costs and not new incremental costs. Such “sunk” costs were prudently incurred to serve customer demand. They support the network infrastructure that NEM customers rely on in order to enjoy their electronic gadgets and all of the modern-day comforts facilitated by reliable electricity when they can’t self-generate. In addition, the NEM program uses the current rate structure and retail rates to set compensation for DG, and the cost-shifting that occurs as a result is one of the central issues to be evaluated here.

As the Company has indicated for many years, for residential customers the Company’s fixed costs are largely embedded within its energy charges. These costs will be unrecovered from NEM customers to the extent they self-generate and do not take service or “energy” from the Company. Instead, these costs are shifted to other non-participating customers, each time rates are set. To illustrate the problem, assume a customer’s normal usage is 900 kWh and he/she self generates 900 kWh over the course of a billing month, some of which is contemporaneous with usage, offsetting all or part of the customer’s electricity need, and some of which may exceed usage at a given time. Under the current rate structure, this customer would only pay the \$8 minimum bill, even though the customer still required reliable electricity from the Company when the customer’s facility was not generating (e.g., at night) or not completely meeting the customer’s electricity requirements. Moreover, the reliability of service for the customer’s electricity requirements is dependent on the Company’s network and service in order to avoid any interruption of service which network must be updated and maintained. For \$8, the Company has provided customer service, distribution facilities, a transmission network, and generation support for both backing up the customer’s facility and serving the customer during times when the customer’s facility is not operating. Because the minimum bill recovers approximately 14 percent

of the total fixed charges attributed to each customer, the only way the Company is able to recover the remaining fixed costs of this particular NEM customer is by spreading them to all of its other customers, each time rates are set, including those who choose not, or cannot afford, to participate in the NEM program.

(2) the distribution costs that are impacted by the NEM program. The distribution electric system was traditionally not designed to operate with a two-way power flow. An increase in customer participation in the NEM program will impact the magnitude and duration of two-way power flow on the system. Depending on the electrical characteristics of the distribution system, a high penetration of NEM requires infrastructure upgrades to provide safe and reliable electricity to customers. For example, the upgrades include, without limitation:

- replacement of existing voltage regulators, installation of new voltage regulators (particularly on lines with NEM customers heavily clustered at the end of the line);
- increased maintenance of voltage regulators due to the impact of cloud cover resulting in an increased number of operations;
- replacement of distribution transformers;
- upgrading or replacement of existing line reclosers or protective relays and installation of new line reclosures to replace existing fuses where protection coordination may be impacted due to large amounts of NEM connections on the feeder; and
- installation and maintenance of additional substation equipment such as dead-line check.

B. The Benefits of the NEM Program

The quantifiable benefits of the DG output generated as part of the NEM program include (1) avoided energy costs and (2) avoided capacity costs, just as was already determined in the avoided cost cases for qualifying facilities in Dockets No. 12-035-100 (“Large QF Docket”) and 14-035-55 (“Small QF Docket”).

Some parties argue that QFs are different from NEM customers who use DG for their own consumption and that those differences warrant a different compensation structure for NEM customers that would value energy generated from the same source differently. The Company acknowledges differences regarding proximity to the grid and the amount of the output generated, in particular as compared to the large QFs (albeit smaller QFs could conceivably be located next door to a residential customer, generating the same output of energy). In those cases, avoided capacity payments must be adjusted to account for differences in line losses. However, the output generated by solar QFs and by customers with solar panels is generated from the same source. They both generate renewable energy. Therefore, the value of that energy should be the same, accounting for the differences in size and in location. Whether the energy comes from residential solar panels or from larger QF commercial solar panels, the Company and its customers should only pay for “real” costs incurred.

In the Large QF Docket, the Commission rejected parties’ arguments that costs should be paid for certain fuel price hedging, fuel price volatility and environmental risk factors (i.e., costs associated with adapting to change climate) indicating that these costs are “based upon divergent and speculative projections,”⁶ and they are not costs the Company incurs. Just as the Commission rejected these arguments in the Large QF Docket, it should reject them here. Value should not be

⁶ *In the Matter of the Application of Rocky Mountain Power for Approval of Changes to Renewable Avoided Cost Methodology for QF Projects Larger than Three Megawatts*, Docket No. 12-035-100, Report and Order, p. 41 (August 16, 2013).

attributed to these same alleged fuel price hedging, fuel price volatility and environmental risk factors, as well as to societal and health risk factors. These suffer from the same problem – they are based on divergent and speculative projections and are not costs the Company incurs to provide service.

More recently, in the Small QF Docket, the Commission approved the removal of an assumed CO2 tax in the estimate of non-fuel variable operation and maintenance costs of the proxy combined cycle combustion turbine for Schedule 37 rates.⁷ The Commission based its decision on the fact that “no such tax exists and attempts at legislation to implement this tax have failed.”⁸ Further, the Commission indicated that although a possibility, “it is highly uncertain whether a tax will be imposed in the 20-year planning horizon, let alone what the rate of such tax might be.”⁹ These facts do not change just because the output is generated by residential DG customers. “[T]o the extent potential costs associated with environmental risks and hedging can be projected and factored into Company decision-making, they should be accounted for in PacifiCorp’s IRP modeling and resource portfolio evaluation process where cost, risk and uncertainty are evaluated to identify a least-cost, risk-adjusted, long-term resource.”¹⁰ The same should hold true for health and other societal values.

IV. The Just and Reasonable Rates Standard Requires the Commission to Ensure That Rates for *All* Customers are Supported and Fully Justified.

One of the principal mandates of the Commission is to ensure that customer rates are just and reasonable. TASC and Sierra Club quote Utah Code Ann. § 54-3-1, “Charges must be just;

⁷ *In the Matter of Rocky Mountain Power’s Schedule No. 37, Avoided Cost Purchases from Qualifying Facilities*, Docket No. 14-035-55, Report and Order (October 21, 2014).

⁸ *Id.*, p. 19.

⁹ *Id.*, p. 19-20.

¹⁰ Large QF Order, p. 41.

service adequate; rules reasonable,” to support their contention that the Commission can consider environmental and societal benefits in its cost/benefit analysis. Utah Code Ann. § 54-3-1 states, in part:

All charges made, demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, shall be just and reasonable ...

The scope of definition “just and reasonable” may include, but shall not be limited to, the costs of providing service to each category of customer, economic impact of charges on each category of customer, and on the well-being of the state of Utah; methods of reducing wide periodic variations in demand of such products, commodities or services, and means of encouraging conservation of resources and energy.

Courts have consistently held that the purpose of this statute is to ensure that *charges* are just and reasonable for the general public.¹¹ The statute should also be read in the context of the mandates and authority provided in other statutes, as supported by accepted rules of statutory construction. In addition, under *Stewart v. Utah PSC*¹², the Court noted that two polar constitutional principles fix the parameters of rate regulation for natural monopolies: the protection of utility investors from confiscatory rates and, of equal importance, the protection of ratepayers from exploitive rates, as set forth in *Federal Power Commission v. Hope Natural Gas Co.*¹³ These principles have been reiterated in subsequent cases, both federal and state.¹⁴ To the best of the Company’s knowledge, no Utah court has interpreted the “just and reasonable” standard the way

¹¹*Committee of Consumer Services v. Questar Gas Co.*, 75 P.3d 48 (Utah 2003); *Stewart v. Utah PSC*, 885 P.2d 759 (Utah 1994); *Bradshaw v. Wilkinson Water Co. and PSC of Utah*, 94 P.3d 242 (Utah 2004).

¹² 885 P.2d 759, 767 (Utah 1994).

¹³ *Federal Power Commission v. Hope Natural Gas Co.* 320 U.S. 591, 64 S.Ct. 281, 88 L.Ed. 333 (1944).

¹⁴ *E.g.*, *Federal Power Comm’n v. Memphis Light, Gas & Water Div.*, 411 U.S. 458, 474, 93 S.Ct. 1723, 1732, 36 L.Ed.2d 426 (1973) (“[U]nder *Hope Natural Gas* rates are ‘just and reasonable’ only if consumer interests are protected and if the financial health of the pipeline in our economic system remains strong...”); *Washington Gas Light Co. v. Baker*, 188 F.2d 11, 19–20 (D.C.Cir.1950) (inclusion in rate base must be just and reasonable to consumers and investors), *cert. denied*, 340 U.S. 952, 71 S.Ct. 571, 572, 95 L.Ed. 686 (1951); *Myers v. Blair Tel. Co.*, 194 Neb. 55, 230 N.W.2d 190, 196 (1975) (“The commission can no more permit the utility to have confiscatory rates for the service it performs than it can compel a utility to provide service without just and equitable compensation.”); *Mountain States Tel. & Tel. v. Department of Pub. Serv. Comm’n*, 191 Mont. 331, 624 P.2d 481, 483 (1981).

that TASC or Sierra are recommending that it be interpreted - to support subsidies for the Company's approximately 2,500 NEM customers at the expense of higher rates for the Company's remaining 800,000 other customers or at the Company's expense, which is what TASC and Sierra Club now advocate in their argument with the implication that the Company should not expect to recover its fixed costs at all.

According to these parties, this statute supports the idea that just and reasonable rates can include "values" this Commission has already found to be "*speculative and divergent projections*" that would translate into either an increase in rates for non-participating customers or into "sunk" costs for the utility. On the contrary, the just and reasonable standard requires the Commission to ensure that rates for *all* customers, including the vast majority of the customers who are non-participants, are cost justified and fair. In other words, it protects all customers, not just NEM customers, and it also protects the utility's ability to recover all of its prudently incurred costs. The just and reasonable standard should not be used, however, to protect a targeted industry's interests, in particular at the expense of Utah's customers and its utility. For this reason, the Commission must reject TASC's and Sierra's misapplication of this statute whose purpose is to *protect* customers from unsupported and unjustified rate increases and the utility from a takings and confiscatory rates.

V. The Company Does Not Have the Burden of Proof to Support Costs And Benefits of the Net Metering Program.

The purpose of this proceeding is for the Commission to evaluate and determine the costs and benefits of the NEM program. The Company is not requesting an increase in rates. Any NEM charge that results from the findings of this case will not benefit the Company. As such, the typical burden-of-proof analysis relied upon by TASC is inapplicable.

Citing to *Utah Department of Business Regulation v. Utah Public Service Commission*, 614 P.2d 1242, 1245-46 (Utah 1980), TASC argues that, whatever framework the Commission develops for evaluating the NEM program, the Company should bear the “burden of populating the framework with the necessary data to support the Commission findings.”¹⁵ In this regard, TASC claims that the Company should not only bear the burden of proving that a charge is reasonable within the framework, but should be required to provide substantial evidence (or data) of every conceivable category within the framework, including categories that may cut against the Company’s requested relief. TASC’s position is premised upon a misapplication of *Utah Department of Business Regulation*. In addition, TASC’s position is entirely untenable and unworkable in this context.

In *Utah Department of Business Regulation*, the Supreme Court held that “[a] utility has the burden of proof to demonstrate that its proposed *increase in rates and charges* is just and reasonable.”¹⁶ This is an unremarkable proposition where a utility is seeking an order allowing it to increase rates for its benefit. However, the Court *did not hold* that a utility bears the same burden where it is not seeking an increase in rates or charges, as is the case here. In this proceeding, a NEM charge would not benefit the Company -- it will be revenue neutral within the rate-setting process. Rather, it is intended to prevent the rate structure from unfairly discriminating against one group of customers to the benefit of another group of customers. As such, the typical burden-of-proof analysis relied upon by TASC is inapplicable. Furthermore, *Utah Department of Business Regulation* did not address what, if any, burden a utility bears in the context of NEM, and TASC’s position ignores the structure of Utah Code Ann. § 54-15-105.1. That statute specifically does not

¹⁵ TASC Comments at 35.

¹⁶ 614 P.2d at 1245 (emphasis added).

impose any burden on the Company, but requires the Commission to assess whether costs incurred from a NEM program will exceed the benefits of that program.

TASC's position is untenable in that it attempts to manufacture a burden that it knows cannot be met. The Company's position is that the only way to determine the costs and benefits resulting from NEM is to consider the quantifiable benefits and actual and quantifiable avoided costs. In this respect, there is quantifiable data that demonstrates that NEM customers are in fact not bearing their full share of the electrical costs they impose on the system. This approach does not become deficient simply because intervenors like TASC claim that it does not capture certain hypothetical or possible "benefits" they claim will someday result from NEM. Even under a typical burden-of-proof analysis, the Company would not be required to include in its assessment outcomes that cannot be demonstrated to be beneficial and quantifiable. A benefit does not become a benefit merely because an intervenor subjectively believes that it is. And TASC cannot be allowed to argue the Company failed to meet its burden of proof because the Company failed to speculate as to every conceived "benefit" that TASC postulates will exist from on-going subsidies to NEM customers.

As the Utah Supreme Court noted in *Utah Department of Business Regulation*, the Commission is limited to assessing "relevant facts" in determining rate issues.¹⁷ In the context of this proceeding, an outcome or result of NEM does not become "relevant" unless it can actually be shown to result in an actual, weighable cost or an actual, weighable benefit, as described in Utah Code Ann. § 54-15-105.1. As such, before an intervenor can claim an outcome of NEM is in fact a benefit that is relevant to the balancing required by § 54-15-105.1, the burden should be on the *intervenor* to first establish that an alleged "benefit" is actually a benefit that results from NEM

¹⁷ 614 P.2d at 1246.

and is quantifiable. It would make no sense to require a utility to prove the negative -- that the alleged outcome is not in fact a benefit or is not quantifiable. For these reasons, the Commission must reject TASC's contentions regarding the burden of proof.

VI. The DSM Tests Are Inappropriate Because They Are Not Being Used By the Company to Sponsor a DSM Program with Utility-Provided Incentives.

The intent of the DSM cost-effectiveness tests is to determine whether the utility should sponsor a DSM program with utility-provided incentives. The purpose of this docket is not for the Company to sponsor a NEM program and pay incentives. As the Company has already stated, based on a comparison of the Section 105 replaced by the new Section 105.1 of the NEM statute, it no longer views the NEM program as an incentive-based or subsidy-based program. The NEM program must be fully and solely supported by participating customers. Neither the Company nor the Commission can spread the costs that are not recovered from participating customers to the Company's entire customer base. The purpose of this docket is to determine whether costs are being shifted from participating to non-participating customers, which evaluation cannot be performed by the standard DSM tests as they don't provide the analysis needed to fully understand any cost shifts.

VII. Technical Conference Recommendations

The Company concurs with the view expressed by several parties that achieving a productive outcome from technical conferences will be challenging. In fact only two parties recommended specific technical conference topics. Some parties recommended that a technical conference process could be enhanced with the participation of third party facilitators. The Company believes that the parties to this proceeding are well acquainted with the issues at hand and the participation of an independent facilitator would do little to enhance the parties

understanding of such issues. In addition, technical conferences would require a commitment of time and resources that would likely not produce meaningful results.

The Company believes that a limited scope of technical conference topics could be useful for consideration. Those topics would include a technical conference on rate design, as recommended by UCE, and a technical conference on grid system costs and benefits directly experienced by all parties to the electrical grid, as recommended by UCARE and TASC. These are topics that could likely be addressed in one day. The Company remains open to further discussion of potential topics; however, without clear direction from the Commission on what types of topics or questions it would like to see explored, it seems unlikely that topics beyond this limited scope would produce meaningful results.

CONCLUSION

The Company supports cost effective renewable energy and the continued development of the NEM program that will treat all customers fairly. The Company submits that policies that artificially boost a specific type of renewable energy rather than targeting emission reductions from any source, in particular at the expense of Utah customers and at the expense of the utility, is not good policy. While some parties would like the Commission to approve a framework that creates subsidies for one subclass of customers at the expense of another, the Legislature has established clear policy against such subsidies in replacing Section 105 with current Section 105.1. And although at least one party in this case sees it as a decision that rewards “smart customer choices” for “smart and engaged ... distributed solar customers,” the Company views it as a decision that would force subsidies to support certain customers’ social, political and economic choices at the expense of others.

For this reason and based on the foregoing, the Company respectfully submits that:

- the Commission must consider the costs and benefits of the NEM program, not just the costs of the “Net Electricity”; as several parties contend;
- the traditional cost-based model requires the exclusion of non-quantifiable or speculatively-quantifiable “values” from cost/benefit analyses;
- the model and framework for determining the costs and benefit of the NEM program has largely been set and there is no need to vary from this precedent;
- the “just and reasonable” standard protects not just NEM customers but *all* customers from unfair, unsupported and unjustified costs and further, as has been interpreted by courts across the country, also protects the utility’s ability to earn a fair rate of return;
- Section 105.1 of the NEM statute does not impose the burden of proof on the Company to demonstrate both the costs *and* benefits of the NEM program; and
- the DSM tests are inappropriate to use here because the NEM program is not an incentive-based program.

DATED this February 20, 2015.

RESPECTFULLY SUBMITTED,
ROCKY MOUNTAIN POWER

A handwritten signature in blue ink, appearing to read "Yvonne R. Hogle". The signature is written in a cursive style with a large initial "Y".

R. Jeff Richards
Yvonne R. Hogle