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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

<p>In the Matter of the Investigation of the Costs and Benefits of PacifiCorp's Net Metering Program</p>	<p>DOCKET NO. 14-035-114</p> <p>Utah Clean Energy's Response to Rocky Mountain Power's Legal Brief filed in Advance of the Deadline for Direct Testimony</p>
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INTRODUCTION

In its *First Order Amending Scheduling Order and Notices of Workgroup Meetings, Hearing and Public Witness Hearing*, issued in the above-captioned proceeding on March 19, 2015, the Commission provided an opportunity for parties to file motions and supporting briefs in advance of the deadline for direct testimony. Utah Clean Energy hereby responds to Rocky Mountain Power's *Legal Brief Filed in Advance of the Deadline for Direct Testimony*.

Rocky Mountain Power's ("the Company" or "RMP") Brief makes two main arguments. First, the Company urges the Commission to exclude consideration of externalities from the net metering docket.¹ Relatedly, the Company argues that the statute precludes consideration of hypothetical, speculative or non-quantifiable costs or benefits from the net metering evaluation.²

¹ See RMP Brief at page 3.

² *Id.* at page 4.

Second, the Company urges the Commission to exclude from consideration studies or other information regarding the costs and benefits of net metering from other states.³

As discussed in our *Initial Comments*, filed February 6, 2015 in this docket, Utah Clean Energy agrees with Rocky Mountain Power that the Commission must have an empirical foundation to justify findings pursuant to its obligations under the net metering statute (as well as rate-setting in general).⁴ However, at this point in the current docket, Utah Clean Energy feels strongly that the Company's recommendations to the Commission are overly broad and would have unintended consequences in this and other dockets, which would not be in the public interest. Utah Clean Energy urges the Commission to make no ruling excluding or precluding from consideration any broad categories of evidence or information from the net metering evaluation.

ARGUMENT

1. RMP's request to exclude information or evidence is contrary to principals of statutory interpretation, premature and overly broad, such that granting it would lead to unintended and unproductive consequences.

Issuing an order precluding consideration of externalities or other broad categories of information at this point in the proceeding would have negative unintended and unforeseeable

³ See *id.* at page 7.

⁴ *UCE Initial Comments*, February 6, 2015 in Docket No. 14-035-114 (*referencing* Docket No. 13-035-184, *Report and Order* (issued August 29, 2014)). In the rate case, the Commission found that the record before it lacked evidence distinguishing "costs net metered customers uniquely cause," making the determinations called for under the net metering statute impossible. In the face of arguments from the Company that net metering customers are a clearly distinguishable subgroup among the residential class, the Commission found that it, "cannot determine from the record in this proceeding that this group of customers is distinguishable on a cost of service basis from the general body of residential customers." The Company's assertion was not supported by any empirical data. In summary, net metering cost/benefit analysis needs to be based on empirical evidence unique to net metering customers. Docket No. 13-035-184, *Report and Order* (issued August 29, 2014), pages 62-67.

Particularly given that the current docket is an outgrowth of the evidentiary deficiencies in the previous general rate case, it is inappropriate to make conclusions, prior to the submission of any evidence, that specific evidence or categories of information is precluded as a matter of law, inadmissible or irrelevant.

consequences, set problematic precedent for this and future regulatory proceedings and run afoul of the Commission's long-standing statutory directive from the legislature to set just and reasonable rates. The net metering statute is not prescriptive about the specific method for evaluating the costs and benefits of net metering, but the Commission must ultimately set just and reasonable rates for all ratepayers. Therefore, Utah Clean Energy recommends that the Commission not exclude broad categories of evidence, information or inquiry, particularly at the current juncture, in order to facilitate a more robust investigation of net metering as well just and reasonable ratemaking for net metering and all customers.

a. Utah Code Ann. § 54-15-105.1 allows for consideration of broad categories of information.

Utah Code Annotated § 54-15-105.1 does not preclude consideration of broad categories of information or areas of inquiry, such as externalities or information from other states, in the net metering context. In *Anderson v. Bell*, the Utah Supreme Court stated that:

It is axiomatic that the best evidence of legislative intent is the plain language of the statute itself. But our plain language analysis is not so limited that we only inquire into individual words and subsections in isolation; our interpretation of a statute requires that each part or section be construed in connection with every other part or section so as to produce a *harmonious whole*.⁵

Provided that statutory interpretation requires each part or section to be construed in connection with every other part or section so as to produce a harmonious whole, it is inadvisable to review the language of Utah Code Ann. § 54-15-105.1(1), specifically and in isolation, without recognition of the fact that it is closely followed by § 54-15-105.1(2). Specifically, Utah Code Ann. § 54-15-105.1 subparts (1) and (2) together direct the Commission to:

⁵ 234 P.3d 1147, 1150 (2010) (*internal citations omitted*).

- (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. [Emphasis added.]

Utah Code Ann. § 54-15-105.1(2) implicates the just and reasonable standard for ratemaking. The just and reasonable standard, outlined in Utah Code Ann. § 54-3-1, outlines a non-exclusive list of factors, all of which may be relevant to a determination of whether rates are just and reasonable, including such non-utility considerations as “the well-being of the state of Utah,” the economic impacts of rates on customers and “means of encouraging conservation of resources and energy.”⁶ In other words, the legislature has explicitly allowed for consideration of factors that are external to the Company’s own accounting (that is, externalities) where rate-setting is concerned and, therefore, these considerations may be included in the analysis of costs and benefits that will be used to set net metering rates.

All Commission decisions should be based on evidence and factors affecting the justness and reasonableness of rates. Therefore, now is not the time to make a determination excluding consideration of evidence, information, or areas of inquiry that may help the Commission in its ultimate obligation of setting just and reasonable rates for all ratepayers.

⁶ “The scope of definition ‘just and reasonable’ may include, but shall not be limited to, the cost 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.” Utah Code Ann. § 54-3-1. RMP argues that the only relevant factors in the net metering rate setting context are those that are “capable of being weighed, i.e. an objective, quantifiable benefit that can be measured; (ii) benefits that will be actually enjoyed by or realized by the Company or its customers (i.e., not hypothetical or “potential” benefits); and (iii) the threshold to determine whether something is a benefit is taken from the point of view of the Company or its non-net metered customers.” RMP Brief at 3. However, this argument conflicts with Utah Supreme Court precedent laid out in *Anderson v. Bell*—precedent which RMP itself cites in its brief. See RMP Brief at 2.

b. As a practical matter, the Commission should not limit the scope of investigation at this point in the proceeding.

In the current proceeding, the Commission has directed the creation of an analytical framework for evaluating the costs and benefits attributable to net metering, pursuant to its obligations under the net metering statute. The statute is not prescriptive on the precise method for examining the costs and benefits of net metering. Utah Clean Energy recommends that, at this point in the docket, it is wise to leave our options open by not precluding consideration of broad categories of information, in order to best facilitate discussion, collaboration and analysis in pursuit just and reasonable rates.

As a practical matter, Utah Clean Energy is concerned about pre-emptively foreclosing broad areas of inquiry at a stage in the proceeding that may stifle the good faith efforts of parties to investigate the costs and benefits attributable to net metering. For example, if the Commission were to grant the Company's request at this time, parties could easily run afoul of Commission order simply by attempting to evaluate costs and benefits potentially attributable to net metering, and whether it is possible, under currently available means, to quantify them. At this point in the docket, when evidence, testimony and analysis have yet to be filed, all costs and benefits are still "hypothetical, speculative, and unquantified." Making a ruling on the Company's brief would be premature and thwart productive inquiry into the costs and benefits of net metering.

At this point in the docket, Utah Clean Energy has retained experts and is participating in the workgroup meetings but has not yet determined the positions we will formally take in testimony. We are taking the workgroup process seriously and in good faith. We are negotiating with all parties in the non-public portions of the workgroup meetings. We are hopeful that we may still narrow the scope of the litigated issues. Having the Commission make a ruling now, specifically precluding broad categories of information or potential evidence, would, in Utah

Clean Energy's view, improperly stifle discussion prematurely and have far-reaching and unforeseeable consequences both in the current docket and dockets to come.

Utah Clean Energy recommends that the Commission allow parties to continue working through issues in the public workgroups and in the non-public settlement negotiations to investigate and narrow the issues and scope of litigation. In Utah Clean Energy's view, the current docket has been useful and will continue to be so to the extent the Commission allows parties the ability to fully investigate the factual issues before it.

2. The Commission should not preclude consideration of any category of information or evidence at this time.

Utah Clean Energy recommends that the Commission not make a ruling precluding consideration of externalities (costs or benefits) or preclude evidence of costs or benefits that may be deemed hypothetical, speculative or non-quantifiable by certain parties, at least currently. It is Utah Clean Energy's position that it is too early in the proceeding to preclude any category of information (see above). Furthermore, while the Commission should not accept another state's net metering evaluation results as determinative of Utah's results, neither should it determine that any and all information from other states is irrelevant to developing an analytical framework in Utah, as the Company recommends.

The Commission has already explained that it needs empirical evidence, directly attributable to NEM customers, in order to justify a rate change for those customers—we agree. However, our current inability to quantify otherwise relevant costs and benefits should not render them inapplicable to cost benefit analysis or the analytical framework. Although some costs or benefits may be hard to quantify at this time, they should not necessarily be excluded from consideration, as this will set dangerous precedent for excluding these factors from future

dockets, and they may become quantifiable in the future. A more prudent approach would be to retain placeholder costs or benefits until more sophisticated measurement methods are available.

Finally, the Commission should not exclude consideration of studies or information from other states. While other states' studies should not determine the costs and benefits of net metering in Utah, instead of "reinventing the wheel" in terms of analytical frameworks, we can learn about processes and methods employed in other states, the types of data used and the experts involved before embarking on our own, Utah-specific endeavor to evaluate the costs and benefits of net metering in the current proceeding. The Company's brief seems to have inappropriately conflated study *results* with study methods, processes and experts. The Commission should allow information from other states to benefit the process in Utah and the Commission's analytical framework to the extent it can.

CONCLUSION

Utah Code Ann. § 54-15-105.1 is not prescriptive in terms of the type of cost/benefit analysis the Commission must undertake, nor does it require that the Commission create a specific analytical framework for determining the costs and benefits of net metering. The statute does require that the Commission set just and reasonable rates. The current docket, as outlined in the previously issued Orders and Notices of the Commission, provides a forum for parties to develop an analytical framework for evaluating net metering, considering the requirements of the net metering and broader public utility statutes and regulations. Utah Clean Energy recommends that the Commission allow parties to continue along the already-approved schedule, consisting of workgroup meetings and testimony filing, without specifically excluding or precluding consideration of any evidence or information.

Thus, Utah Clean Energy recommends that the Commission not issue a ruling precluding broad categories of evidence or information from the net metering docket. Specifically, Utah

Clean Energy recommends that the Commission 1) deny the Company's request to exclude or preclude consideration of costs or benefits other than those that are actually incurred by or accruing to the Company and its customers and 2) deny the Company's request to exclude or preclude consideration of studies relating to benefits or costs outside of Utah.

DATED this 27th day of May, 2015.

RESPECTULLY SUBMITTED,
UTAH CLEAN ENERGY

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