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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

**Sierra Club’s Response to Rocky  
Mountain Power’s Legal Brief filed in  
Advance of the Deadline for Direct  
Testimony**

**I. Introduction**

On May 6, 2015, Rocky Mountain Power (the “Company”) filed a legal brief presenting argument on several broad legal issues and asking the Commission to resolve those issues prior to the deadline for filing direct testimony. It is unclear what relief the Company seeks, whether a declaratory order, the exclusion of evidence on specific topics from the forthcoming proceeding, or something else entirely. A request for a specific form of relief would provide a legal framework for other parties’ responses and the Commission’s decision. Notwithstanding the ambiguity of the Company’s legal brief in this respect, Sierra Club will respond to two major legal issues raised by the Company. First, the Company asks the Commission to find that the governing statute, Utah Code § 54-15-105.1, “excludes consideration of costs or benefits other

than those that are actually incurred by or accruing to the Company and its customers.”<sup>1</sup> Second, the Company asks the Commission to find that the statute “excludes consideration of studies relating to benefits or costs outside of Utah.”<sup>2</sup> The Company’s interpretation of the governing statute is incorrect on both points.

## **II. Background**

The Utah Legislature has required utilities operating in the state to offer customers net metering since 2002; under this law utilities must allow customers with self-generation to provide for their own behind-the-meter consumption, and the utility must compensate those customers for excess generation at a rate set by the Commission. In 2014, the net metering statute was amended to require the governing authority to:

- (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.<sup>3</sup>

As this Commission recently held, the determination of whether the costs exceed the benefits, or vice versa, must be made prior to imposing any special fee on net metering customers or changing the existing tariff structure for those customers.<sup>4</sup>

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<sup>1</sup> Docket 14-035-11, Rocky Mountain Power’s Legal Brief in Advance of the Deadline for Direct Testimony (filed May 6, 2015) (“RMP Br.”), at 3.

<sup>2</sup> *Id.* at 7.

<sup>3</sup> Utah Code Ann. §54-15-105.1.

<sup>4</sup> PacifiCorp dba Rocky Mountain Power 2014 General Rate Case, Docket No. 13-035-184, Report and Order (Aug. 29, 2014) (“2014 Rate Case Order”), at 58.

### **III. Argument**

#### **A. Section 54-15-105.1 gives the Commission discretion to determine which costs and benefits of net metering should be considered.**

The Company's first issue presents two separate questions: (1) whether only costs or benefits that are incurred by or accrue to the utility or its customers should be counted; and (2) whether only non-speculative costs and benefits that can be quantified are relevant to the Commission's analysis under Utah Code §54-15-105.1. Sierra Club disagrees with the Company's interpretation of the statute on both counts.

##### **i. The Statute Does Not Preclude the Commission from Considering Non-Utility Costs**

The Company takes the position that the statute allows consideration only of costs that are incurred by the "electrical corporation" and its customers, and only benefits that accrue to those same entities. Specifically, the Company argues that external benefits such as global health, social and environmental benefits must be excluded from consideration because they "are not directly enjoyed by the Company or its customers." *Id.* at 4.

The Commission already addressed the question of externalities in this docket and implicitly rejected requests by some parties to exclude those factors outright. In its March 9 order in this docket, the Commission made clear that it would "continue to consider evidence and arguments regarding whether, or the extent to which, externalities should factor into an analysis of net metering costs and benefits . . . . [W]e expect a party advocating for consideration of a factor that could be defined as an externality to establish that factor's applicability, quantifiable value, and

proper placement in an analytical framework or equation.”<sup>5</sup> Sierra Club believes that the Commission’s open-minded approach to considering future evidence and arguments concerning externalities is appropriate, and urges the Commission not to decide at this time that externalities are irrelevant to the statutory inquiry as a legal matter. Once the record is fully developed in this proceeding, the Commission will be fully capable of applying its own discretion to determine whether and to what extent externalities should be considered.

The Company’s view that the statute precludes the Commission from any consideration of externalities is incorrect for several reasons. The statute requires consideration of “costs that the electrical corporation or other customers will incur from a net metering program,” and a comparison of these costs to the benefits. Although the statute does not limit the benefits to those experienced by “the electrical corporation or other customers,” Sierra Club agrees that it is a sensible interpretation of the statute to compare the costs and benefits on equal terms. However, we disagree with the Company’s premise that only costs and benefits related to customers’ status *as ratepayers* are relevant under the statute. All of the Company’s customers are residents of the state of Utah, and all customers experience, to some degree, benefits or costs related to the state’s air quality, water quality and supply, and economic health. Those customers experience costs and benefits as residents of the state, not just as customers of Rocky Mountain Power. There is nothing in the statute to suggest that the Legislature intended to view its constituents in such an isolated and counter-intuitive manner. In fact, the sponsor of S.B. 208,

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<sup>5</sup> Docket 14-035-114, Order (Mar. 9, 2015), at 5-6.

Senator Curtis Bramble, stated that the bill “directs [the Commission] to look at the costs and benefits in a *more global* perspective.”<sup>6</sup>

Furthermore, this Commission has recognized that non-utility costs and benefits are relevant to other utility resource decisions. Non-utility benefits are routinely considered when evaluating the cost-effectiveness of demand-side management programs as part of the PacifiCorp Total Resource Cost (“TRC”) test, which includes a “conservation adder.”<sup>7</sup> While the Utility Cost Test is the primary screening test for energy efficiency programs, the Commission requires the Company to perform the PacifiCorp TRC test to provide a point of comparison for the value of the program in question.<sup>8</sup> Likewise, the Commission may determine in this docket that quantitative evidence about the environmental and economic benefits of net metering is relevant to the determination of whether the costs or benefits of the program are greater, even if those benefits do not factor directly into the Company’s revenue requirement.

The Legislature “delegate[ed] to the Commission the responsibility to gather and evaluate relevant facts, opinions and public comments, and to determine whether the costs of PacifiCorp’s net metering program will exceed the benefits.”<sup>9</sup> Thus, the Legislature intended the Commission to apply its expertise and experience with valuing utility system resources to the

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<sup>6</sup> Hearing on S.B. 208 before the H. Public Utilities and Technology Comm., 60th Leg., 2014 Gen. Sess. (Utah 2014) (statement of Sen. Curtis Bramble) (emphasis added), *available at* [http://utahlegislature.granicus.com/MediaPlayer.php?clip\\_id=17038&meta\\_id=500377](http://utahlegislature.granicus.com/MediaPlayer.php?clip_id=17038&meta_id=500377).

<sup>7</sup> See Docket No. 09-035-27, In the Matter of the Proposed Revisions to the Utah Demand Side Resource Program Performance Standards, Order issued Oct. 7, 2009 (adopting recommendation of Utah Demand Side Management Advisory Group to conduct all five cost-effectiveness tests, including the societal TRC).

<sup>8</sup> For example, the results of the PacifiCorp TRC test could be considered by the Commission in determining whether a program that has not passed one of the tests is nevertheless in the public interest. *Id.* at 15.

<sup>9</sup> 2014 Rate Case Order at 58.

questions posed by §54-15-105.1, and there is no reason to interpret the statute to preclude the Commission from considering non-utility benefits that accrue to Utah citizens as a result of net metering.

The statute's incorporation of the state's "just and reasonable" standard further demonstrates that the Utah Legislature intended for the Commission to consider a broad range of factors, including non-utility costs and benefits, when deciding the future of the net metering program. That statutory definition of "just and reasonable" requires the Commission to consider:

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.**<sup>10</sup>

Thus, a just and reasonable rate must to some degree take into consideration the well-being of the state of Utah, which may include public health and economic development considerations. A just and reasonable rate must also reflect the values of "conservation of resources and energy." With regard to net metering, §54-15-105.1(2) expressly incorporates reference to the just and reasonable standard. Thus, the statute clearly contemplates that the Commission will consider issues such as the load reduction and fossil fuel conservation benefits of distributed solar as part of determining whether a charge on net metering customers is just and reasonable. Therefore, these factors should be included in the analytical cost-benefit framework to be established through this docket. If the data regarding non-utility costs and benefits related to the well-being of the state of Utah are not developed as part of the cost-benefit analysis, the Commission will be

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<sup>10</sup> Utah Code Ann. § 54-3-1 (emphasis added).

limited in the amount and quality of information it has about those other critical factors when making its determination in subpart (2).

For these reasons, Sierra Club urges the Commission to reject Rocky Mountain Power's invitation to exclude non-utility benefits and costs from the cost-benefit framework that will be adopted through this docket.

**ii. The Commission Should Decline to Declare Costs or Benefits as Speculative or Unquantifiable Without Considering Testimony as to Appropriate Methodologies**

Relatedly, the Company also argues that the statute “excludes from consideration benefits that are not quantifiable, i.e., benefits that are speculative or not capable of being properly weighed in the cost-benefit analysis.”<sup>11</sup> Sierra Club agrees that benefits and costs that are wholly speculative should not be included in the cost-benefit analysis. However, simply because a cost or benefit is difficult to quantify, or there is disagreement about the proper way to quantify that cost or benefit, does not render it speculative and irrelevant. The Commission regularly considers, as part of resource investment decisions, forecasts that are subject to disagreement among experts, such as fuel prices.

Several benefits and costs of net metering may be difficult to quantify, but that does not render them speculative. For example, distributed renewable generation reduces the utility's exposure to energy price spikes that occur during high load periods and reduces the chance of a system outage by decreasing the utility's distribution system load. Many net metering cost-benefit studies have acknowledged this benefit in general terms, and several have made efforts to

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<sup>11</sup> RMP Br. at 4.

quantify the value of these avoided risks.<sup>12</sup> Other net metering studies have calculated the local economic benefits of net metering, as rooftop solar installations bring employment and increased local spending.<sup>13</sup> There is a wide array of approaches to calculating these benefits, but that variety does not render any economic development impact speculative. Other benefits that the Company suggests cannot be “reasonably or reliably quantified” are the public health and environmental benefits of reduced emissions associated with net metering.<sup>14</sup> However, there are several reasonable methodologies available to calculate those benefits based on information about the avoided emissions associated with net metering.<sup>15</sup>

Sierra Club mentions these methodologies merely to demonstrate to the Commission that public health, environmental and economic benefits are not inherently “speculative,” as the Company asserts.<sup>16</sup> The Commission should refrain from deciding, at this time and without

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<sup>12</sup> See Synapse Energy Economics, Inc., *Net Metering in Mississippi: Costs, Benefits, and Policy Considerations* (Sept. 19, 2014) (prepared for the Public Service Commission of Mississippi), at Appendix A. Indeed, PacifiCorp has acknowledged and even quantified the risk reduction value of its demand-side management resources; in its 2013 IRP, the Company found that accounting for this avoided risk added about 10% to the overall avoided costs calculated in that IRP. *Id.* at 59.

<sup>13</sup> See, e.g., *Nevada Net Energy Metering Impacts Evaluation*, Prepared for State of Nevada Public Utilities Commission, July 2014, at 131-47.

<sup>14</sup> RMP Br. at 6.

<sup>15</sup> See, e.g., *Nevada Net Energy Metering Impacts Evaluation*, *supra* note 13, at 63 (using “criteria pollutant health impact costs from Nevada Energy’s 2013 IRP to evaluate the monetary health net benefits of avoiding or increasing fossil fuel combustion”). In addition, the U.S. Environmental Protection Agency maintains and updates the Co-Benefits Risk Assessment Screening Model (COBRA), which is a tool that enables policymakers to calculate the public health and related economic benefits of reduced emissions. See U.S. EPA, <http://epa.gov/statelocalclimate/resources/cobra.html> (last updated May 2015).

<sup>16</sup> The Company also asserts that this Commission’s recent decisions regarding the inclusion of certain types of avoided costs in the context of the Public Utilities Regulatory Policies Act should guide its decisions about inclusion of those costs in this cost-benefit study. RMP Br. at 4. Sierra Club notes that the legal framework governing PURPA avoided cost payments is distinct from that governing the Commission’s duties under §54-15-105.1; here the Commission retains far greater discretion about the types of costs and benefits to consider.



further development of the record, whether certain benefits and costs are too speculative or hypothetical to be included in the analytical framework.

**B. The Commission May Consider Studies from Outside of Utah Relating to Benefits and Costs of Net Metering**

Nothing in Section 54-15-105.1(1) prohibits the Commission from considering studies from outside of Utah, as the Company asserts. Many other state commissions have undertaken studies of the costs and benefits of net metering,<sup>17</sup> and other entities have issued thoughtful and well-researched reports on the various methodologies used for net metering valuation.<sup>18</sup> The Legislature delegated to the Commission the responsibility to determine how the costs and benefits should be weighed, and it did not preclude the Commission from surveying and understanding the approaches taken to this issue in other states. The Commission can determine whether the approaches taken in those other states are consistent with Utah policy and practice and adapt them for Utah's purposes.

The Company itself frequently looks to other states and utilities to determine an "industry standard" for various ratemaking purposes. For example, the Company's witness in a recent rate case presented an analysis of return on equity rates that considered a comparison of several utilities in other states.<sup>19</sup> In the last rate case, the Company's witness Douglas Marx testified to the impacts of solar resources on the PacifiCorp system in other states, citing specific examples

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<sup>17</sup> See, e.g., Sierra Club Initial Comments on Analytical Framework, filed March 6, 2015, at 7-8.

<sup>18</sup> See, e.g., Interstate Renewable Energy Council, Inc., *A Regulator's Guidebook: Calculating the Benefits and Costs of Distributed Solar Generation* (Oct. 2013), Denholm et al., *National Renewable Energy Laboratory, Methods for Analyzing the Benefits and Costs of Distributed Photovoltaic Generation to the U.S. Electric Utility System* (Sept. 2014), NREL/TP-6A20-62447, Electricity Innovation Lab, Rocky Mountain Institute, *A Review of Solar PV Benefit and Cost Studies* (2nd ed. Sept. 2013), available at [www.rmi.org/elab\\_emPower](http://www.rmi.org/elab_emPower).

<sup>19</sup> See Direct Testimony of Samuel C. Hadaway, Jan. 2015, Docket No. 13-035-184 (looking at authorized rates of return for thirteen non-Utah utilities).

of large distributed solar generation systems in Oregon that had caused voltage fluctuations.<sup>20</sup> In that rate case, the Commission admitted evidence that the Nevada Public Utility Commission had recently concluded a study on the costs and benefits of net metering.<sup>21</sup> These examples illustrate that the experiences and regulatory circumstances of utilities in other states can be relevant to issues before this Commission; the Commission can receive that information and give it whatever significance it believes is appropriate. The Commission should reject PacifiCorp's suggestion that the Utah Legislature somehow intended to strip the Commission of its prerogative to consider out-of-state practices.

The Company's argument on this point seems to confuse the relevance of data or conclusions from out of state, with methodologies employed by studies conducted in other states. Sierra Club would agree that the Commission should not base its determination in this docket on the *conclusions* reached in studies on other states or utilities, nor use data from these other studies where equivalent data are available for Utah. But the approaches that other regulators have used in reaching these conclusions, and the types of data they have considered, are certainly relevant and helpful to the Commission in this matter.

#### **IV. Conclusion**

Utah Code §54-15-105.1 does not restrict the Commission's discretion to evaluate the costs and benefits of the net metering program, as asserted by the Company. The Company's flawed statutory interpretation is further confused by its failure to request any specific form of relief.

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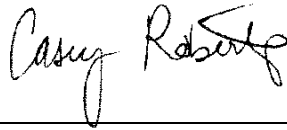
<sup>20</sup> Rebuttal Testimony of Douglas Marx, at 7, June 2014, Docket No. 13-035-184.

<sup>21</sup> See Docket No. 13-035-184, Transcript for July 29, 2014 Hearing, at 438:21-25 through 439:1-4.

For these reasons, the Sierra Club asks the Commission not to enter an order in accordance with the views expressed in the Company's brief.

DATED this 27<sup>th</sup> day of May, 2015.

Respectfully submitted,

A handwritten signature in black ink that reads "Casey Roberts". The signature is written in a cursive style with a large, looped initial 'C'.

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