

JUSTIN C. JETTER (#13257)  
PATRICIA E. SCHMID (#4908)  
Assistant Attorney Generals  
Counsel for the DIVISION OF PUBLIC UTILITIES  
SEAN D. REYES (#7969)  
Attorney General of Utah  
160 E 300 S, 5<sup>th</sup> Floor  
P.O. Box 140857  
Salt Lake City, UT 84114-0857  
Telephone (801) 366-0335  
jjetter@utah.gov

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

<p><b>IN THE MATTER OF THE INVESTIGATION OF THE COSTS AND BENEFITS OF PACIFICORP'S NET METERING PROGRAM</b></p>	<p><b>Docket No. 14-035-114</b></p> <p><b>DIVISION OF PUBLIC UTILITIES' RESPONSE TO ROCKY MOUNTAIN POWER'S BRIEF</b></p>
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Pursuant to Utah Code Ann. § 54-4a-1 and Utah Admin. Code r746-100 the Utah Division of Public Utilities (“Division”), hereby submits this Response to Rocky Mountain Power’s (“Company”) Legal Brief in Advance of the Deadline for Direct Testimony. The Division agrees with the Company that the Public Service Commission of Utah (“Commission”) should declare that pursuant to Utah Code Ann. § 54-15-105.1 the evidence to be considered in this docket is limited to costs and benefits to the electric utility and its customers and decline to consider evidence of external costs and benefits. The Division does not recommend an attempt to list specific evidence to be excluded, but rather clarify the statute so that parties can focus on relevant

evidence.

## INTRODUCTION

In its August 9, 2014 order in Docket No. 13-035-184 the Commission declined to implement a requested net metering facilities charge and concluded that further study and analysis of the net metering program was appropriate. The Commission opened this docket at that time. The purpose of this docket is to evaluate the net metering program in light of Utah Code Ann. § 54-15-105.1 requiring the Commission to evaluate costs and benefits of the net metering program and “determine a just and reasonable charge, credit, or ratemaking structure, including new or existing tariffs, in light of the costs and benefits.” The Commission stated in its November 21 Notice its intent to “establish the appropriate analytical framework for making the required determinations under Utah Code Ann. § 54-15-105.1.”

In its March 19, 2015 First Amended Scheduling Order and Notices of Workgroup Meetings, Hearing and Public Witness Hearing the Commission set May 6<sup>th</sup> as the deadline for filing motions and supporting briefs to be considered in advance of the deadline for direct testimony. On May 6<sup>th</sup> the Company filed a legal brief regarding interpretation of § 54-15-105.1.

The Company’s brief argues for three primary interpretations of § 54-15-105.1; that the benefits are quantifiable, that they are actual benefits, and that the benefits are to the Company and other customers of the Company. (Company Brief at p.3). The Division agrees in principle with this interpretation.

## DISCUSSION

Section 54-15-105.1 states in relevant part that “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.” While there has yet to be evidence presented on the issue of costs and benefits in this docket, it would be appropriate for the Commission to interpret the statute now as to the nature of costs and benefits that will be considered. Such interpretation will guide the development and presentation of evidence in this docket and avoid needless submissions of irrelevant testimony and data.

The Company’s motion concerns how attenuated benefits might be and still be considered in the balancing under § 54-15-105.1. The canons of statutory construction are well established in Utah:

Our primary goal when interpreting statutes is to effectuate the intent of the Legislature. *State v. Watkins*, 2013 UT 28, ¶ 18, 309 P.3d 209. Our starting point is therefore the plain language of the statute. *Marion Energy, Inc. v. KFJ Ranch P’ship*, 2011 UT 50, ¶ 14, 267 P.3d 863. Further, “we interpret[ ] statutes to give meaning to all parts, and avoid[ ] rendering portions of the statute superfluous.” *Watkins*, 2013 UT 28, ¶ 23, 309 P.3d 209 (alterations in original) (internal quotation marks omitted). To do so, “we read the plain language of the statute as a whole, and interpret its provisions in harmony with other statutes in the same chapter and related chapters.” *State v. Barrett*, 2005 UT 88, ¶ 29, 127 P.3d 682 (internal quotation marks omitted).

*Dahl v. Dahl*, 2015 UT 23, ¶ 159, 345 P.3d 566, 606 (Utah 2015), *reh'g denied* (Mar. 23, 2015).

The language requires the Commission to consider whether the costs that the “electrical corporation” or “other customers” of the electrical corporation will incur from the program will exceed the benefits that the electrical corporation or other customers of the electrical corporation will receive from the net metering program. While it may be argued that the statute may also be read to mean that only costs to the electric corporation or other customers are to be balanced against the unlimited universe of benefits that might be attributed to the program, this alternative reading would not harmonize with surrounding statutory requirements or the purpose of utility regulation and history of rate setting in Utah.

In order for the benefit analysis to be interpreted in harmony with other statutes in the same chapter and related chapters, the benefits and costs must be similarly evaluated as being those applicable to the electric utility and other customers. The language should be read consistent with subpart (2) of § 54-15-105.1 that requires the Commission to “determine a just and reasonable charge, credit, or ratemaking structure...in light of the costs and benefits” it has evaluated in subpart (1). Including benefits to customers of other electric utilities or citizens of other states or nations in the process of determining an appropriate rate would compare dissimilar categories and inherently result in inequitable treatment of whichever party – either the company or other customers – who ends up burdened with compensating net metering customers for benefits to others beneficiaries.

Moreover, such a reading would be inconsistent with historical interpretation of Utah Code Ann. § 54-4-4. Utility rates in Utah are set based on costs to the utility. “To avoid confiscatory rates on the one hand and exploitive rates on the other, the Commission must determine what a just and reasonable rate is under Utah Code Ann. § 54-4-4 by applying a standard that is based on a utility's cost of service.” *Stewart v. Utah Pub. Serv. Comm'n*, 885 P.2d 759, 767 (Utah 1994). The *Stewart* court further clarified that “[j]ust and reasonable rates are necessarily based on cost of service and cost of capital, whatever the particular formula used.” *Id.* at 771.

External benefits that do not accrue directly to the utility or its ratepayers do not fit reasonably into the paradigm of rates as a mechanism of allocating current actual costs of utility service to customers. Basing rates as required in subsection (2) on external benefits that are not accruing to the company or its customers in the form of reducing operating costs will not alter the Company’s costs. Therefore such benefits have no value in setting rates which rates are

“necessarily based” on the cost of service. It is illogical to interpret the statute to weigh benefits that are not useful in rate determination when the statute further requires setting of a reasonable charge, credit or rate making structure as a result. Moreover limiting the benefits to those directly accruing to the utility or other rate payers as the plain language suggests is the only interpretation that remains consistent with surrounding chapters such as § 54-4-4 as the canons of construction require.

In addition to these considerations it is in the public interest to limit cost and benefit considerations because of the difficulty in quantifying such external costs and benefits. Doing so requires balancing of such questions as whether a coal miner’s economic impact is greater or lesser than that of a solar panel maintenance worker. Claims of economic stimuli from the employment of construction, maintenance, and operation personnel may be valid but they are not well-suited to determination in rate-related proceedings. It is difficult if not impossible to fairly and accurately quantify these types of external economic benefits. Even if they could be quantified accurately, they still should not be a consideration in setting rates any more than the economic stimulation of any of the other construction projects undertaken are counted when the Company applies for a major plant addition. Considering such factors would be hugely disruptive in the rate setting process, particularly with its limited time frame for evaluation and decision. The costs and benefits outside of those that are directly related to the utility function are simply outside the scope of rate setting.

Public policy provides further basis for such a limitation on costs and benefits to be considered. Externalities tend to be very difficult to evaluate. Valuation of externalities can be imprecise, is often arbitrary and is always controversial. These decisions of such broadly subjective and politicized nature are better left to the elected officials. Governments have other

more appropriate mechanisms for capturing and distributing external costs and benefits. For example the state and federal tax incentives for installation of such distributed generating facilities and emission regulations are more direct methods of incentivizing behavior. Indeed, such incentives exist. If those incentives do not fairly reflect the social value to the state of renewable or similar resources, changing those incentives would be more appropriate than saddling one utility's customers with the costs of all the social benefits the state receives.

## CONCLUSION

The Commission should hold that the proper interpretation of the statute limits the costs and benefits to be considered to those that directly impact the electric utility and its cost to serve its customers. Those costs and benefits are within the scope contemplated by Section 54-15-105.1. They are costs and benefits that are useful in setting utility rates based on the fundamental principle of rates being based on the cost of service. And the public policy of efficiency in utility regulation and reliance on reasonably reliable and quantifiable evidence is furthered by such a holding. For these reasons the Commission should interpret the language of 54-15-105.1 by its plain meaning and in doing so limit the evidence of costs and benefits to be considered to those that are directly received or incurred by the electric utility and rate payers of the electric utility.

While the Commission should hold that the statute does not require or authorize the Commission to consider evidence of benefits to entities other than the Company or its customers, it is unnecessary to make a ruling at this time on exclusion of any specific evidence. Individual testimony and evidence presented later in this and other dockets should be evaluated as it is received. The determination regarding relevance may be made at that time. A ruling on interpretation of the statute will provide sufficient guidance at this time as parties prepare evidence.

Submitted this 26th day May, 2015.

/s/ Justin C. Jetter

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Justin C. Jetter  
Assistant Attorney General  
Utah Division of Public Utilities