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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><b>DOCKET NO. 14-035-114</b></p> <p><b>ROCKY MOUNTAIN POWER'S REPLY BRIEF IN ADVANCE OF THE DEADLINE FOR DIRECT TESTIMONY</b></p>
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PacifiCorp dba Rocky Mountain Power (“Rocky Mountain Power” or “the Company”)  
hereby submits this reply brief regarding the proper legal interpretation and meaning of Utah  
Code Ann. § 54-15-105.1(1).

## ARGUMENT

Utah Clean Energy and the Sierra Club (the “Interveners”) urge the Commission to decline to rule on the interpretation of Utah Code Ann. § 54-15-105.1. They argue that the Company’s Legal Brief is premature and that the Commission should consider the parties’ evidence prior to determining whether it is relevant to the analytical framework that the Commission will adopt. It was the Interveners themselves, however, who invited the Commission to allow for briefing on this topic, claiming that the Commission should narrow the issues in order to spare the parties the time and expense associated with drafting testimony that will ultimately be deemed irrelevant to the final analysis. The Commission should enter an order regarding its interpretation of Section 54-15-105.1. Specifically, the Company requests that the Commission rule that it will only consider costs and benefits that (1) are quantifiable, and (2) are actually enjoyed or realized by the Company or its customers in their capacity as ratepayers in Utah.

### **A. Evidence Regarding Externalities Should Be Excluded.**

The Interveners argue that evidence regarding the societal benefits of solar power and net metering, such as improved air quality, should be admissible. The Interveners make several arguments in favor of the admissibility of this evidence, but each of their arguments fails.

First, relying on the Commission’s March 9, 2015 Notice, the Interveners argue that the Commission has implicitly ruled that evidence of externalities is admissible. That is incorrect. The Commission ruled on March 9, 2015 that the record was insufficient “at th[at] point” to “establish a clear definition of externalities.” The Commission noted that it would “continue to consider evidence and arguments regarding *whether*, or the extent to which, externalities should factor into an analysis.” (Mar. 9, 2015 Notice, emphasis added.) Contrary to the Interveners’

argument, this ruling shows that the Commission has not yet decided whether externalities are admissible in this proceeding.

Second, the Interveners argue that Section 54-15-105.1 incorporates the definition of “just and reasonable” from Utah Code Ann. Section 54-3-1. Section 54-3-1, they argue, defines the scope of the term “just and reasonable” as including consideration of “the well-being of the state of Utah,” which compels consideration of externalities. The Interveners ignore that the term “just and reasonable” has precedent in referring specifically to the utility’s cost of service, which only incorporates items that directly result in costs to the utility’s customers. *Utah Dep’t of Bus. Regulation, Div. of Pub. Utilities v. Pub. Serv. Comm’n*, 614 P.2d 1242, 1248 (Utah 1980) (“A just and reasonable rate is one that is sufficient to permit the utility to recover its costs of service and a reasonable return on the value of property devoted to public use.”); *Stewart v. Utah Pub. Serv. Comm’n*, 885 P.2d 759, 771 (Utah 1994) (“[j]ust and reasonable rates are necessarily based on cost of service and cost of capital, whatever the particular formula used.”). As the Division of Public Utilities (“Division”) noted in its concurrence with the Company’s Legal Brief, benefits that do not actually reduce the Company’s operating costs have no value in setting rates. Because Section 54-15-105.1 tasks the Commission with setting a charge, credit, or ratemaking structure, the Commission should only consider benefits that relate to the Company’s cost of service and its customers’ rates. Considering benefits that go beyond cost savings would undoubtedly interject factors that are subjective, difficult to measure, and speculative into the proceeding. This would be inefficient and disruptive to the rate setting process. Further, as the Division correctly noted in its concurrence, weighing externalities is best left to the legislature, which is better equipped to consider these societal factors and incentivize beneficial conduct.

Moreover, even if Section 54-3-1 could be broadly interpreted to allow for consideration of externalities, the law is clear that “when two provisions address the same subject matter and one provision is general while the other is specific, the specific provision controls.” *Dairyland Ins. Co. v. State Farm Mut. Auto. Ins. Co.*, 882 P.2d 1143, 1146 (Utah 1994). *See also WildEarth Guardians v. Nat’l Park Serv.*, 703 F.3d 1178, 1189 (10th Cir. 2013) (“Normally when two statutes conflict, we interpret the more specific statute as an exception to the more general statute.”). In this case, Section 54-3-1 contains a general definition of the term “just and reasonable,” whereas Section 54-15-105.1 contains a more limited definition. Section 54-15-105.1(2) tasks the Commission with determining a “just and reasonable charge, credit, or ratemaking structure” for a net metering program “*in light of the costs and benefits.*” Utah Code Ann. § 54-15-105.1(2) (emphasis added). “[T]he costs and benefits” in subsection (2) refers specifically to the costs and benefits defined in subsection (1); that is, the costs “that the electrical corporation or other customers will incur from a net metering program” and the “benefits of the net metering program.”<sup>1</sup> This specific definition in Section 54-15-105.1 controls. Section 54-15-105.1 confines the Commission’s consideration to specific costs and benefits directly resulting from the net metering program. It does not allow the Commission to consider the broad societal benefits of solar power generally.

**B. Studies of Costs or Benefits Outside of Utah Should Be Excluded.**

The Interveners do not dispute that the data relied upon by other states in studying net metering costs and benefits are irrelevant to this proceeding. They nevertheless argue that the methodologies employed by other states in analyzing the costs and benefits of net metering are admissible and relevant. The Interveners offer no foundation for this argument. They do not, for

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<sup>1</sup> The reference to “[o]ther customers” in this section means “non-net metering” customers.

example, explain whether these other states have statutes, rules, or regulations similar to Utah's. Given the potential differences among the states' statutory frameworks, methodologies used by other states should have no bearing on this proceeding. Section 54-15-105.1 limits the Commission's inquiry to the costs and benefits of net-metering on the Company and its customers in the state of Utah.

**C. The Commission Should Exclude Speculative and Unquantifiable Costs and Benefits at This Stage of the Proceeding.**

The Commission previously ruled that a party advocating for the admissibility of an externality will have the burden of establishing that factor's "quantifiable value." (Mar. 9, 2015 Notice.) In so ruling, the Commission implicitly ruled that non-quantifiable costs and benefits are inadmissible. The Company requests that the Commission now make that ruling explicit. In response, the Interveners claim that the Commission needs to hear evidence *first*, before it can decide whether that evidence is too speculative or quantifiable to be admissible. Contrary to the Interveners' suggestion, the Company simply requests that the Commission enter an order stating that evidence regarding costs and benefits must be quantifiable and non-speculative (in addition to being actually enjoyed or realized by the Company or its customers in their capacity as ratepayers in Utah) in order to be admissible. The Company is *not* seeking an order excluding any *specific* evidence at this point. Rather, as the parties previously noted, it would be beneficial for the Commission to enter an order interpreting Section 54-15-105.1 and excluding evidence that does not fit within the Commission's statutory interpretation of a "just and reasonable charge, credit, or ratemaking structure" for a net metering program "***in light of the costs and benefits***" that "***the electrical corporation or other customers will incur***" in advance of the deadline for direct testimony.

## CONCLUSION

For the foregoing reasons, Rocky Mountain Power requests that the Commission enter an order ruling that evidence in this proceeding must be (1) quantifiable and non-speculative, and (2) related to the Company's cost of service or the Company's ratepayers' costs in Utah. The Commission should further specifically rule that evidence regarding externalities and studies from outside Utah are inadmissible.

DATED this 9<sup>th</sup> day of June, 2015.

RESPECTFULLY SUBMITTED,

ROCKY MOUNTAIN POWER

A handwritten signature in blue ink, appearing to read "R. Jeff Richards", is written over a horizontal line.

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