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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 OF THE ALLIANCE FOR SOLAR CHOICE**

Pursuant to the *First Order Amending Scheduling Order and Notices of Workgroup Meetings, Hearing and Public Witness Hearing* ("March 19 Order"), The Alliance for Solar Choice ("TASC") respectfully submits its reply to the responses filed by the Division of Public Utilities ("DPU") and the Office of Consumer Services ("OCS") to the legal brief of Rocky Mountain Power ("RMP" or "the Company") regarding the proper legal interpretation and meaning of Utah Code Ann. § 54-15-105.1(1).

While TASC observes that there are important areas of agreement on the interpretation of Section 54-15-105.1(1)—and remains committed to working with parties to develop a proposed recommendation on the treatment of externalities in regards to the net metering analytical framework developed pursuant to that section[1]—TASC is concerned that the responses of DPU and OCS invite the Commission to use their "additional grounds" to interpret Section 54-15-105.1(2) and broaden the immediate issues at hand. TASC suggests that these "additional grounds" raise a distinct legal question that significantly expands the Company's narrowly requested relief. TASC is concerned with the broader implications of considering these "additional grounds," as a Commission order on what categories are excluded from its determination of "just and reasonable" rates could impact issues far beyond net metering.

TASC appreciates that parties find themselves in a unique procedural posture. Parties responded to a stand-alone opening brief, and now are replying to responses to that brief, using a procedural sequence usually associated with party motions. In light of this circumstance, TASC appreciates the opportunity to reply to the "additional grounds" put forward by OCS and DPU in their responses. TASC continues to recommend that parties utilize the upcoming settlement meeting, scheduled for June 25, 2015, to begin to develop a joint recommendation on how externality values should be treated in regard to the analytical framework or in the context of future cases where the analytical framework will be at issue.

I. INTRODUCTION

In the March 19, 2015 *First Order Amending Scheduling Order and Notices of Workgroup Meetings, Hearing and Public Witness Hearing* ("March 19 Order") issued in this proceeding, the Commission modified the procedural schedule to include a May 12, 2015 "deadline for filing motions and supporting briefs to be considered in advance of [the] deadline

[1] TASC's response to the Company's legal brief focused on procedural and practical considerations suggesting that a Commission legal interpretation of Section 54-15-105.1(1) would be premature at this time.

for direct testimony."[2] The Company's "legal brief" was the only filing received in this docket prior to the deadline for submitting motions. No party filed a "motion" in this docket prior to the May 12, 2015 deadline.

The Company's stand-alone legal brief put forward an interpretation of Section 54-15-105.1(1) that construes the benefits to be considered by the Commission in analyzing the net metering program as those: "(i) that are capable of being weighed…; and (ii) …that will be actually enjoyed by or realized by the Company or its customers…".[3] Though the Company's brief largely consists of its own interpretation of Section 54-15-105.1(1), it does contain one apparent, affirmative request for relief from the Commission based on its interpretation:

> [I]f the Commission allows discussion of any externality in testimony, it should **enter an order at this time**, in advance of any testimony or exhibits being filed, that such testimony be limited to quantifiable benefits that accrue directly to Utah rate payers as a direct result of net metering."[4]

The Company, in this manner, scrupulously restricted its analysis to the legal interpretation of only subpart (1) of Section 54-15-105.1 and based its request to limit the scope of evidence on the Commission's acceptance of its proffered legal grounds. The Company requests or "moves" for the Commission to interpret Section 54-15-105.1(1) in a specific manner and to apply that interpretation to limit the scope of evidence to be presented at hearing.

The responses of OCS and DPU support the Company's legal interpretation of Section 54-15-105.1(1), but neither party recommends that the Commission enter an order excluding specific categories of evidence. DPU insists that it "does not recommend an attempt to list specific evidence to be excluded," but it does agree that it would be helpful for the Commission

[2] March 19 Order at p. 1.
[3] RMP Legal Brief at p. 3.
[4] RMP Legal Brief at pp. 6-7 [emphasis added].

to “clarify the statute so that parties can focus on relevant evidence.”[5] OCS notes that it is in “accord with the Company’s contentions” that “only economic factors accruing to the Company and its customers should be taken into consideration in a cost benefit determination” and gives the caveat that it “writes separately only to offer alternative grounds for this conclusion.”[6]

Both OCS and DPU argue that traditional principles of rate regulation, which they state are incorporated into consideration of the net metering program in Section 54-15-105.1(2), provide additional legal grounds to limit the types of costs and benefits that can be considered. DPU and OCS both argue that the Commission’s determination of “just and reasonable” rates, pursuant to Section 54-4-4, inform the scope of cost and benefits that can be considered in the net metering cost-benefit framework. DPU characterizes Section 54-4-4 as requiring a standard that is based on a utility’s cost of service.[7] OCS similarly characterizes “just and reasonable” in Section 54-15-105.1(2) as requiring the Commission to “exclude factors that cannot be useful to traditional methods of ratemaking.”[8]

The Company’s legal brief does not include any discussion of the correct interpretation of subpart (2) of Section 54-15-105.1. The Company’s only affirmative request for relief relates to the Commission interpreting subpart (1) to exclude the consideration of externalities. If the Commission does not interpret subpart (1) to exclude consideration of externalities, then the Company requests that the Commission issue an order directing parties to limit evidence of direct and quantifiable benefits that occur as a direct result of net metering.

[5] DPU Response at pp. 1-2.
[6] OCS Response at p. 3.
[7] DPU Response at p. 4.
[8] OCS Response at p. 7.

II. TASC AGREES WITH OCS AND DPU THAT SECTION 54-15-105.1(1) CONFINES THE FRAMEWORK'S CONSIDERATION OF THE COSTS <u>AND</u> BENEFITS OF NET METERING TO THE "ELECTRICAL CORPORATION AND OTHER CUSTOMERS."

There is no apparent controversy regarding whether the phrase "electrical corporation or other customers" modifies the term "costs" **<u>and</u>** the term "benefits" in subpart (1) of Section 54-15-105.1. Sierra Club notes that "'[a]lthough the statute does not limit the benefits to those experienced by "the electrical corporation or other customers,' [it] is a sensible interpretation of the statute to compare the costs and benefits on equal terms." OCS states that this section is "best understood as distinguishing between 'costs,' which by their nature accrue only to the 'electrical corporation and other [non-net metering] customers' and 'benefits,' which accrue generally to the Company and all its customers, both non-net metering and net metering."[9] TASC does not disagree.

At this point in the proceeding, there is no indication that parties will attempt to present evidence of benefits that are not directly relevant to the Company's ratepayers. DPU is apprehensive of casting the net too wide to capture benefits, fearing that doing so will prove "disruptive in the rate setting process" and opines that "[v]aluation of externalities can be imprecise, is often arbitrary and is always controversial."[10] OCS suggests that "the interveners' approach [to the scope of benefits] renders the statute inoperable," but does not cite to any specific intervenor claim or example of a benefit that would have that effect.[11] OCS cites generically to comments filed in February, prior to parties' interventions, but TASC is not sure what portions of parties' comments OCS views as offensive to the statute.

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[9] OCS Response at p. 4.
[10] DPU Response at p. 5.
[11] OCS Response at p. 7.

TASC suggests that this critique of pre-intervention positions imagines a paper tiger. To the extent there is potential for agreement on the reasonable interpretation that costs and benefits in the framework developed pursuant to subpart (1) of Section 54-15-105.1 must directly relate to the Company or to other customers, there is no great risk that parties presentation of their respective cases will be disruptive, and there is no compelling need for the Commission to act in advance of testimony to declare that benefits of a global scale will not be considered relevant evidence.

As TASC noted in its response, even if the Commission accepts the Company's request to limit evidence of externalities to those that are direct and quantifiable, there are significant factual issues related to sorting through which categories can satisfy that standard. As an example, TASC suggests that any direct economic benefit (e.g., directly traceable to and exclusive caused by net metering) that accrues to citizens of Utah also accrues directly to "other customers." Of course, direct economic impacts to the state should be adjusted to account for the portion of Utahns that qualify as "other customers," but there is likely to be substantial evidence available to establish how such direct economic benefits can be reasonably quantified and adjusted to appropriately reflect the impact on other customers. To the extent evidence satisfies this standard, TASC would expect it to be included within the subpart (1) analytical framework, on equal footing with the cost-benefit categories that reflect utility costs. TASC suggests that it is simply too early to shut the door on either the sufficiency or the relevance of such potential evidence.

III. ASSUMING THE COMPANY'S BRIEF CONSTITUTES A PROPER REQUEST FOR RELIEF, THE "ADDITIONAL GROUNDS" OFFERED BY OCS AND DPU SIGNIFANTLY EXPAND THE SCOPE OF THE MOVING PARTY'S REQUEST.

With the March 19 Order, the Commission set out a process whereby parties could file pre-testimony motions, which could be accompanied by supporting legal briefs to provide a legal basis for the requested relief. Presumably, the purpose of providing this opportunity was to allow parties to present threshold issues through the procedural vehicle of a motion. TASC continues to advocate for a separate track to addressing legal and policy issues, outside of the evidentiary hearing track. TASC, like all other parties, chose not to file a "motion" to seek specific relief from the Commission at this juncture in the proceeding, where issue development is still in early stages.

While it could be argued that any relief embodied within the Company's brief did not conform to the vehicle contemplated in the March 19 Order, it functionally serves as the only "motion" in this proceeding. Accordingly, TASC views the relief sought by the Company's legal brief to envision a Commission order clarifying the Commission's interpretation of **subpart (1)** of Section 54-15-105.1. This is the exclusive relief sought through this pre-testimony motion process, if the Company is to be considered the exclusive moving party.

The Company's request for the Commission to issue an order with its interpretation of subpart (1) is narrowly conceived to draw relief relevant to the immediate task at hand: the development of a cost-benefit analytical framework for the net metering program. In contrast to subpart (1), **subpart (2)** contemplates the next step in a sequence—after a cost-benefit determination has been made—where the Commission must use the results of its subpart (1) determination to find whether any new charge or credit is "just and reasonable" in light of the costs and benefits of the net metering program. Subpart (2), in this way, is a much broader provision, and its interpretation impacts what evidence can be considered in the setting of rates for net metering customers. This goes beyond the narrow task of trying to identify what costs and benefits are directly related to the "electrical corporation and other customers." If the Commission takes a restrictive view of what benefits or costs may be considered according to the text of subpart (1), it would still retain the discretion to consider whether there is other evidence that fits within the factors relevant to setting "just and reasonable" rates, as defined in Section 54-3-1. The "additional grounds" put forward by OCS and DPU amount to a request for the Commission to interpret the statute to prospectively limit its discretion in setting rates. This is distinct from the Company's request to interpret subpart (1) in a manner that solely sets the parameters of the cost-benefit framework.

Moreover, it is important to consider that the "just and reasonable" determination called for in subpart (2) will not occur in this proceeding. This fact highlights that there is a substantive difference in interpreting subpart (1) to exclude externalities from consideration in the context of the net metering framework and in interpreting subpart (2) to exclude externalities from consideration in the ratesetting context. Interpreting subpart (2) is simply not necessary to address the Company's requested relief.

Based on these considerations, TASC views the applicability of subpart (2) as a distinct question of legal interpretation, with a far more expansive impact than the narrow relief the Company originally sought.

IV. THE INTERPRETATION OF "JUST AND REASONABLE" URGED BY OCS AND DPU WOULD UNNECESSARILY RESTRICT THE COMMISSION'S DISCRETION TO CONSIDER ALL RELEVANT FACTORS IN DETERMINING "JUST AND REASONABLE" RATES IN FUTURE CONTEXTS.

While TASC does not agree that the cost-benefit standard in subpart (1) is subsumed by the "just and reasonable" standard in subpart (2) of Section 54-15-105.1, TASC agrees with OCS and DPU that the inclusion of the phrase "just and reasonable" in subpart (2) incorporates the Commission's traditional approach to ratesetting. TASC suggests that this subpart is only operative in proceedings where rates will be set. TASC agrees with DPU and OCS that "just and reasonable" is a term of art, but that term has a meaning that is informed both by Commission precedent and the guidance the Legislature set out in the definition in Section 54-3-1. Commission precedent and the statutory considerations comprising the term "just and reasonable," however, belie the constrained interpretation of the phrase given by OCS and DPU.

The statutory definition of "just and reasonable" is expansive and leaves the Commission broad discretion to consider factors beyond utility costs. Through Section 54-3-1, the Legislature granted significant discretion to the Commission to exercise its judgment in balancing its regulatory duties with the overall welfare of the state. As pointed out in Utah Clean Energy's response, 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."[12]

Commission precedent also indicates that the Commission has not ceded its discretion to consider evidence of values that do not relate directly to utility costs. As the Commission has observed:

> In determining public policy, we must balance conflicting regulatory objectives. In this case, administrative simplicity and customer understanding conflict with our ratemaking objective to set tariff prices on a cost basis. Weighed against the cost-based objective are the objectives of conservation, equity, and customer understanding. We permit no change in customer charges. The combination of a small customer charge and a minimum bill allows the Company to collect a significant share of the customer-related costs while minimizing the ratepayer misunderstanding of these charges. In addition, a smaller customer charge promotes energy conservation <u>**and its associated social benefits which**</u>

[12] Utah Clean Energy Response at p. 4.

> **are enjoyed by all**. These considerations lead us to conclude that this policy is in the public interest.[13]

The Commission, similarly, exercised discretion in allocating costs among different ratepayers based on non-cost factors:

> As for arguments that the program would benefit one class of customers only, and thus should be paid by them only, we note that it is not done in other arguably similar areas and we decline to do so here. One specific example is that each class of service does not pay precisely its "share" of costs. This is true, for example, of the large customer groups, or special contract customers, according to some views of allocations. Yet they do not agree with any allegations that they are being subsidized by residential customers. Examples abound to demonstrate that one person's improper "social welfare" program is another person's legitimate regulation of utilities in the "public interest".[14]

The discretion to consider all aspects of a utility proposal that might impact ratepayers and Utah, generally, has been and will remain an important tool for the Commission. *It is not necessary to limit the Commission's discretion to consider a broad range of factors in ratesetting in order to give rational bounds to the net metering analytical framework.*

Additionally, and importantly, the distinction between utility-costs and non-utility cost factors is also present within the subpart (1) determination. In light of Chapter 54, the costs and benefits to the "electrical corporation" can appropriately be compared to the similar, though not identical, framework related to the Commission's implementation of PURPA. PURPA avoided cost categories are strictly limited to those incremental costs that the utility would incur "but for" the purchase of a unit of electricity from a qualifying facility ("QF"). PURPA does not have a mechanism for capturing benefits that accrue to "other customers" and that do not represent incremental utility costs. By including the term "other customers," the Legislature provided the Commission significant discretion to determine what benefits accrue to "other customers" that may be ***distinct*** from the benefits that accrue to the electrical corporation.

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[13] *Report and Order*, Docket No. 99-035-10 (May 24, 2000) [emphasis added].
[14] *Id.*

V. CONCLUSION

TASC is encouraged by the important areas of agreement on the interpretation of Section 54-15-105.1(1) and is interested in working with parties to develop a consensus recommendation on how externalities will be addressed through the net metering framework—i.e., how to determine what types of benefits are "direct" and "quantifiable" to other customers—and in future proceedings where net metering is at issue. TASC respectfully disagrees, however, with OCS and DPU that the term "just and reasonable" in subpart (2) requires the Commission to limit the factors that it may consider in establishing a net metering analytical framework. The sole concern of the Company's legal brief (or "requested relief") relates to establishing a cost-benefit framework pursuant to subpart (1). Establishing this framework does not involve the setting of rates and should not prospectively impede the Commission's ability to set just and reasonable rates according to its traditional authority. TASC respectfully requests that the Commission decline the invitation from OCS and DPU to provide a legal interpretation beyond what the Company requested in its May 12, 2015 legal brief.

Respectfully submitted this 9th day of June, 2015,

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