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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 REQUEST FOR CLARIFICATION RE UAE'S FILING
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Rocky Mountain Power, a division of PacifiCorp ("Company"), hereby requests that the Commission clarify how the Initial Comments ("Filing") filed on June 8, 2017 by the Utah Association of Energy Users ("UAE") should be handled under the Scheduling Order dated November 18, 2016 ("Scheduling Order").

I. ARGUMENT

A. UAE's Filing Is Not Permitted As Filed.

UAE claims that its Filing is "legal in nature" and not related to "factual or expert testimony." Filing at 1. Nevertheless, UAE requests that its Filing be viewed as "unsworn

public testimony” despite being submitted “on the direct testimony date” rather than on the portal for public comments. *Id.* That is, UAE concedes its legal brief does not amount to “testimony” but uses the Scheduling Order’s date for the filing of direct testimony for the Filing, anticipating that others will respond to the Filing through testimony. In addition, UAE has not put forward any witness to support the Filing. *Id.* The Scheduling Order does not permit such a chimerical filing, and the Company seeks guidance as to how, or if the Commission would like it to respond.

1. As a Party to this Docket, UAE Cannot File Public Comments.

UAE asks that the Commission to accept its Filing as “unsworn public testimony.” *Id.* But that request is not proper under the rules. The rules specify that public comments can only be filed by a “person not a party to the docket.” R746-1-704 (emphasis added). UAE is a party to this docket after being granted intervenor status on April 27, 2015. *See* April 27, 2015 Order Granting Intervention. As a party, UAE is authorized to file testimony and appear and participate at the hearing. But it cannot file public comments as if it were a non-party.

2. UAE’s Filing Is an Untimely and Impermissible Legal Brief.

As is clear from its content, the Filing is not testimony. It is a legal brief, and an unauthorized one at that. The first line of the Filing states that it is filed “pursuant to R746-1-401.” Filing at 1. However, that rule provides that all party filings must be “as required in the Commission’s scheduling order.” R746-1-401(1). Under the Scheduling Order, dispositive motions from parties were to be filed by December 20, 2016. *See* November 18, 2016 Scheduling Order and Notices of Hearing and Public Witness Hearing at 2. The Filing, as best it can be understood, is an attempted dispositive motion filed months too late. Indeed, the Filing is self-described as “legal in nature,” and the Introduction argues that the Commission should “reject RMP’s proposal” due to “the absence of record evidence” that could “meet its burden.”

Id. at 1-2. This language is typical of a dispositive motion wherein a party seeks a ruling from the Commission that issues can be decided as a matter of law without further factual inquiry. Similar arguments were proffered by other intervenors in their motions for summary judgment and motions to dismiss that were filed last December, and subsequently denied by the Commission. UAE offers no justification for its belated Filing and appears simply to be characterizing its Filing as comments to circumvent the Scheduling Order. Therefore, the Filing should not be permitted.

3. UAE’s Filing Is Not Testimony.

UAE submitted its Filing on the deadline for direct written testimony (*see* Scheduling Order at 3), but admits on the first page of the Filing that it is not “factual or expert testimony.” Filing at 1. Indeed, UAE does not even identify a witness that sponsors any testimony. Without a witness, UAE cannot provide any affirmative and admissible facts or evidence the Commission could consider in addressing the Company’s application in this docket. The rules in place when the Scheduling Order was entered made it clear that the Commission “discourages and may prohibit parties from making their cases through cross-examination.” R746-100-10(K).¹ Thus, the Filing does not qualify as testimony by UAE, even if filed on the date for filing of intervenor direct testimony.

B. The Company Is in Need of Commission Guidance Regarding the Filing.

Because UAE’s Filing cannot be considered public comments, would be an untimely dispositive motion, and does not qualify as testimony to which the Company could file rebuttal testimony or on which the Company could conduct cross-examination, the Company is uncertain how to respond, if at all, to the Filing. Therefore, it seeks guidance from the Commission regarding the treatment the Commission intends to give the Filing. The Company also requests

¹ The rules as later revised do not directly address this issue.

that the Commission clarify whether it expects the Company to respond to the Filing and, if so, what format it would like the Company to use in responding to the Filing and when that response should be submitted.

C. The Scheduling Order Should Be Amended to Provide for Appropriate Briefing Following the Hearing.

UAE's Filing creates an untenable situation. It has filed what is clearly a legal brief suggesting the Company respond to it through testimony. But the Filing acknowledges that it is not factual— meaning that no witness will have the foundation to rebut the arguments—and there will be no witness to cross-examine on the points raised by UEA in its Filing. Such a circumstance should not be permitted by the Commission to exist in a proceeding.

That said, the Filing demonstrates the need for an appropriate time to brief issues related to this proceeding. The Company believes the Filing and intervenor testimony raise issues, including legal issues, that need to be addressed. Thus, the Company requests that the Commission amend the Scheduling Order to expressly provide the parties with the opportunity to brief issues after the conclusion of the hearing, and to establish specific due dates for that briefing. The Company believes that such direction will clarify when briefing may be submitted and avoid instances like the present Filing.

II. CONCLUSION

For the reasons stated above, the Company requests clarification regarding how it intends to treat the Filing and how, if at all, it would like the Company to respond to the Filing.

DATED July 25, 2017.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing **REQUEST FOR CLARIFICATION RE UAE’S “INITIAL COMMENTS”** was served by email this 25th of July, 2017, on the following:

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