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In the Matter of the Rocky Mountain Power’s)	DOCKET NO. 14-035-55
Schedule No. 37, Avoided Costs Purchases)	
from Qualifying Facilities)	
)	
In the Matter of Rocky Mountain Power’s)	DOCKET NO. 14-035-T04
Proposed Revisions to Electric Service)	
Schedule No. 37, Avoided Cost Purchases from)	RESPONSE OF THE UTAH DIVISION
Qualifying Facilities)	OF PUBLIC UTILITIES IN SUPPORT OF
)	ROCKY MOUNTAIN POWER’S
)	PETITION FOR RECONSIDERATION,
)	REVIEW OR REHEARING OF THE
)	COMMISSION’S DECEMBER 30, 2014
)	ORDER ON REVIEW AND MOTION
)	FOR STAY

On January 9, 2015, Rocky Mountain Power (Company) filed a Petition for Reconsideration, Review or Rehearing of the Commission’s December 30, 2014 Order on Review (Petition) and Motion for Stay (Motion).¹ The Utah Division of Public Utilities today files its response in support of the Petition and Motion (Response).

¹ Although the Company’s Petition is unusual in that it requesting a review or rehearing on an Order on Review, the Commission previously has issued an order on a second request for reconsideration or rehearing. *In the Matter or the Petition of Deseret Power, L.P., for Approval of a Contract for the Sale of Capacity and Energy from its Proposed QF Facilities*, Docket No. 04-035-04, the Commission issued a clarification order in October 2006. Then, in response to a second request for reconsideration or rehearing, in November 2006, the Commission clarified language from its October 2006 order. See, November Deseret Power Order at pp. 1-2.

INTRODUCTION

In this Docket testimony was prefiled and a hearing was held on September 16, 2014. The Public Service Commission of Utah (Commission) issued an October 21, 2014 order including findings, *inter alia*, that including capacity payment for an SCCT overcompensated qualified facilities under Schedule 37 during the resource sufficiency period (October Order) and that including the energy and capacity option was no longer in the public interest. On November 20, 2014 multiple parties jointly requested reconsideration. On December 30, 2014 the Commission issued an Order on Review (Order on Review) that modified its decision regarding the elimination of the capacity and payment option stating that:

Upon further review of the record, we agree neither PacifiCorp, the Division nor the Office produce evidence showing the capacity and energy payment option, with capacity contribution values applied for intermittent resources, produce materially different payments to Schedule 37 QFs. We recognize that absent an adjustment for the intermittent characteristics of solar resources, as we have approved for wind resources, the two payment options for solar resources could produce materially different prices for QF power. However, our October Order approved solar capacity contribution factors that reduce the capacity payment. Those solar capacity contribution factors should affect the resulting prices. Further, we recognize the capacity and energy payment option is longstanding precedent. We conclude this payment option should be eliminated only with further review and evidence subsequent to the capacity contribution adjustments of our October Order. Therefore, for the present we will retain the capacity and energy payment option. We will consider further evidence and argument regarding the two payment options in future Schedule 37 proceedings.²

In its Order on Review, the Commission also restored “the SCCT cost component in Schedule 37 to account for the value of capacity avoided in the constrained months during years in which

² Order on Review, p. 11.

PacifiCorp is otherwise resource sufficient.”³ The Commission stated that it would “await the presentation of evidence in future Schedule 37 proceedings”⁴ addressing these issues.

On January 9, 2015 the Company filed a Petition for Reconsideration or Rehearing of the Commission’s December 30, 2014 Order on Review and Motion to Stay. On January 17, 2015 the Commission issued a Notice of Intent to Alter Order on Review and Order Staying Portion of Order on Review (“Notice of Intent”). In its Notice of Intent the Commission provided parties with notice that it intends to alter the December Order eliminating the capacity and energy payment option. This Response will support PacifiCorp’s motion to reconsider capacity payments for an avoided SCCT and briefly address the capacity and energy payment option.

The Commission should reverse its decision to add back the SCCT cost component or in the alternative recognize that the value of capacity during the sufficiency period is zero. The reversal in the Order on Review on this issue is inconsistent with governing Utah law and the Public Utilities Regulatory Policies Act of 1978 (PURPA).⁵ Including an SCCT capacity cost adder as set forth in the Order on Review produces prices that are significantly higher than the actual costs the Company will avoid during the resource sufficiency period and, therefore, are not in the public interest.

The Division recognizes that the Commission has issued a Notice of Intent to Alter Order on Review. The Division supports the Commission’s decision to do so and intends to comment as requested by the Commission. With an abundance of caution with respect to preserving issues in this matter the Division is including its arguments on the capacity and energy payment option

³ Order on Review, p. 15.

⁴ Order on Review, p. 15. *See also* Order on Review, p. 11.

⁵ 16 U.S.C. § 2601 *et seq.*

with the understanding that they may no longer be relevant to the Commission's decision on reconsideration of its Order on Review.

ARGUMENT

1. The SCCT Capacity Cost Should Be Removed During the Resource Sufficiency Period in which the Company is Capacity Constrained because Including SCCT Capacity Cost is Inconsistent with Utah law and PURPA.

Including payment for an SCCT that the Commission recognizes will not be avoided is directly in violation the plain language of Utah Law.⁶ The Commission found in the Order on Review that “the identification of capacity cost avoidance during the resource sufficiency period” was different from that in Schedule No. 38 and therefore the recognition that market purchase price includes capacity value in the Schedule No. 38 docket is not directly applicable to Schedule No. 37. The Commission further found that the proposed Schedule 37 method did not contain an “alternative means for identifying the full capacity value contained in such avoided purchases.” On this basis the Commission determined that inclusion of capacity payments based on an SCCT was appropriate.

The reasoning followed to reach this conclusion ignores Utah law on how capacity costs are calculated. Utah law specifically limits the Commission to compensating the generator for its “avoided costs” and states, “the capacity component of avoided costs shall reflect the purchasing utility's long-term deferral or cancellation of generating units which may result from the purchase of power from qualifying power producers.”⁷ It is axiomatic that there must be a resource actually deferred or canceled to calculate a non-zero avoided capacity cost.

⁶ Order on Review, p. 14 (“it is true PacifiCorp does not currently plan to build a resource like an SCCT...”).

⁷ Utah Code Ann. § 54-12-2(2) (emphasis added).

In the midst of complicated proposals for valuation of various components of energy delivery, this issue is relatively simple because the Company “does not currently plan to build a resource like an SCCT...”⁸ It’s conceptually difficult to identify a proxy or analog to base capacity value on as an incremental addition to market purchases because the value attempting to be captured does not exist. During this period the Company will be purchasing energy through front office transactions at a price that this Commission has concluded reflects the cost of that energy.⁹ This energy does not have fixed and variable components that can be separated into capacity and energy components.

Therefore the full cost avoided by the energy delivered is reflected by the price of the market purchase that the Company otherwise would have made. There is nothing further that the Company will avoid. It will not avoid an SCCT. It will not avoid a theoretical capacity payment to an imaginary external entity. It will not avoid internal fictitious capacity costs. There is no other cost identified as avoided. The accurate reflection of the Company’s “long-term deferral or cancellation of generating units which may result from the purchase of power from qualifying power producers” during the sufficiency period is zero. This is true even if the utility is to receive some benefit from capacity supplied by the Schedule 37 project; PURPA and Utah law do not require payment for all the value received from the generator, but for the cost avoided. Allowing no separate capacity payment is the only plausible result of a calculation that includes a deferral of nothing. The Commission must eliminate the SCCT capacity payment adder consistent with Utah law.

⁸ Order on Review, p.14.

⁹ *In the Matter of the Application of Rocky Mountain Power for Approval of Changes to Renewable Avoided Cost Methodology for Qualifying Facilities Projects Larger than Three Megawatts*, Order on Phase II Issues August 16, 2013 at p. 35 (“We are persuaded the Proxy/PDDRR method properly reflects avoided capacity costs associated with FOTs during the period of resource sufficiency. The evidence proffered by the Company and the Office shows a QF’s displacement of FOTs, as determined within the GRID model, results in what PacifiCorp would have otherwise paid for capacity purchases”). Order on Phase II Issues at p. 35

In addition to Utah Law, avoided cost calculations are governed by PURPA as interpreted by FERC.¹⁰ FERC has summarized the 210(b) and 210(d) as creating a “but for” test with a prohibition on exceeding avoided costs. “Section 210(b) of PURPA provides that such purchases must be at rates that are... not in excess of ‘the incremental cost to the electric utility of alternative electric energy.’ Section 210(d) of PURPA, in turn, defines ‘incremental cost of alternative electric energy’ as ‘the cost to the electric utility of the electric energy which, but for the purchase from [the QF], such utility would generate or purchase from another source.’”¹¹

The Commission’s October Order recognized that “adding the SCCT to the wholesale market price is excessive.”¹² The Commission reached this conclusion “at least in part, on our Schedule 38 order that finds wholesale power purchased to meet capacity constraints already contains capacity value...”¹³ However, the Order on Review reversed this decision, finding that the “two methods are meaningfully different with respect to identification of capacity cost avoidance during the resource sufficiency period.”¹⁴ But, the conclusion in the October Order eliminating the SCCT value correctly recognized that the actual costs that are avoided by QFs during the resource sufficiency period are the costs of avoided market purchases.

It is immaterial whether the methods are meaningfully different, the Commission cannot include payment in excess of the costs the Company would otherwise incur. And this Commission has recognized that the Company will not otherwise incur costs related to an SCCT

¹⁰ *Re Southern California Edison Co.* 70 FERC P 61215, 61676 (1995) (“PURPA expressly directed this Commission, and not the states, to prescribe rules governing QF rates. PURPA gave the states responsibility for “implement[ing]” the statute and the Commission’s rules. As a result, a state may prescribe a particular per unit charge *only* if the process it uses to establish the per unit charge is in accordance with the Commission’s rules”).

¹¹ *California Pub. Utilities Comm’n S. California Edison Co. Pac. Gas & Elec. Co. San Diego Gas & Elec. Co.*, 133 FERC ¶ 61059, 61265 (Oct. 21, 2010) (emphasis added).

¹² October Order, pp. 18-19.

¹³ October Order, pp. 18-19.

¹⁴ Order on Review, p. 14.

during the sufficiency period. As a result, including the SCCT capacity cost that is not avoided is plainly in excess of the incremental cost of market purchased electricity that the Company would otherwise rely on. For these reasons including an SCCT is inconsistent with controlling FERC orders. The Commission should return to its October Order on this point.

2. The Capacity and Energy Payment Option is Inconsistent with PURPA and State Law and should be Eliminated

The Commission properly eliminated the capacity and energy payment option in its October Order, and should reverse its decision in the Order on Review restoring the capacity and energy payment option under Schedule 37. In its Order on Review, the Commission restored the energy and capacity payment option based on the lack of evidence that the two methods produced *materially* different results¹⁵ and because “the capacity and payment option is longstanding precedent.”¹⁶

The reasoning behind the Commission’s initial reversal is flawed. First, the Commission was presented with sufficient evidence to require elimination of the energy and capacity payment option. Second, because the two methods produce results that differ at all (and do differ materially),¹⁷ having two payment options resulting in two different “avoided costs” does not satisfy the ratepayer indifference standard for avoided costs established by PURPA and state law. Third, prices for Schedule 38 are also set pursuant to PURPA and the energy and capacity payment method produces Schedule 37 prices that are nearly double Schedule 38 prices, indicating a problem with Schedule 37 prices. And fourth, “longstanding precedent” is in

¹⁵ See, Order on Review, p. 11.

¹⁶ Order on Review at p. 11.

¹⁷ See, Duvall Direct, Table 1, p. 16. See also, Tariff Sheets attached to the Company’s Petition and Motion incorporating both methods as ordered in the Order on Review.

sufficient justification of the continuation of a practice that is inconsistent with the ratepayer indifference standard.

PURPA states that “No such rule prescribed under subsection (a) of this section shall provide for a rate which exceeds the incremental cost to the electric utility of alternative electric energy.”¹⁸ This is known as the “avoided cost rule” and requires the “utility to purchase electricity from a qualifying facility at a rate equal to the utility's full avoided cost. The utility's full avoided cost is ‘the cost to the electric utility of the electric energy which, but for the purchase from such cogenerator or small power producer, such utility would generate or purchase from another source.’”¹⁹ State commissions implement PURPA within the boundaries set by FERC and set rates.²⁰

In his direct testimony, Company witness Mr. Gregory N. Duvall, presented evidence that showed that different prices result from applying the energy and capacity payment method instead of the volumetric pricing method.²¹ He showed that for base load, the difference ranged from a low of \$45.46 (volumetric) to \$45.90 (energy and capacity) to, for fixed solar, \$43.77 (volumetric) to \$54.39 (energy and capacity).²² These differences become greater when “avoided costs” are calculated in accordance with the Order on Review.²³ The hypothetical ability mentioned in testimony to set two payment methods that match in result when capacity

¹⁸ 16 U.S.C. § 824a-3(b).

¹⁹ *American Paper Institute, Inc. v. American Electric Power Service Corporation*, 461 U.S.402, 406 (1983) (internal citations omitted).

²⁰ See, *In the Matter of the Application of Rocky Mountain Power for Approval of Changes to Renewable Avoided Cost Methodology for Qualifying Facilities Projects Larger than Three Megawatts*, Docket No. 12-035-100 (2013) Order on Phase II Issues at p. 4 stating “While PURPA expressly directed FERC to prescribe regulations governing rates paid by electric utilities to QFs, it gave individual states the responsibility to implement FERC's regulations regarding such rates.” (internal citations omitted). See also *Xcel Energy Service Incorporated v. FERC*, 402 F.3d 1241 (CA10 2005) citing, 16 U.S.C. § 824a-(3)(f).

²¹ Duvall, Direct Testimony, Table 1, p. 16.

²² Duvall, Direct Testimony, Table 1, p. 16.

²³ See, Tariff Sheets, Exhibit A through Exhibit II, filed with the Company's Petition.

estimates and ad hoc adjustments are made does not result in actual payments with the same net present value on actual projects with differing characteristics.²⁴

A customer cannot, by definition, be indifferent to two different prices for the same energy. A ratepayer cannot, therefore, be indifferent, as required by PURPA, if a Schedule 37 customer can select a price under one method that is higher than a price under a different method. The capacity plus energy payment option should be eliminated as it cannot both provide a benefit to the QFs (a higher price option than under the volumetric pricing method) and comply with the rate payer indifference standard. Even if the two results are sufficiently close that they are not deemed to be *materially* different the rate payer is not indifferent as between them. Whether the resulting rates are similar or not does not change the outcome. The ratepayer can only be indifferent when the payments are valued equal to what the company avoids by receiving the energy. Indeed, even using two rates with the same present value but a different structure might violate the ratepayer indifference standard if it creates too large an intergenerational transfer of payments between ratepayers. The Company's provided calculations show that the capacity and energy option results in a significant premium over the actual projected avoided costs.

"Longstanding precedent" does not justify continuation of a pricing method impermissible under PURPA. The Commission has issued its Notice of Intent to alter the Order on Review due to the dramatically higher pricing for the capacity and energy payment option. The Division supports this and if the Commission chooses not to reconsider its Order on Review it should eliminate the energy and capacity payment option.

3. The Motion for Stay Should Be Granted

²⁴ See, Office of Consumer Services witness Bela Vastag, Rebuttal Testimony, p. 8, lines 151-154, and Transcript (Vastag) p. 60, lines 12-16.

Because of the effect upon the ratepayer indifference standard under PURPA, and the potentially large cost impact upon ratepayers resulting from the changes adopted in the Order on Review, the Division supports the Company's Motion, and urges the Commission to stay its Order on Review, during the period in which the order is not final, as well as the period when the order is final if the Commission denies the requests to change its Order on Review as suggested above. As demonstrated in the tariff sheets accompanying the Company's Petition and Motion, there is a significant increase in payments due the QF and corresponding ratepayer impact if the energy and capacity payment option is available and/or compensation for the SCCT is included. If the Commission grants these requests to change the Order on Review prior to approval of the Schedule 37 tariff sheets, no stay is necessary.

CONCLUSION

Therefore, the Division urges the Commission reconsider and eliminate the SCCT capacity payment and remove the energy and capacity payment option for Schedule 37. The Division also urges the Commission to grant the motion to stay.

Dated this ___ day of _____ 2015.

Respectfully submitted,

/s/ Justin C Jetter

Justin C. Jetter

Attorney for the Division of Public Utilities

DOCKET NO. 14-035-T04

CERTIFICATE OF SERVICE

I CERTIFY that on the 5th day of December, 2014, a true and correct copy of the foregoing was delivered upon the following as indicated below:

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