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**BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH**

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In the Matter of Rocky Mountain Power’s Proposed            )  
Electric Service Schedule 32, Service from Renewable        ) Docket No. 14-035-T02  
Energy Facilities    )  
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**BRIEF RE: LEGAL ISSUES**

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Interwest Energy Alliance (“Interwest”) submits the following brief regarding legal issues pursuant to order entered from the bench at the hearing held on December 9, 2014.

**I. INTRODUCTION**

Rocky Mountain Power (“RMP”) has submitted its proposed Schedule 32 tariff to implement S.B. 12, which allows customers to purchase renewable energy from new renewable projects in Utah. Interwest acknowledges and appreciates Rocky Mountain Power’s modifications to its proposal responding to stakeholder input, including reduced administrative charges. These changes reflect flexibility and attention to detail which is appreciated as the utility and the State of Utah plow new ground, making Utah a potential leader among the few states that have provided statutory authority for direct purchases of renewables.

SB 12 established a requirement that a Qualified Utility (Rocky Mountain Power) enter into a contract with the customer to supply some or all of the contract customer’s electric service from one or more renewable energy facilities selected by the customer. Utah Code Ann. §54-17-

802 (1). The statute and proposed tariff effectively set up Rocky Mountain Power as a “sleeve” conduit for the renewable energy to flow between the renewable energy facility and the customer’s meter. The Schedule 32 tariff creates a new separate rate class for participating customers. It must be fair and non-discriminatory to all rate classes. Renewable energy provides supply diversity, predictable energy supply, fuel-cost savings, deferred investments in transmission, pipeline, and distribution infrastructure, water savings, and emission reductions. The statute requires the utility to enable ratepayers to provide these benefits by promoting generation choice. The Schedule 32 tariff should not impede this progress through weak analysis of costs and benefits.

## II. ANALYSIS

### **A. The new tariff should reflect modern rate design principles and legislative intent.**

The Commission is not constrained by other tariffs, and should consider these contracts as a new product available to serve ratepayers, distinguished from behind-the-meter renewable offerings. Distributed generation rate design issues do not apply. While Schedule 32 customers should not unfairly impose costs on other customers, the tariff should be designed to provide fair credit. The daily demand charge proposed by RMP may unduly discriminate against solar and wind customers because it does not provide credit for partial contributions to peak demand requirements. The utility acknowledges that a solar or wind facility may indeed provide generation during some of the on-peak billing period identified in the tariff, and may even provide some capacity during the hour of the Company’s “Coincident Peak”, but the tariff as proposed fails to credit the customer for this capacity. See generally, Rebuttal Test. of Dave Taylor, p. 9, lines 168-174. This failure to provide the customer any credit despite reliable capacity for much of the on-peak periods results from inappropriate inclusion of rate designs from other schedules into this new tariff. Hg. Transcript, pp. 96-101, (Cross-Exam. of Kevin Higgins); Direct Test.

Kevin C. Higgins, p. 16, lines 332-347. This denial of credit for avoided costs violates the legislative intent and regulatory goals. "When interpreting statutes, our primary goal is to evince the true intent and purpose of the Legislature." *Duke v. Graham*, 158 P.3d 540, 545 (Utah 2007), citing *State v. Martinez*, 2002 UT 80, ¶ 8, 52 P.3d 1276 (internal quotation marks omitted). The first step of statutory interpretation is to evaluate the "best evidence" of legislative intent, namely, "the plain language of the statute itself." *Id.* (internal quotation marks omitted). "[T]he plain language of a statute is to be read as a whole, and its provisions interpreted in harmony with other provisions in the same statute and with other statutes under the same and related chapters." *State v. Schofield*, 2002 UT 132, ¶ 8, 63 P.3d 667 (internal quotation marks omitted). The statute requires that any kilowatts of electricity delivered from the renewable energy facility that coincide with the contract customer's monthly metered kilowatt demand measurement must be excluded from the customer's utility bill. Utah Code Ann. §54-17-805 (emphasis added). Under these circumstances, granular analysis is more accurate and would avoid the unintended consequence of effective denial of benefits to wind and solar customers whose renewable energy projects provide reliable capacity contributions during portions of the peak periods.

**B. The statute allows for hourly demand or "shaping" charges.**

Utah Code Ann. §54-17-805 ensures that the customers pay "all reasonably identifiable costs" that the qualified utility incurs in delivering the electricity from the renewable energy facility to the contract customer. Utah Code Ann., § 54-17-805(2). The contract shall charge a contract customer for all metered electric service delivered to the contract customer, including generation, transmission, and distribution service, at the qualified utility's applicable tariff rates. Sec. 54-17-805(2). The exclusions from the customer's payment requirements were drafted to recognize the variable nature of significant renewable energy sources. For example, energy

charges are based on time of delivery. Utah Code Ann., § 54-17-805 (3)(a). The statute does not prescribe exactly how the capacity demand charge exclusion is to be measured.

RMP proposes a daily demand charge while UAE and others recommend an hourly demand charge. Utah Code Ann., § 54-17-805(3)(b). The portion of the customer's demand not covered by the renewable energy resource, which may be naturally variable, must be covered by other sources, the costs of which are covered by the "shaping charge", (Higgins's term) or "demand charge" (as referenced by UCE). Rocky Mountain Power originally proposed that the demand charge apply during any month when the peak power requirements were not fully covered by the renewable energy project. RMP agreed to modify the tariff to a daily analysis so that the demand charge applied on any days during which capacity from the designated renewable energy facility was not sufficient to fill all of the customer's demand on the daily peak. Intervening parties, including Interwest, simply recommend taking this progress one step further, by making the demand charge analysis more granular, to apply only during the peak hours in each day when the renewable resource does not cover all of the customer's demand.

### **III. SUMMARY**

Both daily and hourly calculation methodologies are authorized under the statute, so the Commission is presented with a choice to determine which is most consistent with the statute and regulatory best practices. The UAE proposal is more consistent with the overall tenor of the statutory language, which reflects a preference for hour-by-hour analysis and recognition of the variable nature of renewable production. The monthly metered kilowatt demand measurement, adjusted for transmission losses, is more accurately calculated when broken down to the compare hourly peak demand requirements as opposed to daily peak demand requirements. The hourly analysis happens to coincide with the methodology for calculating the energy charge, which is

specifically required by the statute. Utah Code Ann., § 54-17-803(a). This coincidence argues in favor of the hourly analysis methodology. By blurring the distinction between capacity and energy charges, the tariff more closely reflects the regulatory ideal of basing rate design on cost-causation.

Respectfully submitted this 14<sup>th</sup> day of January, 2015.

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## CERTIFICATE OF SERVICE

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