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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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In the Matter of Rocky Mountain Power's  
Proposed Electric Service Schedule No.  
32, Services From Renewable Energy  
Facilities

**Docket No. 14-035-T02**  
Utah Office of Consumer Services Brief on  
Demand Charges

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Comes now the Utah Office of Consumer Services ("Office") and respectfully submits its Brief pursuant to the request of the Public Service Commission of Utah.

**INTRODUCTION**

Schedule 32 is being developed to implement Utah Code Ann. § 54-17-801 *et seq.* which provides a mechanism for an electric customer to purchase power directly from a renewable energy facility ("REF") of the customer's choosing. The electricity under Schedule 32 is actually delivered through existing transmission and delivery facilities owned by Rocky Mountain Power ("RMP"). The statute requires that all reasonably identified costs associated with the delivery of the renewable energy be borne by the customer receiving the power. The cost of purchasing the electricity from the REF is negotiated between the customer and the REF.

Schedule 32 is a new “partial requirements” schedule that creates an opportunity for a customer who does not have on-site generation to contract for power from a third party renewable energy supplier and have the purchased power treated as if it was “behind the meter” similarly to Schedule 31. It differs from Schedule 31 in that a Schedule 32 customer will be using RMP transmission and distribution facilities at all times while Schedule 31 customers use the RMP facilities on a stand-by basis.

Under Schedule 32 the customer is liable for all metered electric services from RMP at the applicable tariff rate, presumably either Schedules 6, 8 or 9. By statute these charges by RMP are subject to offset by “any kilowatt hours of electricity delivered from the renewable energy facility, based on the time of delivery, adjusted for transmission losses.” Utah Code Ann. § 54-17-805(3)(a). The statute also allows for a further offset for “any kilowatts of electricity delivered from the renewable energy facility *that coincides with the contract customer’s monthly metered demand measurement*, adjusted for transmission losses. *Id.* at (3)(b) (emphasis added).

### **PROCEDURAL HISTORY**

In April 2014 the Public Service Commission opened a docket 14-305-T02 to set the conditions for participation in Schedule 32. RMP, the Utah Division of Public Utilities (“Division”), the Office and numerous interveners filed Direct testimony, Rebuttal testimony and Surrebuttal testimony. During this period RMP made significant changes to its proposed contracts and relevant cost schedule based on input from the parties. A hearing was held and ultimately there was general consensus on a number of RMP costs that would be attributable to the REF customer and movement toward consensus for other costs.

The issue that remained most in dispute was the offset the customer should receive for contribution to RMP's "demand" provided by the REF. Several interveners suggest an "hourly on-peak shaping charge" (for instance *Higgins Surrebuttal @ 198-204*). RMP proposes to measure a "daily on-peak charge". The Commission requested briefing from the parties on the application of Utah Code Ann. § 54-17-805(3)(b) to the question of how the off-set for demand contribution may be calculated.

### ANALYSIS

The Public Service Commission is accorded wide discretion in carrying out its statutory responsibilities to regulate the provision of electric services to customers of Rocky Mountain Power.<sup>1</sup> However, the discretion is not unlimited. The Commission's actions must be consistent with any relevant statutory requirements.<sup>2</sup> The pricing requirements for Schedule 32 are primarily found at Utah Code Ann. § 54-17-805(3):

- (3) A qualified utility that enters a renewable energy 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, excluding:
- (a) any kilowatt hours of electricity delivered from the renewable energy facility, based on the time of delivery, adjusted for transmission losses;
  - (b) any kilowatts of electricity delivered from the renewable energy facility that coincides with the contract customer's monthly metered kilowatt demand measurement, adjusted for transmission losses;
  - (c) any transmission and distribution service that the contract customer pays for under Subsection (1) or (2); and

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<sup>1</sup> The commission is hereby vested with power and jurisdiction to supervise and regulate every public utility in this state, and to supervise all of the business of every such public utility in this state, and to do all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of such power and jurisdiction. Utah Code Ann. § 54-4-1 (West)

<sup>2</sup> "One of the requirements for a finding of reasonableness is lawfulness; a minimally reasonable interpretation must *avoid unnecessarily contravening general law*." *McCune & McCune v. Mountain Bell Tel.*, 758 P.2d 914, 918 (Utah 1988) (emphasis added).

(d) any transmission service that the contract customer provides under Subsection (2) to deliver generation from the renewable energy facility.

Schedule 32 is different from many Tariffs in that it has specific statutory provisions setting forth the way certain parts of the rate making should be developed by the Commission. The statute provides only general guidance for the utility's *cost recovery*. The statute requires that any REF contract obligate the customer to pay “ all reasonably identifiable costs that the qualified utility incurs in delivering the electricity from the renewable energy facility to the contract customer, including all costs to procure and deliver electricity and for billing, administrative, and related activities, as determined by the commission” Utah Code Ann. § 54-17-805(2).

Likewise, Section 805(3) requires RMP to charge the 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....” The exact calculation of these required costs is not set forth and must be determined by the Commission.

The code deals differently with offsets to the “metered electric service” that are available to the customer. Section 805 (3) (a)-(d) sets forth a list of four categories of offsets. Parts “c” and “d” provide that the customer should not pay twice for transmission or distribution costs that the customer has otherwise provided or paid for.

Section “a” sets forth the calculation for the offset the customer is entitled to for energy provided by the REF. Specifically, “ any kilowatt hours of electricity delivered from the renewable energy facility, based on the time of delivery, adjusted for transmission losses.”

Section “b” sets forth the offset the customer receives for the “demand” component of the electricity provided by the REF during the month. Specifically “any kilowatts of electricity delivered from the renewable energy facility that coincide with the contract customer's monthly metered kilowatt demand measurement, adjusted for transmission losses” This is the only statutory discussion of demand calculation in the statute.

Under the canons of statutory construction all provisions are presumed to have been used advisedly and the expression of one term “should be interpreted as the exclusion of another” *Southam v South Despain Ditch Co.* 337 P.3d 236,240 (2014) . This means that if the demand offset in § 805(3)(b) is intended to be measured using the monthly metered kilowatt demand of the schedules 6, 8 or 9 any deviation from that measure is inconsistent with the statute and void.

It should be noted that Utah Code Ann. § 54-17 Part 8 speaks of an “applicable tariff rate” and does not explicitly tie the REF deliveries to Schedules 6, 8 and 9. The minimum contract amount of 2 megawatts found at § 802(4) links the contract to one of these three tariffs. Because Schedule 32 is a partial requirements contract , however, it does not fall squarely within full requirement rates for Schedules 6, 8 or 9. As a partial requirements contract it would be sensible to treat Schedule 32 consistently with Schedule 31 the other partial requirements contract.

Using the precedent of Schedule 31 as a template, it is appropriate under Schedule 32 to measure energy and power on a daily basis with charges calibrated to be roughly equivalent to the appropriate tariff rate to help insure ratepayer neutrality. This retains consistency with the frequency of the measurement which is distinguishable from the duration of the billing period.

Moving to a more frequent measurement such as the hourly power measurement proposed by the intervenors is without precedent and should be rejected. This is inconsistent with cost of service principles and moves the demand measurement into a second surrogate energy measurement. This would clearly yield discriminatory treatment relative to any other customer class and would result in subsidies from other customer classes to the new Schedule 32 Customers

DATED this 16th day of January, 2015.

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## CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of January, 2015, a true and correct copy of the foregoing was delivered upon the following as indicated:

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