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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Rocky Mountain Power's Proposed Electric Service Schedule No. 32, Service from Renewable Energy Facilities	)	**DOCKET NO. 14-035-T02** **BRIEF OF THE UTAH DIVISION OF PUBLIC UTILITIES**

Consistent with the opportunity granted by the Public Utilities Commission of Utah (Commission), the Utah Division of Public Utilities (Division) hereby files its brief pertaining to the above-referenced docket. Although Rocky Mountain Power's (Company) proposal to compensate public utility customers contracting with renewable energy facilities (REF) differs from the language of Utah Code Ann. § 54-17-805(3)(b) in that the Company's proposal uses a daily measurement instead of the monthly measurement stated in the statue, the Commission could find the Company's proposal to be in the public interest. Alternatively, the Commission could reject both the Company's proposal and that of the Utah Association of Energy Users (UAE), and order compensation only for the coincident 15 minute monthly measurement.

I. BACKGROUND

Effective in 2012, and as subsequently amended, Utah Code Ann. § 54-17-801 et seq. (SB 12) permits a public utility customer (Contract Customer), conditionally, to source and contract for its own electricity produced from a REF, and to have that electricity delivered by a public utility. In the part most pertinent to this brief, Utah Code Ann. § 54-17-805 specifically addresses Contract Customer payments to the public utility for the Contract Customer's use of the public utility's facilities. Absent SB 12, the Contract Customer would take service under an existing service schedule, which would allow for service from a specific REF only if the facility was located behind the customer's meter.

In its April 25, 2014 filing with the Commission, the Company submitted proposed tariff sheets associated with SB 12 designated as "Schedule 32." Thereafter, scheduling conferences were held and procedural orders issued, interventions were requested and granted, a technical conference was held, rounds of expert testimony were filed, and a hearing took place. At the December 9, 2014, hearing, responding to requests by various witnesses and comments from participating parties, the Commission provided parties the opportunity to file briefs, due on or before January 16, 2015, addressing "legal issues that have arisen in the context of the hearing."[1]

During this proceeding, various proposals to credit the Contract Customers for characteristics of the generation they might bring onto the system were proposed. For

[1] Hearing Transcript, Docket No. 14-035-T02 (Transcript), at p. 75, lines 13-14 (Commissioner David R. Clark). See also Transcript at pp. 72-76 (Commissioner Clark).

purposes of this brief, a simplified version of the proposals highlights the most important difference between the two proposals: the Company proposed compensating the Contract Customer using a daily measurement while UAE proposed compensating the Contract Customer using an hourly measurement. In addition to discussing the Company's and UAE's proposals, parties discussed how customers on other rate schedules are compensated on a monthly 15 minute coincident demand measurement.

II. ARGUMENT

A. Utah Code Ann. § 54-17-805 States that a Monthly Demand Measurement will be Used to Establish a Coincidental Credit

In the most pertinent part, Utah Code Ann. § 54-17-805 states:

* * *

> (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 coincide with the contract customer's monthly metered kilowatt demand measurement, adjusted for transmission losses;
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> * * *
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> (emphasis added).

Thus, under the statute, credit for delivered kilowatts coinciding with the highest value of the customer's monthly kilowatt demand measurement will be given against charges the Contract Customer must pay the qualified utility. Under the Company's currently

approved tariff, “demand” is defined as “[t]he rate in kilowatts at which electric energy is delivered by the Company to the Customer at a given instant or averaged over any designated period of time. For billing purposes, the 15 minute period of the Customer’s greatest use during the month is used.”[2] This language applies to Schedules 6, 8, and 9. Thus, to credit the Contract Customer with costs which otherwise would be payable by the Contract Customer to the Company, the statute utilizes “the 15 minute period of the Customer’s greatest use during the month” as that 15 minute period coincides with “kilowatts . . . delivered by the renewable energy facility.”

General rules of statutory construction provide that the plain meaning of the statute shall be used and that multiple provisions of a statute, or a group of statutes, shall be construed to give meaning to each provision and each statute.[3] This supports using the term “monthly” as it is commonly used and supports the conclusion that (3)(a) and (3)(b) are not duplicative, but are instead complementary. Accordingly, the legislature differentiated between an energy payment, under Subsection (3)(a), and a demand payment, under Subsection (3)(b), and how they were to be measured.

[2] Tariff, Original Sheet No. 2R.2.

[3] See, e.g., Olsen v. Park City Municipal Corporation, 315 P.3d 1055 (Utah App. 2013) at 1057 stating, “We interpret a statute according to its plain language.” *Stampin' Up, Inc. v. Labor Comm'n,* 2011 UT App 147, ¶ 7, 256 P.3d 250. *See Florida Asset Fin. Corp. v. Utah Labor Comm'n,* 2006 UT 58, ¶ 9, 147 P.3d 1189 (“Under our established rules of statutory construction, we look first to the plain meaning of the pertinent language in interpreting [a statute]; only if the language is ambiguous do we consider other sources for its meaning.”). When construing a statute, we presume “that the words and phrases used were chosen carefully and advisedly,” *Amax Magnesium Corp. v. Utah State Tax Comm'n,* 796 P.2d 1256, 1258 (Utah 1990), and “we seek to avoid an interpretation that leads to absurd results,” *State v. Rincon,* 2012 UT App 372, ¶ 10, 293 P.3d 1142.‘’

B. Both the Company's and UAE's Proposals Deviate from that Monthly 15 Minute Credit Concept, but in Different Ways

Although the Utah Code Ann. § 54-7-805(3)(b) explicitly contains the word "monthly," Company witness Mr. David L Taylor and UAE witness Mr. Kevin C. Higgins each state that their respective proposal was not based upon a monthly measurement.[4] Mr. Taylor stated that "when customers provide a sum of their own energy requirements from their own generation resources, such as we have here in this tariff Schedule 32 or happens under our partial requirements tariff Schedule 31, again, we break that down to a daily rate."[5] Mr. Higgins said he made the Company's daily demand charge into an hourly demand charge.[6]

Mr. Taylor indicated that the Company designed Schedule 32 so that "if a customer requires the Company to provide the full-capacity requirement every day during the month, that customer would pay essentially the same in the combination of the delivery charge and the daily power charge as that customer would have paid for the demand component under the general service tariff."[7] Thus, the Company's proposal approximates what a Schedule 32 customer would pay if it were a regular customer of another schedule for those periods when its off-site generation is not available. Contrastingly, the Company claims that under UAE's proposal which changes how demand is billed only for Schedule 32 customers, Schedule 32 customers

[4] See, e.g., Transcript at p. 33, line 20-23 (Mr. Taylor) and at p. 97, lines 305 (Mr. Higgins).
[5] Transcript at p. 24, lines 16-25 (Mr. Taylor).
[6] Transcript at p. 97, lines 18-20 (Mr. Higgins).
[7] Transcript at p. 25, lines 14-21 (Mr. Taylor).

"would receive a preferential treatment not available to other customers that have a similar generation source behind their meter."[8]

UAE, however, contends that under the Company's daily measurement proposal, "the daily power charge for this customer will be the same as if this customer brought in absolutely no renewable capacity at all during the remainder of the day or the earlier part of the day"[9] and so proposes an hourly "shaping" measurement. UAE contends that its "approach is reasonable because it allows Schedule 32 customers to receive credit for the capacity they are 'bringing to the table' that is in direct proportion to its availability during RMP's on-peak hours rather than having recognition of this real capacity benefit negated through the artifacts of how daily billing demand and the RMP on-peak period are defined."[10]

C. The Company's Proposal Seems Close to the Intent of the Statute and could be Found to be in the Public Interest

Although it is based on a daily, not monthly, measurement, the Company's proposal seems to balance the statute's required method against the rigidity of the current method of demand measurement.[11] The Company's proposal deviates from the strict statutory language in a manner designed to effectuate its purpose of compensating for the specific capacity at the time of the customer's peak usage. The Company's proposal, therefore, could be found to be in the public interest.

[8] Transcript, p. 27, lines 20-22 (Mr. Taylor).
[9] Transcript, p. 95, lines 2-6 (Mr. Higgins).
[10] Mr. Higgins, Direct Testimony, lines 364-368.
[11] The Division did, however, note that the actual statutory language may impose legal restrictions on what the Commission can adopt. See, e.g. Mr. Charles E. Peterson, Surrebuttal Testimony, at lines 114-120.

Mr. Taylor testified that he "was personally involved in the crafting of Senate Bill 12 from its initial conceptual development through the drafting of the language and its presentation before the legislature."[12] He stated that he "believe[d] there were three overriding principles that guided the development of Senate Bill 12."[13] He stated that these principles were:

> First, if a customer wants to be served by renewable energy, they ought to be able to do that. I think in the words of Senator Madsen, who is the sponsor of the bill, if someone wants to buy organic tomatoes, they ought to be able to buy organic tomatoes. That was his analogy. Second, with the customer receiving renewable energy, ought to bare [sic] all of the costs associated with acquiring and delivering that energy to the customer. And third, the customers who receive renewable energy should pay the utility standard tariff rate prices for the electric service that it requires and receives from the utility beyond those provided from the renewable energy facility.[14]

Because the Company's proposal is based upon both an energy credit and a capacity credit faithful to existing tariffs and designed to effectuate ratepayer indifference, it comports better with the stated intention of the legislature than does UAE's proposal. Additionally, the Company's proposal better matches use of the public utility facilities, and the associated costs, with the Contract Customer who imposes those costs on the public utility. While the Company's proposal might fail to compensate a Schedule 32 customer for some of the value it brings to the system, the statute does

[12] Transcript, p. 13, lines 14-18 (Mr. Taylor). Mr. Higgins stated that he was not involved in the drafting of SB 12 but that he believes that counsel for UAE was. Transcript, page 101, lines 10-15.
[13] Transcript, p. 13, lines 21-23 (Mr. Taylor).
[14] Transcript at p. 13, lines 23-25 and p. 14, lines 1-12 (Mr. Taylor).

not recognize that value as a compensable one. The Company's proposal is faithful to the statute's intent while allowing some compensation for capacity values and is in the public interest.

D. UAE's Proposal Appears to Offer the Contract Customer Additional Compensation, Could Have Unintended Consequences, and Possibly Shifts Costs

Despite its recognition that a facility built under SB 12 might provide system values for which its customer is not compensated under SB 12, UAE's proposal would allow compensation beyond that contemplated in the statute and could result in costs being imposed on other customers. By converting the capacity payment under Section 805(3)(b) into another energy payment, like that created by Section 805(3)(a), UAE's hourly measurement method increases the amount of compensation paid to the Contract Customer because energy seems to be valued more highly than capacity. This additional compensation and cost shift could have a material effect upon rates and ratepayers. While there might be value added by facilities that is not reflected by the Company's proposal or a rigid look at the monthly 15 minute measurement under existing tariffs, rate design changes affecting demand charges by way of the shaping Mr. Higgins suggests should be evaluated in a general rate case with a cost of service study, where all effects could be questioned and quantified with an eye toward achieving the sort of indifference SB 12 seems to contemplate. Instead UAE proposes a new method for measuring demand that might impact other ratepayers in this proceeding, which does not have the benefit of the broad participation found in a general rate case.

Therefore, hourly measurement is not in the public interest or consistent with the statutory language, and the Commission should reject UAE's proposal.

E. If the Commission Does Not Adopt the Company's Proposal, the Division Recommends that the Commission Reject Both Proposals and Order Credit Using the Monthly 15 Minute Coincidental Measurement

If the Commission does not adopt the Company's proposal, the Division recommends that the Commission use the monthly 15 minute coincidental measurement as explicitly stated in the statute. Testimony addressed the 15 minutes of greatest use concept embedded in Schedules 6, 8, and 9,[15] which use a monthly measurement. Absent Schedule 32, Contract Customers most likely would be taking service through Schedule 6, 8, or 9. This simple method would evaluate what amount of production from the REF temporally coincided with the customer's 15 minute monthly measurement and provide a credit accordingly. This comports most closely with Subsection 54-17-805(3)(b)'s command.

III. CONCLUSION

Therefore, the Division recommends that the Commission adopt the Company's proposal and reject UAE's proposal. If the Commission rejects the Company's proposal based on the statutory language, the Division recommends that the Commission adopt

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[15] Transcript at p. 24, lines 16-9 and at p .31, lines 16-22 (Mr. Taylor), and, generally, pp. 91, 97-98, 101-103 (Mr. Higgins).

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the 15 minute monthly coincidental demand measurement used in Schedules 6, 8, and 9 as the period of demand against which the REF output is measured.

Dated this 16th day of January 2015.

Respectfully submitted,

/s/
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 16th day of January, 2015, on the following:

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