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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of: **Rocky Mountain Power's Proposed Revisions to Electric Service Schedule No. 37, Avoided Cost Purchases from Qualifying Facilities**	Docket No. 14-035-T04 **Office of Consumer Services' Initial Comments Regarding Interim Application of 25,000 kW Cap**

COMES NOW the Office of Consumer Services ("Office") and hereby submits these initial comments regarding an interim application of a 25,000 kW cap ("cumulative cap" or "cap") as it applies to Rocky Mountain Power's ("Company") Electric Service Schedule No. 37 ("Schedule 37"). The Office opposes any effort to reset the Schedule 37 cumulative cap prior to the Public Service Commission's ("Commission") decision regarding the Company's proposed revisions to Schedule 37. The Office submits any such reset is not supported by Commission approved language within Schedule 37. Furthermore, any such reset is contrary to existing Commission Orders modifying the details of the Schedule 37 tariff, and contradicts state and federal law. Accordingly, the Commission should not reset the Schedule 37 cumulative cap prior to the final resolution of the present docket.

DISCUSSION

On May 7, 2014, the Company filed Advice No. 14-04, proposing revisions to Schedule 37. On June 3, 2014, the Commission held a scheduling conference, wherein, among other issues, the Commission requested comments from Parties regarding the 25,000 kW cumulative resource cap contained within Schedule 37. Specifically, the Commission "invite[d] parties to submit comments...regarding the application of the 25,000 kW cumulative cap under Schedule 37 during the time period between the time the 25,000 kW cap is met but prior to the Commission's decision regarding PacifiCorp's proposed revisions to Schedule 37." The Office submits that Commission precedent prohibits the Commission from acting on the issue of the cumulative cap prior to the final decision on the Company's proposed Schedule 37 revisions. The Office objects to any attempt to reset the cumulative cap when the Commission is evaluating the propriety of Schedule 37 avoided cost rates awarded to projects developed under the current cap.

As an initial matter, the Office asserts that unless and until the final 1000 kW of capacity under the cap is developed, it is improper to consider establishing a new cumulative cap.[1] The Commission's June 1, 2004, Order in Docket No. 03-035-T10 ("2004 Order") specifically states that "[w]hen the cap is reached, a new cap will be considered and new rates calculated." While subsequent Commission orders have modified the timing of Schedule 37 rate calculations to be conducted on an annual basis, no such modification has been made to the timing of considering establishing a new cap. Accordingly, so long as the final MW of capacity remains undeveloped, the Commission is not able, under its own precedent, to consider resetting the cumulative cap. While

[1] In its filing the Company states: "the Company has signed power purchase agreements with QFs under Schedule 37 totaling approximately 24 megawatts, almost meeting the 25 megawatt cap described in the "Applicable" section in Schedule 37."

the Office has no insight into the likelihood of development of this final increment, the Office contends any decision regarding the possibility of a new cumulative cap is not ripe and should not be evaluated by the Commission at this time.

Furthermore, the Commission is not bound to immediately establish a new cumulative cap if and when the final increment of the present cap is developed. As noted above, the 2004 Order provides that, upon full development of the capacity under an existing cumulative cap, the Commission will "consider[ ]" establishing a new cap. Based upon the Commission's language implementing the cap, the period of consideration prior to establishing any new cumulative cap was intended to ensure "consistency with the method used to develop the rates" then in place. *See* 2004 Order, p 12. It is apparent that the intent was <u>not</u> an automatic reset of the capacity cap. Rather, the process outlined an analysis of the just and reasonable nature of the existing rates, with possible updates thereof, and the consideration of establishing a new cumulative cap. While this procedure has been updated with respect to the avoided cost review, the Office asserts it is important to maintain the validity of the process by addressing the Schedule 37 framework in the proper sequence, ensuring appropriate analytical support. The Office further asserts it is wrongly timed to reset the cumulative cap prior to the update of rates awarded to projects contracted under Schedule 37.

Indeed, as outlined in the 2004 Order, calculation of new rates and the consideration of a new cap were previously conducted contemporaneously. While, as noted, the Commission has modified the framework surrounding the calculation of avoided cost pricing to occur annually, the Commission has not altered the process leading to consideration of a new cumulative cap. Specifically, the Commission's Order and Order on Reconsideration in Docket No. 03-035-T10

explicitly linked consideration of a new cap with the determination of new avoided cost rates. No subsequent Commission order has disassociated the concurrent nature of these actions. Accordingly, unless and until the Commission issues a final decision on the Company's advice filing and related proposed avoided cost calculations, the Commission cannot establish a new cumulative cap.

Moreover, the Office submits resetting the cumulative cap without finalizing new avoided cost rates would contravene state and federal law regarding purchases of energy and/or capacity from qualifying power producers. Utah law requires that all charges paid for energy and/or capacity by the Company be just and reasonable. *See* Utah Code Ann. §54-3-1 (2014). Simultaneously, Utah law requires the Commission to establish reasonable rates, terms and conditions for the Company's purchase of electricity and/or capacity from qualified power producers ("QFs"). *See* Utah Code Ann. §54-12-2 (2014). However, rates paid to QFs must be based on the Company's avoided costs, a pricing mechanism determined to best balance the interests outlined in the Public Utility Regulatory Policies Act ("PURPA") of: 1) ensuring just and reasonable rates for electric consumers, and 2) eliminating discrimination against qualifying small power producers. *See* Independent Energy Producers Ass'n, Inc. v. CPUC, 36 F.3d 848 (9th Cir 1994).

The Commission's August 16, 2013, Order on Phase II Issues in Docket No. 12-035-100 ("Avoided Cost Order") modified various avoided cost formula variables, including but not limited to integration costs and avoided capacity costs. Specifically, the Commission found "the inclusion of additional capacity value when a FOT [front office transaction] is displaced would over-compensate the QF and violate the ratepayer neutrality objective." Avoided Cost Order, p 36. Having concluded that a variable of the avoided cost calculation must be eliminated in order to meet

state and federal law requiring just and reasonable rates, opening a new cumulative cap incorporating these offending terms would contravene state and federal law, burden ratepayers with excessive rates, and violate the public interest. *See* Independent Energy Producers, 36 F.3d at 858 (noting "ratepayers should be indifferent to the source of power and that if rates are set at a utility's avoided costs, ratepayers will pay neither more nor less than they otherwise would have") (citation omitted).

The Office asserts that the Commission should delay consideration of a new cumulative cap until a final determination has been reached regarding the appropriate avoided costs associated with Schedule 37. Any reset of the cumulative cap without a concurrent update to the avoided cost pricing would violate state and federal law, and offend the public interest.

Submitted this 12th day of June, 2014.

/s/ Brent Coleman
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CERTIFICATE OF SERVICE

I certify that on the 12th day of June, 2014, a true and correct copy of the foregoing was served upon the following as indicated below:

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