

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

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from Qualifying Facilities

Docket No. 14-035-55

Docket No. 14-035-T04

**ORDER PARTIALLY ADDRESSING
ROCKY MOUNTAIN POWER'S
PETITION FOR RECONSIDERATION,
REVIEW OR REHEARING OF THE
COMMISSION'S DECEMBER 30, 2014
ORDER ON REVIEW AND MOTION
FOR STAY**

ISSUED: January 29, 2015

BACKGROUND AND PROCEDURAL HISTORY

On May 7, 2014, PacifiCorp, dba Rocky Mountain Power ("PacifiCorp"), filed Advice No. 14-04, proposing revisions to Electric Service Schedule No. 37 ("Schedule 37"), Avoided Cost Purchases From Qualifying Facilities ("PacifiCorp's Request to Revise Schedule 37"). PacifiCorp's revisions requested five changes to the method for calculating Schedule 37 rates: (1) include integration costs for wind and solar qualifying facilities ("QFs"); (2) reduce solar avoided capacity costs by the resource's capacity contribution; (3) eliminate the option for a QF to be paid a separate rate for its capacity and energy; (4) exclude the capacity costs based on a simple cycle combustion turbine ("SCCT") during the period in which PacifiCorp has sufficient resources to meet its energy requirements; and (5) remove the assumed future taxes on carbon dioxide ("CO2") from the official forward price curve ("OFPC") used in the avoided cost calculation.

After a technical conference, rounds of testimony, discovery, and a hearing, the Commission issued its report and order on October 21, 2014, approving Schedule 37 rates as

filed (“October Order”). On November 20, 2014, Utah Clean Energy (“UCE”), SunEdison, LLC (“SunEdison”) and Sustainable Power Group, LLC jointly filed a request with the Commission for agency review, reconsideration or rehearing of the October Order.

On December 5, 2014, PacifiCorp and the Division of Public Utilities (“Division”) filed responses. On December 10, 2014, the Commission issued an order granting review of the October Order. The Commission thereafter issued an order on review on December 30, 2014 (“December Order”), modifying its decisions in the October Order regarding: (1) elimination of the capacity and energy payment option; and (2) removal of the SCCT capacity cost component during the period of resource sufficiency. On January 9, 2015, PacifiCorp filed a petition for reconsideration, review or rehearing of the December Order (“Petition for Review of December Order”), including a motion for stay of the December Order.

On January 16, 2015, the Commission issued a Notice of Intent to Alter Order on Review and Order Staying Portion of Order on Review (“Notice of Intent”). The Commission stated its “intent to alter the December Order by eliminating the option for a QF to be paid a separate rate for its capacity and energy,” issued a stay of that capacity and energy payment option, and invited parties to comment on the Notice of Intent no later than Monday, February 2, 2015.

On January 26, 2015, the Division, the Office of Consumer Service (“Office”), and UCE and SunEdison jointly, filed responses to the Petition for Review of the December Order.

This Order addresses only the portion of the Petition for Review of the December Order that asks the Commission to modify the portion of the December Order relating to the

SCCT capacity cost component during the resource sufficiency period. The Commission takes no action with respect to the other issues in the Petition for Review of the December Order. Additionally, this order does not modify the Notice of Intent, including the stay of the capacity and energy payment option. Issues related to the elimination of the capacity and energy payment option will be addressed in final Commission action on the Notice of Intent. Therefore, the discussion below only addresses the positions of parties with respect to the SCCT capacity cost component during the resource sufficiency period (“SCCT cost”).

POSITIONS OF PARTIES

PacifiCorp states that “[t]he value of capacity avoided in the constrained months during the sufficiency period is fully accounted for in the Company’s avoidance of front office transactions or wholesale market purchases that reflect premiums during constrained periods.”¹ PacifiCorp also disputes the Commission’s finding that the methods of identifying capacity cost avoidance during the resource sufficiency period are meaningfully different between Schedule 37 and Schedule 38.²

The Division argues that continued inclusion of the SCCT cost violates Utah Code Ann. § 54-12-2(2).³ According to the Division, it is dispositive that PacifiCorp does not plan to build a resource like an SCCT and therefore the capacity payment during the sufficiency period is zero. The Division further argues that “[i]t is immaterial whether the [Schedule 37 and

¹ Petition for Review of the December Order at p. 11.

² Petition for Review of the December Order at pp. 11-13.

³ That statute states in pertinent part that “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.”

Schedule 38] methods are meaningfully different”⁴ and that the SCCT cost simply is not an avoided cost.

Like the Division, the Office opines that under Utah Code Ann. § 54-12-2(2), when PacifiCorp does not plan to build a generating unit, “the measure of avoided capacity tied to deferral or cancellation of specific type of generating unit is zero.”⁵ The Office argues that the Schedule 37 and Schedule 38 methods are not materially different because both “defer wholesale market purchases which contain a capacity value” and because both rely on the Integrated Resource Plan “to determine the timing of resource sufficiency.”⁶ The Office takes the position that continued inclusion of the SCCT cost inflates prices and violates the ratepayer indifference standard.

UCE and SunEdison argue that in its Petition for Review of December Order, PacifiCorp presents new information and evidence. They argue that a higher rate is not determinative of ratepayer indifference, and that ratepayer indifference also must be balanced against additional interests.

DISCUSSION, FINDINGS AND CONCLUSIONS

Interpretation of Utah Code Ann. § 54-12-2(2)

We must initially address the legal argument of the Division and Office that Utah Code Ann. § 54-12-2(2) prohibits continued inclusion of the SCCT cost. If we were to agree with that legal interpretation, it would be dispositive of the issue. For the reasons discussed below,

4 Response of the Utah Division 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, at un-paginated p. 6.

5 Utah Office of Consumer Services Reply to Rocky Mountain Power’s Petition for Reconsideration, Review or Rehearing of the Commission’s December 30, 2014 Order on Review and Motion for Stay, at un-paginated p. 3.

6 *Id.* at un-paginated p. 4.

however, we conclude that Utah Code Ann. § 54-12-2(2) does not prohibit continued inclusion of the SCCT cost.

As an initial matter, we note the interpretation of Utah Code Ann. § 54-12-2(2) proposed by the Division and Office is inconsistent with the positions those two parties⁷ have taken, not only since the Schedule 37 method was adopted in 1995, but also since the SCCT cost was incorporated into Schedule 37 in Docket No. 03-035-T10.⁸ In that docket, the Division did not object to PacifiCorp's proposed proxy SCCT cost in Schedule 37 as a surrogate for avoidable summer capacity purchases when PacifiCorp is capacity deficient.⁹ The Committee of Consumer Services also did not object and recommended that the SCCT cost should be applied over six months instead of the three months proposed by PacifiCorp.¹⁰ Both the Division and the Office maintained similar positions in subsequent dockets.¹¹

On its face, Utah Code Ann. § 54-12-2(2) mandates the inclusion in avoided costs of any “long term deferral or cancellation of generating units which may result from the purchasing utility’s long term deferral or cancellation of generating units which may result from the purchase of power from qualifying power producers.” However, absent additional explicit

7 For purposes of this Order we treat the previous “Committee of Consumer Services” as the same party as the current Office.

8 We note that the relevant language in Utah Code Ann. § 54-12-2(2) has remained substantively unchanged since before that docket. A minor change to the statutory language in 2008 does not substantively affect the legal issue presented here.

9 See Docket No. 03-035-T10, Division Memorandum dated April 6, 2004, docketed on April 13, 2004. *See* also Docket Nos. 94-2035-03 and 95-2035-03, in which proxy costs are used to value avoidable summer capacity purchases.

10 See Docket No. 03-035-T10, Recommendations of the Committee of Consumer Services Regarding Schedule 37: Avoided Cost Purchases from Qualifying Facilities up to 1 MW, April 9, 2004.

11 *See, e.g.*, Docket Nos. 06-035-T06, 09-035-T14, 10-035-T07, 11-035-T06, 12-035-T10, and 13-035-T09 (in which PacifiCorp proposed an SCCT cost of which the Division recommended approval, and on which the Office did not comment, from which we infer that the Office did not object). We also note SCCT's *per se* were not identified as deferrable resources in PacifiCorp's relevant Integrated Resource Plans in any of these cases.

statutory language, a mandate to include one specific capacity cost component does not operate legally to exclude any other capacity cost component. Neither the Division nor the Office claim the existence of any such exclusionary language, and on our own review of the statute we find none.

Additionally, to read the statute the way the Division and Office propose would place Utah Code Ann. § 54-12-2(2) in contradiction of federal law. When determining avoided costs, federal law requires the Commission to consider many factors, to the extent practicable, including “[t]he relationship of the availability of energy or capacity from the [QF] . . . to the ability of the electric utility to avoid costs, *including* the deferral of capacity additions and the reduction of fossil fuel use.”¹² The use of the word “*including*” in 18 C.F.R. 292.304(e), along with the lack of any specific exclusionary language in Utah Code Ann. § 54-12-2(2), leads us to conclude that Utah Code Ann. § 54-12-2(2) does not prohibit continued inclusion of the SCCT cost. We now turn to whether the continued inclusion of the SCCT cost remains good policy.

Policy Considerations

Continued inclusion of the SCCT cost is a difficult issue based on the record in these dockets. We recognize that avoided front office transactions or wholesale power purchases reflect capacity avoided in the constrained months during the sufficiency period. However, no party has alleged that those avoided transactions reflect that capacity to any greater degree today than they did when we originally approved inclusion of the SCCT cost in Docket No. 03-035-T10. For that reason and others, we find that current and future evaluation of whether continued inclusion of the SCCT cost still reflects avoided costs and ratepayer indifference is appropriate.

¹² 18 C.F.R. 292.304(e) generally, and 18 C.F.R. 292.304(e)(3) specifically (emphasis added).

We find that consistency between Schedule 37 and Schedule 38 is not a determinative factor on this issue and is not a sufficient reason to discontinue inclusion of the SCCT cost. We affirm the finding from our December Order that “the two methods are meaningfully different with respect to the identification of capacity cost avoidance during the resource sufficient period.”¹³ With respect to the contrary contentions of PacifiCorp and the Office, we agree that the policy objective of both methods remains the same, that both methods defer the same types of transactions, and that both rely on integrated resource planning. However, the two methods use meaningfully different methodologies to achieve those goals.

For example, the Schedule 38 method identifies the avoidable costs in the period of resource sufficiency that are coincident with the energy delivered by the QF. To the extent the QF delivers energy on-peak or even during super-peak hours, the capacity value contained in that purchase that can be avoided is included in the energy payment to the QF. In PacifiCorp’s Schedule 37 proposed method, without any value for the SCCT, the rates for on-peak and off-peak energy are the same. Thus, the rates paid to a QF delivering all its energy on-peak will understate costs avoided and the rates paid to a QF delivering all its energy off-peak will overstate the costs avoided by the QF. In either case, the avoided cost rates are misstated and potentially violate the principle of ratepayer neutrality.

The other arguments to discontinue inclusion of the SCCT cost allege that continued inclusion of the SCCT cost compensates QFs twice for capacity during the resource sufficiency period. However, no party has laid out a record that would allow us to find that risk to be greater today than it has been for the 10 years Schedule 37 has included the SCCT cost.

¹³ December Order at p. 14.

Considering that deficiency in the record, the deciding factor for this issue is the fact that in the proposal in front of us, with the SCCT cost removed, the peak and off-peak prices are identical during the period of resource sufficiency. As noted above, this produces results that are not credible.

In our October Order we recognized this anomaly in the proposed rates and opted to deal with it in a future proceeding. Reconsidering that decision in our December Order, we found that the implications of the issue were serious enough to order continued inclusion of the SCCT cost until we could consider an alternate method to better represent peak and off-peak pricing during the resource sufficiency period. We decline to modify that decision from our December Order.

We note that in its compliance tariff filing of January 23, 2015, PacifiCorp filed alternate “tariffs with updated Schedule 37 prices that exclude [an SCCT] in the sufficiency period, but are differentiated between peak and off-peak based on the relationship of Palo Verde On-[p]eak and Off-peak market prices to Palo Verde flat market prices, respectively.” While we are unable to consider that alternative proposal based on the record in these dockets, we look forward to evaluating that proposal in future proceedings.

ORDER

1. The portion of our December Order that continued the inclusion of the SCCT cost in Schedule 37 calculations remains in effect.
2. We take no action at this time on the remaining issues raised in the Petition for Review of December Order, and the stay issued in the Notice of Intent remains in effect.

DOCKET NO. 14-035-55, 14-035-T04

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DATED at Salt Lake City, Utah, this 29th day of January, 2015.

/s / Ron Allen, Chairman

/s / David R. Clark, Commissioner

/s / Thad LeVar, Commissioner

Attest:

/s / Gary L. Widerburg
Commission Secretary
DW 263455

Notice of Opportunity for Review

This Order constitutes final agency action. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action.

CERTIFICATE OF SERVICE

I CERTIFY that on the 29th day of January, 2015, a true and correct copy of the foregoing was served upon the following as indicated below:

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