ROCKY MOUNTAIN POWER
A DIVISION OF PACIFICORP

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VIA ELECTRONIC FILING

Utah Public Service Commission
Heber M. Wells Building, 4th Floor
160 East 300 South
Salt Lake City, UT 84114

Attention: Gary Widerburg
Commission Secretary

RE: Docket No. 18-035-39
Investigation Re: Expiring Excess Generation Credits under Schedule 135
Comments

On October 10, 2018 the Public Service Commission of Utah ("Commission") issued a Notice of Docket and Comment Period ("Notice") requesting comments regarding alternative uses of expiring excess generation credits left over at the end of the annualized period under Schedule 135 ("Expiring Excess Credits"). Consistent with the Notice, Rocky Mountain Power ("the Company") submits these comments.

Introduction

The Company filed its Customer Owned Generation and Net Metering Report for the Period April 1, 2017 through March 31, 2018 in Docket No. 18-035-28 ("NEM Report Docket"), presenting a total of $159,839 in value of Expiring Excess Credits associated with Schedule 135, Net Metering Service, for the reporting period. In comments, the Office of Consumer Services ("the Office") and Utah Clean Energy ("UCE") presented a proposal to change the treatment of the Expiring Excess Credits to the low income Weatherization Assistance Program ("WAP") instead of the current use of crediting them to the Home Electric Lifeline Program ("HELP"). The Company opposed the change and suggested an alternative that the funds could be used to support the Lend-A-Hand program. On October 10, 2018, the Commission opened this docket for the purpose of examining the use of Schedule 135 Expiring Excess Credits. In these comments the Company discusses the three possible options put forth by parties to date for use of these credits: 1) Lend-A-Hand, 2) Low Income WAP, 3) HELP. The Company presents what it sees as the benefits and problems with each option. Ultimately, the Company recommends that the Commission direct the funds from the Expiring Excess Credits to the Lend-A-Hand program, although leaving the current treatment of crediting the funds to HELP unchanged is also an acceptable option that provides benefits to the Company's customers.

The proposal to change the current treatment of the use of the Expiring Excess Credits centers around the concerns expressed by the Office and UCE regarding their understanding of the intent of Utah Code § 54-15-104(4) which states:

> At the end of an annualized billing period, an electrical corporation's avoided cost value of remaining unused credits described in Subsection (3)(a) shall be granted:
> (a) to the electrical corporation's low-income assistance programs as determined by the governing authority; or
> (b) for another use as determined by the governing authority.

The Office and UCE argue that supplementing the funding for the HELP program benefits all customers and therefore does not directly support the low income segment of customers, so it does not provide incremental value for low income customers. Thus, these parties claim that transferring the Expiring Excess Credits to the low income weatherization program alleviates their concerns.

The Company appreciates the opportunity to investigate an alternative use of the funds from Expiring Excess Credits and supports using the credits in a way that will most directly help the Company's low income customers with their electricity needs.

Lend-a Hand Program

In an effort to address the concerns of parties that the Expiring Excess Credits be used to provide incremental value for low income customers, Rocky Mountain Power proposes the Expiring Excess Credits be directed to the Lend-A-Hand program. This non-profit program is administered by The Salvation Army, and provides bill payment assistance to households in need. Funds donated by Rocky Mountain Power, as well as Rocky Mountain Power customers and employees are directed to The Salvation Army, who determines eligibility and applies payments to the electric accounts of customers in financial crisis.

In calendar year 2017, a total of 2,960 people residing in 1,156 households obtained assistance through Lend-A-Hand. Over $212,000 was applied to customer billings, with an average assistance payment of approximately $200. Due to limited funding, participation is restricted to homes with elderly and disabled family members, children under five, and veterans. All funds raised in 2017 were depleted. Thus, the funds from the expired credits would provide immediate, direct and incremental benefits to low income customers, which addresses the concerns expressed by the Office and UCE.

Additional funds directed to Lend-A-Hand will provide bill payment assistance to more people in need as these funds are consistently depleted annually. More senior citizens, people with young children, disabled people, and veterans will obtain this direct assistance. The addition of net metering credits to the Lend-A-Hand budget could help more than 700 additional households annually.

Low-Income Weatherization Program

In the NEM Report Docket, the Office and UCE proposed to direct the Expiring Excess Credits to the WAP, which is currently available through Schedule 118. The Company believes that the WAP is valuable and serves an important role for helping low income customers. However, the Company finds the proposal to send the additional funds to the WAP in the manner proposed to be problematic. As outlined in Schedule 118, the Company contracts with the Utah Department of Work Force Services, Housing and Community Development Division ("HCD") for weatherization services. HCD subcontracts with seven local weatherizing agencies ("Agencies") that provide audit, efficiency measure installations, inspections, and energy education services. The Agencies leverage Company-provided funds with federal grants from the U.S. Department of Energy and U.S. Health and Human Services. The Company's funds can be used to cover 50 percent of costs associated with measures that reduce electricity usage.

For Schedule 118, the Company budgets $225,000 per year for weatherization services. Table 1 below shows the annual funding requests from WAP for the weatherization program. As this table shows, the amount requested by WAP each year is significantly less than the amount budgeted.

TABLE 1:
Funding Requests for WAP to Rocky Mountain Power

Year	Amount of Funding ($)	# of homes
2018 (to date)	24,525	158
2017	47,332	296
2016	30,790	333
2015	28,525	306
2014	66,950	419
2013	81,046	543

Although the WAP has a waitlist, the eligibile weatherization services for Company funding are limited by the number of homes on the waitlist with a need for weatherization measures that reduce electricity usage, i.e., those with installed electric heat and/or electric water heaters as well as appliances. Most of the homes served by the Agencies are heated with natural gas, and/or have natural gas water heaters. This limits the weatherization measures offered by WAP that are eligible for Company funds.

Rocky Mountain Power works with staff from HCD to look for ways to increase utilization of the funds for cost-effective electric measures. The biggest roadblock in covering more of WAP's overall weatherization costs is related to the low penetration of electric heat and electric water heaters. The Company provides funding on measures that reduce kilowatt-hour usage, which is most often related to lighting, refrigeration, and furnace fans. Generally, the Company covers 50 percent of the cost of approved measures. In an effort to increase Company funding, approved program revisions in the past have included the following:

- Addition of funding for duct sealing in gas heated homes with electric cooling.
- Funding related to efficient furnace fans in conjunction with the installation of gas furnaces.
- Increased funding on efficient lightbulbs, initially CFLs and then LEDs to 100 percent of related costs.
- Increased the number of lightbulbs covered from eight per home to all bulbs placed in fixtures in use for two or more hours per day.
- Funding added for LED light fixtures in an effort to increase LED use.

In their prior comments on the NEM Report, the Office and UCE suggested that the funds from the Expiring Excess Credits not go through Schedule 118, but be directly transferred to HCD to use for the applicants on the waitlist. Under this proposal, the funds would be used to support measures that would provide benefits related to non-electric sources, like natural gas. The Company believes that comingling funds in this manner is inappropriate. Funding for weatherization measures that are targeted at reducing natural gas should come from other privately-funded or taxpayer-funded programs or natural gas customers, not electric customers.

While the Net Metering Statute grants the Commission the authority to use Expiring Excess Credits for another use as determined by the Commission, the use must be consistent with the Commission's authority granted or implied by statute. In determining the appropriate use of the Expiring Excess Credits, the explicit or clearly implied statutory authority for such regulatory action must exist.[1] To the extent there is an argument that the Commission can use the second option under the Net Metering Statute to get around the first option, "the provision more specific in application governs over the more general provision."[2] Here, the first option under the Net Metering Statute is more specific, where the second option under the Net Metering Statute is not. The first and preferred option under the Net Metering Statute requires the value of the Expiring Excess Credits to be used for the <u>electrical</u> corporation's low income assistance programs. To the extent the second option in the Net Metering Statute conflicts and would otherwise be applicable, the first and preferred option controls. In addition, the Low Income Statute is also more specific about the way the Company's low income assistance program is to be funded, which is by Rocky Mountain Power customers for Rocky Mountain Power customers. The Low Income Statute grants the Commission specific authority related to funding low income assistance programs and it does not authorize, either explicitly or implicitly, the reallocation of the value of the Expiring Excess Credits "without consideration as to the specific electric energy savings attributable to the measures installed,"[3] as recommended by the Office.

The Low Income Statute allows for the funding of low income programs for eligible customers. "Eligible customer" means "an electrical corporation *or* a gas corporation customer." Utah Code Ann. § 54-7-13.6(1) Emphasis added. The electrical corporation is a separate entity from the gas corporation. The Office's recommendation will result in the use of funds from the Company's customers to subsidize a natural gas corporation's low income customers, as noted by the UCE in its reply comments in the Net Metering Report Docket, as follows: "… weatherization predominantly provides bill savings on natural gas usage, rather than electricity usage. Most homes in Utah use gas for both home and water heating, and the Utah Home Performance program found that 86% of weatherization measures targeted natural gas savings compared to 14% for electric savings."[4] This potential cross-subsidization is problematic on many levels and should therefore be rejected. The Company recommends that Commission continue to direct that any type of low-income program funding, including through the value of Expiring Excess Credits, continue to benefit the type of customer who is providing the funding. Thus, Rocky

[1] *See* Utah Dep't of Business Regulation v. Public Serv. Comm'n 720 P.2d 420, 423 (Utah 1986); Mountain States Telephone and Telegraph Company v. Public Service Commission, 754 P.2d 928 (Utah 1988).
[2] Pugh v. Draper City, 2005 UT 12, ¶ 10, 114 P.3d 546 (holding that the portion of the statute specifically applying to campaign disclosure statements governs over the Election Code).
[3] *See* Office Reply Comments, August 16, 2018, p. 3.
[4] *See* UCE Reply Comments, August 16, 2018, p. 3

Mountain Power customers should continue to fund low income assistance programs that serve Rocky Mountain Power's low income customers.

Home Electric Lifeline Program

Currently, the Expiring Excess Credits are credited to the HELP surcharge, which provides bill credits of $12.60 to low income customers. The Office and UCE claim that the current practice of applying the credits to the HELP program creates a small offset to rates paid by all customers subject to Schedule 91, Surcharge to Fund Low Income Lifeline Program, and does not provide an incremental value to low-income customers. The Division of Public Utilities notes that diverting the funds away from the HELP program could result in a slightly higher surcharge.

If the Commission does not elect to divert the Expiring Excess Credits to Lend-A-Hand, the Company believes that the Commission should leave the treatment of the funds unchanged. Although some parties claim it does not align with their understanding of the legislative intent, the Company still maintains that these funds provide benefits to customers. In its Order in Docket No. 14-035-116 issued October 30, 2014 (the "2014 Order"), the Commission indicated:

> We appreciate the alternate net metering credit disposition suggestions provided by the Office and the Division. We note, however, that none of the comments provided by the Division, the Office, UCE and PacifiCorp oppose granting the avoided cost value of annually expiring net metering excess generation credits to PacifiCorp's low-income assistance program under Schedule 91. *We further find this outcome is most consistent with the legislative intent articulated in Utah Code Ann. § 54-15-104(4)."*[5]

Recently in the Net Metering Report Docket, the Office and UCE withdrew their support for using Expiring Excess Credits to fund the HELP program because that would not provide "incremental value for low income customers,"[6] and because "the net metering credits are not additive to other existing sources of HELP funding,"[7] respectively. They contended the Commission confirmed that Expiring Excess Credits must provide incremental benefits based on the following language in the 2014 Order: "we clarify that the Schedule 37 avoided cost value of expiring credits is to be additional (rather than offsetting) to revenue collected under Schedule 91."[8] In addition, the Office explained that it was involved in the legislative process that resulted in the Net Metering Statute and that the understanding at the time was that Expiring Excess Credits would provide incremental benefits to low income customers.[9]

First, the Commission simply ordered in the 2014 Order that the value of Expiring Excess Credits was to be additive to the surcharge that can lawfully be collected under Schedule 91.

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[5] In the Matter of the Disposition of Remaining Unused Credits Associated with Excess Customer-Generated Electricity Provided Under Utah Code Ann. § 54-15-104(4)(a), Docket No. 14-035-116, issued October 30, 2014, p. 6.
[6] See Office Comments, August 1, 2018, p. 6.
[7] See UCE comments, August 1, 2018, p. 4.
[8] Office comments, p. 7.
[9] Office Comments, p. 5.

Specifically, under the currently approved Schedule 91, all monthly bills calculated in accordance with the schedules listed below must include the following monthly surcharge:

Schedules 1, 2 & 2E - $0.16;
Schedule 6, 6A & 6B - $5.60;
Schedule 7 - $0.06;
Schedule 8 - $50.00;
Schedule 9 & 9A - $50.00;
Schedule 10 - $0.97;
Schedule 11 - $0.99;
Schedule 12 - $0.63;
Schedule 15 - $0.10;
Schedule 21 - $12.97;
Schedule 23 - $0.26;
Schedule 31 - $50.00;
Schedule 32 - The rate for Schedule 32 shall be the same as the applicable general service schedule).[10]

The total amounts collected from these authorized surcharges are then used to fund the HELP program (the "Low Income Fund"), in accordance with the other terms and conditions of Schedule 91. In the 2014 Order, the Commission ordered that the revenues from the value of the Expiring Excess Credits *supplement* the Low Income Fund, rather than *offset* it. This is different from saying that the additional revenues from the value of the Expiring Excess Credits must add incremental benefits for low income customers.

Second, regarding the legislative intent of the Net Metering Statute, the language in the Net Metering Statute is unambiguous. The understanding during the legislative process before the Net Metering Statute became law is therefore not relevant. The Commission may not consider legislative history or intent when interpreting a statute if "the language of the statute is clear and unambiguous."[11] The Net Metering Statute is clear that Expiring Excess Credits shall be used for the Company's low-income assistance programs. It does not mention incremental benefits. While the Office and UCE may disagree with the way the Company's low income assistance programs are funded and implemented, there is no requirement that incremental benefits be shown under the statute.

Summary

For the reasons set forth above, the Company respectfully requests that the Commission:

- Deny any proposal to divert the value of Expiring Excess Credits to the WAP,
- Adopt the Company's alternative proposal to use the Expiring Excess Credits to fund the Lend-A-Hand program to provide direct and incremental benefits to low-income customers,

[10] Approved by the Commission in Docket No. 16-035-36, effective July 20, 2017.
[11] Visitor Information Center Authority of Grand County v. Customer Serv. Div., Utah State Tax Com'n, 930 P.2d 1196, 1197 (Utah 1997).

- Alternatively, continue to endorse its long-standing policy of using the Expiring Excess Credits to fund the HELP.

Sincerely,

Joelle Steward
Vice President, Regulation

CC: Service List - Docket No. 18-035-39

CERTIFICATE OF SERVICE

Docket No. 18-035-39

I hereby certify that on November 8, 2018, 2018, a true and correct copy of the foregoing was served by electronic mail to the following:

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