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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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| INVESTIGATION RE: EXPIRING EXCESS GENERATION CREDITS UNDER SCHEDULE 135 | DOCKET NO. 18-035-39 REPLY COMMENTS OF UTAH CLEAN ENERGY |
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Utah Clean Energy (“UCE”) appreciates the opportunity to provide the following reply comments in Docket 18-035-39. Specifically, UCE will address the following in response to comments made by Rocky Mountain Power (the “Company” or “Rocky Mountain Power”) in its initial comments filed on November 8, 2018:

- I. Clarification of UCE’s Positions from Initial Comments
 - a) Utah Law Requires that Expired Net Metering Credits Provide Incremental Benefits to Low-Income Utahns
 - b) UCE Supports Directing the Expired Excess Credits to the WAP Via the Department of Workforce Services, and Not Schedule 118
- II. The Commission May Allocate the Credits to a Program Furthering Natural Gas Efficiency and Savings

- a) Allocation of the Credits to the WAP is Aligned with the Purpose of the Net Metering Program and with the Motivations of Net Metering Customers
- b) The Commission Has Broad Discretion When Allocating the Credits Under 54-15-104(4)(b)
- c) The Intent of Section 54-15-104(4)(b) is to Ensure That Low-Income Customers Receive Incremental Benefits
- d) The Commission is Not Restricted from Allocating the Expired Credits to a Program That Provides Efficiency and Savings Related to Natural Gas

UCE continues to recommend that the Public Service Commission (“Commission”) reallocate the value of the expired schedule 135 credits (“Expired Credits” or “Credits”) to the Utah Weatherization Assistance Program (“WAP” or “Utah WAP”). The Office of Consumer Services (“Office”) supports this allocation, as do several low-income consumer advocate organizations who filed joint comments in support of allocating the Credits to the WAP.¹ The Division of Public Utilities (“Division”) does not oppose changing the use of the credits, and believes that the use of the credits for weatherization services is appropriate, stating that “the use of the excess generation credits to help low-income Utahns with their utility bills and help fund low-income energy efficiency programs is in the public interest.”² Finally, the Office’s initial comments in this docket include a letter from the Utah Weatherization Assistance Program Director confirming that the WAP “would be more than willing and capable of receiving, distributing and administering the utility funds.”³ In light of this broad support, we continue to

¹ Docket 18-035-39, Office of Consumer Services Comments filed on November 8, 2018; Docket 18-035-39, Joint Comments filed on November 8, 2018 on behalf of the AARP, Catholic Diocese of Salt Lake City, Crossroads Urban Center, Utah Coalition of Manufactured Homeowners, and Utahns Against Hunger.

² Docket 18-035-39, Division of Public Utilities Comments filed on November 8, 2018, page 3.

³ Docket 18-035-39, Office of Consumer Services Comments filed on November 8, 2018, pages 4, 6.

recommend that the Expired Credits are allocated to the WAP to provide incremental services to low-income Utahns.

Reply Comments

I. Clarification of UCE's Positions from Initial Comments

a) Utah Law Requires that Expired Net Metering Credits Provide Incremental Benefits to Low-Income Utahns

In its initial comments filed on November 8, 2018, the Company said “UCE argue[s] 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.”⁴ UCE has never argued, explicitly or implicitly, that we support reallocating the Credits solely because “the funding for the HELP program benefits all customers.” Our position is that Utah law requires the Credits to benefit low-income Utahns specifically, and allocation of the Credits to the HELP program does not currently satisfy this requirement. The intent and language in Utah Code section 54-15-104(4) governing the allocation of the Credits (“Allocation Standard”) directs the Expired Credits to a program that will provide incremental services to low-income Utahns, either through the Company’s low-income assistance programs or through another program as determined by the Commission. The HELP budget is not fully utilized on an annual basis, so the Credits are simply kept in the HELP program accounts. Surplus funding from this account was returned to ratepayers in 2015.⁵ In other words, the Credits are currently not being used for incremental services to low-income

⁴ Docket 18-035-39, Rocky Mountain Power Initial Comments filed on November 8, 2018, page 2, (emphasis added).

⁵ Rocky Mountain Power Electric Service Schedule No. 92

customers. Thus, the current allocation is inconsistent with the Allocation Standard and must ultimately be reallocated. UCE has consistently stated this position.⁶

*b) UCE Supports Directing the Expired Excess Credits to the WAP Via the
Department of Workforce Services, and Not Schedule 118*

In its initial comments, the Company also represented that “[i]n the NEM Report Docket [Docket 18-035-28] . . . UCE proposed to direct the Expiring Excess Credits to the WAP, which is currently available through Schedule 118.”⁷ Later on in the Company’s initial comments, Rocky Mountain Power articulated UCE’s position more accurately by saying “[i]n 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.”⁸ The Company also notes that sending the Credits to Schedule 118 would not provide the best use of the funds because, similar to the HELP, the current funding collected for Schedule 118 is not exhausted on an annual basis.⁹ The Company’s dual characterization of UCE’s position is misleading. On numerous occasions, UCE has recommended distributing the Expired Credits to the Utah WAP, but UCE has never

⁶ Docket 18-035-28, Utah Clean Energy Initial Comments filed on August 1, 2018, page 4 (“the balance of expired NEM credits is offsetting funding for the HELP program, rather than providing incremental value through additional services to this population. As a result, the expired NEM credits are not currently being used to satisfy the legislature’s apparent intent with S.B. 110—to provide *additional* services or assistance to low-income customers”); Docket 18-035-28, Utah Clean Energy Petition for Reconsideration or Rehearing filed on September 28, 2018, page 2 (“[i]n a recent meeting between Utah regulators, stakeholders, and Rocky Mountain Power, the Company said that although the expired NEM Credits are being attributed to the Company’s low-income bill assistance program (HELP), there are not enough qualified customers requesting assistance from the HELP program for all of the funds to be utilized. . . . In other words, the minimal value that the expired NEM Credits add to the program is unused due to over-collection of program funds relative to program participation. As a result, the value of the expired NEM Credits is not creating any incremental value for low-income customers (through the utility’s low-income assistance program) or through another program approved by the Commission”).

⁷ Docket 18-035-39, Rocky Mountain Power Initial Comments filed on November 8, 2018, page 2.

⁸ *Id.* at page 4.

⁹ *Id.* at page 3.

recommended that the Company receive and administer the funds through Schedule 118.¹⁰ Our position is that the Utah Department of Workforce Services (“DWS”) is best suited to produce the greatest incremental benefits with the value of the Expired Credits, and for this reason, we recommend that the DWS administer these funds. We agree with the Company in its initial comments that Schedule 118 is not well-suited to receive and administer the Expired Credits,¹¹ largely because allocating the Expired Credits to Schedule 118 would result in the same situation we are currently in—allocating additional funding to a program that cannot currently use its existing budget. UCE is not now, and has never proposed that the Expired Credits go to Schedule 118.

II. The Commission May Allocate the Credits to a Program Furthering Natural Gas Efficiency and Savings

Rocky Mountain Power has taken the position that the Commission may not allocate the Expired Credits to reduce natural gas consumption. We disagree with this position for several reasons. First, allocation of the Expired Credits to reduce natural gas and electricity consumption through the WAP is aligned with the purpose of the net metering program and the motivations of the net metering customers who generate the credits. Second, the Commission has broad

¹⁰ Docket 18-035-28, Utah Clean Energy Initial Comments filed on August 1, 2018, pages 5, 7, 9 (“Utah Clean Energy proposes that the balance of expired NEM credits reported by RMP in their 2018 Customer Owned Generation and Net Metering report, an amount of \$159,839.79, be disbursed to the Utah WAP under the Utah State Department of Workforce Services”); Utah Clean Energy Petition for Reconsideration or Rehearing filed on September 28, 2018, page 5 (“UCE’s comments do not recommend that the expired NEM Credits be allocated for Rocky Mountain Power to administer through Schedule 118 or limited to measures that reduce electricity usage, nor was that our intent. UCE’s comments also do not reference the Company’s Schedule 118 Low Income Weatherization program tariff nor do we suggest that qualifications for this program be modified. Instead, UCE proposed that the expired NEM Credits be disbursed to the Utah WAP and administered by the Utah Department of Workforce Services and the various nonprofit and government subsidiary organizations that provide the weatherization services”).

¹¹ Docket 18-035-39, Rocky Mountain Power’s Initial Comments filed on November 8, 2018, page 3 (“[a]lthough the WAP has a waitlist, the eligible (sic) 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”).

discretion under section 54-15-104 of the Utah Code (“Net Metering Statute”) to allocate the Expired Credits to either of two described uses, and is not required to allocate the Expired Credits to a program that reduces electricity bills or consumption exclusively. Third, it is UCE’s understanding that the legislature included the second, and broader, of the two options available to the Commission – 54-15-104(4)(b) – to ensure the Commission has the faculty to reallocate the credits in the event that the current program utilizing the funds cannot provide additional benefits, as is currently the case. Finally, neither the Allocation Statute nor the section of Utah Code cited in Rocky Mountain Power’s initial comments (54-7-13.6, “Low Income Assistance Statute”) restrict the Commission’s authority to assign the Expired Credits to a program that provides efficiency and savings related to natural gas.

a) Allocation of the Credits to the WAP is Aligned With the Purpose of the Net Metering Program and With the Motivations of Net Metering Customers

The net metering program is designed to allow participating ratepayers to install a renewable generating facility on or adjacent to their property that “is intended primarily to offset part or all of the customer’s own electrical requirements” in an effort to reduce reliance on grid energy and lower energy bills.¹² There is no comparable program for natural gas; commercially available technologies that allow customers to harvest a personal supply of natural gas on ones’ own property do not exist. However, this technological limitation does nothing to inhibit the motivations behind the net metering program itself or the motivations driving customers to participate in the program—reducing reliance on grid energy and lowering energy bills. These motivations are not specific to electricity usage and do not inherently exclude natural gas. So,

¹² Rocky Mountain Power Schedule 135: Net Metering Service.

there is no logical reason to limit the use of the Credits to electricity-related weatherization programs, as asserted by the Company in its initial comments.¹³

Further, the Credits are generated by customers who have voluntarily chosen to participate in the net metering program, not by electricity customers at large. For this reason, the Commission should consider the motivations and preferences of the customers who generate the Credits when determining their use. The Utah Solar Association said in reply comments in Docket 18-035-28 that based on conversations with dozens of net metering customers, customers generally prefer that their Expired Credits are used to reduce reliance on grid energy as well as reduce energy bills.¹⁴ Allocating the value of the Credits to the Utah WAP will result in improved efficiency and reduced costs for electricity and natural gas, which is consistent with the motivations of net metering program participants.

b) *The Commission Has Broad Discretion When Allocating the Credits Under 54-15-104(4)(b)*

The Company disagrees that the Commission has the authority under the Net Metering Statute to allocate the expired credits to the WAP.¹⁵ The Company states that to the extent the Commission has the ability to apply 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.’”¹⁶ UCE agrees that when two statutory standards conflict with one another, the

¹³ Docket 18-035-39, Rocky Mountain Power’s Initial Comments filed on November 8, 2018, page 4.

¹⁴ Docket 18-035-28, Utah Solar Energy Association Reply Comments filed on August 16, 2018, page 2; *see also* Docket 18-035-28, the Division’s Reply Comments filed on August 16, 2018, page 3 (noting that the WAP is aligned with net metering customers’ expectation of how the Expired Credits should be used).

¹⁵ Docket 18-035-39, Rocky Mountain Power’s Initial Comments filed on November 8, 2018, page 4.

¹⁶ *Id.* (citing *Pugh v. Draper City*, 2005 UT 12, ¶ 10, 114 P.3d 546).

general rule is that the more specific standard will apply over the more general one. However, this principal of statutory interpretation is not applicable in this case.

In the case cited by the Company in initial comments, *Pugh v. Draper City*, a city council candidate argued that the “substantial compliance standard” found in the Utah Election Code was the standard that should govern financial disclosure requirements in municipal elections. The City of Draper disagreed and argued that the specific provisions addressing financial disclosures in municipal elections found in the “Campaign financial disclosure in municipal elections” Act (the “Act”) should govern. The Utah Supreme Court agreed with the City of Draper for two reasons. First, the provisions of the Act were independent of the Election Code, so “the latter’s provisions have no bearing on the former’s requirements.”¹⁷ Second, because more specific standards apply over more general standards, the Act is the more appropriate standard because of its greater specificity.¹⁸

The principal of specificity over generality discussed in *Pugh* does not apply in this case because the Allocation Standard under the Net Metering Statute is the only standard applied to the Expired Credits in Utah law. In *Pugh*, two different sections of the Utah Code imposed conflicting outcomes. In the current situation, there is only one standard in Utah law governing how the Commission may allocate the Expired Credits, so there is no need to invoke the specificity over generality principal to determine which statutory standard should apply. If the Commission were to apply this principal to the two options under the Allocation Standard, as the Company suggests doing, the Commission would actually render the second option of the Allocation Standard meaningless because there would never be a case in which it could utilize

¹⁷ *Pugh v. Draper City*, ¶ 9, 548 (“[b]ecause these are two independent sets of regulations, we will not apply provisions of the Election Code to section 10-3-208 absent an indication that such was the legislative intent”).

¹⁸ *Id.*, ¶ 10, 549.

this more general option. This outcome would violate another longstanding principal of statutory interpretation, the presumption that the legislature did not enact a meaningless provision within a statute.¹⁹

Perhaps the most basic principal of statutory interpretation is ““where the statutory language is plain and unambiguous, we do not look beyond the language's plain meaning. . . .”²⁰ The Allocation Standard allows the Commission to allocate the value of the Expired Credits to “the electrical corporation’s low-income assistance programs as determined by the governing authority; *or* for another use as determined by the governing authority.”²¹ The plain language of these two options, separated by the word “or,” establishes that the Commission has the discretion to choose either the Company’s low-income assistance programs *or* another use determined by the Commission. Even if a hierarchy existed favoring the first option under (4)(a) over (4)(b), it is clear that the utility’s low-income program is no longer able to leverage the Expired Credits to provide additional and incremental benefits to low-income customers. The Company said in reply comments in Docket 18-035-28 that, “[t]he Company agrees that, because the HELP program currently has a surplus balance . . . the funds are benefiting all customers, not just low income customers.”²² In such circumstances, the mere existence of the second option in the Allocation Standard suggests that the Commission has the authority to allocate the Credits to a program that can provide incremental benefits to low-income customers when the first option, the utility’s low-income program, cannot.

¹⁹ *Lyon v. Burton*, 200 UT 19 ¶ 19, 5 P.3 616, 623, n.5 (“[the court has a] duty to avoid interpreting a statute in a manner that renders portions of the statute, or related statutes, meaningless”); *Dillon v. Southern Management Corp. Retirement Trust*, 326 P.3d 656, 670 (Utah 2014) (quoting *Hall v. Dep’t of Corr.*, 2001 UT 34 ¶ 15, (“[w]e also ‘seek to render all parts [of a statute] relevant and meaningful.’ Thus, the plain language of specific provisions should be read harmoniously with that statute's other provisions”)).

²⁰ *Lyon* at ¶ 17, 622 (quoting *Horton v. Royal Order of the Sun*, 21 P.2d 1167, 1168 (Utah 1991)).

²¹ Utah Code Section 54-15-104(4) (emphasis added).

²² Docket 18-035-28, Rocky Mountain Power Initial Comments filed on August 16, 2018, page 5.

In sum, the specificity over generality rule does not apply to this case because only one statutory standard is involved. Applying this rule to the two options under the Allocation Standard would render the second option meaningless. Further, the plain language of the rule grants the Commission the authority and the discretion to allocate the value of the Expiring Credits under either option of the Allocation Standard, as determined by the Commission.

c) *The Intent of Section 54-15-104(4)(b) is to Ensure That Low-Income Customers Receive Incremental Benefits*

The Company has also argued that the Commission could leave the Export Credit value allocated to the HELP because the value of the credits must only be additive to the surcharge collected under Schedule 91, and does not need to serve additional Utahns.²³ The Company contends “that the revenues from the value of the Expiring Excess Credits supplement the Low Income Fund, rather than offset it [which] is different from saying that the additional revenues from the value of the Expiring Excess Credits must add incremental benefits for low income customers.”²⁴ However, ensuring that low-income customers receive incremental benefits is precisely why the legislature included the second option under (4)(b)—to provide the Commission the authority and discretion necessary to ensure that the Credits benefit additional low-income Utahns when the utility’s low-income programs cannot. The Commission has previously noted this distinction in Docket 14-035-116, clarifying that the “value of expiring credits is to be additional (rather than offsetting) to revenue collected under Schedule 91.” UCE’s interpretation and understanding is that the Commission intended to ensure the value of the Credits add to an existing program’s service capacity, rather than merely increase the

²³ Docket 18-035-39, Rocky Mountain Power’s Initial Comments filed on November 8, 2018, page 5.

²⁴ *Id.* at page 6.

available budget of a program. The point of adding funding to any program is to increase or to improve the quality of the services rendered by the program. Since the HELP program is not currently utilizing the Credits for either of these purposes, it is no longer an appropriate recipient of the Credits.

As noted above, the Company acknowledged that the Credits are currently benefitting all customers, not specifically low-income customers.²⁵ The Allocation Standard requires the Credits to go to the “Low Income Assistance Programs” to benefit low-income Utahns specifically. The Commission should, therefore, reallocate the Credits to a program that is tailored to, and actually does provide additional benefits to low-income Utahns specifically. For all of the reasons stated above, UCE recommends that the Commission reallocate the Expired Credits away from the HELP.

d) *The Commission is Not Restricted from Allocating the Expired Credits to a Program That Provides Efficiency and Savings Related to Natural Gas*

The Company also argues that even if the Commission may utilize its discretion under the second option articulated in the Allocation Standard, it may not allocate the Expired Credits to benefit natural gas efficiency and savings. UCE disagrees because there is nothing in the language of the statute that expressly limits the Expired Credits to electricity programs. Quite the opposite. The plain language of the Allocation Standard states that the value may be applied to the utility’s “low-income assistance programs” or “for another use as determined by the governing authority.” This is the only language addressing how the Commission may allocate the credits in the Utah Code. As discussed above, when the plain language of the statute is

²⁵ Docket 18-035-28, Rocky Mountain Power Initial Comments filed on August 16, 2018, page 5.

unambiguous, there is no need to look beyond that clear meaning. The legislature’s use of the words “for another use” in the second option without specifying that the “use” must relate to electricity is a clear indication that the legislature intended to grant the Commission broad discretion in its authority to allocate the Credits. The Utah Code Section 54-4-1 states “[t]he 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.” The Commission has the statutory authority to regulate the business of all applicable utilities, gas and electric, and is specifically granted the authority under the Net Metering Statute to allocate the Expired Credits “for another use as determined by the [Commission].” There is no need to look beyond the plain language of the Allocation Standard to conclude that the Commission has the authority to allocate the Credits to a program that provides electric and natural gas efficiency and savings.

The Company additionally argues that the Low-income Assistance Program found at 54-7-13.6 of the Utah Code (“Low Income Assistance Statute”) restricts the Commission’s authority to allocate the Expired Credits to non-electric related programs.²⁶ This argument falls short of the plain language test as well because the language in the Low Income Assistance Statute, which applies to gas and electric customers alike, does not reference the allocation of the Credits at all.²⁷ Nor does the Net Metering Statute say that the Low Income Assistance Statute has any bearing on which program the Commission may allocate the Credits to.²⁸ The two statutes simply do not attempt to regulate the same issues. As discussed above, *Pugh* states that

²⁶ Docket 18-035-39, Rocky Mountain Power’s Initial Comments filed on November 8, 2018, pages 4-5.

²⁷ Utah Code Section 54-7-13.6.

²⁸ Utah Code Section 54-15-104.

independent statutes do not govern one another, and the principal of favoring specificity over generality only governs when competing statutory standards are applied to the same circumstances. In this case, the Low Income Assistance Statute and the Allocation Standard in the Net Metering Statute are two independent statutes that do not demand conflicting outcomes from the same circumstances. The Low Income Assistance Statute does not impact how the Commission may allocate the Expired Credits.

Conclusion

The Net Metering Statute conveys broad discretion and authority to the Commission to determine a use for the Expired Credits. The Allocation Standard allows the Commission to allocate the credits to the utility's low-income assistance programs, or to another use that the Commission determines appropriate. Both options must remain available to the Commission at its discretion, otherwise the unavailable option would be rendered meaningless, violating a basic principle of statutory interpretation. The plain language of the Allocation Standard and the lack of any competing statutory standards support the conclusion that the Commission has the authority to allocate the Credits to programs that provide electricity and natural gas efficiencies and savings. UCE recommends that the Commission utilize its authority and discretion to reallocate the Expired Credits to the WAP, which is well-suited to provide incremental services to low-income Utahns.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

Docket No. 18-035-39

I hereby certify that a true and correct copy of the foregoing was served by email this 27th day of November, 2018, on the following:

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