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Investigation Re: Expiring Excess Generation  
Credits under Schedule 135

DOCKET NO. 18-035-39

ORDER

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ISSUED: January 11, 2019

**BACKGROUND AND PROCEDURAL HISTORY**

Prior to 2014, Utah Code Ann. 54-15-104(3)(a)(ii) required that “all credits that [a net metering] customer does not use during the annualized billing period expire at the end of the annualized billing period.” In 2014 the Utah Legislature passed Senate Bill 208, Public Utility Modifications, enacting Utah Code Ann. § 54-15-104(4) as follows:

- (4) 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 commission; or
  - (b) for another use as determined by the commission.

In accordance with this new statutory requirement, in September 2014 the Public Service Commission of Utah (PSC) opened Docket No. 14-035-116, *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)*, to provide parties the opportunity to recommend the disposition of the expiring credits. On October 30, 2014, the PSC issued an Order (October Order) requiring that “The avoided cost value of net metering customers’ annually expiring net

DOCKET NO. 18-035-39

- 2 -

metering credits shall be credited as additional revenue collected under PacifiCorp's<sup>1</sup> Schedule 91."<sup>2</sup>

Pursuant to applicable law and the PSC's October Order, PacifiCorp currently applies the avoided cost value of unused excess generation credits (Excess Credits) accumulated under its Electric Service Schedule No. 135 - Net Metering Service (Schedule 135)<sup>3</sup> to the balancing account associated with its Electric Service Schedule No. 91 - Surcharge to Fund Low Income Residential Lifeline Program (Schedule 91) (Current Disposition Method). The revenues collected under Schedule 91 fund PacifiCorp's Lifeline Program, also referred to as the Home Electric Lifeline Program (HELP). HELP provides assistance to qualifying low-income customers under Electric Service Schedule No. 3, Low Income Lifeline Program - Residential Service Optional for Qualifying Customers (Schedule 3).<sup>4</sup> Currently there are over 20,000 customers served under Schedule 3.<sup>5</sup>

On July 2, 2018, PacifiCorp filed with the PSC in Docket No. 18-035-28<sup>6</sup> its Customer Owned Generation and Net Metering Report and Attachment A for the Period April 1, 2017 through March 31, 2018 (Report). The Report identified that Excess Credits were valued at \$159,840 at the end of the annualized billing period. In the comments filed on the Report, several

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<sup>1</sup> PacifiCorp does business in Utah as Rocky Mountain Power.

<sup>2</sup> See *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)* (Order, issued October 30, 2014); Docket No. 14-035-116.

<sup>3</sup> PacifiCorp's Net Metering Program is operated under Schedule 135.

<sup>4</sup> To receive assistance through HELP, a customer must be qualified for the Utah Home Energy Assistance (HEAT) Program administered by the Utah Department of Workforce Services.

<sup>5</sup> See *Low Income Lifeline Program Reports 2018*; Docket No. 18-035-15, Rocky Mountain Power's Quarterly Report of the Low Income Lifeline Program for the Quarter ended September 30, 2018; filed on October 25, 2018 at 8.

<sup>6</sup> See *Rocky Mountain Power's Customer Owned Generation and Net Metering Report and Attachment A for the Period April 1, 2017 through March 31, 2018*, Docket No. 18-035-28.

parties advocated for a change in the application of Excess Credits accrued under Schedule 135. While the PSC declined to modify the Current Disposition Method,<sup>7</sup> following receipt of various petitions requesting review of this decision, on October 10, 2018, the PSC issued a Notice of Intention to Open a Separate Docket to Examine Use of Expiring Excess Generation Credits.

On October 10, 2018, the PSC issued a Notice of Docket and Comment Period (Notice) opening this docket for the purpose of considering alternative uses of the Excess Credits under Schedule 135. On November 7, 2018, AARP Utah, the Catholic Diocese of Salt Lake City, the Crossroads Urban Center, the Utah Coalition of Manufactured Homeowners, and Utahns Against Hunger (AARP Utah et al.) jointly filed comments. On November 8, 2018, PacifiCorp, the Utah Division of Public Utilities (DPU), the Office of Consumer Service (OCS), and Utah Clean Energy (UCE) filed comments. On November 27, 2018, PacifiCorp, the DPU, the OCS, UCE, and Western Resource Advocates (WRA) filed reply comments. In addition, the PSC received numerous public comments on this matter.<sup>8</sup>

## **PARTIES' RECOMMENDATIONS**

### **I. Allocate Excess Credits to the Weatherization Assistance Program**

UCE and the OCS express concern that the Current Disposition Method does not provide incremental benefits or value to low-income customers. UCE claims that the HELP budget is not fully utilized on an annual basis. UCE and the OCS also point out that Electric Service Schedule No. 118 - Low Income Weatherization Program (Schedule 118) is problematic in that it

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<sup>7</sup> See *id.*, Correspondence from Gary L. Widerburg issued August 30, 2018.

<sup>8</sup> Public Comments on this matter were also received by the PSC in Docket No. 18-035-28, *Rocky Mountain Power's Customer Owned Generation and Net Metering Report and Attachment A for the Period April 1, 2017 through March 31, 2018*.

generally limits participation to qualified customers with electric space heating and/or electric water heaters and therefore only uses a small portion of its current budget.

UCE and the OCS recommend that Excess Credits should instead be directly allocated to the Weatherization Assistance Program (WAP),<sup>9</sup> administered by the Utah Department of Workforce Services (DWS), without the constraints of Schedule 118. Among other things, UCE and the OCS support this proposal for the following reasons: 1) it provides for both energy efficiency and long-term financial savings to low-income customers; 2) it is authorized by and aligned with the intent of existing statutes allowing the PSC to assign Excess Credit values to a low-income assistance program the PSC deems fit; 3) it will provide more additional benefits because the WAP is an established program that currently has a waitlist for participants and is capable of immediately utilizing the Excess Credits to serve additional low-income customers; and 4) it is consistent with net metering customers' expectations for how the Excess Credits they generate are utilized.

AARP Utah et al., WRA, and the majority of those providing public comment support the positions of UCE and the OCS. PacifiCorp recommends the PSC deny proposals to divert the value of Excess Credits to the WAP for reasons presented below.

The DPU does not provide an alternative Excess Credit allocation recommendation but concludes that the proposal to allocate Excess Credits to the WAP has merit in that it provides ongoing reductions in energy use and would ultimately lower the energy needs of low-income customers. The DPU does not oppose the allocation of Excess Credits to the WAP "provided the

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<sup>9</sup> Information on the WAP is available at <https://jobs.utah.gov/housing/scso/wap/index.html>

parties can agree how to use the funds more effectively and obtain a clear record of the use of current funds.”<sup>10</sup>

**a. Realization of Incremental Benefits**

PacifiCorp asserts the PSC has no statutory requirement to ensure that allocation of Excess Credits results in incremental benefits for low-income customers. Further, PacifiCorp claims the October Order requires that revenues from Excess Credits supplement rather than offset HELP program funds. PacifiCorp contends this is different than saying that additional revenues from Excess Credits must add incremental benefits for low-income customers.

The OCS disagrees with this interpretation, asserting that the October Order clearly states that the value of Excess Credits “should add additional benefits to the recipients of the program and not simply lessen the burden of the Schedule 91 surcharge.”<sup>11</sup> Similarly, UCE asserts that the PSC “intended to ensure the value of the [Excess Credits] add to an existing program’s service capacity, rather than merely increase the available budget of a program.”<sup>12</sup>

**b. Potential Cross-Subsidization**

PacifiCorp argues that UCE’s and the OCS’s proposal would support measures that provide benefits attributed to non-electric sources, like natural gas. PacifiCorp asserts this is an inappropriate use of Excess Credits that results in a potential cross-subsidy and contends that funding for weatherization measures that are not targeted at reducing electricity consumption

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<sup>10</sup> DPU Comments at 4, filed November 8, 2018.

<sup>11</sup> OCS Reply Comments at 10, filed November 27, 2018.

<sup>12</sup> UCE Reply Comments at 10-11, filed November 27, 2018.

should come from other privately-funded or taxpayer-funded programs or natural gas customers, not electric customers.

The OCS and UCE argue that Utah Code Ann. § 54-15-104(4) grants the PSC the authority to allocate Excess Credits to programs that reduce both electricity and natural gas consumption. The OCS asserts that because most households use both electricity and natural gas, there will usually be savings for both services associated with weatherization.

The OCS asserts that the Excess Credits did not originate from rates paid by PacifiCorp customers, and therefore no rates are being cross-subsidized.<sup>13</sup> UCE supports that position.<sup>14</sup> The DPU “generally believes that funds arising from electric customer activity should primarily offset electrical utility bills” and that a given “utility’s customers should not pay for benefits accruing largely to another utility and its customers.”<sup>15</sup>

**c. Concerns about the Effectiveness of Expanding Weatherization Programs**

PacifiCorp asserts that the funding amount requested by the WAP each year for weatherization services pursuant to Schedule 118 is significantly less than the \$225,000 it budgets for these services. PacifiCorp states this is because weatherization services eligible for funding under Schedule 118 are limited to those residences 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. PacifiCorp claims that most of the homes served by weatherization

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<sup>13</sup> OCS Reply Comments at 11, filed November 27, 2018.

<sup>14</sup> OCS Reply Comments at 11, filed November 27, 2018.

<sup>15</sup> DPU Reply Comments at 4, filed November 27, 2018.

agencies under Schedule 118 are heated with natural gas, and/or have natural gas water heaters thereby limiting the eligible weatherization measures offered by the WAP.

The DPU states that if the PSC adopts the proposal to use Excess Credits to fund the WAP, the PSC should clarify whether, and to what extent, Schedule 118 applies.

## **II. Allocate Excess Credits to the Lend-A-Hand Program**

PacifiCorp recommends the PSC deny proposals to divert the value of Excess Credits to the WAP and instead adopt its proposal to use Excess Credits to fund the Lend-A-Hand Program (LAH Program), a non-profit program administered by The Salvation Army to provide bill payment assistance to households in need. PacifiCorp asserts this alternative will provide immediate, direct, and incremental benefits to low-income customers.

The DPU concludes that PacifiCorp's proposal to use Excess Credits to fund the LAH Program has merit and is in the public interest, particularly since funds arising from the activities of electric customer generation are being used for the benefit of low-income electric customers. However, the DPU expresses concern that PacifiCorp's proposal does not necessarily reduce long-term energy consumption by low-income customers.

WRA does not oppose granting the expired excess credits to the LAH Program, but disputes PacifiCorp's rationale for supporting it over the WAP. UCE, the OCS, and WRA prefer allocating Excess Credits to the WAP because this approach provides long-term benefits through increased energy efficiency.

## **III. Leave Treatment of Credits Unchanged**

If the PSC does not elect to divert the Excess Credits to the LAH Program, PacifiCorp recommends the PSC should leave the treatment of the Excess Credits unchanged. PacifiCorp

maintains the funds provide benefits to customers and that the statute does not require the showing of incremental benefits.

### **DISCUSSION, FINDINGS, AND CONCLUSIONS**

We conclude that Utah Code Ann. § 54-15-104(4) does not mandate that Excess Credits provide incremental benefit for low-income customers, but the statutory language “as determined by the commission” permits us to consider the policy value of incremental benefits. We further conclude that allocating Excess Credits for “some other use” other than electricity usage by PacifiCorp’s customers does not constitute an impermissible cross-subsidy, but does constitute a policy issue we should consider. We conclude that Utah Code Ann. § 54-15-104(4)(b) provides us broad discretion to grant Excess Credits for a use we determine to be appropriate.

We find merit in the concept of using Excess Credits to fund energy-efficiency measures that achieve ongoing cost savings for low-income customers, but we find too many uncertainties in the current proposal to adopt it. Specifically, we find the proposed program description requested by the OCS and prepared by the WAP (WAP Proposal) lacks: 1) estimates of how many WAP participants will potentially be helped and how long it would take to expend the Excess Credits funding; and 2) descriptions of proposed measures to be installed by the WAP that are currently not eligible for rebate under PacifiCorp’s Schedule 118.

We also note that Dominion Energy Utah’s Energy Efficiency Report for the Quarter Ended December 31, 2017<sup>16</sup> identifies that for the Low Income Efficiency Program, the budgets for all measures other than furnace replacements, air sealing, and wall insulation measures, were

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<sup>16</sup> See *Dominion Energy Utah’s Energy Efficiency Reports, 2018*, Docket No. 18-057-02 (Dominion Energy Utah March 15, 2019 Filing).

underspent. Similarly, other than wall insulation, actual participants for all other measures were less than estimated participants. Based on these uncertainties and the current unused funds in these programs, we decline to require PacifiCorp to apply the Excess Credit funds in the manner proposed by the OCS and UCE.

Regarding PacifiCorp's LAH Program proposal, we find that it would not be appropriate to approve the distribution of Excess Credits to a PacifiCorp-selected private charitable organization. There may be other worthwhile charitable organizations that could potentially distribute the Excess Credit funds in a similar manner and we are concerned about the propriety of selecting the LAH Program absent an examination of the ability of other agencies to provide the requested similar service.

For the reasons stated above, we decline to adopt either the WAP Proposal or LAH Program proposal at this time.

We find the current use of Excess Credits to continue to be reasonable but find that it can be improved with one adjustment. While our October Order required that Excess Credits be credited as *additional revenue* collected under PacifiCorp's Schedule 91, we find that it is in the public interest to ensure incremental value is being provided to low-income customers. Therefore, instead of applying the Excess Credits to the Schedule 91 balancing account, PacifiCorp shall grant a one-time credit to all Schedule 3 customers during the April 2019 billing cycle. This credit shall be based on dividing the \$159,840 value of the Excess Credits by the number of Schedule 3 customers being served. We find this method is an equitable and reasonable modification of our October Order. In future years, PacifiCorp may propose different timing for the distribution of Excess Credits.

**ORDER**

Pursuant to our discussion, findings, and conclusions:

1. PacifiCorp shall provide a one-time disbursement of the current \$159,840 Excess Credit balance, allocated to each PacifiCorp customer qualifying for HELP based on the number of customers currently receiving service on Electric Service Schedule No. 3 during the April 2019 billing cycle;
2. PacifiCorp shall report on the number of customers and the amount of the one-time distribution no later than 30 days following the end of the April 2019 billing cycle;
3. PacifiCorp shall file any necessary tariff changes to effectuate this order.

DATED at Salt Lake City, Utah, January 11, 2019.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg

PSC Secretary

DW#306196

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this written order by filing a request for review or rehearing with the PSC within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the PSC fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the PSC'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. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on January 11, 2019, a true and correct copy of the foregoing was delivered upon the following as indicated below:

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DOCKET NO. 18-035-39

- 13 -

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