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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Rocky Mountain Power for Authority to Increase its Retail Electric Utility Service Rates in Utah and for Approval of Its Proposed Electric Service Schedules and Electric Service Regulations.	Docket No. 20-035-04

POST-HEARING BRIEF OF THE UTAH ASSOCIATION OF ENERGY USERS

Pursuant to the November 12, 2020 Amended Scheduling Order and Notice of Electronic Hearing issued by the Public Service Commission ("Commission") in this docket, the Utah Association of Energy Users ("UAE") hereby files its Post-Hearing Brief addressing the application and recommendations of Rocky Mountain Power ("RMP" or "Company") the Division of Public Utilities ("DPU"), the Office of Consumer Services ("OCS") and others. In Section I below, UAE addresses certain of its recommendations regarding revenue requirement. UAE's revenue requirement recommendations are set forth in full in the pre-filed testimony of Kevin C. Higgins both in this docket and in Docket No. 18-035-36. In Section II below, UAE addresses certain of its recommendations regarding cost of service and rate design. UAE's cost of service and rate design recommendations are set forth in full in the pre-filed testimony of Justin Bieber.

I. REVENUE REQUIREMENT[1]

A. Separate Test Period for Portions of Pryor Mountain and TB Flats II

RMP's request to use a separate test period to calculate the rate base for the delayed portions of the Pryor Mountain and TB Flats II wind projects is inconsistent with Utah law and Commission rules and should be denied. When using a test period to set rates, the Commission "shall select *a test period that*, on the basis of the evidence, the commission finds *best reflects the conditions that a public utility will encounter* during the period when the rates determined by the commission will be in effect."[2] The Commission may use "a future test period that is determined on the basis of projected data *not exceeding 20 months from the date a proposed rate increase or decrease is filed with the commission*."[3]

In this docket, the Commission approved RMP's request for a test period ending December 31, 2021, using a 13-month average rate base.[4] RMP was thus permitted to file "an application, *using as the test period for the case the test period previously approved* by the Commission."[5] In its application, RMP filed forecasted revenue requirement, cost of service, and other information for the approved test period as required by Utah Admin. Code R746-700-22.B.–D. RMP also filed additional power cost information for to the approved test period as required by R746-700-23.

After submitting its application for a rate increase based on the Commission-approved test period, RMP learned of delays to portions of the TB Flats II and Pryor Mountain wind projects

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[1] UAE's revenue requirement recommendations are set forth in full in the testimony of Kevin C. Higgins. A summary of those recommendations is set forth in lines 18-120 of Mr. Higgins' surrebuttal testimony. UAE supports each of those recommendations but addresses only certain of them in this brief.
[2] Utah Code § 54-4-4(3)(a) (emphasis added).
[3] Utah Code § 54-4-4(3)(b) (emphasis added).
[4] *See* Order Approving Test Period (Mar. 6, 2020), at 4 ("We approve RMP's request to use a test period of twelve months ending December 31, 2021, using a 13-month average rate base.").
[5] Utah Admin. Code R746-700-10.B.2. (emphasis added).

that result in portions of those projects being placed in service in mid-2021. The approved test period will include the average rate base in service during the test period and, therefore, will not include the annualized cost for the delayed portions of these projects. While rate base for other plant that will go into service during 2021 will be calculated using the 13 month average rate base for the approved test period,[6] RMP asks this Commission to use a separate test period—the 12 months ending June 30, 2022—for the delayed portions of TB Flats II and Pryor Mountain.[7]

Utah law bars this Commission from using a separate test period for isolated investments for several reasons. First, adoption of the separate test period would violate Utah Code § 54-4-4(3)(b) because, as RMP admits, it seeks a rate increase based on data that is more than 20 months from the date of RMP's application.[8] Second, use of a separate test period for the delayed portions of the wind projects would violate Commission Rules because RMP has failed to submit the information required by Utah Admin Code R746-700-22 and -23 for the separate test period. Third, using a separate test period for isolated investments without considering all other required revenue requirement and cost of service data for that separate test period constitutes improper single-issue ratemaking.[9] Fourth, Utah law does not permit this Commission to consider changes that occur outside of a fully-projected test period.[10]

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[6] *See* Nov. 4 Hr'g Tr. at 134:7-142:14.
[7] *See* Nov. 3 Hr'g Tr. at 39:15-42:19; Nov. 4 Hr'g Tr. at 134:7-142:14.
[8] *See* Nov. 3 Hr'g Tr. at 42:15-18.
[9] *See Utah Dept. of Bus. Reg., Div. of Pub. Utilities v. Public Serv. Commn.*, 614 P.2d 1242, 1246 (Utah 1980) (reversing Commission order based only on utility's increased wage expense since last rate case when utility "embarked on a new test year, projecting one item of expense," making it "impossible to determine whether the rates were just and reasonable without consideration of the other factors involved in making such a determination."); *Utah State Bd. of Regents v. Public Serv. Commn.*, 583 P.2d 609, 611 (1978) (reversing Commission ruling adopting prior order on rate of return without examining whether conditions still justified rate of return).
[10] *See* Utah Code § 54-4-4(3) (allowing Commission to consider certain changes outside of "a test period that is not determined exclusively on the basis of future projections.").

This Commission should, therefore, reject RMP's request to use a separate test period for the delayed portions of the TB Flats II and Pryor Mountain wind projects.

B. Pryor Mountain Cost Recovery

If the Commission allows RMP to recover its investment in the Pryor Mountain wind project, that recovery should be limited to applicable avoided cost rate at the time RMP decided to invest in the project.[11] The 240 MW Pryor Mountain project was initially developed as three separate 80 MW wind qualifying facilities ("QF") in the same location.[12] The QF developer ultimately elected to sell the development to the Company rather than to build the projects as QFs.[13] Pursuant to the Public Utilities Regulatory Policy Act of 1978 ("PURPA"),[14] electric utilities are required to purchase capacity and energy from qualifying facilities at the utility's "full avoided cost," which is defined as "the incremental cost to the electric utility of the electric energy or capacity or both which, but for the purchase from [the QF], such utility would generate itself or purchase from another source."[15] This is intended to keep customers economically indifferent to the source of a utility's energy and capacity by ensuring that the utility's cost of purchasing power from a QF does not exceed the cost the utility would incur without the purchase from the QF.

When the Company decided to invest in the Pryor Mountain project, the applicable avoided cost pricing for wind QFs in Wyoming was approximately $26.00 per MWh.[16] The Company does not dispute this fact and, as such, at the time the Company decided to invest in the Pryor Mountain

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[11] UAE's recommendation should be adopted only if the Commission determines that the Company's investment in Pryor Mountain was prudent and should not be interpreted as disagreement with the position of the DPU and the OCS that the decision to invest in the Pryor Mountain Project was not prudent.
[12] Nov. 4 Hr'g Tr. at 25:17-26:2.
[13] *Id*. at 26:3-11.
[14] 16 U.S.C. § 824 *et seq*.
[15] 18 C.F.R. § 292.101(b)(6).
[16] Phase I Direct Testimony of Kevin C. Higgins at lines 816-896.

project, the point at which its customers were "indifferent" to the source of capacity and energy was $26.00 per MWh. The Company seeks recovery of more than $26.00 per MWh from its investment in the Pryor Mountain project, demonstrating that ratepayers would have been better off if the project had been developed as a QF, rather than as a Company-owned resource. If the Company is permitted recovery of its costs for the Pryor Mountain project, its recovery should be based on the avoided cost price to ensure that customers are "indifferent" to the source of capacity and energy. The Pryor Mountain project should be treated as a merchant resource so that RMP recovers $26.00 per MWh for the first 20 years of the project and keeps all associated PTCs and REC revenues during that period.[17]

C. Retired Wind Repowering Assets[18]

In the repowering projects, RMP retired existing wind assets that would have remained in service for 20 more years and replaced them with more efficient assets that will receive production tax credits ("PTCs") for ten years and produce zero fuel cost energy for 30 years. The Commission ruled in Docket No. 17-035-39 that the accounting treatment of the retired wind assets would be determined in future dockets. UAE's three recommendations on this matter are discussed below.

1. Depreciation Over 30-year Life of Repowering Projects

UAE recommends that the remaining balance of the retired wind assets be depreciated over the 30-year lives of the repowering projects. Early retirement of the wind assets was a necessary component of the repowering projects and enabled the benefits produced thereby. The retired wind assets are, therefore, inextricably linked to the new investment in the repowered assets and should be depreciated over the 30-year life of the repowering projects.

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[17] *Id*. at lines 897-905.

[18] The repowering projects include the eleven (11) projects approved in Docket No. 17-035-39 and Leaning Juniper.

The DPU is the only party to oppose UAE's recommendation. The DPU proposes a 10-year depreciation period to match the period during which the repowering projects will generate PTCs. The DPU acknowledges that the repowering projects will yield benefits over their entire 30-year lives, but states that depreciating the retired wind assets for longer than ten years would create intergenerational inequity because only customers in years 1-10 will receive PTC benefits.[19] This explanation does not justify depreciating the retired assets over only a portion of the 30-year lives of the repowering projects. As an initial matter, the DPU's logic would justify depreciating *new* wind assets over the 10-year period during which PTCs are generated, despite the fact that customers will continue to receive benefits for an additional 20 years. Moreover, if the DPU's recommendation were adopted, customers in years 20-30—who will continue to benefit from the (near) zero marginal cost energy production from the repowering projects when they otherwise would have had to invest in new generation—would not pay the costs of the retired wind assets that enabled them to receive those benefits. The DPU acknowledges that its recommendation focuses only on the PTC benefits and does not consider the benefits to customers in years 20-30.[20] In considering the economic analysis for the repowering projects over various terms, this Commission found "that it is more appropriate to focus on results over the longer-term (i.e., 30 year) useful life of the Repowering Projects."[21] The longer-term analysis includes not only the ten years of PTCs, but also the 30 years of net power cost benefits—including large benefits in years 20-30 when the original wind assets would otherwise have gone out of service.[22]

[19] *See* Nov. 4 Hr'g Tr. at 244:23-245:7.
[20] *See id*. at 247:2-248:16.
[21] *See Voluntary Request of Rocky Mountain Power for Approval of Resource Decision to Repower Wind Facilities*, Docket 17-035-39, May 25, 2018 Report and Order at 17.
[22] *See id*. at 6-8. In pre-approving the Repowering Projects, the Commission also acknowledged potential benefits related to enhanced reliability and future sale of renewable energy credits. *See id*. at 17-19 & nn.20-21.

UAE agrees with the Commission that it is appropriate to consider the entire 30-year term in which the repowering projects will yield benefits, and its recommendation to depreciate the retired wind assets over the 30-year lives of the repowered projects matches the costs of the repowering project to the time period in which customers will realize benefits.

2. Continue Depreciation of Retired Wind Assets from Date of Retirement

UAE recommends an adjustment to the accounting for the retired wind assets that would continue to depreciate those assets from the date of retirement through the rate-effective date of this docket. RMP proposes an accounting treatment in which the retired assets are removed from rate base on the date of their retirement and depreciation is "paused" until the rate-effective date of this docket. RMP's proposal prejudices customers, who continue to pay rates that include the cost to depreciate the retired wind assets. RMP's assertion that its accounting treatment of the retired wind assets is consistent with the usual accounting treatment for retired assets is not credible. While it is true that retired assets are typically removed from rate base at the time of retirement, it is also true that retired assets are no longer used and useful and utilities are not typically permitted to continue to recover on assets that are no longer in service. The wind assets were retired with 20 years remaining on their useful lives to enable the repowering projects to proceed. UAE acknowledges these special circumstances and agrees that RMP should be permitted to recover the original cost of the investment plus a return of its investment in the assets. These same special circumstances should also result in the continued depreciation of the assets after their retirement date, and the Commission should adopt UAE's recommended adjustment that ensures this result.

3. Reduced Rate of Return on Retired Assets

While UAE agrees that RMP should be permitted a return *of* its investment in the retired wind assets, its return *on* the investment should be reduced by 200 basis points to reflect a better balance of risks between the Company and its customers. As noted above, the wind repowering projects are not typical utility investments intended to meet customer needs. Rather, they are "opportunity" investments intended to harvest expiring PTCs and are justified based on economic analyses that project uncertain benefits over a 30-year time horizon. These types of investments result in an imbalance between the customers and the Company in which the Company is guaranteed to recover its investment with a Commission-approved return on its investment while only customers are at risk if the Company's economic analysis of that investment is not ultimately born out. "[I]n determining whether a particular expense is reasonable and should be charged to ratepayers in a rate increase, the Commission must consider the effects of the expense on both ratepayers and shareholders."[23] UAE's adjustment to the Company's rate of return for these investments seeks to rebalance the risks between RMP and its customers, and should be adopted.

D. Annual Incentive Plan ("AIP")

This Commission should not include in rates any portion of the Company's annual incentive plan ("AIP") that is based on financial performance. It is appropriate to include in rates the cost of incentive compensation plans if those compensation plans are not excessive and are based on metrics for customer satisfaction, operating efficiency, and safety. It is *not* appropriate for customers to pay for any portion of incentive compensation plans that are based on financial performance. Those costs should be borne by shareholders, who are the primary beneficiaries of

[23] *US West Comms., Inc. v. Public Serv. Commn.*, 901 P.2d 270, 276 (Utah 1995).

when the Company meets those financial targets. This Commission has consistently excluded from rates those portions of utility incentive compensation plans that are based on financial performance and should do so again here.[24] The Utah Supreme Court has upheld the Commission's decision not to approve costs of an incentive compensation plan that the Commission found "was designed to increase shareholder wealth only and provided no real benefit to ratepayers," ruling that, in declining to require ratepayers to pay such costs, "the Commission properly considered the effects of the plan on both ratepayers and shareholders in concluding that the costs of the plan were unreasonable and should not be reflected in a rate increase."[25] This Commission should make the same determination in this docket and again affirm its longstanding practice of declining to include in rates the costs of RMP's AIP tied to financial goals.

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[24] *See, e.g.*, *In re Utah Power & Light Co.*, 1992 WL 465762, Docket No. 92-035-06, Jan. 8, 1992 Order ("It is the Commission's belief that incentive pay and bonuses that are ratepayer funded should be tied to performance measures that directly benefit ratepayers. The financial performance of the Company, that is, earnings per share, only indirectly benefit ratepayers."); *In re US West Comms., Inc.*, 1995 WL 798880, Docket No. 95-049-05, Nov. 27, 1995 Order ("[T]he Commission reiterates its policy that an acceptable incentive compensation plan, to be recoverable in rates, must have as its primary objective customer service goals, not financial goals."); *In the Matter of the Request of Rocky Mountain Power for Authority to Increase its Retail Electric Utility Service Rates*, Docket No. 17-035-93, Aug. 11, 2008 Report and Order on Revenue Requirement at 62 ("We conclude the elements of the incentive compensation program, for which the Company seeks recovery from ratepayers, are not related to financial goals. Therefore, we accept the Company's test period forecast for incentive pay.").
[25] *US West Comms., Inc.*, 901 P.2d at 276.

II. COST OF SERVICE & RATE DESIGN[26]

A. The OCS's Alternative ECOSS

This Commission should decline to adopt any of the OCS's proposed adjustments to RMP's embedded cost of service study ("ECOSS") and OCS's "alternative" ECOSS should not be used to inform rate spread. Through its witness, Ron Nelson, the OCS proposed three changes to the cost allocation methodology in RMP's ECOSS, each of which is discussed below.

1. Classification of Fixed Generation and Transmission Demand Costs

UAE supports RMP's classification of fixed generation and transmission costs as 75% demand-related and 25% energy-related (75/25). This Commission has previously approved the 75/25 split[27] and has directed that parties proposing alternative classifications must provide in-depth analysis as well as "analysis to demonstrate the proposed method is also appropriate and viable at the interjurisdictional level."[28] The OCS does not provide this required analysis in support of its proposal to classify 40% of these costs as demand-related and 60% as energy-related (40/60). Mr. Nelson states that a 40/60 split better reflects the nature of the Company's system over the next decade,[29] but he performed no quantitative analysis of the Company's system to reach that conclusion.[30] The OCS's proposed 40/60 split is nothing more than a thought experiment designed to reduce the burden on rate classes with high demand during peak hours. The Commission should reject OCS's proposal and reaffirm its approval of the 75/25 split.

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[26] UAE's cost of service and rate design recommendations are set forth in full in the testimony of Justin Bieber. A summary of those recommendations is set forth in lines 17-73 of Mr. Bieber's surrebuttal testimony. UAE supports each of those recommendations but addresses only certain of them in this brief.
[27] *See, e.g.*, Docket No. 09-035-23, Rocky Mountain Power 2009 General Rate Case, Phase I Order on Revenue Requirement and Cost of Service, February 18, 2010, ("2009 Phase I Order") at 122.
[28] *Id*. at 123.
[29] *See* Nov. 17 Hr'g Tr. at 167:18-169:7.
[30] *See id*. at 168:3-7, 169:3-7; *see also* UAE Exhibit COS 4.1 (response to UAE data request 1.2).

2. Sub-Functionalization of Distribution Plant Costs

UAE supports RMP's sub-functionalization of distribution plant costs in FERC Accounts 364-368, including its adjustment to FERC Account 364.[31] RMP explained the process by which it allocated costs to either primary or secondary voltage in these accounts,[32] and asserted that its method has been in use for many years.[33] Mr. Nelson claims that RMP failed to adequately explain its allocation method and, instead of offering an alternative analysis of the Company's distribution plant, simply took the end result of RMP's allocation and increased the costs allocated to primary voltage by 10 percent in FERC Accounts 365-367.[34] Mr. Nelson did not apply any methodology to reach his conclusions, could not explain why a 10% increase to primary voltage was more appropriate than a 10% decrease, and could not explain why it would be appropriate to start with RMP's conclusions (which he says are unsupported) and arbitrarily shift costs from one category to another.[35] This Commission should approve RMP's allocation of distribution costs between primary and secondary voltage because it is supported by the record. The OCS's proposed adjustment is unsupported and should be rejected.

3. Functionalization of AMI Metering Costs

UAE supports RMP's method of functionalizing advanced metering infrastructure ("AMI") costs as customer-related distribution costs because it appropriately applies cost causation principles. The OCS proposes to shift portions of AMI costs to generation and transmission, asserting that AMI technology can "act as a substitute for production and transmission

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[31] *See* Phase II Rebuttal Testimony of Robert Meredith at lines 296-304; *see also* Nov. 17 Hr'g Tr. at 53:23-55:14.
[32] *See id*. at lines 284-295; Nov. 17 Hr'g Tr. at 50:4-51:1.
[33] *See id*. at lines 279-283; Nov. 17 Hr'g Tr. at 51:25-53:6.
[34] *See* Nov. 17 Hr'g Tr. at 166:19-25.
[35] *Id*. at 166:19-167:17.

investments."[36] This proposal abandons the cost causation principle in favor of a beneficiary pays principle that inappropriately attempts to hypothesize an amount of avoided costs and then allocate actual costs to parties in a manner that is not actually aligned with the projected benefits. RMP's functionalization should be adopted and the OCS's proposed alternative should be rejected.

B. Rate Spread

UAE supports RMP's proposed rate spread, which reflects the results of the cost of service study while employing gradualism to balance the impact of rate increases across rate classes. Given RMP's cost of service results, the proposed revenue allocation among customer classes is reasonable. The proposed rate spread makes gradual movement towards aligning rates with cost, while at the same time mitigating the impacts to the more heavily subsidized customer classes, such as the Residential class. As such, UAE recommends that the Commission adopt RMP's proposed rate spread methodology to recover the final approved revenue requirement.

C. Schedule 32 Rate Design

This Commission should adopt UAE's recommendation[37] to set Schedule 32 delivery charges equal to delivery charges for full requirements customers. All parties agree that the total of the Schedule 32 delivery facilities charges and daily power charges should add up to the total facilities and power charges that full requirements customers would otherwise pay.[38] As set forth below, 1) UAE's proposal is consistent with prior Commission rulings; 2) RMP's proposal is not supported by the cost of service study; 3) RMP's proposal discriminates against Schedule 32 customers; and 4) alternative proposals would avoid discrimination.

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[36] *See* Phase II Direct Testimony of Ron Nelson at lines 837-853.
[37] UAE's recommendation is also supported by the University of Utah, which will file a separate brief on this matter.
[38] *See* Phase II Rebuttal Testimony of Robert Meredith at line 1009.

1. UAE's Proposal is Consistent with Prior Commission Rulings

UAE's proposal is consistent with this Commission's ruling in Docket No. 14-035-T02. In that docket, the Commission agreed with UAE "that under PacifiCorp's proposal, Schedule 32 Contract Customers would pay a different effective rate for delivery services than their full service counterparts who pay bundled rates."[39] As such, the Commission adopted UAE's proposal, which set the delivery facilities charge based on a calculation that would "functionally unbundle the rates" for full requirements customers to determine the amount of those customers' rates devoted to the delivery charge.[40] That calculation is unnecessary here because RMP has proposed unbundled rates,[41] and the Commission can simply set the Schedule 32 delivery facilities charge at the unbundled facilities charge for full requirements customers as proposed by UAE.

RMP again proposes to charge Schedule 32 customers a different effective rate for delivery services than their full service counterparts. This Commission should again reject RMP's proposal and adopt UAE's proposal, which ensures that Schedule 32 customers pay the same effective rate for delivery service as their full service counterparts.

2. RMP's Proposal is Not Supported by a Cost of Service Study

RMP has not demonstrated that its proposal to increase Schedule 32 delivery facilities charges for transmission voltage customers by 30%[42] is based on the cost to serve because RMP did not include Schedule 32 in its cost of service study. RMP had insufficient data to perform a cost of service study for Schedule 32.[43] Further, RMP fails to buttress its lack of evidence for its

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[39] *Id*. at 28.
[40] *Id.* at 26.
[41] *See* Phase I Direct Testimony of Robert Meredith at lines 361-364.
[42] RMP's proposal would increase the transmission voltage delivery facilities charge from $3.85 per kW to $5.01 per kW. ($5.01-$3.85) / $3.85 = 30.1%.
[43] *See* Phase II Rebuttal Testimony of Robert Meredith at lines 1067-1077.

Schedule 32 rate design proposal. First, in rebuttal testimony RMP calculated a ratio of Schedule 32 delivery charges to all demand charges in the full requirements rate schedules. This ratio is an arbitrary and fabricated concept not relevant to the design of any rate schedule and intended solely to obscure the fact that RMP's proposal would drastically increase Schedule 32 delivery charges.

Subsequently, at the hearing RMP pointed to its November 12, 2020 errata pricing model, RMP Exh RMM 1SR, to assert that Schedule 9 power charges include some delivery costs and that a Schedule 32 customer that could somehow avoid daily power charges would underpay delivery costs. RMP filed versions of the pricing model with its direct and rebuttal testimony, but the November 12 errata is the *only* version that shows any delivery costs in the Schedule 9 power charges.[44] This same errata exhibit also shows delivery costs in the proposed Schedule 32 power charges. This is because the errata includes new types of costs in "delivery costs" that were not included in previous versions of the pricing model.[45] RMP's inclusion of new types of "delivery costs" in an errata exhibit filed after discovery and just before the hearing is not a substitute for a Schedule 32 cost of service study. Rather, it results in the inclusion of "delivery costs" in power charges—a contradiction in terms—and shows misalignment between RMP's proposed rates and the cost of service for both the full requirements rate schedules *and* Schedule 32. RMP has simply failed to produce evidence sufficient to justify its proposed Schedule 32 rate design.

Finally, RMP has failed to show that Schedule 32 customers could sufficiently avoid daily demand charges to justify its concerns about UAE's proposal. Given the intermittent nature of

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[44] *Compare* cell UT Pricing Model GRC 2020, "Blocking" tab (cell K1481-82) *with* UT Pricing Model GRC 2020 - Rebuttal, "Blocking-Step2" tab (cell K1481-82) *with* RMP Exh RMM 1SR "Blocking-Step2 tab (cell K1481-82). *See also* Exhibit RMP___(RMM-5) p.14; Exhibit RMP___(RMM-6R) p.34; Exhibit RMP___(RMM-1SR) p.11; errata RMP Exh RMM 1SR "Blocking-Step2 tab (cell K1481-82).

[45] *Compare* UT Pricing Model GRC 2020, "Blocking" tab (cell AA1495) *with* UT Pricing Model GRC 2020 - Rebuttal, "Blocking-Step2" tab (cell AA1495) *with* RMP Exh RMM 1SR "Blocking-Step2 tab (cell AA1495).

renewable resources and the peak periods that reach well into nighttime hours, it is unlikely that Schedule 32 customers will avoid power charges on most days. Moreover, the slow adoption of Schedule 32 and the 300 MW cap on the program[46] should ease concerns about cost-shifting.

The Commission should not re-engineer Schedule 32 as RMP proposes without cost of service data to justify the change. RMP's proposal is without support and should be rejected.

3. RMP's Proposal Discriminates Against Schedule 32 Customers

UAE's proposal to align Schedule 32 facilities charges with facilities charges for full requirement rate schedules is consistent with RMP's treatment of full-and partial-requirements customers and avoids discrimination. "It is axiomatic in rate making that utilities are barred from treating persons similarly situated in a dissimilar fashion. Reasonable classifications between consumers can be made, but there must be adequate findings of fact, supported by evidence, which demonstrate a rational basis for the classification."[47]

RMP's proposed rate design for Schedules 8 and 9 increases the facilities charge by the average percentage price change approved for those rate schedules, with a larger increase to power charges.[48] For Schedule 6, RMP proposes an equal percentage change to all billing elements.[49] RMP's proposal to increase Schedule 6/8/9 facilities charges by each schedule's average percentage increase while increasing Schedule 32 facilities charges by a much larger percentage—as much as 30% for transmission voltage customers—is without evidence and is discriminatory.

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[46] *See* Utah Code § 54-17-802(7) (limiting total amount of electricity subject Schedule 32 to 300 MW at any time).
[47] *See Mt. States Leg. Found. v. Utah Pub. Serv. Commn.*, 636 P.2d 1047, 1052 (Utah 1981) (citations omitted).
[48] *See* Phase II Direct Testimony of Robert Meredith at lines 688-703.
[49] *See* Phase II Rebuttal Testimony of Robert Meredith at lines 767-768. *But see e*rrata RMP Exh RMM 1SR, Tab "Blocking-Step2" at p.7 (Schedule No. 6 Composite) (decreasing facilities charges and increasing power charges).

RMP's proposal also discriminates against Schedule 32 customers as compared to other partial requirements customers. RMP states that it "proposes to set partial requirements rates at levels where proposed prices are set to recover the same increase in revenue as full requirements customers by different price component."[50] While that statement accurately reflects RMP's rate design for Schedule 31, it is not true for Schedule 32. RMP proposes to increase Schedule 31 facilities charges by the same average percentage price change for the full requirements rate schedules.[51] For Schedule 32, which has daily power charges like Schedule 31, RMP proposes a large increase to facilities charges and to reduce power charges. RMP fails to justify its disparate treatment of Schedules 31 and 32 and its Schedule 32 proposal is discriminatory.

RMP argues that its treatment of Schedule 32 is justified because Schedule 32 customers have the ability to offset daily power charges by acquiring sufficient renewable energy from the offsite facility. Schedule 31 customers *also* have the ability to offset daily power charges (from an onsite facility), but RMP does not propose to base Schedule 31 facilities charges solely on the transmission and distribution costs identified in the cost of service study results for full requirements customers. In fact, Schedule 32 customers already pay higher facilities charges than Schedule 31 customers, and RMP's proposals would make this discrepancy worse.[52] This Commission has previously expressed a desire to "avoid the potential for disparate treatment among [Schedule 31 and 32] customers who place a similar level of partial requirements on the

[50] Phase II Direct Testimony of Robert Meredith at lines 927-929.
[51] *See* Errata RMP Exh RMM 1SR, Tab "Blocking-Step2" at Page 19-20 (Schedule No. 31).
[52] *Compare* Errata RMP Exh RMM 1SR, Tab "Blocking-Step2" at Page 19-20 (Schedule No. 31) *with* Pages 21-22 (Schedule No. 32).

utility and may only be distinguishable by the side of the meter from which their renewable resource serves them."[53] RMP's proposal results in disparate treatment and should be rejected.

4. Alternatives are Available that Avoid Discrimination

In rebuttal testimony, RMP suggested an alternative Schedule 32 rate design if the Commission were to decline to adopt either of the proposals put forward by RMP or UAE. UAE believed RMP's alternative proposal was to treat Schedule 32 as it treats Schedule 31—to maintain the current composition of demand charges by increasing the Schedule 32 facilities charge by the same percentage as the increase to the facilities charge for the corresponding full requirements rate. At hearing, RMP asserted that this was not its alternative proposal and UAE withdrew its position that RMP's alternative would not exacerbate the misalignment between the effective delivery rates for Schedule 32 and the corresponding full requirements rates. UAE notes that the alternative that it believed RMP had proposed—which would maintain the status quo for the Schedule 32 rate design by increasing the Schedule 32 delivery facilities charge consistent with the percentage change to the facilities charges for full requirements rate schedules—would help mitigate the concerns addressed herein. If the Commission is concerned that there is a lack of sufficient data to justify the positions of any of the parties, it could maintain the status quo of Schedule 32 until more data can be collected and analyzed in a future rate case.

DATED this 30th day of November, 2020.

Respectfully submitted,

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[53] Schedule 32 Order at 33.

Certificate of Service
Docket No. 20-035-34

I hereby certify that a true and correct copy of the foregoing was served by email this 30th day of November, 2020 on the following:

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