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UTAH DEPARTMENT OF COMMERCE

Division of Public Utilities

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Comments

To: Public Service Commission of Utah

From: Utah Division of Public Utilities

Chris Parker, Director
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Date: August 19, 2022

Re: **Docket No. 22-035-35**, UCARE's Request for Agency Action to Reform the Integrated Resource Plan Guidelines.

Recommendation (No Approval)

On June 30, 2022, Utah Citizens Advocating Renewable Energy ("UCARE") filed a "Request for agency action to reform IRP guidelines" ("UCARE Request") with the Public Service Commission of Utah ("Commission").¹ The UCARE Request asked the Commission to open a proceeding so that the IRP guidelines could be reviewed and revised.²

Following a scheduling conference, the Commission asked parties to provide comments on "whether the PSC should reconsider the existing Guidelines that govern acknowledgment of Rocky Mountain Power's integrated resource plans".³

¹ On July 18, 2022, UCARE filed its "Amended Request for Agency Action," which is discussed below.

² UCARE's Request for Agency Action to Reform IRP Guidelines, Docket No. 22-035-35, filed June 30, 2022.

The IRP guidelines in question are those laid out by the Commission in its 1992 order establishing "Standards and Guidelines for Integrated Resource Planning for PacifiCorp, Utah Jurisdiction." See *In the Matter of Analysis of an Integrated Resource Plan for PacifiCorp*, Docket No. 90-2035-01, Report and Order on Standards and Guidelines issued June 18, 1992 ("IRP Guidelines").

³ Scheduling Order, Docket No. 22-035-35, issued July 15, 2022, p. 1.

The Division recommends that the Commission deny the request, and below discusses several reasons why the review of the IRP Guidelines should not proceed. The primary reasons for the Division's recommendation are:

- (1) The Commission's IRP Guidelines and the IRP process already allow for consideration and valuation of externalities in various ways, including sensitivities, and going further (absent a legislative directive) is not called for. The Utah legislature has not given policy guidance on the subject of externalities.
- (2) The Division believes it is infeasible to open an investigation into one specific IRP Guideline without a review of other IRP Guidelines. The Division expects it would be an onerous and lengthy process, taking anywhere from eight months to over a year, and would involve multiple parties.

Issue and Background

The Commission created Docket No. 22-035-35 to address UCARE's Request and held a scheduling conference on Monday, July 11, 2022. At the scheduling conference, parties agreed to prepare comments on the threshold issue of whether the Commission should reconsider the existing IRP Guidelines. The initial UCARE Request focused on Guideline 4(k), but also mentioned other Guidelines which had been discussed in the most recent IRP order.⁴

UCARE filed an "Amended Request for Agency Action" (the "UCARE Amended Request") on July 18, 2022. The UCARE Amended Request stated that "it is UCARE's desire and intent to focus exclusively on IRP Guideline 4(k) in the context of Docket 22-035-35...."⁵ The UCARE Amended Request specified some items it is hoping to have addressed in the docket, including: identification of externalities, a presentation regarding data that quantifies the cost of externalities, and how Guideline 4(k) might be revised. UCARE hopes to have at least one technical conference focusing on the valuation of externalities.

⁴ The UCARE Request mentioned Guidelines 3, 4(a)(i), 4(b), 4(i), and 4(k). The most recent IRP order was: *PacifiCorp's 2021 Integrated Resource Plan*, Docket No. 21-035-09, Order issued June 2, 2022 ("2021 IRP Order").

⁵ UCARE Amended Request, p. 1.

On July 22, 2022, the Utah Office of Consumer Services (“OCS”) filed an Unopposed Motion to Amend the Scheduling Order, asking the Commission to extend the date for providing comments for approximately 30 days, based on UCARE’s Amended Request. On July 26, the Commission approved OCS’s motion and issued an Order Granting Motion and Amended Scheduling Order. The Division submits these Comments in response to the Amended Scheduling Order.

Discussion

Statutory Issues

As a preliminary matter, the Division requests that UCARE clarify the statutory provision under which it wishes to proceed. In UCARE’s Request, it stated: “Please accept and approve this request for agency action to review and reform the IRP Guidelines, as per your kind offer under 21-035-09 and pursuant to 63G-4-301 and 54-7-15 of the Utah Code.”⁶

It is not clear to the Division whether UCARE is claiming this Section 63G-4-301(1)(a) applies. On its face, the section might preclude UCARE’s request, since UCARE did not “file a written request for review within 30 days after the issuance of the order” (assuming the Report and Order from Docket No. 90-2035-01 is the relevant order (the “1990 Order”)).

Similarly, the Division is unsure of the applicability of section 54-7-15 of the Utah statutes.⁷ UCARE was not a party to the 1990 docket that produced the Guidelines, and it is not clear whether UCARE is asserting that it is a “stockholder, bondholder, or other party pecuniarily interested in the public utility affected” by the 1990 Order. It is also not clear if UCARE is applying for a rehearing of the Report and Order from Docket No. 90-2035-01.

⁶ UCARE Request, p. 2. The UCARE Amended Request does not further specify the statutory provisions under which it wishes to proceed. Section 63G-4 Part 3 of the Utah Statutes is titled “Agency Review.” Section 63G-4-301(1)(a) provides: “If a statute or the agency’s rules permit parties to any adjudicative proceeding to seek review of an order by the agency or by a superior agency, the aggrieved party may file a written request for review within 30 days after the issuance of the order with the person or entity designated for that purpose by the statute or rule.”

⁷ Section 54-7-15(2)(a) provides: “After any order or decision has been made by the commission, any party to the action or proceeding, any stockholder, bondholder, or other party pecuniarily interested in the public utility affected may apply for rehearing of any matters determined in the action or proceeding.”

The Division does not claim that UCARE has no avenue by which to request a review of the Guidelines. The Division acknowledges that the Commission invited parties to initiate review of the Guidelines in the 2021 IRP Order, and even if no other avenues of review were open, the Commission could initiate a review under section 54-7-14.5(1) of the statutes:

The commission may, at any time after providing an affected utility notice and an opportunity to be heard, rescind, alter, or amend any order or decision made by the commission.

However, the Division does seek clarification from UCARE regarding its intended statutory avenue, as it could affect the procedure to be used if the review goes forward.

The Utah Administrative Rulemaking Act

Although to the Division's knowledge, the issue has never been discussed in the courts or a proceeding before the Commission, there is a possibility that the Utah Administrative Rulemaking Act (Section 63G-3-201 et seq.) would require rulemaking, rather than a "regular" docket, if the UCARE Request goes forward. The relevant statutory section provides that:

- (2) In addition to other rulemaking required by law, each agency shall make rules when agency action:
 - (a) authorizes, requires, or prohibits an action;
 - (b) provides or prohibits a material benefit;
 - (c) applies to a class of persons or another agency; and
 - (d) is explicitly or implicitly authorized by statute.⁸

The Division is unaware of any Commission discussion of how this statute might apply to, for example, the IRP Guidelines. However, the more specific and prescriptive an ultimate Commission order is regarding the cost of externalities, the more it would authorize, require, or prohibit an action and provide a material benefit—and the more section 63G-3-201(2) would indicate that rulemaking is required, rather than the process proposed by UCARE.

⁸ Utah Code Ann. § 63G-3-201(2).

Limiting the Review to Guideline 4(k) would Be Difficult

UCARE proposes to limit the IRP Guideline revision to Guideline 4(k). In the Division's opinion, this will be difficult. Guideline 4(k) implicates other guidelines. For example, if externality costs for renewables are prescribed by Guideline 4(k), then Guideline 4(b), which calls for resources to be evaluated on a consistent and comparable basis, would surely be implicated. Similarly, Guideline 4(g) might be implicated ("a description of how social concerns might affect cost effectiveness estimates of resource options"). The issue of how these externalities would be treated in other jurisdictions would likely arise.⁹

Furthermore, even if the review is contained mostly to Guideline 4(k), the Division expects trade groups, environmental organizations, and others to vigorously advocate their positions. Therefore, we expect even a "contained" review to be lengthy, and perhaps contentious. We note the time and effort put in by various parties in the net metering dockets on valuation issues (see Docket No. 17-035-61 and related dockets).

A full treatment of just Guideline 4(k) could turn into a process lasting at least six to eight months, and possibly over a year. The Division would expect that not just one, but multiple technical conferences would be required, as parties put forth their preferred methods of accounting for and valuing externalities. If natural gas production, delivery, and use are implicated in a discussion of externalities, Dominion Energy Utah ("DEU") may be affected and wish to participate. DEU and many other parties that would be involved in an IRP Guideline review are in the middle of a general rate case. Therefore, if the review of Guideline 4(k) goes forward, a lot of time would be spent on a topic that is probably best put on hold until the legislature gives some guidance. Furthermore, a wholesale review of all the Guidelines is not appropriate when one Guideline is in question, especially when the concerns over that Guideline can be addressed in the current framework.

⁹ See IRP Guidelines, p. 41: "The planning standards and guidelines must meet the needs of the Utah service area, but since coordination with other jurisdictions is important, must not ignore the rules governing the planning process already in place in other jurisdictions."

Externalities Can Be Evaluated within the Current Framework

Nothing in the current IRP Guidelines precludes the Company from incorporating the costs of externalities into various IRP scenarios and sensitivities. Guideline (4)(k) reads as follows:

(4) PacifiCorp’s future integrated resource plans will include: ... (k) A range, rather than attempts at precise quantification, of estimated external costs which may be intangible, in order to show how explicit consideration of them might affect selection of resource options. The Company will attempt to quantify the magnitude of the externalities, for example, in terms of the amount of emissions released and dollar estimates of the costs of such externalities.¹⁰

The Guideline calls for the Company to produce a “range” of “estimated external costs which may be intangible.”¹¹ The Company did this in the 2021 IRP; the Company also quantified the magnitude of externalities by considering the amount and dollar cost of the emissions.¹²

Parties to the IRP process can recommend sensitivities and scenarios, and the Company is typically responsive in including these in the modeling. UCARE can recommend sensitivities that use specific externality costs for the 2023 IRP. Revisions to the Guidelines are not needed for the Company to consider various emissions and cost scenarios.

If UCARE is looking for revisions to the Guidelines that *require* the Company to use specific cost valuations of specific externalities in the preferred portfolio, that is veering into the realm of policy, which is better left to the Utah Legislature.

Other States Have Legislative Directives in This Area; Utah Does Not

UCARE’s Request mentions the Washington Utilities and Transportation Commission (“UTC”) and claims the Washington UTC “recently charged PacifiCorp (dba Pacific Power) with failing to use the social cost of greenhouse gas emissions—an externality metric—in its

¹⁰ Report and Order on Standards and Guidelines, Docket No. 90-2035-01, June 18, 1992, pp. 44-45.

¹¹ Note that the current Guideline only says externalities “may” be intangible, not that they are.

¹² See, e.g., 2021 IRP Volume I, Figure 9.11 in the 2021 IRP (“Annual CO2 Emissions Among P02 Variant Portfolios”), p. 268; 2021 IRP Volume II, P02-HH and P02-SCGHG scenarios, pp. 183-4.

2021 resource planning.”¹³ However, the reason the Washington UTC is evaluating the IRP’s treatment of the social cost of greenhouse gas costs is that the Washington legislature passed laws on the issue. For example, a Washington statute specifies that a social cost of carbon is to be used in “resource planning, evaluation, and selection” and a specific source for the social cost of carbon is listed.¹⁴

Utah has no such statute. The issue of a specific cost to be assigned to externalities reflects public policy and is best left to the Utah Legislature. The Commission’s IRP Guidelines generally focus on procedural and structural points, rather than directing policy outcomes. Procedural and structural guidelines are much less likely to be seen as administrative rules and are much more likely to be useful for long periods of time than are guidelines directing policy outcomes.

Conclusion

The Division recommends that the Commission not approve UCARE’s proposed request for agency action to open a review of Guideline 4(k). The Commission’s Guidelines should remain process-focused. In the case of contentious policy issues with potentially large and wide-ranging effects, policy direction from the Utah legislature is preferable. Furthermore, any type of IRP review would likely entail a review of other Guidelines. This would be a lengthy and onerous process, possibly taking up to eight months to well over a year, depending on which Guidelines were ultimately reviewed. A discussion of the “full range of externalities” that UCARE mentions in its Amended Request is already available to parties and can be addressed in IRP sensitivities and scenarios. To the extent UCARE is hoping that the Commission would implement a specific set of costs and benefits that *must* be

¹³ UCARE Request, p. 1.

¹⁴ See Clean Energy Transformation Act, Chapter 194-40 Washington Annotated Code, WAC 194-40-100(1) (titled “Social cost of greenhouse gas emissions”), (available at <https://app.leg.wa.gov/WAC/default.aspx?cite=194-40-100>):

(1) The social cost of greenhouse gas emissions to be included by utilities in resource planning, evaluation, and selection, in compliance with RCW 19.280.030(3), is equal to the cost per metric ton of carbon dioxide equivalent emissions, using the 2.5 percent discount rate, listed in table 2, technical support document: Technical update of the social cost of carbon for regulatory impact analysis under Executive Order No. 12866, published by the interagency working group on social cost of greenhouse gases of the United States government, August 2016, referred to in this rule as the “technical support document.”

considered (as was done in the Washington statute addressed above), a legislative directive may be required.

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