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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

Utah Citizens Advocating Renewable Energy's (UCARE) Request for Agency Action to Reform the Integrated Resource Plan Guidelines.

Docket No. 22-035-35

COMMENTS

Pursuant to Utah Code § 54-10a-30 and UTAH ADMIN. CODE r. 746-101, the Office of Consumer Services (OCS) hereby submits to the Public Service Commission of Utah (PSC) these comments on whether the PSC should proceed with Utah Citizens Advocating Renewable Energy's (UCARE) Request for Agency Action to Reform the Integrated Resource Plan (IRP) Guidelines. The OCS argues that the PSC decline to go forward with UCARE's request.

BACKGROUND

On June 30, 2022, UCARE sent an email to the PSC styled "Request for agency action to reform IRP guidelines." UCARE's request does not meet several of the technical requirements of Utah Code § 63G-4-201, governing the commencement of adjudicative proceedings.¹ Most importantly, the request did not provide a "statement of the relief or action sought from the

¹ For example, it appears that the request was not sent to all persons known to have a direct interest in the requested agency action, as required by section 63G-4-3(b), nor did it provide a statement of the legal authority and jurisdiction under which agency action is requested, as required by section 63G-4-201(3)(a)(iv). Moreover, because the request does not provide a specific statement of the relief requested, the statement could not clearly provide a "statement of the fact and reasons forming the basis for relief or agency action." Section 63G-4-3(a)(v).

agency.” Section 63G-4-201(3)(a)(5). Rather, the request stated that the IRP guidelines are “overdue for review and revision, with input from all interested stakeholders.”² While the request singles out Guideline 4(k), addressing externalities, and Guideline 4(a)(i), addressing inter-jurisdictional allocation, as outdated—it does not indicate what revisions are necessary to update these guidelines.³ Moreover, the request states: “There may be additional IRP Guidelines items other stakeholders would like to see reviewed and updated.”⁴

On July 11, 2022, the PSC held a scheduling conference and several participants raised concerns about the scope and breadth of UCARE’s requests. Some participants expressed a desire to respond to the filing to argue that the PSC should decline to proceed with the request for agency action. Therefore, the PSC ordered that it would “refrain from establishing a full adjudicative schedule or otherwise determine the scope of this proceeding until it heard first from the parties’ positions as to whether the PSC should reconsider the existing Guidelines that govern acknowledgment of Rocky Mountain Power’s integrated resource plans.”⁵ The PSC set July 29, 2022, as the due date for responses and comments to UCARE’s request for agency action and August 19, 2022, for replies and reply comments.⁶

However, on July 18, 2022, UCARE sent an email to the PSC entitled “UCARE Amended Request for Agency Action to Reform IRP Guidelines.” In the Amended Request, UCARE conceded “that a wide-ranging analysis of multiple IRP Guidelines items and associated issues could be exceedingly time and labor consumptive and could actually detract from

² UCARE’s June 30, 2022, Request for Agency Action to Reform IRP Guidelines (June 30th Request) at 1.

³ *Id.* at 1-2.

⁴ *Id.* at 2.

⁵ *Utah Citizens Advocating Renewable Energy’s Request for Agency Action to Reform the Integrated Resource Plan Guidelines*, Docket 22-035-35, Scheduling Order at 1 (Utah P.S.C., July 15, 2022).

⁶ *Id.*

UCARE’s primary focus on Guideline 4(k) and the consequential inclusion of externalities as factors in resource planning.”⁷ Accordingly, UCARE amended its request to seeking a review only of Guideline 4(k) stating that it “looks forward to opportunities within the docket to: . . . propose a revision of Guideline 4(k) that better reflects the importance of incorporating externalities into the IRP process and includes a methodology for doing so.”⁸

On July 22, 2022, the OCS filed an Unopposed Motion to Amend Scheduling Order arguing that the Amended Request for Agency Action significantly curtails the scope of the initial Request, thus substantially changing possible arguments challenging the Amended Request.⁹ Therefore, the OCS, with the agreement of all participants at the scheduling conference, requested that the time for responding to the Amended request be extended for 30 days.¹⁰ On July 26, 2022, pursuant to the OCS’s Unopposed Motion, the PSC issued an Order Granting Motion and Amended Scheduling Order, extending the date for Responses to UCARE’s Amended Request and Comments to August 19, 2022, and Replies and Reply Comments to September 9, 2022.¹¹ The OCS files these Comments in accordance with the PSC’s July 26, 2022, Order.

COMMENTS

The PSC should decline to proceed with UCARE’s Amended Request for Agency Action. *See* § 63G-4-201(3)(d)(i). The primary reason for the OCS’s position is that UCARE

⁷ UCARE’s July 18, 2022, Amended Request for Agency Action to Reform IRP Guidelines (July 18th Request) at 1.

⁸ *Id.*

⁹ OCS’s July 22, 2022, Unopposed Motion to Amend the Scheduling Order at 2.

¹⁰ *Id.* at 1-2.

¹¹ *Utah Citizens Advocating Renewable Energy’s Request for Agency Action to Reform the Integrated Resource Plan Guidelines*, Docket 22-035-35, Order Granting Motion and Amended Scheduling Order, at 2 (Utah P.S.C., July 26, 2022).

has failed to comply with section 63G-4-201(3)(a)(v) because it has not provided a “statement of the relief or action sought from the agency.” Rather than proposing specific relief from the PSC by requesting that the IRP Guidelines be amended in a particular manner, UCARE simply proposes a general topic for the PSC to evaluate: the treatment of externalities in the IRP modeling process. This approach shifts the obligation of developing a specific objective from the party proposing the agency action to the general regulatory community; thereby imposing on the PSC, state agencies and other stakeholders the responsibility to shoulder the burden of undertaking the analysis necessary to unpack the issues, discover any deficiencies and propose specific amendments to the guidelines. Both the language of section 63G-4-201 and the policy underlying the statute strongly argue against the PSC embarking on such an endeavor.

Moreover, the PSC does not need to update Guideline 4(k). The language of Guideline 4(k) is sufficiently durable and appropriate for current resource planning. Specific requirements and expressed methodologies on how to quantify externalities could constrain the approach to externalities and transform the IRP modeling process from a collaborative process to one more adjudicative in nature in contravention of the PSC’s policies underlying the IRP process.¹² For these reasons, the OCS recommends that the PSC decline to proceed with UCARE’s request for agency action.

A. Procedural Deficiencies in UCARE’s Request

The OCS is sensitive to the difficulties presented by administrative procedures to parties that do not regularly participate in PSC proceedings and believes that technical deficiencies should not act as an absolute bar to requests for agency action. Nevertheless, UCARE’s approach of proposing the PSC to grapple with such a broad, all-inclusive, and controversial

¹² See *PacifiCorp’s 2021 Integrated Resource Plan*, Docket No. 21-035-09, Order at pg. 17-18 (Utah P.S.C., June 2, 2022, Utah P.S.C.).

topic without any direction from the requesting party is more than just a technical failing.

Section 63G-4-201(3)(a)(v)'s requirement that the request state the "relief or action sought from the agency" sets the scope of the proposed proceedings and must be specific enough for the agency to make the initial determination of whether to grant, deny or order further proceedings. Section 63G-4-201(3)(d).¹³ It is therefore axiomatic that the request must be specific enough for the agency to determine the initial disposition of the request from the face of the request.

The need for specificity in formulating a request for agency action is also supported by policy considerations concerning the need for the PSC to control its dockets and the stakeholders' collective ability to control the amount of resources needed to respond to various regulatory filings. If the PSC were to accept requests for agency action to investigate wide-ranging and controversial public policy issues without the proposal of a specific resolution, this could lead to a difficult-to-manage slate of multiple large, complex and resource intensive cases. Indeed, in its July 18, 2022, Amended Request for Agency Action, UCARE admits, "that significant resources may be required to thoroughly examine and evaluate IRP Guideline 4(k)"¹⁴ For the same reasons, allowing any party to instigate expansive policy investigations into the IRP process without any specific direction would put a strain on the resources of stakeholders to respond adequately to such amorphous suggestions to investigate complex topics.

Conversely, if a party offers a specific proposal as to how a guideline may be amended rather than just to state that during the course of the investigation modifications to the guidelines should be considered and methodologies established, the PSC would be in a position to grant,

¹³ Section 63G-4-201(3) provides: "The presiding officer shall promptly review a request for agency action and shall: (i) notify the requesting party in writing that the request is granted and that the adjudicative proceeding is completed; (ii) notify the requesting party in writing that the request is denied . . . (3) notify the requesting party that further proceedings are required to determine the agency's response to the request."

¹⁴ July 18th Request at 1.

deny or order further proceedings related to the requests. *See* 63G-4-201(3)(d). Moreover, a party proposing a specific amendment would, presumably, have conducted some analysis and, in complex requests such as the instant request, developed some expert testimony into why the guideline should be amended in a specific fashion. A proposal of a specific approach would serve to focus the process and allow the PSC and stakeholders to limit their involvement to responding to the specific request instead of addressing every conceivable issue that could possibly be related to externalities in the IRP planning process.

Accordingly, both the language of section 63G-4-201 and the policies underlying the statute argue in favor of the PSC declining to go forward with UCARE’s request because of its failure to specifically state the “relief or action sought from the agency,” as required by section 63G-4-201(3)(a)(v).

B. UCARE’s Request is not Necessary or in the Public Interest

Although it is not possible to fully analyze UCARE’s request without a specific statement of the relief or action sought, the OCS notes that UCARE’s main contention that Guideline 4(k) is outdated and no longer effective is simply incorrect. One interpretation of UCARE’s requests is that they are seeking a broad study and review of Guideline 4(k). The OCS asserts that such review is neither necessary nor in the public interest.

Although the guideline dates to 1992, it is sufficiently durable and maintains its efficacy in the IRP process.¹⁵ Guideline 4(k) provides:

PacifiCorp’s future integrated resource plans will include: . . .

. . . .

A range, rather than attempts at precise quantification, of estimated external costs which may be intangible, in order to show how explicit consideration of

¹⁵ *See In the Matter of Analysis of an Integrated Resource Plan for PACIFICOP*, Docket 90-2035-01, Report and Order of Standards and Guidelines, at 39 (Utah P.S.C., June 18, 1991).

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 cost of such externalities.¹⁶

As written, this guideline is sufficient to require PacifiCorp to address the issues UCARE suggests are needed to be improved for the adequate consideration of externalities in the IRP process. UCARE contends that Guideline 4(k) is outdated, lacks specificity as to the characteristics of the externalities under consideration and does not provide a methodology for incorporating externalities into the IRP process.¹⁷ However, the general nature and scope of the present Guideline 4(k) incorporates considerations of these factors. For example, the contention that the guideline is outdated fails because the general nature of the guideline's language and the language's broad scope sufficiently encompasses considerations of advancements in technology, including best practices in IRP modeling, and the "changes in environmental and social conditions" cited by UCARE.¹⁸

As for UCARE's contention that Guideline 4(k) lacks specificity, the PSC should note that specificity does not equate to an appropriate and workable IRP guideline. An IRP guideline containing specific definitions of externalities and precise description of methodologies quantifying externalities may serve to limit what types of externalities are examined and prevent new improved methodologies from being considered. On the other hand, the general language of the existing guideline 4(k) is appropriately broad enough to incorporate changing circumstances and new information when these conditions arise. This allows for the specificity of how

¹⁶ *Id.*

¹⁷ June 30th Request at 1; July 18th Request at 1.

¹⁸ Moreover, the fact that PacifiCorp may not have adequately complied with this Guideline 4(k) does not mean that the guideline itself is insufficient.

externalities are addressed to be appropriately determined through the collaborative IRP process rather than being hardwired in Guideline 4(k).

In addition, narrowing Guideline 4(k)'s language to include specific definitions of externalities and precise methodologies to quantify externalities has the potential to transform the IRP process from a collaborative process to a more adversarial process akin to adjudication. The PSC has repeatedly stressed its intention not to micromanage the IRP process to maintain its collaborative nature.¹⁹ The PSC has also noted that flexibility in the guidelines is needed to ensure "the process identifies the best portfolio possible."²⁰ Here, the present version of Guideline 4(k) provides this flexibility *because* of the guideline's general nature and broad scope. Therefore, the limited information provided in UCARE's two requests for agency action does not support a full-blown investigation of externalities in the IRP process. Moreover, since Guideline 4(k) has proven to be durable and flexible, and an investigation of externalities would be complex and utilize significant resources, it would not be in the public interest to undertake such an investigation at this time.

CONCLUSION

The PSC should decline to go forward with UCARE's request for agency action. The request fails to comply with section 63G-4-201(3)(d)(i) because it does not contain a specific request for relief thereby shifting the burden of developing a revised Guideline 4(k) from UCARE to the PSC and general regulatory community. Moreover, UCARE failed to identify any deficiency in Guideline 4(k) that justifies the modification of the guideline. As written, the guideline's general language and scope sufficiently directs

¹⁹ *PacifiCorp's 2021 Integrated Resource Plan*, Docket No. 21-035-09, Order at 17 (Utah P.S.C., June 2, 2022).

²⁰ *Id.*

PacifiCorp to evaluate the issues identified in UCARE's requests and support the PSC's policies of encouraging collaboration and flexibility.

Respectfully submitted, August 19, 2022.

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CERTIFICATE OF SERVICE
DOCKET NO. 22-035-35

I certify that on August 19, 2022, a true and correct copy of the Utah Office of Consumer Services' Comments was filed with the Public Service Commission and served electronically via email to the following:

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