
Utah Citizens Advocating Renewable Energy’s Request for Agency Action to Reform the Integrated Resource Plan Guidelines	<u>DOCKET NO. 22-035-35</u> <u>ORDER DENYING REQUEST FOR</u> <u>AGENCY ACTION</u>
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ISSUED: November 18, 2022

1. Procedural History

On June 30, 2022, Utah Citizens Advocating Renewable Energy (UCARE) submitted an email to the Public Service Commission (PSC) with the subject line designating the message as a Request for Agency Action (“Initial Request”) in Docket No. 21-035-09 (“Most Recent IRP Docket”).¹ The PSC issued a final order in the Most Recent IRP Docket on June 2, 2022.² The PSC opened this new docket to consider the Initial Request.

The Initial Request sought a broad review of the guidelines that govern the PSC’s review of Rocky Mountain Power’s (RMP) biannual Integrated Resource Plan (IRP).³

On July 11, 2022, the PSC held a well-attended scheduling conference wherein the participants agreed the PSC should refrain from establishing a full adjudication schedule or otherwise determining the scope of this proceeding until it first heard parties’ responses to the Initial Request. Subsequently, the PSC issued a scheduling order that adopted the parties’ stipulated schedule for filing responses and replies to the Initial Request, by July 29, 2022 and August 19, 2022, respectively.⁴

¹ See *PacifiCorp’s 2021 Integrated Resource Plan*, Docket No. 21-035-09.

² Most Recent IRP Docket, Order issued June 2, 2022 (hereafter “IRP Order”).

³ In 1992, the PSC issued its order establishing “Standards and Guidelines for Integrated Resource Planning for PacifiCorp, Utah Jurisdiction.” *In the Matter of Analysis of an IRP for PacifiCorp*, Docket No. 90-2035-01, Report and Order on Standards and Guidelines issued June 18, 1992 (hereafter “Guidelines”).

⁴ Scheduling Order issued July 15, 2022.

On July 18, 2022, UCARE submitted another email to the PSC with the subject line reading “UCARE Amended Request for Agency Action” (“Amended Request”). The Amended Request observed “[other parties appeared reluctant] to undertake a broad review of the IRP guidelines” and sought to narrow UCARE’s request to reevaluation of Guideline 4(k). The Amended Request indicated UCARE would later “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.”

The Office of Consumer Services (OCS) subsequently sought an extension of time to respond to the Amended Request, which the PSC granted, ordering responses by August 19, 2022 and replies by September 9, 2022.

On August 19, 2022, the Division of Public Utilities (DPU), OCS, Sierra Club, RMP, Western Resource Advocates (WRA), and Utah Clean Energy (UCE) filed answers to the Amended Request styled as comments or responses.⁵ The PSC also received numerous emails from individuals generally providing short and succinct statements about the importance of considering externalities in resource planning.

On September 9, 2022, UCARE submitted a letter in reply (“Reply”) to these responses and comments.

⁵ WRA and UCE jointly filed their comments.

2. Regulatory and Legal Background

Title 54 requires the PSC to “engage in long-range planning regarding public utility regulatory policy in order to facilitate the well-planned development and conservation of utility resources.”⁶ Consequently, for more than three decades, the PSC has required RMP to biennially file an IRP.⁷

In 1992, the PSC approved the Guidelines that govern the PSC’s review of the IRP.⁸ The Guidelines define “integrated resource planning” as a “process which evaluates all known resources on a consistent and comparable basis” that “should result in the selection of the optimal set of resources given the expected combination of costs, risk[,] and uncertainty.”⁹ The PSC has repeatedly emphasized “[t]he IRP process is an open, public process” in which a wide variety of stakeholders participate.¹⁰ After completing this public process, RMP must submit its IRP to the PSC for “review and acknowledgement”¹¹ where stakeholders have an opportunity to “make formal comment to the [PSC] on the adequacy of the [IRP].”¹² The PSC must find the proposed IRP substantially complies with the Guidelines to acknowledge it.¹³

⁶ Utah Code Ann. § 54-1-10.

⁷ As the PSC has repeatedly observed, “[t]he PSC relies in part on PacifiCorp’s IRP process to fulfill this planning requirement” with respect to RMP’s service territory in Utah. *PacifiCorp’s 2019 Integrated Resource Plan*, Docket No. 19-035-02, Order issued May 13, 2020 at 4; *see also PacifiCorp’s 2017 Integrated Resource Plan*, Docket No. 17-035-16, Report and Order issued March 2, 2018 at 7.

⁸ *See supra* at 1, n.3.

⁹ Guidelines at 36 (Guideline 1).

¹⁰ IRP Order at 1.

¹¹ Guidelines at 39 (Guideline 5).

¹² *Id.* (Guidelines 5 and 6).

¹³ IRP Order at 2.

While UCARE's Initial Request suggested a reexamination of all the Guidelines, the Amended Request asks the PSC to conduct a narrower reevaluation. Guideline 4 identifies the items an IRP must include and contains 12 lettered subparts, some of which contain additional subparts. UCARE's Amended Request regards only Guideline 4(k), which requires an IRP 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 them might affect selection of resource options. [RMP] 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.

3. Stakeholders Unanimously Oppose UCARE's Amended Request

All of the half dozen organizations that filed responses to UCARE's Amended Request ask the PSC to deny it: DPU, OCS, RMP, WRA, UCE, and Sierra Club (collectively, "Stakeholders"). Aside from short emails received from individual residents, the PSC received no response or comment supportive of UCARE's petition.

The Stakeholders present numerous arguments in opposition, which the PSC does not attempt to fully summarize. Broadly, DPU and OCS argue various statutory and procedural deficiencies exist in UCARE's Amended Request that warrant denial as a matter of law. Additionally, skepticism exists among the Stakeholders as to whether the proceeding could reasonably be limited to reexamining one subpart of a single Guideline. DPU, for example, anticipates a much broader review of the Guidelines would be necessary and that it would entail "an onerous and lengthy process."¹⁴

¹⁴ DPU Comments at 2.

All Stakeholders, however, oppose UCARE’s request on the basis that the existing Guidelines already require consideration of externalities and provide an appropriately flexible framework for their analysis. UCE and WRA emphasize “carbon pricing and other externalized costs associated with climate change is [a] topic of ongoing discussion in the current IRP process.”¹⁵ They further note “[e]very two years ... stakeholders have an opportunity to update and improve IRP externality analysis” but “UCARE has not intervened in any previous IRP docket or filed public comments during the comment period.”¹⁶

4. Discussion, Findings, and Conclusions

- a. The PSC denies the Amended Request because the Guidelines already require consideration of externalities and the Stakeholders who will bear the cost of further proceedings in this docket unanimously oppose it.

Effectively, UCARE asks the PSC to conscript the Stakeholders into a lengthy and costly proceeding over those Stakeholders’ unanimous objection and their unanimous agreement that the existing Guidelines provide an appropriate framework to consider externalities. Significantly, these Stakeholders include renewable and environmental advocates (e.g., WRA, UCE, and Sierra Club) that regularly participate in the IRP planning process and work to ensure RMP considers the very externalities about which UCARE professes concern.

WRA and UCE oppose the Amended Request because they wish to preserve the existing flexibility to “fully and accurately evaluate” externalities, and they worry that amending Guideline 4(k) “may make it more prescriptive, less durable, less capable of accounting for new

¹⁵ WRA and UCE Comments at 7.

¹⁶ *Id.* at 7-8.

information and changed conditions, and no more accurate.”¹⁷ Sierra Club similarly argues the Guidelines already provide an appropriately flexible framework for assessing externalities and cautions this is so “precisely because [they] are not overly prescriptive.”¹⁸

RMP, DPU, and OCS all share this view and argue the existing Guideline 4(k) provides an appropriate framework to analyze externalities.

WRA and UCE observe UCARE has not participated in any prior IRP process and argue UCARE should avail itself of the existing process before seeking to rewrite it for those who do. UCARE concedes it has never participated in the IRP process and protests that “parties traditionally involved with the process, including WRA,” are staffed with competent professionals while UCARE is an all-volunteer organization that does not have capacity to “monitor and engage with the ongoing IRP process.”¹⁹

UCARE cannot be faulted for lacking the resources to participate in the IRP process and its attention to matters of public significance is commendable.

However, UCARE points to no legal authority and we are aware of none that grants UCARE the right to compel Stakeholders that do participate in that process to devote their time and resources to a lengthy and costly proceeding litigating a solution to a problem none of them believes exists. Additionally, the renewable advocates who participate in IRP planning contend such a proceeding may result in a less flexible, less adequate framework for assessing the very externalities about which UCARE professes concern.

¹⁷ WRA and UCE Comments at 5.

¹⁸ Sierra Club Comments at 3.

¹⁹ UCARE Reply at 12.

Based on the Stakeholders' unanimous comments and recommendations, we find the existing Guideline 4(k) provides an adequate and appropriate framework for addressing externalities. We further conclude UCARE has offered no legal authority requiring us to conscript the Stakeholders who participate in IRP planning into a long, expensive proceeding in which none of them wants to participate.

- b. Having denied the Amended Request, the PSC does not reach other legal issues the OCS and DPU raise.

In their respective responses, OCS and DPU raise numerous significant legal questions concerning the pleading standard under the Administrative Procedures Act (UAPA) and scope of the Utah Administrative Rulemaking Act (UARA).

Unrepresented by counsel, UCARE is not well-positioned to defend the sufficiency of its pleading against these challenges and, therefore, the circumstances are not ideal for the PSC to make broad conclusions of law regarding the applicability of UARA to amending the Guidelines or the specificity required in a request for agency action under UAPA. Because we deny UCARE's Amended Request for the reasons stated above, we decline to reach these issues.

5. Order

The Amended Request is denied.

DATED at Salt Lake City, Utah, November 18, 2022.

/s/ Michael J. Hammer
Presiding Officer

DOCKET NO. 22-035-35

- 8 -

Approved and Confirmed November 18, 2022 as the Order of the Public Service
Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#326211

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 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 30 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 November 18, 2022, a true and correct copy of the foregoing was delivered upon the following as indicated below:

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