

Application of Rocky Mountain Power for an Exemption by Appeal under Utah Admin. Code R746-210-4 and for Approval of a Temporary Master Metering Contract

DOCKET NO. 24-035-05

ORDER APPROVING EXEMPTION BY APPEAL AND TEMPORARY MASTER METERING CONTRACT

ISSUED: April 24, 2024

## I. BACKGROUND

On January 24, 2024, Rocky Mountain Power (RMP) filed an application (“Application”), along with confidential attachments,<sup>1</sup> with the Public Service Commission (PSC) seeking an exemption by appeal under Utah Admin. Code R746-210-4<sup>2</sup> (“Exemption”) and approval of a Temporary Master Meter and Multi-Family Units Contract between RMP and a customer developing multi-dwelling units (the “Developer”), dated January 11, 2024 (the “Special Contract”). The Special Contract would allow RMP to provide a temporary master metering arrangement to a customer that would temporarily provide electricity service to 72 units.

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<sup>1</sup> Confidential Attachment 1 is an informal customer complaint filed by the Developer (as defined herein) with the Division of Public Utilities (DPU), and Confidential Attachment 2 is the Special Contract (as defined herein).

<sup>2</sup> Utah Admin. Code R746-210, *et seq.* Public Utility Regulatory Policy Act (PURPA) Standards for Master-Metered Multiple Tenancy Dwellings set forth the prohibition or restriction of master metering of electric service in the case of new multi-dwelling units (“MDU”) to the extent necessary to comply with the federal Public Utility Regulatory Policy Act (“PURPA”) and lists exemptions to the prohibition, including (1) R746-210-2, which describes housing arrangements that qualify for automatic exemptions; (2) R746-210-3, which describes exemptions for situations that meet a cost-effectiveness test; and (3) R746-210-4, which describes the exemption through an appeals process. In addition, according to R746-210-5, “[t]here are no circumstances, other than exemptions, where submetering is an acceptable alternative to individual metering under the constraints of PURPA.” Hereafter, this Order refers to the standards set forth in R746-210 as the “PURPA MDU Standards.”

On February 26, 2024, the Division of Public Utilities (DPU) and the Office of Consumer Service (OCS) filed comments (“DPU Comments” and “OCS Comments,” respectively). With conditions described in detail below, both DPU and OCS recommend approval.

On March 12, 2024, RMP filed reply comments (“RMP Reply Comments”) along with a blank amended Special Contract (“Amended Special Contract”) and a draft Notice of Master Meters and Future Power Disruption Period that the landlord and each tenant are expected to sign as an addendum to any prospective lease agreement (“Notice Addendum”).

On March 18, 2024, the OCS submitted a letter indicating either it or RMP would file a revised Notice Addendum (“Revised Notice Addendum”) with a revised indemnification clause to allay OCS’s concerns. RMP filed the Revised Notice Addendum on March 19, 2024.

## **II. THE APPLICATION**

According to the Application, in May 2023, the Developer ordered individual meters to be installed in each unit of a newly constructed MDU, planning to begin leasing in February 2024. Due to supply chain disruptions, the Developer anticipates a delay of the delivery and installation of the meters until August 2024. The Developer requested an exemption from the prohibition against master metering from RMP due to the significant financial hardship it faces if it cannot provide electric service to its

tenants. RMP represents the Developer neither qualifies for an automatic exemption under R746-210-2 nor a cost-effectiveness exemption under R746-210-3.

As a potential remedy, RMP and the Developer executed the Special Contract to allow temporary master metering in a manner that also provides safeguards to the Developer's tenants until the installation of individual meters. RMP explains that the exemption would be consistent with the stated purpose of PURPA and Utah Administrative Code R746-210. Specifically, RMP recognizes PURPA's objectives of promoting equity, conservation, and efficiency and states the Special Contract will not negatively impact PURPA's goals because the terms of the Special Contract provide adequate measures to meet and promote these objectives.

RMP explains the majority of the terms are consistent with RMP's standard Multi-Family Units Contract and its Electric Service Regulation No. 12 – Line Extensions (“Regulation 12”), except for terms outlined in paragraphs 2 and 4 of Regulation 12 relating to line extensions to residential and planned developments that are not relevant here. RMP asserts the Exemption is warranted because it would prevent significant financial hardship to the Developer while also making housing and electricity available to 72 tenants earlier than August 2024.

The Application states the Special Contract: (1) provides a specific plan to discontinue master metering when the expected individual meter bases are installed on or around August 2024; (2) requires a detailed process for transitioning the tenants

to individual meters; (3) provides the Developer will install individual metering in accordance with the delivery date, while limiting any inconvenience and prioritizing landlord-tenant communication; and (4) provides the Developer will notify tenants in writing before signing a lease agreement and taking occupancy that they will be subjected to a small outage during the transition. Finally, the Special Contract imposes financial obligations on the Developer if it fails to transition to individual metering by October 1, 2024.

### **III. COMMENTS AND REPLY COMMENTS**

DPU comments that RMP provided evidence, through responses to data requests, that the Developer may incur significant revenue losses and potential loan defaults if the PSC denies the Exemption.<sup>3</sup> According to DPU, under the Special Contract, tenants would be billed under Electric Service Schedule No. 6 (“Schedule 6”) through a third-party billing service and notified of the temporary nature of their service. DPU notes the Special Contract contains a process to eventually transition tenants to billing under Electric Service Schedule No. 1, Residential Service, (“Schedule 1”) once the individual meters are installed.<sup>4</sup> DPU asserts the PURPA MDU Standards do not contemplate the facts of this case, but individual customers in this case might be harmed by a “rigid application of the [PURPA MDU Standards].”<sup>5</sup> In

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<sup>3</sup> DPU Comments at 3. *See also* Response to DPU Data Request 1.2.

<sup>4</sup> *Id.* *See also* Response to DPU Data Request 1.3.

<sup>5</sup> DPU Comments at 4.

addition, DPU reiterates RMP's representation that, consistent with PURPA's goal of promoting efficiency measures, the Developer (1) plans to install energy efficient appliances, HVAC, and lighting; and (2) will request that tenants curtail their energy use to keep costs low for themselves and their neighbors.<sup>6</sup> DPU posits that while these assurances are ultimately based on individual tenant behavior, the short duration of the proposed Exemption "should not markedly hinder efficiency efforts [under the PURPA MDU Standards], especially in the longer term."<sup>7</sup> Accordingly, DPU recommends the PSC approve the Application with the recommendation that transfer of metering service be completed by, and the Exemption expire on, September 1, 2024.

In initial comments, OCS expressed concern that the Special Contract provides insufficient ratepayer protections during the term of the temporary arrangement to adequately meet the PURPA MDU Standards. Accordingly, OCS recommends approval of the Application only if RMP compiles with certain conditions, intended to enhance tenant protections, particularly as they relate to subsection (5) of the PURPA MDU Standards.<sup>8</sup> First, OCS recommends the PSC require RMP to amend the Special Contract to: (a) include the tariff upon which the Developer's rates and charges will be

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Utah Admin. Code R746-210-5 reads, "Submetering, while giving consumers control over their energy consumption, still retains a primary objection to master metering; namely, that since customers of a master metered utility customer are not customers of a regulated public utility, the [PSC] is without authority to provide redress where appropriate, such as in cases of service or billing problems."

based during the term of the Special Contract (the “Temporary Tariff”); (b) include a detailed description of how master metered electricity charges will be equitably allocated to tenants and how tenants may file a complaint if they have issues with billing and service (“Equitable Allocation of Charges and Complaint Process”); (c) prohibit the Developer from charging an administration fee on the electricity charges allocated to tenants (“No Administration Fees”); (d) prohibit the Developer from charging tenants for any fees or penalties paid to RMP under Section 4 of the contract for failure to meet the Developer’s obligations (“No Section 4 Penalties”); (e) include a plan on how inefficient usage will be identified and addressed to ensure alignment to PURPA MDU Standards (“Inefficient Usage Tracking”); and (f) require the Developer to inform tenants, before a lease agreement is executed, about the temporary provision of electricity service under a temporary master meter arrangement, and about the Equitable Allocation of Charges and Complaint Process (“Pre-leasing Notice”); and (g) include a revision of the indemnification provision as reflected in the Special Contract.

Second, OCS recommends the PSC require RMP to file a notice when all tenants are transferred to individual meters and the Special Contract is terminated. OCS states the notice should report any unresolved tenant complaints concerning billing or service.

Third, OCS recommends the PSC require RMP to file a monthly status update starting in September 2024 if the Special Contract is still in place.

In Reply Comments, RMP states it agrees with (1) DPU's recommendation that the PSC limit the Exemption granted, and (2) the need for the PSC and parties to monitor the progress and timing of the transition to individual metering. However, RMP disagrees with DPU's proposed expiration date. RMP argues this may constrain the Developer's ability to fully comply with the obligations and protocols provided in the Amended Special Contract. RMP explains this may leave inadequate time for appropriate transfer of service since meters are scheduled to arrive in August 2024 and the planned timeline for installation is September 2024. RMP concludes, therefore, that installation of the meters will extend beyond the expiration date if the proposed timeline is approved and argues that its options for recourse in this instance would be limited to terminating service.

RMP states the public interest is better served by also allowing the Developer flexibility to schedule the outage required to switch the meters when the weather is mild, such as mid-September, rather than August when demand for electricity is high. RMP further states the Amended Special Contract adequately addresses DPU's concern by penalizing the Developer should it fail to expeditiously follow the installation and transfer of service protocol.<sup>9</sup> If the PSC determines to impose an expiration date as proposed by DPU, RMP recommends that it be no earlier than December 1, 2024 "to allow for adequate time to adjudicate a subsequent request."<sup>10</sup>

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<sup>9</sup> RMP Reply Comments at 1-2.

<sup>10</sup> RMP Reply Comments at 2.

In response to OCS's concerns, RMP incorporated the Temporary Tariff, the Equitable Allocation of Charges and Complaint Process, a No Administration Fees clause, a No Section 4 Penalties clause, Inefficient Usage Tracking, and the Pre-leasing Notice to the Amended Special Contract. Finally, on March 19, 2024, RMP also filed the Revised Notice Addendum to address OCS's concerns related to the original indemnification clause.

#### **IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Utah Administrative Code R746-210 (i.e. the PURPA MDU Standards) reflects the PSC's adoption of Section 113 of PURPA, which generally prohibits master metering of electric service for new buildings when there is more than one unit in the building, the occupant of each such unit has electric energy used in such unit, and with respect to such energy used, the long-run benefits to the electric consumers in such building exceed the costs of purchasing and installing separate meters in such building. The PURPA MDU Standards include several exemptions to the prohibition including an exemption by appeal, which RMP contends is the only exemption for which the Developer may qualify.

An exemption by appeal may be granted if there is (1) a benefit-to-cost determination that the long-run benefits of individual metering to the consumer are less than the cost of purchasing and installing separate meters and (2) a showing the



Exemption will be consistent with PURPA's goals of conservation, efficiency, and equity.<sup>11</sup>

First, we find the Amended Special Contract's term is temporary and short in duration and provides adequate protections and transparency for the tenants on key terms, including the Temporary Tariff, the Equitable Allocation of Charges and Complaint Process, a No Administration Fees clause, a No Section 4 Penalties clause, Inefficient Usage Tracking, the Pre-leasing Notice, the Notice Addendum, as well as a strong financial incentive for the Developer to transition to individual metering by October 1, 2024. We also find the Developer will incur significant loss of revenues and potential loan defaults unless the Exemption is granted because there will be no tenants until the individual meters are installed and service can be provided. We further find zero benefits exist with respect to individual metering during the short duration of the contract because individual metering is not possible due to supply chain delays. We also find that individual meters cannot be bought for any price or costs given the supply chain delays. Therefore, under the foregoing circumstances, we conclude that currently the long-run benefits of individual metering to the consumer are less than the cost of purchasing and installing separate meters.

Second, we find the Developer plans to install energy-efficient appliances, HVAC, and lighting, and will request that tenants curtail their energy use to keep costs

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<sup>11</sup> See Utah Admin. Code R746-210-4.

low for themselves and their neighbors. We also find the Amended Special Contract terms promote transparency and induce equitable cost allocation for tenants. Therefore, we find these safeguards will ensure that equity, conservation, and efficiency will not be negatively impacted if the Exemption is granted.<sup>12</sup>

Based on our findings above, the evidence submitted with the Application, the DPU Comments and recommendations, the OCS Comments and recommendations, the RMP Reply Comments, and the Amended Special Contract and its addendums including the Revised Notice Addendum, and in the absence of any opposition, we find and conclude the Exemption is in the public interest and we therefore grant it. We also approve the Amended Special Contract and its addendums.

We also find that imposing a September 1, 2024, expiration date for the Amended Special Contract is insufficiently flexible since no guarantee exists the individual meters will be delivered by August 2024 and installed by September 2024. We therefore decline to adopt DPU's recommendation. However, we adopt RMP's alternative expiration date of December 1, 2024, which provides sufficient time for the PSC to consider a subsequent request. We also adopt OCS's recommendations that RMP file (1) a notice in this docket when the MDU's tenants are taking service from individual meters and the Amended Special Contract has been terminated, and (2) a report of any unresolved tenant complaints concerning billing or service issues. In

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<sup>12</sup> R746-210-4 states, in part, "[i]t is appropriate that equity, conservation[,] and efficiency not be negatively impacted as required under the promulgated PURPA regulations.

addition, we direct RMP to file a monthly status update in this docket starting in September 2024 if the Amended Special Contract is still in place.

**V. ORDER**

Based on the findings and conclusions above we grant the Exemption and approve the Amended Special Contract including all the addendums, as amended. We also direct RMP to file the required notices, reports, and the monthly status report discussed above and any other document required under the Amended Special Contract.

DATED at Salt Lake City, Utah, April 24, 2024.

/s/ Michael J. Hammer  
Presiding Officer

Approved and Confirmed April 24, 2024, as the Order of the Public Service  
Commission of Utah.

/s/ Jerry D. Fenn, Chair

/s/ David R. Clark, Commissioner

/s/ John S. Harvey, Ph.D., Commissioner

Attest:

/s/ Gary L. Widerburg  
PSC Secretary  
DW#333537

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 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 April 24, 2024, a true and correct copy of the foregoing was delivered upon the following as indicated below:

By Email:

Data Request Response Center ([datareq@pacificorp.com](mailto:datareq@pacificorp.com), [utahdockets@pacificorp.com](mailto:utahdockets@pacificorp.com))  
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*Office of Consumer Services*

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Administrative Assistant