- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Utah Clean Energy's Request for Expedited Investigatory Docket and Agency Action	DOCKET NO. 25-035-52 ORDER

ISSUED: October 17, 2025

1. Procedural History

On August 29, 2025, Utah Clean Energy (UCE) filed its Request for Expedited Investigatory Docket and Agency Action ("Request"). The Public Service Commission (PSC) subsequently issued a Notice of Filing and Comment Period, soliciting comments from any interested person by September 19, 2025, regarding what, if any, additional process is required or appropriate in this docket.

The PSC received timely comments from the following organizations: UCE, Western Resource Advocates; Healthy Environment Alliance of Utah; rPlus Energies, LLC; the Division of Public Utilities (DPU); the Office of Consumer Services (OCS); Sierra Club; Utah Manufacturer's Association; Interwest Energy Alliance; and Rocky Mountain Power (RMP). Senator Nate Blouin also submitted timely comments as did numerous other individuals, both prior to and after the September 19 deadline.

On October 1, 2025, UCE filed a Supplemental Comment to Clarify the Record.

2. The Request

The Request asks the PSC to "open an investigatory docket and direct [RMP] to open an expedited 'open call' resource procurement process that could lead to the

procurement of tax-advantaged energy generation."[1] The Request explains that Congress' recent passage of H.R. 1 has created "a tight window of opportunity for energy resource developers and [RMP] to develop new energy resources to capture federal tax credits."[2] The Request provides an overview of the federal legislative changes, issued guidance from the U.S. Department of Treasury, and argues RMP's current integrated resource plan demonstrates a near-term resource need exists such that ratepayers would benefit from it acting promptly to acquire new qualifying resources within the abbreviated time frames that the recent federal legislative created. UAE asserts it has contacted several energy project developers and confirmed "they have shovel-ready projects … that could qualify for the tax credits."[3] UCE asserts rapid procurement of such tax-advantaged wind and solar resources could result in tremendous savings for ratepayers.

Accordingly, "UCE requests the [PSC] direct [RMP] to initiate an expedited hybrid resource procurement process … contain[ing] elements of a traditional RFP … and if the resources are necessary and cost effective for [RMP] to pursue them by securing a Section 54-17-501 Waiver of Energy Resource Procurement Requirements."[4] UCE asks the PSC "convene Utah parties, industry, and [RMP] to

[1] Request at 1.
[2] *Id*. (citing Public Law 119-21, 139 Stat. 72, §§ 70512-13 (July 4, 2025).
[3] Request at 8.
[4] *Id*. at 2.

establish an accelerated procedural timeline for this investigatory docket and Agency Action."[5]

UCE argues the PSC may exercise its "broad legal authority" under Utah Code § 54-4-1 to grant its Request.

3. Stakeholder Comments

RMP opposes any further process in this docket and asks the PSC to deny the Request. RMP disagrees with certain of UCE's assertions about the need for new resources that could feasibly qualify for the soon expiring tax credits. Regardless, RMP argues it "already has available processes in place to take advantage of time-limited opportunities" and "[i]f [it] needed resources to serve Utah customers and a project offered a time-limited opportunity for significant benefits to customers, [RMP] would pursue negotiations and seek a waiver of the solicitation process."[6]

Likewise, DPU "recommends that the [PSC] not open an investigatory docket or direct [RMP] to publish an 'open call' … [RFP] because it is impractical to direct [RMP] to open an RFP against its wishes and infeasible in the proposed timeline."[7]

DPU questions whether the PSC has authority under Utah Code § 54-4-1 to grant UCE the relief it requests. Assuming such authority exists, DPU nevertheless opposes UCE's Request because compelling RMP to conduct an RFP and to seek a

[5] *Id*. at 9.
[6] RMP's Comments at 4.
[7] DPU's Comments at 1.

waiver under Utah Code § 54-17-501[8] would, at minimum, require a lengthy and thorough adjudicative process and insufficient time exists to allow for that process. DPU points out that UCE focuses on what it terms "Pathway 2," which requires that "'[p]hysical work of a significant nature commence[s] by 12/31/2025' in order to be eligible for the relevant tax credits."[9] DPU goes on to discuss the logistical details of the RFP and waiver processes and concludes that entertaining UCE's Request is simply impracticable.

OCS expresses appreciation for UCE's focus on the issue but also opposes UCE's Request because "parties do not have the resources to participate in the investigatory docket process that UCE has proposed."[10] OCS emphasizes that RMP should take prompt action to determine how it can take advantage of expiring tax credits, but OCS does not believe it and other unnamed parties have adequate resources to participate given the current and upcoming "regulatory workload." OCS proposes, instead, that RMP take the initiative to identify "shovel ready" projects that meet needs identified in its integrated resource plan and bring them to the PSC to request a waiver under Utah Code § 54-17-501.

[8] DPU emphasizes that RMP "does assume some risk" regarding cost recovery "when it requests" a waiver under Section 54-17-501. DPU's Comments at 4.
[9] *Id*. at 2 (quoting Request at Table 1).
[10] OCS's Comments at 3.

Generally, other stakeholders' comments support UCE's Request and emphasize the importance of RMP acting to capitalize on time-limited opportunities to acquire tax-advantaged resources to the extent a need for them exists.

4. Discussion, Findings, and Conclusions

Without question, the circumstances surrounding the expiring tax credits call for RMP's earnest attention and analysis. To the extent opportunities exist for RMP to capitalize on time-limited opportunities to fill existing resource needs with projects that can be reasonably expected to qualify for expiring, beneficial tax-treatment, the PSC expects RMP to pursue them. The PSC gives notice that it will expedite its consideration of any applications RMP files to solicit or procure such resources.

However, the relief UCE seeks is, to the PSC's knowledge, unprecedented and would require the PSC to exercise authority for which no clear statutory basis exists. UCE cites Utah Code § 54-4-1, which provides: "the [PSC] is hereby vested with power and jurisdiction to supervise and regulate every public utility in this state, and to supervise all of the business of every such public utility in this state, and to do all things … which are necessary or convenient in the exercise of such power."

While this statutory language is rather broad on its face, Utah courts have long held the PSC's primary authority resides in its "rate-regulation function." "Any activities that are related to rate making are … subject to the [PSC's] broad powers in this area." *Mountain States Tel. & Tel. Co. v. PSC*, 754 P.2d 928, 932 (Utah 1988). However, "[i]t is well settled that public commissions cannot, under guise of rate

regulation, take into their hands the management of utility properties or unreasonably interfere with the right of the management." *Logan City v. PUC of Utah*, 296 P. 1006, 77 Utah 442, 447 (Utah 1931). "Whether [a] method of bettering its system [is] most economical or efficient [is] a matter within the sound discretion of the [utility's] management." *Id*.

Here, UCE asks the PSC to order RMP to initiate an "open call" solicitation to acquire certain resources for the purpose of potentially qualifying for preferential tax treatment. Moreover, the Request asks the PSC order RMP to seek the PSC's approval of a waiver for the otherwise statutorily required approval process that applies to any solicitation for or procurement of a significant energy resource. As DPU notes, such waivers require RMP to forfeit certain assurances it would otherwise enjoy regarding cost recovery for such resources.[11]

Neither UCE nor any supportive stakeholder cites any authority suggesting the PSC possesses the authority to require a utility to solicit or procure a particular generation resource, let alone that the PSC may compel a utility to exercise its right to seek a waiver of the ordinary approval processes that, when completed, afford the utility a measure of protection regarding recovery of the associated costs.

We must, therefore, deny the Request. While the PSC undoubtedly has authority to conduct investigative dockets for informational purposes, such authority does not

[11] *Compare* Utah Code § 54-17-501(10) *with* Utah Code § 54-17-303.

extend to dictating the resource solicitation and procurement decisions that properly belong to the utility's management.

Nevertheless, the PSC appreciates UCE bringing attention to this important issue. The PSC expects RMP to responsibly and prudently evaluate whether any limited-time opportunities exist for procuring necessary resources at a lower cost to customers. The PSC reiterates that it will grant any request by RMP to expedite any application to solicit or procure any resource that may qualify for preferential, time-limited tax treatment. Moreover, while the PSC has no authority to dictate RMP's resource procurement decisions, the reasonableness of RMP's actions in evaluating and acting on any time-sensitive opportunities may certainly be a material factor in future rate proceedings.

Given the PSC must deny the relief UCE seeks and, as OCS underscores, stakeholders' current substantial regulatory workload, the PSC finds continuing any investigatory process in this docket to be unnecessary and counterproductive.

The PSC and stakeholders do, nonetheless, have a legitimate and compelling interest in ensuring RMP acts prudently in evaluating opportunities to procure resources with significant tax benefits. Therefore, the PSC directs RMP to include, in its next IRP Update, a thorough description of the analysis and actions it undertook to respond to the changed circumstances regarding the soon to be expiring tax credits.

5. Order

UCE's Request is denied, and the PSC gives notice it will take no further action in this docket. The PSC directs RMP to include a detailed explanation in its next IRP Update of the analysis and actions it undertook to evaluate and pursue any opportunities to procure needed resources that qualified for the expiring tax credits.

DATED at Salt Lake City, Utah, October 17, 2025.

/s/ Michael J. Hammer
Presiding Officer

Approved and Confirmed October 17, 2025, 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#342336

Notice of Opportunity for Agency Review or Rehearing

Pursuant to §§ 63G-4-301 and 54-7-15 of the Utah Code, an aggrieved party may request agency review or rehearing of this Order by filing a written request with the PSC within 30 days after the issuance of this 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 does not grant a request for review or rehearing within 30 days after the filing of the request, 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 §§ 63G-4-401 and 63G-4-403 of the Utah Code and Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on October 17, 2025, a true and correct copy of the foregoing was delivered upon the following as indicated below:

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