- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Consideration of the Amendment of Title 16 U.S.C. 2621(d) and the Addition of Title 42 U.S.C. 6344 by the U.S. Energy Independence and Security Act of 2007	DOCKET NO. 08-999-05 DETERMINATION CONCERNING THE PURPA IRP STANDARD

ISSUED: August 25, 2009

SYNOPSIS

The Commission determines prior state actions addressing energy efficiency are equal to and comparable with the PURPA Integrated Resource Planning Standard and adoption of the standard is not necessary.

By The Commission:

REGULATORY HISTORY AND COMMISSION RESPONSIBILITY

The 2007 Energy Independence and Security Act ("2007 EISA"), signed into law on December 19, 2007, amended the Public Utilities Regulatory Policies Act ("PURPA") by adding the following four new standards to Title 1 Subtitle B of PURPA:[1] 1) integrated resource planning ("IRP Standard" or "Standard"), 2) rate design modifications to promote energy efficiency investments ("Rate Design Standard"), 3) consideration of smart grid investments ("Smart Grid Investments Standard"), and 4) smart grid information ("Smart Grid Information Standard"). Herein, we address only the IRP Standard.

[1] PURPA § 111(d), 16 U.S.C. § 2621(d).

The Commission has previously examined regulatory standards enacted by PURPA.[2] Title 1 Subtitle A of PURPA[3] requires the Commission, with respect to each utility for which it has ratemaking authority, to consider and make a determination whether the standards set forth in PURPA are appropriate to be implemented to carry out the purposes of PURPA, which are: 1) conservation of energy; 2) the efficient use of facilities and resources by electric utilities; and 3) equitable rates to electric consumers. The Commission's consideration must be after public notice and hearing and the Commission's determination must be in writing, based upon findings included in the determination and evidence provided at hearing, and available to the public.

The Commission may choose to implement a standard or adopt a different standard from those described in PURPA. And while nothing prohibits the Commission from determining that it is not appropriate to implement a standard,[4] if the Commission declines to adopt a standard it is required to state in writing the reason for its decision and make that statement available to the public. The Commission, in its consideration and determination of the the IRP Standard may consider whether: 1) the State has implemented the IRP Standard or comparable standard; 2) the Commission has conducted a proceeding to consider implementation of the IRP Standard or a comparable standard; or 3) the State Legislature has voted on implementation of the IRP Standard or a comparable standard. Following a brief procedural

[2] See Docket Nos. 80-999-09, 81-999-01, 81-999-02, 81-999-03, 81-999-04, 81-999-05, 93-999-03, 93-999-04, and 06-999-03.

[3] PURPA § 101, 16 U.S.C. § 2611.

[4] PURPA § 111(a), 16 U.S.C. § 2621(a).

history, we address the PURPA requirement to consider and make a determination whether or not it is appropriate to implement the IRP Standard to carry out the purposes of PURPA listed above.

PROCEDURAL HISTORY

In a letter dated August 28, 2008, the Commission informed the U.S. Department of Energy that PacifiCorp, doing business in Utah as Rocky Mountain Power ("Company"), is the only electric utility subject to PURPA over which the Commission has ratemaking authority. On September 8, 2008, the Commission issued a Notice of Technical Conference to be held on November 5, 2008, with the purpose of: 1) discussing the four new standards applicable to electric utilities enacted by the 2007 EISA and the requirements for consideration and determination of these standards; 2) identifying existing statutes and programs in place which may potentially address the standards; and 3) setting a procedural schedule.

On December 23, 2008, the Commission issued a Notice of Technical Conference to be held on January 14, 2009, with the purpose of discussing specifically the IRP Standard and the requirements for consideration and determination of this standard. Based upon the comments received during the technical conference and further research, on April 30, 2009, the Division filed with the Commission a recommendation regarding the IRP Standard. This recommendation was submitted on behalf of a work group consisting of representatives of the Division, the Committee of Consumer Services (now known as the Office of Consumer Services), Utah Clean Energy ("UCE"), Sego, Wal-Mart, Rocky Mountain Power/PacifiCorp, Questar Gas Company, Western Resource Advocates, International Brotherhood of Electrical Workers Local 57, Salt

Lake Community Action Program, Utah State Energy Program, Intermountain CHP Center, Central Valley Water, and the Utah Association of Energy Users (collectively, the "Work Group"). In its recommendation, the Work Group concluded the Commission should not adopt the IRP Standard because comparable standards, practices, and policies are already in place and adoption of the IRP Standard is unnecessary. On May 11, 2007, the Commission issued a Request for Comments on the Work Group's recommendation with a filing deadline of June 15, 2009, to which UCE responded.

INTEGRATED RESOURCE PLANNING STANDARD

Section 532 of the 2007 EISA amended Section 111(d) of PURPA and U.S.C. §2621(d) by adding the following standard:

> (16) INTEGRATED RESOURCE PLANNING.–Each electric utility shall–
> (A) integrate energy efficiency resources into utility, State, and regional plans; and
> (B) adopt policies establishing cost-effective energy efficiency as a priority resource.

The 2007 EISA IRP Standard must be evaluated in terms of the standard itself and the PURPA general requirements. With respect to whether or not it is appropriate to implement the IRP Standard we consider whether the Company is already required to integrate energy efficiency resources into utility, State, and regional plans and whether it has adopted policies establishing cost-effective energy efficiency as a priority resource.

A. Positions of the Parties

After an in-depth analysis of the PURPA IRP Standard, Parts 16(A) and 16(B), the Work Group determined by consensus that the Commission already has comparable energy efficiency standards, and the Company has programs in place such that there is no need to adopt

the new standards at this time. Existing standards and programs include the Commission's June 18, 1992, Report and Order on Standards and Guidelines ("1992 IRP Standards and Guidelines") in Docket No. 90-2035-01, "In the Matter of Analysis of an Integrated Resource Plan for PacifiCorp," the energy efficiency modeling procedures contained within the Company's 2008 Integrated Resource Plan, cost effectiveness tests used to evaluate energy efficiency programs, the Company's operation of successful energy efficiency programs since the late 1980's and plans to expand the program portfolio, and Company support for state energy efficiency policies established in the 2009 Utah State Legislative session. The Work Group states Company investments in demand side management ("DSM") have increased year on year with 2008 investments exceeding $76 million per year system-wide and $36 million per year in the state of Utah.

The Work Group also indicates energy efficiency resources accounted for approximately 2.2 million megawatt-hours within the Company's 2007 Integrated Resource Plan ("2007 IRP") preferred portfolio. In addition to the energy efficiency resources identified in the 2007 IRP, the Company completed a system-wide demand side resource market assessment ("DSM Potential Study"), filed in Docket No. 08-035-56, which it has used to update subsequent IRPs.[5] For example, the Work Group notes the DSM Potential Study results increased the Company's forecasted energy efficiency resources to 4.6 million megawatt-hours from the 2.2 million megawatt-hours included in the 2007 IRP. The Company has also changed its approach to modeling energy efficiency resources in its IRP process in that the load forecast decrement

[5] Docket No. 08-035-56, "In the Matter of the Review of the Report Prepared for PacifiCorp entitled "Assessment of Long-Term System-Wide Potential for Demand-Side and Other Supplemental Resources."

approach has been replaced with a method for treating energy efficiency equivalent to supply-side resources by using DSM supply curves.

The Work Group lists several actions at the State level which advance energy efficiency, namely the Governor's April 26, 2006, comprehensive energy efficiency plan, the Governor's May 30, 2006, Executive Order on improving energy efficiency in the State of Utah, and the passage of House Joint Resolution 9 ("HJR 9") – Joint Resolution on Cost-Effective Energy Efficiency and Utility Demand-Side Management during the 2009 Utah legislative session. HJR 9 supports cost effective energy efficiency as a priority resource in Utah and supports an energy savings goal for the Company.

With respect to Part (B) of the IRP Standard, the Work Group refers to programs and plans the Company has implemented which meet the requirements set forth in 16(B). Specifically, in the Company's resource planning process, energy efficiency and supply side resources are selected based on their cost effectiveness, customer-rate effect, and the balance between cost and risk exposure. Energy efficiency resources are selected for implementation over supply side resources when they compare favorably to supply side resources with respect to the criteria listed above. Energy efficiency resources are considered equally along with supply side resources in the Company's resource planning process.

While UCE agrees with the concept that Utah meets the requirements of the IRP Standard, it does not believe the Work Group's report accurately reflects language toward this end. UCE recommends adding the following language to the end of the second full paragraph on Page 6 of the Work Group's June 30, 2009, recommendation: "While equal comparison with

supply side resources does not make energy efficiency a priority resource, this IRP provision coupled with HJR 9 will be interpreted to establish energy efficiency as a priority resource, thereby satisfying Standard 16(B)." Without this amendment, UCE maintains it is not clear that Utah meets the requirements and UCE does not support the position that Utah is in compliance with Part (B) or that the standard is unnecessary. UCE recommends the Commission either adopt the IRP Standard as written or include clear language in its order as to how existing policies and procedures clearly establish cost-effective energy efficiency as a priority resource in utility planning, in contrast to evaluating energy efficiency only on an equal and comparable basis with supply side resources.

UCE also points out an inconsistency between the Division's recommendation in this case and its recommendation in Docket No. 08-999-06[6] pertaining to the consideration and determination of two new PURPA Standards applicable to natural gas utilities enacted by the 2007 EISA. Although the Division recommends not adopting the IRP Standard in this case, it recommends adopting the IRP Standard relating to natural gas utilities in Docket No. 08-999-06. UCE indicates that Parts (B) of the referenced natural gas and electric IRP Standards are nearly identical.

B. Discussion, Findings and Conclusions

The question before us is whether to adopt the standard, adopt parts of the standard, adopt a different standard, or decline to adopt the standard. The Work Group

[6]In the Matter of the Consideration of the Amendment of Title 15 U.S.C. 303(b) by the U.S. Energy Independence and Security Act of 2007 .

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recommends we decline adopting the IRP Standard because equivalent standards are already in place and adoption of the IRP Standard is unnecessary. UCE recommends either adopting the standard as written or clarifying how existing policies and procedures clearly establish cost-effective energy efficiency as a priority resource in utility planning.

We concur with the Work Group our 1992 IRP Standards and Guidelines require the Company to integrate energy efficiency into its planning process for meeting growing demand for electricity. Since the early 1990's the Company has made progress in integrating energy efficiency into its plans. Indeed, according to the Company's recently-filed 2008 Integrated Resource Plan in Docket No. 09-2035-01, between 1,537 and 2,183 megawatts of Class 2-DSM (i.e., energy efficiency) by 2028 are shown to be cost-effective for various portfolios of planned new resources. Further, we observe since the approval in 2003 of the Demand Side Resource tariff rider for cost recovery of DSM expenses, the Company's progress in implementing DSM programs has accelerated.[7]

The Work Group also refers to HJR 9, which clearly provides state policy direction from the Utah Legislature to state and local governments, electrical corporations, rural electric cooperatives, and municipal utilities to recognize energy efficiency and conservation as a priority resource and to promote and encourage all available cost-effective energy efficiency and conservation. Further, the Company now provides an annual fossil fuel generation efficiency plan, developed during our review of the PURPA Fossil Fuel Generation Efficiency Standard in

[7] Docket No. 02-035-T12, "In the Matter of Demand Side Management Cost Recovery by PacifiCorp dba Utah Power & Light Company."

Docket No. 06-999-03.[8] The foregoing laws, policies and Company plans clearly support the PURPA goals of conservation of energy and the efficient use of facilities and resources by electric utilities.

UCE questions how existing policies and procedures clearly establish cost-effective energy efficiency as a priority resource in utility planning in contrast to evaluating energy efficiency only on an equal and comparable basis with supply side resources. In addressing UCE's concerns, we note the 2007 EISA provides no guidance on the meaning of "cost effective" or "a priority resource," or the relationship between the two. With respect to defining cost effective, Utah is probably a step beyond the federal IRP Standard. Through our regulatory process, we have defined "cost effective" through approval of DSM performance standards in Docket No. 92-2035-04.[9] These standards are currently under review in Docket No. 09-035-27, and generally rely on cost-benefit analyses from several points of view.[10] Additionally, in Docket No. 08-035-56, we approved use of the Company's assessment of DSM technical potential in its IRP and also required the Company to perform additional evaluation of alternative approaches for defining its demand side "supply" curves to ensure all cost effective DSM is considered and evaluated in the Company's resource planning process.

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[8] Docket No. 06-999-03, "In the Matter of Consideration of the Amendment of 16 U.S.C. Section 2621 - Consideration and Determination Respecting Certain Ratemaking Standards for Electric Utilities by the Energy Policy Act of 2005."

[9] Docket No. 92-2035-02, "In the Matter of Ratemaking Treatment of Demand-Side Resources and the Analysis of Regulatory Changes to Encourage Implementation of Integrated Resource Planning."

[10] Typical cost benefit tests applicable to energy efficiency resources are the Utility Cost Test, the Participant Test, the Ratepayer Impact Measure Test, and the Total Resource Cost Test which are published in the "California Standard Practice manual: Economic Analysis fo Demand-Side Programs and Projects."

A definition for "priority resource" per se has not been formally or directly addressed by this Commission. However, as noted by the Work Group, the Company's resource planning process involves evaluation of energy efficiency and supply side resources based not only on their cost effectiveness, but also on customer-rate effect, (one of the three PURPA objectives is equitable customer rates) and the balance between cost and risk exposure. To this end, our 1992 IRP Standards and Guidelines provide a process for identifying DSM resources that extends beyond whether an energy efficiency resource has passed a cost-benefit test given a single and static set of assumptions. Rather, utility programs to improve customer energy efficiency are evaluated against supply-side resources based upon multiple, and sometimes conflicting, public interest objectives. At a minimum, the Company must rely on the objectives discussed in our 1992 IRP Standards and Guidelines which include an evaluation of environmental, financial, competitive, reliability and operational risks and an analysis of tradeoffs between different conditions of service such as between reliability and the acquisition of lowest cost resources.[11] Following this process, the Company should select the optimal set of resources given the expected combination of cost, risk and uncertainty, and should, in our view, identify "priority" resources to be included in the Company's action plan. Indeed, in recent IRP's, utility programs to improve customer energy efficiency are shown to compare favorably with supply-side resources with respect to minimizing cost and risk and managing the adverse consequences of possible, yet uncertain, future events. Thus, it is within the context of the

[11] The 1992 Standards and Guidelines define integrated resource planning as a utility planning process which evaluates all known resources on a consistent and comparable basis, in order to meet current and future customer electric energy services needs at the lowest total cost to the utility and its customers, and in a manner consistent with the long-run public interest.

existing scope of IRP analysis that an amount of cost-effective DSM is identified as a "priority" resource. As always, the Company is accountable for its actions in a ratemaking proceeding.

Based on the above we find it **is not necessary** to adopt the IRP Standard at this time as provisions exist which require the Company to integrate energy efficiency into its plans and establish cost-effective energy efficiency as a priority resource as we have defined. We determine these provisions are equal to and comparable with the intent of the PURPA IRP Standard and provide equivalent, if not superior, support for the goals of PURPA.

DETERMINATION

NOW, THEREFORE, IT IS HEREBY determined the June 18, 1992, Report and Order on Standards and Guidelines in Docket 90-2035-01 "In the Matter of Analysis of an Integrated Resource Plan for PacifiCorp," existing and ongoing Commission orders on performance standards, DSM cost recovery, and guidance on IRP's, and HJR 9 are equal to and comparable with the intent of the PURPA IRP Standard and adoption of the PURPA IRP Standard is not necessary.

DATED at Salt Lake City, Utah, this 25th day of August, 2009.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
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