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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.	COMMENTS OF UIEC Docket No. 08-999-05
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On October 28, 2009, the Utah Public Service Commission (“Commission”) issued an order inviting interested parties to submit detailed written comments responding to the recommendation submitted by the Division of Public Utilities (“DPU” or “Division”) “regarding the PURPA Consideration of Smart Grid Investments and Smart Grid Information Standards for electrical utilities, including concurrence or disagreement with the Division’s recommendation and/or whether the Commission should adopt the standards, decline to adopt the standards, or adopt modified standards.” The Utah Industrial Energy Consumers (“UIEC”)¹ hereby submit their written comments as follows.

¹ This is a group of utility customers that have intervened in the current Rocky Mountain Power general rate case, Docket No. 09-035-23.

COMMENTS

I. INTRODUCTION

As part of the 2007 Energy Independence and Security Act (“EISA”), Congress made certain amendments to the Public Utilities Regulatory Policy Act (“PURPA”) of 1978. In doing so, it set forth certain standards and mandated, not that the states adopt the standards, but instead that the states consider the standards and make an informed decision about whether to adopt them. 16 U.S.C. § 2621(a). At issue here are the Smart Grid Investment and Smart Grid Information amendments. See 16 U.S.C. § 2621(d)(16), (17). These are two separate multi-part amendments.

The Division’s recommendation fails to treat these two amendments and their subparts separately. Furthermore, no consideration appears to have been given as to the wisdom of adopting one amendment or the other or both in a modified form.

In the last two or three general rate cases, the UIEC has raised the issue of the inadequate data being relied on by Rocky Mountain Power (“RMP”) for its load sampling. Finally, in this latest general rate case, all parties appear to agree that RMP’s load sampling data is seriously flawed and cannot be relied on for setting fair rates. In fact, RMP has even admitted to this flaw. This involves significant amounts of ratepayer dollars that are perhaps being paid for unfair and unreasonable rates. There is no immediate resolution in sight, but it could be resolved if RMP invested in smart meters.

Recently, RMP made a filing for recovery of demand side management (“DSM”) investments. The UIEC brought to the Commission’s attention the fact that no actual cost effectiveness evaluations have been done on any of the DSM programs. The engineering

estimates that were done before-hand to justify the programs were based on this same load sampling data that has finally been recognized as completely unreliable. If RMP had smart meters, it could present accurate and reliable cost-effectiveness data and make more informed decisions for implementing DSM. Smart meters would also allow RMP to take advantage of demand response measures.

In 2007, PacifiCorp launched the Energy Gateway Transmission Expansion, an ambitious, multi-year \$6 billion-plus investment plan, to add new transmission across the west. PacifiCorp claims that developing “a more robust transmission system is increasingly seen as critical to the successful expansion of new renewable development, to maintaining a reliable, safe electric system.” PacifiCorp Energy Gateway Fact Sheet, <http://www.pacificorp.com/File/File79807.pdf>.

However, without a smart grid, high penetrations of variable renewable resources such as wind or solar are likely to become increasingly difficult and expensive to manage over time due to the greater need to coordinate these resources with dispatchable generation and demand. In addition, smart grid technologies will improve reliability and efficiency in power distribution. Therefore, if RMP is not including smart grid in its Energy Gateway project, it is likely building obsolescence into the system, which would be imprudent.

FERC has announced, however, that even before the smart grid standard and protocols are finalized, FERC will allow recovery of jurisdictional smart grid costs if the applicant makes an adequate showing. Smart Grid Policy, 128 FERC ¶ 61,060 (July 2009). Therefore, it is likely that where possible, PacifiCorp is or will be incorporating smart grid technologies at the transmission level. Why not incorporate such technologies, where possible, at the user level so

as to take advantage of what is being built at the transmission level? If PacifiCorp is not making these smart grid investments in its Energy Gateway project now, some of its expenditures for the Energy Gateway project could be considered imprudent. Similarly, if RMP fails to make smart grid investments at all levels when making new investments, those expenditures may be imprudent.

On October 27, 2009, \$3.4 billion from the American Recovery and Reinvestment Act was awarded for smart grid projects to 100 private companies, utilities, manufacturers, cities and other partners in grants ranging from \$400,000 to \$200 million. RMP made no attempt to acquire any of this funding.

The UIEC requests that the Commission give more thought to these smart grid questions and at the least, require RMP to consider smart grid technologies before making an investment in non-advanced equipment at all levels.

II. CONSIDERATION OF SMART GRID INVESTMENTS

A. Amendment

The Smart Grid Investments amendment provides as follows:

(16) CONSIDERATION OF SMART GRID INVESTMENTS-

(A) IN GENERAL – Each State shall consider requiring that, prior to undertaking investments in nonadvanced grid technologies, an electric utility of the State demonstrate to the State that the electric utility considered an investment in a qualified smart grid system based on appropriate factors, including

- (i) total costs;
- (ii) cost-effectiveness;
- (iii) improved reliability;
- (iv) security;

(v) system performance; and

(vi) societal benefit.

(B) RATE RECOVERY – Each State shall consider authorizing each electric utility of the State to recover from ratepayers any capital, operating expenditure, or other costs of the electric utility relating to the deployment of a qualified smart grid system, including a reasonable rate of return on the capital expenditures of the electric utility for the deployment of the qualified smart grid system.

(C) OBSOLETE EQUIPMENT – Each State shall consider authorizing any electric utility or other party of the State to deploy a qualified smart grid system to recover in a timely manner the remaining book-value costs of any equipment rendered obsolete by the deployment of the qualified smart grid system, based on the remaining depreciable life of the obsolete equipment.

16 U.S.C. § 2621(d)(16).

Subsection (A) of the standard asks that states consider requiring utilities (in this case, RMP) to examine smart grid technologies before investing in traditional transmission and distribution systems. Six factors of costs and benefits are listed to be used in making that determination. This subsection does not require that the investment in smart grid be made. It only requires that a balanced, informed decision be made before a utility further invests in older, traditional technologies.

Because utilities and the investment community may have concerns that smart grid investments and expenditures may not be completely recovered or recovered in a timely manner, and this concern may limit utility investment, subsection (B) asks states to consider allowing utilities to recover the costs of smart grid investments and expenditures. In addition, states are asked to consider allowing a return on the investments utilities make in smart grid technologies, conforming these investments with the treatment of other comparable capital expenditures.

Subsection (C) of the standard asks states to consider allowing utilities to be compensated for the remaining book value of infrastructure made obsolete by smart grid investments. This is intended to remove another possible impediment to smart grid investment by utilities. Some states already have procedures in place that address the possibility that existing long-lived technology could have to be replaced during its operational life because it has become obsolete. This subsection asks that states consider implementing such regulations or updating such regulations if they already exist.

B. Implementation

The UIEC disagrees with the Division's position that the Commission decline to adopt the standards of this amendment in any form. In its consideration of the Smart Grid Investments amendment, the DPU states that the Commission would have to implement smart grid technologies through a general rate case or a similar proceeding. DPU Br. 6. It is not clear what is meant by "a similar proceeding," and it is not clear why the DPU has taken this position.²

As a result of the enactment of the EISA of 2007 and the Energy Policy Act of 2005 ("EPA of 2005"), the Commission has already undertaken the consideration of several similar PURPA amendments. In several cases, investigations and rulemakings were implemented as a result. See, e.g., Docket No. 06-999-03 (fossil fuel energy efficiency standards, time-based metering and communications standards, net metering interconnection standards); R746-312- (generation interconnection procedures). In no case was a general rate case or any other formal

² The number 1 objective listed under "Commission Considerations" from the Smart Grid workshop of May 13, 2009, states that the Commission has "three major rate cases filed in one year" along with "other significant utility matters utilizing the same staff and resources."

adjudicative proceeding required. Similarly, demand-side management (“DSM”) and rate recovery for DSM expenses were implemented without a general rate case.

Therefore, it is not clear why the Division has taken this position. An investigatory and/or rulemaking proceeding is likely all that would be necessary, especially if only parts of the amendment were adopted, or if it was adopted in a modified form. It would appear that at the very least, the prudent course would be to require RMP to consider smart grid technologies before making an investment in what might soon be obsolete equipment.

C. Standards and Protocols

The Division also states that “[c]urrently, there are no industry standards and protocols for smart grid technologies,” and that this prohibits the “Commission from making informed decisions on what types of smart grid technologies should be implemented.” DPU Br. 6. The Division also claims that “cyber security problems associated with the smart grid deployment have not been resolved.” Id. 7. These statements are not quite accurate.

While it is true that no specific finalized set of standards and protocols have been adopted, the National Institute of Standards and Technology (“NIST”) has been mandated with developing a framework of protocols and model standards for the Smart Grid. On June 9, 2009, NIST issued a Federal Register notice (74 Fed. Reg. 27288), requesting comments on a preliminary set of 16 smart grid interoperability standards and specifications for smart grid interoperability and cyber security needs. See 74 Fed. Reg. 52181, 52182 (Oct. 9, 2009). After reviewing and evaluating the input received, NIST increased the initial list to 31 standards and other specifications, which were noticed for comments on October 9, 2009. Id. The comment

period closed on November 9. Id. Accordingly, there should be final standards for interoperability and cyber security needs issued shortly.

In addition, the amendment does not ask the Commission to make a determination of what types of smart grid technologies should be implemented, which appears to be of concern to the DPU. Subsection (A) of the amendment merely asks that the Commission consider requiring RMP to make an informed analysis whenever any new equipment investment is to be made, whereby (i) total costs; (ii) cost-effectiveness; (iii) improved reliability; (iv) security; (v) system performance; and (vi) societal benefit are weighed when choosing between a smart grid investment versus a non-advanced equipment investment. As a matter of prudence, RMP should probably already be making that analysis. Investing in old technology when other options are available and without even making an analysis of these six factors is likely imprudent.

In fact, as a result of FERC's announcement that rate recovery is available for projects that do incorporate smart grid technologies, even before the final standards and protocols are established, PacifiCorp is likely incorporating such technologies in its Energy Gateway project, and if not, PacifiCorp should be. Similar technologies should at least be considered at all levels of the PacifiCorp/RMP system.

D. Funding and Rate Recovery

The Division cites the principle of "used and useful" as a reason why the Commission should not adopt either of these amendments in any form, saying that replacing non-smart technologies while still used and useful would place RMP at risk of not recovering its full cost. First, the Department of Energy has \$4.5 billion in stimulus money to award utilities for smart grid investments. On October 27, 2009, \$3.4 billion of this stimulus funding was awarded.

However, RMP confirmed in a data response to UIEC in the current general rate case that it failed to apply for one single dollar of this funding. Such funding, if it had been utilized, could have considerably alleviated any risk of non-recovery if that truly were the concern.

Also, the amendment does not require that RMP swap out existing equipment. It merely asks that the Commission require RMP to make an informed decision to consider smart grid technology when making any *new* equipment investment.

In a separate subsection (subsection (C)), the amendment asks the Commission to consider adopting new regulations that would allow RMP to recover obsolete-equipment costs if it *were* to swap out the equipment for smart grid technology. The Division has not considered these subsections separately, and gives no reason why such an option should not be considered. What the DPU appears to ignore in their recommendation is that we are going to have stranded costs either way. We either deal with them up front, or we deal with them when the new investments that are not smart grid are deemed obsolete before their time.

In the current general rate case, there is much argument regarding the load information on which RMP relied for its cost of service study; especially the residential class, which is not metered. The only consensus appears to be the fact that the information is unreliable. Similarly, issues have been raised over the lack of cost-effectiveness studies to justify RMP's DSM program costs. Implementing smart grid technologies, even on a limited basis, could greatly improve the information on which RMP relies for its cost allocations and DSM cost effectiveness evaluations. However, the Division's recommendation with respect to smart grid investments is tantamount to a signal that RMP should *not* make any such equipment investments. The UIEC disagrees with this position.

III. SMART GRID INFORMATION

A. Amendment

The Smart Grid Information amendment provides as follows:

(17) SMART GRID INFORMATION-

(A) STANDARD- All electricity purchasers shall be provided direct access, in written or electronic machine-readable form as appropriate, to information from their electricity provider as provided in subparagraph (B).

(B) INFORMATION- Information provided under this section, to the extent practicable, shall include:

(i) PRICES- Purchasers and other interested persons shall be provided with information on—

(I) time-based electricity prices in the wholesale electricity market; and

(II) time-based electricity retail prices or rates that are available to the purchasers.

(ii) USAGE- Purchasers shall be provided with the number of electricity units, expressed in kwh, purchased by them.

(iii) INTERVALS AND PROJECTIONS- Updated information on prices and usage shall be offered on not less than a daily basis, shall include hourly price and use information, where available, and shall include a day-ahead projection of such price information to the extent available.

(iv) SOURCES- Purchasers and other interested persons shall be provided annually with written information on the sources of the power provided by the utility, to the extent it can be determined, by type of generation, including greenhouse gas emissions associated with each type of generation, for intervals during which such information is available on a cost-effective basis.

(C) ACCESS- Purchasers shall be able to access their own information at any time through the Internet and on other means of communication elected by that utility for Smart Grid applications.

Other interested persons shall be able to access information not specific to any purchaser through the Internet. Information specific to any purchaser shall be provided solely to that purchaser.

16 U.S.C. § 2621(d)(17). This amendment is intended to require that electricity purchasers be provided with direct access to information concerning pricing, usage, intervals, and sources (including generation type and greenhouse gas emissions), either in writing or in electronic form.

B. Assessment

DPU has not considered this amendment separately from that discussed above. In fact, the only statement DPU makes regarding this amendment is that “[m]eeting this requirement would require full deployment of smart grid technologies including interoperability of all components.” DPU Br. 6–7. The UIEC takes no position on adoption of this amendment but notes that the statute only requires that the Commission consider this standard, and in doing so, consider whether it should be adopted as written, or adopted with modifications, or not adopted. It is unclear whether any type of modifications were considered in evaluating this standard or whether any of this type of information is currently available or could be made available in some form.

CONCLUSION

Based on the foregoing, the UIEC recommends that the Commission adopt 16 U.S.C. § 2621(d)(16)(A), requiring that RMP make an informed analysis whenever any new equipment investment is to be made, whereby (i) total costs; (ii) cost-effectiveness; (iii) improved reliability; (iv) security; (v) system performance; and (vi) societal benefit are weighed when choosing between any smart grid investment versus any non-advanced equipment investment.

DATED this 25th day of November, 2009.

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of November 2009, I caused to be e-mailed, a true and correct copy of the foregoing **COMMENTS OF UIEC** to:

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