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State of Utah  
DEPARTMENT OF COMMERCE  
Office of Consumer Services

MICHELE BECK  
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To: Utah Public Service Commission

From: Office of Consumer Services  
Michele Beck  
Eric Orton  
Dan Gimble

Re: 08-999-06 In the Matter of Consideration of the Amendment of Title 15  
U.S.C.303(b) by the U.S. Energy Independence and Security Act of 2007

Date: July 16, 2009

Copies to: Division of Public Utilities  
Questar Gas Company

## BACKGROUND

On June 2, 2009 the Utah Public Service Commission (Commission) issued a Request for Comments in the above titled docket. These comments are the Office of Consumer Service's (Office) response to the Division of Public Utilities' (Division) memo dated May 28, 2009. In that memo the Division recommended that the Commission adopt both new standards because these standards are essentially in place or are currently being considered, and are consistent with state law.

## DISCUSSION

The Office participated in the Technical Conferences held on November 5, 2008 and January 27, 2009 to which the Division refers and was fully engaged in all the other proceedings mentioned in the memo. We have independently re-examined the actual standards of section 532 Utility Energy Efficiency Programs amendments referred to and verified the Utah practice and experience relative to the Standards.

First, the Office would like to clarify the options available to the Commission. While the Division quotes the Energy Independence and Security Act of 2007 (EISA) – at § 3203, it also indicates that the EISA “requires formal adoption of this standard” (Division memo, p. 6). The Commission's options are to adopt the standard or to state in writing that it has

determined not to adopt a standard, providing reasons for such determination<sup>1</sup>. It is important to note that the EISA directs adoption of Standards (5) and (6) “if, and to the extent, such authority or non-regulated utility determines that such adoption is appropriate to carry out the purposes of this title [15 USCS §§ 3201 et seq.], is otherwise appropriate, and is consistent with otherwise applicable State law<sup>2</sup>.”

### **Standard 5**

The Division recommended adoption of Standard (5). The Office agrees with the Division’s conclusions that existing statutes, guidelines and regulations are consistent with the standard. We also agree with the Division that the new 2009 IRP Guidelines applicable to Questar Gas require equal treatment of demand-side resources, but do not “establish energy efficiency as priority resources” as required in the EISA. While the Division is correct that demand-side resources are considered an important component in resource planning, being an important component is not the same as being established as priority resources.

The Office does not oppose the adoption of Standard (5). However, we note that modifications to the 2009 IRP Guidelines to elevate energy efficiency to “priority resources” would be necessary in order to be consistent with the adoption of Standard (5). In the alternative, the Commission could determine that it is not necessary to adopt Standard (5) and instead provide in writing that existing policies and guidelines are sufficient to meet the intent of the EISA. This would eliminate the need for any revisions to the guidelines.

### **Standard 6**

The Division also recommended adoption of Standard (6). The Office supports the general conclusions of the Division that the Utah regulatory community has already been considering the issues put forward in Standard (6). However, the Office disputes the manner in which the Division presents some of its evidence on this issue. For example, the Office is concerned the Division’s analysis may be interpreted to imply that if the CET pilot were discontinued the State of Utah would no longer be complying with this statute. The Office believes it is significant that the standard only requires each of the policy options to be considered, clearly leaving the specific policy choices up to individual states rather than being dictated by federal mandate. Since the EISA itself states that adoption of the standard is based on its consistency with state law, an accurate assessment of current Utah law is critical to the analysis of this standard.

As part of its supporting evidence that Standard (6) is consistent with state policy, the Division quotes from what they cite as “H.J.R. 9 Joint Resolution on Cost-Effective

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<sup>1</sup> 15 USCS § 3203 (c)

<sup>2</sup> 15 USCS § 3203 (b)

Energy Efficiency and Utility Demand-Side Management, 2009 General Session State of Utah.” However, the Utah legislature explicitly *did not* endorse the policy quoted by the Division. Before this resolution was considered by any committee or body of the legislature a substitute resolution was proffered, which deleted the portion quoted by the Division. The substitute resolution (attached in full to these comments) that was voted upon and passed by the legislature stated in part:

BE IT FURTHER RESOLVED that the legislature expresses support for regulator [sic] mechanisms, which might include performance-based incentives, decoupling fixed cost recovery from sales volume, and other innovative rate designs intended to help remove utility disincentives and create incentives to increase efficiency and conservation **so long as these mechanisms are found to be in the public interest.** [emphasis added]

The differences between the resolution originally introduced (and quoted by the Division) and the resolution ultimately endorsed by the legislature are significant. The policy articulated in the resolution endorsed by the legislature does not specify any preference for a particular mechanism, but rather supports a wide range of mechanisms specifying that any must be found to be in the public interest. Additional support for this key distinction comes from another piece of legislation passed in the 2009 session. In Senate Bill 75, the legislature amended Section 54-4-4.1 (1) of the Utah Code to read:

- (1) The commission may, by rule or order, adopt any method of regulation that is:
  - (a) consistent with this title;
  - (b) in the public interest; and
  - (c) just and reasonable.

With respect to subtitle (b) of Standard (6), the Office reads the standard to require consideration, but not adoption, of specific mechanisms. Such consideration would be consistent with state law and current practice. However, Utah state law goes further to always specify that mechanisms and methods must be in the public interest. In fact, this Commission has also been consistent in reviewing all rate proposals to ensure that the public interest is met. The Office emphasizes the importance of continuing in this tradition and practice.

The Office recommends that if the Commission adopts Standard (6) then it must also clearly specify that Utah law requires that before any proposed rate mechanism or method is adopted, it must be found to be in the public interest. In the alternative, the Commission could determine not to adopt Standard (6) and provide in writing the explanation that while state laws and policies are largely consistent with the intent of the provision, Utah state law provides additional protection to consumers by requiring a demonstration that all rate mechanisms and methods must be found to be in the public interest.

## RECOMMENDATIONS

The Office respectfully suggests that the Commission has two alternatives for each of the EISA standards at issue.

With respect to Standard (5), the Commission could either:

- (a) Adopt the standard and amend the 2009 IRP Guidelines applicable to Questar Gas Company's IRP filings to make the guidelines consistent with the requirement of Standard (5) that energy efficiency is considered a priority resource; or
- (b) Determine not to adopt the standard and provide the reasoning that existing law and guidelines are sufficient to meet the intent of the EISA.

With respect to Standard (6), the Commission could either:

- (a) Adopt the standard, but also specify that Utah state law requires that before any proposed rate mechanism or method is adopted that it must be found to be in the public interest; or
- (b) Determine not to adopt the standard and provide the reasoning that existing law and policies meet the intent of the EISA and also provide additional protection to Utah consumers by requiring that all rate mechanisms and methods must be found to be in the public interest.