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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH	
Investigation, Re: Carbon Reduction Progress Report Outstanding Issues	Docket No. 24-999-11 Division of Public Utilities’ Comments

Pursuant to Utah Code section 54-4a-1, Utah Administrative Code R746-1, and the Public Service Commission of Utah’s (“Commission”) Notice of Docket and Technical Conference (“Notice”), the Division of Public Utilities (“Division”) submits these comments regarding its preliminary positions on the issues presented in the Commission’s Notice.

I. BACKGROUND

On December 29, 2023, Rocky Mountain Power (“RMP”) filed its 2024 Utah Carbon Reduction Progress Report in Docket No. 23-035-57 (“Report”). In its February 7, 2024, Acknowledgement Letter, the Commission provided notice that it intended to open a docket to seek stakeholder input regarding clarification on issues raised by RMP in its Report.¹ On March 8, 2024, the Commission issued its Notice in this docket in which it noticed a technical

¹ *Rocky Mountain Power’s Utah Carbon Reduction Progress Report*, Docket No. 23-035-57, Acknowledgement Letter (Feb. 7, 2024) at 3.

conference and requested interested stakeholders to “describe their preliminary positions” regarding:

(1) the recognition or issuance of Renewable Energy Credits (RECs) that predate Western Renewable Energy Generation Information System (WREGIS) certification; (2) how credit will be applied towards the target for the 2.4 multiplier for the amount for photovoltaic and solar energy as contemplated in Utah Code Ann. § 54-17-603(6); (3) clarification on whether the 20 percent target becomes an annual target in post-2025 under Utah Code Ann. § 54-17-602; and (4) whether additional action on the process for the issuance, monitoring, accounting, transfer, recognition, and use of a REC with respect to Utah Code Ann. § 54-17-601 to -607 (“Part 6”) is necessary.

II. COMMENTS

In response to the Commission’s Notice, the Division provides the following comments on the above enumerated issues:

(1) The recognition or issuance of RECs that predate WREGIS certification

Utah Code section 54-17-603 requires the Commission to “establish a process for issuance or recognition of” RECs, which “shall be issued for . . . qualifying electricity generated on or after January 1, 1995” Because WREGIS began operation in June 2007,² RMP states that it has a significant amount of renewable energy generation between January 1, 1995, and June 25, 2007, without WREGIS certification.³ The Division notes that the Commission could address the recognition or issuance of pre-WREGIS RECs through rulemaking or through adjudication in a docket. The Commission could make rules to establish standards and procedures for recognizing pre-WREGIS RECs for the purposes of the twenty percent target or it could review evidence and determine how RMP’s pre-WREGIS RECs will be recognized and, if supported by substantial evidence, memorialize those RECs in a Commission order. This could

² Renewables Portfolio Standard Programs, DSIRE (last updated Dec. 5, 2023), <https://programs.dsireusa.org/system/program/detail/840>

³ *Rocky Mountain Power’s Utah Carbon Reduction Progress Report*, Docket No. 23-035-57, RMP’s Report (Dec. 29, 2023) at 5 [hereinafter Report].

be done in a compliance docket for a relevant period or other appropriate docket.

(2) How credit will be applied towards the target for the 2.4 multiplier for the amount for photovoltaic and solar energy as contemplated in Utah Code Ann. § 54-17-603(6)

In interpreting this provision, the Division views the plain language of the statute as providing clear guidance on how credit for solar photovoltaic or solar thermal energy generation in Utah is applied towards RMP's annual twenty percent statutory target.⁴ Utah Code subsection 54-17-603(6)(a) provides that “[f]or the purpose of satisfying [the state’s target for qualifying electricity and the issuance of a REC] under this section, a renewable energy source located in this state that derives its energy from solar photovoltaic or solar thermal energy shall be credited for 2.4 kilowatt-hours of qualifying electricity for each 1.0 kilowatt-hour generated.” Although a WREGIS certificate is generated per megawatt-hour, the statute is straightforward on how solar generation is credited towards the twenty percent target. No new process seems necessary, merely the application of the multiplier to specific RECs, whether under WREGIS or other credentialing.

(3) Clarification on whether the 20 percent target becomes an annual target in post-2025 under Utah Code Ann. § 54-17-602

The Division interprets Utah Code section 54-17-602 as setting an annual twenty percent target for 2025 and continuing post-2025. When interpreting a statute, the Commission should “read the plain language of the statute as a whole and interpret its provisions in harmony with other statutes in the same chapter and related chapters.”⁵

As RMP notes in its Report, Utah Code subsection 54-17-602(1)(a) sets forth that

⁴ Utah Code Ann. § 54-17-602(1)(a) (beginning in 2025, requires each electrical corporation’s annual retail electric sales in Utah to “consist of qualifying electricity or [RECs] in an amount equal to at least 20% of adjusted retail electric sales.”).

⁵ *Taylor v. Taylor*, 2022 UT 35, ¶ 28, 517 P.3d 380, 386.

“beginning in 2025 [RMP’s] annual retail electric sales in this state . . . shall consist of qualifying electricity or renewable energy certificates in an amount equal to at least 20% of adjusted retail electric sales.” A subsequent subsection adds clarity. Specifically, subsection 54-17-602(1)(c) provides that “*an increase in the annual target from one year to the next* may not exceed the greater of: (i) 17,500 megawatt-hours; or (ii) 20% of the prior year’s amount under Subsections (1)(a) and (b).” Because subsection (1)(c)’s reference to “an increase in the annual target from one year to the next” contemplates an ongoing annual requirement, a plain reading of the statutory provisions indicates that the twenty percent target is an ongoing annual requirement that applies to 2025 and subsequent years.

RMP also identified inconsistencies with the assumed ongoing twenty percent target and other statutory requirements, specifically RMP’s reporting requirements, which end in 2026, and possible Commission-recommended penalties for target noncompliance, which may be recommended only for failure to meet the target in 2025.⁶ The Division agrees that legislative changes could be made to harmonize the ongoing annual target, electrical corporations’ reporting requirements post-2026, and penalty recommendations for noncompliance post-2025. But the lack of a continuing statutory reporting period or noncompliance penalty recommendation procedure does not alter the statute’s underlying plain language requiring annual compliance.

(4) Whether additional action on the process for the issuance, monitoring, accounting, transfer, recognition, and use of a REC with respect to Utah Code Ann. § 54-17-601 to - 607 (“Part 6”) is necessary

Part 6 of the Energy Resource Procurement Act directs that “[t]he Commission shall establish a process for issuance or recognition of a renewable energy certificate,”⁷ which “shall

⁶ Report at 6.

⁷ Utah Code Ann. § 54-17-603(1).

provide for the issuance, monitoring, accounting, transfer, and use of a renewable energy certificate, including in electronic form.”⁸ In addition, Utah Code section 54-17-606 states that “[t]he commission shall make rules as necessary to implement this part.” Under the statute, the Commission is granted a certain amount of discretion with respect to rulemaking to establish this process. Although the Commission has approved the use of WREGIS for management and tracking of RECs in RMP’s Blue Sky⁹ and Subscriber Solar¹⁰ programs and for RMP’s renewable energy balancing account,¹¹ at this date, the Commission has not yet made rules to implement Part 6. In light of the outstanding issues that RMP described in its Report, Commission action to establish a process to support claims of qualifying electricity and address REC matters would likely help resolve these outstanding issues.

Respectfully submitted this 29th day of March, 2024.

/s/ Patrick Greco
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⁸ Utah Code Ann. § 54-17-603(2).

⁹ RMP Elec. Serv. Schedule No. 70, Special Conditions ¶ 5; RMP Elec. Serv. Schedule No. 72, Special Conditions ¶ 5.

¹⁰ RMP Elec. Serv. Schedule No. 73, Special Conditions ¶ 9.

¹¹ See, e.g., RMP’s Application for Authority to Revise Tariff Schedule 98, Renewable Energy Credits Balancing Account, Docket No. 23-035-15, RMP Attach. A – Direct Test. of Marcelina R. Hundis (Mar. 16, 2023) 2:35-37.

CERTIFICATE OF SERVICE

I certify that on March 29, 2024, I caused a true and correct copy of the foregoing to be filed with the Public Service Commission and served by the Utah Division of Public Utilities to the following in Utah Docket No. 24-999-11 as indicated below:

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