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BEFORE THE
PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Investigation of the Costs and Benefits of PacifiCorp's Net Metering Program	)	**Docket No. 14-035-114** **PETITION FOR CLARIFICATION AND REVIEW OR REHEARING OF THE ALLIANCE FOR SOLAR CHOICE, UTAH CLEAN ENERGY, SIERRA CLUB AND VIVINT SOLAR, INC.**

Pursuant to Utah Code Ann. §§ 54-7-15 and 63G-4-301 and Utah Administrative Code § R746-100-11, Utah Clean Energy, Sierra Club, The Alliance for Solar Choice and Vivint Solar, Inc. (collectively "Joint Parties") hereby petition the Public Service Commission of Utah ("Commission") to review or rehear and clarify the Commission's Order In the Matter of the Investigation of the Costs and Benefits of PacifiCorp's Net Metering Program ("Order") issued in this docket on November 10, 2015.

The Joint Parties respectfully submit that the Commission's adoption of a framework for determining the benefits and costs of the net metering program places restrictions on the scope of considered costs and benefits in a manner that is inconsistent with Utah Code Annotated §54-15-105.1(1)[1] and that the rejection of the Joint Parties' alternate proposed framework rests on several errors in fact and law. Accordingly, the Joint Parties respectfully petition the Commission to provide review and rehearing of its order in this matter to consider and correct these errors of fact and law, which prevented it from duly considering the Joint Parties' proposed analytical framework for the net metering program.

Additionally, in order to preserve all rights of appeal, the Joint Parties seek clarification that the order constitutes final agency action.

I. INTRODUCTION AND PROCEDURAL HISTORY

On August 29, 2014, the Commission issued its report and order in Docket No. 13-035-184 ("2014 Rate Case Order"). In that Order, the Commission declined to implement PacifiCorp's (or "Company") proposed net metering facilities charge, concluding that further study and analysis, regarding the costs and benefits associated with the Company's net metering program, were required under Utah law.

During the 2014 Rate Case, Senate Bill 208, which amended several sections of the Net Metering Code, was signed by the Governor and took effect. This bill language

[1] Unless otherwise specified, all statutory references herein are to the Utah Code Annotated.

deleted § 54-15-105 in its entirety, replacing it with a new § 54-15-105.1. The now current § 54-15-105.1 states:

> The governing authority shall:
>
> > (1) determine, after appropriate notice and opportunity for public comment, whether costs that the electrical corporation or other customers will incur from a net metering program will exceed the benefits of the net metering program, or whether the benefits of the net metering program will exceed the costs; and
> > (2) determine a just and reasonable charge, credit, or ratemaking structure, including new or existing tariffs, in light of the costs and benefits.

In the 2014 Rate Case Order, the Commission stated its interpretation of Utah Code Ann. § 54-15-105.1 as directing a determination under subsection (1) (costs and benefits determination) before the determination under subsection (2) (just and reasonable rate determination) is made. *2014 Rate Case Order,* p. 58. Based on the requirements of the net metering law and the record of the proceeding, the Commission found that the evidence was inconclusive, insufficient, and inadequate to make a determination under Utah Code Ann. § 54-15-105.1(1), regarding the costs and benefits of the net metering program. *2014 Rate Case Order,* p. 66.

In order to make the determinations required by the net metering statute, the Commission opened Docket No. 14-035-114. In establishing Docket No. 14-035-114, the Commission determined that the examination of net metering costs and benefits would be conducted "in anticipation of a day when rooftop solar may be far more prevalent than it is now." *2014 Rate Case Order*, p. 69. Additionally, because the Commission had previously decided to use demand-side management ("DSM") cost-benefit tests to evaluate small-scale renewable resources, the Commission stated, "We expect the future examination we direct in this order will include an evaluation of whether the DSM tests

or some other economic tests are best suited to measuring the costs and benefits of the net metering program." *2014 Rate Case Order*, p. 69 (referencing Docket No. 09-035-27, Order (issued October 7, 2009), p. 15).

On November 21, 2014, in Docket No. 14-035-114, the Commission established a process and timeline for developing the "analytical framework" for making the required determinations under Utah Code Ann. § 54-15-105.1. The Commission specified that the framework should include "the types of analyses that must be performed, the components of costs and benefits to be included in the analyses, and the sources and time period of data inputs." Docket No. 14-035-114, *Notices of Comment Period and Scheduling Conference* (issued November 21, 2014), p. 2. The Commission clarified that subsequent to the creation of the analytical framework, in a general rate case or other appropriate proceeding, "the Commission will examine the costs and benefits that result from applying data to the approved analytical framework, as such results are presented by interested parties, and ultimately make the required determination under Utah Code Ann. § 54-15-105.1(2) [the just and reasonable rate determination]." *Id.* at pp. 2-3.

On July 1, 2015, in response to pre-testimony briefing from intervenors, the Commission issued an *Order RE: Conclusions of Law on Statutory Interpretation* ("July 1 Order"). First, the Commission concluded that its statutory obligation to conduct a cost-benefit analysis of the net metering program ("Step One") is "separate from and preliminary to" its obligation to establish a "just and reasonable" rate for net metering customers ("Step Two"). *July 1 Order*, p. 11. Specifically, the Commission found that "While the results of the Step One analysis will significantly influence any rate setting that occurs under Subsection Two, *the influence is not reciprocal*." *Id.* (emphasis added).

Indeed, the Commission stated, "[T]he Commission is not persuaded that its responsibility to establish a "just and reasonable" rate structure meaningfully informs the specific, quantitative cost-benefit analysis the legislature has instructed the Commission to undertake in Step One." *Id.*

Second, the Commission concluded that the plain language of the net metering statute limits its consideration of costs and benefits to costs incurred and benefits enjoyed by the Company and its other customers, where costs and benefits are compared on equal terms. *July 1 Order*, p. 12. Third, the Commission concluded that, as used in the net metering statute, the term, "other customers," refers to non-net metering customers in their capacity as ratepayers, and that the costs and benefits relevant to the "Step One" analysis are costs and benefits that affect the utility's costs of providing service. *July 1 Order*, p. 13. Finally, the Commission concluded that costs and benefits that are either "unquantifiable" or "not subject to reasonable verification" are of little value in conducting the "Step One" analysis. Nevertheless, the Commission made no findings as to whether particular costs or benefits were quantifiable or verifiable. *July 1 Order*, p. 15.

Utah Clean Energy, Sierra Club, the Alliance for Solar Choice and Vivint Solar are all intervenors in this docket. Utah Clean Energy, Sierra Club, and The Alliance for Solar Choice filed direct, rebuttal, and surrebuttal testimony together, as the Joint Parties, proposing an analytical framework based on the findings and conclusions contained in the Commission's previously filed notices and orders in Docket No. 14-035-14. Vivint Solar, Inc. filed rebuttal and surrebuttal testimony in support of the Joint Parties' analytical framework.

The Joint Parties' comprehensive analytical framework (for conducting the "Step One" analysis) is the only proposal before the Commission that fully accounts for the costs and benefits of the net metering program. It includes the following components:

- For examining the costs and benefits of the net metering program to the utility, the Joint Parties proposed a variation on the Utility Cost Test, modified to reflect unique impacts associated with a distributed solar net metered resource, to indicate the extent to which the net metering program will impact electricity system costs over the long term. *Joint Parties Exhibit 2.0,* p. 3:49-51.
- For examining the costs and benefits of the net metering program to other customers, the Joint Parties proposed a Rate Impact Analysis. This analysis indicates the extent to which the net metering program impacts electricity rates over the long term. *Joint Parties Exhibit 2.0,* 3:52-53.
- The Joint Parties proposed costs and benefits to include in the cost and rate impact analyses (*Joint Parties Exhibit 2.0*, 16:313-44), as well as descriptions of how to quantify the benefits (avoided costs) (*Joint Parties Exhibit 3.0*, pp. 4-13).
- The Joint Parties did not attempt to prove the existence of costs or benefits in this docket, consistent with the Commission's intention to apply the analytical framework in a subsequent proceeding; rather, the Joint Parties explained how to calculate costs and benefits for purposes of fleshing out the analytical framework. The Joint Parties proposed sources of information for these methods and inputs and proposed a long-term evaluation horizon, consistent with the treatment of all other resources in Company resource planning and acquisition evaluations.

II. REQUEST FOR REVIEW OR REHEARING

The Joint Parties seek review or rehearing upon factual and legal errors in the Order. The Commission failed to implement the requirements of § 54-15-105.1 when it dismissed the Joint Parties' comprehensive proposal in favor of a short-term view of the costs and benefits of the net metering program. Accordingly, the Joint Parties request review and rehearing on the following issues:

- First, the Commission framework is focused on a single test year. This is unreasonably narrow and purports to treat net metering in a manner inconsistent with long-held Commission practices addressing similar demand-side and supply-side resources. Moreover, the willful exclusion of quantifiable, long-term costs and benefits of the net metering program that

impact utility revenue requirements is arbitrary and capricious and in clear error of law.

- Second, the Commission's conclusion that net metering systems are not a system resource is inconsistent with the statutory framework of the net metering program and with the long-held Commission practice of evaluating supply-side and demand-side options on a consistent and comparable basis.
- Third, the Commission committed error of law when it substantially departed from its prior practice in evaluating small-scale renewable energy systems based on standard cost-effectiveness tests without providing a fair and rational basis for that shift in policy.
- Fourth, The Commission's order bears the characteristics of a "rule" under Utah law and was adopted outside of the procedural requirements for a rulemaking.

Upon these grounds, the Joint Parties request review or rehearing of the *Order* to adopt the differential "cost-of-service" studies framework, which is limited to test year costs and benefits, and request due consideration of the Joint Parties proposal. The Joint Parties' submission provided the Commission the only proposal that satisfied the full scope of benefits and costs contemplated in § 54-15-105.1(1).

A. The Commission's Finding that all Costs and Benefits of the Net Metering Program Must Occur During the Test Year Is Arbitrary and Capricious and an Error of Law.

1. The Commission's finding that all costs and benefits should be limited to the test year lacks support in statute.

The Commission misconstrues Section 54-15-105.1 by concluding that a "test year" limit to the consideration of costs and benefits is consistent with the statute. In interpreting a statute, the Supreme Court of Utah has held:

> "[t]he meaning of a part of an act should harmonize with the purpose of the whole act. Separate parts of an act should not be construed in isolation from the rest of the act." […] Further, "a fundamental principle of statutory construction is that a statute should be construed as a whole, and its terms should be construed to be harmonious with each other and the overall objective of the statute." […] In determining the legislative intent of a statute, "the statute should be considered in

> the light of the purpose it was designed to serve and so applied as to carry out that purpose if that can be done consistent with its language."[2]

The Commission errs as a matter of law by failing to consider the dual purpose of the statute to protect customer-generators and "other customers" and in failing to construe the term "other customers" with the rest of the statute.

a. Inserting the word "current" to modify the statutory term "other customers" is legal error, as the Commission implies a basis for imposing a "test year" limit without considering the statute as a whole.

Section 54-15-105.1 does not explicitly include the word "current" to modify "other customers." This construction violates the plain language of the statute. The statute asks the Commission to look at "whether the costs that the *electrical corporation* **or** *other customers* will incur from a net metering program will exceed the benefits of the net metering program." Section 54-15-105.1(1) (emphasis added). In construing the meaning of "other customers," the Commission errs in not construing it together with the term "electrical corporation."

The Commission relies on statutory interpretation and its view of legislative intent to deduce that the term other customers must mean "current other customers" since there is no guarantee that individuals that are customers today will continue to be customers 20 years from now. *Order* at p. 24 ("We believe the Legislature…was concerned about the near term impact net metering has on the utility's other *current* customers") (emphasis in original). The Commission's decision to read-in the word "current" to the statute to modify "other customers" is an error of statutory construction.

[2] *Utah Power & Light Co. v. Utah Associated Mun. Power Sys.*, 784 P.2d 137, 140-141 (Utah 1989) [internal citations omitted].

As evidence of this error, consider that an extension of the Commission's construction of the statute would necessarily include an implication that the word "current" also modifies the term "electrical corporation." The disjunctive "or" separates "electrical corporation" and "other customers," so it is inconsistent to imply a modifier that applies to one term but not the other. While there may be some uncertainty about who the customers will be in twenty years who incur costs based on the net metering program, there can be no doubt that the term "electrical corporation" includes the current electrical corporation and the same electrical corporation into the future, including any successors in interest.

The record supports the proposition that there are potentially significant benefits to the electrical corporation associated with the net metering program that will occur over the life of the system (i.e., 20 to 25 years). *See, e.g.*, Rebuttal Testimony of Tim Woolf at p. 11; Direct Testimony of Ben Norris at p. 6. It is arbitrary for the Commission to ignore the quantifiable costs or benefits that are accrued by the electrical corporation over time.

The Commission lacks a basis to conclude that the Legislature did not want to look beyond the test year in examining whether the utility will incur any future costs as a result of the net metering program.

b. Limiting benefits and costs to the test year protects "other customers" but neglects the dual purpose of Section 15-54-105.1 to protect customer-generators.

The purpose of Section 54-15-105.1 is to provide a reasonable basis for protecting both "other customers" from bearing an undue burden as a result of net metering and as a means of protecting net metering customers from undue discrimination in rate design. The Commission's *Order* ignores the long-term benefits of long-lived solar facilities and

fails to advance the dual purpose by focusing solely on the purpose of avoiding short-term adverse rate impacts on other customers. The dual purpose—of protecting net metering customers and of protecting other non-participating customers—is further evidenced by the fact that the rate making process in subsection (2) of Section 15-54-105.1 might result in either a charge or credit to the customer-generator. Treating a customer-generator as if the benefits of their system are only realizable in a single year fails to protect their interest because it ignores clearly quantifiable and identifiable benefits that occur outside of the test year. Ignoring these benefits is arbitrary and capricious.

By restricting benefits to the test year and ignoring those that occur over the life of the system, the Commission restricts only the rights of customer-generators to present evidence of their long-term benefits. For example, "other customers" are not hurt by the presentation of information of costs and benefits outside of the test year in the determination of costs and benefits. Indeed, the costs and benefits that occur within the test year are included within this larger body of evidence and can be given the weight the Commission believes is due when it determines just and reasonable rates under subsection (2). However, by restricting the types of benefits and costs considered to the test year, the Commission arbitrarily limits evidence that protects customer-generators from discriminatory charges and fails to uphold the dual purpose of Section 54-15-105.1.

As the record shows, many of the benefits of the net metering program are long-term benefits and will be realized outside of the test year. As Ms. Morgan testified, there are certain benefits—particularly avoided transmission and distribution ("T&D") system benefits—that will only be realized if the Company begins to incorporate distributed solar

generation into its distribution system planning process. Rebuttal Testimony of Pamela Morgan at p. 13. It follows that all such deferral or avoidance benefits, which depend on incorporating distributed generation into a future planning cycle, will never be realizable within a given test year. In other words, if generation or T&D capacity was needed two years outside of the test year, and incremental additions of net metered systems continue to push that need into the future, there will never be a test year where the Company was otherwise going to undertake the capital project. Accordingly, the Joint Parties' view of the *Order* is that the Company would not be avoiding a capital expense during the test year and net metering would be in a perpetual cycle of pushing the expense further out without ever being recognized as a benefit. This approach conflicts fundamentally utility planning, where utilities must undertake lumpy additions of generation and T&D capacity with a longer view in mind, with projections of probable customer and load growth into the future.

c. The Commission's decision to imply a "test year" limitation on subsection (1) conflates the two distinct purposes of subsection (1) and subsection (2) in Section 15-54-105.1.

The Commission's determination that any costs and benefits outside of the cost-of-service framework must be realized in the test year is in conflict with Section 54-15-105.1(1). The Commission reasons that the framework should be suitable for the ratemaking purposes in 54-15-105.1(2) (*Order* at p. 8), but it reaches this conclusion based on a false dilemma. Subsection (2) does not require the Commission to apply the determination made in subsection (1) to the rate making function in any particular way. If the determination in subsection (1) is that costs exceed the benefits, subsection (2) does not automatically mandate a new charge on net metered customers. If the Commission finds that benefits exceed the costs, the Commission is not required to approve any

additional credit to those customers. Subsection (2) requires the Commission to assign the proper weight to the results of the cost-benefit determination in establishing just and reasonable rates.

Accordingly, it is legal error to unnecessarily limit the information the Commission will collect as part of subsection (1) regarding the costs and benefit of the net metering program because it wants to look only at the evidence that will be directly adjudicated through the class cost of service study and rate design portion of the utility's next rate case. This is inconsistent with the unequivocal directive to determine **the** (not some) costs and benefits of the net metering program in Section 54-15-105.1(1). The Commission's analysis of two cost of service studies necessarily fails to incorporate certain benefits because the cost of service studies are incapable of identifying long-term system benefits.

As the Joint Parties' witnesses consistently stated, the statute contemplates a cost-benefit determination that is not necessarily integrated into the ratemaking process, as any rate structure must be considered just and reasonable "in light of the costs and benefits." Subsection (2) does not provide the Commission a justification for limiting the scope and duration of the benefits considered in subsection (1), as the Commission remains free to consider all evidence.[3] However, with the adoption of a restrictive framework, the Commission is effectively precluding evidence relative to the long-term benefits of net metering from being considered. The Commission's decision to have less,

[3] In its *July 1 Order*, the Commission stated that its discretion in setting just and reasonable rates need not inform the quantitative cost-benefit analysis performed under the "Step One" requirement. *July 1 Order*, p. 11.

rather than more, information is in conflict with statutory requirement to measure the costs and benefits of the net metering program.

2. The Commission's decision to ignore quantifiable costs and benefits that are not realized in the test year is arbitrary and capricious and discriminates against net metering as a resource to the system.

In addition to lacking support in the statute to limit the consideration of costs and benefits to a single test year, the Commission's decision to limit those benefits will result in imperfect and imprudent decision-making. This limitation is arbitrary and capricious as it lacks any reasonable purpose other than depriving customer-generators of the opportunity to present evidence that will have to be considered in weighing factors to set a just and reasonable rate, credit or ratemaking structure. In determining a mixed question of law and fact, the "Commission's decisions must fall within the limits of reasonableness or rationality." *Hilte v. Industrial Comm'n*, 766 P.2d 1089, 1091 (Utah Ct. App. 1988). In setting a test year limitation on the consideration of costs and benefits of net metering, the Commission acts unreasonably to exclude evidence that would otherwise inform its fair and balanced determination of just and reasonable rates under Section 54-15-105.1(2).

In limiting the costs and benefits to the test year, the Commission provides an incentive for the Company to find ways to incorporate costs within the test year and to push any benefits outside of the test year. Instead of prudently planning around net metered systems to realize net metering benefits (e.g., avoided transmission and distribution capacity), under the "test year" limitation, the Company can ignore those benefits and ensure that they will never be accounted for or planned around. The test year limitation creates an irreconcilable tension between system planning and short-term ratesetting:

> Planning, acquisition and ratemaking treatment should be consistent and comparable while acknowledging such differences. Ratemaking treatment can affect the Company's willingness to acquire resources. Ratemaking treatment for DSR has yet to be determined in this jurisdiction and this uncertainty might create a disincentive to invest in such resources. The Commission concludes that disincentives must be studied in more detail and assigns this analysis to a task force to be described later in this order. *The Commission reaffirms its position on this threshold issue. Demand-side and supply-side resources must be evaluated on a consistent and comparable basis.* The Commission however encourages parties to study how best to implement such a requirement.

Report and Order on Standards and Guidelines, Docket No. 90-2035-01 at p. 15 (issued June 18, 1992) (emphasis added).

Utility decisions often look far into the future and items that are a net cost to "current other customers" may end up being a net benefit to "future other customers." In fact, this situation occurs frequently with the acquisition of large generating resources. Traditional generation sources are "lumpy," which means that the utility frequently acquires more capacity than is necessary in anticipation of future demand. If the prudency standard was limited to whether actions are reasonable based solely on the impacts on the very near term (i.e., the test year), many, if not most, utility capital investments would be imprudent. It is inappropriate to put the blinders on to the obvious and quantifiable benefits and costs of the net metering program that will accrue beyond the test year.

Imposing this artificial limit on the evaluation of a demand-side program—with long-lived assets—is contrary to utility practice in addressing customer programs and system resources and constitutes undue discrimination against net metering facilities. This focus on only a near-term view creates a substantial risk that the future benefits of net metering will not be realized. Under such a framework, the system could suffer because a rate structure based primarily on near-term costs that ignores long-term benefits may result in a rate design that severely curtails or kills the net metering program

for the entire system. Accordingly, the Commission's decision to limit the information that is relevant to its determination in Section 54-15-105.1(1) is arbitrary and capricious and is inconsistent with the statutory directive to consider all benefits and costs to the utility and to other customers.

The Commission does not limit the duration of information relevant to other sources of demand-side reduction on this basis, and has provided no justification for why net metering systems should be singled out for this discriminatory treatment. Because these evaluations have meaning within the regulatory process—they are very much tools that help decision makers weigh the balance of policy objectives and costs to ratepayers—limiting the consideration of benefits for net metering systems constitutes undue discrimination.

B. The Commission's Finding that the Net Metering Program Is Not a System Resource Lacks Substantial Evidence in the Record, Is an Error as a Matter of Law, and is Based on an Unreasonable Assumption that Net Metering Customers Will Not Act as Rational Economic Actors.

The Commission commits legal error by failing to properly implement the statute's requirement to examine the programmatic characteristics of net metering as part of the subsection (1), "Step One" analysis. The Commission is required under Section 54-15-105.1(1) to make a determination of the costs and benefits of the net metering program to "the electric corporation or other customers." In adopting a framework for analyzing the net metering program, the Commission must support its findings by substantial evidence. *See First Nat'l Bank of Boston v. County Bd. of Equalization*, 799 P.2d 1163, 1165 (Utah 1990) ("it is that quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion.").

By improperly basing its decision on only a narrow aspect of the net metering program (i.e., that net metering most resembles the program requiring purchases from qualifying facilities ("QFs")), the Commission relies on factual errors and unsupported assumptions to determine that net metering systems are not a resource to the system. The Commission failed to consider the demand-side attributes of net metering and the statutory focus on demand-side consumption of onsite generation reflected in the definitions in the net metering statute.[4] Specifically, the record does not support the *Order's* factual conclusion that individual customer generators will behave in a manner that either (1) prevents the Commission from valuing the aggregate installation of net metering facilities as a system resource, or (2) fails to appropriately incorporate the value of long-term benefits of net metering into customer rates. These errors could be corrected by viewing net metering *as a program* in its entirety and evaluating how net metering customers will behave *in the aggregate*.

1. It is legal error to ignore the statute's call to examine the programmatic characteristics of net metering.

The Commission committed legal error in concluding that net metering customers' generation equipment is not a system resource. The statute requires the Commission to look at the costs and benefits assignable to the "net metering **program**" (Section 54-15-105.1(1)) as opposed to an individual net metering customer. *Order* at p. 13. Indeed, the "net metering program" is defined in Section 54-15-102(12) as "a

[4] The Commission has previously recognized that net metering and distributed generation can have a positive impact on managing load growth, a demand-side benefit. *See Determination Concerning the PURPA Net Metering and Interconnection Standards*, Docket No. 06-999-03 at p.12 (Issued May 8, 2007) ("The Commission recognizes distributed generation's potential contribution to managing future load growth in Utah and views the interconnection process as integral to encouraging distributed generation in Utah while ensuring a reliable distribution grid.").

program administered by an electrical corporation whereby a customer with a customer generation system may:

> **(a)** generate electricity *primarily* for the customer's own use; [emphasis added]
> **(b)** supply customer-generated electricity to the electrical corporation; and
> **(c)** if net metering results in excess customer-generated electricity during a billing period, receive a credit as provided in Section 54-15-104."

The Commission errs by overlooking the fact that net metering is defined in terms of the program and by focusing on the generating equipment and the speculative behavior associated with anecdotal, individual net metering customers. "The Joint Parties' proposal asks us to adopt a framework that treats customer-owned and controlled equipment as a system resource, requiring speculation about the cost impacts of these customer owned and controlled assets decades into the future…". *Order* at p. 14. The Joint Parties' proposal was based on treating the net metering *program*—not individual customer equipment—as a system resource.

The net metering statute expresses that net metering is a policy intended to enable a participating customer to offset load. Section 54-15-102(12)(a) ("generate electricity *primarily* for the customer's own use"). Utah's net metering statute, Section 15-15-101 *et seq.*, defines a net metering customer's equipment as a "Customer generation system," a term which requires the system to be "intended primarily to offset part or all of the customer's requirements for electricity." Section 54-15-102(3). Unlike a typical generating resource, a customer generation system has characteristics of both a supply-side and a demand-side resource. In this regard, the net metering program is like a demand-side "program" and, at a minimum, is a state-level demand-side resource and

should be evaluated in a manner consistent with other such resources (as required by integrated resource planning standards and guidelines).

The Order errs by comparing individual net metering facilities to individual qualifying facilities, overlooking the stark differences between the two programs, including the fact that net metering has both supply-side and demand-side characteristics. *See,* Order at p. 14 (quoting Company witness P. Clements). The Commission's focus on individual customer behaviors to compare net metering to QFs ignores the fact that Section 54-15-105.1(1) requires an assessment of the costs and benefits of the net metering **program**. This is clear legal error because the record lacks any evidence suggesting that any individual's aberrant behavior would be sufficient to affect the total aggregate behavior of all customer generators in a single class. *See* Direct Testimony of P. Hayet at p. 26 (discussing intra-class homogeneity and noting that net metering-specific load data is not yet available).

Section 54-15-105.1(1) requires the Commission to consider whether the program as a whole—that is, the entire fleet of customer generation systems—is providing a benefit or imposing a cost on other customers and the utility. The Commission's framework fails to implement this requirement.

2. It is an error to assume that net metering systems must give assurances equivalent to purchase contracts with qualifying facilities to be considered a system resource.

As discussed previously, the Commission commits legal error by failing to take the proper aggregate view of net metering. This error subsequently triggers factual errors regarding the Commission's speculation about the individual behavior of customer generators in concluding that such customers cannot be relied on to provide a resource to

the system. *Order* at pp. 13-14 ("Net metering customers may elect, at any time, to use their electricity however they choose").

These hypothetical aberrations are not supported by the record and are contrary to the general understanding of parties that net metering, as a program, is likely to continue to grow.[5] The findings regarding individual customers are premised on false inferences that do not have any record support and fail to demonstrate that the Commission has considered the net metering program, as a whole, as a system resource.

The Commission cites the following discussions or propositions in reaching its conclusions that net metering is not a system resource:

1) PacifiCorp has little if any control over the design of systems on the customer side of the meter;
2) Customers own and control their equipment, and customers make decisions about whether to install that equipment and how much capacity to install;
3) The customer is under no obligation to maintain the system or to supply the utility with electricity;
4) If a problem develops that prevents the customer from generating electricity, the customer is under no obligation to cure it;
5) A customer is under no contractual obligation to provide any of the power it generates to the utility;
6) Net metering customers may elect, at any time, to use their electricity however they choose; and
7) Net metering customer agreements do not include the same credit terms, performance guarantees or other provisions as PacifiCorp's qualifying facility agreements.

[5] The Office of Consumer Services, the Division of Public Utilities, and the Company all adopted a view that the purpose of acting now was to address net metering before it becomes a more significant problem. (*See, e.g.*, Rebuttal Testimony of Douglas L. Marx at 2; Hr'g Tr. at 243:19-244:1; Direct Testimony of Phillip Hayet at 19, Table 3 (assuming 20%-40% growth rates); Direct Testimony of Robert A. Davis at 9. The Commission itself directed that the examination of net metering costs and benefits should be conducted "in anticipation of a day when rooftop solar may be far more prevalent than it is now." *2014 Rate Case Order*, p. 69.

(*Order* at 13-14). In developing these findings, the Commission errs by resting on assumptions that are not supported by any record evidence regarding the lack of control over the design of systems.

Contrary to the assertions that net metering systems lack the characteristics to provide resource benefits to the system, the record and law reflect that it is error to peg the value of net metering systems to the arrangements for purchased power from qualifying facilities ("QFs"):

- There are inherent differences between QFs and net metering resources:
    - The Company purchases electrical output from QFs. It does not purchase kWhs from net metering customers.[6]
    - Net metering systems are required to be located next to customer load.
    - The net metering transaction is governed by tariff (and its terms and conditions) and the applicable rate schedule. QF rates are governed by a published or negotiated rate, along with contractual terms and conditions;
    - Net metering systems must match a customers expected load and may not exceed 25 kW (residential) or 1 MW (non-residential). QFs can be sized up to 80 MW.
- PacifiCorp's own net metering interconnection agreement requires Customer's to "construct, operate, test, and maintain" their net metering facility in accordance with the interconnection agreement, IEEE Standards, Utah state building codes, the Commission's rules, and other applicable standards required by the Commission.[7]
- The record contains no evidence supporting the finding that PacifiCorp exercises "little to no control" over the design of systems on the customer side of the meter. The Company and the Commission have substantial influence and control of the net metering program and can, consistent with

[6] Hr'g Tr. at 209:19-210:10.
[7] Interconnection and Net Metering Service Agreement for Metering Facility Level I Interconnection, approved by *Report and Order*, Docket No. 10-035-44 (Issued March 23, 2011).

other demand-side programs, develop program terms and conditions that closely match the system needs.

- The Commission's framing of the voluntary nature of net metering participation wholly overlooks the fact that incremental load reduction and incremental generation capacity have a value to the system and to other ratepayers.[8]

- It is error and inconsistent with the record to presume that the solar capacity installed under the net metering program will unpredictably or suddenly diminish. The entire premise of the proposals of the Office, Division and the Company is that net metering is growing and will one day grow to have a substantial impact on other ratepayers.[9]

- A net metering customer's motivation is not the same as a QF under contract to either perform or be sanctioned for violating contract obligations. Rather, a customer-generator uses his or her investment to avoid utility purchases by consuming onsite (i.e., demand-side aspect of net metering) and only exports electricity to the utility incidentally. The availability of generation to the utility as a supply-side resource is subordinate to the statutory **primary** purpose of meeting the customer's own electrical requirements. It is logical to assume that any customer making a significant investment in onsite solar will act rationally to protect their own self-interest over the entire life of their investment.

Accordingly, the fact that customer agreements do not include the same credit terms, performance guarantees or other provisions as PacifiCorp's qualifying facility agreements makes a false comparison to net metering as purely a supply-side resource and fails to consider that it is a program meant to encourage customers to **primarily** offset their own electrical requirements from the Company. The Commission therefore must consider the aggregate of customer generator systems to be system resources that reliably offset a predictable level of demand. This same long-term benefit is inherent in the Commission's consideration of and support for energy efficiency and demand side management programs.

[8] Direct Testimony of Tim Woolf at 16-17; Direct Testimony of Ben Norris at 4-13.
[9] See fn. 5, *supra*.

Upon rehearing, the Commission should find that the net metering program in aggregate is a system resource that provides, at a minimum, a service that is similar to a demand-side resource and should be evaluated in a manner consistent with such resources.

C. In Adopting its Framework to Analyze the Net Metering Program, the Commission Departs from Existing Long-Standing Policy of Evaluating Small-Scale Renewables on a Similar Basis as Demand-Side Programs.

The Commission errs in departing from its prior practice of evaluating small-scale solar consistent with demand-side programs without giving a reasoned basis for the inconsistent treatment. Utah law permits "relief from agency action that is 'contrary to the agency's prior practice' unless the agency 'gives facts and reasons that demonstrate a fair and rational basis for the inconsistency.'" *Mountain Fuel Supply Co. v. Public Serv. Comm'n*, 861 P.2d 414, 421 (Utah 1993) (citing Utah Code Ann. § 63G-4-403(4)(h)(iii)). "It is axiomatic that agency action must either be consistent with prior action or offer a reasoned basis for its departure from precedent." *Nat'l Cable & Telecomms. Ass'n v. FCC*, 567 F.3d 659, 667 (D.C. Cir. 2009).

The Commission's *Order* errs in adopting an analytical framework that fundamentally changes how small-scale renewable energy systems engaged in net metering will be evaluated. In 2009, the Commission determined that small-scale renewable resources should be evaluated on a similar basis as energy efficiency and load management (using the standard DSM cost-effectiveness tests) until other economic tests were available. Docket No. 09-035-27, Order, p. 15 (issued October 7, 2009). The *2014 Rate Case Order* considered that the current docket would "include an evaluation of

whether the DSM tests or some other economic tests are best suited to measuring the costs and benefits of the net metering program." *2014 Rate Case Order*, p. 69.

The Commission's adopted analytical framework for the net metering program represents a departure from prior practice. The Commission has failed to provide a reasoned basis for departing from its traditional approach to evaluating small-scale renewable resources and did not address the 2009 Order, as it indicated it would do in the *2014 Rate Case Order*. The Commission erred as a matter of law because it failed to provide any reason for departing from existing practice related to evaluating the cost-effectiveness of small-scale renewables.

Additionally, since all small-scale renewable energy systems are not net metering systems, the Order creates the potential for inconsistent and incomparable treatment of similarly situated resources, contrary to planning standards and guidelines. Under the Commission's existing framework for examining costs and benefits of small-scale renewables—under the standard cost-effectiveness tests in the California Standard Practice Manual—small-scale renewables and demand-side programs may be viewed from a variety of perspectives and the Commission may consider benefits along a timeframe relevant to the useful life of such systems or measures. Under the exclusive framework imposed by the Order, net metering systems (which are also small-scale renewable systems) may only be evaluated for costs and benefits occurring within the test year. If the prior decision stands, then it remains appropriate to consider the long-lived aspect of small-scale renewable systems outside of the net metering context, but is inappropriate to consider anything outside of a rate case test year for net metering systems.

The Joint Parties provided substantial evidence of why the use of the Ratepayer Impact Measure would be inappropriate in the case of net metered systems (proposing an alternate rate impact analysis instead), but argued that the Utility Cost Test was the most appropriate means of evaluating impacts of the net metering program on the electricity system. Direct Testimony of Tim Woolf at 8-11, 14-17. The Joint Parties, thus, provided a means for the Commission to reconcile its prior ruling and develop a unique evaluation method for net metered systems, which does not discriminate against that program as compared to other small-scale renewables. In both cases (under the Joint Parties' net metering framework and the existing cost-effectiveness test for small-scale renewables), small-scale solar facilities would be evaluated for the long-term benefits they provide, consistently with other demand-side resources.

The Commission's legal justifications for adopting the cost-of-service framework and test year limit for additional costs and benefits does not address in any manner its departure from the prior precedent. This is an error of law.

D. The Commission's Order Constitutes an Improperly Adopted Rule under the Administrative Rulemaking Act.

While the Commission's July 1 and November 10 rulings are labeled "Orders," they amount to a rule under the Administrative Rule Making Act. Section 63G-3-101 *et seq*.. Each "order" is a direct result of a legislative directive that explicitly requires agency action, each interprets a legislative mandate, and each applies to an entire class of persons. The Administrative Rulemaking Act defines a rule as an agency's written statement that is explicitly or implicitly required by state or federal statute; implements or interprets a state or federal legal mandate; and applies to a class of persons or another agency. Section 63 G-3-102(16)(a).

The Commission determined that the November 10th Order was implicitly required by Utah Code Ann. § 54-15-105.1. "This Order constitutes a further step toward fulfilling the task the Legislature set for the Commission in Utah Code Ann. § 54-15-105.1." *Order* at p. 1. The *Order* interprets the Legislature's mandate that the Commission make determinations regarding the costs and benefits of the net metering program with respect to its impacts on PacifiCorp and non-net metering customers. Finally, the Commission's determination of the costs and benefits of the net metering program will be used to determine the charges, credits or ratemaking structure that will impact the entire class of residential customers—both net metering and non-net metering.

The Commission's adoption of this "rule" did not follow the requirements of the Administrative Rulemaking Act and, accordingly, it is an invalid rule.

E. The Commission's Conclusory Rejection of the Joint Parties' Proposal Rests Upon Errors of Law and on Assumptions Not Supported By Substantial Evidence.

Upon rehearing, the Joint Parties request that the Commission reconsider and adopt the Joint Parties' proposed framework for evaluating the costs and benefits of the net metering program. The Joint Parties proposal cures the defects of the Commission's approved framework by providing a comprehensive list of costs and benefits that can be proven in a future adjudicatory proceeding where the framework is required to establish a just and reasonable rate. Direct Testimony of Tim Woolf at pp. 16-17; Direct Testimony of Ben Norris at pp. 4-13.

The Joint Parties' proposal is the only framework that properly accounts for the full costs and benefits of the net metering program and satisfies the scope of Section 54-15-105.1(1), as determined by the Commission's *July 1 Order*. The Commission

acknowledges that the approved framework falls short of quantifying all costs and benefits. *Order* at p. 12 ("The record before us does not support our issuing an order that comprehensively identifies categories of costs and benefits…"). The Commission also implicitly acknowledges that there will be benefits in the future that are not reflected in its framework. *Order* at p. 12 ("We recognize that we may have to address disagreements about the existence or magnitude of one or more such effects in a future proceeding"). Regardless of the Commission's decision not to specifically identify costs and benefits, it is arbitrary and capricious to ignore **any** future cost or benefit that occurs outside of the test period where that cost of benefit is readily quantifiable and would ordinarily be accounted for in a cost-effectiveness test. The Commission can use the tool that provides it maximum information (on all of the costs and benefits over the life of the systems in the program) to develop just and reasonable rates.

Based on the Commission's *July 1 Order*, the Joint Parties worked within the Commission's interpretation that the statute requires the framework to relate to costs and benefits impacting the utility's cost (i.e., revenue requirement or cost to serve). *Order* at p. 2. The Commission's *July 1 Order* **did not** establish that a test period cost-of-service analytical framework was the only appropriate means of evaluating net metering. Rather, the Commission clarified that externalities would not be considered within the net metering framework. (*July 1 Order* at p. 15). In response, the Joint Parties' presentation of its case adhered closely to the Commission's guidance, and did not venture into areas of rate design to the extent of the Company, Office and Division. As discussed by Joint Parties' witnesses Morgan and Woolf, the Joint Parties' proposal was the only proposal to meet the requirements to consider **the costs and benefits** (not some of the costs and

benefits or some limited view of the costs and benefits) of the net metering program. The Commission's rejection of this proposal was based on the incorrect premise that net metering generation systems are not a system resource. The Commission's rejection of the Joint Parties' proposal, thus, rests on a clear error of law and fact.

III. REQUEST FOR CLARIFICATION

The Joint Parties request clarification that the Commission's Order is a final agency action, for the sake of preserving rights in accordance with Utah Code § 63G-4-401, *et seq.* and Utah Administrative Code R746-100-12. As the Commission did not include the Notice of Opportunity for Agency Review or Rehearing at the end of the instant *Order*, it is not clear how the Commission characterizes this *Order* as either an adjudication or rulemaking.

IV. CONCLUSION

The Joint Parties respectfully request review or rehearing of the Commission's *Order* adopting a differential cost-of-service analytical approach to evaluating the costs and benefits of the net metering program. The *Order*'s rejection of the Joint Parties' proposed analytical framework is premised on errors of law and assumptions that are not supported by the record. The decision to impose a "test year" limit to consideration of any costs and benefits that are not captured in the cost-of-service framework is arbitrary and capricious and based on an error of law. Additionally, the Commission committed legal error by departing from prior practice without providing a fair and reasonable basis for the departure and adopted a rule outside of the procedural requirements of the

Administrative Rulemaking Act. The Joint Parties request clarification that the *Order* was final agency action for purposes of appeal.

Respectfully submitted on this, the 10th of December, 2015,

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CERTIFICATE OF SERVICE
DOCKET NO. 14-035-114

I hereby certify that a true and correct copy of the foregoing was served by email this 10th day of December, 2015, on the following:

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