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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** **RESPONSE TO JOINT PARTIES' PETITION FOR CLARIFICATION AND REVIEW OR REHEARING**

Pursuant to Utah Code Ann. § 63G-4-301 and Utah Administrative Code § R746-100-11, PacifiCorp dba Rocky Mountain Power (the "Company") hereby submits this response to the *Petition for Clarification and Review or Rehearing* (the "Petition") *of The Alliance for Solar Choice, Utah Clean Energy, Sierra Club and Vivint Solar, Inc.* (together, the "Joint Parties")

submitted on December 10, 2015. The Petition asks the Public Service Commission of Utah ("Commission") to "review or rehear and clarify" the Commission's order in the above-captioned proceeding issued on November 10, 2015 (the "Order"). This response demonstrates why the relief requested should be denied.

I. INTRODUCTION

The Joint Parties Petition this Commission to either rehear arguments made by them at the hearing of this matter or to "clarify" its Order in ways that are more aligned with rulings the Joint Parties had hoped to receive. Unsurprisingly the Petition either attempts to reargue issues that the Joint Parties already argued and lost, or raises new issues that were never presented previously in this proceeding and are improperly raised for the first time in the Petition. The Joint Parties fail to identify a properly preserved argument that they show was decided erroneously, contrary to Utah law, or factually goes against the evidence in the record. Although under Utah law the Joint Parties have the burden to marshal the evidence in the record and demonstrate how the Commission failed to properly construe the facts if they seek to challenge those rulings, they have not even attempted to do so. Accordingly there is no reason to hold a rehearing or issue a new Order based on the Joint Parties' arguments.

ARGUMENT

Each of the Joint Parties is interested in expanding the use of renewable energy in Utah through a net metering program that incents rapid growth of that program. The Commission, by contrast, is only interested in applying the statute according to its plain language and in accordance with the intent of the Legislature. The Commission, unlike the Joint Parties, must determine both the costs and benefits associated with net metering without the overlay of special

interests. In other words, the Joint Parties are single-focused, while the commission has to review what is in the best interest of all customers and consistent with the statute.

The statute at issue reads as follows:

> 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.

Utah Code Ann. § 54-15-105.1 (the "Statute"). The Commission first considered this statute in Docket No. 13-035-184 and issued an order on August 29, 2014 (the "2014 Rate Case Order") requesting more in-depth analysis of both costs and benefits of the program. This docket was created to provide this additional analysis. After multiple rounds of pre-filed briefs and testimony, followed by a day of hearings (during all of which the Joint Parties participated), the Commission established a framework to consider costs and benefits of the net metering program.

In response to the Commission's Order interpreting the Statute, the Joint Parties raise a series arguments in support of their Petition. As shown below, each of those arguments fail.

A. The Temporal Scope Of The Commission's Framework Is Reasonable And Supported.

1. The Commission's Framework Is Appropriately Limited To "Current" Customers.

The Joint Parties attack the Commission's use of a test year in its Order because they claim it improperly limits the Commission's investigation of costs and benefits to "current" customers. As the Commission rightly noted in its Order, an investigation that focuses on current

customers better fulfills the Legislature's intent of providing information that would be useful for the ratemaking referenced in subsection two ("Subsection Two") of the Statute. (Order at 14-15.) A defined test year is also less susceptible to the inherent risks of long-term forecasting, "helps to avoid intergenerational inequity and is more reflective of the time horizon used to set rates." *Id.* (quoting P. Hayet). Thus, the Commission's approach best implements the Statute and the intent of the Legislature.

The Joint Parties also argue without explanation that the Commission's framework is inconsistent with the plain language of the Statute. (Pet. at 8-9.) Again, the relevant language from the Statute requires the Commission to "determine . . . whether costs that the electrical corporation or other customers will incur from a net metering program will exceed the benefits." Utah Code Ann. § 54-15-105.1(1). The Joint Parties argue, without support, that because "[t]he disjunctive 'or' separates 'electrical corporation' and 'other customers,'" that "it is inconsistent to imply [the word 'current'] modifier . . . applies to ['other customers'] but not ['electrical corporation']." (Pet. at 9.) This argument is nonsensical. First, the modifiers do not necessarily need apply to both terms. *See Elec. Fab Tech. Corp. v. Wood*, 749 P.2d 470, 472 (Colo. App. 1987) ("[W]e conclude that this statute was written in the disjunctive and that the qualifying phrase modifies only the phrase [after the disjunction]."). Thus, the Commission's reading is completely consistent with the plain language.

More importantly, the conclusion the Joint Parties propose is illogical. The Joint Parties argue that, if the Commission applies the word "current" to the term "other customers," the requisite application of the same modifier to the term "electrical corporation" would be unworkable. (Pet. at 9.) Not so. There is no reason the Commission could not consider the costs

imposed by "current net metered customers" on "current other customers" and the "current utility." In fact that is precisely what the Commission *is doing.* As the Commission recognized, the cost/benefit analysis required by the Statute is for the purpose of setting credits, charges, or rates. (*See* Order at 14-15.) It is perfectly appropriate for the Commission to consider the costs and benefits to the *current* electrical corporation and the *current* other customers during the chosen test year. That is how a rate case works, that is how a test year works and that is how the plain language of the Statute works. Thus, the Joint Parties have not exposed any fatal flaw in the Order.

The Joint Parties end their argument by noting that the reference to a *current* electrical corporation would "no doubt" include "the current electrical corporation and the same electrical corporation into the future, including any successors in interest." (Pet. at 9.) It appears the Joint Parties are attempting to argue that "electrical corporation" should not be modified with the word "current" because it is likely to change in the future. But this does not identify any problem with the Commission's framework. The framework would address whatever "electrical corporation" or "other customers" were the current ones as of the test year at issue in the then-active proceeding. The fact that electrical corporations and other customers can both change over time does not mean that the scope of the Commission's analysis must be unbounded in duration.[1]

The Joint Parties' next argument is similarly ill-founded. The Joint Parties argue that "[i]t is arbitrary for the Commission to ignore the quantifiable costs or benefits that are accrued by the electrical corporation over time." (Pet. at 9.) As the moving party on the Petition, the Joint

[1] Throughout the Petition, the Joint Parties never identify the time period they propose for the Subsection One analysis. Their only reference is to the "future."

Parties are required to marshal the evidence that supports the Commission on a factual finding and show why it is insufficient. *In re Questar Gas Co.*, 2007 UT 79, ¶ 39, 175 P.3d 545, 555. That is also consistent with the Commission's Order of July 1, 2015 (the "July Order") indicating that any party seeking a particular interpretation in this proceeding bore the burden of proof of what exactly those benefits are. (July Order at 16-17.) However, the Joint Parties' only reference is to the testimony of two of their own witnesses who indicate that the useful life of a photovoltaic resource is "at least 20 years" or "25 years." (Pet. at 9 (citing Rbt. T. Woolf at 11; Dir. B. Norris at 6).) But just because a customer's solar panel may last 20 years does not mean that other customers need to pay for any (alleged) benefits those panels will provide in those future years *this year*. Similarly the Company does not ask the Commission to charge net metering customers *this* year for cost shifting that *may occur* in future years. The Order's decision to pair a test year and rate case avoids this very problem. But beyond the lack of logical support, notably neither reference supports the Joint Parties' claim that a long-lasting roof panel provides "significant benefits to the electrical corporation." (Pet. at 9.) Even more fundamentally, the Joint Parties' accuse the Commission of "ignor[ing] the *quantifiable* costs or benefits" of solar systems, but then only reference "*potentially* significant benefits" without providing any evidence of what those benefits are, much less demonstrate how they would be quantified. By definition, "potential" future benefits are not subject to real time quantification. (Pet. at 9 (emphasis added).) Thus, even in the Petition, the Joint Parties have not supported their claim that these alleged future benefits could be quantified in the next phase of the proceeding; they haven't themselves haven't identified how to quantify the "potential" benefits they want included in the frame work either. The Commission acted reasonably based on the evidence in

the record, and the Joint Parties have failed to marshal the evidence in support of the Commission's decision, much less make a showing that the Commission's decision is not supported by substantial evidence.

2. The Commission Acted Reasonably With Regard To "Customer-Generators."

The Joint Parties next argue that the Commission's Order was "arbitrary and capricious" because it acted contrary to the Statute by "ignoring" the benefits the net metering program offers to "customer-generators." (Pet. at 9-10.) However, the Joint Parties have failed to cite any evidence that this "customer-generator" argument was ever presented to the Commission to begin with. If it wasn't, the Joint Parties cannot claim the Commission wrongfully *ignored* the argument. The fact that the Joint Parties do not even *attempt* to cite to a single line of testimony or text from a pre-hearing brief as having preserved the argument is proof enough that they did not.[2] Moreover, the Joint Parties' argument is, again, simply wrong.

The Statute requires the Commission to determine the costs and benefits of the net metering program to "the electrical corporation" and to "other customers." Utah Code Ann. § 54-15-105.1(1). The only reasonable interpretation of the phrase "*other* customers" is that it refers to customers that are *not* participating in net metering—there is no other differentiation of customers at play in the Statute. Thus, the Statute does not direct the Commission to make a determination regarding "customer-generators," making the Joint Parties' argument on this point completely irrelevant to the statute at hand. Indeed this point was already argued to the

[2] To the extent this argument is a derivative of the Joint Parties' argument that the Commission should consider the costs and benefits to all residents of Utah, the Commission has already rejected that argument. (July Order at 13-15.)

Commission in legal briefs prior to the latest hearing. (*See* July Order at 13 ("[W]e find interpreting 'other customers' to mean non-net metering customers in their capacity as ratepayers to be more intuitive and consistent with the plain language of the statute . . . .").)

The Joint Parties also argue that the Commission's use of a test year is inappropriate because it could fail to account for the alleged benefit of possibly deferring transmission and distribution ("T&D") costs. (Pet. at 10-11.)[3] Again, the Joint Parties have failed to show where this issue was previously raised, and they have failed to marshal the evidence that does not support their claim. The testimony cited by the Joint Parties only states the following:

> [The Commission] should modify integrated planning procedures to ensure that RMP evaluates the ways and extent to which customer-sided generation could provide system value at the generation and transmission level.

Rbt. P. Morgan at 13. It is unclear how the Joint Parties believe this statement identifies a potential problem with identifying deferred maintenance costs. But, even if this statement was enough to raise the issue, the Joint Parties will have sufficient opportunities in upcoming proceedings to identify for the Commission the alleged quantifiable costs that they claim have been saved by the Company or the "other customers" as a result of net metering.

3. The Commission's Order Properly Accounts For The Interplay Between The Subsections Of The Statute.

Despite previously arguing the Commission erred as a matter of law by failing to interpret the Statute as a whole (Pet. at 7-8), the Joint Parties also argue against themselves by claiming that the Commission erred by "conflat[ing]" the "distinct purposes" of the Statute (Pet.

[3] This argument appears in the Joint Parties' section addressing "customer-generators," although it is unclear how the two relate.

at 11). Remarkably, the Joint Parties' argument is not in reference to an entire act, but instead they argue that the Commission should read two sub-paragraphs of the same section in isolation. (Pet. at 11-13.) This argument is contrary to the plain language of the Statute, as well as earlier portions of their own brief.

Subsection Two of the Statute requires the Commission to set credits, charges, or rates "in light of the costs and benefits" determined under Subsection One—an express, statutory reference to the interplay between the two subsections. Utah Code Ann. § 54-15-105.1(2). As recognized by the Commission, the investigation carried out under Subsection One must leave the Commission "well poised" to determine a credit, charge, or rate under Subsection Two. Order at 8. Thus, also as stated by the Commission, it is "eminently sensible to rely on the same test period data" under both subsections. *Id.* Indeed, the Joint Parties' suggestion to investigate potential benefits across an undefined period in the future would fail to provide the Commission with any additional information that could be used to set current rates or charges under Subsection Two.

For example, suppose the Joint Parties had testified that there was a 50 percent chance a new photovoltaic cell would be developed in 10 years that would allow every utility customer to satisfy 100 percent of their own electrical needs for only a $30 purchase cost (and no maintenance fee). How could the Commission use that claim about a future possibility in setting today's rates or charges? The Commission has rightly recognized that it is under a statutory obligation to investigate "quantifiable costs and benefits" for the purpose of determining fees, charges or credits,, that it is required to set rates that will provide for reliable utility service, and that an investigation period that aligns with the ratemaking purpose best fulfills its obligation.

The Joint Parties' emphatic reference to the unquantifiable future of individual solar generation does not change the Statute, or the realities facing the Commission and the Company. Thus, the statutory demands facing the Commission justify its framework, as do the practical realities associated with all parties' inability to calculate or weigh a potential, future benefit that may or may not materialize.

4. The Commission's Use Of A Test Year Does Not Discriminate Against Net Metering.

The Joint Parties next argue that the Commission's decision to align its investigation under Subsection One with the setting of a rate or charge required under Subsection Two as "lack[ing] any reasonable purpose other than depriving customer-generators of the opportunity to present evidence." (Pet. at 13.)

The Joint Parties argue that the test year encourages the Company to "incorporate costs with the test year and to push any benefits outside of the test year." (Pet. at 13.) While the Company disputes that it would act in the way alleged by the Joint Parties, the response to this concern is obvious. In each rate case or proceeding, the Joint Parties will have the opportunity to intervene and provide testimony if they believe that the Company has misrepresented the costs and benefits of net metering in any given test year. Indeed, altering the time period as suggested by the Joint Parties does nothing to lessen the role of adversarial rate cases or similar dockets going forward. Even if the test period were 15 years, parties are bound to have disagreements about how to account for relevant costs and benefits.

The Joint Parties go on to argue (without citation) that the Commission is treating net metering facilities differently than "other sources of demand-side reduction" and doing so with "no justification." (Pet. at 15.) First, this is a change in position from the Joint Parties earlier

arguments that net metering facilities should be treated as a system resource, rather than a demand-side reduction. (*See* Order at 13-14.) Indeed, it is also contrary to the very next argument raised by the Joint Parties that the Commission failed to properly treat net metering customers as a "system resource." (Pet. at 15.) The Joint Parties also failed to provide citations to where they argued this position before the Commission. Thus, the Joint Parties should be precluded from making this argument now.

Even setting aside the Joint Parties' failure to support their argument, the argument still fails on the merits. As noted by the Commission, the Division of Public Utilities, the Office of Consumer Services, and the Company all agreed that net metering customers would be best analyzed using "the established cost of service models." (Order at 6.) Thus, the Commission has adopted a consistent and established method for calculating these costs, even though it may not be the method the Joint Parties proposed.

B. The Joint Parties' Definition Of The Net Metering "Program" Is Incorrect.

The Joint Parties present another erroneous argument regarding what they claim is the proper way to analyze the net metering "program." They claim the Commission erred by allegedly focusing on the behavior of individual net metering customers instead of on the net metering *program.* (Pet. at 17-18.) The flaw in this argument is definitional. The Joint Parties say the Commission should have defined the "net metering program" as "the entire fleet of customer generation systems"—that is, as an aggregation of net metering customers. (Pet. at 18.) However, the statute (which the Joint Parties cite elsewhere) provides the following definition:

> "Net metering program" means a 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;

(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.

Utah Code Ann. § 54-15-102(12). In other words, the "program" is really an administrative function whereby the Company allows for and credits *an individual customer's generation of electricity*. This definition is also consistent with the remaining portions of the Statute at issue. Thus, it was not error for the Commission to use the Statute's definition rather than the definition now proposed by the Joint Parties (and which was never raised in legal briefs before).

In addition, the secondary accusation leveled at the Commission is also unsupported. The Joint Parties argue that the Commission erred by assuming that the behavior of an individual generator would flow through to the alleged bloc of generators. (Pet. at 18.) The Joint Parties support this claim by citing testimony that the alleged bloc of generators exhibits "intra-class homogeneity." *Id.* (citing Dir. P. Hayet at 26). If the bloc of generators are truly homogeneous, then the actions of an individual *would* flow through to define the action of the group because the members of the group are largely the same. Thus, the Joint Parties' accusation is self-defeating. And perhaps more importantly, the arguments raised by the Joint Parties actually support the Company's request to have net metered customers treated as a separate class and the Commission can and will address these arguments of the Joint Parties when the Commission makes that determination.

1. The Commission's Finding Regarding Net Metering Customers Not Constituting A System Resource Is Correct.

In the Order, the Commission made a number of findings that justified its decision not to treat net metering customers as a system resource. (Order at 13-14.) The Joint Parties attack the Commission's determination, but again do so on shaky logic and without legal support.

The Joint Parties claim the Commission's finding that "[n]et metering customers may elect, at any time, to use their electricity however they choose" is contrary to the indications in the record that net metering "is likely to continue to grow." (Pet. at 19 (quoting Order at 13-14).) This is not inconsistent. An increasing use of net metering across the customer base does not change the customers' ability to turn on or off their generation at will. Even if one assumes that 100 percent of Company customers are going to be net metering customers in a coming year, it is still true that each (and all) of the customers can elect to do whatever they want with their electricity at any given time. For example, some or all of them could elect to turn off their air conditioning and push their generation to the grid, or they could choose to turn off their photovoltaic cells for maintenance and take all power needs from the grid. They could allow tree limbs to block or partially block their systems or keep them clear. The list of individual choices that could be made by net metered customers at their will that impact generational output is almost endless. The Company has no control over these decisions, and no guarantees as to total generation or the time of generation. (Rbt. D. Marx at 5-6; Tr. 215-216 (P. Clements).) It is this type of uncertainty that precludes the Commission (rightly) from treating net metering customers as a reliable system resource. And the Order provides sufficient evidentiary support for the Commission's decision. *See* Order at 13-14.

Rather than address the central concern of generation uncertainty, the Joint Parties throw out a series of arguments related to net metering customers that are largely irrelevant:

- They identify technical differences between net metered customers and qualifying facilities, such as the different generating capacities of each. (Pet. at 20.) This argument does nothing to undermine the Commission's basis for not considering net metered customers as a system resource due to the inherent uncertainty of net metered generation.
- They dispute that the Company has "little or no control" over net metered systems because (i) the interconnection agreement requires the systems to be built and operated in accordance with relevant code and (ii) the Company could "develop program terms and conditions" that could "influence" net metering customers to build systems that better match system needs. (Pet. at 20-21.) This is, again, beside the point. Even if all net metering systems are properly built and maintained, and even if the Company (and the Commission) have created perfect incentives to get the right amount of net metered generation, the Company still has absolutely no control over when those systems are used or how much energy is pushed back on the grid, which customers maintain those systems, much less when it will be cloudy or sunny. (Rbt. D. Marx at 5-6; Tr. 215-216 (P. Clements).)
- They argue that focusing on the voluntary nature of net metering generation "overlooks" the value such generation has to the system. (Pet. at 21.) This is simply a non-sequitur. Even if the Commission accepts that net metered

generation has a value to the system, it does nothing to change the uncertain nature of those benefits. The Commission did not hold there were no benefits. It simply said benefits that could receive rate credit needed to be quantifiable. The fact the Joint Parties continue to be unable to quantify the alleged benefits proves the wisdom of the Commission's Order.

- They argue that it is error to "presume" that the net metered generation will "unpredictably or suddenly diminish," especially in light of the expectation that such generation will "grow." (Pet. at 21.) As above, this argument confuses the long-term expectation of increased net metering generation with the uncertainty of hour-to-hour generation. The Joint Parties simply miss the point.
- Finally, they argue that it is "logical to assume" that a net metering customer will "act rationally to protect their own self-interest." (Pet. at 21.) The Company agrees completely. In fact, this is the primary reason net metering imposes a cost on other customers. As discussed at length in pre-filed testimony and at the hearing, an individual customer has an incentive to generate as much energy as possible in order to gain credits with the Company through net metering. This distributed generation peaks between 1:00 and 3:00 in the afternoon, while the customer demand does not peak until between 6:00 and 7:00 in the evening. (Tr. 230-232 (D. Marx).) Because an individual customer can reduce or eliminate their electric bill without aligning their peak generation to their peak consumption the Company is forced incur fixed costs to ensure that the net metering customer can

enjoy reliable energy when needed. Thus, this argument from the Joint Parties appears to only support the Commission's decision.

The Joint Parties end this portion of their Petition by making yet another unsupported argument. The Joint Parties claim that the Commission is required to consider the theorized bloc of net metered generators as a system resource that "reliably offset[s] a predictable level of demand." (Pet. at 21.) Tellingly, and consistent with their prior arguments, the Joint Parties provide no citation to evidence in support of this claim. There is no evidence that net metered generators "reliably" offset a "predictable" level of demand. It highlights the entire flaw with the Joint Parties' position in this proceeding. If the demand offset by net metering customers were "predictable," the Joint Parties would have identified for the Commission the process to reliably quantify that value in their Petition. Indeed, the lack of such a quantification process in the Joint Parties' Petition highlights why their arguments fail. The Joint Parties' demand for rehearing on this point is baseless.

C. The Commission Has Provided A Sufficient Basis For Its Decision.

The Joint Parties also argue that the "Commission has failed to provide a reasoned basis for departing from its traditional approach to evaluating small-scale renewable resources." (Pet. at 22-24.) The Company disputes that the Order is a departure and the Joint Parties provided no evidence that it is. That aside, this argument is, again, simply false. The Commission addressed this issue in the 2014 Rate Case, it opened the current docket to provide even more analysis. It allowed for legal briefs, which the Joint Parties only responded to and did not chose to affirmatively undertake, and it issued an interim order providing guidance (the July Order). After analyzing hundreds of pages of written testimony and a day of live testimony in the second round

of hearings, the Commission has now issued a 17 page Order to cover only the *first stage* of Subsection One. If that were not enough, the Statute being analyzed was only enacted in 2014 which creates an independent (and obvious) basis for departing from a prior approach, to the extent there is a "departure." Thus, the Commission's decision is supported by substantial evidence and would receive due deference from any reviewing court. The Joint Parties argument on this point is completely hollow and is merely a reflection of their dissatisfaction with the result.

D. The Commission's Order Is Not Subject To The Administrative Rulemaking Act.

The Joint Parties make a two-paragraph argument that the Commission's orders (the July Order and the November Order) together constitute a "rule" subject to the Administrative Rulemaking Act. (Pet. at 25-26.) This argument fails for numerous reasons.

First, the Joint Parties actively participated in the 2014 Rate Case and this docket without ever suggesting that the action *they* were requesting the Commission take was impermissible rulemaking. If they claim this procedure needed to be addressed through a rule making process rather than through an adjudicative process, they were obligated to raise the argument before willingly participating in that evidentiary proceeding. Under the invited error doctrine, the Joint Parties cannot be heard to make this allegation now. *Utah Chapter of Sierra Club v. Air Quality Bd.*, 2009 UT 76, ¶ 26, 226 P.3d 719, 728.

Second, and most importantly, the Commission did not engage in rulemaking. The Supreme Court of Utah has provided the following guidance regarding rulemaking:

> When determining whether rulemaking is required under the statute, we focus our attention on whether an agency action amounts to a rule. Defined both statutorily and in case law, a rule is a policy or statement that is [1] generally applicable, [2] implements or interprets law, and [3] results in a change in clear law. Conversely,

> an agency action is not a rule when it provides informal guidelines for implementing agency rules or answers a technical question within the agency's expertise.

Utah Chapter of Sierra Club v. Air Quality Bd., 2009 UT 76, ¶ 50, 226 P.3d 719, 735 (citations omitted). In that case, a rule required the Utah Air Quality Board ("Board") to determine the impact on air quality of a new source when an entity was seeking a permit. *Id.* at ¶ 51. The Board determined that the analysis could exclude certain sources that were modeled below a value identified as de minimis. *Id.* at 49. The Court determined that the Board's decision did not "interpret or alter this rule," but instead "provide[d] internal guidance for the Division for determining compliance with existing administrative rules." *Id.* at 51. As with the Commission's analysis under the proposed framework, the Board in the case could conduct more analysis if it desired. *Id.* Therefore, the Supreme Court of Utah held that the second prong ("implements or interprets law") was not met.

The Supreme Court of Utah also found that the Board's decision was not rulemaking because it was not a change "to what is required of a party," but instead "an internal governance issue on which we defer to the agency." *Id.* at ¶ 52. Thus, the third prong (a change in clear law) was also not met.

This third prong has been the deciding point for courts in other cases as well. In *Ellis v. Utah State Retirement Board,* the Court of Utah Appeals determined that the Retirement Board was not required to follow the Rulemaking Act. 757 P.2d 882, 888 (Utah Ct. App. 1988). In that case, the Retirement Board determined that the passage of an intervening act meant that the 1967 Utah State Retirement Act no longer governed the plaintiff's claim for disability benefits. *Id.* at 886-87. The court held as follows:

> [T]he Board was merely applying the explicit statutory language of the Disability Act to the facts of Ellis's case. . . . This administrative process does not resemble the Legislature's enactment of a statute. On the contrary, the administrative process examined here resembles a court's decision applying explicit statutory language. The only policy decision which was generally applicable was made by the Legislature in its enactment of the Disability Act. The change in clear law in this instance was promulgated by the Legislature, not the Retirement Board. Therefore, the Retirement Board was not compelled to follow the rule making procedures of the Administrative Rulemaking Act.

Id. at 887-88. The same is true in this case: (i) the Commission was merely applying the explicit language of the Statute, (ii) the Commission's process resembled a court decision more than a legislature's enactment of a statute, and—significantly—(iii) the change in law was promulgated by the Utah legislature's revision of the Statute, not the Commission's action (the Commission is merely implementing the legislature's change). Thus, as with the Joint Parties' other arguments, this argument lacks substance.

The Joint Parties' conduct demonstrates that they do not believe their own argument. Immediately after claiming that the Commission's action constitutes impermissible rulemaking, the Joint Parties ask the Commission to adopt their contrary proposal upon rehearing. (Pet. at 25.) If that was rule making, they couldn't and shouldn't ask for this to be reheard in an adjudicative setting, simply to get the result they want. The Joint Parties' reference to the Rulemaking Act is disingenuous in light of their request that the Commission simply change its decision without changing its process.

Here the Commission rightfully undertook its obligation to act as a tribunal to interpret Utah law as it is required to do in a contested, adversarial proceeding such as this. Interpretation of a statute in an adversarial proceeding does not amount to administrative rule making. Such an

interpretation would wholly subvert the tribunal process this Commission engages in on a regular basis.

E. There Is No Reason To Hold A Rehearing.

The Joint Parties request that the Commission hold another hearing so it can adopt the Joint Parties' proposal that was denied after the original hearing. (Pet. at 25.) For the same reasons addressed above, the Joint Parties have not provided any information that would suggest the Commission would reach a different decision on rehearing. They have provided no new evidence which could not reasonably have been presented previously, not demonstrated any case law or argument that requires reversal, and failed *again* to quantify for themselves the benefits they argue this Commission should have quantified. Thus, this request is futile.

As shown during the hearing, the status quo results in net metered consumers shifting some of the costs the Company incurs to serve them to non-net metered customers. (Dir. P. Clements at 9-14.) As a result, the Joint Parties have consistently sought to delay any change to the status quo. Thus, the Joint Parties pushed to have the net metering discussion moved from the 2014 Rate Case to the present docket. After the hearing, the Joint Parties asked that the Commission begin *another* proceeding rather than issuing an order. (Tr. at 275-77.) Now that the Order has been issued, the Joint Parties have asked for a rehearing, and have made not-so-veiled threats of seeking judicial review of the Commission's decision. (Pet. at 27.) The Commission should not allow the Joint Parties to further delay the implementation of the Statute. There is no error in the Commission's decision, and the Commission should deny the Joint Parties' request.

F. The Commission Does Not Need To Provide Any Additional Clarification.

The Joint Parties present the Commission with a false dichotomy by claiming that it must clarify whether the Order constitutes "either an adjudication or rulemaking." (Pet. at 27.) As discussed above, the Commission did not engage in rulemaking by providing requested guidance on the framework that would govern the determination of charges or credits under the Statute. The Commission has now indicated in two orders (the July Order and the November Order) the approach it will take with regard to the Statute. The parties have sufficient information for the next proceeding, and can rely on the Commission's orders when preparing to implement the Legislature's requirements under the Statute. There is no need for anything further from the Commission.

II. CONCLUSION

The Company appreciates the effort the Commission has put into analyzing the Statute and providing helpful guidance to the parties on what information should be submitted in order to get a final adjudication of credits or charges related to net metering at the appropriate time. The Joint Parties' Petition has not provided any basis for the Commission to conduct a rehearing on the proposed framework. Therefore, the Petition should be denied.

DATED this 23rd day of December 2015.

RESPECTFULLY SUBMITTED,

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