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Before the Public Service Commission of Utah

In the Matter of Investigating of Costs and Benefits of PacifiCorp's Net Metering Program	Docket No. 14-035-114 The Office of Consumer Services' Response to 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. § 63G-4-301 and Utah Administrative Code §R746-100-11 the Office of Consumer Services ("Office") respectfully submits its Response to the "Petition for Clarification and Review or Rehearing" ("Petition") in the above entitled matter. The Office supports the Public Service Commission's ("Commission") proposed methodology for proceeding as set forth in the November 10, 2015 Order ("Order"). For the reasons set forth below, the Petitioner's request for relief should be denied.

BACKGROUND

On December 10, 2015 The Alliance for Solar Choice, Utah Clean Energy, Sierra Club and Vivint Solar, Inc. ("Joint Parties" or "Petitioners") submitted a

petition seeking review of the Commission's November 10, 2015 Order setting forth the process by which the Commission would evaluate the costs and benefits of net metering for Rocky Mountain Power ("Company") and its customers. The Order was entered pursuant to the requirements of Utah Code Ann. §54-15-105.1. The Petition does not provide a legal or factual foundation upon which the requested review or rehearing should be granted.

ARGUMENT

A. The November 10, 2015 Order is not a final agency action for purposes of appellate jurisdiction.

The November 10, 2015 Order is an "intermediate" step in completing the Commission's ultimate statutory obligation to determine a just and reasonable ratemaking structure for net metering in light of the costs and benefits developed pursuant to the November 10 Order. The Utah Supreme Court has articulated a three part test to determine whether an agency decision qualifies as a final agency action for purposes of appellate jurisdiction.

> 1. Has administrative decision making reached a stage where judicial review will not disrupt the orderly process of adjudication?;
>
> 2. Have rights or obligations been determined or will legal consequences flow from the agency action?; and
>
> 3. Is the agency action, in whole or in part, not preliminary, preparatory, procedural, or intermediate with regard to subsequent agency action?

All three questions must be answered in the affirmative for an order to qualify as final agency action. Heber Light & Power Co. v. Utah Pub. Serv. Comm'n, 2010 UT 27, ¶ 7, 231 P.3d 1203, 1206 citing *Union Pac. R.R. Co. v. Utah State Tax Comm'n*, 2000 UT 40, ¶ 16, 999 P.2d 17.

By its own terms the November 10 Order was characterized by the Commission as a "next step …to establish the appropriate analytical framework " to examine the costs and benefits of net metering to be examined "in a further phase of this docket." Thus, the order is not, in and of itself, going to alter the

rights of any party. Likewise, because it is an intermediate step in a defined process to develop a rate determination, there is a strong likelihood that the delay caused by a judicial review of this single portion of the process would cause significant disruption of the statutorily mandated process.

B. The Commission did not engage in de facto rulemaking in promulgating the November 10 Order.

The Joint Parties' assertion that the November 10 Order constitutes de facto rulemaking is without merit. The Commission's actions fall squarely within the statutory exception to the rulemaking requirement cited by the petitioners. Specifically, Section 63G-3-102(16)(c)(i) which exempts "orders" from the definition of a rule. Likewise, Section 63G-3-102(16)(c)(iv) excludes "rulings by an agency in adjudicative proceedings" from the definition of a rule. See WWC Holding Co. v. Pub. Serv. Comm'n of Utah, 2002 UT 23, ¶ 32, 44 P.3d 714, 723 ("*The UARA dictates when rulemaking is required and exempts 'rulings by an agency in adjudicative proceedings.' [§ 63G–3–102(16)(c)(iv) (2008)]. Such rulings are excluded from the UARA's definition of "rule" and are therefore not subject to the UARA.*")

The common law exception to this exclusion is not applicable in this case, namely, imputing rulemaking when the decision constitutes a "change in clear law."[1] In the present case the Commission is deciding a case of first impression and there are no prior interpretations of the relevant statutes from which the Commission could diverge.

In any event, it is difficult to imagine a rulemaking procedure that would be more robust than the current process. There have been hundreds of pages of expert testimony from numerous parties and hearings in multiple relevant dockets over a period of years.

[1] Williams v. Pub. Serv. Comm'n of Utah, 720 P.2d 773, 776 (Utah 1986)

C. The Joint Parties have failed to marshal evidence as required by UAC R746-100-11 (F)

The Administrative Code R746-100-11(F) puts the explicit burden on the party seeking review of a Commission order to "marshal the record evidence that supports the challenged finding" before asserting that the original decision should be modified. The Joint Parties cannot avoid this obligation simply by characterizing the Commission decisions as "legally insufficient". For instance, the Petitioners claim that the Commission's finding that Net Metering is not a system resource "lacks substantial evidence in the record" (Petition at 15) yet the Petitioner's provide no citation to the record to support either side of that position.

Likewise, simple assertions that something is "inconsistent with the record" and then merely citing to statements from their own witnesses without a single reference to any contrary or potentially contrary testimony is legally insufficient to carry their burden. (Petition at 21)

Finally, the Petitioners fail in their most basic obligation to marshal evidence in their ultimate request that "the Commission reconsider and adopt the Joint Parties' proposed frame work for evaluating the costs and benefits of the net metering program." (Petition at 25) With no more than the simple assertion that the Commissions assumptions "are not supported by substantial evidence" the Petitioners simply cite to selected testimony of their own witnesses who assert that certain factors should be included in the benefit analysis. The Petitioners provide no analysis of the contradictory testimony provided by other parties (See Rebuttal Testimony of Philip Hayet at lines 140 -287).

D. In making several of their arguments the joint parties conflate Net Metering with distributed generation in general.

The Joint Parties state that net metering has "characteristics of both a supply side and a demand side resource." (Petition at 17) This is simply untrue.

While distributed generation may have such characteristics, net metering, which is a cost recovery mechanism, has no such characteristics. The focus of the Utah Code § 54 -15-105.1 is, by its own terms, limited to rate making. The scope of the ratemaking determination is in the context of individual customers who have voluntarily chosen to install some kind of production capacity for their own use and possibly for sale to the utility. The Petitioners make the same error in claiming that limiting the analysis of costs and benefits to a test year is inconsistent with past practice because 'net metering systems[ ]are also small-scale renewable systems"[ ]. (Petition at 23) Again, net metering is a cost recovery methodology it is not a renewable energy system.

Because net metering is a cost recovery system, the use of a test year is consistent with standard ratemaking principles. The use of something other than a test year (or some defined test period) makes the allocations of costs and benefits applicable to those who produce the benefits and those who bear the costs difficult and heightens the potential for inter-generational cost shifting. This proposal to use an indeterminate period for assessing "benefits" (and presumably "costs") would be inconsistent with the long standing practice which the Commission has used repeatedly in determining rates.

The use of a test year does not mean, as the Petitioner's imply, that quantifiable benefits will not be accounted for in the rate making. When appropriately done, rate making will include such things as avoided costs of transmission and generation. To the degree it is found that a net metering customer is, in fact, providing those benefits, the customer's "costs" would be reduced and the rate reduced thereby. Because speculative, future benefits are not allowed under the Commission's proposal and because a cost of service study will be able to account for the actual costs and benefits resulting from net metering customers, the use of a test year is appropriate.

Without any foundation other than ad hominem assertions of ill motive on the part of the Commission and the Company, the Petitioners assert that use of a test year will lead to "imprudent decision-making, and that it is "unreasonable" as a matter of law. (Petition at 13). The Petitioners point to no language in the Order nor testimony in the record that would support such a proposition. At such time as quantifiable facts regarding benefits (and costs) can be adduced they may be brought before the Commission. In fact, it is precisely in the context of the rate making that the prudence of the decisions should be argued and, should previously unquantifiable benefits be quantified, any party would have the opportunity to request that the Commission address them.

CONCLUSION

The Commission established a long and thorough process to determine the appropriate way to begin the assessment of the costs and benefits of net metering as required by the Statute. The November 10, 2015 Order presents a considered and comprehensive review of the testimony and should be sustained

Dated this 28th day of December, 2015

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CERTIFICATE OF SERVICE

I hereby certify that on this 28th of December 2015, a true and correct copy of the foregoing document was served by email on the following:

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