

Gary A. Dodge (0897)  
Phillip J. Russell (10445)  
HATCH, JAMES & DODGE, P.C.  
10 West Broadway, Suite 400  
Salt Lake City, Utah 84101  
Telephone: (801) 363-6363  
Facsimile: (801) 363-6666  
Email: gdodge@hjdllaw.com  
prussell@hjdllaw.com

*Attorneys for Sustainable Power Group*

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

---

Proposed Rulemaking Concerning Utah Code Ann. § 54-17-807, Solar Photovoltaic or Thermal Solar Energy Facilities, Enacted May 8, 2018	Docket No. 18-R450-01
---	-----------------------

---

**INITIAL COMMENTS OF SUSTAINABLE POWER GROUP  
REGARDING PROPOSED RULES TO IMPLEMENT UTAH CODE ANN. § 54-17-807**

---

Sustainable Power Group (“sPower”), pursuant to the Notice of Proposed Rulemaking and Request for Comments issued by the Commission in this docket (“Notice”), submits these Initial Comments to the Utah Public Service Commission (“Commission”) with respect to rules to be adopted by the Commission under Utah Code Ann. § 54-17-807 (“Rules”).

**INTRODUCTION**

sPower strongly opposed House Bill 261 as initially proposed during the 2018 Utah legislative session and was actively involved in subsequent negotiations with Rocky Mountain Power (“RMP”) and others regarding the draft bill. sPower ultimately withdrew its opposition to

the final version of the bill, codified at Utah Code Ann. § 54-17-807 (the “New Solar Statute”), in exchange for protections added to the bill in an effort to help protect the interests of Utah ratepayers and wholesale electric competition.

It is always problematic when one competitor is also the judge. Other competitors are discouraged from investing the necessary time and expense to submit bids if the utility that will select the winning resource is also submitting a competing bid. Given Utah’s vertically-integrated monopoly utility policy, it is not easy to provide assurances to market participants that any RFP process for RMP will be fair and reasonable, and that their bids will receive due consideration. Active and meaningful involvement and oversight by the Commission is the only available protection for ratepayers and wholesale electric competition.

While in some contexts there may be some perceived ratepayer benefits of utility ownership of cost-of-service-based assets compared to a power purchase agreement (“PPA”)—such as terminal value at the end of the PPA, increased operating flexibility, etc.—no such benefits exist for resources acquired pursuant to the New Solar Legislation. Rather, the only issue is which PPA—one offered by RMP or one offered by competitors—will provide the most value and least cost. It is critical that the Rules to be adopted will ensure a level playing field so that customers can be served by the best PPA regardless of utility or affiliate ownership of the assets associated with the PPA.

Robust wholesale competition for energy resources is by far the most effective and efficient means of ensuing low prices for energy consumers. sPower strongly encourages the Commission to adopt and enforce meaningful Rules to ensure that the general statutory

protections included in the language of the New Solar Bill will in fact protect the interests of competition and ratepayers.

Below, sPower will address a few specific issues or areas of focus that the Rules should address. In these initial comments, sPower is submitting comments on issues and areas of focus as opposed to specific proposed Rule language. sPower understands that it will have other opportunities to submit and comment on specific proposed Rule language. sPower encourages the Commission to expand the schedule proposed in the Notice to include initial submission of proposed Rule language, an opportunity for others to respond to Rule language proposed by others, and perhaps a technical conference following such all such submissions in which areas of concern can be addressed among interested parties.

### **INITIAL COMMENTS**

1. The Rules should include initial filing requirements comparable to those used for solicitations and approval of resource decisions pursuant to Utah Code Ann. §§ 54-17-201 – 304.
2. The Commission should actively solicit comments from a wide variety of wholesale competitors as to the protections and requirements necessary to achieve a “level playing field” as contemplated by the New Solar Statute.
3. The Commission should carefully investigate interconnection and transmission issues that may preclude a level playing field as contemplated by the New Solar Statute. Among other things, RMP should be required to make its transmission rights and assets available to customers for delivery of competing solar resources, and to act in the customers’ best interests in arranging for delivery of solar energy, regardless of the ownership of facilities underlying the market-based PPA. For example, all competitors should have equal access to RMP’s rights

under the Amendment to its Network Operating Agreement (“NOA Amendment”) with PacifiCorp’s transmission function. Failure to do so would necessarily tilt the playing field strongly in favor of RMP in areas with transmission constraints. The NOA Amendment should be used for the benefit of PacifiCorp ratepayers, not PacifiCorp as a wholesale competitor.

4. The Rules should recognize that a retail customer-controlled RFP and resource selection process is different from a utility-controlled RFP and resource selection process, and that the later will require much more active Commission involvement. In all circumstances, the Rule should protect against utility over-reach and protect the affected retail customer(s) and other ratepayers to ensure that the process is fair and reasonable. Examples of utility over-reach may include a utility requesting or insisting upon a right to purchase the facility in the solicitation itself or in contract negotiations.

5. The Rules should ensure that the impacts on retail customers—whether under Schedule 32, Schedule 34, or any other RMP tariff—will be identical whether the market-based PPA is owned by RMP or another developer. The Rules should thus provide that all benefits, requirements, risks and restrictions applicable to any other developer or PPA will also apply to RMP.

6. The Rules should require a rigorous evaluation to ensure that, when RMP’s market-based PPA is selected by RMP over other market-based PPAs, that RMP’s implicit and unavoidable conflict of interest has not tainted the competitive process in any manner. The Rules should also require that the RFP solicitation periods be announced early and remain open long enough to obtain truly competitive market pricing, rather than shorter periods under which many participants may be precluded from meeting the criteria to bid.

7. The Rules should require rigorous analysis and clear explanations if RMP elects not to sign a PPA with the lowest-cost bid. Otherwise, RMP could unfairly use the bidding process as a market discovery tool to refine subsequent utility bids, armed with insider market information.

8. The Rules should narrowly constrain RMP's ability to acquire subsequent solar resources during the following six months at the "competitive market prices" established in a solicitation process. The New Solar Statute restricts any such acquisitions to "similar" resources. This is a critical limitation and the Rule should specify that a "similar" project must be similar in all respects, including resource type, size, location, contract term (in each case 15-20 years or longer for both resources), interconnection requirements, responsibility for interconnection and network upgrade costs, etc. A competitive market price from a specific location at a specific size cannot be used to reasonably inform the competitive market price for a resource with different equipment or technology, of a different size, of a different length contract term, or at a different location.

### **CONCLUSION**

sPower encourages the Commission to adopt strong and enforceable Rules that will ensure that RMP will have no competitive advantage for market-based solar resources.

DATED this 29<sup>st</sup> day of June 2018.

Respectfully submitted,

HATCH, JAMES & DODGE

/s/ Gary A. Dodge  
Gary A. Dodge  
Phillip J. Russell  
*Attorneys for Sustainable Power Group*

Certificate of Service  
**Docket No. 18-R450-01**

I hereby certify that a true and correct copy of the foregoing was served by email this 29<sup>th</sup> day of June 2018 on the following:

**ROCKY MOUNTAIN POWER**

Jeff Richards	robert.richards@pacificorp.com
Yvonne Hogle	yvonne.hogle@pacificorp.com
Jana Saba	jana.saba@pacificorp.com

**DIVISION OF PUBLIC UTILITIES**

Chris Parker	chrisparker@utah.gov
William Powell	wpowell@utah.gov
Patricia Schmid	pschmid@agutah.gov
Justin Jetter	jjetter@agutah.gov

**OFFICE OF CONSUMER SERVICES**

Michele Beck	mbeck@utah.gov
Cheryl Murray	cmurray@utah.gov
Steven Snarr	stevensnarr@agutah.gov
Robert Moore	rmoore@agutah.gov

/s/ Gary A. Dodge