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To: Public Service Commission of Utah

From: Office of Consumer Services  
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Date: June 29, 2018

Subject: 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

## Background

On May 31, 2018, the Public Service Commission of Utah (Commission) issued a Notice of Proposed Rulemaking and Request for Comments (Notice) related to H.B. 261, Renewable Energy Amendments. Comments may be submitted by Friday, June 29, 2018 and reply comments, including draft rule language, may be submitted by Friday, July 13, 2018. Pursuant to the Notice the Office of Consumer Services (Office) submits the following comments.

### H.B. 261

H.B. 261, Renewable Energy Amendments addresses the basis of setting rates for solar photovoltaic or thermal solar energy facilities (Solar Energy Facilities) and permits a qualified utility to apply to the Commission for approval to acquire a photovoltaic or thermal solar energy resource using competitive market prices under certain conditions/circumstances.

On May 18, 2018, H.B. 261 became law and is codified at Utah Code Ann. § 54-17-807, titled “Solar photovoltaic or thermal solar energy facilities”.

Utah Code Ann. § 54-17-807 identifies four circumstances under which a qualified utility may own, solely or jointly, an energy resource acquired under this section:

- 1) to provide renewable energy to a contract customer as provided in Section 54-17-803;
- 2) to serve energy to a qualified utility customer as provided in Section 54-17-806;
- 3) to serve energy to any customers of the qualified utility if the proposed energy resource’s nameplate capacity does not exceed 300 megawatts or, if applicable, the quantity of capacity that is the subject of a contract for the purchase of electricity does not exceed 300 megawatts, so long as the qualified utility proceeds under and complies with Part 4, Voluntary Request for Resource Decision Review; or

4) to serve energy to any customers of the qualified utility if the proposed energy resource's nameplate capacity exceeds 300 megawatts or, if applicable, the quantity of capacity that is the subject of a contract for the purchase of electricity exceeds 300 megawatts, so long as the qualified utility complies with this chapter.

The processes for utility acquisition of Solar Energy Facilities vary depending on the customer or customers the qualifying utility intends to serve and the size of the resource or contract. Resources obtained to serve customers identified in numbers 1 and 2 above are exempt from certain existing Commission rules and requirements but are subject to existing tariffs.

### **Proposed Rulemaking**

Section 54-17-807(11) states that the Commission shall adopt rules, in accordance with the Utah Administrative Rulemaking Act:

- (a) Addressing the content and filing of an application under this section;
- (b) To establish the solicitation process and criteria to be used to identify the competitive market price and select an energy resource; and
- (c) Addressing other factors determined by the commission to be relevant to protect the public interest and to implement this section.

The Office believes that, with some modifications designed to address the specific requirements of the new statutory provisions found in Section 54-17-807, current Commission rules can be used as a guide to address many of these requirements, such as:

- R746-420 Request for Approval of a Solicitation Process.
- R746-430 Procedural and Informational Requirements for Action Plans, for an Approval of a Significant Energy Resource, for Determination of Whether to Proceed, and for Waivers of a Solicitation Process or of an Approval of a Significant Energy Resource.
- R746-440. Voluntary Resource Decision.

However, additional new rules will need to be developed to address new concepts included in Section 54-17-807, such as:

- what constitutes or satisfies the "competitive market price" requirement,
- how the qualified utility will be reimbursed with respect to "assets owned by the qualified utility" that "are not public utility property", and
- how the concept of "the lowest cost ownership option" will be implemented.

In addition, the Office recommends that Commission rules should require that Solar Energy Resources to be acquired for customers identified in Subsections 3 (c) and (d) should be solicited separately from any resources to be acquired for customers identified in Subsections 3 (a) and (b). Section 54-17-807 distinguishes the services and ownership options a qualified utility might consider in serving contract or specific customers of the utility from the utility's use of solar resources to serve "any of its customers" where ownership is limited to the "lowest cost ownership option" and rate recovery is based on "competitive market pricing only."

June 29, 2018

Absent a requirement that resources for these customer categories be solicited separately, the Commission must also include rules to govern the rights of the utility's ratepayers relative to the rights of the specific customers to be served. For example, if the most advantageous bid is insufficient to serve all customer categories, which customer group will receive that benefit or should the resource be divided among the customers for whom the utility is seeking resources.

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