

June 29, 2018

VIA ELECTRONIC FILING

Utah Public Service Commission
Heber M. Wells Building, 4th Floor
160 East 300 South
Salt Lake City, UT 84114

Attention: Gary Widerburg
Commission Secretary

RE: Docket No. 18-R450-01
Proposed Rulemaking Concerning Utah Code Ann. § 54-17-807, Solar Photovoltaic or Thermal Solar Energy Facilities, Enacted May 8, 2018 – Rocky Mountain Power’s Comments

On May 31, 2018, the Public Service Commission of Utah (“Commission”) opened the above referenced docket with its notice of proposed rulemaking and requests for comments (“NOPR”). The Commission is required to create rules pursuant to H.B. 261, which was passed by the Utah Legislature during the 2018 Utah General Session. H.B. 261 was enacted on May 8, 2018, and is codified at Utah Code Ann. § 54-17-807 (the “Market Solar” statute). In the NOPR, the Commission requested comments from interested parties to aid it in the rulemaking process, and Rocky Mountain Power (“Company”) welcomes this opportunity to provide the following comments.

General Comments

The Market Solar statute allows an alternative ratemaking treatment for Company ownership or acquisition of solar photovoltaic or solar thermal resources (“Solar Resources”) to supply its customers at competitive market prices. This would allow the Company to take advantage of federal investment tax credits related to Solar Resource investments.

The Market Solar statute establishes a process to ensure that solicitations for Solar Resources that may be acquired by the Company are structured to equitably result in the least cost resources, and thereby result in a fair determination of market pricing. It also establishes a process to ensure that any resource the Company owns or plans to acquire under the Market Solar statute is evaluated fairly against other bids in a solicitation process. In these comments, the Company explains its understanding of the key sections of the Market Solar statute and offers recommendations to assist in the rulemaking process.

Comments on Key Sections of Utah Code Ann. § 54-17-807

Sections (1) & (2)

Sections (1) and (2) state that the Market Solar statute is only applicable to a qualified utility¹ that seeks to acquire Solar Resources using rate recovery based on a competitive market price rather than traditional regulated cost recovery. The law excludes smaller distributed generation, by specifically stating it is inapplicable to Solar Resources with a capacity of 2 MW or less that are located behind a customer's meter.

Section (3)

Section (3) begins by extending requirements to situations where a qualified utility will fully or partially own the Solar Resource to be acquired. The section then establishes four different resource categories based upon customer type and the size of the Solar Resource to be acquired. These categories receive different levels of Commission review and process under later sections of the law.

Subsection 3(a) refers to contract customers under Utah Code Ann. §54-17-803, which is implemented through the Company's tariff Schedule 32. Subsection 3(b) refers to qualified utility customers under Utah Code Ann. §54-17-806, which is implemented through the Company's tariff Schedule 34. The processes under both subsections 3(a) and 3(b) Solar Resources (collectively, "Specific Customer Solar Resources") are excluded from certain provisions in the law, noted below, which should provide for streamlined review.

Subsection 3(c) refers to a Solar Resource that will be used to supply any or all of the Company's customers to the extent such resource is *not larger* than 300 MW. The Company is also required to seek approval for any acquisition under subsection 3(c) through the Voluntary Request for Resource Decision Review process.² Subsection 3(d) refers to a Solar Resource that will be used to supply any or all of the Company's customers to the extent such resource is *larger* than 300 MW. Subsection 3(d) requires the Company to concurrently proceed with review and approval under all applicable requirements in the Energy Resource Procurement Act.³ To avoid inefficiency and overlap, the Company recommends that the rules harmonize the Market Solar requirements for subsection 3(c) or 3(d) Solar Resources (collectively "General Customer Solar Resources") with the proceedings and requirements of the other relevant parts of the Energy Resource Procurement Act.

Section (4)

Section (4) exempts Specific Customer Solar Resources from the Energy Resource Procurement

¹ "Qualified utility" is defined under Utah Code Ann. §54-17-801 as "an electric corporation that serves more than 200,000 retail customers in the state."

² Utah Code Ann. §54-17-401 et.al., which is implemented through Commission Rule R746-440 ("Voluntary Request for a Resource Decision Rules").

³ The Energy Resources Procurement Act is implemented through Commission Rules R746-420, 430 & 440.

Act requirements. For these resources, the Market Solar statute's requirements are the only ones that apply to Specific Customer Solar Resource applications. Similarly, section (4) exempts subsection 3(c) Solar Resources from the bulk of the Energy Resource Procurement Act's requirements, except for the Voluntary Request for a Resource Decision Rules, as noted above. All of the act's requirements apply to subsection 3(d) Solar Resources.

Section (5)

Section (5) establishes the application requirements for Commission approval of a solicitation, and divides these requirements into two groups. The first group includes the customer driven solicitations for Specific Customer Solar Resources, and requires that the application include the selection criteria "as determined by the customer." This acknowledges that individual customers voluntarily pay the full costs of Specific Customer Solar Resources, and have the ability to set the resource selection criteria to meet their specific goals and requirements. The use of the word "determined" shows that the law does not contemplate Commission modification of these criteria. The second group includes solicitations for General Customer Solar Resources, and requires the application to include the selection criteria "as proposed by the utility." This acknowledges that the selection criteria under solicitations for any or all of the Company's customers will be "proposed" by the Company. The use of the different term here contemplates that the selection criteria for General Customer Solar Resources may be modified by the Commission through the approval process. The Company recommends the rules establish the information required in the application, with recognition of the difference between an application for a solicitation for a Specific Customer Solar Resource and a General Customer Solar Resource.

Section (6)

Section (6)(a) requires a public hearing and opportunity for public comments on an application for approval of a General Customer Solar Resource solicitation. This public process will allow the Company's customers and stakeholders an opportunity to be heard before the Commission approves a solicitation that may affect their interests. In contrast, solicitations for Specific Customer Solar Resources will only affect those customers that affirmatively elect to participate. Because other parties and customers will not bear the costs related to a Schedule 32 or 34 customer's election, a public hearing and comment process is not required.

Under Section 6(b), the Commission cannot approve *any* Solar Resource solicitation unless it makes a determination that the solicitation will create a level playing field for the Company and other bidders. In reaching such a determination, the Commission must specifically consider whether the transmission requirements imposed through the solicitation will be equitably applied to all bidders. The rules should establish a rebuttable presumption that Specific Customer Solar Resource solicitations will result in a level playing field. A rebuttable presumption is appropriate because the individual customer for a Specific Customer Solar Resource solicitation bears all costs and therefore has little incentive to use solicitation criteria that unfairly favor a particular bidder. Finally, the Commission must also determine that the Solar Resource solicitation will otherwise serve the public interest.

The Company recommends that the rules establish clear timelines for the approval processes for all Solar Resource solicitations. Timelines will provide customers and potential bidders, including the Company, with certainty for planning and implementation purposes. Many customers have publicly committed to firm deadlines for their renewable energy goals, and approval timelines will enable them to develop solicitations that are more likely to meet their goals. Similarly, establishing approval timelines will allow potential bidders more certainty as they plan their participation.

Section (7)

Section 7(a) addresses applications for Commission approval of the Company's acquisition of any resources selected through a solicitation process approved under Section 6. Although the text uses the permissive "may," the Company needs Commission approval for every Company acquisition of a Solar Resource to qualify for federal investment tax credits. Unlike solicitation approvals, Section 7(b) requires public hearing and comment for both categories of Solar Resource acquisitions. In addition to providing a public hearing and comment process, the Commission must determine whether the solicitation and evaluation of bids complied with the Market Solar statute, the order approving the solicitation, and that the Company's acquisition is just and reasonable and in the public interest. Establishing timelines for the acquisition approval process is important to providing certainty to customers and the Company. It is perhaps even more critical at the acquisition stage, because a protracted approval process could adversely affect development plans and costs assumed for bid purposes, and thereby would jeopardize the timely and economic completion of the Solar Resource.

Section 7(c) adds an additional requirement for approval of a General Customer Solar Resource acquisition. The Commission must also determine that the Company's bid is the lowest cost ownership option for the Company. The Company recommends the rules make clear that the evidence that the Commission will base this additional determination on is a solicitation's selection criteria and its results.

Section 7(d) establishes the effect of the Commission's approval that: (1) the resulting prices are deemed competitive market prices; and (2) the assets acquired are not public utility property. Both are critical to the Company receiving the full benefits of the federal investment tax credits.

Section 8

Section 8 applies to both Specific and General Customer Solar Resources, and requires the Company to file a report with the Commission if it elects not to acquire an energy resource through an approved solicitation. The report must explain why the Company chose not to acquire the lowest cost resource bid into that solicitation. The Commission retains the discretion to request additional information to the extent needed.

Section 9

Section 9 allows a General Customer Solar Resource solicitation and acquisition approval to

establish a benchmark price for 6 months, or a longer period determined by the Commission. The Company may then seek approval to acquire an additional Solar Resource at the benchmark price by demonstrating that the resource is needed and in the public interest.

The Company appreciates the opportunity to provide comments and looks forward to collaborating with the Commission and other intervenors in the process.

Sincerely,

A handwritten signature in blue ink that reads "Joelle Steward". The signature is written in a cursive style with a large initial "J".

Joelle Steward

Vice President, Regulation

CERTIFICATE OF SERVICE

Docket No. 18-R450-01

I hereby certify that on June 29, 2018, a true and correct copy of the foregoing was served by electronic mail to the following:

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