

July 13, 2018

***VIA ELECTRONIC FILING***

Public Service Commission of Utah  
Heber M. Wells Building, 4<sup>th</sup> 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 Reply Comments and proposed draft rules.

On May 31, 2018, the Public Service Commission of Utah (the “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 in the rulemaking process. Rocky Mountain Power (“Company”) provided initial comments outlining its understanding of key provisions in the Market Solar statute, and suggested clarifications that the Commission should consider incorporating into the rules. Utah Clean Energy (“UCE”), the Interwest Energy Alliance (“IEA”), the Utah Solar Energy Association (“USEA”), Sustainable Power Group (“sPower”), First Solar, Inc. (“First Solar”), and the Office of Consumer Services (“Office”) also provided initial comments. The Company has reviewed their comments and provides its comments in reply. In addition, the Company has drafted proposed rules for the consideration of the Commission and other interested parties, attached as Exhibit A.

The Market Solar statute provides alternative ratemaking treatment for utility ownership or acquisition of solar photovoltaic or solar thermal resources to supply customers the solar output at competitive market prices. This treatment allows utilities to take advantage of federal investment tax credits related to Solar Resource investments. As UCE notes in its initial comments, it therefore provides “utilities the same benefits as non-utility owners of solar resources...”<sup>1</sup> At the same time the Market Solar statute establishes a process to ensure that any resource a utility owns or plans to acquire under the statute is evaluated fairly against other bids in a solicitation process. This balance is important because the goal of the statute is to level the playing field for *all* potential bidders. The Commission should strive to enact rules that ensure this balance is maintained and that no potential bidder is disadvantaged by overly stringent, or unnecessarily lax requirements.

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<sup>1</sup> UCE Initial Comments at p.1.

The Company attempts to properly strike this balance in the attached proposed rules. The Company is eager to work with other parties to more fully develop rules that fit within the bounds of the statute, while providing additional structure and guidance to utilities seeking to acquire solar resources pursuant thereto.

The Company's proposed rules largely follow the Company's initial comments and recommendations. Rather than reiterate those comments, the Company will address points raised by other parties in their initial Comments, and, where relevant, relate those to the Company's proposed rules. Many of the initial comments share a common theme on certain issues, so rather than respond separately to each, the Company first responds to the common issues, and later responds directly to comments of individual parties. For reference, the defined terms the Company uses throughout its reply comments below are defined in Section 1 of its proposed rules.

## **I. General Reply Comments**

### **1. Applicability of Energy Resource Procurement Act Requirements**

UCE and USEA advocate for rules that require employing independent evaluators ("IE") for every Solar Solicitation. USEA comments that requiring an IE would help to ensure objective selections in a solicitation.<sup>2</sup> UCE and sPower go even further in their comments, suggesting that the rules should incorporate most of the requirements under the Energy Resource Procurement Act ("ERPA") regardless of solicitation type.<sup>3</sup> However, Section 4 of the Market Solar statute expressly exempts Specific Customer Solicitations from ERPA's requirements. While Section 3(c) makes ERPA's Voluntary Request for a Resource Decision process applicable to Non-Contract Customers Solicitations, Section 4 exempts such solicitations from all other ERPA requirements. In contrast, Section 3(d) expressly applies all of ERPA to Large Non-Contract Customer Solicitations. Reasonable statutory interpretation requires consideration of the fact that both Specific Customer Solicitations and Non-Contract Customers Solicitations are exempted from the portions of ERPA that include an IE requirement, meaning that the Legislature intended to exclude such solicitations from those requirements. UCE and sPower's recommendations to extend many other ERPA requirements to all solicitation types goes beyond the statutory text, and if the Commission followed their recommendations, it would render Section 4 entirely meaningless. Instead, the Commission can employ other mechanisms, including the public hearing and comment processes required by the statute, to ensure fairness in a manner that is consistent with the text of the Market Solar statute.

### **2. Timing and Size Requirements for Solicitation Responses**

sPower, USEA, IEA and UCE each describe various concerns about the specifications and requirements that may be included in Solar Solicitations under the rules. sPower comments that solicitation periods should be announced early and remain open for a long enough period to

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<sup>2</sup> USEA, Initial Comments, at ¶8.

<sup>3</sup> UCE, Initial Comments, at Section A; sPower, Initial Comments, at ¶1.

encourage more bidders.<sup>4</sup> USEA suggests that too short of a response period could preclude third party developers from participating.<sup>5</sup> IEA recommends at least one month between solicitation and response deadlines.<sup>6</sup> UCE's comments are similar to sPower's but it extends that concept to required commercial operations dates and requests a standard that will allow bidders sufficient time to interconnect to the Company's transmission system.<sup>7</sup> The Company understands these concerns, but does not agree that the rules should implement a specific standard. Response times, and resource development timeline specifications should be driven by the needs of customers rather than the needs of particular bidders. This is especially true with respect to Specific Customer Solicitations, where the customer administers the solicitation, determines its own needs, and will bear the risk of those decisions. For such solicitations, the customer should be allowed to dictate solicitation timelines without second-guessing by other interested parties. For Non-Contract and Large Non-Contract Customers Solicitations, the Company's proposed rules provide for public hearing and comment at the solicitation approval stage, as required under the Market Solar statute. This public process will allow any interested party the opportunity to be heard if it believes that longer response times or different commercial operation dates than initially proposed in the Solar Solicitation are in the public interest. Rules that preserve flexibility, even for Non-Contract and Large Non-Contract Customers Solicitations, and provide parties an opportunity to propose alternatives will more likely result in Solar Solicitations that are well designed to meet the specific needs they are intended to serve.

IEA also recommends the rules specifically allow flexible bid sizes to encourage new opportunities to serve solicitation requirements.<sup>8</sup> The Company recommends against rules that require the utility to leave Solar Resource sizes open in solicitations. The Company agrees that such flexibility may be a benefit in some cases, but it may also create inefficiency and confusion in others. The Company's proposed rules, therefore, do not include any requirements regarding the sizes of Solar Resources that may be solicited, and the Company encourages the Commission to allow the specific need driving each solicitation dictate the size of the Solar Resources that are permitted to submit bids.

### 3. Potential Conflicts of Interest

sPower, USEA, and IEA raise concerns regarding the potential conflict of interest that arises when a utility may bid into a solicitation process that it is also administering.<sup>9</sup> sPower recommends the rules require a rigorous evaluation to ensure that any acquisition by the Company's "unavoidable conflict of interest has not tainted the competitive process in any manner."<sup>10</sup> USEA suggests that use of an IE for all solicitations could remove this concern. IEA recommends that the rules require limitations on the types of information that can be requested in

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<sup>4</sup> sPower Initial Comments, at ¶ 6.

<sup>5</sup> USEA Initial Comments, at ¶2(d).

<sup>6</sup> IEA Initial Comments, at Section II.B.

<sup>7</sup> UCE Initial Comments, at Section I.B.

<sup>8</sup> IEA Initial Comments, at Section II.C.4.

<sup>9</sup> sPower Initial Comments, at ¶ 6; USEA Initial Comments, at ¶2(b); IEA Initial Comments, at Section 5.

<sup>10</sup> sPower Initial Comments, at ¶ 6.

any solicitation.<sup>11</sup> While the Company does not agree with every commenter's characterization of this risk, it recognizes that protections are warranted in the case of Non-Contract Customers Solicitations, where the utility will be making the bid selections. If the Commission believes potential conflicts of interests must be affirmatively addressed in the rules rather than through the public hearing and comment process, then the Company recommends including a provision that requires the utility's selection team be separated from the utility's bid team in a manner that prevents improper sharing of other bidders' information. This method has been successfully used in past Company solicitations and has worked well to avoid potential conflicts of interest. The Company also would not oppose rules requiring additional DPU oversight of the solicitation and selection processes. To the extent any concerns remain after a selection is made, the public hearing and comment process at the acquisition approval stage provides interested parties an additional opportunity to present evidence of a "tainted process" before the Commission approves the acquisition. The Company has not included such a provision in its proposed draft rules because it believes any such concerns can be adequately addressed through the Solar Solicitation approval process, but would not object to including a reasonable requirement in the rules. Such requirements are likely inappropriate for any Specific Customer Solicitations because bid selections will be made by the customer rather than a utility. Likewise, they are unnecessary for Large Non-Contract Customers Solicitations, given the additional ERPA requirements that would apply to those solicitations.

4. Six Month Window

sPower and USEA each recommend that the rules include various restrictions on the Company's use of the Market Solar statute's provision enabling it to acquire similar Solar Resources in the six months following a Non-Contract or Large Non-Contract Customers Solicitation. The Company urges the Commission to not overly proscribe a utility's ability to use this provision upon a showing of need. The Company's proposed rules follow the Market Solar statute closely for this reason. Under those proposed draft rules the Commission retains wide latitude to require additional information to make a determination that the price remains competitive and appropriate in the absence of another Solar Solicitation process. This latitude is sensible because it is hard to predict in advance the circumstances in which this provision may be used. Flexibility gives the Commission the ability to tailor its review based on the specific circumstances that are before it, while not restricting its ability to act in the public interest.

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<sup>11</sup> USEA Initial Comments, at ¶2(b).

## **II. Replies to Specific Commenters**

### 1. sPower

sPower states that the rules should recognize the difference between “customer-controlled” solicitations (i.e. Specific Customer Solicitations”) and those run by the utility to serve its general customers (i.e. a Non-Contract Customers Solicitation or a Large Non-Contract Customers Solicitation). The Company agrees and its proposed draft rules accomplish this by separating these different Solar Solicitation types into three defined categories.<sup>12</sup> These categories also allow the rules to more readily address the ERPA requirements applicable to Non-Contract Customers Solicitations and Large Non-Contract Customers Solicitations.

sPower recommends that the rules require a bidding utility to “make its transmission rights and assets available to customers for delivery of solar energy...regardless of the ownership of facilities underlying the market-based PPAs.”<sup>13</sup> sPower’s recommendation goes far beyond the text of the Market Solar statute, which describes fairness with respect “to interconnection and transmission requirements imposed on bidders by the solicitation within the control of the commission and the qualified utility.”<sup>14</sup> sPower’s comments would impose transmission requirements on the qualified utility rather than, as the statute provides, ensuring any transmission requirements are applied equally to all bidders. Private parties may acquire their own transmission rights through the Company’s federally regulated Open Access Transmission Tariff (“OATT”), which requires equitable treatment of utility and non-utility purchasers. If the Commission were to impose the requirement sPower recommends, rather than leveling the playing field, it would unfairly advantage non-utility bidders at the expense of the utility and its customers. The Company’s proposed rules instead require that the Commission make a determination that transmission requirements in any Solar Solicitation are made equally applicable to utility and non-utility bidders, which is consistent with the text of the Market Solar statute.

sPower goes on to suggest that all bidders should have access to the Company’s rights under its Network Operating Agreement Amendment (“NOA Amendment”).<sup>15</sup> These comments misunderstand the NOA Amendment, which specifically applies to transmission service availability related to qualifying facilities under the Public Utility Regulatory Policies Act of 1978 (“PURPA”). All bidders should be properly incentivized to avoid transmission constrained areas for their bidding, or, alternatively, to account for the added costs to the Company’s transmission system that result from siting in such areas. Otherwise those costs could be shifted to other customers whether or not they will benefit from the Solar Resource. Indeed, even in a circumstance where the Company was permitted by the Federal Energy Regulatory Commission (“FERC”) to use the NOA Amendment as proposed by sPower, such use could limit the Company’s operational flexibility, and the Company would still oppose rules that required it to use the NOA Amendment.

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<sup>12</sup> sPower Initial Comments, at ¶5.

<sup>13</sup> sPower Initial Comments, at ¶3.

<sup>14</sup> Utah Code Ann. 54-17-807§6(b).

<sup>15</sup> *Id.*

sPower claims that rigorous analysis and explanations are required if the Company does not select a resource through a Solar Solicitation, and raises the prospect that the Company may use a solicitation as a “market discovery tool” to provide itself an unfair advantage in subsequent Solar Solicitations. There are far more direct ways for the Company to engage in market discovery, and sPower's intimation that the Company would effectively waste the Commission’s and others’ time to misuse the Solar Solicitation process for this purpose is unfounded and improper. The Market Solar statute only requires a report to the Commission if no resource is selected. Under the Company’s draft proposed rules, the Commission is free to inquire further as necessary, if it suspects the Company is abusing the process. Other parties too could file complaints at the Commission if they have good reason to believe the Company was using the Solar Solicitation process for an improper purpose. The Company urges the Commission to avoid making this section of the rules overly cumbersome based on sPower’s fears of this unlikely scenario.

sPower comments that the rules should provide that “all benefits, requirements, risks and restrictions” be applied equally to utility and non-utility bidders.<sup>16</sup> The rules should not and cannot set forth standards that ensure the benefits, requirements, risks and restrictions will perfectly and evenly apply across the board. The Market Solar statute does not require this sort of balancing, and with good reason. Instead, the statute requires the Commission to determine a level playing field for bidders based on “the solicitation and evaluation processes to be used.”<sup>17</sup> Every bidder is different and the key is that all bids are evaluated fairly, not that ownership of the resource will have the exact same impact on each bidder or that each is exactly similarly situated when it offers its bid. It would be nearly impossible to devise rules that do what sPower suggests, and any effort to do so would fly in the face of the Market Solar statute’s clear intent to reach competitive market prices. To that end, differences in benefits and risks between market participants are a major part of what leads to differences in pricing in any sort of competitive market. Therefore, reading the requirements sPower proposes into the statute would go well beyond its plain meaning and intent.

## 2. Office

The Company largely agrees with the Office’s initial comments, but notes some differences of its understanding of the Market Solar statute that are apparent in the Company’s proposed rules. First, the Office notes that the rules should state how a competitive market price will be determined. It is the Company’s understanding that Commission approval of a Solar Solicitation, including the selection criteria, leads to a presumption that any resource acquired under that solicitation will be at a competitive market price. The solicitation and acquisition approval process in the Company’s proposed rules would allow interested parties an opportunity to raise concerns if that presumption is in doubt. The Office also comments that rules should provide direction on how the “lowest cost ownership option” will be implemented. The Company notes that this concept applies only to Non-Contract Customer and Large Non-Contract Customer Solicitations, each of which is subject to additional review through the Commission’s Voluntary Requests for a Resource Decision rules. That additional scrutiny, when combined with the bid selection criteria, should provide more than enough information for the Commission to make a “lowest cost ownership

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<sup>16</sup> *Id.*

<sup>17</sup> Utah Code Ann. 54-17-807§6(b).

option” determination. Finally, the Office questions how the utility will be reimbursed for assets it owns that are not public utility property. The Company’s tariffs answer that question clearly with respect to Specific Customer Solicitations, which require direct reimbursement from the relevant customer. For Non-Contract Customers and Large Customers Solar Solicitations, the Company anticipated that it would need to propose specific accounting treatment in any application for acquisition approval, and therefore did not include a specific requirement in its proposed rules. However, the Company is open to working with parties to try to develop a more proscribed methodology or requirement.

3. IEA

IEA comments that “[t]here is little oversight of the utility’s preparation of transmission studies, so an independent evaluator which oversees the remainder of the process, but not the transmission study process, cannot prevent or identify inherent unfairness.”<sup>18</sup> IEAs comments demonstrate a lack of understanding of the Company’s federally regulated transmission interconnection process as dictated by through the Company’s OATT. Standards of conduct imposed by FERC require that PacifiCorp’s Transmission function employees operate independently of its market function employees. Requiring an independent evaluator under the rules may also be preempted by FERC regulation of the Company’s transmission function, and could even risk violations of FERC standards of conduct. Fortunately, FERC regulations give a prospective bidder that suspects unfair treatment in the interconnection and transmission study process the ability to address its concerns through a FERC complaint.

IEA comments that solar resources paired with storage should not be precluded from participation under the rules.<sup>19</sup> The Company agrees. There is nothing in the text of the Market Solar statute that would preclude solar resources paired with storage, and no other reason to include such a restriction. Nothing in the Company’s proposed rules would preclude bidders from proposing such projects either. However, for Specific Customer Solicitations, where the customers set the selection criteria, it is possible such criteria could exclude consideration of solar paired with storage. In the case of Specific Customer Solicitations, where the customers determine their own resource selections and bear the risks of those decisions, the Commission should allow such exclusions. IEA also comments that the rules should require refunds of bid fees to bidders that are not selected in a solicitation. If the solicitation is a Specific Customer Solicitation, then the customer should be allowed to make its own determination with respect to bid fee refunds. In the case of Non-Contract Customers or Large Non-Contract Customers Solicitations this question is best answered through the public hearing and comment processes required by the statute. Parties will have the opportunity to raise such concerns, and the Commission can determine if bid fee refunds are appropriate under the circumstances.

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<sup>18</sup> IEA Initial Comments, at Section II.C.3.

<sup>19</sup> IEA Initial Comments, at Section III.C.

4. UCE

UCE addresses the prospect of changes to solicitations after the Commission has issued an order approving them. It proposes rules requiring the unanimous consent of all parties that participated in the approval process before such changes could be made. The Company is concerned that such a requirement would needlessly restrict flexibility to make adjustments to Solar Solicitations, especially in cases where those adjustments are not material. If, however, the Commission determines that the rules need to specifically address post-approval changes to solicitations, the Company is open to rules that require notice to the Commission of any post-approval changes or amendments to a solicitation. To avoid needlessly delaying the solicitation process, however, the Company recommends that any such changes be deemed approved within a short period unless the Commission determines additional approval is necessary or a party files an objection that demonstrates good cause for the Commission to more carefully consider the change.

UCE recommends rules that require a Commission determination on the robustness of the bids before approval of an acquisition.<sup>20</sup> The Market Solar statute includes no such requirement, and what is sufficiently robust is a subjective determination that does not lend itself well to creating a proscribed standard. Under Specific Customer Solicitations, the customer bears the risks of whether bidding was sufficiently robust. Under Non-Contract Customers and Large Non-Contract Customers Solicitations, the Voluntary Requests for a Resource Decision process applies which includes many requirements that will allow the Commission and other parties to determine whether the utility has sufficiently considered other resources and alternatives. All acquisition decisions are subject to public hearing and comment, so interested parties will have the opportunity to have their concerns about robustness heard before Commission approval. Thus there is no need to specifically address this in the rules.

UCE also recommends that the rules encourage that solicitations allow bids from a variety of technologies.<sup>21</sup> The Company agrees that all resource solicitations may be appropriate in certain circumstances, but the Market Solar statute is clear that it only applies to Solar Resources. For this reason, requiring inclusion of non-solar resources in the rules would violate the Market Solar statute. However, the Company notes that nothing in the statute, or the Company's proposed rules, precludes Solar Solicitations that may also invite bids from non-solar resources. The Company notes that if a non-solar resource is selected, then the Market Solar statute would not require the Commission's approval of the acquisition even if such resource will be owned by the utility.

The Company appreciates the opportunity to continue to work with the Commission and the Parties to develop appropriate rules. To that end, the Company recommends the Commission hold an informal workshop to see if a consensus can be reached on aspects of the rules based on the comments and proposals in this round.

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<sup>20</sup> UCE Initial Comments, at Section I.C.

<sup>21</sup> *Id.*



Questions about this filing can be addressed to Jana Saba at (801) 220-2823.

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

# Exhibit A

**Rocky Mountain Power’s Proposed Rules  
under  
Utah Code Ann. 54-17-807 (HB 261)**

(1) Definitions

- (a) “Non-Contract Customers” means any customers of a Qualified Utility that are not contracting with that utility under Utah Code Sections 54-17-803 or 54-17-806.
- (b) “Non-Contract Customers Solicitation” means any Solar Solicitation that will solicit Solar Resources with a rated generating capacity of less than or equal to 300 megawatts that will be used in whole, or in part, to supply Non-Contract Customers.
- (c) “Large Non-Contract Customers Solicitation” means any Solar Solicitation that will solicit Solar Resources with a rated generating capacity of more than 300 megawatts and that will be used in whole, or in part, to supply Non-Contract Customers.
- (d) “Qualified Utility” is defined under Utah Code Section 54-17-801(2).
- (e) “Solar Solicitation” means a solicitation that includes a Solar Resource pursuant to Utah Code Section 54-17-807.
- (f) “Solar Resource” means a solar photovoltaic or thermal solar energy facility.
- (g) “Specific Customer Solicitation” means a Solar Solicitation for any customer of a Qualified Utility that meets the requirements of either Utah Code Section 54-17-803 or Utah Code Section 54-17-806.

(2) Applicability

- (a) This rule applies to Qualified Utility applications for Commission approval of:
  - (i) any Solar Solicitation that may result in the Qualified Utility’s ownership of a Solar Resource using rate recovery based on a competitive market price; and
  - (ii) a Qualified Utility’s acquisition of a Solar Resource resulting from a Solar Solicitation approved under these rules, whether the resource

will be solely or jointly owned, only if the Qualified Utility seeks to use a competitive market price for rate recovery.

- (b) This rule does not apply to Solar Resources located on the customer's side of the meter that have a rated generating capacity of less than two megawatts.
  - (c) Except as otherwise specified in this rule, the requirements of Parts 1 through 5 of the Energy Resource Procurement Act (Utah Code Section 54-17-101 through Section 54-17-501) and Commission rules R746-420-1 through R746-420-6; R746-430-1 through R746-430-4; and R746-440-1 through R746-440-3 do not apply to applications for approval under this rule.
- (3) A Qualified Utility that seeks to acquire a Solar Resource using rate recovery based on a competitive market price shall file an application with the Commission for approval of a Solar Solicitation that includes the following:
- (a) a description of the solicitation process the Qualified Utility proposes to use;
  - (b) a copy of the complete proposed Solar Solicitation with appendices, attachments and draft pro forma contracts if applicable;
  - (c) information to demonstrate that the filing complies with the requirements of Utah Code Section 54-17-807 and the Commission's rules;
  - (d) descriptions of the criteria and the methodology, including any weighting and ranking factors, to be used to evaluate bids;
  - (e) if the Solar Solicitation is a Non-Contract Customers Solicitation or Large Non-Contract Customers Solicitation, information directing parties to all questions and answers regarding the Solar Solicitation and solicitation process posted on an appropriate website; and
  - (f) any other information the Commission may require.
- (4) Solar Solicitation Approval Process
- (a) For any Specific Customer Solicitation, the Qualified Utility shall include in its application a request for the following Commission determinations:
    - (i) whether any party has provided information sufficient to overcome a presumption that the Solar Solicitation and bid evaluation will

create a level playing field that allows fair competition between the Qualified Utility and other bidders;

- (ii) whether any party has provided information sufficient to overcome a presumption that interconnection and transmission requirements imposed on bidders by the Solar Solicitation are made equally applicable to the Qualified Utility and other bidders, excluding any requirements of the Qualified Utility's federally regulated transmission function; and
- (iii) whether the Solar Solicitation is in the public interest.

Interested parties shall file information to overcome the presumptions in 4(a)(i) and 4(a)(ii) of this rule within 30 days of the Qualified Utility's application. The Qualified Utility shall have 15 days to respond to any such information, and, unless the Commission determines that additional time is warranted and is in the public interest, the Commission will issue an order within 60 days of the application.

- (b) For any Non-Contract Customers Solicitation the Qualified Utility shall include in its application a request for the following Commission determinations:
  - (i) whether the Solar Solicitation and bid evaluation will create a level playing field that allows fair competition between the Qualified Utility and other bidders;
  - (ii) whether interconnection and transmission requirements imposed on bidders by the Solar Solicitation are made equally applicable to the Qualified Utility and other bidders, excluding any requirements of the Qualified Utility's federally regulated transmission function; and
  - (iii) whether the Solar Solicitation is in the public interest.

The Commission will hold a scheduling conference to set the time for public comment and schedule a hearing. Unless the Commission determines that additional time is warranted and is in the public interest, the Commission will set a hearing date that is within 75 days of the application.

- (c) For any Large Non-Contract Customers Solicitation, Parts 1 through 5 of the Energy Resource Procurement Act are applicable, and the Qualified Utility shall include all of the information required under Section 3 of this

rule in its application under R746-420. In its application for Commission approval under R746-420 for a Large Non-Contract Customers Solicitation, the Qualified Utility shall request that the Commission make following additional determinations:

- (i) whether the Solar Solicitation and bid evaluation will create a level playing field that allows fair competition between the Qualified Utility and other bidders; and
- (ii) whether interconnection and transmission requirements imposed on bidders by the Solar Solicitation are made equally applicable to the Qualified Utility and other bidders, excluding any requirements of the Qualified Utility's federally regulated transmission function.

(5) Solar Resource Acquisition Approval Process

(a) Before acquiring a Solar Resource selected through a Specific Customer Solicitation approved under this rule, a Qualified Utility shall file an acquisition approval application with the Commission that includes a request for the following Commission determinations:

- (i) whether the solicitation and evaluation processes complied with this section, Commission rules, and the Commission's order approving the solicitation process; and
- (ii) whether the acquisition of the Solar Resource is just and reasonable, and in the public interest.

The Commission will hold a scheduling conference to set the time for public comment and schedule a hearing. Unless the Commission determines that additional time is warranted and is in the public interest, the Commission will set a hearing date that is within 75 days of the application.

(b) Part 4 of the Energy Resource Procurement Act, Voluntary Requests for Resource Decision Review applies to any acquisition of Solar Resources selected in a Non-Contract Customers Solicitation or a Large Non-Contract Customers Solicitation, and a Qualified Utility shall file an acquisition approval application under R746-440. In its application for Commission approval under R746-440 for an acquisition pursuant to a Non-Contract Customers Solicitation or Large Non-Contract Customers Solicitation, the Qualified Utility shall request that the Commission make following additional determinations:

- (i) whether the solicitation and evaluation processes complied with this section, Commission rules, and the Commission's order approving the solicitation process;
  - (ii) whether the acquisition of the Solar Resource is just and reasonable, and in the public interest; and
  - (iii) whether, based on a review of the solicitation criteria and the bid results, the Qualified Utility's bid is the lowest cost ownership option for the Qualified Utility if the Qualified Utility will own the Solar Resource or has an option to purchase it under the power purchase agreement.
- (c) Effect of acquisition approval under sections 5(a) & (b) of this rule:
  - (i) Prices approved by the Commission constitute competitive market prices; and
  - (ii) assets owned by the Qualified Utility and used to provide service as approved under this rule are not public utility property.
- (6) If no Solar Resource is selected at the conclusion of a Solar Solicitation, then the Qualified Utility shall file a report with the Commission within 30 days of such decision explaining its reasons for not acquiring the lowest cost Solar Resource bid into the Solar Solicitation, and any other information the Commission may require.
- (7) In the six months following the approved acquisition of a Solar Resource pursuant to a Non-Contract Customers Solicitation or a Large Non-Contract Customers Solicitation, or for such longer period as the Commission determines is in the public interest, a Qualified Utility may file an application with the Commission seeking approval to acquire another Solar Resource that is similar to the one for which a competitive market price was established without requiring a new Solar Solicitation approval process. In order to gain the Commission's approval, the Qualified Utility's application shall demonstrate that:
  - (a) there is a need to acquire the Solar Resource;
  - (b) the competitive market price remains reasonable; and
  - (c) the acquisition is in the public interest.
- (8) Disposition of Qualified Utility owned Solar Resource acquired under this rule shall comply with the requirements of Utah Code Section 54-17-807(10).

**CERTIFICATE OF SERVICE**

Docket No. 18-R450-01

I hereby certify that on July 13, 2018, a true and correct copy of the foregoing was served by electronic mail to the following:

**Utah Office of Consumer Services**

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**Rocky Mountain Power**

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Katie Savarin  
Coordinator, Regulatory Operations