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@hjdlaw.com
prussell@hjdlaw.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

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

Sustainable Power Group ("sPower") submits these Reply Comments in response to initial comments filed by others regarding rules (the "Rules") to be adopted by the Commission under Utah Code Ann. § 54-17-807 (the "Act").

MOST OF THE INITIAL COMMENTS PROVIDE REASONABLE SUGGESTIONS

The initial comments filed by the Office of Consumer Services, Utah Clean Energy, the Utah Solar Energy Association, and the Interwest Energy Alliance are generally consistent with those filed by sPower. These comments include many reasonable suggestions for protecting competition and ensuring a level playing field as required by the Act. In addition, sPower agrees with the Office that some of the existing Commission Rules can be utilized. The Office correctly

notes that some new rules will be required. In addition to the areas requiring new rules identified by the Office, other new rules will be required to ensure the level playing field contemplated by the Act.

The initial comments of Rocky Mountain Power are also generally accurate and reasonable. For example, it is appropriate to utilize a different process for customer-driven RFPs compared to utility-driven RFPs. Under both circumstances, however, the rules must be designed to protect competition and level the playing field.

THIRD-PARTY PPAS OFFER ALL OF THE SAME VALUE, FLEXIBILITY AND BENEFITS AS UTILITY-OWNED SOLAR FACILITIES

The initial comments of First Solar, Inc., require a more detailed response. Those comments correctly identify many significant benefits of utility-scale solar projects. However, they betray a fundamental misunderstanding of the intent and requirements of the Act—which may be understandable given the fact that First Solar was not actively involved in developing language for the Act, as were sPower and most of the other commenters. The fundamental misunderstanding reflected in First Solar's comments is the notion that *utility ownership* of solar facilities is necessary to achieve the identified benefits of solar facilities. It is not; the very same benefits are available from third-party PPAs.

First Solar correctly identifies some of the benefits available to utilities and their ratepayers—such as renewable energy dispatchability/curtailment, voltage support, reactive power, grid reliability, etc.—from *utility-scale* solar facilities. However, those benefits are not exclusive to *utility ownership*. They are also available from third-party PPAs. The First Solar comments appear to reflect an attempt to compare a solar resource owned by a utility under traditional cost-of-service-based regulation and rate recovery, with a QF PPA under a must-take

obligation and fixed prices. sPower does not agree that the First Solar comments present a complete or fair comparison of utility-owned resources and QFs even under the traditional regulatory paradigm. sPower agrees, however, that numerous distinctions exist between utility asset ownership and PPAs under traditional regulation that make fair comparisons very difficult. All such difficulties and distinctions disappear, however, for solar resources procured under the Act.

The Act does not apply to utility procurement of solar resources under traditional regulation and traditional cost-of-service-based rates. Rather, the Act is designed to permit RMP to submit *market-based* bids just like a PPA. To ensure fairness to customers and competitors, the Act requires that utility bids and third-party bids must all be solicited, analyzed and procured on a fair and equal basis. If market-based utility bids and third-party bids are solicited, analyzed and procured on a fair and equal basis, the ***exact same*** benefits available from utility-owned solar resources will be available from third-party PPAs—and often at a lower cost.

Utah Code § 54-17-807(6)(b) requires that an RFP for market-based solar resources under the Act must "create a level playing field" that will ensure that third-party PPAs can "compete fairly" with utility PPAs. For that to happen, the RFP must indicate the specific nature of the resources solicited, whether for delivery of energy only, or whether it should include some degree of desired flexibility, such as dispatchability/curtailment, ancillary services, etc., and must solicit prices for all such services on a comparable basis so that the utility PPA and third-party PPAs can be compared fairly.

As indicated in the initial comments of sPower and others, a level playing field requires, among other things, that an RFP issued under the Act for market-based utility and third-party

bids must: (a) ensure comparable business terms, risks, benefits and restrictions, including purchase options and compensation structures; (b) solicit comparable facilities, including equipment quality, commercial operation date, project scale/size, project location, etc.; (c) provide comparable interconnection requirements; and (d) ensure comparable access to the utility's transmission assets, contracts and rights. The Act essentially requires that a market-based, utility bid should be considered as a PPA that can be compared on a fair and comparable basis to third-party PPA bids.

The comments of First Solar suggest that utility ownership of solar resources will provide flexibility because the resources can be dispatched or curtailed to provide grid support and reliability services. The same is true of third-party PPAs, so long as the RFP solicits such flexibility, and so long as all PPA bids reflect pricing that assumes such flexibility. Any solar resource—whether owned by a utility or a third party—whose $/kWh pricing is based solely on expected revenue from a fully-dispatched facility must remain fully dispatched in order to pay debt service and provide returns. If flexibility in dispatch is desired or required, the RFP must so specify so that the impacts of such flexibility can be included in optional pricing offered by the utility and third-parties.

First Solar's suggestion that utility-owned solar resource will have longer useful lives or be better constructed is also incorrect, and for the same reasons. Because the Act requires utility and third-party PPA bids to be evaluated on an equal footing, all PPA bids must reflect the same tenor/term and must reflect the same renewal options and other end-of-term expectations.

The utility must bear all of the risks (and will receive all the benefits) of assets ownership under the Act, just like the owner of a third-party PPA. Utah Code § 54-17-807(10) expressly

provides that, at the end of the PPA term, "the qualified utility is permitted to retain the benefits or proceeds and shall be required to assume the costs and risks of ownership of the energy resource." Therefore, utility shareholders—not utility ratepayers—will benefit from any end-of-life value of a solar facility procured under the Act. So long as the RFP clearly specifies the permissible or desired products, the utility bids and third-party bids will include comparable pricing that will permit comparison on a fair and equivalent basis as required by the Act.

CONCLUSION

Any solar PPA can be designed to provide energy, dispatchability/curtailment, grid support, and/or reliability services, as desired. Indeed, solar facilities owned by independent power producers in many markets today provide all such services. If a soliciting customer or utility under the Act is interested in flexibility for grid and reliability support, the RFP must so indicate so that the utility bids and all third-party bids can take such flexibility into account in determining market-based prices to offer. All of the bids will then be capable of evaluation and procurement on a fair and comparable basis under the Act.

sPower repeats its request that the Commission adopt strong and enforceable Rules to ensure that RMP will not have a competitive advantage in market-based bids. sPower also repeats its request for the Commission to expand the schedule to allow sPower and other parties to respond to any Rule language proposed by others, and to schedule a technical conference at which areas of concern can be addressed by interested parties and an attempt can be made to reach consensus on issues.

DATED this 13th day of July 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 13th day of July 2018 on the following:

ROCKY MOUNTAIN POWER

Jeff Richards	robert.richards@pacificorp.com
Yvonne Hogle	yvonne.hogle@pacificorp.com
Joelle Stewart	joelle.stewart@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

UTAH SOLAR ENERGY ASSOCIATION

Ryan Evans	revans@utsolar.org

UTAH CLEAN ENERGY

Hunter Holman	hunter@utahcleanenergy.org

INTERWEST ENERGY ALLIANCE

Lisa Hickey	lisahickey@newlawgroup.com

FIRST SOLAR, INC.

Colin Meehan	colin.meeham@firstsolar.com

/s/ *Gary A. Dodge*