

October 30, 2019

***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. 19-R314-01**

Proposed Rulemaking Concerning Utah Code Ann. § 54-17-901 to 909, Community Renewable Energy Act, Enacted May 13, 2019.  
*Status Update and Proposed Rules*

On April 3, 2019, the Public Service Commission of Utah (the “Commission”) opened the above-referenced docket with its notice of an April 23, 2019 scheduling conference. The Commission is required to create rules pursuant to the Community Renewable Energy Act, Utah Code Ann. § 54-17-901 to 909 (“H.B. 411”), which was passed by the Utah Legislature during the 2019 Utah General Session, and enacted May 13, 2019. At the scheduling conference, the interested parties discussed the potential for working jointly to develop a consensus draft of proposed rules under H.B. 411. Accordingly, the Commission scheduled and publicly noticed several informal meetings to allow interested parties to work towards this goal. PacifiCorp d.b.a. Rocky Mountain Power (“Company”), the Commission, Division of Public Utilities, Office of Consumer Services, Salt Lake City, Summit County, Salt Lake County, Cottonwood Heights, Moab City, Millcreek, Park City, Utah Association of Energy Users, Utah Clean Energy, Western Resource Advocates, HEAL Utah, Interwest Energy Alliance, First Solar, Sierra Club, Wasatch Clean Air Coalition, and members of the public all took part in technical conferences (“Participants”).

Pursuant to the Second Amended Scheduling Order and Notice of Technical Conference dated July 12, 2019, in this docket, some of the foregoing Participants engaged in informal meetings on May 13, May 31, June 12, July 3, July 17, July 30, August 13, August 29, September 17, and October 10, 2019 to collaborate on draft rules. As a result of these meetings and multiple draft proposals between the active Participants, the Company is pleased to report that there is agreement on a consensus draft of the proposed rules as a result of the informal meetings. The consensus version of draft proposed rules is attached as Exhibit A for the Commission’s consideration. No Participant or other party has informed the Company of any opposition to the draft rules.

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The Company greatly appreciates the Commission's patience in allowing the parties the time to negotiate a consensus draft of these rules. The Company believes that formal proposed rules in substantially the same form as those proposed herein would be in the public interest, and that they represent a fair, workable, and reasonably efficient implementation of H.B. 411, the Community Renewable Energy Act.

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

CC: Service List

**EXHIBIT A**

**Community Renewable Energy Act, Utah Code Ann. 54-17-901 through 909  
(HB411)**

**Final Consensus Proposed Rules, October 30, 2019**

**R746-314-101-Definitions.**

When used in this Part, the following defined terms shall have the following meanings:

“Annexed Customer” means a utility customer with an electric service address located within an area annexed into a participating community after the implementation date, beginning on the date that such person becomes an eligible customer.

“Cancellation Date” means the last day of the applicable cancellation period.

“Cancellation Period” means the period during which a participating customer may opt-out of the program without incurring a termination fee. The cancellation period shall be, as approved by the commission:

- (a) for all eligible customers on the implementation date, at least 3 billing cycles immediately following the applicable commencement date; or
- (b) for a new customer or annexed customer, the latter of (i) the period specified in (a), above, or (ii) the 60 day period immediately following the applicable commencement date.

“Commencement Date” means:

- (a) the last day of the 60-day implementation period for an eligible customer on the implementation date, which is the date by which such eligible customer must opt-out of the program in order to avoid paying any program rates, and the first day of such customer’s cancellation period; or
- (b) the date when the first opt-out notice is sent to a new customer or annexed customer, which is the first day of the cancellation period for such customer.

“Eligible Community” means a Utah municipality or county that has adopted a resolution as specified in Utah Code Section 54-17-903(2)(a) and that continues to indicate its intent to become a participating community, including by entering into the utility agreement and the governance agreement.

“Eligible Customer” means a person that is a customer of the utility receiving retail electric service at a location within the boundary of a participating community, and that is identified by the utility with a tax ID associated with a participating

community, excluding any residential customer as specified in Utah Code Section 54-17-905(5) that is then receiving net metering service from the electric utility under the utility's Utah electric service schedule 135.

"Exit Notice" means a notice provided to the utility by an exiting customer that indicates the exiting customer no longer wishes to participate in the program, and that also includes the exiting customer's name, account number, service address, and the telephone number associated with the account.

"Exiting Customer" means a participating customer that elects to terminate its participation in the program after the cancellation date applicable to that participating customer.

"Governance Agreement" means an interlocal or other agreement entered into prior to the filing date of the application for commission approval of the program, among eligible communities that intend to become participating communities and that establishes a decision making process for program design, resource solicitation, resource acquisition, and other program issues and provides a means of ensuring that eligible communities and those that become participating communities will be able to reach a single joint decision on any necessary program issues.

"Implementation Date" means the date following program approval and adoption of an ordinance by all participating communities on which the first opt-out notice is sent to any eligible customer.

"Implementation Period" means the 60 day period beginning on the implementation date.

"New Customer" means a person other than an annexed customer that becomes an eligible customer within a participating community after the implementation date.

"Opt-Out Notice" means a notice meeting the requirements of Utah Code Section 54-17-905(1) including, as applicable, either or both of the following:

(a) "First Opt-Out Notice," which is the first notice to be provided by a utility to an eligible customer, a new customer, or an annexed customer pursuant to R746-314-103; and

(b) "Second Opt-Out Notice," which is the second notice to be provided by a utility to an eligible customer, a new customer, or an annexed customer pursuant to R746-314-104.

"Ordinance" means an ordinance adopted by an eligible community as required by Utah Code Section 54-17-903(2)(c) in order to become a participating community.

“Participating Community” has the meaning specified in Utah Code Section 54-17-902(10).

“Participating Communities’ Representative” is the person(s) or entity authorized to present the decisions and opinions of the participating communities pursuant to the governance agreement.

“Participating Customer” has the meaning specified in Utah Code Section 54-17-902(11).

“Person” means an individual or any other legal entity.

“Program” means a community renewable energy program approved by the commission pursuant to Utah Code Sections 54-17-901, et seq.

“Program Rates” means the rates and fees charged to participating customers and exiting customers to recover all costs and expenses incurred by a utility to implement and operate the program in accordance with Utah Code Section 54-17-904(4).

“Renewable Energy Asset” has the meaning specified in Utah Code Section 54-17-902(14) for a renewable energy resource, excluding resources specified in Utah Code Sections 54-17-902(14)(b)(i) and (ii).

“Tax ID” means an identifier used by the utility to designate meters and accounts that are associated with specific municipal or county taxing districts.

“Termination Fee” means the fee, if any, to be assessed on and charged to an exiting customer in accordance with Utah Code Section 54-17-905(3)(c) and R746-314-108.

“Utility” means a qualified utility as defined in Utah Code Section 54-17-801.

“Utility Agreement” means a single agreement as required by Utah Code Section 54-17-903(b) entered into prior to the filing date of the application for commission approval of the program between the utility and all eligible communities that intend to become participating communities.

## **R746-314-102 General Requirements**

### **(1) Spanish Language Requirements**

- (a) To the extent an eligible customer has previously indicated a Spanish language preference to the utility, notices required by these rules to such customer shall be provided in Spanish.

- (b) Each opt-out notice that is not provided in Spanish shall include a short statement written in Spanish either directing customers to a Spanish language version of the opt-out notice online, or to a telephone number, website, or email address where a Spanish language version can be requested or obtained.

## (2) Customer Eligibility and Participation Requirements

- (a) A utility shall not be deemed to have violated these rules to the extent it enrolls a customer in the program that, based on the tax ID available to the utility, or, for annexed customers, a list of service addresses cross referenced to a list provided by the annexing participating community, appears to be located within a participating community, provided that:
  - (i) A customer who is accidentally enrolled in the program, despite not being an eligible customer, shall be unenrolled with no termination fee, and
  - (ii) The utility shall refund such accidentally enrolled customer the difference between the program rates and charges assessed for the lesser of the time the customer was accidentally enrolled or one year.
- (b) A participating customer that moves or changes its service address from one location within the program boundaries to another location within the program boundaries shall continue to be a participating customer at the new location.
- (c) A participating customer that moves or changes its service address from a location within the boundaries of the program to a location outside the program is no longer an eligible customer, and the utility shall remove such customers from the program.
- (d) A participating customer that closes its account with the utility is no longer an eligible customer with respect to that account, and the utility shall remove such customer account from the program.
- (e) If a person attempts to evade these program rules through a change in name, identity or legal status, or otherwise, the utility, a participating community, or a representative of the program may seek a determination from the commission that the person must abide by the program rules, including payment of any applicable termination fee.

### **R746-314-103 First Opt-Out Notice**

- (1) The utility shall provide a first opt-out notice, separate from standard monthly bills, to each eligible customer, new customer, or annexed customer no earlier than 60 days and no later than 30 days before the commencement date applicable to such customer.
- (2) The utility shall, in all material respects, use the form and content of the first opt-out notice as approved by the commission.
- (3) The utility shall send the first opt-out notice:
  - (a) via a method determined to be adequate by the commission, and
  - (b) in person to any eligible customer with an electric load of one megawatt or more measured at a single meter.
- (4) The first opt-out notice shall include at least the following information:
  - (a) A description of the program, including eligibility requirements;
  - (b) For any eligible customer on the implementation date, the applicable commencement date;
  - (c) The applicable cancellation date;
  - (d) A description of the actions taken by the participating communities and the utility to secure final authorization of the program;
  - (e) A description of the services and resources that the program is intended to provide;
  - (f) The projected range of program rates and terms of participation as approved by the commission, including:
    - (i) Projected billing impacts in the first year of the program at various usage levels using comparisons to the rates then applicable to Utah customers in the same rate class who are not participating in the program; and
    - (ii) A statement that program rates are estimated and subject to change, including a description of how and when rates may change;
  - (g) A statement informing the customer of the following:
    - (i) Either:

1. For notice to an eligible customers on the implementation date, that its electric accounts will be automatically included in the program beginning on the commencement date unless the customer affirmatively opts-out prior to the commencement date; or
  2. For notice to a new customer or annexed customer, that its electric account has been automatically included in the program and will remain in the program unless the customer affirmatively opts-out;
    - (ii) That, unless the customer affirmatively opts-out of the program by the cancellation date, it may incur a termination fee;
    - (iii) The information the customer must provide to opt-out; and
    - (iv) How the customer may affirmatively opt-out.
- (h) The commission approved amount of, or method for calculating, any then applicable termination fee and how and when the termination fee may change; and
- (i) A link to a website or websites where further details can be found.

#### **R746-314-104 Second Opt-out Notice**

- (1) The utility shall provide a second opt-out notice separate from standard monthly bills to each eligible customer, new customer, or annexed customer, at least 15 days after the first opt-out notice was provided and at least 7 days before:
  - (a) the commencement date for the second opt-out notice sent to eligible customers during the implementation period; or
  - (b) the cancellation date for the second opt-out notice to a new customer or annexed customer.
- (2) The utility shall, in all material respects, use the form and content of the second opt-out notice as approved by the Commission.
- (3) The utility shall send the second opt-out notice:
  - (a) via a method determined to be adequate by the Commission, and
  - (b) in person to any eligible customer with an electric load of one megawatt or more measured at a single meter.



- (4) The second opt-out notice shall include at least the information listed in R746-314-103(4).

**R746-314-105 Notice to New Customers and Customers in Annexed Areas**

- (1) A new customer or an annexed customer shall automatically be enrolled in the program, provided that:
- (a) The utility shall provide a first opt-out notice and second opt-out notice to each new customer or annexed customer as specified in R746-314-103-104; and
  - (b) A new customer or annexed customer may provide notice of its intent to opt-out of the program without incurring a termination fee by providing an opt-out notice to the utility prior to the applicable cancellation date, using any of the methods identified in an opt-out notice.

**R746-314-106 Customers Opting-In to the Program**

- (1) An eligible customer located within a participating community that is not then a participating customer may elect to participate in the program by providing notice to the utility. Following such notice, the customer will be enrolled in the program starting with the billing period following the notice in which it is reasonably practicable for the utility to enroll such customer. The reasonably practicable billing period shall be based on when the notice was received and the customer's bill cycle. Following enrollment, the customer becomes a participating customer and is subject to all program requirements, including exit notices and termination fees.

**R746-314-107 Requirements to Exit the Program after the Cancellation Date**

- (1) A customer may exit the program after the applicable cancellation date, as follows:
- (a) The exiting customer may provide an exit notice to the utility in the manner approved by the commission, which may include means for providing notice via the internet, telephone, or US mail, and shall pay any applicable exit fee;
  - (b) The exiting customer is responsible for program rates up to the date the customer is unenrolled from the program;
  - (c) Within 60 days after the utility's receipt of an exit notice, if not previously paid, the utility shall bill the exiting customer the applicable termination fee, if any; and
  - (d) The utility shall unenroll the exiting customer from the program beginning with the billing period that it is reasonably practicable for the utility to unenroll such customer following the later of:

- (i) the date when the exit notice was received, or
- (ii) the date that any applicable termination fee has been paid.

**R746-314-108 Termination Fee**

- (1) The termination fee for an exiting customer shall be calculated and charged as approved by the Commission with the application under R746-314-109, or, thereafter, as approved by the Commission from time to time. The amount of, or method for, calculating the termination fee shall be posted on the internet in a manner approved by the commission.
- (2) The approved termination fees may vary by customer class, usage level, or for other reasons that the commission approves as being in the public interest.
- (3) Termination fees, if any, applicable to a residential participating customer who moves outside of the program boundaries or who ceases to be an electric customer of the utility shall be as approved by the Commission from time to time.
- (4) Termination fees may not be considered as part of the unpaid amount for any residential customer for purposes of account termination or disconnection under R746-200-7.

**R746-314-109 Program Application and Approval Requirements; Rates; Participating Communities**

- (1) The utility shall file an application with the commission for approval of the program requirements and design.
- (2) Each eligible community identified in the application filed with the commission shall, as specified in Utah Code Section 54-17-904(5), be a party to the application proceeding and, for purposes of such proceeding, the commission's discovery rules will take precedence over any conflicting provisions of Title 63G, Chapter 2, Government Records Access and Management Act.
- (3) The utility shall include at least the following in support of its application:
  - (a) The name of each such eligible community;
  - (b) Maps depicting the geographic boundaries of each such eligible community;
  - (c) The proposed ordinance language that each such eligible communities must adopt to become a participating community;

- (d) The number of customers served by the utility within the geographic boundaries of each such eligible community, including:
  - (i) The number of customers served under each rate schedule within each such eligible community;
  - (ii) Monthly kWh load for each customer class within each such eligible community; and
  - (iii) A ten-year load forecast for each customer class;
- (e) Projected program rates for each class of participating customers, including workpapers that provide:
  - (i) An explanation of the proposed rate design that covers at least the following:
    1. A description of how both fixed and variable cost components related to both the program and ongoing costs will be allocated to each customer class and recovered through the proposed program rates; and
    2. Identification of other current or known rate adjustments applicable to the participating customers;
  - (ii) A reasonable range of projected rates based on high, medium, and low estimates of customer participation, along with an explanation for the estimation methodology, which may be based on other prior program experience; and
  - (iii) Projected quantifiable costs and benefits of the program, with a demonstration of how they are reflected in the proposed program rates, excluding costs and benefits that do not directly affect the utility;
- (f) A description of the proposed process for periodic, not more than annually, rate adjustment filings, including a proposed schedule or dates for such filings, which filings shall include:
  - (i) An accounting of program expenses;
  - (ii) The projected costs and revenues for the following year of the program; and
  - (iii) Any proposed changes to program rates, termination fees, tariffs, or other associated program charges.

- (g) Proposed tariff changes to implement the program;
  - (h) The utility agreement;
  - (i) The governance agreement;
  - (j) A description of the plan proposed by each eligible community addressing low-income programs and assistance;
  - (k) The proposed solicitation process for acquiring renewable energy resources for the program in accordance with R746-314-110;
  - (l) The proposed form of opt-out notices;
  - (m) The projected implementation date for the program;
  - (n) Other informational materials on the program to be provided or made available to eligible customers; and
  - (o) An explanation of how non-participating customers and the utility will not be subject to any program liabilities or costs.
- (4) The commission may approve the program if:
- (a) The application meets all applicable requirements of the Utah Code and Commission rules; and
  - (b) The commission finds that the program is in the public interest.
- (5) Any rates approved by the commission for participating customers:
- (a) Shall be based on the factors enumerated in R746-314-109(3)(d)-(e); and
  - (b) May not result in a shifting of costs or benefits to customers of the utility that are not eligible or have elected not to participate in the program.
- (6) Following a commission order approving the program, an eligible community identified in the application must pass an ordinance as required by Utah Code Section 54-17-903(2)(c) in order to become a participating community.

#### **R746-314-110 Solicitation for Program Renewable Energy Resource, and Acquisition Approval Process**

- (1) A renewable energy resource or program as specified in Utah Code Sections 54-17-902(14)(b)(i) or (ii) may be adopted or procured upon approval by the commission based on a finding the same is reasonable and in the public interest.

- (2) To the extent funds are collected from participating customers in excess of then-current costs, such funds may be utilized in a balancing account to help manage unanticipated program costs and expenses, or to help offset the impacts of customers exiting the program.
- (3) Renewable energy assets shall be acquired for the program through a competitive solicitation process that provides an option for the utility to own or purchase the renewable energy assets, if the commission finds that including such an option is not contrary to the interest of participating customers and other customers of the utility.
- (4) For the proposed acquisition of a solar renewable energy asset, the proposed solicitation application, solicitation approval process and resource acquisition approval shall be in accordance with the provisions of R746-450-1 - 4 as applicable to a specific customer solicitation, except to the extent the commission determines that any such provision should not be applicable. The proposed terms of the solicitation application and evaluation criteria under this subsection shall be developed by the utility and the participating communities' representative.
- (5) For the acquisition of a non-solar renewable energy asset, the terms of the solicitation application and evaluation criteria under this subsection shall be jointly developed by the utility and participating communities' representative, and the solicitation application and approval process may either be in accordance with R746-314-110(4), or the utility may file an application with the commission for approval of a solicitation that includes at least the following:
  - (a) a description of the solicitation process proposed and the manner in which the solicitation will be published;
  - (b) a copy of the complete proposed solicitation with any appendices, attachments, and draft pro forma contracts;
  - (c) descriptions of the criteria and the methods to be used by the utility and participating communities' representative to evaluate bids, including the weighting and ranking factors to be used to evaluate bids;
  - (d) information directing interested parties to all questions and answers regarding the solicitation and solicitation process posted on an appropriate website;
  - (e) the utility's proposed cost accounting for management of the solicitation;
  - (f) a description of the utility's proposed mechanism to ensure the utility's personnel involved in evaluating bids and the utility's personnel involved in preparing any bids into the solicitation from the utility will be prevented from sharing information in a manner that may lead to unfair advantage or the

perception of unfair advantage in the selection of a renewable energy resource, and how the utility will avoid its involvement in bid evaluation or selection from being affected by bias;

(g) sufficient information for the commission to make the determinations required by R746-314-110(3); and

(h) any other information the commission may require.

(6) Non-Solar Renewable Energy Asset Solicitation Approval Process.

(a) The commission shall approve a solicitation process if it makes the following determinations:

(i) That the proposed solicitation and bid evaluation process will allow fair competition among all bidders, including the utility, if applicable;

(ii) That the solicitation process is consistent with applicable statutes and commission rules; and

(iii) That the solicitation process is in the public interest.

(b) The commission will provide public notice of the application. Interested persons may file comments on the application within 30 days of the notice. Interested entities shall have 15 days to respond to any comments. The commission will hold a scheduling conference to set the time for public hearing. Unless the commission determines that another process or additional time is warranted and is in the public interest, the commission will set a hearing date that is within 75 days of the date the application is filed.

(7) Non-Solar Renewable Energy Asset Acquisition.

(a) If, following the conclusion of the commission approved solicitation process, the utility seeks to purchase a non-solar renewable energy asset selected through a commission approved solicitation, then the utility shall first file an application for approval of the purchase with the Commission, which shall include information sufficient for the commission to make the following determinations:

(i) That the solicitation process approved by the commission was complied with and adhered to in all material respects;

(ii) That the selection of the winning bid for a renewable energy resource was reasonable in light of the bids received, the explanation of the

scoring process, and the input provided by the participating communities' representative; and

- (iii) That the utility's purchase of the winning renewable energy resource is otherwise in the public interest.

The commission will provide public notice of the application. Interested persons may file comments on the application within 30 days of the notice. Interested persons shall have 15 days to respond to any comments. The commission will hold a scheduling conference to set the time for public hearing. Unless the commission determines that another process or additional time is warranted and is in the public interest, the commission will set a hearing date that is within 75 days of the date the application is filed.

**CERTIFICATE OF SERVICE**

Docket No. 19-R314-01

I hereby certify that on October 30, 2019, a true and correct copy of the foregoing was served by electronic mail to the following:

**Utah Office of Consumer Services**

Cheryl Murray [cmurray@utah.gov](mailto:cmurray@utah.gov)

Michele Beck [mbeck@utah.gov](mailto:mbeck@utah.gov)

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**Rocky Mountain Power**

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Mary Penfield  
Adviser, Regulatory Operations