

Travis Ritchie
Sierra Club Environmental Law Program
2101 Webster Street, Suite 1300
Oakland, California 94612
Phone: (415) 977-5727
travis.ritchie@sierraclub.org

Attorney for Sierra Club

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Investigation of the
Costs and Benefits of PacifiCorp's Net
Metering Program

Docket No. 14-035-114

**Sierra Club's Motion Requesting
Leave to Deliver Public Comments**

Pursuant to R746-1-301, Sierra Club hereby requests leave from the Public Service Commission of Utah ("Commission") to deliver approximately 250 public comment postcards to the Commission under rule R746-1-704. Sierra Club is not requesting that the comments be entered into the record in this proceeding on behalf of itself. Rather, Sierra Club is requesting that the Commission accept and process the postcards as public comment on behalf of the individuals who signed the postcards. In the alternative, Sierra Club has the ability to scan the postcards and deliver them as an electronic document if the Commission prefers that approach. As discussed in more detail below, Sierra Club is making this request by motion in order to avoid any confusion about the nature of the comments and to avoid any potential concerns about *ex parte* communications subject to Utah Code 54-7-1.5.

Sierra Club requested positions from all other parties by email on July 28, 2017. No party objected to the motion. Of the parties that responded, the Office of Consumer Services, HEAL Utah, Utah Clean Energy, and Vivint Solar support the motion. Rocky Mountain

Power, the Division of Public Utilities, Salt Lake City Corporation, EFCA and SunRun do not object.

The Commission's rules of practice and procedure encourage public participation and comment in Commission proceedings. R746-1-704 provides, "A person not a party to a docket may: (1) file comments prior to hearing or (2) appear during any public witness portion of a hearing to provide unsworn testimony." Sierra Club strongly supports this practice and applauds the Commission and its administrative staff for facilitating and accommodating the ability of individual members of the public to communicate directly with their government.

This docket has already generated intense public interest. Numerous public comments have been submitted by individuals expressing their opinions on this issue. As a public interest organization with a public outreach and education mission, Sierra Club – along with other organizations – has played a part in raising awareness about the issues that the Commission will address in this docket. Part of that outreach encourages individuals to engage in the public process provided by R746-1-704. Sierra Club reaches out to public individuals through various means, including setting up tables at public events, sending emails to members, or holding meetings in local communities. This type of public engagement is very common among public interest groups of all political and subject-matter persuasions. These activities are akin to actions that encourage individuals to "call or write your Senator (or other representative)" on important issues.

Specific to this motion, one aspect of Sierra Club's public outreach has been to distribute copies of the postcard included here as Attachment A.¹ If individuals agree with the message in the postcard, they are encouraged to add their name and address and either return

¹ Sierra Club notes that a copy of this postcard was provided to Rocky Mountain Power on June 28, 2017 in response to Rocky Mountain Power's First Data Request to Sierra Club.

the postcard to Sierra Club or drop it in the mail. Postcards that are either returned by hand or mailed are delivered to the Sierra Club's office in Salt Lake City with the expectation that Sierra Club will in turn deliver those postcards to the Commission. Sierra Club considers these postcards to be expressions of the individuals themselves, and the delivery to the Commission is done to facilitate the communication on behalf of the individual.

Sierra Club does not intend these postcards to be a reflection of Sierra Club's position in this proceeding. As a party to this proceeding, Sierra Club submitted pre-filed direct testimony from Allison Clements in accordance with the applicable scheduling order. That testimony is subject to rebuttal and cross examination and is intended to be entered into the record following proper process in the evidentiary hearings scheduled for this docket.

Sierra Club files the current motion to avoid confusion and to seek guidance from the Commission about the proper treatment of the postcards. While Sierra Club does not intend these postcards to be entered as record evidence or to speak for Sierra Club directly, the postcards include the Sierra Club logo and, if the motion is granted, would be physically delivered by the Sierra Club. There is the potential, therefore, that delivery of the postcards could be misconstrued as an improper *ex parte* communication with the Commissioners in violation of Utah Code 54-7-1.5, which provides in part, "No party shall make or knowingly cause to be made to any member of the commission, administrative law judge, or commission employee who is or may reasonably be expected to be involved in the decision making process, an *ex parte* communication relevant to the merits of any matter under adjudication."

Sierra Club does not believe that the Commissioners or other parties would mistake the postcards for testimony on behalf of the Sierra Club. The postcards signed by individuals of the public are clearly distinguishable from Sierra Club's prefiled expert testimony, and the

postcards are intended to represent the comments of individuals who are not a party to this proceeding. Nevertheless, out of an abundance of caution, Sierra Club is filing this motion to ensure that it follows a procedure that is acceptable to the Commission.

WHEREFORE Sierra Club respectfully requests that the Commission grant Sierra Club leave to physically deliver to the Commission all of the postcards that it has received or will receive prior to the August 9, 2017 Public Witness Hearing. In the alternative, Sierra Club requests guidance from the Commission as to the proper process to follow to deliver the postcards to the Commission. For example, Sierra Club has the ability to scan the postcards and deliver them as an electronic document if the Commission prefers that approach.

Respectfully submitted this 31st day of July, 2017.

/s/ Travis Ritchie
Travis Ritchie
Staff Attorney
Sierra Club Environmental Law Program
2101 Webster Street, Suite 1300
Oakland, California 94612
Phone: (415) 977-5727
travis.ritchie@sierraclub.org