
Application of Rocky Mountain Power to Establish Export Credits for Customer Generated Electricity	<u>DOCKET NO. 17-035-61</u> <u>ORDER ON REVIEW</u>
--	---

ISSUED: July 10, 2018

SYNOPSIS

For the reasons outlined in this Order on Review, the Public Service Commission of Utah (PSC) declines to modify, reconsider, or rehear the Phase I Order issued in this docket on May 21, 2018 (Phase I Order). We include some clarification here to assist in the implementation of our Phase I Order.

BACKGROUND

On May 21, 2018, the PSC issued the Phase I Order. The ordering paragraphs read:

1. PacifiCorp shall select new samples for residential and commercial customers that either give each member of the class an equal chance of being selected, or each member of the separate strata an equal chance of being selected.
2. PacifiCorp shall increase the sample size to accommodate the separate study of residential and commercial customers.
3. PacifiCorp shall collect export, import, and production data from the existing LRS study's 36 Schedule 135 participants.
4. We approve the study period as proposed by PacifiCorp to run for 12 months beginning no later than January 1, 2019.
5. We decline to require PacifiCorp to make any modifications to its proposed LRS beyond the directives articulated in this order.
6. We conclude that this order does not constitute final agency action because the results of PacifiCorp's proposed LRS will be subject to a robust adjudicatory proceeding in Phase II of this docket.

Phase I Order at 19-20.

On June 20, 2018, three intervenors—Vote Solar, Utah Clean Energy, and Vivint Solar, Inc. (collectively, Petitioners)—filed a Petition for Review or Rehearing (Petition for Review)

under Utah Code Ann. §§ 54-7-15 of the PSC statutes and 63G-4-301 of the Utah Administrative Procedures Act (UAPA), and Utah Administrative Code R746-1-801 of the PSC rules.

On July 5, 2018, PacifiCorp filed a response to the Petition for Review (PacifiCorp's Response).

PETITIONERS' POSITION ON REVIEW AND PACIFICORP'S RESPONSE

Petitioners' Position

Petitioners request rehearing or review on three issues. First, Petitioners contend PacifiCorp's Load Research Study (LRS) is flawed and should be rectified to correct the LRS's sample design consistent with Dr. Albert Lee's testimony. Petitioners allege specifically: (i) the sample is not drawn from the population of interest; (ii) the sample is a product of two separate samples; (iii) a flawed assumption exists regarding the correlation between nameplate capacity and generation that could result in the sample size being too small to achieve the stated precision; and (iv) no contingency plan exists if additional customers are needed for the sample. *See* Petition for Review at 2.

Next, Petitioners claim the Phase I Order should be amended to require PacifiCorp to provide information from relevant populations necessary to allow Petitioners to meet their burden of proof in Phase II of this docket. In particular, Petitioners request the LRS include: (i) import, export, and generation data from Schedule Nos. 135 (net-metering) and 136 (transitional) customers; (ii) system characteristics (*e.g.*, tilt, orientation, and shading); and (iii) customer characteristics such as "behind-the-meter" data regarding large appliances and house or business size. *See id.*

Lastly, Petitioners ask the PSC to require PacifiCorp to resubmit its updated LRS so the PSC and interested parties have the opportunity to ensure PacifiCorp's LRS complies with the PSC's orders. *See id.*

PacifiCorp's Response

In its responsive comments, PacifiCorp raises a threshold issue concerning the timeliness of the Petition for Review because the Phase I Order is not a "final order." PacifiCorp provides a partial summary of the work it has done and gives some detail on its plans going forward to implement the PSC's Phase I Order, and responds to some of the technical issues raised by Petitioners. Specifically, PacifiCorp asserts positions and provides related information, as follows:

- A. The PSC reached proper conclusions and made appropriate findings regarding the LRS, deciding all issues requiring resolution in Phase I in accordance with applicable statutes and the stipulation.
 1. The Interim Order (*i.e.*, Phase I Order) is not a final agency action.
 2. Approval of the LRS is neither necessary nor required before the Phase II proceedings, and is consistent with the Stipulation stating that nothing will limit or preclude a party from presenting evidence in the export credit rate proceeding (including Phase II).
 3. The PSC has ample authority and discretion to decline to require PacifiCorp to collect information Petitioners believe should be collected on their behalf.
- B. The PSC correctly found that the proposed LRS, with the required modifications, will provide a reasonable basis on which to determine an appropriate export credit rate.

DOCKET NO. 17-035-61

- 4 -

1. The PSC made a finding that is reasonable and supported by evidence: that the most relevant information needed to provide a reasonable basis on which to determine a just and reasonable export credit rate is the volume of exported energy and the times that the energy is exported.
2. Although customer-specific energy generation data is not needed in the final determination of an appropriate export credit rate, the LRS, as modified, addresses many of the concerns raised by Petitioners in the Petition for Review.
 - a. The primary “population of interest” does not currently exist; but the modified LRS was designed to draw from both Schedule Nos. 135 and 136 customers.
 - b. The modified LRS was drawn from a population of both Schedule Nos. 135 and 136 customers which included a total of 360 Schedule No. 136 customers who had an equal probability of being selected. The modified LRS consists of a larger sample size of 105 customers.
 - c. PacifiCorp will continue to collect generation, exported, and imported energy from the 36 Schedule No. 135 customers, which were part of the previous LRS sample used in the net metering proceeding in Docket No. 14-035-114.
 - d. Nameplate capacity is the best available variable of interest for the sample design given its correlation with customer energy generation.
 - e. PacifiCorp intends to test the results of the LRS for bias before the LRS period begins and at certain intervals during the collection period of the LRS.

3. The PSC correctly found that the value of the data Petitioners recommend for collection does not warrant requiring PacifiCorp to collect it on their behalf. PacifiCorp will provide access to the information it collects to Petitioners.

FINDINGS AND CONCLUSIONS

I. No Limitation on Discovery

As an initial matter, we conclude that nothing in this order modifies the ability of parties to seek existing information from PacifiCorp through the discovery process.

II. Timeliness of the Petition for Review

PacifiCorp challenges the Petition for Review on the basis of timeliness because, as PacifiCorp explains, the Phase I Order is not a final order. *See* PacifiCorp's Response at 3. We agree that our Phase I Order is not final. UAPA allows for agency review where a statute or agency's rules permit (*see* Utah Code Ann. § 63G-4-301), and both PSC statute (*see* Utah Code Ann. § 54-7-15) and PSC rule (*see* Utah Admin. Code R746-1-801) permit review or rehearing of any PSC order.

We conclude that the Phase I Order is not a final agency action because PacifiCorp has no legal obligation to obtain PSC approval prior to implementing its LRS, and because the results of the LRS will be subject to a full adjudicative proceeding in Phase II of this docket. We conclude that because the Phase I Order is not a final agency action, we could properly decline to address the Petition for Review. We also conclude, though, that Utah Code Ann. § 54-7-15 gives us discretion to consider the Petition for Review even in the absence of a final agency action. Consistent with that discretion, and to advance efficiency, economy, and clarity as we move forward to Phase II, we have chosen to address the Petition for Review in this Order on Review.

For the same reasons that we conclude the Phase I Order is not a final agency action, we also conclude that this Order on Review is not a final agency action.

III. Petition for Review

We now address the merits of each of the Petitioners' issues:

1. Population of Interest

Petitioners state the sample(s) as approved in our Phase I Order will not be drawn from the population of interest. *See* Petition for Review at 2, 6. The impetus for the sample construct approved in the Phase I Order is the stipulation proposed by the parties and approved by the PSC in Docket No. 14-035-114,¹ (Stipulation). The Stipulation produced the condition where the population of interest, namely future customers subject to the export credit rate set in this docket, would not exist as a class until after all phases of this docket conclude. As such, the regulatory structure created by the Stipulation requires the PSC to set a rate prior to the existence of this future class of customers. The PSC is conducting this proceeding to set the export credit rate, subject to the terms of the Stipulation, and must use the best evidence practically available.

2. LRS

Petitioners state the LRS sample(s) will be a joint product of two separate samples. *See* Petition for Review at 2, 6, 10. We find that the Petitioners appear to have misunderstood our Phase I Order. With respect to the composition of the new samples, planning to reuse an existing LRS sample is incompatible with our Phase I Order. The Phase I Order states:

¹ *See* Order Approving Settlement Stipulation, issued September 29, 2017 (Docket No. 14-035-114), available at: <https://pscdocs.utah.gov/electric/14docs/14035114/29703614035114oass9-29-2017.pdf>.

We direct PacifiCorp to increase the sample size to accommodate study of the two separate classes. We find parties' objections that PacifiCorp's sample design, as proposed, does not conform to standard statistical practice have merit. Specifically, mixing an existing sample that was drawn from a small subset of the current population with a new sample drawn from the entire population violates basic sample selection criteria. We direct PacifiCorp to select new samples for residential and commercial customers that either give each member of the class an equal chance of being selected, or each member of the separate strata an equal chance of being selected.

Phase I Order at 16-17.

We clarify the Phase I Order requires that each member of the relevant population must have an equal chance of being included in the sample. If PacifiCorp preselected any of the previous LRS sample members, those preselected sampled members would have a 100 percent chance of being included in the sample (probability of 1), which would be a substantially higher probability of being included in the samples than any other member of the sampled population(s). Therefore, planning to reuse any of the previous LRS sample members as part of the new samples would violate our Phase I Order. Only newly randomly selected customers may be included in the new samples. We note that according to its July 5, 2018 filing, PacifiCorp has already drawn new samples (which, apparently, Petitioners did not know about when they were preparing their Petition for Review). PacifiCorp informs parties to this docket that the new samples comply with our Phase I Order's requirements to generate two wholly new samples from the relevant populations. This proffer by PacifiCorp is consistent with our Phase I Order and the clarification noted in this Order on Review.

3. Stratification/Sample Plan

Petitioners restate the argument from the Phase I proceeding that PacifiCorp's stratification/sample plan relies on a flawed assumption regarding the magnitude of the

correlation between nameplate capacity and generation that could result in the sample size being too small to achieve the stated precision.

We find that PacifiCorp has provided substantial evidence to support the manner in which it intends to conduct the LRS. Beyond the changes we already required in the Phase I Order, we find that Petitioners have not provided sufficient factual basis to demonstrate that we should order additional modifications to the LRS at this phase of the docket. While we make no judgment at this time as to the ultimate reliability of PacifiCorp's LRS results, we conclude PacifiCorp has adequately defended its preferred approach, taking into account the adjustments we have ordered. A larger sample may provide both greater accuracy and correlation, but would have greater costs. We must balance our interests in a meaningful LRS with our guardianship of costs that will flow to all ratepayers to study issues related to a small subset of ratepayers. We deny the Petitioners' request to further expand the scope of the LRS, and decline to require PacifiCorp to modify its stratification or sample size beyond the requirements contained in our Phase I Order. We reiterate, though, that all parties retain the opportunity to offer evidence supporting their positions in Phase II.

4. Contingency Plan

Petitioners assert there is no contingency plan if additional customers are needed for the sample. We note the Stipulation, and subsequent approved tariffs, require customers to participate in the LRS process if they are selected. Therefore, we do not anticipate the same type of difficulties that PacifiCorp encountered in its previous attempt to construct a LRS sample. However, unexpected events might occur such as the sale of study homes or structural damage. PacifiCorp has informed the PSC and parties to the docket through its July 5, 2018 filing that it

has a substantial pool of alternate sample sites for both the residential and non-residential samples that it intends to use if analysis of the collected data appears unreliable due to bias. While we fully expect PacifiCorp to address unexpected issues as they arise, and to inform the PSC and parties, it would be a relatively simple matter to use these existing alternates if any technical problems develop. Therefore we consider this issue resolved.

5. Request that PacifiCorp Provide Data

Petitioners request that the PSC require PacifiCorp to provide information from relevant populations necessary to allow Petitioners to meet their burden of proof in Phase II of this docket. In particular, Petitioners request:

- (i) import, export, and generation data from Schedule Nos. 135 and 136 customers;
- (ii) system characteristics (*e.g.*, tilt, orientation, and shading); and,
- (iii) (individual) customer (load) characteristics including “behind-the-meter” data such as large appliances and house or business size.

With respect to the information to be collected, our Phase I Order specifies that PacifiCorp will provide import, export, and generation data gathered from the 36 Schedule No. 135 customers in the previous LRS. We clarify that PacifiCorp will also provide import, export, and generation data (on a 15-minute interval basis) for all of the new LRS sample sites. Further, we note that PacifiCorp has already committed to provide all export and import data (on a 15-minute interval basis) for all Schedule No. 136 customers. We clarify that PacifiCorp should also provide all export and import data (on a monthly basis) for all Schedule No. 135 customers as PacifiCorp has committed to do in its July 5, 2018 Response. We find that the factual record in this docket does not support a need for production (generation) data to be gathered from non-

LRS customers. Therefore, we decline to order generation data for each non-LRS customer be collected.

With respect to system and customer characteristics, we decline to modify our Phase I Order, which stated:

[W]e find that the information to be collected by PacifiCorp's proposed LRS, as modified by this order will provide a reasonable basis on which to determine an appropriate export credit rate. We find that the most relevant information for that analysis is the volume of electricity that is exported to the distribution system and the times when that electricity is exported. We find that PacifiCorp's LRS, with the modifications we have ordered, will collect that relevant data. Other parties have requested the collection of additional information such as system characteristics or customer usage data. While the record is insufficient at this point in the docket to conclude that type of data is not relevant and should be excluded from Phase II, the record is also insufficient to establish that the value of that data is meaningful enough to warrant a regulatory requirement for PacifiCorp to collect it on behalf of the parties who desire to use the data in Phase II. Accordingly, we conclude that the LRS proposed by PacifiCorp, as modified by this order, will provide a meaningful basis on which we may evaluate an appropriate export credit rate.

Phase I Order at 18. All of the reasons articulated by the Petitioners were part of the record that we considered before we issued our Phase I Order, and we decline to alter that finding. We deny the Petitioners' request that we order PacifiCorp to collect and provide this additional information.

6. Resubmit Updated LRS

Petitioners ask the PSC to require PacifiCorp to resubmit its updated LRS to ensure PacifiCorp's LRS complies with the PSC's order(s). We find adequate bases in PacifiCorp's Response to conclude it has correctly interpreted and implemented our orders with respect to its LRS sampling plan. In addition, PacifiCorp's unilateral decision to enlarge the sample sizes and

DOCKET NO. 17-035-61

- 11 -

randomly select alternate sites should they become necessary, offers additional assurance.

Therefore, we deny Petitioners' request for a further filing of PacifiCorp's LRS plan.

ORDER

1. We clarify our Phase I Order as provided above;
2. All other issues raised by Petitioners are denied; and
3. This Order on Review does not constitute a final agency action.

DATED at Salt Lake City, Utah, July 10, 2018.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#303427

CERTIFICATE OF SERVICE

I CERTIFY that on July 10, 2018, a true and correct copy of the foregoing was served upon the following as indicated below:

By Electronic-Mail:

Data Request Response Center (datarequest@pacificorp.com, utahdockets@pacificorp.com)
PacifiCorp

Jana Saba (jana.saba@pacificorp.com)
Joelle Stward (joelle.steward@pacificorp.com)
Yvonne R. Hogle (yvonne.hogle@pacificorp.com)
Rocky Mountain Power

Rick Gilliam (rick@votesolar.com)
Briana Kobor (briana@votesolar.com)
Vote Solar

Jennifer Selendy (jselendy@selendygay.com)
Joshua S. Margolin (jmargolin@selendygay.com)
Stephen Q. Wood (swood@woodbalmforth.com)
Co-counsel for Vote Solar

Stephen F. Mecham (sfmecham@gmail.com)
Counsel for Vivint Solar, Inc.

Sarah Wright (sarah@utahcleanenergy.com)
Kate Bowman (kate@utahcleanenergy.com)
Utah Clean Energy

Hunter Holman (hunter@utahcleanenergy.com)
Counsel for Utah Clean Energy

Tyler Poulson (tyler.poulson@slcgov.com)
Salt Lake City Corporation

Megan J. DePaulis (megan.depaulis@slcgov.com)
Counsel for Salt Lake City Corporation

Amanda Smith (asmith@hollandhart.com)
Engels J. Tejada (ejtejeda@hollandhart.com)
Chelsea J. Davis (cjdavis@hollandhart.com)
Counsel for Utah Solar Energy Association

Elias Bishop (elias.bishop@auricsolar.com)
Auric Solar, LLC

Nancy Kelly (nkelly@westernresources.com)
Western Resource Advocates

Sophie Hayes (sophie.hayes@westernresources.org)
Steven S. Michel (smichel@westernresources.com)
Counsel for Western Resource Advocates

Patricia Schmid (pschmid@agutah.gov)
Justin Jetter (jjetter@agutah.gov)
Robert Moore (rmoore@agutah.gov)
Steven Snarr (stevensnarr@agutah.gov)
Assistant Utah Attorneys General

Erika Tedder (etedder@utah.gov)
Division of Public Utilities

By Hand-Delivery:

Office of Consumer Services
160 East 300 South, 2nd Floor
Salt Lake City, UT 84111

Administrative Assistant