

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Application of Rocky Mountain Power to Establish Export Credits for Customer Generated Electricity	<u>DOCKET NO. 17-035-61 Phase II</u> <u>ORDER ON MOTION FOR FORMAL DISCOVERY</u>
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ISSUED: May 8, 2019

On April 23, 2019, Vote Solar filed a Motion for Formal Discovery and Statement of Discovery Issues (“Discovery Motion”). Rocky Mountain Power (RMP) filed a letter addressing its response deadline on April 26, 2019. RMP and the Office of Consumer Services (OCS) filed responses on May 7, 2019. Vote Solar asks the Public Service Commission (PSC) to expedite our consideration of the Discovery Motion following submission of responses. Accordingly, we are acting on this motion without waiting for a final reply from Vote Solar.

Vote Solar notes its intention to conduct a study of import, export, and generation data consistent with the type of study Vote Solar argued, in Phase I of this docket, we should have ordered RMP to conduct. Vote Solar asks us to order RMP to produce anonymous customer identifiers and street addresses for RMP’s Schedule 135 and Schedule 136 customers. Vote Solar argues the request is both proportional and relevant, citing case law holding certain customer lists not to be confidential and noting that RMP’s general customer base is readily ascertainable. Vote Solar asserts RMP’s internal policy against disclosing customer information is not controlling, and argues the requested information is not sufficiently commercially sensitive to avoid production. Vote Solar indicates it has signed non-disclosure agreements, will comply with PSC rules on confidential and highly confidential material, and is amenable to additional protective orders.

In its response opposing the Discovery Motion, RMP states that because its customers have not consented to the release of their data, RMP has a long standing policy to protect that data. RMP asserts the customers, not RMP, are the owners of the data, and that Vote Solar has not exhausted all potential avenues to obtain the data from solar companies or trade groups. RMP expresses concerns over the inability to control how another party will use, share, maintain, or protect that data, and notes granting the request increases the potential for both an involuntary data breach and intentional misappropriation of the information. RMP also argues that the identification of the addresses of customers who take service under Schedules 135 and 136 is a trade secret that is proprietary to RMP.

The OCS opposes the Discovery Motion, arguing that granting it would impinge on customers' reasonable expectation of privacy, subjecting them to annoyance and harassment. The OCS asserts utility customers are captured customers, and that being contacted by a third party requesting information about their electricity use could expose those customers to annoyance, embarrassment, oppression, or undue burden. The OCS proposes additional protective measures that we will restate later in this order.

For the reasons discussed in this order, we adopt the additional protective measures proposed by the OCS. Because we are taking this action before a response by Vote Solar to the OCS proposal (at Vote Solar's request to act expeditiously), we take this action without prejudice to a party raising any issue in a future discovery motion.

We conclude that by ordering RMP and Vote Solar to engage in the process proposed by the OCS, it is unnecessary for us to rule on the assertions and legal issues raised by RMP that the

information constitutes a proprietary trade secret that could be stolen from or intentionally misused by Vote Solar. Nevertheless we recognize that an extensive structure within our administrative rules, Utah Admin. Code R746-1-601 through -606, addresses those concerns. No party has alleged those rules to be inadequate. When a party signs a nondisclosure agreement, that action creates a presumption that the party will comply with those rules. That presumption would need to be rebutted by something more than a concern that misuse is possible.

The more primary issue before us, though, is the need to balance two policy considerations. One is the need to allow Vote Solar some reasonable opportunity to conduct the type of studies they and other parties petitioned us to require RMP to conduct during Phase I. Another is the public interest in protecting the privacy of captive customers of a monopoly public utility. In a recent, unrelated docket we recognized that public interest and acknowledged the need to create more specific administrative rules addressing it.¹ Those rules have not yet been implemented.

We conclude that the OCS proposal provides a meaningful path forward that gives attention to both of those policy considerations. We adopt that proposal² without prejudice to Vote Solar and without ruling on any of the legal issues raised by parties. Any issue raised in connection with this motion may be raised again if the OCS proposal, which requires some coordination and agreement between Vote Solar and RMP, proves unsuccessful.

We conclude that this order does not constitute final agency action.

¹ See *Dominion Energy's Gas Line Coverage Letter* (Report and Order, issued October 4, 2018, pp. 9-16), Docket No. 18-057-07.

² The ordering paragraphs at the conclusion of this order make minor changes to the wording of the OCS proposal. We do not consider any of those modifications substantive enough to warrant further discussion in this order.

ORDER

1. Vote Solar and RMP shall confer and agree on a mailer.
2. The mailer shall:
 - a. be on RMP letterhead and sent in an RMP envelope;
 - b. describe the purpose of this docket;
 - c. describe Vote Solar and its posture in this docket;
 - d. describe the information Vote Solar seeks;
 - e. provide a means by which a customer may opt-in to Vote Solar's study; and
 - f. provide a means by which a customer who has opted-in to Vote Solar's study may opt-out in the future.
3. RMP shall send the mailer to all customers taking service under Schedules 135 and 136.
4. Vote Solar shall bear all printing and mailing expenses, but is not required to bear expenses that would normally be associated with RMP's response to a discovery request.
5. Vote Solar and RMP shall act without unnecessary delay to complete this process.

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DATED at Salt Lake City, Utah, May 8, 2019.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#308135

CERTIFICATE OF SERVICE

I CERTIFY that on May 8, 2019, a true and correct copy of the foregoing was served upon the following as indicated below:

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