

JUSTIN C. JETTER (#13257)
PATRICIA E. SCHMID (#4908)
Assistant Attorney Generals
Counsel for the DIVISION OF PUBLIC UTILITIES
SEAN D. REYES (#7969)
Attorney General of Utah
160 E 300 S, 5th Floor
P.O. Box 140857
Salt Lake City, UT 84114-0857
Telephone (801) 366-0335
jjetter@agutah.gov

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Rocky Mountain Power to Establish Export Credits for Customer Generated Electricity	Docket No. 17-035-61 MEMORANDUM IN OPPOSITION TO UTAH SOLAR ENERGY ASSOCIATION'S MOTION FOR IMMEDIATE RELIEF
---	--

Pursuant to Utah Code § 54-4a and Admin. Code r.746-1, the Division of Public Utilities (“Division”) files this Memorandum in Opposition to Utah Solar Energy Association’s (“USEA”) Motion for Immediate Relief from Implementation Date in Commission’s October 30, 2020 Order Terminating Transition Program (“Motion”). As a signatory to the Settlement Stipulation filed Docket No. 14-035-114¹ on August 28, 2017 (“Settlement Stipulation”) and approved by the Commission,² the Division cannot support the Motion unless doing so would

¹ *In the Matter of the Investigation of the Costs and Benefits of PacifiCorp’s Net Metering Program*, Utah PSC Docket No. 14-035-114, August 28, 2017 Settlement Stipulation (“Settlement Stipulation”).

² *In the Matter of the Investigation of the Costs and Benefits of PacifiCorp’s Net Metering Program*, Utah PSC Docket No. 14-035-114, September 29, 2017 Order Approving Settlement Stipulation (“Order Approving Settlement Stipulation”).

cause the Division to violate its statutory obligations and authority. Therefore, the Division opposes the Motion.

INTRODUCTION

In Docket No. 14-035-114, a group of parties, including USEA, entered into and submitted for approval the Settlement Stipulation which resulted in this export credit proceeding.³ The Settlement Stipulation included a variety of terms that are summarized in this Commission's September 29, 2017 Order Approving Settlement Stipulation.⁴ One of the key terms of the Stipulation was the period during which the "Transition Program" as defined in the Settlement Stipulation would remain open to new customers. The Transition Program terms included the end date that would be set as the earlier of reaching the generation capacity cap or on the date the Commission issued its final order in this docket.⁵

In its Order in this docket issued on October 30, 2020 ("Export Credit Order"), the Commission closed the Transition Program consistent with the agreed upon terms in the Settlement Stipulation.⁶ On November 6, 2020, the USEA filed its Motion requesting relief from the portion of the Export Credit Order that terminates the Transition Program.⁷ USEA requests that this Commission grant relief in the form of an extension of the Transition Program until January 1, 2021.⁸ In its accompanying Motion to Deviate, USEA further requested expedited

³ Settlement Stipulation at 17-19.

⁴ Order Approving Settlement Stipulation at 4-6.

⁵ Settlement Stipulation at ¶ 15.

⁶ October 30, 2020 Order ("Export Credit Order") at 22 ("In accordance with the stipulation we approved in our 2017 Order, the transitional program ends today, the date this order is issued. RMP shall file tariff sheets that reflect this date appropriately in both Schedule 136 and 137.")

⁷ USEA Motion for Immediate Relief at 1.

⁸ *Id.*

treatment of its Motion. The Commission issued its Order Granting Motion to Deviate on November 9, 2020, setting an expedited response date of November 12, 2020.

DISCUSSION

USEA requests an extension of the Transition Program that is inconsistent with a clear term of the Settlement Stipulation approved by this Commission. Paragraph 15 of the Stipulation defined two triggers that would terminate the Transition Program: reaching a predetermined cap on generation or the issuance of a final order in this proceeding.⁹ The Stipulation further clarified that a final order “means the day the order is issued, without respect to time periods for requesting reconsideration or for appeals. This date is used solely to establish the conclusion of the period allowing entry into the Transition Program, and will be unaffected by any action subsequent to the Commission’s order.”¹⁰ Parties to the Settlement Stipulation including the Division agreed to support the terms of the stipulation before this Commission, and not to initiate or support any regulatory action that challenges any term of the stipulation.¹¹

USEA’s Motion does not dispute that the parties to the Settlement Stipulation agreed to the Transition Program closing on the date of the Commission’s final order or that the Export Credit Order is the triggering event. USEA’s Motion seeks to deviate from the terms of the Settlement Stipulation on the basis that the effects of the agreed upon language were unforeseeable. USEA claims that the abruptness of the termination of the program will harm customer generation vendors and customers who were in the process of preparing the documentation to file applications or otherwise in the process of acquiring customer generation

⁹ Settlement Stipulation at ¶ 15.

¹⁰ *Id.*

¹¹ Settlement Stipulation at ¶¶ 33 and 34.

but had not completed applications. USEA provides examples of customers who may have finalized agreements with vendors, but the vendor had yet to submit the form. Or larger customers who may have had pending engineering review that prevented an application from having been filed. USEA requests that the Commission extend the Transition Program for an additional six to seven weeks until January 1, 2021 to allow such customers to submit applications under the Transition Program.

In order to participate in the Transition Program a customer must only submit the application prior to the termination date.¹² The application presumably must be complete and submitted in good faith by the customer or on the customer's behalf, but the application does not need to be approved before the final cutoff date. The customer then has one year to complete the process of installing the customer generation and finalize the interconnection.¹³ Diligent customers or vendors should be able to complete and file applications for customers who were caught by surprise in the middle of the process by the abrupt conclusion of the Transition Program in a relatively short period of time.

The Division has serious concerns that reopening the Transition Program for too long will result in a flood of new applications much like was seen at the end of the NEM program in 2017. The Schedule 136 application fees were intended to serve a dual purpose, both covering the actual costs of processing them and providing some gatekeeping value to reduce the number of speculative applications. The relatively low cost of the application fees in comparison to the value of locking in the above-market rate for energy does not give a lot of comfort that the gold

¹² Settlement Stipulation at ¶ 15 (“submit an interconnection application after the NEM Cap Date until...”).

¹³ Rocky Mountain Power Electric Service Schedule No. 136 Proposed Second Revision of Sheet No. 136.6 ¶ 17.

rush type scenario will not occur. One vendor was recently quoted in the Salt Lake Tribune as having been able to file 25 applications between the time of the Export Credit Order being issued at approximately 3:00 p.m. and midnight.¹⁴ If a vendor can file 25 applications in one evening without notice or preparation, it is possible if not likely that reopening the Transition Period for even a short additional time might result in a very large volume of applications.

One factor that will balance this potential for a large influx in volume of new applications is the second potential trigger for closing the Transition Program. The generation cap for residential customers is near being met. The Division does not have a current precise calculation as of the time of this filing but based on the most recent reporting the cap is within the range that it may be reached relatively soon. It is possible if not likely that the cap will be reached before the end of the year even if the Transition Program were reopened for that long.

Ignoring for the moment the agreed upon terms of the Settlement Stipulation, when weighing the public interest, it is important to consider the interests of the potential schedule 136 customers, vendors, and other non-participating customers. In its Export Credit Order the Commission concluded that a just and reasonable value for exported energy is significantly lower than the rates for exports under the Transition Program.¹⁵ Additionally, customers who join the Transition Program are locked into the higher export credit rate for approximately 12 remaining years.¹⁶ Therefore, the necessary result of additional customers in the Transition

¹⁴ *Utah's solar advocates plan to fight decision by state regulators* Brian Maffly, Salt Lake Tribune, November 9, 2020, accessed November 10, 2020 at <https://www.sltrib.com/news/environment/2020/11/09/utahs-solar-advocates/> (“By the time Jones received the ruling, it was late in the day and he spent the rest of it feverishly calling his customers. He said he got about 25 applications filed before midnight...”).

¹⁵ Export Credit Order at 22.

¹⁶ Settlement ¶ 16 (Transition Program ends on December 31, 2032).

Program is higher rates for non-participating customers because the costs for above market energy flow back through the energy balancing account.

The counter-argument in favor of a small window of additional time is to balance the potential harm of higher rates with the public interest in equitable treatment of a small set of customers who may have been diligently pursuing customer generation and were caught by surprise by the termination of the Transition Period. The Division expects that most vendors and sophisticated industry parties were aware of the termination potential and understood the nature of the Settlement Stipulation and corresponding Commission orders. It is less certain that most typical customers would have full knowledge of the timing and termination of the Transition Program.

There may be a public policy interest in allowing those customers who were legitimately in the process of pursuing distributed generation systems a short window to apply to participate in the Transition Program. However, such a window should be carefully considered to best balance the equities of all customers. It is reasonable to expect that customers can file applications in a short timeframe given the ability of one vendor to apply for as many as 25 customers in an evening. For those reasons, something that might provide time for those customers to apply, but not so long that the pending deadline becomes a new marketing tool for recruiting new customers who were not actively in the process.

The Division recognizes the potential inequities for a group of customers who may have been caught by surprise by the abrupt closing of the Transition Program as it was envisioned by the Settlement Stipulation. However, the Division is bound by its agreement to the Settlement Stipulation not to initiate or support any regulatory action that challenges the terms. USEA's

Motion directly challenges the application of a term of the Stipulation and the Division cannot support the Motion.

Submitted this 12th day of November 2020.

/s/ Justin C. Jetter

Justin C. Jetter
Assistant Attorney General
Utah Division of Public Utilities