- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Application of Rocky Mountain Power to Establish Export Credits for Customer Generated Electricity	DOCKET NO. 17-035-61 ORDER DENYING MOTION

ISSUED: November 17, 2020

SYNOPSIS

In 2017, a broad coalition representing diverse interests executed a stipulation related to customer generation. The Utah Solar Energy Association ("Utah SEA") was one of thirteen parties who signed that agreement and argued it was just and reasonable. The stipulation created a transitional program that expires on the earlier of two dates: either the date a specified installation cap is reached, or the day we issue our order in this docket. Utah SEA asks us to disregard the stipulation and extend the transitional program until January 1, 2021. The Division of Public Utilities and Rocky Mountain Power urge us not to do so. We deny Utah SEA's request.

The settlement term that established the end date of the transitional program was both material and unambiguous. Parties who reached a hard-fought common ground in the stipulation have relied on all of its terms in the subsequent years. The consequences were foreseeable. We honor that settlement term to avoid eroding confidence in future settlement processes.

Additionally, granting the motion would simply defer the situation Utah SEA seeks to avoid to a near-future group of customers if the installation cap is reached before January 1, 2021. That situation would create a much more complicated quagmire, one for which no party has proffered a transparent path forward.

1. Motion and Responses

On November 6, 2020, the Utah Solar Energy Association ("Utah SEA") filed its Motion for Immediate Relief from Implementation Date in Commission's October 30, 2020 Order Terminating Transition Program ("SEA Motion").[1] On November 12, 2020, the Division of Public Utilities (DPU), Office of Consumer Services (OCS), and Rocky Mountain Power (RMP) filed responses to the SEA Motion. On November 13, 2020, Utah SEA filed a reply.

2. SEA Motion and Reply

We issued an order in this docket on October 30, 2020 ("October Order"). Pursuant to a stipulation we approved in a separate but related docket,[2] ("2017 Stipulation") a transitional program was created to govern customer generation. That stipulation established the end date of the transitional program as the earlier of: (1) the date a cap on customer generation installations within the transitional program established in the stipulation ("Installation Cap") is reached; or (2) the date we issue our final order in this docket (excluding reconsideration or appeals).[3] There is no dispute that the Installation Cap has not yet been reached. Accordingly, in our October Order we stated: "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."[4]

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[1] Utah SEA also filed a motion to deviate from Utah Admin. Code R746-1-301 and require responses to the SEA Motion within five days. We granted that Motion to Deviate on November 9, 2020, requiring responses to the SEA Motion by November 12, 2020.
[2] *Investigation of the Costs and Benefits of PacifiCorp's Net Metering Program*, Docket No. 14-035-114.
[3] *See id.*, Order Approving Settlement Stipulation (September 29, 2017).
[4] October Order at 22.

The SEA Motion asks for immediate relief by deferring the conclusion of the transition program until January 1, 2021, arguing that RMP proposed January 1, 2021 as the effective date for Schedule 137, the new program to compensate customer generators after our October Order. Utah SEA argues that the immediate effective date has damaged the rooftop solar industry, preventing affected customers from completing their pending applications, and that when parties executed the stipulation in 2017, "they did not foresee how disruptive and destructive a flash cut termination of the [t]ransition [p]rogram would be to the rooftop solar industry and solar customers."[5] Utah SEA also argues that our October Order creates a time gap during which customers cannot complete applications under either the transitional program or the new program established in our October Order.

Utah SEA's reply discusses the organization's participation in the 2017 Stipulation and argues that the customers who were in the middle of the application process on the date of our October Order created an unintended inequity, and that a current gap exists where both the transitional program and the program we established in the October Order are unavailable to customers. Utah SEA also argues the Installation Cap will prevent a rush of applicants if we grant their motion.

3. DPU, OCS, and RMP Responses

The DPU opposes the SEA motion. Noting some public interest considerations that weigh both against and in favor of the SEA Motion, the DPU states it is bound by its agreement

[5] SEA Motion at 2.

in the 2017 Stipulation[6] and cannot support the SEA Motion. The OCS states it does not oppose the relief sought in the SEA Motion as long as the Installation Cap is maintained. RMP opposes the SEA Motion arguing that the expiration date of the transitional program was a material and unambiguous term of the 2017 Stipulation, and was negotiated specifically to avoid a repeat of a previous increase in applications that resulted from a regulatory proceeding impacting customer generation compensation. RMP argues that granting the SEA Motion would require a waiver of interconnection rules and additional clarity on the enforcement of the Installation Cap in the event of withdrawn applications, and would discourage future settlements "because parties would not be able to rely on them."[7] RMP also states that no time gap exists; RMP can continue to process applications under the provisions of our October Order while its compliance tariff filing is in process.

4. Findings of Fact, Conclusions of Law, and Order

Stipulations and settlements are a crucial aspect of our regulatory process. That concept is enshrined as state policy in Utah Code Ann. § 54-7-1 with language that encourages settlements. The 2017 Stipulation that established the end of the transitional program was signed by a broad coalition of parties representing wide interests, including RMP; DPU; OCS; Vivint Solar, Inc.; Auric Solar, LLC; HEAL Utah; Intermountain Wind and Solar, LLC; Legend Ventures, LLC dba Legend Solar, LLC; the Utah SEA; Salt Lake City Corporation; Utah Clean Energy; Summit County; and Utah Citizens Advocating Renewable Energy.

[6] The parties who signed the 2017 Stipulation agreed "not to initiate or support any regulatory action that challenges any term" of the stipulation.
[7] RMP Response at 4.

a. Paragraph 15 of the 2017 Stipulation is unambiguous and material in establishing the date on which the transitional program shall end. Honoring that stipulated provision is just and reasonable.

The 2017 Stipulation meticulously articulated the end date of the transitional program ("Paragraph 15")[8] with three substantive provisions. First, Paragraph 15 states that the transitional program ends on the earlier of two dates: either the date the Installation Cap is reached or the date we issue our order in this docket. Second, it clarifies that the date we issue our order, for purposes of ending the transitional program, is without respect to reconsideration or appeal periods. Third, it provides that the end of the transitional program will be unaffected by any action subsequent to our order. We conclude (and it is undisputed) that our October Order is the order contemplated in that paragraph.

Utah SEA does not offer any contrary interpretation of Paragraph 15, but rather characterizes it as a mistake and argues the impacts on customers contemplating solar, but who have not yet submitted an interconnection application, are "unintended consequences" that are against the public interest. We find those impacts to be inevitable under Paragraph 15, the adoption of which Utah SEA advocated to be just and reasonable in 2017. Utah SEA has known, or should have known, since we issued our order approving the 2017 Stipulation that the day the

[8] Paragraph 15 reads in full: "The Commission will establish a transition program ("Transition Program") for customer generation systems as specified in Utah Code Ann. § 54-15-102(3), who submit an interconnection application after the NEM Cap Date until the earlier of: (a) the date on which the [Installation Cap] is reached, as provided in Paragraph 22 below, or (b) the date the Commission issues a final order in the Export Credit Proceeding, as provided below ("Transition Customers"). For purposes of this Paragraph 15, 'the date the Commission issues a final order in the Export Credit Proceeding' 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."

transitional program ends by operation of either trigger would almost certainly find customers contemplating, and even preparing a request to receive, service under the transitional program.

In light of the DPU and RMP opposition to the Motion, we could not re-write Paragraph 15 without eviscerating our statutorily-favored settlement process. The parties to the 2017 Stipulation have been acting according to the 2017 Stipulation for over three years and have relied on its efficacy.[9]

Utah SEA, having signed the 2017 Stipulation, asks us to modify Paragraph 15. We conclude that Paragraph 15 was unambiguous. Its level of detail and precision prevent any other conclusion. Additionally, on the basis of RMP and DPU representations, we conclude Paragraph 15 is material to the 2017 Stipulation. We will not and should not set aside a material term of a stipulation because it produces effects a party did not anticipate. We recognize that any settlement process involves give and take, and it would be inappropriate for us to try to pry open that process. To do so would have consequences far beyond this docket by eroding confidence in future settlements and discouraging parties in future proceedings from being able to confidently negotiate stipulations and rely on them. Parties who work to negotiate an agreement should have confidence that the agreement will be honored. If we were to re-write Paragraph 15 of the 2017 Stipulation, equity demands that we would have to open up any other provision of the 2017 Stipulation that some parties might consider against the public interest in light of our October Order. We will not open that Pandora's Box.

[9] The importance of the 2017 Stipulation's provisions is underscored by Paragraph 34 that prohibits any party to the stipulation from initiating or supporting any regulatory action challenging a stipulation term. In its reply Utah SEA states it does not intend to violate Paragraph 34, but whatever its intent, the SEA Motion unequivocally contravenes Paragraph 34.

b. Ending the transitional program pursuant to Paragraph 15 is not a flash cut; it is the natural conclusion of a three-year transitional program. Modifying Paragraph 15 would only defer the impacts to a different group of customers.

When we issued our October Order, we honored the desire of all parties who had signed the 2017 Stipulation to end the three year transitional program pursuant to Paragraph 15. The SEA Motion refers to our October Order as a flash cut to apparently imply that we have discretion to alter Paragraph 15. That implication avoids the plain reading of Paragraph 15.

That end date has been clear to all interested parties for three years. As a signatory to the stipulation who represents the interests of the residential solar installation industry in Utah, it was incumbent on Utah SEA to inform its membership about the terms of the 2017 Stipulation to which Utah SEA agreed, including Paragraph 15. The transitional program end date should not have surprised anyone.

Additionally, granting the SEA Motion would not eliminate the impacts on customers who fall short of transitional program qualification when it terminates; it would simply defer those impacts to a near-future set of customers in the same position. The transitional program has been available to customers for over three years with a continuous stream of applicants. Whenever it ends, that stream will be stopped, and those still upstream will be foreclosed. Moreover, as RMP and DPU point out, extending the termination date to January 1, 2021 would raise the meaningful possibility that the Installation Cap dictated in the 2017 Stipulation would be reached before that date. Program termination for that reason would not only catch customers off guard, who could not possibly know precisely when the end would occur, it would also create difficult questions regarding whose applications were received before the Installation Cap was

reached and how to treat later applicants who would have qualified but for the applications of customers who subsequently fail to install a qualifying system.

No party has proposed procedures to address this situation. Given the choice between honoring Paragraph 15 and unilaterally creating procedures to address reaching the Installation Cap before January 1, 2021, the choice is obvious. We will honor Paragraph 15.

c. RMP's application in this docket recognized Paragraph 15.

Like all parties in this docket and all those who signed the 2017 Stipulation, RMP did not know in advance the date on which we would issue our October Order. While in some instances we have statutory deadlines for issuing orders, one did not exist in this instance. Even where a statutory deadline does exist, there is no history or practice of announcing in advance the date on which we will issue an order. This was no secret to the signatories to the 2017 Stipulation.

RMP used an effective date of January 1, 2021, in the tariff sheets that accompanied its application in this docket, which was reasonable considering RMP's inability to know what date we would issue our October Order. RMP was clear in the testimony accompanying its application that the January 1, 2021 date was an "illustrative placeholder" and that RMP intended to implement whatever program we ordered in compliance with Paragraph 15.[10] That

[10] "To comply with the terms of the Settlement Agreement filed on August 28, 2017 in Docket No. 14-035-114 ("NEM Settlement") and to efficiently transition to the new Net Billing successor program, the Company proposes to revise Schedule 136 to close it to new applications for service and to provide customers with a 12 month period to interconnect with a 6 month extension available upon request for Large Non Residential Customers. Exhibit RMP___(RMM-1) shows proposed tariff revisions for Schedule 136 with the added heading of "Closed to Applications for New Service as of January 1, 2021". Paragraph 15 of the NEM Settlement specifies that the applications may be submitted for the transition program for customer generators up to the earlier of the date the [Installation Cap] is reached or the date the Commission issues a final order in the Export Credit Proceeding. Proposed tariff sheets for

provision of RMP's testimony should have been apparent and intuitive to anyone who had signed the 2017 Stipulation.

d. There is no time gap preventing interconnection applications.

It is long-standing precedent that our orders typically go into effect on the date they are issued. Utilities often file necessary tariff sheets in compliance with those orders, but the rates have already been made effective by the orders. The substantive trigger for rate changes is our orders, not the compliance tariff filings that are subsequently issued. This long-standing practice was well known to the parties who executed the 2017 Stipulation, and was an inherent premise of Paragraph 15.

Accordingly, Utah SEA's concern about a time gap is illusory. RMP has filed its tariff in compliance with our October Order, and our review of that tariff is in process. Our October Order governs that tariff, and it speaks for itself in establishing the parameters for interconnection applications, fees, and export credit compensation going forward. RMP may continue to process interconnection applications pursuant to our October Order.

e. Our October Order Created an Export Credit Rate Structure that is just and reasonable. It is not in the public interest to create a new, abbreviated, secondary transitional program.

The SEA Motion asks us to consider the public interest. As pointed out by the DPU, locking in additional customers to the transitional program for twelve years will be to the

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Schedule 136 list January 1, 2021 as an illustrative placeholder date for the date when the program would be closed to new applications. After either the [Installation Cap] is reached or the Commission issues its final order, the Company would make a compliance filing reflecting the actual date that either of these events occurred." *Application of Rocky Mountain Power to Establish Export Credits for Customer Generated Electricity*, Docket No. 17-035-61, Direct Testimony of Robert M. Meredith, February 3, 2020, Lines 178-192.

detriment of non-participating customers. Our October Order establishes a just and reasonable export credit rate structure that is designed to protect non-participating customers from paying subsidies while providing meaningful compensation for excess generation.

It is not in the public interest to encourage a new, abbreviated transitional program, one that was not contemplated in the 2017 Stipulation. Doing so would allow a new group of customer generators to continue to avoid the just and reasonable rate structure we have ordered to be implemented.

f. Our decision makes it unnecessary to order a temporary waiver of interconnection rules.

While RMP opposes Utah SEA's motion, it asks that if we grant the motion we also grant a temporary waiver of interconnection rules to allow for an anticipated rush of applications. Because we are not granting Utah SEA's motion, it is unnecessary for us to speculate on the extent to which an extension of the transitional program might create a rush of applications. Paragraph 15 appears to have been crafted to prevent this kind of situation, and we decline to disrupt that negotiated outcome.

ORDER

For the reasons outlined in this order, we deny the SEA Motion. We conclude that this order does not constitute final agency action.

DATED at Salt Lake City, Utah, November 17, 2020.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#316439

CERTIFICATE OF SERVICE

I CERTIFY that on November 17, 2020, a true and correct copy of the foregoing was delivered upon the following as indicated below:

By Email:

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

Jana Saba (jana.saba@pacificorp.com)
Joelle Steward (joelle.steward@pacificorp.com)
Emily Wegener (emily.wegener@pacificorp.com)
Rocky Mountain Power

Jennifer Selendy (jselendy@selendygay.com)
Joshua S. Margolin (jmargolin@selendygay.com)
Philippe Z. Selendy (pselendy@selendygay.com)
Lauren Zimmerman (lzimmerman@selendygay.com)
Shelby Rokito (srokito@selendygay.com)
Spencer Gottlieb (sgottlieb@selendygay.com)
Co-counsel for Vote Solar
Sachu Constantine (sachu@votesolar.org)
Claudine Custodio (claudine@votesolar.org)
Vote Solar

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

Hunter Holman (hunter@utahcleanenergy.com)
Counsel for Utah Clean Energy
Sarah Wright (sarah@utahcleanenergy.com)
Kate Bowman (kate@utahcleanenergy.com)
Utah Clean Energy

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

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

Nancy Kelly (nkelly@westernresources.org)
Sophie Hayes (sophie.hayes@westernresources.org)
April Elliott (april.elliott@westernresources.org)
Western Resource Advocates

Ryan Evans (revans@utsolar.org)
Utah Solar Energy Association

Noah Miterko (noah@healutah.org)
Grace Olscamp (grace@healutah.org)
HEAL Utah

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

Madison Galt (mgalt@utah.gov)
Division of Public Utilities

Alyson Anderson (akanderson@utah.gov)
Bela Vastag (bvastag@utah.gov)
Alex Ware (aware@utah.gov)
(ocs@utah.gov)
Office of Consumer Services

_____
Administrative Assistant