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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** **Utah Clean Energy's Petition for Review and Rehearing of the Commission Order Issued on October 30, 2020**

Pursuant to Utah Code §§ 54-7-15 and 63G-4-302, and Utah Administrative Code R746-1-801, Utah Clean Energy ("UCE") hereby submits this Petition for Review and Rehearing of the Public Service Commission's ("Commission") order in this docket, issued on October 30, 2020 ("Order"). Utah Clean Energy respectfully submits that the Commission's Order is inconsistent with Utah Code §§ 54-3-1, 54-4-4, and 54-12-1, and that elements of the Order related to the export credit rate ("ECR") within Schedule 137 rest on errors in fact and law. Specifically, UCE requests that the Commission review, reconsider, or rehear the following errors within the Order: 1) the Commission's determination that only the utility's cost of service is relevant in determining utility rates, including the ECR; 2) the annual review and potential adjustment of the ECR; and 3) the absence of gradualism in implementing the ECR under Schedule 137.

I. INTRODUCTION

In August 2014, the Commission initiated Docket No.14-035-114 to investigate the costs and benefits of PacifiCorp's ("RMP" or the "Company") net metering program. This case eventually resulted in a settlement stipulation that ended new customer participation in the net metering program, established a transition program, and required the Commission to establish an ECR to be applied to new solar customers after the transition program ended. The Commission ordered the creation of this docket to establish this ECR for customer generated electricity.

Rocky Mountain Power ("RMP") filed its proposed ECR in direct testimony on February 3, 2020, in Docket 17-035-61. RMP's original proposal was for an ECR based on avoided energy costs, avoided line losses, and integration costs, all subject to an annual review, to be implemented without gradualism. The Division of Public Utilities ("Division") and the Office of Consumer Services ("Office") filed direct testimony March 3, 2020, rebuttal testimony on July 15, 2020, and surrebuttal testimony on September 15, 2020, generally supporting RMP's proposal. UCE, Vote Solar, Vivint Solar, and the Utah Solar Energy Association also filed testimony on these dates, opposing several components of RMP's proposal, including the absence of gradualism; the annual update to the rate; the exclusion of certain categories of benefits such as capacity value, carbon compliance costs, hedging costs; and methodologies used to calculate certain costs and benefits. Over the course of all three rounds of testimony parties' positions remained largely consistent, although some parties changed or adopted new positions on certain issues, including a recommendation from the Office to include a capacity value in the ECR.

On October 30, 2020, the Commission issued its Order establishing the ECR and immediately ending the transition program created by stipulation of parties and approved by the

Commission in Docket No. 14-035-114. The Commission's new ECR is comprised only of cost of service elements including energy and capacity value, uses monthly netting, and includes an annual update to the rate for existing and future Schedule 137 customers. The ECR took effect immediately on the day the Commission issued the Order.

II. BACKGROUND

The Commission states in its Order that "[o]ur primary responsibility is to set rates based on the utility's cost of service."[1] The Commission recognizes "the importance of environmental considerations, carbon policy, economic development, and public health," but finds that these matters "fall within the regulatory ambit of other governmental agencies."[2]

The Commission goes on to explain that "[m]ore than 30 years ago, the Utah Supreme Court articulated our primary responsibilities to regulate utilities like RMP to ensure reliable service at a reasonable, non-discriminatory cost. . . . If we were to base the ECR on costs and benefits that do not impact RMP's cost of service, we would be assuming authority that has not been legislatively delegated to us."[3]

In support of the Commission's conclusion that it may not, as a matter of law, consider any issue outside the scope of the utility's cost of service the Commission relies on two Utah Supreme Court cases, the Community Renewable Energy Act, and the well-established principle that one agency may not infringe upon the jurisdiction of another.[4] In relying on this conclusion the Commission declined to consider any factor that it determined to be outside the utility's cost of service when it established the ECR. The Commission also imposed an annual review process

[1] Docket 17-035-61, Order issued October 30, 2020, page 1.
[2] *Id*.
[3] *Id*. at pages 6-7, footnote 8.
[4] *Id*. at 1-2.

that may change the ECR each year for both future and existing Schedule 137 customers. In doing so, the Commission did not consider evidence that annual changes to the ECR prevent solar customers from calculating the return on investment and this uncertainty and risk will depress the market for solar in Utah, resulting in negative economic impacts. Lastly, the Commission abstained from utilizing gradualism to implement the new Schedule 137 rate over time.

III. ARGUMENT

Utah Clean Energy submits that the Commission has relied on too narrow an interpretation of both the *Ellis-Hall* and *Garkane Power Association* cases, it misapplies the Community Renewable Energy Act as state policy and as instructive authority in this case, and it ignores the Commission's exclusive jurisdiction over utility rates and the legislative direction that allows the Commission to consider more than utility cost of service when setting them. In doing this, the Commission has imposed an unreasonable self-limitation on its authority contrary to Utah law and the rules of statutory interpretation, and has failed to consider substantial evidence that should have contributed to the development of the ECR. This additional evidence, when considered, supports the reasonable conclusion that a just and reasonable ECR must maintain a stable, nondiscriminatory rate over time for Schedule 137 customers and be implemented gradually to stave off severe and adverse economic consequences.

a. The Legislature has Directed the Commission to Consider More Issues Than the Utility's Cost of Service When Setting Rates.

The Public Service Commission has broad discretion when carrying out its responsibility of regulating utilities in Utah.[5] When establishing utility rates, the Utah legislature provided more specific guidance to the Commission by requiring rates to be "just and reasonable."[6] The plain language of the "just and reasonable" clause states that the definition "may include, but shall not be limited to" considerations for rate design such as energy and resource conservation, the well-being of the State of Utah, and the economic impacts of charges on customer classes. These explicit considerations are in addition to, "the cost of providing service to each category of customer"—the utility's cost of service.[7]

The fact that the legislature included several explicit considerations beyond the utility's cost of service confirms that more than just the cost of service may be relevant when establishing a just and reasonable rate. Further, the language clearly states that the definition of just and reasonable "shall not be limited" to only cost of service.[8] The Commission cannot ignore or disregard this plain language when considering the authority that the legislature has conveyed to it.[9] While the Commission is ultimately tasked with determining what factors contribute to a just and reasonable rate in each set of circumstances, it must consider the evidence presented, including non-cost of service evidence, and explain why each consideration is or is not relevant

[5] UTAH CODE ANN. § 54-4-1 ("The commission is hereby vested with power and jurisdiction to supervise and regulate every public utility in this state . . . and to do all things, whether herein specifically designated or in addition thereto, which are necessary to convenient in the exercise of such power and jurisdiction.").
[6] UTAH CODE ANN. § 54-3-1.
[7] *Id*.
[8] *Id*.
[9] *Lyon v. Burton*, 5 P.3 616, 622 (Utah) (quoting *Horton v. Royal Order of the Sun*, 21 P.2d 1167, 1168 (Utah 1991)) ("where the statutory language is plain and unambiguous, we do not look beyond the language's plain meaning").

in establishing a just and reasonable rate.[10] This determination must occur on a case-by-case basis. Taking a position that variables beyond cost of service should never be consulted when establishing utility rates renders the additional considerations useless, and represents an unreasonable self-imposed limitation on Commission authority.[11]

The legislature provided further guidance to the Commission in the form of a state policy that encompasses customers operating a distributed renewable energy system. In section 54-12-1 of the Utah Code, the legislature enacted the following provision under subsection (1):

> The Legislature declares that in order to promote the more rapid development of new sources of electrical energy, to maintain the economic vitality of the state through the continuing production of goods and the employment of its people, and to promote the efficient utilization and distribution of energy, it is desirable and necessary to encourage independent energy producers to competitively develop sources of electric energy not otherwise available to Utah businesses, residences, and industries served by electrical corporations, and to remove unnecessary barriers to energy transactions involving independent energy producers and electrical corporations.[12]

The legislature went on to say in subsection (2):

> It is the policy of this state to encourage the development of independent and qualifying power production and cogeneration facilities, to promote a diverse array of economical and permanently sustainable energy resources in an environmentally acceptable manner, and to conserve our finite and expensive energy resources and provide for their most efficient and economic utilization." (together referenced as the "IPP Policy").

These provisions of Utah law contain several elements directing the Commission to consider more than just the utility's cost of service to develop the ECR. First, the plain language used at the beginning of subsection (2) articulates a general policy of the State of Utah to

[10] *Williams v. Mountain States Tel. and Tel. Co.*, 763 P.2d 796, 799 (Utah) ("[t]he PSC may not arbitrarily disregard legislative provisions at its convenience, just as it may not . . . declar[e] 'irrelevant' those factors which the legislature expressly deems relevant and instructs the PSC to at least consider").
[11] *Lyon*, at 623, n.5 ("[the court has a] duty to avoid interpreting a statute in a manner that renders portions of the statute, or related statutes, meaningless").
[12] UTAH CODE ANN. § 54-12-1.

develop independent power production and to remove unnecessary barriers to energy transactions involving independent power producers. Second, the policy encourages the development of rooftop solar as part of the definition of an independent power producer. The Utah Code defines independent energy producers as "any person, corporation, or government entity . . . that own[s], operates[s], or controls[s], or manage[s] an independent power production . . . facility."[13] An independent power production facility is any facility that "produces electric energy solely by the use . . . [of] a renewable resource."[14] This definition is separate and distinct from the definition of QF resources, and nothing excludes residential, corporate, or government utility customers who operate a distributed solar resource from the definition. Third, the policy is intended to promote a diverse array of economical and permanently sustainable energy resources in an environmentally acceptable manner. This statement directs the Commission to consider whether a rate affecting independent power production, which includes production from distributed solar resources, will encourage diversifying Utah's energy portfolio and afford Utah sustainable environmental and economic benefits.

In combination with the just and reasonable clause, Utah's policy of encouraging independent power production under § 54-12-1, which includes rooftop solar ("IPP Policy"), supports our conclusion that the Commission should have considered more than just the utility's cost of service in their determination of the ECR. Specifically, the Commission should have considered whether its ECR furthers the legislature's stated goal of "promot[ing] the more rapid development of new sources of electrical energy, to maintain the economic vitality of the state

[13] UTAH CODE ANN. § 54-2-1(16).
[14] UTAH CODE ANN. § 54-2-1(17).

through the continuing production of goods and the employment of its people, and to promote the efficient utilization and distribution of energy."[15]

In 2018, the Utah Legislature also provided explicit direction to state agencies to consider Utah's economy and energy efficiency when carrying out their duties. HCR 007, Concurrent Resolution on Environmental and Economic Stewardship ("HCR 7"), encourages stewardship of natural resources and the reduction of emissions. It also encourages "individuals, corporations, and state agencies to reduce emissions through incentives and support of the growth in technologies and services that will enlarge our economy in a way that is both energy efficient and cost effective."[16] This resolution does not exempt the Commission from its recommendation that state agencies support technology that is both energy efficient and cost effective to enlarge Utah's economy. Thus, the Commission should have considered whether its ECR would promote distributed solar as an innovative technology that promotes energy efficiency in a manner that is sympathetic to Utah's economy and enables individuals, corporations, and state agencies to reduce emissions.

The just and reasonable clause, Utah's IPP Policy, and HCR 7 confirms that the Commission may consider more than cost of service when setting rates. In fact, especially when taken together, these three legislative directives support the conclusion that the Commission should have considered whether the ECR would encourage development of rooftop solar for all the reasons stated above. One thing is clear, to say that the legislature has not delegated the

[15] UTAH CODE ANN. § 54-12-1.
[16] H.C.R. 7, Concurrent Resolution on Environmental and Economic Stewardship, *found at*, https://le.utah.gov/~2018/bills/static/HCR007.html.

authority to the Commission to consider factors other than the utility's cost of service when setting rates is arbitrary and capricious.[17]

b. **The Commission Provides No Meaningful Support for its Conclusion that it May Not Consider Anything Beyond Cost of Service When Setting Rates.**

Despite these clear directives from the legislature, the Commission cites two Utah Supreme Court cases and the Community Renewable Energy Act in support of its conclusion that it may not consider factors beyond the Utility's cost of service to set the ECR.

The Commission cites *Garkane Power Ass'n v. PSC* as one of the primary sources for its explanation of what the Commission can consider when establishing utility rates. In *Garkane* the Utah Supreme Court explained that the Commission is tasked with setting utility rates that balance the utility's ability to maintain reliable service with the public interest of having reliable service at reasonable cost; to create just and reasonable rates.[18] This statement neither absolves the Commission from following the direction of applicable statutes, nor does it limit the interpretation of Utah's just and reasonable clause to only the utility's cost of service. This case does not support the Commission's determination that it may only use cost of service to establish rates. To the contrary, it finds that the Commission should balance the provision of electric service at a reasonable cost with all of the factors that contribute to a just and reasonable rate.

The Commission also cites *Ellis-Hall Consultants, LLC v. PSC* to support its conclusion that it may only consider cost of service when calculating the ECR.[19] Specifically, the

[17] The issue of the Commission's authority as prescribed by the Utah Code is a matter of law, and therefore outside the scope of the marshaling requirement under R746-1-801. However, even if marshaling were required, no other party presented evidence on the record in support of the Commission's determination that it only has the authority to consider evidenced directly tied to the utility's cost of service when setting rates generally, or when setting the ECR specifically.
[18] *Garkane Power Ass'n v. PSC*, 681 P2d 1196, 1207, (Utah 1984).
[19] *Id*.

Commission quotes the Utah Supreme Court's statement that the public interest "does not encompass any and all considerations of interest to the public" in the utility regulatory context. However, this case does not support the Commission's conclusion that it may not consider factors beyond the utility's cost of service when setting rates. In *Ellis-Hall*, the Utah Supreme Court clearly states that the Commission's obligation is dictated by the "purpose of the regulatory legislation in question" and that the term "public interest" is limited to that purpose.[20] The *Ellis-Hall* case involved QF contracts under Schedule 38, and as such the scope of the "public interest" was defined by PURPA and subsections (1) and (2) of § 54-12 of the Utah Code. For purposes of establishing the ECR in this case, the net metering statute does not apply which leaves the just and reasonable clause under Utah Code § 54-3-1 and the IPP Policy.[21] These provisions of law do not limit the Commission's regulatory purview when establishing the ECR to elements that directly relate to cost of service. In fact, they support consideration of cost of service as one element, but certainly not the only element that is relevant to the public interest, as discussed above. Since the court in *Ellis-Hall* directed the Commission to look to the applicable statutes for direction and purpose, *Ellis-Hall* actually supports UCE's conclusion that

[20] *Ellis-Hall Consultants, LLC v. PSC*, 342 P.3d 256, at ¶ 22 (Utah 2014).

[21] The Commission's Order states that "[t]he stipulation we approved in our 2017 Order appears to be premised on establishing Schedule 136 and ultimately Schedule 137 without the NM Statute governing those Schedules." (Commission's Order, page 5). The Commission goes on to say that a legal determination of this is unnecessary at this time. (*Id*.) The intent of the signatories to the 2017 settlement stipulation in Docket No. 14-035-114 was clear: when we ended new participation in the net metering program and created a transitional export credit in anticipation of Schedule 137's export credit, the parties agreed that net metering under section 54-15 ("Net Metering of Electricity") ended and the new export credits would not be governed by this statute. If the plain language of the settlement is not enough to confirm this, the parties reiterated the distinction between net metering customers under § 54-15 and export credit customers under Schedules 136 and 137 in the Community Renewable Energy Act ("CREA"). The CREA precludes customers on the net metering program under section 54-15 from participating in the CREA program. (*See* Section 54-17-904(5)). The Commission's rules clearly limit this precluded population to customers "receiving net metering services" under Schedule 135, confirming that customers under Schedules 136 and 137 may participate in the CREA program because they are not governed by § 54-15. (UTAH ADMIN. CODE R746-314-101(6)).

the Commission should have considered issues relevant to the public interest beyond cost of service when setting the ECR.

Finally, the Commission cites the Community Renewable Energy Act ("CREA") as justification for its decision to exclude consideration of any issue other than the utility's cost of service.[22] The Commission says CREA "codifies as state policy" that the Commission may only consider the utility's cost of service when establishing rates.[23] The Commission misinterprets the CREA as a representation of state policy. The CREA originates from a specific piece of legislation and enables a community program that may serve a limited number of customers who reside within a limited number of communities that have chosen to participate in the program. Further, neither the CREA nor the Commission's rules say anything about any provision of the CREA applying more broadly as a state policy. It is unreasonable and arbitrary and capricious to transform a narrow act that was only intended to serve a limited number of customers into state policy, or to elevate the CREA above the overt language in § 54-12-1 that explicitly articulates a state policy related to rooftop solar.

c. The Public Service Commission has the Exclusive Right to Promote the Economic, Environmental, and Health Interests of Utah Through Utility Ratemaking.

The Commission finally argues that while it believes economic, environmental, and health considerations are important, it may not consider anything beyond the utility's cost of service because doing so amounts to appropriation of another agency's authority. However, the statutory provisions discussed above are found in title 54, the public utilities section of the Utah Code, in a subsection that the Commission has exclusive authority over—determination of utility

[22] Docket 17-035-61, Order issued October 30, 2020, page 7, footnote 8.
[23] *Id*.

rates. The legislature would not have articulated the authority to consider more than cost of service within this section of the code if it did not intend to convey that authority to the Commission. The Commission's self-limitation renders these statutory provisions meaningless, which violates the rules of statutory interpretation. Further, despite the Commission's own acknowledgment that these issues are important, the Commission's position ensures that no agency will address these issues when it comes to utility ratemaking. This is because the Commission is the only agency with jurisdiction to consider non-cost of service issues when setting utility rates, such as risk factors flowing from economic, environmental, and health issues facing Utah.

d. **UCE Requests that the Commission Reconsider UCE's Proposal to Fix Individual Customer ECR Rates for 20 Years.**

The Commission approved annual updates to the ECR, a rate design element that discriminates against rooftop solar customers by burdening them with significantly more uncertainty and risk than other utility customers. This discrimination will stifle the solar market in Utah and deny ratepayers the associated social, health, economic, and energy diversity benefits.

i. The Commission's approval of annual updates to the ECR is discriminatory and does not align with least-cost least-risk planning principles.

It is discriminatory to subject rooftop solar customers to greater uncertainty about future rates and a narrower view of resource value than the utility itself. Least-cost, least-risk planning principles from the IRP dictate that approval of new resources include consideration of whether

they are least-cost and also likely to minimize risk to ratepayers in the future.[24] The Commission found in its Order that rooftop solar provides benefits to the grid over a long period of time, stating that "aggregate [customer generation] output is an output on which RMP has chosen to rely in its integrated resources planning (IRP) process" and "the record includes substantial evidence that aggregate CG output reduces load sufficient to impact RMP's need to invest in future capacity."[25] Requiring an annual update to the ECR for both future and current solar customers under Schedule 137 subjects rooftop solar resources to a high degree of uncertainty about cost recovery, and puts rooftop solar resources at a disadvantage relative to other IRP resources. This uncertainty also threatens the ability of solar customers to obtain advantageous financing for projects, and the Commission has recognized the importance of long-term certainty when it comes to obtaining financing for energy resources.[26] As a result of this discriminatory treatment of rooftop solar rates, the cost of obtaining solar is likely to be higher than it would be if solar rates provided a similar level of certainty about cost recovery as other utility resources. Higher costs will result in lower levels of solar adoption, and all customers may not be able to obtain the lowest cost, lowest risk resource portfolio. Section 54-4-4(1)(a)(i)(C) of the Utah Code precludes the Commission from implementing a discriminatory rate and directs the Commission to correct any such deficiency. Other IRP resources are not subject to annual

[24] Docket No. 90-2035-01, Order on June 18, 1992, page 18 ("[t]he process should result in the selection of the optimal set of resources given the expected combination of costs, risk and uncertainty"), and page 13 ("[t]he Commission finds that future internalization of environmental costs is a risk that is currently facing the electric utility industry. Therefore, the Commission concludes that an analysis of environmental risk must be included in the Company's IRP").
[25] Docket 17-035-61, Order issued October 30, 2020, page 14.
[26] In Docket 15-035-53, the Commission's January 7, 2016, order addresses arguments in support of reductions to QF contact terms and states on page 20, "[f]or all of these reasons, we conclude it is just, reasonable and in the public interest to require PacifiCorp to enter QF PPAs of no longer than 15 years in duration."

updates, and in light of this discriminatory disadvantage to rooftop solar, UCE asks that the Commission fix rates under Schedule 137 to 20 years.

ii. The Commission should fix Schedule 137 rates to avoid imposing an unreasonable deterrent to the adoption of rooftop solar.

The Commission's Order notes that energy and capacity prices can change each year and no party argued otherwise. An annual update to the ECR subjects Schedule 137 customers to considerably more risk and uncertainty about future rates than other utility customers. RMP witness Mr. Meredith identified three rate schedules that are also subject to annual updates, but conceded that these rates (Schedules 94, 98, and 193) are in fact tariff riders that do not represent the preponderance of rates that customers pay.[27] These riders represent a minimal portion of a customer bill.[28] When asked whether any generation asset RMP invests in is subject to a variable rate of return, witness Mr. MacNeil was unable to provide any examples.[29]

Some parties asserted that Schedule 137 customers should not receive a long-term locked in ECR because these customers are not contractually obligated to deliver energy to RMP. Witnesses for Rocky Mountain Power testified that rooftop solar customers have no practical opportunities to deliver excess energy to buyers other than the utility.[30] It does not appear that the absence of a contract will reduce the amount of energy that a solar customer exports to the utility over the lifetime of a solar installation. The Commission's order finds that "a CG customer who wants to lock in a long-term value for the customer's generation could choose to

[27] Docket 17-035-61, Public Hearing Day 1, September 29, 2020, Cross Examination of Mr. Meredith, page 95.
[28] Schedule 94 costs equal 0.05% - 2.80% of a customer's power and energy charge; Schedule 98 results in a 0.06% – 0.17% *reduction* to a customer's power and energy charge, and Schedule 193 equals 3.54% - 4.66% applied to a customer's power charge, energy charge, facilities charge, and voltage discount.
[29] Docket 17-035-61, Public Hearing Day 1, September 29, 2020, Cross Examination of Mr. MacNeil, pages 200 - 201
[30] Witness Mr. MacNeil testified that solar customers may certify as a QF and sell electricity to a different service territory, but conceded that it is unlikely to be economic to do so. See Docket 17-035-61, Public Hearing Day 1, September 29, 2020, Cross Examination of Mar. MacNeil, pages 171-172

sell their power to RMP under the Public Utility Regulatory Policies Act (PURPA)",[31] yet during the hearing Rocky Mountain Power acknowledged that this is unlikely to be economic for a solar customer.[32]

Parties have presented copious amounts of evidence that the uncertainty resulting from an annual adjustment to Schedule 137 prevents customers from calculating an accurate payback estimate for solar.[33] Parties also presented evidence that a shorter or uncertain payback period is likely to deter investments in distributed solar and inhibit the expansion of distributed solar energy resources in Utah, adversely affecting an important industry to Utah's economy.[34] The Commission states that it did not consider the evidence from parties showing how an ECR that updates annually precludes a potential customer from evaluating the economic impact of their system because "those policy arguments are not relevant to RMP's cost of service."[35] However, adverse effects on the customers who would take service through this rate is an explicit consideration included in the just and reasonable clause.[36] Further, the policy articulated in Utah's IPP Policy and HCR 7 both support maintaining a stable price for exported customer generation to provide the economic certainty customers need and to support the growth of distributed generation technology. Of particular importance is the directive within the IPP Policy

[31] Docket 17-035-61, Order issued October 30, 2020, page 7.
[32] Docket 17-035-61, Public Hearing Day 1, September 29, 2020, Cross Examination of, Mr. MacNeil, page 172.
[33] Office witness Mr. Hayet argued that homeowners could overcome the uncertainty of an annually variable ECR by hiring an expert to complete a study or relying on estimates from a marketing company. Mr. Hayet noted that the results of such a study would not provide homeowners with certainty about future savings, but would be a forecast of savings, and "they'd have an ability to bound it, figure out a range, have an idea of what they think the revenue is going to be and have a forecast, just like planners – all planners do." (Hearing transcript day 2, Page 456 – 457).
[34] Mr. Worley stated "Rocky Mountain Power's proposal will shut down the rooftop solar industry in Utah." See Docket 17-035-61, Public Hearing Day 2, September 30, 2020, Direct Examination of Mr. Worley, Page 481. Mr. Davis agreed that increases to the payback period for solar will depress the market and discourage people from investing in solar systems. See Docket 17-035-61, Public Hearing Day 2, September 30, 2020, Cross Examination of Mr. Davis, Page 291 - 292.
[35] Docket 17-035-61, Order issued October 30, 2020, page 7.
[36] UTAH CODE ANN. § 54-3-1 ("'just and reasonable' may include . . . economic impact of charges on each category of customer").

"to remove unnecessary barriers to energy transactions involving independent energy producers."[37] Annual updates to the ECR introduce a new barrier for distributed solar customers seeking to export excess energy to the grid. As several witnesses including Mr. Davis from the Division of Public Utilities said, customers are unlikely to install rooftop solar if the payback period is more than 10 years.[38] When asked about the payback period for solar, RMP witness Mr. MacNeil stated "[i]t could take a number of years for that asset to provide compensation equal to its cost."[39] UCE asserted that annual updates to the ECR are "simply unworkable for the vast majority of potential customers. If the export credit rate is updated annually, it's impossible for a potential solar customer to reasonably forecast their savings with solar."[40] There is no contrary evidence in the record to suggest that investments in rooftop solar will continue to be viable in Utah based on the financial outlook from one year of energy exports alone. UCE and Vote Solar supported updates to the ECR over time for new customers, but assert that existing customers should be able to remain on their rate for 20 years. An annual update to the ECR that does not protect existing customers who have already made a capital investment in their energy resource from unforeseen fluctuations in the value of their exported energy will stifle the rooftop solar industry in Utah.

In response to this position, the Division states that Schedule 137 customers should not be given fixed rates because rooftop solar "is not subject to reciprocal agreements for long-term delivery obligations."[41] However, the Commission itself found that "the record includes

[37] UTAH CODE ANN. § 54-12-1.
[38] Docket 17-035-61, Public Hearing Day 2, September 30, 2020, Cross Examination of Mr. Davis, Page 290.
[39] Docket 17-035-61, Public Hearing Day 1, September 29, 2020, Cross Examination of Mr. MacNeil, pages 199 – 200.
[40] Docket 17-035-61, Public Hearing Day 3, October 1, 2020, Ms. Bowman's hearing statement, page 545, lines 12 – 17.
[41] Docket 17-035-61, Rebuttal Testimony of Mr. Davis, lines 440.

substantial evidence that aggregate CG output reduces load sufficient to impact RMP's need to invest in future capacity."[42] Rooftop solar generation could not impact the utility's need to invest in future energy resources if it did not provide a reliable and predictable level of energy and capacity. The conclusion that rooftop solar should not be afforded the same financial certainty through long-term rates that other resources enjoy because there is no long-term delivery agreement completely ignores these energy and capacity benefits.

The Office states that it believes the annual update is necessary to allow the Commission the ability to update the rate components as costs and benefits change over time.[43] Specifically, the Office identifies potential CO_2 regulations as an example of a rate component that could be added during the annual adjustment to avoid "lag time."[44] However, no other customer rate is subject to the addition of entire categories of costs or benefits outside a rate case. For example, if CO_2 regulations were to take effect, other retail rate schedules would not be subject to an automatic update incorporating this additional cost outside the confines of a rate case. A rate case is the more appropriate forum through which to incorporate these new costs into all rates, including the ECR under Schedule 137. Subjecting Schedule 137 customers to an annual review that automatically implements changed circumstances without the "lag time" that results from updating all rates through a rate case is discriminatory to Schedule 137 customers. Further, as we have discussed above, the value of avoiding this lag time through annual updates does not outweigh the harm of financial uncertainty associated with annual updates.

[42] Docket 17-035-61, Order issued October 30, 2020, page 14.
[43] Docket 17-035-61, Rebuttal Testimony of Ms. Beck, lines 164 – 181; Docket 17-035-61, Rebuttal Testimony of Mr. Hayet, lines 458 – 474.
[44] *Id*. For purposes of our requirement to marshal under Utah Admin. Code R746-1-801(2), RMP also made this argument in support of annual updates. *See* Surrebuttal Testimony of Mr. MacNeil, lines 651 – 656.

When considering RMP's proposal for an annual update, the Commission had an obligation to consider evidence related to the high likelihood that an annual adjustment will deter adoption of rooftop solar, and the discriminatory nature of annual updates to rates for Schedule 137 customers. The preponderance of the evidence in the record supports maintaining a stable rate for Schedule 137 customers to avoid imposing an unreasonable deterrent to customer adoption of this important technology.

iii. The Commission should fix Schedule 137 rates to avoid unreasonably stifling the rooftop solar industry and denying Utah customers of the benefits associated with distributed solar.

Annual updates to the ECR will also have a detrimental impact on the solar industry, and reduce the coincident benefits that the industry provides the state. For example, rooftop solar provides benefits including resource diversity, environmental and economic related benefits, as well as resiliency benefits,[45] some of which are unique to distributed solar resources. Parties also testified extensively as to the value of continued investment in distributed energy resources, which can contribute to the flexibility, technological capability, and diversity of the grid as a whole. Stifling of the solar industry not only harms those who would invest in rooftop solar, it also denies all Utah ratepayers the benefits of continued deployment of distributed generation as part of a diverse and energy efficient portfolio as envisioned by the IPP Statute.

The Commission erred by ignoring the evidence that annual updates will severely curtail deployment of distributed generation. The result is a discriminatory and unreasonable rate that

[45] Docket 17-035-61, Direct Testimony of Kate Bowman, beginning on line 67; Docket 17-035-61, Direct Testimony of Christopher Worley, lines 52 – 53 (discussing the resiliency benefit of DERs); Docket 17-035-61, Public Hearing Day 1, September 29, 2020, Cross Examination of, Mr. MacNeil, page 171 ([customers] may receive some resiliency benefits. If service from the grid is out for some reason, they may be able to operate in the absence of a connection").

constructs an unnecessary barrier to rooftop solar, and that should be corrected by allowing Schedule 137 customers to receive a fixed rate for 20 years.

e. UCE Requests that the Commission Employ Gradualism by Implementing UCE's Glidepath to Limit the Impact of Transition to Schedule 137 on Utah's Economy and an Important Industry to the State.

Section 54-3-1 explicitly states that determination of just and reasonable rates includes consideration of the economic consequences of a rate and the well-being of the state of Utah. The IPP Policy and HCR 7 also both encourage the Commission to execute its ratemaking duties in such a way as to promote a diverse, efficient resource portfolio and the economic vitality of the state. By implementing Schedule 137 without gradualism the Commission will subject rooftop solar developers to a harsh shock that will destabilize this important industry in Utah, reducing the economic benefits, jobs, and tax revenue derived from these companies. Several parties provided evidence in the record testifying that a reduction to the ECR would negatively impact the economic viability of rooftop solar and that implementation of a new rate without a period of time over which solar installers may update their marketing materials, analysis tools, and business practices inhibits their ability to provide good service to customers. Dr. Worley for Vivint Solar testified that following a much smaller reduction in the value of exported solar when Schedule 136 was implemented, the market was impacted such that his company was no longer able to do business in Utah.[46] Mr. Evans of the Utah Solar Energy Association testified that implementation of Schedule 136 resulted in 700 lost jobs.[47] Further, the lack of gradualism results in a significant material disadvantage for solar customers who filed interconnection applications after midnight on October 30, 2020 – just hours after the Commission's order –

[46] Docket 17-035-61, Public Hearing Day 2, Transcript of the Cross Examination of Dr. Worley, pages 498 – 499.
[47] *Id*, Day 3, Transcript of the Cross Examination of Mr. Evans, page 575.

compared to solar customers who were able to file interconnection applications before October 30. The Commission did not address these issues in its Order.

Ms. Steward asserts that gradualism has already occurred in this case because it was implemented in the previous rooftop solar docket, and "[b]y the time the new export credit rates and Schedule 137 are implemented in this proceeding, the solar industry will have had almost seven years to adapt to the changes."[48] RMP's arguments are simply inapplicable to the instant case. UCE did not request implementing gradualism for a rate that existed in a previous docket, or a rate that existed before October 30, 2020. There is no way to gradually implement a rate until that rate exists. Later upon cross examination, Ms. Steward admitted that because the ECR would not be known until the Commission issued its order there was no way for solar companies to know what the ECR under Schedule 137 could be.[49] Further, as UCE witness Ms. Bowman said during testimony, "solar companies could not have known the contents of Rocky Mountain Power's proposal before it was filed in February of this year."[50] Ms. Bowman also stated that RMP has proposed various rate changes over the course of the last 7 years which were ultimately never implemented, including the Company's February 3, 2020 proposal.[51] This demonstrates that there has been no implementation of gradualism for Schedule 137, which only became known on October 30, 2020, when the Commission issued its order.

Gradualism is not a new concept to the Commission. Parties advocate for gradualism in utility ratemaking regularly, including in Utah. In fact, Commission orders have found that "[i]t is a fundamental principle of public utility regulation that abrupt changes in rates should be

[48] Docket 17-035-61, Surrebuttal Testimony of Joelle Steward, lines 108 – 115.
[49] Docket 17-035-61, Public Hearing Day 1, September 29, 2020, Cross Examination of, Ms. Steward, pages 52-54.
[50] *Id.*, Day 3, October 1, 2020, Ms. Bowman's Hearing Statement, page 548
[51] *Id*.

avoided and rate increases should only gradually be put into place."[52] The Commission's order here is effectively a rate increase for rooftop solar customers with clear economic consequences to Schedule 137 customers and the rooftop solar industry. The Commission should have considered these consequences when establishing the ECR. In Ms. Bowman's rebuttal testimony on July 15, 2020, UCE proposed a glidepath to employ gradualism when implementing Schedule 137. There is no compelling reason to avoid using this longstanding ratemaking principle by installing UCE's proposed glidepath to create a smooth transition to Schedule 137.

IV. CONCLUSION

The Commission should have considered more than the utility's cost of service when establishing the ECR for Schedule 137. The just and reasonable clause, the IPP Policy, and HCR 7 all show that the legislature not only intended to authorize consideration of issues beyond cost of service, but that the Commission should do so when presented with compelling non-cost of service factors. The Commission's arbitrary and capricious statement that it was only authorized to consider cost of service evidence was not only contrary to law, but it precluded the Commission from weighing important evidence demonstrating that an annual review process is discriminatory in nature. The Commission's limited interpretation of the scope of this proceeding also prevented the Commission from considering the use of gradualism in this case. UCE requests that the Commission correct these errors by 1) acknowledging that the Commission can and should consider factors other than the utility's cost of service as relevant when determining

[52] Docket 79-035-12, Public Service Commission Order on March 7, 1983, 1983 WL 913533 (Utah P.S.C.); *Utah Power & Light Co*., 112 P.U.R.4th 175 (Utah P.S.C. Feb. 9, 1990) ("the objective of gradualism [is to] to avoid abrupt changes in rates"); *In Re Pacificorp*, 201 P.U.R.4th 467 (Utah P.S.C. May 24, 2000) ("we do rely on the ratemaking principle of gradualism").

utility rates, 2) fixing Schedule 137 rates for 20 years, and 3) implementing gradualism in the ECR by adopting UCE's proposed glidepath for Schedule 137.

RESPECTFULLY SUBMITTED on November 30, 2020.

Utah Clean Energy
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