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**- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -**

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In the Matter of the Application of Rocky Mountain Power to Establish Export Credits for Customer Generated Electricity

**Docket No. 17-035-61 (Phase II)**

***RESPONSE TO RMP'S  
MOTION FOR  
CLARIFICATION AND  
ALTERNATIVELY PETITION  
FOR REHEARING***

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Pursuant to Utah Code Ann. §§ 54-7-15 and 63G-4-301 and Utah Administrative Code § R746-1-801, Vote Solar and Vivint Solar, Inc. (“Vivint Solar”) hereby respond to the November 30, 2020 Motion of Rocky Mountain Power (“RMP”) for Clarification and Alternatively Petition for Rehearing (the “Motion”) filed with the Public Service Commission of Utah (the “Commission”) in the above-captioned matter.<sup>1</sup>

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<sup>1</sup> Only those facts necessary to respond to RMP’s Motion are relayed here. Vote Solar and Vivint Solar otherwise respectfully refer the Commission to their November 30, 2020 Petition for Review or Rehearing (“Vote Solar & Vivint Solar Petition”), which sets forth the bases for this Commission to review its prior orders in this action.

## INTRODUCTION

RMP and Vote Solar each submitted proposed rate schedules for future rooftop solar customer generators (“Schedule 137”) and supporting written testimony. The Commission then held a hearing from September 29, 2020 through October 6, 2020, to determine an appropriate export credit rate (“ECR”) for customer generated exported energy. Each party “b[ore] the burden of proving its assertions” by “present[ing] evidence addressing reasonably quantifiable costs or benefits or other considerations they deem[ed] relevant.”<sup>2</sup>

Following the hearing, the Commission determined an ECR in an order issued on October 30, 2020 (the “October 30 Order”) that, among things, directed “[t]he value of a customer’s monthly excess generation [to] be netted against the energy portion of the customer’s monthly bill.”<sup>3</sup> RMP now challenges that determination—specifically, the determination that monthly excess generation should be netted against a customer’s monthly energy charges.

## PROCEDURAL HISTORY

In its October 30 Order, the Commission declined to adopt proposals by Vote Solar and others to net customers’ excess generation in hourly or other intervals, instead determining the following:

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<sup>2</sup> Dkt. No. 14-035-114, Aug. 28, 2017 Settlement Stipulation, ¶ 30.

<sup>3</sup> October 30 Order at \*2.

While we find netting a customer's ECR values against energy charges on the customer's monthly bill to be simple and intuitive, we consider it unnecessary to consider whether some other netting interval might be more understandable, even though that seems unlikely. ... Netting the values of a customer's ECRs earned against the customer's energy charges on the monthly bill accomplishes that objective.<sup>4</sup>

The Commission reasoned that “[c]ost of service principles dictate that Schedule 137 customers should receive the ECR for each kWh they actually export to the grid.”<sup>5</sup> The Commission further “decline[d] to return to a ‘kWh for kWh’ netting regime for Schedule 137.”<sup>6</sup> But the Commission expressly adopted “**netting** excess generation **on the CG customer’s monthly bill**” and distinguished its choice from netting “on an hourly basis.”<sup>7</sup> The Commission’s October 30 Order concluded that “Schedule 137 customers’ excess generation **will be netted monthly** in connection with billing for RMP-supplied energy.”<sup>8</sup>

Following the Commission’s October 30 Order, RMP filed proposed tariff revisions on November 10, 2020. In relevant part, RMP defined “Exported Customer-Generated Energy” to mean “the amount of customer-generated Energy in excess of the customer’s on-site consumption that is exported to the grid.”<sup>9</sup>

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<sup>4</sup> *Id.* at \*19-20.

<sup>5</sup> *Id.* at \*19.

<sup>6</sup> *Id.* at \*21.

<sup>7</sup> *Id.* at \*19 (emphasis added).

<sup>8</sup> *Id.* at \*22 (emphasis added).

<sup>9</sup> November 10, 2020 Tariff Compliance Filing at \*11.

The Division of Public Utilities (“DPU”) filed an Action Request Response on November 18, 2020, and RMP and two intervenors—Utah Clean Energy (“UCE”) and the Utah Solar Energy Association (“USEA”)—filed comments on the DPU’s Response on November 23, 2020.<sup>10</sup>

On November 25, 2020, the Commission issued an order approving RMP’s tariff revisions (“November 25 Order”). The November 25 Order concluded that RMP’s definition of “Exported Customer-Generated Energy” was consistent with the Commission’s October 30 Order and reiterated that the Commission elected not to adopt *instantaneous netting*: “We conclude and clarify that we did not approve instantaneous netting; we did not articulate an approval of that type of netting and it would be inappropriate considering our disapproval of RMP’s proposed metering fee.”<sup>11</sup>

RMP now argues in its Motion that the Commission intended “to accept the Company’s proposal ***not to net energy*** exported to the grid and energy delivered from the Company.”<sup>12</sup> While Vote Solar and Vivint Solar do not oppose RMP’s request for clarification, RMP’s alternative arguments for rehearing should not be heard both because there is no evidence in the record to support its contention that monthly netting results in a cost shift and because RMP failed to satisfy the statutory requirements for challenging the Commission’s finding.

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<sup>10</sup> UCE and USEA sought clarification on whether the Commission intended to adopt monthly netting.

<sup>11</sup> November 25 Order at \*1-2.

<sup>12</sup> Motion at \*4 (emphasis added).

## ARGUMENT

### **I. Vote Solar and Vivint Solar Renew Their Request for Clarification of the Monthly Net Metering Mechanism**

Vote Solar and Vivint Solar do not oppose RMP's request for the Commission to clarify its order regarding monthly netting. While the Commission has clearly rejected RMP's proposal to institute instantaneous netting,<sup>13</sup> and instead unequivocally ordered monthly netting,<sup>14</sup> the mechanism by which monthly netting for Schedule 137 customers is to occur remains uncertain—specifically, whether the amount of energy a customer exports should be netted monthly against the amount of energy RMP delivers to that customer before calculating that customer's energy charges. Accordingly, Vote Solar and Vivint Solar do not oppose RMP's motion for clarification as to the specific method by which monthly metering shall be carried out for Schedule 137 customers.

### **II. There is No Evidence in the Record of Any Cost Shift or Subsidy Benefitting CG Customers at the Expense of Non-CG Customers**

In requesting clarification on the Commission's netting order, RMP repeats its baseless claim that “kWh for kWh netting results in a significant cost shift regardless

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<sup>13</sup> November 25 Order at \*1-2 (“We conclude and clarify that we did not approve instantaneous netting; we did not articulate an approval of that type of netting and it would be inappropriate considering our disapproval of RMP's proposed metering fee.”).

<sup>14</sup> October 30, 2020 Order at \*2 (“The value of a customer's monthly excess generation will be netted against the energy portion of the customer's monthly bill.”); *id.* at \*19 (“Utah Code Ann. § 54-15-104(1) provides support for netting excess generation on the CG customer's monthly bill”); *id.* at \*20 (“Netting the values of a customer's ECRs earned against the customer's energy charges on the monthly bill accomplishes th[e] objective [of being simple and intuitive].”); *id.* at \*22 (“Schedule 137 customers' excess generation will be netted monthly in connection with billing for RMP-supplied energy.”).

of what export credit is applied to the exported energy.”<sup>15</sup> RMP cites no evidence for the proposition that kWh for kWh netting results in a cost shift. Nor could it. Vote Solar and Vivint Solar have already proven this to be a fiction.<sup>16</sup> And RMP’s Vice President of Regulation conceded at the hearing that RMP did not, as part of this proceeding, present any evidence—or even *attempt* to collect such evidence—that would show kWh for kWh netting results in a subsidy for CG customers.<sup>17</sup>

The parties’ written testimony, oral testimony at the hearing, and post-hearing submissions conclusively demonstrate that *there is no cost shift or subsidy* benefitting customer generators at the expense of other ratepayers—not under net metering, hourly netting, monthly netting, or instantaneous netting; not under the NEM

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<sup>15</sup> Motion at \*5.

<sup>16</sup> *See, e.g.*, Sept. 15, 2020 Surrebuttal Testimony of Sachu Constantine, lines 177-82 (“Vote Solar’s analysis shows that, even under net metering, it is customer generators who produce at least 24.17 cents of benefits per exported kilowatt hour (without including substantial benefits from behind-the-meter usage) and thereby subsidize RMP and other ratepayers. Vote Solar’s analysis illustrates that CG customers are more likely to contribute to a net *decrease* in the cost of operating the grid, which translates to lower costs for everyone.”).

<sup>17</sup> Sept. 29, 2020 Hr’g Tr. 38:11–39:18 (Steward Cross) (“Q. [T]o know whether a subsidy exists under the net metering program specifically, you would need to value the costs and benefits of serving the customers who participate in that metering, right? A. Yes. So weren’t looking at the net metering program, we were looking on the export credit itself and the excess energy that goes onto the grid and what that should be paid. Q. Right. You didn’t value the costs of the net metering program, right? A. Correct. Q. You didn’t value the benefits of the net metering program, right? A. Correct. Q. So you haven’t actually done the work to allow this Commission to determine whether a subsidy existed under the net metering program, right? A. We did that work in 2017. That was the scope of that proceeding that resulted in where we are today, which is looking at a new program structure that addresses exported energy and how to place the proper valuation for the exported energy. Q. I want to clarify: The Commission never determined that the costs of net metering exceeded its benefits, right? A. No. Because the cap on the metering resulted in a stipulation of the parties. Q. And we have seen the order for that stipulation. But my question is: You did not introduce evidence in this proceed[ing] of the costs and benefits of net metering, right? A. Correct. That was outside the scope of this proceeding.”).

Program, Transition Program, or the prospective Schedule 137 program; and not under any ECR proposed by any party in this action.<sup>18</sup> RMP’s assertions are belied by the record and reveal an intent to repeat the same falsehood over and over until, it hopes, the Commission believes it to be true.

In asserting that kWh for kWh netting shifts costs to non-CG customers, RMP does precisely what it has asked this Commission *not* to do: it looks at supposed behind the meter costs rather than exclusively focusing on the benefits and costs of exported energy, which has been RMP’s position throughout the hearing. If the Commission is inclined to look behind the meter—to consider the impact of customer-generated energy used on site—then it must account for *all* of the effects of behind-the-meter generation, including the behind-the-meter benefits that RMP has conceded CG solar provides in the form of reduced system demand.<sup>19</sup> Accordingly, the

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<sup>18</sup> See generally Vote Solar & Vivint Solar Petition at \*12-13.

<sup>19</sup> Sept. 29, 2020 Hr’g Tr. 22:10-14 (Steward Cross) (“Q. So based on that last phrase in particular, doesn’t customer investment and behind-the-meter solar energy reduce Rocky Mountain Power’s demand for energy? A. Yes, it reduces customer demand, just as all of our energy efficiency programs do.”); *id.* at 40:20–41:4 (Steward Cross) (“Q. You also stated in your opening that that behind-the-meter usage benefits RMP by lowering its need for resources, right? A. It reduces demand, yes. Q. And that’s a benefit? A. Generally, yes. Q. Every time a customer uses energy behind the meter, that benefits everyone else, including RMP, right? A. Yes, particularly if it’s during the peak periods.”); *id.* at 91:9-16 (Meredith Cross) (“Q. Every hour--every hour of power that--kilowatt hour that a consumer draws from a solar system during periods of near peak demand is an hour of power that is not demanded from RMP and the grid, correct? A. Yes. Q. And that reduces the demands on the grid, correct? A. Yes, it can.”); *id.* at 180:17-22 (MacNeil Cross) (“Q. I understand that you agree with Vote Solar’s expert, Dr. Milligan, that any increase in supply or reduction in load during a period with loss of load events is likely to reduce the risk and/or the magnitude of outages; is that correct? A. I did say that, yes.”); *Id.* at 181:24–182:1 (MacNeil Cross) (“Q. So when homeowners install rooftop solar, that reduces the risk and/or magnitude of outages, right? A. Yes.”).

Commission should, once more, reject RMP's false assertion that any netting period (including, but not limited, to monthly netting) creates a cost shift or subsidy.

### **III. RMP's Petition for Rehearing Cannot Be Considered Because RMP Did Not Marshal the Evidence In the Record**

RMP styled its Motion as a "Motion for Clarification and Alternatively Petition for Rehearing."<sup>20</sup> In relevant part, RMP stated, "[i]f the intent of the Commission's order is to net usage and exported energy monthly, the Company requests rehearing on that issue."<sup>21</sup> To the extent RMP seeks to challenge the Commission's decision to implement a monthly netting structure, Vote Solar and Vivint Solar ask the Commission to strike RMP's petition on the ground that it has failed to satisfy the requirement to marshal the record evidence.

According to the Utah Administrative Code, a party challenging a factual finding on rehearing before this Commission "*shall* marshal the record evidence that supports the challenged finding." Utah Admin. Code. R746-1-801(2) (emphasis added). The Commission's consideration of a party's petition on review is expressly conditioned on compliance with the requirement to marshal the record evidence. RMP has failed to marshal *any* record evidence to support its challenge to the Commission's clear ruling on instantaneous netting. Even assuming RMP's position had merit, therefore, this Commission cannot and should not consider its petition.

RMP cites the Commission's orders and UCE's and USEA's post-hearing submissions but does not cite *any* evidence for the erroneous proposition that it should

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<sup>20</sup> Motion at \*1.

<sup>21</sup> *Id.*



be permitted to “net the value of the exports against the energy and power charges”<sup>22</sup>—much less that kWh-for-kWh would result in a “significant cost shift,” or any cost shift at all.<sup>23</sup> In its Motion, RMP fails to cite to a single witness’s pre-hearing testimony, appendices, or exhibits, or to a single witness’s opening statement, cross-examination, or re-direct examination at the hearing. RMP’s pure conjecture is not only unpersuasive, but it also fails to satisfy the statutory requirement to consider a post-hearing petition. To the extent RMP’s Motion is construed as a petition for re-hearing on the Commission’s determination to implement monthly netting, Vote Solar and Vivint Solar ask the Commission to deny RMP’s request.

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<sup>22</sup> Motion at \*4.

<sup>23</sup> *Id.* at 5.

**CONCLUSION**

For the foregoing reasons, Vote Solar and Vivint Solar respectfully request that the Commission clarify its October 30 and November 25, 2020 Orders to address the mechanism for monthly netting and deny RMP's alternative petition for rehearing.

DATED this 15<sup>th</sup> day of December, 2020.

*/s/ Joshua S. Margolin*

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 15<sup>th</sup> day of December, 2020 a true and correct copy of the forgoing was served upon the following as indicated below:

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