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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 UCE's Response to Rocky Mountain Power's Motion for Clarification and Alternatively Petition for Rehearing
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On November 30, 2020, Rocky Mountain Power (“RMP”) filed a Motion for Clarification and Alternatively Petition for Rehearing concerning the Utah Public Service Commission’s (“Commission”) October 30 and November 25, 2020, Orders in Docket No. 17-035-61, the Export Credit Docket (RMP’s “Motion” or “Petition”). RMP’s Petition requests that “the Commission clarify its Orders concerning the netting of customer generated electricity,” and that “[i]f the intent of the Commission’s order is to net usage and exported energy monthly, the Company requests rehearing on the issue.”¹ Utah Clean Energy (“UCE”) submits this response pursuant to § 63G-4-301(2)(a) of the Utah Code, and R746-1-801(3) of the Utah Administrative Code. UCE does not believe RMP’s Motion for Clarification is necessary and opposes its Alternative Petition for Rehearing.

¹ Docket 17-035-61, RMP Motion for Clarification and Alternatively Petition for Rehearing, November 30, 2020, Page 1.

I. Further Clarification of the Netting Issue is Unnecessary Given the Commission's November 25 Order.

Rocky Mountain Power's Motion requests that the Commission provide clarification regarding the measurement of energy delivered to solar customers and energy exported by solar customers. Specifically, RMP requests clarification that the Commission "intended to accept the Company's proposal not to net energy exported to the grid and energy delivered from the Company" and "[r]ather, the Company will net the value of the exports against the energy and power charges."² The Commission has already clarified that it did not intend to accept the Company's proposal, and further clarification on this point is not necessary.

RMP's proposal on netting in this docket has been consistent and clear from the start: RMP proposes instantaneous netting, which the utility also calls "no netting" and "real time netting" throughout its testimony and the phase II hearing. To list a few examples of RMP referring to its proposal as instantaneous netting, when responding to Dr. Berry's criticism of RMP's netting proposal, Mr. Meredith says "[t]he Company maintains the position that instantaneous netting will not yield results that are significantly different from 15 minute netting."³ Mr. Meredith also recommends that solar developers begin adapting to RMP's proposal by "developing sales techniques around instantaneous netting."⁴ Further, several other parties referred to RMP's netting proposal as instantaneous and RMP never corrected any of these parties either in pre-filed testimony or during the hearing.⁵

² *Id.* at Page 4

³ Docket 17-035-61, Surrebuttal Testimony of Mr. Meredith for RMP, September 15, 2020, lines 41-42.

⁴ *Id.* at line 54; lines 228-229 (referencing Dr. Worley's criticism of RMP's netting proposal, "[i]t is unclear why or how instantaneous netting would affect the benefits of smart inverters.").

⁵ References to "instantaneous netting" were made by other parties during the hearing, and not corrected by RMP. *See* Public Hearing Day 2, September 30, 2020, Cross Examination of Mr. Worley by Ms. Wegener, Page 496; Public Hearing Day 3, October 1, 2020, Cross Examination of Ms. Bowman by Ms. Wegener, Pages 566, 568, 589.

After RMP filed its revision to Schedule 137 on November 10, 2020, to comply with the Commission’s October Order, UCE requested clarification on the netting issue.⁶ In comments filed on November 23, 2020, UCE differentiated between two proposals for the measurement of exported and delivered energy: Rocky Mountain Power’s proposal and an alternative proposal to net energy at the time of a customer’s monthly billing cycle. UCE’s comments requested that the Commission clarify which of the two proposals its October Order selected. Specifically, UCE requested clarification of “whether the Commission intends for customer generation to be netted against energy purchased from the utility at the time of a customer’s monthly billing cycle, or whether the Commission intends to adopt RMP’s proposal for “instantaneous” netting over an interval of one second.”⁷ To reiterate, it is UCE’s understanding that RMP’s proposal regarding the netting of electricity, introduced as “no interval netting” in direct testimony filed February 3, 2020⁸, has remained consistent throughout this proceeding, and that references to instantaneous netting by RMP and other parties refer to RMP’s proposal.

The Commission’s November 25 Order Approving Tariff Revisions with Corrections makes clear that the Commission has declined to adopt the Company’s proposal. The Commission’s Order states: “[w]e 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.”⁹ The Commission’s November Order also articulates that rather than netting *the value of the exports* against the energy and the

RMP’s witnesses referenced “instantaneous netting” as synonymous with the Company’s proposal in testimony and at the hearing. *See* Surrebuttal Testimony of Mr. Meredith, September 15, 2020, lines 23, 36, 42, 54, 226–235; Day 1 Public Hearing, September 29, 2020, Cross Examination of Mr. Meredith Pages 120 and 124.

⁶ Docket No. 17-035-61, Utah Clean Energy’s Comments on the Division of Public Utilities’ Action Request Response, November 23, 2020.

⁷ *Id.* at Page 3

⁸ Docket 17-035-61, Direct Testimony of Robert Meredith for RMP, February 3, 2020, lines 48–49.

⁹ Docket 17-035-61, Order Approving Tariff Revisions with Correction, November 25, 2020, Page 1–2.

power charges, as RMP proposes, “[s]chedule 137 customers’ *excess generation* will be netted monthly in connection with billing for RMP-supplied energy.”¹⁰ [Emphasis added].

The Commission has sufficiently clarified their directive that excess customer generation should be netted against energy deliveries at the time of the customer’s monthly billing. However, we acknowledge that parties have used different terms to discuss RMP’s proposal throughout this proceeding, and confusion about the practical application of the Commission’s Order to customer bills exists. UCE has been unable to identify language in the Schedule 137 tariff that explains the mechanics of customer billing in sufficient detail to understand what a customer’s bill might look like. Rocky Mountain Power produced some helpful materials that clearly articulate the billing process for a Schedule 136 Transition Program customer.¹¹ To remedy the confusion surrounding how Schedule 137 will work, and ensure that potential solar customers are well-informed, the Commission could direct the Company to create similar materials for Schedule 137 and allow interested parties the opportunity to provide feedback.

II. The Commission Should Decline RMP’s Request for Rehearing.

Rocky Mountain Power’s Petition additionally requests rehearing on the issue of netting and that “the Commission rule that the Company should, on a monthly basis, calculate the monetary value of energy delivered and the monetary value of energy exported and net those amounts to arrive at a monthly bill.”¹² In support of this request, Rocky Mountain Power claims that monthly netting is the same as net metering and reiterates its unsubstantiated argument that solar customers cause cost shifting. The utility’s arguments are not supported by the record or its

¹⁰ *Id.* at Page 1.

¹¹ Billing of your account under the Transition Program for Customer Generators (Schedule 136), *found at*: https://www.rockymountainpower.net/content/dam/pcorp/documents/en/rockymountainpower/savings-energy-choices/customer-generation/UT_136_Welcome_Letter.pdf.

¹² RMP’s Motion for Clarification and Alternatively Petition for Rehearing, November 30, 2020, Page 5.

current Motion, and the utility did not marshal the evidence consistent with the Utah Administrative Code. UCE respectfully requests that the Commission decline RMP's Petition for Rehearing.

a. RMP's Claim that the Commission's Order is "Not Materially Different" than Net Metering is False.

Rocky Mountain Power's Motion states that the issue of netting "is of paramount importance to the company" and that "[i]f the quantity of energy exported and the quantity of energy delivered were netted over a monthly interval the result would not be materially different than net metering."¹³ However, monthly netting combined with an ECR is materially different than net metering and results in a significant decrease in the value of exported customer energy relative to net metering. The Commission's October 30 Order approved an Export Credit Rate ("ECR") for excess customer-generated electricity that equals a monetary credit of 5.6399 to 5.969 cents per kilowatt-hour. In contrast, Schedule 135, the Net Metering program, provides customers with a kilowatt-hour credit for each kilowatt-hour of excess customer-generated electricity. The Schedule 137 rate represents a significant decline in the value of an exported kilowatt-hour compared to Net Metering. The ECR is worth 55 - 59% of the average residential retail rate.¹⁴ For some residential customers in the summer, the ECR is worth 39 - 41% of the value of a kilowatt-hour under Net Metering.¹⁵ The Company's assertion that monthly netting of energy exported and energy delivered equates to net metering fails to acknowledge the material differences between Schedules 135 (Net Metering) and Schedule 137, and is simply not true.

¹³ *Id.*

¹⁴ Compared to the average retail rate of 10.2 ¢/kWh for residential customers.

¹⁵ Compared to 14.4508 ¢/kWh for residential customers using more than 1,000 kilowatt-hours of energy in the summer.

b. RMP's Claim that Monthly Netting Results in a Cost Shift is not Supported by Evidence on the Record.

Rocky Mountain Power's Motion asserts that monthly netting "results in a significant cost shift regardless of what export credit is applied to the exported energy," but has not presented any evidence to corroborate this claim.¹⁶ In direct testimony, RMP witness Mr. Meredith states that the Company's proposed ECR value was determined to "ensure that costs are not shifted onto other customers and the prices paid for exported energy evolve with their value over time."¹⁷ However Rocky Mountain Power does not provide analysis demonstrating that the cost of serving Schedule 137 customers, or other solar customers, is materially different from the cost of serving other customers. Nor did it specifically address how Rocky Mountain Power's proposal for instantaneous netting will mitigate cost shifting specifically, or how any other netting regime will impose cost shifting. In fact, Company witnesses Ms. Steward and Mr. MacNeil both acknowledged that Rocky Mountain Power did not present evidence in this proceeding demonstrating that the costs of kWh for kWh netting exceeds its benefits, that the Commission has not determined that the costs exceed the benefits, and that the relative costs and benefits are outside the scope of this proceeding.¹⁸

Witnesses for the Office of Consumer Services ("OCS") and the Division of Public Utilities ("DPU") also acknowledged that the Company did not present evidence demonstrating a cost shift caused by solar customers. OCS witness Ms. Beck testified that the OCS did not make a determination about the relative costs and benefits of rooftop solar based on any analysis presented by RMP in this docket.¹⁹ When asked whether RMP had offered any proof in this

¹⁶ RMP Motion for Clarification and Alternatively Petition for Rehearing, November 30, 2020, Page 5.

¹⁷ Direct Testimony of Mr. Robert Meredith for RMP, lines 46 – 47.

¹⁸ Public Hearing Day 1, September 29, 2020, Cross Examination of Ms. Steward, Page 38– 39; Cross Examination of Mr. MacNeil, Pages 189- 191.

¹⁹ Public Hearing Day 2, September 30, 2020, Cross Examination of Ms. Beck, Pages 372- 374.

proceeding that non-customer generators subsidized customer generators, Ms. Beck responded “no, they didn’t.”²⁰ Witness Mr. Davis also testified that the DPU has not completed analysis demonstrating a cost shift between solar “CG” customers and other customers.²¹

According to Ms. Steward, the analysis corroborating the Company’s cost shifting claim was performed in the previous rooftop solar docket (Docket 14-035-114).²² However, in the 2017 Settlement Stipulation that resolved Docket 14-035-114 and created the current proceeding, parties agreed that nothing in Docket 14-035-114 would “be precedential in the Export Credit Proceeding or in any future case.”²³ There is no evidence of a subsidy or cost shift in the current docket to support RMP’s claim. Therefore, the Commission does not have a reasonable basis to conclude that cost shifting will occur with monthly netting.

In order to demonstrate a cost shift caused by Schedule 137 customers, Rocky Mountain Power would have had to present analysis demonstrating that the overall cost to serve Schedule 137 customers is different from the cost of serving other customers. Making such a determination clearly requires analysis that considers the value of the ECR and of the bill credits that Schedule 137 customers receive. Rocky Mountain Power could not have determined that the Commission’s approved Schedule 137 tariff results in a cost shift without knowing the value of the final, Commission-approved ECR. However, Rocky Mountain Power has not attempted to quantify a cost shift caused by Schedule 137 customers based on any ECR value. Rocky Mountain Power’s argument is a reiteration of their unsubstantiated assertion that any ECR value

²⁰ Public Hearing Day 2, Cross Examination of Ms. Beck, Page 389.

²¹ Public Hearing Day 1, September 30, 2020, Cross Examination of Mr. Davis, Pages 272-273.

²² Public Hearing Day 1, September 29, 2020, Cross Examination of Ms. Steward, Pages 38 – 39.

²³ *Id.*; Docket 14-035-114, Rocky Mountain Power’s Settlement Stipulation, August 28, 2017, page 10, paragraph 30.

other than what the Company has proposed amounts to a cost shift. The Commission has already considered RMP's ECR proposal and need not do so again.

c. Evidence Presented During this Proceeding Shows that Instantaneous Netting Would Create a Significant Barrier to Installing Rooftop Solar in Utah.

There is copious evidence before the Commission that Rocky Mountain Power's proposal for instantaneous netting would significantly harm the market for solar in Utah. In testimony and during the Phase II hearing, numerous parties testified that customers cannot reasonably shift energy usage in response to instantaneous netting, and that instantaneous netting prevents potential solar customers from reasonably forecasting their savings from installing solar because no customer has access to instantaneous usage data.²⁴ This uncertainty creates an unreasonable barrier to installing solar in Utah. Further, instantaneous netting is discriminatory against solar customers. Although market prices for energy vary temporally and seasonally, no other customer is billed based on their instantaneous energy usage. The uncertainty resulting from instantaneous netting would depress the market for solar in Utah, along with the coincident health, economic, and social benefits.²⁵

²⁴ RMP witness Mr. Meredith agreed that homeowners with solar alone cannot respond to instantaneous netting by adjusting their energy usage in real time. *See* Public Hearing Day 1, Cross Examination of Mr. Robert Meredith, Pages 119 – 120. Vivint witness Mr. Worley and UCE witness Ms. Bowman both testified that solar customers and installers would have no way to estimate customer savings under an instantaneous netting regime because solar customers do not have access to real time solar insolation data or real time customer usage data. *See* Public Hearing Day 2, Cross Examination of Mr. Worley, Pages 480 – 498; Public Hearing Day 3, Cross Examination of Ms. Bowman, Pages 656 - 657.

²⁵ Vivint witness Mr. Worley stated, "Rocky Mountain Power's proposal will shut down the rooftop solar industry in Utah." *See* Public Hearing Day 2, September 30, 2020, Direct Examination of Mr. Worley, Page 481. DPU witness Mr. Davis agreed that increases to the payback period for solar will depress the market and discourage people from investing in solar systems. *See* Public Hearing Day 2, September 30, 2020, Cross Examination of Mr. Davis, Pages 291 - 292.

- d. *RMP has not Sufficiently Marshaled the Evidence and has Failed to Show that the Commission’s Decision on Netting Should be Reheard.*

The Utah Administrative Code requires parties challenging a finding of fact to marshal the evidence on the record that supports the challenged fact.²⁶ The Utah Supreme Court said in *State v. Nelson* that the marshaling requirement should be “focused on the ultimate question of whether the appellant has established a basis for overcoming the healthy dose of deference owed to factual findings . . . not on whether there is a technical deficiency in marshaling meriting a default.”²⁷ While failing to marshal the evidence is not itself a basis for procedurally dismissing a petition for rehearing, a party’s petition “will almost certainly fail to carry its burden of persuasion on appeal if it fails to marshal.”²⁸

RMP did not attempt to marshal the evidence in support of the Commission’s netting determinations at all. The utility’s argument in support of rehearing the netting issue consists of a statement that netting is of paramount importance to the Company because it could induce cost shifts, and monthly netting is tantamount to net metering.²⁹ UCE addresses these concerns above—there is no basis on the record for concluding that non-instantaneous netting shifts costs, nor does monthly netting transpose the ECR into the functional equivalent of net metering. Further, nothing in RMP’s Motion marshals the evidence in support of monthly netting, or any netting regime at all for that matter. Merely stating that UCE’s understanding of the

²⁶ UTAH ADMIN. CODE R746-1-801(2).

²⁷ *State v. Nelson*, 326 P.3d 645, 653 (Utah).

²⁸ *Id.* at ¶42; *Utah Physicians for a Healthy Environment v. Executive Director of the Utah Department of Environmental Quality*, 391 P.3d 148, 154-155 (Utah 2016) (noting that the marshaling requirement is a “natural extension of [the Petitioners’] burden of persuasion, and without it they cannot hope to convince [the court on appeal] that the Executive Director’s final order was faulty.” (quoting *State v. Roberts*, 345 P.3d 1226)); *id.* at 153 (Because the Petitioners failed to address the Executive Director’s final order and its incorporation of the ALJ’s findings . . . the Petitioners failed to meet their burden of persuasion on appeal. Ignoring this failure would . . . require the court to comb through the record to ascertain whether an argument or a piece of evidence was presented to the ALJ, which would turn the court into the Petitioners’ advocate. . . .’); *Wilson v. Sanders*, 447 P.3d 1240, 1247 (Utah Ct. App.) (rejecting a petitioners appeal in part because the “[d]efendants make no attempt to address the evidence supporting the [punitive damages] award”).

²⁹ RMP’s Motion for Clarification and Alternatively Petition for Rehearing, November 30, 2020, Page 5.

Commission’s unambiguous statements is “concerning” does not satisfy the marshaling requirement. As the courts have consistently held, “an argument that does not fully acknowledge the evidence supporting a finding of fact has little chance, as a matter of logic, of demonstrating that the finding lacked adequate factual support.”³⁰ The Commission should reject RMP’s Petition for Rehearing because the utility failed to show that the Commission’s netting decision was unreasonable, in large part because the utility did not marshal any evidence.

III. Conclusion

Additional clarification of the Commission’s decision related to netting is unnecessary because the Commission clearly stated that it did not accept RMP’s instantaneous netting proposal. Instead, “[s]chedule 137 customers’ *excess generation* will be netted monthly in connection with billing for RMP-supplied energy.”³¹ Further, RMP’s Petition for Rehearing should be rejected. RMP’s claims that non-instantaneous netting will induce cost shifting and that monthly netting of the ECR transposes Schedule 137 into net metering are baseless. Additionally, RMP did not attempt to marshal the evidence at all despite its obligation to do so under Utah law. RMP has not shown why the Commission’s decision on netting was made in error, and as such, the Commission should deny RMP’s Petition for Rehearing.

RESPECTFULLY SUBMITTED on December 15, 2020.

Utah Clean Energy

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³⁰ *Simmons Media Group, LLC v. Waykar, LLC*, 335 P.3d 885, 894 (Utah Ct. App.).

³¹ Docket 17-035-61, Order Approving Tariff Revisions with Correction, November 25, 2020, Page 1.