

ROBERT J. MOORE (5764)
Assistant Attorney General
STEVEN W. SNARR (3022)
Special Assistant Attorney General
Utah Attorney General
160 East 300 South, Fifth Floor
P.O. Box 140857
Salt Lake City, Utah 84114-0856
Telephone: (801) 366-0312
Facsimile: (801) 366-0101
Email: rmoore@agutah.gov
stevensnarr@agutah.gov

Attorneys for Utah Office of Consumer Services

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

Application of) Docket No. 17-035-61
Rocky Mountain)
Power to Establish) Office of Consumer Services' Response to Vote Solar's and Vivant
Export Credits for) Solar's Petition for Review or Rehearing; Utah Clean Energy's
Customer Generated) Petition for Review and Rehearing; and Rocky Mountain Power's
Electricity) Motion for Clarification and Alternatively Petition for Rehearing
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Pursuant to Rule 746-1-801(3) of the Utah Public Service Commission's (Commission or PSC) Administrative Procedures Act Rules, the Office of Consumer Services (Office or OCS) hereby provides this response to the Petition for Review and Rehearing filed on November 30, 2020, by Vote Solar and Vivant Solar (Vivant); the Petition for Review and Rehearing filed on November 30, 2020, by Utah Clean Energy (UCE); and the Motion for Clarification or Alternatively Petition for Rehearing filed on November 30, 2020, by Rocky Mountain Power (RMP) in the above referenced proceeding and represents as follows.

Background

In 2002, the Utah State Legislature approved House Bill 7, authorizing RMP to engage in a net metering program which would require “the electrical corporation to give the customer a credit for electricity generated by the customer that exceeds the amount supplied by the electrical corporation.”

In 2014, the Utah State Legislature enacted Senate Bill 208, which required the Commission to determine the benefits and costs of net metering and determine an appropriate credit for energy exported to RMP through the net metering program.

On November 10, 2015, consistent with legislative direction, the Commission in Docket No. 14-035-114 (the net metering docket) established a structure to analyze the cost and benefits of the net metering program which included the initiation of cost-of-service studies to be completed by RMP and to review the netting procedures associated with the net metering program. The Commission also issued orders in that proceeding clarifying the scope of the proceedings.

In its Order issued on July 1, 2015, the Commission stated that

As a matter of law, we conclude Subsection 1 requires the Commission to consider costs and benefits that accrue to the utility or its non-net customers *in their capacity of ratepayers of the utility*. It necessarily follows that any cost or benefit to be included in the Subsection 1 analysis must be a cost or benefit that has some impact on the utility’s cost of service.

In the Matter of the Investigation of Costs and Benefits of PacifiCorp’s Net Meter Program, Docket 14-035-114, Order at 15 (July 1, 2015, Utah P.S.C.) (emphasis in original).

In an Order issued on November 10, 2015, the Commission provided further direction and clarification to the parties participating in that proceeding, stating:

The category of cost should generally be consistent with those PacifiCorp employs in preparing cost of service studies for ratemaking purposes. To the

extent any party believes a cost impact of net metering should be included in one of the studies or used to supplement the result of a study, the party bears the burden to demonstrate the existence of the cost impact that would-be or has-been realized in the test period.

In the Matter of the Investigation of Costs and Benefits of PacifiCorp's Net Meter Program,
Docket 14-035-114, Order at 13 (November 10, 2015, Utah P.S.C.)

Thereafter, parties to the net metering proceeding negotiated a settlement stipulation that was submitted to the Commission and ultimately approved. That Settlement provided for the continuation of net metering rates for existing customers and established a program for new customers desiring to participate in net metering commencing in a transitional period. The Commission also postponed its final determination as to costs and benefits associated with net metering and established this docket and hearing procedures to address cost and benefit issues and to determine an appropriate export credit rate to be established for customers wanting to engage in customer generation in the future.

Pursuant to the hearing procedures established for this docket, the Commission held hearings and received hundreds of pages of pre-filed testimony and evidence related to the costs and benefits that might be associated with net metering and the exportation of customer generated energy. After being fully informed as to the various issues, the Commission issued its Order date October 30, 2020, (hereinafter October 30th Order) in which it authorized an energy export credit rate of 5.969 cents/kWh in summer rates and 5.639 cents/kWh in winter rates, finding that these rates appropriately reflected an avoided energy cost component, plus a component for avoided generation, transmission, and distribution capacity costs associated with the provision of exported energy to RMP. The Commission also established procedures wherein the energy export credit rate would be updated on an annual basis and any unused energy credits would expire annually.

On November 30, 2020, Vote Solar and Vivant Solar filed their Petition for Review and Rehearing, asserting, *inter alia*, that the requirements and methods associated with annual updates for the energy export credit rate were arbitrary and capricious and that the Commission's methods for determining the energy export credit rate lacked evidentiary support and failed to value various externalities.

On November 30, 2020, Utah Clean Energy filed its Petition for Review and Rehearing, asserting that the Commission erred in limiting its cost and benefits analysis to elements associated with RMP's cost of service and further asserting that a fixed, long-term value for exported energy was needed by customer generators in order to facilitate their decision-making in considering investments in solar energy.

Also, on November 30, 2020, RMP filed its Motion for Clarification or Alternatively a Petition for Rehearing seeking clarification of the Commission's October 30, 2020 Order as it relates to the period over which netting would occur and how that would be reflected in monthly billings. The Motion also sought clarification of tariff procedures related to net metering credits that might be carried over.

The Office hereby responds to the recent filings for clarification and rehearing and provides the following comments on some of the issues raised in support of the Commission clarifying and reaffirming the findings and conclusion embodied in its October 30, 2020 Order.

Legal Standards Upon Judicial Review

An initial step towards seeking judicial review of an Order issued by the Commission is the filing of a Petition for Review and Rehearing.¹ While rehearing gives the Commission the

¹ Utah Code §§ 63G-4-301; 54-7-15; UTAH ADMIN. CODE r. 746-1-801(4).

opportunity to review and address issues raised via the petitions, it also provides the Commission an opportunity to reaffirm and further explain and justify its initial decision. In this regard, the Office provides the following brief summary of legal standards applicable in Utah when administrative orders are reviewed by appellate courts with the hope that the Commission's further actions in this proceeding might be affirmed upon any judicial review.

- Statutes governing the Commission's power to set rates imply a grant of discretion to the Commission in how it should use its power, using broad terms, such as "just and reasonable rates" and "in the public interest."² Courts will defer to an agency's use of its discretion so long as it appears that the agency has acted within the bounds of reasonableness and rationality.³
- The factual findings underlying the Commission's decision are supported by substantial evidence, *i.e.*, evidence that is "more than a mere scintilla of evidence though something less than the weight of the evidence, and the substantial evidence test is met when a reasonable mind might accept as adequate the evidence supporting the decision."⁴
- Conclusions reached from factual findings are not an abuse of discretion where they are reasonable, logical, and where the analysis is complete.⁵

The Office submits that when judged by these legal standards, the PSC's October 30th Order should be affirmed. Nevertheless, through this rehearing process, the Commission will have the opportunity to address the claims asserted in the petitions that have been filed and issue such further clarifications as may be appropriate in its order on rehearing.

² Utah Code §§ 54-4-4 and 54-4-4.1.

³ *Murray v. Utah Labor Comm'n*, 2013 UT 38, at ¶¶ 32-33, 308 P.3d 461.

⁴ *Onysko v. Dep't of Env'tl. Quality*, 2020 UT App 51, at ¶ 34, 463 P.3d 669, 684, *cert. denied sub nom. Onysko v. Dep't of Env'tl. Quality*, 466 P.3d 1072 (Utah 2020).

⁵ *See, Murray, supra.* at n. 3.

Netting Customer Exports Against RMP Provided Energy

The OCS believes that it was the PSC’s intent in its October 30th Order to require that the new Schedule 137 customer generator will be compensated by the export credit rate for energy provided to RMP for each unit when energy flows to the grid. Export credit rate compensation will be expressed in dollars and netted against any RMP charges incurred by the customer and reflected on the customer’s monthly bill. For those months where the net value of energy provided by the customer to the grid exceeds the net value of the energy RMP has provided to the customer, the monthly bill should reflect a dollar amount credit. That dollar amount credit can then be carried forward until the next month and be reflected as a credit against the following month’s bill until the annual expiration date. Any energy generated by a new Schedule 137 customer generator will first offset any customer usage – in real time – before the exported amount is measured and credited at the export credit rate. Some parties have used the term “instantaneous netting” to describe this effect. The OCS has observed inconsistent use of terms among parties and across time periods and believes that this has led to some confusion about how the PSC treated netting in its orders.⁶

The PSC should consider clarifying the language in its order on rehearing so that there will be consistency in customer and utility expectations. The PSC should also note the evidence that was presented at the hearing supporting its specific interpretation and application of its

⁶ For example, in its November 25, 2020 Order accepting (with one correction) RMP’s tariff revisions the PSC stated that, “We conclude and clarify that we did not approve instantaneous netting.” *Application of Rocky Mountain Power to Establish Export Credits for Customer Generated Electricity*, Docket 17-035-61, Order Approving Tariff Revisions with Corrections at 1-2 (November 25, 2020, Utah P.S.C.) Yet, the PSC did not reject RMP’s proposal that customer self-generation first offset customer consumption before calculating the exports, assigning monetary credit to each kWh exported and applying the credit to the customer’s bill. It appears that the PSC’s statement that it “did not approve instantaneous netting” did not recognize the manner in which parties had used that term which appears consistent in intent with the PSC Order but opposite in actual usage of the term. Indeed, OCS acknowledges that there is likely not unanimity among parties in how this term is used which is why it supports additional clarification from the PSC.

netting procedures in order to ensure that the substantial record evidence supporting this result can be easily identified and associated with the PSC's findings on this issue.

Commission Findings Concerning Asserted Benefits

In its October 30th Order, the Commission addressed directly various parties' assertions that suggested a wide array of possible benefits that the Commission ought to consider in the establishment of a just and reasonable rate for energy export credits.⁷ In its Order Synopsis, the Commission states:

We decline certain parties' invitation to incorporate components unrelated to utility ratemaking. While we recognize the importance of environmental considerations, carbon policy, economic development, and public health, these matters fall within the regulatory ambit of other governmental agencies. We will not appropriate those agencies' authority or pretend to their essential expertise by adopting a boundless view of our own in the context of utility ratemaking.

Application of Rocky Mountain Power to Establish Export Credits for Customer Generated Electricity, Docket 17-035-61, Order at 1-2 (October 30, 2020, Utah P.S.)

Thereafter the PSC specifically addressed the question of whether costs exceed the benefits associated with customer generation. The Order states:

Specifically, in this proceeding we have evaluated whether "costs that [RMP] or other customer will incur" from CGT operating under Schedule 137 "will exceed the benefits" or that CG, or vice-versa. We are approving a structure within Schedule 137 "in light of [those] costs and benefits."

Id. at 5-6 (citing Utah Code §§ 54-15-105.1(1) and (2)).

⁷Beck Hearing at pg. 350 ln 8 – 16 (benefits must have cost-of-service connection), pg. 386 ln 10 – pg. 387 ln 12 (health benefits not included in cost of service); Bowman Hearing at pg. 575 ln 11 – pg. 576 ln 23 (no current carbon emissions cost); Berry Hearing at pg. 732 ln 25 – pg. 736 ln 5 (asserted economic development benefits), and pg. 737 ln 15 – pg. 743 ln 11 (asserted health benefits).

At hearing, the PSC carefully evaluated evidence presented by various parties in considering whether asserted benefits were quantifiable and relevant to the establishment of just and reasonable rates. The PSC found:

Our evaluation requires us to consider both the evidence supporting each cost and benefit advocated by a party, and the relevance of each cost and benefit. With respect to relevance, we conclude that for purposes of establish Schedule 137, we should evaluate the costs and benefits that accrue to RMP and its customers in their capacity as ratepayers of RMP. Accordingly, we conclude that Schedule 137 should be based on costs and benefits that have a direct and quantifiable impact on RMP's cost of service. We conclude that costs and benefits that do not impact RMP's cost of service in a direct and quantifiable way are not relevant to the rate structure we are approving in this order.

Id. at 6.

The PSC was correct in requiring a cost-of-service connection before incorporating any benefit values in the energy export credit rate that it established. To otherwise provide value for many of the asserted benefits to be applied to customers taking service under Schedule 137 would have postured the Commission's actions as being preferential and discriminatory when compared with customers taking service under other rates schedules where similar benefits might be ascribed.⁸ Parties suggesting recognition of additional benefits never provided evidence or legal support to ensure that existing rates schedules would remain just and reasonable. The PSC should reaffirm the legal conclusion provided in its earlier orders⁹ and in its October 30th

⁸ Costs associated with the production of energy from renewable resources are already included in RMP's base rates. In addition, services provided under Rate Schedules 32 (Service from Renewable Facilities), Schedule 34 (Renewable Energy Purchases for Qualified Customers), and Schedule 73 (Subscriber Solar) specifically rely upon the production of energy from renewable resources.

See Utah Code §54-3-8(1)(a) (prohibiting preferences or discriminations). *See, Mountain States Legal Foundation v. Utah Pub. Serv. Comm'n*, 636 P.2d 1047, 1052 (Utah 1981).

See, Beck Hearing at pg. 351 ln 6 – 14; pg. 375 ln 6 – 9, and pg. 392 ln 3 – 24 (discriminatory treatment); *Berry Hearing* at pg. 736 ln 7 – pg. 737 ln 3, and pg. 740 ln 12 – pg. 741 ln 11 (disparate rate treatment of claimed health benefits between customers using solar energy and customers using other renewable resources).

⁹ *See In the Matter of the Investigation of Costs and Benefits of PacifiCorp's Net Meter Program*, Docket 14-035-114, Order at 15 (July 1, 2015, Utah P.S.C.); *In the Matter of the Investigation of Costs and Benefits of PacifiCorp's Net Meter Program*, Docket 14-035-114, Order at 13 (November 10, 2015, Utah P.S.C.)

Order that for benefits to be considered in the derivation of an energy export credit rate they must be relevant to RMP's provision of utility service and quantifiable as part of RMP's cost of service.

Weighing Costs versus Benefits

Vote Solar and Vivant suggest that the PSC erred by not addressing the question of whether costs outweigh the benefits of net metering or vis versa. While the Commission observed that with the net metering program continuing for existing customers it need not rule on this question, the Office submits that inherent in the PSC's Order, the cost benefit issue has been addressed. The benefits associated with the provision of exported energy to RMP outweigh the utility's costs. The quantification of that comparison, as determined by the PSC after considering the evidence adduced at hearing and the ways that accepting exported energy positively affect the Company's costs, is embodied in the specific rates the Commission has determined should apply for customer generators supplying exported energy during the summer and winter periods. That is, the benefits of accepting export energy from customer generators exceeds the costs of providing such a service by 5.969 cents/kWh and 5.639 cents/kWh respectively, during the summer and winter periods. The PSC, having made this determination based upon the evidence presented,¹⁰ should affirm its cost/benefits findings and conclusions through this rehearing process.

¹⁰ See, Beck Hearing at pg. 383 ln 17 – pg. 384 ln 1, pg. 390 ln 7 – 14.

Annual Updates

Claims have been made that the Commission should not require annual updating of the energy export credit rates. The assertion is that with annual updating potential customer generators might have a more difficult time in making an economic determination as to whether they should invest in roof top solar equipment. While this issue was reviewed during the course of the hearing, petitioner claims were largely based on speculation and provided no legal rationale for the Commission to ensure the financial stability of private parties entering into commitments for solar energy equipment. More importantly, in fulfilling its primary responsibility of setting just and reasonable rates, the Commission must ensure that rates are fair and equitable to all affected parties. And, with respect to rates that are in part based on every-changing market conditions and factors, annual updating provides the PSC the opportunity to review and reset such rates to ensure that they remain fair and equitable for the customer generators and for the utility that is being regulated.¹¹

Expiring Credits

Petitioners have challenged the PSC's determination to allow the annual expiration of unused energy credits. As noted in the PSC's Order, the expiration of unused energy credits is a statutorily crafted feature of an earlier era involving net metering.¹² During the hearing, evidence was presented that by having unused energy credits expire on an annual basis, the customer generators would be incentivized to right-size their solar panel installations rather than

¹¹ Beck Hearing at pg. 351 ln 15 – 17; Hayet Hearing at pg. 437 ln 10 – 15.

¹² *Application of Rocky Mountain Power to Establish Export Credits for Customer Generated Electricity*, Docket 17-035-61, Order at 20 (October 30, 2020, Utah P.S.C.); see, Utah Code § 54-15-104(3)(a)(ii).

create solar generation facilities that might result in excessive use or disruption to the RMP's service to its customers which is performed under the regulatory oversight of the PSC.¹³

In addressing the issue of the expiration of unused energy credits in the context of establishing annual energy export credit rates for customer generators, the PSC stated:

Some parties discussed annual expiration as providing an important disincentive for a customer to over-size a CG system. The ECR should now accomplish that incentive because the highest and best use of CG, and the use that brings the greatest benefit to CG participants, is the energy the consume and thereby avoid purchasing from RMP.

Nevertheless, we are mindful that if we were to eliminate annual expiration of accrued credits at this time, we would do so without any experience with how the ECR will influence the size of future CG systems. Given how changing it would be to walk back from such a change, we consider it more reasonable to defer a decision on discontinuing annual expiration of credits until the effects of the ECR on system size can be evaluated empirically. For now, accrued credits will expire coincident with the regularly schedule meter reading for the month of March (or October for irrigation customers).

Application of Rocky Mountain Power to Establish Export Credits for Customer Generated Electricity, Docket 17-035-61, Order at 20 (October 30, 2020, Utah P.S.C.)

The PSC did not err in conducting its careful review of the evidence and economic incentives that might now be associated with the energy export credits rates applicable customer generated energy. Its decision should be reaffirmed in light of the logical thinking and appropriate analysis that the Commission has incorporated in its Order.

Conclusion

The Commission's Order demonstrates that the Commission has acted within the bounds of the regulatory oversight responsibilities it has been granted. The Commission has appropriately exercised its discretion in the establishment of just and reasonable energy export

¹³ Beck Hearing at pg. 397 ln 1 – pg. 398 ln 17, pg. 423 ln 8 – pg. 425 ln 25.

credit rates that should be provided by RMP for the energy it will receive from customer generators. The factual underpinnings of the Commission's decision are supported by substantial evidence and are based on logical and reasonable analysis. The Office submits that the Commission should reaffirm its Order and render a decision upon rehearing that addresses the issues raised by petitioners with such additional reasonable logical and analysis as may be appropriate.

Respectfully submitted, this 15th day of December 2020.

/s/ Steven W. Snarr
Steven W. Snarr
Assistant Attorney General
Attorney for the Office of Consumer Services