PATRICIA E. SCHMID (#4908)
JUSTIN C. JETTER (#13257)
Assistant Attorney Generals
Counsel for the DIVISION OF PUBLIC UTILITIES
SEAN D. REYES (#7969)
Attorney General of Utah
160 E 300 S, 5th Floor
P.O. Box 140857
Salt Lake City, UT 84114-0857
Telephone (801) 366-0380
pschmid@agutah.gov
jjetter@agutah.gov

BEFORE THE PUBLIC SERVICE COMMISION 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 Division of Public Utilities' Responsive Memoranda to Vote Solar and Vivint Solar's Petition for Review or Rehearing

Pursuant to the Utah Admin Code R746-1-801 the Utah Division of Public Utilities (Division) files its Responsive Memoranda to Vote Solar and Vivint Solar Inc.'s (Petitioners) Petition for Review or Rehearing. The Public Service Commission of Utah (Commission) should deny the Petition for Review or Rehearing on all issues other than the carrying charge calculation for the generation and transmission capacity values.

I. Introduction

On October 30, 2020 the Commission issued a final order (Order) in this docket closing schedule 136 to new customers and setting and export credit rate (ECR) for a new schedule 137. On November 30, 2020 Petitioners filed a Petition for Review or Rehearing. Petitioners seek review or rehearing asserting that the Commission in its Order failed to satisfy its obligations under Utah Code Ann. §54-15-105.1 and failed to properly consider certain externalities such as societal, economic, and health and welfare costs and benefits in its decision. Petitioners further request reconsideration or rehearing on the calculation of avoided capacity and transmission cost adjustments on the basis that the Commission improperly adjusted carrying costs applied to those values. Finally, Petitioners' remaining claims regarding annual pricing updates, annual credit expiration, integration costs, and use of energy imbalance market (EIM) pricing are fundamentally requests to re-argue the same evidence that the Commission considered in setting the ECR its Order.

The Commission's Order may require reconsideration or clarification on the matter of the carrying costs adjustments. The Commission should deny reconsideration or rehearing on Petitioners' remaining requested issues. The Commission did not err in its execution of the legislative requirement under §54-15-105.1. The new approved Schedule 137 is, by definition, not a net metering program and is not subject to the requirements of §54-15-105.1. Even if it were applicable, the Commission plainly performed the necessary evaluation and set a reasonable ECR based on that evaluation. The Commission should not re-consider continuation or termination of the statutory net metering program (Schedule 135) at this time. The Commission relied on substantial evidence on the record along with its own expertise in applying the evidence presented to reach reasonable and rational decisions on each of the remaining issues.

II. Argument

A. The Commission Should Reconsider the Carrying Charge Adjustment to Generation and Transmission Capacity Values.

Petitioners assert that the Commission erred by adjusting the carrying costs when it adopted Vote Solar's avoided capacity cost and avoided transmission cost values. The Division does not support the inclusion of future avoided costs for generation without any long-term commitment from CG customers to avoid or offset those future costs. However, given the adoption of Vote Solar's proposals for those two cost categories respectively, the Division does not dispute Vote Solar's requested adjustment to those values to reflect the appropriate carrying cost determined by the Commission.

B. Under Utah Law Schedule 137 is Not A Statutory Net Metering Program and is Not Subject to or Limited by Utah Code Ann. § 54-15-105.1.

The Commission did not err in setting an ECR for customer generation (CG) customers with respect to any obligation it has under Utah Code § 54-15-105.1. Petitioners challenge to the Commission's Order relies on two faulty premises. The first is the premise that the ECR tariff is a statutory net metering program subject to the net metering statute found in § 54-15. It is not. Schedule No. 137 is, by definition, not a net metering program and therefore is not subject to any of the limitations or statutory obligations set forth in the net metering statute. Second, the premise that the Commission has not evaluated the costs and benefits as required by § 54-15-105.1 - even it if did apply - is incorrect. The Commission performed this analysis in the same way that it would for a net metering program even though it was not necessary for the purpose of setting an ECR, explained that it did so, and used the evidence presented to set an ECR rate.

Schedule 137 is not a statutory net metering program. Section 54-15-102(12) defines a "net metering program" as a program where "if net metering results in excess customer-generated electricity during a billing period, receive a credit as provided in Section 54-15-104." Therefore, at a minimum a statutory net metering program must also include net metering which is defined as "measuring the amount of net electricity for the applicable billing period." §54-15-102(11). And net electricity means the difference between the supplied electricity and customer generated exports. §54-15-102(11). Combining the definitions, a statutory net metering program in Utah at a minimum must net electricity over the billing period. Neither Schedule 136, nor Schedule 137 net energy over a normal billing period and are therefore not statutory net metering programs.

An ECR rate set outside of the net metering statute is consistent with Utah law. Net metering may be discontinued by an electric utility upon generation capacity reaching 0.1% of the peak demand in 2007. The Commission has authority to establish a higher generating capacity cap, and it has in the past. The Commission is not required to extend that cap indefinitely. The Commission extended the cap beyond the default limit of 0.1% and set a higher cap in its September 29, 2017 Order Approving Settlement Stipulation in Docket No. 14-035-114.[1]

In its 2017 order capping the statutory net metering program for Rocky Mountain Power (RMP), the Commission first explained that it opened the docket to make the determination of whether the costs that the electrical corporation or other customers will incur from the net metering program exceed the benefits, but did not need to reach a conclusion as it was capping the net metering program pursuant to approval of a multiparty stipulation.[2] It explained that the Settlement Agreement "lowers the cap on participation under the current, statutory net metering program such that no new customers will be accepted into [the statutory net metering program] after the 'NEM Cap Date.'"[3] The Commission further ordered that the statutory net metering program would only include those customers who joined prior to the cap and the customers in the transition program would not be part of the statutory net metering program.[4]

Schedule 135 is the only current residential statutory net metering program authorized by the Commission to be administered by RMP. Section 54-15-104 does not mandate that the export

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[1] *Investigation of the Costs and Benefits of PacifiCorp's Net Metering Program*, Docket No. 14-035-114, Order Approving Settlement Stipulation, Sept. 29, 2017.
[2] *Id*. at 2.
[3] *Id*. at 5.
[4] *Id*.

credit for each net exported kwh for Schedule 135 must be valued at the full loaded retail rate for each kwh of utility service. Rather it states that it must be "at least avoided cost" and that the credits must "expire at the end of the annualized billing period." Petitioners implicitly acknowledge this by arguing that the credits should not expire annually.[5] It would be directly inconsistent with the statutory net metering program requirement for the credits not to expire annually.

C. The Commission Should Not Re-Open Schedule 135.

Although not raised directly by Petitioners, an indirect consequence may arise from a conclusion by this Commission that the "costs that the electrical corporation or other customers will incur from a net metering program will exceed the benefits of the net metering program." If that is in fact determined to be the case with respect to the only current net metering program - Schedule 135 – it would then necessitate that this Commission "determine a just and reasonable charge, credit, or ratemaking structure, including new or existing tariffs, in light of the costs and benefits" for the statutory net metering program.

The grandfathering of schedule 135 customers under the 1:1 credit rate and the capping of the statutory net metering program for RMP was and is supported by the Division. Retaining the Schedule 135 grandfathering is potentially dependent on the assumption that the statutory net metering program as it exists balances costs and benefits. The Division raises this concern because there may be unintended consequences of a determination that the costs exceed the benefits for the statutory net metering program as it exists under schedule 135. The Division recommends that the Commission maintain the distinction between the net metering program and the two export credit tariffs.

[5] Petition at 19 et seq.

D. The Commission Concluded That the Benefits of Customer Generation to the Utility and its Customers is Less Than the Full Retail Rate for Electric Service.

Even if Section 54-15-105.1 did apply, the Commission has implicitly determined that benefits to the utility and its rate payers do not exceed the costs of the loaded residential retail electric service kwh rate. Petitioners claim that the Commission's Order "lacks any indication that the Commission fulfilled its statutory obligation to evaluation the costs and benefits of net metering."[6] However, the Order is clear that the Commission evaluated this requirement with respect to new customer generation. The Commission stated that it "evaluated whether 'costs that [RMP] or other customers will incur' from CG operating under Schedule 137 'will exceed the benefits' of that CG, or vice-versa."[7] The Commission further stated in plain language that it was "approving a structure within Schedule 137 'in light of [those] costs and benefits.'"[8] The content of the remainder of the Order explains in detail the Commission's evaluation of the costs and benefits along with its conclusions reached from the evidence presented on the record from the parties who participated in the evidentiary phase of the Docket.

The Commission has completed the appropriate inquiry, made a conclusion regarding the inquiry, and set an export credit rate as if 105.1 applied to schedule 137 customers – even though it does not. It was perfectly reasonable for the Commission to follow the legislative intent in a proceeding that in some ways parallels the statutory net metering program. The Commission determined that the costs that RMP and other customers will incur from customer generation netted against full unbundled retail rates would exceed the benefits of the program. This is inherent in the conclusion that the value of the exported energy is lower than the rate for

[6] Petition at 4.
[7] Order at 5.
[8] *Id*.

residential retail electric service. The Commission therefore has, inherent in the results of the Order, made this determination with respect to Schedule 137 customers.

By logical extension this would also be true for consideration of re-opening Schedule 135 to increase the cap for additional customers in the statutory net metering program. Given the natural declining value of each additional CG system it is reasonable and rational for the Commission to both retain the existing statutory net metering as it exists in Schedule 135 while also finding that the benefits of additional net metering program customers do not exceed the costs to the utility and its rate payers and retain the cap on Schedule 135 and set a lower ECR for Schedule 137 as it has done.

E. The Commission Properly Limited Its Scope of Review.

The Commission properly limited its consideration of the public interest to the purposes of the regulatory legislation that it is tasked with applying. The Commission is tasked with setting public utility rates that are in the public interest including the rates that RMP may pay for generation – including exported energy from CG customers. Despite the broad statutory flexibility, the Commission is not tasked with the open-ended universal task of using its regulatory authority over public utilities to resolve any or all societal ills that may be indirectly affected by utility rates.

The public interest standard as applied by the Utah Public Service Commission is limited to the application within the regulatory statute that it applies. The Utah Supreme court recently recognized this principle in *Ellis-Hall Consultants, LLC v. Pub. Serv. Comm'n of Utah*[9] quoting from the Supreme Court that summarized the matter succinctly at the federal level; "This Court's cases have consistently held that the use of the words "public interest" in a regulatory statute is

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[9] 2014 UT 52, ¶ 22, 342 P.3d 256, 261.

not a broad license to promote the general public welfare. Rather, the words take meaning from the purposes of the regulatory legislation."[10] Although not directly on point, the Utah Supreme Court's recent analysis of this question in *Ellis Hall* is instructive on how Utah's courts are likely to address a similar question in the context of the costs and benefits of a utility generation source such as CG. Moreover, to the extent that the *Ellis Hall* is not binding or persuasive, the scope of the Commission's review is a policy decision committed to the Commission's discretion.

Petitioners rely on Utah Code §54-3-1 that states in relevant part that the "scope of the definition 'just and reasonable' *may include*… the well-being of the state of Utah…" While that statutory language does allow the Commission to broadly consider the well-being of the state of Utah, it does not mandate that the Commission consider private vendor pricing not subject to any regulatory oversight in setting a value for energy exported. This is a policy choice legislatively delegated to the Commission. This is similar to other power purchase agreements and market purchases. The Commission regulates the contract terms between the utility and the supplier in such a way that the costs of service for consumers are just and reasonable, it does not extend its review into the number of employees a merchant generator might employ, the profitability for the generation facility vendors, or the endless string of remote externalities that might result. The Commission properly limited the scope of its consideration to those that have quantifiable effects on the costs of utility service.

F. The Commission Properly Used Its Experience, Technical Competence, and Specialized Knowledge to Evaluate Evidence and Draw Inferences as Included in Its Order.

The Commission did not err in its findings of fact, nor did it err in making its policy determinations and applying the law. "Substantial evidence is more than a mere scintilla of

[10] *Nat'l Ass'n for Advancement of Colored People v. Fed. Power Comm'n,* 425 U.S. 662, 669, 96 S. Ct. 1806, 1811, 48 L. Ed. 2d 284 (1976).

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."[11] "[W]hen reasonably conflicting views arise, it is the [agency's] province to draw inferences and resolve these conflicts."[12] And it is further clear in Utah Code § 63G-4-208(2) the legislature expressly authorizes administrative agencies such as the Commission to use its "experience, technical competence, and specialized knowledge to evaluate the evidence."

The Commission applied its experience, technical competence, and specialized knowledge to the facts presented by the parties in this case and reached appropriate conclusions of both facts and applied its own legislatively authorized policy determinations to the facts for the remaining issues raised by Petitioners. The Commission should not re-consider or rehear the remaining issues raised by the Petitioners. The Commission relied on substantial evidence on the record along with its own expertise in applying the evidence presented to reach reasonable and rational decisions on each of the remaining issues.

1. Annual ECR Adjustment

The Commission's decision to annually calculate a current value for as-available CG exports with no long-term obligations is plainly supported by reasonable and rational public interest considerations and is fully supported by evidence on the record. Petitioners claim that the fact that CG equipment is expensive and requires up-front investment requires the Commission to transfer the market risks of changing energy prices to non-participating customers. Petitioners then suggest that the Commission's decision not to transfer that risk to non-participating

[11] *Onysko v. Dep't of Envtl. Quality*, 2020 UT App 51, ¶ 34, 463 P.3d 669, 684, cert. denied sub nom. *Onysko v. Dept of Envntl Quality*, 466 P.3d 1072 (Utah 2020).
[12] *Provo City v. Utah Labor Comm'n*, 2015 UT 32, ¶ 8, 345 P.3d 1242, 1247.

customers is somehow discriminatory and is unsupported by the evidence. Petitioner's reasoning is unpersuasive and the Commission should not reconsider the issue.

The period of rate setting for the ECR is a policy decision of who should bear the risk of market changes. The impact of the ECR on the decisions of customers is something that may be considered by the Commission but is not dispositive of the issue. Even if it were true that lower ECR rates will reduce the growth rate of CG and that is "proven by the science of economics" as Petitioners claim – that does not necessitate a Commission finding that overpaying for energy to compensate is in the public interest. If the Commission authorized RMP to pay five times the market rate for wholesale solar – that would also provide greater incentive for building uneconomic wholesale solar facilities. However, that would not further the public interest in safe reliable and cost-effective energy.

The costs paid by RMP to customer generators for energy will flow back through the energy balancing account mechanism directly into customer rates. If the ECR is higher than the cost that RMP would otherwise pay for that energy, customer rates will increase through the EBA surcharge. If the ECR is lower, customer rates will decrease. The reset term is an allocation of risk. CG customers are not committing to long term delivery contracts and should therefore be subject to the risks associated with the fluctuation in energy market prices. This is no different from other short term or "as-available" small power producers. It is also similar to energy prices for customers who purchase appliances or electric vehicles and are subject to annual changes in energy commodity pricing through the energy balancing account surcharges and periodic general rate cases that have varied over time in frequency and hold no predetermined fixed period.

2. EIM Pricing

The Commission did not err in setting the ECR rate based on the cost that RMP would otherwise pay on the market for energy during the times that CG exports occur. This is plainly within the policy discretion of the Commission to draw the inference that energy is a commodity that can be purchased by RMP through the EIM and that the EIM pricing represents the real time prices on the market. The Division supports a clarification to the extent necessary from the Commission on the EIM node or set of nodes used for price setting going forward. Moreover, the Division suggests that if the Commission clarifies the nodes or policy for choosing nodes that it also recognizes that the nodes and volumes change over time and that the pricing formula must be sufficiently flexible to adjust for future changes.

Petitioners assertion that the EIM data relies on market transaction data that only RMP has access to is without merit. The Commission's decision to use a prior year's actual data will allow any intervening party to seek and analyze the same prior year data when calculating the next year's ECR rate. Intervening parties will have access to the volumes and prices of energy at each relevant node along with the exported CG volumes and be able to calculate the ECR energy value with sufficient transparency. The same data is analyzed annually as part of the energy balancing account to set the net power cost portion of rates.

3. Integration Costs

The Commission properly reviewed the evidence and applied its experience, technical competence, and specialized knowledge to the evidence on the record to reach its decision. Intermittent and non-dispatchable generation has costs for integration into a reliable electric system. It is rational and reasonable to rely on a study of solar integration costs for the cost of integrating customer generation that is predominantly solar. The Commission should decline to reconsider the integration costs.

4. Annual ECR Expiration

The Commission's policy decision that Schedule 137 credits will expire annually is a reasonable and rational policy decision. Petitioners claim that the Commission lacks evidence on the record for the conclusion that annual expiration of credits will incent appropriate sizing of the customer generation systems. A lack of a specific statement on the record that expiration of credits will incent appropriate sizing is not necessary for the Commission to apply its general knowledge and expertise. The totality of the evidence plainly supports the proposition that expiration of credits annually will discourage the installation of customer generation that exceeds the annual customer use. Moreover, the Commission's decision to mirror the annual expiration of the net metering credits found in §54-15-104 was independently reasonable as the statute provides meaningful guidance on the legislative intent. Finally, the expiration of credits annually provides a meaningful distinction between customer generation for personal use and the alternative Schedule 37 that customer generators have available if they choose to become merchant generators.

The Commission did not err in applying its general knowledge and technical expertise to the totality of the fact record in its determination that the export credits should expire annually consistent with the statutory net metering program. The Commission should not reconsider the annual expiration of ECR credits.

III. Conclusion

For the reasons stated herein the Commission should clarify and/or recalculate the carrying cost adjustment to the generation and transmission capacity values. The Commission should deny reconsideration or rehearing of the remaining issues raised in the Petition.

Submitted this 15th day of December 2020.

/s/ Justin C. Jetter

Justin C. Jetter
Assistant Attorney General
Utah Division of Public Utilities