- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Application of Rocky Mountain Power to Establish Export Credits for Customer Generated Electricity	DOCKET NO. 17-035-61 ORDER ON AGENCY REVIEW OR REHEARING AND NOTICE OF VIRTUAL SCHEDULING CONFERENCE

ISSUED: December 23, 2020

1. Procedural Background

On October 30, 2020, the Public Service Commission (PSC) issued an order in this docket ("October Order"), approving an export credit rate (ECR) for customer generation (CG) and other elements of the CG rate structure. On November 25, 2020, the PSC issued an order ("Tariff Order") approving (with one modification) the tariff revisions filed by Rocky Mountain Power (RMP) in compliance with our October Order.

On November 30, 2020, RMP, Vote Solar and Vivint Solar, Inc. jointly ("VS-Vivint"), and Utah Clean Energy (UCE) filed motions ("Rehearing Motions") requesting agency review, rehearing, or clarification of our October Order. The Division of Public Utilities (DPU), the Office of Consumer Services (OCS), UCE, VS-Vivint, and RMP all filed responses to the Rehearing Motions. We consider each issue raised in the Rehearing Motions under Utah Code Ann. §§ 54-7-15 and 63G-4-301. This Order on Agency Review or Rehearing supplements and clarifies our October Order, and grants rehearing on one issue, but it does not replace our October Order. Our October Order remains in effect.

2. Whether or not Utah Code Ann. § 54-15-105.1 is mandatory in this docket, we complied with all provisions of that statute in setting an ECR.

VS-Vivint argues that our October Order did not satisfy the statutory requirement to determine the costs and benefits of a net metering program, and to determine a rate structure in

light of those costs and benefits. The responses to VS-Vivint's motion indicate a difference of opinion among parties about whether Schedule 137, the rate structure (including the ECR) we approved for CG customers who submit an interconnection application after the date of our October Order, must comply with the NM Statute[1] and specifically with Utah Code Ann. § 54-15-105.1.[2] We were mindful of these differences of opinion when we drafted our October Order, and they did not control our process. Whether or not the statute applies, we conducted the statutorily required evaluation for Schedule 137.

We addressed this issue in our October Order, and none of the motions or responses give us any reason to reconsider the way in which we addressed it. We stated, and reaffirm, that "it is unnecessary at this time to conclude whether Schedule 137 operates pursuant to, or independent of, the NM Statute. Regardless of whether the NM Statute's requirements apply to customers who take service under Schedule 137, we conclude our approval of Schedule 137, including an ECR, complies with those requirements."[3] That conclusion was correct and remains so.

We accepted and reviewed testimony and evidence from all parties. We made appropriate conclusions of law with respect to what costs and benefits are relevant to the evaluation Utah Code Ann. § 54-15-105.1 requires. We evaluated the merits of the testimony addressing each relevant cost and benefit. Then we approved an ECR "in light of [those] costs and benefits."[4] In other words, the ECR we approved balanced the costs and benefits of Schedule 137. Our

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[1] Defined in the October Order as Utah Code Title 54, Chapter 15, Net Metering of Electricity.
[2] Utah Code Ann. § 54-15-105.1 provides, in pertinent part, the PSC shall "determine … whether costs that the [utility] or other customers will incur from a net metering program will exceed the benefits … or whether the benefits of the net metering program will exceed the costs."
[3] October Order at p. 5.
[4] *Id.* at pp. 5-6.

findings and conclusions demonstrated that an ECR higher or lower than the one we approved would place those costs and benefits out of balance. There was substantial evidence in the record for all of those findings.

As we stated in our October Order, we did not evaluate the costs and benefits of the grandfathered and transitional customers who are unaffected by our October Order. No party advocated for any modification to the rate structures for those programs, or for the elimination of those programs. If VS-Vivint desire us to discontinue the grandfathered and transitional programs because we have not completed the evaluation under the NM statute for those programs, they may file a request for agency action to that effect, but that is outside the scope of this docket. This docket was established solely to create a rate structure for customers who do not qualify for the grandfathered or transitional rates.

For these reasons and for the reasons we articulated in our October Order, we reaffirm our conclusion that whether or not the NM Statute applies to Schedule 137 and the ECR, we have complied with the requirements of that statute in this docket.

3. The proper scope of costs and benefits that are relevant to the ECR are those that impact RMP's cost of service in a quantifiable way.

Both VS-Vivint and UCE argue that we should consider factors outside of RMP's cost of service when setting an ECR. We articulated the reasons for our interpretation of our authority in our October Order. We reaffirm that analysis, but do not find it necessary to restate it here.

UCE correctly points out that neither *Ellis-Hall Consultants, LLC v. PSC*[5] nor the Community Renewable Energy Act[6] are controlling on our establishment of an ECR. We recognized that in our October Order[7] and used them as illustrative examples, not as controlling precedent, to indicate that our interpretation of our role to establish an ECR is consistent with the roles Utah's Legislature and Supreme Court have assigned to us in other contexts. We take guidance from those sources, and our role as economic regulators, seriously. We decline to modify our conclusion of law that "costs and benefits that do not impact RMP's cost of service in a direct and quantifiable way are not relevant" to establishing a rate structure and ECR for CG.[8]

4. It is just and reasonable to adjust the ECR annually to ensure that RMP's customers are not overpaying for generation from Schedule 137 customers.

UCE urges us to reconsider its proposal to fix individual customer ECRs for 20 years. VS-Vivint characterize annual ECR updates as arbitrary, capricious, not just or reasonable, or not in the public interest. However, the record on this issue was well developed, and substantial evidence supported our finding that "annually updating the ECR is just and reasonable."[9]

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[5] 2014 UT 52.
[6] Utah Code Ann. §§ 54-17-901 through 909.
[7] Referring to the *Ellis-Hall* case we stated "while this matter concerns our authority in a different statutory context, we find the Court's reasoning persuasive and anticipate the Court would apply similar constraints on our regulatory purview with respect to setting an export credit rate." October Order at p. 1 note 2. Further, we indicated that the state policy articulated in the Community Renewable Energy Act was specific to "when we consider rates for participants under" that Act. October Order at p. 7 note 8.
[8] October Order at p. 6.
[9] *Id.* at p. 7.

Utah Admin. Code R746-1-801(2) requires at this stage of the docket that a person who challenges a finding of fact "shall marshal the record evidence that supports the challenged finding." UCE cites and rebuts some of the evidence supporting our finding on this issue; VS-Vivint do not appear to do so.

No one has disputed that evidence was presented about the impact of annual updates on individual Schedule 137 customers' ability to calculate the return on their investment. We see no legal basis to alter our conclusion that the evidence relating to customer return on investment is "not relevant to RMP's cost of service."[10] With that conclusion of law, the more relevant (and also undisputed) evidence was the showing that costs and benefits related to energy and capacity change over time.

There is no basis to modify our findings of fact or conclusions of law on this issue. Our responsibility is to determine a just and reasonable ECR in light of the Schedule 137 costs and benefits. The record contained substantial evidence that the costs and benefits that contribute to the ECR do not stay fixed. It is essential to keep the ECR current because the ECR is paid to Schedule 137 customers by all other RMP customers through the Energy Balancing Account. For these reasons and for all the reasons we stated in our October Order, we decline to make any modification to the annual ECR updates.

5. It is just and reasonable, and potentially less disruptive to Schedule 137 customers, to defer a decision on whether to end the annual expiration of accrued credits.

VS-Vivint argue that annual expiration of accrued credits is arbitrary, capricious, punitive, and contrary to substantial evidence. This argument is facially inconsistent with other

[10] October Order at p. 7.

positions VS-Vivint have taken. On one hand, VS-Vivint argue that the requirements of the NM Statute apply to Schedule 137 and the ECR. On the other hand, VS-Vivint urge us to ignore a provision of the NM Statute that mandates annual expiration.[11]

VS-Vivint marshal some of the evidence on this issue, but they misconstrue our findings. Our continuation into Schedule 137 of the existing practice for grandfathered and transitional customers, annual expiration of accrued credits, was not based on a finding that it was necessary to disincentivize over-sizing of CG systems. We found that the ECR we authorized would accomplish that goal because "the highest and best use"[12] of CG is to avoid energy purchases. That finding is intuitive because that is the use for which Schedule 137 customers will receive a value (reduced energy consumption) that is functionally equivalent to retail rates, not to the lower ECR. We decline to modify our finding that reduced energy use is the highest and best use of CG.

After finding that annual expiration is not necessary to disincentivize over-sizing systems, we made the decision to not yet discontinue annual expiration as we transition into Schedule 137 until more empirical data is available under that schedule. In other words, faced with potential options to either (1) continue annual expiration in the new Schedule 137 and consider later whether the data from that schedule's operation warrant elimination of the expiration; or (2) eliminate annual expiration now and re-implement it if the empirical data from Schedule 137 warrant that action; we found the first option to be more in the public interest and

[11] Utah Code Ann. § 54-15-104(3)(a)(ii).
[12] October Order at p. 20.

less likely to result in unexpected disruptions to Schedule 137 customers. We stated that finding in our October Order,[13] and we decline to modify it now.

6. We approved a just and reasonable method, based on substantial evidence, for calculating avoided energy.

VS-Vivint argue the method we adopted to calculate avoided energy is not supported by substantial evidence and does not specify which EIM pricing node was used in the calculation of the avoided energy price component we approved. VS-Vivint selectively marshal only a portion of the substantial evidence that supported our findings on this issue.

We made numerous findings of fact to support our conclusion that, with annual updates to the ECR, a look back one year to historical prices from the Energy Imbalance Market (EIM)[14] is more reasonable than a forecast of future prices, paramount among them that the EIM-based method is simply "a more accurate method."[15] We re-affirm those findings and that conclusion.

In our October Order, we approved the method of calculating avoided energy from EIM prices "with the modifications to that method presented on surrebuttal by RMP."[16] We used the EIM data provided by RMP during surrebuttal to calculate our approved avoided energy cost of 2.439 cents/kWh in summer rates, and 2.109 cents/kWh in winter rates. There may be potential ambiguity in the record on the issue of which pricing node RMP applied to its surrebuttal EIM

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[13] "Given how challenging 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." October Order at p. 20.
[14] The EIM is operated by the California Independent System Operator.
[15] October Order at p. 9.
[16] *Id.*

price data.[17] Even assuming that ambiguity, RMP provided substantial evidence to support the EIM price data. No party challenged RMP in cross examination on the issue of which pricing node RMP utilized in its surrebuttal testimony, and the substantial evidence standard does not require that every potential unasked question be answered. Pricing node identification is likely to be an issue that can be clarified in future annual updates, but it is not an issue that disturbs our finding, based on substantial evidence, of a just and reasonable avoided energy cost.

One of our numerous findings supporting this avoided energy method was that "EIM price data is publicly available and transparent."[18] VS-Vivint point to RMP testimony that EIM prices are weighted by historical delivered volumes, a factor that is confidential. While VS-Vivint do not meet even a liberal marshaling standard on this issue, we conclude that it warrants a clarification to one of the several findings that supported our conclusion to use EIM pricing to calculate avoided energy. VS-Vivint do not dispute that the EIM historical, published market prices are publicly available and transparent. Accordingly, we clarify one of those findings and state that EIM price data is *generally* publicly available and transparent. That clarification does not modify our conclusion that the EIM method we adopted to calculate avoided energy is the most just and reasonable of the options presented in evidence.

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[17] In its direct testimony, RMP proposed using the PacifiCorp east EIM load aggregation point for price shaping, but not for hourly prices. Direct Testimony of Daniel J. MacNeil, pp. 4-5, lines 85-95. In the workpapers to RMP's surrebuttal testimony, in the "Time Period Examination" table attached to Exhibit RMP_(DJM-1SR) and (DJM-2SR), there is an indication that RMP appears to have used that same aggregation point for calculating hourly prices in surrebuttal testimony.

[18] October Order at p. 9.

7. We grant rehearing on the narrow issues of the proper carrying charge and capacity contribution values to apply to avoided generation, distribution, and transmission capacity costs.

VS-Vivint claim that we incorrectly applied a carrying charge adjustment to avoided generation and transmission capacity costs, and that both should be higher based on our findings and conclusions. RMP counters in its response that we incorrectly applied capacity contribution values to the avoided generation capacity, and that considering the gestalt of the evidence, we should not adjust the ECR. Though the failure is not dispositive, VS-Vivint did not satisfy the marshaling requirement on this issue.[19]

Despite inadequate marshaling of the evidence, our ultimate goal is for the ECR to be just and reasonable and accurately reflect the costs and benefits associated with Schedule 137. We find and conclude that the ECR we ordered in our October Order accomplishes that goal. Nevertheless, we also find that the assertions made by both VS-Vivint and RMP provide an opportunity to consider whether the ECR can be refined with even more precision than we accomplished in our October Order.

Accordingly, we grant rehearing on the narrow issue of the proper carrying charge and capacity contribution values that should be applied to avoided generation, transmission, and distribution capacity costs. We provide the following guidelines[20] for this rehearing:

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[19] If RMP were challenging a finding and asking us to change it, RMP also would not have satisfied the marshaling requirement.

[20] Utah Code Ann. § 54-7-15(2)(d)(i) provides that in this situation we "shall issue [our] decision on rehearing within 30 days after final submission." The Utah Supreme Court evaluated prior statutory language with the same phrase, "after final submission," and a 20-day time frame, and ruled that the PSC may grant rehearing and hold additional hearings that run longer than the statutorily prescribed time frame. *Fuller-Toponce Truck Co. v. Public Service Commission*, 99 Utah 28, 96 P.2d 722 (1939). This ruling is intuitive, because to interpret the statute otherwise

a. On rehearing, we will consider whether the ECR should be adjusted prospectively, not retroactively. We have not modified our findings and conclusions that the ECR we ordered in our October Order is just and reasonable, balancing the costs and benefits of CG under Schedule 137.

b. We will not reconsider our decision to apply all three types of avoided capacity costs to the ECR: generation, transmission, and distribution.

c. We will allow one round of written sur-surrebuttal testimony only on the narrow issues of the appropriate calculation of the carrying charge and capacity contribution values to apply to the three avoided capacity costs.

d. We will hold a hearing to allow cross-examination and commissioner questions on the sur-surrebuttal testimony.

e. We will hold a virtual scheduling conference on Wednesday, January 13, 2021, at 11:00 a.m. MST. Parties should attend prepared with the names of the witnesses for whom they intend to file sur-surrebuttal testimony, and prepared to discuss a filing date and hearing date.

f. We decline to stay or suspend any aspect of our October Order.

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would render the "rehearing" option, an option that exists in Utah Code Ann. § 54-7-15, meaningless. We intend to issue our final order on rehearing of this narrow issue within 30 days after the hearing. Additionally, even if we did not have this authority under Utah Code Ann. § 54-7-15(2)(d)(i), the rehearing proceeding we are initiating complies with Utah Code Ann. § 54-7-14.5, which authorizes us to rescind, alter, or amend any order after providing sufficient due process.

8. We applied a just and reasonable integration cost to the ECR that was supported by substantial evidence.

VS-Vivint allege that our decision to include integration costs in the ECR is arbitrary, capricious, and not supported by substantial evidence. VS-Vivint's attempt to marshal the record supporting our finding is inadequate and misstates the record by asserting that "[n]either Mr. MacNeil nor any other RMP witness put forth any evidence to justify the supposed link between variability and CG solar integration costs."[21]

VS-Vivint correctly notes that RMP's witness testified that its flexible reserve study was not specific to solar CG. However, we acknowledged that fact in our order when we found that "[t]hough the flexible reserve study included only utility scale solar resources, we find that utility scale solar is a reasonable proxy for estimating integration costs for CG solar. RMP's calculation of a percent variability value for CG exports based on aggregate Schedule 136 exports provides evidence for our finding that CG integration costs are likely higher, but at least equal to, the integration costs for utility scale solar identified in the flexible reserve study."[22]

VS-Vivint's selective attempt to marshal the evidence does not address the percent variability value for Schedule 136 exports. Accordingly, we see no basis to reconsider our findings of fact and conclusions of law related to integration costs.

9. The evidence supporting fuel price hedging was flawed and therefore insufficient to warrant inclusion of this element in the ECR.

VS-Vivint restate the evidence that was presented supporting fuel price hedging benefits for CG. They rebut our finding that the data is dated and not specific to RMP by stating that the

[21] VS-Vivint Petition for Review or Rehearing at p. 30.
[22] October Order at p. 13.

Oregon Public Service Commission adopted the values from that same data in 2019. VS-Vivint do not state why that Oregon commission decision (that was in the record prior to our October Order) has any legal or factual bearing on the deficiencies we described in our October Order. VS-Vivint also correctly note that RMP did not present or advocate for a different method to calculate fuel price hedging. Neither did any other party. Accordingly, we affirm our finding that if CG "were found to reduce [fuel price hedging] costs, that would be an appropriate component of the ECR. The record and evidence in this docket, though, are insufficient to include that component."[23]

10. Gradualism has been achieved by the three year glidepath established in the 2017 stipulation.

UCE requests that we implement a glidepath to ease the transition to Schedule 137. We recognize that our October Order was impactful on the residential solar industry in Utah. We also have a tremendous respect for the 2017 Stipulation that led to this docket. That stipulation created a three year glidepath with a transitional program, and set up a timeline under which we were to establish an ECR. It represented a broad agreement among stakeholders and representatives of Utah's solar industry, many of whom are parties to this docket. We have honored the gradual glidepath the 2017 stipulation created, and we equally honor the decisions it required us to make this year.

[23] October Order at p. 17.

11. We clarify that we did not intend to approve an energy-for-energy netting regime, and we reaffirm that RMP's approved tariff language accurately reflects our October Order.

RMP requests clarification on the netting mechanism under which Schedule 137 customers will be compensated for their generation. In our October Order, we stated that "[w]e approve netting a customer's ECR value earned against energy costs incurred on the customer's monthly bill."[24] And we approved RMP's proposed tariff revisions in our Tariff Order.

We regret that our language, particularly our use of the phrase "we did not approve instantaneous netting" in our Tariff Order,[25] has caused confusion. We recognize parties have used the term "instantaneous netting" in different ways and that we could have defined our use of the term better in our Tariff Order. We never intended our October Order, or our Tariff Order, to implement netting energy for energy in Schedule 137.

RMP's approved tariff (with the correction we ordered in our Tariff Order) now reads: "The credit value in dollars computed for the Exported Customer-Generated Energy will be applied against the Power and Energy Charges on the Customer's monthly bill. Excess credits will carry-over to the next monthly bill during the Annualized Billing Period."[26] We approved

[24] October Order at p. 19.
[25] Tariff Order at pp. 1-2.
[26] Schedule 137, P.S.C.U. No. 50, Original Sheet No. 137.3. We also conclude that the interpretation of that tariff language stated by RMP in its Motion for Clarification and Alternatively Petition for Rehearing (pp. 4-5), as stated here, is a correct interpretation of both our October Order and of their approved tariff language: "[RMP] believes the [PSC]'s [October] Order and the language in the approved Schedule 137 is clear. [RMP] should measure and bill the customer for all energy delivered to the customer during a month. [RMP] should also measure all electricity exported by the customer and provide a monetary credit to the customer for that energy. [RMP] should not net the amount of energy delivered and the amount of energy exported before calculating the amount a customer will be charged for the amount of energy

that tariff language, and we conclude again, as we did in our Tariff Order, that the tariff language is consistent with our October Order.

NOTICE OF VIRTUAL SCHEDULING CONFERENCE

The PSC gives notice it will conduct a virtual scheduling conference on **Wednesday, January 13, 2021, at 11:00 a.m. MST**. Pursuant to Utah Code Ann. § 52-4-207, on this December 23, 2020, the chair of the PSC makes this written determination that, due to the COVID-19 pandemic and the continued risks of transmission in Utah, the conference will be conducted as an electronic meeting without an anchor location. An anchor location would provide a substantial risk to the health and safety of those who may be present at the anchor location. This conference will be conducted via Google Meet at the following link: meet.google.com/jzz-kgda-hkh. In the event of unresolvable technological problems, participants should use the following audio only participation information: 720-504-4256 PIN: 179 931 185#.

Parties should attend prepared with the names of the witnesses for whom they intend to file sur-surrebuttal testimony, and prepared to discuss a filing date and hearing date.

In accordance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during the conference should notify the PSC at 160 East 300 South, Salt Lake City, Utah 84111, (801) 530-6716, at least three working days prior to the conference.

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received or the credit for energy exported. Rather, [RMP] will net the value of the exports against the energy and power charges."

ORDER

For the reasons outlined in this order:

1. We grant rehearing as described in this order on the issues of the carrying charge and capacity contribution values that should apply to avoided generation, distribution, and transmission capacity costs in the ECR.
2. We make two clarifications as described in this order related to the calculation of avoided energy costs and the method of netting the ECR against a customer's monthly bill.
3. We decline to modify any aspect of our October Order other than the issues for which we have granted rehearing and provided clarification.
4. We decline to stay or suspend any aspect of our October Order, including the issues for which we have granted rehearing.
5. We conclude that this order constitutes final agency action for every issue except the issues for which we have granted rehearing.

DATED at Salt Lake City, Utah, December 23, 2020.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#316819

Notice of Opportunity for Judicial Review

Judicial review of the PSC's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on December 23, 2020, a true and correct copy of the foregoing was delivered upon the following as indicated below:

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