- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Formal Complaint of Tyler and Meredith Jensen against Rocky Mountain Power	DOCKET NO. 21-035-04 ORDER DISMISSING COMPLAINT

ISSUED: April 29, 2021

1. Procedural History

On January 25, 2021, Tyler Jensen and Meredith Jensen ("Complainants") filed a formal complaint ("Complaint") with the Public Service Commission (PSC). On March 1, 2021, Rocky Mountain Power (RMP) filed an Answer and Motion to Dismiss ("Motion"). Complainants filed a Motion for a Hearing and Objection to RMP's Motion to Dismiss and Answer ("Complainants' Response") on March 10, 2021.

2. Regulatory Background

Because the Complaint largely stems from a recent decision the PSC made in another docket and because the PSC addressed a substantially similar argument in that docket, the PSC provides this summary for regulatory context.

In 2014, the PSC initiated a proceeding ("NM Docket")[1] to comply with its statutory obligation to assess the costs and benefits of net metering and to establish a just and reasonable rate structure in light of those costs and benefits.[2] The NM Docket enjoyed wide ranging stakeholder participation, including numerous state agencies, renewable energy advocates, rooftop solar installers, municipal governments, environmental advocates, and other consumer associations.

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[1] *In the Matter of the Investigation of the Costs and Benefits of PacifiCorp's Net Metering Program*, Docket No. 14-035-114.

[2] *See* Utah Code Ann. § 54-15-105.1.

In the NM Docket, numerous parties argued RMP's net metering program ("NM Program") unfairly shifted costs to non-participating customers by requiring RMP to overpay for customer generation (CG).

After several years of thorough process and as a final hearing to determine a rate structure approached, nearly all of the parties joined a settlement ("Settlement")[3] and filed it with the PSC on August 28, 2017. The parties acknowledged the Settlement "[was] not ideal from the perspective of any party but offer[ed] a compromise that all stakeholder groups generally [agreed] to be acceptable, just, reasonable, and in the public interest."[4]

The Settlement proposed closing enrollment in the NM Program and opening a new proceeding ("ECR Docket") to determine the appropriate export credit rate (ECR) for CG. The Settlement further proposed establishing a "Transition Program" for customers that filed applications to interconnect their CG systems after the NM Program closed but before the PSC issued an order in the ECR Docket. The Transition Program would not compensate CG at the full retail rate (as under the NM Program) but rather at a stipulated and fixed rate until 2032. The Settlement is unequivocal that the new enrollment in the Transition Program would end on the earlier of (i) the date the PSC issues a final order in the ECR Docket; or (ii) the date that an agreed-upon cap was reached with respect to Transition Program participation. Any customers seeking to interconnect their CG systems after the Transition Program terminated would be compensated at the rate to be determined in the ECR Docket.

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[3] NM Docket, Settlement Stipulation filed Aug. 28, 2017.

[4] NM Docket, Order Approving Settlement Stipulation issued Sept. 29, 2017 at 11.

On September 29, 2017, the PSC approved the Settlement, noting the "extensive negotiations and considerable effort" the parties had undertaken to reach a resolution acceptable to all of the signatories. In doing so, the PSC found and emphasized that "all, or nearly all, of the Settlement's terms [were] material to one or more signatories."[5]

Consequently, on December 1, 2017, the PSC opened the ECR Docket.[6] After several more years of additional process that culminated in a hearing that spanned five days, the PSC issued an order on October 30, 2020 ("October Order") approving an ECR. In accordance with the Settlement, the October Order provided that the "[T]ransitional [P]rogram ends today, the date this order is issued."

Subsequently, on November 6, 2020, the Utah Solar Energy Association (USEA) filed a motion seeking to postpone the October Order's effective date ("USEA's Motion"). Acknowledging the Settlement set the Transition Program to expire on the date the PSC issued its order in the ECR Docket, USEA nevertheless argued the October Order had been unduly disruptive to the rooftop solar industry and that the signatories (including USEA) "did not foresee how disruptive … a flash cut termination of the Transition Program would be to the rooftop solar industry and solar customers."[7] USEA further argued that the "flash cut

[5] *Id.* at 12-13. This intention is reflected in the Settlement itself, which allowed for any signatory to withdraw from it in the event the PSC or a reviewing court materially conditioned or altered the Settlement's terms.

[6] *Application of RMP to Establish Export Credits for Customer Generated Electricity*, Docket No. 17-035-61.

[7] USEA's Motion at 2.

termination … left many prospective solar customers in the middle of the application process."[8] RMP and the Division of Public Utilities opposed USEA's Motion.

The PSC denied USEA's Motion, concluding that it could not rewrite the terms of the heavily negotiated 2017 Settlement that stakeholders had relied upon and honored for more than three years. The PSC observed that extending the Transition Program "would not eliminate the impacts on customers who fall short of [T]ransitional [P]rogram qualification when it terminates; it would simply defer those impacts to a near-future set of customers in the same position."[9] Additionally, the PSC reasoned the "October Order establishes a just and reasonable [ECR] structure that is designed to protect non-participating customers from paying subsidies while providing meaningful compensation for excess generation" and that continuing a transitional program "would allow a new group of customer generators to continue to avoid [this] just and reasonable rate structure" to the "detriment of non-participating customers."[10]

3. Complainants' Allegations and RMP's Response

Echoing USEA's unsuccessful motion in the ECR Docket, Complainants characterize the October Order as an "abrupt decision" and generally assert that it "has created undue financial loss for some customers who were already under contract to obtain solar from a local vendor."[11]

Complainants allege they spent significant time researching solar throughout September and October 2020. Complainants explain they received bids from multiple solar installers, one of

[8] ECR Docket, Reply in Support of USEA's Motion filed Nov. 13, 2020 at 2.

[9] ECR Docket, Order Denying Motion issued Nov. 17, 2020 at 7.

[10] *Id.* at 10.

[11] Complaint at 1.

which advised them that RMP "was looking to change the current solar rates in the next few months and that [they] needed to act fast … in order to get the current rates."[12] Ultimately, Complainants dismissed this information as a "high pressure sales pitch" because they were "unable to find anything to support th[e] assertion" despite their "due diligence working with other solar companies" and "searching online resources."[13]

Complainants further allege they spoke multiple times with RMP customer service representatives. They do not specify the dates or times of these calls or the individuals with whom they spoke. Complainants allege RMP's representatives failed to advise them of material information, *see infra* at 7-8, and included representations such as "there were no pending changes at this time."[14]

Complainants allege they provided a deposit to a solar installer on October 15, 2020 and signed a final contract with the installer on October 25, 2020. However, the installer failed to submit an interconnection application to RMP on Complainants' behalf before the Transition Program terminated. On November 17, 2020, the installer informed Complainants they were no longer eligible for Transition Program rates and apologized for failing to submit the interconnection application earlier.

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[12] *Id.* at 2.

[13] *Id.*

[14] *Id.*

Complainants elected to proceed with the solar installation despite not qualifying for the Transition Program.[15] They allege that they had refinanced their home to pay for the solar installation and reasoned that had they "decided not to install solar and use[d] the cash" from the refinancing to "repay the equity on [their] mortgage, [they] would still have an increased mortgage payment" owing to the refinancing.[16]

The Complaint requests the PSC "reconsider the … rate schedule for customers that signed contracts with their solar providers prior to October 31, but submitted their application with [RMP] just after the change in rates."[17]

In its Motion, RMP asks the PSC to dismiss the Complaint because it fails to "allege or establish [RMP] violated applicable law, [PSC] rules or [RMP] tariffs."[18] RMP further argues that the PSC's October Order terminated RMP's authority to enroll Complainants, or any other customers, into the Transition Program after October 30, 2020.

In Complainants' Response, they insist that RMP's failure to advise them of the possibility that the Transition Program could be terminated constitutes a violation of the PSC's rules, administrative rules governing consumer sales practices, and federal law.

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[15] Complainants do not allege they were contractually obliged to proceed, explaining that "[u]ltimately, given the less than ideal choices available to [them] at the time, [they] decided to move forward with installing solar as [they] felt it was the lesser of the two choices." *Id.* at 5.

[16] *Id.*

[17] *Id.* at 6.

[18] Motion at 6.

4. Discussion, Findings, and Conclusions

As a general matter, insofar as Complainants ask the PSC to reconsider the effective date of our October Order, we decline to do so for the same reasons we discussed in denying USEA's Motion in the ECR Docket. Effectively, Complainants ask the PSC to grant an exception that would require RMP to compensate them at a rate in excess of what the October Order found to be just and reasonable. Such a result would be unfair to other customers, who ultimately bear such costs, and would directly contradict the 2017 Settlement and the PSC's order approving it.

The PSC appreciates that Complainants are frustrated their installer failed to submit an interconnection application in time to qualify for the Transition Program. Any customers that elect to install rooftop solar subsequent to the Transition Program's termination may be disappointed they did not enroll earlier to qualify for more favorable CG rates, just as informed Transition Program customers were likely disappointed they did not enroll in the original NM Program, which would have provided an even more favorable credit. Yet, this is not a justification for requiring other customers to continue to pay rates in excess of what we have found to be just and reasonable based on an extensive evidentiary record. As the PSC explained in its order denying USEA's Motion in the ECR Docket, "the [Transition Program] has been available to customers for over three years with a continuous stream of applicants" and "[w]henever it ends, that stream will be stopped, and those still upstream will be foreclosed."[19]

With respect to Complainants' specific allegations, Complainant argues that RMP had a duty to provide them with the following information and failed to do so: (1) the Transition

[19] ECR Docket, Order Denying USEA's Motion at 7.

Program would terminate on the date the PSC issued an order in the ECR Docket; (2) RMP was "actively seeking to change the net metering rate and had filed an application with the PSC to change the rates"; and (3) "hearings had recently concluded between 29 September to 6 October, 2020 and that a possible decision could be made very soon resulting in a change to export credits." Complainants also argue RMP should have updated its website with information regarding the October Order prior to November 25, 2020.

RMP confirms its records indicate "Mr. Jensen called in to [RMP]'s customer service center, but it does not appear that any of those calls were referred to the net metering department, which would indicate that customer generation was not the primary purpose of the call."[20]

We note at the outset that the 2017 Settlement, our order approving it, and the entirety of the ECR Docket and the preceding NM Docket, are publicly available on the PSC's website.[21] While customers may understandably have a difficult time navigating and understanding those legal filings, the ECR Docket and the preceding NM Docket received considerable media attention in local newspapers and industry publications that are readily accessible online.[22]

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[20] Motion at 4-5.

[21] Certain documents identified as confidential are exceptions.

[22] Local newspaper articles published in September 2020, for example, made patently clear that a hearing before the PSC was imminent to consider RMP's proposal to reduce the rate for CG. One of numerous examples is the *Salt Lake Tribune's* article published September 29, 2020, approximately one month before our October Order, with the heading "Future of Utah's rooftop solar industry at stake in utility rate case starting Tuesday." The article explains RMP "is seeking an 84% reduction" in the ECR. Quoting a solar advocate, the article further explains that "[i]f [RMP's] proposal is approved … [i]t would take up to 25 years … to pay back the upfront investment in solar panels. And that means many solar customers will never realize any savings over the life of their panels." As of the date of this order, the article is available at https://www.sltrib.com/news/environment/2020/09/29/future-utahs-rooftop/.

For context, it is important to understand that RMP is a regulated public utility. Changes to its tariff and accompanying rate schedules are not effective until filed and, in many circumstances, affirmatively approved by the PSC.[23] Here, after the PSC approved the 2017 Settlement, RMP submitted proposed tariff sheets to implement the Transition Program to the PSC for approval. All parties to the docket as well as any other interested person had an opportunity to provide input on those sheets before the PSC approved them. Numerous parties did so, including solar advocates, installers, and consumer advocates. As approved, the revised tariff explained the Transition Program would be available up to a certain cumulative cap, but it did not discuss the possibility the program would terminate on the date the PSC issued an order in the ECR Docket. Though there were multiple rounds of comments from stakeholders seeking to refine the tariff language, including solar advocates and installers, the PSC is not aware of any party having advocated for tariff language explaining the effect the ECR Docket might have on the Transition Program under the 2017 Settlement.

RMP's customer service representatives certainly have a responsibility to provide customers with accurate and thorough information pertaining to RMP's effective and approved tariff schedules. Absent a specific instruction from regulators, however, it is not reasonable to expect customer service representatives to advise customers as to the legal ramifications of

[23] *See, e.g.*, Utah Code Ann. §§ 54-3-3, 54-7-12. This requirement also largely addresses Complainants' concern that RMP's website did not immediately reflect the October Order. Per the October Order, RMP submitted proposed tariff sheets for approval in the ECR Docket on November 10, 2020. Parties and other interested persons then had an opportunity to comment on the proposed language, and the PSC later approved revised tariff sheets with additional corrections on November 25, 2020. According to Complainants' Response, RMP updated its website the same day.

positions RMP's legal department is advocating in regulatory proceedings. We are aware of no authority suggesting otherwise.

The instant scenario is illustrative of why this is so. RMP's NM Program and the credit it provides for CG exports have been the subject of considerable public controversy and media attention since, at least, 2014. Stakeholders have advocated vigorously on behalf of their divergent and sometimes competing interests in the ECR Docket. RMP had no way of knowing the outcome until our October Order issued, terminating the Transition Program.[24] Though the 2017 Settlement provided the Transition Program would end on the date an order issued in the ECR Docket, RMP could not responsibly advise customers as to how that order would affect the rates paid for CG nor know precisely when it would issue. Indeed, some parties advocated for a rate *higher* than Transition Program rates, and the ECR the PSC ultimately adopted is significantly higher than the rate RMP sought. Additionally, RMP could not know whether the PSC would interpret the Settlement to require termination on that date and ultimately enforce the requirement or extend the Transition Program as, for example, USEA advocated.

Moreover, though it is a peripheral issue, the Complaint makes clear Complainants did not rely on their alleged communications with RMP in ultimately choosing to proceed with installation of their rooftop solar panels. Complainants were not contractually obliged to proceed with solar installation after their installer informed them it had failed to submit an interconnection application in time to qualify for the Transition Program. Nevertheless,

[24] Though the PSC has approved tariff sheets reflecting the new ECR, the matter remains in a state of some legal flux as the PSC has granted limited rehearing on certain issues that may ultimately modify the amount of the ECR.

Complainants affirm they elected to proceed knowing the Transition Program had terminated and that they no longer qualified for the associated rates.[25]

In sum, we find and conclude Complainants have not alleged facts showing RMP violated any rule, statute, or tariff. Complainants do not allege that RMP provided them with information inconsistent with its approved tariff. Instead, Complainants are upset RMP did not advise them of the status and potential outcome of the ECR Docket. As discussed above, the PSC is aware of no authority imposing such a duty on RMP. Nevertheless, Complainants could have availed themselves of a wide range of public sources to better understand the contested regulatory proceeding that culminated in termination of the Transition Program. Their solar installer certainly could have done so and timely submitted an application on their behalf.[26]

RMP's Motion is granted and the Complaint is dismissed.

DATED at Salt Lake City, Utah, April 29, 2021.

/s/ Michael J. Hammer
Presiding Officer

[25] In citing numerous regulations and a federal law concerning consumer sales practices, Complainants fundamentally misapprehend the nature of the relationship between a utility and an owner of rooftop solar. When it enrolls a person with rooftop generation in a CG program, RMP is not selling the person a product or commodity, rather it is entering a relationship where the customer will, effectively, sell a commodity to the utility in exchange for credit. RMP did not seek to sell rooftop solar equipment to Complainants, their solar installation company did.

[26] RMP's representation that it received 622 interconnection applications on October 30, 2020, more than 10 times the average number it received over the prior six days, suggests other installers were aware of the situation's urgency and acted accordingly on behalf of their customers. *See* RMP's Motion at 7.

Approved and Confirmed April 29, 2021, as the Order of the Public Service Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#318509

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this written order by filing a request for review or rehearing with the PSC within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the PSC fails to grant a request for review or rehearing within 30 days after the filing of a request for review or rehearing, it is deemed denied. 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 April 29, 2021, a true and correct copy of the foregoing was served upon the following as indicated below:

By Email:

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