

[COMMUNITY]
ORDINANCE NO. _____

AN ORDINANCE OF [COMMUNITY] ENACTING TITLE ____, CHAPTER ____ TO THE
[COMMUNITY] CODE, COMMUNITY RENEWABLE ENERGY PROGRAM

Preamble

WHEREAS, in 2019, the Utah State Legislature enacted H.B. 411 that was codified at Utah Code Ann. §§ 54-17-901 to -909, and is known as the “Community Renewable Energy Act” (“Act”); and

WHEREAS, the Act authorizes the Utah Public Service Commission (“Commission”) to establish a community renewable energy program (“Program”) whereby towns, municipalities, and counties may cooperate with qualified utilities to provide electric energy for participating customers from renewable energy resources, in an amount that equals their annual consumption; and

WHEREAS, the Act provides that a customer of a qualified utility may be served by the Program if the town, municipality, or county (“Community”) in which the customer resides satisfies certain requirements, including:

(a) the Community must adopt a resolution no later than December 31, 2019, that states a goal of achieving an amount equivalent to 100% of the annual electric energy supply for participating customers from a renewable energy resource by 2030; and

(b) the Community must enter into an agreement with a qualified utility (“Utility Agreement”):

(i) stipulating to the payment to the qualified utility of the costs of:

(A) third-party expertise contracted for by the Division of Public Utilities and the Office of Consumer Services, for assistance with activities associated with initial approval of the Program; and

(B) providing notice to the Community’s customers as provided in the Act;

(ii) determining the obligation for the payment of any termination charges under the Act that are not paid by a participating customer and not included in participating customer rates; and

(iii) identifying any initially proposed replaced asset;

(c) the Community must, within ninety (90) days after the date of the Commission’s order approving the Program, adopt a local ordinance that:

- (i) establishes participation in the Program; and
 - (ii) is consistent with the terms of the Utility Agreement; and
- (d) the Community must comply with any other terms or conditions required by the Commission; and

WHEREAS, the Act further authorizes the Commission to adopt administrative rules to implement the Act and the Commission has adopted such rules as set forth in Utah Administrative Code R746-314-101 through -402 (“Rules”); and

WHEREAS, the Rules require that a customer of a qualified utility may be served by the Program if, in addition to the requirements of the Act, the Community in which the customer resides also adopts an agreement (“Governance Agreement”) with other eligible Communities to establish a decision-making process for Program design, resource solicitation, resource acquisition, and other Program issues and provides a means of ensuring that eligible Communities and those that become participating Communities will be able to reach a single joint decision on any necessary Program issues; and

WHEREAS, consistent with the requirements of the Act, on [DATE], [COMMUNITY] adopted Resolution No _____, which states a goal of achieving an amount equivalent to 100% of the annual electric energy supply for [NAME OF COMMUNITY’S] participating customers from a renewable energy resource by 2030; and

WHEREAS, consistent with the requirements of the Rule, [COMMUNITY] entered into a Governance Agreement with other eligible Communities, thereby becoming a member of the Community Renewable Energy Agency (“Agency”), which is authorized to make certain joint decisions on behalf of Communities that participate in the Program; and

WHEREAS, consistent with the requirements of the Act, [COMMUNITY] entered into a Utility Agreement with Rocky Mountain Power, a qualified utility under the Act, effective as of [DATE], which addresses the issues required by the Act; and

WHEREAS, consistent with the requirements of the Act, on [DATE] PacifiCorp filed an application with the Commission seeking approval of the Program and the Commission opened Docket No. [_____] to consider the application;

WHEREAS, consistent with the requirements of the Act, on [DATE] the Commission issued an order in Docket No. [_____] (“Commission Order”) approving the Program; and

WHEREAS, as contemplated in the Act, the governing body desires to adopt this ordinance that satisfies the requirement of the Act; and

WHEREAS, the [COMMUNITY]’s governing body desires to take actions which it has determined promotes the health, safety and welfare of the [COMMUNITY]’s residents; and

WHEREAS, [COMMUNITY COUNCIL/COMMISSION] has determined that adoption of this ordinance will enhance the economic well-being of the [COMMUNITY] and its residents through prudent management of the [COMMUNITY]'s financial resources; and

WHEREAS, [COMMUNITY COUNCIL/COMMISSION] has determined that adoption of this ordinance will help address concerns related to poor air quality and other environmental concerns due in part to the use of fossil fuels; and

WHEREAS, the [COMMUNITY COUNCIL/COMMISSION] finds that energy sources utilized by and within [COMMUNITY] therefore can impact public health, safety and welfare; and

WHEREAS, recent advances in energy technology have made renewable energy more economically viable than in the past and, in some cases, more cost-effective than traditional energy sources; and

WHEREAS, proximity to outdoor recreation is a key economic contributor to [COMMUNITY] and one which relies on preservation of the environment and protection of natural resources; and

WHEREAS, [COMMUNITY] and its residents have shown an interest in environmental stewardship through various initiatives and activities surrounding growth and development; and

WHEREAS, [include description of Participating Community's prior sustainability actions]; and

WHEREAS, [COMMUNITY COUNCIL/COMMISSION] believes that determining and undertaking further actions designed to reduce fossil fuel dependence while appropriately balancing financial stewardship and promoting economic growth is an important component of safeguarding public health, safety and welfare; and

WHEREAS, [COMMUNITY COUNCIL/COMMISSION] met in regular session on [_____], 2022 to, among other things, consider establishing renewable energy goals for [COMMUNITY]; and

NOW, THEREFORE, BE IT ORDAINED BY THE LEGISLATIVE BODY OF [COMMUNITY] AS FOLLOWS:

Section 1. Adoption. [COMMUNITY] Code, Title __, Chapter __, Community Renewable Energy Program, which is published as a code in book form, is adopted in accordance with Exhibit A herein, copies of which have been filed for use and examination in the Office of the [COMMUNITY CLERK/RECORDER] (the "Community Renewable Energy Program Ordinance").

Section 2. **Savings Clause.** In the event one or more of the provisions of this Community Renewable Energy Program Ordinance shall, for any reason, be held to be unenforceable or invalid in any respect under applicable laws, such unenforceability or invalidity shall not affect any other provision; and in such an event, this Community Renewable Energy Program Ordinance shall be construed as if such unenforceable or invalid provision had never been contained herein.

Section 3. **Effective Date.** This Community Renewable Energy Program Ordinance shall take effect upon publication by [COMMUNITY] in a newspaper of general circulation in [COMMUNITY], Utah.

APPROVED, ADOPTED, AND PASSED and ordered published by the [COMMUNITY COUNCIL/COMMISSION], this __ day of _____, 2022.

ATTEST:

[COMMUNITY COUNCIL/COMMISSION]

Name: _____
[COMMUNITY CLERK/RECORDER]

Name: _____
[COUNCIL/COMMISSION CHAIR]

APPROVED AS TO FORM:

VOTING OF [COUNCIL/COMMISSION]

Name: _____
[CITY/COUNTY ATTORNEY]

EXHIBIT A

TITLE ____

CHAPTER ____

COMMUNITY RENEWABLE ENERGY PROGRAM

SECTION 1. [COMMUNITY'S] PARTICIPATION IN COMMUNITY RENEWABLE ENERGY PROGRAM

1.1 [COMMUNITY] hereby establishes its participation in the Community Renewable Energy Program (“Program”) as approved by the Public Service Commission of Utah (“Commission”).

1.2 On [DATE], the Commission issued an order in Docket No. [_____] (“Commission Order”) approving the Program. The Commission Order is on file with the Commission. The Program’s rates, rules, and requirements are governed by the Commission Order, and may be modified from time to time by subsequent rules and orders adopted by the Commission. To the extent that the Commission Order or any subsequent rule or order adopted by the Commission contradicts any portion of this Title, the Commission order or rule or order adopted by the Commission shall govern.

1.3 ELIGIBLE CUSTOMERS. Pursuant to Utah Code § 54-17-905(5), residential customers participating in the net metering program under Utah Code Title 54, Chapter 15, Net Metering of Electricity, are not eligible to participate in the Program. All other retail electric customers of Rocky Mountain Power within the current and future boundaries of [COMMUNITY], including all residential, commercial, and industrial customers, are eligible to participate in the Program (“Eligible Customer”).

1.4 COMMENCEMENT DATE. The Program shall commence effective [DATE] (“Program Commencement Date”). Eligible Customers shall be enrolled in the Program if they receive the Notices identified in Section 2, below, and decline to opt out of participation in the Program by the date set forth in the Notices. Consistent with the Act and the Commission Order, the Notices shall be sent to each Eligible Customer before the commencement date that applies to each such customer (“Customer Commencement Date”), as set forth below.

1.4.1 For each Eligible Customer that continuously remains an Eligible Customer within [COMMUNITY] for at least 60 days prior to and through the Program Commencement Date, the Customer Commencement Date shall be the same as the Program Commencement Date.

1.4.2 For electric customers that become Eligible Customers within [COMMUNITY] after the Program Commencement Date (e.g., when a customer becomes a retail electric customer of Rocky Mountain Power

within the boundaries of [COMMUNITY] after the Program Commencement Date), the Customer Commencement Date shall be [] days after the customer becomes an Eligible Customer within [COMMUNITY].

SECTION 2. CUSTOMER PARTICIPATION IN COMMUNITY RENEWABLE ENERGY PROGRAM.

2.1 Each Eligible Customer shall be automatically enrolled in the Program unless the customer opts out of the Program prior to the customer’s Customer Commencement Date.

2.2 NOTICES. As set forth in the Act and the Commission Order, before any Eligible Customer becomes a participant in the Program, Rocky Mountain Power first shall deliver to each Eligible Customer notices (collectively, the “Notices”) containing content and in the form, manner, and delivery method as required by the Act and Commission Order and other orders and rules adopted by the Commission.

2.3. OPT-OUT. Each Eligible Customer may elect not to participate in the Program and to continue to pay applicable existing electric rates by giving notice to Rocky Mountain Power in the manner and within the time period set forth in the Notices.

2.3.1 FIRST OPT-OUT NOTICE. Rocky Mountain Power shall provide a First Opt-Out Notice, separate from standard monthly bills, to each Eligible Customer within [COMMUNITY], no earlier than sixty (60) days and no later than thirty (30) days before the Customer Commencement Date applicable to each customer. The First Opt-Out Notice shall, in all material respects, use the form and content of the First Opt-Out Notice as approved by the Commission.

2.3.2 SECOND OPT-OUT NOTICE. Rocky Mountain Power shall provide a Second Opt-Out Notice, separate from standard monthly bills, to each Eligible Customer within [COMMUNITY], at least fifteen (15) days after the First Opt-Out Notice was provided and at least seven (7) days before the Customer Commencement Date applicable to such customer. The Second Opt-Out Notice shall, in all material respects, use the form and content of the Second Opt-Out Notice as approved by the Commission.

2.3.3 Each Eligible Customer that receives the First Opt-Out Notice and the Second Opt-Out Notice as described herein and declines to opt out of the Program by the customer’s Customer Commencement Date will be enrolled in the Program.

2.4 CUSTOMER OPTION TO OPT IN TO PROGRAM. An Eligible Customer located within [COMMUNITY] that is not enrolled in the Program may at any time elect to participate in the Program by providing notice to Rocky Mountain Power in the form and content approved by the Commission. Following such notice to opt in to the Program, the customer will be enrolled in the Program starting with the billing period following the notice in which it is reasonably practicable for Rocky Mountain Power to enroll such customer. The reasonably

practicable billing period shall be based on when the notice was received from the customer and the customer’s billing cycle. Following enrollment in the Program, the customer shall be subject to all Program requirements, including exit notices and termination fees.

2.5 CUSTOMER OPTION TO EXIT PROGRAM. Customers that do not opt out of the Program by the Customer Commencement Date, or who opt in to the Program, may subsequently exit the Program by taking the steps described in the Commission Order.

SECTION 3. TERMINATION FEES

3.1 If a customer declines to opt out of the Program prior to the applicable Customer Commencement Date, but subsequently exits the Program, the exiting customer may be required to pay a termination fee, as set forth in this Section.

3.2 When applicable, the amount of the termination fee shall be based on the rate schedule of the exiting customer, is set forth in the Commission Order, and may be modified from time to time by subsequent orders of the Commission.

3.3 CIRCUMSTANCES IN WHICH TERMINATION FEE SHALL NOT APPLY: A Termination Fee shall not apply in the following circumstances:

- 3.3.1 Any customer that ceases to be an electric customer of Rocky Mountain Power;
- 3.3.2 Any customer that moves to a new location that is not within the boundaries of a community that participates in the Program;
- 3.3.3 Any customer that seeks protection through bankruptcy proceedings;
- 3.3.4 _____.

SECTION 4. ACQUISITION OF RENEWABLE ENERGY RESOURCES

4.1 For purposes of this section, “renewable energy resource” shall have the definition set forth in Utah Code § 54-17-902(14).

4.2 Rocky Mountain Power may adopt or procure one or more renewable energy resources to serve the needs and goals of the Program. The acquisition of any such renewable energy resource must follow solicitation application and evaluation criteria developed by Rocky Mountain Power and the Community Renewable Energy Agency, of which [COMMUNITY] is a member, and approved by the Commission.

4.3 Any renewable energy resource adopted or procured by Rocky Mountain Power to serve the needs and goals of the Program must be approved by the Commission based on a finding the same is reasonable and in the public interest.

4.3 The Commission shall determine the method of cost recovery for any renewable energy resource acquired to meet Program needs and goals, and the Commission’s determination regarding cost recovery may affect Program rates.

SECTION 5. PROGRAM RATES AND RATE ADJUSTMENT FILINGS

5.1 Program rates will be determined by the Commission.

5.2 The initial Program rates were determined by the Commission in the Commission Order.

5.3 Program rates may be adjusted by the Commission from time to time, consistent with the procedures set forth in the Commission Order for adjusting Program rates.

SECTION 6. UTILITY BILLING FOR PARTICIPATING CUSTOMERS

6.1 Rocky Mountain Power shall bill each Participating Customer on a monthly basis and shall:

6.1.1 include information in its monthly bills to participating customers identifying the Program cost; and

6.1.2 provide notice to participating customers of any change in rates for participation in the Program.

SECTION 7. [COMMUNITY] PARTICIPATION IN PROGRAM

7.1 [COMMUNITY] is, itself, a retail electric customer of Rocky Mountain Power and is an Eligible Customer and shall elect to participate in the Program.

7.2 Through its membership in the Community Renewable Energy Agency, [COMMUNITY] participated in the design and approval of the Program and shall participate in future decisions regarding renewable energy resource solicitation, renewable energy resource acquisition, and certain other Program issues.

7.3 Consistent with Utah Code § 54-17-903(2)(c), [COMMUNITY] entered into an agreement with Rocky Mountain Power regarding the facilitation of the Program (“Utility Agreement”). Pursuant to the Utility Agreement, [COMMUNITY] agreed as follows:

- 7.3.1 [COMMUNITY] agreed to pay its proportional costs of third-party expertise contracted for by the Division of Public Utilities and the Office of Consumer Services for assistance with activities associated with initial approval of the Program. [COMMUNITY’S] portion of these costs was determined based on a formula set by the Community Renewable Energy Agency;
- 7.3.2 [COMMUNITY] agreed to pay its proportional costs associated with Rocky Mountain Power providing the Notices to the [COMMUNITY’S] customers as discussed in Section 2, above;
- 7.3.3 [COMMUNITY] agreed that any termination charges that are not paid by a participating customer shall be included in participating customer rates and shall not be paid by [COMMUNITY];
- 7.3.4 [COMMUNITY] agreed that there shall be no initially proposed “replaced asset” as that term is defined by Utah Code § 54-17-902(15).

7.4 [COMMUNITY] shall not be obligated to pay any costs of the Program other than those costs that [COMMUNITY] has agreed to pay as set forth in the Utility Agreement and any costs that [COMMUNITY] will bear as an Eligible Customer that participates in the Program.