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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of Rocky Mountain Power's Proposed Revisions to Electric Service Schedule No. 37, Avoided Cost Purchases from Qualifying Facilities	**DOCKET NO. 14-035-T04** **Utah Clean Energy, SunEdison LLC, and Sustainable Power Group, LLC's Request for Agency Review, Reconsideration or Rehearing**

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I. INTRODUCTION

Pursuant to §§ 63G-4-301 and 54-7-15 of the Utah Code and § R746-100-11 of the Utah Administrative Code, Utah Clean Energy ("UCE"), SunEdison, LLC ("SunEdison") and Sustainable Power Group, LLC ("sPower") hereby request agency review, reconsideration or rehearing of the Commission's Order issued October 21, 2014 in Docket Nos. 14-035-55 and 14-035-T04 ("October 21 Order"), as set forth below. As explained further below, the grounds for review and the relief requested are as follows:

1. Wind and solar integration costs should not be included in Schedule 37 avoided cost pricing. The inclusion of these costs in Schedule 37 QF pricing is not supported by substantial evidence on the record, the Commission did not adequately explain its decision to include such costs, and the inclusion results in rates that are unjust, unreasonable and discriminatory against qualifying facilities ("QFs"), contrary to the Public Utility Regulatory Policy Act of 1978 ("PURPA"), federal regulations implementing PURPA and Utah Code Ann. §54-12-1 ("Utah-PURPA").

2. The capacity and energy payment option for Schedule 37 QFs should not have been eliminated. The Commission failed to adequately justify its decision to eliminate this option, explanations offered by parties lack an adequate evidentiary basis, and the resulting QF rates are not just and reasonable. Moreover, no adequate explanation has been provided for deviation from prior Commission orders on this issue.

3. The simple cycle combustion turbine ("SCCT") capacity cost component of Schedule 37 rates during the resource sufficiency period should not have been removed. Credible, uncontested evidence in the record demonstrates that doing so undercompensates Schedule 37 QFs for capacity, and therefore results in unjust, unreasonable and discriminatory rates for QFs under Schedule 37. Moreover, no adequate explanation has been provided for deviation from prior Commission orders on this issue.

4. Projected future carbon costs should not have been removed from the Company's official forward price curve and other model inputs. Such costs have been projected and used by the Company for several purposes for many years. Removal of projected future carbon costs renders avoided QF cost pricing unjust, unreasonable, discriminatory and inconsistent with the utility's other resource planning and decision-making criteria. In addition, no adequate explanation has been provided for deviation from prior Commission orders on this issue. Moreover, dicta in the October 21 Order regarding the EPA's proposed 111(d) carbon regulations should be removed or clarified to avoid any implication that projected future costs of complying with non-final EPA regulations are so uncertain or conjectural that they cannot properly be utilized for utility planning and cost projection purposes.

5. The Commission should stay the effective date of its October 21, 2014 decision until final resolution of these issues.

II. PROCEDURAL HISTORY AND BACKGROUND

On May 7, 2014, Rocky Mountain Power ("RMP," "Company" or "PacifiCorp") filed Advice No. 14-04, in Docket No. 14-035-T04, requesting approval of proposed revisions to Electric Service Schedule No. 37, Avoided Cost Purchases from Qualifying Facilities ("Schedule

37”). The Commission had granted a filing deadline extension for this filing, until May 7, in Docket No. 14-035-55.

Schedule 37 establishes “standard prices” for power purchases from Utah-located Qualifying Facilities (“QFs”): cogeneration facilities with a design capacity of 1,000 kilowatts (“kW”) or less and renewable energy facilities with a design capacity of 3,000 kW or less. Standard prices for small QFs are a requirement of the Federal Energy Regulatory Commission’s (“FERC”) regulations implementing the Public Utility Regulatory Policy Act of 1978 (“PURPA”).[1]

Docket No. 14-035-T04 is one of the most recent dockets in a long line of “avoided cost” pricing dockets conducted by this Commission since the early 1990s, pursuant to the Commission’s obligations to implement PURPA in Utah. In addition to PURPA and the FERC regulations implementing PURPA, this Commission is guided by Utah Code Ann. §54-12-1, which sets out Utah’s policy with regard to independent power generation.

On June 12 and June 26, 2014, SunEdison and UCE, respectively, filed timely petitions for leave to intervene in Docket No. 14-035-T04, which petitions were granted by Commission Orders dated July 2 and July 23, 2014, respectively. On July 11, the Company filed direct testimony in support of its proposed Schedule 37 pricing changes. The Division of Public Utilities (“Division”), the Office of Consumer Services (“Office”) and UCE filed direct testimony on August 12. The Company, Division, Office and UCE filed rebuttal testimony on August 29, while SunEdison LLC and Kennecott Utah Copper LLC/Tesoro Refining &

[1] 18 CFR §292.304(c).

Marketing Company LLC filed comments. The Commission held a hearing on September 16, 2014.

On October 21, 2014, the Commission issued a Report and Order in Docket Nos. 14-035-55 and 14-035-T04, stating:" We approve the five adjustments proposed by PacifiCorp and approve the Schedule 37 rates as filed. Our decision rests on the testimony and other evidence presented in this case by the Division and the Office, as well as PacifiCorp, that support PacifiCorp's proposed adjustments to the Schedule 37 method." (October 21 Order at 18).

UCE and SunEdison are intervenors in this docket. Moreover, SunEdison has 33 MW of signed Schedule 37 Purchase Power Agreements, with an additional 50 MW of project assets currently under development, that aspire to be certified as qualifying facilities and sell electricity to RMP at avoided cost rates. As such, SunEdison has a direct financial stake in this matter and the October 21 Order setting avoided cost rates.

sPower is a fast growing Independent Power Producer with corporate headquarters in Salt Lake City. sPower has been acquiring land control on several projects within the RMP franchise area in reliance on the previous reasonable Schedule 37 rates published by RMP. The recent changes in Schedule 37 rates juxtaposed against current costs to construct make it very difficult for any project to proceed. sPower has a large pecuniary interest in the results of this proceeding and in ensuring fair and legally defensible avoided cost rates.

III. ARGUMENT

A. Unsupported wind and solar integration costs should be excluded from Schedule 37 avoided cost pricing determinations.

1. The inclusion of wind and solar integration costs in Schedule 37 pricing is not supported by findings of fact based on evidence of record.

Section 63G-4-208 of the Utah Administrative Code—the statute outlining the obligations of a state agency when issuing an order pursuant to a formal adjudicative proceeding, such as this docket—requires that:

> (1) Within a reasonable time after the hearing, or after the filing of any posthearing documents permitted by the presiding officer, or within the time required by any applicable statute or rule of the agency, the presiding officer shall sign and issue an order that includes:
> (a) *a statement of the presiding officer's findings of fact based exclusively on the evidence of record in the adjudicative proceedings or on facts officially noted...*

Utah Admin. Code § 63G-4-208(1)(a) (emphasis added).

The October 21 Order does not include any findings of fact with regard to whether small wind and solar QFs impose integration costs at all, or to the same extent as large QFs.[2] However, by approving the Company's proposal to add Schedule 38 integration charges for Schedule 37 pricing purposes, the Commission implicitly found that small QFs impose integration costs to the same extent as large QFs. No record evidence supports such a finding. Given the lack of record evidence supporting integration charges for small QFs, , the Commission should exclude such costs from avoided cost pricing for Schedule 37 purposes.

a. There is no utility system cost data on the record supporting the proposed integration charges, nor is there evidence that such data was reviewed to the extent practicable before approving rates based thereon.

In determining avoided costs, electric utility system cost data must be reviewed by state regulators to the extent practicable. 18 CFR §292.304(e)(1). The utility has the burden of coming forward with justification for the data underpinning avoided costs pricing. 18 CFR

[2] Although Schedule 38 "large" QFs could be as small as 3.1 MW, in actuality, no Schedule 38 QFs that are smaller than 50 MW have been built. *See* Docket No. 14-035-T14, *Hearing Proceedings Transcript* (taken at the Public Service Commission on September 14, 3014) (hereinafter *Trans.*), page 18.

§292.302(e)(2). In testimony, the Company pointed to its wind integration study as applied to Schedule 38 large QFs and testified that it *believed* there was no difference in integration requirements related to the size or interconnection voltage of a QF resource.[3] The Division and the Office supported the Company's proposal to include integration costs without addressing or offering any cost data supporting the Company's assertions.

There is no evidence on the record that the Division, the Office or the Commission examined any utility system cost data in their reviews of the Company's proposed Schedule 37 integration charges. The Division's testimony relies on an *a priori* assumption that the utility's assumptions and beliefs were correct, but is not based on an evaluation of utility system cost data or other analysis. Without a showing that it was impracticable to do so, it is contrary to the state's obligations under FERC regulations implementing PURPA to include such charges.

The inclusion of integration charges in Schedule 37 pricing is not supported by evidence on the record. Furthermore, it was improper to rely on the Division's and the Office's untested support for the Company's proposal.

b. While the Company references a wind integration study in support of its proposal to include wind and solar integration charges in Schedule 37 pricing, there is no record evidence that solar resources impose integration costs on the Company.

The Company presented no evidence that small QFs cause the same integration costs as larger Schedule 38 QFs. The Company pointed to a wind integration study from another docket as justification for both wind and solar integration costs as applied to small QFs, many of which interconnect to the Company's system at distribution voltages. Not only is there no evidence of

[3] *October 21 Order*, page 5.

small solar resources imposing any integration costs whatsoever on RMP, there is no evidence that large-scale wind projects present an appropriate proxy for small-scale wind or solar projects for purposes of estimating alleged integration costs. As such, the proposed Schedule 37 integration costs are unsupported and should be rejected.

2. The October 21 Order contains no explanation of the reasons for including wind and solar integration costs in Schedule 37 pricing.

Section 63G-4-208 of the Utah Administrative Code requires that:

> (1) Within a reasonable time after the hearing, or after the filing of any posthearing documents permitted by the presiding officer, or within the time required by any applicable statute or rule of the agency, the presiding officer shall sign and issue an order that includes:
> …
> (c) *a statement of the reasons for the presiding officer's decision...*

Utah Admin. Code § 63G-4-208(1)(c) (emphasis added).

The *Discussions, Findings and Conclusions* portion of the Commission's October 21 Order states simply: "We conclude the proposed adjustments will maintain appropriate simplicity, improve consistency between the methods and produce reasonable avoided cost calculations. In addition, they are consistent with the ratepayer indifference objective."[4] This statement, as applied to the inclusion of integration costs, is an insufficient basis for inclusion of integration charges in avoided cost pricing for small QFs. Apart from summarizing parties' positions, the order is bereft of additional discussion or findings on this issue.

3. Without evidentiary justification, the inclusion of integration costs is discriminatory against Schedule 37 QFs and discourages QF development by artificially lowering prices.

a. Rates for purchases from QFs must not discriminate against QFs.

[4] *October 21 Order*, page 18.

Rates for purchases from QFs must be "just and reasonable to the electric consumer of the electric utility and in the public interest" and must "not discriminate against" QFs. 18 CFR §292.304(a). These FERC regulations are binding with respect to a state determination of avoided costs. The regulations do not require electric utilities to pay more than avoided costs for purchases, but neither may a rate for purchases from a QF be less than avoided cost absent a supported factual determination that a lower rate is non-discriminatory and sufficient to encourage cogeneration and small power production. 18 CFR §292.304(b). By including integration costs without evidentiary justification, the October 21 Order artificially reduced avoided cost pricing for QFs under Schedule 37. This reduction in avoided costs rates was not supported by a determination that such lower rates were non-discriminatory or sufficient to encourage small power production (QF development).

b. Utah state policy encourages the development of QF resources.

Section 54-21-1 of the Utah Code states:

> (1) The Legislature declares that in order to promote the more rapid development of new sources of electrical energy, to maintain the economic vitality of the state through the continuing production of goods and the employment of its people, and to promote the efficient utilization and distribution of energy, it is desirable and necessary to encourage independent energy producers to competitively develop sources of electric energy not otherwise available to Utah businesses, residences, and industries served by electrical corporations, and to remove unnecessary barriers to energy transactions involving independent energy producers and electrical corporations.
> (2) It is the policy of this state to encourage the development of independent and qualifying power production and cogeneration facilities, to promote a diverse array of economical and permanently sustainable energy resources in an environmentally acceptable manner, and to conserve our finite and expensive energy resources and provide for their most efficient and economic utilization.

Utah Code Ann. §54-12-1 (2014).

In addition to FERC regulations prohibiting discrimination against QF resources, it is the specific policy of the state of Utah to encourage QF development. Unjustified charges not based on evidence of record represent an unnecessary barrier to QF development that the Commission should not sanction.

B. A capacity plus energy payment option should be retained for Schedule 37 projects.

1. The October 21 order lacks findings of fact or explanations of the reasoning for eliminating the capacity and energy payment option or for deviating from prior Commission precedent.

As noted above, Section 63G-4-208 of the Utah Administrative Code requires “a statement of the presiding officer's findings of fact based exclusively on the evidence of record in the adjudicative proceedings or on facts officially noted … and (c) a statement of the reasons for the presiding officer's decision.” (Utah Admin. Code § 63G-4-208(1)(c) (2014)). The Commission approved the Company’s proposed Schedule 37 rates as filed, but did not include any discussions, findings or conclusions on the Company’s proposal to eliminate the capacity and energy payment option. In any event, the evidence of record on this issue lacks clarity and does not support elimination of this payment option.

2. Possible explanations for elimination of the capacity and energy payment option lack evidentiary support.

There is no evidence that the capacity and energy payment option, when adjusted for the capacity value of renewable resources, produces unreasonable avoided cost rates. All parties supported adjusting Schedule 37 pricing to account for the capacity value of renewable resources; nevertheless, no party attempted to calculate the capacity and energy payment option for renewable resources while also taking into consideration an adjustment for capacity value.

The Division and Office recommended elimination of the payment option without performing or updating calculations to reflect capacity contribution adjustments supported by all parties in the Docket.

Furthermore, it is not clear from the record whether or to what extent the Division made the correct distinction between "capacity factor" and "capacity value." As explained in the testimony of Sarah Wright, "Energy resources can be characterizes by both a capacity factor and a capacity value. The capacity factor is used to estimate the amount of energy produced by a resource, while the capacity value (or credit) is a reliability-based calculation that assigns a value to a resource based on its ability to reduce the probability of a loss of load event (LOLE) and maintain system reliability."[5] The Division's testimony is not reliable as a basis for eliminating the capacity and energy payment option.

Additionally, expressed concerns over slightly different avoided cost prices or administrative inefficiency are unsupported and unfounded. The record is clear that there is no fixed avoided cost target: prices are constantly in flux and updated frequently (Schedule 37 prices are updated at least once a year while Schedule 38 prices are updated four times a year).[6] Given that there is no sound record evidence supporting elimination of the capacity and energy payment option, and deviation from prior Commission precedent has not been adequately explained, this payment option should not have been eliminated.

C. Capacity payments based on the costs of a simple cycle combustion turbine ("SCCT") during the resource sufficiency period should be retained.

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[5] Docket No. 14-035-T04, *Direct Testimony of Sarah Wright for Utah Clean Energy* (August 12, 2014), lines 649-53.
[6] *Trans.*, pages 57-59.

1. Credible, uncontradicted evidence in the record demonstrates that removal of a capacity payment based on the costs of a SCCT during the resource sufficiency period will result in inadequate compensation for Schedule 37 QF capacity.

The Commission may not disregard "credible, uncontradicted evidence" in its decision-making. *See US W. Commc'ns, Inc. v. Pub. Serv. Comm'n of Utah*, 901 P.2d 270, 274 (Utah 1995). The Company, Division and Office argued that removing fractional SCCT capacity cost payments during the resource sufficiency period was necessary in order to promote "consistency" between the pricing methods under Schedule 37 and 38. However, there is clear, uncontradicted evidence that, due to inconsistencies that remain between the methods, Schedule 37 QFs are undercompensated for capacity relative to Schedule 38 QFs such that eliminating this payment results in unjust, unreasonable and discriminatory treatment of Schedule 37 QFs.

The October 21 Order explained that the elimination of SCCT costs from Schedule 37 prices was based, "at least in part, on our Schedule 38 Order that finds wholesale power purchased to meet capacity constraints already contains capacity value; therefore, adding the SCCT value to the wholesale market price is excessive."[7] However, the record in this docket is clear that Schedule 38 pricing, which is based on specific resource attributes and supply curves, is able to accurately reflect displaced wholesale market purchases (and associated avoided capacity costs) much more than Schedule 37 prices, which are based on a modeled flat decrement to load.[8] For example, at the hearing, the Division's witness acknowledged that Schedule 37 QFs are not compensated in the same way or to the same extent as Schedule 38

[7] *October 21 Order*, pages 18-19.
[8] *Trans.*, pages 43-47.

QFs.[9] Therefore, the conclusion that compensation based on SCCT capacity is excessive is contradicted by the record.

2. Rates for purchases from QFs may not discriminate against QFs.

Rates for purchases from QFs must be "just and reasonable to the electric consumer of the electric utility and in the public interest" and must "not discriminate against" QFs. 18 CFR §292.304(a). QF rates may not be less than avoided cost without a specific determination that the lower rate is non-discriminatory and is sufficient to encourage cogeneration and small power production. 18 CFR §292.304(b). Changes to Schedule 37 capacity pricing proposed by the Company violate these requirements and Utah policy. The approved Schedule 37 rates discriminate against small QFs relative to their Schedule 38 counterparts. There was no finding that such lower rate was non-discriminatory, was sufficient to encourage QF development or was otherwise consistent with Utah Code Ann. §54-12-1; nor is there evidence on the record to support any such findings).

a. Avoiding the burden of negotiating a contract is not a sufficient justification for reducing avoided cost rates for Schedule 37 QFs.

18 CFR §292.304(e) lists the factors to be considered when setting avoided cost rates. The cost or burden of negotiating a contract is not among those considerations. Nevertheless, the Division argued that it did not consider Schedule 37's under-compensation relative to Schedule 38 to be discriminatory because Schedule 37 allows QFs to avoid the contract negotiation process. This consideration is not relevant to a calculation of avoided cost prices and any reliance upon it is erroneous and unjustified.

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[9] *Id.*

b. Consistency with Schedule 38 for its own sake is an improper basis for setting Schedule 37 avoided cost rates.

Rates for purchases from QFs must not discriminate against QFs. 18 CFR §292.304(a). If setting Schedule 37 rates to be consistent with Schedule 38 rates results in rates that undercompensate Schedule 37 QFs, then it is improper for the Commission to utilize consistency with Schedule 38 as its sole basis for establishing a Schedule 37 pricing method. On cross examination, the Division's witness acknowledged that ratepayers are not indifferent, and are in fact harmed, if avoided costs rates are set too low to allow QF projects to be built.[10] For almost 20 years this Commission has had two separate pricing methods for QF projects under Schedules 37 and 38, each of which was approved based on evidence presented in appropriate dockets. Theoretical (not actual) consistency between Schedule 37 and 38 pricing methods, for its own sake, is not an evidentiary basis for setting avoided cost rates. The October 21 Order lacks a sufficient basis for deviation from prior Commission precedent on this issue.

D. Projected carbon ("CO2") costs should not be removed from the Official Forward Price Curve ("OFPC") or other model inputs.

1. Consideration of a projected carbon cost as a "carbon tax" is not supported by the record.

The October 21 Order equates projections of future *carbon costs* that have been used for many years for avoided cost pricing purposes with a legislatively enacted *carbon tax*. Specifically, the order explained that exclusion of "possible CO2 taxes from the OFPC for electricity" was because "no such tax exists and attempts at legislation to implement this tax

[10] *Trans*., pages 49-50.

have failed."[11] Further, the Commission stated, "Though a possibility, it is highly uncertain whether a tax will be imposed in the 20-year planning horizon, let alone what the rate of such a tax might be."[12]

Abundant record evidence demonstrates that PacifiCorp uses a carbon "tax" for resource planning and avoided cost pricing purposes as a *proxy* for expected future costs associated with carbon, however those costs may be enacted, implemented or incurred. In direct testimony, for example, the Company explained that the "tax" was used to reflect compliance costs of either legislation or regulation.[13] And during the hearing, Company Witness Duvall explained, "[I]t's represented in the models as a tax, but I think it is to capture the impacts part of the future from a planning perspective."[14] The Commission may not disregard "credible, uncontradicted evidence" in its decision-making. *See US W. Commc'ns, Inc. v. Pub. Serv. Comm'n of Utah*, 901 P.2d 270, 274 (Utah 1995). There is no support in the record for a finding that RMP is expected to incur absolutely no future carbon-related costs during the 20 year period at issue, yet that it precisely the effect of removing all projections of future carbon costs from the model as sanctioned by the October 21 Order. The Company expects to incur carbon-related costs, and has used and continues to use various projections of such costs in its planning and modeling.

2. The exclusion of carbon costs is discriminatory and results in rates for purchase that are not just and reasonable or in the public interest.

The FERC regulations implementing PURPA require that rates for purchases from QFs shall "(i) Be just and reasonable to the electric consumer of the electric utility and in the public

[11] *October 21 Order*, page 19.
[12] *October 21 Order*, pages 19-20.
[13] Docket No. 14-035-T04, *Direct Testimony of Gregory N. Duvall for RMP* (July 11, 2014), lines 272-97.
[14] *Trans.*, page 24.

interest; and (ii) Not discriminate against qualifying cogeneration and small power production facilities." 18 CFR §292.304. Moreover, this Commission has held that "Avoided Cost should be determined in a manner consistent with the Company's Integrated Resource Plan."[15] Nevertheless, the October 21 Order singles out QFs, among all utility resource options, to be treated in a manner inconsistent with the utility's integrated resource planning by eliminating projections or consideration of future carbon costs.

a. It is discriminatory and contrary to the public interest to allow use of a carbon price for all resource decision-making except QF pricing.

It is the Company's job to justify its electric utility cost data for purposes of setting avoided costs. *See* 18 CFR §292.302(e). Nevertheless, instead of supporting its electric utility cost data, the Company's arguments undermine all of the Company's cost, pricing and resource assumptions and decisions. For example, in rebuttal testimony, the Company argued that its IRP risk assumptions regarding a future CO2 "tax" are only estimates of possible future costs and therefore should not be included in avoided cost calculations—calculations that result in customers paying actual dollars.[16] This is a perplexing argument since virtually all of the assumptions used in the Company's 20-year planning process are estimates of "possible future costs," and since all of the Company's resource decisions, based on estimates and assumptions, result in customers paying actual dollars. Indeed, by the standard of the October 21 Order, such

[15] *In the Matter of Analysis of an Integrated Resource Plan for* PacifiCorp, Docket No. 90-2035-01 Report and Order on Standards and Guidelines (Issued June 18, 1992), page 18. "The Commission finds that consistency between the Company's IRP and its avoided costs is necessary for both internal consistency of the IRP and for an accurate measure of avoided costs." *Id.* at 18-19.
[16] Docket No. 14-035-T04, *Rebuttal Testimony of Gregory N. Duvall for RMP* (August 29, 2014), lines 104-15.

future costs for nearly all pricing inputs and the methods to invest or make planning and compliance decisions around them are at this point "conjecture."[17]

For integrated resource planning, for avoided cost pricing and for other future-looking planning purposes, the Company must project costs out for as long as twenty years. All of these pricing inputs are assumptions about possible future costs, not just carbon costs. For example, "The Company's OFPC consists of available market quotes for the first 72 months, a blend of market quotes and modeled market prices for 12 months, and modeled prices thereafter. The blend of modeled prices and market quotes occurs during 2021; consequently, adjusting the modeled prices beginning in 2022 also impacts the blended prices in 2021."[18] The Company's modeled market prices begin in the same year as its assumed carbon price. Both represent the Company's best business judgment about the most likely future scenario that will unfold in 2020 and beyond, and ultimately what future costs will likely impact utility costs. That is presumably why the Commission relies upon it. For planning purposes and resource decision-making purposes the Company also estimates resource capital costs, fuel costs, gas prices, heat rates and O&M costs, among other costs.[19] There is no claim that can reasonably be made or supported that complete removal of all such costs by the Company would represent the best, most up-to-date cost projections. It is contrary to reason and evidence to single out carbon costs to remove from consideration solely for avoided costs purposes, when carbon cost considerations are and must be utilized in other aspects of utility planning and decision-making.

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[17] October 21 Order, pg. 20.
[18] Docket No. 14-035-T04, *Direct Testimony of Gregory N. Duvall for RMP* (July 11, 2014), footnote 4.
[19] *Trans.*, pages 16-17.

It is discriminatory to eliminate from consideration for QF pricing purposes a factor that is relevant in all other resource planning and acquisition decision-making. In the hearing, Company Witness Duvall acknowledged that environmental compliance costs and carbon price projections are used to justify large capital expenditures in pollution control equipment: "[the Company] uses the IRP models, which include those assumptions."[20]

The Company makes numerous long-term resource decisions and expenditures,-- with the sole exception of QF prices as a result of the 2014 Order -- based on its resource planning assumptions, which represent the Company's assessment and evaluation of future costs. It is discriminatory to exclude future carbon cost assumptions for QFs only. Moreover, the October 21 Order contains no finding that the resulting rates are just and reasonable, in the public interest, and non-discriminatory to the QF. Nor could the Order properly do so without including the best current projection of future carbons costs.

b. Renewable Energy Certificates ("RECs") do not compensate QFs for avoided carbon costs or other environmental compliance costs.

Future costs associated with complying with environmental regulations or a legislatively enacted carbon tax are actual costs that the utility and ratepayers will incur. RECs do not represent compensation for avoided environmental compliance costs. RECs are a creation of state law, a distinct commodity associated with renewable electricity generation that may be unbundled from power generation and sold separately. *In the Matter of the Application of Rocky Mountain Power for Approval of Changes to Renewable Avoided Cost Methodology for*

[20] *Id.* at 17.

Qualifying Facilities Projects Larger than Three Megawatts, Docket No. 12-035-100 (Order on Phase II Issues, August 16, 2013).

It is not clear to what extent the Commission may have relied upon an argument that QFs are adequately compensated for "environmental attributes" through RECs, as offered by the Office in its rebuttal testimony;[21] however, there is no link between avoided environmental compliance costs for avoided cost pricing purposes and RECs, and Commission precedent is clear that RECs are in no way compensated for through avoided cost pricing. The Office's effort to conflate RECs and environmental compliance is unavailing and cannot properly be relied upon.

c. It is contrary to the Utah public interest to set QF prices so artificially low that even cost-effective QF projects cannot be built.

It is the policy of the State of Utah to encourage small power production and cogeneration projects (QF development) in order to promote a diverse array of economical and permanently sustainable energy resources in an environmentally acceptable manner. Utah Code Ann. §54-12-1. PURPA and Utah-PURPA provide Utah with its best opportunity for diversifying its electricity resource mix in a cost-effective, risk-free way. However, if QF rates are set artificially low, even cost-effective QF resources will not be built, Utah policy will be thwarted and Utah ratepayers will not receive the benefits of long term, fixed-price power purchase agreements with pollution-free, renewable resources. Such a scenario is contrary to the public interest. The October 21Order is not in the public interest: it is contrary to Utah law and

[21] Docket No. 14-035-T04, *Rebuttal Testimony of Bela Vastag for the Office* (August 29, 2014), lines 119-22.

harmful to ratepayers who will be deprived of the benefits of risk mitigating, portfolio diversifying, low cost, pollution-free renewable resources.

3. Dicta regarding proposed EPA Regulations should be eliminated or clarified.

The only evidence in the record of RMP best estimate of expected future carbon costs is its "carbon tax" proxy. Although limited evidence was offered regarding the EPA's recent proposed Section 111(d) carbon regulations, the record contains no projections of the likely cost impacts of such regulations. The October 21 Order addresses the proposed carbon regulations in the following dicta:

> Potential compliance strategies are only in the initial stages of exploration. Any associated costs are conjecture at this stage. We will continue to examine the issue of possible CO2 mitigation costs as developments relative to the proposed regulations ensue.

October 21 Order at 2014. This language -- which is not necessary to a decision to eliminate "carbon tax" projections from avoided cost calculations -- should be stricken or clarified in order to ensure that it is not interpreted to preclude consideration of cost projections for 111(d) compliance in other contexts, such as resource planning and other or future avoided cost dockets.

RMP and other utilities routinely estimate and project compliance costs of regulations proposed by or anticipated from the EPA and other governmental agencies before they become final. Indeed, failure to do so would be imprudent and inconsistent with reasonable utility planning. There is no evidence in the record in this docket regarding such issues, but the dicta cited above could be read in a manner that could thwart rational resource planning and cost projections. This dicta should therefore be stricken, or the Commission should clarify that it its

order does not preclude or prejudge the use of cost projections for anticipated or future regulations in other dockets or other contexts.

IV. Conclusion

Utah Clean Energy, SunEdison and Sustainable Power Group respectfully urge this Commission to reconsider its *October 21 Order* in Docket No. 14-035-T04, consistent with the foregoing.

Dated this 20th day of November, 2014

RESPECTFULLY SUBMITTED,

Utah Clean Energy

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DOCKET NO. 14-035-T04

CERTIFICATE OF SERVICE

I CERTIFY that on the 20th day of November, 2014, a true and correct copy of the foregoing was delivered upon the following as indicated below:

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