JUSTIN C. JETTER (#13257)
PATRICIA E. SCHMID (#4908)
Assistant Attorney Generals
Counsel for the DIVISION OF PUBLIC UTILITIES
SEAN D. REYES (#7969)
Attorney General of Utah
160 E 300 S, 5th Floor
P.O. Box 140857
Salt Lake City, UT 84114-0857
Telephone (801) 366-0335
jjetter@utah.gov

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF ROCKY MOUNTAIN POWER'S SCHEDULE NO. 37, AVOIDED COST PURCHASES FROM QUALIFYING FACILITIES **IN THE MATTER OF ROCKY MOUNTAIN POWER'S PROPOSED REVISIONS TO ELECTRIC SERVICE SCHEDULE NO. 37, AVOIDED COST PURCHASES FROM QUALIFYING FACILITIES**	Docket No. 14-035-55 Docket No. 14-035-T04 **DIVISION OF PUBULIC UTILITIES' REPSPONSE TO REQUEST FOR AGENCY REVIEW, RECONSIDERATION AND REHEARING**

Pursuant to Utah Code Ann. §§ 54-4a-1, 54-7-15, and 63G-4-301 and Utah Administrative Code R746-100-11, The Utah Division of Public Utilities ("Division") hereby responds to the Request for Agency Review, Reconsideration or Rehearing filed by Utah Clean Energy, SunEdison LLC, and Sustainable Power Group, LLC ("Petitioners") with the Public Service Commission of Utah ("Commission") on November 20, 2014 ("Request"). The Requesting Parties seek reconsideration of the Commission order issued in this docket on October 21, 2014 ("Order"). It may be appropriate for the Commission to supplement the Order with additional explanation and analysis. If it chooses to do so the Commission should reject the request to modify or reverse its ultimate findings because they are based on sufficient evidence in the record.

I. Introduction

The Petitioners challenge four specific parts of the Order. They challenge the inclusion of integration costs for wind and solar to match those in Schedule 38, the elimination of the capacity plus energy payment option for pricing, the elimination of capacity payments for a SCCT during the resource sufficiency period and the removal of carbon costs from the pricing calculation. The Petitioners assert that the Commission failed to adequately explain its findings of fact under the Utah Administrative Procedures Act, that insufficient evidence exists on the record to support the findings, and that the result is discriminatory against Schedule 37 QFs. This Reply addresses primarily to two distinct issues; the sufficiency of the Order and the sufficiency of the evidence upon which the Order was based with respect to each of the challenged parts of the Order.

II. Discussion

Utah Code Ann. § 63G-4-208(1) requires that the Commission's order, among other things, include 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." While the required findings of fact may be brief, a "rehearsal of contradictory evidence does not constitute findings of fact" *Adams v. Bd. of Review of Indus. Comm'n,* 821 P.2d 1, 6 (Utah Ct. App. 1991). Instead the findings must be sufficiently detailed to disclose the steps by which the ultimate factual conclusions are reached. *Id*. This does not require a step by step analysis, but merely that the Order is sufficiently detailed that it "sufficiently disclosed the logical process employed." *Commercial Carriers v. Indus. Comm'n of Utah*, 888 P.2d 707, 711 (Utah Ct. App. 1994). To avoid legal jeopardy, the Order would benefit from additional explanation by the Commission of the facts it relied upon in support and the manner in which those facts were applied.

The evidence on the record in this docket is substantial and sufficient to support each challenged conclusion in the Order. "'Substantial evidence' is that quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion." *First Nat. Bank of Boston v. Cnty. Bd. of Equalization of Salt Lake Cnty.,* 799 P.2d 1163, 1165 (Utah 1990). In the instant case the reasonable mind is that of the Commission. "The presiding officer may use the presiding officer's experience, technical competence, and specialized knowledge to evaluate the evidence." Utah Code Ann. § 63G-4-208(2). In setting rates "It is the province of the [agency]… to resolve conflicting evidence, and where inconsistent inferences can be drawn from the same evidence, it is for the [agency] to draw the inferences." *Commercial Carriers v. Indus. Comm'n of Utah*, 888 P.2d 707, 712 (Utah Ct. App. 1994) (citing to *Grace Drilling Co. v. Bd. of Review of Indus. Comm'n of Utah*, 776 P.2d 63, 68 (Utah Ct. App. 1989)). Therefore there must be sufficient evidence to convince the Commission with its specialized knowledge and expertise. That standard has been met.

A. Integration Costs

The Order including integration costs for wind and solar is supported by adequate evidence on the record. The Petitioners argument that the evidence is insufficient rests on the premise that the Commission cannot find the Schedule 37 generators are analogous to Schedule 38 customers for the purpose of integration costs because there is not a specific study of the schedule 37 customers. Data analysis is not the only type of evidence that may be considered. The Commission may also rely upon expert witness testimony and its own knowledge and expertise.

Prefiled and live expert witness testimony is on the record in this docket that Schedule 37 QFs impose similar integration costs to Schedule 38 QFs and therefore should be subject to the

same costs. For example the integration costs proposed by the Company were included from its initial filing found in Exhibit A on Tab 12 and reflect those that were the result of the 12-035-100 docket. The Commission has knowledge of the 12-035-100 docket and it is referenced extensively throughout the testimony of expert witnesses. There was expert witness testimony that "there is no reason to believe that there's a difference in integration costs, integration requirements between transmission and distribution voltage levels." *Trans.,* p. 11-12. *See also Rebuttal Testomony of Gregory Duval*, at p. 4-5. This is not intended to be a comprehensive review of evidence on this point, merely a demonstrative example of expert testimony on the record supporting application of integration costs to Schedule 37 at the same rates as Schedule 38. This evidence is substantial and sufficient to provide the Commission a factual basis upon which it could reasonably determine that integration costs should be imposed at the same level as those for Schedule 38 customers.

After reaching the conclusion that the evidence is insufficient the Petitioners next claim that applying integration costs – the same integration costs that would apply to a 3.01MW project - to a 2.99MW project is discriminatory against Schedule 37 QFs. This application of similar costs to two classes of QFs that are similar in nature is within the discretion of the Commission if it finds that doing so will result in accurate avoided costs based on the facts presented.

B. Capacity Plus Energy Payment

The Petitioners claim that the evidence does not support the elimination of the capacity plus energy payment option. Like integration cost evidence, there is substantial evidence on the record regarding elimination of the capacity plus energy payment option. *See ex. Trans.* at p. 13, 52 -53, 58-60, 80-83. This testimony alone is sufficient for the Commission to reach the conclusion that two pricing options would result in different rates. Other rate payers cannot be

indifferent to two different QF prices. The decision to simplify Schedule 37 to a single rate is a policy choice within the discretion of the Commission. No further facts are necessary to eliminate the capacity plus energy payment option.

C. Capacity Payments

Petitioners assert that there exists "credible, uncontradicted evidence" in the record that Schedule 37 QFs are undercompensated for capacity relative to Schedule 38. In support of this theory Petitioners rely on a misinterpretation of the testimony of Division witness Dr. Abdulle. The Request states that "the Division witness [Dr. Abdulle] acknowledged that Schedule 37 QFs are not compensated the same way or to the same extent as Schedule 38 QFs. Therefore, the conclusion that compensation based on SCCT capacity is excessive is contradicted by the record." *Request* at p. 14-15. First and foremost, the jump from not being compensated in the same way to a conclusion that payment for costs known to not be avoided is difficult to make. The two issues are neither mutually exclusive nor inherently connected. There is no evidence whatsoever suggesting an SCCT is avoided by Schedule 37 QFs during the sufficiency period. Paying for avoided cost based on costs that are not avoided is prohibited by PURPA and defies logic.

Second, a complete reading of all of Dr. Abdulle's testimony in context makes clear that his expert opinion is that Schedule 37 QFs are "not going to be undercompensated." *Trans.* at p. 47. He did not agree that simplified pricing undercompensates the small QFs nor did he testify that eliminating a capacity payment for a SCCT during the sufficiency period would undercompensate small QFs. The claim that evidence to the contrary is uncontroverted is not accurate.

The Petitioners further misunderstand the testimony of Dr. Abdulle as it relates to transaction costs. The assertion is essentially that Dr. Abdulle, in response to a question by Ms. Hayes, stated that because Schedule 37 reduces transaction costs, the capacity payments during the sufficiency period would otherwise be appropriate but are offset by the reduced transaction costs. Taken in full context, that is not Dr. Abdulle's testimony. *See Trans.* at p. 41-47 attached as Appendix 1. Ms. Hayes asked a series of questions relating to whether individual small QFs might have different characteristics. *Id.* at 44. Dr. Abdulle testified that Schedule 37 does not take into account unique characteristics of each individual small QF and that the savings in reduced transaction costs is a benefit. Then Dr. Abdulle further testified that the small QFs are not undercompensated. The Commission should recognize there are two distinct issues: capacity payment during the sufficiency period and the tradeoff between accuracy of individualized pricing and transaction costs. The elimination of the capacity payment during the sufficiency period is not offset by the reduced transaction cost. The reduced transaction costs do offset the variation from individualized pricing.

III. Conclusion

The Commission Order would benefit from additional clarification regarding the fact findings. The Evidence on the record is substantial and sufficient to provide the basis for the Order. Therefore the Commission should clarify its findings of fact and deny the request to modify the results of the Order.

Submitted this 5th day of December, 2014.

/s/ Justin C. Jetter

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