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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of Glen Canyon Solar A, LLC and Glen Canyon Solar B, LLC's Request for Agency Action to Adjudicate Rights and Obligations under PURPA, Schedule 38 and Power Purchase Agreements with Rocky Mountain Power	Docket No. 17-035-36

GLEN CANYON SOLAR'S RESPONSE TO ROCKY MOUNTAIN POWER'S MOTION TO DISMISS GLEN CANYON SOLAR A, LLC AND GLEN CANYON SOLAR B, LLC'S REQUEST FOR AGENCY ACTION

INTRODUCTION

Glen Canyon Solar A, LLC and Glen Canyon Solar B, LLC (collectively, "**Glen Canyon Solar**") respectfully submit this Response to the Motion to Dismiss (**"Motion"**) filed July 14, 2017 by PacifiCorp doing business as Rocky Mountain Power (**"RMP"**). As set forth in more detail below, RMP's Motion should be denied for each of the following reasons: (1) the Public Service Commission of Utah (**"Commission"**) has jurisdiction to provide the narrow remedies sought by Glen Canyon Solar—primarily to require RMP, which is clearly under its jurisdiction—to communicate certain information to the transmission provider, and (2) Glen

Canyon Solar's request is ripe because improper delays in the process of communicating the necessary information to facilitate proper interconnection studies would threaten the viability of Glen Canyon Solar's QF projects and its ability to perform under the Commission-jurisdictional PPA.

In addition, RMP's Motion inappropriately asks this Commission to resolve factual disputes in its favor and then asks the Commission to reach legal conclusions based on RMP's preferred resolution of those factual disputes. In its Motion, RMP acknowledges that this Commission must accept as true all allegations in Glen Canyon Solar's Request for Agency Action (**"Request"**) and must consider all reasonable inferences in the light most favorable to Glen Canyon Solar.[1] Despite this acknowledgement, RMP asserts numerous factual and legal disputes that are not relevant to, and cannot be resolved based on, RMP's Motion. RMP's Motion includes numerous legal arguments that are highly disputed by Glen Canyon Solar. For example, RMP asserts disputed arguments regarding Network Resource (NR) Interconnections and Energy Resource (ER) Interconnections, "deliverability" issues, and different types of transmission and interconnection service.[2] RMP then draws unsupported and contested legal conclusions based on those contested arguments, such as assertions as to the type of interconnection service or studies required for a QF,[3] and what network upgrade costs can properly be included as "interconnection costs".[4] Glen Canyon Solar strongly contests RMP's

[1] *See* RMP Motion at 6 ("When considering a motion to dismiss and determining the fact needed to establish jurisdiction, the Commission 'must accept the factual allegations in the complaint as true and consider all reasonable inference[s] to be drawn from those facts in a light most favorable to the plaintiff.'" (quoting *Ho v. Jim's Enters.*, 29 P.3d 633 at 6 (Utah 2001)).
[2] *See, e.g.*, RMP Motion to Dismiss at 10-15.
[3] *Id*. at 14.
[4] *Id*. at 15.

legal (and factual) claims and arguments, but will not address them at length here because they were not (and cannot properly be) raised for resolution in RMP's Motion—which challenges this Commission's jurisdiction to address the dispute and cannot result in a ruling on the merits. RMP's Motion is a facial challenge to the competency of the Commission to adjudicate disputes of this type, and a challenge to the Commission's jurisdiction to resolve such disputes now. This response will thus focus on the issues properly before the Commission for resolution.[5]

In addition to the fact that RMP's Motion is based on irrelevant and unsupported arguments, it is also grounded in a mischaracterization of the relief that Glen Canyon Solar seeks in its Request. Glen Canyon Solar is asking only that the Commission require RMP—not PacifiCorp's transmission function—to take limited actions. The requested relief is all within the Commission's jurisdiction and is designed to avoid factually erroneous and potentially costly determinations that unnecessary network upgrades should be required and assessed as part of interconnection costs. As set forth below, this Commission has jurisdiction over RMP, over RMP's compliance with PURPA, and over RMP's QF interconnections, including interconnection studies and assessment of interconnection costs. Glen Canyon Solar's Request invokes this jurisdiction by asking the Commission to address disputes that relate to *interconnection studies* for the Glen Canyon Solar projects. PacifiCorp Transmission Services (**"PacTrans"**) has made it clear that the interconnection studies for the Glen Canyon Solar QF projects will not study the use of RMP's existing transmission rights and resource re-dispatch options and the resulting potential to avoid unnecessary Network Upgrades, absent further

[5] Arguments that rely in any way on factual allegations extraneous to the face of Glen Canyon Solar's Application, whether disputed or undisputed, must be addressed on the merits at a hearing. Similarly, RMP's facial challenge to the competency and jurisdiction of this Commission does not provide a proper procedural basis for resolution of other legal disputes.

communication from RMP. Glen Canyon Solar maintains that a proper interconnection study can be completed ***only*** if RMP provides PacTrans the required communication/information. The Commission clearly has broad powers to address this dispute between the parties relating solely to information to be provided by RMP to PacTrans as part of a proper interconnection study —a study as to which RMP has acknowledged this Commission's jurisdiction.

Moreover, the disputes between the parties are fully ripe for review. The interconnection studies regarding the Glen Canyon Solar projects are currently pending and PacTrans has informed Glen Canyon Solar that its interconnection studies will not take into account the use of RMP's existing transmission rights and resource re-dispatch options absent a request from RMP that it do so. This Commission need not, and clearly should not, wait for PacTrans to perform improper interconnection studies before adjudicating this dispute, which relates specifically to what information or requests RMP should provide PacTrans to ensure a proper interconnection study. The parties have an actual disagreement and imminent dispute over what information should be supplied to ensure a proper and meaningful interconnection study for the Glen Canyon Solar QF projects, and the matter is thus ripe for Commission review.

STANDARD OF REVIEW

Rocky Mountain Power's Motion seeks dismissal of Glen Canyon Solar's Request on the grounds that this Commission lacks subject matter jurisdiction over this matter.[6] "Subject matter jurisdiction is the authority and competency of the court to decide the case." *State Dept. of Soc. Svcs. v. Vijil*, 784 P.2d 1130, 1132 (Utah 1989) (citing 5 C. Wright & A. Miller, *Federal Practice & Procedure* § 1350 (1969)). "Usually, in order to challenge subject matter

[6] *See* RMP Motion at 6 (asserting in "Legal Framework" Section that Commission lacks subject matter jurisdiction and providing standard of review for motion on that grounds).

jurisdiction, [a party is] required to challenge the authority of the court to hear the underlying case." *Johnson v. Johnson*, 2010 UT 28, ¶ 8, 234 P.3d 1100 (internal quotation marks omitted). "Where the court has jurisdiction over the class of case involved, judgment is not void on the ground that the right involved in the suit did not embrace the relief granted." *Id.*, ¶ 9 (quoting *Perry v. McLaughlin*, 754 P.2d 679, 682 (Utah Ct. App. 1988) (distinguishing between the power of the court to address the dispute and its power to grant the requested relief). "Rather, the concept of subject matter jurisdiction relates to the relationship between the claim and the forum that allows for the exercise of jurisdiction." *Id.* ¶ 9 (internal quotation marks omitted). "For this reason, most of our cases that have addressed subject matter jurisdiction have considered the authority of the court to adjudicate a class of cases, rather than the specifics of an individual case." *Id.*, ¶ 10.

In *Johnson v. Johnson*, for instance, the Utah Supreme Court ruled that a district court has subject matter jurisdiction over actions seeking a divorce, and that this jurisdiction is not lost if the parties to the underlying case are not legally married. *Id.*, ¶ 12 (holding that "because courts of general jurisdiction have the authority to adjudicate divorces, we will not invalidate a divorce decree on the grounds that the 'right involved in the suit did not embrace the relief granted.'" (quoting *Perry*, 754 P.2d at 682)).

As set forth below, the Commission has broad jurisdiction over interconnections between a QF (Glen Canyon Solar) and a state-regulated utility (RMP) and, as such, has jurisdiction over disputes that arise in the context of such interconnection. As such, RMP's Motion should be denied.

ARGUMENT

This Commission has broad authority provided by both federal law and Utah law to address disputes that arise when a QF seeks to interconnect with an electric utility, including the disputes raised in this docket by Glen Canyon Solar regarding steps that must be taken to ensure a proper interconnection study. As set forth below I) this Commission has broad jurisdiction to address the issues raised by Glen Canyon Solar in this docket related to its interconnection with PacifiCorp's transmission system; and II) the disputes raised by Glen Canyon Solar in this docket are ripe for adjudication by this Commission.

I. THIS COMMISSION HAS BROAD JURISDICTION TO ADDRESS QF INTERCONNECTION ISSUES, INCLUDING THE ISSUES RAISED BY GLEN CANYON SOLAR IN THIS DOCKET.

The Utah Supreme Court has addressed the source and breadth of this Commission's power to address disputes relating to the purchase of power from QFs, noting that the Commission "administers state and federal laws requiring PacifiCorp to purchase wholesale power from QFs."[7] The Commission's "jurisdiction over QF rates and the public interest originate in federal law."[8] Under the Public Utility Regulatory Policies Act of 1978 ("**PURPA"**), the Federal Energy Regulatory Commission ("**FERC"**) "is required to set rates for purchases from QFs that are 'just and reasonable to the electric consumers of the electric utility and [are] in the public interest.'"[9] "PURPA also 'requires each state regulatory authority . . . to implement FERC's rules'" adopted to administer PURPA.[10]

[7] *Ellis-Hall Consultants, LLC v. Pub. Serv. Commn. of Utah*, 2014 UT 52, ¶ 21, 342 P.3d 256.
[8] *Id*.
[9] *Id*. (quoting 16 U.S.C. § 824a-3(b)(1)).
[10] *Id*. (quoting *FERC v. Mississippi*, 456 U.S. 742, 751 (1982)).

Among other things, FERC rules implementing PURPA require regulated public utilities like RMP to purchase energy and capacity from a QF[11] and to make interconnections with a QF to accomplish such purchases.[12] FERC has defined the term "interconnection costs"[13] and requires each State regulatory authority—the Commission here—to assess those interconnection costs[14] and obligates the QF to pay interconnection costs as assessed by the State authority.[15]

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[11] *See* 18 C.F.R. § 292.303(a) ("*Obligation to purchase from qualifying facilities.* Each electric utility shall purchase . . . any energy and capacity which is made available from a qualifying facility . . . .").

[12] *See* 18 C.F.R. § 282.303(c) ("*Obligation to interconnect*. . . . [A]ny electric utility shall make such interconnection with any qualifying facility as may be necessary to accomplish purchases or sales under this subpart.").

[13] *See* 18 C.F.R. § 292.101(b)(7) ("Interconnection costs means the reasonable costs of connection, switching, metering, transmission, distribution, safety provisions and administrative costs incurred by the electric utility directly related to the installation and maintenance of the physical facilities necessary to permit interconnected operations with a qualifying facility, to the extent such costs are in excess of the corresponding costs which the electric utility would have incurred if it had not engaged in interconnected operations, but instead generated an equivalent amount of electric energy itself or purchased an equivalent amount of electric energy or capacity from other sources. Interconnection costs do not include any costs included in the calculation of avoided costs.").

[14] In granting state regulatory authorities jurisdiction over the QF interconnection process and the allocation of QF interconnection costs, FERC did not, of course, grant state authorities the power to define "interconnection costs" in a manner inconsistent with FERC regulations or to assess to a QF *as interconnection costs* the cost of transmission facilities defined and allocated by FERC as network transmission upgrades, as erroneously claimed by RMP in its now-stayed Motion for Declaratory Judgment, Docket 17-035-25, and again as erroneously claimed in the Motion. Such claims and disputes are not properly before the Commission for resolution based on RMP's Motion. Rather, such issues can properly be resolved only in an appropriate forum on their individual merits—not based on a facial jurisdictional challenge raised in a motion to dismiss.

[15] 18 C.F.R. § 292.306(a) ("*Obligation to pay*. Each qualifying facility shall be obligated to pay any interconnection costs which the State regulatory authority (with respect to any electric utility over which it has ratemaking authority) . . . may assess against the qualifying facility on a nondiscriminatory basis with respect to other customers with similar load characteristics."). *See also Niagara Mohawk Power Corp.*, 123 FERC § 61,143, 61,938 (FERC May 15, 2008) ("When an electric utility is obligated to interconnect under [18 C.F.R. § 292.303], that is, when it purchases the QF's total output, the relevant state authority exercises authority over the interconnection and the allocation of interconnection costs.").

RMP admits that these FERC rules give the Commission "jurisdiction over QF interconnection studies, QF interconnection agreements, and the allocation of any costs arising from QF interconnections."[16] Indeed, the Commission exercised this jurisdiction in adopting Schedule 38, which governs the process for negotiating QF interconnections, including the requirement that PacTrans conduct studies related to a QF's interconnection with the PacifiCorp transmission system.[17]

The Commission's jurisdiction over QF interconnections is not, of course, limited to the approval or enforcement of tariffs, such as Schedule 38. The Commission's jurisdiction also includes the dispute resolution processes. FERC regulations implementing PURPA "afford state regulatory authorities . . . latitude in determining the manner in which the regulations are to be implemented. Thus, a state commission may comply with the statutory requirements by issuing regulations, by resolving disputes on a case-by-case basis, or by taking any other action reasonably designed to give effect to FERC's rules."[18] Under PURPA, a state commission "has jurisdiction to entertain claims analogous to those granted by PURPA, and it can satisfy

[16] RMP Motion at 25. *See also id*. at 7-8 (stating that "PURPA gives state regulatory authorities exclusive jurisdiction over QF interconnections with a utility's transmission system if the QF's entire output is sold to the directly interconnected utility," and noting that Glen Canyon's interconnection with PacifiCorp's transmission system "is subject to the exclusive jurisdiction of this Commission.").

[17] *See* Schedule 38, Section II.B. at Sheet No. 38.10 (noting that the interconnection process includes the "completion of studies to determine the system impacts associated with the interconnection and the design, cost, and schedules for constructing any necessary interconnection facilities.").

[18] *FERC v. Mississippi*, 456 U.S. at 751. *See also id.* at 760 ("FERC has declared that state commissions may implement this by, among other things, 'an undertaking to resolve disputes between qualifying facilities and electric utilities arising under [PURPA].'" (quoting CFR § 292.401(a) (1980)).

[PURPA's] requirements simply by opening its doors to claimants."[19] Schedule 38 acknowledges the Commission's authority to entertain and resolve disputes related to QF interconnections, including the Commission's jurisdiction over QF power purchase agreements (**"PPA"**) and large QF interconnection agreements when, as here, all of the QF output is sold exclusively to PacifiCorp.[20]

In addition to the powers granted to this Commission under PURPA, the Utah legislature granted the Commission authority to address issues relating to the purchase of power by a utility from a QF. Utah law expressly requires the Commission to "establish reasonable rates, terms, and conditions for the purchase or sale of electricity or electrical generating capacity, or both, between a purchasing utility and a qualifying power producer."[21] In granting this power, the Utah legislature also expressly identified the legislative policy of the state of Utah that the Commission was to carry out, noting that "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***."[22] The legislature delegated to the Commission the "power and

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[19] *Id*. at 760.
[20] *See* Schedule 38 at Section III, Sheet No. 38.11 (noting the Commission's informal and formal dispute resolution processes and stating that they "are available for any matter as to which the Commission has jurisdiction, which may include (i) QF PPA contracts . . . and (iii) large QF interconnection agreements . . . ."). The Commission has also "acknowledge[d] it has a role in regulating and allocating interconnection costs under [PURPA] and attendant federal regulations." *See In the Matter of the Utah Public Service Commission Exercising Jurisdiction over Schedule 38 and, as Adopted, PacifiCorp's OATT Part IV*, Docket No. 15-2582-01 (Order dated Oct. 22, 2015).
[21] Utah Code § 54-12-2(2).
[22] Utah Code § 54-12-1(1) (emphasis added).

jurisdiction to supervise and regulate every public utility in this state, and to supervise all of the business of every such public utility in this state, and to do all things . . . necessary or convenient in the exercise of such power and jurisdiction." Utah Code § 54-4-1.

As the above discussion demonstrates, this Commission has jurisdiction to address the dispute between RMP and Glen Canyon Solar regarding RMP's purchase of electricity and capacity from Glen Canyon Solar and the interconnection process necessary to enable such purchases. Glen Canyon Solar's Request expressly invokes this jurisdiction. The disputes at issue in this docket stem from RMP's refusal to provide information, make requests or otherwise take steps to allow PacTrans and this Commission to determine whether costly Network Upgrades to the PacifiCorp transmission system are reasonably avoidable. The central dispute between Glen Canyon Solar and RMP is that RMP has refused to provide specific information or requests to PacTrans and, without that information, PacTrans will conduct interconnection and transmission studies for the Glen Canyon Solar QF projects that do not recognize or study the cost-avoiding impacts of RMP's use of its existing transmission and redispatch rights. This will result in inaccurate and discriminatory study results that will almost certainly purport to require uneconomic and unnecessary Network Upgrades. This dispute, and Glen Canyon Solar's request for relief to resolve this dispute, falls clearly within the Commission's jurisdiction, as discussed in more detail below.

A. The Commission has Jurisdiction to Remedy RMP's Improper Refusal to Provide Information Necessary for Proper Interconnection Studies in an Effort to Artificially Drive Up Interconnection Costs and Thwart the Glen Canyon Solar QF Projects.

The purpose of Glen Canyon Solar's Request is to address RMP's refusal to provide information necessary to permit PacTrans to conduct proper interconnection studies related to

Glen Canyon Solar's QF projects. RMP's refusal to provide this information will almost certainly result in a determination by one division of PacifiCorp (PacTrans) that Network Upgrades that Glen Canyon Solar maintains are unnecessary must be paid for by Glen Canyon Solar in order to benefit another PacifiCorp division (RMP) by thwarting QF projects.

Pursuant to the PPAs between RMP and Glen Canyon Solar, RMP will purchase the 95 MW of output from Glen Canyon Solar's QF projects at the point of interconnection and transmit that output to RMP's load along the relevant transmission path.[23] Glen Canyon Solar has alleged and intends to prove—and that allegation must be accepted as true for purposes of RMP's Motion—that RMP has 95 MW of existing transmission capacity on that relevant transmission path that can be used to allow for the transmission of the output of Glen Canyon Solar's QF projects to RMP load.[24] Moreover, Glen Canyon Solar has alleged—and, again, the allegation must be accepted as true—that RMP provided avoided-cost pricing for the Glen Canyon Solar projects based that 95 MW of transmission capacity on the relevant transmission path[25] and on the assumption that RMP could and would re-dispatch other generation resources to transmit the output of the Glen Canyon Solar QF projects.[26]

Despite these facts, PacTrans has notified Glen Canyon Solar that the interconnection (and transmission) studies that PacTrans is conducting for the Glen Canyon Solar QF projects will not take into account RMP's existing transmission rights or its ability to re-dispatch other

[23] *See* Request for Agency Action, Factual Background ¶¶ 5-14.
[24] *See id*. ¶¶ 9-10. *See also* June 29, 2017 Direct Testimony of Keegan Moyer ("Moyer Test.") at 18:362-71.
[25] *See id*. *See also* Moyer Test. at 5:101-7:131; June 29, 2017 Direct Testimony of Hans Isern ("Isern Test."") at 3:47–5:91.
[26] *See* Moyer Test. at 20:401-21:408.

generation resources for the Glen Canyon Solar projects unless RMP asks it to do so[27]—a request that RMP refuses to make. Glen Canyon Solar has alleged that RMP has refused to make the request that PacTrans claims is necessary in order for it to conduct proper interconnection studies for the Glen Canyon Solar QF projects. Glen Canyon Solar has alleged that such studies are critical to accurate and non-discriminatory interconnection studies and necessary for RMP to satisfy its obligations under PURPA and Schedule 38. These allegations, the underlying factual claims and inferences of which must be accepted as true for purposes of RMP's Motion to Dismiss, place the dispute squarely within this Commission's jurisdiction over RMP's PURPA compliance and the QF interconnection process.

B. This Dispute Relates Solely to the QF Interconnection Process Within the Commission's Jurisdiction and Does Not Involve Matters Within FERC's Exclusive Jurisdiction.

The dispute at issue in this docket arises solely within the context of Glen Canyon Solar's request for a QF interconnection to the PacifiCorp transmission system—which falls squarely within this Commission's jurisdiction and does not relate to matters solely within FERC's exclusive jurisdiction. As set forth above, when, as here, an electric utility is required to purchase a QF's output, the "electric utility is obligated to interconnect" pursuant to 18 C.F.R. § 282.303 and "the relevant state authority exercises authority over the interconnection and the allocation of interconnection costs."[28] That authority includes the power to "resolv[e] disputes

[27] *See* Isern Test. at 9:182-10:210 and Confidential Exhibit A, attached hereto.
[28] *Niagara Mohawk Power Corp.*, 123 FERC § 61,143, 61,938 (FERC May 15, 2008) ("When an electric utility is obligated to interconnect under [18 C.F.R. § 292.303], that is, when it purchases the QF's total output, the relevant state authority exercises authority over the interconnection and the allocation of interconnection costs.").

on a case-by-case basis" regarding interconnection matters.[29] This Commission has jurisdiction over the disputes raised in this docket between Glen Canyon Solar and RMP regarding the interconnection of Glen Canyon Solar's projects with the PacifiCorp transmission system, and RMP's Motion must be denied.

RMP's assertion that the Commission does not have jurisdiction over the Amended Network Operating Agreement ("Amended NOA") between RMP and PacTrans is neither fully accurate, nor relevant or determinative. FERC clearly has jurisdiction to approve and enforce the Amended NOA, but that does not mean that this Commission lacks jurisdiction to address disputes relating to RMP's re-dispatch options. The Commission has broad authority to adjudicate disputes related to PURPA compliance and electricity rates. Similarly, this Commission has broad authority to adjudicate disputes related to QF interconnections, to evaluate RMP's ability to re-dispatch its own resources, and to direct RMP to take actions necessary for PURPA compliance and to protect the public interest. As such, this Commission certainly has jurisdiction to adjudicate a dispute relating to RMP's re-dispatch options under the Amended NOA if RMP's refusal to use—or even request a study based upon—those re-dispatch rights either calls into question RMP's compliance with PURPA, results in discrimination against a QF, affects Utah electricity rates, or otherwise might affect a Commission determination regarding prudence and setting rates.

In its Request, Glen Canyon Solar references the re-dispatch options available to RMP under the Amended NOA and RMP's avoided cost pricing model to demonstrate that RMP can

[29] *FERC v. Mississippi*, 456 U.S. at 751. *See also* Schedule 38 at Sheet No. 38.11 (noting the Commission's jurisdiction to resolve disputes regarding large QF interconnection agreements).

avoid any risk—to Glen Canyon Solar, PacifiCorp or RMP's ratepayers—of unnecessary and uneconomic Network Upgrades. The Commission clearly has jurisdiction to address this claim.

C. This Commission Has Jurisdiction to Adjudicate Disputes Regarding Discrimination by RMP in the Purchase of QF Power.

This Commission is ultimately responsible for assessing "interconnection costs" and for doing so on a nondiscriminatory basis.[30] FERC rules implementing PURPA prohibit discrimination against QFs.[31] Utah law also prohibits RMP from acting in a discriminatory manner,[32] and this Commission has jurisdiction to address such matters. RMP's refusal to request that PacTrans conduct an interconnection study regarding the Glen Canyon Solar QF projects that takes into account RMP's existing transmission rights and re-dispatch options—and thereby impose unnecessary interconnection costs on either Glen Canyon Solar or RMP's ratepayers, stands in stark contrast to RMP's actions to build new wind resources in Wyoming, and constitutes discrimination against Glen Canyon Solar.

RMP intends to utilize these same re-dispatch options in connection with its recent Application for Approval of a Significant Energy Resource Decision and Voluntary Request for Approval of Resource Decision in Docket No. 17-035-40. In that docket, RMP seeks approval

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[30] 18 C.F.R. § 292.306(a) ("*Obligation to pay*. Each qualifying facility shall be obligated to pay any interconnection costs which the State regulatory authority (with respect to any electric utility over which it has ratemaking authority) . . . may assess against the qualifying facility on a nondiscriminatory basis with respect to other customers with similar load characteristics."). *See also* Schedule 38, Section II.B. ("The QF project owner is responsible for all interconnection costs assessed by the Company on a *nondiscriminatory* basis." (emphasis added)).

[31] *See* 18.C.F.R. § 292.304(a)(1)(ii) (prohibiting discrimination "against qualifying cogeneration and small power production facilities").

[32] *See* Utah Code § 54-3-7 (prohibiting public utilities from "extend[ing] to any person any form of contract or agreement, or any rule or regulation, or any facility or privilege except such as are regularly and uniformly extended to all corporations and persons"); *id*. 54-3-8(1)(a) (prohibiting public utilities from "mak[ing] or grant[ing] any preference or advantage to any person" with regard to any "rates, charges, service, facilities or in any other respect").

of a "significant energy resource decision" to construct or procure several new wind projects and transmission segments in Wyoming.[33] In support of that application, RMP submitted testimony confirming that it intends to utilize its available resource re-dispatch options to back down existing generation resources as necessary to accommodate the proposed new wind resources and to avoid unnecessary transmission expenditures.

PacifiCorp witness Rick A. Vail submitted prefiled testimony in support of RMP's application confirming that re-dispatch of the Jim Bridger plant would be required to accommodate the *interconnection* of those new wind resources:

> Q. Please describe the modifications to the Jim Bridger Generating plant substation that will be necessary to interconnect the new Anticline substation to the Jim Bridger generating plant substation.
>
> A. . . . .
>
> Modification to the Jim Bridger remedial action scheme will be needed due to the ***re-dispatch of Jim Bridger generation necessary to accommodate new wind generation in eastern Wyoming***, while maintaining the 2,400 MW rating on the Bridger West transmission path[34]
>
> Q. How will the Transmission Projects increase transmission capacity in southeastern Wyoming?
>
> A. . . . .
>
> When the Transmission Projects are complete, the Company estimates that it can interconnect up to approximately 1,270 MW of additional wind facilities east of the Bridger/Anticline substation. ***The assumed level of new wind resources is higher than the assumed incremental transfer capability of the transmission facilities because wind resources do not generate at their full capability in all hours of the year. At times when wind resources in southeastern Wyoming are operating near full output, other resources in the***

[33] *See Application for Approval of a Significant Energy Resource Decision and Voluntary Approval of Resource Decision*, Docket No. 17-035-40, June 30, 2017.
[34] *Id*. June 30, 2017 Redacted Direct Testimony of Rick A. Vail ("Vail Test.") at pp. 9-10 (lines 220-251) (emphasis added).

> ***area can be re-dispatched to accommodate PTC-producing wind generation***. Installing more variable resources in an area relative to total transmission capacity allows for more efficient use of the transmission system and the ability to use the most cost-effective resources to meet customer demand.[35]

PacifiCorp witness Rick T. Link similarly testified that PacifiCorp generation resources would be re-dispatched to accommodate the interconnection of the proposed new wind resources:

> Q. Why did PacifiCorp assume new wind resource capacity in excess of the assumed incremental transfer capability of the Aeolus-to-Bridger/Anticline Line in this initial sensitivity?
>
> A. . . . . The assumed level of new wind resources is higher than the assumed incremental transfer capability of the transmission line because wind resources do not generate at their full capability in all hours of the year. ***At times when wind resources in southeastern Wyoming are operating near full output, other resources in the area can be re-dispatched to accommodate PTC-producing wind generation***.[36]

It is clear from this testimony that RMP intends to use its ability to back down or re-dispatch existing network resources to accommodate the interconnection of the new wind resources proposed in Docket No. 17-035-40. Such re-dispatch of existing generation resources will reportedly allow RMP to interconnect new wind resources at a level that is "higher than the assumed incremental transfer capability of the transmission line."[37] Thus, the purpose of the planned resource re-dispatch is to ensure that the proposed new transmission investments are no greater than necessary—precisely what Glen Canyon Solar is seeking in this docket.

RMP's prefiled testimony in Docket No. 17-035-40 demonstrates that RMP's ability to re-dispatch existing generation resources directly affects interconnection of new resources—as

[35] *Id.* Vail Test. at pp. 14-15 (lines 322-345) (emphasis added).
[36] *Id*. June 30, 2017 Redacted Direct Testimony of Rick T. Link at p. 7 (lines 137-148) (emphasis added).
[37] *Id*.

with the QF resources at issue in this docket. RMP's apparent willingness to re-dispatch existing generation resources to accommodate the interconnection of new generation resources that it wants to own—such as Wyoming wind—while refusing to provide PacTrans the information needed for it to study re-dispatch of existing generation resources for the Glen Canyon Solar QF projects, demonstrates RMP's animus and discrimination against these QF projects and directly invokes the Commission's jurisdiction to address such discrimination.[38]

Based on RMP's testimony in Docket 17-035-40, it is clear that if RMP were to generate 95 MW of electric energy or capacity at the Glen Canyon QF sites instead of purchasing that output from Glen Canyon Solar, RMP would certainly re-dispatch other generation resources to avoid unnecessary Network Upgrades. The fact that RMP is unwilling to do so when it is purchasing the power from a QF demonstrates RMP's discrimination against Glen Canyon Solar, and this Commission has jurisdiction over this dispute to address that discrimination. Because the Commission has broad jurisdiction to address disputes that arise in the context of a utility's PURPA compliance and a QF's interconnection to PacifiCorp's transmission system, RMP's Motion to Dismiss is without merit and should be denied.

D. Glen Canyon Solar's Request for Agency Action Will Not Violate PURPA's Ratepayer-Indifference Standards.

In an apparent effort to prejudice the Commission against the merits of Glen Canyon Solar's Request in this matter, RMP improperly expends much effort in its Motion to Dismiss on

[38] *See* Utah Code § 54-3-7 (prohibiting public utilities from "extend[ing] to any person any form of contract or agreement, or any rule or regulation, or any facility or privilege except such as are regularly and uniformly extended to all corporations and persons"); *id*. 54-3-8(1)(a) (prohibiting public utilities from "mak[ing] or grant[ing] any preference or advantage to any person" with regard to any "rates, charges, service, facilities or in any other respect."). Similarly, FERC's PURPA regulations prohibit discrimination "against qualifying cogeneration and small power production facilities" with respect to rates).

issues not relevant to a motion to dismiss by mischaracterizing Glen Canyon Solar's Request as an effort to avoid its responsibility to pay interconnection costs and impose those costs on RMP's ratepayers. That is manifestly ***not*** Glen Canyon Solar's intent and RMP's characterization does ***not*** accurately describe the relief Glen Canyon Solar seeks in this docket. Indeed, the one thing that could put RMP ratepayers at risk of the cost of unnecessary and uneconomic Network Upgrades in connection with these QF projects is if RMP's Motion to Dismiss is granted, PacTrans is not instructed to study the extent to which Network Upgrades can be avoided through the use of existing transmission and redispatch rights, and FERC is asked to resolve this dispute. There is zero risk of ratepayers bearing costs associated with interconnection and transmission of energy from the Glen Canyon Solar QF Projects ***if those costs are avoidable and avoided in the first place—***the precise allegations made and relief sought by Glen Canyon Solar in this docket**.**

Glen Canyon Solar fully intends to pay all interconnection costs that are properly assessed and assigned to it on a non-discriminatory basis—as required by PURPA and Schedule 38.[39] By filing its Request, Glen Canyon Solar seeks to ensure that PacTrans will conduct interconnection studies on a non-discriminatory basis such that the results of the interconnection study will not properly identify Network Upgrades that can be avoided in connection with Glen Canyon Solar's projects or otherwise improperly classify Network Upgrade costs as interconnection costs. Only then can interconnection costs be properly determined and assessed.

PURPA does not contemplate or require a QF to pay—as part of interconnection costs—for unnecessary Network Upgrades simply because a utility refuses to conduct studies to

[39] *See* 18 C.F.R. § 292.303(a) (obligating QF to pay all "interconnection costs" assessed on a nondiscriminatory basis).

determine whether those upgrades are even needed. 18 C.F.R. § 306 provides that state utility commissions—not transmission providers—will assess interconnection costs. RMP's Motion assumes that any cost estimated by its affiliate in connection with an interconnection study is necessarily an "interconnection cost" that a QF must pay, whether or not they are for interconnection facilities or transmission facilities.[40] This claim is not supported by FERC rules or precedent—nor is it relevant to a motion to dismiss. In any event, this Commission has the power to assess interconnection costs and to ensure that interconnection studies are properly performed to identify necessary costs. RMP's actions are designed to prevent PacTrans from performing studies necessary to provide the information needed to ensure that PURPA obligations are properly performed. Indeed, they appear designed to ensure that the resulting studies will result in the conclusion that significant, avoidable Network Upgrades are necessary for the Glen Canyon Solar projects. Glen Canyon Solar has alleged that precisely the opposite is true—Network Upgrades are unnecessary given existing transmission rights. This Commission clearly has jurisdiction to adjudicate this claim.

RMP also erroneously asserts that Glen Canyon Solar's requested relief in this docket would somehow shift costs to ratepayers by causing RMP to back down other resources.[41] This contested factual claim, beyond being irrelevant to RMP's Motion, is unsupported and irrational. Glen Canyon Solar's prefiled testimony in this docket alleges and demonstrates that RMP

[40] *See, e.g.*, RMP Motion at 20 (arguing that "if the network upgrades required for Glen Canyon's interconnection are inappropriately shifted to the transmission service study and constructed, the costs of those upgrades will be paid for by customers through transmission rates.").

[41] *See id*. ("[I]f the Company uses its NOA Amendment to inappropriately avoid construction of the upgrades necessary to accommodate Glen Canyon's state-jurisdictional QF interconnection, then the Company will have to increase how much it needs to back down its generation resources to make room for the QF power to interconnect.").

calculated avoided-cost pricing for the Glen Canyon Solar projects that includes the impacts of any resource re-dispatch that may be required. RMP's avoided-cost pricing methodology is designed to be ratepayer neutral. It accounts for any re-dispatch of existing generation resources. Despite basing prices in the Glen Canyon Solar PPAs on such re-dispatch, RMP is now attempting to preclude proper interconnection studies that reflect similar re-dispatch and avoidance of unnecessary costs resulting from the same. Thus, RMP seeks to require Glen Canyon Solar to accept reduced prices for its output resulting from re-dispatch of other resources, but wants to force unnecessary and costly Network Upgrades that would be avoided by such re-dispatch. This type of double-counting is discriminatory and clearly within this Commission's jurisdiction to address. This Commission has jurisdiction to ensure that proper interconnection studies are performed to allow a proper determination and assessment of interconnection costs. RMP's Motion to Dismiss should thus be denied.

E. Glen Canyon Solar's Request Does Not Interfere with RMP's Existing Contractual Obligations to Arizona Public Service.

Glen Canyon Solar's avoided-cost pricing takes into account RMP's existing contractual obligation to deliver power to Arizona Public Service ("APS"). Indeed, RMP has confirmed that no curtailment is necessary to deliver 95 MW of output along the relevant transmission corridor, taking into account RMP's existing contractual obligations. Specifically, RMP has confirmed that [redacted][42] Despite

[42] *See* Confidential Exhibit B, attached hereto (RMP's Oct. 18, 2016 response to Glen Canyon Solar data request 3.1) at 2.

the fact that uses are made of these transmission rights, RMP has confirmed that it can transmit 95 MW of output from Glen Canyon Solar's projects without the need to curtail those projects.[43]

Not only are RMP's unfounded, unsupported, contested and vague allegations of contractual impacts[44] irrelevant to a motion to dismiss—any such claims can only be evaluated on the merits or in a proper motion for summary judgment—they are directly contradicted by RMP's statements that the PPA pricing [redacted] More importantly, those legacy contracts should not be used as a pretext to avoid performance of proper interconnection studies. This Commission clearly has jurisdiction to require RMP to request such studies.

II. THE ACTUAL ISSUES BEFORE THE COMMISSION ARE RIPE FOR REVIEW.

PacTrans has notified Glen Canyon Solar that, in performing studies associated with the Glen Canyon Solar QF projects, it will not study the implications of using RMP's existing transmission and re-dispatch rights unless RMP asks it to do so, and RMP refuses to so ask. In this docket, Glen Canyon Solar asks the Commission to direct RMP to make the request. Thus, this matter presents a justiciable controversy and is ripe for Commission adjudication.

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[43] *Id.*

[44] RMP claims that "the Company *cannot* transmit all the energy produced by Glen Canyon's projects without potential complications requiring network upgrades or curtailment," RMP Motion at 23. In addition to being irrelevant to RMP's Motion, this statement is not true, as evidenced by the QF pricing study, which takes into account the cost of backing down other generation sources, alleviating the very concerns RMP raises. *See also* Confidential Exhibit B at 2. Additionally, RMP conducted a curtailment study and Glen Canyon Solar's output was reduced from an original 240 MW to 95 MW with the express purpose of fitting the available transmission capacity of the lines that is created through redispatch. PacifiCorp is refusing to coordinate the actions of PacTrans with the redispatch assumed by RMP as part of Schedule 38 and the Commission should require RMP to provide information to PacTrans that will permit PacTrans to conduct a proper interconnection study.

The Utah Supreme Court has articulated its doctrine of ripeness as follows:

> A dispute is ripe when a conflict over the application of a legal provision [has] sharpened into an actual or imminent clash of legal rights and obligations between the parties thereto. An issue is not ripe for appeal if there exists no more than a difference of opinion regarding the hypothetical application of [a provision] to a situation in which the parties might, at some future time, find themselves.[45]

In *Bodell Const.*, the Utah Supreme Court considered, among other things, an appeal from the district court's order striking the plaintiff's expert report. One of the defendants, Bank One, argued that this issue was not ripe for appeal "because there may be some future scenario in which an appellate court would not have to reach the issue."[46] Bank One argued that such a future scenario in which a court would not have to reach the issue "would occur if the district court, on remand, were to enter summary judgment on one of Bank One's alternative theories, the case settled, or the case eventually reaches a jury and the jury finds against [plaintiff]."[47] The Utah Supreme Court rejected this argument, noting that "[t]hough it is possible that the case could be later decided or settled on issues unrelated to the information in the [expert] report, the admissibility of the [expert] report is still properly before us."[48] Accordingly, the Court ruled that the issue was ripe for determination.

Like the defendant in *Bodell Const.*, RMP erroneously contends that the matter before this Commission is not ripe solely because some future scenario *might* occur in which this Commission would not have to address the dispute in this matter. The mere possibility of such a

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[45] *Bodell Const. Co. v. Robbins*, 2009 UT 52, ¶ 29, 215 P.3d 933 (2009) (internal quotation marks and citations omitted) (alteration in original).
[46] *Id*., ¶ 30.
[47] *Id*.
[48] *Id*., ¶ 33.

future scenario is insufficient to deprive the Commission of jurisdiction. As in *Bodell Const.*, the matter before this Commission is ripe for adjudication and RMP's argument should be rejected.

In making its ripeness argument, RMP again mischaracterizes Glen Canyon Solar's Request, incorrectly asserting that "[t]he crux of Glen Canyon's position is that it does not want to pay for any network upgrades needed to interconnect its QF projects."[49] As explained above, this is a gross misstatement as to Glen Canyon Solar's position and requests in this docket. Rather, Glen Canyon Solar's position is that unnecessary Network Upgrades can be avoided altogether through the use of RMP's existing transmission and re-dispatch rights. Glen Canyon Solar is not trying to avoid paying for any required interconnection or upgrade costs, but rather to avoid such unnecessary costs—which would benefit both Glen Canyon Solar and PacifiCorp ratepayers, and allow RMP, notwithstanding its significant efforts to the contrary, to comply with its PURPA and Schedule 38 obligations.

RMP refuses to provide information to PacTrans to cause it to conduct proper studies for the Glen Canyon Solar projects. Without a proper interconnection study, this Commission cannot properly enforce PURPA obligations and interconnection costs cannot properly be assessed. This dispute centers on conflict over the proper application of PURPA's rules, as well as the role of RMP, in ensuring that proper interconnection studies necessary for the proper assessment of interconnection costs will be completed. The relevant interconnection studies have been requested and are pending in the PacTrans queue. RMP must make a timely request for proper studies or the information necessary for the Commission a position to properly discharge its obligations will not be available in a timely manner.

[49] RMP Motion at 24.

RMP claims that interconnection studies for other QFs might, hypothetically, require Network Upgrades that might, hypothetically, result in interconnection studies for the Glen Canyon Solar projects that do not require some Network Upgrades.[50] This argument wholly misses the point. Glen Canyon Solar is not asking for rulings about the outcome of interconnection studies or assessment of costs. Rather, Glen Canyon Solar is asking this Commission to require RMP to provide information to PacTrans in an effort to ensure that proper interconnection studies are performed to provide the information necessary for the Commission to determine PURPA compliance and proper assessment of interconnection costs. The Commission's ability to grant this relief is not contingent on the outcome of other interconnection studies. Moreover, RMP's arguments are not supported by any evidence as to the location of other QFs in the queue or any other evidence on which the Commission could rely as to how or whether Network Upgrades identified in connection with those QFs might affect the transmission path relevant to the Glen Canyon Solar projects. RMP's evidence-free claim that other interconnection studies may hypothetically affect the outcome for Glen Canyon Solar is not relevant to the issue of whether the Commission can direct RMP to request proper interconnection studies on these projects.

The matter before this Commission presents "an actual clash of legal rights and obligations between the parties." *Bodell Const.*, 2009 UT 52, ¶ 29. This matter is ripe for Commission adjudication and RMP's Motion should be denied.

[50] *See* RMP Motion to Dismiss at 24-25.

REQUEST FOR HEARING

A date for a hearing for oral arguments on any motions was not pre-scheduled in the Scheduling Order in this matter because it was not clear whether any dispositive motions would be filed, or the nature of the same. Thus, it was left to the parties to request a hearing if warranted and to the Commission to determine whether a hearing might be useful. Glen Canyon Solar respectfully submits that, given the gravity of this dispute and the significance of the implications of same—on Glen Canyon Solar, RMP, RMP's ratepayers and other QF developers—the Commission should schedule oral arguments at a convenient time.

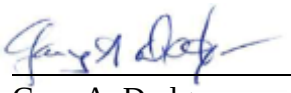
CONCLUSION

For the foregoing reasons, this Commission has jurisdiction over the disputes raised in Glen Canyon Solar's Request for Agency Action and those disputes are ripe for adjudication. The Commission should, therefore, deny RMP's Motion to Dismiss.

DATED this 11th day of August 2017.

Respectfully submitted

HATCH, JAMES & DODGE, P.C.

By: 

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Certificate of Service
Docket No. 17-035-36

I hereby certify that a true and correct copy of the foregoing was served by email this 11th day of August 2017 on the following:

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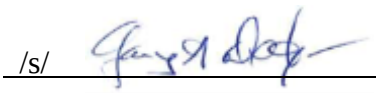
/s/ 

EXHIBIT A
CONFIDENTIAL

EXHIBIT B
CONFIDENTIAL