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- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of Rocky Mountain Power to Establish Export Credits for Customer Generated Electricity	**Docket No. 17-035-61 (Phase II)** ***PETITION FOR REVIEW OR REHEARING***

Pursuant to Utah Code Ann. §§ 54-7-15 and 63G-4-301 and Utah Administrative Code § R746-1-801,[1] Vote Solar, along with Vivint Solar, Inc. ("Vivint Solar"), hereby petition the Public Service Commission of Utah (the "Commission") to review or rehear the Commission's October 30, 2020 Order in the above-captioned matter (the "Order").[2]

INTRODUCTION

Rocky Mountain Power ("RMP") and Vote Solar each submitted proposed rate schedules for future rooftop solar customer generators ("Schedule 137") and

[1] *See, e.g.*, § R746-1-801(2) ("A person that challenges a finding of fact in a proceeding . . . shall marshal the record evidence that supports the challenged finding[.]").

[2] Vote Solar and Vivint Solar incorporate into this Petition all of the testimony, both written and oral, presented to the Commission in the above-captioned matter.

supporting written testimony. The Commission then held a hearing from September 29, 2020 through October 6, 2020, to determine an appropriate export credit rate ("ECR") for customer generated exported energy. Each party "b[ore] the burden of proving its assertions" by presenting "evidence addressing reasonably quantifiable costs or benefits or other considerations they deem[ed] relevant."[3]

Following the hearing the Commission instituted an ECR that combined elements of RMP's and Vote Solar's proposals. The Commission rejected RMP's proposed ECR of 1.53 or 2.22 cents/kWh and Vote Solar's proposed return to the prior net metering program ("NEM Program") or its alternative ECR of 24.17 cents/kWh. The Commission also rejected Vivint Solar's proposed 10.35 cent/kWh. Instead it approved an ECR of 5.969 cents/kWh in the summer (June-September) and 5.639 cents/kWh in the winter (October-May), subject to adjustment annually. The Commission further ordered that "Schedule 137 customers' excess generation will be netted monthly in connection with billing for RMP-supplied energy,"[4] rejected RMP's proposal of no netting period,[5] and determined that CG customers' accrued export credits should expire annually.

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[3] Dkt. No. 14-035-114, Aug. 28, 2017 Settlement Stipulation, ¶ 30.

[4] Dkt. No. 17-035-61, November 25, 2020 order at *1.

[5] Despite the Commission's November 25, 2020 order, what the Commission means by "netted monthly in connection with billing for RMP supplied energy" remains unclear and Vote Solar and Vivint Solar request that the Commission clarify its precise position on netting. It also appears that the Commission has not addressed the considerable evidence regarding the value a proper netting period and structure brings to CG customers and RMP. Vote Solar's witnesses discussed the importance of a proper netting period in allowing customers to be most efficient in their energy use, which benefits RMP as well. *See* July 15, 2020 Rebuttal Testimony of Carolyn A. Berry ("Berry Rebuttal"), lines 519-27 ("If CG customers are provided information about the quantity of exports or deliveries, they can readily both adjust consumption in the context of their day, week, or month, and understand the financial impact

Significantly, however, Utah Code Ann. §§ 54-4-4.1(1), 54-15-105.1 and paragraph 30 of the August 28, 2017 Settlement Stipulation ("Settlement") in Docket No. 14-035-114, *In the Matter of the Investigation of the Costs and Benefits of PacifiCorp's Net Metering Program* (the "Net Metering Docket"), require the Commission to both:

> (1) ***determine***, after appropriate notice and opportunity for public comment, whether costs that the electrical corporation or other customers will incur from a net metering program will exceed the benefits of the net metering program, or ***whether the benefits of the net metering program will exceed the costs***; and
>
> (2) ***determine a just and reasonable charge, credit, or ratemaking structure***, including new or existing tariffs, ***in light of the costs and benefits***.

Utah Code Ann. § 54-15-105.1 (the "Net Metering Statute") (emphasis added).[6] Subsection Two—which requires the Commission to determine a just and reasonable ECR "in light of the costs and benefits" of the net meting program—is expressly conditioned on fulfilling the requirements of Subsection One, which requires the Commission to quantify and weigh those costs and benefits. But Subsection One was

… Real-time netting will not provide this understanding. But hourly netting will."); *id.* at lines 505-07 ("An hour is about the smallest period of time that energy production/consumption data is useful to customers to put that information into the context of a day.); *see also* Sept. 15, 2020 Surrebuttal Testimony of Carolyn A. Berry ("Berry Surrebuttal"), lines 924-26 ("To say that hourly netting is more actionable than 15-minute or real-time netting means that CG customers are both better able to understand and make use of the price and quantity information available when making energy consumption decisions."); May 8, 2020 Revised Affirmative Testimony of Sachu Constantine ("Constantine Revised Affirmative"), lines 396-97 ("Under an ECR, the customer must understand how production would relate to in-home consumption throughout each day within each month" because this will determine net charges or compensation for exports and deliveries.).

[6] The Commission's rate regulation is likewise required to be undertaken in the "public interest." Utah Code Ann. § 54-4-4.1(1) ("The commission may, by rule or order, adopt any method of rate regulation that is: (a) consistent with this title; (b) in the public interest; and (c) just and reasonable.").

never satisfied. Indeed, the Order lacks any indication that the Commission fulfilled its statutory obligation to evaluate the costs and benefits of net metering; accordingly, the Commission could not have determined a just and reasonable ECR and ratemaking structure as the legislature instructed "in light of the costs and benefits" of net metering. As a matter of law, the Commission erred by proceeding to establish an ECR without determining whether the benefits of the net metering program exceed its costs. Because the Commission has not decided a key issue requiring resolution, the Commission should hold a proceeding to address this question, determine an appropriate rate structure only after this assessment has been undertaken, and keep the Schedule 136 transitional program that followed net metering (the "Transition Program") in place pending such a proceeding and subsequent decision.

Setting aside the Commission's failure to evaluate the benefits and costs of net metering properly, Vote Solar and Vivint Solar also respectfully ask this Commission to reconsider the following issues and modify its order to set a just and reasonable rate for customer generators in RMP's Utah service territory:

1. ***The Commission's Decision to Adopt an ECR Subject to Annual Updating is Arbitrary, Capricious, and Not Supported by Substantial Evidence***. The Commission should reconsider its decision to update the ECR annually because the uncertainty created by annual updating is neither just nor reasonable under Utah law. The evidence submitted illustrates that rooftop solar systems require substantial up-front investment; the lack of a long-term price signal will create price instability which will stifle, if not eliminate, investment in CG solar and effectively bring an end to the solar industry in Utah. Vote Solar also presented uncontroverted evidence that CG solar customers or generators are the only RMP customers who will be subject to a ground up rate change each year, meaning that the Commission has authorized RMP to discriminate against CG customers absent any reasonable or evidentiarily-supported basis. The Commission

should thus adopt a 20-year rate as it is just and reasonable and in the best interest of the state of Utah.

2. ***The Commission's Decision to Require that Credits Expire Annually is Arbitrary, Capricious, and Not Supported by Substantial Evidence.*** The Commission should reconsider its decision to allow customer generators' earned export credits to expire annually. The Commission based this decision on the claim that expiring export credits encourages proper system sizing; but not a single witness introduced *any* evidence to support that claim. In fact, there is no evidence in the record that annual expiration of credits has any influence whatsoever on system sizing. Instead, Vote Solar introduced considerable evidence that annually expiring export credits are punitive, arbitrary, and encourage inefficient energy use. The Commission should allow credits to rollover or be paid out annually rather than adopt a prejudicial taking against CG customers based on no evidence.

3. ***The Commission's Conclusion that the EIM Method Should Be Used to Calculate Avoided Energy is Not Supported by Substantial Evidence and Introduces a Key Issue Requiring Resolution.*** The Commission should reconsider its decision to adopt historical, and therefore backward-looking, Western Energy Imbalance Market ("EIM") prices in calculating the ECR's avoided energy component. In support of its decision to adopt the EIM methodology, the Commission indicated that customers should be compensated *"based on the prices RMP in fact paid for energy*." Without ever addressing which pricing node would be used to perform the calculation, there is no way to verify that the EIM prices used to derive avoided energy cost represent the prices RMP paid for energy. Nor can the Commission's other justification—that the EIM methodology relies on "publicly available and transparent" data—find support in this record. The EIM methodology calls for the use of non-public data that RMP—and RMP alone—has access to. The Commission should adopt Vote Solar's proposal to use the Official Forward Price Curve or, at the very least, hold a hearing on the issue of which pricing node should be used in performing the approved EIM methodology.

4. ***The Commission Erroneously, Arbitrarily, and Capriciously Reduced the Value of Avoided Generation Capacity Cost, Contrary to the Record Evidence.*** The Commission should review and revise its avoided generation capacity cost calculation because it improperly reduced Vote Solar's proposed value by 17% on the erroneous assumption that Vote Solar applied a higher carrying charge. In fact, Vote Solar had applied a carrying charge that is lower than RMP's proposed 7.82% that the Commission approved. The Commission should increase its avoided generation

capacity cost by 0.656 cents/kWh to 2.966 cents/kWh to properly reflect the approved carrying charge.

5. ***The Commission Erroneously, Arbitrarily, and Capriciously Reduced the Value of Avoided Transmission Capacity Cost, Contrary to the Record Evidence.*** The Commission should review and revise its avoided transmission capacity cost calculation because it improperly reduced Vote Solar's proposed value on the erroneous assumption that Vote Solar applied a carrying charge. In fact, Vote Solar did not use a carrying charge in its avoided transmission capacity cost calculation because it is based on the transmission rate. The Commission's reduction erroneously reduces the value of avoided transmission capacity. Accordingly, the Commission should revise its approved value upward from 0.91 cents/kWh to 1.09 cents/kWh.

6. ***The Commission's Determination to Include Integration Costs in the ECR is Arbitrary, Capricious, and Not Supported by Substantial Evidence***. The Commission should reconsider its decision to include integration costs in its ECR because there is no evidence in the record from which to conclude that CG solar resources impose costs of integration. The purported link between variability and solar integration cost is unsupported by the record. Any reduction in the compensation owed to CG solar customers where there is no basis for doing is neither just nor reasonable. The Commission should reverse its conclusion to reduce the ECR by .015 cents/kWh to account for unspecified integration costs.

7. ***The Commission Erroneously Interpreted the Law in Declining to Consider Societal, Economics, and Health Benefits and Ignored Substantial Evidence.*** The Commission should reconsider its decision not to assess the quantifiable societal, economic, and health benefits provided by CG solar in either (1) the Commission's effective abandonment of the net metering statute, or (2) in the proper ECR for CG solar taking costs and benefits into account. The Commission incorrectly states that it should not consider benefits to the greater public in its decision making; but the Utah legislature has expressly granted that discretion to the Commission and, at the least, such factors should guide the Commission in setting forward-looking policies that have such a profound impact on rooftop solar adoption in Utah. Vote Solar presented uncontroverted evidence that CG solar provides a panoply of benefits to Utah and its residents. The Commission is statutorily empowered to recognize, consider, and compensate for those benefits in approving an ECR.

PROCEDURAL HISTORY

In 2002, the Utah State Legislature approved House Bill 7, authorizing a statewide NEM Program, which required "the electrical corporation to give the customer a credit for electricity generated by the customer that exceeds the amount supplied by the electrical corporation."[7] This led to consistent growth in CG solar, particularly distributed generation ("DG") resources, and an unrelenting assault from RMP whose fossil fuel assets must now compete with CG solar. In 2014, after RMP proposed a charge on NEM customers, Utah Senate Bill 208 ("SB 208")—which established the Commission's obligations to determine the benefits and costs of net metering and determine an appropriate ECR—was enacted. Pursuant to SB 208, on November 10, 2015, the Commission established a structure to analyze costs and benefits of the NEM Program, ordering RMP to conduct two cost of service studies, which RMP filed on November 9, 2016. Based on their flawed results, RMP advocated for the end of the NEM Program and a new rate structure that substantially reduced the compensation to CG customers. Several parties, including Vote Solar and Vivint Solar, challenged that unscientific proposal. The Commission never held a hearing on the merits of RMP's proposal because RMP and other parties—not including Vote Solar and other interested parties—reached a Settlement that was submitted to the Commission on August 28, 2017.

On September 29, 2017, the Commission approved the Settlement. The Commission's order (the "Settlement Approval Order") set a cap date on the then-existing

[7] *See* Constantine Revised Affirmative, lines 88-118.

NEM Program. No new customers would be accepted after November 15, 2017,[8] and those already participating in the NEM Program ("Schedule 135" customers) could maintain their current rate through 2035.[9] For customers who submitted an interconnection application after the cap date ("transition" or "Schedule 136" customers), net billing would continue until the earlier of the date a specified cumulative nameplate capacity for CG was reached or the date the Commission issued a final order in this docket.[10]

The Settlement further established that a proceeding would be held to determine a new ECR.[11] On December 1, 2017, RMP filed an application requesting that the Commission initiate this export credit proceeding. On December 12, 2017, the Commission issued a scheduling order that bifurcated this docket, Docket 17-035-61, into two phases.

In Phase I of this docket, the Commission addressed the design of RMP's "Load Research Study" and RMP's data collection process. In Phase II—the current proceeding—the Commission was tasked with determining the costs and benefits of net metering and setting a "just and reasonable" export credit rate for energy generated by CG customers.[12]

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[8] The Commission's order approving the settlement stipulation set a "cap date" of the earlier of November 15, 2017 or 60 days after the Commission's order, which was issued on September 29, 2017. *See* Settlement Approval Order at *4-5 & n.3.

[9] Settlement Approval Order at *5.

[10] *Id.*

[11] *Id.* at *5-6.

[12] *Id.* at *1-2.

On February 3, 2020, RMP filed direct testimony. On March 3, 2020, the Office of Consumer Services ("OCS") and the Division of Public Utilities ("DPU") filed affirmative testimony in support of RMP's proposal. On March 3 and 6, 2020, Vote Solar, Vivint Solar, Utah Solar Energy Association, and Utah Clean Energy (the "Intervenors") filed affirmative testimonies in opposition to RMP's proposal.

On May 8, 2020, Vote Solar filed revised affirmative testimonies for its witnesses: Dr. Carolyn Berry, Sachu Constantine, Dr. Albert Lee, Dr. Michael Milligan, Curt Volkmann, and Dr. Spencer Yang.[13]

On July 15, 2020, RMP, the OCS, the DPU, and the Intervenors filed rebuttal testimonies, and on September 15, 2020, RMP, the OCS, the DPU, and the Intervenors (now including Salt Lake City Corporation) filed surrebuttal testimonies.

RMP's final proposed ECR was 1.53 cents/kWh or, alternatively, 2.22 cents/kWh.[14] Vote Solar proposed a return to net metering or, alternatively, valued CG solar's net benefits at 24.17 cents/kWh, or 12.14 cents/kWh without the inclusion of community benefits.[15] Vivint Solar recommended setting the ECR at the current

[13] Vote Solar revised its original affirmative testimonies due to an error in the data that RMP provided that, once corrected, required Vote Solar to update various calculations.

[14] Sept. 15, 2020 Surrebuttal Testimony of Joelle Steward ("Steward Surrebuttal"), lines 38-45.

[15] Berry Surrebuttal, lines 99-100, Table 1A. Vote Solar's valuation of 12.14 cents/kWH includes only utility-based benefits (avoided energy and capacity costs—including avoided transmission and distribution costs—as well as avoided fuel hedging costs and avoided carbon compliance costs). Vote Solar's valuation of 24.17 cents/kWh includes these costs and community benefits (health benefits, reduced carbon emissions, and local economic benefits). *Id.*

retail rate (10.2 cents/kWh).[16]

The hearing in Phase II of this docket (the "Hearing") began on September 29, 2020, and witnesses for RMP, the OCS, the DPU, and the Intervenors provided oral testimony from September 29, 2020 through October 2, 2020. During the Hearing counsel for each party conducted cross examinations of the other parties' respective witnesses. On October 5, 2020, the Commission held a Public Comment Hearing. The Hearing concluded on October 6, 2020 following closing arguments from RMP, the OCS, the DPU, and the Intervenors.

On October 30, 2020, the Commission issued its Order, which, in pertinent part:

1. Failed to evaluate the costs and benefits of net metering;
2. Established an ECR of 5.969 cents/kWh in the summer and 5.639 cents/kWh in the winter;
3. Authorized a taking by requiring that CG customers' accrued export credits expire annually; and
4. Refused to account for the various social and economic benefits that CG solar resources provide.

Vote Solar and Vivint Solar request that the Commission review or grant re-hearing of its Order to correct a number of errors, including making an assessment of the benefits and costs of net metering, recalculating the avoided capacity costs of CG solar, fixing a 20-year ECR, and allowing surplus credits to rollover or be paid

[16] Sept. 15, 2020 Surrebuttal Testimony of Christopher Worley ("Worley Surrebuttal"), lines 72-76.

out.[17] The grounds for this relief are more fully set forth herein.

ARGUMENT

I. The Commission Failed to Carry Out its Statutory Obligation to Analyze the Costs and Benefits of Net Metering

Utah Code Ann. § 54-15-105.1 requires the Commission to: (1) Determine, after appropriate notice and opportunity for public comment, whether costs that the electrical corporation or other customers will incur from a net metering program will exceed the benefits of the net metering program, or whether the benefits of the net metering program will exceed the costs ["Subsection One"]; ***and*** (2) Determine a just and reasonable charge, credit, or ratemaking structure, including new or existing tariffs, ***in light of the costs and benefits*** ["Subsection Two"]."[18] The Commission is thus required to assess the costs and benefits of net metering, and factor these costs into a ratemaking structure. Without determining whether the costs of net metering exceed the benefits (or vice-versa), the Commission cannot fulfill its obligation to set a just and reasonable charge, credit, or ratemaking structure.

The Commission, by way of the Settlement Approval Order, expressly acknowledged that it needed to assess the costs and benefits of net metering:

> Whether the costs of the NM Program outweigh the benefits is a complex question that is highly disputed among the

[17] Separately, on November 6, 2020, Utah Solar Energy Association (USEA) filed a motion seeking immediate relief from the implementation date in the Order and requesting that the Commission defer implementation of the Order to January 1, 2021. USEA further moved the Commission to deviate from Utah Admin. Code Rule R746-1-301 and expedite the response period from 15 days to five days. On November 17, 2020, after other parties had the opportunity to submit responses to USEA's motion, the Commission denied USEA's request to defer the Order's implementation date.

[18] Settlement Approval Order at *1 (quoting Utah Code Ann. § 54-15-105.1) (emphasis added).

> Parties, and we cannot make any determination under Subsection One without allowing all interested stakeholders a fair and reasonable opportunity to assert their positions and present evidence in support of them. Which is to say, we cannot make the Subsection One determination without holding a contested hearing.[19]

The Commission further clarified that the Settlement would not have any bearing on its statutory duty to perform the analysis called for by Subsection One:

> That is, ***the Settlement does not operate to annul our obligations under Subsection One, rather it prolongs them***. Given the additional load studies and other data that will be collected in the meantime, we anticipate being even better equipped to make the required findings at that future date.[20]

Despite the clear statutory language and the Commission's prior reassuring statements, the Commission failed to conduct a proper inquiry into the benefits and costs of net metering. Instead, the Commission's analysis was expressly limited to "evaluat[ing] whether 'costs that [RMP] or other customers will incur' from CG operating under Schedule 137 'will exceed the benefits' of that CG, or vice-versa." Order at *5 (quoting Utah Code Ann. § 54-15-105.1(1)). The Commission focused exclusively on the benefits and costs of exported energy, not the full costs and benefits of net metering, which require an examination of the behind-the-meter benefits to RMP and its customers. The record makes clear that these benefits exist, but also makes clear that they were not taken into account in this proceeding.[21] Indeed, RMP's Vice

[19] *Id*. at *7-8.

[20] *Id*. at *9 (emphasis added).

[21] *See, e.g*., Sept. 29, 2020 Hr'g Tr. 22:10-14 (Steward Cross) ("Q. So based on that last phrase in particular, doesn't customer investment and behind-the-meter solar energy reduce Rocky Mountain Power's demand for energy? A. Yes, it reduces customer demand, just as all of our

President of Regulation Joelle Steward explicitly testified that RMP had *not* undertaken to evaluate the benefits or costs of net metering.

> Q. You didn't value the costs of the net metering program, right?
>
> A. Correct.
>
> Q. You didn't value the benefits of the net metering program, right?
>
> A. Correct.
>
> …
>
> Q. . . . You did not introduce evidence in this proceeding of the costs and benefits of net metering, right?
>
> A. Correct. That was outside the scope of this proceeding.[22]

energy efficiency programs do."); *id.* at 40:20–41:4 (Steward Cross) ("Q. You also stated in your opening that that behind-the-meter usage benefits RMP by lowering its need for resources, right? A. It reduces demand, yes. Q. And that's a benefit? A. Generally, yes. Q. Every time a customer uses energy behind the meter, that benefits everyone else, including RMP, right? A. Yes, particularly if it's during the peak periods."); *id.* at 91:9-16 (Meredith Cross) ("Q. Every hour--every hour of power that--kilowatt hour that a consumer draws from a solar system during periods of near peak demand is an hour of power that is not demanded from RMP and the grid, correct? A. Yes. Q. And that reduces the demands on the grid, correct? A. Yes, it can."); *id.* at 180:17-22, 181:24–182:1 (MacNeil Cross) ("Q. I understand that you agree with Vote Solar's expert, Dr. Milligan, that any increase in supply or reduction in load during a period with loss of load events is likely to reduce the risk and/or the magnitude of outages; is that correct? A. I did say that, yes. Q. So when homeowners install rooftop solar, that reduces the risk and/or magnitude of outages, right? A. Yes.").

[22] *Id.* at 38:19-24, 39:14-18. *See also id.* at 112:24–113:2 (In response to the question "RMP in this proceeding is not accounting in any way for behind-the-meter benefits of solar on homeowners' systems, right?" RMP's witness Robert Meredith testified: "That's correct.") (Meredith Cross); *id.* at 191:5-11 (In response to the question "RMP does not present any quantification of benefits to the system from CG production that is behind the metering consumed rather than exported, correct?" RMP's witness Daniel MacNeil testified: "We have not tried to calculate how the benefits to the system from CG customers relative to their retail rates, what the difference of that might be.") (MacNeil Cross).

Vote Solar presented ample evidence in this proceeding that the value of net metering outweighs any possible costs—and there is no evidence in the record of any cost of net metering at all. As Mr. Constantine explained in his surrebuttal testimony, "Vote Solar's analysis shows that, even under net metering, it is customer generators who produce at least 24.17 cents of benefits per exported kilowatt hour (without including substantial benefits from behind-the-meter usage) and thereby subsidize RMP and other ratepayers."[23] Moreover, "Vote Solar's analysis illustrates that CG customers are more likely to contribute to a net decrease in the cost of operating the grid, which translates to lower costs for everyone."[24]

The Order—and the record in this proceeding—reflect that the Commission failed to evaluate the costs and benefits of administering a Net Metering Program. Without doing so, the Commission cannot fulfill its statutory obligation under Subsection One, and therefore it cannot fulfill its statutory obligation under Subsection Two—the Commission cannot determine a just and reasonable ratemaking structure without considering the costs and benefits of net metering. The Commission has yet to decide a key issue requiring resolution in this matter: there is simply no basis for doing away with the Net Metering Program before the Commission makes the requisite determination that the costs exceed the benefits. The Commission cannot simply defer the consideration of the costs and benefits to a later date; doing so would constitute an abrogation of the legislative directive. To the contrary, the Commission

[23] Sept. 15, 2020 Surrebuttal Testimony of Sachu Constantine ("Constantine Surrebuttal"), lines 177-80.

[24] *Id*. at lines 180-82.

must fulfill its statutory duty to conduct an analysis of the costs and benefits of net metering prior to adopting a rate design that is inconsistent with that paradigm. Accordingly, Vote Solar and Vivint Solar request that the Commission hold a new hearing to determine the costs and benefits of net metering, and keep the Transition Program in place pending such a hearing and decision.[25]

II. The Approved Rate Structure Is Not in the Public Interest

A. The Approval of a Rate Subject to Annual Adjustment is Arbitrary and Capricious Since the Substantial Evidence Demonstrates that a Rate Subject to Annual Adjustment is Neither Just Nor Reasonable And Not in the Public Interest

Contrary to the considerable evidence Vote Solar presented regarding the diseconomy and discriminatory nature of an annually updated ECR, the Commission has authorized annual rate updates. Dr. Carolyn Berry testified that "RMP's proposal to update the export credit rate annually is discriminatory" because "CG customers are the only RMP customers that the Commission intends to expose to annually-changing rates, as non CG customers experience rate adjustments only every 4 years or so."[26] Dr. Berry also explained that such discriminatory treatment of CG customers is a violation of good rate design.[27] RMP's only attempt to counter this evidence was to claim that Schedules 94, 98, and 193 are instances in which

[25] Vote Solar's primary position is that the Commission cannot fulfill its statutory mandate on the record before it, and therefore another hearing must be held so that the Commission can determine the costs and benefits of net metering. Vote Solar makes the remainder of the arguments asserted in this Motion in the alternative.

[26] Oct. 1, 2020 Hr'g Tr. 730:12-20 (Dr. Carolyn Berry Opening Statement).

[27] Berry Rebuttal, lines 85-86, 425-31, 663-73.

residential customers are subject to annual rate updates.[28] However, as Dr. Berry explained, and Mr. Meredith conceded on cross examination, "those schedules are tariff riders, which only apply to small subcategories of customer bills. CG customers remain the only RMP customers whose rates RMP intends to change from the ground up each year."[29] Allowing RMP to impose a rate design that singles out and treats differently one category of customers without justification or evidentiary support is neither just nor reasonable under Utah law and is otherwise arbitrary and capricious. *See* Utah Code § 54-3-1 ("All rules and regulations made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable. The scope of definition 'just and reasonable' may include … economic impact of charges on each category of customer[.]"); *see also* Utah Code § 54-4-4.1(1)(c); Settlement ¶ 30.

Vote Solar also established that an annually updated ECR will have a substantial, and potentially decisive, negative impact on future CG investment. As Dr. Berry explained, allowing RMP to reset the ECR annually creates "price instability."[30] "The uncertainty that annual rate updates creates will stifle CG investment … Annually changing rates will make it impossible for potential CG investors to gauge the likely return on their investment; and thus, deter future CG growth."[31] Oct. 1, 2020 Hr'g

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[28] Sept. 15, 2020 Surrebuttal Testimony of Daniel J. MacNeil ("MacNeil Surrebuttal"), lines 606-08.

[29] Oct. 1, 2020 Hr'g Tr. 730:21–731:2 (Berry Opening Statement); *see also* Sep. 29, 2020 Hr'g Tr. 94:21–96:7 (Meredith Cross).

[30] *See* Berry Rebuttal, lines 726-30. The creation of price instability is also a violation of good rate design. *Id.*

[31] The Commission responds to Vote Solar's evidence regarding the CG solar industry's need for rate stability by stating that "a CG customer who wants to lock in a long-term value for the customer's generation could choose to sell their power to RMP under the Public Utility

Tr. 731:3-9 (Berry Opening Statement); Berry Surrebuttal, lines 147-49 (an annually updated ECR introduces uncertainty into the CG solar market, which "dampens economic activity, causing CG customers to hold back on purchases and CG solar companies to delay or suspend investments"); *see also* Berry Rebuttal 726-36; Sep. 29, 2020 Hr'g Tr. at 88:5-7 (Meredith Cross) ("… I think that a less certain future could make a customer less likely to purchase an investment."). The sharp decline in CG installations that resulted from RMP's 2018 request to reduce the ECR and the initiation of the transition program in 2019 evidences the negative effect rate uncertainty has on overall CG investment in Utah.[32]

The Commission dismissed Vote Solar's evidence regarding the stifling effect that annual ECR updates will have on CG investment as "policy arguments [ ] not relevant to RMP's cost of service." Order at *7. But this is not a matter of mere

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Regulatory Policies Act (PURPA)." Order at *7. This conclusion is erroneous as even Mr. MacNeil, RMP's own witness, conceded that acting as a PURPA Qualifying Facility ("QF") is economically irrational for CG customers:

> Q. And can you conceive of any situation in which that would be an economically sensible thing for a homeowner to do in RMP service territory?
>
> A. It is certainly possible that someone is willing to pay you a great deal of money for your rooftop solar output, but it is unlikely to be economic, especially with where wholesale rates are today, which is the major driver for the export credit rates that we are proposing.
>
> Q. So as a practical matter, homeowners either use the power or sell it to RMP, correct?
>
> A. Yes.

Sep. 29, 2020 Hr'g Tr. at 172:8-18. Given the substantial differences between CG solar customers and QFs, and the absence of any evidence establishing the viability of CG customers selling their energy to RMP under PURPA, the suggestion that CG customers can achieve a just and reasonable ECR by becoming PURPA QFs is wholly unsupported by the record.

[32] *See* Berry Surrebuttal, lines 111-51; Oct. 1, 2020 Hr'g Tr. 775:23–776:12 (Berry Cross).

policy, it is a matter of fact proven by the science of economics through Dr. Berry and unrebutted by any adverse party. In any event, while the Commission has decided that its "regulatory purview 'does not encompass any and all considerations of interest to the public," *id.* at *1,[33] the Commission has statutory discretion to consider "the well-being of the state of Utah" and "means of encouraging conservation of resources and energy" when making a determination regarding a just and reasonable ECR. Utah Code § 54-3-1. *See also* Utah Code § 54-4-4.1(1)(b) ("The commission may, by rule or order, adopt any method of rate regulation that is in the public interest[.]"). As discussed in Section IV *infra*, Vote Solar presented substantial evidence of the multitude of ways in which CG solar benefits the well-being of the state of Utah, not only in terms of strengthening the resiliency and reliability of the grid, but also by providing considerable economic, health, and social benefits to Utah.[34] By implementing an annually updated rate that will effectively put an end to the CG solar

[33] The Commission cites *Ellis-Hall Consultants, LLC v. Public Service Commission of Utah*, 2014 UT 52, ¶ 22, for the proposition that its "regulatory purview 'does not encompass any and all considerations of interest to the public.'" Order at *1 n.2. The Commission acknowledges that *Ellis-Hall* "concerns [its] authority in a different statutory context" but finds "the Court's reasoning persuasive and anticipate[s] the Court would apply similar constraints" to the Commission's determination of an ECR. *Id.* But *Ellis-Hall* is completely inapposite to the ECR. The *Ellis-Hall* dispute arose because Ellis-Hall, a competitor of wind power producers who failed to secure a power purchase agreement with PacifiCorp, accused the utility of unfair dealings in contracting with its competitors. The Commission thus examined whether the power purchase agreements PacifiCorp entered with Ellis-Hall's competitors were fair and reasonable and not the result of questionable motives. The facts and inquiry there are not at all applicable to the Commission's determination of a just and reasonable ECR or the public interests at play here.

[34] *See* May 8, 2020, Revised Affirmative Testimony of Carolyn A. Berry ("Berry Revised Affirmative"), lines 652-889.

industry in Utah, the Commission has approved an ECR that is not just or reasonable, and which is contrary to the public interest and Utah's well-being.

The Commission's rejection of the substantial record evidence regarding the unjustified discriminatory nature of an annually updated ECR and the severe economic consequence of this rate design is groundless and constitutes a violation of the Commission's statutory mandate to set a just and reasonable rate that is in the public interest.

B. The Commission's Adoption of Annually Expiring Export Credits is Arbitrary, Capricious, Punitive, and Contrary to Substantial Evidence

By "defer[ring] a decision on discontinuing annual expiration of credits until the effects of the ECR on system size can be evaluated empirically," the Commission has effectively adopted annually expiring export credits, and by its own admission has done so absent any supporting evidence. Order at *20. The Commission's adoption of a completely unsubstantiated feature of RMP's proposed rate design, which amounts to a taking of CG customers' legitimately earned export credits, is neither just nor reasonable and is not supported by substantial evidence.

The Commission attempts to ground its decision on the fact that "[s]ome parties discussed annual expiration as providing an important disincentive for a customer to over-size a CG system." *Id.* However, every witness who made this claim—Mr. Meredith, Mr. Davis, and Ms. Steward—failed to offer any evidence that the annual expiration of export credits has any influence on system sizing.[35] For example,

[35] *See* Berry Rebuttal, lines 749-56; Berry Surrebuttal, lines 939-50; 972-89.

RMP witness Steward admitted that RMP offered no evidence to support this proposition:

> Q. Okay. You say without this expiration feature, there's a risk customer generators will oversize their system. I believe you just said that a couple of moments ago, right?
>
> A. Right.
>
> Q. And that customer generators might become mini wholesale power producers, right?
>
> A. Right.
>
> …
>
> Q. Can you show me any evidence in your reports that would allow the Commission to quantify the risk that someone will try and become a mini wholesale power producer?
>
> A. No.
>
> …
>
> Q. [I]f we're talking about the likelihood or the risk or the magnitude, there's nothing in your reports that could allow the Commission to determine any of those things, right?
>
> A. No. I'm not even sure how we would present that quantitatively.[36]

Moreover, to the extent system sizing is a concern—though there is no evidence in the record of any system oversizing by CG customers—Dr. Berry proposed instituting upfront mandatory guidelines that would ensure proper sizing without taking the export credits CG customers legitimately earn through their provision of energy

[36] Sep. 29, 2020 Hr'g Tr. 45:2–46:13 (Steward Cross).

to RMP each year.[37] The Commission did not address this approach in its Order. At minimum, the Commission should make a determination about the efficacy of Dr. Berry's proposal, which, unlike annually expiring export credits, is neither punitive nor arbitrary.

The Commission also failed to address the considerable evidence in the record that annually expiring export credits unfairly affects CG customers and disincentivizes efficient energy use. Dr. Berry explained that confiscating customers' export credits "creates ill will and incentivizes inefficient consumption of energy to avoid the loss of credits."[38] Moreover, a one-year expiration timeline is arbitrary, punitive, and does not reflect usage over the 20-25-year lifespan of CG systems.[39] Because a family may experience numerous events that affect their consumption from year-to-year, revoking credits legitimately earned in a low usage year without giving customers the opportunity to apply those credits to a year of higher usage is demonstrably unfair and lacking in evidentiary basis.[40] "Most startlingly, a policy of expiring customer credits flies in the face of the Commission's Demand-Side Management [ ] policy. It imposes a penalty on customers that take actions to reduce their energy consumption and might even disincentivize investments in energy efficiency."[41]

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[37] Berry Rebuttal, lines 96-97.

[38] *Id.,* lines 97-98; *see also id.*, lines 98-100; 775-91.

[39] *Id.*, lines 767-74.

[40] *Id.*

[41] *Id.*, lines 788-91.

Absent an analysis of the substantial evidence regarding the arbitrary and punitive nature of annually expiring export credits, and despite the lack of evidence regarding the impact of annually expiring export credits on system sizing, the Commission concluded that "[t]he ECR should now [disincentivize system oversizing] because the highest and best use of CG, and the use that brings the greatest benefit to CG participants, is the energy they consume and thereby avoid purchasing from RMP." Order at *20. This conclusion is not supported by substantial evidence when viewed in light of the complete hearing record.

The Commission does not have the necessary data to determine the "highest and best use" of CG because there is no evidence that values the considerable behind-the-meter benefits of CG—benefits that even RMP agrees exist.[42] Moreover, if the Commission's position is that the true value of CG is in offsetting behind-the-meter consumption, the Commission must include in the ECR the benefits to RMP and other customers from that behind-the-meter generation—something the Commission has failed to do.[43]

The Commission's decision to leave annually expiring credits in place absent consideration of the substantial evidence regarding its punitive nature and deleterious effects on energy efficiency constitutes a failure to meet the Commission's

[42] Sep. 29, 2020 Hr'g Tr. 40:12–41:5 (Steward Cross) (agreeing that while behind-the-meter usage benefits RMP and all of its customers, RMP has not quantified the behind-the-meter benefits of CG solar in this proceeding); 112:24–113:2 (Meredith Cross) (agreeing that RMP has not accounted in any way for behind-the-meter benefits of CG solar); 191:5-11 (MacNeil Cross) (agreeing that RMP has not tried to calculate the benefits to the system of behind-the-meter usage).

[43] *Id.*

statutory mandate to determine a just and reasonable ECR.

III. Components of the Approved ECR Are Unsupported by the Record

The approved ECR (5.969 cents/kWh in the summer and 5.639 cents/kWh in the winter) is comprised of (i) avoided energy costs (2.439 cents/kWh in the summer and 2.109 cents/kWh in the winter), (ii) avoided capacity costs (3.53 cents/kWh in total for avoided generation, transmission, and distribution capacity), and (iii) integration costs (.015 cents/kWh). Vote Solar and Vivint Solar agree that avoided energy costs and avoided generation, transmission, and distribution capacity costs should be included in the ECR; however, the methodologies and calculations the Commission performed to reach these figures undervalues CG solar.

A. The Determination that the EIM Method Should Be Used to Calculate Avoided Energy is Not Supported by Substantial Evidence and Introduces a Key Issue Requiring Resolution

In this proceeding the parties proposed different methodologies for calculating avoided energy costs. Vote Solar proposed using the Official Forward Price Curve ("OFPC")—forward-looking prices developed and used by PacifiCorp itself—whereas RMP proposed using a backward-looking GRID model.[44] The Commission rejected both methodologies and instead adopted a methodology originally proposed by Vivint Solar in its direct testimony, subject to the modifications recommended by RMP on

[44] May 8, 2020 Revised Affirmative Testimony of Michael Milligan ("Milligan Revised Affirmative"), lines 179-85; Feb. 3, 2020 Direct Testimony of Daniel J. MacNeil ("MacNeil Direct"), lines 62-68.

surrebuttal.[45] This methodology calls for the use of historical Energy Imbalance Market (EIM) prices to project future avoided energy cost. As set forth in its written testimony and at the hearing, Vote Solar's position is that it is far better to use forward-looking prices to forecast future avoided energy cost than backward-looking prices—prices that are *by definition* incapable of accounting for future changes to the grid.[46] Vivint Solar witness Dr. Christopher Worley rejected his EIM proposal and adopted Vote Solar's position in his surrebuttal testimony.[47] In addition, in determining that it is reasonable to use EIM prices to calculate the avoided energy

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[45] Order at *9. *See also* Mar. 3, 2020, Direct Testimony of Christopher Worley ("Worley Direct"), lines 155-69; July 15, 2020 Rebuttal Testimony of Daniel J. MacNeil ("MacNeil Rebuttal"), lines 129-39.

[46] *See, e.g.,* July 15, 2020 Rebuttal Testimony of Michael Milligan ("Milligan Rebuttal"), lines 231-33 ("the items used to create the OFPC take into account forecasted future developments in the interconnection, whereas historical EIM prices do not account for any of these changes") *id*., lines 272-78 ("The role of variable renewable energy development, coal retirements, and the evolution of demand into the future cannot be known with certainty. However, it *is* certain that historical EIM prices do not accurately represent future prices because we know that many factors are changing, and these changes will have significant influence on energy prices."); Oct. 2, 2020 Hr'g Tr. at 793:10-16 (Milligan Opening Statement) ("EIM prices are necessarily historical and do not account for future coal plant retirements, increasing renewables, changes in demand, changes in gas prices, changes in the transmission network, changing reserve margins, gas pipeline tariffs, or any other anticipated technological advances and market evolution").

[47] Worley Surrebuttal, lines 21-33 ("[U]pon further consideration I have decided to change my recommendation on how to best calculate the value of avoided energy. The use of a market proxy like EIM nodal prices should reflect RMP's marginal cost of energy, however, use of historical data raises some conceptual concerns. Firstly, historical prices may or may not accurately reflect future prices. Energy markets have seen dramatic changes over the last 5-10 years with utility-scale renewables becoming cost-effective investments. Further, many states are pursuing accelerated coal generation retirements and other reductions in carbon emissions. Based on this and other market uncertainties, it is unclear that historical EIM prices are a suitable proxy for future prices. My second concern with my previous methodology is that [there] are clear questions on how nodal prices should be averaged spatially and intertemporally. Behind-the-meter solar reduces load at or near the source. Customers throughout RMP's service territory have invested in solar, so it is unclear how to average and weight nodal prices to accurately reflect the distribution of behind- the-meter solar.").

component of the ECR, the Commission drew a conclusion that is not supported by the record.

In explaining its decision to adopt an EIM-based methodology, the Commission noted that using EIM prices is preferable to using a forward price curve because EIM prices "reflect actual market prices within a specified time frame." Order at *9. Because of this, the Commission reasoned, "[c]ustomers receiving an ECR updated annually using recent EIM prices will be more reasonably compensated ***based on the prices RMP in fact paid for energy*** during the most recently comparable time period." *Id.* (emphasis added).

There is no evidence in the record to support the assumption that EIM prices are, in fact, the prices that RMP pays for energy. EIM prices vary according to geographic region. PacifiCorp has two different EIM Load Aggregation Points at which real-time and 15-minute prices are calculated by the California Independent System Operation.[48] There are hundreds of other pricing points in PacifiCorp's service territory and the EIM associated with loads, generation, and interties. In its direct testimony Vivint Solar proposed using 15-minute prices at a load pricing node for downtown Salt Lake City (WTEMPLE_LNODED1).[49] RMP's witness Mr. MacNeil proposed using 15-minute prices for the PacifiCorp East point (ELAP_PACE-APND).[50]

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[48] These are EIM Load Aggregation Point PacifiCorp East (ELAP_PACE-APND) and PacifiCorp West (ELAP_PACW-APND). *See* California ISO, Full Network Model Pricing Node Mapping (based on DB20M10 with EIM), October 23, 2020, available at http://www.caiso.com/market/Pages/NetworkandResourceModeling/Default.aspx.

[49] Worley Direct, lines 155-57.

[50] MacNeil Direct, lines 87-89.

In its Order, the Commission does not address which pricing node is to be used to calculate avoided energy costs. At the same time, the Commission justifies its decision to adopt the EIM methodology by suggesting that customers should be charged the price RMP pays for energy. Order at *9. However, because EIM prices differ according to the pricing node selected, and because the Commission did not address which pricing node should be used, there is no way to verify that the EIM prices used to calculate avoided energy are in fact the prices RMP pays to purchase energy. Accordingly, Vote Solar and Vivint Solar request that the Commission clarify which pricing node it adopted, rehear the issue of which pricing node should be used, and allow the parties to submit evidence on the most accurate pricing point for calculating avoided energy.

The Commission further justified its decision to adopt an EIM-based methodology on the assumption that the underlying data is "publicly available and transparent." Order at *9. But the EIM methodology as modified by RMP calls for the use of non-public data that RMP—and RMP alone—has access to. Under the approved methodology, historical EIM prices are to be "weighted by the historical delivered volumes in each interval."[51] Thus, the methodology relies upon a weighted average of customers' export volumes that is not accessible to anyone besides RMP. To the extent the Commission adopted the EIM method because it relies on data that is "publicly available and transparent," the Commission has drawn a conclusion based on an inaccurate assumption. For these reasons, Vote Solar and Vivint Solar request

[51] MacNeil Rebuttal, line 130.

that the Commission reverse its conclusion to adopt the EIM method to calculate the avoided energy cost component of the ECR and reconsider Vote Solar's proposal to use the OFPC.

B. The Commission Erroneously, Arbitrarily, and Capriciously Reduced the Value of Avoided Capacity Cost, Contrary to the Record Evidence

The Commission approved a total avoided capacity cost of 3.53 cents/kWh, which includes the costs of avoided generation capacity, avoided transmission capacity, and avoided distribution capacity. Vote Solar and Vivint Solar commend the Commission for correctly concluding that these values should be included in the ECR over RMP's and DPU's objection. However, Vote Solar and Vivint Solar ask the Commission to review its conclusion to address calculation errors identified in the Commission's calculations of avoided generation capacity and avoided transmission capacity, resulting in an increase of 0.836 cents/kWh from 3.53 cents/kWh to 4.37 cents/kWh.

1. Avoided Generation Capacity

In its Order, the Commission explains that it approved the capacity contribution value proposed by Vote Solar as adjusted to one-year calculations with the exception of a 9.39% carrying charge that Vote Solar applied based on a study filed in 2018 by PacifiCorp. Order at *16. The Commission concluded that the 7.82% carrying charge proposed by RMP more aptly represents "the current cost of equity and debt for RMP in Utah." *Id*. Thus, the Commission used Vote Solar's one-year avoided capacity calculation of 2.771 cents/kWh (in 2021 dollars) and applied a 17% reduction to correct the carrying charge from 9.39% to 7.82%. However, in actuality Vote Solar

adopted a 6.959% carrying charge (used to determine the $88/kW-yr in 2026 dollars), not a 9.39% carrying charge.[52] Accordingly, the Commission applied a 17% reduction based on the incorrect assumption that Vote Solar had used a higher carrying charge. Upon a review of the Commission's Order, Vote Solar recalculated the avoided generation capacity cost using the 7.82% carrying charge that the Commission approved, rather than the 6.959% carrying charge that Vote Solar used. This yields a one-year avoided generation capacity cost of 2.966 cents/kWh, revised upward from the 2.771 cents/kWh as proposed in Vote Solar's surrebuttal testimony.[53] Accordingly, the Commission should increase its approved avoided generation capacity cost calculation by 0.656 cents/kWh to properly reflect the carrying charge it has approved. Vote Solar and Vivint Solar request that the Commission review its approved value of 2.31 cents/kWh and increase it to 2.966 cents/kWh in 2021 dollars.

2. Avoided Transmission Capacity

The Commission additionally applied a reduction to the calculation of avoided transmission capacity cost to reflect the use of a lower carrying charge, yielding a lower avoided transmission cost calculation. However, Vote Solar did not use a carrying charge in its avoided transmission cost calculation because it is based on the transmission rate.[54] Thus, the Commission erroneously reduced Vote Solar's

[52] Dr. Milligan explains that he used the combustion turbine proxy resource from PacifiCorp, which Mr. MacNeil stated in his testimony has a fixed cost of $88/kW-yr in 2026 dollars. *See* Sept. 15, 2020 Surrebuttal Testimony of Michael Milligan ("Milligan Surrebuttal"), line 634; MacNeil Rebuttal, line 766.

[53] Milligan Surrebuttal, line 635.

[54] May 8, 2020 Revised Affirmative Testimony of Spencer S. Yang ("Yang Revised Affirmative"), lines 190-92. RMP's transmission rates are determined on a $/kW-year basis,

proposed value. Vote Solar and Vivint Solar ask the Commission to review its approved value of 0.91 cents/kWh and increase it to 1.09 cents/kWh.

C. The Decision to Include Integration Costs in the ECR is Arbitrary, Capricious, and Not Supported by Substantial Evidence

The Commission improperly concluded that integration costs should be permitted to decrease the value of the ECR by 0.015 cents/kWh notwithstanding the lack of any evidence that RMP accrues integration costs as a result of CG resources. Order at *13. The Commission based its conclusion on the determination that "RMP's flexible reserve study provides substantial evidence" to support the inclusion of these costs. *Id*. However, RMP witness Mr. MacNeil expressly conceded during the Hearing that in its flexible reserve study RMP did not undertake to study the impact of CG solar resources at all.

On cross-examination of Mr. MacNeil, Vote Solar's counsel Mr. Selendy specifically asked whether the flexible reserve study derived integration costs specific to CG solar. Mr. MacNeil's response was an unambiguous "no":

> Q. All right. Is it accurate to say that the one cost that you did identify in connection with exports from CG, the integration cost, is drawn by you from the flexible reserve study and PacifiCorp's 2019 IRP?
>
> A. Yes. That is where we reported the 2019 IRP values for integration.

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as shown in Dr. Yang's workpapers. *See also* Yang Revised Affirmative, line 229 (Fig. 3). Thus, there is no carrying charge used to determine the $/kW-year rate. Had Dr. Yang used the Deferrable Project Approach like he did for his computation of avoided distribution costs, then a carrying charge would have been used. *Id*. at lines 206-08. But since Dr. Yang did not use that approach, no carrying charge was applied.

> Q. And that study, in fact, didn't derive integration costs that are specific to CG solar, did it?
>
> A. That is true.[55]
>
> . . .
>
> Q. Okay. And so the study is not addressing retail solar in particular, correct?
>
> A. No.[56]

While the Commission acknowledges that RMP's flexible reserve study did not examine CG solar resources, Order at *13, the Commission justifies its conclusion to include integration costs in the ECR by reasoning that "utility scale solar is a reasonable proxy for estimating integration costs for CG solar." *Id.* However, this conclusion is unsupported by the record evidence. Neither Mr. MacNeil nor any other RMP witness put forth any evidence to justify the supposed link between variability and CG solar integration costs.

In the absence of any evidence to support the determination that CG solar imposes costs of integration—and in the presence of evidence that RMP never undertook to study the impact of CG resources—there is no basis to reduce the ECR to account for integration costs. Accordingly, Vote Solar and Vivint Solar respectfully request that the Commission reconsider its decision to include integration costs in the ECR and increase the approved ECR accordingly by 0.015 cents/kWh.

[55] Sept. 29, 2020 Hr'g Tr. 207:5-13.

[56] *Id.* at 208:9-11.

D. The Commission's Decision to Discount Fuel Price Hedging Benefits of CG Solar is Not Supported by Substantial Evidence

The Commission concluded that the avoided fuel price hedging benefit provided by CG solar is a relevant ECR component that could impact RMP's cost of service. Order at *17. However, the Commission chose not to include a value for CG's avoided fuel hedging benefit based on its conclusion that there was insufficient evidence to quantify the value. *Id.* at *17-18. Not so. Using standard industry methods, Dr. Berry quantified the avoided fuel hedging benefit CG solar provides to RMP.[57] Neither RMP, nor any other party, provided any evidence countering or calling into question Dr. Berry's calculation. Indeed, PacifiCorp accounts for fuel hedging costs in its Integrated Resource Plan. Dr. Berry's proposed fuel hedge benefit of 0.19 cents/kWh is "less than half of the hedge value calculated by RMP for energy efficiency" and "likely understates the hedge value provided by CG exports."[58]

The Commission rejected Dr. Berry's proposed hedge value because Dr. Berry relied upon a 2011 published study of utilities in the Northwestern United States which, according to the Commission, is "dated and is not specific to PacifiCorp's current hedging program[.]" Order at *17-18. But, as Dr. Berry pointed out, in 2019 the Oregon Public Service Commission ("PSC") adopted an avoided value equal to Dr. Berry's proposed 5 percent avoided energy costs based on the same study Dr. Berry relied upon.[59] RMP provided no counter evidence or alternative suggestion for

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[57] *See* Berry Revised Affirmative, lines 557-60; Berry Surrebuttal, lines 547-603.

[58] Berry Surrebuttal, lines 578-80.

[59] *See* Berry Revised Affirmative, lines 554-56 (citing *Order No: 19-021 In the Matter of PacifiCorp, dba Pacific Power, Resource Value of Solar,* Public Utility Commission of Oregon,

calculating the avoided fuel hedging benefit. As a result, Dr. Berry's calculation, which was found to be current and reliable by the Oregon PSC as of 2019, should be credited.

IV. The Commission Erroneously Interpreted the Law by Failing to Consider the Well-Being of the State of Utah and Ignored Substantial Evidence

The Commission erred in declining to include values in the ECR for the societal, economic, and environmental benefits of CG solar.[60] The Commission based its rejection of these proven benefits on an assignment of all "environmental considerations, carbon policy, economic development, and public health" to "the regulatory ambit of other government agencies." Order at *1-2. While the Commission has not been tasked with regulating Utah's environment, economy, or health systems generally, the Utah legislature has specifically authorized the Commission to take into account "the public interest" and "the well-being of the state of Utah" when evaluating RMP's rate proposals. Utah Code § 54-3-1 ("All rules and regulations made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable. The scope of definition 'just and reasonable' may include, but shall

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Docket No. UM 1910, p. 20, Jan.22, 2019, https://apps.puc.state.or.us/orders/2019ords/19-021.pdf) ("Acknowledging that a hedge value exists, and that it is difficult to quantify, the Oregon PUC adopted a value equal to 5 percent of avoided energy costs based on a study by E3 Economics."); *see also In the Matter of the Investigation of the Costs and Benefits of PacifiCorp's Net Metering Program*, July 1, 2015 Order, Dkt. No. 14-035-114 at 16 ("Of course, the fact that another state has adopted a particular method or variable will not function to dissuade [the Commission] from considering it.").

[60] The Commission declined to include in the ECR values for avoided carbon compliance, ancillary benefits, community benefits, grid support services, reliability and resilience, health benefits from reduced air pollution, benefits from reduced carbon emissions, social benefits of reduced carbon emissions, avoided fossil fuel life cycle benefits, and local economic benefits. *See* Order at *18.

not be limited to … the well-being of the state of Utah[.]"); *id.* § 54-4-4.1(1)(b) ("The Commission may, by rule or order, adopt any method of rate regulation that is in the public interest."); *see also id.* § 54-12-1(2) ("It is the policy of this state to encourage the development of independent and qualifying power production … 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 H.C.R. 7 Concurrent Resolution on Environmental and Economic Stewardship ("[T]he Legislature and the Governor encourage … state agencies to reduce emissions through incentives and support of the growth in technologies and services that will enlarge our economy in a way that is both energy efficient and cost effective."). Thus, consideration of CG solar's health, economic, and societal benefits falls squarely within the Commission's purview, and the Commission's rejection of its statutory mandate constitutes an erroneous interpretation of the law.

Moreover, even under the Commission's formulation, Vote Solar has not asked the Commission to evaluate "all considerations of interest to the public," Order at *2, but instead, the very specific, evidentiarily supported and quantifiable benefits provided by CG solar using standard, industry accepted methods. Dr. Berry provided extensive testimony calculating each of the health, economic, and societal benefits CG solar provides and, in doing so, relied on data provided by RMP.[61] Vote Solar presented substantial and uncontroverted evidence of the benefits CG solar brings to

[61] *See* Berry Surrebuttal, lines 99-100.

the well-being of Utah, as well as to RMP in the form of avoided carbon compliance costs.[62] The Commission has been empowered by the Utah legislature to consider each of these benefits, and the evidence supporting their valuation, as part of the ECR. A complete refusal to consider the evidence supporting these benefits as part of the determination of a just and reasonable ECR constitutes an abdication of the Commission's statutory duty to set a just and reasonable rate. The Commission's relinquishment of its statutory discretion is particularly improper given that there was no evidentiary challenge to the substantial evidence Vote Solar presented regarding the value of CG solar's health, environmental, and societal benefits.

[62] Berry Revised Affirmative, lines 646-867.

CONCLUSION

For the foregoing reasons, the Intervenors respectfully request that the Commission provide review and rehearing of its October 30, 2020 Order to address the issues discussed above.

DATED this 30th day of November, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of November, 2020 a true and correct copy of the forgoing was served upon the following as indicated below:

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