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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) **RESPONSE TO PETITIONS FOR REVIEW AND/OR REHEARING**

INTRODUCTION

Petitioners Utah Clean Energy ("UCE") and, jointly, Vote Solar and Vivint Solar, Inc. (collectively "VS") have separately petitioned for review and/or rehearing of the Public Service Commission's final order in this Export Credit Docket issued October 30, 2020 (the "Order"). The petitioners challenge a wide range of determinations made by the Commission in the Order. Rocky Mountain Power ("RMP"), a division of PacifiCorp, responds jointly herein to each of these petitions.

The Commission should reject the petitions. The determinations challenged rest largely on discretionary determinations that are subject to a deferential

standard. The Commission's findings and conclusions in this regard are neither arbitrary nor capricious and are supported by substantial evidence in the record. The petitioners also challenge the Commission's statutory analysis. But they characterize the analysis in a way that is at odds with the Commission's actual determinations. The Commission fairly articulated the governing standards and acted properly under the law.

The petitions present no meritorious basis for revisiting a decision that the Commission entered only after a lengthy period of study and a consideration of the relevant factors and record evidence. The petitions should each be denied.

BACKGROUND

Proceedings on how to determine the appropriate compensation for CG began in some form in August 2014. This stage of the proceeding is a result of a settlement stipulation approved by the Commission in September 2017. *Investigation of the Costs and Benefits of PacifiCorp's Net Metering Program*, Docket No. 14-035-114, Order Approving Settlement Stipulation (September 29, 2017) ("Settlement Order"). The Settlement Order capped participation in the Company's net metering program but continued the program through December 31, 2035, put in place a "Transition Program" through December 31, 2032, and stated that the Company would file an Application to open this docket. *Id.* at 4-6. Per the Settlement Order, the stipulation approved by the order, and the Company's Application in this matter, the scope of this proceeding was limited to determining "the compensation rate for exported power from customer generation systems for all customers, including after the

expiration of the Grandfathering Period and Transition Period." (Settlement Agreement ¶¶ 14, 28.)

The Commission's Order in this proceeding came after two phases and several years of consideration, culminating in a four-day hearing held September 29 through October 2, 2020. The Order approved an export credit rate ("ECR") for customer generation of 5.969 cents/kWh for energy exported during the summer period and 5.639 cents/kWh for energy exported during the winter period. (Order at 1.) The rates represent an avoided energy component of 2.439 cents/kWh in the summer period (June through September) and 2.109 cents/kWh in the winter period (October through May), plus total avoided generation, transmission, and distribution capacity costs of 3.53 cents/kWh. (*Id.*) The Order set rates based primarily on RMP's cost of service and approved the concept of annual updates to the ECR, inviting comments on the timing, procedure, and substance of those updates. (*Id.* at 1-2.) The Commission supported its analysis with references to facts on the record. (*Id. passim*.)

VS and UCE bring separate, sometimes overlapping petitions to the Commission urging it to rehear the case, between them addressing nearly every aspect of the Commission's Order. VS kicks off its argument by rehashing its long-held position that the Commission cannot determine the ECR without first analyzing the costs and benefits of net metering under Utah Code Ann. § 54-15-105.1 (the "Net Metering Statute"), an argument inconsistent with the Settlement Order and the plain language of the statute. Both VS and UCE challenge the Commission's use of an annualized ECR, ignoring ample bases in the record for the

Commission's decision. VS challenges the annual expiration of export credits. UCE challenges the timetable implementing the ECR prospectively for new Schedule 137 customers based on a misinterpretation of the principle of gradualism. VS further challenges the Commission's cost analysis, particularly its employment of the EIM method, its calculation of capacity contribution value, its use of integration costs, and its declination of avoided fuel hedging price benefit. UCE challenges the Commission's statutory analysis with respect to its examination of cost of service as the primary basis for determining the ECR. None of these arguments demonstrate that the Commission Order was arbitrary, capricious, against applicable law or policy, or inappropriate in any way. RMP will address each in turn.

ARGUMENT

I. THE COMMISSION WAS NOT REQUIRED TO ANALYZE THE COSTS AND BENEFITS OF NET METERING BEFORE DETERMINING AN ECR.

VS opens its petition for rehearing by repeating its longstanding position that the Commission is required to analyze the costs and benefits of net metering before it can determine an ECR. (VS Pet. at 11-15.) As VS and this Commission well know, in the Settlement Order, the Commission approved an agreement by parties to cap the net metering program at the existing enrollment, and to leave the program in place through December 31, 2035. The Settlement Order leaves net metering in place and specifically declines to make findings under the Net Metering Statute, holding that the Commission's timeframe for that determination is by the conclusion of the grandfathering period. (Settlement Order at 9-10.) Further the Settlement Order approved the opening of this docket, which is limited to

determining an ECR under the new program agreed to in the settlement agreement. (*Id.* at 20.) The Commission did not analyze the costs and benefits of net metering under the Net Metering Statute in this proceeding because that is not the purpose of the proceeding. The Commission should deny VS's petition.

To the extent the Net Metering Statute applies to this proceeding, the Commission made appropriate findings to comply, stating: "Specifically, in this proceeding we have evaluated 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. § 54-15-103(2) and (3).) The Commission concluded: "We are approving a structure within Schedule 137 'in light of [those] costs and benefits." (Order at 5-6, quoting Utah Code Ann. § 54-15-105.1(2).) The Commission noted further: "In this proceeding we have evaluated all costs and benefits advocated by all parties." (Order at 6.) Therefore, the Commission complied with the Net Metering Statute to the extent required, and failure to do so is not a basis to petition for rehearing.

II. THE COMMISSION'S DECISIONS TO IMPLEMENT AN ANNUALIZED ECR AND TEMPORARY CREDIT EXPIRATION USING THE TIMETABLE IT DID ARE REASONABLE AND SUPPORTED BY SUBSTANTIAL EVIDENCE.

A. The Commission's Decision to Annually Review the ECR Is a Reasonable Approach to ECR Implementation.

Both UCE and VS urge rehearing on the Commission's decision to update the ECR annually. (UCE Pet. at 12-21; VS Pet. at 15-23.) But the Commission correctly decided based on the record that energy and capacity prices do not remain constant year to year. (Order at 7.) An ECR subject to annual review ensures that customers

can make an informed usage choice by having the opportunity for an annual cost-benefit analysis. A yearly reevaluation of the ECR also provides fair compensation to CG customers for their exported energy, providing them with the benefit if the value of their generation goes up, and is consistent with how the Commission treats other generators who do not guarantee to provide a certain amount of power to the Company. To treat CG customers differently than other similar generators would be discriminatory.

Contrary to the petitioners' suggestion, the Commission *did* consider potential CG customers' need to be assured of a return on their investment. (*Id.*) As the Commission pointed out, this argument fails to address RMP's cost of service. (*Id* at 7.)

Ultimately, the Commission struck an even balance between the respective interests of CG and non-CG customers, giving the CG customers who choose to enroll in Schedule 137 both the risks and rewards of changes in rates and not requiring non-CG customers to bear that risk. The Commission's balanced and reasoned approach is neither arbitrary, capricious, nor unsupported by substantial evidence. Rather, it is a reasonable way of ensuring customers are protected.

B. The Commission's Decision to Defer Annual Credit Expiration Is Not Arbitrary, Capricious, or Punitive, but Is Substantiated.

VS next petitions for rehearing on the expiration of export credits, but the Commission provides substantial justification for its decision. In its Order, the Commission chose to "defer a decision on discontinuing annual expiration of credits until the effects of the ECR on system size can be evaluated empirically." (Order at 20.) The Commission provided a reasonable rationale for this approach:

> We are mindful that if we were to eliminate annual expiration of accrued credits at this time, we would do so without any experience with how the ECR will influence the size of future CG systems. Given how challenging it would be to walk back from such a change, we consider it more reasonable to defer a decision on discontinuing annual expiration of credits until the effects of the ECR on system size can be evaluated empirically.

(*Id.*)

The petitioners object to this deferral on grounds that the witnesses who testified that oversizing is a potential risk with a rollover credit system did not present supporting evidence. (VS Pet. at 5, 19-21.) Aside from the fact such expert testimony is itself evidence subject to appropriate weight, the Commission took a cautious approach of deferring that decision until more empirical evidence could be gathered. (Order at 3.) This approach is not shown here to be arbitrary, capricious, or punitive. Rather, it is rooted in caution and risk mitigation stemming from expert testimony.

The Commission acted appropriately in deferring and imposing temporary credit expiration, making an appropriate judgment call based on the fact that (1) expert witnesses testified there was a risk, and (2) pending more empirical data, that risk should be avoided. The decision was anchored in the evidence presented. The Commission invited more data, more evidence, and more time to improve the system. That decision was not arbitrary, capricious, or punitive.

C. The Commission Reasonably Employed the Timetables It Did.

UCE urges rehearing because the Commission did not adopt its proposed "glidepath," arguing that the Commission ignored the principle of "gradualism." (UCE Pet. at 19-21.) Solar energy providers have had six years to prepare for this

new rate, the rate is being implemented gradually with ample opportunity for public comment, and gradualism does not apply in this context because the Order does not immediately affect the rate of any existing customer.

The Commission has been considering changes to compensation for CG customers since 2014, when the Utah Senate enacted S.B. 208, establishing the Commission's obligations to determine the benefits and costs of net metering and an appropriate ECR. Pursuant to S.B. 208, in November 2015 the Commission established a structure to analyze costs and benefits of revised ECRs. As the Commission noted in its Order, this particular docket commenced on December 1, 2017, when RMP filed an application for a rate change. (Order at 3.) The application followed the Settlement Order, under which no new customers would be accepted under the old ECR after November 15, 2017. (Settlement Order at 5.) In all, solar energy installers have had six years to prepare for this new rate. Throughout this process, the Commission has consistently and repeatedly asked for comments and invited testimony and evidence. Even in its newly issued Order, the Commission continues to invite parties to submit comments, questions, and evidence. (*E.g.*, Order at 22.)

UCE invokes the principle of gradualism to urge the Commission to implement a gradual change in rates so that alternative energy suppliers can better adjust to the new climate. (UCE Pet. at 19-21.) However, UCE provides no authority for such a position and fails to acknowledge the many years providers have had to adjust to the new rate. The only authority UCE points to is a Commission decision discussing rate increases for customers purchasing electricity

from the provider as opposed to rate decreases for customers selling their overabundance of electricity produced and sent back to the provider. (UCE Pet. at 19.) UCE's analogy aims to conflate two different concepts.

There is no authority requiring the Commission to employ "gradualism" in implementing the new ECR for new CG customers. As already noted, the ECR will only affect customers on the new Schedule 137. Customers on Schedules 135 and 136 will be able to remain on their existing program structures until 2036 and 2033, respectively, allowing a very long "glidepath" for those customers. The Commission has acted reasonably and with an abundance of caution – and in a manner that can even fairly be characterized as gradualism in reaching its decision. The petitions should be denied on this basis.

II. THE COMMISSION'S COST DECISIONS ARE SUPPORTED BY SUBSTANTIAL EVIDENCE AND ARE NEITHER ARBITRARY NOR CAPRICIOUS.

Next, VS attacks the Commission's handling of costs in determining the ECR. (VS Pet. at 23.) Its attack is limited, however, by a concession that it does not challenge the inclusion of avoided energy, generation, transmission, and distribution costs in the ECR. (*Id.*) VS attacks only the inclusion of integration costs and the Commission's "methodologies and calculations" in reaching its results. (*Id.*)

VS's arguments do not carry the day. A discussion is merited on the calculations used by the Commission, but it does not change the outcome and should not lead to rehearing. Indeed, if the Commission were to reopen that limited area, the result would be a *lower* ECR than the one already set by the Commission.

Rather than go that route, the Commission can reaffirm its Order on the basis of the record evidence that led to its decision in the first place.

A. EIM Is a Reasonable Method and Is Supported by Substantial Evidence.

VS first suggests that the Commission should not use the historical Energy Imbalance Market ("EIM") price method to project and calculate avoided energy costs. Notably, it was Vivint Solar that first suggested using this methodology in its direct testimony. (Order at 9.) The Commission found that proposal, with modifications presented on surrebuttal by RMP, to be reasonable. (*Id.*) The Commission should not disturb that determination.

The Commission noted the advantages of the EIM method:

- It does not require use of any proprietary software.
- EIM price data is publicly available and transparent.
- It is a more accurate method of calculating short-term compensation than using a forward price curve.
- It reflects *actual market prices* and thereby avoids the error that sometimes accompanies forecasting.
- Customers receiving an ECR using recent EIM prices – which will happen annually per the Commission's order – will be reasonably compensated based on prices RMP actually paid for energy during the most recently comparable time period.

(*Id.* at 9-10.) Individually and collectively, these present reasonable grounds for using this methodology.

VS suggests it would be "far better" to use forward-looking prices than actual, established market prices. Putting to one side the merits of this assertion, VS momentarily ignores the review standard that it elsewhere articulates. The Commission has already determined from the evidence that EIM represents a reasonable approach; to demonstrate entitlement to review and rehearing, VS must establish that determination was arbitrary, capricious, or not based on substantial evidence. This it cannot do. It is not a question of whether a different approach is "far better" in VS's estimation.

Vivint Solar, for one, is hard-pressed to challenge a methodology it originally proposed. VS states that "Vivint Solar witness Dr. Christopher Worley rejected his [own] EIM proposal and adopted Vote Solar's position in his surrebuttal testimony." (VS Pet., at 24.) Vivint Solar thus advocated for a position, abandoned it, and is now challenging it when adopted. Vivint Solar misses the irony in alleging that anyone else is acting arbitrarily or capriciously. The use of actual, historical EIM data as the basis for the avoided energy cost is both reasonable and supported by the record.

VS suggests there is no record evidence that EIM prices are the prices RMP pays for energy because EIM prices vary and the Commission did not address which pricing node should be used. (VS Pet. at 25-26.) VS further argues that the EIM method uses non-public data and therefore is neither publicly available nor transparent. (VS Pet. at 26.) Neither argument is accurate, and VS ignores the Order itself in making this assertion.

The Commission noted that "RMP's proposed method of calculating avoided energy costs based on EIM pricing uses Schedule 136 customer census data" and

found "RMP's use of that data to be reasonable and supported by substantial evidence." (Order at 10 n.10.) The Commission further noted:

> RMP recommended that the EIM prices originally proposed by Vivint should be adjusted, arguing that Vivint incorrectly removed adders (generally negative for Utah prices) relating to greenhouse gas costs and transmission congestion. We find that these adjustments proposed by RMP are reasonable because the transmission congestion and greenhouse gas adders generally result in higher EIM prices in California, and the EIM prices we use to calculate the ECR should reflect prices paid by Utah customers through the EIM. For these reasons, we find the EIM-calculated avoided energy cost presented by RMP in its surrebuttal testimony, with the line losses adjustment we have described below, is a just and reasonable basis for the avoided energy component of the ECR.

(Order at 10.) The Commission thus concluded and ordered that: (1) the EIM prices will reflect actual "prices paid by Utah customers through the EIM"; and (2) "the EIM-calculated avoided energy costs presented by RMP in its surrebuttal testimony, with the line losses adjustment we have described," are the costs to be used. (*Id.*) There is no merit to VS's argument that EIM prices are not RMP's prices and there is no need for further review or rehearing.

There is likewise no merit to the argument about the transparency of data. By sleight-of-hand, the petitioners change the Commission's finding that "EIM price data is publicly available and transparent" into a suggestion that the Commission made this finding with respect to all related RMP "underlying data." (VS Pet. at 26.) The Commission made no error or "inaccurate assumption" in its finding and need not revisit this. The price data is in fact publicly available, and an ECR based on that data is reviewable at regular intervals as the Commission has ordered. VS has failed to show that the Commission made an error. Furthermore, the Commission relied on much more than just this point in reaching its conclusions justifying the

use of EIM. Even if this one factor were cherry-picked for exclusion from consideration – and there has been no showing that it should – the remaining factors fully support the Commission's decision. There is no basis for disturbing it on rehearing.

B. Any Proposed Clarifications in Avoided Generation or Transmission Capacity Do Not Call for Rehearing.

As the Commission knows, RMP took positions against including generation, transmission, and distribution capacity costs in the ECR. Nevertheless, the Commission has demonstrated that it considered all the evidence and made determinations grounded in the record. Under such circumstances, the Commission's conclusions cannot be said to be arbitrary, capricious, or unsupported by substantial evidence.

VS does not mount any challenge related to distribution capacity costs, and it applauds the Commission for including capacity costs generally. (VS Pet. at 27.) Nevertheless, VS suggests there are "calculation errors" the Commission should address. (*Id.*) Upon review, the Commission should sustain its prior decision or, if it reexamines the issue, lower the capacity costs further and thereby decrease the ECR.

In the first place, VS should not be heard to complain about the use of contribution values. The Commission adopted the capacity contribution value proposed by VS and applied it to each avoided capacity cost. (Order at 15.) The value the Commission adopted was "significantly higher than the one presented by RMP in its surrebuttal testimony." (Order at 15.)

The Commission then applied an annual carrying charge of 7.82% to all the proposed avoided capacity costs. (Order at 16.) The Commission set this percentage based on the rebuttal testimony of RMP witness Daniel J. MacNeil. (*Id.*) The Commission suggested that this number "more accurately reflects RMP's current cost of equity and debt in Utah" and so applied that number to the generation, transmission, and distribution avoided capacity costs. (*Id.*) VS now raises two arguments based on this fact.

First, VS argues that in adopting RMP's number, the Commission incorrectly ascribed to VS a 9.39% carrying charge and that the 7.82% charge therefore reflects a 17% reduction to correct the carrying charge. (VS Pet. at 27.) VS suggests that it had in fact used a 6.959% carrying charge in its calculations and that using the Commission's 7.82% charge would necessarily increase the generation capacity cost calculation and thereby increase the approved ECR. (VS Pet. at 26-27.)

Second, VS complains that the Commission applied a reduction to the calculation of avoided transmission capacity cost to reflect the use of the 7.82% carrying charge but that VS had not used a carrying charge in its own calculation because it had based the calculation on the transmission rate. (VS Pet. at 28.) VS suggests that the Commission thereby reduced VS's proposed value and should retroactively increase it. (VS Pet. at 28-29.)

Clarification may be needed from the Commission but not rehearing. The Commission used for its calculations VS witness Michael Milligan's surrebuttal testimony that the annual cost per kW capacity was $78.61/kW-year in 2021 dollars. This was based on the cost of a simple cycle combustion turbine identified in

the rebuttal testimony of Company witness MacNeil in 2026 dollars. The Company does not dispute that this value is derived from an assumed carrying charge of 6.969%. These figures resulted in a 2.77 cent/kWh payment. Using the ratio of the 7.82% carrying charge employed by the Commission and the 9.39% carrying charge originally proposed by VS results in a 2.31 cent/kWh payment. These numbers pencil mathematically.

Embedded in VS witness Milligan's surrebuttal generation capacity rate proposal for calendar year 2021 was a capacity contribution value of 28.96%. This capacity contribution percentage bears examination to sustain the Commission's conclusion.

The Commission ruled that VS's proposal used capacity contribution values that "include only resources currently operating." (Order at 15.) In fact, Milligan's methodology never accounted for any utility-scale resources at all. The Commission simultaneously rejected RMP's calculation of capacity contribution values because they "included planned future resources." (Order at 15.) In fact, RMP's witness Daniel MacNeil provided evidence about different capacity contribution values based on varying scenarios, including scenarios that did not include planned future resources. (MacNeil Rebuttal Testimony at 20, 34.) MacNeil replicated Milligan's approach using 2019 actual load and export credit data that properly accounts for the relationship between exports and consumption during peak-producing weather conditions. This resulted in a 19% capacity contribution based on systemwide load only and a 22% capacity contribution based on Utah load only; but neither of these values account for the impact of existing utility-scale solar resources on the

Company's need for generation capacity. (*Id.*)[3] Accounting for the actual utility-scale solar resources operating in Utah during 2019 would reduce the capacity contribution value of CG exports to 12%. (*Id.*) The resulting figures would each lead to a capacity contribution value that is lower than that identified by the Commission, even after accounting for the cost of capacity proposed by VS witness Milligan. Employing the 12% generation capacity contribution value would result in a 1.15 cent/kWh payment rather than the 2.31 generation capacity payment employed by the Commission. A 19% value would result in 1.82 cents/kWh and a 22% value would result in 2.10 cents/kWh.

The Commission considered all the testimony and evidence in reaching its 3.53 cent/kWh value and deciding to apply it to all the capacity contribution values. It is not in the mouth of any participant in the docket to say that the Commission's gestalt from the evidence is inappropriate. The Commission clearly determined that the 3.53 cent/kWh value was an appropriate one and based that on evidence. The Commission unequivocally applied that value. VS complains that the Commission did not use its numbers as VS would have wished, but RMP could say the same thing. At the end of the day, the Commission used numbers that are supported by the record, and its conclusions should not be reconsidered.

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[3] "Using actual Utah hourly loads from 2019, the average CG exports during the top ten percent of load hours is 22%." (MacNeil Rebuttal at 34 [work papers].) "Replicating Dr. Milligan's proposed capacity contribution calculation, the simple average of CG exports during the top 10% of system-wide load hours in 2019 is 19%." (*Id.*) "If this calculation is repeated using Utah load net of the actual hourly output of the Company's solar resources in Utah during 2019, the average availability of CG exports drops to 12%." (*Id.*)

In sum, the Commission should not disturb its decision. But if it does, the Commission should accurately account for the solar resources currently operating on the Company's system and adopt the 12% capacity contribution value identified by MacNeil, reducing the generation capacity payment accordingly.

C. The Commission Did Not Act Arbitrarily or Capriciously by Including Integration Costs on this Record.

VS also challenges the inclusion of integration costs in calculating the ECR. (VS Pet. at 29-30.) However, as the Commission noted, "no party alleges that RMP's proposed integration costs, if established by evidence, are not a component of cost-of-service." (Order at 13.) VS is thus attempting a do-over by raising a challenge it did not raise previously. This should be rejected out-of-hand.

VS suggests in its petition that RMP's flexible reserve study does not provide substantial evidence to support the inclusion of the costs. (VS Pet. at 29.) VS's cramped reading of that document creates a straw man that VS then proceeds to knock down by arguing that RMP's study did not examine CG solar resources. (VS Pet. at 30.) But the Commission's Order establishes what it examined and how the Commission used that evidence in its ruling:

> We find that RMP's flexible reserve study provides substantial evidence of the necessary reserve requirements attributable to the aggregate variations from resources (including solar) that do not follow dispatch signals. This study therefore captured the benefits based on the aggregate variation of the diversity that exists among that category of resources. Though the flexible reserve study included only utility scale solar resources, we find that utility scale solar is a reasonable proxy for estimating integration costs for CG solar. RMP's calculation of a percent variability value for CG exports based on aggregate Schedule 136 exports provides evidence for our finding that CG integration costs are likely higher, but at least equal to, the integration costs for utility scale solar identified in the flexible reserve study. We expect the integration

> cost component of the ECR should be adjusted in future annual updates to reflect new resources that are in operation.

(Order at 13.) The petitioners do an inadequate job of raising a challenge to *these actual findings and conclusions*, as opposed to their own straw-man version of them. They only tepidly and conclusorily argue that RMP did not put forth evidence to justify a link between variability and CG solar integration costs. (VS Pet. at 30.)

The petitioners cite no authority for the novel proposition that an applicant itself must supply all inferential links between evidence and conclusions. The Commission is a specialized body with expertise and extensive experience in rate-setting. It can draw conclusions from evidence based on that experience. The Commission viewed the *entire* study and did not limit itself to the narrow focus articulated by VS. The Commission had no obligation to take VS's myopic view of that study and accompanying evidence. The Commission noted that the study included "utility scale solar resources" that constituted "a reasonable proxy for estimating integration costs for CG solar." (Order at 13.) VS does not show how this is untrue.

Furthermore, RMP itself *did* provide an inferential link for the Commission to reasonably rely upon. The Commission noted that "RMP's calculation of a percent variability value for CG exports based on aggregate Schedule 136 exports provides evidence for our finding that CG integration costs are likely higher, but at least equal to, the integration costs for utility scale solar identified in the flexible reserve study." (Order at 13.) And the Commission built in a fail-safe by anticipating that "the integration cost component of the ECR should be adjusted in future annual

updates to reflect new resources that are in operation." (Order at 13.) There is simply no merit to VS's complaints.

D. The Commission Should Not Disturb Its Decision on Fuel Price Hedging.

The Commission determined that the avoided fuel price hedging benefit provided by CG solar could be a relevant ECR component. (Order at 17.) The Commission rightly determined not to include such a benefit, however, because there was insufficient evidence to quantify the value. (*Id.* at 17-18.) In doing so, the Commission was guided by its overall approach that "we have accepted and adopted every component of the export credit rate for which any party provided substantial evidence of a quantifiable impact on the utility's cost of service." (*Id.* at 1.) The Commission should not disturb that decision with respect to fuel price hedging.

VS's challenge alleging substantial evidence in the record is easily disposed. As the Commission found:

> The only evidence in support of a quantified fuel hedging price savings to RMP as a result of CG is a 2011 published study of utilities in the Northwestern United States. The data is dated and is not specific to PacifiCorp's current hedging program or to the RMP territory in Utah. In particular, there was no evidence in the record of how CG would impact RMP's energy balancing account, or the process currently in place to evaluate fuel price hedging in the context of that balancing account. Accordingly, we decline to include an avoided fuel price hedging component in the ECR.

(Order at 17-18.)

VS's argument that evidence exists in the record is unavailing because it does not meet the definition of "substantial evidence." "[S]ubstantial evidence 'is that quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion.'" *Associated Gen. Contractors v. Bd. of Oil, Gas &*

Mining, 2001 UT 112, ¶ 21, 38 P.3d 291 (quoting *First Nat'l Bank of Boston v. County Bd. of Equalization,* 799 P.2d 1163, 1165 (Utah 1990)). The Commission's criticisms of VS's evidence supporting hedging were justified, and rehashing those arguments in the petition does not warrant rehearing.. The Commission should not disturb its decision on fuel price hedging on this record.

III. THE COMMISSION APPROPRIATELY CONSIDERED THE QUANTIFIABLE COSTS AND BENEFITS OF CUSTOMER GENERATION IN SETTING THE ECR.

The petitioners also argue that rehearing is warranted because the Commission did not take into account factors unrelated to the utility's cost of providing service. (UCE Pet. at 5-12; VS Pet. at 32-34.) The ECR was established by the Commission after it reviewed and weighed the evidence presented. Under Utah Code Ann. § 54-3-1, all of the Company's charges must be "just and reasonable," which

> *may include*, but shall not be limited to, the cost of providing service to each category of customer, economic impact of charges on each category of customer, and on the well-being of the state of Utah; methods of reducing wide periodic variations in demand of such products, commodities or services, and means of encouraging conservation of resources and energy.

Notably, this requirement does *not* say, in order for rates to be "just and reasonable," that such rates *must* include all of the elements listed; rather than use a mandatory term such as "shall" or "must," the legislature used the permissive term "may." It is the Commission's prerogative, then, to review any and all of those considerations – or indeed none of those considerations and/or additional ones – when setting "just and reasonable" rates for electric service. Notably, the

Commission did actually review and analyze the quantifiable considerations within its jurisdiction when it issued the Order.[4]

Utah Code Ann. § 54-4-4.1 contains similar language in giving the Commission discretion in rate regulation, where the legislature used the permissive "may" not once but *twice*. Subsection (1) provides that "[t]he commission *may* . . . adopt any method of rate regulation that is (a) consistent with this title; (b) in the public interest; and (c) just and reasonable." (Emphasis added.) Subsection (2) expands on that:

> (2) In accordance with Subsection (1), a method of rate regulation *may include*:
> (a) rate designs utilizing:
> (i) volumetric rate components;
> (ii) demand rate components;
> (iii) fixed rate components; and
> (iv) variable rate components;
> (b) rate stabilization methods;
> (c) decoupling methods;
> (d) incentive-based mechanisms; and
> (e) other components, methods, or mechanisms approved by the commission.

(Emphasis added.)

Faced with the task of establishing an ECR for Schedule 137, the Commission was free to, and did, consider all of the relevant evidence presented – whether or not it fit neatly into one of the statutory categories. In fact, just by setting the ECR, the Commission is encouraging conservation of resources and

[4] In the Order, the Commission "conclude[d] that costs and benefits that do not impact RMP's cost of service *in a direct and quantifiable way* are not relevant to the rate structure we are approving in this order." (Order at 6, emphasis added.)

energy under § 54-3-1 by accounting for the energy RMP will not have to generate, transport, and deliver.

Where the Commission is tasked with regulating public utilities, however, and not with establishing state policy on air quality or economic development, it is appropriate that it considered those factors that have a quantifiable economic impact on the rates paid by the Company's customers when it established the actual amounts for the ECR. *See In the Matter of the Investigation of the Costs and Benefits of PacifiCorp's Net Metering Program*, Docket No. 14-035-114, Order Re: Conclusions of Law on Statutory Interpretation and Order Denying Motion to Strike, at 13-16 (July 1, 2015) (holding that consideration of costs and benefits under the Net Metering Statute is limited to actual and quantifiable costs incurred or received by other customers in their capacity as ratepayers). To do otherwise would have been the very definition of arbitrary and capricious, since the Commission cannot simply create out of thin air an economic value for intangible costs and benefits of CG solar resources, without evidence of a quantifiable impact on the rates paid by the Company's customers – especially where other state agencies have greater expertise in, and jurisdiction and statutory obligation over, those areas.

As more fully discussed in Part II above, moreover, the annual updates to Schedule 137 will ensure that all relevant and quantifiable factors are weighed as the rate is reviewed each year. The Commission has not simply tossed aside the other considerations that it may weigh under Utah Code Ann. §§ 54-3-1 and 54-4-4.1. Indeed, in the Order, the Commission states that consideration of such factors

as community benefits and air quality issues "may impact RMP's cost of service in the future," at which point they could be incorporated into the ECR: "If the costs of a current or future environmental regulation can be shown to be avoided by CG, then the ECR can be adjusted to reflect that avoided cost." (Order at 18-19.)

All of this must be – and was – balanced against the interests of RMP's other customers. Specifically, under Utah Code Ann. § 54-3-1, RMP's rates and charges must be just and reasonable for *all* of RMP's customers – not just those who have elected to install rooftop solar facilities. To establish a higher ECR would "constitute a subsidy to ECR participants from other RMP customers, would not reflect the utility's cost of service, and therefore would be neither just nor reasonable." (Order at 22.)

The approach adopted in the Order is consistent with energy policies recently articulated by the state of Utah, including the Net Metering Statute. Regardless of whether the Net Metering Statute applies to the export credit rate, the Commission weighed the costs and benefits of the various proposed components of the ECR when it issued the Order. Assuming, without conceding, that the Net Metering Statute is applicable to setting the ECR for Schedule 137, Utah Code Ann. § 54-15-105.1 would require the Commission to first determine whether the costs of the program outweigh the benefits (or vice versa), and then determine an appropriate rate structure in light of the relative costs and benefits.

The petitioners seem to think this means that the Commission must also *enumerate* each proposed cost or benefit and set a dollar value for each. However, just because the ECR ultimately is based on *quantifiable* costs and benefits to

RMP's other customers does not mean the Commission failed to weigh all articulated costs and benefits. In fact, the Order explicitly states that "in this proceeding, we have evaluated 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. We are approving a structure within 137 'in light of [those] costs and benefits.'" (Citing Utah Code Ann. §§ 54-15-105.1(1) and (2).) Nevertheless, as discussed above, the Commission cannot simply put a dollar value on components that do not have a quantifiable impact on electricity rates, since doing so would be arbitrary and capricious.

The Commission's Order is also consistent with the Community Renewable Energy Act, Utah Code Ann. § 54-17-904(4)(c), which, in the context of participants of that program, specifically states that the Commission may consider only those costs and benefits that directly affect the utility's cost of service.[5] This is the legislature's most recent pronouncement on state policy regarding what factors may go into utility ratemaking, and as such is instructive here.

Further, the established ECR is consistent with Title 54 Chapter 12 of the Utah Code, which was adopted in 2008 and establishes requirements related to

[5] Contrary to the petitioners' apparent concern that the Commission is unduly broadening its interpretation of the Community Renewable Energy Act (CREA) (*see* UCE Pet. at 4), that reading is not supported by the language in the Order, where the Commission expressly acknowledged that that Act applies only to CREA participants. (Order at 7 n.8: "That Act codifies as state policy that when we consider rates *for participants under the [CREA]*, we 'shall take into account any quantifiable benefits to the qualified utility, and the qualified utility's customers, including participating customers in their capacity as ratepayers of the qualified utility, excluding costs or benefits that do not directly affect the qualified utility's costs of service.'" (Emphasis added).)

"Small Power Production and Cogeneration." In Chapter 12, the legislature expresses a desire 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. . . ." Utah Code Ann. § 54-12-1 (emphasis added). In other words, the other sources of electric power must be competitive and not otherwise available to RMP's customers. The Commission found that the "highest and best use of customer generation is for the customer to avoid the purchase of electricity." (Order at 2.) In setting the ECR, the Commission therefore appropriately weighed the costs and benefits of CG solar against the costs and benefits of other sources of electricity RMP generates and procures, consistent with the expressed legislative intent of Chapter 12.

Finally, to allege that the export credit rate established in the Order is inconsistent with the House Concurrent Resolution on Environmental and Economic Stewardship passed in 2018 is inaccurate. (VS Pet. at 8.) Indeed, the Commission has expressly stated that, once energy policy is established by state agencies with jurisdiction, the Commission will consider the economic impact of those laws or regulations on RMP's customers and include them as appropriate in annual revisions to the ECR. (*See* Order at 19.)

The Commission therefore fulfilled its statutory obligations and its actions were consistent with expressed state policy when it reviewed and weighed the evidence presented, established the ECR, and provided for periodic review of the ECR under Schedule 137.

CONCLUSION

For the foregoing reasons, individually and collectively, the Commission should deny the petitions for reviewing and/or rehearing submitted by UCE and VS.

DATED this 15th day of December, 2020.

PACIFICORP

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By: /s/ Stephen K. Christiansen
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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of December, 2020 a true and correct copy of the foregoing was served upon the following as indicated below:

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