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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

PacifiCorp's 2021 Integrated Resource Plan	Docket No. 21-035-09

COMMENTS OF THE COMMUNITY RENEWABLE ENERGY AGENCY

The Community Renewable Energy Agency ("Agency") is an Interlocal Cooperation Agency formed by certain communities that have indicated an intent to become a "Participating Community" as that term is defined in the Community Renewable Energy Act (Utah Code §§ 54-17-901 to -909, (the "Act")) and by Utah Administrative Rule R746-314 and Utah Code § 54-17-902(10). The Agency submits the following Reply comments in this docket.

REPLY COMMENTS

The Agency looks forward to appearing before this Commission in the coming months to seek approval of a Community Renewable Energy Program that will allow the Participating Communities to ensure that renewable resources provide an amount equivalent to 100% of the electricity served to participating customers by 2030 ("Program"). The Agency is working diligently with Rocky Mountain Power ("RMP" or "Company") to design a Program that will allow the Participating Communities to meet that goal in a way that is cost effective for all participating customers and does not shift costs to non-participants.

The Agency submits comments in this docket to respond to an interpretation of the Act advanced by Sierra Club. As set forth below, the Agency believes that the Sierra Club's interpretation of the Act is not supported by the text of the Act. Moreover, the Agency believes that, if adopted by the Commission, the statutory interpretation proposed by Sierra Club in its comments would lead to higher costs for Program participants that may jeopardize the viability of the Program.

The Act Does Not Require that 100 Percent of Program Energy Be Met Only with Incremental Renewable Resources to the Exclusion of System Renewable Resources

The Agency requests that the Commission decline to adopt the interpretation of the Act proposed by Sierra Club in its comments because that interpretation is not supported by the plain language of the Act. The Act does not support a conclusion that 100 percent of the Program energy requirements must be met only with incremental renewable resources to the exclusion of existing system renewable resources. "When interpreting a statute, our goal is to give effect to the words enacted into law by the legislature. We do not, however, read statutory text in isolation. We must read it in context, taking into consideration surrounding terms and associated provisions." *Utah Office of Consumer Services. v. Public Service Commission*, 2019 UT 26, ¶ 9, 445 P.3d 464 (citations omitted). Sierra Club's proposed interpretation reads a single defined term in isolation and does not take into consideration surrounding terms and associated provisions.

The Act allows communities to participate in a "community renewable energy program," which is defined as "the program approved by the commission under Section 54-17-904 that allows a qualified utility to provide electric service from one or more renewable energy resources to a participating customer within a participating community." Utah Code § 54-17-902(3) (emphasis

added). To qualify as a "participating community," an interested city, town, or county must first adopt a resolution "that states a goal of achieving an amount equivalent to 100% of the annual electric energy supply for participating customers from a renewable energy resource by 2030." *Id*. § 54-17-902(3)(a) (emphasis added). The term "renewable energy resource" referenced in these provisions is defined in the Act as follows:

> (14) 'Renewable energy resource' means:
> (a) electric energy generated by a source that is naturally replenished and includes one or more of the following:
> (i) wind;
> (ii) solar photovoltaic or thermal solar technology;
> (iii) a geothermal resource; or
> (iv) a hydroelectric plant; or
> (b) use of an energy efficient and sustainable technology the commission has approved for implementation that:
> (i) increases efficient energy usage;
> (ii) is capable of being used for demand response; or
> (iii) facilitates the use and development of renewable generation resources through electrical grid management or energy storage.

Id. § 54-17-902(14).

The Act does not define "renewable energy resource" to mean only new, incremental generating assets or only new, incremental energy efficiency and demand response technologies. Instead, the Act contemplates that the Participating Communities may reach the "goal of achieving an amount equivalent to 100% of the annual electric energy supply for participating customers" by leveraging existing, system resources that RMP will use to serve those participating customers in the Program ***and*** by acquiring new, incremental resources to the extent necessary. Participating Communities may meet the Program goal by, for instance, acquiring bundled renewable energy credits ("RECs") sufficient to match participating customers' portion of annual electric energy supplied by, and traceable to, existing utility renewable energy resources on the system, and by

also acquiring or constructing incremental renewable energy resources to match the portion of annual electric energy that would otherwise be supplied by utility resources that do not constitute "renewable energy resources."

Sierra Club's comments incorrectly assert that the Program may not plan to meet annual electric energy supply needs with existing system resources and that, instead, 100% of annual electric energy supply for Participating Customers must come only from resources acquired by the Participating Communities pursuant to the Program and may not come from renewable resources on PacifiCorp's system that are used to serve all system customers. Specifically, Sierra Club claims that, in developing its 2021 IRP, the Company erred when it "assumed 50 percent of the renewable energy used to meet the program's requirements will come from existing resources," an assumption which Sierra Club claims directly contradicts the requirements of the Act.[1, 2] Sierra Club's claim that the Act requires 100% of annual energy supply to Participating Customers to come only from renewable energy resources acquired by the Participating Communities to meet Program load (and not from system renewable energy resources that serve all customers) is based on a single defined term in the Act, a term which is not used anywhere in the Act outside of the definitions.

Sierra Club's argument relies on the term "[r]enewable electric energy supply," which is defined as "incremental renewable energy resources that are developed to meet the equivalent of the annual electric energy consumption of participating customers within a participating

[1] Sierra Club Comments (May 4, 2022) at 10.
[2] The Program to be presented to the Commission for approval is being developed by the Agency and RMP. The Agency currently contemplates that some portion of the annual electric energy supply for Participating Customers by 2030 will be met with existing system resources. That portion may ultimately be higher or lower than 50%, but the Agency takes no issue with the Company's assumption in the 2021 IRP regarding the use of existing resources to meet Program needs.

community." Utah Code § 54-17-902(13). The term "renewable electric energy supply" appears in the Act only once—in subsection 902(13), which defines the term. The term "renewable electric energy supply" is not utilized in any of the operative provisions of the Act and does not impose any substantive requirements on the Program or the Company. No provision in the Act requires that Program load be met only with "renewable electric energy supply." The operative provisions of the Act depend on the definition of "renewable energy resources," rather than the definition of "renewable electric energy supply." For example, the Commission's adoption of a Program "allows a qualified utility to provide electric service from one or more renewable energy resources to a participating customer within a participating community." Utah Code § 54-17-902(3) (emphasis added). The definition of "renewable electric energy supply" does not impose any obligations on the Participating Customers in their efforts to achieve the Program goals.

In addition, Sierra Club's arguments fail to "tak[e] into consideration surrounding terms and associated provisions." *Utah Office of Consumer Services. v. Public Service Commission*, 2019 UT 26, ¶ 9, 445 P.3d 464 (citations omitted). The definitions of "renewable electric energy supply" and "renewable energy resources" do not support Sierra Club's interpretation. For Sierra Club's interpretation to be correct, the term "renewable energy resources" would have to be defined to include only new, incremental renewable resources and to exclude existing system renewable resources. Nothing in the definition of "renewable energy resources," reproduced above, supports such an interpretation. That definition makes no distinction between renewable resources used to serve all system customers and renewable resources used to serve only Program participants. It can mean either or both. Moreover, the definition of "renewable electric energy supply" undercuts Sierra Club's argument. "Renewable electric energy supply" is defined in

subsection 902(13) as "*incremental* renewable energy resources" acquired to meet Program goals. If the legislature had intended "renewable energy resources" to include only incremental resources (and to exclude existing system resources), then the legislature would not have defined "renewable electric energy supply" to mean "incremental renewable energy resources." In Sierra Club's interpretation, the legislature's use of "incremental" in that definition is redundant. *See State v. Candelario*, 909 P.2d 277, 279 (Utah Ct. App. 1995) ("Because we assume every word in the statute was chosen advisedly by the Legislature, we resist concluding it would have chosen redundant language."). The Program may meet its goals through the use of "renewable energy resources," which may include existing system renewable resources that serve all customers and incremental renewable resources acquired to meet Program goals.

Sierra Club's interpretation of the Program requirements is also not supported by the Rule adopted by this Commission to implement the Act. The Commission adopted Utah Administrative Code R746-314 to implement the Act, and the term "renewable electric energy supply" does not appear in the Rule. While the definitions section of the Rule adopts many of the terms set forth in the Act, "renewable electric energy supply" is not one of them. *See* Utah Admin. Code R746-314-101. In addition, the word "incremental" does not appear anywhere in the Rule. *See generally id.* R746-314. As with the Act, the Rule allows the Program to meet its goals through the use of existing renewable resources and through the acquisition or construction of incremental renewable resources.

CONCLUSION

The Agency respectfully requests that the Commission decline to adopt the interpretation advanced by Sierra Club in its March 4, 2022 comments. The Agency looks forward to working

with the Company to develop a Program that is approved by the Commission that will allow the Company "to provide electric service from one or more renewable energy resources to a participating customer within a participating community." Utah Code § 54-17-902(3). We also look forward to determining with the Company, regulators, and other stakeholders like the Sierra Club, how future Program resources ought to be modeled in future IRPs. The renewable energy resources that the Participating Communities rely on to meet Program goals may include a mix of existing system resources and incremental resources.

DATED: April 7, 2022.

Respectfully submitted,

By: 

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Certificate of Service
Docket No. 21-035-09

I hereby certify that a true and correct copy of the foregoing was served by email on April 7, 2022 on the following:

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