UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Karen Schedler, Jeremy Helms, Solar United Neighbors and Vote Solar	)))	Docket No. EL24-54-000

MOTION TO INTERVENE AND PROTEST OF THE AMERICAN PUBLIC POWER ASSOCIATION, THE LARGE PUBLIC POWER COUNCIL, AND THE NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

Pursuant to Rules 211 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC" or "the Commission"),[1] the American Public Power Association ("APPA"), the Large Public Power Council ("LPPC"), and the National Rural Electric Cooperative Association ("NRECA") (together, the "Public Trade Associations") each request leave to intervene in the above-captioned proceeding and protest the First Amended Petition for Enforcement under the Public Utility Regulatory Policies Act of 1978 ("PURPA"), filed January 22, 2024 ("Petition") by Karen Schedler, Jeremy Helms, Solar United Neighbors, and Vote Solar ("Petitioners"). Petitioners ask the Commission to initiate an enforcement action seeking to compel Salt River Project Agricultural Improvement and Power District ("SRP") to sell energy to, and purchase energy from, residential solar customers on terms consistent with PURPA, alleging that SRP's terms of service and purchase violate PURPA section 210[2] and the Commission's associated regulations.

The Public Trade Associations ask that the Petition be dismissed. Petitioners present no case that SRP has failed to implement PURPA section 210, since Petitioners have not offered to sell power to, or requested to purchase power from, SRP under PURPA. Further, Petitioners have

[1] 18 C.F.R. §§ 385.211 and 385.214.

[2] 16 U.S.C. § 824a-3.

not demonstrated whether and to what extent they have power to sell to SRP subject to PURPA's requirements. Nor does Petitioners' claim that SRP's retail rates are discriminatory under PURPA section 210 warrant Commission action. SRP's sales rates as to Petitioners are a retail rate matter. If retail customers with distributed generation ("DG") facilities were to pay only a volumetric usage charge, electric utilities would not be assured of recovering the fixed cost of the grid. Even if PURPA were applicable here, Petitioners fail to demonstrate that they lack the opportunity to sell power to SRP at rates at or above SRP's avoided cost under two of the very rate schedules they have placed in issue.

I. APPA'S, LPPC'S, AND NRECA'S INTEREST AND MOTION TO INTERVENE

APPA is the national service organization representing the interests of not-for-profit, state, municipal, and other locally owned electric utilities in the United States. More than 2,000 public power systems provide over 15 percent of all kilowatt-hours sales to ultimate customers and serve over 49 million people, doing business in every state except Hawaii.

LPPC represents 27 of the largest state and municipally owned utilities in the nation. LPPC's members are located throughout the nation, both within and outside the boundaries of regional transmission organizations and independent system operators. The members comprise the larger, asset-owning utilities in the public power community, owning approximately 90 percent of the transmission assets owned by non-federal public power entities. LPPC members are also members of APPA.

APPA and LPPC members are political subdivisions of various states, as those terms are understood by section 201(f) of the Federal Power Act ("FPA"),[3] and therefore outside the

[3] 16 U.S.C. § 824(f).

Commission's regulatory authority for most purposes. APPA and LPPC wish to intervene in this proceeding to represent the interests of their members as such interests may arise.

NRECA is the national trade association representing nearly 900 local electric cooperatives and other rural electric utilities. Electric cooperatives operate at cost and without a profit incentive. NRECA's member cooperatives include 63 generation and transmission ("G&T") cooperatives and 832 distribution cooperatives. America's electric cooperatives are owned by the people that they serve and comprise a unique sector of the electric industry. Both distribution and G&T cooperatives share an obligation to serve their members by providing safe, reliable, and affordable electric service.

APPA, LPPC, and NRECA members have a vital interest in the outcome of this proceeding. The Public Trade Associations' members are subject to the requirements of PURPA section 210, and many are wrestling with the difficult task of setting retail rates for customers with DG. The issues faced by SRP in doing so, as is the case for many of the Public Trade Association members, call for a careful balance of the public interest in integrating DG facilities into the grid with the importance of retail rate equity across customer classes. At the same time, recovery of the fixed cost of providing distribution service to the grid cannot be undermined, a circumstance that would threaten all customers' service. Given these concerns, the Public Trade Associations ask to intervene – and protest the filing – in order to protect the prerogative that their member utilities now have to devise retail rates that serve these important purposes.

In accordance with Rule 2010,[4] the following persons are designated for service of documents in this proceeding:[5]

*Desmarie Waterhouse
Senior Vice President, Advocacy & Communications and General Counsel
*Latif Nurani
Senior Regulatory Counsel
American Public Power Association
2451 Crystal Drive
Suite 1000
Arlington, VA 22202
202-467-2900
dwaterhouse@publicpower.org
lnurani@publicpower.org

*Mary Ann Ralls
Senior Director, Regulatory Counsel
Government Relations Department
National Rural Electric Cooperative Association
4301 Wilson Blvd.
Arlington, VA 22203
(703) 907-5837
fax (703) 907-5517
maryann.ralls@nreca.coop

*Jonathan D. Schneider
*John McCaffrey
*Harvey Reiter
Stinson LLP
1775 Pennsylvania Avenue NW
Suite 800
Washington, DC 20006
(202) 728-3034
jonathan.schneider@stinson.com
John.McCaffrey@Stinson.com
Harvey.Reiter@stinson.com

Attorneys for APPA and LPPC

II. INTRODUCTION AND SUMMARY OF POSITION

A. SRP and its Residential Distributed Generation Program

SRP is an electric utility and political subdivision of the State of Arizona, exempt from most features of the FPA as an entity under section 201(f).[6] SRP is, however, responsible to implement the provisions of section 210 of PURPA as a nonregulated electric utility.

[4] 18 C.F.R. § 385.2010.

[5] *Parties to be designated on the Commission's official service list. APPA and LPPC respectfully request waiver of Rule 203(b)(3) in order to allow all designated representatives to be included on the Commission's official service list.

[6] 16 U.S.C. § 824(f).

As have other members of the Public Trade Associations, SRP has embraced the interest expressed by many of its retail customers in adding rooftop solar facilities to their homes. These DG facilities can help communities such as those served by SRP to achieve their energy objectives, but they also pose integration challenges. These challenges include the difficulty of having generating resources available to provide load following (ramping) capability when intermittent DG solar resources are unavailable to serve load, and the need to provide financial support for the cost of distribution facilities that must remain available for all customers, including retail customers with DG.[7]

As has also been the case for many Public Trade Associations members, SRP found that without an adjustment to its retail rates, the simple net metering program it initially put in place to accommodate DG solar had the effect of undermining recovery of the fixed cost of the grid. Further, increasing DG market penetration has deepened the subsidization by non-DG residential retail ratepayers of DG solar customers. SRP has hardly been alone in its observation of this phenomenon.[8]

Responding to these events, SRP devised its E-27 pricing plan in 2015, assessing a demand charge to solar DG customers, and an opt-in demand charge for non-DG customers.[9] In

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[7] *See, e.g.*, American Public Power Association, *Rate Design for Distributed Generation: Net Metering Alternatives* (June 2015), available at: https://www.publicpower.org/system/files/documents/ppf_rate_design_for_dg.pdf.

[8] *See, e.g.*, Susan F. Tierney, Ph.D., Analysis Group, *Public Utility Ratemaking: Context for SRP's 2019 Public Pricing Process* at 17-20 (Feb. 17, 2019) ("Analysis Group Report"), available at: https://www.srpnet.com/assets/srpnet/pdf/price-plans/electric-pricing-public-process/Tierney-Analysis-Group-Report-on-SRP-Mangement-pricing-process-2-17-2019.pdf; Tom Stanton, *Review of State Net Energy Metering and Successor Rate Designs*, National Regulatory Research Institute ("NRRI Report"), available at: https://pubs.naruc.org/pub/A107102C-92E5-776D-4114-9148841DE66B?_gl=1*xz2pn*_ga*NzUzMTE1NDA0LjE2ODkyNzY3Nzg.*_ga_QLH1N3Q1NF*MTcwNzI0Njg5Ni43LjEuMTcwNzI0Njk4My4wLjAuMA; Congressional Research Service, *Net Metering: In Brief* (Nov. 14, 2019), available at: https://crsreports.congress.gov/product/pdf/R/R46010.

[9] In an article appearing in the Electricity Journal in 2018, SRP's Principal Financial Analysis, Mark Carroll laid out the data-driven approach to how this rate was initially devised, in order to address the issue of customer class

2019, SRP revised the E-27 pricing plan and added further retail rate options for residential DG customers (the E-13, E-14, and E-15 pricing plans), each designed to address different customer preferences.[10] Importantly, while the Petition repeatedly cites to materials from SRP's 2015 pricing process, SRP's current rates were established in the 2019 pricing process, and, thus, the record from the 2015 process is irrelevant to this proceeding. The aim of the SRP rate schedules adopted and updated in 2019 pricing process has been to shape retail rates in a matter that best suits the customer, while addressing subsidization across customer classes by minimizing differences in customer class contribution to fixed distribution costs.

Critical to consideration of the Petition, these pricing plans were *not* designed to implement PURPA section 210, and SRP has not represented them as such. They are pricing plans designed for eligible *retail* customers with DG capability.

B. The Petitioners and the Petition

The Petition represents that Petitioners Schedler and Helms are residential sales customers of SRP, with solar rooftop facilities of 4.22 kW and 6.8 kW, respectively.[11] Solar United Neighbors and Vote Solar assert that they are non-profit advocacy organizations representing the interests of solar DG customers.[12]

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subsidization resulting from full net metering. *See* Mark Carroll, *Demand Rate Impacts on Residential Rooftop Solar Customers*, The Electricity Journal, 31 (2018), pp. 44-51.

[10] The rate schedules for all of SRP's current retail pricing plans are available at: https://www.srpnet.com/assets/srpnet/pdf/price-plans/residential-electric/ratebook.pdf.

[11] Petition at 3.

[12] It is not clear that Vote Solar and Solar United Neighbors have standing as petitioners. The Commission has previously found that Vote Solar is not authorized to file a petition for enforcement under PURPA section 210(h)(2)(B) "because it is neither a [qualifying facility] nor an electric utility." *Vote Solar Initiative and Mont. Envtl. Info. Ctr. v. Mont. Pub. Serv. Comm'n*, 157 FERC ¶ 61,080 at P 11 (2016) (citing 16 U.S.C. § 823a-3(h)(2)(B)), *reconsideration denied*, 158 FERC ¶ 61,032 at P 12 (2017). Without acknowledging this precedent or citing any other authority, the Petition simply asserts that Vote Solar and Solar United Neighbors are proper petitioners in this proceeding because each "has organizational standing to bring this petition on behalf of its members who are small power producers." Petition at 4.

The Petitioners argue, first, that SRP's fixed charges for residential solar DG customers are discriminatory rates under PURPA section 210(c)(2) for the sale of energy by SRP to these retail customers.[13] Closely related, the Petitioners argue that it is discriminatory for them to be excluded from retail sales rates which have lower fixed charges, available to retail customer without DG.[14] Next, Petitioners argue that the compensation SRP provides for customers under the E-13, E-14, and E-15 pricing plans is below SRP's full avoided cost.[15] Conspicuously, Petitioners do *not* argue that compensation under the E-27 pricing plan is below avoided cost, or that Petitioners Schedler and Helms are ineligible for service under that plan. Rather, they simply allege that the demand charge under the E-27 pricing plan is "difficult to manage."[16]

C. Summary of Protest

Petitioners fail to state a claim for enforcement under PURPA section 210(h)(2)(B) for failure on SRP's part to implement PURPA because Petitioners have not shown that, prior to the filing of this Petition, Petitioners Schedler and Helms asked SRP to purchase or to sell power under PURPA section 210, providing SRP no call to implement the statute as to Petitioners, which the Commission has long held can be done by FPA section 201(f) entities on a case-by-case basis. Nor has the Petition shown whether and to what extent Petitioners Schedler and

[13] Petition at 11-21.

[14] *Id.* at 22-23.

[15] *Id.* at 23-34. The Petition mischaracterizes the treatment of exports to the grid under the E-15 pricing plan. That plan does not, as Petitioners assert, include the $0.0281 credit per exported kWh applicable under the E-13 and E-14 pricing plans. Rather, the rate schedule for the E-15 pricing plan provides: "[t]he kWh delivered to SRP shall be subtracted from the kWh delivered from SRP for each billing cycle. If the kWh calculation is net positive for the billing cycle, SRP will bill the net kWh to the customer under this price plan. If the kWh calculation is net negative for the billing cycle, SRP will credit customer for the net kWh at the retail per-kWh price under this price plan. For the purposes of this calculation, excess generation will be tracked by time-of-use period." https://www.srpnet.com/assets/srpnet/pdf/price-plans/residential-electric/solar/average-demand-e-15.pdf. Further, the Petition appears to overlook that the E-15 pricing plan includes a demand charge, albeit one that is designed differently than the E-27 demand charge.

[16] Petition at 23.

Helms have energy to sell, once their production is netted against their retail purchases, as Commission precedent holds is within state-based authority.

Further, Petitioners fail to state a legitimate claim of discrimination with respect to SRP's sales rates. The features of SRP's rates which provide for the recovery of the fixed cost of providing retail service are state retail rate matters over which FERC should refrain from exercising its authority. Even if subject to FERC's oversight, it is not discriminatory for rates to distinguish retail customers who can be expected to provide fixed distribution cost recovery through usage-based charges, from retail customers with DG facilities which hold the potential to undermine financial support for the grid. These differences in circumstances fully justify differences in rates.

Finally, even assuming that Petitioners establish that the E-13 and E-14 pricing plans are subject to, and fail to comply with, PURPA (which they do not), Petitioners fail to establish that they do not have access to pricing plans providing compensation at or above avoided cost, SRP's E-27 and E-15 pricing plans. Further, Petitioners' only complaint as to the E-27 pricing plan is that SRP's demand charges under E-27 are difficult to manage.

III. ARGUMENT

A. Without Having Offered to Sell Power to SRP Under PURPA Section 210(b), Or Requested to Purchase Power Under PURPA Section 210(c), Petitioners Have No Basis for a Complaint Regarding PURPA Implementation Under PURPA Section 210(h)(2)(B)

At no point do Petitioners Schedler or Helms represent that they have offered to sell energy to SRP under PURPA section 210, or that they have asked SRP to sell them energy in connection with their operation as qualifying small power production facilities ("QFs") under

PURPA section 210(a) and the Commission's associated regulations.[17] Were that the case, SRP could engage in a discussion regarding the terms of sales from SRP under PURPA,[18] and the terms for purchases under appropriate contractual provisions, including the specified term for a legally enforceable obligation and/or an appropriate specification of avoided cost for as-available energy.[19]

But instead of offering to sell energy, or requesting to purchase energy, under PURPA section 210, the Petitioners have chosen to participate in a retail sales program designed to balance SRP's retail obligations and rate equity among customer classes, while integrating customer-owned facilities. The program was *not* designed to satisfy PURPA's requirements.

Further, it is not at all clear whether and to what extent Petitioners Schedler and Helms provide energy to SRP that might be subject to PURPA avoided cost requirements under prevailing Commission precedent. In *MidAmerican Energy Co.*, 94 FERC ¶ 61,340 (2001), the Commission rejected the argument that all energy produced by DG facilities owned by retail customers and injected back onto the grid properly resulted in purchases by the host utility under PURPA section 210. Rather, the Commission held to be reasonable the state's practice of netting on a monthly basis the DG's production of energy against the customer's purchases at retail. As the Commission held, "[i]n the case before us we…find that no sale occurs when an individual homeowner or farmer (or similar entity such as a business) installs generation and accounts for its dealings with the utility through the practice of netting."[20] If there is any excess, only that

[17] Petitioners represent that Petitioners Schedler and Helms are qualifying small power producers, though they were not required to register as such under the Commission's regulations due to their small size. Petition at 2 n.4, 4. Yet, at no time did they so identify themselves to SRP in connection with an offer to sell power under PURPA section 210.

[18] *See generally*, 18 C.F.R. § 292.305.

[19] *See generally*, 18 C.F.R. § 292.304.

[20] *MidAmerican Energy Co.*, 94 FERC at p. 62,263.

excess would be treated as a wholesale sale by the customer to the utility. The Commission held identically in *Sun Edison LLC,* 129 FERC ¶ 61,146 at P 19 (2009), *reh'g granted on other grounds*, 131 FERC ¶ 61,213 (2010), and it declined the invitation to overrule this precedent in *New England Ratepayers Ass'n*, 172 FERC ¶ 61,042 (2020). Without establishing the extent to which they are even providing energy back to SRP, Petitioners ask the Commission to interfere with pricing embedded in the crediting mechanism under SRP's retail pricing plans.

Commission precedent and regulations contemplate that a customer that wishes to be treated as a QF for purposes of sales to a utility, and purchases from it, should provide the interconnected electric utility notice of that position and information pertaining to that status. In Order No. 732, the Commission commented that "[a] transacting utility, of course, needs necessary technical information from a QF in order to safely and reliably interconnect and transact with the QF, and we would expect a QF to provide such information."[21] Similarly, Commission regulations at 18 C.F.R. § 292.303(b) establish a utility's general obligation to sell energy and capacity to a QF, where such "energy and capacity [are] *requested by the qualifying facility*."

Had Petitioners Schedler and Helms made a request to sell and purchase energy under PURPA section 210, SRP could have acted upon it. That request could have been addressed, as Commission precedent clearly permits for nonregulated electric utilities, on a case-specific basis.[22] With clear information about the amount and timing of energy (if any) that Petitioners

[21] *Revisions to Form, Procedures, and Criteria for Certification of Qualifying Facility Status for a Small Power Production or Cogeneration Facility*, Order No. 732, 130 FERC ¶ 61,214 at P 38 (2010).

[22] Since the issuance of Order No. 69 implementing PURPA section 210, the Commission has held that nonregulated electric utilities may implement PURPA section 210 "on a case-by case basis, or by any other means reasonably designed to give effect to the Commission's rules." Order No. 69, FERC Stats and Regs, ¶ 30,128 at p. 30,864 (1980); *see also, e.g.*, *Cuero Hydroelectric, Inc. v. City of Cuero*, 77 FERC ¶ 61,114 at p. 61,442 (1996) ("…as a nonregulated electric utility, the City properly may implement the Commission's PURPA regulations, as here, on a case-by-case basis.").

have to offer, SRP could have entered into a discussion about its avoided cost, whether the offer to sell energy is on an as-available basis or pursuant to a legally enforceable obligation, and the appropriate term of any agreement. The Petitioners at no time offered to enter into such an arrangement.

B. The Challenged SRP Pricing Plans Are a Retail Matter Subject to SRP's Rate-Setting Authority, While Petitioners Fail to Show They Are Discriminatory

Even if Petitioners are regarded as QFs and their transactions with SRP could be subject to the Commission's enforcement authority under PURPA section 210(h)(2)(B), there is no basis for the Commission to exercise such authority to review the retail rate-setting matters addressed in the Petition.

The proliferation of rooftop solar facilities in recent years has prompted many states and nonregulated electric utilities to reassess retail rate designs for customers with distributed generation (including the compensation paid for energy injected back to the grid) to ensure that utility fixed costs are being fairly and equitably allocated among retail customers.[23] SRP is one such nonregulated electric utility, and the Petition fails to show that the retail rates applicable to SRP distributed generation customers reflect anything other than an effort by SRP to reasonably and fairly allocate costs among retail customers while appropriately compensating distributed generation customers for the energy they provide to SRP.

As the Petition perhaps unintentionally proves, SRP has made substantial efforts to provide rate design options for retail customers with distributed generation, while avoiding inappropriate cost shifts among its retail customers.[24] Notably, two separate consulting firms –

[23] *See, e.g.*, Analysis Group Report at 17-20; NRRI Report.

[24] *See, e.g.*, Analysis Group Report at 17-20.

Brattle Group and Analysis Group – conducted independent assessments of the proposed pricing plans during the 2019 pricing process and concluded the plans were consistent with industry ratemaking practices.[25] In discussing the proposed pricing plans for DG customers in particular, Dr. Susan Tierney of Analysis Group observed that "SRP has been at the forefront of efforts of utilities and regulators around the United States to advance new reasonable electricity rate designs for" residential customers with rooftop solar.[26] Dr. Tierney concluded that "the rate options being proposed for residential solar customers . . . reflect the kinds of options being proposed and, in many cases, adopted by regulators of investor-owned utilities and boards of publicly owned utilities in other parts of the country,"[27] and that these "proposed residential solar rate options fit squarely within the norms of utility ratemaking."[28]

The Commission should be circumspect about invoking its PURPA enforcement authority to override the efforts of states and nonregulated electric utilities like SRP to apply well-established ratemaking principles to design retail rates that appropriately and equitably allocate fixed costs across customers in response to the growth of distributed energy resources.[29] Such technical determinations concerning retail rate programs and cost allocation are not the

[25] Brattle Group, *Review of SRP Cost of Service and Rate Design* (December 2018), available at: https://www.srpnet.com/assets/srpnet/pdf/price-plans/electric-pricing-public-process/CostOfServiceandRateDesign.pdf; Analysis Group Report, *supra* at footnote 8.

[26] Analysis Group Report at 17.

[27] *Id.* at ES-2.

[28] *Id.* at 20.

[29] It has been recognized, for example, that full net metering plans (where the homeowner is paid the full retail rate, including distribution and transmission costs, for each kwh delivered to the utility) can result in shifting the costs of distribution and transmission from DG customers onto full requirements customers that may lack the financial resources to install distributed generation. *See, e.g.*, U.S. Dept. of Energy, Office of Energy Efficiency & Renewable Energy, *Solar Futures Study* at § 4.2.2 (Sept. 2021), available at: https://www.energy.gov/sites/default/files/2021-09/Solar%20Futures%20Study.pdf. For a number of years, state and nonregulated electric utility regulators in many states have already shifted away from full net metering for this very reason.

kind of matters that the Commission should address in response to a petition for enforcement of PURPA.

Initiating an enforcement action in a retail ratemaking matter such as this would improperly encourage parties to invoke the Commission's regulations at 18 C.F.R. § 292.305(a) to challenge *any* retail rate design for a retail customer with a potential QF based on assertions that the rate design for customers with QFs differs from the rate designs applicable to full requirements retail customers. Challenges of that nature could easily multiply given the growth of DG, particularly rooftop solar, that may qualify as small power production QFs. Any of these types of entities that are unsatisfied with state or nonregulated electric utility rate design decisions (such as a move away from full net metering) could urge the Commission to second-guess retail regulator judgments on PURPA grounds.[30] The Commission should not encourage this trend.

As with many other states and nonregulated electric utilities, SRP has developed rate options to accommodate the growth of DG on its system while seeking to maintain an equitable allocation of costs among its retail customers. Petitioners fail to show that SRP's rate options for DG customers are discriminatory. The crux of Petitioners' objections to SRP's rate plans for sales to distributed generation customers is that SRP has not justified treating partial requirements customers with on-site generation differently from other retail customers without on-site generation – a practice that Petitioners claim violates PURPA's anti-discrimination requirements.[31] This position is based in part on the (erroneous) claim that SRP did not rely on

[30] *See, e.g.*, Petition at 19 (arguing that "[t]he Commission's rules prohibit SRP from applying different policies ('costing principles') to qualifying facilities than are applied to other customers, *regardless of whether the state regulatory authority or nonregulated utility deems them justified*.") (emphasis added).

[31] *See* Petition at 12-21.

"accurate" data,[32] as well as the suggestion that SRP is not entitled to design a fixed charge for partial requirement distributed generation customers that takes into account these customers' reduced use in allocating fixed distribution costs.[33]

But solar customers' electric load does not have the same characteristics as other non-generating customers; SRP is still obligated to serve the load and still incurs the fixed distribution and other costs to serve these customers' requirements. If DG customers were to pay a usage-only charge, they would not provide assurance of fixed cost recovery. Accordingly, there is justification for a demand charge for DG customers. Courts and the Commission have long recognized that distinctions between customers can justify differential rate treatment,[34] and Petitioners have not shown that SRP, in accounting for those differences in designing its retail rates, has discriminated against the Petitioners under PURPA.[35]

Ensuring fixed cost recovery and equitable cost allocation in the face of growing DG deployment are issues faced by states and nonregulated electric utilities across the country. While retail regulators remain obligated to properly implement the Commission's PURPA rules, their ability to effectively address the retail rate implications of expanded DG deployment –

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[32] *See id.* at 13-16. Contrary to Petitioners' incorrect claim, the load data that SRP used in developing the pricing plans for solar customers in the 2019 pricing process reflected actual meter data from solar and non-solar customers, not proxy data from non-solar customers. *See* SRP Cost Allocation Study at 14-15 (Dec. 20, 2018), available at: https://www.srpnet.com/assets/srpnet/pdf/price-plans/electric-pricing-public-process/cost-allocation-study.pdf. This erroneous assertion undermines Petitioners' "inaccurate data" argument, Petition at 13-16, and, in turn, undercuts the Petitioners' "systemwide costing principles" objections. *See* Petition at 17 (arguing that using proxy load data is not a consistent systemwide costing principle).

[33] *See, e.g.*, Petition at 19 (arguing that "[r]educed contribution to 'grid costs' collected through volumetric charges is not unique to solar customers because non-solar customers with below-average volumetric consumption also reduce their contributions to grid costs."); *id.* at 21 (asserting that the challenged SRP pricing plans "do not apply equally to non-solar customers with similar loads and characteristics").

[34] *See, e.g., Ala. Elec. Coop. v. FERC*, 684 F.2d 20, 27 (D.C. Cir. 1982).

[35] Notably, in dismissing a challenge to SRP's rates under the Equal Protection Clause of the U.S. Constitution, the United States District Court for the District of Arizona concluded that challengers had failed to show that SRP's retail customers with solar systems are similarly situated to retail customers without such systems. *Ellis v. Salt River Project Agric. Improvement & Power Dist.*, 2022 U.S. Dist. LEXIS 148264, *12-13.

whether the DGs are QFs or not – could be severely hampered if the Commission were to inject itself deeply into traditional retail rate-setting processes based on QF allegations that retail rates fail to properly implement PURPA.

C. The Petitioners Do Not Establish that They Lack Access to A PURPA-Compliant Avoided Cost Rate

If the Commission is disposed, notwithstanding the arguments above, to assess SRP's distributed generation retail pricing plans under PURPA, it is important to observe that, although Petitioners object to the demand charge in SRP's E-27 rate schedule, they conspicuously do *not* argue that the credit for exports to the grid under E-27 fails to satisfy the *avoided cost* requirements for energy provided to SRP by solar customers.[36] Instead, the Petition argues that pairing the "difficult to manage" demand charge under the E-27 pricing plan with a more remunerative credit presents QFs with a "Catch-22".[37]

Petitioners argue that QFs cannot simply be provided the choice between multiple non-PURPA compliant options,[38] but the obverse of this assertion is that if QFs have at least one PURPA-compliant option, other programs need *not* comply with PURPA.[39] As discussed above, Petitioners have not established that charging a demand rate (whether difficult to manage or not) to partial requirements customers under E-27 violates PURPA, and thus, the availability of E-27

[36] *See, e.g.*, Petition at 12 n.36.

[37] *Id.* As noted above, Petitioners also mischaracterize – and thus fail to raise a cognizable challenge to – the customer export compensation and demand charge aspects of the E-15 pricing plan. *See* footnote 15, *supra*. The E-15 pricing plan does include the same monthly service charge structure as the E-13 and E-14 pricing plans challenged by Petitioners.

[38] Petition at 12 (citing *Winding Creek Solar LLC v. Peterman*, 932 F.3d 861, 865-66 (9th Cir. 2019)).

[39] *See, e.g., Otter Creek Solar LLC*, 143 FERC ¶ 61,282 at P 4 (2013), *order denying reconsideration*, 146 FERC ¶ 61,192 at PP 7-8 (2014).

moots the other challenges.[40]

IV. CONCLUSION

For the foregoing reasons, APPA, LPPC, and NRECA ask that their requests for intervention be granted and that the Petition be dismissed.

Respectfully submitted,

/s/ Latif Nurani
Desmarie Waterhouse
Senior Vice President, Advocacy & Communications and General Counsel
Latif Nurani
American Public Power Association
2451 Crystal Drive
Suite 1000
Arlington, VA 22202
202-467-2900
dwaterhouse@publicpower.org
lnurani@publicpower.org

/s/ Jonathan D. Schneider
Jonathan D. Schneider
/s/ John McCaffrey
John McCaffrey
Harvey Reiter
Stinson LLP
1775 Pennsylvania Avenue NW
Suite 800
Washington, DC 20006
(202) 728-3034
jonathan.schneider@stinson.com
john.mccaffrey@stinson.com
harvey.reiter@stinson.com

Attorneys for APPA and LPPC

/s/ Mary Ann Ralls
Mary Ann Ralls
Senior Director, Regulatory Counsel
Government Relations Department
National Rural Electric Cooperative Association
4301 Wilson Blvd.
Arlington, VA 22203
(703) 907-5837
fax (703) 907-5517
maryann.ralls@nreca.coop

[40] The rate schedules for the E-13, E-14, and E-15 pricing plans make clear that "A customer may cancel service under this price plan and elect service under another applicable price plan." https://www.srpnet.com/assets/srpnet/pdf/price-plans/residential-electric/solar/tou-export-e-13.pdf; https://www.srpnet.com/assets/srpnet/pdf/price-plans/residential-electric/solar/gen-ev-export-e-14.pdf; https://www.srpnet.com/assets/srpnet/pdf/price-plans/residential-electric/solar/average-demand-e-15.pdf. In other words, the customer can opt to qualify for the E-27 pricing plan.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 12th day of February, 2024.

/s/ John McCaffrey

John McCaffrey
Stinson LLP
1775 Pennsylvania Avenue NW
Suite 800
Washington, DC 20006
(202) 728-3026
john.mccaffrey@stinson.com