

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Application of Fulcrum Sierra BioFuels, LLC to)
purchase energy, capacity, and/or ancillary services) Docket No. 18-06009
from a provider of new electric resources.)

At a special session of the Public Utilities
Commission of Nevada, held at its offices
on December 21, 2018.

PRESENT: Chairman Ann Wilkinson
Commissioner Ann Pongracz
Commissioner C.J. Manthe
Assistant Secretary Trisha Osborne

MODIFIED FINAL ORDER

The Public Utilities Commission of Nevada (“Commission”) makes the following
findings of fact and conclusions of law:

I. INTRODUCTION

Fulcrum Sierra BioFuels, LLC (“Fulcrum”) filed with the Commission an Application, designated as Docket No. 18-06009, to purchase energy, capacity, and/or ancillary services from a provider of new electric resources (“Application”).

II. SUMMARY

The Commission grants the Application, subject to the satisfaction of the compliances and directives delineated in this Order.

III. PROCEDURAL HISTORY

- On June 6, 2018, Fulcrum filed the Application.
- On June 8, 2018, the Commission issued a Notice of Application to Exit System and Notice of Prehearing Conference.
- Fulcrum filed the Application pursuant to the Nevada Revised Statutes (“NRS”) and the Nevada Administrative Code (“NAC”), Chapters 703, 704, and 704B, including but not limited to NAC 704B.340 and 704B.380.
- On June 20, 2018, the Attorney General’s Bureau of Consumer Protection (“BCP”) filed a Notice of Intent to Intervene.

- On July 5, 2018, Sierra Pacific Power Company d/b/a/ NV Energy (“SPPC” or, and together with Nevada Power Company, “NV Energy”) filed a letter with the Commission indicating its intention to participate as party in this Docket.
- On July 13, 2018, the Presiding Officer held a prehearing conference. Staff, BCP, Fulcrum, and SPPC made appearances. A procedural schedule was discussed.
- On July 17, 2018, the Presiding Officer issued a Procedural Order, which established a procedural schedule.
- On Monday, August 6, 2018, the Presiding Officer held a prehearing conference. Staff, BCP, Fulcrum, and SPPC (the “Parties”) made appearances.
- On August 10, 2018, Staff filed its Final Impact Analysis.
- On August 15, 2018, the Presiding Officer issued Procedural Order No. 2.
- On August 24, 2018, Fulcrum filed a letter with the Commission.
- On August 24, 2018, SPPC filed an Alternative Analysis.
- On August 28, 2018, Fulcrum filed Direct Testimony.
- On September 6, 2018, the Presiding Officer issued a Notice of Hearing.
- On September 11, 2018, Staff and SPPC filed Direct Testimony.
- On September 25, 2018, Fulcrum filed Rebuttal Testimony.
- On October 1, 2018, EDAWN filed Comments.
- On October 2, 2018, the Presiding Officer held a hearing. The Parties made appearances. At the conclusion of the hearing, the Presiding Officer granted an oral motion to accept Exhibit Nos. 1-11, 13-14, and 16-24 into the record. In addition the Presiding Officer granted an oral motion to accept Confidential Exhibit Nos. 1-3 into the record. Late-filed Exhibits 12 and 15 were discussed.
- On October 9, 2018, SPPC filed Late-Filed Exhibit 15.
- On October 22, 2018, SPPC filed Late-Filed Exhibit 12.

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IV. APPLICATION

Fulcrum's Position

1. Fulcrum states that it recently began construction of a biorefinery (the "Biorefinery") to be located in Storey County, Nevada, in SPPC's service territory. Fulcrum states that the Biorefinery is not yet complete, and that it has yet to take electric service at the Biorefinery. Fulcrum requests that the Commission issue an order authorizing Fulcrum to purchase energy, capacity and ancillary services for its Biorefinery from a provider of new electric resources pursuant to NRS Chapter 704B ("NRS 704B") and NAC Chapter 704B ("NAC 704B"), on or about September 1, 2019, or such other date identified by Fulcrum and approved by the Commission. Fulcrum states that, on April 25, 2018, it served Staff, BCP, and SPPC with its letter of intent notifying these parties of its intent to file its Application with the Commission. (Ex. 1. at 1-2, 9.)

Compliance with Requirements of NRS and NAC Chapter 704B

2. Fulcrum states that it intends to purchase energy, capacity and ancillary services from a provider of new electric resources (pursuant to NRS 704B) for the Biorefinery. Fulcrum states that it is an "eligible customer" under NRS 704B.080 because it is a "nongovernmental commercial end-use customer in the service territory of SPPC and will consume during the 12 months immediately following the date of commencement 8,760,000 kilowatt-hours [(kWh)] or more of energy at its contiguous property locations or its service locations that are treated as a single service location for billing purposes." Fulcrum states that the Biorefinery's Load Summary, Load Forecast, and Motor List¹, all of which is attached to its Application (for which

¹ Fulcrum states that the Biorefinery's Motor List identifies the various energy consuming operating units to be incorporated in the Biorefinery and industrial processes to take place there. It also identifies operating units, equipment, voltage, installed power, and operating power of the equipment. (Ex. 3 at Q&A 28.)

Fulcrum seeks confidential treatment), demonstrates that the Biorefinery satisfies this consumption requirement. Fulcrum states that because the Biorefinery is not yet constructed, no information regarding points of delivery has been submitted, but it will provide that information as it is developed. Fulcrum states that each of its points of delivery will be equipped with time-of-use meters required by NAC 704B.340(1)(b). (*Id.* at 2-3, 6.)

3. Fulcrum states that, pursuant to NAC 704B.340(1)(a)(2), it is also an eligible customer pursuant to Section 1.14 (ii) of the SPPC Open Access Transmission Tariff (“OATT”) because it will purchase unbundled transmission service pursuant to a retail access program. Fulcrum states that it has the ability to enter into all service agreements necessary for the delivery of energy from the point of receipt to Fulcrum’s points of delivery. (*Id.* at 3.)

4. Fulcrum states that it is in negotiations with several potential providers of new electric resources; therefore, it has not yet selected its provider. Fulcrum states that its provider will meet the requirements of NAC 704B and NRS 704B, and that Fulcrum will provide its provider information as soon as it is available. Fulcrum’s provider will likely be active in the Western Electricity Coordinating Council (“WECC”) wholesale power market and involved in electricity and natural gas trading and marketing activities throughout the region. The provider will likely provide physical load-supply service to utilities and end-use customers in the region and offer a structured products portfolio that includes generation entitlement, transmission capacity and other power products. Fulcrum states that its agreement with the provider will obligate the provider to provide energy, capacity and ancillary services to Fulcrum and require the provider to comply with applicable renewable portfolio standard requirements pursuant to NAC 704B.500 and NRS 704.78213. The agreement will be provided to the Commission pursuant to the requirements of NAC 704B.370(5) and will require the provider to serve as

Fulcrum's scheduling coordinator for delivery of energy which will be delivered from outside NV Energy's control area. (*Id.* at 3-4, 6, Exhibit 1 (Letter of Intent).)

5. Following its selection of a provider, Fulcrum plans to execute an agreement with its new provider. Pursuant to NAC 704B.320(2)(d), Fulcrum states that it anticipates the following terms in its agreement with its new provider: (1) services for the Biorefinery to commence on or about September 1, 2019, and an initial term of service not to exceed seven years (thereafter the term will be further negotiated); (2) Fulcrum will purchase approximately 25 megawatts ("MW") of energy, capacity and ancillary services from the new provider; (3) Fulcrum's new provider will act as Fulcrum's scheduling coordinator; (4) the Midpoint 345-kilovolt ("kV") Substation ("Midpoint") will be the point of receipt, with other interface locations based on availability; (5) the maximum number of megawatts to be delivered is approximately 25 MW,² based upon a forecast developed from the Biorefinery's Motor List; (6) Fulcrum will procure physical firm energy, including capacity and ancillary services from its new provider; (7) termination and notice provisions will be included as required by NRS 704B and NAC 704B; and (8) and Fulcrum will manage its electrical energy requirements using cost-effective energy conservation programs and anticipates no significant increases or decreases to its estimated 25MW of energy over the contract term. (*Id.* at 4-5, Exhibit 1 (Letter of Intent).)

6. Fulcrum states that it intends to acquire firm energy from a "new electric resource" as that term is defined under NRS 704B.110 and has no intention to serve this load by obtaining services directly from generation assets owned by SPPC. All firm energy resources will be capable of delivery to Fulcrum's points of delivery. (*Id.* at 5.)

² In addition to the Biorefinery, Fulcrum intends to operate a municipal solid waste feedstock processing facility ("FPF") in northern Nevada. The FPF has a projected load of 3 MW. Fulcrum chose to exclude the load associated with the FPF from the Application. (Ex. 1 at 4, Exhibit 1 (Letter of Intent); Ex. 3 at Q&A 8.)

7. Fulcrum states that, pursuant to NAC 704B.320(2)(e), it will purchase the following ancillary services from SPPC under SPPC's OATT: scheduling, system control, and dispatch; reactive supply and voltage control; regulation and frequency response; energy imbalance service; spinning reserve service; supplemental reserve service; and loss compensation service. Fulcrum also states that, pursuant to NAC 704B.320(2)(f), the new electric resources will be delivered from outside SPPC's control area. (Ex. 1 at Exhibit 1 (Letter of Intent).)

8. Fulcrum states that the electricity delivered by its provider to Midpoint will be delivered pursuant to the terms of SPPC's OATT. Pursuant to NAC 704B.340(1)(a)(2), Fulcrum agrees to pay, to the extent applicable under the OATT, all costs for system impact studies, facilities studies and construction of facilities that may be required to obtain the necessary transmission service. Fulcrum will provide the studies to the Commission if they are completed. (*Id.* at 5-6.)

9. Fulcrum states that, upon approval of its Application, it will pay applicable taxes, fees, or assessments required by NRS 704B.360, as well as its load ratio share of the unrecovered adjusted balance in the deferred accounts of SPPC³, and will pay an appropriate impact fee, if any, as those amounts may be determined by the Commission. (*Id.* at 6.)

Impact Fee

10. Fulcrum states that, if its Application is approved, there will be no financial impact on SPPC or its remaining customers and, accordingly, Fulcrum should not be required to pay an impact fee. Fulcrum states that it is not currently a bundled customer of SPPC for

³ The Application references NV Energy and SPPC interchangeably, in this instance, the deferred accounts in question are those of SPPC.

purposes of the Biorefinery; construction of the Biorefinery began on June 11, 2018, and operations are not scheduled to commence until the first quarter of 2020. (Ex. 4 at Q&A 7-8.)⁴

11. Fulcrum states that, on October 2, 2017, it informed SPPC of Fulcrum's plan to file its Application and requested SPPC to not plan to serve Fulcrum's load. SPPC responded to Fulcrum in April 2018 stating that SPPC will not plan for Fulcrum's load, as requested. (*Id.* at Q&A 9-10.)

12. Fulcrum states that the central consideration in determining the financial impact of a customer's decision to transition to distribution-only service ("DOS") is the period of time it takes for load growth to replace the load of the departing customer. Generally, the impact fee assessed is meant to compensate the utility and remaining ratepayers for the costs of the electric system the departing customer would have borne over the period of time it takes new load to replace the departing load. Fulcrum notes that Staff's final impact analysis concludes that Fulcrum's proposed departure results in no impact to SPPC or its remaining customers, as SPPC did not forecast or plan for Fulcrum's load. Fulcrum supports Staff's analysis and additionally argues that not requiring an impact fee is consistent with prior Commission decisions. (*Id.* at Q&A 12-19.)

13. Fulcrum states that it is willing to pay its share of the non-bypassable rates of the IS-2 Irrigation Rate Program (pursuant to NRS 704.225) and the Economic Development Rate Program (pursuant to NRS 704.7875). (*Id.* at Q&A 20.)

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⁴ Fulcrum failed to include page numbers within all of its testimonial exhibits filed in this Docket. As a result, the Commission must depart from its usual practice of citing to specific page numbers within testimonial exhibits and cites to Questions and Answers ("Q&A") within Fulcrum's exhibits. Proper pagination of an exhibit is one of the most basic requirements. The Commission admonishes counsel for Fulcrum for not following basic exhibit filing principles.

Request for a Protective Order

14. Pursuant to NAC 704B.340(2), Fulcrum requests that the Commission issue a protective order for Attachment D to Exhibit 1 of its Application and all of Exhibit 2 to its Application. Exhibit 1 is Fulcrum's Letter of Intent. Attachment D to Exhibit 1 is the Biorefinery's Motor List. Fulcrum claims that Attachment D to Exhibit 1 and Exhibit 2 contain customer-specific engineering information, is highly confidential and commercially sensitive, and is entitled to protection under NAC 704B.340(2). Fulcrum believes the information is commercially sensitive because it reveals information about its business operations and design plans, the release of which may present safety and security issues for Fulcrum that has potential to compromise its operations. Fulcrum states that it has transmitted protective agreements to Staff, BCP, and SPPC. Fulcrum requests the Commission keep this information confidential for the maximum period prescribed by law. (Ex. 1 at 7.)

Requests for Deviation from NAC 704B.320(2)(b) and NAC 704B.320(2)(c)

15. Fulcrum requests the Commission deviate from NAC 704B.320(2)(b). This regulation requires an eligible customer to include in its letter of intent the name and address and contact information of the customer's provider of new electric resources. Fulcrum also requests the Commission deviate from NAC 704B.320(2)(c), which requires the letter of intent to identify the customer's points of delivery from which it intends to purchase energy from the provider, physical locations of the same, current account numbers for points of delivery, the name on each account, and each account's current and final billing address. (*Id.* at 8.)

16. Fulcrum states that NAC 704B.340(1) and (1)(e) require that the eligible customer include in its application information that the customer included in its letter of intent and any information required to update or complete the information. (*Id.*)

17. Fulcrum states that it is currently in negotiations with several providers. Fulcrum states that NRS 704B contemplates the possibility of filing applications before construction of projects like the Biorefinery is complete and contemplates applications being filed far in advance of commencement of service. As such, Fulcrum asserts that there is good cause shown to deviate from the requirements of NAC 704B.320(2)(b) and (c) and 704B.340(1) and (1)(e). Fulcrum states that deviation is in the public interest because it will allow the expeditious processing of the Application and avoid any complications that could impact Fulcrum or remaining ratepayers if it were required to delay this process. Fulcrum also states that waiver of these regulations is not contrary to statute. (*Id.* at 9.)

SPPC's Position

Impact Fee

18. SPPC provides a lump sum methodology and a non-bypassable methodology to calculate Fulcrum's impact fee payments. SPPC states that this approach is consistent with Staff's recommendations in other NRS 704B Dockets. Applying the lump sum methodology, SPPC calculates net present values ("NPV") of all applicable charges and revenues over three, six, or ten-year impact fee calculation periods. The lump sum methodology includes NPVs of the following components/charges: Base Tariff General Rate ("BTGR"), Gross Base Tariff Energy Rate ("BTER"), Variable Operations and Maintenance ("O&M") costs, NV Green Energy Rider ("NGR") revenue, Renewable Energy Program Rate ("REPR"), Temporary Green Power Financing ("TRED"), and local government fees. The lump sum methodology yields a \$6.258 million upfront impact fee based on a three-year calculation period. The non-bypassable methodology includes NPVs of the following impact fee components/charges: BTGR, net BTER, Variable O&M costs, NRG Revenue, and local government fees. The non-bypassable

methodology yields \$3.319 million upfront impact fee based on a three-year calculation period. Under the non-bypassable methodology, the renewable out-of-the money component of the BTER (“R-BTER”), REPR, and TRED are collected separately, and in addition to the upfront impact fee payment, over the applicable period of time. (Ex. 5 at 3, 5, 8.)

19. SPPC recommends that the Commission establish an impact fee using at least a three-year impact period based on the non-bypassable charge methodology. SPPC also recommends that the Commission impose on Fulcrum an obligation to pay R-BTER charges for the duration of the contracts represented in those payments. SPPC states that the reason for this is based on the fact that SPPC entered into long-term renewable contracts for the purpose of meeting a state policy objective, and costs of state policy compliance should be socialized, otherwise, remaining SPPC customers would pay increased costs. SPPC states that the non-bypassable methodology in Table Ramirez 1 (Ex. 5 at 8) is an illustrative example of a non-bypassable charge methodology. SPPC states that the most conservative approach to ensure that SPPC’s customers do not see higher electric prices because of this transaction is to assess a full impact fee using at least a three-year impact period with non-bypassable charges. (Ex. 13 at 5, 14-15; Tr. at 140-41, 145-46.)

Carrying Charges on the Impact Fee

20. SPPC notes that, in the 2017 Nevada Power general rate case proceeding, the Commission ordered the Company to apply a carrying charge to the balance of the unamortized BTGR portion of impact fees received from other NRS 704B customers until the balance is refunded to remaining customers. SPPC states that, to prevent increased costs to SPPC, the Commission should gross up Fulcrum’s impact fee for any carrying charges that will be imputed to the Company in SPPC’s next rate review proceeding. Alternatively, the Commission can

make clear in its order in this docket that no carrying charge shall be applied to the balance of any impact fee assessed to Fulcrum. (Ex. 10 at 1; Ex. 13 at 10-11.)

Reliability Must-Run (“RMR”) Costs

21. SPPC explains that it has RMR generating units that are used to maintain the reliability of the transmission system. The RMR units require large amounts of capital investments to maintain their reliability and the reliability of the transmission system. SPPC identifies fuel costs associated with RMR units and estimates that these costs total \$2.33 million for SPPC’s system in 2017. SPPC states that “these costs are reflected in fuel and purchase power costs. Only customers who buy energy from the Company pay fuel and purchase power costs.” (Tr. at 136.) Companies that use the transmission system, but do not take bundled service (e.g. Fulcrum), do not pay these costs. SPPC states that the Commission should establish a mechanism to assess a portion of RMR costs to Fulcrum on an annual basis. In each deferred energy filing, SPPC would calculate actual, historical RMR costs and establish a per-kWh charge based on total sales, including DOS sales. The per-kWh charge would then be in place for the following year (from October 1 through September 30) until it is reset in the next annual deferred energy filing. (Ex. 8 at 6-7; Ex. 13 at 12-13; Ex. 14 at 2; Tr. at 125.) SPPC acknowledges that existing DOS customers who have exited NV Energy’s bundled services pursuant to NRS 704B are not assessed a proportionate share of RMR costs. (Tr. at 136.)

Lost Portfolio Optimization

22. SPPC states that northern Nevada’s transmission system has a finite amount of available transfer capacity (“ATC”) for imports to the NV Energy balancing authority area. ATC is a valuable resource that benefits all SPPC customers. Fulcrum anticipates requesting transmission service for 25 MW of import capacity at Midpoint. SPPC states that this reduction

in ATC diminishes the benefits SPPC receives and passes on to existing customers, such as SPPC's ability to import low-cost hydroelectric and wind generation for the benefit of bundled retail customers by offsetting higher cost resource alternatives. The Commission should therefore consider the issue of opportunity costs associated with diminished ATC in this Docket. SPPC quantifies this cost as an impact totaling \$1.89 million over nine years, and recommends the Commission impose an impact fee in the present value amount of \$1.179 million in this case. This impact should be reviewed in future NRS 704B applications, as the impact will increase as more companies in northern Nevada request departure of SPPC's system and use SPPC's transmission import capacity. (Ex. 10 at 1-2; Ex. 8 at 5.)

23. SPPC states that, together, NV Energy has nine transmission customers that take transmission service at Midpoint. (Tr. at 80.) Switch, Caesars, and Peppermill each take service at Midpoint. (Tr. at 83.) SPPC further states that NV Energy does not have a transmission reservation at Midpoint for retail customers except for cases where a network resource is reserved. (Tr. at 87-88.) The remaining unencumbered transmission is not reserved and is therefore available to all transmission customers pursuant to the OATT. SPPC further states that it does not currently face a transmission constraint for facilities offered under the OATT, and that it has the opportunity to request authority from FERC to change its rates to support the addition of new transmission capacity in the event that this becomes necessary in the future. (Tr. at 93-94, 159.)

24. SPPC argues that the State of Nevada and the Commission have jurisdiction over the administration of retail access programs as established by the State of Nevada, and argues that the Commission should recognize impacts of NRS 704B departures on resource

optimization, in the application of any impacts, impact fees or impacts to SPPC's retail customers. (Tr. at 80-83; 86-92.)

Valmy Costs

25. SPPC states that, if the Valmy Unit I ("Valmy") early retirement plan is approved in Docket 18-06003, and the Commission determines an impact fee should be assessed to Fulcrum, Fulcrum should compensate SPPC and its remaining customers for a share of Valmy remaining net book value costs for three years after the Commission's order in this Docket. These costs should be based on Fulcrum's estimated kilowatt-hours of load at the time such remaining net book value costs are approved by the Commission and added into rates. Such fees should include all Commission-approved Valmy decommissioning and remediation costs until such costs are fully recovered regardless of whether such costs are fully recovered at the end of three years. The mechanism to collect these costs should be determined in SPPC's next general rate review proceeding. (Ex. 10 at 2; Ex. 13 at 4.)

NRS 704B.310(6)(b) – System Reliability

26. SPPC does not find that the proposed transaction will impair system reliability or its ability to provide electric service to remaining customers in any material way. (Ex. 13 at 16.)

NRS 704B.310(6)(c) – Additional Energy, Capacity, or Ancillary Services

27. SPPC notes that, in determining whether a proposed NRS 704B application is contrary to the public interest, the Commission must consider whether the proposed transaction will add energy, capacity or ancillary services to the supply in Nevada. SPPC states that the proposed transaction here does not add energy, capacity, or ancillary services to the supply in Nevada. SPPC notes that Fulcrum proposes to import energy purchased in external wholesale markets, but the energy produced by wholesale generators already exists and, to the extent it is

deliverable to Nevada, already is available. SPPC also states that the proposed transaction does not include the addition of any new generating resources, either within or outside the Nevada balancing area. (*Id.* at 16-17; Tr. at 138.)

Energy Choice Initiative (“ECI”)

28. SPPC states that its Alternative Analysis does not contemplate the outcome or effects that may result due to the results of Question 3 by voters in the November 2018 election. SPPC recommends that the Commission include in any order that approves Fulcrum’s application a provision requiring that Fulcrum be responsible for and allocated its appropriate share of any costs and/or benefits that result from the passage of Question 3. SPPC states that the Commission would need to determine as part of a future filing that such costs/benefits are just and reasonable and should be recovered from and/or credited to Fulcrum in a future proceeding. (Ex. 10 at 2-3.)

Staff’s Position

Impact Fee

29. Staff states that its final analysis indicates that Fulcrum’s proposed departure does not result in a financial impact to SPPC or its remaining customers. Staff states that it did not direct SPPC to do the sort of impact calculation with respect to Fulcrum that Staff had directed SPPC to do in past NRS Chapter 704B dockets because Fulcrum is not yet an established SPPC customer. Accordingly, Staff concluded that it would have been inappropriate for SPPC to perform the same type of impact calculation as had been done for SPPC’s existing NRS 704B exiting customers. Instead, Staff took into account SPPC’s resource planning in relation to Fulcrum’s proposed load. Staff states that its determination is a reasonable estimate of the impact to SPPC of Fulcrum’s departure under NRS 704B. (Ex. 18 at 1.)

30. Staff states that it is reasonable, for the purposes of NRS 704B.310(6)(a), to assume that SPPC has neither planned for nor constructed generation assets for the purpose of serving Fulcrum's projected load because SPPC does not plan load for every customer and, as such, those loads may not be included in a forecast. Staff states that, since SPPC was not planning for and forecasting Fulcrum's load, there can be no measurable adverse material cost to SPPC or remaining SPPC customers as a result of the Fulcrum departure. (*Id.* at 2, Attachment 1.)

31. Furthermore, Staff notes that, with the Biorefinery not planned to be on line and consuming large amounts of load until the September 1, 2019, Fulcrum gave SPPC close to two years' notice of its plan not to be a bundled retail customer. In light of the notice, the assumption should be that a prudent utility like SPPC would have acted accordingly. (Ex. 18 at 2.)

32. Therefore, this leads Staff to conclude that Fulcrum's departure will have no financial impact given these unique circumstances, with the exception of non-bypassable rates. These non-bypassable rates are the IS-2 Irrigation Rate Program pursuant to NRS 704.225 and the Economic Development Rate Program pursuant to NRS 704.7875. All customers are required to pay these rates, including distribution and transmission-only customers. Staff states that these non-bypassable charges can be assessed either through inclusion in the DOS rate or through the imposition of a separate non-bypassable charge added to the DOS rate. Fulcrum will also be required to pay the Commission's annual assessment pursuant to NRS 704.033 and the 5 percent county franchise fee that will be applied to all sales made by its provider of new electric resource. (*Id.*)

33. Staff states that, because SPPC did not plan for Fulcrum's load, Fulcrum should not be obligated to pay the R-BTER costs. (*Id.*)

34. Staff states that its conclusion that there should be no financial impact fee is unique to this Docket. Staff understands that SPPC does not plan for every customer's individual load and, instead, plans for an aggregate amount of customer load. However, Staff cautions that, if every new customer were to want to depart bundled service and argued SPPC was not planning for them by name in a load forecast, the foundation of resource planning would fall apart. In this Docket, given the notice period provided by Fulcrum regarding its plan to construct the Biorefinery and to not be served as a bundled customer, and SPPC's acknowledgement that it was not planning for Fulcrum's new load, Staff believes that Fulcrum's departure will not result in a material impact to SPPC and remaining customers. Accordingly, Staff recommends that no impact fee be assessed. (*Id.* at 2-3.)

35. Staff states that, with respect to SPPC's Alternative Analysis, SPPC performed production cost simulations with base and change case impact analysis, with three-year, six-year, and ten-year take-off points using the same methodology that Staff has utilized in other NRS 704B filings that have occurred over the past four years. Staff notes that it does not appear, however, that SPPC is proposing that Fulcrum be charged a three, six, or ten-year impact fee. Staff assumes that SPPC provided its impact fee analysis for illustrative purposes only. (Ex. 17 at 4.)

36. Staff states that it questions SPPC's justification for removing Fulcrum's load from the base case scenario when the load was never in the forecast to begin with. Furthermore, since the Biorefinery is yet to be constructed, it is unclear how SPPC developed an hourly annual load profile that could be reasonably removed from the load forecast to produce the change case. Staff states that it appears SPPC assumed an 80-plus percent load factor for the Biorefinery

based upon the full 25-MW of transmission import capacity requested; however, that load factor is inconsistent with the load estimates provided by Fulcrum. (*Id.*)

Carrying Charges on Impact Fee

37. Addressing the issue of carrying charges raised by SPPC in its Alternative Analysis, Staff states that, if the Commission approves an impact fee to be applied to Fulcrum, the Commission should order SPPC to apply a carrying charge to any upfront lump sum fee received by SPPC consistent with the Commission's Order in Docket No. 17-06003. (Ex. 16 at 1.)

38. Staff states that the upfront impact fees from the NRS 704B applicants provide immediate funds to NV Energy that would otherwise have to be obtained through debt or equity financing. NV Energy routinely includes a carrying charge on the regulatory assets it establishes to pay for costs it incurs before the costs are included in rates. After receiving the upfront impact fee, NV Energy establishes a regulatory liability for the benefit of remaining ratepayers to amortize over the impact analysis period. Since NV Energy receives the upfront fee in advance of the future amortization, Staff states that the unamortized balance should be assessed a carrying charge equivalent to the weighted costs of capital as approved by the Commission for other NRS 704B applicants in Docket No. 17-06003. (*Id.* at 2.)

39. Staff argues that ordering an NRS 704B applicant to pay an upfront, discounted to net present value, fee – and then later requiring the applicant to pay a carrying charge on the funds the applicant already paid to the Company – is counter intuitive and unreasonable. Furthermore, if the Commission were to require, or the NRS 704B applicant chose to pay, the impact fee on a monthly basis instead of a lump-sum, upfront, discounted impact fee, the applicability of a carrying charge becomes a non-issue. (*Id.* at 2-3.)

RMR Costs

40. Staff states that, if the “Reliability Must Run Units Capital Expense” proposed by SPPC is an actual cost of reliably providing transmission service, SPPC should find a way to include this in its FERC-approved transmission rates and have all customers pay that cost, instead of just Fulcrum. If the cost is material, SPPC should put forth a case to build new transmission projects to remove the must-run requirement and then bill all transmission customers for those upgrades. (Ex. 17 at 8.)

Lost Portfolio Optimization

41. Staff states that it does not agree with SPPC that Fulcrum becoming a transmission and distribution-only customer and requesting 25 MW of import capacity at Midpoint negatively and materially impacts SPPC’s remaining customers. Staff finds that SPPC’s analysis ignores that the Biorefinery will pay SPPC a FERC-approved transmission rate, which is currently \$2.65 per kw-month. As a result, Fulcrum would pay SPPC approximately \$795,000.00 a year in transmission revenue. Staff finds that, by paying this rate, Fulcrum is helping to support the cost of operating and maintaining the existing transmission system and should be entitled to use the requested transmission import capacity. (*Id.* at 5.)

42. Staff states that the “Loss of Wholesale Market Purchase” adjustments proposed by SPPC may be inconsistent with the FERC rules regarding transmission providers being required to post and make available all unused transmission capacity. SPPC’s position implies that retail native load customers have an existing exclusive call option to use and reserve all existing transmission import capacity in the event market conditions favor importing power. Staff states that, if SPPC needs this transmission import capacity to serve load in a least-cost manner, SPPC could sign a contract with a generation resource external to the SPPC

transmission system, designate this resource as a network resource, and secure the transmission import rights long-term, rather than attempting to reserve it based on market speculation. (*Id.* at 7.)

43. Staff also states that SPPC's position with regards to the early closure of Valmy in Docket No. 18-06003 is inconsistent with its proposal in this case with regards to Fulcrum paying for loss of import capacity. By closing Valmy early, SPPC will likely need to rely more heavily on its transmission import capacity. This will result in a cost of at least \$22 million over a four-year period to SPPC customers. This cost is larger than what SPPC claims Fulcrum would be imposing by leaving. Therefore, Staff finds that these two positions are not consistent. (*Id.* at 8.)

Valmy Costs

44. Staff states that, after SPPC raised the Valmy issue in this Docket, Staff investigated the matter further and now concludes that it is appropriate for Fulcrum to be assessed a portion of the Valmy costs. Staff now opines that Fulcrum should be responsible for paying part of the costs associated with the Valmy generating station because it is exactly the type of load growth highlighted by a Northern Nevada Utility Customers ("NNUC") witness in Docket No. 16-06006: Staff states that NNUC addressed the utilization of future load growth to help pay for Valmy costs, and, ultimately, the Stipulation in that Docket outlined a process by which Valmy costs would be deferred into a regulatory asset so that these costs could be accounted for and paid at a later date and not in current rates. (*Id.* at 2, 9-11.)

45. Staff states that it did not raise the Valmy issue in its final analysis in this Docket, but did raise it in Docket No. 17-05014, and Docket No. 18-08007. However, Staff now recommends that Fulcrum be assessed its share of the Valmy generation station costs when those

costs are finalized. Staff states that an exact number of Valmy costs is unknown at this time, but assuming that Fulcrum's new Biorefinery load will represent between one and two percent of SPPC's total load, Fulcrum could be assessed a cost between \$1 million to \$2 million. (*Id.* at 2, 9-10.)

NRS 704B.310(6)(b) – System Reliability

46. Staff states that, with respect to NRS 704B.310(6)(b), the Commission should find that Fulcrum's proposed departure from bundled retail service and request to import capacity at Midpoint for its Biorefinery will not negatively impact the reliability of SPPC's transmission system or negatively impact the service SPPC can provide remaining customers. (Ex. 17 at 12-13.)

NRS 704B.310(6)(c) – Additional Energy, Capacity, or Ancillary Services

47. With respect to NRS 704B.301(6)(c), Staff cannot disprove Fulcrum's assertion that its new provider will meet the definition of a new electric resource. Therefore, Staff believes that, if Fulcrum's Application is approved, it will bring new energy and capacity resources to Nevada. (*Id.* at 13.)

ECI

48. Staff states that with respect to ECI, Staff's current recommendation is that brand new loads, such as Fulcrum's Biorefinery, should not be responsible for potential stranded costs or be entitled to share in the possible benefits associated with the implementation of ECI. However, if ECI passes, then the policy direction would mean that all entities, whether new or existing, should be responsible for the costs and benefits associated with implementing ECI. Therefore, Staff states that the Commission could reasonably find that Fulcrum should be responsible for/entitled to future costs and benefits associated with implementing ECI. Because

the scope of costs and benefits is unknown, deferral of any adjudication of this question into the future transmission/distribution rate charged by SPPC is an option. (Ex. 17 at 10-11.)

Final Recommendation

49. Staff recommends that, pursuant to NRS 704B.310, the Commission find it in the public interest to allow Fulcrum's loads to depart. Staff states that NRS 704B.310(6)(a) will be satisfied if Fulcrum is found to be responsible for its appropriate share of the Valmy generation station costs from Docket No. 16-06006 and if Fulcrum complies with all directives and other requirements ordered by the Commission. (*Id.* at 2-3.)

Directives and Compliances

50. Staff states that the Commission should include a list of compliances and directives in any order approving Fulcrum's Application. These items include the numerous agreements that Fulcrum and SPPC must come to as well as the other items to be applied to Fulcrum and Fulcrum's provider. The compliance items Staff recommends address the necessary filings that Fulcrum must make in order to satisfy NAC 704B.370(5), NAC 704B.370(2), NAC 704B.380(1), NAC 704B.370(1)(a), NRS 704B.340 and NAC 704b.380(3)(b). Furthermore, Staff states that, while there is sufficient evidence that Fulcrum's new Biorefinery load will comply with NAC 704B.300(1), as a compliance, within twelve months following the date Fulcrum begins taking service from its provider of new electric resource, Fulcrum should file a letter with the Commission notifying the Commission when its Biorefinery has consumed 8,760,000 kWh of electricity. The three Directives recommended by Staff are designed to ensure compliance with NRS 704B.360, NAC 704B.380(1) or 704B.380(2), NRS 704.78213, and NAC 704B.500. Finally, Staff states that, because Fulcrum's load is a new load, and the Biorefinery is currently under construction, the 120-day provision regarding

compliances contained in NAC 704B.370(7) is impractical. Therefore, Staff recommends that the Commission deviate from this regulation pursuant to NAC 704B.175 and find that it would be in the public interest to require all compliance items set forth in any Commission order approving the Fulcrum application to be completed within 120 days of Fulcrum's new Biorefinery coming on line and beginning commercial operations. (*Id.* at 13, Attachment PRM-2.)

Fulcrum's Rebuttal Position

Impact Fee

51. Fulcrum states that, in practical terms, the determination of the financial impact of a departing customer for purposes of determining an impact fee is essentially a stranded cost analysis. Fulcrum states that an impact fee is assessed in an amount corresponding to the applicant's share of the costs of the electric system and the utility's reasonable revenue expectation over the period of time it takes for new load to replace its departing load. From an economic perspective, it is inappropriate to assess impact fees on customers who are new to the system, and SPPC cannot legitimately claim that it has incurred significant fixed, sunk costs that cannot be avoided when Fulcrum's Biorefinery is new to its system. There is also no basis to assess impact fees on an entirely new customer where the utility has not incurred any incremental fixed costs to directly serve the customer. Such impact fees would be nothing more than an anti-competitive barrier to competition. (Ex. 23 at Q&A 6-7.)

52. Fulcrum states that, to its knowledge, the Commission has never imposed an impact fee on an NRS 704B applicant that was not already a bundled customer of the utility. Fulcrum notes that in Docket 16-09023, in which Switch applied to exit SPPC's system when Switch's northern Nevada facilities were still under construction, the Commission approved a stipulation between Staff and Switch that required only IS-2 Irrigation Rate and Economic

Development Rate payments. Fulcrum also notes that, in Docket 17-04019, the Commission issued an advisory opinion for Google, indicating that new businesses not yet taking permanent service from NV Energy may avoid impact fees. Fulcrum states that it understands that the Commission is not bound by its Google advisory opinion as it relates to Fulcrum. Fulcrum states that it is similarly-situated to Switch and Google and imposing an impact fee to Fulcrum would be discriminatory. (*Id.* at Q&A 8-9, Q&A 11-12, Q&A 18.)

53. Fulcrum states that it disagrees with SPPC's justification for applying an impact fee to Fulcrum. As SPPC concedes, the qualitative forecasts SPPC develops, based on customer-specific information, are used to adjust the large and industrial model-based forecasts SPPC suggests capture Fulcrum's load. While historical model-based forecasts from twenty years ago may have anticipated load in northern Nevada in an amount consistent with the load that exists today, the Commission's resource planning process calls not only for those forecasts to be adjusted based on customer-specific information used in the qualitative forecasts SPPC described, but for the model-based forecasts themselves to be adjusted and updated every three years, and amendments have even been filed between those years. That load forecast has been updated every three years since, and the qualitative load forecasts SPPC describe are used specifically to update those forecasts. Here, Fulcrum indicated to SPPC that it did not want SPPC to plan for its load, and SPPC agreed and indicated that it did not plan to serve Fulcrum's load. Thus, SPPC and Commission processes have accounted for removal of Fulcrum's anticipated load, either specifically or generically, resulting in no generation assets or commitments being secured to serve Fulcrum's Biorefinery, and thus no stranded costs can be associated with Fulcrum's Application. (*Id.* at Q&A 14-16.)

