

In the Matter of the Petition of Wasatch Wind, LLC for Approval of a Contract for the  
Sale of Capacity and Energy from their Proposed QF Facilities

Docket No. 06-035-42

DPU Exhibit 1.0R

Rebuttal Testimony of Andrea Coon  
Division of Public Utilities

May 31, 2006

1       **Q.     Please state your name and business address, employer, and position for**  
2       **the record.**

3       A.     My name is Andrea Coon. My business address is 160 E. 300 S. SLC, UT. I  
4       work as a Technical Consultant for the Utah Division of Public Utilities  
5       (Division).

6       **Q.     Please summarize your educational and pertinent professional**  
7       **background for the record.**

8       A.     I have a Bachelor's degree in Economics, a Master's degree in  
9       Communications, and have completed all coursework toward a Ph.D. in  
10      Economics. I have been working in utility regulation since 2001. I have  
11      participated in a number of areas including IRP, power costs, special  
12      contracts, and QF agreements.

13      **Q.     What is the purpose of this testimony?**

14      A.     The purpose of this testimony is to give the Division's recommendations on  
15      the issues that are in dispute in this docket as described by the testimony of  
16      Ms. Sarah Wright for Utah Clean Energy; Dr. Richard Collins, Mr. Todd  
17      Tracy Livingston, Ms. Christine Watson Mikell, and Mr. Todd Velnosky for  
18      Wasatch Wind; and Mr. Paul Clements for PacifiCorp.

19      **Q.     Please describe the issues that you will be addressing.**

20      A.     There are several issues that I will be addressing: Should wind projects of 20  
21      MW or less be offered a standard contract, proper timing of development  
22      security posting, concerns regarding unlimited damages, the differences  
23      between intermittent and non-firm resources, altering contract language, and

the economic problems faced by “small” wind facilities. I do not know whether this is a comprehensive list of the issues that Wasatch Wind desires to have decided in this Docket because the testimony lacked clarity on the subject. The Division has issued data requests to three parties in this case; eight sets of data requests are still outstanding. The Division will further address any or all of the issues in future testimony upon receiving the requested further information.

**Q. A joint issues matrix was due to be filed on May 30, 2006. Did this matrix outline a comprehensive list of issues?**

A. The matrix that was due to be filed on May 30, 2006 has not been filed as of this writing. The Division anticipates that the matrix will be filed today (May 31, 2006) and I will be addressing any or all of the issues on the matrix in Surrebuttal.

**Q. Has the Division examined the issue of offering all wind projects of 20 MW or less a standard contract and come to a conclusion?**

A. Yes. Although Ms. Mikell, Dr. Collins, Mr. Livingston, and Mr. Velnosky all refer to the Wasatch Wind project as a “small” or “smaller” project, this definition does not fit the official definition that the Commission has set. Small QF projects are governed by Schedule 37 which, despite some recommendations for a higher MW limit in Docket 03-035-T10, covers wind projects with a nameplate capacity of 3 MW or less. Medium size projects have been defined, for the purpose of Docket No. 03-035-14, in which pricing for Schedule 38 was determined, as being 3-99 MW. The Division believes

47 that if Wasatch Wind truly desires to change the way in which wind projects  
48 of up to 20 MW are defined by this Commission, a contract dispute is not the  
49 appropriate proceeding in which to do so. This issue should be open to a  
50 larger group and be thoroughly examined by all interested parties through  
51 technical conferences, etc. It may be that wind QFs are not the only parties  
52 interested in altering the size thresholds currently in place under Schedules 37  
53 and 38; numerous parties intervened in the last docket (Docket No. 03-035-  
54 T10) to examine the size delineation in Schedule 37. Also, the evidence  
55 provided by Wasatch Wind thus far in support of standard terms is very thin.  
56 In fact, only one specific instance was cited in which a wind facility as large  
57 as 20 MW was given a standard contract. Although the Division has issued  
58 data requests for more information in this area of standard contracts, we have  
59 not received any information as yet that proves standard contract terms for  
60 wind facilities of 20 MW or less are, well, standard. Therefore, the Division  
61 recommends that no standard contract terms for wind facilities of 20 MW or  
62 less be adopted by the Commission at this time.

63 **Q. Another issue discussed by the parties in this docket is the timing of the**  
64 **posting of development security. Does the Division have a position on this**  
65 **issue?**

66 A. Yes. In the May 19, 2006 Report and Order for Docket No. 05-035-09, the  
67 Commission determined that a reasonable time for the wind QF to post  
68 development security would be 12 months prior to the scheduled commercial  
69 date. Even though the order stated that this development security decision did

not necessarily set precedence for the treatment of other wind QFs, the Division feels that it is a reasonable time frame for the Wasatch Wind facility as well, given that the QF sets its own commercial date and so could adequately plan for the security to be paid at that time.

**Q. Dr. Collins and Mr. Velnosky both discuss the possibility of unlimited damages being charged to Wasatch Wind as a reason to reject any delay damage provisions in the proposed contract. Has the Division considered this possibility?**

A. Yes. The Division is at a loss to explain how Dr. Collins and Mr. Velnosky can both state that damages are unlimited when this is so clearly not the case. I can only assume that they are using the terms unlimited and unknown interchangeably; the terms are not equivalent and therefore should not be used interchangeably. Damages could only be unlimited if some input into the calculation that determines damages had no limits. The delay damages are limited by a time component in the contract, by the number of MWs which Wasatch Wind would be responsible for replacing, and by a market price that, realistically, will not ever have a price of infinity. This means that the three inputs into the damage calculation are not unlimited, meaning that the end result of the calculation cannot be unlimited. Therefore, while unlimited damages are an interesting sound bite, they are also an exaggeration and not an adequate reason for passing all the risk associated with having a contracted resource not come online to ratepayers. Unknown damages are simply that, unknown, but not unlimited.

93       **Q.     In his testimony, Mr. Livingston argues that his intermittent wind**  
94           **resource should be given the same contract as a non-firm thermal**  
95           **resource due to a perceived equivalency. Does the Division have a position**  
96           **on this issue?**

97       **A.**     Yes. The issue of non-firm versus intermittent is a complex one. Before  
98           addressing whether or not an intermittent wind resource should be offered the  
99           same contract as a non-firm thermal resource, it is necessary to understand the  
100          differences between them. Even though the terms intermittent and non-firm  
101          are sometimes used interchangeably, even by members of the Division, the  
102          two types of resources are different. Dow Jones defines non-firm as “being  
103          subject to interruption at any time for any reason.”<sup>1</sup> This translates to the fact  
104          that a non-firm resource is not obligated, at any time, to provide energy. Using  
105          Mr. Livingston’s examples of Kennecott and Tesoro, neither of these  
106          resources is obligated to provide power to PacifiCorp at any time under the  
107          non-firm contract; even if the plant is producing, the firm (Kennecott or  
108          Tesoro) decides when to put power to the utility. Intermittent, on the other  
109          hand, is defined as “coming and going at intervals: not continuous.”<sup>2</sup> This  
110          translates to the fact that wind does not produce energy continuously; it does  
111          not translate to a wind farm being able to keep the energy being created.  
112          Therefore, there is a difference between non-firm and intermittent resources;  
113          the difference is based upon the requirement to sell all output (a wind or  
114          intermittent resource) as opposed to the ability to sell any output (a non-firm

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<sup>1</sup> Taken from definitions of market products on the website for Dow Jones

<sup>2</sup> Webster’s Ninth New Collegiate Dictionary, Merriam-Webster Inc., Springfield, MA: 1984.

resource. Discussions with the parties lead the Division to believe that the type of service that Wasatch wants to provide to PacifiCorp is firm service which entails selling all output to PacifiCorp, even though the resource itself is intermittent.

Now that we have established the difference between a non-firm and an intermittent resource, we can move on to why the contracts for the two resources are different. A non-firm contract contains no capacity payments because it is assumed that it is not avoiding any capacity. A non-firm contract pays only an energy payment for that energy being displaced. It is based upon variable costs. This type of contract works well for a company such as Tesoro that built its thermal facility in order to service its various plant needs. A non-firm contract does not contain any damages because the contract does not require or guarantee any level of energy will be provided to the utility. The wind proxy price contains a capacity payment by definition. The wind is being exclusively used to produce power for sale to the utility so it is necessary to recover both fixed and variable costs by means of its contract price. While I understand the difficulty in separating out the capacity, a still not constructed resource would be foolish to sign a 20-year contract if it were not being adequately compensated for its capacity. Therefore, the proxy price contains a capacity value and is a firm contract for an intermittent resource. All output from the wind resource is to be sold to the buyer in the contract. The difference between the resources is the reason why a non-firm contract may not be appropriate for use with an intermittent resource.

138 **Q. In his testimony, Dr. Collins states that liquidated damages associated**  
139 **with availability, etc, should either be removed or substantially reduced**  
140 **from the contract. Mr. Velnosky also suggests that several provisions**  
141 **need alteration. Has the Division seen any concrete proposal from**  
142 **Wasatch Wind as to acceptable contract language?**

143 A. No. As a matter of fact, the Division has yet to see any proposed contract  
144 from Wasatch Wind. We have received a proposed contract from PacifiCorp,  
145 but have been unable to assess whether Wasatch Wind's proposals are more  
146 reasonable because we haven't seen them. The Division has issued a data  
147 request asking for this information.

148 **Q. In his testimony, Mr. Livingston describes the economic problems that**  
149 **differ for a "small" versus a large facility. Does the Division have a**  
150 **position on this issue?**

151 A. Yes. While the Division understands that larger facilities spread costs over  
152 more production, this fact does not change the fundamental nature of QF  
153 contracts which is avoided cost rates that maintain ratepayer indifference. It is  
154 not the responsibility of ratepayers to pay extra to ensure the economic  
155 viability of a small wind resource. It is also not adequate to claim economic  
156 development because it has not been shown that those paying will be the same  
157 group benefiting, thus leading to possible ratepayer subsidization of a  
158 taxpayer group. For example, in the case of Wasatch Wind, the communities  
159 that may benefit the most are those of Spanish Fork and the surrounding areas.  
160 Several of these areas are not served by Utah Power but by municipal utilities.



161           This means that if Utah Power pays above avoided cost for this resource,  
162           those benefiting most may be municipal customers rather than the customers  
163           paying for the resource. In short, economic development is not part of the  
164           puzzle that determines avoided costs. Ratepayer indifference demands that no  
165           more than avoided costs are paid for QF power.

166       **Q.     Does this conclude your testimony at this time?**

167       A.     It does.