

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Petition of)
Wasatch Wind, LLC for Approval)
of a Contract for the Sale of) Docket No. 06-035-42
Capacity and Energy From Their)
Proposed QF Facilities)

REBUTTAL TESTIMONY OF PAUL H. CLEMENTS

May 22, 2006

1 **Q. Please state your name, business address and position with PacifiCorp dba**
2 **Rocky Mountain Power (the Company).**

3 A. My name is Paul H. Clements. My business address is 201 S. Main, Suite 2300,
4 Salt Lake City, Utah 84111. I am the Commercial representative for Rocky
5 Mountain Power, responsible for Qualifying Facilities and Retail Special
6 Contracts.

7
8 **QUALIFICATIONS**

9 **Q. Please briefly describe your education and business experience.**

10 A. I have a B.S. in Business Management from Brigham Young University. I have
11 been employed with PacifiCorp for one year as an Originator/Power Marketer
12 responsible for negotiating retail special contracts and non-standard Qualifying
13 Facility contracts. I have also worked in the merchant energy sector for 8 years in
14 pricing and structuring, origination, and trading roles. I currently have
15 responsibility for Qualifying Facility contracts within Rocky Mountain Power.

16 **Q. Have you previously submitted testimony in this docket?**

17 A. No.

18 **PURPOSE OF TESTIMONY**

19 **Q. What is the purpose of your testimony?**

20 A. I will be responding to the prefiled testimony of Sarah Wright, Todd Velnosky,
21 Christine Watson Mikell, Richard Collins, and Tracy Livingston. I will begin by
22 responding to non-contract specific issues, including the history of negotiations
23 between the Company and Wasatch Wind, the relevance of project size, the

24 relevance of potential economic benefits, and RFP related issues. I will then
25 focus on several common contract-specific issues raised by Wasatch Wind
26 witnesses including termination and delay damages, performance guarantees,
27 liquidated damages, and project development security. I will also address
28 miscellaneous issues unique to individual witnesses, as appropriate.

29

30 **NEGOTIATION HISTORY AND NON-CONTRACT SPECIFIC ISSUES**

31 **Q. Can you summarize the intent of the Company during contract negotiations**
32 **with Wasatch Wind?**

33 A. Yes. The Company's intent during negotiations was and continues to be to
34 develop a contract that follows the Commission's Orders in Docket 03-035-14
35 and the rules governing Qualifying Facilities yet allows Wasatch Wind to proceed
36 with its project.

37

38 **Q. Can you summarize the Company's approach taken during contract**
39 **negotiations with Wasatch Wind?**

40 A. Yes. In Docket 03-035-14, the Commission ordered that pricing for 3 to 99MW
41 QF wind projects be based on the most recently executed RFP contract price. To
42 maintain ratepayer indifference, the company has taken the approach that the risks
43 associated with contracts utilizing this pricing methodology should be consistent
44 with those resulting from the proxy resource contract. To the extent that a
45 specific contract term made a significant contribution to the value of the proxy
46 contract, the Company used that specific term or condition in its contract with

47 Wasatch Wind or offered an alternative structure that would provide similar value
48 or protection to the ratepayer. Failure to follow this approach would lead to a
49 contract that did not maintain the ratepayer indifference standard required under
50 PURPA.

51

52 **Q. What was Wasatch Wind's approach?**

53 A. Wasatch Wind approached the negotiations believing that the proxy contract price
54 was the only contract term that was relevant, and that all other contract terms did
55 not need to provide equal value and protection to the ratepayer. In fact, Wasatch
56 Wind often argued that it should receive terms that provided less value and
57 protection to the ratepayer than the RFP proxy resource due to Wasatch Wind's
58 "small" size, the economic benefit the project may or may not bring to Utah, and
59 the value of community based wind farms.

60

61 **Q. On page 3, line 5 of his testimony, Mr. Collins claims there is a fundamental**
62 **problem with the contract negotiations between the Company and Qualifying**
63 **Projects. Do you agree?**

64 A. Yes, although for different reasons. Wasatch Wind has been seeking concessions
65 for issues that have already been decided or clarified by the Commission or are
66 not relevant to a Qualifying Facility contract based on avoided costs. In fact, the
67 Company's approach to QF contract negotiations has resulted in several
68 successful QF contracts with Utah customers in recent years. In Wasatch Wind's
69 case, the Company has been willing to look at other structures that fit the specific

70 needs of Wasatch Wind while maintaining ratepayer indifference, including
71 allowing a minimum guaranteed performance band in lieu of a mechanical
72 availability guarantee, allowing the QF to set the Scheduled Commercial
73 Operation date, and providing windows during which Wasatch could come online
74 early without significant penalties.

75

76 **Q. Several Wasatch Wind witnesses claim the project is a “small” QF and thus**
77 **should receive terms different than those in the RFP proxy contract. Do you**
78 **agree?**

79 A. No. Utah Schedule 37 clearly defines a small renewable QF as a project that is
80 less than 3 MW. While Wasatch Wind continually claims in its prefiled
81 testimony and throughout negotiations that the project is “small” and should be
82 treated differently than other 3-99 MW projects, the Wasatch Wind project is 18.9
83 MW, more than six times the 3 MW cutoff for Standard (small) QFs in Utah.
84 Wasatch Wind has claimed that the size of the project makes it less economic than
85 larger wind farms. While the Company sympathizes with this issue, it is not the
86 Company’s nor the ratepayers’ responsibility to ensure the economic viability of a
87 project seeking a contract as a Qualifying Facility. Therefore, Wasatch Wind
88 does not qualify for terms and conditions outlined in Schedule 37 and should be
89 treated equal with other projects in the 3 to 99 MW range that qualify for terms
90 and conditions under Schedule 38.

91

92 **Q. Several Wasatch Wind witnesses claim the project should be classified as**
93 **small because it is under 20 MW. Do you agree?**

94 A. No. Utah Schedule 37 clearly defines the “small” QF threshold for the pricing at
95 3 MW, and Wasatch Wind does not meet that threshold. While FERC has
96 determined a separate set of interconnection agreements and procedures should
97 apply to generation projects less than 20 MW, the FERC 20 MW threshold is
98 based on physical system and interconnection requirements, not pricing and
99 commercial contract terms.

100

101 **Q. Should the ratepayer indifference standard be removed if Wasatch Wind**
102 **provides economic benefits to the local community?**

103 A. No. Potential economic benefits are not addressed in PURPA, and thus should
104 not be considered when negotiating contract terms with Qualifying Facilities.

105

106 **Q. What relevance does the Company’s RFP process and history have in this**
107 **proceeding?**

108 A. The connection between the two is limited. The Commission ordered the most
109 recently executed RFP contract be used as the pricing proxy for Utah wind QFs.
110 Beyond this connection, the history and process of the Company’s RFP as well as
111 any activities Wasatch Wind may have had in regards to the Company’s RFP are
112 not relevant in this proceeding to establish a QF contract.

113

114 **CONTRACT SPECIFIC ISSUES**

115 **Q. Why does the Company require termination and delay damages?**

116 A. The RFP proxy contract, filed with my testimony as confidential Exhibit 1,
117 requires the wind project to pay up to 180 days delay damages if the project
118 comes online after the Scheduled Commercial Operation Date. The contract also
119 requires payment of damages incurred by the Company if the project defaults and
120 is unable to fulfill its contractual obligations. The Company allows the wind
121 project to set the Scheduled Commercial Operation Date. The Company even
122 allows for the project to come online early and receive compensation for
123 deliveries. With these concessions, a wind developer should be able to meet its
124 Scheduled Commercial Operation date with relative ease. The Company plans on
125 the resource to be available at the time the wind project states it will come online.
126 If the project is delayed or does not come online at all, the ratepayer may incur
127 damages while replacing the energy that was expected from the wind project. The
128 ratepayer should not be required to assume the risk of such damages, just as the
129 ratepayer does not assume that risk in the RFP proxy contract. Therefore,
130 provisions for delay and termination damages similar to those in the RFP proxy
131 contract should be included in the Wasatch Wind contract.

132

133 **Q. Can you explain the performance guarantees found in the RFP proxy**
134 **contract?**

135 A. Yes. The RFP proxy contract contains a mechanical availability guarantee
136 (“MAG”) concept. The MAG is intended to be a performance commitment in
137 power purchase agreements with intermittent resources. The MAG is founded on

138 the simple premise that consistent high mechanical availability of a wind turbine
139 results in more predictable energy delivery. The converse is also true – if a wind
140 QF is unreliable due to poor mechanical availability of the turbine(s),
141 predictability will be poor, even if the QF accurately forecasts the wind resource.
142 PacifiCorp’s MAG approach recognizes that a wind QF cannot accurately forecast
143 monthly generation output months in advance, and therefore grades the QF’s
144 performance by what it can control – the mechanical availability of the turbines.
145 The MAG provisions require that a QF’s average availability is equal to or
146 exceeds a specific availability threshold, for example: the proxy contract is set at
147 70% for year 1; 80% for year 2; and 87.5% for years 3-20. With each passing
148 year, PacifiCorp and the QF expect to gain more confidence in the dependable
149 annual energy production of the facility—a number critical to PacifiCorp’s long
150 range resource planning. Without the MAG provision, PacifiCorp would have
151 less confidence in the facility’s minimum annual output because the QF would
152 have less incentive to invest in the reliability and maintenance of the turbines. In
153 the event actual deliveries demonstrate that monthly QF output is predictable,
154 PacifiCorp will make use of that information as well. Under this concept, the
155 wind provider is not liable for changes in wind profile and makes no guarantee of
156 output, meaning the wind provider is not liable if the wind does not blow. The
157 only requirement is that the turbines be mechanically available a certain
158 percentage of hours each year.

159

160 **Q. Please describe the mechanics of the MAG.**

161 A. First, let me define mechanical availability. Mechanical availability is the
162 percentage of time that the facility is actually producing net output energy,
163 compared to the total amount of time that the facility could have produced net
164 output energy had all turbines been fully operable. The total amount of time that
165 the facility could have produced net output energy is determined by taking the
166 total minutes in the measurement period and deducting the total number of
167 minutes of non-generation due to inadequate or excessive wind, force majeure,
168 and scheduled maintenance. Where the facility is comprised of multiple wind
169 turbines, the average availability of the facility is taken to be the weighted average
170 of the availabilities of each individual turbine, calculated using the same method.
171 Using verifiable QF collected wind data at the site and metered output of the wind
172 turbine, the Company can determine the availability of the QF turbines for any
173 period of time defined in the QF Agreement. The Company has proposed using a
174 calendar year as the time period for the calculation in the Wasatch Wind contract.
175 Therefore, the availability would be determined for the QF wind farm for the
176 calendar year using the collected wind data and metered output. It would be
177 compared against the threshold availability level in the contract and to the extent
178 the QF did not meet the threshold level of availability, then the QF would pay
179 damages on the difference between actual and the threshold level for that calendar
180 year.

181

182 **Q. Is this an onerous performance guarantee, as Wasatch Wind claims?**

183 A. No. This is the Company’s preferred method of performance measurement with
184 intermittent resources and is used as a standard in its wind contracts. The
185 Company also seeks to use it in its wind QF contracts where allowed by the
186 individual state regulatory agencies. Pioneer Ridge, a potential Utah wind QF,
187 was in favor of this concept and readily accepted it in recent QF contract
188 negotiations with the Company. Furthermore, the RFP proxy contract project
189 accepted this concept.

190

191 **Q. What happens if the annual MAG threshold is not met in a given year?**

192 A. If the wind provider does not meet its MAG threshold, the wind provider is
193 required to provide replacement power under a “cost to cover” concept. For
194 example, the damages for the calendar year would equal the difference of the
195 actual availability to the threshold availability times the annual expected delivery
196 volume in MWh times the positive difference of the contract price and the
197 replacement power price or as shown below in equation form.

198
$$Damages = (Avail_{TH} - Avail_{ACT}) * Expected\ MWh * (RPP - CP)$$

199 Where:

- 200 • $Avail_{TH}$ is the availability threshold set in contract
- 201 • $Avail_{ACT}$ is the availability as measured for the wind farm
- 202 • Expected MWh is the annual expected energy output of the wind-
203 farm based on monthly forecast in contract
- 204 • RPP is the replacement power price as defined in contract
- 205 • CP is the contract price in contract

206 If the project has a measured annual mechanical availability of 80% and the
207 threshold for that year is 87.5%, the project would be required to bear
208 replacement costs, if any, for 7.5% (87.5% - 80.0%) of the annual output of the
209 project. The replacement cost is calculated as the difference between the contract
210 price and the market price at which the energy was replaced. Since this is an
211 annual calculation, the market price used in the calculation is based on the
212 average of the Palo Verde daily index prices for the year. If the contract price is
213 higher than the replacement power costs, the project does not incur any liquidated
214 damages.

215

216 **Q. Is there a cap on liquidated damages? If no, why not?**

217 A. No, just as in the proxy RFP contract, there is no contractual cap on liquidated
218 damages. If the project fails to meet the MAG threshold, the project should
219 assume the full risk of the incremental cost of replacement power. This risk
220 should not be borne by the ratepayers. In the proxy RFP project, the wind
221 developer assumes all risk associated with non-performance under the MAG.
222 This provision minimizes risk to the ratepayer, and Wasatch Wind should be held
223 to the same standard in order to maintain ratepayer indifference.

224

225 **Q. Mr. Velnosky claims the potential liability is unlimited (Page 5, Line 1 of**
226 **Prefiled Testimony of Todd Velnosky.) Do you agree?**

227 A. No. While the contract does not provide for a cap on liquidated damages, the
228 project can plan for the major events that would lead to potential damages and

229 thus cap its liability. For example, the project can acquire the necessary spare
230 parts and potentially spare turbines at a specified cost, and thus ensure the
231 availability of parts required to meet the MAG. Also, many turbine manufactures
232 and other companies offer operations and maintenance contracts that guarantee a
233 specific level of mechanical availability. In my experience, operations and
234 maintenance contracts can be secured that provide for availability guarantees in
235 excess of 90%, which is above the 87.5% required by the Company in years 3-20
236 of the proposed Wasatch Wind contract. Thus, Wasatch Wind has many options
237 available to mitigate any risk associated with the liquidated damages provisions in
238 the proposed contract, and the potential liability can be capped if they choose to
239 do so.

240

241 **Q. What is the Company's position on Project Development Security?**

242 A. The Company proposes Project Development Security terms similar to those
243 ordered by the Commission in the Pioneer Wind proceeding, requiring Project
244 Development Security be posted 12 months prior to the Scheduled Commercial
245 Operation Date.

246

247 **Q. Can you provide a substantially complete contract that the Company is
248 proposing to execute with Wasatch Wind?**

249 A. Yes. Exhibit B contains a substantially complete contract that is consistent with
250 the Commission's recent orders on QF issues and PURPA requirements. The

251 Company is willing to execute an agreement with Wasatch Wind utilizing
252 substantially similar terms as this contract.

253

254 **WITNESS SPECIFIC ISSUES**

255 **Q. On Page 1, Lines 20-22 of her testimony, Ms. Watson Mikell asserts there is**
256 **no incentive for the Company to negotiate with a wind QF and that the**
257 **Company has tried to extract all the value from the project thus making it**
258 **uneconomical. Do you agree?**

259 A. Absolutely not. The Company has worked diligently with Wasatch in an attempt
260 to negotiate a contract that allows the Wasatch Wind project to be successful. At
261 no point has the Company attempted to “extract value” from the project. The
262 Company has simply complied with PURPA requirements and the Orders issued
263 by this Commission regarding QF contracts, thus maintaining ratepayer
264 indifference.

265

266 **Q. Does this conclude your testimony?**

267 A. Yes.