Tracy Livingston
General Manager
Wasatch Wind, LLC
357 West 910 South, Unit A
Heber City, UT 84032
Telephone: 435-657-2550
Facsimile: 435-657-0095
Email: tracy@wasatchwind.com

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 CAPACITY AND ENERGY FROM THEIR PROPOSED QF FACILITIES	Docket No. 06-035-42

PREFILED TESTIMONY OF TRACY LIVINGSTON

Wasatch Wind hereby submits the Prefiled Testimony of Tracy Livingston in this docket.

DATED this 15th day of May, 2006.

Tracy Livingston

/s/_____
Tracy Livingston
Wasatch Wind, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent by United States mail, postage prepaid, or by email this 15th, May 2006 to the following:

Edward A. Hunter
Jennifer E. Horan
Stoel Rives
201 S. Main St., Suite 1100
Salt Lake City UT 84111
eahunter@stoel.com
jehoran@stoel.com

Michael Ginsberg
Patricia Schmid
Utah Division of Public Utilities
Heber M. Wells Bldg, 5th Floor
160 East 300 South
Salt Lake City UT 84111
mginsberg@utah.gov
pschmid@utah.gov

Reed Warnick
Paul Proctor
Committee of Consumer Services
Heber M. Wells BLDG, 5th Floor
160 East 300 South
Salt Lake City, UT 84111
rwarnick@utah.gov
pproctor@utah.gov

Dean Brockbank
PacifiCorp
201 S Main St. Suite 2300
Salt Lake City, UT 84111
dean.brockbank@ pacficorp.com

Paul Clements
PacifiCorp C&T
201 S Main St. Suite 2300
SLC, UT 84111
Paul.clements@pacificorp.com

Sarah Wright
1014 2nd Avenue
Salt Lake City, UT 84103
sarah@utahcleanenergy.org

Christine Watson Mikell
3658 E Golden Oaks Dr
Salt Lake City, UT 84121
christine@isotruss.com

Todd Velnosky
Business Development Manager - Wind Energy
John Deere Credit
6400 NW 86th Street, P.O. Box 6600
Johnston, IA 50131-6600 USA
VelnoskyToddL@JohnDeere.com

PREFILED TESTIMONY

Of

Tracy Livingston
Wasatch Wind, LLC

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

May 15, 2006

BACKGROUND

Q. Please state your name and occupation.

A. My name is Tracy Livingston. I am the Manager of Wasatch Wind, LLC, a wind project development company, manager of Spanish Fork Wind Park 2, LLC a special purpose entity, and CEO of Wind Tower Composites, LLC a technology engineering firm funded by the US Department of Energy and the California Energy Commission to develop next generation, lower cost, multi megawatt class wind turbine towers. All companies are located in Heber City, UT

Q. On whose behalf are you filing testimony in this Docket?

A. Wasatch Wind, LLC

Q. Have you submitted testimony to this Commission before?

A. Yes in Docket 03-35-14.

Q. What is the status of your Spanish Fork wind project?

A. WW has been monitoring wind resources at the mouth of Spanish Fork Canyon in the industrial zone of Spanish Fork City for the past 1.5 years for the purpose of building, owning, and operating a wind farm of 18.9 MW as a special purpose entity called Spanish Fork Wind Park 2, LLC. In addition to the recent data, 3 years of historical wind data from one of our partner companies with a permanent facility and two towers at the site have been evaluated to establish long term energy predictability. Analysis shows that wind predictability and capacity factor due to the strong diurnal nature at the site is superior to the more typical non-diurnal wind farms being governed by macro weather events. The project was recently relocated closer to the mouth of Spanish Fork Canyon due to objections

by some residents of Spanish Fork City that the wind farm will be too close to the residents. With the move, the support from the community has been overwhelming positive. The city mayor and the city council have been fully supportive and cooperative and have also provided land for several of the turbines. Wasatch Wind i.e. Spanish Fork Wind Park 2, LLC has filed an interconnect agreement with the Company per "FERC Docket No. RM02-12-000; Order No. 2006" regarding interconnect procedures for small generators of less then 20 MW. The Company has also provided a method for indicative pricing that Wasatch Wind finds acceptable pending the outcome of a recent Docket initiated by Pioneer Wind.

Q: Are their any other barriers to project completion.

A: Yes. The Company offered Wasatch Wind a PPA nearly identical to the 64.5 MW proxy wind farm PPA. Wasatch Wind and the Spanish Fork project as a small (less then 20 MW) wind farm cannot proceed with a firm energy contract that is more suitable for a large wind farm. Our financial and turbine availability metrics are different thus requiring a different contract. The Company has stated it is unable to agree to a contract with substantive differences to the proxy.

Q: What is your summary recommendation to the Commission that will allow Wasatch Wind to proceed with an 18.9 MW wind farm at Spanish Fork?

A: It's really quite simple. The commission should rule that small wind projects of 20 MW or less as an intermittent resource should be approved to use non-firm contracts typically used by the Company for some other non-firm QF's and should further clarify that the proxy method as previously defined by the

commission should be used only as a determiner of price and is not to be construed as a determiner of contract provisions.

Q: What are your specific recommendations?

A: The commission should order the company to negotiate a good faith non-firm energy contract similar to the Tesoro and Kennecott QF contracts for 20 MW and smaller projects using the proxy pricing and recommended adjusters from the previous related dockets.

Q: Do you have an alternative recommendation to the Commission?

A: Yes I do. The commission could rule that wind power is a non-firm resource and as such require that the liquidated damages, and associated contract provisions be removed from the present contract for 20 MW and smaller wind projects, be allowed to receive the proxy pricing, and then make a further decision regarding the necessity of the amount of security provisions.

Q: What provisions of the Company provided PPA are barriers for Wasatch Wind?

A: There are several. Liquidated damages are the most egregious with several other contract provisions directly tied to this requirement. These "associated provisions" include: turbine mechanical availability, delay damages, guaranteed commercial operation date, and cost to cover. These related provisions are found in the Companies firm power PPA's but are not necessary and have not been required in non firm Company contracts.

Q: Are there any other alternatives to reaching an agreement with the Company?

A: Not in my opinion. Company negotiators have stated that alternative contract clauses that make adjustments to liquidated damages or "associated provisions" would be considered if Wasatch Wind would be willing to agree to a downward price adjustment. This appears to be an egregious interpretation by the Company of the Order in Docket 03-35-14. The Company has stated in negotiations that Wasatch Wind must accept nearly all the major provisions of the firm power proxy contract including liquidated damages and associated provisions in order to receive the proxy price (adjusted for on peak/off peak delivery). The Company has stated they are unable to move beyond this point.

Q: In your opinion should non-firm contracts be structured differently than firm contracts?

A: Yes, a firm resource provides capacity value to the utility. The pricing of such contracts usually includes a capacity payment and an energy payment. Such a pricing structure puts the utility and its ratepayers at risk if the producer fails to deliver power. This is especially true if the contract has a capacity payment. The utility needs contractual assurances that the producer will provide power according to the contract. These firm contracts generally include a penalty for non-delivery of power, this protects the purchaser of power against the potential for non-delivery. However wind resources are regarded as non-firm resources and under the current RFP contract proxy method do not receive an explicit capacity payment. The wind resource is only paid when it provides power.

Q: Is there capacity value associated with wind resources?

A: In Docket No. 03-035-14, some parties argued that capacity value should be

studied further; others stated that a 20 percent value was appropriate, while others said it should equal the capacity factor of the plant, and some said it should not be considered at all. For example, Bruce Griswold in testimony under Docket No. 03-35-14 stated, "Under the Company's proposal, the Company will pay twenty (20) percent of the avoided capacity costs as determined using the Commission approved avoided cost methodology for QF projects over 3 MW." He further states, "The Company proposes that a wind QF resource receive a volumetric price structured as on-peak and off-peak prices where the 20% capacity payment would be included only within on-peak hours. In order for the wind QF to receive the full 20% capacity payment in the on-peak energy price, it would need to maintain a 35% wind capacity factor." This method was disputed vigorously with little agreement. Of note, the proxy resource's capacity factor is lower than Mr. Griswold's threshold and since it is suggested by him that the value is only for on peak hours, even the company places little value on this capacity.

We understood that the final Order in 03-35-14 for using the proxy pricing was based on creating a simple pricing method for wind QF's. The Order has achieved this goal. If the Company was allowed to make adjusters to the contract price, then the development of a methodology for determining this adjustment whether it be based on risk allocation or a capacity difference, would clearly devolve into another endless debate. We would be in proceedings yet again. We are already near the limit of what can be absorbed from a resource and financial prospective. Yet the debate of this controversial issue would continue the delay. Not to mention the action of which could unduly delay integration of small wind

projects at competitive prices into the system.

Q: Are the capacity values of the Spanish Fork and the Proxy projects similar?

A: No one seems to know and that is my point. No agreed analysis can be completed by the Company to put a relative value on this capacity portion. Considering the contract is structured to imply a price for energy and a price for capacity with an unknown explicit value for that capacity and an inability to separate the capacity value with no method by the company to adjust the value of that capacity as a function of energy predictability, then improper pricing signals are the result and the method leaves confusion on how to make an adjustment.

Q: Does the Commission need only to clarify the Order in Docket 03-35-14 stating that the proxy plant comparisons are for pricing only to enable the contract negotiations to proceed?

A: I do not believe it will be enough. In our early negotiations with the Company, I believed this simple clarification would be sufficient. Statements were made by Company personnel saying our contract must be nearly identical to the proxy contract and that contract terms and pricing were inextricably combined and therefore less this clarification they could not proceed with significant contract changes. Therefore, I believed a pricing clarification from the Commission would then give the Company the ability to disconnect pricing from contract terms and thereby negotiate different terms suitable for small wind. However this is a necessary but not sufficient condition for a successfully negotiated contract with a small, under 20 MWs, wind producer. We believe that the Commission should make an explicit finding that small non-firm wind resources should receive

similar contract terms that were granted to other non-firm providers such as Tesoro. In the alternative, the Commission could find that liquidated damages for non-firm power is inappropriate contract condition. Such an explicit finding will help streamline the contractual negotiations and lead to a greater number of successfully completed small wind contracts.

Q: Why would small wind farm development be hampered if the contract was not changed to a standard non-firm type?

In general, project development costs (those prior to construction) are nearly the same for a small project versus a large one. As such, these costs are a larger percentage of the projects total costs for a small wind farm. Therefore, in order for a small wind farm to be viable, other costs such as contract provisions and even the very act of PPA negotiation and regulatory issues must be streamlined for the small project to be on equal financial terms with the large ones. This process for Wasatch Wind has been expensive, long, and difficult and now we are being asked to absorb liquidated damage provisions that are also more difficult for a small wind farm. The combination is more than a small project can absorb. One of our investors is providing testimony in this docket of the problems that a firm power contract creates for a small wind project. Based on our discussions with other investors as well, small projects have difficulty absorbing the undefined costs associated with the risks of liquidated damages especially in states with regulatory and PPA difficulties.

Q: Do you personally have knowledge of particular small wind projects that would be hampered in addition to the Spanish Fork project?

A: Yes. The Spanish Fork site appears to have similar winds to at least three other canyon sites in Utah with diurnal wind patterns. At this time, the likelihood that these sites are viable from a wind resource and land logistics issue is high. Each site is also constrained in size due to site logistics thus all three would be smaller than 20 MW's each. Since the winds and thus the financial metrics are similar to the Spanish Fork site, the contract issues will be the same.

Q: Would no action in this Docket be considered rate payer neutral?

A: No. Doing nothing will mean that small wind projects will be delayed or canceled in Utah because of insurmountable contract terms thus hampering the Company's efforts in reaching its IRP goals for wind projects. This delay will thus subject the ratepayers to greater portfolio risk as the IPR has already deemed that 1400 MW's of wind are the appropriate balance. This also means losing valuable economic development benefits Governor Huntsman has stressed are so important in rural Utah via construction, operation, and tax base increases from wind farm development.

Q: Why do you believe the use of a non-firm contract is a fair proposal?

A: Non-firm contract provisions should apply to small wind projects because of the importance of keeping contracts simple yet reasonably fair and accurate to achieve minimal administrative and overhead burden for the Company, the Commission, the Division and the Committee all while providing equal and fair opportunity for small wind farm developers while maintaining rate neutrality. I believe Wasatch Wind's proposal accomplishes all that and yet keeps in place the motivations for the wind farm owner to produce power.

Q: Can you provide some background for specific examples of the Companies use of firm power PPA's?

A: A sample PPA can be obtained from PacifiCorp at http://www.pacificorp.com/File/File25896.pdf. We understand that this Company provided contract was approved by the Commission as a framework for negotiations for QF's by an Order issued in DOCKET NO. 03-35-15 on August 26, 2003. The Order stated in part,

"The Commission finds that the proposed generic PPA provides a reasonable basis for negotiations with Large QFs, and that it would be in the public interest for the Commission to approve the proposed generic PPA."

We believe the intent of the Generic PPA was to allow large QF's delivering firm power to have a baseline for negotiations. These contracts include liquidated damages and related provisions which make sense for firm power deliveries as witnessed by several larger QF contracts entered into by the Company including Desert Power and Sunnyside Cogen. Both these contracts appear to be patterned after the Generic PPA as they include many of the liquidated damages, performance, security, and default provisions previously mentioned and include firm power obligations by the QF.

Q: Has the company used different QF contracts for non-firm power?

A: Yes in at least two cases in the past year entirely different contracts were used for these non-firm power QF's. The contracts where with Tesoro signed by the Company on January 9, 2006 for a 25 MW gas fired co-generation facility located in Salt Lake City, Utah and another contract with Kennecott signed on December

20, 2005 for up to 31.8 MW from a waste heat fired co-generation facility located in Magna, Utah. Neither of these contracts have provisions for liquidated damages, availability requirements, delay damages, commercial operation start date penalties, Cost to Cover provisions, etc. Although I have not reviewed the US Magnesium contract, I have been told that it also is a non-firm PPA without these previsions as well. The consistent message here is that non-firm power requires a different type of contract.

Q: Have other parties testified previously that wind is a "non-firm resource".

A: Yes. Among others, Phil Hayet in docket no. 03-035-14, testimony dated 12 April 2004 states, "The Company is correct that wind generation is intermittent (non-firm) and should not be afforded the same treatment as firm QF resources." I concur with this statement.

Q: Would the Company be at significant risk of energy non delivery from the wind farm without the penalties of liquidated damages and associated provisions in the contract?

A: No. Provisions to cover liquidated damages have historically been used to ensure that fossil fuel generators continue to deliver power under firm energy contracts. For example, a fuel generator without a tolling arrangement that under predicts future fuel costs has a strong incentive to stop producing as the costs of the fuel place them in a negative financial situation. In this case, the liquidated damages provisions are crucial. In fact damage provisions tend to be significant to avoid non-delivery at times when the Company must depend on the QF for delivery. These provisions also help ensure that generators strongly consider the

implications of fixed price contracts before entering into a PPA. The issue with a wind plant is vastly different. More than 70% typically of the cost of power from a wind plant consists of sunk capital costs with the remainder consisting of variable costs associated with maintenance, administration, and land owner royalties, none of which is dependent on fuel. This is contrasted to fossil plants where most of the energy costs are for fuel. Thus wind plant owners are entirely driven by a necessity to keep turbines operational to cover the capital costs and achieve the expected return on investment i.e. the greater diligence to keep wind turbines mechanically ready, the more energy will be produced, and therefore the higher the return. This is always true.

Q: Are there any other remaining provisions that are difficult?

A: Yes there are. The provided PPA requires that the Project Development Security be in place within 10 days after the Effective Date i.e. after Parties and Commission approval. This is to cover the costs associated with the project not being able to achieve operation by the Expected Commercial Operation Date. This short time frame is egregious, and doesn't capture the reasonable purpose of this clause even in a firm wind energy contract. For example, if two identical projects entered into a contract on the same day and one project had a three year time frame to Operation and the other a one year time frame, do both have the same risk of non-performance at the date of contract signing? While the answer is clearly no, the risk is similar at the time that both projects are within one year of operation. For a small project using a non-firm contract, security provisions are not necessary as the intent is that capacity is available on the system whether the

wind farm is in place or not. If the Commission MUST require this security and believes there is some increasing risk to the Company and/or ratepayers as the Expected Commercial Operation Date comes closer then we suggest a method similar to some other wind contracts. We propose that within one year of Expected Commercial Operation Date that the security funding begins as a linear escalator starting at zero at one year from operation date to full security funding at time of Expected Commercial Operation Date as updated on quarterly basis.

Q: Why does the Project Development Security provision presently hinder your project?

A: Small wind projects are typically developed by firms that ultimately do not provide the final project construction or final capital takeouts as they either do not have the resources or the capability of effectively using the federal production tax credit. Therefore, only after the site development work is nearly completed and the PPA has been signed are these investors willing to negotiate an interest in a wind project. The good news is that these investors are readily available and willing to negotiate but in general they are unwilling to negotiate prior to the local developer on a small project signing a PPA. There are just too many projects in states where contracts have been able to be signed by local developers and utilities because the contracts do not have an imminent security provision.

Q: Did you bid into the most recent RFP?

A: Yes we did because of encouragement from PacifiCorp from two sources. The first encouragement was based on Bruce Griswolds surebuttal testimony in Docket No. 03-35-14 where he states, “PacifiCorp’s alternative proposal is that

the Commission could require that all renewable QF's (over the Schedule 37 threshold) participate in renewable RFP's." and second that we were encouraged to participate by PacifiCorp personnel during the negotiation process.

Q: Were you accepted as a qualified bidder?

A: No. We did not meet the minimum annual energy delivery requirements of 70,000 MWh which is equivalent to an approximately 20 MW capacity wind farm.

Q: Where does that leave the 18.9 MW Spanish Fork Project?

A: We are left in contract limbo. We are too small to participate in the RFP process and yet because we are small we need different contract provisions for success in the QF proxy process.

Q: If 20 MW or smaller projects receive non-firm contracts doesn't that create a bias against larger wind QF's subject to firm contract provisions?

A: **No.** Larger QF's have the opportunity to bid into the RFP. As part of this RFP process the bidder also has the opportunity to adjust contract terms. While the company may chose bidders that are willing to accept firm power contract provisions, they are also under obligation to consider all viable bidder offers in a competitive process gauged against the requirements of the IRP. Less than 20 MW wind projects are unable to participate in this process.

Q: Does this conclude your testimony

A: Yes it does.