Richard S. Collins
Gore School of Business
Westminster College
1840 South 1300 East
Salt Lake City, UT 84105
Telephone: 801-832-2665
Facsimile: 801-832-3106
Email: rcollins@westminstercollege.edu
Representing Wasatch Wind

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

SURREBUTTAL TESTIMONY OF RICHARD COLLINS

Wasatch Wind hereby submits the Prefiled Testimony of Richard Collins in this docket.

DATED this 14th day of June, 2006.

Richard S. Collins

/s/_____
Richard S. Collins
Representing Wasatch Wind

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 14 day of, June 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

Tracy Livingston
357 W 910 S
Heber City, UT 84032
tracy@wasatchwind.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

SURREBUTTAL TESTIMONY

Of

RICHARD S. COLLINS

On behalf of Wasatch Wind

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

June 14, 2006

Q. Are you the same Richard S. Collins who submitted Direct Testimony in this proceeding on behalf of Wasatch Wind, LLC?

A. Yes, I am.

Q. Could you summarize your surrebuttal testimony?

A. Yes, I rebut the testimony of Mr. Paul Clements and Ms. Andrea Coon on a number of issues. Both parties appear to be unsympathetic to the contractual concerns of Wasatch Wind and characterize Wasatch Wind as trying to obtain a subsidy for its project. This characterization is inaccurate. Wasatch Wind is requesting contractual terms that recognize the specific issues that confront a smaller-sized wind facility, i.e., under 20 MWs. Wasatch Wind asks that the contract terms protect ratepayers from risk associated from purchasing power from its facility, but also requests that the terms be commensurate with the actual risks. The Company's attempt to protect ratepayers from every conceivable risk violates the ratepayer neutrality standard for QFs and more importantly will lead to higher costs to ratepayers as economical resources are not secured as a result of unreasonable contract demands. The contract issues are complex and interrelated. Decisions made on one issue will affect the positions of parties on other issues. This makes it difficult to have a simple matrix of issues and positions. Wasatch Wind will try to prioritize the issues and give support for its positions. Alternatives to onerous provisions will be provided to the Commission as well as specific contract language that will allow the project to move forward.

Q: Can you give a summary of your recommendations?

A: Yes. Our number one contractual issue is centered on two clauses of the contract.

The first clause or provision concerns the Mechanical Availability Guarantee or (MAG). This requires that the wind facility and its turbines be available to produce electricity 87.5% of the time after the second year and for every year thereafter. The second clause of the contract concerns liquidated damages; these are the costs that Wasatch Wind must pay if it fails to meet the MAG. As shown in SR-Exhibit-1 of Tracy Livingston's testimony, these potential damages can be extremely large and can place the entire financial viability of the project at risk. Many of the events and circumstances that could lead to liquidated damages for a small wind facility have a strong likelihood of occurring over the twenty life of the project and many are beyond the operator's control. With such a risk exposure, Wasatch Wind fears that it will be unable to find financing and even if financing is obtained, it is feared that contract terms will not be fulfilled thus leading to default.

Q: These same terms were accepted by the proxy model contract, so Wasatch Wind should be required to accept these terms. Correct?

A: No. Wasatch Wind's project is materially different than the proxy resource and thus is more exposed to these risks. Our smaller size means that the loss of a turbine or two could lead to unacceptable losses. To compensate for such risks, a higher return on investment would be required leading to a higher price. Wasatch Wind realizes that this would violate ratepayer neutrality, thus it is seeking contract terms that recognize its different circumstances. Wasatch Wind also objects to the punitive nature of the liquidated damage clause and believes it is overkill. The Company's insistence on this clause as well as others may well be

the reason that PacifiCorp has been unable to secure more wind resources. Again, Wasatch Wind reminds the Commission that the Company accepted 2200 MWs of wind that were bid into the RFP, yet only one contract for some 65 MWs was actually executed. When Wasatch Wind asked for the results of the contract negotiations with the accepted bids in a data request, it was unable to get an answer due to the Company's misinterpretation of the question. A second data request has been sent out but an answer has not been received at the time this testimony was written.

Q: Are onerous contract terms the industry norm? If so, what are the implications for utilities and its ratepayers if these terms persist?

A: According to Edward Sledge, Partner of Hogan and Hartson LLP, who presented at the AWEA 2005 conference in Denver Colorado on May 17, 2005, utilities are structuring PPAs in such a manner that more and more risk is shifted to wind developers. Mr. Sledge commented that it is extremely unfortunate that developers are accepting such terms. When queried why developers would accept such risk exposure, he gave two reasons. First we have been in an era of very cheap capital and developers are anxious to secure such low cost funds. Secondly, the scarcity of wind turbines has put developers behind an eight ball; they must get a contract to obtain these scarce turbines so they agreed to onerous terms. The long run prognosis according to Mr. Sledge is that these early developers will run into financial problems as a result of these contractual obligations and will lose their investments. This will lead to higher risks and higher cost of capital for future wind developers. These higher capital costs will

require higher returns and result in higher future costs for the utility and its ratepayers.

Q. Do you have specific rebuttal testimony of Paul Clements testimony?

A. Yes. I have a number of issues I would like to respond to. The first is Mr. Clements' claim that the "Company's intent during negotiations was and continues to be to develop a contract that follows the Commission's orders in Docket No. 03-035-14 and the rules governing QF yet allow Wasatch Wind to proceed with its project."[1] The Company claims that it is trying to acquire wind resources to meet its IRP goals and indicts its interest in encouraging Utah-based wind facilities through the purchase of green tags. Utah Power spokesman Dave Esklesen is quoted as saying "More than 17,000 our residential and business customers in Utah are participating in our Blue Sky program and with that kind of acceptance we want to do everything we can to support and promote the generation of more renewable energy in the state." [2] Unfortunately our experience with Utah Power has not been so fruitful. The Company has not provided any room to negotiate contract terms that meet the specific needs of our project. It should be stated upfront that Wasatch Wind is not asking to be paid more than the proxy contract; it is asking that contract terms be flexible enough to address the concerns of particular resources. I believe this is the reason the Commission allows case by case negotiations. Good faith negotiations must recognize the differences between various resources so contract terms can be structured to accommodate these differences. The contract should adequately

1 Clements Rebuttal testimony p.3 line 33-36
2 "Utah Power chases more wind turbines" Salt Lake Tribune Section D 11, May 27, 2006

protect ratepayers' interests from undue risk exposure but should not be so onerous that the acquisition of resources fails. Unfortunately, the Company's stance has been that each proxy contract term had some inherent value and it could not be changed unless a price concession was given by Wasatch Wind.

Q: Mr. Clements claims that Wasatch Wind is seeking concessions for issues that have already been decided or clarified by the Commission or not relevant to a QF contract based on avoided costs. Can you respond?

A: The Commission has approved a few QF contracts that are above 3MWs, but I am unaware of any contractual issue that has been ruled upon universally. Therefore, I fail to understand how Mr. Clements can state that Wasatch Wind seeks concessions on issues that have already been decided or clarified by the Commission. It is the Company's own self-interested interpretation of the Commission's orders that has stalled negotiations.

Q: On lines 68 - 71, Mr. Clements states that the Company has been willing to look at other structures that fit the specific needs of Wasatch Wind while maintaining the ratepayer indifference, including a minimum guaranteed performance band in lieu of a mechanical availability guarantee. Do you care to respond?

A: Mr. Clements has been very forthcoming in presenting possible alternative language that addresses Wasatch Wind's concerns. We are appreciative of his efforts. To account for a smaller project's issues, he has verbally suggested a mechanical availability adjustment that is less onerous than the Company's requirement. The Company has also been willing to discuss other contract terms

that were troublesome to Wasatch Wind. One concession allows us to set the Scheduled Commercial Operation date and provides a window during which Wasatch Wind could come online early with slightly lower penalties. Unfortunately, this concession was a minor issue for Wasatch Wind.

Q: Are you still in negotiations with the Company?

A: Yes, we have had some productive talks lately and there has been some interesting give and take on a number of issues. A compromise contract has been received by the Company in written form and we are close to closing a deal. However, there are still issues that need to be resolved. Without resolution the settlement could get scuttled and the issues and our original positions will be presented before the Commission for their decision.

Q: Both Mr. Clements and Ms. Coon accuse Wasatch Wind of seeking concessions from the Company to insure the economic viability of its project and that somehow Wasatch Wind seeks a ratepayer subsidy. Do you agree?

A: No, I do not agree. Wasatch Wind is not asking for a ratepayer subsidy. It will receive that same price as the proxy resource adjusted for differences in wind profiles and other adjustments such as avoided transmission costs. We are not proposing a subsidy. We are asking Company and regulators to recognize that contract terms should be set to protect ratepayers from undue risks associated with the contract yet the contract terms should be commensurate with the potential damage that ratepayer may incur. The contract should be structured to recognize the particular costs and benefits associated with securing the resource. The particular economic, financial and other institutional concerns of the QF should be

addressed in a way that secures the resource and also provides adequate protection to ratepayers for non-performance.

Q: To protect ratepayers the QF should accept all risks for non-performance. Isn't that right?

A: No. Every resource carries some ratepayer risk, even Company-owned resources. I agree that the QF should accept some risks associated with non-performance so that ratepayers are indifferent. However, the amount of financial risk that the QF should bear should be commensurate with the financial impact on ratepayers if the QF fails to perform. The financial risk placed on the QF should not be greater than the financial risk avoided. The critical question is how to quantify the risk to ratepayers if an intermittent resource fails to provide power. As an intermittent resource, the utility can not directly depend on the provision of energy at any one moment. It is much like a non-firm resource. However, the Company and the Commission has recognized that wind resources provide some capacity value. The Commission in its promulgation of Schedule 37 has explicitly recognized a 20% capacity value for wind. Thus if a wind resource fails to be available or fails to produce energy the real risk to ratepayers is the lost capacity value. As an alternative Wasatch Wind suggests that the liquidated damages be based on the value of the lost capacity. We recommend using 20% of the Schedule 37 capacity values.

Q: Can you give an example of a contract term that may be appropriate for the proxy resource but inappropriate for Wasatch Wind or another smaller wind

resource?

A: Yes, the Company has insisted that the Mechanical Availability Guarantee be the same as the proxy resource. However, this requirement affects the two resources very differently and imposes greater risk on the smaller wind resource. As explained in my Direct Testimony, a wind facility with 43 turbines can have five turbines unavailable and still meet the MAG, while a loss of two turbines will put the availability factor for Wasatch Wind at 77% thus subjecting us to onerous liquidated damages. The significant failure of two turbines for a 20 MW 9 turbine project near the same time during the life of the project is possible. Further, the cranes used to replace nacelle and blade components can be difficult to locate and in some cases can take many months to secure. A larger project that can sustain more failures before MAG penalties are imposed may be able to withstand these delays. Mr. Livingston in his testimony provides an exhibit that quantifies the potential risk and financial loss suffered by Wasatch Wind under various circumstances. The exhibit (Wasatch Wind SR Exhibit-1) shows the impact that the MAG and the cost to cover provisions place on the QF for nonperformance. Tremendous financial risk is placed on developers. The cost to cover provision and associated financial risk can actually be a detriment to ratepayers. Small wind projects typically have a corporate structure such that a portion of the project revenues is used to maintain equipment and provide reserves in case of catastrophic failure. The reserves are essential because a wind turbine, unlike a thermal plant, uses a fuel “the wind” in a less controlled environment. The wind is a variable resource subjecting the turbines to stresses that can vary considerably

from year to year depending on gust intensity and average wind speeds. If the reserve must be used to pay cost to cover penalties, then less is available for repairs. In addition, the project must use reserves to post additional security that may become exhausted thus the wind farm could lose the ability to operate.

Q: Mr. Clements indicates that Wasatch Wind is trying to carve out a standard contract for smaller-sized wind facilities, but has no justification. He claims that the Utah Public Service Commission has already ruled that small is less than 3MW and the FERC's rulings for interconnection agreements for facilities under 20 MW are irrelevant. He states that even though FERC requires a separate set of interconnection agreements and procedures for generation projects under 20 MWs, it is based on physical system and interconnection requirements, not pricing and commercial contract terms. Do you agree?

A: No, I do not. According to FERC's Final Rule issued May 12, 2005,

> "This Final Rule responds to the business and technology changes in the electric industry. Where the electric industry was once primarily the domain of vertically integrated utilities generating power at large centralized plants, advances in technology have created a burgeoning market for small power plants that may offer economic, reliability, or environmental benefits."3

The FERC believes that

> "interconnection is a critical component of transmission service and having a standard interconnection procedures and a standard agreement applicable to small Generating Facilities will (1) limit opportunities for transmitting utilities to favor their own generation, (2) to remove unfair impediments to market entry for small generators by reducing interconnection costs and time, (3) encourage investment in generation and transmission infrastructure

3 Page 6 of FERC Order No. 2006

> where needed. We expect the SGIP *(Small Generation Interconnection Procedures)* and SGIA *(Small Generation Interconnection Agreement)* adopted here will resolve most disputes, minimize opportunities for undue discrimination and foster increased development of economic small Generating Facilities and protect system reliability.[4]

Thus the FERC did not institute separate interconnection rules based on physical system and interconnection requirements but to foster and encourage investment in economic but small generating facilities and to prevent the utility from favoring its own generation and practicing undue discrimination. The same situation applies here in Utah. PacifiCorp is insisting on applying the same contractual terms on small facilities that it uses on large facilities even though it places undue burdens on the small facilities. This undue discrimination discourages economic development of smaller wind facilities. Wind facilities under 20 MWs should have contractual terms that provide the same protections from undue discrimination that such facilities receive from FERC.

Q: Mr. Clements states that the Commission has already determined contractual issues for small QFs less than 3 MWs and Wasatch Wind simply does not meet that criteria. Does FERC recognize that there are differences between very small generating facilities and small generating facilities?

A: Yes FERC has promulgated interconnection rules for very small generating facilities of less than 2MWs and has issued rules for small generating facilities under 20 MWs. In citing its rationale for differentiating interconnection agreements between less than 2 MWs and generators greater than two but less

4 Page 8 of FERC Order No. 2006

than twenty MWs the FERC states

> "We conclude that a balanced response to the comments is to issue two sets of documents an SGIP and SGIA that serve the needs of most small generators and a simplified document that meets the needs of very small generators" [5]

The Utah Commission should do the same with QF contracts.

Q: The Company states that another Utah wind project (Pioneer Wind) readily accepted the MAG requirements. Shouldn't Wasatch Wind also be required to accept this contract provision?

A: No. Pioneer Wind is a much larger wind facility, almost identical in size to the proxy resource. A larger wind facility has a lower probability of incurring liquidated damages. Even so, if Pioneer Wind fully analyzes its exposure, it may reconsider its position. It could be added that in its contract proceeding, Pioneer Wind assumed that if its wind profile adjustment had been accepted their returns would have increased dramatically. It is understandable why Pioneer Wind did not make the MAG and liquidated damages the focus of their negotiations, they felt that because of their size there was little risk of not meeting the MAG and that the higher return compensated for the higher risk.

Q: What is the Company's rationale for requiring liquidated damages with no cap on such damages?

A: The Company maintains that if the project fails to meet the MAG threshold, the project should assume the full risk of incremental cost of replacement power. The real issue is to determine the actual risks borne by ratepayers of non-delivery

5 Page ? FERC Order 2006

of power and determine how to mitigate that risk.

Q: What is the financial impact of the Company's proposed MAG requirements and the cost to cover provisions on a small wind facility?

A: The financial impact on a small wind facility of the liquidated damage clause as defined by PacifiCorp's cost to cover is devastating. In Wasatch Wind Exhibit SR Exhibit-1 "Cost to Cover Impact on Profitability", Mr. Livingston has produced a series of calculations that quantifies the impact. This exhibit also shows that a small wind farm is much more liable to be subjected to liquidated damages and these penalties can quickly bankrupt the facility. A hypothetical example will be illustrative. Assume that a small wind facility loses two turbines due to a faulty gear box or maybe the blades get out of line and get shredded. In addition, assume that the turbines are down for one full year as a result of difficulties getting parts or securing a crane. Also assume that the market price for the year that the turbines are down is $100/MWH. The penalty per MW can be determined from the SR Exhibit-1 "Annualized Cost to Cover Penalties per MW" (Table-1) With the loss of two turbines, Wasatch Wind would be at approximately 70% availability and with the $100/MWH market price it would incur penalties of $23,056/MW. (Cell D12) With a 18.9 MW facility, Wasatch Wind would incur a penalty of $435,758 or 22% of its total year's revenue. At higher market prices the situation gets worse. At $250/MWH for the market price, (a price that occurred not more than five years ago and lasted for a couple of years), the penalties would amount to 93% of the yearly revenues or a loss of over $2.5 million. Such losses would bankrupt a small wind facility and would

deny the ratepayer the benefits of the power from the seven remaining wind turbines. As one can see from the mechanical availability scenarios a larger wind farm of 43 turbines can lose two turbines and still meet the 87.5 % MAG and a loss of 3 or 4 turbines still puts very few of its MWHs at risks for cost to cover penalties.

Q: Does Wasatch Wind have some alternative suggestions for the MAG and liquidated damages?

A: Yes, there are a number of alternatives that would allow Wasatch Wind's project to move forward. As shown in our proposed contract for the Power Purchase Agreement, SR Exhibit-3 in section 6.11 Guaranteed Availability, we include language that the availability is at 80% after year 1 and remains as such over the life of the contract. Critical to accepting such language is a provision that allows the sellers to declare a "Declared Suspension of Energy Deliveries"; this occurs due to equipment failure that is not Force Majeure or a result of neglect by the seller. This clause will protect the developer when an unexpected outage occurs that is beyond its control. It provides protection to ratepayers as it allows time for the Company to adjust to the change. Another alternative to this preferred solution is to include the 80% MAG but the liquidated damages will be determined by the SR Exhibit-2. Liquidated damages are defined as the loss of capacity value as determined by Schedule 37 and the 20% of capacity that is granted to wind resources. A third possibility is a guaranteed energy delivery with liquidated damages determined by SR Exhibit-2 if delivered energy is outside an 85% to 115% band of the nominated energy delivery. The nominated

energy delivery amount can be adjusted every 3 months. Any of these solutions will provide protection to ratepayers of nonperformance of the wind facility and structures the penalties to reflect the actual damages incurred.

Q. On lines 116 and 131 of his testimony, Mr. Clements explains the Company's rationale for requiring termination and delay damages. Do you care to comment?

A. Yes, Mr. Clements states that the Company makes resource acquisition plans based on when the wind project states it will come online. If the project is delayed or does not come online at all, the ratepayer **may** incur damages while replacing the energy that was expected from the wind project. The key point is that ratepayers **may** incur damages. If there is a delay, we suggest that we adopt the Company's contract language of a set damage charge per MW per day. However, we believe that there may be situations where a delay does not harm ratepayers and so we recommend that the language on delay damages recognize that possibility and that the lesser of set damages or the cost to cover as defined by PacifiCorp apply.

Q: Do you have other contract language suggestions?

A: Yes, we do and these are outlined in our matrix. However, there are problems with relying on the matrix as the sole source of information in making decisions. Many of the contract issues are interrelated; a decision on one issue makes another issue irrelevant or changes our position on that issue. Thus it is difficult to make recommendations via the matrix. The Commission should first look at the big picture and make general policy decisions. This will lead to further

decisions at the micro level.

Rebuttal of Andrea Coon

Q: Ms. Coon recommends that no standard contract for wind facilities of 20 MWs or less be adopted by the Commission at this time, she mentions that other parties may be affected by such a ruling and thus the Commission should wait. Do you care to comment?

A: Yes, originally Wasatch Wind contemplated a more generic docket that would address the issue of a standard contract for small wind facilities less than 20 MWs. After conferring with the Commission and its staff on the best procedural approach, it was determined that in order to meet our time constraints and expedite the process a proceeding that explicitly dealt with this contract would be best. I do believe that such a generic proceeding would be beneficial to future wind projects and could be pursued, yet the Commission has enough information to make a generic ruling if it sees fit to do so. The costs of delay were simply too great to pursue a more generic proceeding at this point in time.

Q: Ms. Coon notes in her testimony that Mr. Velnosky and Dr. Collins have exaggerated their claims that there are contract provisions that result in unlimited damages to the wind developer. Do you care to comment?

A: Yes, Ms. Coon has attempted to do a literal deconstruction of Wasatch Wind's testimony. She questions our use of the word unlimited to describe damages that are prescribed in the Company's contract. According to Webster's Ninth New Collegiate Dictionary Edition, unlimited is defined as (1) lacking any controls: unrestricted, (2) boundless, infinite, (3) not bounded by exceptions: undefined.

Obviously we were referring to the first definition. We did not mean infinite damages. The liquidated damages specified in the contract however lack any controls and are unrestricted because there are no caps and the damages can potentially be so large as to simply swamp the project's ability to pay them. Unfortunately, Ms. Coon, after noting the apparent exaggeration, dismisses the issue. I parenthetically note that she attributes our comments on unlimited damages to delay damage provisions. This is inaccurate; delay damages as set forth by the Company are a given dollar penalty per MW per day. This is a clause that if modified to include provisions for the actual damages incurred is acceptable to us. (See our language in Section 2.4) Both Mr. Velnosky and I refer to onerous "unlimited" damages in relation to liquidated damages that result from a failure to meet the MAG clause.

Q: Ms. Coon attempts to explain the Division's position on the difference between a non-firm resource and intermittent resource. Do you care to comment?

A: Yes, Ms. Coon seems to differentiate non-firm from intermittent based on a definition from Dow Jones and another from Webster Dictionary. Based on her interpretation of these definitions, she concludes "there is a difference between non-firm and intermittent resources; the difference is based upon the requirement to sell all output (a wind or intermittent resource) as opposed to the ability to sell any output (a non-firm resource)." [6] Frankly, I am confused about this distinction. I went to the BPA's website to obtain the following definitions of

6 See Ms Coon's rebuttal Testimony page 6 line 112-114

firm and non-firm power.

1) **firm power**
In marketing, power composed of firm energy, firm capacity, or both, guaranteed to be available to the customer at all times during the period covered by a contract, except for reason of certain uncontrollable forces or service provisions.

2) non-firm power
1) Power available in varying amounts depending upon season and weather conditions and supplied by BPA to a purchaser without the guaranteed continuous availability of firm power.

3) Intermittent power

According to James H. Caldwell Jr. Policy Director of American Wind Energy Association :

wind is an "intermittent" resource, meaning that it only produces energy when the wind blows, and its output is "as-available" meaning that, even with accurate forecasting, the exact timing of its energy output cannot be precisely predicted.

I believe the key distinction between firm power and non-firm or intermittent power is whether the utility can be guaranteed that the power will be there when they need it. For both non-firm and intermittent power there is a question of whether the power will be available at any given point in time. The Division goes on to indicate that discussions with the parties led it to believe that the type of service that Wasatch wants to provide PacifiCorp is firm service which entails selling all output to PacifiCorp. Again, I am confused; it has never been Wasatch Wind's position that it will be providing firm power to PacifiCorp; we are providing intermittent power that is very similar to non-firm power.

Q: Given these distinctions between firm power, non-firm power and intermittent power could you explain which is more valuable to ratepayers.

A: Firm power is guaranteed to be available to ratepayers and thus is more valuable, utility operators can count on the power and make other purchases and decisions based on that assurance. Intermittent power can not be depended on in any given hour, but will be provided when it is available. Non-firm power is provided in varying amount at the discretion of the provider. This is the least valued product. It is curious that Tesoro which sells non-firm power and hence has no capacity value attached to it is receiving a higher avoided cost payment than an intermittent resource which has some capacity value. In addition, the non-firm contract has substantially less onerous contract conditions than the contract that PacifiCorp is insisting upon for Wasatch Wind. A thermal QF under a non-firm contract provides a less valued product at a higher price with less protection to the ratepayer in terms of risk mitigation. Can this be justified as meeting ratepayer neutrality?

Q: The Division on page 8 lines 138 – 142 indicates that it has not seen any concrete alternative proposals for liquidated damages from the parties and thus is unable to assess whether Wasatch Wind's proposal of eliminating liquidated damages is reasonable. Does Wasatch Wind have any concrete proposals for protecting the ratepayers for power that is not delivered to the system?

A: Yes we do. See testimony on page 13 and 14.

Q: Can you summarize your conclusions.

A: I will try. There a number of contract terms that must be revised in order for Wasatch Wind to move forward with the development of its project. These

requested revisions to the contract are not an attempt to receive a subsidy or to shift risk to ratepayers. They are revisions that eliminate onerous contractual conditions that create barriers to that development of viable wind resources. The requested revisions recognize the unique characteristics of Wasatch Wind and establish contract terms that are fair and reasonable to all parties. It creates incentives for Wasatch Wind to be online as much as is possible but does not unduly punish Wasatch Wind if, for reasons beyond its control, it is unable to produce.

Q: Can you give your recommendation on contract terms in order of priority?

A: Yes. **First** our major issue is with the **MAG.** PacifiCorp is insisting that the 87.5% availability factor must apply to our project because it was accepted in the proxy contract. Due to our smaller size, a lower MAG is more appropriate; a MAG in the range of 75% to 80% will allow us to lose at least two turbines before liquidated damages are assessed. Another important clause that is critical to protect us from incurring excessive liquidated damages is the ability to declare suspended energy deliveries; this clause gives us the right to nominate our energy deliveries on a quarterly basis. This provides protection to ratepayers in that the Company can adjust their power acquisitions in the face of our new nomination. We are even willing to agree to some performance band say 85% to 115% of nominated deliveries if we have the right to change nominations on a quarterly basis.

With regard to liquidated damages, we believe that rate payer neutrality argues for similar terms as non-firm contracts which currently are receiving a

higher price while providing a less valued service. Current non-firm QF contracts do not have provisions for liquidated damages or security provisions. However, if the Commission deems that some liquated damages are necessary, they should be tied to lost capacity values as indicated on Wasatch Wind SR Exhibit-2. PacifiCorp's cost to cover provision places the QF facility at tremendous financial risk and the penalties can be much higher than the financial risks avoided.

Second: The contract clause on termination of contract is another show stopper. If Wasatch Wind does not meet its Commercial Operation date including delays due to Force Majeure which gives only 180 days to remedy, the Company may terminate the Contract. In addition, there is language which prohibits Wasatch Wind from ever obtaining a QF contract under PURPA from PacifiCorp in the future. This clause is onerous for two reasons. First, Force Majeure events may require more than 180 days to remedy, consider the Katrina disaster or a potential catastrophic earthquake. Second, if for reasons beyond our control we are unable to meet the Commercial Operations date, we should not be excluded from obtaining another QF contract. This is particularly troublesome given that PacifiCorp prohibits us from bidding into its RFP. Investors have indicated that they will not invest million of dollars into a project that could be excluded from a viable market.

Three: Delay damages should be the lesser of a set amount or the cost to cover. If the Company can purchase power on the open market at less than the contract price then the ratepayers are not incurring any damages and damages should not

be assessed.

Four: Development security, other QF contracts do not require development security, non-firm contracts such as Tesoro, Kennecott, or the Idaho QF contract recently executed by PacifiCorp did not include security provisions. If the Commission deems that security is necessary than we request terms similar to Pioneer Winds terms.

Five: The cure time for default is only 10 days. This is unreasonable for a small facility. The operator or owner may be out of the country or on vacation and be unable to obtain the funds for damages. This should be lengthened to a minimum of 30 days.

Q: Does this conclude your testimony?

A: Yes it does.