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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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| 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 TRACY LIVINGSTON**

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

DATED this 14th day of June, 2006.

Tracy Livingston

/s/________________________
Tracy Livingston
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 11 day of, July 2005, to the following:

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**SURREBUTTAL TESTIMONY**

**Of**

**TRACY LIVINGSTON**

On behalf of Wasatch Wind

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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

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June 14, 2006

**Q. Are you the same Tracy Livingston 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 portions of Mr. Paul Clements and Ms Andrea Coon and directly address a concern of Ms. Coon about alternatives to the onerous liquidated damages clause that the Company has insisted upon. I will present the exhibits that illustrate the financial impact of these contract terms and why it would be unreasonable to enter into a contract that contained such terms.

**Q: Mr. Clements claims that Wasatch Wind can limit its liability to the Company's proposed liquidated damages by purchasing spare turbines and parts to have available in case of a mechanical problem. He also states that turbine manufactures have performance guarantees as well as operations and maintenance contracts. Is this a realistic solution?**

**A:** No. To keep a spare turbine on site would require a $2.1 million investment approximately 10% of our total investment. This would drastically affect our profit margins. With regard to turbine manufacturers' guarantees, Mr. Clements is correct, turbine manufactures typically provide a two year guarantee of 95% availability. Some turbine manufacturers also offer a 3 year extension for equipment warranties thus providing a total of 5 years of limited coverage. No manufacturer of 1 MW and larger turbines offer longer warranty periods. They also limit their liability typically to 10% of the purchase price or only $210,000 in the case for this wind farm. This would not provide adequate compensation to cover the cost to cover liability. Mr. Clements is correct in that we can enter into an O &M contract. But this is only a service with no warranties, and these contracts do not protect nor indemnify against outages.

**Q: Mr. Clements claims that the performance guarantee is not onerous; do you have evidence that contradicts his testimony?**

**A:** Yes, in SR-Exhibit 1 I have constructed a series of spreadsheets that indicate the financial jeopardy that the Company's performance guarantee places a wind facility. I have attempted to make my analysis generic so it would apply to any wind facility. Tables 1 and 2 show the financial impact of the liquidated damages in dollars and in terms of percentage of revenue. For instance if the wind facility only achieves a 70% availability factor and the index price of electricity is $100 per MWH than the penalty will be $23,056 per MW. This translates into a yearly penalty of 18.9 MWs times $23,056 or $435,758. As Table 2 shows this is approximately 22% of gross annual income. The penalties get worse as the market price increases. If the market price is $250, something that happened less than five years ago the penalty rises to $1,826,500 or 93% of gross revenues. Just when the wind operator needs cash to fix the problem he is getting hammered by penalties. Table 3 shows that a small wind facility like ours would be in this situation with the loss of only two turbines while a large plant could lose two turbines and not be subject to the liquidated damages. Tables 4 & 5 show the impact on profits that result from these liquidated damages

**Q: Do you have an alternative proposal for determining liquidated damages if the Commission deems that such a condition is required?**

**A:** Yes I do, in Wasatch Wind SR-Exhibit 2, I have constructed a spreadsheet that calculates the damages incurred by ratepayers if a wind facility fails to perform. It uses the capacity payments laid out in Schedule 37 as the measure of damage that occurs and for a wind facility it is only credited with 20% of the capacity so the damages should be 20% of the capacity payments per kwh multiplied by the energy not delivered below the Mechanical Availability percentage. This is a much more reasonable damage clause and it protects ratepayers from the damages that they incur and allows the project developer to get financing for the project.

**Q: If the provisions requested in Wasatch Wind's testimonies can be included in the PPA, are you ready to enter into the contract you have provided as SR-Exhibit 3 or a similar contract with the same general provisions?**

**A:** Yes, with one exception. We are asking the commission to approve the included SR-Exhibit 3 or the general provisions to be included in a contract subject to a further ruling by the commission to include the FERC transmission losses in the pricing we have been provided by the company. The evidences and justification for an adder for projects in the Utah Power bubble have not been included in either Rich Collins or my testimony and therefore if the commission cannot rule on the adder at this time we ask the commission for acceptance of the PPA or the suggested changes in general and provide us additional time to submit further evidence for the appropriateness of a transmission loss adjustment.