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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 RICHARD COLLINS

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

DATED this 15th day of May, 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 11 day of, July 2005, to the following:

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PREFILED 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

May 15, 2006

Q. Please state your name and occupation.

A. My name is Richard S. Collins. I am an Associate Professor of Economics and Finance at Westminster College located at 1840 South 1300 East, Salt Lake City, UT 84108.

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. I submitted prefiled testimony dated May 6, 2004, in Docket 03-035-14, the QF avoided cost docket that led to a stipulation. I also submitted testimony in Docket No. 05-035-08 and 05-035-09.

Q. Do you have experience in utility regulatory matters?

A. Yes. Prior to my position at Westminster College, I worked for the Public Service Commission of Utah for approximately 13 years.

Q. Please describe some of your responsibilities at the Commission.

A. I provided technical advice to the Commission on rate proceedings and a variety of other issues. I was responsible for tracking PacifiCorp's IRP planning process, avoided cost, demand-side management, cost of capital, and deregulation issues. In addition, I helped write orders and wrote or coauthored a series of technical reports on deregulation issues for the Commission and the legislature.

SUMMARY OF TESTIMONY

Q: What is the purpose of your testimony in this docket?

A: I explain the problems that Wasatch Wind has experienced trying to negotiate a

Power Purchase Agreement (PPA) with Utah Power on an 18.9 MW wind project located in Spanish Fork. The Company simply will not consider the unique problems associated with this project being an intermittent resource. First we do not have control over when power is produced. Second this project is less than 20 MWs so it has different economics than larger projects—a smaller project can not accept certain contract provisions that larger projects might be able to endure. Wasatch Wind will make the case that these smaller projects that are greater than 3 MWs but less than 20 MWs should be afforded different treatment for contractual obligations that recognize the different economics and ability to withstand the risk obligations. Without explicitly ordering the Company to treat small scale wind projects (defined as < 20 MW's) differently than larger projects, Wasatch Wind will not be able to develop this project and Utah will be denied a valuable renewable resource.

BACKGROUND ON NEGOTIATION PROCESS

Q: Can you give some background into the contractual process that Wasatch Wind has experienced so far with Utah Power?

A: I will try. First, I must stress that the process has been very frustrating and unproductive. We have been in negotiations with the Company since the beginning of 2006. We have had discussions on the phone and have met three times in person. We have discussed the clauses that we felt needed to be changed in order for us to have a financially viable project. The Company in turn gave several suggestions to meet the needs of Wasatch Wind. We redlined their

contract, included some of their suggestions and asked for them to give us a redlined contract in return. After much delay, the Company returned with a contract that was the exact same as their original contract with one minor concession.

Q: Do you think there is a fundamental problem with contract negotiations between the Company and Qualifying Project's?

A: Yes, I do. We have been told in meetings by a variety of Company personnel that it would be easier for them if we were a winner of an RFP bid than a QF. In fact, the Company added this project to the renewable RFP bidder list so that Wasatch Wind would have an opportunity to submit a bid.

The Company views a contract with a QF as a financial obligation that is analogous to a put option. The QF can require the Company to purchase its power and the Company can not refuse. It is a contractual arrangement that the Company has indicated it does not want to encourage. It must meet the ratepayer indifference standard that requires a higher level of scrutiny. In addition, the Company fears that concession to one QF will be regarded as a favored nation's clause and that every QF will demand the same concession. My informal discussions with other QFs who have negotiated or attempted to negotiate with the Company lead me to conclude that the Company is erecting contractual barriers to signing these contracts.

Q: Did Wasatch Wind submit a bid into the RFP to avoid this problem?

A: We did, but unfortunately, we were deemed ineligible because our project did not

meet the minimum energy eligibility requirement. Because the project is 18.9 MW's, we are also ineligible for Schedule 37 which has a standard contract for projects under 3 MWs. Therein lies a problem, what Wasatch Wind deems as small, less than 20 MW's, is constrained because it is too small under the eligibility requirements for the RFP process and too large under schedule 37.

Q: What reasons has the Company given on why it can not compromise on contractual issues and clauses?

A: The Company indicates that its hands are tied because the contract price is determined by the proxy resource and that in order to maintain that proxy resource price it must hold to essentially the same contract terms.

CONTRACTUAL ISSUES

Q: Have you reviewed the contract terms and conditions of the proxy resource?

A: Yes, I have under a protective order. I will admit that the proxy resource has accepted certain contract terms that our project seemly can not live with.

Q: What are those terms?

A: Without getting into the specifics of the contract, but speaking in general terms, the disputed terms include: project security, availability requirements, cost to cover, delay damages, liquidated damages.

Q: If the proxy resources accepted these terms and conditions why shouldn't the QF be required to accept the same terms and conditions?

A: There are a number of reasons. First, our project is materially different than the proxy resource, we have to operate under different economic conditions and

because we are smaller we do not enjoy the economies of scale that the proxy does. Secondly, there appears to be a major problem with the Company's ability to execute contracts with wind projects. The Company's last RFP had 5600 MWs of wind bids and the Company accepted the prices for 2200 MWs, yet only 65 MWs are currently under contract. We have issued a data request asking the Company to explain this discrepancy. We do not have an answer from them. It appears to us that there must be issues in negotiating a contract otherwise we would have seen more projects with power purchase agreements with the Company. This appears to be a major barrier to the Company achieving the IRP goals for the acquisition of wind resources.

Q: Shouldn't the Company try to get the most advantageous contract terms possible to protect ratepayers' interests?

A: Not when the results are that it forgoes securing economical resources now that will be to the benefit of ratepayers. For instance, the Company was in contract negotiations with Pioneer Wind at the then approved avoided costs of $48 per MHW, the Company is now negotiating a contract with Pioneer that has prices substantially higher than that to the determent of the ratepayers. In fact, there appears to be a history of lost opportunities with regard to QFs. In the recent past, the Company signed a contract with Acme Power that secured 150 MW's of power for a price in the high $20 per MWH. My understanding of the project was that construction got delayed and there were substantial delay penalties written into the contract. The QF decided not to go forward possibly as a direct result of

these delay penalties. If indeed that was the cause for this project not going forward then the Company's insistence on strict contract terms would indeed hurt ratepayers.

Q: Why would the Company make it so difficult for QFs to negotiate a contract?

A: As I have testified in other dockets, there are financial reasons why a utility would discourage QF production. The Company has testified that it regards QF production as a put option and that it has to hedge against this financial obligation. Secondly, purchased power is regarded as an expense and the Company does not earn a profit on it. If the Company builds the generation itself, it will earn a profit. It is the opportunity costs of lost profits that make a utility think twice about purchasing power from a QF.

Q: Are there other issues with the negotiation process that Wasatch Wind is concerned about?

A: Yes, during our negotiations the Company has issued another RFP and has received bids for that. This puts Wasatch Wind at a competitive disadvantage. Company personnel know the RFP bids and can use that knowledge as leverage in the negotiation process. The Company personnel that have been negotiating with us have indicated that they are not privy to RFP information, yet they seem to know some details about the bids. I do not know the regulatory requirements regarding this issue; I know that a "Chinese Wall" is supposed to exist between transmission and purchasing departments. The Commission should establish rules on what information a negotiator of QF contracts has access to. This rule should

eliminate any potential conflict that would give a QF a disadvantage.

Q: Can you briefly outline the contract issues that are causing Wasatch Wind concern?

A: Yes, there is one major issue that puts an inordinate amount of risk on the QF developer. This issue concerns damages to be paid to the Company when the QF is unable to perform. The Company is requiring an availability factor of 87.5 percent for the wind turbines--the wind turbines must be available to produce energy 87.5 percent of the minutes of the entire year. If the QF fails it is liable for damages. The damages are calculated as the "Cost to Cover", this is the positive difference between the market index, Palo Verde, and the contract price. If the Palo Verde is at $85/MWH and the contract price is at say $60/MWH then the QF must pay $20 for every MWH that it was not available to produce power. These liquidated damages place an undue burden on the QF. It puts the QF in a position of trying to hedge what are virtually unlimited damages. The market price of power is extremely volatile and can be astronomically high; the western region has recently seen wholesale prices in the $250 - $500 range for substantial periods of time, almost two years in fact. These prices bankrupted two California utilities. There is no way for a small wind project to protect itself from such a catastrophe. One can purchase a financial hedge against the market index, but such hedges are not available over a twenty year horizon. They would have to be purchased each year thus putting an unknown expense on the QF.

Q: The proxy QF accepted this clause, why is Wasatch Wind different?

A: The proxy resource is close to 65 MWs; let's assume that each turbine is 1.5 MWs or approximately 43 turbines. To meet the 87.5 percent availability factor the project needs to have 38 turbines running, this allows approximately five turbines to be down over the entire year. Wasatch Wind is a much smaller project with nine turbines sized at 2.1 MWs. To meet the availability factor and avoid liquidated damages, the project could only have one turbine down and the others would have to be available to run nearly 100 percent of the time leaving little time for maintenance. So if one turbine throws a gear box and needs to be replaced, the project would in all likelihood be subjected to unknown liquidated damages. This is an unforeseen event that we have no control over. In addition, to replace a turbine requires a crane be brought to the site; this can be upwards of $250,000 if one is available. In addition, the turbines we plan on using come from India and being a small consumer, we might get put at the end of the supply chain. These are risks that we have no control over and yet we are subjected to unlimited liquidated damages. In all probability we will lose a turbine sometime over the twenty year contract. For a larger project, the loss of a turbine does not put the project at risk; in fact, larger projects can wait for two, three or four turbines to go out before it needs to hire a crane to replace turbines.

Q: Have you explained these differences to the Company and if so, what was their response?

A: Yes, we have, but their response has been one of indifference. They claim that they are constrained by the proxy contract and the Commission only differentiates

contracts under 3MW's.

Q: If larger projects have benefits associated with economies of scale then so be it, why should the Commission treat smaller projects differently?

A: We believe that there are many sites similar to ours that have good resources, geographically dispersed around the state that will benefit the system and lead to overall lower costs and less risk to ratepayers. But there are barriers that exist for these small projects--the biggest barrier being the contract negotiations necessary to build a project. Each small project will not be able to afford to hire an attorney to fight this battle—the cash flow just won't allow it. That is why in states like Iowa and Minnesota, the regulatory environment had to change to break down the barriers. Minnesota for example, created a standard offer for its contract process. Iowa will be working on a similar standard offer. It appears that the Company is unwilling to recognize the differences for project size and the benefits of small projects.

Q: Do you think that liquidated damages are necessary for a non-firm intermittent resource such as wind?

A: No I do not. The liquidated damage clause was a contract provision that was originally instituted to protect utilities purchasing power on the wholesale market. In particular, it was to protect against a supplier who entered into a fixed price contract with a utility and whose source of power was typically from a thermal resource most often gas. Without a liquidated damage clause, the supplier would refuse to supply power if gas prices rose to a point where it was no longer

economically to fulfill the contract. The liquidated damage clause created the necessary incentive to fulfill the contract. It is an entirely different story with a wind resource. There is no incentive not to provide power because there is no variable energy cost. With no capacity payments a project only gets paid when it produces power. It has every incentive to be up and running. There is no need for liquidated damages to create incentives to produce.

Q: Ok, so liquidated damages are unnecessary for incentives, but what about actual damages incurred by the utility for a lack of production from a QF?

A: One should know what damages are actually being incurred before one sets a remedy. Wind is by its nature intermittent, it is a non firm resource. The Company can not plan with certainty that it will be available for any given hour. If a wind turbine is not available to produce power the Company will go to its dispatch order and choose the cheaper resource it has to meet the load. That may be a market purchase or an increase in output of a low-cost coal unit. In fact, the Company may be saving money in any given hour by not purchasing wind. This can be analogous to a fluctuation in load, Nucor turning on or off a furnace will have a bigger impact on the system than fluctuations in wind output.

Q: What do you recommend?

A: I recommend that these liquidated damages and the other terms of the contract related to this be eliminated or substantially reduced. Most of the problem when wind output is not available is that it requires adjustments by the Company on producing or purchasing power. If the wind QF can inform the Company of what

its projected power will be six months ahead than that is the number of turbines that are available to produce power, then the Company can make the necessary planning adjustment. In addition, the wind farm should be allowed to take turbines off line and excluded from availability immediately if they fail due to unforeseen circumstances.

Q: Does this conclude your testimony?

A: Yes it does.