

**CONFIDENTIAL PROCEEDINGS INCLUDED**

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

In the Matter of the  
Application of Rocky Mountain  
Power for Approval of the  
Power Purchase Agreement  
between PacifiCorp and Blue  
Mountain Power Partners, LLC

Docket No. 13-035-115

In the Matter of the  
Application of Rocky Mountain  
Power for Approval of the  
Power Purchase Agreement  
between PacifiCorp and  
Latigo Wind Park, LLC

Docket No. 13-035-116

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**HEARING**  
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TAKEN AT: Heber M. Wells Building  
160 East 300 South, Room 451  
Salt Lake City, Utah 84111  
  
DATE: Thursday, September 19, 2013  
  
TIME: 9:00 a.m. to 5:27 p.m.  
  
REPORTED BY: Michelle Mallonee, RPR

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|    | INDEX                              |      |
|----|------------------------------------|------|
|    | WITNESS                            | PAGE |
| 1  |                                    |      |
| 2  |                                    |      |
| 3  | PAUL CLEMENTS                      |      |
| 4  | Direct Examination by Mr. Solander | 17   |
| 5  | Examination by Ms. Wood            | 21   |
| 6  | Examination by the Hearing Officer | 79   |
| 7  | MICHAEL D. CUTBIRTH                |      |
| 8  | Direct Examination by Mr. Russell  | 81   |
| 9  | Cross-Examination by Mr. Wood      | 88   |
| 10 | SARAH WRIGHT                       |      |
| 11 | Direct Examination by Ms. Hayes    | 146  |
| 12 | Cross-Examination by Ms. Wood      | 149  |
| 13 | CHARLES PETERSON                   |      |
| 14 | Direct Examination by Mr. Jetter   | 153  |
| 15 | Cross-Examination by Ms. Wood      | 159  |
| 16 | Redirect Examination by Mr. Jetter | 166  |
| 17 | Recross Examination by Ms. Wood    | 167  |
| 18 | BELA VASTAG                        |      |
| 19 | Direct Examination by Mr. Coleman  | 172  |
| 20 | MIKE RORING                        |      |
| 21 | Direct Examination by Mr. Wood     | 177  |
| 22 | Cross-Examination by Mr. Jetter    | 182  |
| 23 | Cross-Examination by Mr. Russell   | 183  |
| 24 | Cross-Examination by Mr. Sackett   | 184  |
| 25 | PAUL CLEMENTS (Docket 13-025-115)  |      |

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

| INDEX                                    |      |
|------------------------------------------|------|
| WITNESS                                  | PAGE |
| Direct Examination by Mr. Solander       | 188  |
| Cross-Examination by Ms. Wood            | 191  |
| Cross-Examination by the Hearing Officer | 241  |
| Recross Examination by Ms. Wood          | 245  |
| Cross-Examination by Mr. Sackett         | 249  |
| Redirect Examination by Mr. Solander     | 252  |
| CHRISTINE MIKELL                         |      |
| Direct Examination by Mr. Sackett        | 255  |
| Cross-Examination by Mr. Coleman         | 264  |
| Cross-Examination by Mr. Wood            | 265  |
| Confidential Portion Begins              | 290  |
| Confidential Portion Ends                | 300  |
| ANTHONY HALL                             |      |
| Direct Examination by Mr. Wood           | 324  |
| Cross-Examination by Mr. Solander        | 338  |

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

| EXHIBITS                               |      |
|----------------------------------------|------|
| EXHIBIT NO.                            | PAGE |
| RMP-1                                  | 19   |
| RMP-2                                  | 19   |
| UCE 1.0 (Docket 13-035-115)            | 147  |
| UCE 1.1 (Docket 13-035-115)            | 147  |
| UCE 1.2 (Docket 13-035-115)            | 147  |
| UCE 2.0 (Docket 13-035-115)            | 147  |
| DPU Confidential 1 (Docket 13-035-115) | 159  |
| DPU Confidential 2 (Docket 13-035-116) | 159  |
| Prefiled OCS 1                         | 174  |
| Prefiled OCS 2                         | 174  |
| Latigo 1                               | 322  |
| Latigo 2                               | 322  |
| Blue Mountain 1                        | 323  |

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
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24  
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Hearing

September 19, 2013

PROCEEDINGS

THE HEARING OFFICER: Okay. Let's go ahead and go on the record. Good morning, everyone. This is the time and place for the duly noticed hearings in Docket Nos. 13-035-115, In the Matter of the Application of Rocky Mountain Power for the Approval of the Power Purchase Agreement between PacifiCorp and Blue Mountain Powers, LLC, and Docket No. 13-035-116, In the Matter of the Application of Rocky Mountain Power for Approval of the Power Purchase Agreement between PacifiCorp and Latigo Wind Park, LLC.

My name is Jordan White. The Commissioners have asked me to act as a presiding officer for these hearings. As an initial matter, I just want to inform parties that we will be recording today, but we will not be streaming.

With that, I want to go ahead and take appearances. We'll start here with Mr. Jetter.

MR. JETTER: Justin Jetter representing Utah Division of Public Utilities.

MR. COLEMAN: Brent Coleman representing the Office of Consumer Services.

MR. SACKETT: Gary Sackett representing Latigo Wind Park, LLC.

MR. RUSSELL: Phillip Russell representing Blue

1 Mountain Power Partners.

2 MS. WOOD: Mary Anne Wood and Stephen Wood  
3 representing Ellis-Hall Consultants.

4 MR. SOLANDER: Daniel Solander on behalf of  
5 Rocky Mountain Power. I have with me at counsel table Paul  
6 Clements, power marketer originator for Rocky Mountain Power.

7 MS. HAYES: Sophie Hayes representing Utah  
8 Clean Energy.

9 THE HEARING OFFICER: Okay. Thank you.  
10 Before we address Latigo's pending motion to restrict  
11 application of a nondisclosure agreement, are there any  
12 housekeeping matters that we need to address before I go  
13 forward?

14 MS. HAYES: Your Honor?

15 THE HEARING OFFICER: Yes. Ms. Hayes.

16 MS. HAYES: Ms. Wright has some meetings this  
17 afternoon that I would love not to make her cancel. I've talked  
18 to counsel, and no one seemed opposed to allowing her to  
19 answer questions this morning. I wasn't planning on calling her  
20 as a witness, but she will be available to answer questions this  
21 morning if parties have them.

22 THE HEARING OFFICER: Okay. I appreciate that.  
23 And just to--it will probably be a bit before we actually get into  
24 testimony and cross, just to deal with some other matters. But  
25 no, that's helpful. Just remind me if for some reason she's



1 getting close to needing to leave, we can maybe see if we can  
2 fit her in.

3 MS. HAYES: Okay. Thank you.

4 THE HEARING OFFICER: So as the parties may  
5 recall, we began to address Latigo's August 20 of 2013 motion  
6 to restrict the application of the nondisclosure agreement of  
7 Docket No. 03-035-116 and determined to table consideration  
8 until today.

9 We have on file with the Commission the  
10 nondisclosure agreement that was signed by Stephen Wood,  
11 Mary Anne Wood, Anthony Hall, and Kimberly Ceruti. And the  
12 agreement affirms that they have all read and reviewed Rule  
13 746-100-16 with respect to review and use of confidential  
14 information and agreed to comply with the terms and conditions  
15 of the rule.

16 Based upon that affirmation, Latigo's motion to  
17 restrict application of nondisclosure agreement is denied.

18 Moving on to the next issue, next unresolved issue.  
19 In our prehearing conference on Monday, there were allegations  
20 made by Ellis-Hall Consultants with respect to, essentially,  
21 making claims of confidentiality for large volumes of documents  
22 without proper markings, yellow paper, et cetera, as required by  
23 the rule for confidentiality. We were informed by Ellis-Hall on  
24 Monday that they intend to challenge claims of confidentiality of  
25 certain documents that they plan to introduce into evidence.

1                   So rather than clearing the room of folks who have  
2 not signed an NDA, or a nondisclosure agreement, every time  
3 we need to address such a challenge, I'd like to begin by taking  
4 all the documents proposed for admission into evidence today  
5 and allow Ellis-Hall to make this challenge regarding the claims  
6 of confidentiality for such documents. The burden, then, will be  
7 upon the party asserting confidentiality to either withdraw the  
8 claim of confidentiality or provide the rationale for such  
9 treatment. And then I'll make a ruling.

10                   Just to be clear, the claim of confidentiality could  
11 be narrowed--you know, rather than just a blanket claim for a  
12 document, if there's specific numbers, data, et cetera, contained  
13 within the document, you are free to narrow that today.

14                   To conduct this portion of the proceeding, I'm going  
15 to need everyone who hasn't signed the nondisclosure  
16 agreement or does not have the right to view confidential  
17 treatment by statute, meaning the Division, the Office, and the  
18 Public Service Commission, to leave the hearing room. And  
19 then after we've completed the in-camera review of the  
20 confidentiality, we can invite everyone back in.

21                   For the rest of the hearing, I'd ask parties, to the  
22 extent possible, to make only general reference to the  
23 documents that ultimately are ruled to be confidential. If that's  
24 impossible--again, it's going to be cumbersome--but we will just  
25 need to follow a process and clear the room if there's going to

1 be documents that are not, you know--Ms. Wood?

2 MS. WOOD: Yeah. I think I can propose an easier  
3 way. We've given both parties, both Latigo and Blue Mountain,  
4 copies of the exhibits that we intend to use, other than the ones  
5 that have been attached to our objections. I think that what  
6 would make sense is for them to look through them see and if  
7 there's anything that they want to preserve confidential. And if  
8 they have, we can address that document by document because  
9 we're not seeking to disclose anything else at this time.

10 THE HEARING OFFICER: Okay. Just so--if I hear  
11 you correctly, so you've provided the documents already to  
12 opposing counsel. And so you'd like to take maybe a short  
13 recess for them to make an identification of what they want to  
14 retain confidentiality?

15 MS. WOOD: Well, for purposes of this hearing, the  
16 only things that really matter are ones that we'll seek to  
17 introduce into evidence. So if there are some of those they  
18 object to --

19 THE HEARING OFFICER: And that's my intent.

20 MS. WOOD: --there's no point in our going through  
21 100,000 documents.

22 THE HEARING OFFICER: I understood that the  
23 parties on Monday agreed that they were going to provide the  
24 documents they wished to have received into evidence, and  
25 those are the documents that would be considered. So

1 certainly, if it makes more sense, if, you know, we want to take  
2 a short recess and allow Rocky Mountain Power and whom other  
3 parties have documents that may be at issue, that's fine with  
4 me. And that would certainly consolidate and make things more  
5 efficient.

6 So why don't we go ahead and do that. Why don't  
7 we take a short recess. Is ten minutes sufficient, or do you  
8 need more time? I also don't know the volume of documents  
9 we're talking about.

10 MR. WOOD: There's quite a few, so they might  
11 need more than ten minutes. We're happy to give them the time  
12 they need. Maybe it will streamline it if--

13 THE HEARING OFFICER: Okay. Let's do that. I'm  
14 happy to do that. Let's say let's come back at 9:30. Make  
15 sense? And certainly you can send someone in to let me know  
16 if there's a resolution before that time. But that's fine. Thank  
17 you. We're off the record. Thanks.

18 (A break was taken from 9:09 a.m. to 9:30 a.m.)

19 THE HEARING OFFICER: Okay. Let's go back on  
20 the record.

21 So do the parties have a plan to proceed with the  
22 documents they resolved with respect to the claim to  
23 confidentiality?

24 MR. WOOD: I think we have a single document out  
25 of all the exhibits.

1 THE HEARING OFFICER: A single document.

2 Wonderful.

3 MR. WOOD: It would be with the Latigo matter. I  
4 don't know who you'd like to go first.

5 THE HEARING OFFICER: The order I planned on  
6 today was to start with Blue Mountain, since 115 comes before  
7 116. So with that, it sounds like at that time that you plan on  
8 introducing that confidential document into evidence, just give  
9 us advance warning so that the court reporter can note between  
10 the discussion. And to the extent possible to avoid even  
11 clearing the gallery, et cetera, it would be helpful just to refer to  
12 it generally, et cetera.

13 Yes, Mr. Wood?

14 MR. WOOD: I think we can make a ruling on  
15 whether or not it is confidential at the outset very quickly. I  
16 understand the only document that Latigo is going to assert as  
17 confidential is their executed LGIA application. And I would just  
18 refer the Court to PacifiCorp's responses to our discovery  
19 requests that state that the LGIA application is confidential until  
20 it is executed. And this document is executed; therefore, it's no  
21 longer confidential. It's also available on OASIS.

22 THE HEARING OFFICER: So it's publicly available  
23 on OASIS?

24 MR. WOOD: Yes.

25 THE HEARING OFFICER: Mr. Sackett?

1 MR. SACKETT: I'm not aware of that. But I'd like  
2 some time to think about it because that's news to me. And  
3 simply because PacifiCorp says it's no longer confidential  
4 doesn't mean we agree with it.

5 THE HEARING OFFICER: Since we're going to  
6 deal with Latigo second, why don't we just consider it and just  
7 be prepared to make an argument. But I will say that if it is  
8 publicly available, that's going to be a hard hurdle to overcome.

9 MR. SACKETT: I agree with that.

10 THE HEARING OFFICER: Okay. Thanks.

11 So why don't we go ahead and start off with Docket  
12 No. 13-035-115, which is the Blue Mountain PPA. Sorry, Mr.  
13 Solander, I'm used to seeing you over on this side. Mr.  
14 Solander, do you want to go ahead and proceed?

15 MR. SOLANDER: Sure. We are here on the  
16 application of Rocky Mountain Power for an order approving the  
17 power purchase agreement between PacifiCorp and Blue  
18 Mountain Power Partners, LLC, dated July 3, 2013. The  
19 Company has previously filed in this docket an application and  
20 the power purchase agreements. The application has been  
21 marked as "RMP Exhibit 1" and provided to the court reporter.  
22 And the power purchase agreement has been marked as "Exhibit  
23 RMP 2" and provided to the court reporter. And the Company  
24 would call Mr. Paul Clements as its witnesses in support of the  
25 application.

1 THE HEARING OFFICER: Okay. Go ahead and  
2 come up to the witness stand, Mr. Clements.

3 Please raise your right hand. Do you solemnly  
4 swear to tell the whole truth and nothing but the truth?

5 THE WITNESS: Yes.

6 THE HEARING OFFICER: Thank you. You can be  
7 seated.

8 Mr. Solander.

9 PAUL CLEMENTS, having been first duly sworn,  
10 was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY-MR.SOLANDER:

13 Q. Would you please state your name and business  
14 address for the record.

15 A. Yes. My name is Paul Clements. My business  
16 address is 201 South Main Street, Suite 2300, Salt Lake City,  
17 Utah, 84111.

18 Q. And what is your position with PacifiCorp?

19 A. I'm senior power marketer and originator,  
20 responsible for negotiating and qualifying facility contracts.

21 Q. And as part of those responsibilities, did you  
22 negotiate the power purchase agreement between Rocky  
23 Mountain Power--or PacifiCorp, rather, and Blue Mountain?

24 A. Yes, I did.

25 Q. Can you provide a summary of the negotiations and

1 the terms of the PPA?

2 A. Yes. The pricing and terms and conditions included  
3 in the power purchase agreement--which we will refer to as a  
4 PPA from here on out in both dockets--the PPA between Latigo--  
5 apologize, Blue Mountain and PacifiCorp are consistent with the  
6 Commission orders in Docket No. 03-035-14 and Docket No. 12-  
7 -12-25--sorry, 12-035-100 and 12-2557-01, three dockets there.

8 The Commission issued an order on Phase II issues  
9 in Docket No. 12-035-100 on August 16, 2013. This PPA  
10 between PacifiCorp and Blue Mountain was executed on July 3,  
11 2013, which is prior to the issuance of the order in Phase II of  
12 that particular docket. Therefore, the rates and other terms and  
13 conditions contained in the PPA between PacifiCorp and Blue  
14 Mountain are consistent with those established by the  
15 Commission applicable at the time of execution.

16 Lastly, Rocky Mountain Power Electric Service  
17 Schedule No. 38 governs the procedures the Company and the  
18 QF views when processing a request for pricing and negotiating  
19 a PPA. The Company and Blue Mountain followed all the  
20 applicable procedures contained in Schedule 38.

21 And in summary, the Company has complied with  
22 all relevant Commission orders and applicable schedules in  
23 negotiation and execution of the Blue Mountain PPA.

24 MR. SOLANDER: At this time, I'd like to move the  
25 admission of Rocky Mountain Power Exhibits No. 1 and 2 into



1 the record.

2 THE HEARING OFFICER: Any objections?

3 MS. WOOD: No objection.

4 THE HEARING OFFICER: They're received.

5 (Exhibits RMP 1 and 2 were received into evidence.)

6 Q. (BY MR. SOLANDER:) Mr. Clements, have you  
7 reviewed the comments filed by Ellis-Hall in this docket?

8 A. Yes, I have.

9 Q. And do you have a response to the comments and  
10 the allegations made in those comments?

11 A. Yes, just a very brief comment regarding those  
12 comments.

13 Many of the issues raised by Ellis-Hall are not  
14 relevant to the approval of this power purchase agreement  
15 between PacifiCorp and Blue Mountain. Furthermore, many of  
16 the comments made by Ellis-Hall are more relative to the  
17 negotiations that are ongoing between PacifiCorp and Ellis-Hall,  
18 and those issues are not appropriate to be addressed in this  
19 particular proceeding. So I don't intend to respond to any of  
20 those allegations today.

21 Q. Thank you.

22 MR. SOLANDER: Mr. Clements is available for  
23 questions from the parties or the Commission.

24 THE HEARING OFFICER: Thank you, Mr.  
25 Solander.

1 We'll go ahead and start off with the Division.

2 Mr. Jetter?

3 MR. JETTER: Thank you. The Division has no  
4 questions.

5 THE HEARING OFFICER: Mr. Coleman?

6 MR. COLEMAN: No questions from the Office.

7 MR. SACKETT: No questions.

8 THE HEARING OFFICER: Okay. Mr. Russell?

9 MR. RUSSELL: I don't have any questions at this  
10 time. But I reserve to the extent that there are questions that  
11 come across from other parties.

12 THE HEARING OFFICER: Understood.

13 Ms. Hayes?

14 MS. HAYES: No questions. Thank you.

15 THE HEARING OFFICER: Ellis-Hall? Ms. Wood,  
16 will you be--

17 MS. WOOD: I will.

18 CROSS-EXAMINATION

19 BY-MS.WOOD:

20 Q. Good morning, Mr. Clements.

21 A. Good morning.

22 Q. If I may, let me ask you to take a look at the  
23 executed PPA. Do you have that in front of you?

24 A. I do not have that in front of me, but I can get it.

25 Q. Well, it's one of your exhibits.

1 If you can give it to him.

2 If I may look at the, first of all, the "whereas"  
3 causes of the PPA, which is on page 2 of the PPA. Do you have  
4 that page in front of you?

5 A. I do, yes.

6 Q. Now, on that page, the third "whereas" says that,  
7 "The seller expects the facility will deliver to PacifiCorp  
8 approximately 220,000 megawatts per calendar year of net  
9 output."

10 On what do you base that expectation?

11 A. We base that on information provided by the  
12 developer during negotiation of the power purchase agreement.

13 Q. Okay. And you further say that, "The seller  
14 acknowledges that PacifiCorp will include this amount of energy  
15 and associated green tags in PacifiCorp's resource planning."  
16 Is that true?

17 A. That is correct, yes.

18 Q. Okay. So if for some reason that number of  
19 megawatts is not delivered, that will cause your resource  
20 planning to be inaccurate. Isn't that true?

21 A. For wind projects, it depends on what portion of the  
22 resource planning you are referring to.

23 Q. Well, will it cause some portion of the resource  
24 planning to have to be altered?

25 A. Well, if we're planning on a certain amount of

1 energy and a different amount of energy is delivered, then it  
2 would be different, yes.

3 Q. Okay. And that may require you to go out and buy  
4 additional energy, perhaps at higher prices. Isn't that true?

5 A. It may, yes.

6 Q. Okay. Now, once again, further down on that page-  
7 -and this is the second to the last "whereas," you state that,  
8 "PacifiCorp intends to designate seller's facility as a network  
9 resource for the purposes of serving network load." And that  
10 means, essentially, the same thing, doesn't it?

11 A. No, it does not.

12 Q. What does that mean?

13 A. PacifiCorp, or Rocky Mountain Power, executes  
14 what's called a transmission service agreement with PacifiCorp  
15 Transmission. As you may or may not be aware, PacifiCorp  
16 Transmission is a separate function from Rocky Mountain  
17 Power. And so Rocky Mountain Power has a transmission  
18 service agreement with PacifiCorp Transmission.

19 Under that transmission service agreement, we  
20 designate all of our resources that are used to serve our load as  
21 network resources. And so in order to move our resources to  
22 load, we have to designate them as network resources. And so  
23 once we execute a power purchase agreement, we go ahead  
24 and submit an application to PacifiCorp Transmission to  
25 designate it as a network resource.

1 Q. Okay. Then if you would turn to page 6, "Delay  
2 Damages." Can you tell me what the delay damages will be if  
3 Blue Mountain is unable to deliver 80 megawatts?

4 A. I can't tell you right now what the delay damages  
5 will be. There's a calculation in the power purchase agreement  
6 that makes it clear how the delay damages are to be calculated.

7 Q. But they can only be calculated once you know the  
8 capacity of the facility. Isn't that true?

9 A. No. They're only calculated once the facility fails  
10 to meet its on-line date and a delay occurs.

11 Q. Right. And that requires in order to do that  
12 calculation once the delay has happened, you have to, in fact,  
13 know what amount of power the facility is supposed to deliver?

14 A. That's correct. The expected energy is a  
15 component of the delay damage calculation.

16 Q. Okay. All right. Now, would you look at the  
17 definition of "Expected Energy" on page 7.

18 A. Okay.

19 Q. Expected energy means approximately 220,000  
20 megawatts. Is that correct?

21 A. Yes. The definition is longer than that, but that's  
22 the first--

23 Q. Okay.

24 A. --phrase.

25 Q. Well, the second phrase is, "Seller estimates the

1 net output will be delivered during each calendar year according  
2 to the estimates of monthly output set forth in Exhibit A, which  
3 Exhibit A will be amended and replaced upon selection of the  
4 turbine pursuant to 2.6 below." Isn't that correct?

5 A. Yes. Well, it's actually pursuant to Section 2.2(b)  
6 below.

7 Q. Okay.

8 A. But the rest of your reading is correct from the  
9 definition, yes.

10 Q. Okay. So that means that the Exhibit A that is  
11 attached to this contract is not applicable to this contract. Isn't  
12 that correct?

13 A. That is not correct, no.

14 Q. Why--you can't determine Exhibit A until you know  
15 what the wind turbine is, can you?

16 A. Yes, I can. Exhibit A is an exhibit that's included in  
17 this power purchase agreement. And perhaps it would be  
18 helpful to walk you through--

19 Q. No, I'm not asking you to walk me through anything.  
20 I'm just asking you to answer my questions. Would that be  
21 okay?

22 THE HEARING OFFICER: For my benefit, a brief  
23 description would be helpful.

24 MS. WOOD: I would like to proceed by question  
25 and answer. And then his lawyer can cross-examine him.

1 MR. SOLANDER: I'm sorry, she asked the  
2 question. Mr. Clements is trying to answer the question.

3 THE HEARING OFFICER: I'd like him to answer for  
4 my benefit. I understand you have a line of questions, but I'm  
5 trying to find facts, also. So I'd appreciate an answer.

6 THE WITNESS: When we execute a power  
7 purchase agreement, we include in the power purchase  
8 agreement what the expected energy is based on the turbine  
9 that has been selected at that point in time by the developer.

10 In this power purchase agreement, and in several  
11 other power purchase agreements executed by the Company, we  
12 allow the developer to select an alternate turbine at a later date,  
13 post execution of the project--or of the power purchase  
14 agreement. We do so because oftentimes the developer is  
15 unable to get a best and final pricing from a turbine  
16 manufacturer until they have an executed power purchase  
17 agreement. And so oftentimes they need to have that executed  
18 power purchase agreement in order to get that best and final  
19 price, and then they select the optimal turbine for the wind site.

20 We allow them to change the turbine type. In my  
21 past practice, having experience with over 1000 megawatts with  
22 the wind contracts, typically if they change the turbine type, it  
23 very minimally affects the expected output of the project, and it  
24 very minimally affects the nameplate capacity rating of the  
25 project. Therefore, we put into the power purchase agreement

1 the expectation of what the turbine will be at the time of  
2 execution. We allow the developer to swap or change a turbine  
3 within a few months of execution, typically which is well before  
4 the on-line date to the project. And then we update the  
5 appropriate exhibits at that time.

6 We found this to be a reasonable compromise  
7 between what a developer needs to execute a power purchase  
8 agreement and what the utility needs in order to make sure that  
9 it's going to get its expected output from the wind project.

10 And so that's really why Exhibit A is binding in the  
11 power purchase agreement. And in fact, if the QF--if Blue  
12 Mountain in this case does not change turbine type, then Exhibit  
13 A continues to be binding and we will expect that expected  
14 energy from the project.

15 Q. What difference does it make to you if the  
16 developer gets the best price for the turbine?

17 A. It doesn't make any difference to us.

18 Q. Okay. So if you're going to remain neutral with  
19 respect to the development of wind projects, you have to leave  
20 that problem up to the developer, don't you?

21 A. I'm not sure I understand your question.

22 Q. I'd say that's the developer's problem, isn't it? It's  
23 not PacifiCorp's problem whether the developer can get the best  
24 price or not.

25 A. If that's a question of whether it's PacifiCorp's



1 problem, no, it's not.

2 Q. Okay. And how many wind projects have you  
3 executed in Utah in the last ten years?

4 A. Last ten years? One that I'm aware of.

5 Q. Okay. And which one was that?

6 A. That would be the Spanish Fork Wind Park 2, I  
7 believe is the official name.

8 Q. And did you permit them to choose their turbine  
9 after the contract was executed?

10 MR. SOLANDER: Objection. What PacifiCorp did  
11 with respect to that wind project has no bearing on this power  
12 purchase agreement.

13 MS. WOOD: Well, I would say that, except that  
14 he's testified that he frequently lets people choose the turbine  
15 after the fact. And since they've only executed one wind project  
16 in Utah in the past ten years, I'm interested in whether that  
17 turbine was included in the contract.

18 THE HEARING OFFICER: Overruled. I'll allow that  
19 question.

20 THE WITNESS: I don't recall.

21 Q. (BY MS. WOOD:) So in the past ten years in Utah,  
22 you can't give us any examples?

23 MR. SOLANDER: Objection. It's been asked and  
24 answered. And it's argumentative.

25 MS. WOOD: I let you just do anything you wanted.

1 I didn't hold you to not having a narrative. I expressed the  
2 opportunity--I've been told you don't usually follow the rules of  
3 evidence. I would appreciate being able to ask my questions  
4 without unnecessary interruptions.

5 THE HEARING OFFICER: The objection is  
6 received--overruled. I'll allow some additional lines of cross,  
7 but we do need to, hopefully, get to the substance or where  
8 you're heading with this question.

9 Q. (BY MS. WOOD:) Okay. So your testimony, your  
10 filed and sworn testimony, that you often let people change their  
11 wind turbine, you can't give me any examples of that in the state  
12 of Utah with Rocky Mountain Power, can you?

13 A. Well, we've only had one wind contract in Utah.

14 Q. Okay. So with only one wind contract, and you  
15 can't remember whether or not you let them change the turbine,  
16 your testimony really doesn't have any support, does it?

17 A. Well, you specifically asked about Utah. And most  
18 of our wind projects are actually not located in Utah.

19 Q. Okay. I'm asking in Utah because we're in front of  
20 the Utah Public Service Commission, right?

21 A. Yes, we are.

22 Q. Okay. Now, you said that Exhibit A is the same so  
23 long as they use the same turbine. But can you tell me what  
24 turbine they're planning to use in this contract?

25 A. Yes, I can.

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Q. What is it?

A. Currently it's a Gamesa.

Q. Well, that's a manufacturer. It's not a turbine, is it?

A. They are a manufacturer of turbines, yes.

Q. So they have not even selected a Gamesa turbine, they've just given you a name of a manufacturer, right?

A. That is not correct.

Q. Where in the contract does it show the precise turbine that this contract revolves around?

A. It doesn't show in the contract what the exact turbine is. However, when Blue Mountain approached the Company and requested an indicative price, they have to provide a 12 by 24 matrix, which is a monthly and hourly representation of what the expected output is. And they derive that 12 by 24 matrix by taking a specific turbine type, which has what's called a power curve. And they apply that power curve to the wind speeds at the site. And they say, based on this turbine type, here is the expected output of the project. And so when we calculated the price, they had selected the turbine. I just do not have it in front of me.

Q. And you didn't include it in the PPA?

A. No.

Q. Let me take a look at exhibit--would you turn--does the witness have a copy of these exhibits?

THE HEARING OFFICER: Ms. Wood, do these

1 contain all the exhibits we're talking about in here?

2 MR. WOOD: Yeah, here's a binder.

3 THE HEARING OFFICER: That's actually helpful,  
4 thanks.

5 Q. (BY MS. WOOD:) Would you turn to Exhibit M. And  
6 can you tell me the turbines that Blue Mountain proposed?

7 MR. SOLANDER: I'm sorry, what exhibit?

8 MR. COLEMAN: Yeah. Can you specify the  
9 exhibits we are talking about?

10 MS. WOOD: These are our additional exhibits.

11 THE HEARING OFFICER: Do you want to go ahead  
12 and identify--

13 MR. JETTER: I think the exhibits that you handed  
14 out are numbers, not letters.

15 MR. WOOD: It's Exhibit M to the objection, which  
16 we all waived additional copies of.

17 THE HEARING OFFICER: Do you want to, just for  
18 the record, identify what the document you're describing is?

19 MR. WOOD: It's Exhibit M to Ellis-Hall's objection.  
20 It is a letter dated October 31, 2012, from Blue Mountain Power  
21 Partners to Paul Clements at PacifiCorp.

22 THE HEARING OFFICER: Thank you.

23 Q. (BY MS. WOOD:) Would you read, "1. Project  
24 Information" into the record, please.

25 A. Yes. "1. Project Information." First bullet, "We

1 expect the generation technology to be either GE 1.7 megawatts  
2 or Gamesa G114, 2.0 megawatts, or Siemens 2.3 megawatt wind  
3 turbines." Keep going?

4 Q. Keep going, please.

5 A. "The proposed installed nameplate capacity of the  
6 project would be up to 80 megawatts.

7 "See attached 12 by 24 matrix of the estimated time  
8 of day delivery of power from the project.

9 "The site is depicted on the attached map and  
10 includes a proposed new substation and point of interconnection  
11 on PacifiCorp's 138 kV transmission, which bisects the  
12 property."

13 Q. Now you'll agree with me that you can't do a 12 by  
14 24 that would be reflective of each--all of those turbines, a  
15 single 12 by 24?

16 A. You cannot do a single 12 by 24 that reflects three  
17 different turbines.

18 Q. So they provided you a 12 by 24 without them  
19 identifying which turbine they were going to use. Is that  
20 correct?

21 A. I don't recall in this particular instance. But  
22 oftentimes--well, most frequently, the 12 by 24 has identified at  
23 the top of it that this is based on a Gamesa 114, or whatever it  
24 may be--which is likely the case in this scenario. I would need  
25 to see the Excel spreadsheet that was provided.

1 Q. Okay. Would you turn to Exhibit 36. Does he have  
2 a copy of Exhibit 36?

3 A. My exhibits are all letters.

4 Q. This is Ellis-Hall 13-035-116.

5 THE HEARING OFFICER: I apologize. Which  
6 exhibit in the big binder, I guess, are we looking at with this  
7 witness?

8 MS. WOOD: Thirty-six.

9 Q. (BY MS. WOOD:) Could you review that and see  
10 which turbine they select for purposes of their interconnection  
11 agreement? That's on II.

12 THE HEARING OFFICER: Just for the record  
13 again, I know that this is--it would be helpful, at least, I guess  
14 for the record to have a description of what we're looking at.

15 MS. WOOD: It's the System Impact Study Report,  
16 Proposed Interconnection Agreement dated January 11, 2012.

17 THE HEARING OFFICER: Thank you.

18 MS. WOOD: Maybe you can show him where it is.

19 THE WITNESS: Do you want me to read from this?

20 Q. (BY MS. WOOD:) Yeah. Just tell us which turbine  
21 is used for the system impact study.

22 A. Again, this appears to be a system impact study  
23 letter from PacifiCorp Transmission to Blue Mountain Power  
24 Partners. And I will note for the record that I am what's  
25 considered a market affiliate employee. And so by FERC

1 designation, I am completely separate from our PacifiCorp  
2 Transmission function; and therefore, I'm not all that familiar  
3 with this document as it's not something that was produced by  
4 me.

5 Q. I understand. But we were denied the opportunity  
6 to have Mr. Fishback here because your counsel represented  
7 that you'd be able to answer all the questions.

8 So if you would tell us what turbine this system  
9 impact study was done on.

10 A. Based on the executive summary, it states that it  
11 will--the project will consist of 47 GE 1.68 megawatt wind  
12 turbine generators.

13 Q. Okay. But that is not--that is not identified, is it, in  
14 the PPA, that particular turbine?

15 A. No. The PPA at the moment contemplates a  
16 Gamesa turbine.

17 Q. Now, would you turn to the PPA and then look at  
18 Exhibit 3.2.5-1 and 2.

19 THE HEARING OFFICER: I'm sorry, just so I can  
20 follow. This is within the big binder, the exhibit you are  
21 referring to?

22 MS. WOOD: This is the--

23 THE HEARING OFFICER: Oh, it's part of the PPA.

24 MS. WOOD: Yes, PPA. It's an exhibit to the PPA.

25 THE HEARING OFFICER: Okay.

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THE WITNESS: Okay.

Q. (BY MS. WOOD:) And if you look at the bottom of 2, it says, "To be Obtained Required Facility Documents" at the bottom. Do you see that?

A. I do see that.

Q. And would you turn to the next page and see what is required?

A. I'm on the next page.

Q. All right. And what does it say, the first line under "Construction and Operations and Maintenance"?

A. "Construction and Operations and Maintenance. Contract for the sale of power generation equipment and related services between Vestas and seller."

Q. Okay. So that one contemplates a Vestas turbine, doesn't it, as being--you have to have a contract with Vestas. And that has to be obtained as a required facility document, doesn't it?

A. Well, currently, yes. And I would state that that's probably an error in our drafting of the agreement.

Q. Well, you could say it was an error. Or you could say, could you not, that you just wanted to finish this PPA without sufficient preliminary work being done so that you actually knew what kind of power--

MR. SOLANDER: I'm going to object--

Q. (BY MS. WOOD:) --you were going to get out of this



1 project.

2 MR. SOLANDER: Is there a question there? I'm  
3 sorry. Ms. Wood is testifying. She didn't ask a question--

4 MS. WOOD: No, I asked a question. It was a  
5 leading question, but it was an appropriate question. But you  
6 interrupted me.

7 THE HEARING OFFICER: Ask your question, Ms.  
8 Wood.

9 Q. (BY MS. WOOD:) It is possible that this  
10 identification of two different turbines in this contract and a third  
11 in the facility study reflects an interest on PacifiCorp's part to  
12 push this through before preliminary work--appropriate  
13 preliminary work had been done. Isn't that true?

14 A. No, that is not true. And I will explain why.

15 Q. I don't want to hear your explanation.

16 THE HEARING OFFICER: I'd like to hear it. Again,  
17 if there's an explanation, this might be helpful.

18 THE WITNESS: You are taking issue with the  
19 required facility documents. And I will submit that the inclusion  
20 of Vestas there was probably an oversight on both parties. The  
21 required facility documents are required to be obtained and  
22 completed prior to the commercial on-line date of the project.

23 We typically perform two levels of due diligence for  
24 these wind projects. Before executing the power purchase  
25 agreement, we ensure that the project is at a certain level of

1 document, where they will be able to meet their obligations  
2 under the power purchase agreement. Then we have a second  
3 due diligence period that occurs prior to deeming the project as  
4 having reached commercial operation.

5 Now, that designation says, "You will now sell to  
6 me, and I will now pay you for the output of that project." Until  
7 they are deemed to have reached commercial operation, we do  
8 not pay them anything.

9 One of the conditions of commercial operation is  
10 that they hold all required facility documents. And Section 3.2.4  
11 states to that effect that they have to maintain for the term all  
12 material rights and entitlements necessary to construct, own,  
13 and operate the facility, and to deliver net output to PacifiCorp  
14 in accordance with this agreement.

15 In short--

16 Q. Well, this agreement--

17 A. --we don't--if I could finish my answer, I'd  
18 appreciate that.

19 Q. No. This agreement doesn't identify a turbine, does  
20 it?

21 THE HEARING OFFICER: I think you've answered  
22 my question. She's got a question for you, Mr. Clements.

23 Q. (BY MS. WOOD:) This agreement does not identify  
24 a turbine?

25 A. Currently, it does identify Gamesa as the maker of

1 the turbine.

2 Q. But not a turbine?

3 A. As drafted, it does not currently identify a specific  
4 turbine. It does include terms and conditions that require a  
5 specific turbine to be selected at a certain date or they are in  
6 default.

7 Q. Oh. We'll talk about whether or not they are in  
8 default. I'm going to go through the contract and see whether or  
9 not they are in default and what happens if they don't select a  
10 turbine.

11 Now, have you personally looked at the physical  
12 challenges of developing a wind turbine site in Monticello?

13 A. I've actually never been to Monticello, no.

14 Q. Okay. So do you know what the amount of wind is  
15 down there?

16 A. I know I can take an estimate of what the wind is,  
17 based on capacity factors that have been submitted to me by  
18 qualifying facilities who are seeking pricing.

19 Q. Okay. Do you know that the amount of wind varies  
20 markedly, depending on the season in Monticello?

21 A. Yes. The wind typically varies, regardless of the  
22 location.

23 Q. Are you aware that the weather conditions in  
24 Monticello create a great challenge for a developer of a wind  
25 project in Monticello?

1 A. I don't know how to respond to that. I don't  
2 develop wind projects in Monticello, so I--

3 Q. Okay. Are you aware of the way that altitude  
4 affects wind turbines in Monticello?

5 A. Again, I don't develop wind projects in Monticello.  
6 But I am aware of how altitude affects wind turbines in general,  
7 yes.

8 Q. And you will agree with me that in order to make  
9 this project a success, Monticello--Blue Mountain has to select  
10 the appropriate turbine for the conditions in Monticello?

11 A. Blue Mountain has to abide by its obligations under  
12 the power purchase agreement.

13 Q. And that's--

14 A. You, yourself, stated that it's not my problem what  
15 turbine they select. And I agree with that.

16 Q. Well, it should be. It's not your problem that they  
17 get the best price on it. It is your problem what turbine they  
18 select.

19 A. Not necessarily, no.

20 Q. Because if the turbine they select doesn't work in  
21 Monticello, everything that's been done to date, including this  
22 PPA, is worthless.

23 A. No, that's not correct. The developer has the  
24 obligation to meet their performance guarantees under the  
25 power purchase agreement. If they want to select a turbine

1 that's less optimal for Monticello, they're welcome to do so.

2 Q. Okay. And is there any reason why, other than  
3 wanting to give some mythical--because you have no  
4 direct-hand knowledge--advantage to a developer to give them a  
5 PPA before they select a wind turbine, is there any advantage to  
6 PacifiCorp to having them execute a PPA without knowing the  
7 wind turbine?

8 A. Advantage, no. However, PacifiCorp's being  
9 compliant with what it views as past Commission practice. There  
10 have been several dockets before the Utah Commission and our  
11 other jurisdictions in the past where this issue of how many  
12 items need to be firmed up and known and measurable at the  
13 time of execution of a power purchase agreement with a  
14 qualifying facility. In fact, we've litigated some of those items  
15 with Pioneer Wind Park in Utah and I believe with Spanish Fork  
16 Wind Park as well on their contracts, where we wanted certain  
17 terms and conditions in the contract. They said I cannot have  
18 those terms and conditions until I'm further down to road.

19 And the direction we received from the Commission  
20 is we need to find a compromise. We need to have enough due  
21 diligence where we have a reasonable assurance they'll  
22 perform. But at the same time, final due diligence can be  
23 performed prior to them coming on-line. The beauty of these QF  
24 contracts is if they don't perform, we don't pay. Our customers  
25 are not at risk unless they perform.

1 Q. They are at risk if you have put them in as a  
2 resource and then they don't perform and you subsequently  
3 have to buy additional power, perhaps at a higher cost, right?

4 A. Yes. And that's why we require security to cover  
5 that exact scenario.

6 Q. Well, we'll talk about whether you required any  
7 security at this point.

8 But let's take a look at Schedule 38. Do you have  
9 that? It's Exhibit 21.

10 Now, Mr. Clements, do you have the authority to  
11 waive Schedule 38--you, personally?

12 A. No. We are bound by Schedule 38, to follow it.

13 Q. Well, let's take a look at B.2 of Schedule 38.

14 A. Okay.

15 Q. "To obtain indicative"--

16 MR. SOLANDER: Say that again?

17 MS. WOOD: B.2.

18 Q. (BY MS. WOOD:) "To obtain an indicative pricing  
19 proposal with respect to a proposed project, the owner must  
20 provide in writing to the Company general project information  
21 reasonably required for the development of indicative pricing,  
22 including but not limited to, (A) Generation technology and  
23 other related technology applicable to the site."

24 Did you give Blue Mountain indicative pricing  
25 without knowing what their generation technology was?

1 A. No, I did not.

2 Q. What is their generation technology?

3 A. It's a wind turbine.

4 Q. So that's all that that means? You don't have to  
5 identify which wind turbine?

6 A. No. You would need to identify which wind turbine  
7 when you provide the information in (b), which is the "net  
8 amount of power to be delivered to the Company's electric  
9 system."

10 Q. All right. Well, that--

11 A. And I would argue that even then, you don't  
12 necessarily need to tell me which turbine you're going to  
13 provide. You are committing to provide energy. What it comes  
14 from is not relevant.

15 Q. Well, you don't know what energy you are  
16 committing to provide, at least in this contract as we will go  
17 through it, because they get to change the amount of energy  
18 they're going to deliver based on the turbine, don't they?

19 A. Yes. We will update the exhibits and the expected  
20 energy, true.

21 Q. All right. So that means you didn't require them to  
22 provide the quantity and timing of monthly power deliveries, did  
23 you?

24 A. Yes, I did.

25 Q. Well, that's going to be determined by the wind

1 turbine, isn't it?

2 A. Yes, it will.

3 Q. Pardon?

4 A. Yes, it will.

5 Q. Okay. You required a 12 by 24, but not one that  
6 was for the wind turbine that they were going to use?

7 A. Well, I think you're not fully understanding how the  
8 process works here.

9 Q. I am confident, Mr. Clements, I understand how this  
10 process works. But I am trying to get you to admit--

11 MR. SOLANDER: I'm going to object again. This is  
12 the third or fourth aside where Ms. Wood is testifying and not  
13 asking questions of Mr. Clements.

14 THE HEARING OFFICER: If you have a question,  
15 please ask it.

16 MS. WOOD: He's saying that I don't understand it.  
17 And I don't understand how somebody can say they're following  
18 Schedule 38 when they have followed none of the--

19 MR. SOLANDER: I'm sorry. Again, she's testifying  
20 now.

21 THE HEARING OFFICER: Ask your question.

22 MR. SOLANDER: Is she responding to my  
23 objection or is she asking a question?

24 THE HEARING OFFICER: Let's just ask the  
25 questions.



1 Q. (BY MS. WOOD:) All right. Did you require them to  
2 provide an on-line date and outstanding permitting  
3 requirements?

4 A. Yes, we did.

5 Q. Well, the on-line date varies, doesn't it?

6 A. No, it does not.

7 Q. Okay. And did you require them to provide a status  
8 of interconnection arrangements?

9 A. Yes, we did.

10 Q. And what is that status?

11 A. I don't recall what it was at the time they submitted  
12 their pricing request. I believe they're in one of the study  
13 phases at this point in time.

14 Q. So they don't have an interconnection agreement,  
15 right?

16 A. I don't believe so, no.

17 Q. All right. And they did not tell you the quantity and  
18 timing of monthly power deliveries, did they?

19 A. They actually did, yes.

20 Q. Well, that depends on the turbine, doesn't it?

21 A. Yes. And when they submitted their pricing  
22 request, they submitted what the expected turbine was at that  
23 point in time, which is what we require in order to obtain  
24 indicative pricing. And then as you move through--

25 Q. No, they submitted--

1 A. --Schedule 38--

2 Q. --they submitted three, didn't they? Three turbines  
3 and one 7 by 24?

4 A. Actually a 12 by 24. And they may have actually  
5 submitted three 12 by 24s. I'd have to go and look at that  
6 spreadsheet. What I suspect occurred after the transmittal of  
7 that request was I said, "Which 12 by 24 do you want us to  
8 use?" And then we used a 12 by 24 to calculate their indicative  
9 price. It's very often the case that the turbine that's used to  
10 request indicative pricing is not the turbine that's selected as we  
11 move through the negotiation process.

12 Q. When was the last time that that happened in the  
13 state of Utah?

14 A. Again, we've only had one wind project in Utah.  
15 And I suspect when they put in their pricing request, they did  
16 not use the Suzlon turbine. I bet they probably used a GE  
17 turbine.

18 Q. Well, you can't testify to that because you don't  
19 remember the contract. Isn't it true?

20 A. Well, it was six years ago? Seven years ago?

21 Q. Yeah. So you can't testify to that. So don't make  
22 assumptions if you can't testify that you know they're true,  
23 okay?

24 THE HEARING OFFICER: Just ask questions,  
25 please.

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MS. WOOD: Okay.

Q. (BY MS. WOOD:) And then if you would look at B.4 under Schedule 38.

A. Okay.

Q. "If the owner decides to proceed forward with the project after reviewing the Company's indicative pricing, it may request in writing that the Company prepare a draft power purchase agreement to serve as a basis for negotiations. In connection with such a request, the owner must provide the Company with any additional project information that the Company reasonably determines to be necessary for the preparation of a draft power purchase agreement, which may include but not be limited to," and it says, "updated information under B.2." Did they provide that to you?

A. Yes, they would have.

Q. You don't know? You can't testify to that?

A. They provided that information to us.

Q. You can testify to that?

A. Yes, I can.

Q. Did they provide you evidence of adequate control of the proposed site?

A. Yes, they did.

Q. How about identification of and timelines for providing governmental permits?

A. Yes, they did.

1 Q. Assurances of fuel supply? Anticipated time lines  
2 for completion?

3 How did they provide you assurance of a fuel  
4 supply?

5 A. They would state that it's wind. And that would be  
6 all the assurance we require because you don't have any  
7 assurance of wind.

8 If this were a natural gas fired facility, we would  
9 require them to demonstrate that they can get natural gas to  
10 their facility. But since it's wind, if they state it's wind, that's all  
11 we require.

12 Q. So you don't require them to provide any wind  
13 data?

14 A. No, we do not. At this stage, no.

15 Q. Before they get a PPA?

16 A. No. The wind data is used to calculate the  
17 expected output of the project, along with the turbine power  
18 curve.

19 Q. So you don't require any wind data before they get  
20 a PPA?

21 A. To the extent that they use the wind data to  
22 calculate the power--the expected output, then that's how the  
23 wind data comes into play.

24 Q. How can they do that without wind data in a  
25 turbine?

1 A. Again, they use the turbine that they are expecting  
2 to use and multiply it by the wind data.

3 Q. What wind data if they don't have any on their  
4 project?

5 A. Most developers have wind data.

6 Q. Do you have know if Blue Mountain has wind data?

7 A. They represented that they did, yes.

8 Q. And you didn't check to see if they did?

9 A. No. Again, that's not a level of due diligence that  
10 we perform. And that's really the beauty of these contracts.  
11 We don't pay unless they deliver. And so whether or not their  
12 wind data is accurate is not really something that matters to us.

13 Q. Now your counsel represented in the first hearing in  
14 this matter that you had done more due diligence on this  
15 contract and on the Latigo contract than any project--

16 MR. SOLANDER: I did not represent that.

17 THE HEARING OFFICER: Ms. Wood, do you have  
18 a question? Rephrase it.

19 Q. (BY MS. WOOD:) Yeah. I'll just say it appears you  
20 didn't do much due diligence on this, did you?

21 A. That is not correct.

22 And it was actually--I made that statement in the  
23 previous hearing on this docket, and let me explain why.

24 We were approached by your client with concerns  
25 about the legitimacy of the leases associated with the Blue

1 Mountain property. We were also aware of the situation that  
2 was occurring with the Redco bankruptcy and the leases that  
3 were purchased by Blue Mountain out of the Redco bankruptcy.  
4 We were a parties to the Redco bankruptcy because we had an  
5 executed PPA with Redco. And so we were following that  
6 proceeding very closely because, as you know, we cannot  
7 terminate a PPA while in bankruptcy. So we were following that  
8 very carefully.

9           Since your client brought to our attention concerns  
10 that they owned the Blue Mountain land leases, we felt it was  
11 appropriate to do additional due diligence on the issue of the  
12 land leases for Blue Mountain. We engaged outside counsel.  
13 We used our own in-house counsel. And we determined that the  
14 land leases that are included in this power purchase agreement  
15 are valid. And that was the extent of our due diligence on that  
16 issue.

17           Q.     Could you be confusing Ellis-Hall and Summit Wind  
18 in that summary?

19           A.     No, I'm not confusing them. I don't know who  
20 Summit Wind is.

21           Q.     Okay.

22           A.     So it would be impossible to confuse them--unless  
23 Mr. Tony Hall is Summit Wind. So I apologize. If he was  
24 representing Summit Wind, then perhaps I was confusing. But I  
25 believe he was representing Ellis-Hall.

1 Q. Okay. And so it appears you've signed another  
2 PPA in the last ten years. And that was with Redco?

3 A. Yes.

4 Q. And did you let them select their turbine after they  
5 executed the PPA?

6 A. I don't believe that one had the option in it, no.

7 Q. Oh, okay.

8 A. And that PPA was not approved by the Commission.  
9 It was withdrawn. And so we don't consider that a PPA that was  
10 ever valid.

11 Q. But it's a PPA which you signed?

12 A. Again we executed it, but it was not a valid, binding  
13 document because it was not Commission approved.

14 Q. Okay. Once again, this is another example --

15 MR. SOLANDER: Objection.

16 THE HEARING OFFICER: I'm just going to ask  
17 that--you know, the line of questioning, if you want to go down  
18 this road, it's fine. But again, we're talking about a PPA  
19 between Blue Mountain and PacifiCorp.

20 MS. WOOD: That's what I'm talking about. And his  
21 filed testimony was that they often let people select a PPA--a  
22 turbine after the PPA was executed so that the developer could  
23 get the best price. And I am trying to show that he has no  
24 evidence of that to back it up.

25 THE HEARING OFFICER: Okay.

1 MS. WOOD: And that is the relationship.

2 THE HEARING OFFICER: I appreciate it. Please  
3 continue with the questions.

4 MS. WOOD: Okay.

5 Q. (BY MS. WOOD:) Now, would you look at No. 5.  
6 "The Company shall not be obligated to provide the owner with a  
7 draft power purchase agreement until all information required  
8 pursuant to paragraph 4 has been received by the Company in  
9 writing."

10 Is that true?

11 A. That is true. That's what it says, yes.

12 Q. And you received all of that information before you  
13 executed this PPA?

14 A. Again, that is information that's required prior to us  
15 providing the draft power purchase agreement--

16 Q. So you had--

17 A. --as stated here.

18 Q. Okay. Did you, in fact, have all of that information  
19 before the draft?

20 A. Yes, we did.

21 Q. Well, you didn't have a generation technology. You  
22 didn't know the megawatts it was going to provide. You didn't  
23 know if there was adequate control of the site. None of those  
24 things did you know.

25 A. Actually, we did know those things because they



1 represented what turbine type they expected to use at that point  
2 in time. And that's very common practice. Because as we move  
3 into No. 6, where we enter the negotiation phase, there's often a  
4 back-and-forth, where the parties will discuss the contract terms  
5 and sometimes change the turbine type, sometimes change the  
6 on-line date. Many things change under No. 6, the negotiation  
7 phase.

8 Q. Okay. Well, what I'm interested in is your signing a  
9 contract and leaving many things to change after the execution  
10 of the contract.

11 Let's go back to page 11.

12 A. Of which document?

13 Q. Of the PPA. And that's something else that's going  
14 to change, once we know what the PPA is.

15 A. Page 11?

16 Q. Of the PPA, "Nameplate Capacity Rating."

17 A. Yes.

18 Q. All right. So that's going to change?

19 A. It may. May not.

20 Q. Do you have any idea if any of the turbines that  
21 they have explored would be appropriate in Monticello?

22 A. No, I do not.

23 Q. You know, if anything is subject to change after the  
24 execution of a PPA, what's the point of charging a customer for  
25 a system impact study and the other studies that you require

1 before the execution of a PPA and a agreed connection  
2 agreement?

3 A. I'm sorry. You're going to have to repeat that  
4 question.

5 Q. Sure. You charge a lot of money to do facilities  
6 studies, system impact studies, don't you?

7 A. Well, again, I think you misunderstand the process.  
8 PacifiCorp Transmission is the entity that administers the  
9 transmission interconnection process. So the studies you are  
10 referring to --

11 Q. If I need that information from you, I'll ask you for  
12 it.

13 A. Well, you said do I charge a lot of money? And I  
14 think I need to make it clear that that's PacifiCorp Transmission.  
15 So no, I do not charge a lot.

16 Q. Okay. PacifiCorp Transmission does, right?

17 A. PacifiCorp Transmission does have fees that are  
18 charged for the studies, yes.

19 Q. Okay. All right. Let's look at 2.2, the "Milestones."  
20 Do you see that?

21 THE HEARING OFFICER: That's 2.2 of the PPA.  
22 Is that--

23 MS. WOOD: Yes, the PPA. I'm sorry.

24 THE WITNESS: Bear with me a moment. My  
25 pages got mixed up.

1 Q. (BY MS. WOOD:) Page 17 at the bottom, "2.2:  
2 Milestones."

3 A. All right. Go ahead.

4 Q. Are you with me there?

5 A. I am.

6 Q. At (a), "On or before the 30th day, following the  
7 effective date, seller shall post the project development security  
8 in the amount described in 8.1." Do you see that?

9 A. Yes, I do.

10 Q. So that's 30 days after a non-appealable order of  
11 the Commission approving this PPA, right?

12 A. Assuming that's what the effective date is defined  
13 as, yes.

14 Q. Okay. So would you look at Section 8.1.1.

15 A. Okay.

16 Q. All right. What is the amount of the project's  
17 security that Blue Mountain is going to have to pass--or pay 30  
18 days after the effective date?

19 A. It will be \$25 per KW of the expected nameplate  
20 capacity rating.

21 Q. But you're not going to know the expected  
22 nameplate capacity rating at this point, are you?

23 A. I actually--contractually right now, we do know.

24 Q. But that's subject to change, depending on what the  
25 turbine is, right?

1 A. Yes. And if they change it, they will need to  
2 change their security.

3 Q. Well--

4 A. Right now, we anticipate that 30 days after the  
5 effective date they will post \$25 per KW based on 80  
6 megawatts. That is a term that is not subject to change. That  
7 is not a term that they can get out of. Thirty days after the  
8 effective date, we are expecting, I believe that would be \$2  
9 million in project development--

10 Q. Okay. But it's not based on megawatts, is it, in  
11 8.1.1? It's based on nameplate capacity rating?

12 A. If you read the contract exactly, it says it's "\$25 per  
13 KW of expected nameplate capacity rating." That is a defined  
14 term in the contract currently. Expected--I'm back on page 7.  
15 "Expected Nameplate Capacity Rating means 80 megawatts,  
16 subject to adjustment, pursuant to Section 2.2(b)." It's currently  
17 defined as 80 megawatts. They have an obligation to post \$2  
18 million of security 30 days after the effective date.

19 Q. But they have a right to change that, based on the  
20 turbine. So they could have 60 megawatts. They could have  
21 56. There is no requirement on them at this point to deliver any  
22 specific number of megawatts. And you don't know any  
23 nameplate capacity rating until you know the turbine, do you?

24 A. There were a lot of questions in there. Should I  
25 take them one at a time?

1 THE HEARING OFFICER: Yeah. That was a bit  
2 compound. Why don't we just start there.

3 Let me ask this, too, just so I can for our court  
4 reporter here. We typically like to give her a break. What are  
5 you thinking in terms of additional time, just so that we may take  
6 a break, say, at 10:45?

7 MS. WOOD: I'm going to be a while with Mr.  
8 Clements. I'm trying to do a lot now so that I will have less  
9 with--

10 THE HEARING OFFICER: So are you thinking, like,  
11 another half, or--

12 MS. WOOD: No, an hour at least.

13 THE HEARING OFFICER: Okay. When I find a  
14 good place for a break, then we'll take a very short break.

15 So anyway, back to the questions.

16 Q. (BY MS. WOOD:) All right. So my question is: You  
17 cannot determine the amount of the security until you know the  
18 nameplate capacity rating of the turbine they select, can you?

19 A. That's not correct.

20 Q. And why is that not correct?

21 A. You are not reading the contract correctly. Section  
22 8.1 requires them to post \$25 per KW of expected nameplate  
23 capacity. That is a defined term in the contract. It is defined  
24 as, "Expected Nameplate Capacity Rating means 80  
25 megawatts." Yes, it's subject to adjustment. But if it's not

1 adjusted, it means 80 megawatts. And if they don't post it, they  
2 will be in default.

3 Q. It says, "Expected Nameplate Capacity Rating  
4 means 80 megawatts, subject to adjustment pursuant to 2.2(b)  
5 below," correct?

6 A. Yes. But that is--

7 Q. So that is subject to change, based on the turbine?

8 A. Yes. And if it changes, then we will adjust the  
9 security that they need to post.

10 MS. WOOD: Why don't we take it here--a break.

11 THE HEARING OFFICER: Let's take a five-minute  
12 break. We're off the record.

13 (A break was taken from 10:28 a.m. to 10:37 a.m.)

14 THE HEARING OFFICER: Let's go ahead and go  
15 back on the record and allow Ms. Wood to proceed with her  
16 questioning of Mr. Clements.

17 Q. (BY MS. WOOD:) Okay. Mr. Clements, you said  
18 that Expected Nameplate Capacity Rating was defined as 80  
19 megawatts. Would you look at the definition of Nameplate  
20 Capacity Rating and read it into the record, please? It's on  
21 page 11 of the PPA.

22 A. Do you want "Expected Nameplate Capacity Rating"  
23 or "Nameplate Capacity Rating"?

24 Q. I want, "Nameplate Capacity Rating."

25 A. Okay. "Nameplate Capacity Rating means the

1 maximum installed instantaneous generation capacity of the  
2 completed facility, expressed in megawatts, when operated in  
3 compliance with the generation interconnection agreement and  
4 consistent with the wind turbine manufacturer's recommended  
5 power factor and operating parameters, as set forth in a notice  
6 from seller to PacifiCorp, delivered prior to the commercial  
7 operation date; and if applicable, updated in a subsequent  
8 notice from seller to PacifiCorp as required for final completion.  
9 The nameplate capacity rating in the facility shall not exceed 80  
10 megawatts."

11 Q. Okay. So there, the nameplate capacity rating is  
12 not to exceed 80 megawatts. So they could come in at 60, 40,  
13 50, 10, right?

14 A. I think the definition stands on its own.

15 Q. Okay. So it's a "not to exceed."

16 A. It stands on its own, again.

17 Q. And it has to--

18 A. The reason it's not to exceed 80 megawatts is  
19 because that's the limit for a qualifying facility.

20 Q. I understand that. But you don't know what they're  
21 going to deliver at this point, do you?

22 A. At this point, I know they're going to deliver 80  
23 megawatts.

24 Q. You don't know that because you don't know what  
25 turbine they're going to select?

1           A.       Again, what they're going to deliver is based on two  
2 terms in the contract; the expected nameplate capacity rating,  
3 which is 80 megawatts, as we've discussed multiple times  
4 already; the expected output, which is currently 220,000  
5 megawatts hours annual; and in Exhibit A, which sets forth  
6 monthly expected output. Those are the binding terms in the  
7 agreement right now.

8           Q.       How can those--No. 1, how can those terms be  
9 binding if the seller has the unilateral opportunity to change the  
10 turbine?

11          A.       They're binding unless they change it.

12          Q.       My precise point. It doesn't come back to the  
13 Commission, does it, if they change the turbine?

14          A.       No. They have a right to change the turbine type  
15 under the agreement. And that is part of the agreement that's  
16 approved by the Commission.

17          Q.       And so all those other terms that depend on the  
18 turbine are not approved by the Commission, are they?

19          A.       No, they are approved by the Commission.

20          Q.       Until they change?

21          A.       Again, the change would be approved by the  
22 Commission. It's part of the contract.

23          Q.       Where is that in the contract?

24          A.       It's Sections 2.8 and 9, I believe. Sorry. It's in the  
25 milestones in this one, I believe. I apologize.



1 Q. Where is it? What page?

2 A. I'm trying to locate it in this one.

3 MR. SOLANDER: Seventeen.

4 THE WITNESS: There we go. Sometimes we do it  
5 as a separate section, sometimes it's in the milestones section,  
6 so.

7 Yeah, "On or before March 31, 2014"--which is a  
8 date that is considerably before the on-line date, I will note--  
9 "seller shall have notified PacifiCorp of the turbine manufacturer  
10 and the model of the turbine selected for the facility." And so  
11 that is a contract term that is part of this PPA, which is before  
12 the Commission for approval.

13 Q. (BY MS. WOOD:) No. My point is they'll notify--

14 MR. SOLANDER: Objection.

15 Q. (BY MS. WOOD:) --PacifiCorp of the--

16 MR. SOLANDER: Objection.

17 MS. WOOD: --of the turbine manufacturer and  
18 model of the turbine--

19 THE HEARING OFFICER: Again, Ms. Wood, if you  
20 have a question, again--

21 Q. (BY MS. WOOD:) I'm going to ask it. My question  
22 was: Does it come back to the Commission for review?

23 And he said, "Yeah, under the milestones."

24 And I say, "No, it doesn't come back to the  
25 Commission for review, does it?"

1 A. No. Nothing would need to come back to the  
2 Commission for review.

3 Q. And, in fact, PacifiCorp doesn't have anything to  
4 say about it either, do they?

5 A. I don't understand that question.

6 Q. Okay. You've signed a contract for something that  
7 may be 80 megawatts or could be as little as 10. You have not  
8 identified a turbine. You haven't studied the turbine, the  
9 unidentified turbine, to see if it works in Monticello. You have  
10 no idea what kind of capacity it's going to have once it's  
11 selected. You don't have--

12 MR. SOLANDER: Objection. I'm going to move to  
13 strike the previous four sentences. Those are either in Mr.  
14 Clements' testimony or part of the record already. But Ms. Wood  
15 testifying to those statements is not appropriate.

16 MS. WOOD: I'm just listing all of the things that do  
17 not get a second review by PacifiCorp.

18 MR. SOLANDER: Are those things that Mr.  
19 Clements has testified to?

20 THE HEARING OFFICER: Ms. Wood, if you have  
21 questions, just maybe break them up.

22 Q. (BY MS. WOOD:) All right. Does PacifiCorp have  
23 any choice? Can PacifiCorp back out of this contract if it  
24 doesn't like the turbine?

25 A. No. Nor can we refuse to enter into the contract in

1 the first place if we don't like the turbine.

2 Q. Can you refuse--does PacifiCorp have any review  
3 of the actual amount of the power that is going to come out of  
4 this project?

5 A. Yes. We review when they submit their QF  
6 application, as we detailed as we went through Schedule 38.

7 Q. No. I mean after the execution of this PPA. You  
8 have no--you are committed to buy whatever they decide is the  
9 nameplate capacity of the turbine that they haven't selected but  
10 they'll select in the future, correct?

11 A. Yes. Our contractual obligation is to purchase the  
12 expected energy from that output.

13 Q. And if they come out with 10, that's what you're  
14 going to buy?

15 A. That is correct.

16 Q. And you'll be short 70?

17 A. We will not be short 70.

18 Q. Well, you'll have 70 that you had put in your  
19 resource plan that will not be there, right?

20 A. No.

21 Q. You won't be getting it from this contract?

22 A. You need to understand our resource planning and  
23 how wind is treated in the resource plan. Wind from a capacity  
24 standpoint is not given a full nameplate capacity contribution in  
25 our resource planning. We will not be short 70, no.

1 Q. Okay. So there's no risk that you would have to go  
2 out and buy 70 megawatts at a later time at a higher price?

3 A. No. There is a risk that we'd have to purchase  
4 energy. Again, resource planning is typically capacity. And what  
5 you are referring to is energy.

6 Q. Okay.

7 A. And so if we do have to go out and purchase  
8 energy, that's what the delay damage--that's what the damages  
9 are in the agreement.

10 Q. But you don't have the delay damages if they select  
11 a wind turbine that only puts out 10 megawatts, do you?

12 A. No, we do not. And they have the right to sell to us  
13 under PURPA. And we feel like that's within their right to do.

14 Q. Okay. So in other words--and all the things that I  
15 said that PacifiCorp would have no review of, the Commission  
16 would have no review of, would they?

17 A. Again, the Commission is reviewing this power  
18 purchase agreement, which includes, as a term, the ability to  
19 change the turbine. And past history--again, I've done quite a  
20 few wind projects.

21 Q. I didn't ask you--

22 A. These developers--

23 THE HEARING OFFICER: That's fine. I don't need  
24 to hear that. That wasn't part of the question. That's fine. We  
25 can move on.

1 Q. (BY MS. WOOD:) We've talked about your past  
2 history in Utah.

3 THE HEARING OFFICER: Let's just move on with  
4 direct questions applicable to this PPA at issue today.

5 Q. (BY MS. WOOD:) Okay. So you are asking the  
6 Public Service Commission to approve a contract that could  
7 result in substantially less than 80 megawatts, couldn't you?

8 A. It could result in less than 80 megawatts, yes.

9 Q. You are asking them to approve a contract that lets  
10 the developer unilaterally change the turbine, don't you?

11 A. Yes. That is one of the terms that's included, yes.

12 Q. All right. And in addition to that, you are asking the  
13 Public Service Commission to approve a contract where most of  
14 the exhibits will change, based on the selection of the turbine.  
15 Isn't that right?

16 A. No, that is not correct.

17 Q. Do you want to go back and look at the exhibits?

18 A. I'd be happy to. In the interest of time, I think  
19 mischaracterization "most" is not the term that I would use.  
20 Some of the exhibits would change.

21 Q. And some--

22 A. I agree with you that some exhibits change.

23 Q. And some very important exhibits. The estimated  
24 monthly output is going to change, right?

25 A. Yes, it would.

1 Q. That's Exhibit A. The guaranteed availability, that's  
2 going to change--could change, couldn't it?

3 A. No, it cannot.

4 Q. That's not going to change, based--

5 A. That's not going to change, no.

6 Q. Eighty-two--it's going to be 82 percent of 10  
7 megawatts?

8 A. Yes.

9 Q. Okay.

10 A. Exhibit B will not change.

11 Q. 3.2.5 would change?

12 A. Certain items in 3.2.5 will change, yes.

13 Q. 6.1 will change?

14 A. Yes. It will change somewhat, yes.

15 Q. And 6.12.2 will change?

16 A. No, it will not.

17 Q. Well, it's going to be, "Damages will be calculated  
18 as a product of the output shortfall and PacifiCorp's cost to  
19 cover for each contract year in which an output shortfall  
20 occurs."

21 You won't know the output shortfall until you know  
22 the nameplate capacity, will you?

23 A. I won't know the output shortfall until they fail to  
24 come on-line and there actually is an output shortfall. But this  
25 exhibit will not change, no.

1 Q. Well, the calculation that will be performed  
2 pursuant to that exhibit will change?

3 A. The calculation will not change. The result of the  
4 calculation may change.

5 Q. Okay. And is there any particular reason why it's in  
6 the public interest for the Commission to approve a PPA in  
7 which so many things will change pursuant to unilateral  
8 decisions made by the developer?

9 MR. SOLANDER: I'm going to object to that  
10 question in that it calls for a legal conclusion from Mr.  
11 Clements.

12 MS. WOOD: No, it doesn't. It's asking for what's in  
13 the public interest.

14 THE HEARING OFFICER: I'm actually extremely  
15 interested in the answer to this question.

16 THE WITNESS: I'm happy to answer it as well.

17 It's in the public interest because this Commission  
18 really has to strike a balance between implementing PURPA and  
19 providing protection to the Utility's customers. That's really the  
20 balance in a QF contract. The Company's customers need to  
21 remain indifferent or unharmed as a result of the QF contract;  
22 yet, the QF needs to have the ability to develop a project and  
23 sell to the Utility, consistent with PURPA. And that's really the  
24 balancing act that this Commission has to perform in these QF  
25 PPAs.

1                   It's actually a bit ironic as I sit here today because  
2 I'm normally sitting here on this stand, in every instance I've  
3 been here before, arguing that we need stricter terms, stricter  
4 terms, and it's a QF arguing that we need less stringent terms,  
5 less stringent terms. And this is the first instance where I'm  
6 having to argue, saying that our terms are stringent enough.  
7 And it's striking that balance that creates the public interest.

8                   It's in the public interest for this Commission to  
9 fulfill its obligation under PURPA. It's in the public interest to  
10 have adequate protections in the contract so that customers  
11 don't pay more or less than avoided cost.

12                   I think that's the key principle that's not being  
13 discussed here. No payment is made to this QF until it comes  
14 on-line, generates power, and delivers that power to the Utility.  
15 At that point in time, we have an obligation to pay, not before  
16 then.

17                Q.       In the meantime, this project, which has so many  
18 things that are not made, sits in the queue and takes up  
19 capacity. Is that in the public interest?

20                A.       You'll have to define what you mean by "queue."

21                Q.       You don't know what the queue is?

22                A.       Well, there's lots of queues. You'll have to be more  
23 specific.

24                Q.       Well, that's the question I'm asking. The  
25 transmission queue.



1           A.     If you're talking about the transmission  
2 interconnection queue, they have a right to be in the  
3 transmission interconnection queue pursuant to the open access  
4 transmission tariff administered by PacifiCorp Transmission.  
5 And as long as they're following the rules outlined in that tariff,  
6 they can stay in the queue.

7           Q.     Okay. And in your testimony, you said that you had  
8 obtained assurances from this project that led you to be  
9 unconcerned about the failure to identify a turbine. What  
10 assurances have you obtained?

11          A.     We've had conversations with them, like we do with  
12 all of our developers, regarding which turbine they're going to  
13 select. And that conversation often goes as follows:

14                   They'll say, "We're getting a good offer from GE,  
15 but we'd rather use this Siemen's turbine because its rotor--or  
16 hub height is better for the site where we're located. But from a  
17 cost-benefit standpoint, we're better off with this particular GE  
18 machine. But we're waiting for a final offer from Siemens or  
19 from Vestas." And we have those types of conversations.

20                   Now, another important point, I think you  
21 mischaracterize--

22          Q.     I've only asked--

23          A.     --no, I need to provide a complete answer here.  
24 And I'd ask that I be allowed to do so.

25                   THE HEARING OFFICER: I'm allowing this

1 because, again, I'm trying to get to the point here, which is why  
2 discretion with respect to some of these terms and conditions--  
3 getting to the point of what this has to do with public interest in  
4 general about this PPA. So I'm going to allow him to because I  
5 need to understand a little bit better.

6 THE WITNESS: That that's the exact key point I  
7 was going to make. I'm not concerned about them building a 10  
8 megawatt project because the likelihood of that occurring is very  
9 small. These developers want to build as big of a project as  
10 they can. They're investing, often, millions of dollars in a  
11 substation. So they want to build as many wind turbines as they  
12 can to leverage that \$2 million investment in their substation.

13 And so in the past when a project has changed  
14 turbine type, they'll go from 80 megawatts to 79.2. Because the  
15 math on a 2.7 megawatt turbine doesn't let them get to 80  
16 megawatts. But they try to get as close to 80 megawatts as  
17 possible. They try to build as big a project as possible in order  
18 to leverage the fixed costs that they've incurred at the site.

19 So I have very little concern that they're going to  
20 build a smaller project. And that's why we're okay, and we  
21 believe these terms are in the public interest.

22 Q. How can you know that they'll be able to land on  
23 the turbine type and buy it if they've been all this time having  
24 these discussions with you about, "Well, we like this one, but we  
25 like that one," as you have described.

1                   Why should they be given more time after the  
2                   execution of the PPA to make business decisions that could  
3                   have been made beforehand and could have been subject to  
4                   appropriate review by PacifiCorp and the Commission?

5                   A.       Why? Because I don't feel like that's necessary in  
6                   order to maintain the issue of public interest. They're committing  
7                   to provide energy to us. If they don't provide it, there are  
8                   ramifications in the contract. What turbine they select  
9                   ultimately is not a concern to us.

10                  Q.       Well, the ramifications are nothing if they don't--if  
11                  they decide just not to go forward, say, "We've selected a  
12                  turbine and it doesn't work"--

13                  A.       No, that's not true.

14                  Q.       --there are no ramifications?

15                  A.       That is not true.

16                  Q.       No further questions.

17                  THE HEARING OFFICER: Mr. Jetter?

18                  MR. JETTER: (Mr. Jetter shook his head in the  
19                  negative.)

20                  THE HEARING OFFICER: Mr. Coleman?

21                  MR. COLEMAN: (Mr. Coleman shook his head in  
22                  the negative.)

23                  MR. RUSSELL: I don't have any questions.

24                  MR. SOLANDER: No redirect.

25                  THE HEARING OFFICER: I just have one question.

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CROSS-EXAMINATION

BY-THE HEARING OFFICER:

Q. You mentioned earlier the issue of performance guarantees. What happens if the counterparty and the PPA does not meet the performance guarantees?

A. Well, then there are liquidated damages, based on the output shortfall.

And for wind contracts, we use what's called a mechanical availability guarantee. You don't know when the wind is going to blow. And so we don't require them to deliver a certain percentage or a certain number of megawatt hours each year. We require them to maintain their turbines in a ready-to-generate mode for a certain percentage of the time. And that's what those percentages are in Exhibit B.

So if one of them is 82 percent, that means in that particular year, the turbine has to be available and ready to generate physically 82 percent of the time throughout the year.

Now, if the wind never blows, they still meet their obligation if the turbine is ready and available to generate. If the wind blows twice as much as expected in the contract, we take their energy in at the contract price. So really, the performance obligation is to maintain your turbines in a mechanical state in which they're able to generate if the wind blows. If they fail to do so, then they pay damages on that.

THE HEARING OFFICER: I have no further

1 questions. You are excused, Mr. Clements.

2 THE WITNESS: Thank you.

3 THE HEARING OFFICER: Okay.

4 So Blue Mountain. Mr. Russell, I believe.

5 MR. RUSSELL: Blue Mountain calls Mike Cutbirth.

6 THE HEARING OFFICER: Raise your right hand.

7 Do you solemnly swear to tell the whole truth and nothing but  
8 the truth?

9 THE WITNESS: I do.

10 THE HEARING OFFICER: Please have a seat.

11 MICHAEL D. CUTBIRTH, having been first duly  
12 sworn, was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY-MR.RUSSELL:

15 Q. Let's start with having you tell us your name and  
16 your business address.

17 A. Mike Cutbirth, 2020 Alameda Padre Serra, Santa  
18 Barbara, California.

19 Q. Are you here as a representative of Blue Mountain  
20 Power Partners?

21 A. I am.

22 Q. Okay. Tell me who Blue Mountain Power Partners  
23 is.

24 A. Blue Mountain Power Partners is a limited liability  
25 company and subsidiary of Champlin Windpower.

1 Q. Who is Champlin Windpower?

2 A. Champlin Windpower is a limited liability company.  
3 And I'm president of Champlin.

4 MS. CERUTI: I'm sorry. Is his microphone on? I  
5 can't hear him.

6 THE HEARING OFFICER: Is the green light on?

7 MS. CERUTI: Thank you.

8 THE HEARING OFFICER: And ultimately, we care  
9 about what the court reporter can hear.

10 Can you hear okay?

11 THE REPORTER: It would be better with the mic.

12 Q. (BY MR. RUSSELL:) Is your mic on now?

13 A. I think so.

14 Q. I think it is, too.

15 What are your duties and responsibilities with Blue  
16 Mountain and Champlin?

17 A. I'm the president of Champlin Windpower and  
18 manager of Blue Mountain Power Partners.

19 Q. And what experience do you have in the wind power  
20 development industry?

21 A. I've been in the wind industry approximately 18  
22 years.

23 Q. And in that approximately 18 years that you've been  
24 in the wind power development industry, have you been involved  
25 in projects that have been developed?

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A. Yes.

Q. And can you tell me--just give me a brief description of some of those projects.

A. It's a variety of projects, about ten of them over the years--in the aggregate, about 800 megawatts. Projects primarily in the U.S., a number of projects in the Midwest, California, in the East Coast, and several projects in Northern and Southern Europe.

Q. Let's talk a bit about the wind project at issue in this docket. Where will it be built?

A. It be will be built in San Juan County, Utah.

Q. And why there?

A. San Juan County has a good wind resource and it has transmission capacity available. And those are two key, important factors for a successful wind project.

Q. When do you anticipate the construction of the project will begin?

A. We would expect to either physically start construction or qualify the project for start of construction by the end of the year.

Q. And when do you expect the project to begin its commercial operation?

A. The commercial operation date in the power contract is, I believe, November of 2015.

Q. Were you involved in the negotiation of the power

1 purchase agreement with PacifiCorp?

2 A. Yes.

3 Q. And during the course of those negotiations--well,  
4 let me step back.

5 Did you request indicative pricing for your power  
6 purchase contract--power purchase agreement with PacifiCorp?

7 A. Yes.

8 Q. And did you receive indicative pricing from  
9 PacifiCorp?

10 A. Yes.

11 Q. And subsequent to receiving that indicative pricing,  
12 did you request that PacifiCorp draft a power purchase  
13 agreement for your review?

14 A. Yes.

15 Q. And did PacifiCorp then provide a draft agreement?

16 A. They did.

17 Q. And what did you do next?

18 A. We worked for a number of months with  
19 PacifiCorp's team to finalize that agreement.

20 Q. And did you provide information to PacifiCorp that  
21 PacifiCorp requested of you?

22 A. We did.

23 Q. And were there any requests that PacifiCorp made  
24 for information that Blue Mountain did not provide?

25 A. I don't believe so.



1 Q. In the course of the negotiations with PacifiCorp on  
2 the power purchase agreement, did Blue Mountain provide  
3 written comments on the draft that PacifiCorp provided?

4 A. We did.

5 Q. And did you send those written comments to  
6 PacifiCorp?

7 A. We did.

8 Q. After you sent those comments to PacifiCorp, did  
9 Blue Mountain and PacifiCorp continue to negotiate regarding  
10 the power purchase agreement?

11 A. Yes.

12 Q. Did Blue Mountain and PacifiCorp eventually reach  
13 an agreement to all terms and conditions of the power purchase  
14 agreement?

15 A. We did.

16 Q. Did PacifiCorp and Blue Mountain both then  
17 execute the power purchase agreement?

18 A. We did.

19 Q. In the negotiations with PacifiCorp regarding the  
20 Blue Mountain PPA, did PacifiCorp require Blue Mountain to  
21 have an interconnection agreement prior to execution of the  
22 PPA?

23 A. No.

24 Q. To the best of your understanding, why has  
25 PacifiCorp not required that Blue Mountain have an

1 interconnection prior to execution?

2 A. That was not a requirement, not one of their  
3 requirements.

4 Q. It was just not a requirement that PacifiCorp  
5 obligated Blue Mountain to have?

6 A. That's right.

7 Q. Okay. Has blue Mountain submitted an  
8 interconnection application?

9 A. Yes.

10 Q. And when did it do that?

11 A. I believe that was the middle of 2012.

12 Q. And did that interconnection application request a  
13 point of interconnection on property controlled by Blue  
14 Mountain?

15 A. Yes.

16 Q. And what did PacifiCorp do with that request?

17 A. They completed a system impact study.

18 Q. Okay. And has PacifiCorp agreed to conduct--or  
19 did PacifiCorp conduct a system impact study at the point of  
20 interconnection on Blue Mountain property?

21 A. They have.

22 Q. Okay. To your knowledge, has Blue Mountain  
23 complied with all applicable Utah laws in connection with its  
24 efforts to obtain a PPA from PacifiCorp?

25 A. My understanding is that we have.

1 Q. And to your knowledge, has Blue Mountain  
2 complied with all applicable Commission orders in connection  
3 with its efforts to obtain a PPA with PacifiCorp?

4 A. To my understanding, yes.

5 MR. RUSSELL: With that, I will pass the witness.

6 THE HEARING OFFICER: Okay.

7 Mr. Jetter?

8 MR. JETTER: I have no questions, your Honor.

9 THE HEARING OFFICER: Mr. Coleman?

10 MR. COLEMAN: The Office has nothing.

11 THE HEARING OFFICER: Mr. Solander?

12 MR. SOLANDER: No questions.

13 THE HEARING OFFICER: Ms. Hayes?

14 MS. HAYES: No questions. Thank you.

15 THE HEARING OFFICER: Is it going to be Mr. or  
16 Mrs. Wood?

17 MR. WOOD: Mr. Wood.

18 CROSS-EXAMINATION

19 BY-MR. WOOD:

20 Q. Good morning, Mr. Cutbirth. You'd agree with me,  
21 wouldn't you, that it is important that PPAs are applied  
22 consistently with the Commission's requirements. Is that  
23 correct?

24 A. I'm not sure I understand that question.

25 Q. As a wind farm developer, it's important to you,

1 isn't it, that PacifiCorp is consistent in its application of  
2 Commission--of the PSC's requirements when it does power  
3 purchase agreements?

4 A. That sounds correct.

5 Q. In fact in your comments, Blue Mountain states,  
6 isn't it true, "At the same time and in the same manner, the  
7 Commission's procedures also protect QF developers by  
8 ensuring that PPAs are consistent with application of  
9 Commission requirements"?

10 MR. RUSSELL: And I'll just object. He's  
11 requesting the witness to confirm something he stated in a  
12 document that's not in front of him. I can provide it if we need  
13 it.

14 MR. WOOD: I think it will be important for him to  
15 have his reply. I understood from our prior agreement that your  
16 reply comments were going to be his testimony.

17 MR. RUSSELL: Well, if you asked him to confirm  
18 that that is his testimony. He says--

19 THE HEARING OFFICER: If you could just get it in  
20 front of him--

21 MR. WOOD: I'm fine with that. He's going to need  
22 it.

23 Q. (BY MR. WOOD:) While he's getting that for you,  
24 Mr. Cutbirth--

25 MR. RUSSELL: May I approach, your Honor?

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THE HEARING OFFICER: Yes.

Q. (BY MR. WOOD:) If you'll look at page 3 in the second paragraph about two-thirds of the way down, the sentence that begins, "At the same time." Will you read that sentence for us?

A. "At the same time and in the same manner, the Commission's procedures also protect QF developers by ensuring that PPAs are consistent with applicable Commission requirements."

Q. And so it's in the public's interest, isn't it, wouldn't you agree, to have those Commission requirements applied consistently?

A. I think so.

Q. And you would agree, wouldn't you, that a Schedule 38, which is one of the Commission's requirements, requires something that should be applied equally to all applicants, would you not?

A. If it's a requirement, I think that's right.

Q. Now, you state in your reply comments on page 12 that, "Schedule 38 does not, as Ellis-Hall--as claimed by Ellis-Hall, require Rocky Mountain Power to conduct rigorous due diligence."

A. Are you asking me to look at a section?

Q. Yes. Your reply comments on page 12. The section that begins--it's the second paragraph. It says,

1 "Required Due Diligence." Let me just read it for you, and you  
2 tell me if I read it correctly.

3 A. Okay.

4 Q. "Schedule 38 does not, as claimed by Ellis-Hall,  
5 require Rocky Mountain Power, RMP, to conduct rigorous due  
6 diligence."

7 A. That's what this states.

8 Q. Is that correct?

9 A. Well, these are not my comments. These are  
10 comments that were put together by our attorney. And it's my  
11 understanding that what they've stated here is correct.

12 Q. Is there anything in your reply comments that you  
13 would disagree with what your attorney has written?

14 A. Well, I think generally I would agree with their  
15 comments.

16 Q. But you can't see any specific examples that you  
17 don't agree?

18 A. No, not without reading the entire thing.

19 Q. Did you read your attorney's reply comments before  
20 they filed them?

21 A. I did.

22 Q. And did you give them permission to file the reply  
23 comments?

24 A. I did.

25 Q. And did you believe they were all true and correct

1 at the time that it was filed?

2 A. I think so.

3 Q. You think so, or--I just want to make sure. Are you  
4 sure?

5 A. I think they were correct.

6 Q. Okay. Now, Mr. Cutbirth, if you would turn to--  
7 there's a binder there, the smaller binder. It contains our  
8 objection to your reply comments. I'm going to have you look at  
9 the documents, Document 1.

10 THE HEARING OFFICER: Is it 1 or is it a letter  
11 number?

12 MR. WOOD: It's actually the Document 1 is the  
13 objection and the exhibit to that document is A.

14 THE HEARING OFFICER: So under the tabs,  
15 what's the best way--

16 MR. WOOD: Tab A.

17 Q. (BY MR. WOOD:) Did you read our objection by  
18 chance, Mr. Cutbirth?

19 A. No.

20 Q. Okay. In our objection, we cite to this letter. And  
21 this is a letter from Rocky Mountain Power--excuse me, this is to  
22 the Public Services Commission from the Utah Division of Public  
23 Utilities.

24 Have you seen this document before?

25 A. No.

1 Q. Would it surprise you to know that in this document  
2 they took the position that Schedule 38 does require PacifiCorp  
3 to conduct rigorous due diligence?

4 A. I don't know what this document says, but that's not  
5 my understanding of Schedule 38.

6 Q. Okay. Now, in your response on page 11--if you'd  
7 turn back to your response. At the very bottom of the response,  
8 it says "The objection then blatantly misrepresents another  
9 portion of Schedule 38 by claiming that an applicant also must  
10 provide specific project information listed in Section I.B.4 and  
11 falsely alleges that Blue Mountain failed to provide the required  
12 information." Do you see that sentence?

13 A. Yes.

14 Q. Is it your belief that that sentence is correct?

15 A. Well, I don't know what the objection is. But, you  
16 know, we certainly did provide information to PacifiCorp as  
17 requested.

18 Q. Yeah. In fact, contrary to that sentence, PacifiCorp  
19 required you to provide the information in I.B.4. Isn't that  
20 correct?

21 A. Well, I don't know what I.B.4 is.

22 Q. Let's look at an email that perhaps will refresh your  
23 recollection. If you'll turn to the other binder. Exhibit No. 26.  
24 It's an email exchange between you and Mr. Clements.

25 Now, the first--I want you to turn the first page to



1 the second page. And at the bottom of the second page, there's  
2 an email from Mr. Clements to you dated October 30, 2012.

3 And it says, "Mike, in response to your request for  
4 a draft form PPA, Section I.B.4 of Schedule 38 requires that the  
5 developer provide the following information in order to receive a  
6 draft power purchase agreement.

7 "A. Updated information of categories described in  
8 B.2.

9 "Evidence of adequate site control of proposed site.

10 "Identification of time lines for obtaining any  
11 necessary government permits, approvals, or authorizations.

12 "Assurances of fuel supply and motivating force.

13 "And anticipated timeliness for completion of key  
14 project milestones."

15 Did I read that correctly?

16 A. Yes. That's a portion of the email.

17 Q. So in your objection--excuse me. In your response,  
18 when Blue Mountain says, "The objection then blatantly  
19 misrepresents another portion of Schedule 38 by claiming that  
20 an applicant must provide the specific project information in  
21 I.B.4," that's not a blatant misrepresentation because you were  
22 required to provide the information in I.B.4. Isn't that correct?

23 A. Well, that's what the email says.

24 Q. So you were required to provide that information?

25 A. Yes.

1 Q. And now, you also--the last part of that sentence  
2 says, "...and falsely alleges that Blue Mountain failed to provide  
3 the required information."

4 Is there any information that was missing in your  
5 applications?

6 A. And you're looking at which?

7 Q. The email--excuse me. I'm looking at page 11 of  
8 your reply comments. The last sentence I just read ends with,  
9 "...and falsely alleges that Blue Mountain failed to provide  
10 required information."

11 A. Well, I think we did provide the information they  
12 requested.

13 Q. Did you provide all of the requested information?

14 A. Well, I believe so.

15 Q. Okay. Now, Mr. Cutbirth, is it possible that  
16 PacifiCorp gave you indicative pricing without all of the  
17 information required by Schedule 38?

18 A. I suppose it's possible.

19 Q. Okay. Now, on your--I'm going to turn you back to  
20 your comments. On page 15 of your comments, if you look at  
21 the final paragraph, it states, "Ellis-Hall has not provided a  
22 shred of evidence that Blue Mountain's PPA violates any  
23 applicable requirement of Schedule 38, Commission orders, or  
24 Utah law. Ellis-Hall has not demonstrated that it was treated in  
25 a discriminatory or improper manner. Indeed, the evidence

1 demonstrates the opposite."

2 Is that statement true that Ellis-Hall has not  
3 provided a shred of evidence?

4 A. Well, my understanding is that a number of  
5 documents and information were requested of Ellis-Hall, both  
6 from Rocky Mountain and from our counsel, and you refused to  
7 provide it.

8 Q. How would our documents evidence violations of  
9 law by Blue Mountain or PacifiCorp relating to Blue Mountain's  
10 PPA?

11 A. Well, I think the statement here is that Ellis-Hall  
12 has not provided a shred of evidence that our PPA violates any  
13 applicable Schedule 38.

14 Q. Did you read our objection?

15 A. I can't really remember whether I read it or not.

16 Q. So you don't know whether that statement is true or  
17 not because you can't remember whether you read the  
18 objection?

19 THE HEARING OFFICER: Can I ask a question  
20 here? I know we discussed this at the prehearing conference.  
21 But my understanding was that with respect to comments, reply  
22 comments, that witnesses would be adopting their sworn  
23 testimony, facts, et cetera, not legal arguments. I just want to  
24 make clear that we're not...

25 MR. WOOD: I'm not trying to lead this into a legal

1 argument. It's just the factual statement that there's not a shred  
2 of evidence.

3 THE HEARING OFFICER: Okay.

4 MR. WOOD: I mean, we filed a 20-page objection  
5 with a lot of exhibits.

6 THE HEARING OFFICER: Understood. Please  
7 continue. But let's--

8 MR. WOOD: If it's argument by his counsel, I'm  
9 fine with having him say that and moving right on.

10 THE HEARING OFFICER: That's fine.

11 Q. (BY MR. WOOD:) Is that what it is, Mr. Cutbirth?  
12 Was that just argument by your counsel?

13 A. Well, this was prepared by our counsel. And my  
14 understanding is that Ellis-Hall was requested to produce  
15 evidence supporting its claims by both Rocky Mountain and our  
16 counsel and refused to do so.

17 Q. Okay. Mr. Cutbirth, in your reply comments on  
18 page 2, it states, "Although Ellis-Hall's specific motives are not  
19 disclosed or acknowledged, its desperate hostility towards a  
20 competing project suggests an improper economic or  
21 competitive motive and raises serious questions about the bona  
22 fides of its objections."

23 Do you have any personal knowledge about  
24 Ellis-Hall's motivations for filing its objection?

25 THE HEARING OFFICER: I need to stop this line

1 of questioning because I need to make a statement here.

2 There is a dispute resolution process within  
3 Schedule 38 for suppliers of energy if they have an issue with  
4 PacifiCorp. I just want to make sure we're clear that we're  
5 focused, again, here on the PPA at hand, which is 115. It's  
6 Blue Mountain and PacifiCorp. So I just want to make sure that  
7 if there's issues with respect to complaints--

8 MR. WOOD: I understand that, your Honor.

9 THE HEARING OFFICER: I just want to make sure  
10 we're on a--I understand that every party has its due right to,  
11 but I just want to make sure that we're focused on the issues  
12 that are pertinent here.

13 MR. WOOD: I understand that, your Honor. I  
14 guess the point that I'm trying to make is that the reply  
15 comments are full of statements, factual statements, about  
16 motivations or the reasons why people file--have filed an  
17 objection. And I'm trying to explore whether or not Mr. Cutbirth  
18 has any factual basis for those statements. And that's important  
19 because, as your Order of Intervention notes, parties are  
20 allowed to intervene in these proceedings if they follow the Utah  
21 rules of civility. And one of the rules of civility is that you do  
22 not impugn motivations to an opposition without a factual basis.  
23 So I want to lay a foundation.

24 THE HEARING OFFICER: I recognize that. But  
25 again, let's just--you know, we want to talk about the public

1 interest of these PPAs. So I just want to make sure that we're  
2 not getting too far afield. That's fine if you want to lay a  
3 foundation or rebut anything that you feel is necessary. Let's  
4 just keep that in the back of our mind as we're going through  
5 today.

6 MR. WOOD: Okay.

7 Q. (BY MR. WOOD:) Mr. Cutbirth, how long have you  
8 been working on your wind project in Monticello?

9 A. Since the first quarter of 2012.

10 Q. That's when you first began working on the project?

11 A. That's the time that we first became aware of the  
12 opportunity.

13 Q. And how did you become aware of that opportunity?

14 A. It was an opportunity that was referred to us by a  
15 meteorologist that has done a fair amount of work for us over  
16 the years.

17 Q. And who is that meteorologist?

18 A. Rich Simon.

19 Q. Was that the only source of your knowledge about  
20 the project?

21 A. At that time, yes.

22 Q. Did you ever learn about the project through the  
23 Redco bankruptcy or individuals involved in the Redco  
24 bankruptcy?

25 A. Shortly after the opportunity was referred to us, we

1 contacted the trustee of Redco.

2 Q. Okay. And what did you ask the trustee?

3 A. Well, I don't remember any specific question, but  
4 basically advised that Redco was interested in selling some of  
5 their assets that had not already been sold, some of which were  
6 for a proposed wind project in San Juan County. And they had  
7 opened a data room and were interested in discussing the  
8 opportunity with prospective buyers.

9 Q. And you eventually purchased some lease  
10 agreements through the Redco bankruptcy. Isn't that correct?

11 A. We acquired a number of assets, including an  
12 assignment of some lease options, some wind data permits, and  
13 other assets.

14 Q. Now, I just want to clarify something from Mr.  
15 Clements' testimony. You are aware that there has been some  
16 dispute about the ownership of some of those lease  
17 agreements. Is that correct?

18 A. I'm aware that during the sale process, during the  
19 auction process in the bankruptcy court, three of the landowners  
20 that were parties to Redco lease options entered into leases or  
21 lease options with Ellis-Hall. And it's my understanding that  
22 Ellis-Hall and those three parties were subsequently sued by the  
23 trustee.

24 Q. Now, I want to clarify that. Is that Ellis-Hall that  
25 entered into the lease option or a company called Summit Wind?

1 A. That, I don't know.

2 Q. You don't know the difference between the leases  
3 asserted by Summit Wind and the leases asserted by Ellis-Hall?

4 A. I don't know the ownership differences there.

5 Q. Would you--

6 THE HEARING OFFICER: Mr. Wood, would you  
7 just help me understand? I'm not trying to interrupt your flow  
8 here. But I just want to--again, trying to understand what these  
9 issues of the bankruptcy court and Ellis-Hall have to do with this  
10 PPA today.

11 MR. WOOD: This is an extremely important issue.

12 THE HEARING OFFICER: All right.

13 MR. WOOD: The issue is that Mr. Clements  
14 testified that there is a dispute over land between Ellis-Hall in  
15 the bankruptcy. Ellis-Hall has--the land that is subject to  
16 Ellis-Hall's leases is not in dispute in the bankruptcy. There is a  
17 second company called Summit Wind. And it is Summit Wind  
18 who has a dispute ongoing in the bankruptcy court regarding the  
19 ownership of Summit Wind. And that is very important because  
20 that issue, your Honor, has been muddied throughout all these  
21 proceedings. Ellis-Hall and Summit Wind are treated as the  
22 same companies, and they are, indeed, not. In fact--

23 THE HEARING OFFICER: Let me just--okay, so I'm  
24 with you there. So help me tie that to what that has to with the  
25 PPA at issue here. I understand there's been discussions.



1 MR. WOOD: It comes, your Honor, specifically to  
2 the issue that Blue Mountain initially filed its applications for  
3 property that was subject to Summit Wind's leases.

4 THE HEARING OFFICER: Okay. That's helpful.

5 MR. WOOD: And it has since moved its project  
6 further to the north to take those disputed leases out of the  
7 project.

8 But if I can turn Mr. Cutbirth to a map he prepared,  
9 which is Exhibit 35, you will see that the land information is laid  
10 out.

11 THE HEARING OFFICER: And again, this goes to  
12 the issue of--is it site control? Just help me--

13 MR. WOOD: Site control, wind data, all sorts of--

14 THE HEARING OFFICER: Okay. That's helpful.

15 Q. (BY MR. WOOD:) So Mr. Cutbirth, are you familiar  
16 with this map?

17 A. Generally, yes.

18 Q. And this is a map that Blue Mountain submitted to  
19 San Juan County as part of its conditional use permit?

20 A. I don't know if this map was submitted to San Juan  
21 County or not. This is dated January of 2013, so it--

22 Q. And the title says "Updated CUP Map"?

23 A. I see the title.

24 Q. Now, if you look, Mr. Cutbirth, you have a  
25 designation on this map for shading in--I'm going to describe it

1 as an orange/red hue--I don't know how it came out on your  
2 copy--for Ellis-Hall's land. Is that correct?

3 A. I see the orange shade.

4 Q. So that's Ellis-Hall's land. And now we see shading  
5 that has some yellow to it. And those yellow leases are the  
6 disputed leases, are they not, or the leases that the landowners  
7 objected to in the bankruptcy?

8 A. Well, I think that there were just three landowners  
9 that there was a dispute in the bankruptcy. I believe that was  
10 Richard Francom and Clay Christiansen and SSP.

11 Q. If you would--if you'd look at, Mr. Cutbirth, the  
12 Exhibits 1 through 20 in your binder. That might refresh your  
13 recollection. I don't want you to have to go through each one of  
14 those. But we've attached all those objections so the record is  
15 clear on what objections were made.

16 But in any event, these are shaded yellow and  
17 these are the leases that signed up with Summit Wind, correct?

18 A. Well, we indicated Ellis-Hall. And I don't know--I  
19 was under the impression that the two companies were related  
20 or under common control or owned by Tony Hall.

21 Q. But that's not what your map says. Your map  
22 designates the Ellis-Hall lease--acquired leases in red. And  
23 these disputed leases are in yellow. So if you believed that that  
24 was all Ellis-Hall land, you probably would have shaded that  
25 orange, right?

1 A. Well, those leases that you are referring to in  
2 yellow that were not crosshatched, were part of what was  
3 assigned to us, lease options that were assigned to us by the  
4 bankruptcy court.

5 Q. Mr. Cutbirth, I don't want to dispute that with you. I  
6 understand that Blue Mountain has a position that those leases  
7 are validly theirs. And I don't think we need to argue that point.

8 But I'm just asking if those are the lands which  
9 there has been a dispute raised about, not--I'm not asking you  
10 to opine on how valid you think that dispute is.

11 A. Well, I think there is a dispute with those three  
12 landowners and whoever the party is, Ellis-Hall, Summit, and the  
13 trustee in the bankruptcy court. But those are not parcels that  
14 are part of the project that we proposed and that are included  
15 under our power contracts. So they're really not something  
16 that's even a part of what constitutes our project.

17 Q. Okay. And that's because you had two conditional  
18 use permits that were denied over this dispute over land, so you  
19 filed a third conditional use permit to change the scope of your  
20 project in order to eliminate that problem. Is that correct?

21 A. No, that's not correct.

22 Q. Well, let's break it up, then. Did you have a  
23 conditional use permit denied?

24 A. We submitted a conditional use permit application  
25 in the summer of 2012. And it was approved by the County.

1 And then subsequently, as a result of complaints made by  
2 Ellis-Hall, the County decided to re-notice the hearing. And the  
3 second time the CUP application came before the County, it was  
4 again unanimously approved.

5 And then approximately 30 days later, Ellis-Hall  
6 filed an appeal, citing a number of issues or deficiencies that  
7 they claimed existed.

8 Q. And your CUP was denied at that point, correct?

9 A. The appeal was upheld. I don't know exactly the  
10 right legal term for it. But the County did not uphold the  
11 approval and asked us to re-file the application--which we did--  
12 and, among other things, remove those three landowner parcels  
13 that were part of the Ellis-Hall and Redco dispute.

14 Q. Mr. Cutbirth, do you have MET towers on your  
15 property?

16 A. Yes.

17 Q. Where are the MET towers located?

18 A. There's a tower designated "M2" on the north end  
19 of the project boundary.

20 Q. Can you tell me roughly what quadrant that's found  
21 in?

22 A. Well, if you look on that same map that you are  
23 referring to on the top string of turbines, next to Turbine No. 7  
24 there's a pink square called "M2."

25 Q. And when was that MET tower installed?

1 A. I think that's been in operation for several years,  
2 three or four years.

3 Q. Are you confident about that, Mr. Cutbirth?

4 A. I'm confident that it's been up there several years.

5 Q. And has it been supplying wind data during that  
6 time?

7 A. Yes.

8 Q. Do you have any other MET towers on your  
9 property?

10 A. Not on the proposed project area. However, as a  
11 part of our acquisition from Redco, we acquired wind data from  
12 MET towers in the surrounding area, both north of the project  
13 area and also south of the project area.

14 Q. And those MET towers on the south part of the  
15 project area, where are those located?

16 A. I believe the two towers to the south are located on  
17 the Rorings' property.

18 Q. That would be Ellis-Hall's property, correct?

19 A. I understand that Ellis-Hall has a lease or lease  
20 option with the Rorings.

21 Q. And those leases are not in dispute, correct?

22 A. We have no dispute with them.

23 Q. Okay. So at least some of the wind data that you  
24 rely on for your project is derived from Ellis-Hall's land, correct?

25 A. Well, I wouldn't call it Ellis-Hall's land. It's wind

1 data from those MET towers, which was the property of Redco.  
2 And that wind data was sold to us as a part of our acquisition.

3 Q. Now, I understand there's a dispute about what was  
4 sold to you. But from a practical standpoint, Mr. Cutbirth, what  
5 help does it have for you to have wind data down on Ellis-Hall's  
6 land, which is miles from your project? How could you even rely  
7 on that data, even if it is yours?

8 A. Well, our meteorologist is using data from both the  
9 MET tower on site, as well as the MET tower to the north and  
10 also to the south. So it gives a pretty good picture of the wind  
11 resource in the area.

12 Q. But the topography of your site changes  
13 significantly, doesn't it?

14 A. Well, I don't know that I'd agree with that.

15 Q. What is the--do you know what the elevation is in  
16 the southern part of your project?

17 A. It's generally around 7000 feet.

18 Q. And how about in the northern end of your--

19 A. I don't know the height, but approximately the  
20 same.

21 Q. And do you know how to read the topo map?

22 A. Generally.

23 Q. And you see that the northern part of your project  
24 seems to be banded by some pretty steep hills and relief. Do  
25 you see that?

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A. Sure.

Q. You don't believe those would have any effect?

A. Effect on what?

Q. On the wind.

A. Oh, I'm sure it has an effect on the wind. But that's taken into account by our meteorologist.

Q. So it's your testimony that your meteorologist can make those calculations, even though there isn't any MET towers on a significant portion of your project, simply by looking at other MET towers on other people's lands?

A. Well, we do have a MET tower on site. And yes, I do believe our meteorologist can do that. He's one of the leading meteorologists in the world. And subsequently, we've erected several additional MET towers on that property. So actually, we have a lot of data from the project area.

Q. Did your meteorologist work for Redco?

A. Yes.

Q. And what is his name again? I'm sorry if you've already stated it. I didn't catch that.

A. Rich Simon. And the Company is V-Bar.

Q. V-Bar. Do you know Mr. Simon's educational background by chance?

A. Generally.

Q. What is his background?

A. He's--and I can't remember the college. I think it

1 was Berkeley, math major. He's a meteorologist with a very  
2 extensive CV.

3 Q. Okay. Mr. Cutbirth, your reply comments stated  
4 that there are no deficiencies in your power purchase  
5 agreement. Is that true?

6 A. I don't believe there's any deficiencies in it.

7 Q. Now, your project has not selected a wind turbine.  
8 Is that true?

9 A. Well, our project is based on the Gamesa turbine.  
10 That is the project we expect to use. We have the right under  
11 our PPA to change that, but that is where our expectation is.

12 Q. Does Gamesa only makes one turbine?

13 A. They make a number of different turbines.

14 Q. So your PPA hasn't selected a turbine, it's selected  
15 a turbine manufacturer. Isn't that correct?

16 A. The turbine that we have contemplated using for  
17 the project in the power contract is the Gamesa turbine.

18 Q. Which Gamesa turbine?

19 A. The G114.

20 Q. Was that turbine studied in your system impact  
21 study?

22 A. No.

23 Q. Was it studied in your facilities study?

24 A. We have advised PacifiCorp Transmission on  
25 several occasions that we expect to change the turbine for



1 purposes of our interconnect agreement. And they told us just  
2 to stand by until we have a final turbine contract ready to go,  
3 and they can make that additional change quickly. That's a  
4 matter of routine course that they do that.

5 Q. Do you remember how much it cost you to have a  
6 system impact study?

7 A. It seems like it was \$50,000.

8 Q. And what about the facilities study?

9 A. I think that was \$100,000.

10 Q. So you have given deposits to PacifiCorp--and I  
11 understand they're deposits, is that right? You deposit and then  
12 you get the amount back that's not used?

13 A. I think that's a correct characterization.

14 Q. So you pay PacifiCorp roughly \$150,000 to study  
15 your project. But PacifiCorp's told you to just hold off on  
16 making a turbine selection, that that can be done at a later  
17 date?

18 A. That's not what I said. And what we advised  
19 PacifiCorp Transmission on several occasions was that we  
20 expected to use a different turbine than what was originally  
21 studied. And they told us that's not a problem for them, just to  
22 advise them when we have that final turbine selected.

23 Q. So what good is the study, Mr. Cutbirth, of a GE  
24 turbine at your wind site when your PPA says that you're going  
25 to be using a Gamesa turbine?

1 A. I think it addresses the important issues from our  
2 standpoint and PacifiCorp's standpoint. And my understanding  
3 is the changing of the turbine is not going to make any  
4 significant impact on that.

5 Q. How do you--what basis do you have that changing  
6 the turbine will not significantly change the data that was  
7 reached in the system impact and facilities study?

8 A. The data?

9 Q. Yeah. I mean, to do the studies, you have to  
10 designate a turbine, correct?

11 A. Yes.

12 Q. And the studies are, in part, based on the turbine  
13 you select--

14 A. Yes.

15 Q. --is that correct?

16 So if you switch turbines, that data is not going to  
17 be consistent. Isn't that correct?

18 A. Well, I don't really think that's the case. I think  
19 these are similar class turbines. I think the results of the  
20 studies would be basically the same.

21 Q. Similar class, however, has no bearing on similar  
22 performance. Isn't that correct?

23 A. Oh, I don't think that's the case.

24 Q. So it's your testimony that two classes of the same  
25 turbine will produce the same performance?

1 A. I didn't say that.

2 Q. Okay. What factors would change the performance  
3 in your opinion?

4 A. Well, different turbines have different performance  
5 characteristics. But for the turbines that we're looking at, I think  
6 they're the same class of machine.

7 Q. Let me just understand here. Does the Gamesa  
8 turbine have the same blade length as the GE turbine?

9 A. No.

10 Q. Does it have the same tower height?

11 A. It may.

12 Q. But you don't know?

13 A. Well, there's several different towers that you can  
14 select from.

15 Q. Which one did you select?

16 A. Well, we haven't made a final selection yet.

17 Q. Which one was studied?

18 A. We've run our analysis on several different towers.  
19 And I can't remember which one, as I sit here.

20 Q. How about blade angle? Do they have the same  
21 blade angle?

22 A. That, I don't know.

23 Q. How about efficiency?

24 A. And what do you mean by "efficiency"?

25 Q. How efficient are they at the Monticello--I mean, all

1 this depends, doesn't it, Mr. Cutbirth, how efficient a turbine is,  
2 about the conditions of the site? Altitude? Wind density?  
3 Moisture content? How hot it is in the summer? How cold it is  
4 in the winter? Those are all factors, aren't they?

5 A. Well, if you mean production, I mean, they're all  
6 similar kind of production profiles within a few percent of each  
7 other.

8 Q. But two turbines will not perform the same?

9 A. Not identically.

10 Q. In fact, if the turbine blades are significantly  
11 different, they'll perform drastically different at this altitude.  
12 Isn't that correct?

13 A. I don't know that I'd agree with that statement.

14 Q. What are some of the challenges to producing a  
15 wind farm site up in Monticello, Mr. Cutbirth? Is it a good site?

16 A. I guess it depends on what your definition of "good"  
17 is.

18 Q. Well, in the industry. I mean, you've testified that  
19 you have a lot of experience in this industry. You have wind  
20 projects in Europe and other parts of the United States. How  
21 does this compare?

22 A. Well, the wind resource is okay. And we think the  
23 economics will work. It's certainly not the best wind site we've  
24 ever worked on. There's transmission capacity in this area.  
25 The land is zoned properly for the use. So there are certainly a

1 lot of factors that make this a good potential wind project.

2 Q. So it's a good wind project from your standpoint  
3 because there is capacity for the project and there's some wind.  
4 Is that correct?

5 A. And the power buyer willing to purchase power at a  
6 price that makes economic sense.

7 Q. And if they change the indicative pricing on you--  
8 let's say your indicative pricing dropped down to \$40, this  
9 project wouldn't make any sense to you, would it?

10 A. I don't think that--if everything else was the same, I  
11 don't think that would make economic sense.

12 Q. And the reason for that, really, is that this site--  
13 Monticello is a difficult site because it's very high altitude, isn't  
14 that correct, for a wind project?

15 A. It's a high-altitude site, but that doesn't mean that  
16 you can't build there. There's been plenty of projects built at  
17 high altitudes.

18 Q. But this is at the upper limit of altitude, isn't that  
19 correct, for product manufacturers?

20 A. We've worked on sites with higher altitudes than  
21 this.

22 Q. And it does not have the strongest wind profile. Is  
23 that correct?

24 A. Compared to some parts of the country, it's not  
25 anywhere near as good a wind resource.

1 Q. And it's very dry here in Utah. That also doesn't  
2 help, isn't that correct? You want more moisture in the air?

3 A. Well, that's--I mean, I'm not sure that's a huge  
4 factor. But, you know, I guess that may contribute  
5 incrementally.

6 Q. And we've got very cold summer--I mean very cold  
7 winters down there in Monticello and warm summers, is that  
8 correct, and that plays a factor?

9 A. It's a factor. But again, it's, relative to other sites,  
10 not anywhere as near as challenging as some.

11 Q. Isn't it true that some wind manufacturers simply  
12 will not provide turbines, given this site's profile?

13 A. Some turbines probably would not work at this site  
14 and altitude.

15 Q. Okay. Now, as you stated in your January 11, 2012  
16 system impact study, you selected the GE 1.64 wind turbine. Is  
17 that correct?

18 A. That's what was studied in the report, even though I  
19 would say certainly since early this year, it was our feeling that  
20 the Gamesa turbine was going to be the turbine we would select  
21 and build.

22 Q. And what does 1.68 in that turbine model mean?

23 A. That's the nameplate capacity.

24 Q. Okay. And what is the turbine that--even though  
25 your PPA doesn't designate a Gamesa turbine--what is the

1 turbine you are looking at now?

2 A. We expect to use the Gamesa G114.

3 Q. G114. So that has a significantly different  
4 nameplate capacity, doesn't it?

5 A. It's a 2 megawatt nameplate capacity.

6 Q. And that's different than the nameplate capacity of  
7 the GE 1.6 turbine that was studied. Isn't that correct?

8 A. Yes.

9 Q. In fact, isn't it true, Mr. Cutbirth, that as late as  
10 June 14, you hadn't settled on a turbine. Isn't that correct?

11 A. Well--

12 Q. Of this year, sorry. June 14 of 2013.

13 A. It would be our plan and our expectation that we  
14 would use the Gamesa turbine in this project, even though we  
15 have the flexibility and right to change the turbine type under  
16 our power contract. So we continue to look at other  
17 alternatives, but the Gamesa turbine is what we expect to use.

18 Q. So there's really no pressure right now. You have  
19 time to change when you feel it's best?

20 A. I'm sorry, I didn't hear the last part of that question.

21 Q. There's no real rush right now for you to select a  
22 turbine?

23 A. We're working very actively on finalizing the turbine  
24 selection.

25 Q. Okay. Now, if you would turn to Section 3.2.5. You

1 may have heard the testimony on this from Mr. Clements. Your  
2 contract says that you're going to purchase your equipment from  
3 Vestas?

4 A. Where are you looking?

5 MR. WOOD: Do you have a copy of his power  
6 purchase agreement?

7 MR. RUSSELL: Yep.

8 MR. WOOD: I apologize. We didn't make a copy of  
9 that for the witness.

10 Q. (BY MR. WOOD:) Now if you look at 3.2.5, at the  
11 bottom, it says, "Licenses, permits, and authorizations that have  
12 been identified in Exhibit H, as contained in the other  
13 documents on Exhibit 3.2.5," and then it gives you, on the next  
14 page, "Construction and operations and maintenance." And it  
15 states, "Contract for the sale of power generation equipment  
16 and related services between Vestas and seller."

17 I apologize if I read that and you weren't quite  
18 there.

19 THE HEARING OFFICER: Mr. Wood, while he's  
20 looking it up, do you have any potential idea about how much  
21 additional time you need?

22 MR. WOOD: I'm happy to take a break now.

23 THE HEARING OFFICER: No, it's okay. I'm just  
24 wondering if we need--I'm trying to--we may go to noon or  
25 12:30. I just wasn't sure. I'd like to have a clean break, rather



1 than not. I wasn't sure if you were thinking...

2 MR. WOOD: I think it can be done by 12:30.

3 THE HEARING OFFICER: Okay. Is that okay with  
4 the parties if we just do that, take a lunch at 12:30? Or is  
5 anyone dying?

6 MS. HAYES: Your Honor?

7 THE HEARING OFFICER: Yes.

8 MS. HAYES: Is it still all right if we hear from  
9 Sarah Wright before lunch?

10 THE HEARING OFFICER: Yeah, that's fine.

11 MR. WOOD: I'm happy to break now and take her  
12 out of turn.

13 THE HEARING OFFICER: Let's see if you can  
14 finish up. Let's go to 12:20, and if we're still--you know, if  
15 you're not there--

16 MR. WOOD: I'm hopeful I can get it done by then.

17 MS. HAYES: Thank you.

18 Q. (BY MR. WOOD:) Do you see that section, 3.2.5-2,  
19 it says, "Contract for the sale of power generation equipment  
20 and related services between Vestas and seller"?

21 A. I do.

22 Q. So your contract, your PPA, states that you're going  
23 to be buying your turbine from Vestas, doesn't it?

24 A. Well, I think the body of the contract contemplates  
25 Gamesa, and this exhibit says Vestas. And I think that the

1 original version of the QF form that was sent over had been for  
2 a Vestas machine and a project using Vestas. I think this is  
3 probably just a, what I would consider, very minor inconsistency.

4 Q. What more do you need to do, Mr. Cutbirth, to  
5 select a turbine? What's preventing you from selecting one  
6 now?

7 A. Well, we're working with Gamesa. And, like I said,  
8 we're looking at several other potential machines as well. You  
9 know, we have to negotiate a turbine supply agreement. That's  
10 the primary thing to do.

11 Q. And why couldn't that have been done before you  
12 executed your power purchase agreement?

13 A. Well, there really wouldn't be any need to do that  
14 unless we actually got a power purchase agreement. That's a  
15 very lengthy contract. And that's typically not something we  
16 would do until we have a power contract.

17 Q. And why is that?

18 A. Well, until we have a power contract, we really  
19 don't have a project.

20 Q. Now, Mr. Cutbirth, you would agree with me,  
21 wouldn't you, that site control is fundamental to any project?

22 A. It's certainly important to have land rights.

23 Q. And if you would turn to Exhibit P.

24 A. In the power contract?

25 Q. Exhibit P in our objection. That would be the

1 smaller binder.

2 THE HEARING OFFICER: Would you identify the  
3 document for the record?

4 MR. WOOD: As soon as I turn there, I'll...

5 Q. (BY MR. WOOD:) Exhibit P is a February 7, 2013  
6 letter from Blue Mountain to PacifiCorp, attention to Mr. Tom  
7 Fishback. You'll note that it appears that you signed this letter,  
8 Mr. Cutbirth.

9 Do you remember this letter?

10 A. Yes.

11 Q. And do you remember that--if you look at in the first  
12 paragraph, last sentence. You said, "As you know, the ability  
13 and right to interconnect is fundamental to the viability of any  
14 project." Is that correct?

15 A. Yes.

16 Q. So until you have site control, really your project is  
17 not viable?

18 A. As it relates to the interconnect or something else?

19 Q. Well, what did you mean?

20 A. Well, what I meant in the letter was that it was  
21 fundamental to the viability of our project to be able to  
22 interconnect on the lands we had rights to. And what we  
23 applied for was a point of interconnect on lands that we had  
24 rights to. And PacifiCorp studied, without advising us,  
25 connecting to a proposed substation on land that Ellis-Hall had

1 proposed a project.

2 Q. And, in fact, they told you that there was good  
3 reasons why they were requiring you to interconnect to  
4 Ellis-Hall. Isn't that right?

5 A. Well, they gave us some reasons. But we  
6 absolutely disagreed with the reasons that they gave us, and we  
7 don't think they were correct. And in fact, after several months  
8 of reconsideration, PacifiCorp agreed with us.

9 Q. Now isn't it true, though, Mr. Cutbirth, that they  
10 initially didn't agree with you? They denied your request and  
11 told you that you had to connect on Ellis-Hall's land?

12 A. They didn't tell us that. They told us that's where  
13 they would like us to connect.

14 Q. We'll look at some of those documents and see  
15 whether they denied your request.

16 But in any event, you said that after months, they  
17 reconsidered their position. When did they reconsider their  
18 position?

19 A. Well, I think they were reconsidering it for several  
20 months. But from the course of around the first part of the year  
21 until--I don't know exactly when, but maybe June--we had  
22 discussions with them on this issue. And sometime during that  
23 time frame, they concluded that they--well, I won't say they  
24 made a mistake. But I think that they agreed with us on our  
25 request.

1 Q. Isn't it true, Mr. Cutbirth, that after months of  
2 telling you that you had to connect on Ellis-Hall's land that they  
3 suddenly changed their mind after you executed the PPA and  
4 Ellis-Hall filed an objection in this matter?

5 A. Well, I don't know that that was the timing.

6 Q. We'll look at those documents.

7 In any event, you understand that under the Open  
8 Access Transmission Service Tariff, you are required to have  
9 site control over your route of interconnection to be able to stay  
10 on the queue?

11 A. I don't know that.

12 Q. Have you read OATT Section 38.3.1?

13 A. No.

14 Q. How about OATT Section 38.3.3.3?

15 A. No.

16 Q. So would it surprise you to hear that in Section  
17 38.3.3.3 it states an interconnection request will not be  
18 considered to be a valid request until all the items in Section  
19 38.3.1 have been received by the transmission provider?  
20 Failure by the interconnection customer to comply with this  
21 section shall be treated in accordance with 38.6, which says that  
22 you're kicked off the queue? That would surprise you to know  
23 that?

24 A. I don't know what that says.

25 Q. So you've never had an experience with OATT in

1 your time as a wind developer?

2 A. Transmission is not an area that I consider to be an  
3 area of expertise. And we have transmission consultants that  
4 actually assist us in this area.

5 Q. But you would agree, however, that Rocky Mountain  
6 Power is interested and has to verify that you have site control  
7 and interconnection access. Is that true?

8 A. I would think they'd be interested. And, in fact, we  
9 did for the point of interconnect that we applied for.

10 Q. But you didn't have that point of interconnection  
11 when your PPA was signed. Isn't that true--the point of  
12 interconnection on your land?

13 A. We had land rights to it, absolutely.

14 Q. No. No. I apologize if my question...

15 At the time your power purchase agreement was  
16 signed, PacifiCorp had not authorized you to interconnect on  
17 your land. They were still requiring you to connect on  
18 Ellis-Hall's land. Isn't that true?

19 A. I don't know that that's a correct statement at all. I  
20 think that they were actively reviewing our request and whether  
21 or not it was appropriate to require us to connect to some other  
22 proposed substation, where we did not have land rights, as  
23 opposed to our own proposed point of interconnect, where we  
24 did have land rights.

25 Q. Did you have site control on June 27, 2012, when

1 you initiated the interconnection request?

2 A. Did we have site control on the land that we had  
3 proposed to connect to?

4 Q. All land. Did you have site control for your project,  
5 and did you have site control for your route of interconnection  
6 on June 27, 2012, when you initiated the interconnection  
7 request?

8 A. I would just have to go back and take a look. I  
9 can't remember when we completed our acquisition from Redco  
10 and what the date of some of those agreements were.

11 Q. Now, when you filed your initiation process, you  
12 initially filed under the land that we have previously addressed  
13 with a map that there's a dispute about. Isn't that correct?

14 A. I'm not sure I understand that question.

15 Q. Okay. If you'd look--when you filed your--back in  
16 June of 2012--if you'd turn to page 35--excuse me, Exhibit 35.

17 So in June 2012, your project consisted of not only  
18 the land that's shaded in blue and crosshatched in yellow--you  
19 actually hadn't even asserted that blue land yet--your project  
20 was focused on the land that was shaded crosshatched in yellow  
21 and bold colored in yellow. Is that correct?

22 A. I believe we had discussions and negotiations  
23 ongoing with the property owners that are outlined in blue at  
24 that point.

25 Q. But you hadn't secured any leases on that land?

1 A. I don't think we had signed agreements on those  
2 properties as of that date.

3 Q. And your project was--your project was proposed to  
4 move forward on this land that's shaded in yellow. Is that  
5 correct?

6 A. Yes.

7 Q. Now, Mr. Cutbirth, I'd like you to turn to your  
8 system impact study, which is Exhibit 36. And if you would turn  
9 to page 18, the last sentence, would you read that?

10 A. "Property must be assignable to Company and  
11 without litigation, suit, liens, condemnation actions, foreclosure  
12 actions, et cetera."

13 Q. So under your system impact study, your project  
14 has to be free--the property on which your project is moving  
15 forward has to be free of any litigation, suits, liens, foreclosure  
16 actions. Is that correct?

17 A. Well, I think the property they're referring to is the  
18 point of interconnect. And as it relates to the point of  
19 interconnect, that would be a true statement.

20 Q. And then at that time--

21 A. The property was not subject to any litigation, suit,  
22 condemnation actions, or foreclosure.

23 Q. How about a lien? It has to be assignable to you.  
24 Was your route of interconnection on January 11, 2013, free  
25 and clear?



1 A. The point of interconnect?

2 Q. Yes.

3 A. I believe so.

4 Q. How could that be possible if it was on Ellis-Hall's  
5 land?

6 A. It was not on Ellis-Hall's land.

7 Q. In June--

8 A. Our point of interconnect has always been Pole  
9 365, which was part of our project. And it's on land that's never  
10 been a part of any dispute or contest.

11 Q. Mr. Cutbirth, isn't it true that PacifiCorp disagreed  
12 with you at that time in January 11, 2013, and was instructing  
13 you that you had to make your point of interconnection on  
14 Ellis-Hall's land?

15 A. Oh, I don't know that that's a correct  
16 characterization at all. They certainly did not conclude that  
17 after reviewing it.

18 Q. Let's look at Exhibit O.

19 Mr. Cutbirth, do you recognize this as the March 1,  
20 2013 letter from Tom Fishback to you, entitled, "PacifiCorp's  
21 Response to Q0426 Point of Interconnection"?

22 A. I see that.

23 Q. And do you see that in this letter, Mr. Cutbirth,  
24 PacifiCorp, Mr. Fishback, states that you will have to connect at  
25 Q240, which is Ellis-Hall's land. It states that this is for good

1 utility practice, maintenance and operational costs, and for the  
2 precedent?

3 A. Well, it's, I think, saying that at that time, they did  
4 not agree to the point of interconnect that we had applied for.  
5 And while they cite some good utility practices and precedent,  
6 the fact of the matter is--and they acknowledged this  
7 subsequently--that, in fact, they do have substations this close,  
8 a number of them, within their system. So this--to say that  
9 there's no precedent for this would be incorrect. And  
10 furthermore--

11 Q. Mr. Cutbirth--

12 A. --they subsequently said that the good utility  
13 practice was not the real reason for this request.

14 Q. Mr. Cutbirth, my question to you was that in  
15 January of 2013 and up until the time after you'd signed your  
16 PPA, PacifiCorp was taking the position that it was good utility  
17 practice, that it was in the interest of maintenance and  
18 operational costs, and it was in the interest of precedent that  
19 you were required to interconnect at 420, which is Ellis-Hall's  
20 land. Isn't that correct?

21 A. I don't think that's a correct statement. I think they  
22 had pretty well concluded by May time frame that, in fact, what  
23 we'd asked for would be appropriate.

24 Q. What's the basis for your belief that they had pretty  
25 well concluded in May?

1 A. Just the discussions that I had with PacifiCorp  
2 Transmission.

3 Q. So even though we have a document here from Mr.  
4 Fishback saying, "You have to connect at 420," you're telling us  
5 that you had separate conversations with him where he said you  
6 don't?

7 A. Well, I think you are confusing the time frame. The  
8 system impact study that they completed and delivered was  
9 January of 2013. Shortly thereafter, we pointed out to them that  
10 they had studied a point of interconnect that was not the point  
11 of interconnect that we applied for. And we did not think it was  
12 appropriate to request that we connect to a substation that was  
13 proposed by some other party. And over the course of five or  
14 six months, PacifiCorp agreed with our position.

15 Q. Mr. Cutbirth, this letter is dated March 1, 2013,  
16 correct?

17 A. That's an email.

18 Q. Excuse me. This email is dated March 1, 2013,  
19 correct?

20 A. Yes.

21 Q. I'll have you turn to Exhibit No. Q. Do you  
22 recognize this as an email from Mike Cutbirth to Thomas  
23 Fishback, dated July 5, 2013?

24 A. Yes.

25 Q. I'll just read this. "As a follow-up to our call, I

1 wanted to confirm that PacifiCorp has signed a QF PPA with  
2 Blue Mountain Power Partners, and they advised it will be filed  
3 with the PSC next week. At this point, we need to resolve the  
4 point of interconnection issue. We applied to interconnect at  
5 Pole 365 and need the right to connect to PacifiCorp's xmission  
6 line on property we have control of and rights to. We do not  
7 have the land right to connect to Pole 390."

8 Where is Pole 390?

9 A. I think that's a point that is on land controlled by  
10 Ellis-Hall.

11 Q. Okay. "Nor do we believe a substation will ever be  
12 built for that proposed project."

13 Why did you believe that a substation will never be  
14 built on that proposed project?

15 A. It's been our opinion that the proposed Ellis-Hall  
16 project would not get built.

17 Q. And why would it not get built?

18 A. That was just our opinion.

19 Q. And what was the basis of that opinion?

20 A. Just our belief.

21 THE HEARING OFFICER: Again, can you help me  
22 understand why we're getting into Ellis-Hall world? I'm just  
23 trying to understand what that has to do with the PPA at hand. I  
24 just need to focus here. We're running short on time. Can you  
25 help me understand where you're going with this?

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MR. WOOD: Yeah. Your Honor --

THE HEARING OFFICER: I said already before that if there's separate complaints against PacifiCorp Transmission or the Company, there's a process for that. Our focus here today is, again, about the public interest of this PPA. Just help me understand where you're going, and then we --

MR. WOOD: I believe firmly, your Honor, that it is in the public interest that PacifiCorp apply its regulations and its rules equally to all parties. That's why we're here today. We're here because Schedule 38 has been applied in a discriminatory manner. And it's very discriminatory in this circumstance because throughout the whole process, PacifiCorp told Blue Mountain that they had to connect on 390. They required Ellis-Hall to have their project built in order to accommodate Blue Mountain. And then after the PPA is signed, they go back on all their reasons for doing so.

THE HEARING OFFICER: And again, you mentioned some--you are claiming potential disparity and discriminatory treatment.

MR. WOOD: We are.

THE HEARING OFFICER: Again, there's a separate process for that with both the Federal Energy Regulatory Commission with respect to the OATT, and there's a separate process for Schedule 38 with respect to potential suppliers of energy under Schedule 38.

1 MS. WOOD: No. When they say they have to have  
2 an interconnection agreement before they sign a PPA, the  
3 question is, is Schedule 38 applicable or is it not applicable?  
4 We're simply pointing out--

5 THE HEARING OFFICER: Okay. I'm just reminding  
6 you. I want to just focus here. So if you're going somewhere  
7 with respect to this--

8 MR. WOOD: I understand, your Honor, that you've  
9 taken the position that this is not properly before the  
10 Commission, that disparate treatment or discrimination in this  
11 circumstance doesn't matter. And you state that in our  
12 prehearing conference.

13 We need to make a record. We disagree with that  
14 position that's been taken. And if you're denying us the right to  
15 put on that evidence, that's fine. But we're going to make a  
16 record that there has been discriminatory and disparate  
17 treatment, unless you tell us we can't do that. And in that case,  
18 we'll appeal that decision.

19 MR. RUSSELL: And I'll just note at this point that  
20 Ellis-Hall's discovery responses indicate that Ellis-Hall's projects  
21 are not relevant to this proceeding and they refused to provide  
22 documents to us on that basis.

23 THE HEARING OFFICER: Again, I will say the  
24 focus, again, is with respect to the PPA of Blue Mountain. And  
25 again, there's plenty of avenues outside this PPA between these

1 two separate counterparties that are available to Ellis-Hall if  
2 they have complaints against --

3 MR. WOOD: And we will be pursuing those  
4 remedies, your Honor. But we also feel that this is properly  
5 before the Commission on this PPA. The PPA should not be  
6 approved on that basis.

7 THE HEARING OFFICER: Based upon disparate  
8 treatment.

9 MR. WOOD: That's right.

10 THE HEARING OFFICER: Okay. Let's get to your--

11 MS. WOOD: Based on the failure to follow  
12 Schedule 38.

13 THE HEARING OFFICER: All right. That's a  
14 helpful caveat. Why don't you continue.

15 Q. (BY MR. WOOD:) Okay. Continuing. "Just so the  
16 situation is clear, we made a proposal to 420 to build just one  
17 substation that both parties could connect to. And the parties  
18 would cooperate to provide reciprocal land rights and share  
19 costs, such that each project would receive the benefit of a  
20 substantial cost savings over two separate substations. That  
21 proposal was rejected by 420. Please review and advise at your  
22 earliest convenience."

23 So at least on July 5, 2013, isn't it true that  
24 PacifiCorp had not made the decision that you could connect on  
25 your own land?

1 A. I think they had pretty well already concluded that  
2 by that date.

3 Q. But you sent this email, notwithstanding that belief?

4 A. I did.

5 Q. And you don't have any documents to support your  
6 allegation that they had made a decision to allow you to  
7 interconnect on your own land?

8 A. I don't think they put any of that. These were  
9 based on discussions with PacifiCorp Transmission.

10 Q. Now, Mr. Cutbirth, isn't it true that your project  
11 does not have all the required permits to complete the project?

12 A. We have the required discretionary permit. We will  
13 obtain additional non-discretionary permits prior to the time that  
14 we start construction.

15 Q. What permit do you have?

16 A. We have a conditional use permit.

17 Q. And do you have a building permit?

18 A. Not as yet.

19 Q. Have you commenced construction?

20 A. Not as yet.

21 Q. Do you have any of the land--the road permits?

22 A. I don't know that there are any road permits  
23 required.

24 Q. You don't believe that there's any highway permits?

25 A. There may be.



1 Q. Have you gotten any of the required federal  
2 permits?

3 A. I don't know that there's any federal permits  
4 required.

5 Q. You haven't explored that?

6 A. Oh, we've looked at it. I don't think there are.

7 Q. Okay. Now in your reply comments on page 18--  
8 excuse me, on page 14, if you'll turn there. You see that you  
9 state, "Ellis-Hall claims without providing any support that there  
10 are 13 required permits to executing a PPA. These claims are  
11 both false and irrelevant."

12 Is that what Ellis-Hall said? Did Ellis-Hall say that  
13 there were 13 required permits to executing a PPA?

14 A. I don't know.

15 Q. That must have been something your lawyer put in?

16 A. As I indicated previously, this was prepared by our  
17 attorneys.

18 Q. But it is true that you haven't obtained all of the  
19 required permits. Isn't that right?

20 A. Well, the key permit is the discretionary permit,  
21 which is the conditional use permit, which we have acquired.  
22 And the rest of the permits are non-discretionary. And those  
23 would be acquired during the normal course of development of  
24 the project.

25 Q. Mr. Cutbirth, has your project been sold to

1 Greenbriar?

2 A. No.

3 Q. Have you entered into any negotiations to sell your  
4 project to Greenbriar?

5 A. Greenbriar Capital Corporation's subsidiary  
6 currently has an ownership interest in the project.

7 Q. And what is that ownership interest?

8 A. That's subject to confidentiality agreements.

9 Q. You understand that you cannot prevent testimony  
10 on the basis of third-party confidentiality agreements, do you  
11 not?

12 MR. RUSSELL: And I'll object. It's not relevant.

13 MS. WOOD: Of course it's relevant.

14 THE HEARING OFFICER: Help me understand  
15 your relevance. Reply to his objection.

16 MR. WOOD: Greenbriar is the Company that's  
17 actually going to build this project, which we believe it is. That  
18 certainly has a big effect on the approval of the PPA.

19 And it is also important, I think, overall for the  
20 public interest the fact that we believe these projects both are  
21 what would be called "pump and dump" projects.

22 THE HEARING OFFICER: Listen, I'm going to  
23 overrule the objection as to the reason why. Potential future  
24 commercial transactions is irrelevant with respect to the  
25 Commission's consideration of the PPA before us today.

1 MS. WOOD: Well, the PPA was brought forward  
2 before--excuse me. The PPA was brought before it really  
3 should have been brought forward because important decisions  
4 hadn't been made. And we're getting a PPA simply to bless it  
5 so the project has value to be sold in the commercial market as  
6 opposed to being available as a resource for customers in the  
7 state of Utah. That certainly is relevant. I mean, we still have  
8 not gotten a reason why this project was pushed forward without  
9 a turbine--

10 THE HEARING OFFICER: Your objection to my  
11 ruling is proffered, but it's overruled.

12 MR. RUSSELL: Did you sustain or--

13 THE HEARING OFFICER: I mean sustained. I'm  
14 sorry. I apologize. It's getting close to lunch.

15 MR. WOOD: No further questions.

16 THE HEARING OFFICER: Sustained. I apologize.

17 Okay. So Ms. Hayes--hold on a second here.

18 I guess any redirect on the part of--do you want to?

19 MR. RUSSELL: I have no further questions for Mr.  
20 Cutbirth, subject to any questions that may be asked of him. I  
21 assume others might have.

22 THE HEARING OFFICER: Okay. Will it be--yes.  
23 Why don't we go ahead and--we have not gone through  
24 everyone. Does anyone else have any questions for Mr.  
25 Cutbirth? Okay.

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All right, you are excused.

THE WITNESS: Thank you, sir.

THE HEARING OFFICER: Ms. Hayes?

MS. HAYES: It looks like my witness has just stepped out of the room. If I could go grab her--

THE HEARING OFFICER: That's fine.

MS. HAYES: --I'd appreciate it. Thank you. She's coming.

THE HEARING OFFICER: Okay. Great.

MS. HAYES: Utah Clean Energy will call Ms. Sarah Wright to the stand.

THE HEARING OFFICER: Would you please raise your right hand. Do you solemnly swear to tell the whole truth and nothing but the truth?

THE WITNESS: I do.

THE HEARING OFFICER: Be seated.

SARAH WRIGHT, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY-MS.HAYES:

Q. Ms. Wright, please state your name and business address for the record.

A. Sarah Wright. The address is 1014 2nd Avenue, Salt Lake City, Utah, 84103. And the organization's name is Utah Clean Energy.

1 Q. And what is your position at Utah Clean Energy?

2 A. Executive director.

3 Q. Did Utah Clean Energy file comments and reply  
4 comments in this docket?

5 A. Yes, we did.

6 Q. Did you review these comments before they were  
7 filed?

8 A. I did.

9 Q. Do you adopt the factual statements therein as your  
10 testimony today?

11 A. I do.

12 MS. HAYES: Ms. Wright is available for  
13 questioning--oh, and I would like to move the admission of those  
14 comments as well.

15 THE HEARING OFFICER: So received.

16 Any objection to receiving those? They're received.

17

18 (Exhibit UCE 1 was received into evidence.)

19 MR. SACKETT: I have a procedural question about  
20 the two dockets.

21 THE HEARING OFFICER: Sure.

22 MR. SACKETT: And it has to do with your intent to  
23 try to get Ms. Wright out of the building. So are we dealing with  
24 both dockets?

25 THE HEARING OFFICER: Yeah. That's--

1 MS. HAYES: Oh, I meant to say that. I'm sorry. I  
2 was wondering if we could possibly condense the two dockets  
3 into one round of questioning.

4 THE HEARING OFFICER: That's fine.  
5 Is the testimony that you're giving going to be  
6 applicable to both dockets?

7 THE WITNESS: Yes.

8 THE HEARING OFFICER: Okay. Good question.

9 MS. HAYES: She's available for questioning.

10 THE HEARING OFFICER: Mr. Jetter?

11 Mr. Coleman?

12 MR. COLEMAN: The Office has nothing.

13 MR. RUSSELL: No questions from Blue Mountain.

14 THE HEARING OFFICER: Rocky Mountain Power?

15 MR. SOLANDER: No questions.

16 THE HEARING OFFICER: And Ellis-Hall?

17 MS. WOOD: We have one, sort of, housekeeping  
18 matter. We want to move for the admission of all of our exhibits  
19 that we've used. We should have done that before we rested.

20 THE HEARING OFFICER: No, understood. I was  
21 going to ask you about that.

22 Any objections to the exhibits? They're received.  
23 (Exhibits Ellis-Hall 1 and 2 were received into evidence.)

24 THE HEARING OFFICER: So it sound like there's  
25 no questions for you, Ms. Wright.

1 MS. WOOD: No, I have a question.

2 THE HEARING OFFICER: Oh, you do. Sorry. I  
3 thought you said you had a housekeeping question.

4 MS. WOOD: I had a housekeeping, and then I  
5 wanted to ask her--

6 THE HEARING OFFICER: I apologize.

7 CROSS-EXAMINATION

8 BY-MS.WOOD:

9 Q. Ms. Wright, in your comments in both dockets--I'm  
10 going to look at page 6 of the 116 matter, just for interest. I  
11 think they're similar.

12 On page 6, you say, "Furthermore, this QF PPA will  
13 bring jobs and economic benefits to the state ... To estimate the  
14 economic benefits to the state of developing an 80 megawatt  
15 wind project in Utah using PacifiCorp's 2013 IRP supply-side  
16 resource cost assumptions for Utah wind resources and JEDI's  
17 default values. Impacts, including induced impacts," and you  
18 list a series of impacts, "\$184 million invested in Utah."

19 Do you have any personal knowledge of those  
20 figures?

21 A. One of our staff--the JEDI model is a model that's  
22 publicly available on the website. And one of our staff members  
23 ran the model. And that is where the numbers came from.

24 Q. But you didn't run the model?

25 A. No. I did not enter the very simple cost data and

1 figures that it asked for into the model, but a very capable staff  
2 person did.

3 Q. And you say that's for an 80 megawatt project,  
4 right?

5 A. Yes.

6 Q. All right. So what are the differences for a 60  
7 megawatt project?

8 A. I haven't run the numbers. I would assume that  
9 they would go down by, you know, linear. But I have not run  
10 those numbers. And I would want to be able to. If you want  
11 those numbers, that's something that we could do.

12 Q. Or a 50 megawatt?

13 A. Same. I would be happy to run those numbers for  
14 you.

15 Q. Or a 30 megawatt?

16 A. Same. I would be happy to run those numbers for  
17 you.

18 Q. So in other words, the actual megawatts of the  
19 project makes a huge difference in terms of the economic  
20 impact on the state?

21 A. Right. And what we were demonstrating there is  
22 that wind projects, in addition to the energy benefits, the risk  
23 mitigation benefits, they also bring jobs to the job as well. Your  
24 project would bring jobs. Any wind project would bring jobs.

25 Q. But the amount of benefit would depend on the



1 megawatts that were actually delivered, right?

2 A. Yes.

3 Q. The size of the project?

4 A. Yes.

5 Q. And whether the project was actually built?

6 A. Yes.

7 Q. And you are not saying that you are in favor of the  
8 Latigo wind project or the Blue Mountain wind project as above  
9 any other wind project, are you?

10 A. Utah Clean Energy supports all renewable energy  
11 development in the state, in the West, globally. We support  
12 renewable energy development and energy efficiency.

13 MS. WOOD: Thank you. That's all I have.

14 THE HEARING OFFICER: Okay. So it's about  
15 12:25 right now.

16 You are excused, Ms. Wright. Thanks for being  
17 patient.

18 Why don't we go ahead and recess for now and  
19 reconvene at 1:30. And we'll start up, I think, with Mr. Jetter's  
20 witness, Charles Peterson. Is that correct?

21 MR. JETTER: That's correct. Thank you.

22 (A break was taken from 12:21 p.m. to 1:29 p.m.)

23 THE HEARING OFFICER: Why don't we go ahead  
24 and go back on the record.

25 So where we left it before the lunch break was

1 we're still on Docket 13-035-115. And I believe we're at the  
2 Division, Mr. Jetter's witness.

3 Proceed.

4 MR. JETTER: Yes. Thank you. The Division  
5 would like to call our witness, Charles Peterson.

6 And if I might at this time, I don't know if it's  
7 something all the parties can agree to, but our testimony and  
8 our presentation will be effectively the same on both the 115  
9 and 116 dockets. And if we could, we would prefer to combine  
10 Chuck's testimony.

11 THE HEARING OFFICER: I'm fine with that, if the  
12 parties are fine with that.

13 MS. WOOD: That's fine with us.

14 THE HEARING OFFICER: Okay. Do you want to  
15 raise your right hand. Do you solemnly swear to tell the whole  
16 truth and nothing but the truth?

17 THE WITNESS: Yes.

18 THE HEARING OFFICER: Be seated. Thanks.

19 CHARLES E. PETERSON, having been first duly  
20 sworn, was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY-MR.JETTER:

23 Q. Mr. Peterson, would you please state your name  
24 and occupation for the record.

25 A. Yes. Charles E. Peterson, S-O-N on Peterson. I'm

1 a utility technical consultant.

2 THE HEARING OFFICER: Can you hear him okay?  
3 Is your microphone on, Mr. Peterson?

4 THE WITNESS: It looks like it's on.

5 THE HEARING OFFICER: I just want to make sure.  
6 Sorry. I apologize for interrupting.

7 THE WITNESS: I'm a technical consultant with the  
8 Division of Public Utilities.

9 Q. (BY MR. JETTER:) Thank you. And in both  
10 dockets, 13-035-116, the Latigo docket, as well as 13-035-115,  
11 the Blue Mountain Power Partners dockets, have you reviewed  
12 the applications in both of those dockets and the power  
13 purchase agreements?

14 A. Yes.

15 Q. And did you prepare a Confidential Report and  
16 Memorandum filed on August 26, 2013, in both of those?

17 A. Yes.

18 Q. Do you have any corrections that you would like to  
19 make to either of those at this time?

20 A. Yes. I have one correction in Docket 13-035-116,  
21 the Latigo Wind Park matter.

22 On page 2, fourth line from the bottom, it says,  
23 "Another milestone is that Blue Mountain must satisfy."  
24 Obviously, search and replace did not catch that. It should read  
25 "Latigo." And with that correction, I believe the rest of the

1 document is correct.

2 Q. And do both of those dockets with that correction--  
3 excuse me, both of those documents with that correction in both  
4 dockets continue to accurately reflect your position today?

5 A. Yes, to the best of my knowledge.

6 Q. Thank you.

7 MR. JETTER: The Division would like to move to  
8 enter what is labeled "DPU Exhibit 1." That has been provided  
9 to the court reporter. That has been prefiled in this docket.

10 MS. WOOD: Your Honor, we have a problem with  
11 that because we were only served with a public version. Ours is  
12 blacked out, almost half the document.

13 THE HEARING OFFICER: Do we--

14 MR. JETTER: I have copies, if...

15 THE HEARING OFFICER: Is that okay?

16 MS. WOOD: Sure. I'd like to see them. But I can't  
17 stipulate to have them admitted when I haven't been able to  
18 evaluate them.

19 THE HEARING OFFICER: Understood. And while  
20 the counsel for Ellis-Hall is reviewing documents, just  
21 understand that there is confidential data that is redacted within  
22 those documents. So I'm assuming that if you are going to  
23 actually refer to any confidential data, that you'll give far  
24 advanced warning for the courtesy of the court reporter.

25 MR. JETTER: Yes.

1 THE HEARING OFFICER: Or generally refer to it  
2 without...

3 MR. JETTER: Yes.

4 MS. WOOD: Your Honor, if I may, I'm just going to  
5 move on to my cross-examination while Mr. Wood reviews those  
6 documents--oh, are you done? I thought you were done. Oh,  
7 no, other people--excuse me. I'm jumping ahead.

8 THE HEARING OFFICER: I'm fine if you want to  
9 reserve--we can wait until the end, I guess, to, you know, I  
10 guess discuss any potential objections to receiving it into  
11 evidence. Is that--

12 MR. JETTER: That's fine. My concern with that is  
13 simply that I intended to let this be as his testimony.

14 THE HEARING OFFICER: Okay. Take your time.

15 MS. WOOD: All I was going to say is that if people  
16 have other questions, Mr. Wood will be reviewing these. And I'll  
17 do the examination I had planned on what we have. And if  
18 there's something more, I can take care of it at the end so that  
19 we can move this along.

20 THE HEARING OFFICER: Okay. Well, let's just  
21 take the time because it sounds like you want to lay the  
22 foundation--I mean, you want to have it in evidence, then, it  
23 sounds like.

24 MR. JETTER: Yes. Otherwise, I'll need to go  
25 through and do a direct examination to enter this same

1 information.

2 MR. WOOD: I don't think we have any objection to  
3 this being admitted as his testimony --

4 THE HEARING OFFICER: Okay.

5 MR. WOOD: --from looking at it. That's as far as  
6 we go. This is his testimony. That's fine.

7 THE HEARING OFFICER: Okay. So hearing no  
8 objections to the receipt of it into evidence, it's received. Thank  
9 you.

10 MR. SACKETT: Just so I'm clear, this document is  
11 the one we're talking about only with respect to Blue Mountain,  
12 or?

13 THE HEARING OFFICER: I believe the intention is  
14 to discuss both dockets.

15 MR. SACKETT: I understand. But he only  
16 identified one document as an exhibit.

17 THE HEARING OFFICER: Okay. Do you want to  
18 do both?

19 MR. JETTER: Yes. I think what I intend to do,  
20 they're both marked "DPU Exhibit 1" for the two separate  
21 dockets. And they'll be DPU Exhibit 1 in each.

22 THE HEARING OFFICER: So does that make  
23 sense for the court reporter, where we have DPU Exhibit 1 for  
24 Docket No. 115 and then DPU Exhibit 1 for purposes of 116?

25 Just for my information, is there any substantial

1 difference with respect to the content of the comments, other  
2 than just, like, the confidential megawatt hours or what have  
3 you?

4 MR. JETTER: Beyond that, I don't believe there's  
5 any significant difference.

6 THE HEARING OFFICER: So are you requesting  
7 receipt of both documents?

8 MR. JETTER: Yes.

9 THE HEARING OFFICER: Counsel for Woods, did  
10 you want to see the other document for the 116 docket before--  
11 okay.

12 Both documents are received.  
13 (DPU Exhibit 1 for Docket 13-035-115 and DPU Exhibit 1 for  
14 Docket 13-035-116 were received into evidence.)

15 MR. JETTER: Thank you. With that, I can allow  
16 Mr. Peterson to be available for cross.

17 THE HEARING OFFICER: Okay. Why don't we go  
18 ahead and allow the Office--do you have any questions?

19 MR. COLEMAN: The Office has no questions.

20 THE HEARING OFFICER: And Rocky Mountain  
21 Power?

22 MR. SOLANDER: No.

23 THE HEARING OFFICER: Ms. Hayes?

24 MS. HAYES: No questions, thank you.

25 THE HEARING OFFICER: Ellis-Hall Consultants?

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MS. WOOD: I have a couple questions.

CROSS-EXAMINATION

BY-MS.WOOD:

Q. If you would look at the small binder, which should be in front of you. And if I may, I'll just approach and show it to you to kind of simplify things. This is our objection. I'm just going to go over this part of it.

THE HEARING OFFICER: Just so we can follow along, which tab are you looking at, Ms. Wood?

MS. WOOD: Your Honor, it's Exhibit A to both of our objections, I believe.

THE HEARING OFFICER: Okay. And just for the-- the little small binder, is that under A?

MS. WOOD: That's right. That's the small binder.

THE HEARING OFFICER: Okay. Thank you.

Q. (BY MS. WOOD:) Okay. Now, if you would take a look at the Action Request Response with respect to Energy of Utah. Are you aware of that document?

A. Yes, I'm aware of it. However, I will note I did not prepare it.

Q. Yes. But that was and is the position of the Division. Is that correct?

A. With respect to this docket, yes.

Q. Well, is it different with respect to other dockets?

A. Depends on what you're referring to.



1 Q. Let's take a look at Discussion Issue 1, which is on  
2 page 4.

3 A. Where it says, "The Company is requiring"?

4 Q. Yes.

5 A. Okay.

6 Q. They're requiring that there be an interconnection  
7 agreement before there is a PPA.

8 A. Yes, I see that.

9 Q. All right. Is that still the Division's position?

10 A. Well--

11 MR. JETTER: I'm going to object to that question.  
12 The nature of the document--the nature of the question  
13 misrepresents what's provided in that document.

14 THE HEARING OFFICER: Ms. Wood?

15 MS. WOOD: Well, let me just read some parts of it,  
16 then, and see if he still agrees with this.

17 THE HEARING OFFICER: I guess I want to make  
18 sure, just so we're clear, this is a document filed in 13-035-22.  
19 So I'll allow you some room on kind of going there. But again,  
20 we don't want to go too far afield of the issue today, which is  
21 the PPAs that have been filed for application. Just so you  
22 understand.

23 MS. WOOD: I understand, your Honor.

24 THE HEARING OFFICER: Okay.

25 Q. (BY MS. WOOD:) I'm just going to look at the

1 second to the last paragraph on page 5 in the carry-over  
2 paragraph.

3 "In response to the informal complaint, the  
4 Company indicated that in the past, it proceeded with PPAs  
5 assuming the interconnection agreement would be executed and  
6 the project would meet the commercial operation date indicated  
7 in the PPA. However, several projects, including two of those  
8 cited by Mr. Vrba, failed to meet the commercial on-line dates.  
9 This puts ratepayers at considerable risk and violates the basic  
10 principle of ratepayer neutrality or indifference that is  
11 fundamental to PURPA."

12 Is that still the position of the Division?

13 A. The Division--generally, yes. The Division believed  
14 at the time, and would still believe, that it would be better if the  
15 interconnection agreements were done prior to or  
16 simultaneously with the PPA.

17 Q. Okay. "If, for example, the Company were to sign a  
18 PPA in advance of the interconnection agreement being signed,  
19 the Company may have to purchase replacement power in the  
20 event the QF fails to meet its commercial deadlines. If that  
21 replacement power is at a higher price than the avoided costs  
22 specified in the PPA, ratepayers or the Company are at risk for  
23 higher prices."

24 Is that still the Division's position?

25 A. Yes.

1 Q. All right. And then if you would look at the second  
2 paragraph on page 6.

3 A. Just a moment while I turn to it. Okay.

4 Q. "Both Blue Mountain Wind and Pioneer Ridge failed  
5 to meet the commercial operation dates in their respective  
6 PPAs. Spanish Fork Wind interconnected with Spanish Fork's  
7 municipal system. According to the Company representative,  
8 the Company is in the process of renegotiating a contract with  
9 Blue Mountain and is requiring that Blue Mountain provide a  
10 signed interconnection agreement."

11 Was that the Division's understanding?

12 A. That's what it says in this docket--or in this  
13 document. That isn't my personal knowledge.

14 Q. And do you believe that in light of this that the  
15 Company, meaning Rocky Mountain Power, should have  
16 required a signed interconnection agreement by Blue Mountain  
17 before entering into a PPA?

18 A. Well, at the time this document was prepared, that  
19 was the Division's expectation that that's what would occur. The  
20 Company, obviously, didn't follow through on that.

21 Q. Is there any reason, from the Division's  
22 perspective, that that oversight should be excused? Or should  
23 they be required to do what they were saying they were going to  
24 do?

25 A. Well, the Division at that point, to my

1 understanding and belief, is that we had representations of the  
2 Company's intent at that time. But we had no way of binding the  
3 Company to that intent.

4 Q. Is it still the Division's position that the Company  
5 should enter an interconnection agreement before signing a  
6 PPA?

7 A. Well, or at least simultaneously. It would be our--  
8 it's still the Division's position that that would be preferable.

9 Q. Okay. And then if you would look at your testimony  
10 on page 5 and 6.

11 A. Okay.

12 Q. Okay. And I believe this is 115. But I think the  
13 same language is in 116?

14 A. I believe it is substantially the same.

15 Q. Yeah. I'm looking on "Lead Time on On-Line  
16 Dates"?

17 A. Yes.

18 Q. "The PPA contemplates an on-line date near the  
19 end of 2015, over two years from now. In Phase I of Docket No.  
20 12-035-100, the Division suggested that it was amenable to  
21 'grandfathering' QFs with Dunlap I pricing that were able to sign  
22 PPAs by September 1, 2013, among other conditions."

23 Is that your testimony?

24 A. Yes.

25 Q. "The other conditions included the understanding

1 that the Company would no longer present a QF PPA to the  
2 Commission for approval unless the QF had a signed  
3 interconnection agreement."

4 Was that your understanding?

5 A. Yes.

6 Q. No further questions.

7 THE HEARING OFFICER: Mr. Jetter?

8 MR. JETTER: I'd just like to redirect, just real  
9 quick a couple of questions.

10 REDIRECT EXAMINATION

11 BY-MR.JETTER:

12 Q. The first of which, just to clarify on the record, Mr.  
13 Peterson: Do you believe the approval of both of these power  
14 purchase agreements would be just, reasonable, and in the  
15 public interest?

16 A. Well, as I said in my conclusions in both these  
17 documents, we believe the Commission can approve these PPAs  
18 based upon the compliance with prior Commission orders, and  
19 that the two parties--or the three parties, Latigo, Blue Mountain,  
20 and PacifiCorp, negotiated in good faith in relying on those prior  
21 Commission orders. That's the Division's--that's my testimony  
22 and that's the Division's position.

23 Q. Thank you. One further question. This is referring  
24 to Exhibit A of Ellis-Hall's objection memo that they had asked  
25 you about earlier.

1 A. Yes.

2 Q. Earlier in this proceeding, it's been represented  
3 that the Division in that document had stated that, "Rigorous  
4 due diligence was a requirement of Schedule 38." Have you  
5 reviewed that document?

6 A. You mean the Division's memo?

7 Q. The Division's memo.

8 A. Yes.

9 Q. And within that memo, are you able to find  
10 anywhere where the Division has said that a rigorous due  
11 diligence was required?

12 A. No.

13 Q. Thank you.

14 MR. JETTER: He may be available for recross, if  
15 she would like.

16 MS. WOOD: I have a couple questions.

17 RECROSS EXAMINATION

18 BY MS. WOOD:

19 Q. Now, when you testified that these contracts were  
20 in compliance with law in the Commission orders, had you read  
21 these contracts?

22 A. I've read--substantially I've read the PPAs  
23 themselves, yes. It's been some time ago. I focused primarily,  
24 though, on the economic terms.

25 Q. Well, do you think it's in the best interest of the

1 Public Service Commission to approve a PPA where the turbine  
2 hasn't been selected?

3 A. I don't have an opinion on that. I don't--the PPAs  
4 did not strike me as containing anything in them that I  
5 considered unusual.

6 Q. So you don't think it's unusual not to have selected  
7 a turbine?

8 A. It didn't strike--it did not raise a red flag in my  
9 mind.

10 Q. Well, how many wind power purchase agreements  
11 have you reviewed for the state of Utah in the last ten years?

12 A. Probably just one, the original Blue Mountain PPA  
13 that was filed and then withdrawn a couple of years ago.

14 Q. All right. So you don't know whether it's usual or  
15 unusual to have a contract where the turbine hasn't been  
16 selected?

17 A. In terms of some statistical analysis of probability,  
18 no. It just did not strike me as being something that would raise  
19 a red flag, from my perspective.

20 Q. As a statistician?

21 A. Well, as an analyst in the Division of Public  
22 Utilities.

23 Q. Did you review the contracts to see how much  
24 would change, depending on the turbine?

25 A. No, I have no knowledge of that.

1 Q. Did you understand that you can't identify the  
2 amount of energy output without knowing the turbine?

3 MR. JETTER: I'm going to object to that. That's  
4 testifying.

5 MS. WOOD: I'm asking if he knew that.

6 MR. JETTER: You're asking if he knew a fact that  
7 he has not testified to.

8 MS. WOOD: Well, he said this was not unusual.  
9 And I'm trying to probe.

10 MR. JETTER: Your question asked if he knew  
11 whether you cannot identify the output if you didn't have the  
12 turbine design.

13 Q. (BY MS. WOOD:) Do you know anything one way  
14 or the other about that?

15 A. I really don't know.

16 Q. Did you know both of these PPAs permit the people  
17 who sign it to change the turbine and then decide how much  
18 energy they're going to deliver?

19 A. I understood that as of a date certain--I think in  
20 both of them, March 31--they had to provide definitive  
21 information to the Company, to PacifiCorp.

22 Q. Well, is there any reason why the PPA shouldn't be  
23 held until they provide definitive information?

24 A. Not to my knowledge.

25 Q. Thank you.



1 THE HEARING OFFICER: Mr. Jetter, any redirect?  
2 MR. JETTER: No. I have no redirect, thank you.  
3 THE HEARING OFFICER: Mr. Coleman, does the  
4 Office have a witness?  
5 MR. COLEMAN: Yes, we do.  
6 THE HEARING OFFICER: Okay. Oh, sorry, I  
7 apologize.  
8 You have no cross for Mr. Peterson?  
9 MR. COLEMAN: No, I have nothing for Mr.  
10 Peterson.  
11 THE HEARING OFFICER: Okay, yeah. You are  
12 excused, Mr. Peterson. Sorry about that.  
13 Do you have a witness that you'd like to--  
14 MR. COLEMAN: I do. Just wanted to--  
15 THE HEARING OFFICER: Oh, yeah. Sure. No  
16 problem.  
17 MR. COLEMAN: The Office would call Mr. Vastag.  
18 THE HEARING OFFICER: Raise your right hand.  
19 Do you solemnly swear to tell the whole truth and nothing but  
20 the truth?  
21 THE WITNESS: Yes, I do.  
22 THE HEARING OFFICER: You can be seated.  
23 Thanks.  
24 MR. COLEMAN: And your Honor, similar to the  
25 Division, Mr. Vastag's comments and prefiled information is an

1 omnibus application across both of the dockets. So we'd, in the  
2 interest of judicial efficiency, like to consolidate his information  
3 for the presentation for both Dockets 13-035-115 and  
4 13-035-116, if that's acceptable.

5 THE HEARING OFFICER: I'm fine with that.

6 With respect to documents, do you plan to kind of  
7 follow the Division's path of introducing them both into  
8 evidence? Any comments--not to jump ahead of you, but...

9 MR. COLEMAN: Yes.

10 THE HEARING OFFICER: Okay.

11 MR. COLEMAN: Following the same path.

12 THE HEARING OFFICER: Okay.

13 MR. COLEMAN: Thank you.

14 BELA VASTAG, having been first duly sworn, was  
15 examined and testified as follows:

16 DIRECT EXAMINATION

17 BY-MR.COLEMAN:

18 Q. Mr. Vastag, can you please state your name, your  
19 occupational title, and your business address?

20 A. Yes. My name is--

21 THE HEARING OFFICER: Is your microphone on?  
22 Maybe you could pull it down.

23 THE WITNESS: My name is Bela Vastag. Do you  
24 want me to spell that?

25 THE REPORTER: Umm-hmm.

1 THE WITNESS: First name, B-E-L-A, last name  
2 Vastag, V, as in Victor, A-S-T-A-G.

3 I'm a utility analyst for the Office of Consumer  
4 Services. Our offices are here in this building at 160 East 300  
5 South, Salt Lake City.

6 Q. (BY MR. COLEMAN:) Mr. Vastag, on August 26 of  
7 this year, 2013, in both dockets, ending -115 and -116, the  
8 Office filed comments consisting of about four pages with an  
9 additional attachment of four pages. Is that correct?

10 A. That's correct.

11 Q. Were you involved in the preparation? Did you  
12 prepare those comments?

13 A. I was part of a team that prepared the comments,  
14 yes.

15 Q. Do you have any corrections or modifications to  
16 those documents?

17 A. Yes, I have one correction. It's the same correction  
18 in both set of comments.

19 Q. Go ahead and please identify that for us.

20 A. On page 3 of the comments, it's the same place in  
21 each docket, 115 and 116. It's in the first sentence after Table  
22 1. The sentence reads, "... or cost Utah ratepayers over" a  
23 certain amount of money, depending on the docket. The word  
24 "Utah" needs to be taken out of that sentence. It should just  
25 read "ratepayers" only. Those are only two changes, one in each

1 docket.

2 Q. And with that slight modification, with the excise of  
3 the identification of Utah ratepayers and simply reading "will  
4 cost ratepayers," do you adopt those comments as testimony of  
5 this proceeding?

6 A. Yes, I do.

7 Q. At this time, the Office would request these  
8 comments in both dockets that are dated August 26, 2013, to  
9 include also Exhibit A, entitled, "U.S. Department of Energy  
10 Announcement of its 2012 Wind Technologies Market Report" be  
11 accepted into the record.

12 THE HEARING OFFICER: Any objections? They're  
13 received.

14 (Prefiled Exhibits OCS 1 and 2 were received into the record.)

15 MR. COLEMAN: At this time, the Office believes  
16 these comments stand on their own and have no additional  
17 comments or testimony to provide. Mr. Vastag is available for  
18 cross-examination or questions by the Commission.

19 THE HEARING OFFICER: Thank you.

20 Mr. Jetter?

21 MR. JETTER: I have no questions, thank you.

22 THE HEARING OFFICER: Blue mountain?

23 MR. RUSSELL: I have no questions.

24 THE HEARING OFFICER: Latigo, I assume you--

25 MR. SACKETT: No.

1 MS. HAYES: No, thank you.

2 THE HEARING OFFICER: UCE.

3 Rocky Mountain Power?

4 MR. SOLANDER: No.

5 THE HEARING OFFICER: And Ellis-Hall

6 Consultants?

7 MS. WOOD: Nothing.

8 THE HEARING OFFICER: You are excused, Mr.  
9 Vastag. Thank you.

10 MR. WOOD: Your Honor, if I may, just a point of  
11 clarification.

12 THE HEARING OFFICER: Sure.

13 MR. WOOD: I want to apologize if I incorrectly  
14 referred to Exhibit A as being the document where the parties  
15 said that Schedule 38 requires rigorous due diligence. I  
16 misquoted that. Actually, there's two documents that were filed,  
17 I believe on the same day, even though their dates say  
18 differently. Exhibit A is the action from Division, which did not  
19 say that. And if I said that, I apologize. I was incorrect.

20 It was actually in Exhibit B. But I see that we've  
21 only provided the cover letter here, not the actual response.  
22 And it's my understanding that the March 25, 2012 letter from  
23 Yvonne Hogle to the Commission is the one that stated that  
24 rigorous due diligence is required under Schedule 38. I will be  
25 providing supplemental copies of that exhibit so that is clarified

1 for the record.

2 THE HEARING OFFICER: Okay. Appreciate it.  
3 Thanks for the clarification.

4 Okay. With that, I believe it's--I think we've already  
5 heard from--are there any additional comments from UCE?

6 MS. HAYES: No, thank you.

7 THE HEARING OFFICER: Ellis-Hall?

8 MR. WOOD: We're going to be calling Tony Hall,  
9 but we intend to do that consolidated. So we can take him now  
10 or we can take him at the end. It doesn't matter.

11 THE HEARING OFFICER: Okay. Well, let's go off  
12 the record for a second.

13 (A discussion was held off the record.)

14 THE HEARING OFFICER: Go ahead and raise your  
15 right hand. Do you solemnly swear to tell the whole truth and  
16 nothing but the truth?

17 THE WITNESS: Yes.

18 THE HEARING OFFICER: You can be seated.

19 THE WITNESS: Thanks.

20 MIKE RORING, having been first duly sworn, was  
21 examined and testified as follows:

22 DIRECT EXAMINATION

23 BY-MR.WOOD:

24 Q. Mr. Roring, can you state your name for the record  
25 and spell it.

1 A. Mike Roring, R-O-R-I-N-G.

2 Q. And Mr. Roring, where do you reside?

3 A. Orem, Utah.

4 Q. And do you or your family have any land in  
5 Monticello, Utah?

6 A. Yes.

7 Q. And what land do you have in Monticello, Utah? I'm  
8 not asking for plot numbers, but a basic description of the kind  
9 of land you have down there.

10 A. Our property is in--

11 THE HEARING OFFICER: Mr. Roring, I apologize.  
12 Can you maybe pull your mic down? I'm not sure if the court  
13 reporter can hear you. Thanks. Appreciate it. If the green  
14 light's on, that means you're live.

15 THE WITNESS: The green light's on.

16 THE HEARING OFFICER: Okay. Perfect. Thanks.  
17 Sorry about that.

18 Please proceed.

19 THE WITNESS: Our property is northeast of  
20 Monticello, probably ten miles. And there's mostly contiguous  
21 acres on the particular map right there.

22 Q. (BY MR. WOOD:) And do you have--approximately  
23 how many acres do you and your family own together?

24 A. On that particular piece right there, I think there's  
25 about 4000 acres.

1 Q. Okay. And Mr. Roring, I'm showing you a map right  
2 here that is actually a map of Latigo's transmission route. Does  
3 Latigo's transmission route pass on any of your family land?

4 A. This is the first time I've seen that map. I need to  
5 orient myself. But I believe it does right across the highway  
6 right there.

7 THE HEARING OFFICER: Mr. Wood, is this a  
8 document that's in any of the--I'm just wondering if there is a  
9 smaller one we can follow along on.

10 MR. WOOD: It's actually in both Latigo and Blue  
11 Mountain's--I mean, in Latigo's submission as far as the system  
12 impact study and the other studies. But in that version, it's kind  
13 of a Google Earth map. So it shows this path. But what we've  
14 done is we've had a professional map designer take the plot  
15 sizes and superimpose that over so you can see where the  
16 actual land parcels are.

17 Q. (BY MR. WOOD:) So when you say--this land right  
18 here as it passes over the highway, it says "Corinne Roring."  
19 Who is Corinne Roring?

20 A. That's my mother. That's her property.

21 Q. And is she here today?

22 A. She's right back there.

23 Q. So this lovely lady in the pink is your mother.  
24 And that is her land, right?

25 A. Yes, sir.



1 Q. Does latigo have any lease agreement with you to  
2 pass over your land?

3 A. No, sir.

4 Q. Okay. Now with regard to the Blue Mountain  
5 project, you are aware that land that you own has been subject  
6 to a dispute. Is that correct?

7 A. Yes.

8 Q. And how did that dispute arise?

9 A. After the bankruptcy through Redco, the dispute  
10 arised as Blue Mountain continued to try to include a portion of  
11 my family's property in with their CUP permit. The first time  
12 around, I think it was with map and description. And then after  
13 an objection, they changed it and put it in with the description  
14 only. And then I think there was a third time that was included  
15 in that. And in your map, they included another landowner that--  
16 on top of our property that was a shareholder with  
17 Redco--vice president.

18 Q. So it's your position that Blue Mountain has  
19 attempted to get permits to construct a wind farm on your land,  
20 but they don't have any right to do so?

21 A. Exactly. That's correct.

22 Q. And Mr. Roring, are there any MET towers located  
23 on land owned by you and your family?

24 A. Yes.

25 Q. And how many towers are there?

1 A. Two.

2 Q. And what has happened in the last few weeks  
3 regarding those towers?

4 A. I've been contacted by Mr. Cutbirth wanting  
5 permission to access the property to remove those MET towers.  
6 And I told him I would have to check with the tower owners and  
7 get some judicial release to have those released. Because  
8 when it was Redco, their vice president told me that's who I  
9 would be answering to as a landowner, not answering to--that's  
10 who they were working with.

11 Subsequent thereafter, an attorney from  
12 Greenbriar, I believe is the company name, called me and  
13 wanted access to that property as well. And I denied access on  
14 both occasions until there was something legal that I could  
15 understand that said they had access to remove those towers. I  
16 didn't want any liability to come back towards our family.

17 Q. And are those MET towers actually constructed on  
18 your land?

19 A. Yes.

20 Q. So they're permanent fixtures on your land?

21 A. Well, permanent being a MET tower, as permanent  
22 as a MET tower can be. They've been there two or three years,  
23 since they were--I don't know the exact time date they were  
24 constructed.

25 Q. But it was constructed on your land?

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A. Yes.

Q. And Blue Mountain's representatives have asked you to take those down. Is that correct?

A. They didn't ask me to take them down, they wanted permission to come in and send somebody to take them down so they could be moved to another location.

Q. No further questions.

THE HEARING OFFICER: Thank you.

Mr. Jetter?

MR. JETTER: Just a brief quick set of questions.

CROSS-EXAMINATION

BY-MR.JETTER:

Q. Mr. Roring, are you a legal expert on land use and land use control leases, that type of thing?

A. Am I a legal expert?

Q. Yes.

A. No, sir, only containing my own property.

Q. Okay. That's the only question I have. Thank you.

THE HEARING OFFICER: Mr. Coleman?

MR. COLEMAN: Nothing from the Office.

THE HEARING OFFICER: Blue Mountain?

MR. RUSSELL: Just a couple of questions.

CROSS-EXAMINATION

BY-MR.RUSSELL:

Q. Do you know who owns the MET towers on that

1 property?

2 A. Pardon me? I didn't hear you.

3 Q. Do you know who owns the MET towers on the  
4 property?

5 A. As far as my understanding, it's a company in  
6 Wyoming. And their name's slipped my mind for a second. I  
7 can't remember. I've got all the details that I've wrote down.

8 Q. It's not you. You don't own it?

9 A. No, I don't.

10 MS. WOOD: That calls for a legal conclusion. I  
11 don't think that's a fair question of a landowner whether he owns  
12 the fixture.

13 Q. (BY MR. RUSSELL:) To the best of your  
14 knowledge, do you own the MET tower?

15 A. No.

16 MS. WOOD: Still calls for a legal conclusion. I'm  
17 sorry, you didn't let me get my objection in.

18 THE HEARING OFFICER: The question was--once  
19 again?

20 Q. (BY MR. RUSSELL:) The question was: To the  
21 best of your knowledge, do you own the MET tower that you are  
22 referring to on the property?

23 A. No.

24 MR. RUSSELL: Okay. I don't have anything  
25 further.

1 MR. SACKETT: I have a question. You passed  
2 over me.

3 THE HEARING OFFICER: Sorry about that, yeah.

4 MR. SACKETT: Because there was a question  
5 asked that was posed in connection with the Latigo project.

6 CROSS-EXAMINATION

7 BY-MR.SACKETT:

8 Q. Mr. Roring, you indicated you had never seen this  
9 map before. Is that correct?

10 A. Not on that scale. I've seen the map before. I just  
11 couldn't get my bearings on it for a minute.

12 Q. And Mr. Wood pointed out to you, or claimed that a  
13 certain line on that document represented the Latigo  
14 transmission line. Do you recall that?

15 A. Yes.

16 Q. And do you know for a fact that is the Latigo  
17 proposed transmission line?

18 A. To the best of my knowledge, it is.

19 Q. And how do you know that?

20 A. Just by viewing a map like this.

21 Q. Well, but we've already decided that you've not  
22 seen this map before.

23 A. Not on this scale. And when we first started, I  
24 thought we were putting up a map that was additional property  
25 we had. So I had to get my bearings on exactly where it was. I

1 know exactly where it is now.

2 Q. And do you know where the Latigo project is and  
3 what lands they have leased for their project?

4 A. Not every acre, but most of it.

5 Q. Can you point on the map to it?

6 A. It's in the yellow--the yellow section there, very  
7 clearly identified.

8 Q. And it's your testimony that you know for a fact that  
9 that's their proposed line? You've verified that in some way?

10 A. Just that I've seen it on this line right here.

11 Q. Okay. Thank you.

12 THE HEARING OFFICER: Okay. So where did Ms.  
13 Hayes go? Did you have any questions?

14 MS. HAYES: No, thank you.

15 THE HEARING OFFICER: Okay.

16 And Rocky Mountain Power?

17 MR. SOLANDER: No questions for Rocky  
18 Mountain.

19 THE HEARING OFFICER: I did want to ask you the  
20 correct pronunciation of Monticello or is it Montichello  
21 (phonetic), but I'll pass on that and go with Monticello. You  
22 seem like an authority.

23 THE WITNESS: It's Monticello.

24 THE HEARING OFFICER: Okay. Good enough.  
25 That's all I have. You are excused, Mr. Roring.

1 Do you have another witness?

2 MR. WOOD: No. As I said, we'll take Mr. Tony  
3 Hall at the end.

4 THE HEARING OFFICER: Okay. That's fine.  
5 Great. Okay.

6 So it sounds like we have exhausted the witnesses  
7 for the 115 docket. I understand that there's been some  
8 witnesses for the Office and Division that have testified as to  
9 both with respect to their comments or reply comments, et  
10 cetera, and also with UCE.

11 Are there any other matters with respect to Docket  
12 No. 13-035-115 before we proceed to the next docket?

13 MS. WOOD: Except that Mr. Tony Hall's testimony  
14 will be for both.

15 THE HEARING OFFICER: Okay. And so when do  
16 we anticipate--is he--are we waiting, or is he--okay, we just want  
17 to--that's fine. Okay. That's fine.

18 Okay. Do the parties want to take a five-minute  
19 recess before we move on, or should we just--

20 MR. SOLANDER: We'd like to get Mr. Clements'  
21 direct testimony, at least.

22 THE HEARING OFFICER: All right. Let's proceed.  
23 Mr. Solander, your witness.

24 MR. SOLANDER: All right. We call Mr. Clements  
25 in support of the power purchase agreement with Latigo Wind

1 Park, LLC.

2 THE HEARING OFFICER: Raise your right hand.  
3 Sorry. I excused you before I should have this morning.

4 Do you solemnly swear to tell the whole truth and  
5 nothing but the truth?

6 THE WITNESS: Yes.

7 THE HEARING OFFICER: Mr. Solander.

8 PAUL CLEMENTS, having been first duly sworn,  
9 was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY-MR.SOLANDER:

12 Q. Would you please state and spell your name for the  
13 record.

14 A. Yes. My name is Paul Clements. Last name is  
15 C-L-E-M-E-N-T-S.

16 Q. And what is your position within PacifiCorp?

17 A. I'm senior power marketer originator, responsible  
18 for negotiating qualifying facility contracts.

19 Q. And as part of those responsibilities, did you  
20 negotiate the power purchase agreement with Latigo Wind Park,  
21 LLC?

22 A. Yes, I did.

23 Q. Can you please describe the negotiations and  
24 provide a short summary of the terms of the PPA?

25 A. Yes. The pricing and the terms and conditions in



1 the PPA between Latigo Wind Park, LLC, and PacifiCorp are  
2 consistent with Commission orders in Docket No. 03-035-14 and  
3 Docket No. 12-035-100.

4           Similar to the Blue Mountain, the Commission  
5 issued an order on Phase II issues in Docket No. 12-035-100 on  
6 August 16, 2013. The PPA between Latigo and PacifiCorp was  
7 executed on July 3, 2013, which was a date that's prior to the  
8 issuance of the order in Phase II of that docket.

9           Therefore, the rates and other terms and conditions  
10 contained in the PPA between PacifiCorp and Latigo are  
11 consistent with those established by the Commission, applicable  
12 at the time of execution. Rocky Mountain Power Service  
13 Schedule No. 38 governs the procedures the Company and the  
14 QF utilized when processing pricing requests and negotiating a  
15 power purchase agreement through to execution. The Company  
16 and Latigo followed all of the applicable procedures contained in  
17 Schedule 38 when negotiating the PPA between PacifiCorp and  
18 Latigo that is now before the Commission for approval.

19           In summary, the Company has complied with all  
20 relevant Commission orders and applicable schedules and  
21 negotiation and execution of the Latigo PPA.

22           Q.     And have you reviewed the comments filed by  
23 Ellis-Hall in the 116 docket?

24           A.     I have.

25           Q.     And do you have an opinion regarding those

1 comments?

2 A. Yes. In brief, the Company believes that many of  
3 the issues raised by Ellis-Hall Consulting are not relevant to the  
4 approval of the Latigo power purchase agreement. Many of the  
5 issues raised are related to the negotiations between the  
6 Company and Ellis-Hall Consulting. The Company does not  
7 agree with those allegations, but will not address them at this  
8 point in time, other than to say that the Company has been  
9 compliant with Schedule 38 in those proceedings.

10 Q. Thank you.

11 MR. SOLANDER: I have no further questions for  
12 Mr. Clements. He's available for cross-examination.

13 THE HEARING OFFICER: Mr. Jetter?

14 MR. JETTER: I have no questions, thank you.

15 THE HEARING OFFICER: Mr. Coleman?

16 MR. COLEMAN: Nothing from the Office.

17 MR. SACKETT: Nothing.

18 THE HEARING OFFICER: Ms. Hayes?

19 MS. HAYES: No, thank you.

20 THE HEARING OFFICER: Ms. Wood?

21 And I apologize. I didn't hear anything from Blue  
22 Mountain. I assumed that you --

23 MR. RUSSELL: (Mr. Russell shook his head in the  
24 negative).

25 THE HEARING OFFICER: Please proceed, Ms.

1 Wood.

2 CROSS-EXAMINATION

3 BY-MS.WOOD:

4 Q. Mr. Clements, if you wouldn't mind taking a look at  
5 the small binder that you've previously been given that contains  
6 the objections.

7 A. Okay. This one says "Blue Mountain." Do I need a  
8 different small binder?

9 Q. Yes. Let's change the small binder.

10 MR. SOLANDER: Mr. Clements, do you have a  
11 copy of the PPA in this docket with you up there?

12 THE WITNESS: I will get one, if that's okay, your  
13 Honor.

14 THE HEARING OFFICER: That's fine.

15 THE WITNESS: Thank you.

16 Q. (BY MS. WOOD:) Would you turn to Exhibit D.

17 A. I have numbers in the binder.

18 THE HEARING OFFICER: Which tab is that, Ms.  
19 Wood?

20 MS. WOOD: I'm sorry. It's 1-D.

21 THE WITNESS: 1-D. I have a tab that's labeled  
22 "1."

23 MR. WOOD: It's right. The binders are slightly  
24 different shaped, here, so those are the numbered exhibits  
25 (inaudible).

1 THE WITNESS: So Tab D?

2 Q. (BY MS. WOOD:) Yes.

3 A. Okay.

4 Q. And can you identify that as an email from you to  
5 Christine Mikell?

6 A. Yes.

7 Q. Okay. Would you read that email into the record,  
8 please? This is dated May 31, 2013. Is that correct?

9 A. Yes, it is.

10 Q. Would you read it, please?

11 A. It says, "Christine, you asked us to calculate  
12 pricing using some alternative wind turbine profiles. Doing so  
13 will take more time than what we have available in order to meet  
14 your objective of executing a power purchase agreement next  
15 week. Since your turbine selection will likely not occur before  
16 we execute, I propose we further discuss the concept, wherein  
17 the PPA contemplates and allows a change in turbine up to a  
18 certain date and all related PPA terms are updated upon final  
19 turbine selection.

20 "I am concerned about having the size of the  
21 project change materially at a later date, due to a change in  
22 turbine type. Usually projects are as close to 80 megawatts as  
23 possible, so a change in turbine type is less than 1 megawatt in  
24 total project size. But we can continue to discuss.

25 "To assist you in running economics for other

1 turbine types, attached are the monthly prices we calculated  
2 using the GE turbine profile you provided (also attached). You  
3 can use this monthly pricing stream to calculate your pricing for  
4 other turbine types. We can discuss further on our call today."

5 Q. Why was it that Latigo wanted to execute a PPA in  
6 the next week after May 31, 2013?

7 A. To my recollection, we had completed negotiation  
8 of all of the material terms of the power purchase agreement.  
9 At this point in time, Latigo is continuing to work with several  
10 turbine manufacturers on selecting the final turbine to be used  
11 in the project. And since we had negotiated all other material  
12 terms in the power purchase agreement, that power purchase  
13 agreement was ready for execution.

14 Q. Are you saying that the turbine type is not a  
15 material term?

16 A. I would say the turbine type is not a material term  
17 in the power purchase agreement.

18 Q. Even though it requires changing a number of other  
19 provisions in the power purchase agreement once it's lighted  
20 upon?

21 A. Again, those changes do not materially alter the  
22 performance obligations of the party under the agreement.

23 Q. That's your opinion. You are not a lawyer. You're  
24 not a lawyer, are you?

25 A. Fine. Let me restate that without a legal opinion.

1 Q. "Material" is a legal opinion, so maybe you could  
2 use a term other than "material."

3 MR. SACKETT: I think he's entitled to use terms  
4 that are in ordinary parlance, your Honor.

5 MS. WOOD: So long as nothing legal is--

6 THE HEARING OFFICER: I'll allow that. What was  
7 the question again? I thought you asked him if it was material.

8 MS. WOOD: No, he was using the term "material"  
9 all over the place.

10 THE HEARING OFFICER: Oh, okay.

11 THE WITNESS: I believe the issue was that  
12 "material" is deemed to require a legal opinion.

13 THE HEARING OFFICER: We understand. Mr.  
14 Clements' attorney will give it the weight that it's due.

15 Q. (BY MS. WOOD:) Does Rocky Mountain Power, is  
16 it required to accommodate arbitrary deadlines set by a potential  
17 supplier?

18 A. You'll have to be more specific with that question.

19 Q. Well, you say it's your objective of executing a  
20 power purchase agreement next week. There was no reason  
21 why Rocky Mountain Power needed to execute that agreement  
22 next week, was there?

23 A. No. We did not have a specific time line, although  
24 pursuant to Schedule 38, there are requirements of both parties  
25 once agreement has been reached on all material terms.

1 Q. Okay. And once again, "material," you're using it  
2 not as a lawyer?

3 A. I am not a lawyer.

4 Q. Okay. And you are the one that proposed just  
5 going ahead and executing and letting them pick the turbine  
6 later, aren't you?

7 A. That is a concept that we had discussed previously,  
8 yes.

9 Q. But not a concept that had ever been used before  
10 in a wind agreement in the state of Utah?

11 A. That is correct.

12 Q. And you say the only thing you are concerned about  
13 is that the size of the project not change materially. Is that  
14 right?

15 A. That's correct. That was a concern I raised at the  
16 time.

17 Q. And what do you consider to be a material change  
18 in the size of the project?

19 A. I think it would require a legal opinion to determine  
20 what's material and not, as you stated earlier, so.

21 Q. In your opinion, as someone who works with these  
22 projects, how much can it change before it impacts you, Rocky  
23 Mountain Power?

24 A. Again, that depends on other circumstances in the  
25 power purchase agreement. So I don't have a specific number.

1 Q. Okay. Well, dropping from 80 to 60, is that  
2 material in your mind?

3 A. Depending on the other circumstances, it may or  
4 may not be.

5 Q. Okay. Now, would you turn to Exhibit F. This is a  
6 letter to the Utah Division of Public Utilities from Rocky  
7 Mountain Power, Bruce Griswold.

8 A. Yes, it is.

9 Q. Is he still employed by Rocky Mountain Power?

10 A. Yes, he is.

11 Q. Is he your boss?

12 A. Yes, I do work directly for Bruce.

13 Q. And is the position he takes in the February 14,  
14 2013 letter to the Utah Division of Public Utilities still the  
15 position of Rocky Mountain Power?

16 A. Again, the document stands on its own.

17 Q. Okay. So you know of no change in the position of  
18 Rocky Mountain Power?

19 A. Again, the document stands on its own.

20 Q. Do you know of a change?

21 A. You'd have to be more specific. It's a multi-page  
22 document with considerable positions.

23 Q. Well, take a minute to look at it and tell me if any  
24 of those positions have changed. It's a two-page document. I  
25 don't think it's that hard.



1 THE HEARING OFFICER: Just for my benefit, help  
2 me understand the context of this letter.

3 MS. WOOD: It has a substantial discussion of  
4 requiring a GIA prior to execution of a PPA, as consistent with  
5 Schedule 38. And it's dated February 14, 2013.

6 THE HEARING OFFICER: And it was filed with  
7 respect to this, the Latigo/PacifiCorp PPA?

8 MS. WOOD: No. It was filed with respect to a  
9 complaint by Energy of Utah.

10 THE HEARING OFFICER: Okay. So I'm just trying  
11 to catch up. Okay.

12 MS. WOOD: Okay. So I'm just asking if anything  
13 has changed--

14 THE HEARING OFFICER: Okay.

15 MS. WOOD: --in the position of Rocky Mountain  
16 Power.

17 THE HEARING OFFICER: Understood, thanks.

18 THE WITNESS: Pursuant to this particular docket,  
19 no. In the situation that surrounded the drafting of this letter,  
20 no.

21 Q. (BY MS. WOOD:) With respect to any document, is  
22 requiring a GIA prior to executing a PPA consistent with  
23 Schedule 38?

24 A. In certain circumstances, it can be, yes.

25 Q. And how does one find out when that can be?

1 A. Let me explain it to you.

2 Schedule 38 states that the Company reserves the  
3 right to require and execute a large generator interconnection  
4 agreement prior or simultaneous with execution of a power  
5 purchase agreement. This is primarily done to ensure that the  
6 project can meet its on-line date. We've had issues with  
7 projects not meeting on-line dates, in that they will set an  
8 on-line date in the PPA that is not achievable with the time line  
9 required for construction of the interconnection.

10 So if there is a doubt concerning that date, we can  
11 require that there be an executed large generator  
12 interconnection agreement that confirms that the project will be  
13 interconnected in time to meet the on-line date.

14 Now, during the negotiation phase that's allowed  
15 under Schedule 38, counterparties have requested at times that  
16 we not require a signed LGIA, but instead accept other  
17 assurances that the on-line date can be met. For example, the  
18 interconnection process typically takes two years in length from  
19 start to finish. If a QF is requesting an on-line date that is  
20 two-and-a-half years from today, it's reasonable to assume that  
21 they can meet the time lines in the interconnection process  
22 because they have two-and-a-half years to complete a two-year  
23 process. That's the type of other assurances that we're willing  
24 to accept in place of a large generator interconnection  
25 agreement.

1 Q. But you don't say that anywhere in this letter, do  
2 you?

3 A. No, we do not.

4 Q. Okay. So we can assume that your boss qualified  
5 his language to the extent he thought it was appropriate, can't  
6 we?

7 A. Again, I can't speak to his state of mind.

8 Q. Okay. And if you would turn to the next page, the  
9 top of the paragraph, he says, "While such occurrences"--that  
10 is, not having an interconnection agreement--"may have  
11 occurred in the past due to circumstances specifically  
12 experienced in connection with some of these PPAs and other  
13 recent PPAs in other states, PacifiCorp is making efforts to fully  
14 implement the process contained in Schedule 38.

15 "PacifiCorp in the recent past experienced  
16 examples where a QF has represented to PacifiCorp in its  
17 merchant capacity that the QF could achieve certain commercial  
18 operation dates for purposes of the PPA. In these cases,  
19 PacifiCorp proceeded with negotiating and executing a power  
20 purchase agreement based on milestone dates leading up to  
21 and including commercial operation date provided by the QF.

22 "After signing the PPA, PacifiCorp learned that the  
23 QF could not, in fact, achieve the commercial operation date  
24 and other milestones included in the PPA because certain  
25 requirements had to be completed in the later negotiated GIA."

1 Is that what PacifiCorp's position was on February 14, 2013?

2 A. In this particular docket and the circumstances that  
3 surrounded this docket, yes, that was the position.

4 Q. And the position still is that PacifiCorp is fully  
5 implementing Schedule 38. Isn't that correct?

6 A. Yes, we do implement Schedule 38.

7 Q. Fully implement Schedule 38?

8 A. Yes.

9 Q. Okay. Now, if you would turn to Exhibit H.

10 A. Eight? H?

11 Q. H, I'm sorry.

12 And this is the letter to Christine Mikell, dated April  
13 15, 2013. Is that correct?

14 A. That's correct. April 15, yes.

15 Q. And you wrote this letter. Is that correct?

16 A. I did.

17 Q. "Schedule 38 also indicates it's the responsibility of  
18 the QF developer to make necessary interconnection  
19 arrangements with PacifiCorp Transmission. As noted in  
20 Schedule 38, 'The Company's obligation to make purchases  
21 from a QF is conditioned upon all necessary interconnection  
22 arrangements being consummated.'

23 "The process of making the interconnection  
24 arrangements may result in the identification of additional costs,  
25 including but not limited to potential improvements to the

1 distribution or transmission system or timing considerations to  
2 accomplish necessary interconnection upgrades that are the  
3 responsibility of the qualifying facility developer."

4 Do you know if that was true when you wrote that?

5 A. Yes.

6 Q. And it's true today?

7 A. Yes, it is true. If the interconnection arrangements  
8 are not consummated--which means they are not interconnected  
9 to the system--then we have no obligation to make purchases  
10 from the QF. And that's actually pretty clear in PURPA.

11 Q. Isn't it true that Latigo had already passed the  
12 date, its interconnection date?

13 A. That, I do not know.

14 Q. Okay. All right. On OASIS, it says that their  
15 interconnection date was 12/31/2012. You don't quarrel with  
16 that?

17 A. Again, it's the scheduled commercial operation date  
18 and the power purchase agreement that is of concern to us.

19 Q. Well, I understand. But we have been told that you  
20 can answer all questions on the interconnection side as well.  
21 We were denied the opportunity to call somebody on the  
22 interconnection side.

23 A. Well, again, I did answer the question. You can  
24 rephrase the question in a way that gets the answer you desire.

25 THE HEARING OFFICER: And I just want to clarify

1 that the denial to Mr. Fishback, that was based upon the  
2 representation that you wanted to get to the heart of the issue  
3 of disparate treatment or discrimination.

4 MS. WOOD: No. It's the heart of whether  
5 Schedule 38 has been complied with. And we said that at the  
6 time. And we believe we should have had the opportunity to call  
7 somebody from--

8 THE HEARING OFFICER: The transcript speaks for  
9 itself. I asked several times about the intent of that witness.

10 MR. WOOD: The transcript speaks for itself.

11 MS. WOOD: That's fine.

12 THE HEARING OFFICER: Agreed.

13 MS. WOOD: We think there is valuable information  
14 that could have been provided here.

15 MR. WOOD: As does our objection.

16 THE WITNESS: Mr. Fishback actually does not  
17 follow Schedule 38. He actually follows the OATT, the Open  
18 Access Transmission Tariff. It's a separate process. So just to  
19 clarify the record.

20 Q. (BY MS. WOOD:) Well, I guess that's a problem  
21 internal to PacifiCorp if you say you're following Schedule 38  
22 and somebody else follows something else, isn't it?

23 A. Again, it's two separate processes. Schedule 38 is  
24 the process that governs how power purchase agreements are  
25 negotiated. The Open Access Transmission Tariff is the

1 process that governs interconnection requests. Mr. Fishback is  
2 on the transmission side of the business. He follows the Open  
3 Access Transmission Tariff. I, as Rocky Mountain Power, I'm on  
4 the merchant side of the business, and I follow Schedule 38. So  
5 making that distinction clear is critical.

6 Q. If you look at Schedule 38, look at Roman Numeral  
7 II.

8 A. Is that something you could hand me?

9 MR. WOOD: Exhibit No. 7.

10 THE WITNESS: In the little binder? Big binder? Or  
11 the medium binder?

12 MR. WOOD: Medium.

13 THE WITNESS: I found 7 here.

14 MR. WOOD: Yeah.

15 THE WITNESS: All right. Yes, I see it.

16 Q. (BY MS. WOOD:) Is that Schedule 38?

17 A. Yes, it is.

18 Q. And would you look at Roman Numeral II and see if  
19 that involves the process for negotiating an interconnection  
20 agreement?

21 A. Yes, it does. And, in fact, that very clearly proves  
22 my point. If you read on page 38.6 at the top, "Because of the  
23 functional separation requirements mandated by the Federal  
24 Energy Regulatory Commission, interconnection and power  
25 purchase agreements are handled by different functions within

1 the Company. Interconnection agreements are handled by the  
2 Company's power delivery function." That would be Mr.  
3 Fishback.

4 Q. I understand that. But you said that he didn't follow  
5 Schedule 38. And I'm just trying to clarify that in his function  
6 he, too, is required to follow Schedule 38, correct?

7 A. Well, let me clarify. Perhaps "follow" is not the  
8 appropriate word. As was just made clear by what I read in  
9 Schedule 38, it's instructing the qualifying facility to approach  
10 PacifiCorp Transmission to obtain their interconnection  
11 agreement. That is all that Schedule 38 speaks to regarding the  
12 interconnection application process.

13 Q. Well, concerning the process, perhaps. But to  
14 obtain indicative pricing under 2, you would have--are required,  
15 for the development of indicative pricing, to have the proposed  
16 seller provide generation technology and related technology  
17 applicable to the site, right?

18 A. Yes. That's what it requires.

19 Q. All right. And if you would look at Exhibit K. Is this  
20 email correspondence between you and Christine Mikell in June  
21 of 2013?

22 A. Yes, it is.

23 Q. Okay. And I think the email chain starts on the  
24 second page. And it says, "Hey, Paul. It looks like Eric, our  
25 resident Ph.D., may not be getting the 12 by 24 until Monday.



1 Sorry. I thought I had the 12 by 24. But when I opened the 12  
2 by 24 and compared it to the summary net megawatts, they  
3 didn't match up. Ugh."

4 Is that the email you received?

5 A. Yes, it is.

6 Q. And what is your response?

7 A. My response is, "The sooner the better on getting  
8 the 12 by 24 nailed down. I need it in order to continue the  
9 credit approvals."

10 Q. Okay. Now, the 12 by 24 is dependent on the  
11 turbine, isn't it?

12 A. Yes, it is.

13 Q. So if you have the wrong 12 by 24, then you're not  
14 going to be able to get the right credit approvals, right?

15 A. We would be materially--if I may use that term in a  
16 non legal manner--close on the credit terms.

17 Q. Okay. And then Christine says, "Here you go."

18 Do you know what 12 by 24, what turbine that was  
19 based on?

20 A. There was likely an attachment to that email. If you  
21 had provided the attachment, I would be able to tell you.

22 Q. Well, unfortunately--

23 MR. WOOD: It wasn't attached to us.

24 Q. (BY MS. WOOD:) --I wasn't provided the  
25 attachment. It would have been interesting to have.

1 A. I doubt that, but I won't speak to it.

2 Q. And then you say, "Thanks. We will assume 26  
3 turbines (78 megawatt) to keep it under the 80 megawatt limit.  
4 We'll adjust the 12 by 24 accordingly."

5 Is that what you said?

6 A. Yes.

7 Q. And Ms. Mikell's response is, "You should keep it at  
8 27 turbines, and we can wither have them derate it to 2.962  
9 machines or have a triple reduction to stop at 80 megawatts. If  
10 you include the losses, you are at 80 megawatts. We have a  
11 long T-time."

12 What does that mean to you?

13 A. "We have a long T-line," I think is what you meant  
14 to say there.

15 Q. Yeah. But what does that response say to you?

16 A. Here's what that means to me. Under PURPA, the  
17 utility has the obligation to purchase output from a QF up to 80  
18 megawatts. And the obligation occurs at the point of delivery.  
19 And so let's say a QF project is 82 megawatts in size  
20 nameplate. If it has losses across its own transmission line and  
21 at the point of delivery we accept 80 megawatts, that's allowable  
22 under PURPA. And so they can build a project that's bigger  
23 than 80 megawatts. We just are not required to purchase  
24 anything more than 80 megawatts. And that's the gist of the  
25 discussion there.

1 Q. Okay. And what's your response?

2 A. My response is--would you like me to read it?

3 Q. Yes.

4 A. "I propose we leave it at 26 turbines and 78  
5 megawatts for purposes of timing on this PPA. Since we have  
6 the ability to change the turbine type and associated contract  
7 terms after execution, we can address the exact number at that  
8 time. Having to explain the derate or triple reduction option at  
9 this time will complicate things and possibly cause delays. I am  
10 not concerned about moving from 78 megawatts to 80  
11 megawatts if that is where it lands. But I think the best option  
12 right now is to do it on nameplate."

13 Q. Okay. So did you ever reach an agreement on 26  
14 or 27 turbines?

15 A. I don't recall. I'd have to look at the power  
16 purchase agreement to know the exact number that was agreed  
17 to, if it's in there.

18 Q. Is there a number agreed to in the power purchase  
19 agreement?

20 A. Let me check.

21 The wind turbine in the power purchase agreement  
22 is a Siemens SWT 2.3 megawatt turbine, and the expected  
23 nameplate capacity was set at 60 megawatts. And so I assume,  
24 doing the math, you could figure out how many turbines were  
25 assumed.

1 Q. Well, up to June 3, 2013, you were talking about a  
2 78 megawatt facility, weren't you?

3 A. Yes, we were.

4 Q. And you just decided to put off the number of  
5 turbines because you have the ability to change the turbine type  
6 and associated contract terms after execution, right?

7 A. Yes. The number of turbines does not matter to us  
8 in terms of performance obligations and the power purchase  
9 agreement.

10 Q. And neither does the layout, then, of the turbines?

11 A. No, it does not.

12 Q. Okay. And it appears that it doesn't matter to you  
13 whether it's 80 or 60 megawatts?

14 A. It does matter in the fact that we do need to  
15 establish an expected nameplate capacity rating upon execution  
16 of the power purchase agreement, which we did.

17 Q. Okay. But you specifically said, "We have the  
18 ability to change the turbine type and associated contract terms  
19 after execution. So we can just address the numbers at a later  
20 time," right?

21 A. If you want me to confirm the exact quotation, I'd  
22 be happy to read that again.

23 Q. And you are going to just let them change the  
24 turbine type and associated contract terms after execution,  
25 right?

1 A. No. We are going to allow them to perform under  
2 the PPA, under the terms and conditions that are allowed under  
3 the PPA. And they're very specific as to what can and cannot  
4 be done.

5 Q. Well, one of the things that can be done is change  
6 the turbine type, and I don't want to have to go through the PPA  
7 with you again and show all the things that change when you  
8 change the turbine type. But you punted that, didn't you?

9 A. You'd have to explain what you mean by "punt."

10 Q. I mean, you left that for your vendor to decide at a  
11 later point?

12 A. No. They have the option to change turbine type.  
13 But the power purchase agreement, as written right now,  
14 reading off page 15 says, "'Wind Turbine' means Siemens SWT  
15 2.3-113, subject to adjustment pursuant to Section 2.8."

16 Q. Subject to their right to change?

17 A. Yes.

18 Q. Okay. And is there any reason why it's in the  
19 public interest for the Commission to approve a PPA on this  
20 project without knowing the turbine type and the associated  
21 contract terms that will have to be changed after the turbine  
22 type is decided upon?

23 A. Yes. It's in the public interest because the wind  
24 turbine that is selected is not material in terms of the  
25 performance obligations of the parties under the power

1 purchase agreement.

2 Think of it as if you're going to get a taxi ride from  
3 here to the airport. You don't necessarily care if it's a Cadillac  
4 or a BMW. You're going to get from here to the airport to fulfill  
5 that obligation.

6 It still applies under the power purchase  
7 agreement. It doesn't materially alter the performance  
8 obligation of either party.

9 Q. But there was no reason not to require them to  
10 make that selection and make the contract changes before you  
11 presented it to the Public Service Commission, was there?

12 A. There was a reason, yes. And the reason is this  
13 Commission has, in the past, instructed the Company to strike a  
14 balance between the needs and the rights of QF developers  
15 under PURPA and the ratepayer indifference standard. And the  
16 Company seeks to do that. We feel like we have a dual  
17 responsibility in negotiating QF contracts. We owe QF  
18 developers the proper implementation of PURPA. And we owe  
19 our customers certain guarantees that the ratepayer indifference  
20 standard will be met.

21 If there's a concept that allows the QF developer  
22 the flexibility that they need without increasing risk to our  
23 customers, then we typically allow that flexibility.

24 Q. Is there any reason not to make them choose a  
25 turbine before you sign this agreement?

1 A. I think I just answered that question.

2 Q. No. You just said, "Oh, well, we're trying to  
3 balance things."

4 THE HEARING OFFICER: Answer it again, please.

5 THE WITNESS: Certainly.

6 Q. (BY MS. WOOD:) What is the reason to sign a PPA  
7 before a turbine is selected? The same work is going to have to  
8 be done by the supplier one way or the other, isn't it?

9 THE HEARING OFFICER: Can we have the  
10 question--let's start with the original question. Then maybe we  
11 can follow up.

12 THE WITNESS: Again, the reason is we have an  
13 obligation to implement PURPA. And it's a dual obligation. And  
14 to the extent that we're able to execute qualifying facility  
15 contracts that allow QFs to be developed in fulfillment of  
16 PURPA, we seek to do so.

17 If the QF requests contract terms pursuant to  
18 Schedule 38, there's an entire negotiation process outlined in  
19 Schedule 38 where a developer can provide a red-lined PPA and  
20 issues list requesting certain items be changed in the power  
21 purchase agreement.

22 In this ticket instance, this was an issue that was  
23 requested be looked at and addressed. We evaluated it. We  
24 determined that allowing them to change turbine type did not  
25 impact our customers and did not increase our customers' risk

1 or increase our customers' cost. Therefore, the ratepayer  
2 indifference standard was maintained, yet the QF was able to  
3 move forward under its rights under PURPA. That is the reason.

4 Q. I beg to differ with you. They didn't ask to have the  
5 right to change the turbine. You offered it in Exhibit K, as we've  
6 just read, didn't you?

7 THE HEARING OFFICER: Is this a question or?

8 MS. WOOD: Yes.

9 Q. (BY MS. WOOD:) You offered it?

10 A. No, it was discussed previously. There were  
11 telephone conversations that probably occurred during this time  
12 period as well. And so whether I offered it or whether it was  
13 requested, I don't have a direct knowledge.

14 Q. Okay. Well, to put off the discussion of 26 or 27  
15 turbines, you said, did you not, "Since we have the ability to  
16 change the turbine type and associated contract terms after  
17 execution, we can address the exact number at that time." Isn't  
18 that what you said?

19 A. Yes, that's what I said.

20 Q. Okay. Now, if you would look at your--and that was  
21 on June 3, 2013, correct?

22 A. What you were reading, yes, it was.

23 Q. Okay. Now, if you would turn to Exhibit G.

24 Would you look at the email dated January 25,  
25 2013?



1

A. Yes.

2

Q. Would you read it into the record, please?

3

A. It says, "Christine, thank you for providing the

4

additional information we requested pursuant to Utah Schedule

5

38. Attached is the draft PPA in response to your request.

6

Please let me know how you would like to proceed. Also please

7

note we will require an executed LGIA prior executing a PPA."

8

Q. And that's what you said on January 25, 2013?

9

A. That is correct.

10

Q. But you did not, in fact, require an executed LGIA?

11

A. No. And without belaboring the proceeding by

12

repeating the answer I provided to an earlier question, other

13

adequate assurances are provided if the on-line date can be

14

met. Then we do not require an executed LGIA. Latigo

15

provided those other assurances. And so we did not require it.

16

Q. And what precisely are the assurances? Isn't it

17

turbine type? Isn't that one of the assurances you require, the

18

selection of a turbine?

19

A. No.

20

Q. That's not one?

21

All right. If you would turn to Exhibit 4.

22

MR. WOOD: In that same binder.

23

MS. WOOD: In that same binder.

24

MR. WOOD: The objection binder.

25

THE WITNESS: I've got letters in this binder. So I

1 think you mean this other one, right? Got an Exhibit 4 over  
2 here.

3 MR. WOOD: If I may approach.

4 THE WITNESS: Looks like an LGIA. That's not it?

5 Q. (BY MS. WOOD:) This is actually, I believe, your  
6 testimony that I'm referring to.

7 A. Oh, okay.

8 Q. Would you turn to page 4 of your testimony?

9 THE HEARING OFFICER: This is under Tab 4?

10 MR. WOOD: Under Tab 4.

11 MS. WOOD: Under Tab 4.

12 Q. (BY MS. WOOD:) Let me read part of the  
13 carry-over paragraph.

14 "Since the interconnection agreement is the  
15 document that establishes the final interconnection schedule, it  
16 is the most reliable method by which to verify the PPA on-line  
17 date is achievable. However, during the negotiating period  
18 described in Section 1.4--1.B.6 of Schedule 8, QFs often  
19 request that the Company evaluate other methods of reasonably  
20 assuring the on-line date can be met, besides an executed  
21 interconnection agreement.

22 "Historically, the Company has been willing to work  
23 with QFs to establish other project-specific assurances, such as  
24 a final interconnection study completion, turbine procurement  
25 agreements, EPC contracts, et cetera, provided such

1 assurances that are adequate to evaluate the validity of the  
2 proposed on-line date, and provided no additional risk is placed  
3 on the Company's customers."

4 Was that your testimony?

5 A. Yes.

6 Q. Which of those things in the case of Latigo lets you  
7 forego the interconnection agreement? They hadn't moved  
8 along in the turbine procurement process. They hadn't even  
9 selected a turbine, right?

10 A. Boy, there were, like, three questions in there and  
11 some part testimony--

12 Q. Have they selected a turbine?

13 A. --I just need--

14 THE HEARING OFFICER: Can I just clarify? I  
15 never found that in the binder. What testimony are we talking  
16 about here?

17 MS. WOOD: It's the testimony--

18 MR. WOOD: This is the reply comments, your  
19 Honor. Latigo's reply. That might not have been included in  
20 your binder.

21 THE HEARING OFFICER: In this docket, then?

22 THE WITNESS: If you need it, I've got it  
23 somewhere else.

24 THE HEARING OFFICER: It's okay. I just wanted  
25 to make sure we were talking about --

1 MR. SOLANDER: If you've got it someplace else.

2 THE WITNESS: Yeah, I do have it.

3 THE HEARING OFFICER: Okay. That's helpful. I  
4 just needed a point of reference. I've read the documents.

5 MS. WOOD: It's the Rocky Mountain Power  
6 statement.

7 THE HEARING OFFICER: All right. Sorry.  
8 Apologize. Proceed with your questions.

9 THE WITNESS: Sorry. You'll have to repeat the  
10 question.

11 Q. (BY MS. WOOD:) Latigo hadn't made any progress  
12 on the turbine procurement agreements, had they?

13 A. That is not correct, no.

14 Q. Well, they hadn't even selected their turbine.

15 A. They had made progress. We had spoken with  
16 them on numerous occasions. They were negotiating with  
17 multiple turbine vendors at the time.

18 Q. Okay. So until you have a turbine, you can't be  
19 making progress on turbine completion agreements, can you?

20 A. It depends how you define "progress." They were  
21 very close.

22 Q. But not close enough for you to wait and identify  
23 the turbine type before you signed the PPA, right?

24 A. No. And again, we don't feel like that's necessary.

25 Q. Had they--did they have a final interconnection

1 study?

2 A. Yeah. What I'm referring to here in my testimony is  
3 we often look at methods of reasonably assuring the on-line  
4 date can be met by looking at certain items. And then we put  
5 milestones in the PPA to further--provide further due diligence  
6 on the project, which is what we've done in this case.

7 Q. All right. Let me just make clear: You've never  
8 done this in any other PPA for a wind project in the last ten  
9 years?

10 A. Never done what?

11 Q. Signed a PPA without a turbine that has been  
12 identified.

13 A. If you are referring to Utah, yes. We've only had  
14 one project that was approved by the Commission. And it did  
15 not have the provision that allowed it to change turbine types.

16 Q. Okay. Let's go through and say: Did, at the time of  
17 your filed testimony--or actually at the time you decided to sign  
18 the PPA without an interconnection agreement, did Latigo have  
19 a final interconnection study?

20 A. No, they did not.

21 Q. And we know they didn't have a turbine--

22 A. Well, I apologize. What do you refer by "final  
23 interconnection study"? There's multiple studies.

24 Q. Well, I'm reading your testimony to you, Mr.  
25 Clements. If you don't know what it means, I can't explain it to

1 you.

2 A. Okay. I'd be happy to explain it.

3 Q. No, I just want to know did they have it?

4 A. You asked me a specific question about an  
5 interconnection study, and I need to know which study you're  
6 referring to.

7 Q. Whatever you were referring to in that testimony.

8 THE HEARING OFFICER: I'm lost. Can you  
9 rephrase the question? I just want to make sure--

10 MS. WOOD: I'm just going through his testimony.  
11 He says that he's willing to work with QFs to establish other  
12 project-specific assurances, such as a final interconnection  
13 study completion.

14 Q. (BY MS. WOOD:) And I am asking: Did Latigo  
15 have that at the time the PPA was signed?

16 A. They did not have a final interconnection  
17 agreement. What I'm referring to at this part of my testimony is  
18 that we often work with qualifying facilities to put milestones in  
19 the power purchase agreement at appropriate dates.

20 Q. That's not what I'm talking about.

21 A. Well, you're asking me about my testimony, and  
22 you're asking me to explain my testimony. And I'm explaining it  
23 to you.

24 Q. No. I'm asking you word by word: Did they have  
25 this--each element that you said you were willing to work with a

1 company, if they had these other assurances. And assurance by  
2 assurance, I'm asking you: Did Latigo have it?

3 A. And again, this section of my testimony, you have  
4 to have the context of this section of my testimony.

5 Q. We've heard the context. I'm asking you the words  
6 you presented.

7 THE HEARING OFFICER: Can we--

8 Q. (BY MS. WOOD:) --to the Commission under oath.

9 A. Certainly. Again--

10 Q. Did they have the final interconnection study  
11 completion?

12 A. And again, my testimony--

13 Q. That's just a yes or no.

14 THE HEARING OFFICER: We've got a disconnect  
15 here. You need to rephrase it. What's the problem? Can you  
16 rephrase?

17 MS. WOOD: I just want to know yes or no.

18 MR. WOOD: He's not answering the question.

19 MS. WOOD: He's not answering the question.

20 MR. WOOD: Did they have agreement?

21 MR. SACKETT: I don't think we need to have tag  
22 teams over here.

23 THE HEARING OFFICER: Yeah. I need to know  
24 who I'm talking to here.

25 MS. WOOD: Did they have the final

1 interconnection study completion? That's his words out of his  
2 testimony. That should be very easy for him to answer yes or  
3 no.

4 THE WITNESS: My testimony is that we require  
5 specific assurances, such as the final interconnection. And at  
6 the time of execution of the PPA, yes, that assurance is in the  
7 power purchase agreement. It is a milestone in the power  
8 purchase agreement.

9 Q. (BY MS. WOOD:) Did they have a final  
10 interconnection study?

11 MR. SOLANDER: Now it's been asked and  
12 answered four times.

13 MS. WOOD: After he signed the PPA? He's not  
14 answering it. It's nonresponsive.

15 MR. WOOD: The answer stands on its own.

16 THE WITNESS: All right. Let's answer it this way  
17 because this is probably how it is.

18 There are three studies--because she keeps asking  
19 about an interconnection study. There are actually three  
20 studies. There's a feasibility study, there's a system impact  
21 study, there's a facilities study. Once you complete those three  
22 study phases, you sign an interconnection agreement. And I'm  
23 just having trouble understanding what the question is, because  
24 "interconnection study" is not specific enough.

25 Q. (BY MS. WOOD:) Okay. Well, I'm just reading



1 from your testimony. So if you don't understand your testimony,  
2 I'm going to assume that they didn't have it. And we know they  
3 didn't have--

4 MR. SOLANDER: I'm sorry. I'm going to object to  
5 the characterization.

6 MS. WOOD: If he doesn't know what he's talking  
7 about--

8 THE HEARING OFFICER: He's allowed to respond  
9 with an explanation.

10 THE WITNESS: Yes. And again--

11 MR. WOOD: He's never answered--

12 MS. WOOD: He's never answered the question.

13 (Reporter interruption.)

14 THE HEARING OFFICER: Folks, I know that  
15 everyone has--we need to be careful to not speak over each  
16 other, remain civil. And for the court reporter's sake, let's keep  
17 things single here.

18 Let's do this: Try to ask the question again, and  
19 let's go through it slowly here because I keep hearing answers,  
20 and maybe I guess I'm not--

21 MS. WOOD: Do you have it in front of you, your  
22 Honor?

23 THE HEARING OFFICER: I don't. I still haven't--  
24 you haven't given me the right documents.

25 MS. WOOD: Let's get it in front of you because I

1 think the question might be clearer to you.

2 THE HEARING OFFICER: There's a Tab 4 out here  
3 somewhere that you are referring to that I have not seen it yet.

4 MS. WOOD: Okay. Let's give it to you so you'll  
5 understand.

6 THE HEARING OFFICER: Okay. Do you want to  
7 ask your question again?

8 MS. WOOD: Yeah.

9 Q. (BY MS. WOOD:) Looking at the sentence that  
10 becomes, "Historically, the Company has been willing to work  
11 with the QFs to establish other project-specific assurances,  
12 such as final interconnection study completion."

13 Had that occurred?

14 A. Yes, that had occurred. And that is--

15 Q. A turbine procurement agreement. Had that  
16 occurred?

17 A. Yes. At the time of the execution, the assurance  
18 had occurred. It's in the power purchase agreement as a  
19 milestone.

20 Q. We're not talking about the milestones in the  
21 agreement. We're asking you whether there was a turbine  
22 procurement agreement, not a milestone for it.

23 But was there a turbine procurement agreement?

24 A. That is different than my testimony. But if you are  
25 asking me specifically if there was a turbine procurement

1 agreement in place, I don't believe so, no.

2 Q. How about an EPC contract?

3 A. If you could explain what that is.

4 Q. I don't know. It's your testimony. I'm just reading  
5 your testimony.

6 A. It's an Engineering Procurement Construction  
7 Contract. And I don't believe there was one in place at the  
8 time.

9 Q. Okay. You said there was an assurance of a final  
10 interconnection study completion. That was a milestone. I'm  
11 just asking you if that had been finished.

12 A. No. At the time, the interconnection agreement had  
13 not been executed. They were still in study phase. I believe  
14 they had received their facilities study or were about to receive  
15 their facilities study.

16 Q. So in other words, the other  
17 assurances--the other assurances that you say are adequate to  
18 proceed without an interconnection agreement, none of those  
19 had, in fact, been achieved at the time you signed the PPA. Isn't  
20 that correct?

21 A. Again, you're misquoting or misinterpreting my  
22 testimony. My testimony is that we--

23 Q. Your testimony is what's on this printed page.

24 THE HEARING OFFICER: Help me understand this.  
25 The sentence I read--now it's gone--began with "Historically."

1 Help me understand the context of the historic nature of what  
2 you're talking about in here. That's one thing I don't have the...

3 MS. WOOD: Well, what's happened here, your  
4 Honor, is that PacifiCorp decides when and when not to enforce  
5 Schedule 38. And in the filed testimony by PacifiCorp in this  
6 matter, they say, "Oh, we don't really need an interconnection  
7 agreement in the Latigo case because we can rely on other  
8 things." And I'm simply trying to get him to admit that with  
9 respect to Latigo, none of those things had happened. That's  
10 all this is about. I have to keep fighting with him about it  
11 because he says his testimony doesn't mean what it says. But  
12 I'm going after the written testimony that we've been asked to  
13 accept.

14 THE HEARING OFFICER: Then what's the fight?  
15 Sounds like you've gone through it three or four--is there an  
16 addition line he hasn't answered yet?

17 MS. WOOD: Well, we've been through them now,  
18 finally. We've got him to admit they hadn't been achieved.

19 THE WITNESS: Again, your Honor, my testimony  
20 here is that we agreed to other--

21 MS. WOOD: There's no question pending.

22 THE WITNESS: I know, but that hasn't stopped you  
23 from testifying.

24 THE HEARING OFFICER: I think it's--if she's done  
25 with the line, I think that that's sufficient.

1 Are you done with your line on that sentence?

2 MS. WOOD: I am.

3 THE HEARING OFFICER: Okay. Why don't we  
4 move on.

5 Q. (BY MS. WOOD:) Now, in order to avoid going over  
6 the information we went over this morning, I don't want to go  
7 through--I know that some of the sections are different. But let  
8 me just have an agreement that in this power purchase  
9 agreement, you've executed it without knowing the turbine,  
10 right?

11 A. No. There is a turbine that's selected in the power  
12 purchase agreement.

13 Q. But, once again, they have a right to change it,  
14 right?

15 A. Yes. That's a different question.

16 Q. Well, if they have a right to change, you don't know  
17 what it is, then.

18 A. I would disagree with that testimony. But you can  
19 carry on.

20 Q. Would you look at paragraph 4.

21 MR. SACKETT: Paragraph 4 of what?

22 THE HEARING OFFICER: Yeah. What are we  
23 looking at?

24 MR. WOOD: Power purchase agreement.

25 MS. WOOD: I'm looking at page 4 of the power

1 purchase agreement, Roman Numeral IV on that page.

2 THE HEARING OFFICER: If there's anything  
3 confidential that you're going to hit on, you might--

4 MS. WOOD: I'm not going to.

5 THE HEARING OFFICER: All right. Thank you.

6 MS. WOOD: Actually, I think I'll just skip that.

7 Would you turn over to page 6, "Deficit Damages."

8 Deficit damages in this case are based on 52  
9 megawatts. Is that correct?

10 A. That's correct.

11 Q. So in other words, this particular--under this  
12 particular power purchase agreement, so long as this producer  
13 achieves 52 megawatts, you don't get any deficit damages, do  
14 you?

15 A. Deficit damages, that's correct, yes.

16 Q. Okay. So, as I understand it, the size is changed  
17 from 80 to 60, but they don't have to pay deficit damages so  
18 long as they achieve 52 megawatts, right?

19 A. For the purposes of the PPA before the  
20 Commission, the size never changed from 80 to 60 megawatts.  
21 The PPA is 60 megawatts. Oftentimes developers change the  
22 size of the project through the indicative pricing stage. It's very  
23 commonplace.

24 Q. This was being changed through the negotiation,  
25 not the indicative pricing, but through the negotiation of the

1 PPA, correct?

2 A. Yes. Oftentimes through the negotiation of the  
3 pricing and power purchase agreement, the size is changed.

4 Q. And then you gave them this further little goody.

5 MR. SOLANDER: I'm going to object to that  
6 characterization.

7 Q. (BY MS. WOOD:) Incentive--no, it's not an  
8 incentive. This further concession that they don't have to pay  
9 deficit damages so long as they achieve 52 megawatts, right?

10 A. Again, it's not something about giving--this is a  
11 term that was negotiated as part of the power purchase  
12 agreement negotiation phase.

13 Q. I understand that. But that means that this is the  
14 facility that, if it doesn't--it can fail to deliver as much as 8  
15 megawatts and not have to pay any damages?

16 A. Deficit damage is correct.

17 Q. All right.

18 A. And again, there are delay damages and other  
19 repercussions.

20 Q. I understand, but they don't have to pay those  
21 deficit damages. And as a result, they may choose to simply  
22 provide 52 megawatts, right?

23 A. That may occur.

24 Q. Now, in this particular contract, if this producer  
25 doesn't meet the milestones, PacifiCorp has a right to take over

1 this project, doesn't it?

2 A. That's after certain events occur. I believe we do  
3 have step-in rights in this agreement. I would have to verify,  
4 though.

5 MS. WOOD: Your Honor, I'm not going to go  
6 through all the provisions we went through this morning. I just  
7 simply ask that the testimony with respect to those provisions,  
8 to the extent the two contracts are the same--

9 THE HEARING OFFICER: I appreciate that. I have  
10 no problem with that, if other parties have no objection.

11 MR. SACKETT: We have no objections to that.

12 MR. SOLANDER: We have no objection.

13 THE WITNESS: I will note, if I could, your Honor,  
14 that the two power purchase agreements are not exactly the  
15 same. Some terms and conditions are different. So to the  
16 extent that there are different terms and conditions, there may  
17 be some answers that would apply differently. But materially, I  
18 would say they were, for the most part, the same.

19 MS. WOOD: I just don't want to go through the  
20 whole things that change because of the change of the turbine.  
21 I'd like to move it along, if that's all right.

22 THE HEARING OFFICER: That's fine.

23 THE WITNESS: My answers on the turbine type  
24 question would remain the same. It was something that was  
25 negotiated.



1 THE HEARING OFFICER: You're talking megawatts  
2 and particular commercial terms that maybe different.

3 THE WITNESS: Yes. There are certain terms and  
4 conditions in the power purchase agreement that will change if  
5 they elect to change turbine type. And their ability to change  
6 turbine type was a negotiated item that we would negotiate with  
7 any QF, including your client, if they were to approach us with  
8 that desire.

9 Q. (BY MS. WOOD:) Okay. And just to summarize a  
10 couple.

11 The estimated monthly output in Exhibit A is going  
12 to change, isn't it, depending on the turbine type?

13 A. That's correct, yes.

14 Q. And Exhibit 3.2.5 is going to change because you  
15 are going to have to require them to provide a contract for sale  
16 of the power services agreement once you have a turbine, right?

17 A. That's correct.

18 Q. And the operations and maintenance agreements  
19 will change pursuant to 3.2.5. Is that correct?

20 A. Possibly. Sometimes they may use the same O&M  
21 provider. It's not necessarily tied to the turbine manufacturer.

22 Q. Right now it's blank.

23 A. Yes, it will change.

24 Q. So it has to change, right?

25 A. Yes.

1 Q. Exhibit 5.1 might change?

2 A. No, it will not.

3 Q. So if the turbine has different characteristics and  
4 isn't able to deliver power at the same times of day or at the  
5 same times of month, there will be no change in 5.1?

6 A. No.

7 And 5.1, your Honor--apologize, I'll respond to Ms.  
8 Wood.

9 5.1 is the exhibit in the contract that sets forth the  
10 pricing. And the Company structures the pricing in an on-peak  
11 and an off-peak price for each calendar month. So whenever  
12 the QF provides energy to us, we pay them based on that  
13 schedule. The reason we provide it in a non-peak and off-peak  
14 by month is because it makes it so that we don't necessarily  
15 care if they've done their due diligence on the wind profile or if  
16 their turbine changes. If they deliver a certain amount of energy  
17 during the July on-peak period, we pay them the July on-peak  
18 price. So it really eliminates our need to verify that their wind  
19 profile is correct, since we pay them based on a time of day,  
20 meaning on-peak and off-peak and on a monthly basis. So it  
21 will not materially alter Section 5.1.

22 Q. (BY MS. WOOD:) But 6.1 will change?

23 A. I believe that's the as-built supplement, to my  
24 memory, and yes.

25 Q. 6.1, the description of the facilities, and here we

1 find that you put in 26 wind turbines. And that was the number  
2 for 80 megawatts, right?

3 A. That may be the case, yes.

4 Q. So we can assume that 60 megawatts will probably  
5 require fewer turbines, right?

6 A. Most likely, yes.

7 Q. Okay. And 6.1, the site map and the distance  
8 between the wind turbines will change?

9 A. Possibly. I don't know. Might not.

10 Q. Well, there's no site map.

11 A. Then one will be added. Again, that's a  
12 requirement to reaching commercial operation is providing an  
13 update--or all of those documents prior to providing--

14 Q. Okay. Now, the distance between wind turbines of  
15 adjacent qualifying facilities could be fairly significant, couldn't  
16 it?

17 A. Significant to the extent that that owner is also the  
18 owner of the adjacent qualifying facility. If they own another  
19 qualifying facility and one of their generators is less than one  
20 mile in separation, then that would become an issue, as that  
21 would not be a separate QF under PURPA guidelines. But a QF  
22 from another owner doesn't matter.

23 Q. Well, it could impact the production of the other  
24 owner, couldn't they?

25 A. It could.

1 Q. Depending on the turbine that's used?

2 A. Responding to the first question, it could impact the  
3 production if there's lake effect, or something to that nature.  
4 And again, that's why--that's somewhat the unique nature of a  
5 wind contract is we don't actually require these wind QFs to  
6 deliver a certain amount of energy because they will never  
7 deliver the amount of energy that we put in the contract. That's  
8 the nature of wind. Some years it will be more, some years it  
9 will be less. That's why in the contract, they build a certain  
10 project. We require the turbines to be mechanically available to  
11 produce energy. And then we accept the energy as it's  
12 generated.

13 MS. WOOD: No further questions of this witness.

14 THE HEARING OFFICER: I do have a couple of  
15 questions before you redirect.

16 CROSS-EXAMINATION

17 BY-THE HEARING OFFICER:

18 Q. For a lot of lines across and questions regarding, I  
19 guess, you know, comparing PacifiCorp's application of  
20 Schedule 38 and with respect to different projects, is that a fair  
21 statement that there's different terms in these agreements?

22 A. Absolutely. And I think that's allowed and even  
23 contemplated under Schedule 38, where there's a section that  
24 discusses the negotiation process when counterparties  
25 exchange drafts and issues lists. And we often end up with PPA

1 terms that are different between QF projects.

2 Q. Why is that in the public interest if there are  
3 different terms with respect to PPAs?

4 A. And again, going back to an answer that I provided  
5 previously, we have the dual obligation of implementing PURPA  
6 and fulfilling the rights allowed to QFs under PURPA and also  
7 protecting the ratepayer indifference standard. And that dual  
8 obligation that we have is something we take very seriously.

9 And at times, a QF may request a contract term  
10 that may be different than what other QFs have in their  
11 agreement. To the extent that that contract term does not  
12 create additional risk or cost for our customers, we feel like the  
13 indifference standard is met and that obligation is met. And we  
14 feel like we can allow it in the QF contract because that meets  
15 their obligation to implement PURPA in a fair way.

16 And that's really the test. The test is if this  
17 increases cost or risk to our customers, then we don't typically  
18 allow that change.

19 Q. Is your testimony the provisions of Schedule 38  
20 with respect to due diligence, are those discretionary or a  
21 requirement of the Company?

22 A. I would argue that it's discretionary. And really, the  
23 Company performs two significant due diligence phases. The  
24 first is pretty clearly outlined in Schedule 38. We require  
25 certain information: 1, to get a price, you need to provide

1 information; 2, to get a power purchase agreement, you need to  
2 provide an additional layer of information; and then 3, the third  
3 step would be execution of the power purchase agreement. And  
4 at that point in time, you need to provide all the information that  
5 is required to set forth your obligations under the power  
6 purchase agreement.

7           Getting back to the section of my testimony we  
8 spoke to at length, we often put in a power purchase agreement  
9 a milestone that says, "You don't have this now. You need to  
10 have this in order to reach commercial operation. And so we  
11 are going to require you to have it by a certain date."

12           For example, in the Latigo PPA, they have to have  
13 an executed interconnection agreement by a certain date. They  
14 have to have a post-project development security by a certain  
15 date. And so we often put milestones in the PPA at an early  
16 stage that say, "You need to provide these items."

17           And then the final milestone, of course, is if they  
18 don't have everything they need to produce power and deliver it  
19 to us, we don't pay for the power. The best due diligence there  
20 is, is we don't pay unless they deliver. If they don't deliver, we  
21 don't pay.

22           Q.       And why would the milestones ever be different  
23 from one PPA to the next?

24           A.       Often the timing of the circumstances around a  
25 particular project. Typically, the milestones are similar in the

1 timing. Sometimes there may be unique circumstances for any  
2 particular project where we may adjust it a few months on either  
3 side.

4 Some projects have an on-line date that might be  
5 two or three years out. So their milestones may be different  
6 than a project that has an on-line date that is one year out. And  
7 so we try to, again, apply the principle: Does this apply  
8 additional cost or risk to our customer? If it does, we need to  
9 address that.

10 And then one other key point on due diligence--and  
11 I think this is extremely relevant--again, we only are obligated to  
12 pay--our customers only pay if it's delivered. To get to the point  
13 where they can deliver power, someone is going to have to  
14 invest tens of millions of dollars, if not hundreds of millions of  
15 dollars. And we kind of piggyback on whoever that investor is.  
16 We assume that whoever is going to lend those QFs tens of  
17 millions of dollars or hundreds of millions of dollars will do more  
18 due diligence than we could ever desire to do under the power  
19 purchase agreement. And we utilize that due diligence because  
20 all of that will have to be done. The money will have to be  
21 lended and spent before we are ever obligated to pay the QF.

22 Q. I have no further questions.

23 THE HEARING OFFICER: Mr. Solander?

24 MR. SOLANDER: I don't have redirect, thank you.

25 MS. WOOD: I have something based on yours.

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RE CROSS EXAMINATION

BY-MS.WOOD:

Q. Would you turn to Exhibit 38.

MR. WOOD: Or Schedule 38.

MS. WOOD: Schedule 38, excuse me.

THE HEARING OFFICER: Which tab are we looking at?

THE WITNESS: I have to think about where that one was. Is that 7? I feel like it's 7. Yeah, 7 in the big binder, maybe?

MR. JETTER: Twenty-one.

THE HEARING OFFICER: Twenty-one?

MR. JETTER: In the big binder, it's 21.

Q. (BY MS. WOOD:) Schedule 38, B.2. "To obtain indicative pricing proposals with respect to the proposed project, the owner must provide in writing to the Company general project information reasonably required for the development of indicative pricing, included, but not limited to," and it says, "generation technology, design capacity, quantity and timing of monthly power deliveries, proposed site location and electrical interconnection point, proposed on-line date, demonstration of ability to obtain QF status, fuel type, plans for fuel and transportation agreements, proposed contract terms and pricing provisions, status of interconnection agreement."

That says "must." And what you're saying is that's



1 "must" with a caveat. So long as they provide you any turbine  
2 type, any design capacity, any quantity and timing of monthly  
3 power deliveries, and so forth, that you'll give them indicative  
4 pricing, that that "must" doesn't have to be what the project  
5 actually is going to be. Is that your position?

6 A. Boy, there was a lot said there. You might have to  
7 break that down into different components.

8 Q. Well?

9 A. Or I can just state: Our position is in order to  
10 obtain indicative pricing, you need to provide that information.

11 Q. You must provide that information.

12 A. Yes. And in the case of the Latigo PPA, they did  
13 provide that information.

14 Q. And then they were free to change it all?

15 A. Not free to change all of it. That's a  
16 mischaracterization.

17 Q. Well, they changed the generation technology?

18 A. I believe it will be wind, regardless of what turbine  
19 they select.

20 Q. The generation technology?

21 A. That is not allowed to change, turbine technology.

22 THE HEARING OFFICER: You're speaking over  
23 each other. Her hands are going to fall off here. So why don't  
24 we just speak one at a time. If you have a question, and then  
25 Mr. Clements can answer it.

1 Q. (BY MS. WOOD:) I believe wind is the fuel type.  
2 Generation technology is what takes the fuel type --

3 MR. SACKETT: Is there a question?

4 Q. (BY MS. WOOD:) --and generates electricity. Are  
5 you with me?

6 THE HEARING OFFICER: Let's break this down by  
7 question because I'm lost. Let's do it one by one again.

8 MS. WOOD: Okay. That's what I'm doing.

9 Q. (BY MS. WOOD:) I'm saying generation technology  
10 is the turbine, isn't it?

11 A. It's the type of turbine, which would be a wind  
12 turbine.

13 Q. It doesn't have to be any more than that?

14 A. No.

15 Q. They don't have to identify the turbine?

16 A. Not necessarily, no. Well, they have to provide  
17 quantity and timing of monthly power deliveries, which would be  
18 C, which would require identification of a turbine on their part.

19 Q. Yes. But they can identify any given turbine. And  
20 then they can change it under your PPA.

21 A. The PPA does have a term that allows them to  
22 change turbines types. We've discussed that ad nauseam here.

23 MS. WOOD: Okay. Thank you.

24 THE HEARING OFFICER: Okay. I have nothing  
25 further.

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Mr. Sackett?

CROSS-EXAMINATION

BY-MR.SACKETT:

Q. Mr. Clements, at various times during the cross-examination, you talked about flexibility that Rocky Mountain Power has to adapt to circumstances that are presented to you.

Do you believe that that flexibility that you've talked about is permitted by Schedule 38?

A. Yes, absolutely. I believe it's permitted by Schedule 38. And I believe it's been allowed by the Commission in other instances. In fact, in every other instance where we've discussed contract terms, the complaint has been a qualifying facility complaining that our contract terms are too stringent and that we are not being flexible enough. And oftentimes when those issues are brought before the Commission, the Commission has sided with the QF, or the Commission has sought a compromise where flexibility is provided to the QF without providing additional cost or risk to the customer. So that is allowed, yes.

Q. And in your discussions about balancing the two basic interests between PURPA and the ratepayers, you believe that flexibility is--sort of looking at it from an overall perspective--in the public interest?

A. Absolutely.

1 Q. And let's just make sure we are clear. Schedule 38  
2 is a Rocky Mountain Power rate schedule that's been approved  
3 by the Public Service Commission?

4 A. That is correct.

5 Q. There's been a good deal of suggestion that Rocky  
6 Mountain Power has been in some way preferential.

7 In your judgment and in connection with your  
8 position, have you been preferential to the Latigo project in any  
9 way?

10 THE HEARING OFFICER: In all fairness, Mr.  
11 Sackett, I haven't allowed Ellis-Hall to go down this route.  
12 Again, this docket is strictly with respect to the PPA between  
13 Latigo and Rocky Mountain Power. And I don't see the  
14 relevance, unless you have another line, about preferential  
15 treatment. In other words, there's a Schedule 38 process for  
16 complaints and --

17 MR. SACKETT: Well, hang on a second here.  
18 When do I get to talk to Mr. Clements about 116?

19 THE HEARING OFFICER: That's fine. I just want  
20 to make sure--again, I'm just stating that, in fairness, I've  
21 already spoken with Ellis-Hall. And I'm just reiterating the  
22 scope of this proceeding is not about potential discrimination  
23 against other power purchase agreement suppliers. There's a  
24 process for a dispute resolution in Schedule 38.

25 I just want to make it clear. If you want to follow

1 that line of questioning if there's another issue with respect to  
2 public interest, I'm fine.

3 MR. SACKETT: No, that's fine. I guess I had  
4 somewhat forgotten that, I guess you might call it, a ruling or a  
5 limitation. So we're happy to live within the limitation.

6 THE HEARING OFFICER: I'm fine for you to  
7 explore that. I want to make sure that we're all clear on that.

8 MR. SACKETT: That's fine. That's all I have.

9 THE HEARING OFFICER: Thank you.

10 Is there any other redirect?

11 MR. JETTER: No, thank you.

12 THE HEARING OFFICER: Why don't we go ahead  
13 and recess. Let's come back in ten minutes--35 after, right?  
14 And then we will begin with, I believe we are--let's see here--  
15 with Latigo, their witnesses, right?

16 MR. SACKETT: Right.

17 THE HEARING OFFICER: Let's go ahead and go  
18 off the record and take a recess.

19 (A break was taken from 3:21 a.m. to 3:37 a.m.)

20 THE HEARING OFFICER: Please raise your right  
21 hand. You solemnly swear to tell the whole truth and nothing  
22 but the truth?

23 THE WITNESS: I do.

24 THE HEARING OFFICER: Mr. Solander?

25 REDIRECT EXAMINATION

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BY-MR.SOLANDER:

Q. A few minutes ago, Mr. Clements, were you asked during cross-examination whether you were aware of any contracts with wind QFs that had been approved by the Commission that allowed for a change in turbine types?

A. I was.

Q. What was your answer?

A. My answer was I was not aware, based on the single contract that had been executed; namely, the Spanish Fork Wind Park II contract.

Q. And was that answer correct?

A. No, it was not.

Q. What would be the correct answer?

A. The correct answer is I am aware of two agreements. I had forgotten that we received a bench order from this Commission approving the Long Ridge Wind I, LLC, and the Long Ridge Wind II, LLC, QF PPAs last week or the week prior. And both of those PPAs included terms and conditions that allowed the wind turbine to be changed at some point. And I apologize for forgetting those two power purchase agreements.

THE HEARING OFFICER: Now, since you are sworn in, you know--again, please, let's try not to go down a whole of other dockets. But if parties do have cross based upon that additional direct testimony...

1 MS. WOOD: I think if this is going to be placed  
2 into evidence, we have a right to see those PPAs.

3 THE HEARING OFFICER: What?

4 MS. WOOD: The PPAs. If he says that--

5 MR. SOLANDER: He was asked that on cross. It  
6 wasn't something that was--

7 MS. WOOD: No, I didn't ask that on cross. I asked  
8 that this morning on cross.

9 So if we're going to talk about those two power  
10 purchase agreements, I think we have a chance to--should have  
11 a chance to see them. Because the document is the evidence.  
12 That's the best evidence, not his testimony of what the  
13 document says. So we ought to see the order and the two  
14 PPAs, which we don't have.

15 THE HEARING OFFICER: We will give his  
16 testimony the weight it's due. I don't want to go down around  
17 the whole of other dockets. Again, we're focusing on, again,  
18 116 here.

19 And so your objection or your statement is taken,  
20 and we'll give it the weight it's due, understanding that the  
21 parties haven't had a chance to review the PPAs with respect to  
22 the other dockets.

23 MS. WOOD: Or the order.

24 THE HEARING OFFICER: There is no written order  
25 yet.

1 MS. WOOD: Well, he just said there was an order.  
2 THE WITNESS: A bench order, I believe I said.  
3 THE HEARING OFFICER: Okay. Any other  
4 questions for Mr. Clements, or is he--are you okay with me  
5 excusing him?  
6 You are excused. Are you sure?  
7 THE WITNESS: Yes. I apologize.  
8 THE HEARING OFFICER: You are excused.  
9 THE WITNESS: Lapse in memory.  
10 THE HEARING OFFICER: Okay. Where we left it  
11 before our last recess is that I think we are--have Mr. Sackett's  
12 witness.  
13 MR. SACKETT: Yes. We call Christine Mikell.  
14 THE HEARING OFFICER: Raise your right hand.  
15 Do you solemnly swear to tell the whole truth and nothing but  
16 the truth?  
17 THE WITNESS: I do.  
18 THE HEARING OFFICER: You may be seated.  
19 Mr. Sackett.  
20 MR. SACKETT: Thank you.  
21 CHRISTINE MIKELL, having been first duly sworn,  
22 was examined and testified as follows:  
23 DIRECT EXAMINATION  
24 BY-MR.SACKETT:  
25 Q. Give your full name and your business address.



1 A. My full name is Christine Watson Mikell. My full  
2 business address is 4525 South Wasatch Boulevard, Suite 120,  
3 Salt Lake City, Utah, 84124.

4 Q. And spell your last name for the reporter.

5 A. Yes. M-I-K-E-L-L.

6 Q. And what's your business affiliation with respect to  
7 this docket?

8 A. I'm the president of Wasatch Wind Intermountain.  
9 And Latigo Wind Park is 100 percent owned by Wasatch Wind  
10 Intermountain. And I'm the manager of Latigo Wind Park.

11 Q. And just briefly, your educational background is  
12 what?

13 A. I received my Bachelor in Engineering from  
14 Vanderbilt University. And then I received an MBA from the  
15 University of Utah.

16 Q. And what has been your previous experience with  
17 wind-related projects?

18 A. I was the project developer on the Spanish Fork  
19 wind project, which was the first wind project developed and  
20 built in Utah.

21 Before that, I was the--worked as the wind energy  
22 manager for the Utah Energy Office, where I started the wind  
23 program there and put up the first MET tower in Monticello,  
24 probably 12 years ago.

25 Q. Okay. And how long have you been working on the

1 Latigo project?

2 A. I've been working on the Latigo wind project for  
3 about six or so years in various capacities.

4 Q. I don't want to belabor this, but I do think it's  
5 important to at least outline how a project of this kind, and this  
6 particular project in particular, goes together.

7 So what is the first thing that, in this project, was  
8 undertaken to get the project underway?

9 A. The first thing was to work with landowners to get  
10 agreements to put up MET towers.

11 Q. So that would have been about six years ago, I  
12 think you said, you'd been working on the project?

13 A. That's right.

14 Q. And then in connection with that or after that?

15 A. After that, we conducted a fatal flaw analysis,  
16 which we hired an independent consultant to do an analysis on  
17 any significant issues that might get in the way. For example,  
18 are there endangered species in that area? What's the  
19 interconnection transmission constraints? What's the wind like?  
20 What's the community like in terms of the permitting process?  
21 And those sorts of things. So that was the second step.

22 Q. And Design Environmental came into the picture  
23 very early?

24 A. That's right. So we looked at the area to see what  
25 kind of endangered species were in the area and the

1 significance of those related to wind.

2 Q. And we've discussed at some length the LGIA  
3 agreement. At what stage for your project did that sort of get  
4 underway?

5 A. Well, we actually submitted our first interconnection  
6 agreement--or sorry, application in about 2008 to see what the  
7 availability of the interconnection was. And we learned a lot  
8 from that. There were a lot of upgrades needed to the system to  
9 inject the power that we wanted to. And so that interconnection  
10 study was terminated.

11 And then we resubmitted our application in  
12 February--or March, I guess--April of 2011 for 60 megawatts  
13 because then we had identified the land area that we could put  
14 the turbines. Because as we went through the process, there  
15 were different factors that limited where we could put the  
16 turbines--there was an airport nearby, there was Forest Service  
17 land adjacent. And so we had a specific area of land where we  
18 could put the turbines. And so that dictated the size of the  
19 project.

20 Q. And with respect to negotiation with Rocky  
21 Mountain Power, how long did negotiation of the LGIA go on?

22 A. The actual--is your question how long did the  
23 negotiation of the agreement last or the study processes?

24 Q. No, the agreement. How long?

25 A. It took us quite a long time to negotiate the

1 interconnection agreement because it's a very long and  
2 complicated document and we wanted to make sure that we had  
3 it right. And so we had an attorney review it and consultants  
4 review it. And so we executed that on August 12 of this year.

5 Q. You mentioned the airport. Was there anything that  
6 you had to do from a regulatory perspective to deal with the  
7 airport?

8 A. There was. When we--so every wind farm has to  
9 submit where its turbine locations are located to ensure that the  
10 pilots are safe when they're landing at nearby airports or in the  
11 vicinity. And so when we first submitted that FAA form, there  
12 were some hazards with some of the turbine locations. And so  
13 then we had to go back and make an appeal to the FAA and ask  
14 that they re-look at the wind turbine locations. And so they did  
15 that and came back with a finding of no hazard for the turbines  
16 after we had to move a couple turbines away from the airport.

17 Q. And with respect to MET towers--first, what are  
18 MET towers?

19 A. A MET tower is a very, I guess, tall tower, typically  
20 60 meters in height with several anemometers at different  
21 locations to measure the wind speed, and then wind veils that  
22 measure the wind speed. We also, on our towers, have Anabat  
23 units so that we can do detailed analyses on bats. Because  
24 that's obviously an important part of the being a responsible  
25 developer, to know what type of bat activity there is, what types

1 of eagle activity there are, if there are sage grouse in the area,  
2 those sorts of things.

3 So we erected our first tower--I'm sorry, I don't  
4 remember the date. But through the course of time, we've  
5 erected five MET towers. And so at our project, we have five  
6 MET towers for about 3000 acres. And we have a report that  
7 says that our MET tower campaign is very much adequate.

8 Q. And with respect to other kinds of permits we've  
9 discussed here, a conditional use permit, where are you with  
10 that process?

11 A. We received our conditional use permit October 4  
12 of 2012. And that permit lasted one year. So it's active. And  
13 then we requested an extension to that. And that will be in good  
14 standing for another six months.

15 Q. Turning to the subject matter, the direct subject  
16 matter of this proceeding, the PPA.

17 Can you just give a brief outline of the history of  
18 when you first made an application for obtaining one and how it  
19 unfolded?

20 A. Well, we initially requested pricing last year. And  
21 then there was an avoided cost proceeding that concluded in  
22 December. And so then I believe we requested pricing in the  
23 January time frame.

24 Q. And how long--well, let me ask you: When was the  
25 PPA finally executed?

1 A. The power PPA was finally executed on July 3rd.

2 Q. So how long did you end up negotiating with Rocky  
3 Mountain Power over this contract?

4 A. We probably--actual negotiating, getting an  
5 attorney involved--started in February and then went through  
6 July when it was executed.

7 Q. How many pages is it?

8 A. At least 160 pages.

9 Q. With respect to the timing of this project, Latigo  
10 has raised the point that there are certain Internal Revenue  
11 Service production credits that are available under certain  
12 circumstances under Section 45 of the Internal Revenue Code.

13 Can you just briefly indicate what that's all about  
14 and why it's important to your project?

15 A. Yes. And I think I'm on record with similar  
16 comments in an earlier proceeding. But the production tax  
17 credit expires at the end of this year. And in order to qualify  
18 that, we need to start construction of a significant nature or  
19 purchase turbines of a certain amount, based on the overall  
20 expense of the project.

21 Q. And how important to the viability of the project is  
22 being able to qualify for those credits?

23 A. It's paramount to the viability of this project.

24 Q. Would you say that the project will or won't go or is  
25 somewhere in the middle if it wouldn't be able to qualify?

1 A. This project would not go if we are unable to meet  
2 to production tax credit safe harbor guidelines.

3 Q. We've had marked as Exhibit Latigo 1, which are  
4 the comments of Latigo Wind Park, and Latigo 2, which were the  
5 reply comments, and deposited copies with the court reporter.  
6 Have you reviewed those two exhibits?

7 A. I have.

8 Q. And to the extent that those exhibits make factual  
9 statements about the project quite apart from any legal  
10 arguments--first of all, do you have any corrections to those  
11 factual assertions?

12 A. Based on the factual assertions, I don't believe I  
13 do.

14 Q. So with respect to factual assertions about the  
15 project, do you attest that they are true and correct to the best  
16 of your knowledge and belief?

17 A. I do note one error. I believe it's on our reply  
18 comments.

19 Q. Oh, okay.

20 A. On page 7. It does say, "Is in the installation of  
21 map towers." I think that should be "MET towers." It's of no  
22 significance, but it still is an error.

23 Q. Right. It's on page 7 at line 3. You can charge me  
24 with that mistake or overlooking it.

25 Beyond that, any others?

1 A. I don't believe so.

2 Q. And are the factual assertions true and correct to  
3 the best of your belief and knowledge?

4 A. Yes.

5 MR. SACKETT: We would tender Ms. Mikell for  
6 cross-examination.

7 THE HEARING OFFICER: Okay.

8 Mr. Jetter?

9 MR. JETTER: I have no cross-examination. Thank  
10 you.

11 THE HEARING OFFICER: Mr. Coleman?

12 MR. COLEMAN: Just one brief question.

13 CROSS-EXAMINATION

14 BY-MR.COLEMAN:

15 Q. With respect to the Anabat surveys, what were the  
16 activity levels?

17 A. They were low.

18 Q. That's all I have.

19 THE HEARING OFFICER: Mr. Solander?

20 MR. SOLANDER: No questions, thank you.

21 THE HEARING OFFICER: Blue Mountain, I assume  
22 you have no questions?

23 MR. RUSSELL: Oh, no. I don't have any  
24 questions.

25 MS. HAYES: No, thank you.



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THE HEARING OFFICER: Ellis-Hall?

CROSS-EXAMINATION

BY-MR.WOOD:

Q. Good afternoon, Ms. Mikell.

I just want to clarify something. In your testimony, you stated you received a conditional use permit on October 4, 2012, and that that was good for one year?

A. Yes.

Q. Is that correct?

A. That's correct. And I probably have that document in my binder here.

Q. Isn't it true that you actually received your conditional use permit on July 5, 2012, and, in fact, the October 4, 2012, was an addendum?

A. No, that's not true.

Q. It's your sworn testimony today that you did not receive in the minutes that the San Juan County Planning Commission issued on July 5, 2012, a conditional use permit?

A. We received a conditional use permit in July. And then we updated our turbine layout a bit. And so we went back in October and we received another conditional use permit.

Q. That was an addendum, correct?

A. I'm not an attorney. But if my attorney that represented me were here, then you could ask her.

Q. As I see the time line, you got your conditional use

1 permit on July 12--excuse me, July 5, 2012. You submitted your  
2 supplemental statement on September 28, 2012. And you were  
3 issued an order--you were given an addendum on October 4,  
4 2012. I just wanted to clarify.

5 A. It was my understanding that we received our  
6 conditional use permit on October 4. And I believe that the  
7 County, San Juan County, would agree with that, based on  
8 needing a permit that we have. And unfortunately, I can't find it  
9 here. But you can request that of San Juan County.

10 Q. Okay. All right. Ms. Mikell, in your testimony, you  
11 stated that all the statements in your reply comments and  
12 comments, the factual statements, are true and correct. Is that  
13 correct?

14 A. I think my attorney referenced that my part of the  
15 brief was based on the project development facts.

16 Q. Only the project development facts?

17 MR. SACKETT: That's all we're talking about here.

18 MR. WOOD: I'm just wondering who I can  
19 cross-examine on the factual statements in your reply  
20 comments.

21 MR. SACKETT: Well, she's the person to  
22 cross-examine about factual statements.

23 MR. WOOD: Okay--

24 MR. SACKETT: Let me explain. As with any of the  
25 other comments, the comments are interspersed with legal

1 argument and legal citations. So she's not in a position to  
2 speak to those.

3 MR. WOOD: I'm not going to examine her on any  
4 legal citations, just the facts. And I was a little confused about  
5 how far that went. But if it's all the factual statements, that's  
6 fine.

7 Q. (BY MR. WOOD:) Okay. And you were the primary  
8 representative of Latigo in its communications and negotiations  
9 with PacifiCorp, is that right?

10 A. We had legal counsel representing us.

11 Q. But you were the primary person communicating  
12 with Mr. Clements. Isn't that correct?

13 A. I believe I did most of it, but others on my team  
14 may have had some communications.

15 Q. That's why I said "primary," right?

16 A. Yes, sir.

17 Q. You handled the majority.

18 Okay. And were all your communications with  
19 PacifiCorp true and correct, to the best of your knowledge?

20 A. To the best of my knowledge.

21 MR. SACKETT: I'm sorry, I don't even understand  
22 the question. Were the communications true and correct?

23 MR. WOOD: Yes. Were the statements in her  
24 communications with PacifiCorp true and correct? When she  
25 responded to PacifiCorp, they asked her for something, was her

1 response accurate?

2 THE HEARING OFFICER: Is there a specific  
3 portion of the communication?

4 MR. WOOD: There are lots, but I just want to get  
5 the witness' testimony about whether they're correct before I go  
6 into them.

7 THE WITNESS: I guess I'll answer based on a  
8 particular communication I had.

9 Q. (BY MR. WOOD:) Is it your custom to communicate  
10 accurately with PacifiCorp?

11 A. It is my custom to be honest.

12 Q. Can you give any instances when you did not  
13 provide true and accurate information to PacifiCorp?

14 A. I cannot.

15 Q. Okay. Are the statements in your PPA true and  
16 correct?

17 A. I'm not sure I understand the question.

18 Q. Well, in your power purchase agreement, you make  
19 representations and warranties--Latigo does. Are those  
20 representations and warranties true and correct?

21 A. Yes.

22 MR. SACKETT: I'm going to object to the line of  
23 questioning. A, the contract speaks for itself. B, it's a legal  
24 document. And C, Ms. Mikell is not a lawyer who is in a position  
25 to interpret it.

1 MR. WOOD: Your Honor, I'm not asking her to  
2 interpret it. Representations and warranties are factual--it's a  
3 representation--

4 THE HEARING OFFICER: Is the  
5 question--I hope it's okay, I'll rephrase it for you. Is your  
6 question: Is the data provided true and correct that basically  
7 informs the contract terms? Is that right?

8 MR. WOOD: Yes. And the representations that are  
9 made by the Company. I'm not asking for legal interpretation of  
10 anything, just factual representations.

11 THE HEARING OFFICER: I'll allow that.

12 THE WITNESS: To the rephrased question, yes.

13 Q. (BY MR. WOOD:) Okay. And lastly, same question  
14 as regarding to your LGIA. Are the terms, the representations  
15 in your LGIA true and correct?

16 MR. SACKETT: I'll object to the question. The  
17 LGIA and its terms are not under scrutiny and directly before the  
18 Commission in this case.

19 MR. WOOD: Your Honor, the terms--

20 MR. SACKETT: Plus--

21 THE HEARING OFFICER: Let's--

22 MR. SACKETT: --we've already identified, or I  
23 think we've identified the LGIA as something that is confidential.

24 MS. WOOD: Didn't we just start this hearing with  
25 the notice that PacifiCorp asserts that the LGIA is not

1 confidential once it's been executed?

2 THE HEARING OFFICER: I'm glad you reminded  
3 me of that. We still have that outstanding objection.

4 Did Latigo ever determine whether or not they were  
5 going to have an objection to receipt of that as confidential or  
6 not?

7 MR. SACKETT: Yes, indeed, we do.

8 THE HEARING OFFICER: You are still maintaining  
9 that it's confidential?

10 MR. RUSSELL: Yes, indeed. Up to this point, so  
11 far as I know, it has not been submitted into evidence.

12 THE HEARING OFFICER: Is it a publicly-available  
13 document?

14 MR. SACKETT: It is not. And the representation  
15 that it was false.

16 MR. WOOD: That's not true. You can request it.  
17 We contacted Tom Fishback, and you can request it and get a  
18 copy of it.

19 THE WITNESS: I think you said that it was posted  
20 on OASIS, and that's an inaccurate statement.

21 THE HEARING OFFICER: I think we'll treat it as  
22 confidential. I can't verify that here. I can't pull up OASIS.

23 MR. WOOD: When I get into it, I'm going to be  
24 talking about one sentence in that document. And if we need to  
25 clear the courtroom, we will. But it's a very important sentence.

1 THE HEARING OFFICER: Let's go back to the  
2 question, which is--I'll allow it. It's a simple question. I agree  
3 with Mr. Sackett that, you know, truthfully, our real focus here is  
4 Schedule 38. But just for--we're getting close to the end of the  
5 day. It's a simple question with respect to--I'm not sure if it's  
6 relevant. It doesn't feel relevant. But if you want to go down--

7 MR. WOOD: It will be highly relevant when you see  
8 the sentence.

9 THE HEARING OFFICER: Okay. That's great.  
10 Let's go there.

11 Q. (BY MR. WOOD:) Are the statements in your LGIA  
12 true and correct?

13 A. To the best of my knowledge, yes.

14 Q. Are there any mistakes in the terms of the PPA or  
15 the LGIA? Are you aware of any?

16 A. At this point, I'm not aware of any.

17 Q. Now, as a wind project developer, you would agree,  
18 wouldn't you, that it's important for PacifiCorp to enforce its  
19 regulations and Schedule 38 fairly and equally to all parties?

20 MR. SACKETT: I'll object to that line of questions  
21 as well.

22 THE HEARING OFFICER: That's sustained. Again,  
23 unless you can give me your rationale for why we're not talking  
24 about potential disparate treatment or a charge of  
25 discrimination.

1 MR. WOOD: Your Honor, very simply in the reply  
2 comments, they state, and I will read it, "Any energy projects  
3 require certain Commission approval entitled to regulatory  
4 stability and predictability of the application of the Commission  
5 order." That's what we're talking about today, whether or not  
6 Schedule 38 has been applied in a consistent manner and a  
7 predictable manner.

8 And in their brief, they state that that stability and  
9 predictability in applying those Commission orders is important.  
10 And I'm just trying to get the witness to--

11 THE HEARING OFFICER: What was your question  
12 again? You're teetering on--I'm still--I followed you, but--

13 MR. WOOD: Wouldn't you agree, as a wind project  
14 developer, that it's important for PacifiCorp to enforce its  
15 regulations consistently and fairly?

16 MR. SACKETT: I object to the question. It's not a  
17 question that she's in a position to answer. It's a potentially  
18 legal question, and the portion of the document that was just  
19 cited was in the nature of legal argument.

20 THE HEARING OFFICER: Sustained. I don't know  
21 if she's in a position to answer questions about PacifiCorp's  
22 role.

23 MR. WOOD: It's their reply comment, your Honor.

24 Q. (BY MR. WOOD:) Let's try this factual question  
25 because this has to do with Ellis-Hall.



1                   Isn't it true that in your reply comments, you state  
2                   that Ellis-Hall's objection is a clear attempt to block a project  
3                   that is much further along in producing electricity to add to the  
4                   grid than its own? Isn't it true that's what your reply comments  
5                   say?

6                   A.       Yes, that's true.

7                   Q.       What basis do you have for that factual assertion?

8                   A.       We have a PPA. We have an interconnection  
9                   agreement. We have two years of environmental data. We've  
10                  consulted with U.S. Fish & Wildlife Service. We worked on our  
11                  Army Corps of Engineering permits. We have our land leased.  
12                  We have easements for our transmission lines. We have dotted  
13                  our I's and crossed our T's in terms of our development.

14                  THE HEARING OFFICER: Let me say this: I  
15                  understand that that was included in their reply comments. But  
16                  again, whenever there's a comparison of two separate projects,  
17                  I need to understand the relevance. Again, we're here focused  
18                  on the project between--the PPA between PacifiCorp and Latigo.

19                  MR. WOOD: It's their reply comments, your Honor.

20                  THE HEARING OFFICER: I understand that. But  
21                  that doesn't mean it's relevant to this. I'm trying to understand  
22                  what the focus of the hearing today is.

23                  MR. WOOD: Well, your Honor, what I'm trying to  
24                  get to with this witness is the witness has made the factual  
25                  assertion that they have crossed--dotted all their I's and crossed

1 all their T's. They've also compared their project to being a  
2 fully-formed adult and Ellis-Hall's project as being a chick. And  
3 I'm here to explain why that is not true, No. 1, and No. 2, why  
4 Ellis-Hall has not been given the same opportunity under  
5 Schedule 38 to get their project to fruition.

6 THE HEARING OFFICER: I'm going to say this one  
7 more time. Schedule 38, the one we've been talking about,  
8 there is a process, a dispute resolution process that allows a  
9 person who believes that they are being discriminated against to  
10 proceed with that.

11 MS. WOOD: Would you point that out to us? You  
12 keep saying that, and I don't see it.

13 MR. SACKETT: I don't know where it says that the  
14 presiding officer has to answer questions.

15 THE HEARING OFFICER: I actually think it would  
16 be helpful because--

17 MS. WOOD: I don't see it.

18 THE HEARING OFFICER: --we're spending a lot of  
19 time on it. And I think it would be helpful. Tell me which tab  
20 the Schedule 38 is under.

21 MR. SOLANDER: Seven.

22 MR. WOOD: Seven.

23 THE HEARING OFFICER: Which binder?

24 MR. SOLANDER: The one with numbers.

25 MR. WOOD: The one with numbers.

1 THE HEARING OFFICER: Let me see which one.  
2 This isn't the most current Schedule 38. I don't know what this  
3 is.

4 MR. RUSSELL: I have a current one, if you'd like  
5 it.

6 THE HEARING OFFICER: Yes. Please approach.

7 MR. WOOD: This is the same one we're looking at,  
8 dated October 12, 2012. I don't see how that's different than  
9 our argument.

10 THE HEARING OFFICER: This is the most recent  
11 version that's dated effective May 13, 2013.

12 MR. WOOD: Okay.

13 THE HEARING OFFICER: This is what's on tariff  
14 and been approved. This is the filed tariff. And under Section  
15 Roman Numeral III, "Process for Filing a Complaint with the  
16 Commission on Contract Terms. The Commission has informal  
17 and formal dispute resolution processes which can be reviewed  
18 on the Commission's website at the following address."

19 Is this someone's copy?

20 MR. RUSSELL: It's mine. I've got several others.

21 MR. WOOD: Your Honor, I don't understand where  
22 that says that a party cannot raise an objection in this  
23 proceeding.

24 THE HEARING OFFICER: Okay. I'm going to  
25 explain this one more time. This proceeding is about the

1 Commission's consideration of two separate PPAs, one with  
2 PacifiCorp and Blue Mountain, and one with PacifiCorp and  
3 Latigo. We've heard a lot of discussion, spent much time and  
4 discussions about how Ellis-Hall has been mistreated. I can't  
5 comment on that. I don't know. That's not before us right now.  
6 There's a process for that, whether it's through FERC on the  
7 Open Access Transmission Tariff site or in Schedule 38.

8 MR. WOOD: Your Honor, I think you are confusing  
9 the issue that we're making.

10 THE HEARING OFFICER: Okay. Explain. I'm  
11 open to explanation.

12 MR. WOOD: Your Honor, our position is simple,  
13 and it's laid out in our objection. Schedule 38 needs to be  
14 applied consistently. It needs to be applied consistently under  
15 Title 54 of Utah's code. All right. That is our argument. That  
16 has always been our argument. This is based on Utah law.

17 Now, your Honor, there are other avenues for us to  
18 challenge disparate treatment. But a party needs to have a  
19 remedy if the Commission is going to approve a PPA that is not  
20 in the public's interest and was the creation of disparate  
21 treatment. And if the Commission does not want to address  
22 those issues now, I understand that. However, we would like to  
23 make our record because we believe that this is the best  
24 available place for us to put a stop to something that otherwise  
25 will take a lot of unraveling to do.

1 THE HEARING OFFICER: Understood. Let me just  
2 clarify one thing you said, and I'm happy to let you go down  
3 here. Is it Ellis-Hall's contention that this PPA hearing that  
4 we're talking about today is not in the public interest because  
5 Ellis-Hall was treated unfairly?

6 MS. WOOD: No. It's because they didn't follow  
7 Schedule 38.

8 THE HEARING OFFICER: I just want to talk to one  
9 attorney at one time. We're not tag teaming here today.

10 MR. WOOD: It is not in the public's interest  
11 because they didn't follow Schedule 38. And they've applied  
12 Schedule 38 inconsistently as to these two or these four PPAs  
13 and in their prior representations before the Commission.

14 THE HEARING OFFICER: Let's move on if you  
15 have additional questions. Again, I just--please proceed.

16 Q. (BY MR. WOOD:) Ms. Mikell, it's true that in your  
17 reply comments you assert that Ellis-Hall's project is not in a  
18 similar stage of your project. Isn't that correct?

19 A. That's correct.

20 Q. All right. Now, you mentioned in your testimony  
21 that you've been working on your project for six years?

22 A. That's right.

23 Q. But you haven't been really working on the project,  
24 have you? You haven't begun construction?

25 A. We haven't begun construction.

1 Q. And you haven't obtained all the necessary  
2 permits?

3 A. Well, there are certain permits, I think as Mr.  
4 Cutbirth alluded to earlier, that you get once you have your  
5 engineering design completed that you would get. So earlier,  
6 when I--

7 Q. Do you--

8 MR. SACKETT: Let her finish her answer, please.

9 THE WITNESS: Earlier when I mentioned that  
10 we've dotted all our T's and--crossed our T's and dotted our I's,  
11 I was speaking of development. But there are some permits that  
12 we'll get based on engineer drawings of the project.

13 Q. (BY MR. WOOD:) So you don't have a building  
14 permit?

15 A. We are working on our building permit.

16 Q. You do not have a building permit, do you?

17 A. We don't have a building permit.

18 Q. Okay. And in your reply comments, the only thing  
19 that you support for your assertion that your project is more  
20 advanced is that you've installed MET towers. Isn't that  
21 correct?

22 A. We have five MET towers up. And you need MET  
23 towers to get a project financed.

24 Q. And you make an assertion that Ellis-Hall doesn't  
25 have any MET towers, don't you?

1 A. I believe we did make that assertion.

2 Q. And is that true?

3 A. I was not privy to the data requests. So anything  
4 related to the MET towers would have to have come from my  
5 attorney.

6 Q. So that's not the factual assertion that you are  
7 willing to stand behind?

8 A. I wasn't privy to the data request. I could only  
9 speak to what I know. And I have not--I only have heard things  
10 from people.

11 Q. And what have you heard from people?

12 A. That Ellis-Hall has conditional use permits for MET  
13 towers but has erected no MET towers themselves.

14 Q. Who told you that?

15 A. Probably someone in San Juan County. I'm not  
16 sure if it was directed to me or if it was somebody that I heard it  
17 from.

18 Q. So you can't recall who you heard that from?

19 A. I cannot. No, sir.

20 Q. Would it surprise you to know that there are, in  
21 fact, MET towers on Ellis-Hall's land?

22 A. If they installed them themselves in the last  
23 months, then that would surprise me, yes.

24 Q. What if they didn't install them in the last months  
25 but they've been on that property for years. Would that surprise

1 you?

2 A. I'm not sure how this relates to Schedule 38 and  
3 our PPA.

4 Q. It relates to the factual assertions you make in your  
5 reply comments. I take that seriously. You've made--your  
6 company has taken the position that there are no MET towers.  
7 You've represented that to the Commission. And I'm trying to  
8 explore whether that's true.

9 A. That's the assertion we've made.

10 Q. And it's not true, is it?

11 A. I have not been to Monticello to look at them, sir.  
12 I'm sorry.

13 Q. Were you sitting in the hearing this afternoon?

14 A. I've been sitting here since whenever it started.  
15 And I've got soccer practice at 5:00 for my seven-year-old. So I  
16 have been here all day.

17 Q. Did you listen to Mr. Roring's testimony?

18 A. I heard Mr. Roring say he didn't know who owned  
19 the MET towers.

20 Q. Did you hear Mr. Roring say that there were MET  
21 towers on his land?

22 A. And I heard him say he wasn't sure who owned the  
23 MET towers.

24 Q. I didn't ask who owned them.

25 THE HEARING OFFICER: Can we just ask the



1 question again? Let's just get back to it, then give an answer.  
2 Do you want to rephrase your question or just give it again?  
3 And then she can --

4 MR. WOOD: Your Honor, Ms. Mikell and Latigo  
5 made the representation that there are no MET towers on  
6 Ellis-Hall's land. I'm just trying to explore with the witness  
7 whether she heard Mr. Roring say that there are MET towers on  
8 his land.

9 THE HEARING OFFICER: Understood. Just ask  
10 your question.

11 THE WITNESS: I'm sorry, sir. That was not our  
12 docket, and I may not have been paying attention.

13 Q. (BY MS. WOOD:) He actually was for both dockets,  
14 Ms. Mikell. He gave his testimony regarding both dockets.  
15 Remember, he pointed to your route of interconnection.

16 THE HEARING OFFICER: Just so I'm clear, what's  
17 the question that we have outstanding?

18 MR. WOOD: I'm just trying to explore that Ms.  
19 Mikell made a factual assertion she has no basis for.

20 THE HEARING OFFICER: What's the question that  
21 she can answer?

22 Q. (BY MR. WOOD:) Ms. Mikell, isn't it true that  
23 Latigo's project has been kicked off the queue several times for  
24 lack of progress?

25 A. I think I made an assertion earlier that we made an

1 interconnect in 2008 for 200 megawatts. We let that lapse,  
2 which meant that we didn't execute any agreement, probably, for  
3 the system impact study because we knew there was no  
4 capacity in the time frame that we were going to build the  
5 project.

6 So if you want to quantify it as lack of activity, we  
7 would quantify it as the fact that we were waiting for upgrades  
8 to be made to the system to interconnect.

9 Q. Well, on the transmission queue 219A and 219B,  
10 one is terminated for lack of activity on December 31, 2010, and  
11 one is terminated on December 31, 2011, for lack of activity. Is  
12 that correct?

13 A. I can only speak to the interconnect for this  
14 particular PPA.

15 Q. Even though you've been working for Latigo for six  
16 years?

17 A. I haven't always been the project developer for this  
18 project.

19 Q. Were you the project developer for this project in  
20 December of 2011?

21 A. I was not.

22 Q. Now you've testified that it's important for you to  
23 have a PPA in order to secure tax credits for your project. Isn't  
24 that correct?

25 A. That's correct.

1 Q. And without those tax credits, your project, as you  
2 said, is a no-go?

3 A. I'm not sure that I said that. Can you repeat that,  
4 please?

5 Q. Didn't you testify that if you do not get the  
6 necessary tax credits, you cannot complete the project?

7 A. I'm not sure I stated it that way because things  
8 change very rapidly in the wind industry in terms of technology.

9 Q. If you don't get your tax credits by the end of the  
10 year, can you complete your project?

11 A. I'm sorry. I'm not sure where you're going with this,  
12 what your question is.

13 THE HEARING OFFICER: He's got a question out  
14 there, Ms. Mikell.

15 Q. (BY MR. WOOD:) Can you complete your wind  
16 project--

17 A. We are working towards completion of our wind  
18 project. We are working on our building permit and the other  
19 aspects to build a wind project.

20 Q. Can you complete your wind project without  
21 obtaining the U.S. Revenue Code tax credits that you testified  
22 to?

23 A. Well, they could also be extended. So in the  
24 event they would be extended, we would build it.

25 Q. If they are not extended, can you complete your

1 project?

2 A. Yes.

3 Q. Without obtaining the tax credits?

4 A. I have to admit that my expertise with the Company  
5 is not the finance part, sir.

6 Q. We'll let your prior testimony speak for itself. But I  
7 believe you testified that without those tax credits, you can't  
8 complete your project. But if you can't remember, that's okay.

9 Now, in your--does your PPA allow you to drop out  
10 of the contract if you don't get the tax credits?

11 A. No, sir.

12 Q. Now, in your power purchase agreement, you don't  
13 select--you select a wind turbine, don't you?

14 A. We do.

15 Q. Which turbine do you select?

16 A. In the power purchase agreement?

17 Q. Yeah.

18 A. It's a Siemens machine.

19 Q. Okay. And that Siemens machine, which is  
20 SWT-2.3-113, is selected, subject to your right to change wind  
21 turbine. Isn't that correct?

22 A. That's the terms of the PPA.

23 Q. And was your Siemens wind turbine evaluated in  
24 your LGIP study process?

25 A. It was not.

1 Q. What wind turbine was studied in your LGIP  
2 process?

3 A. I believe it was the Clipper machine.

4 Q. I want to talk a little bit about that.

5 What is the--Ms. Mikell, what is the current wind  
6 turbine that you are going to use on the project?

7 A. Well, in our PPA, it says the Siemens 2.3 machine.

8 Q. Is that still the machine that you intend to use on  
9 the project?

10 A. Well, in our PPA, we have flexibility for a turbine.  
11 So currently, we're negotiating with different vendors, turbine  
12 vendors. Because with the market the way it is with the  
13 production tax expiring, we need to look at several vendors.

14 Q. Are you looking at Clipper?

15 A. We are not.

16 Q. Ms. Mikell, I want to turn your attention to your  
17 fully-executed QF large generation interconnection agreement.  
18 If we need to clear the room for me to look at one sentence  
19 here, I'm fine doing that.

20 THE HEARING OFFICER: If there are parties in  
21 the room that are either not staff with the Public Service of  
22 Utah, the Office of Consumer Services for the Division of Public  
23 Utilities, or have signed the nondisclosure agreement, we're  
24 going to have to ask you to leave the room.

25 MR. RUSSELL: I'm not sure whether that includes

1 me or not.

2 THE HEARING OFFICER: Have you signed the  
3 nondisclosure?

4 MR. RUSSELL: I don't believe I have. I'm fine  
5 stepping out.

6 MR. WOOD: This will be very quick.

7 THE HEARING OFFICER: That's fine, yeah. Sorry.  
8 Yes?

9 MEMBER OF THE AUDIENCE: I was just going to  
10 mention sometimes the microphones you can actually hear in  
11 the hallway. So you may want to speak a little bit quieter.

12 THE HEARING OFFICER: Okay.

13 MR. WOOD: I don't think that what I'm going to  
14 read is going to be considered confidential and proprietary. But  
15 I don't want to fight about it and waste time.

16 (The following proceedings were deemed confidential and heard  
17 outside the presence of all unauthorized persons.)

18 Q. (BY MS. WOOD:) Now Ms. Mikell, in your direct  
19 testimony, you testified that you wanted to make sure that the  
20 LGIA was correct. And you took the time to do so. Was that  
21 your testimony?

22 A. Please repeat that?

23 Q. In your direct testimony, you stated that you guys  
24 took extra time to make sure that the LGIA was correct.

25 A. I'm sorry. Where did you see that in my testimony?

1 Can you refer me to that?

2 Q. In your testimony today.

3 A. In my testimony, I said to the best of my  
4 knowledge. I didn't say I had taken extra time to look at the  
5 LGIA. I really don't follow your question.

6 Q. We'll let your testimony speak for itself.  
7 If you could turn to Exhibit C.

8 A. In which book?

9 Q. I'm sorry. I thought I asked you to turn to Exhibit 4.

10 A. I have two books here. Can you--is it the big book  
11 or the little book?

12 Q. I know it can be confusing. I'll--

13 THE HEARING OFFICER: Yes, you can approach  
14 the witness.

15 MR. WOOD: I'm sorry, your Honor.

16 THE WITNESS: I can read the page number if you  
17 could just tell me the page.

18 Q. (BY MR. WOOD:) I don't think it's actually--  
19 because it's an exhibit, I don't think it's actually on--

20 THE HEARING OFFICER: I'll take administrative  
21 notice that there's a very cute baby that is in the gallery who  
22 has not signed an NDA, but I'll allow it.

23 MS. CERUTI: She's asleep.

24 THE HEARING OFFICER: I think we're okay.

25 MS. CERUTI: Thank you.

1 Q. (BY MR. WOOD:) Now, Ms. Mikell, your LGIA  
2 agreement was signed--or this was  
3 executed--the letter, cover letter, is August 13, 2013. But your  
4 company, I believe, executed on the 8th, which is more than a  
5 month after you executed your PPA.

6 Could you please read the description of the large  
7 generation facility into the record.

8 MR. SACKETT: Where you are we? I'm sorry.

9 MR. WOOD: Appendix C to the QF LGIA. It's  
10 "Interconnection Details." And I'm sorry I can't point you to a  
11 page number because there are no page numbers.

12 THE HEARING OFFICER: Is this in one of the  
13 tabs, Mr. Wood?

14 MR. WOOD: Yeah, Tab No. 4. In fact, the Court  
15 should already be--

16 THE HEARING OFFICER: Yeah, that's--

17 MR. WOOD: --in the document.

18 Could I approach? Maybe I'll be able to find it for  
19 you. It's kind of a big document.

20 THE HEARING OFFICER: Yes.

21 We're looking at Appendix C.

22 Q. (BY MR. WOOD:) Ms. Mikell, can you read that  
23 into the record?

24 MR. SACKETT: Do we have to have her read it into  
25 the record? It speaks for itself.



1 MR. WOOD: I would like to have her read it.

2 THE HEARING OFFICER: How long are we talking  
3 about here?

4 MR. WOOD: First paragraph, a small paragraph.

5 THE WITNESS: "Description of the Large  
6 Generating Facility"--do you want me to read it slowly for you?

7 THE REPORTER: Yes, please.

8 THE WITNESS: "A 60 MW wind generating facility  
9 consisting of 24 Clipper Liberty Series 2.5 MW wind turbine  
10 generators, located in San Juan County, with 36/48/60 MVA  
11 step-up transformer with an impedance of eight percent."

12 Q. (BY MR. WOOD:) So your LGIA, executed LGIA,  
13 represents that you're going to be using the Clipper turbine.  
14 Isn't that true?

15 A. That's true.

16 Q. Do you have any idea whether those Clipper  
17 turbines are still made?

18 A. We're not interested in using them, and so I don't.  
19 That's not something we concern ourselves with.

20 Q. If you're not interested in using them, why is it in  
21 your LGIA as your turbine type?

22 A. Because we have the ability and the flexibility to  
23 change the turbine type in our LGIA.

24 Q. Ms. Mikell, you may have the ability to change your  
25 turbine type, but why is a turbine type that you have no interest

1 in pursuing listed as the generation technology in your LGIA?

2 A. Because in speaking with a representative of  
3 PacifiCorp, similar to what he told Mike Cutbirth is that we once  
4 we finalize the turbine type, we will give it to them and they will  
5 perform the dynamic studies. And then that will be changed.

6 Q. Did he tell you to designate the Clipper type?

7 A. He suggested we--and I don't recall when he  
8 suggested this. But I have an email from him saying that we  
9 need to designate a change in turbine 30 days after we provide  
10 the security deposit.

11 Q. Ms. Mikell, I'm trying to nail down why this Clipper  
12 turbine is listed. Who was the person that decided to insert the  
13 Clipper turbine in your LGIA?

14 A. Who--that was part of our interconnection. The  
15 Clipper wind turbine has been a part of this process. And  
16 PacifiCorp told us that when we finalize our turbine type for our  
17 PPA, that we will do the same for our interconnect agreement.  
18 And we must do it 30 days after we post the security for our  
19 interconnection.

20 Q. Ms. Mikell, how long has the Clipper turbine not  
21 been a turbine that you were evaluating?

22 A. I'm not certain, sir.

23 Q. Can you give me an estimate?

24 A. I do not have an estimate for you.

25 Q. Are you aware that PacifiCorp has kicked off the

1 queue all Clipper turbine projects because the Company is  
2 involved in litigation and is no longer producing that turbine?

3 A. I am not aware of this information. And I'm not  
4 aware of PacifiCorp kicking people out of the queue for a  
5 turbine. I don't think I'm an expert to answer this question.

6 Q. Let me have you turn to 14.

7 A. Fourteen?

8 Q. Exhibit 14. Ms. Mikell, as you see, Exhibit 14 is the  
9 September 28, 2013 letter from Jason DeGroot from Clipper  
10 Wind. And he responds to Ron saying, "Per our conversation,  
11 Clipper is no longer manufacturing the 2.5 Liberty turbine.  
12 Clipper is now focused on meeting the major maintenance  
13 requirements of our customer base and supporting our fleet of  
14 turbines."

15 Does it surprise you that they're not making the  
16 turbine designated in your LGIA?

17 A. It does because I wasn't aware of this, sir. I'm  
18 sorry.

19 Q. When was the last time you spoke to Clipper about  
20 the turbines?

21 A. I do not recall.

22 Q. Has it been in the last month?

23 A. No.

24 Q. The last three months?

25 A. I don't recall.

1 Q. You can't give me any clarity on when you last have  
2 spoken to Clipper?

3 A. I cannot.

4 Q. But you executed an LGIA after you executed your  
5 PPA designating the Clipper turbine as your turbine?

6 A. That is what you see here, sir.

7 Q. So which one is it going to be? Is it going to be the  
8 Clipper or is it going to be the Siemens?

9 A. I think we have--based on our PPA, we have 90  
10 days from the approval of our contract to determine the turbine  
11 that we use.

12 Q. Do you regularly execute two different contracts  
13 that make contradictory representations, one saying one thing  
14 and the other saying another?

15 A. I'm not sure that we made a representation to the  
16 exact turbine in our PPA because we have the flexibility to  
17 change it if we need to.

18 Q. Well, "Wind Turbine" is defined as the Siemens  
19 SWT-2.3-113, isn't it?

20 A. It is.

21 Q. And you say that you have the ability in your LGIA  
22 also to change turbine type?

23 A. I'm telling you about emails that I had with  
24 PacifiCorp that specifically state that they would prefer us to  
25 change the turbine type when we are certain of the turbine type

1 we will use and that we have to designate that. We have a time  
2 frame, a milestone, that we need to designate that. Based on  
3 our interconnection agreement security deposit, we have to  
4 designate it 30 days after that deposit.

5 Q. Ms. Mikell, does your LGIA executed contract allow  
6 you to change turbine type?

7 A. I believe it does. I think contracts--you know, there  
8 are contracts that--you make amendments all the time to  
9 contracts.

10 Q. After they've been executed?

11 A. Things change occasionally. I'm not a contract  
12 expert. I'm not an attorney, so.

13 Q. So you can't point to anything in the LGIA contract  
14 that says that you can change that term?

15 MR. SACKETT: I'm going to object to the question.  
16 The LGIA is not on trial here.

17 THE HEARING OFFICER: Yeah. Again, you know,  
18 we've let this line of questioning go far. The LGIA is part of the  
19 pro forma Open Access Transmission Tariff that is governed by  
20 the Federal Energy Regulatory Commission. We do not have  
21 jurisdiction in the state of Utah over the terms and conditions of  
22 that.

23 MR. WOOD: I thought that the public and the  
24 Commission might be interested if a contract is being put  
25 forward to be accepted and is contradicted by another term.

1 THE HEARING OFFICER: Can you wrap up where  
2 you're going with this? We're getting a little repetitious at this  
3 point of the evening.

4 MR. COLEMAN: Is it appropriate to allow those  
5 folks who were escorted out to return?

6 MR. WOOD: We can have them come back. I  
7 won't ask any more questions.

8 THE HEARING OFFICER: Okay, that's great. So if  
9 you want to--just you can end the confidential treatment now.

10 Let's go off the record here for a second.

11 (A discussion was held off the record.)

12 (End of confidential portion.)

13 THE HEARING OFFICER: Okay. We're back on  
14 the record.

15 Q. (BY MR. WOOD:) Ms. Mikell, you just testified a  
16 few moments ago that one of the things that separates your  
17 project is that you have complete site control. Is that true?

18 A. That is true. I mean, I guess I'd like you to define  
19 what specifically you are talking about. Site control based on  
20 whose definition?

21 Q. Let me give you a definition.

22 A. From where? I'm sorry. Like, from the dictionary  
23 or--

24 Q. What do you understand as being site control?

25 A. I'm asking you. I mean, I'm asking you to clarify

1 your question.

2 THE HEARING OFFICER: Ask the question. Why  
3 don't you say the question again.

4 Q. (BY MR. WOOD:) What do you understand is site  
5 control?

6 THE HEARING OFFICER: I'll allow that.

7 THE WITNESS: "Site Control" means that we  
8 control the area where our turbines are.

9 Q. (BY MR. WOOD:) How about the area in which  
10 your transmission lines go past?

11 A. I guess it would just depend on what you are  
12 specifically asking me.

13 Q. Well, do you need to have site control over the  
14 transmission line?

15 A. We have site control for our project for both the  
16 wind project and for the T-line.

17 Q. Now, Ms. Mikell, I'm going to turn your attention to  
18 Exhibit 15, which is a June 29, 2012 conditional use permit  
19 application for Latigo--for Latigo, excuse me. And can you turn  
20 to page 7 in that document at the very bottom?

21 THE HEARING OFFICER: Mr. Wood, what tab are  
22 we at again?

23 MR. WOOD: Tab 14.

24 MR. SACKETT: 15.

25 MR. WOOD: Oh, excuse me. What did I say?

1 Yeah, 15. Excuse me. Apologize for being confused.

2 THE HEARING OFFICER: Okay.

3 Q. (BY MR. WOOD:) Page 7 down at the bottom. And  
4 is this a letter you prepared, Ms. Mikell?

5 A. A colleague of mine at the time prepared it.

6 Q. Okay. It says down at the bottom of page 7,  
7 "Latigo Wind Park believes that without transmission  
8 easements, there would be no wind farm; and therefore, the  
9 transmission easement holders should benefit annually, like  
10 those who host wind turbines."

11 Would you agree with that statement?

12 A. In this instance, I would.

13 Q. Now, do you have--you said that you have site  
14 control over your route of interconnection?

15 A. I do. I said I did, yes.

16 Q. Okay. Now, you understand that under the Open  
17 Access Transmission Services Tariff, one of the things that's  
18 required is that you have site control at the time you submit to  
19 the LGIA process?

20 A. Yes.

21 Q. Okay. And you entered into that process in March  
22 of 2011. Isn't that correct?

23 A. That's right.

24 Q. And did you have site control?

25 A. Based on the definition of site control in that



1 particular document, we did. We did have site control. And we  
2 have an email from PacifiCorp, from them saying that we had  
3 site control.

4 Q. On March 25, 2011, you had site control?

5 A. Based on their definition--and I read it earlier today  
6 to confirm my answer--that is true. And PacifiCorp, we provided  
7 the documents to PacifiCorp of our agreement. And they  
8 approved it. And we went on with the process.

9 Q. Okay. Ms. Mikell, would you turn to Exhibit 1 in  
10 that same book. Do you recognize this as an April 11, 2011  
11 letter from PacifiCorp to Wasatch Wind, Mr. James O'Reilly?  
12 And in this letter it states that you do not have site control.

13 A. Right. I think I just said that. We didn't have site  
14 control. And then we had to supply the site control to them  
15 when we had it. And then they approved it.

16 Q. Ms. Mikell, my question to you was whether you had  
17 site control on March 25, 2011. This letter is dated April 11,  
18 2011; therefore, after. So how could you have site control on  
19 March 25, 2011?

20 A. When you don't have site control, you have to  
21 submit an extra \$10,000 in lieu of site control. But if you have  
22 site control, you don't have to submit that 10,000.

23 Q. Did you have site control on March 25, 2011? Your  
24 testimony was that you did.

25 A. I'm sorry, sir. What I said is--you are confusing the

1 date. All I know--because there was another project developer  
2 doing this. What I  
3 recall--and I could be incorrect--but I believe the situation was  
4 that we received a letter from PacifiCorp after the fact, saying  
5 we were in default for our site control. And then we provided  
6 them site control in an agreement that we had proving site  
7 control. And then we cured our default. That is my memory, to  
8 the best of my knowledge.

9 Q. Ms. Mikell, when did you sign up your first  
10 landowner?

11 A. Can you read me the site control document that you  
12 are referring to? Because I think it's important for the record,  
13 for them to understand what the site control definition is based  
14 on an LGIA, if we're going to go down this path.

15 Q. I'm just going to talk to you about whether you had  
16 people signed up. When did you sign up your first landowner?

17 THE HEARING OFFICER: So we're moving off  
18 LGIA onto a new line of questioning. Is that right?

19 Q. (BY MR. WOOD:) Well, I'll read the definition from  
20 the OATT. "'Site Control' shall mean documentation reasonably  
21 demonstrating owner of a leasehold interest in or a right to  
22 develop a site for the purpose of constructing the generation  
23 facility.

24 "2. An option to purchase or acquire a leasehold  
25 site for such purpose.

1 "3, an exclusive or other business relationship  
2 between interconnection customer and the entity having the  
3 right to sell, lease, or grant interconnection customers the right  
4 to possess or occupy a site for such purposes."

5 MR. SACKETT: I'm going to object to all of this  
6 because it seems to be directly related only to the transmission  
7 aspect of this project. And that's not the bailiwick of this  
8 Commission.

9 THE HEARING OFFICER: Overruled. She asked  
10 for him to read it into the record, and he was just responding to  
11 it. So we have it in the record. So again, let's move on from  
12 the LGIA to something else.

13 Q. (BY MR. WOOD:) When did you first acquire your  
14 first lease, purchase, control of land that is the subject to your  
15 wind project?

16 A. I believe it was sometime in the April 2011 time  
17 frame we entered our first agreement.

18 Q. And who was that agreement with?

19 A. Redd Enterprises.

20 Q. Ms. Mikell, if you would turn to Exhibit 9. You will  
21 see your Memorandum of Wind Lease Agreement between you  
22 and Redd Enterprises. And you'll see it says, "The  
23 Memorandum of Wind Lease Agreement is made, dated, and  
24 effective as of July 9, 2012"?

25 A. Yes.

1 Q. That's not April of 2011, is it?

2 A. No. We had an earlier agreement that wasn't  
3 recorded.

4 Q. You didn't produce that agreement to us, did you, in  
5 discovery?

6 A. I don't believe that that was a question.

7 Q. You're certain, though, it was in April of 2011?

8 A. I'm quite certain.

9 Q. When was your next wind leasehold signed?

10 A. I believe the next ones were signed in 2011. I don't  
11 recall the exact dates of all the agreements being executed.

12 Q. Well, I have a little demonstrative exhibit here with  
13 all the recordation dates, the dates of the exhibits, and when  
14 they were all put into effect.

15 Here's the leases you had signed up.

16 THE HEARING OFFICER: Do you have copies for  
17 the other parties to look at that exhibit?

18 MR. WOOD: I don't, your Honor. I apologize. I  
19 wasn't planning on--

20 THE HEARING OFFICER: I think counsel, opposing  
21 counsel, is going to want to see it. Probably I am, too.

22 MR. WOOD: I can hand that to them as soon as  
23 she's had a chance to look at it.

24 Q. (BY MR. WOOD:) From the publicly available  
25 documents, you'll see that in March of 2011 you had no leases

1 signed up.

2 THE HEARING OFFICER: You know, if you're  
3 going to cross-examine a witness on a document, you are going  
4 to need to give copies to me and other counsel.

5 MR. WOOD: I'm not going to enter it as an exhibit.  
6 It's just for demonstrative purposes.

7 THE HEARING OFFICER: I'm not going to allow  
8 that. How can you allow questions on a document that the other  
9 parties can't have a look at?

10 MR. WOOD: Well, then, I'll just go lease by lease.  
11 That's fine. I don't have to ask her about each one. I can go by  
12 the recordation date.

13 THE HEARING OFFICER: So are you going to go  
14 off this document or not?

15 MR. WOOD: No, I won't use that. I'll ask her via  
16 question and answer.

17 THE HEARING OFFICER: Okay.

18 Q. (BY MR. WOOD:) Ms. Mikell, when did you sign up  
19 Grayson W. Redd?

20 A. I'm sorry. I don't have those documents in front of  
21 me. I only have the document that you produced.

22 Q. Is it possible that you signed up Grayson W. Redd  
23 on August 30, 2011?

24 A. It could be.

25 Q. Do you have any reason to believe that that date is

1 incorrect?

2 A. I don't have the document in front of me.

3 Q. Do you recall when you signed up John M. Scorup?

4 MR. SACKETT: I'm going to object to this  
5 apparently lengthy questioning about something that really is  
6 not related to what's currently before the Commission.

7 THE HEARING OFFICER: What are you getting at,  
8 Mr. Wood? Help us understand.

9 MR. WOOD: It's very simple, your Honor. They  
10 had none of the people signed up at the time they were given a  
11 position on the queue, which is a requirement of OATT. And let  
12 me continue. They then made submissions to PacifiCorp that  
13 they had people signed up, which they did not. We have the  
14 dates and the recordings of people who signed up, and they still  
15 don't have everyone signed up. Yet, they've been permitted to  
16 sign a PPA. Their documents under Schedule 38, which are  
17 required to demonstrate site control, have been false.

18 And so the approval of this PPA will result in a  
19 power purchase contract being approved for a party that does  
20 not have site control, which is an essential element of the PPA.

21 THE HEARING OFFICER: I've made my statements  
22 before. Again, let's--to the extent you can, you know, avoid  
23 repetition, that would be appreciated.

24 MR. WOOD: I think we can cut to the chase on  
25 some of this, your Honor.

1 Q. (BY MR. WOOD:) Ms. Mikell, would you turn back  
2 to Exhibit 15. Would you look at page 3 of 16?

3 A. I am there.

4 Q. Okay. If you look under Roman Numeral IV, it  
5 says, "Note: At the time of submittal of the CUP application,  
6 Redd Enterprises"--Redd Enterprises is the one you said you  
7 signed up in April, right, of 2011?

8 A. I said that we entered into an agreement that is not  
9 of record that gave us site control. That is what I said.

10 Q. Okay. Let's read this. "At the time of the submittal  
11 of the CUP application, Redd Enterprises, representing 1080  
12 acres, has not signed the lease agreement to allow turbines to  
13 be placed on its land. However, Wasatch Wind expected that the  
14 lease agreement will be signed prior to the CUP hearing on July  
15 5."

16 So on June 29, you didn't have Redd Enterprises  
17 signed, did you?

18 A. We had had an agreement which allowed us the  
19 ability, based on the site control language, to be approved site  
20 control in our LGIA. That was given to--that agreement was  
21 given to PacifiCorp Transmission. That agreement was reviewed  
22 by them, I believe, and approved, which gave us the site control.  
23 So in my best guess, we had the documents that we needed to  
24 pursue the LGIA process.

25 Q. But that's not what you said to the County, right?

1 A. The site control definition that you read earlier had  
2 several options of different agreements to provide site control,  
3 which I believe is what you are asking.

4 Q. Were any of those signed up at that time?

5 A. We had an agreement with Redd Enterprises which  
6 gave us site control.

7 Q. Was it a written agreement?

8 A. It was a written agreement and signed.

9 Q. So why did you tell the County that they had not  
10 signed a lease agreement to allow turbines to be placed on the  
11 land on June 29, 2012?

12 A. I'm not an attorney. But there are various  
13 agreements that you could enter into with landowners for  
14 different things. So we had an agreement with them. I think  
15 I've said that three times now.

16 Q. If you go down to the second note. Once again,  
17 this is June 29, 2012. "One of the properties crossed by the  
18 potential transmission line is currently in probate (J. Ward  
19 Palmer). The family has stated it will sign the easement once  
20 out of probate. Additionally, a three-quarter of a mile stretch of  
21 transmission line is not signed. We anticipate this will be  
22 resolved prior to the hearing date on July 5."

23 So you didn't have all of your transmission  
24 easements signed as of June 29, 2012, did you?

25 A. We had site control for the generating facility.



1 Q. Did you have site control over your transmission  
2 line on June 29, 2012?

3 A. I would have to check.

4 Q. Well, this letter states--

5 MR. SACKETT: I'm going to object to further going  
6 down this line. For one thing, what we have here is  
7 cross-examination about an application to San Juan County, the  
8 San Juan County Planning Commission for a CUP. And if  
9 Ellis-Hall believes that they've done something wrong in front of  
10 that Commission, then they should go there.

11 THE HEARING OFFICER: I'm going to sustain this.  
12 We're talking about something that happened in 2012. What  
13 we're talking about here is the agreement that's in front of us  
14 here today. I'm having a difficult time understanding where  
15 you're going with this.

16 MR. WOOD: Your Honor, under OATT, if they  
17 didn't have site control, they should have been kicked off the  
18 queue more than a year ago. But they've been permitted to stay  
19 on the queue, execute a PPA without them getting a LGIA.  
20 This--how can we say that Schedule 38 is being applied  
21 consistently if a party is required to demonstrate site control,  
22 they did not have site control, and they still don't have site  
23 control?

24 THE HEARING OFFICER: Okay. So you have a  
25 complaint against PacifiCorp Transmission with respect to their

1 governance of the Open Access Transmission Tariff or OATT.

2 MR. WOOD: I do not believe that it's in the public  
3 interest for the Commission to approve a PPA that has been  
4 based on false statements throughout the entire Schedule 38  
5 process. If the parties can say whatever they want under the  
6 Schedule 38 due diligence, they can make misrepresentations  
7 and then it gets blessed after the fact, that's not in the public's  
8 interest.

9 THE HEARING OFFICER: Again, I'm trying to wrap  
10 my head around the discussion about what happened in 2012  
11 and where we're at today with the PPA.

12 MR. WOOD: They don't have the land in their PPA,  
13 your Honor. They don't have the land.

14 THE HEARING OFFICER: If you can ask questions  
15 with respect to that issue. I guess I just--I mean, again...

16 Q. (BY MR. WOOD:) Ms. Mikell, Latigo did not provide  
17 a site map as part of the power purchase agreement, did they?

18 A. I don't recall.

19 Q. Would you turn--do you have your power purchase  
20 agreement in front of you?

21 A. I do not. Can you please provide it?

22 Q. Maybe your counsel has it.

23 MR. SACKETT: I don't have it.

24 MR. WOOD: Well, that was one of the exhibits we  
25 agreed not to produce to each other, so.

1 MS. WOOD: I think PacifiCorp has the agreement.

2 MR. CLEMENTS: In the interest of time, we're  
3 happy to provide it if no one opposes.

4 THE HEARING OFFICER: That's fine, as long as  
5 we have one for opposing counsel to view at the same time. It  
6 looks like the Office's counsel has graciously agreed to let them  
7 view it.

8 And please explain what we're looking at here, too,  
9 just so we can have it for the record, Mr. Wood.

10 MR. WOOD: This is a map that's been prepared. In  
11 the Latigo PPA, they did not provide a site map; however, they  
12 provided the physical descriptions of the land that is subject to  
13 their power purchase agreement. And this map represents those  
14 parcels. So this is what the map would show if they'd provided  
15 a map, based on the information they provided in the PPA.

16 MR. JETTER: Your Honor, I'm just going to jump in  
17 here, purely for protection of the process before the  
18 Commission. These are a lot of items that should have been  
19 discussed in comments. We shouldn't be seeing new maps here  
20 at the hearing outside of the comment.

21 MR. WOOD: We actually did discuss this in our  
22 objection.

23 MR. JETTER: Was this map in your discussion?

24 THE HEARING OFFICER: My question is: Is this a  
25 document that's been requested for receipt into evidence?

1 MR. WOOD: No, I'm not going to--

2 THE HEARING OFFICER: So this hasn't been  
3 authenticated. This hasn't been--I guess--

4 MR. WOOD: I'm going to ask the witness whether  
5 this represents her project.

6 MR. JETTER: I think it's asking a lot of the  
7 witness. And we're not here today to create a record for some  
8 party. We're here to provide the Commission the information it  
9 needs to make decisions on a couple of power purchase  
10 agreements. And we're going way down these side roads into  
11 new evidence that is fairly far beyond what was proposed during  
12 the comments.

13 THE HEARING OFFICER: You know, I agree. I  
14 feel like we've got a lot of good evidence in your comments, and  
15 whatever. But I understand your point that you're questioning--  
16 you are making an issue as to whether or not they have proper  
17 site control and whether or not PacifiCorp did its due diligence.  
18 And that's at issue, according to you.

19 But again, I just haven't been convinced yet that  
20 this kind of repetitious line of questioning is pertinent to the  
21 examination and the consideration of the PPA they had. I  
22 mean--

23 MR. WOOD: I won't go any further, your Honor.  
24 Then let me establish a proffer for our record, that if we were  
25 given the opportunity, we would demonstrate that Latigo does

1 not have the land that is subject to the parcels in its PPA. And  
2 therefore, the PPA would be approved for a company that does  
3 not have site control, either to their entire project or to the route  
4 of interconnection. And we believe that that would be  
5 something that should be in the public's interest and important  
6 to the Commission. But if the Commission disagrees, we'll  
7 pursue that on appeal.

8 THE HEARING OFFICER: Your proffer is accepted.  
9 Do you have any additional questions with respect  
10 to the Latigo Wind PPA and whether it's in the public interest for  
11 Ms. Mikell?

12 MR. WOOD: Well, I'll just ask your Honor the same  
13 question. Is your Honor interested whether or not Latigo has  
14 the required permits? Is that going to make any difference to  
15 your determination--the Commission's determination?

16 MR. JETTER: I'm going to go on record for the  
17 Division. And again, I'm going to object to that question to the  
18 hearing officer. I don't think that's appropriate.

19 THE HEARING OFFICER: I think I stated on  
20 multiple occasions what the Commission's consideration is here.

21 MR. WOOD: I'm just trying to confirm --

22 THE HEARING OFFICER: I've allowed you a lot of  
23 leash here today--lots of leash here. And part of what we need  
24 to do here today is to have an efficient process. And I  
25 understand the rights of the parties to go down a certain line.

1 But again, can you please, you know, get to your point about the  
2 public interest nature of your line of questioning with Mrs.  
3 Mikell.

4 MS. WOOD: The public interest--

5 THE HEARING OFFICER: I'm not tag teaming  
6 here. Again, I'm talking to Mr. Wood. Which attorney am I  
7 talking to?

8 MR. WOOD: You're talking to me.

9 THE HEARING OFFICER: Okay.

10 MR. WOOD: And as I repeatedly stated, our  
11 position is that it is in public's interest that Schedule 38 be  
12 implemented fully and consistently. As both of these parties,  
13 opposing parties, Blue Mountain and Latigo, have said in their  
14 reply comments, if developers are faced with a situation where  
15 Schedule 38 or the regulations or the rules of the Commission  
16 are applied to different parties different ways, it's not in the  
17 public interest. It's not in the interest of developing wind farm  
18 projects in the state of Utah. That will discourage wind farm  
19 developers and other people who have legitimate wind farm  
20 projects from getting engaged into the process. And that will  
21 ultimately hurt the public because it will decrease competition.

22 So if Schedule 38 is applied consistently, then the  
23 public wins and all potential parties have a fair shot at having  
24 their project approved and moved through the process, which we  
25 believe is what Schedule 38 anticipates and what Title 54 of

1 Utah's code applies.

2 THE HEARING OFFICER: I appreciate your  
3 testimony.

4 Do you have anymore questions? Again, I'm not  
5 going to shut this down. Again, please keep it down to the  
6 narrow issues. You keep talking about disparate treatment and  
7 public interest. But how many more questions do you need to  
8 go down this line?

9 MR. WOOD: Your Honor, the whole reason I asked  
10 whether or not you would be interested in me discussing--

11 THE HEARING OFFICER: I am the hearing officer  
12 here, and I am not subject to cross-examination. I have stated  
13 my position.

14 MR. WOOD: I'm not trying to cross-examination  
15 you. I'm simply saying I was trying to save time by asking  
16 whether you wanted me to go down that line of questioning. If  
17 you don't believe it's relevant, then I won't discuss it.

18 THE HEARING OFFICER: I'm happy for your line of  
19 questions, but just keep it narrow. Keep it brief. This is  
20 becoming highly repetitious.

21 Q. (BY MR. WOOD:) Ms. Mikell, does your project  
22 currently have all the applicable permits?

23 A. I believe there's a section in our PPA that  
24 discusses the permits we have yet to achieve.

25 Q. Has your PPA selected a turbine?

1 A. No.

2 Q. Do you have full site control of your project?

3 A. I believe we do.

4 Q. Have you begun construction on your project?

5 A. I answered this before, and I said no.

6 MR. WOOD: No further questions, your Honor.

7 THE HEARING OFFICER: Thank you. That was  
8 helpful. Why don't we--well, let's go ahead.

9 Ms. Mikell, you're just--I didn't know if your attorney  
10 had redirect or not or if...

11 MR. SACKETT: I don't have anything further.

12 THE HEARING OFFICER: Okay. Why don't we go  
13 ahead, then. You are excused.

14 Let's take a short recess. And if I understand  
15 correctly, we have one more witness from Mr. Ellis-Hall, Mr.  
16 Hall. Is that correct?

17 MR. WOOD: Yes.

18 THE HEARING OFFICER: And before we recess,  
19 too, I want to make sure--I'm not sure if we missed Ms. Hayes or  
20 not. But is there any other documents--just keep that in mind--  
21 that have not been requested to be received that may need to  
22 be?

23 MR. WOOD: We'd like all these Latigo --

24 THE HEARING OFFICER: Yeah, I think we--if I  
25 hadn't, I think we discussed those and there was no objections.



1 And those were received. Is my recollection correct?

2 MR. SACKETT: I believe they were offered, our  
3 Latigo 1 and 2, and we would do so.

4 THE HEARING OFFICER: Any objection to the  
5 Latigo? Okay. Those are received.

6 (Exhibits Latigo 1 and Latigo 2 were received into the record.)

7 MR. RUSSELL: And candidly, Mr. Examiner, I'm  
8 not sure whether we offered Blue Mountain's comments or not.  
9 As I understand it, Ellis-Hall asked for the exhibits they used to  
10 be offered, and there was no objection.

11 I did have to provide one to the witness. Does the  
12 court reporter need one?

13 THE HEARING OFFICER: Yes, if you have one.  
14 So to the extent that there are no objections to those exhibits,  
15 they're received.

16 (Exhibits Latigo 1 and 2 were received into evidence.)

17 (Exhibit Blue Mountain 1 was received into evidence.)

18 THE HEARING OFFICER: So why don't we go  
19 ahead and plan on coming back at, say, ten after 5:00. And  
20 then we'll have one more witness. Thanks.

21 (A break was taken from 4:55 p.m. to 5:11 p.m.)

22 THE HEARING OFFICER: Let's go back on the  
23 record. Okay. So by my account where we left it, we have  
24 Ellis-Hall Consultants with one remaining witness, Mr. Hall. Is  
25 that correct, Mr. Wood?

1 MR. WOOD: That's correct.

2 THE HEARING OFFICER: All right, well?

3 MR. WOOD: Ellis-Hall will call Tony Hall.

4 THE HEARING OFFICER: Approach the witness  
5 stand. Raise your right hand. Do you solemnly swear to tell the  
6 whole truth and nothing but the truth?

7 THE WITNESS: Yes, I do.

8 THE HEARING OFFICER: Be seated, thanks.

9 ANTHONY HALL, having been first duly sworn, was  
10 examined and testified as follows:

11 DIRECT EXAMINATION

12 BY-MR.WOOD:

13 Q. Mr. Hall, will you state your full name for the record  
14 and spell your last name for the court reporter.

15 A. My name is Anthony Hall. And my surname is  
16 spelled H-A-L-L.

17 Q. Mr. Hall, can you give us a very brief synopsis of  
18 your background in the wind industry?

19 A. My whole life's been spent engineering. I left  
20 school at 14 to join a technical college. I joined the university  
21 at the age of 16. At 21, I got a master's degree in mechanical  
22 engineering. At age 23, I got a bachelor's degree in electrical  
23 engineering. And since then, I've spent the whole of my life  
24 working in the engineering world, from Formula 1 racing cars  
25 right through to wind farms now. Heavy machinery, you name it.

1 I've been involved in the engineering world.

2 Worked in Germany, Italy, Spain, most of Europe.

3 I've now settled into Utah to bring my expertise here.

4 Q. Now, Mr. Hall, just so there's some clarification,  
5 you mentioned that you had a bachelor's and master's degree.

6 Where did you obtain your degrees?

7 A. At Mumford University.

8 Q. And would you explain the difference--because  
9 most of the people here are residents of the United States--the  
10 difference between a bachelor's degree here and bachelor's  
11 degree in England?

12 A. I think--I obtained a bachelor's degree, which is--  
13 there's a standard degree and a bachelor's degree in England,  
14 which I think you determine as a master's, a bachelor's and a  
15 master's degree. So under my guidance today, I did a  
16 conversion for your sake. And that was that it was a master's in  
17 mechanical engineering and a bachelor's in electrical  
18 engineering.

19 Q. So the bachelor's was actually the second degree?

20 A. The lower level.

21 Q. Now, do you have a wind project in Scotland?

22 A. I have one that I own and two that I manage.

23 Q. And tell me a little bit about those projects.

24 A. Well, in 2001, I created the first--well, the fourth  
25 wind farm to be built, but the first wind farm to go through the

1 planning process in Scotland. This was, for me, went from a  
2 study process through to dealing with the military. It's a  
3 ten-step process in Great Britain. If you don't have the boxes  
4 ticked, you can't go forward to even to the planning process.  
5 And that involves having a power purchase agreement before  
6 you apply for planning. You have to have your interconnection  
7 agreement, your power purchase agreement--

8 (The reporter interrupted for clarification.)

9 THE WITNESS: The process there involves ten  
10 boxes that you have to tick. Of those boxes, unlike here, all of  
11 the boxes are needed before you go into the planning process.  
12 They won't accept your planning application for what you call a  
13 CUP, or a building permit--which are combined in Great Britain.  
14 They won't accept the application until you have all the pre-work  
15 done.

16 Q. (BY MR. WOOD:) Now Mr. Hall, tell me a little bit  
17 about--compare the efficiency of your project in Scotland to,  
18 let's say, the Spanish Fork project.

19 A. The Spanish Fork project and those in Scotland are  
20 poles apart. The wind machines we have in Scotland--if I can  
21 determine in classes, they're Class 1 sites, which means that  
22 are nine or ten meters per second standard. The Spanish Fork  
23 project, I would suggest, if we're lucky, would be  
24 seven-and-a-half. Monticello is six-and-a-half meters per  
25 second. It's quite a low wind regime site at Monticello, and it

1 needs special conditions there.

2 As far as efficiency goes, we determine having a  
3 power factor. A power factor for wind farm--okay? Are you  
4 okay?

5 (The reporter interrupted for clarification.)

6 THE WITNESS: We determined that the output of a  
7 wind farm and what's called a power factor. The power factor  
8 for my wind farm in Scotland is 46 percent. What I'm expecting  
9 from Spanish Fork would be something around 30. I don't know  
10 the exact numbers there, but by the wind regime, I'd say it's  
11 around 30 percent. My numbers for Monticello are 33, 34  
12 percent. So there's quite a considerable difference between  
13 Scotland and Utah.

14 Q. (BY MR. WOOD:) What makes Monticello  
15 different?

16 A. Its altitude is one of the first considerations. Its  
17 lack of air density is the next one. The wind regime. So you  
18 really have to compound all of those together to determine what  
19 you're going to use as the ideal turbine for the site.

20 The lack of air density, if I could just keep on,  
21 determines the length of the blade you're going to need and the  
22 height of the tower for optimum performance.

23 Q. So in a site like Monticello, it's your testimony that  
24 blade length and tower height are very important factors?

25 A. Very important. And the power curve of the turbine

1 that you're using you've got to take into account because some  
2 turbines use different generators.

3 And to bore everybody here, you can have a direct  
4 drive generator or a gear box generator. A direct drive machine  
5 would be far more efficient, one or two percent more efficient,  
6 than a gear box machine because of the power losses in the  
7 gear box. So turbine choice is ultimate in making a profit.

8 Q. Now, will all turbines work up at the Monticello  
9 site?

10 MR. SOLANDER: Your Honor, it's almost 5:30. Can  
11 we move on to the contract?

12 THE HEARING OFFICER: I'll allow this, but just if--

13 MR. WOOD: I'm almost done.

14 THE HEARING OFFICER: It is fascinating the  
15 Great Britain technology. Just help us understand again how  
16 this is--I'm happy to hear it as long as it's relevant.

17 MR. WOOD: Your Honor, I have one more  
18 question. So I don't know if you want me to explain whether it's  
19 relevant due to the time --

20 THE HEARING OFFICER: No, that's fine. If you've  
21 got one more question, that's fine. Thank you.

22 MR. WOOD: Okay.

23 Q. (BY MR. WOOD:) Do all--will all wind turbines work  
24 up at that Monticello site?

25 A. No.

1 Q. Okay. Now, Mr. Hall, you have also applied--or you  
2 are also in the process of obtaining a wind project down in  
3 Monticello?

4 A. Yes. We have a project on the ground in  
5 Monticello.

6 Q. And under Schedule 38, PacifiCorp required you to  
7 produce certain information. Is that right?

8 A. That's correct.

9 Q. If I could just tick through the parts of Schedule 38.  
10 The first one is, "Generation technology and other  
11 related technology applicable to the site."

12 A. We identified the specific turbine.

13 Q. Okay. And what turbine did you select for your site  
14 originally?

15 A. We'd chosen--originally, we decided on a Gamesa  
16 115 machine.

17 Q. Okay. And that's the same machine that Blue  
18 Mountain--

19 A. Yes, it is.

20 Q. --currently has selected. Isn't that correct?

21 A. That's correct.

22 Q. And what did PacifiCorp tell you about that  
23 machine?

24 MR. SOLANDER: Your Honor, again. The contract  
25 or negotiations between PacifiCorp and Ellis-Hall are not at

1 issue here.

2 THE HEARING OFFICER: Sustained. Again, let  
3 me say this again. Is this--

4 MR. WOOD: Your Honor, let me make the proffer,  
5 then.

6 THE HEARING OFFICER: Okay.

7 MR. WOOD: The very turbine they've approved in  
8 their PPA, PacifiCorp told Ellis-Hall could not be used on their  
9 grid.

10 THE HEARING OFFICER: So you have a potential  
11 complaint against PacifiCorp for Ellis-Hall.

12 MR. WOOD: Your Honor, the question is whether  
13 Schedule 38 governs and whether it's applicable, okay. If the  
14 party has to demonstrate when--or generation technology, that  
15 it's feasible, which is what Schedule 38 requires, that means  
16 that the turbine has to be used.

17 MR. SOLANDER: And none of that goes to whether  
18 or not PacifiCorp followed Schedule 38 in the contract with  
19 Latigo.

20 THE HEARING OFFICER: Listen--okay. I don't  
21 want to talk about Ellis-Hall's issues with PacifiCorp. I've said  
22 this many times. There's a complaint process for that, a dispute  
23 resolution. Help me understand--or if you have lines of  
24 questions that go to the issue of the public interest of the PPA  
25 between PacifiCorp and Latigo, I'm happy to entertain that. But



1 again, this is not the forum for beefs with PacifiCorp for  
2 Ellis-Hall.

3 MR. WOOD: Your Honor, once again, our position  
4 is that this all comes down to does Schedule 38 govern or not?  
5 If it governs, it governs. If it doesn't govern and people can just  
6 do whatever they want, that's an issue.

7 THE HEARING OFFICER: If you have lines of  
8 questions with respect to that issue, please proceed.

9 MR. WOOD: And that's why I asked about  
10 Schedule 38 and the requirement of Schedule 38, which said a  
11 party must demonstrate generation technology or other related  
12 technology applicable to the site.

13 THE HEARING OFFICER: Please proceed.

14 Q. (BY MR. WOOD:) So you were--you selected the  
15 Gamesa 1.4 turbine. What did PacifiCorp say about that  
16 turbine?

17 A. What they said was that after studying it through a  
18 feasibility, which is an optional study, that particular turbine was  
19 not accepted because they had a problem with its PSSD model.  
20 And that's the way it communicates with both their substations  
21 and its ability to respond to changes in the voltages in the grid.  
22 At that particular time, it would not work on that particular part  
23 of the grid.

24 Q. Okay. Mr. Hall, now after you--did you make a  
25 change to your turbine type?

1           A.       Yes, we did. And I'd have to say it was one of the  
2 changes --

3                   MR. SACKETT: I'm going to further object to this  
4 line of questions. It has to do with Ellis-Hall's project, which is  
5 not relevant to the--

6                   THE HEARING OFFICER: Sustained.

7                   MR. SACKETT: --matters before us.

8                   THE HEARING OFFICER: Sustained. Again--  
9 again, we are not discussing potential claims of disparate  
10 treatment, discrimination with respect to Ellis-Hall and this  
11 docket. This is Latigo we're talking about here.

12                  MS. WOOD: And Blue Mountain. We reserved this  
13 testimony.

14                  THE HEARING OFFICER: Okay. Understood.  
15 Blue Mountain/Latigo, 115 and 116.

16                  MR. WOOD: Okay. Your Honor, I'll just say that if  
17 we were given the opportunity, we would proffer each of the  
18 steps that PacifiCorp required Ellis-Hall to make under Schedule  
19 38, including design capacity; station service requirements; net  
20 amount of power and delivery of power to the company's  
21 electrical system; the quantity and timing of monthly power  
22 deliveries, including project ability to respond to dispatch to the  
23 Company; proposed site location and electrical interconnection  
24 point; proposed on-line date and on-line date permitting  
25 requirements; the demonstration of the ability to obtain QF

1 status; fuel type and source; plans for fuel transportation and  
2 agreements; and proposed contract terms and pricing. They  
3 had to provide that information in order to obtain indicative  
4 pricing.

5 They subsequently, in order to enter the power  
6 purchase agreement process, had to update all the information  
7 in categories described in paragraph B.2. They had to add  
8 evidence of adequate site control of the proposed site. They  
9 had to identify the time lines for obtaining any necessary  
10 government permits, approvals, and authorizations, and the  
11 assurances that the fuel supply and motivating force were there.

12 They also had to give anticipated time lines for the  
13 completion of key project milestones and evidence of any  
14 interconnection agreements to be completed.

15 If given the opportunity, we would show that  
16 Ellis-Hall was required to execute an LGIA before first obtaining  
17 a PPA. And that this was not required of the two matters that  
18 are before the Commission.

19 We would then show that after Ellis-Hall objected to  
20 this disparate treatment, PacifiCorp retaliated against Ellis-Hall.

21 MR. SOLANDER: I'm going to object to, first of all,  
22 to the characterization of it as disparate treatment--

23 THE HEARING OFFICER: Where's your proffer--

24 MR. SOLANDER: --and other--

25 THE HEARING OFFICER: --going to--

1 MR. WOOD: Your Honor, you want a proffer. I'm  
2 giving you a proffer. It's almost done.

3 THE HEARING OFFICER: Okay.

4 MR. SOLANDER: I'm going to just have an ongoing  
5 objection on the basis that none of this has to do with the  
6 contract between Rocky Mountain Power and--

7 THE HEARING OFFICER: He's proffering his--

8 MR. WOOD: That's why I'm proffering--

9 MR. SOLANDER: --for the record.

10 MR. WOOD: We will show that we would have  
11 shown that there was an attempt to change Ellis-Hall's indicative  
12 pricing after giving Ellis-Hall an indicative price, based on a  
13 mis-reading of the Commission's order regarding the new  
14 indicative pricing schedule and that all those rules have been  
15 applied differently to Ellis-Hall than they have been applied to  
16 these parties. And that's what we would put on if given the  
17 opportunity. And we have no further questions.

18 THE HEARING OFFICER: Your proffer is received.

19 MR. RUSSELL: Can I also state that had Ellis-Hall  
20 provided documents pursuant to data requests submitted by  
21 Blue Mountain, Blue Mountain would have then had the  
22 opportunity to cross-examine the witness on those topics that  
23 Ellis-Hall is now proffering. But we were denied that opportunity  
24 because--

25 MR. WOOD: Your Honor--

1 MR. RUSSELL: --Ellis-Hall refused--

2 THE HEARING OFFICER: Your proffer is received.

3 MR. RUSSELL: Thanks.

4 MR. WOOD: I will respond to that, that what Blue  
5 Mountain asked for was documents, such as "all the wind data  
6 you've received on your site" and other confidential information  
7 that they claimed had nothing to do with this proceeding.

8 And we also would offer that we objected to those  
9 discovery requests by Blue Mountain because Mr. Gary Dodge  
10 continues to represent Blue Mountain. And this Commission  
11 ruled that it did not have the jurisdiction to make a ruling on  
12 whether or not Mr. Dodge was involved in the conflict of  
13 interest.

14 Given the fact that the Commission said it did not  
15 have the power to rule on that issue, we preserved that  
16 objection for appeal.

17 THE HEARING OFFICER: Any other testimony or  
18 proffers? If we're going to have more testimony from attorneys,  
19 we'll need to swear folks in.

20 Are there any more questions for your witness, Mr.  
21 Wood?

22 MR. WOOD: I said no, your Honor.

23 THE HEARING OFFICER: Okay.

24 Mr. Jetter?

25 MR. JETTER: I have no questions, your Honor.

1 Thank you.

2 THE HEARING OFFICER: Mr. Coleman?

3 MR. COLEMAN: Nothing.

4 THE HEARING OFFICER: Mr. Sackett?

5 MR. SACKETT: No, your Honor.

6 MR. RUSSELL: Nothing from Blue Mountain.

7 THE HEARING OFFICER: Mr. Solander?

8 MR. SOLANDER: Yes. Thank you.

9 CROSS-EXAMINATION

10 BY-MR.SOLANDER:

11 Q. Good afternoon, Mr. Hall.

12 A. Good afternoon.

13 Q. Are you aware of the Long Ridge Wind I and Long  
14 Ridge Wind II PPAs that were--

15 THE HEARING OFFICER: Mr. Solander, just out of  
16 a matter of fairness, I previously instructed Mr. Wood that the  
17 issue of those two dockets are not at--they're not under  
18 consideration right now, so.

19 MR. SOLANDER: Thank you.

20 Q. (BY MR. SOLANDER:) I just have one clarification,  
21 then. You made some statements on direct examination by Mr.  
22 Wood that PacifiCorp advised you regarding the unsuitability of  
23 the Gamesa turbines. Is that a fair characterization?

24 A. Yes, it is.

25 Q. And was that PacifiCorp or PacifiCorp

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Transmission?

A. PacifiCorp Transmission.

Q. Thank you. I have nothing further.

THE HEARING OFFICER: Thank you. I have no questions.

So just to make clear, any other matters of housekeeping, documents that need to be into evidence? I think we've got everything, right?

With that, I appreciate everyone's participation today. The Commission will issue an order in these dockets in due course. With that, we're adjourned. Thank you very much.

(The matter concluded at 5:27 p.m.)

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CERTIFICATE

State of Utah )

ss.

County of Salt Lake )

I, Michelle Mallonee, a Registered Professional Reporter in and for the State of Utah, do hereby certify:

That the proceedings of said matter was reported by me in stenotype and thereafter transcribed into typewritten form;

That the same constitutes a true and correct transcription of said proceedings so taken and transcribed;

I further certify that I am not of kin or otherwise associated with any of the parties of said cause of action, and that I am not interested in the event thereof.

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Michelle Mallonee, RPR, CSR