

Contents

I.	INTRODUCTION.....	1
II.	TERM LIMITS AND FINANCING AND PRICING	2
III.	ENCOURAGING RENEWABLES AND ECONOMIC DEVELOPMENT	6
IV.	ADDITIONAL WITNESS-SPECIFIC COMMENTS.....	8
V.	CONCLUSIONS AND RECOMMENDATIONS.	11

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

Rebuttal Testimony of Charles E. Peterson

I. INTRODUCTION

Q. Please state your name, business address and title.

A. My name is Charles E. Peterson.

Q. Did you file direct testimony in this matter?

A. Yes, on behalf of the Division.

Q. What is the purpose of your testimony in this matter?

A. I will respond to the direct testimonies filed by witnesses of intervening parties and the Office of Consumer Services (Office). Specifically I will be responding to Mr. John R. Lowe, who is the witness for the Renewable Energy Coalition; Ms. Sarah Wright, who is testifying in behalf of Utah Clean Energy; Mr. R. Thomas Beach, the witness for the Sierra Club; Messrs. Kevin C. Higgins, Bryan L. Harris, and Hans Isern, who are providing testimony for the Rocky Mountain Coalition for Renewable Energy; and finally, Mr. Bela Vastag, who is the witness for the Office.

First I will make some comments on issues common to several of the witnesses, then I will make some comments on a few specific issues raised by individual witnesses. In order to be

23 relatively brief, I will not respond to every issue brought up by each witness. Consequently,
24 if I don't specifically comment on an issue raised by a witness it does not necessarily mean
25 that I agree, or disagree, with the witness on that issue.

26

27

28 **II. TERM LIMITS AND FINANCING AND PRICING**

29

30 **Q. What were the comments made by witnesses regarding the effect of limiting the term of**
31 **the contracts to much less than twenty years?**

32 A. As I anticipated in my direct testimony, this was a common theme to almost all of the
33 intervening parties' witnesses. That is, without the ability to enter into at least a twenty year
34 power purchase agreement with the utility, developers will likely find it impossible to finance
35 any of their projects.

36

37 In my direct testimony I offered two responses. First, the Division does not believe that it is
38 the regulator's obligation to assure the economic viability of any project. Different
39 developers will necessarily have different economic capabilities and requirements for the
40 economic return of and on their investments. The Division does not believe it is in the public
41 interest to assure that those requirements can be satisfied. Second, I suggested that in recent
42 years the ability of developers to finance their projects has changed since the time the
43 twenty-year contract term was put in place by the Commission in Docket No. 03-035-14. I
44 suggested that one example of the change in this situation is the development of the

45 “yieldco” model which has been employed by at least one intervenor in this docket (e.g.
46 SunEdison).

47

48 **Q. You mentioned Docket No. 03-035-14. One of the witnesses, Ms. Sarah Wright, quotes a**
49 **PacifiCorp witness to claim “that the ability of a QF to obtain financing is a**
50 **‘fundamental objective’ of the [20-year] contract term.”¹ Do you have a response to**
51 **that?**

52 A. Yes. Ms. Wright quotes from rebuttal testimony in Docket No. 03-035-14 by PacifiCorp
53 witness Bruce Griswold. To add some context, Mr. Griswold was responding to the question
54 “Intervenors have suggested that QF contracts should be afforded terms *up to 35 years in*
55 *length. Does the Company agree?*”² (Italics added). Mr. Griswold disagreed with 35-year
56 contracts. He went on to say “that the current allowed term length of up to twenty (20) years
57 in Utah represents an appropriate balance between a term that allows the QF to secure
58 financing and limiting the risks that accompany long range power price forecasting.”³ The
59 Division believes that it may be time to re-evaluate whether this balance between benefiting
60 QF developers with a 20 year contract and the risks assumed by ratepayers that Mr. Griswold
61 testified to in 2005 is still intact.

62

63 **Q. What evidence was provided by the witnesses that supported the idea that the shorter**
64 **term would make it difficult, if not impossible, for developers to get financing?**

¹ Direct Testimony of Sarah Wright for UCE, Lines 215-216.

² Rebuttal Testimony of Bruce W. Griswold in Docket No. 03-035-14, September 2005, page 8.

³ Ibid.

65 A. Many of the witnesses simply made the assertion without offering any evidence, apparently
66 we are to assume that it is a self-evident truth. Mr. Harris, who appears to have relevant
67 experience stated that “in nearly all cases” of which he is aware, QF financing has involved
68 much longer terms than the Company’s proposed three years, usually twenty years.⁴
69 Similarly, Mr. Isern states that “in virtually all cases” in which he is aware, renewable
70 projects require twenty year terms.⁵ However, neither Mr. Harris nor Mr. Isern provide any
71 further details or discussion about any situations in which, after significant effort was
72 expended, that they failed to obtain financing for projects with shorter contract terms.

73
74 **Q. Several witnesses said, essentially, that limiting the length of the contract is unnecessary**
75 **to avoid the Company being overwhelmed with QF energy because the avoided cost**
76 **pricing will eventually get too low to be economic for any developer? How do you**
77 **respond?**

78 A. As I suggested in my direct testimony, this should be true in principle, at least with regard to
79 for-profit developers. Government agencies and other non-profit entities of course have no
80 profit motive, and may even have little interest in covering all of their costs, so that it could
81 be very difficult to predict when those types of entities may quit development due to low
82 prices. Also in my direct testimony, I noted it may be difficult to predict at what point even
83 for-profit developers might be discouraged by low prices due to the several drivers, in
84 addition to the avoided cost price of electricity, that are likely in developers’ economic

⁴ Prefiled Direct Testimony and Exhibits of Bryan L. Harris, lines 43-44.

⁵ Prefiled Direct Testimony and Exhibits of Hans Isern, lines 50-51.

85 models. Such drivers include government subsidies that have no direct connection to the
86 actual supply and demand for electricity, declining trends in the cost of plant, and new
87 financing opportunities that may be reducing capital costs.

88

89 **Q. Mr. Beach, testifying in behalf of the Sierra Club, asserted that prices below about \$51**
90 **per MWh are too low for developers.⁶ Do you have a comment on that?**

91 A.

92

93

94

95 **Q. What are your conclusions regarding reducing the term and the ability of developers to**
96 **obtain financing?**

97 A. To this point the developers and their supporters have presented little or no hard evidence

98 that they will not be able to obtain financing anywhere if the contract terms are reduced much

99 below twenty years. I believe that conditions regarding financing have changed since the

100 Commission ruled on this more than ten years ago, such that additional financing

101 opportunities are available now compared to a decade or more ago.

102

103 Ever lower avoided cost prices likely will, sooner or later, significantly slow down QF

104 development; but as illustrated above, it is difficult to guess what that price point is.

⁶ Sierra Club Direct Testimony of R. Thomas Beach, pages 20-21, especially lines 404-408.

105 Consequently, it remains possible that the Company could continue to be forced to accept
106 significant new QF contracts for some unknown additional amounts of unneeded energy.

107

108 **III. ENCOURAGING RENEWABLES AND ECONOMIC**
109 **DEVELOPMENT**

110

111 **Q. Several witnesses cite parts of PURPA and Utah Code Annotated 54-12-1 that**
112 **encourage the development of renewable resources as an argument against reducing the**
113 **term of the QF contracts. What is your understanding of the policy statements to**
114 **encourage renewable resource development as it relates to this matter?**

115 A. I am not an attorney and therefore I cannot offer a legal opinion about what those statutes
116 mean. I do not believe however, that the Commission is tasked with permitting and
117 promoting unrestrained, open-ended, and otherwise unlimited resource development as being
118 in the public interest, as some seem to imply.⁷ Rather, based on the PURPA customer
119 indifference standard and the public interest generally, the Commission should promote the
120 reasonable and orderly development of QF resources. The UCA 54-12-1(1) phrase about
121 removing “unnecessary barriers” perhaps implies that there may be “necessary barriers” too.

122

123 **Q. In this regard Mr. Beach encourages that now is the time to get solar resources because**
124 **of low natural gas prices and the expiration of the federal investment tax credit (ITC).⁸**

⁷ For example, see Wright, lines 151-166

⁸ Beach, pages 44-45.

125 **Mr. Higgins argues that due to recent federal EPA rules, it is the wrong time to**
126 **discourage renewable resource development.⁹ Do you have a comment on that?**

127 A. Yes. Developers who are hoping to take advantage of the ITC will likely need to have signed
128 purchase power agreements in place before the Commission is likely to issue a decision in
129 this docket. Thus, I do not believe that whatever the Commission's decision is in this docket
130 will have much effect on whether or not a developer is able to take advantage of the ITC.
131 Furthermore, if the federal ITC does go away as scheduled, we will likely see a noticeable
132 decline in new renewable QF development no matter what the Commission does in this
133 docket.

134

135 While the rules issued by the EPA would seem to support the acquisition of renewable QF
136 energy as Mr. Higgins suggests, we are likely years away from knowing what will be
137 required of Utah and PacifiCorp under the current or possibly future amended rules. Or, what
138 the optimal implementation of those rules by PacifiCorp will be. It is therefore premature to
139 make definitive resource decisions based upon the current state of affairs.

140

141 With regard to the relatively low natural gas prices, it is anyone's guess as to what those
142 prices will actually be over the next few years.

143

⁹ Prefiled Direct Testimony and Exhibits of Kevin C. Higgins, lines 108-116.

144 **Q. Ms. Wright¹⁰ and Mr. Beach¹¹ tout economic development as a reason to encourage**
145 **QFs and to reject the reduction of the contract term. Hasn't this been argued before?**

146 A. Yes. As I mentioned in my direct testimony in this docket, this idea was also argued in
147 Docket No. 12-035-100. The Division does not believe that one of the goals of utility
148 regulation is to promote economic development.

149

150 **IV. ADDITIONAL WITNESS-SPECIFIC COMMENTS**

151

152 **Q. Mr. John R. Lowe, representing a group of small “non-intermittent” renewable**
153 **projects, would like his clients to be exempted from any reduction in the contract term.**

154 **How does the Division respond to that request?**

155 A. Generally, the Division believes that there should be as much uniformity as possible in the
156 contract terms for all QFs. Related to this is the Division's position that it is not the
157 regulators' job to assure the economic viability of a given QF project.

158

159 **Q. Does Mr. Lowe recognize that PacifiCorp faces a genuine problem?**

160 A. Yes. To his credit Mr. Lowe is willing to concede that PacifiCorp faces a “legitimate
161 issue.”¹² He offers what seems to be a compromise position that includes continuation of
162 capacity payments to QFs.¹³ In the Division's recommendation, the Division suggested that

¹⁰ Wright, lines 340-353.

¹¹ Beach, page 44.

¹² Testimony of John Lowe, lines 79-83.

¹³ Ibid., lines 63-66.

163 the capacity contributions of QF resources be recognized by continuing to calculate the
164 capacity payment the same as is presently done, which looks at a 20-year period.

165

166 **Q. Ms. Wright asserts that renewable QFs should be compared with “steel-in-the-ground”**
167 **company-owned plants, she states further that “In fact, ratepayers are exposed to more**
168 **risk from a utility resource than a QF because when the utility makes a capital**
169 **investment it is authorized a rate of return, which is amortized over the life of the**
170 **resource, whereas ratepayers only pay a QF for energy actually delivered.”¹⁴ Do you**
171 **have any comments on this statement?**

172 A. Yes. At best this is an oversimplification of the relationship between a QF project and a
173 company-built project. First, and foremost, the utility has to make a showing that it needs to
174 build a plant to supply its load demand in order to get cost recovery. The QF has to make no
175 such showing. The utility has to show that expenditures in constructing the plant and that the
176 continuing cost of plant operations are prudent, or it could suffer a disallowance. The
177 Company chooses when to take power from a plant based upon its prudent need for power; in
178 the case of a QF, it must take the QF energy whether it needs it or not, and whether it is
179 economic (to the utility) or not to do so. These differences are exacerbated in the current
180 situation where the Company believes that it needs no new capacity until 2028, but is
181 required to add capacity anyway through QFs.

182

183

¹⁴ Wright, lines 252-256.

184 **Q. Mr. Beach makes the comment “The Company is essentially asking the Commission to**
185 **interfere in the functioning QF market”.¹⁵ Do you have a comment?**

186 A. Only to state what should be obvious that the Commission has “interfered” and will continue
187 to “interfere” in the “functioning QF market” through Schedules 37 and 38 and decisions
188 such as what the appropriate capacity contribution values for renewable QFs should be.

189

190 **Q. Mr. Beach has a lengthy discussion of the benefits of the green tags or renewable energy**
191 **credits (RECs).¹⁶ What observations do you have to make about those comments?**

192 A. Mr. Beach seems to be unaware that in Utah QFs retain ownership of the RECs unless they
193 agree to sell them to the utility. This policy was affirmed by the Commission in Docket No.
194 12-035-100. Or, perhaps Mr. Beach is aware of the policy and is advocating that it be
195 reversed. Otherwise, his discussion appears to me to be largely irrelevant.

196

197 **Q. What is the Division’s take on the positions taken by Mr. Vastag representing the Office**
198 **of Consumer Services?**

199 A. Mr. Vastag lists two concerns that the Office has: (1) the risk ratepayers face from twenty-
200 year, fixed-price contracts; and (2) the “disconnect” between the Company’s IRP and the
201 “significant amount of new long-term QF resources [that] are being acquired....”¹⁷

202 Generally, the Division also shares these concerns. However, the solution Mr. Vastag offers
203 is to make the QF avoided cost contract pricing “as accurate as possible.”¹⁸ This is exactly

¹⁵ Beach, lines 160-161.

¹⁶ Ibid., pages 24, 27-29.

¹⁷ Direct Testimony of Bela Vastag, lines 23-36.

¹⁸ Ibid., line 46.

204 the problem with a twenty-year fixed-price contract. The prices might start out more or less
205 “as accurate as possible,” but within a couple of years or so they could be noticeably off, and
206 at the end of twenty years it would be sheer coincidence if they were anywhere close to the
207 then current avoided cost, or market, prices. In the Division’s view, the Office’s accuracy
208 solution to its risk concern, is not a practical solution without frequent “course corrections”
209 to the prices throughout the twenty year contract period.

210

211 **V. CONCLUSIONS AND RECOMMENDATIONS.**

212

213 **Q. Has the Division’s position changed since you filed your direct testimony?**

214 A. No. The witnesses of the various parties have not been persuasive to this point that the
215 Division’s position in direct was flawed. The Division continues to believe that there are
216 marked differences in the environment a decade or more ago when the Schedule 38
217 governing large QFs was first developed and today. Some of those changes were dealt with
218 in recent dockets such as Docket Nos. 14-035-140 and 12-035-100. In this docket the
219 Company has raised additional issues that are a result of this changing landscape. In my
220 direct testimony the Division outlined changes to the Company’s position that might
221 mitigate some of the concerns of developers and their supporters and would meet some of
222 the objectives of the Company’s filing. To review briefly the main points, the Division
223 suggests a term limit of five years with energy payments based upon the five-year term but
224 capacity payments based upon a twenty year calculation as is done presently to give credit
225 for the capacity contribution of a QF.

226

227 **Q. Does this conclude your rebuttal testimony?**

228 **A. Yes.**