

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Rocky)	
Mountain Power for Modification of)	
Contract Term of PURPA Power Purchase)	Docket No. 15-035-53
Agreements with Qualifying Facilities)	

REBUTTAL TESTIMONY OF

BELA VASTAG

FOR THE

OFFICE OF CONSUMER SERVICES

October 14, 2015

1 **INTRODUCTION**

2 **Q. WHAT IS YOUR NAME, OCCUPATION AND BUSINESS ADDRESS?**

3 A. My name is Béla Vastag. I am a Utility Analyst for the Office of Consumer
4 Services (Office). My business address is 160 East 300 South Salt Lake
5 City, Utah 84111.

6 **Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS DOCKET?**

7 A. Yes, I filed direct testimony on September 16, 2015.

8 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

9 A. I will respond to the direct testimony of Charles E. Peterson of the Utah
10 Division of Public Utilities (Division) and to the direct testimonies of
11 witnesses from a several intervenors who represent the interests of
12 renewable energy Qualifying Facility (QF) developers. This group is
13 comprised of the Sierra Club, the Renewable Energy Coalition, Utah Clean
14 Energy and the Rocky Mountain Coalition for Renewable Energy. I will refer
15 to these intervenors collectively as the Renewable Energy Intervenors
16 because they raised similar issues although they filed separate testimony.

17 **RESPONSE TO THE DIVISION**

18 **Q. THE DIVISION RECOMMENDS AN ALTERNATIVE TO THE**
19 **COMPANY'S REQUEST FOR A 3-YEAR CONTRACT TERM FOR QFS.**
20 **WHAT IS THE DIVISION'S RECOMMENDATION?**

21 A. The Division recommends that the Commission adopt a standard 5-year
22 contract term. However, the Division recommends that the capacity

23 component of the contract price be calculated as if the contract term was
24 for 20 years. The Division also requests that the Commission be open to
25 Power Purchase Agreement (PPA) contract terms greater than 5 years if
26 the QF developer can show that a longer term is in the public interest.

27 **Q. WHAT IS THE OFFICE'S RESPONSE TO THE DIVISION'S**
28 **RECOMMENDATIONS?**

29 A. The Office opposes the Division's 5-year contract term recommendation for
30 the same reason that we oppose Rocky Mountain Power's (Company)
31 request for a 3-year term – we believe that contract terms this short will
32 discourage the development of QFs in Utah. This is contrary to federal and
33 state laws that encourage the development of small power producers.

34 Furthermore, if the Commission was to approve a shorter contract
35 term, the Office opposes the Division's recommendation to base capacity
36 payments on a 20-year calculation. There is no guarantee that a QF would
37 renew its contract with the Company when its PPA expired. If a QF does
38 not renew a short-term contract that contains a 20-year capacity calculation,
39 then ratepayers may have paid for capacity that was not delivered or will
40 not be delivered. Some witnesses for the Renewable Energy Intervenors
41 also requested guaranteed capacity payments for QFs regardless of
42 contract term¹ and the Commission should reject this concept.

43 **Q. ARE THERE PARTS OF THE DIVISION'S TESTIMONY THAT THE**
44 **OFFICE AGREES WITH?**

¹ See direct testimony of John Lowe.

45 A. Yes, there are a couple of areas. First, the Division states that “it is not the
46 regulator’s place to ensure economic viability of a QF project.”² The
47 Division explains further that the avoided cost pricing that a QF receives
48 should be high enough such that ratepayers are indifferent between buying
49 power from the QF versus other sources but no higher than that.³ The
50 Office agrees with this even if the Company’s avoided costs are too low to
51 allow for profitable QF development. It is not the Commission’s or other
52 parties’ charge to find speculative cost and/or benefit adders to increase
53 avoided costs to ensure that QFs are profitable. The Office believes
54 strongly that this would go beyond the statutory intent of encouraging QFs.

55 Second, the Division describes how the QF market is not a freely
56 competitive market. In addition to the federal mandate that the Company
57 must purchase power from QFs at avoided cost pricing, the Division points
58 out that “there are large government subsidies that have no direct
59 connection to the actual supply and demand for electricity that make up a
60 large part of QF economics.”⁴ The Office is aware of at least two
61 government subsidies impacting QFs in Utah – the Federal 30% Investment
62 Tax Credit (ITC)⁵ and the state of Utah 75% tax revenue credit from the
63 Alternative Energy Development Incentive (AEDI).⁶ Clearly, when

² Direct testimony of Charles E. Peterson, lines 236 – 237.

³ Ibid, lines 219 – 222.

⁴ Ibid, lines 98 – 100.

⁵ <http://energy.gov/savings/business-energy-investment-tax-credit-itc>

⁶ <http://energy.utah.gov/funding-incentives/financing-for-infrastructure/>

64 contracting with QFs, we are dealing with unusual market dynamics; and,
65 the QF market in Utah is not a traditional freely competitive market.

66 **RESPONSE TO THE RENEWABLE ENERGY INTERVENORS**

67 **Q. IS THE OFFICE IN AGREEMENT WITH THE RENEWABLE ENERGY**
68 **INTERVENORS ON HOW THE COMMISSION SHOULD RESPOND TO**
69 **THE COMPANY'S REQUEST?**

70 A. Yes, each of these intervenors also opposes the Company's request for a
71 change to a 3-year maximum PPA contract. The intervenors also agree
72 with the Office that if avoided cost pricing is set properly, ratepayers will be
73 indifferent to the cost of QF power and be protected from too many QFs
74 executing PPAs with the Company. The Office also appreciates some of
75 the intervenors' witnesses stating that QFs do not want subsidies from
76 ratepayers⁷ – just the proper calculation of avoided cost pricing.

77 **Q. DOES THE OFFICE HAVE SOME CONCERNS REGARDING SOME OF**
78 **THE POINTS MADE BY THE RENEWABLE ENERGY INTERVENORS?**

79 A. Yes. The Office is concerned with how the intervenors provide a limited
80 description of the original intent of PURPA, the portrayal that adjusting the
81 terms of QF PPAs in Utah would amount to interference in a free
82 competitive market and the discussion of speculative and unquantifiable
83 benefits of renewable QFs, despite such topics having been fully litigated in
84 recent proceedings before the Commission.

⁷ Direct testimonies of Hans Isern lines 86 – 90 and Bryan L. Harris lines 62 – 66.

85 **Q. WHAT IS THE ORIGINAL INTENT OF PURPA AS DESCRIBED IN THE**
 86 **1978 LAW?**

87 A. PURPA was created in the late 1970s in response to an energy crisis; and,
 88 its intent is different than more recent government actions such as
 89 Renewable Portfolio Standards (RPS) and the EPA 111(d) rule. The
 90 1970s represented a time of energy insecurity with concerns regarding
 91 adequate supplies of domestic natural gas and with the heavy reliance of
 92 suddenly undependable imports of crude oil. Congress was very clear in its
 93 intentions as described in the opening Section of PURPA:⁸

5

PURPA

Sec. 3

SEC. 2. FINDINGS.

The Congress finds that the protection of the public health, safety, and welfare, the preservation of national security, and the proper exercise of congressional authority under the Constitution to regulate interstate commerce require—

(1) a program providing for increased conservation of electric energy, increased efficiency in the use of facilities and resources by electric utilities, and equitable retail rates for electric consumers,

(2) a program to improve the wholesale distribution of electric energy, the reliability of electric service, the procedures concerning consideration of wholesale rate applications before the Federal Energy Regulatory Commission, the participation of the public in matters before the Commission, and to provide other measures with respect to the regulation of the wholesale sale of electric energy,

(3) a program to provide for the expeditious development of hydroelectric potential at existing small dams to provide needed hydroelectric power,

(4) a program for the conservation of natural gas while insuring that rates to natural gas consumers are equitable,

(5) a program to encourage the development of crude oil transportation systems, and

(6) the establishment of certain other authorities as provided in title VI of this Act.

(16 U.S.C. 2601)

94

⁸ <http://legcounsel.house.gov/Comps/PURPA78.PDF>

95 The Renewable Energy Intervenors repeatedly point out⁹ that PURPA's
96 intent is the reduction of the use of fossil fuels¹⁰ but as we can see from the
97 Section above, PURPA's intent is significantly larger than this. To be fair,
98 we must not lose sight of some of the other objectives of PURPA. For
99 example, PURPA also aimed to promote "equitable retail rates for electric
100 consumers" and improvement of "the reliability of electric service".

101 **Q. WHY DOES THE OFFICE DISAGREE WITH THE CHARACTERIZATION**
102 **THAT QFS OPERATE IN A FREE COMPETITIVE MARKET?**

103 A. The Renewable Energy Intervenors claim that the Commission cannot
104 make changes to the term lengths of QF PPAs because this would "interfere
105 with a functioning free market" or would be "anti-competitive".¹¹ As I
106 discussed in our response to the Division, the QF market in Utah is not a
107 freely competitive market. The Company is mandated to buy QF power,
108 prices are set at avoided cost as determined by the Commission not by a
109 market and large government subsidies affect the profit margins of QF
110 owners. The Office believes that the intervenors' warnings of interference
111 "with a functioning free market" by the Commission if it approves changes
112 to QF PPA contracts are misplaced.

⁹ For example see direct testimonies of R. Thomas Beach line 47, Sarah Wright lines 81 - 82 and Kevin C. Higgins lines 212 - 213.

¹⁰ Note: nowhere in the original Public Utilities Regulatory Policies Act of 1978 is the term "fossil fuel" used.

¹¹ Direct testimonies of R. Thomas Beach page ii (Executive Summary), Hans Isern lines 68 - 69 and Bryan L. Harris lines 41 & 54.

113 **Q. WHAT IS THE OFFICE'S RESPONSE TO THE DISCUSSION OF QF**
114 **BENEFITS?**

115 A. In many of the testimonies filed by the Renewable Energy Intervenors are
116 extensive discussions of speculative and unquantifiable benefits of QFs
117 such as economic development, hedging against fuel price volatility,
118 hedging against environmental compliance uncertainties, value from the
119 sales of RECs from QFs, etc. The question before the Commission in this
120 proceeding is not the determination of the theoretical benefits of QFs but
121 whether the Company's request to shorten the QF contract term is needed
122 to protect ratepayers and complies with federal and state laws. This is not
123 the forum to once again propose additional compensation for QFs for the
124 speculative benefits discussed by the Renewable Energy Intervenors.
125 These issues have been litigated extensively in recent Schedule 37 and
126 Schedule 38 proceedings.

127 **Q. DOES THAT CONCLUDE YOUR TESTIMONY?**

128 A. Yes it does.