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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 Agreements with Qualifying Facilities	**Docket No. 15-035-53**

POST HEARING BRIEF OF THE ROCKY MOUNTAIN

COALITION FOR RENEWABLE ENERGY

The Rocky Mountain Coalition for Renewable Energy ("Coalition"), comprised of large Rocky Mountain Power ("RMP") customers and owners/developers of renewable energy projects in Utah and other western states, including the Utah Association of Energy Users ("UAE"), EverPower Wind Holdings Inc., Scatec Solar North America, Inc., SunEdison, Sustainable Power Group and Wasatch Wind, hereby submits its post-hearing brief in this docket. The Coalition respectfully submits that RMP and the Division of Public Utilities ("Division") failed to carry their burden of proof in this docket to demonstrate that their proposals are just, reasonable, in the public interest or consistent with Utah law and policy.

The Proposals of RMP and the DPU are Inconsistent with Controlling State Law and Policy. The Coalition respectfully submits that the Commission's deliberations in this matter should be guided primarily, and dispositively, by the following declaration of Utah legislative policy:

> (1) ***The Legislature declares*** that in order to promote the more rapid development of new sources of electrical energy, to maintain the economic vitality of the state through the continuing production of goods and the employment of its people, and to promote the efficient utilization and distribution of energy, ***it is desirable and necessary to encourage independent energy producers to competitively develop sources of electric energy not otherwise available to Utah businesses, residences, and industries*** served by electrical corporations, ***and to remove unnecessary barriers*** to energy transactions involving independent energy producers and electrical corporations.
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> (2) ***It is the policy of this state to encourage the development of independent and qualifying power production and cogeneration facilities, to promote a diverse array of economical and permanently sustainable energy resources in an environmentally acceptable manner***, and to conserve our finite and expensive energy resources and provide for their most efficient and economic utilization.[1]

The Legislature's strong declaration of Utah policy is thus to encourage and remove unnecessary barriers to development of independent energy resources. After years of anemic renewable energy development in Utah, this public policy is finally beginning to be realized. Power purchase agreements ("PPAs") for Utah renewable energy projects with approximately 1,000 MW of capacity[2] have been executed in the past few years, many of which are now under development, creating significant benefits for Utah and RMP's ratepayers. Yet, just when this significant State policy is finally beginning to be realized, RMP has asked the Commission to

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[1] Utah Code Ann. § 54-12-1 (emphasis added).

[2] Clements Direct, lines 34-35; Corrected Reporters Transcript of November 12, 2015 Hearing ("Tr")., pg. 14, lines 7-10 (Clements). Focusing on nameplate capacity for intermittent renewable energy resources, however, can be somewhat misleading in that such projects typically have a relatively low load factor. Because RMP's IRP does not call for the addition of a new thermal generating unit for well over a decade, current avoided cost pricing in Utah consists primarily of avoided energy costs, with minor capacity values coming into play only near the end of the 20-year term. *See, e.g.*, RMP Quarterly Compliance Filing, December 2, 2015, UPSC Docket No. 15-035-56.

ignore the legislative policy and eliminate any reasonable possibility of further independent energy development -- at least by anyone other than RMP. RMP's proposal should be firmly rejected.

Utah's legislative policy to encourage and remove barriers to development of independent energy simply cannot be reconciled with the proposals of RMP or the Division in this docket. Indeed, neither RMP nor the Division made any effort whatsoever to reconcile its proposal with Utah law and policy.[3] Not only would renewable energy development in Utah be discouraged, and unnecessary barriers erected, if either proposal were adopted, but further independent energy development in this State would almost certainly terminate.

While ignoring controlling State law and policy, RMP attempts to support its proposal with inaccurate and misleading claims about federal law.[4] In the first place, it should not be necessary to debate or resolve implications of federal or FERC laws or policies given the strong declaration of Utah public policy. It should go without saying -- even absent a specific federal or state legislative mandate -- that reasonable, customary, industry-standard contractual terms and provisions are necessary to encourage, or even permit, independent energy development. Rational lenders and investors will make significant investments only based upon reasonable contractual provisions. The record in this docket demonstrates beyond dispute that a lengthy PPA term is one of the most critical requirements for financing or development of independent energy resources.[5] It was not, and cannot be, seriously disputed that a 3- or 5-year PPA term would

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[3] Prefiled testimony of RMP's witness did not even mention the controlling Utah statute. Prefiled testimony of the Division mentioned it only in response to the prefiled testimony of others, and then only with the statement that some barriers to development may be "necessary." (Peterson Rebuttal, lines 120-121). It is troubling that the proponents of these aggressive new proposed state policies made no attempt whatsoever to satisfy their burden of proof to demonstrate that the results of their proposals are consistent with Utah law and policy.

[4] E.g., Clements Direct, lines 77-137.

[5] E.g., Harris Direct, lines 34-53; Harris Rebuttal, lines 66-71; Harris Surrebuttal, lines 47-61; Isern

prevent reasonable financing of, and thus thwart, any future third-party development of renewable energy in this State.

This indisputable linkage between PPA length and availability of financing was expressly recognized in the last Commission docket to address this issue.[6] In that docket, the presumptive PPA term was set at 20 years, in express recognition of the need to balance customer interests and availability of financing. Indeed, the correlation between PPA length and project financing was underscored in that case in that QF developers were authorized to petition the Commission for an even longer PPA term if necessary.[7] It is simply beyond reasonable dispute that a long-term QF PPA is critical to independent energy development, and that linkage has previously been recognized and implemented by the Commission. Neither RMP nor DPU presented evidence that would warrant deviation from this long-acknowledged linkage and practice.

The Proposals of RMP and the DPU are Also Inconsistent with Federal Law. In support of their proposals, RMP and the Division ignore the controlling Utah declaration of policy and focus instead on inaccurate or misleading claims about federal regulations. Federal law, like Utah law, focuses primarily on overriding policy issues, including the use of avoided cost pricing and encouragement of independent energy development.[8] It leaves specific implementation of expressed public policies up to the good faith discretion of State Commissions. The absence of any specific reference to the required length of a QF PPA is thus not surprising, or even relevant. The focus is and must remain on ensuring that reluctant

Direct, lines 39-67; Isern Rebuttal, lines 64-73; Isern Surrebuttal, lines 50-91; Tr., pg. 170, lines 9-19 (Rich); pg. 177, line 23-pg. 178, line 4 (Vastag); pg. 185, lines 18-22 (Wright); pg. 204, line 25-pg. 206, line 2 (Beach); pg. 240, lines 3-11 (Harris); pg. 258, line 16-pg. 259, line 11 (Isern).

[6] Report and Order, UPSC Docket 03-035-14, at 28-29 (October 31, 2005); Coalition Cross Exh. 1.

[7] *Id.*

[8] 16 U.S.C. § 824(a)-3(a); *FERC v. Mississippi,* 456 U.S. 742, 750; Utah Code Ann. § 54-12-1.

monopoly utilities must offer contractual provisions that are just, reasonable and sufficient to encourage independent energy development based on good faith projections of avoided costs.

While federal laws do not expressly require a 20-year PPA term, nor do they expressly allow a short-term PPA. However, applicable federal laws, like applicable Utah laws, are expressly designed to "encourage the development of cogeneration and small power production facilities."[9] Moreover, the Coalition believes and submits that limiting QF PPA terms as proposed by RMP and the Division would in fact violate FERC regulations that effectively require that QFs be given access to long-term contracts so that they can secure avoided energy and capacity prices based on forecasts at the time a PPA is signed.[10] While FERC regulations allow some "latitude" in determining how FERC regulations should be "implemented" by a state, the manner of implementation must be "reasonably designed to give effect to FERC's rules."[11] If QF PPAs are limited to short terms as proposed by RMP and the DPU, it would clearly violate the clear intent and purpose of federal and state laws, as well as specific federal regulations.

Long Term PPAs are Indispensible to Independent Energy Development. Even if the RMP/Division proposals did not violate express FERC regulations, they clearly violate the intent and purpose of applicable federal and state laws and policies, as they would impose an overwhelming and unnecessary barrier to further QF development in this State. Neither RMP nor the Division countered the overwhelming showing by others that long-term PPAs are necessary in order to secure reasonable financing for or development of independent energy projects. Indeed, the Division admitted that Mr. Peterson never claimed that a renewable QF project developer could obtain reasonable financing with a PPA term of less than 20 years, but

[9] *FERC v. Mississippi*, 456 U.S. 742, 750 (1982).
[10] E.g., l8 C.F.R. § 292.304(d).
[11] *FERC v. Mississippi*, 456 U.S. 742, 751 (1982).

rather simply suggested that perhaps the availability of financing "may" be changing.[12] And, while Mr. Peterson unfairly and incorrectly claimed there was no "hard evidence" that financing for shorter-term PPAs would necessarily be unavailable,[13] he acknowledged on the stand that proving such a negative would be difficult and that proponents of any change in policy or practice bear the burden of proof.[14] That burden was clearly not met here.

In any event, a claim of absence of "hard evidence" that reducing PPA length would prevent project financing is inaccurate. The record demonstrates that 20 years is the industry standard QF PPA length, that QF projects are being financed and developed in Utah and elsewhere with 20-year PPAs, that PPA terms in the 15-year range *may* be financeable, but only if avoided cost prices are high or additional tax or other incentives are available to justify the added risk, that the average remaining PPA term of projects that have already been developed when dropped into "yieldcos" is 15-20 years, and that short-term PPAs simply will not be financeable.[15] Indeed, no evidence was offered of any renewable energy project of any significant size having been *initially* financed and constructed based upon a short-term PPA.[16]

Mr. Peterson's speculation that QF PPA financing circumstances "may be changing" was based on unsupported references to inapplicable notions such as "crowdfunding," which Mr. Peterson acknowledged would not be practicable for larger projects; "yieldcos, the attraction of which is expressly predicated upon long-term, low-risk PPAs with creditworthy utilities; balance sheet financing, which would entail higher cost and would be imprudent; and a few QF projects whose circumstances were not investigated by the Division, and which were shown to be

[12] Tr., pg. 124, lines 1-16 (Peterson); DPU Response to Coalition DR 1.3.
[13] Peterson Rebuttal, lines 97-98.
[14] Tr., pg. 124, line 17-pg. 125, line 18 (Peterson).
[15] E.g., Tr., pg. 126, line 24-pg. 147, line 9 (Peterson); Isern Rebuttal, lines 33-35.
[16] *Id*.

irrelevant and incomparable.[17] Mr. Peterson's speculation that QF PPA financing conditions "may be changing" in this regard was not only unsupported, but also clearly shown to be inaccurate.

RMP's Proposal is Inconsistent with Ratepayer Interests. While ignoring critical federal and state policies, RMP and the Division purport to focus on risks to ratepayers. In fact, however, their extreme proposals are inconsistent with the interests of RMP ratepayers. It is notable that the only two ratepayer advocate intervenors in this docket -- UAE and the Office of Consumer Services -- both oppose these proposals. Simply stated, RMP's request for a dramatic reduction in the maximum term of QF PPAs may be in furtherance of RMP's goals, but it is in no way responsive to ratepayer interests.

Different power supply arrangements obviously create varying levels and types of ratepayer risk. The reality of such risks, however, does not justify, or even support, a reduction in the maximum term of QF PPAs. The risks discussed by RMP and the Division consider only one side of the equation while ignoring the other, more compelling, side from a ratepayer perspective.

All resource decisions carry risk, but a long-term QF PPA with a creditworthy developer actually ***reduces*** ratepayer risk during the term of the PPA by largely eliminating fuel price risk, variable price risk and environmental compliance risk.[18] The only significant "risk" of a long-term PPA is not actually a risk, but rather a potential lost opportunity; if future energy prices end up lower than current projections, ratepayers may miss out on lower-priced opportunities. Of course, the opposite is also true. If future rates end up above current projections, ratepayers will

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[17] *Id.*
[18] E.g., Tr., pg. 187, lines 4-22 (Wright); pg. 233, lines 6-17 (Higgins)

benefit from long-term QF PPAs. There is no way to predict whether ratepayers will ultimately be better or worse off with a long-term fixed-price PPA in comparison to short-term or market resources. That does not mean, however, that the risks are symmetrical. To the contrary, the "downside risk" of higher future prices is essentially limitless, while the realistic "upside risk" of lower future prices is relatively limited.[19]

A Recent Idaho Commission Ruling is Suspect and Unpersuasive and Should Not be Followed. RMP and the DUP cite to a recent ruling of the Idaho Public Utilities Commission reducing maximum QF PPA terms in that State to two years.[20] The Idaho ruling is extremely suspect in terms of rationale and legality, and it has not yet been tested by FERC or any Court. In addition, however, RMP and the Division failed to mention that Commission Staff in Oregon oppose RMP's request for a reduction in the PPA term in that State, for many of the same reasons advanced by the Office and the Coalition in this docket.[21] The Coalition respectfully submits that the Oregon Staff position is much more defensible and consistent with controlling state and federal policies, and with ratepayer interests, than the Idaho order.

The Hedging Collaborative Stipulation Does Not Support RMP's Proposal. RMP and the Division also rely upon a stipulation in a natural gas hedging collaborative. Such reliance is misplaced. As duly noted by Coalition witness Kevin Higgins, "the more apt comparison is not between RMP's hedging practices and long-term QF contracts, but between long-term QF contracts and the Company's recovery of its generation investments in rate base. In this

[19] E.g., Wright Surrebuttal, lines 164-172; Tr., pg. 191, line 8-pg. 192, line 4 (Wright).
[20] E.g., Clements Direct, lines 138-166; Peterson Direct, lines 312-324.
[21] E.g., Tr., pg. 150, line 25-pg. 151, line 15; Staff Exhibit 100, Response Testimony, pg. 14, line 1-pg. 17, line 4, Oregon PUC Docket No. UM 1734, October 15, 2015.

comparison, the obligations of customers are longer-term and more open-ended when it comes to paying for utility-owned plant in contrast with QF contracts."[22]

The hedging collaborative was focused primarily on natural gas financial hedges.[23] It does not support a claim that long-term QF PPAs, or any other long-term wholesale contracts, are discouraged, inappropriate, or otherwise impacted by the stipulation. Indeed, the only express reference in the stipulation attached to the Hedging Report to long-term contracts encouraged the use of long-term natural gas contracts when market conditions appear favorable,[24] as they are today.[25]

The IRP Does Not Support RMP's Proposal. RMP and the Division similarly reference PacifiCorp's IRP in an attempt to support their proposals. Again, however, the reference is unavailing. QF PPAs are not evaluated in the IRP or included as resource options that can be selected at various avoided cost price levels.[26] If they were, it is entirely likely -- indeed almost certain -- that QF PPAs would be selected long before front office transactions ("FOTs"), given that QF PPAs not only reflect long-term market price projections like FOTs, but they also serve to significantly reduce fuel price and environmental compliance risks.

It is also incorrect, as some have claimed, that the IRP shows no need for additional resources for over a decade, and that QF PPAs thus represent unneeded resources.[27] To the contrary, the IRP demonstrates a need for significant new resources, which PacifiCorp primarily

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[22] Higgins Direct, lines 130-145.
[23] Report to the Utah Public Service Commission on the Collaborative Process to Discuss Appropriate Changes to PacifiCorp's Hedging Practices, UPSC Docket 10-035-124, March 30, 2012 ("Hedging Report"); Hedging Report, Exhibit A; Coalition Cross Exhibit 2.
[24] *Id.*; Tr., pg. 74, line 13-pg. 83, line 13 (Clements); Coalition Cross Exhibit 2.
[25] E.g., Higgins Direct, lines 108-116, 191-198.
[26] E.g., Tr., pg. 84, line 20-pg. 85, line 5 (Clements).
[27] E.g., Clements Direct, lines 62-63; Peterson Direct, lines 46-47.

proposes to secure through short-term FOTs.[28] Again, QF PPAs at current prices reflecting RMP's forward price projections would almost certainly be selected over FOTs if they were offered as IRP resource options. From a customer point of view, long-term, low-risk renewable QF PPAs represent an excellent resource option. Consistent with federal and state policies, it is in the interest of RMP's captive ratepayers to acquire as much of these types of resources as possible. If RMP insists upon eliminating such resource options for its ratepayers, RMP, and not its customers, should bear the risk if future prices exceed current projected QF avoided cost rates.

Conclusion

The Coalition respectfully submits that the proposals of RMP and the Division in this docket are overreaching, premature, poorly conceived, unsupported and inconsistent with federal and Utah State laws and policies. So long as avoided cost prices for QF PPAs are set based on reasonable projections and procedures, as they currently are in Utah, allowing QF PPAs to have terms of 20 years represents the most reasonable and defensible balancing of interests between renewable energy development and RMP ratepayer interests.

DATED this 9th day of December 2015.

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/s/ ___________________________
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[28] E.g., Tr., pg. 85, line 19-pg. 86, line 7 (Clements).

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 9th day of December 2015 on the following:

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