

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

<p><b>In the Matter of the Application of Rocky Mountain Power for Approval of Changes to Renewable Avoided Cost Methodology for Qualifying Facilities Projects Larger than Three Megawatts</b></p>	<p><b>DOCKET NO. 12-035-100</b></p>
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**REBUTTAL TESTIMONY OF PAUL H. CLEMENTS**

December 7, 2012

1 **Q. Are you the same Paul H. Clements that previously filed testimony in this**  
2 **proceeding?**

3 A. Yes. I filed direct testimony in which I recommend that the Commission approve  
4 the Company's October 9, 2012 Request for Agency Action Motion to Stay.

5 **PURPOSE AND SUMMARY OF TESTIMONY**

6 **Q. What is the purpose of your testimony?**

7 A. I will provide the Company's response to the testimony of Utah Division of  
8 Public Utilities (DPU) witness Charles E. Peterson, Utah Clean Energy witness  
9 Sarah Wright, Wasatch Wind witness Christine Mikell, and Energy of Utah  
10 witness Robert Milsap.

11 **Q. Please summarize your testimony.**

12 A. My testimony discusses and recommends the following:

- 13 1. The Company agrees with the DPU's assessment that the Market Proxy  
14 method must be reevaluated due to 1) significant changes in the  
15 Company's integrated resource plan (IRP) and 2) possible significant  
16 changes in the cost of wind projects since 2009.
- 17 2. The Company does not agree with the DPU's recommendation that the  
18 stay not apply to wind QFs that submitted pricing requests prior to  
19 October 9, 2012 and, instead, recommends the stay apply to all wind QFs  
20 with the exception of Blue Mountain<sup>1</sup> in order to avoid overpayment of  
21 current avoided costs by customers.
- 22 3. Utah Clean Energy witness Sarah Wright's assertion that it is unlikely

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<sup>1</sup> See *In the Matter of Blue Mountain Power Partners, LLC's Request that the Public Service Commission of Utah Require PacifiCorp to Provide the Approved Price for Wind Power for the Blue Mountain Project*, Docket No. 12-2557-01, Order on Request for Agency Action, September 20, 2012.

23 ratepayers will be harmed if the stay is denied is not accurate.  
24 Furthermore, her discussion and interpretation of PURPA does not  
25 adequately address the critical issue of ratepayer indifference.

26 4. Wasatch Wind’s assertion that it should be given the Market Proxy method  
27 because it relied upon pricing provided in 2010 and 2011 is not consistent  
28 with Utah Schedule No. 38.

29 5. Energy of Utah’s contention that “the amounts presented as additional  
30 ratepayer costs are more correctly explained as an indication of amounts  
31 by which the PDDRR-based prices underestimate the avoided costs for  
32 these projects” are baseless and should be ignored because Mr. Milsap  
33 provides no evidence to support it.

34 **RESPONSE TO TESTIMONY OF CHARLES E. PETERSON**

35 **Q. Mr. Peterson indicated there have been significant changes in the Company’s**  
36 **IRP forecast of anticipated resource needs and possible significant changes in**  
37 **the cost of wind projects since 2009, but then recommends the Market**  
38 **Proxy<sup>2</sup> method should be extended to any project that was in the pricing**  
39 **queue by October 9, 2012. Do you agree with his recommendation?**

40 **A.** No. The Commission should immediately stay the application of the 2005 Order  
41 for indicative pricing based on the Market Proxy method to any wind QF in

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<sup>2</sup> In the October 31, 2005 Order in Docket No. 03-035-14 (2005 Order), the Commission established two separate methodologies for calculating avoided cost prices for large wind QF resources between three (3) and 100 megawatts. The first, the Market Proxy method, is applicable to wind QF resources up to an “IRP target” level of megawatts. The second, the PDDRR method, is applicable to wind QF resources in excess of the IRP target.

42 excess of three (3) megawatts, with the exception of Blue Mountain<sup>3</sup>, pending  
43 conclusion of this docket. As Mr. Peterson has highlighted, the Company's  
44 resource needs have changed significantly since the 2005 Order, and the cost  
45 differential between the Company's last signed wind contract in 2009 and current  
46 costs for wind projects may be significant. These two points illustrate a material  
47 change in the underlying assumptions that were in place at the time the Market  
48 Proxy method was implemented. Therefore, the Market Proxy method is no  
49 longer reflective of avoided costs and should no longer be provided.

50 **Q. Please explain how these material changes in the underlying assumptions**  
51 **behind the Market Proxy method make it no longer reflective of current**  
52 **avoided costs.**

53 A. At the time of the Commission decision in the 2005 Order, it was expected that  
54 the Company would be issuing frequent renewable request for proposals (RFP)  
55 and the Market Proxy method would therefore 1) reflect the current market value  
56 of wind projects and 2) be consistent with the Company's resource needs as  
57 outlined in the IRP. The Company routinely issued renewable RFPs between  
58 2005 and 2009, but a system-wide RFP for renewable resources has not been  
59 issued since 2009. As a result, the Market Proxy method relies on a contract that  
60 is at least three years out of date and no longer reflective of current market  
61 conditions. A stagnant price that does not reflect current market conditions or  
62 current Company resource needs was not intended when the Market Price was  
63 established in the 2005 Order. In fact, one reason the Commission adopted the

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<sup>3</sup> See *In the Matter of Blue Mountain Power Partners, LLC's Request that the Public Service Commission of Utah Require PacifiCorp to Provide the Approved Price for Wind Power for the Blue Mountain Project*, Docket No. 12-2557-01, Order on Request for Agency Action, September 20, 2012.

64 Market Proxy method was that it was deemed at the time to be “reasonably  
65 accurate”<sup>4</sup>. Since the Market Proxy method is no longer accurate or reflective of  
66 current avoided costs, the Company has requested a stay of the Market Proxy  
67 method and does not support Mr. Petersen’s recommendation to provide a Market  
68 Proxy method price to certain QFs.

69 **Q. If the Market Proxy method price is provided to certain QFs as suggested by  
70 DPU witness Petersen, how will customers be impacted?**

71 A. If the QF projects are developed at the Market Proxy method price, customers will  
72 be paying an out-of-market stale price for resources that are not needed by the  
73 Company. In other words, customers will be obligated under PURPA to purchase  
74 resources that the Company does not need as outlined in its IRP and will be  
75 paying an above market price for such resources.

76 **Q. Have you quantified the financial impact to customers?**

77 A. Yes. In my direct testimony, I estimate the impact to customers to be  
78 approximately \$186 million<sup>5</sup>.

79 **Q. Why is the PDDRR method appropriate to use until the Commission  
80 establishes a permanent method in this docket?**

81 A. The PDDRR method appropriately accounts for changing market conditions and  
82 current Company resource needs. The Commission determined in the 2005 Order  
83 that the PDDRR method is the appropriate pricing method for wind QFs when the  
84 Company is no longer seeking wind resources.

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<sup>4</sup> October 31, 2005 Report and Order in Docket No. 03-035-14, page 21.

<sup>5</sup> Direct Testimony of Paul H. Clements, page 9, line 167.

85 **Q. If the Commission does not grant the stay as requested by the Company,**  
86 **should it adopt the time limits recommended by the DPU?**

87 A. Yes. I recommend the Commission immediately stay the application of the 2005  
88 Order for indicative pricing based on the Market Proxy method to any wind QF in  
89 excess of three (3) megawatts. However, in the event the Commission determines  
90 the Market Proxy method pricing should be provided to those wind QFs who  
91 requested indicative pricing prior to the Company's request to stay on October 9,  
92 2012, the Commission should impose a time limit wherein the QF must sign a  
93 contract by a certain date to receive the Market Proxy method pricing. The  
94 concept of a time limit is a reasonable and meaningful way to protect customers  
95 from projects that are not ready to move forward at this time and view the  
96 contract as an option on a price instead of a firm obligation to develop now.

97 **Q. Do you agree with Mr. Petersen's recommendation that the QF must sign a**  
98 **power purchase agreement by September 1, 2013?**

99 A. No. The proposed milestone is not sufficient to adequately protect customers and  
100 needs to incorporate timing of the current docket as well as a commercial  
101 operation date on the project so that the QF does not have an option on pricing  
102 with no end date for development. I recommend that, in the event the DPU's  
103 recommendation is adopted by the Commission, the QF that receives pricing  
104 under the Market Proxy pricing method be required to sign a power purchase  
105 agreement by the earlier of 1) a binding order in this docket establishing a  
106 permanent pricing methodology for wind QFs or 2) September 1, 2013. I further

107 recommend the Commission require that the QF's commercial operation date be  
108 no later than September 1, 2014.

109 **RESPONSE TO TESTIMONY OF SARAH WRIGHT**

110 **Q. Ms. Wright states that the Company's Request for Agency Action Motion to**  
111 **Stay must be denied in order to continuously implement PURPA in Utah<sup>6</sup>.**  
112 **Do you agree?**

113 A. No. The Company will continue to meet its PURPA obligation and will continue  
114 to provide indicative pricing to wind QFs using the PDDRR method.

115 **Q. Ms. Wright attempts to link the PURPA obligation to encourage**  
116 **development from small power production facilities with a higher avoided**  
117 **cost<sup>7</sup>. Is her opinion consistent with PURPA?**

118 A. No. PURPA is clear that avoided costs should not be higher or lower than the  
119 cost the utility would incur to acquire other resources.<sup>8</sup> This is widely known as  
120 the ratepayer indifference standard. PURPA is very clear on how prices for QFs

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<sup>6</sup> Direct Testimony of Sarah Wright, page 8, line 180-181.

<sup>7</sup> Direct Testimony of Sarah Wright, page 8, line 166-168.

<sup>8</sup> See *Independent Energy Producers Ass'n, Inc. v. Public Utilities Com'n of California*, 36 F.3d 848, 858 (9<sup>th</sup> Cir. 1994) ("In implementing its regulations, the Commission clearly weighed Congress's desire to promote cogeneration while not burdening ratepayers, and concluded that requiring utilities to pay full avoided costs properly balanced these interests... . If purchase rates are set at the utility's avoided cost, consumers are not forced to subsidize QFs because they are paying the same amount they would have paid if the utility had generated energy itself or purchased energy elsewhere."). See also Federal Energy Regulatory Commission, *Administrative Determination of Full Avoided Costs, Sales of Power to Qualifying Facilities and Inter-connection Facilities*, Docket No. RM88-6-000, FERC P 32457, (March 16, 1988) ("Under section 210 of PURPA, an electric utility's ratepayers are intended to be at least indifferent, in terms of the rates they pay, as to the source of power. In other words, the ratepayer is not to pay any more for power because the utility has purchased power from a QF rather than generating the power itself or purchasing power from another wholesale source. This is the purpose underlying the incremental cost ceiling on the rates utilities have to offer to purchase QF power. 15 Under the Commission's regulations, in order to maximize the incentives for QFs, the Commission sets the price for purchases from QFs, absent negotiations, at the statutory ceiling. 16 Thus, the avoided cost rate is neither more than nor less than the price the utility would have paid for comparable power from other sources, including other wholesale sources.").

121 are to be established. 16 U.S.C. § 824a-3(b) requires the following regarding QF  
122 prices:<sup>9</sup>

123 The rules prescribed under subsection (a) of this section shall  
124 insure that, in requiring any electric utility to offer to purchase  
125 electric energy from any qualifying cogeneration facility or  
126 qualifying small power production facility, the rates for such  
127 purchase –

128 (1) shall be just and reasonable to the electric consumers of  
129 the electric utility and in the public interest, and

130 (2) shall not discriminate against qualifying cogenerators or  
131 qualifying small power producers.

132 No such rule prescribed under subsection (a) of this section shall  
133 provide for a rate which exceeds the incremental cost to the  
134 electric utility of alternative electric energy.

135 Thus, PURPA provides for a balance between the interests of customers and the  
136 QFs. PURPA avoided cost rates are not to be set with the sole (or even primary)  
137 purpose of trying to incent QF development.

138 Section 292.304(a)(2) of Title 18 of the Code of Federal Regulations  
139 further clarifies the importance of ratepayer indifference:

140 (2) Nothing in this subpart requires any electric utility to pay more than  
141 the avoided costs for purchases.

142 PURPA removes barriers to small power production development by means of the  
143 purchase obligation: utilities must purchase the output of the small power  
144 production facility. It is the purchase obligation that fulfills this objective of  
145 removing barriers. The avoided cost price is not intended to be used as a means  
146 of either providing an incentive to the developer or discouraging development of  
147 any type of resource. PURPA is clear that the price must reflect the ratepayer  
148 indifference standard.

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<sup>9</sup> See also 18 C.F.R. 292.304(a).



149 **Q. Ms. Wright purports there are considerable additional economic benefits to**  
150 **Utah attributable to wind QFs, and these benefits should be considered when**  
151 **establishing avoided costs. Is this position consistent with PURPA?**

152 A. No. The federal regulations implementing PURPA clearly establish the criteria to  
153 be used to determine avoided costs. There is no additional or separate directive in  
154 the federal regulations implementing PURPA to consider the types of economic  
155 benefits described by Ms. Wright.

156 **RESPONSE TO TESTIMONY OF CHRISTINE MIKELL**

157 **Q. Ms. Mikell suggests the Company now recommends using the PDDRR**  
158 **method because of transmission constraints and because the IRP wind target**  
159 **has been reached<sup>10</sup>. Is this accurate?**

160 A. No. The Company has requested a stay because, for the reasons outlined in my  
161 direct testimony and in this rebuttal testimony, the Market Proxy method no  
162 longer represents the Company's avoided costs, and continuing to use the method  
163 would contradict the ratepayer indifference standard required by PURPA.  
164 Transmission constraints were not a consideration in the Company's decision.

165 **Q. Wasatch Wind implies it relied upon the availability of the Market Proxy**  
166 **pricing over several years and therefore should be entitled to continue to**  
167 **receive that pricing<sup>11</sup>. Is indicative pricing binding pursuant to Utah**  
168 **Schedule No. 38?**

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<sup>10</sup> Direct Testimony of Christine Mikell, page 7, lines 151-153.

<sup>11</sup> Direct Testimony of Christine Mikell, page 8, lines 162-174.

169 A. No. Utah Schedule No. 38 makes it clear prices are not final and binding until a  
170 power purchase agreement is executed and states the following regarding  
171 indicative pricing proposals:

172 Such proposal may be used by the owner to make determinations  
173 regarding project planning, financing and feasibility. However,  
174 such prices and other terms and conditions are only final and  
175 binding to the extent contained in a power purchase agreement  
176 executed by both parties and approved by the Commission<sup>12</sup>.  
177 Ms. Mikell pointed out in her direct testimony that the Company provided  
178 indicative pricing to Wasatch Wind in 2010 and again in 2011. The Company has  
179 record of providing indicative pricing to Wasatch Wind for its Latigo Project in  
180 January 2009, March 2010, November 2010 and June 2012. At no point did the  
181 parties engage in earnest negotiations to complete a power purchase agreement. It  
182 is not reasonable for Wasatch Wind to assume the Company's avoided costs will  
183 remain constant for almost four years, and it is clear that Wasatch Wind has had  
184 multiple opportunities to develop the project using the Market Proxy method.

185 **Q. Do you agree with Ms. Mikell's assertion that Wasatch Wind's Latigo**  
186 **Project is entitled to receive the Market Proxy method price based on the**  
187 **Commission's 2012 order in the Blue Mountain docket (Docket No. 12-2557-**  
188 **01)<sup>13</sup>?**

189 A. No. Docket No. 12-2557-01 was specific to the Blue Mountain project and did  
190 not address Wasatch Wind's Latigo Project.

191 **RESPONSE TO TESTIMONY OF ROBERT MILSAP**

192 **Q. What is your response to Mr. Milsap's contention that the amounts**  
193 **presented in your direct testimony as additional ratepayer costs are more**

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<sup>12</sup> Utah Electric Service Schedule No. 38, Original Sheet No. 38.3.

<sup>13</sup> Direct Testimony of Christine Mikell, page 9, lines 194-196.

194 **correctly explained as an indication of amounts by which the PDDRR-based**  
195 **prices underestimate avoided costs?**

196 A. I think Mr. Milsap's contention is baseless and should be ignored because he  
197 provides no evidence to support it. If he wants to refute my testimony, he must  
198 provide evidence to the contrary.

199 **Q. Do you have any final comments?**

200 A. Yes. Irrespective of the Commission's decision in this case, it is important to note  
201 that the Company will recover the costs it incurs from QF contracts from its  
202 customers. Nevertheless, customers should not be paying more than the  
203 Company's full avoided costs.

204 **Q. Does this conclude your testimony?**

205 A. Yes.