

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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.

Docket No. 12-035-100

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HEARING  
MOTION FOR STAY  
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TAKEN AT: Heber M. Wells Building
160 East 300 South
Salt Lake City, Utah 84111

DATE: Wednesday, December 12, 2012

TIME: 9:00 a.m. to 2:17 p.m.

REPORTED BY: Michelle Mallonee, RPR

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Hearing - Motion For Stay

December 12, 2012

PROCEEDINGS

THE COURT: Good morning, everybody. My name is David Clark. I'm the designated presiding officer this morning. We are here to address Docket No. 12-035-100 before the Public Service Commission of Utah. It's 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.

And in particular today, we are conducting a hearing in the Motion to Stay phase of this proceeding. And this hearing has been duly noticed.

And let's begin with appearance of counsel.

MS. HOGLE: Good morning, your Honor and parties. My name is Yvonne Hogle. And I'm here on behalf of Rocky Mountain Power. With me today is Paul H. Clements, who filed testimony in support of the Company's Motion to Stay. Specifically, he filed a direct, rebuttal, and surrebuttal testimony. And he will be providing a summary of his testimony.

THE COURT: All right.

MS. HOGLE: Thank you.

THE COURT: Thank you. We'll just continue down that table to my left.

MR. VRBA: Good morning. My name is Rocco

1 Vrba. I'm here representing Energy of Utah. I have my
2 consultant, Robert Millsap, here. And I have provided a direct
3 testimony in this docket, rebuttal, and surrebuttal. And I will
4 summarize and provide additional evidence that I've submitted
5 this morning in support of my view on this case. Thank you.

6 THE COURT: Mr. Vrba, you're here as a witness, I
7 believe. Is that right?

8 MR. VRBA: That's correct.

9 THE COURT: Mr. Millsap as well. And without
10 counsel representing you. Is that correct?

11 MR. VRBA: That would be correct.

12 THE COURT: Thank you.

13 MR. BURNETT: My name's Brian Burnett. I'm an
14 attorney representing Blue Mountain Power Partners, LLC.

15 MR. DODGE: Gary Dodge on behalf of Wasatch
16 Wind.

17 MS. HAYES: Sophie Hayes on behalf of Utah
18 Clean Energy. And with me is Sarah Wright.

19 THE COURT: Thank you.

20 MS. SCHMID: Patricia E. Schmid with the Attorney
21 General's Office for the Division of Public Utilities. And with me
22 as the Division's witness is Charles E. Peterson, who has
23 presented direct, rebuttal, and surrebuttal. He will ask that
24 those be admitted and also present a summary. Thank you.

25 MR. PROCTOR: Paul Proctor on behalf of the

1 Office of Consumer Services. Mr. Vastag is the witness today.
2 And I need to inform the Commission that in the event this
3 matter goes beyond noon, there will be another attorney
4 appearing for the Office.

5 THE COURT: Thank you, Mr. Proctor.

6 We're here today to hear the testimony of seven
7 witnesses. My intent is to hear them in the following order,
8 beginning with the moving party, the Company, Mr. Clements;
9 and Ms. Wright; Mr. Vrba; Mr. Millsap; Ms. Mikell; Mr. Vastag;
10 Mr. Peterson.

11 Is there any objection to that order?

12 MR. PROCTOR: Paul Proctor on behalf of the
13 Office. Traditionally, the Company, the Division, and the Office
14 have proceeded in that order with the other intervening parties
15 or interested parties. Now, this is an unusual matter. I agree, it
16 could change. However, again, to accommodate my schedule, I
17 would prefer that Mr. Vastag goes on this morning.

18 THE COURT: Without objection, we'll hear from
19 Mr. Vastag immediately after Mr. Clements, just to make sure
20 that we get to him today. Will that be--

21 MR. PROCTOR: Thank you very much. Thank you.

22 THE COURT: Thank you.

23 And other preliminary matters. Mr. Burnett?

24 MR. BURNETT: Again, my name is Brian Burnett.
25 I'm here on behalf of Blue Mountain Power Partners, LLC. I filed

1 a petition to intervene in this proceeding for the limited
2 purposes of requesting an exemption for Blue Mountain Power
3 Partners from the applicability in this proceeding.

4 This proceeding is--the purpose of it is to focus on
5 avoided costs for power projects larger than three megawatts.
6 We've received indicative pricing, pursuant to a Commission
7 order, regarding this matter. We believe our pricing has been
8 set.

9 Originally, when I reviewed the proposal from
10 Rocky Mountain Power regarding this, they specifically
11 exempted Blue Mountain from the proceeding. So I didn't really
12 follow it until there was some testimony filed where there were
13 some proposed conditions that would be imposed upon Blue
14 Mountain. And I object to this, and would request that it not be
15 applicable to them.

16 As a general rule, we have statutes, regulations,
17 and orders which apply industry wide, apply prospectively. And
18 this would be a retroactive application of that. And I would
19 respectfully request the Commission exempt Blue Mountain from
20 the applicability of this particular proceeding.

21 THE COURT: Any party desire to respond to Mr.
22 Burnett's statement?

23 MS. HOGLE: Thank you, your Honor.

24 Rocky Mountain Power objects to the request from
25 Blue Mountain for exemption from the outcome of this case,

1 particularly the Phase 2 of this case. It is the Company's
2 position that it is not reasonable for Blue Mountain to expect
3 market proxy pricing indefinitely. Pursuant to Schedule 38,
4 approved Schedule 38, the Company is allowed to update its
5 pricing up until a power purchase agreement is signed.

6 Therefore, the Company's position is that if a power
7 purchase agreement has not been signed by Blue Mountain by
8 the time that the Commission issues a different pricing
9 methodology, then Blue Mountain should be included as part of
10 the QFs that must comply with the new pricing methodology.
11 Thank you.

12 THE COURT: Any other statements?

13 MS. SCHMID: Yes, please. The Division also
14 objects to Blue Mountain's motion. The Division has addressed
15 what it believes to be the proper treatment of Blue Mountain in
16 the testimony of the Division witness, Mr. Charles Peterson.

17 In this testimony, the Division believes that there
18 should be a time limit for a project, even Blue Mountain, to have
19 a signed purchase agreement with the Company, and the
20 Division is proposing that that be September 1, 2013. As such,
21 the Division objects to Blue Mountain's request.

22 THE COURT: Any other statements?

23 MR. BURNETT: If I might just respond to that. One
24 of the problems I have with this is it's not entirely in Blue
25 Mountain's control when a PPA is signed. There are a variety of

1 moving parts in these projects. You can see from some of the
2 testimony--for example, I think a good example of the
3 complexity and the permits and the contracts required for a
4 project of this type is in Wasatch Winds' testimony--just a
5 variety of permitting and other issues that are applicable. And it
6 only takes one permit or one contract or one issue to delay
7 things a little bit.

8 And so if you impose these additional requirements,
9 and it's not entirely in the QF's realm of authority to enter into--I
10 mean, there's another person, another entity, involved in the
11 negotiations. And imposing an arbitrary deadline is a very
12 dangerous thing.

13 I've been involved with two QFs. I've been involved
14 in the QF business since the mid 80s. I've been involved with
15 two QF projects that were killed. One was killed on a deadline
16 after the PPA was signed. One was killed on a QF after they
17 started construction.

18 Again, if there are arbitrary deadlines in these
19 things, then it's very easy for the utility to stop a project. And
20 it's not in their interest to let the project go forward.

21 So we're in an unequal bargaining position in this
22 particular situation. So if you impose, you know, a deadline
23 that's when the Commission decides this proceeding or
24 September 1, then I can guarantee you it's going to be a
25 problem. It's not a fair situation. I agree that they shouldn't

1 have this price in perpetuity. But setting that short of a
2 deadline, this is troubling. And I think it makes it very, very
3 difficult for the parties to do this.

4 And in addition to--and I know there's a lot of--
5 there was a lot of testimony filed regarding rate payer
6 indifference, which I'm entirely sympathetic to. There's also
7 Utah state statutes that encourage QF development of small
8 power production facilities. None of that was mentioned in the
9 testimony, and certainly is still a statutory requirement, as far as
10 I can tell--unless somebody tells me differently. And it's
11 something which should be encouraged.

12 And I would note that if PacifiCorp decides to
13 develop a wind project and they miss--a permit gets strung out
14 or a contract isn't completed on time, we don't cut their legs out
15 from under them. We don't say, "You know, you spent millions
16 of dollars. Too bad. We imposed an arbitrary deadline. We're
17 not going to let you bring that wind project on." That doesn't
18 happen. But it happens to us, and I've been through it. And
19 believe it or not, it's pretty painful.

20 People spend millions of dollars in reliance on the
21 prices that are set in these things. And to say that it doesn't
22 matter or is irrelevant or they can go ahead without it, it's just
23 unrealistic. And so I would plead that you not impose this one
24 on us. Thank you.

25 THE COURT: The Commissioners will consider that

1 issue, along with the others that are before the Commission
2 today.

3 If there are no other preliminary matters, then, Ms.
4 Hogle, would you call your first witness, please.

5 MS. HOGLE: I would, your Honor. Thank you. I
6 believe he needs to be sworn in.

7 THE COURT: I think it would be best if you are sit
8 here today.

9 MS. HOGLE: Oh, sure.

10 THE COURT: Is that all right?

11 MS. HOGLE: Yes.

12 THE COURT: Do you solemnly swear that the
13 testimony you are about to give shall be the truth, the whole
14 truth, and nothing but the truth?

15 THE WITNESS: I do.

16 THE COURT: Thank you.

17 THE WITNESS: Thank you.

18 PAUL CLEMENTS, having been first duly sworn,
19 was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY-MS.HOGLE:

22 Q. Good morning, Mr. Clements. Can you please state
23 your name and your position with the Company for the record.

24 A. Yes. My name is Paul H. Clements. My position is
25 senior power marketer at PacifiCorp, responsible for negotiation

1 of QF contracts and large industrial contracts.

2 Q. And in that capacity, did you file direct testimony,
3 rebuttal testimony, and surrebuttal testimony in this case?

4 A. Yes, I did.

5 Q. Do you have any changes to that testimony today?

6 A. I do not.

7 Q. So if I were to ask you the questions in your
8 testimony here today, would your answers be the same?

9 A. Yes, they would.

10 MS. HOGLE: Your Honor, I move the admission
11 into the record of the direct, rebuttal and surrebuttal testimony
12 of Mr. Paul Clements.

13 THE COURT: Any objection?

14 They'll be received as RMP Exhibits 1, 2, and 3.
15 (Prefiled Exhibits RMP 1, 2, and 3 were admitted into evidence.)

16 MS. HOGLE: Thank you, your Honor.

17 Q. (BY MS. HOGLE:) Do you have a short summary
18 for the Commission today?

19 A. I do.

20 Q. Please proceed.

21 A. Thank you. Thank you, your Honor.

22 I'd like to begin my summary today by defining
23 terms that I expect most parties will be using during our
24 discussion today.

25 In the October 31, 2005, Order, in Docket No.

1 03-035-14, which I will hereafter refer to as the "2005 order,"
2 the Commission established two separate methodologies for
3 calculating avoided cost prices for large wind QFs. The first is
4 called the "market proxy method." And that method utilizes a
5 price that's based on the last wind contract that was executed
6 by the Company through an RFP process. Currently, that is the
7 Dunlap Wind project from a 2009 RFP.

8 The second is called a "PDDRR method." And it
9 utilizes two energy simulations in grid to determine the avoided
10 energy value, and then uses the next deferrable resource from
11 the IRP to determine the avoided capacity value. This PDDRR
12 method is also a method that's used to set avoided costs for all
13 other QF resource types in Utah.

14 My testimony demonstrates that the Commission
15 should approve the Company's October 9, 2012, Request for
16 Agency Action Motion to Stay. I recommend the Commission
17 immediately stay the application of the 2005 order for indicative
18 pricing based on the market proxy method in order to avoid
19 potential, irreparable harm to customers.

20 I provide evidence that the market proxy method
21 results in paying the QF an outdated price that is based on
22 costs that, one, no longer reflect the current market price for
23 wind resources; and two, does not take into account the current
24 resource needs of the Company.

25 Continued use of the market proxy method will

1 harm customers and is inconsistent with PURPA principles. The
2 PURPA standard is clear. Avoided cost pricing should be such
3 that customers remain indifferent as to whether the energy is
4 purchased from the QF or from other resources. The market
5 proxy method, as currently implemented, fails this critical
6 PURPA test.

7 In the 2005 order, the Commission implemented the
8 market proxy method with the assumption that the price
9 produced by that method would be, and I quote from that order,
10 "Reasonably accurate." I have provided evidence that the
11 market proxy method no longer meets this Commission
12 requirement of being reasonably accurate. The market proxy
13 method uses, as a basis for pricing, a wind contract from 2009.
14 I, as well as the Office of Consumer Services, have
15 demonstrated that turbine prices have decreased considerably
16 since 2009; therefore, the current market proxy method price is
17 clearly outdated and no longer reflective of current market costs
18 for wind projects. It is no longer reasonably accurate. In fact, I
19 would consider it quite inaccurate.

20 Some parties have claimed that the stay would
21 harm QF developers. Yet, those parties have not provided any
22 detailed, measurable evidence of actual or expected harm.

23 On the contrary, my testimony includes an estimate
24 of the potential harm to customers if the stay is not approved. If
25 the five wind projects, who have requested pricing in 2012 prior

1 to the request for a stay, were to execute contracts using the
2 current market proxy method price, which is based on the 2009
3 Dunlap project, the estimated harm to customers, by our
4 calculation, is \$186 million over 20 years. This is a real,
5 measurable impact that cannot be ignored.

6 It is clear that the potential harm to customers far
7 outweighs the potential harm to QF developers, and that
8 potential harm to customers is material enough that a stay is
9 both in the public interest and is required to comply with PURPA
10 principles of customer indifference.

11 Now, some parties have argued that the
12 Commission cannot implement a stay until Phase 2 of this
13 docket is resolved. And we have had a full evidentiary hearing
14 on a permanent avoided cost method. I disagree with that
15 position. I do not presume to know the outcome of Phase 2 of
16 this docket. But I am certain and have provided clear evidence
17 of the following facts:

18 One, the outdated price produced by the market
19 proxy method no longer reflects the current cost of wind
20 resources, and therefore, is no longer just and reasonable under
21 PURPA.

22 Two, the 2005 order establishing the market proxy
23 method was based on the assumption that the market proxy
24 price would be a reasonable estimate of current wind avoided
25 costs.

1 And three, the Company is obligated by PURPA to
2 not pay more than the avoided costs for purchases.

3 Therefore, it is in the public interest and is just and
4 reasonable for the Commission to stay the market proxy method
5 at this time.

6 That concludes my summary.

7 MS. HOGLE: The witness is available for
8 questions, your Honor. Thank you.

9 THE COURT: Cross-examination for the witness?

10 MS. SCHMID: Your Honor, what order would you
11 like that to proceed in?

12 THE COURT: Let's see who desires to
13 cross-examine, and we'll--all right. Start over here.

14 MS. HAYES: Thank you, your Honor.

15 CROSS-EXAMINATION

16 BY-MS.HAYES:

17 Q. Good morning, Mr. Clements.

18 In your direct testimony at Line 92, you reference a
19 report called "Recent Developments in the Levelized Cost of
20 Energy from U.S. Wind Power Projects." Is that correct?

21 A. That was my direct testimony, Line 92?

22 Q. Yes.

23 A. Okay.

24 Q. Do you have a copy of that presentation with you
25 today?

1 A. I do not have the full presentation with me, no.

2 Q. All right.

3 MS. HAYES: May I approach the witness?

4 THE COURT: Yes.

5 MS. HAYES: If I can get to the witness.

6 I can make more copies if I need to.

7 Q. (BY MS. HAYES:) Does this appear to be a copy of
8 the presentation that you reference?

9 A. It appears to be a page from the presentation, yes.

10 Q. Yes, page 8 specifically.

11 MS. HAYES: Utah Clean Energy moves to admit
12 this page and the cover page of this exhibit to the record.

13 THE COURT: Is there any objection?

14 MS. HOGLE: Objection, your Honor. The Company
15 believes that if she is going to be relying on this, she should
16 provide the entire study because anything that she asks from it
17 could be taken out of context.

18 THE COURT: If we know that it's from the study--
19 and I believe the witness has said that it is--then I'll receive it in
20 evidence.

21 (Exhibit UCE Cross 1 was received into evidence.)

22 MS. HAYES: Thank you.

23 Q. (BY MS. HAYES:) Would you read--on page 8,
24 there's a shaded box at the bottom. Would you read that
25 sentence.

1 A. Yes. It says, "Project costs bottomed out in 2001
2 through 2004; rose by \$850/kW on average through 2009; held
3 steady in 2010 (\$2155/kW); based on limited available data,
4 may have dropped in 2011."

5 Q. Thank you.

6 MS. HAYES: May I approach the witness again?

7 THE COURT: Yes.

8 MS. HAYES: I think I gave away my copy, but I
9 think I'll be okay.

10 Q. (BY MS. HAYES:) Do you recognize this
11 document?

12 A. I recognize the structure of it, but I was not
13 involved in the preparation of this document, no.

14 Q. Okay. Does this document appear to be the 2013
15 Integrated Resource Plan Supply-Side Resource Options
16 prepared by PacifiCorp and distributed on October 31, 2012?

17 A. I was not involved in the preparation of the
18 Integrated Resource Plan, and so my familiarity with it is
19 somewhat limited.

20 Q. Would you accept, subject to check, that this is, in
21 fact, the 2013, or rather some sections of the 2013 Integrated
22 Resource Plans Supply-Side Resource Options, published on
23 October 31, 2012?

24 A. Yes.

25 MS. HAYES: Utah Clean Energy would move to

1 admit this Exhibit as UCE Cross 2.

2 THE COURT: Any objections? It's received.
3 (Exhibit UCE Cross 2 was received into evidence.)

4 MS. HAYES: Thank you.

5 Q. (BY MS. HAYES:) Would you--this is on, it says
6 page 3 of 6, kind of in the middle. I'm referencing the Base
7 Capital column of the Wind Resource rows.

8 Do you agree that the base capital costs listed on
9 this table for wind resources are between \$2138 and \$2365 per
10 kilowatt?

11 A. Yes, according to this table.

12 Q. Thank you. No further questions.

13 THE COURT: Mr. Dodge.

14 MR. DODGE: Thank you, Judge.

15 CROSS-EXAMINATION

16 BY-MR.DODGE:

17 Q. Mr. Clements, good morning.

18 A. Good morning.

19 Q. I'm going to follow up just a bit on that.

20 In Mr. Vastag's testimony, he indicates that the--I
21 believe he indicated that the cost per kW of the Dunlap project
22 in 2009 was \$2383. Is that accurate?

23 A. I wasn't--I'm not familiar with the calculation of the
24 cost of Dunlap, all inclusive. We looked at the turbine cost
25 only.

1 Q. You don't have any basis for knowing what the
2 all-in cost of the Dunlap project is, as being used in the current
3 market proxy pricing methodology?

4 A. Somewhat. I would say his estimation is probably
5 accurate for an all-in cost, yes.

6 Q. So assuming that's true, the 2383 doesn't appear to
7 be very different from the Company's current best projections
8 for future all-in costs for wind projects going forward. Is that
9 not a fair statement?

10 A. I would have to look at the other components that
11 make up the Dunlap project versus the components that are
12 making up the projects listed in the supply-side resource table.

13 Q. But what matters is the all-in costs, right?

14 A. Again, I'm not familiar with the preparation of the
15 IRP table, and so I can't provide a definitive answer on that.

16 Q. You agree, don't you, that turbine costs are not the
17 only costs faced by wind project developers?

18 A. I agree they're not the only costs. They are the
19 most significant costs.

20 Q. And if, notwithstanding those decreases, your
21 company is projecting all-in costs that are roughly comparable,
22 then that calls into question your notion that the prices have
23 dropped dramatically, doesn't it?

24 A. Again, I'm not familiar with the preparation of the
25 integrated resource plan values, so I can't comment directly on

1 those.

2 Q. Let's turn for a minute to what you do know about, I
3 believe, and that is your PDDRR numbers that you included--or
4 the damages you allegedly--the alleged damages you calculate
5 in your testimony.

6 First of all, what price curve did you use in
7 calculating the PDDRR pricing?

8 A. That likely would have been, probably, a Q2 or a
9 Q3 price curve from 2012.

10 Q. And when was your most recent QF update filed,
11 actual update, your semi-annual QF update?

12 A. I do not know the exact date.

13 Q. Approximately.

14 A. Probably sometime in the past several months. We
15 typically make those filings quarterly.

16 Q. Do you have any input into that?

17 A. I have limited input into the filing itself. I do
18 provide some information regarding the queue and other things
19 that make up that filing.

20 Q. And is it accurate that the most recent filings were
21 not filing because of this ongoing proceeding--were not updating
22 because of this proceeding?

23 A. I'm not aware of that.

24 Q. Do you know which quarterly update was relied
25 upon for your calculations in your direct testimony of the alleged

1 damages to rate payers?

2 A. I'm not certain it was a quarterly update that was
3 relied upon. We actually did individual PDDRR pricing runs for
4 each of those projects and compared it to what the price would
5 be under the market proxy method.

6 Q. So if, for example, one of those was indicative
7 pricing provided in June of 2012, you are saying it would have
8 been whatever approved forward price curve the Company had
9 at that time?

10 A. Very likely, yes.

11 Q. And how often are the official forward price curves
12 updated?

13 A. Typically--well, the official forward price curve is
14 typically a quarterly update.

15 Q. And do you update it quarterly, then, when you run
16 your PDDRR model for QF pricing purposes?

17 A. That is the typical practice, yes.

18 Q. What's happened to the price of gas since prior to
19 June 2012 to today? Do you have any idea?

20 A. I couldn't speculate on that. I don't know what term
21 you are talking about.

22 Q. Have you run a PDDRR with the most recent
23 forward price curves?

24 A. You'll need to clarify that question. We do quite a
25 few PDDRR runs in the course of normal business.

1 Q. Well, the ones in your testimony are all from the
2 summer, right?

3 A. Yes, those are comparisons that were prepared.

4 Q. And are you generally aware that the price of gas
5 has gone up a fair amount in the last six months?

6 A. I'm generally aware that the spot in some of the
7 front time periods have gone up somewhat, but the long dated
8 forward price curve has not gone up considerably or materially.

9 Q. And yet your forward price curve takes the strips
10 and then escalates them going forward, right, based upon
11 various estimates?

12 A. I think that's an oversimplistic, inaccurate
13 description of how the forward price curve is calculated.

14 Q. It doesn't take existing bids, contracts that your
15 front office people are aware of, and then add shorter terms,
16 several-year projections, and then escalate from there? Is that
17 not how your forward price curve is--

18 A. Again, that is not my area of expertise. But I think
19 that's an oversimplification of how the forward price curve is
20 calculated. It does not take the front years and simply roll
21 them.

22 Q. Nor did I say that. I said it takes current contracts
23 and then market indicators for forward price strips as far as that
24 goes out, 18 months or 24 months. And then it escalates them,
25 based on their indices. Is that not accurate?

1 A. I wouldn't say escalates them based on various
2 indices. It relies on various indices to calculate the back end of
3 the curve. But again, not my area of expertise, so.

4 Q. If gas prices have gone up, then your damage
5 estimates are overstated. Is that not right?

6 A. Yes, that question alone. If gas prices have gone
7 up, then it's possible that they may be overstated. But, again,
8 the grid model is more complex than just gas prices. It's
9 oversimplifying it to say if gas prices go up, then avoided costs
10 go up. There are other inputs to the model that affect avoided
11 costs.

12 Q. All other things being equal, if natural gas prices go
13 up and you're dispatching this against either the market or
14 natural gas proxy resources down the road, the PDDRR is going
15 to go up; is it not?

16 A. I would say that's the most likely outcome, yes. But,
17 again, that oversimplifies the model.

18 Q. What assumptions are used in your PDDRR runs for
19 greenhouse gas taxes?

20 A. I'm not aware of what assumptions are used.

21 Q. Are any assumptions used?

22 A. Again, I'm not aware of what assumptions are used.

23 Q. So how can you testify about damages without
24 having any clue what goes into the model? You're sitting there
25 saying you don't know how those prices are calculated or what

1 goes into it. You just ran it, and these are the results. Is that a
2 fair statement?

3 A. No, that's not a fair statement. We run the PDDRR
4 method consistent with the Commission's order, the 2005 order
5 that I referenced earlier. We've been providing PDDRR-based
6 runs for dozens of QFs since that order. Those runs are often
7 evaluated by the Division of Public Utilities and other
8 intervenors when we sign contracts that are based on those
9 runs.

10 And so we feel like we've been doing those runs
11 correctly and pursuant to the Commission order. And so--

12 Q. That isn't my question. You're here as the only
13 Company witness and testifying to an alleged \$186 million worth
14 of damages to customers, based on running two different
15 models. And you can't tell us what goes into to models?

16 A. Was that a question?

17 Q. Is that accurate?

18 A. No, that's not accurate. I can tell you from a high
19 level, based on my expertise, what the key components of the
20 model are. But in terms of the individual details, no.

21 Q. What are the components relating to greenhouse
22 gas or carbon tax or environmental costs in the PDDRR model?

23 A. Those impacts are reflected in the Company's
24 calculation of the forward price curves. And the details around
25 those, I'm not the expert on. I'm not prepared to discuss those

1 today.

2 Q. What assumptions are built into that PDDRR run
3 that you did in your testimony for SCR requirements on
4 Wyoming coal plants or the Arizona coal plants or Utah coal
5 plants?

6 A. I do not know that.

7 Q. If it were the case that the Company's recently
8 announced it may delay its IRP filing because it anticipates
9 being ordered to install SCRs on three Wyoming wind plants and
10 it's been ordered--or at least the owner has been ordered--the
11 operator's been ordered on an Arizona plant to add SCRs at a
12 cost of \$2 billion, could that impact the forward price curves,
13 and could that impact the PDDRR pricing as well?

14 A. I'm not going to speculate on whether that would
15 impact the forward price curves or not.

16 Q. I misspoke when I said forward price curves. I
17 meant to say the PDDRR estimates of costs for QF projects.

18 A. Again, how the PDDRR calculation is performed is
19 laid out quite specifically in the 2005 order. And the Company
20 executes these PDDRR runs consistent with that 2005 order.

21 Q. You testify that the market proxy method is no
22 longer consistent with your resources options. Will the addition
23 of billions of dollars of additional SCR costs on existing coal
24 plants affect resource selection in the IRP--or might it?

25 A. It may. I'm not here to discuss the IRP.

1 Q. And yet, you are here saying that the resource
2 selection of the Company is no longer reasonably reflected in
3 the market proxy method. And yet, you're not here to describe
4 what the resource future looks like for the Company. Is that
5 true?

6 A. Well, I am here to describe it based on, again, the
7 Commission order under which we're operating, and the avoided
8 costs to Reno (phonetic), which is the 2005 order. And the
9 2005 order makes it clear how we are to perform the PDDRR
10 runs.

11 Q. And it also makes it clear that--

12 A. And--can I finish my question?

13 Q. I'm sorry. You're not finished.

14 A. That's okay.

15 Q. Go ahead.

16 A. It makes it clear how we're to perform these
17 PDDRR runs, which uses a current integrated resource plan
18 preferred portfolio, we have done. It lists the assumptions that
19 are to be used. And we continue to perform the PDDRR
20 calculation consistent with the 2005 order. And some of your
21 questions are probably more appropriate for Phase 2 of this
22 docket, when we're attempting to put in place a permanent
23 methodology.

24 Q. And yet, you're here saying that the Commission
25 order should be voided because that order also required you to

1 use the market proxy method until a certain milestone was hit.
2 And you're asking that to be changed, right?

3 A. No, I'm not asking the Commission to change the
4 order. Our request is very specific, in that the market proxy
5 method price that is produced right now is not reflective of
6 current avoided costs for Wind Resources.

7 Q. But again, you can't tell me what the
8 forward-looking resource needs of the Company will be, or what
9 the forward-looking avoided costs will be in the time frame when
10 these resources would actually be developed, can you?

11 MS. HOGLE: Objection, your Honor.
12 Argumentative. Asked and answered.

13 THE COURT: It's cross-examination. I'll allow the
14 question.

15 THE WITNESS: Sure. And I don't think I need to
16 tell you that in order for the Commission to find that the stay the
17 reasonable. I don't need to tell you the right answer in order to
18 know that the market proxy price is wrong.

19 Q. (BY MR. DODGE:) How do you know the market
20 proxy price is wrong if you don't know what future avoided costs
21 are going to look like for this Company in the time frame that
22 these projects would be developed?

23 A. Because--that's explained in my testimony--the
24 market proxy price is based on a contract that's three years old.
25 It doesn't take into account current market prices. It doesn't

1 take into account current resource needs, as that is defined in
2 the 2005 order.

3 Q. And yet, you can't tell us what the ongoing resource
4 needs are going to be, and you can't even tell us that the
5 Company projects about the same costs per kW in its
6 going-forward IRP as it did in the Dunlap project, right?

7 MS. HOGLE: I continue to object. Argumentative
8 and asked and answered.

9 THE COURT: Mr. Dodge, it is feeling like we're
10 doing the same thing over and over again.

11 MR. DODGE: We're trying to get him to admit it.
12 He won't, but I'll move on.

13 THE COURT: Thank you.

14 Q. (BY MR. DODGE:) Let's talk about the Latigo
15 project, Mr. Clements. Your testimony indicates that in
16 2009-2010, Wasatch Wind asked for indicative pricing and that
17 you provided it, correct?

18 A. That's correct, yes.

19 Q. And both times it was based on the market proxy
20 method, correct?

21 A. Could you repeat the dates that you mentioned
22 there?

23 Q. 2009 and 2010.

24 A. That's correct, yes.

25 Q. And both times, the prices were relatively

1 comparable. Some of the inputs changed periodically, but the
2 pricing was fairly comparable. Is that right?

3 A. Well, I'd say all of the inputs changed. I believe
4 the 2009 price was based on a proxy that was not Dunlap. It
5 was based on a proxy that was in place prior to Dunlap.

6 Q. In 2011--your testimony indicates you didn't get
7 another one until 2012. But, in fact, you got an email in 2011
8 asking you to confirm that the same 2010 pricing was still
9 available; did you not?

10 A. I may have. I don't recall that offhand.

11 Q. Would you like me to produce that?

12 A. Certainly.

13 Q. I'll do that for you at the break.

14 You don't deny that you received an email, you just
15 don't remember it? Is that what you are saying?

16 A. Yeah, I may have. I get dozens of requests.

17 Q. And do you remember that in 2012, in the summer
18 of 2012, you sent a PPA to Wasatch Wind at their request with
19 indicative pricing based on the market proxy method--or with the
20 stated pricing in the PPA including that?

21 A. I recall sending them a power purchase agreement.
22 I don't recall if pricing was included in that.

23 Q. Again, we can ask Ms. Mikell that.

24 But you're not disputing that in 2011, it would have
25 included--it would have been based on the market proxy

1 approach, are you?

2 A. Oh, yes. 2011. I thought you said 2012.

3 Q. No. In 2011, you were asked for a PPA from
4 Wasatch Wind. You submitted it, using that market-based
5 proxy?

6 A. Yes, that's correct.

7 Q. And then 2012 is the first time you indicated to
8 Wasatch Wind that you were going to change the method you
9 were going to use for calculating their indicative pricing,
10 correct?

11 A. That is correct, yes.

12 Q. And you told them, among other things, that you
13 thought the market proxy pricing didn't reflect, properly,
14 transmission constraints?

15 A. I don't recall that, no.

16 Q. And you told them, did you not, that it was
17 because, in your view, the 1400 megawatt referenced in the
18 2005 order had now been reached?

19 A. I don't recall that specific, no.

20 Q. What did you tell them why you had changed it?

21 A. We told them that our interpretation of the 2005
22 order was such that the market proxy method no longer applied.

23 Q. Because you had reached the 1400 megawatt level,
24 correct?

25 A. Yeah. Again, the 1400 number is not one I recall.

1 That's not how I typically explain that difference. But again, we
2 had reached the IRP target, which is the term that's used in the
3 order.

4 Q. That's what I meant by the 1400 megawatts. You
5 told her you had reached the IRP target--same thing you told
6 Blue Mountain, right?

7 A. Potentially, yes. That was our interpretation at that
8 time.

9 Q. And the Commission later said you were wrong
10 about that interpretation, correct?

11 A. In the Blue Mountain order, the Commission
12 ordered us to provide market proxy pricing to Blue Mountain.

13 Q. Let's go to your damage calculations in your direct
14 testimony, Mr. Clements. I'm a little confused by some of these.
15 They're on pages 8 and 9 of your testimony. Let's start on page
16 9. Maybe you can explain to us a couple things that don't make
17 intuitive sense to me.

18 If you look at Projects 4 and 5 on the table on page
19 9, and look at the column that says, "Price Difference Between
20 PDDRR and Market Proxy." Projects 4 and 5 are identical 80
21 megawatt projects, identical number of megawatt hours over 20
22 years. And yet, the Delta between the PDDRR and the proxy
23 method goes from 867 to 913. Why?

24 A. Well, that's a very simple explanation, if you
25 understand how the PDDRR model works.

1 Q. That's why I'm asking you.

2 A. There's a queue and there's a queue position. And
3 so as projects are in the queue, you push further and further
4 down the avoided cost stack--or the resource stack.

5 And so the Project 5 would be displacing different
6 resources than Project 4 in the PDDRR run.

7 Q. And so if each of the four preceding it are not built
8 and the fifth one is, in fact, your price differential would be very
9 different, wouldn't it?

10 A. That's possible, yes.

11 Q. So your 186 assumes that all five of them are built.
12 And it builds on the PDDRR differential with each incremental
13 wind resource coming online, correct?

14 A. Yeah, absolutely. That was my testimony, yes.

15 Q. And then secondly, explain to me, if you will, if you
16 go back to Project 2, for example, it is dated--indicative pricing
17 was given on 6/20/12. Project 3, indicative pricing was given on
18 exact same day. And yet, the price differential between
19 Projects 2 and 3 jumped from 639 to 1062. Can you explain
20 why that is?

21 A. There could be any number of differences there. It
22 could be based on the wind shape that has more on peak or off
23 peak. The wind shape, one project over the other. That's
24 probably the most likely difference. But it could be any number
25 of factors that affect the model.

1 Q. In your direct testimony, Mr. Clements, you
2 reference the fact that your 2011 IRP update doesn't assume
3 any wind in the short-term horizon, with the exception of the
4 2018 wind project to meet renewable portfolio standard
5 requirements. Is that an accurate summary?

6 A. That's accurate, yes.

7 Q. Why is it, in your view, that these projects should
8 not be allowed to get pricing, based on deferring a wind project
9 that is being brought on for renewable portfolio standard
10 purposes? I believe you indicated you don't think that's
11 appropriate--or at least that's how I read your testimony.

12 A. Well, and I pointed out there's some issues
13 regarding inter-jurisdictional allocation under multi-state
14 protocol, REK (phonetic) ownership, and other issues that may
15 make it so that that QF does not defer that resource, depending
16 on the outcome of some of those things.

17 Q. If the renewable portfolio standard simply required
18 you to have a renewable resource, then taking a QF wind
19 renewable resource instead of another one is not going to
20 create inter-jurisdictional allocation issues, is it.

21 A. It very well may. QFs are considered system
22 resources under multi-state protocol; and therefore, those states
23 that require or have the RPS may not get the full allocation--will
24 not get the full allocation of that QF resource, which may not
25 allow them to meet that RPS target, which may require that

1 resource to be built regardless.

2 Q. Under MSP, is it not true that all your resources
3 start as system resources and then costs may be site allocated--
4 site is allocated if costs are higher than the lowest alternative
5 non-renewable resource?

6 A. Yes, that is my understanding of MSP.

7 Q. I mean, it can allocate the cost, regardless of which
8 project comes in to satisfy the need for the RPS standard; can it
9 not?

10 A. It can cost. In terms of how the Renewable Energy
11 Credits would be treated, which is really what's important under
12 the RPS, I don't believe it addresses that.

13 Q. Well, and neither does Wind QF pricing address
14 how those particular renewable credits, energy credits, would be
15 treated, do they?

16 A. No. And therein lies my concerns with that QF
17 being able to defer that resource, which is specifically built for
18 compliance.

19 Q. You suggest in your rebuttal testimony that the
20 economic and policy considerations that some of the witnesses
21 testify to, including economic development, clean air, those
22 sorts of issues, are not appropriate for determining avoided
23 costs, right--or not relevant to determining avoided costs?

24 A. Yeah. Pursuant to my understanding of PURPA,
25 those are not relevant, no.

1 Q. You do accept, do you not, that it's part of the
2 Commission's charge to consider--to ensure that all rates and
3 all things done by the utility are just and reasonable? Do you
4 accept that?

5 A. That's probably a legal interpretation, but I would
6 accept that, yes.

7 Q. It's legal in the sense that that's what the statute
8 says. Would you like to read it?

9 A. Again, I don't want to offer legal opinion. But I
10 would accept that.

11 Q. And do you accept that under the statute in
12 determining just and reasonable rates, the Commission is
13 obligated to consider numerous factors, with costs only being
14 one of them, economic development being another? Other public
15 policy implications being considered? Do you understand that
16 to be part of the Commission's charge?

17 A. Again, that probably is a legal opinion. But I would
18 offer my opinion that that's correct.

19 Q. So even though it's not relevant, per se, to
20 determine avoided costs, those considerations are relevant to
21 determining whether the stay is in the public interest. Would
22 you not agree?

23 A. Again, that's a legal opinion. But I based my
24 testimony and the Company's position on our interpretation of
25 PURPA, which is quite clear what is to be considered when

1 setting avoided costs.

2 Q. You say it's quite clear. How many QF pricing
3 documents have you been through?

4 A. Four.

5 Q. Is it clear to all the witnesses and all the
6 commissions in those dockets that there's one methodology for
7 determining avoided costs?

8 A. No, I didn't say there was one methodology. I said
9 that the rules and regulations of PURPA and how they are to set
10 avoided costs is fairly clear.

11 Q. The overall guiding principles of trying to reach rate
12 payer indifference, and yet pay full avoided costs are clear.
13 The methodology for getting there, those are anything but clear,
14 are they not?

15 A. Those are established by the individual
16 commissions. So, yes, there are differences between
17 commissions.

18 Q. You suggest that development of these five projects
19 that you've listed in your testimony shouldn't be affected by a
20 stay.

21 How many wind QF projects have you developed,
22 Mr. Clements?

23 A. I, personally, have not developed any. I've been
24 involved in the development of close to 1000 megawatts worth
25 of wind projects.

1 Q. All utility projects, right?

2 A. No. I've negotiated QF contracts for several
3 hundred megawatts worth of QFs.

4 Q. And that involves you in the development, to
5 negotiate the QF project, I assume, is what you are saying?

6 A. Well, it depends how you define "involvement." But
7 I'm typically aware of the process, the requirements to develop
8 a wind project, the timing, difficulties. I typically meet with two
9 to three wind developers on a weekly basis to discuss projects
10 that are in process, projects that are being thought about. And
11 so I feel like I'm fairly well-versed in what it takes to develop a
12 wind project.

13 Q. And how many have you financed?

14 A. Again, I've personally not been involved in the
15 financing of any of them.

16 Q. Do you understand what financing entities require
17 in order to commit to a project like a wind project?

18 A. That is often a changing target. But on a high
19 level, yes.

20 Q. And among other things, going back to your table
21 on page 9 of your direct testimony, if one day the indicative
22 pricing that you provide drops by \$10 a megawatt hour, do you
23 think that would impact the ability of a developer to get pricing?

24 A. In my experience, most financing agencies do not
25 care about the indicative price. They're not concerned about

1 indicative price. Most financing parties--so banks and other
2 agencies that the QFs go to--are strictly concerned about an
3 executed power purchase agreement. Until there's an executed
4 power purchase agreement with a firm and binding price, they're
5 typically not too engaged and do not care about the indicative
6 price.

7 Q. You sound like you've never done this. Give me
8 every example that you rely on, or every base you rely on for
9 that opinion that banks don't care when you go to them to try
10 and get a financing commitment on what your indicative pricing
11 looks like.

12 A. Let me rephrase my--

13 Q. Give me every example--no, no. First of all, you
14 stated that. Are you retracting that?

15 THE COURT: Mr. Clements, did you have an
16 opportunity to complete your answer?

17 THE WITNESS: I did not on that last question, no.

18 THE COURT: Okay. So let's rewind to that
19 question.

20 MR. DODGE: May I, though? The question was,
21 "Give every fact upon which you base that opinion." He just
22 gave an opinion. I'd like to know his facts. I'm entitled to that.
23 If he wants to retract it, that's fine. But if he's going to offer
24 that opinion, I want to know what he's basing it on. He's never
25 financed a project.

1 THE COURT: I'd like to hear his complete answer
2 to the question.

3 THE WITNESS: Sure. And I'm not retracting that
4 answer. What I'd like to say is to say that banks don't care is
5 probably an overly broad statement. With my experience of
6 working with QF developers--and again, they typically come to
7 me for indicative pricing, we provide indicative pricing, and we
8 engage in power purchase negotiations.

9 And with my experience with QF developers--and
10 again, numerous developers over nine years--is that they are
11 unable to even get serious and have serious discussions and
12 negotiations with financiers until they have an executed power
13 purchase agreement. There may be some preliminary
14 discussions that occur, where they start to line up potential
15 financing partners. But until there is an executed power
16 purchase agreement, it's my experience that these financiers do
17 not want to get too engaged with the counter party.

18 Q. (BY MR. DODGE:) And your experience is based
19 on what?

20 A. My experience is based on discussions with
21 numerous QF developers--

22 Q. Name one.

23 A. --over nine years.

24 Q. Name one.

25 A. Wasatch Wind, Long Ridge, all of those--

1 Q. Let's stop there. I said one.

2 Wasatch Wind. Name every discussion you've had
3 with Wasatch Wind in which they indicated their financing
4 partners don't care about the indicative pricing you provide.

5 A. Again, my history with Wasatch Wind goes back
6 multiple, multiple years. And typically, our discussions have
7 been that an executed power purchase agreement is critical to
8 getting serious with financiers.

9 Q. Obviously, Mr. Clements, an executed contract is
10 necessary to sign on the dotted line and hand over the dollars.
11 But are you seriously suggesting that banks don't ask to look at
12 the pricing that you've received when the developer goes to ask
13 them if they're willing to finance it or goes to a joint venture
14 partner to say, "Are you willing to invest in this?" Are you
15 honestly suggesting that?

16 A. No. Oftentimes they would use our indicative
17 pricing letter, which is a fairly formal letter. And they would use
18 that to engage in discussions with the potential financing
19 partners. But that letter clearly states, consistent with the
20 language in Schedule 38, Utah Schedule No. 38, that indicative
21 pricing is not binding until a power purchase agreement is
22 signed.

23 And so based on my experience, that may get them
24 in the door with the financing partner, but the financing partner
25 really is most concerned about having a power purchase

1 agreement that's executed.

2 Q. Mr. Clements, we have two actual developers
3 who've actually done this before in this proceeding, who have
4 both testified that if the stay is issued, it will kill QF wind
5 development in this state.

6 Do you think the Commission ought to listen to your
7 uneducated opinion or those that are actually out developing?

8 MS. HOGLE: Objection, your Honor. Move to
9 strike. That was argumentative.

10 THE COURT: Mr. Dodge--

11 MR. DODGE: I'll strike the word "uneducated." I
12 apologize.

13 THE COURT: Why don't you just restate the
14 question without the characterization.

15 Q. (BY MR. DODGE:) Do you accept that wind
16 developers, who are actually out developing, trying to entice
17 joint venture partners and secure financing, who say that their
18 projects will die if this stay is issued without--on a basis, having
19 not replaced it with a long-term methodology, that it would kill
20 the development, do you have reason to doubt that, other than
21 what you've just said about your "experience"?

22 A. Yes. And Mr. Dodge was doing air quotes, for the
23 record, there. And I would disagree with that.

24 My experience is eight or nine years of dealing with
25 dozens of different developers. And I don't believe that the stay

1 would impact their ability to continue discussions with financing
2 partners.

3 Q. On the indicative prices? You knew for a fact that
4 these indicative prices will not support a QF project in Utah; do
5 you not, Mr. Clements?

6 A. I suspect that based, again, on conversations with
7 QF developers.

8 Q. If that's the fact, then issuing a stay that essentially
9 drops them back to those pricing for six or eight months is going
10 to stop development in its track; is it not?

11 A. I don't believe it will stop development. I think
12 development activity will continue. We've witnessed that by
13 some of the parties in this case, where they continued to
14 develop the project, even in light of the current uncertainty.

15 I'd further note that we've provided the market
16 proxy pricing to multiple parties over the past, I guess, six,
17 seven years now since the '05 order's been implemented. And
18 there has not been a rash of development of QF wind projects.

19 Q. In fact, that's the truth, isn't it? Utah has virtually
20 no wind QF development in this state, right, other than the
21 Spanish Fork project?

22 A. That's correct.

23 Q. There's only one QF project that succeeded in
24 Utah, despite many trying, right?

25 A. Yes, that's correct, largely due to the lower wind

1 regime in Utah.

2 Q. And maybe due to these kind of pricing games that
3 PacifiCorp likes to play?

4 MS. HOGLE: Objection, your Honor.

5 MR. DODGE: I withdraw.

6 MS. HOGLE: Argumentative.

7 Q. (BY MR. DODGE:) Let's move to Blue Mountain.

8 When Blue Mountain came in and asked you to give
9 them pricing, you didn't respond that, "We can't give you this
10 pricing because it's not in the customers' interest. It will cost the
11 customers a lot of money. It's outdated pricing," right? You
12 didn't raise any of those issues before the Commission, correct?

13 A. You'd have to clarify what you refer to when you
14 say when Blue Mountain came to us to ask for pricing.

15 Q. When they asked for pricing, you refused. And
16 they filed with the Commission, asking you to be ordered to give
17 them the market-based proxy pricing--the market proxy pricing.
18 You didn't make any of the arguments you're now making about
19 a stay, did you?

20 A. No. When Blue Mountain approached us, we
21 provided them pricing, based on the PDDRR method, based on
22 our interpretation of the '05 order at that time. And they
23 subsequently filed a Request for Agency Action. And we know
24 the result of that.

25 Q. And my point is: You didn't raise the issues you're

1 now raising in that docket, did you?

2 A. We did raise many of the same issues that I'm
3 raising in my testimony in that particular docket, yes.

4 Q. Well, we can read your testimony in that docket,
5 and we can get to that.

6 But the Commission ordered you to provide the
7 market-based proxy pricing, right? The market proxy based
8 pricing?

9 A. Yes. The Commission ordered us to provide the
10 market proxy price to Blue Mountain Wind.

11 Q. How do you justify the discrimination that results if
12 another similarly-situated QF developer is not given the same
13 pricing?

14 MS. HOGLE: Objection. It's argumentative.
15 Assumes that there was discrimination.

16 MR. DODGE: I'll be happy to lay a foundation.

17 THE COURT: Yeah, or rephrase the question, Mr.
18 Dodge.

19 MR. DODGE: I'll rephrase it.

20 Q. (BY MR. DODGE:) Would you agree it would be
21 discriminatory if a similarly-situated project to Blue Mountain
22 were not to get indicative--market proxy based indicative
23 pricing?

24 A. No, I don't believe it would be discriminatory, and
25 here's why. Not all QFs receive the same price, as witnessed in

1 my testimony. Depending on what position you are in the
2 queue, you may receive a different price. So to say that one QF
3 gets a price that's different from another is discriminatory is not
4 an accurate statement.

5 The Company provided the price to Blue Mountain,
6 pursuant to the order, Commission order. I believe it was
7 October 20, 2012, in the Blue Mountain docket. Following that
8 time, the Company reviewed other pricing requests in the queue
9 in conjunction with their review of that order. We estimated the
10 potential impact to customers, and we determined that if all of
11 the projects that were in the pricing queue were to receive the
12 market proxy price and were to continue with projects and
13 execute power purchase agreements, that the potential impact
14 to customers would be significant. And since that impact was
15 material and measurable and real, we felt like it was appropriate
16 to ask the Commission for a stay while we evaluate that
17 additional evidence. And that's why we acted in the manner
18 new did.

19 Q. I appreciate you trying to justify how you acted. My
20 question was: Why is it not discriminatory?

21 Let me start with--you were very reluctant to offer
22 legal opinions earlier. Here, you apparently aren't.

23 What is your interpretation of "discriminatory"?
24 First of all, let me start. Do you understand PURPA forbids you
25 to treat QFs in a discriminatory manner?

1 A. Yes. And if you--

2 Q. It's a yes or no question.

3 Do you understand that PURPA prohibits you from
4 treating QF developments in a discriminatory manner?

5 A. That requires more than a yes or no answer, given
6 the foundation that was laid.

7 Q. Well, let me re-state it, then, if I may.

8 THE COURT: Rephrase your questions, Mr. Dodge.

9 Q. (BY MR. DODGE:) What do you understand the
10 PURPA requirement as to treating QF projects in a
11 discriminatory manner? What do you understand the obligation
12 to be?

13 I'm not asking your interpretation of it. What do
14 you understand the law, the words to say in the regulations?

15 A. The law says that you are not supposed to treat
16 QFs differently than you would treat other energy resources.

17 Q. And you don't understand it to apply as between QF
18 projects?

19 A. No.

20 Q. Okay. That's good enough. So that's all you're
21 talking about when you say it's not discriminatory?

22 A. That's all that PURPA is talking about.

23 Q. And do you understand there to be any Utah-based
24 obligations to treat developers in a non-discriminatory way?

25 A. I imagine there is.

1 Q. I'm not saying there is. I'm asking do you assume
2 that there is? Do you assume there is?

3 A. Well, again, it's how you define "discrimination."
4 And in--

5 Q. That's my question. How do you define
6 "discrimination" in that context?

7 A. Again, QFs are not entitled to receive the same
8 price. And that's clear, based on the 2005 order. Avoided costs
9 are different.

10 Q. Price. About what about methodology? On what
11 basis do you justify discriminating on the methodology you used
12 to develop the price between two similarly-situated developers?

13 A. And again, a methodology produces a price. And
14 that is where the Company had concerns about potential harm to
15 customers and potential violation of PURPA. And that's why we
16 requested the stay. We did not outright reject any requests that
17 were received for the market proxy price. Because I will note
18 that in between the time the Company received the Blue
19 Mountain order on October 20 and the time that--or, I'm sorry,
20 September 20, correct myself, I believe--and September 20 of
21 2012, and the time the Company filed its Request for Agency
22 Action Motion to Stay, the Company did not receive any
23 requests from these other four projects to update the price to
24 the market proxy price.

25 Q. But isn't it true, Mr. Clements, that between

1 September 20, when the Blue Mountain order came out, and
2 when you filed for this say, you told Wasatch Wind that you
3 would be re-pricing, based upon the market price proxy method?

4 A. No. We had a discussion regarding the fact that we
5 were evaluating that in the context of the Blue Mountain order.

6 Q. And isn't it true you told them they would be getting
7 pricing, based upon market proxy?

8 A. I don't recall them telling them that specifically.

9 Q. You don't recall?

10 A. I would not have the authority to do that. Our
11 pricing is reviewed by our management team before we release
12 it.

13 MR. DODGE: I have no further questions.

14 THE COURT: Thank you.

15 Any other cross-examination? Mr. Burnett.

16 MR. BURNETT: If I may, I just have a couple of
17 questions.

18 CROSS-EXAMINATION

19 BY-MR.BURNETT:

20 Q. Good morning, Mr. Clements.

21 A. Good morning.

22 Q. Do you know of any current regulations, not
23 particularly involved in this particular proceeding, but do you
24 know of any current regulations that require a QF developer to
25 sign a power contract within a certain period of time of getting

1 indicative prices?

2 A. The only regulation that I'm aware of that is
3 relevant is Utah Schedule No. 38. And if I can turn to that, I
4 feel like it would be most appropriate if I were to read certain
5 sections of that in response to that question.

6 Schedule 38 contemplates that the price is not firm
7 until a contract is executed between the two parties.

8 Q. All right. Does that set a time frame?

9 A. Typically, it does not set a specific time frame.
10 The practice has been that if the price changes, if the Company
11 is not actively engaged in negotiations with the counter party
12 and the avoided cost is changed, due to model inputs or
13 methodology changes, that the Company will typically re-price
14 and provide new indicative pricing to the counter party.

15 Q. But if they're actively negotiating with you, you will
16 not?

17 A. Typically, yes.

18 Q. And your definition of "active negotiation" is what?

19 A. Typically we define that as we are exchanging
20 drafts, that progress is being made on negotiating a power
21 purchase agreement. That typically occurs in less than a
22 six-month time period.

23 Q. But now you are suggesting it occur within a
24 six-month time period?

25 A. That has been the practice. And we feel like that's

1 a reasonable time period in which you can execute a power
2 purchase agreement.

3 Q. And have you ever refused to execute a power
4 contract, power purchase agreement, because a utility has an
5 issue or two that it's still dealing with, unrelated to PacifiCorp or
6 Rocky Mountain Power--say, for example, a litigation?

7 A. To my knowledge, no, none that I've been involved
8 in.

9 Q. So you wouldn't take the position because they
10 didn't--because there's pending litigation or they haven't got a
11 particular permit or an approval, that would not be a reason for
12 you to fail to execute a power contract?

13 A. Oh, some of those--some of those reasons may be
14 allowable under Utah Schedule No. 38. Again, I'm going to turn
15 to that and read certain sections.

16 Schedule 38 is quite clear. There's certain
17 information in section Roman Numeral I(B)(2) that lay out what
18 is required to receive indicative pricing. Typically, that's
19 provided to the Company. We send a indicative price to the
20 counter party, and they determine whether they want to see
21 proceed forward.

22 At that point in time--it moves to Roman Numeral
23 1(B)(4). "And if the owner desires to proceed forward with the
24 project after reviewing the Company's indicative proposal, it may
25 request in writing that the Company prepare a draft power

1 purchase agreement to serve as a basis for negotiations
2 between the parties."

3 And then it lists several items that need to be
4 provided to the Company prior to providing a draft power
5 purchase agreement.

6 Q. And have you ever taken a position that a
7 governmental permit, for example, or approvals or
8 authorizations prevent you from signing a PPA?

9 A. That may have been the case. I'm not familiar with
10 any. But I'm not the sole person that executes all QF contracts
11 across the company.

12 Q. So just for my educational purposes. So a
13 developer could have spent millions of dollars, have 99 percent
14 of his project ready, and he has one permit on appeal. Would
15 that permit you to refuse to sign a power contract with them?

16 A. Again, it depends on what that permit is.

17 Q. So it's in your discretion?

18 A. It's in our discretion within the bounds of Schedule
19 38, which provides evidence--we have to have "evidence of
20 adequate control of proposed site, identification of and timelines
21 for obtaining any necessary governmental permits, approvals, or
22 authorizations, assurance of fuel supply or motive force,
23 anticipated timelines for completion of key project milestones,
24 and then evidence that any necessary interconnection studies
25 have been performed."

1 Q. I guess, other than--I recognize it talks about status
2 of those things. But let's, just for my edification, describe to
3 me--I mean, doesn't this, essentially, allow Rocky Mountain
4 Power to decide whether or not they're going to sign a power
5 contract?

6 A. It doesn't allow us to unilaterally decide if we're
7 going to execute or not.

8 Q. Have you ever been involved in a project that had
9 100 percent of its permits, approvals, and everything done by
10 the time they signed a power contract?

11 A. Typically, things are not 100 percent complete, no,
12 and we continue to sign.

13 Q. I mean, this--it's your position that you could decide
14 not to sign a power contract if they didn't have all their ducks in
15 a row?

16 A. No. How the Company typically applies this section
17 of Schedule 38 is if there are critical permits or timelines that
18 we don't believe can be met, which will lead the project to not
19 meet its contractual obligations under the power purchase
20 agreement, we are unwilling to enter into that agreement.

21 For example, under F, regarding interconnection, if
22 they had not had an interconnection study completed and,
23 therefore, cannot provide assurance that the interconnection will
24 be complete by the online date in their contract, we don't feel
25 it's appropriate to execute the agreement.

1 So we use reasonable judgment under Schedule 38
2 to make sure that they have adequate development in place to
3 meet the obligations under the contract.

4 Q. Previously, you didn't have a hard-and-fast date for
5 any other developer in this, did you? You didn't say, "By
6 September 1 of the next year, you had to have your ducks in a
7 row"?

8 A. No. Typically we have not had a specific date,
9 other than what I've discussed. Where if we're in active
10 negotiations, then we typically allow the project to maintain that
11 price.

12 Q. Can you foresee a circumstance where a developer
13 may have some concern about the fact that there's a hard date
14 out there and you might decide not to sign the power contract
15 because there's allegedly something that isn't quite finished?

16 A. Well, if the project has realistic concerns about the
17 date, then I would understand that. The date of nine months or
18 seven months would even reasonable, in my opinion. An
19 avoided cost price is not a price that the QF receives
20 indefinitely. It's the indicative avoided cost at that time. And
21 those avoided costs change over time.

22 And so if the entity does not enter into a power
23 purchase agreement, then the avoided cost can be revised and
24 should be revised. And that's pursuant to Schedule 38.

25 Q. Have you ever been involved in a permit appeal of

1 some type, an environmental permit appeal?

2 A. I have been tangentially involved with parties in this
3 docket in such an appeal.

4 Q. And is your experience that they happen quickly?

5 A. No. My experience is that they can take quite a
6 long time. My experience is also that we entered into power
7 purchase agreements, even with some of those permits
8 outstanding.

9 Q. But it's in your discretion whether to enter into
10 those agreements if there's a permit appeal?

11 A. Yeah, the discretion that's allowed under Schedule
12 38.

13 I will note in a case that you're, perhaps, alluding
14 to--and perhaps I'm thinking of the wrong case--but there have
15 been instances where there have been outstanding permits or
16 permits that have been in the appeal process, and we have
17 executed power purchase agreements with those entities. And I
18 will note that those power purchase agreements ended up
19 having to be terminated because they were unable to meet the
20 obligations in those power purchase agreements.

21 Q. I have no further questions.

22 THE COURT: Thank you.

23 Mr. Vrba.

24 CROSS-EXAMINATION

25 BY-MR.VRBA:

1 Q. Good morning, Mr. Clements.

2 A. Good morning.

3 Q. I would like to return to a slide that you have
4 submitted into your direct testimony that's been subject to a lot
5 of questioning from various parties, from Mr. Dodge and Utah
6 Energy as well, in which you have indicated a study produced to
7 outline the turbine--the wind turbine costs in the United States
8 from roughly '82 to 2011.

9 Do you recall that slide?

10 A. I believe I can find that on my own in my direct
11 testimony here. Give me a moment. I believe you are referring
12 to page 6.

13 Q. Can I ask you, from your personal experience, can
14 you please tell me how that slide is directly correlated to a
15 geographic region of Utah in prices?

16 A. The slide is not intended to be related to a
17 geographic region. The slide is intended to reflect recent wind
18 turbine price quotes from major manufacturers. So the intent of
19 the slide is to show what the underlying equipment cost is for a
20 wind project.

21 Q. Thank you. Do you understand from your
22 experience what really drives the price of a turbine vendor when
23 they negotiate TSA or OSA with a developer and utility in the
24 United States?

25 A. No, I'm not typically involved in those negotiations.

1 Q. I can definitely offer an opportunity here. I have
2 been directly involved in 26 wind projects--

3 THE COURT: Mr. Vrba, during the examination,
4 you are not permitted to provide testimony. So if you have
5 testimony in this area--I'm sorry to interrupt you, but you'll--

6 MR. VRBA: Well, yes, I'm not an attorney. So if I
7 overstep my bounds, thank you for stopping me.

8 Q. (BY MR. VRBA:) So let me rephrase the question.
9 You would probably be found to agree with me that
10 Utah has a very specific wind regime. And it may require
11 certain turbines that fit in the regime of the Rocky Mountain
12 region.

13 A. Yes. My understanding is, based on the wind
14 speed at the site, certain turbines may be more efficient than
15 others. So it may require a certain turbine type, yes.

16 Q. With that being said, would you also agree that
17 perhaps the turbines that are used for a low-wind site, such as
18 Utah, perhaps require turbine manufacture of components that
19 are more expensive in order to harvest more energy out of less
20 wind?

21 A. That may be the case, yes.

22 Q. Would you also agree that the topography of this
23 state and also the climate of this state may have something to
24 do with the cost of turbines and packages that the manufacturer
25 has to supply to vendor in order to guarantee their product in

1 the state of Utah?

2 A. Yes, there may be some differences.

3 Q. Okay. In Utah specifically, as you know, as you've
4 lived here for quite a few years, Utah has quite variations in the
5 low and high temperature. And as a result, this may warrant
6 purchases of turbines on the very top scale. Would you agree
7 with that?

8 A. I can't offer an opinion on that.

9 Q. Okay. So in summary of this, if I can, the slide that
10 you have actually provided is specific to the United States, but it
11 doesn't distinguish the differences, the market differences, in
12 the different regions of the United States. So would you agree
13 with me that this isn't a complete slide, that does not give us
14 indications that it would be top of the cost of turbines?

15 A. Well, I wouldn't agree that it's not a complete slide.
16 I mean, the slide stands for itself. And my explanation of it
17 stands for itself. And it was intended to reflect what a third
18 party--very reliable third party's estimate of wind turbines prices
19 have done over the time period in the slide.

20 Q. Mr. Clements, you represent the utility. Would you
21 agree with me that when you are purchasing turbines in the
22 United States, there may be something called "economy of
23 scale." And utilities, such as PacifiCorp and others, may have
24 the ability to secure definitely much more favorable price from
25 developers, such as Long Ridge or Wasatch Wind or others that

1 are present in this room, due to this scale, due to ability to
2 execute multiple projects?

3 A. I'm not typically involved in the purchasing of
4 turbines. So I wouldn't have an opinion on that.

5 Q. So would you agree that perhaps all these elements
6 may have a direct bearing on the cost of turbines secured for
7 this geographic region?

8 A. There may be some differences in turbine types for
9 various different geographic regions, yes.

10 Q. Thank you. I have no more questions on this point.

11 I would like to move, if this is permitted--the
12 Company had requested a Agency Action Motion to Stay on
13 October 9. And Long Ridge Energy of Utah had to file a direct
14 objections to it on the 15th of the same month.

15 Rocky Mountain Power rebuttal to our objection for
16 motion to stay on October 25--this is directly, I think from you,
17 Mr. Clements. And in that document--I'm not sure if everybody
18 has it in front of you. It's dated October 25.

19 You have made two allegation points that I would
20 like to return to, if this is the opportunity.

21 THE COURT: Well, if you have questions for Mr.
22 Clements--

23 MR. VRBA: Yes, I do.

24 THE COURT: --now is the time to ask them.

25 MR. VRBA: Thank you.

1 Q. (BY MR. VRBA:) I will read directly from the
2 document. The document is Point 3, page 2.

3 THE WITNESS: I don't have a copy of that
4 document.

5 THE COURT: Mr. Vrba, can you provide the
6 witness a copy of the document to which you are referring?

7 MR. VRBA: I can provide this copy. Can I
8 approach the witness?

9 MS. SCHMID: Your Honor, if it's an appropriate
10 time to take a break, or at some point, the Division is available
11 to make copies as needed.

12 THE COURT: Okay. Let's be in recess until 10:30.

13

14 (A break was taken from 10:19 a.m. to 10:32 a.m.)

15 THE COURT: All right. We're on the record.

16 Mr. Vrba, you had a document that we now have
17 copies of for the--

18 MR. VRBA: Yes, your Honor. There is a copy on
19 your desk, and I do believe the clerk also has a copy. And I will
20 distribute the rest of it.

21 THE COURT: Mr. Vrba, can you just--does this
22 document have a title or can you describe it?

23 MR. VRBA: Yes, absolutely.

24 THE COURT: I'm not sure what I ...

25 MR. VRBA: Sure. So there's basically two

1 documents. The one is a Rocky Mountain Power response to
2 our objection that's dated October 25, 2012. And the other
3 document is Long Ridge or Energy of Utah, if you will, summary
4 sheet with follow-up email as an evidence to two points in the
5 Rocky Mountain Power objection.

6 THE COURT: So I do need copies of those. I don't
7 think I have them. The reporter might, but I don't think I do.
8 Thank you.

9 Mr. Vrba, please proceed.

10 MR. VRBA: Thank you.

11 Q. (BY MR. VRBA:) Mr. Clements, if you'd take a look
12 at the document provided by your company on October 25 to the
13 Public Service Commission, can you go to page 3. I'm sorry,
14 page 2, Point 3.

15 A. Yes, I'm there.

16 Q. Thank you. Then on the bottom in your testimony,
17 you write, "On September 24, 2012, the Company had
18 discussion with Long Ridge Wind related to the Commission's
19 order in Blue Mountain docket, as stated in the objection. In
20 that meeting, the Company indicated that it was still analyzing
21 the Commission's order in the Blue Mountain docket and its
22 potential impact on prices if applied to Long Ridge Wind's
23 project. The Company indicated it would get back to Long
24 Ridge." Correct?

25 A. One clarification. This is not my testimony. This is

1 the Company's application in Docket 12-035-100. Just to clarify
2 that point.

3 THE COURT: Okay.

4 Q. (BY MR. VRBA:) Take a look at the additional
5 document that I have provided. There is a cover page, Point 3
6 on page 2, that basically is a duplicate of your statement or the
7 Company's statement, if you will.

8 I am providing in evidence emails, dated September
9 28, 2012, through October 1, 2012, in which I would like to ask
10 you if you can flip the page and take a look at the Exhibit B-1.

11 And could you tell me if you recognize that email?

12 A. Yes, I do.

13 Q. Could you please read the top section of that email,
14 starting, "We should have the updated pricing."

15 A. Sure. "We should have the updated pricing in the
16 next day or two. I will check with our pricing group on status
17 regarding review of the material you sent last week."

18 Q. So can you please explain to me and to the rest of
19 the people in this room what does that really mean? Because in
20 your document, you directly state that the Company never
21 indicated to Long Ridge Wind, providing updated pricing. And
22 here, in an email directly to Energy of Utah, you indicate that
23 you had full intentions to do so.

24 A. Certainly. We did not have full intentions to do so.
25 And let me clarify and put some context around that email.

1 We did meet with Long Ridge on the 24th, I believe
2 the date was--on September 24. That was four days after the
3 Blue Mountain order was provided by the Commission.

4 At that point in time, we discussed several things
5 with Long Ridge, one of which they provided multiple
6 spreadsheets and information regarding what they felt was the
7 correct way to calculate a price under the PDDRR method. And
8 the bulk of the discussion was around that particular point.

9 That meeting was held after some discussions Long
10 Ridge had had with the Division of Public Utilities. And while we
11 don't typically have those types of meetings, we felt like we
12 wanted to hear out Long Ridge and discuss with them concerns
13 they had with the PDDRR method. We're always willing to meet
14 QF developers and discuss the pricing.

15 At that time, we mentioned that we were continuing
16 to evaluate the Commission order, that we were reviewing what
17 the pricing would look like for the other counter parties under
18 that order. And we were in discussion with our management
19 team the next steps that would be taken in regards to updating
20 pricing for previous requests or responding to counter parties,
21 who had provided requests prior to that order being received.

22 And the context of this email and that discussion--
23 during that discussion, we discussed with Long Ridge the
24 process that occurred before pricing was released to QF counter
25 parties. And that was, we submit a price to our management

1 team, the management team reviews that price to determine if
2 it's consistent with Commission orders, and then provides
3 approval to release that price to the QF counter party.

4 The context of my email is stating that we'd hoped
5 to have the updated pricing internally prepared for that
6 management review in the next few days. It is not saying that
7 we had hoped to provide it to you.

8 Subsequent management review of the pricing and
9 the situation we found ourselves in after the September 20 order
10 led us to file the Motion to Stay on October 9. So that is the
11 context around that email.

12 Q. Thank you. If I could summarize that, it's very
13 simple: You had no intention, actually, to provide the Blue
14 Mountain price to Long Ridge Wind during that meeting. And
15 your management decided to use a PDDRR method as a
16 response, which is the only thing you've ever submitted to Long
17 Ridge. Is that correct?

18 A. That's not an accurate summary.

19 Q. Can you please tell me where the accuracy is
20 disappearing?

21 A. Yes. We did not have an intention one way or
22 another of which price we would provide to Long Ridge. As we
23 discussed in that meeting, we were reviewing the September 20
24 Blue Mountain order. And we were reviewing with our
25 management team what next steps to take. The next step was

1 an October 9 Request for Agency Action Motion to Stay.

2 Q. Okay. Let's go to another point, which is on page
3 3, Point 7. And in reference to my question, I'm also attaching
4 attachment B-2, which is an email.

5 Mr. Clements, do you recognize that email?

6 THE COURT: Mr. Vrba, page 3 of Point 7?

7 MR. VRBA: Sorry, page 3, Point 7 of the Company
8 response. And it correlates to Attachment B-2.

9 THE COURT: Thank you.

10 MR. VRBA: You're welcome.

11 THE COURT: Mr. Vrba, do you have a question
12 about ...

13 MR. VRBA: Oh, I asked if Mr. Clements recognizes
14 that email.

15 THE WITNESS: Oh. We're on page 3 of your
16 handout now?

17 Q. (BY MR. VRBA:) Yeah. It's labeled "B-2" on top
18 right corner.

19 A. Actually, I'm sorry. It's page 4 of the actual
20 handout. Not listed as page 4, just me counting 1, 2, 3, 4.

21 Yes, I recognize that email.

22 Q. Okay. Mr. Clements, would you please comment on
23 that Long Ridge or Energy of Utah had been meeting with you
24 last quarter of last year, first quarter of this year, in which the
25 Company, through you, directly indicated to Long Ridge that the

1 wind proxy QF, in this case Dunlap, price will be given to Long
2 Ridge. And that was used as an assumption to continue to go
3 on with this process. And it wasn't until May of this year, where
4 you your company decided to use a PDDRR method.

5 A. I think there were a lot of questions in there, but I'll
6 try to respond as best I can.

7 We had been meeting with Long Ridge several
8 times Q4 of 2011, Q1 of 2012. It is common practice for the
9 Company--for me in particular, as the person who manages QF
10 pricing requests--it's common practice during initial meetings
11 with potential QF developers that we provide some sort of
12 indication as to where current avoided costs are.

13 Most of our developers in those initial few
14 meetings, they want to know a general range of where QF prices
15 are to determine if they should put in a formal Schedule 38
16 request to determine a general idea of the viability of their
17 project.

18 MR. PROCTOR: Excuse me, Judge. I'm sorry.
19 The examiner is not an attorney. I am. And I believe that an
20 objection would be appropriate, if I may suggest that the answer
21 being provided is a narrative. It's not responsive to the
22 question. The question was quite specific.

23 THE WITNESS: Then I'll ask you to rephrase.

24 THE COURT: Mr. Vrba, would you restate your
25 question for the witness.

1 Q. (BY MR. VRBA:) Yes. I'm interested to learn, for
2 Mr. Clements to confirm or decline, whether the Company had
3 met with Long Ridge in the last--fourth quarter of 2011 and the
4 first quarter of 2012 and directly indicated to Long Ridge, or
5 Energy of Utah in this case, that the Wind proxy, Wyoming Wind
6 Proxy/Dunlap project would be used in calculating their
7 indicated avoided price.

8 A. The Company did meet with Long Ridge during that
9 time period. I believe that's the first question.

10 The second question, we provided an indication as
11 to where avoided costs were at the time, which is common
12 practice. But again, and the key point to read from this
13 particular email, "And remember, that is just an estimate." It's
14 common practice for me to provide an estimate of where
15 avoided costs are during initial meetings with QF developers.
16 They find that to be helpful. The caveat that I always include is,
17 "Please submit a formal request under Schedule 38, and we will
18 provide an indicative price for your project under that term."

19 Q. Mr. Clements, the price indicated in that email from
20 you to Long Ridge, did you or did you not indicate wind proxy
21 being used as the method to calculate that price?

22 A. Yes. Based on that price, there would be some
23 indication that it was based on the market proxy method, yes.

24 Q. So is it safe to ask you whether you would have an
25 understanding that the developer, given this information from

1 the Company, would continue spending a tremendous amount of
2 money and effort on a project, understanding that wind QF is
3 the given proxy method?

4 A. In the context of all of our discussions with Long
5 Ridge, I would say that they had a full understanding of the
6 2005 order and that the--there were two pricing methodologies.

7 Q. I have no more questions on this docket. I would
8 like to proceed to the last document.

9 I have copies of it. This last document consists of
10 two parts. One is surrebuttal of Mr. Paul Clements, dated
11 December 11, 2012. And as a correlating evidence to it, there's
12 a pretty lengthy document called "Exhibit A - Timeline" with
13 attached emails and front cover page.

14 So who needs a copy?

15 THE COURT: Mr. Vrba, I've got something in front
16 of me that is called "Exhibit A - timeline" --

17 MR. VRBA: That is correct.

18 THE COURT: --which is maybe ten or 12 pages.

19 MR. VRBA: That would be correct. Do you also--
20 your Honor, do you also have the surrebuttal testimony of Paul
21 S. Clements?

22 THE COURT: Yes, I have that.

23 MR. VRBA: Okay.

24 THE COURT: So we're looking at--we're looking at
25 this Exhibit A timeline.

1 MR. VRBA: It will be in similar fashion as the
2 previous document, sir.

3 THE COURT: To help the record, I'm going to
4 marked for identification "Exhibit B - Timeline" as "LR Cross
5 Exhibit 1," and "Exhibit A - Timeline" and the attached pages, or
6 which consists of approximately 12 pages, as "LR Cross Exhibit
7 2" for identification. Both of those are for identification
8 purposes.

9 MR. VRBA: Thank you. I only have two points on
10 this surrebuttal of Mr. Clements.

11 Q. (BY MR. VRBA:) The one comment I have is on
12 page 5 of his direct surrebuttal, Point 101 Capital A.

13 A. Okay. I'm there.

14 Q. Thank you. In this statement here, you state,
15 "Energy of Utah submitted the final piece of information to
16 complete all of the Schedule 38 requirements on July 13, 2012.
17 The missing piece information was 12x24 matrix, which shows
18 the expected output of the new project. This information is
19 required under Schedule 38 and is needed by the Company prior
20 to being able to calculate indicative pricing."

21 The reason for this point is there has been
22 surrebuttal submitted by Energy of Utah, in which we have
23 indicated that the Company had delayed us.

24 THE COURT: Mr. Vrba, again, you need to
25 formulate a question for the witness based on his statement

1 here.

2 MR. VRBA: I will do. Okay.

3 Q. (BY MR. VRBA:) If you would please take a look at
4 the attached "Exhibit A - Timeline" document, and--

5 A. I don't believe I have that document.

6 MS. HOGLE: Your Honor, excuse me. Before we
7 continue, I would just like to note that Commission practice has
8 generally been that it should not allow--or not allow new
9 evidence after surrebuttal testimony.

10 The Company has not had an opportunity to review
11 any of this. And it seems unreasonable that, in particular with
12 Paul on the stand and having, you know, all of this information
13 in front of him that he has never reviewed before, for the
14 Commission to admit this as evidence.

15 So the Company objects to receipt of this evidence
16 as part of the record.

17 THE COURT: And it hasn't been offered yet, but I
18 know you're anticipating an issue.

19 And Mr. Vrba, our practice is that parties, through
20 their direct testimony, rebuttal testimony, surrebuttal testimony,
21 would present their information. And you have filed testimony.
22 You are certainly permitted to present certain documents, as
23 you've done the email documents, to the witness in the course
24 of your cross-examination. And that's what I assume you're
25 about to do.

1 MR. VRBA: That is correct. There are basically
2 two points in Mr. Clements' surrebuttal.

3 THE COURT: If I could just complete my
4 explanation.

5 I think what Ms. Hogle is describing is an objection
6 to the entire document, particularly to those aspects of it that
7 present your positions in an affirmative way. Because your
8 testimony, your prefiled testimony, was your opportunity to
9 present your positions on the matter, and your rebuttal and
10 surrebuttal to the Company's and other positions in the case.

11 So I'm going to allow you to ask questions about
12 this, if you would like to do that.

13 MR. VRBA: Okay. Thank you very much.

14 THE COURT: But receiving all of this in evidence
15 would be contrary to the process that we established for the
16 hearing.

17 MR. VRBA: Okay. I understand.

18 MR. PROCTOR: Excuse me, Judge. If I may speak
19 to that. And again, he's a layman, he's not an attorney. And I
20 don't believe I've ever seen him in a hearing before.

21 But I think Ms. Hogle's objection is premature as
22 well as not well-taken. Much of this information is either
23 correspondence directed to Mr. Clements or responses to that
24 communication from Mr. Clements, including a letter signed by
25 Mr. Clements at the end. And he can certainly ask questions

1 about it and offer to introduce this as a cross-examination
2 exhibit, just like he did the exhibit that began "Exhibit B -
3 Timeline." It's certainly probative.

4 And this Commission also has a habit--a practice, I
5 should say, rather than a habit--of affording it the weight to
6 which it is entitled, which I disagree with. But nevertheless, that
7 would also say this should come in, particularly in a case like
8 this where you're dealing, in particular, with this person's
9 concerns in a case that is obviously very complex.

10 It should be allowed, so long as he lays the
11 appropriate foundation through cross that this is communication
12 to and from Rocky Mountain Power. Thank you.

13 THE COURT: Thank you.

14 So, Mr. Vrba, would you then please continue with
15 your examination of the witness.

16 MR. VRBA: Thank you. I'll try to make it short.

17 THE COURT: Use the document as you intend to.

18 MR. VRBA: Okay.

19 Q. (BY MR. VRBA:) So the document that comes as
20 an "Exhibit A - Timeline" basically underlines communication
21 between Long Ridge and the Company since April 20 all the way
22 until, roughly, August 31, on which Long Ridge received the
23 indicative rates.

24 In Mr. Clements' testimony, he directly states that
25 the Schedule 38 basically required a matrix, 12x24 matrix. And

1 he also states that the document had been submitted to the
2 Company on July 13 via email. That July 13 email is also
3 submitted in this docket.

4 If you would please take a look at the summary,
5 starting with, "April 20, 2012 - QF documents submitted to RMP
6 via U.S. Postal Service," Exhibit A-1 is corresponding document.
7 It's page 3.

8 Mr. Clements, can you take a look at that, and can
9 you tell me if you recognize that cover sheet that had been
10 submitted to you from Long Ridge as a request for indicative
11 price?

12 A. Yes.

13 Q. So part of that in Point C, do you see where it
14 reads, "Quantity and timing of monthly power deliveries. See
15 attached 24/12 report for power distribution."

16 Do you remember ever receiving any 24/12 as a
17 part of this document?

18 A. I don't recall receiving a 12x24 matrix. I recall
19 receiving some estimate of output, but it was not in a 12x24
20 format.

21 Q. Mr. Clements, can you tell me, is a 12x24 format
22 that you just mentioned, is that a direct condition of Schedule
23 38?

24 A. It is, to the extent that Schedule 38 requires an
25 estimation of the expected output. For a wind project, the

1 expected hourly output is critical in calculating the avoided cost.

2 Q. Okay. The following point, "May 10, 2012 - Energy
3 of Utah follows up via email to RMP on indicative price."

4 Would you please take a look at the Exhibit A-2 and
5 tell me if you recognize that?

6 A. I think I see which A-2 is, Long Ridge Wind, LLC?

7 Q. Yes, sir.

8 A. Okay.

9 Q. Dated May 10.

10 A. Okay.

11 Q. Would you feel that this was a direct opportunity for
12 you to respond back to Long Ridge, show that matrix 24x12 not
13 be present in the documents submitted on April 20?

14 A. Yes. That was an opportunity for us to respond to
15 Long Ridge after we had reviewed the information that was
16 submitted.

17 Q. Thank you. Let's go down to timeline. "May 15,
18 Energy of Utah and Rocky Mountain have a call" in Exhibit A-3.

19 Do you remember having a call? I assume not. It's
20 been a long time.

21 A. We had many calls. And so I assume that date is
22 correct.

23 Q. Okay. "May 18, Energy of Utah follows up with an
24 email to Rocky Mountain Power on indicative price - Exhibit
25 A-3."

1 Do you recognize this email?

2 A. Yes, I do.

3 Q. Would you also agree with me that this was
4 opportunity No. 2 for RMP to come back to Long Ridge and
5 state--and ask for 24x12, show that nothing present in our initial
6 submittal?

7 A. Yes. We had not completed our review of the
8 submitted materials at this point in time.

9 Q. Now, we'd like to indicate to the Commission that if
10 you take a look at the attention of the timeline, the initial
11 document was submitted April 20. Now we are on May 20. Mr.
12 Clements just stated to him--would you take a look at that.

13 "May 22, Energy of Utah follows up on time frame
14 for indicative price."

15 Mr. Clements, would you take a look at the Exhibit
16 A-4?

17 A. I see that.

18 Q. Okay. In this email, do also agree that you've
19 indicated, again, 30 days after the initial submission to Long
20 Ridge that the indicative price takes 30 days?

21 A. Yes, I say it should take around 30 days.

22 Q. Okay.

23 THE WITNESS: And if I may be afforded a slight
24 narrative to perhaps expedite this process, your Honor.

25 MR. VRBA: Thank you. Let's go--

1 THE COURT: Mr. Clements if you have an
2 explanation, a brief one?

3 THE WITNESS: I do. And I'd like to, perhaps,
4 expedite this, this line of questioning. So I appreciate the brief
5 narrative.

6 The Company received 44 pricing requests in 2012,
7 an unprecedented number. We typically receive ten to 15 per
8 year or less.

9 During this point in time in particular, the Company
10 received quite a few pricing requests. And so I would agree
11 with Mr. Vrba, which I believe his questioning is going down the
12 line of the Company was slower than what was expected in
13 providing response to Mr. Vrba's initial request and in
14 responding to his pricing request within an indicative price.

15 I believe we provided a price to him 49 days after
16 we verified his request on July 13. I'd have to check my
17 testimony for that exact number. So we did provide it in a time
18 period that was longer than the 30 days required by the tariff.

19 And again, we'd received a large number of
20 requests. And so I acknowledge that it did take a longer time
21 than usual to review Mr. Vrba's pricing request to provide
22 feedback to him and then to provide the actual indicative
23 pricing. I will acknowledge that.

24 MR. VRBA: Thank you. What you have stated only
25 outlines the one point of my documents. Because your direct

1 testimony directly blames the missing matrix of 12x24 for not--
2 for your company's inability to supply the document in timely
3 fashion.

4 And through my evidence, I will definitely outline
5 roughly four opportunities where we have submitted that matrix
6 without receiving a price.

7 THE COURT: Again, Mr. Vrba, you'll have an
8 opportunity to do that when you take the stand.

9 Mr. Clements, are you saying that the material here
10 is representative of your correspondence and communications
11 with Long Ridge?

12 THE WITNESS: Yes, with one correction. I think
13 the dates are accurate, as far as I can tell in the limited time
14 I've had to review this multiple-page document. But I will
15 acknowledge that I believe this generally encompasses the
16 communications between the two parties, with one note. And
17 that is, that he notes several times, beginning June 7, 2012,
18 that a 12x24 matrix was provided. It was not provided in 12x24
19 form. So we did not have hourly production for an average day
20 per month, which is what we typically need to run the avoided
21 cost pricing. And so between June 7 and July 13, there was
22 some iterations until we received the information that we
23 needed.

24 So that would be my one correction, that it was on
25 July 13 that we received the information in the form that we

1 needed to provide the pricing.

2 THE COURT: So, Mr. Vrba, if you're offering this
3 information to the Commission to understand the content of the
4 communications and the timeline, the Commission can receive
5 these documents without the need of you going through them
6 one by one.

7 MR. VRBA: The general point, just one comment.
8 Mr. Clements is correct. Rocky Mountain Power received their
9 desired 24/12 matrix format after they provided their template to
10 Long Ridge on June 7.

11 But the general intent is what Mr. Clements already
12 outlined, yes.

13 THE COURT: So is there an objection to receiving
14 this document, which has been marked Long Ridge Cross
15 Exhibit for Identification 2 into evidence? Okay, then it will be
16 received.

17 (Long Ridge Cross Exhibit 2 was admitted into evidence.)

18 MR. PROCTOR: Would that also include Cross 1? I
19 don't believe that's been offered.

20 THE COURT: I was going to come back to that, but
21 thank you, Mr. Proctor.

22 Is there an objection to receiving Long Ridge Cross
23 Exhibit 1 for Identification into evidence? Okay. Then it will be
24 received as well.

25 (Long Ridge Cross Exhibit 1 was received into evidence.)

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MR. VRBA: No more questions, Mr. Clements.
Thank you, and appreciate the opportunity.
THE COURT: Does that conclude the cross-examination for Mr. Clements?
MS. SCHMID: No. The Division does have a few questions.
THE COURT: All right. Ms. Schmid.
MS. SCHMID: Thank you. If I may approach.
THE COURT: Please.
MS. SCHMID: I'm handing out what I would like to have marked as DPU Cross Exhibit 1. I'll represent that it is a copy of Rocky Mountain Power's Schedule 38 that was downloaded and printed from the Company's website as of yesterday, and that it is a true and accurate copy.
CROSS-EXAMINATION
BY-MS.SCHMID:
Q. Good morning, Mr. Clements.
A. Good morning.
Q. You have before you what I've asked to be marked for identification as DPU Cross Exhibit 1, which is the aforementioned printout of Schedule 38 from the Company. Do you recognize this?
A. I do.
Q. Thank you. Do you agree that Schedule 38 requires execution of both a power purchase agreement and an

1 interconnection agreement before service is provided pursuant
2 to this schedule?

3 A. "Before service is provided" is a term I'll ask you to
4 clarify, please.

5 Q. Sorry. Would you say that Schedule 38 requires
6 execution of a power purchase agreement and an
7 interconnection agreement?

8 A. Yes. In fact, if you look on original sheet No. 38.5,
9 No. 7, the second sentence says, "The Company reserves the
10 right to condition execution of the power purchase agreement
11 upon simultaneous execution of an interconnection agreement
12 between the owner and the Company's power delivery function,
13 as discussed in Part 2."

14 Q. And would you also agree that, prior to the
15 Company providing the document in Section 1(B)(7), that you
16 just--1.7, prior power purchase agreements reflect indicative
17 pricing and are not binding?

18 MR. PROCTOR: Objection. It's friendly leading
19 cross-examination. I mean ...

20 MS. SCHMID: There is a distinct difference
21 between the position of the Company and of the Division. There
22 has been, perhaps, a lack of clarification as to the relationship
23 between the power purchase agreement, the interconnection
24 agreement, and final and binding. And it is that which I am
25 exploring. I do not intend it to be friendly cross. I am

1 attempting to expedite the process to accommodate Mr.
2 Proctor's schedule and others. I can certainly rephrase the
3 question to be in a more open-ended manner.

4 THE COURT: Would you do that, please.

5 MS. SCHMID: I would.

6 Q. (BY MS. SCHMID:) Is the indicative pricing
7 proposal provided to a proposed project under 1(B)(3) final and
8 binding?

9 A. No, it is not. And I intended to read this section, I
10 think, a couple hours ago in response to one of Mr. Burnett's
11 questions. So I'll take the opportunity to do so now.

12 On Original Sheet No. 38.3, middle of the first
13 paragraph, "However, such prices are merely indicative and are
14 not final and binding. Prices and other terms and conditions are
15 only final and binding to the extent contained in a power
16 purchase agreement executed by both parties and approved by
17 the Commission." Schedule 38 is quite clear on this issue.

18 Q. Turning now to the requirement of an
19 interconnection agreement. Is an interconnection--may a power
20 purchase agreement be conditioned upon simultaneous
21 execution of an interconnection agreement?

22 A. Original Sheet No. 38.4, under "B, Procedures,"
23 small letter F--and this is the second set of requirements.

24 So at this point in time, the Company's provided an
25 indicative price pursuant to what's listed on Original Sheet No.

1 38.2. The QF counter party has indicated they wish to obtain a
2 power purchase agreement. And this is the second set of
3 requirements that--or the set of requirements that's needed in
4 order to receive a power purchase agreement. One of those is
5 that, "Evidence that any necessary interconnection studies have
6 been completed and assurance that the necessary
7 interconnection arrangements are being made in accordance
8 with Part II."

9 Q. Would you agree that on Original Sheet 38.5,
10 Section 1(B) paragraph 7, it states that, "The Company reserves
11 the right to condition execution of the power purchase
12 agreement upon simultaneous execution of an 1
13 interconnection agreement between the owner and the
14 Company's power delivery function, as discussed in Part II"?

15 A. Yes. And we adhere to that practice.

16 Q. With regard to the process of reaching and
17 executing an interconnection agreement, what does the
18 Company--what does the Company recommend as to a
19 timetable?

20 A. The estimate that I give is between 18 to 24
21 months. I believe off the Transmission website, I've listed some
22 dates that PacifiCorp Transmission has listed on their website
23 as being applicable to the study phase, and then the
24 interconnection at build phase.

25 Q. Do you agree that the Company recommends that a

1 project pursue a request for interconnection and a request for a
2 power purchase agreement on a parallel track?

3 A. Yes. And in fact, in my initial meetings with most
4 QF developers, I encourage them to begin the interconnection
5 process immediately, as that process is typically the critical path
6 item for projects being completed.

7 Q. Thank you very much. That concludes my
8 questions.

9 THE COURT: Thank you.

10 MS. SCHMID: Except that it is--I would like to
11 request the admission of DPU Cross Exhibit 1, which is the
12 aforementioned printout of Rocky Mountain Power's Electric
13 Service Schedule No. 38.

14 THE COURT: Any objection? It will be received.
15 (DPU Cross Exhibit 1 was received into evidence.)

16 THE COURT: I believe that concludes the
17 cross-examination for this witness.

18 I have a couple of questions--

19 THE WITNESS: Certainly.

20 THE COURT: --Mr. Clements.

21 CROSS-EXAMINATION

22 BY-THE COURT:

23 Q. I'm looking at your direct testimony, Lines--well, the
24 answer that begins with Line 130. And here you express two
25 avoided cost numbers, one reflecting the market proxy method,

1 one reflecting the PDDRR method. And you say, "Using a recent
2 pricing request as an example."

3 First, by that phrase, are you referring to the
4 attributes of the resource, of the wind resource?

5 A. Yes, that is correct. We took a representative wind
6 resource that had submitted a request. It was one of the five
7 listed on page 8.

8 Q. Okay.

9 A. And so we took their attributes in order to make it a
10 realistic comparison.

11 Q. And then applied that to the Dunlap market proxy?

12 A. That is correct.

13 Q. Are you able to identify if you use current turbine
14 pricing--or current turbine costs, where pricing would--or
15 avoided costs would fall in relation to the two numbers that you
16 are providing here under the two methods?

17 A. The way I would do that would be to refer to the
18 graph on the preceding page, which would be page 6. And I
19 would attempt to estimate roughly what the change in wind
20 turbine price quotes was from 2009, when the Dunlap price was
21 executed--or the Dunlap contract was executed, and roughly
22 today. Again, it stops in January 2011 and provides a range of
23 values for the times after that.

24 But if I were to estimate that it has decreased by--
25 ten percent, perhaps, is a reasonable estimate--ten to 20

1 percent, then you could take the Dunlap value that we
2 calculated of 52.25 per megawatt hour for this project. I
3 apologize. That you could take the market proxy value of 59.68
4 per megawatt hour that we calculated using the Dunlap price
5 and reduce that by ten to 20 percent, or whatever you choose to
6 use for your reduction in turbine pricing, and come up with a
7 reasonable estimate of what the market proxy price would yield
8 with a lower turbine price.

9 Q. When did Rocky Mountain Power reach the 1400
10 megawatt wind level that was referred to as a target in the 2005
11 case?

12 A. Well, I think that's a two-part question, your Honor.
13 The Company has exceeded the 1400 megawatt target. There
14 was a time where there was a discussion around a 1400
15 megawatt wind target by a certain date. The Company has met,
16 and since, exceeded that particular target. However, the
17 Commission's interpretation--and I'm referring to the Blue
18 Mountain Order--refers to the IRP wind target as a cumulative
19 target. And so it's not specific to any particular number, such
20 as 1400, but a cumulative target of wind. And that's included in
21 the IRP.

22 Q. Right. So I'm not using "target" in that latter sense.
23 But the 1400 megawatt level, when did the
24 Company reach that in its planning processes?

25 A. I believe that was met in the 2009-2010 time

1 period, is my recollection. And if I may elaborate a bit on that
2 question.

3 Q. Would that have been the 2009 IRP, or do you
4 know?

5 A. Yeah. Well, at the time, the last RFP that we
6 issued was the 2009. And at that point in time, we met our
7 linkable resource need, pursuant to the preferred portfolio at
8 that time. And so we haven't issued any renewable RFPs
9 because we met our reasonable acquisition targets per the IRP
10 preferred portfolio.

11 Q. Ms. Mikell asks the question in her direct
12 testimony, outlines 232 to 238, why did the Company wait so
13 long to make this transition in methods? I hope I'm not
14 mischaracterizing her testimony.

15 But would you address that question?

16 A. Certainly. And the Company did not wait a long
17 time period. The Company is constantly evaluating the orders
18 and the implementation of PURPA pursuant to those orders.
19 Around the time of the IRP update in March of 2012--so March
20 of this year--the Company evaluated the preferred portfolio in
21 that IRP update. And it showed that wind resources would not
22 be needed until approximately 2018, and that those wind
23 resources were needed strictly for compliance on the east side--
24 I apologize, on the west side of the system.

25 The Company began to review the 2005 order, and

1 began to review the underlying set of assumptions that were in
2 place when the Commission put that order into place. And
3 during the course of its review, Q2, Q3 of 2012, the Company
4 determined, for the reasons I've outlined in my testimony, that
5 the underlying assumptions behind that 2005 order--and alluding
6 to your earlier question--at the time that order was put in place,
7 I believe the Commission anticipated that this 1400 megawatt
8 target would be something that the Company would acquire over
9 many years, and that the Company would always be seeking
10 wind resources through market solicitations.

11 That target was met very quickly. And the
12 Company stopped soliciting wind resources through RFPs. And
13 that broke down some of the underlying assumptions behind that
14 2005 order. And so the Company evaluated that order, and over
15 the course of the summer of 2012 determined that it was
16 appropriate to move to the PDDRR method under the 2005 order
17 instead of using the market proxy method.

18 So it wasn't something we held onto and sprung on
19 developers at the last minute. It was something that was done
20 after careful review of the order and the Company's current
21 resource needs following the issuance of the IRP in March of
22 2012.

23 THE COURT: That concludes my questions.

24 Ms. Hogle, do you have any redirect?

25 MS. HOGLE: I do, your Honor. Thank you.

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REDIRECT EXAMINATION

BY-MS.HOGLE:

Q. Mr. Clements, Mr. Dodge asked you a series of questions related to discriminatory treatment between two similarly-situated companies. Do you recall that?

A. I do recall those, yes.

Q. Is it possible, under the currently effective 2005 order, that from one day to the next, two similarly-situated companies could receive pricing under the two different approved pricing methodologies?

A. Yes, absolutely.

Q. How so?

A. As you read the 2005 order, there are two methods that apply to wind QFs. And once the IRP wind target--however you choose to define that term--once that IRP wind target has been met, the price methodology immediately moves to the PDDRR. That could occur from one day to the next.

Q. I want to turn now to some questions that were asked of you from Mr. Brian Burnett.

A. Okay.

Q. He alluded to the fact that the Company had the discretion to delay executing a power purchase agreement.

Has the Company executed purchase power--power purchase agreements, excuse me, with prices that are significantly higher than the pricing that is under review in this

1 docket?

2 A. Yes, we have.

3 Q. And to your knowledge, did the Company delay the
4 execution of such contracts because the pricing was too high?

5 A. No, we did not. In fact, in another jurisdiction, we
6 were presented with contracts for execution for QF projects with
7 prices that were well in excess of the market proxy method
8 price. The Company executed those contracts within days and
9 submitted them to the appropriate Commission for approval.
10 There was no delay.

11 Q. Along the same line of questioning, to your
12 knowledge, is there any benefit or any harm to the Company
13 from the pricing that is included in the PPAs?

14 A. No. And that's a key point that I hope was clear in
15 my testimony. QF power purchase agreements, the revenues
16 and costs that are associated with those agreements, are part of
17 net power costs and are direct pass-through to our customers.
18 So if the price is high, it does not punish the Company; if the
19 price is low, it does not reward the Company. The Company is
20 indifferent as to where the QF price actually is.

21 The Company views itself as the implementer of
22 PURPA and the Commission's interpretations and orders related
23 to PURPA. And the Company's role is one of fairness. It needs
24 to be fair to QF developers, it needs to be fair to our customers.
25 And I've been a witness in various dockets in which I've been

1 arguing for fairness to QFs; I've been a witness where I've been
2 arguing for fairness to customers.

3 When that fairness principle is violated and a price
4 is no longer fair, the Company feels it is obligated and it is its
5 duty to petition the Commission for relief.

6 Q. Going back to Mr. Dodge. You were asked whether
7 you would agree that prices in Utah may be different or are
8 different in terms of turbine prices than the rest of the country.

9 Is that relevant when determining, or when
10 calculating the market proxy methodology?

11 A. No, it's not. It's clear in the 2005 order that
12 whatever the last executed RFP wind contract is, is to be used
13 for the market proxy, regardless of where that contract or that
14 project is located on our system.

15 Q. I have no further redirect.

16 MS. HOGLE: Thank you, your Honor.

17 THE COURT: Thank you.

18 Mr. Burnett?

19 MR. BURNETT: I had one follow-up on redirect. I
20 have one follow-up question on redirect.

21 MS. HOGLE: I apologize, your Honor. I believe
22 that the Company has the last word.

23 THE COURT: I'll let you ask any questions if you
24 need to. But just because it's one question, and to have as full
25 a record as possible, I'll allow you to ask it, Mr. Burnett.

1

MR. BURNETT: Okay.

2

REXCROSS EXAMINATION

3

BY-MR.BURNETT:

4

Q. You testified to this, that you are indifferent

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whether or not the QF's resource has no impact on you because

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it's pass-through.

7

I guess my question is this: If PacifiCorp builds the

8

project, then they earn a return on the rate base, correct?

9

A. That's my understanding of how the regulatory

10

world works, yes.

11

Q. And QFs delay PacifiCorp building projects?

12

A. That's an inaccurate statement. PacifiCorp, when

13

we solicit projects, we go through an RFP process, especially if

14

it's a project of size that falls under Utah Senate Bill No. 26.

15

It's a competent bid process. And perhaps a PacifiCorp resource

16

is selected, perhaps not.

17

Q. But viewing these things as balancing things, you'd

18

rather build your own project, rather than have somebody else

19

build the project because you make money on your own project

20

on the pass-through, right?

21

A. I don't think that's an accurate depiction. In fact, it

22

may be more beneficial for our customers to not have the

23

Company build the project and incur those capital costs.

24

Again, I reiterate: My position is the Company

25

indifferent as to whether a QF project is built or not. We simply

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administer PURPA.

MR. BURNETT: I have nothing further.

THE COURT: Any redirect, Ms. Hogle?

MS. HOGLE: No, your Honor.

THE COURT: Mr. Clements, you are excused.

THE WITNESS: Thank you.

THE COURT: Thank you.

Mr. Proctor?

MR. PROCTOR: Yes.

MS. SCHMID: Thank you, your Honor, appreciate your accommodating us.

THE COURT: Do you solemnly swear that the testimony you are about to give shall be the truth, the whole truth, and nothing but the truth?

THE WITNESS: Yes, I do.

THE COURT: Please be seated.

BELA VASTAG, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY-MR.PROCTOR:

Q. Mr. Vastag, this is your first opportunity to testify before this Commission. Is that correct?

A. Yes.

Q. By whom are you employed?

A. The Office of Consumer Services.

1 Q. And what do you do for them?

2 A. I am a utility analyst. And my areas of
3 responsibility include resource planning, resource acquisition
4 analysis, and transmission planning.

5 Q. And you were assigned to be the office analyst in
6 connection with this avoided cost litigation, correct?

7 A. Correct.

8 Q. What is your educational background?

9 A. I have a bachelors degree in physics from Virginia
10 Tech and a masters degree in finance from University of Utah.

11 Q. And what has your experience been prior to working
12 for the Office of Consumer Services?

13 A. I've got over 20 years working in the areas of
14 finance and budgeting and basic data analysis. Ten years
15 working for government agencies.

16 Q. Mr. Vastag, in connection with your appearance
17 here today, did you file direct, rebuttal, and surrebuttal
18 testimony, including an exhibit to the surrebuttal, and they have
19 been marked as OSC 1D, 1R, and 1S. Is that correct?

20 A. Yes.

21 Q. Do you have any changes or corrections that you
22 need to make to any of those?

23 A. No, I do not.

24 Q. The Office would move to admit into evidence the
25 prefiled written testimony from Bela Vastag.

1

THE COURT: Thank you.

2

Any objection? They'll be received as Office

3

Exhibits 1, 2, and 3.

4

(Prefiled Office Exhibits 1, 2, and 3 were admitted into

5

evidence.)

6

Q. (BY MR. PROCTOR:) Do you have a summary of

7

the testimony you've filed?

8

A. Yes, I have a brief summary I'd like to read.

9

Q. Please.

10

A. Okay. "The Office believes that the Company's

11

request to stay the application of the market proxy method of

12

indicative pricing for wind QFs should be granted.

13

"By approving this data, the Commission will be

14

meeting the requirements of PURPA because, one, the Company

15

is still required to purchase energy and capacity from QFs; two,

16

the Company will continue to provide indicative pricing to QFs,

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based on the PDDRR method; three, the PDDRR method

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provides pricing that reflects the Company's current and avoided

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costs and protects rate payers; and No. 4, the market proxy

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method provides pricing above the Company's current avoided

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costs and would harm rate payers."

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That concludes my summary.

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MR. PROCTOR: This witness is available for

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cross-examination.

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THE COURT: Who desires to cross Mr. Vastag?

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Ms. Hayes.

MS. HAYES: Thank you, your Honor.

CROSS-EXAMINATION

BY-MS.HAYES:

Q. Good morning, Mr. Vastag.

A. Good morning.

Q. Do you have a copy of the 2011 Wind Technologies Market Report that you reference in your surrebuttal testimony at Line 65 or the presentation that you cite to?

A. I have the one slide that I included as an attachment. I do not have the entire report, no.

MS. HAYES: May I approach the witness?

THE COURT: Yes.

Q. (BY MS. HAYES:) I'm going to do two at once to save time.

What I've passed out to you are copies of a portion of the presentation you cite, as well as a portion of the report that the presentation is based upon.

Does this appear to be the presentation you cited in your testimony?

A. Yes.

MS. HAYES: Utah Clean Energy would move to admit the single-page exhibit and mark it as UCE Cross 3, I believe.

THE COURT: Any objection?

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MS. HAYES: And the stapled one.

THE COURT: May I say it's received in evidence.

(UCE Cross Exhibit 3 was received into evidence.)

THE COURT: Go ahead, Ms. Hayes.

MS. HAYES: Okay. Sorry.

Q. (BY MS. HAYES:) Does the stapled document, is that the report associated with the presentation you cited?

A. I believe so.

MS. HAYES: Okay. Thank you. I would move to admit this document as UCE Cross Exhibit 4.

THE COURT: Any objections? It's received.

(UCE Cross Exhibit 4 was received into evidence.)

MS. HAYES: Thank you.

Q. (BY MS. HAYES:) If you would look--well, first of all, I'll ask you: Is the study based on national wind pricing trends?

A. Yes, it is.

Q. Looking at Slide 49 on the single--on UCE Cross 3, does it appear that the study segregates findings from different regions?

A. Yes, it does.

Q. If you look at page 47 in UCE Cross 4, what states does the Mountain Region represent? And I apologize. They're not labeled. And if I were on the stand, I would probably have a

1 hard time.

2 A. It appears that it was in Colorado and Nevada,
3 Utah, Wyoming, Arizona, and New Mexico.

4 Q. Thank you. And sorry for the swapping.

5 Going back to the slide presentation, what is the
6 capacity weighted average for projects built in 2010 and 2011
7 for the Mountain Region? Or what does the price appear to be,
8 based on that graph?

9 A. Approximately \$60 per megawatt hour.

10 Q. And what states does the northwest region
11 represent?

12 A. Washington, Oregon, Montana, and Idaho.

13 Q. You get an A on geography.

14 What is the capacity weighted average for projects
15 built in 2010 and 2011 for the Northwest Region?

16 A. I'm estimating approximately 90.

17 Q. All right. Thank you. According to the Company,
18 what is the avoided cost price per megawatt hour, as calculated
19 by the market proxy method?

20 A. I'm not aware exactly what the Company has
21 stated. I recall from the Commission's order on Blue Mountain
22 that it was approximately \$59.

23 Q. So is it possible--likely, even--that if Rocky
24 Mountain Power had issued a system-wide RFP for wind
25 resources in 2011, the price per megawatt hour would have

1 been around or above \$60 a megawatt hour?

2 A. I don't know what an RFP would produce.

3 Q. All right. No further questions.

4 THE COURT: Thank you.

5 Others desiring to cross?

6 Yes. Mr. Dodge.

7 MR. DODGE: Thank you, Judge.

8 CROSS-EXAMINATION

9 BY-MR.DODGE:

10 Q. Mr. Vastag, good morning.

11 In your rebuttal testimony, beginning on Line 64,
12 you indicate that Wasatch Wind--you reference some IRP
13 comments of Wasatch Wind, that current wind projects can be
14 constructed for as low as 1400 to 1500 per kilowatt.

15 You understand, do you not, that that was
16 referencing turbine prices alone?

17 A. From what I recall from reading those comments, I
18 don't believe the 14- to \$1500 number made any reference to
19 exactly what it was for, whether turbines our all-in costs.

20 Q. If I were to represent to you that that does not
21 include all-in costs, would you have any basis for disputing
22 that?

23 A. No.

24 Q. You pulled out the number on Line 67. You found
25 the number of \$2383 for the costs of the current proxy, the

1 Dunlap one. Is that an all-in cost?

2 A. Based on the source, it would be an all-in cost, yes.

3 Q. So to the extent that the 1400 to \$1500 number you
4 reference in Line 65 is turbine and balance of plant, but not an
5 all-in cost, and 2383 is an all-in, you acknowledge that your
6 calculation leaves some numbers out, don't you? Your
7 calculation that there's a 58 percent drop?

8 A. Well, based on the comments from Wasatch Wind,
9 the 14- to \$1500 wasn't--background information wasn't
10 provided. So I just compared the two numbers as a reference.

11 Q. You recognized that would be comparing apples
12 and oranges if one of them is an all-in cost and one of them is a
13 turbine and balance of plant cost only?

14 A. Yes, I recognize that.

15 Q. And then in terms of, maybe, the Company's
16 current thoughts about where wind prices are going. You saw
17 the exhibit handed out earlier with the 2013 IRP estimated costs
18 for wind projects in the west. Did you see that?

19 A. Yes.

20 Q. And you saw that the Company is projecting for its
21 current IRP--this is October 31 of this year numbers--wind all-in
22 costs in the 2138 to 2368 range, correct?

23 A. Yeah, that's correct. But I'd like to add on--add to
24 that answer that what the Office is pointing out is that the trend
25 in costs have been going down. And comparing costs between

1 specific sources is not an apples-to-apples comparison. So,
2 again, the trend--for example, in the IRP, from one IRP to
3 another, has been declining in total costs.

4 Q. But the Company, presumably, in its IRP, gives its
5 best estimate of its cost to acquire wind, if that's the resource
6 selected in the process, correct?

7 A. Correct.

8 Q. And if the Company is saying right now, most
9 current information, that the all-in cost is going to be 2138 to
10 2365, that's not dramatically different than the current proxy, is
11 it?

12 A. Well, the 2138 cost is probably the--I believe that is
13 the cost for the Wyoming located wind, which would be very
14 similar to the Dunlap site, which I estimated at 2383. And the
15 difference between those numbers is, what, 15 percent, which
16 shows the decline in costs.

17 Q. But not the 58 percent that you testified to in your
18 testimony, right?

19 A. No, that's not comparable.

20 Q. Now, you indicate that in your view, if the
21 Commission doesn't grant the stay, rate payers could be
22 harmed, right?

23 A. Correct.

24 Q. Is it also possible that if the stay is granted and if
25 costs otherwise--if projects that might otherwise prove in the

1 future to be cost effective stop development, that rate payers
2 could be harmed by that as well?

3 A. I'm not in a position to predict that.

4 Q. I'm not asking you to. I'm saying in the event that a
5 stay is issued, and as a result of the stay, projects in Utah
6 cease development. And in the future, it turns out that the next
7 IRP calls for wind. And these projects are not available
8 because the development's been stopped, and therefore,
9 higher-cost projects get built or purchased. That could harm
10 rate payers, could it not?

11 A. Yes, that's possible. But there's many outcomes
12 that are possible. I admit that.

13 Q. And don't you think maybe it's prudent practice for
14 the Commission to wait until it's held its hearings to decide what
15 the future avoided cost methodology and pricing will be before
16 we yank the current methodology out from under the table?

17 A. Because the market proxy is based on an outdated
18 price, it seems prudent to stay the use of that method.

19 Q. Even without a replacement method? And in your
20 view, that complies with the intent of PURPA?

21 A. Well, the replacement method is the PDDRR
22 method.

23 Q. Which the Commission has never found to be just
24 and reasonable for wind projects in Utah, have they? At least
25 not since 2005. So you're asking that a project--that an

1 approach that was found by the Commission to be just and
2 reasonable, until it was changed for a future order, be
3 substituted with one that's never been so found, in the belief
4 that that will be found in the outcome of Phase 2 of this docket.
5 Is that not basically what you are arguing?

6 MR. PROCTOR: Excuse me.

7 MR. DODGE: Did that not make sense?

8 MR. PROCTOR: Made sense to me. That's why I'm
9 objecting.

10 I believe that his preface was that the Commission
11 had never found that to be just and reasonable. Then he went
12 immediately to his question. So he's stating an assumption for
13 which there is no evidence. And to that extent, too, when he
14 repeated the question, it would be argumentative.

15 MR. DODGE: And I'll accept that as a good
16 objection and ask if I can restate.

17 THE COURT: Yeah. That's what I'd like you to do,
18 Mr. Dodge. I think that will help us all.

19 Q. (BY MR. DODGE:) Is it your understanding in the--
20 you've read the 2005 Order, correct?

21 A. Correct.

22 Q. And is it your understanding the Commission found
23 in that order that the just and reasonable means of pricing wind
24 QF projects was the market proxy method, at least until they
25 reached the cumulative IRP target?

1 A. That's correct. But also the alternative pricing
2 method was also just and reasonable.

3 Q. After they reached the IRP target, correct?

4 A. Correct.

5 Q. And the Commission just found a couple months
6 ago we have not yet reached that IRP target, correct, in the
7 Blue Mountain docket?

8 A. That--I believe that was the decision, yes.

9 Q. So do you not accept that at least at this point, this
10 Commission has never found, based on evidence at hearings,
11 that the PDDRR method is just and reasonable for wind QF
12 projects in Utah until we've met that IRP target?

13 A. I cannot speak to whether the PDDRR method was
14 found to be not just and reasonable.

15 Q. Okay. I understand that. And yet, the Division--the
16 Office is, essentially, asking that the Commission substitute the
17 PDDRR for the proxy method in the interim until the Commission
18 has held a full hearing and decided what is just and reasonable
19 going forward?

20 A. Yes.

21 Q. Thank you. No further questions.

22 THE COURT: Mr. Burnett.

23 MR. BURNETT: I have just have a couple
24 questions.

25 CROSS-EXAMINATION

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BY-MR.BURNETT:

Q. Is the Office taking a position on that a contract, a power purchase agreement, has to be executed by September 1, or before the Commission rules in Phase 2 of this docket, or it gets repriced? Have you taken a position on that?

A. No, we do not have a position on that.

Q. Okay. I have no further questions.

THE COURT: Mr. Vrba?

MR. VRBA: Thank you. I don't have any questions.

Thanks.

THE COURT: Anyone else?

I have no questions.

No redirect?

MR. PROCTOR: No.

THE COURT: Thank you. You are excused. Ms. Hayes, are you prepared to proceed?

MS. HAYES: I am. It was my understanding that the order would put the Division next. But we can go now, if you'd prefer.

MS. SCHMID: No.

THE COURT: I think that would be useful. I'd like you to do that, yes.

MS. HAYES: Okay. Thank you.

THE COURT: Thank you.

MS. HAYES: Utah Clean Energy would like to call

1 Sarah Wright as our witness. And she has not yet been sworn.

2 THE COURT: Thank you.

3 THE WITNESS: Is this going to go longer than 15
4 minutes? Because I need a personal health break.

5 THE COURT: I plan to break at noon. Let's be off
6 the record.

7 (A break was taken from 11:43 a.m. to 11:46 a.m.)

8 THE COURT: We're on the record. Do you
9 solemnly swear that the testimony you are about to give shall be
10 the truth, the whole truth, and nothing but the truth?

11 THE WITNESS: I do.

12 THE COURT: Thank you. Please be seated.

13 SARAH WRIGHT, having been first duly sworn, was
14 examined and testified as follows:

15 DIRECT EXAMINATION

16 BY-MS.HAYES:

17 Q. Ms. Wright, please state your name and business
18 address for the record.

19 A. Sarah Wright, Utah Clean Energy. 1014 2nd
20 Avenue, Salt Lake City, Utah, 84103.

21 Q. Did you prepare and file the following testimony in
22 this docket: Direct testimony, including one attachment, filed on
23 November 30, 2012, marked as "UCE Exhibits 1.0D" and "1.1D";
24 rebuttal testimony, filed on December 7, marked as "Exhibit
25 2.0R"; and surrebuttal testimony, filed on December 11, marked

1 as "UCE Exhibit 3.0SR"?

2 A. Yes, I did.

3 Q. If you were to answer the same questions today as
4 contained in your testimony, would your answers be the same?

5 A. Yes.

6 MS. HAYES: I move to admit the prefiled testimony
7 of Sarah Wright.

8 THE COURT: Any objections? They'll be received
9 as UCE Exhibits 1, 2, and 3.

10 (Prefiled UCE Exhibits 1, 2, and 3 were received into evidence.)

11 Q. (BY MS. HAYES:) Ms. Wright, do you have a
12 summary of your testimony you would like to present to the
13 Commission?

14 A. Yes, I do.

15 Q. Please proceed.

16 A. Thank you.

17 I recommend that the Commission deny the
18 Company's motion to stay the application of the 2005 avoided
19 costs methodology for wind QFs. In support of this
20 recommendation, my testimony highlights the policies and
21 objectives underpinning Public Utility Regulatory Policy Act,
22 PURPA--

23 THE COURT: Excuse me, is your microphone on?
24 Doesn't appear to be.

25 THE WITNESS: Is that better?

1 THE COURT: Yes.

2 THE WITNESS: Sorry about that.

3 THE COURT: You might need to start again for us
4 all.

5 THE WITNESS: Okay. Thank you.

6 I recommend that the Commission deny the
7 Company's motion to stay the application of the 2005 avoided
8 cost pricing methodology for wind QFs. In support of this
9 recommendation, my testimony highlights the policies and
10 objectives underpinning the Public Utility Regulatory Policy Act,
11 PURPA. Specifically in enacting PURPA, Congress
12 acknowledged the importance of relying less on fossil fuel
13 resources, the reluctance of utilities to purchase electricity from
14 small power producers, and the need to encourage small power
15 production through laws and regulations. These objectives are
16 no less important today than they were when PURPA was
17 passed in 1978.

18 Although natural gas prices are currently low, the
19 objective of relying less on finite fossil fuel resources is still
20 paramount, particularly given fuel price volatility and the
21 contribution of burning fossil fuels to climate change.

22 The purpose of Section 210 of PURPA's Title II is
23 to encourage the development of co-generation and small power
24 production facilities. To that end, PURPA requires utilities to
25 purchase electricity generation from small power production

1 facilities at avoided cost rates.

2 The 2005 avoided cost methodology for wind QFs
3 was approved to effectuate this requirement without
4 overburdening rate payers and in recognition of the risk
5 mitigation benefits of wind resources.

6 The Commission found, after a full evidentiary
7 proceeding, that the 2005 method was a reasonable avoided
8 cost calculation methodology. The Commission should not
9 mistake the Company's purported evidence in support of its
10 application to evaluate the 2'05 methodology as justifications for
11 its motion to stay. The Company has not made it clear that,
12 absent the stay, rate payers will be harmed more than they
13 would be harmed than--excuse me.

14 The Company has not made it clear, absent the
15 stay, that rate payers will be harmed more than they will be
16 harmed by a sudden shift to a methodology that will arrest most,
17 if not all, QF development in Utah.

18 There is significant benefits for rate payers from
19 the development of wind resources in Utah, including local
20 economic benefits and the very important fuel volatility and
21 environmental risk mitigation benefits for all rate payers.

22 Encouraging wind QF development is also in line
23 with federal PURPA policies, as well as Utah policies that
24 encourage economic development and energy production.
25 Given the choice between maintaining the current effective

1 avoided cost method for wind during the pendency of this docket
2 and shifting to one that will effectively prohibit wind QF
3 development in Utah, the Commission should keep in mind the
4 purposes of PURPA, as well as the significant benefits of wind
5 QF development.

6 The Commission should not look solely at the
7 Company's estimated potential additional cost to rate payers if
8 all QF projects--if all QF projects currently in the queue are
9 granted the market pricing method.

10 The Company has not demonstrated that the 2005
11 market proxy methodology necessarily results in prices that
12 exceed avoided cost or are necessarily harmful to rate payers.
13 In fact, their evidence to this is based on national turbine
14 prices.

15 In summary, I recommend that the Company--that
16 the Commission deny the Company's motion for a stay of the
17 2005 methodology, pending a full investigation of avoided cost
18 methodologies for renewable resources, policy considerations
19 under--excuse
20 me--policy considerations underpinning PURPA, as well as
21 significant benefits of the QF development in Utah, when QF
22 development in Utah support maintaining the current method
23 through the pendency of this docket.

24 And that concludes my statement--summary.

25 THE COURT: Thank you.

1 MS. HAYES: Thank you. Ms. Wright is now
2 available for cross-examination.

3 THE COURT: Cross-examination for Ms. Wright?
4 Anyone else? Ms. Hogle?

5 CROSS-EXAMINATION

6 BY-MS.HOGLE:

7 Q. Ms. Wright, good afternoon.

8 A. Good afternoon--almost.

9 Q. Almost. Can you turn to your rebuttal testimony,
10 please.

11 A. Yes. Too much in here. I'm here.

12 Q. Can you turn to page 4, Lines 62 to 67.

13 A. Page 4, Lines 62 to 67.

14 Q. 63 to 67, approximately.

15 A. Is that on page 5?

16 MS. HAYES: No.

17 THE WITNESS: Excuse me, Sophie. I realized I
18 didn't have this and I thought I printed the correct one this
19 morning.

20 THE COURT: Let's be off the record.

21 (A discussion was held off the record.)

22 THE COURT: On the record.

23 Q. (BY MS. HOGLE:) I just want to ask you about your
24 contention that the Company has refused to comply with
25 Commission orders from the 2005 case and the Blue Mountain

1 case.

2 You are familiar with the Blue Mountain order, are
3 you not?

4 A. Yes, I am.

5 Q. Didn't the Commission, itself, acknowledge in that
6 order that its 2005 order was ambiguous?

7 A. I don't recall that portion of it. I recall the portion
8 when it said that up to the IRP targets, that the wind proxy
9 method should be the method of approach. I don't remember
10 the ambiguous part.

11 Q. Okay. Subject to check, I'm going to read you
12 language from the 2005 order demonstrating what I've just
13 stated. And I quote--this is on page 10, in Docket No. 12-25-57.
14 "The Order on Request for Agency Action issued by the
15 Commission September 20, 2012." It says, "We acknowledge
16 the ambiguity created by the phrase, 'thus, once the next
17 deferrable IRP resource is no longer a wind resources--a wind
18 resource'"--excuse me--"used in the first paragraph on the
19 subsection addressing the avoided cost method for wind QF
20 resources exceeding the IRP target."

21 So would you agree that the Commission, itself,
22 acknowledged that the 2005 was ambiguous, based on what I
23 read?

24 A. Yes.

25 Q. In the Blue Mountain order, the Commission

1 ordered the Company to provide pricing to Blue Mountain based
2 on the market proxy method. Is that right? A yes or no answer
3 will do. Thank you.

4 A. Yes, and they confirmed their IRP target for the
5 market proxy approach.

6 Q. And the Company did provide Blue Mountain pricing
7 based on the market proxy pricing methodology, to your
8 knowledge?

9 A. Yes.

10 Q. And you would agree with me that the Commission
11 did not order in the Blue Mountain order to provide market proxy
12 pricing to others?

13 A. No, I would not agree. Because they acknowledged
14 that the market proxy method should apply up until the IRP
15 target. And the IRP target had not been met. So if you want to
16 look at it very narrowly, then perhaps that's the way you would
17 interpret it. But given that they reaffirmed the IRP target as the
18 target that should be acknowledged for when you stop doing the
19 market proxy method, then I would think that they were saying
20 that that was the appropriate methodology.

21 Q. But in the order in the paragraph where the
22 Commission issues its order, the Commission stated, did it not,
23 that the Company should go back--or excuse me, that the
24 Company should provide Blue Mountain pricing based on the
25 market proxy method?

1 A. And it's your interpretation that that's all they said.

2 Q. I'm just talking about the ordering paragraph.

3 A. Then that's what the language said in that
4 paragraph.

5 Q. Thank you. So it is inaccurate to say that the
6 Company has refused to comply with the Commission orders,
7 isn't it, based on that?

8 A. Your interpretation of that order and my
9 interpretation of that order are obviously different. And so--

10 Q. Based on what I have just read to you, it is
11 inaccurate to say that, isn't it?

12 A. The other material in that order and the background
13 information in that order explained the intent that the market
14 proxy method should be the method until the IRP target is met.

15 I would need to--I'm not an attorney, so I don't want
16 to answer the legal interpretation of that. My interpretation of
17 that docket is that they were saying that the market proxy
18 method was the method that they intended until the IRP target
19 was met. I'm not an attorney.

20 Q. I'm just questioning your use of the words "refusing
21 to comply." There is a difference, isn't there, between refusing
22 to comply and interpreting the 2005 order differently from
23 others, as you, yourself, have said?

24 A. I did not mean that as a--I'm sorry if it was taken in
25 a bad way. I interpret it that they were no longer giving the

1 market proxy method. So if you want to take away the language
2 of "refusing to comply"--you interpreted that order differently.
3 We interpreted it that the market proxy method should hold until
4 the IRP was met. So no ill feelings meant.

5 Q. Thank you. Thank you. Okay. On the same page
6 of your rebuttal testimony, I'd like you to focus, or read--not
7 read, but agree with me that Lines 58 and 59, you basically
8 state that similarly-situated projects may include developers who
9 are not parties to the current docket and use that as a reason to
10 deny the motion to stay. Is that correct?

11 A. So what I was saying is that the "similarly-situated"
12 is hard to define, and that those may not be parties to the
13 docket, and that this docket is--one second.

14 What I was saying is that it was a failed--it was not
15 a workable solution to define and to use an ambiguous term
16 "similarly-situated projects." And so that's one of my many
17 reasons that I gave for denying the stay. It is not my only
18 reason I gave for denying the stay.

19 Q. Okay. So it is a reason that you provide to the
20 Commission for the Commission to deny the stay, that parties
21 who are similarly-situated may not be part of this docket. Is that
22 right?

23 A. No. It's more that it's--you know, it's ambiguous.
24 The term is ambiguous, is the main reason that I gave.

25 Q. Okay.

1 A. And they may not be parties to the docket. But the
2 term is ambiguous. "Similarly-situated" is an ambiguous--I don't
3 know a legal definition of what that would be for these projects.

4 Q. Okay. So you're not recommending that the
5 Commission deny the motion to stay because parties who are
6 not--developers who are not--who have not intervened in this
7 docket, their rights could be affected. That's not what you're
8 saying.

9 A. I'm not an attorney, so I'm not going to go there,
10 so.

11 Q. Okay. Okay. Let's leave it--

12 THE COURT: Ms. Hogle, if you are going to move
13 to another area--

14 MS. HOGLE: I am.

15 THE COURT: Would it be a convenient time for
16 lunch? It's--

17 MS. HOGLE: Yes.

18 THE COURT: --about three after 12.

19 MS. HOGLE: I am, your Honor. And I still have
20 some cross.

21 THE COURT: Okay. So we'll be off the record and
22 in recess.

23 Does 1:15 allow people adequate time? Does that
24 work for everyone? Okay. Then the record needs to include
25 that we'll be back on the record at 1:15.

1 (A break was taken from 12:03 p.m. to 1:19 p.m.)

2 THE COURT: On the record. Let the record reflect
3 that Ms. Wright has resumed the witness stand, and we're ready
4 to continue this hearing. We'll proceed with it, following our
5 lunch break. It's about 1:19.

6 And I believe, Ms. Hogle, you were in the middle of
7 cross-examination.

8 MS. HOGLE: I was. Thank you, your Honor.

9 Q. (BY MS. HOGLE:) Ms. Wright, can you turn to your
10 Cross Exhibit No. 2, titled "2013 Integrated Resource Plan."

11 A. Yes.

12 Q. And turn to the table. So in the 2013 IRP, the cost,
13 the total cost to build a 35 percent capacity factor wind turbine
14 in Wyoming is \$2138 per kilowatt. Is that what that says there?

15 A. Yes, the total capital cost.

16 Q. Okay. And earlier this morning, there was a
17 question about what the total costs were to build Dunlap. Do you
18 recall that?

19 A. I do recall that question.

20 Q. Well, subject to check, the Company went back and
21 did that calculation. And again, subject to check, will you agree
22 with me that the total cost to build Dunlap in 2009 was \$2266
23 per kilowatt?

24 A. Subject to check, yes.

25 Q. So the total cost to build a wind project comparable

1 to Dunlap in Wyoming, based on those two figures, are
2 approximately five-point--5 1/2 percent lower now, so four years
3 after Dunlap was built. Is that true?

4 A. I haven't done the math but, I will--

5 Q. Subject to check?

6 A. Subject.

7 Q. And would you accept, subject to check, then, that,
8 adjusted for inflation, assuming two percent inflation per year,
9 total costs would be in the range of between 13 to 15 percent
10 lower now in real dollars?

11 A. I'm not an economist, so.

12 MR. DODGE: I'm going to object to that because
13 she's just testifying indirectly. You say "subject to check." How
14 is she going to check that?

15 MS. HOGLE: Well--

16 MR. DODGE: I don't think--

17 THE WITNESS: I'm not an economist--

18 THE COURT: Pardon me.

19 Mr. Dodge, express your objection. Then we'll hear
20 from Ms. Hogle.

21 MR. DODGE: The objection is, A, I don't think this
22 is in response to anything Ms. Wright said. Secondly, it's just an
23 attempt to get in some testimony from their own witness that
24 they didn't get in. And thirdly, she says, "subject to check." But
25 what can be checked for that? Is she asking her to go run an

1 economic model or do an Excel spreadsheet and see what the
2 percentage would be? The Commission can do that on its own
3 if it wants to. But to have it put in this way is inappropriate.

4 THE COURT: Ms. Hogle.

5 MS. HOGLE: Yes, your Honor. Thank you.

6 It is common practice for the Company to, subject
7 to check, represent something to a witness. And if, indeed, the
8 Commission and the witness would want that to be checked and
9 for the Company to come back with the calculations, the
10 Company has, in the past and will again today, do that.

11 And this was in response to a question posed
12 earlier. This is in direct response to a question posed earlier
13 about what the total costs to build Dunlap were. And the
14 Company, as it has in the past, went back and calculated that
15 and has that number. That was a question that was asked, and
16 the Company is answering it and would be happy to provide the
17 calculation to the Commission and the parties immediately after
18 this proceeding--or maybe even during.

19 And therefore, the Company, again, would ask that
20 the witness answer the question.

21 THE COURT: Ms. Wright, are you able to answer
22 the question?

23 THE WITNESS: Would you rephrase the question?
24 Repeat the question?

25 Q. (BY MS. HOGLE:) Yes. Subject to check, based

1 on those two numbers, would you agree that, adjusted for
2 inflation, assuming two percent inflation per year, the total costs
3 to build a project similar to Dunlap in Wyoming would be in the
4 range of 13 to 15 percent lower now in real dollars?

5 A. To be honest, I'm not an economist, so I wouldn't
6 be able to check that. So I think you need to ask that to an
7 economist that could evaluate that appropriately.

8 THE COURT: I think you have your answer, Ms.
9 Hogle.

10 Q. (BY MS. HOGLE:) Okay. Well, let's turn to your
11 rebuttal testimony, pages 5 and 6, Lines roughly about 89
12 through 96, where you mention the Cedar Creek dispute.

13 A. Yes.

14 Q. Okay. You're familiar with that dispute--generally
15 familiar; otherwise, you wouldn't have quoted it. Is that correct?

16 A. I'm not familiar with all the details. I was familiar
17 with the ruling here, with the order.

18 Q. To be clear, to the best of your knowledge, was
19 that an enforcement action filed by Cedar Creek against the
20 Idaho Public Utilities Commission and not against Rocky
21 Mountain Power?

22 A. I'm not familiar with those details.

23 Q. Subject to check, would you accept--

24 A. Subject to check.

25 Q. Okay. So this was not a matter of Rocky Mountain

1 Power not meeting its obligation and refusing to sign a PPA,
2 correct?

3 A. Correct. I gave this as an illustration of why setting
4 specific timelines for contract signing could be harmful to
5 developers.

6 Q. Okay. Thank you. Let's go to your surrebuttal
7 testimony, page 4, Lines 59 through 61. I'd like you to read the
8 language that starts with, "It is my opinion."

9 A. On which line?

10 Q. On--

11 A. --on 50?

12 Q. Fifty-nine.

13 A. Fifty-nine. "It is my opinion that rate payers will
14 benefit more than they will be harmed by continuing use of the
15 market proxy method during the pendency of this docket."

16 Q. Have you performed any calculations demonstrating
17 what those benefits are?

18 A. I am intimately engaged in the integrated resource
19 planning process, and have been since, probably, the early
20 2000s. So I understand the cost-risk trade off that is included
21 in integrated resource planning.

22 And when the Commission issued the 2005 order
23 that had a wind market proxy method, they wanted a method
24 that would value the cost-risk trade off that wind power would
25 provide. So no, I did not--I have not undergone specific

1 analysis. But I understand that an integrated resource plan is a
2 plan that looks at cost-risk trade off.

3 I also recognize that the production tax credit may
4 not be around for, you know, very much more time into the
5 future. So projects that are not developed using the production
6 tax credit will ultimately, if they are developed, cost rate payers
7 more money. So this is--if we stopped rate development--I
8 mean, if we stopped--if we stopped the market proxy method,
9 which what I'm hearing from the developers is that it will
10 basically stop wind development in Utah, I feel that the rate
11 payers could be harmed. And that there's no evidence--they'd
12 be harmed by losing the risk mitigating benefits that they bring.
13 And I don't feel that the evidence that the Company put forth,
14 based on turbine pricing, is sufficient to say that the market
15 proxy method is completely out of line.

16 So no, I haven't done a calculated analysis. It is a
17 more policy analysis and looking at cost-risk trade offs.

18 Q. Okay. But you say, yourself, that the Company has
19 performed the calculation of what it believes customers would
20 pay?

21 A. It's what it believes, yes.

22 Q. Yes. And how much they would be harmed if
23 market proxy pricing was given to developers and they acted on
24 that pricing. Is that right?

25 A. It's what the Company believes, yes. I did not

1 agree with the calculation.

2 Q. Thank you. Okay.

3 MS. HOGLE: That's all I have. Thank you, your
4 Honor.

5 THE COURT: Any other cross-examination for Ms.
6 Wright?

7 Ms. Hayes, do you have any redirect?

8 MS. HAYES: No, thank you.

9 THE COURT: You are excused.

10 THE WITNESS: Thank you.

11 THE COURT: Thank you.

12 Mr. Vrba, do you solemnly swear that the testimony
13 you are about to give shall be the truth, the whole truth, and
14 nothing but the truth?

15 THE WITNESS: Yes, I do.

16 THE COURT: Please be seated.

17 Mr. Vrba, I know you don't have counsel with you
18 today. I have a document that is entitled "Rebuttal Testimony of
19 Ros Rocco Vrba." And that's spelled V-R-B-A, last name. It's
20 dated November 28, 2012. And I believe that constitutes your
21 prefiled testimony in this proceeding?

22 MR. VRBA: That would be correct.

23 THE COURT: And you prepared it?

24 MR. VRBA: Yes.

25 THE COURT: And do you desire to make any

1 corrections to it?

2 THE WITNESS: I do not.

3 THE COURT: So do you desire the Commission to
4 consider this as your sworn testimony?

5 THE WITNESS: Yes, please.

6 THE COURT: Okay. I'll mark it as LR Exhibit 1.
7 And is there any objection to it being received in
8 evidence?

9 So it will be received in evidence, Mr. Vrba.

10 (Prefiled LR 1 was received into evidence.)

11 THE COURT: Now, you may offer a brief summary
12 of your testimony. And then the counsel for the parties will
13 have an opportunity to ask you questions on your testimony.

14 ROS ROCCO VRBA, having been first duly sworn,
15 testified as follows:

16 TESTIMONY

17 BY-MR.VRBA

18 MR. VRBA: Thank you. In my summary of my
19 testimony, I recommend that the Commission denies Rocky
20 Mountain Power's Request for Stay. I believe that the wind
21 proxy method was a method approved by the Commission in
22 2005 docket, and has been arbitrarily changed to a different
23 method that was not approved by Utah Public Service
24 Commission that has a guiding tariff.

25 My testimony will also indicate that the Company's

1 decision to use PDDRR method will violate PURPA, and also will
2 discriminate against Utah developers. Utah developers,
3 especially those operating under Rocky Mountain Power,
4 provided wind proxy indication (phonetic) of submitting that
5 pricing to them. I feel that this would be very unfair. And if
6 accepted, it would be adopted in retroactive fashion and would
7 violate even Constitution of the United States. That's all.

8 THE COURT: Thank you. Any cross-examination
9 for Mr. Vrba? All right. Thank you.

10 MS. SCHMID: Could we go off the record for just
11 one moment?

12 THE COURT: We're off the record.

13 (A discussion was held off the record.)

14 MS. SCHMID: We do have just very, very brief.

15 THE COURT: On the record.

16 Ms. Schmid.

17 CROSS-EXAMINATION

18 BY-MS.SCMID:

19 Q. Thank you. Good afternoon, Mr. Vrba. I have just
20 a couple of questions regarding Exhibit 1 to your surrebuttal
21 testimony filed on December 7. And I can't remember if that
22 was admitted into the record or not. I know we did the
23 November 28, but--

24 THE COURT: It wasn't. And I apologize. I had it
25 misfiled in my binder and I overlooked it. So let's just tidy that

1 up for a moment, if I may.

2 Mr. Vrba, I apologize. You provided surrebuttal
3 testimony dated December 7?

4 THE WITNESS: Yes, I have. And I believe that
5 you are referring to the schedule attachment.

6 THE COURT: But before we get there, do you
7 desire that the Commission also receive this document entitled,
8 "Surrebuttal Testimony of Ros Rocco Vrba for Energy of Utah,"
9 dated December 7, 2012, as your testimony?

10 THE WITNESS: Yes, your Honor.

11 THE COURT: And without objection, it will be
12 received as LR Exhibit 2. I apologize for overlooking that, Mr.
13 Vrba.

14 (Prefiled LR Exhibit 2 was received into evidence.)

15 THE COURT: So now you, Ms. Schmid.

16 MS. SCHMID: Thank you.

17 Q. (BY MS. SCHMID:) With regard to Exhibit 1
18 attached to LR Exhibit 2, it appears that Exhibit 1 is a timeline
19 of certain meetings or requests and things like that. Is that fair?

20 A. The exhibit that you are looking at was our
21 guideline that was presented to our investors for the project,
22 under which they would loan us money and enter into some kind
23 of a term sheet.

24 Q. Okay. Thank you. On the left-hand side near the
25 top, there are items listed under "Long Ridge Wind Project

1 Schedule," "Original," "Milestones," "Verify Interconnection
2 Queue," "Confirm ATC with PacifiCorp," "Initiate Investor
3 Discussions," and so on and so forth, ending with "Investor Due
4 Diligence."

5 Were these things done with PacifiCorp
6 Transmission?

7 A. That would be correct.

8 Q. Thank you. Did you make formal requests for these
9 things with PacifiCorp Transmission?

10 A. Can you define "formal request"?

11 Q. Did you make written requests?

12 A. Is email considered written request?

13 Q. Yes.

14 A. Yes. That would be correct. Yes.

15 Q. Thank you. That's all from the Division.

16 THE COURT: Any other cross-examination?

17 Mr. Vrba, you are excused. Thank you.

18 THE WITNESS: I traveled for a long time. I can
19 take more questions, sir.

20 THE COURT: That's up to the lawyers.

21 Now, Mr. Millsap.

22 Do you solemnly swear that the testimony you are
23 about to give shall be the truth, the whole truth, and nothing but
24 the truth?

25 THE WITNESS: I do.

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THE COURT: Thank you. Mr. Millsap, as I understand it, you're a consultant to Mr. Vrba's firm, Energy of Utah and Long Ridge.

THE WITNESS: That's correct.

THE COURT: And you prepared testimony entitled, "Rebuttal Testimony of Robert Millsap for Renewable Energy Advisors, November 6, 2012." Is that correct?

THE WITNESS: Yes, that's correct.

THE COURT: And do you intend the Commission to receive this as your sworn testimony today?

THE WITNESS: Yes, thank you.

THE COURT: We'll call this Exhibit LR 3.

Is there any objection to receiving this in evidence?
It will be received.

(Prefiled LR Exhibit 3 was received into evidence.)

THE COURT: And Mr. Millsap, would you like to provide any summary to your testimony?

THE WITNESS: If I could just read the last paragraph to my testimony, that would be fine.

THE COURT: All right.

ROBERT MILLSAP, having been first duly sworn, testified as follows:

DIRECT TESTIMONY

BY-MR.MILLSAP

"Despite our experience today, I'm convinced that a

1 fairly-implemented, qualifying facility process can produce Utah
2 projects that meet PURPA guidelines. Constructive cooperation
3 between rate payers, the Company, QF developers, and our
4 communities can provide significant, tangible benefits for all
5 parties. I hope we'll have the opportunity to demonstrate this
6 potential. And I'm grateful for the Commission's consideration
7 of this matter."

8 THE COURT: Thank you. Does anyone have
9 cross-examination for Mr. Millsap?

10 No cross-examination. Then you are excused. I
11 hope you didn't travel too far, Mr. Millsap.

12 Mr. Dodge.

13 MR. DODGE: Thank you. Ms. Mikell needs to be
14 sworn.

15 THE COURT: Do you solemnly swear that the
16 testimony you are about to give shall be the truth, the whole
17 truth, and nothing but the truth?

18 THE WITNESS: I do.

19 THE COURT: Thank you. Please be seated.

20 CHRISTINE MIKELL, having been first duly sworn,
21 was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY-MR.DODGE:

24 Q. Could you state your name and on whose behalf
25 you're testifying.

1 A. Sure. My name is Christine Mikell, and I work for
2 Wasatch Wind.

3 Q. Ms. Mikell, did you cause to be filed in this docket
4 direct testimony, rebuttal, and surrebuttal?

5 A. I did.

6 Q. And can do those--does that prefiled testimony, all
7 three versions, does that reflect your testimony here in this
8 proceeding today?

9 A. It does.

10 Q. Do you have any changes you want to make to any
11 of it?

12 A. I do not.

13 Q. Do you have a summary you'd like to provide?

14 A. I would.

15 Q. Please proceed.

16 A. Okay.

17 Q. Excuse me, before you do.

18 MR. DODGE: Judge, could I move the admission of
19 the Wasatch Wind Exhibits Stay 1.0, 1R and 1SR?

20 THE COURT: Yes. Just for consistency, I'm going
21 to mark them WW Exhibit 1, WW Exhibit 2, and WW Exhibit 3 so
22 that they'll follow the system that I've been using with the
23 others. Thank you, Mr. Dodge.

24 MR. DODGE: Thank you.

25 THE COURT: And are you offering them at this

1 point?

2 MR. DODGE: Yes, I'd like to offer them at this
3 point.

4 THE COURT: Is there any objection to these being
5 received in evidence? They're received. (WW Exhibits 1, 2,
6 and 3 were received into evidence.)

7 MR. DODGE: Thank you.

8 Q. (BY MR. DODGE:) Now would you proceed with
9 your summary, please?

10 A. I will. Thank you. Some of you I know in the
11 audience and some of you I don't. So I've been working for
12 Wasatch Winds since 2004. I was part of the '05 docket. And I
13 led the development of Spanish Fork Wind Farm, which is the
14 first commercial QF wind project in the state. I might add that
15 there has not, as many--maybe all of us--know, there has not
16 been a subsequent QF contract signed and a project in the
17 ground since then.

18 So I mention that because in my testimony--I guess
19 during the day, I've heard Mr. Clements testify that there could
20 be an impact to rate payers of \$186 million if all the projects in
21 the queue were built. And I guess, based on past experience
22 and what I believe to be future, I don't believe that we'll see a
23 186 million effect to rate payer. I think if we find one project
24 that can be built in the next year or two if the PTC gets
25 extended, that will be a win for rate payers. Even with the

1 pricing at about \$59, it's very hard to make a project work.

2 If I could just speak a little bit about our project,
3 which is, in fact, in the queue. We have been working on the
4 Monticello project since 2006. More specifically, I've been
5 working with the county and the city there since 2001. We have
6 put up met towers, we've negotiated land leases. We have our
7 interconnection agreement in draft form. It's ready to be signed.
8 We have our county permits. We basically have a project that's
9 ready to go, subject to some eagle take permits and other
10 actions like that.

11 So during this process, developing a wind project is
12 very difficult. It's complex. It's very risky.

13 At one point in 2011, we had asked PacifiCorp for a
14 PPA. Subsequent to that request, we found out that the FAA
15 told us that we couldn't put the turbines there. We were too
16 close to an airport. With that decision, we had to stop the
17 development. We stopped spending money, until that later
18 spring of 2012 we found out that the FAA actually approved
19 those turbines. And we were ready to go.

20 Decisions like that, essentially, stop development.
21 It's not worth our development time and money to continue the
22 development in extreme risk. For us, we understand those risks
23 occur and then we adjust for them.

24 One risk that we didn't account for, though, was
25 with the pricing. When this--when the market proxy pricing

1 came out--and we've read the order. We understand that.
2 That's based on an RFP. We can look down into the future. We
3 know if an RFP is coming out. We know that there wasn't going
4 to be an RFP, so we knew the pricing was going to be at about
5 \$60.

6 Then the second issue with that order talks about
7 the fact that if the IRP target is met, then that pricing will go
8 away.

9 But at no point in this process have we seen
10 anything from PacifiCorp. And I just might add for the record
11 that we appreciate PacifiCorp. We work well with them in
12 Wyoming and other states. And we appreciate their business.
13 So this is nothing against Paul or anything. But just from a
14 process perspective, what we had expected was that if the
15 methodology was changed, that there would have been
16 something sent to the Commission that said, "The methodology
17 has changed."

18 Because at that point, that sends a signal to us.
19 You know, if it's not going to--if the pricing is going to go down
20 to \$48, in our case we'll stop development. But at no point was
21 that ever communicated to us. If we had hit the IRP target,
22 which we may have hit, but we don't know that, that's another
23 indication that the pricing will change and we'll stop
24 development.

25 But if there is no process, the developer can--you

1 know, just assumes that things will go on as they were. And
2 that pricing that they've expected of \$60, it will make the project
3 work, they'll continue development.

4 So if the stay is agreed to, our project will halt
5 development, just like it's done before. And when it halts, that
6 means we won't continue our surveys, our environmental
7 surveys in the spring. And if the Commission approves the
8 pricing and it, in fact, becomes \$60 again come June, we're
9 going to have to continue those spring surveys. Well, we've
10 missed the window. We won't be able to conduct those surveys.
11 And we won't be able to start construction because construction
12 is dependent on those surveys which tell you where the turbines
13 are. So we won't be able to get this project in the ground by
14 2014 and find a financial partner.

15 So, essentially, by committing to this stay, this
16 project will die, from our perspective. We won't be able to hit a
17 PTC window. We won't be able to start construction. We'll stop
18 our development. We will not do the surveys we need to do to
19 get this project on the ground and potentially get an eagle take
20 permit.

21 So I just mention that because, while I appreciate
22 PacifiCorp's position and I understand we don't have these
23 impacts to rate payers, I think it's important that we all
24 acknowledge there should be a process, so that we, as a
25 developer, can follow it and understand the risks and protect our

1 investments.

2 At this point, with this stay, I cannot consciously go
3 to my investors and say, "Spend this money and let's risk it
4 again."

5 And then I guess the last thing I would point out,
6 the Division has stated that if they deny the stay, or if they
7 grandfather us in that, potentially, as long as we sign our PPA
8 by, say, next September, we'll be able to keep that pricing.

9 I just want to say that deadlines based on
10 potentially arbitrary dates are not helpful to us. If the PTC is
11 extended, we would have to start construction by the end of the
12 year. And I think that dates, such as construction and those
13 sorts of things, should be, maybe, weighed more heavily than
14 this negotiation with the utility on a PPA.

15 And finally, the Blue Mountain order, we feel like
16 we are in the same position as Blue Mountain. We didn't make
17 a complaint or request an agency decision. But from our
18 perspective, we're no different than Blue Mountain. We're in the
19 same position. We, perhaps, could be in a further position with
20 our interconnection agreement ready to be signed. So I would
21 ask that that point be considered.

22 And that ends my summary.

23 THE COURT: Thank you.

24 MR. DODGE: Thank you. Ms. Mikell is available
25 for cross-examination.

1 THE COURT: Cross-examination for Ms. Mikell?

2 MS. HOGLE: Just a few questions, your Honor.

3 THE COURT: Ms. Hogle.

4 CROSS-EXAMINATION

5 BY-MS.HOGLE:

6 Q. Ms. Mikell, you just mentioned that halting or
7 staying the market proxy pricing methodology right now would
8 have--would kill the project, essentially, is what you stated. And
9 that's what you said in your testimony.

10 The Company sent you indicative pricing, I believe,
11 four times, the last one being in June 2012. Is that right?

12 A. (The witnesses nodded her head in the affirmative.)

13 Q. And that pricing was based on the PDDRR method,
14 correct?

15 A. That's right.

16 MR. DODGE: Excuse me, Ms. Mikell, you need to
17 answer out loud.

18 THE WITNESS: I was shaking my head "yes."

19 Q. (BY MS. HOGLE:) And seven months,
20 approximately, have passed since the last time that you
21 received indicative pricing based on the PDDRR method from
22 the Company, correct?

23 A. From June until today?

24 Q. From June until today.

25 A. Yes, subject to my calculating it in my head.

1 Q. Sure. Sure. And has that had--

2 A. I think it's five months, though. I don't think it's
3 seven.

4 Q. Six--five or six months. Okay.

5 Has that had any devastating effects or halted or
6 interrupted your project in any way?

7 A. Well, I think between--the communications that
8 have occurred between Blue Mountain and the Commission's
9 order and the conversations we've had with the Company stating
10 that they were going to give us a re-pricing, we felt confident in
11 that communication and honesty in that communication that it
12 wouldn't halt it.

13 At this point in the project stage, the next big
14 expense for us is continuing to do these eagle surveys and
15 getting an eagle take permit. We're in the--over hundreds of
16 thousands of dollars to do those things. We haven't had to hit
17 the "go" button on that yet. That is something we'll be doing in
18 the spring. So this decision will make--we will determine
19 whether to do that based on this decision.

20 So have we halted? No, but we've certainly slowed
21 down, just based on where we are in the development cycle.

22 Q. Aren't there many factors determining whether wind
23 projects will go forward? For example, you mentioned the
24 extension of the federal protection tax credit, fluctuating turbine
25 prices, financing requirements that are probably tighter now

1 than they were. And it's not solely the decision based on--in
2 this docket or the decision from this docket that could have an
3 effect on your decision to go forward or not. Is that correct?

4 A. No, that's not correct. The paramount, sort of the
5 Holy Grail is the pricing that we get from the utility for a project.
6 If it's \$60, we'll do our best to make it work. If it's \$48, we know
7 it won't work. Those other things, we have very good visibility
8 on. They fluctuate a bit. But there aren't a lot of projects that
9 are going to be built in the 2013/2014 project. Our project is
10 positioned to be built in that time frame at the appropriate price.

11 Q. Assuming that there is--that there isn't a stay in
12 this proceeding. If the production tax credit does not get
13 extended in 2013, wouldn't that halt your project?

14 A. It could potentially halt it.

15 Q. Isn't it true that that would have probably an effect
16 of shedding about \$20 per megawatt of--

17 A. I don't think that you can separate the two. They
18 coincide together. You need both of them to make it work.

19 Q. Okay. I'd like you to turn to your rebuttal
20 testimony, page 1, Lines 13 and 14.

21 A. I'm sorry, what page?

22 Q. Page 1, I believe Lines 13 and 14, where you
23 essentially say that a stay is not in the public interest. Is that
24 correct?

25 A. Let me read it, please.

1 Yes.

2 Q. Okay. You were here when it was--several people
3 testified--several parties testified, that the market proxy pricing-
4 -and you know this yourself--is based on the Dunlap Wind
5 Project, which was developed in 2009--or at least went online.
6 Is that right? Did it go online in 2009?

7 MR. CLEMENTS: The decision to move forward
8 was--

9 Q. (BY MS. HOGLE:) Okay. The decision to move
10 forward was made in 2009.

11 And do you agree generally that the prices for wind
12 turbines have gone down since 2009?

13 A. Well, if I look at PacifiCorp's RFP, I would say no.

14 Q. Were you here when I crossed Ms. Wright about
15 that?

16 A. I was, yes.

17 Q. Okay. And did you hear that, assuming the total
18 cost for Dunlap now to be a certain price, \$2238, I think--or
19 actually, 2100--\$2260/kW, it would be cheaper to build a project
20 similar to Dunlap now than it was in 2009?

21 A. And that is a great question. And I heard you ask
22 that of Ms. Wright. And I'm glad you're asking me that question.
23 Because when you determine the cost of wind, you certainly
24 take into account the cost of the turbines. But you also must
25 take into account the balance of plant. The balance of plant is

1 based on how much it costs to construct the project, how much
2 the transmission line will cost, how much the interconnection will
3 cost. So you're asking me to make an estimate of the total cost,
4 based on a site that's an unseen.

5 I mean, I can have a great wind site, and it could
6 be very difficult to build, with long transmission lines. That can
7 affect that price tremendously.

8 Q. Okay. So in your opinion, have prices come down
9 since 2009--turbine prices, the cost of turbine prices just
10 generally?

11 A. Just generally? I guess so.

12 Q. Okay. And turbine costs are a component of the
13 market proxy pricing. Is that correct?

14 A. That is.

15 Q. Okay. So then isn't it true that the currently
16 effective market proxy pricing includes prices for turbines that
17 are too high?

18 A. Well, again, I mean, it's all site dependent. It was
19 not based on the Dunlap project. I mean, if PacifiCorp were to
20 go out for an RFP today, who knows where that project would be
21 built? Projects that were built when Dunlap was built are the
22 low-hanging projects. So you're not--who knows?

23 MS. HOGLE: That's all I have. Thank you, your
24 Honor.

25 THE COURT: Thank you, Ms. Hogle.

1 Any other cross-examination.

2 MS. SCHMID: The Division has just a few
3 questions.

4 THE COURT: Ms. Schmid.

5 MS. SCHMID: Thank you.

6 CROSS-EXAMINATION

7 BY-MS.SCHMID:

8 Q. Good afternoon.

9 A. Hi.

10 Q. Given no change in pricing, which means the 2009
11 pricing would still apply, when does Wasatch Wind expect to get
12 a signed PPA with PacifiCorp?

13 A. Well, assuming the price stays, assuming the PTC
14 gets extended, we would then go out to find a financial partner,
15 somebody that could finance the construction and go in and
16 operate the project. We would get that financial partner and
17 then go to PacifiCorp and start negotiations on a PPA.

18 Q. Do you have any idea how long it might be before
19 you have a signed PPA in hand?

20 A. Well, we have negotiated three contracts with
21 PacifiCorp. There are provisions of that contract that are
22 difficult for us to agree to. So I can't ascertain or come to--I
23 don't know how long it would take to enter into those
24 negotiations and how long it would take to finalize those. There
25 are definitely some issues that, you know, we may have to come

1 to this body and request some help with.

2 Q. Is a signed--is a PPA required before Wasatch
3 Wind begins construction?

4 A. It is.

5 Q. Thank you. Those are all my questions.

6 THE COURT: Any other cross-examination?
7 Redirect, Mr. Dodge?

8 MR. DODGE: I have no redirect. Thank you.

9 THE COURT: Thank you, Ms. Mickell.
10 Ms. Schmid.

11 MS. SCHMID: The Division would like to call Mr.
12 Charles Peterson as its witness.

13 Could Mr. Peterson please be sworn?

14 THE COURT: Do you solemnly swear that the
15 testimony you are about to give shall be the truth, the whole
16 truth, and nothing but the truth?

17 THE WITNESS: Yes.

18 THE COURT: Thank you. Please be seated.

19 CHARLES PETERSON, having been first duly
20 sworn, was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY-MS.SCHMID:

23 Q. Good afternoon.

24 A. Hello.

25 Q. Could you please state your name, by whom you

1 are employed, position, and business address for the record.

2 A. Yes. My name is Charles E. Peterson, S-O-N on
3 Peterson. I work for the Division of Public Utilities as a
4 technical consultant. And the address is the Heber Wells
5 Building, Fourth Floor, Salt Lake City, Utah.

6 Q. Thank you. Have you participated on behalf of the
7 Division in this docket?

8 A. Yes.

9 Q. Did you prepare and file testimony that has been
10 premarked for identification--and I will ask that it be marked for
11 real with a different number. So it would be your direct
12 testimony, which we marked as DPU Exhibit 1.0D, that was filed
13 on November 30, 2012. And I would like to refer to it, if we
14 may, as DPU Exhibit 1.

15 A. Yes, I filed that.

16 Q. Did you file rebuttal testimony, premarked as DPU
17 Exhibit 1.0R--and I'll ask to have it marked as DPU Exhibit 2
18 here--and file that on December 7, 2012?

19 A. Yes.

20 Q. Finally, did you prepare and file what's been
21 marked as DPU Exhibit No. 1.0SR--and which I'd ask to have
22 marked as DPU Exhibit 3 for purposes here--your surrebuttal
23 testimony, and file that on December 11, 2012?

24 A. Yes.

25 Q. Do you have any changes or

1 corrections--

2 A. No.

3 Q. --to that testimony?

4 If I were to ask you the questions today, would your
5 answers be the same as in your written testimony?

6 A. Yes.

7 Q. With that, the Division moves for the admittance of
8 Mr. Peterson's direct, rebuttal, and surrebuttal testimony, which
9 have been marked as DPU Exhibit 1, DPU Exhibit 2, and DPU
10 Exhibit 3 respectively.

11 THE COURT: Any objection? They're received.
12 (Prefiled DPU Exhibits 1, 2, and 3 were received into evidence.)

13 MS. SCHMID: Thank you.

14 Q. (BY MS. SCHMID:) Mr. Peterson, do you have a
15 brief summary?

16 A. Yes, I do.

17 Q. Please proceed.

18 A. The DPU believes that the wind QF methodology
19 needs to be reviewed. The reasons for this is that whatever the
20 outcome is, the 2009 Dunlap project deal is getting dated. And
21 the Division believes that such pricing mechanisms need to be
22 updated at least annually, if not more often.

23 Secondly, the market proxy method, as we've been
24 calling it, was predicated on an IRP scenario that does not
25 appear to exist any longer; that is, that the Company was

1 expected at the time to issue requests for wind projects on a
2 fairly regular basis annually, or at least every two years for a
3 number of years into the future. And as we know, that has come
4 to an end.

5 And so for that reason, too, the methodology needs
6 to be reviewed.

7 In September, the Commission issued an order in
8 the Blue Mountain docket that established the market proxy
9 method for Blue Mountain. And, given the possibility that that
10 could create discriminatory treatment between Blue Mountain
11 and other similarly-situated wind developers, the Division
12 believes that that issue needs to be clearly addressed as well.

13 The Division believes that Schedule 38, which is
14 the guiding tariff in this docket, does not contemplate that
15 indicative prices will not change before contract signing. And
16 therefore, that's one of the risks the developer faces, that
17 pricing will change for one reason or another before the PPA
18 contract is finally signed.

19 However, there does need to be a balance between
20 customer interest--or the public interest of customer indifference
21 that's mandated under the PURPA, as I understand it, and the
22 avoided costs that developers are receiving and their interests
23 in being able to move forward with their projects in a reasonable
24 fashion.

25 The Division, therefore, recommends that projects

1 that reasonably might be ready to sign a PPA between now and
2 the date after the Commission decides the new--possibly new--
3 wind QF pricing methodology in this docket going forward, that
4 they should get the current methodology; that is, the Dunlap
5 pricing methodology.

6 The Division does not believe, however, that this--
7 the availability of this pricing should go on indefinitely. And we
8 have suggested that a cutoff date of September 1, 2013, be
9 implemented. September 1 is not necessarily a line cast in
10 stone, but it is approximately 90 days after the hearing in this
11 docket for determining methodology, and possibly 60 or so days
12 following the issuance of a Commission order. Therefore, that
13 would give a developer the possibility of deciding which
14 methodology they would prefer to be priced under, which could
15 potentially be the new methodology, should there be any.

16 The Division, however, supports a stay for those
17 QFs that are not currently in the queue. The reasoning there is
18 that these QFs, or potential developments, have almost no
19 chance of being anywhere far enough along by the time the
20 Commission issues its final decision and order in this docket.
21 They should get--they should then be subject strictly to the new
22 pricing and--again, should there be new pricing. The possibility
23 exists, of course, the Commission could just sustain the current
24 methodology and pricing.

25 Looking at my notes, I think that pretty well sums

1 up the Division's position.

2 MS. SCHMID: Thank you. Mr. Peterson is now
3 available for cross-examination and questions from the hearing
4 officer.

5 THE COURT: Thank you, Ms. Schmid.
6 Cross-examination for Mr. Peterson?
7 Mr. Dodge.

8 MR. DODGE: We can't let him get off that easy.

9 CROSS-EXAMINATION

10 BY-MR.DODGE:

11 Q. Mr. Peterson, with respect to your proposed cutoff
12 date--and I appreciate what you say and the basis for it, and
13 that you said it's not cast in stone.

14 Would you agree that whatever date is chosen, if
15 one is, it shouldn't be a hard-and-fast date, regardless of
16 circumstances? And let me give you an example.

17 If the project were all done but signing of the
18 contract, and one of the parties simply chose not to by that date
19 and that was the sole reason it went past, you'd probably agree
20 that's not reasonable to allow that to cut off the funding--or the
21 pricing. Is that a fair statement?

22 A. I think I would accept that, yes. If we're talking
23 about a few days or a week, or maybe even a month. But if it
24 gets to be an issue of months and months past some cutoff date
25 or some date certain, I mean, a date certain could conceivably

1 might be when the Commission orders new methodology.

2 But the principle that the Division is trying to
3 emphasize is that at some point, there's got to be an end to the
4 pricing. And we think that it's reasonable to grandfather in--I
5 think that term's been used in this hearing today--grandfather in
6 those projects that are well under way and are meaningful and
7 not--and have, you know, something going on, other than a--

8 (Cell phone interruption.)

9 Q. (BY MR. DODGE:) Sorry. I thought it was off.

10 A. Aren't you in contempt now?

11 Q. On TV, I would be.

12 A. But to answer your question directly--

13 THE COURT: Mr. Peterson, I'm in charge of the
14 hearing.

15 THE WITNESS: Oh, sorry. I didn't say he was in
16 contempt. I suggested that he might
17 be--no.

18 To answer your question, certainly if there's--if
19 you're getting right up to the deadline, say September 1, and
20 there's a delay for a couple of days, I think that should certainly
21 be able to be brought before the Commission and be handled--
22 however you want to describe it.

23 Q. Today in the schedule, there's no absolute
24 deadline, correct? In other words, Schedule 38 doesn't spell out
25 how long the pricing is good for. It says nothing's final until the

1 Commission approves it. But it doesn't really spell out, does it,
2 at what point indicative pricing or methodology might change if it
3 goes too long. Is that your reading of the schedule?

4 A. Well, I read the schedule as saying that the
5 Company will--that the Company will update the avoided costs
6 on a periodic basis when appropriate. And I think that typically
7 the Company has done that quarterly as it produces its new
8 forward price curve.

9 But as far as that isn't in the Schedule 38 itself,
10 specifying how often or what is the appropriate frequency, it's
11 really left up to the Company's discretion as to what's
12 reasonable.

13 Q. Do you think that might be an issue that ought to be
14 dealt with in the second phase, parameters around how long a
15 developer can rely on a given pricing methodology, at least?

16 A. Well, I'm sure that's something that parties might
17 be interested in bringing up. I wouldn't preclude it.

18 Q. And you've seen in this docket the two developers
19 who spent the time and effort and money to come here and
20 challenge the stay. Both have projects with timelines that would
21 have development completed by about the end of 2014. And
22 you've seen testimony that it's about a year or so to construct.
23 So it would have construction starting, roughly, by the end of
24 2013. And you've also seen testimony, I believe, that those are
25 the expected deadlines for the production tax credit, if it gets

1 extended for a year.

2 Do you think that might be a reasonable cutoff type
3 of approach the Commission could use to--if they choose to
4 adopt one--to tie it around deadlines for construction and
5 completion, similar to what the production tax credit does?

6 A. Well, of course, as we've just heard from Ms.
7 Mickell, the company--Wasatch Wind or a developer needs a
8 PPA contract in the hand before it can break ground. And so if
9 you're saying that the project needs to be in the ground and up
10 and running by, say, around the end of 2014, and it takes
11 approximately a year, then you're back approximately to my
12 cutoff date.

13 But if you're saying that you want to bump forward
14 the September 1 date a few months to January 1, 2014, for the
15 PPA, and December 31, 2014, for being operational, I don't
16 think the Division would have any big dispute about that.

17 Again, the principle is, is we're trying to establish a
18 cutoff, where there's known parameters, the parties can--with a
19 known cutoff, the parties can plan for that to the extent that they
20 can.

21 I would note that earlier in the famous--or
22 infamous--03-514 docket, there was an interim pricing that was
23 put into effect. And that was just given a rather ambiguous
24 deadline of whenever the Commission issues a new order. So
25 at least, under the Division's proposal, there would be a date

1 certain that people could plan around.

2 Q. Thank you. I have no further questions.

3 THE COURT: Any other cross-examination for Mr.
4 Peterson?

5 I have a question or two, perhaps.

6 CROSS-EXAMINATION

7 BY-THE COURT:

8 Q. I'd invite your attention to your direct testimony,
9 beginning with Lines 94. Let me give you a minute to turn to it.

10 A. Okay.

11 Q. So here you're addressing the question, "Does the
12 Division support the need for a reexamination of the
13 methodology for WQFs?" And you provide your answer there.

14 And I just would like you to discuss this answer in a
15 little detail in relation to the cross-examination exhibit that's
16 UCE Cross No. 2, which is an excerpt from the "2013 Integrated
17 Resource Plan, Supply-site Resource Options," with the date
18 October 31, 2012, and these base case costs for wind.

19 So I'm asking to you discuss this data in relation to
20 the possible cost differential that you refer to in your answer in
21 your direct testimony.

22 A. Well, at this point, I'm not--first of all, I'm not
23 certain how the Company estimated these wind prices. But I
24 would point out that they are hypothetical, in any case.

25 Whether you think they're good estimates or not so good, they

1 are, nevertheless, hypothetical.

2 The Commission decision for the market proxy
3 method anticipated an RFP issued by the Company and--which
4 these are not those prices. They're basically placeholders.

5 And so at this point, the Division's position is that
6 we are not in a position to say whether, if the Company were to
7 issue a new RFP right now, whether the prices would be
8 markedly higher or lower. However, as Ms. Mickell pointed out,
9 a lot of it is location specific, which also raises a question, in
10 my mind at least, about the use of a--of this market proxy, which
11 appears to be based upon a specific location, and then trying to
12 apply that broadly to a more general QF.

13 But I think the issue that--the question that comes
14 into mind for the Division does still remain, what the proper role
15 of the IRP proxy resources should be in a QF contract. And I
16 think those are issues that need to be reexamined, again, in
17 view of the fact that the Company, in recent years, has
18 determined that periodic frequent wind RFPs are not in order.

19 I don't know if that fully answers your question. But
20 if not, follow up.

21 THE COURT: Thank you, Mr. Peterson. I
22 appreciate your response.

23 If there are no questions based on mine, I think
24 we're at least close to adjournment.

25 Is there any other matter that needs to come before

1 the Commission before we adjourn?

2 MS. SCHMID: Just to state that the Division has no
3 redirect, perhaps.

4 THE COURT: Oh, pardon me.

5 MS. SCHMID: That's okay.

6 THE COURT: Thank you, Ms. Schmid. I would
7 hate to deprive you of that opportunity. All right.

8 Well, you're excused, Mr. Peterson.

9 And that concludes our hearing today. Thank you
10 all for participating.

11 MS. SCHMID: Thank you.

12 MS. HOGLE: This is a little late, and I 1
13 apologize, since the record's closed. But does the Commission-
14 -does your Honor know approximately when a decision will be
15 rendered in this Phase 1 of this docket, given the urgency of the
16 matter?

17 THE COURT: I don't know.

18 MS. HOGLE: Okay.

19 THE COURT: I don't know how to inform you better
20 than just to say, "I don't know."

21 MS. HOGLE: Thank you.

22 (The matter concluded at 2:17 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.

Michelle Mallonee, RPR, CSR