

1 **Q. Are you the same Paul H. Clements who submitted direct testimony on**  
2 **behalf of the Company in this phase of the proceeding?**

3 A. Yes.

4 **Q. What is the purpose of your rebuttal testimony?**

5 A. My rebuttal testimony responds to the direct testimony submitted by other parties  
6 in this phase of the proceeding, including direct testimony submitted by  
7 Mr. Abdinasir M. Abdulle, Ph.D. on behalf of the Division of Public Utilities  
8 (“Division” or “DPU”); Ms. Sarah Wright on behalf of Utah Clean Energy  
9 (“UCE”); and Mr. Luigi Resta on behalf of Scatec Solar of North America  
10 (“Scatec Solar”). Specifically, I respond to issues related to renewable energy  
11 certificate (“REC”) ownership for renewable qualifying facilities (“QFs”) larger  
12 than three megawatts. Company Witness Mr. Gregory N. Duvall will respond to  
13 issues surrounding the methodology for calculating avoided cost pricing for  
14 renewable QFs larger than three megawatts.

15 **Q. Please summarize your rebuttal testimony.**

16 A. First, I show that the issue of ownership of RECs for QF contracts is not  
17 addressed in the Public Utility Regulatory Policies Act (“PURPA”), but is instead  
18 an issue that is properly addressed by individual states. Thus, as we have  
19 proposed in this proceeding, the Commission has the authority to adopt the  
20 Company’s proposal that RECs go to the utility. Second, I demonstrate that the  
21 Company’s proposal is compliant with PURPA and does not contradict the  
22 Commission’s decision in Docket No. 10-035-15 regarding Cottonwood Hydro,  
23 LLC (“Cottonwood Hydro”).

24 **Q. Division witness Dr. Abdulle states that the obligation to purchase the power**  
25 **from renewable resources was established under PURPA in 1978 long before**  
26 **the market for RECs was established.<sup>1</sup> Do you agree?**

27 A. Yes. PURPA was established in 1978 in response to the national energy crisis and  
28 was intended to lessen the country's dependence on oil and encourage the  
29 development of domestic renewable energy alternatives. The encouragement of  
30 renewables came in the form of the must-purchase provision wherein a utility was  
31 required to purchase the energy produced by the QF at its avoided cost. PURPA is  
32 silent on REC s because RECs did not exist when it was drafted. The creation of  
33 RECs is primarily rooted in state renewable portfolio standards ("RPS") which  
34 first began to develop around 1995, almost two decades after the creation of  
35 PURPA.

36 **Q. Dr. Abdulle then states that conveyance of RECs to the utility under a QF**  
37 **contract at solely avoided costs would be a violation of PURPA.<sup>2</sup> Do you**  
38 **agree?**

39 A. No. FERC has made it clear that RECs "exist outside the confines of PURPA.  
40 PURPA thus does not address the ownership of RECs."<sup>3</sup> Since PURPA does not  
41 address the ownership of RECs, the Commission's determination regarding  
42 ownership of RECs will not violate PURPA.

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<sup>1</sup> Direct Testimony of Abdinasir M. Abdulle, page16, lines 292-294.

<sup>2</sup> Direct Testimony of Abdinasir M. Abdulle, page17, lines 312-314.

<sup>3</sup> *American Ref-Fuel Company, Covanta Energy Group, Montenay Power Corporation, and Wheelabrator Technologies Inc.*, , 105 FERC ¶ 61,004, at ¶ 61,007 (October 1, 2003).

43 **Q. Having confirmed that PURPA does not dictate ownership of RECs, has**  
44 **FERC provided guidance on who determines the issue of REC ownership?**

45 A. Yes. FERC has directed that “States, in creating RECs, have the power to  
46 determine who owns the RECs in the initial instance, and how they may be sold  
47 or traded; it is not an issue controlled by PURPA.”<sup>4</sup> FERC further elaborates on  
48 the states’ authority on this issue by stating that because “RECs are state-created,  
49 different states can treat RECs differently.”<sup>5</sup>

50 **Q. Does the testimony of other witnesses in this docket support your position**  
51 **that the issue of REC ownership in QF contracts is a state issue and the**  
52 **Commission has the authority to set policy on this issue?**

53 A. Yes. Scatec Solar witness Mr. Resta states “FERC recognized that state law – not  
54 PURPA – created the concept of RECs, and therefore can determine who owns  
55 them and how they are sold.”<sup>6</sup> UCE witness Ms. Wright states “PURPA is a  
56 federal statute, but RECs are creations of state policy objectives. States determine  
57 what resources are able to generate RECs and for what policy ends...”<sup>7</sup>

58 **Q. Do recent commission decisions regarding REC ownership in large QF**  
59 **contracts in surrounding PacifiCorp states support your position that RECs**  
60 **generated by QFs should be retained by the Company?**

61 A. Yes. The Public Service Commission of Wyoming determined in a November  
62 2011 order that “RMP [Rocky Mountain Power] should continue to retain the

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<sup>4</sup> *Id.*

<sup>5</sup> *American Ref-Fuel Company, Covanta Energy Group, Montenay Power Corporation, and Wheelabrator Technologies, Inc.*, 107 FERC ¶ 61,016 at fn.4 (April 15, 2004).

<sup>6</sup> Direct Testimony of Luigi Resta, page 5, lines 20-21.

<sup>7</sup> Direct Testimony of Sarah Wright, page 34, lines 555-557.

63 RECs” and that “RECs should stay with the utility.”<sup>8</sup> The Idaho Public Utilities  
64 Commission determined in a May 6, 2013 order that RECs from large QFs “be  
65 apportioned equally between the utility and the QF.”<sup>9</sup> In both instances, the  
66 commissions found it was in the public interest that RECs from PURPA contracts  
67 go to the utility with no additional compensation to the QF. Furthermore, in  
68 California, pursuant to Section 399.21(a)(5) of the California Public Utilities  
69 Code, RECs from QFs go to the utility and count towards the RPS requirements  
70 of the utility.

71 **Q. If the Commission determines RECs from Utah QFs go to the Company,**  
72 **could those RECs be used to meet the Company’s Utah renewable portfolio**  
73 **target established pursuant to Utah Code Ann. § 54-17-602?**

74 A. Yes.

75 **Q. Utah Clean Energy witness Ms. Wright stated in her direct testimony that**  
76 **renewable QFs would be paid less for energy and capacity than a**  
77 **cogeneration QF under the Company’s proposal.<sup>10</sup> Is this accurate?**

78 A. No. As described in the testimony of Company witness Mr. Duvall, under the  
79 Company’s proposed methodology for avoided costs, the price paid for capacity  
80 and energy to a renewable QF is no different than the price paid to a cogeneration  
81 QF.

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<sup>8</sup> Public Service Commission of Wyoming Docket No. 20000-388-EA-11, order, page 20 (November 4, 2011).

<sup>9</sup> Idaho Public Utilities Commission Case No. GNR-E-11-03, Order No. 32802, page 26 (May 6, 2013).

<sup>10</sup> Direct Testimony of Sarah Wright, page 35, lines 576-579.

82 **Q. Since the price is the same, is Ms. Wright’s assertion that the Company’s**  
83 **proposal is discriminatory and prohibited by PURPA accurate?**

84 A. No. The Company’s proposal is compliant with PURPA.

85 **Q. Scatec Solar witness Mr. Resta asserts that the Company’s position is not**  
86 **consistent with the Commission’s decision in Cottonwood Hydro. Is this**  
87 **accurate?**

88 A. No. Docket No. 10-035-15 addressed the treatment of RECs specific to a  
89 particular contract between the Company and Cottonwood Hydro, LLC. In that  
90 contract, no language clearly establishing REC ownership was included.  
91 Therefore, the parties had a dispute over who could claim ownership of the RECs  
92 in that particular contract. The Commission determined in the context of  
93 reviewing a specific contract that the RECs under that contract did not  
94 automatically transfer to the utility. However, it was clear that this determination  
95 was made “absent a contract providing otherwise” and “unless provided for  
96 otherwise in a contract.” Therefore, it is clear that the Cottonwood Hydro docket  
97 interpreted an existing contract and the order did not claim to establish a general  
98 policy relative to the ownership of RECs. The Commission could certainly adopt  
99 the Company’s proposal that large QF contracts include explicit contract terms  
100 and contract language that state RECs from large QFs are owned by the utility,  
101 and such a decision will not contradict the order in Docket No. 10-035-15.

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

103 A. Yes.