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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** **Phase 2** **All Other Issues**

REBUTTAL TESTIMONY OF

BELA VASTAG

FOR THE

OFFICE OF CONSUMER SERVICES

MAY 15, 2013

Introduction

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

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

Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN PHASE 2 OF THIS DOCKET?

A. Yes, I filed direct testimony on March 29, 2013.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. I will respond to certain policy issues raised in the direct testimony of other parties[1]. These issues are as follows:

- Proposals to expand the definition of avoided costs beyond the requirements of federal law and regulations.
- Proposal to include the Company's hedging costs in renewable QF avoided cost pricing.

Q. DOES THE OFFICE ADDRESS ANY ADDITIONAL ISSUES IN ITS REBUTTAL TESTIMONY?

A. Yes, the testimony of Mr. Randall J. Falkenberg addresses certain technical issues raised by other parties related to the implementation of a new avoided cost methodology.

[1] Utah Clean Energy, Energy of Utah and Scatec Solar

<u>Proposals To Expand FERC's Definition Of Avoided Costs</u>

Q. IN THEIR DIRECT TESTIMONY, HAVE CERTAIN PARTIES PROPOSED INCLUDING COSTS OUTSIDE OF WHAT THE FEDERAL ENERGY REGULATORY COMMISSION (FERC) DEFINES IN ITS AVOIDED COST RULE[2] FOR QFS?

A. Yes, Utah Clean Energy (UCE), Energy of Utah (EOU) and Scatec Solar (SS) have proposed costs that are outside the scope of what FERC allows in its avoided cost rule for determining QF pricing. Their proposals include cost adders for such factors as fuel price volatility, environmental regulation compliance and climate change and also adders for perceived benefits such as the economic development from renewable power. In addition, the Commission has received public comments which also ask that similar externalities be generally included in setting avoided cost prices.

Q. IS IT APPROPRIATE FOR THE COMMISSION TO INCLUDE THESE ADDITIONAL FACTORS WHEN SETTING AVOIDED COST BASED RATES?

A. No, the obligation for Rocky Mountain Power to purchase from a QF in Utah is created not by state law but by federal law, the Public Utility Regulatory Policies Act (PURPA). State pricing methodologies that would create prices which exceed incremental cost to the electric utility are not

[2] FERC Final Rule, 18 CFR Part 292, "Small Power Production and Cogeneration Facilities; Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978", published February 25, 1980.

consistent with PURPA requirements nor with FERC regulations and rulings that implement PURPA.

Q. FOR DETERMINING AVOIDED COST RATES PAID TO QFS, DO FERC REGULATIONS EXPLAIN WHAT FACTORS SHALL BE TAKEN INTO ACCOUNT?

A. Yes, FERC's avoided cost rule, 18 CFR Part 292 Section 304(e), explains that system cost data from the utility shall be used to determine avoided costs using factors related to energy, capacity and line losses. The factors proposed by UCE, EOU and SS for additional costs are not identified in the FERC rule and would not be consistent with FERC's regulations.

Q. SINCE ADOPTING ITS AVOIDED COST RULE, HAS THE FERC RULED ON SOME STATES' METHODOLOGIES FOR DETERMINING QF AVOIDED COST PRICING UNDER PURPA?

A. Yes. The first such ruling that I am aware of is the Connecticut Light and Power decision, 70 FERC ¶ 61,012 (January 1995). In that case, FERC found that the rate required by Connecticut statute to be paid to a QF is preempted by federal law, i.e. PURPA. In other words, a state cannot use a rate methodology that is inconsistent with the requirements of PURPA and FERC's regulations – i.e., in this case, FERC found that a state cannot impose rates that exceed the utility's avoided costs.

Q. DID THE FERC ISSUE ADDITIONAL DECISIONS DURING THIS SAME TIMEFRAME?

A. Two additional rulings are the Southern California Edison decision, 70 FERC ¶ 61,215 (February 1995) and the Midwest Power decision, 78 FERC ¶ 61,067 (January 1997). The FERC found that the California Commission's method for determining avoided costs was inconsistent with PURPA and FERC regulations and that the Iowa Utilities Board required rates paid to QFs that were in excess of the purchasing utility's avoided cost. FERC found that these states' actions in setting QF rates were preempted by federal law.

Q. IN THE SOUTHERN CALIFORNIA EDISON DECISION DID FERC GIVE CLEAR DIRECTION TO STATES ON INCLUDING ADDERS IN QF AVOIDED COST PRICING?

A. Yes, FERC's order denying reconsideration of the February 1995 decision, 71 FERC ¶ 61,269 (June 1995), explained:

"Thus, in setting avoided cost rates, a state may only account for costs which <u>actually would be incurred by utilities</u>. A state may, through state action, influence what costs are incurred by the utility. Thus, accounting for environmental costs may be part of a state's approach to encouraging renewable generation. For example, a state may impose a tax or other charge on all generation produced by a particular fuel, and thus increase the costs that would be incurred by utilities in building and operating plants that use that fuel. Conversely, a state may also subsidize certain types of generation, for instance wind, or other renewable, through, e.g., tax credits." [emphasis added]

FERC explains further:

"A state, however, may not set avoided cost rates or otherwise adjust the bids of potential suppliers by imposing environmental adders or subtractors that are not based on real costs that would be incurred by utilities. Such practices would result in rates which exceed the incremental cost to the electric utility and are prohibited by PURPA."

Q. HAS THERE BEEN A MORE RECENT FERC CASE THAT ADDRESSES WHETHER ENVIRONMENTAL FACTORS ARE INCLUDED IN FERC'S DEFINITION OF QF AVOIDED COST PRICING?

A. In its American Ref-Fuel decision, 105 FERC ¶ 61,004 (October 2003), FERC clarified again that "environmental attributes" are "not mentioned" in its regulations. The purpose of this proceeding was to address the ownership of Renewable Energy Certificates (RECs); but in its decision, the FERC continues to provide guidance that the definition of a utility's avoided cost is limited to those factors put forth in its regulations.

FERC states in paragraph 22 of its October 2003 decision: "This is because avoided costs were intended to put the utility into the same position when purchasing QF capacity and energy as if the utility generated the energy itself or purchased the energy from another source." In the same paragraph, FERC states further that **"***The avoided cost rates, in short, are not intended to compensate the QF for more than capacity and energy***."** [emphasis added]

Q. YOU HAVE DESCRIBED SEVERAL FERC DECISIONS ON AVOIDED COSTS DATING FROM 1995 TO 2003. WHAT IS THE CONSISTENT MESSAGE?

A. FERC's regulations guiding QF avoided cost pricing implement the intent of PURPA which is that the ratepayer will be indifferent to whether the electric energy and capacity is acquired from a QF or from the utility. FERC has consistently found that avoided costs need to be based on real, actual costs incurred by the utility and that prices paid to QFs authorized under PURPA cannot exceed these actual avoided costs.

Q. BASED ON THIS GUIDANCE FROM FERC, IS IT APPROPRIATE FOR THE UTAH PUBLIC SERVICE COMMISSION TO CONSIDER THE ADDITIONAL COSTS PROPOSED BY UCE, EOU AND SS IN DETERMINING AVOIDED COST PRICING FOR QFS IN UTAH?

A. No, these costs are 1) not known and measurable and 2) not supported by FERC guidance and therefore outside the scope of this proceeding. The development of the method for determining avoided cost pricing for QFs in this proceeding is governed by the federal law PURPA and FERC rulings which define what factors avoided cost pricing shall be based on. The mitigation of potential additional costs or inclusion of perceived benefits such as those that these parties advocate for should be pursued in other venues such as Integrated Resource Planning, before the Utah Legislature or in other settings.

<u>Proposal To Include Average Hedging Costs In QF Avoided Costs</u>

Q. UCE, IN ITS DIRECT TESTIMONY, PROPOSES THAT THE PROXY/PDDRR METHOD BE MODIFIED TO ACCOUNT FOR THE AVOIDED COST OF FUEL VOLATILITY BY USING THE COMPANY'S AVERAGE HEDGING COSTS OVER A TWENTY YEAR PERIOD. SHOULD THE COMMISSION ADOPT THIS PROPOSAL?

A. No. As discussed above, FERC has provided guidance to states that only actual costs avoided by a utility can be included in QF avoided cost pricing. Determining if the Company will avoid some future fuel price volatility costs by buying power from a renewable QF is difficult if not impossible to do. Further, trying to use historical hedging costs incurred by the Company as a proxy for the cost of fuel volatility would be problematic for numerous reasons. For example:

- The hedging costs incurred during the past twenty years are no indication of the actual hedging costs that the Company might incur in the next twenty years. Hedging instruments, markets and techniques have changed substantially over the last twenty years. Parties to the Company's general rate cases over the last several years have expressed concerns with the Company's hedging practices and challenged the prudence of the associated costs. Additionally, the Company has recently changed its hedging policies and practices as a result of a collaborative process with Utah stakeholders;
- Parties do not always agree regarding what types of costs should be included in calculating hedging costs. For example, there may be disagreement whether and how to include hedging gains and losses or whether to include only the costs of premiums charged for certain products. Parties are also not likely to agree on the extent to which personnel expenses for staff working on such transactions (and other

corporate overhead) would be properly assigned as hedging costs. Consequently, it is very difficult to define and measure hedging costs.

- Finally, including hedging costs would not result in a transparent avoided cost calculation. The Company considers most of the documents associated with its hedging practices to be confidential or even highly confidential.

Based on FERC guidance, it would not be appropriate to include fuel price volatility as a factor in QF avoided cost pricing and it certainly would not be appropriate to use the Company's historical hedging costs as a proxy for fuel volatility.

Q. DOES THAT CONCLUDE YOUR TESTIMONY?

A. Yes it does.