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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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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  
)  
) SUR-REBUTTAL TESTIMONY OF  
) LUIGI RESTA  
)  
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Scatec Solar North America, Inc., by and through its counsel, hereby files the sur-rebuttal testimony of Luigi Resta with the Public Service Commission of Utah in the above-captioned matter.

Respectfully submitted this 30<sup>th</sup> day of May, 2013.

/s/ Tesia N. Stanley  
Tesia N. Stanley  
Attorney for Scatec Solar North America, Inc.

1 **Q: ARE YOU THE SAME LUIGI RESTA THAT SUBMITTED DIRECT**  
2 **TESTIMONY IN THIS PROCEEDING ON BEHALF OF SCATEC SOLAR**  
3 **NORTH AMERICA, INC. (“SCATEC”)?**

4 A: Yes, I am.

5 **Q: WHAT IS THE PURPOSE OF YOUR SUR-REBUTTAL TESTIMONY?**

6 A: The purpose of this sur-rebuttal testimony is to respond to (1) the rebuttal  
7 testimony of Sarah Wright, submitted on behalf of Utah Clean Energy (UCE),  
8 regarding the question of whether and when PacifiCorp is capacity deficient and  
9 thus required to provide capacity payments to a qualifying facility (QF)(in  
10 addition to energy payments); and (2) the rebuttal testimony of Paul H. Clements,  
11 submitted on behalf of PacifiCorp dba Rocky Mountain Power (PacifiCorp), with  
12 respect to the proper ownership of Renewable Energy Credits (RECs), as between  
13 the utility and the QF that sells to the utility under the Public Utility Regulatory  
14 Policies Act (PURPA).

15 **Q: PLEASE SUMMARIZE YOUR TESTIMONY.**

16 A: Regarding capacity payments, I explain how I believe Ms. Wright is correct that  
17 PacifiCorp is capacity deficient to the extent that it must rely on firm power  
18 purchases in the market to obtain sufficient capacity to serve its customers and  
19 meet its required reserves. I also provide data directly from PacifiCorp’s brand-  
20 new 2013 Integrated Resource Plan (IRP) that supports the contention that  
21 PacifiCorp is capacity deficient much sooner than it claims to be because it is  
22 relying on yet-to-be acquired firm power purchases in the market, sometimes  
23 referred to as Front Office Transactions or FOT, to provide needed capacity. I

24 also explain how FERC, in its implementation of PURPA, requires an avoided  
25 cost contract to provide a QF energy *and capacity* payments if the purchasing  
26 utility can rely on the QF to avoid a needed firm power purchase in the market,  
27 even if the QF is an intermittent resource, including solar. As a result, PacifiCorp  
28 is capacity deficient significantly sooner than year 2028 as claimed, and should  
29 start offering capacity payments to a QF that allows it to defer entering into a  
30 FOT as planned in its IRP.

31           Regarding RECs, it appears that PacifiCorp no longer advocates that  
32 RECs are part of what the utility is buying with the payment of avoided costs. In  
33 contrast, I continue to demonstrate that FERC orders clearly establish that RECs  
34 are NOT part of what the utility is buying when paying a QF through a typical  
35 avoided cost methodology. I also explain how PacifiCorp's rebuttal testimony  
36 provides an inaccurate characterization of my direct testimony's discussion  
37 regarding FERC's precedent on how state law is used to determine whether the  
38 RECs are bundled with the energy in an avoided cost contract. As I explained in  
39 my direct testimony, and I reiterate here: (1) FERC precedent provides that, if a  
40 state has determined that RECs (or any other environmental attributes) can be  
41 "unbundled" or separated from the underlying energy, then a state is prohibited  
42 from requiring a QF to transfer the RECs to the utility through a traditional  
43 avoided cost contract; and (2) Utah state law already establishes that RECs can be  
44 separated for the underlying energy. I also rebut PacifiCorp's contention that its  
45 position "does not contradict" the Commission's decision regarding REC  
46 ownership in Docket No. 10-035-15, "*In the Matter of the Complaint of*

47 *Cottonwood Hydro, LLC vs. Rocky Mountain Power*” (Report and Order, issued  
48 May 27, 2010) (*Cottonwood*).

49 **PACIFICORP’S CAPACITY DEFICIENCY**

50 **Q: WHAT DOES MS. WRIGHT’S REBUTTAL TESTIMONY SAY ABOUT**  
51 **THE PAYMENT STREAM FOR CAPACITY FROM RENEWABLE QFS?**

52 A: In lines 314-317 of her rebuttal testimony, Ms. Wright says the following:

53 The Company is heavily reliant on the market for its  
54 resource needs over the planning horizon, both during its  
55 periods of resource “sufficiency” and “deficiency.” In  
56 effect, the Company is in a constant period of resource  
57 deficiency; therefore, QFs should be paid for their capacity  
58 contribution starting in the first year.

59 **Q: DO YOU AGREE WITH HER ASSESSMENT THAT “THE COMPANY IS**  
60 **IN A CONSTANT PERIOD OF RESOURCE DEFICIENCY”?**

61 A: I believe she is correct, based on a review of the 2013 Integrated Resource Plan  
62 (IRP) PacifiCorp submitted to the Commission on April 30, 2013 in Docket No.  
63 13-2035-01. For instance, page 99 of the 2013 IRP includes Table 5.12 –  
64 Updated Format: System Capacity Loads and Resources without Resource  
65 Additions (relevant portions of which are attached hereto as Exhibit A). The  
66 “System Position” near the bottom of the table shows a capacity deficiency every  
67 year – 2013 through 2022 – without adding capacity not already acquired. The  
68 deficiency starts at 824 MW for *the current year* and climbs to 2,308 MW for  
69 year 2022.

70 As Ms. Wright explained, PacifiCorp claims it is not currently capacity  
71 deficient by relying primarily on yet-to-be made firm power purchases, including  
72 Front Office Transactions (FOT).

73 **Q: WHAT ARE FOT?**

74 A: According to PacifiCorp, “FOT transactions are firm forward power purchases  
75 that contribute capacity and energy to the system.” PacifiCorp 2013 IRP at page  
76 160 (*see* Exhibit A).

77 **Q: HOW DO FOT HELP PACIFICORP SATISFY ITS CAPACITY NEEDS?**

78 A: This is what PacifiCorp says at page 206 of its 2013 IRP (*see* Exhibit A):

79 All portfolios utilized front office transactions to fill both  
80 near-term and long-term system capacity needs, a  
81 consistent trend among all Energy Gateway scenarios.  
82 Figure 8.6 shows the annual front office transactions  
83 selected among core case portfolios under Energy Gateway  
84 Scenario 2. Over the first 10 years of the planning period,  
85 FOTs range between 599 MW and 1,428 MW. In the latter  
86 half of the planning horizon, annual FOT resource  
87 selections range between 710 MW and 1,472 MW. Beyond  
88 2016, selection of FOTs is highest in case C17, which  
89 assumes a market price spike through 2022. Prior to 2016,  
90 FOTs are highest in cases with near-term coal unit  
91 retirements (cases C04, C05, C08 and C09).

92 The “2013 IRP Preferred Portfolio” discussion (at pages 226-234) includes Figure  
93 8.28 on page 229 (“Current and Projected PacifiCorp Resource Capacity Mix for  
94 2013 and 2022”). (*See* Exhibit A.) It consists of two pie charts: (i) 2013  
95 Resource Capacity Mix with Preferred Portfolio Resources and (ii) 2022 Resource  
96 Capacity Mix with Preferred Portfolio Resources. This data indicates that 7.9%  
97 of PacifiCorp’s capacity portfolio for year 2013 consists of FOT, and how that  
98 percentage increases to 11.7% for year 2022.

99 **Q: IS PACIFICORP CONTINUING TO ACQUIRE NEW FOT?**

100 A: That’s what the 2013 IRP says. Highlights of the 2013 IRP “Action Plan” include  
101 the following statement on page 243: “Acquire economic front office transactions

102 or power purchase agreements as needed through the summer of 2017.” (See  
103 Exhibit A). PacifiCorp also explains on page 244 of the 2013 IRP that “[t]he  
104 2013 IRP action plan, detailed in Table 9.1, provides the Company with a road  
105 map for moving forward with new resource acquisitions.” (Id.) PacifiCorp  
106 Action Item 3a (under the category “Firm Market Purchase Actions”) on page 246  
107 of the 2013 IRP (Id.) is the following:

108 **Front Office Transactions**

- 109 • Acquire economic front office transactions or power purchase  
110 agreements as needed through the summer of 2017.
- 111 – Resources will be procured through multiple  
112 means, such as periodic market RFPs that  
113 seek resources less than five years in term,  
114 and bilateral negotiations.
- 115 – Include in the 2013 IRP Update a summary  
116 of the progress the Company has made to  
117 acquire front office transactions over the  
118 2014 to 2017 forward period.

119 **Q: WHAT IS YOUR INTERPRETATION OF THIS INFORMATION FROM**  
120 **PACIFICORP’S 2013 IRP?**

121 A: I interpret this information from the 2013 IRP to mean that PacifiCorp does not  
122 currently have enough capacity to meet its system capacity position (that is, meet  
123 its forecasted load plus 13% reserves), and that PacifiCorp plans to meet that need  
124 by entering into new power purchase agreements. Any capacity provided by a new  
125 QF would reduce PacifiCorp’s need to enter into some of these firm power  
126 purchases. As a result, each year that a QF displaces a firm power purchase  
127 needed to provide system capacity must receive an avoided cost capacity  
128 payment.

129 **Q: WHAT DOES FERC SAY ABOUT THE ROLE FIRM POWER**  
130 **PURCHASES LIKE FOT PLAYS IN DETERMINING WHETHER A QF IS**  
131 **ENTITLED TO CAPACITY PAYMENTS?**

132 A: FERC’s implementation of PURPA provides that, to the extent a QF allows a  
133 utility to defer obtaining new capacity, regardless of whether it would have come  
134 from new construction or firm power purchases from another utility, the  
135 purchasing utility *must* provide that QF its avoided cost not just for energy, but  
136 for capacity as well.

137 **Q: PLEASE EXPLAIN.**

138 A: FERC’s Order No. 69,<sup>1</sup> the order that first promulgated FERC’s PURPA  
139 regulations, explains: “If a qualifying facility offers energy of sufficient  
140 reliability and with sufficient legally enforceable guarantees of deliverability to  
141 permit the purchasing electric utility to avoid the need to construct a generating  
142 unit, to build a smaller, less expensive plant, *or to reduce firm power purchases*  
143 *from another utility*, then the rates for such a purchase will be *based on the*  
144 *avoided capacity* and energy costs.” Order No. 69 at ¶ 30,865 (emphasis added).  
145 Relying on this language from Order No. 69, FERC has said more recently that  
146 “an avoided cost rate need not include capacity *unless the QF purchase will*  
147 *permit the purchasing utility to avoid building or buying future capacity.*” *City of*  
148 *Ketchikan, Alaska*, 94 FERC ¶ 61,293, at p. 62,062 (2001) (emphasis added).

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<sup>1</sup>*Small Power Production and Cogeneration Facilities: Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978*, Order No. 69, FERC Stats. & Regs. Regulations Preambles 1977-1981 ¶ 30,128 (1980), *order on reh’g*, Order No. 69-A, FERC Stats. & Regs. Regulations Preambles 1977-1981 ¶ 30,160 (1980), *aff’d in part and vacated in part, American Electric Power Services Corp. v. FERC*, 675 F.2d 1226 (D.C. Cir 1982), *rev’d in part, American Paper Institute, Inc. v. American Electric Power Serv. Corp.*, 461 U.S. 402 (1983).

149 **Q: IS SOLAR POWER ENTITLED TO A CAPACITY PAYMENT EVEN**  
150 **THOUGH IT IS AN INTERMITTENT RESOURCE?**

151 A: Yes. I understand that solar power is intermittent, and as a result, will not provide  
152 power 24 hours a day. However, a utility-scale solar farm will displace at least a  
153 portion of PacifiCorp's need to enter into firm power transactions covering most  
154 of the day, including many of the highest demand hours during the day, including  
155 during the hottest days of the summer.

156 This result is dictated by FERC precedent. In *JD Wind 1, LLC*, 129 FERC  
157 ¶ 61,148 (2009), *reh'd denied*, 130 FERC ¶ 61,127 (2010), FERC determined that  
158 the Public Utility Commission of Texas had acted inconsistently with the  
159 requirements of PURPA and FERC's regulations implementing PURPA by  
160 determining that a wind farm QF was not entitled to a legally enforceable  
161 obligation with a capacity payment because of the power's intermittent nature.

162 FERC explained:

163 The preamble to its adoption of the regulation at issue here  
164 expressly contemplated that QFs could receive a capacity  
165 payment. And, in fact, the Commission recognized the  
166 possibility that intermittent QF resources, including solar  
167 and wind resources, which would not be considered "firm"  
168 using traditional utility concepts, could still enable a utility  
169 to avoid capacity, and that "the aggregate capacity value of  
170 such facilities must be considered in the calculation of rates  
171 for purchases." As capacity payments are available under  
172 [18 C.F.R.] section 292.304(d) only to those facilities that  
173 have chosen the legally enforceable obligation, even aside  
174 from the express language of the regulation, the preamble  
175 to the order adopting the regulation supports a finding that  
176 the Commission always intended that nonfirm, intermittent  
177 QF resources are included in the phrase "each qualifying  
178 facility" that has the option to choose to sell pursuant to a  
179 legally enforceable obligation.

180



181 *JD Wind I, LLC*, 130 FERC ¶ 61,127 at P 17.

182 **Q: WHAT YEAR DOES PACIFICORP CLAIM IT BECOMES RESOURCE**  
183 **DEFICIENT AND THUS WILL INCLUDE IN AN AVOIDED COST**  
184 **CONTRACT A CAPACITY PAYMENT?**

185 A: PacifiCorp claims that it does not become resource deficient until the year 2028,  
186 and therefore will not offer a capacity payment to a QF until that year. (See, for  
187 instance, Appendix C to PacifiCorp’s 2013 Q1 Avoid Cost Input Changes filing  
188 in Docket No. 03-035-14, submitted on April 24, 2013, indicating that the 2013  
189 Q1 calculation provides a capacity payment would not begin until year 2028, up  
190 from year 2025 from its 2012 Q4 calculation.) FERC orders, however, require  
191 PacifiCorp to offer a capacity payment in 2013 and beyond because PacifiCorp  
192 has not yet purchased enough firm power (sometimes referred to as FOT) to meet  
193 its capacity needs for 2013 or beyond.

194 **REC OWNERSHIP**

195 **Q: PLEASE DESCRIBE PACIFICORP’S POSITION IN DIRECT**  
196 **TESTIMONY ON REC OWNERSHIP.**

197 A: In PacifiCorp’s direct testimony, Mr. Clements testified that, “[i]n terms of  
198 PURPA, any power purchase agreement securing power from an eligible  
199 renewable energy resource should assign ownership of the associated RECs to the  
200 purchasing utility.” Clements Direct Testimony at Lines 103-105.

201 Mr. Clements reached this conclusion by arguing that RECs are “part of what the  
202 utility is buying with the payment of avoided costs,” and that if “the Company  
203 were to pay a QF separately for the RECs, then, the Company and its customers

204 would be paying twice for the same RECs.” Clements Direct Testimony at Lines  
205 28-29, lines 78-79, and lines 92-93. The clear implication of PacifiCorp’s direct  
206 testimony, therefore, was that the Commission *must* require the QF to hand over  
207 the RECs.

208 **Q: DOES PACIFICORP CONTINUE TO ADVOCATE THIS POSITION IN**  
209 **ITS REBUTTAL TESTIMONY?**

210 A: Apparently not. PacifiCorp’s rebuttal testimony never states that RECs are part of  
211 what the utility is buying with the payment of avoided costs. Instead, Mr.  
212 Clements’ rebuttal testimony states that the Commission “could certainly adopt  
213 the Company’s proposal that large QF contracts include contract terms and  
214 contract language that state RECs from large QFs are owned by the utility.”  
215 Clements Rebuttal Testimony at lines 98-100. Whereas the clear implication of  
216 PacifiCorp’s direct testimony was that it would be unjust and unreasonable to not  
217 include RECs within an avoided cost contract with a renewable QF, PacifiCorp’s  
218 primary argument in its rebuttal testimony is that the Commission has the  
219 flexibility to decide how to treat the RECs, and it should mandate that QFs give  
220 the utility the valuable RECs in an avoided cost contract.

221 **Q: DO YOU KNOW WHY MR. CLEMENTS’ REBUTTAL TESTIMONY,**  
222 **UNLIKE HIS DIRECT TESTIMONY, DOES NOT CLAIM THAT RECS**  
223 **ARE PART OF WHAT THE UTILITY IS BUYING WITH THE**  
224 **PAYMENT OF AVOIDED COSTS?**

225 A: I don’t know. However, I believe it is possible that PacifiCorp dropped this  
226 position because pages 4 through 6 of my direct testimony adequately

227 demonstrated that FERC orders clearly state that RECs are NOT part of what the  
228 utility is buying when paying a QF through a traditional avoided cost  
229 methodology. FERC repeatedly has concluded that “avoided cost rates are not  
230 intended to compensate the QF for more than capacity and energy.” *American*  
231 *Ref-Fuel Co.*, 107 FERC ¶ 61,016 at P 15 (2004); *see also Morgantown Energy*  
232 *Associates*, 139 FERC ¶ 61,066 at P 47 (2012).

233 **Q: MR. CLEMENTS’ REBUTTAL TESTIMONY AT LINES 50-57**  
234 **CONTENDS THAT YOUR DIRECT TESTIMONY SUPPORTS HIS**  
235 **POSITION “THAT THE ISSUE OF REC OWNERSHIP IN QF**  
236 **CONTRACTS IS A STATE ISSUE AND THE COMMISSION HAS THE**  
237 **AUTHORITY TO SET POLICY ON THIS ISSUE.” IS THAT A FAIR**  
238 **CHARACTERIZATION OF YOUR DIRECT TESTIMONY?**

239 A: PacifiCorp selectively cites from my testimony, while ignoring other key aspects  
240 of my testimony, to reach an incorrect conclusion.

241 **Q: PLEASE EXPLAIN.**

242 A: I agree that the concept of REC ownership is based on state law. I also recognize  
243 that the Commission has some discretion to set policy on this issue. However,  
244 PacifiCorp’s rebuttal testimony totally ignores a critical point I made in my direct  
245 testimony on FERC precedent and REC ownership. Specifically, I explained  
246 how, if a particular state has determined that RECs may be unbundled from the  
247 underlying energy, that state may not force a QF to give up the RECs in a  
248 traditional avoided cost rate. I repeat my direct testimony (page 5, lines 20-31)  
249 here for the reader’s convenience:

250 FERC recognized that state law – not PURPA – created the concept of  
251 RECs, and therefore can determine who owns them and how they are sold.  
252 The avoided cost paid by a utility typically does not cover the  
253 environmental attributes. Importantly, FERC recognized that state law  
254 that allows for RECs to be unbundled and traded therefore proves that an  
255 avoided cost contract does not include payment for the environmental  
256 attributes:

257  
258 The very fact that RECs may be unbundled and may be  
259 traded under State law indicates that the environmental  
260 attributes do not inherently convey pursuant to an avoided  
261 cost contract to the purchasing utility.

262  
263 *American Ref-Fuel Co.*, 107 FERC ¶ 61,016 at P 16.

264  
265 In other words, a state could decide that the environmental attributes of renewable  
266 energy may not be unbundled from the underlying energy. Under such a scenario,  
267 FERC precedent provides that state law already has determined that the  
268 purchasing utility may keep the RECs because it would be impossible under state  
269 law to separate the two. However, once a state determines that RECs may be  
270 unbundled, FERC precedent dictates that a QF may not be forced to transfer the  
271 RECs to a utility through a traditional avoided cost rate. See my direct testimony  
272 at pages 4-6 for my full discussion.

273 **Q: HAS THE STATE OF UTAH UNBUNDLED RECS FROM THE**  
274 **UNDERLYING ENERGY?**

275 A: Yes. The Utah Legislature has established under state law that RECs may be  
276 unbundled. This is shown by Utah Code § 54-17-602 (4)(c), which provides that  
277 a company such as PacifiCorp, in meeting its renewable energy goals, can rely  
278 upon a “bundled or unbundled renewable energy certificate.” Notably, as the  
279 Commission held in *Cottonwood*, that provision of the Utah Code supported the  
280 conclusion there that RECs are owned by the QF because “[t]hat statute permits

281 unbundled RECs to be used for compliance with Utah’s carbon emission  
282 reduction requirements.” *Cottonwood* at p. 10.

283 **Q: DOES PACIFICORP ARGUE THAT ITS POSITION IS CONSISTENT**  
284 **WITH COTTONWOOD?**

285 A: Yes. PacifiCorp contends that “the Cottonwood Hydro docket interpreted an  
286 existing contract and the order did not claim to establish a general policy relative  
287 to the ownership of RECs. The Commission could certainly adopt the Company’s  
288 proposal that large QF contracts include explicit contract terms and contract  
289 language that state RECs from large QFs are owned by the utility, and such a  
290 decision will not contradict the order in Docket No. 10-035-15.” Clements  
291 Rebuttal Testimony at lines 96-101.

292 **Q: IS PACIFICORP CORRECT?**

293 A: No.

294 **Q: PLEASE EXPLAIN.**

295 A: As I explained above, under PURPA – as interpreted by FERC – a state may not  
296 both allow RECs to be unbundled from the underlying energy and require a QF to  
297 forfeit its RECs in a traditional avoided cost contract because “avoided cost rates  
298 are not intended to compensate the QF for more than capacity and energy.”  
299 *American Ref-Fuel Co.*, 107 FERC ¶ 61,016 at P 15. I discussed *Cottonwood* in  
300 my direct testimony to demonstrate that the Commission already has determined  
301 that RECs may be unbundled from the underlying energy. For instance, Ordering  
302 Paragraph #1 of *Cottonwood* states the following: “The output of a generator of  
303 renewable energy contains two distinct commodities: 1) the power generated by

304 the facility itself, and 2) the environmental attributes of that power, i.e. RECs.

305 Those commodities can be severed.”

306 **Q: PLEASE ADDRESS THE CLAIM OF MR. CLEMENTS THAT**  
307 **COTTONWOOD SIMPLY INTERPRETED AN EXISTING CONTRACT**  
308 **AND DID NOT STATE A GENERAL POLICY RELATIVE TO**  
309 **OWNERSHIP OF RECS.**

310 A: Mr. Clements’ claim in his rebuttal testimony that *Cottonwood* only interpreted an  
311 existing contract and “did not claim to establish a general policy relative to the  
312 ownership of RECs” is simply wrong. Clements Rebuttal Testimony at lines 96-  
313 98. Instead, the Commission found at p. 11 in ordering paragraph 2 of  
314 *Cottonwood* that “[u]nless provided for otherwise in a contract, the RECs remain  
315 with the generator of renewable energy, and may be sold and valued separately  
316 from the energy produced or retained by the generator of the REC.” The  
317 Commission clearly set forth a “general policy”, contrary to Mr. Clements’  
318 claims.

319 **Q: DID THE COTTONWOOD CASE CONTINUE THE COMMISSION’S**  
320 **POLICY REGARDING OWNERSHIP OF RECS THAT HAD BEEN IN**  
321 **EFFECT FOR A PERIOD OF YEARS?**

322 A: Yes. *Cottonwood* applied an **existing** general policy regarding ownership of  
323 RECs. Relying upon the Commission’s prior 2005 and 2006 *PacifiCorp* Orders,  
324 the Commission in *Cottonwood* found that “absent a contract providing otherwise,  
325 the RECs remain with the QF even when the power generated is delivered to the  
326 utility.” *Cottonwood* at 9. The Commission also held that its 2006 *PacifiCorp*

327 Order had ruled that the energy and environmental attributes of energy generated  
328 by a QF can be separated, and that “the Commission ‘considers[s] the ownership  
329 of RECs to be a separable contractual issue.’” *Cottonwood* at 9 (citing to the  
330 2006 *PacifiCorp* Order). Additionally, the Commission in *Cottonwood* relied  
331 upon the finding in its prior 2006 *PacifiCorp* Order that ratepayers are indifferent  
332 to whether PacifiCorp “contractually acquires ownership of the REC and then  
333 sells the REC to reduce the net cost of the resource or whether the Company  
334 contractually pays a price net of the REC to begin with.” *Cottonwood* at p. 9,  
335 quoting 2006 *PacifiCorp* Order at p. 16. This also shows that PacifiCorp’s  
336 customers are not harmed if the avoided cost does not include the RECs because  
337 the utility is not paying “twice for what it has already bought,” as previously  
338 claimed in Mr. Clements’ Direct Testimony at p. 4.

339 **Q: DO YOU HAVE ANY OTHER COMMENTS CONCERNING**  
340 **PACIFICORP’S CLAIM THAT THE COMMISSION SHOULD**  
341 **MANDATE SPECIFIC CONTRACT LANGUAGE PLACING**  
342 **OWNERSHIP OF RECS WITH THE UTILITY?**

343 A: Yes. First, Mr. Clements provides absolutely no policy reason for the inequitable  
344 result he demands. His rebuttal testimony essentially retracts his prior view in his  
345 direct testimony that PURPA requires that the utility own the RECs, because he  
346 now claims that, under PURPA, the Commission is free to adopt any policy it  
347 wants as to ownership of RECs. Consequently, Mr. Clements’ claims in his direct  
348 testimony that the intent of PURPA and its policy rationale require that RECs go  
349 to the utility do not support PacifiCorp’s current position. Instead, the policy of

350 PURPA is to encourage renewable power sources, while PacifiCorp's position  
351 contravenes that policy goal.

352 **Q: DO YOU HAVE ANY COMMENTS ON PACIFICORP'S ASSERTION**  
353 **(CLEMENTS REBUTTAL TESTIMONY AT PP. 3-4) THAT RECENT**  
354 **DECISIONS IN WYOMING AND IDAHO SUPPORT HIS**  
355 **RECOMMENDATION?**

356 A: The key issue here is whether state law allows REC unbundling. The Utah  
357 legislature, and the Commission in *Cottonwood* and the earlier *PacifiCorp* orders,  
358 already have determined that Utah state law allows such unbundling; therefore, an  
359 avoided cost contract does not compensate the QF for the environmental  
360 attributes.

361 **Q: DOES THIS CONCLUDE YOUR TESTIMONY?**

362 A: Yes, this concludes my testimony.



**VERIFICATION**

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on May 30th, 2013.

/s/ Luigi Resta  
Luigi Resta