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APPEARANCES (CONT.)

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Hearing Proceedings

October 2, 2014

PROCEEDINGS

THE HEARING OFFICER: Let's go ahead and go on the record. Good afternoon, everyone. This is the time and place for Commission consideration of four separate applications relating to the power purchase agreement agreements or PPAs. The first PPA is in Docket 14-035-85, In the Matter of Application of Rocky Mountain Power for Approval of the Power Purchase Agreement Between PacifiCorp and Enterprise Solar, LLC.

The second, third, and fourth PPAs are applications for approval PPAs between PacifiCorp and Escalante Solar I, Escalante Solar II, and Escalante Solar III, LLC, respectively. And these are in Docket Nos. 14-35-86, 14-35-87, and 14-35-88, respectively.

My name is Jordan White. The commissioners have asked that I act as presiding officer for this hearing.

With that, let me go ahead and take appearances. I'll start over here with the Office.

MR. OLSEN: Rex Olsen on behalf of the Office of Consumer Services. And B,la Vastag is our witness.

MR. JETTER: And Justin Jetter representing the the Utah Division of Public Utilities. And with me is the Division of Public Utilities witness Charles Peterson.

1 MR. SOLANDER: Daniel Solander on behalf of
2 Rocky Mountain Power. And I have with me at counsel table
3 Bruce Griswold, director of marketing and origination for
4 PacifiCorp, who will be the Company's witness on these matters.

5 MR. DODGE: And Gary Dodge on behalf of the
6 developers in each of the dockets. And with me is Peter
7 Sullivan with First Wind, who will be the witness for the
8 developers in all of the dockets.

9 THE HEARING OFFICER: Okay. Thank you. Is
10 there anyone else who is making appearance or--okay.

11 Just in terms of housekeeping matters before we
12 get going here, I guess the first question is I know that there's
13 confidential documents, at least portions of documents that are
14 confidential. I'm assuming that the parties in here either
15 statutorily exempt in terms of the requirement for
16 confidential--confidentiality agreement or they've signed it. The
17 one thing I would request and is for purposes of our court
18 reporter, if there's need to or thought that we're going head
19 down into areas that are redacted, etc., as confidential, please
20 just give us a heads-up so we can make sure that the records
21 are separated appropriately, etc.

22 The other question--I'll turn this to the parties, I
23 guess: We have four PPAs. From what I understand, this
24 is--they're all essentially holding companies or entities of First
25 Wind. Does it make sense, or is there any reason why we

1 couldn't, I guess, essentially hear the testimony of the Office,
2 Division, etc., the summaries in toto for these four PPAs or do
3 we need to separate them out separately?

4 Mr. Jetter.

5 MR. JETTER: I think the Division would support
6 hearing them together. The Division filed a single supported
7 memorandum in all four dockets. And the power purchase
8 agreements are substantially similar in all four.

9 MR. DODGE: We agree, on behalf of the
10 developers, they can be heard together.

11 MR. SOLANDER: And--

12 MR. OLSEN: The Office, as well, Your Honor.

13 THE HEARING OFFICER: That would probably be
14 much more efficient. I know sometimes--let you know, too: As
15 we go through and swear in witnesses and allow cross-
16 examination, I think that ultimately I'll just kind of reserve the
17 right for questions from the Commission. And, then, I would
18 just, you know, prefer to do it like a panel. In other words, I'll
19 keep you all sworn in, whoever the witnesses are, if that makes
20 sense. And, then, we can just--because I think what we're
21 talking about here is pricing,
22 so . . .

23 With that, any other matters of housekeeping
24 before we proceed with the hearing?

25 Okay. Mr. Solander, this is Rocky Mountain

1 Power's application, so I'll go ahead and let you proceed.

2 MR. SOLANDER: Rocky Mountain Power would call
3 Mr. Bruce Griswold as its witness. Is it okay if he just sits at the
4 table here, I assume.

5 THE HEARING OFFICER: That's fine. I don't have
6 a problem with that, unless parties are anticipating heavy cross.
7 If--otherwise, it's actually fine with me. Is there any reason why
8 people think they're going to--is everyone okay with just sitting
9 at the table, your witnesses?

10 MR. JETTER: Yeah.

11 THE HEARING OFFICER: You can sit next to your
12 attorney. That's great.

13 Okay. Why don't we go ahead and swear you in.
14 Raise your right hand. Do you solemnly swear to tell the whole
15 truth and nothing but the truth?

16 THE WITNESS: I do.

17 THE HEARING OFFICER: Okay. Thanks.

18 BRUCE GRISWOLD, being first duly sworn, was
19 examined and testified as follows:

20 DIRECT EXAMINATION

21 BY-MR.SOLANDER:

22 Q. Would you please state and spell your name for the
23 record?

24 A. Yes. My name is Bruce Griswold.

25 G-R-I-S-W-O-L-D.

1 Q. And by whom are you employed and in what
2 capacity?

3 A. PacifiCorp, director of short-term origination and
4 QF contracts.

5 Q. As part of your responsibilities in that position,
6 were you responsible for the negotiation of these four PPAs that
7 are before the Commission today?

8 A. Yes, I was.

9 Q. Could you please give a brief summary describing
10 the terms of the PPAs?

11 A. Sure. There are four PPAs. They were negotiated
12 under the PURPA obligation the Company has and per Utah
13 Schedule 38 process. The agreements are--were negotiated.
14 They're fairly identical in terms and conditions. They're--there's
15 a requirement for project development security, default security,
16 and levelization security. They're very consistent with the
17 previous contracts, Schedule 38 contracts that we've negotiated
18 and that have been approved by the Commission.

19 Q. And is it your testimony that all four contracts were
20 negotiated in conformance with Schedule 38 and are--the pricing
21 is also consistent with Schedule 38?

22 A. Yes, they are.

23 Q. And do you have a recommendation for the
24 Commission regarding these contracts?

25 A. Yes. PacifiCorp recommends these projects and

1 the PPAs be approved.

2 MR. SOLANDER: I have no further questions for
3 Mr. Griswold. He's available for questions from the parties or
4 the Commission.

5 THE HEARING OFFICER: Thanks. As I mentioned,
6 I'll probably reserve questions until the other witnesses have
7 had a chance to testify.

8 Let me just ask you this, Mr. Solander: How do we
9 want to deal with documents in terms of receipt into evidence?
10 Do you have a--

11 MR. SOLANDER: I mean, we would move that all
12 four confidential contracts and the amendments thereto that
13 were filed with the Commission be entered into the record. We
14 don't have any prefiled written testimony from any witness.

15 THE HEARING OFFICER: Is there any objection to
16 receipt in evidence of those documents?

17 They're received.

18 Okay, Mr. Jetter.

19 MR. JETTER: No questions from the Division.
20 Thank you.

21 THE HEARING OFFICER: Okay. Mr. Olsen.

22 MR. OLSEN: No questions.

23 THE HEARING OFFICER: And Mr. Dodge.

24 MR. DODGE: No questions.

25 THE HEARING OFFICER: Okay. Great.

1 Okay. Why don't we go ahead, then, and proceed.
2 Typically, we go to the Division first, but do you have any--do
3 you want to go ahead and testify to your witness?

4 MR. DODGE: We would. And what I would
5 propose, Your Honor, is that the written comments filed by the
6 Division, the Office, and the--and by the developers be admitted
7 as testimony of the witnesses here, at least that's our intent. I
8 think it's the intent of the others. And, then, we will have--if
9 that's acceptable, we'll have the witness give a brief summary.

10 THE HEARING OFFICER: Okay. Is there any
11 objection to that?

12 MR. SOLANDER: No objection.

13 MR. OLSEN: We have no objection.

14 THE HEARING OFFICER: Hearing none, they're
15 received. Okay. Why don't you go ahead and proceed with your
16 witness.

17 MR. DODGE: Okay. Did you want to swear him in?

18 THE HEARING OFFICER: Yeah. That would be
19 great.

20 Go ahead and raise your right hand. Do you
21 solemnly swear to tell the whole truth and nothing but the truth?

22 THE WITNESS: I do.

23 THE HEARING OFFICER: Thank you.

24 PETER SULLIVAN, being first duly sworn, was
25 examined and testified as follows:

1 DIRECT EXAMINATION

2 BY-MR.DODGE:

3 Q. Thank you. Would you please state your name,
4 business address, and your job title.

5 A. Sure. Peter Sullivan. Address is 179 Lincoln
6 Street, Suite 500, Boston, Mass. 02111. And my title is vice
7 president of business development.

8 Q. And you're here today, Mr. Sullivan, on behalf of
9 the four developers in these dockets. Is that correct?

10 A. Correct.

11 Q. Would you give just a brief summary of your
12 testimony?

13 A. Sure. As confirmed by what we've seen and filed in
14 the docket already, we appreciate the efforts of PacifiCorp, as
15 well as the Division and the Office, and look forward to bringing
16 these projects to fruition.

17 Q. Mr. Sullivan, do you have any question or
18 comments or requests of the Commission in terms of timing of
19 approval?

20 A. We would request prompt approval. We're trying to
21 get these projects moved forward quickly.

22 Q. Would a bench ruling be of any assistance in that
23 process, followed by written order?

24 A. Yes.

25 Q. And you would request that if that's doable.

1 A. Yes.

2 MR. DODGE: Thank you. No further questions. Mr.
3 Sullivan's available for questions.

4 THE HEARING OFFICER: Okay. Any cross from--

5 MR. SOLANDER: No questions.

6 THE HEARING OFFICER: --Rocky Mountain Power
7 and the Division?

8 MR. JETTER: No questions. Thank you.

9 MR. OLSEN: No, thank you.

10 THE HEARING OFFICER: Okay. With that, we'll
11 go ahead and turn over to Mr. Jetter with the Division.

12 MR. JETTER: Thank you. The Division would like
13 to swear in Charles Peterson.

14 THE HEARING OFFICER: Do you solemnly swear
15 to tell the whole truth and nothing but the truth?

16 THE WITNESS: Yes.

17 THE HEARING OFFICER: Thank you.

18 CHARLES E. PETERSON, being first duly sworn,
19 was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY-MR.JETTER:

22 Q. Mr. Peterson, would you please state your name
23 and occupation for the record?

24 A. Charles E. Peterson. I'm a technical consultant at
25 the Division of Public Utilities.

1 Q. Thank you. Have you reviewed the application in
2 Dockets No. 14-035-85, -86, -87,
3 and -88 by Enterprise Solar, Escalante Solar I, II, and III--or
4 excuse me. Those are four solar projects. The application was
5 filed by Rocky Mountain Power. Have you reviewed those
6 applications?

7 A. Yes.

8 Q. And have you also reviewed the attached power
9 purchase agreements and specifically the pricing included in
10 those?

11 A. Yes, I have.

12 Q. And did you prepare an action request response
13 filed by the Division of Public Utilities on September 4, 2014?

14 A. Yes.

15 Q. And do the recommendations made therein
16 continue to reflect the position of the Division?

17 A. Yes, they do.

18 Q. Are there any edits or changes you'd like to make
19 to that?

20 A. No.

21 Q. I believe these have already been entered into the
22 record of this hearing, so one additional question: Do you
23 believe that approval of these four power purchase agreements
24 by the Commission would be just, reasonable, and in the public
25 interest?

1 A. Yes, I do. The Division believes that the pricing
2 and other terms of the agreements are consistent with previous
3 Commission rulings and directives. And as explained in the
4 Division's memo, some of the nominal concerns we've had--
5 we had were mitigated by representations of First Wind. So, we
6 recommend approval of all four agreements as being in the
7 public interest.

8 Q. Thank you. And did you have any further
9 comments that you'd like to make?

10 A. Not at this time.

11 Q. Okay. And just one final question: Are you aware
12 of any opposition to these that has come into the Division?

13 A. No.

14 MR. JETTER: Thank you. I have no further
15 questions.

16 THE HEARING OFFICER: Thank you. Mr.
17 Solander, is there any cross or--

18 MR. SOLANDER: No, thank you.

19 MR. DODGE: No.

20 MR. OLSEN: No, thank you, Your Honor.

21 THE HEARING OFFICER: With that, I'll turn it back
22 to you, Mr. Olsen, your witness.

23 MR. OLSEN: Thank you. I would like to have you
24 swear in B,la Vastag.

25 THE HEARING OFFICER: Go ahead and raise your

1 right hand. Do you solemnly swear to tell the whole truth and
2 nothing but the truth?

3 THE WITNESS: Yes.

4 THE HEARING OFFICER: Thank you. You may be
5 seated.

6 B LA VASTAG, being first duly sworn, was
7 examined and testified as follows:

8 DIRECT EXAMINATION

9 BY-MR.OLSEN:

10 Q. Mr. Vastag, would you state your name and--for the
11 record, please?

12 A. My name is B,la Vastag. I'll spell that for you:
13 B-E-L-A. Last name, V-A-S-T-A-G.

14 Q. And what is--do you--what is your business?

15 A. I'm a utility analyst working for the Office of
16 Consumer Services located here in this building at 160 East 300
17 South, Salt Lake City.

18 Q. Thank you. And in that capacity, did you have
19 occasion to review the applications for Rocky Mountain Power
20 for Dockets No. 14-035-85, -86, -87, and -88?

21 A. Yes.

22 Q. And did you provide written analysis for the
23 purposes of the Commission on September 4, 2014?

24 A. Yes.

25 Q. Is there any change or modification to that

1 testimony that you would like to present at the present time?

2 A. No. No changes.

3 Q. Based on your analysis, is it your belief that the
4 applications stated previously would--are in--just and reasonable
5 and in the public interest if they were to be approved by the
6 Commission?

7 A. Yes. We reviewed them and found that they are
8 consistent with the Commission's guidelines under Schedule 38.

9 Q. In the capacity for the Office of Consumer Services,
10 have you received any--are you aware of whether or not the
11 Office has received any complaint or objection to these
12 proposed contracts?

13 A. No.

14 Q. Do you have anything further that you would like to
15 add?

16 A. Just a brief statement based on our comments.

17 Q. Go ahead.

18 A. The Office has reviewed these four PPAs in these
19 four dockets--14-035-85, -86, -87, and -88. And from our
20 review, it appears that they are compliant with the Commission's
21 guidelines and--
22 under Schedule 38.

23 In our comments, we raised some concerns
24 regarding the contracting and the pricing process; however, the
25 Office will pursue those concerns in a separate docket.

1 Therefore, the Office recommends that the Commission approve
2 these PPAs--Enterprise Solar, Escalante Solar I, II, and III. That
3 concludes my statement.

4 MR. OLSEN: We would submit that, Your Honor.

5 THE HEARING OFFICER: Cross from Rocky
6 Mountain Power?

7 MR. SOLANDER: No, thank you.

8 THE HEARING OFFICER: First Wind?

9 MR. DODGE: No, thank you.

10 MR. JETTER: No questions. Thank you.

11 THE HEARING OFFICER: I do have a few
12 questions, but it might be helpful if I--because the first
13 question's actually for Mr. Griswold. I might turn to Mr. Vastag
14 to clarify the statement he just made in terms of--I've got--and
15 frankly, my comments are based upon the concerns that were
16 raised in the Office's September 4 comments.

17 Can you elaborate, if you will, on what concerns
18 that you intent to pursue in other dockets and maybe, you know,
19 what that might look that, I guess?

20 MR. VASTAG: Yes.

21 THE HEARING OFFICER: Let me just say this, too:
22 Not to give away the surprise here, but the concern I'm
23 specifically interested in is the issue of the official forward price
24 curve and the carbon tax matter, so if that helps.

25 MR. VASTAG: Right. That was one of our

1 concerns, how the Company handled CO2 tax in determining its
2 official price curve. We have another open proceeding, Docket
3 14-035-40, where we're going to most likely review the Schedule
4 38 quarterly filing. And, so, we foresee our participation in that
5 proceeding as the venue for exploring that issue, as well as the
6 other issues we raised in our comments.

7 THE HEARING OFFICER: Okay.

8 MR. VASTAG: I don't know if you need me to
9 elaborate further.

10 THE HEARING OFFICER: That's helpful. That's
11 helpful.

12 Let me turn to Mr. Griswold. You know, I'm here--I
13 don't know if you have it in front of you--again, this the same
14 concern that was raised in, you know, Paragraph 2 of the
15 Office's comments. Let me just ask you: Are the assertions
16 made by the Office for the prices in the PPAs incorporate the
17 CO2 tax in the development of the official forward price curve
18 for the OFPC--is that a correct and accurate assertion? I mean,
19 does the Company have a response to that?

20 MR. GRISWOLD: Let me pull it up here so I can
21 read it.

22 THE HEARING OFFICER: Yeah, that's--
23 yeah, feel free. I'm happy--why don't I go ahead and read it just
24 into the record so we know what we're all talking about here.
25 This is on--I'm referring here to the comments of the Office

1 submitted on September 4, 2014. And I'm looking at page .2.
2 And this is under the subsection 2. It says, "The prices in this
3 PPA"--this is--again, this is referring to--I think we can apply
4 it--I think it's the same comment to all of them, but this is the
5 comments actually with respect to the Enterprise project, which
6 is 14-35-85, but I think the comments are the same for all.

7 But it says, "The prices in this PPA are based on
8 GRID avoided cost modeling from March 2014, which means that
9 the facility will begin receiving payments in November 2016
10 based on avoided-cost-based prices that are 2.7 years or
11 32"--never mind. Scratch that. It's actually subsection 3. Sorry.
12 I was looking at the wrong one. I apologize.

13 The paragraph begins--this is subsection 3--"The
14 modeling of prices in this PPA incorporates a CO2 tax in the
15 development of the official forward price curve, [or] OFPC, for
16 electric power. Again, this modeling was performed in March
17 2014. On May 7, 2014, the Company submitted its annual
18 update of Schedule 37 QF avoided cost pricing and had
19 removed the CO2 tax assumption from the OFPC per their
20 interpretation of the Commission's August 2013 order in Docket
21 No. 12-35-100. The Office is concerned about inconsistencies
22 in the Company's application of modeling changes and notes
23 that the prices for this PPA were modeled in March 2014 or
24 seven months after the 12-35-100 order while the prices in the
25 Schedule 37 avoided cost update were modeled not much later

1 or nine months after the order. These two different modeling
2 runs, only two months apart, use different CO2 tax
3 assumptions."

4 So, based upon that, I guess the question, Mr.
5 Griswold, is that--does the Company have a response to that?
6 Is that an accurate assertion about the inclusion of the CO2
7 tax?

8 MR. GRISWOLD: Yeah. I can--I'll respond to that.
9 In the negotiations of the agreements with First Wind, there
10 was--we'd originally done some pricing up--we'd done their
11 pricing back in 2013. And as the negotiations went on through
12 February and into March, it was getting close to exceeding the
13 timelines and deadlines within the Schedule 38 process
14 timelines. And First Wind was getting antsy to get going with
15 their project so they could--because they are large projects and
16 require significant time for permitting and construction, that we
17 updated the prices based on where they were originally located
18 in the queue and with the carbon tax as it stood. And
19 the--rather than hold off and wait until the modeling had been
20 completed for the other-- removing the carbon tax. So, because
21 of the deadlines in front of us, we moved forward with what we
22 had while the modeling folks continued with the Schedule 37
23 modeling.

24 THE HEARING OFFICER: So--and I apologize. I
25 may be obtuse on this. Does that mean that they are included,

1 that the--carbon--I'm sorry--the data--the CO2, is it included in
2 the pricing for these PPAs?

3 MR. GRISWOLD: Yes.

4 THE HEARING OFFICER: Okay. And maybe you
5 already explained this, but can you help me understand why
6 they're included in the official forward price curve, given the--

7 THE REPORTER: I'm sorry. "The
8 official" . . .

9 THE HEARING OFFICER: The OFPC. Let's just
10 call it that. I guess I'm just trying to get a better understanding
11 why they're included for purposes of this, the pricing of PPAs,
12 given the position taken in the Schedule 37 docket, which is
13 essentially to exclude those.

14 MR. GRISWOLD: Yes, the--you know, we--when we
15 were doing the modeling--or I shouldn't say--the Company was
16 doing the modeling, you know, the original prices prior to that
17 order were to keep the CO2--we had the CO2 tax included. And
18 just in the negotiations of it with the timelines under 38,
19 when--as they were reviewing their--the modeling folks were
20 reviewing the assumptions to update for the Schedule 37 filing,
21 they realized we were--that they were under the--kind of the
22 order to remove those.

23 THE HEARING OFFICER: Okay.

24 MR. GRISWOLD: And, so--but because of the
25 timelines we're up with and we're moving past kind of the

1 deadlines, we kind of exceeded the 30-day deadlines. While
2 they were--we moved forward for execution with the prices
3 rather than delay it for another two months until they'd finish up
4 the modeling.

5 THE HEARING OFFICER: Let me--and I'll turn it
6 back to you in a second here, but let me turn to the Division first
7 and the Office. Given that, you know, testimony here, I mean, is
8 there any concern on the Division's part that there is an
9 inconsistency between the pricing contained in these PPAs and
10 the Commission's current avoided cost methodology that was
11 approved in Docket 12-35-100?

12 MR. PETERSON: Well, the Division's position is
13 that the Commission's language is ambiguous in that order
14 regarding the removal of CO2, the carbon tax and that
15 arguments can be made either way and the Commission could
16 be justified in going either way. So, in essence, the--
17 at this point, at least, the Division does not have an official
18 position as to what is the correct way to do it. And, so, we
19 are--as far as these particular contracts go that are before the
20 Commission, we are okay with them having the carbon tax
21 added into it without taking a position that they--that it should
22 have been removed.

23 THE HEARING OFFICER: Okay. Let me--
24 before I turn to you, Mr. Vastag, I meant to ask you, Mr.
25 Griswold: What is the--if you can tell me, what is the--you

1 know, the pricing impact with or without? I mean, do you
2 know--you know here today what--is this a material impact with
3 or without the--including the carbon or not?

4 MR. GRISWOLD: I don't have the numbers in front
5 of me. I--my sense is that it's not a material impact, because
6 it's far enough out the curve that it's kind of--it--the biggest
7 impact really in the pricing in here has been the change in the
8 gas curve prices, as well as the deferral of the next resource.
9 And, so, the deferral of the next resource is, you know, far
10 enough out that it masks what the impact is from the carbon tax,
11 is my general review without having the numbers in front of me.

12 THE HEARING OFFICER: You remind me of
13 another question. Is the--we know that this is--
14 for the purpose of these PPAs, that the OFPC is included for
15 purposes of pricing. Is the carbon tax included in, I guess, the
16 dispatch decisions, I guess, for the Company's own units?

17 MR. GRISWOLD: I don't know the answer to that.

18 THE HEARING OFFICER: You don't know.

19 MR. GRISWOLD: No.

20 THE HEARING OFFICER: Okay. I skipped over
21 Mr. Vastag, but, you know, I guess I'll ask you the same
22 question I asked Mr. Peterson with respect to--I mean,
23 does--what is the Division--or sorry--the Office's position
24 regarding--you know, understanding, again, that Schedule 37 is
25 currently being, you know, in place, so . . .

1 MR. VASTAG: If I may follow up on the question
2 you just posed to Mr. Griswold. If I recall correctly, in the
3 current Schedule 38 quarterly update, the Company indicated
4 the impact of the CO2 tax on the OFPC. And if I recall
5 correctly, it was approximately \$1.7 per megawatt- hour. So,
6 that's--in terms of order of magnitude, that gives you an
7 idea--about \$2 per megawatt-hour--

8 THE HEARING OFFICER: And that's just for a
9 portion--correct me--that's for--in other words, this doesn't kick
10 in until--it's only for a portion of the contract rate, right?

11 MR. VASTAG: That may be the 20-year levelized
12 impact.

13 THE HEARING OFFICER: Okay.

14 MR. VASTAG: I'm--

15 THE HEARING OFFICER: Okay.

16 MR. VASTAG: Subject to check.

17 The Office understands that the Company--and
18 there's going to be some lag in implementing the Commission's
19 orders from, say, the 12-035-100 docket. So, our concern is
20 that seven months after that docket they hadn't implemented the
21 CO2 tax yet, and then two months later they had. And our
22 concern is that now there are--there is an inconsistency. And
23 the question is whether it's--the time lag is reasonable. I mean,
24 there will be an inconsistency, obviously, when guidelines and
25 standards change. It takes some time to implement those.

1 They can't occur immediately. So, our--we agree there is an
2 inconsistency between the price in these PPAs and the pricing
3 method in Schedule 37. Whether or not it happened timely or
4 not is our concern.

5 THE HEARING OFFICER: Let me ask you this:
6 Putting aside--again, this is a--you know, currently being
7 deliberated in another docket--I mean, is--depending on how
8 that--the Commission makes a determination on whether it
9 should be excluded or not for purposes of Schedule 37 does
10 that--would that affect the Office's position--
11 because you recommend approval. Does that--I mean, do you
12 feel like it's de minimus and it's immaterial and you just want to
13 investigate it further? Or help me understand or reconcile, I
14 guess. It sounds like you might have a--feel free to take a
15 second to have a . . .

16 MR. VASTAG: Yeah, and our--another primary
17 concern the Office has is that we believe the Company should
18 come to the Commission and ask specifically for approval to
19 make these type of changes in the modeling or before they
20 implement them. They--it appears to us they've done it
21 essentially unilaterally, their interpretation of how the CO2 tax
22 in this case should be handled.

23 And--

24 MR. SOLANDER: I'm sorry. Are you talking
25 about--when you say "in this case," do you mean with respect to

1 these four PPAs or in the other--

2 MR. VASTAG: I apologize. I would say--
3 well, when the CO2 tax removal was implemented, it was the
4 Schedule 37, right?

5 THE HEARING OFFICER: And I just want to be
6 very clear here--and I know in the attorneys' minds there's
7 probably a bit of concern here. I'm not taking testimony on
8 Schedule 37, but I can't help but understand there's some
9 interplay between, you know, essentially the Commission's
10 determination in one docket would essentially affect, you
11 know--so--I mean, I'm trying to walk a line and understand,
12 so . . .

13 Did you want to say something further?

14 MR. SOLANDER: And maybe I can just do it with
15 some redirect questions with--

16 THE HEARING OFFICER: Yeah.

17 MR. SOLANDER: --Mr. Griswold when we're done
18 here.

19 THE HEARING OFFICER: And I'm happy to do
20 that.

21 Why don't we go ahead and do that now. I'm
22 planning on taking a recess at some point. Why don't we go
23 ahead and start with the Company. And feel free to redirect
24 your witness.

25 .

1 REDIRECT EXAMINATION

2 BY-MR.SOLANDER:

3 Q. Mr. Griswold, can you briefly explain the timelines
4 that--the milestones that occur when the Company gets a
5 request for indicative pricing? I believe you referenced the fact
6 that we were nearing the end of our--or had exceeded the time
7 frames for providing pricing to these projects. Can you explain
8 that process?

9 A. Sure. When--we generally have a 30-day clock
10 starts to provide indicative prices once they provided their
11 information. Upon providing them information, if they choose to
12 go ahead and provide us written notice of that, we then provide
13 them a draft PPA. And, in this case, because the negotiations
14 kind of moved from 2013 into 2014, we felt it was appropriate
15 prior to finishing off the negotiations to do a price update, which
16 we did. However, once the prices are agreed to, there is--I
17 believe it's a 30-day window to provide a final PPA for
18 execution. And we were exceeding that 30 days.

19 Q. And the price that was given that was offered to the
20 projects in that contract was the avoided cost price that was in
21 effect at that time?

22 A. That's correct.

23 Q. And the Company doesn't have the power then
24 once that price is provided in a PPA to revisit the price after it's
25 been signed. Is that right?

1 A. That's correct.

2 MR. SOLANDER: I have--I think--I hope that
3 clarifies it. Mr. Griswold is available for further questioning.

4 THE HEARING OFFICER: If you'll allow me to
5 re-redirect. So, just so I'm clear, so you had pricing with it, and
6 then you were planning on updating it after the-- based upon
7 your interpretation of the 100 order, but at that point, it
8 was--based upon Schedule 38 and the timing of the pricing,
9 you--the Company made a determination it was essentially, for
10 lack of a better nomenclature, just too late? Is that kind of--am
11 I characterizing that?

12 MR. GRISWOLD: That's a general statement. We
13 had exceeded the--I guess that last 30-day clock by several
14 weeks to get a final PPA to First Wind for execution. And rather
15 than continue to wait and--they were very anxious to get started
16 on their project because of timing and the whole issues of
17 getting the project in the ground by--to secure the investment
18 tax credit, that it was--we just made a decision that we hold the
19 prices without waiting another two months to get them finalized
20 and filed.

21 THE HEARING OFFICER: Mr. Solander.

22 BY MR. SOLANDER:

23 Q. And was this prior to the Company's request to
24 suspend the application of Schedule 38 that was denied later by
25 the Commission?

1 A. Yes, it was.

2 Q. So, this was of not one of the projects that the
3 Company was--had a backlog to fill that led to that docket.

4 A. That's correct.

5 THE HEARING OFFICER: Mr. Dodge, do you have
6 any redirect of your witness or--I do have a question, too, for
7 you before I . . .

8 MR. DODGE: I had not testimony but just a brief
9 statement--

10 THE HEARING OFFICER: Sure.

11 MR. DODGE: --I'd like to make, not by way of
12 testimony; just by way of just argument.

13 THE HEARING OFFICER: Appreciate it.

14 MR. DODGE: I think that a couple things, Your
15 Honor, ought to focus on on this issue. One is the notion that
16 was very clearly upheld in the 100 docket in the motion, not in
17 the final order, but the motion that was denied in December of
18 2012, saying that the methodology of pricing in place at the time
19 the contract is signed will remain whether or not later changes
20 are made. At the time this contract was signed, the pricing
21 methodology that they had and were giving out to people was
22 the one used to price this PPA. So, I think it's consistent with
23 the Commission's prior orders that that's the pricing that's
24 appropriate for this one.

25 There was some discussion after that about

1 repricing. And we could get it into evidence if you want on that,
2 but I guess the point I want to make is: There was also a
3 increase in the forward price curve of gas. And we still don't
4 know whether we would have been worse off or better off to
5 reprice it, because the tax would have gone one way--which they
6 hadn't yet modeled. They said it's still a month or two away.
7 The client wasn't anxious to wait two months for them to finish
8 their modeling. But the price--the gas prices had also gone up,
9 increasing avoided cost. So, we still don't know what the
10 ultimate pricing would have been, but we're living with pricing in
11 effect as of the time it was signed, which I think is consistent
12 with Commission orders.

13 THE HEARING OFFICER: Okay. So, just to be
14 clear, at the time the PPA was actually signed, this was prior
15 to--I mean this is prior to the--help me understand the timing
16 of--

17 MR. DODGE: It was the QF pricing still being
18 offered by the Company, because they were still two months shy
19 of completing their own internal modeling to figure out how to
20 implement--
21 the CO2 tax isn't as simple as it may sound. It affects
22 several--yeah, you've heard this testimony. It affects several of
23 their data sets. And it took them some time to figure out how in
24 their minds it ought to be removed.

25 Also point out the Commission's never approved

1 that and several parties disagree with that interpretation
2 anyway, but even if they were properly implementing that order,
3 they had not yet figured out how to do that. So, at the time it
4 was signed, the pricing that was in this PPA is the pricing that
5 was the approved--Commission-
6 approved PPA approach in pricing, and even the Company's
7 approved approach, because they hadn't yet decided how to
8 change it in light of the CO2 issue.

9 THE HEARING OFFICER: Remind me again the
10 date--when these contracts were executed.

11 MR. SOLANDER: June.

12 MR. DODGE: June.

13 THE HEARING OFFICER: June? Okay. June of?

14 MR. DODGE: Of twenty--

15 THE HEARING OFFICER: Thirteen?

16 MR. DODGE: Fourteen.

17 THE HEARING OFFICER: Fourteen.

18 MR. DODGE: This year.

19 THE HEARING OFFICER: Okay. And I'm going to
20 allow redirect from Office and Division. Help me understand a
21 little bit about--you mentioned essentially you made a request
22 for a bench ruling. Can you elaborate a bit on timing concerns
23 or what have you just so I can have a better understanding of
24 that as I--I don't know if that's a question for Mr. Sullivan or not.

25 MR. SULLIVAN: I can take that. So, as a

1 developer, we seek financing to construct a project. We'll also
2 seek financing later when the project's--
3 permanent financing when the project's operating. And just as
4 we're talking right now to potential financing partners, it's--we
5 think it would be helpful to know the decision.

6 THE HEARING OFFICER: So, it's more a financing/
7 timing issue.

8 MR. SULLIVAN: Correct.

9 THE HEARING OFFICER: Is there any tied to any
10 tax issues or--

11 MR. SULLIVAN: No.

12 THE HEARING OFFICER: Okay. Did-- Mr. Jetter,
13 did you have any redirect or--for any party earlier?

14 MR. JETTER: I don't have any redirect at this time.

15 THE HEARING OFFICER: Mr. Olsen.

16 MR. OLSEN: No. Thank you, Your Honor.

17 THE HEARING OFFICER: What I propose is taking
18 a recess for a bit to noodle on this, but I don't know--is there
19 any other--anything else that anyone wants to offer up or any
20 other matters before I recess for a bit here?

21 Okay. No?

22 Okay. With that, why don't we go ahead and
23 recess, then we'll be back, hopefully momentarily.

24 We're off the record. Thanks.

25 (Recess taken, 2:39-3:25 p.m.)

1 THE HEARING OFFICER: Why don't we go ahead
2 and go on the record.

3 We have--where we last left before we recessed,
4 we talked about a request for a bench ruling from the developer,
5 First Wind. Appreciate your patience. Based upon the
6 Commission's review of the applications, the comments filed in
7 these dockets, the statements and testimony made at the
8 hearing today, the Commission approves the applications for
9 approval of power purchase agreements between Rocky
10 Mountain Power, PacifiCorp, and Enterprise in Docket No.
11 14-35-85; and then in Dockets No. 14-35-86, -87, and -88. And
12 these are PPAs between Rocky Mountain or PacifiCorp and
13 Escalante Solar I, LLC; Escalante Solar II, LLC; and Escalante
14 Solar III, LLC.

15 Is there anything else in terms of housekeeping
16 beyond today?

17 MR. DODGE: Thank you.

18 THE HEARING OFFICER: The Commission will
19 issue an order memorializing this bench ruling in due course.
20 Thanks for everyone's participation. Thanks. We're adjourned.
21 And the witnesses are excused.

22 (Proceedings concluded at 3:26 p.m.)
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CERTIFICATE

This is to certify that the foregoing proceedings were taken before me, SCOTT M. KNIGHT, a Registered Professional Reporter and Notary Public in and for the State of Utah, residing at South Jordan, Utah;

That the proceedings were reported by me in stenotype and thereafter caused by me to be transcribed into typewriting, and that a full, true, and correct transcription of said proceedings so taken and transcribed is set forth in the foregoing pages, inclusive.

I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action, and that I am not interested in the event thereof.



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