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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 Modification of Contract Term of PURPA Power Purchase Agreements with Qualifying Facilities	<b>Docket No. 15-035-53</b>
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**PREFILED DIRECT TESTIMONY AND EXHIBITS OF KEVIN C. HIGGINS**

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The Rocky Mountain Coalition for Renewable Energy hereby submits the Prefiled Direct Testimony of Kevin C. Higgins in this docket.

DATED this 16<sup>th</sup> day of September 2015.

HATCH, JAMES & DODGE

/s/ \_\_\_\_\_  
Gary A. Dodge  
Attorneys for the Coalition

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 16<sup>th</sup> day of September 2015 on the following:

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/s/ \_\_\_\_\_

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**Direct Testimony of Kevin C. Higgins**

**On Behalf of the**

**Rocky Mountain Coalition for Renewable Energy**

**September 16, 2015**

**I. INTRODUCTION AND SUMMARY**

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**Q. Please state your name and business address.**

A. My name is Kevin C. Higgins. My business address is 215 South State Street, Suite 200, Salt Lake City, Utah, 84111.

**Q. Please state your name and business address.**

A. My name is Kevin C. Higgins. My business address is 215 South State Street, Suite 200, Salt Lake City, Utah, 84111.

**Q. By whom are you employed and in what capacity?**

A. I am a Principal in the firm of Energy Strategies, LLC. Energy Strategies is a private consulting firm specializing in economic and policy analysis applicable to energy production, transportation, and consumption.

**Q. On whose behalf are you testifying in this proceeding?**

A. My testimony is being sponsored by the Rocky Mountain Coalition for Renewable Energy (“Coalition”), an unincorporated, informal coalition formed for the purpose of opposing the efforts of Rocky Mountain Power Company (“RMP”) in Utah and Wyoming to limit the maximum term of Qualifying Facility (“QF”) power purchase agreements (“PPAs”) to three years. Among the current supporters of the Coalition are the Utah Association of Energy Users (“UAE”), EverPower Wind Holdings Inc., Scatec Solar North America, Inc., SunEdison, Sustainable Power Group (“sPower”) and Wasatch Wind

**Q. Please summarize your qualifications.**

22 A. My academic background is in economics, and I have completed all  
23 coursework and field examinations toward a Ph.D. in Economics at the University  
24 of Utah. In addition, I have served on the adjunct faculties of both the University  
25 of Utah and Westminster College, where I taught undergraduate and graduate  
26 courses in economics. I joined Energy Strategies in 1995, where I assist private  
27 and public sector clients in the areas of energy-related economic and policy  
28 analysis, including evaluation of electric and gas utility rate matters.

29 Prior to joining Energy Strategies, I held policy positions in state and local  
30 government. From 1983 to 1990, I was economist, then assistant director, for the  
31 Utah Energy Office, where I helped develop and implement state energy policy.  
32 From 1991 to 1994, I was chief of staff to the chairman of the Salt Lake County  
33 Commission, where I was responsible for development and implementation of a  
34 broad spectrum of public policy at the local government level.

35 **Q. Have you previously testified before the Utah Public Service Commission**  
36 **(“Commission”)?**

37 A. Yes. Since 1984, I have testified in thirty-six dockets before the Utah  
38 Public Service Commission on electricity and natural gas matters. My  
39 involvement in the determination of contract terms for QFs in Utah dates back to  
40 the initial QF buyback rates established for the Utah Power & Light Company in  
41 1984.

42 **Q. Have you testified previously before any other state utility regulatory**  
43 **commissions?**

44 A. Yes, I have testified in approximately 170 other proceedings on the subjects  
45 of utility rates and regulatory policy before state utility regulators in Alaska,  
46 Arkansas, Arizona, Colorado, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky,  
47 Michigan, Minnesota, Missouri, Montana, Nevada, New Mexico, New York, North  
48 Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, Virginia,  
49 Washington, West Virginia, and Wyoming. I have also filed affidavits in  
50 proceedings before the Federal Energy Regulatory Commission.

51 **Q. What is the purpose of your testimony?**

52 A. My testimony addresses the proposal by Rocky Mountain Power (“RMP”  
53 or “Company” or “PacifiCorp”) to reduce the maximum term for QF contracts  
54 executed under Schedule 37 and 38 from twenty years to three years.

55 **Q. Please summarize your primary conclusions and recommendations.**

56 A. RMP’s proposal to reduce the maximum term for fixed price contracts for  
57 QFs from twenty years to three years is not reasonable or in the public interest  
58 and should be rejected by the Commission.

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60 **II. RESPONSE TO RMP PROPOSAL TO REDUCE MAXIMUM CONTRACT**

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**TERMS FOR QFs**

62 **Q. What contract term for QFs is currently permitted in Utah?**

63 A. Commission orders currently provide for standard QF contracts of twenty  
64 years, with an allowance for parties to petition the Commission for longer terms.

65 **Q. What is your understanding of the basis for this contract term?**

66 A. In Docket No. 03-035-14, the Company argued that a twenty-year term  
67 represents an appropriate balance between a term that allows the QF to secure  
68 financing and limiting the risks that accompany long range power price  
69 forecasting. The Commission found reasonable and accepted parties' common  
70 position providing for a standard term limit of twenty years for QF contracts with  
71 the allowance for parties to petition the Commission for longer terms. (October  
72 31, 2005 Report and Order, p. 29)

73 **Q. Do you agree that the current twenty-year contract term with an allowance**  
74 **for parties to petition the Commission for longer terms is reasonable?**

75 A. Yes. I agree that the Utah Commission's current approach to contract  
76 terms is reasonable and provides an appropriate framework for encouraging QF  
77 development while protecting customer interests.

78 **Q. What change in contract term is RMP requesting?**

79 A. As explained in the direct testimony of RMP witness Paul H. Clements,  
80 RMP is proposing that the maximum term for QF contracts be reduced from  
81 twenty years to three years.

82 **Q. What rationale does RMP offer for this change?**

83 A. RMP argues that this change is necessary to ensure ratepayer indifference  
84 to utility purchases of QF power because the twenty-year contract term is (1)  
85 inconsistent with the Company's hedging practices, (2) inconsistent with resource  
86 acquisition policies and practices for non-PURPA energy purchases, and (3) not

87 aligned with the Company's IRP planning cycle and action plan.<sup>1</sup> Mr. Clements  
88 also argues that the availability of twenty-year fixed price contracts for QF power  
89 exposes customers to undue pricing risk.<sup>2</sup>

90 **Q. What is your response to RMP's proposed change?**

91 A. I recommend that the proposed change be rejected by the Commission.  
92 RMP is asking the Commission to abandon its long-established policy of  
93 reasonably encouraging QF development by ensuring the availability of long-term  
94 avoided cost contracts. In its place, the Company seeks adoption of a new policy  
95 designed to hinder further QF development in Utah. In supporting its argument,  
96 the Company relies on inapt comparisons and selectively subjects QF pricing to  
97 specific utility planning criteria while ignoring the obvious fact that the Company  
98 is compensated for its owned resources in a fundamentally different and far more  
99 favorable manner than the QFs. In doing so, the Company brushes aside the  
100 previous body of work developed in this jurisdiction to ensure ratepayer  
101 indifference in accordance with the "partial displacement differential revenue  
102 requirement" ("PDDRR") pricing method, a method that was championed by the  
103 Company and which provides prices to QF projects that are directly derived from  
104 comparison to the Company's least-cost plan.

105 Moreover, the proposed change is likely to quash QF development in Utah  
106 at a time when implementation of the Environmental Protection Agency's  
107 ("EPA") Clean Power Plan is creating significant uncertainty with respect to the

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<sup>1</sup> Direct testimony of Paul H. Clements, lines 47-51.

<sup>2</sup> *Id.*, lines 433-470.



108 Company's long-term resource plan. It strikes me as unwise to be signaling to  
109 QFs, particularly in light of their various renewable, zero-emitting, and combined  
110 heat & power attributes, that their power is of little long-term value, and  
111 consequently discouraging their development, at a time when new environmental  
112 regulations are placing long-term resource planning in a state of flux. This seems  
113 particularly unwise when it is understood that development of renewable, zero-  
114 emitting, and combined heat & power resources – each of which has a nexus to  
115 QF generation – is encouraged by the Clean Power Plan as a means of gaining  
116 compliance.

117 **Q. How is the PDDRR method designed to achieve ratepayer indifference?**

118 A. The PDDRR method is an IRP-based approach to determining avoided  
119 cost which provides prices to QF projects that are directly derived from  
120 comparison to the Company's least-cost plan. The method is designed to pay QFs  
121 the very costs that the Company avoids based on its long-term least-cost plan.<sup>3</sup>  
122 When advocating for adoption of the PDDRR in Wyoming, RMP argued that  
123 "this approach fairly values QFs as they compare to other real alternatives  
124 available to the Company."<sup>4</sup> This statement has not become untrue simply  
125 because QFs have been able to develop successful renewable energy and other

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<sup>3</sup> Because the costs of Company-owned resources are recovered from customers over longer periods than QF contracts (e.g., 35 years versus 20 years) and the cost recovery of Company-owned assets is front-end loaded, the capacity cost to ratepayers over the first twenty years of a Company-owned asset is actually greater than the capacity cost to ratepayers of a twenty-year QF contract that is based on the avoided cost of that same Company-owned asset, all things being equal. This is due to the unequal time periods for recovery. However, because the capacity deferral period for RMP is so far in the future, I am not relying on this observation or argument for purposes of this case.

<sup>4</sup> Wyoming Public Service Commission, Docket No. 20000-342-EA-09, Prefiled Direct Testimony of Gregory N. Duvall, p. 9.

126 qualifying projects at RMP's avoided costs.

127 **Q. What is your response to Mr. Clements' argument that the requirement to**  
128 **offer long-term QF contracts is inconsistent with the Company's hedging**  
129 **practices?**

130 A. Viewed in isolation, long-term fixed price QF contracts might appear to be  
131 inconsistent with the Company's financial hedging practices, which are generally  
132 limited to 36 months.<sup>5</sup> However, this is an apples-to-oranges comparison and the  
133 Company's hedging practices should not be dispositive of the terms for QF  
134 contracts. Hedging contracts are simply an instrument in pricing the Company's  
135 fuel supply and market purchases, whereas the Company's generation assets  
136 serviced by the fuel hedges are indeed long-term obligations for which customers  
137 are bound for decades. So while the Company, albeit somewhat constrained in  
138 its financial hedging practices, enjoys the long-term revenue security of earning  
139 returns from its assets in rate base, the Schedule 37 or 38 contract is the *sole*  
140 *means* by which a QF is compensated for its power. Thus the more apt  
141 comparison is not between RMP's hedging practices and long-term QF contracts,  
142 but between long-term QF contracts and the Company's recovery of its generation  
143 investments in rate base. In this comparison, the obligations of customers are  
144 longer-term and more open-ended when it comes to paying for utility-owned plant

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<sup>5</sup> The Company's hedging policies recognize exceptions to the general 36-month limitation when market conditions warrant. A collaborative process report submitted to the Commission dated March 30, 2012 in Docket No. 10-035-124, noted (at page 7): "While this collaborative process has suggested that 36 months should normally be the limit for future natural gas contracts, the parties agree that the Company should follow prudent fuel management strategies and may act outside the percentage and time horizon limits when market conditions warrant."

145 in contrast with QF contracts.

146 **Q. Please explain this latter point.**

147 A. Utility generation assets are subject to ongoing environmental risks that  
148 are commonly addressed through environmental upgrades which customers are  
149 routinely required to fund pursuant to general rate case decisions. Customers are  
150 also at risk for future accelerated depreciation of utility generation assets to the  
151 extent that plant lives are shortened in response to environmental pressures. In  
152 contrast, a QF under a long-term contract must absorb the cost of future upgrades  
153 and other investments without recourse to additional ratepayer funding. Thus, the  
154 playing field with respect to the risk of recovering lifetime plant investment costs  
155 is already unequal in the utility's favor and disadvantageous to ratepayers. The  
156 PDDRR does not give any weight to this risk avoidance benefit from QFs because  
157 the method accepts the Company's least-cost plan without adjusting for the fact  
158 that RMP can seek approval for recovery of subsequent investment in its plants  
159 during their lifetimes. The omission of this utility risk consideration in QF  
160 pricing suggests that the PDDRR method actually errs on the side of ratepayer  
161 *benefit* rather than ratepayer *indifference* when it comes to lifetime recovery of  
162 plant investment. The Company ignores this risk mitigating feature of current  
163 QF pricing, focusing instead on the risk of entering into a long-term contract at  
164 projected avoided energy costs.

165 **Q. Do you agree that there is price risk associated with long-term QF contracts?**

166 A. Yes, but there is price risk associated with the acquisition of any long-term

167 resource, including utility resources. Moreover, the price risk operates in both  
168 directions. If the Company's market price forecast is unbiased then the long-term  
169 price of a QF contract is as likely to be below future market prices as above them.  
170 Further, because RMP currently is not crediting new QFs with any capacity  
171 displacement until 2030<sup>6</sup>, the pricing of new long-term QF contracts is comprised  
172 largely of avoided energy costs, meaning that ratepayers will not be "paying  
173 twice" for capacity, but rather merely paying QFs to displace RMP energy and  
174 other market purchases largely at the Company's projected avoided energy costs.

175 **Q. Do you have a response to Mr. Clements' observation that the average price**  
176 **under which the Company is under contract to pay QFs over the next ten**  
177 **years is greater than the Mid-C 10-year forward price of \$38.11 on February**  
178 **2, 2015?**

179 A. Yes. This is not surprising, given that market prices are currently at low levels.  
180 But I think it is important to add some perspective. The all-in generation cost for  
181 which RMP requested recovery in Utah in its last general rate case was  
182 approximately \$50.72/MWh, which is also considerably greater than the Mid-C  
183 ten-year forward price.<sup>7</sup> If the Company is taking the position that the cost of  
184 existing long-term resources in excess of the Mid-C ten-year forward price is  
185 unreasonable, then under such a standard the cost of the Company's own

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<sup>6</sup> See Quarterly Compliance Filing - 2015.Q2 Avoided Cost Input Changes, Docket 03-035-14, dated August 10, 2015 at 3.

<sup>7</sup> Sources: Generation revenue requirement at requested return: Utah PSC Docket No. 13-035-184. RMP Witness Joelle Steward, Class Cost of Service Model Workpaper, Function Summary Worksheet, Generation Function Summary (col. D, row 68). Utah Energy at Input: Utah PSC Docket No. 13-035-184. Exhibit RMP\_\_(SRM-3), p. 11.16. Note: The all-in generation cost does include a small proportion of QF power.

186 generation fleet would not fare well. It is more likely that RMP's view regarding  
187 the proper evaluation of the cost of Company-owned resources is that the  
188 reasonableness of their costs should be judged on the circumstances known at the  
189 time the investment decision was made. This same standard of reasonableness  
190 should be applied to QF contracts.

191 Further to the case at hand, RMP's current twenty-year levelized generic  
192 avoided cost rate for a 100 MW Utah QF with an 85% capacity factor is only  
193 \$33.12<sup>8</sup> – well *below* the ten-year Mid-C price quoted by Mr. Clements. Since  
194 this docket pertains to the continuation of twenty-year contracts for new QFs, it is  
195 important to bear in mind that current pricing for new QFs under a twenty-year  
196 contract is well below the pricing for QFs already under contract (quoted by Mr.  
197 Clements), well below RMP's own generation costs, and well below the ten-year  
198 Mid-C price quoted by Mr. Clements.

199 **Q. What is your response to Mr. Clements' argument that the twenty-year**  
200 **contract is inconsistent with resource acquisition policies and practices for**  
201 **non-PURPA energy purchases?**

202 A. Mr. Clements argues that PURPA contracts do not go through the same  
203 extensive IRP process to determine if they are needed, do not receive the same  
204 upper management review and analysis, nor go through the same competitive bid  
205 RFP process to ensure they are lowest cost. In making the first of these  
206 arguments, Mr. Clements overlooks the fact the PDDRR relies upon the IRP least-

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<sup>8</sup> See Quarterly Compliance Filing - 2015.Q2 Avoided Cost Input Changes, Docket 03-035-14, dated August 10, 2015, Appendix B.

207 cost plan. Indeed, this feature was a major selling point of the PDDRR method  
208 when RMP championed its adoption. But more broadly, all of these arguments  
209 overlook the fact that PURPA sets national priorities with respect to the use of  
210 renewable and highly efficient energy resources (as does Utah’s own “mini-  
211 PURPA” statute set state priorities). All things being equal, e.g., so long as QF  
212 power is priced at avoided cost, it is national and state policy to displace the  
213 utility’s non-renewable generation resources with QF power. For this to occur,  
214 FERC has determined that it is necessary for utilities located outside of markets  
215 meeting certain competitive standards to be under a “must take” obligation. In  
216 my opinion, these arguments advanced by Mr. Clements are essentially a  
217 collateral attack on the Company’s “must take” obligation.<sup>9</sup>

218 **Q. Please explain your concerns regarding the Company’s proposal in the**  
219 **context of the uncertainty surrounding PacifiCorp’s compliance with EPA’s**  
220 **Clean Power Plan.**

221 A. EPA’s Clean Power Plan (“CPP”) is intended to limit carbon dioxide  
222 emissions from existing fossil-fueled power plants. The final rule, which was  
223 promulgated under Section 111(d) of the Clean Air Act, was released on August  
224 3, 2015. The CPP requires states to submit a compliance plan to the EPA by  
225 September 16, 2016, although states may request a two-year extension. Subject to

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<sup>9</sup> I note that Mr. Clements’ testimony also cites to a number of legal opinions and appears to offer a number of legal opinions relating to PURPA (e.g., interpretations of PURPA regulations and opinions on lines 91-137, including the opinion that a three-year QF PPA term would not be inconsistent the federal law (at 124-137)). I will refrain from engaging in a discussion of these legal issues as they can properly be addressed in appropriate legal memoranda. From a non-legal perspective, however, I find it difficult to understand how a setting a maximum QF PPA term at three years is consistent with stated goals in federal and state laws to encourage the development of cogeneration and renewable energy production.

226 EPA approval of these plans, states will be required to submit pre-compliance  
227 progress reports to the EPA in 2021 and interim compliance progress reports  
228 starting in 2025.

229 In the final rule, the EPA identified emission reduction goals for each state  
230 based on its formulation of the “best system of emission reduction,” which is  
231 made up of three building blocks: (1) heat rate improvements at existing coal-  
232 fueled resources; (2) increased utilization of natural gas resources; and (3)  
233 increased deployment of renewable resources and zero-emitting resources.  
234 However, compliance actions are not limited to these building blocks and the  
235 EPA identified a number of other actions that can be implemented to achieve  
236 compliance, including increased utilization of combined heat and power, which is  
237 relevant to QFs.

238 PacifiCorp has not stated publicly how the Company intends to comply  
239 with the CPP, but the implications of the CPP for the Company appear likely to be  
240 significant, including the possible early retirement of fossil plants. Although the  
241 Company’s most recent IRP took into account the *proposed* Section 111(d) rule,  
242 the final rule is considerably different from what had been proposed and the  
243 stringency in the final rule has increased for Utah, Wyoming, Colorado, and  
244 Montana – states where PacifiCorp has a fossil generation presence. In light of  
245 this uncertainty, and in light of the critical role of renewable resources, zero-  
246 emitting resources, and combined heat & power resources in reaching CPP  
247 compliance, the Company’s proposal to reduce the contract term for QFs to a

248 maximum of three years appears to be moving in exactly the wrong direction.  
249 Such a change would send a price signal to prospective QFs that the long-term  
250 value of their output is worth very little at the same time that the Company is  
251 facing the challenge of CPP compliance. An important policy question that the  
252 Commission should consider is whether it is wise to be signaling to QFs that their  
253 output is of little long-term value, and consequently discouraging their  
254 development, at this critical time of changing environmental regulations. This  
255 question is particularly important when it is understood that development of  
256 renewable, zero-emitting, and combined heat & power QFs is encouraged by the  
257 final rules as a means of gaining compliance. In my opinion, in light of these  
258 considerations, it is further reason to reject the Company's proposal to reduce the  
259 maximum QF contact term to three years.

260 **Q. Does this conclude your direct testimony?**

261 **A.** Yes, it does.