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Surrebuttal Testimony of Charles E. Peterson

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4 **Q. Please state your name, business address and title.**

5 A. My name is Charles E. Peterson.

6

7 **Q. Did you file direct testimony and rebuttal in this matter?**

8 A. Yes, on behalf of the Division.

9

10 **Q. What is the purpose of your testimony in this matter?**

11 A. I will make comments on issues raised by Mr. Paul Clements who filed rebuttal testimony in
12 behalf of PacifiCorp, Mr. Nathan Rich who filed rebuttal testimony in behalf of the
13 Renewable Energy Coalition, Messrs. Bryan L. Harris, and Hans Isern, who provided
14 rebuttal testimony for the Rocky Mountain Coalition for Renewable Energy.

15

16 **Q. What comments that Mr. Clements made do you want to respond to?**

17 A. Mr. Clements appears to misunderstand the Division's suggested alternative to the
18 Company's three-year contract limit. On lines 517-518 of his rebuttal testimony, he states
19 "[the Division's] proposal continues to lock in the capacity portion of avoided costs for
20 twenty years." To clarify, the Division intended in its proposal to update both the energy and
21 the capacity contribution payments every five years. This would keep the capacity

22 contribution portion of the pricing in-line with the latest expected capacity needs of the
23 Company.

24

25 Mr. Clements beginning at line 546 of his rebuttal testimony correctly points out that the
26 Division's capacity payment proposal may be detrimental to ratepayers if, after five years,
27 the QF opts out and sells its power elsewhere. The issue is that the QF will receive the
28 present value of the deferral of a future project up front, but may later leave the system
29 before the project was to be actually built and will therefore provide no actual capacity
30 deferral. The Division recognizes that the QF will receive the present value of the benefit for
31 capacity that it doesn't actually defer, if it opts out. As I mentioned in my direct testimony
32 (see lines 174-191), with a twenty year contract, the Division looked to apply a strict
33 ratepayer indifference standard in recognition that allowing 20-year contracts was a benefit to
34 QF developers at the expense of ratepayers. However, if the contract term is reduced, the
35 Division believes that other public policy factors may come into play such as providing more
36 encouragement for QF development. At this time the Division believes the risk of a QF
37 opting out after five years is likely small so that the risk that a QF might be overpaid
38 (assuming the avoided cost pricing forecast turns out correct), is a reasonable one to balance
39 competing public interests.

40

41 **Q. What comments do you have regarding Mr. Nathan Rich's rebuttal testimony?**

42 A. First, Mr. Rich incorrectly asserts that "The Division of Public Utilities supports Rocky
43 Mountain Power's proposal on the grounds that QFs no longer need long term contracts to

44 obtain financing.”¹ The Division’s position is that there are more financing possibilities that
45 may be available to an enterprising QF developer than there were 10 or more years ago when
46 the Commission approved a 20-year contract term limit for QFs, and that no party has
47 presented persuasive evidence otherwise.

48
49 Second, Mr. Rich complains that having to negotiate a contract every three (or, in the
50 Division’s suggestion, five) years is burdensome.² The Division notes that the intention of
51 Schedule 37 contracts was to minimize such a burden. In any case, as Mr. Clements points
52 out in his rebuttal testimony,³ a number of QFs renegotiate their contracts annually. The
53 Division does not believe that the burden of renegotiating a contract every few years is
54 excessive, especially for a Schedule 37 QF.

55
56 Finally, I note that Mr. Rich indicates that his company currently has an eleven (11) year
57 PPA with PacifiCorp,⁴ in contradistinction to other intervenors who seem to insist that
58 nothing less than a twenty-year contract term is possible. I will say more about this below.

59
60 **Q. Messrs. Harris and Isern testifying in behalf of the Rocky Mountain Coalition for**
61 **Renewable Energy, provide nearly identical critiques of your direct testimony. What**
62 **replies do you have to their critiques?**

¹ Rebuttal Testimony of Nathan Rich, lines 81-83.

² Ibid., pages 8-10.

³ Rebuttal Testimony of Paul Clements, lines 293-294.

⁴ Ibid., lines 49-50.

63 A. Messrs. Harris and Isern dispute that any new financing vehicles I mentioned, i.e. yieldcos
64 and crowdfunding, and traditional balance sheet financing by the largest developers will have
65 any impact on the need to have long-term, presumably at least 20-year, QF contracts. They
66 also asserted that while they agree that the Commission is not expected to assure the
67 economic viability of any project, their interpretation of economic viability does not include
68 the ability for the project to obtain financing. The Division considers the ability to attract
69 financing to be part of the economic viability of a project.

70

71 With regard to balance sheet financing, Mr. Isern asserts “Furthermore, even if it is *possible*
72 for a select few companies to balance-sheet finance renewable projects...I find it hard to
73 believe that any sponsor actually *would* do this.”⁵ This suggests that there may not be not a
74 lack of ability to do this type of financing, which was my primary point. A developer is free
75 to finance its projects however it can or wants.

76

77 I agree that crowdfunding in its current state of development is not a likely option for a
78 developer, such as Mr. Harris’s company SunEdison, that wants to build facilities costing a
79 few hundred million dollars. However, that funding source might be feasible for a small
80 development costing up to a few million dollars.

81

82 Both Mr. Isern and Mr. Harris admit that yieldcos are a relatively new financing vehicle,
83 however they testify that the existence of yieldcos does not obviate the need for twenty-year

⁵ Rebuttal Testimony of Hans Isern, page 6 of 5 (sic). Italics in original.

84 contracts. That the yieldco concept is a centerpiece for SunEdison’s financing strategies is
85 indicated by an investor presentation issued by SunEdison dated August 6, 2015.⁶ Ahmad
86 Chatila, SunEdison’s CEO, at an August earnings call is quoted as saying “With a strong
87 development engine and now two yieldcos, we have complete coverage wherever renewable
88 energy projects are developed, constructed, and owned...Our ability to drop projects into
89 yieldcos creates a unique structure to generate cash.”⁷ On August 12, 2015 SunEdison
90 announced “the successful syndication of the \$280 million 7 year term loan facility of
91 TerraForm Private Warehouse. The offering was oversubscribed...TerraForm Private
92 Warehouse was formed by SunEdison to hold 521 MW of acquired operating assets from
93 Atlantic Power for a maximum period of 7 years. The assets have a weighted average
94 contracted life of 18 years...TerraForm Power has an exclusive call right over the
95 warehoused operating assets, and expects to add them to the company’s portfolio over
96 time.”⁸

97

98 **Q. What is your point as it relates to project financing?**

99 A. The point is that SunEdison is parking (“warehousing”) a collection of renewable assets up to
100 seven years until it can “drop the projects into” its yieldco, TerraForm Power. If the full
101 seven year period is used then, the projects will be “dropped into” the yieldco with a
102 “weighted average” contract term of only 11 years remaining. This suggests that SunEdison

⁶ <http://investors.sunedison.com/phoenix.zhtml?c=106680&p=irol-irhome> see link to “Q2 2015 Earnings Conference Call Presentation” last accessed October 27, 2015.

⁷ Quoted in an SNL Financial news article, “A battered SunEdison looks to cut costs, streamline business,” by Michael Copley, dated October 5, 2015.

⁸ <http://investors.sunedison.com/phoenix.zhtml?c=106680&p=irol-newsArticle&ID=2079011> last accessed October 27, 2015.

103 expects to “drop projects into” its yieldcos with contract terms noticeably less than 20-years.

104 This suggests further that the 20-year contract term may not be as sacrosanct as witnesses

105 seem to want the Commission to believe.

106

107 **Q. Do you have any other evidence at this point for less-than-20-year contracts?**

108 A. Yes. As mentioned above, Mr. Rich’s company signed an 11-year contract. In response to DPU

109 DR 3.2(a) in this docket, PacifiCorp indicated that it had three renewable QF projects in

110 Washington that were subject to a 5-year contract term limitation. Additionally, a brief internet

111 search resulted in the following link to a 10-year PPA 32 MW project that presumably would

112 require financing from somewhere.⁹ The above discussion also suggests that SunEdison may

113 be contemplating putting projects in its yieldcos with contract terms of around eleven years, or

114 perhaps even less.

115

116 **Q. Does this change the Division’s position in this docket?**

117 A. No. However, I have some concluding comments.

118

119 **Q. What are your concluding comments?**

120 A. As indicated in my direct testimony (see lines 424-426), the Division is not necessarily

121 wedded to the 5-year proposal it made as an alternative to the Company’s proposal. I more

122 than hinted that the Division would be open to consider other proposals. Parties’ witnesses

123 suggested that avoided cost pricing, if it got low enough, would eventually shut down QF

⁹ <http://investor.firstsolar.com/releasedetail.cfm?releaseid=786238> (last accessed 10/27/15).

124 developers; but, while it was somewhat disappointing, it is also not surprising that no one
125 suggested any other solutions to the problems raised by the Company. While it may be too
126 late for serious consideration, other solutions might be to lengthen the contract term
127 somewhat beyond the Company or Division proposals, but less than the current 20-years. It
128 appears that evidence could be obtained that would support an “intermediate” term, which
129 would at least mitigate some of the issues raised with the 20-year term at the expense of
130 pricing precision. Another possibility that might be explored would be to set an annual cap
131 on the amount of QF energy similar to what is done under Schedule 37. The legality of such
132 a proposal under PURPA likely would have to be explored first before that solution was
133 given serious consideration.

134

135 In conclusion, the Division continues to support its position as set forth in my direct and
136 rebuttal testimonies.

137

138 **Q. Does this conclude your surrebuttal testimony?**

139 A. Yes.