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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 the Power Purchase ) Docket No. 15-035-70  
Agreement between PacifiCorp )  
and Three Peaks Power, LLC )

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HEARING PROCEEDINGS

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TAKEN AT: Public Service Commission  
Hearing Room 403  
160 East 300 South  
Salt Lake City, Utah  
DATE: Tuesday, November 10, 2015  
TIME: 9:00 a.m.  
REPORTER: Daren S. Bloxham, R.P.R.

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1 P-R-O-C-E-E-D-I-N-G-S

2 --oOo--

3 CHAIRMAN HAMMER: Let's go on the record,  
4 please. Good morning. This is the time and place  
5 noticed for hearing in the Matter of the Application of  
6 Rocky Mountain Power for Approval of the Power Purchase  
7 Agreement between PacifiCorp and Three Peaks Power,  
8 LLC, Commission Docket No. 15-035-70.

9 My name is Michael Hammer. I'm the  
10 Commission's designated presiding officer for this  
11 hearing. Let's go ahead and take appearances, please.

12 MS. HOGLE: Good morning. Yvonne Hogle on  
13 behalf of Rocky Mountain Power. With me here today is  
14 Mr. Paul Clements.

15 MR. JETTER: Thank you. I'm Justin Jetter.  
16 I represent the Utah Division of Public Utilities. And  
17 with me at counsel table is Charles Peterson with the  
18 Utah Division of Public Utilities.

19 MR. MOORE: Robert Moore representing the  
20 Office of Consumer Services. I have with me Bela  
21 Vastag of the Office of Consumer Services.

22 MR. OLDROYD: Jerry Oldroyd, Ballard Spahr.  
23 And with me today is Luigi Resta from Scatec North  
24 America.

25 CHAIRMAN HAMMER: Thank you. As this is the

1 Company's application, we'll go ahead and ask them to  
2 begin, unless there are any preliminary matters that  
3 anyone thinks we need to address first.

4 MS. HOGLE: Thank you, Mr. Hearing Officer.  
5 The Company calls Mr. Paul Clements.

6 CHAIRMAN HAMMER: Excuse me. Are you  
7 comfortable with Mr. Clements staying where he is?

8 THE REPORTER: Yes.

9 --oOo--

10 PAUL CLEMENTS,  
11 having been first duly sworn to tell the  
12 truth, was examined and testified as follows:

13 --oOo--

14 CHAIRMAN HAMMER: Please proceed.

15 EXAMINATION

16 BY MS. HOGLE:

17 Q. Good morning, Mr. Clements.

18 A. Good morning.

19 Q. Can you please state, spell, and state your  
20 position with the Company for the record.

21 A. Yes. My name is Paul Clements,  
22 C-L-E-M-E-N-T-S. And I'm currently director of  
23 commercial services for Rocky Mountain Power.

24 Q. And in that position, did you prepare or  
25 cause to be prepared or assist in the preparation of

1 the Company's application and the Company's reply  
2 comments in this proceeding?

3 A. Yes, I did.

4 Q. And do you have any changes to the reply  
5 comments that were filed by Rocky Mountain Power?

6 A. I do not.

7 Q. Are you going to be adopting the reply  
8 comments here today?

9 A. Yes.

10 Q. Okay.

11 MS. HOGLE: Your Honor, the Company would  
12 like to move for the admission of Rocky Mountain  
13 Power's reply comments into the record.

14 CHAIRMAN HAMMER: Any objection? They're  
15 received.

16 MS. HOGLE: Thank you.

17 (Reply comments were received.)

18 Q. (By Ms. Hogle) Mr. Clements, do you have a  
19 summary that you would like to give to the Hearing  
20 Officer today?

21 A. I do.

22 Q. Please proceed.

23 A. Thank you. Good morning. I'd like to  
24 present today for Commission approval Qualifying  
25 Facility Power Purchase Agreement between PacifiCorp

1 and Three Peaks Power, LLC, which is dated August 12th,  
2 2015.

3 This agreement provides for the sale to  
4 PacifiCorp of energy to be generated by a solar powered  
5 generation facility. The agreement is for an  
6 80-megawatt project, which is a solar project with  
7 single access tracking system located in Iron County,  
8 Utah.

9 The agreement is for a 20-year term starting  
10 December 31st, 2016. In Docket No. 12-035-100, the  
11 Commission issued a series of orders which establish  
12 the avoided capacity and energy cost payments for  
13 purchases from renewable QFs larger than 3 megawatts.  
14 The purchase price as set forth in those -- in the  
15 Three Peaks agreement was calculated using the  
16 methodology approved in that docket.

17 I have some general comments supporting  
18 approval of this PPA. First, summarizing the comments  
19 from the parties, on October 20th, 2015, three parties  
20 filed comments in this docket. The DPU recommended  
21 approval of the Power Purchase Agreement but suggested  
22 that the PPA is not compliant with the current version  
23 of Schedule 38.

24 The OCS, or Office of Consumer Services,  
25 questioned whether the PPA is compliant with the

1 current version of Schedule 38, and stated that the OCS  
2 is therefore unable to provide a recommendation on  
3 approval of the PPA.

4           Three Peaks Power recommended the Commission  
5 approve the PPA. The primary issue in this proceeding  
6 is whether the Three Peaks contract is compliant with  
7 the current version of Schedule 38 or, alternatively,  
8 whether the facts and equities of the approval of this  
9 contract dictate that Three Peaks should be subject to  
10 the version of Schedule 38 that was in effect at the  
11 time the parties began negotiations and at the time  
12 that an agreement for all essential terms of the  
13 contract were reached.

14           In its October 30th, 2015, reply comments,  
15 the Company provided evidence showing how the contract  
16 is compliant with the version of Schedule 38 that was  
17 in place at the time negotiations commenced, and  
18 remained in place at the time agreement of material  
19 terms was reached in late May 2015.

20           The Company also showed that extenuating  
21 circumstances occurred during the negotiating period  
22 that were outside the Company's control, and further  
23 explained how these circumstances should be considered  
24 by the Commission.

25           The DPU and OCS suggest the PPA is not



1 compliant because the new version of Schedule 38  
2 requires that pricing be no more than six months old.  
3 While the PPA was executed beyond the six-month  
4 timeframe, it was within seven months, the new  
5 Schedule 38 contemplates and allows for extensions of  
6 timelines in the event of extenuating circumstances.

7           Extenuating circumstances existed during the  
8 negotiation and execution of the Three Peaks Power  
9 Purchase Agreement. Those include the following:  
10 First, a new Schedule 38 tariff was implemented at the  
11 approximate time that negotiations were finished and  
12 the parties were preparing for final execution of the  
13 Power Purchase Agreement.

14           The parties initiated negotiations in  
15 February of 2015, and they were working off the then  
16 current version of Schedule 38. On June 9, 2015, the  
17 Commission approved a new version of Schedule 38 that  
18 included new negotiation timelines and new timelines  
19 related to how long an indicative price is valid.

20           The parties did not expect a new Schedule 38  
21 to be applicable to the Three Peaks PPA because they  
22 fully expected to execute the PPA prior to that new  
23 version of Schedule 38 being approved by this  
24 Commission.

25           The second extenuating circumstance was

1 during this time period when we were negotiating the  
2 Three Peaks PPA, we were managing 107 QF pricing  
3 requests. So that's 170 entities that desired an  
4 indicative price and desired to negotiate a Power  
5 Purchase Agreement with the Company.

6 The Company routinely manages between 10 and  
7 20, probably closer to 10 on average, QF negotiations  
8 at any given time. So at this time we were managing  
9 107 different counterparties, where we typically  
10 managed 10.

11 The third extenuating circumstance was that  
12 the parties had reached agreement on the material terms  
13 of the Power Purchase Agreement within the six months  
14 of the date the indicative pricing was provided.

15 The DPU raises the issue of a legally  
16 enforceable obligation, or LEO for short, L-E-O. The  
17 Company acknowledges the existence of the Federal  
18 Energy Regulatory Commission orders on the LEO issue,  
19 but does not believe a review of that issue is  
20 necessary at this time in order to approve this PPA.  
21 However, the Company agrees with the DPU that the  
22 concept of a LEO established under federal law is  
23 consistent with the approval of the PPA in this  
24 circumstance.

25 The seven-month time period between the

1 delivery of the indicative pricing and the execution of  
2 the Power Purchase Agreement is consistent with the  
3 timelines that occurred for other QF PPAs executed  
4 under the Schedule 38 that was in place at the time  
5 negotiations began. Therefore, this PPA is compliant  
6 with that version of Schedule 38.

7 Furthermore, the Company believes the  
8 extenuating circumstances of a new Schedule 38 be  
9 implemented near the end of the multi-month negotiation  
10 when the parties were close to executing the PPA, and  
11 the fact that the Company was managing an  
12 extraordinarily large number of QF negotiations fall  
13 within the types of extenuating circumstances  
14 contemplated in the new version of Schedule 38.

15 I can personally testify to that. I was one  
16 of the primary parties that negotiated the new  
17 Schedule 38. And when we drafted that particular  
18 language regarding extenuating circumstances, it was a  
19 large number of QF requests or other circumstances like  
20 those that occurred in this case that were contemplated  
21 at the time we drafted that language. Under either  
22 scenario, the facts support a just and reasonable  
23 outcome in which the Commission may approve the Three  
24 Peaks contract.

25 Now, a few brief comments in response to the

1 Division of Public Utilities' comments. The DPU and  
2 Three Peaks suggest the delays at the Company  
3 ultimately resulted in a signed PPA not being completed  
4 within six months of Three Peaks receiving pricing.

5 The Company acknowledges the extenuating  
6 circumstances that I've already addressed, but further  
7 notes that both parties worked diligently to complete  
8 the PPA in a timely manner.

9 The DPU also alleges the Company did not file  
10 its pricing queue management as set forth in  
11 Schedule 38, and that the alleged Company delays are  
12 not justifiable. The Company disagrees with this  
13 characterization of its work. Any delays that did  
14 occur were a result of the extenuating circumstances  
15 that I have already explained and were not the result  
16 of any Company inaction or intent to prolong the  
17 process.

18 The Company strongly disagrees with the DPU's  
19 suggestion that the Commission may consider whether to  
20 reduce the Company's recovery of the expenses of this  
21 contract by the difference in price between the PPA and  
22 what an updated price would have been. The Company  
23 executes QF PPAs under the terms and conditions set  
24 forth in Schedule 38 and in other relevant avoided cost  
25 orders.

1           The Company should not be rewarded or  
2 penalized based on its implementation of Commission  
3 avoided costs. The Company did not act imprudently or  
4 negligently in its implementation of the old or the new  
5 Schedule 38 requirements.

6           If the Commission determines the Three Peaks  
7 contract is not compliant or is compliant with the  
8 applicable tariffs and orders, the PPA should be  
9 approved with no further conditions or adjustments  
10 relative to the Company's recovery of any incurred  
11 expenses.

12           Now, one brief correction to the DPU comments  
13 which I believe Mr. Peterson will make today. The DPU  
14 noted in its comments that the Three Peaks -- that the  
15 RECs, the renewable energy credits, in the contracts go  
16 to the Company. That is not correct. Three Peaks  
17 retains the ownership of the RECs.

18           One brief comment related to those comments  
19 filed by Three Peaks. The Company agrees with Three  
20 Peaks that the parties negotiated in good faith and  
21 exchanged comments on the draft PPA on a consistent  
22 basis from the date of indicative pricing until the  
23 parties reached agreement on all material terms and  
24 conditions during the last week of May 2015.

25           I think it's a very important fact in this

1 proceeding that the parties negotiated in good faith  
2 continually; that efforts were made to complete the  
3 Power Purchase Agreement in a timely manner; and that  
4 the extenuating circumstances caused those negotiations  
5 to be slightly longer than what is normally undertaken  
6 by the Company.

7 In summary, the Three Peaks PPA is compliant  
8 with the version of Schedule 38 that was in place at  
9 the time negotiations began and that remained in place  
10 up until the PPA was almost execution ready. The new  
11 Schedule 38 contemplates extensions of deadlines in the  
12 event of extenuating circumstances beyond the Company's  
13 control.

14 The Company has mitigated the impact of the  
15 extenuating circumstances on the Three Peaks  
16 negotiations by training additional personnel. And  
17 this will also result in the Company being well  
18 positioned to manage similar extenuating circumstances  
19 should they arise in future QF negotiations.

20 The Company considers the Three Peaks PPA  
21 negotiation timeline to be somewhat of an anomaly  
22 because of the effectiveness of the new Schedule 38,  
23 which occurred, again, right before execution of this  
24 Three Peaks contract and the other extenuating  
25 circumstances outlined above.

1           The Company expects current and future QF PPA  
2 negotiations to be compliant with the timelines in the  
3 new Schedule 38 that was approved in June of 2015.  
4 Given the extenuating circumstances surrounding the  
5 Three Peaks negotiations and the tariff language that  
6 allows for extensions of deadlines due to those  
7 circumstances, the Company believes the just and  
8 reasonable outcome in this proceeding is to approve the  
9 Three Peaks PPA as filed. That concludes my summary.

10           CHAIRMAN HAMMER: Thank you, Mr. Clements.  
11 Mr. Jetter, any cross?

12           MR. JETTER: I have no questions. Thank you.

13           CHAIRMAN HAMMER: Mr. Moore?

14           MR. MOORE: I have a few questions.

15   EXAMINATION

16 BY MR. MOORE:

17           Q. Turning to the LEO doctrine that you  
18 mentioned in your testimony, is it your position that  
19 the -- "your position" meaning the Company's  
20 position -- that the LEO document -- LEO document is  
21 inconsistent with the timelines set out in the new  
22 Schedule 38, or are you -- do you believe that the LEO  
23 doctrine is consistent with the new Schedule 38, or are  
24 you presently unsure whether the legal document is  
25 consistent with Schedule 38, or do you have another --

1 **another position that I haven't thought of?**

2 MS. HOGLE: Objection, calls for a legal  
3 conclusion.

4 CHAIRMAN HAMMER: I think -- I think I'll  
5 sustain that. If you'd like to rephrase your question,  
6 Mr. Moore, you're welcome to.

7 **Q. (By Mr. Moore) In your testimony, you stated**  
8 **that the Company agrees with the DPU that the concept**  
9 **for LEO established under federal law is consistent**  
10 **with PPA approval the Company is seeking herein.**

11 **Is that part of your testimony?**

12 A. I don't have an opinion other than what was  
13 provided in the reply comments or my summary today  
14 regarding the LEO issue.

15 **Q. I believe that's a quote from your comments.**

16 A. Yeah. Again, I have nothing further, other  
17 than what was included in the comments or in my summary  
18 today.

19 MR. MOORE: I move that comment be stricken  
20 from the record if he can't be cross-examined on it  
21 because it's a legal opinion. He isn't qualified to  
22 author it in his comments.

23 CHAIRMAN HAMMER: Ms. Hogle?

24 MS. HOGLE: Yes. Thank you. I believe that  
25 the comment that he made was made as a lay person, and



1 it was in response, actually, to comments that were  
2 filed by the Division of Public Utilities. Thank you.

3 CHAIRMAN HAMMER: Will you read one more time  
4 for me, Mr. Moore, the comment you'd like stricken from  
5 the record.

6 MR. MOORE: "The Company acknowledged the  
7 existence of the Federal Energy Regulatory Commission  
8 order on the LEO issue but does not believe a review of  
9 the issue by the Commission is necessary at this time  
10 in order to approve the PPA. However, the Company  
11 agrees with the DPU that the concept of a LEO  
12 established -- establishes under federal law is  
13 consistent with the PPA approval the Company is seeking  
14 herein."

15 CHAIRMAN HAMMER: Ms. Hogle, I think it's  
16 fair to characterize that as a statement that tends  
17 toward legal argument. If you'd like to state that  
18 that's a position the Company adopts, you're welcome  
19 to. I don't know that it needs to be in the factual  
20 written record with respect to -- to Mr. Clements'  
21 testimony.

22 Would you be comfortable doing that?

23 MS. HOGLE: I'm sorry, doing what?

24 CHAIRMAN HAMMER: Well, Mr. Moore is  
25 essentially arguing, I think, that the Company has

1 taken a legal position in its submitted written  
2 testimony, and he's uncomfortable not having the  
3 opportunity to cross-examine Mr. Clements about that  
4 legal position, and would like to strike it from the --  
5 the fact evidence in the record in this docket.

6 I think that that's probably appropriate.  
7 But if you, as the Company's counsel, are comfortable  
8 asserting that that's the Company's position, then the  
9 Commission can certainly take note of that.

10 MS. HOGLE: Again, I reiterate my position,  
11 and that is that Mr. Clements was simply agreeing with  
12 something that was argued by the Division of Public  
13 Utilities.

14 CHAIRMAN HAMMER: Okay. Well, Mr. Moore, I  
15 think your -- pardon me -- your request is a little  
16 unorthodox. I'm not going to rule on it at this time,  
17 but we'll certainly take it under consideration and  
18 address it in the written order that's issued in this  
19 docket.

20 Do have any other questions for Mr. Clements?

21 MR. MOORE: Yes.

22 **Q. (By Mr. Moore) Turning to the extenuating**  
23 **circumstance issue, if you believe there was**  
24 **extenuating circumstances in this case, why didn't you**  
25 **request an extension from the Commission when it became**

1 clear that the PPA would not be signed within the  
2 six-month period or even during your application in the  
3 incident docket?

4 A. The parties reached material agreement on all  
5 terms and conditions at the end of May and reasonably  
6 anticipated executing the Power Purchase Agreement the  
7 first week of June. Last minute cleanup items on the  
8 Power Purchase Agreement delayed that by a month or  
9 two.

10 The parties felt at that time that it was  
11 important to complete execution of the Power Purchase  
12 Agreement in a timely manner and then file it for  
13 approval at the Commission, and that was the path that  
14 was taken.

15 In the future, the Company notes we've put in  
16 place a tracking mechanism. And to the extent we  
17 anticipate extenuating circumstances requiring an  
18 extension of deadlines, the Company anticipates that  
19 they will make that request early in the process.

20 Q. One of your extenuating circumstances I  
21 believe is that a new Schedule 38 tariff was  
22 implemented at the approximate time the negotiations  
23 were finished and the parties were preparing the PPA  
24 for extension; is that correct?

25 A. For execution, correct.

1 Q. I'm sorry. For execution.

2 Isn't it true that all parties -- that the  
3 new Schedule 38 came out of that settlement in Docket  
4 14-035-140 that Rocky Mountain Power participated in,  
5 as well as Three Peaks Power?

6 A. Yes. That's correct.

7 Q. And so wasn't it foreseeable, since you were  
8 negotiating the contract and signing the contract, that  
9 the -- that the circumstances of the Schedule 38 being  
10 signed around the same time as the -- Schedule 38 being  
11 implemented at the same time the PPA was signed, that  
12 was foreseeable to all the parties, actually was known  
13 by all the parties, correct?

14 A. That is correct. And that's why the parties  
15 were working very diligently to execute the PPA prior  
16 to that Commission order on the new Schedule 38 and  
17 fully expected to do so and were communicating almost  
18 on a daily basis -- and Mr. Resta can attest to that --  
19 in late May and early June in an attempt to execute the  
20 PPA.

21 And having negotiated these for 11 years or  
22 so at this point in time, we try to do what's fair. We  
23 felt like it was fair to this counterparty to work  
24 diligently to execute the PPA that we've been  
25 negotiating for multiple months under the old

1 Schedule 38.

2 Q. So it's your testimony that it was  
3 foreseeable to all the parties?

4 A. Foreseeable to the extent that we  
5 participated in the proceeding that was implementing  
6 the new Schedule 38, yes.

7 Q. Another one of your extenuating  
8 circumstances, and I'm reading this again, so correct  
9 me if I'm wrong, "The Company during the negotiation  
10 period was managing 170 QF pricing requests and  
11 negotiations, an amount that it five to ten times  
12 normal workload." Then you stated, "The Company  
13 utilized additional resources from within the Company  
14 to assist with the radically increased workload."

15 Could you state specifically -- you touched  
16 on this briefly in your comments. Could you state  
17 specifically what the Company did to handle that -- the  
18 increase in workload?

19 A. Sure. So one of the things we did is we  
20 reallocated some personnel, one of whom is here with us  
21 today, Kyle Moore, and we have trained him to negotiate  
22 Qualifying Facility Power Purchase Agreements. So we  
23 brought in an additional person or reallocated an  
24 existing person within the Company who can assist in  
25 negotiation of Power Purchase Agreements so that we're

1 not fully tied to just one individual.

2 And that was highlighted -- in fact, while I  
3 didn't note this, I think it's relevant or perhaps  
4 interesting -- I was the primary negotiator during this  
5 time period solely myself. And I was actually struck  
6 in the head with a baseball and spent a month in the  
7 hospital recovering from that.

8 And all of the knowledge of this PPA was  
9 locked up in my swollen brain. And we brought in  
10 additional personnel so we'd have some additional  
11 backup or reserve capacity to help negotiate these  
12 Power Purchase Agreements. We believe that will  
13 mitigate extenuating circumstances in the future.

14 **Q. But your position now is it didn't mitigate**  
15 **sufficiently the extenuating circumstances during this**  
16 **PPA negotiation because obviously it's still an**  
17 **extenuating circumstance, correct?**

18 MS. HOGLE: Objection, assumes facts not in  
19 evidence.

20 CHAIRMAN HAMMER: Sustained.

21 Could you rephrase, Mr. Moore?

22 **Q. (By Mr. Moore) All right. Did these measures**  
23 **the Company took ameliorate or relieve the problems**  
24 **caused by the increased workload?**

25 A. No. And we don't anticipate putting in place

1 the ability to handle 10 to 20 times the normal  
2 workload on a routine basis. We don't feel like that  
3 would be in the customers' best interest for us to have  
4 a staffing level that can handle workload that's 20  
5 times the norm. So we try to mitigate these situations  
6 as best we can, which we did in this particular  
7 circumstance.

8           Again, I reiterate that during the drafting  
9 of that language in Schedule 38, we specifically talked  
10 about the fact that there may be times where there's an  
11 incredibly large number of QF pricing requests. And  
12 during those times, which would be extenuating  
13 circumstances, we would need some relief from the  
14 deadlines in the tariff.

15           That was a compromise that was struck among  
16 the parties so we could have reasonable timelines in  
17 the tariff, but we could also have an off-ramp that  
18 would apply under extenuating circumstances. That's  
19 how that came about.

20           **Q. So your testimony is that the steps the**  
21 **Company took did not sufficiently ameliorate the**  
22 **extenuating circumstances of the workload?**

23           MS. HOGLE: Objection, asked and answered  
24 several times.

25           MR. MOORE: It was asked.

1 CHAIRMAN HAMMER: Go ahead and answer,  
2 Mr. Clements.

3 THE WITNESS: Sure. It took seven months  
4 when we hoped that it would take six months. Did our  
5 mitigating work that we put in make it shorter than it  
6 otherwise would have been? Absolutely.

7 Bringing in additional personnel, shifting  
8 some of that workload to an individual in Portland,  
9 that shortened the timeline that otherwise would occur  
10 absent Company mitigating action.

11 Q. (By Mr. Moore) So it was in your control  
12 to -- to address this increased workload through having  
13 additional employees work on the PPAs?

14 A. Yes. The Company took action to continue the  
15 negotiation of the PPA with other personnel while I was  
16 out, and also brought in other personnel to work on the  
17 other Power Purchase Agreements.

18 When we have 107 counterparties that we're  
19 negotiating with, we have to treat them all fairly.  
20 And we have to progress negotiations with each one of  
21 them in a fair and equitable manner. And that's what  
22 we tried to do.

23 Q. Do you anticipate that, again, possibly in  
24 the future you will not be able to handle the workload  
25 due to a large increase in QF requests?



1           A.    I'm not sure if I can anticipate that. That  
2 would be pure speculation on my part. I do believe  
3 that with some of the new tracking mechanisms that we  
4 have recently put in place at the Company, that we will  
5 be able to better foresee when extenuating  
6 circumstances are going to require extension of  
7 deadlines. And we anticipate that we will petition the  
8 Commission quite early in the process for a general  
9 extension of deadlines within the tariff under those  
10 circumstances.

11           **Q.    You testified that this increased workload --**  
12 **I believe in your comments the increased workload**  
13 **occurred in a period from early to mid-2015; is that**  
14 **correct?**

15           A.    Yeah. Probably stretches back into 2014 to  
16 be honest with you.

17           **Q.    Therefore, these problems were foreseeable to**  
18 **the Company, were they not?**

19           A.    Not necessarily. The Company did not  
20 anticipate having 107 QF requests. What we had been  
21 told -- again, if I could provide a little background  
22 on that, the primary push is that the investment tax  
23 credit -- federal investment tax credit for solar  
24 expires at the end of 2016. And so QF projects are  
25 trying to execute Power Purchase Agreements in a timely

1 manner in order to meet 2016 online dates and qualify  
2 for that tax credit.

3 In 2014, when we were negotiating with  
4 counterparties, we were largely told by developers that  
5 the price was as low as it could possibly be for them  
6 to be able to develop the project. The QF pricing  
7 subsequently dropped by \$10, then \$15 a megawatt hour,  
8 and projects were still requesting Power Purchase  
9 Agreements and still requesting to negotiate.

10 And so the Company did not anticipate those  
11 projects continuing forward. Furthermore, it was just  
12 a sheer volume of projects that had not been seen  
13 before by the Company in terms of QFs requesting  
14 pricing.

15 **Q. But it was ongoing for approximately six**  
16 **months prior to signing the PPA, is that correct, from**  
17 **early to mid-2015?**

18 A. Yeah, that's correct.

19 **Q. On page 3 of your reply comments, you stated**  
20 **that another extenuating circumstance was that the**  
21 **parties reached an agreement in all material terms of**  
22 **the PPA within six months of the date that indicative**  
23 **pricing was provided. That might not be correct. You**  
24 **might have said a verbal agreement.**

25 A. If you want to make that distinction, that's

1 correct, yes. The parties had reached verbal  
2 agreement. We had been exchanging contract drafts.  
3 The material terms of the PPA had been agreed to at  
4 that point in time.

5 **Q. If this is an extenuating circumstance,**  
6 **wouldn't it be true that you would never need to**  
7 **file -- sign the PPA under paragraph 9 to get pricing?**

8 MS. HOGLE: Mr. Hearing Officer, I just have  
9 a question.

10 Paragraph 9, are you talking about the  
11 Schedule 38, the reply comments? I'm a little unclear.

12 MR. MOORE: I'm sorry. I was unclear. I'm  
13 talking about Schedule -- paragraph I(b)(9) in the  
14 revised Schedule 38, the Schedule 38 that is presently  
15 in effect.

16 MS. HOGLE: Can Counsel provide a copy of  
17 that to the witness, please?

18 CHAIRMAN HAMMER: Mr. Moore, do you happen to  
19 have enough copies for everyone? Because I don't have  
20 a copy of Schedule 38 in front of me either.

21 MR. MOORE: Actually, I don't. But it is in  
22 the -- the paragraph that I'm citing I believe is on  
23 page number 5 of the Department -- Division of Public  
24 Utilities' reply comments.

25 CHAIRMAN HAMMER: Do you have that, Ms. Hogle

1 and Mr. Clements?

2 THE WITNESS: I believe I do. The reply  
3 comments?

4 MR. MOORE: Your initial comments. I stand  
5 corrected.

6 THE WITNESS: Yeah, I have that.

7 MS. HOGLE: Can counsel repeat the question?

8 CHAIRMAN HAMMER: Mr. Moore, why don't we  
9 give Mr. Clements just a moment to review that  
10 paragraph, and then if you could please ask your  
11 question again.

12 Ready?

13 THE WITNESS: Yeah. Go ahead.

14 **Q. (By Mr. Moore) The fact that the parties have**  
15 **reached an agreement in all material terms of the PPA**  
16 **within six months is an extenuating circumstance,**  
17 **allowing the PPA signed after six months to still be in**  
18 **effect, isn't it true that you would never need a**  
19 **signed PPA to -- to maintain indicative pricing?**

20 A. No. That is not the Company's position. The  
21 Company mentioned that as one of the extenuating  
22 circumstances. That in isolation would not be  
23 sufficient in my opinion to warrant an extension of the  
24 deadline. The Company listed multiple extenuating  
25 circumstances and view those as a group as being just

1 and reasonable in this case.

2 MR. MOORE: That's all I have.

3 CHAIRMAN HAMMER: Thank you, Mr. Moore.

4 Mr. Oldroyd?

5

EXAMINATION

6 BY MR. OLDROYD:

7 Q. Just a couple of questions.

8 The indicative pricing was given in January;  
9 is that correct?

10 A. I believe that's correct. Yes.

11 Q. When was the first draft of the PPA submitted  
12 to my client, do you recall?

13 A. I believe they were working off a draft that  
14 was used for another project that had been executed  
15 between the two parties, so I believe they were working  
16 off a draft that the parties had agreed to several  
17 months prior for a different project, the Utah Red  
18 Hills Renewable Park.

19 Q. During the period of negotiations, was there  
20 any time that the negotiations became stale or that the  
21 parties intended to abandon the process?

22 A. No. Absolutely not.

23 Q. So it was diligently supported by both  
24 parties to complete the PPA; is that correct?

25 A. Yes. Both parties moved forward as

1 diligently as possible to complete the PPA.

2 Q. Okay. You indicated that all material terms  
3 and conditions were met I think you said the end of  
4 May?

5 A. That's correct.

6 Q. Was there other activities after that that  
7 had to be completed?

8 A. So after that, we were completing some of the  
9 exhibits on the Power Purchase Agreement. We were  
10 making sure that the degradation rate included in the  
11 contract was consistent with the degradation rate  
12 included in the pricing.

13 We were finalizing some of the credit terms  
14 that were not material at the time. And we were doing  
15 general cleanup work to prepare the document to be  
16 executed.

17 Q. Did any of those impact any of the material  
18 terms and conditions of that agreement?

19 A. No. I would say that they did not impact the  
20 material terms and conditions, which I would consider  
21 to be the price, the performance guarantees, or the  
22 material credit terms. They were cleanup in nature and  
23 certainly took longer than anticipated by both parties.

24 Q. You indicated that this was -- this situation  
25 is an anomaly. Are there other companies in a similar

1 **situation to this PPA? Are there other PPAs out there**  
2 **with the parties have negotiated the material terms and**  
3 **conditions but failed to get them executed?**

4 A. No. There was one entity, but they've  
5 withdrawn their PPA. At this point in time, this is a  
6 very unique circumstance that applies only to this  
7 Three Peaks Power PPA. We do not have any other  
8 counterparties that are in a similar situation and  
9 don't anticipate any in the near future.

10 **Q. If an extension was granted, it would be**  
11 **uniquely to this situation then?**

12 A. Absolutely. The Company believes that these  
13 circumstances are unique to this situation, and that  
14 moving forward some of the mitigation work that's been  
15 done by the Company, along with the reduced workload  
16 because there are not as many QF requests, we don't  
17 anticipate seeing this unique set of circumstances  
18 again in the future.

19 **Q. You indicated that you were negotiating the**  
20 **revised Schedule 38, that you part of that process.**  
21 **When the order was issued, it made reference to the**  
22 **settlement agreement.**

23 **Did it -- the parties anticipate that there**  
24 **would be a transition period?**

25 A. Yes. The parties anticipated a transition

1 period. In fact, that was built into the stipulation.  
2 The stipulation required the Company to provide at  
3 least 30-days notice to a counterparty of what their  
4 next step would be under the new Schedule 38. The  
5 Company discussed this verbally with Three Peaks, but  
6 we were anticipating executing the PPA within days and  
7 did not provide that formal notice written because,  
8 again, we anticipated executing the PPA.

9 **Q. Was it the intent of that transition period**  
10 **to allow companies in the queue to take up additional**  
11 **steps to remain in the queue?**

12 A. The primary intent of the transition period  
13 was for cases exactly like this one, where a  
14 counterparty had negotiated in good faith and expended  
15 dollars and work to reach a certain point in  
16 negotiations under the old Schedule 38.

17 And we wanted to provide and all parties  
18 agreed to provide a transition period so that a party  
19 that had been doing work could complete that work in a  
20 timely manner before implementation of the new tariff.  
21 And that was the point of the transition period.

22 **Q. So if the transition period applied in this**  
23 **case, the next step would have been to execute the**  
24 **documents; is that correct?**

25 A. That's correct.



1 MR. OLDROYD: I don't have any further  
2 questions.

3 CHAIRMAN HAMMER: Thank you, Mr. Oldroyd.  
4 Ms. Hogle, do you have any redirect?

5 MS. HOGLE: No redirect. Thank you.

6 CHAIRMAN HAMMER: Thank you. No other  
7 witnesses?

8 MS. HOGLE: The Company rests its case.  
9 Thank you.

10 CHAIRMAN HAMMER: Thanks. Mr. Jetter?

11 MR. JETTER: Thank you. I'd like to move at  
12 this time that we -- are we streaming this hearing  
13 currently? I think that my witness's comments today  
14 are going to at least enter into some confidential  
15 and/or trade secret-type information.

16 And we would request that -- I think I know  
17 everyone in the room, and I don't see anyone that I  
18 believe is not entitled to be here, whether it be by  
19 confidentiality, non-disclosure agreement, or  
20 otherwise.

21 I don't think we need to remove anyone from  
22 the room, but I would, I guess, move to move into a  
23 confidential portion of the hearing, which would I  
24 think at this point just mean stopping the streaming  
25 during our comments.

1           CHAIRMAN HAMMER: Okay. Let's -- do you have  
2 anything else to say that you want to say in support of  
3 your request?

4           MR. JETTER: No. I think -- I think some of  
5 our discussion will go into those -- some confidential  
6 information, and I think it would satisfy the rule  
7 under 746.100. I don't recall the exact location in  
8 the rule. Let's see, I think --

9           CHAIRMAN HAMMER: That's okay. I don't  
10 expect you to cite chapter and verse. I just want to  
11 make sure I heard what you had to say on the matter.  
12 We'll recess for a minute to accommodate the technical  
13 requests, and I'll take it up with the commissioners  
14 and make sure they're okay with closing the hearing.

15           MR. JETTER: Okay. Thank you.

16           (Recess taken at 9:40, resuming at 9:48.)

17           CHAIRMAN HAMMER: We're going back on the  
18 record. With respect to Mr. Jetter's request to close  
19 the hearing to the public and cease streaming, I think  
20 that the statutory reference he was probably searching  
21 for and that I had to refer to in my office is  
22 Title 54.321, which governs the Commission's closing of  
23 hearings to the public.

24           I would just ask whether the parties are  
25 willing to stipulate that it would be in the public's

1 interest to close the hearing at this time? We'll  
2 start with Mr. Oldroyd.

3 MR. OLDROYD: I have no objection to closing  
4 the hearings.

5 CHAIRMAN HAMMER: Okay. Ms. Hogle?

6 MS. HOGLE: No objection from the Company.

7 CHAIRMAN HAMMER: Obviously Mr. Jetter?

8 MR. JETTER: Yes. The Division supports  
9 closing the hearing.

10 CHAIRMAN HAMMER: Okay. Mr. Moore?

11 MR. MOORE: We have no objection to closing  
12 the hearing.

13 CHAIRMAN HAMMER: Thank you. Okay. The  
14 hearing will now be closed to the public. Sherry, if  
15 you would please cease streaming the audio and give us  
16 an indication when Mr. Jetter may proceed.

17 (The testimony was now deemed confidential.)

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

1 (The testimony was no longer deemed  
2 confidential.)

3 MR. MOORE: We would call Bela Vastag to  
4 testify for the Office.

5 CHAIRMAN HAMMER: Go ahead.

6 --oOo--

7 BELA VASTAG,  
8 having been first duly sworn to tell the  
9 truth, was examined and testified as follows:

10 --oOo--

11 EXAMINATION

12 BY MR. MOORE:

13 Q. Can you state your name and occupation for  
14 the record?

15 A. My name is Bela Vastag. Spell that.  
16 B-E-L-A, last name is V-A-S-T-A-G. I'm employed by the  
17 Utah Office of Consumer Services as a utility analyst.

18 Q. In the course of your employment, did you  
19 prepare comments on October 20th, 2015, and reply  
20 comments on October 30, 2015, relating to the present  
21 application for the Power Purchase Contract?

22 A. Yes, I did.

23 Q. Do you have any changes you need to make to  
24 those comments?

25 A. I have no changes.

1 MR. OLDROYD: At this point, we would like to  
2 move for the comments to be entered into the record.

3 CHAIRMAN HAMMER: Any objection? They're  
4 admitted.

5 (The comments were admitted into the record.)

6 **Q. (By Mr. Oldroyd) Do you have a brief summary**  
7 **you would like to read into the record?**

8 A. Yes, I do. In many previous proceedings  
9 before this Commission on the approval of Qualifying  
10 Facility, QF, Power Purchase Agreements, or PPAs, the  
11 Office of Consumer Services has raised concerns about  
12 PPA pricing being outdated.

13 However, in these past proceedings, we also  
14 noted that the PPAs appeared to be in compliance with  
15 Schedule 38 and the Commission orders on avoided cost  
16 pricing that were in effect at the time. And we did  
17 not oppose the approval of any of these PPAs.

18 This PPA with Three Peaks Power may be  
19 different. The Office is again concerned that the  
20 pricing in this PPA is outdated. The PPA was executed  
21 on August 13th, 2015, or seven months after the prices  
22 were calculated.

23 However, in this case, it is unclear to the  
24 office whether the Three Peaks PPA is compliant with  
25 current Schedule 38 requirements and with recent

1 Commission -- with a recent Commission order on avoided  
2 costs modeling.

3 The question of noncompliance results from  
4 two separate and distinct issues. One, should the  
5 prices in the Three Peaks PPA have been recalculated at  
6 the time the Commission ordered a change in avoided  
7 cost modeling on June 26th, 2015, in Docket  
8 No. 14-035-140?

9 This order change is the implementation of  
10 new capacity contribution values and the discontinuance  
11 of the interim values from Docket No. 12-035-100 that  
12 were used in the indicative pricing for Three Peaks.

13 Second issue, should the prices in the Three  
14 Peaks PPA have been updated on July 16th, 2015, which  
15 is six months after Three Peaks had received its  
16 indicative pricing and the PPA had not yet been  
17 executed? This requirement is from Section 1(b)(9) of  
18 Schedule 38 and was approved by the Commission in its  
19 June 9th, 2015, order approving the settlement in  
20 Docket No. 14-035-140.

21 Regarding the change in capacity contribution  
22 values, the Office is unclear if the Commission would  
23 require PPA prices to be updated for this change in  
24 avoided cost modeling. Based on Commission actions in  
25 Docket No. 12-35-100, the changes to renewable avoided

1 cost methodology and which also included energy for  
2 Utah's Petition for Review and Hearing Reclarification  
3 and actions in Docket No. 14-035-24, which is the  
4 formal complaint of Ellis-Hall against Rocky Mountain  
5 Power, the Commission may require an update to PPA  
6 pricing in this proceeding for the change in capacity  
7 contribution values which was ordered on June 26, 2015.

8 Now, regarding the Schedule 38 six-month  
9 required pricing update, the developer of Three Peaks,  
10 Scatec, was an active participant in Docket  
11 No. 14-135-140 and a signatory to the settlement which  
12 was implemented -- which implemented this Schedule 38  
13 requirement, this six-month requirement.

14 Scatec would have been fully aware of this  
15 deadline. The Schedule 38 tariff allows for extensions  
16 of time if delays are caused by -- excuse me -- the  
17 Schedule 38 allows for extensions of time if "delays  
18 are caused by Company actions or inactions."

19 Based on comments filed by Three Peaks and by  
20 the Company, it is unclear to the Office if delays  
21 caused by the Company are reasons to waive this  
22 Schedule 38 requirement.

23 It is also unclear if there are legitimate  
24 extenuating circumstances. And, furthermore, the  
25 Company did not request an extension of any deadlines

1 for extenuating circumstances in its application.

2 Due to these uncertainties regarding  
3 compliance with regulatory requirements, the Office  
4 cannot make a recommendation on the Three Peaks PPA.  
5 That concludes my statement.

6 CHAIRMAN HAMMER: Thank you, Mr. Vastag.

7 Mr. Moore, anything more for your witness at  
8 this time?

9 MR. MOORE: Not at this time.

10 CHAIRMAN HAMMER: Ms. Hogle, any cross?

11 MS. HOGLE: No cross.

12 CHAIRMAN HAMMER: Mr. Jetter?

13 MR. JETTER: No questions from the Division.  
14 Thank you.

15 CHAIRMAN HAMMER: Mr. Oldroyd?

16 MR. OLDROYD: Just one question.

17 EXAMINATION

18 BY MR. OLDROYD:

19 Q. Was the PPA in the indicative pricing  
20 methodology correct at the time the indicative pricing  
21 was given? In other words, the capacity charges,  
22 everything associated with it, wasn't it compliant with  
23 Schedule 38 at the time the parties commenced  
24 negotiations?

25 A. As far as we could tell, they were compliant



1 at the time in January.

2 **Q. How about when the parties reached material**  
3 **agreement at the end of May?**

4 A. I'm not sure. I'd have --

5 **Q. That's fine. I have no further questions.**

6 CHAIRMAN HAMMER: Thank you. Mr. Moore, any  
7 redirect?

8 MR. MOORE: No, sir.

9 CHAIRMAN HAMMER: Thank you. And no  
10 additional witnesses?

11 MR. MOORE: No.

12 CHAIRMAN HAMMER: Mr. Oldroyd, do you have a  
13 witness you'd like to present?

14 MR. OLDROYD: Yes. I would like to present  
15 Mr. Luigi Resta.

16 --oOo--

17 LUIGI RESTA,

18 having been first duly sworn to tell the  
19 truth, was examined and testified as follows:

20 EXAMINATION

21 BY MR. OLDROYD:

22 **Q. Mr. Resta, would you please state your name**  
23 **and your address and your occupation.**

24 A. Yeah. My name is Luigi Resta, L-U-I-G-I,  
25 R-E-S-T-A. I'm the CEO of Scatec Solar North America.

1 My office is in Sausalito, California.

2 **Q. Did Scatec prepare comments for this**  
3 **proceeding?**

4 A. I didn't prepare written comments, but I'm  
5 certainly willing to discuss the project and the  
6 process moving forward.

7 **Q. Comments were adopted. Did you review those**  
8 **comments that were submitted?**

9 A. Yes, I did.

10 **Q. Do you adopt those comments?**

11 A. Yes, I do.

12 **Q. Are there any corrections?**

13 A. Only that I think it's -- I agree with  
14 Paul Clements, Mr. Clements' statement, that we have  
15 worked diligently and continuously from the beginning  
16 when we provided indicative pricing through the final  
17 execution version.

18 **Q. Okay. Do you have any other comments that**  
19 **you want to make relative to --**

20 MR. OLDROYD: Well, before we do that, I  
21 would move that we adopt the comments -- submit the  
22 comments to the record.

23 CHAIRMAN HAMMER: Any objections? They're  
24 received.

25 (The comments were received into the record.)

1           **Q. (By Mr. Oldroyd) Mr. Resta, have you prepared**  
2           **a summary of the comments?**

3           A. Yes. I've not -- yeah, I've not prepared a  
4 written summary like I just stated. I would say that  
5 I, once again, agree with Mr. Clements' statements on  
6 the timing of approvals and the process that we  
7 proceeded through.

8                   We did have material approval from both our  
9 side and from what I thought was PacifiCorp's side in  
10 May that included board approval from Oslo, who is our  
11 100 percent owner.

12                   So it's not only my decision to accept any --  
13 entering into any long-term contract like this, but I  
14 need to have board approval from our founders and  
15 funders, which was Oslo. That was provided for us as  
16 well.

17                   I would also say that it's our understanding  
18 that we were -- Scatec Solar was party to the  
19 proceedings of the Schedule 38 and the timing with the  
20 six-month time period. I would say that we think we  
21 believe that we were in all parameters and scope  
22 complying with that timing and the fact that we had  
23 reached material completion of the agreement.

24                   And that we didn't think that there was any  
25 reason for renegotiations of pricing at a later date

1 when it was finally settled because we had been in  
2 material -- in discussions and negotiations on an  
3 ongoing basis from January when we received the  
4 indicative prices, or really February when we started  
5 actively working on it, through to the final date when  
6 it was signed.

7 I would say from a practical matter as a  
8 developer, the idea that you have a repricing that  
9 happened six months after you started the contract  
10 negotiations, although we are aware and we're party to  
11 the docket, you can't -- you -- as a developer, you  
12 would do everything feasible and possible to execute a  
13 contract within that timeline.

14 If you knew the timeline when you started the  
15 process -- which we were not aware of in January or  
16 February when we started the process that there was a  
17 six-month window.

18 And as a developer, you spend millions of  
19 dollars to get a project to a point where you can  
20 actually build it. In the case of Three Peaks now, as  
21 of today, we've spent well over a million dollars.  
22 This is the final approval we need.

23 We've made our interconnection agreements  
24 signed. We've made our deposits on that. We have all  
25 of our easements and rights-of-way. We have all of our

1 permits, not our building permits, but our CUPs. We  
2 have the conditional use permit, the CDA, the Community  
3 Development Authority, approval with our property tax  
4 abatement.

5 So there's a lot of work that goes into  
6 development along with the PPA, which is a material  
7 contract in order to get anything done. But the idea  
8 that, you know, we were six months into contracts, we  
9 had agreed to all material terms, and then there would  
10 be a repricing, that effectively would kill any  
11 project. I would say to any developer it would kill  
12 any project.

13 So, you know, if from the beginning date --  
14 and, again, the reason why we feel we're compliant with  
15 the old Schedule 38 is that we were -- we all felt that  
16 we were done with the PPA, and it was minor cleanup  
17 that we were working on.

18 So as far as this is not -- it's not a high  
19 PPA rate to begin with. It's right on the edge. We  
20 feel like it's financeable. This is the final approval  
21 that we're looking for to be able to start construction  
22 and financing.

23 There is an expiration of the investment tax  
24 credit at the end of 2016, which everybody is aware of,  
25 which is going to have a significant impact on the

1 ability for any developer to build any project in any  
2 state. I would say that Utah is no different than  
3 that.

4 But once again, to kind of close, I would say  
5 that we would ask for approval based on the old  
6 Schedule 38 and the fact that we had reached material  
7 agreement on the contract in May. Barring that, I  
8 would say with the extenuating circumstances, with the  
9 amount of 107 PPAs that PacifiCorp was negotiating,  
10 along with us just doing cleanup, that there would be a  
11 grant of extension to allow for that extra period of  
12 time under the new version of Schedule 38, which were  
13 our old pricing.

14 MR. OLDROYD: I have no other questions.

15 CHAIRMAN HAMMER: Thank you, Mr. Resta.  
16 Ms. Hogle, any cross?

17 MS. HOGLE: No cross. Thank you.

18 CHAIRMAN HAMMER: Mr. Jetter?

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

21 CHAIRMAN HAMMER: And Mr. Moore?

22 MR. MOORE: One quick question.

23 EXAMINATION

24 BY MR. MOORE:

25 Q. In your October 20th comments on page 4,

1     **there's a statement that -- I'm reading now.**

2     **"Schedule 38 is inconsistent with FERC regulations and**  
3     **decisions implementing PERPA."**

4             **Is that still your position?**

5             A.     I am not a lawyer myself, so I wouldn't make  
6     that -- make that statement.

7             MR. OLDROYD:   I object.   He's asking for a  
8     legal conclusion.

9             CHAIRMAN HAMMER:   Mr. --

10            MR. OLDROYD:   This is an issue and, frankly,  
11     it's an issue that exists I think independent of what  
12     we're dealing with here.   I mean, either it is or it  
13     isn't.   It's an issue that probably should be briefed.

14            However, I don't think it's determinative of  
15     what we're doing here because we clearly have avenues  
16     to either approve or disapprove independent of the  
17     Cedar Hills case.

18            CHAIRMAN HAMMER:   I'm going to sustain the  
19     objection because Mr. Resta is a fact witness, and I  
20     agree that it calls for a legal conclusion.

21            Mr. Oldroyd, I appreciate that the format of  
22     the way comments are submitted to the Commission,  
23     sometimes legal argument and factual testimony can get  
24     a little intermingled.   As I invited Ms. Hogle, you're  
25     welcome to make any statement on the record with

1 respect to any legal position you'd like to take.

2 MR. OLDROYD: My statements are clear. The  
3 comments are clear.

4 CHAIRMAN HAMMER: Thank you.

5 MR. MOORE: I would move again -- I'll make  
6 my same motion to strike the portions from the comments  
7 that present legal conclusions.

8 CHAIRMAN HAMMER: Anything else you want to  
9 say about that, Mr. Oldroyd?

10 MR. OLDROYD: That we would object to that.  
11 I think the comments are what they are. Like you say,  
12 there's a blurring of -- with comments. If this was  
13 testimony, it would be different. These are comments  
14 that were submitted. The parties are free to look at  
15 the cases and make their own determination. I think it  
16 should stand.

17 CHAIRMAN HAMMER: Thank you. As with your  
18 prior motion to strike, Mr. Moore, we'll take it under  
19 consideration.

20 MR. MOORE: Thank you, sir. No further  
21 questions.

22 CHAIRMAN HAMMER: Thank you. Ms. Hogle, I  
23 believe you wanted to recall Mr. Clements?

24 MS. HOGLE: I do. The Company recalls  
25 Mr. Paul Clements.



1 CHAIRMAN HAMMER: Mr. Clements, you're still  
2 under oath.

3 THE WITNESS: Yes.

4 CHAIRMAN HAMMER: Please proceed.

5 --oOo--

6 PAUL CLEMENTS,  
7 having been previously sworn to tell the  
8 truth, was examined and testified as follows:

9 EXAMINATION

10 BY MS. HOGLE:

11 Q. Mr. Clements, Mr. Peterson indicated in his  
12 summary that under his review of the emails that were  
13 attached to the Company's reply comments, it appeared  
14 to him that pricing was not final in June 2006.

15 Do you agree with that testimony?

16 A. No. The pricing itself was final. What was  
17 at issue at that point in time was whether we would use  
18 a .5 percent or .8 percent degradation rate in  
19 calculating out the expected output over the length of  
20 the contract. That affected the levelization of the  
21 price. So the underlying pricing itself was final at  
22 that time. It was an issue of degradation.

23 Q. Mr. Peterson also testified in his summary  
24 regarding his assessment of the workload in 2014. Do  
25 you have any comments related to that?

1           A.    Yes.  While I'm not familiar with the docket  
2   that he brought up, that was not in his original  
3   comments, we did see a large increase in 2014.  It was  
4   above our normal amount of counterparties that we were  
5   working with.

6                    It moved from the 10 or so that we normally  
7   do to 40 or 50, which we considered a pretty  
8   significant increase at the time in 2014.  And as we  
9   moved into 2015, that doubled to the 107 we were  
10  dealing with at this particular time.

11                   So I do agree in the sense that we did see an  
12  increased workload.  I do agree that we did put  
13  resources in place to manage that.  I don't agree with  
14  his assessment that those resources were insufficient  
15  because, again, the number of counterparties doubled  
16  between the '14 and '15 time period.  So we continued  
17  to see a large increase over that time and react to it  
18  accordingly.

19           **Q.    Finally, Mr. Clements, I believe that**  
20 **Mr. Peterson's testimony referenced that -- an**  
21 **assertion that ratepayers were harmed in this instance.**  
22 **Do you agree with that?**

23           A.    No, I do not agree with that assessment.  
24  What happened here were extenuating circumstances.  And  
25  a just and reasonable outcome would be to put parties

1 back in the position they would have been absent the  
2 extenuating circumstances. And that would be to  
3 approve the PPA as submitted.

4 The Company could have executed the PPA at  
5 the end of May. It would have required us to go back  
6 and do some cleanup edits through amendments. We don't  
7 like to execute agreements that are not 100 percent  
8 complete and accurate. And, therefore, the cleanup  
9 work to get this agreement to be 100 percent accurate  
10 took a few additional weeks.

11 However, I do not agree with his assessment  
12 that customers were harmed by this. And I believe an  
13 equitable solution would be to put parties back in the  
14 exact position they would have been absent the  
15 extenuating circumstances.

16 MS. HOGLE: Thank you, Mr. Hearing Officer.  
17 The Company rests its case.

18 CHAIRMAN HAMMER: Thank you, Ms. Hogle.  
19 Mr. Jetter, do you have any recross for Mr. Clements?

20 MR. JETTER: Just a few brief questions.

21 EXAMINATION

22 BY MR. JETTER:

23 Mr. Clements, you had just testified a moment  
24 ago that the pricing was final, but the degradation  
25 rate was still subject to some change; is that correct?

1           A.    That's correct. To get consistency between  
2 the degradation use -- the degradation rate used in the  
3 contract and the degradation rate used for the pricing.

4           Q.    And I guess I'm a little unfamiliar with  
5 that. Were there two different numbers being used in  
6 the two different -- those two different calculations  
7 at that time?

8           A.    Yes. So what occurs is when they request  
9 indicative pricing, they tell us what -- their expected  
10 degradation rate. Degradation rate for a solar panel  
11 is how much less output the panel produces year over  
12 year as the material in the solar panel itself  
13 degrades. Typically it's .5 percent, sometimes  
14 .8 percent. It depends what the projection is.

15                   They provide us that number when they provide  
16 the pricing. When we move to negotiate the contract  
17 and they finalize their panel supplier, sometimes we'll  
18 have a different number that they elect to put in the  
19 contract.

20                   And we aim to make sure that the number  
21 that's used in the contract, which governs performance  
22 guarantees, matches the number that's used to calculate  
23 the price.

24           Q.    Thank you. So I guess a brief follow-up on  
25 that, that would change the ultimate kilowatt hours

1 delivered under the contract. Does that lead to a  
2 slight change then in the levelized price?

3 A. It would lead to a slight change in the  
4 levelized price. But again, using the same base set of  
5 avoided costs, those did not change. It's really a  
6 mathematical equation as opposed to anything that's  
7 negotiated or anything that changes.

8 Q. That's because you're delivering more  
9 kilowatt hours later in the contract with a slightly --  
10 the price differs by year?

11 A. That's correct. Under a levelized price  
12 scenario, if you have a degradation rate that is lower,  
13 then you're producing more volumes in the back years  
14 when the price is higher. And the inverse would be  
15 true with a higher degradation rate.

16 Q. Thank you. Just one further question.  
17 Do you know currently how many contracts  
18 you're negotiating today?

19 A. At this point in time, it's probably below  
20 50. Many have dropped out of the queue.

21 MR. JETTER: Okay. Thank you. That's all  
22 the questions that I have.

23 THE WITNESS: Okay.

24 CHAIRMAN HAMMER: Thank you, Mr. Jetter.  
25 Mr. Moore, anything else for Mr. Clements?

1 MR. MOORE: No questions.

2 CHAIRMAN HAMMER: Mr. Oldroyd?

3 MR. OLDROYD: No questions.

4 CHAIRMAN HAMMER: All right. Do any of the  
5 attorneys have anything else they'd like to say before  
6 we adjourn?

7 MS. HOGLE: Thank you.

8 CHAIRMAN HAMMER: Okay. Thank you. We're  
9 adjourned.

10 (The proceedings concluded at 10:23 a.m.)

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REPORTER'S CERTIFICATE

STATE OF UTAH )  
COUNTY OF UTAH )

I, Daren S. Bloxham, a Notary Public and  
Certified Shorthand Reporter, Registered Professional  
Reporter, hereby certify:

THAT the foregoing proceedings were taken  
before me at the time and place set forth in the  
caption hereof; that the witnesses were placed under  
oath; that the proceedings were taken down by me in  
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through computer-aided transcription; and the foregoing  
transcript constitutes a full, true, and accurate  
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had, and of the whole thereof.

I have subscribed my name on this 11th day of  
November, 2015.



Daren S. Bloxham  
Registered Professional Reporter #335