BEFORE THE
PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Rocky Mountain Power for Approval of Solicitation Process for Wind Resources	))))))	**Docket No. 17-035-23**

sPOWER'S PREFILED REBUTTAL TESTIMONY OF HANS ISERN REGARDING PACIFICORP'S PROPOSED RFP

sPower hereby submits pre-filed RFP Rebuttal Testimony of Hans Isern in this docket.

DATED this 13th day of September 2017.

/s/ Melissa Barbanell
Melissa Barbanell Attorney for sPower

Docket No. 17-035-23

CERTIFICATE OF SERVICE

I certify that on September 13, 2017, a true and correct copy of this petition to intervene was delivered upon the following as indicated below:

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Rebuttal Testimony of
Hans Isern

On Behalf of
sPower

September 13, 2017

I. INTRODUCTION AND SUMMARY

Q. Please state your name and business address.

A. My name is Hans Isern. My business address is 201 Mission Street, Suite 540, San Francisco, California, 94105.

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

A. I am a Senior Vice President with sPower, where I have been employed for 4 years. I have approximately 15 years of experience in the electric energy industry and am currently responsible for sPower's origination and utility power marketing efforts. Over the years, I have led teams in diverse roles including utility engineering, power trading, regulatory affairs, generation development and finance. In these roles, I have negotiated and signed power purchase agreements for more than 1,000 MW of renewable energy generation, have obtained more than 3 GW of capacity on the grid, and have seen more than 60 utility-scale projects from development to operation.

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

A. My testimony is offered on behalf of sPower and its development subsidiaries. sPower is an independent power producer based in Salt Lake City. sPower owns and operates over 150 sustainable energy projects totaling over 1 GW of operating assets, as well as a development and construction pipeline totaling close to another 10+ GW. sPower's operating and development assets are located in Utah, Wyoming, and across North America.

Q. Please summarize your work and educational experience prior to joining sPower.

A. Prior to joining sPower, I was the Chief Operating Officer at Silverado Power, a utility-scale solar development company. I have also held positions with Recurrent Energy, as its lead developer for California investor-owned utilities; with 3 Phases, as its head of sales; and with

PacifiCorp, as a utility engineer. I have a Bachelor of Science degree in electrical engineering from the University of Washington and an MBA from UCLA.

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

A. Yes, I testified on behalf of sPower and the Rocky Mountain Coalition for Renewable Energy in Docket No. 15-035-53. I also testified on behalf of sPower subsidiaries Glen Canyon Solar in Docket No. 17-035-36.

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

A. Yes, I have also testified before public service commissions (or similar agencies) in Wyoming, California and Colorado.

Q. What is the purpose of your rebuttal testimony?

A. My testimony responds to the Reply Comments and revised 2017R Request for Proposals (“2017R RFP”) that PacifiCorp filed in this docket on August 18, 2017. I appreciate the improving changes that PacifiCorp made following initial input from the Independent Evaluator (“IE”) and other parties to this proceeding. Several significant concerns remain, however, about the ability of the 2017R RFP to facilitate a fair solicitation process that satisfies Utah’s Energy Resource Procurement Act of 2005,[1] and, as a practical matter, provides developers like sPower the opportunity to compete for the least-cost option to serve Utah customers. Without competition from developers like sPower, the solicitation process cannot ensure that the goals of the Energy Resource Procurement Act, i.e., ensuring the least-cost option for Utah customers, will be achieved.

[1] Utah Code Ann. § 54-17-101 *et seq.* (the “Energy Resource Procurement Act”).

Therefore, based on my experience and specific involvement in hundreds of competitive procurement processes, my testimony first describes my concerns and then recommends either rejecting approval of the 2017R RFP or requiring specific modifications to the 2017R RFP necessary to ensure PacifiCorp complies with Utah law and facilitates a fair and competitive procurement process.

Q. What recommendations does your testimony propose are necessary as prerequisites to Commission approval of the 2017R RFP?

A. In Section III below, I respectfully recommend that the Commission deny approval of the 2017R RFP in its current form. I then propose four modifications to the 2017R RFP that would address my concerns, ensure satisfaction of the Energy Resource Procurement Act, and therefore facilitate approval of the RFP. Specifically, my recommended modifications include: (1) broadening the parameters for eligible resources to include renewable energy resources outside of Wyoming; (2) eliminating the requirement that bidders possess a completed SIS study by the targeted Initial Short List date; (3) revising the PPA structure and length options to provide for a 30-year term; and (4) removing the litigation limitation on bidding eligibility and tying PacifiCorp's general discretion in the RFP to objective standards.

II. DEFICIENCIES WITH THE 2017R RFP

Q. What is your understanding of the Energy Resource Procurement Act?

A. As the head of utility power marketing for a large independent power producer, I bring an "in the field" perspective to the Energy Resource Procurement Act. I know that to satisfy the law and achieve Commission approval of a solicitation process in Utah, the process must be deemed in the public interest. The public interest analysis must consider "whether [the RFP] will most likely result in the acquisition, production, and delivery of electricity at the lowest reasonable cost" to Rocky Mountain Power's customers.[2] I know the public interest test also requires consideration of long- and short-term impacts, risk, reliability and financial impacts on Rocky Mountain Power.

When you consider the parameters of and requirements that remain in the 2017R RFP, the RFP and the solicitation process it facilitates, in their current form, fail to ensure the public interest based on the Energy Resource Procurement Act's factors.

Q. What concerns do you have about the 2017R RFP's parameters and requirements?

A. I recognize that when independent developers compete with incumbent utilities to develop, construct and operate generation, some differences in treatment between a utility's self-build options ("benchmark resources") and competing opportunities are necessary; however, the 2017R RFP remains unnecessarily biased in favor of the benchmark resources in a manner that undermines the possibility of fair competition necessary to protect Utah customers. Specifically, requirements related to eligible resource type and geography, interconnection study status, and available PPA structure and length options must be modified to give any resources other than PacifiCorp's benchmarks a credible chance.

Eligibility Requirements

Q. Will you describe the type of resources that are currently eligible to bid in response to the 2017R RFP?

A. The 2017R RFP invites bids from new or repowered wind resources that can directly interconnect and/or deliver energy to PacifiCorp's Wyoming transmission network.[3]

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[2] Utah Code Ann. § 54-17-201(2)(c)(ii).
[3] 2017R RFP at V.D.

Q. Other parties have expressed concerns with the failure of PacifiCorp to include wind projects outside of Wyoming, or other types of generating resources, like solar, as eligible resources for the 2017R RFP. Do you agree with these concerns?

A. Yes. I strongly agree with the original concerns expressed by the Department of Public Utilities ("DPU"), the Independent Evaluator ("IE"), and the Utah Association of Energy Users ("UAE"), as well as by Enyo Energy Renewables ("Enyo"), in this regard.[4] By limiting the universe of eligible bids to wind resources in Wyoming (a state removed from PacifiCorp's load centers), the 2017R RFP cannot ensure selection of resources that provide Utah customers reliable electricity at the lowest cost. PacifiCorp's territory crosses six states that include rich wind and solar resources. DPU, the IE, UAE and Enyo all agree with sPower's view that the RFP should be expanded to include wind resources outside of Wyoming. PacifiCorp's Reply Comments in this docket noted that PacifiCorp confirmed via discussions that DPU and the IE were not also intending to suggest that the 2017R RFP should expand the scope of eligible resource types beyond wind.[5] However, it is unclear how the IE's original point that "the only reasonable way to determine if the combination of wind generation in Wyoming with the construction of the D2 Segment is a least cost solution that provides benefits to customers is to market test this option"[6] could apply only to geography and stop short of considering resource type. Nonetheless, the IE Report stated that it takes no position on whether the resource type should be broadened. The IE Report provides no explanation or rationale for not doing so. The lack of reasoning for failing to analyze this question is a significant study deficiency. The IE

[4] DPU Initial Comments, at 6; IE Report, at 35; Reply Comments of UAE, at 2; Enyo's Amended Petition to Intervene, at 2.
[5] PacifiCorp Reply Comments, at 9.
[6] IE Report, at 35.

report did state that "it is common practice in resource procurement processes to undertake targeted solicitations *if warranted by market conditions*,"[7] yet the report made no attempt to analyze whether, in this case, market conditions justify artificially limiting bidding eligibility to new or repowered wind resources.

Q. Do you think market conditions justify PacifiCorp's issuance of an RFP that seeks only wind resources in Wyoming?

A. No. Neither the existence of a federal incentive, alone, nor its impending expiration, creates market conditions that eliminate the ability of competing resources to provide lower-cost resources and/or a greater overall economic benefit to Utah customers. The IE report is deficient in failing to take a position on whether the need to "market test" PacifiCorp's proposal goes beyond the consideration of wind power alone.

Q. What is your understanding of PacifiCorp's rationale for limiting the 2017R RFP in this manner?

A. In its Reply Comments, PacifiCorp provides several reasons for why it is reasonable to limit RFP eligibility to wind resources in Wyoming: (1) its 2017 Integrated Resource Plan (IRP) identified the Wyoming wind plus Aeolus-to Bridger/Anticline transmission facilities as part of the least-cost, least-risk plan to meet system load; (2) the results of its broader 2016 RFP, which sought Production Tax Credit ("PTC")[8]/Investment Tax Credit ("ITC")-eligible bids of resources that could be used to satisfy state renewable portfolio standards and could deliver to PacifiCorp's western balancing area, resulted in no proposals that would deliver "all-in" economic benefits for customers; and (3) broadening the scope of the 2017R RFP would require significant revision

[7] IE Report, at 35 (emphasis added).
[8] PacifiCorp Reply Comments, at 10.

and likely result in "tens-of-thousands" of megawatts of bids requiring increased evaluation, together resulting in an extension of the RFP schedule that may obviate the time-limited opportunity presented by existence of the PTC.[9]

Q. Do you think PacifiCorp's reasoning is sufficient to justify its narrow resource geography and type parameters?

A. No. None of the rationales PacifiCorp provides justify avoiding consideration of other resources on its system that can provide comparable benefits at potentially less cost to Utah customers (with or without PacifiCorp's proposed accompanying transmission). PacifiCorp's reasoning unfortunately represents a results-oriented justification for self-building a significant amount of new cost-based generation and transmission to the detriment of competitors that may be able to provide similar service more cost-effectively, and, as a result, to the detriment of Utah customers.

Q. Regarding PacifiCorp's first rationale, is it appropriate for PacifiCorp to rely on the Wyoming wind and transmission as part of the least-cost, least-risk option to meet system load in its 2017 IRP as a basis for limiting eligibility2017R RFP?

A. No. PacifiCorp's reliance on the inclusion of its Wyoming wind and new transmission in its 2017 IRP is troubling for several reasons.

First, the cost assumptions for solar power that PacifiCorp uses in the 2017 IRP are outdated and unrealistically high. Recognizing that the merits of the 2017 IRP are not at issue in this proceeding, the difference between the 2017 IRP's cost assumptions for solar and SPower's own Utah levelized cost of solar numbers is significant. This difference represents one of the several reasons there may be lower-cost, lower-risk solar power options available to serve customers

[9] *Id.*, at 10-11.

with the benefits PacifiCorp aims to provide via the 2017R RFP. In Rocky Mountain Power's Avoided Cost Input Changes Quarterly Compliance Filing docket (Docket No. 17-035-37 2017),[10] its Witness Dan MacNeil stated that "the cost of a Utah tracking solar resource in the 2017 IRP was $57/MWh in 2020, rising at inflation to $65/MWh in 2027.[11] Table 6.2 in the 2017 IRP itself provides a 2019 levelized total resource cost range for single-tracking PV solar in Utah between $51.39/MWh and $56.39/MWh (with ITC), rising to between $54.06/MWh and $59.32/MWh in 2023.[12]

sPower's current levelized cost of solar in southern Utah is approximately $30/MWh. While I have not done a full analysis to determine which of PacifiCorp's IRP cost numbers are the most appropriate to ensure a fair comparison to sPower's own costs, the at least $20/MWh differential is instructive. Failing to consider solar resources that can also take advantage of federal incentives to provide Utah customers similar benefits to the benchmark resources, potentially at lower cost or better overall value proposition to customers, is to unfairly impede competition and is not in the public interest under the Energy Resources Procurement Act.

Second, as noted in DPU and UAE's Initial Comments, PacifiCorp's IRP process did not fully model and consider all, or even several, of the options that may provide a similar level benefits to its customers as the benchmark resources and new transmission. DPU's perspective is worth reiterating: "[t]he mere fact that something was not selected in a necessarily limited and restricted IRP process does not lead to the conclusion that no other possibilities should be considered in the RFP."[13]

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[10] Docket No. 17-035-37, *In the Matter of Rocky Mountain Power's 2017 Avoided Cost Input Changes Quarterly Compliance Filing*.
[11] Direct Testimony of Dan MacNeil on behalf of Rocky Mountain Power at lines 306-307, Docket No. 17-035-37 (August 2017).
[12] PacifiCorp 2017 Integrated Resource Plan ("IRP"), Table 6.2, p111.
[13] DPU Comments, at 6.

Third, and in any case, PacifiCorp's 2017 IRP is still under consideration in other dockets by the Commissions in at least Utah and Oregon. The Wyoming wind and transmission option has not been acknowledged or approved by all the Commissions considering it, so for purposes of the RFP it is premature to deem the Wyoming wind and transmission option as the least-cost, least-risk option in the 2017 IRP.

Q. Do you think that PacifiCorp's second rationale, that their 2016 RFP, which sought PTC/ITC-eligible bids of resources that could be used to satisfy state renewable portfolio standards and could deliver to PacifiCorp's western balancing area resulted in no proposals that would deliver "all-in" economic benefits, is a legitimate reason for limiting the RFP's eligible resource type and location?

A. No. PacifiCorp has no way of knowing whether any proposals will provide "all-in" economic benefits until it receives responses to the 2017R RFP. It is not clear what PacifiCorp means by "all-in," but it is highly unlikely that the only circumstance on PacifiCorp's system in which renewables have the potential to provide net economic benefits to Utah customers is at interconnection points along the Gateway D2 segment. Allowing for a broader bidding pool increases the chances that some number of bids providing net benefits will materialize.

Q. What do you think about PacifiCorp's third rationale that increasing the eligible geographic scope and resource type will lead to significant RFP revisions and a resulting unwieldy number of bids for evaluation, both of which risk the time-limited opportunity that the PTC presents?

A. PacifiCorp does not provide specifics about how any changes may implicate the time-limited opportunity it highlights throughout its comments. From my perspective, even currently early-stage wind and solar development projects have ample time to satisfy the PTC's time requirements. In addition, I do not think that the changes I and others are proposing risk material delay that would jeopardize PacifiCorp's ability to capitalize on the PTC (or ITC).

Q. Can you explain how wind and solar developers, even of currently early stage projects, have ample time to put assets into operation by December 31, 2020?

A. If the Commission were to require modifications to the 2017R RFP that delayed PacifiCorp's schedule by, for example, 4 months, the approximate target for executing final agreements would be moved back to mid-August 2018.[14] At that point, any chosen competing projects would have 28.5 months to reach commercial operation for their chosen project. No project is the same, but utility solar projects, on average, take 24 months to develop from start to finish. Most of the projects that would qualify to compete in the RFP process have already started development, and some are in advanced stages. They will not be starting from scratch at the point they are executing deal documents with PacifiCorp. In addition, it is safe to say that most renewables developers in the western United States are aware of PacifiCorp's 2017R RFP. Most of these developers will continue developing their potentially eligible projects between now and issuance of the final RFP, and so it is not clear to me that additional time will be lost. Again, recognizing all developers and projects are different, sPower would feel comfortable signing a PPA for a wind project as late as December 2018 and still putting the project into commercial operation by the end of 2020.

On the solar side, projects can obtain the full ITC if they reach their commercial operation date by the end of 2021, providing an even longer pathway for large-scale renewable procurement in Utah.

[14] See 2017R RFP, Section 3 Logistics, at 4. This timing also assumes that all other dates would be delayed proportionally and that no time would be made up.

Q. What about the factors outside of the potential bidders control that delay development?

A. The average development time I just provided takes into account all sorts of unanticipated factors, including issues securing land leases or ownership, rights of way, road development, transmission buildout, and bad weather. There are always unpredictable factors, but that is not a reason to avoid achieving a competitive solicitation process.

One delay factor that is not part of the 2017R RFP and therefore largely out of developers' control is the time it takes PacifiCorp to complete interconnection study application processes. As I mention below, these studies tend to take significantly more time than provided in PacifiCorp's tariff (45 days for feasibility studies and 90 days for system impact studies).[15]

Q. What if the delay implicates PacifiCorp's ability to complete construction of Gateway D2 to interconnect resources by December 31, 2020?

From the PTC perspective, we can take some comfort in the IRS' guidance related to the December 31, 2020 deadline. The IRS provides for "excusable disruptions" from the continuous construction necessary to take advantage of the PTC, including at the end of the construction period. One of those excusable disruptions is "interconnection-related delays, such as those relating to the completion of construction on a new transmission line or necessary transmission upgrades to resolve grid congestion issues that may be associated with a project's planned interconnection."[16] Another excusable disruption includes "delays in obtaining permits or licenses from federal, state, local, or Indian tribal governments, including, but not limited to, delays in obtaining permits or licenses from the Federal Energy Regulatory Commission

[15] PacifiCorp Open Access Transmission Tariff, http://www.oasis.oati.com/ppw/index.html.
[16] Internal Revenue Bulletin: 2016-23, Section 4.02(e) (June 6, 2016).

(FERC), the Environmental Protection Agency (EPA), the Bureau of Land Management (BLM), and the Federal Aviation Agency (FAA)."[17]

Finally, the existence of an incentive deadline does not justify considering only the resource type eligible for that incentive, from a competitive cost perspective. The ITC, which is available through the end of 2021, a year beyond the full PTC's expiration, also provides a tax incentive of which PacifiCorp can avail itself in a manner that provides customer savings, perhaps at lower cost. If a $50,000 car is on sale for $10,000 off, it doesn't mean the buyer should avoid consideration of $30,000 options simply because the sale ends next week.

Q. How long has PacifiCorp been aware of the 2020 deadline for full PTC eligibility?

A. Both the PTC and ITC extension and phase outs were passed by Congress in December 2015 and no changes to either the PTC or ITC have occurred since then. So, PacifiCorp has been aware of the timelines associated with the PTC safe-harboring, which it did before the end of 2016, for over 18 months. Still, PacifiCorp brought the RFP to the Commission for review this year. Utah ratepayers should not be deprived of a robust and competitive procurement process on such a large investment simply because PacifiCorp failed to initiate the approval process sooner and is eager to gain Commission approval of a project for which they have already invested in turbines (for which PacifiCorp did not seek Commission approval).

Q. Lastly, as it relates to the 2017 R RFP's resource type and location eligibility, does broadening eligibility offer any Utah-specific benefits?

A. Yes, if Utah assets are chosen as winning bidders. Development of new assets pursuant to PacifiCorp's 2017R RFP would result in significant economic benefits in the winning resource project locations. These benefits come in the form of construction and operations and

[17] *Id.*, Section 4.02(c).

maintenance jobs, significant tax base increases without added services, and important lease revenue.

For example, sPower has developed the 95MW Glen Canyon Solar Project in Kane County that is located on 1000 acres of Utah School and Institutional Trust Lands (SITLA). This lease provides significant revenue to the agency. Under the Glen Canyon Solar lease, SITLA earns $125,000 per year initially with lease fees escalating over time. Over a period of thirty-five years, SITLA will earn $16 million from the Glen Canyon Solar Project. Just how significant a benefit to the state the solar lease is, is made clear when looking at the context of traditional SITLA grazing leases. SITLA lands are commonly leased for grazing, with grazing leases for a comparable 1000 acres being leased at a rate of roughly $600 per year. Over thirty-five years, a grazing lease would only provide SITLA with $21,000 in income. This example does not even consider additional county-level property taxes resulting from project development. Customers from across the PacifiCorp region will have to share in the cost of this significant investment and should be able to compete to reap the economic development benefits associated with those costs.

Status of Interconnection Process

Q. You mentioned that you have concern about the 2017R RFP's requirement that each bidder's system impact study ("SIS") be completed by the initial short list determination, targeted for November 22, 2017. Can you explain this concern?

A. By requiring a signed agreement and deposit to begin the feasibility study as a condition to bidding, the 2017R RFP requirement is an improvement over the RFP's original proposal (requiring bidders to include a completed SIS with their bids). The revised requirement, however, still represents a significant practical barrier for bidders and an unfair advantage for PacifiCorp's benchmark resources.

sPower currently has three active SIS Agreements and two active Feasibility Study Agreements with PacifiCorp. All three of the agreements are delayed beyond the suggested study period timeline contained in PacifiCorp's tariff (90 days for SIS and 45 days for FES). In fact, all three of the SISs are delayed for up to as much as eight months beyond this timeline, and the Feasibility Studies are delayed, by up to two months with further delays expected. PacifiCorp has missed its own tariff deadlines for completing these studies and has taken more than three times as long to complete them than the time contained in the tariff.

Since the benchmark resources do not face a similar SIS requirement, failure by PacifiCorp staff to complete requested SISs per its tariff guidance puts competing bidders at a material disadvantage – the ability to provide interconnection documentation weighs into at least two of the three non-price transmission factors.[18] The fact is that PacifiCorp controls interconnection customer applications and the timing for completion of SIS studies without any recourse for applicants when it misses tariff timelines. This compounds the issue and makes it impossible to suggest a fair or level playing field on this front.

Q. How much influence can interconnection customers exert in determining how quickly SIS studies are completed?

A. After completing the initial interconnection application and executing a feasibility or SIS agreement, interconnection customers have no control over whether PacifiCorp will complete the study within the allotted OATT timeline. Recently, PacifiCorp has sent notices to sPower indicating that its studies will be delayed even further, beyond the already delayed process. At

[18] 2017R RFP Section 6.B.2, at 20-22.

this point, PacifiCorp has not offered any alternatives to allow for these studies to be completed sooner.

<u>PPA Tenor and Financing</u>

Q. In response to concerns by the IE and UAE, the 2017R RFP provides three proposal structure options. Bidders can offer a build-transfer agreement or a 20-year power purchase agreement ("PPA"). Two types of PPA options exist. Bidders are encouraged to include an asset sale at either full realization of the PTC or the end of the 20-year term. Alternatively, bidders may propose a 10-year extension, to be exercised at PacifiCorp's discretion during the 20-year term. Do these options represent fair and competitive opportunities for bidders competing with benchmark resources?

A. No, and these options remain a critical flaw in the 2017R RFP, as price counts for up to 80% of the Phase I Evaluation.[19] Benchmark resources will be evaluated based on a 30-year asset life. Financing options for twenty-year PPAs consider production for 10 fewer years so, from the start, competing resources face a significant price disadvantage. In addition, the ability to obtain financing at competitive costs associated with 20-year, 25-year and 30-year PPAs can range materially. If PacifiCorp's own resources will be evaluated based on a 30-year asset life or levelized cost of energy, then it is fair to evaluate all other entities' bid on a 30-year timeframe as well (recognizing that every input into annual costs will not be made perfectly consistent). Even if the parties do not ultimately agree to a 30-year PPA, the parties should be allowed to submit a 30-year PPA price to compare against PacifiCorp's own 30-year levelized cost analysis.

Finally, the Commission may also want to consider allowing parties to bid a PPA price for PacifiCorp's development assets. Conceptually, this is along the same lines as the build-

[19] 2017R RFP, at 20.

transfer option but with roles reversed. In this case, bidders would be allowed to put a PPA price on PacifiCorp's development, which would provide the Commission with a lower-risk alternative to approving the entire project under a cost-based rate formula. To enable a fair comparison, the Commission would decide on a development cost reimbursement amount to PacifiCorp that would be factored into all parties' bids. This comparison would ensure that the lowest-cost option is being provided to customers in any scenario.

Q. Does the IE-proposed modification, to provide for a 10-year extension at PacifiCorp's option, adequately address the comparability concern the IE report identified?

A. No. It is difficult to see how the IE's proposed extension option improves upon the unfair advantage the original RFP provided PacifiCorp on the pricing front In identifying the problem that the 20-year PPA length imposes on bidding comparability between the utility's benchmark resources and competing bids, the IE Report refers to Utah regulations requiring that the solicitation "allow power purchase contract terms equivalent to the projected facility life of the Benchmark Option."[20] Unfortunately, the IE's proposed solution does not solve the problem. The offered extension is only a possibility, uncertain at the time a PPA is signed and financing is obtained. Moreover, it is only effectuated at PacifiCorp's option, in its sole discretion. No investor will provide 30-year financing terms under these circumstances, so the option needs to be underwritten by the bidder and does nothing to improve project economics over a 20-year PPA. The IE Report provides no explanation of how this extension might serve to address the concerns it identifies. Solving for the lack of comparability issue requires allowing bidders to submit a 30-year PPA price, even if parties ultimately agree to a shorter term.

[20] Utah Admin. Code, R746-420(8)(k). The regulation allows waiver of the requirement "for good cause shown," which PacifiCorp has not tried to show in this case.

PacifiCorp Litigation Limitation and Discretion

Q. PacifiCorp has included a litigation-related eligibility limitation and provided itself significant discretion in its capacity to review bids. Is this standard practice?

A. All utilities must provide themselves with discretion to reject bids for several reasons, like when the bids are incomplete or fail to meet objective criteria included in the RFP. Several of the points of discretion PacifiCorp provides itself fall into this bucket. However, a few of PacifiCorp's points of limitation and discretion are troubling and go beyond what's necessary to provide it with the operational flexibility necessary to manage the RFP process.

Q. Which points in particular are troubling?

A. Initially and importantly, the RFP deems any potential bidder that is in litigation with PacifiCorp or has threated litigation (in writing) with PacifiCorp ineligible to respond to the 2017R RFP.[21] This eligibility requirement is not standard practice and generally serves to undermine the intended balance between monopolies and customer protection. Third-party developers must be allowed to challenge PacifiCorp legally if the monopoly is failing to acknowledge their legal rights or comply with existing law, regulations or their own tariff. Allowing this eligibility restriction to stand would call into question a core tenet of monopoly regulation. This restriction is an explicit attempt to restrain third-party producers from either holding PacifiCorp accountable to comply with the law or from being able to compete with the benchmark resources.

In addition, PacifiCorp has established that many decision points in the 2017R RFP eligibility and bid process will be made "in its sole discretion" with no objective qualifier. As noted, some of these specific qualifiers are necessary as a practical matter. Judgement calls must

[21] 2017R RFP, Minimum Eligibility Requirement No. 8, at 10.

be made. However, two reservations of sole discretion do not seem necessary and seem to tip the balance as far as PacifiCorp thinks it can push it in its own favor. First, PacifiCorp reserves a general right "without limitation or qualification and in its sole discretion, to reject any or all bids, and to terminate or suspend this RFP in whole or in part at any time."[22] Second, a similarly broad reservation of discretion is provided in Section 7.A.1, which states PacifiCorp can in its sole discretion determine which bids are eligible for consideration, again with no tether to the RFP's requirements. Understanding that there may be a need to suspend the process based on the failure of any bids to meet the 2017R RFP's requirements, these broad and general reservations should be tied to the actual RFP requirements. Parties bidding in good faith should be able to rely on good faith from PacifiCorp. Narrowing PacifiCorp's general discretion so that it is tied to the requirements of the RFP ensures this outcome.

III. Recommendations

Q. Based on the series of concerns you described in Section II, do you have recommendations for modifications that would make the 2017R RFP sufficiently fair and competitive as to satisfy the public interest standard to which it is currently subjected?

A. Yes. As noted in the IE report, it is impossible to create a perfectly level playing field for competition between benchmark resources and third-party developed competing resources. It is possible, however, to eliminate the fatal flaws contained in the 2017R RFP that currently render a competitive solicitation process that satisfies the public interest standard out of reach. If the following (or comparable) modifications are not accepted by the Commission, sPower recommends denying approval of the 2017R RFP.

[22] 2017R RFP, at 11. This reservation is reiterated in the Non-Reliance Letter in Appendix G to which bidders are subject.

Q. What are your specific recommendations?

A. I respectfully recommend the Commission require the following changes be made to the 2017R RFP:

1. *Eligibility*. The parameters for eligible resources should be broadened to include renewable energy resources outside of Wyoming that can provide similar net benefits to Utah customers as predicted for the benchmark resources.

To the extent this change leads in a significantly greater number of bidders, the outcome is good for competition. High-level bid metrics, like price, development stage, interconnection study process and other non-price bid factors should be able to eliminate significant numbers of bids without substantial additional time investment during the initial Indicative Bid phase of the evaluation process.

2. *Interconnection Requirements*. The requirement that bidders possess a completed SIS study by the targeted Initial Short List date should be eliminated. At the very most, it should be replaced with a requirement that by the Initial Short List date, bidders are able to demonstrate that they have a signed SIS agreement with and submitted a deposit to PacifiCorp. Since completion of studies has been delayed by PacifiCorp for many months beyond the 90 days provided in the OATT, potential bidders should not be prevented from participating due to a failure by the utility to meet its own timelines. Further, the Commission should consider allowing projects that have either completed interconnection applications or signed feasibility study agreements that have been delayed longer than the time the SIS should have been completed if PacifiCorp met its tariff guidelines.

3. *PPA Structures.* The Commission should find that the IE's recommendation to allow for a 10-year extension to be exercised at PacifiCorp's discretion is not sufficient to solve for the

unfair advantage that comes with evaluating at 30-year lived benchmark asset with a 20-year PPA. The RFP should be modified to explicitly provide for 30-year PPA terms to match the asset lives that will be evaluated for the benchmark resources. Under the 2017R RFP as currently drafted, a longer PPA term would have to be submitted as an "alternative ownership proposal" to be considered "by PacifiCorp in its sole discretion."[23]

The Commission may also consider a reverse build-transfer arrangement in which third parties can bid to construct PacifiCorp's development assets. These modifications would not result in delay in the solicitation process.

4. *PacifiCorp Discretion*. First, the Commission should require PacifiCorp to remove Minimum Eligibility Requirement No. 8 that eliminates from participation in the process any bidder in litigation with or that has threated litigation against PacifiCorp. Second, the Commission should require PacifiCorp to narrow the two general reservations of sole discretion contained in Section 3.I (Company Reservation of Rights and Disclaimers) and Section 7.A.1 (Invitation), and the related Non-Reliance Letter language in Appendix G, so that they have some objective standard against which to measure their determinations, such as "in their discretion as failing to satisfy specific requirements and obligations contained in the RFP."

Q. If implementation of these recommended modifications results in delay to the schedule, does it mean Utah customers will lose out on the chance to benefit from potential benefits from federal production and investment tax incentives?

A. No. sPower appreciates the importance of the PTC (and ITC) phase down and expiration dates. My proposed modifications are unlikely to result in material delay to the RFP process. In addition, as noted above, there is still ample time for renewable energy asset development, even

[23] 2017R RFP, at 12.

with significant transmission build out, in advance of the December 31, 2020 deadline. Recognizing that potential bidders have projects in different stages of development, I think pushing out the schedule proposed in the 2017R RFP even by six months would not result in projects being unable to capture the full PTC or ITC.

Q. Does this conclude your testimony?

A. Yes. Thank you.