

Sophie Hayes (12546)
Utah Clean Energy
1014 2nd Ave.
Salt Lake City, UT 84103
801-363-4046
sophie@utahcleanenergy.org
Attorney for Utah Clean Energy

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of Rocky Mountain Power’s Proposed Tariff Revisions to Electric Service Schedule No. 37, Avoided Cost Purchases from Qualifying Facilities	DOCKET NO. 17-035-T07 Initial Comments of Utah Clean Energy
---	--

I. INTRODUCTION

On May 30, 2017, Rocky Mountain Power (“RMP” or “the Company”) filed testimony accompanying its advice filing in Docket No. 17-035-T07 supporting changes in the Schedule 37 avoided cost pricing method in order to “update the methodology for Schedule 37 consistent with the methodology used for Schedule 38.” RMP application, page 1. On June 12, 2017, the Commission issued a schedule in Docket No. 17-035-T07 for evaluating the Company’s proposed changes to the Schedule 37 pricing method (“Phase II” issues), with direct testimony due on July 20, 2017. Utah Clean Energy is filing these comments in lieu of testimony because its comments are legal and policy-based in nature rather than technical. UCE’s Initial Comments are being filed on the direct testimony date to give parties an opportunity to respond.

II. ARGUMENT

A. THE COMMISSION SHOULD NOT APPROVE SCHEDULE 38-BASED PROPOSED CHANGES TO SCHEDULE 37 BEFORE THEY ARE REVIEWED OR APPROVED FOR SCHEDULE 38.

The issues under investigation in the current docket are materially similar if not identical to those under investigation in the forthcoming Schedule 38 docket. Indeed, the Company has proposed its changes to the Schedule 37 pricing method to make it more like the Schedule 38 method. Therefore, only after these changes are evaluated and potentially implemented for Schedule 38 will it be appropriate to determine their applicability to Schedule 37 standard offer contracts for small QFs.

The Company proposes that Schedule 37 rates *specific to each resource type* be calculated using the partial displacement differential revenue requirement (“PDDRR”) method used for QFs under Schedule 38.¹ The Company argues that applying the Schedule 38 method to Schedule 37 should result in the following changes:

1. Renewable resources displace the next deferrable “like” renewable resource identified in the 2017 IRP preferred portfolio.
2. Proposed Schedule 37 QFs come in at the end of the queue of potential (Schedule 38) QFs.
3. For non-renewable resources, or if no “like” renewables remain in the 2017 IRP preferred portfolio through the expected term, the next deferrable major thermal resource is displaced (again after accounting for the queue of potential QFs).
4. Avoided energy costs are calculated using the expected output of a 10 MW resource of each type and are net of the value of displaced resources from the 2017 IRP preferred portfolio.

The Company has also proposed changes to REC ownership for Schedule 37 QFs, which are mirrored in the Company’s changes for Schedule 38 QFs.

As a threshold matter, the Company’s proposed changes to make Schedule 37 *more like* Schedule 38 should not be approved in this docket before they are evaluated in the Schedule 38

¹ The method approved by the Commission for determining Schedule 38 avoided costs is the “Proxy/PDDRR” method. For more on this method, see Section A, below.

docket (Docket No. 17-035-37). Such changes should not be made while the same or similar changes are being proposed, but have not been evaluated or approved, in a separate Schedule 38 docket. The Commission has noticed a scheduling conference in Docket No. 17-035-37 for Wednesday, July 26, 2017, and has indicated that the following issues will be addressed:

1. Renewable Energy Certificate ownership;
2. Post-Integrated Resource Plan (“IRP”) resource expansion plan pricing;
3. IRP update changes, including sufficiency period, deficiency period, deferrable resources and preferred portfolio; and
4. Impact of the 2017 IRP on the Proxy/PDDRR avoided cost method, including the impact of the 2017 IRP on Schedule No. 38 pricing method, periods of resource sufficiency and deficiency, and next deferrable resources.

These issues are materially similar to those under investigation in the current Schedule 37 docket. Once the Commission has evaluated these changes in the context of Schedule 38, it will be appropriate to consider their applicability to Schedule 37 standard offer contracts for small QFs.

A. THE COMPANY’S PROPOSED CHANGES TO THE PROXY/PDDRR METHOD FOR SCHEDULE 37 ARE CONTRARY TO PRECEDENT AND CONTRARY TO PURPA.

In docket 12-035-100, the Commission approved use of the Proxy/PDDRR method for Schedule 38 renewable qualifying facilities (“QFs”). The Company argues it is proposing to make the Schedule 37 pricing method more like the 38 method. However, the Company has included dramatic changes to the Schedule 38 method within its changes to the Schedule 37 method, which are contrary to precedent and contrary to The Public Utility Regulatory Policy Act (“PURPA”). Changes to the Schedule 38 Proxy/PDDRR method must be evaluated in the context of Schedule 38 before being applied (or not) to Schedule 37.

Background on Proxy/PDDRR Method. The Proxy/PDDRR method has been used for a number of years to calculate the capacity and energy payments for Schedule 38 QFs. A Proxy resource is used to calculate avoided capacity costs during the resource deficiency period while

the partial displacement differential revenue requirement is used to calculate avoided energy and capacity costs during the resource sufficiency period.

In its *Order on Phase II Issues* in Docket No. 12-035-100, the Commission explained the use of a renewable proxy resource for renewable QFs:

The record supports a distinction in the application of the Proxy/PDDRR method to renewable QF resources depending on whether the planned resources reflected in PacifiCorp's IRP include cost-effective renewable resources. We concur with PacifiCorp, Office and UCE that when PacifiCorp's planned resources include cost-effective renewable resources, "like" resource costs are reasonable to use as the proxy for purposes of avoided cost calculations of QF capacity payments. When a like cost-effective renewable resource is not included in PacifiCorp's planned resources, the capital cost of the next deferrable thermal resource will serve as the proxy for the Schedule 38 QF capacity payment. For wind and solar QFs, adjustments shall be made to capacity payments to account for the intermittent capacity contribution of these resources as discussed below. [Docket No. 12-035-100, Order on Phase II Issues (issued August 16, 2013), page 20.]

Displacement of "Like" Resources. In its current filing, the Company argues that renewable QFs can only displace "like" resources. Direct Testimony of Daniel MacNeil, lines 49-57. That is, solar can only displace solar, wind can only displace wind, etc. This proposal has inappropriately conflated the Commission-approved resource-specific capacity payment (described above) with resource sufficiency/deficiency periods and is inconsistent with the Commission approved Proxy/PDDRR method. The proposal is also contrary to PURPA, which was designed to allow independent renewable resources to displace and defer the development of utility-owned fossil fueled resources, regardless of the QF's resource type.

The Commission's *Order on Phase II Issues* in Docket No. 12-035-100 addressed the appropriateness of using a "like" resource as the proxy resource for *capacity cost* calculations, not for purposes of determining the periods of resource sufficiency or deficiency. Using a proxy resource to value avoided capacity is very different from the Company's current proposal to

restrict a renewable resource from deferring or displacing electricity except that which is generated from the same type of resource (i.e., wind for wind, solar for solar, etc.).

The Company has not demonstrated why electricity generated by a renewable QF can only displace electricity from the same type of resource, particularly within the context of the PDDRR method, which already accounts for the capacity contribution of renewable QFs. When evaluating its load and resource balance in the IRP, the Company considers the impact of long-term QF contracts irrespective of type, after taking account of the capacity characteristics of individual QF resources.² Any renewable QF should be able to have its avoided cost pricing determined based on the deferral of the next deferrable resource irrespective of type, with appropriate adjustments for capacity equivalence, consistent with the PDDRR method and the IRP. The avoided capacity and energy costs that result will reasonably reflect the avoided cost of the deferred resource within the framework of the PDDRR method.

The Company's proposal to limit the deferral of a renewable resource to resources of the same type as the QF is unduly restrictive and discriminatory against QFs of all types. The 2017 IRP Preferred Portfolio calls for wind in 2021 and solar in 2028. The implication of PacifiCorp's proposal in this case, using the Preferred Portfolio assumptions (rather than the Company's proposed QF queue assumptions), is that wind QFs could be credited with deferring a wind resource seven years before solar QFs could displace a solar resource. As a result, the capacity value of a solar deferral would be suppressed significantly relative to a wind deferral, reducing avoided cost pricing for a solar QF relative to wind in a needlessly discriminatory matter.

PURPA was passed in 1978 to encourage the development of electricity generation from independent cogeneration and renewable energy facilities, as well as to conserve and reduce the

² See, e.g., PacifiCorp's 2017 IRP Volume I, pages 87-88, 90.

use of fossil fuels. *FERC v. Mississippi*, 456 U.S. 741, 750-51 (1980).³ FERC rules permit consideration of a QF's ability to avoid fossil fuel-related costs. In determining avoided costs, one of the factors to be taken into account to the extent practicable is "the ability of the electric utility to avoid costs, including ... *the reduction of fossil fuel use.*" 18 CFR §292.304(e)(3) (emphasis added). The Company's proposal for avoided cost pricing based on resource specific electricity displacement is contradictory to these objectives and regulations and will artificially reduce avoided cost pricing by delaying a QF's ability to displace a deferrable utility-owned resource.

³ PURPA was enacted specifically to encourage the development of electricity generation from independent cogeneration and renewable energy ("qualifying") facilities ("QFs"). The U.S. Supreme Court provides the following succinct and thorough summary of the purpose of PURPA:

Section 210 of PURPA's Title II, 92 Stat. 3144, 16 U.S.C. § 824a-3, seeks to encourage the development of cogeneration and small power production facilities. Congress believed that increased use of these sources of energy would reduce the demand for traditional fossil fuels. But it also felt that two problems impeded the development of nontraditional generating facilities: (1) traditional electricity utilities were reluctant to purchase power from, and to sell power to, the nontraditional facilities, and (2) the regulation of these alternative energy sources by state and federal utility authorities imposed financial burdens upon the nontraditional facilities, and thus discouraged their development.

FERC v. Miss., 456 U.S. at 750-51 (footnotes omitted).

In addition, Utah Code Annotated Title 54, Chapter 12 (Utah PURPA) was subsequently enacted in response to PURPA in order to encourage electricity development by independent energy producers and to remove unnecessary barriers to energy transactions between qualifying facilities (QFs) and the monopoly utility in Utah.

Utah PURPA includes an extensive policy statement:

(1) The Legislature declares that in order to promote the more rapid development of new sources of electrical energy, to maintain the economic vitality of the state through the continuing production of goods and the employment of its people, and to promote the efficient utilization and distribution of energy, it is desirable and necessary to encourage independent energy producers to competitively develop sources of electric energy not otherwise available to Utah businesses, residences, and industries served by electrical corporations, and to remove unnecessary barriers to energy transactions involving independent energy producers and electrical corporations.

(2) It is the policy of this state to encourage the development of independent and qualifying power production and cogeneration facilities, to promote a diverse array of economical and permanently sustainable energy resources in an environmentally acceptable manner, and to conserve our finite and expensive energy resources and provide for their most efficient and economic utilization.

U.C.A. § 54-12-1 (2008).

Under both statutes, the Utah Public Service Commission is tasked with implementing these policies and the rules and regulations enacted to fulfil them.

The artificially depressed pricing resulting from the Company's proposals will inhibit qualifying facility ("QF") development, contrary to the objectives of PURPA. Utah's PURPA law specifically invokes the following imperatives in its requirement to encourage QF development and inhibit unnecessary barriers thereto: "to promote the more rapid development of new sources of electrical energy, to maintain the economic vitality of the state through the continuing production of goods and the employment of its people, and to promote the efficient utilization and distribution of energy." U.C.A. § 54-12-1 (2008). By inhibiting QF development, these artificially low avoided cost rates deprive customers of multiple benefits associated with having QFs as part of the utility's generation portfolio. In addition to benefits enumerated in Utah PURPA, additional benefits of small QFs include price stability; reduced risks that result from an entity other than the utility assuming the risks of construction overruns; reduced environmental costs from the displacement of fossil-fueled generation; non-lumpy (small), resource additions that are quick to come online; and local economic stimulus.

PacifiCorp's Procurement Plans. PacifiCorp's resource-specific sufficiency/deficiency demarcation points do not reflect the Company's plans to procure new wind and transmission resources by 2021. PacifiCorp's Action Plan from the 2017 IRP includes the procurement of over one gigawatt ("GW") of renewable energy resources with a commercial operation date ("COD") of no later than December 31, 2020. However, current avoided cost rates are based on the expectation that the Company will not procure wind resources until 2031 or solar resources until 2035 (after accounting for the potential QF queue).⁴ As a result, the Company's proposed Schedule 37 rates do not take into account the utility's procurement plans.

⁴ See, e.g., Docket No. 17-035-T07, *RMP Technical Conference Presentation*, page 11 (June 23, 2017).

The Company argues that the addition of a Utah (wind) QF *cannot* displace or defer the new wind and transmission planned to come online by the end of 2020 in PacifiCorp's 2017 IRP Preferred Portfolio. Direct Testimony of Daniel MacNeil, lines 220-21. The Company has explained that, "given the net benefits these projects provide to PacifiCorp's retail customers, [the Company] will pursue these projects even if new QF projects were added to the system in Utah." Direct Testimony of Daniel MacNeil, lines 221-223. Nevertheless, these planned wind/transmission projects are still under review in Utah, and it is not sufficient for purposes of determining the period of resource sufficiency to simply *insist* that a project is not deferrable before it has been approved or even acknowledged.

B. THE COMPANY HAS NOT DEMONSTRATED THAT IT IS COMPENSATING QFS FOR RECS IN EXCHANGE FOR REC OWNERSHIP AND IS THEREFORE NOT ENTITLED TO THEM.

In its *Order Granting in Part and Denying in Part Rocky Mountain Power's Petition for Review and Clarification* in Docket No. 12-035-100, the Commission concluded that, consistent with existing statutes, policy, and previous orders, RECs are retained by a QF unless the QF and purchasing utility have agreed by negotiated contract to an alternate REC ownership structure.⁵

⁵ Docket No. 12-035-100, *Order Granting in Part and Denying in Part Rocky Mountain Power's Petition for Review and Clarification* (issued October 4, 2013), pages 8-10:

First, it is undisputed that RECs are a creation of the Utah Legislature under UCA § 54-17-603. From UCA § 54-17-601(11) it is also clear that QF electricity may be unbundled from RECs.¹⁴ Second, we find no basis in PURPA, FERC regulations or applicable precedent that the price paid for QF power at a utility's avoided cost includes the value of RECs or any other renewable attribute. In fact, FERC has specifically concluded that "avoided cost rates are not intended to compensate the QF for more than capacity and energy." Consistent with PURPA, our approved avoided cost methods compensate QFs for energy and capacity only.

Thus, the Commission disagrees with PacifiCorp's contention that RECs "are part of what the utility is buying with the payment of avoided costs," and that if "the Company were to pay a QF separately for the RECs, then, the Company and its customers would be paying twice for RECs."

Third, it is undisputed that REC ownership is not addressed by PURPA but rather is a policy matter reserved for individual states....

To clarify our holding in Cottonwood Hydro, unless provided for otherwise in a negotiated contract, RECs are retained by the QF and may be sold and valued separately from the energy produced by the QF. In other words, once created, RECs do not remain in some type of ownership

In the current case, the Company has proposed that during the portion of a QF's contract in which it receives a capacity payment based on the costs of an IRP renewable resource, the Company will be entitled to the renewable energy credits ("RECs") associated with the QF's output. Direct Testimony of Daniel MacNeil, lines 88-89. The Company states that, "Beyond the renewable-resource-based capacity payment already identified, no additional compensation will be paid for these RECs." *Id.* at lines 90-91. The implication of this statement is that a capacity payment based on a "like" renewable resource in some way represents compensation for RECs, when in reality, the capacity payment represents compensation for the capacity the renewable resource is providing to the system, not the renewable attributes of the resource.

The Company continues:

The 2017 IRP assumes that RECs associated with new renewable resources will be allocated among all retail jurisdictions. Utah ratepayers are thus entitled to any resulting benefits from those RECs. Assigning REC ownership to PacifiCorp during periods when a QF is being paid for capacity from a cost-effective renewable resource of the same type in the preferred portfolio would ensure that Utah ratepayers are entitled to comparable quantities of RECs. Utah ratepayers should thus be indifferent between the renewable resource in the preferred portfolio and the QF resource. For the same reasons, if QFs continue to receive all RECs associated with their output, the ratepayer indifference standard under PURPA would not be met. [Direct Testimony of Daniel MacNeil, lines 128-36.]

The Company claims that allowing a QF to keep the RECs from the QF project would threaten the ratepayer indifference standard because the Company has identified renewable resources in the IRP Preferred Portfolio and would keep the RECs from those, presumably Company-owned, resources. However, the utility cannot "keep" RECs to which it is not originally entitled, that is, without compensation. Even if RMP hires a developer to build a

limbo until such ownership is specified by contract. Rather, consistent with existing statutes and our previous orders, we affirm RECs are retained by the QF unless the QF and purchasing utility have agreed by negotiated contract to an alternate REC ownership structure.
(Citations omitted.)

project and RMP owns it, the Company would still have to purchase the RECs from the developer in order to acquire the renewable energy attributes of that resource (or, to put it differently, the Company would have to pay a premium to the developer for the right to the RECs, compared to the price they would pay if the developer kept and sold the RECs separately).

Unless PacifiCorp's IRP clearly includes a quantifiable value for RECs in its renewable resource cost assumptions, which accounts for the renewable attributes of renewable resources, avoided capacity costs based on IRP resource costs do not include compensation for RECs. Therefore RECs must be retained by QFs unless otherwise compensated for or provided for in a negotiated contract, consistent with previous Commission orders and REC policy. Renewable resources in the IRP have to compete with non-renewable resources without consideration given to their additional value associated with RECs. Therefore, although RECs may provide additional actual value to PacifiCorp and PacifiCorp's ratepayers, if that value is not quantified as a REC price in the resource selection process, it is not compensated by avoided cost pricing based on IRP resource cost assumptions.

Under the Company's proposal, customers are not "indifferent between the renewable resource in the preferred portfolio and the QF resource"; rather they are unjustly enriched at the QF's expense. While this may be an attractive bargain for PacifiCorp and its ratepayers, it is unfair to QF developers and discourages QF development by denying QFs the value of the renewable attributes of renewable QFs. Ultimately, depriving QFs of this value stream deprives ratepayers of the benefits of local, risk-mitigating, independent QF production.

If the IRP selects renewables without a REC value applied to their costs, the Company does not compensate for RECs through avoided costs pricing and cannot receive the RECs

without otherwise arranging to do so in a negotiated agreement (and providing compensation for them).

C. SCHEDULE 37 STANDARD OFFER PRICES FOR SMALL QFs SHOULD NOT BE BASED ON A QUEUE OF INDETERMINATELY SPECULATIVE SCHEDULE 38 PROJECTS.

The Company has proposed that Schedule 37 pricing be based on an assumption that *all* QFs in the Schedule 38 queue are developed, not just QFs with signed power purchase agreements (“PPAs”). Direct Testimony of Daniel MacNeil, lines 250-51. This is an assumption that is not supported by the record. The Company has provided no evidence that all, or even a specific portion of, QFs who request indicative pricing either 1) sign PPAs or 2) actually develop the QF and deliver electricity to the Company. Therefore, it is unreasonable to conclude that Schedule 37 avoided costs should be based on the development of *all* signed *and* potential QFs in the queue.

The Company’s Schedule 37 queue proposal artificially and unreasonably reduces avoided cost pricing and discourages QF development. It is therefore contrary to one of the central policy objectives of PURPA and Utah PURPA: to encourage QF development. Based on the relative transactional simplicity of Schedule 37 QFs, they should receive pricing based on transparent and predictable queue assumptions. Schedule 37 pricing should not be dependent upon unsupported assumptions about the likelihood of development of potentially more complicated and time-consuming, non-standard (and much larger) Schedule 38 projects.

III. CONCLUSION

The annual Schedule 37 cost update process should not be used to implement changes to the Proxy/PDDRR method, particularly when there is a separate process underway to evaluate the same proposed changes to the Schedule 38 pricing method. Only after the Commission makes a determination regarding what, if any, changes to the Schedule 38 method are reasonable

will it be appropriate to evaluate incorporating those changes into Schedule 37. Furthermore, the changes to avoided cost pricing proposed by the Company in the current docket are insufficiently justified and inconsistent with PURPA and Utah PURPA.

DATED 20th day of July, 2017.

Respectfully submitted,
Utah Clean Energy



/s/ _____
Sophie Hayes
Attorney for Utah Clean Energy