BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE APPLICATION OF ROCKY MOUNTAIN POWER FOR A MODIFICATION OF AVOIDED COST METHODOLOGY AND REDUCED TERM OF PURPA POWER PURCHASE AGREEMENTS	))))))	DOCKET NO. 20000-545-ET-18 RECORD NO. 15133

RENEWABLE ENERGY COALITION'S RESPONSE TO ROCKY MOUNTAIN POWER'S MOTION TO STRIKE PORTIONS OF THE DIRECT TESTIMONY OF THE RENEWABLE ENERGY COALITION

I. INTRODUCTION

In accordance with Chapter 2, Section 13(a) of the Public Service Commission of Wyoming's ("Commission's") rules regarding contested case proceedings, the Renewable Energy Coalition ("REC") hereby responds to Rocky Mountain Power's ("RMP's") Motion to Strike portions of the direct testimony of John Lowe, which was filed on behalf of REC in this proceeding ("Motion"). RMP filed a single motion, through which it seeks to strike portions of testimony filed by two different parties—the Rocky Mountain Coalition for Renewable Energy ("RMCRE") and REC. RMCRE and REC are each responding separately to RMP's Motion, to address the motion as it relates to the testimony of their respective witnesses. Specifically, this response relates to RMP's motion to strike lines 535 through 615 (at pp. 24-28) of John Lowe's direct testimony.

II. BACKGROUND

In its Application in this proceeding, RMP proposes that language be added to its Schedule 38 that would expressly state that a qualifying facility's ("QF's") commercial operation date ("COD") must not be further than 30 months from the power purchase agreement ("PPA") execution date.[1] In response to that proposal, REC's witness John Lowe provided testimony identifying a number of reasons why this requirement is unreasonable, and suggested modifications to RMP's proposed restriction. Specifically, Mr. Lowe's testimony recommended that a QF should be able to select a COD that is "the greater of: 1) four years from contract execution; or 2) the amount of time that PacifiCorp says it will take to complete any interconnections to match the COD."[2] Mr. Lowe provided specific reasons why his proposal was reasonable, and why RMP's proposed restrictions should be modified. These reasons included that RMP's proposal would allow it to thwart QF development by causing QFs to miss their required COD because of delays in the interconnection process that would be expected to result in an interconnection process longer than 30 months.[3] Perhaps more importantly, he testified that RMP's 30-month deadline prevents QFs from being able to even sign PPAs with RMP, because RMP's transmission function cannot execute interconnections within that timeframe, and RMP's merchant function therefore refuses to sign PPAs.

In supporting his assertions that there is a conflict between the timeline required to achieve an interconnection with RMP's system and the 30-month limitation RMP proposes, Mr.

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1 Application at 13.
2 REC Exhibit 601 at 24, lines 531-534.
3 *See* REC Exhibit 601, at 24, lines 537-540.

Lowe described RMP's interconnection process,[4] the delays that prevail in that process,[5] and that there is no practical way for a QF to obtain an interconnection agreement within the time necessary to meet RMP's proposed 30-month limitation in many circumstances.[6] He also explained the circular and irrational process by which RMP will refuse to execute a contract with a QF in light of the fact that RMP cannot guarantee that RMP will be able to interconnect a QF within the 30-month requirement that it places on QFs for achieving COD.[7]

In its Motion, RMP now seeks to strike all of this testimony supporting the logic for Mr. Lowe's recommendation to reject RMP's newly proposed 30-month limitation. In so doing, it argues that Mr. Lowe's testimony is not relevant to its proposed 30-month limitation and that it is duplicative of issues raised in other proceedings.[8]

This Commission should deny RMP's Motion to Strike portions of John Lowe's direct testimony, because it is relevant and provides information that is important for the Commission to consider as it weighs RMP's proposals in this proceeding. RMP's arguments that Mr. Lowe's testimony is not relevant are not credible, given that RMP is asking the Commission, in this case, to adopt a 30-month deadline by which QF projects must achieve their COD. Mr. Lowe's testimony provides evidence about why that proposal is unreasonable, including that RMP's

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4 REC Exhibit 601 at 24-25, lines 541-559. Mr. Lowe described the Federal Energy Regulatory Commission ("FERC")-jurisdictional process; however, QF interconnections are state jurisdictional. Mr. Lowe described the FERC process because his understanding is that RMP generally uses the FERC process for Wyoming state jurisdictional interconnections.

5 REC Exhibit 601 at 25-27, lines 560-589.

6 REC Exhibit 601 at 27, lines 590-609.

7 REC Exhibit 601 at 28, lines 610-615.

8 Motion at 1-2.

interconnection process often requires more than 30 months to complete interconnection—a prerequisite to achieving COD.

The Commission should also deny RMP's Motion because Mr. Lowe's testimony is not duplicative of testimony offered in other proceedings. His testimony does not seek to resolve the issues raised in such other proceedings, and is not seeking to resolve issues related to RMP's unprecedented level of delays in its interconnection processes. Rather, it provides information about these interconnection delays that is important for the Commission to consider when resolving an important issue that RMP itself raised in this proceeding.

RMP, in its Motion, also mischaracterizes REC's proposal, which is tailored to address the interconnection process challenges described in REC's testimony. REC's proposal would not, as suggested by RMP, allow QF developers to significantly modify their commercial operations dates in order to gain pricing advantages, and would not have the other effects RMP describes in its Motion. RMP is also not harmed by being required to put on testimony that responds to issues parties, including REC, have raised about RMP's proposal.

III. ARGUMENT

A. Obstacles to Obtaining Interconnection of a Project Are Relevant to the Commission's Determination of the Appropriate Timeframe Within Which Commercial Operations Must be Established

Mr. Lowe's testimony regarding the interconnection process, and the associated delays, is directly relevant to RMP's proposed tariff revisions. Mr. Lowe's testimony sheds light on the reasonableness (or unreasonableness) of RMP's proposal, by showing that RMP's proposal of a 30-month limitation between signing of a PPA and COD is often too short of a time period to allow a QF to reasonably achieve COD. The time periods necessary to gain interconnection are

relevant to determining an appropriate timeframe in which commercial operations should be required, and RMP has offered no logical reason otherwise.

1. REC's Proposal, Explained in John Lowe's Testimony, Is Tailored to Address a Fundamental Problem Associated with RMP's Proposed Time Limitation on Achieving COD

In its Application, RMP proposes that QFs must be able to achieve commercial operations within 30 months of the date in which the QF executes a PPA. This proposal has consequences not only by subjecting QFs to the potential for damages or other consequences if they fail to meet their COD in that timeframe, but also actually prevents QFs from being able to obtain a PPA in the first instance. This is because, as Mr. Lowe testified, RMP will not execute a PPA with a QF developer, if the developer cannot provide a transmission study that shows that the QF will be interconnected within 30 months. And, ironically, it is RMP itself that controls the timeframe for when interconnection can be completed, and Mr. Lowe testifies that RMP has not provided for an interconnection process that can be completed that quickly.

In his testimony, Mr. Lowe describes this dynamic, and also provides other information that is critical for the Commission to consider as it evaluates RMP's proposal. This includes that QF projects require financing in order to be completed, and that financing often cannot occur until the project has signed a PPA.[9] He explains that, in light of this, a 30-month window between signing a PPA and COD is not reasonable. His testimony also includes that other states have concluded that a QF should have a reasonable amount of time between execution of a PPA and COD, and that other states have adopted timeframes that are longer, and more reasonable

[9] REC Exhibit 601 at 28-29, lines 628-636.

than RMP's proposal in this case.[10] He explains, for example, that PacifiCorp agreed in Oregon that QFs should have a period of up to 36 months between signing a PPA and achieving COD, and potentially longer for good reason, and that projects should have an additional one-year cure period beyond that date if they miss COD.[11] Mr. Lowe also explains that the rules in Oregon were established prior to the more recent significant problems with utilities' (including RMP's, or PacifiCorp's) interconnection processes, and that in light of those challenges, more time is warranted now than what is provided for in Oregon.[12]

In light of RMP's proposal, and all of the reasons for which it is unreasonable, REC proposes that QFs should be able to select a COD that is "the greater of: 1) four years from contract execution; or 2) the amount of time that PacifiCorp says it will take to complete any interconnections to match the COD."[13] In other words, if RMP provides an interconnection timeframe of more than four years at the time when a QF is otherwise able to sign a PPA, then the QF would be able to select that date as a COD and sign a PPA.[14]

All of Mr. Lowe's testimony, including the portions that RMP seeks to strike, support his proposal to reject RMP's 30-month timeframe between execution of a PPA and COD. His testimony provides the factual context around which RMP's proposal should be viewed, and provides the Commission with a view of the real-world impacts of it. It is fundamental to the Commission's contested case process that parties be allowed to raise issues associated with a

10 REC Exhibit 601 at 28, lines 623-628.
11 REC Exhibit 601 at 28, lines 625-628.
12 REC Exhibit 601 at 29, lines 635-636.
13 REC Exhibit 601 at 24, lines 531-534.
14 REC Exhibit 601 at 28, lines 616-622.

utility's proposal, and support their views with testimony in the case. For this reason, the Commission should allow all of Mr. Lowe's testimony, and should deny RMP's Motion.

2. The Fact That Things Other Than Interconnection Can Affect COD Does Not Make the Interconnection Process Irrelevant

RMP attempts to demonstrate that Mr. Lowe's testimony about its interconnection process is not relevant because there are other factors that also affect timing of when a QF achieves COD, such as permitting, construction issues, or financing.[15] However, the fact that there are other factors that affect COD does not mean that RMP's actions in the interconnection process are not also relevant. Instead, the interconnection process is one of a number of factors and potentially the most important factor for a QF to become operational.

Importantly, RMP's actions in its interconnection process relate to the Company's own behavior, whereas the other factors RMP identifies do not. Thus, not only is the interconnection process relevant (because it relates to the likelihood of a QF being able to achieve COD within 30 months), but it is particularly relevant because the timeline for achieving COD should reflect and allow for RMP's own corporate implementation of the Public Utility Regulatory Policies Act ("PURPA"). Said differently, the Commission should ensure that RMP cannot set up a system where it has the power to thwart QF development through its own actions, by refusing to enter into a PPA because RMP itself cannot interconnect the QF in less than 30 months.

3. RMP's Proposal Has Important Consequences, and the Commission Should Reject RMP's Attempt to Cast Its Proposal Narrowly

RMP also seeks to support its claim that Mr. Lowe's testimony is irrelevant by defining the scope of its Application so narrowly as to try to cast Mr. Lowe's testimony as unrelated to its

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[15] Motion at 4.

request. For example, RMP argues that "none of the requests for Commission action, nor the tariff and pricing changes the Company requests in its application, require the Commission to delve into the QF interconnection process to develop a robust record and reach a fully informed decision on the merits of the Application."[16] But, what RMP overlooks is that its interconnection process is a major factor in a QF's ability to achieve COD. Thus, its proposal to the Commission that QFs be required to achieve COD within 30 months of signing a PPA means that the Commission should consider the effects of the interconnection process, and how they may bear on the reasonableness of RMP's proposal. Moreover, the interconnection process is relevant to determining the fairness and reasonableness of imposing delay damages for missing scheduled COD, determining appropriate cure periods, and other contract implementation issues.[17]

RMP erroneously assumes that REC's testimony is asking the Commission to delve in detail into the interconnection process as a whole, as if REC is seeking to turn this docket into an investigation of RMP's interconnection practices.[18] To the contrary, REC has provided evidence about the timelines required to complete interconnection with RMP only to an extent necessary to determine the reasonableness of RMP's proposed COD timelines. It has not introduced evidence in order to request a detailed investigation into whether RMP is compliant with the

16 Motion at 3.

17 *See* REC Exhibit 601 at 30, lines 660-664 (testifying that QFs should be allowed a one-year cure period, and longer if there are delays caused by the utility, such as through its interconnection process).

18 *See* Motion at 3 (arguing that REC's testimony would require the Commission to delve into the complexities of the OATT process).

Commission's or FERC's requirements, or whether modifications to its interconnection process should be ordered by the Commission.

In an effort to cast its Application as narrowly-focused, RMP also argues that "[t]he Company does not dispute the fact that sometimes the generator interconnection process on any transmission provider's system can take a long time, and can be subject to delays, but the reasons for such delays are neither relevant nor material to whether the 30 Month Policy should be maintained and made explicit in the tariff."[19] First, REC disagrees that RMP has a "30 Month Policy", as PacifiCorp allows for 36 months in at least California and Oregon. Second, RMP's proposition is remarkable—that it is not relevant to look at the key RMP-controlled factor that affects the timeframe for achieving COD, when the Commission determines a reasonable timeframe. Contrary to RMP's view, the Commission should find that not only is it relevant to look at the interconnection process when determining if RMP's proposed 30-month rule is reasonable, but it is fundamentally necessary to review it, since interconnection is a prerequisite to achieving COD.

4. REC Is Entitled to Support, With Testimony, Its Proposals Made in Response to RMP's Application

Curiously, RMP acknowledges that interconnection process delays may be relevant to its proposal to incorporate a 30-month rule in its tariff, but it asserts that REC's demonstration of the delays is somehow not relevant. RMP explains, in its Motion, that it "proposes to only strike those portions of Mr. Lowe's testimony that include this irrelevant and immaterial information, while preserving the REC argument that the thirty month policy should be adjusted to account

[19] Motion at 8.

for interconnection delays."[20] This amounts to a view that REC's *proposal* is admissible, but that the evidence supporting *why* its proposal is *reasonable* be stricken. Through this approach, RMP seems to invite the Commission to allow only a colorless assertion by REC about what the Commission should do, but disallow any description of why the proposal is warranted in light of the facts. Simply put, allowing a longer COD due to interconnection delays is more reasonable if there is a history of interconnection delays than if interconnection delays never occurred. Mr. Lowe's testimony sheds light on the fact that a history of interconnection delays has occurred, and supports his proposal.

It is also important that, within its Motion, RMP specifically asserts that 30 months is a reasonable timeframe in which a QF should be required to achieve commercial operations. RMP argues:

> The 30 Month Policy is designed to ensure that pricing provided to a QF is reasonably close in time so as to avoid staleness and inaccuracy by the time the project is actually able to deliver energy. At the same time it allows a QF a reasonable time period to construct its project (two and a half years).[21]

Thus, RMP expressly invites the Commission to make a determination that it is a "reasonable period of time" for a QF to achieve COD within 30 months of signing a PPA. Yet, RMP argues that it is somehow not relevant or material that its own interconnection process—a prerequisite to achieving COD—takes longer than 30 months to complete. RMP is attempting to insulate its proposal from scrutiny by disallowing evidence that undermines RMP's claims about what is "a reasonable amount of time to construct its project."

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20 Motion at 7.
21 Motion at 8.

REC notes that it would be unusual to limit evidence countering RMP's testimony regarding the reasonableness of its 30-month proposal in light of the fact that PacifiCorp, in other states, has agreed to longer timeframes, out of similar concerns being expressed by QFs as those raised by REC in this proceeding. In Oregon, for example, PacifiCorp agreed to 36 months between the execution of a PPA and COD, and that a QF can elect a scheduled COD that is more than three years from the contract execution if the QF can establish to the utility's satisfaction that a longer period is reasonable and necessary, and that it would not unreasonably withhold its consent under such circumstances.[22] In this proceeding, however, RMP seeks to restrict REC's evidence about the reasonableness of RMP's 30-month proposal, even though similar concerns are at play as were expressed in PacifiCorp's Oregon proceeding.

In asserting that Mr. Lowe's testimony regarding RMP's interconnection process should be stricken, RMP also argues that it has not "opened the door" to such testimony.[23] This argument, however, is misplaced. RMP's reference to "opening the door" appears to be a reference to the established rule of law that a defendant in a criminal case may "open the door" to testimony that is otherwise inadmissible, under some rule of evidence, by pursuing a certain line of questioning at trial that relies on that evidence.[24] But, that rule relates to whether

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22 *In Re Public Utility Commission of Oregon, Staff Investigation Into Qualifying Facility Contracting and Pricing*, Public Utility Commission of Oregon Docket No. UM 1610, Brief in Support of Stipulation at 3 (Feb. 26, 2015).

23 *See, e.g.* Motion at 9-10 (explaining that nothing in RMP's application or testimony has opened the door to REC's evidence).

24 *See, e.g. Lawrence v. State,* 171 P.3d 517, 521-22 (Wyo., 2007) ("This Court has recognized that a defendant may open the door to otherwise inadmissible testimony when he inquires about a particular subject, including evidence of prior criminal misconduct.") (internal citations omitted). *Id.* ("Succinctly stated, the 'opening the door' rule is that a party who in some way permits the trial judge to let down the gates to a field of inquiry

evidence that is *inadmissible* becomes *admissible* due to a line of questioning or other evidence from a party that is adverse to the evidence that is otherwise disallowed. With respect to REC's testimony on RMP's interconnection process, the fundamental question is whether REC's evidence is relevant to RMP's application, which, as described above, it is. There is thus no reason in the first instance to find that REC's evidence is somehow inadmissible, and thus there is no need to investigate whether RMP has somehow "opened the door" to such evidence. Furthermore, the evidence is REC's, and not RMP's, and thus this doctrine seems inapposite.

It may be that RMP's reference to "opening the door" to evidence in this case is nothing more than an argument that REC's testimony is not relevant. If so, then this argument is addressed above.

5. REC's Testimony is Relevant and Important Because It Goes to the Heart of RMP's Compliance with PURPA

Contrary to RMP's arguments, addressed above, REC's testimony regarding the interconnection process is particularly relevant, and the Commission should insist that it be considered in this proceeding, because it goes to a core issue regarding Wyoming's implementation of PURPA, and RMP's compliance. As FERC has ordered, a state cannot require an executed interconnection agreement in order to achieve a "legally enforceable obligation," under which the utility is required to purchase a QF's net output.[25] FERC reasoned, in *FLS Energy, Inc.*, that such a requirement would be inconsistent with PURPA's mandate that public utilities purchase a QF's net output, because "the utility can delay the facilities study or

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that is not competent but relevant cannot complain if his adversary is also allowed to avail himself of the opening within its scope.").

25 *FLS Energy*, 157 FERC ¶ 61,211 at 8, Par. 20.

delay tendering an executable interconnection agreement."[26] Thus, FERC has found that a QF's ability to sell power to a utility cannot be conditioned upon a process that the utility controls.

FERC's logic from *FLS Energy* is directly relevant to the issues in this proceeding. Here, RMP's Schedule 38 would prevent a QF from executing a PPA or otherwise forming a legally enforceable obligation when the QF cannot deliver power for the sole reason of RMP delaying studies, executing an interconnection agreement and/or the actual interconnection process. FERC specifically found that such an arrangement cannot be allowed. It explained that the Montana Commission (whose actions were under review in *FLS Energy*) could not require a signed interconnection agreement in order to find that a utility has a legally enforceable obligation to purchase a QF's power, because that was "no different than requiring a utility-signed contract," which FERC had already found unlawful.[27] It would thus seem likely that an arrangement for RMP under which its own interconnection timelines could be used to deny a QF of a PPA would be "no different" than the other arrangements that FERC has found unlawful and violative of PURPA.[28]

This shows that the Commission should not allow RMP to implement a 30-month rule for achieving COD, when the facts show that the utility's own interconnection process is being implemented in such a way that it gives the utility a tool to cause a QF to be unable to satisfy that requirement. The Commission should allow REC's testimony on RMP's interconnection process because it is important to review it to ensure that it does not set up a system for RMP that violates FERC's articulation of what is required of states in implementing PURPA.

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26 *Id*.
27 *Id*. at 10, Par. 26.
28 *Id*.

B. REC's Testimony is Not Unnecessarily Duplicative

In addition to arguing that Mr. Lowe's testimony regarding RMP's interconnection process is irrelevant, RMP also argues that it should be excluded because it is unnecessarily duplicative. RMP asserts that it addresses issues under review in different dockets.[29]

The Commission should disregard this argument. REC is not asking the Commission to resolve interconnection disputes, or remedy any particular interconnection process delays through proffering its testimony in this case. Rather, it is demonstrating that such delays exist, and that they bear upon the reasonableness of RMP's proposed 30-month rule. Thus, regardless of whether any particular interconnection delays may be at issue in other proceedings, REC's testimony is relevant and necessary in this proceeding. Any particular disputes regarding the interconnection process should be addressed in proceedings related to those particular occurrences, and need not be resolved in this case.

C. RMP's Request to Establish A 30-Month COD Rule in Its Tariff Is Significant, and Its Efforts to Equate It to A Housekeeping Change Are Not Persuasive

In its Motion, RMP seeks to characterize its addition of a 30-month rule to its tariff as somehow insignificant, perfunctory, or non-consequential. For example, it argues that the rule already exists, and that the only real substance of its Application to which REC's testimony could possibly relate is the fact that RMP has changed its tariff to include a "more prominent

[29] Motion at 2.

admonition" that QFs should start the interconnection process early, in order to avoid delays.[30] RMP has not submitted testimony or other evidence in support of its allegation that it actually has such a policy in all of its states. Also, RMP's Application itself shows what RMP acknowledges at other places in its motion: it is seeking, through its Application, to add a substantive provision that has not previously been a part of its tariff, which requires QFs to achieve COD within 30 months of executing a PPA. The Commission should therefore reject RMP's efforts to make its tariff change on this topic appear as a "housekeeping" update, which has no consequence worthy of debate through testimony in this case.

Significantly, RMP confesses why it is seeking to add the 30-month rule to its tariff. It explains that there have been "negotiation conflicts and complaints from QFs over the past few years, which demonstrated confusion about this policy among QF developers."[31] In other words, it has not been established that QFs are subject to a 30-month rule, at least through tariff. That RMP seeks to impose this rule through tariff, now, in order to enforce it upon QF developers undermines its characterization of the change as insignificant. Rather, RMP's Application represents an effort to enact a rule regarding a topic that QF developers have already confirmed is important and subject to conflict.

RMP also fails to demonstrate, in its Motion, that the 30-month rule has been adopted by the Commission in any form (let alone with the force of a tariff). In making its assertion that the 30-month rule is consistent with Commission precedent, RMP cites a prior Commission order.[32]

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30 Motion at 6.

31 Motion at 8.

32 See Motion at 9, fn 8 (citing *In Re the Amended Joint Complaint Filing by Trireme Energy Development II, LLC; Pryor Caves Wind Project LLC; Mud Springs Wind Project LLC; and Horse Thief Wind Project LLC Against Rocky Mountain Power and*

However, nothing in that order establishes a 30-month rule. And it is unclear what RMP even intends to cite in that case. In that case, the Commission found that RMP had not acted in bad faith when it updated its avoided costs at a time when significant terms related to the delivery of power by a QF were still under negotiation. This order does not establish that it is reasonable to require commercial operations to commence within 30 months of signing a PPA.

D. RMP Mischaracterizes REC's Proposal for Modifying RMP's Requested 30-Month Rule

In its Motion, RMP argues that REC's proposal would frustrate the Commission's implementation of PURPA, by exposing customers to stale prices. RMP asserts that it would allow QFs to essentially game the system, and take actions that RMP implies would be unfair. In making these assertions, however, RMP mischaracterizes REC's proposal.

Specifically, RMP argues:

> Without the 30 Month Policy a QF could execute a PPA at current avoided costs for energy it cannot deliver until five or 10 years from the date of execution. Existing QFs could similarly seek pricing at any time to effectively extend the terms of their PPAs whenever they determined that the Company's current avoided costs were favorable. The Company has never contracted with QFs on such a forward looking basis, and doing so would be inconsistent with Commission guidance stating a preference that the avoided costs included in PPAs be updated prior to execution to incorporate the most current information available to the Company.[33]

As clearly demonstrated in Mr. Lowe's testimony, however, his proposal, on behalf of REC, is that a QF should be able to select a COD that is "the greater of: 1) four years from contract execution; or 2) the amount of time that PacifiCorp says it will take to complete any

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PacifiCorp Regarding the Avoided Cost Pricing for the Bowler Flats Wind Qualifying Facilities Power Purchase Agreements, Docket No. 20000-505-EC-16 (Record No. 14579), Commission Order at ¶ 63 (Dec. 31, 2018)).

33 Motion at 9.

interconnections to match the COD."[34] Nothing in this proposal would allow the behavior or outcomes described by RMP above. Instead, it would require commercial operations within four years from signing a PPA, in light of the fact that RMP's interconnection process reflects that this amount of time is required to achieve interconnection. Other than applicable cure periods, any period longer than four years would only come about if RMP's interconnection studies at the time of PPA execution showed that COD cannot be achieved within four years. Such a protection would be appropriate in order to shield QFs from actions or efforts by the utility to delay interconnection, and would hopefully not come about in any event. Thus, REC's proposal is well-tailored to the challenges presented by RMP's interconnection process, and the Commission should reject RMP's assertions that its proposal would be unfair.

REC notes that, in any event, it is improper for RMP to use its motion to strike (which is ostensibly filed on the basis of relevance) to argue that it believes REC's proposal has undesirable results. RMP should be required to produce its views in the form of testimony, where it can be addressed in an orderly manner through the Commission's evidentiary process.

E. RMP Is Not Harmed by Responding to The Concerns REC Has Raised About How the Interconnection Process Bears Upon the Reasonableness of RMP's Requested Timelines for Commercial Operations

In addition to claiming that REC's testimony is irrelevant and immaterial, RMP claims that it would be improper to require it to put on testimony from experts in order to respond to assertions about its Open Access Transmission Tariff ("OATT") process.[35] Presumably, RMP reasons that because it did not address the OATT interconnection process in its Application, it

34 REC Exhibit 601 at 24, lines 531-534.
35 Motion at 3.

should not have to in order to respond to parties' arguments about its proposal. But, this amounts to only a re-packaging of RMP's argument that it believes REC's testimony is not relevant. That argument is addressed above. Moreover, that RMP has not yet offered a witness to address the OATT process does not mean that no party can raise this issue. The question is whether such testimony is relevant, and if so, then RMP has a duty to respond to it, or risk the Commission agreeing that it represents an obstacle that demonstrates RMP's proposed 30-month rule would be unreasonable.

RMP also fails to recognize that the Wyoming Commission has jurisdiction over certain QF interconnections matters. For example, QFs also have the right to interconnect with a utility by paying a nondiscriminatory interconnection fee approved by the State regulatory authority.[36] Thus, while REC is not asking for the Commission to remedy RMP's failure to timely process interconnections in this proceeding, the Commission has the legal authority to do so if it wished.

Further, REC notes that in other state proceedings, where appropriate COD timelines were considered, the same PacifiCorp witnesses have discussed both COD timelines (and other PURPA contracting issues), as well as transmission issues, including their OATT process.[37] It is unclear why RMP could not do so here. At the very least, RMP's witnesses that describe the QF

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[36] 18 CFR 292.306. *See also*: https://www.ferc.gov/industries/electric/gen-info/qual-fac/benefits.asp

[37] *See, e.g. In Re Public Utility Commission of Oregon, Staff Investigation Into Qualifying Facility Contracting and Pricing*, Public Utility Commission of Oregon Docket No. UM 1610, Reply Testimony of Bruce Griswold, PAC/1600, Griswold/3-8 (Aug. 7, 2015) (discussing PacifiCorp's response to REC proposal regarding timelines for COD for existing projects, and the company's view about the applicability of OATT requirements). *See also* Docket No. UM 1610, Direct Testimony of Bruce Griswold, PAC/1000, Griswold/23 (merchant function employee discussing PURPA contracting processes as well as impact of transmission business line's practices on that process).

contracting process in this proceeding should be able to address the company's policy of not signing a PPA with a QF that cannot establish an interconnection within that time period.

F. RMP Has Not Justified A Deviation from The Schedule in this Case.

In its Motion, RMP argues that if its request to strike portions of REC's testimony are not granted, then it should be given additional time to respond to that testimony.[38] RMP's Motion, however, does not explain why more time is necessary. In REC's view, RMP should anticipate that it would be required to respond to testimony that counters its proposal, including its proposal to add a new substantive requirement that relates to such an important item as required COD timelines. RMP submits that the Commission should deny this request, therefore, and keep the proceeding on schedule.

IV. CONCLUSION

For all the reasons described above, the Commission should deny RMP's motion to strike portions of REC's testimony.

[signature page follows]

[38] Motion at 10.

Dated this 30th day of May 2019.

Respectfully submitted,

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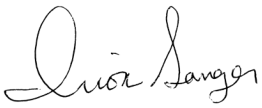

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of May 2019, the foregoing document was e-filed with the Wyoming Public Service Commission and a true and correct copy was sent via electronic mail addressed to the following:

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