

**BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING**

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

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**MEMORANDUM IN OPPOSITION TO ROCKY MOUNTAIN POWER’S MOTION  
TO STRIKE PORTIONS OF THE DIRECT TESTIMONY OF THE ROCKY  
MOUNTAIN COALITION FOR RENEWABLE ENERGY**

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The Rocky Mountain Coalition for Renewable Energy (“RMCRE”) hereby responds to the Motion to Strike (“Motion”) filed by Rocky Mountain Power (“RMP”), which seeks to strike lines 368 through line 404 (at pp. 18-20) of the Direct Testimony of Mark Klein, offered on behalf of RMCRE.

**INTRODUCTION**

This Commission should deny RMP’s Motion to Strike portions of the Direct Testimony of Mark Klein. As an initial matter, RMP’s Motion misapprehends the nature and purpose of Mr. Klein’s testimony. Contrary to RMP’s argument, the portion of Mr. Klein’s testimony that RMP seeks to strike does not relate to RMP’s efforts to modify Schedule 38 to require a 30-month deadline from the execution of a power purchase agreement (“PPA”) to the QF’s commercial operation date (“COD”). Rather, Mr. Klein’s testimony is offered to support RMCRE’s request that the Commission—if it adopts any changes to Schedule 38 as a result of this docket—decline to impose those changes on projects that have reached certain stages of development. Mr. Klein’s testimony is relevant to the issue of whether the Commission should

impose changes resulting from this docket (if any) either immediately upon entry of an order, at some future date, or only against QF projects that have not reached some milestone of development.<sup>1</sup> As set forth below, Mr. Klein’s testimony is relevant to this Commission’s decision in this docket and RMP’s Motion to Strike should be denied.

## **ARGUMENT**

### **A. Relevant Law**

In its Motion, RMP asserts that the Commission must exclude irrelevant evidence, but does not provide a definition of the term “relevant.” “Although the Wyoming Rules of Evidence do not apply to administrative proceedings, the definition of relevance contained in them is instructive.” *Zowada v. Mullinax Concrete Serv. Co., Inc.*, 335 P.3d 455, 461 (Wyo. 2014). “Evidence is relevant if it has ‘any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.’” *Id.* (quoting Wyo. R. Evid. 401). As set forth below, the challenged portions of Mr. Klein’s testimony have a “tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence,” and, as such, Mr. Klein’s testimony is relevant and should not be stricken.

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<sup>1</sup> This memorandum only addresses the relevance of Mr. Klein’s testimony for the purpose for which it was actually offered, and does not address whether Mr. Klein’s testimony would be relevant had it been offered for a different purpose. This should not be viewed as a tacit agreement with RMP’s argument. RMCRE does not agree that Mr. Klein’s testimony would be inadmissible if offered for the purpose that RMP incorrectly cites in its Motion.

**B. RMP's Motion Misapprehends The Nature And Purpose Of The Portion Of Mr. Klein's Testimony That It Asks This Commission To Strike.**

As an initial matter, RMP's Motion misapprehends the nature and purpose of Mr. Klein's testimony. RMP incorrectly asserts that Mr. Klein raises the interconnection issues—and PacifiCorp's delays in completing interconnection studies—to oppose RMP's proposal to modify Schedule 38 to require PPAs to have a COD not more than 30 months from the date that the PPA is executed. That is not the purpose of the testimony that RMP seeks to strike. There is a section of Mr. Klein's testimony—Section III, from page 13 to page 15 of Mr. Klein's direct testimony—that deals with the topic of RMP's proposal to modify Schedule 38 in this way, but the testimony that RMP seeks to strike is *not* located in that section and is offered for a different purpose. The testimony that RMP seeks to strike is found in Section IV of Mr. Klein's testimony, which starts on page 15 and asserts that *if* the Commission adopts any of RMP's proposed changes that it should not impose those changes on QF projects that have reached a certain stage of development. Immediate implementation of the proposed changes in this docket would pull the rug out from under developers who have spent years and hundreds of thousands of dollars to develop a project based on a certain set of rules that RMP seeks to change in this docket.

For the reasons set forth below, Mr. Klein's testimony is certainly relevant to the issue of how and when this Commission imposes changes (if any) from this docket and, for those reasons, the Commission should deny the Motion to Strike.

**C. Mr. Klein's Testimony Is Relevant To The Issue Of How The Commission Should Impose Any Changes (if any) It Adopts As A Result Of This Docket.**

RMP's Application in this docket asks this Commission to drastically modify the manner in which the State of Wyoming implements PURPA, including changes to the approved methodology for calculating avoided costs and the maximum term of QF contracts. If this Commission intends to adopt any changes to the way in which it implements PURPA, it will have to determine how to implement those changes. Mr. Klein addresses this issue in Section IV of his testimony, which begins on page 15. In that Section, Mr. Klein discusses three current projects that he and his company, VK Clean Energy Partners, LLC, are developing in Wyoming, stating that VK Clean Energy has spent more than \$500,000 in developing those projects, that the time and effort spent developing those projects was in reliance on the current avoided cost methodology and QF PPA terms, and that none of the projects would be constructed if this Commission were to adopt the changes proposed by RMP in this docket. Mr. Klein further states that QF developers experience delays in the development of their projects as a result of actions taken by PacifiCorp over which the QF developer has no control. All of this testimony is offered to support Mr. Klein's testimony that *if* the Commission modifies Schedule 38 in this docket, it should not impose those modifications on QF projects that are currently being developed. RMP does not seek to strike any of this testimony.

RMP only objects to portions of Mr. Klein's testimony that seek to explain and give context to the delays that can be introduced by PacifiCorp into the QF development process. For example, RMP seeks to strike portions of Mr. Klein's testimony that:

- A) describe a QF developer's obligation under Schedule 38 to negotiate an interconnection agreement with PacifiCorp's power delivery function (lines 369-373);
- B) discuss that the interconnection process is governed by PacifiCorp's Open Access Transmission Tariff ("OATT") with FERC, which process was adopted by the Commission in Section II.B. of Schedule 38 (lines 374-378);
- C) discuss PacifiCorp's obligations under the OATT to use "reasonable efforts" to complete certain interconnection studies (lines 378-383);
- D) discuss the fact that PacifiCorp takes far longer to complete the studies than the time contemplated in the OATT, including with respect to certain projects developed by VK Clean Energy (lines 383-390);
- E) explain how a QF developer can try to expedite certain portions of the interconnection process, but ultimately has no control over the amount of time it takes to complete the interconnection studies (lines 391-397); and
- F) explain how the delays have pushed back VK Clean Energy's projects such that they could not obtain an executed PPA prior to the conclusion of this docket (lines 398-404).

All of this testimony demonstrates that PacifiCorp can introduce delays into the QF development process over which the QF developer has no control. To be clear, RMCRE does not seek to litigate the disputes between VK Clean Energy and PacifiCorp in this docket and does not offer Mr. Klein's testimony for that purpose. As RMP notes, VK Clean Energy will have an opportunity to litigate those issues in separate dockets before the Commission. While

RMCRE does not seek to litigate the specific disputes between VK Clean Energy and RMP, the testimony is relevant to this docket because it informs the Commission about the types of interconnection delays that QF developers are currently experiencing and allows the Commission to make a decision about how to implement any changes it might adopt from this docket with those delays in mind.

The fact that PacifiCorp's actions can delay the QF development process is relevant to the issue of how this Commission will modify its implementation of PURPA (if it does) as a result of this docket. Mr. Klein's testimony informs the Commission about whether it is appropriate to impose any changes that result from this docket immediately upon the entry of an order, at some future date, or only upon developments that have not reached a certain stage in the Schedule 38 process. For example, Mr. Klein's testimony informs the Commission that, if it were to impose changes immediately upon the entry of an order in this docket, then the delays in the QF process imposed by PacifiCorp that are described in Mr. Klein's testimony will have thwarted QF projects that were in development and for which the developer had invested many months and several hundred thousands of dollars. Based on Mr. Klein's testimony, the Commission may, instead, elect to impose any changes that result from this docket at some future date or only upon projects that did not reach a particular stage of development in Schedule 38 by the time of the entry of the order in this docket.

The topic of how and when to impose changes to Wyoming's implementation of PURPA is clearly relevant to this proceeding. That very same topic was addressed at the hearing in Docket No. 20000-481-EA-15 (Record No. 14220), the 2015 docket in which RMP sought changes to Schedule 38 and Wyoming's implementation of PURPA that are similar to the

changes sought here. At the hearing in that docket, Paul Clements, RMP's Director of Commercial Services, "testified it would be fair to allow the seven Wyoming wind projects in the final contracting and execution stage to proceed with the existing 20-year term contracts if its application were otherwise approved." Memorandum Opinion, Findings of Fact, Decision and Order, Docket No. 20000-481-EA-15 (Record No. 14220) at 11 (¶ 54) (citing hearing transcript testimony). That same issue is relevant to this docket, as well. Mr. Klein's testimony provides the Commission with information that is relevant to the Commission's decision about how to implement changes to Schedule 38 if it elects to implement any such changes and, therefore the Motion to Strike should be denied.

Dated this 30th day of March, 2019.

Respectfully submitted



By:

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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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