BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE APPLICATION OF ROCKY MOUNTAIN POWER FOR MODIFICATION OF CONTRACT TERM OF PURPA POWER PURCHASE AGREEMENTS WITH QUALIFYING FACILITIES	)))))	DOCKET NO. 20000-481-EA-15 (RECORD NO. 14220)

APPEARANCES

For the Applicant, Rocky Mountain Power (RMP or the Company):
YVONNE R. HOGLE, Corporate Counsel, Salt Lake City, Utah.

For the Office of Consumer Advocate (OCA):
CHRISTOPHER LEGER, Counsel, Cheyenne, Wyoming.

For the Intervenor, Wyoming Industrial Energy Consumers (WIEC):
ABBY BRIGGERMAN, Counsel, Holland & Hart, LLP, Greenwood Village, Colorado.

For the Intervenor, Northern Laramie Range Alliance (NLRA):
CRYSTAL J. McDONOUGH, Counsel, Pathfinder Law Offices, LLC, Loveland, Colorado.

For the Intervenor, Renewable Energy Coalition (REC):
IRION SANGER, Counsel, Sanger Law P.C., Portland, Oregon.
HARRIET M. HAGEMAN, Local Counsel, Hageman Law, P.C., Cheyenne, Wyoming.

For the Intervenor, Rocky Mountain Coalition for Renewable Energy (RMCRE):
GARY DODGE, Counsel, Hatch James, & Dodge, Salt Lake City, Utah.
HARRIET M. HAGEMAN, Local Counsel, Hageman Law, P.C., Cheyenne, Wyoming.

For the Intervenor, Chevron Power and Energy Management Company,
a division of Chevron U.S.A. Inc. (CPEM):
JARED JOHNSON, Senior Counsel, Houston, Texas.

HEARD BEFORE

Chairman ALAN B. MINIER
Deputy Chairman WILLIAM F. RUSSELL

LORI L. BRAND, Assistant Secretary,
Presiding pursuant to a *Special Order* of the Commission.

MEMORANDUM OPINION, FINDINGS OF FACT, DECISION AND ORDER
(Issued June 23, 2016)

This matter is before the Wyoming Public Service Commission (Commission) upon the Application of RMP requesting authority to modify the contract term of its Public Utility

Regulatory Policies Act of 1978 (PURPA) Power Purchase Agreements (PPA) with Qualifying Facilities (QFs) and on the interventions of the OCA, WIEC, REC, RMCRE, EverPower Wind Holdings, Inc. (EverPower), NLRA and CPEM (collectively, with RMP, the Parties).

The Commission, having reviewed the Application and respective attached exhibits, the Parties' and Intervenors' prehearing filings, the evidence introduced at the public hearing held on March 29-30, 2016, its files regarding RMP, applicable Wyoming utility law, having heard the arguments of the Parties, and otherwise being fully advised in the premises, FINDS and CONCLUDES:

Introduction

1. RMP is a public utility, as defined in Wyo. Stat. § 37-1-101(a)(vi)(C), providing retail electric public utility service under certificates of public convenience and necessity issued by the Commission. RMP is subject to the Commission's jurisdiction pursuant to Wyo. Stat. § 37-2-112. RMP is a division of PacifiCorp, an Oregon Corporation, which provides electric service to retail customers through its RMP division in Wyoming, Utah, and Idaho, and through its Pacific Power division in Oregon, California and Washington. (Ex. 1, p. 2).

2. On August 26, 2015, the Company submitted an Application together with testimony and exhibits requesting authority to modify the contract term of its PURPA PPAs with QFs.[1] Specifically, RMP requested the Commission issue an order approving a reduction of the maximum contract term of prospective PPAs with QFs under PURPA from 20 to three years consistent with the Company's hedging and trading policies and practices for non-PURPA energy contracts, and to align with its Integrated Resource Plan (IRP) cycle. The Company also requested approval to modify its avoided cost Partial Displacement Differential Revenue requirement (PDDRR) methodology to reflect all active QF projects in the pricing queue ahead of any newly proposed QF requests for indicative pricing. (Ex. 1, pp. 14-15). RMP included with its Application the supporting prefiled testimony and exhibits of two witnesses: Paul H. Clements, RMP Director, Commercial Services (Exs. 2-2.1); and, Brian S. Dickman, RMP Director of, Net Power Costs & Load Forecasting. (Ex. 3).

3. In its application, RMP stated it is necessary to reduce the maximum contract term for PURPA contracts from 20 to three years due to a dramatic increase in QF pricing requests it has received in 2014 and 2015. (Ex. 1, p. 7). RMP asserted the current Commission approved PURPA contract length puts retail customers at risk of harm due to significant and unnecessary exposure to long-term price risk. (Ex. 1, p. 9). Further, RMP stated that the 20-year maximum QF contract term is inconsistent with the hedging policy put in place as a direct result of input from the Company's stakeholders. (Ex. 1, p. 10). According to RMP, this change will uphold the "ratepayer indifference standard" under PURPA and protect Wyoming customers. (Ex. 1, p. 15).

4. On August 27, 2016, the Commission issued a *Suspension Order* suspending the proposed filing for investigation and further action for the initial six-month period pursuant to

[1] As discussed further below, while the applicable statutes and rules are matters of federal law, PURPA gives state commissions the responsibility to determine a utility's avoided costs as well as the terms and conditions of PURPA contracts, so long as those terms are consistent with federal law.

Wyo. Stat. § 37-3-106(c), which commences after the 30-day notice term provided in subsection (b) thereof. (Ex. 100).

5. On August 28, 2015, the Commission issued a *Notice of Application* which generally described the Application and provided a deadline of September 28, 2015, for interested persons to file a statement, intervention petition, protest, or request for a public hearing. A public notice was published in newspapers in RMP's service territory. (Ex. 101).

6. On August 31, 2015, the OCA, a separate, independent division of the Public Service Commission charged with representing the interests of Wyoming citizens and all classes of utility customers filed its *Notice of Intervention*, pursuant to Wyo. Stat. § 37-2-401. (Ex. 102).

7. On September 23, 2015, NLRA, a citizens' group with members who are residents of Wyoming, filed a *Petition for Leave to Intervene*.

8. On September 28, 2015, WIEC, an unincorporated association comprised of large industrial customers, filed a *Petition for Leave to Intervene and Request for Hearing*. Also on this day, OCA filed a Request for Hearing (Ex. 103); CPEM filed its *Petition for Leave to Intervene and Comments*; and REC and RMCRE filed *Petitions for Leave to Intervene and Request for Hearing.*

9. On October 7, 2015, the Commission issued orders authorizing the interventions of NLRA, WIEC, CPEM, REC and RMCRE. (Exs. 104, 105, 106, 107, and 108).

10. On October 7, 2016, EverPower filed its *EverPower Wind Holdings, Inc.'s Late Petition for Leave to Intervene and Request for Hearing*. EverPower's Petition was granted by *Order Authorizing Late Intervention* issued on October 16, 2015. (Ex. 110).

11. On October 9, 2015, the Commission issued a *Special Order Authorizing One Commissioner and/or Presiding Officer to Conduct Public Hearing*. (Ex. 109).

12. On October 9, 2015, RMP filed a *Petition for Confidential Treatment and Protective Order (Petition)*. The Commission granted the *Petition* and issued a *Protective Order* on October 26, 2015. (Ex. 112). Subsequently, WIEC, NLRA, RMCRE, EverPower, REC and CPEM filed their respective Exhibits A to Protective Order.

13. On October 19, 2015, REC filed a *Motion for Admission Pro Hac Vice* of Irion Sanger; and EverPower and RMCRE filed a *Motion for Admission Pro Hac Vice* of Gary Dodge (collectively *Motions*). The *Motions* were granted by *Orders Granting Motion for Admission Pro Hac Vice* issued on November 6, 2015. (Exs. 113 and 114).

14. On October 22, 2015, the Commission issued a *Scheduling Order* establishing the procedural schedule and setting a public hearing to commence on March 29, 2016. (Ex. 111).

15. On November 9, 2015, WIEC filed a *Motion for Application for Admission of Pro Hac Vice of Robert M. Pomeroy, Jr. and Thorvald A. Nelson* (*Motions*). The *Motion* was granted by an *Order Granting Motion for Admission Pro Hac Vice* issued on November 24, 2015. (Ex. 115).

16. On February 29, 2016, the Commission issued a *Notice and Order Setting Public Hearing* for March 29, 2016. A public notice was published in newspapers in RMP's service territory. (Ex. 116).

17. Pursuant to the *Scheduling Order*, the OCA, WIEC, NLRA, REC, RMCRE and CPEM filed the direct testimony of their witnesses on January 4, 2016; RMP filed its rebuttal testimony on January 29, 2016; NLRA and REC filed cross answer testimony; and RMCRE, WIEC and CPEM filed Joint Confidential and Non-Confidential cross answer testimony on January 29, 2016.

18. On March 28, 2016, RMCRE filed a *Motion to Present Witness Testimony by Telephone*. Also on this day, RMCRE, REC and EverPower filed a *Motion to Excuse Attendance of Local Counsel*.

19. On March 29, 2016, the exhibit conference was held and the following exhibits were received into evidence:

- RMP's Exhibit Nos. 1.0 through 15.0. (Tr. Vol. I, p. 23).
- PSC Exhibit Nos. 100 through 172. (Tr. Vol. I, pp. 11 and 16).
- OCA Exhibit Nos. 200 through 200.3. (Tr. Vol. I, p. 24).
- WIEC Exhibit Nos. 300 through 318. (Tr. Vol. I, p. 25).
- NLRA Exhibit Nos. 400 through 403. (Tr. Vol. I, p. 26).
- RMCRE Exhibit Nos. 600 through 607, 609 through 611 and 613 through 621. (Tr. Vol. I, p. 32).
- REC Exhibits Nos. 700 through 716. (Tr. Vol. I, p. 33).

20. The public hearing was held March 29-30, 2016, pursuant to the Wyoming Administrative Procedure Act, Wyo. Stat. § 16-3-101, *et seq*. (WAPA). Paul H. Clements and Brian S. Dickman testified for RMP. Belinda J. Kolb, Ph.D. testified on behalf of the OCA. Kenneth G. Lay and Laura Ladd testified on behalf of NLRA. John R. Lowe, testified on behalf of REC. Kevin C. Higgins, Michael J. Speerschneider, and Hans Isern testified on behalf of RMCRE. RMP Exhibit 16 was also received into evidence. (Tr. Vol. I, p. 99).

21. At the conclusion of the hearing, the Commission requested post-hearing briefs be filed by April 19, 2016. (Tr. Vol. II, p. 513).

22. On April 15, 2016, WIEC, CPEM, RMCRE, EverPower and REC filed a *Joint Motion to Take Administrative Notice of a Rocky Mountain Power Filing and Admit Late-Filed Exhibits (Joint Motion)*. The *Joint Motion* was considered at a noticed special open meeting on April 22, 2016, immediately preceding public deliberations. It was denied by the Commission, which issued its written *Order* on May 31, 2016.

23. On April 19, 2016, OCA, REC, RMP and NLRA filed their respective *Post Hearing Briefs*; and WIEC, RMCRE, CPEM and EverPower filed a *Joint Post Trial Brief.*

24. The Commission held public deliberations on April 22, 2016, pursuant to Wyo. Stat. § 16-4-403. The Commission then directed the preparation of an order consistent with its decision.

Summary of Decision

25. The Commission denies RMP's Application for authority to amend Schedules 37 and 38 to reduce the contract term of its PURPA PPAs with QFs from 20 years to three years. The Commission concludes that RMP failed to meet its burden to demonstrate that the proposed modification of the Wyoming PPA contracts is reasonable, will solve an alleged system-wide problem, and is in the public interest of Wyoming ratepayers. Rather than approving the pending application, the Commission directs the Company to initiate a collaborative process with relevant stakeholders to address substantive and procedural reforms to Wyoming's PPA process and PDDRR avoided cost methodology. In this context, the Commission denies the Company's request to modify its avoided cost PDDRR methodology described in Schedules 37 and 38 to reflect all active QF projects in the pricing queue ahead of any newly proposed Wyoming QF requests for indicative pricing on a similar basis, and leaves this approach for consideration in the collaborative process.

Contentions of the Parties and Resulting Issues

26. RMP requests to decrease its maximum QF contract term from 20 years to three years for all contracts executed under both Schedules 37 and 38. The Company contends the 20-year pricing requirement artificially inflates its avoided cost pricing for QFs leading to higher rates for Wyoming customers and unnecessary exposure of RMP to long-term price risk. It asserts this result violates PURPA's "ratepayer indifference standard." RMP indicates it is experiencing a large increase in QFs in the queue, which coupled with the long-term duration of the contracts, increases fixed price risks to Wyoming ratepayers. (Ex. 2, pp. 1-2) RMP seeks to align the contract duration with its 36-month hedging policy and its two-year IRP planning cycle. According to the Company, aligning the QF contract duration would ensure pricing remains consistent with the most current information regarding RMP's resource needs. (Ex. 1, pp. 13-14). RMP contends its request will not eliminate the "must purchase" obligation of PURPA; rather, the QF PPA's would be re-negotiated every three years and would include the avoided cost pricing current at that time. (Tr. Vol. I, pp. 209-211).

27. RMP also requests to modify its avoided cost PDDRR methodology calculation to include "indicative pricing" for QF contracts to reflect *all* Schedule 38 QFs in the queue. Indicative prices are preliminary estimates of avoided cost rates; they serve as the starting point for negotiations between QFs and a utility. Indicative prices may differ from the final prices in a contract (i.e., contract prices). The current PDDRR methodology used by the Company recognizes only executed QF contracts in the calculation of the avoided cost. All other *proposed* (queued) QFs are not included in the calculation process. The Company requests to incorporate the *proposed* QF projects into the calculation of the avoided cost, arguing it will more accurately reflect the avoided cost of the displaced resources. RMP states that if the queued QFs are ignored in this calculation process the PDDRR calculation results in payments to QFs that exceed the avoided cost. (Ex. 3, pp. 3-4).

28. NLRA supports the Company's request to decrease the maximum term of the QF contracts. NLRA asserts long-term, fixed-price contracts are not in the interest of ratepayers. (Ex. 401, p. 5). It cites *Exelon Wind 1, LLC v. Nelson*, 766 F.3d 380 (5th Cir. 2014), for the proposition there is no obligation for utilities to enter into long-term fixed-price contracts for non-firm energy and the ratepayer indifference standard precludes it. (Ex. 401, p. 6). NLRA argues PURPA contracts should be five years or less, straightforward and based on a rigorous IRP process. (Ex.

401, pp. 13 and 16). As an alternative, NLRA supports a 20 year contract with avoided cost pricing review (and potential adjustment) every three years. (Ex. 402, p. 27).

29. On the issue of modifying the avoided cost pricing methodology, NLRA asserts that because of the substantial increase in QF in the queue, RMP's current methodology does not accurately reflect the pricing of displaced resources. (Ex. 401, p. 6). It also states if FERC has ruled that indicative pricing alone is sufficient to create a legally enforceable obligation, it is appropriate to include all active QFs contracts in the queue when calculating indicative pricing for a prospective QF. (Ex. 401, p. 17). NLRA further contends that if the Commission approves the application, it should apply the requested new policy to all QFs that have not yet begun substantial physical construction and require RMP make compliant any QF contracts for facilities that are not in service on or before the date of the Commission decision. (Ex. 400, p. 10).[2]

30. REC opposes the Company's application and requests the Commission to deny it. It contends a minimal PPA term would cause significant and unnecessary harm to RMP's ratepayers and QF projects; and that three year contract terms will make it impossible for new QFs to obtain financing and could jeopardize the operations of some existing QFs. (Ex. 700, pp. 3-4).

31. REC additionally contends that small QFs covered under Schedule 37 should be exempt from any changes requested by RMP because it is difficult for small QFs (Schedule 37) to negotiate contracts. In the alternative, if the contract term for Schedule 37 is shortened, all small projects as well as all existing projects seeking a replacement of a firm contract should continue to receive capacity payments or value for capacity. REC also recommends Schedule 37 be clarified for application to seasonal hydro projects. REC states the capacity factors for seasonal hydro should be calculated on actual seasonal production basis, rather than annually to account for the capacity benefits provided by such projects. (Ex. 700, pp. 4-5).

32. OCA opposes the Company's application and recommends RMP's requests be denied. It contends that RMP has not sufficiently made its case for the requested changes. It argues decreasing the contract term is anti-competitive, and will do nothing to mitigate higher avoided cost contracts signed in the past. (Ex. 200, p. 7).

33. OCA further contends that a reasonable standard for determining the optimal PPA contract length would be to consider the amount of time that the utility owned plant assets are typically in rate base. OCA suggests there could be alternatives to the contract change requested by the Company such as tiered megawatt thresholds where the first tier is offered 20-year pricing, the next tier offered ten-year pricing in the third tier offered three-year pricing. The tiered alternative could include a provision for a time certain for completion of the project. If a project is not completed, it would forfeit the 20-year pricing. (Ex. 200, p. 9).

34. As to modifying the avoided cost methodology, OCA recommends including 50% of the PPAs that are in a specified final contract phase in the avoided cost calculation. It also suggests an alternative under PURPA where utilities are not required to make QF purchases under "appropriate operational circumstances." Like REC, OCA argues it is unnecessary to change the contract length of Schedule 37 QF PPAs because small QFs are not materially contributing to the problem the Company alleges. (Ex. 200, pp. 15-16).

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[2] RMP repudiated the NLRA approach to existing PPA contracts in its Rebuttal testimony. (Ex. 2.2, pp. 28-29).

35. WIEC, RMCRE, and CPEM oppose RMP's Application and request it be denied. They jointly contend the Company's proposal is neither reasonable nor in the public interest. (Ex. 600 p. 4). They point out that the fixed-price risk decried by RMP operates in both directions. QFs with PPA contracts must absorb the cost of future upgrades and other investments without recourse to additional ratepayer funding, and so may yield a benefit to ratepayers instead of a subsidy to QFs. (Ex. 600, pp. 8-10 and 14-15).

36. As to decreasing the maximum QF contract term, these Intervenors jointly contend that QF PPA contracts should *not* be compared to RMP's hedging practices, and that the more appropriate analogy is to recovery of RMP's generation investment in rate base. (Ex. 600, pp. 8-10).

37. With regard to the requested changes to the avoided cost methodology, WIEC, RMCRE, and CPEM contend that the current PDDRR methodology meets RMP's stated objective of ratepayer indifference, and may actually underprice the avoided cost. These parties contend the current methodology correctly calculates avoided costs by including only QFs with executed contracts in the resource stack, and by requiring indicative pricing to be updated when a new queue of contracts are executed. (Ex. 600, pp. 20-22).

38. These parties also contend the calculation methodology proposed in RMP's application will result in avoided costs that are too low. The proposed indicative pricing would accordingly drive down the prices offered to Wyoming QFs. (Ex. 600, pp. 22-23). Generally, they assert that in making its proposal, RMP overreacted to FERC decisions relating to "legally enforceable obligations" that were applied to a different set of facts than exist in Wyoming. (Ex. 600, pp. 23-25).

39. Lastly, they contend RMP's proposal will have a negative impact on renewable energy developers, is anti-competitive, and will suppress QF development in Wyoming at a time when implementation of the Clean Power Plan (CPP) is already creating uncertainty. (Exs. 600, pp. 15-16; 601, pp. 2-3; and 602, pp. 2-3).

Findings of Fact

Reduction of PPA Contract Term to Three Years

40. RMP applied for approval to decrease its maximum QF contract term from 20 years to three years under both Schedules 37 and 38. RMP witness Paul Clements testified the change is necessary to: [1] maintain PURPA's "ratepayer indifference standard;[3] [2] be consistent with RMP's hedging and trading policies for non-PURPA contracts; and [3] align with the Company's IRP. (Ex. 2, pp. 1-2).

[3] PURPA mandates that a utility must purchase energy and capacity from a QF at the same price it would have to pay if it otherwise purchased or generated the energy or capacity on its own. This requirement is commonly termed the "ratepayer indifference standard." It means ratepayers should be economically indifferent to the source of the utility's energy by ensuring the cost to the utility purchasing from a QF does not exceed the cost it would incur if it were purchasing from another source.

Background

41. The Commission last addressed the subject of the maximum RMP QF contract term in Docket No. 20000-388-EA-11 (Record No. 12750). In that case, RMP submitted its application for Commission approval to implement a permanent avoided cost methodology in Wyoming for QFs that do not qualify for Wyoming Schedule 37 – Avoided Cost Purchases from Qualifying Facilities. In Sub 388, the Company stated that, pursuant to the settlement agreement approved in Docket No. 20000-342-EA-09 (Sub 342), it had completed evaluation and reconsideration of its current pilot program avoided cost methodology and was requesting approval of its proposed permanent avoided cost methodology, which it said was essentially the same methodology approved in Sub 342, with minor modifications. (Sub 388 Application, p. 4, ¶ 5). The Company stated approval of its proposed permanent avoided cost methodology would allow the Company to offer avoided cost prices to QFs of less than 100 MW[4] in a manner that would encourage the development of cost-effective QFs without creating subsidies for existing or new retail customers. (Docket No. 20000-388-EA-11 (Record No. 12750), *Memorandum Opinion, Findings and Order* issued November 4, 2011 (2011 *Order* ¶ 1).

42. Sub 388 had multiple intervening parties and was fully litigated in contested case proceedings. In its 2011 *Order*, the Commission rejected Intervenor proposals to allow for maximum contracts in excess of the 20 years requested. (2011 *Order* at ¶ 62). The Commission noted that RMP witness Gregory N. Duvall, PacifiCorp's then Director Net Power Costs, addressed Intervenor recommendations for contract terms of greater than 20 years where the QF could demonstrate the technology it used had an expected life consistent with a longer-term contract. Duvall expressed the Company's support for a contract term of 20 years, stating that similar contract lengths were allowed in its other jurisdictions. He argued that the proposal for longer-term contracts would place additional risk on retail customers and was not necessary for the development of new QF facilities. In view of the uncertainties facing the electric industry at the time, Duvall expressed his belief that locking in current prices for power deliveries occurring over a 40 year future period would not be a reasonable policy. (*Id.* at ¶ 22).

43. In its 2011 *Order*, the Commission found that all Parties supported adoption of the proposed Schedule 38, which generally codified the Sub 342 *Stipulation,* but liberalized it and provided greater flexibility to the process by removing the 50 MW per year limitation for wind QFs and allowing PPAs with 20-year terms for all QFs. (2011 *Order* at ¶ 58). The Commission found the provisions contained in Schedule 38 also provided the flexibility requested by Intervening parties by: [1] giving the negotiating parties the leeway to agree on specific terms and conditions beyond those described in Schedule 38, and [2] acknowledging the Commission's continuing authority to review proposed contracts, including those containing terms that may vary from those in the standard contract. The Commission noted that Schedule 38 contained a provision, applicable when RMP and the potential QF provider were unable to come to agreement, requiring them to try for 60 days to work out their differences before bringing the issue to the Commission. Finally, the Commission noted a reasonably applied Schedule 38 may assist QFs in obtaining a contract which could support project financing. (*Id.* at ¶ 58).

44. In its 2011 *Order*, the Commission stated that it shared RMP's concern that allowing extended contract terms, in some cases up to 40 years, had the effect of locking ratepayers

[4] 80 MW in the case of wind QFs.

into paying set prices for a 40-year period, which would not be the case with a utility-owned facility. Based on this "lock-in" possibility, the Commission found a QF contract with a term length beyond 20 years may be unwise and may expose the Company and its customers to enhanced risk. The Commission noted in past avoided cost dockets, that longer-term QF contracts were advanced on the idea that a 20-year contract would provide insufficient security for the QF developer to obtain project financing. (*Id.* at ¶ 62).

45. The Commission ultimately found the evidence presented in the case demonstrated wind QF facilities were being developed in Wyoming under PPAs with RMP having 20-year terms, which supported a finding that 20-year contract terms were adequate for obtaining QF project financing. The Commission continued that "these facts notwithstanding, if a thermal QF developer wished to argue, and could successfully demonstrate, that the generation technology chosen for the proposed QF facility has a reasonable life expectancy greater than 20 years, this demonstration and argument should be made during negotiations between the QF provider and RMP under the procedure provided for in Schedule 38." The Commission reminded the parties that absent agreement, "disputes can be brought before the Commission for consideration under the 60-day provision." Thus, "satisfied that the argument for a longer term may be made and fairly considered," the Commission held "it would not require a provision in Schedule 38 that specifically provided for contract terms of longer than 20 years." (*Id.*).

Potential Fixed-Price Risk to Ratepayers

46. RMP asserts the 20-year pricing requirement artificially inflates its avoided cost pricing for QFs leading to higher rates for Wyoming customers and exposes RMP to unnecessary long-term price risk. It contends this result violates PURPA's "ratepayer indifference standard." RMP testifies it is experiencing a large increase of QFs in the system-wide pricing queue, which coupled with the long-term duration of the contracts, increases fixed-price risk to Wyoming ratepayers. (Ex. 2, p. 2).

47. The impetus behind the Company's requested contract term proposal is the fact that system-wide QF contracts have become a major factor in customer rates. (Tr. Vol. I, p. 101, ll. 14-18). Wyoming's allocated share of the projected costs of executed QF contracts over the next ten years is $460 Million. (Tr. Vol. I, p. 101, ll. 14-18). Throughout the hearing this was generally referred to as the "magnitude issue," *i.e.* the idea that the sheer number of the potential QF contracts and their associated MW volumes system-wide creates an exponential fixed price risk to ratepayers. The Company proposes to alleviate this risk with its request to reduce the maximum QF contract term to three years, which constitutes an 85% reduction in the duration of the term. (Tr. Vol. I, pp. 107, 122, 125, 130, 152, 153, 199, 205, 329, 331, 378, 449 and 491).

48. RMP further asserted that 20-year QF PPA terms are inconsistent with its resource acquisition policies and practices and are not aligned with its IRP and planning cycle.[5] The Company states it does not enter into long-term transactions, with fixed price risks, unless there is a long-term resource need identified in the IRP. The Company testified such a long-term resource is not needed until 2028. (Tr. Vol. I, p. 100, ll. 12-15).

[5] QF PPA's are not evaluated in the IRP process nor included as resource options that could be selected. (Tr. Vol. I, p. 186, ll. 7-21).

49. In 2014, Wyoming's RMP average retail load was 1,166 MW and its minimum retail load was 963 MW. RMP currently has 403 MW of "nameplate capacity" from existing Wyoming QF PPA contracts. (Ex. 1, p. 7). Solar and wind generation projects are considered intermittent, rather than continuously available, resources. Accordingly, they generally have lower expected actual outputs or "capacity/load factors" than their nameplate capacities.[6] RMP witness Paul Clements testified that wind projects have an average capacity factor of 39%. (Tr. Vol. I, p. 172, ll. 5-9). This intermittency effect can cause potential inefficient variability in the grid's capacity to service the Company's load, which is acknowledged in the avoided cost pricing and inclusion of integration costs. (*Id.* and Tr. Vol. II, pp. 288-290 and 310-316).

50. In Application Exhibit 2, RMP provides detailed information on its current system-wide QF pricing queue including each QF project's state location, nameplate capacity, type (solar, wind, or hydro), and expected online in-service date. (Exs. 2, p. 11, ll. 17 and 2.1). There are 94 total RMP system-wide proposed QF projects, with an aggregate potential nameplate capacity of 4,632 MW. (Ex. 2.1). There is significant expansion of system-wide QF activity arising from numerous solar projects located primarily in Utah, Oregon, and Idaho. (*Id.* and Ex. 297). However, the QF penetration rate has remained around 6% of energy provided on a system-wide basis. (Tr. Vol. II, p. 330, l. 15).

51. More critically, only nine of the proposed QF projects are located in Wyoming. (Ex. 2.1, p. 2). Eight are wind projects and one is a solar project, which together comprise a total *nameplate capacity* of 713 megawatts (MW). (*Id.*). Thus, Wyoming QF projects make up only approximately 6.5% of the total expected QF growth system-wide. (*Id.*).

52. Historically, RMP's data indicates that system-wide there is only a 10% project completion rate of the total QF portfolio in its pricing queue. (Ex. 200, p. 12). Further, only 75% of those projects with executed PPAs in the queue reach commercial operation making them eligible to receive avoided cost pricing. (Exs. 200, p. 13; 200.1; 200.2 and 200.3). This data weakens the Company's argument of significant fixed-price risk to Wyoming ratepayers arising from the potential QF project queue. (*Id. and.* Ex. 200, p. 16, ll. 22-29). Additionally, the data demonstrates that any fixed-price risk does not generally concern Wyoming QFs governed by Schedule 37.

53. RMP Exhibit 16 is a redacted indicative pricing proposal given to a Wyoming QF developer on March 21, 2016. It includes illustrative avoided cost prices (20-year nominal leveled prices at a 6.6% discount rate) with and without the Gateway Transmission Project.[7] The rates

[6] "Nameplate capacity" refers to the normal maximum output of a generating source under specific conditions designated by the manufacturer often on a nameplate affixed to the machinery. This is the most common number used and is typically expressed in megawatts (MW). "Capacity or load factor" is the average expected output of a generating source over a specified period of time, typically over an annual period. It is a ratio usually expressed as a percentage of the nameplate capacity or in decimal form (e.g. 30% or 0.30). *See generally,* U.S. Energy Information Administration glossary, http://www.eia.gov/tools/glossary/.

[7] The Gateway Transmission Project is jointly proposed by RMP and Idaho Power to build and operate approximately 1,000 miles of new high-voltage transmission lines between the Windstar Substation near Glenrock, Wyoming and the Hemingway Substation near Melba, Idaho. The project would include approximately 150 miles of 230 kilovolt (kV) lines in Wyoming and approximately 850 miles of 500 kV lines in Wyoming and Idaho. According to the Companies, the project is meant to help supply energy to customers and improve the reliability of the electric system

are respectively $27.76 and $26.65/MWh with and without Gateway. (*Id.* pp. 4-5). These rates compare favorably to those found in RMCRE Exhibit 621, an excerpt from RMP's 2015 IRP, which indicates the total resource cost for a Company built 2 MW wind turbine in Wyoming is $36.85/MWh. (Ex. 621, p. 99).

54. RMP's Clements 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. (Tr. Vol. I, p. 209). This militates against the recognition of a significant existing fixed price risk for ratepayers. It all but eliminates Wyoming's share of projects in the remaining queue. We note that projects located in other states are not subject to Wyoming PURPA policies.

Potential Effect of a Three-Year PPA Term on Wyoming QF Projects

55. Multiple Intervenor witnesses testified that a three-year maximum term for QF PPAs would impair the ability of QFs to achieve project financing and capital, and ultimately would discourage QF development in Wyoming in contravention of PURPA. OCA notes PURPA provisions provide QFs should have a reasonable opportunity to sell the power they generate to the RMP at a fair price. OCA further explains it believes a "reasonable opportunity" to sell power is indirectly dependent on a QF being able to secure financing to develop a project which is directly related to contract length. (Ex. 200, p. 8).

56. RMP's position is that the ability to obtain financing is not a requirement that the Commission should consider. The Company argues that it is not stated in PURPA or in the rules implementing PURPA. (Tr. Vol. I, p. 139, ll. 12-18). However, RMP's Clements acknowledged its proposal of a three year contract term will make it more difficult for QFs to obtain financing "under the historic financing model for QFs." (Tr. Vol. I, p. 179, l. 21- p. 180, l. 4).

57. REC witness John Lowe was previously employed by PacifiCorp for 31 years, 25 of which included direct involvement with implementation of PURPA. He is now employed representing QFs in the Company's service territory, primarily small hydro QFs such as those in the REC coalition. (Ex. 700, p. 1 and Tr. Vol. I, p. 224). He testified that short term QF PPA contracts, like those with three-year terms, are not conducive to projects being developed or revitalized and that 20 year terms are "a good number." He acknowledged a lesser number may be good as well, but "three is probably not it." (Tr. Vol. I, p. 226, ll. 9-19).

58. Michael Speerschneider, Chief Permitting and Public Policy Officer for EverPower Wind Holdings testified that limiting the maximum term of a QF PPA to three years would adversely affect the abilities of the renewable energy developers to finance QF projects. (Ex. 601 and Tr. Vol. II, p. 375). He explained that in his experience there are three primary reasons that commercial banker QF investors will not finance on short-term PPAs. First, because the project finance industry expects to be paid over the course of the loan, and a three-year PPA would require extremely high dollars per megawatt for coverage repayment of their debt. (Tr. Vol. II, p. 381, ll. 16-24). Second, the banks are not comfortable taking "recontracting" or residual risk so that there is little value beyond the end of the PPA, which is why the term of the PPA is so important to the

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by enabling delivery of electricity from existing and new generating resources, including renewable resources such as wind. http://www.gatewaywestproject.com/project_info.aspx

debt sizing and lending decision. (Tr. Vol. II, p. 381, l. 25- p. 382, l. 6). Third, commercial banks do not believe that short term PPAs provide the project developer with enough return to stay fully invested in the project, and thus are more of a risk for the lender. (Ex. 601, pp. 2-3, ll. 44-50 and Tr. Vol. II, p. 382, ll. 7-11).

59. Michael Speerschneider further testified that a 20-year term that re-opened or adjusted the price every three years would be viewed similarly to a three-year term PPA by investors and lenders. (Tr. Vol. II, p. 382, l. 22- p. 383, l. 8). He responded to NLRA witness Laura Ladd's testimony by explaining that some of the alternative financing arrangements she suggested are available and can be used by QF developers to create further value and reduce the cost of their capital, and thus their cost of power, but they are only available once the initial financing mechanism driven by the long-term PPA term is in place. (Tr. Vol. II, p. 383, ll. 9- p. 385, l. 9).

60. RMCRE witness Hans Isern is employed as a Senior V.P. of Origination for sPower, which is a developer, financier, owner and operator of renewable generation projects. (Ex. 602, ll. 6-12). He testified that the 20-year PPA term is the industry standard, and that reducing that term to three years would be a huge blow to the IPP industry and its ability to provide competitive power options. (*Id.*, pp. 397-398). This result is caused by the fact that the QF developer's cost of power is driven by its multiple sources of capital, such as equity, debt, and tax equity. (*Id.*, p. 398, ll. 12-16). In his experience, shorter term PPAs are driven by other factors such as extra state tax credits or other additional revenue streams. He further testified that ratepayers benefit from this competition because it drives the avoided cost rate into the $30/MWh range. (*Id.*, p. 399, ll. 9-13). Lastly, he testified that if the PPA contract term is shortened to three years, it is not possible for the developers to simply shift additional risk costs to the banks or investors because they require longer term revenue certainty to repay their capital costs. (*Id.*, p. 400, ll. 15-20). As the banks and investors lend on a national and international basis it is unlikely that they will create a Wyoming exception for their lending model. (*Id.*, p. 400, l. 21- p. 401, l. 2). Instead, the QF development will simply take place where projects can receive adequate financing. (Tr. Vol. II, p. 400, ll. 15-20).

61. The experiences of Idaho and Washington show a chilling effect on QF development after those states approved the use of short-term PPA contracts. Between 1996 and 2001, the Idaho Commission reduced its maximum PPA contract term to five years. (Ex. 705 and Tr. Vol. I, p. 142, ll. 22-23). During that time frame, only a single project was developed for Idaho Power. (Tr. Vol. I, p. 143, ll. 1-5). During the same time period, Clements could not recall any developments in Idaho for RMP other than small hydro until the term was increased back to 20 years. (Tr. Vol. I, p. 142, l. 6- p. 143, l. 11). Paul Clements described it as "shutting the barn door after the horses escaped." (Tr. Vol. I, p. 121, ll. 17-30). Likewise, Washington's approved maximum fixed-price contract is five years. PacifiCorp has three QF PPAs that operate in Washington, and only one is subject to a 5 year PPA term. (Tr. Vol. I, p. 140, l. 21- p. 141, l. 1).

Modification of Avoided Cost Methodology

62. In its Application, RMP requests to modify its avoided cost PDDRR methodology calculation to include "indicative pricing" for QF contracts to reflect all QFs in the system-wide queue. (Ex. 1, pp. 1 and 38 and Ex. 3, p. 10, ll. 19-23). Indicative prices are preliminary estimates of avoided cost rates, which serve as the starting point for negotiations between QFs and a utility. They may differ from contract prices. The current RMP PDDRR methodology recognizes only

executed QF contracts in the calculation of the avoided cost. All other *proposed* (queued) QFs are excluded in the calculation.

The Current PDDRR Method

63. RMP prepares two simulations using the Generation and Regulation Initiative Decision Tool (GRID) model to determine the avoided costs under the PDDRR method. The first GRID model run is the "Base Simulation," which calculates the Net Power Cost (NPC) of the current portfolio, including resources identified in the most recent Integrated Resource Plan. The second GRID model run is the "Avoided Cost Simulation," which calculates NPC for the portfolio with two modifications: the operating characteristics of the proposed QF are added with its energy included at zero cost and capacity and other operational characteristics of the next preferable resource are reduced by an amount equal to the QF capacity contribution. This is known as "partial displacement" and reflects the deferral of a portion of the next avoidable resource in a manner that maintains resource adequacy and system reliability at a level equivalent to the Base Simulation. (Ex. 137).

64. "Front Office Transactions," (FOT) are generally the model's next deferrable resource until the date of the first new thermal unit identified in the IRP. Thus, "Avoided Costs" are equal to the difference in the NPC between the Avoided Cost Simulation and the Base Simulation, plus the fixed costs associated with the partial displacement of the next preferable resource from the IRP. The deferred fixed costs are calculated on a cost per kilowatt-year basis using the resource operating characteristics and payment factor from the IRP. The resource payment factor from the IRP is used to convert the proxy plant capital cost to a real levelized dollar per kilowatt-year that is grossed up for the effect on the revenue requirement. Inflation is then applied to convert the first year fixed cost to a nominal payment stream and the value is adjusted for the capacity contribution of the QF in question. (Ex. 137).

65. The GRID model runs and PDDRR methodology are based on market prices in the Company's most recent official forward price curve and the loads in the Company's most recent load forecast. RMP's GRID model determines the least cost resources to serve retail load and support economical wholesale sales transaction in each hour. These resources will be either generation from the least expensive unused units, wholesale purchases, or reductions in wholesale sales. The least cost resources are dependent on the load and transmission availability, as well as the price and volume available from each generation and market resource. The PDDRR methodology compares the GRID model results from the two scenarios mentioned in paragraph 64. The "Base Simulation" reflects the resource stack in the Company's current forecast. The "Avoided Cost Simulation" reflects the resource stack with partial displacement of the IRP resources and the addition of the QF. When load increases, increasingly more expensive resources will be dispatched, but when load decreases, less expensive resources will be dispatched. When power prices increase, the Company's fuel costs for natural gas generally also increase and wholesale purchases get more expensive (these can be offset by larger benefits from wholesale sales). (Ex. 138).

66. The GRID model automatically accounts for the effects of changing loads and market prices in determining the optimal resource dispatch and thus a QF's avoided cost. (Ex. 137). The GRID model also recognizes the attributes of individual QF projects such as size,

generation profile and location, as well as the Company's ability to integrate the QF output into its system subject to transmission constraints. (Ex. 3, p. 3).

67. The current PDDRR methodology used by the Company recognizes only *executed* QF contracts in the calculation of the avoided cost. All other *proposed* (queued) QFs are not included in the calculation process.

RMP Requested Modification to PDDRR

68. The Company requests to incorporate the system-wide *proposed* QF projects into the calculation of the avoided cost for Wyoming QFs, arguing it will more accurately reflect the avoided cost of the displaced resources. RMP states that if the system-wide queued QFs are ignored in this calculation process, the PDDRR calculation will result in payments to QFs that exceed the avoided cost. (Exs. 1 and 3).

69. RMP requests the Commission approve its modification and indicative pricing proposal on two grounds:

A. First, it contends FERC has determined that a "legally enforceable obligation" (LEO) may include arrangements short of an executed contract between an electric utility and the QF, and that a state may not require a QF to obtain a fully executed contract before recognizing imposition of a LEO and locking in avoid costs rates. The Company reasons that since a QF can establish a right to sell to a utility before a contract is signed, *proposed* QFs should likewise be reflected in avoided costs.

B. Second, it states there has been a significant increase in the number of QF requests received by RMP across its system. (Ex. 3, p. 8).

Legally Enforceable Obligation

70. FERC's PURPA rules and regulations include a requirement that a QF has the option to sell power, not only as available, but pursuant to a "legally enforceable obligation" (LEO) over a specified term. 18 C.F.R. § 292.304(d)(2). FERC has explained that use of the phrase "legally enforceable obligation" is intended to prevent a utility from circumventing the requirement that provides capacity credit for an eligible facility merely by refusing to enter into a contract with a QF. *See* Order No. 69, FERC Stats. & Regs. ¶ 30,128 at 30,880 (noting "the need for qualifying facilities to be able to enter into contractual commitments" and agreeing to "the need for certainty with regard to return on investment in new technologies").

71. The Commission has primary responsibility to determine what constitutes a LEO under PURPA and the Wyoming Schedule 38 procedures. 16 U.S.C. § 824a-3(f). The indicative pricing provided by RMP clearly states that an enforceable obligation is not created at the stated indicative pricing. (Ex. 16). Further, nothing in the FERC's avoided cost pricing regulations "requires any electric utility to pay more than the avoided costs for purchases." 18 C.F.R. § 292.304(a)(2).

72. In addition, as discussed by RMP witness Dickman, the FERC/Idaho cases that initiated RMP's concerns were from the Idaho Commission's decision to change the size of

facilities that qualified for published rates under a standard offer, and to make the decision retroactive. (Tr. Vol. II, p. 269- p. 270, l. 10 and Ex. 620 *Cedar Creek Wind, LLC,* 137 FERC ¶ 61,006 (FERC 2011)). In doing so, the Idaho Commission established a bright line test that there would be no LEO to receive the existing rates if the QF developer did not have either an executed PPA or had filed a complaint at the Commission by the deadline. (Tr. Vol. II, p. 275, ll. 6-14). The FERC petitioners were QF developers in negotiations with RMP who had executed the PPA by the deadline and returned it to RMP and RMP (as characterized by FERC) had "refused to sign the PPA." Under these narrow circumstances FERC determined a bright line test was inconsistent with PURPA regulations and a LEO could have arisen. (Ex. 620, pp. RMCRE000718-000719, ¶¶ 30, 32, 36 and 41) These circumstances have no parallel in Wyoming. (Tr. Vol. II, p. 268, l. 16- p. 284, l. 12 and Ex. 620 *Cedar Creek Wind, LLC,* 137 FERC ¶ 61,006 (FERC 2011)).

73. RMP concedes that no QF developer in Wyoming has asserted a LEO or requested a price lock prior to executing a PPA. (Ex. 318 and Tr. Vol. II, pp. 289, l. 19-290, l. 4). RMP acknowledged that if a QF developer asserted a LEO prior to PPA execution, the Company could (under the existing terms of Schedule 38) refresh the price up until the time the PPA was executed. (*Id.*).

Effect of Proposed PDDRR modification in Wyoming

74. The concerns regarding RMP's proposed PDDRR methodology modification universally expressed by Intervenors WIEC, REC, RMCRE, and CPEM are that RMP's proposal suppresses indicative prices by including projects in the pricing queue which may never complete the contracting process. There is no systematic subsequent adjustment to remove those MWs when projects drop out of the queue. The existing indicative pricing ensures that as new QF projects sign PPAs, the PDDRR method updates QF pricing so that the PPA MWs are incorporated into the avoided cost calculation. (Tr. Vol. II, p. 328, l. 3- p. 329, l. 7; 368, ll. 7-17 and Ex. 600, pp. 20-22).

75. RMP calculated the impact on the PDDRR method avoided costs by including roughly 4,100 MW of proposed QFs (located in Wyoming, Idaho, Utah, and Oregon) prior to the next Wyoming QF, and determined that including these projects, rather than just those with an executed PPA, would reduce the QF's indicative pricing by 11% compared to the existing method. (Ex. 3, p. 9, l. 20- p. 10, l. 5).

76. As addressed in paragraph 52 above, RMP's data indicates that historically system-wide there is only a 10% completion rate as a percentage of the total portfolio of QFs in the pricing queue.

77. Further, while RMP and its parent PacifiCorp may have experienced a system-wide increase in QF development projects seeking avoided cost pricing, as discussed above in paragraph 51 that increase has largely taken place outside of Wyoming.

<u>Initiation of an Avoided Cost Methodology Collaborative</u>

78. As the hearing progressed, it became apparent that the Company has implemented a revised QF process in Utah and Idaho that is no longer consistent with the QF process in Wyoming. (Tr. Vol. II, pp. 494-500). In recognition of the complex problems posed by adjustment

of the Schedule 38 QF process, OCA's Dr. Kolb at length concluded that a collaborative study process in a separate docket would be required. (Tr. Vol. II, p. 483). RMP's Clements said the company would be "okay with that." We find that such a process would allow for better judgments about the best overall result. It would also allow the Company to propose a solution that could be harmonized with the QF procedures in other states, as opposed the proposals in this docket, which would at best be a partial response to changes already made elsewhere in RMP's system.

79. These issues raised in this docket – the PDDRR methodology, QF pricing queue procedures, and PPA terms and length - should be further explored in light of Wyoming's changing load environment coupled with any system-wide effect caused by the rapid development of solar and wind QFs in other states in the PacifiCorp system. System-wide penetration and integration of QFs and their operational effects on the Company's existing Wyoming generation resources should be reported regularly to the Commission and any renewable integration studies completed by the Company or on its behalf should be provided to the Commission. (Tr. Vol. II, pp. 306-315).

Principles of Law

80. Wyo. Stat. § 37-3-101 requires that:

> All rates shall be just and reasonable, and all unjust and unreasonable rates are prohibited. A rate shall not be considered unjust or unreasonable on the basis that it is innovative in form or in substance, that it takes into consideration competitive marketplace elements or that it provides for incentives to a public utility. * * * The commission may determine that rates for the same service may vary depending on cost, the competitive marketplace, the need for universally available and affordable service, the need for contribution to the joint and common costs of the public utility, volume and other discounts, and other reasonable business practices.

81. Wyo. Stat. § 37-3-106(b) and (c) allow the Commission to suspend rates for a total of ten months:

> (b) Unless the commission otherwise orders, no public utility shall make any change in any rate which has been duly established except after thirty (30) days notice to the commission, which notice shall plainly state the changes proposed to be made in the rates then in force, and the time when the changed rates will go into effect. . . .
>
> (c) Whenever there is filed with the commission by any public utility any application or tariff proposing a new rate or rates, the commission may, either upon complaint or upon its own initiative, initiate an investigation, hearing, or both, concerning the lawfulness of such rate or rates. Pending its decision thereon, the commission may suspend such rate or rates, before they become effective but not for a longer initial period than six (6) months beyond the time when such rate or rates would otherwise go into effect. If the commission shall thereafter find that a longer time will be required, the commission may extend the period of suspension for an additional period or periods not exceeding in the aggregate, three (3) months.

82. The Commission has broad powers to inquire into the facts surrounding the determination of rates. They include Wyo. Stat. § 37-2-119, which states that:

> In conducting any investigation pursuant to the provisions of this act the commission may investigate, consider and determine such matters as the cost or value, or both, of the property and business of any public utility, used and useful for the convenience of the public, and all matters affecting or influencing such cost or value, the operating statistics for any public utility both as to revenues and expenses and as to the physical features of operation in such detail as the commission may deem advisable; the earnings, investment and expenditures of any such corporation as a whole within this state, and as to rates in plants of any water, electric, or gas corporations, the geographical location thereof shall be considered as well as the population of the municipality in which such plant is located.

83. Wyo. Stat. § 37-2-120 prohibits the Commission from making any order "which requires the change of any rate or service. . . unless or until all parties are afforded an opportunity for a hearing in accordance with the Wyoming Administrative Procedure Act." The Act establishes general procedures for Commission cases, including the giving of reasonable notice. Wyo. Stat. § 16-3-107; in accord are Wyo. Stat. §§ 37-2-201, 37-2-202, and 37-3-106. *See also*, Sections 106 and 115 of the Commission's Rules.

84. Wyo. Stat. § 37-2-121 gives the Commission latitude to determine the actual rates to be charged by a utility and allows public utilities to present innovative regulatory forms, policies, and rate making methods, stating that:

> If upon hearing and investigation, any rate shall be found by the commission to be inadequate or unremunerative, or to be unjust, or unreasonable, or unjustly discriminatory, or unduly preferential or otherwise in any respect in violation of any provision of this act, the commission . . . may fix and order substituted therefor a rate as it shall determine to be just and reasonable and in compliance with the provisions of this act. The rate so ascertained, determined and fixed by the commission shall be charged, enforced, collected and observed by the public utility for the period of time fixed by the commission. The rates may contain provisions for incentives for improvement of the public utility's performance or efficiency, lowering of operating costs, control of expenses or improvement and upgrading or modernization of its services or facilities. Any public utility may apply to the commission for its consent to use innovative, incentive or nontraditional rate making methods. In conducting any investigation and holding any hearing in response thereto, the commission may consider and approve proposals which include any rate, service regulation, rate setting concept, economic development rate, service concept, nondiscriminatory revenue sharing or profit-sharing form of regulation and policy, including policies for the encouragement of the development of public utility infrastructure, services, facilities or plant within the state, which can be shown by substantial evidence to support and be consistent with the public interest.

85. The public interest must come first in Commission decisions; and, as the Wyoming Supreme Court has stated, the desires of the utility are secondary to it. *Mountain Fuel Supply Company* v. *Public Service Comm'n,* 662 P.2d 878 (Wyo. 1983). Construing Wyo. Stat. § 37-3-101, which requires rates to be reasonable, the Court in *Mountain Fuel, supra,* at 883, commented that:

> This court cannot usurp the legislative functions delegated to the PSC in setting appropriate rates, but will defer to the agency discretion so long as the results are fair, reasonable, uniform and not unduly discriminatory.

Later, 662 P.2d at 885, the Court in *Mountain Fuel* observed that:

> We agree that if the end result complies with the 'just and reasonable' standard announced in the statute, the methodology used by the PSC is not a concern of this court, but is a matter encompassed within the prerogatives of the PSC.

In accord are *Great Western Sugar Co.* v. *Wyo. Public Service Comm'n and MDU, 624* P.2d 1184 (Wyo. 1981); and *Union Tel Co.* v. *Public Service Comm'n,* 821 P.2d 550 (Wyo. 1991), wherein the Supreme Court stated, 821 P.2d at 563, that it ". . . has recognized that discretion is vested in the PSC in establishing rate-making methodology so long as the result reached is reasonable." Read *in pari materia,* these statutes articulate the basic mechanism of the public interest standard which the Commission is to follow in its decisions.

86. In *Willadsen v. Christopulos*, 1987 WY 5, 731 P.2d 1181, (Wyo. 1987), the Wyoming Supreme Court discussed the standard of proof to be used in Wyoming administrative hearings. Construing Wyoming Statutes (W.S. §§ 41-3-911(b) and 41-3-911(c)), neither of which establishes a standard to be applied in matters coming before the State Board of Control, the Supreme Court stated, 1987 WY 5 at ¶13, with regard to W.S. § 41-3-911(c):

> Under that statutory section and the applicable provisions of the Wyoming Administrative Procedure Act, the standard applicable to an adjudicatory hearing before the Board of Control, unless otherwise stated, is the "preponderance of the evidence" standard customarily used in civil cases. *Amerada Hess Pipeline Corporation v. Alaska Public Utilities Commission, Alaska*, 711 P.2d 1170, 1179 n. 14 (1986); *Intermountain Health Care, Inc. v. Board of County Commissioners of Blaine County, Idaho*, 107 Idaho 248, 688 P.2d 260, 263 (1984), quoting E. Cleary, McCormick on Evidence § 357 (3d ed. 1984).

Later, the Court emphasized the necessity of applying this standard, 1987 WY 5 at ¶14, saying:

> Because the Board of Control failed to apply the preponderance of the evidence standard and instead applied the substantial evidence test applicable to appellate review of an agency decision, we find that petitioners were denied due process.

87. In the Commission's 2011 *Order* in Sub 388, it distinguished the case from *Willadsen* noting that "one of the applicable statutes on which we rely in this case, W.S. § 37-1-121, specifies the substantial evidence standard in certain situations. These are:

> . . . [P]roposals which include any rate, service regulation, rate setting concept, economic development rate, service concept, nondiscriminatory revenue sharing or profit-sharing form of regulation and policy, including policies for the encouragement of the development of public utility infrastructure, services, facilities or plant within the state, which can be shown by substantial evidence to support and be consistent with the public interest.

Accordingly, the Commission held "given the mixture of issues in this case, we must therefore agree the higher preponderance of the evidence standard should apply." *2011 Order* ¶ 52.

88. Section 317 of the Commission's Rules sets forth the regulations regarding arrangements between electric utilities and qualifying cogeneration and small power production facilities pursuant to implementation of sections 201 and 210 of PURPA.

Conclusions of Law

89. RMP is duly authorized by the Commission to provide retail electric public utility service in its Wyoming service territory under certificates of public convenience and necessity as issued and amended by the Commission. RMP is an electric public utility as defined in Wyo. Stat. § 37-1-101(a)(vi)(C), subject to the Commission's general and exclusive jurisdiction to regulate it as a public utility in Wyoming pursuant to Wyo. Stat. § 37-2-112.

90. Proper public notice of these proceedings was given in accordance with the WAPA, Wyo. Stat. § 37-2-203 and Section 106 of the Commission's Rules. The public hearings were held and conducted pursuant to Wyo. Stat. §§ 16-3-107, 16-3-108, 37-2-203, and applicable sections of the Commission's Rules. The interventions of the Parties were properly granted, and the entities that intervened became parties to the case for all purposes.

91. In 1978, Congress enacted PURPA in response to a national energy crisis and directed FERC to adopt rules and regulations to implement it. PURPA's goals are to promote energy conservation, encourage the development of cogeneration and small power production facilities, reduce domestic demand for traditional fossil fuels, *Am. Paper Inst. v. Am. Elec. Power Serv. Corp.,* 461 U.S. 402, 404 (1983), and lessen the country's dependence on foreign oil. *FERC v. Mississippi*, 456 U.S. 742, 745-46 (1982). Under the Act, FERC prescribes rules and regulations for implementation, 16 U.S.C. § 824a-3(a),(b) and state regulatory authorities implement FERC's rules. However, states have "discretion in determining the manner in which the rules will be implemented."[8] *FERC v. Mississippi*, 456 U.S. at 751 (1982). Section 317 of the Commission's Rules implements PURPA in Wyoming.

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[8] The U.S. Supreme Court held in *F.E.R.C. v. Mississippi*, that the challenged PURPA provisions do not impinge state sovereignty in violation of the Tenth Amendment. It determined insofar as § 210 authorizes the FERC to exempt qualified power facilities from state laws and regulations, it does nothing more than preempt conflicting state enactments in the traditional way. *Id.* at 758-771. With respect to § 210's requirement that state authorities implement FERC's rules, the statute and its implementing regulations simply require state commissions to settle disputes arising under the statute, the very type of adjudicatory activity customarily engaged in by the Mississippi Public Service Commission. *Id.* at 759-761. The "mandatory consideration" provisions of Titles I and III do not involve the compelled exercise of Mississippi's sovereign powers or set a mandatory agenda to be considered in all events by state legislative or administrative decisionmakers, but simply establish requirements for continued state activity in an otherwise preemptible field. *Id.* at 761-770. Similarly, the procedural requirements of Titles I and III do not compel the exercise of a State's sovereign power. If Congress may require a state administrative body to consider proposed federal regulations as a condition to its continued involvement in a preemptible field, it may require the use of certain procedural minima during that body's deliberations on the subject. "The procedural requirements obviously do not compel the exercise of the State's sovereign powers, and do not purport to set standards to be followed in all areas of the state commission's endeavors." *Id.* at 770-771.

92. PURPA requires utilities to purchase energy from generating facilities known as qualifying facilities or QFs. QFs are facilities that have a power production capacity no greater than 80 megawatts, which are owned by persons not primarily engaged in the generation or sale of electricity other than electric power from small production facilities. Rule 317(b)(i).

93. Because the rates utilities pay QFs impact consumers, the rates must be just and reasonable to consumers and in the public interest, but must not discriminate against QFs. 16 U.S.C. § 824a-3(b); 18 C.F.R. § 292.304; *Am. Paper Inst.*, 461 U.S. at 404-05; Commission Rule § 317(i)(i). Pursuant to FERC Rules, QF rates are set at a utility's "full avoided cost." Full avoided cost is "the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source." 18 C.F.R. § 292.10 1 (b)(6). In other words, a utility must purchase energy and capacity from QFs at the same price it would have to pay if it otherwise purchased or generated the energy or capacity on its own. This requirement is commonly termed the "ratepayer indifference standard." It means ratepayers should be economically indifferent to the source of the utility's energy by ensuring the cost to the utility purchasing from a QF does not exceed the cost it would incur if it were purchasing from another source. Pursuant to Commission Rule §§ 317(i) and (j), the Commission is responsible for determining a utility's avoided cost and setting appropriate QF rates.

94. Generally, it appears that Federal and State law are silent on the issue of the duration of the PURPA QF Contract Term. No statute or rule prescribes a minimum term for QF PPAs. Federal PURPA regulations require QFs have the option to sell electricity "over a specified term" for a price established at the time of contracting, but the regulations are silent as to how long the "specified term" must be. *See* 18 C.F.R. § 292.304(d).

95. The Commission has the authority to modify the maximum term of only those PPA contracts for QF projects located in Wyoming. In the absence of specific legal guidance from the Wyoming Legislature, Congress or FERC,[9] it falls to the Commission to exercise its discretion to establish a PURPA QF contract term that advances the policy interests and goals underlying PURPA of encouraging development, while not discriminating against QFs in Wyoming, and without unduly burdening Wyoming ratepayers with excessive price risk. As FERC has noted:

> States are allowed a wide degree of latitude in establishing an implementation plan for section 210 of PURPA, as long as such plans are consistent with our regulations. Similarly, with regard to review and enforcement of avoided cost determinations under such implementation plans, we have said that our role is generally limited to ensuring that the plans are consistent with section 210 of PURPA…." In this regard, the determinations that a state commission makes to implement the rate provisions of section 210 of PURPA are by their nature fact-specific and include consideration of many factors, and we are reluctant to second guess the state commission's determinations; our regulations thus provide state commissions with guidelines on

[9] FERC has interpreted the phrase "long-term" in regard to a different section of PURPA. FERC Order 688-A included an interpretation of the language in 16 USCA § 824a-3(m) also known as 210(m) that created a must buy exception for those QFs with access to competitive wholesale markets. FERC held that contracts of a year or more are sufficiently long-term to meet the statutory requirement that there be "wholesale markets for long-term sales of capacity and energy" ***within the meaning of section 210(m)(1)(A)(ii)*** (emphasis added).

factors to be taken into account, "to the extent practicable," in determining a utility's avoided cost of acquiring the next unit of generation.[10]

96. The Commission concludes that RMP has not met its burden to show that the solutions proposed in its application: [1] a substantial 85% reduction in the maximum term of its Wyoming PPA contract; coupled with [2] a modification of the Wyoming PDDRR methodology to include all system-wide QFs in the indicative pricing queue will reasonably address the system-wide problems it alleges give rise to the application. The recent surge in QF applications is primarily occurring in other states in the PacifiCorp system. Adopting RMP's proposal also risks discouraging QF development in Wyoming in contravention of PURPA, without any likely effect on whatever factors may be causing increased QF proposals in those other states.

97. If some progress is to be made on this problem, it is more likely that it will result from pursuing changes to PURPA-related tariffs in a manner which has already been accomplished in Utah, through negotiation. RMP has represented to us that these changes are inconsistent with the current structure of the Wyoming tariff, both in process, and in the minimum contract term, which is 15 years in Utah. We find and conclude that a collaborative effort would provide an opportunity to harmonize Company policy on a multi-state basis, as well as an opportunity to address all of the issues raised in this case in a practical and detailed manner.

98. In view of our conclusion that a collaborative is the appropriate way forward, we do not need to address the problem of the imposition of a "legally enforceable obligation" prior to an executed contract, nor do we need to address any modifications to the details of the PDDRR methodology.

99. Pending the outcome of the collaborative, there is no present public interest in overturning the Commission's previous determinations regarding the duration of the PPA contract term or PDDRR methodology.

NOW THEREFORE, IT IS ORDERED:

1. Pursuant to the Commission's deliberations held on April 22, 2016, Rocky Mountain Power's Application is hereby denied. The Company is directed to initiate a collaborative process with relevant stakeholders to address substantive and procedural reforms to Wyoming's PPA and avoided cost methodology.

2. Rocky Mountain Power is hereby directed to update Exhibit 2.1, a list of all the QFs in its system-wide queue, on a semi-annual basis as a compliance filing in this Docket. The Company is further directed to provide the Commission with semi-annual updates on the status of system-wide penetration and integration of QFs and their operational effects on the Company's existing Wyoming generation resources, and to provide any renewable integration studies completed by the Company or on its behalf.

3. This *Order* is effective immediately.

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[10] *Cal. Pub. Util. Comm'n,* 133 FERC ¶ 61,059 at P 24 (2010).

MADE and ENTERED at Cheyenne, Wyoming, on June 23, 2016.

PUBLIC SERVICE COMMISSION OF WYOMING

ALAN B. MINIER, Chairman

WILLIAM F. RUSSELL, Deputy Chairman

(SEAL)

Attest:

LORI L. BRAND, Assistant Secretary