

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
CONTRACT TERM OF PURPA POWER
PURCHASE AGREEMENTS WITH
QUALIFYING FACILITIES

Docket No. 20000-545-ET-18
(Record No. 15133)

**NON-CONFIDENTIAL POST-HEARING BRIEF OF
THE WYOMING INDUSTRIAL ENERGY CONSUMERS AND
TWO RIVERS WIND, LLC**

Table of Contents

I. Introduction And Summary 1

II. Background..... 3

III. Argument 5

 A. RMP’s Proposal To Reduce The Maximum Standard Term For Fixed Price QF
 Contracts From 20 To Seven Years Is Neither Reasonable Nor In The Public Interest,
 And Should Be Rejected..... 5

 i. RMP Routinely Enters Into 20-Year Fixed Price Contracts For Non-QF Wind Power .. 5

 ii. RMP’s Reliance On The IRP And Competitive Procurement Processes As A Basis
 For Its Request In This Proceeding Is Inconsistent With Its Own Recent
 Procurement Of New Capacity 7

 iii. RMP Overstates Risks Posed By The Default Of QF PPAs 10

 iv. A Reduction In The QF Contract Term Length Would Undoubtedly Deter QF
 Development In Wyoming 10

 v. Any Maximum QF Term Length Less Than Seven Years Should Be Rejected..... 12

 B. The Commission Should Conditionally Accept RMP’s “Like For Like” Proposal
 Subject To Certain Reasonable Exceptions 12

 C. Certain Of RMP’s Tariff Change Proposals Are Either Unnecessary Or Else Harmful
 To The Public Interest In That The Proposed Changes Unreasonably Shift The PPA
 Negotiation Leverage To RMP’s Advantage And Should Be Rejected 13

IV. Conclusion 14

I. INTRODUCTION AND SUMMARY

By agreement of the Parties and order of the Hearing Officer,¹ the Wyoming Industrial Energy Consumers (“WIEC”) and Two Rivers Wind, LLC (“Two Rivers Wind”) (collectively, the “Joint Intervenors”), by and through their undersigned counsel, Holland & Hart LLP, respectfully submit this Post-Hearing Brief. The Joint Intervenors, comprised of a diverse group of large Rocky Mountain Power (“RMP” or the “Company”) customers and owners/developers of renewable energy projects, respectfully submit that RMP has failed to carry its burden of proof in its application in the above-captioned proceeding (“Application”) to demonstrate that certain of its proposals are just, reasonable, or in the public interest.

RMP’s Application advocates for a glaring double standard when it comes to the need for the long-term assurances of cost recovery for renewable energy development.² First, as described in the Direct Testimony of Mr. Kevin Higgins, “[w]hen it comes to Company-owned projects, RMP’s position is that long-term cost recovery over the life of the project is essential. But, in contrast, [Qualifying Facilities] QFs are somehow supposed to make do with seven-year deals.”³ Second, RMP generally lauds its Integrated Resources Plan (“IRP”) and the competitive bidding processes that RMP—at times—uses to acquire new, non-QF capacity, while simultaneously denigrating QFs for not being subject to similar treatment.⁴ Yet it is these very same processes that produced the Energy Vision 2020 projects approved in Docket No. 20000-520-EA-17, whose cost is ██████████ on a levelized basis from 2021 through 2049.⁵ Meanwhile, for the Wyoming wind QF projects that have requested avoided cost pricing, but do not yet have a signed power

¹ Trial Tr. Vol. III, p. 551, lines 14-17.

² WIEC Ex. No. 300 (Direct Test. of Mr. Kevin Higgins) at p. 17, lines 7-12.

³ *Id.*

⁴ *See e.g.*, RMP Ex. 2.0 (Direct Test. of Mark Tourangeau) at p. 5, lines 12-20.

⁵ CONFIDENTIAL WIEC Ex. No. 340 at subsection (d).

purchase agreement (“PPA”), the average projected PPA price is just \$25.99/MWh going forward for a 20-year deal.⁶ Furthermore, as explained by Mr. Higgins, these going-forward QF avoided cost prices compare favorably to what customers pay RMP for power, as the all-in generation cost for which RMP was granted recovery in Wyoming in the most recent general rate case was approximately \$49.49/MWh.⁷ When considering these current benchmarks, RMP’s criticism of the 20-year fixed price contract for QF power falls flat.

Accordingly, the Joint Intervenors recommend as follows:

- RMP’s proposal to reduce the maximum standard term for fixed price contracts for QFs from twenty years to seven years is neither reasonable nor in the public interest and should be rejected by the Commission.
- RMP is proposing a modification to its avoided cost calculation that would determine the applicable proxy resource in that calculation to be the next deferrable resource of the same type as the QF in the Company’s preferred portfolio in its IRP. In circumstances in which the next deferrable resources for wind and solar QFs occur relatively close in time, such as within two years of each other, it would be reasonable to use this convention to calculate the avoided costs for wind and solar QFs. However, if the timing of the next deferrable wind and solar resources begins to diverge substantially (i.e., beyond two years) the Commission should retain reasonable flexibility to allow the Company’s proposed “like for like” convention to be waived and to permit wind and solar QFs to obtain avoided cost pricing based on the next deferrable renewable resource, irrespective of QF type, on a capacity-equivalent basis.
- Further, cogeneration QFs should be eligible for deferring the Company’s planned investment in geothermal resources, since cogeneration and geothermal are both baseload resources. Though Joint Intervenors do not recommend that the Commission reject the “like for like” convention for determining the avoided cost of cogeneration QFs, the Commission should also show flexibility in the future if a cogeneration QF can reasonably make the case that its project defers the need for new RMP solar or wind in the IRP, and potentially to allow the determination of avoided cost on that basis.
- It is unnecessary to adopt RMP’s proposed language for Schedules 37 and 38 stating that “providing a pro-forma PPA does not mean the QF is at the PPA negotiation phase.”

⁶ WIEC Ex. No. 300 (Direct Test. of Mr. Kevin Higgins) at p. 28, lines 2-4.

⁷ *Id.* at p. 28, lines 4-7.

- RMP should not be granted a unilateral and open-ended ability to update PPA pricing any time prior to contract execution. Such broad discretion for the Company is unreasonable and potentially subject to abuse. The current standard, which permits RMP to update pricing proposals at appropriate intervals, should be maintained.
- Rather than adopt RMP's proposal to require Schedule 37 customers to seek Schedule 38 pricing once the 10 MW cap on Schedule 37 pricing is reached, the 10 MW cap should simply be eliminated. RMP already plans to reset Schedule 37 rates annually, and if the cap is reached before that occurs, the Company should be free to update Schedule 37 rates at that time.⁸

Finally, the Joint Intervenors do not object to RMP's proposal to calculate Schedule 37 avoided costs using the same method employed for Schedule 38, as it is reasonable to calculate Schedule 37 and Schedule 38 avoided costs on a consistent basis. Nor do the Joint Intervenors object to RMP's proposal to change the on-peak and off-peak definitions used in making payments to QFs. That change is intended to improve price signals for payments to QFs without changing the total expected avoided cost payments to a QF as currently calculated for Schedule 38. It is thus an attempt to fine tune actual payment to better correspond to market value by hour.

II. BACKGROUND

RMP filed its Application in this proceeding after its unsuccessful attempt in Docket No. 20000-481-EA-15 to drastically reduce the QF contract term length from 20 years to three years. As the Commission's Order in the prior proceeding indicates, RMP contended, in part, that:

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.⁹

The Commission concluded, in part, that:

⁸ See generally, *id.* at pp. 6-8.

⁹ WIEC Ex. 303 (Docket No. 20000-481-EA-15, June 23, 2016 Mem. Opinion, Findings of Fact, Decision and Order), at P 26.

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 systemwide 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.¹⁰

The Commission further stated that it believed a collaborative process with relevant stakeholders would provide an opportunity to harmonize Company policy on a multi-state basis, as well as an opportunity to address all the issues raised in Docket No. 20000-481-EA-15 in a practical and detailed manner.¹¹

Having found itself unsuccessful in Docket No. 20000-481-EA-15, RMP entered into the collaborative process. However, by its own admission, RMP's recommendations for changes to Schedule 38 in the collaborative process followed closely with its testimony as filed in Docket No. 20000-481-EA-15.¹² After two in-person meetings and a conference call, RMP filed a notice with the Commission on October 25, 2017 that RMP would no longer pursue discussions with stakeholders in the collaborative process, and that RMP was planning to file a new application to address the PPA term length and avoided cost calculation methodology.¹³

RMP's Application in the current proceeding, in which it is again requesting approval to drastically reduce QF contract term lengths, was filed on November 2, 2018. RMP's arguments here to reduce QF contract term lengths are equally unconvincing.

¹⁰ *Id.* at P 96.

¹¹ *Id.* at PP 97, 98 & Ordering Paragraph 1.

¹² WIEC Ex. No. 300 at page 11, lines 1-9; WIEC Ex. No. 300.1 at p. 6.

¹³ RMP Ex. 15 (Docket No. 20000-481-EA-15, RMP Notice of Termination of Collaborative Process Letter (Oct. 25, 2017)).

III. ARGUMENT

A. RMP's Proposal To Reduce The Maximum Standard Term For Fixed Price QF Contracts From 20 To Seven Years Is Neither Reasonable Nor In The Public Interest, And Should Be Rejected

Reduction of the QF contract term length from a 20-year fixed price contract to a seven-year fixed price contract is unreasonable and not in the public interest. It would undoubtedly deter QF development in Wyoming, notwithstanding the benefits that QF power provides. For example, the obligations of RMP's ratepayers are more open-ended when it comes to paying for utility-owned plant in contrast with QF contracts. As explained by Mr. Higgins, the:

performance risks of QF projects are largely borne by the QF developers themselves, not ratepayers. In contrast, if RMP's wind projects perform at levels that are less than expected, which has been typical in the past, there is no reduction to the Company's capital cost recovery for the under-performing project outside of a finding of imprudence, which is a very high bar. But if a QF project performs at levels that are less than expected, there is an automatic reduction in payment to the QF because the QF only gets paid for its output. Similarly, if the operating and maintenance costs of a Company project run higher than expected, these costs are recoverable from customers in a general rate case, unless there is a finding of imprudence, but a QF must absorb higher-than-expected costs in its margins, prudent or not.¹⁴

Accordingly, and for the reasons explained in more detail below, RMP's proposal to reduce the QF contract term length from 20 years to seven years should be rejected.

i. RMP Routinely Enters Into 20-Year Fixed Price Contracts For Non-QF Wind Power

Notwithstanding RMP's efforts to prevent QFs from entering into 20-year fixed price PPAs in this proceeding, when it comes to PPAs that RMP enters into with non-QF power, it routinely enters into 20-year fixed price PPAs. Table 5.6 to RMP's 2017 IRP identifies the then-existing

¹⁴ WIEC Ex. No. 300 at p. 23, lines 7-18 (footnote omitted).

PPAs that RMP had entered into with wind facilities in both QF and non-QF PPA arrangements.¹⁵

Those RMP PPAs with non-QFs in Table 5.6 are recreated immediately below.

Power Purchase Agreements/Exchanges	State	PPA or QF	Capacity (MW)	Load & Resource Balance Capacity at System Summer Peak (MW)
Combine Hills	OR	PPA	41	5
Foote Creek IV	WY	PPA	17	3
Rock River I	WY	PPA	50	8
Stateline Wind	OR/WA	PPA	175	21
Three Buttes Wind Power (Duke)	WY	PPA	99	16
Top of the World	WY	PPA	200	32
Wolverine Creek	ID	PPA	65	10

Every single PPA identified in Table 5.6 that RMP entered into with non-QF wind generation was for 20 years at a fixed price.¹⁶ RMP entered into these 20-year fixed price PPAs *voluntarily* whether the wind generation was above or below the 80 MW threshold for the project to qualify as a QF.

Furthermore, since the 2017 IRP, RMP has continued to enter into 20-year fixed price PPAs with non-QF power in Wyoming. For example, RMP entered into a 20-year PPA for 200 MW of Wyoming wind generation as part of the Energy Vision 2020 projects.¹⁷ Additionally, in February 2019, RMP entered into a 20-year fixed-price PPA with the 120 MW Cedar Springs III wind project in Wyoming.¹⁸ Similar to the PPAs in Table 5.6 above, RMP agreed to the terms and conditions of these PPAs without any regulatory obligation to enter in to a 20-year fixed price PPA. RMP's request in this proceeding, to deny QFs a fixed-price PPA that is any longer than

¹⁵ WIEC Ex. No. 319 at p. 2.

¹⁶ WIEC Ex. Nos. 321 & 325.

¹⁷ WIEC Ex. 310 (Docket No. 20000-520-EA-17, Oct. 8, 2018 Mem. Opinion, Findings, & Order Approving Stipulation at P 92(iii)); Docket No. 20000-546-EK-18, Cedar Springs Wind, LLC Power Purchase Agreement at Section 2.1.

¹⁸ Docket No. 20000-555-EK-19, Cedar Springs Wind III, LLC Power Purchase Agreement; WIEC Exhibit No. 327.

seven years, flies in the face of the terms and conditions that RMP voluntarily enters into with non-QF projects.

As discussed more below, RMP's attempt to differentiate QFs from non-QF projects in order to justify a seven-year contract falls flat. Indeed, the OCA even conceded that a 20-year contract was reasonable, testifying that the "current contract length of 20 years is not unreasonable or wrong"¹⁹ and conceding that it is more reasonable to think that fifteen-year rather than ten-year QF deals can be done.²⁰

ii. RMP's Reliance On The IRP And Competitive Procurement Processes As A Basis For Its Request In This Proceeding Is Inconsistent With Its Own Recent Procurement Of New Capacity

RMP attempts to justify its request for a seven-year contract for Wyoming QFs in part on its IRP and competitive procurement process. Specifically, Mr. Tourangeau testifies:

the current contract term of 20 years for QFs leads to poor economic outcomes, and violates a central principle of PURPA—the customer indifference standard. This is because 20-year QF contracts expose the Company's customers to significant risk because they are tied to resources that do not go through a rigorous planning process, like the integrated resource plan ("IRP"), which accounts for the interaction between generation, transmission and load on the Company's system. In addition, they are not chosen through a competitive process to ensure that only least-cost, least-risk resources are added when the IRP demonstrates a need.²¹

And yet, since January 2019, RMP has acquired approximately 360 MW of new Wyoming wind generation outside of the competitive procurement process. First, as discussed above in this Brief, RMP entered into a 120 MW PPA for new Wyoming wind with the Cedar Springs III project. This new capacity was acquired outside of a competitive procurement process.²² Additionally, RMP recently acquired the Pryor Caves, Mud Springs, and Horse Thief wind projects, which are 80 MW

¹⁹ Trial Tr. Vol. III at p. 545, lines 6-7.

²⁰ *Id.* at p. 545, lines 12-16.

²¹ RMP Ex. No. 2.0 (Direct Test. of Mr. Mark Tourangeau) at p. 5, lines 12-20.

²² Trial Tr. Vol. I at p. 55, lines 10-17 & p. 66, lines 8-12.

wind projects interconnecting to RMP's transmission system in Wyoming.²³ Again, these three projects were collectively acquired by RMP outside of any competitive procurement process.²⁴

Even when RMP acquires new capacity under the IRP and with use of a competitive procurement process, such processes have not been free from criticism by regulatory authorities.

As Mr. Higgins testified in this proceeding:

RMP's recent history is replete with applications by the Company for Commission approval of renewable projects that were not thoroughly vetted by the IRP process, much less carrying the assurance of being least-cost and least-risk resources. Indeed, each of the three major renewable projects for which RMP has requested Commission approval in the past two years—wind repowering, new wind, and Foote Creek replacement—bypassed the rigors of the IRP process.

...

RMP's 2017 IRP public input process began on June 21, 2016, and consisted of seven public input meetings and five state-specific meetings. However, the Company did not inform parties of its proposed repowering projects until March 2-3, 2017, at the final public meeting before the IRP was filed on April 4, 2017. The timing of this announcement afforded stakeholders little opportunity for meaningful input on these projects during the development of the IRP.

... the magnitude of the contemplated new wind projects, enabled by the Aeolus-to-Bridger/Anticline transmission line, was also announced at the final public meeting on March 2-3, 2017.²⁵

RMP's 2017 IRP was accordingly criticized. As described by Mr. Higgins, RMP's abrupt announcement impeded the ability of stakeholders to evaluate these projects during the IRP development process, as underscored by the Public Utility Commission of Oregon's IRP docket order:

In making this decision on PacifiCorp's Energy Vision 2020 action items, we share Staff's and the intervenors' struggles with the abrupt presentation of PacifiCorp's plan and rigidity of its procurement proposal. PacifiCorp's procurement plans presented in pre-IRP planning meetings changed dramatically to what the company proposed in its filed IRP and supplemental analysis. This left many stakeholders

²³ *Id.* at p. 66, line 21 through p. 67 line 15.

²⁴ *Id.* at p. 67, lines 12-15.

²⁵ WIEC Ex. No. 300 (Direct Test. of Mr. Kevin Higgins) at p. 19, line 5 through p. 20, line 1.

unable to support the 2017 IRP, as they had little chance for input and for comparing the proposal with alternatives.²⁶

The Utah Public Service Commission expressed similar concerns in its acknowledgement of the Company's IRP:

We acknowledge that the 2017 IRP substantially complies with the Guidelines. We also recognize that PacifiCorp's timing in completing and making available to parties its Energy Vision 2020 analysis deprived parties of a reasonable opportunity to evaluate that substantial element of its IRP. Accordingly, *we view Energy Vision 2020, including its effects on other aspects of the plan, to be less credible for IRP purposes than the remaining IRP components.*²⁷

As stated above in this Brief, the results of RMP's IRP and competitive bidding processes have not proven themselves to produce demonstrably superior results for ratepayers as compared to going forward avoided cost pricing for wind projects. For example, the cost of the Energy Vision 2020 projects approved in Docket No. 20000-520-EA-17 is [REDACTED] on a levelized basis from 2021 through 2049.²⁸ Meanwhile, for the Wyoming wind QF projects that have requested avoided cost pricing, but do not yet have a signed PPA, the average projected PPA price is just \$25.99/MWh going forward for a 20-year deal.²⁹ Furthermore, as explained by Mr. Higgins, these going-forward QF avoided cost prices compare favorably to what customers pay RMP for power, as the all-in generation cost for which RMP was granted recovery in Wyoming in the most recent general rate case was approximately \$49.49/MWh.³⁰

In short, despite RMP's reliance on its IRP and competitive bidding processes as a justification for its request for a shorter QF contract term length in this proceeding, RMP's recent practice demonstrates that it sidesteps those same processes, or implements them imperfectly, when it suits RMP's own capacity procurement goals.

²⁶ WIEC Ex. No. 316 (Oregon Docket No. LC 67 (Apr. 27, 2018 Order)) at p. 9.

²⁷ WIEC Ex. No. 317 (Utah Docket No. 17-035-16 (Mar. 2, 2018 Report & Order)) at p. 47 (emphasis added).

²⁸ CONFIDENTIAL WIEC Ex. No. 340 at subsection (d).

²⁹ WIEC Ex. No. 300 (Direct Test. of Mr. Kevin Higgins) at p. 28, lines 2-4.

³⁰ *Id.* at p. 28, lines 4-7.

iii. RMP Overstates Risks Posed By The Default Of QF PPAs

Attempting to undercut the benefits QF power brings to the system, RMP overstates the risks posed by the hypothetical default of a QF PPA. RMP states that certain intervenors:

claim that QFs bear all costs of project development including cost overruns, that, should a QF be decommissioned early, ratepayers do not continue to pay, and that if a QF comes online late the developer must pay delay damages. All of these claims ignore a key point—that if a QF defaults due to any of the reasons above and fails to come online or ceases operations early, it is the Company and its customers who will bear the risk of replacing the defaulted QF capacity.

However, the “key point” that RMP attempts to identify here falls flat. Not only is there no existing or imminent capacity shortage on RMP’s system, but the risks associated with replacing any defaulted QF capacity are no different as compared to risks associated with replacing any defaulted *non-QF* capacity, whether third party PPA capacity or company-owned generation. Thus, this attempt to overstate the risks associated with a QF default, and simultaneously downplay the benefits of QF power, should be rejected.

iv. A Reduction In The QF Contract Term Length Would Undoubtedly Deter QF Development In Wyoming

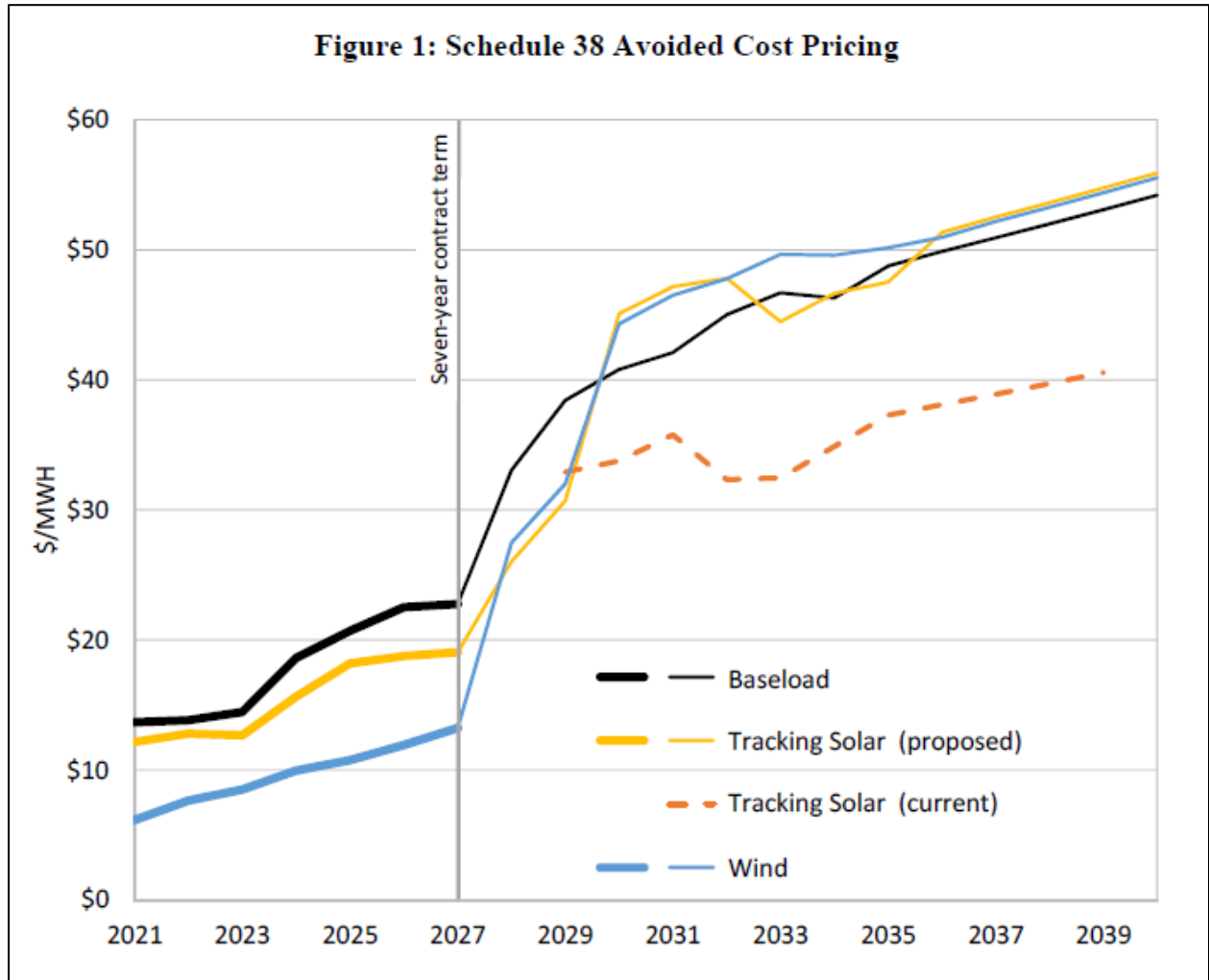
Other PacifiCorp states have demonstrated that reduction in QF maximum term lengths below 20 years deters QF development in that state. For example, the current maximum QF PPA term lengths for Idaho is two years and for Washington is five years.³¹ RMP stated that it currently has no wind or solar QFs under contract and not yet in operation in either Washington or Idaho since those state Commissions approved a reduction in PPA term lengths.³² This reinforces the testimony of the QF financier and developer witnesses that testified that a reduction in QF maximum term lengths will result in unfinanceable QF PPAs.³³

³¹ REC Ex. 606 at p. 0815.

³² Trial Tr. Vol. I at p. 101, line 21 through p. 102, line 2; *id.* at p. 104, lines 7-11; *id.* at p. 105, lines 14-19; REC Ex. 604 at p. 0802.

³³ Trial Tr. Vol. II at p. 417, line 4 through p. 418, line 11; *id.* at p. 445, lines 6-22.

Indeed, RMP’s own testimony exemplifies how seven-year PPAs, and the rock-bottom avoided cost rates projected in that timeframe for wind projects, would make QFs unfinanceable:³⁴



And while PURPA currently requires RMP to enter into a new PPA with a QF when an existing PPA expires,³⁵ it cannot be ignored that the future of PURPA remains uncertain³⁶ and that the right to a new PPA in seven years’ time may no longer exist.

³⁴ RMP Ex. No. 3.0 (Direct Test. of Mr. Daniel MacNeil) at p. 17.

³⁵ See e.g., 18 C.F.R. § 292.309.

³⁶ Indeed, as RMP argues, “PURPA is now a 40 year old law and the energy markets and technology have changed dramatically since 1978. The conditions that prompted the passage of PURPA no longer exist . . .” RMP Ex. No. 2.0 (Direct Test. of Mark Tourangeau) at p. 7, lines 12-14.

v. Any Maximum QF Term Length Less Than Seven Years Should Be Rejected

The Commission should reject any maximum term length less than seven years. The Northern Laramie Range Alliance proposed a maximum QF term length of one year.³⁷ However, this proposal is outside of the scope of RMP's application, was not noticed, and therefore should not be implemented.³⁸ RMP even found itself unable to support anything less than a seven year contract, admitting, "[a]nything shorter than that I think we would struggle with, you know, kind of the straight-face analysis of whether they'd be able to attract capital."³⁹ Accordingly, proposals for anything less than a seven year contract should be rejected.

B. The Commission Should Conditionally Accept RMP's "Like For Like" Proposal Subject To Certain Reasonable Exceptions

RMP's Application advocated for a "like for like" proposal that would modify its avoided cost calculation in a way that would determine the applicable proxy resource in that calculation to be the next deferrable resource of the same type as the QF in the Company's preferred portfolio in its IRP. As stated by Mr. Higgins:

[i]n circumstances in which the next deferrable resource for wind and solar QFs occur relatively close in time, such as within two years of each other, it would be reasonable to use RMP's "like for like" convention to calculate the avoided costs for wind and solar QFs. However, if the timing of the next deferrable wind and solar resources begin to diverge substantially, then the expediency of adhering to this convention must be weighed against the potential arbitrary disadvantage conveyed upon a QF whose resource is deferrable in the IRP at a later date.⁴⁰

To avoid this inefficient consequence, Mr. Higgins recommends the Commission retain reasonable flexibility to waive the Company's proposed "like for like" convention and permit wind

³⁷ NLRA Ex. No. 800 (Direct Test. of Mr. Kenneth Lay) at p. 5, lines 3-9.

³⁸ Staff Ex. No. 124.

³⁹ Trial Tr. Vol. I at p. 163, lines 6-8.

⁴⁰ WIEC Ex. No. 300 (Direct Test. of Mr. Kevin Higgins) at p. 34, lines 12-18.

and solar QFs to obtain avoided cost pricing based on the next deferrable renewable resource, irrespective of QF type, on a capacity-equivalent basis when the timing of the next deferrable wind and solar resources diverge by more than two years.⁴¹ Additionally, the OCA agreed with Mr. Higgins' recommendation because "[t]here can just be a real divergence in time there. So . . . his concept of a waiver would be a really good flexibility to probably keep as part of options to . . . balance these issues out amongst stakeholders."⁴²

Furthermore, as stated by Mr. Higgins, the Commission should permit cogeneration QFs to be eligible for deferring the Company's planned investment in geothermal resources. since cogeneration and geothermal are both baseload resources.⁴³ Finally, the Commission should not ignore the fact that cogeneration could potentially impact and defer the Company's planned development of wind and solar resources. RMP's current Application does not allow for any flexibility in the future if a cogeneration QF can reasonably make the case that its project defers the need for new RMP solar or wind in the IRP, and potentially to allow the determination of avoided cost on that basis. For these reasons, a waiver of the "like for like" provision would strike the appropriate balance between Company and ratepayer risks and interests.

C. Certain Of RMP's Tariff Change Proposals Are Either Unnecessary Or Else Harmful To The Public Interest In That The Proposed Changes Unreasonably Shift The PPA Negotiation Leverage To RMP's Advantage And Should Be Rejected

First, RMP's proposed language for Schedules 37 and 38 stating that "providing a proforma PPA does not mean the QF is at the PPA negotiation phase," are unnecessary. As stated by Mr. Higgins, Schedule 38's Section I.B.6 already outlines this in relevant part.⁴⁴ Second, the

⁴¹ *Id.* at p. 34, line 18 through page 35 line 2.

⁴² Trial Tr. Vol. III at p. 548, lines 3-10.

⁴³ WIEC Ex. No. 300 (Direct Test. of Mr. Kevin Higgins) at p. 33, line 18 through p. 35 line 7-10.

⁴⁴ *Id.* at p. 37, lines 13-23.

Commission should reject RMP’s proposal to unilaterally and open-endedly update PPA pricing any time prior to contract execution as it “would unreasonably shift the PPA negotiation leverage to RMP’s advantage”⁴⁵ Such broad discretion for the Company is unreasonable and potentially subject to abuse. The current standard, which permits RMP to update pricing proposals at appropriate intervals, should be maintained. Finally, RMP’s proposal to require Schedule 37 customers to seek schedule 38 pricing once the 10 MW cap should simply be eliminated. RMP already plans to reset Schedule 37 rates annually and if the cap is reached before that occurs, the Company should be free to update Schedule 37 rates at that time.

IV. CONCLUSION

The Joint Intervenors respectfully submit that certain aspects of the proposals of RMP in its Application are overreaching, poorly supported, and preferential toward RMP. The term of Wyoming PPAs should continue to reflect the industry standard of 20 years, which will provide QFs a reasonable opportunity to receive financing amid RMP’s projected rock bottom pricing in the future. Other RMP states have demonstrated that reducing maximum QF PPA term lengths deters—or completely obstructs—QF development within that state, which in turn eliminates these benefits QFs provide to the states. Accordingly, as described above in this Brief, certain portions of RMP’s Application in this proceeding should be rejected.

⁴⁵ *Id.* at p. 39, lines 5-6.

Respectfully submitted this 8th day of August, 2019.

HOLLAND & HART LLP

By: s/ Abby Briggerman

Michelle Brandt King, #7-5173

Abby Briggerman, #7-5476

Hannah M. Oakes (*pro hac vice*)

Holland & Hart LLP

555 Seventeenth Street, Suite 3200

Denver, CO 80202

Telephone: (303) 295-8000

Email: mbking@hollandhart.com

acbriggerman@hollandhart.com

hmoakes@hollandhart.com

ATTORNEYS FOR WIEC AND TWO RIVERS WIND

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of August, 2019 the **POST-HEARING BRIEF OF THE WYOMING INDUSTRIAL ENERGY CONSUMERS AND TWO RIVERS WIND, LLC** was e-filed with the Wyoming Public Service Commission and a true and correct copy was sent via electronic mail addressed to the following:

Yvonne R. Hogle
Jacob A. McDermott
Assistant General Counsel
Rocky Mountain Power
1407 W. North Temple, Suite 320
Salt Lake City, UT 84116
yvonne.hogle@pacificorp.com
jacob.mcdermott@pacificorp.com

Christopher Leger
Wyoming Office of Consumer Advocate
2515 Warren Avenue, Suite 304
Cheyenne, WY 82002
Christopher.leger@wyo.gov

Crystal J. McDonough
Callie Capraro
McDonough Law LLC
1635 Foxtrail Drive
Loveland, CO 80538
crystal@mcdonoughlawllc.com
callie@mcdonoughlawllc.com

Phillip J. Russell
HATCH, JAMES & DODGE, P.C.
10 West Broadway, Suite 400
Salt Lake City, UT 84101
prussell@hjdllaw.com

Renewable Energy Coalition
Attn: John Lowe
P.O. Box 25576
Portland, OR 97298
jravenesanmarcos@yahoo.com

Stacy Splittstoesser
Wyoming Regulatory Affairs Manager
Rocky Mountain Power
315 West 27th Street
Cheyenne, WY 82001
stacy.splittstoesser@pacificorp.com

Data Request Response Center
PacifiCorp
825 NE Multnomah, Suite 2000
Portland, OR 97232
datarequest@pacificorp.com

Michelle Brandt King
Abigail C. Briggerman
Hannah M. Oakes
Holland & Hart LLP
555 Seventeenth Street, Suite 3200
Denver, CO 80202
mbking@hollandhart.com
acbriggerman@hollandhart.com
HMOakes@hollandhart.com
aclee@hollandhart.com

Dale W. Cottam
Ronald J. Lopez
Bailey | Stock | Harmon | Cottam | Lopez LLP
80 East 1st Ave. | P.O. Box 850
Afton, WY 83110
dale@performance-law.com
ronnie@performance-law.com

Irion A. Sanger
Sanger Law, P.C.
1041 SE 58th Place
Portland, OR 97215
irion@sanger-law.com
marie@sanger-law.com

Wyoming Public Service Commission
2515 Warren Avenue, Suite 300
Cheyenne, WY 82002
steve.mink@wyo.gov
james.branscomb1@wyo.gov
kaeci.daniels1@wyo.gov
daney.brauchie@wyo.gov
angela.elliott@wyo.gov

s/ Gina Gargano-Amari

13221266_4