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BEFORE THE WYOMING PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION OF ROCKY MOUNTAIN POWER FOR 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)

Rocky Mountain Power, a division of PacifiCorp ("RMP" or Company"), submits this Post-Hearing Brief in accordance with the Wyoming Public Service Commission's ("Commission") directions at the hearing held in this docket from July 9th through July 11th, 2019.

INTRODUCTION

The key issues in this case all revolve around the Commission's authority to implement a federal law, namely, the Public Utility Regulatory Policies Act of 1978 ("PURPA"). No party to this proceeding has challenged the Commission's authority to make the changes the Company requested in its November 2, 2019, application ("Application"). Indeed, the Commission's authority to make changes within certain boundaries is by design. Section 210 of PURPA established a program of cooperative federalism. Through its PURPA legislation the U.S. Congress directed the Federal Energy Regulatory Commission ("FERC") to establish rules "to encourage cogeneration and small power production," this was accomplished in part by imposing a "must purchase" obligation upon utilities. The obligation applies to generating facilities that meet specific FERC defined qualifications, thus the common shorthand for such facilities is "Qualifying Facilities" or "QFs."

While Congress intended PURPA to encourage QF development, it did not intend for that encouragement to harm utilities' electricity customers, so payments to QFs under PURPA are limited to "avoided costs,"[1] meaning that utilities (and by extension their customers) should not incur costs that are greater than those that would be incurred for the utility to supply the same amount of energy and capacity by other means. In other words, PURPA does not compel this Commission to encourage QFs no matter the expense, rather the Commission's encouragement must be bounded by the principle that Wyoming customers remain indifferent to the federal "must purchase" mandate.[2]

PURPA is a 40 year old law, many of its objectives have been achieved, and many of the circumstances leading to its passage are no longer present. PURPA was passed at a time when the United States was a net importer of energy products, and it had just suffered through energy shortages and an oil embargo by several countries. A driving force behind its passage was to encourage more efficient energy use and domestic energy production, in part by supporting burgeoning renewable generation technologies. Currently the U.S. is a net exporter of energy, wind and solar generation compete economically with conventional generation such as coal and natural gas, and electricity demand has been flat to negative in many parts of the country.

[1] *See*, 18 C.F.R. §292.304.
[2] *See, e.g. Armco Advanced Materials Corp. v. Pennsylvania Pub. Util. Comm'n*, 535 Pa. 108, 634 A.2nd 207, 209 (Pa. 1993).

All this is not to say that PURPA no longer has a place. It is the law, and it must be followed. However, through PURPA's cooperative federalism and the broad authority granted to states to implement the law, PURPA allows this Commission to modify the law's implementation in Wyoming to maintain the necessary balance between the "must purchase" mandate, and the principle of customer indifference. As the renewable industry, and Wyoming's energy needs change over time, so too must Wyoming's PURPA policies. The changes proposed in the Company's Application will help to restore the balance.

The Company's brief will address the changes it has proposed in light of the additional testimony provided during the July 9-11, 2019, hearing. However, the Commission should keep in mind that the law is clear, the Commission has a "wide degree of latitude" to adjust its PURPA implementation to account for Wyoming's particular "economic and regulatory circumstances." The legal principles are not in dispute by any party to this matter; whether to grant the Company's Application in whole or in part, is, at its core, a policy question that the Commission has clear authority to decide. The Company has supported its request for a seven year term length with substantial evidence, it has explained why the changes proposed to the avoided cost pricing methodology will lead to more accurate estimates, and why the tariff changes it has proposed will improve the Schedules 37 & 38 pricing and contracting processes for prospective QFs. To the extent a specific proposal in the Company's Application is not addressed here, the Company relies on the record already developed in this matter to support its request. As the Company stated in its Application, its proposed changes are not mutually exclusive, each functions as a tool to help rebalance PURPA in Wyoming. While the Company continues to support adoption of the entire package proposed in the Application, it is up to the Commission to consider the extensive factual record that has been developed in this case to determine what changes will achieve the appropriate balance for the Company's Wyoming customers.

ARGUMENT

I. A SEVEN YEAR MAXIMUM TERM BETTER BALANCES QF OPPORTUNITIES TO ACCESS CAPITAL FROM THE MARKET AGAINST CUSTOMER INDIFFERENCE.

Through Mark Tourangeau's direct and rebuttal testimony, the Company has provided the Commission with ample reasons why a seven year maximum term length for Wyoming QFs is warranted. The consideration underlying each of Mr. Tourangeau's reasons for a reduction is the customer indifference principle. As detailed in his testimony, changes in the energy industry have shifted the balance between PURPA's "must take" obligation and customer indifference towards QFs, and a reduction in the maximum term length of QF PPAs is an appropriate tool to use to help restore that balance.

1. The Commission has Broad Authority to Establish Maximum QF PPA Terms.

The Commission has broad authority to grant the Company's request for a reduced maximum QF PPA term length, and it is well within the boundaries set by PURPA's rules and regulations.[3] In granting states such broad authority, FERC recognized that the "economic and regulatory circumstances vary from State to State and utility to utility."[4] No party in this proceeding has questioned this Commission's ability to grant the Company's request for a reduction in the maximum QF PPA term length from 20 to seven years.

[3] 23 FERC P 61304, at P 6146.
[4] *Order No. 69*, 45 Fed. Reg. at 12,231.

Other states have approved terms across a wide range, including terms that are substantially shorter than the seven years requested by the Company.[5] None of these shorter maximum term lengths have been reversed by FERC. Indeed, the clearest guidance FERC has offered with regard to what an acceptable term length for a long-term QF PPA under PURPA was provided in the *Windham Solar* case.[6] In that case FERC stated that "a legally enforceable obligation should be long enough to allow QFs reasonable opportunities to attract capital from potential investors."[7] A reasonable opportunity does not mean the best possible opportunity for QFs to get the lowest possible borrowing rates or the highest levels of leverage possible.

Mr. Tourangeau provided extensive testimony and evidence regarding the changes in capital markets for renewable energy that have occurred, shifting the definition of what constitutes a financeable renewable energy project. Projects have been financed across the country at terms of 15 years or less.[8] Innovative financing approaches such as syndicated debt, the United States Department of Agriculture's ("USDA") Rural Energy for America Program ("REAP"), bank hedges and other financing mechanisms are available in addition to more traditional sources of funding.[9] At the same time there is an increasing pool of investment dollars that seek renewable energy investments. "[C]apital markets for renewables development are open for business. They are broad, deep and highly creative. There are hundreds of billions of dollars chasing renewables development in North America, guaranteeing that any developer with a creditworthy contract will have a reasonable opportunity to finance a project regardless of length."[10]

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[5] Direct Testimony of Mark Tourangeau, at p.15 line 5 through p.17 line 11.
[6] *Windham Solar,* 157 FERC 61.134.
[7] *Id.* At ¶ 8.
[8] Tourangeau Direct at p. 24 lines 15-18.
[9] *Id.* at p. 24 line 21through p.27 line 14.
[10] Tr. 45: 13-19.

Rocky Mountain Coalition for Renewable Energy ("RMCRE") criticized Mr. Tourangeau's testimony stating that most of the PPAs he cited that have terms shorter than 20 years are 15-year PPAs.[11] While the characterization that most of the PPAs Mr. Tourangeau cited were 15-year PPAs is numerically accurate, at hearing Mr. Tourangeau made clear that 34 percent of the cited PPAs (on a megawatt basis) were for ten years or less.[12] Thus the point remains, PPAs of 10 years or less will have reasonable opportunities to attract capital in the markets to finance their projects. RMCRE witness, Mark Klein made it absolutely clear that PPAs for his company's projects were financeable with 15 year PPAs, and that they had explored financing at 10 year terms.[13] In response to questioning by Chairman Fornstrom, Mr. Klein then admitted that tax equity sponsors and debt providers he had spoken to would be willing to finance a project with a PPA term as low as a 10 years.[14] Mr. Klein also admits that he never explored the possibility of financing a project with a 7-year PPA term.[15]

The real impact of term length on QF developers is on the returns they are able to achieve for a given project. With the deep and innovative capital markets for renewables in North America, QF developers are able to lean on the Company's strong credit ratings to achieve greater returns.[16] Reducing the term length may reduce a developer's ability to achieve the same level of leverage they would otherwise been able to apply to their project, and so they will have to put more of their own equity at risk in a given project.[17] RMCRE witnesses Isern and Klein support this concept, longer terms provide projects with greater debt capacity, and therefore the developers are able to

[11] Isern Direct at p.11 lines 218-223.
[12] Tr. 139: 22-23.
[13] Tr. 453: 5-16.
[14] Tr. 474: 7-10 ("Well, you know, going through the process of trying to obtain financing for the 15-year ad dealing with tax equity sponsors, debt providers, about as low a PPA term as they would go is ten years…").
[15] *Id.*
[16] Tourangeau Direct at p.25 line 10 through p.26 line 5.
[17] Tourangeau Rebuttal at p 20 lines 12-15.

achieve higher returns on their investments.[18] Correspondingly shorter terms require greater equity investment from project owners, and Mr. Klein acknowledges that, while the need for a greater equity stake in a project presents challenges, it does not make such investments impossible.[19]

In response to questions from Commission Staff, Mr. Klein also made clear that the difference in returns between a 15 year project his company was pursuing in Montana and a 25 year term project was about 150 basis points.[20] So a ten year reduction to the term length meant 1.5 percent less in terms of returns for a developer. Mr. Klein also stated in response to questioning from Chairman Fornstrom, that the general range of unlevered returns for solar projects (which are lower than those for wind) "falls between 6 percent and 8 percent."[21] Assuming Mr. Klein's estimates of these returns are based on the 15 to 25 year PPAs his company has engaged in, and that a 10 year reduction in Wyoming's maximum term length would result in the 150 basis point reduction he indicated was the difference between the 25 year Montana project and the 15 year Montana project. This answer suggests that for each year reduction in PPA term the project will see a 0.15 percent reduction in its unlevered return on equity. Taking this assumption further, if the Commission set the maximum term length at 10 years in Wyoming, QFs would still earn a 5.25 percent return on their investments, on an un-levered basis.[22] Even accepting the fact that the basis point reduction Mr. Klein referenced may not be perfectly linear, the returns on the seven year term the Company has requested the returns are unlikely be negative, and to the extent a QF is able

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[18] Tr. 419: 19 through 421: 16; and Tr. 454: 9-18.
[19] Tr. 454: 19-23.
[20] Tr. 468: 15 through 469: 6.
[21] Tr. 475:20 through 476:1.
[22] A 6.00% return for 15 years less a five year term reduction at 0.15% per year (0.75%). 6% - 0.75% = 5.25%.

to lever the project at all, their returns could be substantially higher than the 6 and 8 percent Mr. Klein referenced.[23]

Taking things a step further, after the initial PPA term, once the debt is paid down the equity owners will still own the project. While the future is always uncertain there will be remaining economic value for the owners of the project at that time. Assuming that PURPA remains in effect they will have the opportunity to again sell to the Company or another utility as a QF at avoided costs under a long-term contract.[24] Even if the Company joined a regional transmission organization or independent system operator with an organized wholesale market, and was no longer subject to PURPA's must take obligation for a given QF, that facility would be able to sell its output at the market price.[25] At a seven year term, even assuming that the developer earns a lower unlevered return for that PPA, the developer is still able to finance its project and then reap the gains, whether through a market, or subsequent QF PPAs for the remaining life of the project. Accordingly, a seven year term clearly meets FERC's *Windham Solar* requirement that the maximum term be such that QFs have reasonable opportunities to attract capital from potential investors, and is well within this Commission's authority. Given the testimony received at hearing, there can be no doubt that this standard is met at any term greater than the seven years the Company has requested, and witnesses involved in developing larger QF projects have testified that 10 year PPAs are certainly financeable.

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[23] *See e.g.*, Tristan Yates, *Leveraged Investment Showdown*, Investopedia, June 25, 2019 ("Leveraged investing is a technique that seeks higher investment profits by using borrowed money. These profits come from the difference between the investment returns on the borrowed capital and the cost of the associated interest."), available at https://www.investopedia.com/articles/optioninvestor/07/sources-leverage.asp, last visited August 8, 2019; *also see*, § 1:13.Effect of leverage on return, 1 Tax Asp. Real Est. § 1:13 (table demonstrates effect of levels of leverage on an investment expected to appreciate at 4 % annually. At 50 % leverage the return on equity ("ROE") is 8 %, at 66 2/3 % ROE is 12 %, at 75 % ROE is 16 %, and at 80 % ROE is 20 %.).

[24] Tr. 455:7 through 457: 4. (Mr. Klein agrees that if PURPA is still in place the project will still be a QF, and will still have an opportunity to sell to utilities under the "must take" obligation.).

[25] *Id.* (Mr. Klein agrees that even if an ISO is formed and the "must take" obligation for larger QFs goes away, the project would still be able to sell its output into the market after the initial seven year term expires.).

2. Comparisons to Company-Owned Resources, and Non-QF PPA Terms Are Inapt.

Several parties attempt to compare the long-term commitments that the Company makes when it builds its own projects with the relatively shorter seven year maximum term that the Company proposes for QF PPAs in its Application. These comparisons are inapt for a couple of important reasons. First, the Company's legal duty as a public utility to serve its customers with safe, reliable and affordable power is ongoing and necessarily open-ended. Long-term commitments for resources pair well with this duty and match the risks the Company faces if it were to violate its duty to the public. QFs have no such legal duties to the public. Second, the context of the Company's resource procurement is entirely different than that of a QF. When the Company seeks to procure resources for its customers it is subject to regulatory scrutiny and must justify its procurements in light of meeting customer needs. QFs are not procured, but rather are federally mandated purchases that do not involve a consideration of customer needs beyond ensuring that they remain indifferent to purchase under the mandate.

Kevin Higgins, for example, in his testimony for the Wyoming Industrial Energy Consumers and Two Rivers Wind ("WIEC/TRW") cites the "open-ended" and "ongoing" nature of customer obligations for utility-owned generation resources in an attempt to contrast these obligations with QF PPAs which are fixed term and mostly fixed price obligations.[26] While this comparison may seem appropriate at a high level, it falls apart upon a deeper analysis. Mr. Higgins agrees that the Company's duty to supply customers with safe, reliable power does not expire and is open-ended.[27] The Company procures resources because of this duty. The open-ended obligations customers face with respect to Company-owned resources are a natural consequence of the Company meeting its duty. It is, in fact, one of the fundamental bedrocks of utility

[26] Higgins Direct at p.21 lines 19-20, and p.22 lines 1-5.
[27] Tr. 257:22-25 (Mr. Higgins agrees that the Company's duty does not expire).

regulation. Utilities are incentivized to invest in resources to ensure safe, reliable power long into the future only to the extent they are assured recovery for those investments through rates. Mr. Higgins agrees that customers expect reliable electricity supply 24/7, and part of meeting that expectation is that the Company must have sufficient resources to meet its customers' demand for electricity at any time.[28]

On the other hand QFs and their owners are not public utilities, a point to which the WIEC/TRW, RMCRE, and Renewable Energy Coalition ("REC") witnesses all agree.[29] Each of these parties also generally agreed at hearing that PPA contracts dictate the scope of a QF's liability for non-performance.[30] QFs can and frequently do fail to perform at all in spite of their contractual obligations.[31] In contrast the Company, as a public utility, has an ongoing obligation to serve its customers. That duty includes providing safe and reliable power on a 24/7 basis. That duty is open-ended and ongoing, and it even extends to providing replacement power should planned for QFs fail to perform under their PPAs, which could increase costs for customers.[32] The tools used to ensure that rates remain just and reasonable are not the same as those used to determine whether customers remain indifferent to a QF PPA. WIEC/TRW's witness agrees that the risk of cost disallowance is a disincentive to imprudent Company investments in resources it owns and operates.[33] The Company uses its IRP to procure resources for its customers on a least-cost, least-risk basis. REC/RMCRE's witness Dr. Kaufman agrees that "ensuring the Company's customers

[28] Tr. 258: 14-19.
[29] Tr. 259: 1-4 (); Tr. 381:12-14; Tr. 459: 2-7 (collectively, WIEC/TRW witness Higgins, REC/RMCRE witness Kaufman, and RMCRE witness Klein all agree that a QF is not a public utility).
[30] Tr. 259: 5-14; Tr. 381: 15-17; Tr. 459: 8-16.
[31] Hellman/Kaufman Direct at p.64 line 4 through p. 66, line 3; Tr. 386: 14-21.
[32] Tr. 384: 2 through 385:11.
[33] Tr. 268:4 through 269:16.

remain indifferent to the purchases mandated by PURPA entails a different analysis than would ensuring prices reduce customer risk[.]"[34]

WIEC/TRW, REC, and RMCRE each pointed to the Company's ownership and procurement of resources outside of the PURPA context. They attempted to contrast the risks of utility procurement against those associated with QF PPAs, and to allege unfairness in the apparent disparate treatment presented by the Company's proposed modifications to the term length. Yet, at hearing witnesses acknowledged that QF PPAs are in fact very different. QFs do not have ongoing commitments outside of their contracts to provide power to customers, they do not have open-ended legal duties to the public. Those duties remain with the Company, and QFs are but one tool available to the Company to meet these obligations, and that tool has become increasingly less useful in light of the evolution of the electricity markets since PURPA's passage and enactment.

Even in the event that a QF fails to meet its contractual commitments to supply power to the Company, the Company must find replacements for that QF power for its customers. The tools and regulatory mechanisms to ensure that the Company makes prudent long-term investments are fundamental to utility regulation, and provide disincentives against bad investment decisions. The tools that control QF investments (e.g., the "must take" obligation, avoided costs, and customer indifference), are limited by statute, regulation and this Commission's policy decisions. Finally, the analysis of what constitutes a least-cost, least-risk resource in the Company's planned portfolio is very different than an analysis that ensures customers are indifferent to the costs of a QF PPA. The Commission should therefore not be swayed by these arguments. The question under PURPA

[34] Tr. 395:12 through 396:17.

is not, is the term length or pricing fair in light of utility procurement? The question is, are customers being held indifferent to QF purchases in light of PURPA's must purchase obligation?

3. <u>A reduction to the Maximum QF PPA Term is Necessary to Restore the Balance between Customer Indifference and PURPA's "Must Take" Obligation.</u>

QF interested parties in this matter, namely WIEC/TRW, REC and RMCRE, have alleged that the Company, in proposing a seven year maximum PPA term, is seeking to hinder QF development in Wyoming. This is not at all true. The Company's proposed reduction in the term length is intended to restore the economic balance between QFs on the one hand and the Company's customers on the other. These parties are fighting this proposal because rebalancing Wyoming's PURPA implementation will cause them to earn somewhat less money.

Company witness Tourangeau said as much in response to questioning from Deputy Chair Throne. These parties, which largely represent QF interests, "don't like the fact that they'll have to put more skin in the game themselves because they may have a lower debt service or a higher debt service coverage, and so it's not that they can't attract capital, they just don't like that they probably have to put more equity in to attract that capital. They can extract as high of returns, but this is a zero sum game. The more returns they're earning, the worse that is for our customers, and I think that's where you have to turn around and take a look at this and say, okay, they're able to leverage these up, get really low financing rates. The people financing have a very steady stream of income because they're using our credit and our customers' credit to finance -- you know, to get financing on these very long-term contracts. So they're winning. Our customers are losing."[35]

This Commission has the authority to adjust its PURPA implementation based on Wyoming's economic circumstances. The record in this case is clear. Economic circumstances for

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[35] Tr. 167:3-18

both renewable and non-renewable energy development in Wyoming and across the nation have changed drastically in the past 10 years. Electricity demand is flat or declining in much of Wyoming, and new technologies for energy storage are likely to become cost effective in the near future.

Company witness Tourangeau provided evidence that the levelized cost of new renewable resources has rapidly declined over the past ten years.[36] Technological innovation has driven this continued reduction in costs. While some of these declines are captured in the Company's IRP process and models, and therefore are reflected in the Partial Displacement Differential Revenue Requirement ("PDDRR") methodology, the pace of change has been so fast that these changes often outstrip the Company's biennial IRP cycle. Locking in 20 year contracts at prices that have so quickly become outdated leads to customers bearing costs that no longer reflect the Company's true avoided costs, and therefore prices which they are not indifferent to over time. Shorter QF PPA term lengths lead to less exposure to these changes over time. While discussed in more detail below, many of the changes to Wyoming's regulatory circumstances such as the Company's participation in the EIM also drive economic considerations that weigh in favor of a reduced term length.

Wyoming's regulatory circumstances also require a shorter term length to ensure that customers remain indifferent to long-term PPAs with QFs. None of these regulatory circumstances operate in isolation from the other support the Company has provided for a seven year term. The hundreds of billions of dollars available to finance renewable developments in North America, and the innovation in financing tools and the declines in cost for new renewable development all operate in concert with the changes in regulatory circumstances. Where ten years ago a developer

[36] Tourangeau Direct at p. 17 (see table).

may not have been able to finance a project at a seven year or even a 10 year term, now it is reasonably possible, meaning that the Commission now has greater leeway to adjust term lengths within the boundaries specified by FERC to achieve a balance between customer indifference and PURPA's must-purchase mandate.

One area of regulation that has not changed drastically in the past ten years, but where the Commission now has a greater ability to achieve balance is the trade-off that occurs when resources are contracted for through PURPA instead of through IRP driven procurements. The Company provided ample testimony and evidence regarding this trade-off, but the crux of the matter is fairly simple. QFs are procured at a price that ensures customers will be no worse off than if they had purchased the same energy and capacity from the Company, otherwise known as avoided costs. This is a different analysis than for the procurement of resources when needs are identified in its preferred portfolio in an IRP. There the Company seeks to procure resources on a least-cost, least-risk basis. To do so the Company has a number of tools available that may yield even more benefits for its customers than it initially estimated.[37] It can issue a request for proposals ("RFP") where its customers can benefit from price discovery and competition to acquire the least cost resources available.[38] It can identify other alternative ways to meet the IRP identified needs that do not involve building or procuring generation.[39]

Contrast this with QFs, the IRP is used to determine avoided cost pricing through the PDDRR methodology, but because of the strictures of PURPA the Company is not allowed to test

[37] Tr. 272:23 through 273:8 (WIEC/TRW witness Higgins agrees that its possible for the Company to identify benefits beyond the IRP estimates).
[38] Tr. 237:9-22 (Higgins agrees that RFPs are one way the Company may identify benefits that are more beneficial than IRP estimates, that they allow for price discovery, and can lead to lower costs).
[39] Tr. 273:23 through 274:2 (Higgins agrees that the Company can also identify alternative ways to meeting customer needs aside from purchasing or procuring generation).

that pricing against competitors through an RFP.[40] To the extent customer needs are met by QFs, the Company's customers are deprived of the use of tools that could otherwise bring them more beneficial prices, or resources that are more tailored to needs . Customers are not indifferent to this trade-off, but reducing the maximum term length of QF PPAs reduces customer exposure to these QF impacts.

Another regulatory circumstance that justifies a shorter term is that independent developers of renewable generation in Wyoming now have multiple ways to bring their projects to market beyond PURPA.[41] The Company is increasingly identifying renewable energy resources as least cost, least risk resources for its customers. The Company's Energy Vision 2020 ("EV2020") is one example. In EV2020 wind developers in Wyoming had the opportunity to compete with other developers and the Company to supply up to 1150 MW of power over a long–term. Ultimately both Company and non-QF PPAs were selected through that process.[42] Green tariffs, which allow the Company's large customers in Utah to contract for new renewable generation to meet their sustainability goals provide further new opportunities for renewable developers to sell their power.[43] These regulatory changes are not PURPA related, but they demonstrate that, unlike in the past, PURPA is not the only tool this Commission has to encourage independent developers to

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[40] Tr. 274:19-23 (Higgins agrees that the Company cannot run RFPs to find out whether there is a cheaper alternative to a QF).

[41] Tourangeau Direct at p.11, line 6-21.

[42] *See generally*, *In the Matter of the Amended Application of Rocky Mountain Power for Certificates of Public Convenience and Necessity and Nontraditional Ratemaking for Wind and Transmission Facilities,* Wyo. P.S.C. Docket No. 20000-520-EA-17; Record No. 14781; (the Commission's order approving a stipulation in the Wyoming EV2020 proceeding was issued on October 8, 2018).

[43] *See e.g.,* Rocky Mountain Power Electric Service Schedule No. 34, State of Utah, (available at https://www.rockymountainpower.net/content/dam/pcorp/documents/en/rockymountainpower/rates-regulation/utah/rates/034_Renewable_Energy_Purchases_for_Qualified_Customers_5000kW_and_Over.pdf); *and see*, Pacific Power, Oregon Schedule 272, Renewable Energy Rider, Optional Bulk Purchase Option, (available at https://www.pacificpower.net/content/dam/pcorp/documents/en/pacificpower/rates-regulation/oregon/tariffs/rates/272_Renewable_Energy_Rider_Optional_Bulk_Purchase_Option.pdf).

build new renewable projects in Wyoming. Indeed, these other mechanisms allow more flexible terms, like the ability to dispatch them based upon economic merit, that can provide more value to the Company's customers than QF resources.[44] At present, QFs are disincented to explore these alternatives, as they receive a comparable term length at the maximum price customers might be willing to pay, without requiring them to make a competitive bid.

The Company's participation in the energy imbalance market, or EIM, which is administered by the California ISO, is another regulatory change that weighs in favor of shortening the maximum term length for Wyoming QFs. Because of the "must take" obligation imposed by PURPA, the Company is required to dispatch QFs whenever they are available to provide energy, except if the Company is experiencing a system emergency or low load situations.[45] The EIM has enabled the Company to provide its customers with an economic benefit because it allows the Company to take negatively priced energy from California when it is overproducing renewable energy during peak solar hours. The Company has been able to achieve $136 million in savings since EIM's implementation. However, those savings could have been greater. QFs cannot be dispatched down when these negative prices occur, so essentially the QF prevents customers from procuring that low or negatively priced energy. The Company has estimated that cost to customers over 2017 and 2018 to be $327,506 for just one 140.7 MW nameplate capacity QF in Wyoming.[46]

RMCRE witness Isern contends that the impacts of the negative prices in the EIM are already accounted for in the Company's GRID modeling.[47] However, Company witness MacNeil demonstrates that this is not the case because the GRID model does not account for the intra-hour

[44] Tourangeau Direct at p. 12, lines 1-4.
[45] *Id.* at p. 12, lines 22-23.
[46] Tourangeau Rebuttal at p. 8, lines 11-20.
[47] Isern Direct at p.9, Lines 172-180.

variations in pricing that are inherent to the EIM's dispatch.[48] Mr. MacNeil also explains how the GRID model does not account for the inter-regional transfers associated with the EIM.[49] Indeed, at hearing Mr. Isern agrees that the GRID model does not model intra-hour variations in load.[50] He also admits that he has not performed analysis to determine the impact of QFs in Wyoming on the Company's participation in the EIM.[51] The Company has provided analysis regarding these impacts, and demonstrated that non-dispatchability is a cost that customers are not indifferent to that is imposed on them through QF PPAs. Reducing fixed price QF contract lengths will increase the Company's options to respond to changing conditions, including the EIM, and better align the allocation of risk between QFs and customers in accordance with customer indifference.

II. THE AVOIDED COST CHANGES AS MODIFIED BY COMPANY TESTIMONY IMPROVE AVOIDED COST PRICING IN WYOMING AND SHOULD BE ADOPTED.

The majority of the changes proposed in the Application to the Company's avoided cost methodologies have the support of the parties in this proceeding. WIEC/TRW support all of the Company's proposed modifications, with the exception of the like for like capacity deferral proposal. The Office of the Consumer Advocate ("OCA") supported all of the Company's proposed changes.[52] The Northern Laramie Range Alliance ("NLRA") does not take a position on the Company's proposed changes to the avoided cost methodology. On behalf of WIEC/TRW Mr. Higgins proposed that the Commission allow a waiver of the like for like deferral "if the timing of the next deferrable wind and solar resources begins to diverge substantially,"[53] and recommended

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[48] MacNeil Rebuttal at p.26, line 17 through p.27, line 7.
[49] *Id.* at p.27, lines 8-18.
[50] Tr. 389:5-13
[51] Tr. 390:20 through 391:9.
[52] Kolb Direct at p.13, line 25 through p. 14, line 6.
[53] Higgins Direct at p.5, lines 3-8.

that the Commission reserve flexibility to allow a cogeneration QF to argue that it should be able to defer a need for solar or wind identified in a Company IRP.[54]

RMCRE's independent witnesses provided no testimony disagreeing with the Company's proposed avoided cost changes, though the testimony it provided jointly with the REC did take issue with a number of those changes. REC's witnesses took issue with a number of the avoided cost changes proposed by the Company, and proposed its own additional changes. With respect to the like for like deferral proposed by the Company, wherein a renewable QF will be allowed to defer resources of the same type identified in the IRP preferred portfolio, or, if none, then the next deferrable thermal resource, or, if there are none of those, then front office transactions. The RMCRE/REC joint witnesses, Drs. Hellman and Kaufman object to this proposal and instead propose that capacity deferral be based solely on capacity contribution, without regard to resource type.[55]

Drs. Hellman and Kaufman's testimony fails to account for the fact that through the IRP modeling process the Company identifies resources based on factors are not directly tied to the capacity-equivalent cost. Other factors, including seasonal variations in output, the types of resources in the Company's existing portfolio, geographic diversity and resource potential affect the inclusion of one resource type over another. Mr. MacNeil makes clear in his rebuttal testimony that, in order to fully account for these other factors, a model that is as complex as the IRP modeling would need to be performed with each avoided cost pricing run.[56] Accordingly, the like for like proposal is a reasonable alternative to this intensive modelling process that captures other variables related to different resource types, without burdening the Company's avoided cost pricing process,

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[54] *Id.* at p. 33, lines 14-17.
[55] Hellman/Kaufman Direct at p.5, lines 5-17.
[56] MacNeil Rebuttal at p.9, line 18 through p.10, line 4.

which can see large numbers of requests throughout a given year.[57] In contrast, the alternative proposed by Drs. Hellman and Kaufman would diminish the accuracy of avoided cost prices, as demonstrated by Table 6 in Mr. MacNeil's rebuttal testimony. The Company's proposal is the most reasonable way presented in the record to ensure that the forecast of avoided cost prices for a given QF project maintains a comparable risk profile to the IRP preferred portfolio. The evidence provided by Drs. Hellman and Kaufman in support of their alternative proposal fails to demonstrate that their changes would result in more accurate avoided costs.

Drs. Hellman and Kaufman also object to the changes to the definition of on-peak and off-peak hours in the Company's proposed Schedule 37 changes.[58] Drs. Hellman and Kaufman contend that RMP should use similar definitions across all of its tariffs and filings, specifically referencing the Company's Schedule 46 tariff, which uses a different on-peak definition.[59] Mr. MacNeil demonstrates why this concern is unfounded, and how Schedule 37 customers will be appropriately metered, and the more accurate calculation of avoided costs is in keeping with PURPA's customer indifference standard.[60] Mr. MacNeil also demonstrates that Drs. Hellman and Kaufman's claim that the wrong prices to determine the new definitions are incorrect and would have very little impact on the Company's definitions.[61] The OCA supports the Company's proposal in this regard, given the minimal differences.[62] Finally, the Company has proposed to adopt the revenue neutrality in the summer and winter months that Drs. Hellman and Kaufman proposed.[63] Therefore, the Company recommends that the Commission adopt the Company's modified proposal for on-peak and off-peak definitions in Schedule 37.

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[57] Tr. 287:7-11.
[58] Hellman/Kaufman Direct at p.69, line 14 through p.73, line 17.
[59] *Id.* at p.73, lines 2-4.
[60] MacNeil Rebuttal at p.18, line 22 through p.21, line 12.
[61] *Id.* at p.22, lines 8-15.
[62] Tr. 547:20-22.
[63] MacNeil Rebuttal at p.25, line 3 through p.26, line 7.

REC witness Lowe, and Drs. Hellman and Kaufman, jointly for RMCRE and REC, also object to the 10 MW resource cap under Schedule 37. It is important to note that this cap is not a change proposed by the Company, and it exists in the current Schedule 37. The purpose of the cap relates to the time it takes for new Schedule 37 prices to take effect under Wyoming's current procedures. In its Application the Company initially proposed to update Schedule 37 prices annually, which based on past experience, will lead to prices always being 9-21 months out of date. Limiting the number of resources between updates prevents QFs beyond the 10 MW from taking advantage of prices that are outdated, and helps to preserve customer indifference as less resources will be able to contract at prices that are out of step with more current estimates of avoided costs.

As an alternative to the 10 MW cap, Drs. Hellman and Kaufman propose a 100 MW cap, but the Company has proposed a modification to its initial proposal that is more reasonable. The Company has committed to filing an update to its Schedule 37 prices within 30 days after the point when the 10 MW cap is reached, in addition to its annual updates. In the interim, until the new rates are approved, the Company would use project-specific prices using the Schedule 38 methodology. The Company is also open to exploring ways in which the pricing update process at the Commission could be expedited to limit potential periods between Schedule 37 pricing update filings and approval of that new pricing. The Company's proposal will preserve customer indifference, while limiting the time periods during which small QFs are exposed to less certain avoided cost pricing.

Mr. Lowe and Drs. Hellman and Kaufman also proposed that QFs should have the option of receiving non-renewable avoided cost prices by electing to defer non-renewable resources, and then be allowed to keep the renewable energy certificates associated with their generation. This proposal fails to properly account for Wyoming's particular regulatory and economic circumstances, and appears to be imported directly from Oregon's PURPA implementation. It would remove the economic value that customers are currently receiving from the sale of renewable energy certificates by the Company on their behalves. It is inconsistent with and fails to address Commission precedent on this point, and may be at odds with FERC precedent.

In past Commission dockets the issue of whether renewable energy certificates should transfer with the energy provided by a QF was argued extensively on very similar grounds to those raised by Mr. Lowe and by Drs. Hellman and Kaufman.[64] Indeed, the Commission has found that renewable energy credits "are a key component used to mitigate, to an extent, the effects on customers…" and that "The Commission…reiterates its position that RECs should stay with the utility."[65]

Mr. Lowe's testimony, and Drs. Hellman and Kaufman's position in this regard, completely ignores Commission precedent on this matter, and attempts to re-litigate settled matters. Moreover, Mr. Lowe makes no secret that he seeks the same treatment with respect to renewable energy credits as Oregon provides, citing that process directly in his testimony.[66] At hearing Mr. Lowe acknowledged the fact that the Company sells renewable energy certificates produced by Wyoming QFs on behalf of its Wyoming customers.[67] He also acknowledges that in Oregon the current methodology for non-renewable and renewable avoided cost prices results in certain resources receiving higher prices for non-renewable avoided costs, even though the QF is providing less economic value, since it retains the renewable energy certificate. Mr. Lowe also

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[64] *See e.g.,* Memorandum Opinion, Findings and Order, Docket No. 20000-388-EA-11, at ¶¶ 30, 33-34, 36, 43, 63-65.
[65] *Id.* at ¶ 63.
[66] Lowe Direct at p.17, lines 368-387.
[67] Tr. 490:11-20.

demonstrates a limited understanding of Wyoming's regulatory and economic circumstances, and stated that he doesn't "know why there would be any major differences" between Oregon and Wyoming.[68]

The above facts alone suggest that the proposal to adopt renewable and non-renewable avoided cost pricing should be disregarded, but FERC precedent also provides an impediment. In a January 20, 2011 order, FERC explained that PURPA and FERC's regulations do not prohibit the concept of multi-tiered avoided cost rates to address tiered procurement mandates, and that states may take into account obligations imposed by the state that utilities purchase energy from particular sources of energy for a long duration.[69] This FERC order makes clear that tiered avoided cost rates are potentially appropriate in situations where a state has imposed a particular purchase mandate, such as a renewable portfolio standard. However, Wyoming has no renewable portfolio standard, or other mandates with respect to renewable energy, so establishing two-tiered pricing as REC and RMCRE propose likely violates FERC regulations on avoided costs. For all these reasons the proposal to allow QFs to elect renewable or non-renewable avoided costs, and whether to retain the renewable energy certificates produced should be rejected.

III. THE PROPOSED CHANGES TO THE SCHEDULES 37 & 38 CLARIFY THE LANGUAGE, STATE EXISTING PRACTICES BY THE COMPANY, OR DIRECTIVES FROM COMMISSION ORDERS AND SHOULD BE APPROVED.

In addition to a change to the maximum QF PPA term length, and the changes proposed to avoided cost pricing, the Company proposed several housekeeping changes to the texts of Schedules 37 & 38. These changes were not intended to change current practices, but rather to 1) make the text easier to read and understand; 2) put into writing longstanding Company policies

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[68] Tr. 492:17-21.

[69] 134 FERC ¶61,044 at paragraph 32.

and practices so that QFs have a more complete picture of the process; and 3) incorporate Commission guidance since the last updates to the tariffs. Despite the Company's goals for these changes, several parties took issue with some of changes proposed.

Perhaps the largest area of dispute was put forth by REC. REC witness Lowe objected to Wyoming's Schedule 37 process and proposed that the Commission adopt the same informational requirements and timelines used in the Company's Oregon Schedule 37.[70] At hearing Company witness Tourangeau testified that the current version of the Company's Wyoming Schedule 37 does not include any negotiation procedures, and that the Company's practice in lieu of such procedures has been to use the Company's Schedule 38 procedures as a guide.[71] It was this practice that the Company intended to commit to writing in the Application by adding that "the Company will negotiate power purchase agreements under this Schedule in accordance with the procedures in the following sections of Schedule 38: I.A, I.B.1, IB.4 through IB.8, and all of Sections II and III."

As Mr. Tourangeau stated in response to questioning from REC's counsel, the Company was seeking to "streamline and to make very clear what the procedures are" and the intent was to "indicate timelines and a very robust process" so that any QF, regardless of size, would have an understanding of the time and requirements to move through the PPA negotiation process.[72] Upon further questioning by REC counsel it was made clear that not all of the elements of the Schedule 38 PPA negotiation process are directly applicable in the context of smaller Schedule 37 QFs.[73] This exchange highlights some ambiguity in the language the Company added to Schedule 37, "in accordance with" was not intended to mean "follow exactly," as Mr. Tourangeau made clear it was

[70] Lowe Direct at p. 22, line 490 through p.23, line 509.
[71] Tr. 174:6-15.
[72] Tr. 81:4-10
[73] Tr. 81:11 through 86:8

intended to state the Company's existing practice, where it uses the general process and timelines of Schedule 38 as a guide when negotiating PPAs with Schedule 37 QFs.

The Commission is now presented with the potentially ambiguous language proposed by the Company on the one hand, and the proposal from Mr. Lowe to adopt all of the procedures and timelines used in Oregon on the other. There are no other alternatives presented in the record. However, the Oregon Schedule 37 and Wyoming Schedule 37 are "quite different" and adopting Mr. Lowes proposal would therefore be problematic.[74]

Mr. Lowe claimed to have worked on the first version of Oregon's Schedule 37 when it was developed in the "2000 to 2002-2003 timeframe," but expressed very limited knowledge of the development of Wyoming Schedule 37.[75] Mr. Lowe also does not recognize economic and regulatory difference between Wyoming and Oregon.[76] Mr. Lowe's recommendation to adopt the same timelines also fails to account for a key distinction between Schedule 37 in Oregon and Schedule 37 in Wyoming. The Oregon Public Utility Commission has approved form contracts that are largely non-negotiable by either the QF or the Company, therefore the timelines there can be much shorter.[77] Adopting the same exact timelines as used in Oregon, would cause problems since, "[t]here's more work done to create each contract since they're not standard."[78] Mr. Lowe's proposal to simply adopt the timelines and information requirements of Oregon's Schedule 37 is therefore not workable, and ignores key differences between Oregon's Schedule 37 process and Wyoming's. At the same time the Commission may be hesitant to adopt the Company's proposed negotiation process for Schedule 37 given Mr. Tourangeau's exchange with REC counsel.

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[74] Tr. 174: 16-18.
[75] Tr. 494:11 through 495:5.
[76] Tr. 492:17 through 493:8.
[77] Tr. 174:19-25 (Mr. Tourangeau explains that Oregon's Schedule 37 process includes a predrafted, predetermined form of contract, whereas Wyoming does not).
[78] *Id.*

The Company's existing practice for Schedule 37 QFs in PPA negotiations has been to generally follow the Schedule 38 process, as applicable. This practice has worked well up to now, and there have not been complaints from Schedule 37 QFs regarding it. In light of the fact that the existing practice has not been problematic, the Commission could order that the newly proposed negotiation process language be struck, and acknowledge the Company's existing practice. This resolution would avoid the unintentional ambiguity of the Company's proposed language, and provide some helpful guidance to the Company and potential QFs. Alternatively, the Commission could order the Company to modify the language to make it clear that the Schedule 38 timelines and procedures will be used as a guide for Schedule 37 and that strict compliance with the process will not be required for Schedule 37 QFs where Schedule 38's terms are inapplicable. Unfortunately, there is not a sufficient record in this proceeding for the Commission to order more substantive changes to Schedule 37, but the Company would be open to re-examining its tariff language in the future. Accordingly, the Commission may also order either of the foregoing proposed solutions, and also direct the Company to file additional proposed changes to Schedule 37 at a future date.

Another issue that was raised with respect to the Company's proposed tariff changes came only at hearing when REC's counsel, and Deputy Chair Throne asked several questions with regard to the Company's changes to Schedule 38, Sections I.B.3, and I.B.5. In those sections the Company proposes to replace the absolute timing requirements for providing indicative avoided cost pricing and draft PPAs for negotiation with a requirement that it make "reasonably diligent efforts."[79] Mr. Tourangeau explained the Company's reason for this change, noting that requests from QFs for pricing are "lumpy, for lack of a better word. We may go weeks, couple weeks, a month,

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[79] *See,* Tr. 86:9 through 87:6; Tr.159:19 through 161:8; Tr. 168:12 through 170:21; and Application, Exhibits 1 & 2.

without any requests, and then we'll get a number of them..."[80] The Company has faced complaints in the past where developers have claimed violations of Schedule 38 based on missing the 30 day timing for pricing by a day or two when it was inundated with pricing requests.[81] The Company modified the language to avoid such complaints when, despite its diligent efforts, and communication with the prospective QF, it cannot meet a timeline.

In her questioning of Mr. Tourangeau, Deputy Chair Throne, expressed some concern about the use of imprecise language in this section.[82] REC counsel also questioned Mr. Tourangeau "whether there are any provisions in Schedule 38 that allow a QF that sort of room?"[83] While Mr. Tourangeau answered "no," he also clarified that QFs do have options to use the dispute resolution process or file a formal complaint to the extent they feel they are not treated fairly.[84] On redirect Mr. Tourangeau also noted that there are no hard timelines for QFs under Schedule 38. If a QF takes a long time between indicative pricing to the point where it requests a draft PPA it does not have to start over, and it is not disqualified.[85]

The Company proposed these changes to provide it limited flexibility on timelines, when despite its best efforts, it cannot hit them precisely to avoid formal complaints involving minor delays. QFs are not subject to strict timelines under the tariff, and have every opportunity to dispute any claim by the Company that it has made reasonably diligent efforts if timelines are missed. Moreover, the Company takes its timing obligations seriously, and tracks these internally, but there

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[80] Tr. 160:6-22.
[81] *See e.g., In the Matter of Two Rivers Wind, LLC's Complaint Against Rocky Mountain Power and PacifiCorp for Violations of Schedule 38, the Commission's PURPA Rules, and Wyoming Statute § 37-3-112,* Docket No. 20000-534-EC-18 (Record No. 14960), Two Rivers Wind, LLC's Complaint, at ¶28-29 & 73.
[82] Tr. 169:21-23 (Deputy Chair Throne stating, "just for your education, I used to help people comply with their air quality permits. So I like specificity.").
[83] Tr. 160:23 through 161:8.
[84] *Id.*
[85] Tr. 178:18 through 179:6.

have been occasions where some additional flexibility is necessary.[86] The Company added "reasonably diligent efforts" to attempt to balance these considerations, while still preserving a QFs right to complain should it feel the Company is abusing the minor latitude the new language provides. Because the language will help avoid disputes over minor delays, and does not deprive QFs of a right to timely responses, or to file complaints, the Company asks that the Commission grant these proposed changes.

WIEC/TRW witness Higgins also objects to some of the Company's Schedule 38 tariff language. First, he objects to the addition to Schedule 38, Sections I.B.3, and I.B.7.c, stating that the Company has the right to update pricing at any time prior to PPA execution. Mr. Higgins believes this unfairly shifts negotiating leverage to the Company.[87] The Company has made clear that this language was added based on Commission guidance in its order on a recent complaint proceeding.[88]

Mr. Higgins other objection is to language added to Schedule 38, Section I.B.1, generally stating that the Company providing a pro-forma PPA to a QF is not the beginning of PPA negotiations with a QF.[89] Mr. Higgins' concern appears to be that by adding this language the Company is somehow attempting to make it more difficult for a QF to establish that it has a legally enforceable obligation to provide power to the Company outside of an executed agreement. However at hearing Mr. Higgins acknowledges that QFs are not deprived of their rights to dispute resolution under Schedule 38, or the ability to file complaints with the Commission, and accepts the fact that QFs have filed disputes based on unilateral redlines proposed to pro forma PPAs

[86] Tr. 168:21 through 170:21.
[87] Higgins Direct at p.37, line 2 through p.38, line 16.
[88] Tourangeau Rebuttal at p. 31, line 15 through p.32, line 5.
[89] Higgins Direct at p.35, line 13 through p.37, line 1.

provided under Schedule 38, Section I.B.I without ever having reached the PPA negotiation phase of Schedule 38.[90] The added language states a fact that may seem unnecessary to Mr. Higgins, but it may have avoided confusion that lead to disputes and complaints between the Company and QFs in the past. The added language makes the tariff process more clear, and QFs may still complain to the Commission and argue that they have a legally enforceable obligation, so the Commission should adopt it.

REC also takes issue with several portions of the Company's proposed tariffs, and makes arguments suggesting they are intended to limit a QFs ability to seek a Commission determination that they have a legally enforceable obligation under PURPA even without an executed contract. REC witness Lowe takes issue with a portion of Schedule 37 that the Company proposed no changes to, under the "Firm Power Time of Delivery" section. His specific concern is the statement that the prices will only be "those in effect at the time a written contract *acceptable to the Company* is signed on behalf of the Qualifying Facility… (emphasis added)".[91] Mr. Lowe alleges that by stating the executed contract must be on terms acceptable to the Company it would prevent a QF from forming a legally enforceable obligation.[92] Mr. Lowe is wrong. If the Company were to refuse to accept a PPA on reasonable terms the QF retains the option to file a complaint with the Commission and argue that is has a legally enforceable obligation to the extent the Company's refusal to accept the PPA was unreasonable. Moreover, this language allows for the proper administration of contracts by the Company, ensures that QFs do not insert unreasonable terms at the end of the process, and has been in existence for several years without issue or challenge. This language should not be changed now.

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[90] Tr. 287:20 through 288:13.
[91] Application Exhibit 2, Schedule 37, proposed Second Revision of Sheet no. 37-3.
[92] Lowe Direct at p32, line 695-714.

CONCLUSION

Through its Application, written testimony, and at the hearing the Company has presented ample evidence that the Commission should reduce the maximum term length of QF PPAs from its current 20 years, to seven years. There is no doubt about the Commission's legal authority to grant this request, and no party has challenged that authority. Instead, the question is one of policy, and a substantial record has been developed through this proceeding that will allow the Commission to make the appropriate policy determination. From the one year terms proposed by the NLRA, the seven years proposed by the Company, the 10 to 15 year range identified by the OCA, all the way up to the business as usual proposals from REC, RMCRE and WIEC/TRW, the Commission has received a range of maximum QF PPA term proposals. The Company believes it has demonstrated that a seven year term will best ensure that balance is restored and will better achieve customer indifference from QF purchases going forward.

The Company has also proposed reasonable changes to its avoided cost pricing under both Schedules 37 & 38 that will make pricing more accurate, and therefore more in line with PURPA's customer indifference principle. Finally, the Company has proposed improvements to the language of both Schedule 37 and Schedule 38. These changes are intended to make the tariffs more clear, and to incorporate existing Company practices and Commission guidance. As the Company stated in its Application, none of its proposed changes to Wyoming PURPA implementation are mutually exclusive. Each on its own will help the Commission restore the balance between PURPA's mandate that the Company purchase power offered by QFs and the core principle that the Company's customers should be economically indifferent to those purchases. While the Company believes that the entire package of changes proposed in the Application achieve the appropriate balance, the Commission has wide latitude to determine which changes are appropriate, or whether to consider the adoption of alternatives proposed by other parties.

Respectfully submitted this 8th day of August, 2019.

ROCKY MOUNTAIN POWER

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CERTIFICATE OF SERVICE

I hereby certify that on August 8, 2019, I caused to be served, via Email a true and correct copy of Rocky Mountain Power's **Post-Hearing Brief** to the following service list:

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