ROCKY MOUNTAIN POWER
A DIVISION OF PACIFICORP

1407 West North Temple, Suite 330
Salt Lake City, UT 84116

May 10, 2019

VIA ELECTRONIC FILING
AND OVERNIGHT DELIVERY

Wyoming Public Service Commission
2515 Warren Avenue, Suite 300
Cheyenne, Wyoming 82002

Attn: Chris Petrie, Chief Counsel

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

RE: 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 – Motion to Strike

Dear Mr. Petrie:

Enclosed for filing in the above-referenced matter is an original and four (4) copies of Rocky Mountain Power's Motion to Strike.

All formal correspondence and Staff requests regarding this matter should be addressed to:

By E-mail (preferred): datarequest@pacificorp.com

By regular mail:
Data Request Response Center
PacifiCorp
825 NE Multnomah, Suite 2000
Portland, OR 97232

with copies to:
Stacy Splittstoesser
Wyoming Regulatory Affairs Manager
Rocky Mountain Power
315 W. 27th St.
Cheyenne, Wyoming 82001
E-mail: stacy.splittstoesser@pacificorp.com

Jacob A. McDermott
Senior Attorney
Rocky Mountain Power
1407 W. North Temple
Salt Lake City, Utah 84116
E-mail: jacob.mcdermott@pacificorp.com

Please contact Stacy Splittstoesser, Wyoming Regulatory Affairs Manager at (307) 632-2677 if you have any informal questions.

Sincerely,

Joelle R. Steward
Vice President, Regulation

Enclosure

cc: Service List

Yvonne R. Hogle
Jacob A. McDermott
Rocky Mountain Power
1407 W. North Temple, Suite 320
Salt Lake City, Utah 84116
Telephone No.: (801) 220-2233
Facsimile No.: (801) 220-3299
Email: jacob.mcdermott@pacificorp.com

Attorneys for Rocky Mountain Power

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'S MOTION TO STRIKE PORTIONS OF THE DIRECT TESTIMONY OF THE RENEWABLE ENERGY COALITION AND OF THE ROCKY MOUNTAIN COALITION FOR RENEWABLE ENERGY

In accordance with the Rules of Practice and Procedure of the Wyoming Public Service Commission (the "Commission") and Wyoming's Administrative Procedure Act at W.S. § 16-3-108, PacifiCorp d/b/a Rocky Mountain Power ("Rocky Mountain Power" or "Company") respectfully submits this motion to strike ("Motion") certain portions of direct testimony offered by the Renewable Energy Coalition ("REC") and by the Rocky Mountain Coalition for Renewable Energy ("RMCRE"). Specifically, the Company moves to strike lines 535 through line 615 (at pp. 24-28) of John Lowe's direct testimony for REC in this proceeding; and lines 368 through line 404 (at pp. 18-20) of Mark Klein's direct testimony for RMCRE. The

Company so moves on the grounds that the subject portions of the REC and RMCRE testimonies are irrelevant and immaterial to issues presented to the Commission for decision in the Company's application and supporting testimony, and that they are also unnecessarily duplicative given that the same issues are before the Commission for determination in other dockets. The Company further moves that, should the Commission deny the motion to strike these portions of testimony, the Company be allowed additional time to submit expert testimony to rebut the factual claims made by the REC and RMCRE witnesses.

I. INTRODUCTION

In this docket, on April 1, 2019, the Wyoming Industrial Energy Consumers and Two Rivers Wind, LLC (collectively, "WIEC/TRW") jointly filed a motion to compel responses to certain data requests from the Company. The Company objected to those data requests on a number of grounds as it explained in its April 16, 2019 response to the motion to compel. One of the Company's primary objections was that the data requests requested information that fell well outside the scope of its November 2, 2018, application in this docket ("Application") and its supporting direct testimony. The Company expressed its concern that allowing discovery into interconnection-related issues would open the door to testimony and debate about an area of Wyoming's Public Utility Regulatory Policies Act of 1978 ("PURPA") implementation that is exclusively managed by PacifiCorp's transmission function ("PacifiCorp Transmission"), which is functionally separate from PacifiCorp's merchant function in accordance with Federal Energy Regulatory Commission's ("FERC") standards of conduct. Indeed, the Company's application focused only on commercial PURPA issues is sponsored by only representatives from PacifiCorp's merchant function, none of whom can speak to interconnection-related issues in any detail. Rather, both of its witnesses work on commercial aspects of PURPA,

namely pricing methodology and qualifying facility ("QF") contracting policies and procedures. Further, FERC's standards of conduct prevent the Company's transmission division ("PacifiCorp Transmission") from sharing non-public information with marketing function employees, which draws a distinct line between the parts of Wyoming's PURPA implementation that deal with pricing and contracting issues (i.e., commercial issues), and the separate, highly technical issues related to the QF interconnection process.

The Company did not offer a PacifiCorp Transmission expert's testimony for a simple reason: none of the requests for Commission action, nor the tariff and pricing changes the Company requests in its application, require the Commission to delve into the QF interconnection process to develop a robust record and reach a fully informed decision on the merits of the Application. The subject portions of testimony from REC and RMCRE ignore this scope by going on at length about interconnection requirements of the Open Access Transmission Tariff process for QFs in Wyoming ("OATT Process"). While the Company does not agree with how these parties have characterized the interconnection requirements, these mischaracterizations are beside the points raised by the Application. If the testimony is not stricken, the Company would be compelled to respond to these mischaracterizations with expert testimony, even though the Commission does not need in-depth testimony on the OATT Process to decide the issues raised by the Company's Application.

It is well-understood across the industry that the generator interconnection process on any transmission provider's system, including PacifiCorp's transmission system, can be long, and is, at times, subject to delay. The portions of testimony this motion proposes to strike are targeted such that this limited point is preserved in the testimonies. However, the impact such delays may have on the changes proposed by the Company in its Application do not require a

record that includes testimony on the meaning of various OATT Process requirements, or claims about how the Company implements those requirements. That is not the case the Company brought to the Commission, and there are other avenues available for the parties to raise such concerns. One clear example of these other avenues comes from a portion of the testimony of Mark Klein that Company proposes to strike. There Mr. Klein raises interconnection issues regarding a specific project his company is involved in that appear to be the subject of a formal complaint recently filed with this Commission.[1] The Company should not be required to defend itself against such claims in two proceedings before this Commission, especially when those disputed issues are irrelevant and immaterial to its Application. The Commission similarly should not duplicate such efforts, which would waste its limited time and resources, and risk inconsistent outcomes. Granting the Company's motion to strike will similarly not deprive the parties any due process rights. As the referenced complaint from Mr. Klein's company makes clear, parties have the ability to raise them in separate proceedings where they are actually relevant and material to the Commission's determination.

The subject portions of the REC and RMCRE testimony are targeted at the impact of interconnection timing on prospective QFs' commercial operation dates ("COD"), and the testimony on the OATT Process is extraneous and unwarranted. A host of other issues can affect COD timing, such as permitting, construction issues, or financing, and the changes proposed in the Application are indifferent to the reasons why a QF has a particular COD. The Commission does not need in-depth testimony on the facility permitting process to decide whether the fact that permitting can take a long time and push out a QF's desired COD bears

[1] *See, In the Matter or the Complaint Filing by Lincoln Solar, LLC Against Rocky Mountain Power*, Docket No. 20000-559-EC-19 (Record No. 15239).

upon the changes proposed in the Application, any more than it needs in-depth OATT Process testimony. In other words, the fact that this information *relates* to a QF's COD does not mean that it is *relevant and material* to a Commission determination on the Application. It is not. Rather than allowing this proceeding to veer in unnecessary directions on issues already before the Commission in other dockets, the Commission should grant the Company's motion to strike.

II. ARGUMENT

A. Relevant Law

Chapter 2, Section 22 of the Commission's Uniform Rules for Contested Case Practice and Procedure on admissibility of evidence is, in relevant part, as follows:

> (a) The hearing officer shall rule on the admissibility of evidence in accordance with the following:
>
> (i) Evidence of the type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible. *Irrelevant, immaterial, or unduly repetitious evidence shall be excluded.*
>
> (ii) Evidence may be offered through witness testimony or in documentary form;
>
> (iii) Hearings shall generally be conducted as follows:
>
> (A) The presiding officer may allow into evidence, after appropriate filing and service, the written testimony of a witness in question and answer form. The testimony shall have line numbers inserted at the left margin and shall be authenticated by affidavit of the witness. If admitted, the testimony shall be marked and incorporated into the record as existing without being read into the record. Parties shall have full opportunity to cross-examine the witness on the testimony. The presiding officer may require additional written testimony during the pendency of a case;

(Emphasis added). This rule makes clear that the Commission *must* exclude evidence that it determines is irrelevant and immaterial. The rule closely follows the Wyoming Administrative Procedures Act at W.S. § 16-3-108 which provides, in relevant part, as follows:

(a) In contested cases *irrelevant, immaterial or unduly repetitious evidence shall be excluded* and no sanction shall be imposed or order issued except upon consideration of the whole record or such portion thereof as may be cited by any party and unless supported by the type of evidence commonly relied upon by reasonably prudent men in the conduct of their serious affairs. Agencies shall give effect to the rules of privilege recognized by law. Subject to these requirements and agency rule if the interests of the parties will not be prejudiced substantially testimony may be received in written form subject to the right of cross-examination as provided in subsection (c) of this section.

(Emphasis added). This statute also makes the exclusion of irrelevant and immaterial evidence mandatory. Accordingly, for the purposes of this Motion, the Commission is called upon to determine whether the subject portions of the REC and RMCRE testimonies are irrelevant or immaterial to the Application, and if it determines they are it *must* grant the Motion.

B. Interconnection Information is neither Relevant nor Material to the Company's Application Regarding Qualifying Facilities ("QF") Power Purchase Agreement ("PPA") Term Length, Avoided Cost Changes, and Clarifying Changes to Schedules 37 and 38.

The fact that the generator interconnection process can take some time, and is, at times, subject to delay is not anything new. It is for this reason that Schedule 38 has long included an admonition to QFs to start that process early to avoid issues in the avoided cost and power purchase agreement processes.[2] In the Application, the Company proposes a change to Schedule 38 to repeat this same admonition earlier in the tariff to further emphasize this for prospective QF developers.[3] To the extent interconnection process timing is relevant at all to the Application this more prominent admonition is the full scope of that relevance.

[2] *See*, Schedule 38, Section II, "Process for Negotiating Interconnection Agreements" at ¶2 where the tariff states: "It is recommended that the owner initiate its request for interconnection as early in the planning process as possible, to ensure that necessary interconnection arrangements proceed in a timely manner on a parallel track with negotiation of the power purchase agreement."

[3] *See*, Application, Exhibit 1 "Revisions to Schedule 37 and Schedule 38 Clean" at the end of the second paragraph (titled "Applicable") where the existing language is repeated verbatim.

Nevertheless, REC's witness John Lowe claims in his testimony that the Company has "weaponized the transmission and interconnection process" and claims the Company has deliberately created "conflict between the maximum time to allow for COD [commercial operation date] and the minimum time RMP may require for interconnection."[4] This inflammatory accusation is followed by three and a half pages of testimony describing the interconnection process and alleging OATT Process violations by the Company.[5] None of this information is relevant or material to a Commission to determine whether the Company's policy of not executing a PPA with a QF more than thirty months prior to its COD (the "30 Month Policy") is in the public interest in light of potential interconnection process delays. The Company proposes to only strike those portions of Mr. Lowe's testimony that include this irrelevant and immaterial information, while preserving the REC argument that the thirty month policy should be adjusted to account for interconnection delays.

RMCRE's witness Mark Klein similarly alleges that the Company is violating the OATT Process.[6] Mr. Klein's testimony goes on for nearly two pages, and describes the facts that appear to be those associated with a complaint that is already before this Commission for determination.[7] Again, the point of this portion of Mr. Klein's testimony appears to be that QFs experience delays in the OATT Process, and that such delays should result in modifications to the 30 Month Policy. As with the REC testimony, the Company only proposes striking the portions of Mr. Klein's testimony that allege OATT provisions are being violated, or that describe elements of the process that would otherwise require testimony from PacifiCorp Transmission to ensure a full record.

[4] REC, Direct Testimony of John Lowe, at p.24, lines 535-540.
[5] *Id.*, at pp.24-28, lines 540-615.
[6] RMCRE, Direct Testimony of Mark Klein, at p.19, lines 383-386.
[7] *Id.*, at pp.18-20, lines 368-404.

The Company does not dispute the fact that sometimes the generator interconnection process on any transmission provider's system can take a long time, and can be subject to delays, but the reasons for such delays are neither relevant nor material to whether the 30 Month Policy should be maintained and made explicit in the tariff. The Company does not agree that committing the 30 Month Policy to writing in Schedule 38 puts the OATT Process at issue, or that the reasons an interconnection may be delayed are at issue. The 30 Month Policy is designed to ensure that pricing provided to a QF is reasonably close in time so as to avoid staleness and inaccuracy by the time the project is actually able to deliver energy. At the same time it allows a QF a reasonable time period to construct its project (two and a half years). A host of other issues can affect COD timing, such as permitting, construction issues, or financing. The 30 Month Policy is indifferent as to which of these factors results in a given COD. Whatever the reason for a given COD does not change the fact that the pricing Rocky Mountain Power's customers will ultimately pay a given QF is likely to be very stale and inaccurate more than 30 months after PPA execution. In other words, the fact that these factors *relate* to COD does not mean that they are *relevant and material* to a Commission determination of whether putting the 30 Month Policy into writing in the Company's tariff is appropriate or not.

The Company's Application proposes adding explicit language to make the 30 Month Policy clearer to prospective QFs. The Company proposed the change based on PPA negotiation conflicts and complaints from QFs over the past few years, which demonstrated confusion about this policy among QF developers. The purpose of the 30 Month Policy is purely commercial, and is consistent with both past Commission guidance, PURPA's customer

indifference principle, and basic logic.[8] There must be a future cutoff date to avoid QFs speculatively seeking PPAs for energy they will not be able to deliver until many years into the future. Without the 30 Month Policy a QF could execute a PPA at current avoided costs for energy it cannot deliver until five or 10 years from the date of execution. Existing QFs could similarly seek pricing at any time to effectively extend the terms of their PPAs whenever they determined that the Company's current avoided costs were favorable. The Company has never contracted with QFs on such a forward looking basis, and doing so would be inconsistent with Commission guidance stating a preference that the avoided costs included in PPAs be updated prior to execution to incorporate the most current information available to the Company.

The irrelevant and immaterial portions of REC and RMCRE testimony that should be stricken risk expanding the scope of this case well beyond the Application. Failure to grant the Company's motion introduces a necessarily separate (due to FERC's standards of conduct), and highly technical part of PURPA implementation and would likely require testimony from a PacifiCorp Transmission witness. The Company did not offer such a witness, because one is not necessary for the Commission to reach a fully informed decision on the commercial portions of PURPA implementation that the Company proposed in its Application.

III. CONCLUSION

The Company has not opened the door to testimony regarding the many aspects of

[8] *In the Matter of the Amended Joint Complaint Filing by Trireme Energy Development II, LLC; Pryor Caves Wind Project LLC; Mud Springs Wind Project LLC; and Horse Thief Wind Project LLC Against Rocky Mountain Power and PacifiCorp Regarding the Avoided Cost Pricing for the Bowler Flats Wind Qualifying Facilities Power Purchase Agreements*, Docket No. 20000-505-EC-16 (Record No. 14579), Commission Order at ¶ 63 (Dec. 31, 2018). In this order, the Commission noted that, by updating its avoided costs late in the PPA negotiation process, the Company "ensured 'just and reasonable' rates for Wyoming consumers by appropriately considering and applying the updated information it obtained and by adjusting its avoided costs pricing accordingly." The Company's 30 Month Policy is not new and is consistent with this Commission's past guidance. It protects Wyoming consumers by ensuring the Company does not enter into a PPA where it is likely that avoided cost pricing assumptions will have drastically changed by the time the energy is delivered.

PURPAs QF interconnection policies in Wyoming by adding language to Schedule 38 regarding its existing 30 Month Policy. Testimony from the REC and RMCRE witnesses that delve into the OATT Process and allege violations by the Company are irrelevant and immaterial to the Commission's determination of whether such a change to the language of Schedule 38 is in the public interest, and no other portions of the Company's Application or testimony open the door to testimony on these subjects. The Company has also offered no testimony on interconnection related issues. Striking this testimony would not be unprecedented, the Commission has limited the scope of its proceedings for similar reasons in the past.[9] Because the testimony goes to irrelevant and immaterial issues, that are already before this Commission for determination in other dockets, Commission rule Chapter 2, Section 22 and W.S, § 16-3-108 require the Commission to grant the Motion and strike the subject sections of REC and RMCRE testimony from the record.

WHEREFORE, the Company respectfully requests the Commission issue an order:

1. Granting its motion to strike from the record in this proceeding lines 535 through line 615 (at pp. 24-28) of John Lowe's direct testimony for REC;
2. Granting its motion to strike from the record in this proceeding and lines 368 through line 404 (at pp. 18-20) of Mark Klein's direct testimony for RMCRE;
3. Allowing additional time for the Company to submit testimony to rebut the REC and RCMRE testimonies should the Commission deny the motion to strike;

[9] *See*, *In the Matter of the Application of PacifiCorp for Authority to Defer Excess Net Power Costs Incurred, Commencing November 1, 2000*, Docket No. 20000-EP-01-167 (Record No. 6481), Order Granting Motion to Exclude Hunter Generator-Related Costs from Case at ¶7 (Nov. 9, 2001). In this case, the Company had applied for a deferred accounting order related to high power costs, one of the joint movants, WIEC, argued that the Company should not be allowed to seek recovery of costs due to the failure of its Hunter Unit No. 1, because it was introduced after its application and was therefore not within the scope of the case. In granting WIEC's motion, the Commission agreed that allowing the Company to introduce new issues related to the generation unit failure would vastly enlarge the number and scope of issues to be considered.

4. Granting such other relief as the Commission deems just and appropriate.

DATED this 10th day of May, 2019.

Respectfully submitted,
ROCKY MOUNTAIN POWER

/s/ Jacob A. McDermott

Jacob A. McDermott
1407 West North Temple, Suite 320
Salt Lake City, Utah 84116
Telephone: (801) 220-2233
Facsimile: (801) 220-3299
Email: jacob.mcdermott@pacificorp.com

CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2019, I caused to be served, via email a true and correct copy of Rocky Mountain Power's **Motion to Strike** to the following service list:

Office of Consumer Advocate	
Christopher Leger Office of Consumer Advocate 2515 Warren Avenue, Suite 304 Cheyenne, WY 82002 christopher.leger@wyo.gov	
Wyoming Industrial Energy Consumers	
Abigail C. Briggerman (C) Holland & Hart, LLP 6380 S. Fiddlers Green Circle, Ste. 500 Greenwood Village, CO 80111 acbriggerman@hollandhart.com	Michelle B. King (C) Holland & Hart, LLP 6380 S. Fiddlers Green Circle, Ste. 500 Greenwood Village, CO 80111 mbking@hollandhart.com
aclee@hollandhart.com glgargano-amari@hollandhart.com HMOakes@hollandhart.com	
VK Clean Energy Partners, LLC	
Phillip J. Russell (C) HATCH, JAMES & DODGE, P.C. 10 West Broadway, Suite 400 Salt Lake City, Utah 84101 prussell@hjdlaw.com	Dale W. Cottam (C) Bailey Stock Harmon Cottam Lopez LLP 80 E. 1st Ave. Box 850 Afton, WY 83110 dale@performance-law.com
ronnie@performance-law.com	
Two Rivers Wind, LLC	
Abigail C. Briggerman (C) Holland & Hart, LLP 6380 S. Fiddlers Green Circle, Ste. 500 Greenwood Village, CO 80111 acbriggerman@hollandhart.com	Michelle B. King (C) Holland & Hart, LLP 6380 S. Fiddlers Green Circle, Ste. 500 Greenwood Village, CO 80111 mbking@hollandhart.com
aclee@hollandhart.com glgargano-amari@hollandhart.com HMOakes@hollandhart.com	

Northern Laramie Range Alliance	
Crystal J. McDonough (C) McDonough Law LLC 1635 Foxtrail Dr. Loveland, CO 80538 crystal@mcdonoughlawllc.com	Callie Capraro (C) McDonough Law LLC 1635 Foxtrail Dr. Loveland, CO 80538 callie@mcdonoughlawllc.com
Renewable Energy Coalition	
John Lowe Renewable Energy Coalition PO Box 25576 Portland, OR 97298 jravenesanmarcos@yahoo.com	Irion A. Sanger (C) Sanger Law, P.C. 1117 SE 53rd Avenue Portland, OR 97215 irion@sanger-law.com
Dale W. Cottam (C) Bailey Stock Harmon Cottam Lopez LLP 80 E. 1st Ave. Box 850 Afton, WY 83110 dale@performance-law.com	ronnie@performance-law.com marie@sanger-law.com
Rocky Mountain Coalition for Renewable Energy	
Phillip J. Russell (C) HATCH, JAMES & DODGE, P.C. 10 West Broadway, Suite 400 Salt Lake City, Utah 84101 prussell@hjdlaw.com	Dale W. Cottam (C) Bailey Stock Harmon Cottam Lopez LLP 80 E. 1st Ave. Box 850 Afton, WY 83110 dale@performance-law.com
ronnie@performance-law.com	
Rocky Mountain Power	
Stacy Splittstoesser Wyoming Regulatory Affairs Manager Rocky Mountain Power 315 West 27th Street Cheyenne, Wyoming 82001 stacy.splittstoesser@pacificorp.com	Jacob A. McDermott Senior Attorney Rocky Mountain Power 1407 West North Temple, Suite 320 Salt Lake City, Utah 84116 jacob.mcdermott@pacificorp.com
Data Request Response Center PacifiCorp 825 NE Multnomah, Suite 2000 Portland, Oregon 97232 datarequest@pacificorp.com	

Katie Savarin
Coordinator, Regulatory Operations