Edward A. Hunter
Jennifer H. Martin
Stoel Rives LLP
201 South Main Street, Suite 1100
Salt Lake City, Utah 84111
(801) 328-3131
(801) 578-6999 (fax)
eahunter@stoel.com
jhmartin@stoel.com

Attorneys for PacifiCorp dba Utah Power & Light Company

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of PacifiCorp for Approval of an IRP-Based Avoided Cost Methodology for QF Projects Larger Than One Megawatt	DOCKET NO. 03-035-14 **PACIFICORP'S RESPONSE TO UAE INTERVENTION GROUP PETITION FOR REVIEW, REHEARING AND CLARIFICATION AND WASATCH WIND REQUEST FOR CLARIFICATION AND PETITION FOR RECONSIDERATION OF ORDER**

Pursuant to Utah Administrative Code R746-100-11.F, PacifiCorp dba Utah Power & Light Company ("Utah Power" or "Company") hereby responds in opposition to the Petition for Review, Rehearing and Clarification ("UAE Petition") submitted by the UAE Intervention Group ("UAE") and Request for Clarification and Petition for Reconsideration of Order submitted by Wasatch Wind ("Wind Petition") on November 30, 2005 (collectively referred to herein as "Petitions").

I. INTRODUCTION

PacifiCorp respectfully requests that the Commission deny the Petitions because the Petitions simply reargue the UAE and Wasatch Wind positions without offering additional information that was not already presented to and considered by the Commission, or present issues beyond the scope of this proceeding. Furthermore, the Petitions are based on a view of the record in which only UAE and Wasatch Wind evidence is given any weight. The Commission's Report and Order issued October 31, 2005 ("Order") correctly rejected UAE's and Wasatch Wind's positions, based on the review of the entire record. The Petitions present no valid reason to reconsider the Order. Nevertheless, PacifiCorp briefly responds below to set forth its opposition to rehearing in this matter.[1] The Petitions fail to identify any legitimate ground for review, rehearing, or reconsideration of the Commission's Order and should be denied.

II. ARGUMENT

A. Burden of Proof and Standards for Granting Rehearing or Reconsideration

In order to warrant a rehearing once the Commission has issued a final order, a petitioner must demonstrate that there was some essential legal or factual error by the Commission, or that previously undiscoverable evidence has been located that would support a different outcome.[2] Rehearing is not warranted where the petition seeks to reargue issues without identifying error.[3] Nor is it warranted where a party seeks to obtain a second opportunity to introduce evidence that could have been presented at the original hearing but was not.[4] The Petitions do little else but

---

[1] There are numerous factual errors in the Petition that in PaciifiCorp's view do not warrant response. By failing to respond to any particular assertion, however, PacifiCorp does not concede the accuracy of such assertion.

[2] *See, e.g., Taylor v. Public Service Comm'n*, No. 20030694-CA, 2005 WL 615164 at *1 (Ut. Ct. App. Mar. 17, 2005) (upholding the Commission's refusal to grant rehearing where "[appellant] provided no explanation as to why the 'new' evidence or similar evidence was not available at the May 29, 2003 hearing, or why he could not have introduced this material during the May hearing.").

[3] *See, e.g.*, Order No. 23,766, *In re Holiday Acres Water and Wastewater Services*, DW 01-027, 2001 WL 1568405 (N.H. P.U.C. Aug. 24, 2001) ("The fact that the Parties are unhappy with [the order] or disagree with the Commission is not sufficient good reason for reconsideration or rehearing, nor does it follow that we erred in our findings and rulings on the law.") (Internal quotation omitted).

[4] *See, e.g., Taylor, supra* note 2; *Garner v. Thomas*, 78 P.2d 529, 530 (Utah 1938) ("As a general rule courts will not grant rehearings to consider questions which could have been urged in the first

reargue matters already addressed by the Commission and seek to obtain a second opportunity to present arguments and evidence that was either already presented or could have been presented during the hearing. The Petitions, therefore, should be rejected.

B. The UAE Petition Identifies No Ground for Rehearing or Reconsideration.

The UAE Petition sets out nine numbered areas purporting to support a new hearing. None of UAE's arguments support rehearing.

1. Out of System QFs: UAE requests "confirmation or clarification that the pricing and other provisions of the Order, as well as the requirements of Schedule 37, apply equally to any QF able to deliver power into Utah, regardless of where the QF facility is located." (UAE Petition at 2.) The Commission has previously established in a separate docket the requirements under Schedule 37. The purpose of this proceeding does not involve revisiting those issues, but rather, is intended to establish the pricing methodology for purchases from QFs not entitled to Schedule 37 pricing. Accordingly, rehearing on any aspect of Schedule 37 issues is outside the scope of this proceeding. Further, UAE greatly overstates the utility purchase obligation under PURPA. The utility purchase obligation does not extend throughout the state in which the utility is located. In other words, neither federal or state law, nor Schedule 38 requirements obligate PacifiCorp to purchase any power delivered "into Utah". The remainder of UAE's claims are beyond the scope of this proceeding and should be rejected.

2. The Next Deferrable IRP Resource: UAE asserts that "several important questions remain" regarding how the next deferrable IRP resource should be determined for calculating the Company's avoided generation capacity cost method. (UAE Petition at 2-3.) In addition to

---

hearing but were not") (Wolfe, J., Concurring); Order No. 23,543, *In re LOV Water Co.*, DW 99-119, 2000 WL 1531619 (N.H. P.U.C. Aug. 11, 2000) ("We are not required to grant a rehearing so that a party has a second chance to present evidence that it could have presented earlier.").

these assertions, UAE also argues, for the first time, that for QFs who submitted pricing requests prior to the "2005 IRP Update"[5] or who submit requests "in the near future up to the QF level assumed in deferring the 2009 gas plant," that pricing should be based on the 2009 gas resource included in the 2004 IRP. (*Id.* at 3.) UAE asserts that this pricing is the only fair pricing because the 2009 gas resource "was the resource on which all GRID model runs and all analyses were performed in the recent case" and any changes in pricing for pending requests would be unfair and result in delay and "discouragement" of these projects. (*Id*.) Also, UAE asserts that these plants are themselves part of the reason for the decision to cancel the plans for the 2009 gas resource. Finally, UAE proffers for the first time a process whereby the Commission would issue orders designating the next deferrable resource and the Company would be directed to file (*Id*.) IRP updates "anytime" it makes a decision that would change the next deferrable resource.

All of these arguments must be rejected for multiple reasons. First, UAE supported the next deferrable resource approach to determining capacity payments and never raised any of these issues that it now raises in its Petition. UAE has provided no reasonable excuse for failing to present these questions and proposals prior to the Commission's decision in this proceeding. Second, in spite of UAE's protestations to the contrary, this docket was not designed to provide a prices for QFs, rather, the specific purpose of the docket was to develop a methodology in order to determine how to calculate pricing going forward. PacifiCorp, the Division of Public Utilities ("Division") and the Committee of Consumer Services ("Committee") made clear throughout the proceeding, through pre-filed and live testimony that the prices provided in testimony were examples only, not intended to be the prices upon which QFs could rely.[6] Indeed, Mr. Gutting, a

[5] In fact, the update filed earlier this year is to the 2004 IRP.

[6] *See, e.g.,* Docket 03-035-14, Transcript for September 22, 2005 at p. 155, lines 1-18 (Testimony of Gregory Duvall for PacifiCorp); p. 198, lines 13-17 (Testimony of Andrea Coon for Division).

witness for UAE, conceded that the purpose of the hearing was to set a methodology not a price.[7] Ultimately, the Commission agreed that the purpose of the docket was to establish a methodology not specific illustrative prices. (Order at 31.) Under those circumstances, it is not reasonable to order PacifiCorp to offer the pricing examples as avoided cost prices to QFs because no QF could have reasonably relied on those prices, nor did PacifiCorp provide the prices to a particular QF for a particular contract. Such pricing would not be just and reasonable nor satisfy the ratepayer indifference standard.

Third, because the docket was designed to determine a methodology, not a price, the Commission need not engage in rehearing or adopt a brand-new methodology for determining the next deferrable resource. Through questions from the Commission, the Company made clear that it intends to update its GRID runs and proxy pricing consistent with the most recent IRP or IRP update. Indeed, several times, Company witnesses (and Mr. Swenson) answered questions from the Commission regarding replacing the 2009 resource with the next deferrable resource. The Company pointed out that indeed the ease and flexibility with which that change could be made was one of the primary benefits of the proposed methodology.

3. Non-Firm Transmission: UAE argues that the Commission should order PacifiCorp to make a compliance filing on the requirement to include a 48-month historical average of non-firm transmission in the GRID model runs as well as on the other requirements of the Order. (UAE Petition at 4.) Again, the purpose of this proceeding was to establish a methodology for determining QF prices. PacifiCorp can and will comply with the mandates of the Order and will offer avoided cost prices that are calculated in accordance with the method adopted by the

[7] *See id.* at p. 278, lines 12-16 (Testimony of Scott Gutting for UAE) ("Q: Do you agree that the main purpose of this proceeding is not to come up with a price, but to come up with a methodology that could be used in the future? A: Yeah.").

Commission. The Division made clear at the hearing that it would review all updated information put into place after the methodology was determined.[8] As the Commission has ordered, PacifiCorp will provide notice to the Commission and Division of the update and the Division will review the update. After that review, if there are any disputes regarding the prices offered, the Commission has historically, and can in the future, resolve any disputes in QF specific proceedings.

4. Dispatchability: UAE urges the Commission to clarify that the tolling option should be available to QFs in hours in which the QF is dispatched by the utility and GRID-based pricing would be paid in non-dispatched hours. UAE is seeking to greatly expand the tolling option beyond that contemplated by PacifiCorp or beyond that presented to the Commission. Specifically, UAE argues that a QF should be entitled to pricing based on the tolling option even if the QF itself admits that its plant will not in fact be dispatchable (*e.g.*, a must-run plant). For example, a QF plant might have a minimum must-run obligation of 20 MWs, and UAE takes the position that the QF should be entitled to tolling prices up to the 20 MWs on days where the QF is "dispatched" and GRID-based pricing on the days where it is not dispatched, even though it is simply running as a base-load unit delivering 20 MWs of power into PacifiCorp's system at all times. This abuse of the tolling process was not proposed by UAE during the hearing and it is not what the Order provided. While PURPA does permit the Commission to take into account whether a plant is dispatchable in that it will be able to more closely match the utility's resource needs in an economic manner, a QF is not entitled to pricing based on dispatchability when the QF is not, because of operational constraints or other reasons, actually dispatchable. As

[8] *See id.* at p. 175, line 16 to p. 176, line 11 (Testimony of Andrea Coon for Division).

recognized in the Order, a QF should be dispatchable before it is entitled to the tolling-based pricing options.

5. The Company's Relevant Fuel Costs in Rates: UAE seeks reconsideration on the Commission's determination that the Company's relevant fuel costs should be used for variable energy pricing. (UAE Petition at 6.) UAE reiterates the very same arguments it made at hearing and that were rejected by the Commission in this docket regarding why the "fuel costs in rates" are, in UAE's opinion, not representative of avoided costs. UAE asserts that the proposal to use the "fuel costs in rates" was made too late in the proceeding for meaningful consideration and analysis; however, this argument is insufficient on its face. The Division proposed this type of variable pricing option in prefiled rebuttal testimony in response to a UAE proposal. The Committee responded in prefiled surrebuttal testimony on the very same concept. All parties discussed the issue in the hearing, including UAE. UAE spends several pages of its Petition rehashing the arguments made at the hearing that an index-based variable pricing option does not transfer risk and is necessary for the feasibility of QF projects. UAE also once again argues that variable pricing option must reflect actual market pricing. However, parties responded to this argument at the hearing that in the absence of a PCAM, actual market pricing does not reflect the costs that are paid by ratepayers and therefore, avoided costs based on these indices will violate the ratepayer indifference standard. These arguments were made by UAE and responded to by other parties in the QF proceeding. The Commission should reject this attempt to reargue this issue.

UAE also argues that there are too many unanswered questions with respect to how to determine the Company's relevant fuel costs. (UAE Petition at 5-6.) In fact, this argument in nothing more than the same argument regarding the next deferrable IRP resource. The Company can quite easily determine relevant gas or coal costs in its GRID model from the past rate case. The relevant fuel costs will track how they are included in rates (e.g. whether determined hourly or monthly or annualized etc.). This is entirely reasonable given that the Commission determined that the fuel costs included in rates were the appropriate price in order that avoided cost prices not shift gas price risk from the QF to the Company and its customers. UAE also argues that relevant fuel costs included in rates may change if a PCAM is adopted. PacifiCorp agrees; however, until such time as a PCAM is adopted, this is not a legitimate basis for reconsideration.

Finally, UAE argues that some QFs should be entitled to a fuel price based on the 2009 gas resource. For all of the reasons stated above, references to and pricing based upon the 2009 resource must be rejected.

6. Availability: UAE asks the Commission to clarify that a QF need not meet the avoided resource availability to be entitled to capacity prices, but rather availability, either more or less than the avoided resource, should be dealt with in pricing adjustments, liquidated damages provisions or other contractual remedies. (UAE Petition 8-9.) This is an issue which was specifically and clearly addressed in the Order. The Order provides that: "For the QF to be paid for avoiding capacity, it must meet the availability of the avoidable resource." (Order at 17.) UAE is merely seeking a second opportunity to present arguments and evidence that was either already presented or could have been presented during the hearing. UAE's request should be rejected.

7. Avoided Transmission Costs: UAE asserts that a QF developer should be paid a pro rate share of transmission capital costs discussed in the IRP and that avoided transmission line losses should be paid for deliveries in all hours and that the level of line losses should be determined based upon QF location, “generally comparable” to the QF contracts for US Magnesium and Desert Power. (UAE Petition at 9.) UAE recognizes that these issues were to be discussed by the working group.

UAE has simply reiterated the very same arguments it made and that were rejected in the Commission’s Order. UAE has provided no basis for reconsideration of this issue.

Finally, although UAE asserts that line losses should be determined in a manner “generally comparable” to the method used in the most recent QF contracts for US Magnesium and Desert Power, UAE also asserts that line losses should be paid “in all hours.” The Commission should not be misled by these statements. In fact, under the US Magnesium and Desert Power contracts, line losses were only paid to the QF during dispatched hours and were owed by the QF during hours where they failed to deliver and PacifiCorp was forced to buy replacement power. During other non-dispatched hours, the QF did not avoid any line losses as the Company was required to generate or purchase other power in order to meet its load because it could not depend on the QF delivery of power. The Commission should not permit this inaccurate and unsupported statement in a petition for reconsideration to change the methodology previously approved by this Commission on line losses. Instead, the issue should be determined consistent with the position advocated by PacifiCorp, the Division and the Committee in the Transmission Task Force report.

8. Short-Term Capacity Payments: UAE requests that the Commission require capacity payments based on a SCCT resource for short-term contracts. (UAE Petition at 10.) UAE made this same request in prefiled testimony and at the hearing. PacifiCorp did not object to levelization of capacity payments for long-term contracts so long as adequate and sufficient security was in place but did not support the request for short-term contracts, arguing that such a payment would double-count payments. The Commission did not adopt UAE's proposal. UAE simply reiterates that it proposal should be adopted with no new argument as to why that is reasonable. This request should be rejected.

9. Access to GRID Model: UAE makes several very broad requests with respect to access to the GRID model prior to its availability on-line. (UAE Petition at 10-11.) These requests, including training on demand and providing the GRID model to any consultant who has a client that is or may develop a QF facility, will greatly increase costs the Company and ultimately ratepayers incur. PacifiCorp intends to have the GRID model available on-line as soon as practicable. Until that time, the Commission has adopted a reasonable approach that provides transparency and access through updates and notifications to the Commission and the Division. The Commission should not adopt these other overly broad and expensive measures when legitimate QF developers and their consultants can have access to the model through the regulators until the internet option is available.

C. The Wasatch Wind Petition Identifies No Ground for Rehearing or Reconsideration.

The Wasatch Wind Petition seeks clarification of two issues related to integration costs and green tags and reconsideration on the Commission's decision to order working groups to make recommendations on adjustments for wind prices and transmission issues. For the reasons stated below, these requests should be denied.

1. Integration Costs: Wasatch Wind argues that the Commission's decision with respect to integration costs is unclear in the Order and therefore, requires clarification. (Wind Petition at 1-2.) PacifiCorp disagrees. On page 23 of the Order, under the Section "Avoided Cost Method for Wind QF Resources Exceeding the IRP Target", the Commission notes that all parties agree with the proposed pricing methodology for wind QFs above the IRP targets (proxy for avoided generation capital costs and the differential revenue requirement approach for energy costs) with two exceptions, the relevant exception noted being how to deal with integration costs. Therefore, the Commission's discussion of this issue which thereafter follows clearly deals with adjustments to QF prices for wind projects that exceed the 1400 MW IRP target. No further clarification is required.

2. Green Tags: Wasatch Wind seeks clarification on how a QF developer should be entitled to purchase green tags back from the Company. (Wind Petition at 2.) PacifiCorp notes that for the reasons stated in its own Petition for Reconsideration filed on November 30, 2005, the Commission should clarify that a QF developer who wishes to purchase green tags "back" from PacifiCorp should not be entitled to the market proxy price. Contrary to Wasatch Wind's assertion, ratepayers are not "indifferent" with such purchase, rather, as made clear through the testimony of Western Resource Advocates' witness, Mr. Anderson, under the "buy-back" proposal, ratepayers are left without a resource which they and PacifiCorp may properly characterize as a "wind" resource.[9] Under such circumstances, the resource should be priced like any other QF resource.

3. Adjustments for Wind Profiles: Wasatch Wind also seeks reconsideration of the method for adjusting the market proxy price to a QF specific price based on differences in the wind profiles. Wasatch Wind asserts that the Commission deferred this issue to a "working group for resolution." (Wind Petition at 2.) PacifiCorp disagrees. The Commission's Order did not defer this issue to a working group. Rather, the Commission adopted a methodology and stated that differences in wind profile must be taken into account in determining an indicative price for a wind QF. (Order at 21.) It is precisely these types of pricing adjustments that should

---

[9] *See id.* at p. 532, lines 18-25 (where QF developer retains RECs, it "would be just plain old vanilla electricity and it would be an improper claim to count it toward the 1,400 megawatts"); p. 534, line 1 to p. 535, line 7 (Testimony of Bob Anderson for Western Resource Advocates).

be considered on a project-specific basis. PacifiCorp will not know specific wind profiles until individual projects provide, as required by Schedule 38, those profiles to the Company as part of their requests for indicative pricing. After that time, if the QF disagrees with the indicative prices provided by the Company and the parties are unable to resolve the issue, the QF may bring the issue to the Commission for resolution.

4. Transmission Issues: Wasatch Wind also seeks reconsideration on the Commission's decision to establish a working group to make recommendations on transmission capital cost and line loss issues. (Wind Petition at 4.) Wasatch Wind then argues that the Company's position with respect to these issues is ill-founded. Wasatch Wind has not provided a basis for reconsideration of this decision. Rather, Wasatch Wind, like UAE, is simply seeking to reargue their position regarding these issues to the Commission. During the hearing, PacifiCorp, the Division and the Committee proposed a particular methodology for determining whether any transmission capital cost adjustments should be made to QF pricing. However, these parties lacked some detail to respond to Commissioners' questions because PacifiCorp's Transmission group was not involved in the hearing. After being ordered to convene the working group, the parties did so and met several times. In the working group, PacifiCorp did exactly what it told the Commission it intended to do with respect to the working group: present its proposals, now with the benefit of Transmission feedback and with the support of Transmission personnel available in person and on the phone to answer questions. The proposals from the working group are now before the Commission. The fact that the Company did not agree with Wasatch Wind's unsupported positions in the working group, just as it had not during the hearing, is not a basis for reconsideration.

Wasatch Wind also asks the Commission to grant an opportunity for further testimony and hearings if the Commission does not grant their requests as included in the Wind Petition. This request should be denied. Wasatch Wind, like all other parties, have presented their proposals and evidence to the Commission through several rounds of testimony, the Commission heard testimony from these witnesses over several days and the Commission has now issued an Order on all relevant issues. The methodologies have been set and no further hearing is required.

Finally, Wasatch Wind requests a "quick turnaround" time on its Petition as it is seeking indicative prices from the Company and a "positive outcome" is necessary to aid in financing of the Wasatch Wind project. In fact, the Company has already provided Wasatch Wind with its indicative prices.

III. CONCLUSION

For all the aforementioned reasons, the Petitions fail to identify any legitimate grounds for granting review, rehearing, or reconsideration of the Commission's Order. The Petitions should be rejected and the Order allowed to stand.

RESPECTFULLY SUBMITTED: December 15, 2005

____

Edward A. Hunter
Jennifer H. Martin
Stoel Rives LLP

Attorneys for PacifiCorp dba Utah Power & Light Company