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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 MOTION TO STRIKE
PORTIONS OF TESTIMONY OF
ROGER J. SWENSON AND REQUEST
FOR EXPEDITED TREATMENT**

PacifiCorp dba Utah Power & Light Company (“Company”) moves to strike portions of the “Order Clarification Testimony” of Roger J. Swenson for Pioneer Ridge, LLC (“Pioneer Ridge”) dated February 10, 2006, on the grounds that the testimony is irrelevant and procedurally improper. Specifically, PacifiCorp moves to strike the testimony that begins on page 1, line 9 through page 7, line 13.¹ PacifiCorp requests expedited consideration of this motion as rebuttal testimony is due on February 17, 2006 and hearings are currently schedule for

¹ Although the Commission’s rules direct that testimony line numbers be consecutive throughout the document, Mr. Swenson’s testimony begins counting line numbers at “1” on each page. Accordingly, to avoid any confusion regarding the testimony to which this Motion is referring, PacifiCorp makes clear that it is moving to strike the testimony that begins with the question “What issues remain that need further clarification in this matter that you are filing testimony on at this time?” (on PacifiCorp’s printed version, this begins on page 1, line 9) and ends with the answer to the question “What are you asking the Commission to do here?” (which in PacifiCorp’s printed version is on page 7, line 13).

February 23, 2006. Ordinary response times would not have this issue resolved until after conclusion of this proceeding.

I. INTRODUCTION

After a very detailed examination and analysis of the issues in this proceeding, the Commission issued its Report and Order on October 31, 2005 (“Order”) approving methods for calculating avoided costs for Qualifying Facilities (“QFs”) greater than one megawatt and small power production facilities greater than three megawatts. The Order also directed parties to convene a workgroup to provide a case-by-case method to calculate avoided transmission costs and losses within 21 days of the Order. Interested parties convened this transmission workgroup and submitted a non-consensus report on November 21, 2005.

On November 30, 2005, Petitions for Reconsideration and/or Requests for Rehearing or Clarification were filed by Wasatch Wind LLC (“Wasatch Wind”), the Committee of Consumer Services (“Committee”), the UAE Intervention Group (“UAE”) and PacifiCorp. Pioneer Ridge did not file any request or petition for reconsideration, rehearing or clarification.

As it relates to this Motion, Wasatch Wind sought rehearing on the issue of wind profile adjustments in the wind proxy model, arguing that the Commission had not explicitly ruled on a method to account for differences between a QF wind resource and the market proxy. Wasatch Wind argued that the Commission had deferred that issue to the transmission avoided cost working group for resolution. Wasatch Wind argued that the use of GRID to make these adjustments was not supported by the record and that only Pioneer Ridge’s witness presented explicit written evidence as to the appropriate method during the proceeding. PacifiCorp filed a response to Wasatch Wind (and other parties) on December 14, 2005, in which PacifiCorp stated *inter alia* that it did not agree that the Commission had deferred the wind profile adjustment

issue to the workgroup. PacifiCorp stated that such adjustments should be considered in a project-specific basis.

On December 19, 2005, the Commission issued its Order granting Reconsideration and Clarification and its Notice of Scheduling Conference. The Notice of Scheduling Conference stated that the Commission would inform parties of the issues to be reconsidered or clarified and set a schedule for further proceedings.

On January 4, 2006, pursuant to the Notice of Scheduling Conference, a Scheduling Conference was held. The Commission Staff informed the parties that the Commission required additional testimony and a hearing on two issues: (1) the appropriate method for calculating avoided transmission capacity costs and losses and (2) the Company's requirements for providing access to its GRID computer model. The Commission made clear that all remaining issues for which rehearing, reconsideration or clarification were sought would be clarified or reconsidered using the existing record and would be addressed in an order to be issued. In response to a direct question on the wind profile adjustment issue from Wasatch Wind, Commission Staff made clear that further rehearing on that issue was not granted and that the Commission would address that issue in its further order based on the existing record.

The Commission issued its Order on Reconsideration and Clarification on February 2, 2006. In the Order on Reconsideration and Clarification, the Commission addressed all issues for which parties had sought rehearing, reconsideration and/or clarification with the two exceptions regarding transmission and GRID access discussed above. Again, as it relates to this Motion, the Commission clarified its resolution of the wind profile adjustment issue holding:

“We clarify that we did not defer this issue to the transmission working group. Neither did we approve use of the GRID model for wind profile adjustments. Pioneer Ridge's testimony on adjustments is a reasonable starting point for wind

profile adjustments to produce indicative pricing for QFs up to the IRP target of wind resource procurement.” Order on Reconsideration and Clarification at 13-14.

Therefore, the issues in these further rehearing proceedings are limited to two: (1) the method for determining transmission capital and avoided line loss payments or offsets and (2) access to the GRID model. The Commission adopted Mr. Swenson’s proposal from his testimony as the starting point for any wind profile adjustment. Having already “won” this issue and without seeking rehearing or clarification of this ruling, Mr. Swenson’s testimony discusses in great detail his “new” proposed method for calculating wind profile adjustments.

Mr. Swenson’s testimony is irrelevant to the two narrow issues on rehearing in this proceeding. Moreover, it is procedurally improper. If Mr. Swenson wished to seek clarification, rehearing or reconsideration of the Commission’s decision to adopt his own method, he should have sought such change through a petition for rehearing, not through the guise of “order clarification testimony”. Permitting this testimony to stand in the record in this proceeding prejudices all other parties because no parties received any Commission notice that this issue would be reheard.

Accordingly, PacifiCorp is compelled to take the unusual step of moving to strike portions of Mr. Swenson’s testimony that are wholly irrelevant, prejudicial and procedurally improper. By striking this testimony, the Commission will confine this rehearing proceeding to issues that need to be decided and send an important message to the parties, particularly to Pioneer Ridge which thus far has appeared without the benefit of legal counsel, that the Commission expects this proceeding to be conducted in an efficient and effective manner, consistent with its governing statutes and rules, in a manner that will not prejudice the rights of other parties.

II. ARGUMENT

Pursuant to Utah Code Ann. § 63-46b-8(1)(b), the Commission may exclude from a proceeding evidence that is irrelevant, immaterial, or unduly repetitious.”² Relevant evidence is that “having any tendency to make the existence of any fact that is of consequence to the determination of the action more probably or less probably than it would be without evidence.”³

The portions of testimony in Mr. Swenson’s testimony beginning on page 1, line 9 through page 7, line 13 all deal with Mr. Swenson’s new proposed modifications to his own wind profile adjustment proposal adopted by the Commission. This issue is wholly irrelevant to the only two issues in this proceeding – (1) methodology for determining avoided transmission capital costs and line losses and (2) access to GRID model. Mr. Swenson’s testimony does not offer any evidence that is of “consequence to the determination” or probative of these two issues; therefore, it should be struck from the record.

Mr. Swenson has failed to take advantage of several opportunities to address this issue. He could have made a different proposal than was included in his own testimony; he could have sought rehearing of the Order; or he could have replied to Wasatch Wind’s request for rehearing on the issue. Further, the Commission’s Order on Reconsideration and Clarification states that Mr. Swenson’s original proposal is the “starting point” for negotiations. Mr. Swenson will have the opportunity, if necessary, to bring this issue to the Commission in the type of contract-specific proceeding contemplated under the Order. What Mr. Swenson is not procedurally permitted to do is offer irrelevant testimony unrelated to any issue before the Commission in a fast-tracked rehearing proceeding and prejudice the rights of other parties by creating a burden to

² See also Utah Admin. Code R746-100-10(F)(1), providing that while the Commission is not bound by the technical rules of evidence, the Commission may nevertheless exclude “non-probative, irrelevant, or unduly repetitious evidence.”

³ Utah R. Evid. 401.

respond. Accordingly, in addition to being irrelevant, the testimony is also prejudicial to other parties because it is procedurally improper and comes so late in the proceeding and without notice that parties do not have time to adequately respond to it.

III. CONCLUSION

For the aforementioned reasons, the Commission should strike the section of Mr. Swenson's testimony that begins on page 1, line 9 through Page 7, line 13.

RESPECTFULLY SUBMITTED: February __, 2006

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing **PACIFICORP'S**

MOTION TO STRIKE PORTIONS OF TESTIMONY OF ROGER J. SWENSON AND

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