

Stephen F. Mecham (4089)
CALLISTER NEBEKER & McCULLOUGH
Gateway Tower East Suite 900
10 E. South Temple
Salt Lake City, Utah 84133
Telephone: (801) 530-7300
Facsimile: (801) 364-9127

-BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH-

In the Matter of the Application of PacifiCorp for a Certificate of Convenience and Necessity Authorizing Construction of the Currant Creek Power Project	<u>Docket No. 03-035-29</u>
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**PRE-FILED DIRECT TESTIMONY OF F. DAVID GRAEBER FOR
SPRING CANYON ENERGY LLC**

February 4, 2004

1 **Q. Please state your name and business address.**

2 A. My name is F. David Graeber and my business address is 10440 N. Central
3 Expressway, #1400, Dallas, Texas 75231.

4 **Q. By whom are you employed and for whom are you appearing in this**
5 **proceeding?**

6 A. I am a Principal of USA Power LLC and USA Power Partners LLC and I am
7 appearing for Spring Canyon Energy LLC (Spring Canyon). Spring Canyon is
8 wholly owned by USA Power Partners LLC and was formed to develop and
9 ultimately construct a 525 MW Combined Cycle power plant close to Mona,
10 Utah. In addition, we responded to PacifiCorp's Request for Proposals (RFP)
11 issued June 6, 2003. USA Power LLC is the managing member of USA Power
12 Partners and Spring Canyon Energy LLC and is one of the participants in the
13 Spring Canyon project.

14 **Q. What is your education background and power generation experience?**

15 A. I have a BBA degree in Finance from the University of Texas in Austin, 1968 and
16 was in the banking business for approximately 18 years in Dallas, Texas. During
17 that time, I was the President and CEO of three different banks in Dallas,
18 founding two of them as de nova bank charters. Having had operating experience
19 in steam generation as an engineering officer in the US Navy from 1968 – 1971, I
20 decided to re-enter that industry when independent power was allowed to build
21 and sell power to utilities in 1988. I formed a energy related consulting practice
22 in 1988 and became an independent power plant developer and owner of a
23 company known as Powerbridge Inc. Powerbridge developed two QF types of

24 IPP's in Florida, which became commercial in 1993. Powerbridge was involved
25 in power projects in Colorado, Pakistan, China, and Malaysia. Powerbridge was
26 sold to Evergreen Resources Inc., a drilling partner in a coalbed methane gas
27 development, in 1996. Since then, I was involved in several long term consulting
28 engagements with international power and oil and gas firms. In 1997, I formed a
29 relationship with Ted and Lois Banasiewicz in which we developed power project
30 sites in locations in New Jersey, Pennsylvania, Oklahoma, Colorado and Utah.
31 Spring Canyon Energy LLC is one of those sites.

32 **Q. What is the purpose of your testimony?**

33 A. The purpose of my testimony is to explain to the Commission why it is not in the
34 public interest to grant PacifiCorp a Certificate of Public Convenience and
35 Necessity ("CCN") for the Company's proposed Currant Creek power plant. The
36 Commission intended to establish a fair bidding process to ensure that the new
37 power generation required by PacifiCorp's Integrated Resource Plan ("IRP")
38 would be the best, least-cost alternative. Unfortunately, that did not occur in this
39 case. Generally, I will give the Commission the broad outline of Spring Canyon's
40 case against the Company granting themselves the bid and obtaining the CCN
41 from the Commission. Mr. Ted Banasiewicz, another principal in USA Power
42 LLC and Mr. David Olive, an officer with Quixx Corporation, a bid participant in
43 the Spring Canyon Energy project, will address specific inconsistencies and
44 process flaws PacifiCorp made in comparing and applying their models for their
45 NBA and evaluating Spring Canyon's proposals. Together we will show that the
46 self-build alternative PacifiCorp selected for the 2005 RFP was not the least-cost

47 option available to them. We will show that after running the models with the
48 correct inputs, we have the lowest cost alternative, not PacifiCorp, and we should
49 be awarded the bid.

50 **Q. Are you aware of the standards the Commission has used in determining if**
51 **certificating a power plant is in the public interest?**

52 A. I believe this Commission has asked for the answer to two questions to make that
53 determination: 1) Is there a need for the power the plant would produce; and, 2) Is
54 the proposed plant the least cost alternative available. The second question
55 requires that there be a benefit to ratepayers before a plant is certificated.

56 **Q. Is Spring Canyon disputing the need for new power generation?**

57 A. No. Spring Canyon's independent studies over the past three years concur with
58 the conclusions reached by PacifiCorp as to forecasted demand/load growth and
59 the genuine need for new generation sources in the Eastern section of their service
60 area. We are, however, challenging PacifiCorp's claim that their Currant Creek
61 proposal was the least cost alternative available to them in the 2005 peaking
62 category of their recent RFP. In updating their 2002 IRP, PacifiCorp increased
63 their projected need for new power. Even if their Currant Creek project were
64 deemed to be the best in this process, (and that would be a mistake), it does not
65 come close to satisfying their own projected shortfalls.

66 **Q. Did Spring Canyon respond to PacifiCorp's RFP?**

67 A. Yes. We submitted four proposals, two with peaking power capability (one with
68 duct firing capability, Bid 653 and one without duct firing capability, Bid 135)
69 and two in the base load category (Bid No. 367 with duct firing and Bid No. 620,

70 without duct firing). All of the bid proposals stated in the bid that they could be
71 operated as peakers and base load facilities, depending on PacifiCorp's needs.
72 PacifiCorp should have considered the two proposals with peaking power in the
73 2005 peaking category that is the subject of this proceeding, but they eliminated
74 Spring Canyon Bid 653, short listed our Bid 135, and then awarded the bid to
75 themselves.

76 **Q. Isn't Spring Canyon just upset because PacifiCorp didn't accept one of your**
77 **offers?**

78 A. Obviously we want to win the 2005 RFP and build a 525+ Mw Combined Cycle
79 Combustion Turbine power plant in Utah. Spring Canyon was not formed just to
80 submit this bid. We have been developing our project for nearly three years and
81 have spent more than \$1.5 million in obtaining water permits, air permits, land
82 options, engineering studies, engaging in EPC (Engineering, Procurement, and
83 Construction) contract negotiations, and preparing our RFP proposals. We were
84 prepared to begin construction last October when PacifiCorp was supposed to
85 have had (by their published RFP schedule) a power contract in place. If the RFP
86 process PacifiCorp followed had been impartial and PacifiCorp's analysis of the
87 proposals had been consistently applied to all bids, we would not have intervened
88 in this matter to protest. Bid 653 (of which the NBA is a copy) was significantly
89 less expensive than PacifiCorp's Currant Creek proposal, but PacifiCorp didn't
90 even consider it in the RFP peaking category. In addition, though Bid 135, which
91 was short listed, was less economical than Bid 653, we can show that Bid 135 was
92 still more economical than PacifiCorp's Currant Creek proposal. The problem is

93 that PacifiCorp's method for evaluating Bid 135 and comparing it to their Currant
94 Creek proposal insurmountably favored Currant Creek. In fact, I believe
95 PacifiCorp unfairly evaluated all of the responses to the RFP because their
96 process and analysis were flawed. As a result, we do not believe PacifiCorp's
97 RFP process produced the best or least cost alternative and that is not in keeping
98 with the stipulation the Commission adopted to ensure a fair RFP process.
99 Awarding a CCN to PacifiCorp for a less than optimal power plant would violate
100 the public confidence and would be unfair to the ratepayers.

101 **Q. What did PacifiCorp do that was unfair?**

102 A. Several things, all of which we will address in two categories: **Process** and
103 **Comparability**.

104 **Q. Briefly, how was the process unfair?**

105 A. The process PacifiCorp pursued was systematically flawed and unfairly biased
106 toward PacifiCorp's NBA, Currant Creek. As I stated, PacifiCorp didn't even
107 consider our Bid 653 in the 2005 peaking category. They claim Bid 653 was
108 limited to 260 starts per year (which was permitted in their pre-bid conference
109 material as a five day by 16 hour operation. Five days a week for 52 weeks
110 equals 260 starts, a peaking operation in anyone's lexicon), even though our
111 proposal made it clear throughout in several places that it was not limited, that it
112 was dispatchable on a daily basis, even allowed to start on an intra-daily basis.
113 Under the proposal, PacifiCorp could operate the plant much more flexibly, with
114 virtually unlimited starts. We used 260 starts to set variable operating and
115 maintenance costs (V O & M), just as PacifiCorp used 300 starts to determine

116 theirs. Bid 653 should have been evaluated at this stage of the RFP and the fact
117 that it wasn't raises serious doubts and concerns about the RFP process. It was
118 declined in the peaker category by Howard Friedman of Navigant Consulting and
119 Mark Klein of PacifiCorp. It was apparent that they did not read the entire bid
120 proposal, or if they did, it appears that they did not have their own stipulations or
121 references in front of them when they rejected this bid.

122
123 PacifiCorp further corrupted their process by refusing to negotiate with our bid
124 team after the short list was announced. They now claim in these hearings that
125 negotiations with bidders failed to produce economic alternatives to their NBA,
126 but at least insofar as Spring Canyon is concerned, there were no good faith
127 negotiations. Negotiations are defined in the business world as "give and take,
128 bargaining, discussions about values, coming to terms through discussions and
129 dialogue" to arrive at a better and lower value for the ratepayers than originally
130 bid. The discussions were limited to PacifiCorp asking, "*Is this your best offer?*"
131 When we asked for clarifying data that would support a lower price or presented a
132 formula that would permit a lower capacity payment through better equipment
133 purchases or lower than anticipated interests cost, PacifiCorp personnel merely
134 stated, "*duly noted.*" Their notes from the Oct. 16, 2003 meeting, obtained during
135 discovery, certify this type of activity and the lack of earnest negotiations during
136 that meeting. PacifiCorp made no effort to explore "price or non-price terms"
137 even though they told Spring Canyon to expect that to occur after PacifiCorp
138 short listed Bid 135.

139 During discovery, PacifiCorp asked very detailed and seriously crafted questions
140 in order to learn more about both of our bids, Bids 135 and 653. We were very
141 surprised at the depth of their questions and delighted to provide PacifiCorp and
142 the Division and Committee Staff comprehensive answers to these detailed
143 questions since these questions were originally anticipated at our Oct. 16, 2003,
144 Round II short list meeting in Portland, OR. We are proud of our project and are
145 eager to provide all the details that will prove beyond anyone's doubt that we are
146 the best of the bidders, including the NBA. These answers covered over 45 pages
147 of narrative styled answers and supplemental tables about our project. During the
148 "earnest negotiations for price and non-price terms" session in Portland, Spring
149 Canyon's attendees included all members of the bid team, including our power
150 contract attorney, who proposed definitive terms for a prototype power
151 agreement. Even though PacifiCorp was well represented by their staff including
152 an attorney, no legal or contract terms were mentioned or discussed. Our attorney
153 could not understand that they did not even touch on such important contract and
154 pricing matters. Our terms that day were condensed by PacifiCorp to a page and
155 a half on a matrix they called a "template". If they were sincerely interested in
156 discussing price and non-price terms for arriving at the lowest cost alternative for
157 power options for the State of Utah during that meeting, the details and
158 comprehensive inquiries should be more reflective of those we experienced in the
159 recent discovery process.

160 The end result is that PacifiCorp cannot represent to the Commission that Currant
161 Creek was the least cost alternative available to them at the time the bids were

162 originally analyzed. It appears that they had every incentive not to allow bidders
163 to reduce their costs because it would prevent their NBA from being selected.
164 Having PacifiCorp manage the RFP does not lend itself to a fair and unbiased
165 process because they have a huge financial interest in awarding the bid to
166 themselves. If this less-than-independent process is sanctioned now and
167 replicated in the future, no party other than PacifiCorp will go to the time and
168 considerable expense to bid to provide low cost power. Without competition,
169 Utah ratepayers will ultimately pay higher costs for PacifiCorp's prejudiced
170 conclusions. The only financial winners are the shareholders of Scottish Power
171 who get the ratepayers of Utah to finance a rate based, generation asset for
172 PacifiCorp.

173
174 PacifiCorp's less than independent evaluation also carelessly disregarded the
175 significant risks of obtaining air and water permits. Spring Canyon has the
176 permits required to begin construction immediately, but that was not even a factor
177 or consideration in PacifiCorp's analysis. PacifiCorp has just begun to discover
178 the risks Currant Creek faces and the value of Spring Canyon's completed
179 permitting process.

180
181 PacifiCorp's own delays in the RFP process have created the "urgency" the
182 Commission faces in this proceeding. A review of their RFP process schedule
183 supports this claim. They delayed contract negotiations past October 1, 2003,
184 which effectively prevented any bidder from being able to complete construction

185 by PacifiCorp's June 2005 target date. When PacifiCorp discussed these delays
186 with our bid group, they still insisted that we be able to build our project and have
187 it on line by June 2005, regardless of when they executed a power purchase
188 contract. We had definitive commitments from our EPC contractors and could
189 have completed the combined cycle plant 20 months following the October 1
190 contract execution date. They should not be rewarded with a certificate for a
191 proposed less than optimal power plant, particularly when there are better, more
192 economical and lower risk alternatives available.

193 **Q. Why was PacifiCorp's comparison between Currant Creek and Spring**
194 **Canyon Bid 135 unfair?**

195 **A.** As with the RFP process, there are many problems with PacifiCorp's comparison
196 between the Currant Creek plant and Bid 135. The single most important issue
197 that insurmountably favors Currant Creek is PacifiCorp's skewed analysis of Bid
198 135 on a 20-year operating basis against Currant Creek's operations over a 38-
199 year period. PacifiCorp's forward power price curve assumes that electricity
200 prices remain relatively flat for 20 years and then escalate rapidly over the next 20
201 years. Under that assumption alone, no one but PacifiCorp could win the bid
202 because PacifiCorp would not entertain any contract longer than 20 years as stated
203 in the RFP, even though we asked for a longer contract. That explains the
204 deceptively huge difference between Currant Creek and the supposed next
205 cheapest option, which PacifiCorp claims would cost ratepayers at least \$320
206 million more than Currant Creek over the life of the plant. With a formula like
207 the one PacifiCorp used, it is no wonder. PacifiCorp maintains they addressed

208 this issue by applying a “Real Levelized Revenue Requirement” calculation from
209 Appendix J of their Integrated Resource Plan, but that simply does not even out
210 the tremendous advantage that comparing a 20 year contract to a 39 year plant
211 amortization gives PacifiCorp. The problem is only worsened by PacifiCorp’s
212 forward price curve assumptions. The fact is that Spring Canyon proposed to
213 build a plant just like PacifiCorp’s NBA, for less. PacifiCorp’s Currant Creek
214 plant will cost at least \$350 million and perhaps more because they are building it
215 in stages. PacifiCorp complains that our proposal doesn’t recognize the value of
216 our plant at the end of the 20-year contract. The trouble is that if we were to
217 adjust the cost recovery period (lowered capacity payment) to be longer than the
218 contract PacifiCorp will execute, it is doubtful that a lender will finance the
219 project. Our capacity payments have to cover the capital costs (including
220 principle and interest on the debt) of the plant during the contract life. PacifiCorp
221 knows this and uses that fact to prejudice the process. Lenders would be
222 supportive of contracts for 30 years and have said so to us. As I have stated,
223 PacifiCorp summarily refused to even discuss the possibility for an extended
224 agreement for longer than 20 years, which prevents ratepayers from enjoying any
225 part of the lower cost benefit in their electric rates. PacifiCorp’s refusal to
226 negotiate contributed to this problem as well. Had they negotiated, they would
227 have confirmed Spring Canyon’s offer as an option in the initial bid to sell the
228 plant to PacifiCorp at any time, the effect of which ultimately would have reduced
229 rates customers will pay compared to the rates they will pay if Currant Creek is
230 certificated and built. Spring Canyon was prepared to sell the plant at the end of

231 the 20 year tolling agreement for as little as \$1.00. PacifiCorp had little interest in
232 negotiating this option because it would prevent their selection as the winner. We
233 ask the Commission to run the model with the purchase option included to see the
234 significant impact it would have on the selection process.

235 **Q. Did PacifiCorp discuss with you the costs for your project?**

236 Only briefly. We were prepared to discuss all of the relevant costs of debt,
237 returns on equity and amortization of these capital costs during the October 16
238 meeting in Portland. We were able to submit a formula for lowering our capacity
239 charge with lower interest rates for interim construction and term debt. They were
240 “*duly noted!*” During discovery, we submitted a cost of capital summary to
241 compare Spring Canyon’s after-tax capital costs to PacifiCorp’s after-tax cost of
242 capital. It was not surprising to us to demonstrate that even with our higher cost
243 of debt that we originally submitted our after-tax cost of capital was 7.073%
244 compared to PacifiCorp’s 7.50%. With the lower debt we were negotiating with
245 our lenders, we could have lowered that cost to approximately 6.6%. Before tax
246 costs were equally shaded toward Spring Canyon (12.196% for PacifiCorp vs.
247 10.61% for Spring Canyon). (See Table 1.1, Cost of Debt and Capital
248 Comparisons) Needless to say, PacifiCorp did not pursue these discussions. They
249 have learned, subsequent to those Portland, OR, discussions the details of these
250 significant costs savings in their discovery process.

251 In summary, the Currant Creek plant is not the least cost alternative when one
252 includes operations, initial construction costs, and costs of capital. Therefore, we

253 certainly feel that certificating it is not in the public interest for the ratepayers of
254 Utah.

255 **Q. Did PacifiCorp unfairly compare and evaluate Spring Canyon’s Bid 135 in**
256 **other ways?**

257 A. Yes. In addition to elaborating on some of the points I have made, Mr.
258 Banasiewicz and Mr. Olive will use PacifiCorp’s models to show the Commission
259 many of PacifiCorp’s inappropriate and unfair comparisons that favor
260 PacifiCorp’s Currant Creek proposal. Among other things, PacifiCorp used
261 different models to calculate the present value revenue requirements (“PVRR”)
262 for Currant Creek and Spring Canyon. Navigant Consultant, the independent
263 consulting firm PacifiCorp hired to ensure that their RFP process was fair and
264 independent, did not analyze or certify whether the two models calculate the
265 PVRR in the same way. Navigant, to our knowledge, did very little to set up the
266 comparisons on an equitable and consistent process. They certainly did not take
267 credit for all of the models that PacifiCorp used to compare bids.

268
269 Mr. Banasiewicz and Mr. Olive will also address differences they found between
270 the two models that work to the benefit of Currant Creek and inappropriate values
271 PacifiCorp used in evaluating the Spring Canyon bid that dramatically affect the
272 PVRR calculation of our bid. It is very simple. When you run the models, either
273 the PacifiCorp screening models or the Committee’s consultant’s models, the
274 Spring Canyon Energy Bid 135 has the best PVRR and wins! Bid 653 also wins!

275 If running the models for comparing the bids is the substantive issues for issuing
276 the CCN, we win the bid. We are prepared to show these results.

277 **Q. What are you asking the Commission to do in this proceeding?**

278 A. Since the Commission has the responsibility for securing the least cost and least
279 risk alternative for the ratepayers of Utah, and has stipulated in 2002 that
280 PacifiCorp should seek power alternatives from as many sources as possible for
281 the benefit of the ratepayers of Utah, it would appear that the Commissioners
282 should judge the merits of those bid responses and issue a finding as to whether or
283 not PacifiCorp selected the lowest cost and lowest risk alternative, not
284 withstanding the overwhelming desire of PacifiCorp to “only” build and generate
285 power from its own rate based plants. Spring Canyon Energy, as well as other
286 bidders, submitted bids under the premise that the RFP process that would be
287 independent of PacifiCorp’s internal corporate goals; that the review and
288 assessment of all the bids would be fair and objective; and, that the lowest cost
289 and lowest construction risk project would be selected. Our testimony will
290 demonstrate that the process was not fair, the lowest bids were not evaluated for
291 reasons inconsistent with the RFP parameters; the selection of PacifiCorp’s NBA
292 was biased and was not the best alternative for the ratepayers of Utah.
293 Spring Canyon is asking that the Commission not grant a CCN to PacifiCorp for
294 their proposed Currant Creek generation plant on grounds that PacifiCorp failed
295 to select the least cost and least risk alternative available to them for the 2005
296 Peaker RFP bid. Under normal circumstances, we would ask that the
297 Commission require PacifiCorp to re-analyze the proposals before them using the

298 same assumptions and methods they used for Currant Creek and then negotiate
299 with bidders in good faith for the best value for the ratepayer. We are concerned,
300 however, after challenging PacifiCorp's comparative and evaluative methods and
301 their Currant Creek proposal, that PacifiCorp will not treat Spring Canyon fairly,
302 even if we demonstrate that our bids and proposals are better for the ratepayer
303 than their NBA. Again, they have no financial or altruistic incentive to do so. We
304 are therefore also asking, based on the evidence we have provided and the urgent
305 circumstances PacifiCorp says they face in 2005, that the Commission award
306 Spring Canyon the 2005 Peaker bid. As Spring Canyon has all of the necessary
307 construction permits and has obtained reasonable and reliable financing interests,
308 we are prepared to begin construction at the conclusion of this hearing.

309

310 In the alternative, if the Commission should conclude that because of the
311 emergency condition, it must grant PacifiCorp a CCN, we ask that the
312 Commission order PacifiCorp to execute a power purchase agreement with Spring
313 Canyon immediately so that the emergency that PacifiCorp is forecasting can be
314 quantifiably resolved. The Currant Creek plant alone does not come close to
315 meeting the power shortfall PacifiCorp is projecting for 2005. Spring Canyon can
316 fill that gap to meet the impending "black out/brown out" emergency and give
317 PacifiCorp's ratepayers the benefit of a more economical power plant than the
318 NBA. That would give the Commission and PacifiCorp the relief they are
319 seeking. Again, our permits allow us to begin construction immediately.
320 Something is terribly wrong with the process when the low cost bidder is deemed

321 uneconomic. We can build the plant at a lower cost than PacifiCorp, get it into
322 operation quicker, and can operate it cheaper over the life of the comparable term.
323 Our bids stated such, but we were not compared to their NBA consistently and
324 fairly. The Commissioners are placed in a very difficult position by the
325 emergency demands and we appreciate the complexity of the solution. However,
326 if you run the comparison models with correct input values (heat rates, hours of
327 operation, etc.) we win! Issuing a decision contrary to the facts will be very
328 difficult to rationalize to the ratepayer.

329 **Q. Does this conclude your direct testimony?**

330 A. Yes.