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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE PETITION OF DESERT POWER, L.P. FOR APPROVAL OF A CONTRACT FOR THE SALE OF CAPACITY AND ENERGY FROM ITS PROPOSED QF FACILITIES	DOCKET NO. 04-035- **PETITION**

Pursuant to Utah Code Ann. § 54-12-2, and Section 210 of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), 16 U.S.C. §824a-3, Desert Power, L.P. ("Desert Power") hereby petitions the Commission to approve a contract for the sale to PacifiCorp of electric energy and capacity from Desert Power's proposed Qualifying Facility. Desert Power submits that its proposed contract attached hereto as DP 1.1 should be approved, subject to such additions, changes or amendments as may be appropriate, lawful and in the public interest.

In support of this Petition, Desert Power states as follows:

1. This Commission has jurisdiction over this Petition pursuant to Utah Code Ann. §54-12-1, *et seq.,* and Section 210 of the PURPA of 1978, 16 U.S.C. § 824a-3, and regulations promulgated thereunder.

2. Desert Power operates an existing power production facility near Rowley, Utah. Its facility presently is composed of two simple-cycle combustion turbines capable of generating approximately 65 MW. Desert Power intends to upgrade the facility and provide thermal energy for useful purposes such that it will be a Cogeneration Facility under Utah law and a Qualifying Facility under PURPA ("QF") with an output of approximately 90 MW.

3. Desert Power has filed a notice of self-certification as a Qualifying Facility with the Federal Energy Regulatory Commission, docketed in No. QF-04-40-000, and has provided notice as required to Pacificorp and the Utah Public Service Commission.

4. Under applicable federal and state laws, PacifiCorp is required to purchase all power and energy offered to it by a QF at PacifiCorp's avoided costs. Desert Power is prepared to expand its facility as a QF, and is offering to sell power and energy from its QF to PacifiCorp at the avoided cost rates and terms specified in the attached contract.

5. PacifiCorp has not provided Desert Power its avoided costs or provided indicative pricing for the upgraded facilities that are reasonably reflective of its avoided costs despite repeated assurances that it would do so.

6. The Desert Power facility is already in place; with an approved contract by the end of April 2004, its expansion will be fully ready to generate power by the summer peak of 2005. The power will be fully dispatchable.

7. Desert Power understands that US Magnesium has also filed for approval of a QF contract. Together, they will provide at the Rowley site a total output of approximately 140-150 MW.

8. Desert Power has joined with US Magnesium LLC to attempt to work through the cumbersome process of obtaining a QF contract from PacifiCorp for over a year. QF contracts

typically must be in place in advance so that the economics can be demonstrated for purposes of obtaining financing needed to invest in the upgrades. Because Desert Power has not received reliable indicative pricing, it has been forced to size its proposed facility upgrade without any clear understanding of the optimal economic size for PacifiCorp; with ascertainable prices, size optimization could be undertaken.

9. The process for obtaining a QF contract from PacifiCorp for a facility larger than 1 MW is cumbersome and has taken an extraordinary amount of time. Based on input from interested parties the Commission adopted a procedure for a larger QF to obtain avoided cost pricing filed as Schedule 38 within the approved tariff. In accordance with proposed guidelines for Schedule 38, which were adopted by this Commission, Desert Power -- working with US Magnesium LLC -- made a request in November 2002 for "indicative pricing." PacifiCorp finally proposed prices in February 2003, but they were unreasonably low and inadequately documented or explained. In May 2003 it was explained to the QF working group that PacifiCorp's proposed prices did not include any credit for capacity deferral because PacifiCorp was applying a 100 MW minimum threshold for a capacity credit.

10. Desert Power has attempted to analyze PacifiCorp's calculations and to obtain reasonable prices for its QF power and energy only to find problem areas that it discussed with PacifiCorp. PacifiCorp offered to examine the issues raised and report back, but it never did. On February 24, 2003, in Docket 02-035-T11, the Commission ordered PacifiCorp to file a methodology within 90 days to develop avoided costs. On September 24, 2003, the Commission ordered PacifiCorp in Docket 03-035-14, to file a revised avoided cost methodology within sixty days. To date, PacifiCorp has failed to make a filing with an appropriate or workable avoided cost methodology or to provide any specific answers as to how it proposes to calculate capacity

payments. Moreover, despite three QF working group meetings to discuss capacity payments, no resolution has been reached as to a proper methodology for determining capacity payments for a QF, nor was there any basis provided for numbers that Pacificorp included as an example of capacity values. As a result of PacifiCorp's actions and inactions, the Schedule 38 process has failed to produce the intended results and Desert Power is left to petition the Commission to approve appropriate avoided cost rates and a contract for such power sales.

11. PacifiCorp proposes to calculate capacity payments through the use of its IRP model. This approach, however, has proved to be extremely problematic and unworkable. The IRP model was created to help develop long-term least-cost resource development plans, but it cannot be used by project developers to determine or confirm reasonable avoided cost projections. PacifiCorp refuses to make its model or certain critical input data available to QF developers, and instead provides only "black box" outputs that are confusing, unverifiable and unbelievable. The IRP planning model cannot be used to calculate reasonable avoided cost rates.

12. PacifiCorp's "black box" methodology for developing avoided cost rates is unacceptable. By limiting access to data and models, only PacifiCorp can reasonably control or determine the myriad of assumptions and inputs that affect the outcome. Moreover, the IRP methodology provides inconsistent and illogical avoided cost results. A QF pricing methodology should be relatively simple and should use calculations that are transparent, verifiable and logical. With this filing Desert Power proposes the adoption of a process that will allow avoided costs to be determined without endless delays and obfuscation.

13. Desert Power proposes to use a "Next Deferrable Plant" ("NDP") approach, as proposed by US Magnesium LLC, as the basis for establishing avoided cost rates. Desert Power proposes to use PacifiCorp's West Valley lease with its affiliate as the NDP, since PacifiCorp

can terminate that lease in 2006. The West Valley plant also provides clear operating data from which specific operating costs can be developed. This is particularly appropriate given the Commission's finding in its November 21, 2003 Order in Docket No. 03-035-T-10 that PacifiCorp has a "summer peak deficit in all years …." Order at p.3.

14. Under the contract submitted herewith, PacifiCorp will pay Desert Power monthly for deliveries from the facility at a price that includes a fixed capacity payment derived from PacifiCorp’s current lease agreement for the West Valley units, and fixed and variable operation and maintenance costs derived from PacifiCorp’s actual operating costs for those units. It is the intent of the Agreement that the purchase price paid by PacifiCorp during the first year will be based upon the fixed and variable costs actually incurred by PacifiCorp in connection with the West Valley units for the twelve month period ending December 31, 2003, the actual heat rate of the West Valley units, actual fuel costs as they are incurred in the future, and PacifiCorp’s ability to schedule the Desert Power facility as though it were a West Valley Unit. After the first year, the fixed and variable operations and maintenance components will be adjusted based upon inflation and for new takes. For capacity and energy provided by the QF facility when PacifiCorp does not schedule it, the price will be based upon the lower of the West Valley-based costs or firm or non-firm market prices, depending on PacifiCorp’s resource balance at the time. The specific costs, pricing factors and formulae used to calculate the monthly purchase price are detailed in Exhibit D to the contract.

15. QF rights provided by Section 210 of PURPA and Utah Code Sections 54-12-1 and 54-12-2 are intended to encourage the development of more efficient technologies and to encourage the greatest amount of energy utilization per unit of resource input. The need to promote the most efficient use of valuable resources is vitally important in today’s environment.

A regulated utility, however, has little incentive to develop complicated synergies to use thermal energy from power plant exhaust as a QF must do. Rather, a utility has the incentive to invest as much in rate base as possible in order to generate returns for shareholders

16. Desert Power was constructed to meet the critical needs that were evidenced with the Western Energy crisis of 2001. It was the only independent power producer to do so. Now working to provide thermal energy on an efficient basis in accordance with QF requirements, Desert Power can provide an important means of helping to maintain competitiveness and retain Utah jobs, increase efficiency, and benefit utility ratepayers.

17. Even beyond PacifiCorp's legal obligation to purchase QF resources, the QF resources proposed by Desert Power, are in the public interest. They are capable of providing partial relief to the pressing need for new generation resources within PacifiCorp's transmission constrained "bubble." Moreover, by adding the combined cycle to an existing facility, emissions are not increased, only more efficient utilization of resources.

18. Desert Power respectfully requests that its proposed contract be approved as quickly as possible, following appropriate analysis by regulators, so that its facilities can be timely upgraded in an effort to permit it to become more competitive and retain its significant contributions to the Utah economy.

19. In making this filing, Desert Power intends to obligate itself to the delivery of energy and capacity from its facility at rates reflecting PacifiCorp's current full avoided costs, and to create a legally enforceable obligation between the Parties. Desert Power has attempted in good faith, but without success, to get a realistic avoided cost price from PacifiCorp. But for PacifiCorp's conduct, Desert Power would have a contract in place. [*See* 18 C.F.R. §§ 292.303(a), 292.304(d)(2); *Rosebud Enterprises, Inc. v. Idaho Public Utilities Commission*, 951

P.2d 521, 525-26 (Idaho 1998); *Armco Advanced Materials Corp. v. Pennsylvania Public Utility Commission*, 579 A.2d 1337, 1347 (Pa. Cmwlth. 1990), *aff'd per curiam*, 634 A .2d 207 (Pa. 1993), *cert. denied sub nom.*, *West Penn Power Co v. Pennsylvania Public Utility Commission*, 513 US 925 (1994)].

20. In support of this Petition, Desert Power submits herewith the testimony of Roger Swenson, an energy consultant for Desert Power, who is also a consultant to US Magnesium LLC, along with its proposed QF contract for approval. Mr. Swenson's testimony describes his proposal for a workable and equitable methodology for calculating avoided costs.

Desert Power respectfully petitions this Commission to enter an order approving a contract requiring PacifiCorp to purchase all power and energy offered to it from Desert Power's QF beginning not later than July 1, 2005, under terms and avoided cost rates specified therein. In order to meet the projected July 1, 2005 start date, Desert Power respectfully requests approval of the contract submitted herewith by April 30, 2004.

DATED this 23rd day of January, 2004

Callister, Nebeker & McCullough

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition was emailed and mailed, postage prepaid, this 23rd day of January 2003, to the following

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