# State of Utah

DEPARTMENT OF COMMERCE
Committee of Consumer Services

To: The Public Service Commission of Utah

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Date: September 6, 2006

Subject: Docket No 04-035-04: 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

1 Desert Power Petition

On September 24, 2004 PacifiCorp and Desert Power entered into a Power Purchase Agreement (PPA). On October 27, 2004 the Commission issued its Order Approving Desert Power's Qualifying Facility Contract. Desert Power did not meet the May 9, 2006 commercial operation date agreed to in the PPA.

On August 9, 2006 Desert Power, L.P. (Desert Power), filed an "Emergency Petition for Resolution of Dispute Pursuant to Section 21 of Power Purchase Agreement and Proposed Schedule".

As identified in the Petition the dispute involves PacifiCorp's demand that Desert Power agree to amend the PPA to adjust the avoided cost rates that Desert Power would be paid if not on line by June 2, 2007 to then current avoided cost rates. Desert Power contends that it can be on line by June 2, 2007, and that such a change to the PPA would not be acceptable to its bank and investors, therefore the project would not be financable.

Desert Power requests that the Commission approve an amendment to the PPA extending the commercial operation date to June 1, 2007and the contract term one year, and that the issue of the avoided cost rate not be decided unless Desert Power fails to meet the June 1, 2007 commercial operation date.

Although additional issues have been identified by the Parties in testimony and the August 31, 2006 technical conference, the Petition is specific to the issues identified above.

Recommendation

The Committee recommends that in the event any delay, damages, expenses, liabilities, penalties, payments, or other costs different from or greater than PacifiCorp's obligations under the September 24, 2004 PPA are caused by or attributable to PacifiCorp's acts or failure to act contrary to or in breach of the September 24, 2004 PPA, the Commission should determine that those costs are to be borne by PacifiCorp and its shareholders and ratepayers are to be held harmless.

2 Stipulation Order

The Commission order of June 28, 2004 approved a Stipulation that provided, "for an interim period, avoided energy and capacity cost payments for 20-year purchase contracts from large Qualifying Facility projects based on an interim generic avoided cost methodology." Because there was no Commission-approved avoided cost methodology the Stipulation was necessary in order to comply with PURPA requirements for the utility to provide indicative pricing to requesting QFs.

The Stipulation specified the interim period as being from the effective date of a Commission order approving the Stipulation until the date of a Commission order adopting new avoided cost terms and/or prices. Prices in Appendix A of the Stipulation were to be available to any QF contract approved during the interim period provided that power from the QF project was available to PacifiCorp no later than June 1, 2007, up to a cumulative cap of 250MWs.

On October 31, 2005, the Commission issued an order approving an avoided cost method for pricing contracts for power purchases from QFs thereby ending further QF contracts receiving Stipulation pricing.

The Committee consented to Stipulation prices/rates because PacifiCorp identified a need for energy and capacity to serve its load during that period and to meet PURPA requirements while working to achieve an avoided cost methodology that met the PURPA ratepayer indifference standard. The need for power by Summer 2007 still exists.

The stipulated prices were not a calculated avoided cost using customary means. Prices were artificially set for a short period of time to cover a limited amount of energy and capacity necessary to fill an immediate resource need.

QF contracts approved during this period were allowed the Stipulation pricing if, and only if, the Stipulation terms were met. Those terms included the requirement that the QF was serving customer loads no later than June 1, 2007.

## Recommendation

Under the terms of the Stipulation, a QF is required to provide power to PacifiCorp by no later that June 1, 2007 in order to receive payments reflecting avoided cost prices as specified in the Stipulation. If Desert Power is unable to perform according to the terms specified in the Stipulation, the Committee recommends that Desert Power receive payments in accordance with the avoided cost prices in effect when it is commercially operational.