

Dean S. Brockbank  
Rocky Mountain Power  
201 South Main Street, Suite 2200  
Salt Lake City, Utah 84111  
(801) 220-4568  
dean.brockbank@pacificorp.com

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

*Attorneys for Rocky Mountain Power*

**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. 04-035-04  <b>MOTION TO COMPEL DISCOVERY</b>
--	---

Rocky Mountain Power (or the “Company”) hereby respectfully moves for an order compelling discovery from Desert Power, L.P. (“Desert Power”). The grounds for this motion are as follows:

1. In various references within its testimony (*see, e.g.*, p. 2 of Roger Swenson’s testimony: “given the uncertainty raised by the delay, financing arrangements were frozen”) and during the August 31, 2006 technical conference (*see, e.g.*, trn. 8/31/06 at 62 “MR. DARLING: . . . our financing . . . has been adversely impacted”), Desert Power identifies the alleged *force majeure* event in this case as the cause for its financing problems. Further, it identifies its

financing problems as an additional source of delay (*see, e.g.*, trn. 8/31/06 at 39 “MR. DARLING: . . . And when PacifiCorp rejected the *force majeure* claim it started creating problems with our financing, . . . which further impacted and delayed the project, okay?”).

2. The Company sought discovery from Desert Power of “all documentation, information and correspondence from lenders, equity investors or others where any cause for ‘freezing’ or withholding financing or additional funds is addressed.” *See* PacifiCorp’s Third Set of Data Requests at Request 3.2.

3. Desert Power’s response to Request 3.2 stated that “[t]he ‘freezing’ occurred because of PacifiCorp’s refusal to recognize the validity of the force majeure claim as it pertained to PacifiCorp’s interconnection situation. The concern was not the interconnection itself but the fact that with the delay in having the interconnection ready, with the imminence and then passage of the Commercial Operation Date, no resolution had been reached under the contract. The discussions with the financing sources were occurring almost weekly. As LaSalle made clear in April, no funding beyond May 1 would be made without resolution of this issue. The correspondence on this between PacifiCorp and Desert Power has already been provided. The correspondence on this between PacifiCorp and Desert Power is being or has already been provided.” *See* Desert Power, L.P.’s Responses to PacifiCorp’s Third Set of Data Requests at Response 3.2.

4. Notwithstanding Desert Power’s written response to Request 3.2, to the best of its understanding the Company has not yet received from Desert Power any documentation “from lenders, equity investors or others where any cause for ‘freezing’ or withholding financing or additional funds is addressed.”

5. Given Desert Power's assertion that the Company's rejection of the *force majeure* claim was the basis for Desert Power losing its financing, documentation from the lenders is highly relevant and would go toward proving or disproving Desert Power's assertion. For example, the citation by lenders of any additional grounds beyond the uncertainty of the Commercial Operation Date may potentially identify additional causes for the loss of financing. Likewise, concerns being raised by lenders prior to the assertion of *force majeure* may undermine Desert Power's claim of causation.

Given the extraordinarily tight schedule in this matter, the Company has not sought to meet and confer with Desert Power to resolve this issue prior to bringing it to the Commission's attention. It may be that the Company and Desert Power are able to resolve this issue and that Desert Power will voluntarily produce or identify the requested documents. Therefore, the only relief the Company seeks at this point is: (1) the preservation of the Company's right to object to any argument regarding Desert Power's financing problems, in the event Desert Power refuses to produce the requested documents; (2) a reasonable amount of time for Desert Power to produce the documents and for PacifiCorp to review them and determine whether any further testimony or argument is warranted based on the documents; and (3) the right to present additional testimony and/or argument if warranted based on the documents. Specifically, the Company requests that Desert Power be required to produce the requested documents within five days of today's date (consistent with the discovery turn-around previously established) and that the Company be allowed five days from the date the documents are produced in which to submit any additional argument and/or testimony for the Commission's consideration, based on and limited to issues regarding Desert Power's financing.

RESPECTFULLY SUBMITTED: September 7, 2006.

---

Edward A. Hunter  
David L. Elmont  
Stoel Rives LLP

Dean S. Brockbank  
Rocky Mountain Power

*Attorneys for Rocky Mountain Power*

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing **MOTION TO COMPEL**

**DISCOVERY** was sent by electronic mail to the following on September 7, 2006:

Stephen F. Mecham  
Callister Nebeker & McCullough  
10 East South Temple, Suite 900  
Salt Lake City, UT 84133  
sfmecham@cnmlaw.com

Reed Warnick  
Paul Proctor  
Assistant Attorney General  
500 Heber Wells Building  
160 East 300 South  
Salt Lake City, Utah 84114  
rwarnick@utah.gov  
pproctor@utah.gov

Michael Ginsberg  
Assistant Attorney General  
Patricia Schmid  
Assistant Attorney General  
500 Heber Wells Building  
160 East 300 South  
Salt Lake City, Utah 84114  
mginsberg@utah.gov  
pschmid@utah.gov

---