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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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In the Matter of the Application of ) PACIFICORP’S RENEWED OPPOSITION  
PACIFICORP for a Certificate of ) TO THE INTERVENTION OF SPRING  
Convenience and Necessity Authorizing ) CANYON ENERGY, LLC  
Construction of the Lake Side )  
Power Project ) DOCKET NO. 04-035-30  
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PacifiCorp hereby renews its opposition to the intervention of Spring Canyon Energy, LLC’s (“SCE”) in this matter in light of SCE’s recent announcement of its intention to seek qualifying facility status for its proposed facility. PacifiCorp requests that the Commission reconsider its decision to grant SCE’s petition to intervene for the following reasons.

1. Utah law provides that a petition for intervention shall be granted if it is determined that: (a) the petitioner’s legal interests may be substantially affected by the proceeding; and (b) the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention. Utah Code Ann. § 63-46b-9(2). To fulfill the requirements of subsection (a) above, a petition to intervene must include “a statement of facts demonstrating that the petitioner’s legal rights or interests are substantially affected by the formal adjudicative proceeding, or that the petitioner qualifies as an intervenor under any provision of law” and “a statement of the relief the petitioner seeks.” Utah Code Ann. §63-46b-9(1)(c) & (d).

2. SCE's claim of substantial interest in this proceeding was based solely on its contention that it "submitted multiple bids in response to RFP-2003A" and "it was denied the opportunity to further enhance and negotiate its base loaded bid, after being short-listed." SCE's recent announcement to seek qualifying facility status for its facility effectively nullifies the only purported legal interest SCE claimed to have in this proceeding.

3. On July 30, 2004, shortly after the Commission granted SCE's petition for intervention in this proceeding, SCE sent a letter to PacifiCorp indicating that it intends to develop a qualifying facility near Mona, Utah which "will be very similar" to the project SCE proposed "in response to PacifiCorp's RFP 2003-A." (Attached as Attachment A to this pleading).

4. SCE previously participated in Docket No. 03-035-29, the Company's application for a certificate of public convenience and necessity for the Currant Creek power project. In that proceeding, the Commission reviewed the RFP process that served as the basis for selecting the Current Creek plant and the Lake Side power project and that determined the price for those projects. SCE claims that its participation in that process and its offer to sell power to the Company through a purchased power agreement bid into that process provides it sufficient legal interest to justify its intervention. However, SCE has now chosen to seek to offer power to PacifiCorp under an entirely different process both in terms of PacifiCorp's obligation to buy and the means of calculating the price. Rather than the RFP process determining which resource the Company would purchase and at what price, the PURPA statutes and implementing FERC regulations now control whether, to what extent and at what price PacifiCorp would buy SCE power. Indeed, if SCE is able to obtain qualifying facility status, under PURPA and Utah's "mini-PURPA" PacifiCorp is obligated to offer to purchase from SCE. *See* Utah Code Ann. 54-

12-2; 16 U.S.C. 824a-3(a)(2); C.F.R. § 292.303. Given that SCE intends to develop a qualifying facility and seek pricing from PacifiCorp based on the Company's avoided costs, SCE has no legitimate interest that will be affected by this proceeding.

5. SCE claimed in its petition for intervention that "it was denied the opportunity to further enhance and negotiate its base loaded bid, after being short-listed." To the extent that this statement can be read as a request for relief in this docket, SCE's decision to seek qualifying facility status also obviates the need for the relief SCE was seeking. Because SCE is now seeking avoided cost pricing and ultimately a qualifying facility contract with the Company for its proposed facility, it no longer needs to pursue the relief it apparently sought in this proceeding. Specifically, because avoided costs are determined by the Commission based on the *Company's* avoided cost information (not the QF's costs), SCE does not need the Commission to order that it has an opportunity to "enhance" its bid. Further, since the Company is obligated to purchase power from qualifying facilities, SCE no longer needs the Commission to order the Company to negotiate a power purchase agreement with SCE. In any event, in its March 5, 2004 Order in Docket No. 03-035-29, the Commission previously rejected SCE's request for similar relief in the Current Creek proceeding, stating that "restarting negotiations after a bidder's best and final offer is made and found to be uneconomic would be unfair to other bidders and impair the credibility of the process." Docket No. 03-035-29 (Utah PSC Mar. 5, 2004).

WHEREFORE, PacifiCorp respectfully requests that the Commission determine that SCE's intervention in this proceeding is no longer necessary and terminate SCE's status as an intervenor.

Respectfully submitted this \_\_\_\_ day of August 2004.

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## CERTIFICATE OF SERVICE

I hereby certify that on this thirteenth day of August 2004, I caused to be served by electronic service, a true and correct copy of the foregoing Renewed Opposition to the Intervention Spring Canyon Energy LLC's to the following:

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