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-BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH-

In the Matter of the Petition of Spring
Canyon Energy, LLC for the Approval of a
Contract for the Sale of Capacity and
Energy from its Proposed QF Facility:

Docket No. 05-035-08

[Spring Canyon Exhibit 1](#)

**PRE-FILED DIRECT TESTIMONY OF F. DAVID GRAEBER FOR
SPRING CANYON ENERGY LLC**

February 28, 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 providing direct testimony for Spring Canyon Energy LLC (Spring Canyon).
8 Spring Canyon is wholly-owned by USA Power Partners LLC and was formed to
9 develop and ultimately construct a Combined Cycle power plant close to Mona,
10 Utah. USA Power LLC is the managing member of USA Power Partners and
11 Spring Canyon and is one of the participants in the Spring Canyon project.
12 During the past years, Spring Canyon responded to PacifiCorp's Request for
13 Proposals (RFP) issued June 6, 2003 and participated as interveners in the hearing
14 in which PacifiCorp sought a certificate of public convenience and necessity for
15 its Currant Creek Power Project in Juab County.

16 **Q. What is your educational background and power generation experience?**

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

24 independent power plant developer and owner of a company known as
25 Powerbridge Inc. Powerbridge developed two qualifying facilities (“QF”) under
26 the Public Utility Regulatory Policy Act (“PURPA”) in Florida, which became
27 commercial in 1993. Powerbridge was involved in power projects in Colorado,
28 Pakistan, China, and Malaysia. Powerbridge was sold to Evergreen Resources
29 Inc., a drilling partner in a coalbed methane gas development, in 1996. Since
30 then, I have been involved in several long-term consulting engagements with
31 international power and oil and gas firms. In 1997, I formed a relationship with
32 Ted and Lois Banasiewicz in which we developed power project sites in New
33 Jersey, Pennsylvania, Oklahoma, Colorado and Utah. Spring Canyon is one of
34 those sites.

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

36 A. The purpose of my testimony is to briefly describe Spring Canyon’s efforts to
37 contract with PacifiCorp to sell the remaining capacity under the stipulation
38 (“stipulation”) in Docket No. 03-035-14 as a QF at the avoided cost rates
39 approved by the Commission. My description illustrates that Spring Canyon is
40 entitled to the remaining capacity under the stipulation.

41 **Q. Why is Spring Canyon entitled to the remaining capacity under the**
42 **stipulation?**

43 A. Because Spring Canyon was the first to seek the required information from
44 PacifiCorp to contract to sell the remaining capacity and Spring Canyon was the
45 first to petition the Commission for approval to sell the remaining capacity under
46 the stipulation to PacifiCorp.

47 **Q. What evidence do you have of those two claims?**

48 A. I have attached a series of correspondence between PacifiCorp and Spring
49 Canyon that begins July 30, 2004 and a petition from Spring Canyon to the
50 Commission that shows Spring Canyon's intent to provide PURPA QF power to
51 PacifiCorp pursuant to the terms of the stipulation. The correspondence and the
52 petition illustrate that Spring Canyon was the first to seek the remaining capacity
53 under the stipulation for purposes of contracting with PacifiCorp.

54 **Q. When did PacifiCorp respond to Spring Canyon's July 30, 2004 letter?**

55 A. In a letter dated September 17, 2004 in which PacifiCorp offered its opinion that
56 the stipulation did not apply to the Spring Canyon project. It was PacifiCorp's
57 opinion that Spring Canyon would have to await the outcome of the Large QF
58 Task Force created in the stipulation.

59 **Q. Did Spring Canyon send the information PacifiCorp requested?**

60 A. Yes, on September 24, 2004, but by that time the Commission had suspended the
61 requirement in Schedule 38 that PacifiCorp respond and provide indicative
62 pricing within 30 days. Nevertheless, Spring Canyon asked PacifiCorp again to
63 begin contract negotiations and provided additional information PacifiCorp had
64 requested. Without any requirement for PacifiCorp to respond, however, the
65 process to enter into a QF contract became so unclear that Spring Canyon
66 petitioned the Commission September 28, 2004 to award Spring Canyon the
67 remaining capacity under the stipulation. It appeared that PacifiCorp would not
68 enter into QF contract negotiations for the remaining capacity without guidance
69 from the Commission. The Spring Canyon petition was coupled with an

70 alternative request to increase the 275 MW cap in the stipulation which the
71 Commission denied without prejudice. Spring Canyon reiterated its pending
72 September 28, 2004 request that it be awarded the remaining capacity under the
73 stipulation in its February 9, 2005 petition to the Commission.

74 **Q. Did Spring Canyon participate in the Large QF Task Force meetings?**

75 A. Yes, but despite PacifiCorp's opinion, I could see no reason to wait for the
76 outcome of the task force to contract with PacifiCorp for the remaining capacity
77 under the stipulation. During the December 21, 2004 meeting where Roger
78 Swenson and representatives from the Division, Committee, and PacifiCorp were
79 present, I made it clear that Spring Canyon had been seeking the remaining
80 capacity for some time to enter into a QF contract with PacifiCorp and no one
81 objected or asserted any other claims to that capacity. In fact, there seemed to be
82 an acknowledgement on the part of the people in attendance that Spring Canyon
83 was entitled to the remaining capacity under the stipulation because no other
84 parties expressed any interest in it.

85 **Q. Did you begin contract negotiations with PacifiCorp subsequent to that**
86 **meeting?**

87 A. Yes I did. I arranged to meet with Bruce Griswold of PacifiCorp on January 19,
88 2004 where he presented to me a copy of the executed QF contract of Desert
89 Power. Mr. Griswold indicated PacifiCorp's desire to proceed; however, as I
90 stated before, he was concerned that the Commission first give guidance as to the
91 remaining capacity under the stipulation. He did say that Spring Canyon was the

92 only party for whatever megawatts remained under the stipulation for a long-term
93 capacity contract..

94 **Q. What is Spring Canyon's position today?**

95 A. Spring Canyon has been seeking the remaining capacity under the stipulation
96 longer than anyone else now expressing an interest in it. Spring Canyon has done
97 all that it could to comply with Schedule 38 to complete negotiations with
98 PacifiCorp for a QF contract, but its efforts have been stifled at virtually every
99 turn. The Commission should determine the remaining capacity under the
100 stipulation and award it to Spring Canyon without any further delay so that Spring
101 Canyon can negotiate a QF contract with PacifiCorp and have power available to
102 PacifiCorp by June 1, 2007.

103 **Q. Has Spring Canyon filed its QF self-certification with the Federal Energy
104 Regulatory Commission?**

105 A. Yes. I have included a copy of the self-certification as an attachment to my
106 testimony.

107 **Q. What other steps has Spring Canyon taken in pursuit of the Spring Canyon
108 QF project?**

109 A, Spring Canyon has executed a purchase and sale contract on a 40-acre site near
110 Mona, has acquired sufficient water rights for the QF facility, has executed a
111 Large Generator Interconnection Agreement with PacifiCorp Transmission, and
112 has received an air permit from the Utah Division of Air Quality to operate the
113 facility. Now we need the Commission to determine the number of megawatts
114 that remain under the stipulation, increase the 275 MW cap if necessary, and

115 award sufficient capacity to Spring Canyon so that Spring Canyon can execute a
116 contract with PacifiCorp and complete the Spring Canyon QF project.

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

118 A. Yes. David L. Olive will address the Commission's questions concerning the
119 validity of the avoided cost prices established in the stipulation and the megawatts
120 that remain under the stipulation for Spring Canyon.

121

CERTIFICATE OF SERVICE

**I hereby certify that a true and correct copy of the foregoing Petition was
emailed or mailed, postage prepaid, this 28th day of February 2005, to the following:**

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