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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Petition of)	
Wasatch Wind, LLC for Approval of)	PACIFICORP'S MOTION TO COMPEL
a Contract for the Sale of Capacity and)	JOHN DEERE WIND ENERGY TO
Energy from Their Proposed QF)	RESPOND TO DATA REQUESTS
Facilities)	
)	Docket No. 06-035-42

Pursuant to R746-100-8B, Rule 37 of the Utah Rules of Civil Procedure, and R746-100-10, PacifiCorp doing business as Utah Power & Light ("PacifiCorp" or the "Company"), hereby files this Motion to Compel John Deere Wind Energy ("John Deere") to Respond to Data Requests ("Motion to Compel").

Background

In his direct testimony, John Deere witness Todd Velnosky offers broad conclusions and general observations, without any specific and detailed factual or technical support, regarding a number of the contract terms and conditions at issue in this proceeding. For example, Mr. Velnosky repeatedly refers to John Deere's experience with other unidentified projects in other unspecified jurisdictions as the basis for his opinions regarding the appropriate contract terms for purchases from Wasatch Wind. PacifiCorp's first set of discovery to John Deere is designed to get a clear and firm understanding about the factual support for the material statements contained

in Mr. Velnosky's testimony in this proceeding. PacifiCorp cannot effectively respond if it does not understand the factual and technical predicate for Mr. Velnosky's opinions.

While John Deere has provided incomplete responses to data request 1.7, it has objected to providing any specific information or documents regarding its experience with other projects in other jurisdictions. John Deere claims that this information "is considered confidential and proprietary and may be subject to non-disclosure agreements." John Deere's objection cannot withstand scrutiny. This information is directly relevant to the issues raised by John Deere in this proceeding. Accordingly, PacifiCorp respectfully requests that the Commission order John Deere to produce the information and documents responsive to the requests described below.

Specific Data Requests

1. John Deere Cannot Insulate Itself From the Discovery Process By Including Confidentiality Clauses in Their Bid Process and other Documents.

It is a fundamentally understood principle in the discovery process that including a confidentiality clause in documents will not prevent the need for those documents to be disclosed to parties in the litigation process. *See, e.g., Federal Open Market Committee of Federal Reserve System v. Merrill*, 443 US 340, 362 n. 24 (1979) ("[O]rders forbidding any disclosure of trade secrets or confidential commercial information are rare. More commonly, the trial court will enter a protective order restricting disclosure to counsel or to the parties.") (internal citations omitted). In fact, protective orders are put in place so that such information can be disclosed in these proceedings, while maintaining their confidential nature. Where additional protection is necessary, it can be sought. Carrying John Deere's argument to its logical extreme, any party could put confidentiality clauses in all of their documents, correspondence, e-mail and workpapers and prevent disclosure in any future litigation. Parties cannot reach a binding legal agreement to ignore an order of a court or commission to disclose relevant documents.

John Deere's claims of confidentiality are vague, speculative and conclusory. John Deere has not provided any facts to support the assertion that this information is so confidential it cannot even be disclosed subject to the protective order in this proceeding, or under some other additional measures to protect its confidential nature. Nor has John Deere sought to provide alternative methods of producing the documents (such as to counsel only or to a limited list of PacifiCorp employees). Moreover, this information is directly relevant to the issues in this proceeding being raised by John Deere—its experience with other projects in other jurisdictions—and thus, is properly within the scope of discovery. The six specific requests for which PacifiCorp seeks an order compelling disclosure by John Deere, together with John Deere's responses, are as follows:

Request 1.1: “Provide a description of each wind project in which John Deere has participated in, including location, size, ownership, turbine supplier, host utility or power purchaser, year of commercial operation, levelized price over the term of the power purchase agreement, and length of term of power purchase agreement.”

Response: The information requested is considered confidential and proprietary and may be subject to non-disclosure agreements.

Request 1.2: “Provide copies of all executed non-QF wind power purchase agreements to which John Deere is a party, or relating to a project in which John Deere has any financial interest.”

Response: The information requested is considered confidential and proprietary and may be subject to non-disclosure agreements.

Request 1.3: “Provide copies of all executed QF wind power purchase agreements to which John Deere is a party, or relating to a project in which John Deere has any financial interest.”

Response: The information requested is considered confidential and proprietary and may be subject to non-disclosure agreements.

Request 1.4: “Has John Deere or any project in which John Deere has any financial interest proposed to participate in any wind projects, QF or non-QF, located in Oregon, Washington, Idaho, Montana, Wyoming, or California? If so, are any of the proposed projects expected to sell power to PacifiCorp?”

Response: The information requested is considered confidential and proprietary and may be subject to non-disclosure agreements.

Request 1.5: “Have any of the wind projects in which John Deere has participated, either non-QF or QF, failed to meet its scheduled on-line date? If yes, please explain.”

Response: The information requested is considered confidential and proprietary and may be subject to non-disclosure agreements.

Request 1.6: “Have any of the wind projects in which John Deere has participated, either non-QF or QF, defaulted on the power purchase agreement? If yes, please explain.”

Response: The information requested is considered confidential and proprietary and may be subject to non-disclosure agreements.

Notice of Hearing

Pursuant to R746-100-10 and R746-100-14, PacifiCorp seeks a hearing on Monday, June 5, 2006, at a time convenient for the Commission in the commission hearing room to hear PacifiCorp’s motion to compel.

Conclusion

Based on the foregoing, PacifiCorp requests that the Commission enter an order compelling John Deere to respond to the specific data requests referred to herein.

Respectfully submitted this 2nd day of June, 2006.

Dean S. Brockbank
Attorney for PacifiCorp dba Utah Power

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing **PACIFICORP'S MOTION TO COMPEL JOHN DEERE WIND ENERGY TO RESPOND TO DATA REQUESTS** was sent by electronic mail (or via U.S. Mail, postage prepaid if an electronic mail address was not available) to the following on June 2, 2006:

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