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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE PETITION OF
WASATCH WIND, LLC FOR APPROVAL
OF A CONTRACT FOR THE SALE OF
CAPACITY AND ENERGY FROM THEIR
PROPOSED QF FACILITIES

Docket No. 06-035-42

**PACIFICORP'S MOTION TO STRIKE
PORTIONS OF PREFILED DIRECT
TESTIMONY OF TRACY LIVINGSTON**

PacifiCorp dba Utah Power ("Company") moves to strike portions of the Prefiled Direct Testimony of Tracy Livingston for Wasatch Wind, LLC ("Wasatch Wind") dated May 15, 2006, on the grounds that certain portions of the testimony violate Rule 408 of the Utah Rules of Evidence, which excludes matters addressed during settlement discussions from being entered into the record.

I. INTRODUCTION

On April 12, 2006, Wasatch Wind filed with the Commission, requesting that the Commission establish a schedule to resolve certain disputed contract provisions whereby Wasatch Wind, a Qualifying Facility ("QF"), would sell energy to Utah Power from Wasatch

Wind's proposed wind generation facility. On May 15, 2006 Tracy Livingston filed testimony on behalf of Wasatch Wind. Mr. Livingston's testimony contains certain references to settlement discussions, which is inadmissible under Rule 408 of the Utah Rules of Evidence.

Accordingly, Utah Power hereby moves to strike those provisions of Mr. Livingston's testimony that refer to settlement discussions. Because Mr. Livingston's testimony is not paginated, Utah Power will describe those sections that it is requesting be stricken from the record as follows:

(1) The question "What are the specific alternatives suggested by the Company?" falls on line 10 of an unnumbered page. Utah Power requests that the following portions of Mr. Livingston's answer be stricken: from line 10 of that same unnumbered page, which reads "The Company stated in a recent Settlement Conference that because there is an . . ." until line 21, the sentence ending "agreed to in the previous Docket 03-35-14."

(2) The question "Does the Commission need only to clarify the Order in Docket 03-35-14 stating that the proxy plant comparisons are for pricing only to enable the contract negotiations to proceed?" falls on lines 9-11 of an unnumbered page. Utah Power requests that the following portions of Mr. Livingston's answer be stricken: from line 19 of that same unnumbered page, which reads "However, in the . . ." until line 2 of the following page, which reads "of a non-firm PPA would be necessary."

By striking this testimony, the Commission will ensure that the parties, particularly Wasatch Wind, which thus far has appeared without the benefit of legal counsel, will continue to pursue settlement discussions that will foster the free flow of ideas and compromise in the interest of regulatory economy.

II. ARGUMENT

Rule 408 of the Utah Rules of Evidence states that “[e]vidence of conduct or statements made in compromise negotiations is . . . not admissible.” Pursuant to the Scheduling Order issued by the Commission on April 25, 2006, the Commission directed the parties to hold a settlement conference on May 4, 2006. The parties did in fact hold a settlement conference and Wasatch Wind and Utah Power have had subsequent settlement discussions.

The issues discussed during settlement negotiations are not admissible into evidence because public policy “favors the resolution of controversies and uncertainties through compromise and settlement rather than through litigation.” 15A Am. Jur. 2d Compromise and Settlement § 5 (2005); *see also Sackler v. Savin*, 897 P.2d 1217 at 1220 (Utah 1995). “The resolution of controversies and uncertainties by means of compromise and settlement generally is faster and less expensive than litigation. The use of compromise and settlement also is conducive to amicable and peaceful relations between the parties to a controversy.” 15A Am. Jur. 2d § 6.

In the interest of encouraging the settlement of disputes, the Commission frequently requires the parties to a docket to meet to discuss settlement alternatives. This Wasatch Wind docket is one such proceeding whereby the Commission ordered the parties to meet to discuss settlement. The free-flow of ideas and compromises should not be restricted at settlement

conferences with the fear and expectation that such discussions will be disclosed by one of the parties and hold a particular statement or compromise against that party.

III. CONCLUSION

For the aforementioned reasons, the Commission should strike Mr. Livingston's testimony as indicated above because it refers to discussions had during settlement conferences.

RESPECTFULLY SUBMITTED: May 24, 2006

Dean S. Brockbank

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Company*

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing **PACIFICORP'S**
MOTION TO STRIKE PORTIONS OF PREFILED SUPPLEMENTAL DIRECT
TESTIMONY OF TRACY LIVINGSTON was sent by electronic mail (or via U.S. Mail,
postage prepaid if an electronic mail address was not available) to the following on May 24,
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