

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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| |) | DOCKET NO. 08-035-95 |
| |) | Exhibit No. DPU 2.0 |
| In the Matter of the Request of Rocky |) | |
| Mountain Power for Significant Energy |) | |
| Resource Decision and for Certificate of |) | |
| Public Convenience and Necessity |) | Testimony |
| |) | Douglas D. Wheelwright |
| |) | |
| |) | |

**FOR THE DIVISION OF PUBLIC UTILITIES
DEPARTMENT OF COMMERCE
STATE OF UTAH**

**Testimony of
Douglas D. Wheelwright**

February 5, 2009

1 **Q: Please state your name, business address and title.**

2 A: My name is Douglas D. Wheelwright. I am a Utility Analyst in the Division of Public
3 Utilities (Division). My business address is 160 East 300 South, Salt Lake City, Utah 84114.

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5 **Q: On whose behalf are you testifying?**

6 A: The Division of Public Utilities.

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8 **Q: Please describe your position and duties with the Division of Public Utilities?**

9 A: I examine public utility financial data and conduct other research to support Division policy
10 positions.

11
12 **Q. What is the purpose of your testimony?**

13 A. My purpose is to present part of the Division's position on the construction of the Lake Side
14 2 natural gas-fired power plant and its integration into the PacifiCorp (Company) system.

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16 **Q. Please briefly describe the reason and background for this request.**

17 A. In 2005 the Utah Legislature enacted the Energy Resource Procurement Act. The Act is
18 based on the acknowledged need of the Company to acquire substantial new System energy
19 sources. The Company application before the Utah Public Service Commission
20 (Commission) is the result of the Company's Request for Proposals for Base Load Resources
21 (2012 RFP).

22

23 **Q. Please briefly describe the Lake Side 2 power plant.**

24 A. Lake Side 2 is a 607 MW natural gas-fired electric generation facility. The project is
25 proposed with Summit as developer and CH2M Hill as Engineering Procurement and
26 Construction Contractor (EPC). Lake Side 2 will include two Siemens SGT6-5000F
27 combustion turbine generators and a single SST6-5000 steam turbine generator. It will be
28 located adjacent to the Company's existing Lake Side Plant in Vineyard, Utah County, Utah.
29 Under the proposed time frame this facility is scheduled to be completed by July 1, 2012.

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31 **Q. Will you please summarize the Division's position?**

32 A. The Division recognizes the need for additional power generation resources. An over-
33 reliance on purchased power to satisfy future power needs is a concern for rate payers and
34 could potentially have an effect on future economic development. Utah Code §54-17-302
35 requires PacifiCorp to obtain Commission approval, after public hearing, of any significant
36 energy resource decision before it constructs or enters into a binding agreement to acquire the
37 resource. Utilizing the services and experience of the Utah Independent Evaluator (Utah IE)
38 has been a valuable addition to the evaluation and selection process. Based on the IE's report
39 (January 12, 2009), the Lake Side 2 project appears to be the best solution to meet a portion
40 of the future power requirement.

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42 Concerns with this project have been focused on the compressed time for review and
43 approval following a lengthy selection and negotiation process. Other concerns include the
44 uncertain time line in obtaining the air permit and the requirement to hold the Siemens

45 equipment production schedule and the associated additional costs to the contract. It appears
46 that all of these issues were identified by the contractor early in the negotiation process.

47 Thomas Brill from the Division has prepared a detailed review of the events that have caused
48 the current time constraint.

49

50 The Division has been concerned with the Company-caused delays that have been
51 documented internally and identified in the Utah IE report. (These delays are also discussed
52 in Thomas Brill's testimony for the Division.) Delays have caused the Company to push
53 back the original forecast completion date and have resulted in the need for an expedited
54 review and approval process. The terms of the contract identify milestone dates and the
55 permits that need to be in place by June 1, 2009. Delays beyond this date will create
56 additional project costs and could extend the completion date beyond July 2012. In this
57 regard, the Division finds it troubling that the Company has filed an application for approval
58 of a significant resource, laying out what could be argued as an overly optimistic schedule,
59 which requires expedited treatment before the Commission, while testifying that there is a
60 significant risk that key permits will not be in place by the required date. Of primary concern
61 is the air permit issued by the Utah Division of Air Quality (DAQ). It is very likely that this
62 permit will not be issued in the time frame laid out in the Company's application thus,
63 delaying the project start and completion dates and causing PacifiCorp to incur unnecessary
64 costs in the form of additional charges or penalties. This permit could easily be delayed if,
65 for example, there is opposition to the project or if issues are raised during the Federal Land
66 Management review or the public comment period. A significant delay in the receipt of this

67 permit could result in penalties that would add up to [REDACTED] to the total project cost
68 and could extend the completion date to [REDACTED]. The air permit is the critical
69 component of this schedule.

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71 The Company has asked for approval to issue the Limited Notice to Proceed (LNTP) under
72 the specific terms identified in the contract. Once the LNTP has been issued, and prior to
73 issuing the Final Notice to Proceed (FNTP), the Company will be obligated to pay up to
74 [REDACTED].

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77 The Division recommends that PacifiCorp continue with the proposed construction of the
78 Lake Side 2 project but with some limitations on the approval of funds. If the contract were
79 to be cancelled after the LNTP has been issued, it should be the responsibility of the
80 Company and not rate payers to cover [REDACTED]

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83 for the purchase of

84 emission reduction credits. These credits would be owned by the Company and would be

85 available for other projects if Lake Side 2 is cancelled. However, since the need for

86 additional resources has been established and all permits and contracts would be in place, the

87 cancellation of this project would not be advised. Therefore, the Division recommends that

88 the Commission disallow the recovery of any funds expended by the Company due to early
89 termination of the project beyond the cost of the emission credits.

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91 The Division notes that the 2008 RFP is in process and other resources may be available in
92 this same time frame. These proposals are currently being evaluated and the Company has
93 indicated that the results should be available for comparison prior to the hearing on this case.
94 If there are better proposals coming out of the 2008 RFP than the Lake Side 2 project, then
95 cancellation or renegotiation of this project may be advisable. Prior to issuing the LNTP on
96 March 2, 2009, this agreement can be cancelled without any penalty or fee to the Company.

97

98 **Q. Since the permits are critical to the approval process, will the Company be able to**
99 **obtain all of the required permits by the June 1, 2009 deadline?**

100 A. Most of the permits are under way and should be obtained prior to the FNTP date scheduled
101 for June 1, 2009. The item of most concern is the air permit issued by the Utah Division of
102 Air Quality (DAQ). Stefan A. Bird included a detailed explanation of the process in his
103 confidential testimony [REDACTED]

104 .¹ The Division has talked with representatives
105 from DAQ and confirmed that the application is in process and that the required air sample
106 data were completed and submitted. This information will be compiled and sent to Federal
107 Land Managers for the required 60-day comment period. This process should begin in early
108 February and, while it is unlikely that Federal Land Managers will have comments, they are
109 unlikely to waive their comment period. Following the Federal comment period, the 30-day

¹ Confidential Testimony of Stefan A. Bird – p. 20 - Line 389

110 public comment period will begin. All comments received during this period will need to be
111 reviewed and addressed by DAQ. Delays could come from individuals or groups opposed to
112 the project or if a public hearing is requested. With all of the agencies and individuals that
113 will have opportunities to comment, it is optimistic to assume that the permit will be issued
114 by June 1, 2009. DAQ has estimated that the permit could be issued by June 15, 2009 if
115 there is no opposition. This is consistent with the contractor's milestone target date of June
116 12, 2009, but after the Company's goal of June 1, 2009. The Company has indicated that
117 they will not issue the FLTP without having all of the permits in place. Since the permit will
118 likely be delayed beyond June 1, 2009, there will be additional costs associated with this
119 contract and a delay in the scheduled completion date. In response to a data request, the
120 Company indicated that there is a greater than 80% probability that the permit will be
121 received between July 1 and September 1, 2009. This estimate is based on PacifiCorp's past
122 experience in permitting projects of this type.²

123

124 **Q. Why do you feel that the Company should proceed with the current contract**

125 **[REDACTED]**

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127 A. There has been an identified need for additional power generation sources in 2012. Other
128 options have been proposed and reviewed by PacifiCorp and by the Utah IE and the proposed
129 Lake Side 2 project has gone through a very lengthy and detailed RFP process. Cancellation
130 of Lake Side 2 and the selection of another resource would require additional time for

² Response to CCS Data Request 2.8

131 engineering studies, permits and contract negotiations. This would further delay the project
132 completion date and would not satisfy the identified 2012 deficit.

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134 **Q. Are there any other concerns if the June 1, 2009 FNTTP cannot be achieved?**

135 A. In addition to the added costs, the terms of the contract extend the completion date. If the
136 June 1 date is not achieved, the Contractor will not guarantee completion by July 1, 2012.

137 [REDACTED]

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Since

139 the rationale for completing the plant by July 1, 2012 is to allow the Company to meet
140 summer peaking demands in that year, delay until mid-August could impose significant and
141 unwarranted costs for the purchase of spot-market peaking power. Whether rate payers
142 would be at risk for these additional power costs will depend on a variety of factors including
143 the timing of future rate cases and other regulatory mechanisms. These issues can be
144 addressed at the time the Company asks for recovery.

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146 **Q. Should the LNTP be issued without a clear understanding of when the air permit will
147 be issued?**

148 A. A delay in the receipt of the air permit beyond June 1, 2009 will add

149 [REDACTED]

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As noted above, the Division has contacted DAQ to obtain an update on the current status of the permit process. It is uncertain what may occur during the public comment period, however, DAQ believes that the permit could be issued by June 15, 2009. [REDACTED]

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Since, as Dr. Brill illustrates in his testimony, this is a result of the Company caused delay, this additional cost should be the responsibility of the Company.

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[REDACTED]

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Q. Should the Utah ratepayers be responsible to pay for additional costs as a result of these delays?

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A. The Division maintains that they should not. During this process, the Contractor has identified the critical path and advised the Company of the items that needed to be in place in order to achieve the July 2012 completion date. Data requests to the Company concerning

183 the contract negotiation has identified these delays and they are further explained in Dr.
184 Thomas Brill's testimony. The contractor recognized the problem and has structured the
185 contract to reflect the direct responsibility of the Company to obtain all of the approvals in
186 time to meet the critical path deadlines.

187 [REDACTED]³

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192 [REDACTED]⁴

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205 **Q. Should the Company hold the position with the Siemens equipment production**
206 **schedule?**

207 A. Yes, with the information that is available today, this appears to be the best option. There is
208 a high probability that the FNTP could be issued by June 15, 2009. [REDACTED]

209

³ **MASTER DEVELOPMENT, ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT**, by and between PacifiCorp, as Company and Summit Vineyard, LLC, as Developer, and CH2M Hill E&C, Inc., as EPC Contractor, and together, as Contractor
December 3, 2008, p 4.

⁴ Ibid p 67

210 It is the opinion of the Division that this would be the best option provided that these
211 additional costs are the responsibility of the Company. As noted above, this would extend
212 the allowed completion date by 45 days. One of the provisions identified in the contract calls
213 for a meeting with Siemens on April 2, 2009 to discuss scheduling and the permit process.
214 With the recent slow-down in the construction industry, there may be opportunities for the
215 Contractor to complete the project earlier than the outlined schedule. This would be the
216 desired outcome however it is not required.

217

218 [REDACTED]⁵

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227 If there are significant delays in obtaining the air permit, this issue should be reevaluated. It
228 would be the recommendation of the Division that the Company provide a clear
229 understanding of what will take place if there is a delay in obtaining the air permit.

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231 **Q. How would a significant delay in the air permit affect the completion of the project?**

232 A. The terms of the contract call for the FNTP to be issued by June 1, 2009. If the FNTP is
233 issued by that date the Contractor will guarantee completion by July 2012. Any delay
234 beyond that date will add to the total project cost and will add time to the estimated
235 completion date. The additional costs have been identified above. [REDACTED]

⁵ Ibid p 8

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This is well beyond the time the

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resource would be needed in July 2012. The actual terms of the contract are as follows:

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[REDACTED]⁶

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Q. In this filing, has PacifiCorp asked for Commission approval of late fees that may be

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incurred as a result of failure to meet the key deadlines cited above?

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A. Not at this time. However, the Commission should make clear that the Company will not be

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permitted to recover such fees from ratepayers, either as part of future filings, or as part of

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the contingency line item that I will discuss below. As is described more fully in Dr. Brill's

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testimony, the Division finds that delays to this project have resulted from the Company's

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actions and that it has set an unreasonably optimistic time goal for obtaining an air permit.

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Q. Have you reviewed the Final Report of the Utah Independent Evaluator?

⁶ Ibid p 75

264 A. Yes. I will comment briefly on the Utah IE report dated January 12, 2009. Merrimack
265 Energy Group participated with the Company in all phases of this process from the initiation
266 of the RFP to the final evaluation. The Utah IE has concluded that the process has been fair
267 and unbiased with the selection of Lake Side 2 as the successful bid.

268

269 **Q. Is the contract for the construction of Lake Side 2 the only issue to be considered?**

270 A. No. This represents only [REDACTED] of the total amount requested for approval. The
271 application asks that the Commission find the total project costs for construction of Lake
272 Side 2 consistent with the total project costs provided in the Confidential Testimony. The
273 total project cost identified in Stefan A. Bird's testimony is [REDACTED]

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|-----|---------------------------------------|------------|
| 275 | Lake Side 2 Contract | [REDACTED] |
| 276 | Sales Tax | [REDACTED] |
| 277 | Development and Project Cost | [REDACTED] |
| 278 | Sales Tax | [REDACTED] |
| 279 | TOTAL CONSTRUCTION | [REDACTED] |
| 280 | | |
| 281 | Capitalized Property Tax | [REDACTED] |
| 282 | Internal Capitalized Costs | [REDACTED] |
| 283 | Allowance for Funds Used During Const | [REDACTED] |
| 284 | Contingency | [REDACTED] |
| 285 | Transmission Integration | [REDACTED] |
| 286 | RELATED COSTS | [REDACTED] |
| 287 | | |
| 288 | TOTAL PROJECT COSTS | [REDACTED] |
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290 The related costs need further explanation by the Company in order to determine if these
291 costs are reasonable. These costs are mentioned in Stefan A. Bird's confidential testimony⁷
292 but are not explained or compared to other projects. Nor has the Company attempted to

⁷ Confidential Testimony of Stefan A. Bird p14

293 clarify these costs in response to Data Requests. For example, CCS data request 4.4 asked
294 the Company for additional detail for the calculations of AFUDC. The response did not
295 provide any formulas, calculations or explanation of how the AFUDC amount was estimated.
296 (A copy of CCS Data response 4.4 is attached as exhibit 2.1) This represents [REDACTED]
297 of the related costs and should be fully explained. The response to CCS data request 3.2
298 concerning the estimated transmission costs identified an [REDACTED] increase to the
299 Contractor but did not provide the calculation for the [REDACTED] integration cost to the
300 Company. (A copy of CCS data response 3.2 (1-3) are attached as exhibits 2.2 – 2.4)
301 [REDACTED]

302 It is difficult for the Division to make a recommendation on these costs when
303 information is still being developed and total project costs are changing. The [REDACTED]
304 contingency has been calculated as 3% of the total construction costs plus 3% of the internal
305 capitalized costs. It is unclear if a portion of this amount will be used to pay the daily
306 penalties if permits are not in place by June 1, 2009. Regardless, contingency funds should
307 not be pre-approved by the Commission in the absence of information as to the
308 circumstances under which such costs could be incurred. We realize that project budgets as
309 large as this should be flexible enough to meet unexpected contingencies, but the Division
310 recommends that the Company be required to enter a supplemental filing or filings for cost
311 recovery if reasonable and reasonably unanticipated costs are incurred as the project
312 proceeds. It is also unclear from the application what is the rationale for the capitalized
313 property taxes and internal capitalized costs. Nor is any information on how these were
314 calculated provided in the application.

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316 **Q. Is it the Division's position that the construction of a large power plant is in the public**
317 **interest in order for PacifiCorp to control generation assets rather than to purchase**
318 **power on the wholesale market?**

319 A. Yes. The Division is concerned with the wholesale power market in the Western U.S. over
320 the next four or five years. Some reports indicate that the western region may be short of
321 power by 2010 and therefore could limit the availability of low-cost power from the
322 wholesale market. The construction of Lake Side 2 will not completely eliminate the need
323 for front office transactions, however, the Division believes that this enhanced flexibility is a
324 benefit to ratepayers.

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326 **Q. Please summarize the Divisions conclusions and recommendation.**

327 A. The Company has been aware for some time that there is a resource need in 2012. The
328 selection of this resource has gone through a competitive bid process that has been monitored
329 and reviewed by the Utah IE. The Division believes that the construction of the Lake Side 2
330 plant is reasonable and in the public interest. The Company was aware of the time required
331 to obtain approvals from the Commission, obtain the necessary permits as well as the
332 restraints with the Siemens equipment contract. [REDACTED]

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334 Discussions with DAQ have indicated that provided there is no opposition to the project, the
335 air permit could be issued by June 15, 2009. [REDACTED]

336 should be the responsibility of
337 the Company and should not be included under the contingency portion of the approved
338 amount. The company should provide additional details relating to the Related Costs of this
339 project and provide comparable data and calculation details.

340
341 The Division would recommend that the Company proceed with the LNTP and move
342 forward with construction. Since the air permit is the critical item and could change the
343 direction of this decision, that process should be carefully monitored. We would suggest that
344 the Commission review this issue on May 18, 2009 to determine the updated status. By that
345 date there will be additional information from the Federal Land Managers and the public
346 comment period. At that time the total cost of the project could be calculated and the
347 estimated completion date established. This would provide an opportunity to review the
348 project status prior to issuing the FNTP and additional information concerning the 2008 RFP
349 options should be available. With the changes specified above, The Division recommends
350 that the Commission approve the construction of this facility as just and reasonable and in the
351 public interest. Finally, the Division recommends that the Commission approve
352 [REDACTED] in construction and development costs (and associated sales taxes). We are
353 withholding any recommendations on the remaining costs cited in the Company's application
354 until addition information or explanation is provided to demonstrate that they are or will be
355 reasonably and prudently in connection with the Lake Side 2 project.

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357 **Q. Does this conclude your testimony?**

358 A. Yes, it does.