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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of PacifiCorp for Approval of an IRP-based Avoided Cost Methodology for QF Projects Larger than One Megawatt	DOCKET NO. 03-035-14
In the Matter of the Petition of Spring Canyon LLC for Approval of a Contract For the Sale of Capacity and Energy From Its Proposed QF Facilities	DOCKET NO. 05-035-08
In the Matter of the Petition of Pioneer Ridge LLC & Mountain Wind For Approval of a Contract For the Sale of Capacity and Energy from its Existing and Proposed QF Facilities	DOCKET NO. 05-035-09
	Spring Canyon Energy, LLC's Response and Opposition to ExxonMobil's Petition for Review or Rehearing

In accordance with Utah Admin. Rule R746-100-11, Spring Canyon Energy, LLC ("Spring Canyon") responds to and opposes ExxonMobil Production Company's Request for Review or Rehearing of the Commission's Report and Order dated April 1, 2005. The rule allows an opposing party to file a response within 15 days of the filing of any Petition for Review or Rehearing. ExxonMobil filed its petition April 12, 2005, making Spring Canyon's Response and Opposition within the 15-day response period.

ExxonMobil urges the Commission to alter its decision that Spring Canyon is first in the queue for Stipulation pricing in favor of ExxonMobil. ExxonMobil maintains there are three steps a Qualifying Facility must take under PacifiCorp's Schedule 38 and the Stipulation in

Docket No. 03-035-14 to obtain Stipulation pricing: (1) notify PacifiCorp of a desire to sell power as a QF, (2) provide the necessary information to PacifiCorp, and (3) execute a contract with PacifiCorp.[1] These steps are not enumerated anywhere in Schedule 38 or the Stipulation, but assuming for the sake of argument that those are the required steps, the evidence in this case and principles of fairness support the Commission's decision in favor of Spring Canyon for all three criteria.

1. Notice to PacifiCorp

Under ExxonMobil's first criterion, ExxonMobil argues that it is first in the queue for Stipulation pricing because it began discussions with PacifiCorp in August 2001 about power sales from a qualifying facility.[2] Those discussions cannot satisfy any of ExxonMobil's criteria because neither Schedule 38 nor the Stipulation existed in 2001. The Commission approved Schedule 38 in an order dated February 24, 2003 in Docket No. 02-035-T11. Parties in Docket No. 03-035-14 signed the Stipulation May 20, 2004 and the Commission approved it in that docket by order dated June 28, 2004. Any contacts in 2001, therefore, are irrelevant to this case. In addition, ExxonMobil's August 2001 contact with PacifiCorp apparently was a request for 112 MW of firm transmission directed to PacifiCorp Transmission, not to PacifiCorp, and that would not have satisfied ExxonMobil's first criterion.[3] After two years, ExxonMobil did not execute the transmission offering it worked out with PacifiCorp Transmission which ended that inquiry.[4]

Based on the testimony of James Sharp, ExxonMobil's efforts to negotiate and execute a power sale contract with PacifiCorp began more than three and a half years ago and culminated

[1] ExxonMobil Petition for Review or Rehearing p. 2.
[2] ExxonMobil Petition for Review or Rehearing p. 3.
[3] Transcript p. 185, lines 2-5.
[4] Transcript p. 198, lines 12-19.

in the execution of the February 21, 2005 contract for power deliveries in 2005.[5] The negotiations had nothing to do with the Stipulation or Stipulation pricing; the Stipulation did not exist during most of the period of the negotiations. Further evidence that ExxonMobil's negotiations with PacifiCorp had nothing to do with the Stipulation is the fact that the February 21, 2005 contract is a Wyoming contract and the contract prices are not Stipulation prices. ExxonMobil was not even aware of the Stipulation until the summer of 2004, which, based on the context of a statement by Mr. Sharp at hearing, was presumably around the time the Commission suspended procedures for QFs September 23, 2004 in Docket No. 04-035-T10.[6]

Finally, according to Mr. Sharp, ExxonMobil had no desire to enter into this process to pursue the remaining megawatts under the Stipulation cap until relatively late.[7] The first public expression of ExxonMobil's interest in the megawatts remaining under the Stipulation cap occurred in a February 17, 2005 letter from Mr. Sharp to the Commission,[8] just as ExxonMobil and PacifiCorp were executing their current contract for deliveries in 2005. The February 17th letter, however, would not satisfy ExxonMobil's own criteria. The only indication on this record that ExxonMobil ever contacted PacifiCorp about Stipulation pricing is in UP&L Exhibit 2R.2 where Bruce Griswold for PacifiCorp reported a request from ExxonMobil for indicative pricing on December 7, 2004.

Spring Canyon, by contrast, in a letter dated July 30, 2004 contacted PacifiCorp, not the Commission as ExxonMobil suggests, stated its intention to build a QF facility in Mona, Utah, and made it clear that it would use Stipulation pricing for the project.[9] PacifiCorp acknowledged in UP&L 2R.2 that the July 30th letter was Spring Canyon's request for indicative pricing.

[5] Transcript p. 202, line 25 – p. 203, lines 1-6.
[6] Transcript p. 202, lines 9-18.
[7] Id., lines 14-16.
[8] Transcript p. 202, lines 19-22.
[9] Spring Canyon Exhibit 1.1.

Spring Canyon also requested that PacifiCorp forward a draft contract to begin negotiations. Spring Canyon reiterated its request and intention in a letter to PacifiCorp dated September 2, 2004.[10] When PacifiCorp answered on September 17, 2004 and took the position that Spring Canyon could not rely on Stipulation pricing, Spring Canyon wrote PacifiCorp again September 24, 2004, restated its intent to obtain Stipulation pricing, and supplied PacifiCorp with the information PacifiCorp maintained was missing under Schedule 38.[11] Only after it was clear that the process for obtaining indicative pricing from PacifiCorp had failed, Spring Canyon sent a letter to the Commission September 28, 2004 asking that PacifiCorp be required to engage in good faith negotiations with Spring Canyon. In its Petition for Review or Rehearing, ExxonMobil argued that the only "first in time" theory under which Spring Canyon would prevail is if that determination were made based on who first notified the Commission of its intention to seek Stipulation pricing. That interpretation of the Commission's order is plainly wrong. ExxonMobil's own citation to the order in its petition makes it clear that the Commission relied not just on the September 28th letter, but on correspondence exchanged with PacifiCorp, correspondence that had begun two months earlier, to conclude that Spring Canyon was first in the queue. Spring Canyon's July 30th request for indicative pricing predates ExxonMobil's request by more than four months. In a finding the Commission stated: "The record shows that before the Wind Generators and Exxon made their filings with the Commission, Spring Canyon was attempting to learn how many megawatts remained under the cap so that it could contract for those megawatts."[12] It appears from the evidence in this case that Spring Canyon had begun pursuing those megawatts before ExxonMobil was aware of the Stipulation. ExxonMobil's efforts during most of that period had concentrated on its February

[10] Spring Canyon Exhibit 1.2.
[11] Spring Canyon Exhibit 1.4.
[12] April 1, 2005 Commission order, p. 15.

21, 2005 contract with PacifiCorp, not on a contract using Stipulation pricing. The Commission's conclusion that Spring Canyon was the first to pursue the remaining megawatts under the Stipulation cap is correct and that is what placed Spring Canyon first in the queue. ExxonMobil's petition should, therefore, be denied.

2. Information to PacifiCorp

Under ExxonMobil's second criterion of providing the necessary information to PacifiCorp, ExxonMobil fails again to show that it is first in the queue. In UP&L Exhibit 2R.2, Mr. Griswold testified that Spring Canyon delivered the data required by Schedule 38 on September 24, 2004. ExxonMobil did not provide its Schedule 38 data to PacifiCorp until December 7, 2004, more than two months later. In its Petition for Review or Rehearing, ExxonMobil attempted to argue that the information Spring Canyon had given PacifiCorp was deficient.[13] ExxonMobil failed to note Mr. Griswold's testimony where he stated that both Spring Canyon and PacifiCorp were in a quandary before the Commission determined the number of megawatts remaining under the Stipulation cap.[14] PacifiCorp had taken the position that the Stipulation did not even apply to the Spring Canyon project. Spring Canyon provided all the information it could to PacifiCorp without having a Commission determination of the number of megawatts remaining under the cap. There is nothing in evidence that would justify a finding that Exxon Mobil should be first in the queue under its second criterion. Given ExxonMobil's late arrival in this process and its late submission of Schedule 38 information on December 7, 2004, the Commission's decision is correct and ExxonMobil's petition should be denied.

[13] ExxonMobil Petition for Review or Rehearing, p. 3.
[14] Transcript, p. 266 line 24 – p. 267 line 13.

3. First to Contract

ExxonMobil's third criterion of "first to contract" is fraught with potential problems. A party acting in bad faith could unfairly influence the outcome of this process and effectively determine which party gets the contract. There is nothing objective about this criterion and nothing consistent with Schedule 38 and the Stipulation as ExxonMobil suggests. The process could deteriorate into something resembling the "Gold Rush" and the outcome could be very poor. Spring Canyon strongly discourages the Commission from adopting such an approach. To date, negotiations between Spring Canyon and PacifiCorp have proceeded in good faith and the Commission should allow those negotiations to move forward without interference.

Exxon Mobil's Alternative Arguments for Relief

Beyond ExxonMobil's three criteria under which ExxonMobil fails, it argues in the alternative that it be allowed to contract with PacifiCorp using Stipulation pricing until Spring Canyon begins delivering power to PacifiCorp. On its face, Spring Canyon does not oppose ExxonMobil's alternative proposal, but given Spring Canyon's understanding of the Commission's interpretation of the Stipulation, Spring Canyon must oppose it. If the Commission were to allow ExxonMobil to contract with PacifiCorp to sell 75 MW, 100 MW, or any amount of capacity or energy using Stipulation pricing in 2006 and 2007, Stipulation pricing would no longer be available to Spring Canyon for those megawatts when it comes on line June 1, 2007. That would be patently unfair and would defeat the purpose of this proceeding and the Commission's decision in favor of Spring Canyon.

ExxonMobil's other alternative would require the Commission to extend the June 1, 2007 on-line date by six months. The Commission has already ruled against that proposal and Spring Canyon opposes anything that may jeopardize, impede, or interfere with Spring Canyon's current

negotiations with PacifiCorp for the remaining 100 MW under the Stipulation cap.

If the Commission were to decide that it could approve one of ExxonMobil's alternative proposals without negatively affecting Spring Canyon, Spring Canyon would renew its request in this case and ask the Commission to award Spring Canyon the capacity or megawatts of any non-firm contract previously approved under the Stipulation that terminates before or after Spring Canyon comes on line June 1, 2007. This capacity or the megawatts would be in addition to the 100 MW the Commission has allowed Spring Canyon to pursue in contract negotiations with PacifiCorp. Spring Canyon's renewed request would be consistent with granting ExxonMobil's alternative relief and would lead to greater efficiencies in power production for ratepayers.

In conclusion, ExxonMobil maintained in its petition that the Commission has virtually no role in Schedule 38 or the Stipulation, but in this case, where the number of megawatts with a price is limited by a cap, a Commission decision was required.[15] Spring Canyon struggled for several months to get indicative pricing from PacifiCorp under the Stipulation before this proceeding began, but failed until the Commission issued its April 1, 2005 order. The evidence in this case supports the Commission's decision that Spring Canyon is first in the queue to negotiate with PacifiCorp for the remaining 100 megawatts under the Stipulation cap and Exxon Mobil's petition should be denied.

Now, therefore, Spring Canyon requests that the Commission:

1. Deny ExxonMobil's Petition for Review or Rehearing concerning the Commission's determination that Spring Canyon is first in the queue for Stipulation pricing;
2. Deny ExxonMobil's Petition for Review or Rehearing for alternative relief that would allow ExxonMobil to contract with PacifiCorp to sell any amount of capacity or energy under the Stipulation if, under the Commission's interpretation of the

[15] ExxonMobil Petition for Review or Rehearing, p. 2.

Stipulation, that relief eliminates any of the remaining megawatts; and,

3. Award to Spring Canyon the capacity or megawatts of any non-firm contract previously approved under the Stipulation that terminates before or after Spring Canyon comes on line June 1, 2007 if the Commission changes its decision and concludes it can grant the alternative relief ExxonMobil seeks without jeopardizing Spring Canyon's current negotiations with PacifiCorp.

Respectfully, submitted this 25th day of April, 2005.

Callister Nebeker & McCullough

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Stephen F. Mecham

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Response to Exxon Mobil's Petition for Review or Rehearing was mailed or emailed this 25th day of April 2005, to the following:

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