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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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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
)	<u>PACIFICORP’S RESPONSE TO</u>
)	<u>EXXONMOBIL REQUEST FOR REVIEW</u>
)	<u>OR REHEARING</u>
)	

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Pursuant to Utah Administrative Code § R746-100-11(F), PacifiCorp files this response to ExxonMobil’s (“Exxon’s”) Request for Review or Rehearing (“Rehearing Request”) filed on April 12, 2005, seeking review or reconsideration of the Commission’s April 1, 2005 Order (“Order”) in these proceedings. In the Rehearing Request, Exxon requests review of two issues: (1) who is “first in the queue” for Stipulation<sup>1</sup> pricing and (2) even if that issue is not

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<sup>1</sup> As used herein, “Stipulation” refers to the stipulation filed in Docket 03-035-14 on May 20, 2004 and approved by the Commission in its Report and Order issued on June 28, 2004.

reconsidered, Exxon seeks an order allowing it to enter into negotiations to sell energy and capacity to PacifiCorp up to the Stipulation cap and under Stipulation pricing from January 1, 2006 through May 31, 2007 (or longer, as discussed below). PacifiCorp is not responding to the first issue raised in Exxon's Rehearing Request. PacifiCorp is only filing a response to the latter issue raised in the Rehearing Request.

## **DISCUSSION**

In its Order, the Commission decided that 100MW remained under the Stipulation cap and that the claim of an "entitlement" to additional megawatts as other short-term contracts expire was "neither contemplated by the parties to the stipulation nor [] reasonable under the plain meaning of the Stipulation's terms." Order at 11. That finding was supported by the record and otherwise lawful. Exxon has provided the Commission with no compelling reason why reconsideration of the Order on that issue is appropriate. The Rehearing Request does not provide sufficient basis or good cause for reconsideration and therefore, PacifiCorp asserts that the Commission should deny Exxon's request.

**a. The Commission's Order Did Address the Issue of Expiring Megawatts and Exxon has provided no factual or legal basis warranting reconsideration.**

Exxon asserts that the Commission should reconsider its holdings with respect to whether Exxon should be permitted to enter into negotiations for a QF contract for the megawatts remaining under the Stipulation cap until either May 31, 2007 or until the earlier of when Spring Canyon comes on line or December 31, 2007. Exxon asserts that the Commission Order "does not squarely address this question." Rehearing Request at 5. Exxon supports this assertion by arguing that the Commission did not consider the case where an expiring QF's megawatts under the cap were replaced by a new QF who also met the Stipulation requirement to be online by

June 1, 2007, but rather the Commission had only considered whether a new QF could “pick-up” megawatts from an QF whose contract expired sometime after the June 1, 2007 deadline.

For support for this position, Exxon asserts that the four contracts that “use up” 175 MW of the 275 MW cap, Desert Power, Kennecott, Tesoro and U.S. Magnesium, “extend at least through the end of 2007.” Rehearing Request at 5 (citing Spring Canyon Exhibit 2 (Direct Testimony of David Olive) at p. 4, 1. 77-89).

Exxon’s assertions are incorrect. In fact, as the Commission recognized in the orders approving the Tesoro and Kennecott QF contracts, each of those two contracts expires at the end of this year.<sup>2</sup> While each of the contracts includes optional extensions, the extensions can only be exercised if both parties consent and thereafter, will be subject to regulatory review for consistency with the long-term avoided cost methodology then in effect. In other words, the Commission did in fact have before it the precise factual circumstance which Exxon claims

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<sup>2</sup> See *In the Matter of the Application of PacifiCorp for Approval of a Power Purchase Agreement with Tesoro Refining and Marketing Company*, Docket No. 04-035-53, Report and Order (Oct. 4, 2004) (“The Agreement is for a term of sixteen months (September 2004 to December 2005) with option for two one-year period extensions. \* \* \* [T]he Committee also recommends that any extension beyond the initial sixteen month term require re-evaluation of the terms to ensure that the Agreement’s terms are consistent with the long-term avoided cost methodology that would be applicable at the time of extension. The Committee makes this recommendation to ensure that the PURPA ratepayer indifference standard is met and the Agreement continues to be in the public interest during a time period over which it may be applied. \* \* \* The Commission will require any extension beyond the initial sixteen month term to be reviewed and approved by the Commission. PacifiCorp should submit a request to review and approve any extension with sufficient time for interested parties to perform their analysis and submit their recommendations prior to any extension contemplated by PacifiCorp and Tesoro.”) See also *In the Matter of the Application of PacifiCorp for Approval of a Power Purchase Agreement with Kennecott Utah Copper Corporation*, Docket No. 04-035-60, Report and Order (Oct. 25, 2004) (“The Agreement is for a term of fifteen months (October 2004 to December 2005) with option for two one-year period extensions. \* \* \* While the Committee recommends approval of the Agreement, the Committee also recommends that any extension beyond the initial fifteen month term require re-evaluation of the terms to ensure that the Agreement’s terms are consistent with the long-term avoided cost methodology that would be applicable at the time of extension. The Committee makes this recommendation to ensure that the PURPA ratepayer indifference standard is met and the Agreement continues to be in the public interest during a time period over which it may be applied. This is the same recommendation made by the Committee with respect to a QF agreement between PacifiCorp and another counterparty which was recently adopted by this Commission in the order approving that agreement in Docket No. 04-035-53. \* \* \* As in Docket

should drive a different outcome, i.e. that a QF could in fact replace one of these contracts and still meet the requirement to be on line by June 1, 2007.

Exxon attempts to draw a distinction from the factual circumstances presented before the Commission when it issued its Order noting that under Exxon's proposal there are two differences: (1) at no time would the 275 MW cap be exceeded and (2) the on-line date would be preserved. Unfortunately, both of these "differences" were already included in the record before the Commission when it issued its decision. Specifically, Mr. Olive's exhibit makes clear that Spring Canyon's proposal was designed to ensure that the 275 MW cap was never exceeded. *See* Exhibit 3. Moreover, Mr. Graeber's testimony stressed the fact that Spring Canyon would meet the on-line date.

In any event, this distinction should not make a difference to the Commission under the logic of its order. According to the order, the plain language of the Stipulation guides the Commission's interpretation of its meaning. The Commission noted that the Stipulation specifically makes its terms available to "any QF and states the 275 MW cap is cumulative for all QFs approved during the interim period." Order at 11. As the parties pointed out, the Stipulation itself specifically contemplated contracts with terms "up to" 20 years without distinction.

Based on the plain language of the Stipulation, the Commission found that a claim of entitlement to megawatts as contracts expire "was neither contemplated by the parties to the Stipulation nor is reasonable under the plain meaning of the Stipulation's terms." *Id.* In other words, the Commission held that when megawatts were assigned under the Stipulation, whether

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04-035-53, the Commission will require any extension beyond the initial fifteen month term to be reviewed and

through a short or long-term contract, the megawatts were permanently assigned against the 275 MW cap, whether or not the contract expired, and could not be reassigned to another QF.

Indeed, the Commission has made it clear that even parties that already have Stipulation pricing, such as Tesoro and Kennecott, are not assured Stipulation pricing for their contractual extensions. Exxon's argument presents no new facts or reasoning different from the arguments already made to and rejected by the Commission and therefore, its request for rehearing should be denied.

**b. Exxon has provided no factual or legal basis to warrant reconsideration of the PSC's determination that the Stipulation Requirement to be on-line by June 1, 2007 should not be waived.**

As discussed above, Exxon asserts that the Commission can accept both the Exxon and Spring Canyon contracts without violating the Stipulation because the 275 MW cap would not be exceeded and the June 1, 2007 online date would be enforced. In an alternative argument, Exxon asserts that it would be willing to sell energy and capacity to PacifiCorp through the earlier of December 31, 2007 or the date upon which Spring Canyon comes on line (with 90 days notice prior to the online date).

This argument suffers from the same flaws as the previous one. Once Exxon has been assigned megawatts under the Stipulation cap, under the logic of the Commission order, the megawatts are gone for Stipulation pricing irrespective of whether Spring Canyon comes on line before or after June 1, 2007. Therefore, if the Commission were to assign 75 (or 100 MWs)<sup>3</sup> to

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approved by the Commission.”)

<sup>3</sup> Exxon now claims in its Rehearing Request that it can provide up to 100 MWs to PacifiCorp. Rehearing Request at 2.

Exxon at Stipulation pricing, then there would be no megawatts remaining for Spring Canyon to claim.

In any event, Exxon apparently recognizes that such a holding “may require” the Commission to waive the Stipulation requirement of a June 1, 2007 on line date. Rehearing Request at 6. Nevertheless, Exxon argues that extending the on-line date is justified because PacifiCorp would still be “provide[d] a measure of security” that it would have energy and capacity for the summer of 2007. *Id.*

Exxon’s argument misses the point. The Commission expressly held in its Order that it would not extend the online requirement because to do so would not be in the public interest. Order at 8. The logic for this holding was set out as follows: “It is clear this date was chosen to ensure that *any QF receiving the benefit of Stipulation pricing would be online* and providing electricity to PacifiCorp prior to the anticipated peak capacity deficit of the summer of 2007.” Order at 8-9 (emphasis added). In other words, the online date was maintained because the Stipulation pricing assumed the QF was there to provide power in 2007. Under Exxon’s proposal, Exxon would be providing power in the summer of 2007, not Spring Canyon, yet Spring Canyon would still be entitled to Stipulation pricing when it did come online, as late as December 31, 2007. Exxon points to no analysis in the record that a QF that comes on line in December of 2007 should be entitled to Stipulation pricing. Exxon has provided no reasonable basis whatsoever for its alternative request and therefore, it should be rejected.

## **CONCLUSION**

The Commission's Order is supported by the record evidence in this proceeding and is otherwise lawful in all respects. Thus, PacifiCorp requests that the Commission deny Exxon's Rehearing Request as specified in this Response.

Respectfully submitted this 27th day of April, 2005.

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Of Attorneys for PacifiCorp

## CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing PacifiCorp's Response to Exxonmobil Request for Review or Rehearing to be served upon the following via e-mail or United States mail, postage prepaid at the addresses below on April 27, 2005:

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