

Edward A. Hunter
Jennifer H. Martin
STOEL RIVES LLP
201 South Main Street, Suite 11009
Salt Lake City, Utah 84111
Telephone: (801) 328-3131
Facsimile: (801) 578-6999

Attorneys for PacifiCorp

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of)	PACIFICORP'S MOTION TO STRIKE
PACIFICORP for Approval and IRP Based)	LATE-FILED TESTIMONY, OR IN THE
Avoided Cost Methodology for QF Projects)	ALTERNATIVE, MOTION FOR
Larger than 3 Megawatts)	ADDITIONAL TIME TO RESPOND
)	
)	
)	DOCKET NO. 03-035-14

PacifiCorp (or the "Company") hereby submits this motion to strike the testimony late-filed by Wasatch Wind on July 31, 2005, in the above-captioned proceeding. In the alternative, PacifiCorp requests that the Commission provide the Company additional time to respond to the late-filed testimony equal to the number of days the Wasatch Wind testimony was filed late. In support thereof, PacifiCorp states as follows:

Discussion

Per the Commission's Amended Scheduling Order in this proceeding, issued on July 1, 2005, the direct testimony of intervenors was due to be filed by electronic mail (or if not available by facsimile or hand-delivery) by July 29, 2005. Nevertheless, on Sunday, July 31, 2005 at 6:13 p.m., Wasatch Wind filed by electronic mail the prefiled testimony of Richard S. Collins in the above-captioned proceeding. On Monday, August 1, 2005 at 2:20 p.m., Wasatch Wind filed by electronic mail the prefiled testimony of Tracy Livingston. PacifiCorp requests

that the Commission strike the Wasatch Wind proffered prefiled testimony of Mr. Collins and Ms. Livingston as untimely filed and prejudicial.

1. The Commission Should Strike the Wasatch Wind Testimony Because Wasatch Wind is Not a Party to This Proceeding.

Wasatch Wind filed a petition to intervene on July 12, 2005 in this proceeding, 2 years and almost two months after this proceeding was initiated. The Commission has not yet acted on the motion to intervene. Accordingly, Wasatch Wind is not a party to this proceeding and has no right to participate in the proceeding. Only parties to a proceeding may present evidence to the Commission. *See* R746-100-5. Because Wasatch Wind is not a party to this proceeding, its proffered testimony should not be accepted for filing. If it were accepted for filing, PacifiCorp's rights would be prejudiced because it would have no opportunity to conduct discovery on (without Commission issuance of a subpoena) or cross-examine the Wasatch Wind witnesses, who are not parties to the proceeding. Wasatch Wind may seek interested party status and offer public witness testimony; however, it does not have the full rights of party participation without intervenor status. For these reasons, the Commission should strike the Wasatch Wind testimony.

2. The Commission Should Strike The Wasatch Wind Testimony As Procedurally Improper Because It Was Not Served On The Parties in a Timely Manner.

Even if the Commission were to grant intervenor status to Wasatch Wind, the filing of the proffered testimony is still procedurally flawed. The Commission's April 19, 2005, Scheduling Order in this proceeding (as amended by the July 1, 2005 Amended Scheduling Order), specifically addressed the deadline for testimony and the service of filings in this docket. Specifically, intervenor testimony was due on July 29, 2005. Further, the filing of the testimony was governed by paragraph 3 of the April 19 Order:

“The parties shall, if possible, serve all filings and discovery by electronic mail. If any party does not have an electronic mail address or is unable to send documents by

electronic mail, service shall, if possible, be by facsimile. If a party has neither an electronic mail address nor a facsimile number or a party is unable to serve documents by electronic mail or facsimile, documents shall be served by hand delivery or overnight courier at the discretion of the serving party. It is understood that attachments or exhibits that are not available electronically and which are too bulky to be served by facsimile will be either hand-delivered or sent by overnight courier to parties who would otherwise be entitled to receive service of them by electronic mail or facsimile.” (Emphasis added.)

Neither PacifiCorp nor its counsel was served electronically, by fax, by mail or in any other manner with the Wasatch Wind proffered testimony by the July 29, 2005, testimony deadline. Nor did Wasatch Wind contact PacifiCorp or its counsel requesting an extension of time to file or even notifying PacifiCorp that the filing would be late.

Pursuant to Commission Rule R746-100-9(E)(3), the Commission is authorized to take any appropriate action necessary to maintain order in the conduct of hearings before it and to ensure an orderly, just and expeditious hearing. PacifiCorp urges the Commission to strike the proffered testimony of Wasatch Wind in order to ensure an orderly and just proceeding. For these reasons, PacifiCorp requests that the Commission strike the Wasatch Wind proffered testimony as having been untimely filed in contravention of the Commission’s rules and the Scheduling Order in this proceeding.

3. The Commission Should Strike The Wasatch Wind Proffered Testimony Because It Materially Impairs The Orderly And Prompt Conduct Of The Proceeding.

Intervention in Commission proceedings is controlled by the Utah Administrative Procedures Act. *See* Utah Admin. Code R746-100-7; Utah Code Ann. § 63-46b-9. According to the APA, intervention is proper where the “interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.” Utah Code Ann. § 63-46b-9(2)(b). Parties to a Commission proceeding are given the right to participate, including to present evidence and other rights pursuant to the

Commission's rules. Utah Admin. Code R746-100-5. However, even after an order permitting intervention is made, the Commission may impose conditions on the intervenor's participation in order to ensure the "just, orderly, and prompt conduct of the adjudicative proceeding * * * at any time after intervention." Utah Code. Ann. § 63-46b-9(3)(b), (c).

The late-filed Wasatch Wind testimony demonstrates why the Commission should impose conditions on their participation in this proceeding. In their petition for intervention in this proceeding, Wasatch Wind asserts that the "interests of justice and the orderly and prompt conduct of this proceeding will not be materially impaired" by their intervention and that Wasatch Wind "do[es] not seek to upset the current schedule in this matter." (Emphasis added.) In spite of this representation to the Commission, Wasatch Wind did not abide by the current schedule in this matter. Instead, without notice to PacifiCorp, it simply disregarded the Commission's ordered filing deadline for testimony and filed testimony 2 and 3 days late. Such disregard for a Commission's order materially impairs PacifiCorp's opportunity to respond to the late-filed testimony.

For these reasons, PacifiCorp requests that the Commission issue an order striking the Wasatch Wind proffered testimony as a condition of Wasatch Wind's participation in this proceeding because requiring PacifiCorp, and other parties, to respond to this late-filed testimony will interfere with the prompt and orderly conduct of this proceeding.

4. If The Commission Does Not Strike The Wasatch Wind Proffered Testimony, PacifiCorp Requests That The Commission Extend the Time for PacifiCorp's Response to This Testimony.

As noted above, in granting intervention, the Commission must ensure that the participation of the party seeking intervention will not "materially impair[]" the "interests of justice and the orderly and prompt conduct of the adjudicative proceedings." Utah Code Ann. § 63-46b-9(2)(b); *see also* R746-100-7 (dealing with intervention in Commission proceedings and

noting it must be done in conformance with Section 63-46b-9). For the reasons stated above, PacifiCorp believes that the interests of justice and the conduct of the proceeding will be materially impaired if the Commission accepts the Wasatch Wind testimony without condition. Accordingly, if the Commission grants intervention status to Wasatch Wind and does not otherwise strike the late-filed proffered testimony, PacifiCorp requests that the Commission give it a day-for-day delay in the time for filing its rebuttal testimony in response to the Wasatch Wind proffered testimony. Because PacifiCorp did not received all of the Wasatch Wind testimony until Monday, August 1, 2005, three days after the deadline for filing of such testimony, PacifiCorp requests that the time for filing of its rebuttal testimony to Wasatch Wind be moved from September 8, 2005 to September 12, 2005 (because three days would otherwise fall on the weekend).

Conclusion

WHEREFORE, PacifiCorp respectfully requests that the Commission strike Wasatch Wind proffered testimony. If the Commission does not strike the Wasatch Wind proffered testimony, PacifiCorp requests that the Commission give it additional time to respond to the testimony.

Respectfully submitted this 5th day of August 2005.

Edward A. Hunter
Jennifer H. Martin
Stoel Rives LLP
Attorneys for PacifiCorp

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of August 2005, I caused to be served by electronic service, a true and correct copy of the foregoing Motion to Strike, Or in the Alternative, Motion for Official Notice to the following:

Michael Ginsberg
Trisha Schmid
Assistant Attorney General
500 Heber M. Wells Building
160 East 300 South
Salt Lake City, UT 84111
mginsberg@utah.gov

Reed Warnick
Paul Proctor
Assistant Attorney General
500 Heber M. Wells Building
160 East 300 South
Salt Lake City, UT 84111
rwarnick@utah.gov
pproctor@utah.gov

Roger Swenson
E-Quant Consulting, Inc.
1592 East 3350 South
Salt Lake City, UT 84106
roger.swenson@prodigy.net

Stephen F. Mecham
Callister Nebeker & McCullough
10 East South Temple, Suite 900
Salt Lake City, UT 84133
sfmecham@cnmlaw.com

Gregory L. Probst
c/o Energy Strategies
215 South State, Suite 200
Salt Lake City, UT 84111
glprobst@earthlink.net

Eric C. Guidry
Western Resource Advocates
2260 Baseline Road, Suite 200
Boulder, CO 80302
eguidry@westernresources.org

F. David Graeber
10440 N. Central Expressway, #1400
Dallas, TX 75231
fdgraeber@USAPowerpartners.com

Gary A. Dodge
Hatch James & Dodge
10 West Broadway #400
Salt Lake City, UT 84101
gdodge@hjdllaw.com

James W. Sharp
ExxonMobil
800 Bell Street
Houston, TX 77002-2180
james.w.sharp@exxonmobil.com

James W. Holtkamp
Holland & Hart LLP
60 East South Temple, Suite 2000
Salt Lake City, UT 84111
jholtkamp@hollandhart.com

Thor Nelson
Holland & Hart LLP
8390 East Crescent Parkway, Suite 400
Greenwood Village, CO 80111-2811
www.hollandhart.com

Richard Collins
c/o Wasatch Wind LLC
Tracy Livingston
Christine Watson Mikell
Wasatch Wind LLC
357 West 910 South
Heber City, UT 84032
rcollins@westminstercollege.edu

Sarah Wright
Utah Clean Energy
917 2nd Avenue
Salt Lake City, UT 84103
sarah@utahcleanenergy.org

David L. Olive
Amarillo National's Plaza/Two
500 S. Taylor, Suite 400
Lobby Box 254
Amarillo, TX 79101-2447
david.l.olive@ue-corp.com

Major Craig Paulson
AFLSA/ULT
Utility Litigation Team
139 Barnes Drive, Suite 1
Tyndall AFB, FL 32403
craig.paulson@tyndall.af.mil

Gregory L. Probst
9 Pepperwood Drive
Sandy, UT 84092
glprobst@earthlink.net

Lee Brown
US Magnesium LLC
238 North 2200 West
Salt Lake City, UT 84116
lbrown@Magnesiumcorp.Com

James Howarth
OO-ALC/JAN
6026 Cedar Lanes, Bldg. 1278
Hill AFB, UT 84056
james.howarth@hill.af.mil

Scott Gutting
Neal Townsend
Energy Strategies LLC
215 South State, Suite 200
Salt Lake City, UT 84111
sgutting@energystrat.com
ntownsend@energystrat.com