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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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In the Matter of the Application of	)	PACIFICORP’S PETITION FOR
PACIFICORP for Approval and IRP Based	)	RECONSIDERATION OF ORDER
Avoided Cost Methodology for QF Projects	)	GRANTING EXTENSION FOR FILING
Larger than 3 Megawatts	)	SURREBUTTAL TESTIMONY OF
	)	WASATCH WIND
	)	
	)	DOCKET NO. 03-035-14

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PacifiCorp (or the “Company”) hereby submits this petition for reconsideration of the Commission’s September 12, 2005 order granting the Petition for Extension for Filing Surrebuttal Testimony for Wasatch Wind (“Petition”) filed on September 6, 2005. PacifiCorp filed a reply in opposition to the Petition on September 12, 2005 (“Reply”). Wasatch Wind did not offer any reasons that would support a Utah Public Service Commission (“Commission”) finding of good cause in granting the requested extension. Instead, Wasatch Wind requested that PacifiCorp and other parties continue to be prejudiced in their time for responding to Wasatch Wind because of Wasatch Wind’s own failure to comply with a Commission order. While PacifiCorp understands the practicalities that may factor into a Commission consideration on response time to a limited amount of testimony, other factors should have weighed more heavily against granting the Petition. Specifically, as a result of Wasatch Wind’s own late filing, it is now a simple fact that one of two parties is going to get less time to respond—either Wasatch

Wind in filing surrebuttal or other parties in preparing for hearing. PacifiCorp submits that the party who caused the delay should be saddled with that burden, not reap the benefit by other parties getting less time. PacifiCorp asks the Commission to consider these factors and expeditiously grant this request for reconsideration. In support thereof, PacifiCorp states as follows:

### **Discussion**

As discussed in detail in PacifiCorp's Reply filed on September 12, 2005, it is not disputed that Wasatch Wind filed their direct testimony late. Nor is it disputed that as a consequence of that delay, PacifiCorp and all other parties were granted more time by the Commission to respond to that late-filed testimony. When PacifiCorp requested additional time to respond to that late-filed testimony, it noted that contrary to long-standing practice between the parties, Wasatch Wind never contacted PacifiCorp to informally request additional time or, at a minimum, to notify PacifiCorp of the delay in filing. Nor did Wasatch Wind seek from the Commission a formal extension of the schedule to file late. Instead, Wasatch Wind made a unilateral decision without permission from the Commission or notice to the parties to file late.

PacifiCorp filed a request for additional time to respond to this late-filed direct testimony noting that it would otherwise be prejudiced in having less time to respond in rebuttal. Wasatch Wind never filed a reply to that request. When the Commission granted all parties additional time to respond, Wasatch Wind was again silent. They did not request rehearing or note any other problems in their ability to respond. Instead, on the eve of the rebuttal testimony filing deadline, Wasatch Wind for the first time, and again without contacting PacifiCorp, filed a request with the Commission for additional time. Wasatch Wind did not note any particular accommodations it was willing to abide by in terms of filing on time in response to parties who

did not use the extension in responding to the Wasatch Wind testimony and only seeking an extension for other testimony. Instead, Wasatch Wind made a blanket request for an extension to respond to all testimony.

Understanding the scheduling constraints associated with using our full statutory timeline for responding, PacifiCorp filed its reply in opposition well in advance of the statutory deadline and well in advance of testimony filing deadline. PacifiCorp noted that it was Wasatch Wind's own delay that caused the shortened timeframe for their surrebuttal response, not any other parties' conduct. PacifiCorp noted that if Wasatch Wind's motion was granted, PacifiCorp and all other parties would have less time to prepare for the hearing on Wasatch Wind's issues. PacifiCorp argued that Wasatch Wind should not be entitled to reap the benefits for their own dilatory conduct.

In the Commission's Order granting the extension, the Commission noted that Wasatch Wind was concerned that it would have only three business days to respond to rebuttal testimony in filing their surrebuttal testimony and therefore, it would affect the quality of the testimony presented to the Commission by Wasatch Wind. The Commission found that good cause appeared for granting the extension.

PacifiCorp submits that the Commission must consider the other side of the timing equation. There are 10 days between the filing of rebuttal to Wasatch Wind (September 12) and the start of the hearing (September 22). Either Wasatch Wind will benefit from their own dilatory conduct and have additional time to file surrebuttal testimony (they get one week – from September 12 to September 19) and all other parties get 3 days to prepare for the hearing on that issue (September 19 to September 22); or all other parties get the one week they would otherwise be permitted under the scheduling order if properly followed (September 15 to September 22) to

prepare for hearing and Wasatch Wind gets 3 days to prepare surrebuttal (September 12 to September 15). Those are the only two options before the Commission. PacifiCorp submits that in light of the fact that it was Wasatch Wind's own late-filing that caused any time constraints on the parties, that it is inequitable to shorten all other parties time to prepare for the hearing. Wasatch Wind should bear that burden.

Finally, PacifiCorp understands that the Commission may be persuaded by the argument that while parties have a shortened time to prepare for the hearing, they have only to do so on a limited amount of testimony (Wasatch Wind's surrebuttal). PacifiCorp submits that the same logic holds true if the Commission were to hold Wasatch Wind accountable for their dilatory conduct: Wasatch Wind would have only a minimal amount of testimony to respond to on a three-day timeline—PacifiCorp filed only 4 pages of rebuttal to Wasatch Wind on the extending filing deadline; all other parties filed rebuttal to Wasatch Wind on the original timeline. Accordingly, in addition to the inequity of a shortened time period for hearing preparation for the non-dilatory parties, Wasatch Wind is also benefiting by getting more time than all other parties (they will have 10 days; all other parties 7 days) to prepare and file their surrebuttal. While it is clear that other parties should not bear the burden for Wasatch Wind's dilatory filing, it is even more clear that Wasatch Wind should not stand to benefit from their dilatory filing.

### **Conclusion**

WHEREFORE, PacifiCorp respectfully requests that the Commission reconsider its Order granting Wasatch Wind's petition for extension of time to file surrebuttal testimony. PacifiCorp submits that the Commission should reconsider the impact of permitting Wasatch Wind to benefit from a situation of their own making to the detriment of other parties.

Respectfully submitted this \_\_\_\_ day of September 2005.

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## CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of September 2005, I caused to be served by electronic service, a true and correct copy of the foregoing PacifiCorp's Petition for Reconsideration of Order Granting Extension for Filing Surrebuttal Testimony of Wasatch Wind to the following:

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