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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

IN THE MATTER OF THE PETITION OF DESERT POWER, L.P. FOR APPROVAL OF A CONTRACT FOR THE SALE OF CAPACITY AND ENERGY FROM ITS PROPOSED QF FACILITIES	DOCKET NO. 04-035-04  <b>EMERGENCY PETITION FOR RESOLUTION OF DISPUTE PURSUANT TO SECTION 21 OF POWER PURCHASE AGREEMENT AND PROPOSED SCHEDULE</b>
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Desert Power, L.P. (“Desert Power”), by and through counsel, hereby petitions the Public Service Commission of Utah (“Commission”) on an emergency basis to resolve a contract dispute between Desert Power and PacifiCorp (together with Desert Power “Parties”) pursuant to Section 21 of the Parties’ Power Purchase Agreement (“PPA”) which states in part:

If the Parties are unable to resolve a dispute with respect to this Agreement, either Party may send a notice to the other requesting a meeting at which senior officers or officials of the Parties will attempt to resolve the dispute. If the Parties are unable to resolve the dispute within 10 Days after the meeting notice is received by the Party to whom it is directed, or such longer period as the Parties may agree, then either Party may initiate mediation procedures at the Commission as set forth herein. If the mediator is unable to resolve the dispute between the parties to the reasonable satisfaction of both Parties, either Party may file a pleading requesting agency action to interpret and/or enforce provisions of this Agreement. The Parties shall request that the Commission use all reasonable efforts to render a written decision setting forth its findings and conclusions promptly.

After PacifiCorp issued a demand letter July 14, 2006, Desert Power invoked

Section 21 and requested mediation with PacifiCorp.<sup>1</sup> The Parties met together August 1, 2006 but were unable to resolve the dispute which Desert Power now submits to the Commission for resolution.

Essentially, the dispute involves a PacifiCorp demand that Desert Power agree to amend the PPA to accept avoided cost rates in effect June 2, 2007 if the Desert Power plant is not on line by June 1, 2007. Although Desert Power can achieve commercial operation before June 1<sup>st</sup>, its bank and investors will not accept that condition. Without their agreement, there will be no additional financing, the project will fail, and the \$60+ million invested in the plant will be at risk. Desert Power requests that the Commission not decide that issue unless Desert Power fails to achieve commercial operation by June 1, 2007. In addition, Desert Power requests the Commission approve an amendment to the PPA extending the commercial operation date to June 1, 2007 and the contract term one year.

In the interest of time, the Parties agreed to submit this matter to the Commission in a regular proceeding rather than requesting mediation. It is urgent that the Commission act swiftly on this Petition or Desert Power will not be able to complete the plant conversion by June 1, 2007 in accordance with the terms of the stipulation in Docket No. 03-035-14. As a result of this dispute, construction has come to a standstill. Assuming the Commission's calendar can accommodate it, Desert Power respectfully requests the following schedule<sup>2</sup>:

August 14, 2006	PacifiCorp file any response to this Petition
August 16, 2006	Technical Conference - 9:30 a.m. in Room 401

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<sup>1</sup> The correspondence between the Parties addressing the dispute is attached.

<sup>2</sup> PacifiCorp is aware of this proposed schedule but they have not agreed to it.

August 21, 2006      Parties file up to a ten page position statement

August 25, 2006      Hearing - Oral testimony will be presented at 9:30 a.m. in  
the Commission hearing room

Commission Decision As soon as possible following the Hearing

Desert Power is aware that the proposed schedule is short, but without quick  
resolution in accordance with this Petition the project will fail.

Respectfully submitted this 9<sup>th</sup> day of August, 2006.

Callister Nebeker & McCullough

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Stephen F. Mecham

## Certificate of Service

I certify that on August 9, 2006 I emailed a true and correct copy of the foregoing **EMERGENCY PETITION FOR RESOLUTION OF DISPUTE PURSUANT TO SECTION 21 OF POWER PURCHASE AGREEMENT AND PROPOSED SCHEDULE** to the following:

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