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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>LIMITED REPLY OF THE DIVISION OF PUBLIC UTILITIES TO DESERT POWER'S EMERGENCY PETITION FOR EXPEDITED CLARIFICATION OF REPORT AND ORDER RESOLVING DESERT POWER DISPUTE ISSUED SEPTEMBER 20, 2006</b>
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The following is a limited response by the Division of Public Utilities (DPU) to the request by Desert Power for emergency and expedited clarification of the Report and Order of the Public Service Commission (Commission) issued September 20, 2006.

1. Desert Power on September 25, 2006 filed an extraordinary emergency request with the Commission for clarification of its order issued September 20, 2006 (Order). Desert Power has asked the Commission to decide by today, September 26, 2006, the issues raised in its Motion. In an attempt to provide some comments to the Commission under the requested

schedule. the Division is providing these limited comments on Desert Power's request. The request for Clarification appears at least in part to be in response to a letter sent by PacifiCorp to Desert Power on September 22, 2006 stating PacifiCorp's belief that a Material Adverse Change has occurred and that certain assurances are needed from Desert Power. The PacifiCorp letter was attached to Desert Power's pleading. A Material Adverse Claim questions the ability of Desert Power to perform under the contract even under the new Commercial Operation Date of June 1, 2007. Desert Power has asked the Commission to clarify what was intended by its Order by submitting three clarifying questions to the Commission. The Division will provide some limited perspectives on two of the issues raised by Desert Power.

2. In question 3, Desert Power raises the issue of the term of any amendment to the current PPA as a result of the Commission's Order extending the Commercial Operation Date to June 1, 2007. Desert Power asks the Commission to clarify that the term of the contract is still twenty years from the Commercial Operation Date. This particular issue is one regarding which the DPU provided some comments during the hearing and will reiterate them in this filing. The Commission's Order appears to specifically address this issue. The Commission stated after discussing the Commercial Operation Date that: "We do not, however, agree that the contract is to be extended one year. Desert Power has failed to present a sufficient basis, evidentiary or logical, for us to conclude that extension of

the PPA for an additional year is reasonable or appropriate.”<sup>1</sup> Similar language appears in the Ordering section of the Commission Order.<sup>2</sup>

During the hearings, the DPU commented that even though the Commercial Operation Date may be changed to June 1, 2007, it is not in the public interest to change the termination date. The Division’s recommendation continues to be that the contract should expire 20 years from the original commercial operation date or December 31, 2025. When a new amended contract is submitted for Commission approval, the contract should reflect these terms. Such an interpretation allows ratepayers to receive power from Desert Power only for the term that was determined reasonable when the PPA was originally approved by the Commission, when the avoided costs were based on stipulation pricing.

3. With respect to Question 2 raised by Desert Power, the DPU will address ratepayers’ interest in assuring that the project has achieved commercial operation by June 1, 2007 as well as the question of resolving “all disputes.” It is in ratepayers’ interest to know if Desert Power will provide power by June 1, 2007. A Material Adverse Change is a claim by PacifiCorp that it needs assurances that power will be provided by that date. It appears to the DPU reasonable that ratepayers know with some reasonable assurances whether Desert Power will perform under the contract. As of the date of PacifiCorp’s letter, construction had stopped at the site, financing had fallen through, liens had been placed on the

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<sup>1</sup> Order at p. 5.

<sup>2</sup> Id. at p. 7.

property and possibility other impediments to finishing the project exists. With those conditions existing, ratepayers should be able to get assurance that the terms of the contract will be met, and that the current concerns will be resolved. The terms of the contact, i.e. those addressing the Material Adverse Change, appear to be the only way for PacifiCorp to address these concerns and provide reassurance to ratepayers. Additionally, neither this Emergency Petition nor the initial petition specifically identified “all disputes” to be resolved so it is impossible to issue a blanket order addressing “all disputes.” Therefore, it is difficult to determine all areas of concern to Desert Power.

4. The DPU does not know if the Commission will address these issues today, but the DPU wishes to reserve its right to request clarification on other issues it may believe are relevant and to address the reasonableness of the terms of any contract submitted for approval.

RESPECTFULLY SUBMITTED this \_\_\_\_\_ day of September 2006.

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of Public Utilities

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **LIMITED REPLY OF THE DIVISION OF PUBLIC UTILITIES TO DESERT POWER'S EMERGENCY PETITION FOR EXPEDITED CLARIFICATION OF REPORT AND ORDER RESOLVING DESERT POWER DISPUTE ISSUED SEPTEMBER 20, 2006** was served upon the following by electronic mail, on September 26, 2006:

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