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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

<p>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</p>	<p>Docket No. 04-035-04</p> <p>POSITION STATEMENT OF THE UTAH DIVISION OF PUBLIC UTILITIES IN RESPONSE TO DESERT POWER'S EMERGENCY PETITION FOR EXPEDITED CLARIFICATION OF REPORT AND ORDER RESOLVING DESERT POWER DISPUTE ISSUED SEPTEMBER 20, 2006</p>
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While the Division believes that the Commission is in the best position to determine what it may or may not have intended by its orders in this case, we offer the following comments to help explain the Division's position on the Pricing Stipulation adopted in Docket No. 03-035-14.

The Division believes the intent of the Pricing Stipulation was for a QF to be online at its contracted capacity by June 1, 2007 to qualify for Stipulation pricing. In various proceedings, the Division has interpreted the Pricing Stipulation to mean that if a QF failed to come on line by that date, then Stipulation pricing would not be available to the QF; pricing would be determined

by the then-current avoided costs. Consistent with these former recommendations, the Division would recommend that the Commission continue to rule that Desert Power would need to be online by June 1, 2007 to receive stipulation pricing; if it fails to meet that date, prices would be determined using the methodology approved by the Commission in Docket No. 03-035-14.

Also, the purpose of the online date of June 1, 2007 was to ensure that the generation capacity and energy was available through the summer months to meet peak loads. The Division understands that Desert Power's capacity (95 MW) is currently part of the resource mix in the IRP. If Desert Power is able to meet the online date with a lesser MW amount than specified in the contract (81 MW) only to take the facility offline to complete its conversion and, thus, not be available at all over the summer months, then any shortfall in power needs will be exacerbated.

In the fall of 2006, the Commission issued three orders in this docket. In its order dated September 20, 2006 the Commission stated on page 7, "We conclude that it is reasonable, consistent with the parties' intent, and the intent of our resolution of Docket No. 03-035-14, to extend the Commercial Operation Date for the QF to on or before June 1, 2006." On page 2 of its October 2, 2006 order, the Commission stated, "We feel compelled, however, to state that our extension of the Scheduled Commercial Operation date will not permit Desert Power to have any expectation of receiving Docket No. 03-035-14 Stipulation based pricing for electrical output if the plan is not meeting production requirements on or before June 1, 2007." On page 2 of its November 8, 2006

order, the Commission amended the language from the October 2nd order to read, “We feel compelled, however, to state that our extension of the Scheduled Commercial Operation Date will not permit Desert Power to have any expectation of receiving Docket No. 03-035-14 Stipulation based pricing for electrical output if the plant does not meet the new Commercial Operation Date or Scheduled Commercial Operation Date.

The issue before the Commission appears to be, given the Commission’s orders, whether Desert Power can use contract provision 2.4 and 11.1.4 to come online up to 150 days after the Scheduled Operation date. The Division believes that the Commission is in the best position to determine if the clarifications in its October and November orders were intended to allow Desert Power to “buy” an extra 150 days to come online.

The Division’s comments do not address the status of the contract which is now before the US. Bankruptcy Court in Nevada.

RESPECTFULLY SUBMITTED this _____ day of January 2007.

Michael L. Ginsberg
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Attorneys for the Division
of Public Utilities

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **POSITION STATEMENT OF THE UTAH DIVISION OF PUBLIC UTILITIES IN RESPONSE 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 January 11, 2007:

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