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Attorneys for PacifiCorp

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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In the Matter of the Application of	)	
PACIFICORP for a Certificate of	)	PACIFICORP'S OPPOSITION TO
Convenience and Necessity Authorizing	)	CALPINE'S PETITION TO INTERVENE
Construction of the Lake Side	)	
Power Project	)	DOCKET NO. 04-035-30

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PacifiCorp hereby responds to Calpine Corporation's Petition to Intervene ("Petition") filed in this matter. PacifiCorp opposes Calpine Corporation's intervention in this proceeding for the following reasons.

1. Utah law provides that a petition for intervention shall be granted if it is determined that: (a) the petitioner's legal interests may be substantially affected by the proceeding; and (b) 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). To fulfill the requirements of subsection (a) above, a petition to intervene must include "a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceeding, or that the petitioner qualifies as an intervenor under any provision of law" and "a statement of the relief the petitioner seeks." Utah Code Ann. §63-46b-9(1)(c) & (d). Calpine's Petition does not include these required statements. Furthermore, Calpine has not demonstrated and cannot demonstrate that its

legal rights or interests will be affected by this proceeding or that the orderly and prompt conduct of this proceeding will not be impaired by its intervention.

2. Calpine's claim of substantial interest is based solely on its contention that it "proposes to construct new generation facilities within the State of Utah" and "submitted bids in response to RFP-2003A." Calpine's vague contentions that it proposes to construct generation facilities in the state and that it submitted bids in response to PacifiCorp's RFP-2003A do not constitute a statement of facts demonstrating that its legal rights or interests are substantially affected by this proceeding. In fact, PacifiCorp's application seeks a certificate of public convenience for the construction of the Lake Side Power Project. The Commission's certificate statute applies to construction and/or operation of utility assets. Utah Code Ann. §54-4-25(1). The relevant inquiries under such a statute include the need for the resource, whether the issuance of a certificate will adversely affect the operations of any other existing certificated fixed public utility, and whether the public interest requires the issuance of a certificate. Calpine has no interest that will be affected by the construction of this Project. If the Commission determines in this proceeding that it is not in the public interest to construct the Lake Side Power Project, there is no relief that the Commission can grant specifically to Calpine that would further Calpine's own proposal to construct new generation facilities in Utah. To the extent Calpine seeks to intervene to assess the RFP process itself and to make proposals for improving or modifying that process, the Commission has made clear that those issues will be addressed in Docket No. 03-035-03, a docket in which Calpine is an active participant. Absent a statement of facts demonstrating that its legal rights may be substantially affected by this proceeding, Calpine has not satisfied its burden under the statute.

3. Calpine has failed to provide a statement of the relief it seeks in the proceeding as required by Utah Code Ann. § 63-46b-9(1)(d). Since Calpine failed to provide a statement of the relief it seeks in this proceeding, PacifiCorp does not know the result Calpine will seek. In light of the fact that no relief can be granted in this proceeding that would affect Calpine's rights, that there is an open docket to address changes to the RFP process, and there is no other basis on which Calpine's legal interests could be substantially affected by this case, it appears Calpine's purposes in this case could only be to broaden the scope of the proceeding or obtain confidential information that it could not otherwise obtain. Intervention for either of those purposes would certainly materially impair the interests of justice and the prompt and orderly conduct of this proceeding, and should not be allowed.

4. If the Commission determines that Calpine has made the necessary showing under Utah Code Ann. § 63-46b-9(1) such that intervention is proper, PacifiCorp requests that the Commission limit Calpine's participation in this matter. The Utah Administrative Procedure Act expressly authorizes the Commission to "impose conditions on the intervenor's participation in the adjudicative proceeding that are necessary for a just, orderly, and prompt conduct of the adjudicative proceeding." Utah Code Ann. § 63-46b-9(3)(b). As stated above, the issues in the proceeding relate to whether to grant a certificate of public convenience and necessity for the Lake Side Power Project. PacifiCorp requests that Calpine's participation in this matter be limited to the narrow issues before the Commission in order to make that decision. In addition, PacifiCorp specifically requests that Calpine's participation be limited such that it is not permitted to use the discovery process in this certificate proceeding to gain an advantage in other pending or planned litigation.

WHEREFORE, PacifiCorp respectfully requests that the Commission deny Calpine's  
Petition.

Respectfully submitted this \_\_\_\_\_ day of June 2004.

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Edward A. Hunter  
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Attorneys for PacifiCorp

## CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of June 2004, I caused to be served, via facsimile, overnight delivery or hand delivery, a true and correct copy of the foregoing Opposition to Calpine's Petition to Intervene to the following:

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