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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of) PACIFICORP’S OPPOSITION TO
PACIFICORP for a Certificate of) SPRING CANYON ENERGY, LLC’S
Convenience and Necessity Authorizing) PETITION TO INTERVENE
Construction of the Lake Side)
Power Project) DOCKET NOT 04-035-30

PacifiCorp hereby responds to Spring Canyon Energy, LLC’s (“SCE”) Petition to Intervene (“Petition”) filed in this matter. PacifiCorp opposes SCE’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). SCE’s Petition does not include these required statements. Furthermore, SCE 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. SCE's claim of substantial interest is based solely on its contention that it "submitted multiple bids in response to RFP-2003A" and "it was denied the opportunity to further enhance and negotiate its base loaded bid, after being short-listed." SCE's vague contentions that it was denied to opportunity to "enhance" its bid after being short-listed do not constitute a statement of facts demonstrating that its legal rights or interests are substantially affected by this proceeding. There are several reasons why SCE's legal interest claim is ineffective for the purpose of intervening in this proceeding.

3. First, 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. SCE 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 SCE that would further SCE's own proposal to construct new generation facilities in Utah.

4. Second, the underlying legal basis for SCE's intervention, that it was denied an opportunity to "further enhance or negotiate" its bid after being short-listed, was already considered and rejected by the Commission in its Order in Docket No. 03-035-29 to grant PacifiCorp a certificate for construction of the Current Creek facility. In that March 5, 2004

Order, the Commission addressed similar claims by SCE that PacifiCorp refused to restart negotiations after SCE's bid had been short-listed by noting that "restarting negotiations after a bidder's best and final offer is made and found to be uneconomic would be unfair to other bidders and impair the credibility of the process." Docket No. 03-035-29 (Utah PSC Mar. 5, 2004). Thus, the Commission concluded that SCE's request to further negotiate (and, presumably, "enhance") its previous bid was "unacceptable." *Id.* Reconsideration of the same previously-determined legal issue brought by the same party but in a different proceeding is generally precluded by the legal doctrine of "collateral estoppel." Moreover, the interests of justice and the prompt and orderly conduct of this proceeding would be impaired by the duplication of efforts related to the reconsideration of an issue already decided upon by the Commission. In addition, and to the extent SCE seeks to intervene to generally 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. Absent a statement of facts demonstrating that its legal rights may be substantially affected by this proceeding, SCE has not satisfied its burden under the statute.

5. SCE 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 SCE failed to provide a statement of the relief it seeks in this proceeding, PacifiCorp does not know the result SCE will seek. In light of the fact that no relief can be granted in this proceeding that would affect SCE's rights, that there is an open docket to address changes to the RFP process, and there is no other basis on which SCE's legal interests could be substantially affected by this case, it appears SCE's purposes in this case could only be to broaden the scope of the proceeding to further SCE's own bid to construct new generation in Utah or to obtain confidential information that it could not otherwise

obtain. Intervention for either of these purposes would certainly materially impair the interests of justice and the prompt and orderly conduct of this proceeding, and should not be permitted.

6. If the Commission determines that SCE has made the necessary showing under Utah Code Ann. § 63-46b-9(1) such that intervention is allowed, PacifiCorp requests that the Commission limit SCE'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 SCE'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 SCE'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 threatened litigation or other bidding procedures.

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

Respectfully submitted this second day of July 2004.

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CERTIFICATE OF SERVICE

I hereby certify that on this second day of July 2004, I caused to be served by electronic service, a true and correct copy of the foregoing Opposition to Spring Canyon Energy LLC's Petition to Intervene to the following:

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