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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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In the Matter of the Application of PACIFICORP for a Certificate of Convenience and Necessity Authorizing Construction of the Lake Side Power Project	Docket No. 04-035-30  <b>RESPONSE OF CALPINE CORPORATION TO PACIFICORP'S OPPOSITION TO CALPINE'S PETITION TO INTERVENE, OR IN THE ALTERNATIVE, MOTION FOR LEAVE TO AMEND PETITION TO INTERVENE</b>
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Calpine Corporation (“Petitioner”) hereby files this Response to PacifiCorp’s Opposition to Calpine’s Petition to Intervene, or in the alternative, Motion for Leave to Amend its Petition to Intervene, in the above-captioned proceeding. In particular, Calpine states as follows:

1. On May 28, 2004, PacifiCorp filed an Application for a Certificate of Convenience and Necessity Authorizing Construction of the Lake Side Power Project (“Application”) in Docket No. 04-035-30.

2. On June 15, 2004, Petitioner filed a Petition to Intervene in Docket No. 04-035-30 stating, *inter alia*, that it operates wholesale electrical generating facilities throughout the United States and proposes to construct new generation facilities within the State of Utah. Moreover, Petitioner stated that it submitted bids in response to RFP 2003-A issued by PacifiCorp. As PacifiCorp's Application discusses in detail, RFP 2003-A ultimately resulted in PacifiCorp rejecting Calpine's final bid and selecting the Lake Side Power Project.

3. In its Opposition to Calpine's Petition to Intervene, filed June 29, 2004, PacifiCorp alleges that Calpine's Petition: (1) does not state facts demonstrating that its legal rights or interests are substantially affected; and (2) does not include a statement of the relief sought. PacifiCorp's Opposition also requests that to the extent the Commission finds that Calpine's intervention is proper, that the Commission limit the scope of Calpine's participation in the proceeding.

4. In response, Calpine first states that this is the only Commission docket in which Calpine may investigate and, if appropriate, challenge (a) PacifiCorp's decision to reject Calpine's bid and, instead, select the Lake Side Power Project and (b) the integrity of PacifiCorp's bid evaluation and negotiation process. Thus, based on the facts set forth in the Petition and herein, Calpine clearly meets the requirement of Utah Code Ann. § 63-46b-9(2) that it identify the legal issues that may be substantially affected by the proceeding.

5. Further, PacifiCorp's own Application and attached testimony discuss Bid No. 213 which is the Calpine bid at great length to justify why PacifiCorp choose the PacifiCorp/Summit project instead of the Calpine project. Thus, PacifiCorp itself has

put Calpine and the Calpine bid squarely at issue in this docket. Accordingly, Calpine should be entitled to investigate and, as appropriate, refute the false claims or representations PacifiCorp makes about Calpine and its bid.

6. Calpine's participation in the docket will provide the Commission with vital information that no one else possesses about Calpine and its bid. This information is essential to fully understand the options PacifiCorp has for meeting the growing need for electricity in Utah and to analyze which of the available options best meets the interests of Utah's electric consumers. This inquiry is the very heart of the public interest test at issue in this docket. Apparently recognizing this fact, the Utah Division of Public Utilities has already served discovery on Calpine in this docket to investigate Calpine's bid and get more information about Calpine itself. PacifiCorp's attempt to keep Calpine and its knowledge and expertise from this proceeding is nothing more than an attempt to keep the Commission in the dark about the options consumers have and, thereby, enhance the chances that PacifiCorp's own project will be approved.

7. Regarding PacifiCorp's claim that Calpine's intervention should be denied because it fails to state the relief requested, Utah Code Ann. Section 63-46b-9(1)(d) does not require that intervenors identify the relief sought with specificity. Further, it is common practice for intervenors before this Commission to state, as Calpine does, that they wish to intervene to seek such relief as deemed appropriate as the case unfolds. To see an example of this common practice one need look no further than Summit's intervention in this docket that, at paragraph 7, uses almost the exact same language that appears in Calpine's intervention. Interestingly, PacifiCorp does not object to Summit's intervention on this basis.

8. However, if the Commission believes it is important to understand the relief Calpine may seek, Calpine states as follows. Calpine may ask the Commission to deny the application if necessary to satisfy the public interest. Calpine may also ask the Commission to take such other steps as the Commission has the legal authority to take to ensure that Utah consumers enjoy the lowest cost and most reliable electricity possible.

9. Finally, PacifiCorp asks the Commission to limit the scope of Calpine's participation in this docket. For the reasons stated above, this request should be denied. But further, PacifiCorp raises this issue prematurely and in a factual vacuum. The appropriate way to address PacifiCorp's concerns is on a case-by-case basis as the case unfolds. For example, if Calpine propounds inappropriate discovery, PacifiCorp has the right to object and Calpine has the right to bring those issues on a specific case-by-case basis before the Commission. If Calpine raises inappropriate issues in its testimony, PacifiCorp has the right to move to strike and the Commission will be able to resolve any such disputes on a specific case-by-case basis. Finally, if Calpine raises inappropriate issues through cross-examination, PacifiCorp has the right to object and again the Commission will have an ability to make a ruling in light of the specific facts in each instance. Making a decision at this stage in the process about what is and is not a relevant inquiry is simply unnecessary.

Wherefore, Petitioner hereby respectfully requests leave to intervene and participate fully in this docket.

DATED this 1st day of July, 2004.

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was hand delivered this 1st day of July, 2004, to the following:

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I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, this 1st day of July, 2004, to the following:

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