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Managing Member for Spring Canyon Energy LLC

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of) SPRING CANYON ENERGY LLC'S
PACIFICORP for a Certificate of) RESPONSE TO PACIFICORP'S
Convenience and Necessity Authorizing) OPPOSITION TO SPRING CANYON
Construction of the Lake Side) ENERGY, LLC'S PETITION TO
Power Project) INTERVENE, OR IN THE
) ALTERNATIVE MOTION FOR LEAVE
) TO AMEND PETITION TO INTERVENE
)
) DOCKET NO. 04-035-30

Spring Canyon Energy LLC ("Petitioner") hereby files this Response to PacifiCorp's Opposition to Petitioner's Petition to Intervene ("PacifiCorp's Opposition") or in the alternative, Motion for Leave to Amend its Petition to Intervene, in the above captioned proceeding.

Petitioner contests PacifiCorp's Opposition, and in particular Petitioner states the following:

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 24, 2004, Petitioner filed a Petition to Intervene in Docket No. 04-035-30 stating, *inter alia*, that Petitioner has developed a generation site for the purpose of selling capacity and energy within the State of Utah. Moreover, Petitioner stated that it submitted multiple bids in response to RFP 2003-A issued by PacifiCorp and that it was

denied the opportunity to further enhance or negotiate its base loaded bid in good faith after being short-listed in violation of the schedule and notices stated in the RFP 2003-A.

3. In its Opposition, PacifiCorp states that “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.” Further, PacifiCorp states that “[t]o 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’.” In its Opposition, PacifiCorp alleges that Petitioner’s Petition to Intervene does not include these required statements and that Petitioner has neither demonstrated that its legal rights or interest will be affected by this proceeding nor that the orderly and prompt conduct of this proceeding will not be impaired by its intervention.
4. Petitioner takes leave to amend its original petition as follows to include: Petitioner states (a) that it has an interest in the proceedings and that 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 by Petitioner. Furthermore, Petitioner can demonstrate that its legal rights or interests will be affected by this proceeding and that the orderly and prompt conduct of this proceeding will not be impaired by its intervention.

5. In response to PacifiCorp's Opposition, Petitioner first states that this is the only Commission docket in which Petitioner may investigate and, if appropriate, challenge (a) PacifiCorp's decision to reject Petitioner's bids and, instead, select the Lake Side Power Project and (b) the integrity of PacifiCorp's bid evaluation and negotiating process. Thus, based on the facts set forth in the Petition and herein, Petitioner meets the requirements of Utah Code Ann. §63-46b-9(2) that it demonstrates that its legal rights or interest are substantially affected by the formal adjudicative proceeding.
6. Further, with regard to PacifiCorp's allegation that Petitioner's claims are similar to claims addressed by the Commission in Docket No. 03-035-29 (Utah PSC March 5, 2003), Petitioner responds as follows: The doctrine of "collateral estoppel" generally requires that the issue in the current proceeding be identical to the issue actually adjudicated in the prior proceeding, and therefore, it does apply in this situation. Petitioner submitted two bids in response to PacifiCorp RFP 2003-A. These bids were not discussed or evaluated as part of Docket No. 03-035-29, and what is at issue in this proceeding are Petitioner's legal rights and interest as stated above with respect to the Lake Side Power Project and the bids it submitted in response to RFP 2003-A. Also at issue is whether the public interest is served by the granting of a Certificate of Convenience and Necessity authorizing the construction of the Lake Side Power Project.
7. Petitioner's participation in the docket will provide the Commission with information about Petitioner and its bids that can be provided by no other party. 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. PacifiCorp's attempt to exclude Petitioner 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.

8. Regarding PacifiCorp's claim that Petitioner'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 interveners identify the relief sought with specificity. Further, it is common practice for interveners before this Commission to state, as Petitioner does, that they wish to intervene to seek such relief as deemed appropriate by the details of the proceeding.
9. However, if the Commission believes it is important to understand the relief Petitioner may seek, Petitioner states as follows: Petitioner may ask the Commission to deny the application if necessary to satisfy the public interest. Petitioner 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.
10. Finally, PacifiCorp asks the Commission to limit the scope of Petitioner's participation in this docket. For the reasons stated above, this request should be denied. But further, PacifiCorp raises this issue prematurely. The appropriate manner to address PacifiCorp's concerns is on a case-by-case basis as the proceeding unfolds. For example, if Petitioner propounds inappropriate discovery, PacifiCorp has the right to object and Petitioner has the right to bring those issues before the Commission on a specific case-by-case basis. If Petitioner 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 Petitioner 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 12th day of July, 2004.

F. David Graeber
Managing Member
Spring Canyon Energy LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of July 2004, I caused to be served by electronic service, and/or a true and correct copy of the foregoing Opposition PacifiCorp's opposition Petition to Spring Canyon Energy LLC's Petition to Intervene mailed, postage prepaid, to the following:

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