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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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| In the Matter of the Petition of Spring Canyon ) |                                       |
| LLC for Approval of a Contract For the Sale )    | DOCKET NO. 05-035-08                  |
| of Capacity and Energy From Its Proposed )       |                                       |
| QF Facilities )                                  | <u>PACIFICORP'S MOTION TO EXCLUDE</u> |
| )  | <u>ISSUES AND EMERGENCY REQUEST</u>   |
| )  | <u>FOR HEARING</u>                    |

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Pursuant to Utah Administrative Code §§ R746-100-3(H) and R746-100-10(A), PacifiCorp files this motion to exclude issues from the hearing scheduled for August 16, 2005 in the above-referenced proceeding and emergency request for a hearing at the Commission's earliest possible opportunity before the August 16, 2005 hearing. Spring Canyon Energy, LLC ("Spring Canyon") intends to present issues that are outside the proper scope of this proceeding. PacifiCorp moves to exclude consideration of those issues in this docket at the August 16, 2005 hearing. In addition, PacifiCorp respectfully requests that the Commission hear PacifiCorp's legal argument in support of this motion as soon as possible so that the parties understand the scope of the hearings in sufficient time to adequately but efficiently prepare for the hearings.

**DISCUSSION**

- 1. The Commission Should Exclude Issues Related to Pricing and Sale of 160MWs Because These Issues are Currently Pending in Another Docket and All of the Necessary Parties are Not Parties in This Proceeding.**

On August 9, 2005, the Commission issued a Notice of Hearing to Consider QF Contract and Resolve Any Disputed Issues (“Notice”) in the above-referenced proceeding. The Notice stated that the purpose of the hearing was “to consider the qualifying facility (QF) contract between Spring Canyon and PacifiCorp and to resolve any remaining disputed issues between these two parties.” On August 10, 2005, Spring Canyon filed a letter with the Commission listing the issues that Spring Canyon intends to present for Commission consideration at the August 16 hearing. One of those issues is listed as “Section 5.4 – 160 MWs”.<sup>1</sup>

Although this description of the issue is generic, at best, it is important that the Commission understand the question that Spring Canyon intends to present. Section 5.4 of the contract Spring Canyon filed with the Commission on August 10, 2005 deals with the pricing of energy delivered to PacifiCorp over and above the 100 MWs previously awarded to Spring Canyon and priced according to the Stipulation in 03-035-14 per the Commission’s April 1, 2005 Order in that proceeding. Spring Canyon’s draft contract proposes to price these megawatts (which they have indicated will be 160 MWs and are non-firm) using the non-firm pricing provisions contained in the Stipulation.

To the extent Spring Canyon intends to argue that it is entitled to the Stipulation pricing for more than 100 MWs, it is clear that the Commission already rejected this argument in its April 1 Order. *See* April 1 Order at 6 (“We agree with the parties that the Stipulation prices remain reasonable and in the public interest, and find accordingly, but only to the extent that the megawatt cap and online deadline remain unchanged.”; “We therefore conclude that Spring Canyon stands first in the queue to negotiate with PacifiCorp regarding the 100 MW remaining

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<sup>1</sup> Counsel for PacifiCorp attempted to resolve this issue with counsel for Spring Canyon prior to the filing of this Motion; however, those efforts were unsuccessful. Accordingly, PacifiCorp is requesting that the Commission grant

under the Stipulation cap.” (emphasis added)) Likewise, if Spring Canyon intends to assert that the pricing remains reasonable for megawatts above the Stipulation cap, such an argument would be directly contrary to a holding in the Commission’s April 1 Order. *Id.* (“The cap is integrally tied to the pricing available under the Stipulation and we find that retaining the cap at its current level, pending final resolution of the avoided cost issue, is necessary.”)<sup>2</sup> Nevertheless, as these are legal issues, they can be quickly resolved at the August 16, 2005 hearing.

However, to the extent that Spring Canyon intends to present issues related to pricing of the 160 MWs offered to PacifiCorp over and above the Stipulation MWs, these issues are not properly before the Commission in this proceeding and should not be heard at the August 16, 2005 hearing. Instead, these issues are currently pending before the Commission in Docket No. 03-035-14, which goes to hearing near the end of September and involves just over 15 witnesses, including at least four company witnesses and witnesses for parties that are not involved in this proceeding.<sup>3</sup> It would not be reasonable to require PacifiCorp and other parties to attempt to resolve those issues in a one-day hearing on a specific QF contract. In fact, not all of the parties interested in setting new avoided costs are intervenors in this proceeding. Instead, PacifiCorp urges the Commission to define the scope of the proceeding to include resolution of the contract issues for the 100 MWs awarded to Spring Canyon at Stipulation pricing in the Commission’s April 1, 2005 order in Docket No. 03-035-14 and to order that substantive, factual issues related

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the relief requested in this Motion.

<sup>2</sup> It is clear that the Commission ordered PacifiCorp to give indicative pricing to QFs for MWs that did not qualify for Stipulation pricing. April 1 Order at 6-7. However, the Commission also made clear that such indicative pricing must be “outside of the pricing set forth in the Stipulation.” April 1 Order at 7.

<sup>3</sup> The Commission made clear that disputes arising related to Schedule 38 indicative pricing should be resolved in Docket No. 03-035-14. April 1 Order at 13 (“We are confident that PacifiCorp can employ its preferred method to arrive at indicative pricing and will consolidate with Docket No. 03-035-14 any disputes arising from PacifiCorp’s use of its preferred method.” (emphasis added))

to how to price the 160 MWs above the Stipulation-priced megawatts should be considered in Docket No. 03-035-14.

**2. The Commission Should Hear this Motion on an Emergency Basis So that the Hearing Process is Efficient.**

The Commission issued its Hearing Notice on August 9, 2005, giving the parties five business days notice as required of the August 16, 2005 Hearing. PacifiCorp is prepared to present witnesses and evidence on all outstanding disputed issues related to the 100 MWs previously awarded to Spring Canyon. However, PacifiCorp will not have its witness on PacifiCorp's preferred pricing methodology available until the day of the hearing, and would have to attempt to get that witness up to speed on these issues at the hearing if the Commission chooses to take evidence on the substantive and factual issues related to the appropriate pricing methodology for the 160 MWs. Moreover, in order to present the fullest record possible on this issue by August 16 to the Commission, PacifiCorp will need to respond to or incorporate any and all changes to its preferred methodology that were raised by other parties in the filing of their direct testimony on July 29, 2005.

In order to determine whether PacifiCorp must engage in these efforts, in addition to preparing for the many contractual issues still in dispute between the parties, PacifiCorp requests that the Commission hear this motion on an emergency basis on Friday, August 12, 2005. Once the Commission has made a ruling on this Motion, PacifiCorp and other parties will be able to better focus their preparation efforts to conduct a more efficient hearing.

**CONCLUSION**

For the reasons set forth herein, PacifiCorp requests that the Commission grant its Motion to Exclude Issues related to the pricing methodology for the 160 MWs offered by Spring Canyon. PacifiCorp further requests that the Commission hear this motion on an expedited basis.

Respectfully submitted this 12th day of August, 2005.

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Of Attorneys for PacifiCorp

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was hand delivered or sent via United States mail, postage prepaid, this 12<sup>th</sup> day of August, 2005, to the following:

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