

October 10, 2017

HAND DELIVERY

Julie Orchard
Utah Public Service Commission
Heber M. Wells Building
160 East 300 South, 4th Floor
Salt Lake City, UT 84111

Re: Docket No. 05-035-08

Dear Julie:

Attached please find a joint exhibit being filed by PacifiCorp and Spring Canyon Energy LLC (“Spring Canyon”) in the above-referenced proceeding. The purpose of the exhibit is to serve as the list of disputed issues which the panel of PacifiCorp and Spring Canyon witnesses will address in the hearing scheduled in this proceeding tomorrow, August 16, 2005.

Very truly yours,

Edward A. Hunter

PacifiCorp / Spring Canyon

Issues	PacifiCorp Section #	Spring Canyon Section #	PacifiCorp Proposed Language	Spring Canyon Proposed Language
Transmission – Reference to Network Resource	1.60	1.68	“Transmission Provider” means PacifiCorp transmission function or a successor, including any RTO. Seller acknowledges that PacifiCorp, acting in its merchant capacity function as purchaser under this Agreement, has no responsibility for or control over PacifiCorp transmission or any successor Transmission Provider.	“Transmission Provider” means PacifiCorp transmission function or a successor, including any RTO.
Development Security - Timing	2.3.1	2.3.1	Upon the Effective Date, Seller shall provide Project Development Security as described in Section 8.1;	On the earlier of (i) the date Seller obtains construction financing for the Facility (or alternatively permanent financing subject only to construction of the Facility and Seller’s execution of the lender’s loan documents), or (ii) the first Business Day after the Financing Date, Seller shall provide Project Development Security as described in Section 8.1;
Development Security	8.1	8.1	Upon the Effective Date, Seller shall provide PacifiCorp with a Letter of Credit in the amount of \$2,000,000 (“Project Development Security”). In the event that the Commercial Operation Date occurs after the Scheduled Commercial Operation Date, and Seller fails to pay PacifiCorp Delay Damages in accordance with this Agreement, PacifiCorp shall be entitled to draw an amount equal to the unpaid Delay Damages. If at anytime during the Delay Period, PacifiCorp draws on the Project Development Security, then Seller shall restore the Project Development Security to \$2,000,000 provided, however, that in no event will the total cumulative amount of the	On the date required by Section 2.3.1, Seller shall provide PacifiCorp with a Letter of Credit in the amount of \$1,800,000 (“Project Development Security”). In the event that the Commercial Operation Date occurs after the Scheduled Commercial Operation Date, and Seller fails to pay PacifiCorp Delay Damages in accordance with this Agreement, PacifiCorp shall be entitled to draw an amount equal to the unpaid Delay Damages. After the Commercial Operation Date has occurred and PacifiCorp has receipt of the Default Security, PacifiCorp will return the Letter of Credit provided by Seller to Seller for termination.

Issues	PacifiCorp Section #	Spring Canyon Section #	PacifiCorp Proposed Language	Spring Canyon Proposed Language
			Project Development Security provided by Seller exceed \$4,000,000. After the Commercial Operation Date has occurred and PacifiCorp has receipt of the Default Security, PacifiCorp will return the Letter of Credit provided by Seller to Seller for termination.	
Cap on Development Security	2.6	2.6	Notwithstanding anything in this Agreement to the contrary, Seller’s total liability to PacifiCorp for any failure to achieve or any delay in achieving the Commercial Operation Date of the Facility shall not exceed, including any draws on the Project Development Security, the amount as provided in Section 8.1. Except for PacifiCorp’s right to terminate this Agreement in Section 11, the remedies provided in this Section 2 are the exclusive remedies of PacifiCorp for any delay or failure of Seller to achieve the Commercial Operation Date, and the sole liability of Seller to PacifiCorp for money damages for the failure to achieve or delay in achieving the Commercial Operation Date.	Notwithstanding anything in this Agreement to the contrary, Seller’s total liability to PacifiCorp for any failure to achieve or any delay in achieving the Commercial Operation Date of the Facility shall not exceed, including any draws on the Project Development Security, the amount of \$1.8 million. Except for PacifiCorp’s right to terminate this Agreement in Section 11, the remedies provided in this Section 2 are the exclusive remedies of PacifiCorp for any delay or failure of Seller to achieve the Commercial Operation Date, and the remedies provided in this Section 2 are the sole liability of Seller to PacifiCorp for money damages for the failure to achieve or delay in achieving the Commercial Operation Date.
Financing Out	Not included.	11.8	Not included.	Notwithstanding any provision in this Agreement to the contrary, if Seller determines in its sole and absolute discretion within six (6) months from the Effective Date that the Facility cannot be financed on a non-recourse basis on terms and conditions acceptable to Seller, then Seller shall have the right to terminate this Agreement, on or before the six (6) month anniversary date following the Effective Date (the “ Financing Date ”), by delivery to PacifiCorp of a written notice of termination, receipt of which by PacifiCorp shall terminate this Agreement.

Issues	PacifiCorp Section #	Spring Canyon Section #	PacifiCorp Proposed Language	Spring Canyon Proposed Language
Financing Out	2.3.4	2.3.4	No later than sixty (60) days after the Effective Date , Seller shall provide to PacifiCorp written evidence reasonably acceptable to PacifiCorp that Seller has obtained construction financing for the Facility (or alternatively permanent financing subject only to construction of the Facility and Seller's execution of the lender's loan documents);	No later than six months after the Effective Date , Seller shall provide to PacifiCorp written evidence reasonably acceptable to PacifiCorp that Seller has obtained construction financing for the Facility (or alternatively permanent financing subject only to construction of the Facility and Seller's execution of the lender's loan documents); and
Accounting Treatment	2.5	2.5	If, during the Term, Seller seeks to sell capacity and/or associated energy from the Facility in excess of the Net Dependable Capacity to PacifiCorp under a separate QF power purchase agreement, the Parties understand and agree that as a condition precedent to entering any separate QF power purchase agreement, the Parties shall determine and agree in writing how, if at all, such a separate QF power purchase agreement would impact this Agreement including, but not limited to, operation and control of the Facility per Section 6 and appropriate accounting adjustments as a result of capital lease treatment under FASB-13, or any successor thereto, or consolidation required by FIN-46, and if so, at what level. In the event the Parties are unable to reach agreement on these issues, the Parties may seek Commission review and determination of the issues. Notwithstanding anything in this Section to the contrary, no amendment, modification, or supplement to this Agreement shall be binding on either Party except as provided in Section 22.1.	If, during the Term, Seller seeks to sell capacity and/or associated energy from the Facility in excess of the Net Dependable Capacity to PacifiCorp under a separate QF power purchase agreement, the Parties may seek to renegotiate as to how, if at all, such a separate QF power purchase agreement would impact this Agreement including, but not limited to, operation and control of the Facility per Section 6 and appropriate accounting adjustments as a result of capital lease treatment under FASB-13, or any successor thereto, or consolidation required by FIN-46, and if so, at what level. In the event the Parties are unable to reach agreement on these issues, the Parties may seek Commission review and determination of the issues. Notwithstanding anything in this Section to the contrary, no amendment, modification, or supplement to this Agreement shall be binding on either Party except as provided in Section 22.1.
Accounting Treatment	5.5	Not included.	Accounting Adjustment. The Parties agree that if any debt-related cost adjustment is	Not included.

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			<p>determined as a result of a</p> <ul style="list-style-type: none"> (i) Capital lease designation for PacifiCorp per EITF 01-08 (through application of FASB-13); and/or (ii) Variable Interest Entity consolidation onto PacifiCorp's balance sheet per Fin-46. <p>then the debt-related cost adjustment shall be applied as a monthly adjustment to PacifiCorp's payment to the Seller under Section 10 over the Term. In the event the Parties are unable to reach agreement on these issues, the Parties will seek Commission review and determination of the issues.</p>	
Cap on Replacement Energy	5.3	5.5	<p>If Seller fails for any reason other than Force Majeure or the occurrence of a Scheduled Maintenance Period to deliver Scheduled Deliveries from its Facility, Seller shall, subject to the limitations below, pay PacifiCorp damages equal to the positive difference, if any, obtained by subtracting the Replacement Contract Price in dollars from the Replacement Price, which amount shall be a credit that PacifiCorp shall be entitled to apply against any sums due Seller herein for the month in which such shortfall occurs, unless the amount of such credit is more than the amount due from PacifiCorp for such month, in which event such net remaining amount due PacifiCorp shall be paid by Seller to PacifiCorp on the date PacifiCorp's payment would have been due.</p>	<p>If Seller fails for any reason other than Force Majeure or the occurrence of a Scheduled Maintenance Period to deliver Scheduled Deliveries from its Facility, Seller shall, subject to the limitations below, pay PacifiCorp damages equal to the positive difference, if any, obtained by subtracting the Replacement Contract Price in dollars from the Replacement Price, which amount shall be a credit that PacifiCorp shall be entitled to apply against any sums due Seller herein for the month in which such shortfall occurs, unless the amount of such credit is more than the amount due from PacifiCorp for such month, in which event such net remaining amount due PacifiCorp shall be paid by Seller to PacifiCorp on the date PacifiCorp's payment would have been due. Notwithstanding anything in this Section 5.5 to the contrary, however, Seller's obligation to pay for Replacement</p>

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				Energy in any Contract Year shall not exceed \$3,870,000.
Default Security	8.2	8.2	Beginning on the Commercial Operation Date, Seller shall provide default security (“Default Security”) for its performance hereunder. For such purposes, the Default Security shall be composed of a Letter of Credit to the benefit of PacifiCorp established by Seller on or before the Scheduled Commercial Operation Date and will initially be in the amount of \$8,000,000 and adjusted according to the following schedule: On January 1 (or the next Business Day) of the calendar year following the Commercial Operation Date, Seller shall increase the amount of Default Security to \$9,700,000. On January 1 (or the next Business Day) of the second calendar year following the Commercial Operation Date, Seller shall increase the amount of Default Security to \$11,400,000. On January 1 (or the next Business Day) of the 3rd calendar year following the Commercial Operation Date, Seller shall increase the amount of Default Security to \$13,100,000. On January 1 (or the next Business Day) of the 4 th calendar year following the Commercial Operation Date, Seller shall increase the amount of Default Security to \$14,800,000. Then, if Seller has performed in accordance with the terms of this Agreement, on January 1 (or the next Business Day) of the ninth calendar year following the Commercial Operation Date, Seller may reduce the Default Security to \$12,950,000; on January 1 (or the next Business Day) of the tenth calendar year following the Commercial Operation Date, Seller may reduce the amount of	Beginning on the Commercial Operation Date, Seller shall provide default security (“Default Security”) for its performance hereunder. For such purposes, the Default Security shall be composed of a Letter of Credit to the benefit of PacifiCorp established by Seller on or before the Scheduled Commercial Operation Date and will initially be in the amount of \$4,210,000 and adjusted according to the following schedule: On January 1 (or the next Business Day) of the calendar year following the Commercial Operation Date, Seller shall increase the amount of Default Security to \$5,040,000. On January 1 (or the next Business Day) of the second calendar year following the Commercial Operation Date, Seller shall increase the amount of Default Security to \$5,940,000. On January 1 (or the next Business Day) of the 3rd calendar year following the Commercial Operation Date, Seller shall increase the amount of Default Security to \$6,845,000. On January 1 (or the next Business Day) of the 4th calendar year following the Commercial Operation Date, Seller shall increase the amount of Default Security to \$7,470,000. Then, if Seller has performed in accordance with the terms of this Agreement, on January 1 (or the next Business Day) of the sixth calendar year following the Commercial Operation Date, Seller may reduce the Default Security to \$6,320,000; on January 1 (or the next Business Day) of the seventh calendar year following the Commercial Operation Date, Seller may reduce the amount of

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			<p>the Default Security to \$11,100,000, and on January 1 (or the next Business Day) of the eleventh calendar year following the Commercial Operation Date, Seller may reduce the amount of the Default Security to \$9,250,000, and on January 1 (or the next Business Day) of the twelfth calendar year following the Commercial Operation Date, Seller may reduce the amount of the default security to \$7,400,000, at which level it shall remain for the duration of the Agreement. To the extent of any draw on the Letter of Credit, Seller shall, within ten (10) Business Days, restore the amount of the Letter of Credit such that the amount of Default Security held by PacifiCorp shall be the amount as if no such deduction had occurred. Seller has represented that it will seek debt financing (the “Future Debt”). In the event that Seller’s senior unsecured debt rating with respect to the Future Debt (or in the event Seller has no such Future Debt, its corporate credit rating) has a Standard & Poor’s rating of “BBB-” or above (so long as a rating of “BBB-” is deemed to be investment grade by Standard & Poor’s), then Seller’s obligations hereunder shall be abated, and the Letter of Credit shall be released to Seller; provided, however, that if Seller’s credit rating is no longer BBB- or BBB- is not deemed to be investment grade by Standard & Poors, then Seller shall reinstate the Letter of Credit to the amount required by this Section 8.2, after giving effect to any increases or decreases in the amount thereof.</p>	<p>the Default Security to \$5,270,000, and on January 1 (or the next Business Day) of the eighth calendar year following the Commercial Operation Date, Seller may reduce the amount of the Default Security to \$4,225,000, and on January 1 (or the next Business Day) of the ninth calendar year following the Commercial Operation Date, Seller may reduce the amount of the default security to \$3,680,000, at which level it shall remain for the duration of the Agreement. To the extent of any draw on the Letter of Credit, Seller shall, within thirty (30) days, restore the amount of the Letter of Credit such that the amount of Default Security held by PacifiCorp shall be the amount as if no such deduction had occurred. Seller has represented that it may at some future date seek debt financing (the “Future Debt”). In the event that Seller’s senior unsecured debt rating with respect to the Future Debt (or in the event Seller has no such Future Debt, its corporate credit rating) has a Standard & Poor’s rating of “BBB-” or above (so long as a rating of “BBB-“ is deemed to be investment grade by Standard & Poor’s), then Seller’s obligations hereunder shall be abated, and the Letter of Credit shall be released to Seller; provided, however, that if Seller’s credit rating is no longer BBB- or BBB- is not deemed to be investment grade by Standard & Poors, then Seller shall reinstate the Letter of Credit to the amount required by this Section 8.2, after giving effect to any increases or decreases in the amount thereof.</p>

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Change in Law	5.4	5.6	The Parties agree that if any future taxes, governmental levies or other costs associated with emissions or air quality are charged to Seller by fuel suppliers or other means, the Parties may reopen this Agreement for the purpose of negotiation as to how, if at all, such costs should be included in this Agreement, and if so, at what level. In the event the Parties are unable to reach agreement on these issues, the Parties may seek Commission review and determination of the issues.	The Parties agree that if any future taxes, governmental levies or other costs associated with emissions or air quality are charged to Seller by fuel suppliers or other means, or if Seller is required to make capital investments in the Facility to comply with changes in applicable laws associated within emissions or air quality, the Parties may reopen this Agreement for the purpose of negotiation in good faith as to how, if at all, such costs and investments should be included in this Agreement, and if so, at what level. In the event the Parties are unable to reach agreement on these issues, the Parties may seek Commission review and determination of the issues.
Cross-Agreement Offset	10.2	10.2	Either Party may offset against any payments owed to the other Party under this Agreement any undisputed amounts incurred after the Effective Date that are owed to it by the other Party pursuant to any other agreement between the Parties relating to the purchase or sale of electric capacity or energy, transmission services, natural gas or natural gas transportation. If Seller and PacifiCorp disagree on the amount due under this Agreement or any other agreement, the lower of the amounts due asserted by each Party shall be so netted. After resolution of the disagreement, the balance (if any) shall be netted with the next payment, if any, due to either Party, or shall be paid in full within ten (10) days by the owing Party to the other.	Parties shall attempt in good faith to resolve any billing disputes within thirty (30) days of notice by any Party to the other of a billing dispute. If either Party pays any invoice under protest and its position is subsequently upheld, or if an error in any billing is discovered within two (2) years of the date on which it was submitted, interest shall accrue at the rate specified in Section 10.4, applied to the amount of any billing adjustment from the date the bill was initially paid to the date of the adjustment.
Default under	11.1.4	Not	Seller's failure to cure any material default under	Not included.

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Credit Agreement		included.	any material Facility Financing Document entered into by Seller if Seller has failed to cure the default within the time allowed for a cure under such agreement or instrument if Seller's lender(s) have not elected to take assignment of this Agreement within ten (10) Business Days following Seller's failure to cure.	
Material Adverse Change	11.1.5	11.1.5	Material Adverse Change has occurred with respect to Seller and Seller fails to provide such performance assurances as are reasonably requested by PacifiCorp; provided, however, that Seller shall not be required to post additional Default Security [THIS LANGUAGE IS ONLY ACCEPTABLE IF PAC IS SATISFIED WITH THE AMOUNT OF SECURITY ULTIMATELY AGREED UPON].	Material Adverse Change has occurred with respect to Seller and Seller fails to provide reasonable performance assurances in the form of a letter from Seller to PacifiCorp reaffirming Seller's intent to be bound by this Agreement within fifteen (15) days of the date PacifiCorp makes such a request.
Lender Consent	11.6	11.6	PacifiCorp recognizes that Seller may seek to obtain debt financing for the Facility and PacifiCorp hereby agrees to cooperate reasonably with Seller's efforts to secure such financing, and to provide Seller and its lenders on a timely basis with such consents and related documents, as are reasonably requested by the lenders and reasonably acceptable to PacifiCorp in its sole discretion; provided, however, that PacifiCorp shall have no obligation whatsoever to agree to terms and conditions with Seller or its lender that PacifiCorp reasonably finds objectionable and Seller shall have no recourse at law or equity against PacifiCorp if PacifiCorp fails to enter into lender consents and related documents. Seller shall pay for all of PacifiCorp's reasonable attorney fees and costs incurred in negotiating consents and related documents with Seller's	PacifiCorp recognizes that Seller may seek to obtain debt financing for the Facility and PacifiCorp hereby agrees to cooperate reasonably with Seller's efforts to secure such financing, and to provide Seller and its lenders on a timely basis with such consents and related documents, as are reasonably requested by the lenders and reasonably acceptable to PacifiCorp.

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			lenders. [ALTERNATIVE: ATTACH A FORM CONSENT TO THIS AGREEMENT THAT PACIFICORP WILL EXECUTE WITH LENDERS]	
Commercial General Liability Insurance	12.5.3	12.5.3	Commercial General Liability insurance, to include contractual liability, with a minimum single limit of \$1,000,000 to protect against Seller’s liability for injury to persons or damage to property stemming from this Agreement. To the extent available without significant additional cost, such policy required herein shall include i) provisions or endorsements naming PacifiCorp, its Board of Directors, Officers and employees as additional insured, and ii) cross liability coverage so that the insurance applies separately to each insured against whom claim is made or suit is brought, even in instances where one insured claims against or sues another insured.	Commercial General Liability insurance, to include contractual liability, with a minimum single limit of \$1,000,000 to protect against Seller’s liability for injury to persons or damage to property stemming from this Agreement. To the extent available without significant additional cost, such policy required herein shall include provisions or endorsements naming PacifiCorp, its board of directors, officers and employees as additional insured.
Force Majeure	13.1	13.1	As used in this Agreement, “Force Majeure” or “an event of Force Majeure” means any cause beyond the reasonable control of a Party that, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, fire, flood, storms, wars, hostilities, terrorism, , civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction by or on behalf of a public authority which is in each case (i) beyond the reasonable control of such a Party, (ii) by the exercise of reasonable foresight, such Party could not reasonably have been expected to	As used in this Agreement, “Force Majeure” or “an event of Force Majeure” means any cause beyond the reasonable control of a Party that, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, fire, flood, storms, wars, hostilities, terrorism, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction by or on behalf of a public authority which is in each case (i) beyond the reasonable control of such a Party, (ii) by the exercise of reasonable foresight, such Party could not reasonably have been expected to

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			avoid, and (iii) by the exercise of due diligence, such Party shall be unable to overcome, except that nothing contained herein shall effect the obligation to pay amounts incurred prior to the occurrence of the Event of Force Majeure. Force Majeure, however, specifically excludes the cost or market availability of fuel or motive force to operate the Facility or changes in market conditions that affect the price of energy or transmission.	avoid, and (iii) by the exercise of due diligence, such Party shall be unable to overcome, except that nothing contained herein shall effect the obligation to pay amounts incurred prior to the occurrence of the Event of Force Majeure. Force Majeure, however, specifically excludes the cost of fuel or motive force to operate the Facility or the availability of such fuel or motive force on the open market or changes in market conditions that affect the price of energy or transmission.
Force Majeure	13.5	13.5	PacifiCorp may terminate the Agreement if Seller fails to remedy Seller's inability to perform, due to a Force Majeure event, within six (6) months after the occurrence of the event unless Seller is diligently pursuing the remedy of such event and has good-faith efforts underway to remedy such non-performance. If related to Facility repair, so long as Seller has with reasonable diligence pursued the repair but has been unable to do so due to lead times and parts availability for turbines and heat recovery steam generator, then no termination right shall apply up to a period of eighteen (18) months from the date of the occurrence of the event. However, if Seller has failed to remedy Seller's inability to perform, due to a Force Majeure event, within eighteen (18) months after the occurrence of the event, PacifiCorp may terminate the Agreement and Seller is bound by Section 11.3.	PacifiCorp may terminate the Agreement if Seller fails to remedy Seller's inability to perform, due to a Force Majeure event, within six (6) months after the occurrence of the event unless Seller is diligently pursuing the remedy of such event and has good-faith efforts underway to remedy such non-performance. If related to Facility repair, so long as Seller has with reasonable diligence pursued the repair but has been unable to do so due to lead times and parts availability for turbines, heat recovery steam generators, steam turbine, or step-up transformer, then no termination right shall apply up to a period of twenty-four (24) months from the date of the occurrence of the event. However, if Seller has failed to remedy Seller's inability to perform, due to a Force Majeure event, within twenty-four (24) months after the occurrence of the event, PacifiCorp may terminate the Agreement and Seller is bound by Section 11.3.
Waiver of Claims	22.2	Not included.	By executing this Agreement, each Party releases the other from any claims, known or unknown, that may have arisen prior to the Effective Date with respect to the Facility and any predecessor	Not included.

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			facility proposed to have been constructed on the site of the Facility.	