

James Holtkamp
Holland & Hart LLP
60 E. South Temple, Suite 2000
Salt Lake City, UT 84111-1031

Thorvald A. Nelson
Holland & Hart LLP
8390 E. Crescent Pkwy, Suite 400
Greenwood Village, CO 80111-2811

Attorneys for ExxonMobil Production Company

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of PacifiCorp for Approval of an IRP-based Avoided Cost Methodology for QF Projects Larger than One Megawatt	Docket No. 03-035-14
In the Matter of the Petition of Spring Canyon LLC for Approval of a Contract For the Sale of Capacity and Energy From Its Proposed QF Facilities	Docket No. 05-035-08
In the Matter of the Petition of Pioneer Ridge LLC & Mountain Wind For Approval of a Contract For the Sale of Capacity and Energy from its Existing and Proposed QF Facilities	Docket No. 05-035-09
	ExxonMobil Request for Review or Rehearing

ExxonMobil Production Company, by and through its undersigned counsel, hereby submits, pursuant to Utah Code § 63-46b-12 and 54-7-15, a Request for Review or Rehearing of the Commission’s Report and Order dated April 1, 2005.

ExxonMobil respectfully requests that the Commission review and modify its April 1, 2005 Report and Order. First, ExxonMobil requests that the Commission

reconsider its determination that Spring Canyon rather than ExxonMobil is first in the queue for stipulation pricing. Second, even if the Commission does not reconsider its determination of who is first in line, ExxonMobil requests permission to enter into negotiations to sell capacity and energy to PacifiCorp up to the Stipulation cap and under Stipulation pricing from January 1, 2006 through May 31, 2007.¹

With respect to the question of who is first in line, there are three steps a Qualifying Facility must take under the Stipulation and Schedule 38 to obtain Stipulation pricing - (1) notify PacifiCorp of a desire to sell power as a QF, (2) provide the necessary information to PacifiCorp, and (3) execute a contract with PacifiCorp. *See* P.S.C.U. No. 46, Original Sheet No. 38.2-38.5 and Stipulation ¶¶ 5 and 6. The only Commission involvement contemplated in Schedule 38 is in section I. B. 7 on original sheet No. 38.5 which states that the executed contract shall not be final and binding until the Commission has approved it. The only additional Commission involvement contemplated by the Stipulation is in paragraph 6 that states that the Commission may determine the applicability of debt-related adjustments and/or the amount of any such adjustment in the event PacifiCorp and the QF are unable to reach agreement on those points. There is no statement in Schedule 38 or the Stipulation requiring or even suggesting that a QF should notify the Commission of its intent to obtain Stipulation pricing.

If a Qualifying Facility's position in line is determined by either of the first two steps that are required by Schedule 38 and the Stipulation, then ExxonMobil is the first

¹ ExxonMobil has determined that it may be able to obtain an additional 25 MW of firm transmission capacity from its facility into Utah. Thus, to the extent ExxonMobil is deemed eligible for Stipulation pricing, ExxonMobil requests the authority to negotiate a contract to sell up to the maximum permitted under the Stipulation cap.

in line based on the evidence in the record. For example, based on the evidence in the record, ExxonMobil approached PacifiCorp to discuss a QF sale into Utah before Spring Canyon. Specifically, Mr. Sharp testified that ExxonMobil first began negotiations with PacifiCorp regarding a QF sale into Utah in August of 2001. Tr. Vol. 1, p. 185, lines 1-8. Mr. Sharp further testified that these discussions have been proceeding ever since. *Id.* No other witness controverted this testimony. Conversely, Mr. Graeber testified on behalf of Spring Canyon that their first contact regarding a QF sale into Utah was on July 30, 2004. Tr. Vol. 1, p. 12, l. 15-24. The first evidence of Spring Canyon's general discussions with PacifiCorp relate to Spring Canyon's participation in PacifiCorp's 2003 RFP. Tr. Vol. 1, p. 11, l. 8-15.

Further, based on the evidence in the record, ExxonMobil was the first to comply with Schedule 38 and provide PacifiCorp with the information needed to begin contract negotiations. Mr. Griswold of PacifiCorp testified that, as of the date of the hearing, ExxonMobil has complied with Schedule 38 and provided all of the necessary information for PacifiCorp to complete the analyses required by Schedule 38 and the Stipulation paragraph 6. Tr. Vol. 1, p. 257, line 23 to p. 258, line 14. Conversely, Mr. Griswold testified that Spring Canyon has not provided the necessary information pursuant to Schedule 38 as of the date of the hearing. *Id.* Indeed Mr. Griswold specifically testified that PacifiCorp does not have sufficient information from Spring Canyon to complete the debt-related adjustment analysis required by the Stipulation. Tr. Vol. 1, p. 258, l. 15 to p. 259, l. 6.

ExxonMobil would also be willing to accept its position in line being a function of who first completes the required third step of negotiating and executing a contract,

provided the Commission promptly rules on this Request and allows ExxonMobil to begin negotiations with PacifiCorp just as Spring Canyon is already doing. Using “first to contract” as the standard of who is first in a queue would be clearly objective and perfectly consistent with the Stipulation and Schedule 38.

The only “first in time” theory under which Spring Canyon would prevail is if queue order was based on who first notified the Commission of an intention to seek stipulation pricing. *See* Report and Order at p. 14 (“Having exchanged correspondence with PacifiCorp, Spring Canyon submitted a memorandum to the Commission on September 28, 2004, requesting the Commission raise the cap and order PacifiCorp to enter into good faith negotiations to facilitate a QF contract.”) and p. 15 (“As between Spring Canyon, the Wind Generators, and Exxon, we find Spring Canyon was the first to indicate its desire to provide the megawatts remaining under the Stipulation Cap”). But there is nothing in the Stipulation or Schedule 38 that requires, or even contemplates, Commission notification as a means to preserve a place in line. How would a QF have known that notifying the Commission was required? How would a QF have understood that its rights would be based on a filing neither required nor discussed in either the Stipulation or Schedule 38? Using Commission notification as the criterion to establish a queue is arbitrary and capricious in that it is inconsistent with the requirements of the Stipulation and Schedule 38. It is also patently unfair to ExxonMobil who fully and timely complied with the Stipulation and Schedule 38 and was unaware that some other filing was necessary.

Even if the Commission does not reconsider its determination of who is first in line, ExxonMobil requests permission to enter into negotiations to sell capacity and

energy to PacifiCorp up to the Stipulation cap under Stipulation pricing from January 1, 2006 through May 31, 2007. Alternatively, ExxonMobil would be willing to sell capacity and energy to PacifiCorp under Stipulation pricing from January 1, 2006 until the earlier of the date Spring Canyon comes on line or December 31, 2007 (provided ExxonMobil receives 90 day notice of the date Spring Canyon will come on line).

The Stipulation at ¶ 9 creates a cap of 275 megawatts of QF capacity and energy eligible for Stipulation pricing. But this cap is somewhat ambiguous in several ways. For example, there was a lot of discussion in the hearing about whether the cap was exhausted by short-term contracts.

ExxonMobil seeks review on this issue because the Commission's Report and Order does not squarely address this question. The Commission's only affirmative ruling in this regard is that the cap is lowered by the amounts of the Desert Power, Kennecott, Tesoro and U.S. Magnesium contracts. *See* Report and Order at p. 9. However, in each of these instances the contracts extend at least through the end of 2007. *See* Spring Canyon Exhibit 2 (Direct Testimony of David Olive) at p. 4, l. 77-89. Thus, it would be impossible for another QF to replace these contracts and still meet the Stipulation's requirement that the QF be on line by June 1, 2007.

However, what if that were not the case? ExxonMobil would be willing to provide capacity and energy from January 1, 2006 through May 31, 2007. At that point another QF, such as Spring Canyon, could provide the megawatts formerly provided by ExxonMobil and still comply with the terms of the Stipulation. Further, under this scenario, at no point in time would the total capacity and energy sold under Stipulation pricing exceed 275 megawatts.

Another alternative would be to allow ExxonMobil to sell PacifiCorp capacity and energy up to the Stipulation cap under Stipulation pricing from January 1, 2006 until the earlier of the date Spring Canyon comes on line or December 31, 2007 (provided ExxonMobil receives 90 day notice of the date Spring Canyon will come on line). This alternative may require that the Commission be willing to waive the June 1, 2007 date for Spring Canyon but it would provide a measure of security that PacifiCorp will have capacity and energy available under Stipulation pricing during the projected shortage during the Summer of 2007.

ExxonMobil understands that the Commission expressly allowed and even encouraged ExxonMobil to request indicative pricing from PacifiCorp and enter into contract negotiations. Indeed, ExxonMobil has made such a request to PacifiCorp and that request is currently pending. However, the problem with that approach is that ExxonMobil anticipates the possibility that it may not be fully satisfied with the pricing proposed by PacifiCorp. While there is a process that will commence next week to resolve possible disagreements about the appropriate long-term avoided cost methodology, everyone expects that that process will take at least four to five months to resolve. Unfortunately, for business reasons, ExxonMobil may not be in a position to wait until later this year to find out the price it can get for a sale commencing on January 1, 2006, only 8 and half months away. Thus, if ExxonMobil is not eligible for Stipulation pricing it may be forced to seek other buyers for its capacity and energy. This would not be ExxonMobil's first choice and, given the short-term energy needs in Utah, this may not be the Utah ratepayer's first choice either. Thus, ExxonMobil requests that the Commission review its Report and Order and asks the Commission to

find that the Stipulation cap is not exhausted if (1) at no time does the total capacity of active QF contracts with Stipulation pricing exceed 275 megawatts and (2) all QFs providing power under the Stipulation comply with the Stipulation's terms and conditions.

WHEREFORE, ExxonMobil respectfully requests that the Commission review and reconsider its April 1 Report and Order. Specifically, ExxonMobil requests that the Commission reconsider its determination that Spring Canyon rather than ExxonMobil is first in the queue for stipulation pricing. Further, even if the Commission does not reconsider its determination of who is first in line, ExxonMobil requests permission to enter into negotiations to sell capacity and energy to PacifiCorp up to the Stipulation cap and under Stipulation pricing from January 1, 2006 through May 31, 2007.

Dated this 12th of April, 2005

James Holtkamp
Holland & Hart LLP
60 E. South Temple, Suite 2000
Salt lake City, UT 84111-1031

Thorvald A. Nelson
Holland & Hart LLP
8390 E. Crescent Pkwy, Suite 400
Greenwood Village, CO 80111-2811

Attorneys for
ExxonMobil Production Company

CERTIFICATE OF SERVICE

I hereby certify that an original and five copies and an electronic copy the foregoing was hand delivered this 12th day of April, 2005, to the following:

Julie Orchard
Commission Secretary
Public Service Commission
160 East 300 South, 4th Floor
Salt Lake City, UT 84111
jorchard@utah.gov

I hereby certify that a true and correct copy of the foregoing was emailed this 12th day of April, 2005, to the following:

Michael Ginsberg
Trisha Schmid
Assistant Attorney General
500 Heber M. Wells Building
160 East 300 South
Salt Lake City, UT 84111
mginsberg@utah.gov
Pschmid@utah.gov

Reed Warnick
Paul Proctor
Assistant Attorney General
500 Heber M. Wells Building
160 East 300 South
Salt Lake City, Utah 84111
rwarnick@utah.gov
pproctor@utah.gov

Roger Swenson
238 North 2200 West
Salt Lake City, UT 84116
Roger.swenson@prodigy.net

Stephen F. Mecham
Callister Nebeker & McCullough
10 East South Temple, Suite 900
Salt Lake City, UT 84133
sfmecham@cnmlaw.com

Gregory L. Probst
C/o Energy Strategies
39 Market Street, Suite 200
Salt Lake City, UT 84101
glprobst@earthlink.net

Edward Hunter
Jennifer Horan
STOEL RIVES
201 South Main Street, Suite 1100
Salt Lake City, UT 84111
eahunter@stoel.com
jehoran@stoel.com

Gary Dodge
Hatch James & Dodge
10 West Broadway
Salt Lake City, UT 84101
gdodge@hjdllaw.com

James W. Sharp
ExxonMobil
800 Bell Street
Houston, TX 77002-2180
James.W.Sharp@ExxonMobil.com