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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 of ) Docket No. 05-035-08  
Capacity and Energy From Its Proposed QF )  
Facility )

In the Matter of the Petition of Pioneer Ridge )  
LLC & Mountain Wind For Approval of a ) Docket No. 05-035-09  
Contract for the Sale of Capacity and Energy )  
from its Existing and Proposed QF Facilities )

PACIFICORP'S ANSWER

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Pursuant to Utah Code Ann. § 63-46b-6 and Utah Administrative Code R746-100-3(I), PacifiCorp, doing business as Utah Power & Light Company, (“PacifiCorp” or “Company”) hereby responds to the Petitions filed by Spring Canyon LLC (“Spring Canyon”) and Pioneer Ridge LLC & Mountain Wind (“Wind Projects”, together with Spring Canyon, collectively referred to as “Petitioners”) for approval of contracts for the sale of capacity and energy from proposed QF facilities (collectively referred to as “Petitions”) as follows:

**I. STATEMENT OF RELIEF REQUESTED**

PacifiCorp understands that further proceedings will not be scheduled by the Commission in these consolidated dockets until resolution of the issues listed in the Commission’s February

24, 2005 Scheduling Order (“Scheduling Order”) in these proceedings. In the Scheduling Order, the Commission established an expedited schedule to deal with issues raised related to a Stipulation previously approved in Docket No. 03-035-14 that sets avoided cost pricing for a limited number of megawatts for certain eligible QF facilities. Resolution of those issues will impact and possibly obviate the need for resolution of some of the issues raised in the Petitions.

## **II. STATEMENT OF FACTS, REASONS FOR GRANTING REQUESTED RELIEF AND ANSWER**

The pleadings and attachments to the Wind Projects Petition (Testimony of Roger Swenson and Proposed Contract) and to the Spring Canyon Petition (Proposed Contract) setting forth Petitioners’ factual allegations do not contain concise statements of fact conducive to paragraph-by-paragraph response. Therefore, in addition to rebutting Petitioners’ factual allegations by setting forth its own statement of facts below, pursuant to Utah R. Civ. P. 8(b), PacifiCorp responds to the specific allegations of the Petitions by general denial of any allegation that would support a finding that PacifiCorp has in any way violated a provision of law, Commission rule or order, or Company tariff.

### **1. Stipulation in Docket 03-035-14**

On May 20, 2004, parties, including PacifiCorp, the Division of Public Utilities (“Division”), the Committee of Consumer Services (“Committee”), the Utah Association of Energy Users Intervention Group (“UAE”), US Magnesium LLC, Desert Power, LLP and the Utah Energy Office filed a Stipulation that resolved all issues in Docket No. 03-035-14. The Stipulation provided for an interim generic avoided cost prices for large QFs (“Appendix A Prices”). The Stipulation also provided for the creation of a Task Force to further study long-term generic avoided cost methodologies and the impact of accounting and other debt-related issues and green tags related to QFs.

## **2. Subsequent Events**

Subsequent to the Commission's approval of the Stipulation, PacifiCorp entered into contracts with several QFs pursuant to the terms of the Stipulation. The Commission approved those contracts in Docket Nos. 04-035-04 (Desert Power), 03-035-38 (US Magnesium), 04-035-60, (Kennecott) and 04-035-53 (Tesoro).

Also since the approval of the Stipulation, the Commission issued an order approving a certificate of public convenience and necessity authorizing the construction of the Lake Side power plant, a 534 megawatt natural gas-fired combined cycle combustion turbine electric generation plant for service in the summer of 2007 at the Geneva Steel site in Vineyard, Utah. The certificate was issued on November 12, 2004 in Docket No. 04-035-30.

On January 20, 2005, PacifiCorp filed its Draft 2004 Integrated Resource Plan ("IRP"), subsequently docketed 05-2035-01. The Draft IRP provides new load forecast and resource information and was developed in a collaborative public process with input from interested customer groups and regulatory staff. On February 10, 2005, the Commission issued a "Request for Comments" seeking public input on the draft IRP by March 24, 2005.

On February 25, 2005, Governor Huntsman signed into law SB 26, which creates a new statutory framework to govern utilities' acquisition of certain new resources. The legislation also anticipates an expedited rulemaking proceeding before the Commission to establish implementing rules.

Finally, since the approval of the Stipulation, interested parties have engaged in discussions to determine a long-term pricing methodology for QFs over 3 MWs through the QF Taskforce established in the Stipulation. While parties have failed to reach a consensus position, there have been significant discussions and exchanges of information.

### **3. Next Steps**

Faced with at least two new applications for pricing under the Stipulation, the Commission recently issued its Scheduling Order consolidating these dockets and establishing a list of issues to be resolved. PacifiCorp was ordered to file avoided cost information to allow the Commission to analyze the Stipulation by February 28, 2005. Such information is being filed today. Other Parties were ordered to file direct testimony on three issues on the same date:

- (1) Does the Stipulation approved in Docket No. 03-035-14 (“Stipulation”) still reflect PacifiCorp’s avoided costs such that it remains the applicable interim method for determining avoided costs?
- (2) If the answer to Question (1) is yes, how many megawatts are remaining under the cap contained in Paragraph 10 of the Stipulation?
- (3) If the answer to Question (1) is yes, how should the order of eligibility for the remaining megawatts be determined and what is that order?

While the outcome of the Commission’s analysis of these issues is not yet known, it is clear that they must be resolved prior to PacifiCorp being able to finalize and execute QF contracts with either of the Petitioners. If the Commission ultimately determines that the Stipulation is no longer in the public interest or if there are more megawatts being offered then remain under the Stipulation, the Commission will next need to determine the appropriate avoided cost pricing methodology for QFs 3 to 99 MWs and the applicability of SB 26 to QFs 100 MWs and greater.

### **4. Information Provided by Petitioners to PacifiCorp to Date**

Petitioners claim in their Petitions to be QFs entitled to avoided cost pricing at the Stipulation prices. PacifiCorp asserts, however, that to date Petitioners have failed to provide

information sufficient to establish that they are QF projects under federal and state law and for PacifiCorp to provide indicative prices to the Petitioners. Spring Canyon indicated in the summer of 2004 to PacifiCorp that it intended to become a QF and wished to receive avoided cost pricing for its Project. However, PacifiCorp notes that in spite of its repeated requests for additional information, Spring Canyon has never fully complied with the provisions of Schedule 38 in terms of getting the information to the Company necessary to determine if Spring Canyon was eligible for avoided cost and/or Appendix A prices. It is PacifiCorp's understanding that Spring Canyon intends to seek self-certification as a QF under the Federal Energy Regulatory Commission's (FERC) rules implementing PURPA; however, Spring Canyon has not yet provided evidence of such certification to PacifiCorp.

PacifiCorp has had no correspondence or communications with the Wind Projects prior to the filing of their Petition with the Commission.

### **III. DEFENSES**

#### **First Defense**

Petitioners have failed to state a claim upon which relief can be granted.

#### **Second Defense**

PacifiCorp has acted consistent with statute, Commission rule and order, and Company tariff.

#### **Third Defense**

Petitioners' claims are not ripe for adjudication prior to the Commission's resolution of the issues listed in its February 24, 2005 Scheduling Order.

### **Fourth Defense**

Petitioners' claims are not ripe for adjudication prior to resolution of methodological issues regarding the calculation of avoided costs for projects above 3 MWs.

### **IV. CONCLUSION**

Petitioners' claims are premature for several reasons. First, they failed to provide the information required under Schedule 38. Second, the Stipulation-specific issues are yet to be resolved by the Commission. Third, neither the Commission nor the parties have had an opportunity to address issues regarding the methodology for projects 3 to 99 MWs or the applicability of SB 26 to QFs larger than 100 MWs.

RESPECTFULLY SUBMITTED: February 28, 2005

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## CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing PACIFICORP'S ANSWER to be served upon the following via e-mail or United States mail, postage prepaid at the addresses below on February 28, 2005:

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