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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Petition of Spring Canyon Energy, LLC For Approval Of A Contract For The Sale Of Capacity and Energy From Its Proposed QF Facility	Docket No. 05-035-08
In the Matter of the Petition of Pioneer Ridge, LLC And Mountain Wind, LLC For Approval Of A Contract for The Sale of Capacity and Energy From Their Proposed QF Facilities	Docket No. 05-035-09 RESPONSE OF MOUNTAIN WIND LLC AND PIONEER RIDGE LLC

Pursuant to the Utah Administrative Code and the Utah Public Service Commission (“Commission”) Rules of Practice and Procedure, Pioneer Ridge LLC and Mountain Wind LLC, (collectively referred to herein as the “Wind Projects”) hereby respond to the “Motion to Dismiss” filed by Spring Canyon Energy, LLC (“Spring Canyon”). The Wind Projects request that the Commission deny the Motion.

Response

On March 17, 2005, Spring Canyon filed a motion asking the Commission to dismiss the petition of the Wind Projects in Docket 05-035-09.¹

¹ The Commission previously consolidated Spring Canyon’s petition Docket No. 05-035-08 with a prior petition filed by Pioneer Ridge LLC and Mountain Wind for approval of contracts for the sale of capacity and energy from their proposed wind QF facilities, Docket No.

The Spring Canyon Motion must be denied as it is based on a factual error. Spring Canyon states that Mr. Swenson does not have standing to represent the Wind Projects in this matter. However Mr. Swenson has an equity interest in the Wind Projects and such ownership interest predated the January 28, 2005 petition seeking approval of a contract for the purchase and sale of energy and capacity from the Wind Projects. Under Commission rules and practice it is quite clear that a Party (and an equity owner thereof) has standing to represent that Party's interest in proceedings before the Commission. In this case Mr. Swenson's equity interest in the Wind Projects entitles him to represent them as Parties in this matter. Utah Admin. Code R746-100-5 states in relevant part:

“Participation. Parties to a proceeding before the Commission, as defined in Section 63-46b-2, may participate in a proceeding including the right to present evidence, cross-examine witnesses, make argument, written and oral, submit motions, and otherwise participate as determined by the Commission.”

Utah Admin. Code R746-100-6 B states in relevant part:

“Representation of Parties. Individuals who are parties to a proceeding, or officers or employees of parties, may represent their principals' interests in the proceeding.” See also Utah Admin. Code R746-100-3 B2 E (authorizing signing of pleadings by parties' authorized representatives who are not attorneys).

Spring Canyon in its Motion states “Based on responses to questions at the March 9, 2005 technical conference in this matter, Mr. Swenson is neither an officer nor an employee of the parties and, therefore, cannot represent them under that provision of the rule.” Spring Canyon at

05-035-09. *See Scheduling Order*, Docket Nos. 05-035-08 and 05-035-09 (Utah PSC Feb. 24,

this technical conference did not ask whether or not Mr. Swenson had an equity interest in the Wind Projects. In its data request Spring also asked who the principals in the Wind Projects are. In response to the question asked, Mr. Swenson identified the majority owners of the Wind Projects but Mr. Swenson was not asked to identify all equity owners in the Wind Projects, and in particular was not asked to identify holders of minority equity interests in the Wind Projects. . If Spring would have simply been forthright and indicated the reason for their interest in the ownership of the Wind Projects, more information could have been provided and Spring would not have wasted the time and resources of the Commission and the parties in filing a motion that was based on a factual error.

The attached letters from the Wind Projects' Corporate Secretary confirms that Mr. Swenson holds an equity interest in the Wind Projects pursuant to a valid and binding legal contract entered into by Mr. Swenson and the owners of the Wind Projects on November 8, 2004 and therefore that Mr. Swenson's acquisition of such equity interest predated the Wind Projects' January 28, 2005 petition in this matter. Accordingly, as a part owner of the Wind Projects, from and after the date the Wind Projects' petition was filed on January 28, 2005, Mr. Swenson was entitled to represent the interests of the Wind Projects in Commission proceedings pursuant to the above rules and longstanding practice. Parties are of course entitled to represent their own interests before the Commission, either with or without the assistance of counsel as they so choose. Parties often do choose to be represented by their officers or attorneys but the owners of Parties may certainly choose to represent their own interests and are of course permitted to do so by the above rules and Commission practice.

2005).

Therefore, since Spring's Motion was based on a factual error regarding Mr. Swenson's equity ownership in the Wind Projects and since Parties are entitled to represent their own interests before the Commission, Spring's Motion must be denied.

In the course of its Motion, Spring also mistakenly questions whether Mr. Swenson may have violated the prohibition of the practice of law by a non-attorney. As is demonstrated by the argument above, Mr. Swenson has not attempted to do any more than represent the interest of the Wind Projects in which he has an equity interest and this is clearly proper. Mr. Swenson has also provided testimony in the form of his opinion as an expert in energy matters so that the Commission may make decisions as to the best interests of the ratepayers specifically and the State of Utah in general.

Accordingly, as Spring's statements (questioning whether Mr. Swenson's representation of the Wind Projects in this proceeding may have constituted the practice of law by a non-attorney) were based on factual errors regarding Mr. Swenson's status as an equity owner in the Parties, they must be disregarded.

In addition, although the above argument (outlining Mr. Swenson's status as an equity owner in the Parties who is entitled to represent their interests) stands alone and is entirely sufficient for purposes of denying Spring's Motion, the Wind Projects note that on Friday March 18, 2005, the Wind Projects also appointed Mr. Swenson as an Officer of each of the Wind Projects with full authority to represent their interests in these proceedings as evidenced by the attached letter from the Corporate Secretary of the Wind Projects. The Wind Projects have only reluctantly taken what they believe to be this wholly unnecessary action to further clarify Mr. Swenson's scope of authority in an effort to avoid having these proceedings further delayed

by yet additional procedural arguments and delaying tactics that in no way address the merits and only waste the time and resources of the Commission and the Parties and which therefore patently do not serve the interests of the ratepayers and the State of Utah. The Wind Projects are hopeful that such a disservice to the ratepayers and the State will not occur but have taken this action to attempt to foreclose any further unnecessary argumentation and wasteful procedural maneuvering.

Conclusion

For the reasons set forth herein, the Wind Projects request that Commission deny Spring Canyon's Motion to dismiss the Wind Projects' petition in this matter.

DATED: March __, 2005.

Roger J. Swenson

For Mountain Wind LLC & Pioneer Ridge
LLC

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing RESPONSE OF THE WIND PROJECTS to be served upon the following via e-mail or United States mail, postage prepaid at the addresses below on March 21, 2005:

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