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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of PacifiCorp for an Order Approving an Amendment to Its Power Purchase Agreement with Sunnyside Cogeneration Associates	Docket No. 05-035046 PETITION TO INTERVENE OF CYPRESS ASSOCIATES, LLC
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Pursuant to Utah Code Ann. § 63-46b-9 and Utah Admin. Code R746-100-7, Cypress Associates, LLC (“Cypress”) hereby submits to the Public Service Commission of Utah (“Commission”) this Petition to Intervene in the captioned docket. In support of this Petition, Cypress states as follows:

1. Petitioner is the beneficial owner of \$13,400,000 of the principal amount in the Solid Waste Revenue Refunding Bonds, Series 1999B (the “Series B Bonds”), which are a significant component of the financing for the Sunnyside Cogeneration Plant (the “Plant”), now owned and operated by Sunnyside Cogeneration Associates (“SCA”).

2. The Series B Bonds are among the latest in a series of refinancings of the original Variable Rate Demand Resource Recovery Bonds, 1987 Series (“1987 Bonds”), which were used to fund the design, development and construction of the Plant. The proceeds from the 1987 Bonds were then loaned to Sunnyside Power Corporation, the

predecessor in interest to SCA, pursuant to a Loan Agreement dated December 1, 1987 (the “Loan Agreement”).

3. The Series B Bonds were issued pursuant to an Amended and Restated Trust Indenture dated August 1, 1999 (the “Trust Indenture”). Under the Indenture, the principal and interest payments on the Series B Bonds are related to the prices paid for energy delivered by the Plant under the Power Purchase Agreement (“PPA”) between PacifiCorp and SCA.

4. The Amendment to the PPA which is the subject of the captioned docket establishes “floor” and “ceiling” prices for the payments by PacifiCorp to SCA. The prices heretofore paid under the PPA have been more than 50% above the “ceiling” prices proposed in the Amendment to the PPA. Thus, the proposed “ceiling” price would potentially limit the interest payments to Series B Bondholders by placing a cap on the amount of energy revenues that SCA could receive under the PPA.

5. Sections 10.02 and 10.08 of the Indenture specify that SCA may not modify or amend the Indenture or certain other documents in such a way that permits any change in the principal and interests payments under the Series B Bonds without the express consent of every affected bondholder.

6. Section 9.4 of the Loan Agreement specifies that SCA cannot amend the PPA without 80 percent approval of the bondholders. Cypress holds over 20 percent of the outstanding Series B Bonds.

7. Cypress did not authorize the Amendment to the PPA. The Amendment to the PPA therefore is an attempt to circumvent the consent requirements under the Loan Agreement. The Amendment to the PPA is also an attempt to circumvent the consent

requirements under the Indenture to the extent that it affects Cypress's principal and interest payments under the Series B Bonds.

8. On September 2, 2005, Cypress filed a complaint against SCA and its owners Sunnyside Holdings I, Inc., and Sunnyside Holdings II, L.L.P. in the Court of Chancery of the State of Delaware in and for New Castle County (Civil Action No. 1607-N). The complaint seeks, inter alia, “[a]n injunction prohibiting SCA from enforcing the Amendment to the PPA and requiring SCA to disclose its failure to obtain the requisite bondholder approval to the Utah PSC, and to withdraw its support for the proposed Amendment before the Utah PSC.” Prayer For Relief ¶A. The complaint also seeks rescission of the Amendment to the PPA. Prayer For Relief ¶B. A copy of the complaint is attached hereto. The Indenture is attached as Exhibit A to the complaint, and the Loan Agreement is attached as Exhibit B to the complaint.

9. Based on the foregoing, the legal rights and interests of Cypress may be substantially affected by this proceeding. Cypress seeks to intervene for purposes of protecting its interest in payments to it of principal and interest under the Series B Bonds.

10. Cypress seeks from the Commission a stay of the proceedings in the captioned docket pending resolution of the claims in the Delaware proceeding. Cypress reserves the right to seek other relief or take other positions in this proceeding.

11. If intervention is not granted and the requested stay is not ordered, there is a substantial risk of significant confusion and the need for additional proceedings before the Commission if the Delaware proceedings result in the rescission or cancellation of the Amendment to the PPA after the Commission has approved the

Amendment to the PPA. Therefore, the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.

12. Notices in this Proceeding should be sent to:

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WHEREFORE, Cypress Associates, LLC request leave to intervene in this proceeding as its interests may appear.

DATED this 6th day of September, 2005

James A. Holtkamp
Attorney for Petitioner
Cypress Associates, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of September, 2005, I caused to be served, via hand-delivery, a true and correct copy of the Petition to Intervene of Cypress Associates, LLC to the following:

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