

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of)
PacifiCorp for Approval of a 2009) Docket No. 05-035-47
Request for Proposals for Flexible)
Resource)
_____)

MOTION TO SUPPLEMENT RECORD OF WESTERN RESOURCE ADVOCATES

Western Resource Advocates (WRA) files this motion requesting that the Utah Public Service Commission (Commission) supplement the record in this proceeding by taking administrative notice of the recently issued Utah Supreme Court decision in Sierra Club v. Intermountain Power Servs. Corp., Decision No. 20050454, 2006 UT __, __ P.3d __ (Nov. 21, 2006).¹ In support thereof, WRA states as follows:

1. WRA files this motion pursuant to Commission Rule R746-100-3(H), Utah Code Ann. § 63-46b-8(1)(b)(iv) and Rule 201 of the Utah Rules of Evidence.
2. In Sierra Club v. Intermountain Power Servs. Corp., filed on November 21, 2006, the Utah Supreme Court determined that the Utah Air Quality Board (Board) erred in denying standing to the Sierra Club and Grand Canyon Trust on their joint petition to challenge the issuance of a construction permit for the proposed 950 megawatt expansion of the Intermountain Power Project (IPP3). Id., *slip op.* at p.10. The Utah Supreme Court reversed and remanded to the Board with instructions to allow Sierra Club and Grand Canyon Trust to intervene in the proceedings before the Board. Id., *slip op.* at p.11. A copy of the decision has been attached.

¹ Electronic copies of the Utah Supreme Court decision in Sierra Club v. Intermountain Power Servs. Corp., can be found at <http://www.utcourts.gov/opinions/supopin/index.htm>.

3. In this proceeding, WRA has highlighted on multiple occasions the air permitting risks associated with PacifiCorp's participation in the proposed 950 MW pulverized coal expansion of IPP3 and its selection of IPP3 as a utility benchmark resource for meeting its projected 2012 resource need. *See* Comments of Western Resource Advocates on PacifiCorp's Draft 2012 Requests for Proposals, pp.17-17; Post Hearing Brief of Western Resource Advocates, pp.4-5. WRA's policy witness also raised the issue at the November 3, 2006 hearing.

4. WRA submits that good cause exists for granting this motion. WRA raised the issue of air permitting risks associated with IPP3, as currently proposed, in its pleadings and at the hearing in this proceeding. The Utah Supreme Court filed its decision after the hearings in this case had been completed and after post-hearing briefs had been filed. By taking administrative notice of the Utah Supreme Court decision, the Commission will have a more complete record upon which to review PacifiCorp's draft 2012 RFP and its selection of the IPP3 pulverized coal benchmark option for meeting a 2012 in-service date. No party will be unduly prejudiced by the granting of the motion. The issue of air permitting risks of an additional pulverized coal unit at IPP3 was placed squarely before the Commission in this case, while the Utah Supreme Court decision essentially speaks for itself.

WHEREFORE, WRA requests that the Commission grant its request to supplement the record by taking administrative notice of the Utah Supreme Court decision in Sierra Club v. Intermountain Power Servs. Corp..

Respectfully submitted,

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