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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

In the Matter of the Application of PACIFICORP for Approval of Its Proposed Electric Rate Service Schedules & Electric Service Regulations	DOCKET NO. 01-035-01
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**REQUEST FOR RECONSIDERATION OF PROTECTIVE ORDER**

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The Utah Industrial Energy Consumers (“UIEC”), and the UAE Intervention group (“UAE”) through their counsel, and pursuant to the provisions at Utah Code Ann. § 54-715, and R. 746-100-3(H) and (I), hereby move the Commission to reconsider its Order approving PacifiCorp’s Motion for Protective Order in this docket, and to issue an amended Protective Order as proposed in this present motion for reconsideration. The grounds for this motion are as follows:

1. PacifiCorp filed an Application in this case along with an Emergency Motion for Interim Rate Relief on January 12, 2001 at 4:59 p.m. On that same day, the Public Service Commission (the “Commission”) issued a “Generic Protective Order” evidently on the ex parte motion of PacifiCorp (the “Order”).

2. On January 15, 2001 PacifiCorp filed another “Motion for Entry of Protective Order,” stating that the proposed Protective Order was better suited for a general rates case than the generic Protective order. The Commission issued the Protective Order on January 24, 2001.

3. PacifiCorp stated its Motion for Entry of Protective Order that the Protective Order is the same as that issued in the last rate case, Docket No. 99-035-10. While that may be true, it nevertheless contains a number of unreasonable restrictions that will result in delay of the proceedings and significant prejudice to parties seeking to conduct discovery against PacifiCorp. Specifically, the UIEC raise the following objections to the Protective Order.

4. Paragraph 1(a) of the Protective Order states that Confidential Information “shall neither be used, nor disclosed except for the purpose of this proceeding...” Similarly, paragraph 1(b) states that counsel for a party may authorize the party’s expert access to Confidential Information, but “solely for the purpose of this proceeding.” At the conclusion of this docket, all Confidential Information must be returned to counsel for the providing party. Paragraph 3(e).

5. The restriction requiring that Confidential Information be used only in one docket is unreasonable. Confidential Information produced in one case is often relevant in the next case. The UIEC, for example, have requested documents in the present case that PacifiCorp and Scottish Power produced in the Merger Case, Docket, 98-2035-04. Even though the Commission required Scottish Power and PacifiCorp to retain those records, (Report and Order, Docket No. 98-2035-04 at ¶ III.B), production has been slow. Moreover, Scottish Power and PacifiCorp could not identify, or did not retain in any organized fashion, the documents the Commission had ordered them to retain. The UIEC literally had to serve upon PacifiCorp, its own responses to the UIEC’s data requests in the Merger Case before PacifiCorp was able to identify the requested documents.

6. Many of the documents that will be produced in the present docket were relevant in earlier cases and likely will be relevant in the Restructuring Case, Docket No. 00-035-15. It seems a senseless exercise to require a party to return Confidential Information to the providing party only to turn around and request it again for use in another docket. The Protective Order does not require the Division or the Committee to return Confidential Information, but requires only that they provide notice to the Company when they intend to use it in a subsequent case. The UIEC and UAE see no reason that a party should receive any different treatment or should not be permitted to retain Confidential Information from one docket to the next.

7. The UIEC and UAE also request the Commission to reconsider the portion of the Protective Order that states that a party's "notes made pertaining to, or as a result of a review of Confidential Information shall be considered Confidential Information and subject to the terms of this Order." Paragraph 1(a). When read in conjunction with Paragraph 3(e) of the Protective Order, the party receiving Confidential Information is required to turn over its notes to the providing party at the conclusion of the docket. This provision is unreasonable and unnecessary. If a party's notes contain Confidential Information, the party already is bound to non-disclosure under the Protective Order. In addition, notes made in preparation for hearing are the work product of counsel, and very likely notes of the Confidential Information will be inseparable from counsel's notes. Parties should not be required to hand over work product to PacifiCorp, even if a portion of those notes consists of Confidential Information.

8. Finally, the Protective Order provides that, at its own election, a party may refuse to provide counsel or parties copies of "highly sensitive Confidential Information." ¶ 1(d). There is no definition in the Order or what might constitute "highly sensitive" Confidential Information. The Order states that ordinary "Confidential Information" consists of "trade

secrets,” or other information of a “confidential commercial, financial, or competitive nature.” ¶ 1(b). It is hard to imagine any category of information that PacifiCorp could be required to produce that would not be covered under the definition of “Confidential Information.” The way the Protective Order now reads, PacifiCorp can simply refuse to let a party make copies of any documents it want to withhold from view. Once PacifiCorp has claimed that its information is “highly sensitive,” the requesting parties must shoulder the burden to challenge the “highly sensitive” designation. ¶ 2(c). The party is placed at an immediate disadvantage in challenging the designation because of the treatment of “highly sensitive” information in the Protective Order. The Protective Order should articulate a standard for the “highly sensitive” designation, and the party withholding, not the party requesting, should show the need for such extraordinary treatment

9. The Protective Order is also unreasonable to the extent it forbids counsel or expert to receive copies of “highly sensitive” Confidential Information. ¶ 1(d). Not only are counsel and experts precluded from making photocopies, they are precluded even from taking “verbatim” notes or writing down a “substantive transcript” of the information. This prohibition on copying documents is a very substantial impediment to preparing a case.

10. In the Merger Case, Scottish Power’s “highly sensitive” financial documents were sequestered at one law office and PacifiCorp’s at another. The UIEC were excluded from taking copies of this confidential information to review with its consultants or from making sufficient notes to properly analyze the information. Especially with respect to financial data, they found it virtually impossible to conduct a meaningful analysis or present a coherent argument about the evidence because counsel and experts were not allowed to have copies.

11. Other parties were equally disadvantaged. The Division for example, was unable to make the comparison between PacifiCorp's projected costs and Scottish Power's projected costs because they could never compare the documents side-by-side. The information could only be viewed by personally visiting the offices of counsel for both PacifiCorp and Scottish Power. As a consequence, the important information was not brought to the attention of regulators.

12. PacifiCorp has never stated what characteristics of Confidential Information require treating it as "highly sensitive," or why counsel and experts should not be allowed the kind reasonable access to such information that can only be gained by allowing counsel and experts to have copies of the Confidential Information.

13. For the foregoing reasons, the UIEC and UAE respectfully request that the Commission reconsider the Protective Order and require amendment in conformity with the arguments set forth above.

DATED this \_\_\_\_ day of January, 2001.

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**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_ day of January, 2001, I caused to be mailed, first class, postage prepaid, a true and correct copy of the foregoing **REQUEST FOR RECONSIDERATION OF PROTECTIVE ORDER** to:

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