BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of	)	
PacifiCorp for an Increase in its	)	Docket No. 01-035-01
Rates and Charges	)	

POST-HEARING BRIEF OF THE LAND AND WATER FUND OF THE ROCKIES

The record in this proceeding establishes a compelling case for additional cost-effective demand-side management ("DSM") opportunities in PacifiCorp's ("PacifiCorp" or "Company") Utah service territory. In a separate docket (Docket No. 01-035-T09), the Company recently filed, and the Commission recently approved, tariffs for new DSM programs. But, as Utah Energy Office ("UEO") witness Dr. David Nichols explains in his August 1, 2001 oral testimony, the Company's new DSM programs only capture part of the available cost-effective DSM. Nichols, Tr. (8/1/01), at pp.527-528. To realize this full potential for cost-effective DSM, further Commission action is needed.

The Land and Water Fund of the Rockies ("LAW Fund") requests that the Public Service Commission of Utah ("Commission") order the Company, after consultation with the Energy Efficiency Advisory Committee ("EEAC"), to file proposed tariffs for implementing the DSM programs recommended by UEO that are not included as part of the Company's DSM tariff filings in Docket No. 01-035-T09. To reduce the risk of further exposure to potentially volatile wholesale power purchase costs, the Commission should direct the Company to file the proposed tariffs within 60 days of the

Commission's final order in the revenue requirements phase of the proceeding. This should provide sufficient time to ensure that the programs are in place and implementation is underway prior to the 2002 summer peak season.

I. THE RECORD IN THIS PROCEEDING ESTABLISHES A COMPELLING CASE FOR ADDITIONAL COST-EFFECTIVE DEMAND-SIDE MANAGEMENT OPPORTUNITIES IN PACIFICORP'S UTAH SERVICE TERRITORY.

The record in this proceeding documents significant potential for cost-effective DSM in Utah. In his May 31, 2001 direct testimony on revenue requirements, Dr. Nichols recommends that the Company undertake a six-year DSM initiative in its Utah service territory. Nichols, Exhibit UEO 2. Dr. Nichols bases his recommendations on the results of a report he co-authored entitled *An Economic Analysis of Achievable New Demand-Side Management Opportunities in Utah*, prepared by the Tellus Institute for the EEAC. Exhibits UEO 2.2 and 2.4. The study identifies an array of cost-effective DSM programs statewide that, if implemented, are estimated to result in a reduction in peak summer demand of 680 MW by 2006. *See* Exhibit UEO 2.2 at ES-1. The DSM programs are estimated to have a total resource cost of $370 million and result in capacity and energy resource savings of $1.44 billion for a net benefit of $1.08 billion (year 2000 dollars) and a benefit-to-cost ratio of 3.9 to 1. *Id*. The package of programs, taken as a whole, are projected to pass the rate impact measure ("RIM") test and, as a result, are projected to decrease rates by well over $100 million. *See* Nichols, Tr. (8/1/01), at p.526, lines 15-21.

Dr. Nichols estimates that roughly 80 percent of the cost-effective DSM identified in the statewide study is available in the Company's Utah service territory.

Nichols, Tr. (8/1/01), at pp.568, lines 21-23. He recommends that the Company implement a subset of the full DSM potential as part of a multi-year DSM initiative. Under that initiative, he recommends that, of that 80 percent, the Company implement 100 percent of the DSM identified in the study in year one and 60 percent of the DSM thereafter. *Id.* at p.530, lines 6-11. Dr. Nichols estimates the budget for this DSM initiative at $35 million in year one and an average of $32 million for the five subsequent years. *Id.*

On June 26, 2001, the Company proposed its own package of DSM programs in Docket No. 01-035-T09.[1] Its DSM programs include provisions that cover some, but not all, of the programs recommended by Dr. Nichols in his May 31, 2001 testimony. Specifically, the Company's programs do not encompass his recommendations for residential efficient cooling and appliance recycling programs or for non-residential combined heat and power ("CHP") and traditional load management programs. *See* Nichols, *Tr*. (8/1/01), at pp.527-529. In his August 1, 2001 oral testimony, Mr. Burks recommends that the Commission order the Company to develop and propose tariffs for implementing the DSM programs that have been proposed by UEO but are not included in the Company's DSM tariff filings in Docket No. 01-035-T09. Burks, Tr. (8/1/01), at p.519, lines 18-21.

The evidence in support of the cost-effectiveness and benefits to Utah ratepayers of these additional DSM programs is compelling. Dr. Nichols is a national expert on DSM. *See* Exhibit UEO 2.1. He has co-authored a detailed study analyzing the

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[1] On the same date, PacifiCorp also filed a separate motion requesting deferred accounting treatment for the DSM expenditures. On July 18, 2001, the Commission issued an order in Docket No. 01-035-T09 approving the DSM tariff filings. The

cost-effectiveness and potential rate impacts of UEO's recommended programs, including the documentation of key assumptions on penetration rates, energy savings, program costs and other parameters. Exhibits UEO 2.2 and 2.4; *see also* Anderson, Tr. (8/1/01), at p.659, lines 22-25 (commending Dr. Nichols for the "effort and professionalism that Dr. Nichols put into his report."). The study has been presented to, and reviewed by, the EEAC. All parties have been afforded a full opportunity to review UEO's testimony and the Tellus study, conduct discovery, present expert rebuttal testimony and conduct cross-examination of Dr. Nichols' analysis, assumptions, methodologies and findings.[2] *Cf.* Nichols, Tr. (8/1/01), at pp.592-594.

Dr. Nichols' analysis of the cost-effectiveness of the UEO's proposed DSM programs remains current even though wholesale power market prices have subsided as of late. As Dr. Nichols explains in his oral testimony, the cost-effectiveness of the recommended programs are based on the long-run cost savings of avoiding additional supply-side investments in generation capacity, electric energy, and transmission and distribution. Nichols, Tr. (8/1/01), at p.525-526. His evaluation of the cost-effectiveness is not contingent upon the dramatic increases in wholesale power prices over the past two years and, as a result, the analysis remains current even though wholesale prices have recently begun to stabilize. *Id.*

Company's request for deferred accounting treatment is still pending before the Commission.

[2] With one exception, the parties do not challenge the assumptions and methodologies underlying the specific DSM programs recommended by Dr. Nichols. The Division of Public Utilities ("Division"), in its cross-examination of Dr. Nichols, does raise valid concerns about Dr. Nichols' assumed penetration rate for evaporative cooling as part of his efficient cooling program. Nichols, Tr. (8/1/01), at p.558-561. Dr. Nichols testifies that he believes his assumed penetration rate is reasonable. *Id*. Dr. Nichols also explains that the economics of his efficient cooling program are so compelling that the programs

Dr. Nichols' analysis identifies significantly more cost-effective DSM in the Company's service territory than is identified in RAMPP-6, but -- as the record in this proceeding attests -- this is a defect of RAMPP-6, not of Dr. Nichols' analysis. The disparity can be explained, in part, because RAMPP does not consider the load management programs that are part of UEO's package of DSM programs. *See* Nichols, Tr. (8/1/01), at p.569, lines 20-22; Hedman, *Tr*. (8/1/01), at p.630, lines 9-11. Even among energy efficiency programs, RAMPP-6 falls well short of identifying the full potential. *See* Nichols, Tr. (8/1/01), at p.569, lines 20-22. During the hearing, Mr. Brian Hedman, the person who oversaw the development of RAMPP-6 on behalf of the Company, commented on the relevance of RAMPP-6 to the current market environment. He read into the record an excerpt from a cover letter to RAMPP-6, which he authored:

> [RAMPP-6] does not reflect the impacts of the recent events. The integrated resource planning process is a biennial process that culminates in a plan looking forward over the subsequent 20 years. RAMPP, like most utilities' IRP processes, was developed during a period of relative stability in the industry. For the early RAMPP processes[,] [t]he relatively static nature of the electric industry meant that the results of the analysis were still consistent with the state of the industry at the time the report was filed. This has become less true over the later RAMPP's, and for RAMPP-6, it does not appear to be the case at all. The current state of the industry is not encompassed in any of the scenarios analyzed in the study.

Hedman, Tr. (8/1/01), at pp.635-636 (quoting Exhibit Cross Exam. 16). When commenting on the adequacy of the RAMPP-6 input assumptions to identify all cost-effective DSM, Mr. Hedman states that "the market prices and gas prices assumed in

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would still be cost-effective even if his assumption about penetration rates for evaporative cooling proves to be overly optimistic. *Id.* at p.570, line 25 - p.571, line 18.

RAMPP-6 are significantly below what we're currently experiencing." *Id*. at p.637, lines 1-3.

The LAW Fund fully supports the development of a systematic and comprehensive resource planning process to provide useful, timely and relevant input into the Company's resource acquisition decisions. Unfortunately, at this time, the record in this case demonstrates that RAMPP-6 falls short of identifying all cost-effective DSM opportunities in the Company's service territory. *Cf.* Nichols, Tr. (8/1/01), at pp.527-528. Utah ratepayers should not be forced to forego the economic and environmental benefits of DSM until such time as the RAMPP process can be reformed to identify all cost-effective DSM.

II. THE COMMISSION SHOULD ORDER PACIFICORP TO DEVELOP ADDITIONAL DEMAND-SIDE MANAGEMENT PROGRAMS BASED ON THE RECOMMENDATIONS OF THE UTAH ENERGY OFFICE.

The precise scope of UEO's proposed multi-year DSM initiative has been a source of considerable confusion and misunderstanding among the parties. Much of the confusion over the UEO's DSM initiative appears to have centered around whether UEO is recommending an increase in revenue requirements to fund DSM prior to the Company proposing tariffs and estimated budgets for specific DSM programs. In their rebuttal testimony on revenue requirements, several parties object to the UEO's DSM initiative on these grounds. *See* Nelson, Exhibit DPU 11, at p.5; Herz, Exhibit USEA 1R, at p.8; Anderson, Exhibit UAE/Nucor 1R, at pp.7-8, 11; Chalfant, Exhibit UIEC 2R, at pp.6-7.

To allay these concerns, Dr. Nichols confirms in his August 1, 2001 oral testimony that UEO is not proposing an up-front increase in DSM funding prior to, or independent of, Commission approval of specific DSM programs. Nichols, Tr. (8/1/01), at p.530, lines 17-24. He explains that he has provided estimated budgets for the UEO's DSM initiative, but that these are only estimates. *Id.* at p.530, lines 12-16; *see also* Burks, Tr. (8/1/01), at p.518, lines 2-6. Thus, Dr. Nichols and Mr. Burks clarify that, contrary to the perceptions of some witnesses, the UEO is recommending a package of DSM programs -- not a specified level of funding for DSM. Under its proposal, the Company would develop specific tariffs for implementing these programs, including estimated budgets. The revenue requirements for the recommended programs would then be based on the Company's estimated budgets, subject to annual true-up and Commission approval.

Consistent with UEO's proposal, as clarified, the LAW Fund recommends that the Commission order the Company to propose tariffs implementing the DSM programs recommended by UEO that are not included as part of the Company's DSM tariff filing in Docket No. 01-035-T09. Specifically, the Company should be required to propose residential tariffs based on UEO's recommendations for efficient cooling and appliance recycling and non-residential tariffs for CHP and traditional load management.

The LAW Fund requests that the Commission order the Company to come forth with additional DSM programs and not simply leave it up to management discretion. Mr. Stanley Watters, the Company's Managing Director of Wholesale Energy Services, acknowledges during his July 30, 2001 oral testimony that the Company should be pursuing cost-effective DSM that helps avoid the need to purchase power on the wholesale market. See Watters, Tr. (7/30/01), at pp.242-243. Indeed, the significant wholesale power purchase costs that are at the core of this rate proceeding could potentially have been reduced had the Company pursued DSM sooner and more aggressively. The Company's recent DSM tariff filings in Docket No. 01-035-T09 represent an important, but long-overdue first step. However, Dr. Nichols' analysis confirms that there remains significant potential for cost-effective DSM in the Company's Utah service territory. See Nichols, Tr. (8/1/01), at pp.527-529. The Company has had more than ample opportunity to pursue DSM on its own initiative, but its efforts have been limited. Therefore, the LAW Fund submits that further Commission action is warranted to ensure that Utah ratepayers receive the substantial economic and environmental benefits of the UEO's DSM initiative.

The LAW Fund recommends that the Company be required to file the proposed tariff within 60 days of the final Commission order in the revenue requirements phase of this proceeding. The 60-day timeframe should provide the Company with sufficient opportunity to develop the programs and seek EEAC input, while also providing adequate lead-time for the Commission to review the programs and for the Company to have the programs in place prior to the 2002 summer peak.

III. THE COMMISSION SHOULD DEFER A FINAL DECISION ON COST RECOVERY MECHANISM FOR DSM EXPENDITURES UNTIL THE SPREAD-OF-RATES PHASE OF THIS PROCEEDING OR, IF THE COMMISSION DEEMS IT APPROPRIATE, IN A SEPARATE PROCEEDING.

The parties generally agree that the Company should pursue cost-effective DSM opportunities in its Utah service territory. *See* Sterzinger, Tr. (8/1/01), at p.616, line 21 - p.617, line 2; Hedman, Tr. (8/1/01), at p.628, line 20 - p.629, line 2; Nelson, Tr. (8/1/01), at p.654, lines 2-9; Anderson, Tr. (8/1/01), at p.662, lines 4-7; Herz, Exhibit

USEA 1R, at p.7, line 21. The remaining objections raised against UEO's DSM initiative are, for the most part, not directed at the cost-effectiveness of UEO's recommended DSM programs. Rather, they are essentially cost-allocation and cost-recovery issues associated with the recovery of expenditures on these programs.

The LAW Fund and UEO make their recommendations on appropriate cost-recovery mechanisms for DSM expenditures in their direct spread-of-rates testimony. Mr. Rick Gilliam has filed direct spread-of-rates testimony on behalf of the LAW Fund that addresses many of the issues raised by the parties with respect to the cost-recovery mechanism for DSM expenditures.[3] Gilliam, Dir. Test. on Spread of Rates (7/15/01), at pp.4-12; s*ee also* Nelson, Tr. (8/1/01), at p.655, line 14 - p.656, line 2; Sterzinger, Tr. (8/1/01), at p.613, lines 12-22. The LAW Fund respectfully requests that the Commission defer a final decision on the appropriate cost-recovery mechanism for DSM expenditures until after the LAW Fund has presented its evidence on cost-recovery issues in the spread-of-rates phase of this proceeding or, if the Commission deems it appropriate, in a separate proceeding.

For example, the United States Executive Agencies, the UAE Intervention Group and the Utah Industrial Energy Consumers raise equity concerns about requiring end-users who have already made significant investments in energy efficiency to pay for

[3] Similarly, the Division raises reasonable concerns about the legality of establishing a tariff rider as a funding mechanism for DSM expenditures. *See* Nichols and Burks, Tr. (8/1/01), at pp.552-553. The LAW Fund believes that the Commission has ample legal authority to establish a tariff rider for this purpose. Nonetheless, the LAW Fund sees the legality of the tariff rider as a separate issue from UEO's recommendation to increase the number of DSM programs in the Company's Utah service territory. If it turns out that the Commission may not lawfully establish a tariff rider without explicit legislative authorization -- which the LAW Fund does not believe is the case -- then an alternate cost recovery mechanism would be required. The LAW Fund recommends that these cost-

DSM programs for others. As an initial matter, the package of programs recommended by UEO is estimated to pass the RIM test. This means that rates, overall, would be lower as a result of the implementation of these programs, and non-participants should see lower rates.[4] See Nichols, Tr. (8/1/01), at p.526, lines 15-19. Nonetheless, the end-user groups raise valid concerns about the allocation of DSM costs among customer groups and within customer groups. In his spread-of-rates testimony, Dr. Nichols recommends separate tariff riders for residential and non-residential customers, in part, to address equity concerns among customer groups. Nichols, Dir. Test. on Spread of Rates (7/15/01), at p.5, lines 5-7. In addition, the UEO and LAW Fund have floated the idea of self-directed programs for large customers. Gilliam, Dir. Test. on Spread of Rates (7/15/01), at p.12; Nichols, Dir. Test. on Spread of Rates (7/15/01), at pp.5-6. In his August 1, 2001 oral testimony, Dr. Anderson acknowledges that it might be possible to design self-directed industrial programs that help address the equity concerns he has raised in his rebuttal testimony on revenue requirements. Anderson, Tr. (8/1/01), at p.664, line 19 - p.666, line 16. In his spread-of-rates testimony, Mr. Gilliam explains that a tariff rider would readily permit the development of such a self-directed program. Gilliam, Dir. Test. on Spread of Rates (7/15/01), at p.12.

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recovery issues can be explored in the spread-of-rates phase of this proceeding or, if the Commission so elects, in a separate proceeding.

[4] Commission precedent establishes, and the LAW Fund agrees, that the total resource cost ("TRC") test -- and not the RIM test -- is the appropriate measure of cost effectiveness for DSM programs. In this instance, the fact that the UEO's DSM initiative passes the RIM test means that cost-allocation and equity issues are less of a concern that they might otherwise be.

III. CONCLUDING SUMMARY

The record in this proceeding establishes a compelling case for additional cost-effective DSM opportunities in the Company's Utah service territory. The LAW Fund requests that the Commission order the Company, after consultation with the EEAC, to file proposed tariffs for implementing the DSM programs recommended by UEO that are not included as part of the Company's DSM tariff filings in Docket No. 01-035-T09. Specifically, the Company should be required to propose residential tariffs based on UEO's recommendations for efficient cooling and appliance recycling and non-residential tariffs for CHP and traditional load management. To reduce the risk of further exposure to potentially volatile wholesale power purchase costs, the Commission should direct the Company to file the proposed tariffs within 60 days of the Commission's final order in the revenue requirements phase of the proceeding. This should provide sufficient lead-time to ensure that the programs are in place and implementation is underway prior to the 2002 summer peak season.

In addition, the LAW Fund requests that the Commission defer a final decision on the appropriate cost-recovery mechanism for DSM expenditures until the LAW Fund has presented its evidence on this issue in the spread-of-rates phase of this proceeding or, if the Commission so elects, in a separate proceeding.

Respectfully Submitted,

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