

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Investigations of the)	<u>DOCKET NO. 04-035-01</u>
Power Outage December 2003)	
)	<u>ORDER GRANTING IN PART AND</u>
)	<u>DENYING IN PART PETITION AND</u>
)	<u>REQUEST TO INTERVENE</u>

ISSUED: July 6, 2004

By The Commission:

On April 29, 2004, Georgia B. Peterson, Janet B. Ward, William Van Cleaf and David Hiller (collectively Individual Customers) submitted a Petition and Request to Intervene (Petition). The Petition contains a number of paragraphs which include factual representations and matters which the Individual Customers allege contributed to the power outage at issue in this docket. The Petition also contains factual representations and matters which concern ScottishPower's and PacifiCorp's compliance with previous orders of the Commission, including orders in which the Commission approved the merger creating PacifiCorp (PSC Docket No. 87-035-27, Report and Order issued September 28, 1988) and the merger of PacifiCorp and ScottishPower (PSC Docket No. 98-2035-04, Report and Order issued November 23, 1999).

The Petition contains two Counts: Count 1 deals with the Individual Customers' claims which could be appropriately related to the Commission review of the December, 2003, power outage; Count 2 purports to be a class action which seeks Commission investigation of not only the December, 2003, power outage issues raised by the Individual Customers, but other, non-power outage issues (e.g., management of coal assets and management and disposition of land). In the Petition, the Individual Customers seek recovery of monetary compensation for damages claimed by themselves and other customers similarly situated due to the December, 2003, power outage; imposition of fines upon the utility for failure to comply with prior orders of the Commission; restoration to the State of Utah of economic benefits lost due to the utility's alleged failures to comply with prior orders; the utility's strict, future

compliance with Commission orders; ameliorative actions from the utility; and possible divestiture of “the Utah system to another operator.”

On May 14, 2004, PacifiCorp responded to the Individual Customers’ intervention portions of the Petition. PacifiCorp essentially does not oppose the Individual Customers’ intervention in this docket, to the extent that the issues the Individual Customers seek to raise do not unduly broaden the scope of our review to matters unrelated to the December, 2003, power outage. In a response filed June 1, 2004, PacifiCorp responded to the other, non-December, 2003, power outage issues sought to be addressed by the Petition. PacifiCorp presents various arguments against the purported class action, award of individual customer monetary damages, broadening these proceedings beyond issues related to the December, 2003, power outage and requests that the Petition be dismissed with prejudice. Counsel for the Individual Customers filed letter responses to PacifiCorp’s May 14, 2004, Response on May 21, 2004, and PacifiCorp’s June 1, 2004, Response on June 4 and 7, 2004, respectively. A Reply Memorandum was also filed on June, 8, 2004, to PacifiCorp’s May 14, 2004, Response.

Our Rule 746-100-4 provides the time period for responses and reply; no party has sought any extension for their filings and none are pending. The Individual Customers have not been granted an extension in which they would provide further reply to PacifiCorp’s June 1, 2004, Response, nor do we believe that further reply would be useful for our disposition of the Petition. Based on our review of the pleadings submitted by the Individual Customers and PacifiCorp, we will grant part of the Petition and deny the rest. We will grant the Individual Customers’ intervention in this docket, but for their individual interests only; not as representatives of any purported class. As Interveners, they may participate in what remaining proceedings the Commission may conduct concerning the Commission’s review of the December, 2003, power outage and the Commission’s review of the major event exclusion claimed by PacifiCorp. The Individual Customers have not presented a sufficient basis for us to conclude that the interests of their purported class are not adequately pursued by other parties who are already participating in these proceedings. Nor have they convinced us that the class action designation and class action process is warranted or permitted in our review of the power outage.

Relative to the non-power outage issues the Individual Customers seek to raise, we deny their Petition without prejudice. The Individual Customers may present what detailed information they may have concerning their claims to the Division of Public Utilities (Division). The Division has statutory power to conduct its own investigations or studies upon complaint, Utah Code §54-4a-1, and we believe that the Division will objectively consider the claims. Should the Division conclude that future Commission action is warranted, we trust that the Division will bring its recommendations to the Commission.

As to the Individual Customers' request that we order PacifiCorp to pay monetary awards as compensation for damages suffered or award the State of Utah restoration of lost economic benefits, we conclude that the Individual Customers have failed to provide an adequate legal basis upon which such relief is available from the Commission. *C.f., American Salt Company v. W.S. Hatch Company*, 748 P.2d 1060 (Utah 1987), *Basin Flying Service v. Utah Public Service Commission*, 531 P.2d 1303 (Utah 1975) and, *Beaver County et al v. Utah Public Service Commission*, 31 P.3d 1147 (Utah 2001).

Wherefore, we enter the following ORDER,

1. The Individual Customers are granted intervention in this docket to participate in their own behalf in our review of the December, 2003, power outage and PacifiCorp's major event claim.
2. All other aspects of the Individual Customers' Petition and Request to Intervene, filed April 29, 2004, are denied.

DATED at Salt Lake City, Utah, this 6th day of July, 2004.

/s/ Ric Campbell, Chairman

/s/ Constance B. White, Commissioner

/s/ Ted Boyer, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

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