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September 15, 2004

**BY EMAIL, ORIGINAL BY REGULAR MAIL**

David R. Irvine  
Attorney and Counselor at Law  
350 South 400 East, Suite 201  
Salt Lake City, UT 84111

**Re: Docket No. 04-035-01, Subpoena to Richard Walje**

Dear David:

This will respond to the Subpoena and letter hand delivered to me on September 9, 2004.

Utah Power is willing to cooperate reasonably in discovery appropriately initiated by your clients within the scope of the intervention granted to your clients in this matter. In its Order Granting in Part and Denying in Part Petition and Request to Intervene issued July 6, 2004, the Commission said:

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.

In light of the foregoing order, when you requested that we provide you with some available times for scheduling the deposition of Mr. Walje, we indicated that we would like to discuss the matter with you both to understand the purpose for the deposition and to assure that you are deposing the correct person. We noted that this discussion would be particularly helpful in light of the current posture of this docket because the Commission is currently reviewing the Company and Division outage reports to determine what additional proceedings will be

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conducted. As we indicated, until that determination is made, the context for the deposition is uncertain.

In your cover letter, sent with the subpoena, you stated:

I'm not unmindful of the matters and concerns you raised in your e-mail message to me, but Alan and I feel that we cannot allow UP&L to determine the discovery we choose to pursue, select the witnesses, pre-evaluate the questions, etc. Obviously, we wish to question Mr. Walje with respect to matters raised in our petition, and we believe that is entirely legitimate, as with any civil action, without a negotiation process.

The Commission has denied your clients intervention with respect to many of the issues raised in their petition. Therefore, these issues would not be appropriate subjects of discovery. Furthermore, the intervention has been granted only "to participate in . . . 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." As noted in our email, the Commission is currently reviewing the outage reports to determine what further proceedings will take place. We understand that the Division of Public Utilities will be making its recommendation on Utah Power's request for the outage to be declared a major event soon and that your clients will have an opportunity to comment on the recommendation. That is why we have stated that the context of the discovery is uncertain.

Utah Power does not seek to determine the discovery your clients wish to pursue or to pre-evaluate the questions you wish to ask. However, Utah Power remains of the view that a discussion prior to any discovery would be helpful for several reasons. First, it would be a waste of the time and resources of all parties to arrange for and commence a deposition and then have it stopped because it is beyond the scope of intervention granted your clients or the Commission's review of the outage or Utah Power's major event claim. Second, while Mr. Walje, as the principal officer of the Company over Utah matters, is responsible for Utah Power's storm outage report, he is neither its principal author or specifically familiar with the detailed information in the report. Therefore, while Mr. Walje is prepared to respond to high-level questions regarding the report within the scope of his knowledge, he would not be the best person to respond to questions about the specific details of the report. Contrary to the inference in your letter, it is typical practice for a party in litigation to notice the deposition of a corporate party, identify the subject matter of the deposition, and then leave it to the corporation to produce the witness or witnesses best able to testify on the subject matter identified. *See* Utah R. Civ.



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Proc. 30(b)(6). Third, it is possible that your questions may be appropriate subjects of the periodic review meetings between the parties which are taking place in the course of the continued work in this docket. It may be more productive for all of the parties to the docket to arrange an informal meeting to allow the Company to provide information on the appropriate issues you wish to raise.

As a result, we would propose to schedule an informal meeting before any deposition or other discovery issues are addressed. For the meeting to be as productive as possible for your clients and other parties, the Company would need to know the subject matter of the questions before the meeting in order to have the correct people present and to allow them to compile the correct information in advance of the meeting.

Utah Power notes that the subpoena was not properly issued pursuant to Utah Code Ann. § 54-7-3 and, therefore, is not valid. On this basis, Utah Power does not believe it is necessary for it to move to quash the subpoena and does not intend to have Mr. Walje appear on October 4, 2004. In connection with your question about whether we would be willing to accept service of the subpoena, we want to assure you that the decision not to have Mr. Walje appear is not the result of lack of personal service, but is rather based on the issues raised in this letter. The witness fee you tendered with the subpoena is being returned to you as an enclosure to this letter.

We appreciate your willingness to accommodate our schedules. In that regard, we note that October 4, 2004 is an inconvenient date for the meeting mentioned above. Among other reasons, I am not available on that date and the Company has pre-arranged regulatory business on that date. If you will contact us regarding the foregoing, we will attempt with you to arrange a mutually convenient time when all interested parties can participate in an information session at which your legitimate questions may be addressed.

Sincerely,

Gregory B. Monson

*Attorney for Utah Power*

Enclosure

cc: All Counsel of Record