



State of Utah
Department of Commerce
Division of Public Utilities

RUSSELL SKOUSEN
Executive Director

JASON PERRY
Deputy Director

IRENE REES
Director, Division of Public Utilities

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

MEMORANDUM

TO: Public Service Commission
FROM: Division of Public Utilities
Irene Rees, Director
Artie Powell, Acting Manager, Energy Section
John Gothard, Utility Analyst

SUBJECT: Petition and Request For Agency Action, Docket No. 04-035-70

DATE: June 14, 2005

BACKGROUND

Petitioners filed a claim under Docket No. 04-035-01 for damages arising from the Winter Storm Outage and also alleged damages arising from non-storm related matters. Additionally, Petitioners sought certification as a class for purposes of a class action under that docket. The PSC denied the request for class action status, but allowed Petitioners to intervene in that proceeding. The PSC also denied claims related to non-storm matters and directed Petitioners to present detailed information on these claims to the Division for investigation. Petitioners did not approach the Division, but instead re-filed their Petition as a Request for Agency Action under Docket No. 04-035-70. In response to this Petition PacifiCorp filed a Motion to Dismiss And Answer under Docket No. 04-035-70. Petitioners thereafter filed a Response to PacifiCorp's Motion under Docket No. 04-035-70. As of this date no other parties have filed any documents in Docket No. 04-035-70.

RECOMMENDATION

Petitioners have not raised storm-related issues or other issues pertaining to the Major Event declaration that cannot be addressed in Docket No. 04-035-01 and Docket No. 02-235-02. The Division does not support expanding the storm-related investigation outside the original docket.

Regarding issues pertaining to mining operations and past land sales, Petitioners failed to state their claims with enough specificity to allow the Division to assess the merits of the complaint. The Division invites Petitioners to file their complaint on these matters with the Division, as directed by the Commission. Thereafter, the Division will evaluate the complaint and determine whether an investigation is warranted. In the meantime, the Division recommends that the Commission deny any claims regarding these two non-storm issues.

This Petition, like the first nearly identical Petition filed in Docket 04-035-01, is vague with regard to the nature of the damages suffered by Petitioners. Furthermore, Petitioners draw a tenuous connection between violations of historical merger conditions and Commission orders to any storm-related damage. As stated above, Petitioners' storm-related claims should be addressed under Docket No. 04-035-01.

With regard to Petitioners' inquiry into merger conditions, the Division has requested a report from the Company on the status of its compliance with merger conditions. That investigation is ongoing and will result in a report under Docket 98-2035-04. With regard to Petitioners' inquiries related to systems reliability, the Division would invite Petitioners or Petitioners' representatives to participate in the ongoing Service Quality Taskforce and the upcoming acquisition proceedings.

Based on the foregoing and the discussion below, the Division requests that Docket 04-035-70 be closed.

DISCUSSION

The Petition filed under Docket No. 04-035-70 is nearly identical to the Petition filed in Docket No. 04-035-01. It does not raise any new substantive issues or detailed allegations that cannot be, or have not already been, addressed in Docket No. 04-035-01. The underlying causes of storm-related damage have been investigated under Docket No. 04-035-01. The Company has filed its Storm Report with the Commission. A Service Quality Task Force has since been formed to investigate maintenance and investment issues together with the condition of the Utah distribution system to formulate and recommend improvements to assure appropriate service quality.

Petitioners demand an investigation into the causal relationship between alleged violation of merger conditions and their damages arising from the storm outage. The Division recommends that all storm-related issues be addressed under Docket No. 04-035-01 wherein Petitioners have already been granted intervention to participate therein as individual interested parties. Petitioners have not established any need to expand the scope of the storm investigation to a new docket.

Regarding the more general issue of the Company's compliance with merger conditions, the Division and Commission have accepted periodic status reports from the Company outlining its progress toward compliance. The latest report was filed in 2003. At that time, the Company represented that it would be fully compliant with merger conditions by 2005. Moreover, the parties will have another opportunity to examine the merger conditions, and specifically the survival of previous merger conditions upon a subsequent merger and/or acquisition, in the upcoming proceeding involving the sale of PacifiCorp to MidAmerican Energy Holdings Company. The Division anticipates that it will thoroughly review and investigate the merger/acquisition conditions issues in the course of the proceeding seeking approval of the sale of PacifiCorp to MidAmerican Energy Holdings Company.

Finally, with regard to Petitioners' claims concerning the Company's mining operations and land sales, Petitioners have failed to draw any connection between those operations, the storm outage and any damages that Petitioners may have suffered. In the Order dated July 6, 2004, the Commission directed Petitioners to contact the Division with facts to support its claim so the Division could conduct an investigation, if warranted by the specific facts presented. Petitioners have not approached the Division. Neither does the petition in Docket No. 04-035-70 contain sufficient detailed factual allegations upon which the Division can act. Absent presentation of substantial, detailed specific facts, the claims pertaining to the Company's mining operations and land sales are more suitable for examination in the course of a general rate case close in time to the actual transactions and/or actions complained of than in the instant Petition. Therefore, the Division recommends that this request for investigation of the Company's mining operations and land sales be denied at this time.

Accordingly, the Division recommends that the Commission deny the Petitioners' claims and close Docket No. 04-035-70.