

Edward A. Hunter
David L. Elmont
STOEL RIVES LLP
One Utah Center
201 South Main Street, Suite 1100
Salt Lake City, UT 84111-4904
Telephone: (801) 578-6936
Fax: (801) 578-6999

Attorneys for PacifiCorp dba Utah
Power & Light Company

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of PacifiCorp)	DOCKET NO. 05-035-102
for Approval of its Proposed Power Cost)	
Adjustment Mechanism)	OPPOSITION TO MOTION TO
)	EXTEND THE TIME TO RESPOND
)	TO UIEC'S MOTION TO DISMISS

Pursuant to Utah Admin. Code R746-100-4.D, PacifiCorp, doing business as Utah Power & Light Company (“PacifiCorp” or “Company”) hereby responds in opposition to the Motion to Extend the Time to Respond to UIEC’s Motion to Dismiss (“Extension Request”) submitted in this matter by Utah Industrial Energy Consumers (“UIEC”).¹

ARGUMENT

Although couched in neutral terms of providing a fair opportunity to all interested parties to comment on UIEC’s Motion to Dismiss (“Motion”), the Extension Request would

¹ The Extension Request also contained a separate request to set a deadline for intervention as of June 23, 2006. PacifiCorp has no objection to setting that date as an intervention deadline.

result in a delay that could adversely affect the testimony and hearing schedule agreed to by the parties and approved by the Commission for this case.

The Company filed its proposed Power Cost Adjustment Mechanism (“PCAM”) in this matter in November of last year. Thus, interested parties have already had over six months in which to decide whether or not to seek intervention in this case.

On April 4, 2006, the Commission issued its order adopting a procedural schedule for this case. Under that schedule, intervenor direct testimony is due on August 9, 2006. That schedule was agreed to by the parties in both this docket and the PacifiCorp general rate case docket.

Although UIEC sought intervention in January 2006, which was granted on February 2nd, UIEC did not seek to move to dismiss PacifiCorp’s Application until May. Now we are in June (with one extension on the briefing of the Motion already having been granted) and UIEC seeks another extension until July 21—just to complete briefing on a preliminary motion that, pursuant to the relevant rule of civil procedure invoked by UIEC, should have filed and briefed months ago.

In the mean time, the parties have held three technical conferences and numerous discussions about the merits of a PCAM generally and of the proposed PCAM specifically. The docket has proceeded to address substantive issues in such a way that we have moved beyond the time when a preliminary motion directed at an opening pleading is appropriate at all, let alone a motion that is dragged out for an additional month in a manner that is inconsistent with the agreed to procedural schedule to give an unknown number of new intervenors the opportunity to proliferate the arguments.

When intervention is allowed beyond the beginning of a proceeding, “the intervenor must accept the pending action as he finds it; his right to litigate is only as broad as that of the other parties to the action.”² This means that petitioners “must join subject to the proceedings that have occurred prior to [their] intervention; [they] cannot unring the bell.”³ While PacifiCorp has no objection to appropriate additional parties being allowed to intervene in this proceeding, the proceeding should not be held up to await their arrival—especially when six months have already passed, the parties have come a long way in defining and arguing the substantive issues and intervenor direct testimony is due on August 9, 2006. PacifiCorp has no objection to an intervention deadline, and has no objection to appropriate intervenors making whatever arguments are then timely when they seek to intervene. The Extension Request is unnecessary and inappropriate, however, and not justified by UIEC’s mere desire for additional support for the Motion.

² *Lima v. Chambers*, 657 P.2d 279, 284-85 (Utah 1982) (citation omitted).

³ See 7C Charles Alan Wright, et al., *Federal Practice and Procedure*, § 1920 (2nd ed. 1986) (quoting *Hartley Pen Co. v. Lindy Pen Co.*, 16 F.R.D. 141, 153).

CONCLUSION

Wherefore, for the foregoing reasons, PacifiCorp respectfully requests that the Extension Request be denied.

DATED this 5th day of June, 2006.

Respectfully submitted,

STOEL RIVES LLP

By _____
Edward A. Hunter
David L. Elmont
Stoel Rives LLP
Of Attorneys for PacifiCorp

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of June, 2006, I caused to be served, via electronic mail, a true and correct copy of the foregoing **Opposition to Motion to Extend the Time to Respond to UIEC's Motion to Dismiss** to the following:

Michael Ginsberg
Assistant Attorney General
500 Heber M. Wells Building
160 East 300 South
Salt Lake City, Utah 84111

Reed Warnick
Assistant Attorney General
500 Heber M. Wells Building
160 East 300 South
Salt Lake City, Utah 84111

F. Robert Reeder
Parsons Behle & Latimer
201 South Main Street, Suite 1800
Salt Lake City UT 84111

Gary Dodge
Hatch James & Dodge
10 West Broadway, Suite 400
Salt Lake City UT 84101