

Gary A. Dodge, #0897
HATCH, JAMES & DODGE
10 West Broadway, Suite 400
Salt Lake City, UT 84101
Telephone: 801-363-6363
Facsimile: 801-363-6666
Email: gdodge@hjdllaw.com
Attorneys for UAE

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of PacifiCorp for Approval of Its Proposed Power Cost Adjustment Mechanism	Docket 05-035-102 UAE INTERVENTION GROUP'S MEMORAUNDUM IN RESPONSE TO UIEC'S MOTION TO DISMISS
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The UAE Intervention Group (“UAE”) files this memorandum in response to the Utah Industrial Energy Consumers’ Motion to Dismiss PacifiCorp’s Application for Approval of its Proposed Power Cost Adjustment Mechanism.

UAE shares many of the concerns and positions reflected in UIEC’s motion to dismiss. UAE agrees that a number of serious legal issues are implicated by the PCAM filing, including the rule against retroactive ratemaking. UAE also echoes UIEC’s view that a PCAM for PacifiCorp is not necessary or reasonable under current circumstances.

Fuel adjustment mechanisms reduce or eliminate the incentive for utilities to manage fuel risks aggressively and appropriately. PacifiCorp is the only entity with any realistic ability to

manage and mitigate fuel price volatility risks; neither customers nor regulators have any meaningful means of managing such risks. Indeed, the utility's unique ability to manage fuel price risk was the main argument advanced by PacifiCorp in urging elimination of the utility's energy balancing account nearly two decades ago.

Fuel price volatility can reasonably be managed by a utility through hedging instruments, normalizing adjustments, and prudent planning. A fuel adjustment mechanism is thus not necessary to enable the utility to reasonably manage fuel risks. Moreover, given the manner in which the authorized return on equity for a regulated utility is determined, it will likely prove very difficult to identify and impose an appropriate offsetting reduction in authorized return to compensate ratepayers for the risk-shifting inherent in a fuel adjustment mechanism.

UAE thus joins UIEC in resisting a PCAM from a policy perspective. From a legal perspective, UAE has analyzed the statutes and cases cited by UIEC and shares UIEC's view that they raise serious legal questions about the PCAM as proposed by PacifiCorp. It is not clear to UAE, however, that the cited cases and statutes necessarily invalidate every possible fuel adjustment mechanism for PacifiCorp under all circumstances. Accordingly, UAE respectfully suggests that the Commission take UIEC's motion to dismiss under advisement and direct the parties to submit testimony on PacifiCorp's PCAM request on the merits.

In the event the Commission concludes on the merits that a fuel adjustment mechanism is not warranted, UIEC's motion will be moot. If the Commission concludes on the merits that some type of fuel adjustment mechanism may be warranted, the Commission must then address the legal issues implicated by the specific fuel adjustment mechanism under consideration. UAE

believes that all parties will be in a better position at that point in time to address the specific legal issues implicated.

Respectfully submitted this 7th day of July, 2006.

HATCH, JAMES & DODGE

/s/ _____
Gary A. Dodge
Attorneys for UAE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 7th day of July, 2006 to the following:

Edward A. Hunter
Jennifer Martin
STOEL RIVES LLP
201 South Main Street, Suite 1100
Salt Lake City, UT 84111
eahunter@stoel.com
jehoran@stoel.com
Attorneys for PacifiCorp

Michael Ginsberg
Patricia Schmid
ASSISTANT ATTORNEY GENERAL
500 Heber M. Wells Building
160 East 300 South
Salt Lake City, UT 84111
mginsberg@utah.gov
pschmid@utah.gov
Attorneys for Division of Public Utilities

Reed Warnick
Paul Proctor
ASSISTANT ATTORNEY GENERAL
160 East 300 South, 5th Floor
Salt Lake City, UT 84111
rwarnick@utah.gov
pproctor@utah.gov
Attorneys for Committee of Consumer Services

F. Robert Reeder
Vicki M. Baldwin
PARSONS BEHLE & LATIMER
One Utah Center, Suite 1800
201 S Main St.
Salt Lake City, UT 84111
BobReeder@pblutah.com
VBaldwin@pblutah.com
Attorneys for UIEC

Betsy Wolf
UTAH RATEPAYERS ALLIANCE
764 South 200 West
Salt Lake City, Utah 84101
bwolf@slcap.org

Dale F. Gardiner, #1147
Parry Anderson & Gardiner

60 East South Temple, #1200
Salt Lake City, Utah 84111
dfgardiner@parrylaw.com

Thomas W. Forsgren, #1104
2868 Jennie Lane
Holladay, Utah 84117
twforsgren@msn.com
Attorneys for AARP

Lt Col Karen White
Capt Damund E. Williams
Utility Litigation Team
139 Barnes Drive, Suite 1
Tyndall AFB, FL 32403-5319
Karen.White@tyndall.af.mil
Damund.Williams@tyndall.af.mil

C. Scott Brown (4802)
Colleen Larkin Bell (5253)
Questar Gas Company
180 East First South
P.O. Box 45360
Salt Lake City, Utah 84145
scott.brown@questar.com
colleen.bell@questar.com

Peter J. Mattheis
Eric J. Lacey
BRICKFIELD, BURCHETTE, RITTS & STONE, P.C.
1025 Thomas Jefferson Street, N.W., 800 West Tower
Washington, D.C. 20007
PJM@bbrslaw.com

Gerald H. Kinghorn
PARSONS KINGHORN HARRIS, P.C.
111 East Broadway, 11th Floor
Salt Lake City, UT 84111
ghk@pkhlawyers.com
Attorneys for Nucor Steel

Lee R. Brown
US Magnesium LLC
238 North 2200 West
Salt Lake City, UT 84116
lbrown@usmagnesium.com

/s/ _____