

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Formal
Complaint of InSite Towers Docket No. 15-066-01
Development, LLC against
Dixie-Escalante Rural Electric
Association, Inc.

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HEARING PROCEEDINGS  
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TAKEN AT: Public Service Commission
 Hearing Room 451
 160 East 300 South
 Salt Lake City, Utah

DATE: Monday, April 20, 2015

TIME: 10:04 a.m.

REPORTER: Nancy A. Fullmer, RMR

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APPEARANCES

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PROCEEDINGS

THE HEARING OFFICER: I'm Melanie Reif and I am the Administrative Law Judge for the Utah Public Service Commission. And this morning we're holding a scheduling conference in Docket 15-066-01. This is the Matter of the Formal Complaint of InSite Towers Development, LLC Against Dixie-Escalante Rural Electric Association, Inc.

Let's go ahead and take appearances starting with you, Mr. Sackett.

MR. SACKETT: Gary G. Sackett of the Jones, Waldo, Holbrook & McDonough firm for InSite Towers Development.

THE HEARING OFFICER: Thank you. And on the line, sir, could you please make your appearance?

MR. LAUB: Sure. LaDel Laub, President/CEO of Dixie-Escalante Rural Electric Association.

THE HEARING OFFICER: Okay. And, Mr. Laub, just for my reference, are you an attorney?

MR. LAUB: I am not.

THE HEARING OFFICER: Okay. And, again,

1 what is your position with Dixie?

2 MR. LAUB: President/CEO.

3 THE HEARING OFFICER: President and CEO.

4 Okay. Thank you very much.

5 Mr. Crabtree.

6 MR. CRABTREE: David Crabtree. I am an
7 attorney as I am appearing on behalf of

8 Dixie-Escalante.

9 THE HEARING OFFICER: Okay.

10 Mr. Jetter.

11 MR. JETTER: And I'm Justin Jetter with
12 the Utah Attorney General's Office. I represent
13 the Utah Division of Public Utilities. And
14 sitting next to me at the counsel table here is
15 Artie Powell, Dr. Powell, with the Division.

16 THE HEARING OFFICER: Good morning.
17 Thank you, everyone, for being here. Appreciate
18 it very much. Just for reference, is there anyone
19 here on behalf of St. George? Okay. Just wanted
20 to make sure.

21 Mr. Sackett, this is your complaint, so
22 I'll let you have the floor. What we're hoping to
23 do this morning as identified in the notice of
24 scheduling conference is we're hoping to set a
25 schedule. So I hope the parties have had an

1 opportunity to discuss a proposed schedule. You
2 can let me know about that.

3 MR. SACKETT: We discussed briefly before
4 the hearing was opened and arrived at no
5 resolution.

6 As a preliminary matter, and for full
7 disclosure, Intel--InSite has filed a
8 contemporaneous lawsuit in Fifth District Court in
9 St. George. And this is a somewhat complicated
10 situation. And InSite has decided that the way to
11 try to solve its rock-in-a-hard-place problem is
12 to look in both jurisdictions.

13 We fear--and Mr. Crabtree has already
14 identified this--we fear the problem of each
15 jurisdiction saying, "Let the other jurisdiction
16 handle it." We believe that the Commission here
17 has sort of the first shot at the jurisdiction and
18 it's the simpler shot, so to speak. That is to
19 say there's the primary question of whether or not
20 Dixie--Dixie Power has a public service obligation
21 to serve.

22 Apart from the question of what it might
23 cost or what they might charge for that service,
24 we believe it's necessary to sort out, first, what
25 obligation there is, if any. If the Commission

1 were to decide that as a result of the 1981
2 agreement between Dixie and St. George, that Dixie
3 no longer has any obligation to serve that, their
4 territory for public service is no longer--does no
5 longer include the site where InSite plans to
6 construct their tower, then we're finished. That
7 is to say we only have recourse to the courts.

8 On the other hand, and in this simple
9 case, it seems to us if the Commission were to
10 decide that, no, Dixie was not entitled to and did
11 not abandon its original service territory--the
12 territory we're talking about is in the county.
13 It's in Washington County. It's not in St. George
14 City. The City has no obligation to serve as a
15 result of a statute that was passed by the Utah
16 Legislature approximately two years ago, I
17 believe. And they have discretionary authority to
18 serve and they've decided and told us in no
19 uncertain terms that they will not serve InSite
20 unless the fee owner of the property on which
21 the--the InSite Towers' site is located will annex
22 to the City. And those people are the Gublers who
23 own a large ranch in that area. And they said,
24 "Absolutely not."

25 So we've got an organization that

1 desperately needs an electric power. We have an
2 organization, the City of St. George, who refuses
3 to bribe the power. We have another organization,
4 namely, Dixie, that we believe still holds a
5 certificate of convenience and necessity to serve
6 the area and they have an obligation to serve the
7 area.

8 I won't go into all the arguments in the
9 complaint. But it's our view that Dixie never did
10 properly abandon that area. You can't just up and
11 sell off your obligation to serve when you have a
12 certificate of public convenience and necessity.

13 So our view is--and I'm sorry this is
14 going on a little longer than you might have
15 expected. Our view is that the proceedings here
16 could be bifurcated with the first issue being the
17 rather simple issue of whether or not Dixie Power
18 has the obligation to serve--still has the
19 obligation to serve the site that InSite Towers
20 wants to construct a telecommunications tower on.

21 That can be probably resolved relatively
22 quickly with relatively little discovery involved.
23 If it turns out that the Commission says, "No, the
24 1981 agreement where Dixie sold off its facilities
25 in that area to St. George relieves them of any

1 obligation to serve in that area," then we're
2 through here. We'll have to go back and see if we
3 can't get some equitable relief from the Fifth
4 District.

5 But if the Commission says, "No, you
6 cannot, Dixie, simply by a one-page contract,
7 abandon your obligation to serve under your
8 certificate of convenience and necessity," if
9 that's the case, then the real issue here is how
10 does Dixie serve? And that's a complicated issue.

11 So I think that it doesn't make sense to
12 wrap all those things into one piece. We can
13 decide them sequentially and get on with it. I
14 think it would be easy to set out a schedule for
15 the first phase of this and get that decided. It
16 would be decided, it seems to me, on a motion for
17 partial summary disposition.

18 THE HEARING OFFICER: Okay, Mr. Sackett.
19 Apart from that, Dixie does have, under Commission
20 rules, 30 days to respond to the complaint?

21 MR. SACKETT: Yes.

22 THE HEARING OFFICER: So are you
23 proposing that the 30 days to respond to the
24 complaint precede the deadline for motions?

25 MR. SACKETT: Yes. I think they get full

1 chance to craft an answer.

2 THE HEARING OFFICER: Okay. Just a
3 moment, sir.

4 And was there anything else that you
5 wanted to mention as far as what--how you see this
6 being played out, so to speak?

7 MR. SACKETT: No. As I calculate it,
8 their answer is due on May 7, 30 days after the
9 mailing date of the complaint. And so I would
10 suggest that--and I'm not sure if an intervener
11 deadline comes in here. I don't think there are
12 many parties that would be interested, but
13 someplace along the line intervener deadline would
14 be appropriate. And then--

15 THE HEARING OFFICER: Speaking of
16 interveners, do you think St. George will
17 intervene despite the difference in the nature of
18 their practice?

19 MR. SACKETT: Well, I doubt it, but I
20 haven't talked to them about it. They've been
21 quite adamant about their position. And my guess
22 is--this is a conjecture--that they're not
23 interested in even having their appearances of
24 subjecting themselves to the jurisdiction of the
25 Commission.

1 THE HEARING OFFICER: Okay. Very good.

2 MR. SACKETT: So beyond the answer date,
3 I would think that initial discovery, when we can
4 get it prepared, most of it's probably going to
5 come from our side, could be out relatively
6 quickly, within a week to ten days.

7 THE HEARING OFFICER: Are you
8 anticipating that the response would come in first
9 and then the motions would follow that?

10 MR. SACKETT: Yes. I think that's fair.

11 THE HEARING OFFICER: Okay. And, again,
12 the date that you're calculating for the answer
13 date is--what were you--

14 MR. SACKETT: May 7th.

15 THE HEARING OFFICER: May 7th, okay.
16 Okay. Is there anything else, sir, before I turn
17 to Mr. Crabtree?

18 MR. SACKETT: No, that's fine.

19 THE HEARING OFFICER: Okay. Thank you
20 for waiting, sir.

21 MR. CRABTREE: No. Thank you.

22 THE HEARING OFFICER: Please go ahead.

23 MR. CRABTREE: I just want to interject
24 because what I may say--well, what I have to say
25 may affect some of the questioning on the dates.

1 Actually, we look at it somewhat similar to
2 Mr. Sackett, but almost inverse from the way he
3 looks at it.

4 The one proceeding that's currently
5 ongoing in which all the parties that are
6 indispensable to the issue are subject to the
7 jurisdiction of the decider is the Fifth District
8 Court action. The City is a defendant. We are a
9 defendant. InSite chose that forum. And it's
10 true, the underlying question is not whether or
11 not there's a certificate issued by the Public
12 Service Commission. The issue raised both here
13 and in the Fifth District Court is the effect of a
14 1981 agreement between Dixie Power and the City of
15 St. George.

16 In those two proceedings--this one and
17 the court proceeding--InSite seems to be taking
18 diametrically opposed positions. Here it's
19 asserting that notwithstanding the agreement or
20 what the agreement may have intended or not
21 intended, that it would not have any effect to
22 remove the service obligation of Dixie.

23 In the court action, it's asserting that
24 the intent was, and should be enforced, that the
25 service territory was abandoned and that the City

1 has now assumed by that contract the obligation to
2 serve.

3 The--we think that what ought to happen
4 logically is that this proceeding should be
5 stayed. Let the Court decide that issue with all
6 the parties before it. And--otherwise, we run the
7 very real risk of inconsistent rulings by the
8 Commission here and by the Court down there. I
9 don't know what the Court does with a Commission
10 ruling on the effectiveness or non effectiveness
11 of that 1981 agreement when St. George City, a
12 party to that agreement, isn't here before the
13 Commission.

14 THE HEARING OFFICER: Mr. Crabtree, can
15 you release that information about when the
16 lawsuit was filed with Fifth District and where
17 are you in the--

18 MR. CRABTREE: Certainly. I received a
19 copy of the summons about an hour ago. I believe
20 the complaint was signed some--maybe a week ago.
21 I don't know. But it was served either Thursday
22 or Friday. And I received the first copy that I
23 received, like I say, about an hour ago.

24 MR. SACKETT: Your Honor, it was filed
25 the same date as this one in Fifth District. The

1 server, I suspect, was maybe a day or two
2 afterwards. I don't know. Service was originally
3 on Mr. Laub and so he may be able to shed light on
4 that.

5 THE HEARING OFFICER: Okay. A question
6 for both of you gentlemen, please. So inasmuch as
7 it is--there is another matter pending and there
8 has been an interest shown in filing a motion
9 subsequent to the answer that is
10 due--Mr. Crabtree, perhaps this question is best
11 posed to you. Inasmuch as you raised the issue of
12 requesting a stay, wouldn't that be a motion that
13 you could file at the same time that Mr. Sackett
14 would be filing a motion in this matter? And, in
15 other words, we would set a date for the filing of
16 dispositive motions?

17 MR. CRABTREE: Well, I see it more
18 effective if we file a motion to stay before our
19 answer's due.

20 THE HEARING OFFICER: I understand, okay.
21 Okay. Well, the Commission certainly doesn't want
22 to preclude that option to you. And inasmuch as
23 you choose to do that, I think that that would be
24 a strategy decision that would be yours to make.

25 So I guess the issue is are you ready to

1 move forward with scheduling or is it your
2 preference that you have the opportunity to file a
3 request to stay and then file an answer should
4 that motion not be granted?

5 MR. CRABTREE: I would prefer the latter
6 so that we don't end up calendaring a lot of
7 motion practice and dates that may never be
8 needed.

9 THE HEARING OFFICER: Okay. Mr. Sackett,
10 how do you feel about that?

11 MR. SACKETT: I don't think that's the
12 right order. It's pretty much clear to us that
13 what we're asking for as a first part of a perhaps
14 bifurcated proceeding is something that can be
15 disposed of relatively quickly in the overall
16 scheme of how long it takes to sort things out.
17 And it will certainly be quicker than any
18 preliminary or final decision in the Fifth
19 District.

20 The issue of whether or not the
21 Commission believes that Dixie still has the
22 authority and obligation to serve is a
23 straightforward question that we can resolve--you
24 can resolve relatively quickly. And by
25 relatively, I mean relative to how long it will

1 take for matters to unfold in Fifth District
2 Court.

3 It just seems like judicial economy and
4 administrative economy is to get that question
5 sorted out. There's no question in my mind that
6 Dixie is going to--I don't want to speak for them,
7 but it is our theory that Dixie will not--that
8 St. George will not be interested in coming here.
9 It will take its position that it's laid out in
10 sort of hard line fashion.

11 We believe that Dixie would, as a
12 public--as a public service provider, may not want
13 to be in Fifth District Court. We can't tell
14 that, but we know they belong here. They are a
15 public utility. They are subject to the
16 jurisdiction of this Commission.

17 And this issue is a primary issue to be
18 decided. And I think it can be decided relatively
19 quickly. There's not all that much that needs to
20 be done in order to establish whether or not from
21 the Commission's point of view as a--as a legal
22 matter, does--does Dixie have the obligation to
23 serve this site or not? And if it does, then we
24 have to sort out what kind of service should it
25 provide. But that's the second part of the

1 bifurcated proceeding.

2 THE HEARING OFFICER: Mr. Crabtree, do
3 you have a response to that?

4 MR. CRABTREE: Yeah. I don't know
5 how--because that would probably be true if there
6 weren't this intervening issue raised by InSite
7 itself about the effect of the agreement. If this
8 were just a straightforward service area boundary
9 question, I think I would agree that that's the
10 proper disposition and the order of the
11 disposition to take place.

12 InSite is the one that's raised the issue
13 of what did it mean in 1981 when the City of
14 St. George and Dixie entered into this agreement
15 transferring facilities. It is saying to the
16 Court, the effect of that was that the City
17 assumed and relieved Dixie of the obligation to
18 serve, telling the Commission here it doesn't
19 matter what the intent was, Dixie retains the
20 obligation to serve. Those two are incompatible.

21 I don't know how you or anyone here at
22 the Commission can address the issue raised by
23 InSite with respect to that agreement without
24 having the party, St. George City, who is the
25 other party in that agreement. InSite was not a

1 party to that agreement, obviously. Before--but
2 how do you call witnesses? How do you get the
3 testimony from the City?

4 THE HEARING OFFICER: And is St. George a
5 party in that lawsuit?

6 MR. CRABTREE: Yes.

7 THE HEARING OFFICER: And, Mr. Sackett, I
8 know you are seeking expedited review in this case
9 and that's why we scheduled this so quickly. Are
10 you requesting similar review in the Fifth
11 District?

12 MR. SACKETT: No. There is--there is a--

13 THE HEARING OFFICER: Is there an
14 injunction or anything like that?

15 MR. SACKETT: It has not yet been filed.
16 And my suggestion about Mr. Crabtree's argument is
17 that the positions are not inconsistent because
18 it's sequential. The argument here is if Dixie
19 improperly and unlawfully abandoned its obligation
20 in that 1981 agreement, if the Commission were to
21 decide that, that is essentially to say that the
22 1981 agreement really was ineffective.

23 If the Commission decides that, no, it
24 was an effective contract, they were entitled to
25 abandon what they did, then it's true that the

1 issue shifts to the contractual issue. But the
2 predecessor to that is deciding by the Commission
3 whether or not that contract was appropriate.

4 The fact is that Dixie never did come to
5 the Commission, so we don't know whether the
6 Commission would have approved it or not. And we
7 don't know what the Commission's view is about a
8 late concern about it, that is, it's our view that
9 the Commission should say, "You can't do that.
10 You can't just abandon your public service
11 obligation."

12 If that's the Commission's view, then it
13 essentially says, at least parts of the 1981
14 agreement, the jurisdictional parts, are not
15 valid. And if that's the case, then we're here.
16 If the Commission decides that it's okay, we sort
17 of--we sort of okay it with the passage of time,
18 then the first step has been taken and we are off
19 to the Fifth District Court.

20 THE HEARING OFFICER: So, Mr. Sackett,
21 just to make sure that I am understanding
22 sequentially what you're proposing--and please
23 keep in mind, and, Mr. Crabtree, as well, that my
24 question is posed simply to understand where we're
25 going forward with the schedule. It by no means

1 establishes how the Commission is going to
2 interpret this issue once it's been fully briefed
3 and argued because that's not the purpose of this
4 hearing. The purpose of this hearing is just to
5 schedule the matter.

6 So, Mr. Sackett, is it correct to say
7 that InSite's interpretation of this is that the
8 Commission must first look at whether Dixie
9 improperly or--and/or unlawfully abandoned its
10 service territory and thereby entered into the
11 1981 agreement? Or does the '81 agreement come
12 before the abandonment?

13 MR. SACKETT: I guess our view is that
14 the 1981 agreement was an unlawful abandonment.
15 The terms of it--one page--the whole one page of
16 it, the terms of it were we're giving up some
17 service territory, we're giving away for \$65,000
18 certain facilities that will serve that part of
19 our current service territory. Here, St. George,
20 take it.

21 We believe that was not authorized by the
22 Commission. We believe it had to be authorized by
23 the Commission. That a public utility is not
24 permitted to simply decide unilaterally to abandon
25 an area of service responsibility. So it's the

1 1981 agreement that defines what we believe to be
2 an unlawful abandonment of service.

3 THE HEARING OFFICER: Are the parties in
4 agreement that the 1981 agreement did not come
5 before the Commission?

6 MR. CRABTREE: If I may address that? I
7 think we all agree that it was not--it was not
8 authorized--or the authorization or consent of the
9 Commission was not sought before the agreement.
10 What we disagree about is a lot of the
11 characterization given to the agreement. There's
12 nothing in the agreement from our perspective that
13 addresses abandonment of service territory outside
14 the City's boundary, which, by law, the City has
15 that right to serve. It was--if anything, it was
16 a concession under the strawberry users case that
17 Dixie could not stop the City from serving within
18 its own boundaries.

19 The issue--InSite has claimed that there
20 should have been approach made to the Commission.
21 It can't cite a provision of law, nor a regulation
22 to that effect. Doesn't explain its reasoning why
23 that should be the case. I don't believe it is
24 the case. But beyond that, bear in mind, we are
25 speaking now of property that--and I'm embarrassed

1 to say, given the short notice, I've not gone and
2 seen the property location. But we do know that
3 it's outside the city boundary. So with respect
4 to what the agreement may have said, vis-a-vis,
5 service within the city limits, that, and
6 characterizing the agreement as an abandonment of
7 service territory to that extent is just
8 inaccurate. It's just a development to this piece
9 of ground, which is not inside the city.

10 The whole issue is the City doesn't want
11 to serve--well, to put it plainly, I think
12 InSite's preference is to be served by the City.
13 It has tried for a long time to try to get that
14 service from the City. The City is balking. I
15 don't know what the reasonings are, whether it's
16 constrained to issues of utility service or
17 whether it's larger building code type of problems
18 with the tower or right on its border, I don't
19 know.

20 THE HEARING OFFICER: Mr. Crabtree, I
21 need to move forward with this. And I realize
22 that there are things that you need to address and
23 familiarize yourself with and that there are
24 differences of opinions about how this case should
25 move forward. I would like to give an opportunity

1 to the Division to weigh in on this. And please
2 share your thoughts with how you perceive this and
3 what you think is the proper way to move forward.

4 MR. JETTER: Thank you, Judge Reif. This
5 is an interesting case from what I've heard this
6 morning. I'm not real familiar with the facts and
7 the background behind it. But we do have a
8 situation, from what it sounds like, where we have
9 a regulated utility that certainly is under the
10 primary jurisdiction of the Commission. And if
11 the alternate question is whether Dixie has a duty
12 to serve that area, that's an area that I think
13 the courts would defer the jurisdiction of the
14 Commission on because of the special expertise and
15 knowledge as well as the statutory authority
16 that's granted to the Commission to make those
17 type of determinations.

18 On the other hand, after the Heber Power
19 & Light case, I think it's fairly straightforward
20 that the Commission would not have authority to
21 regulate the City. And so we do have a bit of a
22 split here where we have a significant risk of
23 duplicating efforts and inconsistent results. As
24 far as--I suppose it's sort of a chicken and egg
25 argument of which one comes first.

1 I don't know that the Division has a
2 strong preference, but it may be reasonable to
3 take a look at the service territory and duty that
4 the Dixie Power has in that area. And that could
5 inform the courts, at least as far as what the
6 Commission views as the territory in which Dixie
7 has an obligation to serve. How much that will
8 affect whether there's a contractual obligation of
9 some sort of the City to go outside of its
10 boundaries or whether it even can within the laws
11 of the City, I'm not familiar with this. So I
12 hate to speculate about what the Court will do
13 there, but I'm not opposed to going forward with
14 this. And I suppose I'm not terribly opposed to a
15 stay pending the Fifth District Court's
16 resolution. It would really throw a wrench at
17 things to file both at the same time.

18 THE HEARING OFFICER: Mr. Jetter, have
19 you had an opportunity to talk to Dr. Powell
20 and/or the Division about the history involved as
21 far as the service territory?

22 MR. JETTER: I have a very high level
23 understanding. But, no, I haven't spoke--we
24 haven't investigated that and I'm not--I'm not
25 personally fully aware of all the history there.

1 THE HEARING OFFICER: All right. And--

2 MR. JETTER: So I recognize I'm not a lot
3 of help in your decision and I apologize for that.

4 THE HEARING OFFICER: That being said,
5 does it not make sense, though, to address it in
6 the order in which you presented it though
7 inasmuch as the Respondent, Dixie-Escalante, is a
8 regulated utility and under the Commission's
9 jurisdiction and through that analysis determine
10 what its service area is and whether that is in
11 some way affected by the AE1 agreement?

12 MR. JETTER: Yeah. I think it's
13 reasonable to take it in those steps also as far
14 as determining, first, whether that is within
15 their service territory whether they have an
16 obligation, and then--is that what you're asking--

17 THE HEARING OFFICER: Yes.

18 MR. JETTER: --determine the nature of
19 that obligation and line extension policy.

20 THE HEARING OFFICER: And I think
21 part--part of what I'm grappling with, too, is
22 your concern that we might in some way run up
23 against Heber Light & Power. But it seems to me
24 that--and I would certainly invite your thoughts
25 on this--that we could do those things that I just

1 mentioned simply by looking at a utility that's
2 regulated.

3 And if St. George wants to get involved,
4 they have the opportunity to do so by being an
5 intervener. I can see why they may not wish to.
6 But do you see taking--taking the issues in the
7 order in which you presented them being
8 problematic from the standpoint of St. George
9 being possibly an interested third party but not
10 an entity that we have jurisdiction over?

11 MR. JETTER: No. I don't see issues with
12 that. The only concern I might have, just off the
13 top of my head at this point, was fact discovery
14 because they're not--they're not a regulated
15 utility on one side of this issue. But I believe
16 we can proceed with the determination, at least
17 of--of the service territory of the existing
18 utility that is the regulated utility. Certainly
19 that's within the jurisdiction of the Commission
20 to evaluate and make decisions on the operations
21 of Dixie as a public utility.

22 THE HEARING OFFICER: Okay. Gentlemen,
23 is there anything else that you wish to say? I
24 would like to take a few minutes off the record
25 and give this matter some consideration and then

1 we'll come back to it. But before then, is there
2 anything else that you wanted to add before I do
3 so? And, please, I think I've heard your point so
4 unless there's something new--

5 MR. SACKETT: I would just indicate that
6 as far as any supporting fact discovery we think
7 we--if there is any that's necessary for what I
8 would call phase one of the bifurcated proceeding,
9 which is what Mr. Jetter was talking about, would
10 be relatively straightforward and could be done in
11 a relatively short period of time.

12 THE HEARING OFFICER: Okay. Thank you
13 very much. We'll be in recess and off the record.
14 Thank you.

15 (Recess taken.)

16 THE HEARING OFFICER: We're back on the
17 record. Is the caller still on the line?
18 Mr. Laub, are you still on the line? He must have
19 left us.

20 MR. CRABTREE: We can proceed.

21 THE HEARING OFFICER: Okay. Gentlemen,
22 we are going to proceed as we normally do in our
23 rate cases. And so what we will--we'll explain
24 the rationale for that decision in our scheduling
25 order. But just to move forward at this point, we

1 want to start with recognition that the answer has
2 not been filed and, really, in order to move
3 forward, we do need you to have an answer filed.
4 And so, typically, that would be allowed a 30-day
5 response. And then we would move forward with the
6 filing of direct testimony followed by rebuttal,
7 surrebuttal, and we would also need to take into
8 consideration any motions and intervention
9 deadline, as well as a hearing.

10 So, typically, what we would do is,
11 again, the answer would be filed within 30 days.
12 Direct testimony would be filed 15 days
13 thereafter. Rebuttal 15 days after that followed
14 by 15 days for surrebuttal. And the rebuttal
15 deadline, motions, and intervention deadline would
16 be set. And then the question is when would the
17 hearing be held.

18 Do you want to participate in the setting
19 of those dates? Or knowing an idea of how this
20 works on a rate case setting and how we intend to
21 move forward in this particular docket, are you
22 comfortable with the Commission setting those
23 dates? Or would you like to participate in those
24 dates right now so that you can determine whether
25 you have any conflicts?

1 MR. SACKETT: I am a little puzzled about
2 the timing of discovery.

3 THE HEARING OFFICER: We didn't discuss
4 discovery, but that will be included.

5 MR. SACKETT: Well, but it sounded like
6 you had a date for the filing of direct testimony
7 fairly soon after the answer.

8 THE HEARING OFFICER: If you think that's
9 too soon and you need more time, we can certainly
10 factor that in.

11 MR. SACKETT: I guess what I would like
12 to do is take the framework you've talked about
13 and shoehorn in some limited time for discovery
14 and some time for filing the motion for partial
15 summary disposition before the necessity for
16 parties to file testimony. And the partial
17 summary disposition would be essentially something
18 that doesn't require evidentiary testimony, at
19 least as I've outlined in here. And it could be
20 done relatively quickly.

21 THE HEARING OFFICER: And does this go to
22 the issue of bifurcating?

23 MR. SACKETT: Yes.

24 THE HEARING OFFICER: Okay. We'll get
25 into that in the scheduling order, sir. But we

1 are going to be following the schedule that I just
2 laid out, so that's--

3 MR. SACKETT: Okay.

4 THE HEARING OFFICER: Okay? So are you
5 comfortable with the Commission setting the dates?
6 If so, I'm happy to do that. You have some sense
7 as to how this is going to move forward as far as
8 the dates. The only issue is really the hearing
9 date and where we set that.

10 MR. SACKETT: We would like to
11 participate in some sort of mutual agreement
12 about--

13 THE HEARING OFFICER: Dates and times?

14 MR. SACKETT: --the dates, yes.

15 THE HEARING OFFICER: Okay. So why don't
16 we start with the answer. And, Mr. Sackett, you
17 had mentioned earlier that you believe that the
18 answer date is May 7th. Mr. Crabtree, do you
19 agree with that?

20 MR. CRABTREE: Without counting dates, I
21 think that would be fine.

22 THE HEARING OFFICER: Okay. So let's
23 start there as a beginning date. And that is a
24 Thursday. So we'll then go to prefiled testimony
25 starting with direct testimony 15 days thereafter.

1 So--

2 MR. SACKETT: I'm still struggling, Your
3 Honor, with discovery.

4 THE HEARING OFFICER: Okay.

5 MR. SACKETT: 15 days after the--is it
6 your sense that we should get our discovery under
7 way right away?

8 THE HEARING OFFICER: I would anticipate
9 you would be getting it under way right away.

10 MR. SACKETT: Okay. And what kind of
11 response time would you impose on responding
12 parties?

13 THE HEARING OFFICER: That can vary
14 so--but, typically, it's usually 14 days and then
15 seven days depending upon where you are in a
16 calendar. But if you have different thoughts
17 about that or if you think that the direct
18 testimony needs to be set out a little bit further
19 so as to give you more time to get discovery under
20 way--our--our hope is to move this along. And
21 that's what's been requested, so--

22 MR. SACKETT: Here's the suggestion.

23 THE HEARING OFFICER: Okay.

24 MR. SACKETT: We can file what might be
25 called initial discovery on Dixie on the same

1 schedule as the answer we can file and maybe even
2 before that with 14 days for Dixie to respond or
3 if they've got discovery for us as well. And then
4 perhaps give us another two weeks to file direct
5 testimony. So that would put--essentially would
6 put filing of direct testimony out a month from
7 the answer, two weeks for discovery, two weeks for
8 response. I mean, two weeks--I'm sorry. Two
9 weeks for response after the 7th. We would have
10 discovery in by the 7th. Two weeks for response
11 and then two weeks to absorb it all and file
12 testimony as necessary.

13 THE HEARING OFFICER: Okay. So let me
14 make sure I'm following this. So, Mr. Crabtree's
15 answer will be due on the 7th. You want to have
16 your initial discovery request due on that same
17 date with two weeks to review it and then two
18 weeks after that you would like to have your
19 direct testimony due?

20 MR. SACKETT: Yes.

21 THE HEARING OFFICER: Okay. So direct
22 testimony of all parties would be due on--that
23 would be June 4th. Mr. Crabtree, are you
24 following this?

25 MR. CRABTREE: I'm trying to.

1 THE HEARING OFFICER: Okay.

2 MR. CRABTREE: So the discovery response
3 would be due as early as the same day as the
4 answer?

5 MR. SACKETT: No, no, no.

6 THE HEARING OFFICER: No. So the answer
7 is going to be due on the 7th of May. That date
8 is the date for initial discovery requests. And
9 with that initial discovery request you'll have
10 14 days to respond. So your response date is
11 actually the 21st.

12 MR. CRABTREE: Okay. I'm following it.

13 THE HEARING OFFICER: Okay. All right.
14 So then that takes us to direct testimony of all
15 parties, which will occur--the deadline will be
16 June 4th. That's a Thursday. And I would like to
17 set surrebuttal for two weeks after that. That
18 would be--

19 MR. SACKETT: You mean rebuttal?

20 THE HEARING OFFICER: I'm sorry, yes,
21 rebuttal. Rebuttal for two weeks after that,
22 which would be the 18th. And then surrebuttal
23 would be July 2nd. And, just for clarification,
24 June 18th would also be the date for motion
25 deadline, as well as intervention deadline.

1 MR. JETTER: Sorry, what date was that?

2 THE HEARING OFFICER: That's the same
3 date as rebuttal, which would be June 18th. And
4 unless there's something else that I have not
5 addressed, that would take us to witness and
6 exhibit list and a hearing date. And, typically,
7 what I like to do is figure out what we're going
8 to settle on for a hearing date and then back up
9 from that probably a few days, five days or so,
10 and request that you file your witness and exhibit
11 list.

12 So the surrebuttal being on July 2nd,
13 would you like me to propose a hearing date or we
14 could do it as quickly as, say--we could do it as
15 quickly as the 15th if you think that you could
16 have your witness and exhibit list to me, say, the
17 8th. Would that work?

18 MR. SACKETT: I think that's doable for
19 us, Your Honor.

20 THE HEARING OFFICER: Justin, does that
21 work for you? Mr. Crabtree, does that work for
22 you?

23 MR. CRABTREE: The hearing date on the
24 15th and the exhibits and witness list on the 8th?

25 THE HEARING OFFICER: Yes, sir.

1 MR. JETTER: Is it possible to move that
2 back possibly to the 22nd? It may work better for
3 the Division's calendar.

4 THE HEARING OFFICER: I think that that
5 would be doable. Mr. Sackett and Mr. Crabtree,
6 would that be possible for you?

7 MR. SACKETT: That's fine for me.

8 THE HEARING OFFICER: Okay.
9 Mr. Crabtree, does that look okay for you?

10 MR. CRABTREE: Actually, that's more
11 convenient for me.

12 THE HEARING OFFICER: Okay. So let's say
13 July 22nd for a hearing date. And are all of you
14 in town? Mr. Crabtree, are you in town?

15 MR. CRABTREE: My office is in South
16 Jordan, yes.

17 THE HEARING OFFICER: Okay. Are you with
18 Smith Hartvigsen or is it a different Smith?

19 MR. CRABTREE: No. I'm not with any law
20 firm.

21 THE HEARING OFFICER: Oh, okay.

22 MR. CRABTREE: I'm inhouse counsel to
23 the--

24 THE HEARING OFFICER: Oh, you are. Okay.
25 Very good. You're probably furthest away.

1 Mr. Sackett, you're downtown, right?

2 MR. SACKETT: Yes.

3 THE HEARING OFFICER: Would you--I'll
4 give you the option, 9:00 or 10:00, what time
5 would you like to start? You're good with both?

6 MR. SACKETT: I'm fine for 9:00.

7 THE HEARING OFFICER: Let's start at
8 9:00. Okay. And then, just for clarification, so
9 the 15th will be the date for your witness and
10 exhibit list. And we do need a discovery cutoff
11 just so you're not filing for things right up
12 until the hearing. Does the rebuttal deadline
13 work for you on that or do you think you may need
14 it through surrebuttal?

15 MR. SACKETT: I don't see any need for
16 anything later than that.

17 THE HEARING OFFICER: Than rebuttal?

18 MR. SACKETT: Yeah.

19 THE HEARING OFFICER: Justin, do you have
20 a position on that?

21 MR. JETTER: Well, a little bit
22 different. I think we need to shorten the
23 turnaround time after direct.

24 THE HEARING OFFICER: Okay. So after
25 direct you want to make it to seven days maybe?

1 MR. JETTER: Yeah.

2 THE HEARING OFFICER: Okay. So seven
3 days after direct.

4 MR. JETTER: Yeah. And maybe the
5 discovery cutoff the day of surrebuttal because we
6 may see something in rebuttal that we need to
7 investigate a little further.

8 THE HEARING OFFICER: Okay. Would it be
9 useful if I do a review of everything we just went
10 over or are you good with what we have and we'll
11 just issue the order and if there's something that
12 comes up or you have a conflict, you can let me
13 know and we can deal with it at the time?

14 MR. SACKETT: I'm fine with the dates
15 that you've set forth.

16 THE HEARING OFFICER: Okay.
17 Mr. Crabtree?

18 MR. CRABTREE: I think that works. If we
19 have motions, we'll file those.

20 THE HEARING OFFICER: Okay. And, just to
21 be clear, that motion deadline is going to be on
22 the 18th of June, that that will be the same date
23 as the rebuttal deadline, okay? Are there any
24 other matters? Any other deadlines that you feel
25 should have been covered that haven't been

1 mentioned?

2 THE HEARING OFFICER: Okay. All right.
3 Well, thank you very much for being here this
4 morning. And the Commission will issue this as
5 soon as possible. And if something arises in the
6 case in the meantime that you need to let me know
7 about, please feel free to do so. And thank you
8 for being here and very nice to meet both of you.
9 And we'll be issuing the order shortly. Thank
10 you. Have a good day.

11 (Hearing concluded at 11:10 a.m.)

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CERTIFICATE

This is to certify that the foregoing proceedings were taken before me, NANCY A. FULLMER, a Registered Merit Reporter and Notary Public in and for the State of Utah;

That the proceeding was reported by me in stenotype and thereafter caused by me to be transcribed into typewriting, and that a full, true, and correct transcription of said testimony so taken and transcribed is set forth in the foregoing pages;

I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action, and that I am not interested in the event thereof.



Nancy A. Fullmer

Nancy Fullmer, RMR