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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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In the Matter of the Formal Complaint of  
Marian Seamons against Ticaboo Utility  
Improvement District

DOCKET NO. 15-2508-01

ORDER

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ISSUED: September 7, 2016

**I. Procedural History.**

1. On December 18, 2015, Marian Seamons (Ms. Seamons) filed a complaint against Ticaboo Utility Improvement District (TUID). At that time, Ms. Seamons was not assisted by counsel.
2. After filing her initial complaint, Ms. Seamons retained counsel to assist her. Therefore, on February 4, 2016, she filed a motion for leave to amend her complaint. TUID did not oppose the motion.
3. On March 10, 2016, Ms. Seamons filed an amended complaint.
4. On April 22, 2016, TUID filed a motion to dismiss the complaint. The parties fully briefed the motion.
5. On July 6, 2016, the Public Service Commission of Utah (Commission) issued an order partially granting the motion to dismiss and scheduling a hearing on the issues not dismissed. In part, the hearing notice stated that the Commission would take evidence as to whether TUID had noticed and held public meetings in two prior dockets. The notice incorrectly identified the relevant dockets as Docket No. 13-2508-T01 and Docket No. 15-2508-T01. In fact, Docket 13-2508-T01 was never at issue. The issue the Commission needed to address was the enforceability of TUID's standby fees. Those fees were introduced in Docket No. 13-2508-T02.

6. The hearing in this docket was conducted as a formal proceeding on July 27, 2016 by an administrative law judge (ALJ) for the Commission. At hearing, TUID informed the ALJ that the hearing notice failed to identify the docket in which TUID introduced its standby fees. Therefore, TUID stated that it was not fully prepared to discuss standby fees. The ALJ acknowledged the error, but emphasized that it would be necessary to address the enforceability of TUID's standby fees at one point or another.

7. Despite the flaw in the notice, TUID stated at hearing:

And again, we're prepared to address – address the district's compliance with the requirements as far as Docket 13-2508-T02. But that hasn't been the [topic] of our preparation. And understanding that was perhaps a typo or miscommunication by us in the beginning, we would simply like the opportunity to file a [post-hearing] brief if we feel it necessary.<sup>1</sup>

8. The ALJ agreed to allow post-hearing briefing, and the parties agreed to file their briefs by August 26, 2016.

9. TUID filed its brief on August 26, 2016. Ms. Seamons attempted to file her brief that same day; however, due to clerical error, it was not received by the Commission until August 29, 2016. On August 31, 2016, the parties stipulated to include Ms. Seamons's brief in the record, despite the error.

10. On August 31, 2016, Ms. Seamons filed an objection to TUID's brief, arguing that the exhibits provided are irrelevant. TUID filed a response to that objection on September 1, 2016.

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<sup>1</sup> Hearing transcript, p. 96, ln. 21 – p. 97, ln. 2.

**II. Findings of Fact.**

1. TUID is the sole provider of electric and water utility services in Ticaboo, which is an unincorporated townsite located in Garfield County, Utah.
2. TUID is a political subdivision of the State of Utah. It was formed by Garfield County to operate as a local district, pursuant to Utah Code Title 17B.
3. Prior to the formation of TUID, utility service to Ticaboo was provided by a mining company, which subsidized the rates charged to customers. When the mining company ceased operations and Garfield County formed TUID to assume responsibility for utility service, Garfield County did not provide for continued subsidization of rates.
4. TUID holds a certificate of public convenience and necessity from the Commission to operate as an electric utility district.
5. Ms. Seamons owns eight platted lots within TUID's service area.
6. Ms. Seamons does not live in Ticaboo. At certain relevant times, one or more tenants have rented her property.
7. At all relevant times, TUID has had infrastructure in place to deliver electricity to Ms. Seamons's properties.
8. TUID's tariff includes a \$75 monthly standby fee for electric service. TUID applies this standby fee to any property that has an electric supply line, regardless of whether there is a structure on the property.
9. TUID does not charge the standby fee to property owners who permanently abandon service. However, property owners are not permitted to abandon service unless they have

submitted to TUID an application for permanent abandonment and paid the standby fee for at least 24 months following the date of application. Further, at the end of the 24-month standby period, TUID requires the customer's account to be paid in full. If the account is delinquent, TUID does not permit permanent abandonment, but continues to charge the monthly standby fee.

10. In addition to the \$75 monthly standby fee for electric service, TUID charges the following monthly standby fees for its nonregulated services:

- a. water service: \$39.00;
- b. wastewater service: \$28.00; and
- c. garbage service: \$12.00.

11. TUID does not allow a residential customer to contract for electric and water services separately.<sup>2</sup> In order to get either, the customer must contract for both. The total for all standby fees is \$154.00 per month, or \$1,848 per year. Where Ms. Seamons owns eight platted properties, her annual standby fees total \$14,784.

12. Ms. Seamons has not paid in full the standby fees assessed to her by TUID over the past three years. Therefore, TUID has filed liens against her properties.

13. TUID has approximately 124 customers, approximately 60 of whom are subject to standby fees. Of those 60 standby customers, the majority own vacant lots. TUID has filed liens against approximately 13 of those lots due to unpaid standby fees.

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<sup>2</sup> Customers who require water solely for livestock are not required to contract for TUID's other services. All other customers are required to pay for all services TUID is prepared to perform, regardless of the customer's specific needs.

14. On March 20, 2015, TUID filed with the Commission its most recent tariff, Docket No. 15-2508-T01. The relevant facts regarding the tariff changes introduced in this docket are as follows:<sup>3</sup>

- a. TUID introduced into its tariff a per-day tampering fee<sup>4</sup> and a policy prohibiting tenant contracts, except as to tenants who were TUID customers as of the effective date of the tariff amendments.
- b. The tariff was approved by the TUID board of directors on January 15, 2015.
- c. In TUID's post-hearing brief, TUID manager Chip Shortreed (Mr. Shortreed) provided an unsworn declaration stating, in relevant part:

I personally mailed notices to all customers of Ticaboo Utility Improvement District notifying them of the January 15, 2015 public meeting at which the TUID board of trustees planned to adopt a variety of changes to the TUID tariff, including making landlords responsible for tenant account [sic], and clarified [sic] the tap abandonment policy. These notices were mailed at least 10 days in advance of the meeting.<sup>5</sup>

The notice referred to by Mr. Shortreed is not in the record.

- d. On April 13, 2015, the Division of Public Utilities (Division) filed comments in Docket No. 15-2508-T01, recommending that the tariff be rejected because the Division considered that TUID had not complied with Section 17B-2a-406(6)(a). In part, the Division noted that the tariff had an effective date of March 14, 2014, approximately 10 months prior to the January 15, 2015 meeting of the TUID board of directors in which the tariff was approved, and approximately one year prior to the date on which TUID filed the tariff with the Commission.<sup>6</sup> The

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<sup>3</sup> The docket history may be viewed at <http://www.psc.state.ut.us/utilities/electric/elecindx/2015/152508T01indx.html>.

<sup>4</sup> The prior tariff included only a per-incident tampering fee of \$1,000. TUID's board initially approved an additional \$1,000 per-day tampering fee. However, after the Division reviewed the tariff, TUID agreed to reduce the per-day fee to \$100.

<sup>5</sup> TUID post-hearing brief, Ex. F.

<sup>6</sup> There was some evidence that the TUID board had approved portions of the revised tariff at earlier dates (March 21, 2014 and April 17, 2014), but the Division still considered that TUID could not make the tariff effective retroactive to board approval, prior to submitting it to the Commission, and prior to the Commission's making it available to the public for at least 30 days.

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Division did not challenge TUID regarding its notice of a public meeting.

- e. To resolve the Division's concern, TUID and the Division entered into a stipulation, which they submitted to the Commission on August 21, 2015. In relevant part, the stipulation provided that TUID would hold a new board meeting no later than 30 days following the date on which the Commission approved the stipulation; and, within 15 days of the new board meeting, file a revised tariff with the Commission.
  - f. On September 10, 2015, the Commission issued an order approving the stipulation, including the requirement that TUID file a revised tariff within 15 days of holding the new board meeting.
  - g. TUID held the required board meeting on August 27, 2015.
  - h. TUID did not submit a revised tariff to the Commission within 15 days of August 27, 2015, but relied on a redline version that the Division filed along with the settlement.
15. Ms. Seamons did not petition to intervene in Docket No. 15-2508-T01. However, she argues here that she did not receive notice of the January 15, 2015 meeting and that TUID's policy against tenant contracts is inappropriate.
16. TUID's electric service standby fee and associated policies were introduced in Docket No. 13-2508-T02. The relevant facts regarding the tariff changes introduced in this docket are as follows:
- a. TUID filed the tariff with the Commission on October 16, 2013.<sup>7</sup>
  - b. On November 19, 2013, the Division filed comments in the docket, recommending that the tariff be approved. The Division noted that the TUID board had approved the tariff, but did not discuss whether a public meeting had been held or how such meeting was noticed.

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<sup>7</sup> The docket history may be viewed at <http://www.psc.state.ut.us/utilities/electric/elecindx/2013/132508T02indx.html>.

- c. TUID documents titled "Public Notice" or "Notice of Public Hearing"<sup>8</sup> identified August 29, 2013 as the date of a public hearing. These documents did not communicate that standby fees would be discussed, and potentially implemented, by the board. The record is insufficient to find whether these documents are the same documents Mr. Shortreed testified of mailing to TUID customers.
- d. On August 15, 2013, notice of the August 29, 2013 public meeting was published in *The Wayne and Garfield County Insider*, a weekly newspaper, and at Utahlegals.com. The newspaper notice did not communicate that standby fees would be discussed, and potentially implemented, by the board, but twice referred to "the proposed rate increase for water, wastewater, and solid waste services, and rule changes for the District".<sup>9</sup>
- e. TUID also published notice of the August 29, 2013 meeting on the Utah Public Notice Website. This notice did not include the meeting agenda, nor did it communicate that standby fees would be discussed, and potentially implemented, by the board.<sup>10</sup>
- f. At hearing, Mr. Shortreed testified as follows:

Customers were notified [of the August 29, 2013] meeting by a U.S. mail, posting on the public notice website, publication of notice in the local newspaper on April 18th and 25th, and posting notice of the hearing on TUID's community bulletin board located by the community mailboxes on Ticaboo Drive. I personally mailed the notices and posted the notice on the TUID community bulletin board.<sup>11</sup>

- g. In TUID's post-hearing brief, Mr. Shortreed provided an unsworn declaration stating, in relevant part:

I personally mailed notices to all customers of Ticaboo Utility Improvement District notifying them of the August 29, 2013 public meeting at which the TUID board of trustees planned to adopt a system of standby fees and

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<sup>8</sup> TUID Ex. 20, 22.

<sup>9</sup> TUID Ex. 22.

<sup>10</sup> TUID Ex. 22.

<sup>11</sup> Hearing transcript, p. 107, lns. 11 – 18.

make other changes to the District's tariff. These notices were mailed at least 10 days in advance of the meeting.<sup>12</sup>

- h. In its post-hearing brief, TUID included 13 unsworn declarations from individuals stating that they received mailed notice of the August 29, 2013 public meeting at least 10 days in advance of that meeting.<sup>13</sup> TUID also provided an unsworn declaration from Andria Jones stating that, on or before August 15, 2013, she assisted Mr. Shortreed in mailing notices of the August 29, 2013 meeting.<sup>14</sup>
17. Ms. Seamons did not petition to intervene in Docket No. 13-2508-T02. However, she alleges here that she never received notice of the August 29, 2013 public hearing. She alleges that she first became aware of the standby fees when she was billed, in March of 2014, for approximately six months of past-due standby fees.
18. Other provisions of TUID's tariff that are relevant to Ms. Seamons's complaint are as follows:
- a. TUID is required to provide each customer with a customer information pamphlet on an annual basis.
  - b. TUID is required to display the customer information pamphlet prominently in its business office.

These requirements for the provision and display of a customer information pamphlet are also set forth in the Commission's administrative rules at R746-200-1(E). Ms. Seamons testified at hearing that she has not received TUID's customer information pamphlet annually. She also testified that, when she has visited TUID's business office, the pamphlet has not been on display. Mr. Shortreed testified at hearing that he has complied in full with both tariff provisions.

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<sup>12</sup> TUID post-hearing brief, Ex. F.

<sup>13</sup> TUID post-hearing brief, Ex. A and Ex. B.

<sup>14</sup> TUID post-hearing brief, Ex. C.



**III. Conclusions of Law.**

TUID's operations in providing culinary water, sanitary sewer, and garbage collection services are exempt from Commission jurisdiction.

Pursuant to Utah Code § 17B-2a-406(6)(a), TUID's rates for electric service are exempt from Commission review if TUID complies with the following specific requirements:

1. TUID must hold a meeting with the TUID board of directors to approve new rates or other changes that result in new rates;
2. prior to implementing new rates, TUID must hold a public meeting for all customers, to whom mailed notice of the meeting is sent at least 10 days prior to the meeting; and
3. TUID must file its new rates, or other changes, with the Commission.

For the reasons discussed in more detail below, we conclude that TUID's Post-Hearing Brief and accompanying exhibits are relevant to our examination of whether TUID held the public meetings and mailed notice of the meetings to all TUID customers at least 10 days prior to the meetings, as required by Utah Code § 17B-2a-406(6)(a)(iii). Evidence regarding whether Ms. Seamons received the required notice also would be relevant to the determination of whether TUID met that requirement, but is not the only relevant evidence. We deny Ms. Seamons's objection to TUID's Post-Hearing Brief and we consider that brief and its accompanying exhibits as we evaluate whether substantial evidence exists to conclude that TUID complied with its statutory requirements.

In the hearing notice, the Commission stated that it would take evidence as to the circumstances under which TUID removed taps from Ms. Seamons's property. At hearing, it was uncontested that the taps at issue were for water, which the Commission does not regulate, at least with respect to TUID. Therefore, we do not have jurisdiction to adjudicate the removal of water taps from Ms. Seamons's property.

We note at the outset of our discussion of the remaining issues that there is no good outcome in this case, either for TUID or for Ms. Seamons. TUID's tariff and standby fees potentially impact the value of property owned by Ms. Seamons and other standby customers. Alternatively, activity of standby customers affects the rates paid by other TUID ratepayers. The fact that our jurisdiction is limited to TUID's electricity rates further reduces our ability to consider general issues of equity. Therefore, our evaluation focuses on whether TUID complied with Utah Code § 17B-2a-406(6)(a).

We analyze the contested issues as follows.

**1. Standing.**

In its post-hearing brief, TUID argues that Ms. Seamons does not have standing to request review of its tariff because she did not intervene in Docket No. 15-2508-T01. TUID bases this argument on the Notice of Opportunity for Agency Review or Rehearing included in the Commission order approving TUID's stipulation with the Division. The notice stated that "an aggrieved party may request agency review or rehearing[.]" TUID argues that Ms. Seamons cannot qualify as "an aggrieved party" unless she intervened.

Utah Code § 54-7-20(1) states:

When complaint has been made to the commission concerning any rate, fare, toll, rental or charge for any product or commodity furnished or service performed by any public utility, and the commission has found, after investigation, that the public utility ... has charged an unjust, unreasonable or discriminatory amount against the complainant, the commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection.

We do not interpret this statutory language to leave an approved tariff open to review on each and every complaint. A complainant must set forth a legal basis for alleging that a rate is unjust, unreasonable, or discriminatory. Therefore, as an example, a broad allegation that rates are too high, or inequitably allocated between rate classes, would be insufficient. However, we conclude that under the facts of this complaint, Ms. Seamons's allegation that TUID failed to comply with its statutory notice requirements is a valid legal basis for alleging that a rate is unjust, particularly where there is no finding in the relevant tariff docket regarding the sufficiency of the challenged notice.

Given the foregoing, we conclude that Ms. Seamons is not barred from bringing her complaint due to her failure to intervene in one or more prior dockets.

## **2. Burden of proof.**

At hearing, the ALJ indicated that TUID bears the burden to prove that it complied with all public meeting notice requirements and with the Commission's September 10, 2015 order in Docket No. 15-2508-T01. In its post-hearing brief, TUID argued that it is Ms. Seamons, as the complainant, who bears the burden to demonstrate TUID's non-compliance. In support of this argument, TUID cites to *Taylor v. PSC*, 2005 Utah App. LEXIS 146, 2, which states, "In the

typical challenge to agency action, the party challenging the action carries the burden of demonstrating its impropriety."

TUID is not an agency. Therefore, there is no agency action at issue in this case, and the quoted language is immaterial. Further, Ms. Seamons does not challenge an action taken by TUID; she alleges that TUID failed to take actions that are required by statute. However, we do not need to resolve this issue because, as we find, conclude, and explain below, we have evaluated the evidence submitted by all parties and decline to conclude that TUID has failed to comply with its legal requirements.

**3. Validity of tariff filed in Docket No. 15-2508-T01.**

The record demonstrates two legal issues that could impact the effectiveness of the tariff filed by TUID in Docket No. 15-2508-T01. First, if TUID failed to adequately notice a public meeting to make customers aware of the new per-day tampering fee, those circumstances would invalidate the tariff. Second, if TUID failed to comply with the Commission's September 10, 2015 order, then we must evaluate whether the tariff properly became effective.

We turn first to the notice issue. Mr. Shortreed's unsworn post-hearing declaration that TUID mailed a notice to its customers, along with his sworn hearing testimony regarding TUID's practice of mailing notices and of his compliance with that practice, provides evidence that a board meeting had been scheduled with mailed notice to TUID customers. However, the record does not support a finding regarding the specific content of the notice.

Utah Code § 17B-2a-406(6)(a)(iii) states:

Section 54-7-12 does not apply to rate changes of an electric improvement district if[,] prior to the implementation of any rate

increases, the district first holds a public meeting for all its customers to whom mailed notice of the meeting is sent at least 10 days prior to the meeting[.]

The statute does not set forth minimum requirements regarding the content of the notice. Where other statutory notice requirements do set forth specific content requirements,<sup>15</sup> we must conclude the Legislature's omission to be intentional. *See Miller v. State*, 2009 UT App 341, ¶ 13: "It would have been easy for the Legislature to have included such language, and thus we presume the Legislature intentionally omitted those requirements[.]" Where we conclude that the Legislature intentionally declined to mandate the specific content of the notice, we evaluate Mr. Shortreed's testimony and unsworn declaration in context of that non-specific legal notice requirement. Considering the evidence and the legal standard, we are unable to conclude, based solely on Ms. Seamons's testimony that she did not receive the notice, that TUID failed to meet its notice requirement, and we therefore decline to invalidate the tariff or to subject it to Commission ratemaking.

As to TUID's compliance with our September 10, 2015 order, TUID admits that it did not file its revised tariff as it was ordered to do. However, there is no harm done. The red-line version was of record, available to the public, and adequate to inform the public of TUID's rates and policies. Therefore, we decline to invalidate the tariff changes implemented through Docket No. 15-2508-T01, and we therefore decline to invalidate TUID's policy prohibiting Ms. Seamons's tenants from contracting for electric service.

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<sup>15</sup> *See*, for example, the Utah Open and Public Meetings Act, Utah Code Title 52, Chapter 4, which states that public notice of a meeting "shall provide reasonable specificity to notify the public as to the topics to be considered at the meeting [with each topic] listed under an agenda item on the meeting agenda." Subsection 52-4-202(6)(a). We do not have jurisdiction, though, to adjudicate whether TUID complied with this statute.

**4. Validity of tariff 13-2508-T02.**

In context of the non-specific legal notice requirement of Utah Code § 17B-2a-406(6)(a)(iii) we discussed previously, we evaluate Mr. Shortreed's sworn hearing testimony that he mailed notices of the August 29, 2013 meeting to all TUID customers by August 15, 2013, his unsworn post-hearing declaration that TUID mailed a notice to its customers setting forth the time and place of the board meeting, and the post-hearing statements of a significant percentage of TUID's customers. The customer statements support Mr. Shortreed's testimony regarding the mailing of the notice, and contain information suggesting, but not confirming, the notices may have included information about the proposed standby fees. Considering that evidence in totality and the non-specific legal notice requirement, we are unable to conclude, based solely on Ms. Seamons's testimony that she did not receive the notice, that TUID failed to satisfy the notice requirement of Utah Code § 17B-2a-406(6)(a)(iii).<sup>16</sup> Therefore, we decline to invalidate the tariff, including the standby fees for electric service, or to subject that tariff to Commission ratemaking.

**5. Provision and display of customer information pamphlets.**

On this he-said/she-said issue, we decline to make a finding with respect to choosing sides on the basis of witness credibility. We make that decision in context of the relief we might afford Ms. Seamons should we find in her favor.

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<sup>16</sup> We encourage TUID to adopt the common practice of retaining copies of customer notices with some form of attestation by the person who places them in the mail to customers making clear when and to whom they are mailed. Our findings and conclusions here are limited to the facts presented in this docket and cannot be interpreted as a blanket precedent that the evidence presented by TUID in this docket would be sufficient to satisfy the notice requirements under different circumstances or evidence.

Utah Code § 54-7-25(1) states:

Any public utility that violates or fails to comply with this title or any rule or order issued under this title, in a case in which a penalty is not otherwise provided for that public utility, is subject to a penalty of not less than \$500 nor more than \$2,000 for each offense.

At most, we could fine TUID \$4,000, which would not constitute relief to Ms. Seamons in context of the general relief she is seeking in this complaint. Typically, public utility fines are paid from shareholder, not ratepayer, funds. That option does not exist in the structure under which TUID operates. Where TUID's customers are already burdened by unusually high rates for service, we decline to add to that burden. Considering those public policies and the contradictory evidence presented at hearing, we decline to find by substantial evidence that TUID failed to meet its obligations with respect to customer information pamphlets. Instead, we remind and admonish TUID to comply strictly with its tariff and our administrative rules going forward.

**ORDER**

Given the foregoing, we decline to invalidate TUID's current tariff, including the new rates and policies that TUID introduced into its tariff in Docket No. 13-2508-T02, and we decline to subject that tariff to Commission ratemaking. We therefore dismiss Ms. Seamons's complaint.

DATED at Salt Lake City, Utah, September 7, 2016.

/s/ Jennie T. Jonsson  
Administrative Law Judge

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Approved and confirmed September 7, 2016 as the Order of the Public Service  
Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg

Commission Secretary

DW#288965

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.



CERTIFICATE OF SERVICE

I CERTIFY that on September 7, 2016, a true and correct copy of the foregoing was served upon the following as indicated below:

By U.S. Mail:

Marian Seamons  
1707 S 50 E  
Orem, UT 84058

Jeffs and Jeffs  
90 N 100 E  
Provo, UT 84601

By E-Mail:

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Chip Shortreed ([chipshortreed@ticabooid.com](mailto:chipshortreed@ticabooid.com))  
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Assistant Utah Attorneys General

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By Hand-Delivery:

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Administrative Assistant