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BEFORE THE ELECTRICAL FACILITIES REVIEW BOARD

PACIFICORP, an Oregon corporation,

Petitioner,

vs.

THE CITY OF WEST JORDAN,

Respondent.

**MEMORANDUM IN OPPOSITION
TO PETITION FOR STAY PENDING
JUDICIAL REVIEW**

Petitioner, PacifiCorp, hereby submits this Memorandum in Opposition to the Petition for Stay Pending Judicial Review (“Petition”) filed by Respondent, the City of West Jordan (“West Jordan” or the “City”), on December 28, 2005.

INTRODUCTION

In its Order Designating Geographic Area issued on November 28, 2005 (the “Order”), this Board concluded that a “substation shall be located within the [target area] in order for PacifiCorp to provide safe, reliable, and adequate service” to its customers. (Order, at 6.) In its Petition for a Stay, however, West Jordan would have this Board ignore the very reason why the

Board issued the order—the safe, reliable, and adequate service of power to PacifiCorp’s customers.

Specifically, the City requests that the Board stay its pending the outcome of a petition for review of the Order to the Utah Court of Appeals. The City cites the statutory requirement to issue the necessary permits within 60 days of the Board’s decision as the basis for its request. Utah Code Ann. § 54-14-306(2). Without analysis, the City alleges that due to the time required for judicial review, it would suffer “irremediable harm” and be deprived of “meaningful judicial review” if it is required to issue the necessary permits for construction of the substation.

In fact, the City would suffer no real harm. Indeed, it is PacifiCorp and its customers that would be suffer harm if a stay were granted. As PacifiCorp established before the Board, a permanent substation must be constructed and operational before the beginning of the 2006 Summer peak load period. Further delay in the permitting process would jeopardize PacifiCorp’s ability to provide safe, reliable and adequate service to the residents within the Critical Load Area. West Jordan’s Petition is simply a further attempt to delay construction of the substation and to force PacifiCorp to settle for an alternative site in the face of the pending power outages. Accordingly, the Petition should be denied.

ARGUMENT

The Board Should Not Stay Its Order Because a Stay Would Significantly Injure PacifiCorp and Its Customers, and the City Does Not Risk Any Meaningful Injury.

Contrary to West Jordan’s allegation, it is PacifiCorp and its customers—not the City—that risk suffering “irremediable harm.” On one hand, the only injury the City alleges it would suffer if there were no stay is that it would be denied meaningful judicial review. And even this allegation is not true. Without a stay, the City may still pursue its appeal of this matter and

PacifiCorp would still be subject to whatever decision the Court of Appeals rendered, even if it were to overturn the Board's decision. The City is simply facing no risk of injury at all.

On the other hand, the potential injury to PacifiCorp and its customers is real and substantial. The urgency of having a new substation operational by Summer 2006 has been emphasized throughout this process. It is undisputed that in order to meet the Summer 2006 projected demand in West Jordan and to avoid service interruptions, a permanent substation must be built and operational prior to that time.¹ For this to occur, construction must commence immediately.

If the Board were to stay its Order, there would be no hope of constructing the facility before the Summer 2006. In such a case, PacifiCorp's ability to provide safe, reliable and adequate service to the residents and businesses located within the Critical Load Area (which encompasses an area outside of West Jordan) this upcoming summer and beyond would be compromised. Without the permanent substation, residents and businesses within that Area (and perhaps other areas) would will likely experience periodic outages during peak loading periods. These peak loading periods typically occur during the hottest days of the summer when electricity demand spikes. It is during these crucial periods when power will not be available to these residents and businesses.

In addition, if the Order were stayed, PacifiCorp would be required to operate its system above its design parameters, which would increase the likelihood of damage to the system and diminish the availability of backup capacity if a portion of the system is goes down.

Accordingly, to minimize power outages and damage to the system, PacifiCorp would be forced to incur significant costs (in terms of equipment and personnel) to implement whatever possible

¹ The City does not question the need for a substation, and in fact, West Jordan's own expert, Mr. Joseph Beste, stated "[PacifiCorp] needs at least one new substation in the West Jordan area." (Beste Test., pg. 4, line 72).

extraordinary measures may be available to increase capacity and protect the system—such as using diesel generators.²

In sum, the City is facing no real harm by having to comply with the Board’s Order. And whatever harm the City alleges is far outweighed by the harm that would be imposed on PacifiCorp and its customers in the Critical Area if a stay were granted. Accordingly, West Jordan’s Petition should be denied.

CONCLUSION

For the reasons stated above, the Board should deny West Jordan’s Petition for Stay Pending Judicial Review.

Dated this ____ day of January, 2006.

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² If West Jordan’s Petition for Stay is granted, the City should—at a minimum—be required to file a bond to cover all costs associated with these extraordinary measures resulting from any delay in construction of the substation. PacifiCorp is prepared to submit additional information on the costs of such endeavors if requested by the Board.

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of January, 2006, I caused a true and correct copy of the foregoing **MEMORANDUM IN OPPOSITION TO PETITION FOR STAY PENDING JUDICIAL REVIEW** to be sent by U.S. Mail, first class, postage prepaid, to the following:

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