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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF UTAH

IN THE MATTER OF THE APPLICATION OF
PACIFICORP FOR AN INCREASE IN ITS
RATES AND CHARGES

DOCKET No. 01-035-01

SUPPLEMENTAL POST-HEARING BRIEF
OF THE UTAH ENERGY OFFICE

The Utah Energy Office ("UEO") submits this supplemental post-hearing brief in the revenue requirements phase of this proceeding. UEO submits that good cause exists for the Commission to accept this brief to enable UEO to correct two significant mischaracterizations of UEO's position in this case made by the Division of Public Utilities ("Division") in its post-hearing brief. The scope of this supplemental brief is limited to correcting these two mischaracterizations.

First, the Division, in its post-hearing brief, mischaracterizes UEO's recommendations to the Commission. UEO's position is that the Commission order the company to expand its DSM filing to include additional cost effective demands and resources as recommended by Dr.

Nichols. During cross-examination of Mr. Burks, counsel for the Utah Association of Energy Users Intervention Group pointed out that Mr. Burks, in his prepared direct testimony, did not request that the Commission order the Company to come forth with additional DSM programs. (TR. 591-592). From this, the Division mischaracterizes the UEO's recommendations to the Commission by stating that "it seems the Commission has nothing to decide, either in the revenue requirements phase of the case, or in the spread portion of the case, on the DSM issue." Division Post-Hearing Brief at p.34.

During his August 1, 2001 oral testimony, Mr. Burks provided a succinct and clear explanation of UEO's recommendations. First, Mr. Burks reiterated the recommendations he had made in his original pre-filed direct testimony:

[M]y direct testimony made recommendations calling for PacifiCorp to act expeditiously to implement the DSM initiative that UEO's expert witness, Dr. Nichols, proposed in his testimony. In our opinion, doing so would ensure we capture the significant near-term and mid-term energy savings and economic benefits the Tellus demonstrates were possible.

We ask -- in our recommendations, we ask the company to file a six-year plan for implementing the DSM initiative recommended by Dr. Nichols testimony and to do so within 30 days of our filed testimony. We ask for the plan specifically to include budgets, program designs, participation and impact targets, timetables, and provisions for periodic evaluations of each major program.

Second, we ask the company to file a design for a DSM cost recovery tariff that would be equitable to all customer classes. And based on Dr. Nichols's estimates of what it would cost the company to implement the proposed sweep of new DSM initiatives, we calculated the DSM tariff would need to cover an initial year investment of \$35 million.

The actual amount, of course, would follow the Commission-approved budgets provided in the DSM plan by the company we asked for in our first

recommendation. It could be more or less than what Dr. Nichols indicated in his testimony.

We also ask that a DSM cost recovery mechanism be filed by the company to provide the purchased power cost savings from the reductions in electricity use from its DSM initiative be computed with cost savings credited to ratepayers. (TR.517-518)

Mr. Burks then addressed significant events that had transpired since UEO had filed its prepared direct testimony. Notably, on June 26, 2001, the Company submitted four new DSM programs for Commission approval. Mr. Burks provided the UEO's analysis of those programs and offered his recommendations to the Commission:

On June 26th, the company filed tariffs for new DSM programs. We believe the four DSM tariffs the company filed are consistent with the recommendations of the Tellus study [and] Dr. Nichols's testimony. In fact, the company said as much in its presentation on the tariffs to the Energy Efficiency Advisory Committee.

UEO is encouraged by the company's efforts on account of DSM. However, we think it only goes so far. We believe more needs to be done.

There are additional cost-effective DSM initiatives Dr. Nichols has identified in his testimony that warrant being brought to the Energy Efficiency Advisory Committee and Commission for review and approval.

UEO submits that the evidence now available to the Commission is sufficient to act on the recommendations of the UEO and its expert witness. *Therefore, we recommend the Commission order the company to expand its DSM filing to include additional cost-effective demand side resource programs as recommended in Dr. Nichols's testimony.* (TR.518-519) (emphasis added)

In his August 1, 2001 oral testimony, Dr. Nichols identified the additional DSM programs referenced in the above quotation from Mr. Burks' testimony. These additional programs had

been recommended by Dr. Nichols in his pre-filed direct testimony but had not been included in the Company's DSM filing. For residential and small commercial customers, Dr. Nichols recommended efficient cooling, appliance recycling and the direct load control of residential and small commercial air conditioners (TR.528-529). For nonresidential customers, Dr. Nichols recommended combined heat and power ("CHP") and traditional load management (TR.529-530).

UEO's recommendations to the Commission are clear. In his May 31, 2001 prepared direct testimony, Mr. Burks recommended that the Company design programs and propose tariffs implementing Dr. Nichols's recommended multi-year DSM initiative. Mr. Burks recommended that the Company come forth with these new programs *prior to* the hearing on revenue requirements or, more precisely, within thirty days of the filing date of his prepared direct testimony. It is correct that Mr. Burks did not recommend in his prepared direct testimony that the Commission order the Company to come forth with Dr. Nichols' recommended programs prior to a hearing on the merits of those recommendations, which only makes sense. Rather, Mr. Burks recommended that the Company file the programs and that the Commission act expeditiously on the Company's application. Indeed, consistent with UEO's recommendations, the Company filed additional DSM programs within thirty days, and the Commission acted expeditiously on that application and approved the Company's programs.

In his August 1, 2001 oral testimony, Mr. Burks updated UEO's position in the case to reflect UEO's assessment of the Company's June 26, 2001 DSM filing. As quoted above, he

testified that UEO had reviewed the Company's DSM filing, and "while encouraged by the company's efforts," he believed that "more needs to be done" (TR.518). Therefore, he recommended that "the Commission order the company to expand its DSM filing to include additional cost-effective demand side resource programs as recommended in Dr. Nichols's testimony" (TR.519).

Second, the Division mischaracterizes Mr. Burks' motive for making a correction to his prepared direct testimony. During his August 1, 2001 oral testimony Mr. Burks made a correction to his prefiled direct testimony "to make certain my . . . summary statement in my testimony conforms to the recommendations listed at the end of my testimony" (TR. 517). On cross-examination by Division counsel, Mr. Burks elaborated on the reason for the correction:

I think there was some confusion that the Energy Office was -- amongst the rebuttal witnesses, that the Energy Office was proposing an increase in revenue requirements in this case of \$35 million. And there was also an inconsistency with that statement in my summary statement in my direct prefiled testimony and the recommendations that I made at the end of my testimony. I wanted to make sure that statement conformed with my recommendations that I had made. It was a clarification." (TR. 549)

Later in the discussion, counsel for the Division asked Mr. Burks and Dr. Nichols whether they were familiar with certain statutes and cases pertaining to the lawfulness of establishing a tariff rider as a DSM funding mechanism:

MR. WALGREN: "[I]s your method of recovery this proposed to be through the pass-through statute? Or some other mechanism?

DR. NICHOLS: We don't know about the pass-through statutes because we're not attorneys.

MR. WALGREN: At the time you filed your testimony suggesting this tariff rider, which will allow for underrecoveries and overrecoveries, was the Utah Energy

Office or Dr. Nichols aware of the wage case in Utah which prohibits retroactive ratemaking?

DR. NICHOLS: I think we we're even more unaware of that than we are the first item you mentioned.

MR. WALGREN: Okay. Were you aware of the pass-through statute?

MR. BURKS: No.

DR. NICHOLS: Neither of us.

MR. WALGREN: Were you aware of the EBA case?

MR. BURKS: I was aware that there once was an energy balancing account that the company operated under.

MR. WALGREN: And were you aware of the case that interpreted that particular statute, which I'll represent is 54-7-12?

MR. BURKS: No.

Even though Mr. Burks and Mr. Nichols explicitly denied knowledge of the legal issues raised by Division's counsel, the Division, in its post-hearing brief, speculates that "the reason the UEO made the change in its testimony was a concern with its proposal being a single-item rate case, a prohibition which the UEO was not aware of at the time it filed its testimony." Division Post-Hearing Brief at p.31.

There is no basis on the record for the Division's speculation as to Mr. Burks' motives for making the correction to his testimony. During his August 1, 2001, oral testimony, Mr. Burks explains why he made the change to his prepared direct testimony (supra). There is no evidence on the record to the contrary. To the extent that the Division, in its post-hearing brief, seeks to challenge the credibility of Mr. Burks as a witness by second-guessing his motives, the UEO submits that such a challenge should have been raised during the hearing – and not in a post-hearing brief – so that Mr. Burks would have the opportunity to defend himself.

In short, Mr. Burks was clear and direct in his August 1, 2001 oral testimony, both as to

his motives for making the change to his pre-filed testimony and in his recommendations to the Commission. The Division, in its post-hearing brief, cites "confusion in the UEO's position." Division Post-Hearing Brief, at p.35. Yet, the principal source of any remaining confusion appears to be the Division's mischaracterization of UEO's motives and recommendations in this case, not in the UEO's position itself. UEO believes that the record in this case establishes a compelling case for additional cost-effective DSM opportunities in the Company's Utah service territory. The UEO urges the Commission to ignore efforts to muddle the issues and, instead, to focus on the merits of UEO's analysis and recommendations. UEO respectfully requests that the Commission adopt UEO's recommendation and order the Company to come forth with the additional DSM programs identified in Dr. Nichols' August 1, 2001 oral testimony.

DATED this ____ day of _____, 2001.

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of August, 2001, I caused to be mailed, first class, postage prepaid, a true and correct copy of the foregoing to the following:

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