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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of PACIFICORP for Approval of Its Proposed Electric Rate Service Schedules & Electric Service Regulations	DOCKET NO. 01-035-01
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**OPPOSITION TO PACIFICORP'S MOTION TO REVISE
SCHEDULE 95 COLLECTIONS**

The Utah Industrial Energy Consumers ("UIEC") hereby file this Opposition to PacifiCorp's Motion to Revise Schedule 95 Collections. In support of this Opposition, the UIEC state as follows:

1. On February 2, 2001, the Commission issued an Order in this docket granting PacifiCorp a \$70 million interim rate increase. The interim increase has been collected as a surcharge on rates currently in effect pursuant to Electric Service Schedule 95.

2. In its final Report and Order in the Revenue Requirement Phase of this case, the Commission granted an increase of approximately \$40.6 million, \$29.4 million less than the \$70

million interim increase that is currently being collected under Schedule 95. See Report and Order, Docket No. 01-035-01, September 10, 2001.

3. As a result of the Commission's Order, base rates should be adjusted upward to reflect the \$40.6 million increase. The parties have entered into a Stipulation in which they recommend a method for allocating the increase to the classes. When the increase is finally incorporated into base rates, the surcharge implemented in Schedule 95 must be eliminated in order to avoid over collection.

4. PacifiCorp's has moved to leave the Schedule 95 surcharge in place to offset Hunter I replacement power costs subject to a final determination by the Commission in the Hunter I Docket (Docket No. 01-035-23). In effect, the Company is requesting the Commission to allow it to collect \$29.4 million as an interim increase applicable to the Hunter I replacement power costs. At the same time, PacifiCorp has not filed any request for interim relief in the Hunter I docket.

5. PacifiCorp's motion should be denied because PacifiCorp has failed to establish an adequate *prima facie* showing that the interim rate increase is justified. See Utah Code Ann. § 54-7-12(3)(a). The Company has presented no evidence in the present docket to support its claim for an increase due to replacement power costs, to explain the reasons for or the amount of the requested increase, or to suggest an interim increase in any amount is necessary. Moreover, the Commission should not hear such evidence in the present docket. The Company's motion should have been filed in Docket No. 01-035-23 where the record now exists and will be further developed.

6. The Company's request is also unlawful. The Commission's statutes provide in part:

If the commission in its final order on a utility's revenue requirement finds that the interim increase order under Subsection (3)(a) exceeds the increase finally ordered, *it shall order the utility to refund the excess to customers.*

Utah Code Ann. § 54-7-12(3)(b)(ii). The mandate is clear: the Commission *shall* order a refund. The statute evidently does not give the Commission discretion to carry the excess amount collected under Schedule 95 forward to offset a requested increase in some other docket. The Commission must deny the motion and order the refund.

7. Even assuming for the sake of argument that the Commission could ignore the statute, and further assuming that the motion should be considered in the present docket rather than the Hunter I docket, there has been no testimony or submission of evidence to suggest that an interim increase is justified. While the Company has requested an increase of \$103 million, it is far from certain that any increase is warranted. The \$103 million request must be reevaluated in light of the Commission's Order in the present docket. In addition, it is not readily apparent that rate payers should bear any of the costs of replacement power for Hunter I. PacifiCorp's application for a rate increase in Wyoming has been resisted in part on the grounds that PacifiCorp was negligent in maintaining the Hunter I plant and that rate payers should not bear the cost of the Company's negligence (Docket No. 20000-EP-01-167). On Friday, September 21, 2001, the Wyoming PSC denied PacifiCorp's request for a \$21.4 million interim increase in that docket.

8. Finally, the issues presented by PacifiCorp's Motion to Revise Schedule 95 Collections likely will require evidence and testimony presented by expert witnesses in order for

the Commission to ascertain whether PacifiCorp should be granted an interim increase with respect to Hunter I replacement power costs. Not only is the present docket the wrong forum to present that evidence, but the parties do not have adequate time to prepare such testimony by October 3, 2001, the date of the scheduled hearing on PacifiCorp's motion.

For the foregoing reasons, the UIEC respectfully requests that the Commission deny PacifiCorp's Motion to Revise Schedule 95 Collections and instead order a refund of any excess revenue collected under Schedule 95 as required by statute.

DATED this _____ day of September, 2001.

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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of September, 2001, I caused to be mailed, first class, postage prepaid, a true and correct copy of the foregoing **OPPOSITION TO PACIFICORP'S MOTION TO REVISE SCHEDULE 95 COLLECTIONS**, to:

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