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BEFORE THE PUBLIC SERVICE COMMISSION
OF UTAH

In the Matter of the Application)	Docket No. 01-35-01
of PacifiCorp for an Increase in)	COMMITTEE OF CONSUMER SERVICES
its Rates and Charges)	OPPOSITION TO PACIFICORP'S MOTION
)	TO REVISE SCHEDULE 95 COLLECTIONS
)	
)	AND
)	
)	MOTION FOR REFUND

The Committee of Consumer Services ("Committee") through its counsel, and pursuant to the provisions of R746-100-3(H), hereby submits this Opposition to PacifiCorp's Motion to Revise Schedule 95 Collections ("Company's Motion"), and requests that the Public Service Commission (the "Commission") deny the Company's Motion and issue instead an Order that PacifiCorp promptly refund to ratepayers any amount collected by PacifiCorp under the February 2, 2001, \$70 million interim rate increase in this Docket which is in excess of the \$40,573,755 increase in revenue requirement established by the Commission in its September 10, 2001 Order in this proceeding. In support of this Motion the Committee further states as follows:

1. On February 2, 2001, the Commission granted PacifiCorp (“PacifiCorp” or “Company”) a \$70 million interim rate increase in this Docket. On September 10, 2001, the Commission issued its Order in the first, or revenue requirement, phase establishing an increase in the amount of \$40,573,755, and stating “[a]ny amount collected over this increase since February would be subject to refund”. (Page 41 of Order). However, the Commission advised it would “maintain rates at current levels until we issue a final order in the second phase of this proceeding following the hearings in October.” (Page 41 of Order).
2. On or about September 24, 2001, PacifiCorp filed with the Commission a Motion for Approval of a Stipulation signed and executed September 21, 2001, by PacifiCorp, the Division of Public Utilities, the Committee of Consumer Services, and all other parties to the second, or rate spread, phase of this proceeding (the “Stipulation”). The Stipulation, if approved and accepted by the Commission, disposes of rate spread and all other remaining second phase issues in this Docket. A hearing on the Stipulation is scheduled for Wednesday, October 3, 2001 at 9:00 a.m.
3. On or about September 24, 2001, PacifiCorp also filed with the Commission its Motion to Revise Schedule 95 Collections in this Docket, (“Company’s Motion” or “Motion”) mentioned first above. Company’s Motion has been noticed up for hearing immediately following the hearing on the Stipulation on Wednesday, October 3, 2001. The Motion requests that the Commission allow PacifiCorp to retain all monies collected, or yet to be collected, under the \$70 million interim order in this Docket in excess of the

\$40,573,755 revenue requirement increase established by the Commission in its

September 10 Order:

“ . . . to offset Hunter 1 replacement power costs deferred pursuant to the order in Docket No 00-035-14, pending, and subject to, final determination by the Commission in Docket No 00-035-23 on the disposition of such amounts. (Page 3 of Company’s Motion).

As justification for this request, PacifiCorp states it “mitigates rate instability and provides for interim recovery by the Company”. (Page 3 of Company’s Motion).

4. The Committee strongly opposes the action and relief requested in Company’s

Motion on the following grounds:

(1) any refund or other adjustments resulting from this General Rate case ought to be resolved and settled separate and apart from—and not as a part of-- any other substantial matters pending before the Commission; and

(2) PacifiCorp is here asking the Commission for “interim relief” in the Hunter 1 docket absent a requisite hearing in that docket on the Company’s entitlement, and absent a requisite prima facie showing by the Company and necessary findings by the Commission that such interim rate increase is justified.

5. With regard to the Committee’s first ground for opposition, the refund would largely offset one month’s electricity bill payment for the average residential customer, and can easily be so explained by the Company to customers as a one-time adjustment to the customer’s bill. If explained and implemented in that way, the Committee believes customers would welcome such one-time relief in their monthly electricity bill. To not grant a refund to customers, and instead roll their refund entitlement over into a separate future proceeding, the outcome of which is presently impossible to determine, means that any positive effect of such refund will likely be entirely lost in the minds of customers.

6. With regard to the Committee’s second ground for opposition, the action and relief sought by the Company constitutes, in the words of Company’s Motion, “interim recovery . . . subject to the Commission’s final order in Docket No. 01-035-23” (Page 3 of Company’s Motion). Subsection 54-7-12(3)(a) of the Utah Code Ann. sets forth certain conditions and procedures precedent which must be met before a grant of interim recovery by the Commission can be made. That Subsection states as follows:

“On its own initiative or in response to an application by a public utility or other party, the commission, after a hearing, may allow any proposed rate increase or decrease, or a reasonable part of the rate increase or decrease, to take effect, subject to the commission’s right to order a refund or surcharge, upon the filing of the utility’s schedules or at any time during the pendency of the commission’s hearing proceedings. The evidence presented in the hearing held pursuant to this subsection need not encompass all issues that may be considered in a rate case hearing held pursuant to Subsection (2)(b), but shall establish an adequate prima facie showing that the interim rate increase or decrease is justified.” [emphasis added].

7. Subsection 54-7-12(3)(a) makes it very clear that before any interim rate increase may be granted there must first be a hearing on the “application” by the Company where the Company has the burden of establishing “an adequate prima facie showing that the interim rate increase or decrease is justified”.

8. The Utah Supreme Court defines a further precondition to the Company’s Motion for interim recovery. Not only must there be a hearing where adequate evidence justifying or opposing the rate adjustment is presented, but, further, the Commission must then discharge its statutory responsibility by making necessary findings of fact based on such evidence that the rate adjustment is or is not warranted:

“We have on many occasions emphasized that the Commission must make appropriate findings of fact to justify rate orders. In *Utah Department of Business*

Regulation v. Public Service Commission, 614 P. 2d 1242, 1245 (Utah 1980), we stated that the first prerequisite of a rate order is that it be preceded by a hearing and findings. *MCI Telecommunications Corp. v. Public Service Commission of Utah*, 840 P.2d 765 (Utah 1992), at 773.

9. The Company's Motion, to the extent it is asking for interim recovery for the Hunter 1 outage, isn't even filed in the appropriate docket—the docket where the Company has filed application for a rate increase in the Hunter 1 outage matter and where the Commission is to hear and consider argument and evidence in that matter. The Committee submits that, before any interim recovery can be granted for the Hunter 1 outage, the Company must first: (a) petition for same in Docket No. 01-035-23 where its application for a rate increase in that matter is filed, and then, (b) in a hearing on the Company's petition in that docket, (c) must establish “an adequate prima facie showing” that the requested interim recovery is justified, so that (d) the Commission can make appropriate and necessary findings that such interim recovery is or is not warranted.

10.. At any such appropriate hearing for interim recovery, the Division, the Committee, and other parties would have the opportunity to oppose or support such request by the Company and to present argument and evidence to that end. The parties are still in a very preliminary stage in the process of evidence gathering and review of the Company's Application in Docket 01-035-23, which would indicate that the Company's Motion for interim recovery in this Docket is not only out of place and requests relief that contravenes Utah statutory law and judicial precedent, but is premature as well. The Company could have coupled its Application in Docket 01-035-23 with a petition for an interim rate increase, giving all parties adequate notice and time to prepare a response,

but-- for whatever reason-- it did not do so. The door is still open for the Company to so petition, however that door isn't in this Rate case.

11. For the reasons given above in the Committee's opposition to the Company's Motion, in the event the Commission approves and accepts the Stipulation at the October 3, 2001 hearing, or at such time that it otherwise by order resolves the remaining phase two issues in this proceeding, the Committee respectfully requests that the Commission order a prompt refund to ratepayers of all monies collected by the Company under the Interim Order in this Docket which are in excess of the \$40,573,755 revenue requirement increase established by the Commission in its September 10, 2001 order.

DATED this twenty-eighth day of September, 2001.

Reed T. Warnick
Attorney for the Committee of Consumer
Services

CERTIFICATE OF SERVICE

I hereby certify that on the ___ day of September, 2001, I caused to be served, via U.S. mail, and fax where indicated, a true and correct copy of the foregoing **Opposition and Motion** to the following:

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