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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Division's Annual
Review and Evaluation of the Electric
Lifeline, HELP

In the Matter of HELP, Electric Lifeline
Program Evaluation,

**MOTION BY THE DIVISION OF
PUBLIC UTILITIES (DPU) TO
EXCLUDE AND/OR DISMISS ISSUES
RAISED BY CERTAIN PARTIES IN
THEIR PROPOSED PRELIMINARY
ISSUES**

Docket No. 03-035-01

Docket No. 04-035-21

The following is a Motion by the Division of Public Utilities (DPU) to exclude and/or dismiss certain issues raised by Light and Truth in its proposed preliminary issues list filed on May 13, 2005.

INTRODUCTION

As a result of uncertainty as to which issues are relevant to the PSC in this docket, the parties agreed to file issues list for the Commission's consideration. On May 13, 2005 a number of parties filed their preliminary issues. The Scheduling Order directed parties to file by July 1, 2005 Motions to either exclude or dismiss issues raised in the preliminary issues lists that are not appropriate for this proceeding. The DPU's motion

seeks to assist in limiting this docket to and focusing it upon what the DPU considers relevant issues.

The DPU has chosen to limit the issues in the docket because of the extraordinary amount of resources that have been devoted to the HELP program. In the DPU's issues list it was pointed out that since January of this year, 531 man hours have been spent on evaluating, monitoring and reporting on HELP, while at the same time approximately 1200 hours were spend on the PacifiCorp rate case.¹ Significant resources of the DPU have been devoted to HELP since its inception.

An attributable cause to the extraordinary amount of resources spends on HELP have been the filings of Light and Truth and Paul Mecham over the years and in particular their repeated attempts to re-raise issues that have already been decided by the PSC.

In Light and Truth's issues list and in its June 24, 2005 Motions Light and Truth asking the PSC to re-hear the third party billing issue and the general legal issue is on the PSC jurisdiction to adopt a lifeline rate.

The DPU request to limit this docket does not mean that the HELP program will not be evaluated. In the Stipulation in Docket 99-035-10 (that became the basis of the Commission's Order approving the HELP tariff), a major review of the HELP program was to take place after the program had been in effect for three years. That review was "to make sure the program is effective and to suggest changes or an end to the

¹DPU HELP program issues lists filed May 12, 2005.

program.”² This docket is intended to accomplish that detailed review. Decisions on funding, account balances, criteria for evaluations, future reports and even if the program continues to be in the public interest are all relevant issues to be heard. Therefore, limiting issues in this docket will not deprive any party of its opportunity to provide relevant information about the HELP program to the Commission.

**THE COMMISSION HAS ALREADY DECIDED
THE THIRD PARTY BILLING ISSUES AND THAT IT HAS
JURISDICTION TO PUT RATE SCHEDULE 3 IN EFFECT**

**A. NOTHING REQUIRES THE COMMISSION TO RE HEAR THE COMPLAINT
CONCERNING THIRD PARTY BILLING 54-4-37.**

In Docket 03-035-09 Mr. Mecham filed a complaint alleging that the lifeline charges reflected in PacifiCorp’s Tariff 91 violate Utah Code 54-4-37. The Commission, after converting his complaint into a formal adjudicative proceeding, ruled that Mr. Mecham’s Complaint had no merit and dismissed it for failure to state a cause of action. The lifeline charges authorized by Tariff 91 were authorized by the Commission in a general rate proceeding and are the charges of the utility. Therefore, by definition 54-4-37 does not have any applicability since it is not a charge of a third party. After his Complaint was dismissed Mr. Mecham asked for rehearing and after its denial took no further action.

In Questar’s Docket 03-057-02 Mr. Mecham filed a similar complaint, claiming that Questar’s weatherization charge violated 54-4-37. As with the lifeline charge, the weatherization charge was authorized by the PSC in a general rate case and by

² 99-035-10 Joint Stipulation on PacifiCorp’s Lifeline rate approved in 00-035-T07 Order issued August

definition is a charge of the utility and cannot be a third-party billing violation. As with his lifeline complaint the Commission converted his complaint to a formal adjudicative proceeding and dismissed it on the merits. Again Mr. Mecham asked for rehearing, and after its denial, he took no further action.

These charges do not violate 54-4-37 regardless of whether the PSC decides to keep these programs or not. These charges are valid tariffs of the utility and therefore by definition are not a bill of a third party. It would serve no purpose to re-hear the issues in this docket under the guise of Light and Truth or under the premise of allowing the PSC to have an opportunity to hear all issues.

B. THE COMMISSION NEED NOT RE-HEAR LEGAL ARGUMENTS ON WHETHER THE COMMISSION HAS LEGAL AUTHORITY TO ADOPT A LIFELINE RATE.

The Commission determined it had legal authority to adopt a lifeline rate as far back as Docket 85-999-13 when the PSC issued a Declaratory Order that it had legal authority to establish a "lower rate to provide 'lifeline'" services to a district [do you mean distinct?] group of ratepayers."³ After the PSC declared it had legal authority to adopt a lifeline rate it held a hearing to determine if evidence would support a lifeline rate. On December 17, 1986 after receiving evidence, the Commission established rules for a lifeline rate. Although the pooling aspect of the rules were appealed and later reversed by the Utah Supreme Court, no challenge to the authority to adopt a lifeline rate occurred. The Commission quoted the Supreme Court in Mountain States Legal

30, 2000.

³ 85-999-13 Declaratory Order issued January 3, 1986 p. 4.

Foundation v. Public Service Commission, 626 P 2d 1047 (Utah 1981) as its authority to adopt a lifeline rate. The PSC, quoting the Court, stated:

The 1977 amendments to Section 54-3-1 by permitting consideration of the economic impact of a rate on each category of customers, gave legislative approval, in the form of binding law, to considerations which may relate, directly or indirectly, to 'social problems.'

It is evident that the Court has concluded that the Commission has authority to adopt a lifeline telephone rate to meet the needs of a distinct class of low income residential customers under existing law.⁴

In the electric arena, the current lifeline rate was heard in Pacificorp's 1997 general rate case. Evidence was presented and the Commission made findings including the determination that it had legal authority to adopt a lifeline rate. Even though the PSC determined it had the legal authority to adopt a lifeline rate questions were still present and instead of implementing the proposal, the PSC sent the issue to a lifeline task force for further study. In the next general rate case Docket 99-035-10, after receiving more evidence the Commission, ordered the implementation of the lifeline rate. That implementation occurred in an Order issued in 00-035-T07 on August 30, 2000. That Order also approved a Stipulation dealing with the specifics of the rate, reporting, auditing, and the detailed three year review that is the subject of the DPU reports and the Quantec review.

The lifeline surcharge included in Tariff Rider 91 and the HELP rate itself included in Schedule 3 have been in place for a number of years. As early as the 1997

⁴ Order 85-999-13 December 17, 1986 pp. 7-8.

rate case the Commission concluded that it had legal authority to approve the proposed rate and that sufficient evidence had been presented in Order to satisfy the Mountain States Legal Foundation v. Public Service Commission Supreme Court decision. In the 1999 General rate case the PSC ordered implementation of a lifeline rate. The Commission stated:

In the prior case the Commission found that we have the authority to implement a lifeline rate; that a real need exists that is not otherwise being met by other programs; that the program as proposed in that case was successfully targeted and would not overly burden other customers; that the benefits offset negative impacts; and that the proposed program was administratively simple and inexpensive to administer.”⁵

After hearing the evidence in the 1997 and 1999 rate case the Commission concluded that sufficient information had been submitted for it to find that the proposal was in the public interest and met any legal test established by the Utah Supreme Court in the Mountain States Legal Foundation decision.

After reviewing these decisions the DPU does not see a need for the PSC to re-determine whether it has legal authority to adopt these Schedules. Instead what is before the Commission is after reviewing all of the evidence that has been developed since Schedule 3 and 91 went into effect is if these schedules are still in the public interest and if so should there be any modifications. These modifications could be in reporting, auditing, the balance of funding or even if the program should continue.⁶

⁵Order 99-035-10 May 24, 2000 p. 77.

⁶ This Docket is not a rate case. Therefore, it would not be reasonable to eliminate Schedule 3 and raise customers rates outside of a general rate case. Likewise, this proceedings should not be the bases for increase the Tariff 91 charges. Those charges should only be subject to increase in a general rate case.

CONCLUSION

The electric HELP program and its reviews have resulted in the expenditure of a great amount of resources. The DPU urges the PSC to limit this docket to issue that it believes should be heard. Many of the issues raised by Light and Truth have already been heard by the PSC and decided. Basic PSC authority to adopt a lifeline rate and issues surrounding third party billing have been addressed on a number of occasions. The Commission does not need to re address those issues here.

Respectfully submitted this _____ day of June, 2005.

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CERTIFICATE OF SERVICE