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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE DIVISION'S
ANNUAL REVIEW AND
EVALUATION OF ELECTRIC
LIFELINE PROGRAM, HELP

Docket 03-035-01

IN THE MATTER OF HELP, ELECTRIC
LIFELINE PROGRAM EVALUATION

Docket No. 04-035-21

MOTION TO PRECLUDE ISSUES AND EVIDENCE

Pursuant to Utah Code 54-7-9, Public Service Commission Rules R746-100-3, and R746-100-9, the Utah Committee of Consumer Services (Committee) moves the Utah

Public Service Commission (Commission) to limit proceedings in these dockets by precluding issues and evidence.

STATEMENT OF THE DOCKET

The Low Income Lifeline Program – Residential Service Optional for Qualifying Customers, commonly referred to as the HELP program, was first authorized by the Commission’s May 24, 2000 Report and Order in Docket No. 99-035-10, based upon the findings and conclusions therein and the findings and conclusions in the Commission’s March 4, 1999 Report and Order in Docket No. 97-035-01. HELP was implemented by the Commission’s August 30, 2000 Report and Order in Docket No. 00-035-T07, which added Schedules 3 and 91 to PacifiCorp’s P.S.C.U. Tariff No. 43. HELP has been reauthorized in each general rate case report and order issued since May 2000, including the most recent, Docket No. 04-035-42.

When the Commission authorized and implemented HELP, it capped the annual collection of funds at \$1,850,000 and required that the Division of Public Utilities (Division) annually audit the program for three years. The Commission opened Docket No. 03-035-01 and Docket No. 04-035-21 to consider the Division’s annual reports. Following its Year 3 report, the Division retained Quantec to further evaluate HELP. Quantec conducted its evaluation under Docket No. 04-035-21. Quantec’s January 27, 2005 final report and the Division’s comments and analysis of the report are now before

the Commission. Currently, annual collections exceed the recommended cap, annual collections exceed the total annual credit, and there is a substantial account balance.

Paul F. Mecham is a Division employee and participated in the development and presentation of the Division's position in Commission proceedings that first considered the HELP program. On February 11, 2005 and February 23, 2005 respectively, Mecham doing business as "Light and Truth" intervened in Docket No. 03-035-01 and Docket No. 04-035-21 and has requested agency action by a formal hearing, reevaluating and eliminating the HELP program.

The proceeding as scheduled is intended to review the HELP program in light of Quantec's report and the Division's response; and to rule upon Mecham's request for agency action. The parties have filed lists of issues believed to be at issue and appropriate for the Commission's consideration. The Committee contends that Mecham's issues and the evidence he has or is anticipated to submit must be precluded from further consideration.

ARGUMENT

I. MECHAM LACKS STANDING IN ALL BUT A NARROW AND LIMITED REQUEST FOR AGENCY ACTION.

Light and Truth is an assumed business name of Paul F. Mecham, first registered on July 20, 2001. Mecham occupies every organizational position possible as the principal, agent, and real party in interest. *See Utah Code §42-2-5.* No person or entity other than Mecham owns, controls, conducts, or transacts the business or activities of

Light and Truth. No person or entity other than Mecham either benefits from or is liable for its business or activities. By law Mecham represents only his own narrow and personal interests. Under PacifiCorp's P.S.C.U. Tariff No. 46 effective March 1, 2005 and Schedules 3 and 91, Mecham's interest is limited to the \$1.44 annual HELP surcharge he pays on his electric utility bill.¹ *See Part II.*

Only by so limiting Mecham's request for agency action can these dockets proceed under Commission rules. Commission Rule R746-100-6 B. states:

B. Representation of Parties -- Parties may be represented by an attorney licensed to practice in Utah; an attorney licensed in a foreign state, when joined of record by an attorney licensed in Utah, may also represent parties before the Commission. Upon motion, reasonable notice to each party, and opportunity to be heard, the Commission may allow an attorney licensed in a foreign state to represent a party in an individual matter based upon a showing that local representation would impose an unreasonable financial or other hardship upon the party. The Commission may, if it finds an irresolvable conflict of interest, preclude an attorney or firm of attorneys, from representing more than one party in a proceeding. *Individuals who are parties to a proceeding, or officers or employees of parties, may represent their principals' interests in the proceeding. [Emphasis added.]*

Whether represented by an attorney or not, individuals who are parties to a proceeding may only represent themselves. While an officer or an employee of a party may represent the party before the Commission, Mecham and Light and Truth are one in the same. Because Mecham only represents himself, any remedy he seeks or that can lawfully be awarded is limited to his narrow and personal interest.

¹ The Commission should determine if Mecham has actually paid the surcharge. If he has not, his request for agency action should be dismissed in its entirety.

The Committee is statutorily charged with the duties and responsibilities of assessing the impact of utility rate changes and regulatory actions on residential consumers and small commercial enterprises, and advocating positions most advantageous to a majority of its constituents “as determined by the committee”. *Utah Code §54-10-4*. Through its director, Committee policies and directives are carried out in the representation of the consumers and the consumers’ interests. *Utah Code §54-10-5*.

The Committee is the statutory representative of Utah residential and small commercial utility consumers before the Commission. Mecham cannot claim to represent ratepayers generally or any particular ratepayer class, as a private attorney general or in any other representative capacity.

II. MECHAM’S REQUEST FOR AGENCY ACTION PERTAINING TO COMMISSION ORDERS ESTABLISHING AND FUNDING HELP IS BARRED BY UTAH CODE §§54-7-9 and 20 AND BY COLLATERAL ESTOPPEL.

The authority of the Commission to consider Mecham’s request for agency action is limited to those issues that the Commission is empowered to hear by express statutory grant or clear statutory implication. *See Basin Flying Service v. Public Service Comm’n*, 531 P. 2d 1303, 1305 (Utah 1975). “[A]ny reasonable doubt of the existence of any power must be resolved against the exercise thereof.” *See Hi-Country Estates v. Bagley & Co.*, 901 P.2d 1017, 1021 (Utah 1995). Utah Code §54-7-9 excludes from Commission authority and prohibits the Commission from entertaining a request for agency action concerning the reasonableness of any utility rate or charge unless the

request is signed by not less than 25 consumers or purchasers or prospective consumers or purchasers of the utility service. *Utah Code §54-7-9(3)(b)*.

Furthermore, in *American Salt Co. v. W.S. Hatch Co.*, 748 P.2d 1060 (Utah 1987), the Utah Supreme Court concluded that reparations under Utah Code §54-7-20 for “unjust” or “unreasonable” charges cannot be awarded when the Commission had previously determined the charges complained of to be just and reasonable in a final rate order. This holding was consistent with holdings by other courts that also found that later facts that render the previously charged rate unjust or unreasonable should only be addressed prospectively in rate-setting, not through reparations.

The HELP program has been found to be just and reasonable and in the public interest on numerous occasions and in several dockets – each time in a final order. The authorization and implementation of a lifeline electric rate is permitted by Utah Code §54-3-1 and the Utah Supreme Court’s decision in *Mountain States Legal Foundation v. Utah Public Service Commission*, 636 P.2d 1047 (Utah 1981). The Commission first considered HELP in its March 4, 1999 Report and Order in Docket No. 97-035-01. The Commission directed that the HELP program be designed because “(w) e find that the cost of energy is disproportionately large for low-income households and that there are many such households in Utah Power’s service territory.”

In its May 24, 2000 Report and Order in Docket 99-035-10, the Commission relied upon the findings and conclusions from Docket No. 97-035-01, and considering

additional evidence, the Commission found and concluded that it is in the public interest to have an electric lifeline program. The Commission concluded that the utility, all utility customers and the intended beneficiaries of HELP benefit in general through reduced cost to the utility of collections, termination, reconnections, and arrearages, and that HELP was a simply-designed program with relatively modest goals and is analogous to the lifeline program for telephone service. The evidence upon which the Commission based its findings of fact and conclusions of law in Docket No. 97-035-01 and Docket No. 99-035-10, continues to be an accurate and relevant description of the public interests benefiting from HELP.

In its August 30, 2000 Report and Order in Docket No. 00-035-T07, the Commission approved Schedule No. 3 for the Low Income Lifeline Program and Surcharge for Funding contained in Schedule 91. HELP has been reauthorized in each general rate case report and order issued since May 2000, including the most recent, Docket No. 04-035-42.

Accordingly, as Mecham alone challenges the reasonableness of HELP rates and charges, and as those rates and charges have been found to be just and reasonable in final rate orders, these issues and evidence pertaining to them should be precluded. In addition, the legal principle of collateral estoppel prevents the relitigation of issues already determined in final Commission orders.

Issue preclusion, sometimes referred to as collateral estoppel, prevents the parties from relitigating issues resolved in a prior related action. *Timm v. Dewsnup*, 851 P.2d 1178, 1184 (Utah 1993). *Sevy v. Security Title Co*, 902 P.2d 629, 632 (Utah 1995), outlines the requirements of collateral estoppel so as to preclude the re-litigation of issues. First, the issue challenged in the case at hand must be identical to the issue decided in the previous action. Second, the issue in the previous action must have been decided in a final judgment on the merits. Third, the issue in the previous action must have been competently, fully, and fairly litigated. Fourth, the opposing party in the action at hand must have been either a party or privy to the previous action.

Mecham has been a party, an intervener, or in performance of his duties as an employee of the Division, privy to each case cited in this motion that has ruled upon the issues now raised by Mecham in his request for agency action. Irrefutable proof that the first three requirements have been met is provided by the Commission orders cited herein.

III. MECHAM'S REQUEST FOR AGENCY ACTION PERTAINING TO COMMISSION ORDERS ESTABLISHING AND FUNDING HELP AND TO MECHAM'S LIABILITY TO PAY THE \$1.44 ANNUAL HELP SURCHARGE IS BARRED BY COLLATERAL ESTOPPEL.

The most particular of the Commission's final orders pertaining to Mecham and HELP, further supports the relief requested in this motion. Significantly, in Docket No. 03-035-09, *In the Matter of the Complaint of Paul F. Mecham v. Utah Power & Light*, the Commission found that HELP is properly established and funded, that the

Commission was within its authority to implement HELP and Schedules No. 3 and No. 91, that collections of \$0.12 per month from Mecham are lawful and in accordance with Commission order and the tariff, and that HELP does not violate Utah Code §54-4-37.

CONCLUSION

As stated above, there are timely and important issues concerning HELP that the Commission will be asked to resolve. However, with due respect, the Commission's process and the public are not well served by the disorder inherent in Mecham's ongoing efforts to eliminate HELP by raising the same issues and submitting the same evidence in the face of final unfavorable orders. The Committee does not question Mecham's good faith and his persistence is admirable. However, the character of his participation in these and the prior HELP dockets, both as a Division employee and by filing administrative complaints using the provocative assumed business name "Light and Truth", impedes the Commission's and the parties conscientious consideration of refining and improving HELP. Mecham's filings should no longer be permitted to divert the Committee's, the Division's, the Commission's and the utility's attention away from the genuine issues.

RESPECTFULLY SUBMITTED this 29th day of June 2005.

Paul H. Proctor
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Utah Committee of Consumer Services

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to Preclude Issues and evidence was served June 29, 2005, upon the following by e-mail:

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