

HOUSE OF REPRESENTATIVES
STATE OF UTAH

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STANDING COMMITTEES: NATURAL RESOURCES,
AGRICULTURE AND ENVIRONMENT; REVENUE
AND TAXATION
APPROPRIATIONS: NATURAL RESOURCES

May 14, 2004

Richard Campbell
Chairman, Utah Public Service Commission
Heber Wells Building
160 East 300 South
Salt Lake City, UT 84111

CC: Irene Reese, Director, Utah Division of Public Utilities
Roger Ball, Executive Director, Committee of Consumer Services

Dear Chairman Campbell:

I am writing this letter to express my concerns with what I see happening in the electrical power generation in the State of Utah. As I study state law and policy, it seems we strongly urge efficient independent power production and co-generation. But, from what I read in the newspapers and hear on television, none of this is happening. Having lived in Tooele County most of my life, I know it is not happening with independent power producers here. I also know that is not happening in the renewable energy arena, because in the 2003 session, I sponsored HB 89 to create a "renewable portfolio standard" and it was condemned from the start "because it was a mandate". So now we have a tax exemption to help motivate developers. But this does not help, because Pacific Corp. controls the process with their "IRP". It seems to me the Public Service Commission should write the IRP and then allow others to help implement it. To continue like we are now makes the Commission, the Division of Public Utilities, and the Committee of Consumer Service rubber stamps for Pacific Corp.

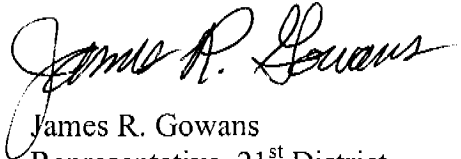
As you can see I am becoming quite frustrated with the whole process. I am enclosing a white paper put together by some independent power people and a copy of Governor Walker's energy policy and several code references. I am also a member of the legislatures administrative rules committee and have asked staff to research these areas and see if we need to invite the various groups to our next meeting. My perception is that you are not following what is in code and policy.

I would like to have these documents and letter read into the public record at the hearing on May 19th. I will not be able to attend this hearing, due to a commitment to meet with the Tooele

County caucus with one other representative and four other senators, to discuss this issue with commissioners and concerned citizens.

Thank you for your time on this issue. If at any time you would like to call or meet on these problems, I would certainly welcome it.

Sincerely,

A handwritten signature in black ink that reads "James R. Gowans". The signature is written in a cursive style with a large initial "J" and a long horizontal flourish at the end.

James R. Gowans
Representative, 21st District

White Paper

Our state laws and polices are very clear: efficient independent power production and cogeneration are strongly encouraged. In contrast to this clear mandate, we witness systematic exclusion of independent power producers from Utah. Today, we have only one non QF independent power producer in this state, and only a small one at that. The number of Qualified Cogeneration Facilities developed over the last twenty (20) years is too small to recall.

The testimony offered by the Committee of Consumer Services, the Division of Public Utilities and PacifiCorp in this case indicates why. The Committee and Division , who allow PacifiCorp to recover all of its investment costs, propose to allow independent producers to recover less than 50% of the capacity payment for fixed investment costs in the early years. (WHY?) We have been told by PacifiCorp that there is such a power shortage in this state that this Commission must issue a certificate to PacifiCorp on an emergency basis to build a new plant, brushing aside hundreds of offers from other companies, without protest from the Committee or the Division (WHY?). Yet now we hear from those same public agencies that incurring similar investment costs for independent QF

power producers, who are able to use precious natural gas resources efficiently to co-generate, is unreasonable and excessive. (WHY?)

The Commission is encouraged to approve a gas fired plant for PacifiCorp, but the Committee and Division propose a lower rate for independent producers based on theoretical fuel mixes using both coal and gas, which prevents a gas fired plant built by an independent producer from recovering it's full fuel costs. (WHY?)

The Committee and Division approve recovery of actual fuel costs as they are incurred in the future by PacifiCorp, but they want to limit an independent power producer to recovery of a current long-term forecast of gas costs, which puts the independent power producer totally at risk for recovery of its actual fuel costs. (WHY?) **Why are so many preferences shown to the Utility?**

In these circumstances, there is little wonder why there is only 65 MW of non QF independent power in the State and no reasons for Qualified Cogeneration Facilities to be built. And even as to that one producer, PacifiCorp has not yet signed a contract with it, long-term or otherwise, while at the same time PacifiCorp's representative swears under oath before this Commission he cannot find more than 50 MW available in

the market to thwart the impending blackouts which will occur because of a 1,200 MW shortage.

The Commissioners need to ask themselves why the utility refuses to reach an economic contract with the only independent power producer in the state, notwithstanding its earlier testimony that it faces a deficiency of 1,200 MW next summer, and why it offers Qualifying Facility ("QF") rates that are 80% lower than it is paying itself, while seeking regulatory approval for its double standard.

This must stop. The legislative mandates must be respected.

White Paper Attachment

Docket No. 03-035-14

In the Matter of the Application of PacifiCorp for Approval of a IRP-Based Avoided Cost Methodology for QF Projects Larger than One Megawatt.

Division, CCS and PacifiCorp proposals:

1. Deny recovery of full investment in early years to QFs while awarding full recovery to PacifiCorp, preventing financing or effectively bankrupting independent producers.
2. Tie recovery of future fuel costs to unreliable 20 year projections rather than actual costs which are awarded to PacifiCorp.
3. Allow PacifiCorp to collect for its investment 4-5 times what it would pay an independent power producer.
4. Postpone payment of reasonable or economic rates for an independent power producer while awarding same to PacifiCorp, effectively preventing any investment in efficient resources, notwithstanding a power emergency so great that the specter is raised of massive shortages and blackouts.

Division and CSS proposals:

1. Awarding PacifiCorp with full cost recovery while diluting Qualified Facilities gas costs with much lower cost of coal, assuring no independent power producer's gas fired plant will recover its full costs and
2. Imputing a hybrid coal/gas plant, resulting in denial of cost recovery to an independent power producer.

The testimony offered by the Committee and DPU result in continued frustration of legislative mandates to encourage efficient use of resources, development of independent power, and prohibition against preferences to the utility. PacifiCorp, with the active assistance of these public representatives, will unfortunately for rate payers maintain and

promote schemes that prevent and frustrate development of competitive independent power and result in double standards and preferences for PacifiCorp.

The Result of this systemic discrimination toward independent developers is:

1. Only one small independent power producer exists in the entire state, and PacifiCorp refuses to pay that producer what it pays itself for energy, and with whom it currently has no contract.
2. Recent sworn Testimony by a senior PacifiCorp officer ignores the existence of independent power producers.
3. Every other independent power producer that has tried to build in Utah has been totally thwarted.
4. Independent power development in Utah will continue to be non-existent until state agencies elect to implement and enforce state policies in a fair and reasonable manner.

The Commission needs to confront and eliminate the preferences shown to the Utility by the Committees and Divisions proposals and create a level playing field that encourages development by independent electrical generators and Qualified Cogeneration Facilities in order to carry out State Policy.



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UTAH ENERGY POLICY

January 2001

Utah will have reliable, affordable, sustainable, clean energy.

Inside the Office

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- Staff

ECONOMIC PRIORITIES

- **Availability of Adequate Energy Supplies** - Utah residential consumers and businesses will have reliable, high quality power and energy resources.
- **Second, Reasonable Prices** - Energy prices in Utah will reflect the development and use of the state's low-cost resources.
- **Diversity and Flexibility of Supply** - Energy supply will have system redundancy and a diversification of fuel mix and technologies.

PRINCIPLES

- **Regional Participation** - Utah recognizes that it is part of an integrated energy system and partners with neighboring states in developing regional solutions to common problems. Utah's contribution to increasing power supply in the region is expected to take advantage of the abundant coal reserves within the state. Utah also supports open access to transmission lines and the creation of a properly formed Regional Transmission Organization and encourages the state's transmission-owning utilities to become members.
- **Quality Environment** - Utah will maintain a clean and safe environment. The following Enlibra principles will guide policy positions:
 - **National Standards, Neighborhood Solutions** - Responsibilities will be assigned at the right level.
 - **Collaboration, Not Polarization** - Utah will use collaborative processes to break down barriers to meet our energy needs and find solutions to them.
 - **Reward Results, Not Programs** - Utah will move to a

- performance-based system to achieve its energy policy.
- **Science for Facts, Process for Priorities** -Utah will separate subjective choices from objective data gathering in making its decisions.
 - **Markets Before Mandates** -Utah will pursue economic incentives and markets as opposed to regulatory matters whenever appropriate.
 - **Change a Heart, Change a Nation** -Environmental understanding is crucial to Utah's energy future.
 - **Recognition of Costs and Benefits** -Utah will make sure all decisions affecting infrastructure, development and environment are fully informed as to their economic consequences to Utah.
 - **Solutions Transcend Political Boundaries** - Utah will use appropriate geographic boundaries for environmental air problems, which will require the state to develop regional solutions with its neighbors.
 - **Efficiency and Conservation** - Public policies will support sustained investments in cost-effective demand-side management and increased use of energy efficient technologies and services in Utah's economy.
 - **Consumer Protection** - Consumers will be protected against unfair business practices and have continued access to reasonably priced energy supplies. Low-income consumers will continue to have affordable energy.
 - **Utah Resources** - Utah's abundant supply of natural resources, such as coal, will be leveraged to meet Utah's energy needs now and into the future.
 - **Investment** - Private investment by utilities and non-utility providers is required to meet our energy needs. Investment occurs only when there is an opportunity for adequate financial returns.
 - **Prosperity** - Economic prosperity is linked to the availability and affordability of energy. Utah will plan for our energy needs with economic optimism.

PROJECTIONS

- **Estimated Electrical Need** - Utah's current estimate of additional electrical requirements over the next ten years is 1,800 to 3,100 MW. This additional electrical demand will require new supply to be built in Utah and across the western power grid. Utah's actual requirements could vary depending on a number of factors such as: economic growth, price elasticity, technological change, conservation, plant retirements, and the amount of planned reserves. Additional transmission will need to be built to accommodate the growing supply of electricity.
- **Estimated Natural Gas Need** - Utah's current estimate of additional natural gas annual firm usage over the next 10 years is 32 million decatherms. The firm design peak day is expected to increase by at least 200,000 decatherms. To meet the growing demand for natural gas, additional pipeline capacity will need to be built.
- **Estimated Transportation Fuel Need** - Utah estimates that the demand for petroleum products in 2010 will increase by

287 million gallons from 2000. The additional increase is projected as follows: 160 million gallons of motor gasoline, 99 million gallons of diesel fuel, and 28 million gallons of jet fuel. Pipeline expansion will be necessary to meet these needs.

AGENDA

We will cultivate an ethic of conservation and energy efficiency. We will promote the development of new energy supplies sufficient to meet Utah's growing demand over the next 10 to 15 years, while making a contribution to regional energy requirements. We will streamline state regulatory processes and encourage expedited federal action. We will establish a single point review process that coordinates reviews across state departments and with federal agencies. We will not short-change environmental requirements, but can and will fast-track regulatory response. We will promote a vibrant and open electrical transmission system through a regional transmission organization. The Regional Transmission Organization must guarantee open access to transmission and provide incentives for an expansion of the transmission grid.

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54-3-1. Charges must be just; service adequate; rules reasonable.

~~All charges made, demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, shall be just and reasonable.~~ Every unjust or unreasonable charge made, demanded or received for such product or commodity or service is hereby prohibited and declared unlawful. Every public utility shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as will promote the safety, health, comfort and convenience of its patrons, employees and the public, and as will be in all respects adequate, efficient, just and reasonable. All rules and regulations made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable. The scope of definition "just and reasonable" may include, but shall not be limited to, the cost of providing service to each category of customer, economic impact of charges on each category of customer, and on the well-being of the state of Utah; methods of reducing wide periodic variations in demand of such products, commodities or services, and means of encouraging conservation of resources and energy.

Amended by Chapter 206, 1977 General Session

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Last revised: Thursday, April 29, 2004

54-3-8. Preferences forbidden -- Power of commission to determine facts.

(1) No public utility shall, as to rates, charges, service, facilities or in any other respect, make or grant any preference or advantage to any person, or subject any person to any prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, charges, service or facilities, or in any other respect, either as between localities or as between classes of service.

(2) The commission shall have power to determine any question of fact arising under this section.

Amended by Chapter 265, 1998 General Session

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54-12-1. Legislative policy.

(1) The Legislature declares that in order to promote the more rapid development of new sources of electrical energy, to maintain the economic vitality of the state through the continuing production of goods and the employment of its people, and to promote the efficient utilization and distribution of energy, it is desirable and necessary to encourage independent energy producers to competitively develop sources of electric energy not otherwise available to Utah businesses, residences, and industries served by electrical corporations, and to remove unnecessary barriers to energy transactions involving independent energy producers and electrical corporations.

(2) It is the policy of this state to encourage the development of small power production and cogeneration facilities, to promote a diverse array of economical and permanently sustainable energy resources in an environmentally acceptable manner, and to conserve our finite and expensive energy resources and provide for their most efficient and economic utilization.

Enacted by Chapter 180, 1985 General Session

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54-12-2. Purchase of power from independent energy producers.

(1) Purchasing utilities shall offer to purchase power from independent energy producers.

(2) The commission shall establish reasonable rates, terms, and conditions for the purchase or sale of electricity or electrical generating capacity, or both, between a purchasing utility and an independent energy producer. In establishing these rates, terms, and conditions, the commission shall either establish a procedure under which small power producers and cogenerators offer competitive bids for the sale of power to purchasing utilities or devise an alternative method which considers the purchasing utility's avoided costs. The capacity component of avoided costs shall reflect the purchasing utility's long-term deferral or cancellation of generating units which may result from the purchase of power from independent energy producers.

(3) Purchasing utilities and independent energy producers may agree to rates, terms, or conditions for the sale of electricity or electrical capacity which differ from the rates, terms, and conditions adopted by the commission under Subsection (2).

(4) The commission may adopt further rules which encourage the development of small power production and cogeneration facilities.

Amended by Chapter 4, 1989 General Session

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54-12-3. Recovery of investment costs.

The commission may not consider any purchasing utility's purchase of power from an independent energy producer as a reason for disallowing recovery of the purchasing utility's investment costs for facilities which are in use prior to signing a contract for the purchase of power from an independent energy producer.

Enacted by Chapter 180, 1985 General Session

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