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Attach to docket
04-035-01

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UTAH PUBLIC
SERVICE COMMISSION
May 20, 2004

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RECEIVED

Chairman Ric Campbell
Utah Public Service Commission
Heber Wells Bldg., 4th Floor
160 East 300 South
Salt Lake City, UT 84111

HAND-DELIVERED

Re: PacifiCorp Outage Investigation
Docket No. 04-035-01

Request for Five Report Copies

Dear Chairman Campbell:

Last Friday, PacifiCorp filed a Response to the Petition of Georgia B. Peterson, *et al.* to intervene in the above matter. The Commission has not entered an order with respect to that Petition, and the Response filed by PacificCorp, is essentially a suggestion that the petitioners' complaints, which are several and serious, be ignored and that our participation in the proceeding be restricted to whatever issues the Division and Committee decide they will pursue. As counsel for the petitioners, obviously, we do not feel comfortable allowing PacifiCorp to frame the case we wish to present, nor do we feel that the company's wishes should dictate the manner in which the investigation proceeds.

We understand that the Commission will rule on various procedural questions associated with our petition, and we will be filing a reply to the PacifiCorp Response within the next several days. For now, we wish to emphasize that the investigation is in its earliest stages, and the petition we've filed does not unduly burden the docket in any respect. The principal thrust of our Petition is a request that the Commission determine whether any of the causes of the outage are related to violations of the company's certificate responsibilities or violations of the Commission's previous orders as described in the Petition. Those are not trifling or insignificant matters, and it has not appeared to us that either the Division or the Committee has asked those fundamental questions. Therefore, we believe, it is appropriate that the petitioners we represent, indeed the class for which we have requested intervention, be permitted to fully raise and pursue those matters in the course of the investigation.

As a consequence of the Technical Conference held on May 18th, a procedural issue has arisen which requires us to request rather immediate assistance from the Commission. We have requested that PacifiCorp provide us with five copies of the

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outage report (and explanatory slides) the company has already filed with the Commission, the Division, the Committee, and other persons. My co-counsel and I would each like a copy, and we would like three additional copies for the purpose of submitting them to potential witnesses we may wish to call. PacifiCorp has declined that request, and has suggested that we work through the Committee or go Online for the report and the slides used at the Technical Conference. According to the company, "all copies have been distributed and no more will be printed."

We do not wish to be petty or pains in the neck about this, but PacifiCorp spends about \$9 million annually on regulatory and governmental affairs in Utah, and it does not seem excessive that counsel for party participants should be able to get a few hard copies of a report which is, to date, the company's major evidentiary response in this docket. Rule 5 of the Utah Rules of Civil Procedure provides that every paper relating to discovery shall be served upon each of the parties. The company, by insisting that we obtain copies of this filing through the Committee, is ignoring that requirement. I should note that this is not a dispute between the lawyers; it is the company's direction to its counsel that requires us to bring what would otherwise be a trivial matter to you. It is just inappropriate for PacifiCorp to selectively serve copies of its filings. If we were to attempt a reciprocal discriminatory policy, the other parties, properly, would not stand for it.

We recognize that a petition in the form of a class action request for specific performance and reimbursement is not something the Commission usually sees. The outage was a major disaster. The company could easily have an \$80 million liability to the 80,000 customers who were left without power for an extended number of days. This docket should not just be a forced march to absolution -- as the company might prefer. The Commission's findings about the causes of the outage could affect these customers' rights in very significant ways. Our ability to fully participate is critical to the petitioners and the class. We have a real need for the copies, and we don't believe it's unreasonable for PacifiCorp to be directed to provide us with just five copies of this singular report and the slides used to explain it at the Technical Conference.

Respectfully,



David R. Irvine

DRI:sp

cc: Commissioner White, Commissioner Boyer, Greg Monson, Esq., Ted Smith, Esq., Dale Gardiner, Esq., Art Sandack, Esq., Tom Forsgren, Esq., Mike Ginsberg, Esq., Reed Warnick, Esq.

Done, May 25, 2004
J.P.O.