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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE COMPLAINT OF
GEORGIA B. PETERSON, JANET B. WARD,
WILLIAM VAN CLEAF, and DAVID HILLER
ON BEHALF OF THEMSELVES and ALL
ALL OTHER MEMBERS OF THE CLASS
DESCRIBED BELOW AGAINST SCOTTISHPOWER
PLC and PACIFICORP, dba UTAH POWER & LIGHT
CO., REQUESTING AN INVESTIGATION, and
ENFORCEMENT OF THE COMMISSION'S
ORDERS IN DOCKET NOS. 87-035-27 and
98-2035-04, and COMPENSATION FOR LOSSES.

Docket No. 04-035-01

MOTION TO
INCORPORATE
PREVIOUS
TESTIMONY INTO
THIS DOCKET

Petitioners, through their counsel, hereby move that the sworn testimony of Public Witness Darcie White, taken under oath in Docket No. 04-035-42 (In the Matter of the Application of PacifiCorp for Approval of Its Proposed Electric Service Schedules and Electric Service Regulations) on February 23, 2005, and the responsive sworn testimony of Mr. Douglas Larson (PacifiCorp's witness), be included as a matter of record in the file in the instant case. Petitioners base their motion on the following:

Mr. Darcie White is a former senior Vice President of Utah Power & Light Company, now retired after 34 years of Utah Power service. He is familiar with the

company's service obligations to customers, and he related a personal and neighborhood experience in his testimony which has direct bearing on PacifiCorp's violations of its tariffs as to the company's maintenance responsibilities of secondary distribution lines, many of which were affected by the winter storms which are the subject of the instant docket. Mr. Larson's admissions of tariff violations bear directly on the issues raised in the instant docket, particularly PacifiCorp's request that the Christmas outage be classified as a major event.

Mr. White's testimony was given in an open hearing before this Commission, under oath, and he was subject to cross-examination by PacifiCorp, the Division, and the Committee - all of which declined that opportunity. PacifiCorp presented the testimony of Mr. Larson as an attempt to rebut or at least explain the company's reaction to Mr. White's testimony.

The excerpted pages from the record in Docket No. 04-035-42, which are pages 46 through 57 of the certified transcript are attached hereto as Exhibit 1.

In its Outage Report, PacifiCorp has stated that 90% of the outages were caused by tree contact with power lines [p. 112]. The Report further states, "The vast majority of these tree incidents occurred on secondary feeders and low-voltage service lines running from distribution transformers to customers' homes."

In PacifiCorp's tariff, the responsibility for maintenance of all the company's lines and equipment rests, as a matter of law, with PacifiCorp, and it is non-delegable. Customer responsibilities are summarized under ¶ 8 of Electric Service Regulation No. 1, and that summary makes no reference whatsoever to line maintenance or tree trimming.

Electric Service Regulation No. 2, ¶ 23 defines the point of delivery as “The point, unless otherwise specified in the application for electric service, Electric Service Agreement or contract, at which the Company’s facilities are connected with the wires or apparatus of the Customer.”

Electric Service Regulation No. 4, ¶ 1 states, “Unless otherwise specifically provided in the electric service schedule or contract, the Company’s rates are based upon the furnishing of electric service to the Customer’s premises at a single point of delivery and at a single voltage and phase classification.” [Emphasis added.] ¹

Electric Service Regulation No. 5, ¶ 1(a) states, “Installation and maintenance of all facilities beyond the point of delivery, except metering equipment, shall be at the expense and responsibility of the Customer, except under conditions specified by the Company in writing.” There is nothing in this or any other section of the tariff which places the responsibility for maintenance of the secondary distribution lines (including tree trimming) on customers.

Electric Service Regulation No. 6, ¶ 1 states, “Except as otherwise provided in these Regulations, an Electric Service Agreement, or the Electric Service Schedules, the Company will install and maintain its lines and equipment on its side of the Point of Delivery . . .” ¶ 2(c) states, “The Customer shall permit access by the Company’s representatives at all hours to maintain electric distribution facilities on the Customer’s premises. The Customer shall permit the Company to trim trees and other vegetation to

¹ PacifiCorp personnel have suggested in Technical Conferences that the Company’s rates are not calculated to cover the costs of maintaining the secondary distribution lines to the customers’ points of delivery, *i.e.* the household meter. The implication of these statements is that trimming trees on these lines could only be financed by raising rates. If these statements are true, it is a *prima facie* admission of a tariff violation by PacifiCorp, because Electric Service Regulation No. 4 clearly states that rates are based on furnishing service to the point of delivery. PacifiCorp’s obligation to maintain the company’s equipment and lines runs to the point of delivery.

the extent necessary to avoid interference with the Company's lines and to protect public safety."

Mr. White testified that two New Year's Eve 2004 outages and a third outage within two days of that in his neighborhood prompted him to call PacifiCorp to complain of tree damage to the secondary conductors (which for the previous two years had caused arcing and sparking), and that PacifiCorp had failed to respond to the neighborhood complaints until the New Year's Eve problem. [TR, p. 47-48.] Mr. White stated that when a company representative finally returned his call, Mr. White was told "it's the company's policy to require customers to trim trees, any trees necessary to keep the secondaries in their yards clear of branches." [TR, p. 48.]

Mr. White then said, "This seemed so outrageous to me that I asked him to repeat it, which he did, and he added that the company would send someone to disconnect the line while the trimming was done if the customer requested it." [TR, p. 48.] Mr. White went on to testify as follows:

This appears to me to be an abandonment of the company's service responsibility. Further, the company's practice of using contractors to do so much work formerly done by company employees raises the question as to whether it's the company's intent to operate as a cost-plus contracting organization or as a utility.

Number Two, it exposes unqualified customers to a very serious safety hazard.

Number Three, it's shifting a legitimate company operating expense to the customer.

Number Four, it's discriminating among customers in the same class because those with underground service have no such requirement.

Five, customers have historically understood that it's the company's responsibility to maintain all of the facilities that it owns, up to and including their connection to the company's service entrance.

Number Six, research does not reveal any commission approval of such a policy.

Number Seven, killing a circuit to allow customer [*sic*] or his hired contractor to do tree trimming is ridiculous on its surface and the cost of doing so would be a significant offset to any savings that the company might realize. Also, the company is extremely thin on employees who are qualified to do this kind of work, and finally, this procedure would inconvenience other neighbors.

Number Eight, this policy, in my opinion, does not serve the interests of any of the parties involved. [TR, p. 49-50.]

For PacifiCorp, Mr. Larson then testified in response. Although Mr. Larson has been a prolific witness for PacifiCorp, he stated, "I am not by any means an expert on tree trimming or the specific policies. I do have some familiarity with the storm report and policies that are out on the PacifiCorp website that do address this issue of the different policy related to trimming trees on the transmission system and the backbone distribution system as opposed to the service drops that come into, you know, customers' yards and hook into the meter and at least, it's my understanding that that's an industry practice. ." [TR, p. 52.] Irrespective of Mr. Larson's belief about "industry practice," the governing law is the company's filed tariff, and a claim by PacifiCorp that "industry practice" shifts the tariffed responsibility from the company to the customer is simply fanciful.

Mr. Larson then went on to testify, "What I would say in response to your issue is two-fold. Number one, you're exactly right. The company has not been trimming trees around service drops. Those costs, since we haven't been doing it, aren't included in customer prices. The second issue, I guess, really is whether or not that is something that the company should be doing on a prospective basis which is, I think, the heart of the issue you're addressing with the commission, and your recommendation is that in fact the company should have the responsibilities to trim those trees on secondary

drops." [TR, p. 52, emphasis added.] Of course, as the company's tariff provides, such tree trimming around all company-owned lines is the responsibility the company has had during all of PacifiCorp's ownership of the system.

Chairman Campbell then expressed surprise at Mr. Larson's response. "When you say the company hasn't been doing it, did the company do it at one time?" To which Mr. Larson responded, "Not that I'm aware." [TR, p. 52.] In the colloquy which followed, Mr. White stated that during his time with Utah Power, "There was no specific policy about trimming trees around secondary conductors except that the tree trimming crews and the service crews were expected to note any problems that may potentially or actually exist on the secondaries. . . we did do tree trimming around secondaries in the interest of preventing or correcting problems." [TR, p. 53.]

A further colloquy established PacifiCorp's ownership of the secondary lines, and Chairman Campbell asked "Why would the company not trim around its own property?" Mr. Larson responded, "I do not know, you know, what the rationale for the policy is." [TR, p. 54.] Whatever the rationale Mr. Larson may have been searching for in order to excuse the company's failure to trim around secondary lines - tree contact with which secondary lines the company has admitted was responsible for the "vast majority" of the tree outages (90% of all the outages) - Electric Service Regulation No. Six of the company's tariff places all maintenance responsibility for all company property on PacifiCorp. No such responsibility, whatsoever, is placed on customers.

It is clear from this sworn testimony that PacifiCorp abdicated its tariff responsibility to maintain the very lines which caused "the vast majority" of the tree outages (90% of the total outages) experienced by 190,000 customers. The testimony therefore goes directly to whether the outage was caused or exacerbated by PacifiCorp's

own negligence and tariff violations, and the testimony directly undercuts any conclusion that the Christmas outage was a “major event.” The testimony should be included as part of the instant docket because: (a) PacifiCorp should not be afforded “major event” status for the storm, where its own tariff violations and negligence were the principal cause of the outage; and (b) Chairman Campbell, in the February 23, 2005 hearing stated, “I think maybe the best way to proceed is we do have a storm outage meeting on our file scheduled – storm management or reliability scheduled for April 4th, and if you [Mr. Larson] would come prepared to answer these questions for us – .” [TR, p. 55.] This question by Chairman Campbell clearly contemplates the importance of putting Mr. White’s and Mr. Larson’s testimony in the instant docket.

The April 4, 2005 technical conference, however, did not answer the eight Darcie White questions in a satisfactory way (it did not even address most of them), and no explanation was offered which even attempted to square the company’s negligent conduct with its own tariff obligations, nor were any witnesses put under oath, nor was a record made of the proceedings.

DATED this 19th day of June, 2005.

David R. Irvine
Attorney for Petitioners

CERTIFICATE OF SERVICE

I certify that I caused a true and correct copy of the foregoing Motion to be served this 19th day of June, 2005, by mailing copies of the same, first-class U.S. Mail, postage prepaid, to the following parties in interest:

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EXHIBIT 1