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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Investigation of the	:	Docket No. 04-035-01
Power Outage: December 2003	:	
	:	
	:	OPPOSITION TO PETITION FOR THE
	:	COMMISSION TO EXTEND THE 30-DAY
	:	CUSTOMER CLAIM PERIOD AND
	:	OTHER RELIEF
	:	
	:	

PacifiCorp, doing business as Utah Power & Light Co., (“PacifiCorp”) hereby submits this memorandum in opposition to the Petition for the Commission to Extend the 30-Day Customer Claim Period and Other Relief (“Petition”) filed by the Committee of Consumer Services (“Committee”) on January 23, 2004. For the reasons set forth below, the Petition should be denied.

ARGUMENT

A. The Petition Should Be Denied Because It Is Unnecessary.

The Commission opened this docket to investigate the storm-related power outages of December 2003. Those outages resulted from heavy winter storms and caused serious electrical service problems for many of PacifiCorp’s customers. In response, PacifiCorp has sought to

work with the Commission, its customers, and other interested parties to identify any steps PacifiCorp can reasonably take to help mitigate the effects of similar heavy storms in the future.

PacifiCorp has agreed to a detailed terms of reference with key regulatory groups, including the Committee, and is meeting on a bi-weekly basis with these parties to update them on the progress being made. PacifiCorp has also worked hard to demonstrate its good will for customers by voluntarily offering a good-will credit to customers who were without power for 48 hours or more. This good-will credit is based on the following structure: 48-71 hours, \$100; 72-95 hours \$150; 96+ hours, \$200. PacifiCorp has estimated that total payments under this arrangement may be in excess of \$ 2 million.

As part of this good-will offering, PacifiCorp has voluntarily given customers until February 26 to make a claim for the credit. PacifiCorp has issued a press release notifying its customers of the terms of the credit and the date by which claims must be made.¹ The state's major newspapers have also run stories specifying the details of the credit, including the date by which claims for the credit must be made.² In addition, PacifiCorp published half-page advertisements in these newspapers on February 4, 2003.³ PacifiCorp is monitoring the number of good-will claims and intends to run another set of these advertisements this week.

These are the circumstances of cooperation and customer notice in which the Committee files its Petition. In these circumstances, customers already have a full and fair opportunity to receive a storm-outage credit. The Petition is therefore unnecessary and should be denied.

B. The Petition Should Be Denied Because It Is Unlawful.

¹ A copy of the press release is attached hereto as Exhibit 1.

² See stories from Salt Lake Tribune, Deseret Morning News and Ogden Standard-Examiner (February 3, 2004), the texts of which are attached hereto as Exhibit 2.

The Petition should also be denied because its object is unlawful. The Petition seeks an order “to extend the 30-day after outage deadline specified in Utah Power & Light Company Electric Service Regulation No. 25”⁴ A Commission order to this effect would be an impermissible retroactive change to PacifiCorp’s lawful tariff on file with the Commission.

“Standard principles of statutory construction apply to the interpretation of [a] tariff,”⁵ and when interpreting statutes the primary goal is to derive “the legislative intent, as evidenced by the plain language, in light of the purpose the statute was meant to achieve.”⁶ The meaning of the 30-day claim requirement of Regulation No. 25 is plain. There is no ambiguity. Under that tariff provision, “valid compensation claims ... submitted within 30 days of the date of an outage will be credited to the Customer’s account.” There is no basis to read into this language a caveat that claims need not be submitted within 30 days if an investigation has been begun or PacifiCorp has sought to have a storm declared a Major Event under its tariff.⁷ Moreover, nothing about the Commission’s investigation or PacifiCorp’s response to the storms would have the effect of unfairly lulling customers into complacency so as to unfairly prejudice their rights. If anything, the publicity regarding these events—providing details about the good-will credits and specifically distinguishing the tariff service guarantee in Regulation No. 25—is much more

³ A copy of the PacifiCorp ad is attached hereto as Exhibit 3.

⁴ Petition at 1.

⁵ *Citoli v. City of Seattle*, 2002 WL 31689411, *10 (Wash. App. Nov. 25, 2002) (quotation omitted).

⁶ *See State v. Burns*, 2000 UT 56 ¶ 25, 4 P.3d 795, 799-800. *See also American Fork City v. Pena-Flores*, 2002 UT 131 ¶ 9, 2002 WL 31875585, *3 (Utah December 27, 2002) (Utah courts “determine the statute’s meaning by first looking to the statute’s plain language, and give effect to the plain language unless the language is ambiguous.”) (quotation omitted).

⁷ *See contra* Petition at 5.

apt to increase customer awareness of tariff requirements for obtaining credits under Regulation No. 25, which customers are already legally presumed to know by virtue of the filed tariff.⁸

If the tariff cannot be interpreted as extending the 30-day claim period, for the Petition to be granted the tariff must be suspended or amended. But such suspension or amendment could only apply prospectively, because under the filed-rate doctrine it is unlawful to retroactively raise or lower a lawful rate charged for service.⁹ By changing the terms of the tariff in the manner sought by the Petition, the Commission would be requiring PacifiCorp to expand the availability of guarantee credits, if applicable, beyond the scope contemplated in the tariff for an outage event that has already happened. This, in effect, would cause PacifiCorp to receive less than the filed tariff rate for service already provided, and would violate the filed-rate doctrine. The Petition should therefore be denied.

CONCLUSION

PacifiCorp is committed to continuing to work with the Commission and with its customers to make sure the response to the major storms of last December is effective and appropriate. PacifiCorp has already committed to provide substantial good-will credits to its customers and to extend the time in which they may claim these credits. These actions were taken voluntarily and will protect the interests of PacifiCorp's customers. Any further reasonable

⁸ See, e.g., *Fax Telecommunicaciones Inc. v. AT & T*, 138 F.3d 479, 489 (2nd. Cir. 1998) (Discussing the filed-rate doctrine: "All customers are 'conclusively presumed' to have constructive knowledge of the filed tariff under which they receive service.") (citing *Kansas City Southern Ry. Co. v. Carl*, 227 U.S. 639, 653 (1913)) (additional citations omitted).

⁹ See, e.g., Utah Code Ann. § 54-3-7 ("[N]o public utility shall charge, demand, collect or receive a greater or less or different compensation for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the rates, tolls, rentals and charges applicable to such products or commodity or service as specified in the schedules **on file and in effect at the time ...**") (emphasis added).

steps the Commission may want PacifiCorp to pursue can be discussed over the course of this proceeding. The Petition, however, seeks a Commission order mandating an unnecessary and unlawful extension of time to file claims in a manner not contemplated by PacifiCorp's tariff. The Petition should, therefore, be denied.

RESPECTFULLY SUBMITTED THIS 9th day of February 2004.

By _____
Edward A. Hunter
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David L. Elmont
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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of February 2004, I caused to be served, via U.S. mail, postage prepaid, a true and correct copy of the foregoing **OPPOSITION TO PETITION FOR THE COMMISSION TO EXTEND THE 30-DAY CUSTOMER CLAIM PERIOD AND OTHER RELIEF** to the following:

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