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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Investigation of the Power
Outage: December 2003

Docket No. 04-035-01

**RESPONSE OF UTAH POWER TO
PETITION OF GEORGIA B.
PETERSON, ET AL.**

I. INTRODUCTION

PacifiCorp dba Utah Power & Light Company (“Utah Power” or “Company”), pursuant to Utah Code Ann. § 63-46b-6(1) and Utah Admin. Code R746-100-4.D, hereby responds to the complaint portion of the Petition and Request for Intervention (“Petition”) filed by Georgia B.

Peterson, Janet B. Ward, William Van Cleaf and David Hiller (“Petitioners”) on April 29, 2004 in this docket.¹

This Response is organized into the following sections:

1. A brief section recounting general factual information regarding the December 2003 storm and the service outage, a description of the background of this docket, and a description of relief sought in the Petition (Section II).
2. A discussion of several of Petitioners’ specific claims, including the legal and policy reasons why these claims are unlawful or inappropriate (Section III).
3. The Company’s Answer to the specific factual allegations of the Petition (Section IV).
4. Utah Power’s affirmative defenses to the claims asserted by Petitioners (Section V).
5. The relief requested by Utah Power (Section VI).

II. GENERAL BACKGROUND

On May 13, 2004, the Company filed its Utah Holiday 2003 Storm Inquiry Report (“Storm Report”) with the Commission, which represents the Company’s detailed report, analysis, and recommendations related to the 2003 storm.²

¹ Utah Power responded to the portion of the Petition and Request for Intervention seeking intervention separately on May 14, 2004.

² The Company provided a confidential version of the Storm Report to the Commission and Division of Public Utilities on May 13, 2004 and provided a nonconfidential version of the Storm Report on May 18, 2004. The nonconfidential version is also available on the Utah Power website at <http://www.utahpower.net/File/File38050.pdf>. The non-confidential version excludes sensitive financial data related to the Company’s ten-year budget forecasts; it also excludes the names of specific vendors of products or systems.

A. THE STORM AND THE COMPANY'S RESPONSE

A severe winter storm hit the Wasatch Front on the evening of Christmas day in 2003. The magnitude and duration of the storm were unanticipated. The storm stalled over the Great Salt Lake and Wasatch Mountains, causing heavy, wet snow to continue to fall for five days. In terms of total moisture content per inch of snow, it was one of the worst storms in 75 years.

The storm caused wide-spread power outages, disrupting electric service to many of Utah Power's customers along the Wasatch Front. Approximately 80,000 customers were simultaneously without power at the height of the storm, and approximately 2700 customers were without power for several days. Overall, delivery of power to approximately 190,000 customers was disrupted at one time or another during the storm. In terms of damage to Utah Power's system, the storm was the most destructive in the Company's recent history.

As outage calls increased during the early morning hours of December 26, Utah Power recognized that this was a major event and that the Company was not adequately staffed to handle the number of calls and outages. Many employees had been approved for vacation time during the week between Christmas and New Years. The Company approved the vacations because there was no indication through weather forecasts that this kind of severe winter storm was imminent or that extra staffing would be needed.

The Company activated its Regional Emergency Action Center in Utah at 2:30 a.m. on December 26. By 4:00 a.m. the center was fully staffed and within eight hours the Company had put in place the restoration processes and staff that would, under normal circumstances, be sufficient to handle a winter storm. In addition, repair crews were brought into Utah from surrounding states. Over 1000 employees and contractors were involved in the restoration efforts. The restoration efforts continued for several days until service had been restored for all customers.

Unfortunately, the combination of the severity of the storm, the extremely high number of customer calls, and other technical problems caused the system that collects customer outage information and inferences outage data to become seriously impaired. In the interests of collecting customer outage information and restoring power as quickly as possible, the Company switched from the primary computerized system to a backup manual system. Although the Company's overall efforts to restore power were not materially affected by these system problems, the system problems affected the Company's ability to identify which customers' power had been out the longest, to provide estimates to customers of when their power would be restored, and to communicate other information regarding the outage to customers, resulting in substantial frustration for customers and the Company.

B. COMMISSION PROCEEDING

During the course of the storm, the Commission received numerous customer complaints by telephone. Beginning on December 29, 2003, the Commission began receiving letters from customers and others regarding the outage. In response, the Commission convened a hearing on January 6, 2004, to allow the Company to provide information to the public on the outage and to allow customers to air grievances. At the conclusion of the hearing, the Commission established this docket to investigate the outage.

As part of the investigation docket, the Company confirmed that it was conducting an internal investigation. In addition, the Commission requested that the Division of Public Utilities ("Division") independently review the Company's investigation process and report and provide its own recommendations on reliability measures. The Company, the Division, with the assistance of an independent consulting firm retained by the Division, the Commission staff and the Committee of Consumer Services ("Committee") developed detailed Terms of Reference to define the scope of the investigation and have worked collaboratively since that time. The

Company filed its confidential Storm Report with the Commission on May 13, 2004. The Division's report was filed on May 14, 2004. A technical conference was held on May 18, 2004 to consider the reports and plan additional steps in the investigation. The Company provided a nonconfidential version of the Storm Report in connection with the technical conference and posted it on its website.

The scope of this Commission-initiated docket is defined by the Terms of Reference, which have been agreed upon by the parties and Commission staff. They provide numerous issues for investigation and recommendations in this docket. The Terms of Reference and the Company's detailed response to them are set forth in the Storm Report.

The Commission has directed the parties to work together and share information in this collaborative process to identify strengths and weaknesses in Utah Power's systems, to assess reliability measures, and to make recommendations for future actions.

C. THE PETITION AND REQUEST TO INTERVENE

On April 29, 2004, Petitioners filed their Petition and Request to Intervene in this docket on behalf of the four named Petitioners and "as a class action" on behalf of all other similarly situated customers.³ While the Petition addresses the December storm outage, the scope of the issues raised in the Petition is dramatically broader than the issues raised by the Commission in this docket.

The Petition seeks, among other things, (a) damages for alleged monetary losses sustained by class members, (b) penalties for alleged violation of conditions to approval of the mergers of Utah Power & Light Company with PacifiCorp in 1988 and of PacifiCorp with ScottishPower in 1999, (c) an order requiring compliance with merger conditions (including

³ While the Petition was filed in this docket, it includes an inconsistent case caption.

additional hiring), (d) potential divestment of the Company, (e) the restoration of undefined benefits to the State of Utah, and (f) Commission investigations of these various allegations. Several of these claims have only the most tenuous relationship to the December 2003 storm outage and the Terms of Reference. In addition, the Petition makes two allegations that lack any relationship whatsoever to the storm outage: (a) that unspecified coal mining practices of the Company may have harmed ratepayers and (b) that tracts of land held for trade with federal and state entities have allegedly been improperly transferred.

III. DISCUSSION OF SPECIFIC CLAIMS

A. PETITIONERS' CLAIMS FOR COMPENSATORY DAMAGES

Petitioners' claims for damages for themselves individually, for the putative class they purport to represent, and for the State of Utah are barred because the Commission lacks the statutory authority to award compensatory damages of the type requested by Petitioners.

It is well-understood that the authority of the Commission is limited to that which is expressly granted or clearly implied by statute,⁴ and "any reasonable doubt of the existence of any power must be resolved against the exercise thereof."⁵ Petitioners cite no Utah statute that authorizes the Commission to provide compensatory relief to customers or to the State of Utah for losses allegedly sustained in connection with the December 2003 storm.

Petitioners' compensatory claims are therefore governed by Utah Power's Commission-approved tariff. All claims of Petitioners for damages or other compensation in excess of or inconsistent with the tariff are barred.

Electric Service Regulation No. 25 ("Regulation No. 25") of the Company's approved tariff sets forth the general terms and conditions and the manner by which customers may receive

⁴ See, e.g., *Basin Flying Service v. Public Serv. Comm'n*, 531 P.2d 1303, 1305 (Utah 1975).

⁵ See *Hi-Country Estates v. Bagley & Co.*, 901 P.2d 1017, 1021 (Utah 1995).

compensation if the Company is unable to fulfill specified “Customer Guarantees,” including restoration of power supply after an outage. In relevant part, Regulation No. 25 provides:

Customer Guarantee Credit: For failure to meet a Customer Guarantee for Customer Guarantees 1 and 7, Customers must make a claim for compensation. Valid compensation claims for Customer Guarantees 1 and 7 submitted within 30 days of the date of an outage will be credited to the Customer’s account. . . . See Schedule 300 for a description of the Customer Guarantee credits.⁶

Customer Guarantee 1: Restoring Supply After an Outage

In the event of an outage, the Company will restore a Customer’s electric supply within 24 hours of being notified except where:

- (1) The Customer agreed to remain without supply;
- (2) The Company offered the Customer a generator as an alternative means of supply;
- (3) There were problems or safety-related issues with the Customer’s internal equipment; or
- (4) Specialized equipment was required to restore the supply.*

* Also see General Exceptions.

To receive a credit, a Customer must make a claim for compensation within 30 calendar days of the date of the outage.⁷

The general terms and conditions for compensation provided under Regulation No. 25 “are applicable to all metered customers or applicants utilizing the services of the Company.”⁸ This compensation mechanism serves to provide uniform remedial relief to customers who may have been inconvenienced by the Company’s failure to restore power supply on a timely basis, without requiring customers to prove the amount or extent of any such damages. Additionally,

⁶ Utah Power & Light Company, Electric Service Schedule 300 sets forth the following credit “charges” with respect to Customer Guarantee 1: For residential customers, \$50; for non-residential customers, \$100; and for each additional 12 hours, \$25.

⁷ Utah Power & Light Company, Electric Service Regulation No. 25, issued by authority of Report and Order of the Commission in Docket No. 03-2035-02.

⁸ *Id.*

Regulation No. 25 acts as a deterrent by penalizing the Company for such customer service deficiencies.

The Commission has approved this tariff provision and accepted the terms, conditions, and limitations of Regulation No. 25 as appropriate for determining Utah Power's remedial obligations in connection with a failure to restore power supply after an outage. The Utah Supreme Court has held that tariffs have the binding force of law and, therefore, should be enforced accordingly.⁹ Petitioners' request for remedial relief beyond the remedies of the tariff is unlawful and barred by the applicable relief provisions set forth as Regulation No. 25 in the Company's approved tariff provisions.

B. GOODWILL COMPENSATION CREDITS

On January 23, 2004, the Committee filed a Petition for the Commission to Extend the 30-Day Customer Claim Period and Other Relief in this docket seeking an open-ended extension the 30-day limitation period in which customers must file claims for outage compensation under Regulation No. 25. AARP petitioned to intervene and joined in the Committee's petition. On February 2, 2004, Utah Power announced that it would voluntarily provide goodwill compensation in the form of bill credits to customers whose service was interrupted by the storm for more than 48 hours and that customers could make claims for this goodwill compensation until February 26.¹⁰ The Company also provided extensive advertising of this goodwill compensation, as did AARP, and it received widespread media coverage. On February 18, 2004, AARP withdrew its support for the Committee petition, characterizing Utah Power's goodwill

⁹ *Mountain States Tel. & Tel. Co. v. Atkin, Wright & Miles*, 681 P.2d 1258, 1263 (Utah 1984); *See also Questar Gas Co. v. Utah Pub. Serv. Comm'n*, 34 P.3d 218, 224 (Utah 2001); *Atkin Wright & Miles v. Mountain States Tel. & Tel. Co.*, 709 P.2d 330, 334 (Utah 1985); *Shehi v. Southwestern Bell Tel. Co.*, 382 F.2d 627, 629 (10th Cir. 1967) ("A tariff . . . is more than a mere contract—"it is the Law.") (citations omitted)).

¹⁰ The Company actually voluntarily paid claims received through the end of March.

compensation offer as equitable and reasonable. On February 27, 2004, the Commission issued its Order Denying Petition to Extend Claim Period based on a finding that the Company's goodwill payment alternative was equitable and reasonable.

Utah Power has provides voluntary goodwill compensation totaling approximately \$2 million to more than 14,000 customers.¹¹

C. PETITIONERS' CLAIMS FOR THE IMPOSITION OF PENALTIES

Petitioners' claims for penalties under Utah Code Ann. § 54-7-25 are barred by Regulation No. 25, which provides penalties in lieu of those provided for in section 54-7-25:

Any public utility that violates or fails to comply with this title or any rule or order issued under this title, in a case in which a penalty is not otherwise provided for that public utility, is subject to a penalty of not less than \$500 nor more than \$2,000 for each offense.¹²

The Commission has the authority to impose penalties in accordance with section 54-7-25 upon a finding that a rule or order has been violated, if such violation has been established by clear and convincing evidence.¹³ However, the statute expressly provides that such penalties may be imposed only "in a case in which *a penalty is not otherwise provided for that public utility.*"¹⁴ Because the Company's Customer Guarantee No. 1, as set forth in Regulation No. 25, discussed earlier in this Response, already provides a penalty for the Company's failure to restore supply after an outage, the Commission may not impose an additional penalty under section 54-7-25 in connection with this failure (if deemed to be a violation of a statute, rule, or Commission order).

¹¹ Utah Power paid goodwill compensation of \$1,934,000 to 14,396 claimants.

¹² Utah Code Ann. § 54-7-25(1).

¹³ *Wycoff Co. v. Pub. Serv. Comm'n*, 369 P.2d 283, 286 (Utah 1962); *see also Thomas J. Peck & Sons v. Pub. Serv. Comm'n*, 700 P.2d 1119, 1122 (Utah 1985), *Beehive Telephone Co. v. Public Serv. Comm'n*, 2004 UT 18, ¶ 43.

¹⁴ Utah Code Ann. § 54-7-25(1) (emphasis added).

The imposition of additional penalties by the Commission for inadequate service in connection with the extended outage would be contrary to the express language of section 54-7-25 and would result in duplicate penalties for the same purported violation.

D. PETITIONERS' CLASS ACTION CLAIMS

The Commission lacks the statutory authority to certify this matter as a class action. Petitioners' request to certify this matter as a class action is therefore barred. Further, the Commission has concluded that it is inappropriate and burdensome to utilize class action procedures in dockets before it.

Petitioners have cited no statutory authority for the Commission to certify this matter as a class action. It is well-understood that the authority of the Commission is limited to that which is expressly granted or clearly implied by statute,¹⁵ and "any reasonable doubt of the existence of any power must be resolved against the exercise thereof."¹⁶

In addition to this lack of authority, the Commission has concluded in the past that it is inappropriate and burdensome to utilize class action procedures in dockets before it. In a letter to parties in a matter involving another request for certification of a class, the Commission said:

The Commission also informs the parties it currently believes that it is inappropriate and burdensome to conduct these proceedings as a class action, following the procedures contemplated and required by the Utah Rules of Civil Procedure and case law for class actions undertaken in the courts. The Commission believes that its traditional proceedings are in the nature of and substantively the same as class action proceedings in a court. But for individual customer complaints brought before the Commission, typical Commission proceedings affect all of a utility's service groups and customers. The Commission sees little benefit and significant burdens to impose additional requirements,

¹⁵ See, e.g., *Basin Flying Service*, 531 P.2d at 1305.

¹⁶ See *Hi-Country Estate*, 901 P.2d at 1021.

applicable to court class actions, on these proceedings and the procedures to be followed herein.¹⁷

Finally, even if the Commission had the authority to certify this matter as a class action, Petitioners' are not appropriate class representatives.

E. CLAIMS BEYOND THE SCOPE OF THIS PROCEEDING

Several of the claims asserted by the Petitioners are beyond the carefully tailored scope of this proceeding. Allowing them to be considered in this docket will negatively affect the orderly and prompt conduct of this docket. Among the claims that are beyond the scope of this docket are:

1. Petitioners' request for an investigation of Utah Power's compliance with merger conditions.
2. Petitioners' request for an investigation of Utah Power's coal mining practices.
3. Petitioners' request for an investigation of Utah Power's land sales.

IV. ANSWER

A. RESPONSE TO PETITIONERS' JURISDICTIONAL ALLEGATION

Utah Power acknowledges that the Commission's investigation of the 2003 storm and outage is appropriately within the jurisdiction of the Commission. However, for the specific reasons described above and hereafter, Petitioners' effort to transform this docket from an appropriate exercise of the Commission's authority into an adversarial proceeding related to, among other things, claims for compensatory damages, penalties, and the investigation of matters unrelated to the 2003 storm would result in the consideration of issues beyond the

¹⁷ Letter from Public Service Commission of Utah to Parties of Record, *In the Matter of the Complaint of Beaver County, et. al. v. Qwest Corporation*, Docket No. 01-049-75 (Utah PSC, Sept. 30, 2002).

jurisdiction of the Commission to consider or to grant relief. Utah Power therefore denies Petitioners' jurisdictional allegation for the specific reasons set forth herein.

B. RESPONSE TO SPECIFIC FACTUAL ALLEGATIONS

With respect to the specific allegations of the Petition, Utah Power admits, denies and alleges as follows:

1. Utah Power admits that the Commission has jurisdiction to enforce its own orders, but denies that the Commission has jurisdiction to provide elements of relief sought in the Petition or to certify this matter as a class action. Further, Utah Power denies that Petitioners' participation in this matter will not unduly delay the Commission's current investigation. The remaining allegations of paragraph 1 set forth legal conclusions to which no response is required. To the extent any of these allegations can be construed as stating factual allegations, Utah Power denies those allegations.

2. Based on a review of its billing records, Utah Power admits that there are account holders located in Salt Lake County named David Hiller and W. Van Cleaf. Utah Power lacks sufficient information to know whether these account holders are the same persons as the Petitioners. Based on a review of its billing records, Utah Power does not have record of accounts in the names of Georgia B. Peterson or Janet B. Ward in Salt Lake County and therefore on information and belief denies that these two named petitioners are customers of the Company resident in Salt Lake County. Utah Power admits that approximately 80,000 customers were without electrical power simultaneously on December 26, 2003, but denies that approximately 80,000 customers were without power for a continuous period of at least one day beginning on December 26, 2003. The Storm Report provides detailed information relating to the nature and extent of the outage. The remaining allegations of paragraph 2 set forth legal

conclusions to which no response is required. To the extent any of these allegations can be construed as stating factual allegations, Utah Power denies those allegations.

3. Utah Power lacks sufficient knowledge and information to admit the allegations in paragraph 3 with respect to Petitioners' belief; however, to the extent paragraph 3 implies that thousands of the Company's customers were without electrical service for approximately seven days, Utah Power denies the allegation. The Storm Report provides specific information related to the extent of the outage and the number of customers affected by it. To the extent any of the other allegations of paragraph 3 can be construed as stating factual allegations, Utah Power denies those allegations.

4. Based on information and belief, Utah Power admits that certain customers were inconvenienced during the period of power outage caused by the December 2003 storm. The Storm Report provides a detailed explanation of the storm and the outage. With respect to the specific allegations of paragraph 4, Utah Power lacks sufficient knowledge and information to admit such allegations and therefore denies the same.

5. Utah Power admits that, due to the severity of the storm, the extent of the damage, the high number of calls, and problems with its systems, its ability to communicate information regarding the outage to customers was impaired. Utah Power refers to the Storm Report for a more detailed explanation. On information and belief, Utah Power admits that this impairment resulted in frustration to customers. With respect to the specific allegations in paragraph 5 relating to Petitioners' acceptance of media accounts, Utah Power lacks sufficient knowledge and information to admit or deny such allegations.

6. Utah Power lacks sufficient knowledge and information to assess the validity of the vague allegations of paragraph 6 and therefore denies the same. Utah Power denies that Petitioners have standing to assert claims for “losses to the county and state.”

7. Utah Power admits that it has requested that the Commission declare the severe December 2003 storm that resulted in the power outage a “major event,” in accordance with the Company’s tariff. The remaining allegations of paragraph 7 set forth legal conclusions to which no response is required. To the extent any of these allegations can be construed as stating factual allegations, Utah Power denies those allegations.

8. On knowledge and information, Utah Power admits to the existence of a petition filed by the Committee of Consumer Services in this docket seeking to extend customers’ time to apply for customer guarantee payments under the Company’s tariff. To the extent that the remaining portion of paragraph 8 can be construed as stating factual allegations, Utah Power denies those allegations.

9. Utah Power admits that a Utah corporation known as Utah Power & Light Company merged with a Maine corporation known as PacifiCorp to become the new PacifiCorp and that the referenced order was one of the conditions precedent to the merger. To the extent paragraph 9 implies that the new PacifiCorp resulted from an arrangement other than a merger transaction, Utah Power denies the allegation.

10. Utah Power admits that paragraph 10 correctly quotes a portion of the Commission’s Report and Order dated September 28, 1988 in Docket No. 87-035-27 (the “1988 Merger Order”), but notes that the italics in paragraph 10 is not in the 1988 Merger Order. The Company otherwise refers to the 1988 Merger Order for its terms and conditions.

11. Utah Power admits that paragraph 11 correctly quotes portions of the 1988 Merger Order, but notes that the italics in paragraph 11 is not in the 1988 Merger Order. Utah Power otherwise refers to the 1988 Merger Order for its terms and conditions.

12. Utah Power admits that paragraph 12 correctly quotes portions of the 1988 Merger Order. Utah Power otherwise refers to the 1988 Merger Order for its terms and conditions.

13. Utah Power admits that paragraph 13 correctly quotes portions of the record in the Commission's proceeding in Docket No. 87-035-27. Utah Power otherwise refers to the 1988 Merger Order for terms and conditions in connection with this merger.

14. Utah Power admits that paragraph 14 correctly quotes portions of the record in the Commission's proceeding in Docket No. 87-035-27, but notes that the italics in paragraph 14 is not in the Commission record. Utah Power otherwise refers to the 1988 Merger Order for terms and conditions in connection with this merger. To the extent Petitioners' characterization of the Company's obligations with respect to the quoted statements differs from the actual terms and conditions set forth by the 1988 Merger Order, Utah Power denies these allegations.

15. Utah Power admits that paragraph 15 correctly quotes portions of the record in the Commission's proceeding in Docket No. 87-035-27, but notes that the italics in paragraph 15 is not in the Commission record. Utah Power otherwise refers to the 1988 Merger Order for terms and conditions in connection with this merger. To the extent Petitioners' characterization of the Company's obligations with respect to the quoted statements differs from the actual terms and conditions set forth by the 1988 Merger Order, Utah Power denies these allegations.

16. Utah Power admits that paragraph 16 correctly quotes portions of the record in the Commission's proceeding in Docket No. 87-035-27, but notes that the italics in paragraph 16 is

not in the Commission record. Utah Power otherwise refers to the 1988 Merger Order for terms and conditions in connection with the merger. To the extent Petitioners' characterization of the Company's obligations with respect to the quoted statements differs from the actual terms and conditions set forth by the 1988 Merger Order, Utah Power denies these allegations. To the extent that the remainder of paragraph 16 implies that the Company has acted in a manner "completely inconsistent" with specified representations or has violated the terms and conditions of the Commission's 1988 Merger Order, Utah Power denies those allegations.

17. The allegations of paragraph 17 set forth legal conclusions to which no response is required. To the extent any of these allegations can be construed as stating factual allegations, Utah Power denies those allegations.

18. Utah Power admits that paragraph 18 correctly quotes portions of the Commission's Report and Order dated November 23, 1999 in Docket No. 98-2035-04 (the "ScottishPower Merger Order"). Utah Power otherwise refers to the ScottishPower Merger Order for its terms and conditions. To the extent Petitioners' characterization of the Company's obligations with respect to the quoted statements differs from the actual terms and conditions set forth by the ScottishPower Merger Order, Utah Power denies these allegations.

19. Utah Power admits that paragraph 19 correctly quotes portions of the ScottishPower Merger Order, but notes that the italics in paragraph 19 is not in the Commission order. Utah Power otherwise refers to the ScottishPower Merger Order for its terms and conditions.

20. With respect to the allegation of the first sentence of paragraph 20 that suggests that as many as 80,000 customers were without power for five days, Utah Power denies the allegation and refers to the Storm Report for accurate estimates of customers out of service.

Utah Power denies the allegation that it is failing to meet the terms and conditions of its certificate of convenience and necessity. With respect to the quoted language of paragraph 20, Utah Power admits that Petitioners correctly quote portions of the referenced publication, but notes that the underlining in paragraph 20 is not in the original document. Otherwise, Utah Power denies the allegations, express or implied, of paragraph 20.

21. In response to paragraph 21, Utah Power acknowledges the announced intention of ScottishPower to build a new power plant in the United Kingdom. The Company admits that the second sentence of paragraph 21 correctly quotes a portion of the referenced publication. Otherwise, Utah Power denies the allegations, express or implied, of paragraph 21.

22. The allegations of paragraph 22 set forth legal conclusions to which no response is required. To the extent any of these allegations can be construed as stating factual allegations, Utah Power denies those allegations.

23. Utah Power denies the allegations of paragraph 23.

24. With respect to the first sentence of paragraph 24, Utah Power lacks sufficient knowledge to deny the allegations with respect to Petitioners' belief; however, to the extent paragraph 24 alleges that the December 2003 storm did not constitute an instance of *force majeure*, an act of God, or a "major event" (as defined in Regulation No. 25), Utah Power denies such allegations. Based on information and belief, Utah Power denies the allegations of paragraph 24 with respect to other municipal systems and affirmatively alleges that differences in systems and conditions make simplistic comparisons between Utah Power and municipal systems meaningless. Utah Power lacks sufficient knowledge and information to admit the remaining allegations of paragraph 24 and therefore denies the same.

25. Utah Power denies the allegations set forth in paragraph 25, except that the Company admits that the second sentence of this paragraph correctly quotes a small portion of the record in the Commission's proceeding in Docket No. 87-035-27 to consider the 1988 merger. Utah Power otherwise refers to the 1988 Merger Order for terms and conditions imposed by the Commission in connection with this merger. To the extent Petitioners' characterization of the Company's obligations with respect to the quoted statements differs from the actual terms and conditions set forth by the 1988 Merger Order, Utah Power denies these allegations.

26. With respect to paragraph 26, Utah Power admits that Petitioners seek relief in the form of monetary compensation for losses allegedly suffered because of the December 2003 storm. The Company denies that the claims for such losses are legally or factually meritorious and denies the remaining allegations of paragraph 26, except that the Company lacks sufficient knowledge to admit or deny the allegations relating to other electric power providers in Utah.

27. Utah Power denies that communications system for reporting service problems was centralized and operated from Oregon and affirmatively alleges that there are such communications systems in both the eastern region dispatch center in Salt Lake City, Utah and in the western region dispatch center in Portland, Oregon. Utah Power further denies that the location of the communication system for reporting service issues contributed to the problems with the system during the December 2003 storm. As noted in Utah Power's response to paragraph 5, due to the severity of the storm, the extent of the damage, the high number of calls, and problems with its systems, its ability to communicate information regarding the outage to customers was impaired. Utah Power refers to the Storm Report for a more detailed explanation. Utah Power denies all remaining allegations of paragraph 27.

28. Utah Power denies the allegations of paragraph 28. With regard to the footnote related to paragraph 28 (footnote 2), Utah Power admits that it correctly quotes a portion of the transcript of Docket No. 87-035-27. To the extent Petitioners' characterization of the Company's obligations with respect to the quoted statements differs from the actual terms and conditions set forth by the 1988 Merger Order, Utah Power denies these allegations. With regard to the final sentence of the first paragraph of footnote 2, Utah Power denies that its internal realignment of employees over the past fifteen years has damaged Utah's economy. As to the second paragraph of footnote 2 wherein Petitioners' describe a formula allegedly used by the Utah Division of Business and Economic Development, Utah Power lacks sufficient knowledge to assess the truthfulness of the speculative allegations made therein, and therefore denies the same. Utah Power denies that Petitioners have standing to assert claims on behalf of the State of Utah or its general economy.

29. With respect to the first sentence of paragraph 29, Utah Power lacks sufficient knowledge to admit or deny the allegations with respect to Petitioners' concerns. However, with respect to the substantive and speculative allegations set forth in paragraph 29, Utah Power denies such allegations. The last sentence of paragraph 29 sets forth a request for Commission action for which no response is required; however, the Company notes that such a request is beyond the scope of this proceeding and subject to affirmative defenses set forth hereafter.

30. Utah Power lacks sufficient knowledge and information to admit the vague allegations of paragraph 30 and therefore denies the same. The last sentence of paragraph 30 sets forth a request for Commission action for which no response is required; however, the Company notes that such a request is beyond the scope of this proceeding and subject to affirmative defenses set forth hereafter.

31. Paragraph 31 sets forth requests for relief for which no response is required. To the extent paragraph 31 requires a response, Utah Power incorporates by reference its responses to paragraphs 1 through 30 as if fully set forth herein.

32. Paragraph 32 sets forth requests for relief for which no response is required. To the extent paragraph 32 requires a response, Utah Power incorporates by reference its responses to paragraphs 1 through 30 as if fully set forth herein.

33. With respect to Paragraph 33, Utah Power acknowledges that Petitioners seek Commission treatment of its Petition as a class action for purposes of assessing damages. For the reasons set forth in the discussion of class action issues in section III.D above and as set forth hereafter, it would be unlawful to certify this case as a class action. Subject to Utah Power's position that certification of this matter as a class action would be unlawful, Utah Power hereby responds to the allegations of each particular subparagraph of paragraph 33:

a. Utah Power admits the allegation in paragraph 33.a that in terms of damage to Utah Power's system, the 2003 storm was the most destructive in the Company's recent history. In several other measures as well, the storm was the most severe in Company history.

b. Paragraph 33.b generally sets forth legal conclusions for which no response is required. To the extent any of the allegations of paragraph 33.b can be construed to be factual allegations requiring a response, Utah Power denies those allegations.

c. Paragraph 33.c generally sets forth legal conclusions for which no response is required. To the extent any of the allegations of paragraph 33.c can be construed to be factual allegations requiring a response, Utah Power denies those

allegations. Utah Power specifically denies that the interests of customers may be left unprotected outside of a class action. Rather, the participation of the Division and the Committee in this proceeding ensures that the interests of individual customers are represented and will be protected, given the statutory authority of these agencies. Utah Power denies the allegation regarding payments to customers and refers to the Storm Report and section III.B above for a discussion of the payments made by Utah Power to customers.

d. Paragraph 33.d sets forth legal conclusions for which no response is required. To the extent any of the allegations of paragraph 33.d can be construed to be factual allegations requiring a response, Utah Power denies those allegations. Utah Power admits that Petitioners accurately quote portions of Utah Code Ann. § 54-4-1, but denies the legal conclusion the Petitioners draw from its quotation of section 54-4-1.

e. With respect to Paragraph 33.e, Utah Power admits that the best interests of customers and the Company may be served by permitting the Commission, as it has been doing, to investigate the December 2003 storm-related outage through one proceeding; however, the Company denies that either the Petitioners' class-action participation or its attempt to broaden the issues promotes this interest.

f. With respect to the first sentence of Paragraph 33.f, Utah Power lacks sufficient knowledge and information to assess the validity of the allegations therein and therefore denies the allegations; otherwise, the Company denies all remaining allegations of paragraph 33.f.

34. Paragraph 34 sets forth legal conclusions and requests for relief for which no response is required. To the extent paragraph 34 can be construed as stating factual allegations, Utah Power denies those allegations.

35. Paragraph 35 sets forth legal conclusions and requests for relief for which no response is required. To the extent paragraph 35 can be construed as stating factual allegations, Utah Power denies those allegations.

36. Paragraph 36 sets forth legal conclusions and requests for relief for which no response is required. To the extent paragraph 36 can be construed as stating factual allegations, Utah Power denies those allegations. Further, Petitioners' attempt in the first paragraph of paragraph 36 to shift the burden of proof to Utah Power is unlawful.

37. Paragraph 37 sets forth requests for relief for which no response is required. To the extent paragraph 37 can be construed as stating factual allegations, Utah Power denies those allegations.

38. Paragraph 38 sets forth requests for relief for which no response is required. To the extent paragraph 38 can be construed as stating factual allegations, Utah Power denies those allegations.

39. Paragraph 39 sets forth legal conclusions and requests for relief for which no response is required. To the extent paragraph 39 can be construed as stating factual allegations, Utah Power denies those allegations.

40. Paragraph 40 sets forth requests for relief for which no response is required. To the extent paragraph 40 can be construed as stating factual allegations, Utah Power denies those allegations.

41. Paragraph 41 sets forth requests for relief for which no response is required.

42. To the extent Utah Power has not specifically admitted or denied factual allegations contained in paragraphs 1 through 41 of the Petition, Utah Power hereby denies those allegations.

V. AFFIRMATIVE DEFENSES

A. FIRST AFFIRMATIVE DEFENSE

Petitioners have failed to state a claim upon which relief can be granted.

B. SECOND AFFIRMATIVE DEFENSE

To the extent any of the individual Petitioners, members of the putative class, or the State of Utah failed to file claims for compensation under Regulation No. 25 in a timely manner, their claims are barred by Regulation No. 25 and the terms of the Commission's February 27, 2004 Order Denying Petition to Extend Claim Period.

C. THIRD AFFIRMATIVE DEFENSE

The claims of Petitioners or members of the putative class may be barred by the doctrine of accord and satisfaction.

D. FOURTH AFFIRMATIVE DEFENSE

Petitioners' requests for (1) compensatory damages,¹⁸ (2) penalties,¹⁹ (3) an investigation of Utah Power's compliance with merger conditions,²⁰ (4) an investigation of the coal mining

¹⁸ Utah Power's service and its exposure to liability for customer service issues have been subject to review in each Utah Power rate case and effect the level of expenses and rate base upon which rates were approved and established by the Commission in each case. It is inappropriate to now reconsider those issues. Such reconsideration would implicitly amount to a reconsideration of the justness and reasonableness of rates set in prior orders which have become final.

¹⁹ In considering Utah Power's tariff, the Commission has considered the appropriate level of penalties to which Utah Power should be exposed and has approved Regulation No. 25 imposing a specific level of penalties in certain circumstances. It is inappropriate to now reconsider these issues. Such reconsideration would implicitly amount to a reconsideration of the justness and reasonableness of the Company's tariff on a retroactive basis.

²⁰ Utah Power has kept the Commission fully informed of its organizational structure, department and employee locations, budgets and staffing levels. Those matters and the Company's practices, in light

practices of Utah Power,²¹ and (5) an investigation of the land sales practices of Utah Power²² are barred by the doctrines of res judicata, collateral estoppel, the bar on retroactive ratemaking, and laches.

E. FIFTH AFFIRMATIVE DEFENSE

Utah Power reserves the right to assert any additional affirmative or special defense that may become known through discovery or further proceedings in this matter or as may be otherwise appropriate.

VI. RELIEF REQUESTED

Based upon the foregoing answer and defenses, Utah Power requests the following relief:

1. An order denying certification of this matter as a class action.
2. An order finding that Petitioners are not appropriate representatives of the class.
3. An order dismissing the Petition with prejudice.
4. An award of Utah Power's costs and attorneys fees incurred in defending against

the claims made in the Petition.

of the merger conditions, have been subject to review in each subsequent Utah Power rate case before the Commission. Moreover, these issues directly relate to, and effect the level of, expenses upon which rates were approved and established by the Commission in each case. It is inappropriate to now reconsider those issues. Such reconsideration would implicitly amount to a reconsideration of the justness and reasonableness of rates set in prior orders which have become final.

²¹ The expenses Utah Power incurs and the investments it makes in its coal mining operations have been subject to review in each Utah Power rate case and effect the level of expenses and rate base upon which rates were approved and established by the Commission in each case. It is inappropriate to now reconsider those issues. Such reconsideration would implicitly amount to a reconsideration of the justness and reasonableness of rates set in prior orders which have become final. In addition, Utah Power's coal mining practices have been the subject of specific examination in recent Utah Power rate cases.

²² Utah Power's land sales practices have been subject to review in each Utah Power rate case and effect the level of expenses and rate base upon which rates were approved and established by the Commission in each case. It is inappropriate to now reconsider those issues. Such reconsideration would implicitly amount to a reconsideration of the justness and reasonableness of rates set in prior orders which have become final.

RESPECTFULLY SUBMITTED: June 1, 2004.

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing **RESPONSE OF UTAH
POWER TO PETITION OF GEORGIA B. PETERSON, ET AL.** was mailed by U.S. Mail,
postage prepaid, to the foregoing on June 1, 2004:

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