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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 REQUEST TO INTERVENE OF GEORGIA B. PETERSON, ET AL.

PacifiCorp dba Utah Power & Light Company (“Utah Power” or “Company”), pursuant to Utah Code Ann. § 63-46b-9 and Utah Admin. Code R746-100-7, hereby responds to the Request to Intervene (“Request”) filed by Georgia B. Peterson, Janet B. Ward, William Van Cleaf and David Hiller (“Petitioners”) on April 29, 2004 in this docket.¹ Utah Power does not object to the Request so long as any grant of intervention is conditioned to strictly limit the

¹ Utah Power will respond separately to the Request for Agency Action which was part of the pleading filed by Petitioners on April 29, 2004, in accordance with Utah Code Ann. § 63-46b-6(1) and Utah Admin. Code R746-100-4(D).

issues to those properly before the Commission in this docket and to avoid disruption to the orderly and prompt conduct of this proceeding through duplication of effort or otherwise.

I. INTRODUCTION

A. THE STORM AND THE COMPANY'S RESPONSE

A severe winter storm hit the Wasatch Front on the evening of Christmas day in 2003. Although a storm had been forecast, the magnitude and duration of the storm were unanticipated. Instead of continuing eastward, the storm stalled over the Great Salt Lake and Wasatch Mountains, providing an extreme example of the "lake effect." Heavy, wet snow continued to fall for five days. The National Weather Service has classified the storm as a mega-storm. In terms of total snowfall and water content, it was one of the worst storms in 75 years.

Although the storm was welcomed for its potential to assist in relieving the five-year drought, it unfortunately also caused wide-spread power outages, disrupting electric service to many of Utah Power's customers along the Wasatch Front. 80,000 customers were simultaneously without power at the height of the storm, and 2700 customers were without power for several days. Overall, delivery of power to 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 inadequately staffed to handle it. Many employees had planned vacations during the week between Christmas and New Years. The Company was not alerted through weather forecasts or otherwise that extra staffing was needed in anticipation of the storm. However, once the unusual severity of the storm was

apparent, employees were notified and began to report for work. Additional employees, not normally assigned to handle customer calls, were also asked to assist with this function.

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 a force of 639 field employees had been assembled to respond to the outage conditions. In addition, repair crews were brought into Utah from surrounding states. Over 1000 employees and contractors were involved in the restoration efforts.

Utah Power's Computer Assisted Distribution Operations System ("CADOPS"), the system that coordinates outage reports and prioritizes repairs and which had worked successfully in prior storms, failed during this storm due to the exceptionally high volume of calls. In the interests of restoring power as quickly as possible, the Company reverted to an older manual system. Although the Company's overall efforts to restore power were not materially affected by the failure of CADOPS, its ability to communicate with customers and to determine which customers had been out the longest was affected, resulting in substantial frustration and misunderstanding.

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, the Company confirmed that it was conducting an internal investigation. In addition, the Commission requested the Division of Public Utilities ("Division") to independently review the Company's investigation and report and

to 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. They have been working collaboratively since that time. The Company filed its confidential report with the Commission on May 13, 2004. It is anticipated that the Division’s report will be filed on May 14. The Commission has scheduled a technical conference for May 18, 2004 to consider the reports and plan additional steps in the investigation.²

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 Utah Power’s tariffed Customer Guarantees.³ 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 26.⁴ 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 compensation offer as equitable and reasonable. On February 27, 2004, the

² The Company plans to provide a nonconfidential version of its report prior to the technical conference.

³ Utah Power & Light Company, Electric Service Regulation No. 25, State of Utah, P.S.C.U. No. 45.

⁴ The Company actually voluntarily paid claims received through the end of March.

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.

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 general and second level Terms of Reference are as follows:

1. The Storm

- Was the storm, in fact, unusual?
- Did it cause more damage/customer interruptions than other storms?

2. PacifiCorp's Response

- Describe the company's response to the storm.
- Why did it take up to five days to restore some customers?
- How did the company deal with emergency/dangerous situations, customers with special needs, etc.?
- What planning/contingencies does the company undertake for situations like this?

3. Technology Issues

- Why exactly did the outage management system (CADOPS) fail?
- How did the failure impact restoration and call center performance?
- What are you doing to prevent similar failures in the future?
- What are you doing to improve back-up systems?

4. Vegetation Management

- Is the company's tree trimming program adequate for Utah?
- Is the work completed efficiently and effectively?
- Are current clearances an issue?
- Is enforcement of clearances/rights of way/easements an issue?

- Respond to allegations that you have failed to act on requests to trim trees.

5. Investment and Standards

- Is the company investing adequately in the electricity infrastructure in Utah?
- Why aren't the assets better able to withstand storms?
- Why doesn't the company underground all its electricity lines?

6. Reliability and Maintenance

- Is it true that reliability is, in fact, deteriorating?
- What are you doing to improve reliability?
- Is the company spending enough money on maintaining its assets?

7. Organization and Resourcing

- Do you employ enough people in the state of Utah to operate the business effectively?
- Explain why more activities/functions aren't based in Utah.
- Why have you let so many experienced people leave the organization?

8. Comparative Performance and Benchmarking

- How does PacifiCorp/Utah Power's performance compare with other utilities?
- Respond to the allegation that the quality of service has declined with each merger.

9. Major Event Definition and Compensation

- Is the number and frequency of "major events" increasing?
- Should the major event definition be revisited?
- Should customers receive compensation/guarantee payments given the extent of inconvenience during long outages?

The Commission has directed the parties to work together and share information in this collaborative process to identify problems and strengths 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.⁵ 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 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 of 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.

Because some of the issues raised in the Petition are related to the outage and the Terms of Reference, Utah Power does not oppose the intervention of the Petitioners, so long as their involvement in the case does not broaden the scope of the case or impair the orderly and prompt conduct of this proceeding through duplication of effort or otherwise.

⁵ While the Petition was filed in this docket, it includes an inconsistent case caption.

II. ARGUMENT

A. UTAH INTERVENTION STANDARDS

Utah law provides that a petition for intervention shall be granted if it is determined that:

(a) the petitioner's legal interests may be substantially affected by the formal adjudicative proceeding and (b) the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.⁶

To fulfill these requirements, a petition to intervene must include “a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceeding” and “a statement of the relief the petitioner seeks.”⁷

B. PETITIONERS' INTERVENTION SHOULD BE LIMITED

Utah Power will respond in due course to the full range of factual allegations in the Petition and to the various forms of relief requested therein. However, for purposes of Petitioners' Request, there are two reasons the intervention should be conditioned and limited as requested herein: (1) to the extent their legal rights or interests may be substantially affected by this docket, those interests are already represented by the Division and Committee in this docket, and (2) given the dramatically broad scope of the Petitioners' Petition vis-à-vis the issues defined by the Commission in this docket, the interests of justice and the orderly and prompt conduct of the adjudicative proceeding will be materially impaired by allowing those broader issues to become part of this docket.

1. Impact on Petitioners' Rights or Interests

A case can be made that Petitioners have failed to demonstrate, as the statute requires, that their legal rights and interests are substantially affected by this docket. Two agencies of the

⁶ *Id.* §§ 63-46b-9(2)(a) & (b).

⁷ *Id.* §§ 63-46b-9(1)(c) & (d).

state are active participants in this matter. The Division, with its broad investigatory powers and its duty to represent the general public interest,⁸ is fully engaged in this docket. Likewise, the Committee, which has the specific statutory charge to represent the interests of “residential and small commercial consumers”⁹ is an active participant. Both the Division and Committee fulfill roles designed to assure that individual customer interests are represented and will be protected. The interests of the four Petitioners or the class they purport to represent are no different than the other customers who were impacted by the outage—the interests of all such customers are being represented in general by the Division and specifically by the Committee.

Nevertheless, Utah Power recognizes that the Commission has typically been liberal in allowing interested parties to intervene in open dockets. Thus, while Utah Power does not object to Petitioners’ intervention, that intervention should not be allowed to change the focus and purpose of this docket as defined by the Commission and as detailed in the Terms of Reference.

2. Impact on the Orderly and Prompt Conduct of the Hearing

As stated above, the Petition seeks relief that goes far beyond the scope of the this docket.

To be more specific, the Petition seeks, among other things:

- Damages for alleged monetary losses sustained by class members as a result of the outage.
- Penalties based on the Company’s alleged violation of merger conditions.
- An order to show cause requiring the Company to affirmatively demonstrate that it has complied with several merger conditions that Petitioners claim were violated.
- Restoration of undefined benefits to the state of Utah associated with employee transfers from Utah.

⁸ *Id.* §§ 54-4a-1 & 54-4a-6.

⁹ *Id.* § 54-10-4(1).

- An order requiring compliance with several merger conditions, including possible additional hiring and relocation of functions and positions.
- Potential divestment of the Utah system of the Company if the Company fails to return to pre-merger levels of quality of service.
- An investigation of unspecified coal mining practices of the Company that may have allegedly produced short-term company revenue at the expense of long-term resource availability and fuel costs.¹⁰
- An accounting of the proceeds of sale of certain unspecified tracts of land held for trade with federal and state entities and a determination whether the tracts were improperly transferred in violation of the *Wexpro* decisions.¹¹

If Petitioners are allowed to intervene and to address the foregoing issues, some of which are so vague that they defy definition and response, the character of this docket will change dramatically. Instead of this case being a collaborative effort to investigate the outage and the Company's response and assess constructive recommendations related thereto, it will be transformed into a contentious, adversarial proceeding in which the focus will be diverted by Petitioners' efforts to extract damages, impose punishment and do so based upon allegations that have little or nothing to do with the outage.¹² If Petitioners are allowed to intervene without condition, their intervention will violate the requirement that "interests of justice and orderly and prompt conduct of the adjudicative proceedings will not materially impaired by allowing the intervention."¹³

¹⁰ Coal mining practices and costs have been the subject of examination in recent Utah Power rate cases. In fact, the Committee hired an independent consultant to review coal issues in at least two recent rate cases.

¹¹ *Committee of Consumer Services v. Public Serv. Comm'n*, 595 P.2d 871 (Utah 1979) ("*Wexpro I*"); *Utah Dep't of Admin. Services v. Public Serv. Comm'n*, 658 P.2d 601 (Utah 1983) ("*Wexpro II*"). Petitioners ignore the fact that the appropriate time to raise questions regarding an asset sale is at the time of the sale or in the next general rate case following the sale.

¹² The Petition essentially ignores the Customer Service Guarantees of the Company's tariff, not to mention the Company's goodwill payment alternative that was already found to be equitable and reasonable.

¹³ *Id.* § 63-46b-9(2)(b).

In addition, because the Petitioners' interests are already represented directly by the Committee and indirectly by the Division, their intervention should be limited to working with and through the Committee.¹⁴

III. CONCLUSION

Utah Power does not oppose Petitioners' intervention. However, the scope of that intervention should be strictly limited consistent with the current scope of this docket as defined by the Terms of Reference, including: a specific investigation of the December 2003 storm, the resulting outage, Utah Power's response to the outage, reliability measures, and consideration of recommendations related to those issues, and a review of implementation of customer service guarantees. In addition, their participation should be through the Committee to avoid duplication of effort.

RESPECTFULLY SUBMITTED: May 14, 2004.

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¹⁴ If Petitioners at anytime do not believe the Committee is adequately representing their interests with respect to issues properly before the Commission in this docket, they may petition the Commission to allow them to engage in their own direct participation, such as filing independent pleadings, discovery, testimony or argument.

CERTIFICATE OF SERVICE

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

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