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BEFORE THE UTAH PUBLIC SERVICE COMMISSION

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| An Additional Petition Submitted in the |) | <u>Docket No. 04-035-21</u> |) |
| Matter of the Evaluation of the Home |) | |) |
| Electric Lifeline Program (“H.E.L.P.”) |) | BRIEF OF LIGHT AND TRUTH |) |

I. BACKGROUND

The following sections explain briefly the origin and effects of the H.E.L.P. program and what has happened procedurally before the Utah Public Service Commission (“the Commission”) from the position of Light and Truth.

A. The “H.E.L.P.” Program

On May 24, 2000, the Commission published its Report and Order in Docket No. 99-035-10, ordering the Utah Division of Public Utilities, the Utah Committee of Consumer Services, the Salt Lake Community Action Program, and any other interested party to work with Pacificorp to design a program whereby qualifying low-income households would receive electricity at a reduced tariff. On July 20, 2000, the parties, with the exception of the Utah Committee of Consumer Services, stipulated to a plan they created called the “Home Electric Lifeline Program” or “H.E.L.P.” The Commission ordered the implementation of H.E.L.P., as stipulated by the parties, in the Commission’s Report and Order issued August 30, 2000 in Docket No.00-035-T07.

Under H.E.L.P., a maximum monthly credit of \$8.00 for specified low-income residents

is provided through the creation of PacificCorp Tariff Schedule 3. Pacificcorp *does not provide* funding for this credit, however. Rather, H.E.L.P. funding is balanced on the backs of its remaining electrical customers through Pacificcorp Tariff Schedule 91. Schedule 91 permits a separate line item entitled “Home Electric Lifeline Program”, with an accompanying charge of \$0.12, to appear on the electrical bill for Pacificcorp’s other customers. Pacificcorp’s electrical bills are, thus, the conduit for such charging and collecting monthly at least \$0.12 from all non-qualifying Pacificcorp customers. In this way, funding for H.E.L.P., subject to an approximate annual cap of \$1,850,000.00, is obtained.

According to the parties’ stipulation (which became the Commission’s order), however, Pacificcorp may not use this money in its usual ways but, instead, acts as a receptacle, “hold[ing] these funds in a separate Lifeline tariff account” for distribution to H.E.L.P.’s qualified recipients. Appendix A from Docket No. 99-035-10, the Joint Stipulation, p. 1. In fact, the Utah State Department of Community and Economic Development (“DCED”) “agree[d] to *administer* the Lifeline program” while Pacificcorp merely “*assist[s]* DCED in maintaining a database of applicants for and recipients of the Lifeline program.” *Id.* at 2 (emphasis added). Pacificcorp and DCED are compensated for their administrative role in H.E.L.P.

B. Procedural history

On April 25, 2003, Mr. Paul F. Mecham filed an informal, billing complaint against Utah Power Company (Pacificcorp) with the Division of Public Utilities. The complaint alleged the H.E.L.P. funding method was an unlawful third-party billing; however, the complaint was processed erroneously as an Inquiry. After Pacificcorp filed a response in opposition to the complaint, the issue Mr. Mecham raised was left unresolved.

On May 7, 2003, Mr. Mecham escalated his action by filing a formal complaint against

Pacificorp with the Commission (Docket No. 03-035-09), stating the same allegations about H.E.L.P. Pacificorp, responding by letter dated June 6, 2003, conceded it was undisputed that Mr. Mecham was being assessed for H.E.L.P. funding. However, it claimed that, because the Commission authorized and, indeed, ordered the H.E.L.P. charges on Mr. Mecham's electric bill, the complaint should be directed to the Commission. Mr. Mecham then submitted a letter to the Commission, dated June 10, 2003, arguing that he is being harmed by the third-party billing for H.E.L.P. because it is contrary to Utah statutory law.

In a Procedural Order issued August 27, 2003, the Commission converted Mr. Mecham's "customer complaint" to a formal proceeding to be heard and considered directly by the Commission. The Commission then dismissed Mr. Mecham's formal complaint in a Report and Order issued September 2, 2003. In this dismissal order, with regard to Mr. Mecham's arguments, the Commission stated only: "The charges complained of are from the public utility; they are part of the public utility's authorized tariff. They are not third party charges." Docket No. 03-035-09, Report and Order, September 2, 2003, p. 2. The Commission neither explained how funds Pacificorp could not use were part of its "authorized tariff" nor analyzed the relevant third-party billing statutes to support its conclusory statements and decision.

By letter to the Commission, dated September 16, 2003, Mr. Mecham exercised his right to petition for a review/rehearing of the Commission's Report and Order which dismissed his complaint. The Commission, however, elected not to respond to Mr. Mecham's request.

Now that the Commission is evaluating the H.E.L.P. program, under a separate docket number, Light and Truth comes before the Commission claiming the funding for H.E.L.P. violates Utah's third-party billing law and must be terminated.

II. ARGUMENT

A. Standing

On February 12, 2003, in its Docket No. 03-035-01 Order on Petition to INtervene and Order Designating Proceedings as Informal, the Commission denied Light and Truth's petition to intervene. It simultaneously designated the docket as an informal proceeding where intervention is not needed for Light and Truth to participate. The Commission stated that other participants should continue to include Light and Truth in their correspondence, exchange of information, meetings, etc.

On June 17, 2003, in its Docket No. 03-2035-02 Order Granting Intervention, the Commission granted Light and truth leave to intervene as its interests may appear. Docket No. 03-2035-02 is the most recent Pacificorp rate case in which H.E.L.P. was considered.

Light and Truth initially contends it has standing to participate in these proceedings and its presence in this case is appropriate because it is an entity conversant with the relevant issues. It offers specific arguments which, it believes, will aid the Commission in reaching a simple and speedy resolution of this matter.

Second, the Public Utilities Statutes provide as follows: "Each public utility *shall allow* account holders to prohibit the public utility from billing for all or selected third parties for for services." Utah Code Ann. Sec. 54-4-37(18) (emphasis added). The very thrust of Light and Truth's brief is that Pacificorp, a "public utility" is, in fact, "billing for . . . selected third parties [qualified H.E.L.P. recipients] for services [reduced electric tariffs or credits]" and should be "prohibited" from doing so. In this very proceeding, the Commission will decide whether Pacificorp should be prohibited from continuing its present billing practices concerning H.E.L.P.

Moreover, Pacificorp, a “public utility”, must “allow” such Pacificorp customers as Mr. Mecham, an “account holder” and affiliate of Light and Truth, to press forward with their petitions.

Finally, in its letter dated June 6, 2003, Pacificorp admitted that it “does not deny that [Mr. Mecham] is being assessed \$.12 cents per [bill] for the Electric Lifeline Program.” Thus, Light and Truth’s affiliate, Mr. Mecham, has a direct stake in the outcome of this case because he is being harmed by Pacificorp’s billing methods.

B. The Commission Has Overstepped its Limited Authority

“It is well established that the Commission has no inherent regulatory powers other than those expressly granted or clearly implied by statute.” Mountain States Tel. & Tel. Co. v. Public Serv. Comm’n, 754 P.2d 928, 930 (Utah 1988) (citing Basin Flying Serv. v. Public Serv. Comm’n, 531 P.2d 1303, 1305 (Utah 1975)); accord Hi-Country Estates Homeowners Ass’n v. Bagley & Co., 901 P.2d 1017, 1021 (Utah 1995). “All powers retained by the PSC are derived from and created by statute. The PSC has no inherent regulatory powers and can only assert those which are expressly granted or clearly implied as necessary to the discharge of the duties and responsibilities imposed upon it.” Williams v. Public Serv. Comm’n of Utah, 754 P.2d 41, 50 (Utah 1988); accord Hi-Country Estates, 901 P.2d at 1021. Accordingly, “[t]o ensure that the administrative powers of the PSC are not overextended, any reasonable doubt of the existence of any power must be resolved against the exercise thereof.” Williams, 754 P.2d at 50 (citation omitted); accord HiCountry Estates, 901 P.2d at 1021. “Despite its broad language, section 54-4-1 [describing Public Service Commission jurisdiction] does not confer upon the Commission a limitless right to act as it sees fit, and this court has never interpreted it as doing so.” Hi-Country Estates, 901 P.2d at 1021; accord Mountain States Tel. & Tel. Co., 754 P.2d at 930.

The Commission has cited no statute directly or indirectly authorizing it to instigate or order several community organizations to create a program like H.E.L.P. and to determine its manner of funding. Light and Truth has found no such authority, and it appears counter to the Commission's jurisdiction to provide new services and otherwise "act as it sees fit". Addressing a "lifeline" program for telephone service, the Mountain States Telephone court noted: "We agree that universal service is desirable end . . . [but] [w]ithout clear statutory authority, the Commission cannot pursue even worthy objectives for the public good." Mountain States Tel. & Tel. Co., 754 P.2d at 933. Light and Truth, thus, argues the Commission acted without authority in ordering the implementation of H.E.L.P., even if it is judged "for the public good."

C. The "H.E.L.P. Program Violates Utah Law and Must be Terminated

Light and Truth is convinced a clear understanding of the facts of this matter, applied to relevant Utah statutory law, will lead the Commission to the only correct resolution: the H.E.L.P. funding as presently constituted is unlawful and must be abolished.

Light and Truth contends Utah Code Ann. SECTION 54-4-37 is relevant to the present facts, and the Commission has breached its provisions. Correctly applying the plain language of Section 54-4-37(1)(e)(I), it is obvious that a third party is any person other than the account holders (all Pacificorp's regular customers who do not qualify for H.E.L.P.), and the utility (Pacificorp). In this matter, the third parties are, in fact, the low-income H.E.L.P. recipients.

The H.E.L.P. charges are indeed assessed by means of Pacificorp bills, but, as clearly noted in the language of the Joint Stipulation quoted above, the H.E.L.P. money is not meant or collected for Pacificorp, Pacificorp must hold the H.E.L.P. funds in a separate account for disbursement to qualified recipients, Pacificorp does not use H.E.L.P. funds in its operations, and

Pacificorp is not even in charge of administering the H.E.L.P. program. Without a doubt, Pacificorp is merely a repository for the H.E.L.P. funds ultimately destined for third parties, i.e., the qualified low-income recipients who are neither ratepayers nor a utility.

Moreover, the Utah Code provides that “a public utility may not charge an account holder for services the account holder never: (a) ordered; or (b) knowingly authorized.” Utah Code Ann. Sec. 54-4-37(3). It is undisputed that funding for H.E.L.P. was never even explained to, let alone authorized by, Pacificorp’s remaining, unqualified customers in the manner outlined and required by Utah Code Ann. Sec. 54-5-37(4). The H.E.L.P. charge simply appears on electric bills for unqualified customers.

The method currently employed to fund H.E.L.P. constitutes unlawful third-party billing, violates Utah law unequivocally, and must be terminated immediately.

III. CONCLUSION

Light and Truth contends that, however laudable the purpose for H.E.L.P., the program was designed and approved outside the scope of the Commission’s authority. Now in operation for over four years, the funding method for H.E.L.P. constitutes third-party billing in contravention of Utah Code Ann. Sec. 54-4-37. Although the Commission has stated that H.E.L.P. funding is not third-party billing, it has never supported its statement with reasoning, analysis of Utah law, or evidence of any kind, despite Mr. Mecham’s repeated efforts to obtain legal support for H.E.L.P. The Commission cannot continue to break the law nor encourage or permit utilities to do so. Pacificorp cannot justify its continued violation of the law by hiding behind the Commission’s unlawful order. As the ultimate result of the Commission’s actions, Pacificorp’s ratepayers who do not qualify for H.E.L.P. have paid nearly \$2 million per year to

support a program they have not authorized and likely do not even know about. The Commission must exercise its authority to terminate H.E.L.P.'s funding immediately,see Utah Code Ann. Sec. 54-4-37(23), and reimburse those who paid for the program.

Dated this _____ day of April, 2005.

Carolyn Jones
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Brief of Light and Truth in the matter of the Evaluation of the HELP Program Docket No. 04-035-21 was distributed and transmitted electronically on the 24th day of June, 2005 to the following:

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Dated this 24th day of June, 2005

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