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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of
PACIFICORP for Approval of its Proposed
Electric Service Schedules and Electric Service
Regulations

DOCKET NO. 04-035-42

**MEMORANDUM IN SUPPORT OF
UAE'S MOTION TO COMPEL
DISCOVERY FROM PACIFICORP,
REQUEST FOR ADDITIONAL
TIME TO FILE TESTIMONY AND
REQUEST FOR EXPEDITED
RESOLUTION**

The UAE Intervention Group (UAE) files this memorandum in support of its motion for an order compelling PacifiCorp to provide full and adequate responses to UAE Data Requests 4.1 and 4.2. The questions seek information relating to PacifiCorp's load and resource projections, projected resource timing needs, resource selection process, and Lake Side project. These issues are clearly relevant in this docket. PacifiCorp is seeking recovery of hundreds of millions of dollars in costs for a number of new resources, including the extended West Valley lease and the Currant

Creek project. Data requests exploring PacifiCorp's load and resource projections, RFP processes, bid evaluations and resource selection are clearly relevant.

Under Rule 26(b)(1), “[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, ... including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things.... It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible.” Relevance in the context of discovery is to be liberally construed. See, e.g, 8 Federal Practice and Procedure 2008 (2d ed. 1994) (“[T]he requirement of relevancy should be construed liberally [I]t is not too strong to say that a request for discovery should be considered relevant if there is any possibility that the information sought may be relevant to the subject matter of the action.”)

It is beyond reasonable argument that the information requested by UAE not only “may be,” but in fact clearly is relevant to this matter. Just a few of the myriad of relevant issues that UAE may elect to investigate in this docket, and as to which the requested data and documents are relevant, are as follows:

- Was PacifiCorp prudent in its load and resource projections in the years leading up to its claim of “emergency” circumstances that led to demands for immediate approval of proposed new resources to be owned by it and its affiliate?
- What analyses did PacifiCorp perform and what information did it consider in electing not to pursue resource acquisition on a more timely basis?
- Did PacifiCorp unreasonably delay its pursuit of new resources in an attempt to protect shareholders at the risk of ratepayers?

- Was PacifiCorp prudent in the timing of its RFP, its analysis of bids, its negotiations with bidders, its determinations of categories to which bids were assigned, its follow-up negotiations with bidders, etc.?
- Did any bidders offer to make less-expensive resources available in a timeframe that might have avoided or delayed the need for more expensive resources like the West Valley lease extension, the simple cycle Currant Creek project, or the combined cycle Currant Creek project?
- What amount of excess costs are ratepayers being asked to pay for the Currant Creek project and the West Valley extended lease as compared to other resources that could have been available, including those that evaluated as less expensive than Currant Creek in PacifiCorp's own bid evaluation?

These and many other related issues are clearly relevant to PacifiCorp's request to recover the costs of the West Valley lease extension, the Currant Creek simple cycle project and the Currant Creek combined cycle project. Particularly in light of the limited options for advance customer or regulatory review or approval of new resources, a general rate case proceeding is currently the only forum in which ratepayers may meaningfully analyze or challenge the utility's prudence in connection with resource planning and selection. Having thwarted all efforts at meaningful advance investigation into the prudence of PacifiCorp's resource planning and selection process, remarkably it now seeks to also avoid any such investigation in this general rate case. The requested information if clearly relevant and PacifiCorp should be ordered to produce it immediately.

Given PacifiCorp's delay and refusal to produce clearly relevant data, UAE also requests a delay in its testimony filing date on issues relating to the prudence of its resource selection process.

PacifiCorp waited three full weeks from its receipt of the data requests to provide a one-sentence objection and refusal to produce even one document in response to UAE's request. UAE cannot reasonably complete its analysis and prepare its testimony until it receives the requested information and has had an adequate opportunity to analyze the same. UAE thus requests a delay in its December 3, 2004 direct testimony filing date on issues impacted by PacifiCorp's wrongful failure to provide relevant data on a day-for-day basis from the date PacifiCorp's response was due, November 9, 2004, until the requested documents are received in full by UAE.

UAE also requests expedited consideration and resolution of this motion. The compressed statutory timeframe for resolution of general rate filings warrants expedited consideration of this motion.

Finally, UAE requests an order pursuant to Rule 37 that PacifiCorp reimburse UAE for its reasonable expenses incurred in obtaining this order, including attorneys' fees.

DATED this ____ day of November, 2004.

HATCH, JAMES & DODGE

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email or U.S. mail, postage prepaid, this ___ day of November, 2004, to the following:

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