

In the Matter of the Complaint of Georgia B.)
Peterson, Janet B. Ward, William Van Cleaf,)
David Hiller, GP Studio, Inc., Truck)
Insurance Exchange, and Farmers Insurance)
Exchange on Behalf of Themselves and All)
Other Members of the Class Described)
Below Against Scottish Power PLC and)
PacifiCorp, dba Utah Power and Light Co.,)
Requesting an Investigation, and)
Enforcement of the Commission's Orders in)
Docket Nos. 87-035-27 and 98-2035-04 and)
Compensation for Losses)

DOCKET NO. 04-035-70

ORDER DENYING MOTIONS TO STAY
DISCOVERY

ISSUED: November 4, 2005

By The Commission:

PROCEDURAL HISTORY

On August 15, 2005, Petitioners Georgia Peterson *et al.* submitted a Request for Production of Documents to PacifiCorp dba Utah Power & Light Company ("Utah Power") containing thirty-one (31) enumerated requests for documents. On August 17, 2005, Petitioners submitted to the Utah Division of Public Utilities ("Division") a memorandum styled Data Requests and Request for Production of Documents containing seventeen (17) interrogatories with sub-parts and thirty (30) requests for production of documents.

On September 19, 2005, Utah Power filed a Motion for Protective Order Staying Discovery ("Utah Power Motion"). On September 23, 2005, the Division similarly filed a Motion for an Order Staying Discovery ("Division Motion"). Both Motions argue that requiring Utah Power and the Division to respond to Petitioners' data requests prior to Commission

decision on Utah Power's pending Motion to Dismiss is unnecessarily burdensome since the decision on the Motion to Dismiss could moot some or all of the data requests.

On October 13, 2005, Petitioners filed their Response to Motions for Protective Orders Staying Discovery from PacifiCorp and the Utah Division of Public Utilities. On October 25, 2005, Utah Power and the Division, respectively, filed their Reply in Support of Motion for Protective Order Staying Discovery and Reply to Complainant's Response for an Order Staying Discovery.

On October 27, 2005, oral argument on the Utah Power Motion and Division Motion was held before the Administrative Law Judge. David L. Elmont and Gregory B. Monson represented Utah Power. Patricia Schmid argued for the Division. Petitioners were represented by Alan L. Smith and David R. Irvine.

DISCUSSION AND CONCLUSIONS

Utah Power casts the key question before the Commission as whether there is prejudice to Petitioners if a stay of discovery is granted or whether there is prejudice to Utah Power if the stay is not granted. Utah Power argues that staying discovery will not prejudice Petitioners in any way while requiring discovery to proceed pending decision on the Motion to Dismiss would impose a significant burden on Utah Power. Utah Power points out that once the Motion to Dismiss has been decided all parties will have a better understanding of the scope of the proceedings going forward, leading to a more focused, more efficient discovery process.

The Division echos these arguments and notes that it does not seek denial of discovery but merely a reasonable delay pending Commission decision on the Motion to

Dismiss. The Division estimates responding to Petitioners' data requests will require two full-time personnel working for two weeks. The Division believes that the interests of administrative efficiency and fairness require a stay of discovery until the Motion to Dismiss has been decided.

Petitioners argue there is no reason to stay discovery because their claim for penalties can not be extinguished by granting the Motion to Dismiss. Petitioners also argue that discovery is necessary in preparation for adjudication of the Motion to Dismiss. Utah Power does not concede this point, but notes that even if some discovery would aid Petitioners in preparation for final argument on the Motion to Dismiss, such discovery would comprise a small subset of Petitioners' propounded data requests. Petitioners identify Utah Power data requests 8, 9, 17, 24, and 25, as well as data requests to the Division seeking documents regarding potential ex parte communications between the Division and Commission, as necessary to their preparation for argument in opposition to the Motion to Dismiss.

Having carefully considered the arguments of each party in this matter, we are simply not persuaded that the burden of responding to Petitioners' data requests is so great as to justify staying all discovery until after the Motion to Dismiss has been decided. Furthermore, while it may be possible to limit a stay to only those data requests thought not germane to the Motion to Dismiss, we are not convinced of the need to do so. We instead conclude our obligation to ensure a full, fair, and timely hearing of the issues and arguments presented by all parties will best be satisfied by permitting discovery to proceed without stay or limitation.

Therefore, based on the foregoing information and for good cause appearing, the Administrative Law Judge enters the following proposed

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. Utah Power's Motion for Protective Order Staying Discovery is denied. Utah Power is ordered to respond within thirty (30) calendar days from the date of this Order to Petitioners' August 15, 2005, Request for Production of Documents.

2. The Division's Motion for an Order Staying Discovery is denied. The Division is ordered to respond within thirty (30) calendar days from the date of this Order to Petitioners' August 17, 2005, Data Requests and Request for Production of Documents.

DATED at Salt Lake City, Utah, this 4th day of November , 2005.

/s/ Steven F. Goodwill
Administrative Law Judge

Approved and Confirmed this 4th day of November, 2005, as the Order of the Public Service Commission of Utah.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#46408