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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of Pinnacle Engineering &	:	
Land Surveying, Inc.,	:	
Complainant,	:	Docket No. 05-035-01
vs.	:	
PACIFICORP,	:	PACIFICORP'S MOTION
d/b/a Utah Power & Light Company,	:	TO DISMISS AND ANSWER
Respondent.	:	

Pursuant to Utah Code Ann. § 63-46b-6, and Utah Admin. Code sections R746-100-3.H
and R746-100-3.I, PacifiCorp, doing business as Utah Power & Light Company, (“PacifiCorp”

or “Company”) hereby responds to the Complaint of Pinnacle Engineering & Land Surveying, Inc. (“Pinnacle” or “Complainant”) as follows:

I. STATEMENT OF RELIEF REQUESTED

For the reasons stated below, PacifiCorp respectfully requests that the Commission find that PacifiCorp has not violated any provision of law, Commission order or rule, or Company tariff, and that Pinnacle be denied its requested relief. PacifiCorp also moves that the Complaint be dismissed in its entirety, with prejudice.

II. STATEMENT OF FACTS AND REASONS FOR GRANTING REQUESTED RELIEF

In its Complaint, Pinnacle seeks the relief of requiring PacifiCorp to “be responsible for the majority of the cost” of having “the line increased to three-phase as part of a master plan.”¹ Pinnacle is not entitled to relief unless PacifiCorp’s actions have been in violation of “any provision of law or any order or rule” of the Commission.² The law, in turn, requires that PacifiCorp’s practices be just, reasonable, safe and proper.³ An important element of just and reasonable practices is that they be nondiscriminatory,⁴ including that charges for service not be “greater or less . . . than the . . . charges applicable to such . . . service as specified in [the Company’s] schedules on file and in effect at the time . . .”⁵

In this case, PacifiCorp allocated the appropriate portion of the costs of the work at issue to Fair Grove Construction, Inc. (“Fair Grove”), pursuant to the Company’s Commission-approved tariff. Thus, the Company has properly complied with its legal obligations and there is

¹ Complaint at ¶ 5.

² See Utah Code Ann. § 54-7-9(1).

³ See *id.* at § 54-4-7.

⁴ *Id.* at § 54-4-4(1)(a).

⁵ *Id.* at § 54-3-7.

no basis to grant the relief requested in the Complaint. Moreover, Pinnacle is not the real party in interest even if PacifiCorp had violated any legal obligation to Fair Grove. The construction charges at issue in this case were billed to, and paid by, Fair Grove. Pinnacle has no entitlement to any relief and no standing to seek relief on behalf of Fair Grove.

A. Factual Background

This matter began in the fall of 2004 when Fair Grove asked the Company to provide an estimate for (1) a backbone system to provide electric service to Fair Grove Estates (a new development in West Haven) and (2) a relocation of the power line along 5100 West adjacent to Fair Grove Estates, as part of a road widening for the development. Service to developments is provided pursuant to Electric Service Regulation 12.4, and relocations are provided pursuant to Regulation 12.6. For the relocation work Fair Grove was responsible for “(1) The estimated installed cost of the new facilities plus the estimated removal expense of the existing facilities, less (2) The estimated salvage value of the removed facilities and depreciation on the original facilities.”⁶ In addition, as part of a request to serve a development, “For both nonresidential and residential developments the Company may require the Developer to pay for facilities to provide additional service reliability or for future development.”⁷

Upon receiving the Company’s estimate, Pinnacle, the engineering firm for Fair Grove, objected to the cost of the estimate and asked the Company to lower the cost of providing the relocation. In an informal complaint with the Commission Pinnacle asked, “...why is it going to cost more to move some power poles ... than it cost to move other power poles that were in the same area a year ago?” PacifiCorp attempted to accommodate Fair Grove, as raised in the informal complaint by Pinnacle, to the extent possible consistent with its duty not to

⁶ Electric Service Regulation 12.6(a), PSCU No. 45.

⁷ Electric Service Regulation 12.4(b), PSCU No. 45.

discriminate. In the response to the informal complaint the Company provided a summary of the facilities included in the current estimate and those from the relocation that occurred a year earlier. Although the total cost on the current request was approximately 25% higher than the previous request, the job size in number of poles and length of conductor was more than 25% greater than the previous job, resulting in a cost per foot to Fair Grove that was 20% less than the job from the previous year.

PacifiCorp met with Fair Grove and Pinnacle and also provided Pinnacle a breakdown of the costs of the line relocation, which described which items were charged to Fair Grove and which were charged to PacifiCorp. Subsequent to sending the cost breakdown information to Pinnacle, PacifiCorp received notice that Pinnacle filed a formal complaint with the Commission disputing the need for installing three-phase capacity where the old facility consisted of single-phase line. Based on the contents of the Complaint, it appears that the only matter remaining at issue is the cost associated with upgrading from single-phase to three-phase capacity. However, to the extent Pinnacle continues to contest the overall job costs, as opposed to merely contesting the three-phase component, PacifiCorp herein continues to assert that the overall costs were reasonable and appropriate under its tariff.

B. Reasons for Granting PacifiCorp's Requested Relief

1. PacifiCorp has made correct capacity decisions.

PacifiCorp is responsible for designing and maintaining a system with adequate capacity. PacifiCorp's Engineering Department has determined, based on current system loads and Fair Grove's proposed developments, both current and future phases, that a three-phase line is required.

Pinnacle states that “[their] calculations show that a single phase line would suffice for this local”, yet fail to provide any substantiation of that claim. PacifiCorp asked for this information in a data request but Pinnacle has refused to provide the information.

The Company’s calculations indicate that the first phase of Fair Grove’s development to be served from this line brings the existing single-phase line near to its capacity limits. The very next phase of the development being planned by Fair Grove will exceed those limits. The Company must take into consideration such reasonably foreseeable growth in determining the facilities that are required for this development. It would be poor design to build a single-phase line, and then within a short amount of time have to reframe the poles for three-phase due to the very load growth that was predictable from the outset, and that was caused by Fair Grove’s own development plans. Such short-sighted planning would result in higher ultimate costs (including higher costs to Fair Grove). It is not as if the Company is seeking in this case to burden Fair Grove with costs caused by some unrelated developer. It would be unfair for Fair Grove to escape the costs associated with the appropriate sizing of facilities, based on future development that Fair Grove plans to pursue.

In addition to the capacity requirements, three-phase is necessary to balance the loads on the three-phase line feeding this area, to balance loads within the current phase and the next phase of the development, and to have the ability to shift loads between power line phases for maintenance and reliability. All of these needs are directly related to providing adequate and reliable service to Fair Grove’s current and planned development.

2. PacifiCorp charged Fair Grove the appropriate amount for the service.

Where developments are directly involved with the cause of growth on the system and system modifications are necessary to respond to serving said developments, it is an approved policy to require that the developer pay for the costs associated with serving the development. Regulation 12.4 states PacifiCorp may require developers “to pay for facilities to provide additional service reliability or for future development.”

In the specific instance of serving this development, the relocation consisted of removing five spans of single-phase line, setting five new poles, re-conductoring two spans of single-phase to three-phase and installing three-phase on the relocated poles. With the exception of the costs associated with changing from single-phase to three-phase service, the Complaint does not appear to take issue with the charges. As to those costs associated with upgrading to three-phase service, PacifiCorp billed Fair Grove only for those costs that were associated with Fair Grove’s current and planned development. Thus, the cost of the three phase conductor along 5100 West beyond the point of delivery to Fair Grove Estates and tree removal were not included in the cost charged to the customer. The portion of the costs that the Company determined were general system costs, 46% of the total job cost, were allocated to PacifiCorp. This as an appropriate allocation of costs. There is no basis to for requiring PacifiCorp to bear more of the costs.

3. Pinnacle is not an appropriate complainant to bring this action.

The Commission has authority to grant reparations for the charges for “any . . . service performed by any public utility” when “the commission has found, after investigation, that the public utility has charged an amount for such . . . service in excess of the schedules, rates and tariffs on file with the commission, or has charged an unjust unreasonable or discriminatory

amount against the complainant.”⁸ Again, the charges must have been “against the complainant.”⁹ In such cases, the Commission may order that “the public utility make due reparation to the complainant.”¹⁰ In this case, Pinnacle was neither billed for nor has paid the costs of relocating and upgrading the service. Fair Grove, the party who was billed and has paid for the service, is not a party to this proceeding. Even if Fair Grove might conceivably have a claim against PacifiCorp—which it does not since the Company appropriately billed for the service—Pinnacle would not have standing to pursue a claim on Fair Grove’s behalf.¹¹ On this ground, in addition to the other grounds identified above, the Complaint must be dismissed.

III. ANSWER

The Complaint does not contain concise statements of fact conducive to paragraph-by-paragraph response. Therefore, in addition to rebutting Complainant’s factual allegations by setting forth its own statement of facts above, PacifiCorp responds to the specific allegations of the Complaint by general denial of any allegation that would support a finding that PacifiCorp has in any way violated a provision of law, Commission rule or order, or Company tariff, such that Pinnacle could be entitled to its requested relief.

IV. DEFENSES

First Defense

Complainant has failed to state a claim upon which relief can be granted.

⁸ Utah Code Ann. § 54-7-20(1).

⁹ *See id.* (emphasis added).

¹⁰ *See id.* (emphasis added).

¹¹ *See, e.g., Report and Order, Nichols v. Utah Power and Light Co., Docket No. 97-035-09, P.U.R. Slip Copy at 3 (Utah P.S.C. Aug. 18, 1998)* (“[T]he Commission is empowered to grant reparation to the complainant only and not to persons in addition to the complainant.”).

Second Defense

PacifiCorp has acted consistent with statute, Commission rule and order, and Company tariff.

Third Defense

Complainant's claims are barred, in whole or in part, by the filed tariff doctrine.

Fourth Defense

Complainant lacks standing to assert the claims identified in the Complaint.

Fifth Defense

Complainant's claims are barred, in whole or in part, by the doctrine of satisfaction and release.

Sixth Defense

Complainant's claims are barred by the doctrines of estoppel and waiver.

Seventh Defense

PacifiCorp 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.

WHEREFORE, for the reasons stated above PacifiCorp respectfully requests that the Complaint be dismissed in its entirety, with prejudice.

RESPECTFULLY SUBMITTED: February 2, 2005

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Senior Counsel, PacifiCorp

Attorneys for PacifiCorp

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing **PACIFICORP'S MOTION TO DISMISS AND ANSWER** was sent by U.S. Mail, postage prepaid, to the following on February 2, 2005:

Steve Fackrell
1513 N. Hillfield Rd.
Layton, UT 84041
