Roger J Ball
1375 Vintry Lane
Salt Lake City, Utah 84121
(801) 277-1375

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of PacifiCorp for Approval of its Proposed Electric Service Schedules and Regulations	Docket No 06-035-21 REPLY TO OPPOSITION TO REQUEST TO DENY MOTION AND REJECT STIPULATION

PREAMBLE

On 6 September, I asked the Commission to deny PacifiCorp's Motion for Approval of Stipulation dated 26 July 2006 and reject the associated Stipulation Regarding Revenue Requirement and Rate Spread dated 21 July 2006 in this Docket.

On 12 September, PacifiCorp, and on 14 September, the Committee of Consumer Services and the Division of Public Utilities, filed their responses (PacifiCorp and the Committee) and reply (the Division) to my Request.

PacifiCorp argues that my Request was untimely, that it should have been filed no later than 10 August; that it lacks a valid basis, while the Stipulation is supported by substantial evidence; and that public policy favors settlement.

The Committee adds that the record was closed on 28 August, but for my "request to cross-examine the (Division's) witnesses", and that my Request consists of nothing more than bald assertions.

All three opponents base their arguments in large part upon their own interpretations of what my Request “attempt(ed) to show”, or “seemingly advanced” or “conten(ded)”.

ISSUES OF TIMELINESS

Nobody (except they themselves, perhaps) knew by 10 August what testimony or argument the stipulants would advance in support of the 26 July Stipulation and Motion for Approval. At that point, I knew I wasn’t going to join the Stipulation, but not that I would ask the Commission to reject it and deny the Motion. Only as I considered what had been said during the 28 August Hearing did it become entirely clear to me just how flawed would be the outcome the stipulants and opponents wish the Commission to adopt.

PacifiCorp, the Committee, and the Division would like the Commission to accept their classification of my Request as a response or reply in order to rule it untimely under R746-100-4D. They present no reason why the Request must necessarily be so classified, however, and it is evident that, during the life of many dockets, people – including PacifiCorp, the Committee, and the Division – often present filings that they expect the Commission to accommodate outside the timeframe of 4D – an expectation which experience shows to be quite reasonable. Nor do they suggest that any adverse consequences would result should the Commission, regardless of their opposition, proceed to consider my Request – even if it should agree with their classification.

The final sentence of 4D appears to state both why people should file within the ten or fifteen day time spans, and the consequences of not doing so: the Commission may presume there is no opposition. In this case, my response to Mr Reeder during the 28 August Hearing made it very clear that there was opposition, even though it was not yet entirely clear to me what form that opposition might take.[1]

In fact, I dispute my opponents' classification of my Request. It was neither a response nor a reply, either to PacifiCorp's Motion or to the Stipulation, and it wasn't captioned as such. It was an original motion in its own right, captioned "Request" rather than "Motion" solely to avoid confusion in subsequent references to itself and to PacifiCorp's Motion.

The Committee avers that, at "the conclusion of the August 28, 2006 hearing … the record was closed" and the "Commission (did not) request or require oral argument or written memoranda".

The Transcript contains no record of any statement by any member of the Commission that in any way suggests it regarded the record as closed. While R746-100-10(L) permits "the presiding officer (to) order parties to present further matter in the form of oral argument or written memoranda", it in no way prohibits parties from submitting anything they see fit.

[1] Transcript: Page 49, line 23, to Page 50, line 1.

As the Transcript of that Hearing makes abundantly clear, while the Commission took the submissions made under advisement, the matter was by no means over.[2] Nor did it need to be; all involved anticipated at least one further round of proceedings (relating to Rate Design) over a period of several weeks before a final order in this Docket can be contemplated. Inter alia, the Commission extended its consideration of the Motion and Stipulation until at least 6 September.[3]

The Division thinks that "the recitations set forth in (my) Request", apparently referring to the third through the eleventh paragraphs, "could have been raised at the hearing". They were, in my cross-examination of Messrs Taylor, Brill and Warnick. It was their unsatisfactory responses to my questions that, upon reflection, led me to file my Request.

In recommending that my Request not be considered, PacifiCorp alleges that the "Commission's failure to (do so) would not prejudice" me, apparently because I have already had ample opportunity to present my position on the Stipulation, to file testimony addressing its merits, and to fully participate in the Hearing, cross examining witnesses and making explanatory statements.

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2 Transcript: Page 121, lines 1-2.

3 Transcript: Page 53, lines 17-20; Page 56, lines 21-23; and Page 121, lines 1-5.

In its Footnote No 1, the Committee characterized as a "claim" my statement that I had not received service of the Division's witnesses' testimony. The Commission, of course, had already (Transcript: Page 56, lines 20-21) accepted my word in that regard.

The Committee's Response erroneously claims that I requested to cross-examine the Division's witnesses. In actuality, I merely objected to the admission of their testimony on the grounds that it had not been properly served on me. Simultaneously, the Commission admitted the testimony and, unsolicited, gave "Mr. Ball until September 6 to notify the Commission if he would like us to reconvene to ask questions related to that prefiled testimony."

So have my opponents. By PacifiCorp's logic, they would therefore not be prejudiced if the Commission denies the Company's Motion and rejects the Stipulation. It should do both of these.

Of course, the Commission has considered both the Motion and stipulation, before, during and after the hearing. I have every confidence that it will afford my Request equal consideration. It is inconceivable to me that the Commission should, as PacifiCorp evidently recommends, fail to consider it, and that recommendation to neglect its duty ought to be as offensive to the Commission as it is to me. More offensive yet should be PacifiCorp's apparent arrogation to itself of the right to excuse in advance the Commission for the dereliction it proposes. (Even the Papal sale of indulgences has fallen into disrepute.) I fully expect that the Commission will thoroughly consider both the Motion and Stipulation, and my Request, not least because failure to do so in respect of either filing would be prejudicial to the respective applicants, inter alia denying them due process.

SETTLEMENT ISSUES

PacifiCorp seems to think that statutory encouragement to settle is dispositive. Unfortunately for PacifiCorp, encouragement to settle is one thing; proving that a particular settlement proposal is in the public interest, and will result in just and reasonable rates, is quite another. And the Legislature has not yet fully emasculated its creature, the Commission.

The Commission is not required to approve any agreement, and may do so only: after "considering the interests of the public and other affected persons"; and if "the commission finds that the settlement proposal is just and reasonable in result; and the evidence, contained in the record, supports a finding that the settlement proposal is just and reasonable in result."[4]

The Company asserts that "prior PacifiCorp rate proceedings, including those in which Mr. Ball participated as Director of the Committee, have been resolved by settlement without a 'fully litigated case'." This statement is misleading: by no means all of the prior PacifiCorp rate proceedings in which I participated as Director of the Committee were resolved by settlement. The general rate cases in dockets 97-035-01 and 99-035-10 were fully litigated, and several other cases that predominantly bore on rate issues (including those pertaining to inter-jurisdictional allocations, the sale by PacifiCorp of its share of a significant base-load generating resource, and its claimed excess net power costs) were extensively, if not fully, litigated. The problem here is that approval of this Stipulation would represent the third time in a row that the Commission might increase rates without any significant investigation into the details of PacifiCorp's expenses and revenues.

PacifiCorp avers that "settlement … avoids … public and private expense of litigation." Of course, neither stockholders nor taxpayers incur expense in utility regulation. Not only the utility's, but all the State agencies', expenses are fully funded by customers,

[4] UCA §54-7-1: (2)(a); (3)(d)(i)(A); and (B).

disproportionately by residential customers such as myself and small businesses, to whom none of these opponents wants to give any voice in the matter whatsoever.[5]

PacifiCorp reminds the Commission that the "law has no interest in compelling *all* disputes to be resolved by litigation."[6] What the Company fails to point out is that, while recognizing that settlement may *sometimes* be an appropriate way in which to resolve matters before the Commission, the Utah courts have *not* said that it is *always* the most appropriate way. Discretion to determine that is left to the Commission.

I advised the Commission in my 16 March 2006 Request to Intervene that "my legal rights and interests may or may not coincide with 'the public interest'" that it is the Division's statutory duty to act in, and that "as an individual customer, my legal rights and interests may or may not coincide with those of 'a majority of residential consumers as determined by the committee'". Now that these two agencies have joined the Stipulation and opposed my Request, it is eminently clear that their policy positions do not coincide with my legal rights and interests. Lest there be any doubt, I repudiate their claims in any way to represent my interests. Of course, I also dispute that the Division's position is consistent with the public interest, or the Committee's with the interests of a majority of residential or small business customers.

Without quite saying, as usual, how it reaches that conclusion, the Division characterizes my Request as arguing that a rate increase cannot be in the public

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5 Transcript: Page 59, line 20, through Page 62, line 15; Page 79, line 4, through Page 81, line 21.

6 Emphasis added.

interest. It implies that I have said no rate increase can ever be in the public interest, and that is simply not the case.

I have advanced the argument that serial settlements may go beyond the public interest and result in rates that have not been shown to be just and reasonable, and that this Stipulation represents just such a bridge too far. I have implored the Commission to deny PacifiCorp's Motion and reject the current Stipulation because:

> "PacifiCorp has not proven that the Stipulation would result in just and reasonable rates, or that its approval and adoption by the Commission would be in the public interest. In fact, it is evident that approval and adoption would not be in the public interest, and it remains in question whether the resultant rates would be just and reasonable."[7]

PacifiCorp asserts that this

> "contention is not supported by evidence from Mr. Ball regarding any deficiency in the terms and conditions of the Stipulation, or in the audits and analysis described in the stipulation testimony of the Division and the Committee. That contention is not even supported by any evidence regarding what would, in Mr. Ball's view, constitute just and reasonable rates for PacifiCorp. Indeed, Mr. Ball concedes that, as far as he knows, the Stipulation may indeed result in just and reasonable rates."

As discussed in greater detail later,[8] these burdens that the Company would like to impute to me simply are not mine to bear. Furthermore, it is for the Commission to determine whether the evidence, contained in the record, supports a finding that the settlement proposal is just and reasonable in result. I say that the stipulants have not

[7] Request of Roger Ball to Deny Motion and Reject Stipulation in Docket No 06-035-21, dated 6 September 2006, second paragraph.

[8] On Pages 12-14.

convinced me. It remains to be seen whether the Commission will be able to marshal the evidence to support such a finding and approve this settlement.

The Division asserts that "Ratemaking is far more complex than attempting to base a rate increase on an analysis of past percentage of dollars requested and granted by the Commission." I agree that ratemaking is extremely complex, and will further address the Division's failure to fulfill its statutory role in the context of this case later in this Reply. However, those who ignore history are prone to make blunders that those who learn from it may avoid. The Division seems to have taken false comfort from its ignorance of PacifiCorp's rate case history in Utah since 9 March 1992, as I detail two paragraphs further on.

I do encourage the Commission to conclude that there may be a point at which one more settlement may gloss over so many issues that it cannot reasonably find that the resultant rates will be just and reasonable, and that this stipulation reaches or passes that point.

While, under cross-examination, PacifiCorp witness Taylor could identify no constant criteria, no invariable standards, up against which the Company consistently could hold proposed settlements to judge whether they were in the public interest. The "four or five points" he enumerated to explain why he felt "this Stipulation was in the public interest" amounted to no more than situational ethics, what was convenient to justify an outcome

the Company had decided it now preferred over a full examination of the facts in its application by the Commission.[9]

Similarly, Dr Brill could identify no fixed marks against which the Division assessed settlements. For him, the end justified the means. Although he claimed (Page 66, line 11) that the Division had considered the record of past litigated and settled cases, subsequent replies made it plain that had not been the case (Page 67, lines 4 through 11, for instance).[10]

Dr Warnick conceded that the Committee uses no criteria beyond the opinions of its members.[11]

It seems very obvious to me that assuring the Commission that a settlement would be in the public interest has become just one more hoop for my opponents to jump through in persuading the Commission to approve the latest stipulation. They have no clear idea of what the public interest looks like, walks like, or quacks like, but they are always ready to call it a duck if it will relieve them of the burden of proving their cases. Mr Reeder's and Mr Dodge's comments recorded in the Transcript[12] illustrate the unfortunate paralysis suffered by the representatives of industrial and large commercial customers whose clients want the early rate certainty offered by a settlement more than the ongoing expense of ensuring that the resultant rates are just and reasonable.

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9 Transcript: Page 57, line 16, through Page 64, line 21.

10 Transcript: Page 65, line 11, through Page 69, line 4.

11 Transcript: Page 77, line 9.

12 Transcript: Page 49, lines 6-21, and Page 119, line 14, through Page 120, line 25.

Consequently, not despite, but because of, the stipulants' assertions, it is evident that this Stipulation is not in the public interest. It is my opinion that they have failed to enter into the record substantial evidence to support a finding that the settlement proposal is just and reasonable in result, and I respectfully invite the Commission to join me in that conclusion.

EVIDENCE ISSUES

PacifiCorp claims that, whereas it, the Committee and the Division filed lots and lots of testimony and exhibits from "qualified expert witnesses" in support of the Stipulation, my contention that all of it together is insufficient for the Commission to determine "that the stipulation will result in just and reasonable rates … is not supported by evidence from (me) regarding any deficiency in the terms and conditions of the Stipulation, or in the audits and analysis described in the stipulation testimony … (or) by any evidence regarding what would, in (my) view, constitute just and reasonable rates".

Similarly, the Committee says that my "Request consists of nothing more than bald assertions that do not suffice to prove any material issue of fact or law"; that I "presented no evidence or testimony, other than cross-examination that had no probative value to the facts, analysis, and audits upon which the stipulation is based"; and that my "conclusory allegations" "that the statement of public interest in the Stipulation is casual, formulaic, unproven by substantial evidence and ungrounded in principle or analysis" "are unsupported by (my) own analysis and evaluation, or by

evidence of a critical (or any) examination by (me) of testimony, evidence, and data responses or other analysis performed by the other parties."[13]

The Division opines that the "Request offers no persuasive evidence to support its claim that the Stipulation will not result in just and reasonable rates and that approval of the stipulation would not be in the public interest." Of course, that is not what my Request claimed,[14] and the burden is not mine to show that the agreement is flawed or that it would not be in the public interest for the Commission to approve it; the burden rests

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[13] The Committee, in its Footnote No 1, accuses me of planning to evade due process, characterizing my Request as testimony, which it self-evidently is not, after the fact and not subject to the Commission's questions or the parties' cross-examination.

It states that I concluded my case by announcing that I would not present any evidence or testimony. I have no recollection of making any such announcement, and have been quite unable to find anything like it in the Transcript.

In its Footnote No 2, the Committee continues to huff, inaccurately, about supposed acts of omission on my part.

It states that I did not request to see the results of discovery conducted by others. At Paragraph 13 of my 16 March 2006 Request to Intervene in this Docket, I requested "that copies of all … discovery … – past and future – in this proceeding should be sent to me". PacifiCorp failed to comply with that request, which I fondly imagined the Commission's 7 April Order Granting Intervention had required the Company and all other parties to do. As soon as I realized that failure, I pointed it out to PacifiCorp, which promptly began to correct its omission. As with the Division's witnesses' testimony, I cannot know what has not been shared with me, except that discovery questions and responses are not even listed in the Commission's docket index. If other parties, the Committee among them, have been similarly derelict, I would welcome their repentance.

The Committee continues by alleging that I have refused to comply with the Commission's 17 February 2006 Protective Order. Again, the Committee overreaches: there is no obligation in that Order for anyone to sign a Nondisclosure Agreement unless they choose to do so. In fact, it is PacifiCorp that has failed, as directed in Paragraph 1(A), to "file both a confidential and non-confidential version (of its discovery responses) clearly marked as such."

[14] While I have said that approval of the Stipulation would not be in the public interest, I have not said that it will not result in just and reasonable rates. Nor have I "conceded", as PacifiCorp alleges, "that, as far as (I know), the Stipulation may indeed result in just and reasonable rates. Nuance is lost on my opponents, it seems.

What I have actually said is that "The Division may have satisfied itself that the Stipulation will result in just and reasonable rates. It may even prove to be right in such a conclusion. But the evidence has not been fully entered into the Commission's record, and the Division is not the tryer of fact."

upon the stipulants to prove that it would be in the public interest and result in just and reasonable rates.

The Committee alleges that I claimed "that no objective and comprehensive evidence supports the stipulation." No, I didn't, and the Committee fails to point to where my Request says any such thing. I did, however, say:

> Provision of a settlement recommendation does not satisfy the requirements regarding "objective and comprehensive information (and) evidence";
>
> But the evidence has not been fully entered into the Commission's record;
>
> Notwithstanding statutory encouragement for parties to settle matters, the number of moving parts in a case such as this, the inevitable differences of opinion between parties on each of them individually, and the consequent compromises that have been made by the stipulants to arrive at this "black box" settlement, make it impossible for the Commission to determine independently and on the basis of substantial evidence that this Stipulation will result in just and reasonable rates. But assurances are not evidence;

and

> The Commission should give no weight to the utility's, Division's or Committee's casual assertions of public interest, but should insist upon ascertaining for itself, based upon substantial evidence, what rates are justified by all the utility's costs and revenues, examined separately and only then taken together. That is what would be in the public interest.

Apparently, the Committee is upset that it is unable to cross-examine me on testimony that I have not filed and PacifiCorp asserts that I "had the opportunity to file testimony to address the merits of the Stipulation (and) failed to do so." It would like the Commission to adopt its position that an individual residential customer bears the same burden of

proof as a utility earning in excess of $1 Billion, and spending of the order of $5 Million representing its interests in Utah regulatory proceedings, each year. Not only is that patently inequitable, but it flies in the face of findings by the Utah Supreme Court that the utility bears the burden of proof, and that it is a heavy one, that its requests will result in just and reasonable rates.

Moreover, the Committee gets to spend in the order of $1.5 Million, and the Division some $4 Million, of customers' (including my) money each year to retain staff, attorneys and expert witnesses, some of which can be devoted to PacifiCorp issues. They have the duty and resources (albeit inadequate, especially the Committee, measured against the utilities') to do all that stuff; I don't. But when the Division fails to act competently and effectively in the public interest, or the Committee fails to represent customers' interests *vigorously*, customers suffer the consequences.

I reserve the right for myself and for other Utah utility customers to judge the actions of the Committee and Division. We pay the piper. We may not call the tune, but we are certainly free to criticize their choices. They are there to protect captive customers from the depredations of politically powerful companies that enjoy State-awarded monopolies and have consequently amassed great fortunes in assets and cash flow. The Division claims to protect customers, but more usually focuses on protecting stockholders. The Committee, not surprisingly given the sound beatings it has always taken from the utilities' surrogates in elective and appointed office, particularly in the last couple of years, has adopted the fetal position. It's time they both grew up and stood up; time to blow the charge, instead of beat retreat.

PacifiCorp claims that when I used the word “assurances” in my Request I was referring to conclusions by the opponents’ expert witnesses. Not really; there weren’t that many conclusions by expert witnesses to refer to; there were far more assertions by policy witnesses.

I draw the Commission’s attention to the paucity of expert testimony in support of the stipulation. PacifiCorp’s attorney, Mr Hunter, told the Commission that “12 witnesses, 11, 12”[15] (it was actually 16) had originally filed testimony in support of its Application. Only one of those, policy witness Taylor, filed stipulation testimony.

Dr Warnick testified that the Committee “had seven to eight witnesses that perhaps would have participated in a fully litigated proceeding”.[16] In the event, in addition to himself as policy witness, the Committee presented only Ms DeRonne as an accounting witness.

While we can only guess at the number of witnesses the Division might have presented in a fully litigated proceeding, it seems reasonable to suppose it would have been somewhere in the eight to sixteen range, whereas it put forward only one, rate of return, expert in addition to its policy witness to support the Stipulation.

In other words, three of five witnesses were put on to tell the Commission why it would be a good idea to approve another settlement, and the other two could address only partisan fractions of the broad range of issues that the Stipulation proposes to compromise. All five were eager to assure the Commission that the settlement was in

[15] Transcript: Page 92, line 1.

[16] Transcript: Page 91, lines 5-7.

the public interest, and that the resultant rates would be just and reasonable. For all that PacifiCorp claims the Committee and Division had thoroughly analyzed PacifiCorp's filing, there was a dearth of facts and analysis supporting the elements that made up the global dollar number; many agreed that the way they had arrived at it was quite different than the routes taken by others, and several conceded (or failed to convincingly deny) that they had compromised their positions considerably in reaching the settlement.

How can the Commission honestly conclude that there is substantial evidence in this record supporting a finding that the settlement proposal would be just and reasonable in result? Once again, I respectfully urge the Commission to conclude that there is not, to deny the Motion and to reject the Stipulation.

THE EFFECT OF CUMULATIVE SETTLEMENTS

None of the witnesses for the stipulants addressed the effect of cumulative settlements. It was left to me in cross-examination to raise this significant issue. I asked:

> Would you have a concern, Dr. Brill, if you saw that in fully litigated cases the percentage of the rate request that the Company filed that they got was considerably lower than the percentage that they were getting on a trend basis in the last two settled cases, and in particular in this case?

Dr Brill responded:

> Of course I would have a concern. But I had to look at the facts of the current case, the situation of the Company, the large investments, the growth in load and electric demand, and I had no doubt as soon as the application was filed in March that this was going to come in most likely for

> more than 50 percent, again, using very round numbers. It's because of the unique aspects of the current filing.[17]

Dr Brill and Mr Peterson had already made it clear that their familiarity with the history of PacifiCorp rate cases only extended back as far as the previous settlement.[18]

I interpret, and invite the Commission to interpret, these exchanges as signifying that the Division is far more concerned with "the situation of the Company, the large investments, the growth in load and electric demand" than with the effect upon customers of serial settlements. Again in its Reply, the Division focuses on the interest of the utility in a rate increase rather than any broader view. In other words, the Division might have a concern, but not enough of a concern even to acquaint itself thoroughly with the little bit of simple data readily available on the Commission's website about rate changes since 9 March 1992. In real time, the Division concluded upon sight of the Application that a rate increase in excess of $100 Million was inevitable, and decided to settle with as little exertion as possible.

PacifiCorp's strategy is working: ask for more than you need or can justify, lots more; ask more often; ask for lots of other stuff; when you see the whites of their eyes, back off a bit; walk away with far more than you ever dared hope for.

The three opponents' (to my Request) witnesses testified that major factors in their decisions to stipulate had been the need to build additional generation capacity and PacifiCorp's withdrawal of its Power Cost Adjustment Mechanism. Yet there was no

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[17] Transcript: Page 68, line 14, through Page 69, line 4.

[18] Transcript: Page 66, line 2, through Page 67, line 11.

reference to the Company's strategic decisions, including those not to build during the PacifiCorp era (ie after Utah Power & Light was purchased by PacifiCorp, and before PacifiCorp was purchased by ScottishPower) and subsequently to build gas turbine capacity rather than more traditional base-load generation, that have been the root causes of so many of the utility's later travails.

THE DIVISION'S STATUTORY DUTY

> "In the performance of the duties, powers, and responsibilities committed to it by law, the Division of Public Utilities shall act in the public interest in order to provide the Public Service Commission with objective and comprehensive information, evidence, and recommendations"
>
> UCA §54-4a-6

The Division has not taken issue with the statement in my Request that "Provision of a settlement recommendation does not satisfy the requirements regarding "objective and comprehensive information (and) evidence".

The Division does, however, protest the comments in the twelfth paragraph of my Request:

> As can be seen by the record in this case and the substantial testimony supporting the Stipulation, the Division has complied with its statutory duties and has fulfilled its responsibilities. Even the most casual and cursory examination of the record and evidence in this case demonstrates that the Division has provided the Commission with comprehensive, objective information and evidence.

Well, no.

The Company's Application alone, filed in 3-ring binders, occupies some twelve lateral inches of my book case. The three opponents vigorously argue the extensive nature of their discovery and analysis, not only in their oppositions, but in their pre-filed and summary testimony at the Hearing.

Since PacifiCorp eventually began to provide me with its discovery responses, and bearing in mind that it has sent me nothing it deems confidential, not even redacted versions, it has delivered scores of pages and no less than 12 CDs.

So where is the product of all this effort? PacifiCorp's Opposition states that it, the Committee and the Division "filed approximately 100 pages of testimony and exhibits … in support of the Stipulation." Even if printed single-sided, 100 pages amounts to less than half an inch of paper.

The Division asserts (twice) that "Each case must be considered on its merits." How I do agree. So what has become of all the objective and comprehensive information and evidence that the Division's audits, discovery and analysis generated, and why hasn't all of it been provided to the Commission? My contention, of course, is that the Division has, in its own institutional mind, grown beyond its statutory role and wants to usurp the Commission's.

Dr Brill thought there were limits to the Commission's ability to review data claimed to be confidential, and declined to say what proportion of all of the information in this case the Division had in fact made available to the Commission. Mr Ginsberg seemed to concede that the Division had conducted its audit to support the settlement, rather than

to investigate PacifiCorp's Application, and had provided more detailed testimony for that purpose than in past cases, but declared that it had not filed the testimony of each of its witnesses.

It simply isn't credible for the Division to claim that it has provided the Commission with comprehensive information and evidence in about one-third of approximately 100 pages. How is the Commission to consider this case on its merits if the Division's focus is on winning approval of a settlement rather than fully informing the Commission?

The Division asserts that "without support or substance is the Request's contention that there have been enough settlements and that a fully litigated case is required here." Didn't it read the Request? The very "recitations" it earlier decried provide a solid foundation for recommending that the Commission think very carefully before approving another settlement.

PROCEDURAL ISSUES

There remains before the Commission the motion I made at the end of the 28 August Hearing that it schedule an appropriately widely publicized public witness hearing on this rate increase stipulation and direct the utility to advertise it in the media. During the Hearing, I described flaws in the promulgation of details of the public witness hearing previously scheduled for 28 August, and explained why the fact that no one came should not be taken as evidence of no interest.

Electronic service of testimony is patently not foolproof as we have long been schooled to believe service by US Mail to be. Perhaps the Commission could convene a group to consider how to improve the reliability of this potentially time- and cost-saving method of distribution.

I am concerned that many of my opponents' comments appear to have been attempts to "spin" my Request. To enhance the daily experience of lawyers and the reputation of the Bar as a whole, the Utah Supreme Court, by order dated 16 October 2003, approved Standards of Professionalism and Civility as recommended by its Advisory Committee on Professionalism. They include, at Number 4:

> Lawyers shall never knowingly attribute to other counsel a position or claim that counsel has not taken or seek to create such an unjustified inference or otherwise seek to create a "record" that has not occurred.

POSTAMBLE

Counsel for my opponents have extensively misrepresented the arguments advanced in my Request, neglecting the fourth of the Standards of Professionalism and Civility for the Utah Bar approved by the Utah Supreme Court. I respectfully request that the Commission censure them accordingly.

My Request was not untimely; it could not have been filed by 10 August; it was neither a reply nor a response either to PacifiCorp's Motion for Approval of Stipulation dated 26 July 2006 or to the associated Stipulation Regarding Revenue Requirement and Rate Spread dated 21 July 2006; rather it was an initial motion arising from careful reflection

on the Stipulation testimony filed on 17 August and the answers to my cross-examination questions at the 28 August Hearing; the Commission did not close the record at the end of the Hearing; it should give my Request equal consideration with all other filings in this Docket.

While public policy favors settlement, it requires the Commission to consider the interests of the public and other affected persons and determine that the evidence, contained in the record, supports a finding that a proposed agreement will be just and reasonable in result.

The Commission has already increased PacifiCorp's rates in excess of 20% based upon two previous settlement agreements. Approval of this Stipulation would increase that to more than 30%, a total of $318 Million. The volume of data and analysis offered in support of the Stipulation is dwarfed, not only by that of PacifiCorp's initial Application, but by that of the discovery conducted by the parties. It is not in the public interest that the Commission repeatedly approve rates on the basis of secret negotiations, warranties of just and reasonable rates that are unproven by substantial evidence, and assurances regarding the public interest that are ungrounded in any principle or analysis.

I respectfully urge the Commission to require that this Docket be brought to full development by, inter alia, denying the Motion and rejecting the Stipulation. That would enable the Commission to assure itself, and the public it serves, that the rates it finally puts into effect will indeed be just and reasonable.

Please deny PacifiCorp's Motion for Approval of Stipulation and reject the associated Stipulation Regarding Revenue Requirement and Rate Spread.

Respectfully submitted on 25 September 2006,

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Roger J Ball

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply to Opposition in Docket 06-035-21 of Roger J Ball was mailed electronically on 25 September 2006, to the following:

Claire Geddes
geddes@xmission.com
3542 Honeycomb Road
Salt Lake City, Utah 84121
(801) 943-3654

For Utah Ratepayers Alliance

Laura Polacheck
lpolacheck@aarp.org
AARP Utah
6975 S Union Park Center, Suite 320
Midvale, Utah 84047
(801) 567-2643
(801) 561-2209 (fax)

Betsy Wolf
bwolf@slcap.org
Salt Lake Community Action Program
764 S 200 West
Salt Lake City, Utah 84101
(801) 359-2444 ext 223
(801) 355-1798 (fax)

Coralette M Hannon
channon@aarp.org
6705 Reedy Creek Road
Charlotte, North Carolina 28215
(704) 545-6187

For AARP

Peter J. Mattheis
pjm@bbrslaw.com
Brickfield Burchette Ritts & Stone
1025 Thomas Jefferson Street NW
Washington, DC 20007

Dale F Gardiner
dfgardiner@parrylaw.com
Parry, Anderson & Gardiner PC
60 E South Temple, Suite 1200
Salt Lake City, Utah 84111
(801) 521-3434
(801) 521-3484 (fax)

Attorney for AARP

Arthur F. Sandack
asandack@itower.net
8 East Broadway, Suite 510
Salt Lake City, UT 84111

Thomas W Forsgren
twforsgren@msn.com
2868 Jennie Lane
Holladay, Utah 84117
(801) 272-2287

Attorney for AARP

Lee Brown
lbrown@Magnesiumcorp.com
US Magnesium LLC
239 North 2200 West
Salt Lake City, UT 84116

Dan Gimble
(801) 530-6798
dgimble@utah.gov
Cheryl Murray
(801) 530-6957
cmurray@utah.gov
Utah Committee of Consumer Services
Heber M Wells Building, 2nd Floor
160 E 300 South
Salt Lake City, Utah 84111
(801) 530-7655 (fax)

Reed T. Warnick (3391)
(801) 366-0327
rwarnick@utah.gov
Paul Proctor (2657)
(801) 366-0552
pproctor@utah.gov
Assistant Attorneys General
Heber M Wells Building, 5th Floor
160 East 300 South
Salt Lake City, Utah 84111
(801) 366-0352 (fax)

Attorneys for the Utah Committee of Consumer Services

Gerald H. Kinghorn
ghk@pkhlawyers.com
Parsons Kinghorn Harris, P.C.
111 East Broadway, 11th Floor
Salt Lake City, UT 84111

Marco Kunz
marco.kunz@slcgov.com
Salt Lake City Corporation

Ronald J. Day
dayr@cvwrf.org
Central Valley Water

Gary A. Dodge (0897)
(801) 363-6363
gdodge@hjdlaw.com
HATCH, JAMES & DODGE
10 West Broadway, Suite 400
Salt Lake City, Utah 84101
(801) 363-6666 (fax)

Attorney for UAE Intervention Group

Rick Anderson
randerson@energystrat.com
Kevin Higgins
khiggins@energystrat.com
Energy Strategies
215 S State Street, Suite 200
Salt Lake City, UT 84111
(801) 355-4365
(801) 521-9142 (fax)

For UAE Intervention Group

F Robert Reeder
bobreeder@pblutah.com
Vicki Baldwin
vbaldwin@pblutah.com
Parsons, Behle & Latimer
201 S Main Street, Suite 1800
Salt Lake City, Utah 84111
(801) 532-1234
(801) 536-6111 (fax)

Attorneys for UIEC

Michael L. Kurtz
mkurtz@bkllawfirm.com
Kroger

Constance White, Director
(801) 530-6659
cbwhite@utah.gov
William Powell
(801) 530-6032
wpowell@utah.gov
Dennis Miller
(801) 530-6657
dennismiller@utah.gov
Utah Division of Public Utilities
Heber M Wells Building, 4th Floor
160 E 300 South
Salt Lake City, Utah 84111
(801) 530-6512 (fax)

Michael Ginsberg (4516)
(801) 366-0353
mginsberg@utah.gov
Patricia E Schmid (4908)
(801) 366-0380
pschmid@utah.gov
Assistant Attorneys General
Heber M Wells Building, 5th Floor
160 East 300 South
Salt Lake City, Utah 84111
(801) 366-0352 (fax)

Attorneys for the Utah Division of Public Utilities

Colleen Larkin Bell
Colleen.bell@questar.com
Questar Gas Company

Lt. Col. Karen White
Karen.white@tyndall.af.mil
FEA

Jeff Larsen
jeff.larsen@pacificorp.com
Dave Taylor
dave.taylor@pacificorp.com
PacifiCorp
201 S Main Street, Suite 2300
Salt Lake City, Utah 84111-2300
(801) 220-4907
(801) 220-3116 (fax)

Data Request Response Center
datarequest@pacificorp.com
PacifiCorp
825 NE Multnomah, Suite 800
Portland, Oregon 97232
(503) 813-6060 (fax)

Edward A Hunter
eahunter@stoel.com
Jennifer H Martin
jhmartin@stoel.com
Stoel Rives LLP
201 S Main Street
Salt Lake City, Utah 84111-4904
(801) 578-6936
(801) 578-6999 (fax)

Attorneys for PacifiCorp

Roger Swenson
Roger.swenson@prodigy.net
US Magnesium

_____
Roger J Ball