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Attorneys for PacifiCorp

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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In the Matter of the Application of PacifiCorp )  
for Approval of its Proposed Electric Rate )  
Schedules & Electric Service Regulations )  
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DOCKET NO. 06-035-21  
**RESPONSE OF PACIFICORP IN  
OPPOSITION TO REQUEST OF  
ROGER BALL TO DENY MOTION  
AND REJECT STIPULATION**

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PacifiCorp (the “Company”) hereby responds to the Request of Roger Ball to Deny Motion and Reject Stipulation (“Request”) dated September 6, 2006. The Commission should not consider the Request because it is untimely. However, even if it were appropriate for the Commission to consider the Request, the Commission should deny the Request because it does not provide any valid basis for rejection of the Stipulation Regarding Revenue Requirement and Rate Spread dated July 21, 2006 (“Stipulation”).

**I. THE REQUEST IS UNTIMELY AND SHOULD NOT BE CONSIDERED BY THE COMMISSION.**

On July 26, 2006, PacifiCorp filed and served on all parties, including Mr. Ball, its Motion for Approval of the Stipulation (“Motion”). The rules of the Commission provide that a “response or reply pleadings to other than applications, petitions or requests for agency action shall be filed within 15 calendar days and 10 calendar days, respectively, of the service date of the pleading or document to which the response or reply is addressed.” Utah Admin. Code R746-100-4D.

Under the Commission rules, the Request, even if it is considered a reply pleading rather than a response, should have been filed no later than August 10, 2006. The Request was not filed until September 6, 2006, almost one month after the deadline established by the rules. The Request is not timely and should not be considered by the Commission..

The Commission’s failure to consider the Request would not prejudice Mr. Ball. The Commission has already provided Mr. Ball with ample opportunity to present his position on the Stipulation in this proceeding. Mr. Ball had the opportunity to file testimony to address the merits of the Stipulation. Mr. Ball failed to do so. The Commission also provided Mr. Ball with the opportunity to fully participate in the August 28, 2006, hearing on the Stipulation. At that hearing, Mr. Ball was allowed to cross examine witnesses and to make statements explaining his position on the Stipulation.

**II. THE REQUEST DOES NOT PROVIDE ANY VALID BASIS FOR REJECTION OF THE STIPULATION.**

The Request consists of unsupported contentions that are inconsistent with both the law and the record in this proceeding. The undisputed and substantial evidence in the record establishes that the Stipulation is in the public interest and will result in just and reasonable rates.

**A. PUBLIC POLICY FAVORS THE RESOLUTION OF MATTERS BEFORE THE COMMISSION BY SETTLEMENT.**

The underlying premise of the Request appears to be that a “fully litigated case” is preferable to a settlement agreement as a way in which to resolve matters before the Commission. Request at 4-5. That premise is inconsistent with Utah statutes, Commission precedent and court decisions.

Under Utah statutes, the informal resolution of matters before the Commission by the agreement of the parties is encouraged. Utah Code Ann. § 54-7-1(1). The Commission may adopt a settlement proposal if it 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.” Utah Code Ann. § 54-7-1(3).

Further, the resolution of rate proceedings by settlement and without a “fully litigated case” is entirely consistent with Commission precedent. As recognized in the Request, 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”. Request at 2.

The Utah courts have also recognized that settlement is an appropriate way in which to resolve matters before the Commission. “The law has no interest in compelling all disputes to be resolved by litigation. One reason public policy favors the settlement of disputes by compromise is that this avoids the delay and public and private expense of litigation. The policy in favor of settlements applies to controversies before regulatory agencies, so long as the settlement is not contrary to law and the public interest is safeguarded by review and approval by the appropriate public authority.” *Utah Department of Administrative Services v. Public Service Commission*, 658 P.2d 601, 613-614 (Utah 1983).

**B. THE STIPULATION IS SUPPORTED BY SUBSTANTIAL EVIDENCE.**

The Request contends that the Commission cannot determine on the basis of the evidence in the record that the Stipulation will result in just and reasonable rates. Request at 4. That 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. Request at 4.

Instead, the Request asserts that the testimony provided by the parties in support of the Stipulation constitutes "assurances" and not evidence. Request at 4. That is a baseless assertion.

As used in the Request, the term "assurances" appears to mean a conclusion by the expert witnesses for the Division, the Committee and the Company that the Stipulation is reasonable and will result in just and reasonable rates. What the Request fails to recognize is that such a conclusion is within the appropriate scope of expert testimony. *See, e.g., Re US West Communications*, Docket No. 95-049-05 (Utah PSC June 6, 1996).

In this proceeding, the Division, the Committee and the Company filed approximately 100 pages of testimony and exhibits by qualified expert witnesses in support of the Stipulation. The expert witnesses for the Division and the Committee had participated in the analysis and audits of the Company's revenue requirement request and they explained at length during the hearing on August 28, 2006, the results of their audits and the basis for their shared opinion that the Stipulation was just and reasonable in result.

For example, Committee witness Donna DeRonne testified that, prior to entering into the Stipulation, Committee experts and staff had conducted a thorough analysis of PacifiCorp's

filing, including a detailed review of the Company's testimony and supporting exhibits, the issuance of discovery requests and a review of responses, as well as an on-site audit of Company documents, and discussions with other parties regarding various adjustments to PacifiCorp's case. Ms. DeRonne concluded that, based on that complete analysis, the Stipulation results in fair and reasonable rates for Utah customers and provides benefits that would not otherwise have been available to customers, including rate stability through at least August 7, 2008 and the withdrawal of PacifiCorp's Power Cost Adjustment Mechanism filing.

Similarly, Division witness Thomas Brill testified that the Division had also performed a thorough analysis of the Company's case, including an independent verification of the reasonableness of each of the Company's proposed adjustments and projections to the test year. Mr. Brill concluded that, based on that analysis, the proposed Stipulation balances the interests of all parties in this matter and, therefore, is just and reasonable and in the public interest.

### **III. CONCLUSION**

The Request is not timely and should not be considered by the Commission. However, even if the Commission considers the Request, the Request provides no valid basis for rejection of the Stipulation and should be denied. The testimony of the qualified expert witnesses for the Division, the Committee and the Company establishes that the issues in this case were thoroughly analyzed and the Stipulation is the result of arm's length negotiations among all the parties to the Stipulation, resulting in significant concessions by PacifiCorp to the benefit of customers. The undisputed evidence on the record establishes that the Stipulation is just and reasonable in result and in the public interest and it should be approved by the Commission.

RESPECTFULLY SUBMITTED this 12th day of September, 2006.

By \_\_\_\_\_  
Edward Hunter

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing RESPONSE OF PACIFICORP IN OPPOSITION TO REQUEST OF ROGER BALL TO DENY MOTION AND REJECT STIPULATION to be served upon the following via Electronic mail at the addresses below on September 12th, 2006:

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