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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Complaint of Rocky Mountain Power, a Division of PacifiCorp, Against Heber Light & Power Regarding Unauthorized Service by Heber Light & Power in Areas Certificated to Rocky Mountain Power	Docket No. 07-035-22 HEBER LIGHT & POWER COMPANY'S MOTION FOR STAY PENDING JUDICIAL REVIEW
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In this proceeding, Rocky Mountain Power (“RMP”) asks the Commission to determine, *inter alia*, whether HLP has authority to provide retail electric service to customers in the unincorporated areas of Wasatch County. HLP moved to dismiss the Amended Complaint because no statute granted the Commission jurisdiction over a governmental entity such as HLP. The Commission denied HLP’s motion and refused to recognize that, as a matter of law, governmental entities are not “public utilities” subject to Commission jurisdiction. *Report and*

Order (“Commission Order”) at p. 20.

The Commission Order adopts a new and expansive interpretation of the Commission’s jurisdiction which could have far-reaching implications for all Utah governmental entities, and could have immediate and detrimental impacts on HLP’s business. Stated simply, the Commission Order could bring within the Commission’s broad jurisdiction any governmental entity that the Commission concludes has been “acting like a public utility,” subjecting the governmental entity to the full breadth of Commission jurisdiction under *Utah Code Ann.* § 54-4-1. *Commission Order* at p. 20.

HLP has appealed the Commission’s Order to the Utah Supreme Court. The Utah Supreme Court has determined to retain this appeal on its docket rather than assigning it to the Utah Court of Appeals. The Supreme Court has also deferred ruling on RMP’s motion to dismiss HLP’s Petition for Review and has set a briefing schedule. As a result, the appeal will soon be ripe for a decision by the Supreme Court, which should definitively determine whether the Commission has jurisdiction over governmental entities such as HLP.

HLP has filed the instant motion to respectfully request that the Commission stay this proceeding, pending the Supreme Court’s ruling on the jurisdiction issue. Utah law is clear that the pending appeal divests the Commission of jurisdiction and thus these proceedings should be stayed. *Career Service Review Board v. Utah Department of Corrections*, 942 P.2d 933, 943 (Utah 1997). The Utah Rules of Appellate Procedure require that HLP bring this motion in the Commission, before requesting a stay from the Supreme Court. *Ut. R. App. Pro.* 17.

In *Career Services*, the Utah Supreme Court considered the effect of an appeal on the agency’s jurisdiction pending resolution of the appeal. The Court held: “[W]here an order of an administrative agency is appealed to a court, that agency may not act further on that matter until

all questions raised by the appeal are finally resolved.”” *Career Services*, 942 P.2d at 943. The reason for this rule is to prevent a conflict with the appellate court’s jurisdiction. *Id.*

Under *Career Services*, HLP’s appeal divests the Commission of jurisdiction pending final resolution of the appeal. HLP’s appeal requires the Utah Supreme Court to determine whether HLP, as a governmental entity, is subject to or has the right to be free from Commission jurisdiction. The court cannot effectively make this determination, if these proceedings continue, as if the Commission had jurisdiction. In such a case, HLP would be effectively subject to Commission jurisdiction, even if the court were ultimately to determine that the Commission erred in asserting jurisdiction. Stated in different words, the continuation of these proceedings, pending appeal, would conflict with the court’s authority by essentially rendering meaningless a court ruling that the Commission lacked jurisdiction. Thus, HLP’s appeal divests the Commission of jurisdiction in order to avoid a conflict with the Utah Supreme Court’s authority.

Conclusion

For these reasons, the Commission should stay these proceedings pending appeal.

Dated this ___ day of _____, 2009.

/s/ _____
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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **HEBER LIGHT & POWER COMPANY'S MOTION FOR STAY PENDING JUDICIAL REVIEW** to be served upon the following by email to the email addresses shown below on April 8, 2009:

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