

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Notice of Intent to File a)	
General Rate Case on or Soon after June 6,)	<u>DOCKET NO. 08-035-38</u>
2008, by Rocky Mountain Power)	<u>ORDER ON REQUEST TO INTERVENE</u>
)	

ISSUED: May 27, 2008

By the Commission:

By letter dated April 7, 2008, PacifiCorp, d/b/a Rocky Mountain Power (RMP), notified the Commission RMP intended “to file a general rate case on or soon after June 6, 2008.” RMP stated that it was giving the notice of its intent to file a future 2008 rate case “as a courtesy and in accordance with the spirit of the Stipulation.” The stipulation reference being to that of Docket No. 06-035-21, wherein RMP agreed to a stipulation term which required RMP to provide advance notice of its intent to file a general rate case in 2007. RMP acknowledged that it had complied with the advance notice to which it had stipulated in Docket No. 06-035-21 when it provided notice, on October 12, 2007, of its plan to file a 2007 general rate case request, which was done through a December 17, 2007, Application for a General Rate Increase submitted in Docket No. 07-035-93. Beyond the Docket No. 06-035-21 stipulation term applicable only to the 2007 general rate case request, there is no statutory or administrative rule requirement for RMP to provide advance notice of its future plans to request agency action for a general rate case.

For administrative, clerical purposes, the Commission filed RMP’s letter and assigned Docket No. 08-035-38 for future reference and aid in the filing of documents in anticipation of RMP’s future general rate case application. On April 7, 2007, Roger Ball

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submitted a Request to Intervene in the future Docket No. 08-035-38 adjudicative proceedings, even though no request for agency action had been submitted by RMP and the only document received by the Commission was RMP's April 7, 2007 letter expressing RMP's intent to file a request in the future. Because no request for agency action had been received to commence the adjudicative proceedings, the Commission's Secretary sent Mr. Ball an April 28, 2007, letter, which in part, explained:

However, Rocky Mountain Power has yet to file the proposed rate case with the Public Service Commission and no adjudicative proceeding has commenced pursuant to Utah Code 63-46b-3. The Public Service Commission will not act on your request to intervene until the adjudicative proceeding has commenced. Once the adjudicative proceedings have commenced, with the filing of Rocky Mountain Power's request for agency action, the Public Service Commission will act on your request to intervene pursuant to Utah Administrative Rule R746-100-4.D, in having replies to you (sic) request to intervene be filed within 10 days after the filing Rocky Mountain Power's request for agency action commencing the adjudicative proceeding.

Apparently dissatisfied by the treatment outlined in the April 28 letter, Mr. Ball submitted a May 16, 2008, Request to Submit for Decision, requesting the Commission rule on his intervention request at this time rather than after the filing of any general rate case application RMP may file.

Mr. Ball disagrees with the position stated in the Commission's April 28, 2008, letter and argues that either RMP's April 7, 2008, letter or the Commission's assignment of Docket No. 08-035-38 for document filing purposes constitute the commencement of adjudicative proceedings. Mr. Ball posits "the Commission considered PacifiCorp's [April 7, 2008, letter] filing to be 'notice of request for agency action' or that it gave notice of agency

action on its own motion by publishing the Docket Index on its website, but commencing adjudicative proceedings one way or another.”

Mr. Ball’s position is not consistent with Utah law. Utah’s Administrative Procedure Act, formerly numbered as Utah Code Sections 63-46b-1 et seq., and now renumbered as Utah Code Sections 63G-4-101 et seq., is contrary to Mr. Ball’s argument. Utah Code Section 63G-4-201 plainly states “Commencement of adjudicative proceedings. (1) Except as otherwise permitted by Section 63G-4-502 [permitting emergency agency action to issue an order without complying with UAPA], all adjudicative proceedings shall be commenced by either: (a) a notice of agency action, if proceedings are commenced by the agency, or (b) a request for agency action, if proceedings are commenced by persons other than the agency.” Contrary to Mr. Ball’s argument, RMP’s April 7, 2008, letter, informing the Commission that RMP planned to make a future request for agency action in filing a general rate case application sometime later in 2008, is not a request for agency action. Utah Code Section 63G-4-201(3)(a) describes what constitutes a request for agency action. No reasonable claim can be made that RMP’s April 7, 2008, letter corresponds to the elements listed in Section 63G-4-201(3)(a). Utah Code Section 63G-4-201(2)(a) describes what constitutes a notice of agency action, where agency action is initiated by an agency. Again, no reasonable claim can be made that the Commission assigning a docket number for clerical document filing purposes corresponds to the elements listed in Section 63G-4-201(2)(a), nor that giving a docket number for document reference comports with Section 63G-4-201(2)(b). Neither RMP’s act nor those of the Commission constitute the commencement of agency action under Section 63G-2-201.

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We had hoped to rule upon Mr. Ball's intervention request after RMP had actually filed a request for agency action. We conclude Mr. Ball asks to intervene in a case which essentially does not yet exist. As Mr. Ball asks us to make the intervention ruling in a void, we conclude that his intervention request be denied. We will do so without prejudice, allowing Mr. Ball to resubmit an intervention request after RMP has filed a request for agency action. To avoid any possible error, should RMP file a general rate case application in 2008, Docket No. 08-035-38 will be the docket number applicable to the adjudicative proceedings.

Wherefore, we enter this ORDER denying, without prejudice, Roger Ball's Request to Intervene.

DATED at Salt Lake City, Utah, this 27th day of May, 2008.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#7514