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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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In the Matter of the Notice Given by PacifiCorp  
of its Intent to File Another General Rate Case  
On or Soon After 6 June 2008

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Docket No 08-035-38  
  
REQUEST TO SUBMIT FOR DECISION

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On 7 April 2008, PacifiCorp (Company, or utility) provided the Commission with *Notice of Intent to File General Rate Case* "on or soon after June 6, 2008", serving copies upon all parties to dockets 07-035-93 and 06-035-21, including me. Later that same day, I filed my *Request to Intervene* with the Commission, appropriately serving it on all parties to whom PacifiCorp had sent its *Notice*.

The fourth sentence of Commission Rule R746-100-4D requires response pleadings to be filed within 15 calendar days. None having been filed according to the Commission's website Docket Index for 08-035-38, and none having been served on me, either by 22 April or since, it appears that there is no objection to my being granted intervention and that neither a reply nor a hearing is necessary. I therefore respectfully move the Commission to decide my *Request to Intervene* by granting it forthwith.

BACKGROUND

On 12 October 2007, PacifiCorp filed its *Notice of Intent to File General Rate Case* "on or soon after December 11, 2007." The Company served it on 15 of the non-Company parties to Docket 06-035-21, including me, in accordance with a provision in the *Stipulation Regarding Revenue Requirement and Rate Spread* in Docket 06-035-21, which was moved by PacifiCorp on 26 July 2006 and approved by the Commission on 1 December 2006, that:

Rocky Mountain Power Rate Case

Roger J Ball

REQUEST TO SUBMIT FOR DECISION

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16 May 2008

PacifiCorp will provide notice to the Parties of its intention to file its next general rate case at least 60 days prior to the date that it actually files its next general rate case.

I reminded an RMP regulatory executive that I had been an intervenor in the previous case, informed him that I intended to intervene in the next, and requested that the Company copy me on everything it filed.

On 12 December 2007, PacifiCorp applied to the Commission to open a docket for the purposes of a general rate case application, and to issue a protective order on an expedited basis. However, this *Application* was served on the attorneys for only 4 parties: the Utah Division of Public Utilities (Division), the Utah Committee of Consumer Services (Committee), the UAE Intervention Group (UAE), and the Utah Industrial Energy Consumers (UIEC).

On 13 December 2007, the Commission issued a *Notice of Scheduling Conference* for 20 December in Docket 07-035-93 and, on 17 December, the Commission issued a *Protective Order*. I have no idea to whom either was distributed, but I did not receive copies.

On 17 December 2007, too, PacifiCorp filed its *Application for General Rate Increase* in Docket 07-035-93, but confined service to the Division, the Committee, UAE, and UIEC. However, it also issued a press release, and the *Salt Lake Tribune* published details of the *Application* on 18 December. Also on 18 December, UIEC hand delivered its *Special Protest to Scheduling Conference* addressed to the three commissioners by name, essentially objecting to the fast-tracking of the early stages of these proceedings. Service of the *Special Protest* was limited to PacifiCorp, the Division, Committee, and UAE.

At 2:26pm on 19 2007 December, the Division electronically and widely distributed (including to me) its proposed schedules for the two proceedings. 91 minutes later, the Commission widely distributed (again, including to me) an email which, in pertinent part, said:

*As most of you know*, the Public Service Commission has set a Scheduling Conference for Thursday, December 20, 2007 at 1:30 p.m., Room 401. We plan to go ahead with the

scheduling conference. Attached you will find a proposed schedule that has been prepared by the PSC to satisfy the scheduling requirements of the Commission and manage in an orderly manner, the simultaneous filing of two general rate cases. I have been informed that others may be interested in these cases that did not receive a scheduling notice *even though it has been on the Commission website* as well as posted on the bulletin board. Therefore, I am sending this notice to everyone who intervened in the previous major rate case for Questar Gas and Rocky Mountain Power. (Emphasis added.)

In preparation for the afternoon's Scheduling Conference, I went to the Commission's website on the morning of 20 December 2007, where I was able to obtain copies of the *Notice of Scheduling Conference* and the *Protective Order*. I was also able to print out copies of the Commission's Document log for November and December 2007. The last entry was dated 27 November, so Pacificorp's 12 December *Application to Open Docket and for Issuance of a Protective Order* could not be found.

The UAE petitioned to intervene on 21 December 2007. There were no objections or other response pleadings, and the Commission issued its *Order Granting (UAE) Intervention* on 16 January 2008. I filed my *Request ... to Intervene* on 24 December 2007. On 27 December, the Commission issued its 27 December *Scheduling Order* which provided, among other things, a 25 January 2008 deadline to file direct testimony ahead of a 7 February Test Year hearing, and that:

Only parties who have been granted intervention and who have filed written testimony will be permitted to participate in examination of witnesses at a hearing.

I filed my *Test Year Direct Testimony* on 25 January 2008, and the Commission issued its *Order Granting (me) Intervention* on 28 January.

On 16 April 2008, the Commission, by its Secretary, sent me an email and, on 28 April, a letter saying much the same thing, viz:

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 be filed within 10 days after the

filing (sic) Rocky Mountain Power's request for agency action commencing the adjudicative proceeding.

## ARGUMENT

Although PacifiCorp served me with a copy of its 7 April 2008 *Notice of Intent*, until I am granted intervention I can have no confidence that it will serve me with a copy of the application it has said it intends to file "on or soon after June 6, 2008". The Company served me with a copy of its 12 October 2007 Notice, and I had asked one of its regulatory executives that I be copied with everything, but I received neither its 12 nor its 17 December 2007 applications.

Although the Commission knows of my ongoing interest in PacifiCorp general rate cases, because I have intervened in both dockets 06-035-21 and 07-035-93, I can have no confidence that it will serve me with copies of any notices or orders it may issue in this matter until I have been granted intervention. The Commission did not serve me with its 13 December 2007 *Notice of Scheduling Conference* or its 17 December *Protective Order*.

Although the Commission maintains a very useful website on which it makes available a *Filing Log*, I can have no confidence that, by monitoring the *Filing Log*, I will timely learn of any applications filed by PacifiCorp in this matter. Documents filed with the Commission are often not timely uploaded: on 20 December 2007, the latest posting was dated 27 November; and at 1:03pm today, the latest posting was dated 9 April 2008.

Although the Commission has helpfully opened a *Docket Index* for Docket 08-035-38, I can have no confidence that, either by monitoring this *Docket Index* or as a result of having subscribed to the excellent Yee Haw WebWatch facility for it, I will timely learn of any applications filed by PacifiCorp in this matter. It is labeled *In the Matter of the Notice of Intent to File a General Rate Case On or Soon After June 6, 2008, by Rocky Mountain Power*, but the Commission may choose to open

another docket with a different number, negating my WebWatch subscription, when PacifiCorp files its application regarding the said rate case, on or soon after 6 June.

I note that, while it has been listed on the *Filing Log* for 7 April 2008, and a link to the *Index* for Docket 08-035-38 has been provided there, my *Request to Intervene* is not listed on, and cannot be downloaded from the *Docket Index*.

Although the Commission, by rule in UAC §R746-100-4C, may order PacifiCorp to publish notice of an application for a rate increase, I can have no confidence that it will do so. The Commission has routinely declined to exercise its authority to order a utility to publish notice of a rate increase application in recent years.

Although PacifiCorp chose to issue a press release when it filed its 17 December 2007 *Application*, and although, on that occasion, the *Salt Lake Tribune* published an article the next day, I can have no confidence either that a press release will be issued, or that either the *Tribune* or the *Deseret News* will timely report the filing of another general rate case application. PacifiCorp is under no obligation to release a press notice, nor any newspaper to publish a story about it in any timely manner, or at all. Besides, the 18 December *Tribune* account came several days after the 12 December *Application*, as well as the Commission's 13 December *Notice*, and the day after the 17 December *Protective Order*, and only two days prior to the Scheduling Conference. On the other hand, I can be fairly sure that preparatory applications, notices and orders will *not* be publicised or reported. PacifiCorp issued no press releases, and neither the *Tribune* nor the *Deseret News* published anything about the December 2007 ones.

The Commission, in UAC §R746-100-5, has granted the "Division and Committee ... full participation rights in any case." Consequently, PacifiCorp serves copies of its requests for agency action on each of those agencies at the same time it files them with the Commission. It is administratively economical for the Commission so to rule, but that does not mean that these

agencies should have some special right to commence their participation in Commission proceedings before any other party. In Docket 07-035-93, PacifiCorp also served copies of its requests for agency action on UAE and UIEC, although neither consortium has any special rights by statute or regulation over and above those of other ratepayers.

Other parties on whom PacifiCorp certified it had served its 12 October 2007 *Notice of Intent to File General Rate Case*, but on whom it apparently did not serve its 12 December *Application to Open Docket and for Issuance of a Protective Order* or 17 December *Application for General Rate Increase*, were: Nucor Steel, Salt Lake Community Action Program, Central Valley Water Reclamation Facility, Federal Executive Agencies, Kroger, IBEW, USMagnesium, AARP, Million Solar Roof Partnership, and Questar Gas Company. With the exception of the Federal Executive Agencies, all these entities or their key participants subsequently requested and were granted intervention on Docket 07-035-93.

Perhaps falsely lulled by the wide distribution given to PacifiCorp's 12 October 2007 *Notice of Intent to File General Rate Case*, which it would reasonably have expected after its approval of the *Stipulation* provision in Docket 06-035-21 referred to above, the Commission appears not to have noticed that the Company had not served copies of its 12 and 17 December applications equally widely. Whether it noticed or not, the Commission does not appear to have done anything to draw those applications to the attention of the eleven participants in the previous case that PacifiCorp did not distribute them to.

I have no way of knowing to whom the Commission sent copies of its 13 December 2007 *Notice of Scheduling Conference* and 17 December *Protective Order* at the time it issued them. I did not receive them, and the email and letter referred to above suggest that I was not alone. In the interests of governmental transparency and accountability, I respectfully ask the Commission to disclose, as part of its determination of this *Request to Submit for Decision*, to whom that *Notice*

and *Order* were sent at the time of their issue, and how it came to be “informed that others may be interested in these cases that did not receive a scheduling notice”.

UAC §R746-100-4, Filing and Service, D, Times for Filing, says:

Responsive pleadings to requests for agency action shall be filed with the Commission and served upon opposing parties within 30 days after service of the request for agency action or *notice of request for agency action*, which ever was first received. (Emphasis added.)

The clear implication of this rule is that those who wish to respond may reasonably expect that they will have a 30 day period in which to do so *before* the Commission acts on a request for agency action or notice of request for agency action. In these two cases the Commission took significant actions in response to utility requests within 1 and 5 days respectively, and 6 and 2 days respectively before I, at least, and perhaps 10 other parties to Docket 06-035-21 were informed by the Commission’s 19 December email that a Scheduling Conference had been ordered for the very next day. Whilst I am grateful for the Commission’s email, it does not seem unreasonable to point out that the exchange of information between a cozy group consisting of the regulatory agencies, the utilities, and the large industrial and commercial consumer consortia is plainly inadequate to fulfill the role envisaged for a *Public Service Commission*.

It may be understandable that the Commission felt the need to act expeditiously faced with the prospect of conducting two general rate cases on essentially the same 240 day schedule, but the haste with which the Commission proceeded from PacifiCorp’s 12 December *Application* to its own 13 December *Notice of Scheduling Conference* and 17 December *Protective Order*, coupled with the inadequate service of PacifiCorp’s applications and the Commission’s *Notice* and *Protective Order*, effectively denied due process to me and perhaps ten other parties.

I was faced with the choice of dropping everything to attend the Scheduling Conference on less than 24 hours’ notice, or lose any opportunity to be heard. I had no opportunity at all to respond to *PacifiCorp’s Application ... for Issuance of a Protective Order* before it was issued just 5 calendar –

and only 3 business – days after being filed. That I was not alone in experiencing frustration at the Commission’s undue haste to give the utility all that it sought procedurally without permitting others any effective voice is indicated by the UIEC’s *Special Protest*. This, notwithstanding that UIEC had received PacifiCorp’s *Application* on the same day as the Commission, and presumably the Commission’s *Notice* and *Protective Order* on the days they were issued or the day after.

In the first paragraph of its *Special Protest*, UIEC wrote:

On December 13, 2007, the Commission issued a Notice of Scheduling conference in the above-referenced matters to be held on December 20, 2007. At the time the Notice was issued, no application had been filed in either matter. The Application of Rocky Mountain Power (“RMP”) was filed in Docket No 07-035-93 on December 17, 2007, and we received a copy the same day.

It seems that I am not alone in finding it unusual and inequitable for the Commission to have responded so hastily and unquestioningly to PacifiCorp’s 12 December Application.

When PacifiCorp filed its 7 April 2008 *Notice of Intent* and, of its own free will and choice, chose to serve it on all parties to dockets 07-035-93 and 06-035-21, I decided to request intervention immediately in order to ensure that I would be timely served with, and have reasonable opportunity to timely respond to, all further pleadings, notices, orders, etc, in the proceeding the Company says it intends to request.

The view, expressed in the Commission’s 16 April 2008 email and 28 April letter, that “no adjudicative proceeding has commenced” is contradictory to UAC §R746-100-4D, quoted above. PacifiCorp may not, yet, have requested agency action, but it has certainly *given notice* that it *intends* to request agency action. The 30-day clock started ticking when it filed on 7 April, and the Commission confirmed it when it allocated Docket No 08-035-38. The appearance is that either the Commission considered PacifiCorp’s 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.



If the Commission can open Docket 07-035-93 and issue a *Notice of Scheduling Conference* the very day after PacifiCorp requests it, and a *Protective Order* just 5 calendar (3 business) days after the Company applies for it, and before the utility files its actual *Application for General Rate Increase*, when others seem entitled by UAC §R746-100-4D to 30 days in which to respond before the Commission acts, then it is not unreasonable, indeed it is no more than equitable, for the Commission to grant my *Request to Intervene* no more than 16 days, and certainly no more than 39 days, in the absence of responses, after I filed it and PacifiCorp gave *Notice of Intent to File General Rate Case*, without waiting for the Company to file its actual application for another rate case.

*Utah Rule of Civil Procedure 7(d)* provides that:

When briefing is complete, either party may file a "Request to Submit for Decision." The request to submit for decision shall state the date on which the motion was served, the date the opposing memorandum, if any, was served, the date the reply memorandum, if any, was served, and whether a hearing has been requested. If no party files a request, the motion will not be submitted for decision.

Since I served my *Request to Intervene* on PacifiCorp and every party on which the Company served its 7 April *Notice of Intent*, and since the 15 calendar days for others to file responses to my *Request* expired on Tuesday, 22 April, and no-one has objected or requested a hearing by that date or since, I respectfully request that the Commission grant it forthwith, please.

Respectfully submitted on 16 May 2008,

/s/  
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Roger J Ball

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Request to Submit for Decision of Roger J Ball in the Matter of the Notice Given by Rocky Mountain Power of Its Intent to File a General Rate Case was mailed electronically on 16 May 2008, to the following:

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