

MEMORANDUM

To: The Public Service Commission of Utah
From: Roger J Ball
Copies to: Parties in Dockets 07-035-093 and 07-057-13
Date: Monday, 19 May 2008
Re: ORDER OF WITNESSES FOR RATE OF RETURN HEARINGS ON 20 & 21
MAY 2008

This Memorandum responds to the Commission's Rate of Return Witness Order letters distributed by email on Friday, 16 May 2008, at 4:33 and 4:43pm in Dockets 07-057-13 and 07-035-93, respectively. It will be emailed to everyone on the service lists for both dockets, as well as to the Commission.

BACKGROUND

During the joint Scheduling Conference on 20 December 2007, I informed the Commission's Secretary and all others in attendance, including representatives of PacifiCorp and Questar, that I would be unable to participate in any proceedings that might be scheduled during several weeks this summer. I had made commitments, and have since made firm plans that will take me to Europe and the United Kingdom for most of June and much of July.

Because the Commission, in its 27 December 2007 07-035-93 Scheduling Order, set revenue requirement hearings for 2-10 June and, in its 27 February 07-057-13 Amended Scheduling Order, set revenue requirement hearings for 30 June and 1-3 July, I will not be able to appear throughout either to present and be examined regarding my 7 and 21 April direct revenue requirement testimony and otherwise participate fully and effectively. While that is unfortunate, I chose not to request changes to the schedules, but to accept those restrictions on my ability to protect my interests. I had intended to file memoranda on 23 May, in place of the rebuttal testimony due on that day, but instead take this opportunity, to inform the Commission and other parties that I am unlikely to further participate in the revenue requirement portion of either proceeding, but will probably file cost of service direct testimony on 21 and 28 July.

However, relying upon the Commission's 27 December 2007 Scheduling Orders, which set the Rate of Return hearing in 07-035-93 for 20 May, and in 07-057-13 for 21 May, 2008, and in addition to reading other parties pleadings and pre-filed testimony, I prepared and filed rate of return direct, rebuttal, and surrebuttal testimony on 31 March, 28 April, and 12 May, respectively. Also I prepared and, on 12 May, filed my Response to Questar Gas Company's Motion to Strike my Rate of Return Direct Testimony, and am preparing to file my Response Motion to a similar Rocky Mountain Power Motion on 19 May. Now I wish to attend and participate fully in all of the rate of return hearing(s), as is my right as a party.

If the Commission goes forward with the plans outlined in its 16 May letter in 07-057-13, with just 5 calendar (3 business) days notice, it will deny me the opportunity effectively to protect my interests, and perhaps those of other similarly situated Questar customers, which is why I

requested and was granted intervention in this matter. I will be deprived of the ability to introduce myself, make corrections to and offer my pre-filed testimony into evidence, provide a summary, stand cross-examination, listen to the presentation and examination of other parties' witnesses and cross-examine them myself, make and respond to procedural and legal arguments, and otherwise fully participate in the hearing which, for the past 20 weeks, I had been led to expect would happen on 21 May.

Whilst I appreciate that it may appear difficult to accommodate all 16 witnesses who have filed rate of return testimony on Tuesday and Wednesday, I do ask the Commission to try again to find a way in which to allow me to participate fully in the hearing(s), not least because I have pre-filed testimony on issues that no other party has addressed.

INTRODUCTION

There has been some exchange of views between parties as a result of the Commission's 16 May letters, and several difficulties with its proposals have been identified, but no consensus solution has yet emerged.

Questar opines that its hearing could be moved in its entirety to 30 June and 1 July, freeing 21 May for a continuation of the 07-035-93 hearing, and wonders when other parties might cross-examine me, because I will not be available then. But I am entitled to participate fully and effectively throughout the hearing, so I must object to any part of the rate of return hearings being held then, I'm afraid.

PacifiCorp's witnesses aren't able to stay through 21 May, so it prefers to carry them over to sometime in the period scheduled for its revenue requirement hearings, 2–10 June. Unfortunately, I have very limited availability during that period, so the options are rather restricted.

The Division has indicated, without saying why, that it opposes a schedule change.

I agree for two very specific reasons. First, the longer the period between hearing dates in either docket, the greater the possibility that the result will be distorted. Second, the Commission's proposal for 07-057-13 will deny me the opportunity to participate fully and effectively and, depending upon how its proposal for 07-035-93 is implemented, that might have the same effect.

ARGUMENT

The Commission should make strenuous efforts to accommodate everyone and complete each hearing on the scheduled day.

The last sentence of each of the Commission's letters, with minor variations, states:

If these witnesses are unable to provide additional oral testimony at the May (20 or 21) hearing, *the Commission will utilize their pre-filed written testimony*, to the extent it is admitted and relevant *and will provide them an opportunity to provide oral testimony and be cross-examined in the later revenue-requirement hearings scheduled in June (and July).*

The Commission's 27 December 2007 scheduling orders set the rate of return hearing in each docket for one day. In the same way that the Commission received direct, rebuttal and surrebuttal testimony more or less simultaneously, it would see every party's witness(es) examined at much the same time, and would have everything before it when it adjourned to consider what rate to authorise. If the hearings are bifurcated, it will be much more difficult not to pre-judge based upon what is heard on the first day, or to reconsider based upon what is heard on the second. The greater the interval, the bigger the problem.

Accommodating everyone and completing each hearing on the scheduled day will require everyone to be brisk and efficient. Here are some ideas for how it might be achieved:

The 9:00am hearing could continue until 10:00pm, if necessary, comfort breaks be limited to 10 minutes, and lunch and dinner breaks to 30 minutes each. For my part, I am willing to bring my own lunch and dinner to facilitate this schedule. That way, the time available for the presentation and examination of witnesses will be 11hrs 30mins, approximately the same as on two normal days.

The Company's witnesses could be presented (limited to 10 minutes each) and examined from 9:00am until 1:00pm, with a 10 minute comfort break at about 10:55am. Since there are fewer witnesses in 07-035-93, it ought to move more quickly. The Commission could set and enforce periods of time for examination of each witness by each adverse party, and discourage circumlocutory answers by deducting the excess time from the Company's examination of others' witnesses.

From 1:30 until 5:30pm, with a 10 minute comfort break at about 3:25pm, adverse parties' witnesses could be presented with similar constraints. If needed, the period from 6:00pm until 10:00pm could be used for further examination, re-direct, re-cross, etc. If by some happy chance examination of the suggested witnesses is completed early, the Commission could move on immediately to the next group.

In the alternative, rate of return hearings should be entirely re-scheduled so those in each proceeding can be completed on consecutive days. The earliest dates on which I could accommodate such a change would be 22 and 23 July, and 29 and 30 July.

SCHEDULING CARRY-OVER DAYS

PacifiCorp has indicated that it interpreted the Commission's earlier order to mean that the hearing should be completed on May 20, and is certain that it will be able to conclude all of its witnesses and other parties' technical witnesses (so everybody but me?) on that day. Given that, I find it difficult to imagine that the 07-035-93 hearing cannot be completed on the scheduled day if we all get on with it and perhaps run a bit later than usual. (How much cross-examination does PacifiCorp, or anyone else, have for me? Questar says it has none.)

If it is entirely impossible for all 6 witnesses to be presented and examined on 20 May, PacifiCorp says that 21 May, suggested by Questar, is not an option for a carry-over for its rate of return hearing.

Questar, on the other hand, thinks the Commission is rightly concerned about getting through its hearing in one day. While I understand that there may be other events on the calendars of the Commission and others, as well as on mine, I could accommodate an additional half-day of hearings on 22 or 23 May, and I think others could too, with a little Commission encouragement,

but I still think that an extended day with careful time management ought to enable everything to be done on 21 May.

However, if all the witnesses in either proceeding cannot be heard during the period 20–23 May, the Commission should reschedule the hearing concerned, in its entirety, to 22 and 23 July or later to avoid an unacceptably long interval of a week or more between groups of witnesses. I recognise that some will consider that date too close to the 240-day limit; however, the root cause of this problem is not the availability of any party or witness, but the recency, given that non-company parties filed their direct testimony on 31 March, of the realisation that the work to be done during a hearing might not fit into the time scheduled.

CONCLUSION

Unfortunately, I am unable to agree to the postponement of the presentation and examination of Messrs Allred, Reed, Higgins and Ball until the 30 June and 1-3 July dates scheduled for the 07-057-13 Revenue Requirement hearings, as proposed in the Commission's 16 May Order of Witnesses letter. With regard to the contingency plan for 07-035-93, I may be able to agree providing the details can be worked out satisfactorily, but cannot see why it should be necessary. In all respects, I would greatly prefer to adhere to the schedules as they have been established for some time.

Finally, will the Commission please let us all know its intentions for each hearing at least the evening before.