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BEFORE THE ELECTRICAL FACILITIES REVIEW BOARD

PACIFICORP, an Oregon corporation,

Petitioner,

vs.

THE CITY OF WEST JORDAN,

Respondent.

**PRE-FILED REBUTTAL
TESTIMONY OF CAROL HUNTER**

1 **Q: Ms. Hunter, what is the purpose of your testimony?**

2 A: The purpose of my testimony is to rebut Mr. Luebbers', City Manager of West Jordan,
3 pre-filed testimony. And in doing so, I demonstrate that refusal to identify or approve an
4 acceptable location to site a substation, West Jordan has prevented PacifiCorp from
5 constructing a substation needed to provide safe, reliable, adequate, and efficient service
6 to its customers.

7 **Q: Mr. Luebbers testified that City officials never told you that there were no**
8 **acceptable sites for the substation in West Jordan. Is this correct?**

9 A: No.

10 **Q: Was Mr. Luebbers present in all of the meetings with West Jordan City officials?**

11 A: No. Prior to filing our action with this Board and our District Court case, Jeff Richards,
12 Senior Counsel, and I met with Mayor Holladay and Assistant City Manager Tom Steele.
13 During the meeting, I indicated that the Company preferred to work with the City to find
14 a satisfactory site as opposed to filing an action with this Board and/or in District Court.
15 We were told at that meeting by both Mr. Steele and the Mayor that the City was unable
16 to identify any site acceptable to the Council. As stated in my pre-filed testimony, a
17 similar discussion occurred in mid-August 2004 with Mayor Holladay, Mr. Luebbers, and
18 Councilmember Richardson. Rich Walje, President of Utah Power, and Mr. Gerrard
19 were present with me.

20

1 **Q. Did West Jordan provide the Company with two potential sites for the proposed**
2 **substation?**

3 A. Yes. As I stated in my previous testimony, during the summer of 2004, West Jordan
4 officials proposed a site on the southeast corner of 2700 West 7000 South and an
5 unspecified site at Jordan Landing.

6 **Q: Mr. Luebbers testified that PacifiCorp rejected the 2700 West Site. Is this correct?**

7 A: No. The 2700 West Site is operationally acceptable and the property owners indicated a
8 willingness to sell their property at market value. Contrary to Mr. Luebbers' testimony, it
9 was the City that withdrew the 2700 West Site from further consideration after the
10 Company conducted a public open house to discuss the potential site with interested
11 parties. In addition, it was after the same open house, on September 7, 2004, that the
12 Council voted to have the city staff work with the Company to identify a site in a
13 commercial area and a minimum of 500 feet from any residence.

14 **Q. Would the Company accept a conditional use permit for the southeast corner of**
15 **2700 West and 7000 South?**

16 A: As Mr. Gerrard testified, the estimated time line for performing design, purchasing
17 materials and equipment, completing property acquisition, obtaining property easements
18 and completing the substation, transmission and distribution line construction is
19 approximately 12 months for a new location. Other than this timing issue, the 2700 West
20 Site meets the Company's operational requirements and its requirement to provide safe,
21 reliable, adequate and efficient service to its customers. Company representatives have
22 not, however, been in contact with the residents on the southeast corner of 2700 West and

1 7000 South since 2004 and, therefore, I am unable to verify that the property owners
2 remain willing to sell.

3 **Q: Mr. Luebbers testified that PacifiCorp rejected Jordan Landing “out of hand.” Is**
4 **this correct?**

5 A: No. At the time that West Jordan made the proposal, I indicated that Jordan Landing was
6 outside of the target area, and consequently I was concerned with the operational
7 effectiveness and efficiency of siting a substation at Jordan Landing. That being said, the
8 Company thoroughly analyzed Jordan Landing as a potential site. As Mr. Gerrard
9 testified, that analysis demonstrated that Jordan Landing would not satisfy the electrical,
10 safety, operational, and reliability needs as well as the 3200 West Site. Moreover, a site
11 at Jordan Landing would cost approximately \$3.6 million more than building a substation
12 at the 3200 West site.

13 **Q: During the three years the Company worked with West Jordan in siting the**
14 **proposed substation, did any one associated with West Jordan suggest the five sites**
15 **suggested by Mr. Beste?**

16 A: No.

17 **Q: Mr. Luebbers testified that Mr. Beste’s five proposed sites would be acceptable to**
18 **the City. Is this correct?**

19 A: I don't know. Because a conditional use permit would be required for any of those sites, I
20 believe it is impossible for anyone to know with certainty what the City would approve
21 until the public process is complete and a final vote taken.

22

1 **Q: Mr. Luebbers testified that PacifiCorp’s CUP application was rejected by the City**
2 **because it was inadequate, the site was not compatible with the proposed use, and**
3 **the impacts could not be adequately mitigated. Is this correct?**

4 A: The Company met with City staff continually for the past three years concerning the
5 substation on the 3200 West Site and together agreed on a very comprehensive landscape
6 plan. City staff supported the site plan and the approval of the substation during the
7 public hearings and the CUP was approved by the Planning Commission. Because the
8 Council did not articulate a reason for overturning the decision of the Planning
9 Commission, it is impossible for anyone to know specifically why the City Council
10 rejected PacifiCorp’s application. The City Council made no findings nor did it have any
11 discussion to the effect that the site was not compatible with the proposed use, and the
12 impacts could not be adequately mitigated. Instead, on a 4–3 vote, the City Council
13 simply stated that “the proposed substation does not meet the six criteria for approval of a
14 conditional use permit.” (March 15 Meeting Tr. at 376.)
15 Furthermore, whether the City’s rejection was proper, or whether it was arbitrary,
16 capricious, and illegal, is an issue before the Court of Appeals. Those issues are not
17 before this Board.

18 **Q: Mr. Luebbers testified that PacifiCorp did not tell the City about the 17 sites**
19 **referred to in Mr. Gerrard’s testimony. Is this correct?**

20 A: No. Mr. Luebbers’ testimony suggests that the Company was withholding information
21 from the City. Quite the contrary, PacifiCorp was transparent in the process and tried to
22 work with the City at every turn. While the 17 sites was not presented to the City as a
23 list, various sites were reviewed over the course of our discussions. For example, in

1 meetings following my May 15, 2004 letter, we discussed our attempt to obtain a site at
2 2870 West 7000 South (Jones and Jordan Park LLC), and the issues associated with the
3 Taylorsville Bennion Improvement District sites and the Utah Power site. The latter sites
4 were identified and discussed during a city council meeting. We also indicated a
5 willingness to consider the following sites: the northwest corner of 2700 West 7000
6 South (Brewer, Turner and Carter), 2590 West 7000 South (Duncan) and the southeast
7 corner of 2700 West 7000 South (Brown, Tafuna and Ownes). Following a review of
8 these potential sites we discussed our results with a number of council members and city
9 staff members, including Mr. Rolfe. It was at this time that Mr. Rolfe volunteered his
10 support for the site on the southeast corner of 2700 West 7000 South and we agreed to
11 give it further consideration.

12 **Q: Mr. Luebbers' testified that the City wants the substation to be built in an industrial**
13 **or commercial area. Can cities and/or counties direct the Company to alternative**
14 **sites?**

15 **A:** Under certain circumstances, yes. However, the legislature recognized in the Electrical
16 Facility Review Board Act that:

17 [T]he construction of transmission lines and substations by electrical
18 corporations that are public utilities under this title is a matter of statewide
19 concern. The construction of these facilities may affect the safety,
20 reliability, adequacy, and efficiency of service to customers in areas within
21 the jurisdiction of more than a single local government. Excess costs
22 imposed by requirements of a local government for the construction of
23 facilities may affect either the rates and charges of the public utility to
24 customers other than customers within the jurisdiction of the local
25 government or the financial viability of the public utility, unless the local
26 government pays for those excess costs.

27
28 Utah Code Ann. § 54-14-102(1). Consequently:

1 [A] local government may require or condition the construction of a
2 facility in any manner if:

3
4 (1) the requirements or conditions do not impair the ability of the
5 public utility to provide safe, reliable, and adequate service to its
6 customers; and

7
8 (2) the local government pays for the actual excess cost resulting
9 from the requirements or conditions, except;

10
11 (a) any actual excess costs that the public utility collects
12 from its customers pursuant to an order, rule, or regulation of the
13 commission; or

14
15 (b) any portion of the actual excess costs that the board
16 requires to be borne by the public utility.

17
18 *Id.* at § 54-14-201.

19
20 **Q: Does this law cover the City's election to have the substation built in an**
21 **industrial or commercial area?**

22 A: Yes, since the City is imposing such a condition on PacifiCorp in its attempt to site the
23 substation. In this case, the City's requirement is even inconsistent with its own
24 administrative decisions. As mentioned in my pre-filed testimony, on June 10, 2004,
25 staff from West Jordan provided PacifiCorp with a letter and an "Administrative
26 Decision" (attached as Ex. CH-4 to previous testimony) confirming that substations are
27 accessory structures to transmission line facilities and therefore are permitted in all zones,
28 including residential areas, without a land use or zoning change.

29 **Q. Although inconsistent with the City's "Administrative Decision," is Mr. Luebbers'**
30 **testimony consistent with the City Council's previous statements on this issue?**

31 A. Yes. On September 7, 2004 the City voted to have the City staff work with the Company
32 to site the substation in a commercial area 500 feet from the nearest residence.

1 **Q. Did West Jordan express any interest and/or ability to pay the excess costs**
2 **associated with this preference?**

3 A. No. A preliminary estimate was prepared for siting a substation at an unspecified site at
4 Jordan Landing. The estimate, along with a copy of the Electric Facility Siting Review
5 Board Act was presented to the City. The City did not indicate a willingness to pay the
6 excess costs. In addition, a number of council members voiced a preference for the
7 Company to underground the transmission line between 2700 West 7000 South and the
8 Company's proposed site at 3200 West 7000 South. Again, the Company prepared a
9 preliminary estimate of the excess costs associated with this stated preference.
10 Afterwards, the City indicated that it did not have the available funds.

11 **Q. Have you provided estimates to other communities based on local preferences,**
12 **conditions and/or requirements?**

13 A. Yes. It is not unusual for a community to voice a preference in the siting of substations
14 and the undergrounding of transmission lines. We prepare and present an estimate of the
15 excess costs to the city. To the degree that the requested preference does not impair the
16 ability of Company to provide safe, reliable, and adequate service to its customers, and
17 the community agrees to pay the excess cost, the Company constructs the facilities in
18 accordance with the community's preference or requirement. While a request to
19 underground facilities is more common, the Company has at times received requests to
20 site its substation at alternative sites.

21 **Q. Have you constructed facilities consistent with a community's preference, condition**
22 **and/or requirement?**

1 A. Yes, as I testified we most recently undergrounded a 138 kV line at the request of Sandy
2 City.

3 **Q. What has been the impact of the Electric Facility Siting Review Board Act on the**
4 **cost of siting new facilities?**

5 A. As a result of the Electric Facility Siting Review Board Act, communities choosing to
6 have the Company either site a substation at an alternative site or underground its
7 transmission lines bear the excess costs. This Act, therefore, shields the Company's other
8 Utah customers from having to subsidize preferences imposed by other local
9 governments. Unless West Jordan pays for the excess cost associated with its decision to
10 site a substation within a commercial or industrial site, those costs would be passed on to
11 the Company's other customers through increased rates. Moreover, were West Jordan
12 able to pass these costs along, other communities would likely follow suit, resulting in
13 even more increases in rates. In sum, the Company would be operating contrary to the
14 interest of its customers, to state law, and to public policy as set forth by the state
15 legislature if it were to incorporate West Jordan's preference for a local benefit without
16 requiring that West Jordan bear the cost of that preference.

17 **Q. Should cost be a consideration in siting, designing and constructing facilities?**

18 A. Yes. The Company has an obligation to act in a prudent manner considering the
19 operational characteristics, long term costs and inherent risks associated with each of its
20 decisions. Consequently, both the initial cost and operating costs of all facilities
21 constructed and/or purchased by the Company must be considered.

22 **Q: Mr. Luebbers also testified that the City is not trying to force PacifiCorp to**
23 **relinquish its ability to design its system. Do you agree?**

1 A: No. Despite Mr. Luebbers' characterization, the City is in fact attempting to force
2 PacifiCorp to relinquish its ability to design its system. On one hand, the City's main
3 focus, as Mr. Luebbers acknowledged, is to have the substation located in an industrial or
4 commercial location and the City has rejected any proposed location not conforming to
5 this local option. On the other hand, the Company needs to secure a site that ensures the
6 safe, reliable, adequate, and efficient service to its customers. In this case, the City's
7 goals and the Company's requirements are inconsistent and cannot be reached by a
8 common solution. By prohibiting the Company from siting a substation within the target
9 area, the City has effectively precluded the Company from designing its own system.

10 **Q: What is the summary of your rebuttal testimony?**

11 A: The Company has an affirmative obligation to provide safe, reliable, adequate, and
12 efficient service to its customers. Without a new substation in West Jordan, the Company
13 will be unable to satisfy these obligations. We have been working with the City for over
14 three years to site this substation at a site that would meet our requirements. Despite
15 numerous requests, the City provided no suitable alternative sites. Instead, the City is
16 intent on having the substation sited at a commercial or industrial site, despite the fact
17 that no such site has been identified that would enable PacifiCorp to best fulfill its
18 statutory obligations. Moreover, even if such a site did exist, West Jordan has expressed
19 no willingness to compensate the Company for the excess costs it would incur to satisfy
20 this local option.

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of October 2005, I caused to be sent by US mail, postage prepaid, a true and correct copy of the foregoing **PRE-FILED REBUTTAL TESTIMONY OF CAROL HUNTER** to the following:

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