

1  
2  
3 -BEFORE THE ELECTRICAL FACILITY REVIEW BOARD-

4 -----  
5 Electric Facility Review Board Review ) DOCKET NO. 05-999-08  
6 of a Dispute between PacifiCorp and ) ORDER DESIGNATING  
7 West Jordan City ) GEOGRAPHIC AREA  
8 -----

9  
10  
11 ISSUED:  
12 November 28, 2005

13  
14 By The Facility Review Board:

15 By request dated April 25, 2005, PacifiCorp (PacifiCorp or the Company) asked the  
16 Electrical Facility Review Board (Board) to convene and address a dispute with West Jordan City  
17 (the City) concerning the location and construction of an electrical substation within the City. In  
18 the Board's proceedings, PacifiCorp is represented by Jeff Richards, of PacifiCorp, Mark E.  
19 Hendley and Greg Monson, of Stoel Rives LLP; West Jordan City is represented by Jody K.  
20 Burnett and Robert C. Keller, of Williams and Hunt, and Stephen F. Mecham, of Callister,  
21 Nebeker & McCullough.

22 Since 2002, PacifiCorp has desired to locate and construct an electric service substation  
23 to meet growing electric service needs in West Jordan City. PacifiCorp identified an area, called  
24 the critical load area, in which existing and expected electrical load growth would (or has)  
25 outpaced the reasonable service and operating capacity of its existing electric service distribution  
26 infrastructure or utility plant. PacifiCorp sought a substation site that would permit the new  
27 substation to be integrated with other substations, distribution and transmission facilities

28 (existing and planned), allowing PacifiCorp to provide safe, efficient and reliable electric service  
29 to its customers. PacifiCorp identified what it denominated as the “target area,” between 2700  
30 West and 3300 West and 6900 and 7200 South in West Jordan City, in which PacifiCorp desired  
31 to build the new substation.

32 PacifiCorp had various meetings with officials and representatives of the City and West  
33 Jordan City citizens to try to identify a substation site within the target area that would meet  
34 PacifiCorp’s needs and be acceptable to the desires of the City and its citizens. Although  
35 PacifiCorp and the City have previously been able to locate, grant approval for and construct new  
36 substations outside of the target area, they have been unable to reach agreement on a location for  
37 a new permanent substation site within the target area. PacifiCorp became increasingly concerned  
38 about the inability to locate a substation site, continued customer load growth showed that some  
39 type of substation was needed soon to avoid potential service interruptions or curtailment to its  
40 customers. On December 16, 2004, PacifiCorp applied to the City for conditional use permits to  
41 construct a permanent and a temporary substation at 3200 West and 7000 South.

42 On February 2, 2005, the City’s Planning and Zoning Commission decided to issue a  
43 conditional use permit for a permanent substation and deny a permit for a temporary substation.  
44 As allowed by the City’s municipal code, a citizen appealed the Planning and Zoning  
45 Commission’s decision to the West Jordan City Council. At a February 22, 2005, City Council  
46 meeting, after a failed vote to affirm the appeal and a failed vote to deny the appeal, the Council  
47 directed the matter back to the Planning and Zoning Commission to explore whether alternative  
48 sites for a permanent substation within the target area might be identified. However, on March  
49 15, 2005, the City Council rescinded its February 22 direction to study alternative sites within the

50 target area and readdressed the appeal on PacifiCorp's request for a conditional use permit to  
51 construct a permanent substation at 3200 West and 7000 South. The Council then approved the  
52 citizen appeal and reversed the decision of the City's Planning and Zoning Commission.

53 PacifiCorp, utilizing the granted conditional use permit for a temporary substation,  
54 proceeded to install the temporary substation and it has been providing service support since  
55 mid-2005. As its name indicates, the temporary substation is just that, temporary. PacifiCorp  
56 must decommission the temporary substation by August 31, 2006; pursuant to the West Jordan  
57 City Council's decision. PacifiCorp and the City recognize that a permanent substation needs to  
58 be constructed. Since the City Council's March 15, 2005, decision, the parties are no closer in  
59 reaching agreement on a site for a permanent substation within the target area. PacifiCorp  
60 appealed the City Council's March 15<sup>th</sup> decision to the District Court. The District Court ruled in  
61 the City's favor, PacifiCorp has appealed that court decision to the Utah Court of Appeals.  
62 PacifiCorp desires to have a permanent substation constructed by early summer of 2006, in order  
63 to be available to provide service support during Utah's summer peak load.

64 Soon after the filing of the April 25, 2005, request to convene the Board, PacifiCorp and  
65 the City agreed to additional efforts to identify a mutually acceptable location for the permanent  
66 substation; PacifiCorp's April 25<sup>th</sup> Board request was withdrawn. However, these last efforts  
67 proved unsuccessful as well. On August 30, 2005, PacifiCorp refiled a Petition for Review and  
68 Expedited Treatment (Petition). PacifiCorp states that it is "seeking review by the Board because  
69 the City has prohibited the construction of electric facilities which are needed to provide safe,  
70 reliable, adequate, and efficient service to its customers and because the City has imposed  
71 requirements on the construction of facilities that will result in estimated excess costs without  
72 entering into an agreement with PacifiCorp for the actual excess costs. (Petition, page 2.)

73 Through its Response to the Petition, the City disputes PacifiCorp’s claim that the City has  
74 prohibited any construction or imposed requirements on construction without agreeing to pay for  
75 excess costs. The City contends that the permanent substation site identified by PacifiCorp is not  
76 the only site location on which a substation can be built to provide safe, reliable, adequate and  
77 efficient service. Through a scheduling conference with the Board, PacifiCorp and the City, a  
78 bifurcated schedule for Board proceedings was set. Under the bifurcated schedule, the parties and  
79 the Board would first address the site location dispute, and then in the second phase resolve any  
80 disputes on the specific excess costs that may be associated with a particular site location that  
81 may be identified.

82 In preparation for evidentiary hearings before the Board, PacifiCorp and the City prefiled  
83 written direct, rebuttal and surrebuttal testimony. This written testimony was later admitted at  
84 November 7 and 8, 2005, evidentiary hearings, as well as the live testimony of the parties’  
85 witnesses. In summary, PacifiCorp’s testimony and position is that a permanent substation must  
86 be constructed soon, in order to be operational before the beginning of the 2006 Summer peak  
87 load period. While PacifiCorp has a preference for the 3200 West and 7000 site (Preferred Site)  
88 it has identified, PacifiCorp would accept an alternative site, as long as it is located within the  
89 target area; the area located between 2700 West and 3300 West and 6900 South and 7200 South.  
90 The City’s testimony and position can be summarized as the substation site need not be located  
91 in the target area. The City identifies a number of possible site locations, all outside the target  
92 area, which the City maintains can be used by PacifiCorp, in lieu of the 3200 West and 7000  
93 South site, without impairing PacifiCorp’s ability to provide safe, reliable, and adequate service.

94 The Electrical Facility Review Board Act, Utah Code §§54-14-101, *et seq.*, (the Act)  
95 acknowledges a local government’s authority to “require or condition the construction of a

96 facility in any manner,” but only as long as the “requirements or conditions do not impair the  
97 ability of the public utility to provide safe, reliable, and adequate service to its customers; and the  
98 local government pays for the actual excess cost resulting from the requirements or conditions . .  
99 . .” *Id.*, at Section 201. The Act’s definitions provide that a facility includes an electrical  
100 substation and an electrical substation includes the substation site. *Id.*, at Section 103(5) and (9).  
101 Where a local government has prohibited a facility to be constructed, the Board may “specify any  
102 general location parameters [for a facility] required to provide safe, reliable, adequate, and  
103 efficient service to the customers of the public utility.” *Id.*, at Section 305(3).

104 For each of the site locations proposed by the City, the evidence shows that construction  
105 of a substation at any of the City’s suggested sites will require miles of additional transmission  
106 and distribution facilities compared with such facilities that result from construction at the  
107 Preferred Site or a site located within the target area. With the addition of more transmission and  
108 distribution facilities, the safety and reliability of PacifiCorp’s network and service is degraded.  
109 There is also anticipation that these additional transmission and distribution facilities, beyond  
110 those needed for a substation site within the target area, would engender their own objections.<sup>1</sup>  
111 The evidence also establishes that location of the disputed substation at the City’s suggested sites  
112 or otherwise outside of the target area diminishes PacifiCorp’s ability to efficiently and  
113 adequately utilize the capacity of other substations to provide service to areas proximately  
114 located to the target area and the target area itself. While the City argues that construction of the  
115 substation outside the target area is technically feasible, the evidence shows detrimental impact

---

<sup>1</sup>At this point of the proceedings we do not address specific excess costs. We note, however, that additional costs come with additional transmission and distribution lines. The alternative site locations do bring an impact upon PacifiCorp’s costs and the efficiency of its network.

116 for each of the specific sites identified by the City and generally for any substation site located  
117 outside the target area.<sup>2</sup> We conclude that the City's position that the substation may be located  
118 outside the target area without impairing PacifiCorp's ability to provide safe, reliable, and  
119 adequate service must be rejected. Because PacifiCorp has indicated that the Preferred Site is not  
120 the only location within the target area that it will accept, we need not rule that the Preferred Site  
121 is the only possibility. Pursuant to Utah Code Section 54-14-305(3), we conclude and find that  
122 the substation shall be located within the general area between 2700 West and 3300 West and  
123 6900 South and 7200 South in order for PacifiCorp to provide safe, reliable, and adequate  
124 service.

125 DATED at Salt Lake City, Utah, this 28 day of November, 2005.

126  
127 /s/ Richard M. Campbell, Chairman

128  
129 /s/ Ted Boyer

130 /s/ Ron Allen

131  
132 /s/ Joe Johnson

133 /s/ Monette Hurtado

---

<sup>2</sup>Indeed, for one of the City's proposals, a substation would be built outside the target area, but would still require another substation to be built within the target area in order to provide service to customers.