

Mark E. Hindley (#7222)
Richard R. Hall (#9856)
STOEL RIVES LLP
201 South Main Street, Suite 1100
Salt Lake City, Utah 84111-4904
Telephone: (801) 328-3131

R. Jeff Richards (#7294)
PACIFICORP
201 South Main, Suite 2200
Salt Lake City, Utah 84111
Telephone: (801) 220-4734

Attorneys for Petitioner

BEFORE THE ELECTRICAL FACILITIES REVIEW BOARD

PACIFICORP, an Oregon corporation,

Petitioner,

vs.

THE CITY OF WEST JORDAN,

Respondent.

PETITION FOR REVIEW

**EXPEDITED TREATMENT
REQUESTED**

On March 15, 2005, the City Council for the City of West Jordan (“West Jordan” or “the City”) overturned the West Jordan Planning Commission’s approval of PacificCorp’s application for a conditional use permit to construct a proposed permanent electrical substation on the southeast corner of 3200 West and 7000 South (the “70th South Site”). The City has instead required PacificCorp to “select a proposed site for the substation that is in a Commercial area, at least 500 ft. from the nearest residence,” which will result in significant excess costs and considerable delays in constructing vital utility infrastructure needed for continuous and reliable

service to PacifiCorp's customers. (Minutes of the City of West Jordan City Council Meeting, Sept. 7, 2004.)

Pursuant to Utah Code Ann. § 54-14-303, PacifiCorp respectfully submits this Petition for Review of the City's decisions to the Electrical Facilities Review Board (the "Board" or the "EFRB"). Specifically, PacifiCorp is seeking review by the Board because the City has prohibited the construction of electric facilities which are needed to provide safe, reliable, adequate, and efficient service to its customers and because the City has imposed requirements on the construction of facilities that will result in estimated excess costs without entering into an agreement with PacifiCorp for the actual excess costs.

BACKGROUND

PacifiCorp's Duty to Provide Reliable Electrical Service

1. PacifiCorp is a public utility regulated by the Public Service Commission of the state of Utah ("PSC"). Under that regulation, PacifiCorp has an affirmative legal duty to design, construct, and maintain facilities sufficient to provide safe, reliable, adequate, and efficient electric service to its customers. Utah Code Ann. § 54-3-1.

The Need for a New Substation in West Jordan

2. The substations currently serving West Jordan cannot keep up with demand in that area. In February 2005, PacifiCorp identified that over 4,400 new customers had been connected to PacifiCorp's system in West Jordan over the past three years and more have been added since that time. PacifiCorp anticipates similar growth in the foreseeable future. At the same time, per capita use of power has also increased significantly, attributable in large measure to the conversion from swamp coolers to forced air conditioning and the ever increasing use of

home electronics. Accordingly, demand on PacifiCorp's electric system has increased and continues to increase.

3. To meet this increased demand within West Jordan, PacifiCorp has determined that a new substation must be constructed. Based on 2005 loads adjusted for weather and anticipated growth from new and existing customers, PacifiCorp has projected that without additional facilities (even assuming continued use of the temporary substation) it is likely that there will be insufficient capacity to meet customer demand in West Jordan by approximately June 2006 and beyond. Further, without these new facilities, PacifiCorp may have to interrupt service to customers to protect the existing power system in the area from overload and subsequent damage under heavy usage and persistent hot weather conditions.¹

4. PacifiCorp has identified a "target area" in which to build the substation. The target area is the area where a substation is most efficiently sited because of its proximity to the load center and to transmission and distribution facilities. The target area is approximately between 2700 West and 3300 West, 6900 South and 7200 South.

PacifiCorp Selects the 70th South Site

5. Anticipating the increase in electrical demand, PacifiCorp approached West Jordan City officials in 2002 to discuss the need to locate a new substation within the target area.

6. PacifiCorp identified an ideal location: a 4.3-acre site on the southeast corner of 3200 West and 7000 South.

¹ Customer demands on the electric system are highly dependant on high temperatures due to the high density of forced air conditioning in the area. Weather conditions of concern are where high temperatures (typically >100°) persist for several days and where average evening and night temperatures remain high. These conditions produce additional demands on the electric system that may already be at or near their capacity.

7. This Site is ideal because it: (i) is close to PacifiCorp's transmission lines, existing distribution network, and load center; (ii) satisfies PacifiCorp's operational and technical requirements; (iii) does not require removing homes, (iv) is large enough for PacifiCorp's facilities and for mitigation measures such as landscaping and other screening; and (v) was available from a willing seller.

8. Moreover, the 70th South Site is already well buffered. No homes are directly adjacent to the Site. It is bordered by open space on the north, south, and west, and by a canal on the east. The Site is also easily accessible from public roads.

West Jordan Rejects the 70th South Site

9. In order to build the substation at the 70th South Site, West Jordan required PacifiCorp to submit an application to rezone the Site for public facilities, which PacifiCorp did on November 7, 2003.

10. In March 2004, the City Council denied PacifiCorp's request to rezone the Site and asked PacifiCorp to consider other potential sites. (The City later determined that, in fact, rezoning was not necessary because "all of [the City's] zones allow substations . . . as a conditional use." WJCMC § 89-3-302 & § 89-6-902(b).)

11. In response, PacifiCorp sent a letter to the City on May 14, 2004, explaining the immediate need for a substation and providing anticipated dates when a substation should be completed to avoid customer interruptions and equipment damage.

West Jordan Rejects Another of PacifiCorp's Site Selections

12. After the zoning denial, City officials held a series of meetings with PacifiCorp to evaluate site alternatives. PacifiCorp identified and reviewed approximately 100 potential

substation sites. Of these, 16 sites were identified as being possibly feasible and further evaluated.

13. During those meetings, City representatives identified three locations to consider, one of which was 2700 West and 7000 South (the “2700 West Site”) for which the City expressed a preference.

14. PacifiCorp then met with City officials and administrative staff on June 9, 2004 and again on August 17, 2004, to review site options and expended funds to develop conceptual plans for the 2700 West Site. At the direction of the City, PacifiCorp then held a public “open house” on August 19, 2004, to present those conceptual plans to West Jordan residents.

15. Residents mounted opposition to the 2700 West Site on the grounds that the substation would be directly adjacent to or across the street from their homes. PacifiCorp was then informed that the City had withdrawn its support for that Site. In response, PacifiCorp sent a letter to the City on September 3, 2004, stressing again the immediate need for a substation and requesting a meeting to discuss the next steps in identifying a site. In the letter, PacifiCorp advised the City that

because of the critical need to get a substation on line to reliably serve customers in West Jordan, the Company no longer has the ability to engage in a lengthy permitting process that might lead to an unfavorable result. Consequently, prior to submitting a request for a conditional use permit for property located at 2700 West and 7000 South *we are once again seeking guidance from the city on your view of the options.*

(Emphasis added.) PacifiCorp restated that both the 2700 West Site and the 70th South Site were both “acceptable from an electrical system operation standpoint” and that it was “willing to consider other similarly situated locations in the target area that meet Utah Power’s criteria” and the needs of the City.

16. The City, however, provided no guidance. Instead, at its September 7, 2004 meeting, the City Council voted 5-0 to require PacifiCorp to “*select a proposed site for the substation that is in a Commercial area, at least 500 ft. from the nearest residence.*” (Minutes of the City of West Jordan City Council Meeting, Sept. 7, 2004 (emphasis added)). In so doing, the City precluded all substations near or within residential zones without amending its ordinance.

17. On September 16, 2004, PacifiCorp sent yet another letter to the City, similar to the previous two, emphasizing the immediate need for an approved site. Additionally, due to the delay in receiving approval for a permanent substation site, PacifiCorp notified the City that it would have to build a temporary substation at significant expense to avoid outages in the summer of 2005.

Siting the Substation at Jordan Landing Would Impair PacifiCorp’s Ability to Provide Safe, Reliable, Adequate, and Efficient Service

18. During this time, the City requested that PacifiCorp consider constructing the substation at Jordan Landing, a commercial development approximately 2 miles from the interconnecting transmission and distribution lines and outside of the target area.

19. However, building at Jordan Landing would impair PacifiCorp’s ability to provide safe, reliable, adequate, and efficient service.

20. PacifiCorp advised the City of these problems. In its September 16th letter, PacifiCorp addressed some of the issues involved in siting a substation at Jordan Landing:

We were also asked to look at Jordan Landing as a potential site. What we found is that a site at Jordan Landing is not economically feasible and also impairs Utah Power’s ability to provide safe, reliable, and adequate service to its customers. Jordan Landing is outside of the target service area and would limit the ability to transfer load among the various electrical circuits serving West Jordan. Construction and right of way costs would be exorbitantly high for this location.

PacifiCorp Reselects the 70th South Site

21. After the City rejected the 2700 West Site, PacifiCorp elected to pursue the preferred 70th South Site. On November 30, 2004, PacifiCorp sent a letter to the City reemphasizing the immediate need for a permanent substation and stating that the 70th South Site “best meets the needs of both [PacifiCorp] and the city.” Additionally, PacifiCorp stated:

The city planning staff advised us to seek a Land Use and Zone change as a prerequisite to a conditional use permit. That site was essentially denied when the city voted not to change the zoning. Since that time, *we have been further advised by the city that zoning change is not required and rather a conditional use permit is all that is needed.* We were then given the task of analyzing other potential locations. Working in good faith, we have done that without having succeeded in finding an acceptable alternative.

We will . . . file an application for a conditional use permit to construct a permanent substation at [the 70th South Site].

The CUP Process

22. Facing the likelihood of future customer interruptions and system damages, having determined that the 70th South Site was the best location, and having been advised by the City that a rezone was not required and that a conditional use permit was the appropriate permit, PacifiCorp submitted an application with the City on December 16, 2004, for a conditional use permit to construct a permanent substation on the 70th South Site.²

² On the same date, PacifiCorp submitted an application with West Jordan to construct the temporary substation referenced in its September 16, 2004 letter. The Planning Commission denied PacifiCorp’s conditional use permit to construct the temporary substation. Given the time required to design and construct a permanent substation and the need for additional capacity to avoid power outages during the summer of 2005, PacifiCorp appealed the Planning Commission’s denial of the conditional use permit for the temporary substation. On February 15, the West Jordan City Council overturned the Planning Commission decision with respect to the temporary substation and issued the conditional use permit. As a condition of the permit, however, PacifiCorp is required by West Jordan to remove the temporary substation no later than August 31, 2006 and to post a *\$1,000,000* bond that West Jordan can collect if the temporary substation is not removed by that date. (Feb. 15 Minutes, at 16.)

23. On February 2, 2005, the West Jordan Planning Commission considered PacifiCorp's CUP application under the six conditional-use criteria under § 89-5-404(e) of the West Jordan City Municipal Code.

24. After evaluating the evidence produced by PacifiCorp and the City's planning staff, the Planning Commission ruled that the application met the applicable criteria and approved PacifiCorp's conditional use permit application.

25. On February 11, 2005, a local resident, Rick Brown, appealed the Planning Commission's decision approving PacifiCorp's conditional use permit.

26. On March 15, 2005, the City Council reversed the Planning Commission's decision. On a 4-3 vote, the City Council found that "the proposed substation does not meet the six criteria [under § 89-5-404(e)] for approval of a conditional use permit." In making its decision, the City Council did not provide any reasoning or rationale to support its decision.

REQUEST FOR REVIEW

27. The City prohibited PacifiCorp from constructing a permanent substation at the 70th South Site when it overturned the Planning Commission's approval of PacifiCorp's conditional use permit application.³

28. The City Council has instead elected to pursue an option of local benefit requiring PacifiCorp to "select a proposed site for the substation that is in a Commercial area, at least 500 ft. from the nearest residence" (Minutes of the City of West Jordan City Council Meeting, Sept. 7, 2004.).

³ In an action filed in Utah State Third District Court, PacifiCorp has alleged that the City Council's decision was arbitrary, capricious, and illegal under Utah Code Ann. § 10-0-1001(3)(b). Those particular issues are not before the Board.

29. These restrictions and requirements impair PacifiCorp's ability to provide safe, reliable, adequate, and efficient service to its customers. Utah Code Ann. § 54-14-303(3) & (4).

30. Accordingly, pursuant to Utah Code Ann. § 54-14-305(2)(a), the Board should find that the substation should be built at the 70th South Site and that the condition imposed by the City that it be constructed "in a Commercial area, at least 500 ft. from the nearest residence" may not be imposed because it impairs the ability of the Company to provide safe, reliable, adequate, and efficient service to its customers.

31. In the alternative the Board should issue a written order: (1) finding that the substation shall be constructed within the target area at a location that is immediately available in order to provide safe, reliable, adequate and efficient service to PacifiCorp's customers; (2) determining the amount of the estimated excess costs associated with locating the substation at a site other than the 70th South Site for which the City must agree to pay in accordance with Utah Code Ann. § 54-14-201(2); (3) determining that construction of the substation must commence immediately in order for PacifiCorp to provide safe, reliable, adequate, and efficient service to its customers.

32. Moreover, the Board should find that any failure of the City to extend the conditional use permit for the existing temporary substation until a permanent substation is operational without penalty to PacifiCorp (including exercising any rights the City has to collect on the above-referenced bond posted by PacifiCorp) will impair PacifiCorp's ability to provide safe, reliable, adequate, and efficient service to its customers or will impose an excess cost on PacifiCorp.

REQUEST FOR EXPEDITED TREATMENT

PacifiCorp requests that the Board expedite this action given the critical nature of the dispute. Currently, West Jordan is being served in part by a temporary substation in order to meet West Jordan's ever-increasing demand for power. This temporary substation, however, is merely a stopgap, providing only a short-term solution in the target area where demand for electricity is quickly outrunning available capacity. PacifiCorp must, however, decommission the temporary substation by August 31, 2006. The reasons are: (1) the lease on the property where the temporary substation is located will expire in February 2007; (2) the conditional use permit will expire; and (3) the City Council of West Jordan has required that it be decommissioned by that date. On this last point, to ensure that PacifiCorp decommissions the temporary substation on time, West Jordan imposed upon PacifiCorp a **\$1,000,000** bond requirement, payable to the City if PacifiCorp fails to decommission the temporary substation on time. (Minutes of City Council Meeting, Feb. 15, 2005.) Unless changed, PacifiCorp must comply with the current CUP stipulations and remove the temporary substation and therefore cannot rely on the temporary substation being operational after August 2006 to service its customers. A permanent substation must be constructed within the target area in order to meet the increasing demand for electricity. However, West Jordan has refused to approve a conditional use permit for a permanent substation, forcing PacifiCorp into a position where it projects that it may have inadequate capacity to meet electric demand during the summer of 2006 and beyond.

Even with the temporary substation in place, PacifiCorp projects, depending on increased additional loading and peak summer temperatures, that West Jordan customers may experience service interruptions and its system may be damaged. In order to meet the projected demand and

avoid against the exposure and likelihood of overloads on PacifiCorp's electric system and resulting service interruptions to PacifiCorp customers, a permanent substation must be built and be operational by the summer of 2006. Planning, engineering, procuring the necessary structures and equipment, constructing and commissioning a substation at the 70th South Site is expected to take approximately 8-11 months.⁴ Use of a different site would extend this timeframe.

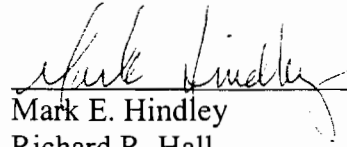
Accordingly, in light of these circumstances, PacifiCorp requests that the Board expedite this matter and suggests this schedule:

1. Initial Hearing—within 10 days of the filing of this Request
2. Brief of Petitioner—within 10 days of Initial Hearing
3. Brief of Respondent—within 10 days of date Brief of Petitioner is served
4. Hearing—within 10 days of date Brief of Respondent is served.

⁴ Substation construction typically requires 11 months, including engineering, design, steel fabrication, ordering materials and equipment and site construction. Additional time is also needed for permitting and acquisition of property and easements. Here, PacifiCorp has taken steps to reduce this duration to approximately 8 months by purchasing the property, and has continued with design engineering and procurement. Selection of a different site at this point would greatly increase the necessary timeframe to complete the substation.

DATED this 30th day of August, 2005.

STOEL RIVES LLP



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Richard R. Hall

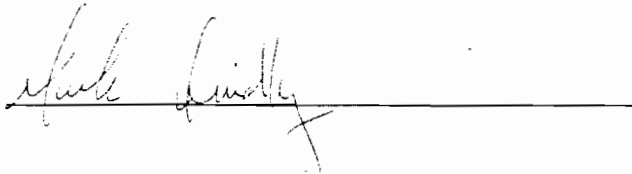
Attorneys for Petitioner/Appellant

PacifiCorp

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of August, 2005, I caused to be sent by hand delivery a true and correct copy of the foregoing **PETITION FOR REVIEW**, to the following:

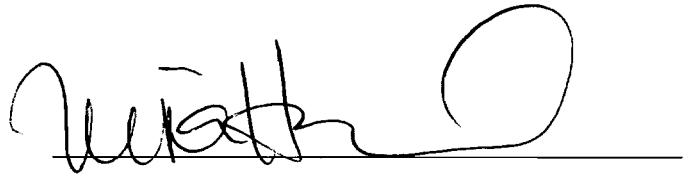
Jody K. Burnett
Williams & Hunt
257 East 200 South # 500
Salt Lake City, Utah 84111



CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of August, 2005, I caused to be sent by US mail, postage prepaid, a true and correct copy of the foregoing **PETITION FOR REVIEW** to the following:

The City of West Jordan
c/o Melanie S. Briggs, City Recorder
8000 S. Redwood Road
West Jordan, UT 84088

A handwritten signature in black ink, appearing to read "W. Math", is written over a horizontal line. The signature is cursive and includes a large loop at the end.