

Gary A. Dodge (0897)  
HATCH, JAMES & DODGE  
10 West Broadway, Suite 400  
Salt Lake City, Utah 84101  
Telephone: (801) 363-6363  
Facsimile: (801) 363-6666  
Email: gdodge@hjdllaw.com  
Attorneys for UAE

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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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In the Matter of the Application of PACIFICORP for an Increase in its Rates and Charges.	SUPPLEMENTAL POST-HEARING BRIEF OF THE UAE INTERVENTION GROUP IN RESPONSE TO UTAH ENERGY OFFICE'S SUPPLEMENTAL BRIEF
	[DSM Issues]
	Docket No. 01-035-01

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The Utah Association of Energy Users Intervention Group (“UAE”) submits this Supplemental Brief in response and opposition to the Supplemental Brief filed herein by the Utah Energy Office. The UAE submits that the Commission should reject the Utah Energy Office’s Supplemental Brief, as well as its attempt, post-hearing, to modify its position. In the event the Utah Energy Office’s Post Hearing Brief is rejected, UAE will withdraw its Supplemental Brief. To the

extent the Utah Energy Office's Supplemental Brief is accepted, UEA requests that this responsive brief also be accepted.

The Utah Energy Office has created significant confusion on this record with respect to its recommendations. The prefiled testimony of Mr. Burks and Mr. Nichols was read by most parties to recommend that the Commission add \$35 million to PacifiCorp's Utah revenue requirement in this case to fund a specific set of DSM programs proposed by Mr. Nichols. The testimony was also understood to request that the Commission *order* PacifiCorp to proceed to implement those specific programs. On the stand, Mr. Burks and Mr. Nichols clarified that they were *not* recommending that any amount be added to the Utah revenue requirement for DSM programs, *and that they were not asking the Commission to order PacifiCorp to do anything with respect to DSM programs*. Rather, they were *asking* PacifiCorp to file tariffs to implement the recommended programs, and requesting prompt Commission consideration of any such filing.

In reliance upon the assurances received at the hearings, the UAE, and perhaps other parties, cut short its cross examination of the Utah Energy Office witnesses, modified its intended live surrebuttal testimony on this issue, and did not address the Utah Energy Office's original (or newly-revised) recommendations in its brief in any detail. The parties to this case have been unfairly prejudiced by the Utah Energy's Office's new position as articulated in its Supplemental Brief.

The Utah Energy Office's Supplemental Brief states the Utah Energy Office's current recommendation as follows: "[T]he Commission [should] *order the company* to expand its DSM

filing to include additional cost effective demands and resources *as recommended by Dr.*

*Nichols.*” [Utah Energy Office Supplemental Brief at 1-2 (emphasis added)].

In contrast, in live testimony offered during hearings in this matter, Mr. Burks stated and clarified the Utah Energy Office’s position as follows:

MR. DODGE: Yet you're asking ... that the company be ordered, within 30 days, to file a plan for implementing at a minimum the DSM recommended in Dave Nichols's testimony beginning immediately.

MR. BURKS: I don't believe I asked the Commission to order the company. I thought our testimony reads, we recommend the company do the following.

MR. DODGE: Okay. What are you asking the Commission to do, then?

MR. BURKS: To act -- to expedite on the basis of the company's proposed DSM implementation plan that we ask them to file.

MR. DODGE: *If the company chooses not to accept your recommendation and file within 30 days the program design, etcetera, on the 14 programs that Dr. Nichols recommends, you're not recommending this Commission order that? It's just you hope they will, and if they do, you hope the Commission will act expeditiously?*

MR. BURKS: *It would appear so.*

[Transcript at page 591, line 8 – page 592, line 12].

Similarly, Dr. Nichols testified as follows:

MR. DODGE: Will you agree with me that the best thing this Commission can do in the DSM arena is to indicate strong support for cost-effective DSM programs and direct the company that they expect them to bring forward those programs that are cost-effective and reasonable for implementation in this state and potentially be held accountable if they do not?

DR. NICHOLS: I think that would be a salutary development.

[Transcript at page 603, lines 7 –16].

The Utah Energy Office’s after-the-fact request that the Commission order the company to file tariffs implementing specific programs proposed by Dr. Nichols is prejudicial to the other parties

to this docket. Moreover, it would be bad public policy to order the Company to file tariffs to implement programs that have not been carefully analyzed and that the utility does not support. Such programs should be mandated only after careful analysis by all interested parties and a finding by the Commission, based on an adequate record, that the programs are in the public interest.

If the Utah Energy Office wishes to submit specific proposed DSM tariffs for Commission consideration, it is free to do so. As with any other entity proposing the adoption of new programs or tariffs, the Utah Energy Office would properly bear the burden of supporting the proposal with adequate analyses, and of demonstrating that it is in the public interest.

UAE supports the implementation of cost-effective DSM programs in Utah. However, the specific programs supported by the Utah Energy Office have not been subjected to critical analysis by any other parties, are not specifically supported by most of the parties in this case, and are premature. The UEA submits that the Commission should do what the Utah Energy Office asked it to do in the hearings, i.e., encourage PacifiCorp to explore all cost-effective DSM opportunities, act quickly in responding to DSM tariff filings, and remind PacifiCorp that the prudence of its actions will be evaluated in the context of completed and rejected DSM opportunities.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2001.

HATCH, JAMES & DODGE

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Gary A. Dodge  
Attorneys for UAE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, this \_\_\_\_ day of \_\_\_\_\_, 2001, to the following:

Edward Hunter  
John Eriksson  
STOEL RIVES  
201 South Main Street, Suite 1100  
Salt Lake City, UT 84111

Brian W. Burnett  
CALLISTER NEBEKER & MCCULLOUGH  
10 East South Temple, #800  
Salt Lake City, UT 84133

Michael Ginsberg  
ASSISTANT ATTORNEY GENERAL  
Division of Public Utilities  
500 Heber M. Wells Building  
160 East 300 South  
Salt Lake City, UT 84111

Reed Warnick  
ASSISTANT ATTORNEY GENERAL  
Committee of Consumer Services  
160 East 300 South, 5<sup>th</sup> Floor  
Salt Lake City, UT 84111

F. Robert Reeder  
William J. Evans  
PARSONS BEHLE & LATIMER  
201 South Main Street, Suite 1800  
P.O. Box 45898  
Salt Lake City, UT 84145-0898

Peter J. Mattheis  
Matthew J. Jones  
BRICKFIELD BURCHETTE & RITTS  
1025 Thomas Jefferson Street, N.W.  
800 West Tower  
Washington, D.C. 20007

Tony J. Rudman  
MAGCORP  
238 North 2200 West  
Salt Lake City, UT 84116

Jeff Burks  
Office of Energy & Resource Planning  
Utah Department of Natural Resources  
1594 West North Temple, Suite 3610  
Salt Lake City, UT 84114-6480

Steven F. Alder  
ASSISTANT ATTORNEY GENERAL  
P.O. Box 140857  
Salt Lake City, UT 84114

Captain Robert C. Cottrell, Jr.  
Utility Litigation and Negotiation  
AFLS/ULT  
139 Barnes Drive, Suite 1  
Tyndall AFB, Florida 32403-5319

Glen E. Davies  
Bill Thomas Peters  
PARSONS DAVIES KINGHORN PETERS  
185 South State Street, Suite 700  
Salt Lake City, UT 84111

Stephen R. Randle  
RANDLE, DEAMER, MCCONKIE & LEE  
139 East South Temple, Suite 330  
Salt Lake City, UT 84111-1169

Charles E. Johnson  
1338 Foothill Boulevard, Suite 134  
Salt Lake City, UT 84108

Eric C. Guidry  
The Energy Project  
Land and Water Fund of the Rockies  
2260 Baseline Road, Suite 200  
Boulder, CO 80302-7740

Betsy Wolf  
SLCAP/CUC  
746 South 200 West  
Salt Lake City, UT 84101

David Crabtree  
DESERET GENERATION & TRANSMISSION  
10704 South Jordan Gateway  
South Jordan, UT 84095

Bruce Plenk  
Utah Ratepayer Alliance  
1338 Foothill Dr., PMB134  
Salt Lake City, UT 84108

