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July 8, 2005

Electric Facility Review Board  
c/o Julie Orchard  
160 East 300 South  
400 Heber M. Wells Bldg.  
Salt Lake City, UT 84111

MARK E. HINDLEY  
Direct (801) 578-6947  
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**REVIEWED BY COMMISSIONERS**

**RIC CAMPBELL** \_\_\_\_\_

**TED BOYER** \_\_\_\_\_

**RON ALLEN** \_\_\_\_\_

**Re: PacifiCorp v. West Jordan City**

Dear Board Members:

On April 25, 2005, PacifiCorp made a request that the Electric Facility Review Board ("EFRB") convene to consider a dispute between PacifiCorp and West Jordan City relating to the City's denial of PacifiCorp's application for a conditional use permit to construct a substation on the southeast corner of 3200 West and 7000 South (the "Request"). PacifiCorp has now been asked by the City of West Jordan to withdraw the Request "without prejudice." A copy of the City's request is attached.

Currently, by order of the EFRB on June 13, 2005, the Request is stayed pending the outcome of litigation in the Third District Court also involving the City's denial (the "Litigation"). Thus, given that the EFRB has stayed this matter, and because the dismissal the City seeks would be "without prejudice," PacifiCorp does not believe that a dismissal of the Request serves any practical purpose.

Nevertheless, PacifiCorp will comply with the City's request and, by this letter, asks the EFRB to dismiss the Request *without prejudice* consistent to the conditions contained in the City's letter. The principal reason for doing so is because obtaining a quick resolution in the Litigation is critical. The Court has already scheduled a hearing on PacifiCorp's dispositive motion in the Litigation for July 27. The City, however, has suggested that, unless PacifiCorp asks the EFRB to dismiss the Request, the City may raise jurisdictional issues that would delay the Litigation. (See Letter, at 2.)

PacifiCorp cannot afford such a delay. Accordingly, PacifiCorp asks the EFRB to dismiss the Request *without prejudice*. If the Litigation does not fully resolve the relevant issues, PacifiCorp reserves the right to file a new Request before the EFRB.

Oregon  
Washington  
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Utah  
Idaho



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Finally, PacifiCorp respectfully requests that the EFRB continue to promulgate the rules and create the infrastructure for its operation. Whether or not PacifiCorp files a new Request relating to its dispute with West Jordan, this Board will certainly be called upon to address other disputes relating to proposed electric facilities in the future.

Sincerely,

Mark E. Hindley

cc: Jeff Richards  
Carol Hunter  
Jody Burnett, counsel for West Jordan

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JODY K BURNETT

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July 5, 2005

Mark E. Hindley  
Stoel Rives LLP  
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Salt Lake City, UT 84111-4904

VIA EMAIL AND U. S. MAIL

Re: *PacifiCorp v. West Jordan City*  
Civil No. 050906877  
Our File No. 1008.0204

Dear Mark:

This letter is intended to confirm and supplement our recent telephone conversations regarding the possible withdrawal of the request submitted by PacifiCorp on April 25, 2005, seeking review of this dispute by the Electrical Facility Review Board under the provisions of Utah Code Ann. § 54-14-101, *et seq.*

Specifically, on behalf of the City of West Jordan, we are asking PacifiCorp to withdraw its request at this time in order to avoid a potential dispute regarding the jurisdictional issue related to the effect of such a request on pending judicial proceedings.

In order to address the concerns that you and I have previously discussed, the City would agree to the following:

1. This would be regarded as the functional equivalent of a dismissal without prejudice and will not be deemed to be a waiver of any position of either party in any future proceedings.
2. The initial filing of the request and/or the withdrawal of the request will not be used or referred to by either party in the pending court proceedings.

This proposed action will facilitate our mutual goal of expeditiously resolving this dispute on cross-motions in the pending action in the Third District Court. Otherwise, a jurisdictional issue is presented about the effect of such a request on any pending judicial proceedings, particularly in light of the provisions of Utah Code Ann. § 54-14-308, which provides that the Court of Appeals has jurisdiction to review any decision of the Board in a formal adjudicative proceeding.

We look forward to cooperating with you in getting these issues resolved on the merits for the mutual benefit of all concerned.

Very truly yours,

WILLIAMS & HUNT

A handwritten signature in black ink, appearing to read "Jody K. Burnett", with a long horizontal line extending to the right.

Jody K. Burnett

JKB/bap

cc: Roger E. Cutler  
James D. Fisher

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