

2000

Westside Dixon Associates L.L.C. v. Utah Power and Light Company/Pacificorp, Utah Public Service Commission : Opening Brief

Utah Supreme Court

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BEFORE THE UTAH SUPREME COURT

In the Matter of the Complaint of WESTSIDE)	OPENING BRIEF OF
DIXON ASSOCIATES L.L.C.,)	PETITIONER WESTSIDE
)	DIXON ASSOCIATES L.L.C
Petitioner,)	
)	Priority No. 14
vs.)	
)	
UTAH POWER & LIGHT COMPANY/)	Case Number: 2000 0731 SC
PACIFICORP, UTAH PUBLIC SERVICE)	
COMMISSION)	
Respondents.)	

APPEAL FROM TWO ADMINISTRATIVE ORDERS
OF THE PUBLIC SERVICE COMMISSION
SALT LAKE COUNTY, STATE OF UTAH
(ADMINISTRATIVE LAW JUDGE A. ROBERT THURMAN)

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COMPLETE LIST OF ALL PARTIES

Pursuant to Rule 24 (a) (1) of the Utah Rules of Appellate procedure, the undersigned counsel for Petitioner represents that the named parties, Westside Dixon Associates, L.L.C., Utah Power & Light Company/PacifiCorp, and Utah Public Service Commission, are and have been the only parties to this litigation.

TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OF JURISDICTION	1
STATEMENT OF ISSUES PRESENTED FOR REVIEW	1
STATEMENT OF CASE	4
SUMMARY OF ARGUMENTS	5
ARGUMENT	7
A. THE PSC COMMITTED REVERSIBLE ERROR IN APPLYING THE ADMINISTRATIVE RULE 746-210, TO THE BROADWAY LOFTS CONDOMINIUMS (LOFTS), BY CONSTRUING THE J.G. MCDONALD BUILDING CONSTRUCTED IN 1901 AS A “NEW” BUILDING CONSTRUCTED AFTER AUGUST 1, 1984 <u>AS REQUIRED</u> FOR THE APPLICATION OF R746-210.....	7
B. THE PSC MISAPPLIED THE LAW TO THIS PROJECT IN ITS FAILURE TO RECOGNIZE THE COST EFFECTIVE EXCEPTION WHEN APPLYING THE ADMINISTRATIVE RULE 746-210, (“PURPA”).	8
C. PACIFICORP, BY ITS ACCEPTANCE OF THE PLANS SHOWING MASTER METERING/SUB METERING IN FEBRUARY 1998, HAD WAIVED ANY RIGHT TO OBJECT TO THE MASTER METERING/SUB METERING OF THE LOFTS OVER ONE AND ONE HALF YEARS LATER.	10
D. THE PSC’S INTERPRETATION OF R746-210, OR R746-210 BY ITS SPECIFIC TERMS DISCRIMINATES AGAINST THE OWNERS/TENANTS OF THE BROADWAY LOFTS CONDOMINIUMS IN THE AMOUNT THEY ARE REQUIRED TO PAY FOR ELECTRIC SERVICE.	11
CONCLUSION	13

TABLE OF AUTHORITIES

	<u>Page</u>
<u>Cases</u>	
<u>Deland v. Uintah County</u> 945 P.2d 172 (Utah App. 1997)	8
<u>Drake v. Industrial Comm’n</u> 939 P.2d 177,181 (Utah 1997)	1,2,3,4
<u>Living Scriptures, Inc. v. Kudlik</u> 890 P.2d 7 (Utah App.1995)	11, 14
<u>Mountain States Legal Foundation v. Utah Public Service Commission</u> 636 P.2d 1047 (Utah 1981)	12,14,15
<u>Pasker, Gould, Ames & Weaver, Inc. v. Morse</u> 887 P.2d 872, 876 (Utah App. 1994)	11
<u>Postal Telegraph –Cable/Co. v. Associated Press</u> 228 N.Y. 370, 127 N.E. 256 (1920)	12
<u>Skinner v. Oklahoma</u> 316 U.S. 535 (1942)	7
<u>Soter’s, Inc. v. Deseret Fed. Sav. & Loan Ass’n.</u> 857 P.2d 935,939-40 (Utah 1993)	11
<u>State ex rel. Utilities Commission v. Mead Corp.</u> 238 N.C. 451, 78 S.E. 2d 290 (1953)	12
<u>Taylor v. Dept. of Commerce, State of Utah</u> 952 P.2d 1090 (Utah App. 1998)	1,2,3
<u>Taylor v. Utah Training School.</u> 775 P.2d 432 (Utah App. 1989)	1,2,3
<u>US Xpress, Inc.v. Utah State Tax Comm’n</u> 886 P.2d 1115,1117 (Utah Ct.App.1994)	8
<u>Williams v. Public Serv. Comm’n</u> 754 P.2d 41,50 (Utah 1988)	1,2,3

Statutes

<u>Utah Code Ann. § 54-7-15</u>	4
<u>Utah Code Ann. § 63-46b-12</u>	4
<u>Utah Code Ann. § 78-2-2(e)(i)</u>	1

Rules

<u>Utah Rules of Appellate Procedure, Rule 14</u>	1
<u>Administrative Rule 746</u>	4
<u>Administrative Rule 746-210</u>	1,2,4,5,6,7,8,9,10,11,13
<u>Administrative Rule 746-210-3</u>	6,8
<u>Administrative Rule 746-210-3-A</u>	8
<u>Administrative Rule 746-210-3-B</u>	6, 9
<u>Administrative Rule 746-210-3(B),(C), (D), and (E)</u>	4
<u>Administrative Rule 746-210-3-D</u>	6, 10, 14
<u>Regulation No. 7</u>	4
<u>Uniform Building Code Rule 106.1 Salt Lake City 1997</u>	7

I. STATEMENT OF JURISDICTION

This case is on review from two administrative orders of the Public Service Commission (PSC) by Administrative Law Judge A. Robert Thurman. Westside-Dixon Associates (Westside), the Complainant/Petitioner filed a Petition for Review with the Utah Supreme Court pursuant to § 78-2-2(e)(i) and Rule 14 Utah Rules of Appellate Procedure.

II. STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the PSC committed reversible error in applying the Administrative Rule 746-210, which adopts the Public Utility Regulatory Policy Act ("PURPA") to the project which is the subject matter of this case, the Broadway Lofts Condominiums (Lofts), by construing the J.G. McDonald Building constructed in 1901 as a "new" building constructed after August 1, 1984 as required for the application of R746-210.

APPLICABLE STANDARD OF APPELLATE REVIEW

The applicable standard of appellate review with respect to this issue, the application of R746-210 or not appears to be *de nova* (as purely a question of law). In *Taylor v. Utah Training School*, 775 P.2d 432 (Utah App. 1989) stated,

“that this case involves a question of law to which the courts should apply the "correction of error" standard, with no particular deference given to the agency's interpretation. See, e.g., *Williams v. Public Serv. Comm'n*, 754 P.2d 41, 50 (Utah 1988); *Administrative Services*, 658 P.2d at 608.”

Further, in the case of *Taylor v. Dept. of Commerce, State of Utah*, 952 P. 2d 1090 (Utah App. 1998) the Court stated,

“As a general rule, we review an agency's legal conclusions for correctness. See, e.g., *Drake v. Industrial Comm'n*, 939 P.2d 177, 181 (Utah 1997)”

2. Whether the PSC committed reversible error in its failure to recognize the cost effective exception when applying the Administrative Rule 746-210, ("PURPA") to the project that is the subject matter of this case, the Broadway Lofts Condominiums (Lofts).

APPLICABLE STANDARD OF APPELLATE REVIEW

The applicable standard of appellate review with respect to this issue, the application of R746-210 or not appears to be *de nova* (as purely a question of law). In *Taylor v. Utah Training School*, 775 P.2d 432 (Utah App. 1989) stated,

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“As a general rule, we review an agency's legal conclusions for correctness. See, e.g., *Drake v. Industrial Comm’n*, 939 P.2d 177, 181 (Utah 1997)”

3. Whether the PSC committed reversible error in its failure to recognize that PacifiCorp, by its acceptance of the plans showing master metering/sub metering in February 1998, had waived its right to object to the master metering/sub metering of the Lofts.

APPLICABLE STANDARD OF APPELLATE REVIEW

The applicable standard of appellate review with respect to this issue whether Westside's detrimental reliance prevents the objection of PacifiCorp to master metering/sub metering appears to be *de nova* (as purely a question of law). In *Taylor v. Utah Training School*, 775 P.2d 432 (Utah App. 1989) stated,

“ that this case involves a question of law to which the courts should apply the "correction of error" standard, with no particular deference given to the agency's interpretation. See, e.g., *Williams v. Public Serv. Comm’n*, 754 P.2d 41, 50 (Utah 1988); *Administrative Services*, 658 P.2d at 608.”

Further in the case of *Taylor v. Dept. of Commerce, State of Utah*, 952 P. 2d 1090 (Utah App. 1998) the Court stated,

“As a general rule, we review an agency's legal conclusions for correctness. See, e.g., *Drake v. Industrial Comm’n*, 939 P.2d 177, 181 (Utah 1997)”

4. Whether the PSC committed reversible error in their depriving Westside as a member of the Broadway Lofts Condominium Association of due process and equal protection under the XIV Amendment to the United States Constitution by allowing tenants and/or condominium owners in buildings with a central boiler/chiller to be master metered with lower tariff energy rates, while those apartment tenants or condominium owners with individual heating and cooling units could not have the lower tariff rate. This is discrimination without any reasonable justification.

APPLICABLE STANDARD OF APPELLATE REVIEW

The applicable standard of appellate review with respect to this issue whether Westside’s XIV Amendment rights of due process and equal protection appears to be *de nova* (as purely a question of law). In *Taylor v. Utah Training School*, 775 P.2d 432 (Utah App. 1989) stated,

“ that this case involves a question of law to which the courts should apply the "correction of error" standard, with no particular deference given to the agency's interpretation. See, e.g., *Williams v. Public Serv. Comm’n*, 754 P.2d 41, 50 (Utah 1988); *Administrative Services*, 658 P.2d at 608.”

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“As a general rule, we review an agency's legal conclusions for correctness. See, e.g., *Drake v. Industrial Comm’n*, 939 P.2d 177, 181 (Utah 1997)”

III. STATEMENT OF THE CASE

Westside-Dixon Associates (“Westside”), sent plans to PacifiCorp for the conversion of an existing building into condominiums at property located at 159 West 300 South, known as Broadway Lofts, on or before April 1, 1998. The plans sent to PacifiCorp showed that Westside intended to have master metering/ sub metering for Broadway Lofts. Those submitted plans were approved by PacifiCorp.

On or about December 10, 1999, over one and one-half years later, PacifiCorp’s counsel informed Westside’s counsel that its master metering system was not allowed under their interpretation of the Commission’s rules. On or about December 21, 1999, PacifiCorp wrote a letter to Westside informing it that the power would be disconnected on January 3, 1999, because in their opinion, master metering did not comply with Rule 746 and Regulation No. 7. On January 4, 2000, Westside filed a formal complaint with the Public Service Commission objecting to PacifiCorp’s demand to install its own meters. A hearing was held before the Public Service Commission (“PSC”) on April 20, 2000. Following the hearing, the Commission’s Report and Order was issued dated June 28, 2000.

Pursuant to Utah Code Annotated §54-7-15 and §63-46b-12, and the Commission’s Order a Petition for Review was filed on July 18, 2000. A Motion to Stay Power Termination was filed by Westside on July 18, 2000. PacifiCorp filed a Memorandum in Opposition to Petition for Review on July 26, 2000. The PSC granted a Limited Review on August 7, 2000. Said review was limited to the question of cost benefit under § R746(B),(C),(D) and (E), Utah

Administrative Code. On August 10, 2000, prior to receipt of the PSC Order granting limited review, Westside filed a Reply Memorandum Petition For Review in response to PacifiCorp's Memorandum in Opposition to Petition for Review. PacifiCorp filed a Response to Westside's Reply Memorandum on August 21, 2000. On August 25, 2000, Westside filed a Memorandum Pursuant to Order Granting Review limiting this memorandum to the cost benefit issue. Westside filed a Petition for Review with the Utah Supreme Court on August 25, 2000. PacifiCorp submitted a Response to Westside-Dixon's Memorandum Pursuant to Order Granting Review on September 1, 2000. The PSC issued its Order On Review September 8, 2000. Westside filed its Amended Petition For Review on October 5, 2000.

On October 25, 2000 Westside filed its Second Amended Petition For Review.

IV. SUMMARY OF ARGUMENTS

1. The PSC improperly applied the law R746-210 or "PURPA" to the J.G. McDonald Chocolate Company Building now known as the Broadway Lofts (Lofts). Rule 746-210, PURPA's, definition for when construction begins on a new building is when the footings are poured. The footings for this building were poured in 1901. Salt Lake City Corporation Business Services and Licensing Division does not consider the Broadway Lofts Building as a new building for purposes of issuing a building permit. This division has two types of permits, new building and building renovation. The building permit issued was for renovation. The ruling by the PSC that this building was a "new" building and therefore was subject to R746-210, PURPA, violates the requirements defining when construction begins on a new building, as well as the common sense determination of whether a building built in 1901 is a new building. A marshalling of all of the evidence presented to the PSC, and the reasonable inference to be drawn there from, supports the

conclusion that this building is not a new building for the purposes of the application of R746-210, PURPA.

2. The PSC misapplied the law to this project in its failure to recognize the cost effective exception when applying the Administrative Rule 746-210, ("PURPA"). Assuming, for argument sake, that Broadway Lofts were a new building, which it is obviously not, a marshalling of all of the evidence presented to the PSC, and the reasonable inference to be drawn there from, supports the conclusion that master metering/sub metering meets the cost effectiveness exemption under R746-210. Westside submitted the Affidavits of L. Deane Smith, C.P.A. in conjunction with its memoranda dealing with the cost effective exemption of R746-210-3. Those affidavits met Westside's responsibility under R746-210-3-B to meet the cost effective test. PacifiCorp was required under R746-210-3-D to provide "lump sum differential cost reflecting the purchase and installation of separate meters versus a single meter". This requirement of PacifiCorp was never fulfilled. The Affidavits of L. Deane Smith, C.P.A were unopposed. Both affidavits demonstrate that Westside meets the cost effectiveness exemption of R746-210-3. Using the master-metering system saves the customer substantial money by providing the energy to the tenants of the building at a lower price per kilowatt-hour. This cost savings has been determined to be \$148.61 per unit per year with a 30 year savings projection \$2860.00 per condominium unit. The PSC erred in its failure to apply the exemption for cost effectiveness under R746-210-3 when Westside met its burden through the Smith Affidavits and PacifiCorp failed to meet its required burden under R746-210-3-D.
3. The PSC improperly applied the law in its failure to recognize that PacifiCorp, by its acceptance of the plans showing master metering/sub metering in February 1998, had waived any right to object to the master metering/sub metering of the Lofts over one and one half years later,

resulting in Westside relying on this acceptance to their detriment in the installation of the master metering/sub metering system in the Lofts.

4. “Notions of what constitutes equal treatment for purposes of the Equal Protection Clause do change”, *Skinner v. Oklahoma*, 316 U.S. 535 (1942). There is no question that under the PSC’s interpretation of R746-210 or in the terms themselves of R746-210 the owners/tenants of the Broadway Lofts Condominiums are being treated unequally with those owner/tenants of other buildings that contain a central boiler and chiller. Further, the Public Service Commission failed to acknowledge that the Public Utilities Commission has and does take jurisdiction between end users i.e. the public and Relms Inc., the metering and billing entity involved in the case at bar. This gives equal protection under the Public Utilities Commission to those metered by PacifiCorp and those metered by Relms Inc., yet the inhabitants of Broadway Lofts are discriminated against by not having the same lower master-metered electrical rates that other inhabitants of multiple family dwellings possess, because their structure is not considered to be a “new building” or it has a central boiler and central chiller system.

V. ARGUMENT

A. **The PSC committed reversible error in applying the Administrative Rule 746-210, to the Broadway Lofts Condominiums (Lofts), by construing the J.G. McDonald Building constructed in 1901 as a “new” building constructed after August 1, 1984 as required for the application of R746-210.**

The J.G. McDonald Building was constructed in 1901. **Tr. 0044, Tr.0068.** The Uniform Building Code that is adopted by Salt Lake City states that no building or structure “ ... shall be erected, constructed, enlarged, altered, repaired, moved, improved, converted or demolished...” without a permit. *See 106.1 1997 Uniform Building Code.* The building permit upon which the PSC relied in construing the J.G. McDonald Building as a new building, is not for the erection or construction of

the building but for the renovation of an existing structure. **Tr.0068, Tr. 0115, Exhibit 8.** The Uniform Building Code defines an existing structure as “ A structure erected prior to the date of adoption of the appropriate code, or one for which a legal building permit has been issued.” **1997 Uniform Building Code.** It would be absurd to claim that the permit referred to in R746-210-3 A. applied to all types of building permits. It can only apply to permits for construction or erection of the building itself. Otherwise, if you put a new water heater in your home, or finished the basement, added a patio cover, or any type of minor alteration, you would be entitled to call your home a “new” home. That would not true, for you have an existing structure that you added to or modified, not a new building. R746-210-3 A., upon which the PSC relies defines construction beginning “when footings are poured”. **Tr. 0115** Hearing Brief Exhibit 4. The footings for this building were poured during or before 1901. By no stretch of the imagination can this building be considered a new building, constructed on or after August 1, 1984, not even for the purpose that PacifiCorp can charge the building residents more money for their electrical power. The J.G. McDonald Building that houses the Broadway Loft Condominiums is not, by any stretch of the imagination, a new building subject to R746-210-3. In *Deland v. Uintah County*, 945 P.2d 172(Utah App. 1997). The Court stated,

When we construe a statute, we first explore its plain language and use other modes of interpretation only if the language contains ambiguities. Unless a literal reading would render the statute's wording unreasonably inoperable or confusing, we accord the wording its " 'usual and accepted meaning' " and do not " 'look beyond plain and unambiguous language to ascertain legislative intent.' " Id. (quoting *US Xpress, Inc. v. Utah State Tax Comm'n*, 886 P.2d 1115, 1117 (Utah Ct.App.1994)).

Therefore, the J.G. Building cannot be interpreted to be a new building. It is an old building that has been renovated.

B. The PSC misapplied the law to this project in its failure to recognize the cost effective exception when applying the Administrative Rule 746-210, (“PURPA”).

Hypothetically, only for argument sake, assume that J.G. McDonald Building, which houses the Broadway Lofts, is a new building, which it is obviously not. A marshalling of all of the evidence presented to the PSC, and the reasonable inference to be drawn there from, supports the conclusion that master metering/sub metering meets the cost effectiveness exemption under R746-210. The master metered multi-unit residential complexes are billed at a lower per kilowatt rate than units individually metered by PacifiCorp. Master metered complexes are billed on Schedule No. 6. **Tr. 0064-65**. While those individually metered by PacifiCorp are billed under Schedule 1. **Tr. 0058-59**. L. Deane Smith, C.P.A. in his first affidavit accompanying Westside's Reply Memorandum Petition For Review **Tr. 0087** demonstrated the cost effectiveness of master metering for the residents of the Broadway Lofts by utilizing the data pertaining to the Dakota Lofts, a similar building, **Tr. 0095-96**, that had operated for over 4 years with a master metered – sub metered electrical power. **Tr. 0098**. The Dakota Lofts were properly billed under Rate Schedule 6. **Tr. 0115 p.12**. Relms Inc., the company that sub meters both the gas and electricity, charges \$4.50 per unit per month for its billing service. If separate meters were installed by both the gas company, Questar, and PacifiCorp, the combined monthly billing charge per unit is \$5.98. **Tr. 0097-98, Tr. 0115 p.9**. Mr. Smith in this first affidavit showed that the annual expected savings per unit would be **\$148.61** per unit. **Tr. 0093**. Applying the format specified in R746-210-3 B., the present value for savings would amount to **\$2,860** per condominium unit. **Tr. 0094**. It is important to understand that Westside filed its Reply Memorandum Petition For Review **Tr. 0087** on August 10, 2000, prior to receipt of Order Granting Review. **TR. 0079** that is dated August 7, 2000. This is important because Westside did not expect the PSC in its Order Granting Review **TR. 0079** to require Westside to do the cost-benefit analysis using only Rate Schedule 1 **Tr. 0058-59**, instead of the correct rate, Rate Schedule 6 **Tr. 0064-65**". Rate Schedule 6 states,

“[t]his Schedule is for general non-residential service except for multi-unit residential complexes master metered in accordance with the Utah Administrative Code, Section R746-210” Tr. 0064-65.

It is apparent that the PSC erred in its requirement that Westside only use Schedule 1 in its cost-benefit analysis.

However, Westside did do a second cost-benefit analysis using only the improper Rate Schedule 1, as required by the PSC, and yet there still was a cost-benefit as required under R746-210. In its Memorandum Pursuant To Order Granting Review **Tr. 0104**, that Westside filed after its receipt of Order Granting Review. **TR. 0079**, it demonstrated a \$17.78 per unit per annum savings **Tr. 0104**. This is shown in the second Affidavit of L. Deane Smith, C.P.A. **Tr. 0109**.

PacifiCorp’s only defense to both of the cost-benefit analysis done is that Westside did not do its cost-benefit analysis properly, yet PacifiCorp failed to provide the required “lump sum differential cost reflecting the purchase and installation of separate meters versus a single meter” dictated by R746-210-3 D. **Tr. 0041**. If there is a failure, it is due to PacifiCorp’s failure to provide the necessary information. Therefore the cost-benefit analysis was done correctly pursuant to R746-210 or if it failed, it was the result of PacifiCorp’s failure to provide the required differential costs under R746-210-3 D. **Tr. 0041**.

C. PacifiCorp, by its acceptance of the plans showing master metering/sub metering in February 1998, had waived any right to object to the master metering/sub metering of the Lofts over one and one half years later.

The PSC improperly applied the law in its failure to recognize that PacifiCorp, by its acceptance of the plans showing master metering/sub metering, had waived any right to object to the master metering/sub metering of the Lofts. The electrical plans were submitted in February 1998, along with the other appropriate drawings to PacifiCorp for review and approval. **Tr.**

0115, Exhibits 1.and 2. The purpose for this review and approval is to give notice to PacifiCorp such that its own engineers can specify the proper size of transformers, feeder lines, switch gear and meter can(s) for the building. PacifiCorp did review the plans and specified a three meter base can for the building, two for the commercial portion and one for the residential (future restaurant per Utah Power& Light [PacifiCorp] requirement) **see attachment #1.** One meter can for residential shows that the project is master metered. The Plans further specified the Relms sub metering system. **Tr. 0115 p.10.** PacifiCorp built the electrical service to the Lofts as a master metered building. **Tr. 0115 p.17.** PacifiCorp by this acceptance waived its right to object to the installation 2 years later.

“The elements of waiver consist of ‘(1) an existing right, benefit, or advantage; (2) knowledge of the existence of that right, benefit or advantage; and (3) an intention to relinquish the right, benefit, or advantage.’ “ *Living Scriptures, Inc. v. Kudlik*, 890 P.2d 7 (Utah App. 1995) quoting *Pasker, Gould, Ames & Weaver, Inc. v. Morse*, 887 P.2d 872,876 (Utah App.1994) accord *Soter’s, Inc. v. Deseret Fed.Sav.& Loan Ass’n*, 857 P.2d 935, 939-40

PacifiCorp was aware of its right to object to the master metering/sub metering. Further, it was aware that if it approved the plans that it relinquished its right to object. Therefore, even if you stretch the imagination and designate a building constructed in 1901 as a new building, further overlook the positive cost-benefit analysis in spite of PacifiCorp’s failure to provide the required information, PacifiCorp has waived its right to change the master metered/sub metered to individual PacifiCorp meters.

D. The PSC’s interpretation of R746-210, or R746-210 by its specific terms discriminates against the owners/tenants of the Broadway Lofts Condominiums

in the amount they are required to pay for electric service.

The PSC is required to perform an extremely delicate function of balancing interest of having financially sound utilities that provide essential goods and services against public interest of having goods and services made available without discrimination and on the basis of reasonable cost. Therefore, it is important that persons in similar circumstances pay the same amount for their utility. This Court in *Mountain States Legal Foundation v. Utah Public Service Commission*, 636 P.2d 1047 (Utah 1981) stated,

“ It is axiomatic in rate making that utilities are barred from treating persons similarly situated in a dissimilar fashion. *State ex rel. Utilities Commission v. Mead Corp.*, 238 N.C. 451, 78 S.E. 2d 290 (1953); *Postal Telegraph-Cable Co. v. Associated Press*, 228 N.Y. 370, 127 N.E. 256 (1920). Reasonable classifications between consumers may be made, but there must be adequate findings of fact, supported by evidence, which demonstrate a rational basis for the classification.”

Those owner/tenants of buildings that contain a central boiler and chiller are exempt from PURPA and therefore billed under Rate Schedule 6, **Tr. 0064-65**. As previously pointed out, Rate Schedule 6 is a much lower rate for electrical service than Rate Schedule 1, the rate under which the Broadway Loft owner/tenants are billed. **Tr. 0091**. The discrimination between those with a central boiler and chiller and those without is not based on “adequate findings of fact, supported by evidence, which demonstrate a rational basis”. Both tenant/owners, if allowed to be master metered, would be billed under Rate Schedule 6. **Tr. 0064-65**. To not allow both to be master metered is discrimination without justification. This discrimination constitutes a

violation of the Broadway Loft tenant/owners right to equal protection under the law. Therefore, Broadway Lofts, to prevent unfair discrimination, must be allowed to be master metered.

Further, the Public Service Commission failed to acknowledge that the Public Utilities Commission has and does take jurisdiction between end users, i.e. the public, and Relms Inc., the metering and billing entity involved in the case at bar. This gives equal protection under the Public Utilities Commission to those metered by PacifiCorp and those metered by Relms Inc., yet the inhabitants of Broadway Lofts are discriminated against by not having the same lower master-metered electrical rates that other inhabitants of multiple family dwellings possess, because their structure is not considered to be a “new building” or it has a central boiler and central chiller system.

VI. CONCLUSION

The PSC improperly applied the law R746-210 or “PURPA” to the J.G. McDonald Chocolate Company Building, now known as the Broadway Lofts (Lofts). Rule 746-210 or PURPA defines the time when construction begins on a new building as the time when the footings are poured. The footings for this building were poured in 1901. Salt Lake City Corporation Business Services and Licensing Division does not consider the Broadway Lofts Building a new building for purposes of issuing a building permit. The building permit issued was for renovation not for a new building. It has a different permit for a new building. Therefore, since it is not a new building constructed after August 1, 1984, it is not subject to R746-210.

The PSC misapplied the law to this project in its failure to recognize the cost effective exception when applying the Administrative Rule 746-210, (“PURPA”). Westside did everything it could do to properly perform the cost-benefit analysis for the PSC. The PSC improperly

required that the cost-benefit analysis use the wrong rate schedule, Schedule 1, for its calculations. Schedule 6 is the correct rate schedule. Each of the cost-benefit analysis prepared met the requirements of the PSC even without the information required to be supplied by PacifiCorp. PacifiCorp was required under R746-210-3-D to provide “lump sum differential cost reflecting the purchase and installation of separate meters versus a single meter”. This requirement of PacifiCorp was never fulfilled. It is difficult to understand how PacifiCorp has standing to object to the prepared Cost-benefit analysis prepared for Westside when PacifiCorp failed to provide its required information.

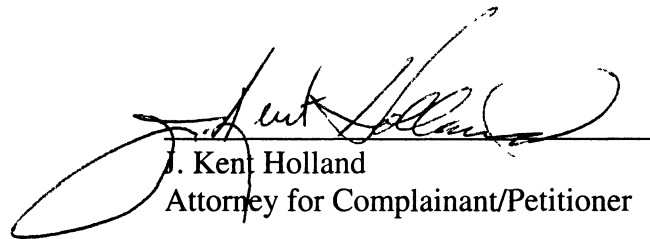
PacifiCorp, by its acceptance of the plans showing master metering/sub metering in February 1998, had waived any right to object to the master metering/sub metering of the Lofts. Westside relied on this acceptance to their detriment in the installation of the master metering/sub metering system in the Lofts. The elements necessary for waiver were met by PacifiCorp. *Living Scriptures, Inc. v. Kudlik* , 890 P.2d 7 (Utah App. 1995). PacifiCorp waived its right to object to the master meter/ sub meter system at Broadway Lofts.

PacifiCorp must provide electricity and services to the public without discrimination and on basis of reasonable cost. PacifiCorp is barred from treating persons similarly situated in a dissimilar fashion. *Mountain States Legal Foundation v. Utah Public Service Commission*, supra. The residents of the Broadway Lofts are residents of a building built in 1901. Residents of other buildings built before August 1, 1984 are allowed to master meter/sub meter their electric service such that they can use Rate Schedule 6 for a cost savings. Broadway Loft residents are being penalized because their building has been renovated. Reasonable classifications between consumers may be made by PacifiCorp., but there must be adequate findings of fact, supported by evidence, which demonstrate a rational basis for the classification. *Mountain States Legal*

Foundation v. Utah Public Service Commission, supra. There are no adequate findings of fact to justify the discrimination between Broadway Loft residents and those residents similarly situated, be they residents with a central boiler and chiller or residents of a building that has not had any remedial work since 1984.

Therefore Broadway Lofts should be allowed to master meter.

DATED this 12th day of March 2001.



J. Kent Holland
Attorney for Complainant/Petitioner

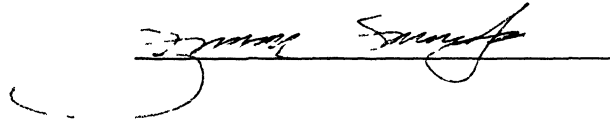
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing OPENING BRIEF OF COMPLAINANT/PETITIONER, was mailed, postage pre-paid, this 13th day of March 2001, to the following:

Mark E. Hindley
STOEL RIVES LLP
201 South Main Street, Suite 1100
Salt Lake City, Utah 84111-4904

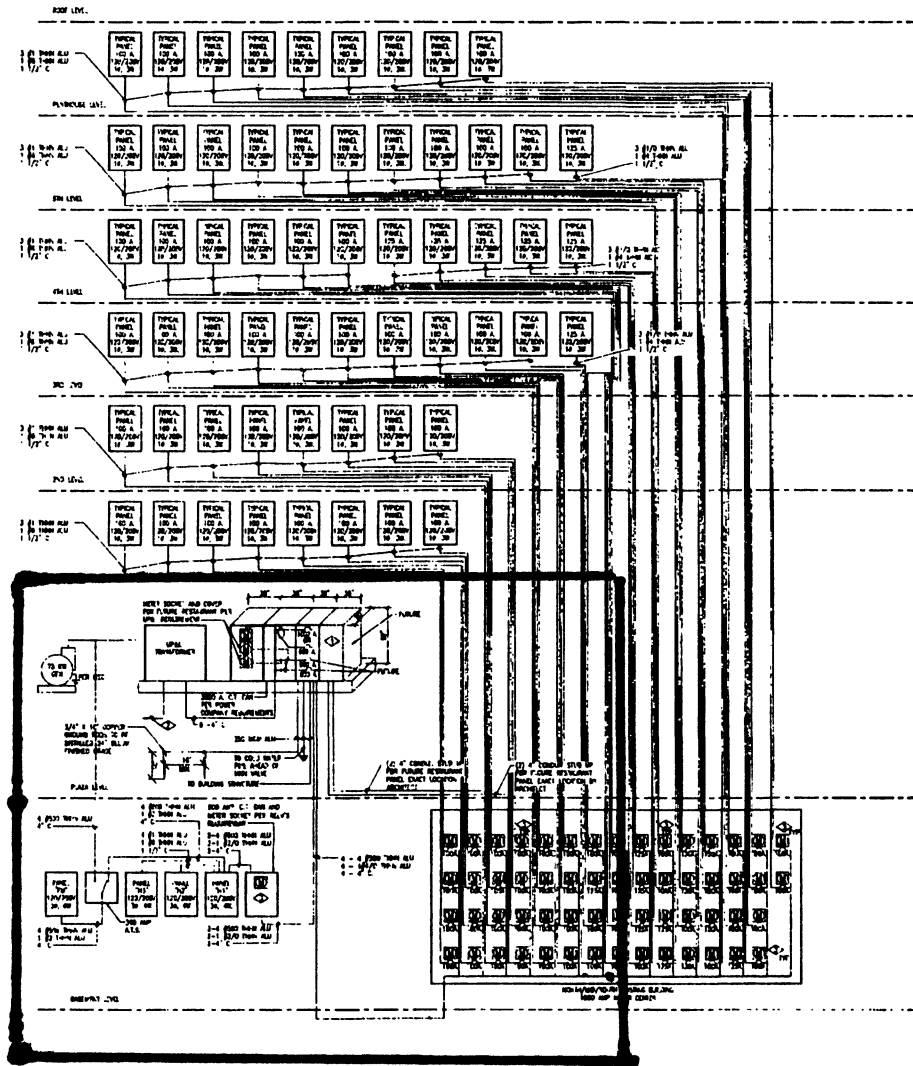
Sandy Mooy
UTAH PUBLIC SERVICE COMMISSION
Heber J. Wells Building
160 East 300 South
P.O. Box 45585
Salt Lake City, Utah 84145-0585

William Halls
30 East Broadway, #300
Salt Lake City, Utah 84111

A handwritten signature in cursive script, appearing to read "William Halls", is written over a horizontal line. The signature is fluid and stylized, with the first and last names being more prominent.

Tab 1

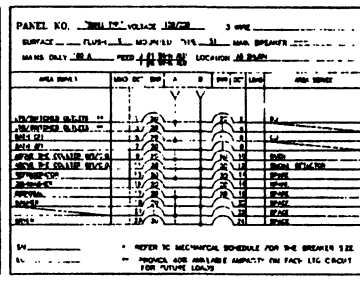
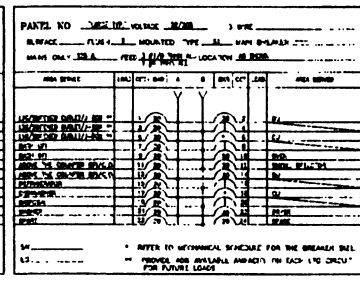
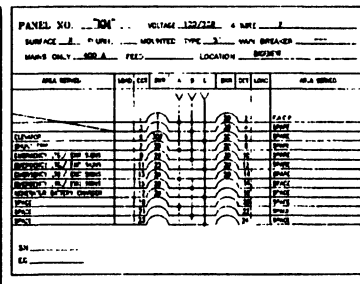
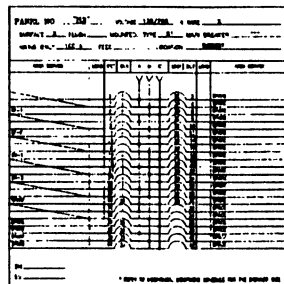
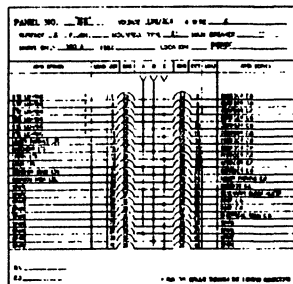
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REFERENCE NOTES:

- 1. Panels 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

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THE BROADWAY LOFTS
100 WEST BROADWAY STREET, SALT LAKE CITY, UTAH

MJSA
ELECTRICAL
ENGINEERS

NO. 100-0001
FOUR
SINGLE
LINE
DIAGRAM
100-10-02

