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BEFORE THE UTAH AIR QUALITY BOARD

SEVIER COUNTY CITIZENS FOR CLEAN)
 AIR AND WATER,)
)
 Petitioner,)
)
 and)
 SEVIER POWER COMPANY; and the)
 EXECUTIVE SECRETARY OF THE UTAH)
 AIR QUALITY BOARD,)
 Respondents)
 _____)

In the matter of: Sevier Power Company
 Power Plant; Case No.: DAQE-AN2529001-
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MOTION TO COMPEL DISCOVERY

Pursuant to the Utah Administrative Procedures Act and Rule 37 of the Utah Rules of Civil Procedure, the Executive Secretary hereby requests that the Board issue an order compelling the Sevier County Citizens for Clean Air and Water (Sevier County Citizens or SCC) to answer the interrogatories served upon SCC by the Executive Secretary on August 23, 2005 and to produce for inspection and copying all documents and other things described in the request for production served upon SCC by the Executive Secretary on August 23, 2005. The

reasons, including supporting authorities, for this motion are set forth in an accompanying memorandum filed this date by the Executive Secretary.

Counsel for the Executive Secretary hereby certifies, pursuant to Rule 37(a)(2)(B), Utah Rules of Civil Procedure, that he has conferred with James Kennon, President of SCC, in an effort to secure the information and materials without Board action. None of the requested discovery has been produced, with the exception of a ring binder of newspaper and journal articles received from SCC on this date.

Dated this 3rd day of October, 2005



RICHARD K. RATHBUN
CHRISTIAN C. STEPHENS
Assistant Attorneys General

ARGUMENT

The purpose of discovery is to facilitate a fair hearing with full disclosure of all relevant testimony and evidence. *Roundy v. Staley*, 984 P.2d 404 (UT App 1999). In order to prepare for a hearing on SCC's Request for Agency action, the Executive Secretary served the interrogatories and requests for production on August 23, 2005, seeking identification and production of witnesses, documents and other relevant evidence. Copies of the interrogatories and requests for production are attached hereto as Exhibits 1 and 2, respectively.

As of the date of filing of this motion, the Executive Secretary has received no answers to interrogatories from SCC, and has received only a single ring-binder of documents (less than one inch thick) from SCC. The latter appears to consist of general newspaper and journal articles on a variety of topics, but bears no identifying description, labeling or organization corresponding with the categories of documents and things described in the Executive Secretary's request.

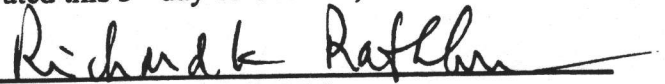
Rule 37, Utah Rules of Civil Procedure, provides that since SCC has failed to answer interrogatories submitted under Rule 33, and has failed to produce documents and other things requested under Rule 34, the Executive Secretary is entitled to an order compelling SCC to fully answer and satisfy the interrogatories and requests for production. Rule 37 further provides that, should SCC fail to comply with a board order compelling discovery, appropriate sanctions may be imposed, including dismissal of the action, the striking of claims and defenses, the exclusion of evidence, and other measures.

CONCLUSION

SCC has failed to fully satisfy the discovery requests submitted by the Executive Secretary in this matter. The Executive Secretary therefore asks that the Board issue an order, compelling full and timely disclosures by SCC to the Executive Secretary's interrogatories (Exhibit 1) and requests for production (Exhibit 2) within a deadline period to be determined by the Board. In the absence of full compliance by SCC with any such Board order, the Executive

Secretary will follow this motion to compel discovery with a request for sanctions, including dismissal of these administrative proceedings.

Dated this 3rd day of October, 2005

A handwritten signature in cursive script, appearing to read "Richard K. Rathbun", written over a horizontal line.

RICHARD K. RATHBUN
CHRISTIAN C. STEPHENS
Assistant Attorneys General