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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of PacifiCorp for an Increase in its Rates and Charges	:	Docket No. 01-035-01
	:	PACIFICORP'S REPLY TO REQUESTS FOR REHEARING OR RECONSIDERATION

In accordance with Utah Admin. Code R746-100-11(F), PacifiCorp, doing business as Utah Power & Light Company ("PacifiCorp" or "the Company"), hereby replies to the Petition for Rehearing of Nucor Steel and the Request for Reconsideration filed by the Committee of Consumer Services ("the Committee") in this proceeding.

I. THE COMMISSION SHOULD REJECT THE REQUEST OF THE COMMITTEE AND NUCOR TO BASE THE WHOLESALE CONTRACT REVENUE IMPUTATION ON MARGINAL COSTS.

In its September 10, 2001 Report and Order in this case (the "Order"), the Commission adopted the recommendation of the Division of Public Utilities ("Division") to impute revenues to certain long-term wholesale sales contracts based on embedded costs, rather than the cost of short-term firm purchases. The Committee and Nucor now argue in their petitions for reconsideration that the Commission erred in using embedded costs as the basis for the imputation. Those arguments are flawed and must be rejected.

Both the Committee and Nucor base their arguments on the "1990 Criteria" adopted in Docket No. 90-035-06, which, among other things, required the filing of certain information with applications for approval of revenue credit treatment of long-term firm wholesale sales contracts. In particular, the Committee and Nucor focus on the requirement that such filings include not only embedded cost information, but also marginal cost information. Further, they focus on the purpose of the 1990 Criteria, which the Commission found to be the protection of retail ratepayers from the risks of the Company's long-term wholesale sales activity. Order at 30. From that, they erroneously claim that the criteria and the purpose behind it *require* that the Commission base the imputation on the marginal costs of serving the long-term sales.

First, there is <u>nothing</u> in the 1990 Criteria that requires a revenue imputation of any sort. Revenue imputation is not even mentioned in the 1990 Criteria. In fact, the alternative to revenue credit treatment under the 1990 Criteria is assignment of the contracts to a FERC jurisdiction, which the challenging parties in this case did not propose. Contrary to the Committee's and Nucor's position, there is no "standard" in the 1990 Criteria upon which a revenue imputation is to be based.

Further, the argument by the Committee and Nucor that the purpose of the 1990 Criteria requires a revenue imputation based on marginal costs is unfounded. Since the purpose of "protection" of retail ratepayers in not contained in the 1990 Criteria, it is of course not defined in those criteria. As the Commission found, the criteria have not been previously applied (Order at 30), so there is no precedent to rely upon for the Commission's determination of how to apply the purpose in this case. The Commission certainly has the discretion to interpret and apply the purpose it found *in this case* to the issue at hand. The Commission concluded that "imputation of revenues to long-term firm wholesale sales contracts must occur to, as the purpose of the 1990 criteria reveals, protect retail ratepayers from the consequences of bearing unwarranted risk." Order at 33. The Committee and Nucor make the untenable argument to the effect that the Commission has no discretion to determine what it means when it says "protect retail ratepayers from the consequences of bearing unwarranted risk." There is simply nothing that requires the Commission to adopt the hindsight marginal cost basis for imputation argued by the Committee and Nucor.

Nucor also argues that the Commission's use of embedded costs as the basis for the revenue imputation is "contrary to the evidence in this case." Nucor Petition at 9. Nucor's assertion is simply wrong. The Commission's use of embedded costs for an imputation as a means of "protect[ing] retail ratepayers from the consequences of bearing unwarranted risk" is supported by the evidence submitted by the Division, as reflected in the Order.[1] Order at 33-34; Exhibit DPU 8 at 18-19. Nucor's assertion is apparently based on what *Nucor* thinks the Commission meant by its statement of the purpose of the 1990 Criteria, which causes Nucor to ignore the evidence in the record relied upon by the Commission.

[1] PacifiCorp has petitioned the Commission for reconsideration regarding the adoption of the "unwarranted risk" standard and the partial application of the 1990 Criteria. PacifiCorp's arguments in this Reply are responsive to the Committee's and Nucor's arguments, and are not to be construed as supporting the "unwarranted risk" standard, or the partial use of the 1990 Criteria.

The level of ratepayer protection against "unwarranted risk" which the Commission found to be appropriate in this case is reflected in its adoption of the embedded cost standard proposed, and supported with evidence, by the Division.

II. THE ORDER CORRECTLY RESOLVED THE ISSUE OF LOSSES ON SHORT-TERM TRADING, AND NUCOR HAS PRESENTED NO BASIS FOR RECONSIDERING THIS ISSUE.

The Order rejected the proposals of the Committee and Utah Industrial Energy Consumers ("UIEC") to remove the "losses" from short-term firm transactions. The Committee had calculated an adjustment of $46.9 million on a Total Company basis, or $17.3 million for Utah, by setting the monthly purchase price equal to the monthly sales price (*i.e.*, disallowing the purchase price to the extent it exceeds the sales price). UIEC, for its part, proposed an adjustment of $44.7 million on a Total Company basis, or $16.6 million for Utah, on the basis of a study that used data from outside the test period in this proceeding (October and November 2000). In rejecting the UIEC adjustment, the Order agreed with the Company that the UIEC proposal "violates our test year construct as well as ignores the normalization process used for non-firm transactions." Order at 13. As for the Committee's calculation based on a simple comparison of sales and purchase prices, the Order stated that "a strict comparison of short-term firm sales and purchase prices does not take into account the realities of the different transactions cited by the Company to balance the system." Id. at 14. The Order concluded that the record did not contain "cause to adjust the revenue requirement as advocated by the Committee or UIEC." Id. at 14-15.

In its Petition for Rehearing, Nucor claims that the Order imposes an "unreasonable standard" and "unfairly and unlawfully shifts the burden of proof to the intervenors." Nucor

Petition at 2. Nucor urges the adoption of UIEC's proposed adjustment to "protect ratepayers from the losses incurred by the Company on its short-term wholesale transactions." Id. at 4.

In its Petition, however, Nucor fails to address the reasons given by the Commission for rejecting UIEC's proposed adjustment: that UIEC's proposal "*violates our test year construct as well as ignores the normalization process used for non-firm transactions*." Order at 13 (emphasis added). Nowhere in Nucor's Petition does it address why the Order's rejection of UIEC's proposal was wrong. UIEC's adjustment was fundamentally flawed in its calculation, by relying on data from October and November 2000 that was not consistent with the rest of the Company's case (using a test period ending on September 30, 2000). UIEC's proposal was fundamentally flawed in its theory, by failing to recognize that actual non-firm transactions should be excluded since retail rates are set on the basis of normalized non-firm sales and purchase transactions calculated by the Company's net power cost model. These flaws were the basis for the Commission's rejections of the UIEC adjustment, as stated on page 13 of the Order, and any request on rehearing for resurrection of the UIEC adjustment must address the purported error in the Commission's analysis. Utah Code Ann. § 63-46b-16(4) Nucor's Petition for Rehearing fails utterly to do so.

Rather than responding to the Order's specific findings against the adjustment which it advocates, Nucor resorts to relying on a procedural technicality: UIEC's adjustment was assertedly rejected because the Commission "unfairly and unlawfully" shifted the burden of proof. Nucor Petition at 2. According to Nucor, the Order places upon intervenors "the burden of proving that the Company made speculative sales, rather than requiring the Company to prove its sales reasonable." Id. Nucor's argument, however, ignores the Commission's findings about the lack of evidence supporting the UIEC proposal, and disregards the fundamental flaws in the calculation of the UIEC proposal.

In determining whether the rates are "just, reasonable and adequate" under Utah Code Ann. § 54-4a-6(2), the Commission employs the prudent investment standard. *Utah Power & Light Co. v. Public Serv. Comm'n*, 107 Utah 155, 152 P.2d 542 (1944) (noting that the Commission held the just and proper rate base is the amount actually and "prudently invested.") Under the prudent investment standard, the utility is entitled to the presumption that its actions were prudent, unless the contrary is shown. *Missouri ex rel. Southwestern Bell Tel. Co. v. Pub. Serv. Comm'n of Missouri*, 262 U.S. 276, 289, n. 1, 43 S.Ct. 544, 67 L.Ed. 981 (1923) (Brandeis, concurring) ("*Southwestern Bell*") Here, the "contrary" has *not* been shown with any credible evidence. As to Nucor's claim that the Company has engaged in speculative trading strategies, the Order states:

> Some parties *conjecture* that short-term transactions were made for speculative reasons . . .

Order at 14. In other words, there was no evidence upon which the Commission could find that short-term transactions were made on a speculative basis; the parties offered only "*conjecture*." In the absence of a credible showing that transactions were engaged in for speculative purposes, the Company does not bear the burden of going forward to disprove that claim. Rather than "unfairly and unlawfully" shifting the burden, the Order merely recognized the absence of credible evidence supporting the parties' claim about speculative transactions.

Moreover, Nucor's "burden of proof" argument ignores the infirmity of the adjustment it advocates. As noted above, the UIEC adjustment advocated by Nucor on rehearing was fatally flawed, and the Commission so found. Order at 13. The burden does not shift to the Company to refute improper, unsupported adjustments. UIEC's proposal was improper on its face, and whether or not the Company presented substantial evidence in response is irrelevant to the inadequacy of UIEC's proposal.

Nucor's request for rehearing on this issue should be rejected, as it failed to address the substantive reasons stated in the Order for rejecting UIEC's adjustment. Moreover, the procedural grounds raised by Nucor's Petition are without merit.

III. THERE IS NO BASIS ON THE RECORD FOR INCREASING THE ADJUSTMENT FOR SYSTEM INTEGRATION AS REQUESTED BY THE COMMITTEE.

The Order accepted an adjustment proposed by the Division/Committee to reflect the value of transmission integration of the Pacific and Utah divisions. The Division/Committee calculated a proposed reduction of $13.7 million in Total Company net power costs due to integrated operations. Order at 21. Although the Order states that the modeling effort of neither the Division/Committee nor the Company fully captures the value that exists in integrated system operation, the Order adopted the Division/Committee's $13.7 million adjustment as "the only amount on this record reasonable suggestive of the value of integrated system operations." Id.

In its Request for Reconsideration, the Committee, having been successful in securing Commission adoption of its adjustment, now claims the number should be $27.5 million rather than the $13.7 million figure offered in testimony and adopted in the Order. According to the Committee, the Order adopted the market price proposed by UIEC, and the system needs to be "re-optimized" with these prices to capture the value of the system integration adjustment. The Committee claims that it has performed such a "re-optimization," and the value increases to $27.5 million. The Committee urges the Commission to make a final power cost run based on the set of power cost decisions contained in the Order, which it says will support increasing the adjustment to $27.5 million.

The Company opposes granting reconsideration. Any adjustment to reflect integration should be very limited in amount, given Mr. Widmer's testimony that the bulk of the benefits of system integration are captured in the Company's STF transactions. Tr. 1188-89. Thus, the "operational benefits" of system integration have not "disappeared" – as the Order states (page 23) – but rather are already reflected in the data from the Company's short-term firm transactions. Accordingly, any separate adjustment to capture the benefits of system integration should be limited in magnitude, such as the $.8 million adjustment proposed by the Company.

As for the Committee's statement that "re-optimizing" the system would *increase* the size of the adjustment, this contention is counter to the evidence on the record. Exhibit A, attached to this Reply, shows that the impact of the adjustment will *decrease* rather than increase when the power cost decisions from the Order are taken into account. Page 1 of Exhibit A summarizes the major components affecting the size of the adjustment, while page 2 shows the incremental impact on the calculation of the system integration adjustment. As shown on page 2 of Exhibit A, Total Net Expenses would increase by $4.3 million, prior to consideration of adjustments adopted in the Order other than market prices.

Of all the other adjustments adopted in the Order, only the adjustments to Gadsby and thermal availability alter the MWh balances of the original model. The rest of the adjustments do not affect generation levels or balancing the Company's system. Therefore, the incremental impact on the system integration adjustment can be broken into two components: impacts due to market prices and impacts due to changes in energy balances. It is intuitive that the net changes in Gadsby generation and other thermal generation will increase net power costs through either decreases in secondary sales or increases in secondary purchases, or both.

Assuming there were no adjustments to the thermal generation, the original secondary sales and purchase MWh modeled by Division/Committee would still be correct. Then, the only change would be the impact of the secondary sales and purchase prices adopted by the Commission. A very conservative way to capture the changes in market price is to assume long positions would be sold at the highest monthly price and short positions purchased at the lowest monthly price, regardless of transmission constraints. The "Market Prices" section on page 2 of Exhibit A shows the difference between Commission-adopted market prices on the most economic basis and the original prices used by Division/Committee. That is, the Division/Committee sales price is compared with the maximum monthly sales price adopted in the Order for the PPL and UPL divisions, respectively, and the purchase price is compared with the minimum monthly purchase price adopted in the Order. Applying the original Division/Committee modeled short and long MWh positions to the differences in market prices at the aggregated level demonstrates that net power costs increase by $4.3 million as a result of the market prices adopted in the Order. Thus, the Committee's request to rerun the power cost model to reflect the set of power cost decisions contained in the Order would *decrease*, rather than *increase*, the magnitude of the system integration adjustment.

The Committee's request for reconsideration on this issue should be denied, as it is based upon a flawed calculation that would revise the adjustment in the wrong direction.

IV. THE ORDER CORRECTLY RESOLVED THE ISSUE OF THERMAL AVAILABILITY, AND NEITHER THE COMMITTEE NOR NUCOR HAS PRESENTED A BASIS FOR RECONSIDERING THIS ISSUE.

The Order continues the use of a four-year average for calculating thermal availability, which follows an historical practice in effect since the Utah/PacifiCorp merger more than ten years ago. Order at 16. In rejecting the proposals of the Division/Committee and USEA to use a six-year period instead, the Order states that "the four-year averages approximate a longer 10-year experience better than do the six-year averages proposed by the other parties." Id. The evidence cited by the Order includes the following equivalent availability statistics from Exhibit UP&L 5.11R, which show that the six year period proposed by the Division/Committee and USEA is out of line with the 10-year average (89.41% versus 89.12%), while the four-year average proposed to be used by the Company (89.16%) is virtually the same as the 10-year average.

PacifiCorp Equivalent Availability

Year	Equivalent Availability
Average 1991-2000	89.12%
Average 1996-99	89.16%
Average 1994-99	89.41%

In their requests for rehearing, Nucor and the Committee continue to urge adoption of the six-year average. Nucor Petition at 5-6; Committee Request at 4-5. The Committee, for its part, claims that using a six- or ten-year average rather than a four-year average produces a swing of about $100 million in net power costs. Committee Request at 5.

Both of these parties miss the point of the Company's comparison of 4-year averages to 10-year averages. The issue is selection of a period which produces a *representative* figure upon which to base rates. The Company's long-standing, historical practice has been to use a 4-year average, and the Commission has previously adopted the use of four years for this purpose. Given this precedent, a four-year average should be abandoned only if it can be shown that the figure produced by the four-year average is not *representative* for purposes of setting future rates. To test whether the four years of data is a representative level, the Company looked at 10 years of data, and provided this information to the Commission. The 10-year data confirms the reasonableness of the four-year average, as indicated in the table above. The Order confirms the reasonableness of this approach, and agrees that the four-year data appear to produce a more representative level upon which to base rates, using the 10-year data as a point of reference. Order at 16. Neither Nucor nor the Committee offers anything on rehearing to refute this analysis.

The Committee's reference to the impact of this adjustment on overall net power costs is shocking in its disingenuousness. The attachment to the Committee's Request is a rehash of Mr. Falkenberg's Ex. DPU 9.8, which uses the much higher market prices included in the Company's filing, and suggests an $82.3 million difference between four and six-year averages. As the Committee is aware, the Commission did not adopt this level of power costs in the Order, and it serves no useful or valid purpose for the Committee to use these market prices, at this stage of the proceeding, to quantify the "value" of the Committee's proposed adjustment. The underlying findings by the Commission that would support quantifying the adjustment in this manner simply do not exist, and the issue of market prices is not even in dispute on reconsideration.

As demonstrated in Exhibit UP&L 5.12R, the issue of thermal availability has a very limited impact on overall net power costs when quantified in a manner reflective of the Commission's decision on net power costs. For example, using the market prices from the Company's 1997 Utah stipulation shows that the difference between a four-year average and a six-year average produces a Total Company difference of only $8.1 million. Using the adopted market prices from Docket No. 99-035-10 produces a difference of $12.8 million. Thus, the main driver of the increase in net power costs associated with this adjustment is the multiplier used -- the level of market prices -- not the relatively small variations in thermal availability.

Neither the Committee nor Nucor have presented any basis in their requests for reconsidering the Commission's decision on this issue, and their requests should be denied.

V. THE ORDER CORRECTLY REJECTED THE USE OF A 6-YEAR AVERAGE FOR MAINTENANCE HOURS, AND NUCOR HAS PRESENTED NO BASIS FOR RECONSIDERING THIS ISSUE.

As with the thermal availability issue, the Order continues the long-standing, historical practice of using a four-year average for calculating maintenance hours. Order at 16. In rejecting the proposal of the United States Executive Agencies ("USEA") to use a six-year period instead, the Order states that "a thorough analysis of maintenance requirements" is necessary "in order to justify a change in our practice of using four-year averages." Id. Rather than the thorough analysis required by the Commission, the Order found that the record in this case provided an "inadequate foundation" upon which to "base so important a decision." Id. Nucor urges reconsideration of this issue, claiming that the evidence supports the use of a six-year average and "Utah law and Commission precedent" do not require the "thorough analysis" desired by the Commission. Nucor Petition at 7.

The "evidence" cited by Nucor in its Petition is the same evidence which the Order found to be an "inadequate foundation" for the proposal to use a six-year average. To overcome this insufficient evidentiary showing in support of the six-year proposal, Nucor again resorts to relying on a procedural technicality: the Company assertedly failed to support its calculation with "substantial evidence" and thus failed the burden imposed on it under *Utah Department of*

Business Regulation , Division of Public Utilities v. Public Service Commission, 614 P.2d 1242 (Utah 1980) This argument stands the ratemaking process on its head. It is the Company which prepared its calculation of this issue in accordance with Commission precedent, and this calculation produced a result which, on its face, suggested a result that was reasonable and incorporated a representative level of maintenance hours in rates. The Order properly recognizes that a party seeking to depart from Commission precedent has a heavier burden to justify its proposed treatment. USEA failed to make the requisite showing on the record, and the infirmities in its evidentiary presentation cannot be cured by Nucor on rehearing.

Moreover, Nucor's reliance on *Utah Department of Business Regulation* is inapposite. That case involved the issue of whether or not there was substantial evidence on the record to support the Commission's findings. 614 P.2d at 1246. In this proceeding, the Company provided sufficient evidence to support the four-year average it proposed. It was the proponent of the six-year average – USEA – that utterly failed to offer any credible evidence in support of its proposal. USEA witness Herz merely speculated that a longer period "would *be more likely to* incorporate the long-term maintenance cycle that is commensurate with large coal-fired generating units." Ex. USEA 1 at 21-22. Mr. Herz included no analysis or technical information regarding maintenance cycles that would support his "theory" that six years is more representative than four. Tr. 1067.

The decision reached by the Order is fully supported by the record and Commission precedent. Nucor has failed to show on rehearing why that decision should be revisited.

VI. CONCLUSION

For all the foregoing reasons, the Commission should deny the Requests of the Committee and Nucor for Rehearing or Reconsideration.

Dated: October 11, 2001

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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of October, 2001, I caused to be served, via United States mail, postage prepaid, a true and correct copy of the foregoing Reply of PacifiCorp to Requests for Rehearing or Reconsideration to the following:

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