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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of PacifiCorp for an Investigation of InterJurisdictional Issues.	Docket No. 02-035-04 **UIEC'S COMMENTS ON AGREEMENT PERTAINING TO PACIFICORP'S SEPTEMBER 15, 2010 APPLICATION FOR APPROVAL OF AMENDMENTS TO REVISED PROTOCOL ALLOCATION METHODOLOGY**

In accordance with R746-100-10.F.5, the Utah Industrial Energy Consumers ("UIEC"), hereby submit to the Utah Public Service Commission ("Commission") these Comments on the Agreement Pertaining to PacifiCorp's September 15, 2010 Application for Approval of Amendments to Revised Protocol Allocation Methodology entered into by PacifiCorp ("PacifiCorp," "RMP," or the "Company"), the Utah Division of Public Utilities, ("DPU" or the "Division"), the Office of Consumer Services ("OCS" or the "Office"), and the Utah Association of Energy Users ("UAE").[1] While UIEC does not oppose the result of a rolled-in methodology for allocation of PacifiCorp's interjurisdictional costs and revenues to Utah in the current general

1 The two other parties to this matter, Nucor and UIEC, did not sign the Agreement.

rate case, Docket No. 10-035-124, UIEC does oppose any assumption that the agreement entered into between these parties ("Agreement") can set preconditions for any changes in functionalization, classification, and allocation factors in the future for the determination of just and reasonable rates in Utah. Accordingly, UIEC states as follows.

BACKGROUND

In the Commission's final order approving the Revised Protocol stipulation ("MSP Order"), the Commission reviewed the history[2] of interjurisdictional allocation proceedings in Utah.[3] The Commission had established the Rolled-In method in 1990 as the benchmark for merger-fairness cost evaluations.[4] In 1998, the Commission adopted the Rolled-In method as the interjurisdictional allocation method.[5] However, in doing so, the Commission concluded that "cost causation reflecting ***current rather than historical usage*** is the basis of cost apportionment."[6] Thus, the Commission recognized that the cost causation measurements used in the 1990 Rolled-In method needed to be updated eight years later to reflect the then-current usage of 1998.

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2 As noted by the Commission in the MSP Order: "Although the 1989 merger was approved without resolution of interjurisdictional allocation issues, the states worked on the issues while the Company accepted the risk of less than full cost recovery." MSP Order at 21-22. In addition, "the Commission approved the [PacifiCorp and ScottishPower] merger subject to a number of conditions including the requirement that Scottish Power and PacifiCorp assume all risks that may result from less than full system cost recovery if interjurisdictional allocation methods differ among PacifiCorp's various state jurisdictions." Id. at 27. In 2000, citing industrial developments, the Company filed an application for approval to implement a corporate restructuring that would reorganize itself into six distribution companies. Id. at 27-28. Fearing that such a restructuring would result in higher costs and loss of jurisdiction, the states renewed their efforts to accomplish an interjurisdictional arrangement. Id. at 28-29. Noting that the Revised Protocol stipulation was "***not binding on parties to future rate proceedings***," id. at 36 (emphasis added), and that it could ***not "restrict future regulatory review and changes if it no longer produces results that are just, reasonable, and in the public interest***," id. at 37 (emphasis added), the Commission approved the stipulation subject to conditions, id. at 40.

3 Multistate Process ("MSP"), Report & Order at 21-29, Docket No. 02-035-04 (Dec. 14, 2004).

4 Id. at 24.

5 Id.

6 Id. at 25 (emphasis added).

After a hearing was held on the Revised Protocol stipulation, the Committee of Consumer Services ("Committee") (nka the Office) "filed a petition for leave to file a post hearing response regarding how class cost of service would be affected by the Revised Protocol."[7] However, the Commission noted in its Report and Order:

> [T]he Company cites language in the Revised Protocol that leaves ***unresolved how the effect of the Revised Protocol should be applied to or apportioned among customer classes in Utah***. PacifiCorp agrees with the Committee's assertion that ***the record regarding rate spread is not fully developed in this proceeding*** and concurs with the Committee's recommendation that the Commission's order in this docket not deal with how the revenue requirement impacts from use of the Revised Protocol and Stipulation be applied to, or apportioned among customer classes in Utah.
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> The Division testifies ***the MSP was established to address a cost recovery problem***. The Division describes this problem as ***less than full cost recovery of existing generation costs due to adoption of different cost allocation methods among states and less than full cost recovery of new generation cost due to Oregon's legislation which undercut that jurisdiction's rate base participation in future generation plants***. Further, the Division states its concern about the Company's future ability to fund a least-cost/risk generation-transmission infrastructure absent a consistent cost-allocation mechanism among states.
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> The Committee in its post-hearing filing states ***the record regarding rate spread to customer classes is not fully developed in this proceeding*** and recommends the Commission Order in this docket not address how the revenue requirement impacts resulting from use of the Revised Protocol and Stipulation be applied to, or apportioned among, customer classes in Utah.[8]
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7 Id. at 6.

8 In addition, the Committee testified that some components of the Revised Protocol method were not cost-based. Id. at 17, 38.

> UAE, in its response to the Committee's post-hearing filing, agrees with PacifiCorp's response that ***the issues raised by the Committee regarding cost of service and rate impacts of the Stipulation to customer classes have not been analyzed or addressed on the record in this docket and thus cannot properly be addressed or resolved in the Commission's Order***.[9]

Clearly, therefore, there was complete agreement amongst the parties and the Commission that the MSP dealt only with resolving the cost recovery shortfall that had reached problematic levels. Furthermore, it was recognized by all involved that no record was established regarding the relationship between the Revised Protocol and Utah customer class allocations—this had not been analyzed or addressed. As a result, the Commission ordered:

> Regarding the issue of the impact of the Stipulation and the Revised Protocol on customer classes, the Committee, PacifiCorp and UAE agree the record in this docket is not fully developed on this issue and the Order in this case should not try to resolve it. We concur. We further conclude ***the Revised Protocol only addresses interjurisdictional cost allocation which means class cost of service will be dealt with in other dockets such as general rate cases***.[10]

In summary, this critical order provides the following key information: (1) in 1998 the Commission adopted a Rolled-In methodology for allocation of interjurisdictional costs between the states; (2) in adopting this methodology, the Commission recognized that the 1990 classification of costs used to develop the Rolled-In methodology was outdated after eight years and should be replaced with a 1998 classification of costs based on 1998 usage, not historic usage; (3) there was absolutely no relationship between the Revised Protocol used for interjurisdictional allocations and allocations between customer classes in Utah; and (4) the

9 Id. at 14, 18-19 (emphasis added).

10 Id. at 40.

allocation of costs between customer classes in Utah should be dealt with separately in general rate cases.

Several months prior to the issuance of the MSP Order, the general rate case of 2003, Docket No. 03-2035-02, was settled. In the stipulation settling that case, the parties agreed to apply the amount of the rate increase applicable to Schedules 6[11] and 9 entirely to the demand charge and a seasonal rate was established for Schedule 23.[12] The Commission approved the stipulation.

A few months after the issuance of the MSP Order, the general rate case of 2004, Docket No. 04-035-42, was settled. In the stipulation settling that case, the Commission once-again approved the seasonal rate designs for Schedules 6, 8, 9, and 23.[13]

In 2006, the Company introduced in its filing a cost of service study using the allocation of generation, transmission, and net power costs to reflect the impact of seasonal cost and load differences.[14] This case was settled, with the Commission accepting this seasonal cost of service study as part of the stipulated settlement.[15]

The cost of service and rate design portions of the general rate cases of 2007 and 2008, Docket Nos. 07-035-93 and 08-035-38, respectively, were settled. Each was filed using a cost of service study that allocated generation, transmission, and net power costs in a way that reflected

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11 Schedule 8 did not exist at that time.

12 Report & Order, Docket No. 03-2035-02 (Jan. 30, 2004).

13 Report & Order, Docket No. 04-035-42 (Feb. 25, 2005).

14 Application Test. Anderberg, Docket No. 06-035-21 (March 6, 2006).

15 Report & Order, Docket No. 06-035-21 (Dec. 1, 2006).

the impact of seasonal cost and load differences.[16] The Commission accepted the settlement stipulations in each case, thus accepting this seasonal allocation.[17]

The Company's 2009 general rate case, Docket No. 09-035-23, was litigated.[18] The Commission's order in this case, as it relates to class allocations and their relationship to interjurisdictional allocations, stated as follows:

> We find the Company's classification and allocation methods for generation and transmission costs are generally consistent with our prior decisions.[19] Contrary to some assertions, these methods have been supported in the past by analysis, including stress factor analysis. . . . Any party who would like to propose an alternative to the approved methods must provide analysis to demonstrate the proposed method is also appropriate and viable at the interjurisdictional level.[20] ***This analysis must include a level of detail to determine the impacts to Utah and other states in the PacifiCorp system of a proposed change in classification and allocation methods***.
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> We affirm our commitment to having a consistent basis for allocating the Company's shared system costs to each state in the PacifiCorp utility system and among the classes within Utah. . . . Other than treatment of MSP stipulation components, ***parties recommending changes to cost allocations for class cost of service purposes must provide analysis regarding the appropriateness of these changes for interjurisdictional cost allocations and provide an estimate of the impact to Utah and the other states of any proposed change and an assessment of the likelihood such a change could also be made at the interjurisdictional level***.

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16 Application Test. Paice, Docket No. 07-035-93 (Dec. 17, 2007); Application Test. Paice, Docket No. 08-035-38 (July 17, 2008).

17 Report & Order on COS & Rate Design, Docket No. 07-035-93 (Nov. 6, 2008); Report & Order on COS & Rev. Spread, Docket No. 08-035-38 (May 7, 2009).

18 This was the first Company general rate case litigated since Docket No. 99-035-10.

19 Those prior decisions were approvals of settlement stipulations.

20 No previous similar showing had been made for these methods.

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> The Division emphasizes the allocation factors used to determine Utah's revenue requirement in the Company's interjurisdictional model reflect important information regarding the classification of costs.
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> We approve continued use of the Company's classification for firm non-seasonal purchases because it is consistent with both interjurisdictional cost allocation and with treatment of firm non-seasonal wholesale sales. Any party proposing a change to this classification must address these two issues, providing analytical support a change is reasonable in both instances and to provide comprehensive impact analysis of the proposed changes.[21]

These statements led to the UIEC's comments on the newly proposed interjurisdictional methodology Agreement.

These statements not only disregard the fact that the Commission held the interjurisdictional method was not binding and could not restrict changes, they also appear to disregard the fact that the interjurisdictional model was specifically held to have no relationship whatsoever with the allocation of costs among the classes in Utah.[22] They also disregard the fact that the change in allocation of generation, transmission, and net power costs to reflect some impact of seasonal cost and load differences was accomplished through merely introducing it in a filing and having the settlement stipulations approved.

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21 Report & Order on Rev. Reqmt., Cost of Serv. and Spread of Rates at 123-27, Docket No. 09-035-23 (Feb. 18, 2010) (emphasis added).

22 The statements also appear to disregard the fact that the Rolled-In Method was revised in 1998 to reflect the then-current usage classifications rather than rely on the original, historic usage classifications. Now, twelve years after those classifications were updated, and after drastic changes in the industry have occurred, these old usage classifications appear to have become sacrosanct to some.

Furthermore, in this order the Commission went so far as to order that proposed changes to cost allocations in Utah must be evaluated based on their impacts on other states. This is not only contrary to law, but also contrary to the Commission's obligation to the ratepayers of Utah.

In the most recent general rate case, Docket No. 10-035-124, the case was settled by stipulation. Rolled-In was the agreed upon interjurisdictional allocation methodology, but Klamath costs were pulled out and they, along with Hydro Endowments, are excluded from the Rolled-In methodology that is the subject of the Agreement. This means the Rolled-In methodology adopted for the latest general rate case is far from pure.

Furthermore, the allocations for the energy balancing account ("EBA") will need to be made based on actual Utah load and actual Utah energy costs.[23] These are not currently reflected anywhere but have to be accounted for in some fashion. What is their relationship to the interjurisdictional methodology in the Agreement?

COMMENTS

The cost causation principle is one of the foundational principles of utility regulation.[24] UIEC is concerned that the functionalization, classification, and allocation factors used today do not reflect up-to-date cost causation principles. It is UIEC's position that the bases of these factors as they relate to transmission and generation costs have not been investigated for over twelve years[25] and they have not been investigated within the framework of the industry as it exists today.

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23 EBA Corrected Report & Order at 75-76, Docket No. 09-035-15 (March 3, 2011).

24 Western Area Power Admin. v. Federal Energy Regulatory Comm'n, 525 F.3d 40, 57-58 (D.C. Cir. 2008).

25 As shown above, when the Commission adopted the Rolled-In method, it ordered that the factors be updated to reflect the then-current usage conditions, not the historic, original usage conditions.

With respect to transmission, it is now being developed on a more regional basis than it has in the past. This regional development not only takes into account differing state and federal public policies, but also the interests of numerous beneficiaries, not just retail ratepayers. The cost allocation methodology should ensure that all who benefit pay, including those responsible for the inadvertent flows from what has in the past been an opportunity for free ridership.

The Federal Energy Regulatory Commission ("FERC") has just issued final rules requiring all transmission providers to file compliance filings identifying their methods for allocating costs of new transmission facilities, and these rules serve as a good model of how to approach cost allocation of transmission developed on a regional basis.[26] Those cost allocation methods must be consistent with six principles: (1) costs must be allocated to those who benefit on a basis at least commensurate with estimated benefits; (2) those who receive no benefits must not be allocated any costs; (3) if a benefit to cost threshold is used to determine which facilities have sufficient net benefits to be included in a regional transmission plan for the purpose of cost allocation, it must not be so high that transmission facilities with significant positive net benefits are excluded; (4) costs must be allocated solely within that transmission planning region; (5) cost allocation methods and data requirements must be transparent; and (6) different cost allocation methods are permitted for different types of transmission facilities.[27] Additionally, for the first principle, wherein costs must be allocated proportionally to those who benefit, FERC has

26 136 FERC ¶ 61,051, Docket No. RM10-23-000, Order No. 1000 at ¶¶ 558, 586 (July 21, 2011).

27 Id. at ¶ 586.

"explicitly provide[d] for consideration of Public Policy Requirements established by state or federal laws or regulations that drive transmission needs."[28]

This means PacifiCorp now is required to file a transmission cost allocation method with FERC that is unlikely to reflect exactly the cost allocation method in this latest interjurisdictional Agreement because it must allocate costs to all cost beneficiaries, not just retail ratepayers, and include consideration of Public Policy Requirements such as the renewable portfolio standard requirements of Oregon, California, and Washington. This would appear to dictate the assignment of different functionalization, classification, and allocation factors.

Similarly, with respect to generation there is a need for enhanced analytics. The need for resources is being driven by a state's naturally available resources as well as a state's public policy.

The Commission's responsibility is to determine rates that are just and reasonable and in the public interest for Utah.[29] Utah rates should be based on functionalization, classification, and allocation factors that are just and reasonable for Utah ratepayers based on Utah law and Utah policies, regardless of any interjurisdictional allocation agreement. Such an agreement cannot dictate additional burdens for demonstrating what constitutes just and reasonable rates in Utah.

Nevertheless, despite fairly clear pronouncements to the contrary, the Commission has recently behaved as though it and parties are somehow bound by interjurisdictional allocation agreements. No party should be precluded from arguing that the use of a different functionalization, classification, or allocation factor, or different value of an existing factor, is

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28 Id. at n.454.

29 Stewart v. Utah Pub. Serv. Comm'n, 885 P.2d 759, 767, 770-71 (Utah 1994).

necessary for the determination of just and reasonable rates in Utah. Similarly, the Commission should not be precluded from using and adjusting any such factor or value when necessary for the determination of just and reasonable rates for Utah ratepayers and should not impose any limitations on itself or Utah ratepayers as a result of this interjurisdictional allocation Agreement.

CONCLUSION

In summary, the functionalization, classification, and allocation factors as they relate to transmission and generation costs need to be kept current. They should reflect current usage and current Utah public policies and no agreement should preclude updates.

In addition, the functionalization, classification, and allocation factors of Utah inter-class cost allocations should remain separate from and be considered independently from any interjurisdictional allocation methodology. The interjurisdictional cost allocation methodologies are the product of negotiation and compromise, not a usage analysis. In fact, PacifiCorp refers to each state's interjurisdictional method by the same name (in this case, the "2010 Protocol") even though it is a different methodology in each of its separate jurisdictions.

Finally, the Commission is obligated to ensure that Utah ratepayers are subject to just and reasonable rates. Therefore, the Commission and Utah ratepayers should not be confined for any period of time to the use of a backward-looking interjurisdictional cost allocation methodology that is merely the product of negotiation and compromise. The proposed method may work in the current general rate case of Docket No. 10-035-124, but that cannot preclude its being challenged in the future. These are the concerns of UIEC with respect to the proposed Agreement.

DATED this 18th day of August, 2011.

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of August 2011, I caused to be e-mailed, a true and correct copy of the foregoing **UIEC'S COMMENTS ON AGREEMENT PERTAINING TO PACIFICORP'S SEPTEMBER 15, 2010 APPLICATION FOR APPROVAL OF AMENDMENTS TO REVISED PROTOCOL ALLOCATION METHODOLOGY** to:

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