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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of PACIFICORP for an Investigation of Inter-Jurisdictional Issues	Docket No. 02-035-04 RESPONSE OF UTAH COMMITTEE OF CONSUMER SERVICES TO PACIFICORP COMMENTS ON LEGAL FORM OF PROCEEDING

Pursuant to Commission Rule 746-100-3I, the Utah Committee of Consumer Services ("Committee") hereby responds to the November 7, 2003, filed Comments on Legal Form of Proceeding ("PacifiCorp Comments") by PacifiCorp ("PacifiCorp" or "Company") in this docket.

RESPONSE DISCUSSION

1. In its Comments, PacifiCorp recommends that "the Commission process the Company's filing under its rulemaking procedures." The Committee does not oppose an eventual rulemaking proceeding so long as the concerns expressed by several parties, and noted in the Commission's November 13, 2003, Second Scheduling Order, and elsewhere, are accommodated in such a proceeding—and in the meetings and actions leading up to such a proceeding.

2. Since this proceeding fundamentally addresses the Commission's preservation of its

sovereign power to regulate PacifiCorp's utility service in Utah in the best interest of Utah customers, it is essential that:

a) The proceeding include discovery, testimony, and at least one round of hearings to produce a full evidentiary record.

b) The proceeding be structured to result in a Commission order or rule that disposes of the issues raised by PacifiCorp's application.

c) Commission staff be allowed to participate with other Utah parties in continued joint investigation, discussions, and responses to PacifiCorp's inter-jurisdictional cost allocation issues and the position of various state jurisdictions with respect to those issues.

d) The Commission be permitted (if it so desires) to attend multi-state meetings with regulatory commissions from other states where PacifiCorp provides electric service, in order to conduct a joint investigation of the facts and discuss common interests and concerns in resolving inter-jurisdictional cost allocation issues affecting PacifiCorp and its utility customers.

3. The Committee notes that while these proceedings may eventually become what may be characterized as "rulemaking," Utah Code Chapter 46a, Administrative Rulemaking Act, apparently considers a rulemaking proceeding to begin with the Commission drafting and filing a proposed rule with the Division of Administrative Rules. Once a rule has been drafted and filed, the Commission "may then hold a public hearing on [the] rule during the public comment period." (Utah Code §63-46a-5].

4. This rulemaking procedure raises the question of how an investigation, discussions, and proceedings prior to the Commission actually drafting a rule for public comment should be characterized. The issue is not name tags or formalities, but rather the substantive nature of

proceedings that will accommodate the concerns expressed above and, at the same time, comply with the provisions of the Administrative Rulemaking Act. Utah Code §54-4-1.5, Investigations, providing information, audits and recommendations by director, as well as §54-4-2, Investigations – Hearings and notice – Findings, are statutory provisions that provide for broad investigative actions by the Commission that may be necessary with regard to either a subsequent adjudicatory proceeding or a subsequent rulemaking proceeding. Either statutory provision would arguably accommodate the kind of pre-rulemaking proceedings and steps that are necessary in this critically important case. Utah Code §54-4-1.5 creates an investigative proceeding under the auspices of the director of the Division of Public Utilities; whereas, Utah Code §54-4-2 does not.

5. Further, Utah Code §54-4-1.5 speaks of the Division of Public Utilities providing information, etc., in "compliance with the provisions regarding ex parte communications set forth in Section 54.7.1.5." However, Section 54.7.1.5 raises ex parte concerns in the case of "any matter under adjudication," or the Commission's "decision-making process" with respect to "any matter under adjudication." The provisions of that section would, therefore, not limit an investigation preparatory to a rulemaking proceeding.

6. The Committee concurs with the statement in PacifiCorp's Comments that "[t]he Commission has the discretion within its governing statutory framework to determine how to process matters before it."[1] Perhaps the present proceedings initiated by PacifiCorp's September 30, 2003 Motion for Ratification of Inter-Jurisdictional Cost Allocation Protocol in this docket should be designated by the Commission as an investigative proceeding under Utah Code §54-4-1.5 or §54-4-2 for the purpose of gathering requisite information preparatory to a Commission rulemaking proceeding.

[1]PacifiCorp's Comments, page 4.

7. Under such an investigative proceeding, the substantive steps in PacifiCorp's Proposed Schedule attached to PacifiCorp's Comments would still be appropriate, even if the dates set forth are not. However, the final substantive step, characterized as "Commission Order Target" would really become the step where the Commission promulgates its draft Rule for public comment.

8. Such a procedure raises the question of whether the hearing identified in PacifiCorp's Proposed Schedule should occur prior to the Commission promulgating its own draft rule or subsequent to such promulgation, as envisioned by Utah Code §63-46a-5. Since the Commission would be required to hold a hearing under §63-46a-5 anyway in the event "another state agency, ten interested persons, or an interested association having not fewer than ten members" requests it, the Committee would recommend that the hearing provided for in PacifiCorp's Proposed Schedule occur after the Commission has drafted its proposed rule for public comment. The Committee believes that the testimony filed by various parties prior to such a rule being promulgated would still be relevant to the actual rule drafted by the Commission. However, the Commission, prior to the hearing, should order a further round of filed testimony from interested parties that specifically responds to the proposed rule.

ATTACHED ISSUES LIST

9. Attached to this Response, and identified as Exhibit A, is the Committee's Preliminary Issues List.

Respectfully submitted this 21st day of November, 2003.

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REED T. WARNICK
Assistant Attorney General

Response of the Utah Committee of Consumer Services
Docket No. 02-035-04
November 21, 2003

EXHIBIT A

Preliminary Issues List
Of
The Utah Committee of Consumer Services

Guiding Principles

1) The Committee believes that consideration of any interjurisdictional cost-allocation allocation mechanism, including PacifiCorp's filed "Interjurisdictional Cost allocation Protocol", should be evaluated using the evaluation criteria developed by the Utah parties and circulated with the 11 July 2003 and the 10 September 2003 memos from Utah parties. In particular an allocation mechanism must meet the overriding principles of :

   a) Assignment of cost on the basis of cost causation,

   b) Maintenance of the benefits of single system operation and planning,

   c) Long-term durability of the solution.

The following are the list of questions that the Committee believes must be addressed. The list is incomplete and will be fully fleshed out at a later date.

Sustainability of Protocol

2) Is the Protocol sustainable?

   a) How likely is it that the West will pay the Hydro bill when it comes due? (Utah customers have already prepaid a 20-year transition to rolled-in with the promise of benefits in the later years. Does the Protocol just repeat history?)

   b) The Protocol asserts that the proposed cost shifts are equitable, because PacifiCorp *projects* that the present value of jurisdictional costs will be essentially unchanged by the package of changes over a 15-year span. What happens when future costs are different from the projections and different parts of the package move in unanticipated directions?

   c) PacifiCorp's definitions of seasonal, regional and state resources are incomplete, and PacifiCorp does not apply them consistently. As new resources are added and various State Commissions interpret the precedents differently, can the arrangement be durable?

3) Are the assumptions and projections that underlie PacifiCorp's comparison of the Protocol with the Rolled-In allocation method reasonable, in particular projections of:

   a) Hydro relicensing costs,

   b) Coal environmental costs,

   c) Addition of peakers and seasonal resources,

   d) Relative Utah load growth.

Seasonal Resources

4) Has PacifiCorp developed clear, understandable rules for identifying seasonal resources and seasonal contracts?

   a) On what underlying criteria has the Company based its designation of the CTs and the combination of Cholla Unit 4 and the APS contract as seasonal resources?

      i) For the CTs, is the Company's designation based on their actual operation? GRID model results? Planning assumptions?

      ii) For the combination of Cholla and the APS exchange, is the Company's designation based on a seasonal output pattern, even though the "resource" has output in all twelve months. (See FY2004_18 APS Cholla Factors.xls).

      iii) Under the Protocol, will all resources with output that follows a seasonal pattern or higher output in the peak hours of the day be designated as "seasonal resources"?

   b) Does exclusion of the following resources from the definition of "seasonal resource" or "seasonal contract" make sense?

      i) Contract purchases that a have strong seasonal pattern, but not zero in 7 months of the year,

      ii) Sales contracts,

      iii) Exchange contracts,

         (1) the Tristate Exchange, which allows for purchases in 6 months (Oct-Mar), and sales in the other months,

         (2) the BPA Exchange,

      iv) BPA Peaking contract.

   c) Why has PacifiCorp excluded from its list of seasonal contracts the Gemstate contract (which is available for no more than 5 months in the summer)?

5) Has PacifiCorp developed clear, understandable rules for allocating seasonal resources and seasonal contracts? Do these rules always result in an equitable allocation of costs?

   a) Why has the Company selected Cholla as the source of deliveries under the APS contract? Why does the Company consider Cholla more appropriate as the measure of the costs of the APS exchange than, say, the most expensive summer resources, including market purchases and peakers, or some other PacifiCorp resource or mix of resources?

b) Will the allocation of baseload and seasonal resources both on total coincident peak and total energy result in overallocation of capacity to the jurisdiction with the highest contribution to peak?

c) Since the allocators of seasonal contracts and CTs are affected by the monthly outputs of each of those resources, is it appropriate to allocate these resources on an aggregate basis?

d) Is the allocation of total seasonal contract costs including commodity charges based on a capacity allocator equitable and cost-based?

6) Why should SCCT allocation factors be derived by GRID-simulated SCCT monthly output excluding "incremental" sales? And why not use the same approach for seasonal purchases?

a) What is meant by "incremental"? What rules would be used to determine whether a sale is incremental? Why does PacifiCorp think this is the right definition for this purpose? If PacifiCorp enters into a sale and a purchase for similar periods with different parties, is the sale incremental? Why remove sales and not purchases?

b) What problems of equity and incentives between jurisdictions might arise from this approach? Is it possible that construction of a peaker and a sale that reduces net power costs to PacifiCorp as a whole would increase the costs of some jurisdictions? Is this approach sustainable?

c) Does GRID model peaker dispatch accurately enough to support this allocation approach?

Regional Resources

7) If the hydro and coal endowments have the same capacity and the allocation of other capacity and energy is based on total loads, will the Protocol overallocate capacity to the jurisdiction with the lowest total loads?

Hydro Endowment

8) What is the cost justification for creating a hydro endowment?

a) Why should the Mid-C Contracts be part of the hydro endowment?

b) Why isn't the merger-related 40 MW increase in Mid-C capacity (resulting from the availability of generation control on the UPL thermal plants) allocated to the UPL jurisdictions?

9) Is the policy rationale for the hydro endowment valid?

a) Is there anything in the Washington or Oregon orders approving the merger that establishes the Pacific states' entitlement to pre-merger resources?

b) Do these Orders recognize that the Pacific states will benefit from UPL states' pre-merger generation resources? For example, do these orders say anything about the benefits of supply diversity or deferral of PPL resource additions?

c) What do the Orders cite as the benefits of the merger? How do they justify that the merger is in the public interest?

d) Have the Pacific states received those benefits?

e) What merger conditions were imposed in Oregon and Washington regarding power-supply costs, and have those been met?

10) Does the Protocol allocation method effectively insulate the UPL states from all of the costs of hydro relicensing, in particular costs resulting from reductions in hydro capacity or output?

a) How would PacifiCorp's proposed allocation method adjust for reductions in hydro capacity or output resulting from relicensing?

i) Would the PPL states be allocated the fixed and variable costs of the same "alternative resource" that would be assumed under the First-Major-Coal-Resource-Opt-Out scenario?

ii) Or would PPL states receive a greater share of embedded plant to make up for the reduction in hydro capacity?

iii) Or would the PPL states receive the same portion of existing plant costs based on the SG and SE allocators that they would have otherwise?

iv) Or would the capacity of the UPL states' coal endowment be reduced to make up for reduction in hydro endowment capacity?

v) Or something else.

b) Under this adjustment, would the UPL states' revenue requirements be unaffected by hydro capacity or output reductions due to relicensing?

Coal Endowment

11) On what underlying principle is the coal endowment based?

12) Are matching Hydro and Coal endowments a feasible solution?

a) Is Huntington the appropriate offset to the Pacific states' Hydro Endowment?

b) Why has PacifiCorp allocated all other generation resources based on total SG and SE when part of the jurisdictions' loads have been met by the Endowments? Will the allocation always be equitable despite this double-counting?

c) Has PacifiCorp considered other solutions to the "unreasonable cost shifts," such as applying total-load allocators to new plant?

Oregon Opt-Out of First Major New Coal Resource

13) How will costs be allocated if Oregon chooses to opt-out of the First New Major Coal Resource?

a) Has the Company developed any rules or processes to select the "Alternative Resource," and to determine its costs?

b) Has the Company developed a clearly defined method, with rules and formulas, for taking this "Alternative Resource" into account in the allocation of generation plant and energy costs?

i) If PacifiCorp places a new coal plant on line and no other capacity additions are needed for awhile:

(1) Does Oregon pay for some proxy alternative resource?

(2) Do the remaining states pay for their share of the coal plant based on their % share of total PacifiCorp SG and SE allocators?

(3) How would the Protocol deal with the timing differences if the "alternative resource" is installed after the coal plant?

(a) If the first year revenue requirements of the "Alternative Resource" exceed the coal plant's, who gets the excess revenues? The other states? The shareholders?

(b) When PacifiCorp does need another new plant and it actually builds a plant of the "alternative-resource" type, what is Oregon's share of the new plant? Would it be based on its SG and SE allocators? Would there be any adjustment for accumulated depreciation on the proxy "alternative resource."

c) Would the Protocol insulate other states from the costs of Oregon's deciding to opt-out?

State Resources

14) Why shouldn't the above-market costs of QF contracts be allocated to the jurisdictions that approved or ordered them?

a) Possible alternatives:

i) Situs allocation of above-market costs

ii) Situs allocation of total costs with load decrement or other credit

iii) Situs allocation of above-embedded-costs

System Resources

15) Has PacifiCorp proposed a clear, understandable rule for the allocation of system firm purchase contracts that are *not* seasonal contracts? In particular, are the fixed as well as variable charges of these contracts classified as 100% demand-related and allocated based on the SG factor?

a) If so, is this an equitable, cost-based allocation?

b) If not, is Exhibit DLT-6, which indicates that Purchased Power expenses associated with Firm contracts are allocated on the SG factor, correct?