

-BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH-

In the Matter of Demand Side Management)
Cost Recovery by PACIFICORP dba UTAH)
POWER & LIGHT COMPANY)
)

DOCKET NO. 02-035-T12

REPORT & ORDER CONFIRMING
BENCH DECISION

ISSUED: October 3, 2003

APPEARANCES

John M. Eriksson	for	PacifiCorp
Patricia Schmid Assistant Attorney General	“	Utah Division of Public Utilities
Reed Warnick Assistant Attorney General	“	Utah Committee of Consumer Services
Gary Dodge	“	UAE Intervention Group
William Evans	“	UIEC
Eric Guidry	“	Western Resource Advocates
Jeff Burks	“	Utah Energy Office, Department of Natural Resources
Betsy Wolf	“	Salt Lake Community Action Program, Crossroads Urban Center, Utah Legislative Watch (collectively, Utah Ratepayers Alliance)
Marco Kunz	“	Salt Lake City Corporation

By the Commission:

PROCEDURAL HISTORY

On October 31, 2002, PacifiCorp filed with the Commission a Petition for approval of a demand side management (“DSM”) cost recovery tariff schedule (Electric Service Schedule No. 191 or “Schedule 191”). As part of its Petition, the Company also requested that the Commission utilize this docket to develop self-direction criteria and procedures that would provide a credit to qualifying customers that self-invest in energy efficiency projects. Pursuant to notice issued by the Commission, technical conferences were held January 9 and January 30, 2003. Additional working group meetings were held March 3, April 7, June 24, July 8, July 18, July 31 and August 13, 2003. The Company and the Utah Association of Energy Users Intervention Group (“UAE”) filed testimony pursuant to the Commission’s March 20, 2003 Scheduling Order.

On August 29, 2003, PacifiCorp filed a Motion for Approval of a Stipulation, which was submitted with the Motion. Pursuant to Notice issued by the Commission, a hearing on the Motion was held on September 23, 2003. At the hearing, John Stewart, for PacifiCorp, Christine Wright, for UAE, Judith Johnson and Mary Cleveland, for the Division, and Cheryl Murray, for the Committee, presented testimony in support of the Stipulation. Statements were also presented on behalf of Western Resource Advocates, UIEC and the Utah Ratepayers Alliance. No party presented any testimony in opposition to the Stipulation. The Commission questioned the parties and witnesses regarding certain aspects of the Stipulation and the evidence presented.

THE STIPULATION

PacifiCorp introduced the Stipulation as Exhibit UP&L 1 and described various provisions of the Stipulation. Among other things, the Stipulation states the parties' support for the Commission's approval of an agreed-upon form of a DSM tariff rider (Schedule 191) and an agreed-upon form of a self-direction credit mechanism (Schedule 192), both of which were attached to the Stipulation. Schedule 191 provides for a DSM rider, or surcharge, as a single line-item charge on tariff customers' bills to collect costs of the Company's DSM programs approved by the Commission. Schedule 192 provides for credits to be applied against the Schedule 191 charge for high use customers that self-direct the installation of DSM measures (i.e., fund their own DSM investments). Paragraph 10 of the Stipulation describes the basis for setting the Schedule 191 collection rate, taking into account the amount deferred pursuant to this Commission's order in Docket No. 01-035-21, the next year's forecasted expenses for Commission-approved DSM programs, and the current collection rate. Paragraph 15 of the Stipulation states the parties' agreement that the DSM rider collection rate is to be collected from customer classes based on the classes' revenues, as is done with the currently effective Schedule 95 surcharge. However, the parties also acknowledge in that paragraph the lack of complete agreement on the issue of whether the Schedules should be applicable to special contract customers, and reserve their ability to address the manner of accounting for any DSM costs allocated to special contracts. PacifiCorp does not propose collection rates at this time, but intends to make a filing in late November of this year to establish the Schedule 191 collection rates to be implemented April 1, 2004.

UAE witness Christine Wright provided further description of Schedule 192, particularly the three different levels of credits provided under the Schedule: one for 80% of Eligible Expenses (as defined in the Schedule); a smaller one for Transition Projects (generally, qualifying DSM projects completed prior to the Commission's approval of Schedule 192), available for up to four years following the Effective Date of the Schedule in the amount of 56% of Eligible Expenses; and a credit equal to 50% of the monthly Schedule 191 charge, applied for two years, for customers that have implemented extensive DSM measures, as more specifically described in the Schedule. Schedule 192 provides for a Self-Direction Administrator for administering the self-direction program, and specifies in considerable detail the functions of the Administrator. The self-direction program will be viewed as other DSM programs with respect to cost-effectiveness, and cost-effectiveness of individual self-directed projects will be established by meeting a simple payback period of between 1 and 5 years. That criterion, a simple payback of between 1 and 5 years, was tested against reasonable assumptions and found to satisfy this Commission's cost-effectiveness tests for DSM programs. As a constraint on the cost of the self-direction program, each category of credits has an annual dollar limit for the aggregate amount of the respective credit that will be available to participating customers.

DISCUSSION

The Company's Petition, including the proposal for a self-direction provision, was filed pursuant to Utah Code Ann. § 54-7-12.8, which was enacted in 2002. Section 54-7-12.8 authorizes the Commission to approve a DSM tariff rider charge which appears as a separate line item on a customer's bills, and also authorizes the Commission to approve a tariff with a

provision allowing a customer to receive credits, to be applied against the DSM tariff rider charge, for electric energy efficiency measures that (a) the customer implements or has implemented at its expense, and (b) satisfy Commission-established criteria.

Settlement of matters before the Commission is encouraged at any stage of proceedings. Utah Code Ann. § 54-7-1. *See also Utah Dept. of Admin. Services v. Public Service Commission*, 658 P.2d 601, 613-14 (Utah 1983). The Commission may approve a stipulation or settlement after considering the interests of the public and other affected persons if it finds the stipulation or settlement in the public interest. *Id.* Accordingly, we must determine whether the Stipulation in this case is in the public interest.

The parties to the stipulation include PacifiCorp, state agencies with responsibility for customer interests, representatives of a diverse group of PacifiCorp customers, from some of the largest customers to residential customers, as well as the Utah Energy Office, which is charged with “participat[ing] in regulatory proceedings as appropriate to promote the development, conservation, and efficient use of energy” (Utah Code Ann. § 63-34-101). Western Resource Advocates, formerly the Land and Water Fund of the Rockies, and the Southwest Energy Efficiency Project are also parties to the Stipulation. Testimony of the parties made it clear that the Stipulation resulted from extensive discussions and negotiations, and represents a fair and reasonable compromise of parties’ positions. The parties to the Stipulation all agree that the Stipulation is just, reasonable and in the public interest, and no contrary evidence was presented. If these parties agree that the Stipulation, which includes Schedules 191

and 192, is just, reasonable and in the public interest, this is strong evidence that we should find that the Stipulation is in the public interest.

The Company, the Division and the Committee presented testimony that the DSM tariff rider mitigates disincentives associated with utility investment in DSM measures which exist under traditional ratemaking, and puts demand-side resources on more of an equal footing with supply-side resources. By providing more contemporaneous cost recovery through a surcharge, the tendency to have peaks and valleys in DSM activity between rate cases is reduced. Further, the Stipulation establishes specific reporting requirements for PacifiCorp regarding activity under Schedules 191 and 192, and the Division is satisfied that it will be able to perform its audit function to ensure that costs are not collected through both Schedule 191 and general rates.

In response to questioning by the Commission, parties stated that there is no explicit cap on the level of dollars that could be collected through Schedule 191, but noted that there are effectively indirect limits, in that only costs of Commission-approved DSM programs can be collected through the Schedule, and there is a practical limit to the amount of cost-effective DSM that could be implemented in the state, given the varying technical and economic potential of DSM measures. Parties also testified in response to questions from the Commission regarding whether Schedule 192 might be seen as discriminatory, inasmuch as self-direction credits are available to a limited class of customers. It was pointed out that it would be unreasonably burdensome and administratively cost-prohibitive to make the program available to

all the Company's customers in the state. Moreover, the self-direct program is but one of a number of DSM programs which are directed at different customer groups.

UIEC presented a statement reflecting the comments it filed with the Commission regarding the Stipulation. UIEC, while not opposing the Stipulation, stated its concern on several matters, one of which is the level of self-direction credit for Transition Projects. UIEC recommended that the Commission revisit the issues before the proposed effective date of the Schedules of April 1, 2004. Several parties stated their opposition to UIEC's recommendation. On the issue of the level of the self-direction credits, it was clear that those levels were matters of compromise among the parties, and that they are parts of a whole which the parties to the Stipulation believe is just, reasonable and in the public interest. Other aspects of UIEC's concerns appear to have been addressed. For instance, its concern that the Self-Direction Administrator under Schedule 192 should be a third party, rather than a Company employee, is eliminated for at least the initial year of the program by the Company's testimony that it will be contracting with a third party to serve as the Administrator.

Noting the possibility of confusion over the designation of the DSM tariff rider as Schedule 191, where a "191 account" is a type of balancing account used in the gas industry, the Commission asked whether the Company could change the number of the Schedule, which the Company agreed to.

Based upon the foregoing and the Commission's review of the Stipulation, the Commission issued a bench decision approving the Stipulation, subject to the change to the

schedule number for the DSM rider. In confirmation of that bench order, the Commission now makes the following findings of fact, conclusions of law and order.

FINDING OF FACT AND CONCLUSIONS OF LAW

1. This Commission is authorized by Utah Code Ann. § 54-7-12.8 to approve a DSM tariff rider charge which appears as a separate line item on customers' bills, and also to approve a tariff with a provision allowing a customer to receive credits, to be applied against the DSM tariff rider charge, for electric energy efficiency measures that (a) the customer implements or has implemented at its expense, and (b) satisfy Commission-established criteria. Pursuant to that authority, this Commission has the authority to approve the Schedules submitted as part of the Stipulation.

2. Settlement of matters before the Commission is encouraged. Utah Code Ann. § 54-7-1. *See also Utah Dept. of Admin. Services v. Public Service Commission*, 658 P.2d 601, 613-14 (Utah 1983). The Commission may approve a stipulation or settlement after considering the interests of the public and other affected persons if it finds the stipulation or settlement in the public interest. *Id.*

3. The Stipulation has broad-based support, no opposition by any party to this case, and resolves significant issues that have been addressed by recent legislation, including the adoption of a DSM rider, which has been the subject of unresolved dispute in the past.

4. The Stipulation, including Schedule 191 (to be renumbered) and Schedule 192, is just, reasonable and in the public interest.

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ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The Stipulation, including Schedule 191 (to be renumbered) and Schedule 192, is approved.
2. Any person aggrieved by this Order may petition the Commission for review/rehearing pursuant to *Utah Administrative Procedures Act, Utah Code Ann. § 63-46b-1 et seq.* Failure to do so will preclude judicial review of the grounds not identified for review. *Utah Code Ann. § 54-7-15.*

DATED at Salt Lake City, Utah, this 3rd day of October, 2003.

/s/ Ric Campbell, Chairman

/s/ Constance B. White, Commissioner

/s/ Ted Boyer, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#35402