- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of Rocky Mountain Power for Authority to Increase its Retail Electric Utility Service Rates in Utah and for Approval of its Proposed Electric Service Schedules and Electric Service Regulations, Consisting of a General Rate Increase of Approximately $161.2 Million Per Year, and for Approval of a New Large Load Surcharge	DOCKET NO. 07-035-93 ORDER ON RECONSIDERATION

ISSUED: October 13, 2008

SHORT TITLE

PacifiCorp 2007 General Rate Case
Order on Reconsideration of Revenue Requirement Issues

SYNOPSIS

The Commission herein changes and provides clarification of its decision on the imputation of revenues to the Sacramento Municipal Utility District wholesale sale contract and orders an increase in Utah jurisdictional revenue requirement of $3,207,810. The Commission provides additional discussion on property tax expense and the displacement of Energy Trust of Oregon funding of the Goodnoe Hills wind project.

INTRODUCTION AND PROCEDURAL BACKGROUND

On September 2, 2008, pursuant to Utah Code § 63G-4-3-1, Utah Code § 54-7-15 and Utah Administrative Rule 746-100-11.F, PacifiCorp, doing business in Utah as Rocky Mountain Power ("Company") petitioned the Public Service Commission of Utah ("Commission") for reconsideration of the Commission's August 11, 2008, Report and Order on Revenue Requirement and subsequently issued August 21, 2008, Erratum Report and Order on Revenue Requirement ("Order") issued in this docket. The Company asks the Commission to review, reconsider, and grant a new hearing, revising the portions of the Order and the Commission's oral rulings which address the following issues: (1) Net power costs, (2) return on equity, (3) generation overhaul expenses, (4) property taxes, (5) test year, (6) Energy Trust of Oregon funding of the Goodnoe Hills wind project, and (7) the Commission's exclusion of the Company's sur-surrebuttal evidence. On September 8, 2008, the Company withdrew the portion of its Petition for Reconsideration ("Petition") requesting reconsideration of the Commission's decision on return on equity. However, the Company stated it continued to request clarification of the Commission's decision on return on equity.

The Utah Division of Public Utilities ("Division"), the Utah Committee of Consumer Services ("Committee"), the Utah Association of Energy Users ("UAE"), and the Utah Industrial Energy Consumers ("UIEC"), filed responses on September 17, 2008, to the Company's Petition. On September 22, 2008, the Commission granted the Company's Petition.

DISCUSSION, FINDINGS AND CONCLUSIONS

All parties, except for the Division, recommend the Commission reject the Petition. These parties argue the Order is reasonable and well supported regarding the issues raised in the Company's Petition. The Division recommends the Commission reconsider its decisions on the Sacramento Municipal Utility District ("SMUD") contract revenue imputation and property tax expense. Specifically, the Division recommends the Commission reverse its decisions on these two issues or rehear the issues in a timely fashion.

Based on the Company's Petition and parties' responses to the Petition, we reconsider our decisions on the SMUD contract imputation, property tax expense, and the Energy Trust of Oregon funding of the Goodnoe Hills wind project.

SMUD Contract Revenue Imputation

The Company contends the Commission erred in imputing a price of $58.46 per megawatt hour ("MWh") related to a wholesale sales contract to supply power to SMUD. The Company argues the Commission's decision is either the result of a calculation error or is arbitrary, unsupported by the evidence and asymmetric. Although we change our decision on the SMUD contract imputation, we do not do so based on the arguments and reasoning offered by the Company. Like the Company (Petition, page 5), we provide some history on this issue to make clear our decision on reconsideration, our intent and how the SMUD contract may be treated in the future.

Typically, wholesale sales contracts are executed in order to reduce net power costs. An adjustment for the SMUD contract has been advocated in ratemaking proceedings

because of claims that the terms of the contract and its impact upon the calculation of net power costs are not reasonable. In return for the obligation to provide power to SMUD, the Company received consideration in the form of a lump-sum, up-front payment of $98[1] million, the transfer (from SMUD to the Company) of a Bonneville Power Administration power entitlement, and recurrent revenues from SMUD through payment of charges for power delivered based upon the SMUD contract's other terms and conditions. In 1999, when the Commission first had to resolve the SMUD contract as a disputed matter in Docket No. 99-035-10, it was recognized that the Company erred in its treatment of the SMUD contract in calculation of revenue requirement. Parties noted the recurrent prices paid by SMUD under the contract, included in the Company's calculation of the revenue requirement for the test year used in that docket, were insufficient ("below market") and the Company had failed to attribute any value for the other consideration received. All parties, including the Company, agreed a revenue imputation (attributing additional value received in exchange for power provided) must be made in making a revenue requirement calculation to account for the effects of the SMUD contract.

In Docket 99-035-10, the parties presented a variety of imputation amounts and methods. The Commission settled on imputing revenues based on an imputed price of $37 per MWh for power delivered to SMUD. The Commission did so based on an elimination of alternative approaches until only two choices were left for consideration. One choice was an imputed $37 price referenced from a wholesale sales contract the Company had with Southern

[1] Evidence in this docket identifies the lump-sum payment to be $98 million. In other dockets, the amount is noted as $94 million. We do not attempt to reconcile the difference in this docket.

California Edison ("SCE"). In other proceedings, parties had referred to the SCE contract as an appropriate surrogate to use in place of the flawed SMUD contract. Other state regulatory commissions had also used the SCE contract as a proxy for the SMUD contract in revenue requirement calculations in ratemaking proceedings. Although the SCE contract was a contract executed in the same time period as the SMUD contract, contrary to the Company's argument in seeking reconsideration in this docket (Petition, pages 5 and 6), the $37 price was not a contemporaneous price nor one which the Commission intended as unalterable. The initial pricing for the SCE contract was $42; the $37 figure was from a 1995 renegotiation of the SCE contract. Contrary to the Company's argument on reconsideration in this docket, the $37 price was selected not because it was a rate reflective of a reasonable rate at the time the contract was executed, but because of its deemed reasonableness in relation to the test year and its underlying conditions for Docket No. 99-035-10. Our order in that docket stated:

> What remains [after eliminating other alternatives] on the record are the prices from the original [$42] and the renegotiated [$37] SCE contracts. No reason appears on this record to reject these prices as the basis for imputation other than the mere fact of contract renegotiation, which the Division believes removes it from consideration. This is not reasonable. We could easily choose this [$42] amount as the basis for a permissible revenue imputation, just as it has been in the past. This record, however, makes clear that, due to changes in the wholesale market, prices of wholesale sales have been declining. We surmise that the reduction of the price in the SCE contract reflects these changes, which result, we believe, not merely from temporary realignment of the forces of supply and demand but from institutional alterations in part due to government requirements. The latter fact inclines us to accept the renegotiated SCE contract rate of about $37 per MWH as the basis for a proper imputation of revenues for the under-market SMUD contract, and we so order. (May 24, 2000, Report and Order, Docket No. 99-035-10, page 45.)

Our language and reasoning clearly did not present the $37 amount because it was a level price set at the initiation of the contract, nor as an imputation level cap when addressing the SMUD contract. *C.f.,* Petition, page 6. We know the SCE contract, based on its terms and whatever snapshot in time is used, has produced prices which have varied significantly from the $37 imputation price the Company argues was immutably set in Docket No. 99-035-10.

In the Company's next rate case, Docket No. 01-035-01, our September 10, 2001, Report and Order noted:

> PacifiCorp argues the Commission's use of $37 in the previous case does not suggest an intent to impute revenues based on the actual SCE contract price during the test year. Renegotiation of this contract, states the Company, occurred in 1995, and the rate for the first year following that is $37, the amount used by the Commission. PacifiCorp informs us that power cost data in Docket No. 99-035-10 contains a test-year SCE contract price of $49.42, which, it alleges, should have been used if the intention was to base imputation on a test-year contract price.
>
> We seek a reasonable basis for imputation, once we decide an imputation must be made. In the previous Docket, $37 was such an amount, because it was the most current contract price debated on the record and it recognized structural changes in the wholesale market. No party advocated the test year figure of $49.42 the Company now calls to our attention. In fact, no party mentioned the figure in that Docket and we were not aware of it. *Id.*, pages 23 and 24.

In addressing the SMUD contract in a ratemaking setting, we seek a reasonable adjustment (which can include a revenue imputation) when the Company's treatment of the contract in calculating a revenue requirement for a test year is inappropriate. In Docket No. 01-035-01, we faced a wide variety of approaches and adjustments in how to deal with the SMUD contract. The Company and other parties disputed whether even the SCE contract's terms and

pricing would be an appropriate basis upon which to formulate a revenue imputation for the SMUD contract. We stated:

> We therefore believe arguments opposing further use of the SCE contract are appropriately a subject for the next general rate case in which SMUD revenue imputation arises.
>
> Issues parties enumerate that distinguish the SMUD contract from the other contracts to which we impute revenue in this Docket include an initial payment of $94 million. We concur that these factors separate the SMUD contract from other contracts and can be considered in making the imputation. In PacifiCorp's last general rate case we used the SCE renegotiated contract to impute revenues to reflect changes in the wholesale market that affected a contract similar to SMUD's that was executed at about the same time. We also sought to use data closest to the test year in that case which is one of the reasons we used the renegotiated price of $37.
>
> In this Docket we learned that the actual test year SCE contract price in Docket No. 99-035- 01 was $49.42. The $37 price, therefore, was not the closest figure to the test year in that case though it was more reflective of the changes that had occurred in the wholesale market than the terms of the SMUD contract. We also discovered that the SCE contract is indexed to the Southern California border price of gas, a fact that could lead to unintended results not fully explored on this record. Our objective is to impute revenues to the SMUD contract to make it compensatory. The only proposals before us are to apply $37 or $47.70 to the SMUD contract. After the testimony and argument in this case, there are enough questions about the SCE contract as an appropriate reference that we will not depart from our previous decision by increasing the imputation to $47.70. *Id.*, page 24.

Faced with a limited choice between the imputation price determined in Docket No. 99-035-10 and an alternative imputation price based on a contract whose relevance was disputed and whose terms and conditions provided for results which were not fully developed on the record then before us, we reverted to our prior adjustment mechanism. As reflected in the quotes from both prior cases, other factors may also be considered in making a revenue requirement adjustment for the SMUD contract, other than reference to a contemporaneous

alternative contract. We disagree with the Company's argument on reconsideration in this docket that we "reaffirmed" the $37 price imputation in our September 10, 2001, order because the $37 represents a cap and no alternative to that amount can be made in a ratemaking setting. We also disagree with the Company's departure from past cases and the contention now made in this docket that treatment of the SMUD contract must be symmetric to other contracts. As reflected in the quote above, we have long recognized and treated the SMUD contract and the circumstances accompanying its execution distinct from treatment that may be accorded other wholesale contracts.

In this docket, we are again faced with determining an appropriate adjustment for the SMUD contract in calculating the Company's revenue requirement given the test period used in this docket. Again, parties presented a variety of methods and rationales and made their ultimate recommendations and opposed those of other parties in the testimony they presented and their examination of witnesses at hearing. Our application of an imputed price of $58.46 for the SMUD contact in this case was not due to a calculation error. The $58.46 price is based upon our application of a method presented in the pre-filed Surrebuttal testimony of the Division. The Division's written testimony presented this method as a reasonableness test for any proposed imputation. This method accounted for the lump-sum payment only. Effectively, the Division concluded that the lump-sum payment was the only value that should be recognized for the SMUD contract. Based on this view, the Division abandoned its support of its previously presented adjustment and ultimately advocated adoption of a $37 imputation price for the SMUD contract advocated by the Company. In reviewing and evaluating the alternative methods and

reasoning ultimately advocated by the parties for their competing adjustments, we believed the Division's method represented a reasonable, although incomplete, approach through which to address the matter. We disagreed with the Division that only the lump-sum payment should be considered. Value from the SMUD contract should include recognition of all of the components received by the Company in exchange for the provision of power.

However, as we have reviewed the SMUD contract adjustment on reconsideration, we recognize the possibility that our use of the method may not have been accounted for by the parties in their presentations to the Commission. As the method was not ultimately advocated by the Division, the record evidence developed for it is limited and parties, including the Division, may not have had an opportunity to develop a record upon which they believe the Commission could appropriately select the method over other approaches presented. At this late stage in this docket, we face a situation similar to the predicament in Docket No. 01-035-01. We face selecting from competing methods and adjustments presented in this case for the SMUD contract, accompanied by a record which a dissatisfied party could claim does not support the choice we make, or selecting a reversion to the adjustment made in a prior case. On reconsideration, we return to the $37 price imputation for the SMUD contract. We do so concluding that, given the existing record, how it was developed, and unanswered questions regarding parties' ultimate recommended adjustments, we again revert to the adjustment made and found reasonable in our prior cases.

Property Tax Expense

In its Petition, the Company contends the Commission erred in accepting the Committee's property tax recommendation which reduced the Company's forecast total Company property tax expense from $79.7 million to $72.7 million (a $6.929 million reduction) and the associated Utah revenue requirement by $2.988 million. The Company argues the decision is unsupported by evidence in the case and is therefore arbitrary and capricious.

The Company states its estimated $10.6 million increase over the actual 2007 property tax expense is based on the significant increase in the value of the Company's operating property and earnings which taxing jurisdictions consider when calculating the market value on which the Company's tax liability is determined. The Company further claims the record contains unrebutted evidence showing it received 2008 property tax assessments in four of the ten states in which it operates representing a $901 million increase in assessed property over the calendar year 2007. In its Petition, the Company argues the Committee's method for property tax expense estimation bears no relationship to how states actually assess property taxes and incorrectly ignores the substantial increase in the Company's property values and earnings that are subject to tax. As a result, taking into account the unrebutted evidence of the substantial increase in the Company's property subject to the tax, the Committee assumes an applied tax rate of only 0.18 percent.

The Company notes the Commission seemed to accept the fact that the Company's property subject to taxes had increased by approximately $900 million. However, the Commission stated that "some of these investments, such as those related to the installation

of pollution control equipment, could be subject to either property tax exemptions or special taxing situations." Based on this speculation, the Company maintains the Commission implicitly found that the Company's increase in property value over 2007 would be taxed at the rate of .18 percent—a number even the Committee could not endorse. The Company contends the Commission's property tax estimate is speculative and has no support in the record and therefore should be reconsidered.

The Division supports the Company's Petition on property tax, including the Company's representation that its property tax is based primarily upon the rate base or book value of its property, plant, and equipment and the income of the Company. The Division contends that an increase in the value of property, plant, and equipment from one year to the next, which the Company has demonstrated in this case, will likely result in a directly proportional increase in the property tax amount. This increase is, in the short run, independent of longer-term trends since it is determined by management's planning and budgets, especially in an era of increased plant investment. Given a different set of facts, the Division suggests, a trending methodology might, at some future time, be more reasonable than it is here.

UIEC proposes the Commission should dismiss the Company's request to reconsider its decision on property tax expense as the Company failed to meet its burden of proof as to why the Commission's decision should be reconsidered. UIEC maintains the Company failed to meet its burden of proof during the proceeding that its position on property tax expense should be adopted and presents nothing new in its Petition.

The Commission reached its decision on property tax expense based on the parties' evidence and testimony on record. Parties provided testimony that factors such as rate base or book value of property subject to assessment in each state, assessed value of property in each state, property tax rate for each state, the outcomes of previously-filed property tax appeals in each state, the projected outcomes of newly-filed property tax appeals in each state, special state or local taxing situations identified for each state, identification and allocation of property taxes associated with capital projects, O&M, or fuel accounts, and the Company's net operating income affect the amount of money the Company will ultimately pay in property tax expense during any given year. In using a future test period to determine rates we note that few of these items are known with certainty when a case is filed.

The record contains the following evidence regarding the property tax expense issue. In its March 2008 filing[2] the Company provided a property tax adjustment summary ("Adjustment Summary") by state for projected 2007 and 2008 property tax expenses unsupported by any information, assumptions, estimates, calculations, or explanation of judgment or methods used, as required by R746-100-10.F.2.c.

DPU Exhibit 4.1.1, filed in support of the Division's April 7, 2008, direct testimony proposing an adjustment to the Company's initial estimated property tax amount, presents a table entitled "Revised Property Tax Adjustment Summary as provided by RMP in DPU Data Request 21.1." ("Revised Adjustment Summary"). Upon review of the information presented in this table we observe the Company's revised actual 2007 property tax expense of

[2] Page 7.4.1 of Exhibit RMP_(SRM-1S)

$69,102,427, includes a new, un-annotated entry for $285,746 inserted into the table under the line for Wyoming for both the Projected 2007 Expense and the Projected 2008 expense columns. Since this new entry for $285,746 is unexplained we can only speculate what it represents and whether other accounts in the Company's filing have been adjusted to correctly reflect this new entry.

In its May 9, 2008, rebuttal testimony, the Company provides a chart entitled "Recap of Changes in Property Subject to Assessment and Net Operating Income" ("Recap of Changes"). At hearing the Company testified it has experienced "a substantial rise in *property subject to tax*."[3] However, the Company acknowledged property taxes are a product of the *assessed value* of the property multiplied by the tax rate. The Company stated it did not provide the actual assessed value of property in the Recap of Changes chart and that in developing the Recap of Changes chart it saw no need to present the actual property tax amounts paid. In short, the Company fails to provide the pertinent information on which the Company itself states property taxes are based or is relevant to projections of future property tax expenses.

At hearing, the Company indicated it has received several property tax assessments for the 2008 tax year which are considerably higher than those for the 2007 tax year, i.e., Utah's 2008 assessment is $301 million higher, Wyoming's 2008 assessment is $172 million, Montana's 2008 assessment is $10 million higher, and Oregon's 2008 assessment is $418 million higher. The Company also testifies it is planning to appeal the Oregon assessment, and that previous appeals in Utah will affect its property taxes. The Company, however, failed to indicate what

[3] Italics added.

portion of these increases in assessments, if any, should be allocated to construction projects, thereby reducing taxes. The Company also does not indicate what portion of these increases in assessments, if any, are subject to special taxing situations which would further reduce taxes. Nor does the Company state what portion of these increases in assessments, if any, should be allocated to and properly recovered in other operations and maintenance or fuel accounts which would decrease property tax expense, and what portion of these increases in assessments, if any, the Company will appeal in other states which would reduce the property tax amount. The Company does not provide its estimate, on a state by state basis, of the tax rates which will apply to these increases in property subject to tax; nor does it state how other previously appealed property tax decisions, if any, could affect the tax due. The Company does not even state what percentage increase in total assessed value these increased amounts represent. Belatedly, only at hearing did the Company provide any data on the assessed property value – but then only the increase in assessed values. Beyond the simple increase in the amount of property subject to property tax, the Company failed to provide any information on the actual historic or estimated test period total assessed values, or information on how the other factors affect the property tax expense which the Company projects it expects to pay. In its response to the Company's Petition, the Division states that an increase in property, plant, and equipment amounts from one year to the next will likely result in a directly proportional increase in property tax amount. The Division's position also does not account for any of the factors mentioned above.

The Company fails to provide information on the extent to which special taxing situations exist and are incorporated into the Company's Revised Adjustment Summary. At hearing the Company introduces the issue of special taxing situations as follows:

> "Certain statutes provide for certain property to be exempt from taxation for certain periods of time. An example of that would be for the Company's Leaning Juniper plant in Oregon. The plant is located within an enterprise zone and, as a consequence, it is treated as exempt for the first three years of its -- first three tax years. And so, in that instance, we have been able to add roughly $170 million of investment with very little in the way of property tax, so that was what I was getting at. *And there are similar provisions in other jurisdictions*."[4]

The Company does not explain whether any of the $901 million increase in the assessed property value is subject to any of these "similar provisions," hence our statement in our Order "some of these investments, such as those related to the installation of pollution control equipment, could be subject to either property tax exemptions or special taxing situations."

The Committee, recognizing how taxes are actually calculated and paid, provided a different method for estimating the Company's property tax liability during a future test period – not through calculation using an estimated assessed property value but rather through an analysis of historical trends. These trends are based upon evidence in the form of the results of CCS data request 32.3, which provide a historic look at the Company's actual taxes along with a summary of the Company's past budget inaccuracies.

The Committee testified that, in spite of major increases in total property subject to assessments and net utility operating income, over the past five years property tax expense recorded on the Company's books only increased by $2 million. The Committee concludes this

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[4] Italics added.

information does not support the requested $10 million dollar increase in this case. The Committee also provides unrebutted testimony that during 2006 the Company experienced a major increase in property subject to assessment ($890 million or 9.7 percent greater than the previous year with a concurrent 11.81 percent increase in net operating income) yet we observe property tax expense for the Company only increased by 2.3 percent. This information is contrary to the Division's argument that an increase in the property, plant, and equipment amounts and net operating income from one year to the next will likely result in a directly proportional increase in the property tax amount.

We received testimony that the Company frequently appeals tax assessments, special taxing situations exist, ultimate tax rates and taxes paid are affected by many factors, and in years 2006 and 2007 the Company over-budgeted property tax expense by $2.9 million and $16 million, respectively. We conclude the Company's estimate of the 2008 future test period property tax expense is inadequately unsupported by relevant data and omits too many factors which should be considered in calculating the property tax expense for the selected test period. We find the Committee's method for estimating the Company's future test period property tax expense is supported by data and appropriate for rate making in this case. We further adjusted the test period amount to include $2 million for property tax in Utah which the Company states was previously capitalized for recovery in rates to be set in this case. In future rate cases we request parties' comments on the Company's property tax estimation model and evaluation of its validity, assumptions, projections, and judgment contained therein. We reaffirm our determination of the

property tax expense as presented in our Order. This determination results in a property tax expense increase of 5.6 percent over the previous year.

Energy Trust of Oregon Funding of the Goodnoe Hills Wind Project

In its Petition, the Company requests the Commission declare whether the State of Utah will keep its allocated share of renewable energy credits ("RECs") from the Goodnoe Hills wind plant ("Goodnoe Hills"). The Company states the Energy Trust of Oregon has contributed funds to this project in exchange for the allocation to Oregon of renewable energy credits after the first five years of Goodnoe Hills operation. The Company states Utah has the option to keep its allocated share of RECs from Goodnoe Hills if Utah pays $1.9 million for its portion of the amount pledged by the Energy Trust of Oregon, part of which was included in this case as an offset to Utah's revenue requirement, and the Company recommends the Commission affirmatively declare its desire to do so. The Company represents it reduced Utah's revenue requirement by $359,000 in this rate case to reflect Energy Trust of Oregon credits. Since the Commission did not add the $359,000 to the Company's revenue requirement, the Company requests clarification as to whether this means the Commission has elected not to displace the Energy Trust of Oregon funding to keep Utah's allocated share of the RECs from Goodnoe Hills after the first five years of plant operations.

We do not have sufficient information on the record to make this clarification at this time. First of all, it is our understanding the Revised Protocol cost allocation agreement

addresses State Portfolio Standards.[5] The record is not clear how the Company's proposal fits with the multi-state agreement on REC revenue allocation. On the surface, this appears to be the sale of a REC by the Company and there are currently informal agreements for allocating such revenue. We are interested in knowing if there are alternatives to addressing the Energy Trust of Oregon's funding, whether it is a prepayment for the sale of future RECs, whether it addresses above market costs, and if so, whether this factor needs to be considered.

Second, no party other than the Company recommends the Commission accept this proposal and the Company provides no evidence demonstrating, through cost-benefit analysis, this proposal is in the public interest. The Committee is the only other party to comment on the issue and it recommends the Commission reject the Company's recommendation in this docket and require the Company to explain and provide supporting evidence for any benefits to Utah customers resulting from adoption of the Company's proposal in the next general rate case.

Finally, because the issue addresses the disposition of REC revenue five years hence, we conclude we may await further evidence on the costs and benefits of this expenditure to Utah ratepayers prior to rendering a decision.

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[5] The Revised Protocol states "costs associated with resources acquired pursuant to a State Portfolio Standard, which exceed the costs PacifiCorp would have otherwise incurred acquiring comparable resources, will be assigned on a situs basis to the state adopting the standard." Page 6 of 15, item C.2.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. The Company file appropriate tariff revisions increasing Utah jurisdictional revenues by $3,207,810.

2. The tariff revisions shall reflect the determinations and the decisions contained in this Order. The Division shall review the tariff revisions for compliance with the terms of this Order.

DATED at Salt Lake City, Utah, this 13th day of October 2008.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#59453