

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of Rocky Mountain Power to Extend the 2017 Protocol through December 31, 2019	<u>DOCKET NO. 17-035-06</u> <u>ORDER</u>
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ISSUED: March 23, 2017

On February 1, 2017, PacifiCorp dba Rocky Mountain Power filed its Application to Extend the 2017 Protocol through December 31, 2019 ("Application"). Having received and reviewed comments from the Office of Consumer Services ("Office"), the Division of Public Utilities ("Division"), the Utah Association of Energy Users ("UAE") and Sierra Club, the Public Service Commission ("PSC") provisionally grants the Application. The PSC's approval of the Application is expressly conditioned on the following: the respective public utility commissions for each state that approved the 2017 Protocol must also approve PacifiCorp's application to extend the 2017 Protocol, without additional amendment or modification, in their state. If the public utility commission of any such state fails to approve the request for an extension, the provisional approval the PSC grants here will be void pursuant to the terms of the 2017 Protocol.

1. Background

On June 23, 2016, the PSC issued an order approving PacifiCorp's Application for Approval of the 2017 Protocol ("2016 Order").¹ By its terms, the 2017 Protocol will expire on December 31, 2018 "unless all State Commissions that approved the 2017 Protocol determine, by no later than March 31, 2017, that the term ... will be extended by an optional one-year

¹ Order dated June 23, 2016, *In the Matter of the Application of Rocky Mountain Power for Approval of the 2017 Protocol*, Docket No. 15-035-86.

extension through December 31, 2019."² The instant Application asks us to grant this one year extension, rendering the 2017 Protocol effective through December 2019.

We refer parties to the 2016 Order for additional discussion of the issues and history relating to interjurisdictional cost allocation. Here, we highlight only the history and facts pertinent to this Order.

a. PacifiCorp Has Operated Its Interstate System as an Integrated Whole for Decades.

In 1989, the PSC approved the merger between Pacific Power and Utah Power & Light Company ("UP&L") based on, among other things, PacifiCorp's representation that integrated system costs would be substantially lower than the sum of the costs of independently operating the systems. At the time of the merger, no agreement existed among the states as to how PacifiCorp's costs would be allocated. The absence of an agreement on interjurisdictional cost allocation did not deter PacifiCorp from the merger, and PacifiCorp agreed shareholders would bear any risk associated with jurisdictions adopting inconsistent allocation methods.

Since the merger, the PSC has unwaveringly sought to implement a method that capitalizes on the advertised integrated system benefits attendant to the merger and treats the utility system as a whole, apportioning costs and revenues among the jurisdictions using a cost-of-service analysis, *i.e.*, a fully "Rolled-In Method." Nevertheless, shortly after the merger, the PSC recognized that cost differences between the pre-merger Pacific Power and UP&L systems warranted Utah customers paying a merger fairness premium during a transition period. *See, e.g.*,

² Application for Approval of the 2017 Protocol filed December 31, 2015 (Ex. A at 4), *In the Matter of the Application of Rocky Mountain Power for Approval of the 2017 Protocol*, Docket No. 15-035-86.

A. Powell, Direct Test. at 5:83-91, *In the Matter of the Application of Rocky Mountain Power for Approval of the 2017 Protocol*, Docket No. 15-035-86 (citing Report and Order, Docket No. 90-035-06, Phase I, December 7, 1990).³ In so doing, the PSC stated its intention to transition to "a rolled-in method for interjurisdictional allocations process within ten years," acknowledging that "meeting the fairness objective ... may continue to require some modification of full roll-in ... over a transitional period no longer than the depreciation schedules and contract renewals and terminations" of pre-merger plant and contracts. *Id.* Consequently, through February 1999, Utah ratepayers paid, on a nominal basis, approximately \$498 million in merger fairness premiums. *Id.* at 6:125-7:127.

In 1997, the PSC re-examined the merger fairness premium issue and determined that part of a pending rate refund would be used to "buy-out" the remaining value of the merger premium. Restated in 1999 dollars, the total merger fairness premium Utah customers paid from 1992 through 1999 totaled \$614.80 million. *Id.* at 8:139-141. Yet this sum still does not equal the total premium Utah customers have paid because, in the 12 rate cases since 1997, the PSC has approved additional sums above the amount Utah customers would pay under a fully Rolled-In method. *Id.* at 8:144-149.

In sum, nearly 30 years have passed since the merger, and PacifiCorp has been operating its system as a single, integrated whole for decades. In the interim, Utah ratepayers have paid a

³ We cite Dr. Powell's prior testimony here for context. No finding in this order is predicated on this testimony, which we acknowledge may be challenged in the context of an adjudicated proceeding.

tremendous sum of money to compensate pre-merger Pacific Power customers for any cost advantages they enjoyed relative to UP&L customers prior to the merger.

b. The 2017 Protocol.

In 2012, the PSC approved the "2010 Protocol," a multi-state stipulation for cost allocation that removed certain "embedded cost equalization adjustments" and moved the process closer to the fully Rolled-In Method. By its terms, the 2010 Protocol limited its applicability to regulatory filings made prior to January 1, 2017. (*See* 2016 Order at 4.)

On December 31, 2015, PacifiCorp filed its Application for Approval of the 2017 Protocol. In essence, the stakeholders involved in negotiating a stipulated cost allocation method agreed to the 2017 Protocol as an interim measure because they were unable to reach a longer term consensus and expiration of the 2010 Protocol was imminent. In our 2016 Order approving the 2017 Protocol, we highlighted our appreciation for the complexity of the issues and the disagreement that exists among the jurisdictions in which PacifiCorp operates. Ultimately, we approved the 2017 Protocol because (i) we understood it to be a short-term strategy to facilitate cost recovery in light of the 2010 Protocol's imminent expiration and (ii) parties testified that, even under a fully Rolled-In method, Utah ratepayers could be exposed to greater costs than they are under the 2017 Protocol in the event different coincident peaks were employed or if demand and energy were differently weighted. Of course, we have not found, and have no present reason to believe we would find, different coincident peaks or a different weighting of demand and energy should be substituted for those that have been historically employed. However, we recognized that questions of fact may exist with respect to these issues. For these reasons, we

approved the short-term, interim approach to which the parties stipulated in the 2017 Protocol, including Utah's "Equalization Adjustment" of \$4.4 million.

The 2017 Protocol expires on December 31, 2018 "unless all State Commissions that approved the 2017 Protocol determine, by no later than March 31, 2017, that the term ... will be extended by an optional one-year extension through December 31, 2019." PacifiCorp represents "stakeholders have reengaged in [multi-state protocol] discussions and are reviewing alternatives" but "it seems unlikely that the parties will be able to reach consensus on a proposal" and obtain approval from the various state commissions before December 31, 2018. (Application at 3.) PacifiCorp asks the PSC to approve the extension to "allow [PacifiCorp] and the parties sufficient time to ... reach agreement." (Application at 4.)

c. All Parties Who Have Commented, Save Sierra Club, Recommend Approving the Extension.

The Division represents the extension is in the public interest because it will allow interested stakeholders necessary time to discuss alternatives. (Division Comments at 6.) However, the Division emphasizes the terms of the 2017 Protocol require all states that approved it in the first instance to agree to the extension in order for the extension to be exercised. The Division recommends that, in the event one or more adopting states declines to approve the extension, the PSC adopt Rolled-In cost allocation or another reasonable allocation method (in an appropriate proceeding) for purposes of reporting and establishing Utah's revenue requirement. (*Id.*)

The Office similarly believes "little chance for significant harm to Utah ratepayers [exists] and a better chance of a fair and just outcome" exists, if the PSC grants the request to

extend the 2017 Protocol. Like the Division, the Office qualifies its recommendation on the condition that all states adopting the 2017 Protocol approve the extension. (Office's Comments at 3.)

Finally, UAE "has no objections to a one-year extension of the [2017 Protocol] *so long as* all the other States that have approved the 2017 Protocol similarly extend it for one year without any substantive changes." (UAE Comments at 1 (emphasis in original).)

Sierra Club is the only party to file comments that oppose the extension. Sierra Club argues that differences in state policies are "creating an increasingly irreconcilable difference in interests as to how coal plant costs should be allocated." (Sierra Club Comments at 3.) Sierra Club maintains PacifiCorp will face significant capital expenditures relating to its coal plants before 2021 and that Utah should "resolve sooner rather than later the question of who will pay for those expenditures." (*Id.*) Sierra Club asks the PSC to use this proceeding, or to open a separate proceeding, for reviewing PacifiCorp's interjurisdictional allocation protocol. (*Id.* at 4.)

2. Findings and Conclusions

We find no circumstances have changed such that we should reconsider our determination in the 2016 Order that the 2017 Protocol is just, reasonable and otherwise in the public interest. Granted, the interim, short-term nature of the 2017 Protocol was fundamental to our conclusion in the 2016 Order. However, the extension seeks only an additional 12 months for the parties to continue to work toward building consensus on a long-term solution. PacifiCorp, the Division, the Office and UAE all concur that the extension is appropriate in light of the status of discussions among stakeholders from the various jurisdictions. (*See, e.g.*, Office Comments at 2 (explaining the Office views the parties' ability to reach consensus by January 1, 2019 as

"highly optimistic" and emphasizing that "a great deal of work [must] be completed before any proposal [will be] well enough developed for the Office to take a specific position"); Division Comments at 5 ("[I]t is unlikely that the [parties] will, in the absence of an extension, reach a consensus on a new method prior to January 2019.") At this stage, we do not believe it would be productive to disrupt the parties' discussions by imposing an abbreviated, unrealistic deadline. We therefore conclude the extension of the 2017 Protocol for 12 additional months, as expressly contemplated under its terms, is just, reasonable and in the public interest.

We note the clause in the 2017 Protocol providing for the potential extension states it will terminate December 31, 2018 "unless all State Commissions that approved the 2017 Protocol determine, by no later than March 31, 2017, that the term ... will be extended by an optional one-year extension through December 31, 2019." We share the Division's, the Office's and UAE's concern that Utah's unilateral approval of the extension, absent the approval of the other participating states, may result in an unfair outcome for Utah ratepayers. Therefore, our approval of the extension is expressly contingent on all state commissions that approved the 2017 Protocol also approving the extension without modification or amendment. If any such state commission fails to approve the extension, our approval granted herein is void.

3. Statement Regarding Interjurisdictional Allocation Method.

The PSC appreciates that stakeholders from numerous states are and have been engaged in a long and productive dialogue as to the appropriate mechanism for interjurisdictional cost allocation. We are mindful of the underlying complexities and the difficulties inherent in reaching a consensus with so many stakeholders representing sometimes divergent interests. We do not intend to interfere with those discussions or disrupt them.

However, we have concerns that we believe would be constructive for the parties to consider earlier rather than later. Of course, the PSC will evaluate any stipulation, application or request regarding interjurisdictional cost allocation on its merits and on the full record established in the corresponding docket. Nothing we state here should be construed as prejudgment of any issues for which a factual record will ultimately be developed. Nonetheless, we are hopeful that our providing some initial guidance as to the PSC's impressions on the matter may be useful to the stakeholders in their ongoing discussions.

First and foremost, we have not deviated from our numerous prior declarations that a Rolled-In method is the appropriate cost allocation mechanism. PacifiCorp has been operating as a single, integrated whole on a least cost basis for many years. Utah ratepayers long ago compensated pre-merger Pacific Power customers for any cost advantage they enjoyed prior to the 1989 merger through the extensive merger fairness premiums (and other functionally equivalent payments) Utah ratepayers have made over nearly three decades. While the geographical location of a resource may be pertinent for logistical and dispatch purposes, it is not relevant for cost allocation. All of the resources belong to PacifiCorp, and all of PacifiCorp's customers, regardless of where they reside, should now enjoy any benefits and share any risks associated with any particular resource, no matter where it's located.

We share the Division's initial skepticism about the feasibility of a structural separation into two utilities that independently serve PacifiCorp's existing east and west territories. (*See* Division Comments at 4-5.) Although we will not prejudge the issue without additional facts, stakeholders should understand that any such separation would not only entail all of the logistical and financial difficulties that PacifiCorp has already enumerated in its presentations. We would

also expect Utah customers to be fully and adequately compensated for the extensive merger fairness premiums (and their equivalents) they have paid over the years to participate in a fully integrated system.

Additionally, we respect principles of interstate comity and the right of each state legislature and utility commission to pursue the policy interests of their respective states as they see fit. However, one state does not have the power to dictate or impose its policy priorities on another. More pointedly, the Oregon legislature has no authority to dictate how electricity is produced in Utah or any other state, and the PSC will not allow Utah ratepayers to absorb costs that stem from Oregon's policy choices. Indeed, we have concerns about the constitutionality of Oregon's legislative effort to affect coal fired generation in other states. *See, e.g., North Dakota v. Heydinger*, 825 F.3d 912 (8th Cir. 2016) (affirming district court's invalidation of Minnesota statute that purported to regulate how electricity was produced in other states with circuit judges concurring in judgment but disagreeing as to whether Minnesota statute was unlawful as violative of the dormant commerce clause or preempted by the Federal Power Act). Regardless of whether a federal court would uphold its statute, Oregon must bear the cost of its policy choices. To the extent Oregon's legislative policy proscriptions increase system costs for any state, those costs should be passed onto Oregon's ratepayers.

PacifiCorp has presented a broad outline of a new interjurisdictional allocation approach to stakeholders that it terms "Coal Life Evaluation, Allocation and Realignment" or "CLEAR." (*See* Office Comments at 2.) PacifiCorp represents this approach would "achieve results similar to structural separation for generation, while retaining the current company structure and economic dispatch across the system, and increas[e] state autonomy in resource decisions." (*Id.*)

We understand this proposal is in its infancy and many details remain to be developed. It would be premature for us to opine, absent any factual record, on its justness or reasonableness. Still, the parties should understand, before they expend extensive time and resources on developing an alternative method, that the PSC will use a Rolled-In method under the existing integrated system as the benchmark for any proposed alternatives. To the extent the parties believe a new resource subscription model or other mechanism is appropriate to accommodate legislation in Oregon and possibly elsewhere, the PSC will be reluctant to impose any costs on Utah ratepayers that exceed those they would have paid under an integrated, fully Rolled-In system.

Again, we reserve judgment as to the justness and reasonableness of any approach until a factual record is before us. We are hopeful these preliminary remarks will prove useful to stakeholders as they continue to discuss the issues surrounding interjurisdictional cost allocation.

4. Order

We approve PacifiCorp's Application to extend the 2017 Protocol through December 31, 2019. Our approval is expressly conditioned on all state commissions that approved the 2017 Protocol also approving the extension through December 31, 2019 without modifying or amending the terms of the 2017 Protocol in any fashion. If any state commission fails to approve the extension or amends or modifies the terms of the 2017 Protocol (excluding any amendments such commission may have made when approving the 2017 Protocol for its initial term), then the approval granted herein is void pursuant to the terms of the 2017 Protocol.

DATED at Salt Lake City, Utah, March 23, 2017.

/s/ Michael J. Hammer
Presiding Officer

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Approved and Confirmed March 23, 2017, as the Order of the Public Service
Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
DW#292454

CERTIFICATE OF SERVICE

I CERTIFY that on March 23, 2017, a true and correct copy of the foregoing was served upon the following as indicated below:

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