- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of PACIFICORP for Approval of Its Proposed Electric Rate Service Schedules & Electric Service Regulations-Hunter Plant	DOCKET NO. 01-035-23
In the Matter of the Application of PACIFICORP dba UTAH POWER & LIGHT COMPANY for a Deferred Accounting Order	DOCKET NO. 01-035-29
In the Matter of the Application of PACIFICORP dba UTAH POWER & LIGHT COMPANY for Recovery of Excess Wholesale Power Costs	DOCKET NO. 01-035-36 ORDER ON STIPULATION

SYNOPSIS

The Commission accepts and approves a stipulation resolving these three dockets and other issues. The stipulation provides benefits to customers and the Company which are in the public interest. Schedule 95 will continue through March 31, 2004 and Schedule 99 (merger benefit credit) will be ended effective March 31, 2002. The Company will be allowed to retain sums collected under Schedule 95, those that would have been available under Schedule 99, and will retain the remaining value associated with the prior sale of the Centralia plant. Future rate increase proceedings are limited.

ISSUED: May 1, 2002

By The Commission:

PROCEDURAL HISTORY

On November 24, 2000, PacifiCorp (or the Company) experienced a forced outage at its Hunter I generation plant. In Docket 00-035-14, the Commission issued a February 9, 2001 order authorizing PacifiCorp to use deferred accounting for purchased power costs relating to the Hunter plant outage. The order provided that recovery of the deferred expenses would be determined at a future date. The Hunter plant was out of operation from November 24, 2000, until May 8, 2001. On August 24, 2001, PacifiCorp filed an application, in Docket No. 01-035-23, seeking approval of a specific rate schedule to recover the Hunter plant power costs previously deferred. By order issued November 2, 2001, in Docket Nos. 01-035-23 and 01-035-01 (a PacifiCorp general rate proceeding) the Commission allowed continuation of an interim rate increase that had been granted in the general rate proceeding. The continuation would be in lieu of the specific rate schedule proposed by PacifiCorp in Docket No. 01-035-23. Again, the Commission deferred consideration of actual recovery of the Hunter plant power costs for a later determination. The sums collected under the general rate case interim rate increase and their continued accrual under the November 2, 2002 order could be applied to the Hunter plant power costs if recovery were later permitted or would be refunded if recovery were denied.

On September 24, 2001, PacifiCorp filed an application in Docket No. 01-035-29 seeking a deferred accounting order for excess power costs incurred by the Company from May 9, 2001, through September 30, 2001. The Company alleged that its net purchased power costs exceeded the levels which had been allowed by the Commission in setting rates in the

last rate case, Docket No. 01-035-01. The Company sought deferred accounting and future recovery for these excess costs. On November 16, 2001, the Company filed an application seeking recovery of May 9, 2001, through September 30, 2001, excess wholesale purchased power costs through the statutory "pass-through" process provided in Utah Code 54-7-12(3)(d). The Company sought recovery of those expenses which exceeded the levels incorporated in the Docket No. 01-035-01 rate proceeding.

Various parties sought intervention in the three dockets, intervention being granted, in many of the dockets, over time, to the Utah Industrial Energy Consumers (UIEC), composed of Abbott Critical Care, Fairchild Semiconductor, Amoco Petroleum Products/Salt Lake, Holnam, Inc., Kimberly-Clark Corporation, Micron Technology, Inc., Praxair, Inc., Western Zirconium, and Kennecott Utah Copper Corporation; the UAE Intervention Group (UAE), composed of Alliant Aerospace Company, Central Valley Water Reclamation District, Chevron Products Company, ConAgra Beef Company, Geneva Steel, Hexcel Corporation, IHC Hospitals, Inc., S. F. Phosphates Ltd. Company, U.S. Gypsum Company, Western Electrochemical Company and the Utah Association of Energy Users; the Utah Farm Bureau Federation (Farm Bureau); the United States Executive Agencies; Nucor Steel, a division of Nucor Corporation; the Land and Water Fund of the Rockies; the Utah Energy Office; and the Utah Ratepayers Alliance (Ratepayers Alliance), composed of the Salt Lake Community Action Program, the Crossroads Urban Center and Utah Legislative Watch.

The three dockets proceeded independently. The Commission issued various procedural orders and protective orders to facilitate parties' preparation for hearings which were scheduled in the three dockets. At the request of the parties, hearing dates in these matters were continued and rescheduled as the parties prepared for contested adjudicative hearings on the issues raised in each docket and to broach negotiations among the parties. On March 28, 2002, a written stipulation addressing the three dockets was filed by PacifiCorp on behalf of itself and other signatory parties. PacifiCorp requested that the Commission set a hearing to consider adoption of the stipulation. The Commission set hearing dates of April 16 and 17, 2002, for its consideration of the stipulation's terms and whether to accept or reject the stipulation. Notice was given, but due to an error in the notice process, some of the parties did not receive direct notice of the hearing from the Commission. They learned of the hearing from other parties. After consultation with the various parties, it was agreed that a hearing on the merits of the stipulation could be conducted on April 17, 2002.

At the April 17, 2002 hearing, PacifiCorp appeared through attorney Edward A. Hunter; the Division of Public Utilities (DPU) appeared through Michael Ginsberg, Assistant Attorney General; the Committee of Consumer Services (CCS) appeared through Reed Warnick, Assistant Attorney General; the Ratepayers Alliance appeared through attorney Bruce Plenk; the Utah Energy Office appeared through Steven Alder, Assistant Attorney General; the Farm Bureau appeared through attorney Stephen R. Randle; the UAE appeared through attorney Gary Dodge; the UIEC appeared through attorney William Evans; the Executive Agencies of the United States appeared through attorney Captain Kristine Hoffman; Nucor Steel appeared through attorney Peter Mattheis; and the Land and Water Fund appeared through attorney Eric Guidry, who participated telephonically. No party objected to proceeding with the scheduled hearing. Testifying at the hearing were D. Douglas Larson and Mark Widmer, on behalf of PacifiCorp; Judith Johnson, on behalf of the DPU; Dan Gimble and Randall Falkenberg, on behalf of the CCS (the latter appearing telephonically); and Betsy Wolf and Clair Geddes, on behalf of the Ratepayers Alliance.

THE STIPULATION

The March 28, 2002 written stipulation submitted by PacifiCorp, the DPU, the CCS, the UAE and the UIEC (Stipulation) would resolve Docket Nos. 01-035-23, 01-035-29 and 01-35-36. Through the Stipulation, these parties propose the following:

1. Schedule 95, a current tariff applied to Utah customers of PacifiCorp through previous orders issued in Docket Nos. 01-035-01 and 01-035-23, would continue for customer bills rendered through March 31, 2004. On April 1, 2004, Schedule 95 would cease to be applied to customer bills without further order from the Commission.

2. PacifiCorp would retain all past amounts collected under Schedule 95, including interest, through March 31, 2002.

3. PacifiCorp would retain the remaining value of the credit previously allocated to Utah customers in Docket 01-035-01 for the sale of the Centralia plant, and no further credit would be applied to Utah customers. The parties acknowledge that the credit for the Centralia plant sale is currently incorporated into base rates charged for electricity in Utah, but

agree that no adjustment to base rates would be made to compensate for PacifiCorp's retention of the credit until PacifiCorp's next general rate case.

4. Schedule 99, a current tariff applied to Utah customers of PacifiCorp through an order issued in Docket No. 98-2035-04, would cease to be applied to customer bills rendered after March 31, 2002. Schedule 99 applies a "merger credit" to Utah customer bills attributable to the Scottish Power merger.

5. No party would apply for or take any action that could result in an increase in or surcharge on PacifiCorp's Utah retail rates that would become effective prior to January 1, 2004. An increase could be sought if PacifiCorp can demonstrate that, due to extraordinary events beyond its control, its actual earnings for Utah, over a rolling 12 month period, have fallen below 4 percent as calculated in accordance with an exhibit incorporated in the Stipulation. PacifiCorp could request an interim rate increase, during a rate proceeding permitted under the Stipulation, only if its actual earnings had fallen below 5 percent, as calculated pursuant to the exhibit. Proceedings on a rate increase or interim rate request would only proceed if the Commission separately determined that these conditions precedent had been met.

6. PacifiCorp would be precluded from seeking any recovery or deferred accounting treatment of power costs incurred prior to December 31, 2003. Excluded from this prohibition are: 1. Existing Commission orders allowing for deferral of demand side management costs; 2. Docket No. 01-035-02's pending request for deferred accounting treatment of costs associated with the closure of the Trail Mountain operations; 3. New cost-effective demand side management expenditures; and 4. Increased costs that result from new or changed state or federal statutes.

7. In any application for a rate increase filed May through December 2003, PacifiCorp will use and the other parties will not oppose a proposed test year that includes a combination of data beginning October 1, 2002, and projected data through the end of the proposed test year; provided that the test year is updated so that it has twelve months of actual data available for parties' use at any hearing on the application. If the Commission rejects the proposed test year, PacifiCorp is required to normalize its power expenses in any alternative test year proposed, to adjust purchased power expenses incurred during 2001 and the summer of 2002 to the extent they do not reflect levels applicable to the rate effective period.

8. Activities in Docket No. 01-035-35 may continue, but no party shall request a hearing schedule until after January 1, 2004.

Application of the Stipulation's terms would permit PacifiCorp to retain past collections and continue collecting revenues generated under Schedule 95 through March 31, 2004. PacifiCorp would cease to provide any "merger credit" to customers through continued application of Schedule 99. PacifiCorp would also retain the remaining Utah allocated value obtained from the sale of the Centralia plant, which would otherwise be given to Utah customers through continuation of the amortization incorporated in current rates. The overall current rate impact of these provisions would result in an approximate 1 percent increase in customers' rates (essentially through the loss of the Schedule 99 credit). Parties reserve the ability to seek further Commission orders which would alter the contributions to the settlement that various classes may be required to make. Although future rate decrease applications could be filed, the terms preclude future rate increase applications, except in the limited circumstances identified by the Stipulation. The terms prohibit any rate increase to become effective prior to January 1, 2004. The terms also address other matters, in pending or potential rate proceedings, which will be discussed hereafter.

At the hearing on the Stipulation, the Utah Energy Office and the Land and Water Fund clarified that the Stipulation does not preclude any new demand side management programs or proposals which may be developed during the term of the Stipulation. PacifiCorp represented that it anticipated working with interested parties to develop new, cost effective demand side management programs and they would be presented to the Commission for consideration. The Stipulation would only preclude direct rate increases attributable to such new programs. They could be implemented with recovery occurring after the period contemplated in the Stipulation. With that understanding, the Utah Energy Office and the Land and Water Fund did not oppose the Stipulation. Also at the April 17, 2002 hearing, Nucor Steel and the Executive Agencies of the United States indicated that they also supported the Stipulation. The Farm Bureau supported the Stipulation, but advocated a modification of some of the rate spread aspects of the Stipulation.

DISCUSSION

PacifiCorp, the DPU, the CCS, the UIEC and the UAE submitted a written Stipulation as a compromise of the issues which would have been addressed in the Commission's hearings set for these three dockets. As previously noted, the Stipulation also addresses issues which would be associated with rate proceedings that could be considered by the Commission through the year 2003 and rates that would become effective on or before January 1, 2004. Our consideration of the Stipulation is directed by Utah statutory provisions that encourage informal resolution of matters brought before the Commission. Utah Code §54-7-1. We also take direction from the Utah Supreme Court's decision in *Utah Department of Administrative Services v. Public Service Commission*, 658 P.2d 601 (Utah 1983)(hereafter *Wexpro II*).

In *Wexpro II*, the Supreme Court approved resolution, through parties' stipulation, of a remanded controversy before the Commission. The Court noted that "The law has no interest in compelling all disputes to be resolved by litigation. . . . The policy in favor of settlements applies to controversies before regulatory agencies, so long as the settlement is not contrary to law and the public interest is safeguarded by review and approval by the appropriate public authority." 658 P.2d, at 613. In footnote 24, the Court observes that the threshold assurance of the fairness of the terms of a settlement arises from its derivation from parties' "arm's length bargaining in good faith." *Id.* Here, the Stipulation is supported by PacifiCorp, the DPU, the CCS, the UIEC, the UAE, the United States Executive Agencies, Nucor Steel and the Farm Bureau as being in the public interest. It is opposed by the Ratepayers Alliance. No party or participant appearing before the Commission contends that the Stipulation is anything other than an agreement negotiated in good faith by adverse parties. The Ratepayers Alliance's opposition to the Stipulation is driven by its view that the Stipulation obtains results which it believes are not consistent with the public interest. The Ratepayers Alliance does not believe that these dockets should be resolved through stipulation and, in addition, argued that the result is prohibited by the general rule against retroactive ratemaking.

The ultimate conclusion the Commission must make in deciding to accept or reject the proffered Stipulation is whether the Stipulation is in the public interest. In making that determination, we use the argument and evidence the parties submitted in support of and in opposition to the Stipulation at the April 17th hearing. As we will discuss hereafter, we conclude that approval of the Stipulation is in the public interest.

We acknowledge the public policy consideration articulated by the Ratepayers Alliance in support of an adjudicated resolution of issues associated with public utility matters. We must also consider, however, the statutorily stated public policy which encourages stipulated resolution of matters brought before the Commission. They are not mutually exclusive policies. As undertaken in these dockets, the benefits of an open procedural process are obtained through the hearing held on the Stipulation itself. Interested parties were given opportunity to present their cases in support of and in opposition to the Stipulation. As noted by the *Wexpro II* Court, the fairness and reasonableness of the Stipulation is presumed because it results from the good-faith negotiation of adverse parties. We understand the Ratepayers Alliance criticism that it was not brought in at the beginning of the negotiations and had limited opportunity to participate in formulating the terms of the Stipulation, but it had the opportunity to present its concerns about the Stipulation at the hearing.

We consider public interest aspects of the Stipulation in the context of the Supreme Court's approach taken in *Wexpro II*. We find that the Stipulation brings to an end three pending dockets which involve complex, divisive issues whose resolution through continued litigation between the parties would entail extensive, additional costs beyond those already expended to this point. In Docket No. 01-035-23, known as the Hunter Plant docket, the parties have spent considerable time and resources examining the issues in that case. These include possible causes for the plant's outage, the duration of the outage, the appropriateness of the amount of replacement power claimed by PacifiCorp to be associated with the outage, the reasonableness of the costs PacfiCorp claimed are associated with the outage and the possible allocations of the responsibility for the outage, the risks attendant to such an outage, and responsibility for the various expenses arising from the outage. With respect to Docket Nos. 01-035-29 (which sought a deferred accounting order for excess power costs occurring from May through September 2001) and 01-035-36 (which sought pass-through treatment, under Utah statutes, of the same excess power costs)(collectively the two dockets known as the Excess Power Costs dockets), the parties supporting the Stipulation prepared their own substantive analyses in preparation for an adjudicative examination of the issues associated with the Excess Power Costs dockets. These parties independently examined the amount of

purchased power which PacifiCorp claimed to vary from the levels (both in quantity and expense) used by the Commission in setting PacifiCorp's general rates, reviewed PacifiCorp's calculation of the net additional expenses incurred in obtaining the claimed excess purchased power, analyzed PacifiCorp's consistency with the Commission's past rate case treatment of calculating power costs, and explored additional adjustments which they may have proposed if litigation continued.

The supporting parties also identified how the purchased power expenses at issue in these three dockets could influence future rates. Ratemaking proceedings conducted by the Commission utilize a test year formulation in determining what future, prospective rates should be. Past regulatory practice has shown a preference for a test year based on historical data. *See, Mountain Fuel Supply Co. v. Public Service Commission,* 861 P.2d 414 (Utah 1993). Further, the power costs incurred by the Company during the time periods addressed in the three dockets could be included as expenses in a test year used in future ratemaking proceedings.

[T]he adjustment of *future* rates to take into account past events is not technically a *retroactive* process at all. In truth, the rates are set on a wholly prospective basis. Indeed, the *EBA* case recognized that fact when it stated, "Overestimates and underestimates are then taken into account at the next general rate proceeding in an attempt to arrive at a just and reasonable future rate." *Id.* at 421.

Stewart, supra, 885 P.2d, at 778 (italics in original) (citing *Utah Dept. of Business Reg. v. Public Service Comm'n*, 720 P2d 420 (Utah 1986)). The supporting parties presented testimony that if past practice were followed, the test year likely to be used in near term rate applications would include power cost amounts claimed by the Company in these three dockets, or likely even greater levels. The prospect of purchased power costs even greater than the amounts claimed by PacifiCorp in these three dockets arises from our prior order limiting the deferred accounting only for purchased power attributable to the lost generation of the Hunter plant. Purchased power expense calculations in a general rate case would not be so constrained. Testimony was given that PacifiCorp's actual net power costs from March 2001 through February 2002 exceeded one billion dollars, an amount almost twice as large as the amount the Commission allowed in PacifiCorp's last general rate case. The supporting parties testified that the Stipulation provisions addressing future rate applications, power cost adjustments, and test year calculations are intended to preclude or limit the impact of even higher net power costs. The Stipulation addresses these additional issues which, historically, have been the subject of complex, highly disputed contentions between the parties. The Stipulation precludes any rate increase applications prior to May 1, 2003, or any rate increase that would become effective prior to January 1, 2004. An exception to the rate increase prohibition is provided for extraordinary circumstances, beyond the Company's control, where the Company's actual earnings are less than 4 percent for its Utah operations. The parties testified that this provision benefits customers, and their representatives, who will not have to contend with rate increase applications if earnings are above the 4 percent threshold, while still providing the Company an opportunity to seek relief when it becomes constrained for reasons beyond its control. We find that precluding or limiting rate increase applications, while leaving open rate decrease applications, is a direct benefit to customers from their financial viewpoint.

The Stipulation places parameters, in provision number 16, upon which an interim rate increase could be requested by the Company. Additionally, the Stipulation addresses adjustments to the calculation of power costs for the test year that could be used in any rate increase or interim rate increase request which the Company could file under the terms of the Stipulation. The circumstances under which interim rate increases may be awarded, adjustments to power costs, and the calculation of power costs in the appropriate test year used in ratemaking proceedings are significant, complex and contested issues which the parties and the Commission would have to address in future proceedings, but for the terms of the Stipulation. The Ratepayers Alliance did not directly address these unique Stipulation benefits, which go beyond resolving the three subject dockets. We find that, while leaving open all rate decrease applications, the Stipulation provides benefits to customers relative to future rate increases, benefits which would not arise through a litigated resolution of the three dockets. We find that the Stipulation also provides benefits to customers and the Company in resolving test year and expense calculation issues that would otherwise be contested in future rate proceedings and would not be resolved through litigation of the three dockets.

In addition, the Stipulation prohibits the Company from seeking any recovery or deferred accounting treatment for power costs incurred prior to December 31, 2003, with four specified exceptions.[(1)] The Stipulation also prohibits any rate increase from becoming effective prior to January 1, 2004, and delays any request for hearing of Docket No. 01-

035-35 (which could impose a rate mechanism that may increase rates) until after January 1, 2004. Again, we find these are benefits to customers and the Company that would not be available through continued litigation of the three dockets.

The supporting parties' witnesses testified that the litigation risk of adjudicating the issues raised in these three dockets and those arising in future rate proceedings was a major factor in their decision to enter into the Stipulation. They contended that the avoidance of litigation associated with these matters, in agreeing to a stipulated result they believe is comparable to the possible result of litigating these issues, is in the public interest. From the Company's viewpoint, continued litigation of these dockets and the future rate application issues present the risk that contrary conclusions would be reached, setting the stage for recovery of less than what the Company could claim. One Company witness candidly testified that is why the Company agreed to accept less than what it views as full recovery. The DPU and the CCS witnesses as well described the litigation risk they considered in entering into the Stipulation. These parties factored a risk for a litigated determination that would permit the Company to recover amounts higher than what is allowed in the Stipulation.

We find that the Stipulation not only resolves complex issues for which the parties and the Commission would otherwise have to apply their limited resources in continued litigation of the three dockets, but also resolves other significant issues associated with actual or potential proceedings beyond these three dockets. Compromise of the litigation risks, from both the utility's and customers' viewpoints, can also be in the public interest where the parties advocate a stipulation as a reasonable approximation of the net effect that would result from full litigation. These are benefits which support finding that the Stipulation is in the public interest beyond its resolution of the three dockets. *See, Wexpro II, supra,* 658 P.2d, at 615 -15.

In considering the alternative to accepting the Stipulation and its benefits, we review the prospects to be derived from rejecting the Stipulation, litigating these three dockets and future rate increase cases prior to 2004. The parties who made their own analyses in preparation to resolve these issues at contested adjudicative hearings are the parties who support the Stipulation. They testified that acceptance of the Stipulation would avoid the burdens of contested hearings on the issues raised in the Hunter Plant and Excess Power Costs dockets and the future rate cases. They testify that the Stipulation obtains results, which from each of their respective independent views of the overall terms and effect of the Stipulation, would not materially differ from the outcome each would anticipate from further litigation.

As noted above, the Ratepayers Alliance did not directly address the supporting parties' position concerning the benefits applicable to future rate proceedings. In contrast to the supporting parties, the Ratepayers Alliance did not do a separate analysis of the Hunter plant outage or the excess power costs. The Ratepayers Alliance did not indicate what evidence it would present in future proceedings that would contradict the testimony of the supporting parties. The Ratepayers Alliance did not present, or proffer, any evidence upon which the Commission could rely to reject the supporting parties' testimony that the Stipulation provides results similar to contested proceedings that would examine the substantive aspects of these issues. The Ratepayers Alliance witnesses attempted to address these issues through introduction of hearsay (referencing statements made by an individual appearing before a regulatory commission in another state). We recognize that hearsay may be admitted in administrative proceedings, Utah Code 63-46b-8(1)(c), but the Commission may not resolve contested issues upon hearsay, Utah Code §63-46b-10(3). If the position is that the supporting parties' testimony is in error, or that there is an alternative to the Stipulation producing greater benefit, that position should be supported by evidence or a proffer of admissible evidence which contradicts the supporting evidence and identifies the substantive differences between the alternatives. We conclude that the Ratepayers Alliance has not made a sufficient showing that there are greater benefits by rejecting the Stipulation and continuing litigation. *C.f., Mountain Fuel Supply Co. v. Public Service Commission, supra,* 861 P.2d, at 421 -23 (party to show the differences between two competing scenarios for Commission to select between the two).

We accept the Stipulation because we have found that there are greater public interest benefits in accepting the Stipulation compared to further litigation. These benefits extend beyond the resolution of the issues contained in the three specific dockets. We state this point because of the Ratepayers Alliance position concerning the general rule against retroactive ratemaking. We do not find that we are precluded by law from accepting the Stipulation. Even if the rule prevented recovery in the three specific dockets resolved by the Stipulation, the Stipulation brings additional benefits which are in the public interest.

We do not necessarily agree with the premise of the Ratepayers Alliance view on the application of the rule. The rule against retroactive ratemaking, as held by the Utah Supreme Court, "is not absolute and does not rest on a constitutional right of a utility to earnings in excess of what is just and reasonable any more than the rule gives ratepayers a constitutional right to service at rates that are less than just and reasonable." *Justin Stewart, et al. v. Public Service Commission,* 885 P.2d 759, 779 (Utah 1994) (*Stewart).* The three dockets resolved by the Stipulation are not cases where the utility is attempting to retain "earnings in excess of what is just and reasonable." Indeed, past regulatory reports submitted by PacifiCorp and the supporting parties' witnesses' testimony establish that the Company's earnings during the time periods covered by these three dockets were substantially below those anticipated by the authorized return set by the Commission. If the rule has an earnings test, the rule may not be applicable.

In *MCI Telecommunications Corp. v. Public Service Commission,* 840 P.2d 765, 772 (*MCI*), the Utah Supreme Court stated that "[the rule against retroactive ratemaking] does not apply where justice and equity require that adjustments be made for unforeseen windfalls and disasters not caused by the utility." In referencing cases where recovery of past expenses is allowed, *MCI* includes cases based on unexpected loss of generation and cases where a factor is known, but its impact is greater than that which was used in setting rates (e.g., weather effects are considered in normal ratemaking, but severe ice storms provide exceptions to the rule). On the face of PacifiCorp's applications in these three dockets, the circumstances alleged by PacifiCorp (unexpected shutdown of a generation plant and unprecedented prices for purchased power) appear similar to cases where recovery has been allowed. The Stipulation's terms expressly state that the Stipulation is not indicative of the parties' positions on whether the general rule against retroactive ratemaking does or does not apply to the circumstances of these three dockets or other circumstances that may arise in the future. Nor should our acceptance of the Stipulation, or our observations made herein, be construed as any determination on the application of the rule. We conclude that the record does not establish that we are precluded by law from accepting the Stipulation.

PROPOSED MODIFICATIONS TO THE STIPULATION

We now address an issue raised by the Farm Bureau. The Farm Bureau supported the Stipulation, but requested modification of the Stipulation's mechanisms which will affect rates paid by customers. The Farm Bureau premised its argument on its position that the customers it represents, mainly irrigators, had little electric power consumption during the time period associated with the Hunter Plant outage. The Farm Bureau argued that these customers should not contribute revenues allocable to this period. While the argument has some intuitive appeal, we decline to make such adjustment on the record before us. The record is insufficient to conclude that the irrigators are the only group for which this approach has application. The request would also require us to allocate the Stipulation's whole compromise to the disparate instances covered by the three dockets. The supporting parties indicated that they have differing views of the value attributable to each of the separate dockets; their compromise is based on the whole, not individual parts. We find the record insufficient to make the type of allocation required to implement the request. We also note that to the extent that a group or customer has seasonal (or other time sensitive) load variance during the time periods implicated in these dockets, that load variance has application during future time periods as well. Where a customer was consuming little or no electricity during a past time period in which expenses were incurred, the customer is likely to consume little or no electricity in similar, future time periods. In these future, low or no consumption time periods, this customer will be making little or no contribution to the Stipulation's compromise, whereas other, less time-variable customers will be making payments in contribution to the Stipulation's compromise. Intuitively, the future variability of these customers' loads, and their concomitant contribution to the Stipulation's compromise value, may well be in proportion to the Farm Bureau's requested adjustment.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. The Stipulation is approved by the Commission and shall be implemented as accepted by this Order.

2. PacifiCorp shall filed revised tariff provisions necessary to implement the terms of the Stipulation and the Division of Public Utilities shall review the proposed tariff changes to insure that they reflect the proper implementation of the Stipulation as approved by the Commission.

3. This Order constitutes final agency action. Pursuant to Utah Code Ann. § 63-46b-13, an aggrieved party may file, within 20 days after the date of this Order, a written request for rehearing/reconsideration by the Commission. Pursuant to Utah Code Ann. § 54-7-15, failure to file such a request precludes judicial review of the Report and Order. If the Commission fails to issue an order within 20 days after the filing of such request, the request shall be considered denied.

DATED at Salt Lake City, Utah, this 1st day of May, 2002.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/Richard M. Campbell, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

G#29311 (Docket No. 01-035-23)
G#29326 (Docket No. 01-035-29)
G#29327 (Docket No. 01-035-36)

1.The exceptions are for: 1. Existing Commission orders allowing deferral of demand side management costs; 2. A pending request for deferred accounting for mine closure costs; 3. New cost-effective demand side management expenditures; and 4. Costs resulting from new or changes in state or federal law.