

-BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH-

In the Matter of the Petition of	)	<u>DOCKET NO. 02-035-02</u>
MAGNESIUM CORPORATION OF	)	
AMERICA to Require PACIFICORP to	)	<u>ORDER</u>
Purchase Power from MAGCORP and to	)	
Establish Avoided Cost Rates.	)	

ISSUED: November 8, 2002

By the Commission:

On January 18, 2002, Magnesium Corporation of America ("Magcorp") filed a petition with the Commission seeking resolution of disputes that prevented it from executing an agreement with PacifiCorp for the purchase of power from its 36 megawatt gas fired cogeneration facility ("Facility"). PacifiCorp and Magcorp were able to resolve their disputes and, on May 16, 2002, a power purchase agreement ("Agreement") was submitted to the Commission for approval. Hearings on the Agreement were held on May 16, 2002.

At the hearings, PacifiCorp appeared through counsel Edward A. Hunter, of the law firm Stoel Rives, LLP; the Division of Public Utilities ("Division"), Utah Department of Commerce, appeared through Michael Ginsberg, Assistant Attorney General, Utah Attorney General's Office; the Committee of Consumer Services ("Committee"), Utah Department of Commerce, appeared through Reed Warnick, Assistant Attorney General, Utah Attorney General's Office; and Magcorp appeared through Gary A. Dodge, of the law firm Hatch, James & Dodge. Magcorp presented evidence through witness Roger J. Swenson. PacifiCorp presented evidence through witness Bruce W. Griswold. The Division presented evidence through witness Artie Powell. The Committee presented evidence through the testimony of Kelly A. Francone.

DISCUSSION, FINDINGS AND CONCLUSIONS

The Facility is a qualifying facility under the provisions of the Public Utility Regulatory Policies Act ("PURPA") and Federal Energy Regulatory Commission ("FERC") regulations. Under PURPA and the implementing regulations, PacifiCorp is required to purchase power from the Facility at prices that reflect, as determined by the Commission, PacifiCorp's avoided costs.

PacifiCorp's witness testified that the Agreement provides for prices that reflect PacifiCorp's avoided costs for purchases from Magcorp. PacifiCorp's witness explained that Magcorp will, under the Agreement, deliver electric energy, as it determines energy to be available, during PacifiCorp's peak periods. As a result, the price for the energy will be, as specified in the FERC regulations, determined at the time of delivery based on the "Palo Verde Firm, On Peak Price" index adjusted by hourly shaping factors. PacifiCorp's witness stated that this shaped index reflects the market price for the product the Facility provides.

Magcorp, the Division and the Committee also provided testimony supporting Commission approval of the Agreement. Magcorp's witness testified that the Agreement was in both Magcorp's interest and the public interest. The Division and Committee witnesses testified that the Agreement would provide Magcorp with reasonable avoided cost payments for the Facility's output without imposing significant risk on Utah customers.

Based on our analysis of the Agreement and the evidence provided by the parties, we conclude that the rate for purchases from Magcorp under the Agreement reflects PacifiCorp's avoided costs and is just and reasonable. We also conclude that the acquisition of energy from Magcorp under the Agreement is in the public interest and the Agreement should be approved.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The Agreement is hereby approved;
2. The rate for purchases from Magcorp under the Agreement reflects PacifiCorp's avoided costs and is just and reasonable.
3. The purchase of energy from Magcorp under the Agreement is in the public interest.
4. The costs incurred for the purchase of energy under the Agreement which are assigned to the Utah jurisdiction shall be allowed to and be recoverable by PacifiCorp as prudently incurred expenses for ratemaking purposes.
5. The terms concerning price index and shaping factors contained in this Agreement and those terms in the power supply contract between the parties approved by the Commission on May 24, 2002 should be consistent. If there is merit to using different shaping factors in the power supply contract than the shaping factors noted in this Agreement, the shaping factors in this Agreement may be changed to be consistent with those used in the Power supply contract. Our intent is to avoid or reduce the opportunity of either party to arbitrage between the two contracts.

Dated at Salt Lake City, Utah, this 8<sup>th</sup> day of November, 2002.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Richard M. Campbell, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary

G#31517