

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of PacifiCorp)
for Approval of a Master Electric Service)
Agreement between PacifiCorp and IM Flash)
Technologies, LLC)
)
)

DOCKET NO. 06-035-26

ORDER APPROVING SERVICE
AGREEMENT

ISSUED: May 19, 2006

SYNOPSIS

The Commission approves a proposed service agreement between PacifiCorp and IM Flash with minor modifications

By The Commission:

On February 21, 2006, PacifiCorp filed with the Commission an application, supporting information and service agreement (together Application) through which PacifiCorp requested Commission approval of the service agreement to provide electric service to IM Flash Technologies, LLC (IM Flash). IM Flash is a joint venture between Intel Corporation and Micron Technology, Inc. (Micron) which intends to use Micron's existing facilities, located in Lehi, Utah, to produce flash memory. The Lehi facilities are located within the City of Lehi's municipal electric service area. Beginning in 1996, Lehi City, Micron and PacifiCorp have agreed to the provision of electric service through a contract between Micron and PacifiCorp (1996 Contract). Since the expiration of the 1996 Contract, Lehi City has provided electric service to the Micron facilities.

IM Flash and PacifiCorp have reached agreement on terms of service by which PacifiCorp will provide electric service for the new, intended operations at Micron's Lehi facilities. Generally, the proposed service agreement provides that IM Flash will receive retail service from

PacifiCorp, paying \$0.07040 per kWh, through December 31, 2006. PacifiCorp represents that this rate adequately covers its incremental costs to serve the projected load (up to 12 MW) for the term of the agreement. The proposed service agreement permits PacifiCorp to continue to service IM Flash, as a Service Schedule 9 retail customer pursuant to a ten-year renewal option. PacifiCorp and IM Flash state that the expected high load factor for the Lehi facilities provides benefits to PacifiCorp, and correspondingly its other customers, through better utilization of existing resources during off-peak hours, shoulder hours and shoulder months. They argue that the benefits arising from the proposed service agreement along with its prices, terms and conditions create a service agreement that is just and reasonable and approval would be in the public interest.

By letter dated March 23, 2006, the Utah Association of Energy Users, a trade organization of large Utah energy users, stated support for approval of the proposed service agreement. On April 14, 2006, the Division of Public Utilities (Division) submitted its Memorandum providing the Commission with the Division's analysis of the Application and the Division's recommendations. The Division recommended approval of the proposed service agreement with a number of conditions. Through its analysis of the Application, the Division concluded that with the anticipated usage levels and load characteristics, the proposed service to IM Flash could be beneficial and the proposed terms reasonable. However, the analysis also raised concerns regarding the reasonableness of the service terms if IM Flash's usage or load characteristics varied from those presented in the Application. During the analysis, information had been provided that IM Flash could change its electrical demand and usage dramatically during the time period possible under the proposed service agreement. As described in the Memorandum, under some change of

circumstances, service to IM Flash might not be beneficial to PacifiCorp and its other customers. To address these concerns, the Division proposed that Commission approval of the proposed service agreement be conditioned on the following: IM Flash be required to receive any electrical service at embedded costs based rates for a period not less than ten years; if IM Flash's load varies from that presented in the Application, that PacifiCorp file a cost-of-service study for the new load size within 90 days of the load change; and that PacifiCorp bear the risk of any revenue shortfall arising during the time a load change leads to a service cost difference and a corresponding change in rate for service provided to IM Flash.

On May 5, 2006, IM Flash responded to the Division's April 14, 2006, Memorandum and recommendations. IM Flash agreed that a ten-year term was reasonable and noted its willingness to commit to a ten-year service agreement. IM Flash acknowledged the potential impact if IM Flash's usage and demand varied, but also noted its own needs for what it termed reasonable certainty and predictability as to both its supply and pricing of electric service. To address the concerns raised by the Division, IM Flash proposed a contract reopener clause that could be used to deal with changes in demand or usage. IM Flash proposed the use of the following language:

The cost of service study provided by the Company [PacifiCorp] and evaluated by the Division assumed a steady load resulting in a load factor of 95%. IMFT [IM Flash] shall notify the Division in the event its actual load factor decreases from the estimated 95% load factor by fifteen percent or more in any calendar year. Following receipt of such notice, the Division may request that PacifiCorp prepare a new cost of service study for the IMFT load and, upon application by the Division, the Commission may make a prospective adjustment to IMFT's rates or conditions of service, if such an adjustment is shown to be warranted and in the public interest.

IM Flash argued that this reopener clause would adequately address the Division's concerns without causing unintended consequences to IM Flash or PacifiCorp. IM Flash argued that the Division's third condition was improper. IM Flash contended that PacifiCorp should not be required to bear the risks associated with the proposed service contract; noting that PacifiCorp had not solicited the contract, IM Flash had.

By Memorandum submitted May 9, 2006, the Division replied to IM Flash's May 5 response. The Division concluded that use of IM Flash's reopener clause language, with one modification, would adequately address the Division's concerns. The Division recommended that the Commission accept the proposed service contract, with the reopener language proposed by IM Flash, with the modification that notification to the Division must take place no later than January 31st of the year following a change in IM Flash's load factor characteristics. With respect to the aspect of risk sharing, the Division argued that risks associated with the proposed service agreement should be borne by the parties to the agreement, not PacifiCorp's other customers. The Division noted that IM Flash is located outside of PacifiCorp's service territory and PacifiCorp has no utility obligation to serve IM Flash. To the extent the utility ventures to provide such out- of-territory service, it is a business decision of the utility and the out-of-territory customer and associated risks should not be borne by the utility's service-territory customers. As IM Flash is willing to bear the risks, through inclusion of the reopener clause, the Division concludes that the issue is adequately resolved.

On May 10, 2006, the Committee of Consumer Services (Committee) submitted its Memorandum addressing the Application and the proposed reopener clause. As with the

Division, the Committee's analysis indicates that there could be detrimental aspects from the proposed service if IM Flash's load characteristics vary from those assumed in the Application. The Committee concludes that IM Flash's reopener clause proposal acknowledges the Commission's ability to review the terms of service if conditions change, and alter them accordingly. As with the Division, the Committee recommends that the Commission approve the proposed service agreement if the reopener clause is included and the January 31st date is required for the notice of load factor change. Additionally, the Committee also recommends that the Commission require PacifiCorp to perform a cost of service analysis on the proposed service agreement and provide the results of the analysis in PacifiCorp's pending general rate proceeding, PSC Docket No. 06-035-21. The Committee asks that the analysis include sensitivity analysis relating to load size (ranging from 12 – 57 MW) and load factor (less than 95%), identify rate impacts on other customer classes, and be submitted in the general rate proceeding 45 days prior to the date intervenor direct cost-of-service testimony is due.

Based on the Application, Memoranda and other documents submitted by the parties, the Commission concludes that the proposed service agreement may be approved, conditioned upon IM Flash's reopener proposal and notification of any load changes being made by January 31st of the subsequent year following a load change. We agree with the Division and the Committee that the Commission may appropriately consider changes in usage and load characteristics that can occur with a proposed out-of-territory electric service agreement, along with their potential impact on the utility's in-service-territory customers. The potential benefits and detriments that can come from providing such service do weigh in the Commission's

consideration and ultimate determination on whether the proposed service is just and reasonable and in the public interest. In this case, we agree that the proposed service agreement, with the proposed reopener clause proposal, is just and reasonable, in the public interest and can be approved. With the modification, service to be provided to IM Flash can provide an opportunity to make effective use of PacifiCorp's utility resources and the risks of varying load characteristics, from those assumed, are appropriately borne.

We also conclude that notice of change in IM Flash's load characteristics should be communicated so that cost-of-service analysis can be performed and appropriate adjustments in rates or other terms of service may be considered, so that future service under the service agreement remains just and reasonable and in the public interest. The January 31st notice date recommended by the Division should be used. Although we agree with the need to have the opportunity to review changes in load characteristics, we do not believe that the analysis requested by the Committee needs to be required or ordered through this docket. In this docket, we are asked to consider the just and reasonable terms and conditions under which service may be initiated and continued, during the term of the proposed service agreement. The information sought by the Committee's recommended analysis appears to be intended for use in Docket No. 06-035-21; we believe that the information sought would be more appropriately obtained in that docket rather than being ordered in this one.

Wherefore, we enter this ORDER approving the proposed service agreement if modification is made to include the reopener clause proposed by IM Flash and to provide that

DOCKET NO. 06-035-26

-7-

notification of changes in load characteristics is required on or before January 31 of the year subsequent to any change.

DATED at Salt Lake City, Utah, this 19th day of May, 2006.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#49046