

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of)
PacifiCorp for An Increase in Rates)

DOCKET NO. 01-035-01

) ORDER GRANTING AN INTERIM RATE
) INCREASE

ISSUED: February 2, 2001

SHORT TITLE

Interim Rate Increase

SYNOPSIS

The Commission grants an interim rate increase of \$70,000,000, to be effective February 2, 2001.

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By The Commission:

On January 12, 2001, PacifiCorp, doing business as Utah Power and Light (hereafter PacifiCorp or Company), filed a general rate case application (hereafter Application) to increase rates. In the Application, PacifiCorp alleges that its Utah jurisdictional revenues are insufficient to recover the expenses incurred in providing service to its Utah customers. The Company seeks an increase in Utah revenues of approximately \$142 million. On January 17, 2001, PacifiCorp filed a request, styled as an Emergency Motion, asking the Commission to grant an interim rate increase of approximately \$142 million pursuant to Utah Code § 54-7-12(3)(a). After discussions with interested persons, PacifiCorp, the Division of Public Utilities (hereafter Division or DPU), and the Committee of Consumer Services (hereafter Committee or CCS), it was proposed that the Commission set a hearing date to consider the Company's request for an interim rate increase. On January 26, 2001, the Commission issued an amended notice of hearing upon the interim rate request for a hearing to be held on January 30, 2001.

Between the filing of the Application and the hearing on the interim rate request, intervention in these proceedings was sought by, and granted to, the Utah Association of Energy Users Intervention Group, composed of Con Agra Beef Company, Hexcel Corporation, IHC Hospitals, Thiokol Corporation, and Western Electrochemical Company (hereafter UAE); the Utah Industrial Energy Consumers, composed of Abbot Critical Care, Fairchild Semiconductor, Amoco Petroleum Products/Salt Lake, Holnam Incorporated, Kimberly-Clark Corporation, Micron Technology Incorporated, Praxair Incorporated, Western Zirconium, and

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Kennecott Utah Copper Corporation (hereafter UIEC); the United States Executive Agencies (hereafter USEA); Nucor Steel, a division of Nucor Corporation (hereafter Nucor); Emery and Millard Counties, State of Utah (hereafter Emery and Millard or Counties); and the Utah Ratepayers Alliance, composed of the Salt Lake Community Action Program, the Crossroads Urban Center, and Utah Legislative Watch (hereafter Utah Ratepayers Alliance or URA). The Department of Natural Resources, State of Utah, sought intervention prior to the hearing, but its request was not ruled upon by the time of the hearing.

In support of its request for an interim rate increase, PacifiCorp submitted the written testimony of Mark Widmer, Matthew R. Wright, William Griffith, and Karen Clark. In connection with the request for an interim rate increase, the Division submitted the written testimony of Lowell Alt, the UIEC/UAE submitted the written testimony of Alan Chalfant and Michael Gorman, and the Committee presented written testimony of Laura S. Nelson and Dan Gimble. The hearing on the interim rate request was held on January 30 and 31, 2001. At the hearing, PacifiCorp was represented by Edward A. Hunter and John M. Eriksson, of Stoel Rives LLP; UAE was represented by Gary A. Dodge, of Hatch, James & Dodge; UIEC was represented by F. Robert Reeder and William J. Evans, of Parsons, Behle & Latimer; the Counties were represented by Bill Thomas Peters, of Parsons, Davies, Kinghorn and Peters; Nucor was represented by Peter J. Mattheis, of Burchette, Ritts & Stone; and USEA was represented by Capt. Robert C. Cottrell, Jr., AFLSA/ULT. Stephen R. Randle, of Randle, Deamer, McConkie & Lee, appeared and participated at the hearing on behalf of the Utah Farm Bureau without objection by any party. At the hearing, testimony for PacifiCorp was presented by

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Matthew R. Wright, Mark Widmer, Karen Clark, and William Griffith; for the Division by Lowell Alt; for the Committee by Laura S. Nelson, Dan Gimble, and John Legler; and for UIEC and UAE, jointly, by Alan Chalfant and Michael Gorman.

In its Motion, PacifiCorp seeks an interim rate increase of \$142.2 million. The Company alleges it will experience serious financial harm unless the Commission grants the requested interim relief. The Company claims the increase is required in large part due to an unprecedented increase in the Company's purchased power expenses. Approximately \$95 million of the total requested relief is attributable to the extraordinary cost of power purchases in the wholesale power market. The Company testifies that its normalized net power costs during the 1999 test period are approximately \$266 million higher than 1998 normalized net power costs. The 1998 period was used to establish rates during the last general rate case, Docket No. 99-035-10. Based on its analysis of financial indicators, the Company asserts the requested interim relief is necessary to avoid serious financial harm. The Company proposes to spread any increase granted to all tariffed rates on a uniform percentage basis, effective January 22, 2001.

The Division recommends an interim award of \$65 million, in order to allow PacifiCorp an opportunity to maintain a minimum level of financial health during the pendency of the general rate case. The Division conducted a financial analysis using indicators similar to those used by the Company, but does not rely on it. Instead, the Division relies on an analysis of Utah jurisdictional earnings. To be conservative, the Division's position is based on the lowest rate of return awarded to a representative sample of electric utilities, 10 percent, which would

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necessitate an increase of \$105 million based upon the results of 1999 operations filed by the Company in this case. With the expectation that the role of wholesale market transactions will be a disputed issue in the main case, the Division recommends an interim increase limited by the proportion of retail load to total load, or approximately 62 percent of the \$105 million. In its view, an interim award of this amount is conservative and minimizes risk that a refund might be necessary. The Division recommends a spread of any interim increase on a uniform percentage basis to all tariffed rates.

The Committee employs an analysis of financial indicators to support a starting point of \$105 million. This amount is reduced by \$67 million to account for four areas of net power costs that the Committee expects to be disputed in the main case. These are net power cost modeling, fuel costs, the treatment of the gain on the sale of Centralia plant, and the split between the Company's wholesale and retail activity. This results in a recommendation of \$38 million, banded plus or minus by \$15 million to create a recommended range of \$23 million to \$53 million. The Committee recommends a spread of any interim increase on a uniform basis to tariffed usage rate elements only, leaving customer charges and minimum bills unchanged.

Industrial intervenors UIEC and UAE recommend denial of the interim increase request, but at most, based on an analysis of financial indicators, an increase of \$37 million. This analysis shows PacifiCorp under earning, but allows UIEC/UAE to conclude that the Company's financial position is not desperate. In its view, because Utah jurisdictional earnings are higher than total company earnings, Utah should not grant an interim award unless all other jurisdictions also do so.

DISCUSSION, FINDINGS, AND CONCLUSIONS

The Commission last permitted an interim increase in general rate case Docket No. 99-057-20 (Questar Gas Company). In its Order dated January 25, 2000, in that case, the Commission summarized the history of interim increase cases and the conclusions it drew from them applicable to that Docket. Rather than redeveloping that discussion, we quote relevant passages from the Order.

We consider the Motion for interim relief pursuant to 54-7-12(3)(a)

which states:

On its own initiative or in response to an application by a public utility or other party, the commission, after a hearing, may allow any proposed rate increase or decrease, or a reasonable part of the rate increase or decrease, to take effect, subject to the commission's right to order a refund or surcharge, upon the filing of the utility's schedules or at any time during the pendency of its hearing proceedings. The evidence presented in the hearing held pursuant to this subsection need not encompass all issues that may be considered in a rate case hearing held pursuant to Subsection (2)(b), but shall establish an adequate prima facie showing that the interim rate increase or decrease is justified.

This statute was enacted in 1981. It was later modified to permit, among other things, interim rate decreases. Several petitions for interim rate adjustments were considered by this Commission during the first half of the 1980s, culminating in Docket No. 85-049-02, Report and Order issued June 26, 1985, wherein the Commission declined to allow an interim rate increase on grounds the utility faced no financial harm by waiting for a change in rates until the full proceeding had concluded. Because the Commission outlined the scope of its discretion and intent in the 1985 Report and Order, we briefly review it here. . . .

In the June 26, 1985 Report and Order, the Commission states that statutory provisions "contain no guiding principles for

this Commission to follow in deliberating an interim rate request. Thus, the Commission is left to its own discretion and best judgment in applying the statute.” The interim statute was enacted “presumably in response to . . . a period of unusually high inflation, which had the effect of exacerbating the historical problem of regulatory lag Accordingly, we have heretofore granted interim requests in the main as a response to the effects of high inflation on utilities.” The “unique” financial problem rapid inflation creates for utilities having by that time abated, the Commission determined that it should reexamine the basis for granting interim awards.

Past cases reveal three problems with interim proceedings and awards. First, the Commission cannot permit the hearing process to become a “mini rate case.” It must look mainly to the application, but doing so raises fairness and due process problems. In practice, an abbreviated hearing is held in which the application is considered with but cursory responses from parties. Because the process does not offer an opportunity to examine the behavior of all other costs and revenues as possible offsets, the abbreviated hearing may encourage an applicant to present a single issue as the factor motivating the interim request. As a result, the Commission concluded in 1985 that interim increases should be awarded only “in the most narrow of circumstances.”

The second problem when a refund is necessary is the failure of the refund provision to adequately protect ratepayer interests. Refunds are to be made only to “present customers.” Some customers who move during the period between the interim increase and the final order may not receive a refund. Moreover, the interest attached to the refund may not adequately recompense customers. Additionally, the interim award may become a floor for ultimate revenue requirement determination. For these reasons, the Commission found it must be “very circumspect in approving interim rate adjustments.”

Third, because only cursory examination of an Application is permitted, the Commission set the objective to “preserve . . . the status quo among customer classes and on rate design issues, pending the full case.”

Given the decline of inflation and high capital costs, and the problems these unusual conditions cause for utilities, the Commission concluded it must reexamine the basis for interim awards and apply a stricter standard to them. The Commission expressed its increasing reluctance to grant interim increases “short of a compelling showing that failure to grant such an increase would result in serious financial harm to the utility.”

The Commission stated that the record in the Questar Docket and the history of the preceding cases permitted it to conclude, first, that examination of a motion for an interim increase must not become a mini rate case in order to avoid prejudgment, on the basis of incomplete and in fact one-sided information, of the final outcome of the Docket. By relying on financial indicator analysis, the Commission could assess the utility’s financial condition without full examination of all revenue requirement issues. Second, the refund provision does not fully protect ratepayers from the adverse effects of an interim increase of unwarranted magnitude. Therefore, an interim increase must be conservative and must not set a floor for the final rate case outcome. Third, an interim rate increase must be spread to classes of service and rate elements on a basis that does not upset existing rate relationships. These conclusions remain valid and we will apply them in the present Docket. As the Commission did in the Questar Docket, we conclude that record evidence of likely financial harm in the absence of an interim award is the proper basis for our decision.

PacifiCorp’s argument for interim rate relief rests on poor financial performance occasioned largely by untoward changes in wholesale power markets. The Company’s filed results of operations include its proposed adjustments and normalized 2000 net power costs.

This shows Utah jurisdictional earnings on equity for the 12 months ended December 31, 1999, of 4.17 percent, well below the 11 percent rate of return authorized in this jurisdiction.

We do not grant an interim rate increase simply because a utility is under-earning, though under-earning may trigger a general rate case. Not until all evidence has been considered at the end of proceedings can the Commission judge whether claimed under-earning requires a regulatory response. As the Commission has previously stated, to base an interim increase on an under-earning argument is to prejudge the case on the basis of evidence presented largely by the utility itself. This has led the Commission to rely on an analysis of financial indicators.

All parties rely on the financial information filed by the Company and applied to a set of financial indicators with values consistent with an "A" credit rating. The intent is to show what is required to maintain that rating. The record reveals several problems with this analysis in the present Docket, of which five are of primary importance. The first is a disputed ranking of the Company's business risk profile, which determines the numerical values of the financial indicators required for an "A" rating. Second, the Company adjusts its reported financial results in a manner which parties dispute. Third, certain information critical to the financial analyses was not timely made available by the Company to parties. Fourth, there is a subjective or qualitative component independent of the financial indicators that is influential in determining a company's credit rating. In the recent past, PacifiCorp's financial performance has not met objective standards for the "A" rating; nevertheless, that rating has been maintained. Fifth, application of the financial indicators by some parties leads to a result greater than the Company's own request. We conclude that these problems undermine the financial indicator

analysis relied upon by the Commission in previous dockets. The objective basis for decision offered by such an analysis is not present in this Docket.

Parties do not dispute, however, that the Company's current performance is insufficient to meet financial standards consistent with a credit rating of "A", and we so find. The Company's financial performance has deteriorated in recent months. Though we do not prejudge net power cost issues or the reasons for the Company's participation in the wholesale market, we recognize the extraordinary difficulties currently besetting that market, and, to the extent the Company participates in that market to meet wholesale and retail load requirements, the financial threat this presents to the Company. It is clear that recent prices of wholesale purchased power have reached unprecedented heights. For example, the Company testifies that, on the California-Oregon border, prices of wholesale power increased from an average of \$36.69 per MWH in November 1999 to \$312 per MWH in December 2000. We conclude wholesale market difficulties are impairing the Company's financial performance. For the first time in the Company's history, a monthly operating loss has been reported.

The Company's emergency request for interim relief asks for an award of the entire amount it believes necessary to earn a rate of return it recommends as reasonable for this jurisdiction. Of this \$142.2 million request, changes in net power costs amount to \$95 million. The remaining \$47 million is accounted for by general rate case issues, unrelated to net power costs or participation in wholesale markets. This leads us to conclude that at most \$95 million should be considered for interim rate relief. To be conservative while not prejudging net power cost issues, to provide an improvement in the Company's financial performance, to minimize the

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potential for refund, and using the discretion granted to the Commission by statute, we find an award of \$70 million to be appropriate.

In Docket No. 99-057-20, Questar Gas asked the Commission to make the interim rate effective at the earliest next available billing period in its billing cycles. In that Docket, in order to implement the rate change in the earliest full billing cycle, we announced our decision and communicated our conclusion and the interim rate increase amount to the parties weeks prior to the issuance of our written order. To do the same here, we will make the interim rate increase in this case effective on the date of this Order. Based upon our understanding from the existing record in this Docket, PacifiCorp's billing-cycle procedures will permit inclusion of the rate increase beginning with the date of our decision and on the issuance date of this Order. Wherefore we will direct that the interim rate increase will become effective as of the date of this Order to be included in the Company's next billing cycle.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. Utah jurisdictional revenues for the Company may be increased in an interim amount of \$70 million pursuant to Utah Code § 54-7-12(3)(a).
2. This interim increase shall be allocated to the Company's Utah customers through a uniform percentage increase in the usage elements of the Company's rate schedules for tariffed sales in Utah. The increase shall not be applied to customer charges or minimum bills.
3. The effective date for the interim increase shall be February 2, 2001.

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DATED at Salt Lake City, Utah, this 2nd day of February, 2001.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary