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ATTORNEYS FOR NUCOR STEEL, A DIVISION OF NUCOR CORPORATION

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application	)	Docket No. 01-035-01
of PacifiCorp for an Increase in	)	
its Rates and Charges	)	PETITION FOR REHEARING OF
	)	NUCOR STEEL, A DIVISION
	)	OF NUCOR CORPORATION

Pursuant to UTAH ADMIN. CODE R746-100-11(F) and the Commission's *Report and Order* issued September 10, 2001 in the above-captioned proceeding, Nucor Steel, a Division of Nucor Corporation ("Nucor"), hereby submits its Petition for Rehearing of the Commission's *Report and Order*. The conclusions and findings set forth in the *Report and Order* (hereinafter "Order") are inconsistent with the record evidence in this matter and are based upon errors of law. In support of this Petition for Rehearing, Nucor states as follows:

I. LOSSES ON SHORT-TERM TRADING

The Commission found that it lacks the appropriate record to rule on how to address losses on short-term trading activity because it cannot determine "what percentage of short-term wholesale transactions were made on a speculative basis." Order at 14. Similarly, the Commission stated that "a strict comparison of short-term firm sales and purchase prices does not take into account the realities of the different transactions cited by [PacifiCorp] to balance the system. While an hourly analysis provides greater detail, it is still incomplete in calculating an amount that could be identified as truly a loss." *Id.* at 14-15. A requirement that intervenors must delineate short-term sales by type of transaction before shareholders will be required to bear any of the risk of short-term market speculation will, for all practical purposes, insulate PacifiCorp shareholders from any liability for management's speculation in the short-term wholesale market. As a result of the Commission's unreasonable standard, PacifiCorp's net power costs are skewed in their shareholders' favor, resulting in unjust and unreasonable rates to Utah ratepayers. The Commission's ruling unfairly and unlawfully shifts the burden of proof to the intervenors, placing upon them the burden of proving that the Company made speculative sales, rather than requiring the Company to prove its sales reasonable. The Commission should assign the losses on short-term sales to PacifiCorp's shareholders to reflect the speculative nature of PacifiCorp's short-term transactions.

As noted by the Commission, UIEC witness Mr. Chalfant provides "an hourly model that attempts to balance loads and resources, thereby allowing . . . segregat[ion of] short-term wholesale transactions." Order at 12-13. Furthermore, the Commission expressly states that "the record in this case is more fully developed on this issue than in Docket No. 99-035-10," PacifiCorp's last general rate case. Order at 14. The ability to develop further evidence on this issue is at best unclear. Deciphering the intent of a PacifiCorp trader engaging in short-term wholesale transactions in order to determine whether the true nature of the transaction is a speculation, a hedge, an arbitrage, or some other type of transaction, is virtually impossible from a practical standpoint. Nonetheless, the Commission recognizes that such transactions co-exist, and are very different, with the risk of speculative transactions falling squarely on the shoulders of shareholders, and prudent hedging and arbitrage transactions being "legitimate strategies to help lower net power costs" and therefore warranting ratepayer support through rates. Order at 14. To impose on ratepayers *all* the costs associated with losses on all short-term transactions is not just and reasonable.

A utility has the heavy burden of proving it is entitled to rate relief, and must support its application for a rate increase with substantial evidence. *Utah Department of Business Regulation, Division of Public Utilities v. Public Service Commission*, 614 P.2d 1242 (Utah 1980). PacifiCorp has not produced substantial evidence to support recovery of its losses on short-term transactions, and its net power costs should be adjusted accordingly.

Moreover, the Commission expressly found that the Company adopted a wholesale strategy in the short-term markets designed to benefit shareholders – which strategy exposed ratepayers to risk:

> Record evidence supports the UAE/Nucor premise that during or shortly after 1995 PacifiCorp adopted a business strategy emphasizing participation, independent of its obligation to serve native retail load, in wholesale market activity, and sought to position the Company there to capitalize on its view of a future restructured electric industry….It is impossible to conclude other than that the data belies the Company's assertion in this Docket that it always used wholesale transactions for no purpose but to balance load and resources or to reduce cost of service, either with short-term arbitrage transactions or by engaging in short-term purchases to back off more expensive thermal generation. The point is that in entering the contracts to an extent not related simply to the public utility purpose of balancing firm retail load with resources but far beyond such a requirement, the Company exposed ratepayers to substantial risk having little to do with a public utility's obligation to serve.

Order at 33. PacifiCorp produced no evidence supporting the notion that any of these transactions were designed to benefit ratepayers. A decision not to assign any of the losses to shareholders unfairly forces ratepayers to bear the cost of all of the losses on short-term transactions. In light of the overwhelming evidence on the record, the Commission should adopt the recommendation of UIEC witness Chalfant, and protect ratepayers from the losses incurred by the Company on its short-term wholesale transactions. To do otherwise ignores the record evidence and unlawfully shifts the burden of proof to the intervenors.

II. THERMAL AVAILABILITY

In adopting the Company's proposed four-year average for thermal availability (Order at 16), the Commission has applied an incorrect standard and ignored the record evidence. Therefore, the Commission should adopt a thermal availability factor that is based on the longer six-year period.

The basis for the Commission's decision is its opinion that "four-year averages approximate a longer 10-year experience better than do the six-year averages." Order at 16. However, the issue before the Commission is not what average period best reflects thermal availability over the most recent historical 10-year period. If that were the standard, the Commission could simply use the actual 10-year average for thermal availability. This has not been the Commission's practice, or the Commission's goal. Rather, as Division/Committee witness Mr. Falkenberg recognizes, "what we're trying to do is develop a *forward-looking* test year for *forward-looking* rates. And . . . come up with a representation that's as accurate as possible of *future* conditions." Tr. at 1165, ll. 7-11 (emphasis added). The test for the appropriate standard is not which methodology better approximates the past, but which methodology provides a better assessment of expected future conditions.

The record evidence shows that the six-year thermal availability factor suggested by Mr. Falkenberg and United States Executive Agencies ("USEA") witness Joseph Herz better estimates the availability of PacifiCorp's thermal generators during the future rate effective period at issue. PacifiCorp, in support of the adoption of its four-year average, relies solely on

the past, citing its historical performance as compared to industry performance, with no analysis linking that historical performance to expected future performance. Tr. at 443, ll. 1-4 (Widmer). In marked contrast, Messrs. Falkenberg and Herz consider PacifiCorp's past in the context of future expectations. As noted in Nucor's Post-Hearing Brief, PacifiCorp has stated that the large outages that have occurred over the last four years "'are not indicative of a declining trend,'" which stands in contrast to its recommended four-year average. Post-Hearing Brief of Nucor at 4-5 (citing Ex. DPU 9.2 at 1).[1] The proposed six-year average better reflects expected generating unit operations by diminishing the impact of those years that are admittedly not representative of PacifiCorp's future thermal availability (Tr. at 1165, ll. 12-19 (Falkenberg)) and more closely tracking the decline in outage rates evident from PacifiCorp's year 2000 data (Ex. UP&L 5.10R (Widmer Rebuttal); Tr. at 1166, ll. 2-5 (Falkenberg)). Furthermore, if the Commission wishes to put some emphasis on approximation of a 10-year experience, as Mr. Falkenberg noted during the hearing, the six-year average (4.38%) is .04% closer to the 10-year average (4.48%) than is the four-year average (4.62%). Tr. at 1162, ll. 17-20; Ex. UP&L 5.10R (Widmer Rebuttal). As noted by the Commission, "small changes in thermal output can have significant impacts on net power costs." Order at 15. Based upon the foregoing discussion, the Commission should adopt the six-year thermal availability factor proposed by Messrs. Falkenberg and Herz.

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[1] Mr. Falkenberg also referenced PacifiCorp's data response to CCS 16.4, which listed every PacifiCorp outage from 1994 to 2000, and raises questions as to the inclusion of some of the outages in the outage rate calculation. Tr. at 1163, l. 7 to 1164, l. 25.

III. MAINTENANCE HOURS

The Commission also mistakenly adopted the use of PacifiCorp's suggested four-year average for unit maintenance hours. Order at 16. Although the Commission recognizes that maintenance hours for 1997 and 1998 are "disproportionately high in comparison to other years in the 1994 to 1999 period," the Commission nevertheless chooses to ignore these anomalies and states that it "require[s]" a thorough analysis of maintenance requirements to justify a change from a four-year average. *Id.* Utah law and Commission precedent, however, do not require such an analysis and the record evidence supports the use of a six-year scheduled maintenance factor.

As stated previously, a utility must support its application for a rate increase with substantial evidence. *Utah Department of Business Regulation,* 614 P.2d 1242. Here, PacifiCorp provided no evidence supporting the use of a four-year average for maintenance hours other than the calculations themselves. PacifiCorp did nothing to demonstrate why the four-year average is more indicative of future operations than an alternative methodology. In contrast, USEA witness Mr. Herz supports the use of an alternative six-year average scheduled maintenance factor, citing to the maintenance life cycle of PacifiCorp's facilities and PacifiCorp's historical data. Ex. USEA 1 (Herz Direct) at 21-22. The Commission states that patterns in the data are not enough to substantiate a claim. Order at 16 (stating that "[o]n this record we merely have a discussion of patterns in data"). Yet, the assessment of the appropriate number of years to use in calculating an average is fundamentally an issue of statistics. Thus,

the patterns in a data set, if there are patterns, are the best evidence of changing approaches and circumstances. In the instant case, as the Commission recognized, there is a historical pattern that reveals the "disproportionately high" maintenance hours in 1997 and 1998. Ex. USEA 1.4 (Herz Direct) at 1; Order at 16. This is sufficient to constitute substantial evidence that the use of PacifiCorp's proposed four-year average is inappropriate for use in this case. The record evidence therefore supports the Commission's adoption of the six-year average scheduled maintenance factor proposed by Mr. Herz.

IV. USE OF EMBEDDED COST TO CALCULATE REVENUE IMPUTATION FOR SELECTED LONG-TERM WHOLESALE CONTRACTS

The Commission correctly finds that PacifiCorp used short-term purchases to cover long-term, wholesale sales. Order at 32 (finding that while PacifiCorp's thermal and hydro resources were sufficient to serve firm retail load, "[i]t is the inclusion of long-term firm wholesale sales transactions that requires [PacifiCorp] to engage in short-term purchases to meet its total firm load obligations"). Having made this finding, the Commission then correctly attempts to protect ratepayers by imputing revenue to certain long-term wholesale contracts. However, instead of using the Company's test-year, short-term, actual firm purchase prices to develop the revenue imputation necessary to protect ratepayers (which prices correspond to the actual cost of serving the contracts), the Commission relies upon embedded costs (Order at 36), which bear no relation to the costs actually incurred to cover the sales at issue.

The Commission expressly and correctly recognizes that the protection of ratepayers is what is at issue in this proceeding. Order at 31. At the outset, the Commission discusses the Report and Order from the 1990 PacifiCorp general rate case, Docket No. 90-035-06, noting that the Commission therein adopted criteria for regulatory treatment of long-term wholesale sales contracts (hereinafter "1990 Criteria") that were intended to protect retail ratepayers from the risks of PacifiCorp's long-term wholesale sales activity. Order at 27. Alas, the Commission, after stating that the 1990 decision sets the appropriate criteria (*see* Order at 30), then misapplies its own standard.

Pursuant to criterion 4(b) of the 1990 Criteria, in order to obtain recovery of the costs associated with wholesale contracts, the wholesale contracts must cover marginal costs.[2] Because the cost of the short-term purchases (marginal cost) used to serve wholesale contracts are higher than the embedded costs, if the Commission utilizes only embedded costs to calculate the imputed revenues, the Commission will permit the Company to obtain recovery for a contract that does not cover marginal cost.[3] This is contrary to the Commission's standard and contrary to the evidence in this case. In order to provide ratepayer protection and adhere to its own standard, the Commission must utilize the actual, short-term market prices to calculate the

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[2] Order at 29 n.7 (providing 1990 Criteria as cited in Ex. DPU 8 at 9).

[3] Because the Commission utilizes the contracts selected by CCS witness Yankel (Order at 36), there is some sharing of the cost burden associated with the Company's speculative wholesale activities between ratepayers and shareholders. Order at 35; *see also* Ex. CCS 7 (Yankel Direct) at 29; Tr. at 890, ll. 19-20 and 898, ll. 10-18 (Yankel).

revenue imputation, as recommended by Dr. Anderson and Mr. Yankel. *See* Ex. UIEC (Anderson Direct) at 25; Ex. CCS 7SR (Yankel Surrebuttal) at 8; Tr. at 846-47 (Yankel).

V. CONCLUSIONS AND RECOMMENDATIONS

As addressed above, the Commission should make the following modifications to its Order in this docket:

(1) Protect ratepayers from PacifiCorp's losses on its short-term wholesale trading activity by assigning those losses to shareholders;

(2) Utilize six-year thermal availability factors in the NPC Model to better reflect expected future conditions;

(3) Utilize six-year scheduled maintenance factors in the NPC Model to better reflect expected future conditions; and

(4) Impute revenue to long-term wholesale contracts using actual short-term market prices to reflect the cost of serving those contracts.

WHEREFORE, for the reasons set forth above, the Commission should modify its Order in this docket in accordance with the arguments raised herein.

DATED this 1st day of October 2001.

Respectfully submitted,

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