

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of PacifiCorp)
for Approval of an IRP-Based Avoided Cost)
Methodology For QF Projects Larger than One)
Megawatt)

DOCKET NO. 03-035-14

REPORT AND ORDER

ISSUED: June 28, 2004

SHORT TITLE

PacifiCorp Schedule 38 Avoided Cost Cas

SYNOPSIS

The Commission approves a Stipulation providing, for an interim period, avoided energy and capacity cost payments for 20-year purchase contracts from large Qualifying Facility projects based on an interim generic avoided cost methodology. The Stipulation also establishes a Task Force to further study long-term generic avoided cost pricing methodologies, renewable QF issues, the impact of accounting and other debt-related issues and green tags related to QFs.

APPEARANCES:

Edward A. Hunter, Attorney at Law Stoel Rives	For	PacifiCorp
Michael L. Ginsberg Assistant Attorney General	"	Division of Public Utilities
Paul Proctor Assistant Attorney General	"	Committee of Consumer Services
Gregory L. Probst Attorney at Law	"	UAE Intervention Group
Stephen F. Mecham Attorney at Law Callister Nebeker & McCullough	"	Desert Power LP
Gary A. Dodge Attorney at Law Hatch, James & Dodge	"	US Magnesium LLC
Steven F. Alder Assistant Attorney General	"	Utah Energy Office

PROCEDURAL HISTORY

On May 27, 2003, PacifiCorp filed, in response to a February 24, 2003 Commission Order in Docket No. 02-035-T11, an application for approval of an Integrated Resource Plan (“IRP”)-based avoided cost methodology for pricing utility purchases from Qualifying Facility (“QF”) projects larger than the cap in Electric Service Schedule 37. This proposed methodology for determining prices for QF contracts under Electric Service Schedule No. 38 was discussed, at the request of the Commission, in a QF work group which included representatives from the Division of Public Utilities (“Division”), the Committee of Consumer Services (“Committee”) and other interested parties.

On July 30, 2003, the Division filed comments recommending interim approval of the avoided cost methodology, but asked that the QF work group be reconvened to resolve the capacity payment issue. On August 26, 2003, the Committee filed comments recommending the capacity payment issue be resolved before implementing the avoided cost methodology used to determine energy and capacity payments. On September 24, 2003, the Commission ordered the work group to reconvene to resolve the capacity payment issue and PacifiCorp to file within 60 days a revised avoided cost methodology. In response to a request by parties, the Commission extended the filing date to February 3, 2004. In response to a request by PacifiCorp, the Commission issued a Protective Order on December 18, 2003.

On February 3, 2004, PacifiCorp filed direct testimony to support its request for a new generic avoided cost methodology for determining prices for QF contracts under Electric Service Schedule No. 38. On March 24, 2004, the Commission issued an order establishing a procedural schedule for this case, which was revised on May 10, 2004. Parties filed rebuttal testimony on April 12, 2004, and surrebuttal testimony on May 12, 2004. Testimony was given by public witnesses on May 19, 2004.

The Stipulation was presented to the Commission at a hearing on May 20, 2004. Parties to this Stipulation are: PacifiCorp, Division, Committee, UAE Intervention Group (“UAE”), US Magnesium LLC (“US

Magnesium”), Desert Power LP (“Desert Power”) and Utah Energy Office. At the hearing, PacifiCorp, the Division, the Committee, Desert Power and US Magnesium presented testimony in support of the Stipulation. No party presented any testimony in opposition to the Stipulation. The Commission questioned the parties and witnesses regarding various aspects of the Stipulation and the evidence presented. The Commission ruled from the bench approving the Stipulation (attached).

STIPULATION

Without modifying its terms in any way, the following is a brief summary of the Stipulation. In paragraph 5 of the Stipulation, the Parties agree on Schedule 38 avoided cost prices (presented in Appendix A attached to the Stipulation) for an interim period available to QFs as described in the Stipulation and discussed below. The parties agree that the QF could choose, at its option, to base its avoided energy price either on a fixed basis or on a variable basis. The specific avoided cost capacity and energy prices and methodologies are described in the three pages of Appendix A to the Stipulation.

In paragraph 6 of the Stipulation, the Parties agree that the issue of whether a debt-related adjustment should be applied to the QF Prices (presented in Appendix A of the Stipulation) when a QF contract results in an accounting liability (capital lease or consolidation) as a result of applicable accounting standards, such as Emerging Issues Task Force 01-08 (“EITF 01-08”) and/or Financial Interpretation No. 46R (“FIN-46R”), will be determined on a contract-specific basis during the Interim Period. PacifiCorp agrees to provide, no later than two weeks after receiving requested information, its determination whether the contract as structured would likely constitute a capital lease or consolidation. If PacifiCorp and the QF cannot reach agreement on the applicability of debt-related adjustments and/or the amount of any such adjustment, these issues will be presented to the Commission in contract specific cases for the Commission’s determination. The parties also agree that accounting adjustments should not be applied to QF contracts in a manner that unlawfully disadvantages or prejudices a QF project.

In Paragraph 7 of the Stipulation, the Parties agree to the establishment of a Task Force to review and

discuss a long-term avoided cost pricing methodology and the debt-related issues related to EITF 01-08, FIN-46R and credit rating agency debt imputation impacts on QF pricing. A separate renewable QF issues subgroup of the Task Force will be established to review, discuss and make recommendations on appropriate adjustments to intermittent renewable energy QFs and green tags. The parties agree to present a consensus report if possible to the Commission on these issues by November 22, 2004. If no consensus report can be filed, parties may file individual reports with the Commission. The Parties request that the Commission make a determination on the proposals or consensus report by December 20, 2004, or establish additional procedures and determine whether prospective changes should be made to the Stipulation if necessary.

In Paragraphs 8 and 9 of the Stipulation, the Parties agree that the prices presented in Appendix A would be available during an Interim Period from the date of this order approving the Stipulation until the date the Commission issues an Order adopting new avoided cost terms and/or prices for QFs with capacities in excess of the Schedule 37 maximum capacity. The Parties also agree that the prices presented in Appendix A would be available to any QF contract approved during the Interim Period so long as power from the QF project will be available to PacifiCorp no later than June 1, 2007, up to a cumulative cap of 275 MWs for all QF projects approved during the Interim Period. Parties may apply to the Commission, for changes regarding the cap, terms or prices, if a proposed QF project will cause the 275 MW cap to be exceeded.

In addition to these provisions, the Stipulation also provides that the Stipulation is appropriate for resolving issues in Docket Nos. 03-035-38, 04-035-04 and any other QF contract-specific proceeding during the Interim Period and that contract-specific issues will be resolved in separate contract approval dockets, including proposed re-openers for adjustments to account for inflation in operation and maintenance costs that vary significantly from the assumed inflation rates in the capacity payment prices presented in Appendix A and for accounting adjustments referenced in paragraph 6 of the Stipulation.

The parties to this Stipulation agree that it is in the public interest and that all of its terms and conditions

are fair, just and reasonable.

DISCUSSION, FINDINGS AND CONCLUSIONS

Utah Code 54-7-1 encourages settlement of matters before the Commission. This docket was open to all interested parties. Seven parties (listed in the Procedural History) representing a diversity of interests signed the Stipulation. The parties to the Stipulation include PacifiCorp, state agencies with responsibility for the public interest and customer interests, representatives of a diverse group of PacifiCorp customers, from some of the largest industrial to residential and irrigation customers, and current and potential QF projects themselves. Agreement among these diverse parties is strong evidence that the Stipulation is fair, just and reasonable in result. PacifiCorp, the Division, the Committee, Desert Power and US Magnesium provide testimony recommending that the Commission approve the Stipulation. They testify that it is just and reasonable in result and in the public interest. Evidence was presented that negotiations were open to all parties, were thorough and began on April 22 and continued on April 30 and May 3, 4, 18 and 19, 2004.

PacifiCorp testifies that 1) the recommendation in the Division's prefiled testimony for an interim hybrid methodology and proposed Task Force provided the basis for the settlement discussions, 2) that Appendix A avoided cost prices are within the range of filed positions of the parties, 3) the Stipulation's megawatt cap is reasonable based on the short-duration of the Stipulation and is based on representations of parties as to projects that likely could meet the June 1, 2007, eligibility deadline, 4) that a Task Force will provide parties more time to fully analyze the differential revenue requirement and proxy plant methodologies for determining long term avoided cost prices, and 5) that individual contracts, based on the interim prices in the Stipulation, will be brought to the Commission for approval.

The Division testifies that parties participated, for the past year and a half, in a Commission established work group that met and discussed avoided cost pricing methodologies for large QF projects. Consensus on a long term methodology was not reached before PacifiCorp's filing deadline. The Stipulation establishes, with a deadline, a Task Force to continue the effort to develop a long term avoided cost price methodology for large QFs. The Division further

testifies that the Stipulation will help facilitate the removal of any unnecessary barriers for entry of QFs. The Division explains that the Appendix A prices are based on the Division's proposed hybrid methodology with a few reasonable modifications. This hybrid method is described by the Division in testimony as a combination of the differential revenue requirements approach and proxy plant approach and is consistent with the company's IRP.

The Committee testifies that its goal is to ensure proper avoided cost prices to QFs while meeting the PURPA "ratepayer" indifference standard. The Committee testifies that the Stipulation is in the public interest because 1) it provides an opportunity for QFs to come on line by 2005 for a resource deficient utility, 2) it requires QFs to meet certain operating characteristics to get full avoided cost prices, 3) the fuel price is linked to the gas daily index which protects ratepayers, 4) it provides avoided costs that consider characteristics of the entire system, 5) it offers full dispatching or scheduling rights that result in benefits of QF energy and capacity, 6) it provides rates that will allow QF development in Utah, and 7) it establishes the Task Force, with deadlines, to evaluate the differential revenue requirement and proxy plant methods, green tags and debt-related impacts of QF contracts.

US Magnesium and Desert Power testify that they support the Stipulation as reasonable. The United States Executive Agencies were granted intervention, but did not make an appearance at the hearing.

After examining the Stipulation and the evidence contained in the record, the Commission concludes that its terms are just and reasonable and it is just and reasonable in result.

The Commission's approval of these Stipulations, as in similar cases, is not intended to establish any precedent by the Commission.

ORDER

Wherefore it is hereby Ordered that the Stipulation is approved.

This Report and Order constitutes final agency action on PacifiCorp's February 3, 2004, Application.

Pursuant to U.C.A. §63-46b-12, an aggrieved party may file, within 30 days after the date of this Report and Order, a written request for rehearing/reconsideration by the Commission. Pursuant to U.C.A. §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. Judicial review of this Report and Order may be sought pursuant to the Utah Administrative Procedures Act (U.C.A. §§63-46b-1 et seq.) and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 28th day of June, 2004.

/s/ Ric Campbell, Chairman

/s/ Constance B. White, Commissioner

/s/ Ted Boyer, Commissioner

Attest:

/s / Julie Orchard
Commission Secretary

G#39051