- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of PACIFICORP, dba Utah Power & Light Company for Approval of Provisions for the Supply of Electric Service to Magnesium Corporation of America.	)))))	DOCKET NO. 01-035-38 ORDER SETTING RATE FOR JANUARY 1, 2002 THROUGH MAY 24, 2002 TIME PERIOD

ISSUED: November 13, 2003

SYNOPSIS

The Commission sets a rate of $21 per MWh for service provided to Magcorp during January 1, 2002, through May 24, 2002. A monthly, straight line amortization of the arrearage will be made through the term of the current contract ending December 31, 2004.

By the Commission:

HISTORY

This Docket results from the Application of PacifiCorp to resolve disputes it has with Magnesium Corporation of America, subsequently US Magnesium LLC (Magcorp). Magcorp is a large industrial customer which received electric service from PacifiCorp under a special service contract. The contract has been amended eight times since its origination in 1968; the latest service contract expired by its own terms on December 31, 2001. By order issued May 24, 2002, we resolved various disputes which had prevented PacifiCorp and Magcorp from executing a new special service contract for electric service rendered after the December 31, 2001, expiration date. By this order, we resolve the remaining disputed issue, i.e., what are the appropriate terms and conditions, specifically the rate, applicable for electric service provided from December 31, 2001 through May 24, 2002 (Disputed Period).

POSITION OF THE PARTIES

PacifiCorp argues that after the expiration date, December 31, 2001, there was no replacement special contract to govern the terms of the service provided to Magcorp. Therefore, the terms and conditions for the service rendered would be found in the electric service schedules in PacifiCorp's tariffs in effect during the Disputed Period. Using this approach, PacifiCorp argues that the appropriate rate for the Disputed Period is a rate of $29.82 per MWh, derived from the cost of firm service minus the value of interruptibility for system integrity.

Magcorp argues that the rate for the Disputed Period should be a continuation of the rate included in the special contract which expired on December 31, 2001. Magcorp argues that the Commission's January 12, 1998, Order, in PSC Docket No,. 97-035-08, which approved the December 31, 2001, expiring version of the special contract, is the governing Commission determination of the appropriate rate for service. Magcorp further argues that any effort to now set a rate for the Disputed Period that differs from the $18 per MWh used in the special contract approved by the January 12, 1998, Order, would constitute improper retroactive rate making. Magcorp has paid $18 per MWh for service rendered during the Disputed Period while PacifiCorp has billed its proposed rate.

The Division of Public Utilities (DPU) argues that the appropriate rate to be charged during the Disputed Period is the rate set in our May 24, 2002, Order: $21 per Mwh. The DPU argues that where a special contract has expired prior to the resolution of the replacement terms and conditions for subsequent service, historical practice has applied the replacement terms and conditions to the time period intervening between expiration of the old contract and the replacement contract. On this basis, the DPU supports the application of the $21 per Mwh rate established in our May 24, 2002, Order to the Disputed Period. The DPU further argues that the parties' analyses and evidence presented for the May 24, 2002, Order was based on an annual time reference. The parties' evidence for the appropriate terms and conditions, including the rate, to apply after the December 31, 2001, expiration was based on analysis which applied the resulting rate beginning January 1, 2002. Using a different rate for the Disputed Period would not be consistent with the analyses presented, as they were based on annual time periods of January through December, beginning with January 1, 2002.

DISCUSSION

We disagree with Magcorp's contention that we cannot set a rate different from the $18 per MWh rate relied on in our January 12, 1998, Order. The special contract approved in that order had a termination date of December 31, 2001. By its own terms, it was not to govern service after its expiration date. An issue raised in considering approval of the contract was the need to re-evaluate any extension beyond December 31, 2001. On page 2 of our January 12, 1998, Order, we noted that the contract had a specific termination date and no automatic renewal provisions. The submitted contract, and our approval of it, was not intended to continue beyond December 31, 2001, absent Commission review of whether the $18 rate could be found appropriate for service rendered after the contract's specified expiration date.

As there was no contract rate which continued past December 31, 2001, Magcorp's retroactive rate setting argument is in error. Setting a rate for the Disputed Period in these proceedings does not retroactively change an effective rate; by specific terms, the $18 rate

was not effective after December 31, 2001. But for PacifiCorp's argument that other electric service schedules' terms and conditions apply, our action to set a rate for the Disputed Period simply fills the lacuna resulting from the expiration anticipated and contemplated in the contract and our prior order. Nor do we agree with PacifiCorp's position concerning the application of other tariff terms during the Disputed Period. Determination of the rate proposed by PacifiCorp requires calculations and applications beyond what is contained in tariff provisions. There were no applicable interruptible service terms or provisions which could reasonably apply to the service provided to Magcorp during the Disputed Period.

In our May 24, 2002, Order, we concluded that a rate of $21 per MWh was just and reasonable, based on the evidence presented. PacifiCorp and Magcorp introduce no significant substantive evidence upon which we could rely to justify a different rate. Their approach is focused more to explain why, procedurally, we are required to reach their respectively proposed rates. No determinative, contradictory evidence is presented in this portion of the proceedings that supports a cost or benefit based deviation from the $21 rate. Indeed, we agree with the DPU that a different rate would be unjustified. Insufficient evidence is presented to warrant a deviation from our prior conclusions. The evidence and testimony was based on analyses which used January 1, 2002, as their starting date. We obtained the $21 rate based on our consideration of the evidence and our conclusions that a rate of $21, combined with the service interruptions we specified, would be just and reasonable; a resulting contract which had these terms would be found to be in the public interest.

One rationale supporting our May 24, 2002, Order is that the considered balance of the costs and benefits associated with the contemplated replacement contract, which would include the specified terms and conditions, would be just and reasonable under Utah law; e.g., Utah Code 54-3-1. Part of the benefits would be the revenues paid by Magcorp, at the specified $21 rate, for service rendered during the time period used in the analyses and contemplated in our decision, beginning January 1, 2002. If a different rate is to apply

during the Disputed Period, the revenue stream that will be received during the new replacement contract's term will be different than that supporting our May 24, 2002, Order. If the rate paid for service during the Disputed Period varies from the $21 rate presumed, our May 24, 2002, Order may need to be modified to account for the change in anticipated revenues. Under Utah law, the $21 rate was determined to be the just and reasonable rate applicable upon issuance of our May 24, 2002, Order. We find no reason to not make that rate effective from the date of the order to the time it was incorporated into a written service agreement between Magcorp and PacifiCorp. We conclude that the $21 rate should apply during the Disputed Period. There is no sufficient, convincing record evidence to warrant deviating from our prior conclusion that a $21 rate is just and reasonable under the terms of service given to Magcorp. The replacement contract and our prior conclusions are supported by applying the $21 rate beginning January 1, 2002.

Because the rate paid by Magcorp during the Disputed Period is less than the just and reasonable rate determined by us in this Order, an arrearage is due to PacifiCorp. In balancing the interests of Magcorp, PacifiCorp, PacifiCorp's other customers and the public interest, we conclude that it is just and reasonable that Magcorp pay the arrearage through a monthly, straight line amortization over the remaining term of the replacement contract, ending December 31, 2004.

Wherefore, based upon our discussion herein, we enter the following ORDER:

1. The just and reasonable rate to be charged during the January 1, 2002, through May 24, 2002, time period is $21 per Mwh.

2. Magcorp shall pay the arrearage accruing over that time period through a monthly, straight line amortization over the remaining life of the current contract, through December, 2004.

3. Pursuant to Utah Code 63-46b-12 and 54-7-15, agency review or rehearing of this order may be obtained by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code 63-46b-14, 63-46b-16 and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 13th day of November, 2003.

/s/ Richard M. Campbell, Chairman

/s/ Constance B. White, Commissioner

/s/ Ted Boyer, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

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