

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of PacifiCorp)
And ScottishPower plc for an Order Approving) Docket No. 98-2035-04
And Issuance of PacifiCorp Common Stock)
)

**COMMENTS OF MAGNESIUM CORPORATION OF AMERICA ON THE
PROPOSED SETTLEMENT STIPULATION AMONG SCOTTISHPOWER PLC,
PACIFICORP, THE DIVISION OF PUBLIC UTILITIES AND THE COMMITTEE
OF CONSUMER SERVICES AND REQUEST FOR CONDITION ON
APPROVAL**

Magnesium Corporation of America ("Magcorp"), an intervenor in this proceeding, hereby comments on the Stipulation recently submitted by the Applicants, the Division of Public Utilities (the "DPU"), and the Committee of Consumer Services.

Statement of Interest

Magcorp is a large industrial customer served by PacifiCorp under a special contract expiring December 31, 2001. Magcorp's power agreement with PacifiCorp was entered into and approved by the Public Service Commission in 1968 to ensure that more than 500 jobs and related economic benefits would accrue to the State of Utah rather than the State of Washington. The economic benefits to the State of Utah have recently been calculated to be over \$123,000,000 per year.

Magcorp is currently in the middle of upgrading its facilities--at a cost of more than \$50 million -- that will render it one of the most efficient magnesium producers in the world. But without access to economically priced power that allows it, even with the new investment in efficiency, to remain competitive in the world marketplace, the investment will be for naught, and the jobs and industry will be lost.

Just how competitive the magnesium marketplace is has been pointedly demonstrated just this year by the closure of Dow Magnesium, at the time the largest domestic producer of magnesium. With that closure, Magcorp is left as the sole, independent producer of magnesium in the United States.

Comments

Interestingly, the Proposed Settlement Stipulation, although agreed to be in the public interest, ignores and leaves out the largest consumers of electricity in Utah -- the large industrial customers served under special contracts. This omission means that the entities entering into this Agreement have determined to exclude one body of consumer from any participation in merger benefits and, ultimately, from the protection of the Utah public utilities statute.

The situation thus confronting Magcorp is one in which the public utility regulation representatives have abandoned Magcorp and other large industrial customers and placed them beyond the purview of the interests they place within their statutory mandate to protect. Indeed, Lowell Alt, in testimony on behalf of the DPU, has claimed that all special contract customers -- the large industrial infrastructure of Utah and a massive generator of employment and benefits to the whole of the Utah economy -- are subsidized by the remaining ratepayers of Utah. Although he also admitted that these customers generate system benefits, the DPU's outlook creates significant uncertainty for special contract customers as they look to contract expiration, an uncertainty only heightened by the views being espoused in the current Task Force on Special Contracts.

At the same time, as pointed out in the comments of the large Industrial Customers on the Proposed Stipulation, ScottishPower/PacifiCorp have refused to negotiate

with large industrial customers over a renewal or extension of their existing special contracts. That is precisely the experience of Magcorp, who has received an explicit refusal to negotiate anything as to power supply arrangements after December 31, 2001.

It is clear from a review of the Proposed Settlement Stipulation that there are no benefits to be allocated to Magcorp as a result of the merger. It is clear the DPU has concluded that an industrial customer such as Magcorp should be ignored and left to its own devices rather than promoted to the benefit of the Utah economy and protected under the statutory regime. And it is equally clear that ScottishPower/PacifiCorp is unwilling to enter into negotiations under which it would continue to provide power at economic prices to industrial customers such as Magcorp to assure their contribution to the Utah economy.

This set of circumstances puts Magcorp into a totally untenable position. First, it directly threatens Magcorp's viability after expiration of its existing contract. Second, it means that Magcorp, to avoid the threat to its shareholders, its plant and its employees, must immediately commence negotiations or alternative power supply arrangements for the period commencing January 1, 2002 if those arrangements are to be in place by that date: for a contract the size of Magcorp's, putting into place alternative supply arrangements requires years, not days or months, a fact confirmed in the comments of the Large Industrial Customers. Thus, Magcorp must immediately commence negotiations with alternative power suppliers if it is not to risk the viability of its plant and the jobs of its workers.

Magcorp is not looking for a handout. But is not willing to entrust its future to either happenstance or random luck. Accordingly, in light of ScottishPower/PacifiCorp's refusal to negotiate with it, Magcorp has in fact begun seeking out alternative suppliers and

arrangements by which it can ensure its economic viability -- and the continuation of its economic contribution to Utah's economy.

In these circumstances, Magcorp must seek relief. That relief is not to block the merger or seek special benefits. Rather, Magcorp seeks only the assurance through conditioning of the Settlement Agreement that roadblocks will not be interposed in its path -- either by the Commission, the DPU, or ScottishPower/PacifiCorp -- as it seeks to find a long-term power supply that will allow it to assure its economic survival. Having had the door shut in its face by ScottishPower/PacifiCorp; and having been abandoned as a member of a protected class of customer by the DPU (as have all large industrials generally), Magcorp simply requests that it be allowed to be its own retail service area out of which it can contract for long-term power supplies without interdiction by the DPU; by ScottishPower/PacifiCorp -- which refuses to deal with it on a long-term power arrangement; or ultimately, by this Commission upon request of either of the other two entities.

If the Commission would allow Magcorp to constitute its own retail service area, then it can seek out those suppliers willing to serve it on market terms without any claim that it is burdening the retail ratepayers of Utah and with a security that the long-term agreements it enters into will not be subject to regulatory interdiction during their lives.

Requested Relief

Magcorp is not attempting to block the Proposed Settlement Stipulation. Magcorp is not attempting to block the merger. But having been excluded from any of its benefits; having been identified -- erroneously -- as enjoying a subsidy by the retail ratepayers by the DPU since it holds a special contract; and having been denied by ScottishPower/PacifiCorp the opportunity to negotiate a future supply arrangement, Magcorp

simply seeks the opportunity to pursue its own power arrangements so that it can attempt to preserve its economic viability and contribution to the economy of Utah.

Accordingly, Magcorp requests that it be decertified from PacifiCorp's retail service area effective upon the expiration of its power agreement with PacifiCorp. In this manner, Magcorp can seek out alternative suppliers and form such entities and affiliations as will allow it to acquire economically priced supplies of power.¹ Once its contract with PacifiCorp expires, Magcorp can be assured that it will have in place alternative arrangements that will allow it to continue to operate.

This is not to exclude ScottishPower/PacifiCorp from a future ability to serve Magcorp on a mutually agreeable basis after contract termination, should it choose to do so. But Magcorp will be able to choose among potential suppliers, including ScottishPower/PacifiCorp if it so chooses, in order to access economically priced power.

WHEREFORE, Magnesium Corporation of America respectfully requests that as a condition of the approval of the Settlement Agreement it be decertified from ScottishPower/PacifiCorp's service area effective upon the termination of its contract with PacifiCorp and that it be allowed to form, upon application such alternative statutory entity, if any, as to allow it to access alternative power supplies on the wholesale market with delivery to its facilities in western Utah.

Respectfully submitted,

Lee R. Brown

¹ For example, Magcorp may choose to form a cooperative, or join a cooperative, in order to meet its future power needs.

Vice President
Magnesium Corporation of America