

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of
PACIFICORP for an Order Approving an
Agreement with Kennecott

DOCKET NO. 01-035-15

ORDER

ISSUED: May 25, 2001

By The Commission:

This docket arises from a load curtailment proposal (Agreement) involving PacifiCorp and Kennecott Utah Copper (Kennecott). The Agreement proposes a load curtailment whereby Kennecott is to reduce its electric load by reducing the load associated with the North Concentrator (Bonneville) Complex. The concentrator is to be shut down and PacifiCorp is to compensate Kennecott for the load reduction. The Agreement is to be implemented June 1, 2001, and potentially extends to November 1, 2002.

The docket was opened upon PacifiCorp's Motion for Protective Order filed May 2, 2001. PacifiCorp stated that the information, in support of the Agreement, was considered confidential by either PacifiCorp or Kennecott, and that a protective order would facilitate the submission of information and consideration of the Agreement by the regulatory agencies including the Division of Public Utilities (Division) and the Committee of Consumer Services (Committee). The Commission issued a Protective Order and PacifiCorp filed its Application, a proposed Agreement, and supporting material on May 2, 2001. The Division filed its Memorandum and attachments on May 21, 2001. The Division's Memorandum was submitted to PacifiCorp and Kennecott pursuant to the terms of the Protective Order. The Committee submitted its Memorandum and attachments on May 23, 2001. On May 24, 2001, the Committee submitted revised attachments, providing further information. The Committee's Memorandum was also available to PacifiCorp and Kennecott pursuant to the Protective Order. Kennecott provided a May 23, 2001, letter, authored by Roger Johnson, to respond to one recommendation contained in the Committee's Memorandum.

In the memoranda of the Committee and the Division, each agency generally describes the PacifiCorp/Kennecott proposal, the analysis each undertook of the information supplied by PacifiCorp and Kennecott, and the specific conditions each agency suggests the Commission include in order to permit PacifiCorp to execute the Agreement. Both the Division and Committee identify various concerns, which they propose could be addressed through adoption of the specific recommendations they make. The Division and the Committee make a general recommendation that the Commission allow PacifiCorp to execute the Agreement. They each conclude that their analysis of the information submitted in support of the Agreement led them to believe that a public interest benefit could be obtained through operations under the Agreement, if their recommendations are followed. Their analyses support PacifiCorp's contention that the Kennecott load reduction will benefit PacifiCorp, and its retail customers, through reduced wholesale power purchases that could be avoided if Kennecott curtails its load. Within the confines of their analyses, neither the Division nor the Committee finds a basis to reject the Application.

While the Committee and Division present general recommendations to approve, each memorandum notes that the analysis was limited to the information submitted; that the information was limited; that time constraints hindered each agency from conducting a thorough analysis, using independently obtained information; and that the analysis raised issues which precluded them from making an unqualified recommendation to approve. Hence, both the Committee and the Division make specific recommendations that they believe the Commission should include in approving the Application. The Committee and Division note that the public interest determination is made in the context of the expected operations under the Agreement, under conditions which are variable and which have an impact on the analysis and the conclusions to be drawn therefrom. Their recommendations are intended to address their concerns, accommodate possible changes in circumstances, and the sensitivity of the analysis (and public interest determination)

to changes, which the Agreement's terms, conditions, and supporting information, in their view, do not adequately address.

The Commission has concluded that it will not adopt the Committee's or the Division's recommendations, save two. We have determined that we should not, in this Order, impose conditions, which essentially substitute our judgment for that of PacifiCorp's management, in proposing the Agreement. We decline to adopt the other Committee and Division conditions, not because we view their analyses to be faulty or their concerns unwarranted, but because the record for our consideration is limited. Selecting various conditions would cause us to embark upon the very course which the Committee and Division suggest that we reserve, a prudence review. We reserve a prudence review for a future time.

In order to implement the Agreement within the time frame contemplated, the Committee and Division analyses were compressed into a short period of time (which they use as a basis for their additional suggested conditions). Both the Division and Committee memoranda march through the analytical limitations which drive their lists of recommended conditions for approval. Both specifically urge the Commission to reserve prudence review of the Agreement for some future time, which we do. Alteration of the Agreement's terms and conditions might implicitly indicate that the Agreement may not be prudent unless the added condition is included. We specifically conclude, however, that if prudence of the terms, conditions, and operation under the Agreement are to be considered, they will be done when such issues become ripe. We would endeavor to do so upon an adequate record for such considerations.

At this point, we will not make such determinations in an incomplete way, changing some Agreement terms and conditions now and then awaiting some future proceeding(s) to make additional changes. Neither the Committee's, nor the Division's, analysis is considered as a sufficient, final analysis, completely addressing the issues raised by their concerns.

We will accept PacifiCorp's Application representation that the Agreement's proposed load curtailment will benefit PacifiCorp and its customers. We will also accept PacifiCorp's representation that the terms and conditions of the Agreement are adequate. We believe that PacifiCorp negotiated the agreement with better information than that which was submitted in support of the Agreement. Where PacifiCorp is satisfied that the Agreement's terms and conditions are prudent for the variable conditions and time period, over which it will be in force, we will not second guess that position on this record.

We do find it necessary, however, that the load curtailment Agreement obtain a minimum load reduction before any compensation obligation arises. Load curtailment is the stated purpose of the proposed Agreement. Both the Committee and Division advise us that the load reduction, to be obtained from the concentrator shut down, could be offset though Kennecott's electricity consumption in other operations. Therefore, each recommends that actual, overall Kennecott load be reduced by 15 aMW per month as the basis for their public interest benefit conclusions over the range of circumstances contained in their analyses. Kennecott's May 23rd letter indicates that it anticipates that the concentrator shut down, even if other operations are included, will still result in Kennecott's overall load being reduced by more than the referenced 15 aMW per month. The proposed Agreement also references the 15 aMW level. To avoid any ambiguity, we will require that Kennecott's overall load be reduced by

15 aMW per month, for each month, before any load curtailment payment obligation arises under our approval for the proposed load curtailment Agreement. PacifiCorp must identify and establish the load monitoring measures that this requires, and must submit periodic reports to the Division detailing the results achieved. We will impose no further requirement to condition PacifiCorp's decision to enter into the Agreement proposed in its Application. Wherefore the Commission Orders as follows:

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

- PacifiCorp may enter into a load curtailment agreement with Kennecott, as proposed in the Application.
- Any load curtailment agreement executed under this Order shall require that Kennecott's overall load be reduced by at least 15 aMW per month before any load curtailment payment obligation arise.

PacifiCorp shall implement load-monitoring measures to ensure that the necessary overall load reduction has occurred and that the payment amount is correct and warranted for any month for which compensation is to be paid. The Division shall monitor and audit the operations, and reports of operations, as it determines necessary.

DATED at Salt Lake City, Utah, this 25th day of May, 2001.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Richard M. Campbell, Commissioner

Attest:

/s/ Julie Orchard

Commission Secretary