

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of PACIFICORP dba)
UTAH POWER & LIGHT COMPANY for Approval)
of its Proposed Electric Service Schedule)

DOCKET NO. 01-035-23

ORDER

ISSUED: November 2, 2001

SYNOPSIS

By this order the Commission grants PacifiCorp relief by allowing it to retain temporarily a refund created by the Commission's September 10, 2001 decision in Docket No. 01-035-01. The Commission also permits PacifiCorp to maintain rates at current levels until the Commission orders otherwise.

Appearances:

Edward A. Hunter, John M. Eriksson	For	PacifiCorp
Douglas C. Tingey	"	Division of Public Utilities
Reed Warnick	"	Committee of Consumer Services
William J. Evans	"	Utah Industry Energy Consumers
Stephen R. Randle	"	Utah Farm Bureau
Gary A. Dodge	"	Utah Association of Energy Users
Peter J. Mattheis	"	Nucor Steel
Michael R. Lund	"	United States Executive Agencies

By The Commission:

In this case PacifiCorp (or "Company") asks the Commission for interim relief under UCA 54-7-12 (3)(a) by revising Electric Service Schedule No. 95 and delaying refunding money owed to customers that was collected under that schedule during the pendency of Docket No. 01-035-01. At hearing October 16, 2001, PacifiCorp offered evidence showing the negative effects on the Company of purchasing significant amounts of replacement power on the wholesale market when the Hunter I plant failed in November 2000. According to testimony, PacifiCorp paid \$217 million to acquire additional power from other sources to replace Hunter I power. The Company argued that its cash flow would be negative at least through the end of 2001 and that it faces possible credit downgrading. It also recommended that the Commission avoid the expense and complexity of a refund in Docket No. 01-035-01 until this case is decided.

The Division of Public Utilities (Division) supported PacifiCorp's petition, arguing that the sum the Company is seeking in the interim is reasonable given the Company's current financial status. The Division also supported the petition for the purpose of maintaining rate stability. In addition, the Division maintained that the interim relief sought by the Company would help ensure that the customers served when Hunter I was down would help pay any amounts the Commission ultimately determines to be recoverable in this case.

The Committee of Consumer Services (Committee) opposed the Company's petition. The Committee does not believe

PacifiCorp faces a financial emergency that it did not cause for itself and suggested that the power costs at issue in this matter be examined before any relief is given. The Committee also opposed the retention of the \$21 million refund that was the result of the Commission's decision in Docket No. 01-035-01.

The Utah Industrial Energy Consumers (UIEC) opposed PacifiCorp's petition on grounds that the Company's cash flow is not constrained. Additionally, UIEC expects PacifiCorp's financial indicators to improve considerably during the pendency of this case and, therefore, in its judgment, interim relief is unnecessary.

The United States Executive Agencies originally opposed the petition in a written submission but took no active role in the hearing. The Utah Farm Bureau did not oppose the petition. The other participants took no position in the matter.

DISCUSSION

This case presents troubling facts. The Commission just reset PacifiCorp's revenue requirement in Docket No. 01-035-01 at a level that we believe is just and reasonable. Nevertheless, in the short term, it appears that the Company's cash flows are negative as a result of past excess purchased power costs PacifiCorp incurred that generally are not recoverable in a traditional rate case. Rates there are set prospectively which does not contemplate recovery of past costs. That fact may leave the Company in a vulnerable position in the capital markets and could lead to increased credit costs. The issue of retroactive recovery of those power costs is germane to the ultimate decision in this case, but in the interim, the fact remains that those unrecovered costs appear to be negatively affecting PacifiCorp's cash flow.

In addition to negative cash flows, we are concerned about the financial indicators by which rating agencies establish PacifiCorp's credit ratings. Suffice it to say that the indicators are worse today than they were when the Commission granted the Company interim relief last February in Docket No. 01-035-01. Though the credit rating agencies have not downgraded PacifiCorp's bond rating, Moody's has the Company's debt rating under review for possible downgrading and Standard and Poor's has it on credit watch. A downgrade would increase PacifiCorp's future borrowing costs, and, therefore, could negatively affect customers.

The past year has been extraordinary. Prices in the western wholesale market rose to unprecedented levels that caused serious financial strain in the electric industry and for customers throughout the region. PacifiCorp is still feeling ill effects from that period and it is those we are addressing today, at least temporarily. We believe that the circumstances of this case warrant relief, however, the Company should not assume that this decision establishes a floor for recovery in this case or guarantees recovery at all. It still must convincingly make its case for any recovery.

Some parties argued at hearing that UCA 54-7-12 (3)(b)(ii) requires the Commission to issue an immediate refund created by our decision in Docket No. 01-035-01. We disagree. There is no question that that provision mandates that the Commission order the utility to refund any overcollection, and that is the intent of this order and of the Cost of Service order issued today in Docket No. 01-035-01. Customers will get their overpayment with interest. The statute, however, does not require an immediate, lump sum return of the money in every instance. Obviously we must act reasonably, but if there were reason to refund the funds over time, or take other measures to mitigate the financial impact on the utility, the statute does not prohibit that. Were it otherwise, the refund statute could prevent the Commission from performing other significant Commission duties. The statute must be interpreted and applied in a way that reconciles all of the Commission's public interest obligations established in law and by case law.

In the case before us we have evidence that PacifiCorp's financial indicators have deteriorated and that its cash flow is constrained at least through the end of the year. It makes no sense to exacerbate those problems by ordering an immediate refund, further reducing cash flow, and possibly causing a credit downgrade that ultimately could inflict more harm on customers. That would frustrate the very reason for granting relief in this case.

FINDINGS AND CONCLUSIONS

1. PacifiCorp's cash flow is constrained at least through the end of 2001.
2. The financial indicators by which PacifiCorp's credit rating is established have deteriorated since the Commission granted the Company interim relief in Docket No. 01-35-01.

3. PacifiCorp's credit rating is under review for possible downgrading.
4. A credit downgrade could harm customers by increasing the Company's credit costs.
5. The interim relief sought in this matter is reasonable and could prevent a credit downgrade.
6. PacifiCorp has made an adequate prima facie showing under UCA 54-7-12 (3)(a) that interim relief is justified.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. PacifiCorp's petition to revise Electric Service Schedule No. 95 and to retain temporarily the collections under that schedule on an interim basis is granted with the exception of the provision making any refund contingent on final determination in this matter. Though the refund may be used as an offset, the Commission intends that there be a refund when the conditions found in this order warranting relief improve.

2. PacifiCorp will ensure that each customer will be reimbursed based on usage in the event of a refund.

Dated at Salt Lake City, Utah, this 2nd day of November, 2001.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Richard M. Campbell, Commissioner

Attest:

/s/ Julie Orchard

Commission Secretary