

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION )  
OF PACIFICORP DBA UTAH POWER & ) CASE NO. PAC-E-01-16  
LIGHT COMPANY FOR APPROVAL OF )  
INTERIM PROVISIONS FOR THE SUPPLY )  
OF ELECTRIC SERVICE TO MONSANTO ) ORDER NO. 29206  
COMPANY )**

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On December 10, 2001, PacifiCorp dba Utah Power & Light Company (PacifiCorp; Company) filed an Application with the Idaho Public Utilities Commission (Commission) regarding supply of electric service to Monsanto Company (Monsanto). Monsanto's Soda Springs facility produces elemental phosphorous and is PacifiCorp's largest Idaho customer with an electric load of over 200 megawatts. PacifiCorp and Monsanto are engaged in litigation in federal District Court regarding the contract termination date of a Commission approved 1995 Power Supply Agreement (Agreement). Reference Case No. UPL-E-95-4, Order No. 26282.

The Commission by Order No. 28918 issued December 21, 2001, denied the Company's interim rate request. As reflected in the Commission's Order No. 28918, the procedure and process adopted by the Commission in this case was to establish a permanent rate going forward for Monsanto. A true-up mechanism retroactive to the termination date of the existing Agreement as determined by the federal District Court will be used to adjust the difference between the existing rate and the new rate.

On January 27, 2003, the Commission issued final Order No. 29157 in Case No. PAC-E-01-16 deciding relevant contract and rate issues for a new service agreement. As reflected in our Order, the Commission's resolution of issues, while determinative, is not in lieu of a new service agreement which the Commission expects the parties to negotiate, finalize and file for approval.

On February 18, 2003, PacifiCorp filed a Petition for Reconsideration and Clarification of Order No. 29157. On February 25, 2003, Monsanto filed an answer to PacifiCorp's Petition for Reconsideration/Clarification noting its acceptance of the Commission's final Order, providing counter arguments to PacifiCorp's Petition and requesting that PacifiCorp's Petition be denied. Monsanto also submitted a proposed draft service agreement for Commission approval. The Commission has reviewed and considered

PacifiCorp's Petition for Reconsideration/Clarification, Monsanto's Reply, our final Order No. 29157 and the underlying record in this case. We deny the Petition and provide clarification on some points.

**Petition for Reconsideration**

PacifiCorp raises four points in its Petition for Reconsideration.

1. PacifiCorp requests reconsideration of the Commission's determination in its final Order not to prorate or otherwise adjust monthly credits for interruptible/curtailment options to reflect the monthly availability of furnace load. The Order requires that PacifiCorp compensate Monsanto for the value of curtailment and interruptibility by means of a fixed discounted monthly demand charge. This pricing design, the Company contends, will allow Monsanto to receive compensation for curtailment and interruptibility which it may, by its own unilateral election or otherwise, not provide or not be able to provide.

*Commission Findings*

PacifiCorp makes the same argument in its Petition for Reconsideration as it did in comments on the Commission's Proposed Order. In our Order we rejected the variable credit methodology proposed by PacifiCorp in favor of a fixed discounted monthly demand charge. While a credit methodology may provide the Company with greater preciseness in monthly calculations, in light of the limited number of hours in interruption per year and the periods of the year that interruptions actually provide value to PacifiCorp, it seems unreasonable to reduce the credit on demand year round. The Commission recognizes that Monsanto furnace outages could result in higher operating reserve costs for PacifiCorp. We are unwilling, however, to design a variable service rate for Monsanto based on a "what if" scenario when to do so provides only marginal benefits and sacrifices the price certainty desired by Monsanto for its business planning and forecasting.

In its reply to PacifiCorp's Petition, as at hearing, Monsanto states that it has historically run its furnaces all out and plans to continue to do so in the future. Operating its furnaces in such a manner allows it to maximize production and achieve operating efficiencies. We have no reason to doubt Monsanto's claims, and PacifiCorp offers no proof that Monsanto has plans to change its method of operation.

Based on the foregoing, we find PacifiCorp's argument to be unpersuasive and deny reconsideration on this point.

2. PacifiCorp requests reconsideration on what it states was the Commission's determination in its final Order that system integrity interruption be limited to 95 megawatts. PacifiCorp contends for system integrity, the Company should be allowed to interrupt Monsanto's entire furnace load.

*Commission Findings*

Although framed as a request for reconsideration, in light of what we find to be the Company's misinterpretation of our Order, we find it reasonable to recharacterize the request as one for clarification. Reference Rule 325, Commission Rules of Procedure, IDAPA 31.01.01.325. The Company, we find, is correct in its analysis. The record does not support limiting system interruption to 95 MW. Monsanto's protestation notwithstanding, for system integrity the Company should be allowed to interrupt Monsanto's entire furnace load. Accordingly, we clarify that the original intent of our Order was that interruptions for system integrity are to be provided at 162 MW for 12 hours per year and operating reserves are to be provided at 95 MW for 288 hours per year.

3. PacifiCorp requests clarification or reconsideration of the Commission's final Order with respect to the amount of Monsanto's load to which firm pricing shall apply. PacifiCorp contends that all of Monsanto's firm load, not just 9 MW, should be billed as firm. The Commission in its final Order applied the firm rate to the first 9 MW of Monsanto's non-furnace load at 100% load factor.

PacifiCorp by affidavit states that the 9 MW is served off a service line that cannot be interrupted without interrupting other customers. Historically, the Company notes that Monsanto has received up to 12 MW over this service line. Monsanto in reply contends that the amount over 9 MW is additional auxiliary load which is interruptible. The auxiliary load, Monsanto states, includes fans, motors and other equipment related to the operation of the furnaces.

*Commission Findings*

The Commission notes that on page 3 of PacifiCorp's comments regarding Proposed Order No. 29157, PacifiCorp states

The Company proposes to apply the Commission-ordered firm rate of . . . to Monsanto's firm, non-furnace load *viz.*, the first approximately 9 MW of service at 100% load factor or, alternately, the amount of non-furnace load specifically identified and metered.

The Commission finds that in ordering that the firm rate be applied to the first 9 MW of Monsanto's load at 100% load factor, we provided the Company with the treatment it requested. We continue to find the alternative we selected to be just and reasonable and deny the Company's request for reconsideration on this point.

4. PacifiCorp requests clarification with respect to the "true up" under the Commission's final Order and Interlocutory Order No. 28918 (December 21, 2001) and the implementation of the pricing approved in the Commission's final Order. PacifiCorp requests clarification as to whether the Commission intends that the true-up shall account for the fact that Monsanto already received payments for operating reserve curtailment under separate agreements during certain months of 2002.

*Commission Findings*

The Commission notes that the federal District Court has yet to decide the termination date of the 1995 service Agreement. We find PacifiCorp's request for clarification on this issue to be premature.

**Service Contract**

Monsanto with its reply submits a draft contract for approval that it states complies with the Commission's Order. PacifiCorp objects to Monsanto's contract submission and contends that some contract terms are still unresolved and that the contract itself as a matter of process should be negotiated by the parties and not presented to the Commission in draft form.

*Commission Findings*

The Commission notes that in our final Order we informed the parties that we expected a new electric service agreement to be negotiated, finalized and filed with this Commission. Neither party requested a stay of that portion of our Order. The rates we approve were by party agreement to be incorporated in a new service agreement effective January 1, 2003. We are informed that the parties are engaged in contract negotiations. We find it reasonable assuming good faith on the part of both parties to require submittal of a signed agreement within 45 days. We accordingly will take no action on the draft agreement submitted unilaterally by Monsanto.

**Intervenor Funding**

On October 29, 2002, the Idaho Irrigation Pumpers Association, Inc. (Irrigators) filed an Application for Intervenor Funding in Case No. PAC-E-01-16. Reference *Idaho Code* § 61-

617A; IDAPA 31.01.01.161-164. Following issuance of the Commission's final Order No. 29157, the Irrigators filed a supplement to their Application specifically addressing the requirements of *Idaho Code* § 61-617A(2)(a) addressing whether the Irrigators' participation materially contributed to the decision rendered by the Commission and *Idaho Code* § 61-617A(2)(c) addressing whether the Irrigators' recommendation to the Commission differed materially from the testimony and exhibits of the Commission Staff.

The Irrigators in their testimony addressed PacifiCorp's proposal (1) to do away with interruptible rates/tariffs, (2) base pricing solely on cost of service principles and (3) require that customers negotiate separate short-term contracts with the Company to provide interruptibility. The Irrigators supported the continued use of interruptible rates and tariffs, as did Staff, and advocated a pricing methodology similar to that proposed by Commission Staff. The Irrigators note in their supplemental filing that the testimony of their witness addressed the relevant and material issues considered by the Commission in this case. While the Commission may not have specifically agreed with or adopted the Irrigators' recommendations, exact positions or reasoning, the Irrigators contend that this fact does not preclude an award of intervenor funding.

While noting that the testimony of its witness relating to contract structure, system versus situs treatment, and valuation methodology were similar in nature to Commission Staff's recommendation, Irrigators state that their position differed materially from that of Commission Staff with respect to the regulatory policy stance the Commission should take toward PacifiCorp's view of interruptibility and with respect to the valuation methodology that should be used to provide the proper incentive to PacifiCorp's customers to provide this valuable demand side management (DSM) resource. The policy recommendations cited by the Irrigators are (1) that interruptibility is a valuable DSM and ratemaking tool and (2) that the peaker method to valuing interruptibility sends the appropriate pricing signal to PacifiCorp's customers.

The Irrigators request intervenor funding totaling \$23,373.19 for legal and consulting fees. The amount requested is more specifically detailed as follows:

Legal – Eric L. Olsen	
Legal Fees: 75.60 hours @\$150	\$11,340.00
Costs: travel, meals, lodging and miscellaneous	<u>    496.79</u>
TOTAL	\$11,836.79

Consulting Fees – Tony Yankel	
Consulting Fees: 106.5 hours @ \$100	\$10,650.00
Costs: travel, meals, lodging, postage, photocopies and miscellaneous expenses	<u>886.40</u>
TOTAL	<u>\$11,536.40</u>

TOTAL \$23,373.19

As reflected in their Application, the Irrigators are an Idaho non-profit organization qualified under Internal Revenue Code Section 501(c)(5) representing farm interests in electric utility rate matters affecting farmers in southern and central Idaho. The Irrigators rely solely upon dues and contributions voluntarily paid by members, together with intervenor funding to support activities and participation in rate cases. The Irrigators contend that the payment of fees and costs related to its participation in this proceeding would constitute a financial hardship. The Irrigators represent that its testimony and arguments addressed issues of concern to the general body of users or consumers and that its advocacy was not limited to any specific customer class.

*Commission Findings*

The Commission has reviewed and considered the Application for Intervenor Funding filed by the Idaho Irrigation Pumpers Association, Inc. and the related statute (*Idaho Code* § 61-617A) and Rules (IDAPA 31.01.01.161-165). We have also reviewed the underlying record and transcript of proceedings, and our final Order No. 29157. We find that the Application of the Irrigators was timely filed and satisfies the procedural requirements set forth in Rules 161-165 of the Commission’s Rules of Procedure.

Rule 165 of the Commission’s Rules of Procedure contains the following “substantive” requirements:

- (a) The Irrigators involvement must have materially contributed to the Commission’s final decision,
- (b) The costs of intervention award must be reasonable in amount,
- (c) The costs of intervention must be a significant hardship for the Irrigators,
- (d) The recommendations of the Irrigators must have differed materially from the testimony and exhibits of the Commission Staff, and
- (e) The Irrigators must have addressed issues of concern to the general body of ratepayers.

While the Commission appreciates the participation of the Irrigators in this case, neither the Irrigators themselves, nor this Commission, we find, can articulate with any specificity how the Irrigators' testimony on relevant issues differed from the testimony and exhibits of Commission Staff. While unable to articulate a material difference, however, their testimony, because it was independently prepared, did provide the Commission with additional support for our findings. The intervenor funding fee that we find fair, just and reasonable to award the Irrigators in this case is \$5,000. We find that these costs and expenses do constitute a significant hardship for the Irrigators. We find the Irrigators contribution while mostly of concern to the Irrigators and other interruptible customers, also had some generic benefit to the general body of customers.

### **CONCLUSIONS OF LAW**

The Idaho Public Utilities Commission has jurisdiction over this matter and over PacifiCorp dba Utah Power & Light Company, an electric utility, and its service contract with Monsanto Company pursuant to the jurisdiction granted under Title 61 of the Idaho Code and the Commission's Rules of Procedure, IDAPA 31.01.01.000 *et seq.*

### **ORDER**

In consideration of the foregoing and as more particularly described above, IT IS HEREBY ORDERED and the Commission does hereby deny PacifiCorp's Petition for Reconsideration and provides limited clarification set forth above.

IT IS FURTHER ORDERED and the Commission does hereby award Intervenor Funding to the Idaho Irrigation Pumpers Association, Inc. in the amount of \$5,000. Reference *Idaho Code* § 61-617A. PacifiCorp is directed to pay said amount to the Idaho Irrigation Pumpers Association, Inc. within 28 days from the date of this Order.

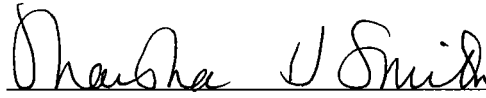
IT IS FURTHER ORDERED and the Commission expects PacifiCorp and Monsanto to negotiate in good faith and to submit a signed Service Agreement conforming with our Order for Commission consideration and approval within 45 days.

THIS IS A FINAL ORDER ON RECONSIDERATION. Any party aggrieved by this Order or other final or interlocutory Orders previously issued in this Case No. PAC-E-01-16 may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules. See *Idaho Code* § 61-627.

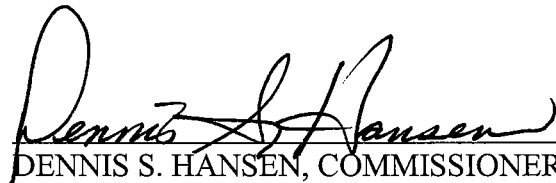
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 14<sup>th</sup>  
day of March 2003.



PAUL KJELLANDER, PRESIDENT




MARSHA H. SMITH, COMMISSIONER



DENNIS S. HANSEN, COMMISSIONER

ATTEST:



Jean D. Jewell  
Commission Secretary

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