

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)
OF PACIFICORP DBA UTAH POWER &) **CASE NO. PAC-E-02-1**
LIGHT COMPANY FOR APPROVAL OF)
CHANGES TO ITS ELECTRIC SERVICE) **NOTICE OF HEARING**
SCHEDULES.) **ON RECONSIDERATION**
)
) **NOTICE OF SCHEDULING**
)
) **INTERLOCUTORY**
) **ORDER NO. 29079**

BACKGROUND

On January 7, 2002, PacifiCorp dba Utah Power & Light Company (PacifiCorp; Company) filed an Application with the Idaho Public Utilities Commission (Commission) requesting approval of proposed electric service schedules. The Company's Application had four parts: 1) a proposed Schedule 34 – Bonneville Power Administration (BPA) Exchange Credit distribution; 2) a proposed electric service schedule adjusting rates to bring customer classes closer to cost-of-service (COS); 3) a proposed Power Cost Surcharge; and 4) a proposed Rate Mitigation Adjustment (RMA) designed so that no customer classes would have an increase during the two-year period of the surcharge.

The Company's Application was processed in two parts. The first dealt with the BPA credit and was processed using Modified Procedure, i.e., pursuant to written submission rather than hearing. IDAPA 31.01.01.201-204. The second part dealt with the Company's request to recover through a Power Cost Surcharge \$38 million in excess net power supply costs accrued during the period November 2000 through October 2001 and to implement other proposed changes.

The BPA credit was approved in Interlocutory Order No. 28946 and became effective February 1, 2002. The BPA credit is a distribution of exchange benefits negotiated by Northwest utilities and state regulatory Commissions in a May 2001 Settlement Agreement with the BPA. As contemplated by the 1980 Pacific Northwest Electric Power Planning and Conservation Act, the credit passes the benefits of the Federal Columbia River Power System to PacifiCorp's qualifying residential and small farm customers in eastern Idaho.

On April 11, 2002, a Stipulation and Settlement was filed by PacifiCorp, Monsanto Company, the Idaho Irrigation Pumpers Association and the Commission Staff regarding all other issues. The proposed settlement: 1) limited recovery of excess power costs to \$25 million; 2) accelerated the remaining two years of the PacifiCorp/ScottishPower merger credit to reduce the excess power costs by \$2.3 million; 3) established a Power Cost Surcharge designed to recover excess power supply costs of \$22.7 million over a two-year period; 4) restructured the irrigation tariff schedules to provide firm power; and 5) adjusted revenue responsibility to bring the irrigators closer to cost of service.

On June 7, 2002, the Commission in final Order No. 29034, reaffirmed its previous authorization of the BPA Exchange Credit distribution. The Commission also approved the proposed Stipulation and Settlement; and, for failure to provide the individual customer notice required by Rule 102 of the Commission's Customer Information Rules, the Commission in its Order directed PacifiCorp to provide each customer with a one time credit of \$20.00. IDAPA 31.21.02.102.

**PETITIONS FOR RECONSIDERATION OF ORDER NO. 29034
AND FOR STAY OF CIVIL PENALTY**

Petitions for Reconsideration of Order No. 29034 were filed by Stanley Searle on June 25, Tim Shurtz on June 26 and PacifiCorp on June 28, 2002. Reference *Idaho Code* § 61-626; IDAPA 3.01.01.331-333. Answers to the Petitions filed by Mr. Shurtz and Mr. Searle were filed by PacifiCorp on July 3, 2002.

On June 28, 2002, PacifiCorp also filed an Emergency Petition for Stay of the Civil Penalty imposed by Commission Order No. 29034. Reference IDAPA 31.01.01.324, 333; *Idaho Code* 61-626.

The Commission in this interlocutory Order and for reasons set forth below denies the Reconsideration Petitions filed by Mr. Shurtz and Mr. Searle, grants PacifiCorp's Petitions for Reconsideration and Stay and establishes related scheduling for prefile and hearing.

Petitions for Reconsideration – Timothy Shurtz and Stanley Searle

Timothy Shurtz

Mr. Shurtz in his Petition addresses 1) the Commission's treatment of the BPA credit, 2) the Hunter Plant failure (requests Commission clarification of "most favored nation" clause in ScottishPower merger case Order, i.e., if another jurisdiction rules against or limits

recovery of these costs, will the Company be directed to pass similar benefits to Idaho customers), 3) the rate moratorium (contends that all excess power costs during the two-year rate moratorium should be thrown out) and 4) the Company's lack of individual notice (Rule 102) suggesting that the credit is insufficient and that it is up to the Commission to redress the many damages suffered by all of the customers of Utah Power because of the "unintentional or intentional misinformation or lack of information by Utah Power."

PacifiCorp in its Answer contends that Mr. Shurtz has failed to sustain his burden as a petitioner on reconsideration to show that the Commission's Order No. 29034 or any issue decided in the Order is "unreasonable, unlawful, erroneous or not in conformity with the law." Reference Commission Rule of Procedure 331.01; *Idaho Code* § 61-626. PacifiCorp recommends that the Petition be denied. The Company contends that the "most favored nation" provision relied upon by Mr. Shurtz does not apply to this proceeding; that although not broken out into specific cost components, the Order correctly found that the proposed power supply cost settlement amount is fair, just and reasonable; that the Commission correctly interpreted ScottishPower Merger Condition No. 2 to allow PacifiCorp to recover its excess power costs in rates effective after January 1, 2002; and that there is no basis on the record for increasing the civil penalty imposed by the Commission.

Stanley Searle

Mr. Searle in his Petition addressed 1) the potential for preferential treatment in the Company's proposal to provide continued interruptible service to only a limited number of large irrigators (on a first-come first-serve basis); 2) the Company's Idaho presence and accessibility to customers (or lack thereof) and 3) the Company's failure to comply with the Rule 102 notice requirement and the size of the related credit.

Mr. Searle contends that had the Company provided notice in January as required, customers could have been given time to provide more and better evidence, and the State Legislature would have still been in session to help provide customers with a reasonable resolution. Mr. Searle contends that the evidence of the Company's willingness to misinform and leave the public in the dark is a matter of public record. Mr. Searle argues that to reduce the fine from \$108,772,000 to \$1,087,720 is to make it more profitable for the Company to violate the law than obey.

PacifiCorp in its Answer contends that Mr. Searle has failed to sustain his burden as a petitioner on reconsideration to show that the Commission's Order No. 29034 or any issue decided in the Order is "unreasonable, unlawful, erroneous or not in conformity with the law." Reference Commission Rule of Procedure 331.01; *Idaho Code* § 61-626. PacifiCorp recommends that the Petition be denied. PacifiCorp contends that its agreement to discuss individual interruptibility or load control contracts for the 2002 irrigation season with not more than 15 large irrigators is reasonable and non-discriminatory. The Company states that the agreement is intended to be a non-discriminatory approach (first-come first-serve). The Company notes that the irrigators agreed that 15 was a reasonable number given the short duration of time remaining between the time settlement agreement was negotiated and the 2002 irrigation season. PacifiCorp contends that it complied with the relevant statutory notice provision by keeping its Application on file and available for inspection at its local offices. The Company further contends that there is no basis on the record for increasing the civil penalty imposed by the Commission.

Commission Findings

The Commission has reviewed the filings of record in Case No. PAC-E-02-1 including its final Order No. 29034 and the underlying transcript of proceedings. We have also reviewed and considered the Petitions of Reconsideration filed by Timothy J. Shurtz, and Stanley Searle.

The Commission's Procedural Rule 331.01 provides that petitions for reconsideration "must set forth specifically the ground or grounds why the petitioner contends that the order or rule is unreasonable, unlawful, erroneous or not in conformity with the law, and a statement of the nature and quantity of evidence or argument that the petitioner will offer if reconsideration is granted." IDAPA 31.01.01.331.01. "Issues on reconsideration that are not supported by specific explanation may be dismissed." Rule 332 (IDAPA 31.01.01.332). The Commission may grant reconsideration upon the filing of a petition for reconsideration or upon its own motion. *Id.* The Commission may grant reconsideration by rehearing if it intends to take additional evidence or oral argument. When the grounds for reconsideration present only issues of law or issues of fact not requiring a hearing, then the Commission may grant reconsideration by submission of briefs, or other written format.

Reconsideration provides an opportunity for an aggrieved party to bring to the Commission's attention any question previously determined or omitted in a matter. Likewise, reconsideration provides the Commission with an opportunity to rectify any mistake or omission. *Washington Water Power Co. v. Kootenai Environmental Alliance*, 99 Idaho 875, 591 P.2d 122 (1979).

Addressing the petitions filed by Mr. Shurtz and Mr. Searle, we note that the petitioners offer no new relevant evidence or argument for consideration. Nor do they contend with any specificity how the Commission's Order was "unreasonable, unlawful, erroneous or not in conformity with law." Reference IDAPA 31.01.01.331.01; *Idaho Code* § 61-626. As reflected above, reconsideration provides an opportunity for a party to bring to the Commission's attention any issue previously determined and thereby provides the Commission with an opportunity to rectify any mistake or omission. In reviewing our Order and the issues raised by Mr. Shurtz and Mr. Searle, we find there is substantial and competent evidence to support our decision. We accordingly deny the petitions. Regarding points raised as to the Company's communication with customers, and its presence and assessability to customers, we find that the Company should review its practices and physical facilities and reduce or eliminate obstacles that may inhibit effective communication with customers and report actions taken to us.

Petition for Reconsideration -- PacifiCorp

PacifiCorp requests reconsideration of that portion of the Commission's Order No. 29034 that required the Company to provide each customer a credit of \$20 (or a total of \$1,087,720) within 90 days of the service date of the Order for failure to comply with the individual notice requirement of Rule 102 of the Commission's Customer Information Rules. Reference IDAPA 31.21.02.102.

Reconsideration is warranted the Company contends because: (1) Rule 102 does not apply to this proceeding which is neither a general nor a tracker rate case; (2) even if Rule 102 applies and bill stuffer-notice as prescribed therein was required, the Commission's finding that it could impose a remedy pursuant to Idaho Code, Chapter 61, Title 7 for violation of that rule was contrary to the law and, accordingly, any remedy imposed thereunder unlawful; (3) even if Rule 102 applies, the Commission failed to afford the Company a full and fair opportunity to be heard regarding the circumstances surrounding the alleged violation and determination of the appropriate penalty (if any), violating the Company's constitutional and statutory due process

rights; (4) the Commission misinterpreted the penalty provisions of *Idaho Code* § 61-701 *et seq.* when it found the maximum penalty applies on a per customer basis; (5) the Commission exceeded its authority under *Idaho Code* § 61-701 *et seq.* when it required payment of the penalty to customers instead of to the Idaho State Treasury; and (6) the penalty imposed is excessive in comparison to the violation and contrary to Commission precedent.

PacifiCorp requests that the Commission grant reconsideration of Order No. 29034 for the limited purpose of rescinding its findings related to Rule 102 and withdrawing the civil penalty imposed by the Order.

In the event reconsideration is granted and the Commission wishes to hold an evidentiary hearing on the issues raised by the Company's Petition or to hear oral argument regarding the matters raised, PacifiCorp will offer the argument asserted in its Petition as well as the following evidence:

1. Evidence of actual notice to PacifiCorp's customers;
2. Evidence of PacifiCorp's good-faith compliance with the Commission's Notice requirement; and
3. Further evidence to consider in mitigation.

Petition for Stay of Civil Penalty

PacifiCorp requests that the Commission stay the effectiveness of what it characterizes as the civil penalty imposed by the Commission in Order No. 29034. Reference Commission Rules of Procedure 324 and 333 and *Idaho Code* §61-626. PacifiCorp intends that enforcement of the penalty is contrary to law and the public interest and may result in confiscation and irreparable loss to PacifiCorp. Absent a stay of the \$20 per customer credit, the Company states that it will be forced to issue credits to customers despite the fact that the appropriateness of that penalty has been challenged on several grounds. More significantly, the Company states that the \$20 per customer credit violates *Idaho Code* § 61-712, which requires that all penalties "shall be paid into the State Treasury to the credit of the General Fund."

Moreover, the Company contends that if the civil penalty is not stayed and reconsideration is ultimately granted, recovery of the credited amounts from all customers is unlikely, resulting in irreparable loss to PacifiCorp. Not only is it possible that the Company will suffer injury under those circumstances, the Company contends that providing credits to

customers while resolution of their validity is ongoing creates the risk that customers receiving the credit will not be the same as those customers who may ultimately be called upon for its refund. Such a result, it contends, would be contrary to the public interest.

PacifiCorp's emergency petition for stay is limited to that portion of Order No. 29034 imposing the \$1,087,720 civil penalty. By so limiting its Petition, PacifiCorp understands that the remainder of the Order is not stayed. Reference *Idaho Code* § 61-626(3); IDAPA 31.01.01.333.

Commission Findings

The Commission has reviewed the filings of record in Case No. PAC-E-02-1 including its final Order No. 29034 and the underlying transcript of proceedings. We have also reviewed and considered the Petition of Reconsideration and Petition for Stay of Civil Penalty filed by PacifiCorp.

Regarding PacifiCorp's Petition for Reconsideration, the Commission finds the Company's due process argument to be persuasive and finds that the Company should be granted an opportunity to address the individual notice requirement of Rule 102, our finding that the Company failed to comply with the rule and the related remedy that we imposed. We find the issues presented to be both of fact and law. We accordingly find it reasonable to grant reconsideration for evidentiary hearing and establish the following scheduling:

August 28, 2002	Prefile date for PacifiCorp testimony on reconsideration
September 10, 2002	Hearing on Reconsideration (PacifiCorp Petition for Reconsideration) to commence at 9:30 a.m. in the Commission's Hearing Room, 472 W. Washington, Boise, Idaho.
September 27, 2002	Prefile date for post-hearing briefs on reconsideration

For reasons of administrative convenience and necessity because we have granted PacifiCorp's Petition for Reconsideration, we also find it reasonable to grant PacifiCorp's related Motion for Stay of that portion of the Commission's Order No. 29034 which directed the Company to provide a \$20 credit to customers within 90 days from the service date of the Commission's Order. Reference 31.01.01.324; .331.

ORDER

In consideration of the foregoing and as more particularly described above IT IS HEREBY ORDERED that the Petitions for Reconsideration of Order No. 29034 filed by Timothy Shurtz and Stanley Searle are denied. Our Order in this regard is an Interlocutory Order which will be made final for purpose of appeal at the conclusion of this case. Reference *Idaho Code* § 61-626; -627.

IT IS FURTHER ORDERED that the Petition for Reconsideration of Order No. 29034 filed by PacifiCorp is granted in the manner and pursuant to the scheduling described above.

IT IS FURTHER ORDERED and the Commission does hereby grant PacifiCorp's Emergency Petition for Stay.

THIS IS AN INTERLOCUTORY ORDER. Any person interested in this Order may file a petition for review within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order. A petition to review may request that the Commission: (1) rescind, clarify, alter, amend; (2) stay; or (3) finalize this Interlocutory Order. After any person has petitioned for review, any other person may file a cross-petition within seven (7) days. *See* Rules 321, 322, 323.03, 324, 325 (IDAPA 31.01.01.321-.325).

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this day of July 2002.

PAUL KJELLANDER, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Jean D. Jewell
Commission Secretary

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