

DECISION MEMORANDUM

TO: COMMISSIONER KJELLANDER
COMMISSIONER SMITH
COMMISSIONER HANSEN
JEAN JEWELL
RON LAW
LOU ANN WESTERFIELD
TONYA CLARK
DON HOWELL
DAVE SCHUNKE
MICHAEL FUSS
RANDY LOBB
ALDEN HOLM
JOE LECKIE
MADONNA FAUNCE
BEV BARKER
GENE FADNESS
WORKING FILE

FROM: SCOTT WOODBURY

DATE: JULY 12, 2002

RE: CASE NO. PAC-E-02-1 (PacifiCorp)
PETITIONS FOR RECONSIDERATION OF ORDER NO. 29034
PETITION FOR STAY OF CIVIL PENALTY

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 (\$38 million including carrying charges); 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 and reduces 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 were filed by Stanley Searle on June 22, Tim Shurtz on June 26 and PacifiCorp on June 28, 2002. Answers to the Petitions filed by Mr. Shurtz and Mr. Searle were filed by PacifiCorp on July 3, 2002.

Petitions for Reconsideration

PacifiCorp

PacifiCorp requests reconsideration of that portion of the Commission's Order No. 29034 which for failure to comply with the individual notice requirement of Rule 102 of the

credit of \$20 (or a total of \$1,087,720) within 90 days of the service date of the Order. Reference IDAPA 31.21.02.102 (see attached).

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 bills 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.

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 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.

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.

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 Decision

Petitions for Reconsideration of Commission Order No. 29034 in Case No. PAC-E-02-01 have been filed by PacifiCorp, Timothy J. Shurtz and Stanley Searle. It is noted that neither Mr. Searle or Shurtz offer a statement of the nature and quantity of evidence

and argument the petitioners will offer if reconsideration is granted. Reference Commission Rule of Procedure 331.01. Should reconsideration be granted? If so, in what manner?

PacifiCorp has filed an emergency Petition for Stay of Civil Penalty. Does the Commission find it reasonable to grant the emergency relief requested?

Scott Woodbury

vld/M:PACB0201_sw6

**RULES 101 THROUGH 200--INFORMATION TO CUSTOMERS OF GAS,
ELECTRIC, AND WATER UTILITIES**

101. EXPLANATION OF RATE SCHEDULE (RULE 101).

Each gas, electric, and water utility subject to these rules shall transmit annually to each of its customers and give to each new customer at the time of initiation of service a clear and concise explanation of the existing rate schedule for the class of services selected by that customer. (7-1-93)

102. NOTICES TO CUSTOMERS OF PROPOSED CHANGES IN RATES (RULE 102).

01. Customer Notice Of General Rate Cases And Tracker Rate Cases. Each gas, electric, and water utility that applies for a general or tracker rate change shall give to each customer a statement (customer notice) announcing the utility's application. If the utility is requesting a rate increase, the customer notice shall include a brief explanation of the utility's need for additional revenue and the dollar amount requested. The notice shall give the proposed overall percentage change from current rates as well as the proposed percentage increase in revenue for each major customer class. The customer notice shall make it clear that the application is a proposal, subject to public review and a Commission decision. It shall also inform customers that a copy of the utility's application is available for public review at the offices of both the Commission and the utility. (7-1-93)

02. Timing Of Notice For Trackers. Tracker adjustments occasioned by Federal action may be brought to the attention of customers in compliance with this rule after approval by the Commission. All other tracker cases remain subject to the requirements of advance notice contained in this rule. (7-1-93)

03. Distribution Of Customer Notices. The customer notices referred to in Rule Subsection 102.01 may be mailed to customers as bill stuffers over the course of a billing cycle or may be contained in additional comment pages to the customer's monthly bill. If additional comment pages are used, the information required by this rule is to be clearly identified, easily understood, and pertain only to the proposed rate change. (7-1-93)

04. Press Release. In instances covered by Rule Subsection 102.01, the utility shall also send a press release containing, at minimum, the same information presented in the customer notices to all newspapers, radio, and television stations listed on the Commission's news organization list for that utility. The press releases shall be mailed or delivered simultaneously with filing of the application. A copy of the press release shall be filed with the application. (7-1-93)

05. Purposes And Effects Of This Rule. The purposes of Rule Subsections 102.01 through 102.04 of this rule are to encourage wide dissemination to customers of information concerning proposed rate changes for utility services. It is not a purpose of these paragraphs to create due process or other procedural rights in customers by expanding, contracting, or otherwise modifying the notice and due process rights of customers under the Public Utilities Law and the Commission's Rules of Procedure, IDAPA 31.01.01.000 et seq. Accordingly, Rule Subsections 102.01 through 102.04 of this rule create no individual procedural rights in any customer for notice that would give rise to a due process or other procedural claim cognizable by the Commission, but failure to comply with Rule Subsections 102.01 through 102.04 of this rule can be grounds for returning an application for incompleteness. (7-1-93)

103. COMPARISON OF CONSUMPTION FROM PREVIOUS YEAR--GAS AND ELECTRIC UTILITIES (RULE 103).

Each gas and electric utility subject to the Commission's jurisdiction shall compare on each customer's regular billing the customer's actual consumption of gas or electricity with the customer's actual consumption of gas or electricity for the corresponding billing period for the previous year. If the two (2) billing periods being compared contain a different number of days, the utility shall adjust the data to take into account the different length of the billing periods and show the comparison either as an absolute change in therm use or kilowatt hour use per day, week or month, or as a percentage change in therm use or kilowatt hour use per day, week or month. (7-1-93)

104. DEGREE-DAY DATA--GAS AND ELECTRIC UTILITIES (Rule 104).

Upon request, each gas and electric utility subject to the Commission's jurisdiction shall make degree-day adjusted data available for comparisons of the kind made in Rule 103. (7-1-93)