

DECISION MEMORANDUM

**TO: COMMISSIONER KJELLANDER
COMMISSIONER SMITH
COMMISSIONER HANSEN
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL**

FROM: SCOTT WOODBURY

DATE: JANUARY 29, 2004

**RE: CASE NO. PAC-E-03-5 (PacifiCorp)
REQUEST FOR DEFERRED ACCOUNTING ORDER AND RELATED
SURCHARGE**

On March 31, 2003, PacifiCorp dba Utah Power & Light Company (PacifiCorp; Company) filed an Application with the Idaho Public Utilities Commission (Commission) for an accounting Order allowing PacifiCorp to defer, for regulatory purposes (a) excess costs incurred for forward power purchases made for the summer of 2002, and (b) federal and state payments made in 2002 resulting from Internal Revenue Service Income Tax Audits. Reference *Idaho Code* § 61-524, System of Accounts.

On December 21, 2003, following an informal stay of proceedings, the Company filed an amended Application with the Commission (a) removing its request for deferred accounting authority for summer 2002 excess power purchase costs, (b) providing additional and amended information regarding the tax audit payments, and (c) requesting approval of a 16-month Schedule 93 surcharge to collect the income tax audit-related payments and to recover a projected under-collection in the present Schedule 93 surcharge for recovery of authorized excess power costs. Reference Order No. 29034, June 8, 2002.

PacifiCorp requests approval of deferred regulatory accounting for federal and state income tax payments made in 2002-2003 resulting from the conclusion of Internal Revenue Service Income Tax Audits for tax years 1994 through 1998, in which the IRS made its final determination of the adjustments to the Company's income tax obligations. Such payments attributable to PacifiCorp's regulated utility operations amounted to approximately \$54 million.

The revenue requirement associated with the 2002-2003 federal and state tax audit determination payments attributable to Idaho is \$4,198,000. See Application, Exhibit No. 2 (revised). These IRS audit-related payments, the Company contends, are a legitimate cost of doing business as previously recognized by the Commission. Citing *Re: Utah Power & Light Company*, Case No. U-1009-157, Order No. 20523 (May 29, 1986), in which the Commission on reconsideration of a Commission adopted expense adjustment to a disputed IRS tax assessment, determined that if the Company could show it paid a liability arising from an IRS Audit, (“we will allow it to submit tariffs to recover this alleged liability from its ratepayers as a legitimate expense”, assuming the audit assessment was not payable from a reserve already accumulated.) Also citing *In The Matter Of The Investigation Of The Effects Of Revisions Of The Federal Income Tax Code Upon The Cost Of Service Of Regulated Utilities*, Case No. U-1500-164, Order No. 21302 (July 1, 1987), wherein following passage of the 1986 Tax Reform Act which reduced corporate income tax rates, the Commission allowed the Company to recover the Idaho jurisdictional portion of approximately \$25 million paid in 1987 following an IRS audit of 1983 and 1984 taxes. The audit payments, which the Company seeks authority to defer in this case, the Company contends, were not paid from a reserve already funded by Idaho ratepayers.

PacifiCorp proposes to account for the federal and state income tax payments, for regulatory purposes, in the following manner: income tax payments will be credited to Account 409, Income Taxes, thereby decreasing the recorded income tax expense, and debiting Account 182.399, Regulatory Assets.

Deferred accounting treatment for regulatory purposes, PacifiCorp contends, is an appropriate, just and reasonable means of providing the Company an opportunity to seek recovery of the federal and state IRS Audit-related income tax payments incurred by the Company.

In its amended Application the Company includes a request for approval of proposed electric service Schedule 93 (proposed Schedule 93) to collect the income tax audit-related payments described in its amended Application and to address the over-collection or under-collection of excess power costs currently being recovered under present electric service Schedule 93 (present Schedule 93). The Company requests that the proposed Schedule 93 be effective immediately upon the expiration of the present Schedule 93 (June 8, 2004). Present Schedule 93 provides that, subject to Commission review and approval, the surcharge may

continue at a revised rate to reflect any under-collection or over-collection of the authorized surcharge amount. Order No. 29034, June 8, 2002. Current estimates of the power cost collection under the existing surcharge project an under-collection of approximately \$200,000 as of June 8, 2004. PacifiCorp's proposed Schedule 93 includes the projected under-collection of power costs in addition to the requested collection of income tax audit-related payments. If approved, the power costs under-collection of approximately \$200,000 will be revised based on current actual data prior to implementation of proposed Schedule 93. The deferred amounts collected through the surcharge will not include a carrying charge.

The proposed Schedule 93 is designed to recover from tariff customers, on a uniform percentage basis of revenue from each rate schedule, the deferred amounts over a period of approximately 16 months. Proposed Schedule 93 would be applied to customers' bills for electric usage commencing June 08, 2004. Utilizing a test period for the 12-months ending March 31, 2003, Application Exhibit No. 6 shows the effects of proposed Schedule 93 by rate schedule and a worksheet containing derivation of the cents per kilowatt hour surcharges for each rate schedule. For residential customers, the implementation of proposed Schedule 93 would result in a price reduction from current prices averaging 3.3%. Excluding special contracts, commercial and industrial customers would see a price reduction averaging 3.5%. Irrigation customers would see a price reduction averaging 3.6%. The overall effect on Idaho tariff customers would be a price reduction from current levels averaging 3.5%. If the current surcharge is allowed to expire as scheduled on June 08, 2004, a rate decrease of approximately 5% from current levels will result. The price changes set out in the Company's Application, the Company notes, do not reflect any impact of reductions to the levels of BPA credits that are expected to occur in 2004.

PacifiCorp requests that the Commission consider this matter under Modified Procedure pursuant to Commission Rules of Procedure 201-204 and enter its Order authorizing the deferral of the Company's excess federal and state income tax payments.

Commission Decision

PacifiCorp has filed a request for a deferred accounting Order to recover federal and state payments made in 2002 resulting from Internal Revenue Service Income Tax Audits. The Company also requests approval of a proposed Schedule 93 surcharge to recover the income tax audit-related payments and any true up of the Company's present Schedule 93 power cost

recovery. Staff recommends that an intervention deadline be established. Staff apprises the Commission of its intent to hold public workshops in this matter and to engage in subsequent settlement discussions with the Company and other parties of record. Reference IDAPA 31.01.01.271-279. Staff recommends that the Company's Application be processed pursuant to Modified Procedure, i.e., by written comment rather than by hearing. Reference IDAPA 31.01.01.201-204. Does the Commission agree with Staff's recommended procedure?

Scott Woodbury

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