

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION OF )**  
**PACIFICORP DBA UTAH POWER & LIGHT )** **CASE NO. PAC-E-01-16**  
**COMPANY FOR APPROVAL OF INTERIM )**  
**PROVISIONS FOR THE SUPPLY OF ELECTRIC )** **NOTICE OF APPLICATION**  
**SERVICE TO MONSANTO COMPANY )**  
**)** **NOTICE OF INTERVENTION**  
**)** **DEADLINE**  
**)**  
**)** **NOTICE OF**  
**)** **PREHEARING CONFERENCE**  
**)**  
**)** **ORDER NO. 28918**

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On December 10, 2001, PacifiCorp dba Utah Power & Light Company (“PacifiCorp” or “Company”) filed an Application with the Commission for approval of interim provisions (and most importantly the rate) for the supply of electric service to Monsanto Company (“Monsanto”). PacifiCorp contends that establishing an interim rate is necessary as the existing Power Supply Agreement between it and Monsanto will expire on December 31, 2001 and the parties have failed to negotiate a new agreement. Consequently, PacifiCorp requests that the interim provisions become effective on less than 30 days notice, i.e., on January 1, 2002.

On December 17, 2001, Monsanto filed a Motion to Dismiss or Stay PacifiCorp’s Application along with a supporting brief and exhibits. As described in greater detail below, the Commission suspends the Application and denies Monsanto’s Motion to Dismiss and schedules a prehearing conference.

**I. BACKGROUND**

***A. The Existing Agreement***

The Power Supply Agreement between Monsanto and PacifiCorp dated November 1, 1995 (the “Agreement”) was approved by the Commission in Case No. UPL-E-95-4 by Order No. 26282. The language of the Agreement states that it would continue in “effect through December 31, 2001 and thereafter shall be renewed annually until either party gives at least one year’s written notice of termination.” *Agreement*, p. 5, § 2.1. On December 11, 2000, PacifiCorp faxed a notice of

termination to Monsanto and now contends that this Agreement terminates as of December 31, 2001. Under the Agreement, Monsanto pays a charge of 18.5 mills per kWh for all energy delivered provided that in no month shall Monsanto pay PacifiCorp less than \$66,600 for all energy delivered. *Agreement* at p. 11, § 4.1.3.

### ***B. Court Proceedings***

On November 16, 2001, Monsanto and P4 Production L.L.C. filed a complaint in the District Court of the Sixth Judicial District for the State of Idaho seeking a declaratory judgment that:

Pursuant to Section 2.1 of the Agreement, the parties can only exercise the option to terminate by giving one year's written notice of termination after December 31, 2001.

The earliest date for notice of termination of the Agreement is January 1, 2002 and the earliest possible termination date is January 1, 2003.

PacifiCorp's Notice of Termination, which purports to terminate the Agreement on December 31, 2001 is premature, invalid and of no force or effect whatsoever.

The Agreement is in full force and effect.

*Complaint for Declaratory Judgment* at pp. 4-5. On December 6, 2001, this case was removed by PacifiCorp to the United States District Court for the District of Idaho. The parties have not apprised the Commission as to the status of the federal District Court proceeding.

## **II. THE PRESENT APPLICATION**

PacifiCorp states that if the Declaratory Judgment action is not resolved until after January 1, 2002, it will still treat the Agreement as if it was terminated as of December 31, 2001. Thus, the Company asserts that no agreement will be in place establishing the terms for providing electric service to Monsanto after January 1, 2002. Furthermore, the Company insists that it does not have an existing electric service schedule or tariff that would be applicable to the Monsanto load due to its size of over 200 MW. Hence, the Company filed the present Application.

Based on the foregoing and in accordance with *Idaho Code* § 61-313, PacifiCorp requests that the Commission take two actions: 1) approve, on an interim basis, the rates to be charged for electric service provided to Monsanto after January 1, 2002; and 2) establish permanent contract rates in a final order. In the interim, PacifiCorp proposes to provide firm service to Monsanto in

accordance with its Electric Service Schedule No. 9 and the Electric Service Regulations set forth in the Company’s tariff.<sup>1</sup> However, the Company states that pricing for this service should be based on a “cost of service” study specific to Monsanto. Accordingly, PacifiCorp proposes the following pricing:

<u>Rate Element</u>	<u>May-Oct.</u>	<u>Nov.-April</u>
Customer Charge	\$282.89	\$282.89
Demand Charge (\$/kW-mo.)	\$10.56	\$8.56
On-Peak Energy (\$/MWh)	\$19.57	\$16.31
Off-Peak Energy (\$/MWh)	\$14.68	\$14.68

*Application* at p. 4, ¶ 6. Based upon these rate elements, PacifiCorp concludes that an appropriate interim rate would be 31.4 mills per kWh. *Direct, Prefiled Testimony of David L. Taylor*, at p. 3, ll.1-6. The Company states that the basis for providing firm, rather than interruptible, service to Monsanto and the pricing therefore is set forth in the prefiled testimony of David L. Taylor, attached to the Application.

The Company also proposes that any interim rate that is set by the Commission in this matter be subject to true-up for service during the period of January 1, 2002 through the effective date of the charges established by the Commission’s final Order. PacifiCorp proposes that interest on any true-up necessary accrue at the weighted average cost of capital utilized in the cost of service study, 8.42%. The Company further states that any interim rate that the Commission sets by Order in this action will not be a basis for waiver or estoppel in the Declaratory Judgment action.

Finally, the Company requests that the Commission process its Application by Modified Procedure, pursuant to Commission Rules of Procedure 201-204, IDAPA 31.01.01.201-204. PacifiCorp believes written comments by interested parties should be sufficient for the Commission’s review of this matter.

### **III. MONSANTO’S MOTION TO DISMISS OR STAY**

Monsanto requests that the Commission dismiss PacifiCorp’s Application or alternatively stay it until the Court determines when the Power Supply Agreement expired or expires. Monsanto alleges in its Motion that the Commission lacks jurisdiction to establish a new rate for Monsanto

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<sup>1</sup> The 1995 Agreement was largely interruptible and PacifiCorp admits as such. *Taylor, Direct*, at p. 3, ll.8-9.

because the existing Power Supply Agreement has not expired. Monsanto maintains that its action against PacifiCorp in federal court involves the interpretation of the Agreement. Interpretation of agreements and contracts is a matter that lies within the jurisdiction of the Courts and not with the Commission. *See Afton Energy, Inc. v. Idaho Power Company*, 111 Idaho 925, 928, 729 P.2d 400, 403 (1986). Thus, until the Court proceeding is decided, the Commission may not establish a new rate.

In the event the Commission denies its Motion, Monsanto anticipates it may take substantially more time to establish a new rate than what has been proposed by PacifiCorp. Monsanto argues that PacifiCorp's proposal to adopt an interim rate is a departure from past ratemaking decisions the Commission has made with regard to the parties' special contract and neglects to account for many factors that are central to their relationship. First, Monsanto states that PacifiCorp's proposed new rate of 31.4 mills per kWh for firm service represents a 70% increase over Monsanto's existing contract rate and alleges that an increase this substantial would threaten the viability of the continued operation of the Soda Springs plant. *Supporting Brief of Monsanto*, at p. 7. Monsanto alleges that if this plant closed it would be an economic disaster to the regional economy. *Id.* Second, Monsanto contends that PacifiCorp's proposed new rate based on firm service, ignores the unique interruptible nature of Monsanto's load which has historically been recognized by the Commission as providing a substantial operating reserve and load balancing benefits to the PacifiCorp system. *Id.* Lastly, Monsanto contends that because it has always been treated as a system customer and not as an Idaho jurisdictional load it has not historically been included in traditional cost of service studies. *Id.* Accordingly, its rates have never been established in this fashion and PacifiCorp's proposal represents a dramatic departure from ratemaking principles that have been applied to Monsanto by the Commission in the past. *Id.* at 7-8. Based on the foregoing, Monsanto strenuously objects to PacifiCorp's Application being granted or being processed by Modified Procedure.

#### **IV. COMMISSION FINDINGS AND DECISION**

1. Effective Date Less than 30 Days. As a preliminary matter PacifiCorp requests an effective date of less than 30 days. *Idaho Code* § 61-307 provides that unless otherwise ordered by the Commission, no change shall be made to any existing contract rate or tariff rate by any public utility

except after 30 days notice to the Commission and the public. Furthermore, the Commission may only allow changes sooner than 30 days based upon a showing of good cause. *Id.*

In this instance PacifiCorp chose to file its Application at the eleventh hour asking for expedited approval of its proposed interim rate. However, the Commission finds that PacifiCorp has neglected to show good cause why its proposed, interim rate should be approved by the Commission on less than 30 days notice. *See Idaho Code* § 61-307. Furthermore, Monsanto has vigorously opposed PacifiCorp's request. Even if we were to process this matter as requested by PacifiCorp under Modified Procedure, such a proceeding would normally take at least 30 days (allowing a 21-day comment period). *See IDAPA 31.01.01.202.02*. Accordingly, the Commission declines to approve PacifiCorp's request to approve the proposed rate on less than 30 days notice.

2. The Proposal for an Interim Rate. The Commission further finds that at this time it has insufficient evidence before it to change the rate that PacifiCorp charges Monsanto for electric service. The setting of a new contract rate, interim or otherwise, is a complex matter that should not be decided hastily. PacifiCorp has filed an Application with prefiled testimony urging the Commission to adopt an interim rate based upon a cost-of-service study. As should be obvious, the testimony has not been placed in an evidentiary record and Monsanto has not had the opportunity to examine the witness or probe the validity of the study supporting the rate. *Supporting Brief of Monsanto* at pp. 7-8. PacifiCorp has proposed an interim rate that would be an increase of close to 70%. Given the dispute between the parties, PacifiCorp should have filed an Application much earlier if it wanted the Commission to establish a new rate effective January 1, 2002.

The Commission finds that the process to establish a permanent rate going forward is a complex matter that will require significant review and analysis. Given the dispute between the parties, it is not in the public interest to process this Application by Modified Procedure. Instead the Commission shall suspend this Application for a period of five (5) months plus thirty (30) days as allowed pursuant to *Idaho Code* §§ 61-622 and -623 so that this matter may be set for hearing.

We now turn to Monsanto's Motion to Dismiss. In essence, Monsanto maintains that the Commission is without jurisdiction to establish new rates because this matter is before the federal District Court. However, Monsanto's argument is misplaced. While we concede that Idaho law generally places the interpretation of contract beyond the Commission's jurisdiction, such is not the

case here. *Afton Energy, Inc. v. Idaho Power Co.*, 111 Idaho 925, 928, 729 P.2d 400, 403 (1986); *Lemhi Telephone Company v. Mountain States Telephone & Telegraph Co.*, 98 Idaho 692, 697, 571 P.2d 753, 758 (1977). The Application that is before the Commission now is a request to establish a new and/or interim rate for the delivery of electric service to PacifiCorp's largest customer. Rate setting is clearly the prerogative of this Commission. *See Idaho Code* §§ 61-502, -503, -622, -623. Neither have we been asked, nor would we venture to determine when the Agreement terminates.

Having suspended the Application, the Commission initiates a proceeding to establish the appropriate rate for Monsanto on a prospective basis. Embarking on a proceeding to review PacifiCorp's Application does not intrude upon the Court's process. The Commission recognizes that it is for the Court to determine when the Agreement ends. In other words, if PacifiCorp were to prevail in its argument that the contract ends December 31, 2001, then the Commission already will have begun the process to establish new rates. Conversely, if Monsanto prevails in its argument that the contract does not end this year, then the Commission will be able to establish a new rate in a timely manner, while recognizing that the parties may still reach an agreement between themselves. Accordingly, Monsanto's Motion to Dismiss is denied.

Having determined that this matter should be suspended and that an evidentiary hearing be scheduled, a lingering question remains, i.e., what is the appropriate electric service rate for Monsanto if the Court were to conclude that the contract terminated on December 31, 2001. As PacifiCorp observes in its Application, absent a special contract or agreement, it does not have an applicable tariff or rate schedule applicable to Monsanto. *Application* at p. 3. Pursuant to our authority under *Idaho Code* §§ 61-622 and 61-623, the Commission intends to convene a hearing concerning the propriety of the rate proposed by PacifiCorp. Until such time as the Commission has established a new rate or the parties present for the Commission's approval a new agreement, the Commission finds that, if necessary, PacifiCorp shall continue to charge Monsanto 18.5 mills per kWh for electric service provided that in no month shall Monsanto pay PacifiCorp less than \$66,600 for all energy delivered. *See Agreement* at p. 11, § 4.1.3. Continuing this rate maintains the status quo and the positions of the parties. Our suspension is equivalent to a stay of the rates. This rate shall remain in effect until the Commission has rendered a decision on this Application or the United States District Court finds in Monsanto's favor, or the parties reach a new agreement.

4. True-up Mechanism and Interest Rate. PacifiCorp proposed in its Application that any interim rate set by the Commission be subject to true-up in accordance with a final order by the Commission regarding the appropriate charges for service during the period of January 1, 2002 through the effective date of the charges established by such final Order. *Application* at p. 4, ¶ 7. PacifiCorp states that if the Commission determines that the rates during such period should be higher than the interim rates, Monsanto should pay PacifiCorp the difference applicable to all electric service provided during that period. Similarly, if the Commission determines that the rates should have been lower than the interim rate set or if Monsanto were to prevail in the Declaratory Judgment action, there would be a similar true-up for electric service provided during the additional year of the Agreement. *Id.* at pp. 4-5.

PacifiCorp also proposes that the interest rate on any under or overpayments should accrue at the weighted average cost of capital utilized in the costs of service study, 8.42% and that such payments of true-up amounts shall be made within 30 days of invoice. *Id.* at p. 5.

Monsanto states that in the unlikely event that the Court determines the termination date of the Agreement is December 31, 2001, it has agreed to apply, retroactive to the termination date whatever new rate is appropriate for Monsanto's ongoing electric service, whether established by a new agreement between the parties or by the Commission. *Supporting Brief of Monsanto* at p. 4. Furthermore, Monsanto also represented that it would pay interest on any true-up amount that it might owe to PacifiCorp at a "reasonable rate." *Application* at p. 4. Monsanto made its intentions in this regard known to PacifiCorp by a letter, dated December 6, 2001, sent to the law firm that represents PacifiCorp in this case. *Exhibit 4, Supporting Brief of Monsanto.*

Because both parties agree that there should be a true-up mechanism in place to adjust the difference between an interim rate and a future rate if the Court finds that the Agreement expires on December 31, 2001, the Commission finds that this proposal is a reasonable means by which to protect each party's respective interests. Accordingly, the Commission shall order that this rate true-up proposal be adopted. Furthermore, the Commission agrees with the parties that a reasonable rate of interest should be paid on any true-up amount that may accumulate in the future. However, the Commission does not agree with PacifiCorp's proposal that the interest rate for true-up amounts be established at 8.42%.

As has been our practice, the Commission will use the interest rate on utility deposits set out in our Utility Customer Relations Rule 106. IDAPA 31.21.01.106.01. Commission Rule 106.02 sets the rate of interest for customer deposits for each calendar year. IDAPA 31.21.01.106.02. The interest rate for 2002 has been determined to be 4%. *See* Order No. 28896 issued November 26, 2001. We find this rate represents a reasonable interest rate to be paid on the amount to be tried up, if necessary.

### NOTICE OF PREHEARING CONFERENCE

YOU ARE HEREBY NOTIFIED that the Commission shall set a prehearing conference for **TUESDAY JANUARY 29, 2002 AT 9:30 A.M. IN THE COMMISSION HEARING ROOM, 472 W. WASHINGTON, BOISE, IDAHO** to discuss the scheduling of this case and any preliminary matters to be presented to the Commission. Parties wishing to participate by telephone should so notify the Commission Secretary at least three days in advance of the prehearing conference. To promote the orderly development of the record in this case, the Commission finds it is also appropriate to establish an intervention deadline for interested parties.

YOU ARE FURTHER NOTIFIED that **persons desiring to intervene** in this matter for the purpose of presenting evidence or cross-examining witnesses at hearing **must file a Petition to Intervene** with the Commission pursuant to this Commission's Rules of Procedure 72 and 73, IAPA 31.01.01.072 and -.073. Persons intending to participate at the hearing must file a Petition to Intervene **on or before January 2, 2002**. Persons desiring to present their views without parties' rights of participation and cross-examination are not required to intervene and may present their comments without prior notification to the Commission or the parties.

YOU ARE FURTHER NOTIFIED that discovery is available in Case No. PAC-E-01-16 pursuant to the Commission's Rules of Procedure, IDAPA 31.01.01.221-234.

YOU ARE FURTHER NOTIFIED that the Application together with supporting workpapers, testimonies and exhibits, have been filed with the Commission and are available for public inspection during regular business hours at the Commission offices. The Application is also available for public inspection at the Commission's home page at [www.puc.state.id.us](http://www.puc.state.id.us) under the "File Room" icon, then go to "Electric Cases."



YOU ARE FURTHER NOTIFIED that all hearings and prehearing conferences in this matter will be held in facilities meeting the accessibility requirements of the Americans with Disabilities Act (ADA). In order to participate in or to understand testimony and argument at a public hearing, persons needing help of a sign language interpreter or other assistance may ask the Commission to provide a sign language interpreter or other assistance as required under the ADA. The request for assistance must be received at least five (5) working days before the hearing by contacting the Commission Secretary at:

IDAHO PUBLIC UTILITIES COMMISSION  
PO BOX 83720  
BOISE, IDAHO 83720-0074  
(208) 334-0338 (TELEPHONE)  
(208) 334-3762 (FAX)

YOU ARE FURTHER NOTIFIED that all proceedings in this case will be held pursuant to the Commission's jurisdiction under the Title 61 of the Idaho Code and that the Commission may enter any final Order consistent with its authority under Title 61. The Commission has jurisdiction over this matter pursuant to *Idaho Code* §§ 61-502, 61-622, and 61-623.

YOU ARE FURTHER NOTIFIED that all proceedings in this matter will be conducted pursuant to the Commission's Rules of Procedure, IDAPA 31.01.01.000 *et seq.*

### **ORDER**

IT IS HEREBY ORDERED that PacifiCorp's request to implement the proposed rate on less than 30 days notice is denied.

IT IS FURTHER ORDERED that the Commission shall suspend this Application for a period of thirty (30) days plus five (5) months from December 10, or until such time as the Commission may issue an Order accepting or rejecting or modifying the provisions contained in the Application.

IT IS FURTHER ORDERED that persons desiring to intervene in this case for the purpose of presenting evidence or cross-examination at hearing shall file a Petition to Intervene with the Commission no later than January 2, 2002.

IT IS FURTHER ORDERED that Monsanto's Motion to Dismiss is denied. Monsanto's alternative Motion to Stay is moot given the Commission's suspension of this Application.

IT IS FURTHER ORDERED that the true-up mechanism proposed by the parties is adopted by the Commission and the interest rate for any true-up amounts that accrue shall be 4%, the interest rate set for customer deposits under the Utility Customer Relations Rules, IDAPA 31.21.01.106.01-02.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this day of December 2001.

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PAUL KJELLANDER, PRESIDENT

Commissioner Smith Out of the Office this Date  
MARSHA H. SMITH, COMMISSIONER

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DENNIS S. HANSEN, COMMISSIONER

ATTEST:

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Jean D. Jewell  
Commission Secretary

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