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In the Matter of the Complaint of WESTERN )  
ELECTROCHEMICAL Against PACIFICORP )  
for Charging Unjust, Unreasonable, and )  
Discriminatory Rates for Electric Service and for )  
Violating the Terms of its Electric Service )  
Agreement )

DOCKET NO. 01-035-03

ORDER

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ISSUED: April 16, 2001

By The Commission:

BACKGROUND

On February 14, 2001, Complainant and Petitioner Western Electrochemical, a division of American Pacific Corporation (WECCO), filed a Complaint and Request for Agency Action (Complaint) pursuant to Utah Code Ann. §§ 54-3-1, 54-4-4, 63-46b-3, et seq., 54-7-9, and Public Service Commission Rules R746-100-1, et seq., claiming that PacifiCorp was charging unjust, unreasonable, and discriminatory rates and was violating the terms and conditions of the Electric Service Agreement between PacifiCorp and WECCO. WECCO requested agency action to establish just and reasonable rates and conditions for the provision of electric service from PacifiCorp to WECCO and for an order requiring PacifiCorp to refund, or pay to WECCO, all amounts improperly collected by PacifiCorp from WECCO over the life of the Electric Service Agreement.

WECCO also filed an Emergency Motion for Relief (Emergency Motion) pursuant to Utah Code Ann. §§ 54-7-9, 63-46b-1, et seq., and Public Service Commission Rule R746-100-3 H, seeking immediate relief in the form of an Order requiring PacifiCorp to provide electric service to WECCO under just, reasonable, and non-discriminatory rates and terms of service beginning with the next bill sent by PacifiCorp to WECCO. Specifically, WECCO requested an order directing PacifiCorp that all future bills to WECCO, for power and energy, should be calculated without the application of Replacement Power and Energy pass-through cost provisions, at rates that equal or do not exceed Schedule 9 rates, or at firm power and energy rates pursuant to the Agreement.

EVIDENCE PRESENTED

WECCO's Emergency Motion was scheduled for hearing on Thursday, February 22, 2001, and rescheduled, at the request of the parties', for Friday, February 23, 2001. Witnesses who provided sworn testimony at the hearing were John R. Gibson, Chairman, President, and CEO of WECCO; Harold Shirley, Mayor of Cedar City; Douglas Larson, Vice President of Regulation for PacifiCorp; and Lowell Alt of the Division of Public Utilities.

At the hearing, WECCO and PacifiCorp presented "Amendment Number 3 to the Electric Supply Agreement Between PacifiCorp (Formerly Utah Power & Light Company) and Western Electrochemical (Formerly Pepcon Production, Inc.)" for approval, dated February 21, 2001 (Amendment), that had been executed by the parties. The Amendment was admitted as WECCO Exhibit

No. 2. The Amendment reduced WECCO's Interruptible Power under the Agreement to 0 kW and increased its Firm Power to 11,000 kW effective from the February billing period through the termination of the Agreement. The Amendment also established the rates for Firm Power and Energy under the Agreement at the same rates reflected in PacifiCorp's Electric Service Schedule No. 9, as the same have been and may hereafter be adjusted by the Commission. Finally, the Amendment permits either party to terminate the Agreement in the event the Commission adopts a new electric service schedule that would otherwise be applicable to WECCO.

Mr. Gibson testified to the background of WECCO's decision to locate in Southern Utah, its need for and reliance upon reasonable and stable electric prices, its intent and understanding relative to the Agreement, the nature of its pricing dispute with PacifiCorp, WECCO's reduction of production in response to electric prices being charged, and the company's inability to continue normal production on an economic basis at electric prices currently being charged. Mr. Gibson also testified that the current interpretation and application of pricing under the Agreement posed a serious and significant danger and threat to the public interest, and to the public welfare, including WECCO, its employees and customers, Cedar City, Southern Utah, and the State of Utah. Mr. Gibson testified that it is in the public interest for the Commission to approve the Amendment effective immediately.

Mayor Shirley testified that he was on the Cedar City Council in 1988 when the Agreement was negotiated and executed. He testified that Cedar City, with the assistance of Utah Power, undertook an aggressive economic development program in the 1980s in response to adverse economic conditions in the region. Mayor Shirley testified that one of the earliest and most significant companies enticed to locate in Iron County at that time was WECCO. He testified that WECCO, with approximately 200 employees paid at relatively high salaries, was instrumental and essential to the economic revival, and is essential to the continued economic health of Cedar City and Iron County. He testified that the risk, that WECCO might be forced to discontinue its normal production in Iron County in response to current electric prices being charged to it, posed a serious and significant danger and threat to the public interest and to the public welfare, and specifically to the interest and welfare of the citizens of Cedar City, Iron County, and Southern Utah. Mr. Shirley testified that it is in the public interest for the Commission to approve the Amendment.

Mr. Larson explained relevant provisions of the Agreement and the Amendment, described the basis for PacifiCorp's support of the Amendment, and testified that it is in the public interest for the Commission to approve the Amendment.

Mr. Alt explained the Division's investigation and analysis of WECCO's Complaint, Emergency Motion, and current circumstances, and testified that the Division had intended to appear at the hearing to recommend that the Commission grant immediate relief to WECCO in the form of changing all interruptible power to firm power, with prices consistent with Schedule 9 rates. Mr. Alt testified that the Amendment is consistent with the Division's position, that the rates and terms of service reflected in the Amendment are just and reasonable, that the Division supports Commission approval of the Amendment, and that immediate approval of the Amendment is in the public interest.

No party appeared or presented testimony contesting WECCO's Emergency Motion or the parties' request for immediate approval of the Amendment. The Committee of Consumer Services did not present testimony, but did express concerns, principally the concern that it had questions that had not been answered so that it could not take a position. In particular, the Committee expressed concern that approval of WECCO's emergency motion may set a precedent for moving Special Contract customers to tariffed rates while the issue of obligation to serve remains unresolved.

At the conclusion of the hearing, the Commission issued a bench order immediately approving the

Amendment according to its terms.

In light of WECCO's Complaint and Emergency Motion, and based upon the sworn testimony and evidence presented at the hearing, the Commission hereby enters the following:

#### CONCLUSIONS OF LAW

1. PacifiCorp is a public utility that provides retail electric service in the states of California, Idaho, Oregon, Utah, Washington, and Wyoming. PacifiCorp conducts its electric utility business in the state of Utah under the assumed business name of "Utah Power & Light Company."
2. WECCO manufactures ammonium perchlorate and other products at facilities located in Iron County, Utah, approximately 20 miles west of Cedar City. WECCO's predecessor in interest operated manufacturing facilities near Henderson, Nevada, until they were destroyed in May 1988. Utah Power and Cedar City jointly proposed that the new manufacturing facilities be constructed in Iron County, Utah, and Utah Power offered economically-priced interruptible electric power and energy under the Agreement, in an effort to entice the building of new facilities in Utah.
3. Utah Power and WECCO entered into an Electric Service Agreement (Agreement) in December 1988. The Agreement specified an initial ten-year term, with a three-year evergreen provision. The rates and terms of service under the Agreement are subject to modification by the Commission. The Agreement requires Utah Power to provide both firm and interruptible power and energy at specified minimum prices. The energy charges are subject to periodic adjustments, although the interruptible energy rate can never decrease below a stated minimum rate.
4. Interruptible power and energy are subject to curtailment under the Agreement in the event of certain capacity, energy, or transmission deficiencies. Interruptible power and energy is also subject to curtailment for economic reasons under paragraph 2.2 (b) of the Agreement under certain circumstances. In the event of an economic curtailment, WECCO has an option to buy-through the economic interruption by paying "Replacement Power and Energy" charges calculated in accordance with the Agreement.
5. The Utah Public Service Commission approved the Agreement on January 26, 1989. The Order approving the Agreement acknowledged the following:

Further, [Utah Power] also states that PEPCON has represented that the Agreement rate was one of the most significant factors in its decision to locate its new plant in Utah, and that to the extent the rate provided an incentive for PEPCON to locate its facility in Utah, the Agreement serves to promote economic development in the state.

Order Approving Agreement, issued January 26, 1989, Docket No. 88-035-35, pg. 2, ¶ 3.

6. Utah Power and WECCO have operated under the Agreement since 1988. In March 1999, PacifiCorp sent a notice to WECCO terminating the Agreement effective March 31, 2002.
7. In or about 1997, pass-through pricing provisions, similar to the Replacement Power and Energy provisions of the Agreement, were eliminated from the contracts of other special contract customers. WECCO executed an amendment designed to eliminate the Replacement Power and Energy provisions from the Agreement, but the amendment was never presented to the Utah Public Service Commission for approval.

8. Since the spring of 2000, based upon PacifiCorp's calculations of Replacement Power and Energy Charges under the Agreement (which calculations are disputed by WECCO), the interruptible power and energy, supplied by PacifiCorp to WECCO, have been priced at significantly higher levels than firm power and energy prices under the Agreement, or under Schedule 9.
9. WECCO has requested that its interruptible power and energy levels be reduced to zero, and that its firm power and energy levels be increased to 11 MW under §2.1(B) of the Agreement.
10. Because of the disputed price of interruptible power and energy, WECCO has reduced its operations to minimal levels, and the continued operations of WECCO's facilities in Iron County are at serious risk.
11. The disputed rates for interruptible power and energy being charged to WECCO, and the resulting inability of WECCO to continue to operate economically in Iron County, have created an immediate and significant danger to the public welfare and public interest of WECCO, Cedar City, Iron County, and the State of Utah, and immediate action by the Commission is required in response.
12. The rates and terms of service reflected in the Amendment are just, reasonable, and non-discriminatory.
13. The amendment is in the public interest and should be approved.
14. Immediate approval of the Amendment is necessary to prevent or avoid imminent danger to the public welfare and public interest.

#### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. WECCO's Emergency Motion is hereby granted. Emergency relief in the form of immediate approval of the Amendment is appropriate and necessary to prevent danger to the public welfare.
2. The Amendment is hereby approved by the Commission effective immediately according to its terms, as just, reasonable, and in the public interest and welfare.

DATED at Salt Lake City, Utah, this 16th day of April, 2001.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Richard M. Campbell, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary