
In the Matter of the Petition of Geneva)
Steel for Approval or Determination of a)
New Contract for Electric Service and an)
Infrastructure Agreement.)

DOCKET NO. 02-035-05

ORDER

ISSUED: September 30, 2002

By the Commission:

This Docket was initiated by a Petition filed by Geneva Steel LLC (Geneva) for expedited approval or determination of the rates, terms and conditions of service for: (i) a contract (Electric Supply Contract) for continued electric service by PacifiCorp to Geneva's historic and future operations, including Geneva's planned new electric arc furnace (New Furnace) which is expected to be operational in or after January 2004; and (ii) an agreement ("Infrastructure Agreement") meeting the requirements of the Industrial Electric Infrastructure Act (Act), Utah Code Sections 54-16-101, et seq., which became effective on July 22, 2002.

HISTORY

Geneva operates steel production facilities in Vineyard, Utah County, Utah. Geneva has historically employed more than 1,000 skilled employees. On January 25, 2002, Geneva filed a voluntary petition with the United States Bankruptcy Court for the District of Utah seeking relief under chapter 11 of the Bankruptcy Code. Geneva's facilities are largely idled at this time as it completes negotiations for financing arrangements to enable it to resume and expand its operations.

For more than 13 years, Geneva has received electrical services for its historic operations under the terms of an Electric Supply Agreement for interruptible power and energy (Current Agreement) dated February 10, 1989, as amended. The Current Agreement provides for up to 150 MW of interruptible power and energy under certain circumstances. The Current Agreement expires on December 31, 2002. Geneva anticipates that its future operations (excluding the New Furnace) may require between 110 - 150 MW of electric supply after January 1, 2003. Geneva expects the New Furnace will require up to approximately 120 MW of electric supply beginning in or after January 2004.

PacifiCorp determined that new infrastructure improvements will be reasonably necessary in order for PacifiCorp to supply the electric needs of the New Furnace. Under the Act, PacifiCorp is entitled to deferred accounting treatment and recovery from its Utah customers of reasonable expenses directly related to providing new industrial electric infrastructure needed or appropriate to provide electric services to a new industrial facility.

During the pendency of this docket, Geneva and PacifiCorp reached agreement on the terms for both an Electric Supply Agreement and an Infrastructure Agreement, and submitted the contracts for approval. The Division of Public Utilities (Division), Utah Department of Commerce, and the Committee of Consumer Services (Committee), Utah Department of Commerce, both submitted memoranda providing comments and recommendations with respect to the two proposed agreements.

A hearing was held to consider approval of the two contracts on September 16, 2002. PacifiCorp appeared through counsel Edward A. Hunter, of the law firm Stoel Rives, LLP; the Division appeared through Kent Walgren, Assistant Attorney General, Utah Attorney General's Office; the Committee appeared through Reed Warnick, Assistant Attorney General, Utah Attorney General's Office; and Geneva appeared through Gary A. Dodge, of the law firm Hatch, James & Dodge. A time for public witnesses was scheduled at 4:00 p.m.

PacifiCorp introduced the prefiled testimony of David L. Taylor, Bruce W. Griswold, Randy Rhodes and Robert C. Lively, which was admitted into evidence, and the live testimony of David L. Taylor, Aaron Gibson, Randy Rhodes and Robert C. Lively, in support of the agreements. Geneva introduced the prefiled testimony of Ken C. Johnsen, Joseph A. Cannon, Craig N. Hartman and Roger R. Swenson, which was admitted into evidence, and the live testimony of Joseph A. Cannon in support of the agreements.

The Division introduced a Memorandum dated September 9, 2002, which was admitted into evidence, and the live testimony of Lowell Alt. The Division recommended that the PSC approve the Infrastructure Agreement and the Electric Supply Contract. To ensure effective regulatory oversight and to protect other customers, the Division also recommended that the Commission order Geneva and PacifiCorp to comply with the following conditions:

- Any and all future revisions to the agreements, including the appendices, should be filed with the Utah PSC upon revision.
- PacifiCorp should inform the Commission in a timely manner of any power quality problems due to the additional load arising from Geneva's operation of the proposed electric arc furnace.
- Cost of service studies for Geneva and all other special contracts should be conducted and filed with the Commission as part of any future PacifiCorp rate case.
- Geneva should file its annual financial statement with the Commission and the Division.
- PacifiCorp should promptly notify the Commission and the Division in the event Geneva defaults in part or whole to either agreement.
- In the event of a default by Geneva, PacifiCorp should be required to pursue all reasonably prudent measures to recover Geneva related costs, including participating in any future bankruptcy proceedings.

PacifiCorp and Geneva both accepted the Division's recommended conditions.

The Committee introduced a Response dated September 9, 2002, which was admitted into evidence. In the Response, the Committee stated that it had no significant concerns or problems with the Electric Supply Contract, but suggested that the Commission's order underscore PacifiCorp's responsibility, and contractual right, to ensure that the rate it charges Geneva under the agreement covers the costs to supply power to Geneva. With respect to the Infrastructure Agreement, the Response indicated that the Committee's consultant had concluded that the specified equipment and estimated total cost of the "New Industrial Electric Infrastructure" reflected in Appendix A of the Infrastructure Agreement and the estimated total cost of the "Geneva-Specific Infrastructure" appear reasonable. The Committee noted that the costs are estimates only, and final costs will have to be reviewed for reasonableness prior to any PacifiCorp application to include them in rates. The Committee raised a question as to the extent that construction of the non-Geneva infrastructure may be accelerated to accommodate Geneva's power supply needs, argued that the cost of any such acceleration should be borne by Geneva, and suggested that the Commission needs further information on this issue. Finally, the Committee raised an issue concerning "flicker" and suggested that PacifiCorp should further explain its capability to isolate Geneva's load to one transformer in light of its projected assignment of non-Geneva load to the Geneva-specific transformer.

Geneva and PacifiCorp opposed the Committee's recommendations as to the Infrastructure Agreement and offered testimony in response to the issues raised in the Committee's Response.

DISCUSSION, FINDINGS AND CONCLUSIONS

Electric Supply Agreement.

1. The Electric Supply Agreement becomes effective upon the expiration of the Current Agreement on January 1, 2003, and expires on December 31, 2007.
2. The Electric Supply Agreement includes a monthly customer charge comparable to Schedule 9 and commodity charges for all energy used by Geneva. The commodity charges during peak pricing hours (1-9 p.m., Monday-Friday excluding holidays) are much higher, by a factor of nearly three, than the commodity charges for the other hours. The one-part commodity charges are designed to provide an incentive for Geneva to operate its facilities, to the extent practicable, in hours other than during PacifiCorp's peak pricing hours.
3. The commodity charges are different for the New Furnace and related facilities that will be supplied through a new delivery point than for existing facilities supplied through delivery points. The commodity charges for the existing facilities are designed to recover the cost of service for the existing facilities, based on PacifiCorp's cost of service study using data from the test year utilized in its most recent rate case. The commodity charges for the New Furnace were designed based on Schedule 9 firm rates, assuming a load factor of approximately 85%.
4. Rates specified in the Electric Supply Agreement can be adjusted prospectively no more than once per year by one of two alternative means: (1) The rates will be adjusted to reflect the overall average Utah jurisdictional rate increase or decrease granted by the Commission to all Utah rate classes after a general rate case; or (2) the Commission may adjust rates, following a hearing, if the rates over-recover or under-recover PacifiCorp's cost of providing service to Geneva.
5. The parties also contemplate a separate agreement wherein PacifiCorp will offer to compensate Geneva for accepting one or more forms of interruption.
- 6 The Electric Supply Agreement is subject to the approval of the United States Bankruptcy Court for the District of Utah, and the approval and continuing jurisdiction of this Commission.
- 7 The Electric Supply Agreement contains reasonable terms relating to credit, payment, deposit, and other conditions of services. The Electric Supply Agreement contains rates, terms and conditions that are just, reasonable and in the public interest.
8. Pending further determination or order of this Commission, the expenses and revenues associated with the Electric Supply Agreement may be assigned situs to the State of Utah.

Infrastructure Agreement.

9. Geneva is an "eligible customer" pursuant to Section 4 of the Act, codified at Utah Code Ann. § 54-16-202. Geneva filed a Statement of Eligibility in compliance with the Act on July 23, 2002, more than 15 days have passed since Geneva filed its Statement of Eligibility, and no request for findings has been filed in accordance with Section 4 of the Act, Utah Code Section 54-16-202(3). Geneva was a customer of PacifiCorp on the day on which its Statement of Eligibility was filed. In its Statement of Eligibility,

Geneva represented that it reasonably believes that: (i) within five years Geneva will begin operating a new industrial facility (the New Furnace) that will require the construction of new industrial electric infrastructure (Infrastructure); (ii) operation of the New Furnace will require electric loads that exceed Geneva's electric loads during 2002 by at least 50 megawatts; (iii) during the five years following the date of Geneva's Statement of Eligibility, Geneva will have capital costs that equal or exceed \$50 million in connection with the New Furnace; (iv) the operation of the New Furnace will require the creation or retention of at least 500 jobs within Utah that are related to the operation of the New Furnace, are full-time positions, and are anticipated to be filled for not less than one year; (v) the required Infrastructure is expected to cost PacifiCorp more than \$20,000,000; and (vi) but for the operation of the New Furnace, the required Infrastructure would not be built or would be built by PacifiCorp at a time that would unreasonably delay the construction or operation of the New Furnace.

10. The New Furnace is a "new industrial facility" meeting the requirements of Section 2 of the Act, codified at Utah Code Section 54-16-102(6). The New Furnace consists of buildings, machinery, equipment, or other facilities that in the aggregate will be used in a manufacturing process within Utah or for activities relating to that manufacturing process. The construction or acquisition of the New Furnace will require capital investment by Geneva after the day on which it filed its Statement of Eligibility of \$50 million or more.

11. The Infrastructure Agreement is an "infrastructure agreement" meeting the requirements of Section 5 of the Act, codified at Utah Code Section 54-16-203(1)-(3). The Infrastructure Agreement specifies the New Furnace that requires new Infrastructure, specifies the Infrastructure that PacifiCorp will provide the New Furnace under the Infrastructure Agreement, states the Covered Expenses that Geneva must pay for the portion of the Infrastructure that is the responsibility of Geneva under the Act (Geneva Specific Infrastructure), in an amount calculated by estimating the portion of Covered Expenses that are properly the responsibility of Geneva under applicable tariffs, applicable rules of the commission and standard practices of PacifiCorp. The Infrastructure Agreement states the time period during which Geneva is required to pay such amount, which is not longer than seven years from the day on which the Infrastructure Agreement was executed, and is subject to approval by the Commission.

12. The Infrastructure improvements identified in Appendix A to the Infrastructure Agreement, including the Geneva-Specific Infrastructure, are all "new industrial electric infrastructure" meeting the requirements of Section 2 of the Act, codified at Utah Code Section 54-16-102(5). The Infrastructure consists of facilities or equipment that will be constructed, expanded, installed or upgraded under the Infrastructure Agreement after the date the Infrastructure Agreement was executed, that are reasonably necessary or appropriate to provide electric service to the New Furnace, and that include an electric substation, electric transformers, switching gear, and other related facilities, transmission or distribution lines and poles or related facilities from the substation to the New Furnace, and necessary or appropriate upgrading of affected electric lines or facilities.

13. Under the Act, PacifiCorp is entitled to classify as a "covered expense" any reasonable expense directly related to the Infrastructure that is incurred by PacifiCorp after the execution of the Infrastructure Agreement and the Electric Supply Agreement and after Geneva has secured financing for the construction of the New Furnace, including expenses incurred for design and engineering, acquisition of rights-of-way, purchase or construction of Infrastructure, capital overhead charges such as labor and other charges that have been identified as capital and are general in nature and not directly related to the Infrastructure, and similar expenses ("Covered Expenses").

14. Appendix A to the Infrastructure Agreement specifies PacifiCorp's current estimate of the Covered Expenses that PacifiCorp will incur in completing the Infrastructure. Appendix B to the Infrastructure Agreement specifies PacifiCorp's current estimate of the Covered Expenses for the Geneva Specific

Infrastructure. Both estimates are subject to revision to account for Covered Expenses actually incurred by PacifiCorp in completing the Infrastructure and the Geneva Specific Infrastructure.

15. Covered expenses incurred in connection with the Geneva Specific Infrastructure identified in Appendix B to the Infrastructure Agreement are properly the responsibility of Geneva under the standards prescribed by Section 5 of the Act, codified at Utah Code Section 54-16-203(2). A Covered Expense which should appropriately be recovered from Geneva, but has not been included in Appendix B, is the expense associated with the carrying charge used for the Account for Funds Used During Construction (AFUDC). Appendix B will need to be modified to include this expense. Covered expenses incurred by PacifiCorp in completing the Geneva Specific Infrastructure represent the amount that Geneva is required to pay under the Act, and are not less than an amount calculated by estimating as of the day on which the Infrastructure Agreement was executed the covered expenses that PacifiCorp will incur for the Infrastructure and determining the portion of such covered expenses that are properly the responsibility of Geneva under applicable tariffs, applicable rules of the Commission, and the standard practices of PacifiCorp on the day on which the Infrastructure Agreement was executed. Geneva's repayment term is not longer than seven years from the day on which the Infrastructure Agreement was executed.

16. PacifiCorp and Geneva have executed the Electric Supply Contract, which meets the requirements of Section 5 of the Act, codified at Utah Code Section 54-16-203(4). The Electric Supply Agreement requires Geneva to purchase electric services from PacifiCorp to be used for operation of the New Furnace, provides the rates, terms, and conditions under which Geneva shall purchase such electric services, and is subject to approval by the Commission.

17. After this Commission has entered a supplemental order ("Supplemental Order") determining that Geneva has secured financing for the construction of the New Furnace meeting the requirements of Section 3 of the Act, codified at Utah Code Section 54-16-201(1)(b), all costs reasonably incurred by PacifiCorp in connection with constructing the Geneva-Specific Infrastructure and the Infrastructure shall be Covered Expenses under the Act.

18. Under the Act, PacifiCorp is entitled to recover all of its Covered Expenses in rates, except for Covered Expenses actually paid by Geneva under the Infrastructure Agreement, solely from PacifiCorp's customers located within the State of Utah, in a manner determined by the commission in accordance with the Act. PacifiCorp is entitled to recover such Covered Expenses whether or not: (i) any Covered Expense is specifically identified as being paid by Geneva; (ii) Geneva ever purchases electric services from PacifiCorp after the Infrastructure Agreement was executed; (iii) Geneva ever operates the New Furnace; (iv) Geneva continues to engage in business in Utah; (v) Geneva actually achieves one or more of the reasonable beliefs included in its Statement of Eligibility; (vi) the Infrastructure includes transmission facilities; (vii) any portion of the Infrastructure is used by a PacifiCorp customer other than Geneva; or (viii) PacifiCorp takes any action to recover monies owed by Geneva under the Infrastructure Agreement in the case of a breach of the Infrastructure Agreement.

19. Under the Act, PacifiCorp is directed to maintain an account: (i) for Covered Expenses that permits PacifiCorp to account for Covered Expenses at the time they are incurred; (ii) that includes a carrying charge on the unamortized balance of the account at a rate equal to PacifiCorp's weighted average cost of capital as approved by the Commission at the time the Covered Expense is incurred; and (iii) to which PacifiCorp will credit any payments from Geneva received by PacifiCorp under the Infrastructure Agreement. In PacifiCorp's first general rate case that begins on or after a Covered Expense is incurred, the commission is required to provide for the recovery by PacifiCorp of all amounts in the account described above, including accrued carrying charges, solely from PacifiCorp customers located within the State of Utah.

20. The carrying charge authorized by the Act, and which should be used in connection with the account to be established by PacifiCorp and the Promissory Note to be signed by Geneva, is 12.21%.

21. PacifiCorp will maintain an account for the Covered Expenses as required by the Act. The Commission will provide for the recovery of the amounts in the account in the next general rate case commenced after Covered Expenses are incurred.

22. The rates, terms and conditions contained in the Electric Supply Agreement are just and reasonable, and the Infrastructure Agreement is consistent with the Act.

ORDER

Based upon the foregoing, the Commission orders as follows:

1. The Electric Supply Agreement is approved.
2. Pending further determination or order of this Commission, the expenses and revenues associated with the Electric Supply Agreement may be assigned situs to the State of Utah.
3. The Infrastructure Agreement is approved, when modified to account for AFUDC.
4. When Geneva has secured financing for the construction of the New Furnace as required by Section 3 of the Act, Utah Code Section § 54-16-201(1)(b), Geneva shall submit evidence of such financing and the Commission will issue a Supplemental Order finding that Geneva has secured financing as required by the Act.
5. All reasonable costs incurred by PacifiCorp in connection with the Geneva-Specific Infrastructure and the Infrastructure after the issuance of the Supplemental Order shall be Covered Expenses under the Act and PacifiCorp will be entitled to recover the entire amount of such Covered Expenses in rates solely from its Utah customers, except to the extent that the Covered Expenses are paid by Geneva under the Infrastructure Agreement. After the Infrastructure has been completed, PacifiCorp shall file revised Appendices A and B to the Infrastructure Agreement with the Commission for approval.
6. PacifiCorp shall maintain an account for the Covered Expenses as required by the Act.

DATED at Salt Lake City, Utah, this 30th day of September, 2002.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Richard M. Campbell, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

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