

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 1662**

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY

and

PACIFICORP dba PACIFIC POWER,

Request for Generic Power Cost
Adjustment Mechanism Investigation.

STAFF PREHEARING BRIEF

I. Introduction.

In 2007, the Oregon legislature adopted Senate Bill (SB) 838 implementing a Renewable Portfolio Standard (RPS) under which a certain percentage of generation resources used by Portland General Electric Company (PGE) and PacifiCorp (together the “Joint Utilities”) to serve retail load must be renewable. SB 838 specifies that “all” prudently incurred costs associated with compliance with the RPS are “recoverable” in rates charged by electric companies. However, with one exception, SB 838 not limit the Commission’s authority to determine the ratemaking treatment of these recoverable costs.¹ The exception is that SB 838 specifies that the Commission must allow utilities to recover costs to construct or otherwise acquire facilities that generate electricity from renewable energy sources or for associated transmission under an automatic adjustment clause.²

¹ This requirement is now found in ORS 469A.120(1).

² ORS 469A.120(2).

The Joint Utilities object to the Commission's current treatment of the net variable power costs (NVPC) of renewable resources acquired to comply with the RPS. Currently, the Joint Utilities recover NVPC for all generation resources under power cost adjustment mechanisms (PCAMs) that allow the utilities to change power cost rates each year to take into account updated forecasts and to retroactively true-up amounts collected under forecasted rates to actual costs, subject to a deadband, sharing mechanism, and earnings test. The Joint Utilities object to recovery of NVPC associated with RPS resources under these PCAMs because the utilities must absorb some of these costs under the deadband, sharing, and earnings test. In this docket, the Joint Utilities seek authority to separately recover NVPC for renewable resources under a renewable resource tracking mechanism (RRTM) that does not require the utilities to absorb any of the NVPC associated with resources acquired for the RPS.³

The Joint Utilities state that their RRTM proposal is based on language in Section 13(1) of SB 838 that "all prudently incurred costs associated with the compliance with a renewable portfolio standard are recoverable in the rates of an electric company[.]"⁴ The Joint Utilities believe their proposed mechanism is supported by the language of SB 838 because their proposal would allow them to recover "all" of their prudently incurred costs, whereas the current recovery mechanisms do not.⁵

Staff recommends that the Commission reject the Joint Utilities' proposed RTTM. The language of SB 838 does not support the Joint Utilities' implicit suggestion that the legislature intended to limit the Commission's discretion regarding the recovery of RPS-

³ PGE-PAC/100, Tinker-Dickman/6-8.

⁴ PGE-PAC/100, Tinker-Dickman/4.

⁵ PGE-PAC/200, Tinker-Dickman/8.

related NVPC.⁶ The Commission has previously concluded that any automatic adjustment mechanism for NVPC should include deadbands, sharing, and an earnings test to allocate cost-recovery risk between the utilities and ratepayers. Nothing about RPS-related NVPC warrants shifting this risk entirely to ratepayers.

II. Analysis.

A. The meaning of “recoverable” in Section 13(1) of SB 838.

In a 2007 order regarding implementation of the Renewable Adjustment Clause for costs to construct renewable resources, the Commission addressed the meaning of “recoverable” in Section 13(1) of SB 838:

Section 13 of the Act provides that “all prudently incurred costs associated with compliance with a renewable portfolio standard are recoverable in the rates of an electric utility.” In this regard SB 838 does not make “new” law. Prudently incurred costs always have been recoverable in rates. The “new” feature of SB 838 (in terms of ratemaking) is its endorsement of the adjustment clause (or another method for timely recovery of costs) as the vehicle for a utility to recover its prudently incurred costs [to construct new resources], pending its next general rate case.⁷

The Commission’s interpretation of “recoverable” is consistent with the plain meaning of the word. “Absent a special definition, [Oregon appellate courts] ordinarily would resort to dictionary definitions [to determine the meaning of statutory text], assuming that the legislature meant to use a word of common usage in its ordinary sense.”⁸ According to *Webster’s Third New Int’l Dictionary*,⁹ “recoverable” means

⁶ See e.g., PGE-PAC/200, Tinker-Dickman/6 (“By authorizing recovery of all prudently incurred costs of RPS compliance, the legislature made the choice to require customers to bear the costs of SB 838 compliance.”; “The degree of variability of RPS resources is not a qualifier for the recoverability of variable RPS compliance. SB 838 clearly states that *all* costs associated with RPS compliance are recoverable.” (Emphasis in original.)).

⁷ *In re: PacifiCorp dba Pacific Power*, Order No. 08-548.

⁸ *State v. Murray*, 340 Or 599, 604, 136 P3d 10 (2006).

“capable of recovery.”¹⁰ Nothing in the other sections of SB 838 (the context of the bill) suggests that the legislature intended anything other than this plain meaning of “recoverable.”

As noted above, no section of SB 838 specifies how the Commission should allow rate recovery of RPS-related costs that do not fit within the description in Section 13(3). In absence of such a direction, the rate treatment of costs that are “capable of recovery” is a matter left to the Commission’s discretion.

B. Commission discretion.

The Commission has broad discretion to determine the ratemaking treatment of costs incurred by the utility to serve customers. In a 2014 opinion, the Oregon Supreme Court explained “ratemaking is a unique enterprise that is governed by statute but largely left to the PUC’s discretion.”¹¹ The Oregon Supreme Court has previously observed that the PUC is empowered to “make delegated policy choices of a legislative nature within the broadly stated legislative policy.” It is within the Commission’s discretion to allow the Joint Utilities to recover RPS-related NVPC subject to a risk-sharing mechanism that balances the interests of ratepayers and the utilities.

(...continued)

⁹ *Webster's Third New Int'l Dictionary* (unabridged ed. 2002) appears to be the dictionary of choice in the Oregon appellate courts. See, e.g., *Pacificorp Power Marketing, Inc. v. Dept. Revenue*, 340 Or 204, 215, 131 P3d 725 (2006).

¹⁰ *Webster's Third New Int'l Dictionary* (unabridged ed. 2002) at 1898.

¹¹ *Gearhart v. Public Utility Commission of Oregon*, 356 Or 216, 221, 339 P.3d 904 (2014). See also *Springfield Education Assn. v. School Dist.*, 290 Or 217, 230, 621 P.2d 547 (1980), explaining that the PUC is empowered to “make delegated policy choices of a legislative nature within the broadly stated legislative policy”).

C. The Commission appropriately exercised its discretion to require recovery of RPS-related NVPC under power cost adjustment mechanisms applicable to all NVPC.

The Commission has concluded that five general principles form the basis of a well-designed PCAM: (1) any adjustment under a PCAM should be limited to unusual events and capture power cost variances that exceed those considered normal business risk for the utility; (2) there should be no adjustments if the utility's overall earnings are reasonable; (3) the PCAM's application should result in revenue neutrality; (4) the PCAM should operate in the long-term to balance the interests of the utility shareholder and ratepayer; and (5) the PCAM should provide an incentive to manage its costs effectively.¹²

The RTTM is not based on these principles. The RRTM would (1) allow dollar-for-dollar recovery of NVPC for the Joint Utilities' renewable resources rather than recovery of power cost variances that exceed the utilities' normal business risk, (2) allow recovery of all actual RPS-related NVPC that exceeds what is forecasted in rates even when the utility's overall earnings are reasonable; (3) not balance risk between shareholders and ratepayers, but would shift all risk to ratepayers; and (4) not provide an incentive to the utilities to manage costs effectively.¹³

There is no material difference between the NVPC associated with RPS-compliant resources and NVPC associated with all other resources that warrants modified rate-making treatment for RPS-related NVPC. Staff acknowledges that the utilities are

¹² Order No. 07-015 at 26-27; Order No. 12-493 at 13-16.

¹³ In fact, the RTTM would create a perverse incentive to poorly forecast the market. As an example, if the utilities forecast the test year market to be zero for all hours, the RRTM would provide for full recovery of 100% of the market value of the wind energy

required to acquire renewable resources to comply with the RPS, but this requirement is little different from the general requirement on utilities to acquire sufficient resources to serve their retail load.

Contrary to the Joint Utilities' assertion, the risk associated with recovery of RPS-related NVPC is not materially different from risks associated with recovery of non-RPS-related NVPC. In their testimony, the Joint Utilities assert that the actual variable costs and benefits of renewable resources acquired to meet the RPS are not reflected in the Joint Utilities' rates "given the challenges of forecasting intermittent generation" and the fact the Joint Utilities are not allowed to recover the entire variance between forecasted costs and actual costs.¹⁴ Forecast risk is not unique to renewable resources. Instead, "[f]orecast errors exist with all generation and are a normal part of a company's operation."¹⁵

Furthermore, some non-RPS compliant resources are intermittent, and NVPC for these resources would remain subject to the existing PCAMs under the Joint Utilities' RRTM.¹⁶ Testimony presented by the Industrial Customers of Northwest Utilities demonstrates that the forecast variability for wind resources is not materially different than that for the utilities' hydro resources.¹⁷

In fact, as emphasized by Staff in its testimony, the variability between the Joint Utilities forecasted and actual NVPC is due in substantial part to the difference between

¹⁴ PGE-PAC/100, Tinker-Dickman/1 and 5-6.

¹⁵ Staff/100, Crider/4.

¹⁶ Staff/100, Crider/6 ("The PCAM includes forecasts of hydro generation that also may deviate from hydro generation.").

¹⁷ ICNU/100, Mullins/13-16.

forecasted and actual market prices.¹⁸ Risk of variability between actual and forecasted market prices has nothing to do with generating energy from renewable resources.¹⁹ Instead, as Mr. Mullins testified on behalf of the Industrial Customers of Northwest Utilities (ICNU), “[v]ariations between forecast and actual market prices are caused by a multitude of factors largely unrelated to the variability of renewable resources.”²⁰

Because the generation forecast risk for RPS resources is not materially different from that for other generation resources, and the market risk has nothing to do with whether resources are renewable or non-renewable, it is inappropriate to afford different ratemaking treatment to the RPS resources. This conclusion does not change because all NVPC for RPS resources is “recoverable” in rates under Section 13(1) of SB 838. As the Commission has previously stated, prudently incurred costs have always been recoverable in rates and the requirement in SB 838(1) that RPS-related costs are “recoverable” is not new.²¹

D. The design of the Joint Utilities’ proposed RTTM shifts too much risk to ratepayers.

If the Commission adopts a special cost recovery mechanism for RPS-related NVPC, the mechanism should be limited so that it addresses only variability due to forecasted and actual RPS-compliant resource generation.²² As noted above, the market

¹⁸ See Staff/100, Crider/10.

¹⁹ Staff/100, Crider/8.

²⁰ ICNU/100, Mullins/11. See also Staff/100, Crider/8 (“The utilities proposal shifts market price risk from the company to customers and this has nothing to do with renewable resource cost recovery.”).

²¹ Order No. 08-548 at 18.

²² Staff/100, Crider/11.

risk is the same for RPS and non-RPS resources and NVPC variability due to differences between forecasted and actual market prices and should not be accounted for in the recovery mechanism.

Staff also recommends that the Commission retain the earnings test for any RPS-only recovery mechanism so that the utilities recovery of RPS-related costs does not cause the utilities to over earn.²³

E. The Joint Utilities should address any under-collection of RPS-related NVPC with modifications to forecasting methodologies.

Staff recommends the utilities work on developing improved generation production forecasting methodologies to address their risk to under-collect NVPC.²⁴ The PCAMs allow each company to recover in rates 100% of the utilities' forecasted costs if the forecasts are accurate and correctly reflect actual costs. It is when the forecast of power costs is in error that the company under-collects. Therefore, improving the accuracy of forecasts will limit the potential that utilities will not fully recover their power costs.

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²³ Staff/100, Crider/16.

²⁴ Staff/100, Crider/5-7.

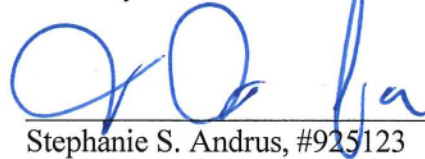
III. Conclusion.

Staff recommends that the Commission reject the Joint Utilities' proposal for the RRTM.

DATED this 16th day of September 2015

Respectfully submitted,

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