



## Public Power Council

1500 NE Irving, Suite 200  
Portland, Oregon 97232  
503.232.2427  
Fax 503.239.5959

April 28, 2004

Delivery in Person

Electronically Filed as Attachment to <carol.hulse@state.or.us>

Administrative Hearings Division  
Public Utility Commission of Oregon  
Docket UM 926  
PO Box 2148  
Salem, Oregon 97308-2148

RE: Docket No. UM 926. Reply Comments of Public Power Council, *et al.*,  
Recommending Continuing Deferral of the Reduction of Risk Discount  
under BPA/PacifiCorp's Financial Settlement Agreement; and Errata to  
Initial Comments with Revised Attachments B and C.

Attention:

Pursuant to Ruling issued by the Commission in Docket No. UM 926 on  
March 24, 2004, enclosed are an original and five copies of Reply Comments of  
Public Power Council (PPC), Oregon Municipal Electric Utilities, Oregon  
People's Utility District Association, and Oregon Rural Electric Cooperative  
Association on the Deferral of the Reduction of Risk Discount (RRD) under the  
Financial Settlement Agreement between Bonneville Power Administration and  
PacifiCorp. Also enclosed are an original and five copies of PPC's **Errata** to  
Initial Comments, with Revised Attachments B and C incorporated.

As directed by the Commission's Ruling, PPC also files copies  
electronically as an attachment to e-mail sent to [carol.hulse@state.or.us](mailto:carol.hulse@state.or.us).

Thank you for the opportunity to comment.

Sincerely,

/s/ Denise Peterson

Senior Counsel, Public Power Council

Enclosures

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 926

In the Matter of )  
 )  
The Investigation Regarding the )  
Purchase of Subscription Power from the )  
Bonneville Power Administration. )

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**REPLY COMMENTS OF PUBLIC POWER COUNCIL, *et al.***

**RECOMMENDATION FOR CONTINUING DEFERRAL  
OF THE REDUCTION OF RISK DISCOUNT (RRD) UNDER  
BPA/PACIFICORP'S FINANCIAL SETTLEMENT AGREEMENT**

**April 28, 2004**

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**INTRODUCTION**

In its Ruling issued March 24, 2004, the Public Utility Commission of Oregon (Commission) provided the opportunity to comment on the Commission Staff's recommendation that the Commission direct PacifiCorp to terminate the deferral of its Reduction of Risk Discount (RRD) payments under PacifiCorp's Financial Settlement Agreement with Bonneville Power Administration (BPA).

Public Power Council, Oregon Municipal Electric Utilities, Oregon People's Utility District Association, and Oregon Rural Electric Cooperative Association (Jointly, Public Power) timely filed initial Comments due April 21, 2004, and now file Reply Comments, pursuant to the Commission's Ruling.

Public Power thanks the Director of the Department of Energy for encouraging the Commission to allow additional time to make a decision that will not prejudice the interests of the parties to the proceeding or the interests of other Oregon ratepayers. We will reply to the initial comments filed by the Citizens' Utility Board of Oregon (CUB), Portland General Electric (PGE) and PacifiCorp in the following discussion.

## DISCUSSION

### Reply to Citizens' Utility Board

CUB urges the Commission to end the deferral of PacifiCorp's RRD payments under its May 23, 2001, Financial Settlement Agreement with BPA. According to CUB, the RRD provided PacifiCorp's customers fair compensation for increased risk and "[it] would create a harm to PacifiCorp's customers if the provision is not triggered." (CUB's April 21, 2004, Comments, p. 1.) CUB has not met a minimal burden to demonstrate any risk and/or harm to PacifiCorp's ratepayers.

CUB did not support claims that PacifiCorp's customers were exposed to risk exceeding that of the other investor-owned utilities' customers, which would require additional compensation, or that PacifiCorp's customers would be harmed if the RRD were not triggered. Also without supporting analysis, CUB implied that the Commission's balancing of the interests of the "public generally," including customers of publicly-owned and investor-owned utilities (PacifiCorp, PGE and Idaho Power in Oregon), would result in "a wash." An economic analysis demonstrates a net harm to the public generally, which includes harm to PGE in particular. Public Power's initial Comments also demonstrate that PacifiCorp's residential ratepayers are doing better than most Oregon utility customers, and far better than PGE's residential customers. It is difficult to comprehend an "outrageous" harm to PacifiCorp's ratepayers if the Commission does not trigger the RRD.

CUB is statutorily charged with representing and advocating for the interests of customers of investor-owned utilities generally. See, ORS §§ 774.010 (Definitions), 774.020 (Policy), and 774.030(3) (Powers). In its comments, CUB is particularly zealous on behalf of PacifiCorp's residential customers in trying to obtain for them the difference on the RRD at \$45.5/MW over the \$38/MW, while ignoring the effect on the residential ratepayers of the other major investor-owned utility, PGE.

The Commission in Order No. 01-427, issued on May 22, 2001, adopted the May 15, 2001, Stipulation of PacifiCorp, PGE, CUB and Commission Staff. The May 15, 2001, Stipulation Relating to BPA's Subscription Settlement and Proposed Order incorporated the adoption of 38 mills per kWh (\$38/MWH) as the basis for calculating the monetary benefits for the residential and small farm customers of the investor-owned utilities. The Joint Customers agreed to this amount in their Proposal to BPA in the WP-02 rate proceeding and incorporated it in the Partial Stipulation and Settlement Agreement, which was executed by the

State Commissions, including Oregon's, as well as the settling investor-owned utilities (all six in the PNW) and much of public power. (Order No. 01-427, Appendix A, Stipulation, p. 3 of 119; Partial Stipulation and Settlement Agreement, pp. 81, *et seq.*, OPUC signatory at p. 94 of 119.)

CUB mistakenly maintains that the RRD is a part of the Financial Settlement Agreement "between BPA and the regional IOUs" offered to the regional IOUs for risk mitigation. (CUB's comments, p. 2.) CUB's remarks seem to suggest that all the regional utilities received the RRD, and that only PacifiCorp's residential customers have been deprived. All the IOUs accepted \$38/MWH for the buydowns, and only PacifiCorp and Puget Sound Energy (Puget) got the additional RRD, ostensibly as an incentive for settlement. The May 15, 2001, Stipulation referenced a possible amendment to PacifiCorp's financial settlement agreement, but the terms were not accessible to the public, as they were filed under a protective order. (Order No. 01-427, Stipulation, Appendix A, p. 3 of 119.) Public power was not aware of PacifiCorp's (or Puget's) RRD at the time of the negotiations, and thus was not in a position to challenge it in any forum, contrary to CUB's assertion.

In the preceding Order No. 00-678, issued in this Docket on October 25, 2000, the Commission, in ordering the ten-year contract term for the original power/monetary benefits under the Subscription Settlement, stated the following:

The Commission has two key objectives regarding access to BPA low cost power. First, the benefits must be protected and preserved for the benefit of qualifying PGE and PacifiCorp consumers. Second, the benefits must be shared equitably among all qualifying PGE and PacifiCorp consumers.

(Docket No. UM 926, Order No. 00-678, p. 1.)

CUB's recommendation that the Commission trigger the RRD for recovery in the Fiscal Years (FYs) 2005-2006 would lead to an inequitable result, in which PGE's residential customers would pay more, to benefit PacifiCorp's residential customers who are enjoying much lower rates already. CUB has not provided the Commission a legal or factual basis that would mandate this result.

### **Reply to PGE's Comments**

PGE's comments do not address the Commission's specific request in the March 24, 2004 Ruling that provided the opportunity to comment:

[A]ny alternative recommendation [must] include a discussion of the Commission's ability to adopt such alternative given its statutory responsibilities to customers of investor owned utilities.

PGE recommends that the Commission approve new settlement agreements, including one between PGE and BPA, that resulted from discussions among BPA and the six Pacific Northwest (PNW) investor-owned utilities. PGE encourages the Commission to end the RRD deferral by PacifiCorp. Without elaboration, PGE asserts that the proposed BPA Settlement Agreements with PacifiCorp and Puget require triggering the payment of the full \$200 million RRD (this would mean Puget's in Washington, as well). PGE does not provide a basis for the Commission to end the deferral, other than an alleged requirement in the proposed BPA/PacifiCorp and Puget Settlement Agreements.

PGE describes the benefits to PGE of the new settlement agreements, which include an 8.7 percent reduction in the cost of power in FYs 2005-2006 for the 258 Mwa that PGE purchases from BPA, for a savings of \$3.9 million in the near term, and certainty in PGE's residential exchange benefits in the long term. The near-term savings, however, are not based on the Commission's ending the deferral, but rather on the assumption that the new settlement agreements would be approved and executed. If the deferral ended and the settlement agreements were not approved, PGE would see a rate increase in FYs 2005-2006.

This slope appears slippery. Let us assume that the Oregon Commission pulls the trigger on PacifiCorp's RRD, and Puget is obligated to do the same in Washington for its share, because the proposed Settlement Agreements are interpreted to "require" the triggering. Then BPA, PacifiCorp and Puget determine that they want more public power support, perhaps even total assent, than is indicated by the assertion that the rights to judicial review will not be compromised by these new agreements. With the full trigger in place, would PGE be burdened with its full share of the RRD in the FYs 2005-2006? Or would the full \$200 million kick into the five-year rate period FYs 2007-2011? PGE does not make this clear.

PGE's comments do not provide enough detail or support for the Commission to grant the request to end the deferral, nor has PGE shown a compelling need to do so for the next six-month rate period. The fact that a proposed agreement between PacifiCorp and BPA may require the trigger of the full deferral (including the RRD deferral between Puget and BPA) is not sufficient reason to jump the gun and trigger the deferral before June 3, 2004. The Commission has the power to direct the parties to modify such a provision in the proposed agreement, pursuant to its authority to approve contracts with BPA.

BPA allows comment through May 16, 2004, in its April 16 Notice of Public Comment Period Regarding Agreements with Regional Investor-Owned Utilities and a Modification to the BPA Power Subscription Strategy. This matter is too important to the region to ask the Commission to hasten to exercise its discretion, without due deliberation and assessment of possible adverse consequences to PGE particularly, and the public generally, of triggering the RRD.

### **Reply to PacifiCorp's Comments**

On April 20, 2004, PacifiCorp's Comments presented an entirely new alternative that Public Power did not anticipate when the Commission issued its ruling and notice of comment period on March 24. BPA's April 16, 2004, Notice came to the attention of the region late on that Friday. The region needs time to evaluate BPA's modified Subscription Strategy.

PacifiCorp has given the Commission no reason to adopt the Staff proposal to trigger the RRD before June 3, 2004. In fact, PacifiCorp recognizes that either PacifiCorp *or* the Commission can terminate the deferral under the terms of the Conditional Deferral Agreement. (PacifiCorp's Comments, p. 3.) PacifiCorp can unilaterally terminate the deferral on the determination that settlement was not concluded successfully. The Commission can terminate it if it *objects to or disapproves continuation*, and the exercise of this discretion need not be related to the failure of the settlement. But such an exercise at this time should have a sound basis in public policy and a legal rationale to support the decision. Public Power has given the Commission good reasons in its initial comments not to exercise this discretion for the next six-month rate period.

PacifiCorp can trigger the RRD pursuant to its contract. The Commission does not have to exercise its discretion to discontinue the deferral at this time. Determining how the Commission will exercise this discretion is a political decision as much as a legal one. The political aspect lies in who would take responsibility for triggering the RRD payments. While PacifiCorp has the narrow interest of its residential ratepayers only, the Commission must balance the interests of all its jurisdictional utilities and their ratepaying customers, and consider the public interest generally, as described in our initial comments. PacifiCorp has given no legal or public policy basis that requires the Commission to trigger the RRD payments at this time. In fact, in its initial comments it appears that PacifiCorp is not requesting the Commission to do so.

Public Power has not weighed in on others' legal arguments related to the RRD as a "litigation penalty." In the initial comments, we have supported the position that the Commission should not exercise its discretion to trigger the RRD based on equitable and legal considerations, and a fair balancing of the interests of its jurisdictional utilities, their customers, and the public generally. We have made simple arguments on law and equity; we leave the complex discussion to others.

We feel compelled, however, to reply to, and draw the Commission's attention to, aspects of PacifiCorp's comments that bolster our equity arguments. The Settlement process was tedious and wrought with many hours of negotiations and discussions. PacifiCorp asserts that "most Public Litigants" supported the settlement, and there were just a few holdouts. (PacifiCorp's Comments, p. 4.) Although there was no unanimous consent to settlement, PacifiCorp would bilaterally agree with BPA to some provisions in the Comprehensive Settlement, because of the value to its residential and small farm customers in Oregon, Washington and Idaho. (PacifiCorp's Comments, p. 5.)

PacifiCorp, however, informs the Commission in its alternate recommendation that it will not forego all, but just one-half of the RRD payments, "[i]n recognition that the Public Litigants did not terminate their third party legal challenges to the Settlement Agreement . . . ." (PacifiCorp's Comments, p. 7.) The rationale and tone of these comments is discomfiting.

There is a significant public policy issue that the Commission should consider in exercising its discretion and rendering the decision on the RRD, *i.e.*, the punitive element involved in adversely affecting the bulk of public power litigants willing to settle the lawsuits, *e.g.*, Public Power Council and others. Furthermore, there are consumer-owned utilities that were not parties to the lawsuits that would have to pay higher rates, when they had no opportunity to affect the outcome of the settlement. We raise these issues for the Commission's consideration in balancing the interests and making an equitable determination.

## CONCLUSION

The initial comments filed by PacifiCorp, PGE and CUB have not provided the Commission a good reason to exercise its discretion to trigger the RRD payments for recovery from BPA's ratepayers in the next rate period (FY 05), beginning October 1, 2004.

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Meanwhile, the region needs more time to evaluate PacifiCorp's alternative to the Staff's Recommendation, which is a proposed bilateral settlement agreement between PacifiCorp and BPA. PacifiCorp's alternative does not require triggering the full RRD payments before June 3, 2004, as the intention is to recover one-half of the RRD Payments in the five-year rate period, FYs 2007-2011. Therefore, the Commission has no need to act on the Staff's recommendation to terminate the deferral of PacifiCorp's RRD payments.

WHEREFORE, we respectfully request that the Commission, in balancing the interests of jurisdictional ratepayers and the public generally, direct the continuation of the deferral of the RRD payments for an additional six-month period. We ask that the Commission provide adequate opportunity to examine PacifiCorp's proposal for settlement of the RRD and residential exchange benefits before the Commission renders a decision on PacifiCorp's alternative.

PUBLIC POWER COUNCIL

/s/ Denise Peterson

Denise Peterson, Senior Counsel

OREGON MUNICIPAL ELECTRIC UTILITIES

/s/ Denise Peterson for

Tom O'Connor, Executive Director

OREGON PEOPLE'S UTILITY DISTRICT ASSOCIATION

/s/ Denise Peterson for

Robin Freeman, Executive Director

OREGON RURAL ELECTRIC COOPERATIVE ASSOCIATION

/s/ Denise Peterson for

Sandra Flicker, Executive Director





The Attachments and Economic Analysis were offered for illustrative purposes and were not definitive. The Revised Attachments are also not definitive and are offered for illustration. The Revised Analysis demonstrates aggregate harm to the public generally, if the RRD is triggered for FYs 2005-2006, and particular harm to Portland General Electric's (PGE) residential ratepayers.

Wherefore, PPC submits the following correction to the April 20, 2004, Comments, Discussion, Part II., page 6:

.....  
**ERRATA**  
.....

Public Power Council's economist, Annick Chalier, has prepared a financial analysis of the RRD, assuming collection in the FYs 2005-2006. Cost/Benefit Analysis, attached and incorporated in these Comments as **Revised Attachment B**, supported by **Revised Attachment C**. Compiled from a number of sources, the information is not definitive, and is offered for illustrative purposes to demonstrate the effects of the Commission's triggering the RRD if the Commission exercises its discretion as Staff requested in the March 16, 2004, Public Meeting.

The bottom line is that there would be a net cost to Oregon utilities, including consumer-owned utilities and PGE, as a result of the RRD, assuming that if PacifiCorp requested it from BPA, Puget would follow suit for its full collection. PacifiCorp's residential ratepayers in Oregon would receive approximately **\$43 million** [not \$56.8 million] in FYs 2005-2006. PGE's residential customers would be responsible for about **\$7.2 million** [not \$8.9 million] in total payments and Oregon consumer-owned utilities responsible for at least **\$42 million** [not \$61.4] million over the two-year period. Triggering the RRD would total at least **\$6.2 million** [not \$13.5 million] of a net cost to all Oregon utilities over the FYs 2005-2006, when netting the benefit to PacifiCorp's residential customers against the cost to all Oregon utilities, including PGE.  
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Respectfully submitted on April 28, 2004.

/s/ Denise Peterson

Denise Peterson, Senior Counsel  
PUBLIC POWER COUNCIL

**REVISED**

**Cost/Benefit Analysis on PacifiCorp's Reduction in Risk Discount (RRD)  
Annick Chalier, Public Power Council**

**Benefit to PacifiCorp's Oregon Residential Ratepayers for its RRD**

If OPUC were to instruct PacifiCorp to trigger the RRD payments in October 2004, over the course of FY05 and FY06, PacifiCorp would receive an additional \$80 million from BPA for its small farm and residential customers (residential) in Oregon, Washington, and Idaho. PacifiCorp's residential customers in Oregon would receive about 53.8% of its total RRD payments, or a total of **\$43 million**. (This proportion is based on the loads listed in PacifiCorp's October 2000 Settlement Agreement with BPA).

**Cost to Oregon Utilities to Pay for RRD**

If OPUC were to instruct PacifiCorp to trigger the RRD payments in October 2004, then Puget Sound Energy would likely follow suit and trigger its RRD payments. A total of \$200 million would be collected from BPA's customers over the next two years, in the form of a higher LB CRAC. PGE's contract for 258 aMW would pay a total of **\$7.2 million** of the RRD over FY05 and FY06.

In 2004, Oregon's public load served by BPA is projected to be about 1536 aMW. 225 aMW of this is in the form of Pre-Subscription contracts that are not subject to the LB CRAC in the FY02-06 period. After adjusting for 1% load growth in FY05 and FY06 for the non-Pre-Sub Oregon load on BPA, on average, about 1330 aMW of load will face the higher LB CRAC in FY05 and FY06. Oregon's public load would pay a total of **\$42 million** for PacifiCorp and Puget's small farm and residential customers.

The total cost to Oregon utilities would be about **\$49.2 million**.

**Net Benefit (Cost) to Oregon**

In balancing the jurisdictional utilities' interests and the public interest, the Commission can determine that netting the **benefit** to PacifiCorp's residential load of **\$43 million**, and the **cost** to the Oregon utilities of **\$49.2 million** (**\$7.2 million** to PGE's load; **\$42 million** to Consumer-owned) results in a **negative benefit, i.e. cost**, to Oregon utilities as a whole of **\$6.2 million**, as a result of triggering the RRD. Such a decision would be detrimental to PGE's residential ratepayers, to Oregon utilities generally, and contrary to the public interest.

**REVISED Rate Effects of Reduction of Risk Discount (RRD)  
Reflected in an Increased Forecasted Load-Based Cost Recovery Adjustment  
Clause (LB CRAC), as of 12/18/03**

	Annual Average (with RRD) in FY05 and FY06	Annual Average (without RRD) in FY05 and FY06
Non-Slice LB CRAC charged to RL-02 and PF-02	24.0	32.0
Annual Average LB CRAC'd RL (assumes base rate of 19.74 mills and excludes FB CRAC and SN CRAC)	24.5 mills	26.1 mills
Annual Average LB CRAC'd PF (assumes base rate of 22.33 mills and excludes FB CRAC and SN CRAC)	27.7 mills	29.5 mills
Cost of PGE's 258 aMW/yr Power Purchase from BPA	\$55.3 million	\$58.9 million
Change in PGE's Annual Power Cost due to RRD		\$3.6 million
Cost of Oregon's Consumer-Owned Utilities' 1330 aMW/yr Power Purchase from BPA, subject to the LB CRAC	\$322.7 million	\$343.7 million
Change in Oregon's Consumer-Owned Utilities' Annual Power Cost due to RRD		\$21.0 million

\* BPA will recover the full \$200 million RRD plus interest payable to PacifiCorp and Puget Sound Energy by increasing the LB CRAC. The LB CRAC is an adjustment to BPA's base rates to collect anticipated augmentation costs not recoverable through BPA's base rates. For this analysis, it is assumed that the primary change in the forecasted LB CRAC in FY05 and FY06, listed in the materials distributed by BPA on 12/18/03 illustrating the rate implications of the failed Settlement, is the need to collect for the RRD plus interest. [Note: These materials show the differential as eight percentage points, but one BPA official recently claimed that it would be more on the order of 8.6 percentage points. This would increase the total paid by PGE and Non-PreSubscription Oregon public utilities by about \$3.5 million.] One group of Preference Utilities does not pay the LB CRAC for their purchases because they signed Pre-Subscription Contracts with BPA. There is approximately 225 aMW of Pre-Subscription load in Oregon.

\* The total increase to PGE's power purchase due to the increased LB CRAC is \$7.2 million.

\* PGE had 754,000 retail customers by the end of 2003. About 88% (or 663,520) of these are residential (and small farm) customers, using about 810 aMW of power in 2003. (From PGE's 10-K filing, p. 4-5).

## ATTACHMENT C: NUMERIC ANALYSIS OF REDUCTION IN RISK DISCOUNT

\* Assuming that PGE passes on in full this additional cost of \$7.2 million to only its residential customers, then each one will pay a total of \$10.85 more. Roughly \$4.34 of this is entirely due to PacifiCorp. PacifiCorp will pass this benefit on to its small farm and residential customers in Oregon, Washington, and Idaho in proportion to the negotiated loads listed in its Settlement Agreement with BPA (contract no. 01PB-12229). In the FY02-06 period, PacifiCorp's Oregon residential and small farm customers receive 53.8% of PacifiCorp's total benefits, Washington customers receive 16.8%, and Idaho customers receive 29.4%.

\* This means that if the OPUC directs PacifiCorp to send BPA notice, then 59.8% of the residential customers served by an IOU the OPUC regulates will pay out \$4.34 so that 39% of the residential customers served by an IOU the OPUC regulates will see their rates fall. (Residential IOU load figures taken from 2002 OPUC report on Oregon utilities).

\* In 2002, PacifiCorp charged its residential customers 6.4 cents/kWh, while PGE charged 7.33 cents/kWh (according to the 2002 OPUC utility report, although the PacifiCorp literature quotes this figure as 7.78 cents/kWh). Granting the RRD notice will further increase the disparity between these two IOUs' rates.

\* If one wishes to take into consideration the effects on all of Oregon's residential (those served by both Publics and PGE), then the RRD payments will increase the rates of 63.6% of the total residential electricity customers in Oregon (PGE's plus the non-Pre-Subscription Publics') so that 28.5% of the total residential electricity customers in Oregon (PacifiCorp's) can enjoy lower rates. (Residential IOU and Publics load figures taken from 2002 OPUC report on Oregon utilities).

\* Consumer-owned utilities in Oregon serve the majority of their loads with power purchased from BPA. Roughly 1330 aMW will be purchased by Oregon's consumer-owned utilities from BPA in FY05 and FY06 and subjected to the LB CRAC. A total of \$42 million will be collected from Oregon's consumer-owned utilities to pay for the RRD plus interest and passed on to PacifiCorp's and Puget's small farm and residential customers. 40%, or approximately \$16.8 million contributes to PacifiCorp's portion of the total RRD.