

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 926

In the Matter of the Investigation)	
Regarding the Purchase of Subscription)	COMMENTS OF THE
Power from the Bonneville Power)	CITIZENS'S UTILITY BOARD
Administration)	

The Citizens' Utility Board of Oregon urges the Commission to direct PacifiCorp to terminate the deferral of its Reduction of Risk Discount payments under PacifiCorp's May 23, 2001, Financial Settlement Agreement with the Bonneville Power Administration.

The Reduction of Risk Discount (Discount) was a negotiated element of the Financial Settlement that would provide \$ 80 million to PacifiCorp's residential and small farm customers in the form of a higher price of power sold to BPA in the event the deal was exposed to greater litigation risk. Since this element was negotiated in good faith, constituted a fair quid pro quo by providing customers compensation for increased risk, is legal on its face and would create a harm to PacifiCorp's customers if the provision is not triggered, the PUC in its duty to protect PacifiCorp's residential customers should direct PacifiCorp to terminate deferral of the Discount and collect the \$ 80 million owed to its residential and small farm customers.

We understand that BPA has recently published a new residential exchange agreement with PacifiCorp covering 2007 to 2011 in order to solicit comments on its terms. Agreement Regarding Payment of Residential Exchange Program Settlement Benefits During Fiscal Years 2007 Through 2011, April 15, 2004. We have not yet inspected this document and this document is not directly at issue in this proceeding at this time. This proposed settlement does not persuade us to recommend continuation of the Discount deferral. Quite to the contrary, termination of the deferral lets all parties know precisely what the lay of the land is during finalization of any completed settlement.

DISCUSSION

ORS 756.040 says:

the commission shall represent the customers of any public utility or telecommunications utility and the public generally in all controversies respecting rates, valuations, service and all matters of which the commission has jurisdiction. In respect thereof the commission shall make use of the jurisdiction and powers of the office to protect such

customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates.

It is our belief that given the context, history, and value of the Discount, failure to terminate the deferral and collect the negotiated compensation on behalf of PacifiCorp's customers would be imprudent on the part of PacifiCorp and a dereliction of its statutory mandate on the part of the Commission.

The mandate of ORS 756.040 requires that the Commission act in the best interests of the customers of the utilities it regulates and the public generally. We must focus on the Commission's obligations to PacifiCorp's customers because those interests in this case are quite clear and specific. In contrast, the Commission's duty to the "public generally" is quite unclear, as the public generally includes customers of publicly-owned utilities in Oregon and customers of PacifiCorp, PGE and Idaho Power in Oregon. The interests of the "public generally" are quite varied and thus are a wash. In this case, the Commission's obligation to the public generally is to avoid an outcome that is so outrageous as to offend the sensibilities.

Despite the heated rhetoric of some who now are opposed to the Discount, the Discount is a valid contract provision that was intended to give value for value. The Discount was a part of the Financial Settlement Agreement between the BPA and the regional IOUs and was a way for BPA to buy power from the IOUs at reduced rates at a time when energy prices were high and volatile. In exchange for the lower sales price, the IOUs were offered a form of risk mitigation by reducing the likelihood of litigation.

At that time, when market prices were so high, many welcomed the negotiation of lower buy-back rates. At the time, no party challenged the provision in the Ninth Circuit. Now that prices have moderated, many forget the value of the deal went both ways. We believe that BPA was interested in the discount mechanism to reduce the price of the energy purchases which would be reflected in a lower preference rate for the publicly-owned utility customers. Without the provision, and without the offer of exchange of money for risk reduction value, the price of the energy purchase would have been higher as would be the preference rate. Preference customers have already gotten the value of this discount mechanism in lower rates. Now that the customers of PacifiCorp have been denied their risk reduction value, some would now invalidate that bilateral agreement and make that loss of value permanent. The outcome that most offends the sensibilities is if one set of regional customers benefits from this mechanism and then works to undermine the quid pro quo when compensation is due.

We should look at the Discount for what it is: a small part of a larger bilateral agreement negotiated in good faith that exchanged monetary value for risk reduction value. Any claim that the provision was a constitutionally invalid theft of rights to sue need only look to the on-going litigation in the Ninth Circuit as proof that this point is all bluster and no substance.

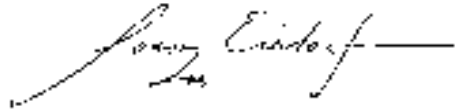
PacifiCorp negotiated an arms length, good faith agreement with BPA. PacifiCorp customers temporarily relinquished a part of the total fair compensation due them in exchange for risk reduction. That risk reduction never materialized. It is now time to restore the just and

full compensation owing to PacifiCorp customers. Failure to do so would result in unjust and unreasonable rates and a truly unjust outcome.

The Commission should direct PacifiCorp to terminate the deferral of the Reduction of Risk Discount prior to June 3, 2004. This would cause payments to PacifiCorp's customers to begin October 1, 2004. There remains plenty of time before payments commence to complete, if possible, a settlement agreement that is agreeable to and in the interests of all contracting parties.

Dated this 21st day of April, 2004

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jason Eisdorfer", with a horizontal line extending to the right from the end of the signature.

Jason Eisdorfer #92292
Attorney for Citizens' Utility Board of Oregon