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BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 995/UE 121/UC 578

In the Matter of the Application of PACIFICORP for an)
Accounting Order Regarding Excess Net Power Costs.)
(UM 995))

In the Matter of PACIFICORP's Application for Partial)
Authorization of Its Request to Defer Excess Net Power)
Costs and Approval of Its Request to Implement an)
Amortization in Rates of Deferred Excess Net Power)
Costs. (UE 121))

ORDER ON
RECONSIDERATION

INDUSTRIAL CUSTOMERS OF NORTHWEST)
UTILITIES and CITIZENS' UTILITY BOARD,)

Complainants,)

vs.)

PACIFICORP (UC 578),)

Defendant.)

DISPOSITION: RECONSIDERATION DENIED

On November 2, 2000, PacifiCorp applied for an accounting order authorizing deferral of excess net power costs, to begin on that date for later amortization in rates. The application was filed pursuant to ORS 757.259(2)(e), which allows the Commission, on application of a utility, to authorize deferral of certain items for later incorporation in rates. On December 4, 2000, the Industrial Customers of Northwest Utilities (ICNU) and Citizens' Utility Board (CUB) filed comments opposing the application. Commission Staff filed comments raising a number of issues for discussion and indicating that Staff might be willing to support PacifiCorp's application. PacifiCorp filed reply comments on December 14, 2000.

On January 9, 2001, the Commission issued Order No. 01-085, which found that PacifiCorp's application could proceed as a matter of law. The Commission made the following findings:

- That PacifiCorp had “convincingly rebutted CUB’s and ICNU’s legal arguments against its application” (at 11);
- That the application “does not violate the deferred accounting statute” inasmuch as “this filing may minimize the frequency of rate changes” (*id.*);
- That “the application and the circumstances underlying it are also within the ambit of prior Commission decisions on deferred accounting” (*id.*); and
- That “the expenses for which [PacifiCorp] seeks deferred accounting are based on extraordinary behavior of the power markets and are not ordinary power cost expenses” (*id.*).

On March 12, 2001, ICNU filed an application for reconsideration with the Commission. ICNU urges that the Commission’s conclusions in Order No. 01-085 should be reconsidered to review new evidence and to correct errors of law and fact essential to the decision.

ICNU’s Argument. (1) ICNU contends, first, that the Commission should grant ICNU’s application for reconsideration because new evidence essential to the decision has been submitted regarding whether PacifiCorp’s net power costs are “discrete.” OAR 860-014-0095(3). Order No. 01-085, at 11, rejected ICNU’s and CUB’s legal arguments against PacifiCorp’s application for deferral, but withheld final determination on the issue of whether PacifiCorp’s net power costs are “discrete.”

The Commission found, according to ICNU, that the cause of PacifiCorp’s increased power costs was the extraordinary behavior of the power markets. ICNU contends that new evidence has since been introduced, which changes the factual basis underlying the order. According to ICNU, PacifiCorp’s brief does not support its original position. PacifiCorp alleged in its brief that the cause of increased net power costs is a confluence of events coming together with an exponential effect (PacifiCorp Brief, UM 995, February 28, 2001). PacifiCorp has submitted additional information throughout settlement negotiations and through its data responses, but ICNU contends that PacifiCorp has never consistently demonstrated the specific, discrete basis on which it seeks deferral of excess net power costs. PacifiCorp has also expanded its application

to mirror a power cost adjustment clause. Thus, ICNU maintains, the exact causes of PacifiCorp's excess net power costs are unknown, but it is clear that they were not caused by a "discrete" event and thus are not appropriate for deferral under Oregon law.

(2) ICNU argues, second, that PacifiCorp's application does not minimize the frequency of rate changes or fluctuations in rate levels. In Order No. 01-085, at 11, the Commission concluded that PacifiCorp's filing may minimize the frequency of rate changes because PacifiCorp could have filed for interim rate relief and the changes due to amortization would be included in UE 116 or a subsequent rate proceeding. After Order No. 01-085 issued, PacifiCorp filed Advice No. 01-002, docketed as UE 121, seeking authorization to defer excess net power costs and approval to raise rates by \$22.8 million per year. According to ICNU, the advice filing modified PacifiCorp's original application in that PacifiCorp no longer sought to include deferred amounts in UE 116 rates and requested an immediate \$22.8 million increase in rates.

On February 21, 2001, the Commission authorized deferral and amortization of \$22.8 million in excess net power costs. Order No. 01-186. ICNU argues that granting this immediate rate increase was a change in the Commission's underlying assumption in Order No. 01-085, that deferred amounts would not be recovered until rates are set in UE 116. Therefore, PacifiCorp's deferral no longer complies with ORS 757.259(2)(e), the deferred accounting statute, which applies to "Utility expenses or revenues, the recovery or refund of which the commission finds should be deferred to minimize the frequency of rate changes or the fluctuations of rate levels"

ICNU contends that deferral of PacifiCorp's net power costs actually increased the frequency of rate changes and fluctuations. Without the initial deferral, PacifiCorp would not have been permitted to amortize amounts and increase customer rates. In addition, PacifiCorp continues to assert that without further increases it may also file an interim rate case or a power cost adjustment mechanism. The Commission should reconsider its ruling on whether deferral will minimize the frequency of rate changes or fluctuations in light of this new evidence and deny PacifiCorp's application.

(3) ICNU's third point is that ORS 757.259 does not permit deferral of anticipated costs. In testimony before the legislature regarding the passage of the deferred accounting statute, Commissioner Davis testified that the deferred accounting statute was intended to address "a few circumstances in which expenses unanticipated at the time rates were approved by the Commissioner would have been included in rates had the Commissioner known of them." Deferred Accounting Statute: Hearing on HB 2145 before the House Committee on Energy and Environment, Exhibit B at 1 (1987) (testimony of Public Utility Commissioner Charles Davis).

ICNU argues that PacifiCorp was aware of and assumed the risk for all of its anticipated net power costs. PacifiCorp has introduced new evidence stating that at least a portion of the deferred amounts are based on the combination of “the third worst hydro conditions in the history of the water records in the Pacific Northwest—streamflows about 59 percent of average—and the prospect of replacing the lost generation from the Company’s considerable hydro portfolio—about 1,200 MW of installed capacity—through market purchases.” PacifiCorp Brief at 4. ICNU maintains that the risk of critical water years was factored into PacifiCorp’s current rates, which are based on normalized water conditions, and the risk of critical water years was anticipated in PacifiCorp’s last general rate case. In addition, according to ICNU, some of the excess net power costs associated with high market prices for which PacifiCorp seeks deferral were known and anticipated by PacifiCorp in its past rate case, UE 111. In light of this new evidence, ICNU argues, the Commission should reconsider its ruling on whether PacifiCorp may defer amounts anticipated during its last rate case and should deny the deferral of all anticipated amounts.

PacifiCorp’s Reply. On March 27, 2001, PacifiCorp filed a reply to ICNU’s application for reconsideration. PacifiCorp contends that reconsideration is not warranted, as ICNU has failed to state a basis under OAR 860-014-0095(3) on which to grant reconsideration. That rule requires new evidence unavailable and not reasonably discoverable before the issuance of the order or an error of law or fact. PacifiCorp argues that ICNU has presented no new evidence and has not presented an error of fact or law that would permit the Commission to grant reconsideration.

(1) PacifiCorp argues that, contrary to ICNU’s position, there is no requirement that power costs arise from a “discrete” event, and that it is not “new evidence” that PacifiCorp’s extraordinary power costs arise from a combination of events. According to PacifiCorp, there is, first of all, no statutory requirement that expenses for which deferral is sought arise from a discrete event. ORS 757.259(2)(e) simply allows deferral of “utility expenses or revenues.” PacifiCorp contends that the application is explicit about the costs to be included and the manner of calculating them. This specificity, according to PacifiCorp, satisfies the requirements of ORS 757.259(2)(e).

Second, PacifiCorp contends that there is no “new evidence” warranting reconsideration. PacifiCorp’s application in this proceeding is premised on the extraordinary conditions in the wholesale electricity markets in the Western United States, which were not anticipated when rates were set in UE 111. PacifiCorp maintains that these extraordinary conditions have made the operational risks normally borne by utilities unacceptably high. As PacifiCorp pointed out in its brief, costs of replacement power are 10 or more times higher than normal. Thus, it is not new evidence that adverse conditions, such as the Hunter outage and poor hydro conditions, have arisen and affect the operational risks the company bears. Rather, PacifiCorp argues, these adverse

conditions have made the case for recovery through deferred accounting more compelling. The Hunter outage and poor hydro conditions only increase PacifiCorp's exposure to extraordinary replacement power prices.

(2) PacifiCorp argues, second, that the Commission's approval of the 3 percent amortization of deferred amounts in UE 121 is not new evidence and does not make the application for deferred accounting unlawful. ICNU contends that the Commission's authorizing amortization in rates of \$22.8 million in deferred amounts is new evidence in that it "was a change in the Commission's underlying assumption in Order No. 01-085 that deferred amounts would not be recovered until rates are set in UE 116." PacifiCorp states that the basis of its application in this proceeding was to minimize the frequency of rate changes, as would have occurred had the amortization of deferred amounts been postponed until the conclusion of UE 116, as the application anticipated. There was, therefore, a lawful basis for granting the requested deferral under ORS 757.259(2)(e).

PacifiCorp contends that the Commission determined it was preferable to begin amortization of 3 percent, or \$22.8 million, in February 2001 rather than waiting for the conclusion of UE 116. Based on Staff's memorandum for the January 19, 2001, Public Meeting, the Commission reasoned that the amounts proposed for deferral for November and December 2000 substantially exceeded the 3 percent limitation of ORS 757.259(6) and that better matching of burdens would be achieved by earlier amortization in rates of the deferred amounts. The Commission therefore decided to begin amortization in rates in February 2001. PacifiCorp contends that this action is not new evidence for purposes of granting reconsideration. Once the amount was properly deferred, amortizing in rates sooner rather than later was not precluded by statute and was preferable under the circumstances.

(3) Finally, PacifiCorp argues that the power costs for which recovery is sought were unanticipated when rates were set in UE 111, and it is not new evidence that poor hydro conditions are contributing to these extraordinary power costs. PacifiCorp's application is premised on the extraordinary conditions in the wholesale electricity markets in the Western United States, conditions that were not anticipated when rates were set in UE 111. ICNU contended that PacifiCorp was aware of and assumed the risk of all of its anticipated net power costs, including the risk of critical water years. On that basis, ICNU now argues that it is new evidence that PacifiCorp cites poor hydro conditions now as a basis for its deferral request.

PacifiCorp does not dispute that risks of hydro conditions are the type of normal operating risks utilities bear between rate cases. PacifiCorp notes that its request for deferred accounting is not premised on poor hydro conditions but on the extraordinary conditions in the wholesale electricity markets, which have changed the magnitude of risk associated with poor hydro.

Applicable Law. OAR 860-014-0095(3) provides:

The Commission may grant an application for rehearing or reconsideration if the applicant shows that there is:

- (a) New evidence which is essential to the decision and which was unavailable and not reasonably discoverable before issuance of the order;
- (b) A change in the law or agency policy since the date the order was issued, relating to a matter essential to the decision;
- (c) An error of law or fact in the order which is essential to the decision; or
- (d) Good cause for further examination of a matter essential to the decision.

ORS 757.259(2)(e) provides:

(2) Upon application of a utility or ratepayer or upon the commission's own motion and after public notice and opportunity for comment, the commission by order may authorize deferral of the following amounts for later incorporation in rates:

* * * * *

(e) Utility expenses or revenues, the recovery or refund of which the commission finds should be deferred in order to minimize the frequency of rate changes or the fluctuation of rate levels or to match appropriately the costs borne by and benefits received by ratepayers.

Commission Discussion and Resolution. (1) ICNU contends, first, that ongoing excess net power costs incurred for a variety of unspecified reasons do not constitute discrete costs as required by ORS 757.259(2)(e). In Order No. 01-085, we deferred a discussion of whether the costs for which PacifiCorp requests deferral were discrete or not, pending a discussion among the parties about Staff's concerns. The parties did not resolve this issue. ICNU now argues that we should reconsider Order No. 01-085 because new evidence shows that PacifiCorp's net power costs have not risen because of a discrete event and they are thus not appropriate for deferral under Oregon law.

We note that the requirement of "discrete" costs arises not from the statute but from UE 76, Order No. 92-1128, at 8, where we stated: "*For the most part*, deferrals under ORS 757.259(2)(c) [now (e)] were to be of discrete items which might substantially affect a

utility's earnings on a short term basis" (emphasis supplied). Our view is that the situation in the power markets is unprecedented and should be addressed with the means at hand. The language of the statute does not preclude granting PacifiCorp's application, and the discussion in UE 76 does not impose an absolute requirement of discrete costs in a deferred accounting application. ICNU's contention with respect to discrete costs and new evidence therefore fails.¹

(2) ICNU next argues that PacifiCorp's application does not minimize the frequency of rate changes or fluctuations in rate levels. ICNU's theory is that Advice No. 01-002, UE 121, seeking authorization to defer excess net power costs and approval to raise rates by \$22.8 million per year, modified PacifiCorp's original application by seeking immediate amortization instead of amortization in UE 116 rates or in another proceeding. ICNU argues that this modification vitiates the ground for granting the deferral: to minimize the frequency of rate changes or the fluctuations of rate levels.

We agree with PacifiCorp that the deferral was properly granted in Order No. 01-085, on the understanding that the application would have a later effect on rates. We do not subscribe to ICNU's theory that our later action to change the amortization date invalidates the deferral or constitutes new evidence on which to reconsider our deferral order. We had good reason for allowing immediate amortization of the deferred \$22.8 million. We reasoned, among other things, that immediate amortization would better match the costs incurred by the company with the customers receiving the benefits of the power supplied. This reasoning echoes the last ground in ORS 757.259(2)(e) for granting a deferral: "to match appropriately the costs borne by and benefits received by ratepayers." ICNU's argument that the decision to amortize \$22.8 million immediately invalidates our earlier deferral decision fails.

(3) ICNU argues that PacifiCorp was aware of and assumed the risk of all anticipated net power costs, including the risk of critical water years. ICNU concludes that it is new evidence that PacifiCorp is now citing poor hydro conditions as a basis for its deferral. ICNU maintains that the risk of critical water conditions was factored into PacifiCorp's current rates. We concur with PacifiCorp that the power costs for which recovery is sought were unanticipated when rates were set in UE 111. We also agree that it is not new evidence that hydro conditions contributed to the extraordinary conditions in the wholesale electricity markets. ICNU's attempt to characterize the power costs for which PacifiCorp seeks recovery as anticipated costs was rejected in Order No. 01-085. Adding another input, hydro conditions, to the sum of costs does not change our conclusion.

¹ In any case, excess net power costs themselves (measured relative to a baseline) are discrete even if events causing them are not.

ICNU has adduced no ground under OAR 860-014-0095 for granting reconsideration of Order No. 01-085. ICNU's application for reconsideration should be denied.

ORDER

IT IS ORDERED that the application for reconsideration of Order No. 01-085 filed by the Industrial Customers of Northwest Utilities is denied.

Made, entered, and effective _____.

Ron Eachus
Chairman

Roger Hamilton
Commissioner

Joan H. Smith
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. The request must be filed with the Commission within 60 days of the date of service of this order and must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.