

This is an electronic copy. Attachments may not appear.

**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

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

Complainants,)

vs.)

PACIFICORP,)

Defendant. (UC 578).)

DISPOSITION: BASELINE SET FOR NET VARIABLE POWER COSTS

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), which allows the Commission, on application of a utility, to authorize deferral of certain items for later incorporation in rates. PacifiCorp filed the application to recover a portion of the extraordinary power costs it has incurred since November 2, 2000. 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 may 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. On January 18, 2001, PacifiCorp submitted a tariff filing in docket UE 121 for approval of a \$22.8 million deferral and to begin amortization of that amount in rates. The tariff filing was in accordance with a stipulation between Staff and PacifiCorp included in Order No. 01-171, under which Staff agreed with PacifiCorp that "the Company has incurred, at a minimum, \$22.8 million of excess net power costs for which deferral and amortization in rates is appropriate."¹

In its Order No. 01-171, entered February 13, 2001, the Commission authorized the deferral of \$22.8 million. On February 21, 2001, the Commission authorized amortization in rates of \$22.8 million, subject to refund pursuant to ORS 757.215(4), thereby increasing PacifiCorp's rates by 3 percent (Order No. 01-186).

On May 11, 2001, the Commission entered Order No. 01-420, which approved deferral of the remainder of PacifiCorp's excess net power costs² and also approved the deferral mechanism proposed by Staff. That proposal provides for a range of 250 basis points within which no amounts are deferred, or a "deadband," followed by a range of 150 basis points where PacifiCorp and its customers share on a 50-50 basis the excess net power costs. Above 400 basis points, the sharing percentage is 75 percent by customers and 25 percent by PacifiCorp. That order left open the question of the baseline beyond which net variable power costs were excess. The baseline is the point around which the deadband and sharing bands are organized. The record in docket UM 995 did not contain sufficient information to determine the appropriate baseline. Therefore, Order No. 01-420 at 29 directed the parties to meet and agree on a baseline or, failing agreement, to submit briefs on the issue within 30 days of the order.

Parties agree that the baseline should represent the amount of net variable power costs currently reflected in PacifiCorp's rates. The starting point for that number is the power costs established in docket UE 111, PacifiCorp's last general rate case. The numbers at issue in UE 111 range from \$415,718,353 (the number resulting from adding the power cost items in the stipulations together) to \$475,299,882 (the power costs requested by PacifiCorp in its initial filing in UE 111).

PacifiCorp and Staff signed a stipulation³ that was adopted by the Commission in UE 111 (Appendix B to Order No. 00-580). The adjustments in that stipulation underlie the final revenue requirement authorized by the Commission. In that stipulation, Staff and PacifiCorp resolved all issues except power and coal costs. That stipulation reduced PacifiCorp's revenue requirement increase request from \$82.7 million to \$21.7 million.

¹ In response to the UE 121 tariff filing, CUB and ICNU filed a formal complaint on January 22, 2001, which was docketed as UC 578. The complaint challenged the prudence of PacifiCorp's expenditures and asked to make any increase in UE 121 subject to refund. The complaint, the deferral application, and the amortization application have been consolidated for procedural purposes.

² Defined as the difference between the level of power costs currently "in rates" and the level of net power costs actually incurred or, in the case of future months, expected to be incurred by PacifiCorp.

³ The stipulation was signed by PacifiCorp on May 31 and by Staff on June 2, 2000, and has two signature pages with two different dates. We will refer to it as the Appendix B stipulation.

On September 6, 2000, the parties to UE 111 reached a stipulated settlement of all rate spread and rate design issues. The parties agreed to a total annual revenue requirement increase of \$13.625 million. That stipulation was attached to Order No. 00-580 as Appendix C and was adopted by the Commission in that order (the Appendix C stipulation).

The Appendix B and C stipulations do not specify an explicit figure for power costs. Parties to this docket conferred about how to derive a figure and were unable to agree on a baseline. Commission Staff, PacifiCorp, and ICNU/CUB submitted timely briefs on the issue.

All parties that submitted briefs agree that the baseline should capture the amount of net variable power costs currently in rates. The parties disagree on how to calculate that amount, in large part because the UE 111 settlement was a “black box” settlement that did not break out the power cost figure explicitly.

PacifiCorp’s Position. PacifiCorp is concerned that too high a baseline will result in nonrecovery of prudently incurred power costs. PacifiCorp points out that the sharing mechanism for deferral adopted in Order No. 01-420 already results in nonrecovery of approximately 45 percent of its actually incurred excess net power costs. The sharing mechanism is intended to give the company an incentive to minimize power costs, among other things. But, PacifiCorp argues, setting the baseline incorrectly may result in a disallowance of actually incurred costs that is not associated with achieving an objective such as reducing power costs. According to PacifiCorp, Staff overstates the level of power costs currently included in rates by approximately \$15 million.

PacifiCorp’s Methodology. PacifiCorp proposes \$437,457,229 as the starting point to determine the baseline. PacifiCorp calculated this figure by spreading pro rata the difference between the revenue requirement increase that PacifiCorp requested (\$82.7 million) and the increase agreed on in the final stipulation in UE 111 (\$13.6 million). This calculation assumes that all categories of expenses were reduced proportionately to achieve the agreed upon rate increase and the allowed rate of return.⁴ Adjusting this figure to reflect the difference between the retail load used for setting rates in UE 111 (5739 aMW) and the retail load assumed in PacifiCorp’s current rate case, UE 116 (6067 aMW), increases the baseline to \$462,392,626. PacifiCorp argues that this is the proper baseline for purposes of calculating the deferral. The figure represents the amount of net power costs currently reflected in rates, adjusted to reflect changes in load. PacifiCorp proposes spreading this amount across the months of the year, in the same proportions as the original UE 111 filing, for purposes of calculating monthly deferrals.

PacifiCorp’s Critique of Staff’s Methodology. According to PacifiCorp, Staff’s proposal assumes that PacifiCorp was granted full recovery of its requested power costs in UE 111. Staff’s approach takes the highest number in the range described above, the level of net

⁴ PacifiCorp states that it increased revenues in its initial filing in UE 111 by the \$13.6 million increase agreed upon in the final stipulation, and then reduced all expense categories by approximately 8 percent to produce the agreed upon rate of return of 8.707 percent. This resulted in a reduction of net power costs from approximately \$475 million, as originally requested by the company, to approximately \$437 million.

power costs included in PacifiCorp's request in UE 111, or \$475,299,882,⁵ and assumes that there were no disallowances of power supply expenses in reaching the stipulated amount. This position is not credible, given the level of power cost adjustments that were proposed by Staff and ICNU in their UE 111 testimony. Staff proposed \$17.8 million, or \$55 million on a total company basis, of adjustments to PacifiCorp's requested power costs. ICNU proposed adjustments totaling \$30.4 million, or approximately \$90 million on a system basis. Adjustments to power costs were the single largest category of adjustments proposed by these parties in their UE 111 presentations.

PacifiCorp maintains that after recommending the highest possible number available in the record in UE 111, Staff proposes further adjustments to arrive at its recommended UM 995 baseline: Staff proposes that its UE 111 figure of \$475,299,882 be adjusted to include California load and adjusted to include revenue generated by Wah Chang's contract. The retail load assumed in UE 116 (6067 aMW) used for purposes of adjusting PacifiCorp's proposed baseline includes the California load and captures this element of Staff's proposed adjustment. This produced a baseline of \$502,342,339. The impact of the Wah Chang loads has not been quantified, and is a confidential figure. PacifiCorp notes that the impact of this adjustment would further increase the baseline.

According to PacifiCorp, Staff's proposal denies recovery of \$15 million of prudently incurred power costs over and above the power costs that are not recovered under the sharing mechanism. This \$15 million is disallowed simply because the baseline is not set correctly. PacifiCorp provides the following table to show the effects of Staff's baseline versus its proposed baseline. Staff's baseline increases the percentage of nonrecovery by 5 percent (from PacifiCorp's 40 percent nonrecovery to 45 percent under Staff's baseline).

	Staff Baseline	PacifiCorp Baseline
Difference Between Actual And Baseline Power Costs	\$170,258,068	\$190,830,620
Deferred Power Costs	99,652,186	114,994,569
Unrecovered Power Costs	70,605,882	75,836,051
Percentage Unrecovered	45	40

PacifiCorp's Recommendation. PacifiCorp contends that the Commission should adopt its baseline level of power costs because that baseline is the best estimate of net power costs

⁵ PacifiCorp notes that Staff bases its argument on the progression of the revenue requirement increase from the earlier stipulation regarding revenue requirement in UE 111, dated May 31, 2000, which provided for a \$21.7 million increase, to the overall revenue requirement in the final stipulation, which provided for a \$13.6 million increase. According to Staff, if the difference between the two stipulations is attributed to power costs, the resulting baseline could be no lower than \$451 million, as compared to the \$437 million produced by PacifiCorp's pro rata spread. According to PacifiCorp, Staff's method implies that there is specific information available from the stipulations to determine the level of power costs included in rates. PacifiCorp maintains that the stipulations do not include such information, however, and it is not appropriate to attempt to derive such details from them. It is less appropriate to use selective information from the stipulations, as proposed by Staff. PacifiCorp contends that the specific information available in the stipulations suggests the \$415 million baseline figure that is calculated by adding up the numbers in the final stipulation.

currently in rates and will allow the sharing mechanism adopted by the Commission to operate in a symmetrical manner. That is, it will give PacifiCorp as much chance to gain under the baseline as to lose.

ICNU and CUB's Position. ICNU and CUB generally support Staff's approach to setting the baseline. ICNU and CUB believe that with Staff's adjustments, the UE 111 numbers reasonably approximate the current level of power costs in rates. In the alternative, ICNU and CUB argue that the Commission should independently establish the correct power baseline. ICNU and CUB believe that PacifiCorp's approach understates the power costs currently in rates.

As a general matter, ICNU and CUB believe that PacifiCorp should be responsible for excess net power costs between rate cases. ICNU and CUB believe that PacifiCorp is asking customers to cover costs that are not included in normalized power rates, such as costs associated with plant outages and low hydro conditions. ICNU and CUB argue that PacifiCorp's approach understates power costs currently in rates and attributes the stipulated UE 111 revenue requirement number, as compared to PacifiCorp's filed case, to all issues in the rate case. ICNU and CUB argue that the baseline must not be set so as to reduce the value of the UE 111 stipulations, or customers will face higher power cost deferrals because power costs currently in rates will be understated. ICNU and CUB argue that PacifiCorp's request in UE 111 must be adjusted so that PacifiCorp does not recover through the power cost deferrals concessions on other issues that other parties to UE 111 made in settlement.

ICNU and CUB support Staff's approach to establishing the baseline, as set forth in Staff's April 10, 2001, letter to Commissioner Smith. Even if the Commission uses the implicit UE 111 settlement amount for power costs, the baseline should be no less than the UE 111 filed net variable power costs minus \$8.075 million, because the difference between the Appendix B stipulation and the final rates is the implicit amount by which the filed UE 111 power costs were reduced. The Appendix B stipulation resolved all issues but the power and coal cost issues. Thus, these parties contend, it is inappropriate to spread all the Appendix B disallowances to power costs.

ICNU and CUB point out that there are several practical matters that the Commission should consider in this docket. PacifiCorp has indicated that the excess net power cost deferral may approach \$190 million. This amount far overshadows any amount requested by PacifiCorp in any recent general rate case. Given this extraordinary request, and the fact that it comes between rate cases, a risk normally borne by the utility, ICNU and CUB urge the Commission to use its judgment to set the baseline in favor of customers. The Commission should also require monthly reporting of the amount of the excess power deferral.

The Commission should also, according to ICNU and CUB, consider the date on which the UM 995 deferrals should end. ICNU and CUB argue that the deferrals should end no later than July 31, 2001. The Commission's final order in UE 116 is expected to issue by August 1. If UE 116 does not cover PacifiCorp's power costs, as ICNU and CUB believe it should,

PacifiCorp should file a new application providing new support and justification for additional deferrals.

Staff's Position. Staff argues that the Commission should consider three principles in determining the baseline:

1. The baseline should be derived from the net variable power costs implicit in customer rates at this time;
2. The baseline should reflect 2001 loads to closely match the deferral period; and
3. The baseline should include California loads that were excluded from UE 111 due to the erroneous assumption that PacifiCorp would be selling its California service territory.

Staff notes that its own proposal and PacifiCorp's proposal both adopt these principles. The matter of difference between the proposals is the number that correctly reflects the net variable power costs currently in rates.

The Commission set PacifiCorp's current rates in UE 111, where it approved rates based on a stipulation reflecting an overall settlement of all issues in the case. The settlement presented no explicit figure for net variable power costs. Staff and PacifiCorp provide alternative approaches to deriving net variable power costs using figures from UE 111.

Staff derived the implicit level of net variable power costs in current rates from a document created by PacifiCorp and prepared in connection with UE 111. On April 10, 2001, Staff provided a letter in response to Commissioner Smith's request for clarification on baseline proposals. An attachment to the letter is a work paper from PacifiCorp's initial filing in UE 111 that shows PacifiCorp's request of \$475,299,882 in systemwide power costs.

Staff's Critique of PacifiCorp's Proposal. In its UM 995 brief, PacifiCorp stated that \$462,392,626 is the proper baseline to be used for purposes of calculating amounts to be deferred. The company reached this figure in two steps. First, PacifiCorp calculated a net variable power cost baseline in UE 111 by spreading pro rata the difference between the entire revenue requirement increase requested in UE 111 and the increase agreed on in the stipulation, implying \$437,457,229 as the stipulated UE 111 power cost result. Second, PacifiCorp increased that figure by the retail load difference between UE 111 and UE 116, which used a 2001 test period.

Staff agrees with the second step, which appropriately adjusts the UE 111 power cost figure by the load change to 2001. Staff believes that PacifiCorp's load adjustment percentage indicates that the company agrees with Staff's second and third principles above. Staff contends, however, that PacifiCorp's first step is improper. Spreading the entire revenue requirement

difference between the amount PacifiCorp requested and received pro rata across all PacifiCorp's costs, including power costs, completely ignores the process in UE 111 and the initial stipulation the company signed with Staff in that case.

The UE 111 Appendix B stipulation resolved all issues but power costs and reduced PacifiCorp's revenue requirement request from \$82.7 million to \$21.7 million. Therefore, the \$61 million reduction was related to all issues *except* power costs. PacifiCorp cannot now claim that any portion of the \$61 million in adjustments is related to power costs.

The final, or Appendix C, stipulation, signed by Staff, PacifiCorp, and other parties, reduced PacifiCorp's revenue requirement by an additional \$8.1 million, to \$13.6 million. This stipulation settled power cost issues as well as a number of non-power cost issues raised by other parties. Therefore, Staff argues, given the Appendix B stipulation, the most PacifiCorp could claim as a power cost disallowance is \$8.1 million (\$24 million on a system basis). This would mean, according to Staff, that UE 111 power costs were at least \$451.3 million (\$475.3 million requested minus \$24 million), not \$437.5 million before load adjustment, as PacifiCorp asserts. Staff recommends that the Commission reject PacifiCorp's proposed load adjusted net variable power cost baseline of \$462.4 million.

Staff's Baseline Proposal. If the Commission assumes that the entire adjustment of the second UE 111 stipulation, from \$21.7 million to \$13.6 million, was related to power costs, the level of power costs in UE 111 rates is \$451 million. Increasing that amount to account for load growth produces a net variable power cost baseline of \$477.1 million. Staff believes this level is not appropriate, however, because other parties also had significant proposed adjustments in UE 111. Adopting a baseline of \$477.1 million would ignore concessions made by other parties in reaching a global stipulation in that case.

Staff's High End Proposal: \$502.3 million. Staff calculates this amount using PacifiCorp's requested \$475.3 million in UE 111, adjusted by the same load adjustment percentage (5.72 percent) proposed by PacifiCorp in this docket. This baseline net variable power cost implicitly assumes that the company's requested power cost level in UE 111 was adopted. Furthermore, this baseline prevents PacifiCorp from recovering, through UM 995 deferrals, what it gave up on power costs in exchange for substantial concessions by other parties in the final settlement agreement. This figure allows none of the \$8.1 million disallowance as power costs.

Staff's Recommendation: A UM 995 baseline net variable power cost of between \$477.1 million and \$502.3 million. Staff believes that the appropriate baseline net variable power costs for UM 995 is between \$477.1 and \$502.3 million on a system basis. The \$477.1 million figure assumes that all of the final \$8.1 million disallowance is related to power costs, an outcome Staff does not believe is sensible given the facts of the UE 111 case. The \$502.3 million figure assumes that none of the final \$8.1 million disallowance is related to power costs; or alternatively, that the portion related to power costs should not be recoverable through the UM 995 deferral mechanism. As another alternative, the Commission could reasonably assume that the

incremental disallowance in the final UE 111 stipulation was related equally to power costs and other issues. In that event, the average of the two figures is approximately \$489.7 million.

Staff's Proposed Adjustments to the Baseline. Staff argues that the baseline should also be adjusted to account for the expected nine month deferral period, November 2000 through July 2001. The deferral period will end when the UE 116 rates go into effect, which is planned for August 1, 2001. The baseline should be shaped by month using actual 1999 power costs.

In addition, Staff argues that the Commission should increase the baseline by the amount of revenue generated by PacifiCorp through its contract with Wah Chang, excluding the inflation adjusted adder for transmission and distribution services.

Discussion and Resolution. We agree with the parties that the appropriate starting point for the baseline is the UE 111 company filed net power cost figure. We further agree that the figure should be adjusted to include California load and updated to take load growth into account. We understand that the 6067 aMW assumed in UE 116 takes both of these adjustments into account.

We conclude that the baseline figure should also be adjusted to include revenue generated by the Wah Chang contract. Wah Chang's contract obliges the customer to pay PacifiCorp market based rates. Thus, the baseline should be increased by the amount paid by Wah Chang under the contract, excluding the inflation adjusted adder for transmission and distribution services. Without this adjustment, PacifiCorp would be able to spread the costs of serving Wah Chang to other customers while retaining the higher revenue generated by the contract. Since the Wah Chang figures are confidential, Staff is requested to work with PacifiCorp to adjust the baseline figure to include the adjusted Wah Chang revenue.

The annual baseline number we adopt will be adjusted to reflect the deferral period, from November 2000 through July 2001 or until rates in UE 116 go into effect. The baseline should be shaped by month using 1999 actual power costs. We will require monthly reporting from PacifiCorp on the amount deferred.

It remains to determine whether to adopt PacifiCorp's or Staff's calculation of net variable power costs currently included in rates. PacifiCorp proposes prorating across all expense categories the difference between the overall revenue requirement it requested in UE 111 and the revenue requirement of the final settlement in that docket. The assumption behind PacifiCorp's approach is that the disallowances implicit in the Appendix C, or final, stipulation are spread evenly across all expense categories. PacifiCorp supports its approach by pointing out that there is no specific information available from the stipulations to allow us to determine what is in rates. PacifiCorp's approach would yield a \$437 million figure, which would then be adjusted upward for load growth and California load.

Staff's approach takes into account the subject matter and interrelationship of the Appendix B and C stipulations. We agree with Staff that this approach is reasonable. In its letter to the Administrative Law Judge dated April 27, 2001, PacifiCorp contends that taking the history of the settlement process into effect here could have a chilling effect on settlement discussions. PacifiCorp's apprehension is ill founded. We do not look beyond the stipulations resulting from the settlement discussions, which explicitly exclude power costs in one case⁶ (Appendix B stipulation) and include them in the other⁷ (Appendix C stipulation). These documents are incorporated into Order No. 00-580 and are matters of public record.

While neither stipulation names a figure for power costs, we assume, based on the explicit language of the Appendix B stipulation, that the \$61 million reduction in the Appendix B stipulation was not related to power costs. We note, however, that Commission Staff and PacifiCorp were the only signatories to the Appendix B stipulation, whereas Staff, PacifiCorp, CUB, ICNU, and Tim Watson signed the Appendix C stipulation. We also note that the Appendix C stipulation does not state that its only subject matter is power costs. The parties who were not signatories to the Appendix B Stipulation were active participants in the case after the Appendix B Stipulation was filed; they submitted testimony on the Appendix B Stipulation (Order No. 00-580, Appendix C at 2). Thus as between PacifiCorp and Staff, we can assume that the issues settled by the Appendix C Stipulation were power cost issues. We cannot assume that the other parties had only power cost issues, however.

We therefore assume that the further \$8.1 million reduction in revenue requirement increase in the Appendix C stipulation was at least partially related to power costs. We find it unreasonable to assume that the entire disallowance was related to power costs. Therefore, we elect the average figure Staff proffered, \$489.7 million, as the baseline net variable power cost figure. This figure is to be adjusted to include the amounts paid by Wah Chang under its contract with PacifiCorp, excluding the inflation adjusted adder for transmission and distribution services. We find this figure to be a reasonable apportionment of risk between rate cases.

It remains to state explicitly the duration of the UM 995 excess net power cost deferral. We did not address this issue in Order No. 01-420. We find that the deferral approved in that order should end when rates in UE 116 go into effect. UE 116 is PacifiCorp's general rate case and includes consideration of a power cost adjustment. If PacifiCorp considers rates in that docket insufficient to cover any excess net power costs, it can file for a new deferral at that point.

ORDER

IT IS ORDERED that:

⁶ "This Stipulation represents a partial settlement of revenue requirement issues because it does not incorporate proposed adjustments to PacifiCorp's net power costs." Order No. 00-580, Appendix B at 1.

⁷ "This revenue requirement increase resolves (a) all revenue requirement issues raised by the Staff that were not resolved in the First Revenue Requirement Stipulation and (b) all revenue requirement issues raised by ICNU, CUB, and Watson." Order No. 00-580, Appendix C at 3, para. 11.

1. The baseline for deferral of excess net power costs will be set at \$489.7 million and adjusted to include the amounts paid by Wah Chang under its contract with PacifiCorp, excluding the inflation adjusted adder for transmission and distribution services.
2. Commission Staff and PacifiCorp shall work together to adjust the baseline figure to include the Wah Chang contract amounts, and shall report that figure back to the Commission within 20 days from the date this order issues.
3. The annual baseline number will be adjusted to reflect the deferral period, from November 2000 until rates in docket UE 116 go into effect. The baseline should be shaped by month using 1999 actual power costs.
4. PacifiCorp shall report its deferral figures monthly.

Made, entered, and effective _____.

Roy Hemmingway
Chairman

Roger Hamilton
Commissioner

Joan H. Smith
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request 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.