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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))

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

Complainants,)

vs.)

PACIFICORP,)

Defendant. (UC 578))

ORDER ON
RECONSIDERATION

DISPOSITION: APPLICATION FOR 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. On January 18, 2001, PacifiCorp filed Advice No. 01-002, Application for Amortization, docketed as UE 121. The application proposed to defer and commence recovering in rates \$22.8 million of excess net power costs (3 percent of the Company's gross revenues in Oregon for 2000, pursuant to ORS 757.259(6)). Staff did not oppose the Advice and entered into a stipulation with PacifiCorp in support of it. By Order No. 01-171, the Commission authorized amortization of the \$22.8 million.

On May 11, 2001, the Commission issued Order 01-420 approving the deferral of PacifiCorp's excess net power costs and adopting Staff's sharing mechanism for calculating the amount of the deferral. On June 29, 2001, PacifiCorp filed an application for reconsideration of Order No. 01-420. On July 16, 2001, both the Industrial Customers of Northwest Utilities (ICNU) and Commission Staff filed responses to PacifiCorp's application.

Positions of the Parties

PacifiCorp's Argument. *Factual Basis.* PacifiCorp contends that the Commission must reconsider the mechanism it applies to the Company's excess net power costs because the Commission did not choose the mechanism that is most favorable to ratepayers.

PacifiCorp contends that in rejecting PacifiCorp's proposed mechanism, the Commission stated that Staff's proposed mechanism was more favorable to ratepayers. PacifiCorp argues first that under some conditions the Company's proposal is more generous to ratepayers. That is, when actual power costs in a given month are less than the amount currently included in rates, the Company's proposal returns more money to customers than Staff's. Moreover, PacifiCorp argues that the forecast it introduced into evidence in this proceeding indicated that such a situation would occur in September 2001. Finally, PacifiCorp argues that we must assume that the generosity of the mechanism to the ratepayers is essential to the decision, because the Commission did not provide further comment about its analysis in its order. Therefore, the Company requests reconsideration of this issue so that the Commission may adopt the Company's mechanism.

Additionally, PacifiCorp asserts that the deferral mechanism adopted by the Commission, allowing recovery of 55 percent of the power costs incurred, is unsupported by the Commission's findings in this proceeding. The Commission's order stated that the Company should have an opportunity to recover some of its excess power costs due to extraordinary circumstances. PacifiCorp argues that the recovery the Commission then granted was inconsistent with this statement.

Legal Issues. PacifiCorp maintains that the Commission departed from precedent when it denied the Company recovery of 45 percent of its prudently incurred costs. Specifically, PacifiCorp argues that when the Commission denied recovery of 45 percent of the costs, it departed from its precedent of allowing recovery of 80 percent to 100 percent of costs incurred due to extraordinary circumstances beyond a company's control.¹ In the instant case the Company contends that the factors contributing to the excess power costs (weather, low hydro conditions, the volatility of the wholesale electricity markets, and a catastrophe at the Hunter Unit) were beyond the Company's control. Therefore, PacifiCorp requests reconsideration so that the Commission may explain its departure from precedent.

Finally, PacifiCorp argues that adjustments for jurisdictional issues should be made during a general rate proceeding, because adjustments should be made when the allocation factors are reset. Allocation factors are reset during a rate proceeding and based on a complete evidentiary record. In the instant case the Company argues that the adjustment is not being made in a rate proceeding and is also not based on a complete evidentiary record. Therefore, the Company requests reconsideration on this issue to allow the development of an evidentiary record on this adjustment.

ICNU's Reply. *Factual Basis.* ICNU contends that the Commission made no factual error regarding the deferral mechanism. According to ICNU, PacifiCorp's assertion that its proposal is better in one circumstance does not indicate an error. Staff's proposal is more favorable to ratepayers overall. ICNU contends that the Commission chose the plan based on a balance of the ratepayers' and the Company's interests. Moreover, ICNU asserts that PacifiCorp's assumption that the only basis essential to the decision was the relative generosity of the proposals is incorrect, based on the Commission's discussion of all the parties' positions in the order, at 1 through 26.

ICNU also argues that PacifiCorp has not shown how the order's alleged inconsistency with previous decisions in these dockets meets the requirements for granting reconsideration. According to ICNU, nothing in the previous orders in this docket approves recovery in excess of \$22.8 million for PacifiCorp's net power costs.

¹ PacifiCorp cites the following cases: UM 445, Order No. 91-1781 (90 percent recovery for replacement costs arising from a plant outage); UM 529, Order No. 93-309 (recovery of 80 percent of Trojan outage excess power costs); UM 673, Order No. 94-1111 (60 percent recovery of Oregon's share of deferred power costs tied to the percentage of generation Idaho Power received from hydroelectric resources and resulting in nearly complete recovery of the utility's drought related excess power supply costs); UG 73, Order No. 89-1046 (allowing 80 percent recovery of changes in gas commodity cost); UM 903, AR 357, (setting 67/33 percent sharing of variations between actual and projected gas costs for PGA mechanisms, with full recovery for annual base rate changes each year when rates are adjusted; *see* Order No. 99-272); UF 3518, Order No. 79-830 (80 percent recovery of changes in power costs under a power cost adjustment); UE 102, Order No. 99-033 (95 percent recovery of stranded costs); UM 480, Order No. 92-1130 (recovery of purchased power costs was not subject to a sharing mechanism; the Commission authorized Idaho Power to defer part of Oregon's share of excess power supply costs commencing as of March 23, 1992, through December 31, 1992; percentage of recovery tied to level allowed in a temporary rate increase by the Idaho Public Utility Commission).

Legal Basis. PacifiCorp argues that prior Commission decisions set a standard for deferral sharing mechanisms. ICNU contends that PacifiCorp has not supported its claim for reconsideration on this point. ORS 757.259 gives the Commission limited authority to set rates retroactively. Order No. 92-1128 at 8. The Commission has acknowledged that deferred accounts can “depart from the normal risk reward assumption by utilities.” UE 82, Order No. 93-257. Because of these concerns, ICNU notes that the Commission has narrowly interpreted the deferred accounting statute and implemented various restrictions tailored to the specific factual circumstances to protect ratepayers. *See, e.g.*, UE 82, Order No. 93-257. ICNU argues that the Commission has departed from precedent in allowing recovery of power costs between general rate cases. The usual principle is that the utility enjoys both the risk and reward associated with regulatory lag. UM 995, Order No. 01-420 at 29.

Finally, ICNU argues that the Commission properly considered multijurisdictional concerns in its decision. The Commission's responsibility is to protect Oregon ratepayers from costs that do not provide associated benefits. Therefore, the Commission's consideration of the impact of load growth in another jurisdiction on the power cost PacifiCorp seeks to defer is appropriate.

Staff's Reply. Factual Issues. Staff responds that Order No. 01-420 contains no factual errors. Staff argues that PacifiCorp misunderstands the mechanism adopted by the Commission; although PacifiCorp's proposal may be more generous in the situation described by PacifiCorp, Staff's plan is more favorable overall. Staff contends that while the particular situation PacifiCorp describes is possible, the power cost difference in any single month is irrelevant for purposes of the ultimate deferral, which is based on the cumulative amount of actual versus base power costs for the entire deferral period. Order No. 01-420 at 6. Accordingly, while it is possible that PacifiCorp's proposed deferral mechanism would yield results that are more favorable to ratepayers in a particular month, the cumulative results obtained by Staff's proposed mechanism will be more favorable to ratepayers overall.

Staff also argues that PacifiCorp's contention that the Commission's order is inconsistent with previous findings is not grounds for reconsideration. Staff maintains that PacifiCorp is merely rehashing arguments that the Commission has already considered and rejected.

Legal Issues. Staff maintains that the Commission did not depart from precedent when it adopted Staff's deferral mechanism and did provide an explanation for adopting the mechanism. Further, Staff asserts that the record supports the Commission's adoption of the mechanism.

Staff contends that the mechanism the Commission adopted in its order is consistent with the mechanisms approved in the Commission's most recent orders regarding power cost deferrals. *See* UM 1008/1009, Order No. 01-231; UM 1007, Order No. 01-307. While the use of a deferral mechanism in UM 995 may vary from less recent dockets, Staff notes that the facts giving

rise to PacifiCorp's request for deferral also vary from those less recent dockets. In UM 445, for instance, the request for deferral stemmed from a plant outage. In UM 673, the request stemmed from the utility's drought related excess power supply costs. In UG 73, the request stemmed from changing gas prices. Here the request stems from a combination of factors: poor hydro conditions, volatile energy markets, and a plant outage. There is no precedent for how the Commission should treat a deferral application in these particular circumstances. However, Staff argues that the Commission's decision in this case is fundamentally consistent with its treatment of those requests for deferral.

PacifiCorp has asserted that the reasoning underlying the Commission's decision to limit the amounts that PacifiCorp may defer is unclear. Staff disagrees and states that the reasoning is found in the discussion of Staff's position on the issues and the subsequent adoption of that position. Order No. 01-420 at 6-8; 29.

Additionally, the Commission's reasons for limiting the amounts that PacifiCorp may defer is found in Order No. 01-420 in the section that outlines the Staff's concerns regarding multijurisdictional issues. Specifically, the Commission is clear that it adopted Staff's mechanisms in order to limit the amounts that PacifiCorp could defer to address concerns about load increases in other jurisdictions. However, Staff argues that PacifiCorp's assertions about the multijurisdictional issue are not appropriate reasons for reconsideration under OAR 860-014-0095(3).

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.

Commission Discussion and Resolution

The issue in this case is whether the Commission should reconsider Order No. 01-420, in which we approved the deferral of PacifiCorp's excess net power costs subject to the deferral mechanism adopted in the order.

Factual Basis. PacifiCorp contends that our adoption of the deferral mechanism proposed by Staff was incorrect because in some circumstances the Company's proposal is more generous to ratepayers. We agree with Staff's responses to these claims. The proposal submitted by PacifiCorp could, under some limited circumstances, benefit ratepayers more generously than the proposal submitted by Staff on a month to month basis. However, the power cost difference in any single month is irrelevant for purposes of the ultimate deferral, which is based on the cumulative amount of actual versus base power costs for the entire deferral period. Order No. 01-420 at 6.

PacifiCorp also maintains that the recovery of only 55 percent of its excess net power costs is inconsistent with our findings in the order. We disagree. In the order we stated that circumstances facing the Company were beyond the normal and that given the extraordinary circumstances, the Company should have the opportunity to recover some of its excess power costs. The Commission is allowing the Company to recover some of its costs. There is no inconsistency here.

We conclude that PacifiCorp's claim that the factual basis is insufficient to support our order fails to meet the standards for reconsideration.

Legal Issues. PacifiCorp argues that the amount of recovery allowed in the order departs from precedent without explanation. We apply ORS 757.259 narrowly, as ICNU has pointed out, and each case is judged on its own facts. The cases PacifiCorp cites are not precise factual analogues to its own case and do not constitute precedent for that reason. PacifiCorp's case presented a new constellation of events: poor hydro conditions, a plant outage, and volatile power markets. In deciding on PacifiCorp's application, we did not depart from precedent because there were no factual situations close enough to PacifiCorp's to constitute precedent in our deferred accounting cases.

PacifiCorp next asserts that the consideration of multijurisdictional issues and an adjustment based on that consideration were inappropriate. We disagree. ORS 756.040 requires the Commission to protect Oregon ratepayers from unjust and unreasonable exactions and practices. The consideration of multijurisdictional concerns is therefore appropriate to ensure that Oregon ratepayers are not unreasonably and unjustly burdened with the costs associated with the growth in load in other jurisdictions. There is support in the record for this decision, as Staff has pointed out. PacifiCorp has not met the standard for reconsideration of Order No. 01-420 with respect to legal issues.

We conclude that PacifiCorp's application for reconsideration has not demonstrated any grounds for reconsideration and should be denied.

ORDER

IT IS ORDERED that PacifiCorp's application for reconsideration of Order No. 01-420 is denied.

Made, entered, and effective _____.

Roy Hemmingway
Chairman

Roger Hamilton
Commissioner

Joan H. Smith
Commissioner

A party may appeal this order to a court pursuant to applicable law.