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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 127

In the Matter of the Revised Tariff Sheets)	
Filed by PACIFIC POWER & LIGHT for)	ORDER
Electric Service.)	
Advice No. 01-021)	

DISPOSITION: TARIFF SHEETS SUSPENDED

On September 21, 2001, PACIFIC POWER & LIGHT filed tariff sheets in Advice No. 01-021 to be effective October 23, 2001. The terms of the proposed tariff sheets are set forth in the Staff Report dated October 5, 2001, attached as the Appendix to this order.

At its October 22, 2001, public meeting, the Public Utility Commission of Oregon found good and sufficient cause exists to investigate the propriety and reasonableness of the tariff sheets pursuant to ORS 757.210 and 757.215. The Commission ordered suspension of the advice pending that investigation.

IT IS ORDERED that Advice No. 01-021 filed by PACIFIC POWER & LIGHT is suspended for a period of time not to exceed six months from October 23, 2001, the effective date of the tariff sheets.

Made, entered, and effective _____.

Lee Beyer
Commissioner

Joan H. Smith
Commissioner

Chairman Hemmingway votes no on Staff Recommendation Alternative No. 1, but favors Alternative No. 2

Roy Hemmingway
Chairman

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.

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: October 22, 2001

REGULAR X CONSENT EFFECTIVE DATE October 23, 2001

DATE: October 5, 2001

TO: Phil Nyegaard through Lee Sparling and Ed Busch

FROM: Judy Johnson, Maury Galbraith, and Bill Wordley

SUBJECT: PacifiCorp, Docket UE 127, Advice No. 01-021
Requests to Increase the Amortization of Deferred Excess Net Power
Costs from Three Percent to Six Percent.

SUMMARY RECOMMENDATION:

We recommend that the Commission suspend PacifiCorp's proposed tariff sheet filed in Advice No. 01-021.

DISCUSSION:

On September 20, 2001, PacifiCorp filed Advice No. 01-021, docketed as UE 127. This filing requests approval to increase amortization of the company's excess net power costs in Schedule 94 from three percent of the previous year's gross retail revenues (the level authorized in Order No. 01-186 (Docket UE 121)), to six percent. ORS 757.259(4) provides that deferred amounts may be recovered in rates only to the extent authorized by the Commission "in a proceeding to change rates under ORS 757.210." PacifiCorp asserts that this advice filing triggers the process for a proceeding to change rates under ORS 757.210.

Under the former ORS 757.259, PacifiCorp's recovery of deferred amounts was limited to \$22.8 million, which is three percent of the company's Oregon 2000 gross revenues (\$761.1 million). In 2001, the Oregon Legislature amended ORS 757.259 so that the Commission may now allow a maximum amortization level of six percent for electric utilities. In this filing the company is requesting authority to amortize an additional three percent of deferred costs, for the maximum total allowed under ORS 757.259 of six percent (\$45.6 million).

History

On November 1, 2000, PacifiCorp filed an Application for an Accounting Order Regarding Excess Net Power Costs (Application) docketed as UM 995, which requested authorization to defer excess net power costs. Staff, the Industrial Customers of Northwest Utilities (ICNU), and the Citizens' Utility Board (CUB) filed comments in response to the Application. ICNU and CUB opposed the company's Application. The Commission found, in Order No. 01-085, that the Application could continue.

Staff, PacifiCorp, and other parties engaged in settlement discussions centering on the mechanism for booking an appropriate level of excess net power costs. The parties reached no agreement. However, on January 18, 2001, Staff and PacifiCorp entered into a stipulation wherein Staff would recommend that the Commission grant partial approval of the company's deferred accounting application in Docket UM 995, up to \$22.8 million. This recommendation allowed discussion on an appropriate mechanism to continue, while at the same time affording the company an opportunity to begin recovery of its excess power costs.

On January 18, 2001, PacifiCorp filed: 1) authorization to defer \$22.8 million in UM 995; and 2) an Application to Waive Statutory Notice and Advice No. 01-002, docketed as UE 121, requesting approval to implement Schedule 94, which would commence rate recovery of the \$22.8 million. Staff recommended approval of the company's filing at the January 23, 2001 Commission Public Meeting.

The Commission approved the partial deferral in Docket UM 995 (Order No. 01-171), but requested that PacifiCorp and Staff provide a more thorough justification of the proposed rate increase for the February 20, 2001 Commission Public Meeting. Staff followed up with additional analysis in its memo for the February 20th meeting and again recommended that the company's requested increase be granted. In Order No. 01-186, the Commission approved PacifiCorp's application to amortize \$22.8 million in excess net power costs.

In early March 2001, parties to UM 995 filed briefs on proposed deferral mechanisms. On April 5, 2001 parties made presentations to the Commission at a Special Public Meeting. Throughout March and April 2001, parties held settlement meetings, but reached no agreement regarding an appropriate deferral mechanism. On May 11, 2001, the Commission issued Order No. 01-420 approving Staff's proposed mechanism for calculating the appropriate level of deferred net power costs beginning November 1, 2000. In that Order, the Commission left open the question of what is the appropriate baseline for the mechanism. The Commission ordered parties to try to settle the baseline issue and failing that, to submit briefs. Parties did not reach resolution on the baseline and submitted briefs in early June 2001. On July 31, 2001, the Commission issued Order No. 01-683 setting PacifiCorp's baseline for net variable power costs.

The Commission authorized PacifiCorp to defer its net power costs under the UM 995 mechanism until "...rates in Docket UE 116 go into effect." (See Order No. 01-

683, page 10.) Rates in UE 116 went into effect on September 10, 2001, at which time a new Power Cost Adjustment Mechanism took effect.

Notwithstanding the fact that UM 995 deferrals have stopped, the UM 995 docket is not concluded. PacifiCorp still must show that its power costs were prudent before Docket UM 995 can be completed. A schedule has been set for the Prudence Review Phase of this docket that should allow the Commission to issue a decision in early 2002. Staff expects the Prudence Review Phase to cover a number of issues that have been controversial to date.

On October 2, 2001, PacifiCorp filed two complaints in the Circuit Court of the State of Oregon for the County of Marion. The first suit is to modify Order No. 01-420 of the Public Utility Commission of Oregon (the mechanism). The second suit is to modify Order No. 01-683 of the Public Utility Commission of Oregon (the baseline).

Alternative 1

Staff recommends that the Commission suspend PacifiCorp's proposed tariff sheets filed in Advice No. 01-021 until the Prudence Review Phase of Docket UM 995 has been completed. The Commission can suspend a tariff filing for further investigation under the provisions of ORS 757.215.

Staff bases its recommendation on Order No. 01-420, in which the Commission states:

"The parties opposing this application share a concern about the deficiency of the factual record. We do not consider the factual record inadequate to grant an application for deferral. Deferral is only the first stage in PacifiCorp's eventual recovery of its excess net power costs. PacifiCorp must also subject its excess net power costs to a prudence review, which will generate a factual record. *Before we approve amortization of the deferred amounts for inclusion in rates, we will conduct an evidentiary hearing that includes a prudence review.* Should the factual record there be inadequate, the amortization will not be granted and PacifiCorp will fail to recover any of the costs it applies to defer. We believe that this procedural step addresses many of ICNU's, Wah Chang's, and CUB's concerns." (See Order No. 01-420, page 27) (emphasis added).

Staff believes the Order is clear that the Commission did not intend to allow any further amortization until the Prudence Review Phase was completed. As stated above, the Prudence Review Phase should be completed in early 2002.

Moreover, Staff also believes it would be inappropriate to allow PacifiCorp to collect any additional money on a balance that is in dispute. Until the Prudence Review Phase has been completed, the actual amount customers owe the company is unknown. Accordingly, if the Commission approves this application, there is some risk that the Commission will authorize amortization of amounts that will ultimately be found to have been improperly deferred.

PacifiCorp anticipated Staff's concerns regarding its request for amortization and attempts to address them in the Application and accompanying documents. First, PacifiCorp states: "While PacifiCorp must therefore demonstrate the prudence of its excess power costs prior to a *final* resolution of the total amount of power costs in its deferred account eligible for amortization, that demonstration is not a prerequisite to raise the current amortization level from 3 percent to 6 percent." (See Letter accompanying PacifiCorp filing Advice 01-021, page 3.) Staff disagrees. Staff believes the Commission's Order is clear that it did not intend that any further amortization was to take place, which includes an increase in the existing amortization level, until after a prudence review.

PacifiCorp also states that the balance to be collected from customers through June 2001, is \$90 million and that "...it is highly unlikely that PacifiCorp would ultimately be found to have over-recovered for its excess power costs at the end of the Commission's prudence review in February or March 2002." (See PPL/100, Wrigley/4, lines 16-18.) Staff does not know the basis of the company's claim. PacifiCorp provided no documentation to back up its assertion. In fact, Staff believes the entire amount of net power cost deferrals is in dispute. Given the expected contentiousness of the prudence review, it seems premature for the company to assure the Commission that it will not over-recover its costs.

PacifiCorp further states that this filing will also help address the company's cash flow issues raised by the energy crisis. However, it should be noted that the Oregon Commission's actions in 2001, relative to actions in PacifiCorp's other jurisdictions, have already contributed to an improved cash flow for the company. More specifically, ScottishPower, in a Pre-close Statement for 2001 First Half (dated September 28, 2001), stated: "In total, PacifiCorp has received regulatory awards in excess of \$140 million to date and has filings and petitions pending decisions for an additional \$290 million to date, with further state filings to be made." ScottishPower further stated: "Total additional revenue in Oregon, therefore amounts to \$95 million, potentially increasing to \$118 million." It appears that of the \$140 million awarded the company in 2001 that \$95 million will come from Oregon customers. Oregon customers make up less than one-third of PacifiCorp's load, but have contributed sixty-eight percent of the company's increased revenue stream.¹

Finally, Staff believes that delaying the collection of the additional three percent will not harm the company because interest is earned on the balance in its deferred account until the entire amount is collected from customers.

By letter dated October 3, 2001, CUB filed its opposition to PacifiCorp's proposed increase in amortization from three to six percent. In particular, CUB stated that the increase "...would not be consistent with the Commission's February 21, 2001, order allowing amortization of the initial 3%, and would also contradict a clear statement in a May 11, 2001, Commission order which stated that the Commission would not allow any more amortization of deferred amounts for inclusion in rates until the

¹ For a synopsis of PacifiCorp's activities in other states, see Attachment 1.

Commission conducts an evidentiary hearing that includes a prudence review." CUB further referred to the need for review of the company's wholesale trading strategy – which will be part of the prudence review phase of UM 995 – prior to authorizing additional amortization.

Alternative 2

As discussed above, Staff's recommendation to suspend PacifiCorp's application is based on language in OPUC Order No. 01-420 indicating that the Commission intended to allow no further amortization of amounts deferred in UM 995 until after a prudence review and Staff's concern that some of the amounts deferred by PacifiCorp will not withstand such a review. Notably, whether the Commission intended Order No. 01-420 to preclude amortization of an additional three percent, which was not statutorily permissible at the time the Commission issued Order No. 01-420, is a matter entirely within the Commission's discretion. In the event the Commission decides that Order No. 01-420 should not preclude PacifiCorp's application, and decides to consider the company's request, Staff recommends that the Commission allow amortization only if it is subject to refund. Under ORS 757.259 (4), as amended by HB 2630, the Commission may require that amortization of deferred amounts be subject to refund. If the additional amortization is subject to refund, customers will be protected should the Commission find, in Docket UM 995, that PacifiCorp acted imprudently, and accordingly over-collected.

To the extent that the Commission may choose to exercise its authority to review PacifiCorp's request, Staff analyzes the merits of PacifiCorp's application. Pertinent provisions of the deferral statute, ORS 757.259, are as follows:

(4) Unless subject to an automatic adjustment clause under ORS 757.210(1), amounts described in this section shall be allowed in rates only to the extent authorized by the commission in a proceeding under ORS 757.210 to change rates and upon review of the utility's earnings at the time of the application to amortize the deferral. The commission may require that amortization of deferred amounts be subject to refund. The commission's final determination on the amount of deferrals allowable in rates of the utility is subject to a finding by the commission that the amount was prudently incurred by the utility.

(5) Except as provided in subsections (6) and (7) of this section, the overall average rate impact of the amortizations authorized under this section in any one year may not exceed three percent of the utility's gross revenues for the preceding calendar year.

* * * * *

(7) The commission may authorize amortizations for an electric utility under this section with an overall average rate impact not to exceed six percent of the electric utility's gross revenues for the preceding

calendar year. If the commission allows an overall average rate impact greater than that specified in subsection (5) of this section, the commission shall estimate the electric utility's cost of capital for the deferral period and may also consider estimated changes in the electric utility's costs and revenues during the deferral period for the purpose of reviewing the earnings of the electric utility under the provisions of subsection (4) of this proceeding.

For a cost deferral, the Commission conducts an earnings review to determine whether the utility could absorb some or all of the deferred amounts. In support of the Application, PacifiCorp notes that its earnings were reviewed in connection with UE 116. The Company "submits that this [earnings review] information provides sufficient financial results data with which to determine the Company's earnings for a period reasonably representative of the time period for which deferral was sought, given the fact that the case was based upon a 2001 test period." Staff agrees with this assertion. Staff further agrees that the cost of capital finding made by the Commission in UE 116 is sufficient for this docket as well. Staff notes that PacifiCorp's adjusted return on equity in UE 116 (prior to the allowed rate increase of \$64 million) was 7.25 percent. Staff believes that this indicates the company could not absorb any portion of the UM 995 deferrals and still earn a reasonable rate of return.

PacifiCorp also states that increasing the amortization now would achieve a better matching of costs incurred by the company with customers receiving the benefits of those costs, send more appropriate price signals and mitigate the amount of carrying charges on the deferred balances. Staff generally agrees. Nonetheless, consistent with the Commission's previous decisions, we recommend that Advice 01-021 be suspended at this time.

STAFF RECOMMENDATION:

We recommend that the Commission suspend PacifiCorp's proposed tariff sheet filed in Advice No. 01-021. The Commission can suspend a tariff filing for further investigation under the provisions of ORS 757.215. At the completion of the Prudence Review Phase, Staff will make a further recommendation regarding this tariff sheet.

ATTACHMENT 1**California**

PacifiCorp filed for an interim increase in March (\$7.4 million or 13.8%) and requested the increase go into effect immediately. The Commission declined to put the increase into effect immediately and set the matter for hearing in August. The company has indicated that it expects an order in October 2001. PacifiCorp has also indicated it expects to file a general rate case in November 2001.

Idaho

PacifiCorp has received permission for deferred accounting of excess power costs. The company has not yet requested recovery.

Wyoming

PacifiCorp has received an \$8.9 million increase from a general rate case. The company also has received permission for deferred accounting for power costs. In July 2001, the company filed an application to begin collection of deferrals. A hearing on the application will be held in November. In August the company filed an "emergency" motion to recover \$21.4 million in power costs. On September 21, 2001, the Wyoming Commission unanimously rejected the company's "emergency" request.

Washington

A rate freeze is currently in effect in Washington.

Utah

PacifiCorp filed a general rate case requesting \$168.8 million or 17.9%. The company received an interim increase of \$70 million. In September 2001, the Utah Commission granted the company a \$40.5 million increase, which will result in a pro rata **refund** of about \$22 million. In August, PacifiCorp filed for recovery of deferred costs related to the Hunter power plant outage of \$104 million. In September, the company filed a request for deferred accounting costs, not related to Hunter, of \$109 million. The company expects these filings will be heard later this year.

Oregon

PacifiCorp filed a general rate case (UE 116) requesting \$160.7 million or 21.45%. On September 7, 2001, the Oregon Commission granted the company a \$64.4 million increase. The company deferred excess net power costs under a mechanism decided in UM 995 from November 1, 2000 to September 10, 2001. The prudence phase of that docket is currently pending. The company received permission to begin collecting \$22.8 million in February 2001 (UE 121) related to excess net power costs. Power costs are currently being deferred under a Power Cost Stipulation signed in UE 116.