

ORDER NO. 02-853

ENTERED DEC 10 2002

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**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

UE 121/UE 127

In the Matter of PACIFICORP’S Application for )  
Partial Amortization 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. Advice )  
No. 01-002 (UE 121) )

ORDER

)  
In the Matter of the Revised Tariff Sheets Filed )  
by PACIFIC POWER & LIGHT for Electric )  
Service. Advice No. 01-121 (UE 127). )

DISPOSITION: MOTION GRANTED; DOCKETS REOPENED;  
STIPULATION APPROVED; TARIFF APPROVED  
UNDER ORS 757.210

**Background:** On August 6, 2002, the Commission conducted a Public Meeting at which it considered PacifiCorp’s request in dockets UE 121 and UE 127, for approval of a tariff (Revised Schedule 94) that would increase the rate at which PacifiCorp amortizes the deferred excess net power costs authorized for collection in docket UM 995. PacifiCorp requested that the Commission allow PacifiCorp to increase its amortization of the deferred power costs from an annual amount equal to three percent of PacifiCorp’s gross revenues for 2000 to an annual amount equal to six percent of gross revenues for 2000.

The vote of the two Commissioners present at the August 6, 2002 Public Meeting resulted in a one to one tie with respect to both the increase in the amortization rate from three percent to six percent and the issue of whether any increase should be granted subject to refund. Commission counsel advised the Commission that this tie vote was a nullity and that, as a result, the revised tariffs would take effect by operation of law at the end of the suspension period. The Commission issued a press release on August 6, 2002, stating that the nullity vote allowed the requested rate increase to go into effect. The suspension period for Revised Schedule 94 ended on August 8, 2002, and the three percent rate increase went into effect at that time.

On August 19, 2002, the Industrial Customers of Northwest Utilities (ICNU) and the Citizens' Utility Board (CUB) filed a complaint with the Commission challenging the legality of PacifiCorp's collection of the additional three percent of the deferred power costs under Revised Schedule 94 that allegedly took effect by operation of law on August 8, 2002. The complaint was docketed as UCB 5. In UCB 5, ICNU and CUB contend that PacifiCorp is illegally collecting the additional three percent of its deferred excess net power costs because the Commission never affirmatively authorized that collection, as required by ORS 757.259(4).

**The Stipulation.** On October 10, 2002, PacifiCorp and CUB entered into a Stipulation. In the Stipulation, PacifiCorp and CUB agreed that (1) CUB will support PacifiCorp's increase in the amortization of its deferred excess net power costs from three percent to six percent effective on Commission approval of the stipulation; and (2) PacifiCorp will request approval of a proposed tariff (Second Revised Schedule 94) that includes a self executing provision designed to refund to customers any amounts that PacifiCorp is found to have overcollected in any Commission order modifying the final decision in UM 995.

**PacifiCorp's Motion.** On October 10, 2002, PacifiCorp filed a Motion to Amend and Request for Approval of Stipulation and Proposed Tariff (Motion) on behalf of itself and CUB (the Parties). PacifiCorp moves the Commission to reopen the consolidated dockets UE 121 and UE 127 and amend Revised Schedule 94, PacifiCorp's six percent amortization tariff. The Parties also request that the Commission approve their Stipulation and proposed Second Revised Schedule 94.

PacifiCorp recites that it has been collecting rates under Revised Schedule 94 since its suspension period expired on August 8, 2002. By joining this motion, CUB does not agree that Revised Schedule 94 legally took effect on expiration of the suspension period and will continue to pursue its complaint in UCB 5. CUB does not admit that the six percent amortization was properly collected between August 8, 2002, through the approval of newly revised Schedule 94. PacifiCorp also expressly maintains its position that Revised Schedule 94 went into effect by operation of law.

The Parties have reached a voluntary settlement on the issue of PacifiCorp's six percent amortization of its deferred amounts in the future and the existence and operation of a rate credit in the event that CUB succeeds in its appeal of Order No. 02-469 and PacifiCorp is found to have overcollected its deferred power costs.

PacifiCorp relies on ORS 756.568<sup>1</sup> for the proposition that the Commission may grant a motion to amend if there is good cause to reopen a proceeding and further examine a matter essential to the decision. The Commission has previously defined "good cause" to

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<sup>1</sup> ORS 756.568 provides:

The Public Utility Commission may at any time, upon notice to the public utility or telecommunications utility and after opportunity to be heard as provided in ORS 756.500 to 756.610, rescind, suspend, or amend any order made by the commission. Copies of the same shall be served and take effect as provided in ORS 756.558 for original orders.

include such things as changed circumstances, ratepayer interest, Commission failure to express its intent clearly in a previous order, and correction of a prior erroneous conclusion.<sup>2</sup>

As a result of a voluntary settlement, the Parties have arrived at an agreement that will allow PacifiCorp to amortize its deferred excess power costs at the six percent level subject to a self executing surcredit condition, described in detail in the Stipulation. The Parties argue that good cause exists in this case to reopen these consolidated dockets so that the Commission may review the Stipulation reached between the Parties concerning PacifiCorp's future amortization of its deferred accounting balance.

In short, PacifiCorp argues, modification under ORS 756.568 is warranted because good cause exists to further examine the issue of PacifiCorp's six percent amortization of its deferred costs on a going forward basis. The Parties ask the Commission to grant this motion, admit the Parties' Stipulation into the record of these consolidated dockets, and approve it as presented on an expedited basis, along with the accompanying proposed tariff, Second Revised Schedule 94. If the Commission grants this motion and approves the Stipulation and tariff as proposed, PacifiCorp waives its right to notice and a hearing as provided by ORS 756.568.

**ICNU's Reply to the Motion.** On October 14, 2002, ICNU filed a reply to PacifiCorp's Motion. ICNU requests that the Commission deny PacifiCorp's motion to amend. Additionally, if the Commission approves the Stipulation, ICNU requests that the Commission clarify that any refund of deferred excess net power costs ordered under the stipulation will be returned to customers according to the same methodology and rate spread under which PacifiCorp collected those costs pursuant to Second Revised Rate Schedule 94.

ICNU argues that the Motion is procedurally improper. According to ICNU, ORS 756.568 does not authorize the Commission to revise a tariff, as PacifiCorp requests. Furthermore, the Commission did not issue an order to take any other action in UE 127 or UE 121 that is properly subject to a motion to amend under ORS 756.568.

ICNU argues first that ORS 756.568 grants the Commission authority to rescind, suspend, or amend an order. However, according to ICNU, the Commission did not issue an order in this docket. Under the Oregon Administrative Procedures Act (APA), ORS 183.310(5)(a), an order is defined as:

any agency action expressed orally or in writing directed to  
a named person or named persons, other than employees,

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<sup>2</sup> See, e.g., Re Portland General Elec. Co., Order No. 98-279, UE 102 (significant change in posture of case warrants modification under ORS 756.568); Re U.S. WEST Communications Co., Order No. 00-003, UX 21 (Commission can exercise its authority under ORS 756.568 to protect ratepayers); Re Portland General Elec. Co. et al., Order No. 92-557, UA 37/UA 41 (revising order that was not complete or accurate); Re Transportation Rates Charged by Gas Utilities, Order No. 87-803, UG 23, UE 50 (affirming its jurisdiction to reconsider order when appeal filed, citing ORS 756.568).

officers or members of an agency. ‘Order’ includes any agency determination or decision issued in connection with a contested case proceeding.

ICNU contends that although certain provisions of the APA do not apply to Commission proceedings, the definitions section at ORS 183.310 does apply. ORS 183.315(6); *Utility Reform Project v. OPUC*, 171 Or App 349 (2000).

According to ICNU, the Commission did not issue an order in UE 121 or UE 127 or take any other action that fits within this definition. According to the Commission, ICNU maintains, the nullity vote that occurred at the August 6, 2002 Public Meeting was the equivalent of the Commission taking no action on Revised Schedule 94. Under these circumstances, the Commission has taken no oral or written action nor has it made a decision or determination in a contested case proceeding. As a result, there is no Commission order that is properly subject to a motion to amend under ORS 756.568.

In addition, ORS 756.558 refers to ORS 756.568, which requires the Commission to take certain actions to enter a legally sufficient order. Most important, ICNU contends that the Commission must enter findings of fact and conclusions of law in an order. The Commission did not enter any such findings or conclusions as a result of the nullity vote at the August 6 Public Meeting, because that vote was not a decision on which such findings could be made. Under these circumstances, ICNU asserts that PacifiCorp’s motion to amend is procedurally improper because no order was entered in UE 121 and UE 127 for the Commission to amend. PacifiCorp may simply file and seek approval of Revised Schedule 94 without the need to amend a nonexistent order.

ICNU also argues that PacifiCorp should pay any refunds to customers according to the same rate spread and methodology by which PacifiCorp collects its deferred power costs. Under the Stipulation, PacifiCorp and CUB agreed that the Second Revised Schedule 94 would include a self executing surcredit designed to return to customers any amounts that the company is subsequently found to have overcollected. However, ICNU asserts that the Stipulation and Second Revised Schedule 94 are ambiguous as to exactly how PacifiCorp will pay any refunds that it may be ordered to provide to customers. ICNU asks the Commission to explicitly recognize that any refunds will be returned according to the same rate spread and methodology that PacifiCorp used to collect the deferred power costs.

**PacifiCorp’s Response to ICNU’s Reply.** According to PacifiCorp, ORS 756.568 authorizes the Commission, upon notice to the utility and an opportunity to be heard, to “rescind, suspend, or amend any order made by the Commission.”

PacifiCorp argues that the broad language of ORS 183.310(5)(a) is not compatible with ICNU’s narrow reading. The statute provides that any agency action expressed orally and directed to a named person or persons qualifies as an “order.” The Commission action upon which the Parties’ motion is based is the oral consideration and vote respecting PacifiCorp’s Revised Schedule 94 that took place at the August 6 Public Meeting and the subsequent

expiration of the suspension period for Revised Schedule 94 on August 8, 2002. According to PacifiCorp, however one understands the legal effect of the Commission's tie vote at the August 6 Public Meeting or the legality of PacifiCorp's amortization pursuant to Revised Schedule 94, the "action" that resulted in PacifiCorp's six percent amortization of its deferred accounting balance pursuant to Revised Schedule 94 is sufficient to constitute an "order" for purposes of ORS 183.310(5)(a).<sup>3</sup> PacifiCorp also points out that the Commission's action is prima facie lawful. According to PacifiCorp, ORS 756.565, as applied to this proceeding, in which the Commission followed the advice of its counsel and acted in good faith when it "acted" on PacifiCorp's revised schedule 94, means that the action is valid unless and until a reviewing court or the Commission says otherwise. "All rates [and] tariffs \* \* \* approved or prescribed by the Public Utility Commission and any order made or entered upon any matter within the jurisdiction of the commission shall be in force and shall be prima facie lawful and reasonable until found otherwise in a proceeding brought for that purpose under ORS 756.580 to 756.610." ORS 756.565.

Prior to a determination by a reviewing court or the Commission that Commission action is invalid, the Commission has the express statutory authority to correct its own orders. ORS 756.568. Viewing ORS 756.565 and ORS 756.568 together with the broad definition of "order" provided by the APA, there is no doubt, PacifiCorp contends, that the Commission is authorized to take the action the Parties request.

ICNU also contends that the Commission's action in its null vote was not an order because the Commission did not enter findings of fact and conclusions of law. ICNU relies on a reference in ORS 756.568 to ORS 756.558, which, according to ICNU, requires the Commission to take certain actions to enter a legally sufficient order. PacifiCorp argues that if ICNU's position were correct, the Commission's authority to enter oral orders at public meetings would be limited. This result is contrary to the statutes that specifically govern the Commission (ORS 756.101 *et seq.*) and the definition of "order" in the APA.

Moreover, according to PacifiCorp, the reference in ORS 756.568 to 756.558 is to the procedural, not the substantive, mandate respecting Commission orders. ORS 756.568 provides that a Commission order rescinding, suspending, or amending a prior order "shall be served and take effect as provided in ORS 756.558 for original orders." As relevant, PacifiCorp argues, ORS 756.558(2) requires that an order "state the date it becomes effective" and "be served upon each of the parties to the proceeding." In short, nothing in the text of ORS 756.568—or, for that matter, in the definition of "order" provided by ORS 183.310(5)(a)—requires that the "order" being rescinded, suspended, or amended contain express findings of fact and conclusions of law.

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<sup>3</sup> PacifiCorp points out that there is a dispute regarding the legal effect of the Commission's August 6 tie vote and the legality of PacifiCorp's amortization pursuant to Revised Schedule 94. In their Motion, the Parties expressly maintained their opposing positions in that dispute. Resolution of that dispute is not required to move forward on the parties' motion and take action with respect to the Stipulation and the proposed tariff.

ICNU's final argument in opposition to the Parties' motion is that the null vote cannot be an order because the Commission itself referred to the split decision at the August 6 meeting as "the equivalent of the Commission taking 'no action' on Revised Schedule 94 altogether." Reply at 4. This contention is premised on ICNU's unduly restrictive reading of ORS 183.315(5)(a), which is inconsistent with the language of the statute. The statute defines an order as "any [Commission] action" without regard to that action's "equivalent."

PacifiCorp mounts further argument in support of its position that the August 6 vote was an order. PacifiCorp argues that the statutory scheme under which the Commission operates expressly provides that Commission action can be taken via inaction. That is, ORS 757.215 provides that upon expiration of the prescribed suspension period a rate or schedule of rates becomes final by operation of law without the necessity of any findings of fact or conclusions of law. Harmonizing ORS 757.215 with the definition of "order" provided by the APA, the three means by which the Commission may take "any action" (in other words, issue an "order") include (1) in writing; (2) orally; or (3) by operation of law. According to PacifiCorp, ICNU's arbitrary distinction between these methods produces an absurd result, namely, no oral Commission decision announced at a public meeting (even one that is transcribed) **and** no rate that takes effect by operation of law upon expiration of a suspension period can ever be amended or directly challenged, because the statutes authorizing amendment, rehearing, or reconsideration, and judicial review each require a Commission "order." See ORS 756.561; 756.568; 756.580.

PacifiCorp contends that if ICNU's construction of the statutes is correct, the Commission can preclude appeal of its own decisions simply by issuing them orally or by allowing rate suspension periods to expire. PacifiCorp maintains that the current proceeding highlights the irrationality of ICNU's position, because the time to petition for reconsideration has already expired. If the Commission agrees with ICNU's construction of ORS 756.568, then neither of the procedural vehicles normally available to the Commission (reconsideration or reopening the docket) is available in this case, effectively putting Revised Schedule 94 out of the Commission's reach. PacifiCorp argues that this cannot be what the Legislature intended.

According to PacifiCorp, the Parties' motion is based on a more rational and consistent interpretation of ORS 756.568 and ORS 183.310(5)(a) than that proffered by ICNU. The basis for the Commission's authority to revisit a matter previously decided, codified in ORS 756.568, is the view that an administrative agency, when acting in a regulatory capacity, "must at all times be free to take such steps as may be proper in the circumstances, irrespective of its past decisions." *Re Portland General Elec. Co.*, Docket DR 10/UM 535, Order No. 93-1117 (Aug. 9, 1993) (citing Oregon Attorney General Opinion Letter), *rev'd on other grounds, Citizens' Utility Bd. Of Oregon v. Public Utility Comm'n of Oregon*, 154 Or App 702 (1998). Moreover, the Commission "has been granted the broadest authority—commensurate with that of the legislature itself—for the exercise of [its] regulatory function." *Pacific N.W. Bell v. Sabin*, 21 Or App 200 (1975); ORS 756.040. Although that authority "cannot go beyond that expressly conferred," *Pacific N.W. Bell v. Katz*, 116 Or App 302 (1992), the policy underlying ORS 756.568, together with the broad definition of "order" in the APA, gives the Commission

the express authority under these circumstances to grant the Parties' motion and reopen these consolidated dockets for the purpose of modifying its prior decision.

PacifiCorp next addresses ICNU's request that the Commission "clarify that any refund of deferred excess net power costs ordered under the Stipulation will be returned to customers according to the same methodology and rate spread that PacifiCorp collected those costs under proposed Revised Rate Schedule 94." PacifiCorp contends that this clarification is unnecessary. The stipulation explains that the "Second Revised Schedule 94 is designed to reverse and to implement surcredits by returning to ratepayers overcollected amounts (defined [in the Stipulation]) upon final resolution adverse to PacifiCorp (also defined [in the Stipulation])." Accordingly, the Stipulation and the tariff itself already provide that any refunds PacifiCorp provides to customers pursuant to Second Revised Schedule 94 will be returned according to the same rate spread and methodology applied to PacifiCorp's amortization of those costs under the tariff.

**Staff's Response.** Staff takes no position on whether the Parties properly rely on ORS 756.568 in their motion. However, Staff does support the Stipulation and recommends that the Commission approve it. Further, in the event the Commission grants PacifiCorp's and CUB's motion to amend, Staff recommends that the Commission afford parties the opportunity to challenge PacifiCorp's tariff as allowed under ORS 757.210.

Under the Stipulation, PacifiCorp agrees to voluntarily provide refunds to its customers if the Commission later concludes that PacifiCorp is entitled to defer less than the amount specified by Order No. 02-469. In its Staff Report filed in early August 2002 in connection with these dockets, Staff noted the merit of attaching a refund provision to the amortization of the costs PacifiCorp deferred in UM 995.

Staff notes that CUB and ICNU have challenged the Commission's decision regarding the prudence of costs deferred in connection with UM 995. In the event these groups prevail and the Commission determines that PacifiCorp should amortize less than what is currently authorized, it is possible that PacifiCorp's customers would be overcharged. A refund provision could help protect consumers from this eventuality, according to Staff.

Notwithstanding the possibility that PacifiCorp could overcollect from its customers, Staff did not recommend that the Commission impose a refund provision in connection with the amortization of amounts deferred in UM 995 in its report on UE 127 dated August 2, 2002. However, PacifiCorp's agreement to voluntarily incorporate a refund provision into the tariff under which its UM 995 deferred costs are amortized avoids the impediments to the Commission's imposing a refund provision. Accordingly, Staff recommends that the Commission accept PacifiCorp's agreement and approve the Stipulation.

Staff recommends that the Commission approve PacifiCorp's Second Revised Schedule 94 tariff under ORS 757.210. ORS 757.210 provides that when a utility files a rate or schedule of rates establishing or stating a new rate or schedule of rates, the Commission may conduct a hearing to determine the propriety and reasonableness of the rates. The Commission

may conduct a hearing on its own motion or on the filing of a complaint by a proper party. Staff believes that it is unclear whether the Stipulation calls for PacifiCorp to file what will be a new schedule of rates, which triggers Commission review of PacifiCorp's filing under ORS 757.210.

Specifically, the Stipulation between CUB and PacifiCorp calls for PacifiCorp to file a "Second Revised Schedule 94." Revised Schedule 94 went into effect after an ORS 757.210 process. This filing is made in the same docket in which PacifiCorp filed the Revised Schedule 94 and according to PacifiCorp is only an amendment of that schedule. PacifiCorp has provided notice of the Second Revised Schedule 94 to all parties who received notice of Revised Schedule 94. Finally, the Second Revised Schedule 94 does not call for an increase to the rates established in Revised Schedule 94.

On the other hand, Staff points out that the Second Revised Schedule 94 could be seen as a "new" schedule of rates because it incorporates into Revised Schedule 94 an element that does not currently exist, the possibility of a refund. Further, Second Revised Schedule 94 is not a compliance filing, which is clearly not a "new" filing under ORS 757.210.

Although it is not clear that the Commission is required to review the Second Revised Schedule 94 under ORS 757.210, Staff recommends that the Commission afford parties to this proceeding and other "proper parties" the opportunity to file a complaint as allowed under ORS 757.210.<sup>4</sup> If a party files such a complaint, the Commission may conduct a hearing to determine the reasonableness and propriety of the rates in Second Revised Schedule 94.

Staff does not suggest that the Commission is required to give PacifiCorp's customers or other proper parties the chance to file a complaint to initiate a hearing. Rather, Staff recommends that the Commission afford customers and proper parties this opportunity to ensure that parties to this proceeding, as well as any other proper party, are not denied due process. To accomplish this, the Commission could condition its approval of the Stipulation on the stipulating Parties' agreement that the Commission would conduct a hearing if a proper party filed a complaint within 60 days of the time PacifiCorp filed Second Revised Schedule 94.

Finally, Staff does not believe that a full blown evidentiary hearing in connection with PacifiCorp's new tariff will be necessary. Staff is aware of no new factual issues stemming from PacifiCorp's Second Revised Schedule 94. Moreover, as far as Staff is aware, no party opposes PacifiCorp's amortization of its deferred costs at the six percent level under Second Revised Schedule 94 if a refund provision is incorporated into the tariff. Staff has previously recommended that the Commission allow PacifiCorp to amortize costs deferred in UM 995 at the six percent level. Staff believes that if PacifiCorp is allowed to defer its costs at the six percent level, it is more likely that PacifiCorp will pass its excess net power costs to customers who consumed the power.

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<sup>4</sup> "The Commission shall conduct . . . a hearing upon written complaint filed by the utility, its customer or customers, or any other proper party within 60 days of the utility's filing."



**Discussion and Resolution.** *A. Did the Commission issue an “order” for purposes of ORS 756.568, by virtue of its nullity vote on PacifiCorp’s application to increase its deferral?*

We agree with the parties that ORS 183.310 applies to the Commission. We agree with PacifiCorp that the Commission’s vote at the August 6, 2002 Public Meeting was an action constituting an order under ORS 183.310(5)(a). That statute specifically provides that an order may be oral or written. The Commission took oral action in its vote.

ICNU contends that the Commission’s action in its nullity vote was not an order because the Commission did not enter findings of fact and conclusions of law, which ICNU believes are required by ORS 756.558. ICNU relies on a reference in ORS 756.568 to ORS 756.558.<sup>5</sup> The requirement of findings of fact and conclusions of law in ORS 756.568 applies to cases in which evidence is taken. That requirement does not apply here. The reference in ORS 756.558 to ORS 756.568 addresses the service and effective date of orders rescinding, suspending, or amending Commission orders. Service and effective date are procedural matters, as PacifiCorp has pointed out.

ICNU also argues that the August 6 Public Meeting vote cannot be an order because the Commission itself referred to its decision as “the equivalent of the Commission taking ‘no action’ on Revised Schedule 94 altogether.” Whatever the Commission said about its action and whatever the action might be equivalent to, the Commission took action in its vote at the August 6 Public Meeting, and that action constitutes an order under ORS 183.310. We further conclude that the order is lawful and that we have express statutory authority to correct our own orders, as PacifiCorp has argued. *See* p. 5 above.

*B. Is there good cause to reopen UE 121 and UE 127 and amend Revised Schedule 94?*

PacifiCorp has been collecting rates under Revised Schedule 94 since August 8, 2002. Revised Schedule 94, the tariff under which PacifiCorp is collecting its six percent amortization currently, does not provide for refunds to customers in the event that PacifiCorp is

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<sup>5</sup> ORS 756.568 provides:

The Public Utility Commission may at any time, upon notice to the public utility or telecommunications utility and after opportunity to be heard as provided in ORS 756.500 to 756.610, rescind, suspend or amend any order made by the commission. Copies of the same shall be served and take effect as provided in ORS 756.558 for original orders.

ORS 756.558 provides, in relevant part:

(2) After the completion of the taking of evidence, and within a reasonable time, the commission shall prepare and enter findings of fact and conclusions of law upon the evidence received in the matter and shall make and enter the order of the commission thereon. The findings of fact and conclusions of law may be embodied in the same instrument with the order or may be embodied in a separate instrument. The findings of fact, conclusions of law and order thereon shall be signed by the commission. The order shall state the date it becomes effective. A copy of the findings of fact and conclusions of law and a copy of the order shall, forthwith upon the entry of the same, be served upon each of the parties to the proceeding.

found to have overcollected revenues. The Parties have reached a voluntary settlement on the issue of PacifiCorp's six percent amortization of its deferred amounts in the future and the existence and operation of a self executing rate credit in the event that CUB and ICNU succeed in their appeal of Order No. 02-469 and PacifiCorp is found to have overcollected its deferred power costs.

We agree that good cause exists to reopen UE 121 and UE 127 and admit the Stipulation into evidence. The Stipulation resolves some issues between the Parties. More important, however, the Stipulation gives ratepayers some protection if PacifiCorp is found to have overcollected revenues. We therefore approve the Stipulation.

The Stipulation calls for PacifiCorp to file a Second Revised Schedule 94 tariff to take effect on Commission approval of the Stipulation. We have considered Staff's recommendation that we review the tariff under ORS 757.210, which provides that when a utility files a new rate schedule, the Commission may, on its own motion or on the filing of a complaint by a proper party, conduct a hearing to determine the propriety and reasonableness of the rates. Staff's recommendation is based on the fact that Revised Schedule 94 went into effect after an ORS 757.210 process and on Staff's desire to provide due process to all proper parties. We believe that Staff's recommendation is sound and will review the Second Revised Schedule 94 under ORS 757.210.

Because all tariffs must be noticed to interested persons under OAR 860-022-0038, we will direct PacifiCorp to file its proposed tariff for Commission review. The Commission will provide notice of the tariff as required. Staff will review the tariff and take the matter to a public meeting for Commission action.

ICNU has requested that we specify that any refunds under the Second Revised Schedule 94 will be distributed according to the same rate spread and methodology that PacifiCorp used to collect the deferred power costs. PacifiCorp opposes this request, arguing that the Stipulation is unambiguous that this will be the method of distribution for any refund. We believe that this method of distributing refunds is implied in the Stipulation and in Second Revised Schedule 94. In case of any ambiguity, however, we specify that the method of distributing any eventual refund under Second Revised Schedule 94 shall be according to the same rate spread and methodology that PacifiCorp used to collect the deferred power costs.

**ORDER**

IT IS ORDERED that:

1. Consolidated Dockets UE 121 and UE 127 are reopened.
2. The Stipulation between CUB and PacifiCorp is entered into the record in those dockets and approved.
3. PacifiCorp shall file the Second Revised Schedule 94, as described in the Stipulation, under ORS 757.210, for Commission review.

Made, entered, and effective \_\_\_\_\_.

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**Roy Hemmingway**  
Chairman

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**Lee Beyer**  
Commissioner

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**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.

Concurring Opinion of Commissioner Lee Beyer

In the initial decision on this case, I objected to increasing recovery from 3 percent to 6 percent. I also desired to allow a refund to consumers should the intervening parties prevail in their challenge before the courts. Those efforts were not successful. Because the company's tariff went into effect after a tie vote, the company is now allowed to recover deferred costs at the 6 percent level, so my first objection is moot. The stipulation recognized in this order allows the company to continue to recover at the 6 percent level but also provides for a refund to customers should interveners succeed in court. Faced with two undesirable outcomes, I chose to concur in this order to provide customers at least the opportunity for refund should the legal challenge be successful.