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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 926

In the Matter of the Investigation Regarding)
the Purchase of Subscription Power from the)
Bonneville Power Administration.) ORDER

DISPOSITION: APPLICATIONS APPROVED

On January 8, 2003, PacifiCorp filed a request for approval of an agreement regarding the Fiscal Year 2003 deferral amount between PacifiCorp and Bonneville Power Administration (BPA). On the same date, Portland General Electric Company (PGE) also filed a request for approval of an agreement regarding the Fiscal Year 2003 deferral amount between PGE and BPA.

The agreements in question modify the current financial benefits provided to the utilities' residential and small farm customers by deferring a portion of the Fiscal Year 2003 payments to the 2006-2011 time period. BPA would defer \$11.6 million in payments to PacifiCorp and \$10.64 million in payments to PGE. The deferral balance would accrue interest at an annual rate of 3.01 percent, compounded monthly. The rate would apply to the deferral balance until such monies are disbursed by BPA. The payment schedule of the disbursement is 60 equal monthly payments beginning October 1, 2006, and ending September 30, 2011. Both PacifiCorp and PGE estimated that the effects of this deferral equate to a 1.7 percent increase in net rates for residential and small farm customers. Neither utility requests a rate change to be implemented with this filing.

Commission Staff reviewed the applications and drafted a Staff report on each of them, recommending that the Commission approve the utilities' requests to execute an agreement with BPA to defer a portion of BPA's Fiscal Year 2003 residential exchange payments. The applications were considered at the Commission's January 21, 2003, Public Meeting. The Commission declined to make a decision on the applications at that meeting and asked Staff to bring the matters before it again at the February 4, 2003, Public Meeting. The Commission was concerned that approval of the agreements could lead to an increase in rates for residential and small farm customers with no assurance of compensating benefits in the future.

Staff drafted a second set of reports for the February 4, 2003, Public Meeting. Staff noted that in the interim, the Commission's concern has become moot. Recent BPA announcements make likely, according to Staff, that BPA will increase its rates through a Safety Net Cost Recovery Adjustment Clause (CRAC).

PacifiCorp estimates that it anticipates no rate increase unless BPA implements a Safety Net CRAC surcharge above 15 percent. The existing balancing account has sufficient funds, and qualifying residential and small farm loads have declined such that the existing federal system credit can be maintained. The 15 percent rate equates roughly to PacifiCorp's deferral. If BPA implements a Safety Net CRAC surcharge above 15 percent, a rate increase is likely. The increase will be due to the Safety Net CRAC, however, and not to the deferral.

PGE anticipates that it will later file for an adjustment to its Schedule 102 to have revised rates effective April 1, 2003. PGE estimates that the effects of the deferral would be a 1.7 percent increase in net rates for residential and small farm customers. Again, assuming a Safety Net CRAC surcharge is likely, the increase in rates would occur anyway.

In its reports, Staff states that it believes that PacifiCorp and PGE customers benefit from coordinated regional efforts, such as these deferral agreements, because such agreements enhance the likelihood of a settlement between the public agencies and the investor owned utilities. Staff maintains that PacifiCorp, PGE, and the Commission will demonstrate good faith in working with BPA and other regional parties. Staff argues that cooperative working relationships increase the likelihood that a fair and reasonable long term resolution of BPA related issues may eventuate. Staff's reports for the January 21 and February 4, 2003, Public Meetings are attached to this order as Appendix A and incorporated herein by reference.

At its February 4, 2003, Public Meeting, the Commission voted to adopt Staff's recommendation and to approve PacifiCorp's and PGE's requests to execute an agreement with BPA to defer a portion of BPA's Fiscal Year 2003 residential exchange payments.

ORDER

IT IS ORDERED that:

1. The application of PacifiCorp to execute an agreement with the Bonneville Power Administration to defer a portion of BPA's Fiscal Year 2003 residential exchange payments is approved.

2. The application of Portland General Electric to execute an agreement with the Bonneville Power Administration to defer a portion of BPA's Fiscal Year 2003 residential exchange payments is approved.

Made, entered, and effective _____.

Roy Hemmingway
Chairman

Lee Beyer
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.

PacifiCorp Hermiston service territory. The financial benefits associated with the Hermiston service territory revert back to BPA.)

PacifiCorp is not requesting any rate change to be implemented at this time with the contract revision. PacifiCorp expects that it can manage until at least October of this year the deferral of monies due from BPA. PacifiCorp estimates that the effects of this deferral equates to a 1.7 per cent increase in net rates for residential and small-farm consumers.¹

Background

BPA requested the investor-owned utilities defer \$55 million of financial benefits for the 2003 fiscal year because of BPA's current state of financial health. Absent this action, and efforts by BPA to reduce costs, there is the risk that BPA would need to implement its Safety Net Cost Recovery Adjustment Clause (CRAC) to better ensure scheduled payments to the federal Treasury. In the event that a Safety Net CRAC is triggered, it would reduce the amount of financial benefits available to PacifiCorp's residential and small farm consumers. However, the proposed contract also anticipates the possibility of implementing the Safety Net CRAC. In that event, any payments due by PacifiCorp associated with the Safety Net CRAC would first be deemed to be funded by the deferral of financial benefits.

To further reduce near term cash outlays, BPA has also obtained the deferral of an additional \$50 million in annual payments due in total to Puget and PacifiCorp relating to exposure to legal contract challenges. The Commission issued Order No. 02-414 on June 20, 2002, approving an agreement between PacifiCorp and BPA that:

....allows BPA to defer the payments that were to begin October 1, 2002. The monies deferred would accrue interest at an annual rate of 4.46 percent, compounded monthly. PacifiCorp may terminate the agreement if it believes that the lawsuit settlement agreement between the publics and the investor owned utilities will not conclude to PacifiCorp's satisfaction. In addition, the Washington, Idaho or Oregon regulatory commissions may terminate the agreement if any of the commissions objects to or disapproves continuation of the deferral period. Once the agreement is terminated, beginning on the date of a new six-month period, BPA

¹ PacifiCorp provided information that residential consumers receive 92.4 per cent of benefits provided by BPA and that residential revenues net of all adjustments is \$343.9 million. $1.7\% = .924 \text{ per cent} * \$6.2 \text{ million} / \$343.9 \text{ million}$.

shall pay PacifiCorp the deferred cash payments and begin the monthly payments associated with the litigation risk.²

The investor-owned utilities support BPA's request to defer \$55 million in financial benefits as part of an overall effort to settle years of regional division over the residential exchange program. For the last year or so, the investor-owned utilities and the publicly-owned agencies have discussed alternative policies and mechanisms to resolve the future role of BPA, its policies, and the residential exchange program. As a result of these discussions, a Joint Company Proposal (JCP) has been developed and transmitted to BPA. BPA is currently holding technical workshops to discuss the JCP and related contractual matters. As the region works in good faith to alleviate BPA's near-term financial difficulties, there is an expectation that BPA will do likewise to consider and implement the JCP. BPA is currently holding technical workshops to work through the many issues entailed in the JCP. As of January 14, 2002, BPA has not yet scheduled technical workshops to discuss the JCP for the long-term resolution of the residential exchange.

On December 2, 2002, the chairs of the four-state commissions transmitted a letter to Steve Wright, Administrator of the Bonneville Power Administration. The full text of the letter is provided in Attachment C.

We are inclined to support your request of our regulated utilities to defer a portion of the FY 2003 residential exchange benefits, if it has two important features: 1) the deferral accumulates interest at an appropriate rate, and 2) the future period for delivery of the benefits to the residential customers is clearly established and certain. This second feature means that the deferred balance should not be netted against any benefits otherwise to be received by residential customers pursuant to the residential exchange, or any agreement fulfilling the residential exchange, during the period in which the deferral is paid out.

In addition, we have a request of you. The four Pacific Northwest state utility commissions have been following with great interest the settlement discussion among BPA's publicly owned and investor-owned customer utilities. That discussion has resulted in a proposal for the long-term allocation of federal power and role of BPA after 2006. The proposal seeks to resolve significant policy issues: namely the role of BPA and an equitable distribution of the benefits of the FCRPS. The utilities have offered their proposal in the context of the public process convened by the

² June 11, 2002, Public Meeting memo by Marc Hellman to John Savage

Northwest Power Planning Council to examine post-2006 federal power issues. We believe that the utility proposal is a constructive one, and, if all the details can be successfully negotiated, promises to be beneficial for the region. We urge you to move forward with the proposal. We trust you will direct your staff to work constructively with the publicly owned and privately owned utilities, as well as with public-interest groups and other regional parties, on the proposal offered by the utilities.

Additional Background

Commission authorization with regards to this proposed contract is required pursuant to ORS 757.663, which reads as follows:

In order to preserve the benefits of federal low-cost power for residential and small-farm consumers of electric utilities, the Public Utility Commission may require an electric company to enter into contracts with the Bonneville Power Administration for the purpose of securing such benefits. The contracts shall be subject to approval by the commission....

In docket UM 926, the Commission investigated the residential and small farm consumers' access to federal system benefits and method of delivery (power or cash). As a result of the UM 926 investigation, the Commission issued Order Nos. 00-678 and 01-427, directing both PGE and PacifiCorp to enter into 10-year power purchase contracts with BPA relating to residential exchange benefits. These contracts provided PGE and PacifiCorp both cash and cost-based federal power. On October 31, 2000, PacifiCorp and PGE executed ten-year subscription settlement agreements with BPA. PacifiCorp and BPA later agreed to convert the power sale portion of the federal system benefits into cash.

Issues

The four-state commission letter identifies two issues:

- 1) The deferral accumulates interest at an appropriate rate, and
- 2) The future period for delivery of the benefits to the residential customers is clearly established and certain. This second feature means that the deferred balance should not be netted against any benefits otherwise to be received by residential

customers pursuant to the residential exchange, or any agreement fulfilling the residential exchange, during the period in which the deferral is paid out.

With regards to issue #1, the proposed agreement does provide for interest to accrue on the deferral of fiscal year 2003 benefits. Section 2 (b) (2) of the BPA/PacifiCorp proposed agreement states that the deferral balance will accrue interest at an annual rate of 3.01 percent compounded monthly. This rate would apply to the deferral balance until such monies are disbursed by BPA. The payment schedule of the disbursement is 60 equal monthly payments beginning, October 1, 2006, and ending September 30, 2011. (Section 2 (b)(2))

The 3.01 per cent rate is slightly below market rates of interest applicable for terms of five to eight years of relatively risk free securities. Treasury rates as of the week of January 6, for terms of five to ten years averaged roughly 3 and 4 percent, respectively. Therefore, the BPA-offered rate of 3.01 per cent, while slightly below Treasury rates, is sufficiently close that it may be counterproductive to require PacifiCorp to renegotiate the issue. As noted previously, the Commission has approved contracts between PacifiCorp and BPA that call for interest rates on deferral balances at levels different (lower) than standard Commission practice.

Again, the Commission approved an annual interest rate of 4.46 percent, compounded monthly on deferrals in Order No. 02-414, and issued June 20, 2002. That order dealt with deferrals associated with financial benefits associated with litigation risk.

The second issue identified in the 4-state commission chairs' letter to BPA is:

The future period for delivery of the benefits to the residential customers is clearly established and certain. This second feature means that the deferred balance should not be netted against any benefits otherwise to be received by residential customers pursuant to the residential exchange, or any agreement fulfilling the residential exchange, during the period in which the deferral is paid out.

This provision is addressed in full by paragraph 2 (b)(2)(E) of the agreement between BPA and PacifiCorp. That text is provided below:

The Parties agree that any amounts PacifiCorp is entitled to receive pursuant to section 4(c)(6)(C) above after September 30, 2006, shall be in addition to amounts PacifiCorp is otherwise entitled to receive under this

Settlement Agreement, as it may hereafter be amended, superseded, or replaced ...

The proposed contract language satisfactorily addresses the concern identified in the 4-state chairs' letter.

Concluding Observation

In viewing the merits of executing the proposed BPA/PacifiCorp agreement, PacifiCorp consumers do benefit from these agreements because it enhances the likelihood of a settlement between the publics and the investor owned utilities. Settlement is enhanced because it shows good faith on the part of PacifiCorp and the Commission to work with BPA and other regional parties. Cooperative working relationships increase the likelihood that a fair and reasonable long-term resolution of BPA-related issues may come to pass, with focus placed on the JCP.

ALTERNATIVES FOR COMMISSION CONSIDERATION:

Besides the staff recommendation, the Commission has alternative actions it could take regarding the PacifiCorp request. One alternative is to not approve amending the current contracts. The effect of this action would be to reduce pressure to raise residential and small-farm rates in the near term since federal system benefits would not be deferred. The drawback to this action is that the risk is raised to Bonneville and its customers that the Safety Net CRAC would be implemented and rates rise for all of BPA's customer groups. Staff does not support this alternative.

Another alternative is to approve the contract amendment contingent on BPA agreeing to accrue interest on the deferred monies at PacifiCorp's authorized rate of return. This revision would clearly hold PacifiCorp's consumers harmless from a near term perspective. However, it is unclear whether BPA would agree to this revision. Assuming BPA does not agree, it is doubtful that the difference in accrued interest between 3.01 per cent and 8.62 per cent is sufficient to cause the Commission to direct PacifiCorp to not agree to the BPA contract amendment. Given that the Commission has decided not to adopt this alternative in a previous BPA/PacifiCorp contract amendment, it is not supported.

PROPOSED COMMISSION MOTION:

The Commission approve PacifiCorp's request to amend its power sales contract with the Bonneville Power Administration to defer payments commencing on October 1, 2002.

Alternative motion:

Contingent on the deferred account accruing interest at the Commission's authorized rate of return for PacifiCorp, the Commission approve PacifiCorp's request to amend its power sales contract with the Bonneville Power Administration to defer payments associated with Oregon's allocated share of \$11,584,210.53 for BPA's 2003 Fiscal Year.

MARCUS A. WOOD
Direct (503) 294-9434
mwood@stoel.com

January 7, 2003

Administrative Hearings Division
Oregon Public Utility Commission
550 Capitol Street NE, Suite 215
Salem, OR 97301-2551

**Re: Docket UM 926: Approval of Agreement Regarding Fiscal Year 2003
Deferral Amount PacifiCorp and the Bonneville Power Administration**

PacifiCorp hereby requests Public Utility Commission of Oregon (Commission) approval of the enclosed Agreement Regarding Fiscal Year 2003 Deferral Amount, between the Bonneville Power Administration (“BPA”) and PacifiCorp, BPA proposed Contract No. 03PB-11262 (“2003 Deferral Agreement”).³

A. The Financial Settlement Agreement

The Commission’s Order No. 01-427 in Docket No. UM 926, dated May 22, 2001, authorized PacifiCorp to enter into a Financial Settlement Agreement with BPA. The Financial Settlement Agreement, identified as BPA Contract No. 01PB-10854, accordingly was executed on May 23, 2001. Pursuant to Section 4(b) of the Financial Settlement Agreement, PacifiCorp was to be paid, for the benefit of its residential and small farm customers, \$6,634,240 per month for the period October 1, 2001 through September 30, 2002. This amount was to increase to a net payment of \$6,962,740 per month (\$6,981,876 during a leap year) for the period October 1, 2002 through September 30, 2006.

B. Prior Deferral of Supplemental Financial Settlement Benefits

In addition to the above payments, during the period October 1, 2002 through September 30, 2006, PacifiCorp was to be entitled, again for the benefit of its residential and small farm customers, to an additional payment of \$1,681,318 per month (\$1,685,864 per month during a leap year), if by December 1, 2001, PacifiCorp had not entered into a settlement agreement with one or more of BPA’s publicly-owned utility and cooperative customers that waived and dismissed legal challenges to any of the following related to PacifiCorp’s subscription benefits: (1) the Settlement Agreement, (2) the Financial Settlement Agreement, (3) the Residential Purchase and Sale Agreement ROD, (4) the Power Subscription Strategy RODs, including the

³ A copy of the final execution version of this contract is attached as Attachment C to this request.

Marcus A. Wood
Direct (503) 294-9434
mwood@stoel.com

Residential Exchange Program Settlement ROD, and (5) the application of the 7(b)(2) surcharge to BPA's WP-02 rates. The additional amounts to be so paid were identified in the Financial Settlement Agreement as the "Reduction of Risk Discount" amounts. The intent of this provision was to encourage the publicly owned utilities and cooperatives to negotiate a settlement that would eliminate all the litigation that threatens PacifiCorp's current subscription benefits.

On June 11, 2002, PacifiCorp requested that the Commission approve an Agreement Regarding conditional Deferral of Reduction of Risk Discount Amount, between BPA and PacifiCorp, BPA Contract No. 02BP-11157 (the "Initial Deferral Agreement"). The Initial Deferral deferred, but did not forgive, the Reduction of Risk Discount amounts. PacifiCorp explained that this deferral was in its opinion a necessary component of its overall efforts to secure both a dismissal of challenge to the current BPA subscription benefits and an agreement providing for a long-term continuation of adequate subscription benefits for PacifiCorp's Oregon customers. PacifiCorp also pointed out in its request that the long-term settlement of subscription benefits, if carried to completion by BPA, would include a waiver of the Reduction of Risk Discount. In accordance with the Commission staff's affirmative recommendation, the Commission approved the Initial Deferral Agreement by its Order No. 02-414, entered June 20, 2002.

C. Negotiation of the 2003 Deferral Agreement

BPA experiences a major operating loss in its fiscal year 2002 (October 1, 2001 through September 30, 2002) and has projected additional major operating losses over the next several fiscal years. These losses, if not addressed, would permit BPA to impose various automatic rate increases, including a Safety Net Cost Recovery Adjustment Clause ("SN CRAC") surcharge that would reduce the subscription benefits provided to PacifiCorp and passed through to its residential and small farm customers. For example, the ten percent SN CRAC that BPA projected with its initial loss calculations would cause PacifiCorp to permanently lose, on a system-wide basis, \$7,520,000 per year in subscription benefits. Since that initial calculation, BPA's losses have increased so the permanent loss to PacifiCorp's customers might be even greater. If BPA were to trigger a SN CRAC of 15 percent, PacifiCorp's customers would permanently lose \$11,280,000 for every year the SN CRAC remained in effect.

BPA asked PacifiCorp and the other investor-owned utilities receiving subscription benefits to assist in mitigating BPA's costs and losses during its 2003 fiscal year through an additional \$55 million deferral in subscription benefits due in the 2003 fiscal year, in an effort, among other matters, to avoid the need for an SN CRAC. The 2003 Deferral Agreement was the

Marcus A. Wood
Direct (503) 294-9434
mwood@stoel.com

result of substantial negotiations involving six investor-owned utilities⁴, the publicly owned utilities with which PacifiCorp has been negotiating a long-term settlement of residential exchange benefits, and BPA. The 2003 Deferral Agreement remains subject to regulatory review, of which this request for Commission approval is a part.

PacifiCorp expects the 2003 Deferral Agreement to mitigate, and hopefully to avoid, the imposition of an SN CRAC. Although BPA has not been willing to commit in writing to achievement of other cost reductions in return for the 2003 Deferral Agreement, PacifiCorp and the other investor-owned utilities, as well as BPA's publicly-owned customers, have expressed their expectation that BPA will strive to manage its internal costs to BPA's 2001-2002 expenditure levels. BPA has stated that participation by the investor-owned utilities through the 2003 Deferral Agreement is crucial to BPA's efforts to secure cost cuts from other entities. BPA has been working cooperatively with its customers to date in an effort to substantially reduce its projected expenditures.

PacifiCorp and the other investor-owned utilities also have expressed their expectation that BPA will work collaboratively and in good faith with its utility customers to formulate a mutually acceptable initial staff proposal for the regional BPA future role proceeding, taking into consideration the proposals of other constituent groups during this collaborative process. Although BPA has not agreed in writing to such an effort, BPA currently is participating in a collaborative process. If BPA continues to move forward toward a comprehensive long-term settlement acceptable to the investor-owned utilities, BPA can be expected to ask the investor-owned utilities to agree to additional \$55 million annual deferrals in fiscal years 2004-2006.

D. Provisions of the 2003 Deferral Agreement

1. No Termination of the deferral under the Initial Deferral Agreement: PacifiCorp and Puget Sound Energy would agree under their 2003 Deferral Agreements not to give, prior to January 1, 2003 any notice of termination of the deferral provided through the Initial Deferral Agreements and Puget's comparable agreement. The effect of this provision, given the termination notice provisions in the Initial Deferral Agreement, would be to ensure that such deferral would not be terminated prior to the beginning of BPA's 2004 fiscal year.

2. Additional deferrals: PacifiCorp and the other investor-owned utilities would defer an additional \$55 million of their FY 2003 "Monetary Benefits" under the Financial Settlement Agreement and comparable agreements of the other investor-owned utilities. The amounts deferred would be paid back over a five-year period commencing in October 2006, together with

⁴ Avista, Idaho Power, Northwestern Energy, Portland General Electric and Puget Sound Energy also have negotiated 2003 Deferral Agreements with BPA.

Marcus A. Wood
Direct (503) 294-9434
mwood@stoel.com

interest equal to BPA's current applicable borrowing rate of 3.01 percent per annum, compounded monthly.⁵

The 2003 Deferral Agreement provides that any repayment of residential exchange benefits is to be in addition to any other amount that PacifiCorp is entitled to receive for the benefit of its residential and small farm customers. However, if the comprehensive long-term settlement is adopted, the 2003 deferral repayments (with interest) would be treated as system costs and would be included in rates. As a result, residential and small farm customers of investor-owned utilities would bear approximately 30 per cent of the repayments to the investor-owned utilities.

In the event that the Safety Net Cost Recovery Adjustment Clause (SN CRAC) triggers, the amount deferred by PacifiCorp under the 2003 Deferral Agreement would be reduced by the amount of any payment due by PacifiCorp under the SN CRAC.

The deferral amounts for each investor-owned utility under the 2003 Deferral Agreement were determined by first spreading equally over each of the four years to each investor-owned utility the same dollars of allocated deferral that would be produced if (i) the deferral for BPA's fiscal year 2003 had been allocated \$50 million to Puget and \$5 million to PacifiCorp, and (ii) any deferrals for BPA's fiscal years 2004, 2005 and 2006 had been allocated among the investor-owned utilities in proportion to their respective current shares of residential exchange financial benefits. This calculation contemplates the possibility that there may be follow-on requests by BPA for later-year deferrals, although no such deferrals have yet been agreed to. Using the above formula, as shown in Attachment A to this letter, the allocation of the \$55 million deferral for 2003 is:

⁵ The current BPA interest was calculated in a manner comparable to the then-current interest rate contained in the Initial Deferral Agreement. The reduction from the Initial Deferral Agreement's interest rate reflects the decline in applicable interest rates since May of 2002.

Marcus A. Wood
Direct (503) 294-9434
mwood@stoel.com

| | |
|-----------------------------------|-----------------|
| Puget Sound Energy | \$27.70 |
| Avista | 1.95 |
| Idaho Power Company | |
| 2.61 | |
| Northwestern Corporation | |
| 0.52 | |
| PacifiCorp | |
| 11.58 ⁶ | |
| Portland General Electric Company | |
| <u>10.64</u> | |
| | \$55.00 million |

Under the 2003 Deferral Agreement, PacifiCorp's \$11.58 million deferral is in turn allocated among the States of Oregon, Washington and Idaho in the same proportion as the Monetary Benefits currently are allocated. As shown in Attachment B to this letter, the resulting allocation is:

| | |
|------------|---------------------|
| Oregon | \$6,203,060.70 |
| Washington | 1,966,189.36 |
| Idaho | <u>3,414,960.47</u> |
| Total | \$11,584,210.53 |

F. Impact of Approval of 2003 Deferral Agreement on PacifiCorp's Oregon Retail Rates

Although the deferral ultimately will impact the level of Monetary Benefits PacifiCorp is able to pass through to its Oregon customers from the Financial Settlement Agreement, PacifiCorp does not expect during the period of the deferral to need any Oregon retail rate adjustment as a result of the deferral. The deferred amount of \$11,584,210.53 will be in part offset by an increase in monetary benefits of \$3,942,000 under the Financial Settlement Agreement, that became effective October 1, 2002, as a result of the expiration of an earlier ten percent (10 per cent) reduction in such benefits for BPA's fiscal year 2002, as previously approved by the Commission. PacifiCorp would propose to accumulate the remainder of the deferral into its balancing account, until at least October 2003.

⁶ More precisely, by the Attachment A allocation formula, PacifiCorp's allocation is \$11,584,210.53.

Marcus A. Wood
Direct (503) 294-9434
mwood@stoel.com

G. Commission Action Requested

PacifiCorp requests approval from the Commission at its January 21, 2003 meeting for PacifiCorp to execute the 2003 Deferral Agreement. For the reasons stated above, PacifiCorp believes that such approval and execution are important (1) to avoid the imposition of an SN CRAC rate surcharge, which surcharge would not be refundable and (2) to promote a comprehensive long-term subscription settlement for the benefit of the residential and small farm customers of all Pacific Northwest investor-owned utilities. Time is of the essence, in that BPA representatives have informed PacifiCorp that BPA needs to commence the deferrals under the 2003 Deferral Agreement as of February 2003.

Very truly yours,

/s/ Marcus A. Wood

Marcus A. Wood

Attachments

Contract No. 03PB-11262

AGREEMENT REGARDING
FISCAL YEAR 2003 DEFERRAL AMOUNT
executed by the
BONNEVILLE POWER ADMINISTRATION
and
PACIFICORP

This AGREEMENT REGARDING FISCAL YEAR 2003 DEFERRAL AMOUNT (“Agreement”) is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (“BPA”), and PACIFICORP (“PacifiCorp”). PacifiCorp is a corporation existing under the laws of the State of Oregon. BPA and PacifiCorp are sometimes referred to in this Agreement in the singular as “Party” and in the plural as “Parties.”

RECITALS

- A. On October 31, 2000, the Parties entered into Contract No. 01PB-12229, and on May 23, 2001, the Parties entered into Amendment No. 1 to such agreement (as so amended, the “Settlement Agreement”), which settled the Parties’ rights and obligations during the period from July 1, 2001, through September 30, 2011, under or arising out of section 5(c) of the Northwest Power Act.
- B. On May 23, 2001, the Parties entered into Contract No. 01PB-10854 (“Financial Settlement Agreement”) which provides, among other things, that BPA will, rather than deliver Firm Power to PacifiCorp during the first 5 years of the Settlement Agreement, make cash payments to PacifiCorp during such 5-year period.
- C. On June 20, 2002, the Parties entered into the Agreement Regarding Conditional Deferral of Reduction of Risk Discount, Contract No. 02PB-11157 (“Conditional Deferral Agreement”), which amended the payment provisions of the Financial Settlement Agreement to provide for conditional deferral of payment by BPA of certain amounts to be paid under the Financial Settlement Agreement.

D. BPA wishes to defer payment in FY 2003 of certain amounts of Monetary Benefit under the Settlement Agreement and yet wishes to facilitate a relatively uniform passthrough of benefits under the Settlement Agreement.

E. Contemporaneously with entering into this Agreement, BPA is entering into other agreements under which other investor-owned utilities and BPA are agreeing to BPA's deferral of payment in FY 2003 of payments under agreements similar to the Settlement Agreement. The total cumulative amount to be deferred under this Agreement and such other agreements equals \$55 million.

AGREEMENT

The Parties agree:

1. TERM

This Agreement shall become effective on the date signed by the Parties, and shall continue in effect through September 30, 2011. Upon the expiration or other termination of this Agreement, the rights and obligations then accrued or incurred for the payment of any amounts to PacifiCorp by BPA under this Agreement shall survive.

2. AMENDMENT OF SETTLEMENT AGREEMENT

The Settlement Agreement is amended as follows:

(a) Amendment of Section 2

Sections 2(n), 2(o), and 2(p) are added at the end of and as part of section 2 of the Settlement Agreement:

“(n) “Deferral Amount for Contract Year 2003” means an amount equal to \$11,584,210.53.

(o) “Monthly Deferral Amount” means the following amounts for each month of February through September of Contract Year 2003, the sum of which is equal to the Deferral Amount for Contract Year 2003:

| Month, Year | Monthly Deferral Amount |
|--------------------|--------------------------------|
| February 2003 | 1,448,026.29 |
| March 2003 | 1,448,026.32 |
| April 2003 | 1,448,026.32 |
| May 2003 | 1,448,026.32 |
| June 2003 | 1,448,026.32 |

| <u>Month, Year</u> | <u>Monthly Deferral Amount</u> |
|--------------------|--------------------------------|
| July 2003 | 1,448,026.32 |
| August 2003 | 1,448,026.32 |
| September 2003 | 1,448,026.32 |
| TOTAL: | \$11,584,210.53 |

- (p) “SN CRAC Reduction” means in any month prior to October 1, 2006, an amount equal to the sum of
- (i) an amount equal to the reduction to Monetary Benefit paid in such month under section 4(c) of this Settlement Agreement as a result of the application of the SN CRAC, plus
 - (ii) an amount equal to the reduction calculated pursuant to section 4(c) of the Financial Settlement Agreement in the amount paid in such month under section 4(b) of the Financial Settlement Agreement.”

(b) **Amendment of Section 4(c)**

- (1) Section 4(c)(5) is added at the end of and as part of section 4(c) of the Settlement Agreement:

“(5) **Deferral of Fiscal Year 2003 Monetary Benefit**

The monthly amount of Monetary Benefit to be paid to PacifiCorp pursuant to the preceding provisions of this section 4(c) during the period February 2003 through September 2003 shall be reduced by the Monthly Deferral Amount. PacifiCorp shall allocate each such monthly reduction among the states in the same proportions as the relative average megawatt entitlements for each state as shown in section 4(c)(1)(A) above, but with the Oregon average megawatt total reduced by 0.92 percent to reflect the reduction in Oregon benefits resulting from the loss of the Hermiston qualifying load benefits, pursuant to the letter from Mark Miller of BPA to Matthew Wright of PacifiCorp, dated January 24, 2002.”

- (2) Section 4(c)(6) is added at the end of and as part of section 4(c) of the Settlement Agreement:

“(6) Repayment of Deferral Amount for Contract Year 2003

- (A) The Deferral Amount for Contract Year 2003 shall be paid, plus interest, to PacifiCorp by BPA as Monetary Benefit pursuant to sections 4(c)(6)(B) and 4(c)(6)(C) below. Such interest shall accrue at an annual rate of 3.01 percent, compounded monthly, and shall accrue on the amount of each reduction commencing on (and including) the date it would have been due to be paid absent the occurrence of such Deferral Amount for Contract Year 2003 and continuing up to (but not including) the date such amount is paid pursuant to section 4(c)(6)(B) or 4(c)(6)(C) below.
- (B) If there is any SN CRAC Reduction in Contract Years 2003, 2004, 2005, or 2006, an amount equal to the lesser of
- (i) such SN CRAC Reduction; or
 - (ii) the amount, if any, by which the aggregate amount of reductions after January 31, 2003, of payments pursuant to section 4(c)(5) above, including interest calculated in accordance with section 4(c)(6)(A) until the Due Date determined under section 4(c)(4) above, exceeds the aggregate amount of any payments that have then been previously made pursuant to this section 4(c)(6)(B)

shall be paid by BPA to PacifiCorp as Monetary Benefit at the time the SN CRAC Reduction is reflected in the payments to PacifiCorp under this Settlement Agreement.

- (C) In addition to paying each month any amounts otherwise due during such month to be paid to PacifiCorp pursuant to the provisions of this

Settlement Agreement, as it may hereafter be amended, superseded, or replaced, or the Conditional Deferral Agreement, BPA shall pay to PacifiCorp as Monetary Benefit an amount, if any, equal to (i) the Deferral Amount for Contract Year 2003 (plus interest as calculated in section 4(c)(6)(A) above), reduced by (ii) any amounts previously paid pursuant to section 4(c)(6)(B) above. Such amount shall be paid by BPA to PacifiCorp in 60 equal monthly installments during the period October 1, 2006, through September 30, 2011.

- (D) PacifiCorp shall allocate monthly payments received from BPA under this section 4(c)(6) among the states identified in section 4(c)(1)(A) above in the same manner as the Monthly Deferral Amounts were allocated under section 4(c)(5) above.
- (E) The Parties agree that any amounts PacifiCorp is entitled to receive pursuant to section 4(c)(6)(C) above after September 30, 2006, shall be in addition to amounts PacifiCorp is otherwise entitled to receive under this Settlement Agreement, as it may hereafter be amended, superseded, or replaced, and the Conditional Deferral Agreement (and shall only reduce other amounts PacifiCorp is entitled to receive after such date for the benefit of its residential and small farm customers, under this Settlement Agreement or otherwise, through its impact on the level of the Lowest PF Rate).”

(c) Amendment of Section 6(b)

Section 6(b) of the Settlement Agreement is amended by deleting the second sentence of such section 6(b) and inserting the following in its place:

“The amount of benefits held in the account described in section 6(c) below shall not at any time exceed an amount equal to the greater of (1) the expected receipts of monetary payments from BPA under this Settlement Agreement over

the next 180 days or (2) the receipts of monetary payments from BPA under this Settlement Agreement over the immediately preceding 180 days.”

3. LIMITATION OF CONDITIONAL DEFERRAL AGREEMENT NOTICE

PacifiCorp shall not give, prior to January 1, 2003, to BPA any notice of termination of the deferral period pursuant to section 2 of the Conditional Deferral Agreement.

4. OTHER PROVISIONS

- (a) The Settlement Agreement (as amended by this Agreement), the Financial Settlement Agreement, and the Conditional Deferral Agreement shall be and continue in full force and effect.
- (b) For purposes of determining the Conservation and Renewable Discount for PacifiCorp’s Monetary Benefit under section 8 of the Financial Settlement Agreement (and the terms specified in BPA’s applicable Wholesale Power Rate Schedules, including GRSPs), the forecasted amount of monthly Monetary Benefit to be paid to PacifiCorp shall be determined as though the Parties had not entered into this Agreement.
- (c) If this Agreement is held to be illegal, invalid or unenforceable for any reason, the Settlement Agreement, the Financial Settlement Agreement, and the Conditional Deferral Agreement shall be and continue in full force and effect (and any amounts that have then been deferred pursuant to this Agreement shall be paid to PacifiCorp by BPA within 30 days of such holding). This section 4(c) shall be and remain in effect even if any or all of the other provisions of this Agreement are illegal, invalid or unenforceable.

(d) This Agreement sets forth the entire agreement of the Parties with respect to the subject matter hereof and may only be amended by writing hereafter signed by each of the Parties. Each of the Parties represents that its signatory below is authorized to enter into this Agreement on behalf of the Party for whom he or she signs.

PACIFICORP

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By _____
Senior Vice President, Regulation
& External Affairs

By _____
Account Executive

Name _____
(Print/Type)

Name _____
(Print/Type)

Date Signed _____

Date Signed _____

PACIFIC NORTHWEST STATE UTILITY COMMISSIONERS



Idaho
Public Utilities
Commission



Montana
Public Service
Commission



Oregon
Public Utility
Commission



Washington
Utilities and Transportation
Commission

December 2, 2002

Steve Wright, Administrator
Bonneville Power Administration
PO Box 12999
Portland, OR 97212

RE: Regional Dialogue and Deferral of Fiscal-Year 2003 Residential Exchange Benefits

Dear Administrator Wright:

Regulated investor-owned utilities have contacted us about BPA's request to defer for future payment \$55 million of residential exchange benefits for FY 2003. This request is of special concern to us. While we appreciate the financial pressures on BPA and your objective of reducing near term financial obligations, our regulated utilities have also experienced significant financial strains from the power markets of the last few years. As a result, we have made the difficult decisions to approve significant rate increases for the customers of many of the utilities we regulate. Deferral of the residential exchange benefits will place additional upward pressure on the rates paid by the residential and small-farm consumers of those utilities. Nevertheless, we understand that the requested deferral would be an important contribution toward addressing BPA's near-term revenue shortfall and would help continue the positive relationship among the regional parties that depend upon BPA and the Federal Columbia River Power System ("FCRPS").

We are inclined to support your request of our regulated utilities to defer a portion of the FY 2003 residential exchange benefits, if it has two important features: 1) the deferral accumulates interest at an appropriate rate, and 2) the future period for delivery of the benefits to the residential customers is clearly established and certain. This second feature means that the deferred balance should *not* be netted against any benefits otherwise to be received by residential customers pursuant to the residential exchange, or any agreement fulfilling the residential exchange, during the period in which the deferral is paid out.

In addition, we have a request of you. The four Pacific Northwest state utility commissions have been following with great interest the settlement discussion among BPA's publicly owned and investor-owned customer utilities. That discussion has resulted in a proposal for the long-term allocation of federal power and role of BPA after 2006. The proposal seeks to resolve significant policy issues: namely the role of BPA and an equitable distribution of the benefits of the FCRPS. The utilities have offered their proposal in the context of the public process convened by the Northwest Power Planning Council to examine post-2006 federal power issues. We believe that the utility proposal is a constructive one, and, if all the details can be successfully negotiated, promises to be beneficial for the region. We urge you to move forward with the proposal. We trust you will direct your staff to work constructively with the publicly owned and privately owned utilities, as well as with public-interest groups and other regional parties, on the proposal offered by the utilities.

When called upon, BPA has shown itself to be very resourceful and constructive in resolving difficult regional issues. The Subscription Settlement and the 2001 general rate case are good examples. We are confident that the same will be true for resolution of post-2006 issues. For our part, we offer to help however we can as you consider proposals made by the utilities and others.

Sincerely,

Idaho Public Utilities Commission



Paul Kjellander, President

Oregon Public Utility Commission



Roy Hemmingway, Chairman

Montana Public Service Commission



Gary Feland, Chairman

Washington Utilities &
Transportation Commission



Marilyn Showalter, Chairwoman

cc: Northwest Congressional Delegation

ITEM NO. 2

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: January 21, 2003

REGULAR X CONSENT _____ EFFECTIVE DATE _____ N/A _____

DATE: January 14, 2002

TO: John Savage

FROM: Marc Hellman

SUBJECT: PORTLAND GENERAL ELECTRIC: (Docket No. UM 926) Approval of Agreement between Bonneville Power Administration and Portland General Electric Regarding Fiscal Year 2003 Deferral of Subscription Benefits.

STAFF RECOMMENDATION:

I recommend that the Commission approve Portland General Electric's request to execute an agreement with the Bonneville Power Administration to defer a portion of BPA's fiscal year 2003 residential exchange payments.

DISCUSSION:

On January 8, 2003, Portland General Electric filed a request with the Commission to approve a proposed agreement with the Bonneville Power Administration (BPA) relating to residential exchange benefits. (A copy of the application is provided in Attachment A to this memorandum. A copy of the contractual agreement between Portland General Electric and BPA is provided in Attachment B.) The agreement modifies the current financial benefits provided to Portland General Electric's residential and small-farm consumers by deferring a portion of the 2003 fiscal year payments to the 2006-2011, time period. Specifically, BPA would defer \$10.64 million in payments to Portland General Electric. The deferral balance will accrue interest at an annual rate of 3.01 percent, compounded monthly. This rate would apply to the deferral balance until such monies are disbursed by BPA. The payment schedule of the disbursement is 60 equal monthly payments beginning, October 1, 2006, and ending September 30, 2011.

This Portland General Electric calculation is consistent with the four-state commission agreement on the percentage of Portland General Electric residential exchange benefits allocated to each state, modified principally by Puget Sound Energy's offer to be

responsible for roughly 50 percent of the total request by BPA for deferrals among the regions investor-owned utilities.

Portland General Electric is not requesting any rate change to be implemented with this filing. Portland General Electric anticipates that it will later file for an adjustment to its Schedule 102 to have revised rates effective April 1, 2003. Portland General Electric estimates that the effects of this deferral equates to a 1.7 per cent increase in net rates for residential and small-farm consumers.¹

Background

BPA requested the investor-owned utilities defer \$55 million of financial benefits for the 2003 fiscal year because of BPA's current state of financial health. Absent this action, and efforts by BPA to reduce costs, there is the risk that BPA would need to implement its Safety Net Cost Recovery Adjustment Clause (CRAC) to better ensure scheduled payments to the federal Treasury. In the event that a Safety Net CRAC is triggered, it would reduce the amount of financial benefits available to Portland General Electric's residential and small farm consumers. However, the proposed contract also anticipates the possibility of implementing the Safety Net CRAC. In that event, any payments due by Portland General Electric associated with the Safety Net CRAC would first be deemed to be funded by the deferral of financial benefits.

To further reduce near term cash outlays, BPA has also obtained the deferral of an additional \$50 million in annual payments due in total to Puget and PacifiCorp relating to exposure to legal contract challenges. The Commission issued Order No. 02-414 on June 20, 2002, approving an agreement between PacifiCorp and BPA that:

...allows BPA to defer the payments that were to begin October 1, 2002. The monies deferred would accrue interest at an annual rate of 4.46 percent, compounded monthly. PacifiCorp may terminate the agreement if it believes that the lawsuit settlement agreement between the publics and the investor owned utilities will not conclude to PacifiCorp's satisfaction. In addition, the Washington, Idaho or Oregon regulatory commissions may terminate the agreement if any of the commissions objects to or disapproves continuation of the deferral period. Once the agreement is

¹ 1.7% = $\$10.64 \cdot .923 \cdot 100\% / \581.3 where residential annual revenues net of all adjustments is \$581.3 and 92.3% of PGE's federal system benefits are associated with service to residential consumers. Portland General Electric states that net of the Conservation & Renewable Discount treatment that the rate increase will be 1.4%.

terminated, beginning on the date of a new six-month period, BPA shall pay PacifiCorp the deferred cash payments and begin the monthly payments associated with the litigation risk.²

The investor-owned utilities support BPA's request to defer \$55 million in financial benefits as part of an overall effort to settle years of regional division over the residential exchange program. For the last year or so, the investor-owned utilities and the publicly owned agencies have discussed alternative policies and mechanisms to resolve the future role of BPA, its policies, and the residential exchange program. As a result of these discussions, a Joint Company Proposal (JCP) has been developed and transmitted to BPA. BPA is currently holding technical workshops to discuss the JCP and related contractual matters. As the region works in good faith to alleviate BPA's near-term financial difficulties, there is an expectation that BPA will do likewise to consider and implement the JCP. BPA is currently holding technical workshops to work through the many issues entailed in the JCP. As of January 14, 2002, BPA has not yet scheduled technical workshops to discuss the JCP for the long-term resolution of the residential exchange.

On December 2, 2002, the chairs of the four-state commissions transmitted a letter to Steve Wright, Administrator of the Bonneville Power Administration. The full text of the letter is provided in Attachment C.

We are inclined to support your request of our regulated utilities to defer a portion of the FY 2003 residential exchange benefits, if it has two important features: 1) the deferral accumulates interest at an appropriate rate, and 2) the future period for delivery of the benefits to the residential customers is clearly established and certain. This second feature means that the deferred balance should not be netted against any benefits otherwise to be received by residential customers pursuant to the residential exchange, or any agreement fulfilling the residential exchange, during the period in which the deferral is paid out.

In addition, we have a request of you. The four Pacific Northwest state utility commissions have been following with great interest the settlement discussion among BPA's publicly owned and investor-owned customer utilities. That discussion has resulted in a proposal for the long-term allocation of federal power and role of BPA after 2006. The proposal seeks to resolve significant policy issues: namely the role of BPA and an equitable distribution of the benefits of the FCRPS. The utilities have

² June 11, 2002, Public Meeting memo by Marc Hellman to John Savage

offered their proposal in the context of the public process convened by the Northwest Power Planning Council to examine post-2006 federal power issues. We believe that the utility proposal is a constructive one, and, if all the details can be successfully negotiated, promises to be beneficial for the region. We urge you to move forward with the proposal. We trust you will direct your staff to work constructively with the publicly owned and privately owned utilities, as well as with public-interest groups and other regional parties, on the proposal offered by the utilities.

Additional Background

Commission authorization with regards to this proposed contract is required pursuant to ORS 757.663, which reads as follows:

In order to preserve the benefits of federal low-cost power for residential and small-farm consumers of electric utilities, the Public Utility Commission may require an electric company to enter into contracts with the Bonneville Power Administration for the purpose of securing such benefits. The contracts shall be subject to approval by the commission....

In docket UM 926, the Commission investigated the residential and small farm consumers' access to federal system benefits and method of delivery (power or cash). As a result of the UM 926 investigation, the Commission issued Order Nos. 00-678 and 01-427, directing both PGE and PacifiCorp to enter into 10-year power purchase contracts with BPA relating to residential exchange benefits. These contracts provided PGE and PacifiCorp both cash and cost-based federal power. On October 31, 2000, PacifiCorp and PGE executed ten-year subscription settlement agreements with BPA. PacifiCorp and BPA later agreed to convert the power sale portion of the federal system benefits into cash.

Issues

The four-state commission letter identifies two issues:

- 1) The deferral accumulates interest at an appropriate rate, and
- 2) The future period for delivery of the benefits to the residential customers is clearly established and certain. This second feature means that the deferred balance

should not be netted against any benefits otherwise to be received by residential customers pursuant to the residential exchange, or any agreement fulfilling the residential exchange, during the period in which the deferral is paid out.

With regards to issue #1, the proposed agreement does provide for interest to accrue on the deferral of fiscal year 2003 benefits. Section 2 (b) (2) of the BPA/Portland General Electric proposed agreement states that the deferral balance will accrue interest at an annual rate of 3.01 percent compounded monthly. This rate would apply to the deferral balance until such monies are disbursed by BPA. The payment schedule of the disbursement is 60 equal monthly payments beginning October 1, 2006, and ending September 30, 2011, (Section 2 (b)(2)).

The 3.01 per cent rate is slightly below market rates of interest applicable for terms of five to eight years of relatively risk free securities. Treasury rates as of the week of January 6, for terms of five to ten years averaged roughly 3 and 4 percent, respectively. Therefore, the BPA-offered rate of 3.01 per cent, while slightly below Treasury rates, is sufficiently close that it may be counterproductive to require Portland General Electric to renegotiate the issue. As noted previously, the Commission has approved contracts between PacifiCorp and BPA that call for interest rates on deferral balances at levels different (lower) than standard Commission practice.

Again, the Commission approved an annual interest rate of 4.46 percent, compounded monthly on deferrals in Order No. 02-414, and issued June 20, 2002. That order dealt with deferrals associated with financial benefits associated with litigation risk.

The second issue identified in the 4-state commission chairs' letter to BPA is:

The future period for delivery of the benefits to the residential customers is clearly established and certain. This second feature means that the deferred balance should not be netted against any benefits otherwise to be received by residential customers pursuant to the residential exchange, or any agreement fulfilling the residential exchange, during the period in which the deferral is paid out.

This provision is addressed in full in the agreement between BPA and Portland General Electric. That text is provided below:

The Parties agree that any amounts Portland General Electric is entitled to receive pursuant to section 4(c)(6)(C) above after September 30, 2006, shall be in addition to amounts Portland General Electric is otherwise

entitled to receive under this Settlement Agreement, as it may hereafter be amended, superseded, or replaced ...

The proposed contract language satisfactorily addresses the concern identified in the 4-state chairs' letter.

Concluding Observation

In viewing the merits of executing the proposed BPA/Portland General Electric agreement, Portland General Electric consumers do benefit from these agreements because it enhances the likelihood of a settlement between the publics and the investor owned utilities. Settlement is enhanced because it shows good faith on the part of Portland General Electric and the Commission to work with BPA and other regional parties. Cooperative working relationships increase the likelihood that a fair and reasonable long-term resolution of BPA-related issues may come to pass, with focus placed on the JCP.

ALTERNATIVES FOR COMMISSION CONSIDERATION:

In addition to the staff recommendation, there are alternative actions the Commission could take regarding the Portland General Electric request. One alternative is to not approve amending the current contracts. The effect of this action would be to reduce pressure to raise residential and small-farm rates in the near term since federal system benefits would not be deferred. The drawback to this action is that the risk is raised to Bonneville and its customers that the Safety Net CRAC would be implemented and rates rise for all of BPA's customer groups. Staff does not support this alternative.

The other alternative is to approve the contract amendment contingent on BPA agreeing to accrue interest on the deferred monies at Portland General Electric's authorized rate of return. This revision would clearly hold Portland General Electric's consumers harmless from a near term perspective. However, it is unclear whether BPA would agree to this revision. Assuming BPA does not agree, it is doubtful that the difference in accrued interest between 3.01 per cent and 9.09 per cent is sufficient to cause the Commission to direct Portland General Electric to not agree to the BPA contract amendment. Given that the Commission has decided not to adopt this alternative in a previous BPA/Portland General Electric contract amendment, it is not supported.

PROPOSED COMMISSION MOTION:

The Commission approve Portland General Electric's request to amend its power sales contract with the Bonneville Power Administration to defer payments commencing on October 1, 2002.

Alternative motion:

Contingent on the deferred account accruing interest at the Commission's authorized rate of return for Portland General Electric, the Commission approve Portland General Electric's request to amend its power sales contract with the Bonneville Power Administration to defer payments of \$10,640,000 for BPA's 2003 Fiscal Year.



COPY

Portland General Electric Company
121 SW Salmon Street • Portland, Oregon 97204

Hellman

HARD COPY OF *1/8/03 Jay*

RECEIVED

JAN 09 2003

Public Utility Commission of Oregon
Administrative Hearings Division

January 8, 2003

Administrative Hearings Division
Oregon Public Utility Commission
550 Capitol Street NE, Suite 215
Salem, OR 97301-2551

Re: **Docket UM 926: Approval of Agreement Regarding Fiscal Year 2003 Deferral Amount Portland General Electric Company and the Bonneville Power Administration**

Portland General Electric Company (PGE) hereby requests Public Utility Commission of Oregon (Commission) approval of the Agreement Regarding Fiscal Year 2003 Deferral Amount, between the Bonneville Power Administration ("BPA") and PGE, BPA proposed contract no. 03PB-11267 ("BPA-PGE 2003 Deferral Agreement"). The BPA-PGE 2003 Deferral Agreement is included as Attachment A.

A. The Subscription Settlement Agreement

The Commission's order no. 00-678 in Docket No. UM 926, dated October 25, 2000, ordered PGE to enter into a Subscription Settlement Agreement with BPA. The Subscription Settlement Agreement, identified as BPA contract no. 00PB-12161, obligates BPA to provide PGE, for the benefit of its residential and small farm customers, with firm power and monetary benefits from October 1, 2001 through September 30, 2011.

B. Negotiation of the 2003 BPA-PGE Deferral Agreement

BPA experienced a major operating loss in its fiscal year 2002 (October 1, 2001 through September 30, 2002) and has projected additional major operating losses over the next several fiscal years. These losses, if not addressed, would permit BPA to impose various automatic rate increases, including a Safety Net Cost Recovery Adjustment Clause ("SN CRAC") surcharge that would reduce the subscription benefits provided to PGE and passed through to its residential and small farm customers. For example, the ten percent SN CRAC that BPA projected with its initial loss calculations would cause PGE's customers to lose, on an annualized basis, \$8.5 million per year in subscription benefits. Since that initial calculation, BPA's losses have increased so the permanent loss to PGE's customers would likely be even greater. If BPA were to trigger a SN CRAC of 15 percent, PGE's customers would permanently lose \$12.7 million for every year the SN CRAC remained in effect.

DOCKETED

BPA asked PGE and the other investor-owned utilities receiving subscription benefits to assist in mitigating BPA's costs and losses during its 2003 fiscal year through a \$55 million deferral of subscription benefits due in the 2003 fiscal year, in an effort, among other matters, to avoid the need for an SN CRAC. The 2003 BPA-PGE Deferral Agreement was the result of substantial negotiations involving six investor-owned utilities¹, the publicly-owned utilities and BPA. The BPA-PGE 2003 Deferral Agreement remains subject to regulatory review, of which this request for Commission approval is a part.

PGE expects the BPA-PGE 2003 Deferral Agreement and the deferral agreements between BPA and other investor-owned utilities to mitigate, and hopefully to avoid, the imposition of the SN CRAC. Although BPA has not been willing to commit in writing to achievement of other cost reductions in return for the BPA-PGE 2003 Deferral Agreement, PGE and the other investor-owned utilities, as well as BPA's publicly-owned customers, have expressed their expectation that BPA will strive to manage its internal costs to the average of BPA's 2001-2002 expenditure levels. BPA has stated that participation by the investor-owned utilities through the 2003 deferral agreements is crucial to BPA's efforts to secure cost cuts from other entities. BPA has been working cooperatively with its customers to date in an effort to substantially reduce its projected expenditures.

PGE and the other investor-owned utilities also have expressed their expectation that BPA will work collaboratively and in good faith with its utility customers to formulate a mutually acceptable initial staff proposal for the regional BPA future role proceeding, taking into consideration the proposals of other constituent groups during this collaborative process. Although BPA has not agreed in writing to such an effort, BPA currently is participating in a collaborative process. If BPA continues to move forward toward a comprehensive long-term settlement acceptable to the investor-owned utilities, BPA can be expected to ask the investor-owned utilities to agree to additional \$55 million annual deferrals in fiscal years 2004-2006.

C. Provisions of the BPA-PGE 2003 Deferral Agreement

PGE and other investor-owned utilities would defer \$55 million of their FY 2003 "Monetary Benefits" under the Subscription Settlement Agreement and comparable agreements of the other investor-owned utilities. The amounts deferred would be paid back over a five-year period commencing in October 2006, together with interest equal to BPA's current applicable borrowing rate of 3.01 percent per annum, compounded monthly.²

¹ Avista, Idaho Power, Northwestern Energy, PacifiCorp and Puget Sound Energy have negotiated 2003 Deferral Agreements with BPA containing substantially similar terms as the BPA-PGE 2003 Deferral Agreement.

² The current BPA interest was calculated in a manner comparable to the then-current interest rate contained in the Initial Deferral Agreement executed by PacifiCorp in May of 2002.

The BPA-PGE 2003 Deferral Agreement provides that any repayment of residential exchange benefits is to be in addition to any other amount that PGE is entitled to receive for the benefit of its residential and small farm customers. However, if the comprehensive long-term settlement is adopted, the 2003 deferral repayments (with interest) would be treated as system costs and would be included in rates. As a result, residential and small farm customers of investor-owned utilities would bear approximately 30% of the repayments to the investor-owned utilities.

In the event that the SN CRAC triggers, the amount deferred by PGE under the 2003 Deferral Agreement would be reduced by the amount of any payment due by PGE under the SN CRAC.

The deferral amounts for each investor-owned utility under the 2003 deferral agreements were determined by first spreading equally over each of the four years to each investor-owned utility the same dollars of allocated deferral that would be produced if (i) the deferral for BPA's fiscal year 2003 had been allocated \$50 million to Puget and \$5 million to PacifiCorp, and (ii) any deferrals for BPA's fiscal years 2004, 2005 and 2006 had been allocated among the investor-owned utilities in proportion to their respective current shares of residential exchange financial benefits. This calculation contemplates the possibility that there may be follow-on requests by BPA for later-year deferrals, although no such deferrals have yet been agreed to. Using the above formula, as shown in Attachment A to this letter, the allocation of the \$55 million deferral for 2003 is:

| | |
|-----------------------------------|-----------------|
| Puget Sound Energy | \$27.70 |
| Avista | 1.95 |
| Idaho Power Company | 2.61 |
| Northwestern Corporation | 0.52 |
| PacifiCorp | 11.58 |
| Portland General Electric Company | <u>10.64</u> |
| | \$55.00 million |

D. Impact of Approval of BPA-PGE 2003 Deferral Agreement on PGE's Retail Rates

PGE's \$10.64 million share of the subscription power benefits deferral described above will reduce PGE's Schedule 102 BPA Subscription Power Credit to residential and small farm customers. PGE proposes to adjust the Schedule 102 rates effective April 1, 2003 to reflect the impact of this settlement and will file revised tariffs.

The reduction from the Initial Deferral Agreement's interest rate reflects the decline in applicable interest rates since May of 2002.

PGE proposes to mitigate a portion of the overall \$10.64 million impact through application of Conservation and Renewable Discount ("C&RD") credits which result from the purchase of subscription power and have been accruing from October 2001. The rate impact of the Schedule 102 credit reduction resulting from the deferral net of the impact of the C&RD credit is estimated to result in an average increase of 1.4% to residential consumers. This does not include the impact of the April 2003 Load Based CRAC increase.

E. Commission Action Requested

PGE requests approval from the Commission at its January 21, 2003 meeting for PGE to execute the BPA-PGE 2003 Deferral Agreement. For the reasons stated above, PGE believes that such approval and execution are important (1) to avoid the imposition of an SN CRAC rate surcharge, which surcharge would not be refundable and (2) to promote a comprehensive long-term subscription settlement for the benefit of the residential and small farm customers of all Pacific Northwest investor-owned utilities. Time is of the essence, in that BPA representatives have informed PGE that BPA needs to commence the deferrals under the 2003 Deferral Agreement as of February 2003.

Very truly yours,



Pamela G. Lesh
Vice President, Regulatory and
Federal Affairs

Attachments

Contract No. 03PB-11267

AGREEMENT REGARDING
FISCAL YEAR 2003 DEFERRAL AMOUNT
executed by the
BONNEVILLE POWER ADMINISTRATION
and
PORTLAND GENERAL ELECTRIC

This AGREEMENT REGARDING FISCAL YEAR 2003 DEFERRAL AMOUNT ("Agreement") is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION ("BPA"), and PORTLAND GENERAL ELECTRIC ("PGE"). PGE is a corporation existing under the laws of the State of Oregon. BPA and PGE are sometimes referred to in this Agreement in the singular as "Party" and in the plural as "Parties."

RECITALS

A. On October 31, 2000, the Parties entered into Contract No. 00PB-12161 ("Settlement Agreement"), which settled the Parties' rights and obligations during the period from July 1, 2001, through September 30, 2011, under or arising out of section 5(c) of the Northwest Power Act.

B. BPA wishes to defer payment in FY 2003 of certain amounts of Monetary Benefit under the Settlement Agreement and yet wishes to facilitate a relatively uniform passthrough of benefits under the Settlement Agreement.

C. Contemporaneously with entering into this Agreement, BPA is entering into other agreements under which other investor-owned utilities and BPA are agreeing to BPA's deferral of payment in FY 2003 of payments under agreements

similar to the Settlement Agreement. The total cumulative amount to be deferred under this Agreement and such other agreements equals \$55 million.

AGREEMENT

The Parties agree:

1. TERM

This Agreement shall become effective on the date signed by the Parties, and shall continue in effect through September 30, 2011. Upon the expiration or other termination of this Agreement, the rights and obligations then accrued or incurred for the payment of any amounts to PGE by BPA under this Agreement shall survive.

2. AMENDMENT OF SETTLEMENT AGREEMENT

The Settlement Agreement, as amended by Amendment No. 1, is further amended as follows:

(a) Amendment of Section 2

Sections 2(n), 2(o), and 2(p) are added at the end of and as part of section 2 of the Settlement Agreement:

"(n) "Deferral Amount for Contract Year 2003" means an amount equal to \$10,638,157.89.

"(o) "Monthly Deferral Amount" means the following amounts for each month of February through September of Contract Year 2003, the sum of which is equal to the Deferral Amount for Contract Year 2003:

| <u>Month, Year</u> | <u>Monthly Deferral Amount</u> |
|--------------------|--------------------------------|
| February 2003 | 1,329,769.71 |
| March 2003 | 1,329,769.74 |
| April 2003 | 1,329,769.74 |
| May 2003 | 1,329,769.74 |
| June 2003 | 1,329,769.74 |
| July 2003 | 1,329,769.74 |
| August 2003 | 1,329,769.74 |
| September 2003 | 1,329,769.74 |
| TOTAL: | \$10,638,157.89 |

- (p) "SN CRAC Reduction" means in any month prior to October 1, 2006, an amount equal to the sum of
- (i) an amount equal to the reduction to Monetary Benefit paid in such month under section 4(c)(2)(A) of this Settlement Agreement as a result of the application of the SN CRAC, plus
 - (ii) an amount equal to the increase in payments for Firm Power under Contract No. 00PB-12167 as a result of the application of the SN CRAC."
- (b) **Amendment of Section 4(c)**
- (1) Section 4(c)(3) is added at the end of and as part of section 4(c) of the Settlement Agreement:

"(3) Deferral of Fiscal Year 2003 Monetary Benefit

The monthly amount of Monetary Benefit to be paid to PGE pursuant to the provisions of section 4(c)(2)(A) during the period February 2003 through September 2003 shall be reduced by the Monthly Deferral Amount."
 - (2) Section 4(c)(4) is added at the end of and as part of section 4(c) of the Settlement Agreement:

"(4) Repayment of Deferral Amount for Contract Year 2003

 - (A) The Deferral Amount for Contract Year 2003 shall be paid, plus interest, to PGE by BPA as Monetary Benefit pursuant to sections 4(c)(4)(B) and 4(c)(4)(C) below. Such interest shall accrue at an annual rate of 3.01 percent, compounded monthly, and shall accrue on the amount of each reduction commencing on (and including) the date it would have been due to be paid absent the occurrence of such Deferral Amount for Contract Year 2003 and continuing up to (but not including) the date such amount is paid pursuant to section 4(c)(4)(B) or 4(c)(4)(C) below.

- (B) If there is any SN CRAC Reduction in Contract Years 2003, 2004, 2005, or 2006, an amount equal to the lesser of
- (i) such SN CRAC Reduction; or
 - (ii) the amount, if any, by which the aggregate amount of reductions after January 31, 2003, of payments pursuant to section 4(c)(3) above, including interest calculated in accordance with section 4(c)(4)(A) until the Due Date determined under section 4(e), exceeds the aggregate amount of any payments that have then been previously made pursuant to this section 4(c)(4)(B)

shall be credited by BPA to PGE as Monetary Benefit at the time the SN CRAC Reduction is reflected in the payments by or to PGE under this Settlement Agreement.

- (C) In addition to paying each month any amounts otherwise due during such month to be paid to PGE pursuant to the provisions of this Settlement Agreement, as it may hereafter be amended, superseded, or replaced, BPA shall pay to PGE as Monetary Benefit an amount, if any, equal to (i) the Deferral Amount for Contract Year 2003 (plus interest as calculated in section 4(c)(4)(A) above), reduced by (ii) any amounts previously paid pursuant to section 4(c)(4)(B) above. Such amount shall be paid by BPA to PGE in 60 equal monthly installments during the period October 1, 2006, through September 30, 2011.
- (D) The Parties agree that any amounts PGE is entitled to receive pursuant to section 4(c)(4)(C) above after September 30, 2006, shall be in addition to amounts PGE is otherwise entitled to receive under this Settlement Agreement, as it may hereafter be amended, superseded, or replaced (and shall only reduce other amounts PGE is entitled to receive

after such date for the benefit of its residential and small farm customers, under this Settlement Agreement or otherwise, through its impact on the level of the Lowest PF Rate).”

(c) **Amendment of Section 6(b)**

Section 6(b) of the Settlement Agreement is amended by deleting the second sentence of such section 6(b) and inserting the following in its place:

“The amount of benefits held in the account described in section 6(c) below shall not at any time exceed an amount equal to the greater of (1) the expected receipts of monetary payments from BPA under this Settlement Agreement over the next 180 days or (2) the receipts of monetary payments from BPA under this Settlement Agreement over the immediately preceding 180 days.”

3. OTHER PROVISIONS

- (a) The Settlement Agreement (as amended by Amendment No. 1 and as further amended by this Agreement) shall be and continue in full force and effect.
- (b) For purposes of determining the Conservation and Renewable Discount for PGE’s Monetary Benefit under section 10 of the Settlement Agreement (and the terms specified in BPA’s applicable Wholesale Power Rate Schedules, including GRSPs), the forecasted amount of monthly Monetary Benefit to be paid to PGE shall be determined as though the Parties had not entered into this Agreement.
- (c) If this Agreement is held to be illegal, invalid or unenforceable for any reason, the Settlement Agreement shall be and continue in full force and effect (and any amounts that have then been deferred pursuant to this Agreement shall be paid to PGE by BPA within 30 days of such holding). This section 3(c) shall be and remain in effect even if any or all of the other provisions of this Agreement are illegal, invalid or unenforceable.
- (d) This Agreement sets forth the entire agreement of the Parties with respect to the subject matter hereof and may only be amended by writing

hereafter signed by each of the Parties. Each of the Parties represents that its signatory below is authorized to enter into this Agreement on behalf of the Party for whom he or she signs.

PORTLAND GENERAL ELECTRIC

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By _____
Senior VP, Power Supply

By Scott K Wilson
Account Executive

Name _____
(Print/Type)

Name SCOTT K WILSON
(Print/Type)

Date Signed _____

Date Signed December 18, 2002

(M_WG-PTS-W:APSC\PM\CT\11267.DOC)

PACIFIC NORTHWEST STATE UTILITY COMMISSIONERS



Idaho
Public Utilities
Commission



Montana
Public Service
Commission



Oregon
Public Utility
Commission



Washington
Utilities and Transportation
Commission

December 2, 2002

Steve Wright, Administrator
Bonneville Power Administration
PO Box 12999
Portland, OR 97212

RE: Regional Dialogue and Deferral of Fiscal-Year 2003 Residential Exchange Benefits

Dear Administrator Wright:

Regulated investor-owned utilities have contacted us about BPA's request to defer for future payment \$55 million of residential exchange benefits for FY 2003. This request is of special concern to us. While we appreciate the financial pressures on BPA and your objective of reducing near term financial obligations, our regulated utilities have also experienced significant financial strains from the power markets of the last few years. As a result, we have made the difficult decisions to approve significant rate increases for the customers of many of the utilities we regulate. Deferral of the residential exchange benefits will place additional upward pressure on the rates paid by the residential and small-farm consumers of those utilities. Nevertheless, we understand that the requested deferral would be an important contribution toward addressing BPA's near-term revenue shortfall and would help continue the positive relationship among the regional parties that depend upon BPA and the Federal Columbia River Power System ("FCRPS").

We are inclined to support your request of our regulated utilities to defer a portion of the FY 2003 residential exchange benefits, if it has two important features: 1) the deferral accumulates interest at an appropriate rate, and 2) the future period for delivery of the benefits to the residential customers is clearly established and certain. This second feature means that the deferred balance should *not* be netted against any benefits otherwise to be received by residential customers pursuant to the residential exchange, or any agreement fulfilling the residential exchange, during the period in which the deferral is paid out.

In addition, we have a request of you. The four Pacific Northwest state utility commissions have been following with great interest the settlement discussion among BPA's publicly owned and investor-owned customer utilities. That discussion has resulted in a proposal for the long-term allocation of federal power and role of BPA after 2006. The proposal seeks to resolve significant policy issues: namely the role of BPA and an equitable distribution of the benefits of the FCRPS. The utilities have offered their proposal in the context of the public process convened by the Northwest Power Planning Council to examine post-2006 federal power issues. We believe that the utility proposal is a constructive one, and, if all the details can be successfully negotiated, promises to be beneficial for the region. We urge you to move forward with the proposal. We trust you will direct your staff to work constructively with the publicly owned and privately owned utilities, as well as with public-interest groups and other regional parties, on the proposal offered by the utilities.

When called upon, BPA has shown itself to be very resourceful and constructive in resolving difficult regional issues. The Subscription Settlement and the 2001 general rate case are good examples. We are confident that the same will be true for resolution of post-2006 issues. For our part, we offer to help however we can as you consider proposals made by the utilities and others.

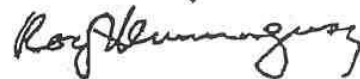
Sincerely,

Idaho Public Utilities Commission



Paul Kjellander, President

Oregon Public Utility Commission



Roy Hemmingway, Chairman

Montana Public Service Commission



Gary Feland, Chairman

Washington Utilities &
Transportation Commission



Marilyn Showalter, Chairwoman

cc: Northwest Congressional Delegation

New Information and Additional Analysis

Since the January 21, 2003, Public Meeting, Portland General Electric and PacifiCorp have responded to the Commission requests for additional information and BPA has made some public announcements. While it is not good news, it appears much more likely that BPA will implement the Safety Net Cost Recovery Adjustment Clause (CRAC). BPA emailed the following announcement on January 27, 2003.

Bonneville Power Administration's (BPA) financial situation has continued to deteriorate, increasing the likelihood of triggering the Safety Net Cost Recovery Clause (SN CRAC), although no final decision has been made. Due to this increased likelihood, please reserve every Tuesday and Thursday during the month of February for possible workshops. Because we respect your time, BPA will finalize the dates as soon as possible and provide you with additional information on the specific content of these workshops.

In the event that a Safety Net CRAC is triggered, any payments due by PacifiCorp associated with the Safety Net CRAC would first be deemed to be funded by the deferral of financial benefits. To the extent that the deferral amounts exceed the Safety Net CRAC, those funds would be returned to PacifiCorp, with interest. Correspondingly, any portion of the deferral that is used to meet the Safety Net CRAC surcharge would not be refunded to customers.

The second page of the PacifiCorp submission shows that a 15% Safety Net CRAC surcharge roughly equates to the PacifiCorp deferral. Thus, once the Safety Net CRAC hits the 15% amount, there would be little or no monies returned to customers because the entire deferral amount would have been exhausted in being used for the CRAC purposes.

As noted previously, PacifiCorp states in its latest correspondence that no rate increase is anticipated relating to the deferral. The existing balancing account has sufficient funds, and qualifying residential and small farm loads have declined such that the existing federal system credit can be maintained. However, should BPA implement a Safety Net CRAC surcharge above 15%, one could surmise that an increase may be unavoidable. Therefore, if there is an increase to residential and small farm rates, it will not be due to this agreement, but rather BPA's decision to implement the Safety Net CRAC.

PacifiCorp also states in its latest correspondence that the working relationship with the public agencies could be harmed if the deferral application is not approved.

Concluding Observation

Staff believes PacifiCorp consumers do benefit from coordinated regional efforts, such as this deferral agreement, because it enhances the likelihood of a settlement between the publics and the investor owned utilities. PacifiCorp and the Commission will demonstrate good faith in working with BPA and other regional parties. Cooperative working relationships increase the likelihood that a fair and reasonable long-term resolution of BPA-related issues may come to pass, with focus placed on the JCP.

ALTERNATIVES FOR COMMISSION CONSIDERATION:

Besides the staff recommendation, the Commission has alternative actions it could take regarding the PacifiCorp request. One alternative is to not approve amending the current contracts. Staff does not support this alternative.

Another alternative is to approve the contract amendment contingent on BPA agreeing to accrue interest on the deferred monies at PacifiCorp's authorized rate of return. This revision would clearly hold PacifiCorp's consumers harmless from a near term perspective. However, it is unclear whether BPA would agree to this revision. Assuming BPA does not agree, it is doubtful that the difference in accrued interest between 3.01 per cent and 8.62 per cent is sufficient to cause the Commission to direct PacifiCorp to not agree to the BPA contract amendment. Given that the Commission has decided not to adopt this alternative in a previous BPA/PacifiCorp contract amendment, it is not supported.

PROPOSED COMMISSION MOTION:

The Commission approve PacifiCorp's request to amend its power sales contract with the Bonneville Power Administration to defer payments commencing on October 1, 2002.

Alternative motion:

Contingent on the deferred account accruing interest at the Commission's authorized rate of return for PacifiCorp, the Commission approve PacifiCorp's request to amend its power sales contract with the Bonneville Power Administration to defer payments associated with Oregon's allocated share of \$11,584,210.53 for BPA's 2003 Fiscal Year.

PACIFICORP
RESPONSES TO OPUC COMMISSION AND STAFF INQUIRIES
RE DEFERRAL OF BPA MONEYS

Q1. What is the impact, both dollar and percentage terms on residential net rates if the Safety Net CRAC is implemented and the deferral agreement is not adopted? Please use a range of examples.

Q2. What is the impact, both dollar and percentage terms on residential net rates if the Safety Net CRAC is implemented and the deferral agreement is adopted? Please use a range of examples.

A1 and 2: As explained below, our current analysis indicates that the impacts of the 2003 Deferral Agreement could be adsorbed within PacifiCorp's current balancing account balance, without any rate increase.

The impacts (per year), in dollar and percentage terms on PacifiCorp's Oregon residential net rates for various levels of Safety Net CRAC, both if the 2003 Deferral Agreement is implemented and if the 2003 Deferral Agreement is not implemented, are set forth below. The examples used are for a 0%, 10%, 15%, 20% and 25% Safety Net CRAC. PacifiCorp thinks these examples include all reasonably likely outcomes; however, PacifiCorp also thinks the example of a 0% Safety Net CRAC, combined with no Deferral Agreement, is extremely unlikely to occur.

PacifiCorp also notes that the impacts of approval of the 2003 Deferral Agreement on Oregon retail rates would be substantially mitigated by the fact that Puget Sound Energy is bearing a disproportionate share of the deferral costs, but would bear only a proportionate share of Safety Net CRAC costs. The impacts also differ somewhat between PacifiCorp and Portland General Electric Company because of differences in the allocation of the deferrals between these two companies.

In this response, PacifiCorp shows both the "Gross Impact" and the "Net Impact" on residential rates. The "Net Impact" is less than the percent "Gross Impact" figures earlier presented to the Commission, because PacifiCorp will be able to offset the 2003 Deferral Agreement impacts by Oregon-allocated benefits of \$2,110,704.40, as a result of the expiration of an earlier ten percent reduction in benefits to PacifiCorp for BPA's fiscal year 2002, as previously approved by the Commission.

As shown below, the actual net impact in Oregon of the 2003 Deferral Agreement will be \$4.1 million. As of the end of fiscal year 2002, and as a result of lower than expected loads, PacifiCorp had a positive balance of \$5.8 million in the balancing account. Barring unexpectedly high residential loads in 2003, this

balance should be sufficient to fully offset the net impacts as shown below, without a rate adjustment.

GROSS IMPACTS
With and Without the 2002 Deferral Agreement

| <u>Safety Net CRAC Level</u> | <u>Impact w/Deferral Agreement</u> | | <u>Impact w/o/Deferral Agreement</u> | |
|----------------------------------|------------------------------------|----------|--------------------------------------|----------|
| | <u>\$ (millions)</u> | <u>%</u> | <u>\$ (millions)</u> | <u>%</u> |
| 0% | 6.2 ¹ | 1.7 | 0 ² | 0 |
| 10% | 6.2 ³ | 1.7 | 4.0* | 1.1 |
| 15% | 6.2 ⁴ | 1.7 | 6.0* | 1.65 |
| 20% | 8.0* | 2.2 | 8.0* | 2.2 |
| 25% | 10.1* | 2.8 | 10.1* | 2.8 |

NET IMPACTS
With and Without 2003 Deferral Agreement

| <u>Safety Net CRAC Level</u> | <u>Impact w/Deferral Agreement</u> | | <u>Impact w/o/Deferral Agreement</u> | |
|----------------------------------|------------------------------------|----------|--------------------------------------|----------|
| | <u>\$ (millions)</u> | <u>%</u> | <u>\$ (millions)</u> | <u>%</u> |
| 0% | 4.1 ⁵ | 1.1 | -2.1 ⁶ | -0.6 |
| 10% | 4.1 ⁷ | 1.1 | 1.9* | 0.5 |
| 15% | 4.1 ⁸ | 1.1 | 3.9* | 1.06 |
| 20% | 5.9* | 1.6 | 5.9* | 1.6 |
| 25% | 8.0* | 2.2 | 8.0* | 2.2 |

Q3. What would be the financial consequences to BPA if the 2003 Deferral Agreement were adopted and the Bonneville Power Administration ("BPA") thereafter decided to reject key elements of the Joint Customer Proposal?

A3. If BPA made such a decision, PacifiCorp anticipates that it would know sometime during BPA's 2003 fiscal year (October 2002 – September 2003). In such event:

¹ All of the \$6.2 million would be recoverable on a deferred basis.
² PacifiCorp considers this outcome to be highly improbable.
³ \$2.2 million of the \$6.2 million would be recoverable on a deferred basis.
⁴ \$0.2 million of the \$6.2 million would be recoverable on a deferred basis.
⁵ All of the \$4.1 million would be recoverable on a deferred basis.
⁶ PacifiCorp considers this outcome to be highly improbable.
⁷ \$2.2 million of the \$4.1 million would be recoverable on a deferred basis.
⁸ \$0.2 million of the \$4.1 million would be recoverable on a deferred basis.
* None of these amounts would be recoverable on a deferred basis.

a. BPA and its public agency customers have expressed an interest in deferring additional \$55 million amounts of the residential exchange benefits in fiscal years 2004, 2005 and 2006. If the investor-owned utilities or their Commissions elected not to agree to such deferrals, BPA's revenue requirements for these three fiscal years would increase by up to \$165 million (depending on the level of any SN CRAC otherwise imposed by BPA – see answers above to questions 1 and 2).

b. PacifiCorp and Puget Sound Energy currently are deferring \$50 million per year to which they otherwise would be entitled in fiscal years 2003, 2004, 2005 and 2006 as a Reduction of Risk Discount. If BPA implements the Joint Customer Proposal, the entire \$200 million so deferred, plus interest accrued thereon, would be permanently forgiven. If the settlement efforts appear stalled, either the investor-owned utilities or their Commissions could cause this deferral to be terminated. The termination could be made effective as of October 1, 2003, on 120 days advance notice to BPA, as well as at the end of each 6-month period thereafter, again on 120 days advance notice to BPA. Upon termination BPA must immediately (a) begin paying the investor-owned utilities the additional \$50 million annually and (b) must refund in equal monthly installments through September 2006, all Reduction of Risk Discount previously deferred, with interest thereon. Thus, BPA would incur over four fiscal years \$200 million of Reduction of Risk Discount amounts, plus interest, that it otherwise could have avoided paying and charging to its customers.

Q4. If the 2003 Deferral Agreement is not approved by the Commission, what impact would that have on the cooperation built to date with the public agencies?

A4. PacifiCorp believes such a rejection would raise concerns within public power as to the value of the unprecedented levels of cooperation shown in recent months, although of course, we cannot know with certainty the degree of the impact of such concerns. For reasons explained below, the rejection also may heighten concerns among public power managers as to the current distribution between public agency and investor-owned utility customers of the benefits of the BPA power system, even though PacifiCorp itself does not itself consider the current allocation to be unfair.

Some background information may assist in understanding this response:

a. In August 2002, BPA approached public power representatives with a request for assistance in forcing the investor-owned utilities to accept the following reductions in residential exchange benefits:

(1) Surrender by PacifiCorp and Puget Sound Energy of the \$200 million in Reduction of Risk Discount, without any tie to BPA's response to the Joint Customer Proposal.

(2) Continuation of the fiscal year 2002 reduction in benefits of 10 percent by Puget Sound Energy and PacifiCorp, resulting in an additional permanent reduction of benefits totaling \$39 million.

(3) Elimination of an additional \$60 million in residential benefits per year, or \$240 million over fiscal years 2003-2006. Of this \$240 million, \$60 million would be permanently forgone and another \$180 million deferred until the 2007-2011 period, without interest.

The public agency representatives refused to meet with BPA on this subject without investor-owned utility representatives in attendance. The public agency representatives then joined the investor-owned utility representatives in telling BPA that its proposal was inequitable and in presenting the counter-proposal that has been brought to the Commission.

b. BPA approached the Executive Committee of the Public Power Counsel with charts that purported to show that in the rate period 2002-06, the investor-owned utilities would receive \$368 million in annual benefits from the federal base system, while all of public power would receive only \$84 million in annual benefits. BPA then set out the above concessions it stated it was seeking from the investor-owned utilities to address this purported disparity and to assist BPA to meet its financial crisis. In PacifiCorp's opinion, the BPA charts and conclusions were seriously flawed and misleading. However, the BPA presentation understandably initially caused quite a stir among public agency managers. This initial uproar was quieted when the participating public agency representatives individually explained to the participating public agency managers that the investor-owned utility representatives and the public agency representatives had jointly proposed to BPA (subject to Commission approval) the resolution represented by the 2003 Deferral Agreements.

c. In the current and upcoming rate periods, public agencies face two major cost adjustment clauses, the Load-Based CRAC and the Financial-Based CRAC. Because of the terms of our various BPA residential exchange settlements, neither of these CRACs impact investor-owned utility monetary benefits (although PGE pays the Load-Based and Financial-Based CRACs for the power it purchases from BPA under Subscription). Although the investor-owned utilities have no legal obligation to make residential benefit concessions, the public agency representatives have expressed their views that as a matter of fairness there should be some concessions offered by the investor-owned utilities to mitigate the need for a Safety Net CRAC. The proposed 2003 Deferral Agreements represent a mutually-agreed level of financial concessions in the form of benefit deferrals.

Q5. What is BPA's financial picture (stated in qualitative terms if quantitative information is not available)?

A5. At the time the 2003 Deferral Agreements were negotiated and PacifiCorp's application for approval was filed, PacifiCorp expected that with the 2003 Deferral Agreements and other BPA cost cuts, a Safety Net CRAC could be avoided. BPA has acted to cut spending, and claims that its internal costs for fiscal years 2003-06 have been reduced below fiscal year 2001 (October 2000-September 2001) levels, a cost cut of \$136.7 million. Other projected cost savings or deferrals that BPA has projected for the fiscal 2003-06 period include \$13 million for conservation augmentation, \$19.6 million in Corps of Engineers and Bureau of Reclamation spending, \$87.2 million in Energy Northwest expenses, \$23.8 million in incentive payments to various entities, and \$3.6 million for renewable resources.

However, because of projected poor stream run-offs based on rainfalls to date and current reduced forecasts of secondary power sales revenues, BPA recently has raised the likely need, despite its cost cuts, of a Safety Net CRAC in the 10-25% range. This CRAC would be allocated both to public agency customers and to investor-owned utility customers. Any such Safety Net CRAC could commence as early as July 2003 and could run through fiscal year 2006. Of course, any amount of Safety Net CRAC would be even larger absent the various BPA cost cuts.

PacifiCorp is furnishing a copy of presentation slides presented the Northwest Power Planning Council on January 14, 2003, by Paul E. Norman of BPA. These slides summarize BPA's view of its current financial situation.

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: February 4, 2003**

REGULAR CONSENT EFFECTIVE DATE _____ N/A _____

DATE: January 28, 2003

TO: John Savage

FROM: Marc Hellman

SUBJECT: PORTLAND GENERAL ELECTRIC: (Docket No. UM 926) Approval of Agreement between Bonneville Power Administration and Portland General Electric Regarding Fiscal Year 2003 Deferral of Subscription Benefits.

STAFF RECOMMENDATION:

I recommend that the Commission approve Portland General Electric's request to execute an agreement with the Bonneville Power Administration to defer a portion of BPA's fiscal year 2003 residential exchange payments.

DISCUSSION:

The Portland General Electric (PGE) request was presented to the Commission at the January 21, Public Meeting. The Commission declined to act on the request and directed staff to bring the issue before the Commission at the February 4, 2003, Public Meeting. For reference, the January 21, 2003, Public Meeting memo and attachments should be considered as additional materials to this presentation.

At the last public meeting, all three Commissioners expressed concern that approval of the contract amendment could lead to an increase in rates for residential and small farm consumers with no assurance of compensating benefits in the future. Given Oregon's economy, discretionary increases in rates such as this proposal clearly should be avoided. Recent events may make the Commission's concern moot. As discussed in my memorandum, recent BPA announcements make it likely that BPA will increase its rates through a Safety Net CRAC. Therefore, regardless of whether the Commission approves PGE's request, PGE's residential and small farm consumers will very likely see a rate increase. And it is important to note that the proposed agreement between BPA and PGE targets any deferred monies under the agreement to be used instead to meet the BPA Safety Net CRAC. Given these considerations, Staff supports the PGE

request because it furthers regional cooperation while posing minimal risks on PGE's consumers given BPA's recent news.

New Information and Additional Analysis

Since the January 21, 2003, Public Meeting, Portland General Electric and PacifiCorp have responded to the Commission requests for additional information. While it is not good news, it appears much more likely that BPA will implement the Safety Net Cost Recovery Adjustment Clause (CRAC). BPA emailed the following announcement on January 27, 2003,

Bonneville Power Administration's (BPA) financial situation has continued to deteriorate, increasing the likelihood of triggering the Safety Net Cost Recovery Clause (SN CRAC), although no final decision has been made. Due to this increased likelihood, please reserve every Tuesday and Thursday during the month of February for possible workshops. Because we respect your time, BPA will finalize the dates as soon as possible and provide you with additional information on the specific content of these workshops.

In the event that a Safety Net CRAC is triggered, any payments due by PGE associated with the Safety Net CRAC would first be deemed to be funded by the deferral of financial benefits. To the extent that the deferral amounts exceed the Safety Net CRAC, those funds would be returned to PGE, with interest. Attachment 2 shows that a 15% Safety Net CRAC surcharge is slightly greater than the PGE deferral amount. Thus, once the Safety Net CRAC hits the 15% amount, there would be no monies returned to customers because the entire deferral amount would have been exhausted in being used for the CRAC purposes.

PGE is not requesting any rate change to be implemented with this filing. PGE anticipates that it will later file for an adjustment to its Schedule 102 to have revised rates effective April 1, 2003. PGE estimates that the effects of this deferral equates to a 1.7 per cent increase in net rates for residential and small-farm consumers.¹ Again, assuming a Safety Net CRAC surcharge is likely, the increase in rates would occur anyway.

PGE also states in its latest correspondence that the working relationship with the public agencies could be harmed if the deferral application is not approved.

¹ $1.7\% = \$10.64 \cdot .923 \cdot 100\% / \581.3 where residential annual revenues net of all adjustments is \$581.3 and 92.3% of PGE's federal system benefits are associated with service to residential consumers. Portland General Electric states that net of the Conservation & Renewable Discount treatment that the rate increase will be 1.4%.

Concluding Observation

Staff believes PGE consumers do benefit from coordinated regional efforts, such as this deferral agreement, because it enhances the likelihood of a settlement between the publics and the investor owned utilities. PGE and the Commission will demonstrate good faith in working with BPA and other regional parties. Cooperative working relationships increase the likelihood that a fair and reasonable long-term resolution of BPA-related issues may come to pass, with focus placed on the JCP.

ALTERNATIVES FOR COMMISSION CONSIDERATION:

In addition to the staff recommendation, there are alternative actions the Commission could take regarding the PGE request. One alternative is to not approve amending the current contracts. The effect of this action would be to reduce pressure to raise residential and small-farm rates in the near term since federal system benefits would not be deferred. The drawback to this action is that the risk is raised to Bonneville and its customers that the Safety Net CRAC would be implemented and rates rise for all of BPA's customer groups. Staff does not support this alternative.

The other alternative is to approve the contract amendment contingent on BPA agreeing to accrue interest on the deferred monies at PGE's authorized rate of return. This revision would clearly hold PGE's consumers harmless from a near term perspective. However, it is unclear whether BPA would agree to this revision. Assuming BPA does not agree, it is doubtful that the difference in accrued interest between 3.01 per cent and 9.09 per cent is sufficient to cause the Commission to direct PGE to not agree to the BPA contract amendment. Given that the Commission has decided not to adopt this alternative in a previous BPA/PGE contract amendment, it is not supported.

PROPOSED COMMISSION MOTION:

The Commission approve Portland General Electric's request to amend its power sales contract with the Bonneville Power Administration to defer payments commencing on October 1, 2002.

Alternative motion:

Contingent on the deferred account accruing interest at the Commission's authorized rate of return for Portland General Electric, the Commission approve Portland General Electric's request to amend its power sales contract with the Bonneville Power Administration to defer payments of \$10,640,000 for BPA's 2003 Fiscal Year.

PORTLAND GENERAL ELECTRIC
RESPONSES TO OPUC COMMISSION AND STAFF INQUIRIES
RE DEFERRAL OF BPA MONEYS

Q1. What is the impact, both dollar and percentage terms on residential net rates if the Safety Net CRAC is implemented and the deferral agreement is not adopted? Please use a range of examples.

Q2. What is the impact, both dollar and percentage terms on residential net rates if the Safety Net CRAC is implemented and the deferral agreement is adopted? Please use a range of examples.

The effect (per year), in dollar and percentage terms on PGE's residential net rates for various levels of Safety Net CRAC (i) if the 2003 Deferral Agreement is not implemented, (ii) if the 2003 Deferral Agreement were to be implemented proportionate to PGE's percentage of residential exchange benefits, and (iii) if the Deferral Agreement as written is implemented, are set forth in the attached spreadsheet. The examples used are for a 0%, 5%, 10%, 15%, 20% and 25% Safety Net CRAC. PGE believes these examples include all possible outcomes; however, PGE also believes that any example of a Safety Net CRAC occurring at less than 10 percent is extremely unlikely especially if coupled with no deferral by the investor-owned utilities.

PGE notes that the effect of approval of the 2003 Deferral Agreement on our residential and small farm rates would be substantially mitigated by the fact that Puget Sound Energy is bearing a disproportionate share of the deferral costs, but would bear only a proportionate share of Safety Net CRAC costs. The impacts also differ somewhat between PacifiCorp and Portland General Electric Company because of differences in the allocation of the deferrals between these two companies.

In this response, PGE shows both the "Gross Impact" and the "Net Impact" on residential rates. The "Net Impact" is less than the percent "Gross Impact" figures because PGE will be able to offset some of the rate effect with conservation and renewable discount credits from BPA that are attributable to the Oregon system benefit charge instituted in SB 1149. The attached spreadsheet shows the rate impacts for PGE's residential loads.

Q3. What would be the financial consequences to BPA if the 2003 Deferral Agreement were adopted and the Bonneville Power Administration ("BPA") thereafter decided to reject key elements of the Joint Customer Proposal?

A3. If BPA made such a decision, PGE anticipates that it would know sometime during BPA's 2003 fiscal year (October 2002 – September 2003). In such event:

a. BPA and its public agency customers have expressed an interest in deferring additional \$55 million amounts of the residential exchange benefits in fiscal years 2004, 2005 and 2006. If the investor-owned utilities or their Commissions elected not to agree to such deferrals, BPA's revenue requirements for these three fiscal years would increase by up to \$165 million (depending on the level of any SN CRAC otherwise imposed by BPA – see answers above to questions 1 and 2).

b. PacifiCorp and Puget Sound Energy currently are deferring \$50 million per year to which they otherwise would be entitled in fiscal years 2003, 2004, 2005 and 2006 as a Reduction of Risk Discount. If BPA implements the Joint Customer Proposal, the entire \$200 million so deferred, plus interest accrued thereon, would be permanently forgiven. If the settlement efforts appear stalled, either the investor-owned utilities or their Commissions could cause this deferral to be terminated. The termination could be made effective as of October 1, 2003, on 120 days advance notice to BPA, as well as at the end of each 6-month period thereafter, again on 120 days advance notice to BPA. Upon termination BPA must immediately (a) begin paying the investor-owned utilities the additional \$50 million annually and (b) must refund in equal monthly installments through September 2006, all Reduction of Risk Discount previously deferred, with interest thereon. Thus, BPA would incur over four fiscal years \$200 million of Reduction of Risk Discount amounts, plus interest, that it otherwise could have avoided paying and charging to its customers.

Q4. If the 2003 Deferral Agreement is not approved by the Commission, what impact would that have on the cooperation built to date with the public agencies?

A4. PGE believes such a rejection would raise concerns within public power as to the value of the unprecedented levels of cooperation shown in recent months, although of course, we cannot know with certainty the degree of the impact of such concerns. For reasons explained below, the rejection also may heighten concerns among public power managers as to the current distribution between public agency and investor-owned utility customers of the benefits of the BPA power system, even though PGE itself does not itself consider the current allocation to be unfair.

Some background information may assist in understanding this response:

a. In August 2002, BPA approached public power representatives with a request for assistance in forcing the investor-owned utilities to accept the following reductions in residential exchange benefits:

- (1) Surrender by PacifiCorp and Puget Sound Energy of the \$200 million in Reduction of Risk Discount, without any tie to BPA's response to the Joint Customer Proposal.
- (2) Continuation of the fiscal year 2002 reduction in benefits of 10 percent by Puget Sound Energy and PacifiCorp, resulting in an additional permanent reduction of benefits totaling \$39 million.
- (3) Elimination of an additional \$60 million in residential benefits per year, or \$240 million over fiscal years 2003-2006. Of this \$240 million, \$60 million would be permanently forgone and another \$180 million deferred until the 2007-2011 period, without interest.

The public agency representatives refused to meet with BPA on this subject without investor-owned utility representatives in attendance. The public agency representatives then joined the investor-owned utility representatives in telling BPA that its proposal was inequitable and in presenting the counter-proposal that has been brought to the Commission.

b. BPA approached the Executive Committee of the Public Power Counsel with charts that purported to show that in the rate period 2002-06, the investor-owned utilities would receive \$368 million in annual benefits from the federal base system, while all of public power would receive only \$84 million in annual benefits. BPA then set out the above concessions it stated it was seeking from the investor-owned utilities to address this purported disparity and to assist BPA to meet its financial crisis. In PGE's opinion, the BPA charts and conclusions were seriously flawed and misleading. However, the BPA presentation understandably initially caused quite a stir among public agency managers. This initial uproar was quieted when the participating public agency representatives individually explained to the participating public agency managers that the investor-owned utility representatives and the public agency representatives had jointly proposed to BPA (subject to Commission approval) the resolution represented by the 2003 Deferral Agreements.

c. In the current and upcoming rate periods, public agencies face two major cost adjustment clauses, the Load-Based CRAC and the Financial-Based CRAC. Because of the terms of our various BPA residential exchange settlements, neither of these CRACs impact investor-owned utility monetary benefits (although PGE pays the Load-Based and Financial-Based CRACs for the power it purchases from BPA under Subscription). Although the investor-owned utilities have no legal obligation to make residential benefit concessions, the public agency representatives have expressed their views that as a matter of fairness there should be some concessions offered by the investor-owned utilities to mitigate the need for a Safety Net CRAC. The proposed

2003 Deferral Agreements represent a mutually agreed level of financial concessions in the form of benefit deferrals.

Q5. What is BPA's financial picture (stated in qualitative terms if quantitative information is not available)?

A5. At the time the 2003 Deferral Agreements were negotiated and PGE's application for approval was filed, PGE expected that with the 2003 Deferral Agreements and other BPA cost cuts, a Safety Net CRAC could be avoided. BPA has acted to cut spending, and claims that its internal costs for fiscal years 2003-06 have been reduced below fiscal year 2001 (October 2000-September 2001) levels, a cost cut of \$136.7 million. Other cost savings or deferrals that BPA has projected for the fiscal 2003-06 period include \$13 million for conservation augmentation, \$19.6 million in Corps of Engineers and Bureau of Reclamation spending, \$87.2 million in Energy Northwest expenses, \$23.8 million in incentive payments to various entities, and \$3.6 million for renewable resources.

However, because of projected poor stream run-offs based on rainfalls to date and current reduced forecasts of secondary power sales revenues, BPA recently has raised the likely need, despite its cost cuts, of a Safety Net CRAC in the 10-25% range. This CRAC would be allocated both to public agency customers and to investor-owned utility customers. Any such Safety Net CRAC could commence as early as July 2003 and could run through fiscal year 2006. Of course, any amount of Safety Net CRAC would be even larger absent the various BPA cost cuts.

**Portland General Electric
Subscription Power Benefits Deferral Analysis
PGE Proportionate Share @ 490/1900 of \$55 M**

Effect of SN CRAC and Proportionate Share of Deferral on Sch 7 (Residential) Rates

| CRAC % | <u>Without Deferral (case i)</u> | | | | <u>With Proportionate Deferral (case ii)</u> | | |
|--------|----------------------------------|---------------------------|--------------------------|-----------------|--|---------------------------|--------------------------|
| | RPA: Total Dollar Effect | Schedule 7 Dollar Effect* | Sch. 7 Percentage Effect | Sch 7 With C&RD | RPA: Total Dollar Effect | Schedule 7 Dollar Effect* | Sch. 7 Percentage Effect |
| 0% | \$0 | \$0 | 0.0% | | \$14,184,211 | \$13,096,251 | |
| 5% | \$4,240,891 | \$3,915,606 | 0.7% | 0.3% | \$14,184,211 | \$13,096,251 | |
| 10% | \$8,481,782 | \$7,831,211 | 1.3% | 1.0% | \$14,184,211 | \$13,096,251 | |
| 15% | \$12,722,674 | \$11,746,817 | 2.0% | 1.7% | \$14,184,211 | \$13,096,251 | |
| 20% | \$16,963,565 | \$15,662,422 | 2.7% | 2.4% | \$16,963,565 | \$15,662,422 | |
| 25% | \$21,204,456 | \$19,578,028 | 3.4% | 3.0% | \$21,204,456 | \$19,578,028 | |

Residential is 92.33% of RPA load.

| | |
|-------------------------------|---------------|
| Sch 7 Load as % of RPA Load | 92.33% |
| Sch 7 2003 projected revenues | \$581,311,645 |
| C&RD | (\$2,146,200) |

