ORDER NO. 08-548

ENTERED 11/14/08

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 200

In the Matter of	)	
	)	ORDER
PACIFICORP, dba PACIFIC POWER	)	
2009 Renewable Adjustment Clause	)	
Schedule 202	)	

DISPOSITION: RAC FILING APPROVED WITH EXCEPTIONS

I. INTRODUCTION

This is the first annual Renewable Adjustment Clause proceeding for PacifiCorp, dba Pacific Power (Pacific Power). In this proceeding the Public Utility Commission of Oregon (Commission) determines the actual and forecasted revenue requirement associated with prudently incurred costs of resources (including associated transmission) that are eligible for recovery under Senate Bill (SB) 838, Oregon's Renewable Portfolio Standard.

UE 200 was submitted following a public hearing on September 8, 2008. Testimony received was sponsored by Pacific Power, Commission Staff (Staff) and the Industrial Customers of Northwest Utilities (ICNU). Opening and reply briefs were filed by each of these parties.

On September 12, 2008, Pacific Power, Staff, the Citizens' Utility Board of Oregon (CUB) and ICNU submitted a "partial" stipulation. This stipulation settles an issue raised by Staff regarding the O&M expenses associated with the Company's renewable resource projects. A copy of the stipulation is attached to this order.

II. STIPULATION

In its April 1, 2008, RAC filing Pacific Power reported total forecasted O&M expenses for the calendar year 2009 of $26,085,114 on a total Company basis. The amount allocated to Oregon was $6,889,452.

In its testimony, Staff forecast O&M expenses of $21,583,024 on a total Company basis. The amount allocated to Oregon was $5,700,385.

In its rebuttal testimony, Pacific Power forecast total Company O&M expenses of $21,635,250, or $5,714,179 allocated to Oregon.

The difference between Pacific Power's and Staff 's estimates was $13,814.

In their stipulation, the parties agree to include in the 2009 Renewable Adjustment Clause (RAC) O&M expenses of $21,609,137 on a total Company basis, or $5,707,282 allocated to Oregon. The stipulated amount is half of the difference added to or subtracted from the respective figures.

The stipulation is reasonable on its face. The parties had independently derived figures that were very similar. A simple average of the two results is a fair way to resolve the little remaining difference.

However, as discussed below, the Commission finds that costs related to Pacific Power's Rolling Hills wind project should be excluded from rates. Accordingly, the amount of total Company costs recoverable through the Stipulation is reduced by $3.9 million.

III. CONTESTED ISSUES

A. In General

As noted by Pacific Power, various issues raised by the parties have been resolved, either through the partial stipulation or by consensus.[1] Additionally, Staff agreed that its proposal to examine the impact of the RAC on cost of capital should be done in a general rate case, while Staff's issues concerning Pacific Power's method for assessing the economics of renewable resources are more appropriately addressed in docket AR 518.[2]

Pacific Power then notes that three primary issues remain: (1) Staff's proposal to disallow $60.5 million in capital costs for the Rolling Hills project (Rolling Hills) (or the equivalent amount in annual net power costs (NPC)) based on a finding of imprudence and an imputed capacity factor; (2) Staff's proposal to disallow $14.2 million in capital costs (or the equivalent amount in net power costs) for the Glenrock project (Glenrock) by increasing the capacity factor; and (3) ICNU's proposal to penalize the Company for acquiring resources imprudently outside of a Request for Proposals (RFP) process.

All of these issues relate to three wind farm projects developed by Pacific Power – Seven Mile Hill (99 megawatts (MW)), Glenrock (99 MW), and Rolling Hills (99 MW). Neither Staff nor ICNU opposes the Company's recovery of its costs related to the five other projects included in the Company's RAC filing.

---

[1] Pacific Power cites: (1) concerns with how to establish RAC schedule rates using 2009 forecast loads; (2) the inclusion of Glenrock III and Seven Mile Hill II projects in the RAC; (3) ICNU's proposal to establish a regulatory liability for banked renewable energy credits; and (4) ICNU's adjustment for liquidated damages paid to Pacific Power associated with construction delays for the Goodnoe Hills project.

[2] The rulemaking proceeding opened by this Commission to implement SB 838.

B. Staff's Position

Staff first challenges Pacific Power's representation of its Rolling Hills and Glenrock facilities as two separate projects. Staff notes that the "so-called" separate projects are located within one mile of each other and follow the same contour of the land. Staff also notes that the Company submitted one permit to the Wyoming Industrial Siting Council for development "in phases" at the site. The permit referred to building up to three wind generation projects in phases at the site – each project to be rated at 99 MW.

Staff argues that Pacific Power was imprudent when it separated the development of the Rolling Hills project from the Glenrock project. Pacific Power knew, or should have known, that Rolling Hills/Glenrock is more properly viewed as a single project, constituting a Major Resource under the Commission's competitive bidding guidelines (Guidelines) for resource procurement adopted by the Commission in Order No. 06-446, Docket UM 1182.

Viewed together – as a 198 MW project – under the Guidelines Pacific Power would have been required to proceed through the competitive bidding process. A key goal of the competitive bidding process is to minimize long-term energy costs.

Staff admits that the Guidelines do not expressly address the question of when two (or more) ostensible projects should be treated as a single project, subject to the Guidelines. Given the many common elements of these two projects, Staff believes that this is not a "close case."

Staff notes that Pacific Power states that it needed to move quickly to develop these projects to obtain benefits from the various tax incentives and to lock in a "good deal" on the turbines for the project. Even if conceding those points, Staff argues that they do not support the Company's unilateral action.

Staff points out that the Commission's order adopting the Guidelines allows for exceptions that allow a utility to avoid the competitive bidding process *with Commission approval*. (Staff's emphasis). Pacific Power itself sought and obtained such approval from the Commission in Docket UM 1374 (Order No. 08-376).

Staff discusses and dismisses the various claims made by Pacific Power to defend its actions. Staff's concerns are heightened by evidence that the Company ignored pertinent information in a technical report furnished by CH2M Hill, its technical consultant.

In particular, Staff questions Pacific Power's decision to develop Rolling Hills in light of the technical consultant's predicted capacity factor for the project – 31 percent. According to Staff, that capacity factor would be extremely low for a Wyoming project. Staff considers a 38 percent (or better) capacity factor to be more representative.

That "low" capacity factor leads Staff to question the Rolling Hills energy production cost compared to other wind resources. Staff states that Pacific Power's own economic analysis shows that the "economic effectiveness" of Rolling Hills is far less than that of other Wyoming projects of the same size and on-line in the same year. Staff's analysis shows that the energy production cost of Rolling Hills is far higher than the costs for the Glenrock and the Seven Mile Hill (Seven Mile Hill) projects.

Staff does not recommend that Rolling Hills be excluded from rate base. Staff states that the "appropriate remedy" is to make a one-time adjustment to the amount of plant investment that is allowed into rate base. That adjustment is meant to capture for Pacific Power's customers the expected capacity factor of a Wyoming wind resource the Company likely would have acquired, had it gone through the competitive bidding process.

The amount of the (system-wide) capital cost disallowance proposed by Staff is $44,738,535. Alternatively, Staff recommends that the Commission direct Pacific Power to use the 38 percent capacity factor for Rolling Hills in calculating its NPC in Docket UE 199, Pacific Power's TAM proceeding.

Staff does not question the prudency of Pacific Power's development of its Glenrock process. However, Staff does propose a capacity factor adjustment, to be taken into account in determining the Company's NPC in UE 199.

Staff explains that, while the issue is simple in concept, unfortunately, the history of how Pacific Power has documented its proposed capacity factor is long and tortuous.

Staff reports that Pacific Power first provided an approximate capacity factor of 38 percent for Glenrock. However, the only documentation initially provided by the Company was a report by CH2M Hill that showed a 41 percent expected capacity.

Staff recounts Pacific Power's "refinements" to its expected capacity factor – 37.6 percent in Pacific Power's rebuttal testimony, and then 38.6 percent in its "update" to an exhibit, filed with a motion to supplement the record. Staff notes that the report relied on by the Company was prepared seven months prior to the report relied on by Staff.

Staff also raises issues regarding the treatment of federal production tax credits and renewable energy certificates. Each kilowatt-hour generated from a wind facility that goes into service in 2008 is eligible for a federal tax credit of 2.1 cents for the first 10 years of production. In addition, one Renewable Energy Certificate (REC) is awarded for each megawatt-hour of energy generated. RECs can be sold or used for compliance with voluntary or mandatory renewable resource programs.

The benefits of the federal production tax credits are accounted for in this RAC proceeding. Staff recommends that the Commission make an adjustment to reflect

the amount of tax credits that would be associated with the 41 percent capacity factor for Glenrock. Staff proposes to reduce tax expense for Glenrock by $443,961 (system-wide) to account for this adjustment.

Similarly, Staff proposes that the Commission include in the RAC the additional federal tax production credits associated with the 38 percent capacity factor Staff imputes to Rolling Hills. To reflect that the tax credits are provided during the first 10 years of facility operation, Staff recommends that the RAC reduce the tax expense attributed to Rolling Hills each year from 2010 through 2018. The amount of the reduction in federal tax credits would be $1,276,821 (system-wide).

Staff further recommends that the Commission make an adjustment to account for the additional RECs that would accrue to Pacific Power at the imputed 38 percent capacity factor for Rolling Hills. At the higher capacity factor, the project would qualify for additional RECs that could be sold or banked. Staff proposes that the Commission direct Pacific Power to deduct that additional REC value from its capital costs for the December 2009, update. The amount of the reduction (system-wide) would be $304,005.

To account for the Company's 2007 REC value of $5 per MWh over the first five years of Rolling Hills' operation, Staff proposes that the Commission direct Pacific Power to make an adjustment each year from 2010 through 2013.

Pacific Power states that it used two methods of financial analysis for its wind projects, depending on when each project was evaluated. These two methods are the present value revenue requirements differential method (PVRR(d)) and a next highest alternative cost for compliance method (ACC).

Staff asks that the Commission require Pacific Power to perform simultaneous runs of the two methods for comparison purposes. Staff believes that the results would provide Staff the greatest amount of information and provide a basis for comparison. Staff believes there would be no additional cost to the Company if Staff were to perform such studies.

Staff states its view that the RAC mechanism reduces Pacific Power's risk of regulatory lag, a factor that reduces a Company's risk. Staff believes this effect should be taken into account in setting the cost of capital. Staff intends to investigate this effect further in Pacific Power's next general rate case.

If the Commission does not approve Staff's recommended 41 percent capacity factor for the Glenrock project in the UE 199 TAM proceeding, Staff proposes that the Commission make a "discrete" adjustment to account for the impact of Rolling Hills on Glenrock in accordance with confidential information provided by Staff. Further associated with that adjustment, Staff proposes that the Commission direct the Company to account for the associated federal production tax credits (through 2018) and renewable energy certificates through 2013.

C. ICNU's Position

ICNU recommends that the Commission disallow the costs associated with the Glenrock, Rolling Hills, and Seven Mile Hill projects on the grounds that Pacific Power imprudently circumvented the competitive bidding process and violated the Commission's Guidelines. Alternatively, ICNU proposes a pricing adjustment as redress for the Company's decision to acquire these resources outside of the Commission's competitive bidding process.

ICNU states that Pacific Power sized the Glenrock, Rolling Hills, and Seven Mile Hill projects at 99 MW solely to avoid the requirement that it issue an RFP and conduct a competitive bidding process. However, ICNU argues that these projects do exceed the 100 MW threshold and should have been subjected to the competitive process.

Like Staff, ICNU argues that Glenrock/Rolling Hills is a single project that significantly exceeds 100 MW. ICNU cites many of the same factors as Staff in support of this position.

ICNU further argues that the project actually should have been larger than even 200 MW, citing evidence that Pacific Power already is adding another 39 MW of capacity at the Glenrock/Rolling Hills site. ICNU cites these circumstances to illustrate Pacific Power's complete disregard for the Commission's Guidelines.

ICNU states that Seven Mile Hill also exceeds 100 MW, citing evidence that Pacific Power divided a 118 MW project into 99 MW and 19 MW projects at the same location. These two projects are at the same location, use the same type of wind turbines, and have the same expected in-service date.

ICNU cites testimony by a Pacific Power witness to the effect that it sized the three projects at 99 MW to avoid the Commission's RFP requirement. ICNU disputes the Company's claim that it had good reason to evade the competitive bidding process. ICNU states that Pacific Power's stated concerns with the availability of wind turbines or the federal production tax credits are "inaccurate post hoc rationalizations," not supported by the evidence.

In any event, according to ICNU, the Company had sufficient time to conduct an RFP and still meet its target in-service date of December 31, 2008. ICNU warns the Commission should be mindful that, just as Pacific Power can always size wind projects to come under the 100 MW threshold, the Company can also always manufacture its own time constraints.

ICNU argues that the Commission should find that any Major Resource acquired inconsistently with the Guidelines is *per se* imprudent. ICNU cites other instances that support its claim that Pacific Power has a long history of avoiding the competitive bidding process to acquire higher cost resources.

ICNU states that a prudency disallowance also is necessary to ensure the integrity of SB 838. Pacific Power should not be allowed to make the disingenuous claim that it needs to ignore the Commission's rules to comply with the Renewable Portfolio Standard.

As a remedy, ICNU proposes the Commission remove Glenrock, Rolling Hills, and Seven Mile Hill from Pacific Power's 2009 RAC. ICNU would invite the Company to conduct an RFP including a similar amount of wind resources in its 2010 or 2011 RAC, to qualify these plants for inclusion. Meanwhile, if these particular resources truly are cost-effective (and the low-cost alternatives), then the Company should be able to sell the output in the market and recover its costs.

Alternatively, ICNU suggests that the Commission might include these plants in the Company's 2009 RAC, but make a prudence disallowance, based on the costs of market wind resources. ICNU proposes that the Commission make that adjustment based on the costs of wind power purchase agreements entered into by the Company in 2008.

ICNU cites three new wind purchase power agreements entered into by Pacific Power: Mountain Wind I, Mountain Wind II, and Spanish Fork II. According to ICNU, the average cost of these projects is $60.25/MWh, compared to the cost of Glenrock ($73.24) and Rolling Hills ($95.68). These projects represent a reasonable proxy for Glenrock and Rolling Hills.

ICNU dismisses Pacific Power's arguments against ICNU's cost comparisons, stating that size differences do not account for the differences in costs. ICNU also defends its use of test year costs, versus levelized costs, "because [Pacific Power] is requesting to recover test year costs in rates and not the levelized costs of its own wind resources."

ICNU singles out Rolling Hills, stating that Pacific Power was imprudent to build it. The Company relied on inadequate and unreliable information to build a facility that may perform poorly for the next twenty-five years.

ICNU states that Pacific Power's own economic analysis of Rolling Hills shows that, under the best of assumptions, it is a questionable resource addition. Because the Company has no immediate Renewable Portfolio Standard compliance issues in Oregon, the Company had no economic basis to proceed with the project.

ICNU states that Pacific Power failed to adequately investigate the wind conditions at the Rolling Hills site. The Company built the project based on limited, short-term wind data. ICNU cites extensive confidential information to support its position.

ICNU argues that the Commission should impose an adjustment because Pacific Power imprudently built Rolling Hills without having adequately investigated the

reasonableness of its decision to proceed. ICNU proposes that the Commission exclude Rolling Hills from rates, or impute a higher capacity factor. ICNU supports the "very conservative" 38 percent capacity factor proposed by Staff.

D. Pacific Power's Response

According to Pacific Power, these "most pressing" issues relate to the application of the Commission's competitive bidding Guidelines to renewable resources that are sized less than 100 MW. Arguing that the Guidelines are "silent," the Company disputes both Staff's and ICNU's proposed treatments of projects sized at 99 MW (to avoid the RFP process).

Pacific Power states that Staff's position has created considerable uncertainty for its renewable resource risk acquisition efforts. If the Commission were to consider Staff's position, Pacific Power states that "the basic requirements of administrative law require commencement of an investigation or rulemaking to consider expansion of the Guidelines."

Pacific Power states that SB 838 sets aggressive renewable acquisition targets that the Company can meet, only through "an all-out, creative, timely, and collaborative approach." The Company notes that SB 838 provides for recovery of all prudently incurred costs associated with compliance – it does not require that utilities acquire their renewable resources through competitive bidding.

Pacific Power's RAC filing includes eight new renewable resources that have come into service since September 2006, or are expected to be in service prior to January 1, 2009. The Company states that it is undisputed that the costs of each of these resources are eligible for recovery under SB 838.

Pacific Power states that its acquisition of each of these renewable resources was consistent with its resource plans approved by this Commission. The Company cites the 2007 plan's target of 2000 MW of renewable resources by 2013, as well as its commitments to renewables as conditions of the approval of its acquisition by MidAmerican Energy Holdings Company.

Pacific Power states that it procured these renewable resources consistent with the Commission's competitive bidding guidelines.[3] The Company notes that Guideline 1 requires competitive bidding for acquisition of Major Resources, defined as resources with durations longer than five years and capacity greater than 100 MW, while Guideline 2 allows for waivers in certain circumstances.

The Guidelines are silent on their applicability to "separate" renewable resources located within close proximity to each other. The Guidelines also are silent on

[3] Order No. 06-446.

penalties for noncompliance. Pacific Power cites the policy goals of the Guidelines, arguing that they "militate against implying new requirements into the Guidelines, especially on an ad hoc, retroactive basis."

Pacific Power's concern arises first from Staff's recommendation that two of the Company's projects – Rolling Hills and Glenrock (each 99 MW) – should be deemed aggregated because of their relative proximity to each other (about one mile apart). Pacific Power points out that: (1) each resource (at 99 MW) is below the Major Resource threshold; (2) the decisions to proceed on the two projects were made at different times, each based on its own economic analysis; (3) each resource has a separate certificate of public convenience and necessity from the Wyoming Public Service Commission; (4) each resource has separate construction contract obligations; (5) each resource has stand-alone collector substations and transformers; and (6) the Company procured wind turbines for the resources at different times in different negotiations.

Pacific Power complains that Staff has not articulated any particular standard for determining when separate renewable energy resources should be aggregated for purposes of deciding whether they should be deemed a Major Resource. The Company notes that Staff initially proposed that the Commission apply the five-mile radius standard it had adopted to determine whether Qualified Facility (QF) resources under the same owner should be aggregated for purposes of deciding whether they were under 100 MW (and qualified for the standard offer contract).[4]

Pacific Power notes that, at the hearing, Staff indicated that it was applying the reasoning of the QF standard, not the standard itself. In Staff's view, the facts of this case – that Glenrock and Rolling Hills are both owned by Pacific Power, on the same site, about one mile apart, and scheduled to come on-line in the same year – makes it "obvious" that the resources should be aggregated to constitute a Major Resource. The Company disputes Staff's view.

According to Pacific Power, Staff's position raises numerous policy and practical questions, citing Staff data request responses that the Company found to be insufficient. Pacific Power finds a sharp contrast between Staff's failure to design and articulate a clear policy in regard to resource aggregation with the Commission's thorough investigation of the issue in the QF Docket.

Pacific Power states that it acquired its renewable resources through a reasonable acquisition process. The Company followed the Commission's directive to meet or exceed its renewable resource targets, using both competitive bidding and other acquisition processes, as appropriate. In each case, the Company considered factors such as market changes, the rise in major equipment and construction costs, the time-limited nature of renewable resource opportunities, and the "reasonable expectation" that a resource could be placed in service before the then-current expiration of the federal production tax credit.

[4] Order No. 07-360, Docket UM 1129.

Three of the renewable resources resulted from Pacific Power's RFP 2003-B. These were the Leaning Juniper 1 (100.5 MW), Marengo (140.4 MW), and Marengo II (70.2 MW) plants.

The Goodnoe Hills project (94 MW) was acquired with Staff's assistance in negotiating funding agreements with the Energy Trust of Oregon. According to Pacific Power, Goodnoe Hills originally was to have been two 56 MW projects. The Company notes that Staff never suggested aggregating these two projects into a Major Resource, even though they would have been in close proximity to each other, would have been constructed by the same contractor, with the same on-line date, and would have shared a collector substation and transformer.

Pacific Power developed its Blundell Bottoming Cycle project (11 MW) at its Blundell plant in Milford, Utah. The Company issued an RFP to acquire project services and equipment.

Pacific Power "separately developed" Seven Mile Hill (99 MW), Glenrock (99 MW), and Rolling Hills (99 MW). For each project, the Company issued an RFP for engineering, procurement and construction services, and collector substation transformers.

Pacific Power disputes Staff's claim that the Company was imprudent with regard to Rolling Hills. Pacific Power states that "because the Company has shown that the costs associated with Rolling Hills were prudently incurred, the Commission may not deny recovery of these costs."

Pacific Power recites the general rules regarding prudence review. The Commission will examine the "objective reasonableness" of the decision. The Commission will consider the decision at the time it was made, with no hindsight. The Commission cannot substitute its judgment for that of the utility. The determination of what is reasonable is the primary responsibility of utility management, not this Commission.

Pacific Power infers that Staff claims that the Company must show that Rolling Hills was the "best" resource available. Pacific Power states that it must show that the acquisition was "objectively reasonable," not that it was the "best" choice.

Pacific Power notes that the Commission has recognized the need for regulatory certainty, and applies a high standard when examining the reasonableness of utility decisions. The Commission has never concluded that any of Pacific Power's own resources were imprudently developed.

Pacific Power states that its Rolling Hills project is consistent with the Company's Integrated Resource Plan (IRP) and its costs are below that of the IRP proxy. The Company disputes Staff's calculations, and argues that, when Rolling Hills' costs are

compared with the IRP proxy, that includes wind integration costs, the projected cost of Rolling Hills is well below the IRP proxy on a real-levelized basis.

Pacific Power further states that the Rolling Hills project's costs are below the Company's Oregon avoided costs.

Pacific Power states that the cost of Rolling Hills is less than the cost of Goodnoe Hills, a resource that Staff found to be prudently acquired. The Company states that its economic analysis was conservative as it did not factor in the terminal value benefits to ratepayers.

Pacific Power states that the capital costs of Rolling Hills on a capacity basis are within a reasonable range. The Rolling Hills capital costs are below the costs of Glenrock and Goodnoe Hills.

Pacific Power states that Staff's "sole concern" with regard to Rolling Hills is the capacity factor. Capacity factor is not the only determinant of whether a project is cost-effective.

Pacific Power estimated the Rolling Hills capacity factor at 31 percent at project approval. The Company notes that this is a higher capacity factor than Marengo II, which Pacific Power acquired through an RFP and which Staff found to be prudent. The Company claims that the final build design estimate of the Rolling Hills capacity factor is higher than Marengo I, Marengo II, and Goodnoe Hills.

Pacific Power states that it was not aware of any site with a higher capacity factor that would have been available if the Company had issued an RFP.

Pacific Power offers three reasons for rejecting Staff's proposed "changes to the guidelines." First, the Commission should not establish new rules of general applicability in a contested case. Second, retroactive application of the rule would be unreasonable. Third, nothing in the Guidelines bars cost recovery of a resource not acquired in compliance with the Guidelines.

Pacific Power argues that the Guidelines are properly interpreted as "rules" under the Oregon Administrative Procedures Act. When establishing the Guidelines, the Commission gave notice, held numerous conferences and workshops, and reviewed two rounds of comments from participating parties. It would be unfair to make significant changes to the Guidelines without a similar opportunity for public notice and invitation for participation.

Pacific Power argues that the need for public notice and input is more pronounced in this case, where Staff's proposed standard is unclear. Staff's "ad hoc" approach is inconsistent with the Commission's policy of promoting regulatory certainty and would result in arbitrary decision making. The proper forum to address changes to the Guidelines is in a Commission investigation or an expedited rulemaking proceeding.

Pacific Power further argues that Staff's proposal would require the Commission to apply new rules retroactively. The Company cites legal authority for its argument that retroactive application of the rule would be invalid.

According to Pacific Power, nothing in either the Guidelines or other Commission precedent dictates that noncompliance with the Guidelines bars full cost recovery. The Company cites the Commission's order acknowledging Pacific Power's 2007 IRP, where the Commission stated that utilities would be expected to explain actions they take that may be inconsistent with the plan. The Commission did not state that inconsistent actions are "automatically" subject to cost disallowance.

If the Commission were to adopt Staff's "new" definition of a Major Resource, Pacific Power argues that the Commission should then use its discretion to waive application of the guideline to Rolling Hills. A waiver should be granted because Pacific Power's 2007 IRP noted that the Company planned to acquire renewable resources through self-development. The turbines used for Rolling Hills were available only on a "time-limited" basis. Use of the RFP process would have resulted in the loss of the turbines and the loss of a cost-effective wind resource timed for completion before the anticipated expiration of the federal production tax credits at the end of 2008.

If the Commission were to find that Pacific Power's acquisition of Rolling Hills was imprudent, the Company objects to Staff's proposed capacity factor adjustment. Because the costs of Rolling Hills are "objectively reasonable," Pacific Power argues there is no basis for a prudence disallowance.

Pacific Power states that the Commission has never imputed a higher capacity factor as a remedy for a finding of imprudence, and should not do so in this case. The Commission should not make such an adjustment, "when overall the resource is cost effective."

Pacific Power argues that Staff's proposed disallowance is unreasonably high. By the Company's calculations, the effect of the disallowance would result in costs of Rolling Hills that are "far lower" than the cost of any other resource in this case.

If the Commission does find that Pacific Power's acquisition of Rolling Hills was imprudent, and that a cost disallowance is appropriate, Pacific Power argues that the Commission should exclude Rolling Hills from rates, as proposed by ICNU. It would be unfair for Oregon to disallow costs, but claim a full share of the renewable energy certificates related to the resource. Permanent removal from rates would be the "equitable" result.

If the Commission were to decide to adopt Staff's position, Pacific Power argues that the proper capacity factor to apply would be 35 percent, not the 38 percent proposed by Staff. According to the Company, 35 percent is the average capacity factor for its Wyoming wind resources.

Based on the 35 percent capacity factor, and assuming that Rolling Hills/Glenrock is one project, Pacific Power argues that there is no basis for a capacity imputation to Rolling Hills. As a single project, the combined capacity factor of Rolling Hills/Glenrock would be 34.6 percent, near the average for the Company's Wyoming wind resources.

Pacific Power argues that the Commission should reject Staff's proposed capital cost adjustment related to Glenrock. According to the Company, Staff's proposed 41 percent capacity factor was an interim estimate. Pacific Power states that it relied on a 38.6 percent capacity factor in approving the resource and in its filing.

Pacific Power argues that SB 838 mandates cost recovery for prudently acquired resources. Staff's adjustment is not based on imprudence and is not allowed under the statute.

According to the Company, if Staff's proposed adjustment is viewed as an update to the RAC, Glenrock's capacity factor should be set at 37.4 percent. Pacific Power notes that the RAC order provides that all cost elements of the RAC are subject to updating through November.

Pacific Power argues that the Commission should reject ICNU's proposed Rolling Hills, Glenrock, and Seven Mile Hill adjustments. The Commission cannot disallow the costs of prudently acquired renewable resources under SB 838. Like Staff's proposal, ICNU's proposal rests on retroactive application of a new rule.

Pacific Power argues that ICNU's calculation of its proposed disallowance is flawed. ICNU compares the test-year costs of the three QF resources to the first-year costs of Glenrock and Rolling Hills. However, according to Pacific Power, ICNU's witness previously criticized the use of first-year costs when designing rate recovery for renewable resources. When levelized costs are used, the costs compare favorably.

Pacific Power disputes ICNU's claim that the Company's wind potential data for Rolling Hills was insufficient. Pacific Power claims that it did gather long-term, on-site data prior to going forward with the project. In any event, the Company argues that ICNU's contention is not "actionable" without a showing of harm to customers. Pacific Power repeats its claim that its Rolling Hills project is cost-effective.

E. Staff's Reply

Staff first addresses Pacific Power's argument that a Commission Guideline is a "rule" within the meaning of the Oregon Administrative Procedures Act. Staff argues that Pacific Power's argument fails because: (1) the Guidelines are not rules; and (2) even if they were rules, Staff is not proposing to add to or modify the Guidelines.

Staff cites several Commission orders to make the point that Guidelines are not "rules." In the order adopting the Guidelines, the Commission stated: "While we

[have adopted] a set of guidelines, we have drafted them with both mandatory and permissive language so that the utilities involved will clearly understand our preferences." As guidelines, the instructions are permissive in nature.

Staff likens the Guidelines to the Commission's determinations in a utility's IRP Docket. A utility may choose to take actions inconsistent with an acknowledged IRP, but it does so at its risk. Similarly, a utility assumes a risk when it takes actions inconsistent with the Guidelines. The utility must explain and justify to the Commission why it took the actions.

In any event, Staff states that it has proposed only to apply the Guidelines, not to modify them. Staff explains that its finding that Rolling Hills/Glenrock is a Major Resource was not a "close case," and does not implicate a change to the Guidelines. Staff's "common sense" conclusion simply upholds the integrity of the Guidelines.

Staff disputes Pacific Power's use of SB 838 to suggest that the statute requires full inclusion of eligible resources under all circumstances. Staff cites the provision in the statute for the recovery of "prudently incurred costs" as the clear evidence of the standard of proof required. The statute does not impose a higher burden of proof on parties asserting imprudence of renewable resource acquisitions.

Staff distinguishes this case from other prudence reviews. Pacific Power failed to conduct the competitive bidding process required by the Guidelines. As a remedy, Staff recommends the imputation of a specified capacity factor for Rolling Hills – the capacity factor of a Wyoming wind resource the Company likely would have acquired had it complied with the Guidelines.

Staff "corrects" certain statements of Pacific Power in the Company's opening brief. Staff does not "concede" a general rate case is the proper forum to examine the impact of the RAC on the cost of capital. Staff itself made that recommendation in its testimony.

Staff does not agree that the ACC method should be investigated in open Docket AR 518. Staff stands by its recommendation that Pacific Power be required to perform simultaneous runs of the ACC method and the PVRR(d) method.

If Pacific Power is genuinely uncertain about how to proceed with other projects in light of Staff's proposed adjustment for Rolling Hills, Staff suggests that the Company reconsider its approach of unilaterally applying Guideline 1 in any manner it chooses. It either may proceed with the competitive bidding process specified in Order No. 06-446, or ask for a waiver.

Staff explains that its participation with Pacific Power on the Goodnoe Hills project was mainly focused on the REC issue, and was largely over by the time the Commission announced the competitive bidding Guidelines.

Staff challenges Pacific Power's claim that the Company's acquisition of Rolling Hills was "objectively reasonable." Staff reports "several problems with the Company's comparison of the Rolling Hills costs with avoided costs." Pacific Power uses an unsubstantiated resource cost estimate for Rolling Hills, based on an inappropriate comparison.

Regarding the Company's comparisons of Rolling Hills' estimated capacity factor to other resources not challenged by Staff, Staff states that its recommended finding of imprudence involves more than comparisons of capacity factors. Staff also notes that other projects were acquired through an RFP and represent the best resource options at that time.

Staff defends its proposed disallowance for Rolling Hills as reflecting the net power cost benefits of a Wyoming wind resource the Company likely would have acquired if it had followed the competitive bidding process. Staff dismisses the Company's "corrected" Wyoming capacity factor as being derived from: (1) contracts for resources that do not serve Pacific Power customers, and (2) an inappropriate capacity factor for Glenrock.

Regarding the averaging of the Rolling Hills and Glenrock capacity factors, Staff argues that it is inappropriate to justify Rolling Hills on the basis of combining its capacity factor with Glenrock's, when another resource would likely have been selected.

Staff clarifies that it recommends that the Rolling Hills adjustment be made in UE 200, not UE 199. However, should the Commission direct Pacific Power to make the adjustment in UE 199, the Commission should also order the Company to make that same adjustment in each annual update.

F. ICNU's Reply

ICNU disputes as "pure hubris" Pacific Power's characterization of itself as "a utility that is honestly attempting to expeditiously comply with the new mandates of SB 838, and being innocently caught off guard when Staff and ICNU challenged the Company's actions." ICNU states that SB 838 does not lower the prudence standard for renewable resources. The statute does not diminish the Company's burden of proving the prudence and reasonableness of its actions. The availability of an automatic adjustment clause, with its attendant procedural features, should prompt the Commission to be more skeptical and conduct a more rigorous examination of the Company's evidence.

ICNU is disdainful of Pacific Power's argument that the Guidelines are "completely silent" regarding whether the Company can split projects to avoid the RFP requirement. The Company would not have engaged in the fiction of separately naming and sizing the Glenrock and Rolling Hills projects, if not for the competitive bidding guidelines. Under Pacific Power's interpretation, the Guidelines would be

meaningless for wind projects – the Company could always break up any project into less than 100 MW pieces.

The primary purpose of the Guidelines is to lower costs by ensuring that utilities obtain the least-cost resources for its customers. ICNU argues that its proposed prudency disallowance is consistent with the intent of the Guidelines.

ICNU further explains its view that Rolling Hills/Glenrock is a single Major Resource. According to ICNU, from the inception of the project, Pacific Power envisioned one large wind resource. Throughout the planning and construction, Pacific Power treated the project as one large facility and moved turbines between the resources. If there were no competitive bidding Guidelines, then the Company would have built one 237 MW Glenrock project.

ICNU states that the evidence is "overwhelming" with respect to Pacific Power's imprudence in proceeding with the Rolling Hills project, based on inadequate information. The Company knew that Rolling Hills could have a very low capacity factor, that the additional turbines at Rolling Hills could lower the Glenrock capacity factor, and that the Company had not completed its studies to ascertain where to "best" locate the wind turbines.

ICNU supports Staff's imputed 38 percent capacity factor for Rolling Hills. ICNU cites Staff's testimony as "more credible" in its derivation of the average capacity factor for Wyoming resources.

G. Pacific Power's Reply

The Company makes the legal argument that the Commission lacks discretion to interpret the Guidelines as proposed by Staff and ICNU. The Company cites a recent Oregon Supreme Court case (*Gafur v. Legacy Good Samaritan Hosp.* 344 Or 525, 537 (2008)) holding that an agency may not interpret a rule in a way that is "inconsistent with the wording of the rule itself and its context."

Pacific Power applies the *Gafur* standards in arguing that Staff has failed to meet the necessary conditions. The Company states that "agency integrity is best preserved by interpreting agency rules according to their express terms."

Pacific Power argues that Staff's and ICNU's arguments that the Company's failure to acquire resources outside the Guidelines is "per se" imprudent are without merit. The Guidelines are silent on the prudence standards applicable to resources acquired outside the Guidelines. The "relevant standard" of review is of "less weight," leaving the utility with the burden of establishing the prudence of a resource. Pacific Power argues that it met that burden with its evidence of Rolling Hills' cost-effectiveness.

Pacific Power states that Staff's claim that the Company is required to include its Rolling Hills resource in rates even after a prudence disallowance is untenable.

Pacific Power states that Staff and ICNU make unsupported allegations with factual inaccuracies. A "careful review" of the record demonstrates that the evidence supports full cost recovery of the Rolling Hills, Glenrock, and Seven Mile Hill projects.

Pacific Power disputes as "flawed" Staff's premise that, if the Company had issued an RFP, it would likely have acquired a facility with a capacity factor higher than 38 percent. Staff could not identify any Wyoming wind resources or sites that Pacific Power could have acquired. There were no other entities with a permitted site when the Company was investigating resource alternatives. There are no pending interconnection applications for wind projects in Wyoming. Market demand for equipment has been volatile, with wind turbines in short supply.

Pacific Power states that Staff ignores and minimizes the complexities associated with wind resource acquisition in suggesting that the Company could have used the Rolling Hills turbines in an RFP project. There was a high risk that the Company could not have completed an RFP and obtained a fully constructed wind resource by the end of 2008, when the federal production tax credit was set to expire.

Pacific Power explains that its decision making process to acquire Rolling Hills was no different than its process used to acquire other resources. The Company argues that it should not be penalized for moving quickly to acquire renewable resources, when SB 838 was explicitly intended to accelerate development of renewable resources.

Pacific Power claims that Staff stated only vague concerns about the validity of the Company's evidence that the average capacity factor for Wyoming wind resources is 35 percent, not the 38 percent claimed by Staff. Pacific Power states that Staff did not elaborate on its concerns, offer an alternative calculation, or otherwise follow-up with its investigation.

Pacific Power disputes ICNU's claim that Glenrock and Rolling Hills were developed as a single project. According to the Company, ICNU's position is based on hindsight. The Company did not have the Rolling Hills turbines available at the time it made the decision to advance the Glenrock project.

Pacific Power defends its wind data studies at the Rolling Hills site, relying largely on confidential information. The Company states that it prudently assessed the performance risk of the project.

Pacific Power opposes ICNU's proposal to exclude Seven Mill Hill from rates, on the basis that the actual project includes Seven Mile Hill II. The Company did not have the turbines to develop both projects at the time it chose to move forward with

Seven Mile Hill. There is no evidence that the acquisition of Seven Mile Hill was imprudent.

Pacific Power agrees with Staff that, when analyzing prudence, the proper capacity factor to use is the one the Company relied on at the time it made its decision to move forward with the acquisition. However, the parties disagree on what capacity factors should be used to set rates in the RAC and TAM proceedings.

With respect to Glenrock, Pacific Power disagrees with Staff regarding the "right" capacity factor. The Company's 37.4 percent capacity factor is based on more recent information than the 41 percent capacity factor proposed by Staff.

Because the RAC stipulation explicitly allows for updates to cost elements, Pacific Power states that the most recent capacity factor estimates cannot be ignored in the RAC and TAM calculations. Rates should reflect the most current and accurate capacity factors available.

Pacific Power states that Staff's concerns regarding the ACC method are unfounded. The Commission recently required the Company to calculate the incremental capacity value for purposes of evaluating bids using the ACC method, not the PVRR(d) method (citing Order No. 08-476, Docket UM 1368). Further, Staff did not request that the Company conduct simultaneous runs when evaluating bids in Pacific Power's recently approved renewable RFP.

IV. DISCUSSION

A. Introduction

SB 838 establishes a Renewable Portfolio Standard for electricity, which requires that electric utilities meet specified percentages of their Oregon load with electricity generated by eligible renewable resources by specified dates.

Section 13 of the Act provides that "all prudently incurred costs associated with compliance with a renewable portfolio standard are recoverable in the rates of an electric utility." In this regard SB 838 does not make "new" law. Prudently incurred costs always have been recoverable in rates. The "new" feature of SB 838 (in terms of ratemaking) is its endorsement of the adjustment clause (or another method for timely recovery of costs) as the vehicle for a utility to recover its prudently incurred costs, pending its next general rate case.

Just as the statute does not make new law with respect to recovery of prudently incurred costs, nor does it modify current law or practice with respect to prudence review. The standard to be applied has not been "lowered" to foster the acquisition of renewable resources.

B. Rolling Hills

Much has been made of Pacific Power's strategy of avoiding the Commission's Major Resource acquisition Guidelines by developing 99 MW projects. This Commission took very seriously its responsibility to establish a workable framework for the utilities to procure new Major Resources. In adopting the Guidelines, the Commission found that the public interest was served by a balancing of the private interests of utilities, their customers and competitive providers of generation resources.

The Guidelines have substantive, as well as procedural, applications. The procedural aspects of the Guidelines provide, first, for an RFP, and then, for review of the proposals (if any) that are received. The substantive aspect is the result of that process – the terms and conditions of the competitive bids that provide a basis to compare resources.

A utility always has the burden of proving that it acted prudently in acquiring its resources. *See* ORS 757.210. It also bears the initial burden of producing evidence to support that proposition. When the utility has followed the Guidelines, however, the resulting resource acquisitions are presumed reasonable. Consequently any party that would question those decisions would carry the initial burden of producing evidence that the utility acted imprudently. Where the utility avoids the Guidelines, the burden of producing evidence remains with the utility. Pacific Power bears that burden of producing evidence in this case that its actions were prudent.

Pacific Power's Rolling Hills project's specifications are markedly inferior, compared to either Glenrock or Seven Mile Hill, or other Wyoming wind projects in general. Without the objective evidence that would otherwise be provided by the competitive bidding process, Pacific Power must establish that it was prudent for the Company to develop the project at this time and at this location.

In their testimony and briefs, the parties cite evidence regarding the estimated capacity factors for each of these three resources at the time of project approval and at subsequent intervals. According to Pacific Power, the estimated capacity factor at the time of project approval was 41.3 percent for Seven Mile Hill, 38.6 percent for Glenrock, and 31 percent for Rolling Hills. The estimated capacity factor at the time of project approval is the crucial factor in deciding whether the project was prudently acquired.

To overcome the weight of the evidence about the relatively poor capacity factor for Rolling Hills, Pacific Power argues that external considerations were crucial factors contributing to its decision to proceed with the project. One of these factors was the availability of the wind turbines.

Pacific Power states that its choice was not between Rolling Hills and another project, but between Rolling Hills and no project, because the Company would not have been able to hold the turbines made available to it for the duration of the RFP

process. That rationale is inconsistent with other statements by the Company explaining its decision to proceed with Rolling Hills.

Pacific Power originally planned to develop another site in Idaho and acquired the turbines for that site. The Company has failed to prove that it could not have stored the turbines or that it could not have negotiated with the manufacturer to resell them if it had no immediate use for them.

Pacific Power disputes the availability of other sites at the time it decided to proceed with Rolling Hills. However, Staff rightly argued that the Company conducted no discovery for alternate sites. The public record (such as siting approval applications filed in Wyoming) does not provide an exhaustive inventory of sites that may be available, both within and outside the Company's service territory. Again, the failure to solicit competitive bids is a factor that undermines the weight of the Company's evidence.

Pacific Power cites the possible expiration of the federal production tax credits as a factor in its decision to proceed with Rolling Hills. Without regard to the probability that the tax credits would expire, the Company failed to prove that the availability of the credits was a material factor in its decision to proceed with the project. Further, the Company did not make a strong case that it needed to act to meet Renewable Portfolio Standard targets or other commitments.

Nor are we persuaded by evidence comparing the Rolling Hills project to other projects in other regions. Pacific Power's burden was to prove that it prudently acquired the Rolling Hills project. The relevant alternatives are other wind projects in Wyoming that might have been – or may be – available.[5]

Having found that the Rolling Hills project acquisition was not prudent, we do not address the issue whether the Rolling Hills and Glenrock projects should be treated as a single project. Such issues should be addressed in a generic proceeding regarding resource acquisitions.

As noted above, SB 838 provides for the recovery of prudently incurred costs attributable to eligible projects through the RAC procedure. Because we find that Pacific Power failed to prove that it prudently acquired the Rolling Hills project, all costs associated with that project are excluded from the RAC cost recovery mechanism.

ICNU suggested that Pacific Power be allowed to "cure" its "imprudence," depending on the results of a future competitive bidding process. The finding that the Company failed to prove the prudence of its Rolling Hills project acquisition in this case applies only to the Company's right to recover the costs of these

[5] Comparisons to older projects are of limited value because of differences in the vintages of the wind turbine technology. Newer turbines are more efficient, resulting in higher expected capacity factors.

projects in this RAC. Future ratemaking treatment of the Rolling Hills project will be taken up as appropriate.

C. Glenrock

Staff's argument that the Glenrock and Rolling Hills projects should be treated as a single project is moot, based on our finding that Pacific Power failed to prove that it prudently acquired Rolling Hills. However, the close proximity of the two projects – one above the line, and the other below the line – raises issues regarding the future configurations of the two projects in terms of turbine placement. We intend that the Company will "freeze" its turbine configurations at the two projects in a manner that avoids increasing the capacity factor at Rolling Hills, while decreasing the capacity factor at Glenrock.

ICNU cites the 99 MW installed capacity at Glenrock, and argues that Pacific Power imprudently circumvented the competitive bidding process for Major Resources. While we acknowledge that the Company sized the project to avoid the competitive bidding project, we do not consider that action as dispositive of the prudency of the Company's decision to acquire Glenrock.

We earlier discussed the interplay between the competitive bidding Guidelines and burden of proof. Without the benefit of the market insights provided by the results of the competitive bidding process, Pacific Power nevertheless proved that its acquisition of Glenrock was prudent, based primarily on estimated capacity factor at the time of project approval and the costs of project development. We concur with Staff that the Company prudently acquired Glenrock.

Although the estimated capacity factor at the time of project approval is dispositive for purposes of prudency review, it is not dispositive for purposes of forecasting resource availability for ratemaking purposes. The most recent reliable data should be used to set rates for the test period, recognizing that such data necessarily will be uncertain, particularly at start-up. The most recent estimate provided by Pacific Power is from its final build design report prepared by its consultant.

For Glenrock, the current estimated capacity factor is 37.4 percent, down from the estimated capacity factor at project approval of 38.6 percent and the capacity factor of 41 percent reported in an interim study, as proposed by Staff. [6] For purposes of this proceeding, we set the capacity factor at 37.4 percent, as proposed by Pacific Power, and adjust it upward to make the discrete adjustment proposed by Staff to account for the degradation of Glenrock's performance caused by the development of Rolling Hills. Pacific Power is directed to make this discrete adjustment in the TAM updates.

Further, the Company is directed to reduce tax expense for Glenrock to account for the additional federal production tax credits through 2018 and reduce capital

[6] We acknowledge that Staff did not have time to verify the Company's most recent estimate.

costs for Glenrock to account for the additional renewable energy certificates through 2013, as proposed by Staff.

D. Seven Mile Hill

With regard to the Seven Mile Hill project, ICNU raised the same concerns regarding the project's size (99 MW) and the avoidance of the Commission's competitive bidding Guidelines. As with regard to the Glenrock project, Pacific Power's decision to acquire the Seven Mile Hill must be evaluated for prudence without the benefit of the competitive market information that would have been provided by the bidding process.

However, like Glenrock, Pacific Power has presented affirmative evidence that proves that the Seven Mile Hill project was prudently acquired. The estimated capacity factor at the time of project approval compares favorably to other Wyoming wind resources. No party disputes that the project was prudently installed.

The final build design capacity factor for Seven Mile Hill is 40.3 percent, down from the 41.3 percent estimate at project approval. However, in the stipulation in Docket UE 199 (Pacific Power's TAM proceeding), the parties agreed that the 41.3 percent estimate should be used for ratemaking purposes.

E. Financial Models

Staff asks that Pacific Power be directed to provide Staff (and other parties) with simultaneous runs of the ACC method and the PVRR(d) method to perform financial analyses of wind projects. Staff has shown that the availability of the requested information would be helpful to its understanding of the Company's financial decisions and projections. Pacific Power is directed to provide the information to Staff and other parties.

F. Rate Design

As proposed by Pacific Power, the revenue change should be allocated across customer classes on the basis of an equal percent of generation revenue and applied on a cents per kilowatt-hour basis to each applicable rate schedule.

Findings of Fact

1. Pacific Power developed the Glenrock, Rolling Hills, and Seven Mile Hill projects, each with a capacity of 99 MW.

2. Pacific Power developed these projects at 99 MW capacity to avoid the Commission's Major Resource acquisition Guidelines.

3. At the time of project approval, Pacific Power's estimated capacity factors for the three projects were 38.6 percent for Glenrock, 41.3 percent for Seven Mile Hill, and 31 percent for Rolling Hills.

4. The estimated capacity factors for the Glenrock and Seven Mile Hill projects compare favorably with other Wyoming wind resources.

5. The estimated capacity factor for the Rolling Hills project compares unfavorably with other Wyoming wind resources.

6. Pacific Power did not offer the results of a competitive bidding process to show that its acquisition Rolling Hills was prudent.

7. Pacific Power failed to prove that its acquisition of the Rolling Hills project was prudent.

8. Costs attributed to Pacific Power's Rolling Hills' project should not be recovered through the RAC mechanism.

9. The most recent estimate of resource availability for the Glenrock project should be used for ratemaking purposes.

10. The estimate for Glenrock should be increased by a discrete factor to account for the effect of Rolling Hills on Glenrock's availability.

11. The financial effects of that discrete adjustment should be incorporated by Pacific Power in future rate filings.

12. The capacity factor for the Seven Mile Hill project should be set at the figure agreed to by the parties in their Stipulation filed in Docket UE 199.

13. Pacific Power's proposed rate design is reasonable.

14. The partial stipulation should be modified to reduce the amount of costs allowed to reflect the exclusion of all costs associated with the Rolling Hills project.

Conclusions of Law

1. Pacific Power failed to prove that it was prudent when it developed the Rolling Hills project.

2. Pacific Power provided that it was prudent when it developed the Glen Rock and Rolling Hills projects.

3. Rates should be set based on the adopted capacity factors for the Glenrock and Seven Mile Hill Projects.

4. Pacific Power's proposed rate design should be adopted.

5. The partial stipulation should be approved, as modified.

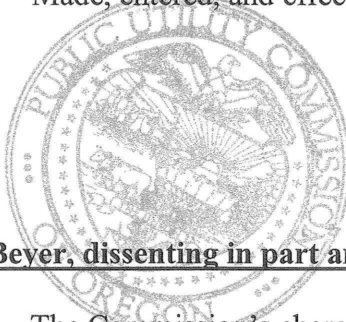
ORDER

IT IS ORDERED that

1. PacifiCorp, dba Pacific Power, is allowed to recover all relevant costs included in its Renewable Adjustment Clause filing, subject to the adjustments adopted in this decision.

2. The revenue change should be allocated across the Company's customer classes on the basis of an equal percent of generation revenue and applied on a cents per kilowatt-hour basis to each applicable rate schedule.

Made, entered, and effective November 14, 2008.



Ray Baum
Commissioner

<u>Chairman Beyer, dissenting in part and concurring in part.</u>

The Commission's charge is not to manage utility companies subject to our regulation, but rather to ensure that the companies are managed in a responsible manner that provides reliable, reasonably priced service. Management, by definition, is the application of considered judgment and, hopefully, common sense.

What is before the Commission in this case is the decision of whether the Company acted in a prudent manner in acquiring the wind generating resources. To be included in rates, state law (ORS 757.210) requires that a utility bears the burden of demonstrating that its decision, in acquiring a resource, was made in a prudent manner.

Webster's New Collegiate Dictionary defines ***<u>Prudence</u>*** as: (1) the ability to govern and discipline oneself by the use of reason; (2) sagacity or shrewdness in the management of affairs; (3) skill and good judgment in the use of resources; (4) caution or circumspection as to danger or risk.

When applied to the acquisition of an energy resource, the history of utility regulation does not require that the company demonstrate that the resource was necessarily the absolute lowest cost available to be found prudent; rather, precedent says

that the utility must just demonstrate that the acquisition was "reasonable" given the circumstances and factors at hand.

In this order, the majority finds that the Company has not adequately met its burden of demonstrating that the acquisition of the Rolling Hills wind project was prudent. I disagree.

In the absence of a formal request for proposals, the majority looks at the Glenrock and Seven Mile Hill projects, as well as other Wyoming wind projects, and finds that Rolling Hills' projected 31 percent capacity factor didn't justify the investment. They hypothesize that there were likely other opportunities that may have been available that might have produced higher capacity factors resulting in cheaper electricity for ratepayers.

While the Company could have done a better job of demonstrating the prudence of its actions, and certainly it would have been preferable to see the results of a formal request for proposals, this application does meet the minimum standard of demonstrating the Company acted in a responsible manner given the circumstances and made a prudent choice in acquiring a resource at a cost similar to other wind resources being acquired in the region.

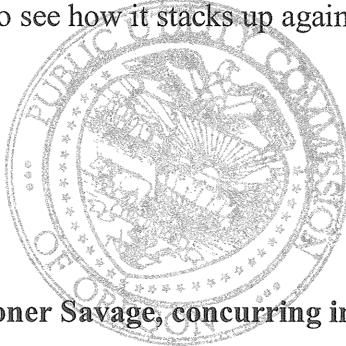
I note that Staff has acknowledged, except for the capacity factor, that the Company developed the Rolling Hills project in a prudent manner. With respect to Rolling Hills' capacity factor, at a projected 31 percent, the project's capacity factor is reasonably close to the 35 percent average capacity factor used in Pacific Power's recently Commission acknowledged Integrated Resource Plan. Likewise, it is similar to or higher than other wind projects that have been accepted by the Commission for inclusion in rates elsewhere in the region, both by Pacific Power and Portland General Electric Company.

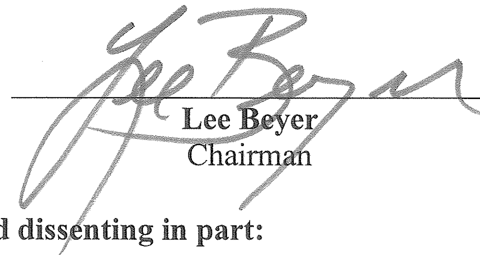
While capacity factor is indeed a major component of a wind project, it is not the only thing that should be considered. There is no question that fast development of renewable generation has been at the top of this Commission's agenda, and thus the Company's work plan. The Commission has frequently directed the Company to report on its progress in acquiring renewables as a method of installing a sense of urgency. Likewise, a goal for attaining a large amount of renewable generation was part of the approval of the acquisition of PacifiCorp by Mid-American. And, in the last legislative session, the Assembly passed SB 838 that set aggressive targets for utilities to incorporate renewable generation in its resource mix.

Given these pressures, and with other Western states setting similar renewable targets, the competitive environment for obtaining scarce wind sites and equipment are intense. Coupled with an unstable Federal tax incentive environment – which can make the difference between whether a project is cost-effective or not – a business climate certainly existed that suggested quick decisions by the Company when opportunities to acquire quality renewables are presented.

Given this environment, the Company has outlined its judgment of the necessity to act as they did. As with any judgment call, those decisions could be questioned. However, the test is whether the Company's actions, given the situation, were reasonable. I believe they were. I believe the Company has met both Webster's definition of prudence as well as the more generally accepted definition used in regulatory practice.

While I disagree with the majority on their determination that the Company did not meet its burden of demonstrating prudence with respect to Rolling Hills, given that determination, I concur that the correct action is to not allow the inclusion of this project in rates. Not putting the Rolling Hills investment in rate base allows the Company to attempt to recover its investment by selling Rolling Hills output in the market or, perhaps, bidding the project or its output into a subsequent request for proposals to see how it stacks up against competition.





Lee Beyer
Chairman

Commissioner Savage, concurring in part and dissenting in part:

I concur in the majority opinion that Pacific Power failed to prove that it prudently acquired its Rolling Hills project. Pacific Power's arguments and evidence are not persuasive. One of the factors weighing against Pacific Power is that it chose to size a manifestly marginal (31 percent capacity factor) Wyoming wind project at 99 megawatts and avoid soliciting competitive bids for projects at other Wyoming sites.

I dissent from the majority that the remedy is to disallow the project in its entirety.

It is very likely, over the longer run, that Oregon customers will be made worse off by this remedy. Removing the Rolling Hills output from power cost runs and replacing it with additional market purchases or reduced market sales may result in increased net variable power costs.

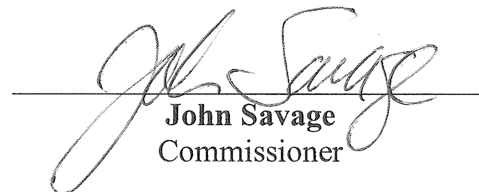
In the near term, the reduced capital cost estimates (in UE 200) will probably exceed the higher net variable power costs (in UE 199). For the longer term (and factoring in REC values), the net result will probably harm Oregon customers.

My preferred approach is a variant of Staff's recommended approach: adjust the amount of Rolling Hills plant investment included in rate base, as proposed by Staff, to reflect a capacity factor based on the average of output-adjusted capacity factors of Wyoming projects of similar vintage.

This approach signals that we want the company to pursue the best possible wind projects. Adjusting for the capacity factor of Rolling Hills makes its costs comparable to other Wyoming projects deemed prudent (such as Glenrock), benefiting Oregon customers.

Further, it would be administratively easier to leave Rolling Hills in rates with the capital cost adjustment. Because the project will remain part of Pacific Power's system, the majority decision will require Rolling Hills to be adjusted out in rate proceedings for the next 20 plus years. We now face 20 plus years of disputes about replacement power costs and reallocation of common costs (such as O&M costs covered under multi-project contracts and wind integration costs), among other issues.

One last point. We leave unresolved a number of hotly disputed issues about our competitive bidding guidelines and how they should be applied in proceedings like this one. Our guidelines need to be revisited.



John Savage
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 by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.

1 **BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON**

2 **UE 200**

3

4 In the Matter of:

5 PACIFICORP, dba PACIFIC POWER
2009 Renewable Adjustment Clause Schedule
6 202

PARTIAL STIPULATION

7

8 The parties have entered into this Partial Stipulation for the purpose of resolving the
9 issue of the amount of operations and maintenance ("O&M") expenses to be included in
10 PacifiCorp's (or the "Company") 2009 Renewable Adjustment Clause ("RAC").

11 **PARTIES**

12 1. The parties to this Partial Stipulation are PacifiCorp, Staff of the Public Utility
13 Commission of Oregon ("Staff"), the Citizens' Utility Board ("CUB"), and the Industrial
14 Customers of Northwest Utilities ("ICNU") (together, the "Parties").[1]

15 **BACKGROUND**

16 2. On April 1, 2008, PacifiCorp filed revised tariff sheets for Schedule 202,
17 PacifiCorp's 2009 RAC, to be effective January 1, 2009. The purpose of the RAC is to
18 implement ORS 469A.120, Section 13 of SB 838, which states that "prudently incurred costs
19 associated with compliance with a renewable portfolio standard are recoverable in the rates of
20 an electric company." The Public Utility Commission of Oregon ("Commission") established
21 the RAC to serve as the automatic adjustment clause required by ORS 469A.120(3) to allow
22 timely recovery of such prudently incurred costs.

23 3. The April 1, 2008, RAC filing reflected total forecasted O&M expenses for the
24 calendar year of 2009 of $26,085,114 on a total Company basis, or $6,889,452 on an Oregon-
25

26 [1] Renewable Northwest Project and Portland General Electric Company are parties to this proceeding but did not file testimony or participate in the settlement conference.

1 allocated basis. This amount includes an adjustment to reflect funding from the Energy Trust
2 of Oregon ("ETO") for Goodnoe Hills.
3 4. On July 23, 2008, Staff filed its proposed adjustment to the Company's O&M
4 expenses. Staff's adjustment resulted in forecasted O&M expenses of $21,583,024 on a total
5 Company basis, or $5,700,385 on an Oregon-allocated basis. This amount includes an
6 adjustment to reflect funding from ETO for Goodnoe Hills.
7 5. On August 22, 2008, the Company filed rebuttal testimony that updated the
8 forecasted O&M expenses based on updated projections. The updated O&M expenses were
9 $21,635,250 on a total Company basis, or $5,714,179 on an Oregon-allocated basis. This
10 amount includes an adjustment to reflect funding from ETO for Goodnoe Hills.
11 6. The Parties convened a settlement conference on September 8, 2008, to discuss
12 resolving the difference in the Company's and Staff's proposed O&M expenses.
13 **AGREEMENT**
14 7. As a result of the settlement conference, the Parties have reached a settlement
15 on the level of O&M expenses in this case. The Parties agree to include in the 2009 RAC
16 O&M expenses in the amount of $21,609,137 on a total Company basis, or $5,707,282 on an
17 Oregon-allocated basis ("Stipulated O&M Expenses"). The Stipulated O&M Expenses include
18 an adjustment to reflect funding from ETO for Goodnoe Hills. Exhibit A to this Partial
19 Stipulation shows the Company's and Staff's proposed O&M expenses and the Stipulated
20 O&M Expenses on a per-resource basis.
21 8. The Parties' agreement on Stipulated O&M Expenses does not reflect an
22 agreement on a methodology for calculating or forecasting O&M expenses in this proceeding
23 or in future RAC proceedings.
24
25
26

1 9. Section 6(e) of the Stipulation adopted in Order No. 07-572[2] contemplates that
2 the Company will update its RAC filing by December 1 to reflect then-current, prudently-
3 incurred actual resource costs, or forecasted costs where appropriate, of certain cost
4 elements. Pursuant to Section 6(b) of that stipulation, such cost elements include forecasted
5 O&M costs. As part of the settlement of this issue, PacifiCorp will not further update its O&M
6 expenses for the 2009 RAC.
7 10. If a resource for which Stipulated O&M Expenses are included in the 2009 RAC
8 does not come on line on or before December 31, 2008, or is otherwise not included in rates,
9 the O&M expenses related to that resource, as specified in Exhibit A to this Partial Stipulation,
10 will be deducted from the Stipulated O&M Expenses. Consistent with the Stipulation in UM
11 1330, the Parties agree to support the use of deferred accounting to allow an opportunity for
12 recovery of the O&M expenses related to such resource, should it come on line during
13 calendar year 2009. The Stipulated O&M Expense specified in Exhibit A will be used in the
14 deferral for any resource in this filing, prorated for the period of the deferral. No Party waives
15 any arguments or rights during the amortization phase of such deferred accounting.
16 11. The Parties agree to submit this Partial Stipulation to the Commission and
17 request that the Commission approve the Partial Stipulation as presented. The Parties agree
18 that the adjustments and the rates resulting from their application are sufficient, fair, just, and
19 reasonable.
20 12. This Partial Stipulation will be offered into the record of this proceeding as
21 evidence pursuant to OAR 860-014-0085. The Parties agree to support this Partial Stipulation
22 throughout this proceeding and any appeal, (if necessary) provide witnesses to sponsor this
23 Partial Stipulation at the hearing, and recommend that the Commission issue an order
24 adopting the settlements contained herein.
25

26 [2] The Stipulation adopted in Order No. 07-572 set out the terms and conditions for PacifiCorp's and Portland General Electric Company's RAC schedules.

1 13. If this Partial Stipulation is challenged by any other party to this proceeding, the
2 Parties agree that they will continue to support the Commission's adoption of the terms of this
3 Partial Stipulation. The Parties agree to cooperate in cross-examination and put on such a
4 case as they deem appropriate to respond fully to the issues presented, which may include
5 raising issues that are incorporated in the settlements embodied in this Partial Stipulation.
6 14. The Parties have negotiated this Partial Stipulation as an integrated document. If
7 the Commission rejects all or any material portion of this Partial Stipulation or imposes
8 additional material conditions in approving this Partial Stipulation, any Party disadvantaged by
9 such action shall have the rights provided in OAR 860-014-0085 and shall be entitled to seek
10 reconsideration or appeal of the Commission's Order.
11 15. By entering into this Partial Stipulation, no Party shall be deemed to have
12 approved, admitted, or consented to the facts, principles, methods, or theories employed by
13 any other Party in arriving at the terms of this Partial Stipulation, other than those specifically
14 identified in the body of this Partial Stipulation. No Party shall be deemed to have agreed that
15 any provision of this Partial Stipulation is appropriate for resolving issues in any other
16 proceeding, except as specifically identified in this Partial Stipulation.
17 16. This Partial Stipulation may be executed in counterparts and each signed
18 counterpart shall constitute an original document.
19
20 This Partial Stipulation is entered into by each party on the date entered below such
Party's signature.
21 ***Signature page follows.***
22
23
24
25
26

1 STAFF
2
3 By: [signature]
4 Date: 9/11/08

ICNU

By: ____________________

Date: ____________________

5 CUB
6
7 By: ____________________
8 Date: ____________________

PACIFICORP

By: ____________________

Date: ____________________

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1 STAFF ICNU

2

3 By: ______________ By: [signature]

Date: ______________ Date: 9/12/08

4

5 CUB PACIFICORP

6

7 By: ______________ By: ______________

Date: ______________ Date: ______________

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

STAFF	ICNU
By: ____________	By: ____________
Date: ____________	Date: ____________
CUB	PACIFICORP
By: [signature]	By: ____________
Date: 9-11-08	Date: ____________

1 STAFF ICNU
2
3 By: ______________________ By: ______________________
4 Date: ______________________ Date: ______________________
5 CUB PACIFICORP
6
7 By: ______________________ By: Andrea Kelly
8 Date: ______________________ Date: 12 Sept 08
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

APPENDIX A
PAGE 9 OF 9

Exhibit A to UE 200 Partial Stipulation
Pacific Power
Oregon
Renewable Adjustment Clause

	CY 2009												
	Leaning Juniper	**Marengo**	**Blundell Bottoming Cycle**	**Goodnoe Hills**	**Marengo II**	**Glenrock**	**Seven Mile Hill**	**Rolling Hills**	**Total**		**Factor**	**Factor %**	**Oregon Allocated**
O&M Expense	3,386,951	4,629,233	510,000	2,457,997	2,320,617	3,845,966	3,551,906	3,383,278	24,085,947		SG	26.4114%	6,361,443
Energy Trust of Oregon Credit	-	-	-	(2,450,697)	-	-	-	-	(2,450,697)		SG	26.4114%	(647,264)
Total PacifiCorp Rebuttal O&M	3,386,951	4,629,233	510,000	7,300	2,320,617	3,845,966	3,551,906	3,383,278	21,635,250	(1)	SG	26.4114%	5,714,179
Percentage of Total O&M	15.7%	21.4%	2.4%	0.0%	10.7%	17.8%	16.4%	15.6%	100.0%				
Staff Witness Garcia's Direct Position									21,583,024	(2)	SG	26.4114%	5,700,385
Variance									52,226				13,794
1/2 of Variance									26,113				6,897
Total Stipulated O&M Expense	3,382,863	4,623,645	509,384	7,291	2,317,816	3,841,324	3,547,619	3,379,194	21,609,137	(3)			5,707,282

Notes:
1) PacifiCorp Witness, R. Bryce Dalley, Exhibit PPL/304
2) Staff Witness, Deborah Garcia, Exhibit 102
3) Stipulated total O&M was derived by splitting the difference between the Company's rebuttal position and Staff's direct position.

ORDER NO. 08-548