

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1355

In the Matter of the

PUBLIC UTILITY COMMISSION OF
OREGON

Investigation into Forecasting Forced Outage
Rates for Electric Generating Units.

ORDER

DISPOSITION: CLARIFICATION OF NOTICE OF INTENT TO MODIFY
STIPULATIONS AND ESTABLISH RATE CALCULATION;
REQUEST FOR COMMENT; ESTABLISHMENT OF
PROCEDURES

I. INTRODUCTION

On October 6, 2009, an Administrative Law Judge (ALJ), at our direction, provided notice to the parties of our intention to adopt the Stipulations settling all of the issues in the case relative to Portland General Electric Company (PGE) and Idaho Power Company (Idaho Power), subject to certain specific modifications, and to modify and insert additional language into the Partial Stipulation relative to PacifiCorp, dba Pacific Power (PacifiCorp), settling certain open issues. The modifications in that Notice set forth the following language to establish the methodology for addressing extraordinary forced outages in the calculation of forced outage rates (FORs) for coal fired generating facilities and for the regulatory treatment of outages caused by utility management's imprudence, as follows:

FOR "Collar": The Parties agree that for each year in which a coal fired unit's annual FOR falls outside the 10th or 90th percentile of comparable NERC coal units, the methodology for calculating the forced outage rate shall be as set forth in Staff/200, Brown/8-15, except that, instead of adjusting the FOR to the 10th or 90th percentile values for the calendar year, the mean annual FOR from the unit's entire historical data shall be substituted. This methodology does not imply "imprudence," and it is not intended to be used to determine imprudence. If the Commission, however, finds that any plant outage is due to utility imprudence, the FOR for that calendar year would be replaced in the four-year rolling average by the

historical mean annual FOR for the unit. Furthermore, for any determination of imprudence related to an outage made after a final order is issued in this docket, the FOR for the calendar year of the outage will not be included in the calculation of the historical mean annual FOR.

The Notice also set October 19, 2009, as the date by which the parties had to notify the Commission of their intention to reject the intended changes and assert their rights to a hearing pursuant to OAR 860-014-0085(6). On that date, PGE, Idaho Power, PacifiCorp, and the Industrial Customers of Northwest Utilities (ICNU) each filed responses. In this Order, we answer clarifying questions raised in those responses, request further comment from the parties, and establish procedures for the conduct of the remainder of the case.

II. COMMENTS OF THE PARTIES

ICNU provided a Notice to the Commission that it did not intend to exercise any rights to withdraw from either the PGE or PacifiCorp stipulations in which it participated. ICNU asserted that it was not necessary to amend the PacifiCorp Stipulation because the subject matter of the Notice—the forced outage collar rate—was not part of the Stipulation and that the record provided adequate information for the Commission to adopt its “hybrid collar.”¹

The utilities also responded to the Commission Notice. The responses generally asked for clarification of certain statements made in the Notice and also sought the opportunity to submit additional evidence and comment on matters for which the utilities felt there had been insufficient data on the Record to warrant the conclusions of the Commission. The utilities also took issue with both the modification of the extraordinary outage collar calculation, and the application of adjustments to the FOR calculation for events leading to forced outages where imprudence was involved.

PGE notified the Commission that it intended to reject the Commission Notice’s modifications to its Stipulation and urged the Commission to adopt the PGE Stipulation in its original form. PGE gave several reasons for rejecting the Commission modifications:

- The proposal has not been vetted.
- The proposal would cause further discontinuities and anomalous results.
- The proposal is inconsistent with the four-year moving average concept.
- There are inherent data availability problems; there is no evidence in the record that PGE has complete historical data on the Boardman plant and locating the data for Boardman and Colstrip would be time-consuming and costly.

Idaho Power likewise rejected the Commission’s modifications to its Stipulation, and urged the Commission to adopt the Idaho Power Stipulation in its original form. Failing that, Idaho Power asked for additional proceedings, asserting:

¹ ICNU Response at 2-3.

- There is no evidence in the record to support the assertion that this methodology is appropriate for Idaho Power.
- The means of calculation are unclear.
- There is no record to support the Commission’s proposal for treating imprudence outages differently; a change in policy should be open to examination and comment.
- Further hearings are necessary to address these matters as they are unsupported in the record and beyond the scope of the issues list.

The PacifiCorp Partial Stipulation did not address the FOR collar issue and the company rejected the Commission modifications as an addition to the Partial Stipulation. PacifiCorp also exercised its rights and requested additional proceedings on the grounds that:

- There is no evidence in the record explaining or analyzing the proposal.
- In analyzing the proposal, PacifiCorp believes that the modification will result in permanent disallowance of prudent net power costs.
- The language is ambiguous.
- The treatment of imprudence is beyond the issues list and has no support in the record.
- Hearings are therefore necessary to examine the Commission modification proposal.

III. POINTS OF CLARIFICATION OF COMMISSION NOTICE

From the comments received, the Commission believes that some clarification of the Notice is necessary to remove any ambiguity as to what requirements a utility is to meet in the event of an extended forced outage at one of its coal fired plants. We first address the phrase “unit’s entire historical data.” PGE asserts at page 6 of its Response that there is nothing in the record regarding the availability of data relating to the operations of the Boardman plant in the distant past. PGE also has an interest in the Colstrip 3 and 4 plants and has not verified that the plants’ operator has the necessary records.

We clarify our Notice in this regard by stating that there is a rebuttable presumption that all such records are available, or recreatable. The burden is upon the utility to demonstrate that it has made its best reasonable effort to locate or recreate the forced outage history of a coal fired plant. In the event that the utility cannot reasonably locate or recreate the data, the utility shall use all of the historical data that it has been able to obtain through its best efforts and accompany the data by a declaration to that effect.

Another point of clarification relates to the use of data for a year that falls outside the FOR collar. Although the actual data for the outside-the-collar forced outage year will not be used in the computation of the FOR four-year moving average, it will (if not due to imprudence) become part of the historical data set that will be utilized in subsequent outside-the-collar FOR calculations. Years with outages due to imprudence will be excluded from all calculations.

IV. PROCEDURAL RIGHTS

In their respective responses, PGE, Idaho Power, and PacifiCorp each indicated its intention of exercising its rights under OAR 860-014-0085(6) to present additional evidence and argument. To determine what additional proceedings are necessary, we divide the issues into two groups and ask the parties to respond to the following inquiries:

Other PGE and Idaho Power Stipulation Issues. Our proposed changes outlined in the Notice only addressed coal plant forced outage rates, so additional proceedings on other stipulated issues may not be necessary. However, we want to ensure that PGE and Idaho Power have the opportunity to file reply testimony and cross-examine witnesses on these other stipulated issues if they so choose.² If the parties waive that opportunity, we will make our findings of fact and conclusions of law based upon the existing testimony and briefs. At the same time, parties may consider a partial stipulation on these other stipulated issues.

Coal and Imprudence Issues. To address questions of fact and supplement the record, parties may file additional testimony and cross-examine witnesses on issues related to the FOR collar for coal plants outlined in the Notice, to the extent they can show there are new facts that are in dispute. Contrary to certain assertions raised in the filed responses, issues of the treatment of out-of-collar forced outages at coal fired generating facilities and treatment of forced outage occurrences due to company imprudence had been previously addressed in pre-filed testimony. *See, e.g.*, CUB/100, Jenks/3; PPL/101, Godfrey/4. Parties will only be allowed to offer additional testimony if they can establish that there are new issues of fact that their witnesses have not previously been able to address.

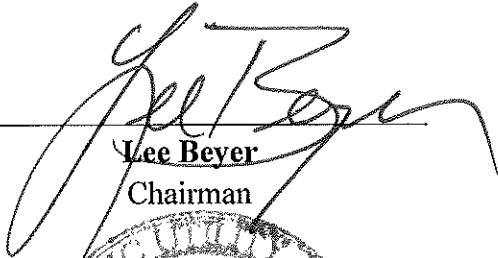
Regardless of whether additional testimony may be allowed, all parties will be allowed to file opening and reply briefs with respect to those issues and, in addition, may make further argument based upon the existing record with respect to other aspects and issues of the case if they so choose.

² The ALJ has already admitted the pre-filed direct testimony of the parties and certain data responses into the record by Ruling of September 28, 2009.


V. ORDER

It is ordered that the presiding Administrative Law Judge shall convene a procedural conference to discuss these matters with the parties and establish dates and procedures for the remainder of the case consistent with this Order.

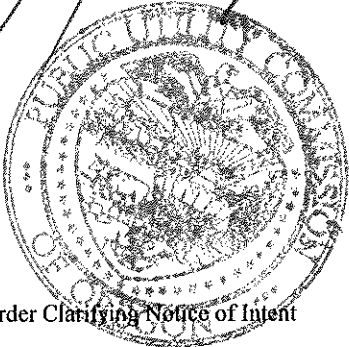
Made, entered, and effective DEC 07 2009.




Lee Beyer
Chairman



John Savage
Commissioner





Ray Baum
Commissioner

UM 1355 Order Clarifying Notice of Intent