

**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: PACIFIC POWER MOTION FOR ADDITIONAL TESTIMONY DENIED; PGE AND IDAHO POWER MOTIONS FOR ADDITIONAL TESTIMONY GRANTED IN PART; SCHEDULE TO BE ESTABLISHED

I. INTRODUCTION

On October 6, 2009, the 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 (Pacific Power), settling certain open issues. The modifications in that notice related to the proper methodology for addressing extraordinary forced outages in the calculation of forced outage rates (FORs) for coal fired generating facilities.

In its testimony, the Commission Staff had proposed the Commission use industry data provided by the North American Electric Reliability Council (NERC) to objectively determine whether a plant has experienced an extreme forced outage. If the plant's forced outage rate fell outside of the 10th or 90th percentile values for comparable industry data, Staff recommended the Commission adjust the plant's annual FOR for that year back to the NERC 10th or 90th percentile values.¹

During subsequent settlement discussions, PGE and Idaho Power agreed to include Staff's proposed methodology as part of comprehensive stipulations intended to resolve all open

¹ See Staff/200, Brown 8-15.

issues with respect to each utility.² Pacific Power did not, and proposed an alternate methodology for our consideration.³

During our consideration of the PGE and Idaho Power stipulations, as well as the open issues related to Pacific Power, we generally agreed with Staff's proposed FOR collar methodology. We determined, however, that the methodology could be made more accurately predictive with one minor modification. Specifically, we concluded that, rather than adjusting an outlier to the NERC 10th or 90th percentile, the FOR for that year should be replaced by the mean annual FOR from the unit's entire historical data. We also determined that certain provisions should be added to address outages caused by utility imprudence. Accordingly, we proposed the stipulations include the following FOR collar:

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.⁴

The notice also provided the parties an opportunity to notify the Commission of any intention to reject the proposed modification and to assert their rights to a hearing pursuant to OAR 860-014-0085(6). On that date, PGE, Idaho Power, Pacific Power, and the Industrial Customers of Northwest Utilities (ICNU) each filed responses.

In Order No. 09-479, entered December 7, 2009, we clarified that "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 * * **. *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.*"⁵

² See PGE Stipulation, ¶ 2.d.; Idaho Power Stipulation, ¶ 5.c.

³ See Pacific Power Opening Brief at 1-2.

⁴ ALJ Ruling at 3 (Oct 7, 2009).

⁵ Order at 4 (emphasis added).

PGE, Pacific Power, and Idaho Power each filed motions seeking the right to file additional testimony. CUB and ICNU opposed all three utilities' motions. Staff did not oppose the motions but reserved the right to object to any new testimony that might be filed.

II. DISCUSSION

All three utilities seek the opportunity to file additional testimony in order to respond to new issues raised by the Commission. We address each request separately.

A. Pacific Power

Pacific Power seeks to file additional testimony in the interest of developing a full and complete record in this docket. Pacific Power asserts that its new testimony will establish “new facts,” including that the Commission’s FOR collar proposal could produce anomalous results, encourage the reduction in overall efficiency, fail to produce more accurate forecasts, and be less fair.⁶

CUB replies that Pacific Power has failed to meet the standards required to submit additional testimony because it raises no new facts subsequent to the submission of reply and supplemental testimony and that every issue it raises has already been in play. Furthermore, CUB states that Pacific Power has not shown any lack of due process, having had the opportunity to participate in four workshops and having filed direct, rebuttal, and supplemental testimony; an opening brief; a reply brief; a partial stipulation; and a letter allegedly seeking clarification of certain issues.⁷

ICNU also objects to Pacific Power’s request. ICNU notes that Pacific Power was already allowed—over ICNU’s and CUB’s objections—the right to file additional testimony to address concerns voiced by the Commissioners at a May 28, 2009, workshop. ICNU also notes that the Commission’s FOR collar proposal is a hybrid of the Staff and ICNU proposals, both of which were fully litigated. ICNU concludes that Pacific Power has failed to identify any new issue and that the record is sufficiently developed. Further testimony, according to ICNU, is unnecessary and duplicative.⁸

Commission Resolution

Pacific Power, unlike PGE and Idaho Power, did not enter into a stipulated agreement settling the FOR collar issue. Rather, it filed supplemental testimony, waived the right to cross-examine any witnesses, and submitted the matter for Commission resolution based on the record. It also filed opening and reply briefs. Because the record provided adequate information for our decision, we were not required to provide notice to Pacific Power of the modified FOR collar—we could have simply adopted it for Pacific Power.

⁶ PacifiCorp’s Motion to File Additional Testimony at 4-5.

⁷ CUB Reply in Opposition at 11.

⁸ ICNU Opposition at 3-5.

Furthermore, Pacific Power had the full opportunity to analyze and comment upon the key elements that comprised the Commission's proposed FOR collar. As noted above, the Commission proposal has been described by all of the parties as a "hybrid" of the Staff and ICNU proposals. Although Pacific Power complains that ICNU's proposal came late in reply testimony, Pacific Power had the opportunity to cross-examine ICNU's sponsoring witness but declined to do so. Moreover, Pacific Power addressed both Staff's and ICNU's proposals in opening and reply briefs.⁹

Pacific Power has had sufficient opportunity to present evidence and has failed to establish that there are any new facts that require additional testimony. Pacific Power's request to file additional testimony is denied. As we noted in Order No. 09-479, however, Pacific Power will be allowed to further address these matters in briefs.¹⁰

B. PGE

PGE notes that, because it had reached settlement on all issues in this docket, it waived its right to file supplemental testimony or cross-examine witnesses. Because the Commission has proposed to modify that settlement, PGE seeks the opportunity to file additional testimony on the FOR collar. Specifically, PGE requests the opportunity to address key components of Staff's and ICNU's proposals relied upon by the Commission in developing its hybrid FOR collar.

With regard to Staff's proposal, PGE seeks to provide additional testimony to address:

- The use of NERC data to form a collar mechanism;
- The appropriateness of the 10th and 90th percentiles;
- The bias introduced in the FOR projections from use of such a collar; and
- The financial impact on PGE of a collar.

With regard to ICNU's proposal, PGE seeks to provide testimony to address:

- The methodologies used by ICNU's expert witness;
- The appropriateness of the data set proposed by ICNU;
- The potential bias of ICNU's proposal;
- The lack of data for PGE plants needed under the proposal; and
- The financial impact on PGE under ICNU's proposal.

CUB responds that PGE's filing "misses the mark" because every issue raised by PGE in its motion was "already in play" at the time it filed its last round of testimony. According to CUB, PGE has not only not raised any new issues, but also failed to show any lack of due process; it made the strategic decision to enter into the stipulated settlement rather than file more briefs, thereby waiving its right to file additional testimony. CUB also notes that the Commission's collar was a

¹⁰ See Order No. 09-479 at 4.

hybrid of Staff and ICNU proposals, both of which were fully litigated. CUB concludes that PGE's motion should be denied.¹¹

ICNU similarly contends that the Commission's proposed FOR collar is a hybrid whose elements have been fully litigated. ICNU contends that PGE has failed to adequately identify what testimony it intends to submit or what the new issues of fact might be. ICNU also asserts that there is no need for PGE to analyze the testimony of ICNU's witness, because it is the Commission's plan that is at issue.

Commission Resolution

OAR 860-014-0085(6) requires the Commission, upon rejection of a stipulation, to "provide the parties with sufficient opportunity on the record to present evidence and argument on the matters contained in the settlement or stipulation."

PGE seeks to provide additional testimony in response to our proposal to modify the stipulated FOR collar to use of historical unit data—rather than NERC data—to substitute an outage rate in years when the collar is triggered. Specifically, PGE seeks to provide additional testimony to address Staff's and ICNU's FOR collar proposals. Staff's proposal, first made in opening testimony filed in April 2009, included the use of NERC data for purposes of both identifying and adjusting extreme outages when forecasting FORs.¹² ICNU's proposal, made in reply testimony filed in August 2009, recommended a modification to Staff's proposal that would use historical data, rather than NERC data, to adjust an extreme outage.¹³

We conclude that PGE has previously had an opportunity to present evidence on Staff's FOR collar proposal. In fact, PGE has already filed testimony responding to Staff's proposal, including the use of NERC industry data. Among other things, PGE provided testimony asserting that Staff's boundaries set at the 10th and 90th percentiles are arbitrary, that Staff's benchmarking methodology introduces bias, and that the NERC sample data is not objective and verifiable.¹⁴ Because additional testimony on these same issues would be redundant, we do not permit it.

We further conclude, however, that PGE has not had the opportunity to address ICNU's proposed modification to Staff's FOR collar. As noted, ICNU presented its proposal in reply testimony following the Commission workshop. Given the timing and circumstances surrounding ICNU's proposal, PGE did not have the opportunity to respond to ICNU's proposal through either testimony or cross-examination. Moreover, because PGE had reached settlement with Staff and CUB, ICNU's proposal was presented with regard solely to Pacific Power. In the interest of fairness, we conclude that PGE should be afforded that opportunity to address ICNU's proposal.

Accordingly, PGE's motion to file additional testimony is granted in part. PGE may file additional testimony to address ICNU's FOR collar proposal. We limit this opportunity, however, in one respect. In its motion, PGE states that it wishes to address the lack of historical data

¹¹ CUB Reply in Opposition at 13-15.

¹² See Staff/100, Brown/18-21.

¹³ See ICNU/300.

¹⁴ See PGE/200, Niman – Hager – Tinker/14-25.

that is available for its plants. Such testimony is not necessary, as we have already clarified that, if a utility is unable to locate or recreate the data, it must use all of the historical data that is available.¹⁵

C. Idaho Power

Idaho Power seeks to present testimony on key issues that it claims it has not had the opportunity to address. Specifically, Idaho Power seeks to address ICNU's proposal to replace excluded averages with an historical average for the FOR collar—a proposal Idaho Power states was offered late in the proceeding and after it had reached settlement with Staff and CUB. Idaho Power also seeks to address the Commission's modified FOR collar proposal, which Idaho Power states is based in part on ICNU's late proposal. Idaho Power does not seek to file testimony on Staff's proposed FOR collar.

Idaho Power states that, through testimony, it will establish the following facts relevant to issues to which the Company has had no previous opportunity to respond:

- Idaho Power may be unable to collect and verify the historical data for its coal plants;
- The use of historical data will not increase the accuracy of forecast outage rates;
- Historical averages are not necessarily predictive of their generating fleet's future outage rates; and
- Idaho Power's fleet so differs from Pacific Power's that the Commission proposal may not be appropriate for Idaho Power.

CUB acknowledges that Idaho Power has not filed testimony in this docket. CUB contends, however, that Idaho Power had the opportunity to fully participate and attend workshops, file testimony, and file briefs, and that "Idaho Power should not now be rewarded for a prior strategic decision to not file testimony" even though it knew what issues were being argued and chose, instead, to enter into a stipulated settlement. Moreover, CUB points out that the settlement came after Pacific Power had filed its supplemental testimony on July 24, 2009; that testimony addressed the problems in using NERC data, as Staff had proposed, as well as technical problems with Staff's benchmarking proposal. CUB asserts that Idaho Power has therefore failed to raise any new issues and also failed to show any lack of due process at any point in the proceedings.¹⁶

ICNU notes that the Idaho Power stipulation was filed September 1, 2009,¹⁷ but makes no other specific reference to Idaho Power in its objection. However, ICNU notes that the utilities generally participated in workshops and were provided ample opportunity to submit testimony and conduct discovery on multiple occasions.¹⁸ ICNU argues that utilities are not

¹⁵ Order No. 09-479 at 3.

¹⁶ CUB Reply in Opposition at 8, 12-13.

¹⁷ ICNU Opposition at 4.

¹⁸ *Id.* at 3-4.

implicitly given “the last word” in a proceeding and the NERC Issues and treatment of imprudent outages and outages outside the FOR collar have already been litigated.¹⁹

Commission Resolution


Like PGE, Idaho Power reached settlement with Staff and CUB on all issues, including the FOR collar. Due to that reason, Idaho Power has not had the opportunity to address ICNU’s proposed modification to Staff’s FOR collar. Accordingly, Idaho Power should be afforded that opportunity now. For reasons discussed above, however, this opportunity is limited to exclude any testimony as to the availability of historical data for its coal plants.

III. ORDER


IT IS ORDERED that:

1. The motion to file additional testimony, filed by PacifiCorp, dba Pacific Power, is denied;
2. The motions to file additional testimony, filed by Portland General Electric Company and Idaho Power Company, are granted in part.

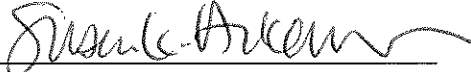
Made, entered, and effective APR 26 2010.



Ray Baum
Chairman



John Savage
Commissioner



Susan K. Ackerman
Commissioner



¹⁹ *Id.* at 6-8.