

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1662

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY and

PACIFICORP, dba PACIFIC POWER,

Request for Generic Power Cost
Adjustment Mechanism Investigation.

ORDER

DISPOSITION: PROPOSED RESOURCE TRACKING MECHANISM
DENIED; DOCKET CLOSED

I. BACKGROUND

In March 2014, Portland General Electric Company and PacifiCorp, dba Pacific Power (collectively the “Joint Utilities”) requested that we open an investigation regarding their recovery of costs incurred to comply with the Renewable Portfolio Standard (RPS) as authorized by ORS 469A.120(1). They stated that the existing ratemaking mechanisms fail to account for all their variable costs directly attributable to RPS compliance that they are legally entitled to recover.

At the November 12, 2014 Public Meeting, we adopted Commission Staff’s recommendation to open an investigation into the ratemaking treatment of variable costs that are a direct result of compliance with the RPS standard, limited to the four issues: (1) Isolation of RPS Variable Costs; (2) Identification and Quantification of RPS Benefits; (3) Discussion of Recovery; and (4) Cost Recovery Design.

In March 2015, the Joint Utilities submitted joint testimony proposing a Renewable Resource Tracking Mechanism (RRTM) to recover their variable RPS costs. In May 2015, Staff, the Citizens’ Utility Board of Oregon (CUB), and the Industrial Customers of Northwest Utilities (ICNU) each submitted testimony opposing the RRTM. In its testimony, Staff offered an alternate proposal in the event the Commission chooses not to reject the RRTM outright. Following additional rounds of testimony and the parties’ waiver of cross-examination, we held oral arguments on November 17, 2015.

II. THE NEED FOR THE MECHANISM

In the eight years since the RPS was adopted, the Joint Utilities have added many new renewable resources to comply with the law. They claim that the actual variable costs and benefits of these resources are not reflected in their rates, however, given the challenges of forecasting intermittent generation and the current design of their respective power cost adjustment mechanisms (PCAMs). As a result, they claim that they have significantly under-recovered their RPS compliance costs.

The Joint Utilities explain that they under-recover their variable costs associated with their RPS compliance requirements because the PCAM evaluates the utilities' overall net power costs (NPC) compared to the forecast established in their annual NPC updates. Additionally, neither the PCAM nor the annual NPC updates include recovery of or account for variations in production tax credits (PTCs) associated with wind production.

The Joint Utilities also state that the design of the NPC recovery mechanisms are inadequate to account for the variable costs and benefits associated with RPS compliance. For example, PacifiCorp explains that, for the years 2007 through 2013, the net market value of its wind generation reflected in the Transition Adjustment Mechanism (TAM) has exceeded actuals by an average of \$31.6 million per year. Under the operation of PacifiCorp's TAM and PCAM, however, these variations were fully absorbed by the company. Similarly, PGE states that, from 2010 to 2013, forecasted amounts included as part of its Annual Update Tariff (AUT) deviated from its actuals by up to \$24 million in a given year. PGE adds, however, that these deviations are not reflected in customer rates due to the operation of the PCAM.

III. THE JOINT UTILITIES' PROPOSAL

A. Recovery under ORS 469A.120

1. *Joint Utilities*

The Joint Utilities' proposal rests on its assertion that ORS 469A.120 entitles them to dollar-for-dollar recovery of all RPS costs. They emphasize that, in enacting the statute, the legislature ensured that the utilities would not be harmed by the RPS mandate to invest in specific resources by allowing them to recover "all prudently incurred costs associated with compliance with a renewable portfolio standard." Based on this assertion, the Joint Utilities argue that their alleged under-recovery of variable RPS costs violates ORS 469A.120(1):

The Joint Utilities currently recover less than 100 percent of their RPS compliance costs, a fact that Staff, the Citizens' Utility Board of Oregon (CUB), and Industrial Customers of Northwest Utilities (ICNU) all concede * * *. Specifically, as a result of the large dead band under their current power cost adjustment mechanisms (PCAMs) the Joint Utilities have no opportunity to recover RPS compliance cost variances up to \$30 million. And there is no opportunity at all to recover cost variances for changes in production tax credits (PTC) in PGE's Annual Update Tariff (AUT) and Pacific Power's Transition Adjustment Mechanism

(TAM), or in the Joint Utilities' PCAMs or Renewable Adjustment Clauses (RACs).¹ (Emphasis in original).

In support of their legal argument, the Joint Utilities offer their interpretation of the legislative history of the statute and cite Commission decisions where they claim we approved deferred accounting and dollar-for-dollar recovery under similar statutory language.

2. *Staff and Intervenors*

Staff, CUB, and ICNU dispute the Joint Utilities' claim that ORS 469A.120(1) requires dollar-for-dollar recovery of all RPS related costs. They likewise cite legislative history, believing that it supports their view that "recoverable" means only the *opportunity* to recover the costs. They note that in the very next provision in the statute, ORS 469A.120(2), the legislature directed an automatic adjustment clause be established to allow the utility dollar-for-dollar recovery of RPS-related capital costs. The parties claim this indicates that the legislators were well aware of the distinction between the two types of cost recovery and chose not to require dollar-for-dollar recovery of non-capital related costs.

B. **Proposed RRTM**

1. *Joint Utilities*

To fulfill the mandate of ORS 469A.120(1), the Joint Utilities propose to separate their renewable resources from the PCAM and pass the variable benefits and costs of those resources through an annual supplemental tariff filing called the RRTM. Through the RRTM, the Joint Utilities would use their respective RAC filings to refund to or collect from customers' variances in NPC (output, market value, purchased integration, and royalties) and related PTCs for RPS-compliant resources. The refund or collection through the RAC would be included as an adjustment to the Results of Operations Report, reducing or increasing the regulated return on equity for the year. The forecasted and actual NPC would be removed from the PCAM for purposes of determining refunds or collections under the PCAM.

For implementing the RRTM, the proposed steps are:

- Each utility establishes an NPC forecast for year one.
- Actual costs are traced for year one.
- During year two, the variances between forecasted and actual costs related to renewable resources in year one are calculated and removed from each utility's PCAM.
- Each utility files to include any variance in rates effective January 1 of year 3.

¹ Joint Opening Brief at 1-2.

For utility-owned resources, the NPC variance is calculated as the difference between forecasted market value of output and actual market value of output. As applicable, the difference between forecasted and actual royalty payments and integration costs will also be calculated. For contracted resources, the NPC variance will be determined by calculating the difference between forecasted output and margin and actual output and margin, with margin determined as the difference between the market price and contract price.

According to the Joint Utilities, market price is the best value to use for determining the variances because both power cost forecasting and actual operations are based on the economic dispatch of resources. The NPC included in rates is reduced by the forecast value of the RPS-compliant resources. To the extent that forecast value is overstated, rates will not reflect the true cost of service including the resources for RPS compliance. If the actual generation from RPS compliant resources does not match the power cost forecast, the utilities must go to the market to either purchase the deficit or sell the surplus.

With regard to the interaction between the RRTM and PCAM, the Joint Utilities explain that each company would continue to make an annual NPC (AUT or TAM) filing, and adjust its PCAM calculations to remove both the forecast and actual renewables power costs. They believe this approach removes possible double counting by applying both the PCAM and RRTM to the same underlying costs, and also enables the PCAM to continue to operate for the non-renewable portion of their power costs. The PCAM will continue to operate, with deadbands, an earnings test, and sharing on non-RPS related net variable power costs.

With regard to PTC variances, the Joint Utilities propose to calculate the difference between actual PTCs generated and those forecasted to be generated in the most recent general rate case. The forecasted PTCs will be valued at the \$/MWH rate used in the utility's most recent general rate case, while actual PTCs will be valued at the rate established by the Internal Revenue Service for the year in question.

The Joint Utilities propose that variances will accrue interest at each utility's authorized cost of capital. While they propose annual revisions to rates, they note that a structure (such as a dollar limit the accrued variances must reach before customers are credited or charged) could be put in place to reduce the frequency of price changes.

2. *Staff and Intervenors*

Staff, CUB, and ICNU oppose the Joint Utilities' proposed RRTM on various policy grounds.

a. *Staff*

Staff contends that the proposed RRTM should be rejected because it shifts too many risks to customers. First, Staff explains that the Joint Utilities' proposed cost calculation in its formula shifts market price risk from the companies to their customers and has nothing to do with renewable resource cost recovery. Second, Staff states that the RRTM also shifts to customers the risk of any difference between the actual energy and

forecasted energy. Third, Staff contends the RRTM shifts the risk of load forecast error. Staff explains that the formula assumes that the load forecast is correct and the unrealized energy is always needed and must be purchased at the market price. In reality, Staff adds, there may be many instances where the load forecast is in error and the unrealized energy is not needed.

Staff states that currently these risks are appropriately shared by customers and the Joint Utilities through the PCAM. By removing these costs from the PCAM, Staff contends that 100 percent of the risk is shifted to customers along with 100 percent of the cost. If the Commission were to approve the Joint Utilities' request for 100 percent recovery of RPS-related variable costs, Staff recommends the Commission shift only the risk associated with renewable plant generation forecast error to customers.

Staff concludes that the Joint Utilities should address any under-collection of variable power costs associated with RPS compliance through modifications to forecasting methodologies.

b. CUB

CUB opposes dollar-for-dollar recovery of variations in power costs generally, and specifically with regard to the variance between forecast and renewable generation and market prices. CUB believes that allowing dollar-for-dollar recovery of forecast errors is poor public policy, improperly shifts risk to customers, has consistently been rejected by this Commission, and is not consistent with the RPS. CUB believes that the Joint Utilities' proposal is a poorly designed measure that has more to do with recovering the costs of changes in market prices than it does recovering forecasting errors in wind generation.

Regarding the specific design of the mechanism, CUB argues that the proposed mechanism is less about tracking the changes in wind production and more about tracking the value of wind, which the utilities value at market prices. CUB maintains that the price changes under the mechanism would therefore be primarily related to market price forecasting errors, not wind forecasting errors.

c. ICNU

ICNU contends that all prudently incurred costs associated with SB 838 compliance are already recoverable in rates. Rather than true-up cost of compliance, ICNU believes that the proposed mechanism would true-up the market value of renewable resource generation – a modeling concept that represents the opportunity cost of energy generated from renewable resources. ICNU notes that, in their proposal, the Joint Utilities do not address actual costs that can be appropriately tied to RPS compliance.

ICNU further argues that the proposed mechanism contains a number of technical problems that cannot be resolved in a manner that is fair to customers. First, the proposed mechanism does not satisfy the Commission's design criteria for a well-designed PCAM because it is not subject to sharing bands, deadbands, and an earnings test. Second, it is difficult to accurately carve-out power costs attributable solely to renewable resources. The power cost impacts associated with renewable resources are

based on complex interactions, not just market value. It is the performance of the whole portfolio that matters; isolating a portion of the integrated resource portfolio for separate recovery inaccurately assesses the performance of the overall portfolio.

Finally, ICNU also opposes the Joint Utilities' proposed true-up of production tax credits (PTCs). True-up of the PTCs only will result in asymmetrical recovery because the utilities do not propose also to adjust accumulated deferred income taxes to reflect the true-up of PTCs.

IV. DISCUSSION

We reject the Joint Utilities' claim that they are entitled to dollar-for-dollar recovery of their prudently incurred variable costs of RPS compliance. We also find the Joint Utilities' proposed RRTM to be flawed and contrary to ratemaking policy, and decline to adopt it.

A. Recovery under ORS 469A.120

The resolution of this issue involves the interpretation and application of ORS 469A.120, which governs recovery of costs associated with RPS compliance. Our task is to determine the intent of the legislature by means of a two-step analytical process as clarified by the Supreme Court in *State v. Gaines*.² We start with a review the text of a statute in context and in light of relevant legislative history. If legislative intent cannot be gleaned from this review, we then turn to relevant maxims of construction.

ORS 469A.120 provides, in part:

(1) Except as provided in ORS 469A.180(5), all prudently incurred costs associated with compliance with a renewable portfolio standard are recoverable in the rates of an electric company, including interconnection costs, costs associated with using physical or financial assets to integrate, firm or shape renewable energy sources on a firm annual basis to meet retail electricity needs, above-market costs and other costs associated with transmission and delivery of qualifying electricity to retail electricity consumers.

(2) The Public Utility Commission shall establish an automatic adjustment clause as defined in ORS 757.210 or another method that allows timely recovery of costs prudently incurred by an electric company to construct or otherwise acquire facilities that generate electricity from renewable energy sources and for associated electricity transmission.

Based on our plain reading of the statute, we agree with Staff, CUB, and ICNU that ORS 469A.160(1) does not mandate dollar-for-dollar recovery of all RPS costs, but rather allows the utilities the opportunity to recover their variable costs. The current ratemaking treatment of the utilities' renewable resources provides this opportunity for the utilities to fully recover the costs of all their generation resources, including

² *State v. Gaines*, 346 Or 160 (2009).

renewables—subject to the deadbands, sharing bands, and earnings test in their respective PCAMs.

This interpretation is reinforced by the language in ORS 469A.120(2), where the legislature explicitly mandated the use of an automatic adjustment clause to provide dollar-for-dollar recovery for fixed capital costs associated with RPS compliance. This provision makes clear that the legislature appreciated the difference between various types of cost recovery mechanisms, and only mandated dollar-for-dollar recovery of fixed capital costs.³

We find nothing in the legislative history to cast doubt on our conclusion. We agree with the parties that the history generally shows that the stakeholders were focused on the mechanism for recovery of capital investments. Perhaps due to this reason, no history demonstrates any intent to require dollar-for-dollar recovery of variable costs. To the contrary, the history that exists shows an understanding that certain RPS costs would not be subject to the automatic adjustment clause and would need to be recovered through general ratemaking.⁴

B. Proposed Renewable Resource Tracking Mechanism

Having rejected the Joint Utilities' legal argument, we turn to the policy question of whether to adopt separate ratemaking treatment for variable costs associated with renewable resources. We conclude the answer is no.

We are not persuaded that there is a material difference between variable power costs associated with RPS-compliant resources and variable power costs associated with other resources to warrant different rate-making treatment. All variable power costs, regardless of resource type, should be recovered through the operation of the Joint Utilities' respective PCAMs. As Staff and intervenors note, these PCAMs were designed to promote various regulatory policies and to operate in the long-term interests of the utility shareholders and ratepayers.

We acknowledge the Joint Utilities' concerns about forecasting intermittent generation and the differences in the actual value of their renewable resources from the forecasted values. We note, however, that forecast errors exist for all generation resources, and that the PCAM is designed so that the errors should balance out over time. In the event of a persistent forecast error in one direction, we agree with Staff that the solution is to refine models and improve the forecasting of model inputs, not to adopt different ratemaking treatment outside the PCAM for one component of net variable power costs.

³ *Hale v. Klemp*, 220 Or App 27, 32 (2008) (“When we examine the text of the statute, we always do so in context, which includes, among other things, other provisions of which the disputed provision is a part.”).

⁴ “[T]he utility will have to file a general rate case under ORS 757.210 to seek recovery of costs that do not qualify for recovery under the automatic adjustment clause.” Testimony, Committee on Energy and the Environment, SB 838, April 16, 2007 (Statement of Public Utility Commission Chairman Lee Beyer).

Having rejected the proposed RRTM, we also deny the Joint Utilities' request that we isolate their associated PTCs for ratemaking purposes. The ratemaking treatment of the PTCs should remain in the general rate case where they are accounted for along with other tax issues.

V. ORDER

IT IS ORDERED that:

1. The request to adopt a Renewable Resource Tracking Mechanism (RRTM), made by Portland General Electric Company and PacifiCorp, dba Pacific Power, is denied.
2. This docket is closed.

DEC 18 2015

Made, entered, and effective _____.



Susan K. Ackerman
Chair





John Savage
Commissioner



Stephen M. Bloom
Commissioner

A party may request rehearing or reconsideration of this order under 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 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.