

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 195

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| In the Matter of |) | |
| |) | |
| IDAHO POWER COMPANY |) | |
| |) | ORDER |
| Application for Authority to Implement a |) | |
| Power Cost Adjustment Mechanism for |) | |
| Electric Service to Customers in the State |) | |
| of Oregon. |) | |

DISPOSITION: MOTION FOR CLARIFICATION GRANTED IN PART AND DENIED IN PART; POWER COST ADJUSTMENT MECHANISM ACCEPTED AS APPROVED APPLICATION FOR DEFERRED ACCOUNTING TREATMENT.

In this Order, the Public Utility Commission of Oregon (Commission) responds to a Motion for Clarification (Motion) filed by Idaho Power Company (Idaho Power or the Company) regarding the accounting treatment of its Power Cost Adjustment Mechanism (PCAM) and accepts the previously approved PCAM as satisfying the statutory requirements of ORS 757.259 and the regulatory requirements of OAR 860-027-0300 as a Commission-approved application for deferred accounting treatment.

Introduction. By Order No. 08-238, entered in this docket on April 28, 2008, the Commission approved a Stipulation between Idaho Power and Commission staff (Staff) and authorized the Company to add Annual Power Cost Update (APCU) and PCAM provisions to its rate schedule applicable to rates for the Company’s Oregon customers. These provisions were necessary because, as we noted in that Order:¹

In docket UE 167, we recognized that Idaho Power’s system is uniquely reliant on hydroelectric generation and acknowledged that, in Oregon, the Company was limited in its ability to amortize deferred costs. Such deferrals adversely impact the Company’s ability to recover net power supply expenses in a timely manner.

* * *

¹ Order No. 08-238 at 1, 4.

Under Oregon's deferral statute, ORS 757.259(8), the Commission may not authorize amortizations of deferred amounts with an overall average rate impact of over 6 percent. This prohibition results in exceedingly long delays between the time the Company incurred excess power costs and their recovery, despite the Commission's grant of the Company's requests for deferred power cost expenses for 2005-2006 and 2006-2007. [Footnote omitted.]

We also noted that ORS 757.210(1) provides for a provision in a utility's rate schedule for an "automatic adjustment clause" allowing rate changes without a hearing to reflect costs incurred, taxes paid to units of government or revenues earned by a utility. The automatic adjustment clause is subject to review by the Commission at least once every two years. We adopted the stipulated provisions applying the PCAM pursuant to that statute, believing that it would benefit Idaho Power and its customers by allowing the Company to recover its prudently incurred power expenses on a timely basis.²

The PCAM was to be implemented as follows:

Each February of each year, beginning in 2009, Idaho Power will file an Annual Power Supply Expense True-up, which will implement the PCAM by calculating the deviation between actual net power supply expenses and those expenses recovered through the Combined Rate for the same period. For purposes of the true-up, power costs are first calculated on a total system basis and then allocated to Oregon based on an allocation factor.

Power supply deviations are calculated using an asymmetrical deadband. A positive deviation (actual expenses greater than those recovered) will be reduced by the dollar equivalent of 250 basis points of Return on Equity (ROE) from Idaho Power's last general rate proceeding. Ninety (90) percent of any excess power supply cost would be deferred for possible recovery. A negative deviation (actual expenses lower than those recovered) will be reduced by the dollar equivalent of 125 basis points of ROE. Ninety (90) percent of any power supply savings would be deferred for possible refund to customers.

² *Id.* at 3-4.

Eligible power supply expense deviations will be added to an annual true-up balancing account at the end of each 12-month period ending in December, along with 50 percent of the annual interest calculated at the Company's authorized cost of capital. Interest will accrue on the balancing account at the Commission-authorized rate for deferred accounts.

Before any amounts of excess power supply true-ups are approved for subsequent recovery or refund, the Commission will apply an earnings test. If Idaho Power's earnings are within 100 basis points of its authorized ROE, no true-up amounts will be added to the balancing account for that year. If earnings are 100 basis points below its authorized ROE, the Company will be allowed to add 90 percent of the eligible amounts to the balancing account, up to an earnings level that is 100 basis points less than its authorized ROE. If earnings are more than 100 basis points above its authorized ROE, the Company will be allowed to include 90 percent of the eligible amounts as a credit to the balancing account, down to an earnings level that is 100 basis points above its authorized ROE.³

The Idaho Power Motion. On July 18, 2008, Idaho Power filed a Motion for Clarification of Order No. 08-238 (Motion). In the Motion, the Company asks the Commission to specifically find that the annual application requirement in the deferral statute, ORS 757.259, does not apply to the PCAM and that the PCAM:

. . . is not subject to the deferral statute by law because it is not a form of retroactive ratemaking. By its terms, the mechanism is subject only to the six percent cap on amortization of deferred amounts, not other aspects of the deferral statute. Therefore, the annual application requirement is inapplicable.

In the alternative, if the Commission finds that a request for deferred accounting is required prior to tracking actual costs for recovery under the [PCAM], Idaho Power requests that the Commission construe the Company's March 24, 2008 tariff filing proposing Schedules 55 and 56 as an application for deferred accounting.

³ *Id.*

Finally, if the Commission finds that Idaho Power Company was required to file an application for deferred accounting and the March 24, 2008 tariff filing did not constitute an application for deferred accounting, the Company requests that the Commission accept this pleading as an application for deferred accounting.⁴

The Company asserts as its first point for clarification that the PCAM should not be subject to the deferral statute. The Company notes the general legal consensus in Oregon that retroactive ratemaking—setting rates to be collected from customers in the future to reflect past profits or losses—is prohibited. The exception is set forth in ORS 757.259, the “deferral statute,” in which the Commission may authorize certain amounts to be deferred and incorporated in later rates. This deferral is limited to a period of 12 months from the time of the deferral application and requires an annual application for deferral prior to deferring eligible amounts. Furthermore, the Commission is limited to 6 percent of a utility’s gross revenues as the annual amount which it may approve to be amortized. As a consequence, a utility with unusually high deferred costs, such as Idaho Power, must amortize those costs over a longer period of time.⁵

The Company also notes that the Commission has the authority to authorize Automatic Adjustment Clauses (AACs) that provide for changes in rates without hearing. AACs may reflect changes in a utility’s costs, taxes paid or revenues earned and are subject to biannual reviews.⁶ The Company asserts that the annual application and 6 percent cap are applicable to an AAC under the deferral statute, but “[i]f the AAC is implemented pursuant to prospective ratemaking, however, the deferral requirements will not apply.”⁷

The Company further states that, while the Commission has authorized purchased gas cost adjustments to be implemented through AACs, it has not explicitly discussed the degree to which these AACs constitute retroactive ratemaking and are therefore subject to the deferral statute. However, a 1987 Oregon Attorney General Opinion said that a fuel adjustment clause—a cost-of-service tariff—would constitute retroactive ratemaking, but that a fixed rate tariff would not. Dollar-for-dollar recovery of past costs is retroactive and must be approved by the Legislature to be valid.⁸ By contrast, a fixed rate tariff uses past rates to estimate current expenses, with previous periods acting as test periods for setting future fuel costs, and is thus prospective and not proscribed retroactive ratemaking.⁹

⁴ Motion at 1.

⁵ *Id.* at 4-5, and portions of ORS 757.259 cited therein.

⁶ *Id.* at 6, and portions of ORS 757.210(1)(b) cited therein.

⁷ *Id.* at 6.

⁸ *Id.*

⁹ *Id.* at 7.

Idaho Power therefore argues that the APCU portion of the APCU/PCAM is most appropriately interpreted as a fixed rate tariff and does not constitute retroactive ratemaking. The Company further contends that the PCAM, although including past costs in its calculation, is not “designed to recover all past costs on a dollar-for-dollar basis,” but instead uses historical costs as the first step in determining the “true-up” and then applies deadbands and an earnings test to calculate the final amount. Oregon law does not prohibit the use of historical costs to establish prospective rates, and the PCAM is similar to the permissible use of such information in a general rate case. Thus, in the Company’s view, the PCAM does not transfer past costs to future ratepayers and is thus not subject to the deferral statute.¹⁰

The Company cites prior Commission orders as indicative that not all power cost adjustment AACs, and the APCU/PCAM in particular, are subject to the deferral statute or that deferrals implemented as AACs are subject to the statute. The APCU/PCAM was specifically identified as an alternative solution to a statutory deferral in docket UE 167.¹¹ The Company also maintains that the Stipulation reflected discussions with Staff during which Staff indicated that only the provision relating to the 6 percent cap related to the deferral statute, despite the lack of such a specific statement within the Stipulation approved by the Commission and that a proper reading of the Stipulation’s provisions supports that interpretation.¹²

In light of the possibility that the Commission may not concur with the Company’s view as to the limited applicability of the deferral statute, Idaho Power asks that, in the event that the Commission finds that a deferral application is required to implement the APCU/PCAM, the Commission accept and construe its Advice No. 08-01 filed March 24, 2008, as its application for deferred accounting for actual net power supply expenses. Under such a construction, a separate application and proceeding for deferred accounting would not be required. Accepting Advice No. 08-01 and construing it as Idaho Power’s application for deferred accounting would acknowledge the good faith actions undertaken by Idaho Power to comply with the Commission’s rules and statutes. Furthermore, the information requirements of OAR 860-027-0300(3) are in large part already present in the tariff sheets, despite a lack of references to authorizing sections of ORS 757.259.¹³

Finally, the Company asks that, if the Commission finds that the Company’s PCAM is subject to the deferral statute and does not accept the tariff filing as an application for deferral, the instant Motion be accepted as such and it appends a Notice of Application for Deferred Accounting to its Motion.¹⁴

¹⁰ *Id.* at 7-8.

¹¹ *Id.* at 8-9.

¹² *Id.* at 10.

¹³ *Id.* at 11-12.

¹⁴ *Id.* at 13-14.

The Staff Response. On August 14, 2008, Staff filed a Response to Idaho Power Company's Motion for Clarification (Response). Staff asserts that "the PCAM true-up allows the Company to transfer past costs to future ratepayers and is subject to ORS 757.259" and should not be treated as a substitute for a deferred accounting application.¹⁵ Staff cites the true-up language contained in the Stipulation and states that the result is the collection of historical costs, subject to a deadband and earnings test and thus constitutes retroactive ratemaking subject to ORS 757.259. Staff contends that ORS 757.210(1)(b) allows for prospective changes in rates and does not give the Commission authority to retroactively adjust rates and, as a consequence, the Company's PCAM must be subject to the deferral statute.¹⁶

Staff also argues that, assuming the PCAM is subject to ORS 757.259, the tariff filing is not an adequate substitute for a deferred accounting application. Staff is concerned that such an action would set a precedent for utilities to argue that the filing of a tariff is equivalent to the filing of a deferred accounting application, which would not provide notice to the Commission or other stakeholders that such an application has been filed or meets the other filing requirements of OAR 860-027-0300(3). The failure to file the deferred accounting application was a Company oversight. However, Staff does not oppose Idaho Power's request to treat the instant Motion as an application for deferred accounting.¹⁷

The Idaho Power Reply. On August 25, 2008, Idaho Power filed a Reply to Staff's Response to Motion for Clarification (Reply). In its Reply, the Company describes the evolution of the PCAM from its original application, but asserts that its basic characteristics were included in the stipulated mechanism. In July, well after the approval of the PCAM mechanism and the beginning of the APCU/PCAM year, counsel for Staff notified the Company that the deferral application might be necessary to allow the Company to book the PCAM variances for inclusion in later rates. The Company's Motion followed.¹⁸

The Company asserts that, assuming the PCAM is subject to the deferral statute, as Staff maintains, the requirements of that statute were met by the proceedings and the required tariff filings. The Company argues that Subsections 2(e) and (4) of the statute were fulfilled by the APCU/PCAM application, the Stipulation and the supporting testimony, exhibits and tariffs. The Company specifically notes that its original application included a true-up component that, to the extent it constituted a deferral, gave adequate notice to all interested parties, who had at least three separate opportunities to comment on the methodology. Thus, in the Company's view, no further application is needed to satisfy the statute.¹⁹

¹⁵ Response at 1. Staff does not oppose the Company's request to treat its Motion as a deferred accounting application.

¹⁶ *Id.* at 2.

¹⁷ *Id.* at 2-3.

¹⁸ Reply at 1.

¹⁹ *Id.* at 2-4.

The Company further claims that the Commission's rules were also satisfied by the filing of the application because it contained virtually all of the information required by OAR 860-013-0036 as a deferral petition, and the Commission has the authority to construe the application and associated filings and accept them in satisfaction of its rules governing deferral petitions.²⁰

Next, the Company argues that a separate deferral filing would be of no practical benefit either to Staff, the Commission or any potentially interested party. The data already supplied is the most current available, and under the timing schedule approved by the Commission, the Company would have to annually provide the identical information (the March forecast) in its deferral filing as in its annual APCU/PCAM filing. The deferral application would be a duplicative filing and thus an empty exercise.²¹

Finally, Idaho Power argues that, for four separate reasons, even if the Commission concludes that, in the future, the Company should make a separate deferral filing each March, it should exercise its discretion in this case to construe the March 2008 forecast as a deferral application. First, as a practical matter, all parties assumed that the Company was beginning a deferral process; second, no party is prejudiced by the failure to file a separate stand-alone deferral application; third, the Company acted with due diligence and, finally, the Company will be harmed by approximately \$2 million by its inability to recover the excess power costs it has incurred and which could have been deferred during the months this matter was pending.²²

DISCUSSION

Under ORS 757.259, the Commission may not authorize amortizations of deferred amounts with an overall average rate impact of over 6 percent, unless it follows the procedures set forth in Subsection (2). The Commission authorized the implementation of the PCAM, pursuant to ORS 757.210(1), which provides for a provision in a utility's rate schedule for an "automatic adjustment clause" that provides for rate changes without a hearing to reflect costs incurred, taxes paid to units of government or revenues earned by a utility, and that is subject to review by the Commission at least once every two years. Such an authorization is not, however, mutually exclusive with the applicability of ORS 757.259.

Although Idaho Power contends that the PCAM is not a form of retroactive ratemaking, we find that the true-up mechanism contained in the PCAM, notwithstanding the earnings band limitations, has, at its core, a recovery of expenses for the provision of service in the past (i.e., "cost of service") from future ratepayers, even if not on a dollar-for-dollar basis. As a direct consequence, we conclude that ORS 757.259(8) does indeed apply to the PCAM.

²⁰ *Id.* at 4, and case cited therein.

²¹ *Id.* at 5.

²² *Id.* at 5-6.

The Company asked that, in the event that we find that the deferral statute is applicable to the PCAM—as we have just done—we construe the Company’s March 24, 2008, tariff filing proposing Schedules 55 and 56 as an application for deferred accounting in full compliance with the statutory requirements of ORS 757.259. We concur with the Company’s view that the requirements of ORS 757.259(1)(b)(2)(e) and (1)(b)(4) were satisfied by the APCU/PCAM application, Stipulation, supporting exhibits and tariffs. We further find that the filing of the application and associated documents contain substantially all of the information required by OAR 860-013-0036.

Given the nature and amount of the information provided by Idaho Power, its good faith efforts to comply with all of the requests of Staff in reaching the Stipulation Agreement and the public nature and notice given throughout the APCU/PCAM application process, including the original true-up proposal in the application, we find that the need for providing adequate public notice and participation has been met. We especially note that potential parties had several opportunities to comment upon Idaho Power’s PCAM methodology.

We do not share Staff’s view that our actions here will set a precedent for utilities to argue that the filing of a tariff is equivalent to the filing of a deferred accounting application. In this particular proceeding, the very nature of the APCU/PCAM process and the agreed-upon filing requirements closely tracked both the timing and the substance of a deferral application *and provided all potential parties with notice that a deferral mechanism was proposed as an integral part of the tariff filing*. Thus, we believe that Staff’s concern about the setting of a precedent leading to a failure to provide interested persons with adequate notice is misplaced.

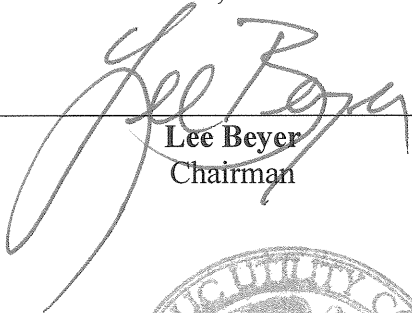
For these reasons, pursuant to ORS 757.259(2) and (4), we grant Idaho Power deferral authority for power supply expense deviations under its PCAM for up to 12 months beginning March 24, 2008. We note, however, that under Schedule 56, the Company’s PCAM, Idaho Power calculates power supply expense deviations on a January through December basis. Accordingly, for requesting reauthorization of deferrals related to the PCAM, we encourage the Company to file an application prior to each January 1 for the subsequent calendar year.

ORDER


IT IS ORDERED that:

1. The Motion for Clarification filed by Idaho Power Company is GRANTED to the extent indicated in this Order and is DENIED in all other respects.
2. All filings submitted by the Company pursuant to Order No. 08-238, shall be consistent with and conform to the requirements set forth in this Order.

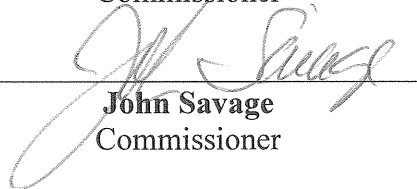
Made, entered and effective OCT 06 2008.



Lee Beyer
Chairman



Ray Baum
Commissioner



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.