

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND	)	DOCKET UE-100749
TRANSPORTATION COMMISSION,	)	
	)	
Complainant,	)	ORDER 16
	)	
v.	)	
	)	ORDER REJECTING FILED
PACIFIC POWER & LIGHT	)	REVISION TO SCHEDULE 95 AND
COMPANY,	)	AUTHORIZING ALTERNATIVE
	)	RECOVERY OF OVER-CREDITS
Respondent.	)	OF RENEWABLE ENERGY
	)	CREDIT SALE PROCEEDS
.....	)	

**BACKGROUND**

- 1 By Order 06, entered March 25, 2011, the Washington Utilities and Transportation Commission (Commission) resolved all issues regarding Pacific Power & Light Company’s (Pacific Power or Company) request for a general rate increase except for certain issues regarding the appropriate treatment of the proceeds from the Company’s sale of Renewable Energy Credits (RECs). The Commission concluded in that order that those proceeds should be distributed to Pacific Power’s ratepayers as a bill credit, and pending resolution of other issues, required the Company to begin crediting customers for REC sales proceeds based on a forecast of future REC sales proceeds, subject to true-up to actual amounts Pacific Power received.
  
- 2 The Commission entered Order 12 on December 28, 2012. That order modified Order 06 to require Pacific Power to file a full accounting of the REC sales proceeds the Company received from April 3, 2011, through December 31, 2012, along with a forecast of the REC sales proceeds Pacific Power reasonably anticipated receiving in 2013 and a proposed revision to the credit in Schedule 95 to reconcile the past overpayments through credit amounts paid over the coming calendar year.

- 3 Pacific Power made a filing in compliance with Order 12 on January 16, 2013. The Company calculated the actual REC sales proceeds credited to customers through the end of 2012 and estimated proceeds for calendar year 2013. Based on those figures, Pacific Power represented that it over-credited customers \$3.6 million as of the end of 2012 and would continue to pay credits in excess of anticipated sales proceeds pursuant to Schedule 95. The Company, therefore, proposed to revise the credit amounts in Schedule 95 to zero cents per kilowatt hour effective immediately.
- 4 On February 12, 2013, the Commission entered Order 13 authorizing Pacific Power's proposed revisions to Schedule 95 and requiring the Company to make annual report and true-up filings as required in Order 06 by January 31 of each successive year.
- 5 On February 28, 2014, Pacific Power filed a letter reflecting an agreement between the Company, Commission Staff (Staff), Public Counsel, and the Industrial Customers of Northwest Utilities (ICNU) on a tracking mechanism for REC sales proceeds. The parties agreed that Pacific Power would make annual filings on May 1 of each year accounting for the total actual REC sale proceeds for the prior calendar year and a true up of the credits issued during that time, including interest on any under- or over-credits.
- 6 On May 1, 2013, Pacific Power made a filing pursuant to the parties' agreement for informational purposes. The Company provided the total REC sales proceeds for the period April 3, 2011 through December 31, 2012, including interest on the over-credited amounts. However, Pacific Power did not propose any change to Schedule 95 at that time to true up the customer credits to the actual REC proceeds.
- 7 In response to Pacific Power's request, the Commission issued a notice on January 23, 2014, extending the deadline by which the Company was required to make the annual report and true-up filings required in Order 13 to May 1, 2014, to reflect the date on which the parties agreed Pacific Power should make such filings.
- 8 On May 1, 2014, Pacific Power made a filing pursuant to the notice and Order 13. The Company provided actual REC sales proceeds received and credits made to customers in calendar year 2013, including interest. Again, Pacific Power did not

propose any change to Schedule 95 or other mechanism to true up the discrepancy between the actual REC proceeds and customer credits.

- 9 On June 5, 2014, Pacific Power filed Schedule 96 to its tariff WN U-75, which implemented a May 30, 2014, Settlement Stipulation between the Company, the Commission, and ICNU in Pacific Power's judicial appeal of Order 10. The tariff provided a one-time credit to customers of \$13 million in historic REC sales proceeds the Company agreed in the settlement to provide to its customers. Pacific Power's filing did not address true-ups of over-credits for REC sales proceeds after April 2, 2011, or how interest should accrue on that outstanding balance. On June 12, 2014, the Commission entered Order 15 permitting the tariff revision to go into effect on less than statutory notice so that customers could begin receiving the credit on June 20, 2014.
- 10 On October 3, 2014, Pacific Power filed a revised Schedule 95 requesting a rate adjustment to recover \$5.2 million in over-credits of REC sales proceeds, plus accumulated interest, over a one-year period beginning November 16, 2014. The Company contends that having provided a credit to customers in June 2014 for REC sales proceeds generated between January 1, 2009, and April 2, 2011, Pacific Power is now entitled to recover the over-credits for such proceeds the Company provided from April 3, 2011, through December 31, 2013.
- 11 Public Counsel observes in comments filed on October 17, 2014, that Pacific Power's proposal would result in a 1.6 percent rate increase for customers or approximately \$1.86 per month for the average residential customer. Public Counsel does not oppose recovery of the principal but recommends that the Commission disallow recovery of interest after May 1, 2013, the date by which the parties had agreed that the Company would begin submitting annual compliance filings detailing REC sales proceeds for the previous calendar year and establishing a true-up of the actual proceeds to the credit amounts. By making only informational filings without a true-up on May 1, 2013, and May 1, 2014, Public Counsel argues, Pacific Power failed to comply with both the parties' agreement and Order 13 and should not recover any interest on the outstanding credit balance after the date on which the Company should have made the initial true-up.

- 12 Commission Staff (Staff), in its October 17, 2014, comments supports Pacific Power's request to recover the over-credited amounts plus interest that have accrued until November 16, 2014, the date on which the Company requests the monthly adjustments take effect, but recommends that the Commission disallow any additional interest after that date. According to Staff, Pacific Power is entitled to collect interest in accordance with the mechanism on which the parties agreed but should not benefit from delaying its true-up request due to the dispute over historic REC sales proceeds. Staff also recommends that the Company recover the over-credits over a two-year period, rather than one year as Pacific Power proposes.
- 13 ICNU recommends in its October 17, 2014, comments that the Commission reject the Company's filing for failure to comply with the Commission's orders or the multi-party agreement, or alternatively, that the Commission suspend the filing to allow for a full investigation. ICNU observes that no Commission order authorizes Pacific Power to collect interest on over-credited REC sales proceeds. ICNU interprets the parties' agreement to limit any interest on over- or under-credits to one year because true-ups were required annually, and the Company's proposal to accrue interest for the more than four years is inconsistent with that limitation. ICNU also contends that Pacific Power's calculations require further scrutiny before the Commission could approve them.
- 14 On October 28, 2014, Pacific Power filed a response to the other parties' comments and in support of the Company's filing. Pacific Power contends that it has timely acted in conformance with its agreement with those parties and Order 13. Pacific Power maintains that it provided multiple filings that detailed the over-credited amounts and clearly stated that interest is accruing. The Company further argues that the interest it calculated is not a windfall but reflects the time value of money and accepted regulatory accounting principles.
- 15 Staff also filed a response to October 28, 2014. Staff adheres to the recommendation in its initial comments but states that it would not object to further limiting of accrued interest, such as Public Counsel has proposed. Staff, however, opposes ICNU's request to reject or further investigate Pacific Power's filing, believing that the record is sufficient to enable the Commission to make a determination now.

### DISCUSSION AND DECISION

- 16 We do not adopt any of the parties' proposals for allowing Pacific Power to recover the over-credits for REC sales proceeds the Company provided to customers after April 2, 2011. As an initial matter, we will not refuse to consider Pacific Power's filing, nor will we conduct further proceedings, as ICNU proposes. The issue is ripe for determination now, and we agree with Staff that we have enough information to make a decision. We nevertheless share some of the concerns the parties raise in their comments.
- 17 ICNU correctly observes that the Commission never authorized interest on the outstanding balance of the over-credits. We agree with Pacific Power that interest represents the time value of money and is consistent with general regulatory principles in some instances, but we question whether this is such an instance. Requiring Pacific Power to pay interest if it underestimated its REC sales proceeds provided the Company with an incentive to ensure its forecasts were as accurate as possible. Allowing Pacific Power to charge interest if it overestimated those proceeds, however, created the incentive to do just that, *i.e.*, err on the side of forecasting excessive sales proceeds because the Company would receive its authorized rate of return on any over-credits and avoid paying any interest on under-credits.
- 18 Not surprisingly, Pacific Power has acted consistently with that incentive. The Company began over-crediting customers shortly after beginning to provide those credits but did not seek authority to terminate them for several months. Nor did Pacific Power file a true-up proposal until October 2014, almost two years later, despite its agreement with the other parties to do so on May 1, 2013.
- 19 The parties, however, agreed in February 2013 that interest would accrue on any under- or over-credits, and all parties were aware that to that date, Pacific Power had made significant over-credits. The Commission neither approved nor rejected that agreement, but we do not believe that disrupting settled expectations on this issue so long after the parties reached their accord would be appropriate. Accordingly, we will allow the Company to recover interest at its after-tax authorized rate of return as the parties agreed. The issue, then, is the period during which that interest accrues.

- 20 Public Counsel proposes that interest accrue only until May 1, 2013, the date on which Pacific Power agreed to file its initial true-up and failed to do so. This proposal would carry more weight if Public Counsel had sought to enforce the parties' agreement at that time. No party insisted on a true-up in May 2013, and under those circumstances, we find it would not be appropriate to terminate interest accrual as of that date.
- 21 Staff recommends that Pacific Power be authorized to accrue interest only until November 16, 2014, the date on which the Company initially proposed to begin recovering the over-credits.<sup>1</sup> We appreciate Staff's effort to propose a compromise, but we see no basis for terminating interest accrual on November 16, 2014, other than to forge a compromise. In the absence of the parties' agreement to accept such a compromise, we will not impose it.
- 22 Pacific Power, for its part, proposes to accrue interest on the outstanding balance until the Company recovers the over-credits in full. In light of our concerns about the applicability of interest in these circumstances and the amount of time that has elapsed since Pacific Power first recognized it was over-crediting customers, we are equally unwilling to approve the Company's proposal to collect interest for almost four years.
- 23 We therefore must determine independently the appropriate time period for interest accrual. We do so by recognizing that Pacific Power's appeal of the Commission's decision requiring the Company to credit customers for its historic REC sales proceeds has effectively delayed adoption of a mechanism for the Company to recover the over-credits for current RECs. As stated in the January 23, 2014, notice extending the deadline for Pacific Power's compliance filing, we refrained from establishing or approving a mechanism for crediting current REC proceeds, at least in part, because of the pending appeal. The Settlement Stipulation filed in the court of appeals on May 30, 2014, terminated that appeal, finally enabling the Commission and the parties to address recovery of the over-credits of current REC sales proceeds.

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<sup>1</sup> On November 14, 2014, Pacific Power filed a revised Schedule 95 with an effective date of December 16, 2014, to provide the Commission and the parties more time to review and evaluate the Company's proposal.

- 24 We find that May 30, 2014, is the date on which accrual of interest on the outstanding balance of the over-credits Pacific Power provided its customers should end. The Settlement Stipulation provides that the Company agreed to credit its customers \$13 million in historic REC sales proceeds, *including interest*. The agreement does not specify how the interest was calculated, but it is reasonable to believe that the interest to which the Stipulation referred had accrued prior to May 30. Accordingly, we construe the Stipulation as providing for no interest accrual after the parties signed it. Accounting for the outstanding balances for both the historic REC sales proceeds and RECs sold after April 2, 2011, awaited resolution of the appeal. Therefore, as interest did not accrue on the outstanding balance of historic REC sales proceeds after May 30, 2014, so should interest no longer accrue on the over-credits of current REC sales proceeds.
- 25 Pacific Power may argue that it distributed the entire \$13 million in historic REC sales proceeds within one month after signing the Settlement Stipulation, but will continue to have an outstanding balance of over-credits for at least 18 months after May 30, 2014. That is a discrepancy of the Company's making. Order 13 required Pacific Power to file a true-up proposal on May 1, 2014. The Company did not make such a proposal on that date. Nor did Pacific Power file a true-up proposal in conjunction with its request to expedite payment of the customer credit required under the Settlement Stipulation. We expected – and believe customers would have preferred – to resolve both issues simultaneously by reducing the credit for the historic REC sales proceeds by the amount Pacific Power over-credited for current REC sales. The Company denied customers that option, and as a result, they now must pay higher monthly rates. They should not, however, pay interest during a payment period that Pacific Power could, and should, have avoided.
- 26 Pacific Power is entitled to recover the amounts it over-credited customers plus interest pursuant to the parties' agreement. That interest, however, should not accrue beyond May 30, 2014 – the date (1) on which the Company's interest obligation for past due amounts ceased and (2) by which Pacific Power should have proposed a true-up mechanism for the over-credits that would have avoided protracted recovery of the over-credits and would have been more beneficial to ratepayers.

- 27 To further soften the blow for customers, we also adopt Staff's recommendation to spread recovery of the over-credits over a period of two years, rather than one year as the Company proposed. We cannot go back in time to provide customers with a more palatable recovery mechanism, but we can minimize the negative impact of the alternative before us.
- 28 In addition, Pacific Power's rates will likely change as an outcome of its pending general rate case in Docket UE-140762, and customers would be better served by a single rate adjustment, rather than two different changes within a short period of time. Accordingly, we require the Company to refile Schedule 95 consistent with this order with an effective date that coincides with the effective date of the tariff filings Pacific Power makes in compliance with the final order in Docket UE-140762.

### **ORDER**

THE COMMISSION ORDERS that:

- 29 (1) The Commission rejects Pacific Power and Light Company's revisions to Schedule 95 filed on October 3, 2014, and revised on November 14, 2014.
- 30 (2) By January 31, 2015, Pacific Power and Light Company must refile Schedule 95 to revise its monthly rates to recover, over a period of 24 months, the outstanding balance of over-credits for the sale of renewable energy credits since April 2, 2011, plus interest at the Company's after-tax rate of return accrued through May 30, 2014. The revised Schedule 95 must become effective on the same date that any changes to the Company's rates resulting from the final order in Docket UE-140762 become effective. As part of its filing of the revised Schedule 95, Pacific Power and Light Company must file work papers supporting its calculations and revised rates.
- 31 (3) Pacific Power and Light Company must continue to make the compliance report and true-up filings required in Order 13 by May 1 of each year until relieved of this obligation.

- 32 (4) The Executive Director and Secretary is authorized to review and make the appropriate determinations on these compliance filings.

DATED at Olympia, Washington, and effective December 12, 2014.

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

JEFFREY D. GOLTZ, Commissioner