

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PACIFIC POWER & LIGHT COMPANY,
a division of PacifiCorp,

Respondent.

DOCKET UE-100749

**PACIFIC POWER & LIGHT
COMPANY'S MOTION FOR
CLARIFICATION OF ORDER 16
OR, ALTERNATIVELY,
RECONSIDERATION**

I. INTRODUCTION

1 Under WAC 480-07-835, WAC 480-07-850, and RCW 34.05.470, Pacific Power & Light Company (Pacific Power or the Company), a division of PacifiCorp, respectfully moves the Washington Utilities and Transportation Commission (Commission) for clarification or, in the alternative, reconsideration of Order 16 entered on December 12, 2014, in this docket.

2 First, Pacific Power requests clarification or reconsideration of the reliance in Order 16 on the settlement stipulation agreed to by the Commission, the Industrial Customers of Northwest Utilities (ICNU) and Pacific Power that resolved the disputed issues in Orders 10 and 11 that were on direct review before the Washington Court of Appeals, Division II, under RCW 34.05.518, in Court of Appeals Case No. 44591-3-II and Superior Court Case No. 12-2-02667-7 (Settlement Stipulation).¹ Specifically, under WAC 480-07-835(1) and WAC 480-07-850(2), Pacific Power asks the Commission to clarify or reconsider paragraphs 24, 25, and 26 of Order 16, which rely on the Settlement Stipulation to disallow interest after May 30, 2014, on the amount that Pacific Power over-credited to customers for revenues from the sale of renewable

¹ Public Counsel was not a signatory to the Settlement Stipulation, but did not oppose it.

energy credits (RECs) from April 3, 2011, through December 31, 2013.

3 In seeking clarification or reconsideration, Pacific Power does not challenge the ultimate outcome in Order 16, recognizing the Commission’s discretion to craft a compromise to the parties’ competing positions in these circumstances. Instead, Pacific Power requests clarification or reconsideration of paragraphs 24, 25, and 26 to confirm that agreement exists regarding the terms of the Settlement Stipulation. Unless Paragraphs 24, 25, and 26 are clarified, Order 16 will be contrary to PacifiCorp’s understanding of the terms of the Settlement Stipulation, as well as the February 28, 2013 joint agreement concerning the over-credited REC revenues.

4 Second, to enable Pacific Power’s compliance in accounting and crediting the proceeds from the sale of RECs, the Company requests clarification that the Commission approves and adopts the joint agreement that Commission Staff (Staff), Pacific Power, Public Counsel, and ICNU filed with the Commission on February 28, 2013, on the proper mechanism for accounting and crediting REC revenues after April 2, 2011. Paragraph 19 of Order 16 states that “[t]he Commission neither approved nor rejected that agreement [from February 2013], but we do not believe that disrupting settled expectations on this issue so long after the parties reached their accord would be appropriate.” Pacific Power is unclear whether Order 16 approves and adopts the February 2013 agreement, and clarification of that question should be granted.

**II. MOTION FOR CLARIFICATION OR, IN THE ALTERNATIVE,
RECONSIDERATION**

5 On October 3, 2014—within 60 days of the dismissal of its judicial review proceeding from Orders 10 and 11 on August 7, 2014—Pacific Power filed a revised Schedule 95 to request a rate adjustment to recover \$5.2 million, including interest, for the over-credited revenues from the sale of RECs from April 3, 2011, through December 31, 2013. Pacific Power proposed for

the over-credited REC revenues to be recovered from customers over a one-year period beginning November 16, 2014.² As of the date of Pacific Power’s filing, the Commission had neither approved nor rejected the parties’ joint proposal on the proper mechanism to account for REC revenues from April 3, 2011, forward.

6 Staff filed a response, and Public Counsel and ICNU filed comments, on the Company’s October 3, 2014 filing. In their respective filings, Staff, Public Counsel, and ICNU acknowledged the February 2013 joint agreement that provides for interest to accrue on the “net balance” of any over-credited REC revenues.³ Notwithstanding the terms of the February 2013 agreement, however, those parties argued that the Commission should limit Pacific Power’s recovery of interest on over-credited amounts, urging that the Company should have sought a rate adjustment at an earlier time. Staff recommended that the Commission disallow interest after November 16, 2014, or the date on which Pacific Power requested that the rate adjustment take effect.⁴ Public Counsel argued that the Commission should disallow interest after May 1, 2013, or the date on which Pacific Power submitted its first compliance filing under the February 2013 agreement.⁵ ICNU argued that the Commission either should reject the compliance filing or suspend it for a “full investigation” or, alternatively, apply interest to only “one year’s balance in the account.”⁶

7 In Order 16, the Commission rejects the various proposals of Staff, Public Counsel, and ICNU to limit Pacific Power’s recovery of interest on the over-credited amounts. Regarding Staff’s proposal to limit interest, paragraph 21 states that there was “no basis for terminating

² October 3, 2014 Letter Requesting Schedule 95—Renewable Energy Revenue Adjustment.

³ Commission Staff’s Response to Pacific Power’s Compliance Filing, at ¶ 3 (Oct. 17, 2014); Comments of Public Counsel in Response to Pacific Power’s Compliance Filing, at ¶ 4 (Oct. 17, 2014); Comments of ICNU in Response to Pacific Power’s Compliance Filing, at ¶ 6 (Oct. 17, 2014).

⁴ Commission Staff’s Response to Pacific Power’s Compliance Filing, at ¶ 5 (Oct. 17, 2014).

⁵ Comments of Public Counsel in Response to Pacific Power’s Compliance Filing, at ¶ 1 (Oct. 17, 2014).

⁶ Comments of ICNU in Response to Pacific Power’s Compliance Filing, at ¶¶ 1, 11 (Oct. 17, 2014).

interest accrual on November 16, 2014, other than to forge a compromise.” Regarding Public Counsel’s proposal, paragraph 22 correctly recognizes that no party ever previously claimed that Pacific Power breached the February 2013 agreement by not filing an initial true-up in May 2013, and paragraph 23 further correctly determines that the judicial review proceeding from Orders 10 and 11 “effectively delayed adoption of a mechanism for the Company to recover the over-credits” until that proceeding was finally concluded. Regarding ICNU’s proposal, paragraph 16 correctly recognizes that Pacific Power’s entitlement to interest on the over-credited REC revenues was “ripe for determination now[.]”

8 In rejecting the various proposals to limit Pacific Power’s recovery of interest on the over-credited REC revenues, paragraph 19 correctly recognizes that “[t]he parties...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.” Paragraph 19 also correctly decides to honor the February 2013 agreement and to “allow the Company to recover interest...as the parties agreed.”

9 After making those correct determinations, however, the Commission in paragraphs 24, 25, and 26 independently determines that no interest should accrue on the over-credited REC amounts after the date of the Settlement Stipulation, or May 30, 2014, because: (1) the Settlement Stipulation stopped the accrual of interest on the historical REC revenues at issue in Orders 10 and 11; and (2) Pacific Power did not seek to resolve the over-credited REC amounts “simultaneously” with the \$13 million rate credit for the historical REC revenues from Orders 10 and 11. Although Pacific Power does not challenge the ultimate outcome in Order 16 or the Commission’s discretion to craft a compromise on interest in these circumstances, Pacific Power requests clarification or reconsideration of the reasoning in paragraphs 24, 25, and 26, because

those paragraphs appear contrary to the terms of the Settlement Stipulation carefully separating the disposition of pre- and post-April 3, 2011 REC revenues, do not acknowledge that the judicial review proceedings associated with the Settlement Stipulation were not finally dismissed until August 7, 2014, and are contrary to the February 2013 agreement on the mechanism to account for REC revenues from April 3, 2011, forward.

10 As paragraph 19 of Order 16 correctly recognizes, the February 2013 agreement—not the Settlement Stipulation—governs interest on the over-credited REC revenues from April 3, 2011, through December 31, 2013. The February 2013 agreement expressly provides that interest will accrue on the “net balance” of any “over- or under-crediting of net revenues” from REC sales, and it additionally reported the amount that the Company over-credited customers with REC revenues for the time period from April 3, 2011, through January 31, 2013.⁷ As paragraphs 6, 9, and 23 of Order 16 correctly note, Pacific Power again reported the amount of the over-credited REC revenues, including interest, on May 1, 2013, and May 1, 2014, but did not seek a true-up at those times because the Commission had “refrained from establishing or approving a mechanism for crediting current REC proceeds, at least in part, because of the pending appeal”⁸ concerning the historical REC revenues that were at issue in Orders 10 and 11.

11 The Settlement Stipulation resolved *only* the historical REC revenues that were at issue in Orders 10 and 11. The Settlement Stipulation provides that the \$13 million rate credit “fully and finally discharges all of PacifiCorp’s obligations under Orders 10 and 11 regarding REC

⁷ February 28, 2013 Joint Letter regarding Renewable Energy Revenue Tracking Mechanism. In addition, Pacific Power submitted a compliance filing on December 31, 2012, showing a net excess distribution of revenues to customers for the period from April 1, 2011, through December 31, 2011. See Compliance Filing, at 3 (Dec. 31, 2012), Confidential Attachment B. On January 16, 2013, Pacific Power made another compliance filing in which it estimated that REC revenues would be over-credited by \$3.6 million for the period from April 3, 2011, through December 31, 2013, and proposed to revise the credit amounts in Schedule 95 to zero. See Compliance Filing, at 3 (Jan. 16, 2013), Confidential Attachment A.

⁸ Order 16, ¶ 23.

Revenues from January 1, 2009, through April 2, 2011, including interest.”⁹ Contrary to paragraph 24 of Order 16, the Settlement Stipulation specifically states that “[t]his Stipulation does not affect REC revenues or rate credits issued to customers through Schedule 95 on or after April 3, 2011.”¹⁰ The Settlement Stipulation also expressly states that “the Stipulating Parties agree that this Stipulation... [is] non-precedential.”¹¹

12 In disallowing interest after the date of the Settlement Stipulation, Paragraph 25 of Order 16 faults Pacific Power for not resolving over-credited amounts “simultaneously” with the implementation of the \$13 million rate credit for the historical REC revenues. But Paragraph 25 overlooks the fact that the Settlement Stipulation expressly obligated Pacific Power to credit customers using a specified procedure for the settlement amount for historical REC amounts—a procedure that specifically did not include an offset for the existing over-credited REC revenues. Pacific Power followed the procedure required under the Settlement Stipulation, and then filed its request to change Schedule 95 to recover the over-credited REC proceeds within 60 days of the dismissal of the judicial review proceeding.

13 The Settlement Stipulation explicitly provides that REC revenues or rate credits issued to customers through Schedule 95 on or after April 3, 2011, were unresolved and *unaffected* by the Settlement Stipulation.¹² To expedite payment to customers for the historical REC revenues, the Settlement Stipulation expressly provides that Pacific Power was required to file and seek expedited approval of a separate tariff schedule—Schedule 96—to implement the \$13 million rate credit for the historical REC revenues.¹³ Pacific Power fully complied with the requirements

⁹ Settlement Stipulation, ¶ 5.

¹⁰ Settlement Stipulation, ¶ 8.

¹¹ Settlement Stipulation, ¶ 9.

¹² Settlement Stipulation, ¶ 8.

¹³ Settlement Stipulation, ¶ 4.

of the Settlement Stipulation, and the Commission approved Schedule 96 without conditions or modifications at an open meeting on June 12, 2014.

14 After the Commission approved Schedule 96 “without modifications or conditions and acknowledge[d] in that order that all of PacifiCorp’s obligations regarding [historical] REC revenues... [were] discharged,” the Settlement Stipulation obligated Pacific Power and the other parties to jointly move to dismiss the judicial review proceeding with prejudice.¹⁴ There is no dispute about the fact that Pacific Power timely fulfilled that obligation.

15 Although paragraph 23 of Order 16 correctly recognizes that the dismissal of the judicial review proceeding “finally enable[ed] the Commission and the parties to address recovery of the over-credits of current REC sales proceeds,” paragraph 23 does not appear to recognize that the judicial review proceeding from Orders 10 and 11 was not finally dismissed until August 7, 2014 —after the Washington Court of Appeals, Division II, issued its mandate in Appellate Case No. 44591-3-II and the Thurston County Superior Court dismissed the proceeding on remand in Superior Court Case No. 12-2-02667-7. On October 3, 2014, within 60 days of the dismissal of the judicial review proceeding, Pacific Power then filed a revised Schedule 95 to request a rate adjustment to recover for the over-credited revenues from the sale of RECs from April 3, 2011, through December 31, 2013, according to the terms of the February 2013 agreement.

16 Although Pacific Power does not challenge the outcome in Order 16 or the Commission’s discretion to craft a compromise on interest in these circumstances, Pacific Power requests that the Commission clarify or reconsider the reliance on the Settlement Stipulation in paragraphs 24, 25, and 26. Nothing in the Settlement Stipulation affected interest on the over-credited REC revenues issued through Schedule 95 on or after April 3, 2011. The Settlement Stipulation also

¹⁴ Settlement Stipulation, ¶ 7.

did not provide that Pacific Power should seek to simultaneously resolve the over-credited REC revenues in seeking approval of the \$13 million rate credit for the historical REC revenues, instead specifically stating that the Settlement Stipulation did not address or affect those REC revenues. Neither did any party request for Pacific Power to resolve those revenues either as part of the Settlement Stipulation or the subsequent Commission proceeding approving Schedule 96.

17 Although the parties claimed in their filings that Pacific Power should have sought a rate adjustment earlier, the Commission’s notice on January 23, 2014, expressly stated that “[t]he Commission has not yet established or approved a mechanism for accounting for REC sales proceeds due to the Company’s judicial appeal and other factors.”¹⁵ Paragraph 23 of Order 16 also correctly recognizes that fact, acknowledging that the Commission and the parties were not prepared to “address recovery of the over-credits of current REC sales proceeds” until after the conclusion of the judicial review proceeding from Orders 10 and 11. Within 60 days after the judicial review proceeding was dismissed following the appellate mandate, Pacific Power filed a revised Schedule 95 to request a rate adjustment to recover the over-credited REC revenues according to the terms of the February 2013 agreement. Pacific Power complied fully with the Settlement Stipulation, and the Commission should clarify or reconsider the reasoning in paragraphs 24, 25, and 26.

18 Pacific Power also requests clarification confirming that the Commission approves and adopts the February 2013 agreement on the mechanism for accounting and crediting REC revenues after April 3, 2011. Paragraph 19 of Order 16 states that “[t]he Commission neither approved nor rejected that agreement [from February 2013], but we do not believe that disrupting settled expectations on this issues so long after the parties reached their accord would

¹⁵ Notice of Extension of Deadline for Compliance Filing at 1.

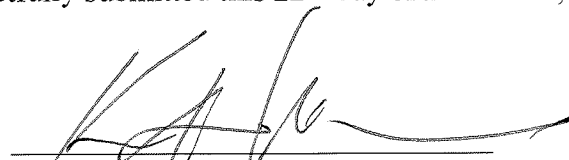
be appropriate.” It is unclear whether Order 16 approves and adopts the February 2013 agreement, and the Company requests clarification on that issue for future compliance filings, particularly the deadline for the annual filing of reporting and true-up filings. Currently, Pacific Power is obligated under Order 12 to file annual filings on January 31 of each year, although the parties’ February 2013 agreement requires filings on May 1 of each year.

III. CONCLUSION

19 For the reasons stated above, the Commission should grant PacifiCorp’s motion for clarification of Order 16 or, alternatively, reconsideration. Pacific Power is not challenging the Commission’s authority to craft a compromise regarding interest on the over-credited REC amounts in this docket, nor does Pacific Power challenge the ultimate outcome of Order 16. Unless revised, however, Order 16 appears contrary to the Settlement Stipulation and the parties’ February 2013 agreement. PacifiCorp also requests that the Commission clarify that it approves and adopts the February 2013 agreement.¹⁶ Clarification should be granted.

Respectfully submitted this 22nd day of December, 2014,

By:



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¹⁶ The Commission’s January 23, 2014 notice “extend[ed] the initial deadline for PacifiCorp to comply with paragraph 8 in Order 13 to May 1, 2014, based on the parties’ agreement that the Company will submit a filing detailing its REC sales proceeds by May 1 of each year.” The parties’ agreement was driven by the time needed for the Company to finalize calendar-year data for the filing, which can take up to three months after the end of the year.