

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKET UE-100749
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	ORDER 17
)	
v.)	
)	ORDER CLARIFYING ORDER 16
PACIFIC POWER & LIGHT)	
COMPANY,)	
)	
Respondent.)	
.....)	

MOTION

- 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 Following additional proceedings, Pacific Power made a compliance filing on January 16, 2013, in which the Company represented that it had over-credited customers \$3.6 million for REC sales proceeds received after April 2011 and requested to discontinue making additional credits effective immediately.
- 3 On February 12, 2013, the Commission entered Order 13 granting Pacific Power’s request and requiring the Company to make annual report and true-up filings as required in Order 06 by January 31 of each successive year.
- 4 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 proposal for a tracking mechanism for REC sales proceeds (February 2013 Agreement). The parties agreed to propose 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.

- 5 On May 1, 2014, Pacific Power made a filing pursuant to Order 13 and a subsequent notice authorizing the Company to file on that date. The Company provided actual REC sales proceeds received and credits made to customers between April 2, 2011 and December 31, 2013, including interest, but did not propose any mechanism to true up the discrepancy between the actual REC proceeds and customer credits.
- 6 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, which addressed disposition of REC sales proceeds prior to April 2, 2011. The tariff provided a one-time credit to customers of \$13 million that 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.
- 7 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 between April 2, 2011, and December 31, 2013, plus accumulated interest, over a one-year period beginning November 16, 2014. The Company subsequently extended the filing's effective date to December 16, 2014.
- 8 On December 12, 2014, the Commission entered Order 16, rejecting the filing.¹ The Commission required Pacific Power to 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 is to

¹ See Order 16 ¶¶ 2-15 for a more detailed discussion of the background leading up to entry of that order.

become effective on the same date that any changes to Pacific Power's rates resulting from the final order in Docket UE-140762, the Company's pending rate case, become effective.

- 9 On December 22, 2014, Pacific Power filed a Motion for Clarification of Order 16, or Alternatively 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."² Rather, the Company "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."³ The Company also seeks clarification that Order 16 includes Commission approval of the February 2013 Agreement.

DISCUSSION AND DECISION

- 10 We take seriously the obligations to which parties have agreed in settlements – no less so when the Commission is one of those parties. Accordingly, we will address Pacific Power's concerns that Order 16 is inconsistent with the Settlement Stipulation.
- 11 We start by observing that Order 16 does not state or suggest that Pacific Power did not comply with the Settlement Stipulation. The order does not interpret the Stipulation to require simultaneous resolution of the amount of historic REC sales proceeds to be credited to customers and Pacific Power's recovery of the over-credits the Company made after April 2011. Order 16 also does not find that the Settlement Stipulation determines the calculation of interest on the over-credits. Nor does Order 16 provide that Pacific Power should have made a distribution of historic REC sales proceeds other than according to the terms in the Settlement Stipulation.
- 12 Rather, we concluded in Order 16, and continue to conclude, that Pacific Power's failure to file a proposed true-up mechanism for the over-credits on May 1, 2014, in compliance with Order 13 resulted in an unwarranted extension of the time and manner for recovery of those over-credits. Had the Company made the requisite filing, the Commission could have approved or established a recovery mechanism that

² Motion ¶ 3.

³ *Id.* ¶ 2.

coincided with the one-time credit for historic REC sales proceeds. Accordingly, we determined that interest did not accrue on the over-credits beyond May 30, 2014, the same date that interest stopped accruing on the historic REC sales proceeds.

- 13 Pacific Power incorrectly assumes that we contemplated a departure from the Settlement Stipulation's required distribution of historic REC sales proceeds when we observed in paragraph 25 of Order 16 that historic and current REC sales proceeds issues could have been resolved "simultaneously by reducing the credit for the historic REC sales proceeds by the amount Pacific Power over-credited for current REC sales." Order 13 expressly required adjustments to Schedule 95 to address the current REC sales proceeds. Pacific Power filed a different tariff revision, Schedule 96, to implement the one-time credit to which the parties agreed in the Settlement Stipulation. Schedule 95 could – and should – have been revised to allow the Company to collect a one-time charge at the same time Pacific Power provided the one-time credit under Schedule 96. The result would have been a net reduction in the credit given to customers without requiring any adjustment to the distribution to which the parties agreed in the Settlement Stipulation.
- 14 Pacific Power also contends that it timely submitted its proposal for recovering the over-credits within 60 days of the date the court dismissed the Company's appeal, just as the Commission stated was its expectation. Again, Pacific Power misconstrues our prior order. We explained in paragraphs 23-25 of Order 16 that our focus had been on when the issues in the appeal were *resolved*, not when the court dismissed the case. The Settlement Stipulation was that resolution, and the parties implemented it well before the case was formally dismissed. Nothing in any Commission order authorized the Company to wait until two months after the dismissal to propose a recovery mechanism for the over-credits. To the contrary, the Commission ordered Pacific Power to make that proposal on May 1, 2014, without regard for the parallel appellate proceedings.⁴

⁴ To the extent Pacific Power claims it was awaiting the outcome of the appeal before proposing the true-up mechanism, the filing requirements in Order 06 and Order 13 were not contingent on the resolution of judicial review. The Company could have proposed a true-up that only became effective once the appeal was resolved to address the concern that recovering the over-credits should not precede the crediting of historic REC sales proceeds.

- 15 Pacific Power further argues, “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.’ The Settlement Stipulation also expressly states that “the Stipulating Parties agree that this Stipulation... [is] non-precedential.”⁵ Order 16 does not conclude that the Settlement Stipulation is “precedential” or otherwise determines the amount or recovery of the over-credits of current REC sales proceeds. Rather we found that the date of that Stipulation, in conjunction with the May 1, 2014, deadline for filing the true-up, was a reasonable date on which interest should no longer accrue on the over-credit balance.
- 16 We could have terminated interest accrual on May 1, 2014, when the Company should have filed its proposed true-up. We ultimately decided that authorizing an additional month of interest would be fairer to the Company since it was paying interest on the historic REC sales proceeds until that date. Pacific Power, however, may calculate interest on the over-credit balance until May 1, 2014, instead of May 30, 2014, if the Company believes that any association of the over-credits with the Settlement Stipulation is problematic.
- 17 Finally, Pacific Power maintains that no party requested that the Company address recovery of the over-credits “either as part of the Settlement Stipulation or the subsequent Commission proceeding approving Schedule 96.”⁶ While we would have welcomed, if not expected, such a request from another party, Pacific Power had the ultimate obligation to propose a mechanism for recovering the over-credits. The Company cannot avoid that responsibility by claiming that the other parties also failed to address this issue.
- 18 Pacific Power also requests that the Commission clarify that Order 16 approves and adopts the parties’ February 2013 Agreement “for future compliance filings, particularly the deadline for the annual filing of reporting and true-up filings.”⁷ We did not, and do not, adopt that agreed proposal. Subsequent Commission orders have largely superseded or modified that proposal, and we believe approving and adopting

⁵ Motion ¶ 11 (footnote omitted).

⁶ *Id.* ¶ 16.

⁷ *Id.* ¶ 18.

it now would result in more confusion than clarity. Order 16 has already resolved the specific issue of concern the Company raises,⁸ as well as disposition of the current REC sales proceeds through May 2014. Pacific Power's reports on REC sales proceeds indicate that such sales have declined precipitously over the last three years. Accordingly, we will address any issues with the Company's REC sales and future compliance filings when and if they arise.

ORDER

THE COMMISSION ORDERS that:

- 19 (1) The Commission clarifies Order 16 as stated in this Order, and Order 16
remains in full force and effect.
- 20 (2) The Commission otherwise DENIES Pacific Power & Light Company's
Motion for Clarification of Order 16, or Alternatively, Reconsideration.

Dated at Olympia, Washington, and effective December 31, 2014.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

JEFFREY D. GOLTZ, Commissioner

⁸ Future reporting and true-up filings in compliance with Orders 06 and 13 are due on May 1 of each year. Order 16 ¶ 31 (Order ¶ (3)).