

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: September 23, 2008**

REGULAR CONSENT EFFECTIVE DATE _____

DATE: September 18, 2008

TO: Public Utility Commission

FROM: Marc Hellman

THROUGH: Lee Sparling

SUBJECT: PACIFIC POWER & LIGHT: Docket UM 926: Application for Approval of the Residential Purchase and Sale Agreement by and between the Bonneville Power Administration and PacifiCorp for the Payment of Residential Exchange Program Benefits for 2009 through 2011 and the New Resource Firm Power Block Power Sales Agreement by and between the Bonneville Power Administration and PacifiCorp.

STAFF RECOMMENDATION:

I recommend that the Commission require PacifiCorp to execute the proposed contracts with the Bonneville Power Administration.

DISCUSSION:

Bonneville Power Administration (BPA) is a federal agency that markets low-cost federal power to private and public agencies as well as certain large industrial customers. The Regional Power Act, federal legislation passed nearly thirty (30) years ago, authorizes BPA to provide the benefits of the low-cost federal hydroelectric system to residential and small farm customers of PNW privately owned utilities (IOUs). Under the Act, an IOU has two options by which to enter into contracts with BPA for the benefit of the IOU's residential and small farm customers. The first option is to enter into a residential exchange contract pursuant to provision 5(c) of the Regional Power Act. Under this option, the IOU sells power, equal in amount to its residential and small farm load, to BPA at the IOU's average system cost (ASC). BPA in turn sells an equal amount of power back to the IOU at BPA's priority firm (PF) exchange rate. Typically no power is actually transferred between BPA and the IOU. Rather, cash benefits are provided to the IOU equal to the residential and small farm load multiplied by the difference between the IOU's ASC and BPA's PF exchange rate.

The second method to obtain benefits for the residential and small farm customers is to enter into a contract with BPA under the provisions of 5(b) of the Regional Power Act. Under this provision, an IOU can purchase power from BPA equal to the IOU's net requirements and the power is priced at the new resource (NR) rate. A utility's net requirements are calculated as the difference between the utility's firm loads and its firm resource supply.

BPA is offering two contracts to PacifiCorp covering the two options described above. The contracts cover the time period October 1, 2008 through September 30, 2011. Pursuant to ORS 757.663, Commission approval is required before either PGE or PacifiCorp may enter into contracts with BPA for the purpose of obtaining federal system benefits.

For the last year or so, the OPUC has been very active in BPA proceedings and regional discussions regarding the level of federal system benefits available to residential and small farm consumers. Much activity has taken place since the Ninth Circuit Court ruled that BPA's settlement agreements with the IOUs entered into during the early 2000s were contrary to federal law. BPA reopened its 2002 to 2006 rate case to establish what residential exchange benefits would have been under a properly administered residential exchange program. BPA then compared the results of this analysis to the level of benefits that were actually paid out to determine the level of excess benefits that need to be returned to BPA. BPA also held proceedings to determine the residential exchange benefits for 2009. And BPA has used public processes to review and revamp its policies for determining utility ASC as well as handling Regional Power Act provisions (section 7(b)(2)) that protect public agencies from being harmed by the provision of residential exchange benefits.

Needless to say, there are some aspects of BPA's decisions to which the OPUC is much opposed. For example, the OPUC has submitted testimony and briefs that challenge the legality of BPA's proposal to provide refunds to public agencies for past alleged overpayments to the residential and small farm customers of IOUs. The OPUC will continue to advocate on behalf of the residential and small farm customers and take any actions necessary.

However, whatever our disagreements may be with BPA on its policy and decision making, these contracts act as the vehicle to deliver the benefits, not the amount of benefits. The contracts themselves do not specify any specific level of benefits, only how the benefits would be calculated in a formulaic sense. If the contracts are not approved, customers would not receive any federal system benefits.

The Residential Purchase and Sale Agreement offered by BPA contains provisions that preserve PacifiCorp's rights to challenge BPA decisions regarding level of benefits including the reduction of residential exchange (resx) benefits in order to refund monies to public agencies. Specifically, Section 20 of the contract provides as follows:

Adjustments to Monetary Benefits

The monetary benefits provided under this Agreement shall be subject to adjustment by BPA to account for the overpayment of benefits, if any, for the period October 1, 2001, through September 30, 2008. Any such adjustments shall be limited to those formerly established by BPA in its wholesale power rate adjustment proceedings or other forums established by BPA for the determination of the amount of overpayment to be recovered and the associated recovery period; provided, however, that any such adjustment is subject to the resolution of all administrative or judicial review thereof.

Notwithstanding anything in this Agreement to the contrary, it is hereby agreed that neither Party has waived or is waiving, either by virtue of entering into this Agreement, by making or accepting payments under this Agreement, or otherwise, any arguments or claims it has made or may make, or any rights or obligations it has or may have, regarding (i) the above referenced payments, if any, to PacifiCorp, or (ii) the calculation implementation or settlement of Residential Exchange Program benefits for any period of time, or (iii) implementation or settlement of rights under Contract No. 01PB-10854 (Financial Settlement Agreement), as amended, and each Party hereby expressly reserves all such arguments and rights. This section 20 shall survive the termination or the expiration of this Agreement and shall survive even if any other provision(s) of this Agreement is held to be not consistent with law, or void or otherwise unenforceable.

Currently, PacifiCorp is not receiving any federal system benefits from BPA. In Order No. 08-174, the Commission ordered PacifiCorp not to enter into the interim contract agreement with BPA. This action continued the status of BPA's suspension of benefits.

In the future, PacifiCorp's customers face the prospect of significantly reduced federal system benefits from the level in rates prior to the Ninth Circuit decision. Prior to the cessation of resx benefits, PacifiCorp's Oregon customers were receiving roughly \$52 million annually in resx benefits. Given projected benefits and refund obligations provided by BPA at its workshop, PacifiCorp's Oregon customers would receive, net of the refund obligation to public agencies, \$22 million annually. This is a reduction of \$30 million or 58 percent.

	Resx benefits Prior to Ninth Circuit Decision and Suspension of Benefits (Oregon)	Projected Benefits beginning October 12, 2008 (Oregon)	Projected benefits refunded to public agencies (total company)
Residential Exchange Benefits	\$52 million	\$22 million	\$26.5 million

BPA also developed a second contract relating to section 5(b) of the Regional Power Act. This contract also falls under ORS 757.663 because the contract arises from the Regional Power Act and rights to federal power for the benefit of PacifiCorp's residential and small farm consumers. I recommend the Commission direct PacifiCorp to execute this contract as well. While it is doubtful that PacifiCorp will purchase federal power under this contract, because the power is priced at market, it is useful to have this option.

I should also report that consensus among the states of Washington, Idaho and Oregon has likely been reached regarding the allocation of prospective benefits and refund obligations. The table below provides detail regarding this issue.

State	2002 – 2006		2007 – 2011		Pro rata Load %
	4-state Benefits	%	4-state Benefits	%	
Idaho	140 aMW	29.4%	140 aMW	23.7%	13%
Oregon	256	53.8%	341	57.8%	67%
Washington	80	16.8%	109	18.4%	20%

For prospective gross benefits, the allocation of benefits will be on a pro rata load basis. Oregon represents roughly two-thirds of total qualifying load comprised of the states of Oregon, Washington and Idaho. However, for the period over which BPA has determined excess benefits were paid, the allocation of benefits was not on a pro rata basis. I believe the staffs of both Washington and Idaho agree that any refund obligation shall be proportional to the benefits received. Therefore, Idaho's refund obligation will be greater than on a pro rata load basis and Oregon's will be less.

PROPOSED COMMISSION MOTION:

I recommend that the Commission issue an order requiring PacifiCorp to execute both proposed contracts.