

PacifiCorp and BPA later agreed to convert the power sale portion of the federal system benefits into cash.

PacifiCorp's contract with BPA includes provisions that increase the amount of cash paid to PacifiCorp unless the contracts between BPA and PacifiCorp, BPA's Record of Decisions relating to either Subscription or Residential Exchange Program Settlement, do not face legal challenges. (Puget has a similar contract provision.) To date, there are lawsuits outstanding, filed by publicly owned utilities and others, opposing the benefits offered to the investor-owned utilities. The publicly owned utilities and investor owned utilities have been working hard to resolve the lawsuit matters as well as the role of BPA. As a result of these efforts, these parties have developed a proposal resolving many far reaching issues including federal system benefits for the residential and small farm consumers of the investor owned utilities and the role of BPA. Currently, BPA is reviewing the proposed settlement and its initial reaction is expected the week of June 10, 2002.

The current application by PacifiCorp requests the Commission approve a new agreement that allows BPA to defer the payments that were to begin October 1, 2002. The monies deferred would accrue interest at an annual rate of 4.46 percent, compounded monthly. PacifiCorp may terminate the agreement if it believes that the lawsuit settlement agreement between the publics and the investor owned utilities will not conclude to PacifiCorp's satisfaction. In addition, the Washington, Idaho or Oregon regulatory commissions may terminate the agreement if any of the commissions objects to or disapproves continuation of the deferral period. Once the agreement is terminated, beginning on the date of a new six-month period, BPA shall pay PacifiCorp the deferred cash payments and begin the monthly payments associated with the litigation risk.

The main purpose of this agreement is to allow BPA to not include the potential for cash payments in its new rates for the six-month period beginning October 1, 2002. According to PacifiCorp's application, including the payments could raise BPA rates by 0.65 mills per kWh.

Staff offers that its main substantive issue is the rate of interest on the balancing account. Commission policy is for balancing accounts to accrue interest at the company's authorized rate of return established by the Commission. Docket UE 116 established PacifiCorp's overall rate of return at 8.62 per cent. BPA offers to accrue interest on the deferred account at 4.46 per cent. PacifiCorp recommends the commission adopt a variance to its policy for two reasons. First, BPA does not often pay interest on balancing accounts and so PacifiCorp has done well to get any interest

accrued. Second, PacifiCorp consumers benefit from this agreement because it enhances the likelihood of a settlement between the publics and the investor owned utilities. Settlement is enhanced because it shows good faith on the part of PacifiCorp to entertain this agreement. Staff agrees that it is important to maintain the cooperative working relationship between the publics and investor owned utilities. Therefore, perhaps a variance to standard commission practice is justified.

ALTERNATIVES FOR COMMISSION CONSIDERATION:

The Commission has several alternative actions it could take regarding the PacifiCorp request. One alternative is to not approve amending the current contracts. The effect of this action would be to reduce rates in the near term for PacifiCorp residential and small farm consumers as a result of the flow through of the litigation risk monies provided for in current contracts. The drawback to this action is that Bonneville and the public agency entities would likely perceive this action as a lack of good faith on the part of the Commission; and BPA rates would increase for public agency entities. The settlement achieved by the investor-owned utilities and the public agencies could be put at risk. Staff does not support this alternative.

Another alternative is for the Commission to grant PacifiCorp's request as is.

The last alternative identified by staff is to approve the contract amendment contingent on BPA agreeing to accrue interest on the deferred monies at PacifiCorp's authorized rate of return. This revision would clearly hold PacifiCorp's consumers harmless from a near term perspective. However, it is unclear whether BPA would agree to this revision. Assuming BPA does not agree, it is doubtful that the difference in accrued interest between 4.46 per cent and 8.62 per cent is sufficient to cause the Commission to direct PacifiCorp to not agree to the BPA contract amendment. To avoid these kind of situations, staff believes it is best to include the Commission early on these discussions so that the issues may be discussed among the parties and resolutions reached, rather than a take-it-or-leave-it proposition. Staff encourages PacifiCorp to provide greater notice to the Commission of these issues as they arise.

PROPOSED COMMISSION MOTION:

The Commission approve PacifiCorp's request to amend its power sales contract with the Bonneville Power Administration to defer payments commencing on October 1, 2002.

Alternative motion:

Contingent on the deferred account accruing interest at the Commission's authorized rate of return for PacifiCorp, the Commission approve PacifiCorp's request to amend its power sales contract with the Bonneville Power Administration to defer payments commencing on October 1, 2002.

June 11, 2002

Via Fax and Overnight Mail

Administrative Hearings Division
Oregon Public Utility Commission
550 Capitol Street NE, Suite 215
Salem, OR 97301-2551

Re: Docket UM 926: Approval of Deferral Agreement Between PacifiCorp and the Bonneville Power Administration

PacifiCorp hereby requests Public Utility Commission of Oregon (Commission) approval of the enclosed Agreement Regarding Conditional Deferral of Reduction of Risk Discount Amount, between the Bonneville Power Administration ("BPA") and PacifiCorp, BPA proposed contract no. 02PB-11157 ("Deferral Agreement").

Background and Reasons for Deferral Agreement

The Commission's order no. 01-427 in Docket No. UM 926, dated May 22, 2001, authorized PacifiCorp to enter into a Financial Settlement Agreement with BPA. The Financial Settlement Agreement, identified as BPA contract no. 01PB-10854, accordingly was executed on May 23, 2002. Pursuant to Section 4(b) of the Financial Settlement Agreement, PacifiCorp was to be paid, for the benefit of its residential and small farm customers, \$6,634,240 per month for the period October 1, 2001 through September 30, 2002. This amount was to increase to a net payment of \$6,962,740 per month (\$6,981,876 during a leap year) for the period October 1, 2002 through September 30, 2006.

In addition to the above payments, during the period October 1, 2002 through September 30, 2006, PacifiCorp was to be entitled, again for the benefit of its residential and small farm customers, to an additional payment of \$1,681,318 per month (\$1,685,864 per month during a leap year), if by December 1, 2001, PacifiCorp had not entered into a

settlement agreement with one or more of BPA's publicly-owned utility and cooperative customers that waived and dismissed legal challenges to any of the following related to PacifiCorp's subscription benefits: (1) the Settlement Agreement, (2) the Financial Settlement Agreement, (3) the Residential Purchase and Sale Agreement ROD, (4) the Power Subscription Strategy RODs, including the Residential Exchange Program Settlement ROD, and (5) the application of the 7(b)(2) surcharge to BPA's WP-02 rates. The additional amounts to be so paid were identified in the Financial Settlement Agreement as the "Reduction of Risk Discount" amounts. The intent of this provision was to encourage the publicly-owned utilities and

cooperatives to negotiate a settlement that would eliminate all the litigation that threatens PacifiCorp's current subscription benefits.

A settlement was not reached by December 1, 2001. Therefore absent further action, PacifiCorp would begin receiving the Reduction of Risk Discount amounts commencing October 1, 2002. Under a similar financial Settlement, Puget Sound Energy ("Puget") would begin receiving comparable additional payments of \$2,463,429 per month (\$2,470,178 per month during a leap year) commencing October 1, 2002. BPA would need to increase its power rates by approximately 0.65 mills/kWh to cover the combined payments to PacifiCorp and Puget.

Discussions currently are in an advanced stage between PacifiCorp and the other investor-owned utilities in the Pacific Northwest and numerous publicly-owned utilities and cooperatives regarding a comprehensive settlement of various BPA matters, including litigation relating to the current subscription benefits. An outline of a settlement that would both conclude current litigation and provide the residential and small farm customers of the investor-owned utilities, including PacifiCorp, with new 20-year subscription benefits, has been submitted to BPA for its review and for a public process. One feature of such settlement, if entered, would be a waiver by PacifiCorp and by Puget of the Reduction of Risk Discount amounts during the October 1, 2002 through September 30, 2006 period.

The negotiating parties have asked PacifiCorp and Puget to enter an agreement deferring collection of the Reduction of Risk Discount amounts while the comprehensive settlement is being pursued. Both Puget and PacifiCorp have indicated a willingness to defer such collection, subject to concurrence by their affected state regulatory commissions. PacifiCorp believes that its agreement to defer such additional amounts during the period of negotiations is a necessary component of its overall efforts to secure both a dismissal of challenges to the current subscription benefits and an agreement providing for a long-term continuation of adequate subscription benefits.

The Provisions of Deferral

The Deferral Agreement would defer, but would not forgive, the Reduction of Risk Discount amounts. The deferral could be unilaterally terminated if either (1) PacifiCorp determined that the current comprehensive subscription settlement efforts are unlikely to be concluded successfully to PacifiCorp's satisfaction or (2) this Commission, the Washington Utilities and Transportation Commission, or the Idaho Public Utilities Commission objected to or disapproved continuation of the deferral period. To be clear, the subject outlined settlement now being reviewed by BPA would include a waiver of the Reduction of Risk Discount if carried to completion as submitted to BPA.

If the deferral were terminated, BPA would be required to (1) commence payment prospectively of the Reduction of Risk Discount amounts plus (2) repay all deferred amounts over time with interest. The interest amount specified on deferred amounts would be an annual

rate of 4.46 percent, compounded monthly. This interest rate represents BPA's calculation of the average of its current three-year and five-year borrowing rates, a period designed to reflect the longer end of a period of deferral, if the deferral were later terminated. BPA initially contended that no interest should be paid on deferred amounts but was persuaded by PacifiCorp and Puget that BPA should pay its time value of money on the deferrals. Particularly in light of PacifiCorp's and the Commission's unilateral rights to terminate the deferral and demand payment with interest, PacifiCorp does not think that it could obtain more favorable interest terms than BPA's borrowing rate as proposed.

Commission Action Requested

Accordingly, PacifiCorp requests approval from the Commission at its June 18, 2002 meeting for PacifiCorp to execute the Deferral Agreement. For the reasons stated above, PacifiCorp believes that such approval and execution are important to the prospects for a comprehensive long-term subscription settlement for the benefit of the residential and small farm customers of all Pacific Northwest investor-owned utilities. Time is of the essence in that BPA representatives have informed PacifiCorp that BPA needs to know as soon as possible in June 2002 if the Deferral Agreement is to be executed, because BPA is facing a deadline for determining whether to increase its rates as of October 1, 2002 for the deferred amounts otherwise payable to PacifiCorp and Puget.

Very truly yours,

Marcus Wood

Enclosures

Cc w/encls: Parties of Record

Parties of Record

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Contract No. 02PB-11157

**AGREEMENT REGARDING
CONDITIONAL DEFERRAL OF REDUCTION OF
RISK DISCOUNT AMOUNT
executed by the
BONNEVILLE POWER ADMINISTRATION
and
PACIFICORP**

This AGREEMENT REGARDING CONDITIONAL DEFERRAL OF REDUCTION OF RISK DISCOUNT AMOUNT (Agreement) dated as of _____, 2002 (Effective Date), is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA), and PACIFICORP (PacifiCorp). PacifiCorp is a corporation existing under the laws of the State of Oregon. BPA and PacifiCorp are sometimes referred to in this Agreement in the singular as "Party" and in the plural as "Parties."

RECITALS

- A. Pursuant to Section 4(b) of the Financial Settlement Agreement (Contract No. 01PB-10854) between BPA and PacifiCorp ("Financial Settlement Agreement"), PacifiCorp would have accepted a "Reduction of Risk Discount" of \$1,681,318 monthly (\$10,087,908 every 6 months or \$20,175,816 annually) commencing October 1, 2002, if by December 1, 2001, it entered into specified settlement agreements with one or more of BPA's publicly-owned utility and cooperative customers (hereinafter referred to as "BPA Preference Utilities").
- B. Such specified settlement agreements were not entered into by December 1, 2001, and failure to reach such settlements affects the costs that BPA must include in its LB CRAC adjustment to its wholesale power rates effective October 1, 2002.
- C. As of the Effective Date, discussions between PacifiCorp and various parties, including BPA Preference Utilities regarding a comprehensive settlement of various BPA matters, including litigation relating to Contract No. 01PB-12229 or the Financial Settlement Agreement, are at an advanced stage. (It is an objective of such discussions to develop and execute a new agreement between BPA and PacifiCorp pursuant to which PacifiCorp will, for a period commencing FY 2007, receive payments from BPA for the benefit of its residential and small farm customers pursuant to implementation of or in settlement of the residential exchange provisions of the Northwest Power Act.) BPA Preference Utilities have asked that any such settlement, if successful, include a reduction in payments under

the Financial Settlement Agreement equal to the Reduction of Risk Discount, and that PacifiCorp defer collection of the amounts covered by the Reduction of Risk Discount while settlement discussions continue.

AGREEMENT

The Parties agree:

1. The deferral period under this Agreement shall begin October 1, 2002, and continue until termination of the deferral period pursuant to section 2 below. For each month of the deferral period: (i) the amount equal to \$6,962,740 (\$6,981,876 during a leap year) shall be paid to PacifiCorp pursuant to section 4(b) of the Financial Settlement Agreement on the payment schedule set forth in the Financial Settlement Agreement, and (ii) an additional amount equal to \$1,681,318 (\$1,685,864 during a leap year) shall be deferred.
2. The deferral period shall continue for the 6-month period beginning October 1, 2002. The deferral period shall be continued for each subsequent 6-month period; provided, PacifiCorp may elect, by notice to BPA not less than 120 days prior to the beginning of any such 6-month period, for a reason specified below in this section 2, to terminate the deferral period at the end of such 6-month period. PacifiCorp shall have the right to terminate the deferral period under the Financial Settlement Agreement if:
 - (a) PacifiCorp determines that the current comprehensive settlement efforts regarding litigation relating to Contract No. 01PB-12229 or the Financial Settlement Agreement are unlikely to be concluded successfully to PacifiCorp's satisfaction; or
 - (b) the Washington Utilities and Transportation Commission, the Public Utility Commission of Oregon, or the Idaho Public Utilities Commission objects to or disapproves continuation of the deferral period.
3. Upon termination pursuant to section 2 above of the deferral period at the end of a 6-month period, BPA shall pay PacifiCorp:
 - (a) pursuant to section 4(b) of the Financial Settlement Agreement, monthly payments equal to \$8,644,058 (\$8,667,740 during a leap year); and
 - (b) an additional amount equal to the aggregate amount deferred pursuant to item (ii) of section 1 above since October 1, 2002, together with interest thereon from the deferral until paid, at an annual rate of 4.46 percent, compounded monthly. Commencing upon termination of the deferral period as described in section 2 above, such additional amount, together with accrued interest thereon, shall be paid in equal monthly installments over a period equal to the greater of: (i) the period that begins with the end of the deferral period as described in section 2 above and continues through September 30, 2006, or (ii) the deferral period as described in section 2 above.

4. Any comprehensive final settlement agreement entered into by PacifiCorp and BPA Preference Utilities of litigation relating to Contract No. 01PB-12229 or the Financial Settlement Agreement that is concluded successfully to PacifiCorp's satisfaction shall include PacifiCorp's and BPA's agreement that, unless such settlement is successfully challenged or otherwise is determined to be invalid or unenforceable.
 - (a) the monthly amount paid to PacifiCorp pursuant to the Financial Settlement Agreement, after the agreements successfully concluding such litigation are entered into and become effective, shall equal \$6,962,740 (\$6,981,876 during a leap year) and
 - (b) all amounts that have been deferred pursuant to section 1 above and that have not then been paid to PacifiCorp shall not be paid to PacifiCorp.In no event shall any amount paid by BPA to PacifiCorp pursuant to section 4(b) of the Financial Settlement Agreement be refunded to BPA.
5. In the event of a conflict between the terms of this Agreement and the terms of section 4(b) of the Financial Settlement Agreement, the terms of this Agreement shall prevail.
6. This Agreement shall remain in effect until either:
 - (a) the date specified in a comprehensive settlement agreement entered into pursuant to section 4 above; or
 - (b) the date (following termination of the deferral period pursuant to section 2 above) that all payments owed to PacifiCorp by BPA pursuant to section 3 above have been made.
7. This Agreement sets forth the entire agreement of the Parties with respect to the subject matter hereof and may only be amended by writing hereafter signed by each of the Parties. Each of the Parties represents that its signatory below is authorized to enter into this Agreement on behalf of the Party for whom he or she signs.

PACIFICORP

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By _____
Senior Vice President

By _____
Account Executive

Name _____
(Print/Type)

Name _____
(Print/Type)

Date Signed _____

Date Signed _____