

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

In the matter of the Application of PACIFICORP (U
901 E) for approval to implement a Net Surplus
Compensation Rate

Application No. 10-03-____
(Filed March 1, 2010)

**APPLICATION OF PACIFICORP (U 901-E) FOR APPROVAL OF A NET SURPLUS
COMPENSATION RATE**

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COMPENSATION RATE**

Pursuant to Rules 2.1 and 2.2 of the California Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure; Sections 451, 454, 491, 728, 729, and 2827 of the California Public Utilities Code, and Ruling Paragraph 2 of the Assigned Commissioner’s Ruling Directing Electric Utilities to File Applications Proposing A Net Surplus Compensation Rate Pursuant to Assembly Bill 920 (“Ruling”),¹ PacifiCorp, d.b.a. Pacific Power (“PacifiCorp” or “Company”), respectfully submits this Application requesting approval to implement a net surplus compensation rate in its California service territory.

I. INTRODUCTION AND BACKGROUND

Section 2827 of the Public Utilities Code requires electric utilities to offer a net energy metering (“NEM”) tariff to certain customer-generators with certain types of distributed generation systems. AB 920 amended Section 2827 to require the Commission to establish a Net Surplus Compensation value to compensate certain customer-generators for surplus kilowatt hours generated over 12 months. To accomplish this, President Peevey issued a ruling directing Pacific Gas & Electric, Southern California Edison Company, and San Diego Gas & Electric Company to file applications proposing a Net Surplus Compensation Rate by March 1, 2010.

¹ Issued January 15, 2010 in Docket R.08-03-008.

The ruling invited other electric utilities to file applications, stating it was not necessary, but other utilities could be subject to the outcome of the filings made by the named utilities.

PacifiCorp is a multi-jurisdictional utility providing electric retail service to customers in California, Idaho, Oregon, Utah, Washington, and Wyoming. PacifiCorp serves approximately 46,500 customers in Del Norte, Modoc, Shasta, and Siskiyou counties in northern California. The Company offers an NEM program under California Schedule No. NEM-35 (“NEM-35”). At the time of this filing, 26 customers were taking service under NEM-35, although none of these customers has ever had surplus kilowatt hours at the end of the 12-month cycle.

II. DESCRIPTION OF PACIFICORP’S PROPOSED NET SURPLUS COMPENSATION RATE

As more fully explained below, PacifiCorp proposes to compensate eligible customer-generators at an avoided cost rate. Additionally, the Net Surplus Compensation Rate would include a component to compensate for other attributes. The Company intends to update its NEM-35 tariff in accordance with the outcome of this proceeding.

III. RESPONSES TO NET SURPLUS COMPENSATION RATE QUESTIONS PRESENTED IN THE RULING

PacifiCorp provides the following responses to the questions presented in the Ruling:

- (1) How will Net Surplus Compensation rate be determined? Options include payment of the full retail rate, the generation-only rate, the most current RPS Market Price Referent rate adjusted for time-of delivery, an up-front avoided cost calculation, simple payout of customer bill credits, or some other method of valuation. For whatever rate is chosen, please discuss why the other rate options discussed above were not selected as the preferred method of compensation.**

In determining PacifiCorp’s proposed Net Surplus Compensation rate, the Company reviewed a body of case law to determine what would satisfy the requirements of both the state of California and the Federal Energy Regulatory Commission (“FERC”). In situations where net

metering customer-generators produce more energy than needed over an applicable billing period, FERC considers this to be a net sale of energy to the utility that is subject to FERC's jurisdiction.² Net metering transactions are those in which a utility credits a customer for energy generated by the customer and transmitted by the utility over an applicable billing period.³ However, if the transactions result in a net sale over a reasonable time, such as a billing period, then that transaction is a sale subject to FERC jurisdiction.⁴ The Federal Power Act ("FPA") gives FERC exclusive authority to regulate wholesale sales of electricity.⁵ The FPA defines "wholesale sales" as the "sale of electric energy to any person for resale."⁶ The California legislature noted in the legislative counsel's digest that the electric utility must adopt a method of compensating a net surplus generated by a customer-generator; and that any net surplus electricity belongs to the electric utility purchasing the net surplus and any net surplus energy counts towards the electric utility's renewable resource purchase requirements.⁷

It is well established that FERC has jurisdiction over wholesale sales in interstate commerce. This jurisdiction does not distinguish between the types of facilities used to transmit the electricity, thus FERC's jurisdiction extends to facilities most often used for retail sales (i.e. distribution lines).⁸ Even if electricity generated by customer-generators and purchased by electric utilities is then resold to retail customers, FERC considers the sale to be within interstate

² *MidAmerican Energy Co.*, 94 FERC ¶ 61,340 (2001), *Sun Edison LLC.*, 129 FERC ¶ 61,146 (2009).

³ *Id.*

⁴ *Id.*

⁵ 16 U.S.C. §§ 824-824m. See also, *Transmission Agency of N. Cal. V. Sierra Pac. Power Co.*, 295 F.3d 918, 928 (9th Cir. 2002), quoting *New England Power Co. v. New Hampshire*, 455 U.S. 331, 340 (1982).

⁶ 16 U.S.C. § 824b(2)(d).

⁷ Assembly Bill No. 920, Legislative Counsel's Digest, February 26, 2009.

⁸ See e.g., *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667,694 (D.C. 2000), *aff'd New York v. FERC*, 535 U.S. 1 (2002) ("FPA § 201(a) makes clear that all aspects of wholesale sales are subject to federal regulation, regardless of the facilities used. FERC's assertion of jurisdiction over all wholesale transmission, regardless of the nature of the facility, is clearly within the scope of its statutory authority."). See also *Detroit Edison Co. v. FERC*, 334 F.3d 48, 51 (2003) ("When a local distribution facility is used in a wholesale transaction, FERC has jurisdiction over that transaction pursuant to its wholesale jurisdiction under FPA § 210(b)(1).").

commerce.⁹

One, and only one, exception exists to the FERC's jurisdiction over wholesale sales of electricity. The Public Utility Regulatory Policies Act of 1978 ("PURPA") confers jurisdiction to states to establish an avoided cost price for utility purchases of power from qualifying facilities ("QFs").¹⁰

Based on the Company's review of applicable law, net surplus energy purchases would be considered wholesale sales. Given that, the Company believes there are only two appropriate methods of compensating net surplus energy for customer-generators. If the customer-generator elects to become a QF, the customer could be compensated for any net surplus energy using the Company's then-current avoided cost rate. If the customer-generator is not a QF, the customer could be compensated using a market rate. This would involve negotiating contracts with individual customer-generators. Given that potential customer-generators in the Company's service territory would be very small and unlikely to produce surplus energy, negotiating individual contracts would be administratively inefficient. Therefore the Company proposes to compensate customer-generators electing the Net Surplus Compensation rate at an avoided cost rate, as explained below.

For customer-generators electing to become a QF, the Company proposes to provide payment at the avoided cost rate for any surplus energy. The customer-generator would need to self-certify with FERC, which is a simple process. The Company also proposes a payment for the other attributes associated with the net metering facilities. These other attributes would include:

⁹ 535 U.S. at 7-8. The court noted that technological advances and the development of the transmission networks have made it such that any electricity that enters the grid immediately becomes a part of the energy moving through interstate commerce.

¹⁰ 16 U.S.C. § 824a-3 et. seq.

- The environmental attributes of the energy produced, which could be subsequently aggregated by the utility and registered as certified RECs within the Western Renewable Energy Generation Information System (“WREGIS”).
- Any measurable distribution or transmission system beneficial attributes. Given the total capacity of the net metering program, it is unlikely there will be significant avoided cost savings. However, there could be some level of distribution system benefits, possibly including avoided maintenance costs.

This proposal would use the Company’s then-current methodology for calculating the avoided cost of energy rate. FERC does not have jurisdiction to set rates for environmental or other attributes. Because of this, the Company and participating customer-generators may need to agree to the arrangement and memorialize such an arrangement through a contract. Finally, the Commission would need to state that the applicable rate for the other attributes is prudent.

(2) Will the rate be fixed as of the online date of the generation (similar to RPS contracting) or change over time (along with other rates)?

If the customer-generator elects to become a QF, the Company would fix the rate for the term of net surplus energy purchase at the avoided cost rate in effect at the time the contract for excess is executed.

(3) How will the rate offered for Net Surplus Compensation interact with the rate offered for net generation on a monthly basis (i.e., the full retail rate)?

The two rates would be independent. The net generation rate (i.e., full retail rate) is determined through rate-setting proceedings and the Net Surplus Compensation rate would be based on avoided cost rates.

(4) How will all non-participating customers be held indifferent to the Net Surplus Compensation rate of payment?

If the Net Surplus Compensation is set at avoided cost for PacifiCorp the Company is

paying only the costs avoided by not generating the energy itself, and by definition, other customers are held harmless.

- (5) If the Customer will be receiving Net Surplus Compensation based on a generation-only rate, will a customer receive the generation rate applicable at the time the excess generation was generated, or the generation rate in effect at the time of the 12 month assessment?**

PacifiCorp is proposing to use its avoided cost as the Net Surplus Compensation rate. If the rate was based on a generation-only rate, PacifiCorp would propose to pay the generation rate in effect at the time of the 12 month assessment. This approach would be simpler for the customer-generator and administratively efficient for PacifiCorp.

- (6) Should the administrative cost of calculating Net Surplus Compensation and applying it to customer-generators' bills be considered when calculating a rate, to avoid shifting costs between customer-generators and other bundled service customers?**

Yes, the cost of administering the program should be considered when setting the rate.

- (7) Is it possible to simply pay eligible customer generators the amount they have in surplus bill credits at the end of the true-up period?**

When customer-generators accrue surplus bill credits, PacifiCorp credits the customers in kilowatt hours ("kWh") not in dollars. Therefore, a compensation rate would still have to be calculated in order to provide monetary compensation for surplus energy credits at the end of a 12-month period.

IV. RESPONSES TO POLICY QUESTIONS PRESENTED IN RULING

PacifiCorp provides the following responses to the policy questions presented in the Ruling:

- (1) Will the new tariff created by AB 920 replace the customer's existing NEM tariff, or would it coexist alongside that tariff? Will some customers remain on basic NEM, and others opt into Net Surplus Compensation NEM? Will customers on the new tariff be compensated monthly for their monthly bill credits at the full retail rate?**

PacifiCorp proposes that a description of the Net Surplus Compensation option be included in the existing NEM-35 tariff. The Company would continue to have just one net metering tariff, which would include all options available to net metering customers. Compensation should be made annually at the end of the 12-month true-up period for those customers choosing the Net Surplus Compensation option.

- (2) Is it possible that a customer could use all the bill credits created by surplus generation over a 12-month period and still have surplus kilowatt-hours? Should the Net Surplus Compensation Program restrict a customer's ability to receive and consume full-retail bill credits on a monthly basis and receive payment for surplus kilowatt-hours?**

PacifiCorp currently credits monthly surplus generation as kWh credits and applies them to kWh use in future bill periods. If a customer has excess kWh credits at the end of the true-up period, the customer could choose to be compensated for the excess generation.

- (3) Will customers be allowed to switch from the compensation option to the rollover option or vice versa, and if so, at what point will switching be allowed?**

PacifiCorp would allow customer-generators to switch from the Net Surplus Compensation option to the rollover option once each year at the time of the 12-month true up.

- (4) Will surplus electricity be rolled over in the form of bill credits or kilowatt-hours?**
- a. Will customers be compensated when they have surplus bill credits but not surplus kilowatt-hours?**
 - b. Will customers be compensated when they have surplus kilowatt-hours but not surplus bill credits?**

Please refer to the answer to (2) above.

- (5) In order to qualify for RPS compliance, a generator must be certified as eligible by the California Energy Commission (CEC), and the REC must be recorded in the Western Renewable Energy Generation Information System (WREGIS), which requires the meter measuring the generation to have accuracy of +/- 2%. Currently, the CEC has not certified distributed generation systems as eligible for RPS compliance and many systems on net metering tariffs do not have meters that meet the WREGIS accuracy requirements. Are CEC certification and WREGIS meter**

accuracy requirements necessary preconditions in order for the utilities to count towards the RPS annual procurement targets the RECs associated with net surplus electricity purchased from eligible customer-generators (as per Section 2827(h)(5)(A-B))? Assuming these are necessary preconditions, and if a net surplus customer-generator has equipment that complies with CEC and WREGIS standards:

- a. **Will the REC belong to the utility if the customer chooses the roll-over option, where a credit for net surplus generation is rolled over into the next 12-month true-up period, or only if the customer chooses a payment for net surplus generation?**

Public Utilities Code Section 2827(h)(5)(A) states that after the net surplus generation compensation rate is set, then RECs associated with net surplus generation purchase from customer-generators by the utility belong to the utility. This section further states that the customer-generator retains ownership of RECs for electricity generated and used by the customer-generator.¹¹ PacifiCorp interprets this to mean that RECs would transfer to the utility only when a purchase of electricity occurs.

- b. **Will the REC belong to the utility for any net surplus generation if the customer does not elect either option?**

PacifiCorp believes the utility would acquire RECs from a surplus generator only when providing compensation for excess generation.

- (6) **Will customers be permitted to roll excess kilowatt-hours over into subsequent 12-month periods indefinitely, or will the excess kilowatt-hours “expire” after a certain period of time?**

PacifiCorp believes the Commission may want to consider a cap or time limit at which point kWh credits would expire or compensation would be required to be paid, but has no specific recommendation at this time.

- (7) **Will the utility be required to cut a physical check to every customer that opts for Net Surplus Compensation, even if the amount owed would be below a de minimus threshold (for instance, if the customer is owed \$1.00)? If not, how should the de minimus threshold be determined?**

¹¹ Pub. Util. Code §2827(h)(5)(A).

PacifiCorp suggests that it be allowed to follow its current process which is that refund checks are issued only for amounts greater than \$5.00. For amounts less than \$5, the customer could have the option to donate the credit to PacifiCorp's bill assistance program, or roll the kWh credit forward into the next 12-month period.

- (8) Given the potential new layer of complexity that Net Surplus Compensation may add to the existing NEM program, how will the utility communicate the NEM-related rate and program offerings to customers and how will it communicate the financial implications of the new Net Surplus Compensation program? Will customers be able to “look up” what rate is being offered to them? If the rate is the generation-only rate, how will customers be notified if and when that rate changes, as it may multiple times throughout the year?**

PacifiCorp proposes to send a letter to NEM-35 customers informing them of the disposition of the Net Surplus Compensation rate, as was done to notify customers of the new options provided to them as a result of AB 920. The applicable rate would be posted in the net metering section of PacifiCorp's web site and updated as often as was necessary. Customer service agents would also be able to advise customers as to the then-current rate. PacifiCorp's proposal to use the avoided cost rate would simplify this process greatly. The avoided cost rate is typically updated every two years, so frequent changes would be avoided. In addition, customers would receive the avoided cost rate in effect at the time they choose to become a Net Surplus Compensation customer, and that rate would not change. Therefore, changes to the avoided cost rates would not affect existing customers.

V. STATUTORY AND REGULATORY REQUIREMENTS

A. Statutory and Other Authority (Rule 2.1)

Rule 2.1 requires that all applications state clearly and concisely the authorization or relief sought; cite by appropriate reference the statutory provision or other authority under which

Commission authorization or relief is sought; and be verified by the applicant. The relief being sought is summarized in Section II above. The statutory and other authority under which this relief is being sought includes Rules 2.1 and 2.2, Sections 451, 454, 491, 728, 729, and 2827 of the California Public Utilities Code. This Application has been verified by an officer of PacifiCorp as provided in Rules 1.1 and 2.1.

B. Proposed Categorization, Need for Hearing, Issues to be Considered, and Proposed Schedule (Rule 2.1(c))

Rule 2.1(c) requires PacifiCorp to state “[t]he proposed category for the proceeding, the need for hearing, the issues to be considered, and a proposed schedule.” PacifiCorp proposes that the Commission classify this proceeding as “ratesetting.”¹² PacifiCorp believes that hearings will not be necessary for the Commission to act on PacifiCorp’s request. The issue in this Application is approval of a Net Surplus Compensation rate for PacifiCorp. PacifiCorp respectfully proposes the following procedural schedule:

Event	Estimated Timeline
Application Filed	March 1, 2010
Application Noticed in Daily Calendar	March 3, 2010
Protests/Responses Due	April 2, 2010
Response to Protests Due	April 12, 2010
Proposed Decision Issued	May 28, 2010
Comments on PD Due	June 17, 2010
Reply Comments on PD Due	June 22, 2010
Final Commission Decision	July 8, 2010

C. Legal Name and Correspondence – Rules 2.1(a) and (b)

PacifiCorp is a public utility organized and existing under the laws of the state of Oregon. PacifiCorp engages in the business of generating, transmitting, and distributing electric energy in portions of northern California and in the states of Idaho, Oregon, Utah, Washington, and

¹² Rule 1.3(e) defines “Ratesetting” as “proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities). . . .”

Wyoming. PacifiCorp's principal place of business is 825 NE Multnomah Street, Suite 2000, Portland, Oregon 97232.

Communications regarding this Application should be addressed to:

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Additionally, PacifiCorp respectfully requests that all data requests regarding this matter be addressed to:

By E-mail (preferred): datarequest@pacificorp.com

By regular mail: Data Request Response Center
PacifiCorp
825 NE Multnomah, Suite 2000
Portland, OR 97232

D. Organization and Qualification to Transact Business – (Rule 2.2)

A certified copy of PacifiCorp's Articles of Incorporation, as amended, and presently in effect, was filed with the Commission in A.97-05-011, which resulted in Commission issuance of D.97-12-093 and is incorporated herein by reference pursuant to Rule 2.2.

VI. CONCLUSION

The Company respectfully requests approval of its Net Surplus Compensation rate.

Respectfully submitted this 1st day of March 2010 at San Francisco, California.

By Michelle Mishoe/MT
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OFFICER VERIFICATION

(Rule 1.11)

I am an officer of the reporting corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 1, 2010, at Portland, Oregon.



Andrea Kelly
Vice President, Regulation

Certificate of Service

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this 1st day of March, 2010, at Portland, OR, provided via electronic mail or U.S. Mail (if an email address has not been provided), a true and correct copy of PacifiCorp's (U 901-E) APPLICATION FOR APPROVAL OF A NET SURPLUS COMPENSATION RATE to the following parties:

Service List R.08-08-009

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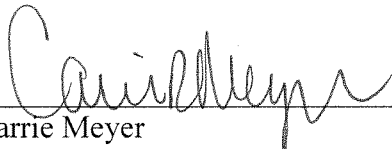
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