

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1081

In the Matter of the)	
)	
PUBLIC UTILITY COMMISSION OF)	MOTION FOR LEAVE TO SUBMIT
OREGON STAFF's)	SUPPLEMENTAL TESTIMONY OF
)	LINCOLN WOLVERTON ON
Investigation Into Direct Access Issues for)	BEHALF OF THE INDUSTRIAL
Industrial and Commercial Customers under)	CUSTOMERS OF NORTHWEST
SB 1149.)	UTILITIES
_____)	

INTRODUCTION

Pursuant to OAR §§ 860-013-0031 and 860-014-0060, the Industrial Customers of Northwest Utilities (“ICNU”) requests leave of the Oregon Public Utility Commission (“OPUC” or the “Commission”) to file supplemental testimony of Lincoln Wolverton on behalf of ICNU. Good cause exists to allow ICNU to supplement the testimony of Mr. Wolverton because no party has addressed the impact on direct access customers of the new Transition Adjustment methodology proposed by PacifiCorp (or the “Company”) in its rebuttal testimony, which the Company filed on June 24, 2004.

Mr. Wolverton’s supplemental testimony updates his direct testimony to:

1) compare the cost of power under the cost-of-service rate with the cost of power from Energy Service Suppliers (“ESSs”) using the new Transition Adjustment proposed by PacifiCorp; and 2) update ICNU’s Transition Adjustment to include the same forward price information that PacifiCorp relies upon in calculating its new Transition Adjustment. ICNU requests leave to submit Mr. Wolverton’s testimony to ensure that

the Commission has the necessary information to evaluate whether PacifiCorp's Transition Adjustment is a barrier to implementing direct access in Oregon.

BACKGROUND

Pursuant to the Administrative Law Judge's Conference Report, dated February 26, 2004, the calculation of PacifiCorp's Transition Adjustment was set for hearing. On April 1, 2004, PacifiCorp filed its direct testimony and exhibits, which included exhibits that compared the Company's current and proposed Transition Adjustment. On May 27, 2004, intervenors, including ICNU, EPCOR and Staff, submitted their testimony based on PacifiCorp's original filing.

On June 24, 2004, PacifiCorp filed its rebuttal testimony and exhibits. PacifiCorp abandoned its original testimony regarding the appropriate Transition Adjustment and proposed that the Commission conduct a new proceeding to investigate a long-term Transition Adjustment based on the Company's GRID model. In the interim, PacifiCorp requested that the Commission not adopt its original proposal, but instead adopt a modified version of the Transition Adjustment proposed by Staff. PacifiCorp's new Transition Adjustment also includes updated forward market data that was not reflected in Mr. Wolverton's direct testimony.

ARGUMENT

Pursuant to Oregon Rule of Civil Procedure ("ORCP") 23, the Commission may "permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading

sought to be supplemented.”^{1/} The analogous federal rule regarding supplementary filings has been interpreted liberally to allow supplementation when there is an absence of prejudice. Keith v. Volpe, 858 F.2d 467, 475-76 (9th Cir. 1988). ICNU’s request to supplement testimony is similar to allowing a party to supplement pleadings. In addition, the Commission has previously allowed supplementary filings as long as “the supplemental filing does not prejudice the other parties.” Re PacifiCorp, OPUC Docket No. UE 111, Order No. 00-090 at 5 (Feb. 14, 2000). ICNU’s Motion should be granted because no party will be harmed by, and the record will benefit from, Mr. Wolverton’s supplemental testimony.

PacifiCorp filed its direct testimony, including its original proposed Transition Adjustment on April 1, 2004. Included with this testimony, PacifiCorp filed a number of exhibits that compared its current direct access Transition Adjustment with its proposed Transition Adjustment. Based on this testimony by PacifiCorp and ICNU’s comparisons, Mr. Wolverton submitted his testimony on behalf of ICNU, concluding that PacifiCorp’s proposed Transition Adjustment did not accurately reflect the value of the Company’s resources and was a barrier to establishing direct access in Oregon. ICNU/100, Wolverton/1-2. Mr. Wolverton suggested that the Commission reject the Company’s proposed adjustment and adopt a transition adjustment that is similar to Portland General Electric Company’s transition mechanism. Id. As part of his direct testimony, Mr. Wolverton sponsored ICNU Exhibit/104, which provided an analysis of

^{1/} Pursuant to OAR 860-11-0000(3), the ORCP govern Commission proceedings unless contradicted or modified by Commission rules. No Commission rule governs the filing of supplemental testimony.

the rate impact of the original Transition Adjustment on a direct access customer based on information that PacifiCorp relied upon when preparing its original Transition Adjustment.

Maury Galbraith, on behalf of Staff, submitted testimony, also in reliance on PacifiCorp's direct testimony, recommending that the Commission reject PacifiCorp's proposed Transition Adjustment and adopt the adjustment proposed by Staff. PacifiCorp, in its rebuttal testimony, adopted, in large part, Staff's recommendation. However, PacifiCorp provided no comparison of the cost of power under the cost-of-service rate with the cost of power under direct access, assuming the adoption of the new proposed Transition Adjustment.

As stated by Mr. Galbraith in his direct testimony, the Commission must ensure that the Transition Adjustment accurately measures the impact of direct access "and may determine that full or partial recovery of the costs of uneconomic utility investment, or full or partial pass-through of the benefits of the economic utility investment, is in the public interest." Staff/100, Galbraith/3 (citing ORS § 757.607). As part of assessing whether the Transition Adjustment complies with Oregon law, it is necessary for the Commission, and parties to UM 1081, to understand the rate impact of the proposed Transition Adjustment on direct access customers.

No party has had an opportunity to file testimony or present evidence regarding PacifiCorp's new proposed Transition Adjustment and its rate impacts. There is no such comparison in the record and the Commission may not be able to determine the rate impact of the new Transition Adjustment without the testimony of Mr.

PAGE 4 – MOTION FOR LEAVE TO SUBMIT SUPPLEMENTAL TESTIMONY OF
LINCOLN WOLVERTON ON BEHALF OF ICNU

Wolverton. In addition, due to the complexity of the calculations, it would be difficult, if not impossible to obtain this information from any witnesses on cross examination.

In an effort ensure that a comparison of the rate impact under PacifiCorp's current Transition Adjustment with the proposed Transition Adjustment would be included in the record, ICNU requested, in Data Request No. 5.1, that PacifiCorp provide a comparison by month of the delivered cost of power for a customer taking power under the cost-of-service rate and under direct access, assuming the new Transition Adjustment was adopted.^{2/} The Company objected to ICNU's request and refused to perform the calculation. However, PacifiCorp provided ICNU with additional information which, combined with publicly available data and previously provided discovery materials, would allow ICNU to perform the comparisons.

Using this publicly available information and data provided in discovery, Mr. Wolverton calculated the comparison that is the subject of his supplemental testimony. Exhibit ICNU/107 includes the monthly (heavy and light load hour) cost-of-service rate that Mr. Wolverton calculated using publicly available information regarding the Company's rates. Exhibit ICNU/107 also includes the monthly (heavy and light load hour) rate that an ESS would likely charge a direct access customer based on the Company's forward price curve and its proposed Transition Adjustment. Exhibit ICNU/107 also compares the percentage difference between the cost-of-service rate and

^{2/} PacifiCorp's response to ICNU Data Request 5.1 is attached (with the voluminous spreadsheets omitted) as Exhibit ICNU/106 to Mr. Wolverton's Supplemental Testimony.

direct access using PacifiCorp's new Transition Adjustment and ICNU's Transition Adjustment.

In addition, Mr. Wolverton includes information that updates the ICNU Transition Adjustment based on the forward market information provided by the Company. Exhibit ICNU/107 includes the monthly (heavy and light load hour) rate that an ESS would charge based on ICNU's Transition Adjustment updated to include the same forward market price curve that the Company relied upon.^{3/} Exhibit ICNU/108 also compares PacifiCorp's existing Transition Adjustment with the Company's proposed Transition Adjustment and the ICNU Transition Adjustment. Mr. Wolverton updated the information in the ICNU Transition Adjustment to allow the Commission to be able to compare similar information.

No party will be harmed if the Commission allows ICNU to supplement the record with Mr. Wolverton's testimony. Mr. Wolverton's supplemental testimony only addresses two limited issues, and does not respond, address or rebut any other factual or policy issues in the Company's rebuttal testimony. Mr. Wolverton's supplemental testimony relies entirely upon information that was provided by the Company, and is made solely for the purpose of admitting this information into the record. In addition, all parties will have the opportunity to cross examine Mr. Wolverton regarding his testimony at the hearing. In order to facilitate the other parties' preparation

^{3/} The ICNU Transition Adjustment in Exhibits ICNU/107 and ICNU/108 include the price of power based on the Mid-Columbia hub. If the Commission adopts ICNU's proposal, the final Transition Adjustment would need to be adjusted to reflect the value of power sold at the four hubs (Mid-Columbia, Palo Verde, Four Corners and the California Oregon Border) not just Mid-Columbia.

for hearing, ICNU has also voluntarily provided all other parties with an electronic version of Mr. Wolverton's testimony, exhibits and supporting workpapers, with all electronic cells and formulas intact. ICNU provided a draft of this Motion to PacifiCorp. PacifiCorp has not yet taken a position on the Motion.

III. CONCLUSION

ICNU respectfully requests that the Commission grant ICNU's Motion for Leave to Submit Supplemental Testimony of Mr. Wolverton. PacifiCorp has not provided this information in either its rebuttal testimony or its response to ICNU's data requests. The update of the ICNU Transition Adjustment and the comparison of the cost-of-service rate with the direct access rate under the new Transition Adjustment is necessary to determine the rate impact on PacifiCorp's customers.

Dated this 12th day of July, 2004.

Respectfully submitted,

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