

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 191

In the Matter of)
)
PACIFICORP)
)
2008 Transition Adjustment Mechanism.)
)
_____)

**REPLY BRIEF OF
THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES**

September 17, 2007

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I. INTRODUCTION

The Industrial Customers of Northwest Utilities (“ICNU”) submits this Reply Brief to the Oregon Public Utility Commission (“OPUC” or the “Commission”) responding to the Opening Briefs of PacifiCorp (or the “Company”) and Staff. Staff’s Brief includes cogent explanations as to why the Commission should adopt Mr. Wordley’s wholesale margin adjustment and ICNU’s net variable power costs in rates position. In contrast, PacifiCorp’s brief focuses on the irrelevant descriptions of its actual net variable power costs (“NVPC”) and the history of the transition adjustment mechanism (“TAM”), and on arguing that ICNU’s and Staff’s adjustments “lack meaningful evidentiary and policy support.” PacifiCorp Brief at 2. It is PacifiCorp, not ICNU or Staff, who has failed to present meaningful evidence as to why ratepayers should pay for the costs of imprudent outages, the “higher” costs of the Georgia Pacific (“GP”) Camas contract when the contract’s actual costs have not changed, and a number of inflated GRID modeling errors. PacifiCorp also has failed to provide a straightforward explanation as to why the Commission should assume the Company obtained a smaller NVPC increase in UE 179 than it was actually granted.

PacifiCorp repeatedly argues that in recent years its actual power costs have been higher than the NVPC set in rates. PacifiCorp Brief at 2, 15, 19. This claim is based on unverified data submitted by PacifiCorp at hearing that no party was able to conduct discovery on or respond to. PPL/207, Widmer/1. More importantly, this information is irrelevant. Since the turn of the millennium, PacifiCorp has had near annual rate cases and more than a fair opportunity to request recovery of any prudently

incurred costs. The NVPC that PacifiCorp is referring to are likely power costs that PacifiCorp voluntarily removed from rates because ICNU and Staff challenged them as being imprudent or non-beneficial to ratepayers. PacifiCorp should not be provided a second bite of the apple or to be able to support its arguments in this proceeding because the Company has agreed to remove from rates its imprudent or non-beneficial costs.

PacifiCorp also disingenuously emphasizes the importance of this case for determining the direct access transition adjustment. PacifiCorp Brief at 7-10. This case will have no impact on PacifiCorp's direct access program. The current mechanism for calculating the value of PacifiCorp's resources has the practical effect of ensuring that direct access is an uneconomic option for nearly all eligible PacifiCorp customers. Less than 1% of PacifiCorp's customers are taking service from alternative service suppliers, and those numbers will not change regardless of the Commission's order in this proceeding. See Status Report Oregon Electric Industry Restructuring (Aug. 2007) (0.6% of PP&L eligible customers on direct access). The real world purpose for this proceeding is to allow PacifiCorp an annual opportunity to update its NVPC on an expedited basis without a review of its other costs and revenues.

PacifiCorp also emphasizes the "streamlined," "straightforward," and "limited" nature of this proceeding. PacifiCorp Brief at 1, 10. PacifiCorp seeks to use the "limited" nature of this proceeding as the grounds to pass through the phantom cost increases associated with the GP Camas contract and to prevent ICNU from challenging its imprudent outages. Id. at 26-30, 37-38. ICNU disagrees with PacifiCorp's characterization of this proceeding. The original procedural schedule did not provide

Staff or ICNU an opportunity to respond to PacifiCorp's rebuttal testimony, which was not limited to rebutting Staff and ICNU, but included numerous new contracts and other costs, and an entirely new hydro modeling proposal. Staff recognized some of the problems with the schedule and sought to supplement its testimony, noting that "agreeing to a schedule that did not provide additional rounds of testimony was a mistake." Staff Motion to Supplement the Record at 2. ICNU does not propose any specific procedural remedy in this proceeding, but notes that there are serious problems with the scheduling of the TAM proceeding that will need to be remedied when the schedule is set for the 2008 TAM.

II. ARGUMENT

1. The Commission Should Set the NVPC Baseline at \$225 Million and Prevent PacifiCorp from Inflating Its Rate Increase

Staff supports ICNU's NVPC in rates argument pointing out that PacifiCorp received a \$10 million NVPC-related rate increase in UE 179, and that PacifiCorp's position would deny Oregon ratepayers the benefits associated with Oregon's declining allocation of PacifiCorp's overall costs. Staff Brief at 6. Notably, PacifiCorp is the only party to the UE 179 NVPC Stipulation that argues that it obtained only a \$2.5 million rate increase.

PacifiCorp raises a plethora of complex arguments as to why the Company believes it received a \$2.5 million NVPC-related rate increase instead of the \$10 million NVPC rate increase identified in the UE 179 Stipulation. As a preliminary matter, ICNU agrees with PacifiCorp that the Commission should facilitate its policy of enforcing

settlements according to their express terms; however, in this case that means rejecting PacifiCorp's unilateral attempt to turn the UE 179 stipulation into something it is not.

PacifiCorp argues that the calculation used in Section 5 of the UE 179 Stipulation to set the \$10 million NVPC increase should be used in all future proceedings. PacifiCorp Brief at 24-25. The precedential impact of the UE 179 NVPC Stipulation was that the NVPC rate increase for 2007 would be "capped at a maximum of \$10 million." Re PacifiCorp, Docket No. UE 179, Order No. 06-530, Appendix A at 3 (Sept. 14, 2006). The UE 179 Stipulation identifies the NVPC rate increase, and then provides the formula to calculate the \$10 million rate increase. Id. There is no indication that this formula will be used to set the amount of NVPC in rates in perpetuity.

PacifiCorp's admits that the UE 179 Stipulation denies Oregon ratepayers the benefits of Oregon's lower allocation factors, and asserts that ICNU is seeking "to revisit its bargain in UE 179 by reworking" the UE 179 Stipulation. PacifiCorp Brief at 25. ICNU is not seeking to revisit the deal that was reached in the UE 179 Stipulation. ICNU recognizes that the UE 179 Stipulation did not pass to Oregon the full benefits of its lower allocation factors, and ICNU is not seeking to alter that settlement. The UE 179 Stipulation was acceptable to ICNU because it clearly capped the NVPC rate increase at \$10 million. ICNU and Staff did not agree, however, that Oregon ratepayers would be denied the benefits that accrue due to Oregon's lower than average load growth in all future proceedings.

PacifiCorp argues that ICNU's witness agreed that the \$225 million in Oregon NVPC translates to a total Company baseline power cost of \$861 million.

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PacifiCorp Brief at 25. PacifiCorp distorts Mr. Falkenberg’s testimony. Mr. Falkenberg agreed with PacifiCorp’s attorney’s mathematical calculation, but stated that the \$861 million number is “not a very meaningful number. The reason it’s not meaningful is when all is said and done, what the parties agreed to in UE 179 was a \$10 million increase for net power cost.” Hearing Transcript at 82.

PacifiCorp also asserts that, if the Commission concludes that NVPC in rates are \$225 million, then it will result in allowing ICNU “to recover \$7.5 million of the \$10 million TAM increase granted in UE 179, an adjustment barred by retroactive ratemaking principles.” PacifiCorp Brief at 26. ICNU is not revisiting or changing the amount of the NVPC rate increase that was granted in UE 179. ICNU simply recognizes that PacifiCorp was granted a \$10 million NVPC rate increase in UE 179 that should be added to the undisputed UE 170 NVPC of \$215 million to establish NVPC in rates of \$225 million.

2. The Commission Should Remove All Outages Caused by Imprudence or Manufacturer Defect

PacifiCorp raises a wide variety of arguments in opposition to ICNU’s outage rate adjustment, including that outage rates should be considered in a generic proceeding, PacifiCorp’s overall system performance has allegedly improved, the adjustment is allegedly contrary to public policy and Commission precedent, and ICNU has “selectively” relied upon the available information. Strikingly absent from PacifiCorp’s brief is any assertion that the outages challenged by ICNU were not caused by imprudence, poor management, personnel or maintenance errors, other avoidable

causes, or manufacturer defects. Instead of rebutting the factual evidence, PacifiCorp relies upon a myriad of procedural arguments in an effort to distract the Commission from actually reviewing the specific outages challenged by ICNU.

The Commission should reject PacifiCorp's argument that the Company should be allowed to include imprudent costs in rates because there "are several policy issues implicated by ICNU's adjustment, all of which require consideration in the Commission's generic docket rather than this case." PacifiCorp Brief at 28. Despite this broad statement, PacifiCorp fails to identify any policy issue that requires consideration in a generic docket. The opposite is actually the true. PacifiCorp must demonstrate that its costs have been prudently incurred and are the responsibility of ratepayers before they can be included in rates. Re US West Communications, Inc., Docket Nos. UT 125 and UT 80, Order No. 00-191 at 15 (Apr. 14, 2000). Even PacifiCorp has admitted that the purpose of the TAM proceeding is to conduct a prudency review. PPL/102, Kelly/2. The Commission's standard for determining prudence is well established, and there is no precedent that would allow the Company to charge ratepayers costs not shown to be prudent merely because similar issues may be considered in a future proceeding.

PacifiCorp argues that ICNU's outage rate adjustment should be rejected because the Commission recently reaffirmed the use of a four-year rolling outage rate in Portland General Electric Company's ("PGE") rate case. PacifiCorp Brief at 27-28. PacifiCorp fails to note that the Commission was not reviewing a prudency challenge in the PGE case, but whether the utility's own outage rates or generic utility outage rates should be used to set rates. Re PGE, Docket Nos. UE 180, UE 181 and UE 184, Order

No. 07-015 at 14 (Jan. 12, 2007). PacifiCorp also refuses to recognize that the outage rate in the PGE case and other proceedings removed certain outages like Boardman and Hunter. Thus, ICNU's outage rate adjustment is entirely consistent with this precedent.

PacifiCorp argues that removing outages caused by manufacturer error would alter the traditional prudence standard and that the Commission should depart from its prior decision to assign the costs of manufacturer error to the utility because "the Commission's holding was expressly limited to the UE 88 case." PacifiCorp Brief at 29. Again, PacifiCorp avoids addressing the fundamental issue of who should be responsible for the costs associated with outages caused by manufacturer defects. All Commission cases are limited to their facts; however, the Commission adopted a policy in UE 88 that, even when the utility is prudent, the utility should be responsible for the costs associated with manufacturer defects because: 1) the utility is better situated to recover its costs from the manufacturer; and 2) it is fair that shareholders bear some of the consequences of management investment decisions. Re PGE, Docket No. UE 88, Order No. 95-322 at 3 (Mar. 29, 1995). Absent from PacifiCorp's pre-filed testimony or brief is any argument as to why ratepayers should be responsible for all the costs associated with manufacturer defects.

PacifiCorp asserts that "ICNU has relied on selected portions of selected PacifiCorp root cause analysis (RCA) reports" and that this "is misleading because it lacks necessary context." PacifiCorp Brief at 29-30. In proposing the outage rate adjustment, Mr. Falkenberg relied upon his review of a wide array of evidence, including PacifiCorp's historic declining reliability and the voluminous RCA reports. ICNU/100,

Falkenberg/20-30. PacifiCorp choose not to submit any rebuttal testimony regarding the “necessary context” surrounding any of the specific outages challenged by Mr. Falkenberg. If any such “context” was truly necessary, then PacifiCorp should have responded with its own specific evidence as to why the outages occurred.

PacifiCorp warns the Commission that reliance upon the RCA reports could discourage it from reviewing and addressing the causes of future outages. PacifiCorp has an obligation to explain the reasons for its forced outages when it seeks to include these costs in rates. The Company would be unable to explain why its reliability is declining if it did not create the reports.

Citing the Oregon Evidence Code 407, PacifiCorp argues that there is a “strong public policy against using evidence of subsequent remedial measures to prove negligence” PacifiCorp Brief at 30. Oregon law is actually directly contrary to PacifiCorp’s position. Under Oregon law, subsequent action is barred from proving negligence only if the action could have prevented the harm if taken before the event occurred. ORS § 40.185; Ensign v. Marion County, 140 Or. App. 114 (1996). The RCA reports are PacifiCorp’s employees’ summaries of the reasons for the outages. The RCA reports analyzed the outages after the fact, could not have prevented the outages from occurring, and cannot be considered subsequent remedial actions under Oregon law.

PacifiCorp argues that its overall operations are prudent because its personnel errors are allegedly in line with national averages. PacifiCorp Brief at 30-31. As explained in ICNU’s Opening Brief, PacifiCorp’s overall performance has been declining and is further evidence of imprudent operations. ICNU Brief at 9-12.

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PacifiCorp argues that its equivalent availability factor specifically attributed to personnel error is small and in line with national averages. PacifiCorp Brief at 31. This is not an accurate comparison, because Mr. Falkenberg's review of PacifiCorp's outage reports demonstrates that PacifiCorp routinely reports outages caused by personnel error as being caused by different reasons. ICNU/100, Falkenberg/29. For example, none of the fourteen large outages challenged by ICNU were originally categorized by PacifiCorp as being due to "personnel error." Thus, it is impossible to determine if PacifiCorp's outages due to personnel error are in line with national averages.

PacifiCorp also asserts that has an above average capacity factor that has resulted in energy savings and lowered costs. PacifiCorp Brief at 31. It is not appropriate to rely upon comparisons of capacity factors between different utilities to measure prudent operations because a capacity factor is highly contingent upon the utility's generation mix and overall load, both of which have nothing to do with actual reliability. Even if capacity factors were relevant, they would show that PacifiCorp has experienced declining reliability while the national fleet has improved. A review of PacifiCorp's own capacity factors show that, despite significant increases in its loads that have increased reliance upon PacifiCorp's thermal generation, the Company's capacity factor has worsened from 86.63% in 1990 to 82.35% in 2006. ICNU/208, Mansfield/4. In comparison, the national equivalent thermal units have shown an improvement in capacity factors from 58.9% in 1990 to 73.53% in 2005. ICNU/209, Mansfield/4.

3. The Commission Should Reject PacifiCorp's Station Service Adjustment

PacifiCorp argues that the Commission should allow the Company to increase NVPC by including an adjustment related to “station service.” PacifiCorp argues that it is “irrelevant” that its station service adjustment is novel and contrary to standard industry practice because the Company operates a unique six-state generation system. PacifiCorp Brief at 32. PacifiCorp, however, fails to point to any aspect of its multi-state generation system that is relevant as to why it should model this one-sided adjustment that decreases available generation while ignoring times when its own generators run above their maximum rate capacity. There are numerous multi-state utilities in the country, and PacifiCorp cannot point to any other utility that makes this type of adjustment.

PacifiCorp's brief also states that Mr. Falkenberg “is incorrect” when he testifies that the Company's GRID model ignores thousands of hours when generators are operating higher than their rated capacity. Id. In support, PacifiCorp cites evidence that the GRID model for the current test period shows a tiny increase in coal generation over the average for the past four-year period. Id. This increase is not relevant to the issue of the station service adjustment because the GRID model should show an increase in coal generation as PacifiCorp's loads have increased. Further support for Mr. Falkenberg's conclusions comes from PacifiCorp witness Mark Widmer who agreed with Mr. Falkenberg that the Company's generation exceeds the maximum ratings modeled in GRID, but disagreed about whether the actual generation increases should be modeled in GRID. PPL/204, Widmer/32.

According to PacifiCorp, it is appropriate for GRID to ignore the increased generation because the “limited variation in generation does not belong in normalized ratemaking.” PacifiCorp Brief at 32. If normalized ratemaking principles prevent the inclusion of the higher generation excluded from GRID, then they should also prevent the inclusion of the lower generation allegedly caused by station service. Also, contrary to PacifiCorp’s assertion, the increased generation ignored by GRID is not a “limited” amount. The generation that GRID ignores is more than 50,000 MWh per year which “amounts to more than 70% of the assumed station service requirement.” ICNU/100, Falkenberg/40. As explained by Mr. Falkenberg, PacifiCorp “clearly should not ignore situations when extra power is available from its generators, if it models the minor generation losses due to station service.” Id. at Falkenberg/40-41.

4. PacifiCorp Should Not Reduce the Maximum Capacity of Dave Johnston

PacifiCorp argues that the maximum capacity of Dave Johnston should be reduced from 230 MWs to 220 MWs because the unit rarely exceeds 220 MWs and the reduction is required to maintain proper emission rates. PacifiCorp Brief at 33-34. Dave Johnston operates at above 220 MWs more frequently than PacifiCorp suggests, because the data relied upon by the Company excludes thermal ramping. See PPL/204, Widmer/34-36. The Commission should not change Dave Johnston’s capacity because of the state emission caps. The state emission caps are not relevant because Dave Johnston has historically operated at a capacity above 220 MWs and not exceeded the state emission limits.

5. PacifiCorp Should Not Increase the Minimum Capacity of Cholla 4

PacifiCorp critiques the use of 150 MW minimum capacity in its GRID model because the Company claims that running Cholla 4 at this level would be inconsistent with the historical results. PacifiCorp Brief at 34-35. This is based on Mr. Widmer's opinion that the use of 150 MW minimum capacity would result in Cholla 4 running at 150 MW 14% of the time, but that Cholla runs at 250 MWs or less only 3% of the time in actual operations. PPL/204, Widmer/37. This analysis is misleading and irrelevant.

It is misleading because inserting a 250 MW minimum capacity in the GRID model is just as inconsistent with the regular historic operating output of Cholla 4. ICNU/223, Widmer/2 (Excerpt of Mark Widmer Workpapers). Inserting 250 MWs for Cholla 4's minimum capacity in the GRID model results in the unit running at 250 MW 17% of the time. In other words, Mr. Widmer's proposed 250 MW minimum capacity is just as inconsistent with actual historic operations, and only shows that the GRID model inaccurately runs Cholla 4 at its minimum capacity regardless of whether the minimum capacity is set at 150 MW or 250 MW. The Commission should not compound this error by selecting an erroneous and overstated minimum capacity.

More importantly, the argument is not relevant because the minimum capacity of a unit is not based on its typical generating output, but on the actual physical limitations of the plant. A minimum capacity for a generation unit is similar to the physical limit of the plant and does not represent the regular output of the plant. PacifiCorp's generation plants need to operate at a certain minimum capacity to be

efficient and to operate properly. The Commission should set the minimum capacity of Cholla 4 at 150 MW because it is more reflective of the physical limitation of Cholla 4 during actual operations.

6. ICNU's Hydro Adjustment Is Based on Realistic Assumptions

PacifiCorp's brief defends the Company's original hydro analysis by arguing that Mr. Falkenberg's observation that PacifiCorp's hydro modeling assumed that its hydro resources are perfectly correlated is "incorrect." PacifiCorp Brief at 36. PacifiCorp provides no citation to the record for its claim that Mr. Falkenberg is "incorrect," which may be due to the fact that Mr. Widmer specifically stated that "I agree with Mr. Falkenberg's statements regarding the correlation (or lack thereof) among the individual hydro plants and river systems." PPL/204, Widmer/27. PacifiCorp's original hydro modeling was flawed and the Commission should not permit the Company to replicate the same result with an entirely new hydro modeling approach that it proposed for the first time in rebuttal testimony.

7. ICNU's GP Camas Contract Adjustment Will Not Increase Rates

PacifiCorp argues that ICNU's GP Camas adjustment would increase rates in this proceeding. PacifiCorp Brief at 38. PacifiCorp proposes to offset this adjustment by updating its revenues in a manner which would result in an overall rate increase. The Commission should reject PacifiCorp's proposed "solution" to the GP Camas issue and adopt ICNU's proposal to "not allow any update to the GP Camas contract price unless the Company actually has to pay the increased cost." ICNU/100, Falkenberg/9. This

would result in an approximately \$118,000 Oregon revenue requirement reduction.
ICNU/114, Falkenberg/2.

III. CONCLUSION

For the reasons stated above and in more detail in ICNU's opening brief, the Commission should adopt the adjustments proposed by Mr. Falkenberg and Mr. Wordley's wholesale margin adjustment

Dated this 17th day of September, 2007.

Respectfully submitted,

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