

McDowell & Rackner PC



KATHERINE McDOWELL
Direct (503) 595-3924
katherine@mcd-law.com

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VIA ELECTRONIC FILING AND U.S. MAIL

PUC Filing Center
Public Utility Commission of Oregon
PO Box 2148
Salem, OR 97308-2148

Re: Docket No. UM 1355

Enclosed for filing in the above-referenced docket are an original and one copy of PacifiCorp's Motion to File Additional Testimony.

A copy of this filing has been served on all parties to this proceeding as indicated on the attached certificate of service.

Very truly yours,

A handwritten signature in black ink, appearing to be "Katherine McDowell", written over a horizontal line.

Katherine McDowell

cc: Service List

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served a true and correct copy of the foregoing document in
3 Docket UM 1355 on the following named person(s) on the date indicated below by email
4 and first-class mail addressed to said person(s) at his or her last-known address(es)
5 indicated below.

6 Michael Weirich Kelcey Brown
7 Department Of Justice Public Utility Commission of Oregon
8 1162 Court St NE PO Box 2148
9 Salem, OR 97301-4096 Salem, OR 97301
10 michael.weirich@state.or.us Kelcey.brown@state.or.us

9 Melinda J. Davison Randall J. Falkenberg
10 Davison Van Cleve P C RFI Consulting, Inc
11 333 SW Taylor- Ste 400 PMB 362
12 Portland, OR 97204 8343 Roswell Rd
13 mail@dvclaw.com Sandy Springs, GA 30350
14 consultrfi@aol.com

13 Patrick Hager Douglas Tingey
14 Rates and Regulatory Affairs Portland General Electric
15 Portland General Electric 121 SW Salmon 1WTC1301
16 121 SW Salmon St 1WTC0702 Portland, OR 97204
17 pge.opuc.filings@pgn.com doug.tingey@pgn.com

17 Catriona McCracken OPUC Dockets
18 Citizens' Utility Board of Oregon Citizens Utility Board Of Oregon
19 catriona@oregoncub.org dockets@oregoncub.org

19 Robert Jenks Gordon Feighner
20 Citizens' Utility Board Of Oregon Citizens' Utility Board of Oregon
21 bob@oregoncub.org Gordon@oregoncub.org

21 Lisa Nordstrom Barton Kline
22 Idaho Power Company Idaho Power Company
23 lnordstrom@idahopower.com bkline@idahopower.com

23 Gregory Said Christa Beary
24 Idaho Power Company Idaho Power Company
25 gsaid@idahopower.com cbeary@idahopower.com

25

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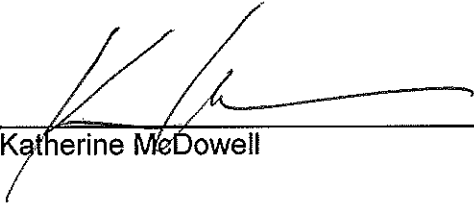
Scott Wright
Idaho Power Company
swright@idahopower.com

Wendy McIndoo
McDowell & Rackner
wendy@mcd-law.com

DATED: January 29, 2010

Tim Tatum
Idaho Power Company
ttatum@idahopower.com

Lisa Rackner
McDowell & Rackner
lisa@mcd-law.com



Katherine McDowell

1 ("CUB"), and the Industrial Customers of Northwest Utilities ("ICNU") reached a settlement
2 that resolved most of the issues in the case as to PacifiCorp.

3 During the May 28th workshop several new issues were raised by the parties. Thus,
4 PacifiCorp requested the opportunity to file additional testimony to address these new issues.
5 Staff, ICNU, and CUB all objected to allowing any additional evidence. Nonetheless, the ALJ
6 allowed PacifiCorp to file supplemental testimony, subject to limitations proposed by the other
7 parties. *See Prehearing Conference Report* (July 6, 2009).

8 PacifiCorp filed its supplemental testimony on July 24, 2009. Staff, ICNU and CUB
9 did not file supplemental testimony, although they were not precluded from doing so. Staff
10 and ICNU, however, did file reply testimony on August 13, 2009, eight days before the
11 hearing. *See Notice of Hearing* (Aug. 10, 2009). Although their testimony was supposed to
12 respond to PacifiCorp's July 24th supplemental testimony, Staff included extensive new
13 analysis and ICNU included an entirely new and novel collar proposal. Under the terms of the
14 July 6, 2009, Prehearing Conference, PacifiCorp had no opportunity to file responsive
15 testimony.

16 Because PacifiCorp had only eight days before hearing to analyze the new issues
17 raised in the Staff and ICNU "reply" testimony, the Company agreed to waive cross-
18 examination in exchange for additional time for discovery. *See Ruling* (Aug. 20, 2009).

19 PacifiCorp objected to both the Staff and ICNU proposals and the parties briefed
20 these issues to the Commission, filing opening briefs on September 16, 2009, and reply briefs
21 on September 24, 2009. In PacifiCorp's opening brief, it specifically objected to the ICNU new
22 proposal as late-filed and insufficiently developed in the record and noted that ICNU's
23 presentation of its new proposal in its reply testimony effectively precluded other parties from
24 responding to it. *See PacifiCorp's Opening Brief* at 2 (Sept. 16, 2009).

25 On October 7, 2009, ALJ Arlow issued a Notice of Intent to Modify Stipulations and
26 Establish Rate Calculation ("Notice") finding that the Partial Stipulation was reasonable and in

1 the public interest with the exception of the fact the parties did not agree upon a methodology
2 to exclude extreme events. The Commission presented a new benchmark using NERC data
3 to identify extreme outages, but replacing these outliers with “the mean annual FOR from the
4 unit’s entire historical data.” Although the new benchmark has elements of both the Staff and
5 ICNU proposals, the proposed approach is not one that was previously examined or analyzed
6 by the parties in their written testimony. In addition, the Commission also included a new
7 provision to address the exclusion and replacement of imprudent outages, an approach raised
8 for the first time in the Notice.

9 On October 19, 2009, PacifiCorp filed its Rejection of Proposed Addition to Partial
10 Stipulation and Request for Additional Proceedings. In that filing, PacifiCorp rejected the
11 Commission’s proposed addition to its Partial Stipulation, requested that the Commission
12 adopt the Partial Stipulation as originally filed, and requested additional proceedings to allow
13 the parties to submit testimony on the Commission’s proposed collar mechanism and the
14 additional issues raised in the Notice.

15 On December 7, 2009, the Commission issued Order No. 09-479. The Commission
16 ordered the ALJ to convene a procedural conference to establish procedures to allow parties
17 to file additional testimony related to the collar mechanism and the treatment of imprudent
18 outages if the testimony addressed new facts in dispute that witnesses had been previously
19 unable to address.

20 On January 7, 2010, the ALJ convened a prehearing conference to establish a
21 procedural schedule pursuant to Order No. 09-479. The parties were unable to agree on the
22 schedule to allow parties to submit additional testimony. Thus, ALJ Arlow issued his January
23 22, 2010, Ruling allowing any party to file a motion “seeking the right to file additional
24 testimony with respect to new issues of fact arising subsequent to the submission of reply and
25 supplemental testimony.”

26

1 **II. DISCUSSION**

2 **A. New Facts Which PacifiCorp Will Establish in Additional Testimony**

3 In the interest of developing a full and complete record in this docket and allowing the
4 Company to respond to new issues raised by the Commission, the Company requests the
5 right to file testimony in this case. Based upon the Company's preliminary analysis, the
6 Company's testimony will establish the following new facts:

- 7 • The Commission's proposed collar could produce anomalous results for
8 PacifiCorp, disallowing significant forced outage-related costs for PacifiCorp even
9 though its overall fleet performance is better than that of its comparable NERC peer
10 group.
- 11 • The Commission's proposed collar could encourage PacifiCorp to operate its fleet
12 to decrease forced outage costs even if this reduces overall efficiency and increases
13 overall NPC. This outcome could be prevented by modifying the Commission's
14 proposed collar to apply only if the equivalent availability factor of the Company's
15 thermal generation fleet falls below NERC averages.
- 16 • The Commission's proposed collar will not more accurately forecast PacifiCorp's
17 forced outage rates, which is the underlying purpose of the proposal. In some units,
18 application of the Commission's proposed collar could produce higher forced outage
19 rates. In other units, application of the Commission's proposed collar could produce
20 lower forced outage rates. The combined use of NERC benchmarks and life-of-unit
21 averages produces arbitrary and unpredictable forced outage rates.
- 22 • The Commission's proposed collar would be more consistent and fair if, instead of
23 using the unit's historical average forced outage rate as the replacement value, it used
24 the 90th and 10th percentiles of the unit's historical forced outage rate.
- 25 • Replacement of annual outage data when an imprudent outage of any length is
26 found within the year will lead to anomalous results when otherwise normal outage

1 rates are excluded from the forecast. This results in a less accurate forced outage
2 rate.

3 • Consistent replacement of actual operating data with an historical average, as will
4 occur when an imprudent outage of any length is found, will skew the future averages
5 to the current historical average. This will cause the outage forecast to become less
6 accurate and forces the outage rate further from the four-year rolling average the
7 Commission has used since 1984.

8 • Anomalous results could be minimized if the Commission's proposed treatment of
9 imprudent outages in forecasting forced outage rates applied only to major outages
10 which exceed a specified length (i.e. 28 days).

11 **B. The Commission Should Permit PacifiCorp to File Additional Testimony.**

12 The Commission should permit PacifiCorp to file additional testimony establishing the
13 facts listed above. PacifiCorp has not previously addressed any of these points in its
14 testimony in this docket. PacifiCorp's supplemental testimony addressed Staff's proposed
15 collar mechanism, as refined and explained in the Commission workshop. PacifiCorp's
16 supplemental testimony did not address the use of historical average outage rates as the
17 replacement value in a collar mechanism, which is the primary topic PacifiCorp proposes to
18 address in its additional testimony. The Company did not do so because this was not an
19 issue in the docket until October 7, 2009, when the Commission proposed a collar mechanism
20 incorporating this approach. Nor did PacifiCorp address how a year with an imprudent outage
21 should be handled in a collar mechanism. Because no party had proposed using life-of-unit
22 averages or special treatment of years with imprudent outages in the collar mechanism at the
23 time PacifiCorp filed its supplemental testimony, PacifiCorp could not have addressed these
24 issues in its supplemental testimony.

25 Staff, CUB, and ICNU all objected to PacifiCorp's request to file supplemental
26 testimony and insisted that the scope of the testimony be limited. In response, the ALJ set an

1 expedited schedule and a page limit for the testimony. In this context, it is clear that
2 PacifiCorp's supplemental testimony was limited to the issues that parties had raised to date.
3 It is not credible to assert that PacifiCorp could have anticipated and addressed in its
4 supplemental testimony proposals that no party had yet made in the docket.

5 ICNU and CUB have argued that because the Commission's proposed collar is a
6 hybrid of Staff's proposal and ICNU's proposal, there are no new issues of fact raised by the
7 October 7th Notice.¹ PacifiCorp's proposed testimony, however, makes clear that there are a
8 number of important, new factual issues on which the Commission currently has no
9 evidentiary record.

10 Additionally, it is inaccurate to assert that the Commission's proposed collar is a
11 combination of the Staff and ICNU proposals. The Commission's proposed collar uses life-of-
12 plant average combined with a NERC benchmark, whereas ICNU's collar proposed use of a
13 twenty-year average both to exclude extreme outages and to determine the replacement
14 value. In any event, because ICNU's proposal was raised after the Company filed its
15 supplemental testimony, the Company never had an opportunity to file testimony on its
16 proposal.²

17 ¹ ICNU and CUB also argue that PacifiCorp has already had six different opportunities to develop
18 the record in this case. This reference is not clear, because PacifiCorp has filed only direct, reply and
19 supplemental testimony to date. ICNU and CUB also fail to note that the Company's prior testimony was
20 all filed before ICNU proposed its collar mechanism and before the Commission's October 7, 2010 Notice.
21 In any event, ICNU had the opportunity to present its collar mechanism in direct, reply or supplemental
22 testimony and yet chose to wait until its final round of testimony to do so. ICNU's presentation of a new
23 proposal in its reply to PacifiCorp's supplemental testimony has contributed to the current deficiencies in
24 the record in this case.

25 ² ICNU and CUB now argue that PacifiCorp in fact had an opportunity to respond to ICNU's reply
26 testimony because it could have cross-examined ICNU's witnesses or requested the right to file additional
27 testimony, as it is doing here. See Letter from ICNU and CUB to ALJ Arlow at 2 (Jan. 19, 2010). ICNU
28 and CUB do not deny that ICNU's testimony presented a new proposal and new issues of fact to which
29 the Company has not responded. Rather, they assert that cross-examination is a reasonable substitute
30 for responsive testimony. The Commission's order, however, states that the Company has the right to file
31 testimony to address new issues of fact to which the Company's witnesses were unable to respond.
32 Cross-examination is not an opportunity for the Company's witnesses to address the new issues of fact
33 which were raised in the ICNU testimony.

1 the filing of PacifiCorp's supplemental testimony. PacifiCorp proposes to file its additional
2 testimony 45 days from the date of the Commission's order permitting this testimony.

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4 DATED: January 29, 2010.

McDowell & Rackner PC



Katherine McDowell
Attorneys for PacifiCorp

PACIFICORP

Michelle R. Mishoe
Pacific Power
Legal Counsel
Suite 1800
825 NE Multnomah Street
Portland, OR 97232-2135