

McDowell Rackner & Gibson PC



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August 24, 2015

VIA ELECTRONIC FILING

PUC Filing Center
Public Utility Commission of Oregon
PO Box 1088
Salem, OR 97308-1088

**Re: UE 296– In the Matter PACIFICORP, dba PACIFIC POWER, 2016 Transition
Adjustment Mechanism**

Dear ALJ Rowe:

Pursuant to your Ruling on Friday, August 21, 2015, the parties have conferred regarding the three issues identified in your ruling. The parties will make a joint filing later today indicating that PacifiCorp does not intend to present live testimony at tomorrow's hearing and that PacifiCorp and the Industrial Customers of Northwest Utilities (ICNU) have reached an agreement on admission of each other's cross examination exhibits.

PacifiCorp and Noble Americas Energy Solutions LLC's (Noble Solutions) were unable to resolve the dispute created by Noble Solutions' request for live testimony. Therefore, PacifiCorp is filing the attached Response to Noble Americas Energy Solutions LLC's Request for Live Rebuttal Testimony.

Please contact this office with any questions.

Very truly yours,

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

Katherine McDowell

cc: Service List

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 296

In the Matter of:

PACIFICORP, dba PACIFIC POWER
2016 Transition Adjustment Mechanism.

**PACIFICORP'S RESPONSE TO
NOBLE AMERICAS ENERGY
SOLUTIONS LLC'S REQUEST
FOR LIVE REBUTTAL
TESTIMONY**

1 PacifiCorp d/b/a Pacific Power (PacifiCorp or Company) submits this response to
2 Noble Americas Energy Solutions LLC's (Noble Solutions) Revised Cross Examination
3 Statement filed on August 21, 2015, which included a request to present live rebuttal
4 testimony. The Public Utility Commission of Oregon (Commission) should reject Noble
5 Solutions' improper attempt to present live rebuttal testimony at hearing for the following
6 reasons.

7 First, the schedule in this Transition Adjustment Mechanism (TAM) case includes
8 three rounds of testimony and does not allow intervenors to file rebuttal testimony. In
9 docket UE 245, Chief Administrative Law Judge (ALJ) Michael Grant, in consultation with
10 the Commission, issued a memorandum order specifically rejecting a proposal for five
11 rounds of testimony in the TAM.¹ Since that order, the TAM has been limited to three
12 rounds of testimony.

13 Second, Noble Solutions has failed to present any reasonable basis to allow live
14 testimony at hearing. The memorandum order in docket UE 245 established the standards

¹ *PacifiCorp 2013 Transition Adjustment Mechanism*, Docket No. UE 245, Prehearing Conference Memorandum (Mar. 20, 2012).

1 for intervenors to file additional testimony in a TAM proceeding.² Intervenors must show
2 that PacifiCorp “raised new issues or presented unanticipated evidence in its reply
3 testimony, and that Staff and intervenors would be unable to effectively rebut the issues or
4 evidence on cross examination at hearing.”

5 Noble Solutions contends that PacifiCorp’s reply testimony introduced a “new
6 theory late in this proceeding” related to Noble Solutions’ proposed adjustment to include
7 the value of freed-up Renewable Energy Certificates (RECs) in the transition adjustment
8 calculation.³ The “new theory” presented by PacifiCorp consists of four lines of testimony
9 in the Company’s reply testimony stating that direct access customers receive a share of
10 any revenues generated by the sale of RECs.⁴ Noble Solutions claims that this is a “new
11 theory” because the Company had not disclosed this fact in discovery when it was asked to
12 explain whether the Company agreed that it was appropriate to adjust the transition
13 adjustment calculation to reflect the freeing-up of RECs due to direct access.⁵

14 The Company’s testimony presents nothing new or unanticipated because it simply
15 describes the impact of a Commission order that requires the Company to refund revenues
16 earned through the sale of RECs to all customers.⁶ The fact that Noble Solutions was

² *Id.* (“Following consultation with Commissioners, I conclude that the procedural schedule should include three rounds of testimony. To ensure that all parties have the opportunity to present relevant evidence on all disputed matters, however, Staff and intervenors should have the opportunity to request the ability to file additional, issue specific testimony upon a proper showing. That showing would require Staff or intervenors to establish that Pacific Power raised new issues or presented unanticipated evidence in its reply testimony, and that Staff and intervenors would be unable to effectively rebut the issues or evidence on cross examination at hearing. If the Commission grants a request to present additional prefiled testimony, then Pacific Power will be given the opportunity to respond to any filing with the direct testimony of live witnesses at hearing.”).

³ Noble Americas Energy Solutions LLC Revised Cross Examination Statement at 2.

⁴ PAC/500, Dickman/84.

⁵ *See* Noble Solutions/102, Higgins/9.

⁶ *See PacifiCorp Application Requesting Approval of Sale of Renewable Energy Credits*, Docket No. UP 260, Order No. 10-210 (June 9, 2010).

1 unaware of the Commission’s order is no basis to claim that PacifiCorp presented a “new
2 theory” in its reply testimony that warrants live rebuttal testimony.

3 Indeed, the Company’s response to Noble Solutions’ adjustment is no more a “new
4 theory” than the Company’s response to every other adjustment presented in this case.
5 Notably, Noble Solutions does not argue that the Company’s reply testimony exceeded the
6 proper scope of reply testimony nor does Noble Solutions argue that the Company’s
7 testimony was not directly responding to Noble Solutions’ adjustment. Given that there
8 was nothing improper about the Company’s reply testimony, there is no basis for Noble
9 Solutions to present live rebuttal testimony.

10 Noble Solutions further claims that it is entitled to present live rebuttal testimony
11 because the Company has yet to update one of its responses to a Noble Solutions’ data
12 request.⁷ But presumably Noble Solutions’ witness cannot testify as to the content of the
13 Company’s response, so this is no basis to allow live testimony. Moreover, the Company
14 provided an updated response on Friday, August 21, 2015, and has no objection to Noble
15 Solutions offering the updated response as an additional cross-examination exhibit in this
16 case.

17 In addition, Noble Solutions has indicated that it intends to cross-examine
18 PacifiCorp’s witness for one hour and filed extensive cross-examination exhibits, including
19 numerous Company responses to data requests relating specifically to this “new theory.”
20 Noble Solutions can also respond to the Company’s “new theory” in its briefing. The
21 Commission has previously found that the opportunity to cross-examine a witness and brief

⁷ Noble Americas Energy Solutions LLC Revised Cross Examination Statement at 3.

1 the issue was sufficient to address new proposals raised in reply testimony.⁸ Thus, even if
2 there were merit to Noble Solutions’ claim that PacifiCorp presented a “new theory” in
3 reply testimony, the procedural schedule in this case affords Noble Solutions sufficient
4 opportunity to respond without allowing additional live testimony.

5 Third, under the standard announced in docket UE 245, assuming that an intervenor
6 could meet the “new issue or unanticipated evidence” standard, they are entitled to request
7 *prefiled written rebuttal*, to which the Company could respond with live testimony at the
8 TAM hearing. The Company filed its reply testimony on August 3, 2015. Noble has had
9 almost three weeks to seek leave to file written rebuttal and has offered no explanation for
10 waiting until August 21, 2015, to declare its intention to present rebuttal testimony at
11 hearing. Noble Solutions’ proposal deprives the Company of its right to respond to pre-
12 filed rebuttal testimony.

13 Fourth, Noble Solutions’ late request for live testimony is prejudicial to PacifiCorp.
14 Noble Solutions requested live testimony three days after PacifiCorp waived cross of Noble
15 Solutions’ witness and only one full business day before the hearing. Noble Solutions
16 informed PacifiCorp of its intention to seek live rebuttal testimony only after PacifiCorp
17 communicated that it had no objections to Noble Solutions’ cross-exhibits.

18 Fifth, although PacifiCorp reserved the right to present live supplemental reply
19 testimony in response to improper cross-answering testimony from Staff and ICNU, as
20 reflected in the Company’s cross-examination statement, the Company elected to pursue

⁸ *Investigation into Forecasting Forced Outage Rates for Electric Generating Units*, Docket No. UM 1355, Order No. 10-157 at 4 (Apr. 26, 2010) (“Although Pacific Power complains that ICNU’s proposal came late in reply testimony, Pacific Power had the opportunity to cross-examine ICNU’s sponsoring witness but declined to do so. Moreover, Pacific Power addressed both Staff’s and ICNU’s proposals in opening and reply briefs.”).

1 these issues instead through cross-examination. To be clear, the Company does not intend
2 to request live rebuttal testimony at hearing.

3 DATED: August 24, 2015.

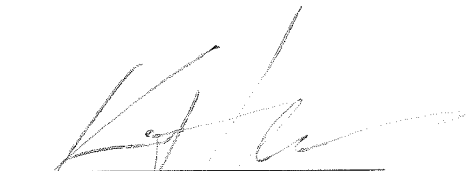
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Matthew McVee
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