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October 5, 2016

VIA ELECTRONIC FILING

Public Utility Commission of Oregon
201 High Street SE, Suite 100
Salem, OR 97301-1166

Attn: Filing Center

Re: UE 307—PacifiCorp's Response to Citizens' Utility Board of Oregon's Motion

PacifiCorp d/b/a Pacific Power encloses for filing in the above-referenced docket its objection to Citizens' Utility Board of Oregon's motion to take official notice and supplement the administrative record.

If you have questions about this filing, please contact Natasha Siores at (503) 813-6583.

Sincerely,

R. Bryce Dalley
Vice President, Regulation

Enclosures

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 307

In the Matter of
PACIFICORP, dba PACIFIC POWER,
2017 Transition Adjustment Mechanism.

PACIFICORP’S OBJECTION TO THE
CITIZENS’ UTILITY BOARD’S
MOTION TO TAKE OFFICIAL
NOTICE AND SUPPLEMENT THE
ADMINISTRATIVE RECORD

1 Under OAR 860-001-0460(2), PacifiCorp d/b/a Pacific Power (PacifiCorp or
2 Company) objects to the Citizens’ Utility Board of Oregon’s (CUB) Motion to Take
3 Official Notice and Supplement the Administrative Record (Motion). The Motion
4 requests that the Public Utility Commission of Oregon (Commission) take official notice
5 of a newspaper article from The Bend Bulletin (Bulletin Article), dated
6 September 25, 2016.¹ The Bulletin Article; however, contains disputed facts and is not
7 the type of document normally considered for official notice. The Motion should be
8 denied as not meeting the standard for official notice under OAR 860-001-0460,
9 untimely, and irrelevant to PacifiCorp’s 2017 Transition Adjustment Mechanism (TAM)
10 proceeding.

ARGUMENT

12 The Motion cites OAR 860-001-0460, which permits the Commission or
13 administrative law judge (ALJ) to take official notice of, among other things:

- 14 • All matters of which the courts of the State of Oregon take judicial
15 notice;² and

¹ Joseph Ditzler, *Pacific Power extends solar-project timeline*, The Bend Bulletin (September 25, 2016).
² OAR 860-001-0460(1)(a).

- 1 • General, technical or scientific facts within the specialized knowledge of
2 the agency.³

3 The Motion does not demonstrate that the Bulletin Article meets these requirements. In
4 addition, the Bulletin Article does not present information useful in the Commission’s
5 consideration of this case. It has not been sponsored by any witness and there is no
6 foundation for the truthfulness of its contents. At this late date, official notice of the
7 Bulletin Article is fundamentally inappropriate because it contains disputed facts, is
8 irrelevant, and could be misleading.

9 **A. The Bulletin Article Does Not Meet the Standard for Official Notice**

10 The Bulletin Article does not qualify for official notice under OAR 860-001-
11 0460. OAR 860-001-0460(a) allows the Commission or ALJ to take official notice of
12 “[a]ll matters of which the courts of the State of Oregon take judicial notice.” Under
13 ORS 40.065, a judicially noticed fact must be one not subject to reasonable dispute in
14 that it is either:

- 15 (1) Generally known within the territorial jurisdiction of the...court; or
16 (2) Capable of accurate and ready determination by resort to sources whose
17 accuracy cannot reasonably be questioned.

18 The Bulletin Article does not meet that standard. The article quotes statements
19 from a number of individuals, presumably with knowledge of local permitting
20 requirements, but provides no depth of analysis sufficient to establish any facts to which
21 a court could take official notice. The alleged facts are specialized and not of the type
22 that would be generally known to the Commission, and the accuracy of the Bulletin
23 Article is not beyond reasonable question. The Bulletin Article provides no details

³ OAR 860-001-0460(1)(e).

1 regarding the local permitting process or the status of applications. The Bulletin Article
2 does not refer to the current status of the projects in the TAM, as discussed in more detail
3 below, and includes quotes from Mr. Bob Jenks that mirror the disputed testimony of
4 CUB’s witness in the current proceeding.

5 Likewise, the Bulletin Article does not qualify for official notice under OAR 860-
6 001-0460(e). Under OAR 860-001-0460(e), the Commission or ALJ may take official
7 notice of “[g]eneral, technical, or scientific facts within the specialized knowledge of the
8 [Commission].” First, local permitting requirements are not within the specialized
9 knowledge of the Commission. More importantly, the facts CUB alleges are in the
10 Bulletin Article are not general, technical, or scientific. The Bulletin Article is a
11 newspaper story with only opinions regarding timing for a permitting process, without
12 official statements from the responsible agencies, reference to local codes, or actual
13 permit applications.

14 **B. The Motion is Untimely**

15 In addition to the Bulletin Article not meeting the standard for official notice,
16 CUB’s attempt to bolster its arguments at this late date is inappropriate. Even a cursory
17 review of the Bulletin Article raises questions regarding the accuracy of the alleged facts
18 and the story’s probative value. Furthermore, the article includes statements from Mr.
19 Jenks that are aligned with CUB’s litigation position in the current proceeding –
20 effectively introducing additional testimony from CUB, without allowing PacifiCorp an
21 opportunity to respond.

22 The Commission has previously denied requests to take official notice after the
23 record has been closed and where the truth of a document’s contents could not be

1 established.⁴ In Order No. 06-565, the Commission refused to take official notice of a
2 report on universal service telephone subsidies. In the order, the Commission determined
3 that the record in the proceeding had long been closed, but more importantly, even if the
4 record had not been closed, that the Commission could not take notice of the “truth of its
5 contents.”⁵

6 The same concerns arise upon review of the Motion. The hearing and any
7 opportunity to challenge the truthfulness of the contents of the Bulletin Article have past,
8 making CUB’s request untimely. Furthermore, the Commission cannot take notice of the
9 truth of the contents of the Bulletin Article because it identifies no facts, merely opinion,
10 and lacks context to other evidence currently in the record of this proceeding.

11 **C. The Bulletin Article Is Irrelevant and Potentially Misleading.**

12 In its response brief, CUB cites to the Bulletin Article as support for its claim that
13 there are delays in the construction of certain qualifying facilities included in the
14 Company’s forecast net power costs for 2017.⁶ CUB’s citation to the Bulletin Article
15 ignores undisputed facts in the record.

16 In the TAM reply update, the Company provided the following commercial
17 operation dates for the four Coronal projects:

Qualifying Facility	Commercial Operation Date
Adams Solar Center, LLC	4/25/2017
Bear Creek Solar Center, LLC	3/31/2018
Bly Solar Center, LLC	3/31/2017
Elbe Solar Center, LLC	4/24/2017

⁴ *In re Public Utility Commission of Oregon*, Docket No. UM 1217, Order No. 06-565 (October 3, 2006).

⁵ Order No. 06-565, n.1.

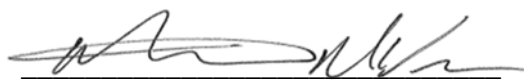
⁶ CUB UE 307 Response Brief at 16.

1 Contrary to what CUB implies, these dates are all consistent with the information
2 contained in the Bulletin Article. The Company revised the commercial operation date of
3 Bear Creek Solar Center, LLC (Bear Creek), the primary focus of the Bulletin Article, to
4 March 31, 2018.⁷ This provides more than a year for Bear Creek to secure the necessary
5 permits for construction, which is entirely consistent with the timelines referenced in the
6 Bulletin Article. It also means that the Bear Creek project is *not* in the 2017 TAM
7 forecast. With respect to the other qualifying facilities referenced in the Bulletin Article,
8 given the time remaining for construction and the speed at which solar projects can be
9 constructed, the commercial operation dates remain reasonable.⁸ The Bulletin Article
10 does not support the proposition for which CUB cites it, rendering it irrelevant and
11 potentially misleading in this case.

12 CONCLUSION

13 The Bulletin Article is not an appropriate document for official notice and should
14 not be included in the record for this proceeding. For the reasons discussed above,
15 PacifiCorp requests that the Commission deny the Motion.

16 Respectfully submitted this 5th day of October 2016.

By: 
Matthew D. McVee
Assistant General Counsel
PacifiCorp d/b/a Pacific Power

⁷ The most recently expected commercial operation dates used in GRID for all of the projects identified in the Bulletin Article were provided in PacifiCorp's workpapers, specifically the reply update workpaper "Cum ORTAM17w_QF (Endur 2016 02 02) (1606) CONF.xlsx."

⁸ PacifiCorp will continue to monitor status of the projects and, as required by the TAM Guidelines, attest to the expectation that any new qualifying facility projects will be operational during the test period as part of the TAM final update.