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Portland, Oregon 97232

June 29, 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 Objection to Staff's Motion to Amend Schedule**

PacifiCorp d/b/a Pacific Power encloses for filing in the above-referenced docket its Objection to Staff's Motion to Amend Schedule.

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

Sincerely,

A handwritten signature in black ink that reads "R Bryce Dalley" followed by a small mark that appears to be "wcs".

R. Bryce Dalley  
Vice President, Regulation

Enclosure

**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  
STAFF'S MOTION TO AMEND  
SCHEDULE

**INTRODUCTION**

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Under OAR 860-001-0420(4) and the Administrative Law Judge's June 27, 2016 Ruling, PacifiCorp d/b/a Pacific Power (PacifiCorp or Company) objects to Staff's Motion to Amend the Schedule (Motion) in the Company's 2017 Transition Adjustment Mechanism (TAM) proceeding. Staff requests that the Public Utility Commission of Oregon (Commission) modify the schedule to add additional rounds of testimony – without adjustment to Staff and intervenors opening testimony date. Staff's proposed schedule would: (1) reduce PacifiCorp's time to file reply testimony by 16 days, from 35 to 19 days; (2) burdens the Company with a three-day response time to data requests for a significant portion of the proceeding, without imposing any such burden on Staff and intervenors after their opening testimony; and (3) deviates from the general practice of three rounds of testimony and sequential briefing in TAM dockets; and (4) omits the filing of prehearing memoranda.

The Motion is untimely and would not result in a more complete record. Staff provides no support for the need for the additional testimony, and its contention that the Commission prefers such an approach is contrary to recent, express Commission direction in a TAM case.

1 The Commission should deny the Motion as unjustified, contrary to a full and fair  
2 process for the resolution of this case, and prejudicial to the Company. If and when Staff  
3 can justify the need for additional testimony after the Company files its reply testimony, the  
4 Commission can consider this request and review whether cross-examination at hearing  
5 suffices to address Staff's specific concerns.

## 6 **ARGUMENT**

### 7 **A. Staff's Motion is Untimely**

8 Staff's request is too late in the proceeding given the prior accommodations on  
9 timing. Following several rounds of communications, the parties agreed to a recommended  
10 schedule in this proceeding, which was subsequently adopted by the Administrative Law  
11 Judge.<sup>1</sup> During the scheduling discussion, the Company proposed an initial schedule based  
12 on the schedule in docket UE 296 (the 2016 TAM), with Staff and intervenors filing  
13 opening testimony by June 29, the same date as for opening testimony in the 2016 TAM.  
14 Staff specifically requested an additional nine days to file its opening testimony during those  
15 discussions.<sup>2</sup> The Company agreed to Staff's request, which compressed the later events in  
16 the proceeding to close the record in sufficient time for the Commission to issue an order by  
17 November 1, 2016. Now, Staff requests an amendment to the procedural schedule that  
18 maintains the additional time for Staff and intervenors' opening testimony, but shortens the  
19 time for PacifiCorp's reply testimony by almost half.

### 20 **B. Staff's Amended Schedule Would be Unduly Burdensome and Prejudicial**

21 The Company objects to Staff's request because it places *all* the burden of  
22 accelerating the proceeding on PacifiCorp—the party bearing the burden of proof in this

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<sup>1</sup> Prehearing Conference Memorandum (Apr. 26, 2016).

<sup>2</sup> A copy of Staff's e-mail requesting additional time is included as Attachment A.

1 case—which impedes the Company’s ability to present its case. Staff’s proposal would  
2 provide only 19 calendar days for PacifiCorp to file its reply testimony. On its own, this is  
3 not sufficient time to prepare testimony in response to four parties. Staff, however, also  
4 recommends shortening the response time for data requests to three days only *after*  
5 PacifiCorp files its reply testimony. In combination, Staff’s proposal would make it  
6 extremely difficult for PacifiCorp to prepare adequate reply testimony because PacifiCorp  
7 would only have time for one round of discovery and would not receive responses until  
8 shortly before the reply testimony due date.

9         The three-day accelerated response time would also apply from July 27, 2016, to  
10 (presumably) just before the hearing—approximately 30 days. This would allow other  
11 parties to propound multiple sets of discovery requests while PacifiCorp is preparing  
12 surrebuttal testimony (if allowed) and for hearing. The same individuals drafting surrebuttal  
13 testimony will be responsible for responding to these data requests, unreasonably burdening  
14 both PacifiCorp’s witnesses and counsel. In addition, in PacifiCorp’s dockets before this  
15 Commission, such a short response time for such a lengthy period is unprecedented. It is  
16 simply not possible to respond to a data request in any meaningful way in just three days.

17         Additionally, Staff’s proposal would eliminate sequential briefing to facilitate the  
18 additional rounds of testimony, despite the Commission’s guideline that “where one party  
19 carries the burden of proof...the Commission generally requires that parties to file  
20 sequential briefs, so that the party with the burden has the last opportunity to present  
21 argument.”<sup>3</sup> PacifiCorp bears the burden of proof in this proceeding. Eliminating  
22 sequential briefing prejudices the Company because it cannot address the final arguments  
23 presented by other parties in the proceeding.

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<sup>3</sup> Public Utility Commission of Oregon Internal Operating Guidelines (Oct. 14, 2014) at 10.

1           Finally, the proposed amended schedule would not result is a more fully developed  
2 record. To accommodate Staff’s request for additional rounds of testimony, the Company  
3 would lose the time necessary to conduct meaningful discovery and respond to the opening  
4 testimony of the other parties. The Company would have to respond to discovery requests  
5 under an unreasonably accelerated schedule for an entire month. There would be no  
6 opportunity for prehearing memoranda, and the Company would not have the last  
7 opportunity to present its arguments. A full record relies on a process that provides an  
8 opportunity for all parties to address the issues. Staff’s request may allow Staff and  
9 intervenors to submit additional testimony into the record, but in a rushed manner and only  
10 at the expense of PacifiCorp’s ability to fully respond. This would *not* result in a more fully  
11 developed set of issues or record in the proceeding.

12   **C.     Staff Has Not Justified the Need for an Amendment to the Procedural Schedule**

13           The Motion is devoid of any persuasive rationale for modifying the schedule in  
14 docket UE 307 that would justify imposing a significant burden on the Company. Staff has  
15 not articulated a need for the additional testimony other than a vague statement that the  
16 “issues present in the case are more complex than initially determined” and a note that  
17 forecast of production tax credits is a new issue in this TAM proceeding.<sup>4</sup> PacifiCorp  
18 disputes those assertions, and Staff has provided only a generic justification for its request.  
19 Furthermore, the purpose of cross-examination at hearing is to further develop the evidence,  
20 and Staff has not explained why Staff and intervenors would be unable to effectively rebut  
21 the issues or evidence on cross-examination at hearing.<sup>5</sup>

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<sup>4</sup> Motion at 1:12-19.

<sup>5</sup> If, after reviewing PacifiCorp’s reply testimony, Staff believes that cross-examination is not sufficient and additional pre-filed testimony is necessary, then Staff can move for a revised schedule at that point. Such a request should be based on a showing that the Company raised new issues or presented unanticipated evidence

1           Contrary to Staff’s contention, the issues in this proceeding are no more complex  
2 than previous TAM proceedings. Indeed, the Company has not proposed any modeling  
3 changes, as directed by the Commission in Order No. 15-394. Accordingly, the issues  
4 should be limited to inputs and outputs to the GRID model. In previous TAM proceedings,  
5 these issues have been adequately addressed in three rounds of testimony. Staff correctly  
6 states that PacifiCorp’s forecast of production tax credits (PTCs) is a new issue for the  
7 TAM, but it is not complex because those values are based on generation estimates  
8 evaluated in every TAM, and involve no new analysis or modeling.

9           Staff’s contention that the Commission has recently recognized the importance of  
10 additional rounds of testimony is inapplicable here because of the limited scope of the TAM  
11 proceeding. The Commission has previously determined that three rounds are appropriate  
12 for the TAM.<sup>6</sup> For example, in docket UE 245 when the parties could not reach consensus  
13 on whether there should be three or five rounds of testimony, the Administrative Law Judge,  
14 following consultation with the Commission, concluded that three rounds was sufficient.

15           Staff’s sole precedent for its Motion is a general rate case, not a limited-issue power  
16 transition adjustment mechanism.<sup>7</sup> In the case cited by Staff, the Commission stated that it  
17 “will expect five rounds of testimony in future *general rate case proceedings*.”<sup>8</sup> The TAM  
18 is not a general rate proceeding, and treatment three-round schedule is entirely consistent

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in its reply testimony, and that Staff and intervenors would be unable to effectively rebut the issues or evidence on cross-examination at hearing. *In the Matters of PacifiCorp d/b/a Pacific Power 2013 TAM and Request for General Rate Revision*, Docket Nos. UE 245 & UE 246, Prehearing Conference Memorandum at 3 (Mar. 20, 2012). In the alternative, Staff could request additional time for filing opening testimony, which could be accommodated with less disruption to the remainder of the schedule.

<sup>6</sup> *In the Matters of PacifiCorp d/b/a Pacific Power 2013 TAM and Request for General Rate Revision*, Docket Nos. UE 245 & UE 246, Prehearing Conference Memorandum at 3 (Mar. 20, 2012)

<sup>7</sup> Motion at 1:20-25.

<sup>8</sup> *In re Avista Utilities*, OPUC Docket Nos. UG 288 & UM 1752, Order No. 16-109 at 22 (Mar. 15, 2016) (emphasis added).

1 with the procedural schedules in PacifiCorp's prior TAM proceedings.<sup>9</sup> The Commission  
2 has distinguished the TAM and determined that three rounds are sufficient in those  
3 proceedings.<sup>10</sup> Staff's Motion provides no support for its contention that the TAM raises the  
4 same evidentiary concerns as a general rate case proceeding, where all elements of a utility's  
5 rates are examined, not just net power costs.

6 Staff's argument is also internally inconsistent. Staff claims on that the Commission  
7 wants additional testimony, but fails to address the Commission's general requirement that  
8 sequential briefing be allowed when one party has the burden of proof, as is the case here.<sup>11</sup>  
9 Accordingly, not only is the current schedule consistent with prior proceedings, it is  
10 consistent with the Commission's operating guidelines.

#### 11 CONCLUSION

12 Given the unreasonable burden that the proposed revised schedule would place on  
13 PacifiCorp's ability to present its case, as well as the fact that Staff's request is contrary to  
14 the Commission's internal operating guidelines and recent TAM precedent, PacifiCorp  
15 respectfully requests that the Commission deny Staff's motion.

16 Respectfully submitted this 29th day of June 2016.

By:



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

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<sup>9</sup> See, e.g., *In the Matters of PacifiCorp d/b/a Pacific Power 2013 TAM and Request for General Rate Revision*, Docket Nos. UE 245 & UE 246, Prehearing Conference Memorandum (Mar. 20, 2012); *In the Matters of PacifiCorp d/b/a Pacific Power Request for a General Rate Revision and 2014 Transition Adjustment Mechanism*, Docket Nos. UE 263 and UE 264, Errata Joint Prehearing Conference Memorandum (Mar. 29, 2013).

<sup>10</sup> *In the Matters of PacifiCorp d/b/a Pacific Power 2013 TAM and Request for General Rate Revision*, Docket Nos. UE 245 & UE 246, Prehearing Conference Memorandum at 3.

<sup>11</sup> Public Utility Commission of Oregon Internal Operating Guidelines (Oct. 14, 2014) at 10.

**ATTACHMENT A**



**From:** [Weirich Michael](#)  
**To:** ["Greg Adams"](#); [McVee, Matthew](#); [Tyler C. Pepple](#); [Michael Goetz \(mike@oregoncub.org\)](#); [Moser Sommer](#); [WEIRICH Michael \(michael.weirich@state.or.us\)](#); [Katherine A. McDowell - McDowell Rackner & Gibson PC \(katherine@mrg-law.com\)](#)  
**Cc:** [Higgins, Kevin \(Noble Americas\)](#)  
**Subject:** [INTERNET] RE: UE 307 Procedural Schedule  
**Date:** Friday, April 15, 2016 2:45:02 PM

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Hello,

I think we will probably have to discuss the Schedule further at the prehearing conference. Right now, Staff has the following requests:

Move the Staff & Intervenor Opening Testimony date to July 8<sup>th</sup>; and

Move the PacifiCorp Reply and Staff & Intervenor Cross Answering date to August 12<sup>th</sup>

Staff is fine with a hearing anytime during the week of August 29<sup>th</sup>.

Mike

---

**From:** Greg Adams [mailto:Greg@richardsonadams.com]  
**Sent:** Friday, April 15, 2016 10:15 AM  
**To:** McVee, Matthew; Tyler C. Pepple; Michael Goetz (mike@oregoncub.org); Moser Sommer; WEIRICH Michael (michael.weirich@state.or.us); Katherine A. McDowell - McDowell Rackner & Gibson PC (katherine@mrg-law.com)  
**Cc:** Higgins, Kevin (Noble Americas)  
**Subject:** RE: UE 307 Procedural Schedule

The only day that could possibly work for Kevin Higgins, our witness is the 29<sup>th</sup>. He has to travel to another hearing in Cheyenne the next day through the rest of the week.

Our lawyers will be double booked that day (29<sup>th</sup>), but we can figure out how to manage if that's the only day that will work for everyone else, especially if we can get agreement on moving the intervenor testimony date per my request earlier.

**Greg Adams**  
Richardson Adams, PLLC  
515 N. 27th Street, 83702  
P.O. Box 7218, 83707  
Boise, Idaho  
Voice: 208.938.2236  
Facsimile: 208.938.7904

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Thank you.

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**From:** McVee, Matthew [<mailto:Matthew.McVee@pacificorp.com>]  
**Sent:** Friday, April 15, 2016 11:01 AM  
**To:** Tyler C. Pepple; Greg Adams; Michael Goetz ([mike@oregoncub.org](mailto:mike@oregoncub.org)); [sommer.moser@doj.state.or.us](mailto:sommer.moser@doj.state.or.us); WEIRICH Michael ([michael.weirich@state.or.us](mailto:michael.weirich@state.or.us)); Katherine A. McDowell - McDowell Rackner & Gibson PC ([katherine@mrg-law.com](mailto:katherine@mrg-law.com))  
**Cc:** Higgins, Kevin (Noble Americas)  
**Subject:** RE: UE 307 Procedural Schedule

That is a difficult week for PacifiCorp also. Greg – is there any date during the week of the 29<sup>th</sup> that would work for NAES?

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**From:** Tyler C. Pepple [<mailto:tcp@dvclaw.com>]  
**Sent:** Friday, April 15, 2016 9:58 AM  
**To:** Greg Adams; McVee, Matthew; Michael Goetz ([mike@oregoncub.org](mailto:mike@oregoncub.org)); [sommer.moser@doj.state.or.us](mailto:sommer.moser@doj.state.or.us); WEIRICH Michael ([michael.weirich@state.or.us](mailto:michael.weirich@state.or.us)); Katherine A. McDowell - McDowell Rackner & Gibson PC ([katherine@mrg-law.com](mailto:katherine@mrg-law.com))  
**Cc:** Higgins, Kevin (Noble Americas)  
**Subject:** [INTERNET] RE: UE 307 Procedural Schedule

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Thank you for circulating the proposed schedule, Matt. The prehearing conference for PGE's AUT is on Monday, so I will know more about ICNU's availability after that. In response to Noble's proposed amendments, however, I know that ICNU will not be available for a hearing the week of August 22<sup>nd</sup>, which rules out a possible hearing date of August 26<sup>th</sup> for us.

Thanks,  
Tyler

**Tyler C. Pepple | Attorney**  
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**From:** Greg Adams [<mailto:Greg@richardsonadams.com>]

**Sent:** Thursday, April 14, 2016 1:37 PM

**To:** McVee, Matthew <[Matthew.McVee@pacificorp.com](mailto:Matthew.McVee@pacificorp.com)>; Michael Goetz ([mike@oregoncub.org](mailto:mike@oregoncub.org)) <[mike@oregoncub.org](mailto:mike@oregoncub.org)>; Tyler C. Pepple <[tcp@dvclaw.com](mailto:tcp@dvclaw.com)>; [sommer.moser@doj.state.or.us](mailto:sommer.moser@doj.state.or.us); WEIRICH Michael ([michael.weirich@state.or.us](mailto:michael.weirich@state.or.us)) <[michael.weirich@state.or.us](mailto:michael.weirich@state.or.us)>; Katherine A. McDowell - McDowell Rackner & Gibson PC ([katherine@mrg-law.com](mailto:katherine@mrg-law.com)) <[katherine@mrg-law.com](mailto:katherine@mrg-law.com)>

**Cc:** Kevin Higgins <[khiggins@energystrat.com](mailto:khiggins@energystrat.com)>

**Subject:** RE: UE 307 Procedural Schedule

Matt,

Thanks for circulating a proposal. Our witness will be out of the office on June 29 and for significant amount of time prior to that, and we collectively have hearings stacked up in the end of August and beginning of September so we request two changes.

Staff-Intervenor Testimony: July 6

Hearing: August 26.

We are reasonably flexible on moving other dates around to accommodate those changes.

**Greg Adams**

Richardson Adams, PLLC

515 N. 27th Street, 83702

P.O. Box 7218, 83707

Boise, Idaho

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Thank you.

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**From:** McVee, Matthew [<mailto:Matthew.McVee@pacificorp.com>]

**Sent:** Thursday, April 14, 2016 12:17 PM

**To:** Michael Goetz ([mike@oregoncub.org](mailto:mike@oregoncub.org)); Greg Adams; Tyler C. Pepple; [sommer.moser@doj.state.or.us](mailto:sommer.moser@doj.state.or.us); WEIRICH Michael ([michael.weirich@state.or.us](mailto:michael.weirich@state.or.us)); Katherine A. McDowell - McDowell Rackner & Gibson PC ([katherine@mrg-law.com](mailto:katherine@mrg-law.com))

**Subject:** UE 307 Procedural Schedule

Below is proposed schedule for UE 307 (2017 TAM) ahead of the April 20 prehearing conference. I've included a comparison to the 2016 TAM schedule. The proposed schedule tracks with last year's TAM schedule. Due to a couple conflicts, PacifiCorp would like to move the hearing date out a week compared to last year.

<b>EVENT</b>	<b>2016 TAM</b>	<b>2017 TAM (PROPOSED)</b>
Filing Date	April 1	April 1
Prehearing Conference	April 29	April 20
Settlement Conference	June 8,	TBD
Staff & Intervenor Opening Testimony	June 29, 2015	June 29
Second Settlement Conference	July 7, 2015	TBD
PacifiCorp Reply Testimony and Staff & Intervenor Cross-Answering Testimony	August 3, 2015	August 3
All Parties' Prehearing Memoranda	August 17, 2015	August 19
Cross-Examination Statements and Exhibits	August 18, 2015	August 23
<b>Hearing</b>	<b>August 25, 2015</b>	<b>Aug 31 or Sept. 1</b>
PacifiCorp Opening Brief	September 14, 2015	September 20
Staff & Intervenors Response Briefs	September 28, 2015	October 3

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