



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

July 7, 2016

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

**Re: UE 307– In the Matter PACIFICORP, dba PACIFIC POWER, 2017 Transition
Adjustment Mechanism**

Attention Filing Center:

Attached for filing in the above-captioned docket is an electronic copy of PacifiCorp's Request for Certification to Commission or Alternative Motion to Modify Amended Procedural Schedule.

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. The signature is fluid and cursive.

Katherine McDowell

cc: Service List

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 307

In the Matter of:
PACIFICORP d/b/a PACIFIC POWER
2017 Transition Adjustment Mechanism.

**REQUEST FOR CERTIFICATION TO
COMMISSION OR ALTERNATIVE
MOTION TO MODIFY AMENDED
PROCEDURAL SCHEDULE
(Expedited Consideration Requested)**

I. INTRODUCTION

On July 1, 2016, the Administrative Law Judge (ALJ) issued a ruling partially granting Staff's motion to amend the schedule in this case (Ruling), to add two additional rounds of testimony. PacifiCorp opposed Staff's motion to amend the schedule without a specific and compelling showing of need, given the difficulty of developing and presenting the case under the amended schedule. PacifiCorp's response did not propose an alternative, five-round schedule, but instead objected generally to shortening PacifiCorp's reply period, from five weeks to 19 days, and reducing the response time for expedited data requests from seven business days to three business days. The Company also objected to the elimination of sequential briefing, which the ALJ restored to the amended schedule in the Ruling.

PacifiCorp seeks certification of the Ruling under OAR 860-001-0110 because it results in undue prejudice to PacifiCorp, substantial detriment to the public interest, or for other good cause. The Commission specifically reviewed the three-round/five-round question in the 2013 Transition Adjustment Mechanism (TAM), docket UE 245, and approved three rounds of

1 testimony.¹ In that docket, the Commission stated that a “proper showing” to extend the TAM
2 schedule to five rounds of testimony “would require Staff or intervenors to establish that Pacific
3 Power raised new issues or presented unanticipated evidence in its reply testimony, and that Staff
4 and intervenors would be unable to effectively rebut the issues or evidence on cross examination
5 at hearing.”² Since that ruling, all TAM cases have followed a three-round schedule. Staff’s
6 motion did not satisfy this standard or even address the applicable precedent.

7 The ALJ cited the Commission’s decision in docket UE 245 in the Ruling, finding that
8 Staff made a “proper showing” for five rounds of testimony. But that finding cannot be
9 reconciled with the standard articulated by the Commission in docket UE 245, which requires
10 Staff to specifically identify unanticipated issues and show that they cannot be rebutted without
11 additional testimony. The Company relied on the scheduling guidelines set by the Commission
12 in docket UE 245 in agreeing to Staff’s and intervenors’ opening testimony date of July 8, 2016
13 (well past the June 29 date for opening testimony in last year’s TAM or the June 19 date for
14 opening testimony in the 2015 TAM).³ Under these circumstances, the Ruling granting Staff’s
15 motion is prejudicial to PacifiCorp and detrimental to the public interest, and should be certified
16 to the Commission.

17 In addition, the three-day discovery response period under the amended schedule is
18 infeasible, prejudicial, and ultimately counter-productive to the full and complete exchange of
19 information between the parties.

¹ *In the Matters of PacifiCorp 2013 Transition Adjustment Mechanism and Request for General Rate Revision*, Docket Nos. UE 245 & UE 246, Prehearing Conference Memorandum at 2-3 (Mar. 20, 2012). Although the procedural issue was resolved in a Prehearing Conference Memorandum, Chief Administrative Law Judge Michael Grant noted in his ruling that it was made after consultation with the Commissioners.

² *Id.* at 3.

³ *In the Matter of PacifiCorp’s 2015 Transition Adjustment Mechanism*, Docket No. UE 287, Prehearing Conference Memorandum at 1 (April 15, 2014).

1 Staff does not meet the standard for five rounds of testimony set in docket UE 245.
2 Staff's motion cites no new issues or unanticipated evidence. This is unsurprising given that the
3 scope of this case was narrowed by Order No. 15-394 in the 2016 TAM, where the Commission
4 directed the Company to forgo any modeling changes in the 2017 TAM. Staff points to the fact
5 that the TAM includes a request to update Production Tax Credits under Senate Bill 1547. But
6 this aspect of the case was clearly described in several pages of the Company's initial filing, is
7 straightforward, and was well-known to Staff when it proposed the original schedule in this case.

8 Staff relies on the recent Avista general rate case scheduling order for the proposition that
9 the Commission prefers five rounds of testimony.⁶ This order was issued in a general rate case
10 and is inapplicable to the TAM. Additionally, the order was issued on March 15, 2016, more
11 than one month before the April 20, 2016, prehearing conference in this case, so it cannot be
12 considered a new development justifying a change to the original schedule.

13 Under the circumstances of this case, Staff should be required to demonstrate a specific
14 and pressing need for additional testimony that warrants the disruption caused by its request for
15 five rounds of testimony at this stage of the case.⁷ As described above and in the Company's
16 response to Staff's motion to amend the schedule, Staff failed to make this showing.

17 In the Ruling, the ALJ notes that the Commission has generally used three rounds of
18 testimony for the TAM, but has allowed for five rounds of testimony upon a "proper showing."
19 The ALJ cites to the ruling in docket UE 245 for these propositions, but then does not apply that
20 standard in finding that Staff made a proper showing for five rounds of testimony. The Ruling
21 selectively relies on the applicable Commission precedent in a manner prejudicial to the

⁶ *In re Avista Utilities*, Docket Nos. UG 288 & UM 1753, Order No. 16-109 (Mar. 15, 2016).

⁷ *In the Matters of PacifiCorp 2013 Transition Adjustment Mechanism and Request for General Rate Revision*, Docket Nos. UE 245 & UE 246, Prehearing Conference Memorandum at 3 (Mar. 20, 2012).

1 Company. The ALJ should certify the Ruling to the Commission, which should deny Staff's
2 motion.

3 **B. The Ruling's Discovery Provisions are Infeasible and Prejudicial.**

4 PacifiCorp's discovery obligations under the amended schedule are more rigorous and
5 one-sided than in any prior TAM proceeding. The new three-day response period and
6 PacifiCorp's truncated reply period without expedited discovery combine to impede PacifiCorp's
7 ability to develop testimony and prepare for hearing, resulting in undue prejudice to the
8 Company.

9 To ensure accurate data request responses, PacifiCorp assigns data requests to the most
10 knowledgeable person(s) in the Company, allows a reasonable period for that person(s) to
11 respond, and concludes with a complete regulatory and legal review. The absolute minimum for
12 these steps is five business days, a time period that requires virtually full-time availability of the
13 key personnel involved. A reduction of this response period to three business days, even on a
14 best-efforts basis, could eliminate one or more of these quality control steps. This is especially
15 true given the fact that PacifiCorp cannot limit the number of data requests to which it must
16 respond at any given point in time, both in Oregon and in other jurisdictions.

17 As a practical matter, PacifiCorp cannot reasonably comply with a three-business day
18 response requirement, so it may be forced to provide incomplete responses or seek additional
19 time under the best-efforts clause, detracting from the efficiency of the discovery process. In
20 recognition of these practical limitations, a three-day response period in the TAM is virtually

1 unheard of.⁸ Indeed, the Commission has limited even the five-day period the Company
2 proposes as an alternative in its motion to modify the amended schedule; for example, the
3 original schedule in this case applied a seven-day period for expedited discovery.⁹

4 In addition, because a three-day response period is unworkable, the Company expects
5 that it may need to regularly invoke the best-efforts clause to seek a longer discovery response
6 timeline. This could result in discovery disputes and motions, disrupting the orderly litigation of
7 this case and causing a substantial detriment to the public interest.

8 Staff and intervenors may claim that they are prejudiced by longer timelines because they
9 cannot conduct as much discovery. But Staff cannot wait to seek additional rounds of testimony
10 until late June and then complain about practical limitations on discovery. The burden of the
11 compressed schedule resulting from Staff's request for five rounds of testimony should be fairly
12 balanced between the parties.

13 Moreover, the unprecedented three-day response period unreasonably applies only after
14 the Company files its reply testimony—meaning that PacifiCorp's opportunity to conduct
15 discovery on Staff and intervenors will be extremely limited. Under the fourteen-day response

⁸ PacifiCorp has located only one TAM filing that ever used a three-day response period, docket UE 207. In that case, the shortened period did not apply to PacifiCorp's reply testimony, but was used only at the very end of the case. *In the Matter of PacifiCorp's 2010 Transition Adjustment Mechanism*, Docket No. UE 207, Prehearing Conference Memorandum at 2 (May 4, 2009). This case preceded the ruling in docket UE 245.

⁹ See, e.g., *In the Matter of PacifiCorp's 2016 Transition Adjustment Mechanism*, Docket No. UE 296, Prehearing Conference Memorandum at 2 (May 1, 2015) (eight calendar days to respond to data requests after Staff and intervenors filed opening testimony and six calendar days after PacifiCorp's reply testimony); *In the Matter of PacifiCorp's 2015 Transition Adjustment Mechanism*, Docket No. UE 287, Prehearing Conference Memorandum at 2 (April 15, 2014) (eight calendar days to respond to data requests after Staff and intervenors filed opening testimony and six calendar days after PacifiCorp's reply testimony); *In the Matter of PacifiCorp's 2012 Transition Adjustment Mechanism*, Docket No. UE 227, Prehearing Conference Memorandum at 2 (Apr. 19, 2011) (seven business days to respond to data requests after Staff and intervenors file testimony and four-business-day turnaround in the eight-day period between PacifiCorp's reply testimony and hearing).

1 period now in place, PacifiCorp will not receive responses to its data requests until July 25 at the
2 earliest (assuming that PacifiCorp files its data requests the first business day after it receives the
3 opening testimony), two days before its testimony is due under the amended schedule. This
4 discovery schedule severely limits PacifiCorp's ability to develop its reply testimony.

5 In the Ruling, the ALJ notes the Company's position that a three-day response period is a
6 substantial burden, but never addresses that issue or the Company's related arguments. The
7 Ruling contains just one sentence setting the discovery timeline. The Ruling should be certified
8 for review by the Commission, which should vacate or modify the three-day response period.

9 **III. ALTERNATIVE MOTION TO MODIFY AMENDED SCHEDULE**

10 If the Commission affirms the five-round schedule in the Ruling or if the ALJ denies the
11 Company's request for certification, PacifiCorp requests modifications to the discovery
12 obligations and reply testimony filing date in the amended schedule. These changes are
13 necessary for the full and fair development of the record in this case.

14 PacifiCorp seeks three changes to discovery requirements under the amended schedule:

15 (1) lengthening the three-day, best-efforts period for expedited discovery to five days, best
16 efforts; (2) starting the expedited discovery period on July 8, 2016, to allow PacifiCorp a realistic
17 opportunity to conduct discovery on Staff's and intervenors' opening testimony; and
18 (3) suspending new discovery against PacifiCorp during the period in which the Company is
19 drafting its reply testimony.

20 First, as discussed above, the three-day response period is unworkable. Allowing a five-
21 day, best-efforts response time will allow timely responses from the Company and mitigate the
22 risk of discovery disputes in this case.

1 Second, because PacifiCorp’s period for preparing reply testimony has been shortened,
 2 the ALJ should require a five-day, best-efforts response period for the Company’s data requests
 3 on the parties’ opening testimony. As described above, this will allow the Company to conduct
 4 meaningful discovery on Staff and intervenors before filing reply testimony.

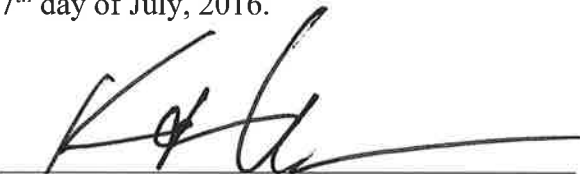
5 Third, PacifiCorp seeks a suspension of new discovery on the Company while it prepares
 6 its reply testimony on an expedited basis. The parties have already served nearly 300 data
 7 requests on PacifiCorp, so a short hold on discovery on the Company will not be prejudicial.
 8 The Company proposes that normal discovery resume as soon as it files its reply testimony.

9 PacifiCorp also requests an August 1, 2016, due date for its reply testimony, restoring
 10 five days to its reply period (for a total of 24 days, instead of 19 days). PacifiCorp assumes that
 11 Staff’s opening testimony will raise numerous issues, reflecting Staff’s new allegations that this
 12 is an unusually complex case. The Company needs a more reasonable response period to address
 13 them all. The ALJ can allow this schedule change, while still permitting the submission of two
 14 additional rounds of testimony using generally the same time frames in the current schedule, as
 15 follows:

EVENT	DATE	PACIFICORP PROPOSED
Staff and Intervenor Opening Testimony	July 8, 2016	July 8, 2016
PacifiCorp Reply Testimony	July 27, 2016	August 1, 2016
Staff and Intervenor Rebuttal/Cross-Answering Testimony	August 8, 2016	August 12, 2016
PacifiCorp Surrebuttal Testimony	August 18, 2016	August 22, 2016
All Parties’ Cross-Examination Statements	August 23, 2016	August 24, 2016
All Parties Cross-Examination Exhibits	August 24, 2016	August 25, 2016
Hearing	August 29, 2016	August 29, 2016

1 to five days, best efforts, beginning on July 8, 2016; and suspending discovery on PacifiCorp
2 while it prepares its reply testimony. The Company also requests that the ALJ restore to
3 PacifiCorp five additional days to prepare its reply testimony, from July 27 to August 1, and
4 adjust the balance of the schedule accordingly.

Respectfully submitted this 7th day of July, 2016.



Katherine A. McDowell
McDowell Rackner & Gibson PC

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

Attorneys for PacifiCorp