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June 6, 2005

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**VIA ELECTRONIC FILING**

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

**Re: PacifiCorp's Application for Waiver of OAR 860-038-0080(1)(b)**  
**Docket UE 170**

Enclosed for filing is PacifiCorp's Application for Waiver of OAR 860-038-0080(1)(b) in the above-referenced docket. A copy of this filing was served on all parties to this proceeding as indicated on the attached service list.

Very truly yours,

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

Katherine A. McDowell

KAM:knp  
Enclosure  
cc: Service List

BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

UE 170

In the matter of PACIFIC POWER &  
LIGHT (d/b/a PacifiCorp) Request for a  
General Rate Increase in the Company's  
Oregon Annual Revenues.

PACIFICORP'S APPLICATION FOR  
WAIVER OF OAR 860-038-0080(1)(b)

**INTRODUCTION**

Pursuant to OAR 860-038-0001(4), PacifiCorp requests the Public Utility Commission of Oregon (the "Commission") waive the application of OAR 860-038-0080(1)(b) (the "New Resource Rule") to PacifiCorp's acquisition of three major generating resources: (1) Phase One of the Currant Creek Project, a natural gas-fired simple cycle combustion turbine project located adjacent to PacifiCorp's Mona Substation in Juab County, Utah; (2) the Gadsby Project, a gas turbine simple cycle project located in Salt Lake City, Utah; and (3) the West Valley lease.

PacifiCorp requests this waiver so that the New Resource Rule will not prohibit PacifiCorp from including the following costs in PacifiCorp's revenue requirement in this case: (1) the capital costs of the Currant Creek and Gadsby Projects in PacifiCorp's rate base for ratemaking purposes in a manner similar to the capital costs of PacifiCorp's other owned generating projects, and (2) the operations and maintenance costs of the Currant Creek and Gadsby Projects in PacifiCorp's revenue requirement in a manner similar to the operations and maintenance costs of PacifiCorp's other owned generating projects; and (3) the costs associated with the West Valley operating lease.

**ANALYSIS**

OAR 860-038-0001(4) states that the Commission may relieve PacifiCorp of any of its obligations under the Direct Access Rules under Chapter 860, Division 38 for "good cause shown." PacifiCorp can demonstrate good cause because a waiver of the New Resource

1 Rule for the Currant Creek and Gadsby Projects and the West Valley lease will benefit  
2 PacifiCorp's customers and is consistent with Oregon law. This is especially true given the  
3 fact that two of the resources, Gadsby and the West Valley lease, are already reflected in  
4 PacifiCorp's revenue requirement at cost, and the fact that Gadsby is currently included in  
5 PacifiCorp's rate base.

6 In Order 05-133, the Commission deferred ruling on the meaning, application and  
7 proposed revisions to the New Resource Rule by holding UM 1066 in abeyance. In so doing,  
8 the Commission acknowledged the practical difficulties associated with continued  
9 uncertainty over the New Resource Rule and proposed the filing of waiver applications such  
10 as this as an interim solution. Consistent with the foregoing, the Commission should grant  
11 PacifiCorp's application for a waiver of the New Resource Rule.

12 **A. The Waiver Benefits PacifiCorp's Customers.**

13 The granting of the waiver requested by PacifiCorp would be in the best interest of  
14 PacifiCorp's customers because PacifiCorp has demonstrated through its IRP, through  
15 testimony in UE 134 and UE 147 (its last rate cases), and in testimony in this case, that the  
16 generating resource portfolio that provides PacifiCorp's customers with the best combination  
17 of price and rate stability includes the Currant Creek and Gadsby Projects and the West  
18 Valley lease at cost. The alternative—potentially including these resources in revenue  
19 requirement at variable, undefined market rates, including fair returns on the capital  
20 investment—could result in either higher rates for customers or unfair and confiscatory rates  
21 for PacifiCorp. The response of the capital markets to the regulatory uncertainty created by a  
22 market approach to new resources further exacerbates the potential harm associated with  
23 application of the New Resource Rule.

24 Currant Creek was the result of PacifiCorp's RFP 2003-A, designed under Order 91-  
25 1383 and approved by the Commission in UE 1079 in Order 03-356. The project is  
26 described in more detail in the Direct Testimony of Mark Tallman, filed in this case.

1 The Gadsby Project was included in rates at cost (both expense and rate base) by  
2 virtue of the Commission's adoption of an all-party Stipulation in UE 147 in Order 03-528.  
3 PacifiCorp pursued the Gadsby Project because it represented a least-cost, new resource  
4 option that was consistent with the demand for summer peak capacity in PacifiCorp's East  
5 control area. PacifiCorp determined that it could build and operate the required capacity less  
6 expensively than it could purchase such capacity from a third party building a similar  
7 dedicated facility in Utah.

8 The facts and circumstances around the original execution and continuation of the  
9 West Valley lease have been addressed in Oregon Commission dockets UI 196 and UE 134,  
10 and are discussed in detail in Mr. Tallman's Direct and Rebuttal Testimony in this case.

11 Currant Creek, Gadsby and West Valley are sound resource decisions, providing  
12 generation to PacifiCorp customers at costs that are competitive with the market options  
13 available. PacifiCorp acquired both Currant Creek and the West Valley lease through  
14 competitive procurement processes and the cost of Gadsby compares favorably with Currant  
15 Creek and the West Valley lease. Under OAR 860-027-0040(2)(k), the cost of resources  
16 acquired through competitive procurement processes are presumed to be at market:

17 "Transfer prices in contracts or agreements for the procurement of  
18 goods or services under competitive procurement shall be  
19 presumed to be the market value, subject to evaluation of the  
procurement process[.]"

20 Waiving the rule to permit these resources to be added or maintained in PacifiCorp's rate  
21 base at costs which are competitive with market prices at the time the resource was acquired  
22 is therefore in the best interests of customers.

23 **B. The Waiver is Consistent with Oregon Law.**

24 The New Resource Rule is part of the Direct Access Rules, which the Commission  
25 adopted in the fall of 2000 under Order No. 00-596. The Direct Access Rules contemplated a  
26 process that would lead to utilities not acquiring new generating resources except to serve

1 residential and small non-residential customers. They also contemplated that larger  
2 customers would be served by the market and not by the utilities. The Direct Access Rules  
3 required the utilities to file a Resource Plan that would lead the utilities to divest or remove  
4 from rates all generating resources not needed to serve residential and small non-residential  
5 customers.

6       Within months of enactment of the Direct Access Rules, Western power markets  
7 were in shambles and it was clear that the expectations that gave rise to the Direct Access  
8 Rules could no longer be supported. Oregon policy makers promptly reacted to these  
9 changed circumstances and radically changed their approach to direct access and to utility-  
10 owned resources. As a result, in 2001, the Oregon Legislature adopted HB 3633, now  
11 codified at ORS 757.603, which delayed the implementation date of Direct Access and  
12 required electric companies to provide a cost-of-service rate option to all retail electric  
13 consumers. ORS 757.603 also allows the Commission to waive the cost-of-service rate  
14 option requirement, but only if the Commission can make specific findings designed to  
15 protect customers from an electricity market that is not fully functional or that does not  
16 produce prices that are just and reasonable. To date, no one has requested such a waiver  
17 from the Commission.

18       The Commission was also quick to recognize that the Direct Access Rules could have  
19 unintended consequences that could harm electric utility customers and it proposed several  
20 amendments to the rules. To date, most of the amendments to the Direct Access Rules  
21 proposed by the Commission have been adopted. However, the issue of whether new  
22 resources should be reflected in rates at cost or market, most recently the subject of UM  
23 1066, has remained unresolved for nearly four years.

24       On March 17, 2005, the Commission issued Order No. 05-133 in which the  
25 Commission held docket UM 1066 in abeyance pending the resolution of two open dockets  
26 on related issues (UM 1056 and UM 1182). Pending ultimate resolution of this issue, the

1 Commission has directed parties seeking to include a new resource in its revenue  
2 requirement at cost to file a request to waive the administrative rule. The Commission  
3 granted such a waiver to Portland General Electric Company (“PGE”) for PGE’s last major  
4 plant addition, Port Westward in Order No. 04-376.

5 An extensive analysis of the reasons that a waiver of the New Resources Rule is  
6 consistent with Oregon law is included in PacifiCorp’s comments in UM 1066, filed on  
7 January 30, 2004 and are incorporated by reference herein. PacifiCorp believes that a waiver  
8 of the New Resources Rule is fully consistent with ORS 757.603 and the other provisions of  
9 HB 3633.

10 **C. A Waiver is Consistent With the Commission’s Prior Interpretations of**  
11 **the New Resource Rule.**

12 Since its enactment, the Commission has never applied the New Resource Rule by  
13 replacing a cost-based approach with a market-based approach, suggesting that the  
14 Commission has adopted a more practical interpretation of the New Resource Rule to allow  
15 utilities to recover the cost of new resources (including a return on the investment in them), if  
16 a utility can show that the resources are priced comparably with market-based alternatives.  
17 This is implicit in the treatment of Gadsby and the West Valley lease in UE 147. PacifiCorp  
18 can meet this requirement because, as noted above, PacifiCorp has demonstrated that its  
19 resource acquisition strategies for the Currant Creek and Gadsby Projects and the West  
20 Valley lease have resulted in new resources priced comparably with market-based  
21 alternatives. Therefore, the granting of a waiver would be consistent with the Commission’s  
22 prior interpretation of the New Resource Rule.

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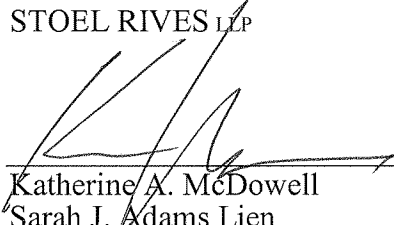
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1 **CONCLUSION**

2 For the reasons stated above, PacifiCorp requests that the Commission waive the  
3 application of the New Resource Rule to PacifiCorp's Currant Creek and Gadsby Projects  
4 and the West Valley lease.

5 DATED: June 6, 2005.

6 STOEL RIVES LLP

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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing document in Docket UE 170 on the following named person(s) on the date indicated below by email and first-class mail addressed to said person(s) at his or her last-known address(es) indicated below.

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DATED: June 6, 2005

  
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