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**Re: UM 1712 – In the Matter of PACIFICORP d/b/a PACIFIC POWER Application for
Approval of Deer Creek Mine Transaction**

Attention Filing Center:

Attached for filing in the above-captioned docket is PacifiCorp's Brief on Stipulation Procedure.
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Very truly yours,



Katherine McDowell

cc: Service List

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1712

In the Matter of

PACIFICORP d/b/a PACIFIC POWER

Application for Approval of Deer Creek Mine
Transaction.

**PACIFICORP'S BRIEF ON
STIPULATION PROCEDURE**

I. INTRODUCTION

1 PacifiCorp d/b/a Pacific Power (PacifiCorp or Company) and the Citizens' Utility
2 Board of Oregon (CUB) filed a stipulation on March 25, 2015, resolving all issues in this
3 case between these two parties. On March 30, 2015, Administrative Law Judge (ALJ)
4 Arlow held a prehearing conference on the procedural schedule for reviewing the
5 stipulation. The parties agreed on a process and schedule, with the exception of one
6 issue—whether the Public Utility Commission of Oregon (Commission) should allow
7 testimony from the non-settling parties in addition to written objections and a hearing
8 under OAR 860-001-0350(8). As directed by ALJ Arlow, PacifiCorp submits this brief to
9 support its position that the specific procedures in OAR 860-001-0350(8) for review of
10 multi-party settlements—written objections or a hearing—are sufficient in this case,
11 without the need for additional rounds of testimony on the stipulation.

II. BACKGROUND

12 On December 12, 2014, PacifiCorp filed an application seeking Commission review
13 and approval of a proposed transaction to close the Deer Creek mine near Huntington,
14 Utah. Because the transaction requires regulatory approval by May 31, 2015, the Company

1 requested that the Commission issue an order in this proceeding by May 27, 2015. In
2 recognition of the timing constraints in this proceeding, ALJ Arlow set an expedited
3 schedule, with three rounds of testimony.

4 To informally address questions on the filing, the Company convened a
5 technical workshop on January 23, 2015, and participated in a Commission workshop on
6 February 12, 2015. The parties also gathered for settlement discussions on three different
7 occasions—February 12, February 23, and March 9, 2015.

8 On March 5, 2015, the parties filed response testimony, generally supporting the
9 transaction, but objecting to aspects of PacifiCorp’s ratemaking proposal. On March 19,
10 2015, the Company filed reply testimony, modifying its ratemaking proposal to address the
11 parties’ concerns.

12 Building on the modifications in the Company’s reply testimony and the three
13 settlement negotiations, CUB and the Company reached a comprehensive settlement of the
14 issues in this case on March 23, 2015. The Company filed the stipulation on March 25,
15 2015, indicating that CUB and the Company planned to file a brief in support of the
16 stipulation by April 3, 2015.

17 The PacifiCorp-CUB stipulation is straightforward and based entirely on testimony
18 now on file in this docket. The stipulation takes the Company’s modified ratemaking
19 proposal from its reply testimony¹ and makes three changes to it, all based on CUB’s
20 response testimony.

¹ PAC/400, Dalley/10-12.

1 First, the Company proposed a June 1, 2015 tariff effective date.² CUB asserted
2 that the earliest effective date should be January 1, 2016.³ The stipulation reflects a
3 January 1, 2016 tariff effective date.

4 Second, the Company proposed an interest rate of 5.25 percent on the amounts in
5 the Deer Creek Mine Closure tariff.⁴ CUB recommended an interest rate of no more than
6 3.31 percent.⁵ The stipulation adopts CUB's recommended interest rate.

7 Third, the Company proposed to recover all of its estimated closure costs through
8 the Deer Creek Mine Closure tariff.⁶ CUB proposed that all closure costs be tracked to a
9 deferral for later ratemaking treatment.⁷ Under the stipulation, only actual closure costs
10 incurred through November 30, 2015, are included in the tariff (with the balance recorded
11 to a regulatory asset).⁸

12 No party in this case sought to cross-examine the Company on its modified
13 ratemaking proposal at the hearing in this case that was originally scheduled for March 30,
14 2015. No party filed cross-answering testimony objecting to CUB's response testimony or
15 sought cross-examination of CUB.

III. ARGUMENT

16 Under OAR 860-001-0350(1), the Commission specifically allows multi-party (as
17 opposed to all-party) settlements at any time on any or all issues. OAR 860-001-0350(7)

² PAC/400, Dalley/11.

³ CUB/100, Jenks-McGovern/14-16, 22.

⁴ PAC/400, Dalley/11

⁵ CUB/100, Jenks-McGovern/19.

⁶ PAC/400, Dalley/11-12.

⁷ CUB/100, Jenks-McGovern/22.

⁸ The Company's initial testimony and reply testimony, as well as the stipulation, all use the same estimate of closure costs. See Application for Approval of Deer Creek Mine Transaction at 11, Attachment B at 2; PAC/200, Stuver/3, 6-7; Exhibit PAC/201, Stuver/1; PAC/400, Dalley/9; Exhibit PAC/401, Dalley/2; Stipulation at 2, 4, 7, Exhibit A at 2. The stipulation simply limits the tariff to amounts through November 30, 2015.

1 provides the guidelines for filing a stipulation memorializing a settlement agreement and
2 requires that the settling parties submit an explanatory brief or testimony in support of the
3 stipulation. When a stipulation is submitted late in the proceeding—after several rounds of
4 testimony—and when a stipulation is based entirely on the pre-filed testimony, it is
5 appropriate to file a brief supporting the stipulation rather than testimony. For example, in
6 a case in which the settling parties filed testimony in support of a stipulation, because the
7 stipulation was already fully supported by the existing record, the ALJ treated the
8 testimony as an explanatory brief.⁹ On the other hand, in a case in which a multi-party
9 settlement was achieved before the time set for parties to file opening testimony, the ALJ
10 set a procedural schedule allowing for parties to file additional testimony on the
11 stipulation.¹⁰

12 If a party objects to a stipulation, OAR 860-001-0350(8) provides that a party may
13 file written objections or request a hearing. The rule is silent on the right of non-settling
14 parties to file testimony in response to a stipulation, and this issue has been addressed on a
15 case-by-case basis, taking into consideration the state of the record and timing constraints
16 in the proceeding.

17 In a case similar to this one, docket UE 227, the ALJ rejected the parties' request to
18 file additional testimony on a stipulation for two reasons: (1) because the stipulation was
19 fully supported by pre-filed testimony; and (2) the docket was subject to a scheduling

⁹ See *In the Matter of PacifiCorp d/b/a Pacific Power 2012 Transition Adjustment Mechanism*, Docket No. UE 227, Ruling (Sept. 22, 2011).

¹⁰ See *In the Matter of Idaho Power Company Request for a General Rate Revision*, Docket No. UE 213, Corrected Prehearing Conference Memorandum (Aug. 25, 2009) (setting date for Staff and intervenors to file opening testimony on December 3, 2009); Prehearing Conference Memorandum (Dec. 9, 2009) (noting that Idaho Power provided notice of settlement on November 23, 2009, and setting schedule for parties file testimony).

1 deadline.¹¹ The ALJ determined that any additional testimony on the stipulation would not
2 add new factual information to the pre-filed testimony and instead directed the parties to
3 file opening and reply briefs.

4 The same factors weigh against allowing additional testimony in this case. First,
5 the terms in the PacifiCorp-CUB stipulation are fully supported by the evidence presented
6 in pre-filed testimony in this docket and do not rely on the development of new facts. The
7 evidence supporting the stipulation was not challenged through cross-examination or
8 otherwise. As a result, PacifiCorp and CUB appropriately plan to support the stipulation
9 with a brief, not through joint testimony. Any additional testimony opposing the
10 stipulation would either be duplicative or, if new issues are raised, would be outside the
11 proper scope of objections under OAR 860-001-0350(8).

12 The procedural schedule agreed to in this case at the March 30, 2015 prehearing
13 conference allows for the filing of objections, a hearing, and simultaneous opening and
14 closing briefs. Because the evidentiary record supporting the PacifiCorp-CUB stipulation
15 is fully developed, this procedural schedule provides an adequate and appropriate
16 opportunity for the parties to object to the stipulation.

17 Second, this case is on an expedited schedule, driven by the May 31, 2015 deadline
18 for regulatory approval of the Deer Creek transaction. Given this schedule, the
19 Commission should not permit new testimony that does not meaningfully add to the
20 proceedings or assist the Commission in its resolution of the disputed issues in this docket.

¹¹ *In the Matter of PacifiCorp d/b/a Pacific Power 2012 Transition Adjustment Mechanism*, Docket No. UE 227, Ruling (Sept. 22, 2011) (“The several rounds of prefiled testimony and the hearing already completed in this docket provide a full and fair basis for both the stipulation and ICNU’s objection’s.”).

1 Third, the existing record provides an adequate basis for the Commission to
2 approve the stipulation. The Commission has explained that it “may accept a non-
3 unanimous settlement agreement so long as we make an independent finding, supported by
4 substantial competent evidence in the record as a whole, that the settlement will establish
5 just and reasonable rates.”¹² The testimony already in the record provides the “competent
6 evidence” upon which the Commission may make its findings.

7 Finally, during a March 30, 2015 prehearing conference in this docket, counsel for
8 the Industrial Customers of Northwest Utilities (ICNU) argued that the Commission’s
9 decision in docket UE 267 mandated that the PacifiCorp-CUB stipulation be treated as
10 joint testimony rather than a stipulation.¹³ ICNU is incorrect. In docket UE 267, the
11 Commission found that the stipulation did not “‘*resolve* any issues’ since the adverse party
12 in the docket, PacifiCorp, opposes its terms.”¹⁴ The Commission nonetheless found that
13 the stipulation had value because it served the same function as joint testimony by
14 narrowing the range of positions on developing the record, but encouraged parties in the
15 future to “submit joint testimony as a means of aligning positions against an adverse
16 party.”¹⁵ In this case, CUB is an adverse party to PacifiCorp, filing testimony opposing
17 PacifiCorp’s proposed ratemaking treatment of the transaction. The PacifiCorp-CUB
18 stipulation resolves all of the issues between two adverse parties, unlike the stipulation in
19 docket UE 267. Procedural concerns regarding multi-party stipulations between non-
20 adverse parties, such as those addressed in docket UE 267, are therefore inapplicable here.

¹² *In the Matter of PacifiCorp d/b/a Pacific Power Request for a General Rate Revision*, Docket No. UE 210, Order No. 10-022 at 6 (Jan. 26, 2010).

¹³ *In the Matter of PacifiCorp d/b/a Pacific Power Transition Adjustment, Five-Year Cost of Service Opt-Out*, Docket No. UE 267, Order No. 15-060 (Feb. 24, 2015).

¹⁴ *Id.* at 3 (emphasis in original).

¹⁵ *Id.*

1 Furthermore, interpreting the decision in UE 267 to apply to all multi-party settlements
2 would render OAR 860-001-0350(8) meaningless.

3 The PacifiCorp-CUB stipulation narrows the range of issues facing the Commission
4 in this docket, obviating the need for any further testimony. If the Commission allows the
5 parties to file testimony objecting to the stipulation, however, PacifiCorp requests the
6 opportunity to respond to that testimony at hearing if necessary.

IV. CONCLUSION

7 Based on the foregoing, the Commission should reject the request of parties to file
8 both written objections and testimony opposing the PacifiCorp-CUB stipulation, in
9 addition to conducting a hearing on the stipulation. In the alternative, if the supplemental
10 testimony is allowed, the Commission should allow PacifiCorp and CUB to respond with
11 live testimony at the hearing.

Respectfully submitted this 31st day of March, 2015.



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