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May 12, 2009

Via Electronic and US Mail

Public Utility Commission
Attn: Filing Center
550 Capitol St. NE #215
P.O. Box 2148
Salem OR 97308-2148

Re: Investigation into determination of resource sufficiency
Docket No. UM 1396

Dear Filing Center:

Enclosed please find an original and five (5) copies of the Reply Testimony on behalf of the Industrial Customers of Northwest Utilities in the above-referenced docket.

Thank you for your assistance.

Sincerely yours,

/s/ Brendan E. Levenick
Brendan E. Levenick

Enclosures
cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Reply Testimony of the Industrial Customers of Northwest Utilities upon the parties on the service list, shown below, by causing the same to be sent by electronic mail to all parties, as well as, deposited in the U.S. Mail, postage-prepaid, to parties which have not waived paper service.

Dated at Portland, Oregon, this 12th day of May, 2009.

/s/ Brendan E. Levenick
Brendan E. Levenick

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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1396

In the Matter of)
)
The Public Utility Commission of Oregon)
Investigation into the Determination of)
Resource Sufficiency)
_____)

**REPLY TESTIMONY OF
RANDALL J. FALKENBERG
ON BEHALF OF
THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES**

May 12, 2009

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 **A.** Randall J. Falkenberg, PMB 362, 8351 Roswell Road, Atlanta, Georgia 30350. I am the
3 same Randall J. Falkenberg who filed direct testimony on April 13, 2009 in this case. I
4 am submitting testimony on behalf of the Industrial Customers of Northwest Utilities
5 (“ICNU”).

6 **Q. WHAT IS THE PURPOSE OF YOUR REPLY TESTIMONY?**

7 **A.** I comment on the direct testimony of PacifiCorp, Portland General Electric Company
8 (“PGE”) and Oregon Public Utility Commission (“OPUC” or the “Commission”) Staff.

9 **PGE and PacifiCorp Testimony**

10 **Q. HOW DO PGE AND PACIFICORP PROPOSE TO DETERMINE THE**
11 **RESOURCE SUFFICIENCY AND DEFICIENCY PERIODS?**

12 **A.** Both companies propose that the deficiency date be determined by the time when a new
13 base load plant is first included in the Integrated Resource Plan (“IRP”). It is assumed
14 this would be a Combined Cycle Combustion Turbine (“CCCT”). In some respects, this
15 appears to be a change from current methodologies, which rely on analysis of peak
16 demands and energy requirements performed at the time of the avoided cost tariff
17 updates, rather than analyses performed as part of the much larger IRP process.
18 However, I do have certain concerns regarding this proposal.

19 First, the IRP process is a long and costly process for a Qualifying Facility (“QF”)
20 to participate in. Many aspects of the IRP process would have little or no bearing on
21 rates paid to QFs. This would impose needless costs on QFs, and by itself serve to
22 discourage QF development. The IRP is not a litigated process in the normal sense; thus,
23 there is no assurance that all affected parties will have their due process rights respected.
24 Further, it takes around a year for an IRP to be acknowledged, and as shown in recent

1 cases, there is no assurance the IRP will be acknowledged by the Commission.
2 Consequently, the results of the IRP can't be counted on as being a sound basis for
3 determining QF pricing.

4 Second, even if the IRP is acknowledged, there is no clear requirement that
5 utilities must follow the IRP, once it is acknowledged. The recent Chehalis acquisition
6 by PacifiCorp is a case in point. While PacifiCorp may be able to justify the prudence of
7 this acquisition, what cannot ever be known, is whether the Company may have passed
8 on opportunities to obtain equivalent capacity from QFs. Thus, the IRP is very much a
9 flexible standard, which gives the utilities substantial opportunity to pursue their own
10 desired plans at the expense of potential competitors such as QFs. The Commission is
11 concerned that utilities have a "self build bias," which gave rise to Docket UM 1276.
12 The IRP process does not seem to provide protection against this bias.

13 Third, assumptions that may be accepted in an IRP context may not be
14 appropriate for QF rate setting and may be quite subjective. For example, in the IRP, the
15 utility may include unspecified "front office transactions" premised on assumptions that
16 there will be sufficient capacity in the market to make purchases for a specific time
17 frame. A utility may assume that it can make 500 MW of purchases for several years,
18 thus pushing out the date when a new CCCT is needed. However, the same utility could
19 just as easily decide that it would be better to accelerate the date of the new CCCT, by
20 assuming such purchases are no longer available or desirable. In the end, this provides a
21 great deal of flexibility on the part of the utility in deciding the timing of new plants. QF
22 rates should not be premised on such subjective and open ended determinations.

1 Finally, the use of the IRP leads to a “chicken and egg” problem. Utilities have
2 generally acquired enough capacity in the short run to avoid the immediate need for new
3 baseload capacity. In UM 1129, the then current IRP showed a need for a new CCCT in
4 2007. Later IRPs showed a need in 2012. Subsequent IRPs will almost certainly show a
5 later need. This will result in a situation where the first several years are always assumed
6 to be met with purchases, and QFs will never obtain capacity credits. In the meantime,
7 the utilities have been adding substantial new long-term resources virtually every year.

8 **Q. IF THE IRP IS USED AS THE BASIS FOR DETERMINING THE DEFICIENCY**
9 **DATE, WHAT IS YOUR RECOMMENDATION?**

10 **A.** First, if the IRP is used, sufficiency must be based on the last acknowledged IRP. The
11 utility shouldn’t be given the “benefit of the doubt” that its IRP will be acknowledged.
12 This is especially true in the case of “IRP Updates.”

13 Second, “Front Office Transactions” or other unidentified/non-contracted capacity
14 sources should be eliminated from the need determination.

15 Third, the three tier test I discussed in my direct testimony should be applied to
16 the last acknowledged IRP assumptions, with suitable adjustments to remove speculative
17 resources.

18 **Staff Testimony**

19 **Q. PLEASE COMMENT ON THE STAFF TESTIMONY REGARDING RESOURCE**
20 **SUFFICIENCY.**

21 **A.** The Staff position regarding resource sufficiency is rather troubling because it is unclear,
22 impractical, unrealistic and in conflict with prior Staff testimony. In the end, I fear that
23 the Staff position will serve to increase the “substantial amount of discretion” utilities
24 have to determine resource sufficiency and deficiency. See Staff/100, Durrenberger/5,
25 lines 8-9.

1 **Q. PLEASE EXPLAIN THE STAFF PROPOSAL.**

2 **A.** Mr. Durrenberger proposes what he considers to be:

3 [A] relatively simple standard that requires a filing of resource deficiency
4 if the normal monthly load requirements, including retail load and
5 contracted wholesale commitments, excluding planning contingencies, are
6 greater than the normal monthly resources available, both for company-
7 owned generation and for firm power purchase commitments for six or
8 more months out of any rolling twelve month period.

9 Staff/100, Durrenberger/5 (emphasis added).

10 While the above stated proposal seems simple enough, there are a few concerns.
11 First, Mr. Durrenberger proposes to exclude “planning contingencies.” This means that
12 he would require a provision for operating reserves, but not planning reserves. This, by
13 itself, assures that QFs will be paid less than full avoided costs. Typically operating
14 reserves amount to 7% of thermal generation and 5% of hydro and wind generation.
15 Planning reserves typically are in the range of 12-15% or more.

16 The need for new resources is based on meeting planning reserves, not operating
17 reserves. Assuming load growth in the range of 1 to 2 percent per annum, a utility may
18 show a need for capacity from a new resource based on planning reserves several years
19 before it would be needed based on operating reserves. In PacifiCorp’s 2007 IRP, a 12%
20 planning reserve margin showed a need for capacity in 2010, while a 15% planning
21 reserve margin showed a need for capacity in 2008. PacifiCorp 2007 IRP at 3. Use of a
22 5-7% reserve, would certainly seem to delay the time when a deficit was shown. As we
23 now know, PacifiCorp actually added a significant amount of new capacity (Chehalis) in
24 2008. Thus, PacifiCorp’s most recent capacity acquisition seems consistent with a 15%
25 reserve margin, while Staff’s proposal would use something less than 7% for QFs. This
26 will clearly result in a bias against QFs in the resource selection process as they will be

1 paid full avoided cost systematically later than the utility actually is adding new
2 resources.

3 **Q. IS THE STAFF PROPOSAL IN THIS CASE CONSISTENT WITH THE STAFF**
4 **POSITION IN UM 1129?**

5 **A.** No. In UM 1129, Staff witness Maury Galbraith testified “I also recommend that the
6 Commission direct PacifiCorp to determine its annual capacity position based on the
7 largest monthly capacity deficit (or smallest capacity surplus) when determining its
8 resource sufficiency period in future avoided cost filings.” Re OPUC, UM 1129,
9 Staff/1200, Galbraith/8 (December 9, 2005).

10 In this case, Mr. Durrenberger is proposing that a rolling average be used, and that
11 the capacity deficiency is only established if the utility is deficient for six months out of a
12 twelve month period. This will, again, delay the time when the utility is deemed to be
13 deficient. In discovery, ICNU asked Mr. Durrenberger why the Staff is now proposing
14 this different requirement. Mr. Durrenberger’s response was as follows:

15 The testimony at Staff/100, Durrenberger/8, lines 6-12 provides for
16 a longer time period only for utilities relying on the wholesale
17 market. I do not believe this represents a change to Staff’s
18 position.

19 ICNU/201, Falkenberg/1.

20 This response is not entirely clear, as there is some question as to what constitutes
21 reliance on the wholesale market and what wholesale transactions should be counted. For
22 example, Mr. Durrenberger suggests that the determination should rely only on known
23 and measurable resources. Staff/100, Durrenberger/2, lines 18-19. Later Mr.
24 Durrenberger seems to imply that he would limit wholesale resources to contractual
25 commitments. Id. at Durrenberger/8-9. Elsewhere, however, Mr. Durrenberger suggests
26 that use of historical or planned levels of Short-Term Firm purchases is satisfactory. Id.

1 at Durrenberger/2, lines 16-17. In a practical sense, there is little difference. Both PGE
2 and PacifiCorp seem to rely substantially on the wholesale market at present, thus Mr.
3 Durrenberger's new proposal would apply to them.

4 Mr. Durrenberger's comments regarding the proposal applying only to utilities
5 that rely on the wholesale market addresses the same factual circumstances that Mr.
6 Galbraith addressed in his testimony. In UM 1129, both PGE and PacifiCorp were
7 dependant on the wholesale market, as they are now. Consequently, Staff's position has
8 changed and merely amounts to a proposal to delay the payment of full avoided costs to
9 QFs for the two largest utilities in the state as compared to Staff's prior position in UM
10 1129.

11 **Q. EXPLAIN THE PRACTICAL DIFFICULTIES YOU SEE WITH THE STAFF**
12 **CAPACITY SUFFICIENCY ANALYSIS.**

13 **A.** Based on prior analyses, it appears that both PGE and PacifiCorp rely substantially on the
14 wholesale market for meeting capacity requirements. Mr. Durrenberger proposes that
15 market resources would only be considered if there is a regional capacity sufficiency, and
16 there is sufficient transmission capacity available to deliver the power. This, however,
17 amounts to a nearly impossible standard to apply. I have performed such studies in the
18 past, as part of stranded cost and market price evaluations. These are quite complex, time
19 consuming and certainly not free of ambiguity. To perform a proper analysis of the
20 regional supply and demand is a much larger (and no less controversial) task than
21 performing such an analysis for a single utility. Further, much of the necessary data that
22 was readily available in the past (when I performed such studies), is now deemed by
23 utilities to be confidential and would be quite difficult to obtain.

1 In discovery, Mr. Durrenberger acknowledged that confidentiality issues would
2 complicate the process. ICNU/201, Falkenberg/2-3. While Mr. Durrenberger cites some
3 studies performed by Bonneville Power Administration and Northwest Power and
4 Conservation Council (“NPCC”) as possible resources, there is no basis for assuming
5 these studies will be current, available in a timely fashion, or that they will share
6 assumptions consistent with the utilities regulated by the OPUC. I believe it is quite
7 unrealistic to assume the OPUC would adopt the position of entities it does not regulate,
8 nor has the ability to compel discovery from, as a basis for making such determinations.

9 Further, such studies are simply unreliable. In the responses to ICNU Data
10 Requests 1.7 and 1.8, Mr. Durrenberger comments that studies prepared in the 2000-2001
11 time frame by PGE and PacifiCorp did not predict capacity deficits, while the NPCC
12 study performed around the same time did predict medium term deficits. ICNU/201,
13 Falkenberg/4-5. If utilities can “miss” an event of the magnitude of the regional power
14 crisis, there is not a lot of room to be optimistic about this approach.

15 **Q. IN MR. DURRENBERGER’S APPROACH, DOES A CAPACITY ANALYSIS**
16 **REALLY MATTER ANYWAY?**

17 **A.** No. While Mr. Durrenberger discusses the capacity analysis in his testimony at some
18 length, in the end, he states that for QF contracts only energy matters in the analysis of
19 sufficiency:

20 A utility itself must be deficient in energy and the regional power
21 pool in which the utility is located must have insufficient resources
22 relative to loads for the utility to be considered resource deficient.

23 Staff/100, Durrenberger/2.

24 By definition, a QF standard power purchase agreement is an
25 energy supply contract. Therefore, only the energy load/resource
26 balance shall be considered.

1 Id. at Durrenberger/8.

2 In effect, Mr. Durrenberger’s “simple standard” amounts to proving that the
3 region is short of energy or that the utility is energy deficient, and there is not sufficient
4 transmission capacity available to deliver any surplus regional energy. As noted above,
5 this was something that the major utilities in the state failed to do prior to the most severe
6 power crisis in the history of the United States.

7 **Q. WHAT IS YOUR RECOMMENDATION?**

8 **A.** The Commission should reject Staff’s and the utilities’ proposals as they are unfair,
9 unrealistic, and impractical. Instead, the three tier test I described in my direct testimony
10 should be applied.

11 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

12 **A.** Yes.

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ICNU/201

**OPUC Staff Data Responses to
ICNU Data Requests**

Request:

1.12 Page 8, lines 6-8. In UM 1129, Mr. Galbraith testified (Staff 1200/ Galbraith 2 lines 9-12) that PacifiCorp should use its largest monthly deficiency or smallest surplus to determine its position. In this case, Mr. Durrenberger appears to require that a utility be deficient for six out of twelve months to determine deficiency, as opposed to only one month. Please explain why Staff has changed its position in this matter, and provide an explanation and justification for this change.

Response:

The testimony at Staff/100, Durrenberger/8, lines 6-12 provides for a longer time period only for utilities relying on the wholesale market. I do not believe this represents a change to Staff's position.

Request:

- 1.5 Please see Staff/100, Durrenberger/6, lines 3-6. Please explain the mechanics involved in determining whether there is a regional surplus or deficiency. Would this require obtaining data from all utilities, other load serving entities, and all non-utility generators in the region regarding their load and supply balance? Please identify whether any of the data is confidential. Please discuss the practical difficulties Mr. Durrenberger sees obtaining this data and evaluating it.

Response:

The regional studies undertaken by the Northwest Power and Conservation Council (NPCC), Bonneville Power (BPA) and others could serve to analyze the regional resource adequacy issue. Alternately, a utility can attempt to collect the necessary data and present their case for regional sufficiency. Having data that is deemed confidential will make the analysis more difficult.

Request:

- 1.6 Please see Staff/100, Durrenberger/6, lines 3-6. Please explain the mechanics involved in determining whether there is sufficient transmission capacity available to deliver power to a specific utility. Would this require obtaining data from all regional transmission service providers concerning their available capacity, and commitments? Please identify whether any of the data is confidential. Please discuss the practical difficulties staff sees obtaining this data and evaluating it.

Response:

Regional power flow studies are available and could be used to justify any bottlenecks whereby generation could not be delivered to loads. Alternately a utility could attempt to collect the necessary transmission data and present their case on that basis. Confidential data will make the analysis more difficult for parties.

Request:

- 1.7 Please see Staff/100, Durrenberger/6, lines 3-6. Please provide examples of when in past 10 years when Mr. Durrenberger believes there was a regional deficiency of generating capacity.

Response:

The NPCC.'s Resource Adequacy Assessment from around 2000 projected a potential regional power deficits in the mid term.

Request:

- 1.8 Please identify whether PGE and PacifiCorp would have been considered sufficient during the power crisis of 2000 and 2001. Please explain.

Response:

Both PGE and PacifiCorp, prior to the power crisis of 200-01 were forecasting sufficient resources to meet normal loads under normal hydro conditions. Unfortunately, neither of these years had anything like normal hydro conditions.