

Davison Van Cleve PC

Attorneys at Law

TEL (503) 241-7242 • FAX (503) 241-8160 • mail@dvclaw.com
Suite 400
333 S.W. Taylor
Portland, OR 97204

August 21, 2009

Via Electronic and U.S. Mail

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

Re: Advice No. 09-012 – PacifiCorp’s Request for Approval of
Schedule 37 – Avoided Cost Purchases from Qualifying Facilities
(10,000 kW or less)

Dear Filing Center:

Enclosed please find an original Complaint on behalf of the Industrial
Customers of Northwest Utilities in the above-referenced matter.

Thank you for your assistance.

Sincerely yours,

/s/ Allison M. Wils
Allison M. Wils

Enclosures

cc: UM 1129 Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the Complaint on behalf of the Industrial Customers of Northwest Utilities on PacifiCorp by causing the foregoing document to be deposited, postage-prepaid, in the U.S. Mail.

Dated at Portland, Oregon, this 21st day of August, 2009.

/s/ Allison M. Wils

Allison M. Wils

PacifiCorp Oregon Dockets
Oregon Dockets
825 NE Multnomah St Ste 2000
Portland, OR 97232
oregondockets@pacificorp.com

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

Docket No. _____

INDUSTRIAL CUSTOMERS OF)	
NORTHWEST UTILITIES,)	
)	
Complainant,)	
)	
v.)	COMPLAINT OF INDUSTRIAL
)	CUSTOMERS OF NORTHWEST
PACIFICORP, dba PACIFIC POWER,)	UTILITIES
)	
Defendant.)	
)	
)	
_____)	

INTRODUCTION

Pursuant to ORS § 757.210, Industrial Customers of Northwest Utilities (“ICNU” or “Complainant”) brings this Complaint before the Public Utility Commission of Oregon (“OPUC” or “Commission”) against PacifiCorp, dba Pacific Power (“PacifiCorp”) regarding PacifiCorp’s Advice No. 09-012, filed on July 9, 2009 (“Advice No. 09-012”). Complainant requests that the Commission suspend the revised tariff sheets included in Advice No. 09-012 and conduct a hearing in which PacifiCorp will bear the burden of demonstrating that the rate revisions in Advice No. 09-012 are fair, just and reasonable.

In support of this Complaint, Complainant alleges as follows:

IDENTITY OF THE PARTIES

1. ICNU is an incorporated, non-profit association of large industrial electric customers in the Pacific Northwest. ICNU’s address is 333 SW Taylor, Suite 400, Portland,

Oregon 97204. A list of ICNU members is included as Attachment A. Many members of ICNU are customers of PacifiCorp, as indicated in Attachment A.

2. PacifiCorp is an Oregon corporation that is qualified to do business in the state of Oregon as an electric utility company regulated by the Commission. PacifiCorp's address is 825 NE Multnomah, Suite 2000, Portland, Oregon 97232.

APPLICABLE STATUTES AND ADMINISTRATIVE RULES

3. The Commission has jurisdiction over this Complaint and PacifiCorp pursuant to ORS §§ 756.040 and 757.210. The Commission has previously initiated an investigation into PacifiCorp's avoided cost tariff sheets, and ordered a suspension on the effectiveness of proposed Schedule 37 revisions, pursuant to ORS §§ 757.210 and 215. Re Pacific Power & Light, OPUC Docket No. UM 1129, Order No. 06-628 (Nov. 13, 2006).

4. The statutes expected to be involved in this case include: ORS § 756.040; ORS §§ 757.205, 210, 215, 220, and 225; and ORS §§ 758.505 through 545. The rules expected to be involved in this case include those within divisions 11 through 14, 22, and 29 of OAR chapter 860.

FACTUAL BACKGROUND

Complainant alleges:

5. On July 9, 2009, PacifiCorp filed Advice No. 09-012. In Advice No. 09-012, PacifiCorp requests approval of revisions to Schedule 37. Specifically, PacifiCorp requests approval of the following revised tariff sheets: 1) Seventh Revision of Sheet No. 37-3; 2) Fifth Revision of Sheet No. 37-4; 3) Fifth Revision of Sheet No. 37-5; 4) Fifth Revision of Sheet No.

37-6; 5) Fifth Revision of Sheet No. 37-7; and 6) Second Revision of Sheet No. 37-11. On July 15, 2009, PacifiCorp requested an effective date for its revised tariff sheets of August 26, 2009.

6. Every two years, PacifiCorp is required to apply for Commission approval of its avoided cost rates. Re OPUC, OPUC Docket No. UM 1129, Order No. 05-584 at 29 (May 13, 2005). Schedule 37 is PacifiCorp's tariff for Avoided Cost Purchases from Qualifying Facilities of 10,000 kW or Less. Under Schedule 37, standard rates for power sales from Qualifying Facilities with output not exceeding 10 megawatts ("small QFs") are established. The Schedule 37 avoided costs are also used as the starting point to negotiate the avoided costs for larger QFs with output exceeding 10MW.

7. The proposed revisions to Schedule 37 in Advice No. 09-012 would drastically alter the pricing options available to small QFs. For instance, PacifiCorp is proposing a decrease of 3.39 ¢/kWh in the rate it will pay to small QFs for on-peak energy sales in 2009, along with a decrease of 2.57 ¢/kWh for off-peak sales. Schedule 37, Fifth Revision of Sheet No. 37-5. Further, over the next five years, small QFs would be paid an average of 2.04 ¢/kWh less for on-peak sales, and 1.61 ¢/kWh less for off-peak sales. Id. These rate revisions, if approved, would be extremely significant since the same first five-year rates will apply; regardless of whether small QFs choose fixed, gas market indexed, or banded gas market indexed pricing options. Schedule 37, Seventh Revision of Sheet No. 37-3.

8. In Advice No. 09-012, PacifiCorp appended a number of exhibits containing various calculations and data tables. PacifiCorp has not filed any testimony, however, or even offered a basic explanation that would justify the extent of these major rate revisions.

9. PacifiCorp has requested an effective date of August 26, 2009, for the revised Schedule 37 tariff sheets. This is too short a period to allow adequate review. Given the significant revision in rates being requested, more time is needed for the Commission and interested parties to review Advice No. 09-012.

LEGAL CLAIMS

Complainant's Claim for Relief

PacifiCorp has Not Demonstrated that the Rates in Schedule 37 are Fair, Just and Reasonable

10. Complainant realleges paragraphs 1 through 9.

11. ORS § 757.210(1)(a) provides that whenever a public utility such as PacifiCorp files any schedule of rates establishing a new rate, the Commission:

shall conduct [a] hearing upon written complaint filed by the utility, its customer or customers, or any other proper party within 60 days of the utility's filing At the hearing the utility shall bear the burden of showing that the rate or schedule of rates proposed to be established or increased or changed is fair, just and reasonable.

OAR § 860-029-0080(6) also specifically provides that upon Commission review of a utility's avoided cost data, the utility "has the burden of justifying and supporting its data." Therefore, in representing the interests of customers and proper parties to this avoided cost filing, ICNU is entitled to a hearing regarding whether the proposed tariff changes are fair, just and reasonable, and PacifiCorp will have the burden of proof at such a hearing.

12. PacifiCorp has failed to demonstrate that the proposed tariff revisions in Advice No. 09-012 will result in power purchases from small QFs at fair, just and reasonable rates. PacifiCorp has requested major reductions in power sale rates, and only offered

unelaborated calculations and data tables in support of these reductions. Advice 09-012 contains no explanation as to how PacifiCorp's figures justify the extreme extent of the proposed rate decreases, such that the revised rates can be considered fair, just and reasonable. Hence, under ORS §§ 757.210 and 757.215, the Commission should suspend Advice No. 09-012 for investigation and hearing.

RELIEF REQUESTED

WHEREFORE, ICNU respectfully requests that the Commission issue an Order:

1. Finding that PacifiCorp has not demonstrated that the proposed Schedule 37 rate revisions are fair, just and reasonable;
2. Suspending Advice No. 09-012 for investigation and hearing; and
3. Granting such other relief as the Commission may deem necessary.

Dated this 21st day of August, 2009.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Melinda J. Davison

Melinda J. Davison

Irion Sanger

333 S.W. Taylor, Suite 400

Portland, Oregon 97204

(503) 241-7242 phone

(503) 241-8160 facsimile

ias@dvclaw.com

mail@dvclaw.com

Of Attorneys for Industrial Customers
of Northwest Utilities

ATTACHMENT A
INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES

Air Liquide
Air Products
Amcor PET Packaging USA, Inc.
Blue Heron Paper Co.
Boeing
*Boise Cascade LLC
*Boise Paper
Certain Teed Gypsum & Ceiling Manufacturing, Inc.
(BPB)
*ConAgra Foods
Dyno Nobel, Inc.
Eka Chemicals, Inc.
Emerald Performance Materials, LLC
Equa-Chlor, LLC
*Evanite Fiber
Evraz, Inc.
*Freres Lumber Co.
*Georgia-Pacific
Grays Harbor Paper, L.P.
*Hewlett-Packard
Inland Empire Paper Co.
Intel
*International Paper
JR Simplot
Kimberly-Clark Corporation
Linde, Inc.
Longview Fibre
Microsoft Corporation
*Norpac Foods
PCC Structurals, Inc.
Ponderay Newsprint Co.
REC Solar Grade Silicon LLC
Shell Oil Products US
Simpson Paper & Timber
SP Newsprint
Tesoro Refining and Marketing Co.
*Wah Chang
West Linn Paper Co.
Weyerhaeuser

**Denotes PacifiCorp Customers*