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June 23, 2017

Via Electronic Filing

Public Utility Commission of Oregon
Attn: Filing Center
201 High St. SE, Suite 100
Salem, OR 97301

Re: In the Matter of PACIFICORP's 2017 Integrated Resource Plan
Docket No. LC 67

Dear Filing Center:

Please find enclosed the Opening Comments of the Industrial Customers of Northwest Utilities in the above-referenced docket.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Sincerely,

/s/ Jesse O. Gorsuch
Jesse O. Gorsuch

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

LC 67

In the Matter of)	
)	
PACIFICORP, dba PACIFIC POWER,)	OPENING COMMENTS OF THE
)	INDUSTRIAL CUSTOMERS OF
2017 Integrated Resource Plan.)	NORTHWEST UTILITIES
_____)	

I. INTRODUCTION

Pursuant to the Prehearing Conference Memorandum in this proceeding, the Industrial Customers of Northwest Utilities (“ICNU”) submits the following comments regarding PacifiCorp’s (or the “Company”) 2017 Integrated Resource Plan (“IRP”). ICNU is submitting limited comments, and plans to review the opening comments of other parties, PacifiCorp’s reply comments, and the final comments and recommendation of Staff. ICNU may raise additional issues in final comments on Staff’s recommendations or at the Public Utility Commission Oregon’s (“OPUC” or the “Commission”) special public meeting, presently scheduled for November 7, 2017.

II. COMMENTS

From ICNU’s perspective, the most consequential features of Pacific Power’s 2017 IRP appear to be the Company’s plan for major investments in wind, solar, and associated transmission, with a corresponding move away from investments in coal-fired generation. ICNU sees the *potential* for customer benefit in the Company’s new investment plans—but also very considerable risk, especially considering the sheer magnitude of capital, measured in the billions,

that is implicated by PacifiCorp’s ambitious plans. Accordingly, ICNU respectfully requests that the Commission take express note of such risk potential in any future acknowledgement determination, preferably by declining to formally acknowledge near-term repowering and resource acquisition plans, which are not driven by actual capacity or energy need.

More specifically, the Company plans to repower 905 MW of its existing wind fleet, while adding at least 1,100 MW of new Wyoming wind resources by the end of 2020.^{1/} To accommodate this new generation, PacifiCorp plans to invest in a new 140-mile, 500 kV transmission line, also to be completed by the end of 2020.^{2/} Beyond 2020, the Company’s resource mix includes an additional 859 MW of wind generation (85 MW of Wyoming wind, scheduled to come online in 2031, and 774 MW of Idaho wind scheduled for 2036), as well as new solar resources, mostly in Utah, totaling 1,040 MW and set to come online over the 2028 to 2036 timeframe.^{3/} With respect to its near-term investment plans, the Company’s haste to complete these projects by 2020 is driven by a desire to capture the full benefits of federal wind production tax credits (“PTCs”).^{4/}

A. Wind Repowering

First, these comments briefly address the Company’s wind repowering proposal, which is one of the primary proposals in PacifiCorp’s IRP that could impact Oregon rates. ICNU has conducted a high-level review of the proposal, and has two primary concerns with the plan.

^{1/} PacifiCorp 2017 IRP, Volume I at 2.
^{2/} Id.
^{3/} Id. at 2-3.
^{4/} Id. at 2.

As a threshold matter, PTCs are not free. While the Company itself may obtain tax benefits associated with PTCs at no cost, the cost of those tax expenditures are borne by taxpayers and society as a whole. That social cost does not seem to be factored into the Company's analysis.

ICNU is concerned with such lack of social consideration because, through the wind repowering plan, the Company is requesting acknowledgment of what may well be regarded as an excessively wasteful activity. That is, the Company proposes to take perfectly good wind generation infrastructure, which may have otherwise been in service for an additional 25-30 years, and decommission that infrastructure at great cost—all for the sole purpose of obtaining a tax benefit.

As an advocate for ratepayers of PacifiCorp and taxpayers generally, ICNU cannot readily support this type of the wasteful activity. At the end of the day, ICNU members and other ratepayers must bear the cost of repowering infrastructure, whether through rates or through taxes. Suffice to say, there are more beneficial ways for the tax expenditures to be used than unnecessarily tearing down and rebuilding wind turbine components.

In addition, the strategy PacifiCorp proposes seems to be a purely economic one, in the sense that wind repowering is not justified based on an identified need to provide services. Rather, according to the Company, “this exciting project” is justified because it “will save customers hundreds of millions of dollars.”^{5/} As “exciting” as this sounds, however, the plan is still problematic because the Company's proposal is not without risk. If the resources were

^{5/} Id. at 3.

needed for load service, for example, then there might be less of a question as to whether ratepayers should ultimately be responsible for bearing the financial risk of the Company's resource decisions. But, in the instance of a purely economic project, ratepayers should not be expected to bear all of the risk, no more than ratepayers should be expected to bear the risks of utility investment in a merchant power plant.

There would appear to be numerous assumptions inherent within the repowering plan which, if they do not occur as expected, could cause the repowering strategy to be uneconomic—potentially imposing great costs on ratepayers, as a result. For instance, regardless of any apparent certainty that PacifiCorp will be able to claim incremental PTCs, based on present assumptions, the Internal Revenue Service (“IRS”) may ultimately disallow these investments. In particular, the safe harbor that the Company relies upon to qualify for incremental PTCs can be found in IRS Notice 2016-31. An IRS notice, however, does not carry the same weight as a statute or regulation, and the IRS position with respect to the notice may change. Moreover, IRS Notice 2016-31 was issued under the prior administration; so, given the acute policy reversals seen in just the first few months of the current administration, there is a serious potential for the position of the IRS to change, or for Notice 2016-31 to be held unlawful.

Determining whether repowering activities qualify for the safe harbor is also not necessarily straightforward, and it is possible that the Company improperly assessed its ability to utilize PTCs. Accordingly, ratepayers should not be responsible for any additional costs, to the extent that the IRS later finds that the credits should be disallowed, or if the credits for some other reason become unusable. For example, ratepayers should not be required to pay a carrying

charge on PTC carryforwards, if the Company is not in a taxable position that allows for credit utilization in a future period.

B. New Wind Resource and Transmission Investment

Similarly, new wind resource acquisition plans (and associated transmission investment) present a significant amount of additional market risk to ratepayers. In short, to the extent market prices do not escalate in the manner the Company forecasts, the ultimate value of the new acquisition investment would be greatly diminished. ICNU has significant concerns that ratepayers could then be left to bear the burden of recovering such uneconomic investment.

Like the wind repowering plan, the Company presents the new wind and transmission asset plan based on pure economics, rather than a need to serve load. In fact, even “before adding any incremental new generating resources,” the Company’s capacity balance is such that both summer and winter margins are projected to be well in excess of the 13 percent target planning margin over the next decade.^{6/} In terms of energy balance, a mere sliver of energy shortfall is projected through the same period, again “before adding any incremental new generating resources.”^{7/} Further, such is the lack of actual “need” for new resource acquisition that “[t]he first new natural gas resource is added in 2029, one year later when compared to PacifiCorp’s 2015 IRP preferred portfolio”^{8/}

Notwithstanding, according to the Company, new wind resource and transmission investment planned by 2020 will provide “significant economic benefits for PacifiCorp’s

^{6/} Id. at 10-11.
^{7/} Id. at 12.
^{8/} Id. at 2.

customers,” and “extraordinary economic development benefits to the state of Wyoming.”^{9/} For such near-term wind and transmission investment, however, Oregon ratepayers might see insufficient benefits to correspond with proportional investment risk. Specifically, new renewable resources will only be “added to the west side beginning 2028,”^{10/} while future interjurisdictional cost allocation methodology—whether implemented through Multi-State Process settlement, or via the independent and Oregon-specific investigation, just underway in Docket UM 1824—could materially affect the reflection of east side resource benefits in Oregon rates.

C. Oregon-specific IRP Considerations

The lack of actual new resource “needs” for Oregon customers, and the Company’s complete emphasis upon potential economic benefits for near-term acquisition strategies to maximize PTC opportunities, is worth contemplating against OPUC rule provisions and order affirmations on what *should* be the foundational elements of an IRP. For instance, an IRP is defined as a utility plan determining “future long-term resource *needs*,” analysis of “associated risks ... to meet *those needs*,” and an action plan selecting “resources to meet *those needs*.”^{11/} The hallmark of the Company’s 2017 IRP, however, appears to be an ambitious assessment of economic opportunity divorced from actual “needs,” and with a worrying lack of “risks” assessment on eventual ratepayer investment responsibility, if all does not go according to plan.

^{9/} Id. at 2.

^{10/} Id. at 8.

^{11/} OAR § 860-027-0400(2) (emphasis added).

In partially acknowledging PacifiCorp’s 2015 IRP, the Commission listed “a finding of resource *need*” as the first among “key elements” included within an IRP.^{12/} The Commission then explained that a preferred portfolio within an IRP would contain “resources to meet *this need*; and an action plan that identifies the steps the company will take during the next two to four years to deliver resources in the preferred portfolio.”^{13/} Thus, since a preferred portfolio is based on resource “need,” and the action plan identifies resource acquisition to meet those needs, the purpose of an IRP action plan is not to provide a means for elective/opportunistic economically-driven resource acquisitions. Yet, action plan items 1a, 1b, and 2a within the Company’s 2017 IRP are all based on such elective/opportunistic acquisitions,^{14/} unrelated to actual resource “need.”

The “needs” of a utility are extremely relevant to the proper scope of Commission consideration in an IRP context. If ICNU is not correct on placing emphasis on the natural, everyday meaning of the word “need” or “needs,” then the repeated usage of the word in IRP rule provisions and Commission orders loses all relevance—which, in turn, completely undermines the purpose of providing a meaningful definition for an IRP in Commission rules, or any Commission attempt to explain the foundational background and key elements of IRPs in an order. In other words, if the “exciting” nature of alleged economic benefit opportunities in the 2017 IRP would justify overlooking or reinterpreting the fundamental “needs” rule definition and

^{12/} Re PacifiCorp, Docket No. LC 62, Order No. 16-071 at 2 (Feb. 29, 2016) (emphasis added).

^{13/} Id.

^{14/} PacifiCorp 2017 IRP, Volume I at 16-17.

this key element of an IRP, then going through the motions of ostensible fidelity to IRP rules and purposes would be farcical, at best.

But, fidelity to the definition and purposes of an IRP—or the question of whether certain action items are the proper subject of an acknowledgment consideration—is not an academic matter, since IRP acknowledgments may be used as evidence in future ratemaking determinations. As the Commission affirmed in partially acknowledging the Company’s 2015 IRP: “Acknowledgment of an IRP ... is relevant to subsequent examination of whether a utility’s resource investment is prudent and should be recovered from ratepayers.”^{15/} Similarly, the Commission has confirmed that “[c]onsistency with the plan may be evidence in support of favorable rate-making treatment of the action”^{16/} In this manner, acknowledgment of action items associated with new wind and wind repowering plans could attain presumptive evidentiary value in future cost recovery proceedings, even though such action items are not properly the subject of an IRP—since they are not founded on actual resource “needs.”

If this were not enough to promote caution, however, the Commission has also declined to acknowledge action items when PacifiCorp has already effectively made its investment decisions *before* including plans within an IRP.^{17/} Nevertheless, the Company has long since executed purchase agreements to implement its wind repowering program,^{18/} while a new wind acquisition request for proposals process has begun via Docket UM 1845.

^{15/} Docket No. LC 62, Order No. 16-071 at 2.

^{16/} Re PacifiCorp, Docket No. LC 57, Order No. 14-252 at 2 (July 8, 2014) (quoting Re Investigation into Integrated Resource Planning, Docket No. UM 1056, Order No. 07-002 at 24 (Jan. 8, 2007)).

^{17/} See id. at 6-9 (declining to acknowledge action items 8b and 8c within the Company’s 2015 IRP).

^{18/} PacifiCorp 2017 IRP, Volume I at 16 (stating such agreements were executed in December 2016).

Acknowledgment now of these seemingly completed investment decisions would essentially reward the Company for flouting the express guidance offered by the Commission under similar circumstances in consideration of PacifiCorp's 2013 IRP: "We agree with Staff that energy utilities that desire acknowledgment of an investment decision should request acknowledgment *before* the investment decision is made ..."^{19/} Thus, as the Commission formerly declined to acknowledge a Company action item when determining that "PacifiCorp is going ahead with the investments ... regardless of our decision in this proceeding,"^{20/} ICNU recommends that the Commission similarly consider declining acknowledgment of at least action items 1a, 1b, and 2a within the Company's 2017 IRP, each of which appears to be a fait accompli from PacifiCorp's perspective.

III. CONCLUSION

ICNU appreciates this opportunity to provide comments on Pacific Power's 2017 IRP. The Company's ambitious plans for wind repowering, as well as new wind resource acquisitions and associated transmission investment, may well have the *potential* for notable economic benefits, for both Pacific Power and its customers. That said, ICNU recommends that the Commission consider the risks involved with action items focused upon economic opportunities more than "needs," and which may be suited to benefit eastern PacifiCorp customers primarily, even if any Oregon benefits ever come to fruition. The Company will certainly have a full and fair opportunity to demonstrate the prudence of such investment decisions when seeking recovery in future ratemaking proceedings—but, given the huge

^{19/} Docket No. LC 57, Order No. 14-252 at 7 (emphasis added).

^{20/} Id. at 9.

ratepayer risks involved, and the corresponding need for caution, acknowledgment now should be declined, so as to avoid any effective presumption of prudence.

Dated this 23rd day of June, 2017.

Respectfully submitted,

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