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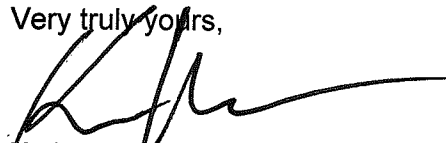
VIA ELECTRONIC FILING

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

Re: Docket UE 191

Enclosed for filing in the above-referenced proceeding is PacifiCorp's Response to Motions to Supplement the Record. A copy of this filing has been served on all parties to this proceeding.

Very truly yours,



Katherine A. McDowell

Enclosures

cc: Service List

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BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UE 191

In the Matter of PACIFICORP's 2008
Transition Adjustment Mechanism.

**PACIFICORP'S RESPONSE TO MOTIONS
TO SUPPLEMENT THE RECORD**

Pursuant to OAR 860-013-0050(3)(d), PacifiCorp provides the following response to the Oregon Public Utility Commission Staff ("Staff") and Industrial Customers of Northwest Utilities ("ICNU") respective Motions to Supplement the Record. For the reasons stated below, PacifiCorp objects to Staff's Motion, but does not object to ICNU's Motion.

INTRODUCTION

Late in the afternoon on August 8, 2007, with only one full day remaining before the evidentiary hearing in this proceeding, Staff and ICNU each served on PacifiCorp a Motion to Supplement the Record with surrebuttal testimony. This occurred two days after the parties met for final settlement negotiations in the case on Monday, August 6, 2007.

At the conclusion of the settlement conference, ICNU stated that it intended to file an update of its table of adjustments in its pre-filed testimony. Staff was present when ICNU provided this notice to PacifiCorp. Staff never said a word about the need to respond to "numerous and complex" issues in PacifiCorp's testimony or its intent to file supplemental testimony. Staff served no discovery on PacifiCorp's rebuttal testimony, which had been filed two weeks prior on July 25, 2007, and waived all cross-examination of PacifiCorp witnesses. In short, Staff gave no indication that they were concerned about the scope or content of PacifiCorp's rebuttal testimony.

On Tuesday, August 7, 2007, ICNU sent a new exhibit for PacifiCorp to review. Yesterday, Wednesday, August 8, 2007, ICNU informed PacifiCorp that it intended to file

1 supplemental testimony. PacifiCorp objected to ICNU's proposal, concerned about the
2 scope of ICNU's proposed testimony.

3 Also on Wednesday, August 8, 2007, Staff served its motion to file supplemental
4 testimony without any advance notice to PacifiCorp. Before the day ended, ICNU filed its
5 own motion to supplement. ICNU messengered its filing to PacifiCorp, along with
6 workpapers. Staff did not produce workpapers for its filing. PacifiCorp has requested Staff's
7 workpapers (twice) and has not yet received them.

8 In the last few minutes, Staff notified PacifiCorp that one of its exhibits is incorrect
9 and that they will be seeking to delete it from the proposed filing.

10 Consistent with PacifiCorp's objection to surrebuttal testimony, ICNU's proposed
11 supplemental testimony is limited to updating its earlier testimony and supplementing the
12 record with an exhibit that provides more detail on an earlier proposed adjustment.

13 Staff's supplemental testimony is not an update, but instead is surrebuttal testimony,
14 supported by four new numerical exhibits.

15 PacifiCorp respectfully requests the Commission deny Staff's Motion, which, if
16 granted, would unreasonably truncate the decision-making process in this proceeding,
17 unduly prejudice PacifiCorp—the party with the burden of proof in this proceeding—and
18 establish precedent harmful to the Transition Adjustment Mechanism (TAM) process in
19 particular as well as to settlement of cases generally.

20 PacifiCorp does not object to ICNU's Motion because ICNU's Supplemental
21 Testimony is an update, not surrebuttal testimony, and because ICNU provided sufficient
22 notice to PacifiCorp to prevent it from being prejudiced by the filing.

23 **ARGUMENT**

24 Staff requests an additional round of testimony to respond to the rebuttal testimony
25 of PacifiCorp witness Mark Widmer. Staff acknowledges that the schedule in this case

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1 "does not provide a mechanism for Staff to file surrebuttal testimony in response to
2 Mr. Widmer's rebuttal." (Staff Mot. at 1.)

3 Staff nevertheless seeks permission to make such a filing for several reasons. First,
4 it states that there are issues raised in Mr. Widmer's rebuttal testimony that Staff would
5 otherwise have no opportunity to rebut. (*id.* at 2.) Staff claims that surrebuttal testimony is
6 necessary because Mr. Widmer's testimony "raise[s] a host of issues that operate to confuse
7 the record." Staff claims that PacifiCorp was not limited by the scope of testimony raised in
8 rebuttal and raised new issues. None of these allegations are true.

9 **A. Mr. Widmer's Rebuttal Testimony Did Not Raise Any New Issues, but Instead**
10 **Responded to the Adjustments Proposed in Mr. Wordley's Testimony.**

11 Mr. Widmer's testimony does not, as Staff suggests, raise new issues that justify
12 surrebuttal testimony from Mr. Wordley. Mr. Widmer's testimony responded to
13 Mr. Wordley's proposed margin adjustment with a list of reasons why the adjustment is
14 unwarranted and unfair. Each one of the arguments responded to Mr. Wordley's direct
15 testimony; none went outside the scope of the adjustment proposed. Indeed, many of
16 Mr. Widmer's arguments in his rebuttal testimony were made previously in PacifiCorp's
17 rebuttal testimony in UE 179, where Mr. Wordley proposed the same adjustment.

18 Staff's claim that Mr. Widmer raised a host of new and complex issues that confuse
19 the record is inconsistent with Staff's failure to conduct discovery on Mr. Widmer's testimony
20 and its waiver of cross-examination. If Staff believed that this witness's rebuttal testimony
21 raised complex and erroneous issues, which require a response in order to provide the
22 Commission with a "full and complete record," (*id.* at 3), the obvious course of action would
23 have been to use discovery and cross-examination to discredit the witness. Staff chose to
24 do neither.

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1 **B. Staff's Motion Essentially Asks for this Streamlined Proceeding to be**
2 **Transformed Into a Full-Fledged Ratecase with Five Rounds of Testimony.**

3 If the arguments in Staff's Motion were accepted by the Commission, there could be
4 no end to the rounds of testimony. Staff argues that "[i]n order to achieve a full and
5 complete record, additional testimony is necessary to explain the assertions made in
6 Mr. Widmer's rebuttal testimony," stating also that "agreeing to a schedule that does not
7 provide for additional rounds of testimony was a mistake." (*Id.* at 2.) But, Staff's argument
8 that it should be provided with the opportunity to present untimely testimony rests on
9 grounds that are present in every case. In every case, the party with the burden of proof
10 (here, PacifiCorp) has the right to present a final round of rebuttal testimony. See
11 ORS 757.210 (the applicant in a proceeding for a rate change is the party with the burden of
12 proof); 860-014-0035(1) (the order of procedure for an application is as follows: (1) the
13 applicant files its application; (2) protestants, participants and Staff respond; and, (3) the
14 applicant provides a rebuttal).

15 According to Staff's argument, each time Staff believes that rebuttal testimony
16 includes assertions that Staff debates (*i.e.*, "issues that operate to confuse the record"), Staff
17 should have the opportunity to provide responsive testimony. Staff apparently
18 acknowledges that the party with the burden of proof would then have a right to present
19 further rebuttal testimony. (*Id.* at 3 (agreeing to work with parties to "cure any procedural
20 disadvantage granting this motion may cause).) However, each time the applicant (in this
21 case PacifiCorp) responded to Staff's testimony, Staff could claim that the applicant's
22 response requires further clarification and response from Staff in order to create a complete
23 record.

24 While the potential for endless rounds of testimony would be unreasonable in any
25 proceeding, it would be particularly troublesome in a TAM proceeding such as this one. The
26 TAM is, as a matter of policy, a streamlined process. See UE 170, Order No. 05-1050 at 21

1 (adopting PacifiCorp's proposed TAM because it "most clearly meets the requirements
2 established in Order No. 04-516 [the interim TAM order]" and agreeing with PacifiCorp and
3 Staff that an approach similar to PGE's RVM will mitigate some of the complexity of the
4 process).

5 Adding two additional rounds of testimony (surrebuttal for Staff and sursurrebuttal for
6 PacifiCorp), additional time for discovery, and an additional hearing date adds complexity to
7 this largely-mechanical process that the Commission sought to avoid. Providing for
8 additional rounds of testimony, discovery and a hearing would also truncate the decision-
9 making process itself. This is because the Commission must issue its order in this case by
10 the scheduled October 18 decision date to satisfy the timetable for setting the transition
11 adjustment for the direct access shopping window in mid-November. Truncating the
12 Commission's decision-making process obviously works to the detriment of all concerned.

13 **C. Permitting an Un-Noticed Round of Testimony After Final Settlement**
14 **Negotiations Would Harm Parties' Ability to Settle Future Proceedings.**

15 Allowing additional rebuttal testimony after a final settlement conference in a case
16 also undermines the protocol around pre-filing of testimony and settlement conferences.
17 The purpose of the final settlement conference is to determine if settlement is possible after
18 all issues have been aired through pre-filed testimony. Permitting parties to file additional
19 testimony after the final settlement conference—especially, as in the case of Staff here,
20 without any notice to the parties at the settlement conference—could encourage a host of
21 bad behaviors, including using settlement conferences as final, prehearing discovery.

22 **D. If the Commission Grants Staff's Motion, It Should Allow PacifiCorp**
23 **Discovery, Sur-surrebuttal Testimony and Delayed Cross-Examination.**

24 If the Commission grants Staff's motion, it should indicate that it is allowing such
25 testimony in this case only because of the unique factors cited in Staff's "good cause"

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1 section of its motion. Otherwise, the precedent created here could undermine the
2 procedural integrity of the TAM process in the future.

3 Additionally, PacifiCorp should be granted the following schedule changes and
4 accommodations to protect its procedural rights:

- 5 • 2-day turn around on discovery
- 6 • Live sur-surrebuttal by Mr. Widmer and possibly one new witness on
7 wholesale transactions on Monday, August 20, 2007 or Tuesday, August
8 21, 2007 along with cross-examination of Mr. Wordley
- 9 • Initial Briefs filed September 5, 2007
- Reply Briefs filed September 14, 2007

10 CONCLUSION

11 For the reasons stated above, PacifiCorp requests that the Commission deny Staff's
12 Motion to Supplement the Record. PacifiCorp does not object to ICNU's Motion to
13 Supplement the Record.

14 DATED: August 9, 2007.

15 MCDOWELL & RACKNER PC

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18 Katherine A. McDowell

19 Attorney for PacifiCorp
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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 191 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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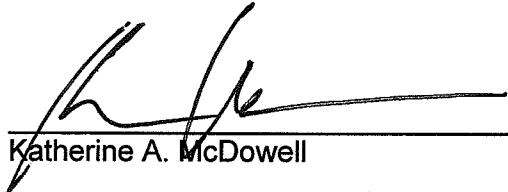
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DATED: August 9, 2007



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