

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 216

In the Matter of)	
)	
PACIFICORP, dba PACIFIC POWER)	THE INDUSTRIAL CUSTOMERS OF
)	NORTHWEST UTILITIES' REPLY IN
2011 Transition Adjustment Mechanism)	OPPOSITION TO MOTION FOR
<u>Schedule 201 Cost-Based Supply Service</u>)	MODIFIED PROTECTIVE ORDER

I. INTRODUCTION

Pursuant to the Administrative Law Judge's order shortening the time for response, the Industrial Customers of Northwest Utilities ("ICNU") submits this reply in opposition to PacifiCorp's (or the "Company") motion for a modified protective order ("Motion"). PacifiCorp's Motion presents the Oregon Public Utility Commission ("OPUC" or the "Commission") with a simple question: will ICNU be allowed to fully and fairly review PacifiCorp's forward price updates, which are used to set net power costs and direct access transition credits? ICNU cannot effectively review and analyze PacifiCorp's forward price curves under the terms of the modified protective order, and granting the Motion will be akin to simply trusting PacifiCorp to correctly update its net power costs without intervenor review. The Commission should deny PacifiCorp's Motion, and require the Company to provide ICNU with all the information necessary to review the Official Forward Price Curve ("OFPC") and transition adjustment mechanism ("TAM") updates. In the alternative, the Commission should adopt a less restrictive "highly confidential" protective order that allows ICNU and its consultants access to all documents related to the OFPC in their offices.

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DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

II. BACKGROUND

The parties entered into a stipulation that resolved certain issues in this docket on July 7, 2010 ("Stipulation"). PacifiCorp's Motion inaccurately states that the Stipulation "resolved all issues in this docket." Motion at 2. The Stipulation only resolved certain issues, leaving others to potentially be litigated by the parties in the future. Stipulation at 2. The parties specifically reserved the right to review and challenge nearly all aspects of the Company's rebuttal and final updates. Id. at 2-3. The main limitation on the parties' review of the rebuttal and final updates were that certain errors relating to earlier filings could not be corrected. Id. at 3. In other words, ICNU reserved the right to review and challenge PacifiCorp's official forward price curve ("OFPC") updates. It was appropriate for parties to reserve the right to review the rebuttal and final updates since the updates had not yet been filed. ICNU has certainly taken issue with PacifiCorp's updates in the past.

ICNU conducted discovery regarding PacifiCorp's July 7, 2010 rebuttal updates. The July update showed an approximately \$10.8 million increase in net power costs (despite declining gas prices), \$8.4 million of which was related to the forward price curve update. ICNU data request 13.1 requested information regarding the July OFPC, including a list of documents or types of documents reviewed by the Company in preparing the OFPC and all workpapers and spreadsheets used by the Company to compute the OFPC. ICNU also intends to seek similar information for the November OFPC updates, which will be used to set the final rate increase in this proceeding.

PacifiCorp provided a narrative response, but refused to provide any responsive documents. The Company stated that it "utilizes daily trading prices and broker quotes when

preparing the official forward price curve. The Company considers these quotes and spreadsheets to be of utmost commercial sensitivity and highly confidential.” Motion, Exhibit 2. The response requested that ICNU contact the Company “to discuss arrangements for review onsite.” Id.

PacifiCorp’s Motion describes its refusal to provide the information as its general practice, which “appears to have worked well, based on the lack of discovery conflicts over Highly Confidential information the parties have submitted to the Commission for consideration in the Company’s rate cases and TAM proceedings.” Motion at 6-7. ICNU agrees that PacifiCorp’s practice has been to withhold information and over-designate information as “Highly Confidential,” but strongly disagrees that this process has “worked well.”

PacifiCorp routinely designates information as confidential in a manner that appears to be a litigation strategy to delay providing responsive information, and require ICNU to go to great lengths to obtain information necessary to review the Company’s power costs. For example, in addition to the dispute over the OFPC, in the current TAM and in the general rate case proceedings, PacifiCorp refused to provide and/or designated as “highly confidential” responsive information related to its budgeted costs, renewable energy credits, and power cost contract information. ICNU was often required to challenge PacifiCorp’s designations and failure to provide information resulting in numerous letters, emails and telephone calls. In all instances (except the OFPC), ICNU was able to eventually obtain copies of the requested information without visiting the Company’s offices, but only after a considerable delay and waste of resources. This significantly harms ICNU’s ability to participate in PacifiCorp’s rate proceedings, especially those with an expedited schedule like the TAM. In addition, nearly all of

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the disputed information in this case is of the kind that other utilities routinely provide to ICNU and its consultants, and ICNU is simply not forced to go through these efforts with any other regulated utility in the Northwest. For example, the protective order applicable to PGE power cost matters does not even have a highly confidential designation. See, e.g., Order No. 10-056. The fact that PacifiCorp typically relents before the issue is brought before the Commission does not mean PacifiCorp's litigation tactics are acceptable or have "worked well."

ICNU undertook considerable efforts to work with the Company and obtain the information regarding the OFPC update through alternative means. Although not required by the protective order, ICNU's consultant Randall Falkenberg traveled to the offices of PacifiCorp's Atlanta law firm to review the OFPC documents to ascertain whether the information might be relevant to the issues in this proceeding, and whether being provided access at the Company's offices would prevent ICNU from effectively reviewing, understanding and analyzing the materials. Falkenberg Affidavit ¶ 6. After making a special trip to PacifiCorp's Atlanta law firm, PacifiCorp did not even provide a working copy of the OFPC and its supporting documents until it was almost time for Mr. Falkenberg to leave the offices. Id. The failure to provide working copies of documents is typical of the Company, and significantly increases the difficulty and time in reviewing the Company's filing. Id. at ¶¶ 7-12.

Mr. Falkenberg determined that the information was relevant to the reasonableness of the July update and would be relevant to the November updates. Id. at ¶ 8. Mr. Falkenberg also concluded that it would not be possible from a practical perspective to analyze the information at the Company's offices. Id. at ¶¶ 4, 7-13. In addition, Mr. Falkenberg determined that, even if it were possible, PacifiCorp's restrictions are not reasonable and would

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be overly time consuming and cumbersome. Id. at ¶¶ 9-13. Finally, Mr. Falkenberg determined that PacifiCorp's restrictions could prevent ICNU from presenting testimony challenging the OFPC included in the updates. Id. at ¶ 13.

ICNU also sought to obtain information necessary to review the OFPC through alternative means. ICNU's fourteenth set of data requests, *inter alia*, requested an alternative GRID study based on a forward price curve derived from broker quotes or the data necessary to compute the GRID study. PacifiCorp incorrectly states that it "responded to each of the requests." Motion at 6. While PacifiCorp provided a narrative response, the Company again refused to provide the requested information arguing that no other forward price curve was available, refused to provide the data to compute an alternative forward price curve based on broker quotes, and has not provided information regarding the performance goals for traders.

On September 28, 2010, ICNU sent PacifiCorp its fifth letter regarding discovery disputes in the TAM case requesting that PacifiCorp provide the responsive OFPC information or ICNU would file a motion to compel. PacifiCorp did not provide the responsive information, and has instead filed its Motion requesting that the Commission modify the protective order. PacifiCorp's modified protective order would require ICNU to review "highly confidential" material at the Company's offices in Portland, Oregon or Atlanta, Georgia. Highly confidential material would include: 1) documents reviewed by the Company in preparing the OFPC; and 2) workpapers and spreadsheets used by the Company to develop and compute the OFPC. PacifiCorp would be allowed to have a monitor present, ICNU would not be allowed to make copies of the information, and ICNU could only make limited notes for reference purpose. Motion, Exhibit 1. Notes could not be a verbatim or substantive transcript of the documents.

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Id. Such practices should not be permitted by a regulated monopoly utility, particularly for such a major area of its costs that have been increasing.

III. REPLY

The Commission should reject PacifiCorp's highly confidential protective order and special handling restrictions because they would effectively prevent ICNU from reviewing the reasonableness of the power cost updates in this proceeding. PacifiCorp has failed to explain why this information needs heightened protection, why these specific conditions are required, and it omitted that its conditions will prevent ICNU from reviewing and analyzing the information or presenting testimony regarding the OFPC. Staff may also wish to review this information. ICNU's power cost consultant routinely finds issues not discovered by Staff, just as Staff finds issues not discovered by ICNU's expert. Thus, it is critically important to have two sets of eyes on this key area to ensure fair, just and reasonable rates. Finally, PacifiCorp's arguments regarding the scope of the Stipulation should be disregarded because they are irrelevant to whether ICNU should be permitted to review data supporting the July and November updates.

1. Legal Standard

The Oregon Rules of Civil Procedure apply in proceedings before the OPUC. OAR § 860-011-0000(3); Citizens' Util. Bd. v. Or. Pub. Util. Comm'n, 128 Or App 650, 655 (1994) ("CUB"). Information may be obtained under ORCP 36 if it is reasonably calculated to lead to discoverable information. The information PacifiCorp seeks to protect in its Motion has a direct bearing on the parties' and the Commission's analysis regarding PacifiCorp's proposed TAM rate increase. Useful access to the information is crucial to informed intervenor

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involvement, and to the overall conduct of a fair, just, and fully participatory proceeding. The Commission recognizes protective orders as a means to both protect sensitive information and facilitate communication of information. Re Investigation Relating to Posting the Cost of Providing Telecommunication Service, OPUC Docket No. UM 351, Order No. 91-500 (1991).

PacifiCorp has the burden of proof to establish that the information warrants protection and that the specific protections sought are necessary and will not harm the participation of the parties in this proceeding. Parties seeking to maintain the confidentiality of information “have the burden of proof on all issues.” Re Investigation into Service Quality Reports, Docket No. UM 1038, Order No. 02-854 (Dec. 10, 2002).

The imposition of a highly confidential protective order is an extreme remedy that the Commission should only impose in rare circumstances, when no other protections are adequate. There are two main types of highly confidential protective orders. Not at issue in this case is the more common highly confidential protective orders that restrict access to documents to only certain parties (e.g., preventing competitors that have intervened in a case from reviewing certain documents). E.g., Re PacifiCorp, Docket No. UM 1429, Order No. 09-413 (Oct. 19, 2009). ICNU would not object to this type of “highly confidential” protective order, which would allow ICNU with access to the highly confidential materials at its offices.

The second type of highly confidential protective order limits access to certain documents in a specified location and allows the utility to monitor all discussions that occur in the presence of the documents. Re PacifiCorp, Docket No. UE 177, Order No. 08-002 (Jan. 3, 2008). This version of the highly confidential protective order was imposed in response to the release of PGE’s confidential tax documents. Although ICNU believes such a protective order is

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illegal, the Commission has only imposed the highly restrictive provisions after concluding that significant harm that “might occur from the disclosure of” the information, that there was a “regrettable risk of disclosure,” and that the Commission “had no choice but to limit intervenors’ review of documents containing highly confidential information to a safe room located in Portland.” Id. at 5. ICNU also believes that the Attorney General’s Office should have conducted a full and complete investigation to learn who released this confidential information rather than penalizing all intervenors. PacifiCorp has not shown that there is a significant risk of ICNU disclosing the documents related to the OFPC, and has not established that its proposed restrictions are required.

2. PacifiCorp Has Not Met Its Burden of Proof to Establish That Its Information Requires Heightened Protection

PacifiCorp argues that the OFPC information should be provided heightened protection because it “is extremely sensitive” proprietary data, including the Company’s internal valuation of illiquid trading points. Motion at 8. These vague and conclusory statements are insufficient to impose heightened protections and prevent ICNU from accessing the confidential material.

Pursuant to ORCP 36(C), a party to a proceeding may obtain a protective order if the party establishes “good cause” showing that, *inter alia*, “disclosure would result in a clearly defined and serious injury.” CUB, 128 Or App at 658-59. For purposes of this standard, “[b]road allegations of harm unsubstantiated by specific examples or articulated reasoning do not satisfy the good cause requirement.” Id. at 658. For a heightened protective order limiting

access, the harm must be “substantial” and the Commission must not have any other practical choices to protect the information. Docket No. UE 177, Order No. 08-002 at 5.

PacifiCorp’s Motion primarily consists of allegations of unsubstantiated harm instead of specifically explaining what the information is and why it needs additional heightened protection. For example, PacifiCorp does not specifically identify each piece of information considered “highly confidential” nor does the Company provide an explanation regarding why it needs heightened protection on each piece of information. The Commission should not allow PacifiCorp to rectify this failure to meet its burden of proof in any responsive pleadings which would not allow ICNU to respond.

The information PacifiCorp seeks to have heightened protection for is similar to information that the Company has provided on a confidential basis in the past. Falkenberg Affidavit at ¶¶ 20-21. For example, while the Company treats the OFPC as confidential in Oregon, the entire document (except pricing related to Four Corners) is considered public information in Utah and Idaho. Id. at ¶ 20. PacifiCorp appears to generally seek to impose more restrictive limitations on its information in Oregon than in other states. In addition, the information that PacifiCorp seeks to place under “highly confidential” protections “is by its nature not particularly unique, or sensitive.” Id. at ¶ 17.

3. PacifiCorp Has Not Justified That Its Proposed Treatment of Any Highly Confidential Material Is Reasonable

PacifiCorp’s Motion includes four lines explaining why the Company believes that its proposed restrictions are reasonable. Motion at 9. PacifiCorp does not provide any information regarding why it believes there is a risk of disclosure that cannot be mitigated with

less restrictive conditions. PacifiCorp's four lines of justification are woefully inadequate compared to the harm of preventing ICNU from effectively reviewing the OFPC. PacifiCorp should have to demonstrate exactly why these specific restrictions are necessary based on the specific factual circumstances of this case. The Company has failed to do so, and the Commission should reject the Company's request for a highly confidential protective order.

ICNU and its power cost consultant Randall Falkenberg have participated in countless PacifiCorp rate proceedings without disclosing confidential material. Mr. Falkenberg treats PacifiCorp's confidential material with the utmost seriousness, and provides it with greater protections than the Company. Falkenberg Affidavit at ¶¶ 19-28. Even if the information warrants additional protection, PacifiCorp has provided no explanation regarding why ICNU's attorneys and consultant cannot be entrusted to review and have access to the confidential material in their offices. Further, Mr. Falkenberg does not provided consulting services to consultants of PacifiCorp. Id. at ¶ 16.

4. PacifiCorp's Proposed Restrictions Will Prevent ICNU From Reviewing the Reasonableness of the OFPC

ICNU cannot effectively review PacifiCorp's OFPC and its supporting documents in the Company's offices. ICNU is seeking to review the underlying documents the Company relies upon when preparing the OFPC, and all workpapers and spreadsheets used by the Company to develop and compute the OFPC. These are key pieces of information that PacifiCorp utilizes to set rates in the July and November updates, and ICNU must have access to these documents outside of PacifiCorp's offices to review the reasonableness of the Company's power cost updates.

The TAM process includes updates to the Company's power costs which are typically filed in July and November. ICNU opposed the TAM process that was proposed by PacifiCorp, but the Commission adopted PacifiCorp's TAM, including a process that results updates in late in the proceeding. Re PacifiCorp, Docket No. UE 170, Order No. 05-1050 at 21 (Sept. 28, 2005). The Commission, however, did state that it was concerned about the overall "one-sidedness" of the TAM process. Id. The use of updates (or the inclusion of the OFPC), however, is not required to set rates, and PacifiCorp should not be allowed to use information to set rates in this proceeding that parties cannot access and review. If the Commission determines that the documents used to calculate the OFPC should be treated as "highly confidential," then the Commission should require that the TAM only be updated with regular confidential information that can easily be reviewed by the parties. If the process is not working and parties are not provided a reasonable opportunity to review this data, then the TAM should be abandoned.

ICNU's consultant cannot review, analyze or present testimony regarding the OFPC under the terms of PacifiCorp's proposed highly confidential protective order. Mr. Falkenberg needs access to this OFPC information in his regular place of business, which includes a copy of the Company's power cost computer model and other data, to be able to understand, review and analyze this information. Falkenberg Affidavit at ¶¶ 8-9. Similarly, Mr. Falkenberg cannot submit testimony or otherwise challenge the calculation of the OFPC if he is limited to reviewing the underlying documents at the Company's offices. Id. at ¶¶ 8-9, 13.

Even if it were possible to review the information at PacifiCorp's offices, the proposed restrictions are unnecessarily cumbersome and impose a significant hardship upon

ICNU. Id. at ¶¶ 9-13. Requiring Mr. Falkenberg to travel to PacifiCorp's Atlanta offices to review these documents (which will be used to update power costs numerous times throughout the proceeding) and preventing the taking of detailed notes significantly increases the difficulty and cost of reviewing the Company's power costs. Reviewing PacifiCorp's "highly confidential" documents at their offices has also proven to be unreliable as the Company did not provide ICNU with a working copy of the spreadsheets at the time Mr. Falkenberg first arrived. Id. at ¶¶ 6, 11. Providing ICNU with these types of unusable spreadsheets and erroneous documents appears to be yet another tactic to increase the costs of participation in PacifiCorp rate cases.

These restrictions are especially cumbersome during ICNU's review of the final updates which are the only OFPC that is actually used to set rates. PacifiCorp will file its final updates on November 8, 2010 and November 15, 2010. ICNU then has less than two months to review and challenges these updates before new rates go into effect. Conducting discovery on all aspects of these filings, which can be a difficult process given the Company's historic practice of providing incomplete and nonresponsive data responses, is very difficult under this schedule even without these additional restrictions.

5. The OFPC Is Highly Relevant to the Remaining Issues in this Proceeding

PacifiCorp argues that there would be little benefit to providing ICNU with access to the information because the information "is beyond the scope of this very limited phase of the docket." Motion at 8. The scope of the remaining portion of the proceeding is to review the reasonableness of the Company's final power cost updates (the July and November updates). In the July update, \$8.4 million out of \$10.8 million in net power cost increases were related to the

OFPC, and the OFPC may have a large impact upon power costs in the November update. ICNU has yet to be able to review the reasonableness of the July update, and effectively will be unable to review the November update if the Commission grants PacifiCorp's Motion. The OFPC updates can have a dramatic impact on the final TAM rates in this proceeding and ICNU should not be prevented from reviewing their reasonableness.

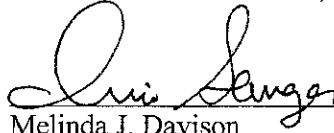
IV. CONCLUSION

The Commission should reject PacifiCorp's Motion because it will prevent ICNU from being able to effectively review the reasonableness of the Company's final updates that will be used to set rates in this proceeding. PacifiCorp has failed to carry its burden to demonstrate that the allegedly highly confidential information warrants additional protections, or that the PacifiCorp's conditions are necessary to prevent against any risk of disclosure. PacifiCorp's restrictions are particularly unreasonable given that they will ensure that the Company can unilaterally update its power costs in this proceeding without review by a key expert representing ratepayer interests.

Dated this 13th day of October, 2010.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

A handwritten signature in cursive script, appearing to read "Irion A. Sanger", is written over a horizontal line.

Melinda J. Davison

Irion A. Sanger

333 S.W. Taylor, Suite 400

Portland, Oregon 97204

(503) 241-7242 phone

(503) 241-8160 facsimile

mjd@dvclaw.com

ias@dvclaw.com

Of Attorneys for Industrial Customers
of Northwest Utilities

ATTACHMENT A
AFFIDAVIT OF RANDALL J. FALKENBERG

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 216

In the Matter of)
)
PACIFIC POWER & LIGHT)
(dba PACIFICORP))
)
Transition Adjustment Mechanism Schedule)
<u>201 Cost-Based Supply Service</u>)

I, Randall J. Falkenberg, being first duly sworn on oath, depose and say:

1. My name is Randall J. Falkenberg. I am a utility rate and planning consultant holding the position of President and Principal with the firm of RFI Consulting, Inc. I am appearing in this proceeding as a witness for the Industrial Customers of Northwest Utilities ("ICNU"). My business address is: PMB 362, 8343 Roswell Road, Sandy Springs, Georgia 30350.

2. I sponsored pre-filed direct testimonies and exhibits on behalf of ICNU in Oregon Public Utility Commission Docket No. UE 216. Specifically, Reply Testimony addressing the GRID model study of Net Variable Power Costs (ICNU/100), and exhibits (ICNU/101-108) that were filed on May 12, 2010. I have also been involved in numerous PacifiCorp proceedings related to the same subject matter in California, Idaho, Washington, Wyoming and Utah.

3. ICNU has requested that I perform analysis of the PacifiCorp Official Forward Price Curves ("OFPC") that was used in the July 2010 update and that will be used to set final rates as part of the November 2010 update. In order to be able to perform this analysis and evaluate the reasonableness of PacifiCorp's net power costs, I have asked discovery questions of PacifiCorp and have analyzed various documents prepared by the Company.

4. The Company has stated in non-confidential discovery responses that the OFPC is “benchmarked” to broker quotes. If the OFPC would otherwise differ from the broker quotes by more than 5%, it is adjusted. In order to determine the validity of the Company’s OFPC, ICNU requested the Company provide a forward price curve and a GRID study based solely on the broker quotes, or provide ICNU the data necessary to perform this calculation. The Company has refused to provide the former and has imposed restrictions that effectively make it impossible for ICNU to perform the latter.

5. The Company has required “special handling procedures” for documents related to its OFPC. The Company has done so based on the claim that, unlike ordinary confidential material produced in this proceeding, the documents supporting the OFPC are “highly confidential.”

6. Among the “special handling procedures” required by the Company was a requirement to view the material either in PacifiCorp’s offices, or at the offices of Troutman Sanders, an Atlanta based law firm engaged by the Company. The Company has required that they have a monitor present during any review of the documents, did not permit me to take verbatim notes, and did not provide me with a working copy of the electronic files until the meetings was nearly over. In order to determine the nature of the documents in question, I conducted such a review in late August 2010. It is my understanding that the Company is now requesting the Commission to require ICNU to follow the same procedures to review the underlying documents used to calculate the OFPC for the November update.

7. The Company’s requirements are not reasonable, and make it impossible to fully analyze and test the Company’s OFPC. There are several reasons for this.

8. First, it is quite apparent from the documents reviewed already that the determination of the OFPC is largely driven by judgmental determinations made by the

Company's traders. The trader's market estimates are then used in a highly complex spreadsheet which produces the OFPC. The Company models at least six markets in GRID, and produces an on and off peak OFPC for each market for each month. This results in 144 individual data points for each year, and GRID normally requires data for time periods before and after the test year. Each of these data points is the result of calculations performed in the Company's spreadsheets, which transform traders' expectations into the OFPC results. These spreadsheets are highly complex and contain far too many data inputs and calculations to be verified by ICNU in a short period of time. Given the subjective nature of the traders' market inputs, ICNU believes that the only reasonable way to test the validity of the OFPC is to compare the GRID results with an FPC based solely on broker quotes used for the benchmarking process. It would be impossible, and not allowed by the Company's special handling procedures, for ICNU to produce a broker quote FPC, copy the results and then use them as inputs to GRID. Computing inputs to GRID would require use of all of these inputs, would require access to computers in my offices and to the Company's GRID computer.

9. The requirement to observe the data in a setting controlled by PacifiCorp also hinders my investigation because it does not allow me to compare the data in the Company spreadsheets to other data I have available either in my office (such as discovery documents produced by the Company already) or via the internet (such as market indices from other independent sources such as the Inter Continental Exchange).

10. The proposed requirements are unreasonable because they would add substantially to the time and cost required to undertake the analysis I have been requested to perform. The time required to travel to the Troutman Sanders' offices, and the additional time required due to the lost productivity associated with these procedures are not reasonable, even if it were possible to successfully perform the task assigned. These procedures would also make

discovery more difficult and time consuming if I am required to travel to the Troutman Sanders offices' whenever I need to conduct discovery on the underlying documents related to the OFPC.

11. The requirement that the documents be observed in a location controlled by the Company is also unreasonable because it has proven to be unreliable. The day when I went to the Troutman Sanders office, the computer spreadsheets were made available on the Company's computer. For all but a few minutes during my review, the computer screen was populated with error messages, making it impossible to see the actual results being derived. This was the case during my entire discussion with the Company's subject matter expert who was on the telephone. While this problem was rectified shortly before I had to leave, there is no reason to believe it would not happen again. Indeed, it is frequently the case that the Company produces documents in discovery with similar problems. It has often been necessary for the Company to prepare revised documents. It typically takes a considerable amount of time to obtain corrected and revised documents. Prior to my document review, the Company's Manager of Regulation indicated she had concerns that this problem would occur, and had taken steps to avoid the problem. Consequently, it seems that even when the Company makes extra efforts to avoid the problem, it cannot always be addressed in advance.

12. The Company's requirements are unreasonable, because the Company's regulatory staff may set limits on the process. During my review of the Company documents, the Company made one of its subject matter experts available to explain the spreadsheets. This was helpful in understanding the matter at hand and the complexity of the Company's documents. However, the expert was asked to limit his discussion by the Company's Manager of Regulation. It is not clear what limits the Company would place on any telephone discussions that might be held under its procedures.

13. The Company's requested procedures are unreasonable because they may make submitting testimony on any issues related to the OFPC difficult. Testimony challenging the power cost updates and the OFPC may need to reference or address "highly confidential" material. If I cannot take notes or reference the "highly confidential" material in my testimony, then the Company's proposed restrictions could prevent me from fully addressing and challenging the OFPC. Further, it would be impossible to create useful workpapers documenting my analysis and the alternative FPC because I would not be allowed to copy the files used or print the pages from the spreadsheets.

14. The Company's requested procedures are unreasonable because there is no reason why the documents and information in question cannot be protected by the use of less restrictive confidentiality measures. This includes redaction of confidential data from public record documents. Further, in similar cases, ICNU has agreed to work with the Company to implement additional protections for sensitive data, such as providing the documents containing highly confidential data to the Company prior to release to other parties in a proceeding. This type of protection would allow for the Company to ensure that whatever information might be released can be protected from parties that may have an ability to use it in a manner unfavorable to the Company and its ratepayers.

15. The Company's requested procedures are also unreasonable because ICNU has offered the alternative of allowing the Company to compute the alternative FPC and associated GRID study, based on broker quotes. Based on my understanding of this process, it would not take the Company much additional time to prepare such an analysis, as traders are already required to benchmark the OFPC to within 5% of the broker quotes. The Company's subject matter expert indicated the benchmarking process added a few hours to the daily routine of producing a forward price curve.

16. The Company's requested procedures are unreasonable because I am not involved in any business activity where I could use the information obtained to provide services unrelated to rate case litigation to clients that might benefit from knowledge of the Company's OFPC. I further have no plans or desire to become engaged in such a business. Further, many of ICNU's members are PacifiCorp customers and would be impacted adversely should PacifiCorp's sensitive information be revealed.

17. The Company's requested procedures are unreasonable because the information they seek to protect is by its nature not particularly unique, or sensitive. There are already various sources of market trading data readily available to market participants. It should also be apparent that the same broker quotes available to the Company are available to other market participants. Further, the actual day to day business activities (such as trading) of the Company are not normally based on the OFPC, but rather FPCs produced on a daily basis. Consequently, the information the Company seeks to protect is likely to be outdated quickly after it is produced, reducing its commercial value.

18. The Company's requested procedures are unnecessary because I have always strived to protect the Company's confidential data. I am not aware of any instance where the Company has faulted me for revealing confidential data. In many cases, I have inquired with the Company as to whether specific information is considered confidential or not, when there was some ambiguity about it. In any case where there is doubt, I have always erred on the side of caution.

19. I have worked carefully with the Company to protect its confidential data in numerous past proceedings. For example, in UM 1355, I provided the Company confidential workpapers and worked with them to prepare special versions of these documents to provide PGE in order to protect the Company data.

20. The Company's requested procedures are further unreasonable because the Company treats the OFPC data itself as ordinary "confidential" data in Oregon. If there is some specific high value to the Company's market price assumptions, the most confidential material should be the final result (i.e., the OFPC itself) rather than any of a myriad of specific input assumptions that are used to derive the OFPC. Further, the Company does not even treat the OFPC data as confidential in other states. For example, the Company files its OFPC as a public record document in Utah in general rate cases as part of its Minimum Data Requirements. The Company also produced the OFPC used in GRID in its current Idaho general rate case on a non-confidential basis. The only OFPC data the Company considers confidential in Utah and Idaho is the Four Corners market price forecast.

21. The Company's requested procedures are unreasonable because the Company applies the designations of non-confidential, confidential and highly confidential inconsistently, and in a manner that appears often to be arbitrary and perhaps even careless. For example, in this proceeding the Company originally contended that the response to ICNU Data Request 2.2 was highly confidential and required "special handling procedures." Subsequently, the Company changed the designation to confidential. Another example of the Company's arbitrary designation of data as confidential concerns outage rate data. For several years the Company contended that outage rate event data was confidential. However, in UE 199, in its response to ICNU Data Request 1.6, the Company changed the designation of the event data to non-confidential. Subsequently, the Company changed its position again and designated recent outage event data as confidential.

22. Yet another example of the Company's arbitrariness concerns the GRID model inputs. In Washington Docket No. UE-080220, the Company provided the GRID model database on a non-confidential basis to all parties in the proceeding as a filing workpaper.

Subsequently, the Company informed the WUTC Staff in a data response that the data was confidential.

23. In another example, the Company designated the Sacramento Municipal Utility District contract as confidential. This document has been in the public record for more than 20 years, and is on file with the Federal Energy Regulatory Commission. There is no basis for designating it as confidential. The Company subsequently changed the designation back to non-confidential.

24. In another example, the Company informed parties in this proceeding that its Actual Net Power Cost reports were now considered confidential. In response to ICNU Data Request 4.12-1 (First Revised), the Company designated the entire 2009 Actual Net Power Cost report as confidential. At the same time, the first 11 months of same report were available for download on the Company's web page as part of its Wyoming PCAM filing. At various points the Company suggested this was done to protect the price information for certain contracts. However, that price information was also readily available in a GRID model output available for download on the Company's web page.

25. The Company has changed the designation of information from non-confidential to confidential numerous times after the information was already released. For example, in Utah Docket No. 08-035-38, the Company included the Four Corners Market prices as part of its non-confidential filing requirement, and subsequently changed the designation to confidential. In this instance, the Company treats OFPC data for markets other than Four Corners as non-confidential in Utah, but all of this data as confidential in Oregon. In Washington Docket No. UE-080220, the Company also included the Four Corners market price as part of a non-confidential workpaper (response to ICNU Data Request 1.41), but subsequently changed the designation to confidential. In Washington Docket No. UE-090205, the Company did the same thing again in

relation to the very same workpapers (the response to ICNU Data Request 1.45) and later changed the designation from non-confidential to confidential.

26. In Utah Docket No. 09-35-13, the Company produced a copy of the Nevada Power Contract as a confidential document showing the prices paid for RECs. However, in Oregon, when comparable contracts were produced REC prices were redacted, on the basis that the information was "highly confidential."

27. In Wyoming Docket No. 20000-277-ER-07, the Company produced heat rate workpapers for the GRID model, as a non-confidential document but later changed the designation to confidential.

28. The above identified examples are not an exhaustive list, but only a representative sample of the Company's treatment of allegedly confidential material. These examples illustrate that while opposing parties are bound to use of extreme caution in the protection of the Company's confidential data, its own employees and executives have been arbitrary (and possibly careless) in the treatment of confidential data. Further, it illustrate that the designation of highly confidential is one that the Company applies in an arbitrary manner. It does not make sense that the Company should treat its OFPC as public record documents in one state, yet demand they be treated as confidential, and/or highly confidential in Oregon.

29. In summary, the Company's request for special handling procedures is not reasonable. In the alternative, if the Commission is inclined approve the Company's motion, it should require the Company to produce an FPC based solely on broker quotes and associated GRID run, as requested by ICNU, and allow ICNU to review the workpapers for this study under the approved procedures.

I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST
OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE
FOR USE AS EVIDENCE AND IS SUBJECT TO PENALTY FOR PERJURY.


SIGNED THIS 12 th day of October, 2010, at Sandy Springs, GA.



Randall J. Falkenberg

SUBSCRIBED AND SWORN to before me this 12 day of October, 2010.




NOTARY PUBLIC FOR Cobb

My Commission Expires: May 13, 2012