

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 216

In the Matter of)	CUB’S REPLY TO PACIFICORP’S
)	MOTION FOR DIRECTION ON
PACIFICORP, dba PACIFIC POWER,)	IMPLEMENTATION OF DOCKET UM
2011 Transition Adjustment Mechanism)	1355 ORDER
)	EXPEDIATED CONSIDERATION
)	REQUESTED

Comes now the Citizens’ Utility Board of Oregon and files CUB’s Reply to PacifiCorp’s Motion for Direction on Implementation of Docket UM 1355 Order – Expedited Consideration Requested.

INTRODUCTION

The UE 216 and UM 1355 dockets already have long and tortured histories – and that is before the Commission begins consideration of the Company’s most recent filing in UE 216 seeking “Direction on Implementation of Docket UM 1355 Order.” What PacifiCorp seeks is an order from the Commission directing it to either: 1) implement the final UM 1355 order in the 2012 Transition Adjustment Mechanism (TAM) so that power costs do not have to be included in this year’s TAM; or 2) incorporate the final UM 1355 order in an update on December 1, 2010 instead of on November 8, 2010 as required by the current TAM Guidelines.

CUB opposes both options set forth by PacifiCorp. CUB has little sympathy for PacifiCorp’s largely self-inflicted problems. The Commission signaled months ago its thinking on the collar issue in the UM 1355 docket, and the final order merely tweaked its prior thinking.

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IMPLEMENTATION OF DOCKET UM 1355 ORDER

Additionally, PacifiCorp has known ICNU's position on Capacity Deration and Heat Rate Adjustment for over a year and should have been planning for a Commission ruling in favor of ICNU on that issue. The fact that the ruling on Capacity Deration and Heat Rate Adjustment was issued for the first time on October 22, 2010, should not carry much weight in the Commission's determination of whether to grant PacifiCorp any additional time for implementation of these elements.

Since the Commission order was delivered on October 22, 2010, one week after the "Anticipated Date of Commission Order", and this motion and reply have added one additional week of delay, CUB submits that any extension granted to the Company should be no longer than two weeks. PacifiCorp should not be permitted to circumvent the implementation of the Commission's final Order in the 2011 TAM through the filing of this or any other motion.

ARGUMENT

A. The Company has known for many months the potential obligations it faced under the TAM Guidelines and the impending UM 1355 Order. There should have been no surprises here and no need for additional time.

i. The TAM Guidelines.

The TAM Guidelines came into being as a result of an agreement reached in the UE 199 2009 TAM filing. As noted in Section II of that document – "Background", "Pacific Power's TAM is an annual filing, updating the Company's forecast net power costs to account for changes in market conditions, with the final forecast update close to the direct access window to capture costs associated with direct access and to identify the proper amount for the transition adjustment." The upshot of that docket was that in any future TAM filings (after docket UE 207,

Pacific Power's 2010 TAM proceeding) Pacific Power must follow the TAM Guidelines in making its filings. However, that Stipulation also recognized that the parties had not resolved all issues identified in that docket and that some issues might be taken up in the UM 1355 docket.

ii. UM 1355.

Although opened in November 2007, the UM 1355 docket had accomplished little at the time of the 2009 UE 199 TAM filing. When the UE 207 (2010 TAM) filing was made the UM 1355 docket was still a work in progress. The UE 207 Order No. 09-432, Section II. C. noted some changes in the TAM Guidelines but those changes are not relevant here. The Company then filed its 2011 Tam filing as Docket UE 216.

iii. UE 216.

PacifiCorp filed its 2011 TAM on February 26, 2010. TAM Order No. 10-363 issued on September 16, 2010. That Order notes at Section IV. Paragraph 4, the agreement by PacifiCorp to "reflect the final Commission decision in docket UM 1355 in its 2011 TAM filing, if the decision is timely." The Stipulation itself provided at paragraph 11, "[t]he Company agrees to reflect the final Commission decision in the Docket UM 1355 in the 2011 TAM *if the decision is timely and issued prior to the Indicative Filing*. The Parties agree that the adopted schedule in UM 1355, including the proposed Commission decision date, would result in a timely final order."¹ The parties did not say what an untimely order issuance date would be. The published schedule provided "Anticipated Date of Commission Order October 15, 2010." While the final Order was issued one week later on October 22, 2010, CUB submits that a one week delay, given the minor teaks to the original order, was "timely". CUB further notes that the order did in fact

¹ *Emphasis added.*

issue prior to the Indicative Filing deadline referenced in the Stipulation.

As noted by ICNU in its reply to the Company's Motion, "the final order in UM 1355 was issued over two months before the TAM rates will be in effect and well before the November 8, 2010 update, which should provide PacifiCorp with sufficient time to implement the final UM 1355 order."²

iv. What the Company knew or should have known.

Having reviewed the two dockets again, it is abundantly clear that the Company knew – long before the filing of UE 216 – the positions that the Commission was likely to take on the UM 1355 outstanding issues. As long ago as May 2009, the Company had attempted to narrow the UM 1355 docket to eliminate issues related to modeling of PacifiCorp's planned outage schedule, PacifiCorp's approach to modeling heat rate/minimum loading duration, and PacifiCorp's ramping adjustment. The Commission denied the Company's request on May 27, 2009. On September 4, 2009, PacifiCorp filed a Partial Stipulation in UM 1355 on behalf of the Company, Commission Staff, ICNU and CUB. The partial Stipulation left two PacifiCorp issues for resolution in UM 1355: (1) excluding extreme events/outliers for coal units to increase forecast accuracy; and (2) heat rate curve-minimum duration.

On October 7, 2009, ALJ Arlow issued the Notice of Intent to Modify Stipulations and Establish Rate Calculation. The Notice said that the Commission had found the PGE, Idaho Power, and PacifiCorp stipulations to be reasonable and in the public interest with one exception.³ That exception was the methodology for the regulatory treatment of extraordinary forced outages. The Commission noted that the methods described in Staff's testimony could be

² ICNU Reply to PacifiCorp's Motion for Direction at page 2.

³ Notice of Intent to Modify Stipulations and Establish Rate Calculation at page 3, Discussion, Section 1.

made more accurately predictive and set forth a methodology that would make it so. The Commission also noted that “with respect to the PacifiCorp Partial Stipulation, paragraph 6, page 2, lines 22-23 should be amended to read as follows: ‘The Parties agree to litigate the following issue in UM 1355: heat rate curve-minimum duration.’” Thus PacifiCorp has known since October 7, 2009, more than one year ago, where the Commission wanted to go with the collar, and since April 7, 2009, what ICNU’s arguments were related to Capacity Deration and Heat Rate Adjustment.

On December 7, 2009, the Commission issued Order No. 09-479 clarifying the ALJ’s prior Notice. The Notice explained that there were rebuttable presumptions about available data and who carried the burden of proof. It also clarified the data use in the collar calculation. The Commission permitted additional testimony only in regard to new issues of fact related to the forced outage rate collar for coal plants. After much back and forth, some, but not all, parties were permitted to file additional testimony – PacifiCorp was not. The Commission’s final Order in Docket UM 1355 was issued on October 22, 2010 – CUB was not surprised by anything in the Order.

- B. The Direct Access rules in Division 38 provide at OAR 860-038-001(4) that the Commission may relieve a Company of an obligation under these rules for good cause shown – while CUB thinks it is debatable whether a one week UM 1355 order issuance delay in fact provides good cause in this situation CUB would not object to the Commission granting the Company a two week extension for compliance with its obligations under UE 216 and UM 1355 orders.**

OAR 860-038-0001(4), which implements ORS 757.609, provides that, “[the direct access rules] shall not in any way relieve any entity from its duties under Oregon law. Upon

application by an entity subject to these rules and for good cause shown, the Commission may relieve it of any obligations under these rules.” Thus the Commission could choose to delay, and to order the Company to delay, everything by two weeks, including the other timelines listed by the Company under OAR 860-038-0275. It is CUB’s position that, given the somewhat self-inflicted time crunch under which the Company now finds itself, this option would be preferable to the suggestions made by the Company. A two week delay should also provide sufficient time for the Company to incorporate the Commission’s changes into the calculation of its Schedule 201 rates and thus to meet the January 1, 2011, effective date.

CONCLUSION

PacifiCorp should not be permitted to circumvent the timelines set forth in the Guidelines and Stipulations related to implementation of the UM 1355 order in the UE 216 2011 TAM filing. CUB is not opposed to a two week extension but strenuously objects to any form of lengthier delay – PacifiCorp’s timing problems were largely self-inflicted due to their own lack of foresight and preparation.

Respectfully submitted,



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UE 216 – CERTIFICATE OF SERVICE

I hereby certify that, on this 4th day of November, 2010, I served the foregoing CUB'S REPLY TO PACIFICORP'S MOTION FOR DIRECTION ON IMPLEMENTATION OF DOCKET UM 1355 ORDER in docket UE 216 upon each party listed in the UE 216 PUC Service List by email and, where paper service is not waived, by U.S. mail, postage prepaid, and upon the Commission by email and by sending one original and one copy by U.S. mail, postage prepaid, to the Commission's Salem offices.

(W denotes waiver of paper service)

(C denotes service of Confidential material authorized)

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