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January 29, 2008

Via Electronic and US Mail

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

Re: In the Matter of PUBLIC UTILITY COMMISSION OF OREGON STAFF'S Request to open an investigation regarding performance-based ratemaking mechanisms to address potential build-vs-buy bias
Docket No. UM 1276

Dear Filing Center:

Enclosed please find the Closing Comments and one (1) copy of the Industrial Customers of Northwest Utilities in the above-referenced matter.

Thank you for your assistance.

Sincerely yours,

/s/ Eric G. Shelton
Eric G. Shelton

Enclosures

cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Closing Comments on behalf of the Industrial Customers of Northwest Utilities upon the parties on the service list, shown below, by causing the same to be deposited in the U.S. Mail, postage-prepaid, or via electronic mail to those parties who have waived paper service.

Dated at Portland, Oregon, this 29th day of January, 2008.

/s/ Eric G. Shelton
Eric G. Shelton

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(W) = Waived Paper Service

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1276

In the Matter of PUBLIC UTILITY COMMISSION OF OREGON STAFF'S Request to open an investigation regarding performance-based ratemaking mechanisms to address potential build-vs-buy bias	)))))))))	THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES' CLOSING COMMENTS

I. INTRODUCTION

The Industrial Customers of Northwest Utilities ("ICNU") submits these Closing Comments regarding the Public Utility Commission of Oregon's ("OPUC" or the "Commission") investigation into mechanisms to address the utility bias to build rather than purchase new generation resources. Numerous incentive mechanisms have been proposed that will increase costs to ratepayers in order to provide the utilities with additional revenues if they enter into purchase power agreements ("PPAs"). None of these incentive proposals make any effort to identify the extent of the utilities' bias, or what impact they will have on utility decision making. The only guarantee is that they will give the utilities additional revenues for entering into third party market transactions, even those PPAs the utilities were already going to enter into. The incentive proposals demonstrate that this docket is no longer concerned with mitigating any utility bias, or whether the utilities can be prompted to change their behavior when making resource

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decisions, but the focus is on how much of a subsidy ratepayers should pay to utility shareholders when a utility happens to enter into a PPA.

ICNU will not repeat all of the concerns raised in our opening comments, but reiterate that it is inappropriate and illegal to provide the utilities with higher rates as a reward for their failure to acquire lower cost market resources. ICNU also reiterates that, if the Commission decides to adopt any of the incentive proposals, then a corresponding adjustment to the utilities' return on equity ("ROE") should be made to hold ratepayers harmless and ensure that utility earnings are not increased above a reasonable level.

II. BACKGROUND

The Commission has been presented with numerous proposals throughout this proceeding that are allegedly intended to reduce utility bias. Although the details differ, the remaining proposals being sponsored by the utilities, Staff, the Northwest and Intermountain Independent Power Producers' ("NIPPC"), and the Northwest Energy Coalition ("NWEC") are all variants along the same theme of allowing the utilities to earn a return or profit on PPAs.[1/] The proposals differ in that the Staff Proposal could limit the types of PPAs eligible for the subsidy, and the NWEC and Staff Proposals charge ratepayers less than the NIPPC or PacifiCorp Proposals; however, these are differences in degree and not in kind. None of these proposals consider a balanced

[1/] It is ICNU's understanding that NIPPC is no longer actively supporting its previous proposal to address the utilities' bias in the integrated resource planning process.

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approach of positive and negative economic incentives to alter utility behavior, rather they all offer rewards and no penalties. Instead of penalizing poor utility decision making, or changing the resource procurement process to require the utilities to actually purchase the least cost and least risk resource, these proposals simply throw ratepayer money at the problem.

Staff has proposed that ratepayers should pay to the utilities a 10% pre-tax adder on Oregon's share of the non-fuel costs of PPAs. Staff proposes that PPAs eligible for this 10% subsidy must be 25 megawatts ("MW") or larger, have a three year or longer term, and must be selected in a competitive bidding process. Staff also has a vague requirement that the PPA must reduce certain utility risks and that an independent evaluator must provide a formal recommendation whether the PPA provides benefits compared to utility ownership options. Costs in any year will also be capped at 1%, which will likely result in automatic annual 1% rate increases. Finally, the Staff Proposal has a requirement that the Commission review the incentive proposal within three years.

PacifiCorp, Portland General Electric Company ("PGE") and Idaho Power Company ("Idaho Power") have proposed a modified version of the Staff Proposal ("Joint Utility Proposal") that is a blatant attempt to increase the utilities monetary incentives while reducing the minimal ratepayer protections contained in the Staff Proposal. The Joint Utility Proposal applies the 10% incentive to after-tax rather than pre-tax costs, which has the practical effect of requiring ratepayers to pay 16% instead of

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10% more for PPAs. The Joint Utility Proposal also does not require the PPA to be purchased in a competitive bidding process, and eliminates the 1% cost cap.

PacifiCorp has proposed a revised Conservation Incentive Model for Purchase Power (described by PacifiCorp as the "PacifiCorp CIM/pp"). The PacifiCorp CIM/pp is a very complex methodology that results in extremely large payments to the utilities for nearly all their medium and long-term PPAs. The PacifiCorp CIM/pp would increase the costs to ratepayers of any PPA that has a term of one year or longer by 25-33%. PacifiCorp also front loads the majority of payments under this proposal to recover these higher payments from ratepayers during the first years of the PPA; thereby ensuring that the utilities will come out ahead, even if the PPA defaults or the Commission abandons the CIM/pp.

NIPPC and the NWEC have made their own incentive proposals. NIPPC's Proposal is a modified version of Staff's Proposal, which is focused on promoting utility purchases from independent power producers through a competitive bidding process. NIPPC's most significant change from Staff's Proposal is that, similar to the Joint Utility Proposal, it would increase the incentive that ratepayers pay to the utilities to 16%. NWEC believes that the Staff Proposal could result in a bias against utility ownership, and proposes a 2-3% after tax incentive (which would result in a 3-5% cost adder to be paid by ratepayers). NWEC does not limit the types of contracts, impose a cap, or require competitive bidding, but would prevent PacifiCorp from taking advantage of the incentive mechanism until Utah adopts a similar mechanism.

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None of the various proposals include symmetrical incentives, or any meaningful benchmarks to evaluate whether utility bias has been mitigated. Although Staff proposes a three year review, there are no guidelines or benchmarks to evaluate whether the incentive mechanisms are successful. Additionally, there also has been no attempt to balance the potential rewards with any penalties or other negative incentives. The proposals are not designed to make ratepayers whole, but for ratepayers to pay automatically pay higher costs to encourage the utilities to do what they are already required to do under the law.

The Commission should reject these ill-conceived and harmful incentive ratemaking proposals. If the Commission believes any of the proposals have merit, then it should direct the parties to refine them and develop a symmetrical mechanism that provides penalties as well as rewards, and sets incentives that are designed to alter utility decision making. There should also be meaningful benchmarks to ensure that the utilities are not provided rewards for those PPAs they would already have entered into. Alternatively, if the Commission simply adopts any of the proposals, then the Commission should adopt ICNU's ROE adjustment proposal to protect ratepayers and ensure that earnings are not unreasonable.

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III. COMMENTS

A. All of the Incentive Proposals Violate Oregon Law and Sound Regulatory Policy

The Staff, Joint Utility, NIPPC, and NWEC Proposals are all inconsistent with Oregon law and the Commission's regulatory policies because they will allow the utilities to earn excessive profits that are not based on any actual costs. Although Staff and the utilities attempt to assert that their proposals are consistent with the Commission's precedent, in fact they are radical departures from established ratemaking principles. The Commission should reject these proposals because they will result in unjust and unreasonable rates.

1. Rates Must Be Based on Actual Costs to Serve Customers

Oregon's regulatory framework is based on the assumption that electric utilities charge ratepayers for the reasonable costs of service—not imaginary cost adders. To ascertain whether a utility's rates are fair, just and reasonable, the Commission must establish the utility's authorized revenue requirement, which "is determined on the basis of the utility's costs." Re PacifiCorp, Docket No. UE 116, Order No. 01-787 at 5 (2001) (citing American Can Co. v. Lobdell, 55 Or. App. 451, 454-55 (1982)). A utility cannot increase its rates if its actual costs do not increase; or conversely, a utility is only entitled to increase rates if it can establish that its "actual costs will exceed actual revenues under the existing rate structure . . . ." American Can Co., 55 Or. App. at 455-56.

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The only potential exception to the rule that utility rates must be based on actual costs of service is the alternative form of regulation ("AFOR") statute, ORS § 757.210(2). Under an AFOR, the Commission is allowed to sets rates "using alternatives to cost-of-service rate regulation." ORS § 757.210(2)(c). The explicit and limited authorization to depart from rates being set based on actual costs in the AFOR statute is consistent with the traditional ratemaking framework, which prevents the Commission from approving rates based on imaginary costs. There is no other aspect of Oregon's ratemaking framework that allows the Commission to permit the utility to recover costs or expenses that it has not actually incurred. As succinctly explained by the Oregon Court of Appeals, "the utilities may not collect revenues in excess of actual current costs . . . ." American Can Co., 55 Or. App. at 457.

2. Utilities Are Allowed An Opportunity to Earn a Return or Profit on Their Investments Based on Their Actual Operating Risks

There is no legal basis or sound regulatory theory that would allow the utilities to earn a return or profit without making any investment. Utilities are allowed an opportunity to earn a fair and reasonable return on their investments. The amount of this return on its investment is based on actual considerations, like the ability to maintain a sound financial structure, and the need to attract capital at a reasonable cost. See Re PGE, Docket Nos. UE 180, UE 181 and UE 184, Order No. 07-015 at 47-48 (2007). The entire premise of allowing a rate of return is that the utility's earnings or profits are directly related to the utility's actual investments, and there is no justification for the

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utility to earn a risk free return on its expenses. The incentive ratemaking proposals provide the utilities with a risk free return on their expenses and allow the utilities to earn overall returns above a reasonable amount.

3. There Is No Precedent For the Incentive Ratemaking Proposals

PacifiCorp argues in its opening comments that providing monetary incentives is consistent with the Commission precedent regarding conservation incentives. PacifiCorp Comments at 5-6. The proposals in this proceeding are very different from the conservation incentives previously approved by the Commission. For example, the conservation incentives provided the utilities an opportunity to earn a profit on at least some actual investments that the utilities made—not just power supply expenses. ICNU is also unaware of any analysis regarding whether the conservation incentives were effective in encouraging additional cost effective conservation.

Unlike this proceeding, the Commission only adopted conservation incentives after attempting to remove many of the utility disincentives, and then concluding that removing the disincentives would be insufficient. Re Electric Utility Incentives for Acquisition of Conservation Resources, Docket No. UM 409, Order No. 92-1673 (1992). There has been no such investigation into the causes of the utility self build bias, and, except for ICNU's ROE adjustment, there has been no effort to address the utility bias problem by eliminating the disincentives faced by utilities to enter into PPAs.

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The various incentive proposals in this proceeding also fail to meet the basic requirements of the Commission's conservation incentives. In allowing conservation incentives, the Commission concluded that they must provide symmetrical and proportionate rewards and penalties, and include specific benchmarks. Id. The Commission concluded that "[t]he incentive system should not merely heap rewards on the utility above the currently allowed rates of return, but should reward exceptional performance and punish poor performance." Id. None of the proposals in this proceeding impose any penalties to punish poor performance nor do they even include any benchmarks to evaluate the utilities' performance. The Staff, Joint Utility, NWEC and NIPPC Proposals do not even reward exceptional performance, but provide monetary rewards to the utilities even if they do not change their behavior or if the problem of utility bias worsens.

B. The Incentives Offered to the Utilities Are Not Designed to Eliminate Utility Bias

The purpose of this proceeding was to develop performance based ratemaking mechanisms to eliminate the utilities' bias to own rather than purchase generation resources. Staff Report at 1 (Aug. 22, 2006). The focus of this proceeding has gradually shifted from developing solutions to eliminate utility bias to simply providing the utilities with monetary rewards to enter into certain types of PPAs. For example, Staff does not even pretend that its proposal is designed to mitigate any actual utility bias, but it is now intended to provide an incentive that "recognizes the risk

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mitigation value of PPAs . . . ." E.g., Staff Proposal at 1 (Dec. 21, 2007). In confusing the separate issues of the risk mitigation value of PPAs and the problem of utility bias, the various proposals do not adequately address either issue and will likely only result in higher rates.

1. There Has Been No Attempt to Identify the Reasons Why Current Regulation Has Not Eliminated Utility Bias

This proceeding has suffered from the problem of never identifying and analyzing the problem of utility bias. Instead of identifying what aspects of the current resource procurement process are flawed, there has been a rough assumption by the parties that the fact that the utilities earn returns on their investments in generation resources, but not expense items like PPAs, causes the utilities to favor owned resources.

ICNU agrees that there is a real utility bias; however, in order to design solutions we must understand how the current regulatory process has failed to prevent the utilities from acquiring higher cost, utility-owned resources. The Commission's primary role should be to fix the problems with current regulatory regime of integrated resource planning, competitive bidding, resource purchasing, and rate review that have prevented the Commission from remedying this bias in the past. Although NIPPC originally proposed a potential modification to the competitive bidding process, no party is actively supporting any solution other than giving the utilities more ratepayer money to enter into PPAs.

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2. No Party Has Analyzed Whether the Economic Rewards Will Change Utility Behavior

There is no information regarding how much of a monetary incentive (penalties or rewards) would be sufficient to reduce or eliminate the utility bias to own resources. The various proposals propose an adder of 4% to 33% on Oregon's share of the costs of certain PPAs, but no party has quantified how much incentive is actually needed to eliminate this utility bias (except the utilities' repeated mantra that higher incentives are better). Thus, even if an economic reward is the proper solution to the problem of utility bias, no party has provided any information that would allow the Commission to determine what is the proper amount of an incentive that will remove this bias. Similarly, there has been no analysis regarding whether the positive incentives proposed in this proceeding will cause the utilities to become biased in favor of PPAs.

Lacking any analytical support as to the proper amount of an economic incentive, all of the proposals are blind shots in the dark without any understanding of whether or how they will affect utility decision making. Commission rate orders must be based on substantial evidence in the record. Pac. Northwest Bell Tel. Co. v. Sabin, 21 Or. App. 200, 204 (1975). Ratepayers deserve better, and the legal requirements for substantial evidence require that the Commission support any incentive proposal with more than the back of the envelope guesses that underlie the adders proposed by all the parties in this proceeding.

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3. This Is Not the Docket to Determine the Risk Avoidance Benefits of PPAs

Many of the adders are not justified based on whether they will mitigate utility bias, but rather on the grounds that the incentive will act as a proxy for the risk mitigation value of a PPA. E.g., Staff Proposal at 1. There is no analysis regarding whether a 10%, 33%, or another number accurately represents the risk mitigation benefits of a PPA. Even if there were any support in this proceeding to set an actual value for the risk mitigation benefits of a PPA, the amount is unlikely to match the exact amount that will cause a utility to select a PPA over a self build option. There also has been no explanation as to why the alleged risk mitigation value of a PPA should be used to set the amount of a monetary incentive to eliminate utility bias in resource procurement.

In support of Staff's 10% adder being a reasonable proxy for the risk mitigation benefits of a market purchase, Staff mentions some benefits associated with PPAs, including risk mitigation, flexibility for resource planning and acquisition, resource diversity, and maintaining a competitive market. Staff Proposal at 1. ICNU agrees that certain PPAs bring these benefits to ratepayers, but there is no information in this docket that would allow the Commission to set a specific value for these benefits. Staff, NIPPC, and the utilities also ignore the risks associated with PPAs that would reduce the risk mitigation value of PPAs. The utilities have argued for years that PPAs actually impose a cost to ratepayers because their debt is imputed by the credit rating agencies. Although ICNU has always questioned the utilities' position regarding debt

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imputation, no party has proposed to reduce the risk mitigation benefits of PPAs by the costs of debt imputation. There are other costs of PPAs (e.g., the risk of counter party default, etc.) and benefits of utility self-build resources (e.g., more protection from market price changes, etc.) that are ignored in these proposals. Moreover, even if the adders proposed by Staff, NIPPC and the utilities were accurate, there is no explanation as to why ratepayers should pay all the costs of obtaining these benefits, while the utilities reap all the rewards (both the cost adders paid for by ratepayers and the allegedly less risky PPAs).

If the Commission wants to ascertain a value for the risk mitigation benefits of PPAs, it should do so in a separate proceeding that does not muddle the issue with how to address the utilities' ownership bias. The Commission could even direct the utilities to begin this process in their next integrated resource plans. The issue of utility bias and the risk avoidance of PPAs are two entirely different issues that should not be combined in one incentive ratemaking proposal.

4. The FIN 46(R) Standard Is Insufficient to Prove that a PPA Mitigates Risk

Staff and the Joint Utilities propose that a PPA show that it has risk mitigation characteristics by meeting the standards of Financial Accounting Standards Board Financial Interpretation 46(R), Consolidation of Variable Interest Entities ("FIN 46(R)"). Staff proposes that a PPA is worthy of ratepayers paying a 10% adder if FIN 46(R) "does not require consolidation of the PPA on the utility's balance sheet." Staff

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Proposal at 2; see also Joint Utilities Proposal at 2. FIN 46(R) should not be used to show risk avoidance benefits because it is an illusory, minimal requirement that will nearly always be met.

FIN 46(R) was written to prevent a company from hiding the losses of affiliates, and avoiding an Enron-type bankruptcy. The accounting standard requires a parent company to show whether it has an ownership in another company, and provides guidelines as to when an affiliate must be included on a balance sheet. FIN 46(R) was not designed to determine whether the power seller or the utility bears the risks of a PPA.

A PPA should easily be able to meet FIN 46(R) standard as long as the utility is not absorbing so much of the power seller's risks that the utility will be required to include the power seller on its balance sheet. This standard can be met without the power seller absorbing any of the utilities' risks, and can even be met if the power seller shifts some risks to the utility (as long as those risks do not result in the utility taking an ownership like risk in the power seller). Thus, meeting FIN 46(R) does not show that the PPA is absorbing the utility's risks, but whether the PPA is transferring risks to the utility to such a degree that the contract between the two amounts to ownership in disguise.

PacifiCorp suggests that, if the power seller does not bear commodity or performance risks, then consolidation may be required under FIN 46(R). PacifiCorp's and PGE's answers to ICNU's discovery requests contradict this assertion. Neither PacifiCorp nor PGE currently have any contracts that require consolidation, and both utilities have contracts under which the power sellers are not bearing commodity or

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performance risks (e.g., tolling contracts and certain wind contracts). In practice, PPAs that increase utility risks have not required consolidation under FIN 46(R). Using FIN 46(R) as the baseline standard for determining if risk avoidance has occurred is worse than no standard at all because it is an illusory hurdle that will almost always be met. Any meaningful analysis would review whether entering into the PPA actually results in a net reduction in risk to ratepayers, not that the PPA only slightly increases utility and ratepayer risks.

C. The Incentive Proposals Will Allow the Utilities to Earn Excessive Earnings Even If They Do Not Change Their Resource Procurement Decisions

One of the most troubling aspects of all the incentive proposals in this proceeding is that they would reward the utilities, even if they continue their current practice of being biased in favor of their own resources. The utilities would even make money if they increased their reliance on self build options and reduced the number of PPAs that they entered into. Any incentive mechanism should not provide compensation to the utilities for those PPAs that they would have already entered into.

The utilities' future resource portfolios will include PPAs, and regardless of the Commission's actions in this proceeding, the utilities will enter into a certain amount of new PPAs. The utilities will be able to earn the incentive adder on all new PPAs, even those that they would have entered into without the incentive proposal. There is no explanation in any of the proposals as to why the utilities should receive monetary rewards for doing nothing. Even if the utilities decide to favor their self build

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resources more than in the past and reduce their market purchases, then the incentive proposals would still pay the utilities for those few market transactions they decide to enter into.

A review of PGE and PacifiCorp's current portfolio illustrates the inequities of the incentive proposals. Currently about half of PGE's energy needs are met through market transactions, and PacifiCorp's market purchases constitute about 16% of its total portfolio. These utilities are not expected to suddenly stop entering into PPAs if the Commission rejects the incentive proposals. If the Staff Proposal were applied to PGE's current resource portfolio (and PGE had acquired its current 25 MW and larger three-year PPAs through competitive bidding), then the Staff Proposal would result in an automatic $6 million rate increase. Similarly, PacifiCorp's rates would be increased by $4.7 million under the Staff Proposal.[2/] Under the utilities' and NIPPC's proposed 16% adders, PGE's rates would be $10 million higher and PacifiCorp's rates would be $7.6 million higher. The PacifiCorp CIM/pp Proposal to increase the costs to ratepayers of PPAs by 25-33% would have caused much larger rate increases. Therefore, even if PacifiCorp and PGE continue to essentially operate as they have in the past, then they will obtain significant annual rate increases under the incentive proposals.

An incentive proposal should not simply allow the utilities to increase rates if they do not make different resource procurement decisions. Staff, NIPPC and the

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[2/] Numbers are estimates based on ICNU's review of PacifiCorp's and PGE's responses to ICNU's data requests.

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utilities proposals fail to recognize that the utilities will enter into some PPAs in the future without any action in this proceeding. At a minimum, any incentive proposal should not apply to those market transactions that the utilities would not have entered into without the incentive mechanism.

The Commission could address this problem by limiting any of the incentive mechanisms so that they only apply to those PPAs that exceed each utility's historic percentage of its energy resources that are market transactions. For example, PGE would only be able to use the incentive mechanism if PPAs exceed half of its energy needs; and PacifiCorp could only apply the incentive mechanism on those market transactions that exceed 16% of its total portfolio.

D. The Inventive Proposals May Distort the Market

Adoption of any of the incentive proposals could have unintended, harmful consequences for ratepayers and the Northwest power markets. It is unclear how the incentive proposals will actually impact utility decision making. They could have no impact on the utilities' resource procurement decisions and simply shift money from ratepayers to shareholders. Conversely, the incentive mechanism could cause utilities to enter into expensive market transactions and unintentionally harm the electricity markets and ratepayers.

If the incentives are overly generous, then they may cause the utilities to favor PPAs over lower cost and less risky build options. Ratepayers would not only be required to pay the incentive adders of 10% to 33%, but would be required to pay the

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higher underlying costs of expensive and more risky PPAs that under normal circumstances would be considered imprudent purchases.

There will likely be other market distortions, unintended consequences, and opportunities for utility abuse. For example, the proposals would apply the incentives to utility affiliates even though the utilities already have strong monetary incentives to enter into above market transactions with their affiliates. The Staff Proposal could also improperly encourage the utilities to enter into PPAs of three years or longer, instead of entering into a more prudent and less risky blend of short and long-term contracts.

The PacifiCorp CIM/pp Proposal is likely to cause the most harmful unintended consequences. The CIM/pp would allow the utilities to capitalize the capacity portion of new PPAs, up to a cap of 50% of the total costs. This methodology may result in numerous new PPAs that happen to have a capacity portion of 50%. Similarly, the CIM/pp front loads the incentive payments from ratepayers to utility shareholders under a standard PPA in the early years. This may result in power sellers structuring their PPAs to maximize this early front loaded payment, and encourage the utilities to enter into more risky PPAs that guarantee short-term utility earnings. If the Commission later abandons the incentive ratemaking experiment, then front loading of the incentives will ensure that the utilities would retain large profits while ratepayers are burdened with expensive and risky long-term PPAs.

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E. The Incentive Mechanisms Should Not Apply to PacifiCorp or Idaho Power

The multi-jurisdictional status of PacifiCorp and Idaho Power raise significant problems that should be resolved before these utilities are allowed to take advantage of any incentive mechanism. Due to the small size of their Oregon load, PacifiCorp's and Idaho Power's resource decisions may not be impacted by only one state adopting incentive mechanisms. There are also specific concerns associated with PacifiCorp's interstate cost allocation methodology (the Revised Protocol) that could harm Oregon ratepayers if they are not resolved before an incentive mechanism is adopted.

To change utility actions, the incentive mechanisms will need to set rewards and/or penalties that will cause the utilities to change their actions. All of the incentive mechanisms impose the same percentage adder to each of Oregon's three utilities, despite the fact that Oregon represents very different portions of their overall utility-wide loads. Oregon represents about 26% of PacifiCorp's energy load and a much smaller percentage of Idaho Power's load, and the actual impact of an incentive on these utilities will be reduced because of their small Oregon loads. Thus, if Staff's proposed 10% adder actually happens to reflect the appropriate positive reward that would incent a utility to change its behavior, then the reward would have little impact on PacifiCorp because it would actually provide a 2.5% incentive and have even less of an impact on Idaho Power. Alternatively, if a 10% adder on PacifiCorp's Oregon load is sufficient to

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change its overall company wide behavior, then a much smaller adder would be appropriate for PGE.

The Commission should resolve this problem by requiring PacifiCorp and Idaho Power to obtain similar incentive mechanisms in their other jurisdictions before being permitted to take advantage of any incentive mechanism in Oregon. Adopting a uniform incentive amount for all three Oregon utilities, without concurrent action in other jurisdictions, would automatically result in an incentive mechanism that is too high for some utilities and too low for others.

Requiring other jurisdictions to adopt incentive mechanisms also makes sense because it is not fair to require that Oregon ratepayers shoulder the entire responsibility of mitigating utility biases that harm ratepayers in PacifiCorp's and Idaho Power's other states. Similarly, if the incentive amounts are tied to the risk mitigation benefits of PPAs, then these benefits should be equally valuable to all of PacifiCorp's and Idaho Power's ratepayers. Oregon ratepayers should not be required to pay for all the "improvements" in the resource selection process, while other states receive the majority of the benefits.

There are also problems with implementing an incentive ratemaking proposal with PacifiCorp's Revised Protocol. If the incentive mechanism works as planned and causes PacifiCorp to enter into a PPA that it would not otherwise have entered into, then there is an open question as to how that resource will be considered under the Revised Protocol. Some parties in the multi-state process ("MSP") have

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suggested that this situation would result in the resource being considered a state resource under the Revised Protocol, further increasing the costs to Oregon ratepayers.

The incentive mechanism also implicates other more technical aspects of the Revised Protocol. There is no question that the use of positive incentives will increase the cost of PPAs for Oregon (from 4% under NWEC's proposal to 33% under the CIM/pp). Under the Revised Protocol, those higher costs (everything else being equal) will increase the value of the embedded cost deferential ("ECD") to Oregon. It is unclear how PacifiCorp will interpret the application of the ECD in future rate cases and whether PacifiCorp will be willing to reflect these changes in the Oregon ECD.

ICNU raised these and other issues regarding the incentive proposals and the Revised Protocol with the MSP Standing Committee, and PacifiCorp strongly objected to resolving or addressing them. The Standing Committee voted not to address these issues, despite the lack of agreement among the MSP parties regarding how these problems would be resolved. PacifiCorp refused to even provide a written explanation of how it believes the ECD provisions should apply in future Oregon rate cases because such an explanation could be used against the Company in the future. There are serious problems with how an Oregon-only incentive mechanism could cause even greater harm to Oregon ratepayers, and it should be clear how the Revised Protocol will be interpreted before any incentive mechanism is adopted. The Commission should exempt PacifiCorp from utilizing any incentive mechanism until all outstanding questions regarding the application of the Revised Protocol are resolved.

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IV. CONCLUSION

The Commission should reject all of the incentive ratemaking proposals in this proceeding. The incentive proposals violate Oregon law because they allow the utilities to impose phantom costs on ratepayers and will provide the utilities with excessive profits. The incentive proposals also fail to take a balanced approach of rewards and penalties or adopt any benchmarks, but merely provide the utilities with monetary payments for their new market transactions, even those the utilities would have already entered into. There also has been no attempt by any party to ascertain whether the proposals will actually mitigate utility bias or what concrete impact they will have on utility decision making. Finally, no multi-state utility should be permitted to utilize the incentive mechanisms until the majority of its jurisdictions adopt similar proposals.

Dated this 29th day of January 2008.

Respectfully submitted,

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