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October 19, 2009

Public Utility Commission of Oregon
Administrative Hearing Division

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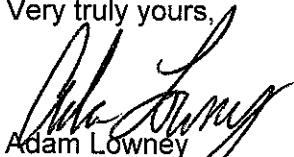
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Public Utility Commission of Oregon
PO Box 2148
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Re: Docket No. UM 1355

Enclosed for filing in the above-referenced docket are an original and one copy of PacifiCorp's Rejection of Proposed Addition to Partial Stipulation and Request for Additional Proceedings.

A copy of this filing has been served on all parties to this proceeding as indicated on the attached certificate of service.

Very truly yours,



Adam Lowney

cc: Service List

1 BEFORE THE PUBLIC UTILITY COMMISSION
2 OF OREGON

3 UM 1355

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OCT 21 2009

Public Utility Commission of Oregon
Administrative Hearing Division

4 In the Matter of
5 THE PUBLIC UTILITY COMMISSION
6 OF OREGON,
7 Investigation into Forecasting Forced
8 Outage Rates for Electric Generating Units.

**PACIFICORP'S REJECTION OF
PROPOSED ADDITION TO PARTIAL
STIPULATION AND REQUEST FOR
ADDITIONAL PROCEEDINGS**

9 Pursuant to Administrative Law Judge Allan J. Arlow's October 7, 2009, Notice of
10 Intent to Modify Stipulations and Establish Rate Calculation ("Notice"), PacifiCorp files this
11 response, declining to accept the Commission's proposed addition to the parties' Partial
12 Stipulation. Under OAR 860-014-0085 and the substantial evidence standard, PacifiCorp also
13 requests that the Commission adopt the Partial Stipulation as originally filed, but set additional
14 proceedings on the issue of how to exclude extreme events from forecasted outage rates, in
15 light of the Commission's proposed new approach to this issue.

16 **I. BACKGROUND**

17 The purpose of this proceeding is to establish a methodology for forecasting forced
18 outage rates for electric generating plants. *See Re Portland General Electric Co. Request for*
19 *General Rate Revision*, Docket UE 180, Order No. 07-015 at 15 and 55 (Jan. 12, 2007). This
20 case arose out of Docket UE 180, where Staff of the Public Utility Commission ("Staff"), the
21 Citizens' Utility Board ("CUB"), and the Industrial Customers of Northwest Utilities ("ICNU")
22 proposed a new methodology to account for extreme outages reflected in Portland General
23 Electric Company's ("PGE") general rate case filing. *Id.* at 13-15. There, the Commission
24 rejected the Staff, ICNU, and CUB proposal to use industry data from the North American
25 Electric Reliability Corporation ("NERC") to establish a "normal" outage rate. *Id.* at 14-15.

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1 Although the Commission rejected the proposal in UE 180, it ordered the opening of a
2 new generic docket to review and evaluate the Commission's method for forecasting forced
3 outages. *Id.* at 15 and 55. The Commission opened this proceeding on November 2, 2007.

4 In this docket, the parties filed opening and reply testimony on April 7, 2009, and May
5 13, 2009, respectively. The Commission convened a workshop on May 28, 2009, and
6 thereafter, PacifiCorp, Staff, ICNU, and CUB reached a settlement that resolved most of the
7 issues in the case as to PacifiCorp. The Partial Stipulation left two issues unresolved as
8 applied to PacifiCorp: (1) the appropriate method for excluding extreme events/outliers from
9 the forced outage rate forecast for coal units to increase forecast accuracy; and (2) whether
10 PacifiCorp should change its long-time practice of modeling the actual heat rate curves and
11 actual minimum capacity of its generating units when the maximum capacity of the generating
12 unit is de-rated to reflect the loss of availability associated with outages. The Partial
13 Stipulation was filed on September 4, 2009.

14 To allow the parties to better develop the record with respect to the unresolved issues,
15 PacifiCorp submitted supplemental testimony on July 24, 2009, and Staff and ICNU filed reply
16 testimony on August 13, 2009.

17 With respect to the method to exclude extreme events, PacifiCorp, Staff, and ICNU
18 each proposed a different methodology. PacifiCorp proposed excluding all outages in excess
19 of 28 days or, in the alternative, adopting a benchmark that used 20 years of actual unit data
20 and excluding outage results that are more than two standard deviations from the mean. See
21 PacifiCorp's Opening Brief at 1-2. In contrast, Staff's proposal used a benchmark based upon
22 the 90th and 10th percentile of NERC data to identify and replace extreme outages. See
23 Staff/100, Brown/20, II. 3-8. In its final round of testimony—filed such that no other party had
24 an opportunity to respond—ICNU, for the first time proposed an alternative benchmark that
25 used 20 years of actual unit data to identify outliers but replaced those values with the 20-year
26 mean annual outage rate. See ICNU/300, Falkenberg/13, II. 6-7.

1 PacifiCorp objected to both the Staff and ICNU proposals and the parties briefed
2 these issues to the Commission, filing opening briefs on September 16, 2009, and reply briefs
3 on September 24, 2009.

4 On October 7, 2009, ALJ Arlow issued the Notice, finding that the Partial Stipulation
5 was reasonable and in the public interest with the exception of the fact the parties did not
6 agree upon a methodology to exclude extreme events. The Commission presented a new
7 benchmark using NERC data to identify extreme outages, but replacing these outliers with
8 "the mean annual FOR from the unit's entire historical data." Although the new benchmark is
9 related to both the Staff and ICNU proposals in UM 1355, the proposed approach is not one
10 that was previously examined or analyzed by the parties in their written testimony. In addition,
11 the Commission also included a new provision to address the exclusion and replacement of
12 imprudent outages, an approach raised for the first time in the Notice.

13 II. DISCUSSION

14 A. PacifiCorp Does Not Accept the Proposed Addition to the Partial Stipulation.

15 PacifiCorp objects to the new proposed approach to the treatment of extreme events in
16 the forced outage rate presented in the Notice. Because there is no evidence in the record
17 explaining or analyzing the new proposal, the precise impact of the proposal on PacifiCorp
18 remains unclear. However, given PacifiCorp's analysis of related proposals in this case,
19 PacifiCorp believes that the new approach could result in a significant and permanent
20 disallowance of PacifiCorp's prudent net power costs. In its testimony in UM 1355, Staff
21 estimated that its 90 percent benchmark using NERC data would apply approximately 16
22 percent of the time to PacifiCorp's coal units. Staff Response to PacifiCorp Data Request
23 4.9(b). In addition, PacifiCorp's fleet of coal plants is nine times the size of PGE's and, unlike
24 both PGE and Idaho Power, PacifiCorp does not have a Power Cost Adjustment Mechanism
25 ("PCAM") allowing a true-up to forecast net power costs. This means that the impact of any
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1 benchmark/collar mechanism will have a far larger and more disadvantageous impact on
2 PacifiCorp than other utilities.

3 In summary, the new approach may have a material, negative impact on PacifiCorp
4 and PacifiCorp declines to accept its addition into the Partial Stipulation.

5 **B. The Commission Should Adopt the Partial Stipulation Without The Additional**
6 **Terms.**

7 PacifiCorp respectfully requests that the Commission reconsider its decision to modify
8 the Partial Stipulation and instead approve it as originally filed. The Partial Stipulation reflects
9 the comprehensive agreement of PacifiCorp, Staff, ICNU, and CUB with respect to most
10 issues in this docket. Approval of the Partial Stipulation will resolve the issues in this docket in
11 an efficient manner, result in an accurate method to calculate forced outages, and ultimately
12 result in just and reasonable rates for PacifiCorp's customers.

13 In contrast, rejection of the Partial Stipulation will result in additional, unnecessary
14 litigation. The parties have expended considerable resources building the record with respect
15 to these issues and working together to resolve their differences where possible. The Partial
16 Stipulation leaves only two issues unresolved. Moreover, for the heat rate curve issue, the
17 record is fully developed, the parties have briefed the issue, and no additional administrative
18 proceedings are necessary.

19 If the Commission adopts the Partial Stipulation, the only issue that will require
20 additional proceedings is the benchmark issue. As discussed below, additional proceedings
21 on this issue are required to ensure that the Commission has fully developed the record on its
22 new approach and considered changes or modifications to it as warranted.

23 **C. PacifiCorp Seeks Additional Proceedings.**

24 PacifiCorp requests that the Commission reopen the record in this proceeding to allow
25 the parties to submit evidence in response to the Commission's new proposed approaches to
26 the benchmark/collar issue and to the treatment of imprudent outages. Allowing the parties to

1 submit additional testimony with respect to the proposal will permit full development of the
2 record as required by the Oregon Administrative Procedures Act ("Oregon APA"). See ORS
3 183.482(8)(c) (Commission orders must be supported by substantial evidence in the record).
4 PacifiCorp believes that the proposed approach may present legal, policy, and practical
5 problems that warrant its reconsideration or modification.

6 Although elements of the Commission's proposal were addressed in the record, the
7 record lacks any discussion or analysis of the Commission's proposal as a whole. To the
8 extent that this proposal is derived in part from ICNU's proposed benchmark, PacifiCorp
9 previously objected to that proposal as late-filed and insufficiently developed on the record.

10 Among other issues, the proposed stipulation replaces excluded outages with "the
11 mean annual FOR from the unit's entire historical data." (Emphasis added). No party
12 proposed the use of the entire historical data of a unit to determine a replacement value for
13 excluded outages. Thus, the record contains no discussion of how this affects the accuracy of
14 forecast outages or whether this proposal will create unintended consequences. For example,
15 for some units PacifiCorp has up to forty years of operating data and the older data may be
16 difficult to verify. In such instances, it is unclear if the Commission intended to use forty-year-
17 old data to forecast future outages. Because the record contains nothing about this new
18 proposal, its language and impact is ambiguous. Additional evidence is necessary to fully
19 analyze the impact of this proposal and clarify the Commission's intent.

20 The Commission's proposed benchmark also includes new terms that exceed the
21 scope of this docket as reflected by the Issues List adopted by ALJ Arlow on January 30,
22 2009. See *Re. Public Util. Comm'n of Oregon Investigation into Forecasting Forced Outage*
23 *Rates for Elec. Generating Units*, Docket UM 1355, Ruling (Jan. 30, 2009). The proposed
24 stipulation includes two provisions related specifically to imprudent outages—replacement of
25 outage data with the historical mean for any year that includes an imprudent outage and
26 removal of years with imprudent outages from the calculation of the historical mean annual

1 forced outage rate. The Issues List, on the other hand, includes nothing relating to imprudent
2 forced outages. Moreover, the extensive testimony submitted by the parties in this docket
3 also lacks any substantive discussion of how the Commission should account for imprudent
4 outages. The proposed stipulation's method of excluding imprudent outages and replacing
5 them with the historical mean, therefore, lacks any support in the record. Because this is a
6 new issue for this docket, PacifiCorp requests that Commission allow the parties to submit
7 additional evidence to develop the record as required by the Oregon APA.

8 In total, the Commission's proposed benchmark is prejudicial to PacifiCorp, represents
9 a departure from the proposals contained in the record, exceeds the scope of this docket, and
10 includes additional terms lacking support in the record. For these reasons, PacifiCorp
11 requests additional proceedings to address these issues and develop a more comprehensive
12 record with respect to the benchmark mechanism so that an eventual Commission order
13 complies with the Oregon APA.

14 **III. CONCLUSION**

15 For all the reasons previously stated, PacifiCorp requests that the Commission
16 approve the PacifiCorp Partial Stipulation and set additional proceedings to allow for full

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1 development of the record with respect to any benchmark or collar mechanism ultimately
2 adopted.


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4 DATED: October 19, 2009

McDowell & Rackner PC

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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing document in Docket UM 1355 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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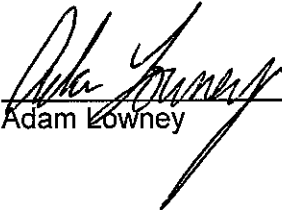
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DATED: October 19, 2009


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