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MAY 22 2009

Public Utility Commission of Oregon
Administrative Hearing Division

May 21, 2009

Via Electronic and U.S. Mail

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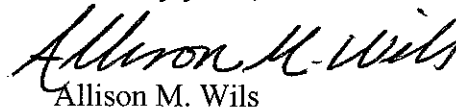
Re: In the Matter of PUBLIC UTILITY COMMISSION OF OREGON Investigation
into Forecasting Forced Outage Rates for Electric Generating Units
Docket No. UM 1355

Dear Filing Center:

Enclosed please find an original and five copies of the Response in Opposition to PacifiCorp's Motion to Limit Scope of Docket on behalf of the Industrial Customers of Northwest Utilities in the above-referenced docket.

Thank you for your assistance.

Sincerely yours,



Allison M. Wils

Enclosures

cc: Service List

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

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MAY 22 2009

UM 1355

Public Utility Commission of Oregon
Administrative Hearing Division

In the Matter of)
THE PUBLIC UTILITY COMMISSION OF)
OREGON) RESPONSE IN OPPOSITION TO
) PACIFICORP'S MOTION TO LIMIT
) SCOPE OF DOCKET OF THE
Investigation into Forecasting Forced Outage)
Rates for Electric Generating Units.) INDUSTRIAL CUSTOMERS OF
) NORTHWEST UTILITIES

Pursuant to the Administrative Law Judge's ("ALJ") oral ruling on May 18, 2009, the Industrial Customers of Northwest Utilities ("ICNU") submits this response in opposition to PacifiCorp's Motion to Limit Scope of Docket ("Motion"). ICNU respectfully requests that the ALJ deny PacifiCorp's Motion in its entirety. PacifiCorp misconstrues the nature of the Oregon Public Utility Commission ("OPUC" or the "Commission") investigatory proceedings, ignores the established scope of this proceeding, and mischaracterizes ICNU's testimony. ICNU repeatedly identified the issues it intended to raise; PacifiCorp failed to object to their inclusion on the Issues List; and the Company should not be allowed to postpone the resolution of these important forced outage issues which should be properly decided in this Docket. Further, the Company appears to seek to cure its own voluntary failure to address all issues by deferring matters to future cases. This proceeding is the appropriate forum to resolve the forced outage issues, and the ALJ should reject PacifiCorp's eleventh hour attempt to significantly narrow the proceeding.

I. BACKGROUND

The Commission initially opened this proceeding to address the issue of what is the most accurate forecast of forced outages for ratemaking purposes. Re Portland General Electric Company, Docket Nos. UE 180, UE 181 and UE 184, Order No. 07-015 at 15 (Jan. 1, 2007). The parties had raised concerns about Portland General Electric Company's ("PGE") four year forced outage rate, including whether a four year period should be used and technical concerns regarding the details of PGE's methodology. Id. at 13-15. PGE argued that, if the Commission were to make certain changes to the forced outage methodology, then the changes should be made in a generic proceeding. Id. at 13. The Commission's order resolved the forced outage issues for that case, but opened a generic docket to further consider forced outage issues. Id. at 15.

On October 2, 2008, parties submitted "Outage Rate Proposals." ICNU filed its proposal with the Commission, stating its position on outage rate issues that were subsequently adopted by the ALJ and that PacifiCorp now seeks to exclude from this proceeding, including: 1) power cost modeling of forced outage rates; 2) modeling planned outages; 3) whether ad hoc non-outage adjustments should be made; and 4) modeling of minimum loadings and heat rates in the context of the deration models such as PacifiCorp's GRID model and PGE's MONET model.

On January 30, 2009, Staff submitted a consolidated issues list on behalf of the parties, including ICNU and PacifiCorp. The ALJ adopted the parties' consolidated Issues List on January 30, 2009. Re Investigation into Forecasting Forced Outage Rates, Docket No. UM 1355, Ruling (Jan. 30, 2009) ("Issues List"). At no time has PacifiCorp objected to the inclusion of any issues on the Issue List. Moreover,

without substantive modification, the Issues List includes each of ICNU's issues that PacifiCorp now seeks to exclude from this proceeding, which are: 1) how to apply the forced outage methodology in power cost models (Issue No. I.D); 2) should non-outage related adjustments be included in the forced outage determination, and, if so, which ones (Issue No. I.G); and 3) what methodology should the Commission adopt for planned maintenance (Issue No. IV).

The majority of the issues in this proceeding focus on what the appropriate modeling methodologies should be for a wide variety of forced outage issues. Id. This necessarily includes an evaluation of how any rules, principles and methods will be applied to forced outages in consideration of the utilities' actual practices and power cost models. Since PGE and PacifiCorp use different power cost models, all policies and evidence in this proceeding must be cognizant of how they will impact the utilities' models.

Opening testimony was filed on April 7, 2009, and reply testimony was filed on May 13, 2009. PacifiCorp admits that its opening testimony did not "clearly address" all the issues on the established Issues List, specifically Issue I.D.: "What is the appropriate methodology for calculating forced outage rates and how should that be applied within the power cost model?" PPL/400, Duvall/3, lines 21-23. This is one of the key issues in this Docket from ICNU's perspective and Mr. Falkenberg has submitted extensive testimony on this point.

Until PacifiCorp filed its Motion on May 13, 2009, ICNU was not aware that that the Company believed ICNU's forced outage issues were outside the scope of this proceeding. In fact, PacifiCorp's previous position was that ICNU should not litigate

forced outage issues in the Company's rate proceedings, but these issues should be addressed in this generic proceeding which was "designed to comprehensively review the forced outage rate issue." Re PacifiCorp, Docket No. UE 191, PacifiCorp Reply Brief at 10 (Sept. 17, 2007) (emphasis added). The parties have conducted a number of workshops, telephone conferences and settlement discussions to discuss these forced outage issues over the course of the past year and a half—all which provided PacifiCorp an opportunity to express its views about the scope of the proceeding. In addition, ICNU has previously raised some of these issues and repeatedly explained to PacifiCorp how its proposals would impact the Company in numerous meetings. Motion at 2. There is no excuse for PacifiCorp to wait until it filed its reply testimony to raise its concerns, and the Company should not now be allowed to significantly narrow the scope of the proceeding after direct and reply testimony has already been filed. ICNU has expended a great deal of time and money submitting testimony on issues properly included on the Issue List. Parties must be able to rely upon the Issue List in preparing testimony, otherwise creating an Issue List is pointless.

II. RESPONSE

1. Utility Specific Issues Are Often Considered in Commission Investigations

PacifiCorp claims the Commission's policy is that investigations should not resolve issues unique to a particular utility, and that Commission investigations are more akin to rulemakings than contested cases. Motion at 3-4. PacifiCorp has an unduly narrow view of Commission investigatory proceedings, which is contradicted by the Commission's past practice. Commission investigations, even when considering broad and generic public policy issues, often resolve numerous utility specific issues. In

addition, Commission investigations that rely upon testimony and conduct evidentiary hearings are contested case proceedings, not rulemakings.

PacifiCorp selectively cites a few Commission decisions for its claim that “the Commission addresses only generic issues in investigative dockets.” Motion at 3. The cases cited by PacifiCorp merely stand for the proposition that, in those proceedings, the Commission adopted generic guidelines, and stated that it would address certain utility specific implementation issues in future proceedings. For example, the Commission established general guidelines for stranded costs, but left the actual implementation of those guidelines to a future case in which a utility actually sought to recover any stranded costs. Re Investigation into Transition Costs for Electric Utilities, Docket No. UM 834, Order No. 98-353 at 1 (Aug. 24, 1998).

PacifiCorp ignores that the Commission will often consider utility specific issues in general investigations. For example, the Commission conducted a general investigation into utility purchases from qualifying facilities in Docket No. UM 1129. The Commission adopted generic policies on the calculation of avoided costs, but also included specific details regarding how those policies would apply to individual utilities. Re Investigation into Utility Purchases from QFs, Docket No. UM 1129, Order No. 05-584 at 26-27 (May 13, 2005) (allowing Idaho Power to use a different method and specifically directing “PGE to discontinue using the market-based methodology it most recently employed to calculate avoided costs.”); Docket No. UM 1129, Order No. 07-360 at 38 (Aug. 20, 2007) (whether PacifiCorp should be required to offer market index pricing). There are also cases in which broad Commission investigations developed into proceedings which considered only utility specific issues. Re Investigation into Direct

Access Issues for Industrial and Commercial Customers, Docket No. UM 1081, Order Opening Investigation (May 1, 2003); Docket No. UM 1081, Order No. 04-651 (Nov. 2, 2004).

The Commission also has a number of current generic dockets which are addressing utility specific issues. The Commission opened an investigation into Oregon utilities provision of qualified reporting entity (“QRE”) services in Docket No. UM 1394. As part of the proceeding, Staff requested that the utilities file utility specific contract provisions, which the utilities subsequently did. Staff and the utilities recently filed a settlement of the case, which includes a general statement and utility specific contracts implementing the settlement. Re Investigation into Utility Provision of QRE Services, Docket No. UM 1394, Joint Motion to Adopt Memorandum of Understanding (May 8, 2009). Similarly, the Commission is conducting an investigation into utility large generator interconnection agreements, which includes the utilities filing revisions to each utility’s specific large interconnection agreement. See Re Investigation into Interconnections, Docket No. UM 1401, Staff Report at 3 (Nov. 4, 2008).

PacifiCorp cites the Oregon Administrative Procedure Act (“APA”) as supporting its conclusion that “the scope of the issues addressed in a generic policy docket is limited to issues of general applicability.” Motion at 4. PacifiCorp argues that generic investigations are similar to agency rulemakings rather than contested cases, and that company-specific issues should only be considered in contested case proceedings. Id. This position represents a misunderstanding of the APA.

The Commission defines a “contested case” as “a proceeding before the Commission in which a person is provided the opportunity for a hearing which is

substantially of the character described in” the APA. The APA defines a “contested case” proceeding as a proceeding before an agency “[w]here the agency by rule or order provides for hearings substantially of the character required by ORS §§ 183.415, 183.417, 183.425, 183.450, 183.460 and 183.470.” ORS § 183.310(2)(a)(D). The Oregon Supreme Court has articulated a list of elements required for a proceeding to provide a hearing “substantially of the character required” in a contested case:

An agency may oblige itself to contested case hearings if it identifies certain persons as parties separate from the general public, if it provides for a record of testimony and evidence from the parties that is subject to rebuttal and cross-examination, and if it binds itself to make a decision on the basis of evidence in the record.

Oregon Environmental Council v. Oregon State Board of Education, 307 Or. 30, 40

(1988). The Oregon Attorney General has also stated that an agency decision to provide only some of the procedures required for a contested case may convert the case into a contested case. Or. Op. Att’y Gen. No. OP-5822 n.4 (April 18, 1985).

This forced outage proceeding fits all the requirements for a contested case. There are separate parties to this proceeding, there will be a record for testimony, evidence will be developed at a hearing, the parties are subject to rebuttal and cross examination, and the Commission will make its decision based on the evidence in the record. Even under PacifiCorp’s own logic, since this is (or has all the requirements of) a contested proceeding under the APA, then this proceeding is appropriate to address utility specific issues.

Finally, it would be inappropriate for the Commission to adopt general methodologies on these issues without considering how they impact the utilities. The difficulty in separating “generic” from “utility specific” issues is illustrated by the fact

that PacifiCorp has not objected to ICNU's testimony regarding the appropriate hydro methodology. PGE does not model hydro outages and, therefore, the resolution of this issue primarily impacts PacifiCorp. This is a "company specific" issue that PacifiCorp believes should be considered in this proceeding.

2. Planned Outage Issues Are Within the Scope of this Proceeding

The Commission should resolve the issues related to both utilities' planned outage methodologies that ICNU has raised in this proceeding. The development of an appropriate planned outage methodology is an issue identified on the Issues List in this proceeding, and raised in ICNU's October 2, 2008 Outage Rate Proposal. Issues List, Issue IV; ICNU Outage Rate Proposal at 3.

Planned outages "represent events when generators are taken out of service for routine scheduled repairs and maintenance." ICNU/100, Falkenberg/28. ICNU's testimony proposed a specific methodology for planned outages that applies to both utilities, and explained how that methodology should be applied to PGE and PacifiCorp. *Id.* at Falkenberg/28-43. This planned outage issue involves both utilities because planned outages and forced outages are calculated using some of the same outage event data. Outage data must be categorized as either planned or forced. ICNU/100, Falkenberg/29-31. ICNU also explained this early in this case in its Outage Rate Proposal: "Planned and forced outage rate modeling should be coordinated and consistent so that they use the same time period. Planned outage scheduling should represent past patterns during the historical period." ICNU Outage Rate Proposal at 3.

ICNU's planned outage methodology is a rolling multi-year rolling forced outage rate that is normalized to remove abnormal events. *Id.* at Falkenberg/31-32.

ICNU's proposal applies equally and would require both PGE and PacifiCorp to abandon their current planned outage methodologies in favor of ICNU's proposal. PGE uses its most current forecast of the actual schedule for the test year to develop its planned outages. Id. at Falkenberg/28. ICNU's testimony explains the problems with PGE's planned outage methodology and recommends that it be rejected. Id. at Falkenberg/29-31. PacifiCorp uses a different methodology, which is a rolling four year average that is based upon an arbitrary and unrealistic normalization process. Id. at Falkenberg/1-2, 32-43. ICNU's testimony identifies problems with PacifiCorp's planned outage methodology, and how PacifiCorp's method would need to change to comply with ICNU's recommendations. Id. at Falkenberg/1-2, 32-43.

ICNU's planned outage issues are within the scope of issues the Commission should resolve, and all parties were provided ample notice that ICNU intended to address the issue. ICNU's company specific testimony is relevant and necessary for the Commission to understand how the utilities are modeling planned outages, how they are related to forced outage modeling, and how the utilities' method would need to change if the Commission adopts ICNU's recommendations. Any proceeding of this nature produces a better result if more specific information is provided to the Commission to understand the deficiencies of a particular approach and how changes will impact the utilities and ultimately the rates charged to their customers.

3. The Commission Should Resolve Whether Non-Outage Rate Adjustments like Thermal Ramping Can Be Included in Forced Outage Rates

ICNU proposed that the Commission's forced outage rate methodology should exclude certain non-outage related adjustments. Contrary to PacifiCorp's assertion, this is an issue on the established Issues List. The adopted Issues List states:

“Should non-outage related adjustments be included in the forced outage rate determination? If so, which non-outage related adjustments should be included?” Issues List, Issue I.G. ICNU also raised this issue in its October 2, 2008 Outage Proposal, identifying ICNU’s concerns regarding ad hoc adjustments to outage rates. ICNU Outage Proposal at 5.

PacifiCorp’s Motion does not provide an adequate explanation to support its efforts to remove PacifiCorp’s “thermal ramping” non-outage period adjustment from the proceeding. PacifiCorp’s Motion does not explain why it believes the thermal ramping issue is not a non-outage related issue that is on the Issues List. In fact, PacifiCorp’s own testimony discusses that thermal ramping is an adjustment to the forced outage rate that occurs when the generating units are not on an outage. PPL/400, Duvall/19-20. If PacifiCorp believes ICNU’s thermal ramping issue is not a non-outage adjustment, then its Motion should have explained why ICNU’s issue is different from the one on the established Issues List. PacifiCorp’s conclusory and inaccurate statements that thermal ramping is not on the Issues List is an inadequate basis to take the extreme step of striking relevant testimony.

Consistent with the Issues List, ICNU’s testimony addresses non-outage rate related adjustments, stating that one specific adjustment (“thermal ramping”) should be excluded in forced outage rate determinations. ICNU/100, Falkenberg/16. Mr. Falkenberg explains that the Commission has already rejected a similar proposal from PGE, and recommends that the Commission continue to not allow such adjustments by either PGE or PacifiCorp. Id. at Falkenberg/18; Re PGE, Docket No. UE 139, Order No.

02-772 at 23-24 (Oct. 10, 2002). The thermal ramping issue is within the scope of issues that should be resolved in this proceeding.

4. The Commission Should Determine How Forced Outage Rates Are Applied in the Utilities' Power Cost Models

ICNU has proposed power cost modeling revisions to incorporate its proposed forced outage methodology. Without any support, PacifiCorp asserts that ICNU's "heat rate and minimum loading technique" issue is not on the Issue List. Motion at 2. PacifiCorp appears to be seeking to remove this issue from ICNU's testimony since the Company may have overlooked this issue in its original testimony. PPL/400, Duvall/3. The Company should not be allowed a "do over."

The issue of how to implement forced outage issues in the utilities' power cost models is on the established Issues List, which states: "What is the appropriate methodology for calculating forced outage rates and how should that be applied within the power cost model?" Issues List, Issue I.D. In addition, ICNU raised this issue in its October 2, 2008 Outage Rate Proposal, stating that ICNU would address power cost modeling issues like minimum deration loadings and heat rates, including utility specific methods for forecasting minimum loadings and heat rates in their power cost models. ICNU Outage Proposal at 5. PacifiCorp cannot claim that it was unaware that ICNU intended to raise this issue.

ICNU has proposed a "capacity deration and heat rate" modeling adjustment to properly account for forced outages in power cost models. After a forced outage rate is determined, the outage rate must be accurately applied in a utility power cost model. ICNU/100, Falkenberg/50-51. Power cost models account for forced outages by reducing the generating units' availability capacity. Id. ICNU submitted

testimony that PGE's MONET model correctly applies the forced outage rate to its generating units' capacity, but that PacifiCorp's GRID model has serious errors when the forced outage rate is applied to the generating units' capacity. Id. at Falkenberg/50-62. ICNU recommends that the Commission adopt one policy that applies to both PGE and PacifiCorp, and that PacifiCorp change its modeling of minimum capacity derations and heat rates to ensure that heat rates are not automatically increased because of forced outages.

5. PacifiCorp Will Not Be Prejudiced By Addressing These Forced Outage Issues in this Proceeding

PacifiCorp argues that it would be prejudicial to the Company and inefficient to litigate these issues in this proceeding. Motion at 1, 5. ICNU strongly disagrees. Both utilities have argued in the past that ICNU should raise its forced outage issues in this generic proceeding and not utility specific proceedings. E.g., Docket No. UE 191, PacifiCorp Reply Brief at 10; Docket Nos. UE 180, UE 181 and UE 184, Order No. 07-015 at 15. PacifiCorp's arguments appear to be diametrically opposed to the position it took in UE 191. ICNU also repeatedly raised these issues in this proceeding, and has provided the Company with sufficient notice that they should be resolved here.

It would be inefficient, inequitable and highly prejudicial to postpone ICNU's forced outage issues to another PacifiCorp proceeding. ICNU has conducted discovery, submitted two rounds of testimony, and spent a considerable amount of time and effort in reliance upon the assumption that these issues would be conclusively and finally resolved in this proceeding. It is simply time to resolve these important issues.

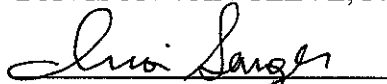
III. CONCLUSION

The Commission should resolve ICNU's forced outage rate methodology issues in this Docket. Granting PacifiCorp's Motion and deferring ICNU's forced outage issues would unfairly penalize ICNU for making a serious effort to address all the relevant issues in this proceeding. Thus, for the reasons stated above, ICNU respectfully requests that the ALJ or the Commission deny PacifiCorp's Motion to Limit Scope of Docket.

Dated this 21st day of May, 2009.

Sincerely yours,

DAVISON VAN CLEVE, P.C.



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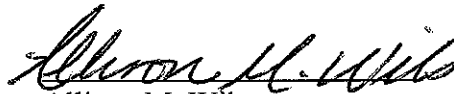
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Of Attorneys for Industrial Customers of Northwest
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Response in Opposition to PacifiCorp's Motion to Limit Scope of Docket of the Industrial Customers of Northwest Utilities upon the parties on the service list, shown below, by causing the same to be sent by electronic mail to all parties, as well as, deposited in the U.S. Mail, postage-prepaid, to parties which have not waived paper service.

Dated at Portland, Oregon, this 21st day of May, 2009.


Allison M. Wils

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