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January 19, 2010

*Via Electronic and US Mail*

Allan Arlow  
Administrative Law Judge  
Oregon Public Utility Commission  
550 Capitol St. NE #215  
P.O. Box 2148  
Salem OR 97308-2148

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 Judge Arlow:

The Industrial Customers of Northwest Utilities (“ICNU”) and the Citizens’ Utility Board (“CUB”) submit this letter in response to PacifiCorp’s January 8, 2010 letter which stated that it was sent to “assist the Commission in resolving the procedural issues raised at the scheduling conference.” ICNU and CUB disagree with PacifiCorp’s characterization of the history of this proceeding and with the scope of the remaining issues that PacifiCorp believes warrant additional testimony or briefing. PacifiCorp’s letter does not appear to clarify any issues, but is focused on allowing the Company to reargue issues. ICNU and CUB’s response is that PacifiCorp should not be permitted to file any additional testimony because the record is fully developed and ready for Commission decision.

The Commission has provided PacifiCorp with a sufficient opportunity to litigate all issues associated with forced outage rate collars. This proceeding was opened on November 2, 2007, over two years ago. The original schedule in this proceeding established two rounds of testimony in April and May of 2009 to address forced outage policy issues. After all parties filed extensive opening and reply testimony, the Commission held a Commissioner attended workshop.

After the workshop, PacifiCorp requested the ability to file additional testimony. Over the objection of Staff, ICNU and CUB, two additional rounds of testimony were allowed in July and August, and PacifiCorp had an opportunity to conduct cross examination or request to file additional testimony. PacifiCorp now claims it “had no opportunity to respond” to ICNU’s forced outage collar, which is incorrect because it could have conducted cross examination, or requested to file testimony. PacifiCorp was apparently satisfied with the evidentiary record because it did not cross examine any witnesses or request to file testimony. PacifiCorp cannot dispute that, including the workshop, there have been at least six opportunities to develop the evidentiary record in this proceeding, which is double the standard two rounds of testimony and a hearing in generic policy dockets.

On October 7, 2009, the Commission issued a Notice regarding the forced outage issue, stating that it decided to adopt a modified forced outage collar for PacifiCorp. Although the Notice stated that the Commission intended to modify the partial PacifiCorp stipulation, the Commission did not need to modify the stipulation because the parties agreed to litigate the issue of which forced outage rate collar should be used for PacifiCorp. And, the Commission had the ability to simply adopt its preferred forced outage collar for PacifiCorp based on the existing evidentiary record.

On December 7, 2009, the Commission clarified its Notice, stating that it would provide the parties an opportunity to file additional testimony and cross examine witnesses related only to the forced outage rate collar, “to the extent they can show there are new facts that are in dispute.” (emphasis added). The Commission’s proposed forced outage collar is a hybrid of the Staff and ICNU proposals, both of which have been fully litigated. The Commission’s final order in this proceeding need not be limited to only the specific proposals presented by the parties, but can adopt a new forced outage collar based on the evidence presented by the parties. The Commission has crafted numerous resolutions of issues in policy and ratemaking proceedings that were not specifically supported by any party, many of which were based on far less evidence than in this case.

ICNU and CUB do not believe that there are any additional new facts that are in dispute that warrant additional testimony or cross examination for PacifiCorp, and the Company did not identify any new facts in its letter. If any party believes additional testimony is warranted, then that party should be required to file a motion explaining what new facts are in dispute prior to any party filing any testimony. PacifiCorp has not demonstrated that there are any new facts in dispute, and its proposal to litigate all issues related to the Commission’s proposed forced outage collar and the treatment of imprudent outages would simply provide a broad opportunity to re-litigate a wide array of issues. PacifiCorp should not be provided with yet another bite at the apple (at least third bite) on issues already fully litigated.

The Commission has allowed PacifiCorp more than an adequate opportunity to litigate issues in this proceeding, and the Commission should resolve

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issues related to PacifiCorp's forced outage collar based on the record before it. ICNU and CUB appreciate your consideration on these issues.

Sincerely yours,



Irion A. Sanger



Catriona McCracken

cc: Service List

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing letter on behalf of the of the Industrial Customers of Northwest Utilities and the Citizens' Utility Board upon the parties, on the service list, by causing the same to be deposited in the U.S. Mail, postage-prepaid, and via electronic mail where paper service has been waived.

Dated at Portland, Oregon, this 19th day of January, 2010.

Sincerely,

/s/ Allison M. Wils  
Allison M. Wils

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