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**VIA FACSIMILE AND FIRST-CLASS MAIL**

Administrative Hearings Division  
Oregon Public Utility Commission  
PO Box 2148  
Salem, OR 97308-2148

**Re: Docket UM 926: Reply Comments of PacifiCorp Regarding the Bonneville Power Administration Comprehensive Settlement and Conditional Deferral of Reduction of Risk Discount under PacifiCorp's Financial Settlement Agreement**

PacifiCorp's initial comments requested that the Public Utility Commission of Oregon (the "Commission") approve PacifiCorp's execution of an agreement substantively equivalent to the form of the Agreement Regarding Payment of Residential Exchange Program Settlement Benefits During Fiscal years 2007 through 2011, as set forth in Exhibit 1 to the Application attached to PacifiCorp's initial comments. PacifiCorp believes that this agreement substantially meets concerns expressed in several of the initial comments. Therefore, PacifiCorp files only these limited Reply Comments.

PacifiCorp responds specifically to certain comments made by Public Utility District No. 1 of Snohomish County, Washington ("Snohomish") and by the Canby Utility Board ("Canby"), as follows:

1. Both Snohomish and Canby express indignation that PacifiCorp and Puget Sound Energy, Inc. ("Puget") should have agreed to provide \$200 million in Reduction of Risk Benefits in return for settlement of litigation challenging payments by the Bonneville Power Administration ("BPA") for the benefit of residential and small farm customers. The Reduction of Risk Discount in the Financial Settlement Agreement between BPA and PacifiCorp (BPA Contract No. 02PB-11157) would have reduced from \$45.49/MWh to \$38/MWh the payments owed PacifiCorp in return for its acceptance of curtailment of BPA power deliveries. Quoting earlier filings by PacifiCorp in this docket, both Snohomish and Canby stated that PacifiCorp "admitted" that the Reduction of Risk Discount provisions were intended to encourage the negotiation of a settlement of litigation challenging PacifiCorp's subscription benefits. Snohomish and Canby argue that such encouragement represented bad public policy, and even violated rights guaranteed litigating parties by the First Amendment to the United States

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Constitution.

Only in our current highly litigious society could parties make such arguments with a straight face. PacifiCorp granted BPA the right for \$45.49/MWh to curtail power that BPA was obligated to provide PacifiCorp and that BPA would have had to cover in a sky-high power market. This price was in itself very favorable to BPA and greatly reduced expected increases in the prices that BPA would have had to charge Snohomish, Canby, and other purchasers of BPA power. PacifiCorp and Puget further agreed to provide a \$200 million discount if such a discount could induce settlement of existing litigation challenging payments for the benefit of their residential and small farm customers.

By no rational standard is a willingness to reduce by \$200 million the price paid by BPA for power curtailment, in return for settlement of litigation, an infringement of anyone's constitutional rights or contrary to good public policy. Snohomish and Canby appear simply to be demanding the benefit of the Reduction of Risk Discount offered as a settlement of litigation, despite a refusal to settle the litigation.

2. Canby cites a highly selective "procedural history," apparently in part to convey the impression that the Financial Settlement Agreement, including its Reduction of Risk Discount provisions, was hidden from BPA's preference customers.

Such a claim is unsupportable, as this agreement and the related Puget agreement both were highly publicized. For example:

- On May 24, 2001, BPA announced that PacifiCorp had agreed to release BPA from its commitment to sell the company 251 average megawatts of power each year through 2006.
- On June 14, 2001, BPA publicly announced that Puget had agreed to release BPA from its commitment to sell the company 368 average megawatts of power each year through 2006.
- On May 24, 2001, PacifiCorp issued a press release announcing its load reduction agreement.
- On June 14, 2001, Puget issued a press release announcing its load reduction agreement.
- On June 22 and June 27, 2001, BPA announced that the Administrator would disclose the final results of BPA's load reduction efforts on June 29, 2001. BPA held such briefing



on June 29, 2001, and provided additional materials at that time, all of which were posted on BPA's website. These materials included a chart showing load reductions by customer group, showing that 93 percent of BPA's load reduction goal for investor-owned utilities ("IOUs") had been reached through signed agreements. These materials also included a chart showing that BPA had achieved a total of 558 average megawatts of load reductions from the IOUs. These materials also included a list of "Golden Heroes," that is, customers reducing load by 10 percent or more, which included both PacifiCorp and Puget.

- On May 30, 2001, BPA issued a publication entitled *BPA News Shorts* and posted it on BPA's website. This publication noted that PacifiCorp had "released BPA from its commitment to sell the IOU 251 average megawatts a year for the next five years."
- On June 27, 2001, *BPA News Shorts* contained a table showing the results of BPA's load reduction efforts with its IOU customers, including PacifiCorp and Puget.
- In June 2001, BPA published an issue of the *BPA Journal*, a newsletter sent to all BPA customers, in which it noted that PacifiCorp "released BPA from its commitment to sell it 251 average megawatts a year for the next five years."
- On June 27, 2001, the BPA Administrator issued a statement on the energy crisis, in which he referenced BPA's load reduction agreements with BPA's utility and industrial customers, noting that PacifiCorp was the first IOU to sign a load reduction Agreement.
- On June 29, 2001, the BPA Administrator sent a letter to the region summarizing BPA's load reduction efforts, which included agreements with "public and private power and industries."
- The load reduction agreements were extensively covered in the regional media. The May 28, 2001 and June 11, 2001 issues of *Clearing Up* each included an article on the PacifiCorp agreement. *Clearing Up's* June 18, 2001 issue included an article on the Puget agreement.

In short, if BPA, PacifiCorp, and Puget were trying to keep their agreements secret, they did a rather poor job. The agreements were widely publicized, and all BPA contracts are public documents available to the general public upon request. The fact is, however, that Canby needed the benefits of the curtailments of power sales agreed to by PacifiCorp and Puget in 2001, whether the price for those curtailments turned out to be \$45.49/MWh or \$38/MWh. At either



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price, by allowing BPA to avoid large power purchases in a very high-priced power market, the PacifiCorp and Puget load reduction agreements greatly diminished rate increases that Canby otherwise would have faced. Only now, after obtaining the substantial benefit of the load reduction agreements, does Canby posture that knowledge concerning the agreements was unavailable to it.

Very truly yours,

*/s/ Marcus Wood*

Marcus A. Wood