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August 23, 2011

VIA ELECTRONIC AND U.S. MAIL

PUC Filing Center
Public Utility Commission of Oregon
PO Box 2148
Salem, OR 97308-2148

Re: **UE 227 – PacifiCorp's 2012 Transition Adjustment Mechanism**

Attention Filing Center:

Enclosed for filing in the captioned docket are the original and one copy of PacifiCorp's Reply to the Response in Opposition to Motion to Admit Testimony. A copy of this filing was served on all parties to this proceeding as indicated on the attached Certificate of Service.

Very truly yours,

A handwritten signature in black ink, appearing to read "Amie Jamieson".

Amie Jamieson

cc: Service List

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 **UE 227**

4 In the Matter of:

5 PACIFICORP, dba PACIFIC POWER
6 2012 Transition Adjustment Mechanism

**REPLY TO RESPONSE IN OPPOSITION
TO MOTION TO ADMIT TESTIMONY**

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8 Pursuant to OAR 860-001-0420, PacifiCorp d/b/a Pacific Power (or the Company) files
9 this Reply to the Response in Opposition to Motion to Admit Testimony (Reply) filed by the
10 Industrial Customers of Northwest Utilities (ICNU) and the Citizens' Utility Board of Oregon
11 (CUB) with the Public Utility Commission of Oregon (Commission).

12 1. This Reply is Proper. Based on the arguments presented in ICNU's and CUB's
13 Response in Opposition to Motion to Admit Testimony (Response), PacifiCorp believes that
14 the Motion is substantive under OAR 860-001-0420(2), because it relates to the right of
15 PacifiCorp to present evidence in support of its filing. Therefore, PacifiCorp is entitled to file a
16 reply to the response under OAR 860-001-0420(6).

17 If the Commission finds that the Motion is procedural, PacifiCorp requests that the
18 Administrative Law Judge (ALJ) permit this Reply pursuant to OAR 860-001-0420(6), to
19 ensure proper development of the record on this issue.

20 2. CUB and ICNU Opened the Door to Submission of Mr. Graves' Supplemental
21 Rebuttal Testimony (Testimony). CUB's and ICNU's primary objection to Mr. Graves'
22 Testimony is that it is irrelevant. However, CUB's opening testimony in this docket relied on
23 the expert testimony of Dr. Lori Schell filed on behalf of the Utah Office of Consumer Services
24 in the Company's Utah rate case. See CUB/100, Jenks-Feighner/13. CUB also attached
25 portions of Dr. Schell's testimony as an exhibit. See Jenks-Feighner, Exhibit 106. ICNU's
26 opening testimony referenced the challenges to the Company's hedging policies that were

1 occurring in the Utah rate case as support for its hedging adjustment. See ICNU/100,
2 Schoenbeck/15.

3 Because CUB and ICNU raised the hedging adjustments pending in Utah in their
4 opening testimony, they cannot now argue that the Company's Testimony responding to the
5 Utah hedging adjustments is irrelevant.

6 CUB and ICNU argue that CUB relied upon Dr. Schell's factual assertions "for
7 illustrative purposes" only. However, in response to a data request from PacifiCorp asking
8 CUB to "provide all evidence to support the contention of 'substantial losses suffered by
9 PacifiCorp and its customers'" referenced in CUB's testimony on hedging, CUB responded
10 that this assertion "is based on the testimony of Lori Smith Schell of the Utah Office of
11 Consumer Services in Utah Docket No. 10-035-124."¹ CUB cited no other evidence upon
12 which its allegation of hedging losses is based. Mr. Graves' Testimony is relevant because it
13 responds to CUB's only support for its hedging adjustment in CUB's opening testimony. While
14 CUB has moderated its position in surrebuttal, CUB has not repudiated its prior testimony, nor
15 has ICNU withdrawn or reduced its hedging adjustment, which also relies upon hedging
16 adjustments proposed in Utah.

17 CUB and ICNU argue that all other Utah testimony should be allowed if Mr. Graves'
18 Testimony is allowed. Because CUB and ICNU do not propose to offer the sponsoring
19 witnesses of other Utah testimony, however, there is no foundation for such testimony. In
20 contrast, the Company's Testimony has been affirmed and adopted for purposes of this case
21 by its sponsor Mr. Graves, who will appear for cross-examination at the hearing both on the
22 Testimony and on his sur-surrebuttal testimony to be filed on August 30, 2011.

23 3. There is No Undue Prejudice in Allowing the Testimony. PacifiCorp originally
24 filed the Testimony as Exhibit PPL/405 to Mr. Stefan Bird's rebuttal testimony filed on July 29,

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¹ CUB's Response to PacifiCorp Data Request 1.4, attached as Exhibit 1.

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1 2011, so CUB and ICNU cannot claim they are surprised by its presentation in this case. The
2 Testimony simply clarified, in response to a discovery request from ICNU, that Mr. Graves
3 would be sponsoring that testimony and would be available for cross examination on it. The
4 Testimony avoided prejudice to ICNU and CUB by assuring Mr. Graves' availability for cross-
5 examination and doing so well prior to the date for CUB's and ICNU's surrebuttal testimony.
6 In addition, the fact that the Company is offering the Testimony for the purpose of responding
7 to CUB's and ICNU's references to Utah hedging adjustments eliminates any prejudice to
8 CUB and ICNU.

9 It would be unduly prejudicial to PacifiCorp to adopt ICNU's and CUB's position that
10 CUB should be permitted to present testimony from another docket without making that
11 witness available for cross examination, but that PacifiCorp should be denied the ability to
12 present its affirmed testimony responding to that witness.

13 4. It is Appropriate to Address the Admissibility of the Testimony at the Hearing.
14 PacifiCorp agrees with ICNU's and CUB's position that the ALJ should not make a
15 determination on the admissibility of the Testimony prior to the hearing. PacifiCorp filed its
16 Motion well in advance of the hearing to provide parties with ample notice that Mr. Graves
17 would be appearing in this proceeding and would be available for cross examination at the
18 hearing.

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1 **CONCLUSION**

2 The Company requests that the Commission admit the Supplemental Rebuttal
3 Testimony of Frank C. Graves for the purpose of responding to CUB's and ICNU's testimony
4 regarding hedging adjustments in Utah.

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6 DATED: August 23, 2011.

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8 Katherine McDowell
9 Amie Jamieson

10 Attorneys for PacifiCorp
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Exhibit 1 to PacifiCorp's Reply to Response in Opposition to Motion to Admit Testimony

1.4 See CUB/100, Jenks-Feighner/14, lines 21-22. Please provide all evidence to support the contention of "substantial losses suffered by PacifiCorp and its customers."

CUB's assertion that there were "substantial losses suffered by PacifiCorp and its customers" is based on the testimony of Lori Smith Schell of the Utah Office of Consumer Services in Utah Docket No. 10-035-124. Dr. Schell writes:

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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing document in UE 227 on the following named person(s) on the date indicated below by email addressed to said person(s) at his or her last-known address(es) indicated below.

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DATED: August 23, 2011