

# Davison Van Cleve PC

Attorneys at Law

TEL (503) 241-7242 • FAX (503) 241-8160 • mail@dvclaw.com  
Suite 400  
333 SW Taylor  
Portland, OR 97204

December 6, 2011

*Via Electronic and FedEx*

Public Utility Commission  
Attn: Filing Center  
550 Capitol St. NE #215  
P.O. Box 2148  
Salem OR 97308-2148

Re: In the Matter of PACIFICORP 2012 Transition Adjustment Mechanism  
**Docket No. UE 227**

Dear Filing Center:

Enclosed please find an original and one (1) copy of the Notice of Concerns Regarding the Final Update on behalf of the Industrial Customers of Northwest Utilities in the above-referenced docket. Thank you for your attention to this matter.

Sincerely yours,

/s/ Sarah A. Kohler

Sarah A. Kohler  
Paralegal

Enclosures

cc: Service List

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Notice of Concerns on behalf of the Industrial Customers of Northwest upon the parties, on the service list, by causing the same to be deposited in the U.S. Mail, postage-prepaid, where paper service has not been waived.

Dated at Portland, Oregon, this 6th day of December, 2011.

/s/ Sarah A. Kohler  
Sarah A. Kohler

**(W) PACIFICORP**  
OREGON DOCKETS (C) (HC)  
825 NE MULTNOMAH ST STE 2000  
PORTLAND OR 97232  
oregondockets@pacificorp.com

**(W) PUBLIC UTILITY COMMISSION OF OREGON**  
MAURY GALBRAITH (C) (HC)  
PO BOX 2148  
SALEM OR 97301  
maury.galbraith@state.or.us

**(W) RICHARDSON & O'LEARY**  
GREGORY MARSHALL ADAMS (C)  
PO BOX 7218  
BOISE ID 83702  
greg@richardsonandoleary.com

**(W) NOBLE AMERICAS ENERGY SOLUTIONS LLC**  
GREG BASS  
gbass@noblesolutions.com

**(W) CITIZENS' UTILITY BOARD OF OREGON**  
GORDON FEIGHNER (C) (HC)  
ROBERT JENKS (C)  
G. CATRIONA MCCrackEN (C) (HC)  
610 SW BROADWAY, SUITE 308  
PORTLAND OR 97205  
gordon@oregoncub.org  
bob@oregoncub.org  
catriona@oregoncub.org

**(W) DEPARTMENT OF JUSTICE**  
JASON W JONES (C) (HC)  
ASSISTANT ATTORNEY GENERALREGULATED  
UTILITY & BUSINESS SECTION  
1162 COURT ST NE  
SALEM OR 97301-4096  
jason.w.jones@state.or.us

**(W) MCDOWELL & RACKNER PC**  
KATHERINE A MCDOWELL (C)  
AMIE JAMIESON (C) (HC)  
520 SW SIXTH AVE - SUITE 830  
PORTLAND OR 97204  
katherine@mcd-law.com  
amie@mcd-law.com

**(W) ENERGY STRATEGIES LLC**  
KEVIN HIGGINS (C)  
PRINCIPLE215 STATE ST - STE 200  
SALT LAKE UT 84111-2322  
khiggins@energystrat.com

**(W) REGULATORY & COGENERATION SERVICES INC**  
DONALD W. SCHOENBECK (C) (HC)  
900 WASHINGTON ST STE 780  
VANCOUVER WA 98660-3455  
dws@r-c-s-inc.com

**(W) PUBLIC UTILITY COMMISSION OF OREGON**  
ED DURRENBERGER (C)  
PO BOX 2148  
SALEM OR 97301  
ed.durrenberger@state.or.us

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UE 227**

In the Matter of	)	
	)	
PACIFICORP, dba PACIFIC POWER	)	THE INDUSTRIAL CUSTOMERS OF
	)	NORTHWEST UTILITIES' NOTICE OF
2012 Transition Adjustment Mechanism	)	CONCERNS REGARDING FINAL
Schedule 201, Net Power Costs, Cost-Based	)	UPDATE
Supply Service Schedule 205, TAM	)	
<u>Adjustment for Other Revenues</u>	)	

**I. INTRODUCTION**

The Industrial Customers of Northwest Utilities (“ICNU”) provides this notice to the parties and the Oregon Public Utility Commission (“OPUC” or the “Commission”) of potential concerns with PacifiCorp’s final transition adjustment mechanism (“TAM”) updates. Pursuant to Section 14 of the UE 216 Stipulation regarding challenges to final TAM updates, ICNU provides notice of concern regarding updates included in PacifiCorp’s final November TAM updates made in this proceeding. First, ICNU is disputing the updated Monsanto payment, the new US Magnesium qualifying facility (“QF”) contract, the new Kennecott smelter and refinery QF contracts, and the new Tesoro QF contract. In total, these four updates increase system wide net power costs by over \$1 million. These four contracts have been executed, but are not yet final because of pending regulatory approvals, and they should not be included in this year’s TAM unless PacifiCorp can demonstrate that they will become final before the effective date for new rates, or January 1, 2012.

Separately, ICNU is providing notice of a concern regarding PacifiCorp's calculation of the official forward price curve, which is being used to set final net power costs in this case. Finally, ICNU has pending discovery requests and has not completed its review of PacifiCorp's final TAM updates, and ICNU may raise additional concerns later in this proceeding as a result of this ongoing discovery.

## **II. BACKGROUND**

PacifiCorp's TAM process allows the Company to include new wholesale power contracts in the updates that are filed after the Commission issues its final order. PacifiCorp's final updates typically include a large number of updated and new contracts that frequently increase net power costs. The parties and Staff have very little opportunity to review these new contracts, limited time for discovery, and no formal opportunity to submit responsive testimony. ICNU has objected to this process in the past and remains opposed to the update process because it often allows PacifiCorp to increase power costs without adequate review. As a result, the Commission is unable to conclude that the final rates are just and reasonable.

In last year's TAM, PacifiCorp and ICNU agreed upon a process to allow ICNU to review and challenge cost elements included in the final TAM updates. The Commission approved this process as part of the all party stipulation. Re PacifiCorp, Docket No. UE 216, Order No. 10-363 at 3 (Sept. 16, 2010). ICNU has retained its procedural rights to challenge "any issue regarding the Company's Final Updates . . . prior to and during the Commission public meeting" and that parties may request "that a specific amount of the tariff change will be subject to deferral" subject to specified procedures. Id. at Stipulation at 5-6.

Despite retaining the right to raise issues in other ways, the parties also agreed to make good faith efforts to follow specific procedures regarding identifying and raise concerns regarding the final updates. Id. These processes envision parties raising concerns ten business days before the Commission open meeting immediately prior to the effective date of the compliance filing, PacifiCorp providing an initial response within five business days, and, if the issue is not resolved by the parties prior to the Commission open meeting, then the parties may recommend a process to resolve the dispute. PacifiCorp has agreed that it will not oppose the filing of a deferral of any limited and specific cost that is identified in this process. ICNU retains the right to raise issues or concerns even if they are not raised ten business days before the Commission open meeting. Id.

PacifiCorp filed its final TAM updates in this proceeding on November 8, 2011 and on November 15, 2011. The November 8th update included sixteen changes (including the system balancing adjustment) from the Company's surrebuttal filing, which increased system net power costs by about \$5.2 million. Four of these sixteen updates are related to a Monsanto payment (\$1.5 million system increase), new US Magnesium QF contract (\$0.5 million system decrease), new Kennecott smelter and refinery QF contract (\$79,177 system decrease) and new Tesoro QF contract (\$98,422 system increase). These four contracts have been executed but are not yet final, because regulatory approval has not been obtained. PacifiCorp's November 15, 2011 update included a forward price curve and system balancing updates which reduced system wide net power costs by about \$4.2 million. The system wide net power cost amounts for the Monsanto, Kennecott, US Magnesium and Tesoro contracts are based on the numbers provided

in PacifiCorp's November 8 filing, which may be different when adjusted for the updated forward price curves.

### III. NOTICE

#### 1. All Contracts Should Be Final Before Being Included in Rates in this Proceeding

ICNU is providing notice under the UE 217 Stipulation of its concerns regarding four updates related to new contracts that PacifiCorp has executed, but which have not been finalized because of pending regulatory approvals (Monsanto, Kennecott, US Magnesium and Tesoro contracts). PacifiCorp has treated similar executed but not yet final contracts inconsistently in past TAM updates, and there is no clear Commission policy regarding how or whether these contracts should be reflected in the TAM updates. For the purposes of this proceeding only, ICNU proposes that executed but not yet final contracts only be included in rates if they become final before the effective date of new rates in this case, or before January 1, 2012. Otherwise inclusion of these costs violates the requirement that adjustments be known and measurable.

In response to discovery requests, PacifiCorp has stated that it includes wholesale power contracts "in the final GRID update if the contract has been executed and the Company is reasonably certain that no conditions exist that would prevent the contract from being effective" during the next year. Docket No. UE 227, PacifiCorp Response to ICNU data request 17.1. Specifically, PacifiCorp has stated that for contracts that are subject to regulatory approval, but of which the Company is reasonably certain that such approval will occur prior to the beginning of the applicable TAM year, "the Company includes the contracts in the final GRID update." Id.

In past final TAM updates, PacifiCorp has included some but not all QF contracts that were signed, but not approved by the date of the updates. PacifiCorp also did not include the signed but not executed Nevada Power contract. While ICNU and PacifiCorp disagreed about the Oregon value of the Nevada Power contract, ICNU initially estimated that the inclusion of the contract in the final updates could have reduce net power costs by more than \$28.7 million total Company, or \$7.5 million, Oregon basis. In the Matter of Industrial Customers of Northwest Utilities' Application for Deferred Accounting, UM 1465, ICNU Deferral (Dec. 31, 2009) at 4.

PacifiCorp is simply given too much latitude under this approach to pick and choose updated increases and reductions in costs. The process for determining whether a contract is included in the final update should be clear and limit utility discretion, especially given the limited opportunity for ICNU and other parties to conduct discovery and review all aspects of the updates. There is insufficient time, however, at this stage of this proceeding for the Commission to enunciate and litigate the standards for the inclusion of executed, non-final contracts. Given the time remaining in this proceeding and estimated revenue requirement impact of the four executed, non-final contracts, ICNU proposes that the generic issue of the inclusion of these types of contracts be addressed in next year's TAM.

For this year's TAM, however, ICNU proposes that the Monsanto, Kennecott, US Magnesium and Tesoro only be allowed in rates if PacifiCorp can provide verification that the contracts have become final before January 1, 2012. This is consistent with PacifiCorp's stated standard for inclusion of contracts in the final update: there must be reasonable certainty that the contract will obtain approval "prior to the beginning of the" year. If PacifiCorp cannot

demonstrate that regulatory approval has occurred by December 31, 2011, then it is reasonably certain that regulatory approval will not have occurred before the beginning of the year and the contracts should not be included in rates.

**2. PacifiCorp Should Calculate the Official Forward Price Curve in the Manner Approved by the Commission**

PacifiCorp's final update included an additional adjustment to the shaping of super off-peak hours that is inconsistent with its prior forward price curve calculations.

PacifiCorp uses confidential and highly confidential data to convert monthly forward price curves into hourly values in its GRID model. ICNU challenged PacifiCorp's approach, but the Commission did not adopt ICNU's adjustments. Re PacifiCorp, Docket No. UE 227, Order No. 11-435 at 15-20 (Nov. 4, 2011). In PacifiCorp's forward price curves provided in discovery to the parties in this case, the forward price curve calculation process included an adjustment for additional shaping for super off-peak hours. In the final updates, however, the values calculated in this step are not used. PacifiCorp's methodology change increases system wide net power costs.

PacifiCorp should be required to calculate the forward price curve in the same manner as the Company calculated earlier in this proceeding, and should not be permitted to make substantive changes to its calculation methodology in a final update. The update process is not the appropriate time to make substantive changes in calculation methodologies. Therefore, the Commission should reject PacifiCorp's modification to its final forward price curve calculation and require the Company to refile its final rates in manner consistent with how the Company calculated its forward price curve earlier in this proceeding.



#### IV. CONCLUSION

Net power costs in this proceeding should not include the costs of the executed, but not yet final Monsanto, Kennecott, US Magnesium and Tesoro contracts. It is unclear at this time whether these contracts will become final before the end of the year (or at all), and under the Company's own interpretation of the TAM process, contracts should not be included in the final updates unless it is reasonably certain that they will be final before rates are effective. Therefore, these contracts should be removed from rates unless PacifiCorp can demonstrate that they have become final by December 31, 2011. Finally, PacifiCorp should not be permitted to make substantive changes in methodology to any aspects of its filing during the update process, and the Company's substantive change to how it calculates the official forward price curve should be rejected.

Dated this 6th day of December, 2011.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Irion A. Sanger

Irion A. Sanger

333 S.W. Taylor, Suite 400

Portland, Oregon 97204

(503) 241-7242 phone

(503) 241-8160 facsimile

ias@dvclaw.com

Of Attorneys for Industrial Customers

of Northwest Utilities