

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UE 227**

In the Matter of	)	
	)	
PACIFICORP, dba PACIFIC POWER	)	MOTION TO COMPEL OF THE
	)	INDUSTRIAL CUSTOMERS OF
2012 Transition Adjustment Mechanism	)	NORTHWEST UTILITIES
Schedule 201, Net Power Costs, Cost-Based	)	
Supply Service Schedule 205, TAM	)	<b>(EXPEDITED CONSIDERATION</b>
<u>Adjustment for Other Revenues</u>	)	<b>REQUESTED)</b>

**I. INTRODUCTION**

Pursuant to OAR §§ 860-001-0080(3)(d) and 860-001-0500(7), the Industrial Customers of Northwest Utilities (“ICNU”) submits this Motion to Compel (“Motion”) regarding PacifiCorp’s answers to certain ICNU data requests (“DR”) in Docket No. UE 227. ICNU requests that Administrative Law Judge (“ALJ”) Power compel PacifiCorp (or “the Company”) to fully respond to ICNU DRs 2.12, 2.13, 2.14, and 9.2. Pursuant to OAR § 860-001-0500(7), ICNU certifies that the parties have conferred and were unable to resolve the dispute. Copies of PacifiCorp’s incomplete data responses and documents related to the attempts to resolve this dispute are attached to this Motion as Attachments A and B. ICNU requests expedited consideration of this Motion since intervenor direct testimony is currently due on June 24, 2011.

**II. BACKGROUND**

The Commission adopted a transition adjustment mechanism (“TAM”) for PacifiCorp in 2005. Re PacifiCorp, Docket No. UE 170, Order No. 05-1050 (Sept. 28, 2005).

The purpose of the TAM is not to benefit PacifiCorp by allowing it to annually update its power costs, but “to capture costs associated with direct access, and prevent unwarranted cost shifting.” Id. at 21. The Commission adopted the current TAM proceeding with an expedited schedule over the objections of ICNU and the Citizens’ Utility Board, but expressed reservations, stating that it was “somewhat concerned about establishing the TAM with its annual update because there is a certain amount of one-sidedness to PacifiCorp’s annual updates without concomitant adjustments by intervenors and Staff.” Id.

Since its adoption, the TAM has not been necessary to implement direct access, but has instead served as an annual power cost adjustment proceeding which has always increased customer rates. Direct access loads on PacifiCorp’s system have been almost imperceptible, averaging less than one percent of eligible Schedule 48 large industrial customers, and making up between zero to almost 2 aMWs of Schedule 48 load. In contrast, regardless of whether market prices have increased or decreased, PacifiCorp has increased rates in each of the six TAMs, with increases for Schedule 48 customers ranging from 0.5% to 8.4%.

PacifiCorp has requested a 6-8% rate increase for industrial customers in this TAM proceeding, despite the fact that market prices are low and the Company increased industrial customer rates nearly 20% in a little more than a year. The Company was aware that all aspects of its filing, including its estimates associated with wholesale market prices, would be subject to discovery and review, as PacifiCorp addressed these issues in its direct testimony and they have been subject to significant disputes in prior proceedings. See PPL/100, Duvall/5-7, 11-19 (PacifiCorp’s forecast of wholesale market prices increases rates in this case).

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ICNU has conducted discovery regarding a wide number of issues in this case, including PacifiCorp's estimates of market prices (which are based on its official forward price curve ("OFPC")). PacifiCorp's responses claimed to designate a large amount of information as "highly confidential," despite there being no "highly confidential" protective order in this case. Attachment A at 2-4, 6-10. Specifically, PacifiCorp stated that it withheld "highly confidential" material requested in ICNU DRs 2.11, 2.12, 2.16 and 2.18. Id. PacifiCorp claimed that ICNU would be required to review all of the allegedly "highly confidential" information at the Company's offices despite the absence of any order mandating such procedures.

PacifiCorp also withheld certain relevant information as "highly confidential" even though the Company's original response to ICNU DRs 2.13 and 2.14 did not indicate that any information had been withheld. After review by ICNU's expert consultant, PacifiCorp admitted that it had withheld relevant information in DRs 2.13 and 2.14, and the Company later provided a supplemental answer to ICNU admitting that it withheld responsive information as "highly confidential" that must be reviewed at the Company's offices. Attachment A at 4, 6.

ICNU conferred with PacifiCorp via the telephone, email, letters, and in-person meetings in an attempt to resolve this discovery dispute. Attachment B; Attachment C at ¶¶2-6; Confidential Attachment D at ¶5. PacifiCorp has re-designated some information responsive to ICNU DR 2.11 and all the information responsive to ICNU DR 2.18 as standard "confidential material." Attachment A at 1, 9. In addition, although the Company continues to claim certain information responsive to ICNU DR 2.11 and 2.16 is "highly confidential," PacifiCorp has

provided the material to ICNU subject to “special handling arrangements.”<sup>1/</sup> Id. at 1, 8.

Although ICNU has gained access to the documents responsive to ICNU DRs. 2.11, 2.16 and 2.18, PacifiCorp ultimately took two weeks to provide these responsive documents.<sup>2/</sup> The Company continues to insist that other “highly confidential” documents be reviewed in its offices, including those responsive to ICNU DRs 2.12, 2.13, and 2.14. Id. at 3-4, 6.

ICNU also sought to obtain other information regarding PacifiCorp’s OFPC through additional discovery, including ICNU’s ninth set of DRs. PacifiCorp objected to ICNU DR 9.2, which is seeking the underlying data that PacifiCorp uses to develop its market price estimates in its GRID model. PacifiCorp purchases this data from a third party, Powerdex, and the Company has claimed that Powerdex has raised concerns regarding the scope of ICNU’s discovery request. PacifiCorp has not provided ICNU with the details of Powerdex’s specific concerns nor asserted that the Powerdex data is not actually used when setting the Company’s net power costs. ICNU also contacted Powerdex to obtain the underlying inputs directly, but Powerdex proposed a cost prohibitive fee. Confidential Attachment D at ¶15. Powerdex is not a party to this case. ICNU has unsuccessfully attempted to resolve the dispute regarding ICNU 9.2 through telephone calls, email, a letter, and in-person discussions. Attachment B at 18-22; Attachment C at ¶¶2-6.

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<sup>1/</sup> ICNU agreed to these “special handling arrangements” as only an interim measure to allow ICNU to gain access to the documents, and has requested that PacifiCorp work with ICNU to develop a modified protective order to ensure that ICNU gains access to this material at the time discovery responses are due. PacifiCorp and ICNU have not yet resolved the issue of this separate “highly confidential” material, but it is not the subject of this Motion. Attachment B at 2, 19-20

<sup>2/</sup> The documents would have been provided two weeks late, but for ICNU making special arrangements to pick up the responsive documents at the Company’s offices. The documents were incomplete, and PacifiCorp was required to provide supplemental responses.

In summary, PacifiCorp has refused to provide ICNU with working access or copies of documents responsive to ICNU DRs 2.12, 2.13, 2.14, and 9.2.<sup>3/</sup> ICNU has not had an opportunity to adequately review documents responsive to these DRs, and ICNU may be required to file a motion to extend the due date for submitting testimony regarding the OFPC and PacifiCorp's market price estimates if these documents are not promptly provided to ICNU. Thus, ICNU requests that PacifiCorp be ordered to produce complete responses and all documents in response to ICNU DRs 2.12, 2.13, 2.14 and 9.2. Specifically, these responsive documents should be produced in-hand and not at PacifiCorp's offices without the ability to make copies for the purposes of filing testimony and preparing for hearing.

### III. LEGAL STANDARD

Under the Oregon Rules of Civil Procedure ("ORCP"), a party is entitled to discovery of any document that is relevant to a claim or defense. ORCP 36(B). A party may move to compel production under ORCP 36 if the opposing party is not responsive to the discovery request. See, e.g., Stauffer v. Or. Citizen's Alliance Educ. Found., 211 Or. App. 11, 14 (2007); Volt Servs. Group v. Adecco Empl. Servs., Inc., 178 Ore. App. 121, 136 (2001). In a proceeding before the Commission, discovery is a matter of right, and the Commission follows the ORCP regarding discoverable material. Re Pacific Power & Light, dba PacifiCorp, Docket No. UE 177, Order No. 08-003 at 2 (Jan. 4, 2008). The Commission expects parties to err "on the side of producing too much information . . . rather than too little." Re Portland General

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<sup>3/</sup> ICNU DR 2.12 seeks an electronic copy of PacifiCorp's analysis converting the monthly forward price curve indices into monthly values, ICNU DR 2.13 and 2.14 seek documents regarding hourly market prices inputs for the Mona and Mead trading hubs, and ICNU DR 9.2 seeks five years of Powerdex input data used in this case.

Electric Co., Docket No. UE 196, Order No. 09-046 at 8 (Feb. 5, 2009). Parties seeking to maintain the confidentiality of information “have the burden of proof on all issues.” Re Investigation into Service Quality Reports, Docket No. UM 1038, Order No. 02-854 at 6 (Dec. 10, 2002).

When a utility places a cost model at issue in a rate proceeding, then the utility must provide the parties with the model and all underlying inputs at no charge. Re Qwest, Docket No. UM 1025, Order No. 03-533 at 9-10 (Aug. 28, 2003). As explained by the Commission, utilities “have a fundamental obligation to make essential elements of their model available to the Commission and other parties for review and analysis. Without such information, the Commission does not have an adequate basis upon which to judge the merits of the model.” Id. at 8.

PacifiCorp is likely to argue that the Commission’s decisions in the income tax proceedings provide precedent to restrict access to certain “highly confidential” material to being reviewed only in the Company’s offices. This type of a protective order is an extreme remedy that the Commission should only impose in rare circumstances when no other protections are adequate. Although ICNU believes such a protective order is illegal, the Commission has only imposed the highly restrictive provisions after concluding that significant harm that “might occur from the disclosure of” the information, that there was a “regrettable risk of disclosure,” and that the Commission “had no choice but to limit intervenors’ review of documents containing highly confidential information to a safe room located in Portland.” Re PacifiCorp, Docket No. UE 177, Order No. 08-002 at 5 (Jan. 3, 2008). PacifiCorp has provided neither information that

would meet its burden of proof to establish that there would be a significant risk of disclosure nor that there are not other options to protect the Company's allegedly "highly confidential" material.

In addition, the protective order in this proceeding contains no "highly confidential" provisions, and there is only one type of confidential information in this proceeding. The protective order provides a process by which any party can request "additional protection" for any confidential material. Re PacifiCorp, Docket No. UE 216, Order No. 10-069, Appendix A at 4 (Feb. 25, 2010).<sup>4/</sup> A party requesting additional protection must explain the basis for the additional protection, nature of the information, the type of relief requested, and other requirements. Id. ICNU has repeatedly requested that PacifiCorp not withhold information as "highly confidential" without first moving for additional protection as required under the rules, but the Company has not made any such filing in this proceeding.

#### IV. ARGUMENT

PacifiCorp should be required to provide all information that enables ICNU to fully and fairly review the Company's forward price estimates that are used to set net power costs and estimate direct access transition credits. ICNU cannot review the reasonableness of PacifiCorp's forward price estimates at the Company's offices, nor should ratepayer intervenors be required to review basic net power cost related data in a TAM proceeding at PacifiCorp's offices. There is no reason why ratepayers should not have access to all documents and models

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<sup>4/</sup> The protective order in UE 216 applied to that and all future TAM proceedings, including this proceeding. Docket No. UE 216, Order No. 10-069 at 1.

used to set power costs and direct access transition credits. The requirements unilaterally imposed on ICNU are unduly burdensome and prevent our full participation in this proceeding.

**1. The Information ICNU Seeks Is Highly Relevant and Must Be Reviewed**

There can be no reasonable dispute that the forward price curve and the way the GRID model estimates wholesale market prices is a critical element of the Company's filing that warrants review. Changes in PacifiCorp's estimate of forward market conditions can have a significant impact on the Company's proposed rate increase. See e.g. PPL/100, Duvall/6. Forecasted market prices not only govern the price of power that PacifiCorp buys and sells, but also impact a wide variety of other cost elements, including but not limited to, when gas and coal generation units will run, the costs of integrating renewable resources, and economics of the Company's hedging policies.

While the Company updates the forward price estimates throughout the proceeding, the OFPC included with the initial filing is highly relevant. PacifiCorp plans to use the same basic underlying methodology by which it converts monthly forward prices into the hourly values in GRID in the final mid-November power cost update. Staff and intervenors are only provided a few weeks to review all changes in mid-November, including any revisions to the forward price curve. There is insufficient time to review all aspects of the final forward price curve, especially given the Company's practice of providing incomplete data responses and insisting that the most important documents be reviewed at PacifiCorp's offices.

The information PacifiCorp has withheld is highly relevant to ascertaining the reasonableness and accuracy of the Company's method for converting the OFPC into hourly



values for each market hub used by GRID. ICNU DR 2.12 requests PacifiCorp's analysis to convert the forward monthly prices into hourly values that are actually used in GRID to set net power costs and transition credits. ICNU DRs 2.13 and 2.14 seeks all documents used to generate the hourly prices for the Mona and Mead trading hubs where no forward monthly prices exist. PacifiCorp estimates hourly prices for certain illiquid trading hubs when no actual forward data exists, and ICNU should be permitted to review the documents the Company relied upon to generate its estimated prices for these times in which there is no information.

ICNU DR 9.2 seeks the five years of Powerdex data that the Company uses to develop the hourly values in GRID from the forward monthly price curves. Powerdex collects real time market price data by hour for each trading hub. ICNU understands that all of Powerdex's real time transactions include the price and megawatts for each date, but that there may be periods in which there are no transactions. PacifiCorp claims that it uses the most recent five years of Powerdex data and uses the data to develop a "scalar factor" that converts the forward monthly prices to hourly prices in GRID. Without reasonable access to the withheld information, ICNU cannot review the accuracy and reasonableness of the data, whether the information is complete, or whether the market information is liquid (i.e., whether there are sufficient trades), nor can ICNU analyze the reasonableness or accuracy of the "scaling factor" that PacifiCorp uses to convert forward monthly prices into hourly prices. Confidential Attachment D at ¶12.

Different assumptions and/or input data regarding the OFPC can have significant impacts on PacifiCorp's net power costs. For example, ICNU DR 9.1 requested that PacifiCorp

update its market price estimates using only the two most recent years of Powerdex data instead of five years. This single and simple change resulted in an over \$18 million total company change in net power costs. Similarly, ICNU should be able to review whether a different scalar methodology produces more accurate or reasonable estimates of future market prices.

**2. PacifiCorp Should Be Required to Provide Reasonable Access to All Forward Price Curve Data that the Company Placed at Issue in this Proceeding**

PacifiCorp has elected to estimate its net power costs with an OFPC that relies upon data the Company does not want to share with ICNU's consultant. PacifiCorp controls what types of data and models it will utilize to support its power cost rate filings, and utilities cannot withhold information and models that prevent Staff or intervenors from preparing their cases. Docket No. UM 1025, Order No. 03-533 at 5-6, 8-10. PacifiCorp was aware that its OFPC and its underlying assumptions and inputs would be subject to discovery and review, and this current discovery dispute is a problem of the Company's own making. If PacifiCorp did not want to provide ICNU and its consultant access to this data, then the Company should have used a different method to estimate forward market prices for setting net power costs and transition adjustment credits.

PacifiCorp is the only utility ICNU is aware of that uses allegedly "highly confidential" material when setting net power costs or that withholds the basic market data inputs from review. All other Pacific Northwest investor-owned utilities and the Bonneville Power Administration provide intervenors with forward price curve data on a non-confidential or regular confidential basis and provide intervenors with all underlying inputs. Confidential Attachment D at ¶16. No other utilities claim that their "scaling" methodology or its underlying

data can be analyzed only in their offices. Id. There is no reason why the calculation of PacifiCorp's net power costs should be any different or anything that makes their data "highly confidential."

**3. Net Power Costs and Transition Credits Should Be Set Without Requiring Ratepayers to Conduct their Review at the Company's Offices**

Requiring ICNU to review PacifiCorp's net power cost data at its offices will effectively prevent a thorough review of the Company's forward market price estimates and their impact on rates. ICNU's consultant visited PacifiCorp's offices to discuss and review the withheld material to attempt to understand the type of information that was withheld and to understand the extent of time and effort that would be required to make a complete review. Confidential Attachment D at ¶5. Mr. Schoenbeck determined that it would be unduly burdensome and time consuming to review the information outside of his offices. Id. at 6-7. In addition, Mr. Schoenbeck concluded that there was no reason he should not be allowed review the information as standard "confidential" material, nor was there any legitimate basis why he could not be entrusted to review the information at his own offices. Id. at 9-10. Finally, Mr. Schoenbeck determined that: 1) he could not complete his review of the reasonableness of PacifiCorp's OFPC without analyzing the withheld information; and 2) that PacifiCorp's restrictions could prevent ICNU from presenting testimony challenging the OFPC. Id. at 8.

Regardless of the practicality or possibility of ICNU reviewing this specific information at the Company's offices, this case presents an important precedent regarding whether intervenors will be required to prepare their cases at the utility's offices in ordinary rate cases. Previously, most of PacifiCorp's net power cost information was non-confidential, but

over time the Company has designated larger and larger amounts of material as confidential. PacifiCorp has recently started designating (without filing for modified protection) net power cost information as “highly confidential” that now must be reviewed at its offices. Review of ordinary rate case information at the Company’s offices increases the cost and difficulty of participating in rate proceedings, and will make it cost-prohibitive or impossible to adequately analyze many aspects of the Company’s filing. PacifiCorp should not be permitted to use these tactics in an effort to minimize intervenors’ ability to review their cases and propose appropriate adjustments.

**4. PacifiCorp Has Not Demonstrated that Its Confidential Material Must Be Reviewed Only at Its Offices**

PacifiCorp has not provided any legitimate reason why it should be allowed to set rates based on data that must be viewed at its offices, nor has the Company provided sufficient justification why its allegedly “highly confidential” material cannot be provided to ICNU’s consultant. PacifiCorp has not asserted any allegations of specific harms that could occur, other than the possibility that the information could be inadvertently released. Mr. Schoenbeck has participated in PacifiCorp rate proceedings for thirty years, and ICNU is not aware of the Company ever raising any concerns with his treatment of confidential material. Confidential Attachment D at ¶2.

PacifiCorp has not met its burden of proof to establish that ICNU cannot be entrusted to review the forward price curve information outside of the Company’s offices. Pursuant to ORCP 36(C), a party to a proceeding may obtain a protective order if the party establishes “good cause” showing that, *inter alia*, “disclosure would result in a clearly defined

and serious injury.” Citizens’ Util. Bd. v. Or. Pub. Util. Comm’n, 128 Or. App. 650, 658-9 (1994). For purposes of this standard, “[b]road allegations of harm unsubstantiated by specific examples or articulated reasoning do not satisfy the good cause requirement.” Id. at 658. For a heightened protective order limiting access, the harm must be “substantial,” and the Commission must not have any other practical choices to protect the information. Docket No. UE 177, Order No. 08-002 at 5.

PacifiCorp has not even attempted to meet this standard or provided any explanation regarding why Mr. Schoenbeck cannot be provided copies of the documents. In response to ICNU’s request for additional information regarding why the responses to ICNU DRs 2.12, 2.13 and 2.14 cannot be provided to Mr. Schoenbeck, PacifiCorp did not provide an explanation but instead referred to the text of its supplemental data responses. Attachment B at 13-14. PacifiCorp’s data responses simply state that the information is “commercially sensitive and highly confidential.” Attachment A at 3-4, 6-7. The Company elaborated that it “intends to protect information that could indicate what the Company pays or accepts for market prices, or could indicate the Company’s purchases or sales requirements.” Id. at 4. Nothing in the Company’s responses indicate why this information cannot be reviewed outside its offices by Mr. Schoenbeck.

**5. PacifiCorp Has Not Explained Why ICNU Cannot Be Provided the Powerdex Data**

PacifiCorp has provided even less justification regarding its decision to withhold the five years of Powerdex inputs that are used to estimate net power costs in this case.

PacifiCorp has asserted that Powerdex has raised some vague and undefined concerns regarding

the scope of ICNU's request for information, but the Company has not disputed that it possesses the data or that the data will be used to set rates in this case. Essentially, ICNU is not aware of the grounds upon which PacifiCorp is withholding the underlying data that is used in its OFPC and to set rates.

ICNU's consultant sought to obtain the five years of data directly from Powerdex, but Powerdex quoted a price that was cost prohibitive. Confidential Attachment D at ¶15. The data is older, historic market price information that has no value to ICNU or its consultant other than to review PacifiCorp's filing in this proceeding. Id. The Commission has previously rejected attempts by a utility to require parties to pay third parties to obtain data that the utility has elected to use in its filing. The Commission agreed that "it is unreasonable to require parties and/or the Commission to pay for discovery. Not only does such a policy seriously disadvantage opposing parties, it also limits the Commission's fact finding ability. Both are clearly unacceptable from a public interest standpoint." Docket No. UM 1025, Order No. 03-533 at 8. There is no reason why ICNU should not be provided a complete copy of all the Powerdex data used in this case at no cost.

## **V. CONCLUSION**

The Commission should require PacifiCorp to fully and completely respond to ICNU DRs 2.12, 2.13, 2.14 and 9.2 to ensure that ICNU will be able to effectively review the reasonableness of the Company's forward price curve data and TAM filing. PacifiCorp has not even attempted to explain why the extraordinary measures of requiring on-site review and refusing to provide the Powerdex inputs are reasonable, let alone meet its burden to demonstrate

that the allegedly highly confidential information warrants this extraordinary protection. The Company elected to use these documents when estimating its net power costs and transition credits in this proceeding, and it should not be allowed to prevent ICNU from assessing the reasonableness of PacifiCorp's filing. PacifiCorp should be required to provide all information regarding its forward price curve and market price forecasts on a standard confidential basis similar to how all other Northwest utilities treat this information.

DATED this 8th day of June, 2011.

Respectfully submitted,

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<sup>3/</sup> ICNU DR 2.12 seeks an electronic copy of PacifiCorp's analysis converting the monthly forward price curve indices into monthly values, ICNU DR 2.13 and 2.14 seek documents regarding hourly market prices inputs for the Mona and Mead trading hubs, and ICNU DR 9.2 seeks five years of Powerdex input data used in this case.

Electric Co., Docket No. UE 196, Order No. 09-046 at 8 (Feb. 5, 2009). Parties seeking to maintain the confidentiality of information “have the burden of proof on all issues.” Re Investigation into Service Quality Reports, Docket No. UM 1038, Order No. 02-854 at 6 (Dec. 10, 2002).

When a utility places a cost model at issue in a rate proceeding, then the utility must provide the parties with the model and all underlying inputs at no charge. Re Qwest, Docket No. UM 1025, Order No. 03-533 at 9-10 (Aug. 28, 2003). As explained by the Commission, utilities “have a fundamental obligation to make essential elements of their model available to the Commission and other parties for review and analysis. Without such information, the Commission does not have an adequate basis upon which to judge the merits of the model.” Id. at 8.

PacifiCorp is likely to argue that the Commission’s decisions in the income tax proceedings provide precedent to restrict access to certain “highly confidential” material to being reviewed only in the Company’s offices. This type of a protective order is an extreme remedy that the Commission should only impose in rare circumstances when no other protections are adequate. Although ICNU believes such a protective order is illegal, the Commission has only imposed the highly restrictive provisions after concluding that significant harm that “might occur from the disclosure of” the information, that there was a “regrettable risk of disclosure,” and that the Commission “had no choice but to limit intervenors’ review of documents containing highly confidential information to a safe room located in Portland.” Re PacifiCorp, Docket No. UE 177, Order No. 08-002 at 5 (Jan. 3, 2008). PacifiCorp has provided neither information that

would meet its burden of proof to establish that there would be a significant risk of disclosure nor that there are not other options to protect the Company's allegedly "highly confidential" material.

In addition, the protective order in this proceeding contains no "highly confidential" provisions, and there is only one type of confidential information in this proceeding. The protective order provides a process by which any party can request "additional protection" for any confidential material. Re PacifiCorp, Docket No. UE 216, Order No. 10-069, Appendix A at 4 (Feb. 25, 2010).<sup>4/</sup> A party requesting additional protection must explain the basis for the additional protection, nature of the information, the type of relief requested, and other requirements. Id. ICNU has repeatedly requested that PacifiCorp not withhold information as "highly confidential" without first moving for additional protection as required under the rules, but the Company has not made any such filing in this proceeding.

#### IV. ARGUMENT

PacifiCorp should be required to provide all information that enables ICNU to fully and fairly review the Company's forward price estimates that are used to set net power costs and estimate direct access transition credits. ICNU cannot review the reasonableness of PacifiCorp's forward price estimates at the Company's offices, nor should ratepayer intervenors be required to review basic net power cost related data in a TAM proceeding at PacifiCorp's offices. There is no reason why ratepayers should not have access to all documents and models

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<sup>4/</sup> The protective order in UE 216 applied to that and all future TAM proceedings, including this proceeding. Docket No. UE 216, Order No. 10-069 at 1.

used to set power costs and direct access transition credits. The requirements unilaterally imposed on ICNU are unduly burdensome and prevent our full participation in this proceeding.

**1. The Information ICNU Seeks Is Highly Relevant and Must Be Reviewed**

There can be no reasonable dispute that the forward price curve and the way the GRID model estimates wholesale market prices is a critical element of the Company's filing that warrants review. Changes in PacifiCorp's estimate of forward market conditions can have a significant impact on the Company's proposed rate increase. See e.g. PPL/100, Duvall/6. Forecasted market prices not only govern the price of power that PacifiCorp buys and sells, but also impact a wide variety of other cost elements, including but not limited to, when gas and coal generation units will run, the costs of integrating renewable resources, and economics of the Company's hedging policies.

While the Company updates the forward price estimates throughout the proceeding, the OFPC included with the initial filing is highly relevant. PacifiCorp plans to use the same basic underlying methodology by which it converts monthly forward prices into the hourly values in GRID in the final mid-November power cost update. Staff and intervenors are only provided a few weeks to review all changes in mid-November, including any revisions to the forward price curve. There is insufficient time to review all aspects of the final forward price curve, especially given the Company's practice of providing incomplete data responses and insisting that the most important documents be reviewed at PacifiCorp's offices.

The information PacifiCorp has withheld is highly relevant to ascertaining the reasonableness and accuracy of the Company's method for converting the OFPC into hourly

values for each market hub used by GRID. ICNU DR 2.12 requests PacifiCorp's analysis to convert the forward monthly prices into hourly values that are actually used in GRID to set net power costs and transition credits. ICNU DRs 2.13 and 2.14 seeks all documents used to generate the hourly prices for the Mona and Mead trading hubs where no forward monthly prices exist. PacifiCorp estimates hourly prices for certain illiquid trading hubs when no actual forward data exists, and ICNU should be permitted to review the documents the Company relied upon to generate its estimated prices for these times in which there is no information.

ICNU DR 9.2 seeks the five years of Powerdex data that the Company uses to develop the hourly values in GRID from the forward monthly price curves. Powerdex collects real time market price data by hour for each trading hub. ICNU understands that all of Powerdex's real time transactions include the price and megawatts for each date, but that there may be periods in which there are no transactions. PacifiCorp claims that it uses the most recent five years of Powerdex data and uses the data to develop a "scalar factor" that converts the forward monthly prices to hourly prices in GRID. Without reasonable access to the withheld information, ICNU cannot review the accuracy and reasonableness of the data, whether the information is complete, or whether the market information is liquid (i.e., whether there are sufficient trades), nor can ICNU analyze the reasonableness or accuracy of the "scaling factor" that PacifiCorp uses to convert forward monthly prices into hourly prices. Confidential Attachment D at ¶12.

Different assumptions and/or input data regarding the OFPC can have significant impacts on PacifiCorp's net power costs. For example, ICNU DR 9.1 requested that PacifiCorp



update its market price estimates using only the two most recent years of Powerdex data instead of five years. This single and simple change resulted in an over \$18 million total company change in net power costs. Similarly, ICNU should be able to review whether a different scalar methodology produces more accurate or reasonable estimates of future market prices.

**2. PacifiCorp Should Be Required to Provide Reasonable Access to All Forward Price Curve Data that the Company Placed at Issue in this Proceeding**

PacifiCorp has elected to estimate its net power costs with an OFPC that relies upon data the Company does not want to share with ICNU's consultant. PacifiCorp controls what types of data and models it will utilize to support its power cost rate filings, and utilities cannot withhold information and models that prevent Staff or intervenors from preparing their cases. Docket No. UM 1025, Order No. 03-533 at 5-6, 8-10. PacifiCorp was aware that its OFPC and its underlying assumptions and inputs would be subject to discovery and review, and this current discovery dispute is a problem of the Company's own making. If PacifiCorp did not want to provide ICNU and its consultant access to this data, then the Company should have used a different method to estimate forward market prices for setting net power costs and transition adjustment credits.

PacifiCorp is the only utility ICNU is aware of that uses allegedly "highly confidential" material when setting net power costs or that withholds the basic market data inputs from review. All other Pacific Northwest investor-owned utilities and the Bonneville Power Administration provide intervenors with forward price curve data on a non-confidential or regular confidential basis and provide intervenors with all underlying inputs. Confidential Attachment D at ¶16. No other utilities claim that their "scaling" methodology or its underlying

data can be analyzed only in their offices. Id. There is no reason why the calculation of PacifiCorp's net power costs should be any different or anything that makes their data "highly confidential."

**3. Net Power Costs and Transition Credits Should Be Set Without Requiring Ratepayers to Conduct their Review at the Company's Offices**

Requiring ICNU to review PacifiCorp's net power cost data at its offices will effectively prevent a thorough review of the Company's forward market price estimates and their impact on rates. ICNU's consultant visited PacifiCorp's offices to discuss and review the withheld material to attempt to understand the type of information that was withheld and to understand the extent of time and effort that would be required to make a complete review. Confidential Attachment D at ¶5. Mr. Schoenbeck determined that it would be unduly burdensome and time consuming to review the information outside of his offices. Id. at 6-7. In addition, Mr. Schoenbeck concluded that there was no reason he should not be allowed review the information as standard "confidential" material, nor was there any legitimate basis why he could not be entrusted to review the information at his own offices. Id. at 9-10. Finally, Mr. Schoenbeck determined that: 1) he could not complete his review of the reasonableness of PacifiCorp's OFPC without analyzing the withheld information; and 2) that PacifiCorp's restrictions could prevent ICNU from presenting testimony challenging the OFPC. Id. at 8.

Regardless of the practicality or possibility of ICNU reviewing this specific information at the Company's offices, this case presents an important precedent regarding whether intervenors will be required to prepare their cases at the utility's offices in ordinary rate cases. Previously, most of PacifiCorp's net power cost information was non-confidential, but

over time the Company has designated larger and larger amounts of material as confidential. PacifiCorp has recently started designating (without filing for modified protection) net power cost information as “highly confidential” that now must be reviewed at its offices. Review of ordinary rate case information at the Company’s offices increases the cost and difficulty of participating in rate proceedings, and will make it cost-prohibitive or impossible to adequately analyze many aspects of the Company’s filing. PacifiCorp should not be permitted to use these tactics in an effort to minimize intervenors’ ability to review their cases and propose appropriate adjustments.

**4. PacifiCorp Has Not Demonstrated that Its Confidential Material Must Be Reviewed Only at Its Offices**

PacifiCorp has not provided any legitimate reason why it should be allowed to set rates based on data that must be viewed at its offices, nor has the Company provided sufficient justification why its allegedly “highly confidential” material cannot be provided to ICNU’s consultant. PacifiCorp has not asserted any allegations of specific harms that could occur, other than the possibility that the information could be inadvertently released. Mr. Schoenbeck has participated in PacifiCorp rate proceedings for thirty years, and ICNU is not aware of the Company ever raising any concerns with his treatment of confidential material. Confidential Attachment D at ¶2.

PacifiCorp has not met its burden of proof to establish that ICNU cannot be entrusted to review the forward price curve information outside of the Company’s offices. Pursuant to ORCP 36(C), a party to a proceeding may obtain a protective order if the party establishes “good cause” showing that, *inter alia*, “disclosure would result in a clearly defined

and serious injury.” Citizens’ Util. Bd. v. Or. Pub. Util. Comm’n, 128 Or. App. 650, 658-9 (1994). For purposes of this standard, “[b]road allegations of harm unsubstantiated by specific examples or articulated reasoning do not satisfy the good cause requirement.” Id. at 658. For a heightened protective order limiting access, the harm must be “substantial,” and the Commission must not have any other practical choices to protect the information. Docket No. UE 177, Order No. 08-002 at 5.

PacifiCorp has not even attempted to meet this standard or provided any explanation regarding why Mr. Schoenbeck cannot be provided copies of the documents. In response to ICNU’s request for additional information regarding why the responses to ICNU DRs 2.12, 2.13 and 2.14 cannot be provided to Mr. Schoenbeck, PacifiCorp did not provide an explanation but instead referred to the text of its supplemental data responses. Attachment B at 13-14. PacifiCorp’s data responses simply state that the information is “commercially sensitive and highly confidential.” Attachment A at 3-4, 6-7. The Company elaborated that it “intends to protect information that could indicate what the Company pays or accepts for market prices, or could indicate the Company’s purchases or sales requirements.” Id. at 4. Nothing in the Company’s responses indicate why this information cannot be reviewed outside its offices by Mr. Schoenbeck.

**5. PacifiCorp Has Not Explained Why ICNU Cannot Be Provided the Powerdex Data**

PacifiCorp has provided even less justification regarding its decision to withhold the five years of Powerdex inputs that are used to estimate net power costs in this case.

PacifiCorp has asserted that Powerdex has raised some vague and undefined concerns regarding

the scope of ICNU's request for information, but the Company has not disputed that it possesses the data or that the data will be used to set rates in this case. Essentially, ICNU is not aware of the grounds upon which PacifiCorp is withholding the underlying data that is used in its OFPC and to set rates.

ICNU's consultant sought to obtain the five years of data directly from Powerdex, but Powerdex quoted a price that was cost prohibitive. Confidential Attachment D at ¶15. The data is older, historic market price information that has no value to ICNU or its consultant other than to review PacifiCorp's filing in this proceeding. Id. The Commission has previously rejected attempts by a utility to require parties to pay third parties to obtain data that the utility has elected to use in its filing. The Commission agreed that "it is unreasonable to require parties and/or the Commission to pay for discovery. Not only does such a policy seriously disadvantage opposing parties, it also limits the Commission's fact finding ability. Both are clearly unacceptable from a public interest standpoint." Docket No. UM 1025, Order No. 03-533 at 8. There is no reason why ICNU should not be provided a complete copy of all the Powerdex data used in this case at no cost.

## V. CONCLUSION

The Commission should require PacifiCorp to fully and completely respond to ICNU DRs 2.12, 2.13, 2.14 and 9.2 to ensure that ICNU will be able to effectively review the reasonableness of the Company's forward price curve data and TAM filing. PacifiCorp has not even attempted to explain why the extraordinary measures of requiring on-site review and refusing to provide the Powerdex inputs are reasonable, let alone meet its burden to demonstrate

that the allegedly highly confidential information warrants this extraordinary protection. The Company elected to use these documents when estimating its net power costs and transition credits in this proceeding, and it should not be allowed to prevent ICNU from assessing the reasonableness of PacifiCorp's filing. PacifiCorp should be required to provide all information regarding its forward price curve and market price forecasts on a standard confidential basis similar to how all other Northwest utilities treat this information.

DATED this 8th day of June, 2011.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Irion A. Sanger

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Of Attorneys for Industrial Customers of  
Northwest Utilities

# **Attachment A**

UE-227/PacifiCorp  
May 6, 2011  
ICNU Data Request 2.11

**ICNU Data Request 2.11**

Please provide an electronic copy in EXCEL format of the Company's daily forward price indices (comparable to the 5-C2 file) for the period of January 1, 2011 to the present.

**1<sup>st</sup> Supplemental Response to ICNU Data Request 2.11**

Further to the Company's response provided April 25, 2011, the Company continues to consider the daily forward price indices requested to be commercially sensitive. As it has in the past, the Company intends to protect information that could indicate what the Company pays or accepts for market prices, or could indicate the Company's requirements to buy or sell. Notwithstanding, the Company agrees to classify daily forward prices for points of delivery (PODs) with substantial liquidity as confidential. Please refer to Confidential Attachment ICNU 2.11 1<sup>st</sup> Supplemental for the requested daily forward price indices which have been redacted to exclude illiquid PODs. The Company continues to consider illiquid POD price indications Highly Confidential and requests that special handling arrangements be made for review. Confidential information is provided subject to the terms and conditions of the protective order provided for this case (Order No. 10-069).



UE-227/PacifiCorp  
April 25, 2011  
ICNU Data Request 2.11

**ICNU Data Request 2.11**

Please provide an electronic copy in EXCEL format of the Company's daily forward price indices (comparable to the 5-C2 file) for the period of January 1, 2011 to the present.

**Response to ICNU Data Request 2.11**

Please refer to Attachment ICNU 2.11 for a copy of the March 31, 2011 quarterly price curve. The Company considers the other forward price indices requested to be commercially sensitive and highly confidential. Please contact Joelle Steward at 503-813-5542 to discuss arrangements for review.

UE-227/PacifiCorp  
April 25, 2011  
ICNU Data Request 2.12

**ICNU Data Request 2.12**

Please provide an electronic copy of the analysis performed by the Company to convert the monthly forward price indices into the hourly values contained with the GRID input 2010 Official Forward Price 2012 EXCEL csv file.

**Response to ICNU Data Request 2.12**

The Company's market price generator is used to calculate the GRID hourly prices. The market price generator is set up to multiply monthly heavy and light load power prices by the appropriate scalar to produce hourly prices for each hour of the year. The hourly price files are set up to be consistent with the GRID format.

This information can only be accessed within the C&T Department using proprietary Excel add-in software; the Company considers both the information and the software to be commercially sensitive and highly confidential. Please contact Joelle Steward at 503-813-5542 to discuss arrangements for review.

**ICNU Data Request 2.13**

Please provide a detailed explanation and all accompanying supporting documents on how the hourly market prices contained in the GRID input file were derived for the Mona trading hub and the Company's view of the market liquidity at this location.

**1<sup>st</sup> Supplemental Response to ICNU Data Request 2.13**

Further to the Company's response provided April 25, 2011, hourly prices in GRID are derived by applying an hourly price scalar to the monthly forward on-peak and off-peak price at a specific point of delivery. The monthly forward prices for Mona and Mead are derived as a basis off of Palo Verde. Hourly price scalars are based upon historical hourly price data.

The Company considers information on hourly scalars and information on how the monthly forward prices used to create hourly prices for Mona and Mead were derived to be commercially sensitive and highly confidential. Please contact Joelle Steward at 503-813-5542 to discuss arrangements for onsite review.

In addition, the Company has developed and relies upon a proprietary tool that applies hourly scalars to the forward monthly on-peak and off-peak prices as a means to produce hourly price inputs for GRID. This tool requires the use of proprietary Excel add-ins and Visual Basic code and is also considered to be commercially sensitive and highly confidential but available for review onsite.

As it has in the past, the Company intends to protect information that could indicate what the Company pays or accepts for market prices, or could indicate the Company's purchase or sales requirements.

UE-227/PacifiCorp  
April 25, 2011  
ICNU Data Request 2.13

**ICNU Data Request 2.13**

Please provide a detailed explanation and all accompanying supporting documents on how the hourly market prices contained in the GRID input file were derived for the Mona trading hub and the Company's view of the market liquidity at this location.

**Response to ICNU Data Request 2.13**

Prices for major electricity trading hubs in the Company's Official Forward Price Curve are generally readily obtainable and therefore reflect observable market quotes. However, in locations such as Mona and Mead that are illiquid and not actively traded, the forward price curves must be estimated and modeled on observed historical price relationships with actively traded locations.

UE-227/PacifiCorp  
May 4, 2011  
ICNU Data Request 2.14 – 1<sup>st</sup> Supplemental

**ICNU Data Request 2.14**

Please provide a detailed explanation and all accompanying supporting documents on how the hourly market prices contained in the GRID input file were derived for the Mead trading hub and the Company's view of the market liquidity at this location.

**1<sup>st</sup> Supplemental Response to ICNU Data Request 2.14**

Further to the Company's response provided April 25, 2011, please refer to the Company's response to ICNU Data Request 2.13 1<sup>st</sup> Supplemental.

UE-227/PacifiCorp  
April 25, 2011  
ICNU Data Request 2.14

**ICNU Data Request 2.14**

Please provide a detailed explanation and all accompanying supporting documents on how the hourly market prices contained in the GRID input file were derived for the Mead trading hub and the Company's view of the market liquidity at this location.

**Response to ICNU Data Request 2.14**

Please refer to the Company's response to ICNU Data Request 2.13.

**ICNU Data Request 2.16**

For each of the gas swap transactions contained with the EXCEL file provided as attachment 5-C4, please provide a copy of the transaction trade ticket, the Company's Official Forward Price Curve for the execution date ("Done Date") and the Company's position report for the period covered by the transaction as of the execution date.

**Response to ICNU Data Request 2.16**

The transactions in files "5-C3" and "5-C4" are financial swap transactions that do not have trade tickets and do not have physical delivery of products. The Company's Official Forward Price Curves are not available on all Done Dates. Please refer to the Company's response to ICNU Data Request 2.11 for a discussion on daily forward curves.

For the capacity (see column K "daily volume") for gas swaps, please refer to the tab "Source data" in the file "5-C4 - ORTAM2012w\_Gas Swaps (Confidential) - Ext 602.xlsx" previously provided in the 5 day workpapers.

For the capacity (see column M "delivery rate") for electric swaps, please refer to the tab "Source" in the file "5-C3 - ORTAM2012w\_Electric Swaps (Confidential) - STF Ext 601.xlsx" previously provided in the 5 day workpapers.

The Company's position reports are commercially sensitive and highly confidential. Please contact Joelle Steward at 503-813-5542 to discuss arrangements for identification and review of specific position reports.

UE-227/PacifiCorp  
May 4, 2011  
ICNU Data Request 2.18 – 1<sup>st</sup> Supplemental

**ICNU Data Request 2.18**

Please provide a complete copy of the Company's hedging policy (both gas and electric) as of October 2007 and any subsequent revision.

**1<sup>st</sup> Supplemental Response to ICNU Data Request 2.18**

Please refer to the Confidential Attachment ICNU 2.18 1<sup>st</sup> Supplemental for a copy of Exhibit 10, the Commodity Price Exposure Hedge Program. This Exhibit was originally identified as Highly Confidential in the Company's April 25, 2011, response to ICNU Data Request 2.18. Upon further consideration, the Company has re-designated it as Confidential.

Confidential information is provided subject to the terms and conditions of the protective order in this proceeding.



UE-227/PacifiCorp  
April 25, 2011  
ICNU Data Request 2.18

**ICNU Data Request 2.18**

Please provide a complete copy of the Company's hedging policy (both gas and electric) as of October 2007 and any subsequent revision.

**Response to ICNU Data Request 2.18**

Please refer to Confidential Attachment ICNU 2.18, which provides a copy of the Front Office Procedures and Practices approved June 25, 2002 and July 31, 2008. Confidential information is provided subject to the terms and conditions of the protective order provided for this case (Order No. 10-069).

Please note that Exhibit 10, the Commodity Price Exposure Hedge Program, is not included; the Company considers it to be commercially sensitive and highly confidential. Please contact Joelle Steward at 503-813-5542 to discuss arrangements for review.

UE-227/PacifiCorp  
May 27, 2011  
ICNU Data Request 9.2

**ICNU Data Request 9.2**

With regard to the five years of Powerdex real time price data used to derive the Company's hourly scalar factors, please provide an EXCEL file containing the source data for the following market hubs: Palo Verde, Mid-C, Four Corners, Mead, Mona and COB. For each hub, day and hour the source data should include the weighted average price, the high price, the low price and volume.

**Response to ICNU Data Request 9.2**

On May 23, 2011 the Company informed ICNU of concerns raised by Powerdex regarding the scope of this request. The Company understands that ICNU is reviewing whether to revise the request in light of these concerns.

## **Attachment B**

# Davison Van Cleve PC

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Irion A. Sanger

April 28, 2011

*Via Email*

Jordan White  
Senior Counsel  
PacifiCorp  
1407 W. North Temple, Suite 320  
Salt Lake City, UT 84116

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

Dear Jordan:

This letter is to request that PacifiCorp fully respond to the Industrial Customers of Northwest Utilities' ("ICNU") First, Second and Third Set of Data Requests ("DR"). We have already discussed these issues over the phone on April 27 and 28, 2011, and via email exchanges on April 27, 2011. This letter summarizes the current status of the discovery dispute and request that these issues be resolved as expeditiously as possible. PacifiCorp has a history of using the discovery process to limit and slow ICNU's review in rate proceedings. For example, we were required to send five letters and engage in numerous telephone calls in the Company's last transition adjustment mechanism ("TAM") case to resolve unnecessary discovery disputes. We appreciate your willingness to discuss these issues and hope we can reach an agreement without bringing this issue before the Commission. The following summarizes our outstanding discovery issues.

**1. "Highly Confidential" Material**

PacifiCorp did not provide ICNU with a significant amount of information claiming the information is "highly confidential" and must be reviewed at the Company's offices. PacifiCorp stated that it withheld "highly confidential" material requested in ICNU DRs 1.17, 2.11, 2.12, 2.16 and 2.18. We do not agree that this information should be designated as highly confidential. Further it is burdensome to review the information at your offices.

PacifiCorp's actions are inconsistent with the terms of the Commission's protective order. PacifiCorp can seek heightened protection, but must first move to obtain "additional" protection, providing the Commission with the exact nature of the information, the exact nature of the relief requested, the specific reasons the relief is necessary, and a detailed

description of the intermediate measures explored to resolve the dispute. PacifiCorp did not contact ICNU to attempt to resolve this dispute or explain why the information needs additional protection, but instead simply requested that ICNU review the information at its offices. ICNU requests that in the future PacifiCorp provide notice before the data requests are due that information will be withheld on the grounds that the Company claims it to be “highly confidential.”

We discussed ICNU’s need to review the material PacifiCorp has designated over the phone yesterday and today, and you detailed a proposal regarding how the Company would provide certain highly confidential material responsive to ICNU DR 2.11 and 2.16 in a manner similar to how the Company provided highly confidential renewable energy credit materials in previous Oregon and Washington proceedings. In an email on April 27, 2011, you detailed PacifiCorp’s proposed side agreement under which ICNU would “agree to: (1) provide the Company with notice prior to filing of testimony that references the HC information so that ICNU and the Company can discuss how it should be filed and to determine whether the Company objects to ICNU providing the HC material to any other individuals who have signed the protective order; (2) not provide the HC material contained in testimony, workpapers, briefs, etc. to others until the Company’s objections are resolved; (3) not to make any further copies of the information (except as necessary to reference the information in confidential testimony, cross-examination exhibits or in a trial brief) or seek to use it in any other proceeding. ICNU would not make any copies, except for these purposes, and it would return the confidential material after the end of the case, except for information in the testimony, workpapers, exhibits and brief that ICNU would retain for their files.”

ICNU can agree to this side agreement as an interim measure to gain access to the material designated as highly confidential, but this approach is not a long-term sustainable resolution. We request that PacifiCorp work with ICNU to draft a “highly confidential” protective order, and (regardless of whether an agreement can be reached) that PacifiCorp request that the Commission approve a highly confidential protective order that would apply to this and future TAM proceedings. First, this type of side agreement proved not to be workable when ICNU actually used the highly confidential material in a recent PacifiCorp Washington proceeding. Although there were unique facts and difficulties in that case, it was clear that the Washington Commission did not recognize the side agreement between ICNU and PacifiCorp, which eventually led to ICNU being required to refile its pleadings without the highly confidential material. Second, the side agreement reached in past proceedings has not helped ICNU obtain information promptly in this proceeding. For example, the Company did not rely upon the past side agreement in this case, but instead withheld “highly confidential documents” and asked that ICNU review them at the Company’s offices. Both ICNU and PacifiCorp would benefit from having a Commission approved protective order in place that allows PacifiCorp to provide to ICNU materials the Company believes to be highly confidential without delay or engaging in discovery disputes.

Your email sent on April 27, 2011 stated that you are working with the Company to determine what procedures PacifiCorp is willing to agree to regarding the material designated as highly confidential in response to ICNU DRs 2.12, 2.18 and 1.17. We discussed on the phone

today that the Company may be willing to agree to provide the remaining information response to under a side agreement, but there still may be some information PacifiCorp may insist is reviewed at its offices. ICNU is willing to agree to the temporary measures of an interim side agreement with a long-term “highly confidential” protective order for all the materials responsive to ICNU’s DRs. It is critical that ICNU be able to review the information response to ICNU DR 2.11, 2.12, 2.16 and 2.18 outside of the Company’s offices.

ICNU DRs 2.11, 2.12 and 2.16 requested information regarding the Company’s forward price curves that cannot be adequately reviewed at the Company’s offices. The forward price curve impacts numerous aspects of the Company’s filing and ICNU must have the forward price curve information to conduct its analysis in this case. ICNU must also have the documents outside of the Company’s offices to compare PacifiCorp’s forward price curve to other, publicly available price curve information. ICNU also typically receives forward price curve information from other utilities, and the Company has not identified any legitimate grounds regarding why it is different. For example, Avista and Puget Sound Energy (“PSE”) provide ICNU with forward price curve information as confidential material, and PSE’s material can be verified and compared with publicly available materials. Portland General Electric also provides similar information in a much more transparent manner that is only designated as confidential.

ICNU DRs 2.16 and 2.18 seek information to review PacifiCorp’s hedge transactions and other forward price curve materials. PacifiCorp has asserted that trade tickets do not exist, and has claimed that its hedge positions are highly confidential. ICNU has sought to review the authorization for each transaction to ensure that it is consistent with their position report at the time of execution and then current hedging strategy. This analysis is extensive and requires utilization of other documents in Mr. Schoenbeck’s files. All this information is provided by PSE and Avista on a standard confidential basis. In addition, PSE and Avista have provided ICNU with a complete copy of their hedging program including position limits—information PacifiCorp claims to be “highly confidential.”

In addition, PacifiCorp’s proposed process of reviewing documents at the Company’s offices is entirely unworkable for the Company’s final updates. The final updates include the most important forward price curve because it is used to set rates. There is an extremely limited amount of time to review the final updates, with limited time to conduct discovery and analyze the filing. It is not reasonable to expect ICNU to review the Company’s final update at PacifiCorp’s offices. Further, we simply do not know why PacifiCorp is insisting in this highly restrictive treatment of input data that is used for setting rates.

## **2. Incomplete Responses**

The Company has provided ICNU with a large number of incomplete and partial responses, which is striking given that ICNU has only received answers to three sets of data requests to date. These include the responses to ICNU DR 2.3, 2.7, 2.13, 2.14, 2.15, 2.22, 2.35, and 2.36. ICNU requests that the Company provide full and complete information immediately. We discussed these data responses via telephone and email, and you stated that you are working with the Company to provide responses. I look forward to your prompt response.

ICNU DR 2.3 requests information regarding certain GRID input files, specifically requesting that the Company “provide a reconciliation from the sixteen nodal load areas to the jurisdictional load levels (six states and FERC) indicated in Mr. Duval’s Exhibit 101-102 workpapers (worksheet CY 2012 Factors).” PacifiCorp first objected to providing this information, and appears to have misinterpreted this request. ICNU is not requesting “jurisdictional load or factors for CY 2012 in UE 216,” but is requesting UE 216 test period load data for 2011 mapped to the different nodal areas. The Company should either provide ICNU with the requested reconciliation or provide ICNU with the data to perform the analysis.

ICNU DR 2.7 requests “all PacifiCorp’s monthly load forecast comparison reports from January 1, 2009 to the present.” The Company’s response did not include comparative reports, but only a total monthly energy comparison. ICNU typically receives this information from other utilities that includes a monthly report comparing actual and weather normalized actual loads to the currently applicable official forecast. The complete monthly load forecast comparison reports with all relevant information should have been provided.

ICNU DR 2.13 and 2.14 requests detailed explanation and all accompanying support documents regarding the hourly market prices contained in the GRID input files for the Mona and Mead trading hubs. PacifiCorp only provided a limited written explanation of how the hourly prices were derived for these illiquid markets, and not the necessary calculations to show how the Company derived these prices.

ICNU DR 2.15 requests “a detailed explanation on how the burner tip values are derived for each gas-fired resource along with all supporting workpapers, including contracts and applicable federal or state transportation tariffs.” Essentially, ICNU is seeking the supporting workpapers on how the forward burner tip prices were derived. PacifiCorp must provide workpapers or an Excel file that performs the calculations in the written response. PacifiCorp’s response does not indicate that this information has been withheld or provide any explanation for why the information was not provided.

ICNU DR 2.22 requested information regarding each of the arbitrage and trading transactions and a copy of the transaction trade ticket. Upon a request from the Company, ICNU narrowed this request to certain trades, but emphasized that ICNU needed the capacity and time of execution of each transaction. The response includes the capacity amount, but fails to include the time of the execution.

ICNU DRs 2.35 and 2.36 requests copies of testimony and workpapers that have been filed, or will be filed in the future, in current Wyoming and Utah rate proceedings. ICNU specifically requested information filed by staff and intervenors. The Company provided documents that it has filed, but for the testimony of other parties merely referred ICNU to the non-confidential documents available on the utility commission websites. ICNU could have obtained the non-confidential information from the websites without the Company’s assistance; however, ICNU is unable to obtain the confidential testimony and workpapers from the website, which was the very reason for the data requests.

We discussed on the phone a potential way to resolve this problem. As I understand it, the Company believes that protective orders in other states prevent PacifiCorp from providing copies of this confidential material to ICNU in Oregon, even though the confidential material is PacifiCorp's confidential material. I do not agree with the Company's interpretation; however, in the interests of resolving this issue I have agreed to attempt to obtain the permission of the parties in Wyoming and Utah to use this confidential material in Oregon. If we are unable to obtain permission from the other parties, we will request that the Company provide complete confidential copies of this testimony and workpapers.

### **3. Information From Previous Proceedings**

PacifiCorp refused to provide a number of documents stating that they have been provided to ICNU to previous proceedings. Specifically, in ICNU DRs 2.1, 2.8 and 2.9, ICNU requested certain excel files that were included in previous TAM proceedings. We discussed why ICNU needs this information from the Company over the phone and your April 27, 2011 email stated that the Company would supplement its responses with the requested material.

### **4. Hydro Modeling**

PacifiCorp has refused to provide ICNU with reasonable access to its VISTA hydro model and is effectively preventing ICNU from reviewing the reasonableness of hydro costs. ICNU requested all the inputs to the Company's VISTA model in DR 2.31. The Company refused to provide any the inputs, claiming the majority of the information is contained within the model, which only can be reviewed at the Company's offices. ICNU DRs 3.6 and 3.7 sought information regarding PacifiCorp's VISTA runs based on different assumptions than are included in the Company's filing. PacifiCorp refused to provide the information claiming the Company has not performed the requested analysis. Thus, the Company is simultaneously refusing to provide ICNU with the information to conduct our own analysis of the VISTA model unless ICNU goes to the Company's offices, and refusing to re-run the VISTA model for ICNU.

PacifiCorp must provide ICNU with reasonable access to the computer models and inputs that the Company uses to calculate its rates. If the Company elects to use the VISTA model for calculating its hydro costs, then the Company must ensure that ICNU has the ability to utilize the model in a reasonable fashion. Requiring ICNU to travel to PacifiCorp's offices to conduct all of its analysis of the VISTA model is not reasonable. ICNU requests that the Company provide access to the VISTA model in a manner comparable to how ICNU gains access to the GRID computer model.

ICNU understands that the Company has stated that it may need to take certain steps and may not be able to provide ICNU with immediate access to the VISTA model. In the interim, ICNU requests that PacifiCorp conduct a limited number of VISTA model re-runs. The discovery rules state that a party does not need to perform a study unless they have the unique capability to perform the study. OAR § 860-001-0050(4). ICNU believes this rule requires the Company to perform reasonable and not unduly burdensome model runs if PacifiCorp is not




Jordan White  
April 28, 2011  
Page 6

willing to provide ICNU with a working copy of the model that can be used under reasonable terms and conditions.

ICNU requests that PacifiCorp provide full and complete responses, including all information withheld on the ground that it is “highly confidential,” or ICNU will be required to file a motion to compel. In addition, if the Company believes that any information is “highly confidential,” ICNU requests that the Company follow the appropriate procedures and request additional protections instead of refusing to provide ICNU with usable information. IF we do not have these resolved promptly we will file a motion to compel.

Sincerely yours,



Irion A. Sanger

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**From:** Irion A. Sanger  
**Sent:** Wednesday, May 04, 2011 8:29 AM  
**To:** 'White, Jordan'  
**Cc:** Steward, Joelle  
**Subject:** RE: Discovery UE 227

Jordan

Thank you for calling me back regarding these outstanding discovery issues yesterday. I wanted to summarize my understanding of the status of our discovery disputes. PacifiCorp is providing certain materials to ICNU today and additional documents on Friday. On Thursday or Friday of this week, you will send me a letter identifying what materials are being provided, and provide an explanation regarding the Company's reasons if any materials are not being provided.

Although the Company has not yet decided what, if any materials, may ultimately not be provided to ICNU, you stated that it is likely that ICNU will not be provided a copy of the VISTA hydro model. We disagreed about whether PacifiCorp should be required to provide ICNU a copy of the VISTA model, and you mentioned a licensing agreement for the VISTA model that could potentially limit the Company's ability to provide ICNU with a copy of the model. I requested a copy of the licensing agreement. In addition, please provide us with any information regarding the Company's negotiations for use and access to the VISTA model, in particular any efforts that PacifiCorp might have made to ensure that intervenors could be provided with a copy of the model.

We also discussed my concerns that the Company is taking too long to provide responsive materials, and I stated that ICNU intends to file a motion to compel if these discovery issues are not satisfactorily resolved. I agreed not to file a motion to compel any earlier than Monday May 9, 2011.

**Irion A. Sanger**  
Attorney

Davison Van Cleve, PC  
333 SW Taylor St., Suite 400  
Portland, OR 97204  
Tel: 503.241.7242  
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---

**From:** White, Jordan [mailto:Jordan.White@PacifiCorp.com]  
**Sent:** Wednesday, April 27, 2011 4:41 PM  
**To:** Irion A. Sanger  
**Cc:** Steward, Joelle  
**Subject:** RE: Discovery UE 227

Irion, I wanted to touch base with you on where the Company is with addressing the concerns/requests we discussed this morning.

**ICNU 2.35 and 2.36** (regarding confidential NPC-related testimony submitted by other parties in the WY and UT GRC): Below is a list of the parties that submitted confidential NPC-related testimony in the UT and WY GRC proceedings, along with their representatives' contact information:

- Freeman Testimony (OCA) – covers cost of capital, energy gateway, pollution control, system reliability, demand response
- Parrish Testimony (OCA) -covers NPC
- Higgins workpapers (WIEC) – one on REC revenues, one on SO2 allowances
- Falkenberg Testimony and workpapers (WIEC) – covers NPC
- Baron workpaper (WIEC) – COS
- Widmer Testimony (WIEC) – covers NPC

OCA Contact:

Ivan Williams, Senior  
Counsel  
Office of Consumer  
Advocate  
2515 Warren Ave., Suite  
304  
Cheyenne, WY 82002  
(307) 777-5717  
[iwilli@state.wy.us](mailto:iwilli@state.wy.us)

WIEC Contact Info:

Robert M. Pomeroy, Jr.  
Thorvald A. Nelson  
6380 South Fiddler's Green Circle, Suite 500  
Greenwood Village, CO 80111  
[rpomeroy@hollandhart.com](mailto:rpomeroy@hollandhart.com)

**ICNU 2.1, 2.8 and 2.9** (request for information submitted in other proceedings): PacifiCorp will supplement the DR responses.

**ICNU 2.11, 2.12, 2.16, 2.18 and 1.17** (containing highly confidential information): My clients are generally comfortable with the agreement we discussed this morning whereby the Company would provide the highly confidential (HC) information contained in **ICNU 2.11 and 2.16** regarding daily forward price curves to ICNU either on green paper/CD or some other form marked HC. In-turn ICNU would agree to: (1) provide the Company with notice prior to filing of testimony that references the HC information so that ICNU and the Company can discuss how it should be filed and to determine whether the Company objects to ICNU providing the HC material to any other individuals who have signed the protective order; (2) not provide the HC material contained in testimony, workpapers, briefs, etc. to others until the Company's objections are resolved; (3) not to make any further copies of the information (except as necessary to reference the information in confidential testimony, cross-examination exhibits or in a trial brief) or seek to use it in any other proceeding. ICNU would not make any copies, except for these purposes, and it would return the confidential material after the end of the case, except for information in the testimony, workpapers, exhibits and brief that ICNU would retain for their files.

However, I am still working with data owners, who have not been available today, for the highly confidential information contained in **ICNU 2.12, 2.18 and 1.17** to receive their approval for the agreed upon process discussed above.

**ICNU 2.31 and 3.6 and 3.7** (inputs to VISTA hydro model): The Company will consider ICNU's request to utilize VISTA. With respect to ICNU's interim request for the Company to re-run models, I am still waiting on a response from my client.

Finally, with respect to your requests for supplemental information outlined in your email below, I am also waiting on a response from my client. I apologize that I was unable to provide answers to all of your questions today but I hope that I can provide further information tomorrow.

Thanks,

Jordan

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**From:** Irion A. Sanger [mailto:IAS@dvclaw.com]  
**Sent:** Wednesday, April 27, 2011 11:45 AM  
**To:** White, Jordan  
**Subject:** Discovery UE 227

Jordan

Thank you for calling this morning to discuss the discovery issues in this year's TAM. We discussed the Company's designation of the highly confidential material, the VISTA model, and a number of incomplete data responses, and I stated that I was drafting a letter summarizing ICNU's concerns. We agreed that I would wait to send the letter while you discussed the issues with the Company and we would talk again before the close of business today.

Due to the complexity of some of the incomplete data requests, we also agreed that I would send you this email summarizing the incomplete data requests to expedite resolution of the disputes and to avoid unnecessary confusion of

these sometimes technical issues. This email does not address the other discovery issues, including the material designated as highly confidential, the access to confidential testimony filed in other states, the information ICNU has requested from previous proceedings, and the VISTA model that we discussed on the phone.

Here is the list of incomplete responses and an explanation of the missing information.

ICNU DR 2.3 requested information regarding certain GRID input files, specifically requesting “provide a reconciliation from the sixteen nodal load areas to the jurisdictional load levels (six states and FERC) indicated in Mr. Duval’s Exhibit 101-102 workpapers (worksheet CY 2012 Factors).” PacifiCorp first objected to providing this information, and then appears to have misinterpreted the request. ICNU is not requesting “jurisdictional load or factors for CY 2012 in UE 216,” but is requesting UE 216 test period load data for 2011 mapped to the different nodal areas. The Company should either provide ICNU with the requested reconciliation or provide ICNU with the data to perform the analysis.

ICNU DR 2.7 requested “all PacifiCorp’s monthly load forecast comparison reports from January 1, 2009 to the present.” The Company’s response did not include comparative reports, but only a total monthly energy comparison. ICNU typically receives this information from other utilities that includes a monthly report comparing actual and weather normalized actual loads to the currently applicable official forecast. The complete monthly load forecast comparison reports with all relevant information should have been provided.

ICNU DR 2.13 and 2.14 requested detailed explanation and all accompanying support documents regarding the hourly market prices contained in the GRID input files for the Mona and Mead trading hubs. PacifiCorp only provided a limited written explanation of how the hourly prices were derived for these illiquid markets, and not the necessary calculations to show how the Company derived these prices.

ICNU DR 2.15 requested “a detailed explanation on how the burner tip values are derived for each gas-fired resource along with all supporting workpapers, including contracts and applicable federal or state transportation tariffs.” Essentially, ICNU is seeking the supporting workpapers on how the forward burnertip prices were derived. PacifiCorp must have workpapers or an Excel file that performs the calculations provided in the written response. PacifiCorp’s response does not indicate that this information has been withheld or provide any explanation why the information was not provided.

ICNU DR 2.22 requested information regarding each of the arbitrage and trading transactions and a copy of the transaction trade ticket. Upon a request from the Company, ICNU narrowed this request to certain trades, but emphasized that ICNU needed the capacity and time of execution of each transaction. The response includes the capacity amount, but does not include the time of the execution.

Thanks

**Irion A. Sanger**

Attorney

Davison Van Cleve, PC

333 SW Taylor St., Suite 400

Portland, OR 97204

Tel: 503.241.7242

Fax: 503.241.8160

[ias@dvclaw.com](mailto:ias@dvclaw.com)

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may be unlawful. If you believe you have received this communication in error, please delete it and call or email the sender immediately. Thank you.

Please Reply To:

Jordan A. White, Senior Counsel  
Suite 320

*Direct Dial* (801) 220-2279

*Fax* (801) 220-4416

Email: jordan.white@pacificorp.com

*Via Email*

May 6, 2011

Irion A. Sanger, Esq.  
Davis Van Cleve PC  
333 SW Taylor  
Portland, OR 97204  
[ias@dvclaw.com](mailto:ias@dvclaw.com)

**Re: In the Matter of PacifiCorp 2012 Transition Adjustment Mechanism  
(OPUC Docket UE 227)**

Dear Irion:

This letter is provided in response to your letter of April 28, 2011 regarding the status of the Industrial Customer's of Northwest Utilities' (ICNU) 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> sets of data requests (DR) to PacifiCorp in Docket UE 227.

Your letter you indicates that "PacifiCorp did not contact ICNU to attempt to resolve this dispute or explain why information needs additional protection, but instead simply requested that ICNU review the information at its offices." PacifiCorp takes exception to this statement. I understand that Joelle Steward informed Don Schoenbeck (ICNU's expert) on April 20, 2011 that much of the information requested was considered highly confidential, including the daily forward price curves and the position reports, and would require on-site review at PacifiCorp's offices. I also understand that Greg Duvall also reached out to Mr. Schoenbeck on April 22, 2011 and provided the same message. As such, it is somewhat disingenuous for ICNU to claim that it was taken off-guard by PacifiCorp's initial responses.

Below is an update on the status of the DRs referenced in your April 28, 2011 letter.

**1. "Highly Confidential" Material**

**ICNU 1.17:** The Company has evaluated ICNU's request to receive electronic copies of the Company's coal contracts that are modeled in GRID under the terms of the side agreement previously discussed and outlined in your April 28, 2011 letter. After careful consideration, the Company determined that due to the highly-sensitive nature of this information, it can only be viewed at PacifiCorp's offices as indicated in PacifiCorp's initial response to ICNU 1.17. The determination of whether commercially sensitive information requires heightened protection is ultimately guided by the Company's obligation to protect its competitive advantage for the benefit its customers. Because the

disclosure of different sets of data could potentially cause greater damage to the Company's competitive position, it would be very difficult to set forth a blanket policy with respect to the treatment and disclosure of commercially sensitive information. To that end, the Company reviews data requests in the TAM proceeding on a case-by-case basis. For certain highly-confidential information, the Company has determined that the information may be sent to parties such as ICNU and sufficiently protected under the terms of a side agreement. However, for other highly-confidential information such as the coal contracts referenced in ICNU 1.17, the Company has determined that on-site review is required in order to protect the Company's competitive advantage.

In previous discussions you have pointed to the practice of other northwest utilities that provide ICNU with confidential or highly-confidential information via mail rather than requiring on-site review. For PacifiCorp, the reliance on coal-fired generation is considerably greater than other northwest utilities. In addition, the majority of northwest coal-fired generation is jointly-owned, which allows those owners to collectively negotiate coal contracts and share a common cost structure. The majority of the Company's coal-fired generation, however, is supplied from Company operated facilities with coal supply and transportation contracts negotiated and executed solely by the Company. These contracts contain commercially sensitive pricing data, volumetric data and detailed provisions regarding contract reopeners and price resets. The inadvertent release of this highly confidential data would seriously jeopardize the Company's obligation to protect its competitive advantage for the benefit its customers. Moreover, the Company's long-term coal plant fueling strategies are inextricably linked to these contractual terms. With only a small amount of the Company's coal supplied from competitive markets, as opposed to illiquid markets, the Company's ability to ensure a low-cost coal supply for the customers would be undermined with even minimal disclosure.

The Company believes that requiring parties to review certain highly-confidential data on-site is not overly burdensome and is consistent with the Company's approach in other jurisdictions. It is also worth noting that the Company has consistently treated the information requested in ICNU 1.17 as highly confidential and required parties (including ICNU) to view the material on site. *See, e.g.* ICNU 1.44 in UE 216. Furthermore, the Company asserts that the great risk associated with disclosure of commercially sensitive information far outweighs any inconvenience associated with on-site review.

**ICNU 2.11:** As previously indicated in my email of April 27, 2011, the Company will provide the highly confidential information subject to the terms and conditions outlined in my email and confirmed in your April 28, 2011 letter. In addition, the Company has agreed to provide forward price curve information for points of delivery of substantial liquidity on a confidential basis. The price curves for illiquid markets will continue to be classified as highly confidential. PacifiCorp will supplement ICNU 2.11 accordingly. (to ship May 6, 2011).

**ICNU 2.12:** The Company stands by its original response that the information requested in the DR is highly confidential and must be viewed at PacifiCorp's offices. Please refer



to the Company's 1<sup>st</sup> Supplemental Response to ICNU 2.13, shipped May 4, 2011, for further rationale.

**ICNU 2.16:** As previously indicated in my email of April 27, 2011, the Company will provide the highly confidential information subject to the terms and conditions outlined in my email and confirmed in your April 28, 2011 letter (to ship May 6, 2011).

**ICNU 2.18:** As discussed in our telephone conversation on May 3, 2011, after further consideration the Company has re-classified this information as confidential and has supplemented the DR (shipped May 4, 2011).

## 2. Supplemental Responses

**ICNU 2.3:** Based on the clarification provided in your letter of April 28, 2011, PacifiCorp will provide a supplemental response (to ship May 6, 2011).

**ICNU 2.7:** Based on the clarification provided in your letter of April 28, 2011, PacifiCorp will provide a supplemental response (to ship May 6, 2011). In response to your comments in the letter, PacifiCorp notes that it is not aware of monthly load forecast comparison reports provided by other utilities and the request did not specify both actual and weather normalized loads to the applicable forecast.

**ICNU 2.13 and 2.14:** PacifiCorp prepared supplemental responses (shipped May 4, 2011).

**ICNU 2.15:** PacifiCorp prepared a supplemental response (to ship May 6, 2011).

**ICNU 2.22:** Based on the clarification provided in your letter of April 28, 2011, PacifiCorp provided a supplemental response (shipped May 4, 2011).

**ICNU 2.35:** As discussed in our call on May 3, 2011, no interveners have provided confidential information in the Utah general rate case at this time.

**ICNU 2.36:** Pursuant to the waiver provided by Thor Nelsen (WIEC's attorney) in his email to you dated May 4, 2011, PacifiCorp provided the confidential information provided by WIEC in the Wyoming general rate case related to net power costs (shipped May 5, 2011).

## 3. Information from Previous Proceedings

**ICNU 2.1, 2.8 and 2.9:** As indicated in the Company's response to ICNU 3.1, PacifiCorp agreed to allow ICNU and its consultants to utilize discovery responses from previous proceedings, subject to: (1) the Company's reservation of all evidentiary objections; (2) maintaining the confidentiality of such data on the terms and conditions of protective orders and confidentiality agreements in those dockets; and (3) the terms and

conditions of the protective order in this docket (UE 227). Because ICNU has retained a new expert for this proceeding that may not have access to previous DR responses, PacifiCorp will provide supplement responses to these data requests as a matter of courtesy (shipped May 4, 2011).

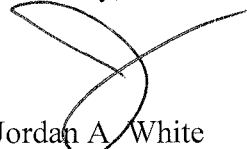
#### 4. **Hydro Modeling**

**ICNU 2.31:** ICNU's request for ICNU to run the Vista model itself would present difficulties since it would require the purchase of two licenses (one for Vista and one for cplex) and training requirements are significant (i.e., Vista execution, Vista datasets/data management, and hydro modeling/operations). PacifiCorp will provide a supplemental response (to ship May 6, 2011).

**ICNU 3.6 and 3.7:** PacifiCorp will provide supplemental responses (to ship May 6, 2011). PacifiCorp will perform the requested studies only because the Company has the unique capability to do so. While the Company believes that the studies will be accurate based on the assumptions provided by ICNU, it does not endorse the reasonableness of the assumptions or results.

If you have questions or require additional information, please contact me directly at (801) 220-2279.

Sincerely,



Jordan A. White  
Attorney for PacifiCorp

---

**From:** Irion A. Sanger  
**Sent:** Friday, May 27, 2011 3:08 PM  
**To:** 'Katherine McDowell'  
**Cc:** 'Steward, Joelle'; [dws@r-c-s-inc.com](mailto:dws@r-c-s-inc.com)  
**Subject:** RE: OR UE-227 PacifiCorp's Response to ICNU Set 9

Katherine and Joelle

This email is in regards to ICNU data request 9.2. When Katherine and I talked earlier about ICNU DR 9.2, I stated that we would review whether we can revise the data request, and I also requested that the Company provide us with more information regarding Powerdex's concerns. Specifically, it is not clear to us whether Powerdex objects to any of the specific information, the length of time (5 years), or other issues. In addition, from my conversation earlier this week with Joelle in Salem, it is unclear to us whether the Company is objecting to provide the information or is requested that it be treated as "highly confidential." We have not received answers to our questions about the nature of the objections to providing us with this information.

I was able to communicate with Don Schoenbeck this week, and we cannot narrow the scope of the request absent a settlement of issues related to the calculation of the forward price curve. As Don explained to PacifiCorp earlier, ICNU needs this information to advocate a more transparent method to the calculation of the forward price curve. As previously explained, one reason ICNU is exploring this approach is to resolve the dispute regarding PacifiCorp's refusal to provide ICNU with allegedly "highly confidential" material regarding the forward price curve outside of the Company's offices.

ICNU is willing to work with the Company regarding the forward price curve calculation, but to review the reasonableness of PacifiCorp's filing, ICNU requires transparent information that can be reviewed in our consultant's offices. Therefore, ICNU requests that the Company provide Mr. Schoenbeck with the "highly confidential" material regarding the forward price curve, or a complete response to ICNU data request 9.2.

**Irion A. Sanger**

Attorney

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---

**From:** Meyer, Carrie [<mailto:Carrie.Meyer@PacifiCorp.com>]

**Sent:** Friday, May 27, 2011 2:37 PM

**To:** Irion A. Sanger; Mail; [dws@r-c-s-inc.com](mailto:dws@r-c-s-inc.com); [gordon@oregoncub.org](mailto:gordon@oregoncub.org); [peter@richardsonandoleary.com](mailto:peter@richardsonandoleary.com); [greg@richardsonandoleary.com](mailto:greg@richardsonandoleary.com); 'khiggins@energystrat.com'

**Cc:** Watkins, Betsy; Bell, Barry; Steward, Joelle; Chaney, Christy

**Subject:** OR UE-227 PacifiCorp's Response to ICNU Set 9

Attached above is PacifiCorp's Response to ICNU Set 9 (1-3) in Oregon docket UE-227. Please let me know if you have any trouble opening the attached files.

Thank you,

Carrie Meyer

PacifiCorp

Coordinator, Regulatory Operations

503-813-6217



# Davison Van Cleve PC

Attorneys at Law

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

June 3, 2011

*Via U.S. Mail & Email*

Jordan White  
Senior Counsel  
PacifiCorp  
1407 W. North Temple, Suite 320  
Salt Lake City, UT 84116

Katherine McDowell  
McDowell Rackner & Gibson PC  
419 SW 11th Ave, Suite 400  
Portland, OR 97205

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

Dear Jordan and Katherine:

This letter is our final request that PacifiCorp fully respond to the Industrial Customers of Northwest Utilities' ("ICNU") Second and Ninth Set of Data Requests ("DR"). We have addressed PacifiCorp's refusal to provide complete data responses numerous times and have exchanged a number of emails and letters regarding this discovery dispute. It appears that PacifiCorp is not willing to provide complete responses, and ICNU intends to file a motion to compel with the Administrative Law Judge on Wednesday June 8, 2011, if this issue is not resolved. ICNU may also request an extension to time to file testimony regarding the forward price curves if this discovery dispute is not promptly resolved.

## **1. Forward Price Curve Generation and Conversion**

ICNU has requested complete information to review how PacifiCorp's generates and converts the forward price curve at various trading hubs into hourly real-time prices since the earliest stages of this proceeding. Among ICNU's early discovery requests, ICNU DR 2.12 requested the analysis undertaken by PacifiCorp to convert the forward monthly prices into hourly values. In addition, ICNU DR 2.13 and 2.14 sought all documents used to generate the

hourly prices for the Mona and Mead trading hubs where no forward monthly prices exist. The Company has refused to provide to ICNU or its consultant, Donald Schoenbeck this data and analysis. PacifiCorp claims that certain information is “commercially sensitive and highly confidential” and must be reviewed in the Company’s offices.

ICNU’s consultant visited PacifiCorp’s offices to discuss and review information regarding the forward price curves and the hourly conversion process. Mr. Schoenbeck determined that it was not practical to conduct his analysis and prepare testimony at the Company’s offices, and ICNU has been unable to review the material responsive to ICNU DR 2.12, 2.13 and 2.14.

In an attempt to ascertain the significance of the hourly conversion issue, ICNU requested different hourly data for the same forward price curves in ICNU DR 9.1. ICNU also re-iterated the request for data used to derive the hourly values for each trading hub used in the GRID model. As was explained by PacifiCorp at the meeting with Mr. Schoenbeck, the fundamental source of data used in the process is five years of historical real-time hourly transactional data at each trading hub as provided by Powerdex. ICNU DR 9.2 was submitted to the Company in order to obtain the five years of Powerdex data that the Company uses to develop the hourly values from the forward monthly price curves. PacifiCorp has refused to provide ICNU with Powerdex data claiming that Powerdex has raised concerns regarding the scope of the request. PacifiCorp has not provided ICNU with the details of Powerdex’s specific concerns nor asserted that the Powerdex data is not actually used when setting the Company’s net power costs.

ICNU’s previous conversations and communications have explained that ICNU cannot adequately review and prepare testimony regarding the Company’s forward price curve data and hourly conversion process at the Company’s offices. As previously pointed out, there also is no “highly confidential” protective order in this case and there are no grounds for the Company to insist that ICNU review any documents at PacifiCorp’s offices. In addition, ICNU has explained that it reviews forward price curve data on a standard confidential basis for all other Northwest utilities. PacifiCorp has elected to rely on specific forward price curve data to estimate its net power costs, and the Company cannot prevent full discovery of this information because its allegedly proprietary nature or the fact that it was developed by a third party.

ICNU has exhausted all reasonable efforts to resolve this discovery dispute, and intends to file a motion to compel if fully responsive material to ICNU DRs 2.12, 2.13, 2.14 and 9.2 are not provided by Wednesday June 8, 2011.

## **2. Highly Confidential Material**

PacifiCorp has provided ICNU with certain documents on green paper designated as “highly confidential.” The Company provided these documents under the terms of an email sent by Jordan White on April 27, 2011. ICNU understands that PacifiCorp does not object to ICNU reviewing these documents, but objects to third party competitors accessing them. As explained in my April 28, 2011 letter, ICNU agreed to these terms on a temporary, limited basis

to gain immediate access to the documents while a long-term solution was resolved. Specifically, I requested “that PacifiCorp work with ICNU to draft a ‘highly confidential’ protective order, and (regardless of whether an agreement can be reached) that PacifiCorp request that the Commission approve a highly confidential protective order that would apply to this and future TAM proceedings.” I also explained why the side-agreement has not proven workable in the past, and why a formal amendment to the protective order is necessary if the Company believes its information requires “highly confidential” treatment.

PacifiCorp has made no efforts to develop a long-term sustainable resolution to the issue of PacifiCorp designating certain material as “highly confidential” when there is no “highly confidential” protective order. ICNU requests that PacifiCorp either classify these documents as standard confidential, or file a modified protective order proposing different treatment. ICNU may refer to or attach these documents to its testimony, and ICNU requests that this issue be resolved prior to filing intervenor testimony in this proceeding on June 24, 2011.

### **3. Hydro Model**

ICNU requested that PacifiCorp provide ICNU with copies of the VISTA model and that the Company perform VISTA model studies for ICNU. ICNU DRs 2.31, 3.6 and 3.7. PacifiCorp has refused to provide ICNU with a copy of the VISTA model, but, after initially refusing to perform VISTA model studies, the Company has agreed to perform VISTA model studies for ICNU. Jordan White Letter to Irion Sanger, May 6, 2011 at 4. PacifiCorp will not provide ICNU with a copy of the VISTA model because “it would require the purchase of two licenses” and the “training requirements are significant.” *Id.* PacifiCorp originally claimed that it was prevented from providing the VISTA model because of its licensing agreement, but after ICNU requested a copy of the licensing agreement, the Company appears to have dropped that objection.

For this proceeding only, ICNU agrees not to request a copy of the VISTA model, but to rely upon PacifiCorp performing VISTA model runs for ICNU. This agreement, however, is conditioned upon PacifiCorp’s agreement to enter into appropriate licensing agreements so that ICNU can access all models that the Company relies upon without objection in any future proceeding. The Commission’s policies do not allow a utility to use a model for the purposes of setting rates and to refuse to provide the parties the model or require that parties pay additional costs to utilize the model. Specifically, the Commission has ruled that “it is contrary to the public interest to require parties to Commission proceedings (and potentially the Commission itself) to pay for discovery.” *Re Qwest*, Docket No. 1025, Order No. 03-533 at 10 (Aug. 28, 2003). If PacifiCorp cannot or elects not to enter into licensing agreements that allow ICNU to review models, then those models should not be used in any ratemaking proceeding before the Commission.

Sincerely yours,

/s/ Irion A. Sanger

Irion A. Sanger

cc: Peter Richardson  
Jason W. Jones  
G. Catriona McCracken



## **Attachment C**

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 227

In the Matter of )  
)  
PACIFICORP, dba PACIFIC POWER )  
)  
2012 Transition Adjustment Mechanism )  
Schedule 201, Net Power Costs, Cost-Based )  
Supply Service Schedule 205, TAM )  
Adjustment for Other Revenues )

AFFIDAVIT OF IRION A. SANGER

I, Irion August Sanger, being first duly sworn on oath, depose and say:

1. My name is Irion August Sanger. I am an attorney with the law firm of Davison Van Cleve, PC, and I represent the Industrial Customers of Northwest Utilities (“ICNU”) in this proceeding. My business address is: 333 SW Taylor, Suite 400, Portland, Oregon 97204.

2. I have discussed via the telephone and in person a number of discovery issues in this proceeding.

3. On or about April 27, 2011 and May 3, 2011, I discussed via the telephone a number of PacifiCorp’s incomplete responses to ICNU second of data requests (“DR”) with Jordan White. Jordan White represents PacifiCorp in this proceeding. We were unable to satisfactorily resolve PacifiCorp’s decision not to provide ICNU with complete copies of ICNU DRs 2.12, 2.13, and 2.14.

4. On or about May 23, 2011, I discussed via the telephone PacifiCorp’s concerns with ICNU DR 9.2 with Katherine McDowell. Ms. McDowell represents PacifiCorp in this proceeding. Ms. McDowell stated that Powerdex raised concerns regarding the scope of ICNU DR 9.2 and indicated that ICNU should consider revising its request in light of these concerns. I

requested that PacifiCorp provide information regarding Powerdex's concerns and what information the Company would not provide to ICNU.

5. On or about May 24, 2011, I discussed in person PacifiCorp's concerns with ICNU DR 9.2 with Amie Jamieson and Joelle Steward. Amie Jamieson represents PacifiCorp and Joelle Steward is the Oregon regulatory manager for PacifiCorp. We were not able to satisfactorily resolve issues related to ICNU DR 9.2.

6. On or about June 3, 2011, I attempted to contact Katherine McDowell via telephone regarding ICNU DRs 2.12, 2.13, 2.14 and 9.2, but was unable to speak with her.

I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE AND IS SUBJECT TO PENALTY FOR PERJURY.

SIGNED THIS 7 th day of June, 2011, at Portland, Oregon.

Irion A. Sanger

Irion A. Sanger

SUBSCRIBED AND SWORN to before me this 7<sup>th</sup> day of June, 2011.



Sarah Kohler  
NOTARY PUBLIC FOR Oregon

My Commission Expires: March 10, 2015

**REDACTED**  
**Attachment D**

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UE 227**

In the Matter of	)	
	)	
PACIFICORP, dba PACIFIC POWER	)	
	)	AFFIDAVIT OF DONALD W.
2012 Transition Adjustment Mechanism	)	SCHOENBECK
Schedule 201, Net Power Costs, Cost-Based	)	
Supply Service Schedule 205, TAM	)	
<u>Adjustment for Other Revenues</u>	)	

I, Donald W. Schoenbeck, being first duly sworn on oath, depose and say:

1. My name is Donald W. Schoenbeck. I am a member of Regulatory & Cogeneration Services, Inc. ("RCS"), a utility rate and economic consulting firm. My business address is 900 Washington Street, Suite 780, Vancouver, WA 98660. I am preparing testimony as a witness for the Industrial Customers of Northwest Utilities ("ICNU") in this proceeding.
2. I have participated in numerous PacifiCorp rate proceedings since 1981, and I have reviewed PacifiCorp's confidential material in many of those proceedings. I am not aware of PacifiCorp ever raising any concerns regarding my handling or treatment of confidential material. I am not aware of myself or my office inadvertently or purposefully revealing confidential information in a manner inconsistent with the terms of a relevant protective order.
3. ICNU has requested that I perform analysis of PacifiCorp's proposed transition adjustment mechanism rate increase and transition credits, including the PacifiCorp Official Forward Price Curves ("OFPC") that was used in the initial filing, the forward price curve update that will be made in July 2011, and the forward price curve update that will be used to set final rates as part of the November 2011 update. In order to be able to perform this analysis and evaluate the reasonableness of PacifiCorp's net power costs, I have asked discovery questions of

PacifiCorp and have analyzed various documents prepared by the Company. Under my direction, ICNU data requests (“DR”) 2.12, 2.13, 2.14 and 9.2 were sent to PacifiCorp.

4. PacifiCorp has stated that certain information responsive to ICNU DRs 2.12, 2.13 and 2.14 is “commercially sensitive and highly confidential” and requested that ICNU contact PacifiCorp to arrange for “onsite review” of these documents.

5. On May 12, 2011, I visited PacifiCorp’s offices to discuss the information responsive to ICNU DRs 2.12, 2.13 and 2.14. The focus of the discussion was to ascertain how PacifiCorp calculated the hourly prices at each trading hub required as input to PacifiCorp’s power cost model (“GRID”) from monthly forward prices and to ascertain how PacifiCorp determined hourly prices at trading hubs where no forward monthly prices are even available. We discussed the type of information relied upon by PacifiCorp to derive the hourly values and PacifiCorp provided contact information of the business that provides the fundamental data used in the conversion analysis.

6. It would be unduly burdensome and time consuming to review and analyze the information outside of my offices. The GRID model uses hourly values for seven different trading hubs. Thus, the fundamental data used by PacifiCorp to derive all the scaling factors would be in excess of 300,000 values (8,760 hours in a year x 5 years of data x 7 trading hubs). Further, in addition to the specific reported hourly value, an examination of the megawatts (“MW”) traded that hour and the range of prices (high, low, average) would need to be checked to simply verify the accuracy of the PacifiCorp method. This would put a complete audit at over 1.5 million values.

7. The requirement to examine the data at PacifiCorp’s offices hinders my ability to maintain my consulting practice as it would impose being away from my offices for an extended

period of time. Further, it would also constrain my ability to only review the data during PacifiCorp's normal business hours.

8. The Company's requested procedures are unreasonable because they may make submitting testimony on any issues related to the OFPC, including the hourly conversion process extremely difficult. Testimony challenging the power cost updates and the OFPC may need to reference or address "highly confidential" material. If I cannot reference the "highly confidential" material in my testimony, then the Company's proposed restrictions could prevent me from fully addressing and challenging the OFPC. Further, it may be difficult, if not impossible, to create useful comparative workpapers documenting my analysis and the Company's method because I would not be allowed to copy the files used or print the pages from the spreadsheets.

9. I have conducted a limited review of the documents responsive to ICNU DR 2.12, 2.13 and 2.14 and I do not believe there is any reason why this information should only be reviewed at PacifiCorp's offices nor why I cannot be provided copies of this information to review at my offices.

10. Review of ICNU DRs 2.12, 2.13, 2.14 and 9.2 are important for my review of the TAM rate filing, and are highly relevant to ascertaining the reasonableness and accuracy of the Company's method for converting the OFPC into hourly values for each market hub used by GRID. ICNU DR 2.12 requests the analysis undertaken by PacifiCorp to convert the forward monthly prices into hourly values that are actually used in GRID to set net power costs and transition credits.

11. ICNU DRs 2.13 and 2.14 seeks all documents used to generate the hourly prices for the Mona and Mead trading hubs where no forward monthly prices exist. PacifiCorp



estimates hourly prices for certain illiquid trading hubs when no actual forward data exists, and I should be able to review the documents the Company relied upon to generate its estimated prices for these times in which there is no other forward price information.

12. ICNU DR 9.2 seeks information that is highly relevant and includes the five years of Powerdex data that the Company uses to develop the hourly values in GRID from the forward monthly price curves. Powerdex collects and reports real time market price data by hour for each trading hub. From having reviewed illustrative Powerdex real time transactions, the data includes price and MWs traded for each hour of the day, but there are periods in which no transactions are even reported. PacifiCorp claims that it uses the most recent five years of Powerdex data, and uses the data to develop a “scalar factor” that converts the forward monthly prices to hourly prices in GRID. Without reasonable access to the information in ICNU DR 9.2, I cannot review the accuracy and reasonableness of the data, whether the information is complete, whether the market information is liquid (i.e., whether there are sufficient trades), or the reasonableness of the resulting scalar factors.

13. PacifiCorp has not provided me documents responsive to ICNU 9.2. I am not aware of whether PacifiCorp is requiring that these documents only be reviewed “on site” or if PacifiCorp is refusing to provide copies of these documents.

14. Different assumptions and/or input data regarding the transformation from OFPC to hourly values can have significant impacts on PacifiCorp’s net power costs.

For example, in ICNU DR 9.1, I requested that PacifiCorp generate the hourly GRID values using only the two most recent years of Powerdex data instead of five years. This single and simple change resulted in an \$18 million total company change in net power costs.

15. On May 12, 2010, I contacted Powerdex to obtain the same documents requested in 9.2. The historic real time market information is of no value to me other than to analyze PacifiCorp's filing in this proceeding. Powerdex quoted a price of approximately [REDACTED] to be provided the five years of data for all the trading hubs.

16. I have reviewed forward price curve data and estimates used in rate proceedings that were developed by Portland General Electric Company, Avista, Puget Sound Energy, and Bonneville Power Administration. None of these utilities require that any of their forward price curve models or input data must be considered highly confidential or reviewed at their offices.

17. In summary, PacifiCorp's restrictions prevent me from presenting testimony challenging the OFPC hourly conversion process and reviewing its reasonableness.

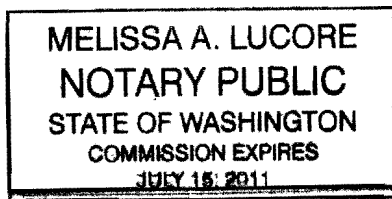
I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE AND IS SUBJECT TO PENALTY FOR PERJURY.

SIGNED THIS 7 th day of June, 2011, at Vancouver, Washington  
(Clark County)

Donald W. Schoenbeck

Donald W. Schoenbeck

SUBSCRIBED AND SWORN to before me this 7 day of June, 2011.



Melissa A. Lucore  
NOTARY PUBLIC FOR Clark County  
My Commission Expires: July 15, 11

# Davison Van Cleve PC

Attorneys at Law

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Portland, OR 97204

June 8, 2011

***Via Electronic and U.S. Mail***

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 Motion to Compel and Attachments A, B, C & D on behalf of the Industrial Customers of Northwest Utilities in the above-referenced docket. Confidential copies are being provided to parties who have signed the protective order in UE 216. 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 Motion to Compel and Attachments A, B, C & D on behalf of the Industrial Customers of Northwest Utilities 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 8th day of June, 2011.

/s/ Sarah A. Kohler

Sarah A. Kohler

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June 8, 2011

*Via Electronic and U.S. Mail*

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Sincerely yours,

/s/ Sarah A. Kohler  
Sarah A. Kohler  
Paralegal

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Dated at Portland, Oregon, this 8th day of June, 2011.

/s/ Sarah A. Kohler

Sarah A. Kohler

**(W) PACIFIC POWER & LIGHT**

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