



September 26, 2012

VIA ELECTRONIC FILING AND FIRST CLASS MAIL

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

Re: Docket UE 245—Response to Objections to Admission of PAC/500

Dear ALJ Pines,

On September 18, 2012, you issued a ruling allowing parties to raise objections to the admission of Exhibit PAC/500 through September 25, 2012. Although no party made a specific filing in accordance with your ruling, Commission Staff (Staff), the Industrial Customers of Northwest Utilities (ICNU), and the Citizens' Utility Board of Oregon (CUB) object to the admission of Exhibit PAC/500 in their closing briefs filed on September 21, 2012. This letter provides PacifiCorp's response to those objections and explains why the exhibit should be entered into the record.¹

PacifiCorp provided Exhibit PAC/500 specifically in response to the Commission's second and third requests for Information Requested in Briefing issued on August 31, 2012: "A discussion of the reasons that Pacific Power has asked for an increase in rates every year since the TAM was introduced" and "A discussion of the factual conflict in the parties' testimony regarding whether arbitrage sales are modeled in GRID." The Commission's second inquiry relates to information that was not contained in the record at the time of the Commission's request. To balance the need to respond to the Commission's question and the need to limit the introduction of new information, PacifiCorp limited Exhibit PAC/500 to only the information necessary to respond to the question and used data that was previously provided to Staff, ICNU, and CUB in this or prior TAM proceedings.² PacifiCorp also authenticated the exhibit with an affidavit of

¹ The September 18, 2012 ruling did not contain a date by which PacifiCorp could file a reply to any objections. The parties' objections, however, are a "request to the Commission or ALJ for a ruling or other action" and therefore arguably constitute a motion, to which PacifiCorp has a right to reply within seven days under OAR 860-001-0420(6).

² The "Actual NPC" numbers contained in Exhibit PAC/500 were provided to parties in this case concurrently with the initial filing in workpapers supporting Gregory N. Duvall's testimony. The "Final Rates Effective" numbers were derived from the final filing PacifiCorp provides to the Commission and parties at the conclusion of each TAM proceeding. This final filing typically includes revised tariff sheets, transition credits, and the final TAM NPC.

Gregory N. Duvall attesting to the accuracy of the data. The exhibit assists the Commission in evaluating why PacifiCorp has asked for increases in TAM rates, as the Commission requested, and does so by compiling information previously provided to the Commission and to the parties.

ICNU and CUB argue that PacifiCorp's request that Exhibit PAC/500 be admitted is contrary to Oregon law and precedent. Admission of Exhibit PAC/500 as information provided in response to a request by the Commission, however, is fully consistent with law and Commission practice. In a recent Portland General Electric Company (PGE) case, the Utility Reform Project (URP) objected to admission of evidence provided by PGE in response to a bench request.³ The Commission found that the Commission has authority to take additional evidence under ORS 756.558, "and the ALJ has the delegated authority to request additional information under that statute."⁴ Here, the ALJ issued a memorandum outlining "Information Requested in Briefing" that requested, "[i]n addition to thoroughly briefing all issues relevant to each party's position," additional discussion that required evidence not yet in the record. While not titled a "bench request," the memorandum was the functional equivalent because it requested a discussion of information not included in the record. Allowing evidence into the record in response to a bench request is consistent with Commission precedent and furthers the Commission's interest in having a full and robust record. It would be inappropriate to limit the Commission's ability to review information it has specifically requested parties to provide.

In addition, admission of this exhibit will not prejudice the parties. The parties have had this information throughout the proceeding and have not questioned the authenticity of the information. Although ICNU and CUB claim that the information in PAC/500 cannot be understood without additional review and opportunity for rebuttal, the numbers included in Exhibit PAC/500 are derived directly from workpapers and filings the parties already have and are not based on complex calculations.

Finally, ICNU and CUB argue that PacifiCorp has not requested that the affidavit be accepted into the record and that the evidentiary hearing is closed, implying that it is too late for the Commission to accept Exhibit PAC/500. They are wrong on both counts. PacifiCorp requested admission of Exhibit PAC/500 on page 6 of PacifiCorp's Opening Brief. In addition, while the evidentiary hearing has concluded, the record is not closed. ICNU and CUB cite to page 144 of the hearing transcript, which states "[s]o that concludes the hearing," but does not state that the record is closed. As the Commission has previously found, "[t]he record closes upon an oral or written ALJ ruling," which did not occur in this case.⁵ Even if the record has been closed, ORS 756.558(1) allows the Commission to reopen the record and request additional information.⁶

³ *In the Matter of PGE Application for Deferral of Incremental Administrative Costs Associated with the Trojan Refund*, Docket UM 1402, Order No. 11-315 (Aug. 17, 2011).

⁴ *Id.* at 3.

⁵ *Id.* at 4.

⁶ *Id.*

For these reasons, the Company requests that the Commission overrule the objections to admission of Exhibit PAC/500 and admit the exhibit into the record.

Very truly yours,

A handwritten signature in black ink, appearing to read "Katherine McDowell", followed by the word "for" in a cursive script.

Katherine McDowell

cc: Service List

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing document in Docket UE 245 on the following named person(s) on the date indicated below by email addressed to said person(s) at his or her last-known address(es) indicated below.

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DATED: September 26, 2012.


Wendy McIndoo