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May 13, 2009

VIA ELECTRONIC FILING AND U.S. MAIL

PUC Filing Center
Public Utility Commission of Oregon
PO Box 2148
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Re: Docket No. UM 1355

Enclosed for filing in the above-referenced docket are an original and one copy of PacifiCorp's Motion to Limit Scope of Docket to Generic Issues.

A copy of this filing has been served on all parties to this proceeding as indicated on the attached certificate of service.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Katherine McDowell', with a long horizontal flourish extending to the right.

Katherine McDowell

cc: Service List

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served a true and correct copy of the foregoing document in
3 Docket UM 1355 on the following named person(s) on the date indicated below by email
4 and first-class mail addressed to said person(s) at his or her last-known address(es)
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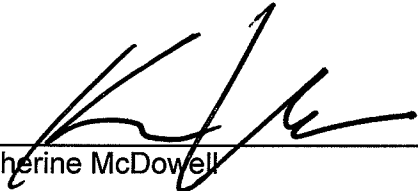
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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1355

In the Matter of:
PUBLIC UTILITY COMMISSION OF
OREGON,
Investigation Into Forecasting Forced
Outage Rates for Electric Generating Units.

**PACIFICORP'S MOTION TO LIMIT SCOPE
OF DOCKET TO GENERIC ISSUES
(Expedited Treatment Requested)**

Pursuant to OAR 860-013-0031, PacifiCorp submits this Motion to Limit the Scope of this Docket to Generic Issues ("Motion") to the Public Utility Commission of Oregon ("Commission"). PacifiCorp requests that the Commission exclude from this generic docket three PacifiCorp-specific issues raised only by Industrial Customers of Northwest Utilities ("ICNU"): modeling of PacifiCorp's planned outage schedule, PacifiCorp's approach to modeling heat rate/minimum loading deration, and PacifiCorp's ramping adjustment.¹

These issues address highly technical, PacifiCorp-specific implementation issues related to the generic forced and planned outage methodologies ICNU advocates in this docket. PacifiCorp submits that it is procedurally improper to litigate PacifiCorp-specific issues in this generic docket; it is inefficient to address implementation issues prior to a Commission order establishing general guidelines on forced outage modeling; and it is unnecessary and prejudicial to PacifiCorp to litigate these issues in this case given the current pendency of PacifiCorp's Transition Adjustment Mechanism (net power costs) filing, UE 207, a case in which the record on these issues may be more fully developed and the issues expeditiously resolved.

¹ ICNU addresses PacifiCorp's approach to modeling planned outages at ICNU/100, Falkenberg/28-43; heat rate and minimum loading at ICNU/100, Falkenberg/50-62 and ramping adjustment at ICNU/100, Falkenberg/17-21. Almost one-half of ICNU's testimony is focused on rate-case type argument directed at PacifiCorp net power cost modeling issues, instead of the general policy discussion at issue in this proceeding.

1 PacifiCorp seeks expedited resolution of this motion so that the scope of the docket
2 is clear before the hearing on May 28, 2009. PacifiCorp has conferred with ICNU on this
3 motion. ICNU objects to the motion and intends to file a response in opposition.

4 **I. BACKGROUND**

5 This Commission investigation was opened under ordering paragraph number 5 of
6 Order No, 07-015, which states that "The Commission shall open a new docket to review the
7 appropriate method for determining the forced outage rate for generating plants..." In
8 Administrative Law Judge Arlow's ruling of January 30, 2009, the Commission adopted a
9 Consolidated Issues List to govern the scope of this proceeding. The Consolidated Issues
10 List focuses on broad and general methodology issues for forecasting forced outages rates.
11 It includes only one issue on planned outages, which is "what methodology should the
12 Commission adopt for planned maintenance (e.g. average versus forecast) of thermal,
13 hydro and wind plants." In no instance does the issue list address utility-specific issues
14 related to the implementation of particular forced or planned modeling methodologies.

15 With the exception of ICNU, no party's direct testimony addressed utility-specific
16 modeling issues. The testimony of ICNU witness Randall J. Falkenberg, however,
17 addressed in detail three PacifiCorp-specific implementation issues: (1) PacifiCorp's planned
18 outage schedule, based upon a 48-month average, (2) PacifiCorp's heat rate and minimum
19 loading technique; and (3) PacifiCorp's ramping adjustment. Approximately one-half of
20 ICNU's direct testimony is devoted to these issues. In support of its position, ICNU cited to
21 discovery requests, previous rate case filings, and orders from Oregon and other
22 jurisdictions where ICNU and PacifiCorp have litigated these or related issues. Contrary to
23 the policy-based nature of this investigation, ICNU appears to have approached this case as
24 simply another opportunity to litigate net power cost issues against PacifiCorp. ICNU's
25 testimony in this generic docket is similar, and in some respects identical, to testimony Mr.
26 Falkenberg has filed in recent PacifiCorp rate cases in Oregon and Utah.

1 To preserve PacifiCorp's litigation position, PacifiCorp's rebuttal testimony contains a
2 general response to all issues raised by ICNU. PacifiCorp's response is less detailed and
3 robust, however, than it would be in a rate case setting both because of the more truncated
4 schedule in this case and for fear of shifting the focus of this docket from the important
5 policy issues to the detailed, PacifiCorp-specific implementation issues.

6 **II. DISCUSSION**

7 Generic issues are those not specific to a particular utility. See *ICG Telecom Group,*
8 *Inc.*, Docket CP 1045, Order No. 02-438, 3 (July 8, 2002). Generally, the Commission
9 addresses only generic issues in investigative dockets. Thus, if an issue or proposal is
10 unique to a particular utility, the Commission should decide it in a company-specific docket.
11 *Id.*

12 The Commission has previously made a distinction between a docket to establish
13 general guidelines, which would be generic in nature, and a docket to review company-
14 specific issues related to the implementation of such general guidelines, which would occur
15 in a rate case or other utility-specific case. *Re Transition Costs for Electric Utilities*, Docket
16 UM 834, Order No. 98-353, 1998 WL 748606, *5 (Aug. 24, 1998). In that case, the
17 Commission stated:

18 [The guidelines] reflect the policy decisions we can make in a
19 docket that applies to utilities in differing circumstances and
20 that does not provide the context of a particular utility's
21 unbundled rate filing. We fully expect substantial discussion
22 about implementing the guidelines in any such proceeding to
unbundle an individual utility's rates.² *Id.*

23 _____
² Specific issues the Commission found are appropriate for company-specific proceedings
24 include cost allocation for multi-state utilities, productivity and labor cost savings resulting from the
25 sale of assets, the issues arising from a partial asset sale, securitization as a mitigation strategy,
whether to reserve specific resources rather than netting all low-cost assets against high-cost assets,
factors affecting whether full or partial cost recovery should be allowed, allocation of transition costs
among customer classes, and determination of the appropriate exit fee.

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1 The Commission acknowledged that company-specific proceedings are better able to
2 address the unique issues facing each particular utility because not all relevant
3 considerations are before the Commission in generic proceedings. *Id.* at *13.

4 In another generic docket, the Commission refused to adopt a general standard for
5 measuring rate impact of utility demand-side programs because the parties only
6 recommended a very specific test rather than a general guideline. *Re Calculation and Use*
7 *of Cost-effectiveness Levels for Conservation*, Docket UM 551, Order No. 94-590, 1994 WL
8 209908, *17-18 (Apr. 6, 1994) (“each utility’s least-cost planning process provides the
9 appropriate forum for this issue”).

10 Oregon’s Administrative Procedures Act (“APA”) is also instructive on this point.
11 Under the APA, the scope of the issues addressed in a generic policy docket is limited to
12 issues of general applicability. The Oregon APA contains two basic types of agency
13 action—rulemaking and contested cases. The APA defines a “rule” as an agency directive,
14 standard, regulation, or statement of general applicability implementing, interpreting, or
15 prescribing law or agency policy. ORS 183.310(9). *See also Pac. NW Bell Tel. Co. v.*
16 *Eachus*, 107 Or. App. 539, 542 (1991) (agency decisions that are not directed to a named
17 person and involve a quasi-legislative act of general applicability are rules). On the other
18 hand, a “contested case” is a proceeding before an agency in which individual legal rights of
19 specific parties are determined after an agency hearing. ORS 183.310(2).

20 Although investigative dockets are neither rulemaking nor contested case
21 proceedings under the Oregon APA, they are more similar to a rulemaking because they
22 announce general policy guidelines of general applicability. Therefore, company-specific
23 issues are beyond their scope.

24 As the consolidated issue list makes clear, this is an investigation of forecasting
25 forced outage rates for electric generating units. The purpose of the docket is to set general
26 policy guidelines on modeling forced outages that are applicable to all electric utilities under

1 the Commission's jurisdiction. It is not the proper forum for ICNU to litigate PacifiCorp-
2 specific net power cost issues.

3 This is especially true because PacifiCorp has a net power costs filing, UE 207,
4 pending concurrently with this case. In choosing whether to address a particular issue in a
5 generic or specific docket, the Commission weighs the efficiency of each proceeding in
6 disposing of the issue. *Re Portland General Electric*, Docket UE 102, Order No. 98-534,
7 1998 WL 992032, *1 (Dec. 17, 1998).

8 Here, removing the PacifiCorp-specific issues from this generic docket is more
9 efficient because there is a pending docket—UE 207—that can address the PacifiCorp-
10 specific issues, presumably with the benefit of the Commission's order in this case setting
11 general policy guidelines. It is inefficient for PacifiCorp and ICNU to litigate these issues
12 prior to the establishment of these guidelines or to litigate these issues here and in UE 207
13 simultaneously. It is also unfair to require other parties to expend resources to analyze and
14 respond to ICNU's PacifiCorp-specific issues that are outside the scope of the proceeding
15 established by ALJ Arlow. Finally, if these issues are litigated in this generic docket, it
16 distracts focus from the key policy issues in the case.

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III. CONCLUSION

For all of the foregoing reasons, PacifiCorp requests that the Commission grant this Motion and limit the scope of the docket as described above.

DATED: May13, 2009.

MCDOWELL & RACKNER PC



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