

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UE 200**

In the Matter of	)	
	)	OPENING BRIEF OF THE INDUSTRIAL
PACIFICORP	)	CUSTOMERS OF NORTHWEST UTILITIES
	)	
2009 Renewable Energy Adjustment Clause	)	
_____	)	

**I. INTRODUCTION**

Pursuant to Administrative Law Judge (“ALJ”) Power’s July 9, 2008 Ruling, the Industrial Customers of Northwest Utilities (“ICNU”) submits this Opening Brief in PacifiCorp’s 2009 Renewable Energy Adjustment Clause (“RAC”) proceeding. ICNU recommends that the Oregon Public Utility Commission (“OPUC” or the “Commission”) deny PacifiCorp’s request to include in rates the costs associated with the Glenrock, Rolling Hills and Seven Mile Hill wind generation facilities because the Company imprudently circumvented and violated the Commission’s competitive bidding rules. The removal of these wind projects should be non-prejudicial, and the Company could later seek to include them in rates if the resources are found to be the resources selected pursuant to an approved request for proposal (“RFP”). If the Commission does not elect to enforce its competition bidding rules and completely exclude these wind projects from rates, in the alternative, ICNU recommends that the Commission adopt a pricing adjustment to reflect the fact that the projects were improperly acquired outside of a competitive bidding process.

PacifiCorp also imprudently built the Rolling Hills resource when the Company relied upon on incomplete and questionable wind study information. The Commission should impose a disallowance for PacifiCorp's failure to investigate the Rolling Hills' site by either completely removing Rolling Hills from rates or adjusting Rolling Hills' capacity factor to a more reasonable number.

## II. BACKGROUND

PacifiCorp has been planning to purchase or acquire a significant amount of new wind generation since at least 2004. As part of the Company's 2004 Integrated Resource Plan ("IRP"), the Commission approved PacifiCorp's preferred portfolio, which proposed "to aggressively pursue cost-effective renewable resources," including up to 1,400 MWs of wind by 2015. Re PacifiCorp 2004 IRP, Docket No. LC 39, Order No. 06-029 at 3 (Jan. 23, 2006). As part of the purchase of PacifiCorp by MidAmerican Energy Holdings Company ("MEHC"), PacifiCorp also committed to meet a goal of 1,400 MWs of cost effective renewable energy by 2015. Re MEHC, Docket No. UM 1209, Order No. 06-121, Appendix A at 35 (March 14, 2006). PacifiCorp's 2007 IRP accelerated these plans and indicated that the Company intended to acquire 2,000 MWs of renewable energy by 2013 as part of its overall best cost/risk resource portfolio. UE 200, Staff/200, Schwartz/22.

PacifiCorp has long been aware that its new renewable resources must be acquired pursuant to a Commission-approved RFP. In its 2004 IRP, PacifiCorp specifically informed the Commission that it would acquire its "renewable resources through current and future RFP(s)." Re PacifiCorp 2004 IRP, Docket No. LC 39, Order No. 06-029 at 3. In August 2006, the Commission adopted competitive bidding rules requiring PacifiCorp to issue an RFP

for all major resources which have a duration of five years or longer and greater in size than 100 MW. Re an Investigation Regarding Competitive Bidding, Docket No. UM 1182, Order No. 06-446, Appendix A at 1 (Aug. 10, 2006).

The Oregon legislature passed the Oregon Renewable Energy Act (Senate Bill (“SB”) 838) and the bill was signed into law on June 6, 2007. SB 838 requires PacifiCorp to include in its power portfolio a percentage of electricity generated from qualifying renewable energy projects. PacifiCorp must purchase 5% renewable energy by 2011, 15% by 2015, 20% by 2020, and 25% by 2025. ORS § 469A.052.

PacifiCorp’s existing plans to acquire renewable resources allow the Company to exceed its obligations under the Oregon renewable portfolio standard until at least the end of 2014. Under SB 838, PacifiCorp needs 1,031 MWs of renewable energy by 2011, and 3,359 MWs by 2015. UE 200, Staff/200, Schwartz/21. In May 2007, prior to the passage of SB 838, PacifiCorp already planned to add 1,817 MWs by 2011 and 2,247 by 2013. Re MEHC, Docket No. UM 1209, Compliance Filing (May 30, 2007). Even without the banking of renewable energy credits (“RECs”), PacifiCorp’s current plans easily meet its immediate RPS needs.

### **III. LEGAL STANDARD**

PacifiCorp has the burden of proof to establish that its proposed RAC rate increase is just and reasonable. ORS § 757.210(1)(2007); ORS § 469A.120(3)(2007); Pac. Northwest Bell Tel. Co. v. Sabin, 21 Or. App. 200, 213-14 (1975). The Commission also has the independent responsibility to ensure that PacifiCorp’s customers are only charged just and reasonable rates. ORS § 756.040(7)(2005); Pac. Northwest Bell Tel. Co., 21 Or. App. at 213.

The burden of proof is borne by the Company “throughout the proceeding and does not shift to any other party.” Re PacifiCorp, Docket No. UE 116, Order No. 01-787 at 6 (Sept. 7, 2001).

PacifiCorp must demonstrate that its renewable energy costs are reasonable and prudent before the Commission will allow their inclusion in rates. ORS § 469A.120(1)&(3) (2007); see Re US West Communications, Inc., Docket Nos. UT 125/UT 80, Order No. 00-191 at 15 (Apr. 14, 2000). Prudence is based on the reasonableness of the action using existing circumstances and what the Company either knew or should have known at the time it was making its decision. Re Northwest Natural Gas Co., Docket No. UG 132, Order No. 99-697 at 52 (Nov. 12, 1999).

SB 838 provides PacifiCorp with additional procedural opportunities to recover its costs and obligations to purchase specific amounts of renewable energy, but does not guarantee cost recovery or weaken PacifiCorp’s legal obligation to demonstrate that all costs are reasonable and prudent. SB 838 specifically states that parties retain their full procedural rights, and specifically limits PacifiCorp’s cost recovery to “prudently incurred costs associated with compliance with” the RPS. ORS § 469A.120(1).

#### **IV. ARGUMENT**

##### **1. The Commission Should Exclude the Costs of PacifiCorp’s Wind Resources that Were Imprudently Acquired in Violation of the Competitive Bidding Rules**

PacifiCorp has violated the Commission’s competitive bidding rules by failing to conduct an RFP prior to building Rolling Hills, Glenrock and Seven Mile Hill. PacifiCorp selected a 99 MW project size for these wind generation resources solely to avoid the requirement to conduct an RFP. See Hearing Transcript (“Tr.”) at 42-43 (Tallman). These wind

generation resources, however, are actually larger than 100 MWs, and the Commission should exclude their costs and benefits from rates until or if they are selected through an RFP. In lieu of removing these resources from rates, the Commission could impose a prudence related disallowance for Glenrock and Rolling Hills based on the costs of comparable wind resources. The Commission should penalize PacifiCorp's actions in this case to maintain the integrity of its competitive bidding rules, and to ensure that the RPS is complied with in a reasonable and prudent manner. ICNU/100, Falkenberg/23; see Tr. at 59-64 (Schwartz).

**A. Glenrock, Rolling Hills and Seven Mile Hill Exceed 100 MWs**

Rolling Hills, Glenrock and Seven Mile Hill facilities must be acquired pursuant to an RFP because they are larger than 100 MWs. The competitive bidding rules require PacifiCorp to issue an RFP for all major resources which have a duration of five years and a size greater than 100 MW. Re an Investigation Regarding Competitive Bidding, Docket No. UM 1182, Order No. 06-446, Appendix A at 1. There are limited exceptions to the RFP requirement, and PacifiCorp has demonstrated that it has the ability to seek a waiver of the rules. See Re PacifiCorp Petition for Waiver of the Commission's Competitive Bidding Guidelines, Docket No. UM 1374, Order No. 08-376 (July 7, 2008); ICNU/100, Falkenberg/21.

Glenrock and Rolling Hills are one single project that significantly exceeds 100 MWs. ICNU/100, Falkenberg/17; UE 200, Staff/200, Schartz/12-13<sup>1/</sup>; UE 199, Staff/600, Schwartz/6-8. The evidence demonstrates that “there is really no reason why Glenrock and Rolling Hills could not have been a single project larger than 200 MW.” ICNU/100,

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<sup>1/</sup> Citations to Staff and PacifiCorp's testimony and exhibit in the brief will identify whether the evidence was originally pre-filed in UE 199 or UE 200. All of ICNU's evidence was filed in UE 200.

Falkenberg/17. Indeed, Staff concluded that it is not even “a close call” about whether Glenrock and Rolling Hills are one project, and PacifiCorp’s attempts to separate the two do not pass “the laugh test.” Tr. at 62 (Schwartz).

Glenrock and Rolling Hills are located at the same site and only one mile apart. UE 200, Staff/200, Schwartz/13; ICNU/100, Falkenberg/17; Tr. at 64 (Schwartz). A map of the two projects shows that Glenrock and Rolling Hills are adjacent and run parallel to each other. ICNU/104. The map shows that the separation “between Glenrock and Rolling Hills appears somewhat arbitrary.” ICNU/100, Falkenberg/17. When planning to build Glenrock/Rolling Hills, they were originally [REDACTED]. UE 200, Confidential PPL/205, Tallman/30, 34.

Glenrock and Rolling Hills also share other essential characteristics, including that they both are scheduled to become operational at the same time and PacifiCorp filed a single permit application. See UE 200, Staff/200, Schwartz/13; Tr. at 54 (Schwartz). Glenrock and Rolling Hills are also electrically connected. For example, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]” Confidential ICNU/124, Falkenberg/15; Confidential ICNU/125.

Glenrock/Rolling Hills should also be considered over 100 MWs because PacifiCorp planned to, and is already constructing, additional turbines which increase their size above 200 MWs. PacifiCorp “is adding another 39 MW of capacity at the Glenrock/Rolling

Hills site to be in-service by year-end.” UE 200, Staff/200, Schwartz/13. This additional 39 MWs at Glenrock III is located [REDACTED] of the Glenrock site, uses the same type of turbines, [REDACTED], and has the same expected in-service date as Glenrock/Rolling Hills. UE 199, Staff/202, Schwartz/2, 5; Confidential ICNU/123, Falkenberg/7-8. This demonstrates that the Glenrock project by itself exceeds 100 MWs and illustrates the Company’s complete disregard for the Commission’s requirement to conduct an RFP on projects over 100 MWs.

Seven Mile Hill also exceeds 100 MWs because the Company separated a 118 MW project into 99 MW and 19 MW projects at the same location. The Seven Mile Hill projects are at the same location, use the same type of wind turbines, and have the same expected in-service date. UE 199, Staff/202, Schwartz/1, 4. Further, Seven Mile Hill II [REDACTED] [REDACTED] [REDACTED] Confidential ICNU/122, Falkenberg/7-8, 11. Essentially, there is no reason why Seven Mile Hill should not be considered a single project larger than 100 MW. See ICNU/100, Falkenberg/17-18.

**B. PacifiCorp Admits that the Company Artificially Sized the Wind Projects in Order to Avoid the Competitive Bidding Rules**

PacifiCorp has selected the 99 MW size for Rolling Hills, Glenrock and Seven Mile Hill with the sole purpose of avoiding the Commission’s requirement to conduct an RFP for all major resources. See Tr. at 42-43 (Tallman). PacifiCorp has attempted to justify its decision to unilaterally disregard the competitive bidding rules; however, these justifications are

groundless because there was no reason PacifiCorp should not have conducted an RFP other, than to ensure its projects are the ones built and paid for by ratepayers.

Although PacifiCorp was evasive regarding the reasons for sizing its wind projects at 99 MWs in discovery and pre-filed testimony, the Company admitted on the witness stand at-hearing that the projects were sized to avoid an RFP. PacifiCorp witnesses Mark Tallman stated that “the projects somewhat sized themselves.” Tr. at 43 (Tallman). Mr. Tallman admitted that the projects were sized at 99 MWs because “the only way we can get the project constructed by the end of 2008 is if we’re not required to go through a commissioner approved RFP process.” Tr. at 42-43 (Tallman).

Mr. Tallman claimed that the projects would not have been developed or built if the Company was required to conduct an RFP. Id. at 42-43. PacifiCorp argues that the wind turbines would not have been available and that the Company would not have obtained the Federal Production Tax Credit (“PTC”) if it had conducted an RFP. ICNU/100, Falkenberg/18; ICNU/102, Falkenberg/43-45. These are inaccurate post hoc rationalizations because the issue of the PTC was not a factor in the Company’s decision making regarding Glenrock, Rolling Hills and Seven Mile Hill. Even if these had been actual concerns, the evidence demonstrates that PacifiCorp could have completed an RFP to acquire the resources by the end of 2008.

PacifiCorp did not hasten the construction of the wind projects to obtain the PTCs. When considering whether to build the projects, there is no evidence that PacifiCorp’s board and executives [REDACTED]

[REDACTED] Confidential ICNU/100, Falkenberg/18-19; see also ICNU/102, Flakenberg/46. In fact, PacifiCorp did not even analyze the likelihood of whether Congress



would extend the PTC, and instead simply assumed that they would be renewed. ICNU/100, Falkenberg/19-20; ICNU 102, Falkenberg/46; UE 199, Staff/600, Schwartz/3. If the PTC issue was critical to the Company's decision to move forward with the projects, then the completion dates left no margin for error. Attempting to complete these projects by the end of 2008 solely to gain the benefit of the PTC would have been risky because the projects were planned to come on line by December 31, 2008, and if "the project had been delayed for unforeseen reasons, then PTC may not have been available if the credits were not extended." ICNU/100, Falkenberg/18.

The turbine availability is also a red-herring as PacifiCorp has been planning to build or acquire these projects long before SB 838 was passed. PacifiCorp's claims that the Rolling Hills turbines were only available on a time limited basis, and that the Company needed to react quickly to build this plant are particularly disingenuous. See UE 200, PPL/203, Tallman/21. This alleged time sensitivity should not have prevented them from performing an RFP because PacifiCorp [REDACTED] [REDACTED] ICNU/102, Falkenberg/12. The Company could have used the turbines in an RFP as a self-build benchmark resource "or for building a project on a site offered by a bidder for development." UE 199, Staff/600, Schwartz/3. It is not credible that the Company had sufficient time [REDACTED], but not to conduct an RFP.

Importantly, PacifiCorp had sufficient time to conduct an RFP before acquiring resources with an in-service date of December 31, 2008. UE 200, Staff/200, Schwartz/12; ICNU/100, Falkenberg/21. PacifiCorp has been aware of its commitments to build renewable energy for a long time, and there is "no reason why the Company could not have arranged to

implement an RFP in time to conduct a bidding process for a December 2008 in service date for comparable resources.” ICNU/100, Falkenberg/21. The Commission has previously approved RFPs within months after filing, and even if the Company delayed issuing an RFP in 2006, “the Company had all of 2007 to undertake a competitive solicitation for resources with a 2008 in-service date.” UE 200, Staff/200, Schwartz/11-12. Staff’s testimony that the Company could have conducted an RFP is particularly compelling because Ms. Schwartz is Staff’s lead analyst for electric utility competitive bidding and renewable resources. UE 200, Staff/201, Schwartz/1. The Commission should be mindful that, just as PacifiCorp can “always size wind projects to come under the 100 MW threshold, it can also always create time constraints by dragging its feet until the last minute.” ICNU/100, Falkenberg/21.

Finally, PacifiCorp was under no requirements from SB 838 to complete these projects for an in-service date of 2008, or even 2009 and 2010. There was no reason to rush into building these projects, except for the Company’s desire to obtain immediate rate recovery, and include these projects in rate base before the SB 838 rate cap applies.

**C. The Commission Should Not Include Glenrock, Rolling Hills, and Seven Mile Hill in Rates**

Glenrock, Rolling Hills and Seven Mile Hill should not be included in rates because PacifiCorp failed to acquire these resources in the competitive bidding process. The Company should have the option to seek to include their costs and benefits in rates in a future rate proceeding only if these resources are selected pursuant to a Commission approved RFP. PacifiCorp would still be required to demonstrate the reasonableness and prudence of any resources acquired in the RFP process. For the Commission to reach any other conclusion would

essentially signal to the utilities that the RFP rules are meaningless because it is hard to imagine a more blatant disregard for the rules than what is present in this proceeding.

The Commission should conclude that a major resource acquired inconsistent with the competitive bidding rules is per se imprudent. See UE 200, Staff/200, Schwartz/12 (Rolling Hills imprudent because it was acquired inconsistent with the competitive bidding rules). PacifiCorp has a long history of avoiding the competitive bidding process to acquire higher cost resources, including affiliate owned resources like West Valley. PacifiCorp's recent purchase of the Chehalis plant also demonstrates that PacifiCorp still makes many of its actual resource acquisition decisions outside of the RFP process. The Commission should not allow PacifiCorp to make a sham of its competitive bidding rules or allow PacifiCorp the freedom to decide on a case by case basis what Commission rules should be followed. ICNU/100, Falkenberg/22.

A prudency related disallowance is also critical to ensure the integrity of the recently passed SB 838. PacifiCorp should not make the disingenuous claim that it needs to ignore the Commission's rules to comply with the RPS, nor should the Company be allowed cost recovery of unnecessarily expensive and poorly performing projects. Failing to penalize PacifiCorp will "give renewable energy a 'black eye' if utilities profit from unsuccessful projects that fail to deliver renewable energy in a cost effective manner." Id. at Falkenberg/23.

Removal of Glenrock, Rolling Hills and Seven Mile Hill from the 2009 RAC should not harm ratepayers or unduly penalize PacifiCorp. Ratepayers should be protected because PacifiCorp does not need these resources in 2009 to comply with the RPS. PacifiCorp should also be protected because it can expeditiously conduct an RFP and may have the option to

include a similar overall amount of wind resources in its 2010 or 2011 RAC. If these resources truly are cost effective and the low cost alternatives, then the Company should be able to sell their output in the market to offset the revenue losses associated with their removal from rates.

**D. The Commission Could Reduce the Costs of Glenrock and Rolling Hills Based on Market Alternatives**

In the alternative, the Commission should invoke a prudence disallowance based on the costs of market wind resources if it does not completely remove Seven Mile Hill, Glenrock and Rolling Hills from the RAC.<sup>2/</sup> ICNU proposes that the Commission adopt an adjustment based on the costs of market alternatives that the Company entered into 2008. This conservative adjustment is consistent with prior Commission decisions to remove the costs of imprudent or unreasonable contracts, and impute costs based on proxy alternatives. Re PGE, Docket No. UE 139, Order No. 02-772 at 13-14 (Oct. 30, 2002) (imprudent contracts); Re PacifiCorp, Docket No. UE 116, Order No. 01-787 (Sept. 7, 2001) (SMUD contract).

ICNU proposes that the Commission impute the costs of Glenrock and Rolling Hills based on three new wind purchase power agreements (“PPAs”): Mountain Wind I, Mountain Wind II and Spanish Fork II. ICNU/100, Falkenberg/22. The average cost for these projects was \$60.25/MWh, compared to the cost of Glenrock (\$73.24/MWh) and Rolling Hills (\$95.68/MWh). Id. These represent a reasonable market cost proxy for the 2009 test year for the imprudent Glenrock and Rolling Hills projects.

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<sup>2/</sup> ICNU does not propose a market alternative adjustment for Seven Mile Hill because it has a cost comparable to the competitive projects ICNU based its adjustments on. Including it in the total would result in a modest reduction to ICNU’s adjustment; however, the Company should not be rewarded for its decision to avoid competitive bidding. ICNU/100, Falkenberg/22 n.6.

PacifiCorp claims that that Rolling Hills and Glenrock compare favorably with the wind PPAs because ICNU did not account for the fact that these projects are smaller (18 MWs, 60 MWs and 79 MWs), have shorter terms, and the 18 MW Spanish Fork project does not include the RECs. UE 200, PPL/203, Tallman/17-18. PacifiCorp, however, does not justify the significant pricing difference between Glenrock/Rolling Hills and these market alternatives. See id. It is hard to imagine that these factors would make the \$95.68/MWh cost of the Rolling Hills project anything close to the average \$60.25/MWh wind PPA alternatives. In fact, the market value of the RECs has recently been estimated by the Company at \$3.5/MWh, which does not fundamentally alter ICNU's adjustment. See ICNU/100, Falkenberg/24.

PacifiCorp also questions ICNU's use of test year costs for the wind projects, instead of levelized costs based on the life of the projects. UE 200 PPL/203, Tallman/17-18. It is not fair to compare ICNU's adjustment to levelized costs of the resources because PacifiCorp is requesting to recover test year costs in rates and not the levelized costs of its own wind resources. Tr. at 128, 141-142 (Falkenberg). In addition, ICNU's adjustment is consistent with the Commission's past adjustments for imprudent resources that were based on market prices in the test year, and not a long-term analysis comparing the future values of the market alternatives. See Re PGE, Docket No. UE 139, Order No. 02-772 at 13-14.

## **2. Rolling Hills Is an Imprudent Project that Should Be Removed From Rates**

PacifiCorp imprudently decided to build Rolling Hills based on inadequate and unreliable information that may cause the facility to poorly perform for the next twenty five years. PacifiCorp relied upon extremely limited wind data that was only a [REDACTED] and was gathered contrary to [REDACTED]. Indeed, PacifiCorp's own consultant

recommended that the Company conduct further tests to ascertain whether and how the project should be built. PacifiCorp's rushed decision to build Rolling Hills could harm the capacity factors at both Rolling Hills and Glenrock, and cost ratepayers millions of dollars over the life of the projects.

**A. Rolling Hills Is an Expensive and Uneconomic Project**

PacifiCorp's economic analysis of Rolling Hills shows that under the best of assumptions it is a questionable resource addition. ICNU/100, Falkenberg/8-9. Rolling Hills was expected to be more expensive than other resources options (including wind) and could only be considered economic if the penalty payment for failing to comply with a RPS was

██████████ Id. As PacifiCorp has no immediate RPS compliance issues in Oregon, Rolling Hills was an expensive resource alternative that the Company should only develop after it had exhausted all other less costly alternatives to comply with SB 838. As explained by Ms. Schwartz, "Rolling Hills is an opportunity that PacifiCorp should have passed up." UE 199, Staff/600, Schwartz/3.

**B. PacifiCorp Imprudently Built Rolling Hills Prior to Completing the Necessary Wind Studies**

PacifiCorp failed to adequately investigate the wind conditions at the Rolling Hills site, and appears to "have decided to build an ill-convinced wind project adjacent to the Glenrock site because it had the opportunity and means to do so, and expected that cost recovery would be rapidly forthcoming." ICNU/107, Falkenberg/4. The analysis PacifiCorp relied upon to determine the capacity factor at Rolling Hills was not based on "████████████████████" and was nothing more than "████████████████████" Confidential

ICNU/102, Falkenberg/29, 23. PacifiCorp should have further investigated the site by gathering data at additional locations over a longer period of time to determine if Rolling Hills should be built, and, if so, where to place the wind turbines to best optimize their location.

The capacity factor, or the expected annual generation of a wind project, is central to the project's overall economics. ICNU/100, Falkenberg/9. A wind facility's capacity factor is highly dependent upon its location, the quality of the turbines, and the correct turbine placement. The capacity factor of a wind project "is the most direct measure of a wind project's productivity and, therefore, its economic benefit." UE 200, Staff/200, Schwartz/13. Even a small difference in average wind speed and capacity factor can result in a "large difference in the cost of electricity produced and, therefore, a large difference in the cost of the electricity generated." Id. A [REDACTED] difference in capacity factors at different locations was sufficient for PacifiCorp [REDACTED] [REDACTED]. Confidential ICNU/100, Falkenberg/9.

PacifiCorp built Rolling Hills based on limited, short-term wind data. Typically, PacifiCorp will construct several on site test towers with wind measuring equipment, gather data between [REDACTED] years, and compare the information with multiple comparison towers at other locations. Confidential ICNU/100, Falkenberg/10; Confidential ICNU/102, Falkenberg/3. For Rolling Hills, PacifiCorp did not use any onsite towers, but primarily relied upon [REDACTED] [REDACTED] and "only one year's worth of data from two towers at the adjacent Glenrock site." ICNU/100, Falkenberg/12; Confidential ICNU/124, Falkenberg/10.

As late as November 2007, PacifiCorp's consultants stated that they had [REDACTED]

[REDACTED]

[REDACTED] Confidential ICNU/124,

Falkenberg/1-10, 14. These original “studies” were not intended to [REDACTED]

[REDACTED]

[REDACTED] Id. at Falkenberg/10-11. [REDACTED]

[REDACTED]

[REDACTED] See Confidential ICNU/124, Falkenberg/11-12, 14 [REDACTED]

[REDACTED] Id.

PacifiCorp also relied upon very limited wind data from other locations. Despite their close location, the few towers at Glenrock used by PacifiCorp were ill-suited to evaluate the wind conditions at Rolling Hills. PacifiCorp’s consultants noted that the towers used were “[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Confidential ICNU/102, Falkenberg/29. The consultants also criticized the

[REDACTED]

[REDACTED] Id. The use of better and more

numerous wind towers was for [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Confidential ICNU/100, Falkenberg/12-13. [REDACTED]

[REDACTED]

[REDACTED] Confidential ICNU/100,

Falkenberg/13, Confidential ICNU/102, Falkenberg/29; UE 200, PPL205, Tallman/33, 39.



PacifiCorp's consultants ultimately recommended that PacifiCorp [REDACTED]. Confidential ICNU/102, Falkenberg/29. This could allow PacifiCorp to determine whether to build the Rolling Hills wind facility and best optimize turbine operations. PacifiCorp [REDACTED]. [REDACTED]. [REDACTED] UE 200, Confidential PPL/204, Tallman/4; Confidential ICNU/102, Falkenberg/3. In not delaying the project to take advantage of the additional wind data, PacifiCorp [REDACTED]. [REDACTED] Confidential ICNU/100, Falkenberg/15; See UE 200, Confidential Staff/200, Schwartz/14-15.

In addition to the high expected costs and the incomplete wind information, Rolling Hills is expected to have other problems and concerns. For example, the development of Rolling Hills project is also expected to "[REDACTED]. [REDACTED]." Confidential ICNU/102, Falkenberg/36; UE 200, Confidential Staff/200, Schwartz/16-17; UE 200, Staff/202. This not only demonstrates the interconnected nature of Rolling Hills and Glenrock, but raises questions why PacifiCorp would decide to proceed with a project that [REDACTED].

**C. The Commission Should Either Remove the Costs of Rolling Hills from Rates or Impute a Higher Capacity Factor**

The Commission should impose an adjustment to reflect that PacifiCorp imprudently decided to build Rolling Hills without adequately investigating its reasonableness, prudence or cost effectiveness. The simplest resolution would be to remove the costs of Rolling

Hills from rates. In the alternative, the Commission could impute a higher capacity factor based on the capacity factor that PacifiCorp may have obtained if it had either conducted an RFP or used better wind data.

The Commission should impute a 38% capacity factor for Rolling Hills instead of the [REDACTED]% currently assumed by the Company. UE 200, Staff/200, Schwartz/16; UE 200, Confidential PPL/204, Tallman/1. When PacifiCorp made the decision to build Rolling Hills, the capacity factor was estimated at [REDACTED]%, although the consultants originally thought it might be as low as [REDACTED]%. Confidential ICNU/124, Falkenberg/14. PacifiCorp now estimates the capacity factor will be [REDACTED]%; however, this estimate is still only a guess because it was [REDACTED] [REDACTED] and Rolling Hills is not yet operating. See UE 200, Confidential PPL/204, Tallman/1.

Ms. Schwartz recommends that the Commission impute a 38% capacity factor “to capture the benefits ratepayers would receive if PacifiCorp had selected an appropriate wind site . . . .” UE 200, Staff/200, Schwartz/16; UE 199, Staff/200, Schwartz/3. This recommendation is based on the fact that the average capacity factor of wind plants in Wyoming is about 38%. UE 199, Staff/200, Schwartz/4; UE 200, Staff/200, Schwartz/17. Staff’s proposed 38% capacity factor is very conservative because a higher number could be imputed if the Commission imposed an adjustment based on the higher capacity factors of other recently completed Wyoming wind projects. UE 199, Staff/600, Schwartz/11; ICNU/107, Falkenberg/3. Even with a 38% capacity factor, Rolling Hills is an expensive resource and “the cost of Rolling Hills would exceed the cost of Seven Mile Hill on a per kWh basis.” ICNU/107, Falkenberg/4.

PacifiCorp argues that a higher capacity factor should not be imputed because there were no other Wyoming wind projects available, and that ICNU and Staff overstate the costs of Rolling Hills. PP/203, Tallman/6-13, 17-22. There is simply no way to accurately test whether there were other available Wyoming resources because the Company did not perform an RFP. The fact that PacifiCorp recently announced that it is moving forward with two new 99 MW wind projects in Wyoming strongly indicates that other resources may have been available. See, e.g. UE 200, Staff/508. Similarly, since PacifiCorp circumvented the RFP requirement, “there is no price discovery to demonstrate that Rolling Hills was the best resource for ratepayers.” UE 199, Staff/600, Schwartz/3. Regardless, PacifiCorp cannot dispute that Rolling Hills’ test year costs are almost double those for Seven Mile Hill. Id. at Schwartz/5.

The Commission should completely remove Rolling Hills from rates if the Commission does not adopt the capacity factor adjustment. Even assuming that PacifiCorp’s cost estimates and reasoning are correct, “the Company still made an imprudent decision to commit to Rolling Hills [REDACTED]” Confidential ICNU/107, Falkenberg/6. If PacifiCorp’s claims regarding the costs of Rolling Hills are accurate, then removing Rolling Hills “would not necessarily have an adverse impact on the Company over the long term.” Id.

## V. CONCLUSION

This is the first case for this Commission to decide under its new renewable rules. It is critically important to ratepayers that are being asked to bear these additional costs that these projects costs be prudently incurred and that the Commission rules be scrupulously followed. Neither is the case here. PacifiCorp has shown a callous disregard for the process established by

the Commission. Glenrock, Rolling Hills and Seven Mile Hill wind generation facilities should not be included in rates because the Company imprudently circumvented the Commission's competitive bidding rules. If the Commission does not exclude these resources from rates, then the costs of Glenrock and Rolling Hills should be reduced based on market alternatives. PacifiCorp also imprudently rushed the construction of the Rolling Hills facility without adequately investigating the expected availability of wind. Regardless of the competitive bidding rules, Rolling Hills is an imprudent facility which should either be removed from rates or have a higher capacity factor imputed.

Dated this 22nd day of September, 2008.

Respectfully submitted,

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September 22, 2008

***Via Electronic and US Mail***

Public Utility Commission  
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Salem OR 97308-2148

Re: In the Matter of PACIFICORP 2009 Renewable Energy Adjustment  
Clause  
**Docket No. UE 200**

Dear Filing Center:

Enclosed please find the original and five (5) copies of each of the following documents for filing in the above-referenced docket:

- Confidential Opening Brief of the Industrial Customers of Northwest Utilities; and
- Redacted Opening Brief of the Industrial Customers of Northwest Utilities.

Thank you for your assistance and please do not hesitate to contact me with any questions.

Sincerely yours,

/s/ Ruth A. Miller  
Ruth A. Miller

Enclosures

cc: Service List

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day served the foregoing Confidential Opening Brief of the Industrial Customers of Northwest Utilities upon the parties indicated below with a (C), which are authorized to receive confidential information pursuant to the protective order, by causing the same to be deposited in the U.S. Mail, postage-prepaid.

In addition, I HEREBY CERTIFY that I have this day served the forgoing Redacted Opening Brief of the Industrial Customers of Northwest Utilities upon the parties shown below, by causing the same to be deposited in the U.S. Mail, postage prepaid, where paper service has not been waived and where a confidential version has not been provided, as well as via electronic mail.

Dated at Portland, Oregon, this 22nd day of September, 2008.

/s/ Ruth A. Miller  
Ruth A. Miller

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**(C) = Authorized to Receive Confidential Information Pursuant to Protective Order**  
**(W) = Waived Paper Service**