

McDowell & Rackner PC



AMIE JAMIESON
Direct (503) 595-3927
amie@mcd-law.com

October 2, 2008

VIA ELECTRONIC FILING AND U.S. MAIL

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

Re: Docket No. UE 200

Enclosed in the above-referenced docket are an original and five copies of PacifiCorp's Reply Brief, including the redacted and confidential versions. A copy of this filing has been served on all parties to this proceeding as indicated on the Service List.

Very truly yours,

A handwritten signature in black ink, appearing to read "Amie Jamieson".

Amie Jamieson

Enclosure

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

Dockets UE 200 on the following named person(s) on the date indicated below by email and

4

first-class mail addressed to said person(s) at his or her last-known address(es) indicated

5

below.

6

CUB – OPUC Dockets
Dockets@OregonCUB.org

Robert Jenks
Citizens' Utility Board
bob@oregoncub.org

7

8

Deborah Garcia
Public Utility Commission of Oregon
Deborah.garcia@state.or.us

Lisa C. Schwartz
Public Utility Commission of Oregon
lisa.c.schwartz@state.or.us

9

10

Judy Johnson
Public Utility Commission of Oregon
PO Box 2148
Salem OR 97308-2148
judy.johnson@state.or.us

Irion Sanger
Davison Van Cleve PC
333 SW TAYLOR - STE 400
PORTLAND OR 97204
ias@dvclaw.com

11

12

13

Michael T. Weirich
Department of Justice
michael.weirich@doj.state.or.us

Douglas C. Tingey
Portland General Electric
doug.tingey@pgn.com

14

15

Randall Dahlgren
Portland General Electric
pge.opuc.filings@pgn.com

Ken Dragoon
Renewable Northwest Project
ken@rnp.org

16

17

John W. Stephens
Esler Stephens & Buckley
stephens@eslerstephens.com

Ann English Gravatt
Renewable Northwest Project
ann@rnp.org

18

19

Randall Falkenberg
RFI Consulting, Inc.
PMB 362
8343 Roswell Road
Sandy Springs, GA 30350
consultrfi@aol.com

20

21

22

23

DATED: October 2, 2008

24



Amie Jamieson

25

26

Of Attorneys for PacifiCorp

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 200

In the Matter of:

PACIFICORP, dba PACIFIC POWER
2009 Renewable Adjustment Clause
Schedule 202

PACIFICORP'S REPLY BRIEF

PacifiCorp respectfully submits the following Reply to the Opening Briefs of the Public Utility Commission of Oregon ("Commission") Staff and the Industrial Customers of Northwest Utilities ("ICNU") filed on September 22, 2008.

I. DISCUSSION

A. Staff's and ICNU's Proposed Disallowances in This Case are Not Authorized by Law.

1. The Commission Lacks Authority to Interpret the Guidelines Inconsistently with the Actual Language or Previous Interpretations of the Guidelines.

While Staff acknowledges that the Glenrock resource falls below the minimum size threshold for Major Resources, Staff contends that PacifiCorp "knew, or should have known" that the Commission would view Rolling Hills and Glenrock together as one Major Resource under the Guidelines. Staff's Opening Brief at 4, 7. ICNU makes a similar argument. ICNU's Opening Brief at 5. However, it is undisputed that the plain language of the Guidelines does not define "Major Resource" in the manner proposed by Staff and ICNU in this case, nor has the Commission or any party ever previously proposed such a definition.

The Commission lacks discretion to interpret the Guidelines as Staff and ICNU propose. The Supreme Court of Oregon recently held that an agency may not interpret a rule in a way that is "inconsistent with the wording of the rule itself and its context." *Gafur*

1 v. *Legacy Good Samaritan Hosp.*, 344 Or. 525, 537 (2008). That case involved an
2 argument by an agency (BOLI) that a “plausible” interpretation of one of its rules permitted
3 employees to file wage claims for missed rest breaks. The Supreme Court rejected the
4 agency’s “interpretation,” because the language of the agency rule did not specifically
5 allow such claims and: (1) the agency provided no evidence showing “that it has, in the
6 past, ‘interpreted’ [the rule] in the way that it now espouses,” and (2) the agency did “not
7 offer a past case or policy statement or any other evidence that it ever intended [the rule]
8 to have the meaning that it now advocates.” *Id.*

9 Under the *Gafur* case, the Commission should reject Staff’s and ICNU’s argument
10 as an improper, overly-expansive interpretation of the Commission’s rules. The
11 interpretation of Staff and ICNU is not specifically supported by the wording of the
12 Guidelines themselves, nor has any party provided evidence of a past case or policy
13 statement indicating that the Commission ever intended the Guidelines to have the
14 meaning that Staff and ICNU now advocate. Staff originally pointed to the QF proximity
15 guideline as precedent for its position but apparently now has abandoned this position,
16 never once citing to it in its Opening Brief. Staff now argues that its position is supported
17 by the words “site-specific” in Guideline 4 on utility ownership options. But Guideline 4
18 does not define the term “site,” nor does it even remotely address Staff’s underlying theory
19 that resources in proximity to one another should be aggregated in some cases for
20 purposes of determining whether they are Major Resources under the Guidelines.

21 While Staff argues that the Commission must read additional requirements into the
22 Guidelines to preserve their “integrity,” (Staff’s Opening Brief at 8) the Supreme Court
23 made clear in the *Gafur* decision that agency integrity is best preserved by interpreting
24 agency rules according to their express terms.

25

26

1 **2. Staff's and ICNU's Position that Acquisitions Conducted Outside of**
2 **the Guidelines Are Per Se Imprudent Is Without Support.**

3 Staff and ICNU assert that a utility's decision to acquire a Major Resource outside
4 of the competitive bidding rules is "per se imprudent." ICNU's Opening Brief at 11. See
5 also Staff's Opening Brief at 7. In this argument also, Staff and ICNU improperly expand
6 the Guidelines beyond their express terms. The Guidelines are silent on the prudence
7 standard applicable to resources acquired outside of the Guidelines and no party has
8 previously argued for application of a "per se imprudence" standard in this context.
9 Instead, as described in PacifiCorp's Opening Brief, the relevant precedent from past RFP
10 and IRP dockets suggests application of a "less weight" review standard. See, e.g.,
11 *PacifiCorp Draft 2009 Request for Proposals*, Docket UM 1208, Order No. 06-676 at 4
12 (Dec. 20, 2006) (absence of Commission-approved RFP is relevant to the evidentiary
13 showing required for a utility to establish the prudence of a Major Resource, but does not
14 automatically preclude full cost recovery).

15 In this case, PacifiCorp's evidence of Rolling Hills' cost-effectiveness (outlined in
16 PacifiCorp's Opening Brief at pp. 15–19) overcomes the "less weight" review standard,
17 even assuming it is applicable. This is especially true given the fact that Rolling Hills was
18 acquired consistently with the Company's acknowledged IRPs and is therefore a resource
19 decision otherwise entitled to "greater weight."

20 **3. Staff's Claim that the Company is Required to Include the Rolling Hills**
21 **Resource in Rates in the Event of a Prudence Disallowance is**
22 **Untenable.**

23 While Staff argues that "Rolling Hills is an opportunity that PacifiCorp should have
24 passed up" (Staff's Opening Brief at 4), it is telling that Staff now refuses to pass up the
25 favorable economic opportunity Rolling Hills presents for Oregon customers. Specifically,
26 Staff objects to PacifiCorp's position that if the Commission proposes to disallow cost
recovery for Rolling Hills based on acquisition imprudence, the Company will remove the

1 resource from the Oregon revenue requirement and exclude the resource from the
2 dispatch stack in the Company's net power costs. PPL/101, Kelly, 5, ll. 19-23.

3 Staff cites *Re Portland Gen. Elec. Co.*, Docket UE 47, Order No. 87-107, 86
4 P.U.R.4th 463 (1987) for the position that the Company must include Rolling Hills in rate
5 base even if the Commission finds it imprudent. This case is readily distinguishable
6 because PGE sought to rate base its resource irrespective of the outcome of litigation over
7 its prudence. It was an intervenor in that case (not PGE) who argued against rate-basing
8 in the event of a prudence disallowance, similar to ICNU's position in this case. In that
9 context, the Commission held only that rate-basing and prudence were separate issues.
10 Importantly for purposes of this case, the Commission did not hold that a utility could be
11 forced to rate-base a resource, especially in the face of a significant cost disallowance.

12 The PGE case is also distinguishable because here, unlike in the *PGE* case or in
13 any other Commission case, Staff is improperly proposing a prudence disallowance for a
14 cost-effective resource. Applying its unprecedented theory of capacity factor imputation to
15 Rolling Hills, Staff takes a resource with costs at or below market and proposes to reduce
16 these costs to a level well below any other resource in the RAC. PPL/203, Tallman/8-9
17 (Staff's adjustment produces capital costs in rates equal to \$1,474 per kW); Staff/102,
18 Garcia/1 (listing the costs of resources in the RAC at \$1,748 per kW to \$2,092 per kW).

19 Based upon the cases cited in PacifiCorp's Opening Brief at 25-27, it is clear that a
20 prudence disallowance for a cost-effective resource is improper. Staff's argument that the
21 Commission can mandate acceptance of such a disallowance further compounds the legal
22 problems in Staff's case.

23 **B. The Positions of Staff and ICNU are Not Supported by the Record.**

24 Staff's and ICNU's Opening Briefs contain many unsupported allegations and
25 factual inaccuracies. A careful review of the record demonstrates that the evidence
26 supports full cost recovery for Rolling Hills, Glenrock, and Seven Mile Hill.

1 1. The fundamental premise of Staff's argument against Rolling Hills is that,
2 had the Company issued an RFP, it would likely have acquired a facility with a capacity
3 factor higher than 38%. Staff's Opening Brief at 4, 11. This premise is flawed:

- 4 • Staff admits it has no evidence to support this statement. PPL Cross
5 Exhibit 2, Response to PacifiCorp Data Requests 3.6, 3.7, and 3.8. Staff
6 could not identify any Wyoming wind resources or sites that PacifiCorp
7 could have acquired in the place of Rolling Hills with a higher capacity
8 factor. PPL Cross Exhibit 2, Response to PacifiCorp Data Requests 3.7
9 and 3.8. Other resources in the RAC have capacity factors well below
10 38%. See PPL Cross Exhibit 6, slides 9, 12, 13.
- 11 • PacifiCorp established that it knew of no other viable alternatives to Rolling
12 Hills in Wyoming. PPL/203, Tallman/18, I. 5–Tallman/19, I. 4. There were
13 no entities with a Wyoming Industrial Siting Council-permitted site when
14 the Company was investigating resource alternatives. *Id.* Indeed, as of
15 the date of the hearing in this case, months after PacifiCorp announced its
16 2008 renewable RFPs, there were no siting applications for renewable
17 projects filed or pending in Wyoming. Tr. 40, II. 1–8.
- 18 • Staff alleges that not all energy projects in Wyoming require state siting
19 approval and, without a supporting citation, claims that the Duke Energy
20 project referred to in Staff Exhibit 509 did not require siting approval.
21 Staff's Opening Brief at 11. The Wyoming Industrial Siting Act contains a
22 construction cost threshold that determines whether the Wyoming
23 Industrial Siting Council has jurisdiction over a proposed facility. Tr. 23, II.
24 10–12. There is no evidence in the record as to whether or not the Duke
25 Energy project is subject to Council jurisdiction.

26

- 1 • There are no interconnection applications for wind projects in Wyoming
2 currently pending with the Company's transmission function, which
3 generally requires an 18-month process to complete. PPL/203,
4 Tallman/18, I. 14–Tallman/19, I. 4. While Staff responds that PacifiCorp
5 could acquire resources outside its service territory (Staff's Opening Brief
6 at 11) this is a more costly approach, requiring payment for wheeling,
7 losses, reserves, and current or potential future integration tariffs for a
8 resource interconnected to another entity's transmission system and
9 wheeled across one or more third party transmission system(s).
- 10 • Staff itself noted that the market demand for equipment has been volatile,
11 wind turbine equipment has been in short supply, and there is significant
12 competition for sites favorable to wind production. Staff/100, Garcia/8, II.
13 2–8. These factors highlight the challenges the Company faced in finding
14 a permitted, interconnection-ready, and ready-to-build site in time to have a
15 new resource on line before the expiration of the PTC at the end of 2008.

16 2. Staff claims that the Company could have used the turbines it used for
17 Rolling Hills in an RFP. Staff's Opening Brief at 10. Staff's argument ignores and
18 minimizes the complexities associated with wind resource acquisition:

- 19 • The storage of the wind turbines while conducting an RFP would have
20 created additional risk. Confidential Exhibit ICNU/102, Falkenberg/4. This
21 includes the risk of cost increases to equipment, turbine storage, double
22 handling, increased transportation costs or the increased risk associated
23 with construction contracting, permitting risk, third party risk, and
24 interconnection risk. PPL/203, Tallman/22, II. 5–7.
- 25 • Staff claims that the Company had all of 2007 to conduct an RFP and ICNU
26 states that the evidence demonstrates that PacifiCorp could have

1 completed an RFP to acquire the resources by the end of 2008. Staff's
2 Opening Brief at 10; ICNU's Opening Brief at 8. In PacifiCorp's
3 experience, the RFP process in Oregon takes approximately a year or
4 more. PPL/203, Tallman/19, II. 13–14. Construction time for a wind
5 project varies, but it can also take a year or more. See Staff/502 at 3-7
6 (construction schedules for Glenrock and Rolling Hills estimated at more
7 than a year). Once the Company determined that it had turbines available
8 in the summer of 2007, there was a very high risk that it could not have
9 completed an RFP and obtained a fully constructed wind resource by the
10 end of 2008, when the PTC was set to expire. PPL/203, Tallman/19, I. 12–
11 Tallman/20, I. 4; see ICNU/102, Falkenberg/46.

- 12 • In a related argument, ICNU states that it is not credible that the Company
13 had sufficient time to change the project's location but not to conduct an
14 RFP. ICNU's Opening Brief at 9.

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED] See Confidential Exhibit ICNU/102, Falkenberg/12;

20 Tr. 55, II. 11–15. Therefore, it was much more expeditious to change the
21 project location to the Rolling Hills site than to conduct an RFP. See
22 PPL/203, Tallman/22, II. 5–7.

- 23 • In an attempt to undermine the Company's evidence that its decision to
24 acquire a resource by the end of 2008 was driven in part by the expiration
25 of the PTC, Staff states the Company believed that the PTC would be
26 extended. Staff's Opening Brief at 10. The evidence cited by Staff,

1 however, does not support this statement. The PacifiCorp testimony Staff
2 cites stated that the Company believed that “[i]t is possible” that the PTC
3 would be extended; it does not state that the Company believed they would
4 be extended. Staff/200, Schwartz/11, ll. 11–17. In addition, Staff’s point
5 that the Company has planned other projects beyond 2008 is irrelevant as
6 to whether the Company believed that it was prudent to place the Rolling
7 Hills turbines in-service before PTCs expired. The evidence clearly shows
8 that PacifiCorp considered the economic impact of the PTC in approving
9 the Rolling Hills resource. Confidential Exhibit ICNU/102, Falkenberg/11.

10 3. Staff alleges that the Company’s decision-making process for Rolling Hills
11 was too fast. Staff’s Opening Brief at 11. The Company, however, used the same
12 process to acquire Rolling Hills as it did for the other resources included in the RAC, the
13 prudence of which Staff has not questioned. PPL/203, Tallman/7, ll. 2–7. Staff
14 acknowledged the market factors requiring utilities to move quickly to acquire renewable
15 resources, namely the tight turbine market, expiration of PTCs, and the competition for
16 transmission-friendly sites. Staff/100, Garcia/8, ll. 2–8. The Commission should not
17 penalize PacifiCorp for moving quickly to acquire renewable resources when SB 838 was
18 explicitly intended to accelerate utilities’ acquisition of renewable resources. See PPL
19 Cross Exhibit 10 at 1, Preamble to SB 838; Tr. 42, ll. 10–12.

20 4. Staff’s adjustment for Rolling Hills was originally based on imputing the
21 average capacity factor of Wyoming wind resources, which it claimed was 38%. UE 199,
22 Staff/200, Schwartz/4, ll. 12–13. In response to PacifiCorp’s evidence in its rebuttal
23 testimony that this figure is actually 35% (PPL/203, Tallman/5, ll. 2–10), Staff stated vague
24 concerns about the validity of this analysis based on Staff’s “quick review of workpapers.”
25 Staff’s Opening Brief at 15. Staff, however, did not elaborate on these concerns, present
26 an alternative calculation, make any data requests of the Company, or reconcile these

1 concerns with the fact that PacifiCorp's acknowledged 2007 IRP uses a 35% capacity
2 factor for Wyoming wind resources. See *id.* Staff also did not cross examine the
3 Company's witness on these workpapers when it had the opportunity to do so.

4 5. Staff states that Oregon ratepayers will receive a far higher share of the
5 RECs from Goodnoe Hills after the first 5 years of operation. Staff's Opening Brief at 13.
6 There is no support for this statement in the record, which is based entirely upon Staff's
7 speculation on how other jurisdictions may treat the Goodnoe Hills resource in rates in the
8 future.

9 6. ICNU alleges that "PacifiCorp has long been aware that its new renewable
10 resources must be acquired pursuant to a Commission-approved RFP." ICNU's Opening
11 Brief at 2. That is not the case—PacifiCorp must acquire resources in compliance with its
12 IRP and the Guidelines, which may or may not require an RFP.

13 7. ICNU charges that the Company has a long history of avoiding the RFP
14 process. ICNU Brief at 11. ICNU provides no support for this accusation, except a
15 reference to the Company's acquisition of West Valley. In fact, the Company acquired the
16 West Valley resource through an RFP that resulted in 52 proposals. *Re PacifiCorp's*
17 *Request for Approval of West Valley Generation Facilities Lease Agreement with*
18 *PacifiCorp Power Marketing, Inc.*, Docket UI 196, Staff Report for Public Meeting on May
19 28, 2002 at 3 (May 22, 2002).¹ The Commission approved the West Valley lease. *Re*
20 *PacifiCorp's Request for Approval of West Valley Generation Facilities Lease Agreement*
21 *with PacifiCorp Power Marketing, Inc.*, Docket UI 196, Order No. 02-361 at 3 (May 31,
22 2002) amended by Order No. 02-657 (Sept. 18, 2002).

23

24

25 ¹ Pursuant to OAR 860-014-0050(1), PacifiCorp requests that the Commission take official
26 notice of Staff's Report and the Commission's Orders Nos. 02-361 and 02-657 filed in Docket UI 196.

26

1 ICNU's point is further undermined by the Company's recently-approved
2 renewable resource 2008R-1 RFP and renewable resource RFP 2003-B, which pre-dated
3 the Guidelines and was used by the Company to acquire several of the renewable
4 resources in the RAC. See *Re PacifiCorp Request for Approval of a 2008R-1 Solicitation*
5 *Process for New Renewable Resources*, Docket UM 1368, Order No. 08-476 (Sept. 23,
6 2008); *Re PacifiCorp Request for Proposals for Generation Resources (RFP 2003-B)*,
7 Docket UM 1118.² In addition, the Company issued another renewable RFP in 2008 for
8 resources under the 100 MW threshold. PPL/200, Tallman/5, II. 18-22.

9 8. ICNU states that Glenrock and Rolling Hills [REDACTED]
10 [REDACTED]. ICNU's Opening Brief at 7. In fact, the projects have different collector
11 substations, demonstrating the electrically distinct and separate nature of the two projects.
12 PPL/203, Tallman/15, I. 12--Tallman/16, I. 8.

13 9. ICNU claims that the evidence demonstrates that there is no reason why
14 Rolling Hills and Glenrock could not be developed as a single project. ICNU's Opening
15 Brief at 5. This statement is based upon an improper hindsight review, because the
16 Company did not have the Rolling Hills turbines available at the time it made the decision
17 to advance Glenrock. PacifiCorp approved Glenrock in May of 2007. Tr. 33, II. 1-12.
18 PacifiCorp could not have approved Rolling Hills at that time because did not know
19 turbines would be available. See UE 199, PPL/400, Tallman/8, II. 4-12. Hindsight is
20 inappropriate when making a determination of prudence. *Re Tariffs filed by Juniper Utility*
21 *Co. for Water Service*, Docket UW 65, Order No. 00-543 at 8 (Sept. 14, 2000).

22 10. ICNU also attacks the wind data the Company used to evaluate the Rolling
23 Hills resource on a number of factually incorrect bases:

24

25 ² Pursuant to OAR 860-014-0050(1), PacifiCorp requests that the Commission take official
26 notice of the pleadings and orders filed in Dockets UM 1368 and UM 1118.

- 1 • Contrary to ICNU's claim, the wind data relied upon by the Company was not
2 "short term." See ICNU's Opening Brief at 15. The data used by the
3 consultant to evaluate the wind resource [REDACTED]
4 [REDACTED]. Confidential Exhibit ICNU/102,
5 Falkenberg/24; Tr. 27, ll. 4-7. The tower on the site that measured this long-
6 term data was ten meters, a typical height for a tower used for such a purpose.
7 Tr. 38, l. 25-Tr. 39, l. 8.
- 8 • ICNU discounts the [REDACTED]
9 [REDACTED]. ICNU's Opening Brief at 15.
10 The purpose of the exercise was to [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED] Confidential Exhibit ICNU/124, Falkenberg/2. The data
15 from this study allowed the Company's consultants to [REDACTED]
16 [REDACTED]
17 Confidential Exhibit ICNU/124, Falkenberg/2; ICNU/102, Falkenberg/13
18 (" [REDACTED]
19 [REDACTED] ") For this reason, ICNU's statement that the
20 Glenrock towers were not suited to evaluate the wind conditions at Rolling Hills
21 (ICNU's Opening Brief at 16) is false.
- 22 • ICNU attempts to discount the wind data as a whole by stating that PacifiCorp
23 will "typically" construct several on-site test towers and gather data over [REDACTED]
24 [REDACTED] years. ICNU's Opening Brief at 15. The Company has no such pre-
25 established methodology. As PacifiCorp testified, wind resource development
26 is relatively new and historically non-routine. PPL/203, Tallman/14, ll. 12-17.

- 1 • When the consultant recommended that PacifiCorp install additional towers at
2 the site, PacifiCorp did so. PPL/203, Tallman/13, II. 20–23. ICNU states that
3 by not delaying the project to take advantage of the additional wind data from
4 these towers, PacifiCorp lost the opportunity to optimize turbine operation.
5 ICNU's Opening Brief at 17. There is no basis in the record for this statement.
6 In actuality, the additional data allowed the consultant to [REDACTED]
7 [REDACTED] Confidential
8 Exhibit PPL/204, Tallman/21. The Company [REDACTED]
9 [REDACTED] and had time to apply these data to its
10 optimization of the site prior to and after the project's scheduled ground
11 breaking around May, 2008. See Confidential Exhibit PPL/204, Tallman/5;
12 Staff 502 at 3-7.
- 13 • ICNU states that [REDACTED]
14 [REDACTED]. ICNU's Opening Brief at 16. This statement is patently
15 false. The communications referenced by ICNU show that [REDACTED]
16 [REDACTED]
17 [REDACTED]. See ICNU/124,
18 Falkenberg/11, 12, and 14.
- 19 • The Company hired a respected and qualified consultant to collect and study
20 data and report on the expected capacity factor for the Rolling Hills project.
21 The Company prudently assessed the performance risk of the project. See
22 Confidential Exhibit ICNU/102, Falkenberg/13. While the on-site data was
23 ultimately supplemented, the information available to the Company was
24 sufficient at the time to make the "go/no go" decision. PPL/203, Tallman/14, II.
25 5–7. This was especially true taking into account the conservative nature of
26 the project capacity factor of 31 %, arising from the fact that the Company's

1 consultant appropriately utilized a de-rated power curve, a lower availability
2 assumption, and lower efficiency factor to account for potential turbulence.
3 PPL/203, Tallman/14, II 7–11.

4 11. For the first time in this proceeding, ICNU recommends in its Opening Brief
5 that the Commission exclude Seven Mile Hill from rates. ICNU's Opening Brief at 7.
6 ICNU contends that Seven Mile Hill should be excluded from rates because it exceeds
7 100 MW, based on the development of the Seven Mile Hill II project. *Id.* ICNU has not
8 presented evidence that the Company could have developed the two projects as one. In
9 fact, the Company did not have the turbines to develop both projects at the time that it
10 chose to move forward with Seven Mile Hill. See Confidential Exhibit ICNU/102,
11 Falkenberg/41. Regardless, there is no evidence that the acquisition of Seven Mile Hill
12 was imprudent. Even ICNU concedes that Seven Mile Hill is less expensive than other
13 resources ICNU has used for cost comparison. ICNU/100, Falkenberg/23, n.7.

14 **C. The Commission Should Use the Most Recent Capacity Factors When**
15 **Establishing Rates in the RAC and the TAM.**

16 Staff and PacifiCorp disagree on the proper capacity factors to use in the RAC and
17 the Transition Adjustment Mechanism ("TAM") when: (1) analyzing the prudence of an
18 acquisition; and (2) establishing rates. PacifiCorp's position on this issue is consistent and
19 has its foundation in the Commission's orders on prudence and SB 838. Staff's position,
20 on the other hand, is inconsistent and appears to depend on whether a given capacity
21 factor will provide the basis for larger disallowances.

22 PacifiCorp agrees with Staff that when analyzing prudence, the proper capacity
23 factor to use is the one the Company relied upon at the time it made its decision to move
24 forward with the acquisition. See Staff's Opening Brief at 12. For Rolling Hills, the parties
25 agree that the correct capacity factor to use when assessing prudence is 31%.

26 PacifiCorp's Opening Brief at 2 n.1; Staff's Opening Brief at 11. Staff, however, argues

1 that when analyzing the prudence of Glenrock, the Commission should not use the
2 capacity factor relied upon by the Company when approving the acquisition, 38.6%, and
3 instead should use a 41% capacity factor drawn from a November 2007 interim
4 consultant's report. Staff's Opening Brief at 5.

5 There is no question that PacifiCorp's approval document for Glenrock states that
6 the estimated capacity factor at that time was 38.6%. ICNU/102, Falkenberg/36. Staff
7 states that the Commission should not rely on the 38.6% figure because PacifiCorp did not
8 justify its reliance on that figure. Staff's Opening Brief at 5. PacifiCorp provided the third-
9 party consultant's report supporting the 38.6% figure to parties prior to the hearing and
10 requested that it be entered into the record after hearing. *Re PacifiCorp 2009 Renewable*
11 *Adjustment Clause*, Docket UE 200, PacifiCorp's Motion to Supplement the Record
12 (Sept. 15, 2008). The report was prepared by the same consultants who prepared all of
13 the other capacity factor reports on Glenrock and Rolling Hills. See PPL/205; Confidential
14 Exhibit ICNU/102, Falkenberg/23–40. After an opportunity for cross-examination and
15 discovery on the report, Staff has failed to point to any specific problems associated with
16 the report.

17 With respect to Glenrock, however, this whole issue is a red herring because Staff
18 does not challenge the prudence of the resource (Staff's Opening Brief at 16) and ICNU's
19 argument regarding the prudence of Glenrock has nothing to do with the resource's
20 capacity factor (ICNU's Opening Brief at 5). Therefore, the question for Glenrock is the
21 capacity factor to use in setting rates, not in assessing prudence. There is no basis for
22 using the 41% capacity factor proposed by Staff in rates because this estimate (which was
23 prepared almost one year ago before construction commenced) was superseded by the
24 37.4% capacity factor estimate prepared by the Company's consultants in August 2008
25 based upon the final build design of the resource.

26

1 PacifiCorp's position on this issue is consistent: the proper capacity factor to use
2 when establishing rates for the RAC and the TAM is the most recent estimate produced by
3 the Company's third-party consultants during the RAC and TAM proceedings. Based on
4 the updated capacity factor reports included in the Company's rebuttal testimony, Rolling
5 Hills now has a 33.8% estimated capacity factor, Glenrock has a 37.4% estimated
6 capacity factor, and Seven Mile Hill has a 40.3% estimated capacity factor. PacifiCorp's
7 Opening Brief at 2 n.1.

8 The RAC Order contemplates updating cost elements for projects under
9 construction. *Re Investigation of Automatic Adjustment Clause Pursuant to SB 838, UM*
10 1330, Order No. 07-572, Appendix A, page 5, section 6(e) (Dec. 19, 2007). Staff has
11 conceded that capacity factor is a cost element. Tr. 101, ll. 12-14. In addition, the RAC
12 Order states that if a cost element cannot be verified by the final round of testimony in the
13 RAC, the utility will make an update filing by December 1. RAC Order, Appendix A, page
14 5, section 6(e). Finally, the RAC Order provides for matching cost recovery for resources
15 in the RAC and the TAM, meaning that capacity factor updates in the RAC must also be
16 reflected in updates to the TAM. *Id.* at page 7, section 6(j).

17 Because the RAC Stipulation explicitly allows for updates to cost elements (Order
18 No. 07-572, Appendix A at 5) the most recent capacity factor estimates for Glenrock and
19 the other resources under construction cannot be ignored in the RAC and the TAM
20 because they require effort to review or because they are lower than earlier estimates.
21 While Staff appears to suggest that the Company prevented Staff from obtaining
22 information to verify the methodology or calculations in the updated economic analysis
23 (Staff's Opening Brief at 14), there is no basis for such an insinuation. Indeed, the
24 Company and Staff reviewed the Company's workpapers for these calculations in detail
25 prior to the hearing in this case.

26

1 For all of these reasons, the capacity factor of Glenrock should be reflected in the
2 RAC and the TAM at 37.4%, the capacity factor of Rolling Hills should be reflected in the
3 RAC and the TAM at 33.8%, and the capacity factor of Seven Mile Hill should be reflected
4 in the RAC and the TAM at 40.3%. The Commission should reject Staff's proposals to
5 impute capacity factors or inconsistently select only the highest capacity factor estimates
6 in the record. Rates should reflect the most current and accurate capacity factors
7 available, irrespective of whether these estimates are higher (in the case of Rolling Hills)
8 or lower (in the case of Glenrock and Seven Mile Hill) than earlier estimates based on less
9 complete data.

10 **D. Staff's Concerns Regarding the ACC Method are Groundless.**

11 Staff continues to argue that the Commission require PacifiCorp to provide
12 simultaneous runs of the PVRR(d) and ACC methods. Staff's Opening Brief at 21. Staff
13 fails to mention the fact that the Commission recently required the Company to calculate
14 the incremental capacity value for purposes of evaluating bids using the ACC, not the
15 PVRR(d). *Re PacifiCorp Request for Approval of a 2008R-1 Solicitation Process for New*
16 *Renewable Resources*, Docket UM 1368, Order No. 08-476 at 3 (Sept. 23, 2008). The
17 Commission did not identify any problems with the ACC method in its order. *See id.* In
18 addition, Staff did not request that PacifiCorp conduct simultaneous PVRR(d) runs when
19 evaluating bids in the recently-approved renewable RFP. *See Re PacifiCorp Request for*
20 *Approval of a 2008R-1 Solicitation Process for New Renewable Resources*, Docket
21 UM 1368, Staff's Reply Comments (Aug. 13, 2008). Neither did the Independent
22 Evaluator ("IE"). *See Re PacifiCorp Request for Approval of a 2008R-1 Solicitation*
23 *Process for New Renewable Resources*, Docket UM 1368, Supplemental Comments of
24 the Independent Evaluator (Aug. 22, 2008).

25 Given that Staff and the IE have not raised concerns with the ACC method for the
26 purposes of administering renewable RFPs, that neither has suggested that the PVRR(d)

1 method is more appropriate, and that PacifiCorp explained why Staff's concerns in this
2 docket are baseless, the Commission should reject Staff's proposal. Alternatively, as
3 proposed in PacifiCorp's Opening Brief at 2, the Commission should refer this issue to the
4 AR 518 rulemaking addressing the implementation of SB 838.

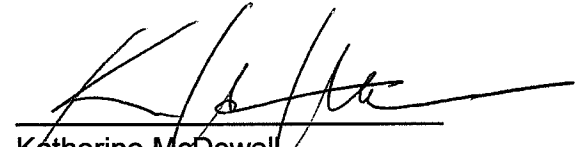
5 **II. CONCLUSION**

6 For the reasons stated in PacifiCorp's Opening Brief and Reply Brief, the
7 Commission should reject Staff's and ICNU's proposed disallowances in this proceeding.
8 A contrary outcome would be dissonant with SB 838 and Oregon's state policy on
9 renewable resource acquisition.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

DATED: October 2, 2008

McDowell & Rackner PC



Katherine McDowell
Amie Jamieson
Attorneys for PacifiCorp