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October 2, 2008

Via Electronic and US 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 2009 Renewable Energy Adjustment Clause
Docket No. UE 200

Dear Filing Center:

Enclosed please find the original and five (5) copies of the Reply Brief on behalf of the Industrial Customers of Northwest Utilities for filing in the above-referenced docket:

Thank you for your assistance.

Sincerely yours,

/s/ Brendan E. Levenick
Brendan E. Levenick

Enclosures

cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Reply Brief of the Industrial Customers of Northwest Utilities upon the parties indicated below by causing the same to be deposited in the U.S. Mail, postage-prepaid, where paper service has not been waived, and via electronic mail.

Dated at Portland, Oregon, this 2nd day of October, 2008.

/s/ Brendan E. Levenick
Brendan E. Levenick

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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 200

In the Matter of	)	REPLY BRIEF OF THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES
PACIFICORP	)	
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 Reply Brief in PacifiCorp's 2009 Renewable Energy Adjustment Clause ("RAC") proceeding. This proceeding presents the Oregon Public Utility Commission ("OPUC" or the "Commission") with the case of PacifiCorp (or the "Company") attempting to avoid the Commission's competitive bidding rules and imprudently deciding to construct wind facilities without adequately investigating their reasonableness. The Commission should not permit PacifiCorp to flagrantly disregard its competitive bidding rules, and should remove or reduce the costs of Rolling Hills, Glenrock and Seven Mile Hill. The Commission should further disallow the costs of Rolling Hills because PacifiCorp imprudently built Rolling Hills without adequately investigating the project's capacity factor. ICNU urges the Commission to issue a prudency disallowance to protect ratepayers in both this proceeding, and to protect the integrity of its own rules and Senate

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Bill ("SB") 838. Failure to impose any prudency related disallowance will provide a clear message to PacifiCorp that it has a blank check to obtain cost recovery for any renewable resource, regardless of the actions the Company takes. PacifiCorp will likely continue to "push the envelope" if the Commission provides the Company with the green light to flagrantly disregard its rules and policies in this case.

II. ARGUMENT

PacifiCorp's Opening Brief attempts to rewrite history in an effort establish that it prudently acquired Rolling Hills, Glenrock and Seven Mile Hill. PacifiCorp paints a picture of a utility that is honestly attempting to expeditiously comply with the new mandates of SB 838, and being innocently caught off guard when Staff and ICNU challenged the Company's actions in this case. This is false, and the reality is that pure hubris led the Company to believe that the Commission's rules do not apply to it, and that cost recovery for any renewable resources would be automatic, regardless of the actions the Company takes. PacifiCorp's main arguments can be summarized as:

1. The assertion that there is a lower legal standard for the recovery of renewable resources and that the Company must aggressively acquire renewables in the early years of SB 838.

2. The claim that competitive bidding guidelines are "completely silent" on whether the Company can break up large wind facilities in order to avoid a request for proposal ("RFP").

3. PacifiCorp argues that there is no evidence that Rolling Hills was imprudent, and that the costs are reasonable.

4. Finally, based on late filed and disputed evidence, PacifiCorp argues that the capacity factor of Rolling Hills is higher than the Company originally expected,

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and that the capacity factor of all its Wyoming resources is lower than Staff has shown.

ICNU's response is that:

1. The Commission cannot allow PacifiCorp to recover imprudent costs and there was no need to rush to complete these projects by the end of 2008.

2. The Commission's competitive bidding guidelines clearly apply to the wind resources at issue in this proceeding, and enforcement of the rules would not retroactively change the rules.

3. There is voluminous evidence of PacifiCorp failing to investigate the reasonableness of Rolling Hills. PacifiCorp had inadequate, "non-standard industry" information about Rolling Hills' wind conditions and the Company essentially gambled ratepayer money on a mere "guess."

4. The actual capacity factors for these new wind resources are unknown because they are not yet operating. Regardless of the ultimate capacity factor for Rolling Hills/Glenrock, information available to the Company at the time it decided to build Rolling Hills indicated that Rolling Hills would have a low capacity factor and would reduce the output of Glenrock. Ratepayers should be protected from PacifiCorp's hasty and imprudent decision.

A. PacifiCorp Should Not Be Permitted to Recover the Costs of Imprudently Incurred Renewable Resources

PacifiCorp argues that the passage of SB 838 may require Staff and ICNU to meet a higher burden to establish that renewable resources were imprudently acquired. PacifiCorp Brief at 15. PacifiCorp also claims that SB 838 imposed aggressive acquisition goals that the Company will only be able to meet with "all-out" effort. Id. at 5. PacifiCorp misconstrues SB 838 and ICNU's prior testimony in order to make these claims.

SB 838 does not lower the prudence standard for renewable resources. PacifiCorp cannot point to any specific language in SB 838 that lowers the prudency

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standard. Instead, PacifiCorp is allowed cost recovery of only the "prudently incurred costs" associated with compliance with SB 838. ORS § 469A.120(1). The Legislature codified the Commission's existing practice of removing imprudent costs from rates, and there is no indication in the language or legislative history that the Legislature intended this to be a weaker prudence standard.

ICNU agrees that SB 838 imposed aggressive renewable resources acquisition targets; however, the aggressive requirements do not apply to the early compliance years. PacifiCorp's existing plans prior to the passage of SB 838 allowed the Company to easily meet its early Renewable Portfolio Standard requirements until 2015. ICNU Brief at 2-3. Even if it were prudent for PacifiCorp to meet its later SB 838 requirements with early resource acquisitions, there was no rush to construct wind generation facilities with on-line dates for the end of 2008. The real reason PacifiCorp hastened these facilities was to avoid the competitive bidding requirements and to include these costs in rates as soon as possible, perhaps to avoid the SB 838 rate caps.

The new law does not reduce the legal requirement that PacifiCorp meet its burden of proof to demonstrate the prudence and reasonableness of its resource acquisitions. The availability of an automatic adjustment clause, the shortened schedule, and reduced rounds of testimony effectively reduce the practical ability of Staff and intervenors to conduct their cases. See Transcript ("Tr.") at 140-41 (Falkenberg). Instead of lowering the legal standard, these practical realities should prompt the

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Commission to be more skeptical and conduct a more rigorous examination of the Company's evidence.

B. The Competitive Bidding Guidelines Apply to Glenrock, Rolling Hills and Seven Mile Hill

PacifiCorp argues that competitive guidelines are "completely silent," unclear and ambiguous as to whether the Company can separate single, over 100 MW projects to avoid conducting a request for proposal ("RFP"). PacifiCorp Brief at 3, 7-11. PacifiCorp claims that the application of the competitive bidding rules to this case would be "retroactive," and that the Commission must first establish new rules before imposing a prudence disallowance for failing to acquire resources in a competitive bidding process. Id. at 19-25. PacifiCorp is aware that the competitive bidding rules apply to its new wind resources, and the Company's only real surprise is that its blatant attempt to disregard the rules is being challenged strenuously by Staff and ICNU. The Company would not have engaged in the fiction of separately naming and sizing Rolling Hills/Glenrock if the competitive bidding rules did not exist.

The competitive bidding rules are not "silent," but impose a clear requirement that Oregon utilities must 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 (Aug. 10, 2006). The Commission specifically rejected a proposal by Portland General Electric Company to allow utilities to acquire wind projects as large as 300 MWs without conducting an RFP. Id. at 3. Requiring PacifiCorp to comply with these rules would not

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"retroactively" change the rules, because the rules were adopted well before the Company decided to build these wind resources. PacifiCorp was a party to UM 1182, and to claim now that it did not know how the rules would be applied is not credible. Further, under PacifiCorp's interpretation, the rules would be completely meaningless for all wind projects because the Company could always break up the project into sizes under 100 MWs.

Imposing a prudency related disallowance for PacifiCorp's decision not to conduct an RFP would also be consistent with the rules because their primary purpose was to lower costs and ensure that electric utilities obtain the least cost resources for customers. See id. at 2-3. PacifiCorp's decision not to conduct an RFP will increase customers' rates unless the Commission imposes a disallowance in this case.

When developing its new wind resources, PacifiCorp was well aware of these rules and that they would apply to its new wind resources. See Tr. at 42-43 (Tallman). PacifiCorp consciously decided not to conduct an RFP, and developed a scheme to break up larger projects in order to avoid the RFP requirements. See id. Instead of scheming to avoid the rules, PacifiCorp should have either conducted an RFP or sought a waiver of the Commission rules. If PacifiCorp believed the rules were ambiguous, then the Company should have sought clarity from the Commission before arbitrarily separating its wind resources into smaller groups.

PacifiCorp's Brief also argues that Rolling Hills and Glenrock are separate resources, and identifies some aspects of the resources that allegedly support its case.

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PacifiCorp Brief at 8-9. ICNU's and Staff's opening briefs have already rebutted most of the arguments PacifiCorp raised in its claim that these resources are separate and distinct. ICNU Brief at 5-8; Staff Brief at 4, 7-11. The fundamental issue that PacifiCorp fails to mention is that from the start of the Rolling Hills/Glenrock project, PacifiCorp envisioned one large wind resource. Many of the allegedly "separate" aspects essentially stem from PacifiCorp's decision to arbitrarily separate this project into Rolling Hills, Glenrock and Glenrock III. The key fact is that if there were no competitive bidding guidelines, then PacifiCorp would have built one large 237 MW Glenrock project.

PacifiCorp incorrectly asserts that the Glenrock/Rolling Hills project is not electrically connected. PacifiCorp Brief at 8; Tr. at 58 (McDowell). As explained in ICNU's Opening Brief, the Glenrock/Rolling Hills project is electrically connected. ICNU Brief at 6. Throughout the planning and construction of Glenrock/Rolling Hills, PacifiCorp treated the project as one large facility and moved turbines and/or turbine locations between all three resources. In fact, because the final project design has changed, it is likely that the in-service turbines and turbine locations for Glenrock and Rolling Hills that the Company will include in its November update will not be the same as those that the Company originally filed for in this case. Switching turbines and turbine locations is additional evidence of the arbitrary separation of the project into Rolling Hills, Glenrock I and Glenrock III.

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C. ICNU and Staff Presented Overwhelming Evidence that Rolling Hills is a High Cost and Imprudent Resource

PacifiCorp makes the ridiculous claim that there is no evidence that Rolling Hills is imprudent and that Staff is overly concerned with the project's capacity factor. PacifiCorp Brief at 13, 18-19. As explained in ICNU's Opening Brief, there is voluminous evidence that PacifiCorp imprudently failed to investigate the wind conditions at Rolling Hills and decided to proceed with the project based on inadequate information. ICNU Brief at 13-17. It will never be known how badly ratepayers will be harmed by this imprudent decision. Rolling Hills' and Glenrock's actual capacity factors are unknown because they are not yet operating. Moreover, since PacifiCorp did not conduct an RFP and never fully studied the site to determine the best wind turbine layout, it is impossible to determine exactly how much PacifiCorp's imprudent actions could harm ratepayers.

PacifiCorp complains that the only problem with Rolling Hills is its capacity factor. PacifiCorp Brief at 18. This is tantamount to saying the only problem with a car is that the engine does not work. The capacity factor is the most important factor in determining whether a wind project is cost effective. ICNU/100, Falkenberg/9; UE 200, Staff/200, Schwartz/13. Rolling Hills' low estimated capacity factor directly results in the project being a high cost resources. See ICNU Brief at 12-14.

The fundamental problem with Rolling Hills' capacity factor is that PacifiCorp had poor and incomplete information about wind conditions when it decided to build it. PacifiCorp knew that Rolling Hills could have a very low capacity factor, that

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the additional turbines at Rolling Hills could lower the Glenrock capacity factor, and that the Company had not completed its studies to ascertain where to best locate the wind turbines. ICNU Brief at 17-18. PacifiCorp should have waited for better information before deciding to install wind turbines at Rolling Hills.

D. The Commission Should Impute a 38% Capacity Factor for Rolling Hills

PacifiCorp argues that the Rolling Hills capacity factor imputation should be 35% and not 38%, if the Commission adopts a capacity factor adjustment for Rolling Hills. PacifiCorp Brief at 28-29. PacifiCorp supports its 35% capacity factor because it claims that the average capacity factor for its Wyoming wind facilities is 35%, and that the average capacity factor for Rolling Hills/Glenrock is 34.8%. Id. Both arguments are flawed.

PacifiCorp's assertion that the average capacity factor for its Wyoming wind facilities is 35% is not supported because PacifiCorp's analysis and assumptions suffer from flaws that have not been corrected. Tr. at 73-76 (Schwartz). Staff's original estimate of a 38% average capacity factor for the Wyoming resources is more credible. UE 199, Staff/600, Schwartz/11. In addition, a 38% capacity factor remains conservative because it is less than the expected capacity factors for Seven Mile Hill and Glenrock. Id.

PacifiCorp also supports the use of 35% capacity factor imputation for Rolling Hills based on its new estimate of a 34.8% capacity factor for a combination of Rolling Hills/Glenrock. PacifiCorp Brief at 28. Although PacifiCorp continues to assert the facilities are separate, it now wants the Commission to consider the overall capacity

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factor of Glenrock/Rolling Hills when imposing a disallowance for Rolling Hills. This argument avoids the question of whether Rolling Hills should even have been built, given how much it lowers the overall capacity factor for Rolling Hills/Glenrock project. PacifiCorp would also have the Commission ignore that Rolling Hills would likely have a higher capacity factor if PacifiCorp had prudently investigated the wind conditions. ICNU Brief at 13-17. PacifiCorp was warned that constructing Rolling Hills could harm the capacity factor for Glenrock, and the Company did not wait for the completion of wind studies that could have facilitated the better placement of the wind turbines. Id. Therefore, it is reasonable to impute a capacity factor for Rolling Hills slightly higher than 35%.

IV. CONCLUSION

PacifiCorp violated the Commission's competitive bidding rules by selecting a 99 MW project size for Rolling Hills, Glenrock and Seven Mile Hill with the sole purpose of avoiding the requirement to conduct an RFP. The Commission has the legal authority and the evidence supports the imposition of a prudency disallowance by either excluding these facilities from rates until the Company conducts an RFP, or reducing the costs of Glenrock and Rolling Hills based on market alternatives. In addition, there is overwhelming evidence that PacifiCorp imprudently rushed the construction of the Rolling Hills facility without adequately investigating its wind conditions. Rolling Hills is an imprudent facility which should either be removed from rates or have a 38% capacity factor imputed.

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Respectfully submitted,

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