BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 200

In the Matter of PACIFICORP, dba PACIFIC POWER 2009 Renewable Adjustment Clause Schedule 202	STAFF REPLY BRIEF

1. Introduction

Staff of the Public Utility Commission of Oregon (staff) anticipated in its Opening Brief many of the arguments PacifiCorp presents in its Opening Brief. As such, staff's Reply Brief will respond only as necessary to address new arguments and to clarify critical areas of dispute. Staff incorporates and includes by this reference its Opening Brief as its reply to any PacifiCorp argument not specifically addressed in this Reply Brief.

For the Administrative Law Judge's (ALJ) convenience, staff will address PacifiCorp's arguments in the order presented in the company's Opening Brief. However, staff will depart from this approach to (1) first dispose of PacifiCorp's legal argument that staff's proposed Rolling Hills adjustment represents a "rule" that the Commission may not adopt in this docket, and (2) respond to an apparent overall PacifiCorp theme that the necessity to develop eligible resources in response to Senate Bill (SB) 838 in essence trumps any serious prudence review of the company's decision-making process.

2. Staff's conclusion that Rolling Hills/Glenrock is a Major Resource is not a "rule" under the Oregon Administrative Procedures Act.

PacifiCorp first asserts the Guidelines set forth in Commission Order No. 06-446 (Guidelines) are rules under the Oregon Administrative Procedures Act ("APA"). PacifiCorp then claims that staff is proposing to add criteria to Guideline 1 by means of the analysis it used to conclude Rolling Hills/Glenrock is a Major Resource. Based on these two premises,

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PacifiCorp argues that staff's analysis represents an improper adoption of rules under the APA. *See* PacifiCorp Brief (PacifiCorp Br) at 19-21. The sole alleged staff "additional rule" that PacifiCorp expressly identifies is, in PacifiCorp's language, to add a "five-mile exclusion zone" to the definition of a Major Resource. *See* PacifiCorp Br at 21. Simply stated, PacifiCorp's argument fails because (1) the Guidelines are not rules themselves, and (2) even if they were, staff is not proposing to add to or modify the Guidelines.

Under the APA, a rule is "any agency directive, standard, regulation, or statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of any agency." ORS 183.310(9). Clearly, if the Guidelines themselves are not rules under the APA, then adding to or modifying a Guideline, cannot, by definition, be considered a rulemaking activity.[1]

The Commission knows the difference between guidelines and rules and knows how to adopt rules under the APA. *See, e.g.*, Commission Order No. 07-002 at 2 (adopting guidelines and announcing that a later rulemaking would be commenced to promulgate rules consistent with the guidelines). In Order No. 06-446, the Commission expressly chose to adopt guidelines, not rules: "*While we are adopting a set of guidelines*, we have drafted them with both mandatory and permissive language so that the utilities involved will clearly understand our preferences." Order No. 06-446 at 2 (emphasis added). As Guidelines, the instructions arising from Order No. 06-446 are permissive in nature, unlike the mandatory requirements set forth in a rule adopted under the APA.

In the context of Order No. 06-446, if the Commission denies a "request for proposal" (RFP) application, and "the company proceeds with its (denied) RFP and requests the Commission acknowledge the resulting short-list of resources, the company would need to address, to our satisfaction, the deficiencies discussed." Order No. 07-018 at 10. In other words,

[1] Staff does not agree that it modified Guideline 1 for the reasons discussed later in the text.

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a utility has the discretion to proceed with its actions under a denied RFP proposal, but it does so at a risk.

In this manner, the Guidelines are akin to the Commission's determinations in a utility's Integrated Resource Planning (IRP) docket. A utility may choose to take actions inconsistent with an acknowledged IRP but it does so at a risk. While utility actions that are inconsistent with the plan will not necessarily lead to unfavorable ratemaking treatment, the utility must ultimately explain and justify why it took the inconsistent actions. *See* Order No. 07-002 at 24 (quoting from Order No. 89-507).

In both the IRP case and with the RFP Guidelines, the risk of possible adverse future Commission action does not transform permissive guidelines into mandatory rules. Thus, since the Guidelines are not themselves "rules," by definition, the act of applying the Guidelines in this docket, even including modifying or adding to them, is not a rulemaking activity under the APA.

Even assuming the Guidelines are rules, which they are not, PacifiCorp is incorrect when it argues that staff has attempted to add to or modify them. Staff explained at length that it was merely applying Guideline 1 as written to the set of facts presented by Rolling Hills/Glenrock to determine that the project was a Major Resource. The conclusion that Rolling Hills/Glenrock is a Major Resource was not a "close case." In the case at hand, it is not necessary, nor does staff propose to, add to Guideline 1 the common-sense criteria staff employed to reach its determination about Rolling Hills/Glenrock. *See generally* Staff's Opening Brief (Staff Br) at 8-9. Staff's common-sense conclusion about the project simply, correctly, and importantly, upholds the integrity of the Guidelines.

As to the one objectionable criterion specifically identified by PacifiCorp, its so-called "five-mile exclusion zone," staff witness Schwartz explained that she looked to the *reasoning* behind the Stipulation adopted by the Commission in its Errata Order No. 06-586. Ms. Schwartz did not, and does not, advocate that PacifiCorp's so-called five-mile proximity criterion be made

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a part of Guideline 1. *See* Staff/200, Schwartz/7 and Staff/600, Schwartz/5-6 (UE 199); Transcript (TR) at 54 (Schwartz).

Finally, for the same reasons as stated above, staff's well-reasoned conclusion that Rolling Hills/Glenrock is a Major Resource does not constitute a retroactive rule as PacifiCorp argues. *See* PacifiCorp Br at 22-23.

3. Application of the Prudence Standard: PacifiCorp incorrectly suggests that SB 838 requires full inclusion of all eligible resources under any and all circumstances.

PacifiCorp sprinkles comments throughout its brief to support its apparent overall theme that SB 838[2] essentially requires the Commission approve each and every cost it included in its "Renewable Adjustment Clause" (RAC) filing with minimal, if any, scrutiny of the resource acquisition decision. *See, e.g.*, PacifiCorp Br at 4 ("To avoid a slow down in renewable resource development and acquisition inconsistent with the legislative intent of SB 838, PacifiCorp urges the Commission to reject Staff's proposed changes to the Guidelines in this proceeding"). Indeed, PacifiCorp goes so far with its theme to suggest SB 838 "may require parties advocating a finding of imprudence to meet a higher burden for renewable resources." PacifiCorp Br at 15.

PacifiCorp is wrong. SB 838, while intending to promote development of renewable resources, does not grant a utility a "blank check" to include any and all costs of eligible resources in customers' rates. Rather, ORS 469A.120(1) expressly limits the recovery of such resources to only the "prudently incurred costs." In using this phrase, the legislature clearly rejected the argument/theme PacifiCorp now advocates.

As to PacifiCorp's suggestion that SB 838 somehow imposes a "super" prudence standard, the legislature is presumed to carefully choose its words and the courts are not to insert words into statutes that are not present. *See* ORS 174.010. The legislature's use of the phrase "prudently incurred costs" in ORS 469A.120(1) is the clearest evidence available of what parties asserting imprudence of a cost must show – simply that an incurred cost was not prudent. The

[2] SB 838 has been codified as ORS chapter 469A.

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statute does *not* impose a higher burden of proof on parties asserting imprudence of overly costly, or imprudently acquired, renewable resources.

PacifiCorp further incorrectly asserts that staff has misapplied the standard prudence test when it states "Staff insinuates that PacifiCorp must show that the acquisition of Rolling Hills was the 'best' resource or the "best" combination of cost and risk to meet its burden of showing that the acquisition was prudent." PacifiCorp Br at 14. Staff's reference to "best" resource was made in the context of what is required under the Commission's competitive bidding guidelines, not as an application of the prudence test. As specified by the Commission, the first goal of competitive bidding is to "provide the opportunity to minimize long-term energy costs, subject to economic, legal and institutional constraints." Order No. 06-446 at 2.

PacifiCorp states that staff's capacity factor imputation for Rolling Hills as a remedy for its imprudent acquisition of Rolling Hills is unlawful because it does not target specific costs that were imprudently incurred. *See* PacifiCorp Br at 25-26. PacifiCorp seems to not understand that staff's primary prudence concern related to Rolling Hills arises not from a single cost source.

The present case is not the type of prudence disallowance that PacifiCorp cites to in its brief. *See Id*. Here, as discussed at length in staff's opening brief, PacifiCorp failed to conduct a competitive bidding process for Rolling Hills as it was required to do under the Guidelines. Staff recommends the Commission conclude PacifiCorp was imprudent in evading the Commission's Guidelines in this manner. Under these circumstances, staff agrees with PacifiCorp that it would be an inappropriate remedy for this type of imprudence to disallow the cost of some random Rolling Hills "widget." However, that does not mean there should be no remedy at all. Instead, staff recommends as a remedy the imputation of a certain capacity factor for Rolling Hills.[3] The imputed capacity factor is structured to capture for PacifiCorp's customers the expected capacity

[3] PacifiCorp states that the Commission has never imputed a higher capacity factor as a remedy for a finding of imprudence. PacifiCorp Br at 26. The resources in the RAC are the company's first owned wind resources since Foote Creek I (in 1999). *See* PPL/200, Tallman/12 (UE 200). As staff testified, "Capacity factor is the most direct measure of a wind project's productivity and, therefore, its economic benefit." Staff/200, Schwartz/13 (UE 200).

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factor of a Wyoming wind resource the company likely would have acquired if it had proceeded in compliance with the Guidelines. Without performing such an adjustment, PacifiCorp's customers will be harmed as a result of higher net power costs.[4] Staff's recommended remedy is entirely appropriate under the circumstances of the present case. *See generally* Staff Br at 14-16; Staff/102, Garcia/5 (UE 200); ICNU Opening Brief at 12 (citing to two Commission orders that used imputation as a remedy for a utility's imprudent or unreasonable actions).

4. Selected reply to various PacifiCorp arguments

Staff will now address selected PacifiCorp arguments in the order presented in the company's Opening Brief.

a. PacifiCorp asserts that staff "concedes" a general rate case is the proper forum for examining the impact of the RAC on the cost of capital. PacifiCorp Br at 2. Staff's recommendation about a general rate case being the proper venue to examine RAC-related cost of capital issues was originally presented in its testimony. *See* Staff/300, Brown/14 (UE 200). Staff's position has remained unchanged – staff has not modified its position as PacifiCorp's choice of the word "concedes" incorrectly implies.

b. In the next sentence, PacifiCorp seems to suggest, without giving a supporting citation, that staff agrees "the approach used by PacifiCorp for assessing the economics of renewable resources (the alternative compliance or "ACC" approach) are most appropriately addressed in AR 518, the docket in which the Commission will develop rules to define the 'incremental cost of compliance' with SB 838 and otherwise determine how to calculate the cost off-ramp resulting from SB 838." PacifiCorp Br at 2.

Preliminarily, staff has not stated in this docket that it agrees the ACC method should be investigated in the ongoing AR 518 docket. Further, staff stands by its recommendation that PacifiCorp be required in future proceedings to perform simultaneous runs of the ACC method

[4] PacifiCorp explains how net power cost benefits of renewable resources in the RAC offset much of the RAC revenue requirement. *See* PPL/100, Kelly/8.

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and present value of revenue requirements differential (PVRR(d)) method. *See* Staff Br at 21-22. The statutorily-defined incremental cost of compliance for the cost off-ramp under SB 838 is different from assessing the economic effectiveness of resources in resource planning and acquisition. The Commission may adopt rules in AR 518 related to the incremental cost of compliance that are more general in nature, taking into account that modeling methods may change over time and even that utilities may use different modeling methods to demonstrate compliance. Finally, since there are no rules yet proposed in AR 518 relating to the incremental cost of compliance, for the foreseeable future, the Commission will still need to address in rate cases a utility's specific modeling method.

c. PacifiCorp professes concern that, in light of staff's proposed adjustment for Rolling Hills, it is uncertain how to proceed with other projects scheduled to commence in the future. *See* PacifiCorp Br at 3-4; 10-11. As stated repeatedly, the determination that Rolling Hills/Glenrock is a Major Resource was not a close case and staff is not proposing the Commission adopt additional criteria for Guideline 1. However, as a result of this proceeding, staff agrees PacifiCorp should seriously reconsider its approach to simply unilaterally applying Guideline 1 in any manner it chooses. If the company is unsure of the status of any particular project, it may either proceed with the Competitive Bidding process delineated in Order No. 06-446, or ask for a waiver as provided in the Order. *See also* Staff Br at 10. Another possible approach would be for the company to ask for a declaratory ruling, which would apply Order No. 06-446 to a set of (assumed) facts. *See* ORS 756.450. The Commission should reject PacifiCorp's highly unusual request that Order No. 06-446 be suspended until it is clarified to the company's satisfaction. PacifiCorp Br at 4. The well-reasoned Competitive Bidding Order, adopted after a lengthy process involving PacifiCorp and other important stakeholders, is sufficiently clear to be understood by its intended highly-sophisticated audience.

d. PacifiCorp observes that the Guidelines "are also silent on penalties or automatic cost disallowances for noncompliance." PacifiCorp Br at 7. The point of PacifiCorp's statement

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is not entirely clear, but the company seems to suggest that there should be no ramifications to a utility that chooses to ignore, misapply or otherwise attempts to evade the Guidelines. As stated in Section 2 of this brief, the Commission's traditional approach in addressing the circumstance of a utility not following the Commission's guidelines (e.g. actions taken inconsistent with an acknowledged IRP or issuing an RFP the Commission declined to approve) is to reserve the right to take appropriate remedial action. As discussed in Section 3 of this Reply Brief, the approach proposed by staff for PacifiCorp's actions is to find Rolling Hills imprudently acquired, accompanied by staff's recommended remedy. *See also* Staff Br at 7-16.

e. PacifiCorp quotes from staff comments filed in UM 1276 as support for its assertion the Commission has encouraged the acquisition of less than 100 MW resources. PacifiCorp Br at 8. UM 1276 is an investigation looking into a possible bias of utilities to "build" their own resources rather than to "buy" them. In this context, the staff comments in UM 1276 are not on point as they concern the benefits of power purchase agreements for shorter terms and diverse resource sizes, not utility-owned resources like Rolling Hills/Glenrock.

f. PacifiCorp incorrectly states that staff witness Schwartz "clarified" for the first time at the hearing that staff was not advocating for a "five-mile exclusion zone" for a Major Resource (PacifiCorp's language) similar to that for certain qualifying facility projects, but only relying upon the reasoning behind the UM 1129 Stipulation. PacifiCorp Br at 9. PacifiCorp fails to recognize that Ms. Schwartz' testimony was not a "clarification" but a reiteration of her testimony on the issue from as far back as staff's initial testimony in UE 199. *See* Staff/200, Schwartz/6-7 (UE 199). *Also see* Staff/600, Schwartz/5-6 (UE 199).[5]

g. PacifiCorp suggests the Commission's Order No. 07-018 allows it to avoid the competitive bidding Guidelines in trying to meet its IRP renewable resource targets. PacifiCorp

[5] "For the record," PacifiCorp's assertion that the Oregon Energy Facility Siting Council (EFSC) rules do not apply distance-based criteria in determining jurisdiction over siting is also incorrect. *See* Staff/600, Schwartz/6-7 (UE 199).

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Br at 11-12. PacifiCorp's suggestion flies in the face of the Order. *See* Order No. 07-018 at 6; PPL Cross Exhibit 2 (Staff response to DR 3.3).

h. PacifiCorp states that the timing on employing the turbines ultimately installed at Rolling Hills was critical, implying it had to use the turbines or lose them. PacifiCorp Br at 12. Staff previously addressed the problems with this assertion in its Opening Brief at 10. In addition, staff directs the ALJ's attention to the company's September 15, 2008, submission in UM 1368 where PacifiCorp acknowledges the Commission's approval of special accounting treatment for Portland General Electric's wind turbine reservation costs.[6]

i. In response to staff's determination that Rolling Hills/Glenrock is a Major Resource, PacifiCorp asserts that its Goodnoe Hills project was originally contemplated as two 56 MW projects in close proximity to each other, with the same on-line date, and staff "never raised the issue of aggregation of these projects into a single 112 MW resource that would be deemed a Major Resource." PacifiCorp Br at 12-13. Staff previously addressed this issue, pointing out that Oregon ratepayers will receive more than its share of Renewable Energy Certificates (RECs) from Goodnoe Hills. *See* Staff Br at 13. Staff's involvement with Goodnoe Hills was mainly focused on the REC issue, and was basically over by the time the Commission announced the Major Resource Guideline 1. *See* Staff/504; TR at 90-92, 102 (Schwartz). Finally, Goodnoe Hills' final project size, unlike Rolling Hills/Glenrock, is under the 100 MW Major Resource threshold. *See* PPL/200, Tallman/17 (UE 200).

j. PacifiCorp states its acquisition of Rolling Hills was objectively reasonable because its capital costs are well below the costs of the proxy resources in the company's approved IRP. *See generally* PacifiCorp Br at 15-16. Staff did not rely on the relative capital costs of IRP proxy wind resources vs. RAC wind resources in reaching the conclusion that PacifiCorp acted

[6] Staff asks the ALJ to take official notice of PacifiCorp's UM 1368 filing pursuant to OAR 860-014-0050(1)(e).

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imprudently in acquiring Rolling Hills, so its discussion of this topic is not helpful to resolving the issues present in this docket. *See* Staff Br at 12-14.

k. PacifiCorp states its acquisition of Rolling Hills was objectively reasonable in part by asserting its costs are below Oregon Schedule 37 avoided costs for qualifying facilities (QFs) under the Public Utility Regulatory Policies Act (PURPA). PacifiCorp Br at 17. There are several problems with this conclusion. First, PacifiCorp uses a new, unsubstantiated levelized resource cost estimate for Rolling Hills. Staff Br at 14; *also compare* PPL/207 *with* Staff/202, Schwartz/10 (UE 200). Second, the Commission has approved fixed avoided costs only through 2023. QFs must take a market-based rate beginning in year 16 of their PURPA contracts, so actual rates in those years are not known today. *See* PacifiCorp Advice No. 07-014 at 3-4, approved at the August 7, 2007, public meeting. In addition, QF contracts may not exceed 20 years, but PacifiCorp's estimate of levelized QF avoided costs is based on a 25-year calculation. Therefore, PacifiCorp's avoided cost calculation inappropriately includes many years for which QFs cannot obtain PURPA contracts and approved avoided costs do not yet exist. Further undermining PacifiCorp's comparison of Rolling Hills' costs to avoided costs is the fact that the Commission does not allow levelization of avoided cost rates for PURPA contracts. *See* TR at 82-83 (Schwartz); Order No. 05-584 at 20, 28 (footnote 46).

l. PacifiCorp asserts that its Rolling Hills economic analysis was "conservative" partly because of avoided lease costs. PacifiCorp Br at 17. However, staff has explained in detail why PacifiCorp's estimated avoided lease costs are overstated. *See* Staff/500, Brown/3 (UE 199) and Staff/600, Schwartz/4 (UE 199). PacifiCorp also claims its analysis is conservative because it does not factor in the terminal value that benefits customers. *Id.* In Docket UM 1368, the Oregon Independent Evaluator finds little, if any, terminal value for owned resources generally.

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See Supplemental Comments of the Independent Evaluator, August 22, 2008, at 2-3, in Docket UM 1368.[7]

m. PacifiCorp compares Rolling Hills' estimated capacity factor (both at project approval and the final build estimate) to other selected resources that were not challenged for imprudence and concludes Rolling Hills' capacity factor compares favorably. PacifiCorp Br at 18. Staff's recommendation that the Commission find Rolling Hills imprudently acquired involves more than simply comparing one project's capacity factor to another. Staff explained at length in its Opening Brief the reasons supporting its recommendation. *See* Staff Br at 7-14. It also is important to note that resources acquired through a Commission-approved RFP that is fairly administered by the utility represent the best resource options *at that time*. PacifiCorp acquired Leaning Juniper, Marengo I and Marengo II through a Commission-approved 2006 amendment to RFP 2003B. *See* Staff/200, Schwartz/7 (UE 200); TR at 86-87, 89-90 (Schwartz).

n. PacifiCorp maintains that staff's proposed disallowance for Rolling Hills is unreasonably high because it would result in costs on a capacity (dollars per kilowatt) basis that are lower than other resources in this case. The company also asserts "It would be unfair for Oregon to disallow costs related to a renewable resource but claim a full share of the RECs related to the resource." PacifiCorp Br at 27. While capacity costs are one indicator of whether a utility's investment in a generating resource is within a reasonable range, the Commission's prudence determination also must consider energy production costs (dollars per kilowatt-*hour*). For wind projects, energy production costs are highly dependent on the wind resource at the site. Staff recommends a capital cost disallowance to reflect the net power cost benefits of a Wyoming wind resource the company would likely have acquired if it followed the Commission's established process for acquiring Major Resources. *See* Staff Br at 12-14, 18. Staff has demonstrated that, based on the estimated capacity factor of Rolling Hills at the time

[7] Staff asks the ALJ to take official notice of the Oregon Independent Evaluator's supplemental comments in UM 1368, filed by staff on August 25, 2008, pursuant to OAR 860-014-0050(1)(e).

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the company made the decision to go forward with the project, its energy production costs are significantly higher than comparable Wyoming resources. Staff's proposed disallowance related to RECs is consistent with the recognition of a higher (38 percent) capacity factor resource.

o. PacifiCorp submitted updated information that allegedly shows the "correct" average capacity factor for Wyoming wind resources serving PacifiCorp is 35 percent, not the 38 percent figure used by staff, and claims staff has "never explained" why it continues to use 38 percent for its Rolling Hills' proposed adjustment. PacifiCorp Br at 28. PacifiCorp's mystery of the missing explanation is easily solved as staff's basis for its adjustment is part of the record in this proceeding. *See* Staff Br at 15-16; PPL Cross Exhibit 2 (DR 3.18). Regarding PacifiCorp's "corrected" Wyoming average capacity factor, staff explained in cross-examination that the company inappropriately included in its revised calculation integration, storage and return contracts for resources that do not serve PacifiCorp customers and applied an inappropriate capacity factor for Glenrock. *See* TR at 74-76 (Schwartz).

p. PacifiCorp proposes to "average" the Rolling Hills and Glenrock capacity factors and argues no disallowance is appropriate as the combined average is reasonable. PacifiCorp Br at 28-29. The simple response is, if PacifiCorp had followed the Guidelines, it would have issued an RFP and Rolling Hills would very likely not have been selected. *See* TR at 77-78 (Schwartz). In other words, it is inappropriate to justify Rolling Hills on the basis of combining its capacity factor with that of Glenrock when another resource (such as market bids, turnkey projects, or another site using the turbines) would likely have been selected. *Id.*

q. PacifiCorp correctly observes that, pursuant to the stipulation adopted by Order No. 07-572, all cost elements of the RAC are subject to updating through November. PacifiCorp Br at 29-30; *see also* Order No. 07-572, Appendix A at Paragraph 6(e). But, from this, PacifiCorp makes the huge leap in logic that its new, updated 37.4 percent capacity factor for Glenrock should be used in the present docket. Staff disagrees for the reasons stated in opening briefs, including evidence presented by Industrial Customers of Northwest Utilities (ICNU) on a key

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cause of the updated values. *See* Staff Br at 17-18; ICNU Opening Brief at 6. Further, the entire issue of accepting a final update under the RAC is more properly decided when, and if, PacifiCorp makes such a filing by December 1. If so, the Stipulation provides that parties retain all procedural rights to investigate, and if necessary, challenge the offered update. *See* Order No. 07-572, Appendix A at Paragraph 6(e).

r. PacifiCorp asserts that "ICNU's selective quotes from the (Rolling Hills) wind study do not undermine the fact that the Company gathered long-term, on-site data prior to going forward with the project." PacifiCorp Br at 31. PacifiCorp's statement ignores the fact that the ICNU quotes are taken from a report prepared by CH2M Hill, PacifiCorp's technical advisor, in November 2007, which is a short one month prior to when PacifiCorp made the decision to proceed with Rolling Hills. *Compare* Staff/202, Schwartz/57 (UE 200) *with* PPL/203, Tallman/17 (UE 200).

s. As a final observation, PacifiCorp notes that the parties agreed in the UE 199 stipulation to litigate the adjustments associated with Rolling Hills and Glenrock in UE 200. *See* PacifiCorp Br at 2, footnote 1. Along these lines, staff explained at length in its Opening Brief the reasons why the Rolling Hills adjustment should occur in UE 200 rather than in UE 199. *See* Staff Br at 20-21, 23-24.

However, should the Commission instead direct PacifiCorp to make the adjustment in the UE 199 TAM, the Commission should direct the company to make that same adjustment in each annual power cost update. In other words, the Commission should direct that PacifiCorp always use a 38 percent capacity factor for Rolling Hills in its annual power cost modeling. For the 2009 TAM, staff calculates the appropriate adjustment in Staff/500, Brown/1 (UE 199). The adjustments for the additional tax credits and renewable energy certificates associated with a 38 percent capacity factor, however, must be made in the RAC. These adjustments are summarized in staff's opening brief at 23.

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1162 Court Street NE
Salem, OR 97301-4096
(503) 378-6322 / Fax: (503) 378-5300

5. Conclusion

For the reasons stated, staff requests the Commission and the ALJ adopt its recommendations in this case which are summarized in staff's Opening Brief at 23-25.

DATED this 2nd day of October 2008.

Respectfully submitted,

HARDY MYERS
Attorney General

s/Michael T. Weirich
Michael T. Weirich, #82425
Assistant Attorney General
Of Attorneys for the Public Utility Commission of Oregon

Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 378-6322 / Fax: (503) 378-5300

CERTIFICATE OF SERVICE

I certify that on October 2, 2008, I served the foregoing STAFF REPLY BRIEF upon all parties of record in this proceeding by delivering a copy by electronic mail and by mailing a copy by postage prepaid first class mail or by hand delivery/shuttle mail to the parties accepting paper service.

W
CITIZENS' UTILITY BOARD OF OREGON
OPUC DOCKETS
610 SW BROADWAY STE 308
PORTLAND OR 97205
dockets@oregoncub.org

ROBERT JENKS - **CONFIDENTIAL**
610 SW BROADWAY STE 308
PORTLAND OR 97205
bob@oregoncub.org

DAVISON VAN CLEVE
IRION A SANGER - **CONFIDENTIAL**
ASSOCIATE ATTORNEY
333 SW TAYLOR - STE 400
PORTLAND OR 97204
ias@dvclaw.com

W
ESLER STEPHENS & BUCKLEY
JOHN W STEPHENS - **CONFIDENTIAL**
888 SW FIFTH AVE STE 700
PORTLAND OR 97204-2021
stephens@eslerstephens.com

W
MCDOWELL & RACKNER PC
KATHERINE A MCDOWELL - **CONFIDENTIAL**
ATTORNEY
520 SW SIXTH AVE - SUITE 830
PORTLAND OR 97204
katherine@mcd-law.com

W
PACIFICORP
RYAN FLYNN - **CONFIDENTIAL**
LEGAL COUNSEL
825 NE MULTNOMAH, SUITE 1800
PORTLAND OR 97232
ryan.flynn@pacificorp.com

W
PACIFICORP OREGON DOCKETS
OREGON DOCKETS
825 NE MULTNOMAH ST - STE 2000
PORTLAND OR 97232
oregondockets@pacificorp.com

W
PORTLAND GENERAL ELECTRIC
RANDALL DAHLGREN
121 SW SALMON ST 1WTC 0702
PORTLAND OR 97204
pge.opuc.filings@pgn.com

DOUGLAS C TINGEY
121 SW SALMON 1WTC13
PORTLAND OR 97204
doug.tingey@pgn.com

PUBLIC UTILITY COMMISSION
JUDY JOHNSON - **CONFIDENTIAL**
PO BOX 2148
SALEM OR 97308-2148
judy.johnson@state.or.us

W
PUBLIC UTILITY COMMISSION OF OREGON
DEBORAH GARCIA - **CONFIDENTIAL**
PO BOX 2148
SALEM OR 97308-2148
deborah.garcia@state.or.us

LISA C SCHWARTZ - **CONFIDENTIAL**
PO BOX 2148
SALEM OR 97308-2148
lisa.c.schwartz@state.or.us

W
RENEWABLE NORTHWEST PROJECT
KEN DRAGOON - **CONFIDENTIAL**
917 SW OAK, SUITE 303
PORTLAND OR 97205
ken@rnp.org

Department of Justice
1162 Court Street NE
Salem OR 97301-4096
(503) 378-6322

W

RENEWABLE NORTHWEST PROJECT
ANN ENGLISH GRAVATT - **CONFIDENTIAL**
917 SW OAK - STE 303
PORTLAND OR 97205
ann@rnp.org

RFI CONSULTING INC
RANDALL J FALKENBERG - **CONFIDENTIAL**
PMB 362
8343 ROSWELL RD
SANDY SPRINGS GA 30350
consultrfi@aol.com

Neoma Lane
Legal Secretary
Department of Justice
Regulated Utility & Business Section

Department of Justice
1162 Court Street NE
Salem OR 97301-4096
(503) 378-6322