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October 5, 2011

VIA E-MAIL AND FIRST-CLASS MAIL

PUC Filing Center
Public Utility Commission of Oregon
550 Capitol Street NE
Salem, OR 97308

Re: **UE 227 – PacifiCorp's 2012 Transition Adjustment Mechanism**

Attention Filing Center:

In reference to the above captioned docket and on behalf of PacifiCorp, Commission Staff, the Citizens' Utilities Board of Oregon and Noble Americas Energy Solutions, LLC, (collectively, the Joint Parties'), please find enclosed for filing the original and five copies of the Joint Parties' Opening Brief.

A copy of this filing was served on all parties to this proceeding as indicated on the attached Certificate of Service.

Please contact me with any questions.

Very truly yours,



Katherine McDowell

Enclosures

cc: Service List

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UE 227

In the Matter of:

PACIFICORP, dba PACIFIC POWER
2012 Transition Adjustment Mechanism

JOINT PARTIES' OPENING BRIEF

Pursuant to Administrative Law Judge (ALJ) Lisa Hardie's Ruling on September 22, 2011 (Ruling), Staff of the Public Utility Commission of Oregon (Staff), PacificCorp d/b/a Pacific Power (or the Company), the Citizens' Utility Board of Oregon (CUB), and Noble Americas Energy Solutions LLC (Noble Solutions) (collectively, the Joint Parties) submit this Opening Brief to the Public Utility Commission of Oregon (Commission).

I. INTRODUCTION

In this Opening Brief, the Joint Parties provide the Commission with the information requested by ALJ Hardie in the Ruling: (1) the appropriate legal standards to apply in the resolution of this docket; and (2) references to factual information from the record the parties consider important to the Commission's decision, as well as any other issues the parties deem relevant. The Joint Parties also provide the Commission with a summary of the adjustments proposed by parties to this proceeding that were resolved prior to settlement and the adjustments that were outstanding at the time of settlement. As the Joint Parties explain below, an evaluation of the Stipulation in the context of the adjustments that remained at issue at the time of settlement demonstrates that the Stipulation will result in just and reasonable rates.

1 **II. BACKGROUND**

2 On March 17, 2011, PacifiCorp filed its 2012 Transition Adjustment Mechanism
3 (TAM) to update net power costs (NPC) for 2012 and to set transition adjustments for
4 customers who choose direct access in the November 2011 open enrollment window.

5 The March 17, 2011 TAM filing (Initial Filing) reflected total forecasted normalized
6 system-wide NPC for the 2012 test period of approximately \$1.56 billion.¹ On an Oregon-
7 allocated basis, the forecasted normalized NPC in the Initial Filing were approximately \$382.3
8 million.² The Oregon-allocated NPC increase included in the Initial Filing was \$61.6 million
9 after application of the load change adjustment,³ or an overall increase to Oregon rates of
10 approximately 5.2 percent.⁴

11 Staff, CUB, Noble Solutions, and the Industrial Customers of Northwest Utilities (ICNU)
12 filed opening testimony responding to the Company's Initial Filing on June 24, 2011.⁵ In
13 addition, ICNU filed supplemental testimony on the issue of hourly scalars for forward price
14 curves on July 5, 2011.

15 The Company filed reply testimony on July 29, 2011 (Rebuttal Filing). In the Rebuttal
16 Filing, the Company updated NPC to reflect the most recent official forward price curve and
17 new power, fuel, and transportation/transmission contracts and updates to existing contracts,
18 consistent with the TAM Guidelines. Staff and intervenors responded to the Company's
19 Rebuttal Filing in rebuttal testimony on August 16, 2011. The Company filed a final round of
20 surrebuttal testimony on August 30, 2011, and the case went to hearing on September 8,
21 2011.

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23 ¹ PPL/100, Duvall/2, I. 19; Exhibit PPL/101.

24 ² PPL/100, Duvall/2, I. 23-3, I. 2; Exhibit PPL/101.

25 ³ PPL/100, Duvall/3, II. 9-10; Exhibit PPL/101.

26 ⁴ PPL/300, Ridenour/4, I. 13.

⁵ Staff filed the reply testimony of Brian Bahr on June 27, 2011.

1 After the hearing, all parties to the docket participated in a settlement conference on
2 September 14, 2011, which resulted in a comprehensive settlement among the Company,
3 Staff, CUB, and Noble Solutions. ICNU, the only other party to the proceeding, attended the
4 September 14 settlement conference but did not join in the settlement.

5 On September 20, 2011, the Joint Parties filed the Stipulation; Joint Testimony in
6 Support of the Stipulation; and a Joint Motion to Reopen Record, Allow Filing of Stipulation
7 and Joint Testimony, and Amend Schedule. On September 22, 2011, ALJ Hardie clarified in
8 the Ruling that the record remains open, accepted the Stipulation as evidence, accepted the
9 Joint Testimony as an explanatory brief, and directed the filing of briefs.

10 III. ARGUMENT

11 A. Legal Standard Applicable to Review of Contested Stipulations

12 Recognizing that PacifiCorp bears the burden to show that any rate increase is just
13 and reasonable,⁶ and pursuant to the Commission's broad power to set just and reasonable
14 rates, the Commission must "make an independent judgment as to whether any given
15 settlement constitutes a reasonable resolution of the issues,"⁷ taking into consideration that
16 setting rates typically involves a "continuum of outcomes"⁸ rather than one "right number in
17 any cost category." Thus, the Commission's ultimate inquiry in approving a stipulation is
18 whether it results in just and reasonable rates.⁹ To that end, the Commission has held that it
19 does not need to evaluate and approve "theories or methodologies used or individual
20
21

22 ⁶ *Re PacifiCorp Request for a General Rate Revision*, Docket UE 210, Order No. 10-022 at 6
23 (Jan. 26, 2010). See ORS 757.210. See also, *In re PacifiCorp*, Docket UM 995, Order No. 02-469 at 4
(July 18, 2002).

24 ⁷ *Re PacifiCorp*, Docket UE 210, Order No. 10-022 at 6.

25 ⁸ *Id.*

26 ⁹ *Id.* at 7. ("As we have explained, our key concern is whether the stipulated rates are, as a whole, just and reasonable.")

1 decisions made” in order to approve a stipulation, as long as the outcome is reasonable.¹⁰
2 Similarly, the Commission may approve non-unanimous stipulations where substantial
3 competent evidence on the record shows the stipulation will result in just and reasonable
4 rates.¹¹ In addition, Commission policy has been to encourage voluntary resolution of issues
5 “to the extent that settlement is in the public interest.”¹²

6 In Order No. 10-222, the Commission approved a contested revenue requirement
7 stipulation in the Company’s 2010 general rate case. ICNU challenged the settlement,
8 claiming it was a “black box” settlement that did not “adequately identify specific costs or
9 methodologies used to calculate the proposed rate increase.”¹³ ICNU argued that without
10 specific information on how the overall revenue requirement was reached, the rate increase
11 was not supported by evidence.¹⁴

12 The Commission rejected this argument, explaining that the reasonableness of overall
13 rates, not particular methodologies, is the “key concern.”¹⁵ For example, the Commission
14 approved the stipulated overall rate of return, despite the fact that stipulating parties did not
15 “agree among themselves on the individual capital components that make up that return.”¹⁶
16 Similarly, the Commission was satisfied that the stipulated adjustments to wages and salaries

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19 ¹⁰ *Id.* (citing *Re. Portland Gen. Elec. Co.*, Docket DR 10, *et al.*, Order No. 08-487 at 7-8 (Oct. 26,
20 2009)). See also, *Re. PacifiCorp*, Docket UM 995/UE 121, Order No. 02-469 at 75 (July 18, 2002)
21 (“Parties negotiate settlements for their own reasons. We need not inquire into those reasons if the
outcome is reasonable.”).

22 ¹¹ *Re PacifiCorp*, Docket UM 995/UE 121, Order No. 02-469 at 75.

23 ¹² *Re PacifiCorp’s 2010 Transition Adjustment Mechanism*, Docket UE 207, Order No. 09-432 at
6 (Oct. 30, 2009).

24 ¹³ *Re PacifiCorp*, Docket UE 210, Order No. 10-022 at 6.

25 ¹⁴ *Id.*

26 ¹⁵ *Id.* at 7.

¹⁶ *Id.*

1 were reasonable, despite not being able to determine “precisely” which of the proposed
2 adjustments were included in the stipulation.¹⁷

3 Ultimately, the Commission stated that its primary role is not to “examine any . . .
4 specific cost categories in detail, but rather to determine whether the Stipulation as a whole
5 results in just and reasonable rates.”¹⁸ The Commission approved the stipulation as a
6 “compromise of different positions” which represented “a reasonable resolution” of the
7 issues.¹⁹

8 **B. The Settlement Results in Just and Reasonable Rates**

9 The Stipulation is a reasonable resolution of the issues presented in this proceeding
10 and results in just and reasonable rates for customers.

11 **1. The Stipulation is Built on a Fully Developed Record With a Number of 12 Resolved Issues.**

13 The Stipulation was executed late in this proceeding and, as ALJ Hardie noted, came
14 after “the record on the issues in dispute [was] very well developed.”²⁰ Through the filing of
15 five rounds of testimony, the parties narrowed the issues, leaving only a relatively small
16 number of issues outstanding. The parties primarily addressed one issue at the hearing—the
17 Company’s natural gas hedging for the test period.

18 Prior to hearing, the scope of issues in dispute was narrowed by the Company’s
19 acceptance of a number of adjustments proposed by the parties. These adjustments were
20 reflected in the NPC proposed in the Company’s surrebuttal testimony that formed the starting
21 point of the NPC reduction in the Stipulation.²¹ First, in testimony, the Company accepted

22 ¹⁷ *Id.* at 10.

23 ¹⁸ *Id.*

24 ¹⁹ *Re PacifiCorp*, Docket UE 210, Order No. 10-222 at 5.

25 ²⁰ *Re. PacifiCorp 2012 Transition Adjustment Mechanism*, Docket UE 227, Ruling at 2 (Sept. 22,
2011).

26 ²¹ Stipulation ¶ 10.

1 Staff's proposal to update the 2012 load forecast with the Company's latest forecast in July
2 2011.²² This adjustment reduced Oregon-allocated NPC by \$4.7 million.²³

3 Second, the Company accepted Staff's and ICNU's adjustment to model Bear River
4 generation to take into account flood control years.²⁴ This adjustment reduced total-Company
5 NPC by \$2.1 million.²⁵

6 Third, the Company accepted CUB's proposal to use a four-year rolling average to
7 calculate liquidated damages resulting from forced outages.²⁶ This adjustment reduced
8 Oregon-allocated NPC by \$0.1 million.²⁷

9 Fourth, to address Noble Solutions' adjustment for line losses, the Company proposed
10 an approach to ensure that the line loss charges approved at FERC would be reflected in the
11 direct access calculation.²⁸

12 Other parties also moderated their positions as the record became more fully
13 developed. While Staff originally proposed adjustments disallowing Gadsby and Currant
14 Creek "must run" modeling, California Independent System Operator (Cal ISO) costs, and
15 costs related to the DC Intertie, Staff ultimately concluded that these adjustments were
16 unnecessary.²⁹

17 On rebuttal, CUB's adjustment on natural gas hedging moved from disallowing hedges
18 in excess of 36 months to disallowing hedges in excess of 48 months.³⁰ Additionally, while
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20 ²² PPL/110, Duvall/3, ll. 9-11.

21 ²³ PPL/110, Duvall/5, ll. 13-14.

22 ²⁴ PPL/105, Duvall/4, ll. 1-3.

23 ²⁵ PPL/105, Duvall/4, ll. 1-3.

24 ²⁶ PPL/110, Duvall/6, ll. 3-4.

25 ²⁷ PPL/110, Duvall/6, l. 17.

26 ²⁸ PPL/105, Duvall/37, ll. 1-12; Noble Solutions/301.

²⁹ PPL/112.

³⁰ CUB/200, Jenks-Feighner/7, ll. 5-16.

1 CUB initially opposed the Company's wind integration charges, after the Company accepted
2 CUB's proposal for continued work with stakeholders on developing wind integration studies
3 and calculating appropriate wind integration charges, CUB ultimately accepted the Company's
4 proposed charges as reasonable.³¹

5 On rebuttal, Noble Solutions accepted the Company's proposal on line losses.³² No
6 party has opposed this resolution of the line loss issue.

7 **2. The Stipulation is a Reasonable Compromise of the Outstanding Issues.**

8 The Stipulation reduces the Oregon-allocated NPC proposed on surrebuttal by \$8
9 million. This represents a significant 14 percent reduction to the Company's proposed NPC.
10 This represents a reasonable compromise of the issues outstanding among the parties after
11 the hearing.

12 Staff's remaining adjustments were for market caps (approximately \$1.5 million) and
13 affiliate mine incentives and meals (approximately \$0.4 million). CUB's remaining adjustment
14 was for natural gas hedging (approximately \$3.9 million). ICNU's remaining adjustments were
15 for natural gas hedging (\$16.2 million), retail load forecast (\$42.6 million), forward price curve
16 methodology (\$1.7 million), market caps (\$1.4 million), DC Intertie costs (\$1.2 million),
17 California ISO fees (\$1.1 million), and Gadsby "must run" designation (\$0.8 million).

18 Noble Solutions' remaining adjustment was for the Bonneville Power Administration
19 (BPA) transmission credit, which had no NPC impact. The Stipulation resolved this issue by
20 adopting a \$0.75/MWh BPA transmission credit, a reasonable compromise between the
21 Company's proposal of no wheeling credit and Noble Solutions' proposal of a BPA
22 transmission credit of up to \$2.28/MWh.³³ ICNU did not file testimony on this BPA
23

24 ³¹ CUB/200, Jenks-Feighner/5, ll. 12-15.

25 ³² Noble Solutions/200, Higgins/2, ll. 10-19.

26 ³³ Noble Solutions/200, Higgins/4, ll. 6-17.

1 transmission credit issue, and therefore this part of the settlement is not inconsistent with any
2 position ICNU has taken in this docket.

3 The Stipulation is a “black box” settlement that does not specify how the \$8 million
4 reduction to NPC was derived. Nevertheless, based upon the outstanding adjustments in the
5 case, the rates resulting from the Stipulation are demonstrably just and reasonable.

6 ICNU’s largest adjustment, the retail load forecast, is based upon the Company’s
7 original load forecast, not the updated load forecast that formed the basis of the Stipulation.³⁴
8 It is thus the Company’s position that ICNU’s adjustment is significantly higher than it would
9 be if it were based on the load forecast underlying the Stipulation, and that this adjustment
10 was made moot by the Company’s adoption of Staff’s proposal to update the load forecast. In
11 any event, the Company provided evidence that the adjustment would violate the TAM
12 Guidelines and the Commission’s matching principle.³⁵ None of the other parties filed
13 testimony on this adjustment.

14 ICNU’s hedging adjustment overlaps in part with CUB’s hedging adjustment, in that
15 both ICNU and CUB proposed to disallow hedges over 48 months. The remainder of ICNU’s
16 adjustment addresses hedges that are less than 48 months in length.³⁶ The Company notes
17 that this is a length that ICNU has conceded is reasonable.³⁷

18 The Joint Parties note that the Stipulation also adopts Staff’s proposal that the
19 Company enter a series of workshops to review, in depth, the Company’s existing hedging
20 practices and potential changes to future hedging strategies. While the Joint Parties agree
21 that such discussions will not constitute a preapproval process for purposes of any future
22 prudence review, it is hoped that PacifiCorp can use this process to implement appropriate

23 ³⁴ ICNU/100, Schoenbeck/5-9.

24 ³⁵ PPL/600, Griffith/2-6.

25 ³⁶ PPL Cross Exhibit/900, at 26, ll.1-22.

26 ³⁷ PPL Cross Exhibit/900, at 25, ll. 7-9; UE 227 Transcript at 168, ll. 1-5 (Sept. 8, 2011).

1 policy changes on a going forward basis that result from agreement in the collaborative
2 process.³⁸

3 ICNU's NPC modeling adjustments overlap NPC modeling issues raised by Staff,
4 including Staff's market cap adjustment and the Cal ISO, DC Intertie, and Gadsby must run
5 adjustments raised but subsequently conceded by Staff. CUB did not provide testimony on
6 these issues, except that the latter issue (Gadsby must run) is a subset of the wind integration
7 charge issue raised by CUB and ultimately resolved.

8 Another issue raised by ICNU was a proposal to change the Company's methodology
9 for calculating its forward price curve (FPC). ICNU's proposed preferred methodology
10 reduced NPC by \$1.7 million on an Oregon basis, and its alternative methodology reduced
11 NPC by \$0.9 million on an Oregon basis.³⁹ Staff testified that the Company's existing FPC
12 methodology is reasonable.⁴⁰ PacifiCorp provided testimony that ICNU's proposed
13 methodology does not appropriately take into account market conditions.⁴¹ CUB took no
14 position on this matter.

15 Both the value of the combined outstanding adjustments, and the remaining level of
16 NPC to which there is no challenge, demonstrates that the \$8 million reduction contained in
17 the Stipulation will produce rates that are just and reasonable. The conclusion that the
18 \$8 million reduction to NPC will result in rates that are within the continuum of reasonable
19 outcomes is supported by substantial evidence in the record. Therefore, consistent with the
20 Commission's standard for reviewing stipulations, the Joint Parties' Stipulation should be
21 approved.

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23 _____
³⁸ Stipulation ¶ 14.

24 ³⁹ ICNU/108, Schoenbeck/2, ll. 12-3, l. 1.

25 ⁴⁰ Staff/300, Durrenberger/12, ll. 15-19.


26 ⁴¹ PPL/500, Link/4, ll. 18-5, l. 3.

1 **IV. CONCLUSION**

2 As discussed above, the record in this case contains substantial evidence showing
3 that the rates resulting from the Stipulation are just and reasonable. The Parties therefore
4 request that the Commission adopt the Stipulation as the basis for resolving issues in this
5 proceeding and include the terms and conditions of the Stipulation in its order in this case.
6

7 DATED: October 5, 2011

McDowell Rackner & Gibson PC

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9 
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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing document in UE 227 on the following named person(s) on the date indicated below by email addressed to said person(s) at his or her last-known address(es) indicated below.

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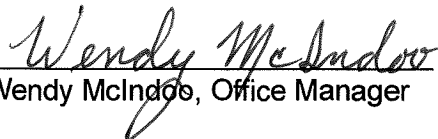
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DATED: October 5, 2011


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