

# McDowell Rackner & Gibson PC



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October 12, 2011

## VIA ELECTRONIC AND U.S. MAIL

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

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

Attention Filing Center:

Enclosed for filing in the above captioned docket are the original and five copies of the Joint Parties' Reply Brief.

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

Very truly yours,

A handwritten signature in black ink, appearing to read 'Katherine McDowell', written over a horizontal line.

Katherine McDowell

cc: Service List

1 **BEFORE THE PUBLIC UTILITY COMMISSION**  
2 **OF OREGON**

3 **UE 227**

4 In the Matter of :

5 PACIFICORP, dba PACIFIC POWER  
6 2012 Transition Adjustment Mechanism

**JOINT PARTIES' REPLY BRIEF**

7  
8 Pursuant to Administrative Law Judge (ALJ) Lisa Hardie's Ruling on September 22,  
9 2011 (Ruling), Staff of the Public Utility Commission of Oregon (Staff), PacifiCorp d/b/a Pacific  
10 Power (or the Company), the Citizens' Utility Board of Oregon (CUB), and Noble Americas  
11 Energy Solutions, LLC (Noble Solutions)<sup>1</sup> (collectively, the Joint Parties) submit this Reply  
12 Brief to the Public Utility Commission of Oregon (Commission) in reply to the Opening Brief of  
13 the Industrial Customers of Northwest Utilities (ICNU), filed on October 5, 2011. Filed  
14 concurrently with this Joint Parties' Reply Brief (CUB, Staff, PacifiCorp, and Noble Solutions)  
15 is PacifiCorp's and Staff's Reply Brief.

16 **ARGUMENT**

17 **A. The Joint Parties Provided Support for the \$8 Million Reduction.**

18 ICNU's Opening Brief includes a number of incorrect statements regarding the nature  
19 of the Joint Parties' settlement.

20 First, ICNU erroneously claims that the Joint Parties provided no support for the  
21 proposed rate increase other than the fact that the increase is the midpoint between  
22 PacifiCorp's and CUB's positions.<sup>2</sup> In fact, the \$8 million reduction stipulated to by the Joint

23 \_\_\_\_\_  
24 <sup>1</sup> ICNU does not oppose the portions of the settlement resolving direct access line loss  
25 calculations and the BPA transmission credit raised by Noble Solutions. Opening Brief of ICNU at n.3.  
26 Thus, this Reply Brief does not address those issues.

<sup>2</sup> Opening Brief of ICNU at 9.

1 Parties reflects an amount that *exceeds* Staff's and CUB's combined remaining net power  
2 cost (NPC) adjustments at the time of settlement.

3 ICNU claims that CUB modified its hedging adjustment on rebuttal to be consistent  
4 with ICNU's,<sup>3</sup> supporting an adjustment of \$16.2 million to the Company's filing.<sup>4</sup> But the  
5 record clearly demonstrates that CUB's modified adjustment included only hedges in excess  
6 of 48 months, unlike ICNU's adjustment, which includes hedges 36 to 48 months in length.  
7 While ICNU claims that CUB did not identify the NPC impact of its modified hedging  
8 adjustment, CUB's rebuttal testimony explicitly quantified this adjustment as \$3.9 million.<sup>5</sup> At  
9 the time of settlement, Staff's remaining adjustments were market caps (approximately \$1.5  
10 million) and Bridger affiliate costs (an adjustment of \$0.4 million).<sup>6</sup>

11 Second, the settlement was a black box settlement and did not specify the amount of  
12 NPC reduction that was attributable to any party's proposals. However, as noted above,  
13 several of ICNU's proposed adjustments overlapped with adjustments proposed by other  
14 parties. For example, the CUB adjustment based on hedging; the Staff adjustments to market  
15 caps, Cal ISO charges, and DC Intertie charges; and the Staff and CUB adjustments to the  
16 Company's wind integration charges.

17 **B. The Legal Standard Relevant to the Commission's Review of Stipulations**

18 ICNU appears to agree that the Commission's ultimate inquiry in approving a  
19 stipulation is whether it results in just and reasonable rates<sup>7</sup> and that the Commission does not  
20 need to evaluate and approve "theories or methodologies used or individual decisions made"

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22 <sup>3</sup> Opening Brief of ICNU at 10, n. 4.

23 <sup>4</sup> *Id.* at 9.

24 <sup>5</sup> CUB/200, Jenks-Feighner/7, ll. 14-16.

25 <sup>6</sup> Joint Parties' Opening Brief at 7.

26 <sup>7</sup> Opening Brief of ICNU at 7 ("the Commission's first analysis should be whether the . . . rate  
increase is supported by substantial evidence and results in just and reasonable rates.").

1 in order to approve a stipulation.<sup>8</sup> However, ICNU claims that the Stipulation is defective  
2 because the Joint Parties “have not identified any specific value to their adjustments, nor any  
3 explanation regarding why the \$8 million amount, rather than a different or larger number  
4 would be a more reasonable resolution of CUB’s and Staff’s proposed revenue requirement  
5 adjustments.”<sup>9</sup>

6 ICNU is incorrect. ICNU’s argument is virtually identical to the one presented by ICNU  
7 and rejected by the Commission in the Company’s 2010 rate case. There, ICNU challenged  
8 the settlement, claiming it was a “black box” settlement that did not “adequately identify  
9 specific costs or methodologies used to calculate the proposed rate increase.”<sup>10</sup> In rejecting  
10 this argument, the Commission stated that its primary role is not to “examine any . . . specific  
11 cost categories in detail, but rather to determine whether the Stipulation as a whole results in  
12 just and reasonable rates.”<sup>11</sup> As explained in the Joint Parties’ Opening Brief, the Commission  
13 made its standard for reviewing settlements clear in Order No. 10-222, which evaluated a non-  
14 unanimous settlement and, based on that standard, the Stipulation should be approved.

15 Finally, ICNU criticizes the Joint Parties for not resolving “a number of key and  
16 controversial issues regarding the appropriate scope and implementation of the TAM,”  
17 including how these issues will be accounted for in future TAMs.<sup>12</sup> ICNU’s argument that a  
18 settlement is improper if it does not resolve all issues for purposes of the instant case and  
19 future proceedings is unpersuasive. The purpose of a settlement is to avoid litigation, and

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20 <sup>8</sup> *Re PacifiCorp Request for a General Rate Revision*, Docket UE 210, Order No. 10-022 at 6  
21 (Jan. 26, 2010) (citing *Re. Portland Gen. Elec. Co.*, Docket DR 10, *et al.*, Order No. 08-487 at 7-8 (Oct.  
22 26, 2009)). *See also, Re. PacifiCorp*, Docket UM 995/UE 121, Order No. 02-469 at 75 (July 18, 2002)  
23 (“Parties negotiate settlements for their own reasons. We need not inquire into those reasons if the  
24 outcome is reasonable.”).

25 <sup>9</sup> Opening Brief of ICNU at 9.

26 <sup>10</sup> Order No. 10-022 at 5.

<sup>11</sup> *Id.* at 10.

<sup>12</sup> Opening Brief of ICNU at 11.

1 Commission policy has been to encourage voluntary resolution of issues "to the extent that  
2 settlement is in the public interest."<sup>13</sup> Requiring parties to explicitly resolve all issues in a case  
3 and agree on how those issues will be accounted for in the future will make settlement much  
4 more elusive.

5 **CONCLUSION**

6 For the reasons stated in the Joint Parties' Opening Brief and the Joint Parties' Reply  
7 Brief, the Joint Parties respectfully request that the Commission find that the Stipulation  
8 produces just and reasonable rates, reject ICNU's arguments to the contrary, and approve the  
9 Stipulation as filed.

10  
11 DATED: October 12, 2011

McDowell Rackner & Gibson PC

  
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25 <sup>13</sup> *Re PacifiCorp's 2010 Transition Adjustment Mechanism*, Docket UE 207, Order No. 09-432 at  
26 6 (Oct. 30, 2009).

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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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DATED: October 12, 2011

  
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