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October 12, 2011

Via Electronic and FedEx

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 2012 Transition Adjustment Mechanism
Docket No. UE 227

Dear Filing Center:

Enclosed please find an original and five (5) copies of the Reply Brief on behalf of the Industrial Customers of Northwest Utilities in the above-referenced docket. Thank you for your attention to this matter.

Sincerely yours,

/s/ Sarah A. Kohler

Sarah A. Kohler
Paralegal

Enclosures

cc: Service List

CERTIFICATE OF SERVICE

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

Dated at Portland, Oregon, this 12th day of October, 2011.

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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 227

In the Matter of)	
)	
PACIFICORP, dba PACIFIC POWER)	THE INDUSTRIAL CUSTOMERS OF
)	NORTHWEST UTILITIES' REPLY
)	BRIEF
2012 Transition Adjustment Mechanism)	
(Schedule 201), Net Power Costs, Cost-Based)	
Supply Service (Schedule 205), TAM)	
<u>Adjustment for Other Revenues</u>)	

**REPLY BRIEF OF THE
INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES**

October 12, 2011

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I. INTRODUCTION

The Industrial Customers of Northwest Utilities (“ICNU”) submits this reply brief in PacifiCorp’s (or the “Company”) transition adjustment mechanism (“TAM”) proceeding in response to the Opening Brief of PacifiCorp, Staff, the Citizens’ Utility Board (“CUB”), and Noble America Solutions (“Noble Solutions”) (jointly, “Settling Parties”). The Settling Parties’ Brief is notably devoid of substantive analysis or detailed support for their proposed large \$50.7 million rate increase. The Settling Parties submitted a short Brief, fewer than 10 full pages, arguing that the Oregon Public Utility Commission (“OPUC” or the “Commission”) should only review a settlement for whether it proposes an overall increase that is just and reasonable, and should not review any substantive issues in detail. The Settling Parties do not provide any substantive support other than an extra-record summary of the litigation positions of all the parties; they simply argue that the proposed \$8 million reduction from the Company’s surrebuttal testimony “is a reasonable compromise of the outstanding issues.” Settling Parties’ Brief at 7. Thus, the Commission has little evidence supporting that this \$50.7 million rate increase is in fact fair, just and reasonable, other than the Company’s filed case.

PacifiCorp’s Oregon ratepayers deserve better than simply another large rate increase, and Oregon law requires more. Industrial customer rates have recently increased 23%, and PacifiCorp should not be allowed any additional rate increases without a thorough demonstration that its actual net variable power costs have increased. Thus, the Commission should reject the Settlement, as it would allow an unjustified and unnecessary rate increase that is not supported by substantial evidence that the Company’s costs have increased over \$50 million, fails to produce just and reasonable rates, and is inconsistent with the purpose of the TAM.

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Finally, the Commission should not allow the Settling Parties to bolster their limited Brief with a detailed or substantive reply that actually addresses the underlying issues in this proceeding because it would deprive ICNU with an opportunity to respond.

II. ARGUMENT

A. The Settling Parties' Proposed Legal Standard Would Support Any Rate Increase As Long As Some Parties Have Reached a "Compromise"

The Settling Parties' position is that all that is needed to support the settlement is a compromise of the parties "within the continuum of reasonable outcomes . . . supported by substantial evidence in the record." Settling Parties' Brief at 9. The Settling Parties, however, have failed to explain how their over \$50 million rate increase is a "reasonable outcome," and their justifications essentially support any rate increase that is within the book ends of PacifiCorp's testimony (\$58.7 million increase) and ICNU's testimony (zero rate increase). The Settling Parties would have the Commission abdicate its statutory responsibilities and essentially defer to any rate increase that some, but not all, parties happen to agree upon. This is too unduly deferential to the Settling Parties themselves, fails to recognize the unique procedural nature of the TAM, and is inconsistent with Commission precedent.

1. The Settling Parties Must Provide More Justification than Only That They Were Able to Agree Upon a Rate Increase Number that Is Between the Different Litigation Positions of the Parties

The Settling Parties heavily refer to the Commission's decision in the 2009 PacifiCorp general rate case (Docket No. UE 210) in which the Commission adopted a black box type settlement over the objection of ICNU. Settling Parties' Brief at 3-5. ICNU agrees that the Commission has concluded that ratemaking decisions often cannot be reduced to a specific

amount, that there can be a variety of reasonable options, and that rate increases must be evaluated based on the reasonableness of the rates. Re PacifiCorp, Docket No. UE 210, Order No. 10-022 at 6 (Jan. 26, 2010). The Settling Parties, however, ignore that the Commission also concluded that has “a statutory duty” to “make an independent judgment” that any settlement will produce just and reasonable rates. Id. at 6.

More significantly, while the Commission in UE 210 did not exhaustively analyze all cost elements and relied upon a conclusion that the overall rate increase was just and reasonable, the UE 210 settlement and the Commission’s analysis were far more searching than offered by the Settling Parties in this case. In UE 210, the Settlement proposed quantifiable adjustments to specific cost categories, including a specific rate of return and interstate cost allocation amounts. Id. at 3-4. The Commission not only reviewed the overall reasonableness of the rate increase in UE 210, but it also reviewed the merits of each ICNU argument on every contested legal and factual issue and concluded that the specific proposed resolution of each issue was reasonable. Id. at 7-16.

The Settling Parties would also have the Commission ignore its history of conducting more rigorous reviews of non-unanimous settlements in numerous other proceedings. For example, the Commission rejected a settlement regarding PacifiCorp’s proposed alternative form of regulation (“AFOR”) based upon the conclusion that the stipulated AFOR would not produce customer benefits. Re PacifiCorp, Docket No. UE 94, Order No. 97-371 at 9-10 (Sept. 18, 1997). Similarly, the Commission rejected a settlement between Staff and PacifiCorp on the grounds that it was not fair, just, and reasonable, based upon specific concerns about the details of depreciation lives, the environmental effects, and concerns regarding whether coal plants

would continue to be economic. Re PacifiCorp, Docket No. UM 1329, Order No. 08-327 at 2-5 (June 17, 2008). In addition, while the Commission ultimately approved the settlement between PacifiCorp and Staff in the Hunter outage deferral proceeding, the Commission first exhaustively analyzed all of ICNU's and CUB's legal and factual arguments regarding the prudence of PacifiCorp's decisions. Re PacifiCorp, Docket No. UM 995, Order No. 02-469 at 8-76 (July 18, 2002). The Commission's review in this proceeding should be just as exhaustive and searching as the cases identified above.

The Settling Parties request that the Commission abandon this practice of reviewing the substantive arguments in cases in which some parties have agreed to resolve issues, and to ignore its statutory obligation to independently verify whether the rate increase is supported by substantial evidence in the record. Simply put, substantial evidence in the record is more than just showing that the parties have entered into a compromise that is somewhere between two possible results, but that the proposed settlement adequately resolves all contested issues in a fair and reasonable manner. This requires the Commission to review the individual factual and legal arguments, including whether the proposed rates accurately represent the Company's costs, were prudently incurred, and consistent with all legal requirements. Docket No. UE 94, Order No. 97-371; Docket No. UM 995, Order No. 02-469.

2. The Settling Parties Fail to Explain How their Black Box Rate Increase Is Consistent with the Purpose of the TAM

The Settling Parties also failed to recognize that the purpose of this TAM proceeding is not to increase rates to bundled customers, but to accurately set transition adjustment credits. In past proceedings with specific rate mechanisms or statutory obligations,

the Commission has conducted a rigorous and detailed analysis to ascertain whether the settlement was consistent with the underlying statutory purpose. Thus, in the AFOR proceeding, one reason that the Commission rejected a non-unanimous PacifiCorp settlement was because it did not meet the specific statutory guidelines for AFORs, including providing specific customer benefits. Docket No. UE 94, Order No. 97-371 at 10. Similarly, in contested settlements of deferred accounting cases, before considering the reasonableness and prudence of the proposed rate increase, the Commission first considers whether the deferral is consistent with the statutory requirements for deferrals. E.g., Re PGE, Docket No. UE 196, Order No. 10-051 at 7-8 (Feb. 11, 2010); Docket No. UM 995, Order No. 01-085 at 12-13 (Jan. 9, 2001).

The TAM was established because the Commission is required to set the date upon which electric utilities must announce direct access prices for the subsequent calendar year, which may include transition charges or credits. ORS §§ 757.607, 609. The statutory requirements for direct access do not require or even necessarily contemplate annual rate changes for bundled customers. Id. The Commission, however, has decided to implement the direct access requirements through a TAM that includes an annual power cost rate change, because the Commission found that it was useful “to capture costs associated with direct access, and prevent unwarranted cost shifting.” Re PacifiCorp, Docket No. UE 170, Order No. 05-1050 at 21 (Sept. 21, 2005); Re PacifiCorp, Docket No. UM 1081, Order No. 04-516 at 9-14 (Sept. 14, 2004). Given the small number of customers in PacifiCorp’s direct access program, this case is certainly not above preventing cost shifts.

Unlike a general rate proceeding that reviews the overall reasonableness of the rate increase, this proceeding has a specific statutory purpose: to accurately and specifically

calculate PacifiCorp's power costs in order to ensure that the costs of direct access are captured and that there is no unwarranted cost shifting. The Settling Parties' arbitrary \$8 million revenue requirement reduction from PacifiCorp's inflated \$58.7 million surrebuttal position is not supported by any evidence that it will accurately estimate the Company's power costs or transition credits. Instead, the only evidence relied upon by the Settling Parties is that it might be within the range of reasonable options (which ICNU disputes). Settling Parties' Brief at 7-9. The Settling Parties do not even bother to claim that the TAM will accurately set the Company's power costs or transition credits, which is a fundamental prerequisite for approving any TAM settlement.

The Settling Parties also all but ignore one of the most significant issues in this proceeding: how retail load forecasts and other retail revenues should be accounted for in a TAM. The Settling Parties' brief includes one paragraph which inaccurately claims (without citation) that the value of ICNU's adjustment is "significantly" lower and made "moot" by the Company's acceptance of a different Staff adjustment. Settling Parties' Brief at 8. The Settling Parties refuse to address why failing to include other retail revenues is necessary to implement direct access, capture costs, or prevent cost shifting; nor do they address how retail load forecasts should be addressed in future TAM proceedings (if any). The Settling Parties fail to acknowledge that almost none of PacifiCorp's rate increase request in this proceeding is related to actual cost increases, but instead are attributed to uncorrected GRID modeling errors and the one-sided nature of the TAM that ensure that net variable power cost rates always increase whether or not PacifiCorp's power costs are increasing or decreasing. The TAM should be

abandoned if it is no longer serving its original purpose and is only acting as a tool to allow PacifiCorp to increase its rates.

III. CONCLUSION

The Commission should reject the Settling Parties' position that a TAM Settlement is appropriate as long as the overall rate increase is somewhere between the various litigation positions of the parties. The fact that some, but not all, parties have reached a settlement does not mean that the Commission no longer reviews the substantive basis upon which PacifiCorp is seeking a rate increase or how the Settlement is consistent with the underlying statutory purpose of setting direct access transition credits. The logical result of the Settling Parties' position is that the Commission would no longer review substantive issues in a proceeding as long as two or more parties (which could be a settlement between only PacifiCorp and Staff, or even a settlement between ICNU and CUB) propose a "compromise" rate increase. The Commission should review the substantive issues in this proceeding and conclude that PacifiCorp has failed meet its burden of proof to justify an approximately \$50.7 million rate increase.

Dated this 12th day of October, 2011.

Respectfully submitted,

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