

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UE 227**

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

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

**REDACTED VERSION  
(Confidential and Highly Confidential Material has been removed)**

**October 5, 2011**

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## I. INTRODUCTION

The Industrial Customers of Northwest Utilities (“ICNU”) submits this opening brief in PacifiCorp’s (or the “Company”) transition adjustment mechanism (“TAM”) proceeding that will set net power cost rates and transition adjustment credits for the 2012 calendar year. PacifiCorp, Staff, the Citizens’ Utility Board (“CUB”), and Noble America Solutions (“Noble Solutions”) (jointly, “Settling Parties”) entered into a settlement (“Settlement”) that proposes an approximately \$50.7 million rate increase, which is an over 6% industrial customer rate increase. This is a slight reduction from PacifiCorp’s originally filed \$61.6 million power cost related rate increase, and follows upon a difficult time for industrial customers that have experienced the worst economic conditions in a generation and about a 23% rate increase in a little more than a year and half time period. ICNU recommends that the Oregon Public Utility Commission (“OPUC” or the “Commission”) reject the proposed Settlement and PacifiCorp’s rate increase almost in its entirety.

The majority of PacifiCorp’s rate increase is not related to actual cost increases, but the manner in which the Company has designed its power cost model (known as “GRID”) and interpreted how the TAM should apply to its retail load forecasts. According to the Company, the Commission must essentially accept its retail load forecasts in a stand-alone TAM proceeding and the Commission cannot recognize the additional fixed cost revenue recovery that will occur from additional sales. The Commission should offset the overall TAM increase with

the known and measurable \$30.8 million in additional retail revenues, because there is no dispute that they will occur and lower PacifiCorp's actual costs.<sup>1/</sup>

The Commission should also disallow about \$16.2 million of PacifiCorp's rate increase proposal because the Company's gas hedging policy and implementation is fundamentally flawed. PacifiCorp's controversial gas hedging policy is imprudent because the Company locked in far too much gas far too quickly. ICNU's gas hedging proposal makes adjustments consistent with how other prudent utilities are managing hedging the risk associated with gas costs, and would still allow the Company to recover approximately half of its out of market hedging costs in this proceeding.

The Commission should also adopt a number of ICNU adjustments related to how PacifiCorp's power cost model accounts for the costs of the California Independent System Operation ("Cal ISO"), the DC Intertie, market caps, wind integration costs, and how the forward price curves are developed.<sup>2/</sup> Similar to the retail load forecast dispute, these issues do not represent actual cost increases, but are primarily related to how the Company models these costs and benefits of its resources in GRID. Adoption of these adjustments would further reduce PacifiCorp's rate increase by approximately \$6.2 million. The following table includes ICNU's proposed adjustments to PacifiCorp's surrebuttal testimony position:

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<sup>1/</sup> Unless otherwise stated, revenue requirement numbers in this Opening Brief are Oregon allocated numbers. In addition, the exact revenue requirement value of most ICNU's adjustments will change because they will be subject to the final forward price curve and need to be rerun in GRID.

<sup>2/</sup> ICNU continues to support all of the eight revenue requirement adjustments identified in ICNU witness Donald Schoenbeck's direct testimony. ICNU/100, Schoenbeck/5; ICNU/108, Schoenbeck/2-3. Seven of ICNU's eight issues remain in dispute and are addressed in this brief. PacifiCorp accepted ICNU's Bear River normalization adjustment in rebuttal testimony, and this issue is no longer in dispute. PPL/105, Duvall/3-4.

**Table 1: Combined Adjustments**

	<b>Adjustments</b>	<b>\$ (in millions)</b>
1	Retail Revenue Sales Offset	\$30.8
2	Gas Financial Hedging Strategy	\$16.2
3	Source of Forward Price Curves	\$1.7
4	Sales Activity – Market Sales Limits	\$1.4
5	Sales Activity – ISO Charges	\$1.1
6	Sales Activity – DC Intertie Charges	\$1.2
7	Gadsby Units 4-6 – Wind Integration	\$0.8
	<b>Total Adjustments</b>	<b>\$53.2</b>

The Commission should adopt ICNU’s adjustments on their merits, but they are also warranted because Oregon ratepayers have already had their rates increase significantly more than PacifiCorp’s actual costs and more than ratepayers in its other jurisdictions. The rate increase in this case is driven by the design of the TAM and not actual cost increases. ICNU also believes that the TAM should be fundamentally reexamined as it is nothing more than a lopsided, poorly designed power cost adjustment mechanism. Oregon has already contributed more than its fair share in terms of rate increases, and the Commission should reject selective use of regulatory mechanisms and modeling techniques that arbitrarily increase costs.

## **II. BACKGROUND**

PacifiCorp has significantly increased the rates of Oregon customers since the acquisition of the Company by Mid-American Energy Holdings Company (“MEHC”). MEHC made commitments to control and lower costs, and predicted that annual rate increases would be less than 4%. CUB/100, Jenks-Feighner/2-4. Oregon customer rates have increased far more

than 4% per year, with residential rates increasing about 59% since 2005. Id. at Jenks-Feighner/4. Industrial customers have experienced even higher rate increases than residential customers because of the use of marginal cost pricing. In contrast to the escalating Oregon rates, PacifiCorp's customers in other jurisdictions have experienced far more stable rates. Oregon industrial customer rates have increased about 8% per year and 47% in total between January 1, 2007 and July 2011, while Utah industrial customer rates have increased about 3.5% per year and only about 19% over the same time period. The following table includes rate increases as of the first half of this year, and illustrates the inequitable rate increases that Oregon industrial customers have experienced.

	Oregon industrial rate increases	Utah industrial rate increases
2007	6.8%	2.5%
2008	5.4%	2.7%
2009	5.7%	6.4%
2010	5.1%	3.0%
2011	17.4%	3.0%
Total	46.8%	18.8%
Annual	8.0%	3.5%

Unlike Portland General Electric Company's annual power cost proceeding, PacifiCorp's TAM has always resulted in a rate increase to customers. As explained by CUB witness Bob Jenks:

[T]he TAM has always increased. While the new investments in wind should reduce fuel costs and put downward pressure on net power costs, that investment has not led to lower net power costs. Instead, power costs have gone up with wind investment. Power costs have also gone up with increased economic activity and, conversely, have gone up with decreased economic activity. Power costs have gone up when natural gas prices have risen and have also gone up when natural gas prices have fallen. In short, power costs go up . . . period.



CUB/100, Jenks-Feighner/5. Mr. Jenks points to PacifiCorp's failure to control its costs, which ICNU agrees is a significant cause of the Company's rate increases. The Company's refusal to control its costs, however, does not explain why PacifiCorp has obtained larger rate increases in Oregon than in other states or rate increases that exceed its actual cost increases.

PacifiCorp originally requested a \$61.6 million TAM increase, which would have been an average 5.2% increase and an average industrial customer increase of 7.3%. This increase was proposed despite historically low gas prices and the Company already having increased industrial rates nearly 23% since January 1, 2010. ICNU, CUB, Staff and Noble Solutions filed direct testimony on June 24, 2011, and on July 5, 2011, with only ICNU proposing significant reductions in the Company's proposed rate increase. PacifiCorp updated its power costs in rebuttal and surrebuttal testimony, eventually proposing a \$58.7 million rate increase. PPL/307, Ridenour/1.

PacifiCorp's testimony primarily focused on ICNU's and CUB's gas hedging adjustments, as well as arguing that a number of ICNU's, Staff's and CUB's adjustments are inconsistent with the TAM guidelines. Even though PacifiCorp claims that ICNU, Staff and CUB have made proposals that violate the TAM guidelines, PacifiCorp is willing to agree to Staff's load growth adjustment and CUB's liquidated damages adjustment. PacifiCorp, however, is not willing to agree to ICNU's load growth adjustment, with the main difference between ICNU's and other parties' proposals being their overall revenue requirement impact. The Company also disagrees with all but one of ICNU's other revenue requirement adjustments, including those which have been resolved against the Company in other states.

All the parties met for settlement discussions following the September 8, 2011 evidentiary hearing, with the Settling Parties reaching a black box settlement of revenue requirement issues.<sup>3/</sup> The Settlement proposes an \$8 million reduction in PacifiCorp's last filed position in surrebuttal testimony, which would produce a \$50.7 million rate increase. The final proposed rate increase is unknown, as PacifiCorp will be allowed to update its power costs in a November update filing. ICNU has not jointed the Settlement, because it does not produce fair, just, and reasonable rates, and also fails to address ICNU's significant unresolved issues.

### III. ARGUMENT

#### A. Legal Standard

PacifiCorp has the burden of proof to establish that its proposed rate increase is just and reasonable. ORS § 757.210(1); Pac. Nw. Bell Tel. Co. v. Sabin, 21 Or. App. 200, 213-14 (1975). The Commission also has the independent responsibility to ensure that PacifiCorp's customers are only charged just and reasonable rates. ORS § 756.040(1); Pac. Nw. Bell Tel. Co., 21 Or. App. at 213. The burden of proof is borne by the Company "throughout the proceeding and does not shift to any other party." Re PacifiCorp, Docket No. UE 116, Order No. 01-787 at 6 (Sept. 7, 2001). PacifiCorp retains the burden of proof, even if the Company has entered into a settlement of all or some issues in a proceeding. Re PacifiCorp, Docket No. UE 210, Order No. 10-022 at 6 (Jan. 26, 2010).

The fact that some, but not all, of the parties have entered into a black box settlement should not significantly alter the Commission's review of the legal and factual issues

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<sup>3/</sup> The Settlement also resolves certain issues related to how the transition credits are calculated for direct access customers, the ostensible purpose of this proceeding. ICNU does not oppose the Settling Parties' resolution of Noble Solution's concerns regarding the calculation of line losses and the Bonneville Power Administration ("BPA") contract for direct access customers. These issues do not have a revenue requirement impact.

in this proceeding. Regardless of whether part of a settlement, the proposed rates must be supported by substantial evidence in the record to be considered just and reasonable. Order No. 10-022 at 6; Re PacifiCorp, Docket No. UM 995, Order No. 02-469 at 75 (July 18, 2002). Therefore, the Commission's first analysis should be whether the Settling Parties proposed over \$50 million rate increase is supported by substantial evidence and produces fair, just and reasonable rates.

In reviewing non-unanimous black box settlements that specify a specific revenue requirement amount without explanation, the Commission also reviews whether the recommended rate increase is within a range of reasonable options, and the specific recommendations are supported by the evidence and lawful. E.g., Docket No. UE 210, Order No. 10-022 at 7-8, 14-15; Docket No. UM 995, Order No. 02-469 at 8-76 (the Commission adopted a non-unanimous black box settlement only after exhaustively analyzing and resolving all contested issues). The Commission has rejected Staff and utility settlements that failed to explain or justify the resolution of critical issues. E.g., Re PacifiCorp, Docket No. UM 1329, Order No. 08-327 at 3-4 (June 17, 2008). The Commission's analysis of non-unanimous settlements is particularly searching and detailed outside of the general rate case context, because the Commission is not only reviewing whether the overall rates are consistent with the law and evidence, but whether the statutory or regulatory requirements of the unique proceeding are met. E.g., Docket No. UM 995, Order No. 02-469; Docket No. UM 1329, Order No. 08-327 at 2-4. Therefore, the Commission should carefully review whether the rate increase proposed by the Settlement is consistent with the underlying purpose and needs of the TAM.

PacifiCorp is required to demonstrate that its costs are used and useful, reasonable and prudent to be included in rates. Docket No. UE 210, Order No. 10-022 at 14-15; Re PacifiCorp, Docket No. UE 200, Order No. 08-548 at 19-20 (Nov. 14, 2008); Re US West Communications, Inc., Docket Nos. UT 125/UT 80, Order No. 00-191 at 15 (Apr. 14, 2000). Prudence is based on the reasonableness of the action using existing circumstances and what the Company either knew or should have known at the time it was making its decision. Re Northwest Natural Gas Co., Docket No. UG 132, Order No. 99-697 at 53 (Nov. 12, 1999). PacifiCorp has the burden to produce evidence from the time it made its decision that establishes that its decision was prudent. Order No. 08-548 at 19-21 (PacifiCorp failed to provide contemporaneous evidence “that it prudently acquired the Rolling Hills project.”)

Utility rates are typically set based on a test period, which should be representative of the period during which the rates will be in effect. American Can Co. v. Lobdell, 55 Or. App. 451, 454 n.2 rev den 293 Or. 190 (1982). PacifiCorp’s TAM is based on a future test period, which estimates future net power costs during the upcoming 2012 calendar year. The Oregon Supreme Court has accepted that “[w]hen a future test year is used, the data is drawn from budget figures and financial models of the utility. Abnormal events of the past are therefore excluded and all known future changes are included.” Id. When setting rates the Commission has recognized that “standard ratemaking practice uses only known and measurable loads and resources when setting cost-of-service rates.” Re Staff’s Investigation Relating to Elec. Util. Purchases from Qualifying Facilities, Docket No. UM 1129, Order No. 07-360 at 24 (Aug. 20, 2007). Therefore, PacifiCorp must demonstrate that its proposed test period will accurately reflect the costs and revenues that it will be expected to incur during 2012.

**B. The Settling Parties' Over \$50 Million Rate Increase Is Not Just and Reasonable and Is Inconsistent with the Purpose of the TAM**

The Settling Parties have recommended that the Commission increase rates by over \$50 million based on a black box Settlement. The Settling Parties have not identified any specific rationale or value to their adjustments, and PacifiCorp will not make any changes to its GRID model or its cost inputs in this or future TAMs. The Settlement should be rejected on this basis alone, because the Settling Parties have provided no support for their proposed increase other than the fact that it is about the midpoint between PacifiCorp's and CUB's final litigation positions.

The Settling Parties have proposed an \$8 million reduction to PacifiCorp's surrebuttal filing; however, they have not identified any specific value to their adjustments, nor any explanation regarding why the \$8 million amount, rather than a different or larger number would be a more reasonable resolution of CUB's and Staff's proposed revenue requirement adjustments. As recognized by the Administrative Law Judge, the Settling Parties' recommendation "adds no additional factual information to this agreement, which is, by its own words, is based on the testimony already filed." Docket No. UE 227, Ruling at 2 (September 22, 2011).

The Settling Parties appear to have reached their recommended over \$50 million rate increase because it is a compromise half way between the positions of PacifiCorp and CUB. PacifiCorp's surrebuttal testimony recommends a \$58.7 million rate increase while CUB's final testimony recommended approximately \$16 million in revenue requirement reductions.

Joint/100, page 3; CUB/200, Jenks-Feighner/5-8.<sup>4/</sup> Noble Solutions raised no revenue requirement issues, and Staff's overall revenue requirement recommendation has never been known, because Staff did not provide an estimated value for some of its recommendations, including one of its last two issues.<sup>5/</sup> The Settling Parties have provided only one sentence of explanation regarding their proposed \$8 million reduction, which states that the "\$8 million reduction takes into account the issues raised in the testimony of Staff, CUB, and Noble Solutions." Joint/100, page 5. This falls far short of meeting the Commission's requirements for imposing a rate increase of this magnitude.

The Settling Parties recognize that the Stipulation only accounts for the recommendations of CUB, Staff and Noble Solutions, but does not incorporate ICNU's approximately \$53 million in revenue requirement and other TAM-related proposals. Joint/100, at 5. The \$8 million recommendation of the Settling Parties does not include any revenue requirement reductions associated with ICNU's sales revenue offset, source of the forward price curves, market caps, California ISO charges, DC Intertie charges, or wind integration adjustment as none of the Settling Parties were recommending adjustments related to these issues. Thus, the

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<sup>4/</sup> CUB did not identify the revenue requirement amount of its last remaining adjustment (gas hedging) in rebuttal testimony; however, CUB modified the underlying rationale for its gas hedging recommendation to be consistent with ICNU's recommendation, which produces a \$16.2 million adjustment. CUB/200, Jenks-Feighner/6-8; ICNU/100, Schoenbeck/5. CUB had no other issues, because PacifiCorp's surrebuttal testimony accepted CUB's \$0.1 million liquidated damages recommendation, even though the Company believes it violates the TAM guidelines. PPL/105, Duvall/32; PPL/110, Duvall/6.

<sup>5/</sup> PacifiCorp's surrebuttal testimony accepted Staff's load growth adjustment even though the Company claimed it violated the TAM guidelines, so Staff's unresolved issues were related to: 1) the GRID market caps; and 2) a \$0.4 million coal adjustment. PPL/110, Duvall/3-10; Staff/400, Bahr/1. Staff never provided an estimate of the value of its market cap recommendation; however, PacifiCorp calculated the impact of Staff's recommendation as increasing system wide power costs by \$10 million. PPL/110, Duvall/7. Thus, the practical impact of Staff's recommendations may have been a higher rate increase than PacifiCorp's surrebuttal position.

Settling Parties cannot claim that their \$8 million reduction to PacifiCorp's surrebuttal testimony accounts for the majority of ICNU's recommended revenue requirement adjustments in this case.

The Settling Parties also fail to address or resolve a number of key and controversial issues regarding the appropriate scope and implementation of the TAM. The Settling Parties have not agreed to any specific changes to the GRID model, the model's cost inputs, or the TAM guidelines. This is unlike many past TAM proceedings, in which the PacifiCorp agreed to remove costs from future TAM filings, change the manner in which the TAM or direct access calculations would be made in the future, or fix GRID modeling errors. In addition, PacifiCorp's claims that various ICNU, Staff and CUB adjustments are inconsistent with the TAM guidelines, which has been a significant area of dispute in this proceeding. PacifiCorp has agreed to Staff's and CUB's proposals for this case only, but there is no resolution of how these issues will be accounted for in future TAMs, assuming the TAM remains in place. Similarly, the Settling Parties do not address ICNU's proposals regarding how the TAM should be implemented, including how to more appropriately use the forward price curves and the treatment of the Company's increasing amount of allegedly "highly confidential" material.

**C. The Commission Should Recognize Additional Revenues to Offset PacifiCorp's Forecasted Retail Load Growth**

About two thirds of PacifiCorp's original proposed rate increase is related to the Company's claim that retail loads have increased 7.5% from the loads included in its last TAM

proceeding.<sup>6/</sup> No party, however, now believes that PacifiCorp's loads have increased 7.5% over the last year or that the Company's actual costs associated with retail load growth are \$30.8 million higher. PacifiCorp has proposed to charge ratepayers all of the net power cost ("NPC") related cost increases associated with projected high load growth, but it is not accounting for the additional fixed cost revenue recovery that would result from the additional sales that occur because of higher retail load growth. Thus, most of the Company's proposed rate increase is related to PacifiCorp's manipulation of the regulatory process to further its goals of relentless and unending large annual rate increases in Oregon.

As applied and interpreted by PacifiCorp, the TAM provides the Company with an important gaming opportunity to increase its rates without experiencing corresponding cost increases. When a TAM is filed as part of a general rate case ("GRC"), then the parties have an opportunity to review the reasonableness of all cost increases, including retail load estimates. Critically, in a combined TAM/GRC, the same retail load levels are used to develop the rates for all the Company's fixed and variable costs. In a stand-alone TAM proceeding, however, PacifiCorp:

[H]as every incentive to increase the retail sales level to drive up NPC resulting in a higher NPC per unit recovery while maintaining the fixed cost recovery at greater per unit charges than would be the case if the higher sales level had simultaneously been reflected in the fixed cost recovery determination.

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<sup>6/</sup> Mr. Schoenbeck calculated the revenue requirement impact of this adjustment based on PacifiCorp's original testimony as lowering rates by \$42.6 million. ICNU/100, Schoenbeck/2. PacifiCorp's \$58.7 million rate increase that Company proposed in surrebuttal testimony includes a lower retail load forecast. PPL/110, Duvall/2. The lower retail load forecast impacts the value of ICNU's adjustment, which ICNU now estimates to be a \$30.8 million instead of \$42.6 million revenue requirement adjustment.



ICNU/100, Schoenbeck/9. The exact opposite is true in a combined TAM/GRC proceeding because a lower load forecast produces a higher resulting per unit rate for recovering fixed costs.

Id.

PacifiCorp filed this year's TAM proceeding noting that "this filing reflects an increase of approximately 4.3 million megawatt-hours, or 7.5 percent, in the total company load forecast compared to loads reflected in UE 216." PPL/100, Duvall/6. PacifiCorp recognized that this "increased load increases NPC." Id. ICNU and Staff pointed out in testimony that PacifiCorp's retail load forecasts were entirely unsupported and inconsistent with all other evidence showing lower load growth. ICNU/100, Schoenbeck/5-8; Staff/100, Durrenberger/3-4. In rebuttal, PacifiCorp argued that its retail loads are actually projected to increase by less than half this amount (3.1% on a system basis), but that the higher and inaccurate load growth figures must be used because the "TAM Guidelines do not provide for updating the load forecast after the Company's Initial Filing." PPL/105, Duvall/9-15. In its final round of testimony and in the Settlement, PacifiCorp has reluctantly agreed to use a lower retail load forecast, although the Company continues to insist using a more recent load forecast violates the TAM guidelines. PPL/110, Duvall/3-4.

ICNU proposes a different and more equitable approach to addressing the issue of accounting for retail load changes in a TAM. As demonstrated by the dispute regarding the appropriate load forecast, PacifiCorp's evolving position and numbers, and the Company's "woefully inadequate" supporting documentation, it is inappropriate to use a new retail load forecast in an abbreviated stand-alone TAM proceeding. ICNU/100, Schoenbeck/8. Examination of the reasonableness of a retail load forecast is a difficult and time consuming

process which “cannot be adequately performed in a TAM only rate proceeding when there are numerous other matters to examine and the intent is that it be a ‘stream-lined’ process.” Id. at Schoenbeck/8-9. This is particularly true when the Company provides almost no supporting documentation with its original filing or in response to discovery requests, but instead provides substantive information or changes in positions in its rebuttal or surrebuttal filings. Id. at Schoenbeck/8; see PPL/105, Duvall/9-15; PPL/110, Duvall/3-4.

ICNU proposes that retail load forecasts be addressed in a stand-alone TAM proceeding by simply recognizing the additional fixed cost recovery from the additional sales to use as an offset to the overall TAM-related rate increase. ICNU/100, Schoenbeck/9. Another reasonable resolution would be to use the same load levels as in the prior rate proceeding. Id. ICNU’s approach is appropriate because it “will eliminate the gaming opportunity of artificially inflating a TAM only [load] forecast to achieve a higher net power cost recovery while maintaining a higher fixed cost rate recovery.” Id. at Schoenbeck/10.

PacifiCorp’s primary substantive argument in opposition to ICNU’s proposal is that it is inconsistent with the TAM guidelines. PPL/105, Duvall/9; PPL/600, Griffith/1-6. PacifiCorp does not argue that the TAM guidelines explicitly bar ICNU’s recommendation, but that they are implicitly prohibited because there is no specific provision of the guidelines which allow for the recognition of the higher retail revenues that PacifiCorp will actually obtain if its loads increase. PPL/600, Griffith/1-6. At its best, PacifiCorp’s argument shows that the parties did not explicitly consider how to resolve this issue.

PacifiCorp also argues that ICNU’s recommendation would be one-sided, punitive to the Company and would discourage the Company from taking steps to avoid filing

annual rate cases. Id. at Griffith/4. PacifiCorp's approach, not ICNU's, is one-sided and fails to reflect the relevant and extraordinary circumstances of the TAM and this proceeding in particular. PacifiCorp increased industrial customer rates 17.4% in 2011, with about 8% of that amount being related to last year's TAM. ICNU/110, Schoenbeck/13; ICNU/102, Schoenbeck/2, 4. As it was filed in a GRC, last year's TAM increase was largely because of a low level of estimated retail sales. PacifiCorp is now requesting in this stand-alone TAM that industrial customer rates be increased because of a high level of estimated retail sales. ICNU/110, Schoenbeck/13; PPL/307, Ridenour/10-12. Thus, PacifiCorp has manipulated the regulatory process to ensure that its rates go up when retail load forecasts are both low and high, even when there is no actual increase in the Company's costs. ICNU/110, Schoenbeck/13.

Finally, the Commission's stated purpose for the Company's TAM was not to be a single issue power cost only rate proceeding, but to be a mechanism to allow eligible customers to select direct access in a manner that captures costs associated with direct access and prevents unwarranted cost shifting. Re PacifiCorp, Docket No. UE 170, Order No. 10-1050 at 21 (Sept. 21, 2005). PacifiCorp believes otherwise, as explained by PacifiCorp witness Andrea Kelly who testified that this TAM is "a proceeding that is exclusively related to establishing the appropriate level of net power costs in rates for calendar year 2012." PPL/800, Kelly/6 (emphasis added); see also PPL/600, Griffith/3. PacifiCorp apparently recognizes that the practical effect of a TAM is that it is a mechanism to increase net power costs to bundled customers because the Company has very little direct access load. ICNU/100, Schoenbeck/10; ICNU/110, Schoenbeck/13. An appropriately structured power cost mechanism should have

deadbands and a sharing mechanism to provide the correct incentives to minimize costs. None of this is present here.

The Commission should ensure that PacifiCorp is not using the TAM process as a one-sided mechanism to artificially increase rates. A reasonable remedy that is used in many power only proceedings is to incorporate a revenue credit associated with fixed costs when loads differ from the amount forecast in a previous GRC. ICNU/110, Schoenbeck/14. Including the fixed cost revenues would be a more even handed approach that recognizes how retail loads impact more than just net power costs and that a utility should not be allowed a substantial net power cost rate increase if it will be offset by other revenues. Id.

**D. The Commission Should Disallow PacifiCorp’s Imprudent Gas Hedges**

The Commission should remove from PacifiCorp’s rate increase proposal approximately \$16.2 million because the “Company’s hedging strategy is fundamentally flawed by locking in far too much gas far too quickly.” ICNU/100, Schoenbeck/3. PacifiCorp’s gas hedging transactions are imprudent because the Company acted inconsistent with its own hedging policy by entering into far too much gas under a large number of non-standard hedges that are [REDACTED]<sup>7/</sup> The Commission should also disallow gas hedging costs because the Company has failed to provide any contemporaneous documentation of its unusual and aggressive approach of locking in huge amounts of gas well before it was needed.

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<sup>7/</sup> ICNU defines “non-standard hedges” under the Company’s hedging policy [REDACTED]

## 1. PacifiCorp's Hedging Policy

An appropriate utility gas hedging policy should align as closely as possible costs and revenues, recognize that the utility will not be able to “beat the market,” and apply the diversification principle. ICNU/100, Schoenbeck/11. Thus, a successful hedging strategy should execute transactions “on a programmatic basis, relying on both forward and spot markets for gas transactions (either physical or financial), and not contracting for gas long before it is projected to be needed.” Id. Finally, a utility should evaluate the benefits and costs of all potential hedging strategies and should document all hedging decisions. Hearing Transcript (“Tr.”) at 60-61 (Bird).

The relevant gas hedging policy in this proceeding is the Company's 2006 hedging policy, which governed the 2007 and 2008 transactions that are being challenged by ICNU. ICNU/110, Schoenbeck/9-10. PacifiCorp's gas hedging policy and implementation includes certain aspects that are consistent with standard industry practices, but also other elements that are overly risky and aggressive and have directly resulted in significant and unnecessary losses. For example, some appropriate elements of the Company's implementation of its hedging policy is that PacifiCorp has entered into gas hedges with [REDACTED]

[REDACTED]. Confidential Exhibit 1 Accompanying Affidavit of Stefan Bird. PacifiCorp's hedging policy, however, departs from standard electric utility industry practices by allowing the Company to enter into hedges for longer terms and greater volumes than most utilities. For example, the policy allows

hedges for greater volumes and [REDACTED]

[REDACTED] Confidential PPL/404, Bird/9.

## 2. PacifiCorp's Imprudent Hedges

PacifiCorp's proposed rates in this case include the costs associated with [REDACTED] gas financial hedges executed from [REDACTED] with over [REDACTED] [REDACTED] system-wide in total value of the fixed gas transactions. Confidential ICNU/100, Schoenbeck/11; Tr. 111 (Bird). The hedges have a current mark-to-market cost over \$122 million on a system-wide basis, which means that the gas hedges are over the current forward gas prices by about \$122 million. ICNU/100, Schoenbeck/11. [REDACTED] these gas hedging transactions are non-standard because they have tenors [REDACTED] PacifiCorp also purchased far too much gas too early when it acquired [REDACTED] [REDACTED]. Confidential ICNU/100, Schoenbeck/14.

ICNU has proposed an adjustment that reduces the mark-to-mark cost of the Company's system wide gas hedging amounts by \$64.8 million, which still allows PacifiCorp to recover a substantial sum of \$58 million attributable to the hedging program.<sup>8/</sup> ICNU/100, Schoenbeck/16; ICNU/103, Schoenbeck/15. ICNU's adjustment is first based on removing a number of "too far" transactions that includes all of PacifiCorp's [REDACTED] that were [REDACTED] prior to the prompt period. Next, ICNU did not remove the non-

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<sup>8/</sup> PacifiCorp claims the value of its hedges is \$ [REDACTED] million because ICNU's calculation: 1) uses volumes outside the test period and 2) includes sales as purchases. Affidavit of Stephen Bird at 2. The \$ [REDACTED] million figure is the correct amount that shows the total fixed value of all PacifiCorp's hedging sales and purchases. All hedges, not just those in the test period, must be included and both sales and purchases must be recognized to obtain the accurate total fixed value of the hedges.

<sup>9/</sup> ICNU continues to support Mr. Schoenbeck's recommendation, which has not changed despite PacifiCorp's claims. At the hearing, Mr. Schoenbeck verified that the value of his adjustment would change if different assumptions were used, but he did not change his recommendation or agree that different assumptions should be used. Tr. 157-189 (Schoenbeck).

standard transactions beyond [REDACTED]

[REDACTED] See Confidential ICNU/103, Schoenbeck/15. ICNU's specific recommendation:

is based on a programmatic hedging policy for all months of the year but it also recognizes the uniqueness of the second quarter (April through June) of each year when abundant hydro is available to displace the vast majority if not all the gas-fired generation in the Pacific Northwest region.

ICNU/100, Schoenbeck/16. ICNU's recommendation is based on a conservative recommendation that still allow the Company to recover hedging amounts far in excess of other prudent utilities. E.g., ICNU/100, Schoenbeck/15-16.

### 3. PacifiCorp Violated Its Own Hedging Policy

PacifiCorp's gas hedging transactions should be disallowed as imprudent because the Company acted inconsistently with its own gas hedging policy that limits longer term hedges. PacifiCorp's hedging policy allows for hedges [REDACTED]; however, this is the exception to the general rule. PacifiCorp's hedging policy specifically states that hedges should be limited to [REDACTED] and that individual hedges can exceed this period only if they meet [REDACTED] Confidential ICNU/103, Schoenbeck/5; Confidential PPL/401, Bird/37. These non-standard hedges must [REDACTED]

[REDACTED] Confidential ICNU/103, Schoenbeck/4;  
Confidential PPL/401, Bird/38.

PacifiCorp did not follow this policy [REDACTED]

[REDACTED]. PPL/406, Bird/6; Confidential

ICNU/100, Schoenbeck/13. PacifiCorp claims that it was following its hedging policy because the non-standard hedges were allegedly pre-approved before they were entered into. PPL/400, Bird/9-10. This argument should be rejected because a policy is no longer being followed when the exception has swallowed the rule. The implementation of a sound risk management policy would result in [REDACTED]

[REDACTED] Confidential ICNU/100, Schoenbeck/13.

#### **4. PacifiCorp Hedged Too Much Gas Too Early**

Regardless of whether the Company's actions were consistent with its already aggressive gas hedging policy, PacifiCorp's actions [REDACTED]

[REDACTED] Id. PacifiCorp uses gas for its generation facilities, which are used to meet the last increment of load and may not be dispatched depending on market and load conditions. Id.; PPL/400, Bird/6. Gas generation needs can change dramatically because of load forecast errors, unexpected weather, economic conditions, and changes in generation from other lower cost resources. ICNU/100, Schoenbeck/13-14. In addition, the longer the hedges, the less liquid the market and the higher the financial and price risk to customers. CUB/100, Jenks-Feighner/13-15. Due to the changing needs for gas and the risk of price changes, a prudent utility should minimize the amount of gas transactions that are executed long before the gas is actually needed. ICNU/100, Schoenbeck/13-14; CUB/100, Jenks-Feighner/13-15.

The [REDACTED]

[REDACTED]. Confidential CUB/100, Jenks-Feighner/13. Similarly, [REDACTED] of the transaction volumes that PacifiCorp is seeking to recover in this proceeding were entered



into before [REDACTED]

Confidential ICNU/100, Schoenbeck/14. These amounts are far too high because [REDACTED]

[REDACTED] Id. The imprudence of PacifiCorp's approach is illustrated by the fact that other utilities engaged in dramatically different strategies and did not hedge as much gas as far out nor experience as significant of losses. Id. at Schoenbeck/14-15.

**5. PacifiCorp Has Not Provided ANY Contemporaneous Evidence to Support Its Decision to Hedge So Much So Soon**

PacifiCorp has failed to provide evidence in this proceeding to meet its burden of proof to establish that its unusual and highly aggressive gas hedging transactions were prudent. PacifiCorp has provided no contemporaneous evidence of its analysis regarding why it entered into these numerous non-standard gas hedges. Instead of justifying its specific transactions, the Company provided generic information regarding why hedging in general is a good idea, an after the fact analysis of the market conditions at the time it entered into the gas hedges, and argued that hedging has saved customers money in the past. These arguments are insufficient to demonstrate the prudence of nearly [REDACTED] in hedging transactions.

The Company has no contemporaneous documentation of any of the analysis it undertook to enter into any of the [REDACTED] hedging transactions. Tr. at 119-122 (Bird). Under its hedging policy, [REDACTED]

[REDACTED] In order to review PacifiCorp's analysis "at the time the decision was made," ICNU requested all the Company's analysis in discovery, and the Company responded that it had "no documents or analyses . . . ." E.g., ICNU/110, Schoenbeck/11; ICNU/112, Schoenbeck/1. Instead of providing any contemporaneous analysis,

the Company supports its decision with the simple statement by the Company's Senior Vice President of Commercial and Trading that he "personally pre-approved these transactions . . . ." PPL/406, Bird/8; Tr. at 119-122 (Bird).

While the Company has no information from the time it decided to enter into the hedging transactions, PacifiCorp has created a post hoc analysis of market data that it could have considered in 2007 and 2008. PPL/400, Bird/9-10, 28-33. PacifiCorp explains in testimony in this case that it departed from its hedging policy and acquired "a relatively high volume of long-dated natural gas swaps in 2007 and 2008" because the Company allegedly believed there was an elevated risk of long-term price escalation. Id. at Bird/9-10. There is no ability to verify what PacifiCorp's actual reason for entering into these transactions was. More important, this limited, after the fact explanation is insufficient because it only would establish that the Company was attempting to "beat the market," an approach that both ICNU and PacifiCorp agree should not be utilized in a prudent hedging policy. ICNU/110, Schoenbeck/12; PPL/400, Bird/16. It is simply imprudent to lock in as much gas as PacifiCorp did because both the price and the need for gas can significantly change over a three to four year period.

**6. ICNU Is Not Arguing that PacifiCorp Should Not Hedge, but That PacifiCorp's Overly Aggressive Hedging Was Imprudent**

PacifiCorp also justifies the specific gas hedging transactions in this case on the grounds that it would be imprudent not to enter into any gas hedging transactions and that PacifiCorp would have been exposed to more risk of price fluctuations if it has not entered into its hedging transactions. PPL/400, Bird/10-14; PPL/406, Bird/11-13. For example, PacifiCorp justifies its hedging policy on the grounds that it was better to hedge than to not hedge at all and simply to purchase the same amount of gas at prevailing market prices during 1994 to 2004.

PPL/400, Bird/10-11. Similarly, PacifiCorp cites reports from the Utah Division of Public Utilities and the National Regulatory Research Institute that state that customers are likely to pay higher prices “absent some level of hedging” and that the failure to engage in any hedging may be imprudent. Id. at Bird/12-13. These arguments do not support the behavior ICNU is challenging because the fact that all parties agree that PacifiCorp should enter into some hedges to reduce price volatility does not mean that the Company should have entered into these particular long and high volume hedges.

**7. PacifiCorp’s Actions Changed and Exceeded the Permissible Limits of Even its New, Overly Aggressive Hedging Policy**

PacifiCorp also argues that the non-standard transactions that are being challenged in this proceeding should be considered prudent because its hedging decisions from 2005 to 2010 decreased past power cost volatility and rates. PPL/400, Bird/11; PPL/105, Duvall/5-8. PacifiCorp states that it “would be unfair to accept” the past benefits of PacifiCorp’s hedging and to disallow the costs in this case “when nothing material has changed in the Company’s approach or circumstances.” PPL/105, Duvall/7.

PacifiCorp is incorrect that “nothing has materially changed.” When PacifiCorp began entering into the 2007 and 2008 hedges at issue in this proceeding, the Company had just changed its risk management policy in October 2006 to allow for up to 48-month tenors.

PPL/400, Bird/8. This change was

PPL/404, Bird/9. PacifiCorp then entered into significantly longer terms and higher volumes than in the past or even than allowed under its aggressive new policy—which is the material change that is the crux of this dispute.

**E. The Commission Should Remove PacifiCorp’s Arbitrary Market Caps**

The Commission should remove PacifiCorp’s arbitrary limitations or “caps” on possible sales in the GRID model because they are artificial constraints that do not accurately model PacifiCorp’s actual sales activities. PacifiCorp has dropped its previous claim that the market caps are necessary to model coal generation, and now argues that they are needed to model market illiquidity despite the fact that modeled transactions do not come close to historical sales levels. PPL/105, Duvall/18-20. The purpose of the GRID model should be to accurately estimate the Company’s expected net power costs, and the market caps will inappropriately ensure that PacifiCorp’s sales levels will always be lower than actual operations. Removing this unnecessary limitation will more accurately model sales, which reduces net power costs by approximately \$1.4 million. Staff agrees that PacifiCorp’s market caps are problematic, but proposed that PacifiCorp use an earlier market cap method that may increase net power costs.

PacifiCorp’s market caps impose a limitation on the sales that PacifiCorp can make at each trading hub. ICNU/100, Schoenbeck/22. The caps reduce PacifiCorp’s forecasted sales in each hour of the test period based on the average energy sold by the Company over the last 48 month on-peak and off-peak period. Id. at Schoenbeck/3, 22. PacifiCorp’s market caps reduce the energy that can be sold in all hours based on average transactions, including those hours in which no transactions were executed. ICNU/110, Schoenbeck/7. Using averages to impose hourly caps results in “many, many hours in the historical period when the actual hourly sales amount exceeded the average sales value.” ICNU/100, Schoenbeck/22. The caps act as a direct constraint limiting the Company’s sales value and increasing power costs. Id.

No party disputes that the market caps impose limitations that result in the level of transactions in GRID that “does not come close to historical actual levels.” PPL/105, Duvall/19. This is because the market caps do not impose a limitation based on what the Company could or even has actually sold at any location, but instead imposes a limitation on each hour based on the Company’s average energy sales over a four year period. ICNU/100, Schoenbeck/22-23; ICNU/110, Schoenbeck/6-8. For example, a review of certain of the Company’s transactions at the [REDACTED]

[REDACTED] Confidential ICNU/110, Schoenbeck/6-7. For numerous hours, PacifiCorp’s approach “results in cap values that are substantially lower than actual transactions it has executed at each trading hub” and inappropriately “restricts sales when the Company has marketable surplus capacity available to sell.” Id. at Schoenbeck/7.

PacifiCorp’s approach produces other absurd and counter intuitive results. ICNU analyzed the limitations the market caps would impose during the on-peak and off-peak hours for each month during 2012. The logic of the GRID model is questionable because it shows PacifiCorp entering into [REDACTED]

[REDACTED] and should be expected to do so during 2012.

Removal of the market caps produces reasonable results that more accurately reflect conditions during the time rates will be in effect. ICNU analyzed the GRID model estimates for sales with and without the Company's market caps, and elimination of the caps

[REDACTED] Confidential ICNU/100,  
Schoenbeck/23; Confidential ICNU/105, Schoenbeck/4-5. [REDACTED]

[REDACTED] Confidential ICNU/100,  
Schoenbeck/23.

PacifiCorp argues that market caps should be included in GRID because: 1) the Utah Public Service Commission ("Utah Commission") allowed the Company to limit sales; 2) the market caps are needed to address an illiquid market; and 3) ICNU's adjustment would double count trading transactions. PPL/105, Duvall/16-20. Notably, PacifiCorp fails to explain the grounds upon which the Utah Commission allowed a market caps or that the Utah Commission required that PacifiCorp provide "updated support in the future to determine if these caps continue to be relevant and if they are not resulting in unintended and inappropriate consequences . . . ." Re Rocky Mountain Power, Utah Commission Docket No. 09-035-23, Report and Order at 27 (Feb. 18, 2010).

In Utah, PacifiCorp argued that "the entire point of the caps is to ensure a reasonable amount of coal generation is included in normalized net power costs." Id. at 26 (emphasis added). PacifiCorp appears to have dropped that argument in this proceeding. In anticipation that PacifiCorp would rely upon its historic justifications, ICNU presented evidence in its direct case that there is no problem with too much coal generation because the removal of the market caps has [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED], which is well within historical operations for all coal plants. Id.; Confidential ICNU/105, Schoenbeck/7. PacifiCorp did not dispute this issue in rebuttal testimony, and thus, the Company's previous justification has disappeared.

PacifiCorp has shifted focus and now primarily argues that the market into which the Company sells power into is illiquid and market caps are necessary to address this illiquidity. PPL/105, Duvall/19-20. Illiquidity, however, should not be addressed by imposing arbitrary caps on PacifiCorp's sales because the electricity trading markets are much larger than only the Company's transactions. ICNU/110, Schoenbeck/9. For example, PacifiCorp's actual trading activity is only a small percentage of the market at each of the six market hubs included in GRID. ICNU/100, Schoenbeck/24; ICNU/105, Schoenbeck/8. PacifiCorp implicitly recognizes that the market caps cannot be justified on economic or historical grounds "as the Company does not impose purchasing caps in its GRID simulation." ICNU/110, Schoenbeck/9 (emphasis in original).

PacifiCorp also argues that the market caps are designed to address limitations on the Company's excess generation and transmission rights. PPL/105, Duvall/19. ICNU does not dispute that all utilities experience actual limitations on their ability to sell generation. No other Pacific Northwest utility, however, attempts to simulate its actual limitations in their power cost model with market caps. ICNU/110, Schoenbeck/7-8. A more meaningful limitation would reflect the actual maximum values that PacifiCorp has transacted at each hub and not a limitation on its ability to sell power in all hours based on average energy sold over a four-year period. Id.

Eliminating the market caps in this proceeding is eminently reasonable because [REDACTED]

[REDACTED] Confidential ICNU/100, Schoenbeck/23.

Finally, PacifiCorp raises a new argument in this case that the market caps should not be eliminated because it would be a double count of the short-term trading margin adjustment that the Commission adopted in Docket No. UE 191. PPL/105, Duvall/19-20. PacifiCorp does not cite the text of the Commission's order in UE 191, but instead cites its own witness Mark Widmer, a witness who now believes that the market caps are no longer necessary. See id. More importantly, there is no double count because removal of the market caps only has a modest impact on the Company's sales and "is far less than the historical sales transactions." ICNU/110, Schoenbeck/8. In GRID, the combination of the elimination of the market caps and the Commission's trading adjustment would result in forecasted sales of approximately 12 million MWhs, which is less than half of the 27 million MWhs of historical sales. Id. Thus, there is no double count.

**F. The Gadsby Facilities Should Not Be Modeled As Must Run**

The Commission should make a small reduction to the significant amount of wind integration costs PacifiCorp is seeking to recover in this case. Specifically, the Gadsby units 4-6 should not be modeled as "must run" facilities in its GRID because the Company is not actually planning to operate the units in this manner. Instead, Gadsby should be modeled consistent with its expected operations, which would result in a \$0.8 million revenue requirement reduction.

Based on the results of its controversial wind integration study, PacifiCorp is proposing to capture the costs of wind integration by including a balancing charge of \$0.70 per



MWh and modeling the Currant Creek and Gadsby units 4-6 as being “blocked on” or must run. ICNU/100, Schoenbeck/30. ICNU has concerns with how PacifiCorp has modeled its overall wind integration costs, but in lieu of analyzing the Company’s complex and error prone study during the expedited TAM schedule, ICNU is only challenging the must run designation of Gadsby. Id. at Schoenbeck/31. It would be inappropriate to pass through significant wind integration costs to ratepayers until the reasonableness of the wind study can be vetted in a rate proceeding with a full procedural schedule. Id.

PacifiCorp does not, and is not expected to, operate the Gadsby facilities as must run in the real world, and it should not be modeled in such an inaccurate manner. Id.; ICNU/110, Schoenbeck/4. Each of the 40 MW Gadsby facilities are inefficient and impose high costs, especially when blocked as must run facilities. ICNU reviewed PacifiCorp’s actual Gadsby operations, which establish that “these units are not blocked on to provide operating reserves as has been assumed” by the Company. ICNU/100, Schoenbeck/30.

PacifiCorp does not provide any evidence that it actually plans to operate the Gadsby facilities as must run, but instead argues that its overall wind integration costs are lower than those of the Bonneville Power Administration (“BPA”), and that the test period energy output for these facilities is similar to their energy output in 2009. PPL/105, Duvall/31; PPL/110, Duvall/14-16. While PacifiCorp’s wind integration charge may be slightly lower than BPA’s (\$6.32 per MWh compared to \$6.53 per MWh), even PacifiCorp admits that the actual charges cannot be compared on an apples to apples basis. See PPL/110, Duvall/14 (estimated BPA and PacifiCorp charges). The fact that BPA’s wind integration charges are similar to PacifiCorp’s actually demonstrates that PacifiCorp’s are likely too high, as BPA has the largest

amount of wind penetration of any balancing authority in the nation (39% in 2010), which is over three times the level of wind penetration of PacifiCorp (15% in the eastern system and 7% in the western system).

PacifiCorp also supports its must run designation by pointing out that Gadsby's average energy output of 32% in this case is similar to their 33% capacity factor of 2009. PPL/105, Duvall/31. This does not demonstrate that the units will be operated as a must run during the test period. If the Commission intends to rely upon a single year to estimate operations for 2012, then the Commission should use the most recent twelve months ending June 30, 2011, which include capacity factors [REDACTED] as the capacity factor that GRID estimates when the must run designation is removed. Confidential ICNU/110, Schoenbeck/4-5. More importantly, simply comparing average megawatt values for the month or year has limited use because it "ignores the manner in which the energy was actually dispatched from these plants" in a single year. Id. at Schoenbeck/4. For example, [REDACTED]

[REDACTED]

[REDACTED] Id. [REDACTED]

[REDACTED] by simply comparing average capacity factors. Id. A must run designation assumes that the Gadsby units will operate each and every hour at specific amounts when the units would otherwise be shut down for economic reasons. This results in higher costs because they are hypothetically forced to run in an inefficient manner that will not occur in real operations. Id.

## G. Forward Price Curves

Forward prices are a critical element and impact most aspects of the Company's net power cost calculations, including the determination of whether certain resources dispatch, burner-tip fuel costs, certain contract prices, and mark-to-market gas hedging calculations. The Company uses internally generated monthly electricity and gas forward price projections or curves as data inputs in developing its net power costs. PacifiCorp then converts most of its forward monthly electricity prices into hourly values required for the GRID model for all trading hubs.

The primary issue in the case regarding forward price curves is that the Company relies upon "internally developed and commercial models," with internal "fundamental data inputs" used to create "forward price curves derived from internal models" rather than utilizing an independent, third party source. ICNU/100, Schoenbeck/17. PacifiCorp's reliance upon complex internally created figures and formulae has resulted in the Company withholding and designating significant amounts of centrally important information as "highly confidential," which has frustrated and increased the costs of ICNU's ability to review the accuracy of the forward price curve estimates as well as increasing net power costs. There is no need for such a complex calculation in what is supposed to be a more streamlined proceeding to calculate transition credits for the tiny amount of PacifiCorp's direct access customers.

The Commission should also require PacifiCorp to convert monthly forward prices to hourly values using [REDACTED].  
[REDACTED] Alternatively, if this recommendation is not adopted, PacifiCorp's forward price conversion methodology

should still be adjusted to [REDACTED]

[REDACTED] Highly Confidential ICNU/108, Schoenbeck/2. There is no need for such a complex forward price curve methodology in a streamlined TAM proceeding that is supposed to set transition credits.

**1. The Commission Should Require PacifiCorp to Use Independent, Third Party Pricing Data that Is Not Highly Confidential to Facilitate Reasonable Intervenor Participation**

PacifiCorp's reliance upon internal forward price projections is unnecessary because the Company already "ensures" that the forward price curve it uses to derive net power costs [REDACTED] Confidential PPL/500, Link/8. Thus, if the Company's complex forward pricing methodology must be confined to approximate third party projections in all events, the only actual end achieved by the Company's insistence on a secretive and byzantine internal derivation process is to inhibit the ability of intervenors to effectually participate in TAM proceedings.<sup>10/</sup> ICNU's recommendation to limit PacifiCorp to reliance upon third party pricing data will have no impact on rates in this case, but will crucially impact and improve the ability of intervenors to participate in future TAM proceedings.

As the record in this docket attests, the accessibility of PacifiCorp's internal pricing information should be of serious concern to the Commission. In both this and the last TAM proceeding, PacifiCorp initially refused to provide responsive information to numerous separate ICNU data requests by inappropriately designating such information as "highly

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<sup>10/</sup> The continuance of such a regime does nothing to alleviate the Commission's rightly noted concern as to the "one-sidedness to PacifiCorp's annual updates without concomitant adjustments by intervenors and Staff." Docket No. UE 170, Order No. 05-1050 at 21.

confidential.”<sup>11/</sup> See generally, UE 227, Motion to Compel of ICNU (June 8, 2011). Ultimately, ICNU was forced to expend precious time and resources—first through failed, informal attempts to obtain such information, and second in filing a motion to compel—before PacifiCorp eventually relented and produced the requested data. Even then, analysis proved to be very costly due to incomplete formulaic data provided by the Company relative to its internal calculations, and required a change in the schedule to file supplemental testimony. See ICNU/108, Schoenbeck/4. Use of third party data would eliminate any alleged need to use the Company’s own supposed “highly confidential” material, which should not be necessary to set a transition adjustment mechanism for direct access.

A central purpose behind the entire institution of the TAM is “to capture costs associated with direct access, and prevent unwarranted cost shifting.” Order No. 05-1050 at 21. PacifiCorp has not provided any explanation or justification regarding why its method of calculating the forward price curve is consistent with this purpose. In contrast, PacifiCorp’s method prevents effective intervenor participation in TAM proceedings and creates a process rife with gaming opportunity. Therefore, the Commission should require PacifiCorp to use independent, third party forward pricing projections and, in accord with all other Pacific Northwest utilities, designate such data with a public or confidential protective classification.

Finally, in rebuttal testimony, Staff elected to oppose ICNU’s recommendation regarding the source of the forward price curves and opined that PacifiCorp’s forward price curve is reasonable. Staff/300, Durrenberger/12. Staff, however conducted only limited

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<sup>11/</sup> In fact, as ICNU witness Don Schoenbeck testifies (with nearly 40 years of experience in the utility industry to his credit), PacifiCorp is the only Northwest utility which designates forward price curve inputs as highly confidential. Highly Confidential ICNU/108, Schoenbeck/1.

discovery of PacifiCorp's complex method of calculating the forward price curve in this proceeding, and Staff did not encounter any difficulties in gaining access only because of its limited review and analysis. ICNU Cross Exhibit/121. In this and past proceedings, ICNU is the only party that has sought review of the inputs and the reasonableness of PacifiCorp's forward price curve, and the Commission should require the use of independent third party information to facilitate the review of how PacifiCorp calculates the forward price curve. ICNU/100, Schoenbeck/17-21; ICNU Cross Exhibit/121.

**2. The Commission Should Require PacifiCorp to More Accurately Convert Monthly Forward Pricing to Hourly GRID Values**

ICNU witness Don Schoenbeck has provided thorough, detailed analysis and explanation highlighting the [REDACTED] upon which PacifiCorp's GRID modeling is based. E.g., Highly Confidential ICNU/108, Schoenbeck/5-10; Highly Confidential ICNU/109. Notwithstanding, [REDACTED]  
[REDACTED]  
[REDACTED] Highly Confidential ICNU/108, Schoenbeck/10; Highly Confidential ICNU/109, Schoenbeck/14. The flaws in PacifiCorp's methodology are compounded because [REDACTED]  
[REDACTED] Highly Confidential ICNU/108, Schoenbeck/11; Confidential ICNU/105, Schoenbeck/9.

To accurately reflect how the Company transacts in the market, [REDACTED]  
[REDACTED]  
[REDACTED] Highly Confidential ICNU/108, Schoenbeck/11. To this end, ICNU recommends that PacifiCorp be required to

recalculate net power cost projections using [REDACTED]<sup>12/</sup> Id. [REDACTED]

[REDACTED]

[REDACTED] which would facilitate reasonably effectual intervenor participation in TAM cases.

To illustrate this more accurate hourly pricing approach, ICNU used [REDACTED]

[REDACTED]

[REDACTED] Highly Confidential ICNU/108, Schoenbeck/12; Highly

Confidential ICNU/109, Schoenbeck/11-12. Inputting hourly prices into GRID resulted in a

system wide reduction in the Company's net power costs of \$6.9 million, or about \$1.7 for

Oregon. Highly Confidential ICNU/108, Schoenbeck/12. Accordingly, ICNU requests that the

Commission require PacifiCorp to recalculate net power costs using [REDACTED]

[REDACTED]

**3. Alternatively, the Commission Should Require PacifiCorp to Exclude Illiquid Pricing Data from GRID Modeling**

If the Commission does not require PacifiCorp to use [REDACTED]

[REDACTED] ICNU alternatively requests that the Company be required to [REDACTED]

[REDACTED] thereby lowering Oregon net power cost

projections by \$0.9 million. [REDACTED]

[REDACTED] Highly Confidential

ICNU/108, Schoenbeck/13; Highly Confidential ICNU/109, Schoenbeck/2. Consequently, these

[REDACTED]

[REDACTED] Highly Confidential

<sup>12/</sup> More specifically, reflective of how the Company actually transacts in the market, [REDACTED]

[REDACTED] Id.

ICNU/108, Schoenbeck/13, 2. Under PacifiCorp’s method, the Company [REDACTED]  
[REDACTED]

Nevertheless, PacifiCorp contends that ICNU’s alternative recommendation is “inferior” to the Company’s approach, primarily arguing that [REDACTED] [REDACTED] would make its scalars “more volatile.” Highly Confidential PPL/500, Link/14-15; Highly Confidential ICNU/108, Schoenbeck/2. The Commission should not accept such logic because [REDACTED]

[REDACTED] Rather, to avoid underlying [REDACTED] ICNU alternatively recommends that the Commission simply [REDACTED] [REDACTED] Highly Confidential ICNU/108, Schoenbeck/13. [REDACTED]

[REDACTED] Id. Adopting this approach lends itself to more fair and reasonable ratemaking based on known and measurable values and lowers PacifiCorp’s Oregon net power costs by \$0.9 million. Id. Therefore, ICNU requests that the Commission require PacifiCorp to adopt this modification if the Commission does not require PacifiCorp to [REDACTED] [REDACTED]

**H. The Costs of the Cal ISO and DC Intertie Should Be Removed from Rates**

PacifiCorp has proposed to include the costs associated with certain sales transactions in net power costs without including the corresponding benefits to ratepayers. These costs have been disallowed by other state regulatory commissions, and ICNU recommends that the OPUC remove from the GRID study \$1.1 million associated with California ISO (“Cal ISO”)



and \$1.2 million associated with the DC Intertie. If PacifiCorp were actually concerned about the impact of rate increases upon its customers, then the Company would not seek to include in Oregon rates costs which have already been disallowed in other states. Instead of removing these costs, the Company apparently believes that the OPUC will be more willing to pass on costs that other states have already rejected, particularly in the context of a black box settlement.

**1. Cal ISO Costs Should Be Removed Because the Offsetting Revenues Are Not Captured in GRID**

PacifiCorp's approach to modeling the costs and benefits of the Cal ISO ensure that ratepayers pay for the full costs but are not compensated for all the associated benefits of the Cal ISO. ICNU recommends that net power costs be reduced by \$1.1 million and that the costs of the Cal ISO be excluded from rates until the Company can effectively model all the associated benefits which would reduce or eliminate the Cal ISO fees and charges.

PacifiCorp has proposed to include Cal ISO service fees and wheeling charges that were imposed by the Cal ISO for spot market transactions undertaken by the Company during July 2009 to June 2010. ICNU/100, Schoenbeck/25. While all the costs associated with the Cal ISO are charged to ratepayers, there are offsetting revenues which have not been included in GRID. Id. Specifically, the GRID model does not capture the higher margin and lower cost wholesale transactions, which are the type of short-term transactions made close to the time of delivery and make up the bulk of the transactions. See Re Rocky Mountain Power, Idaho Public Utility Commission ("Idaho Commission") Docket No. PAC-E-10-07, Order No. 32196 at 31-32 (Feb. 28, 2011).

PacifiCorp responds by making general arguments about overall system benefits provided by the Cal ISO, stating that it will actually enter into transactions with the Cal ISO, and

how the Company would experience higher costs if it did not participate in the Cal ISO. PPL/105, Duvall/25-26. PacifiCorp is simply not responding directly to ICNU's arguments. ICNU does not dispute that the Cal ISO may be used during the test period or recommend that PacifiCorp not transact with the Cal ISO in actual operations. Instead, ICNU's concern is that the higher margin transactions that PacifiCorp will enter into are not accounted for in GRID. ICNU is proposing the same adjustment that was adopted and found to be persuasive by the Idaho Commission less than a year ago, and PacifiCorp has not provided any grounds that this Commission should not adopt the same resolution. ICNU/100, Schoenbeck/25.

**2. The Costs of the DC Intertie Should Be Removed Because the GRID Model Does Not Account for Any Offsetting Benefits**

ICNU recommends that the \$1.2 million in costs of the DC Intertie also be removed from rates, because PacifiCorp does not model any corresponding benefits, and the Company has failed to establish the Intertie's continued usefulness. PacifiCorp has proposed to charge Oregon ratepayers the costs of a 200 MW capacity contract with BPA that was originally associated with a contract with Southern California Edison that has been terminated for a decade. ICNU/100, Schoenbeck/26. The DC Intertie is seldom used and its "extraordinary low level of activity does not justify the inclusion of the substantial wheeling costs in" net power costs. Id.

PacifiCorp argues that it prudently entered into the DC Intertie contract 17 years ago and that the Company would need to make other arrangements for the few transactions that may be transacted over the Intertie in the future. PPL/105, Duvall/21-24. Again, PacifiCorp is attempting to shift focus away from ICNU's arguments, an approach that failed when the Washington Utilities and Transportation Commission ("WUTC" or the "Washington Commission") recently adopted the same exact ICNU proposal. WUTC v. PacifiCorp,

Washington Utilities & Transportation Commission Docket No. UE 100749, Order 06 at ¶¶ 148-151 (Mar. 25, 2011). As explained by the Washington Commission, the issue is not whether the Company prudently entered into the DC Intertie nearly two decades ago, but whether the Company is fulfilling its ongoing obligation to manage resources to provide benefits to ratepayers and whether the resource will continue to provide value matching its costs. Id. PacifiCorp has failed to provide evidence that it has evaluated other less costly options to serve the tiny amount of load that was served under the DC Intertie, and the Company has not provided any measure to evaluate or model the capacity benefits that would offset the significant costs of the DC Intertie. Thus, the OPUC should also disallow the costs of the DC Intertie in this case.

#### **IV. CONCLUSION**

ICNU recommends that the Commission significantly reduce or eliminate PacifiCorp's proposed rate increase in this proceeding. The over \$50 million rate increase agreed to by the Settling Parties allows the Company to recover significantly higher rates than has been justified in this proceeding. The \$8 million reductions agreed to in the Settlement does not adequately account for the extent of PacifiCorp's imprudent gas hedging contracts and does not include any reductions associated with GRID modeling issues, including the market caps, wind integration costs, calculation of the forward price curve, the DC Intertie contract or CAISO fees. Some of these issues have already been decided against PacifiCorp in other jurisdictions, and there is no basis for Oregon to pay for costs that other states have already disallowed. Finally, the Commission should adopt ICNU's retail load adjustment to ensure that PacifiCorp is not able to increase net power costs to ratepayers without accounting for other retail revenues that all parties know PacifiCorp will actually receive.

Dated this 5th day of October, 2011.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Irion A. Sanger

Melinda J Davison

Irion A. Sanger

333 S.W. Taylor, Suite 400

Portland, Oregon 97204

(503) 241-7242 phone

(503) 241-8160 facsimile

mjd@dvclaw.com

ias@dvclaw.com

Of Attorneys for the Industrial Customers of  
Northwest Utilities

# Davison Van Cleve PC

Attorneys at Law

TEL (503) 241-7242 • FAX (503) 241-8160 • mail@dvclaw.com  
Suite 400  
333 SW Taylor  
Portland, OR 97204

October 5, 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 Opening Brief on behalf of the Industrial Customers of Northwest Utilities in the above-referenced docket. Confidential hard copies are being provided to those parties who have signed Protective Order No. 10-069 in Docket No. UE 216. Highly Confidential hard copies are being provided to those parties who have signed the modified protective order in this 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 Opening 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 5th day of October, 2011.

/s/ Sarah A. Kohler  
Sarah A. Kohler

**(W) PACIFICORP**  
OREGON DOCKETS (C) (HC)  
825 NE MULTNOMAH ST STE 2000  
PORTLAND OR 97232  
oregondockets@pacificorp.com

**(W) PUBLIC UTILITY COMMISSION OF OREGON**  
MAURY GALBRAITH (C) (HC)  
PO BOX 2148  
SALEM OR 97301  
maury.galbraith@state.or.us

**(W) RICHARDSON & O'LEARY**  
GREGORY MARSHALL ADAMS (C)  
PO BOX 7218  
BOISE ID 83702  
greg@richardsonandoleary.com

**(W) NOBLE AMERICAS ENERGY SOLUTIONS LLC**  
GREG BASS  
gbass@noblesolutions.com

**(W) CITIZENS' UTILITY BOARD OF OREGON**  
GORDON FEIGHNER (C) (HC)  
ROBERT JENKS (C)  
G. CATRIONA MCCrackEN (C) (HC)  
610 SW BROADWAY, SUITE 308  
PORTLAND OR 97205  
gordon@oregoncub.org  
bob@oregoncub.org  
catriona@oregoncub.org

**(W) DEPARTMENT OF JUSTICE**  
JASON W JONES (C) (HC)  
ASSISTANT ATTORNEY GENERALREGULATED  
UTILITY & BUSINESS SECTION  
1162 COURT ST NE  
SALEM OR 97301-4096  
jason.w.jones@state.or.us

**(W) MCDOWELL & RACKNER PC**  
KATHERINE A MCDOWELL (C)  
AMIE JAMIESON (C) (HC)  
520 SW SIXTH AVE - SUITE 830  
PORTLAND OR 97204  
katherine@mcd-law.com  
amie@mcd-law.com

**(W) ENERGY STRATEGIES LLC**  
KEVIN HIGGINS (C)  
PRINCIPLE215 STATE ST - STE 200  
SALT LAKE UT 84111-2322  
khiggins@energystrat.com

**(W) REGULATORY & COGENERATION SERVICES  
INC**  
DONALD W. SCHOENBECK (C) (HC)  
900 WASHINGTON ST STE 780  
VANCOUVER WA 98660-3455  
dws@r-c-s-inc.com

**(W) PUBLIC UTILITY COMMISSION OF OREGON**  
ED DURRENBERGER (C)  
PO BOX 2148  
SALEM OR 97301  
ed.durrenberger@state.or.us