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September 18, 2013

Via Electronic Mail and Federal Express

Public Utility Commission of Oregon
Attn: Filing Center
550 Capitol St. NE #215
P.O. Box 2148
Salem OR 97308-2148

Re: In the Matter of PACIFICORP 2014 Transition Adjustment Mechanism
Docket No. UE 264

Dear Filing Center:

Enclosed for filing in the above-referenced docket, please find the original and five (5) copies of the redacted version of the Confidential Industrial Customers of Northwest Utilities' Post-Hearing Response Brief. Also enclosed are the original and five (5) copies of the confidential pages of same, which are sealed pursuant to the General Protective Order in this docket.

Thank you for your assistance, and please do not hesitate to call our office with any questions.

Sincerely,

/s/ Jesse Gorsuch
Jesse Gorsuch

Enclosures
cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the CONFIDENTIAL INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES' POST-HEARING RESPONSE BRIEF upon all parties in this proceeding by causing a copy thereof to be sent via electronic mail to each party's last-known email address, as shown below, and by causing the confidential pages of same to be sent via First Class U.S. Mail, postage prepaid, to all parties who are "qualified persons" as defined in the General Protective Order in this docket.

Dated at Portland, Oregon, this 18th day of September, 2013.

/s/ Jesse Gorsuch
Jesse Gorsuch

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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 264

In the Matter of	)
	)
PACIFICORP	)
	)
2014 Transition Adjustment Mechanism	)
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THE CONFIDENTIAL INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES' POST-HEARING RESPONSE BRIEF

REDACTED VERSION

September 18, 2013

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 264

In the Matter of	)	
	)	THE CONFIDENTIAL INDUSTRIAL
PACIFICORP	)	CUSTOMERS OF NORTHWEST
	)	UTILITIES' POST-HEARING
2014 Transition Adjustment Mechanism	)	RESPONSE BRIEF
	)	
	)	

I. INTRODUCTION

The Industrial Customers of Northwest Utilities ("ICNU") submits this post-hearing response brief summarizing ICNU's positions in this Transition Adjustment Mechanism ("TAM") proceeding that will set rates for the 2014 calendar year. The Oregon Public Utility Commission ("OPUC" or the "Commission") should order an approximately $8.7 million reduction in the Company's Oregon allocated net power costs to enforce the Commission's rule against affiliate subsidization, account for known and measurable increases in the generation capacity and efficiency at Jim Bridger Units 1 and 2, and prevent PacifiCorp from inflating its wind integration costs with a new and unproven methodology that only relies upon a single year of data to forecast its hourly wind shapes. ICNU's prehearing memorandum included a summary of the case, background, appropriate legal standard and positions, and this response brief will not repeat information previously briefed, except as necessary to respond to the opening post-hearing brief of PacifiCorp. ICNU's revenue requirement adjustments have not changed from the prehearing memorandum, and are summarized below:

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ICNU Power Supply Adjustments ($ in Millions)		
Issue	**PacifiCorp NPC[1/]**	**OR NPC Allocation**
Coal Costs[2/]	$27.4	$6.8
Jim Bridger Heat Rate Improvement	$3.3	$0.8
Wind Energy Shaping[3/]	$4.6	$1.1
Total:	$35.3	$8.7

This TAM case raises key substantive and procedural issues that will have a broad impact on the integrity of the Commission's regulatory proceedings. First, PacifiCorp has waited until its rebuttal testimony to provide most of its testimony on contested coal costs and wind modeling. Given the complexity of these issues and the fact that Staff and intervenors are provided only one round of testimony, PacifiCorp should have fully supported all of its issues in direct testimony, especially critical ones that are new and/or known to be controversial. The Commission should not allow PacifiCorp to meet its burden of proof and persuasion by waiting to blindside the parties by submitting most of its coal related evidence on rebuttal, as it did in this case.

The Commission's implementation of the rule requiring affiliate transactions to be included at the lower of cost or market[4/] will also have broad ramifications beyond this specific

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1/ NPC is Net Power Costs. Column one is a system wide number and column two reflects these adjustments on an Oregon basis.

2/ Both ICNU and Staff have proposed mutually exclusive coal cost adjustments. ICNU has proposed that coal costs be included at the lower of cost or market, which in this proceeding is the market rate. If the Commission includes coal costs at the higher cost based amount (which includes a rate of return), then the Commission should adopt Staff's proposed adjustment to remove certain costs.

3/ ICNU, Staff and the Citizens' Utility Board of Oregon ("CUB") all submitted testimony in opposition to PacifiCorp's new wind energy shaping methodology.

4/ Sometimes abbreviated as "LCM."

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TAM proceeding. PacifiCorp's parent company has a complex web of affiliates (which will only become more extensive given the proposed Berkshire Hathaway or MidAmerican Energy Holding Company's ("MEHC") acquisition of NV Energy, formerly known as Nevada Power). It is simply impossible for Staff and intervenors to properly police, review and analyze all of the affiliate transactions that currently occur, and will occur in the future, between the various companies owned by Berkshire Hathaway and MEHC, especially during the expedited timelines of TAM proceedings. Given the difficulty of verifying whether the various affiliate transactions are actually appropriate arm's length transactions, it is critical that the Commission protect ratepayers by firmly enforcing the rule that affiliate costs be included at the lower of cost or market.

II. ARGUMENT

A. The Company Has Unfairly Withheld Evidence in Attempting to Carry Its Burden of Proof on Bridger Coal Company ("BCC") Purchases and Wind Costs until the Final Round of Testimony

Contrary to PacifiCorp's assertions, the Company has essentially ambushed the parties by withholding substantive testimony on coal pricing and wind integration costs until the final round of rebuttal testimony. In effect, PacifiCorp has attempted to turn the burden of proof standard upside down. As ICNU explained in its prehearing memorandum, Commission precedent finds that PacifiCorp's burden of proof remains with the Company throughout the proceeding. Re PacifiCorp, Docket No. UE 246, Order No. 12-493 at 2 (Dec. 20, 2012). Yet, the failure of the Company to carry this burden in direct testimony forced responding parties to raise the coal issue in their rebuttal testimony knowing that the Company will provide evidence that the opposing parties will have no opportunity to rebut.

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Accordingly, in light of the material prejudice which PacifiCorp itself has created by its actions, ICNU requests that the Commission carefully weigh PacifiCorp's proof on the reasonableness of wind costs and BCC purchases, especially in regard to the lower of cost or market analysis. The Commission may find guidance in this regard through its recent determination in the Company's 2012 general rate case. On the prudence of PacifiCorp investments, the Commission held that a revenue requirement reduction was warranted because PacifiCorp failed to include sufficient information in the record to demonstrate the prudence of certain decisions. Re PacifiCorp, Docket No. UE 246, Order No. 12-493 at 31 (Dec. 20, 2012). Similarly, PacifiCorp's failure to include support for its wind integration costs and coal costs forces the Commission to consider a record that lacks sufficient evidence for PacifiCorp to carry its burden of proof.

B. PacifiCorp Must Account for BCC Purchases at the Lower of Cost or Market Price

The rule governing affiliate sales of supplies to utilities is straightforward: "[S]ales shall be recorded in the energy utility's accounts at the affiliate's cost or the market rate, whichever is lower." OAR § 860-027-0048(4)(e). Quite simply, PacifiCorp must account for BCC coal purchases at the lower of cost or market price.

In testimony, the prehearing memorandum and in its opening brief, however, PacifiCorp rejects application of the LCM standard in favor of a "reasonable" analysis, as if the LCM standard and the reasonableness standard were somehow at odds. In short, PacifiCorp would have the Commission include above-market BCC coal prices in rates on the grounds that

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it believes these excess charges are "reasonable." Above market costs are inherently unreasonable, especially in the context of affiliate transactions.

1. The LCM Standard Applies to Ratemaking

PacifiCorp has made the novel argument that the LCM standard only applies for accounting purposes, but is irrelevant to actual ratemaking. Specifically, PacifiCorp witness Cindy Crane testified that OAR § 860-027-0048 and the LCM standard only "applies to approval of proposed affiliate transactions for regulatory accounting purposes, not for ratemaking purposes." PAC/600, Crane/8. PacifiCorp also argues in its opening brief "that after an affiliate arrangement is approved by the Commission, 'the subsequent ratemaking review is whether the payments set forth in the contract are reasonable.'" PacifiCorp Opening Brief at 11-12 (quoting Order No. 02-820 at 7). The question at issue in Order No. 02-820 was whether the Commission should review the decision to enter into the contract or just the financial aspects of the contract. Re PacifiCorp, Docket Nos. UE 134 and UM 1047, Order No. 02-820 at 7 (Nov. 20, 2002). ICNU is only reviewing the financial aspects of coal costs. Under PacifiCorp's view, although the Company might be subject to LCM accounting for bookkeeping purposes, the gates of cost-allowance would be opened wide to a lesser "reasonable" standard when it matters most and rates are set.

This is inconsistent with Oregon law. The Oregon Court of Appeals has stated that "[a] primary responsibility of the Public Utility Commissioner is the protection of the ratepayer." Oregon Tel. Corp. v. Public Utility Comm'r, 5 Or App 231, 236 (1971). To this end, in considering utility balance sheet items, the Court also concluded that it is the Commission's "duty to see that all such are properly accounted for in the books of the company." Id. In order

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for the Commission to satisfy its "responsibility" to protect ratepayers through the "duty" to check the appropriateness of utility accounting, there *must* be a link between accounting and rate setting. Otherwise, supposed ratepayer protections via accounting rules are meaningless. Accordingly, the LCM accounting mandate of OAR § 860-027-0048 must also apply for rate setting purposes.

In fact, within the "most recent order on the supply agreement between BCC and Bridger," PAC/600, Crane/8, the Commission acknowledged its statutory duty "to protect ratepayers from the abuses which may arise from less than arm's length transactions." Re PacifiCorp, Docket No. UI 189, Order No. 01-472 at 2 (June 12, 2001). To achieve that end, the OPUC adopted Staff's recommendation to approve the BCC supply agreement because it appeared to meet the Commission's affiliate transfer policy—i.e., "goods and services purchased by a regulated electric utility from an affiliate shall be priced at the lower of cost or fair market rate." Id. at Appendix A, p. 2.

2. The Commission Has Consistently Used the Lower of Cost or Market Standard

PacifiCorp contends that ICNU's application of the LCM rule "to the BCC transaction is misplaced and contrary to Commission precedent." PacifiCorp Opening Brief at 14. The Company continues to present a false dichotomy wherein the LCM standard is opposed to a "reasonableness" or "cost-based standard to coal sales from affiliate mines" which, according to PacifiCorp, "the Commission has always applied." Id. In reality, the Commission has never separated its review of BCC transactions into incompatible categories of either LCM or reasonableness standard. Rather, the Company must include in rates its coal costs at the lower

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of cost or market and demonstrate that any costs or market transactions are objectively fair and reasonable.

PacifiCorp criticizes ICNU for responding to two orders in its prehearing brief which the Company originally cited in rebuttal testimony—Order Nos. 79-754 and 82-606. PacifiCorp contends that "the Commission applied a cost-based approach" in each. Id. Further, PacifiCorp claims: "Neither order references or discusses the [LCM] standard or applies that standard to BCC coal." Id. at 15.

PacifiCorp's arguments regarding Commission precedent are flawed. First, ICNU agrees that the Commission has approved cost-based coal pricing in the past, and specifically in the context of Order Nos. 79-754 and 82-606. The problem is that PacifiCorp interprets past approvals of coal pricing at "cost" as being incompatible with the LCM standard. But application of the LCM standard *should* result in cost-based pricing when an affiliate supply is less than or equal to market costs, as was the case Order Nos. 79-754 and 82-606. There is no mutual exclusivity here.

Second, PacifiCorp ignores the fact that the cost-based pricing approvals in Order Nos. 79-754 and 82-606 *were* premised upon a LCM analysis. In the first case, the OPUC observed that Pacific Power had contracted for BCC coal in 1974 based on a price that was only 75% of the Wyoming commercial price. Re Pacific Power, Docket No. UF 3508, Order No. 79-754 at 16 (Aug. 18, 1982). The Commissioner confirmed that Pacific Power had secured BCC coal "at a price below the then prevailing market price." Id. at 19.

The Commission's most recent order on BCC, Order No. 01-472, also refutes PacifiCorp's claim that coal costs are treated differently and only judged on a cost standard as

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opposed to the lower of cost or market standard. The Commission's order expressly incorporated and adopted Staff's recommendation in that case, in which Staff asserted "that the appropriate standard the Commission has used and continues to use for ratemaking is its affiliate interest transfer-pricing requirements, namely that the price is the lower of cost or fair market rate." Re PacifiCorp, Docket No. UI 189, Order No. 01-472 at Appendix A, p. 2 (June 12, 2001). Moreover, Staff determined that PacifiCorp had met that policy "because BCC is charging PacifiCorp a price for its coal supply based on BCC's fully distributed cost that is currently less than the market rate," thereby resulting in a fair and reasonable price. Id. at 2, 3. Thus, a proper review of the entire context of the most recent order on the supply agreement between BCC and Bridger demonstrates that affiliate transactions must meet the fair and reasonable standard and the LCM standard. Given the potential for abuses this result is required to adequately protect ratepayers..

3. The Commission's LCM Rule Has the Power of a Legislative Enactment

PacifiCorp ignores the fundamental legal principle that, once the Commission adopts a rule, that rule becomes "as binding as if the legislature itself had acted." Harsh Inv. Corp. v. State, 88 Or App 151, 157 (1987) (citing Bronson v. Moonen, 270 Or 469, 476–77 (1974)); accord, Re Rulemaking to Update Waiver Provisions in the Commission's Administrative Rules, Docket No. AR 554, Order No. 11-346 at 4 (Sep. 8, 2011). In order for decisions to which the Company cites to have the desired effect (of essentially trumping OAR §

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860-27-0048 and the LCM standard), the Commission would need to disregard Oregon law and treat its rules as mere discretionary guideposts that can be set aside at will. [5/]

Primarily, the Company is arguing that the Commission is essentially bound by prior determinations that allegedly favor PacifiCorp's "cost equals reasonableness," rubber-stamp paradigm. PacifiCorp Opening Brief at 15-16. This reasoning flatly contradicts precedent. Specifically, the Oregon Court of Appeals posed the following question: "Does the Commissioner's prior approval of a contract between a utility and an affiliated interest . . . 'estop' him from disallowing any portion of those payments when exercising his authority to determine and impose 'just and reasonable' rates?" Pacific NW Bell Telephone v. Sabin, 21 Or App 200, 225. The Court answered with a definitive "nay," finding: "Because applying a doctrine of 'estoppel' to the acts of the Public Utility Commissioner would deprive him of an essential flexibility and appear to be inconsistent with his regulatory role, we do not believe that [statutes] should . . . be interpreted as giving rise to such a limitation." Id. at 225–226. Consequently, regardless of any OPUC determinations on BCC pricing that have gone before, the Commission is required to apply LCM rule as the law commands—that is, "as binding as if the legislature itself had acted." Harsh Inv. Corp., 88 Or App at 157 (citing Bronson, 270 Or at 476–77).

4. PacifiCorp's Coal Availability Arguments Are Not Persuasive

ICNU affirms the positions stated in its prehearing memorandum regarding the applicability of the LCM pricing standard to *all* BCC coal. PacifiCorp, however, contends that ICNU's market rate analysis is "deficient because it focuses exclusively on the Black Butte mine

[5/] The Commission can waive a rule for good cause which is not present here. OAR § 860-027-0000(2).

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and fails to consider the costs of coal supply from other mines in southwest Wyoming in determining the 'market rate.'" PacifiCorp Opening Brief at 18.

ICNU has done nothing improper by using Black Butte coal as the comparable market price for BCC coal. The Company itself identified only Black Butte coal as a "comparable" alternative to BCC coal. PAC/200, Crane 15. ICNU can hardly be faulted when the Company supplied very little substantive information on this issue to carry its burden of proof in direct testimony. The Company's 18 pages of direct testimony documenting its coal costs are conspicuously silent on justification for affiliate pricing.

PacifiCorp's complaint that ICNU has failed to consider other coal supply options is not accurate. Ms. Crane testified in Utah this year that BCC coal is inferior to all other regional supply, including other southwest Wyoming sources, thereby demonstrating that the Company itself does not view any other coal as "comparable" except the specifically identified Black Butte market alternative. For instance, Ms. Crane has testified that "[t]he relatively low heat content in comparison to Colorado and Utah coals and the high ash content relative to Powder River Basin coals confines Southwest Wyoming coal largely to the local area." ICNU/206 at 11; accord, id. at 15. Likewise, Ms. Crane asserts that, "[r]elative to other Southwest Wyoming mines, Bridger surface coal is a relatively low heat content, high ash coal . . . ." Id. at 12.

Dating back at least to [redacted]

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ICNU/203 at 3. If the Company's [redacted], ICNU has done nothing inappropriate in doing likewise.

Moreover, PacifiCorp has publicly revealed that it will replace significant amounts of BCC supply with Black Butte coal in 2015-2017, a three year period *immediately* following the test year in this proceeding. This supports using Black Butte coal as the market alternative and casts extreme doubt on the veracity of PacifiCorp's claim that "evidence in this case makes clear that Black Butte mine does not have sufficient excess capacity to supply the Bridger plant." PacifiCorp Opening Brief at 18. Specifically, Ms. Crane testified in February 2013 in Utah Docket No. 12-035-92 concerning the "*replacement* of Bridger Coal Company with Black Butte deliveries during the 2015-2017 timeframe while . . . reserves are being developed." ICNU/206 at 7 (emphasis added).

Also, in updating a number of Bridger supply costs, Ms. Crane testified that the cost increase associated with a "change in supply mix" related to new Black Butte coal was only [redacted] compared to a cost increase update associated with BCC coal of [redacted]. Id. at 6-7. Further still, Ms. Crane testified in the Utah case that separate cost increases related to Black Butte coal and its associated rail transport were only projected to begin [redacted] Id. at 7; accord, id. at 17 (noting that a "shift in the Black Butte price reflects a projection of the impact on Black Butte costs of reduced coal production").

Ultimately, customers should not bear the burden of having to produce exact data on coal costs when the Company has failed to do so. Just as in Docket No. UE 246, the

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Company and not ratepayers must produce evidence demonstrating that its preferred affiliate coal purchase benefits ratepayers. Docket No. UE 246, Order No. 12-493 at 32. PacifiCorp has not and cannot make such a showing, thus, market pricing should apply to its coal purchases.

5. ICNU's Alternate Inventory-Based Adjustment is Appropriate in these Circumstances

ICNU also affirms the positions taken in its prehearing memorandum regarding the alternate BCC pricing adjustment incorporating Bridger stockpile inventory.[6/] PacifiCorp contends that, by suggesting an alternative adjustment in a prehearing memorandum, "ICNU prevented PacifiCorp from providing responsive evidence demonstrating the prudence of the Company's inventory policy." PacifiCorp Opening Brief at 21. This is a fantastic claim, given the Company's decision to raise the issue in its rebuttal testimony that there is insufficient capacity at Black Butte to meet the needs of the Bridger plant. ICNU's alternate argument is simply responsive to these new arguments: if the Commission agrees with PacifiCorp that the availability of coal at Black Butte is relevant (which ICNU believes it is not), then the Commission should make an adjustment based on the excess amount of coal available at Black Butte. Applying the market rate to a smaller amount of coal would lower PacifiCorp's Oregon net power costs by about $3.4 million.

PacifiCorp also alleges that the "inventory adjustment is illegal retroactive ratemaking" since ICNU argues that "the Commission should expect the Company to have minimized costs by filling Bridger capacity with the lowest price coal available." Id. at 21-22

6/ ICNU agrees with PacifiCorp that any alternative adjustment based on Bridger inventory should reflect the fact that PacifiCorp is only a two-thirds owner of BCC and the Bridger Plant. PacifiCorp Opening Brief at 22.

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(internal quotations and emphasis omitted). As the Company reasons, ICNU's proposal is illegal because it would have "the Commission re-price the coal that the Company has already purchased." Id. at 22.

This rationale is not sound and ICNU's adjustment does not violate the rule against retroactive ratemaking. Indeed, when following the Company's dubious logic to its ultimate end, the LCM rule standard would have no effect and utilities could claim "retroactive ratemaking" anytime the Commission disallowed excessive expenditures. The Commission is not retroactively "re-pricing" expenditures whenever it fails to simply accept above-market affiliate transactions. To accept PacifiCorp's argument would gut prudence review of its affiliate transactions.

As noted by the Oregon Court of Appeals: "The function of the rate-making power, however, *is to protect the utility's rate payers*. In the proper exercise of that power, the commission does not require the authority to invalidate contracts." Sabin, 21 Or App at 226 (quoting Re General Tel. Co. v. Lundy, 17 NY2d 373, 380 (1966)) (emphasis added). To effect such protection, "[a]ll that is required . . . is the authority to disregard unwarranted payments to affiliates when calculating the 'just and reasonable' rates . . . ." Id. at 226–27 (quoting Lundy, 17 NY2d at 380). Therefore, the Commission has the inherent authority, even predating and independent of the actual codification of LCM rules, to require that utilities pay for excess affiliate charges rather than unjustly burden ratepayers. Id. In this proceeding, the Commission would be adhering to its LCM rule and complementary reasonableness standards by only authorizing rate recovery of BCC purchases at a market price.

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Further, the propriety of an LCM adjustment related to Bridger coal inventory is supported by PacifiCorp testimony. In 2010, Ms. Crane testified that "[t]he Company's inventory policy contemplates increasing inventory levels if there are opportunities to procure coal at below-market prices," pledging also to "continue to seek opportunities to efficiently manage fuel cost and quality through effective management of its inventory." ICNU/204 at 5, 9. PacifiCorp now criticizes ICNU for not demonstrating that past supply opportunities would have allowed the Company to fulfill its stated policy of stocking the Bridger inventory with below-market price coal. PacifiCorp Opening Brief at 22-23. The reality, however, is that *the Company* has failed to provide any evidence that BCC costs are justified in comparison to inventory options.

ICNU's alternative recommendation is fully in keeping with PacifiCorp's own inventory policy which, as Ms. Crane has testified, is supposed to benefit customers: "This prudent management benefits customers, the slight increase in coal inventory carrying costs is more [than] offset by the lower purchase price of the coal." ICNU/204 at 5. The official Company coal policy and outside consultant analysis establishes that PacifiCorp has had ample time and awareness to implement an inventory policy for the benefit of customers. PacifiCorp received a permit for increased Bridger inventory capacity in early 2009, with the ability to add 200,000 tons to inventory per year up to the Company's total stockpile share of just over 800,000 tons. Id. at 7. These basic facts were also acknowledged in the Company's official 2010 coal policy. ICNU/201 at 2. In sum, the Company has had at least four calendar years *before* the 2014 test year to implement its below-market stockpile policy for customer benefit, up to its full Bridger inventory share.

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PacifiCorp has been aware since at least [redacted] ICNU/203 at 16. PacifiCorp has not met its burden to explain why more Black Butte coal has not been transported into inventory, especially given the excess capacity at Black Butte in 2014 and beyond, the lower costs of Black Butte coal, and the superiority of Black Butte coal.

Finally, PacifiCorp's 2013 official coal policy states that, [redacted] ICNU/202 at 3. Notwithstanding, PacifiCorp has failed to minimize acknowledged and long-standing risks associated with underground BCC mining by increasing supplies of lesser risk and lesser cost coal from Black Butte. Ms. Crane testified in 2010 that, "[w]ith the advent of underground mining," BCC has produced coal with ash content exceeding the Company's quality threshold. ICNU/204 at 11.

Elaborating further, Ms. Crane testified in 2011 that, "recognizing the increased supply risk associated with underground mining, the Company requested and received a permit" in 2009 to increase Bridger storage capacity to 1.3 million tons. ICNU/205 at 5. Again, PacifiCorp acknowledged the continuing issues of "greater unpredictability" along with "the potential for extended periods of high ash coal production" related to BCC underground mining. Id. at 9. And, once more, Ms. Crane testified that "[t]he increase in Bridger plant's long-term storage capacity" was "indicative of the Company's focus on pursuing economic options that

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maximize performance." Id. at 11. Nonetheless, by not stockpiling available Black Butte coal in the intervening years, the Company has failed to act on its repeated inventory pledge.

In sum, the Company has long been aware of its ability and the desirability of maximizing benefits supplied to customers through increased usage of Black Butte coal in inventory. PacifiCorp has simply failed to capitalize on its opportunities and the Commission should adjust the amount the Company is allowed to collect for excessive and unwarranted BCC purchases.

6. ICNU's Rate Base Adjustment Is Appropriate

PacifiCorp argues that it is inappropriate to account for the non-net power costs rate base aspects of ICNU's coal adjustment. PacifiCorp Opening Brief at 19-20. PacifiCorp also asserts that ICNU's adjustment is inconsistent with the stipulation in the Company's 2013 general rate case. Id. at 20. Neither argument is correct.

TAMs filed when the Company files a general rate case are intended to be broader and to allow the parties to address more issues. Re PacifiCorp, Docket No. UE 199, Order No. 09-274 at Appendix A pp. 9, 13 (July 16, 2009). For example, there are a number of issues that parties can raise in TAMs filed concurrently with a general rate case that cannot be addressed in the narrower TAMs filed on a stand-alone basis. Id. Order No. 11-435 cited by PacifiCorp supports this conclusion, as the Commission rejected ICNU's proposal regarding load forecasts because it was made in a stand-alone TAM proceeding rather than a TAM proceeding filed concurrent with a general rate case. Re PacifiCorp, Docket No. UE 227, Order No. 11-435 at 6 (Nov. 4, 2011). Therefore, it is appropriate for ICNU to include the rate base impacts of its adjustments in this proceeding because it was filed concurrently with a general rate case.

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Language was included in the 2013 general rate case settlement testimony recognizing that ICNU would be allowed to fully address its coal cost issue, including adjusting the rate base elements. The settlement testimony recognized that the TAM case was ongoing, and stated that the settlement "does not address or resolve any of the issues raised by the parties in that proceeding, except as specifically noted in the Stipulation." Re PacifiCorp, Docket No. UE 263, Stipulating Parties/100 at 3 (Aug. 6, 2013). While ICNU cannot identify any of the confidential communications regarding the settlement process, it was ICNU's intention that this language was included for the sole purpose of preventing PacifiCorp from raising this exact argument.

If parties must separately identify in the concurrent general rate case the non-net power cost impacts of their net power cost adjustments, then such a policy should only be adopted on a prospective basis. ICNU has operated under the assumption that it need not separately submit testimony in a concurrent general rate case that has the limited and sole purpose of simply quantifying the non-net power cost impacts of adjustments that are being substantively litigated in the TAM. ICNU requests that the Commission provide prospective guidance on this issue so that parties do not fall into PacifiCorp's procedural traps. This is another example of why the Commission should open an investigation to address changes to the operation of PacifiCorp's TAM.

C. PacifiCorp's Coal Pricing Should be Reviewed on a Periodic Basis

According to PacifiCorp, Staff does not support an LCM adjustment to BCC pricing but "supports PacifiCorp periodically (e.g., no less than once every three years) preparing a fuel supply plan that compares affiliate mine fuel supply to other alternative supply options,

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including market alternatives, to facilitate the implementation of the Commission's prudence and affiliate transaction standards in future rate proceedings." PacifiCorp Opening Brief at 13. ICNU supports the development of a fuel supply plan, but on a prospective basis.

The problem with applying Staff's new approach *now* is that the law does not allow for a later, periodic review in lieu of LCM analysis in this TAM proceeding, and that it is different from Staff's recommendations every time coal cost issues have been raised in the past. PacifiCorp should not be permitted to overcharge customers at this point in time with the hope that it will be corrected in the future. Indeed, different Staff witnesses have consistently applied the LCM standard and OAR § 860-027-0048 in recent TAM cases when testifying about BCC pricing. E.g., Docket No. UE 227, Staff/200, Bahr/2; Docket No. UE 216, Staff/200, Dougherty/2; Docket No. UE 207, Staff/200, Dougherty/7, 8, 10, and Staff/400, Dougherty/17, 20. ICNU was surprised when Staff did not raise the argument again in this case. Thus, while Staff's new position may have merit, the Commission must follow the rule currently in effect, just as Staff has traditionally advocated in prior cases. Id.

D. The Commission Should Update the Jim Bridger 2 Heat Rate to Reflect its Actual Heat Rate

The Commission should make a known and measurable change to the Jim Bridger Unit 2 heat rate to reflect the efficiency upgrades the Company has claimed will occur. PacifiCorp will charge ratepayers the full costs of turbine upgrades that will increase the unit's generating capacity, and it is appropriate to reflect the expected net power cost benefits associated with this upgrade. PacifiCorp should not charge ratepayers the full costs of this

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turbine upgrade without passing on ICNU's conservative estimate of the net power cost benefits that will occur.

PacifiCorp does not dispute that there will be net power cost benefits associated with the upgrades, but asserts that the exact amounts are speculative, accounting for the benefits violates a stipulation in a prior TAM proceeding (UE 216), and including the benefits is inconsistent with the testimony of retired ICNU witness, Randy Falkenberg. ICNU's recommended heat rate improvement adjustment is reasonable and [redacted]. In addition, the stipulation in UE 216 does not impose any bar on adopting ICNU's recommendation, and Mr. Falkenberg's prior testimony does not support the Company's assertions in this case. PacifiCorp is again mischaracterizing ICNU's prior positions and Mr. Falkenberg's testimony.

1. ICNU's Heat Rate Adjustment Is a Conservative Estimate of the Net Power Cost Benefits Associated with Jim Bridger 2 Upgrade

PacifiCorp has made a turbine upgrade at its Jim Bridger 2 facility that should already be completed. The turbine upgrade's total estimated cost is $31 million, which will be paid for by PacifiCorp's ratepayers, including its Oregon customers. ICNU/100, Deen/3. The main benefits of the upgrade are that it will increase the unit's generating capacity by about 12 MWs with no additional fuel requirements. Id. PacifiCorp witness Dana Ralston provided a full description of the costs and benefits associated with the turbine upgrade, arguing that the investment was prudent and that capital costs were "known and measurable." Re PacifiCorp, Docket No. UE 263, PAC/400, Ralston/1-6.

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PacifiCorp estimates that the upgrade will result in an approximately 500 BTU/kWh efficiency improvement. Id.; ICNU/100, Deen/3. PacifiCorp's estimated efficiency improvement in the Jim Bridger 2 unit is based upon the efficiency upgrades that occurred at the Jim Bridger 1 unit, which the company stated "are of similar design, capacity and size." ICNU/100, Deen/4; Confidential ICNU/102, Deen/3. Mr. Deen agreed that the units were comparable, and reviewed the Jim Bridger 1 operations before and after its upgrades. Mr. Deen then proposed that the average heat rate for the Jim Bridger 1 unit be used to estimate the efficiency improvements of the Jim Bridger 2 unit. ICNU/100, Deen/4-5. Therefore, in order to reduce controversy, [redacted]

PacifiCorp traditionally estimates the heat rates in its GRID model based on the most recent 48-month period. Id. at Deen/5. Mr. Deen recommended against this approach for the Jim Bridger 2 heat rate improvement because it does not allow for the timely integration of the net power cost impact of capital improvements that are known to occur. Id. at Deen/5-6. Under the Company's approach, known efficiency improvements will not be fully reflected until 2015, even though customers will already have been paying for capital improvements. Id.

PacifiCorp argues that the specific rate improvements recommended by Mr. Deen are "entirely speculative" because they use a smaller data set and are based on data from a different unit. PacifiCorp Opening Brief at 25. PacifiCorp's brief overstates and mischaracterizes the evidence in the record. While PacifiCorp witness Greg Duvall opposed accounting for the heat rate improvement, the factual argument he raised was that a normalized four-year average should be used, rather than more recent information because a longer time

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period will better account for a broader range of operations. PAC/500, Duvall/21. ICNU agrees that a normalized 48-month period is appropriate in most circumstances, but that more current information should be used for this specific unit because the unit's operations will change and the improvement is measurable. ICNU/100, Deen/3-5. In responsive testimony, PacifiCorp did not challenge Mr. Deen's estimated heat rate improvements, which were based on PacifiCorp's own data [redacted]

2. ICNU's Heat Rate Improvement Is Consistent with the Stipulation in Docket No. UE 216 and Mr. Falkenberg's Prior Testimony

PacifiCorp asserts that ICNU's heat rate adjustment for Jim Bridger 2 is inconsistent with a stipulation in Docket No. UE 216, claiming that ICNU's approach is "asymmetrical," "one-sided," and not fair or equitable. PacifiCorp Opening Brief at 24-25. PacifiCorp's brief omits key language of the Stipulation in Docket No. UE 216 and distorts its purpose and meaning. The stipulation is not as one-sided as the Company claims. The Stipulation in Docket No. UE 216 states that the Company's initial filing will include a 48-month average when it makes adjustments for scrubbers and other capital improvements, absent a change in facts or circumstances. Re PacifiCorp, Docket No. UE 216, Order No. 10-363, Appendix A at 3 (Sept. 16, 2010). Thus, the Company could identify a change in facts or circumstances, if it believed that a capital improvement should be accounted for differently than in the 48-month average. The Bridger Unit 2 efficiency upgrades are one such change in facts or circumstances.

Notably, this limitation only applied to the Company. The Company's Opening Brief and testimony ignores the specific language of the Stipulation that states that the

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obligations to use a 48-month period "apply to the Company." Id. The Stipulation further provides that "Staff and Intervenors reserve the right to review, challenge and propose alternatives to the methodological changes listed below." Id. The Stipulation could not be clearer that it was intended to be asymmetrical and did not limit ICNU's rights to propose alternative methods for calculating heat rate improvements.

This approach is not inconsistent with the recommendations made by a prior ICNU witness, Randy Falkenberg. Mr. Falkenberg was concerned that, in prior cases, PacifiCorp's heat rate changes were speculative because the Company had incorrectly modeled heat rate changes due to capital improvements, repeatedly corrected errors in its calculations of heat rate changes over the course of cases, and failed to consider all of the impacts of scrubber investments on unit performance. Re PacifiCorp, Docket No. UE 216, ICNU/100, Falkenberg/52-55 (May 12, 2010). These are critical issues, as the TAM proceedings are more streamlined, and it is difficult for Staff and intervenors to review all changes and revisions, especially when the Company's filings include significant errors, constantly changing numbers, and omit certain information. In contrast to the factual circumstances in UE 216, Mr. Deen's recommendations are based on the uncontested fact that there will be a heat rate improvement at Jim Bridger 2, and it is based on a conservative estimate of efficiency improvements.

Similarly, Mr. Falkenberg's testimony in UM 1355 does not support the Company's position in this case. The testimony in Docket No. UM 1355 addressed forced outage rates and ramping adjustments and not heat rates. Re Investigation into Forecasting Forced Outage Rates for Electric Generating Units, Docket No. UM 1355, ICNU/100, Falkenberg/21-22 (April 7, 2009). One issue in the case was whether the huge number of forced

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outages should be subject to a "collar" that would exclude extreme outages. The collar reflects that rates should not be set based on extreme events. Despite this, Mr. Falkenberg actually testified that it would be appropriate for there to be exceptions to using the 48-month period if there was an objective, rather than a subjective, way to account for unit specific conditions. Id. at Falkenberg/22.

E. The Commission Should Reject PacifiCorp's New Approach to Forecasting Wind Energy Shaping

PacifiCorp has proposed a major and controversial change in its methodology for forecasting the hourly shape of its wind forecast in the GRID model. The Company's wind energy shaping forecast is used to estimate the expected and normalized hourly wind generation in the GRID model. ICNU/100, Deen/10. PacifiCorp has historically "developed its wind energy forecast for GRID based on a median energy, or 'P50', forecast intended to have an equal probability of over or under forecasting wind output in a given year." Id. In this case, PacifiCorp has changed the forecast to use data of a single year (2011) to shape the hourly wind resource output, which creates more variability and higher forecast wind integration costs. Id. At a minimum, this proposed change appears to be results oriented and intended to raise power costs.

While no party is opposed in principle to further refinements to improve wind energy shaping forecasts, ICNU, Staff and CUB all filed testimony in opposition to this change on the grounds that PacifiCorp's proposed change has not been fully vetted, has not been demonstrated to improve its wind integration cost forecast accuracy, may allow the Company to double-recover wind integration costs, and relies upon insufficient information.

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Approval of PacifiCorp's wind energy shaping changes will have impacts beyond this TAM proceeding. If the costs of wind energy shaping are truly higher, as the Company has claimed, then those higher costs will need to be accounted for in the Company's integrated resource plans ("IRP") and renewable portfolio compliance filing proceedings. Many of the parties that typically review the Company's wind generation and wind integration cost estimates are not intervenors in this proceeding, and have not had the opportunity to review the reasonableness of its wind energy shaping costs.

The Commission should also be aware that PacifiCorp has a history of dramatically overestimating its costs of wind integration. For example, after further review by a broad group of interested stakeholders in its IRP process, the Company significantly reduced its estimated costs of integrating its wind generation from $9.70 per MWh in its 2010 studies to $2.55 per MWh in its 2013 IRP. PacifiCorp 2013 IRP Volume II at 86 (Appendix H). In addition, PacifiCorp made the exact same hourly wind energy shaping change in its current Washington general rate case, but the Company withdrew it, stating that it would propose a new wind shaping method in the future. Washington Utilities and Transportation Commission v. PacifiCorp, Docket No. UE-130043, Rebuttal Testimony of Greg Duvall at 11 (Aug. 2, 2013). Since PacifiCorp has declined to withdraw its new wind shaping methodology in Oregon, the Commission should reject this change and require PacifiCorp to collaboratively work with the parties on whether a new methodology should be adopted. Specifically, the Company should be required to fully analyze its wind shaping methodology with a broader group of interested parties in its IRP process before making a dramatic change that increases net power costs.

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1. It Is Inappropriate to Rely Upon a Single Year of Data to Forecast Wind Energy Shaping Costs

A fundamental problem with PacifiCorp's new approach is that the Company uses a single year of actual wind output. ICNU/100, Deen/10-11; Staff/100, Crider-Ordonez/12-14; CUB/100, Jenks-Hanhan/5-6. As explained by Mr. Jenks and Ms. Hanhan, wind generation output "is volatile, and 2011 may not prove to accurately model its hourly shape." CUB/100, Jenks-Hanhan/6. ICNU, Staff, and CUB have all recommended that the Company be required to use a much larger data set to forecast a normalized wind profile because using "a single year of data for introducing variability does not accurately reflect a normalized estimate of the wind since wind generation exhibits annual, seasonal, daily and hourly variability that is not necessarily highly correlated from year to year." Staff/100, Crider-Ordonez/13; see also CUB/100, Jenks-Hanhan/6; ICNU/100, Deen/10-11.

Typically, modeling variable resources like wind and hydro use much larger data sets than a single year of data. ICNU/100, Deen/10-11; PAC/700 at 7-8, 15-18. For example, hydro units often take "into account ten years or more of operational experience." ICNU/100, Deen/11. While it uses a small data set that could limit its ability to establish definitive patterns or long-term trends, a National Renewable Energy Laboratory ("NREL") report suggests that wind power is similar to run of the river hydro power. Id.; PAC/700 at 7-8, 18. It would be highly unusual for the Commission to rely on one year of data to forecast normalized wind or hydro conditions.

PacifiCorp raised a number of arguments in rebuttal testimony alleging that a single year of data can be used to accurately estimate future wind energy shaping. The

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Company's arguments are unconvincing and without empirical support. The purpose of wind modeling is to "produce a reasonable normalized estimate of wind generation not a specific year's forecast." Staff/100, Crider-Ordonez/13. While 2011 data reflects conditions in 2011, the Company has not established that use of 2011 data will accurately reflect normalized conditions in the future.

The Company also relies upon complex statistical analysis in its rebuttal testimony arguing that, even though there are huge variations in annual wind generation, there is almost no variability in short-term wind power fluctuations. PAC/500, Duvall/16-18. The Company has extrapolated the assumptions from the NREL report to its own wind projects using a "coefficient of variation" that purports to show that there is little short-term variability. It is far from clear that there is almost no short-term variability. For example, the report relies upon four wind generation resources, none of which were located in the western United States (Minnesota, Iowa, Oklahoma, and Texas). Id.; PAC/700 at 7. While the report shows less short-term wind variability at these four projects, there still were short term differences of 70% to 120%. PAC/700 at 17-18. Parties should be provided an opportunity to analyze and submit responsive testimony on these claims before any change is made to modeling hourly wind shapes.

2. PacifiCorp May Double Recover Its Wind Integration Costs

PacifiCorp has not demonstrated that its current approach of forecasting wind shaping and its wind integration costs included in GRID do "not fully account for the costs of dealing with the variable output of wind resources." ICNU/100, Deen/11. PacifiCorp has made extensive revisions to its wind integration studies to include a more accurate estimate of its reserve requirements, which includes an outside of the GRID model adjustment to include inter-

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hour wind generation. Id. These wind integration costs already included in rates may provide sufficient cost recovery for PacifiCorp.

PacifiCorp claims that the hourly shape is not specifically accounted for in its wind integration studies, which supposedly only account for regulating reserves required for persistent deviations and inter-hour balancing costs. PAC/500, Duvall/19-20. First, these claims should be given little weight because PacifiCorp provided this information in rebuttal, which did not provide the parties an opportunity to submit responsive testimony. More importantly, PacifiCorp has not submitted any evidence that demonstrate the combined amount of wind integration costs (including those associated with persistent deviations, inter-hour differences, and current wind energy shaping forecasts) will not provide cost recovery. In other words, PacifiCorp has not demonstrated that its total wind integration costs are inadequately accounted for.

3. PacifiCorp's Power Cost Adjustment Mechanism Does Not Preclude Recovery of Its Wind Integration Costs

PacifiCorp asserts that the adoption of a power cost adjustment mechanism ("PCAM") with deadbands, sharing bands and an earnings test (instead of its dollar-for-dollar PCAM) and the Oregon renewable portfolio standard support the adoption of its changed wind shaping methodology. PacifiCorp Opening Brief at 7-8. The Commission already rejected similar arguments regarding PCAMs and the Oregon RPS in PacifiCorp's last general rate case when the Commission acknowledged that, while the RPS "provides for recovery of prudently incurred SB 838 compliance costs, we find it unreasonable to adopt a straight dollar-for-dollar PCAM . . . ." Re PacifiCorp, Docket No. UE 246, Order No. 12-493 at 14 (Dec. 20, 2012). The

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Commission has also explained that the Oregon RPS sections regarding the recovery of all prudently incurred costs did "not make 'new' law" and that prudently incurred costs have always been recoverable. Re PacifiCorp, Docket No. UE 200, Order No. 08-548 at 18 (Nov. 14, 2008). The fact that PacifiCorp cannot recover every dollar difference between its normalized net power costs and actual net power costs does not mean that the Commission should abandon normalized test year ratemaking to allow the Company to inflate and over-recover its wind integration costs. PacifiCorp already uses a future test year to forecast its net powers, it files single issue power cost only cases, and has a balanced PCAM, all of which depart from traditional regulation and allow more than sufficient opportunities for cost recovery. This is simply another attempt to shift additional risk to ratepayers.

F. The Commission Should Adopt Noble's Changes to Direct Access

PacifiCorp's direct access program has been largely a failure, and ICNU supports Noble's modest recommendations that could potentially make the program an economic option for more of PacifiCorp's customers. The lack of participation in PacifiCorp's direct access program is not due to a lack of customer interest, but to problems with the design and implementation of the program.

V. CONCLUSION

ICNU urges the Commission to lower PacifiCorp's Oregon net power costs by about $8.7 million. While the overall revenue requirement impact of ICNU's adjustments is important, this case will also have significant and long-term consequences regarding whether utilities can use affiliates to pass on higher than market costs to ratepayers and can withhold key arguments until the rebuttal phase of the proceeding. A rate case based on three rounds of

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testimony can only work if the utilities do not withhold key evidence and arguments until their last round of testimony. In addition, weakening or ignoring the lower of cost or market standard could return Oregon to a time when utilities routinely used their affiliates to pass on exorbitant above-market costs.

Dated this 18th day of September, 2013.

Respectfully submitted,

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