

September 6, 2013

***VIA ELECTRONIC FILING
AND OVERNIGHT DELIVERY***

Public Utility Commission of Oregon
3930 Fairview Industrial Dr. S.E.
Salem, OR 97302-1166

Attn: Filing Center

RE: UE 264—PacifiCorp's Confidential Opening Brief

PacifiCorp d/b/a Pacific Power encloses for filing its confidential and redacted opening brief in the above-referenced proceeding. Confidential material in support of the filing is being provided to parties under Order No. 10-069, the standing protective order adopted for all TAM proceedings. As indicated on the attached certificate of service, a copy of this filing is being served on all parties on the service list.

If you have questions about this filing, please contact Bryce Dalley, Director of Regulatory Affairs & Revenue Requirement, at (503) 813-6389.

Sincerely,



William R. Griffith
Vice President, Regulation

Enclosures

cc: Service List—UE 264

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of Pacific Power's Opening Brief on the parties listed below via electronic mail and/or US mail in compliance with OAR 860-001-0180.

SERVICE LIST

UE 264

OPUC Dockets (W)
Citizens' Utility Board of Oregon
610 Broadway, Suite 400
Portland, OR 97205
dockets@oregoncub.org

G. Catriona McCracken (C)(W)
Citizens' Utility Board of Oregon
610 Broadway, Suite 400
Portland, OR 97205
catriona@oregoncub.org

Melinda J Davison (C)(W)
Davison Van Cleve PC
333 SW Taylor – Ste 400
Portland, OR 97204
mail@dvclaw.com

Samuel L. Roberts (C)(W)
Hutchinson Cox Coons Orr & Sherlock
777 High Street, Ste. 200
PO Box 10886
Eugene, OR 97440
sroberts@eugenelaw.com

Katherine A McDowell (W)
McDowell Rackner & Gibson PC
419 SW 11th Ave, Suite 400
Portland, OR 97205
Katherine@mcd-law.com

Sarah Wallace (C)(W)
Pacific Power
825 NE Multnomah St Ste 1800
Portland, OR 97232
Sarah.wallace@pacificorp.com

Gregory M. Adams (C)(W)

Robert Jenks (C)(W)
Citizens' Utility Board of Oregon
610 Broadway, Suite 400
Portland, OR 97205
bob@oregoncub.org

Irion A Sanger (C)(W)
Davison Van Cleve
333 SW Taylor – Ste 400
Portland, OR 97204
ias@dvclaw.com

Kevin Higgins (C)(W)
Energy Strategies LLC
215 State St Ste 200
Salt Lake City, UT 84111-2322
Khiggins@energystrat.com

Michael T. Weirich (C)(W)
PUC Staff – Department of Justice
Business Activities Section
1162 Court Street NE
Salem, OR 97301-4096
Michael.weirich@state.or.us

Greg Bass (W)
Noble Americas Energy Solutions LLC
401 West A St., Ste. 500
San Diego, CA 92101
gbass@noblesolutions.com

Oregon Dockets (W)
Pacific Power
825 NE Multnomah St, Ste 2000
Portland, OR 97232
oregondockets@pacificorp.com

Donald W. Schoenbeck (C)(W)

Richardson & O'Leary
PO Box 7218
Boise, ID 83702
greg@richardsonandoleary.com

Douglas C. Tingey (W)
Portland General Electric
121 SW Salmon St. 1WTC 13
Portland, OR 97204
Doug.tingey@pgn.com

Lissa Maldonado (W)
Safeway Inc.
5918 Stoneridge Mall Road
Pleasanton, CA 94588-3229
Lissa.maldonado@safeway.com

Steve W. Chriss (C)(W)
Wal-Mart Stores Inc.
2001 SE 10th Street
Bentonville, AR 72716-0550
Stephen-chriss@wal-mart.com


Regulatory & Cogeneration Services Inc
900 Washington St Ste 780
Vancouver, WA 98660-3455
dws@r-c-s-inc.com

John Crider (C)(W)
Public Utility Commission of Oregon
PO Box 2148
Salem, OR 97308-2148
john.crider@state.or.us

Jay Tinker (W)
Portland General Electric
121 SW Salmon St. 1WTC-0702
Portland, OR 97204
pge.opuc.filings@pgn.com

George Waidelich (W)
Safeway Inc.
5918 Stoneridge Mall Road
Pleasanton, CA 94588-3229
george.waidelich@safeway.com

Dated this 6th of September, 2013.


Carrie Meyer
Supervisor, Regulatory Operations

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

In the Matter of
PACIFICORP d/b/a PACIFIC POWER
2014 Transition Adjustment Mechanism.

UE 264

**PACIFICORP'S
CONFIDENTIAL OPENING BRIEF—REDACTED**

September 6, 2013

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	CONTESTED ADJUSTMENTS AND ISSUES	3
A.	The Commission Should Approve PacifiCorp's New Approach to Modeling the Shape of its Wind Generation Because it More Accurately Reflects the Natural Variability of Wind.....	3
1.	The Parties Have Not Provided Evidence Invalidating PacifiCorp's Use of a Single Year of Data for Wind Shape.....	4
2.	ICNU Fails to Recognize the Distinction Between Modeling Output (P50) and Modeling Shape (2011 Actual Historical Data).....	7
3.	PacifiCorp's Previous Wind Modeling Approach Did Not Accurately Reflect Variability of Wind, and These Costs Are Effectively Unrecoverable Under PacifiCorp's PCAM.	7
4.	PacifiCorp Provided Evidence to Support its Adjustment in its Initial Filing.....	8
5.	Notwithstanding Continuing Study and Workshops, the Commission Should Approve the Company's Refined Approach to Wind Modeling.	9
B.	Staff's O&M Adjustment to Affiliate Coal Costs Is Unwarranted Because the Costs Involved are Reasonable and Necessary.....	9
C.	BCC Coal Costs are Reasonable and There is No Basis for Imputing a Lower Price as ICNU Proposes.	11
1.	Staff and PacifiCorp Both Support Future Review of the Reasonableness of BCC Coal Costs Through Periodic Fuel Supply Plans.....	13
2.	The Lower of Cost or Market Standard Does Not Apply to PacifiCorp's Captive Mines.....	13
3.	Even if the Lower of Cost or Market Standard Applies, there is no Lower Price Coal Available from a Non-Affiliate.	17
4.	ICNU's Adjustment Improperly Decreases the Company's Rate Base.	19
5.	ICNU's Claim that PacifiCorp Ambushed the Parties is Completely Without Merit.	20

6.	ICNU's Inventory Adjustment is Improper and Lacks Substantial Evidence.	20
D.	The Commission Should Reject ICNU's Proposed Bridger Heat Rate Adjustment.....	23
1.	ICNU's Adjustment is Contrary to the Stipulation in the Company's 2011 TAM.	24
2.	ICNU's Methodology for Imputing Heat Rates from Bridger Unit 1 to Bridger Unit 2 is Speculative and Unsupported.	25
D.	The Commission Should Reject Noble's Proposed Changes to the Transition Adjustment.	27
E.	Staff No Longer Proposes an Adjustment for Hydro Modeling.	31
III.	CONCLUSION	32

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 264

In the Matter of
PACIFICORP d/b/a PACIFIC POWER
2014 Transition Adjustment Mechanism.

**PACIFICORP'S
CONFIDENTIAL OPENING BRIEF**

I. INTRODUCTION

PacifiCorp d/b/a Pacific Power (PacifiCorp or Company) respectfully submits this Confidential Opening Brief to the Public Utility Commission of Oregon (Commission) in PacifiCorp's 2014 Transition Adjustment Mechanism (TAM). The 2014 TAM forecasts a decrease in net power costs (NPC) taking into account current market conditions and other NPC inputs. With known updates and corrections, PacifiCorp estimates a decrease of approximately \$0.9 million on an Oregon-allocated basis.¹ PacifiCorp's Opening Brief outlines the issues in this case, responds to the parties' prehearing memoranda, and addresses the additional evidence submitted by the parties as cross-examination exhibits.

The Commission should approve the 2014 TAM as reasonable and well supported. In the 2013 TAM, the Commission stated its expectation that PacifiCorp "will refine its modeling to produce the best estimates of all components of net power costs."² The 2014 TAM reflects a number of important updates and modeling refinements:

¹ On September 6, 2013, the Company filed a Notice of Corrections and Updates for the TAM Final Update. The corrections and updates included in this notice result in a decrease of approximately \$0.9 million in the 2014 TAM.

² *In the Matter of PacifiCorp d/b/a Pacific Power 2013 Transition Adjustment Mechanism*, Docket No. UE 245, Order No. 12-409 at 7 (Oct. 29, 2012).

- 1 • The transfer of three generating units—Chehalis, Leaning Juniper, and
- 2 Goodnoe Hills—from BPA’s control area to PacifiCorp’s west balancing
- 3 authority area;³
- 4 • The addition of the variable cost benefits of Lake Side 2 from June 2014
- 5 forward;⁴
- 6 • An increase in generation associated with the turbine upgrade at Jim Bridger
- 7 Unit 2;⁵
- 8 • Recalculation of GRID market caps as directed by the Commission in Order
- 9 No. 12-409 in the 2013 TAM;⁶
- 10 • Modeling forced outages on hydro generation with storage capability more
- 11 similarly to modeling forced outages on thermal generating units;⁷
- 12 • Updating wind integration costs to reflect the Company’s most recent wind
- 13 study;⁸ and
- 14 • Refining the Company’s wind generation to reflect an hourly shape based on
- 15 the Company’s most recent actual annual wind generation pattern.⁹

16 Many of these changes reduce NPC, and most were uncontroversial. Staff of the Public
17 Utility Commission of Oregon (Staff), the Citizens’ Utility Board of Oregon (CUB), and the
18 Industrial Customers of Northwest Utilities (ICNU) proposed a relatively small number of

³ PAC/100, Duvall/5.

⁴ *Id.*

⁵ *In the Matter of PacifiCorp d/b/a Pacific Power Request for a General Rate Revision*, Docket No. UE 263, PAC/400, Ralston/5 (Mar. 1, 2013).

⁶ PAC/100, Duvall/15.

⁷ *Id.* at 16.

⁸ *Id.* at 20-22.

⁹ *Id.* at 18-20.

1 NPC-related adjustments in this case. The Company resolved one adjustment, involving the
2 modeling of interruptible contracts, by accepting the parties' position.¹⁰

3 There are four NPC-related adjustments outstanding in this case: (1) wind shaping
4 (proposed by Staff, CUB, and ICNU); (2) affiliate mine operations and maintenance (O&M)
5 (proposed by Staff); (3) Jim Bridger coal costs (proposed by ICNU); and (4) Jim Bridger
6 Units 1 and 2 heat rate (proposed by ICNU). As outlined below, these adjustments are
7 unfounded and their acceptance would reduce the accuracy of the 2014 TAM by disallowing
8 prudent costs the Company will incur in 2014, some of which have been included in rates for
9 decades (for example, Bridger coal costs).¹¹

10 In addition, Noble Americas Energy Solutions LLC (Noble) raised identical transition
11 adjustment issues to those the Commission rejected in the 2013 TAM.¹² Wal-Mart Stores,
12 Inc. (Walmart) and Safeway, Inc. (Safeway) support Noble's proposals. As addressed below,
13 less than one year has passed since the prior litigation, and there is no basis for revisiting
14 these issues in this case.

15 II. CONTESTED ADJUSTMENTS AND ISSUES

16 A. The Commission Should Approve PacifiCorp's New Approach to Modeling the 17 Shape of its Wind Generation Because it More Accurately Reflects the Natural 18 Variability of Wind.

19 ORS 469A.120(1)¹³ mandates recovery of costs to comply with Oregon's renewable
20 portfolio standard, including costs to "integrate, firm or shape" renewable generation.
21 PacifiCorp's approach to modeling the shape of its wind generation for the 2014 TAM builds

¹⁰ PAC/500, Duvall/9-10.

¹¹ *Id.* at 3.

¹² Order No. 12-409 at 17.

¹³ ORS 469A.120(1) provides: "Except as provided in ORS 469A.180(5), all prudently incurred costs associated with compliance with a renewable portfolio standard are recoverable in the rates of an electric company, including interconnection costs, costs associated with using physical or financial assets to integrate, firm or shape renewable energy sources on a firm annual basis to meet retail electricity needs, above-market costs and other costs associated with transmission and delivery of qualifying electricity to retail electricity consumers."

1 on PacifiCorp's established wind generation modeling methodology using the P50 forecast
2 approach,¹⁴ but reflects the hourly shape of wind generation based on the Company's most
3 recent annual data.

4 Staff, CUB, and ICNU oppose PacifiCorp's new approach because it uses actual
5 historical data from only one year, instead of using a longer-term, normalized data set (which
6 is not currently available for most of the Company's wind generation units). These parties
7 advocate for a return to PacifiCorp's previous approach using flat, four-hour blocks, an
8 approach that did not model the variability of wind or capture the full costs of integrating
9 renewable resources in rates.

10 The Company used 2011 actual data to develop its wind generation profiles for
11 several reasons. Most importantly, use of a single year of data permitted the Company to
12 create a pattern of wind generation that reflects the actual operations of the Company's wind
13 resources while maintaining correlations between the various projects in the Company's
14 fleet.¹⁵ In addition, the Company relied on 2011 data to derive hourly wind shapes because it
15 was the first year that all of the Company's owned wind resources were online for a full year,
16 the Company's proposed wind integration costs in the 2014 TAM are based on 2011 data,
17 and 2011 was the most recent data available at the time the Company filed the 2014 TAM.¹⁶

18 **1. The Parties Have Not Provided Evidence Invalidating PacifiCorp's Use of**
19 **a Single Year of Data for Wind Shape.**

20 ICNU argues that ten years of data is required to model the costs of wind shaping.¹⁷

21 CUB argues that at least three years is required, but also compares wind generation to run-of-

¹⁴ A P50 forecast projects generation at a level that is expected to have an equal probability of being higher or lower than forecast. PAC/100, Duvall/18.

¹⁵ PAC/500, Duvall/15.

¹⁶ *Id.*

¹⁷ ICNU's Confidential Prehearing Memorandum at 14.

1 river hydro generation and suggests that as much as 50 years of data may be needed.¹⁸ Staff
2 is not specific, but “recommends a much larger dataset should be used.”¹⁹ None of the
3 parties provide support for their claims that a larger dataset will provide a more accurate
4 wind shape. Nor do they acknowledge that requiring multiple years of actual data to model
5 wind shape could indefinitely postpone the Company’s ability to recover these costs as it
6 collects this data.

7 CUB’s witnesses state “it is possible that wind may blow in other shapes and that the
8 distribution of the hourly data will change from year to year.”²⁰ Staff’s witnesses similarly
9 testify that “wind generation exhibits annual, seasonal, daily and hourly variability that is not
10 necessarily highly correlated from year-to year.”²¹ These conclusions are based on opinion,
11 rather than any particular study or analysis, and they are contrary to the technical evidence in
12 the record, notably including a report published by the National Renewable Energy
13 Laboratory (NREL Report) and the Company’s corroborating analysis.²²

14 The NREL Report was originally introduced by ICNU’s witness, Michael Deen.²³
15 The conclusions in the report, however, support PacifiCorp’s methodology, and reference to
16 the NREL Report is conspicuously absent from ICNU’s Prehearing Memorandum. The
17 NREL Report concludes that:

- 18 • “[T]he characteristics of short-term wind power fluctuations do not change
19 much. The climate pattern may change from one year to the next, which will
20 result in mean wind speeds being high or low and thus change wind energy

¹⁸ CUB’s Pre-Hearing Memorandum at 6.

¹⁹ Joint Staff/100, Crider-Ordenez/13.

²⁰ CUB/100, Jenks-Hanhan/6.

²¹ Joint Staff/100, Crider-Ordenez/13.

²² Exhibit PAC/700, Long-Term Wind Power Variability, Y.H. Wan. Technical Report, NREL/TP-5500-53637.

²³ ICNU/100, Deen/10-11.

1 production, but the nature of wind as seen from the point of short-term
2 variations (fluctuations) remains the same.”²⁴

- 3 • “[D]istinctive seasonal and diurnal patterns are persistent over the years
4 independent of the overall annual wind energy production.”²⁵
- 5 • With respect to variations in power level from one hour to the next, “[i]t can
6 be concluded that short-term wind power fluctuations do not exhibit year-to-
7 year variability.”²⁶

8 The analysis in the NREL Report directly refutes the parties’ objections to wind generation
9 profiles based on the most recent year of actual data.

10 In addition, PacifiCorp applied the methodology used in the NREL Report to four
11 wind plants included in the TAM and confirmed the lack of year-to-year variability for short-
12 term wind fluctuations.²⁷ The NREL Report uses the coefficient of variation (COV) to gauge
13 the short-term wind variability of wind generation. The COV is defined as the ratio of the
14 standard deviation value to the mean value at various facilities.²⁸ PacifiCorp’s analysis of
15 COV demonstrates that Company’s new approach to modeling is very close to historical
16 variability levels and much more accurately captures wind variability than the Company’s
17 previous flat-block approach.²⁹

18 Furthermore, when the wind shape based on 2012 data is included in GRID, the
19 results show only a small change to NPC using 2011 data (an increase of approximately
20 \$643,000 total company, or just \$163,000 on an Oregon-allocated basis).³⁰ In summary, the

²⁴ Exhibit PAC/700 at 18.

²⁵ *Id.*

²⁶ *Id.*

²⁷ PAC/500, Duvall/16-17.

²⁸ *Id.* at 16.

²⁹ *Id.* at 17 at Table 1.

³⁰ *Id.* at 17.

1 Company's independent analysis supports the NREL Report's conclusion that there is a little
2 variability in wind shapes from year to year. There is no technical evidence to the contrary in
3 the record.

4 **2. ICNU Fails to Recognize the Distinction Between Modeling Output (P50)**
5 **and Modeling Shape (2011 Actual Historical Data).**

6 ICNU argues that "[w]ind energy resources typically have a high degree of inter-
7 annual variability in output, which has not been proven to be predicted by one year of
8 data."³¹ While a wind plant's generation level may vary from year to year, the intra-annual
9 generation profile is persistent. This is why the Company proposes the continued use of the
10 P50 model to forecast the generation at an annual, seasonal, and diurnal level, but actual data
11 to model the hourly generation shape. Shaping the P50 output forecast with 2011 hourly data
12 improves the accuracy of the TAM, but does not change the total wind generation output
13 forecast.

14 **3. PacifiCorp's Previous Wind Modeling Approach Did Not Accurately**
15 **Reflect Variability of Wind, and These Costs Are Effectively**
16 **Unrecoverable Under PacifiCorp's PCAM.**

17 ICNU contends that PacifiCorp failed to demonstrate that its previous approach to
18 wind modeling "does not fully account for the full costs of variable wind generation."³² In
19 its initial filing, however, PacifiCorp established that it previously modeled wind generation
20 using six four-hour blocks per day,³³ resulting in flat generation across a given block, with
21 each period the same for each day during a month. The wind generation in GRID
22 demonstrated little variability and did not reflect natural volatility in wind generation.³⁴

³¹ ICNU's Confidential Prehearing Memorandum at 14.

³² *Id.*

³³ PAC/100, Duvall/18.

³⁴ *Id.*

1 In its 2012 general rate case (2012 GRC), the Company sought a power cost
2 adjustment mechanism (PCAM) based in part on the challenges of forecasting wind
3 variability in normalized NPC. The Company presented a wind variability analysis
4 demonstrating that since 2007, the variability between actual and forecast wind generation
5 ranged widely and over-forecast the value of generation.³⁵

6 The Commission adopted a PCAM with deadbands, sharing bands and earning
7 bands.³⁶ The design of the PCAM effectively precludes recovery of the Company's wind
8 shaping costs unless they are included in baseline NPC. Given this fact, it would be
9 inconsistent with the cost recovery mandate in ORS 469.120(1) to adopt the parties'
10 proposals that indefinitely eliminate wind shaping costs from the TAM.

11 **4. PacifiCorp Provided Evidence to Support its Adjustment in its Initial**
12 **Filing**

13 In its prehearing memo, ICNU complains that PacifiCorp only provided a substantive
14 justification for its wind energy shaping in its last round of testimony, and parties did not
15 have a chance to respond.³⁷ In the direct testimony of Greg Duvall, however, the Company
16 provided several pages of testimony explaining and supporting its revised approach to
17 modeling wind variability.³⁸ ICNU does not point to any specific "surprise" justification that
18 appeared in PacifiCorp's rebuttal testimony; in fact, much of PacifiCorp's rebuttal testimony

³⁵ *In the Matter of PacifiCorp d/b/a Pacific Power Request for a General Rate Revision*, Docket No. UE 246, PacifiCorp Reply Testimony, PAC/1800, Duvall/5 (July 19, 2012). Staff, CUB and ICNU opposed the Company's PCAM and argued that the Company could capture its actual wind generation costs through the TAM. For example, Staff stated in its Prehearing Brief: "If the Company believes that GRID does not include all costs from the Wind Study, it should improve its GRID modeling, rather than requesting a zero-dead band PCAM." *In the Matter of PacifiCorp d/b/a Pacific Power Request for a General Rate Revision*, Docket No. UE 246, Staff's Prehearing Brief at 30 (Oct. 4, 2012).

³⁶ *In the Matter of PacifiCorp d/b/a Pacific Power Request for a General Rate Revision*, Docket No. UE 246, Order No. 12-493 at 14-15 (Dec. 20, 2012).

³⁷ ICNU's Confidential Prehearing Memorandum at 13.

³⁸ PAC/100, Duvall/16-20.

1 was focused on its analysis of the NREL Report included in ICNU's own testimony. ICNU's
2 claim that it was "ambushed" is purely rhetorical and has no grounding in fact.

3 **5. Notwithstanding Continuing Study and Workshops, the Commission**
4 **Should Approve the Company's Refined Approach to Wind Modeling.**

5 Staff states that "[w]ind modeling for determining power costs is still in a state of
6 development" and recommends "[c]ontinuing study and workshops."³⁹ The Company is
7 open to continued study, discussion, and refinement of its wind modeling, but this process
8 should not further delay effectuation of the policies underlying ORS 469.120(1) through
9 approval of the Company's approach to wind shaping in the 2014 TAM.

10 **B. Staff's O&M Adjustment to Affiliate Coal Costs Is Unwarranted Because the**
11 **Costs Involved are Reasonable and Necessary.**

12 Staff has not challenged the overall reasonableness of the transfer price of Bridger
13 Coal Company (BCC) coal or supported ICNU's lower of cost or market adjustment. Staff
14 does, however, propose adjustments to BCC and Deer Creek Mine for fines and O&M costs
15 embedded in the transfer price.⁴⁰ Specifically, Staff proposes to disallow costs for
16 management overtime and fines⁴¹ and to disallow 50 percent of the costs for bonuses and
17 meals, for a total adjustment of approximately \$460,000 on an Oregon-allocated basis.⁴²

18 The Commission should reject Staff's proposed adjustments. Staff eliminates costs
19 without ever addressing the reasonableness of the safety and employment-related
20 expenditures in the operation of the BCC and Deer Creek mines. Staff has not identified any
21 cases where the Commission authorized the adjustments proposed here for affiliated mines,
22 and the orders Staff does cite are not on point.⁴³

³⁹ Staff's Prehearing Brief at 8-9.

⁴⁰ Joint Staff/100, Crider-Ordenez/7-9.

⁴¹ There are no fines included in the coal costs in the 2014 TAM. PAC/600, Crane/14.

⁴² Staff's Prehearing Brief at 3-4.

⁴³ *Id.* at 4.

1 For example, Staff relies on Order No. 07-527 to support its argument that
2 management overtime costs should be absorbed by the Company.⁴⁴ However, in that case
3 the Commission disallowed a water utility's request for "very substantial amounts of
4 overtime."⁴⁵ The water utility had proposed labor expenses that included 16.75 hours of
5 overtime each week for each full-time employee.⁴⁶ Here, the overtime expenses for the
6 affiliate mines are required to ensure, as a safety measure, the presence of front-line
7 supervisors during additional weekend shifts, as well as coverage for vacation or
8 absenteeism.⁴⁷ There is no evidence in the record that the overtime amounts are
9 unreasonable or substantial, and the level of overtime expenses is nowhere near the level
10 present in Order No. 07-527. In addition, the overtime costs are directly related to safety, an
11 issue of paramount concern in mining operations.

12 Staff's "bonus" adjustment should likewise be rejected because the Company's
13 Annual Incentive Plan (AIP) is not a "bonus" plan at all—it is an integral part of employee
14 compensation.⁴⁸ PacifiCorp's employees receive a base salary and incentive pay under the
15 AIP. Together, these amounts result in the market wage necessary to hire and retain
16 qualified employees and safely and efficiently operate the mines. The AIP puts a portion of
17 employee's compensation "at risk" to encourage superior performance and achievement of

⁴⁴ *Id.*

⁴⁵ *In re Crooked River Ranch Water Co.*, Docket No. UW 120, Order No. 07-527 at 13 (Nov. 29, 2007).

⁴⁶ *Id.* at 11.

⁴⁷ PAC/600, Crane/14-15.

⁴⁸ *See Wash. Util. and Transp. Comm'n v. PacifiCorp*, Docket UE-100749, Order 06 ¶ 248 (Mar. 25, 2011) ("As we decided in the last litigated case, we conclude that the AIP is an appropriate method of implementing "incentive-based" compensation. PacifiCorp has chosen an overall structure of employee compensation that includes both a base salary and a certain portion that is "at-risk," or incentive compensation. By its very definition, incentive compensation is not a bonus or a level of pay in excess of the maximum compensation for a position. It is simply motivation for an employee to strive for the total compensation for his or her position by achieving certain individual and group goals.").

1 Company, business unit, and individual employee goals.⁴⁹ The AIP is necessary to ensure
2 that employees receive a competitive, market-based salary.⁵⁰ The Company reviewed salary
3 survey data to ensure that the compensation of its management employees at the mining
4 companies (including AIP) is comparable to other coal mining companies of similar sizes in
5 the Company's geographical area.⁵¹

6 **C. BCC Coal Costs are Reasonable and There is No Basis for Imputing a Lower**
7 **Price as ICNU Proposes.**

8 For ratemaking purposes, affiliate transactions are examined to determine whether the
9 costs associated with the transaction are reasonable.⁵² For example, in the most recent order
10 approving the sale of coal from BCC to PacifiCorp, the Commission concluded that it
11 “reserves the right to review for *reasonableness* all financial aspects of this arrangement in
12 any rate proceeding.”⁵³ Similarly, when the Commission approved the affiliate arrangement
13 between Idaho Power Company (Idaho Power) and Idaho Energy Resources Company
14 (IERCO)—which is a co-owner of Bridger Coal Company (BCC)—the Commission also
15 expressly reserved the right to determine the *reasonableness* of all the financial aspects of the
16 contract for ratemaking purposes.⁵⁴ In another proceeding involving the appropriate
17 ratemaking treatment for a generation facilities lease between PacifiCorp and an affiliate, the
18 Commission affirmed that after an affiliate arrangement is approved by the Commission, “the

⁴⁹ PAC/600, Crane/15.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *In the Matter of PacifiCorp Application for Approval of New Tariffs*, Docket Nos. UE 134/UM 1047, Order No. 02-820 at 7 (Nov. 20, 2002) (“[T]he Commission does not establish the ratemaking treatment of the contract in the affiliated interest docket.... [T]he subsequent ratemaking review is whether the payments set forth in the contract are reasonable.”); *In the Matter of Pacific Power & Light Company, dba PacifiCorp*, Docket No. UI 105, Order No. 91-513 (April 12, 1991) (Commission uses ratemaking process to ensure that expenses associated with affiliate transaction are reasonable).

⁵³ *In the Matter of PacifiCorp d/b/a Pacific Power and Light Co.*, Docket No. UI 189, Order No. 01-472 (June 12, 2001).

⁵⁴ *In the Matter of Idaho Power Company*, Docket No. UI 107, Order No. 91-567 at 4 (Apr. 29, 1991).

1 subsequent ratemaking review is whether the payments set forth in the contract are
2 reasonable.”⁵⁵

3 Here, the Company has demonstrated that its approach to coal supply for the Jim
4 Bridger plant (Bridger plant) is reasonable.⁵⁶ The Company supplies the Bridger plant with a
5 blend of coal from BCC and a third-party contract with the Black Butte mine to ensure a
6 diversified fuel supply.⁵⁷ Over the years, BCC and Black Butte prices have fluctuated
7 relative to each other, but on balance the Company’s long-term fuel supply strategy has
8 resulted in the acquisition of a reasonably priced, stable supply of coal for the Bridger
9 plant.⁵⁸ For 2014, BCC’s prices have increased to reflect reclamation activities, and Black
10 Butte’s prices have increased to reflect contract-specific consumer and producer price
11 indices.⁵⁹

12 The Company has demonstrated that there are no lower cost alternatives to BCC coal
13 available in 2014.⁶⁰ For 2014, Black Butte has a small amount of coal available to the
14 market, enough only to meet a small fraction of Bridger’s fuel requirements.⁶¹ The other
15 three mines in the southwest Wyoming market similarly could not replace BCC’s fuel
16 supply, and coal from these mines is priced much higher than BCC coal after considering
17 transportation costs.⁶²

18 Although ICNU presented no evidence challenging the reasonableness or prudence of
19 PacifiCorp’s approach to coal supply for the Bridger plant, for the first time in its prehearing

⁵⁵ Order No. 02-820 at 7 (“This leaves the issue of the standard to be applied when reviewing the cost of the lease. The question is whether the costs of the lease are reasonable, i.e., is the cost of the lease a necessary and ordinary recurring expense. If it is, the costs are included in rates. If not, the costs are not included in rates.”)

⁵⁶ See generally PAC/600, Crane/2.

⁵⁷ *Id.* at 9.

⁵⁸ *Id.* at 10.

⁵⁹ *Id.* at 5-6, 9-10.

⁶⁰ *Id.* at 10-12.

⁶¹ *Id.* at 11.

⁶² *Id.* at 10-12.

1 memorandum, ICNU argued that the Company was imprudent for not seeking out alternative
2 coal supplies.⁶³ As discussed above, and in more detail in the following section, BCC coal
3 has been and continues to be a reliable source of low cost coal to fuel the Bridger plant.⁶⁴

4 **1. Staff and PacifiCorp Both Support Future Review of the Reasonableness**
5 **of BCC Coal Costs Through Periodic Fuel Supply Plans.**

6 Staff does not support ICNU's lower of cost or market adjustment. Instead, "Staff
7 supports PacifiCorp periodically (e.g., no less than once every three years) preparing a fuel
8 supply plan that compares affiliate mine fuel supply to other alternative fuel supply options,
9 including market alternatives, to facilitate the implementation of the Commission's prudence
10 and affiliate transaction standards in future rate proceedings."⁶⁵

11 PacifiCorp supports development of periodic Bridger plant fuel plans to permit
12 parties to review the reasonableness of BCC coal supply on a longer-term, multi-year basis,
13 rather than on a year-by-year basis as costs fluctuate in annual NPC updates. Given renewed
14 interest from all parties in this approach, the Commission should reject ICNU's adjustment
15 and direct parties to work together to develop a long-term fuel plan review process for
16 generation plants supplied by the Company's affiliate mines.

17 **2. The Lower of Cost or Market Standard Does Not Apply to PacifiCorp's**
18 **Captive Mines.**

19 ICNU proposes an adjustment to re-price all of the coal that is used to fuel the
20 Bridger plant in 2014 at the 2014 cost of coal provided under the Company's contract with
21 the Black Butte mine.⁶⁶ ICNU claims that that the Commission's affiliate transaction

⁶³ ICNU's Confidential Prehearing Memorandum at 10.

⁶⁴ PAC/600, Crane/8, 10.

⁶⁵ Exhibit PAC/704 at 3.

⁶⁶ ICNU/100, Deen/8-10.

1 accounting rule, OAR 860-027-0048,⁶⁷ requires that the transfer of coal from BCC to
2 PacifiCorp be priced at the lower of cost or market. ICNU’s application of this rule to the
3 BCC transaction is misplaced and contrary to Commission precedent. The Commission
4 should reject ICNU’s proposed adjustment and affirm that the proper standard for reviewing
5 the transfer price of BCC coal is the reasonableness of the overall price.

6 ICNU argues that even though OAR 860-027-0048 “went into effect as an officially
7 adopted OPUC rule in 2003, the enactment of the rule changed nothing—the Commission
8 has always followed the [lower of cost or market] standard when approving affiliate coal
9 pricing.”⁶⁸ Contrary to ICNU’s unsupported claim, however, the Commission has always
10 applied a cost-based standard to coal sales from affiliate mines, not the lower of cost or
11 market standard. The Commission has never adjusted the transfer price of coal from an
12 affiliate mine in a ratemaking proceeding under the lower of cost or market standard.

13 ICNU specifically relies on Order Nos. 79-754 and 82-606 to support its argument
14 that the Commission has “always followed” the lower of cost or market standard.⁶⁹ In both
15 cases, however, the Commission applied a cost-based approach to PacifiCorp’s coal
16 purchases from BCC, setting the transfer price at the actual, prudent costs of production, plus
17 a return component on the investment in the Bridger mine limited to PacifiCorp’s current
18 authorized rate of return (ROR).⁷⁰ The Commission based this conclusion on its finding that
19 PacifiCorp “treats Bridger Coal as an integral part of its own utility operation and never

⁶⁷ *In the Matter of Pacific Power & Light Company d/b/a PacifiCorp Request for General Rate Revision*, Docket No. UE 170, Order No. 05-1050 at 18 (Sept. 28, 2005) (OAR 860-027-0048 “is an accounting rule...”); *see also* Order No. 02-820 (Nov. 20, 2002).

⁶⁸ ICNU’s Confidential Prehearing Memorandum at 4.

⁶⁹ *Id.*

⁷⁰ *In the Matter of Pacific Power & Light Company*, Docket No. UF 3508, Order No. 79-754 (Oct. 29, 1979) (reducing transfer price of BCC coal by limiting return to PacifiCorp’s authorized ROR); *In the Matter of Pacific Power and Light Company*, Docket No. UF 3779, Order No. 82-606 (Aug. 18, 1982) (same).

1 intended that Bridger Coal stand independent of the company.”⁷¹ In Order No. 79-754, the
2 Commission observed that “staff’s ideal coal price would be one permitting Bridger Coal to
3 recover expenses and earn a fair and reasonable rate of return.”⁷² Neither order references or
4 discusses the lower of cost or market standard or applies that standard to BCC coal.

5 Furthermore, in Order No. 91-513, the Commission approved the mining contract
6 between PacifiCorp and its affiliate Energy West Mining Company (EWMC) on a cost-based
7 approach rather than the lower of cost or market.⁷³ The Commission found that the “cost-
8 based approach and the limitation of EWMC’s activities to those arising under the contract
9 minimize the likelihood of cross-subsidization.”⁷⁴ The Commission continued, “[t]hrough
10 the rate-making process, the Commission can ensure that Oregon utility customers do not pay
11 unreasonable expenses.”⁷⁵

12 In Order No. 91-567, the Commission approved the coal sales agreement between
13 BCC and Idaho Power noting that transactions are “technically” subject to the affiliated
14 interest filing requirements even though IERCO, the Idaho Power subsidiary that is a one-
15 third owner of BCC, is “disregarded as a separate entity for ratemaking purposes.”⁷⁶ The
16 Commission also found that there is no risk of cross-subsidization between Idaho Power and
17 BCC, “nor is there any danger of Idaho [Power] paying in excess of market value” because
18 Idaho Power is “paying for its coal as if IERCO were not even involved in [the]

⁷¹ Order No. 79-754 at 18.

⁷² *Id.* at 17.

⁷³ Order No. 91-513 at 3.

⁷⁴ *Id.* at 2; *see also In the Matter of Pacific Power & Light Company d/b/a PacifiCorp*, Docket No. UI 249, Order No. 06-305 at App. A at 3 (June 19, 2006) (“The Commission, in Order No. 91-513 (UI 105), has previously allowed a cost-based approach, instead of the lower of cost or market standard pursuant to OAR 860-027-0048, when affiliate activities were limited to a specific contract function.”).

⁷⁵ Order No. 91-513 at 2.

⁷⁶ Order No. 91-567 at 2.

1 transaction.”⁷⁷ The Commission also found that the transfer price for coal “shall be billed at
2 the actual cost.”⁷⁸

3 More recently, in Order No. 06-016, the Commission approved Idaho Power’s
4 provision of short-term loans to IERCO at Idaho Power’s costs, rather than the market rate.⁷⁹
5 In that case, Staff concluded that because the affiliate’s “net income is included in IPC’s net
6 operating income, Staff believes the Commission should allow a cost-based approach to the
7 loans and allow IPC to set interest rates at IPC’s short-term borrowing costs and not the
8 lower of cost or market.”⁸⁰

9 In Order No. 01-472, the Commission expressly approved the contract between BCC
10 and PacifiCorp as “fair, reasonable, and not contrary to the public interest.”⁸¹ Although the
11 Staff report attached to the order states that the appropriate standard for reviewing the BCC-
12 PacifiCorp contract is the “affiliate interest transfer-pricing requirements,” Staff
13 recommended continuation of a cost-based approach for regulatory accounting purposes,
14 which the Commission approved. Notably, in this case Staff does *not* support ICNU’s coal
15 cost adjustment based on the application of the lower of cost or market standard. In fact,
16 Staff’s O&M adjustment is predicated on the consolidation of BCC and EWMC with
17 PacifiCorp for regulatory purposes and demonstrates the atypical nature of these affiliates.⁸²

18 ICNU argues that if the Commission continues to apply a cost-based standard to BCC
19 coal, “then the protections from [OAR 860-027-0048] evaporate.”⁸³ ICNU’s concern is

⁷⁷ *Id.*

⁷⁸ *Id.* at 3.

⁷⁹ *In the Matter of Idaho Power Company Application for Authority to Provide Short-Term Loans to Idaho Energy Resources Co.*, Docket No. UI 244, Order No. 06-016 at 3 (Jan. 17, 2006).

⁸⁰ *Id.* at App. A at 4.

⁸¹ *In the Matter of PacifiCorp*, Docket No. UI 189, Order No. 01-472 at 2 (June 12, 2001).

⁸² *In the Matter of Pacific Power & Light Company*, Docket No. UE 21, Order No. 84-898 (Nov. 14, 1984) (noting general policy of consolidating Bridger Coal subsidiary); PAC/600, Crane/8.

⁸³ ICNU’s Confidential Prehearing Memorandum at 10.

1 entirely unfounded. Irrespective of OAR 860-027-0048, PacifiCorp must demonstrate the
2 prudence of its approach to fuel supply at the Bridger plant.

3 Additionally, the Commission adopted OAR 860-027-0048 specifically to prevent
4 cross-subsidization between utilities and their affiliates.⁸⁴ In the case of BCC coal, the
5 Commission has found that there is no possibility of cross-subsidization.⁸⁵ If BCC earns a
6 margin over PacifiCorp's authorized rate of return, BCC must credit this margin back to the
7 Company through a reduced transfer price.⁸⁶

8 ICNU's prehearing memorandum in this case also relies heavily on Staff's testimony
9 in prior TAM proceedings.⁸⁷ ICNU's reliance on Staff testimony in prior cases is
10 unpersuasive because *in this case* Staff does not support ICNU's coal cost adjustment.

11 **3. Even if the Lower of Cost or Market Standard Applies, there is no Lower**
12 **Price Coal Available from a Non-Affiliate.**

13 The lower of cost or market rule states that transactions between utilities and affiliates
14 "shall be recorded in the energy utility's accounts at the affiliate's cost or the market rate,
15 whichever is lower."⁸⁸ The rule defines "market rate" as "the lowest price that is available
16 from nonaffiliated suppliers for comparable services or supplies."⁸⁹ ICNU claims that the
17 Black Butte "contract price for 2014 will represent a fair and current market value for the

⁸⁴ *In the Matter of Affiliated Transactions for Energy Utilities*, Docket No. AR 459, Order No. 03-691 at 1 (Dec. 1, 2003); *see also* Order No. 02-820 at 6 (Nov. 20, 2002) (ORS 757.495 was "designed to protect ratepayers from abuses which may arise from less than arm's length transactions") (citations omitted).

⁸⁵ Order No. 91-513 at 2 (regarding approval of contract between PacifiCorp and Energy West Mining Company (EWMC), the "cost-based approach and the limitation of EWMC's activities to those arising under the contract minimize the likelihood of cross-subsidization"); Order No. 91-567 ("Since all of IERCO's results of operation are merged with and made a part of Idaho's for ratemaking, there is no possibility of cross-subsidization.").

⁸⁶ PAC/600, Crane/8.

⁸⁷ ICNU's Confidential Prehearing Memorandum at 7-8.

⁸⁸ OAR 860-027-0048(4)(e).

⁸⁹ OAR 860-027-0048(1)(i).

1 year.”⁹⁰ The 2014 Black Butte contract price, however, does not represent a price that is
2 available from a non-affiliate supplier.

3 The evidence in this case makes clear that Black Butte mine does not have sufficient
4 excess capacity to supply the Bridger plant. For 2014 BCC will supply approximately
5 ■ million tons of coal to the Bridger plant.⁹¹ The record in this case demonstrates that the
6 Black Butte mine *may* have approximately ■ million tons of excess production capacity in
7 2014, which is less than ■ percent of the Bridger’s plant 2014 production target.⁹² ICNU’s
8 own testimony from PacifiCorp’s 2011 Washington rate case made clear that “[t]here is no
9 readily *available* source for coal costs near and around the Bridger facility.”⁹³ When
10 discussing the use of the Black Butte contract price as a “market rate,” ICNU also
11 acknowledged that “this is a very limited measure of market value[.]”⁹⁴ Therefore, coal from
12 the Black Butte mine is not *available* to replace BCC coal as required by the lower of cost or
13 market rule.

14 ICNU’s market rate analysis is also deficient because it focuses exclusively on the
15 Black Butte mine and fails to consider the costs of coal supply from other mines in southwest
16 Wyoming in determining the “market rate.” PacifiCorp has demonstrated that BCC’s costs
17 compare favorably to these other mines.⁹⁵

18 ICNU also fails to consider the vintage of the Black Butte pricing that it claims is a
19 “market rate” for 2014. If the Company could obtain additional coal supply from the Black
20 Butte mine for 2014, the price would be higher than the current contract price, which is now

⁹⁰ ICNU/100, Deen/9.

⁹¹ PAC/600, Crane/10.

⁹² *Id.* at 11.

⁹³ Exhibit PAC/701 at 3 (emphasis added).

⁹⁴ *Id.* at 5.

⁹⁵ PAC/600, Crane/11-12.

several years old.⁹⁶ Furthermore, purchases of additional Black Butte coal would result in a drop in BCC deliveries and an increase in BCC costs on a per-ton basis.

4. ICNU's Adjustment Improperly Decreases the Company's Rate Base.

ICNU claims that its lower of cost or market adjustment reduces Oregon-allocated NPC by \$6.8 million.⁹⁷ To calculate its adjustment, ICNU first adds the rate base return on PacifiCorp's investment (ROI) in the Bridger mine from the Company's now-settled 2013 general rate case to the production costs of coal supply from BCC included in the 2014 TAM.⁹⁸ ICNU then compares the costs of BCC coal under the Company's contract with the Black Butte mine, adjusted for the heat content of the coal.⁹⁹

ICNU's calculation is flawed because the proposed adjustment affects non-NPC costs that are not a part of the TAM proceeding. Specifically, the coal transfer price that is included in the TAM does not include the ROI associated with the Bridger mine.¹⁰⁰ The TAM is "an annual filing with the objective to update the forecast net power costs to account for changes in market conditions."¹⁰¹ In Order No. 11-435 the Commission made clear that the "TAM filing focuses on the NPC side of the equation."¹⁰² Removal of the non-TAM items from ICNU's adjustment reduces the adjustment to \$2.6 million.¹⁰³

⁹⁶ *Id.* at 13.

⁹⁷ ICNU's Confidential Prehearing Memorandum at 2. ICNU's original adjustment was \$7.4 million. ICNU/100, Deen/10. However, in discovery and its brief, ICNU corrected its calculation to properly account for deferred taxes. PAC/600, Crane/12-13; Exhibit PAC/703.

⁹⁸ ICNU/100, Deen/7-8.

⁹⁹ *Id.* at 8.

¹⁰⁰ PAC/600, Crane/12.

¹⁰¹ See *In the Matter of PacifiCorp d/b/a Pacific Power 2009 Transition Adjustment Mechanism*, Docket No. UE 199, Order No. 09-274, App. A at 9 (July 16, 2009).

¹⁰² *In the Matter of PacifiCorp d/b/a Pacific Power 2012 Transition Adjustment Mechanism*, Docket No. UE 227, Order No. 11-435 at 6 (Nov. 4, 2011) ("the purpose of the TAM is to 'update [Pacific Power's] forecast net power costs to account for changes in market conditions,' and to identify the amount for the transition adjustment for direct access customers.").

¹⁰³ PAC/500, Duvall/12; PAC/600, Crane/12-13. ICNU acknowledges that its adjustment extends beyond NPC and affects revenue sensitive items that are a part of the Company's general rate case. Exhibit PAC/703. ICNU

1 Importantly, ICNU did not directly challenge the prudence of the Bridger mine
2 investment in this case or in the Company's 2013 general rate case. ICNU is a party to a
3 comprehensive settlement of that rate case, the approval of which is now pending before the
4 Commission.¹⁰⁴ The stipulation does not include any adjustment to the ROI on the Bridger
5 mine.¹⁰⁵

6 **5. ICNU's Claim that PacifiCorp Ambushed the Parties is Completely**
7 **Meritless.**

8 ICNU argues that PacifiCorp did not properly address the lower of cost or market
9 standard in its direct testimony "even though the issue of the Commission's market transfer
10 pricing rule for coal costs has been controversial in numerous past TAMs, and the Company
11 knew it would be an issue again."¹⁰⁶ ICNU's argument is pure rhetoric, not fact. PacifiCorp
12 filed 18 pages of direct testimony documenting its coal costs in this case. In addition, an
13 adjustment like ICNU's has been raised only once before, in docket UE 207, when BCC's
14 costs spiked as a result of a change in accounting standards. Given the fact that the
15 production costs of BCC and Black Butte are relatively comparable in this case, PacifiCorp
16 could not have reasonably anticipated ICNU's adjustment in this case.

17 **6. ICNU's Inventory Adjustment is Improper and Lacks Substantial**
18 **Evidence.**

19 In its prehearing memorandum (and for the first time in this case), ICNU proposes an
20 alternative adjustment related to Bridger fuel supply.¹⁰⁷ ICNU requests that "if the
21 Commission elects not to apply the market rate to all BCC purchases, ICNU requests that the
22 market rate be applied, at a minimum, to the available excess capacity at the Black Butte

also acknowledges that they have never previously adjusted proposed TAM disallowances for revenue sensitive items. *Id.*

¹⁰⁴ PAC/600, Crane/12.

¹⁰⁵ *Id.*

¹⁰⁶ ICNU's Confidential Prehearing Memorandum at 4-5.

¹⁰⁷ *Id.* at 9.

1 mine and the full storage capacity at the Bridger plant.”¹⁰⁸ To support this new adjustment,
2 ICNU cites to the 2013 PacifiCorp Coal Inventory Policies, which ICNU submitted as a
3 cross-examination exhibit.¹⁰⁹ ICNU claims that the Bridger plant’s inventory capacity is
4 ■ million tons and that all these amounts should be re-priced at the 2014 Black Butte
5 price.¹¹⁰ ICNU’s adjustment should be rejected because it was introduced too late in this
6 proceeding, it constitutes illegal retroactive ratemaking, and it lacks evidentiary support in
7 the record.

8 It is entirely improper and unfairly prejudicial for ICNU to propose a new adjustment
9 for the first time in its prehearing memorandum. ICNU had sufficient opportunity to conduct
10 discovery and present this adjustment in its testimony. By presenting this adjustment in its
11 prehearing memorandum, ICNU prevented PacifiCorp from providing responsive evidence
12 demonstrating the prudence of the Company’s inventory policies and precluded the
13 development of a full and complete record with respect to this newly proposed and
14 complicated adjustment. For this reason, ICNU’s new adjustment should be rejected.

15 In addition to the procedural impropriety of ICNU’s adjustment, the newly proposed
16 inventory adjustment is illegal retroactive ratemaking.¹¹¹ The TAM is a prospective update
17 of the Company’s NPC.¹¹² But ICNU’s adjustment is, by its own terms, entirely backward
18 looking: the “Commission should expect the Company *to have minimized* costs by filling

¹⁰⁸ *Id.*

¹⁰⁹ Exhibit PAC/702C. ICNU’s cross-examination exhibit included only a portion of PacifiCorp’s Coal Inventory Policies and Procedures. The Company submitted, as Exhibit PAC/702C, the complete document in response to ICNU’s introduction of the excerpt.

¹¹⁰ ICNU’s Confidential Prehearing Memorandum at 9.

¹¹¹ *See In the Matter of Portland Gen. Elec. Co.*, Docket Nos. DR 10, UE 88, and UM 989, Order No. 08-487 at 36 (Sept. 30, 2008); Or. Op. Atty. Gen. OP-6076, 1987 WL 278316 at 1 (Or. A.G. 1987) (“retroactive ratemaking orders are *absolutely impermissible* unless they are expressly authorized by the legislature and do not violate the Oregon and United States Constitutions.”) (emphasis added); *see also* Or. Op. Atty. Gen. OP-6076 at 5 (“we have no *question* that retroactive ratemaking is unlawful in Oregon.”).

¹¹² Order No. 11-435 at 6.

1 Bridger capacity with the lowest price coal available.”¹¹³ ICNU argues that PacifiCorp
2 *should have purchased* Black Butte coal using the Bridger plant’s inventory.¹¹⁴ ICNU
3 proposes that the Commission re-price the coal that the Company has already purchased and
4 coal that is already a part of the Bridger plant’s inventory. This retroactive adjustment to
5 coal costs is outside the scope of a forward looking TAM and is illegal retroactive
6 ratemaking.

7 ICNU’s adjustment also inflates PacifiCorp’s share of the Bridger coal inventory.
8 ICNU’s adjustment re-prices the entire [REDACTED] million tons of coal in the Bridger plant’s
9 inventory. However, PacifiCorp is only a two-thirds owner of BCC and the Bridger plant.¹¹⁵
10 ICNU’s adjustment also fails to account for the quality differences between BCC and Black
11 Butte coal and the blending requirements for the Bridger plant.¹¹⁶

12 ICNU claims that the total inventory ([REDACTED] million tons) and the amount available from
13 Black Butte ([REDACTED] million tons) is the “sum of excess Black Butte coal which should have been
14 purchased using the Bridger plant capacity.”¹¹⁷ But ICNU provides no evidence to
15 demonstrate that the Company could have acquired [REDACTED] million tons of Black Butte coal,
16 when, as even ICNU appears to acknowledge, there is only [REDACTED] million tons available for
17 2014. Moreover, the record in this case regarding coal availability is entirely forward
18 looking so there is no evidence regarding 2013 or the historical availability of Black Butte
19 coal that the Company *could have purchased* to fill the inventory.

20 ICNU’s adjustment also fails to consider the costs of the coal that is currently in the
21 Bridger plant inventory that ICNU claims should be re-priced. ICNU argues that because the

¹¹³ ICNU’s Confidential Prehearing Memorandum at 9. (emphasis added).

¹¹⁴ *Id.*

¹¹⁵ PAC/600, Crane/7; Exhibit PAC/702C at 13.

¹¹⁶ *See, e.g.* ICNU/203 at 3, 22.

¹¹⁷ ICNU’s Confidential Prehearing Memorandum at 9.

1 Black Butte contract price is less than the BCC transfer price in 2014, coal purchased by the
2 Company in 2013 and before must be re-priced at the 2014 Black Butte contract level. This
3 argument makes no sense. Even if the Commission were to apply the lower of cost or market
4 standard to BCC coal and assume that all of the inventory coal was purchased in 2013 (an
5 assumption for which there is no evidence in the record), for purposes of ICNU's adjustment,
6 the relevant inquiry is whether the 2013 Black Butte price is less than the BCC transfer price.
7 Not only is there insufficient evidence in the record regarding 2013 coal prices, these prices
8 were specifically included in the Company's 2013 TAM filing, docket UE 245, and no party
9 claimed that in 2013 the BCC costs were unreasonable or higher than market.

10 **D. The Commission Should Reject ICNU's Proposed Bridger Heat Rate**
11 **Adjustment.**

12 ICNU proposes an adjustment to reduce the heat rate for Bridger Units 1 and 2 to
13 reflect increased efficiency resulting from recent turbine upgrades.¹¹⁸ For both units, ICNU
14 proposes to replace the actual heat rate derived using a 48-month average with the heat rate
15 derived using a 24-month average from Bridger Unit 1.¹¹⁹ ICNU acknowledges that it
16 initially overstated its Bridger heat rate adjustment and clarifies that the value of its Oregon-
17 allocated adjustment to NPC is \$0.8 million.¹²⁰ The Commission should reject ICNU's
18 adjustment because it is contrary to the stipulation in docket UE 216, ICNU's proposed heat
19 rate derivation is speculative and unsupported, and PacifiCorp has already lowered NPC by
20 reflecting the increased generation capacity.

¹¹⁸ ICNU/100, Deen/4.

¹¹⁹ *Id.* at 5-6.

¹²⁰ ICNU's Confidential Prehearing Memorandum at 11.

1 **1. ICNU's Adjustment is Contrary to the Stipulation in the Company's 2011**
2 **TAM.**

3 The stipulation in the Company's 2011 TAM, docket UE 216, specifically requires
4 the use of a 48-month average for derivation of heat rates in the Company's TAM filings. In
5 docket UE 216, the Company proposed an incremental increase to heat rates at three
6 generating units to account for degradation caused by the installation of emission control
7 systems.¹²¹ ICNU challenged the Company's proposal and argued that the heat rate should
8 continue to be calculated using a 48-month historical average of each unit's actual heat
9 rates.¹²² ICNU argued that any efficiency gains or losses will be reflected in rates as the
10 gains or losses appear in the historical data.¹²³ The Company agreed to withdraw its
11 incremental heat rate adjustment, and the parties to docket UE 216 entered into a stipulation
12 that was approved by the Commission. The stipulation requires that the Company "rely on
13 the traditional analysis of four years of actual data to derive the heat rate inputs . . . absent a
14 change in facts or circumstances identified by the Company."¹²⁴

15 The Company's TAM filings have abided by the terms of the docket UE 216
16 stipulation despite capital projects at several plants (Dave Johnston 4, Jim Bridger 3,
17 Naughton 1, Naughton 2) that have reduced net generation.¹²⁵ Here, ICNU has identified no
18 change in circumstance that would warrant changing the traditional method of calculating
19 heat rates and the arguments it presented in docket UE 216 apply equally today.
20 Additionally, the Bridger Unit 1 upgrade has been in place since July 2010 and ICNU failed
21 to seek a change in the unit's heat rate in the 2012 or 2013 TAMs.

¹²¹ PAC/500, Duvall/21.

¹²² *Id.* at 22.

¹²³ *Id.*

¹²⁴ *In the Matter of PacifiCorp, d/b/a Pacific Power 2011 Transition Adjustment Mechanism*, Docket No. UE 216, Order No. 10-363, App. A at 3-4 (Sept. 16, 2010).

¹²⁵ PAC/500, Duvall/22-23.

1 ICNU argues that the stipulation in docket UE 216 applies exclusively to PacifiCorp.
2 It is unreasonable to construe this provision in such a one-sided manner. Equity and fairness
3 require that if the Company is precluded from proposing adjustments due to incremental heat
4 rate increases, other parties should be equally precluded from proposing adjustments due to
5 incremental heat rate decreases. The Commission should reject ICNU's asymmetrical
6 reading of the stipulation because it fails to appropriately balance the interests of the parties.

7 **2. ICNU's Methodology for Imputing Heat Rates from Bridger Unit 1 to**
8 **Bridger Unit 2 is Speculative and Unsupported.**

9 ICNU argues that the heat rate improvement at Bridger Unit 2 is not speculative and
10 therefore the incremental decrease in heat rate should be accounted for when determining
11 NPC.¹²⁶ Contrary to its claims, however, ICNU's adjustment is entirely speculative because
12 it replaces 48 months of actual heat rate data for Unit 2 with only 24 months of actual heat
13 rate data from Unit 1.¹²⁷ Not only does ICNU's adjustment use less historical data, it uses
14 historical data from a different generating unit. It is entirely speculative to assume that the
15 actual heat rate data from Unit 1 is more representative of the heat rate for Unit 2 than actual
16 data from Unit 2. This is particularly true because the two units did not undergo the same
17 type of turbine upgrade.¹²⁸

18 PacifiCorp's use of 48 months of historical data is consistent with the historical
19 period used to normalize other thermal attributes in the Company's filing, specifically forced
20 and planned outages.¹²⁹ It is also how the Company has traditionally calculated its heat rates,
21 even when capital improvements increased or decreased a unit's performance. Here, ICNU's
22 proposed methodology change is not based on superior modeling; instead it is based on

¹²⁶ ICNU's Confidential Prehearing Memorandum at 11-12.

¹²⁷ ICNU/100, Deen/5.

¹²⁸ ICNU/102, Deen/2.

¹²⁹ PAC/500, Duvall/21.

1 ICNU's desired outcome. The Commission should reject this argument as unfairly
2 asymmetrical and contrary to the plain language of the docket UE 216 stipulation.

3 ICNU's proposal is also contrary to its prior recommendations to the Commission. In
4 docket UE 216, ICNU testified that a 48-month average is appropriate for determining heat
5 rate and specifically repudiated the inclusion of incremental heat rate adjustments for capital
6 improvements.¹³⁰ ICNU attempts to distinguish its earlier position, insisting that it was
7 recommending against "speculative" heat rate adjustments, which did not take into account
8 all of the "realistic impacts" of the capital changes.¹³¹ But ICNU provides no evidence
9 distinguishing its proposal here from its testimony in docket UE 216 or explaining why the
10 heat rate changes in this case are any less speculative than the heat rate changes at issue in
11 UE 216. And, as noted above, ICNU's use of a proxy heat rate for Bridger 2 is entirely
12 speculative.

13 ICNU also attempts to distinguish its testimony in docket UM 1355 by claiming that
14 when it testified that forced outage rates should not be adjusted for new capital investments
15 until "after these improvements have shown up in the historical data," it was actually
16 testifying about ramping adjustments.¹³² Even a cursory review of the testimony makes clear
17 that ICNU's claim is untrue.¹³³ ICNU also argues that in docket UM 1355, it "recommended
18 that rolling outage rates should generally be used, but that it would be appropriate to reflect
19 increased efficiencies when customers are charged the specific costs and there is an objective
20 manner to measure efficiency improvements."¹³⁴ ICNU provides no citation to its docket

¹³⁰ *Id.* at 22.

¹³¹ ICNU's Confidential Prehearing Memorandum at 11-13; citing *In the Matter of PacifiCorp d/b/a Pacific Power 2011 Transition Adjustment Mechanism*, Docket No. UE 216, ICNU/100, Falkenberg/52-55 (May 12, 2010).

¹³² ICNU's Confidential Prehearing Memorandum at 12.

¹³³ PAC/500, Duvall/22.

¹³⁴ ICNU's Confidential Prehearing Memorandum at 12 (emphasis in original).

1 UM 1355 testimony to support this claim. In fact, ICNU testified in docket UM 1355 that
2 there might be a limited exception where incremental changes could be accounted for, for
3 example, “in the case of a resource that has suffered from a chronic reliability problem due to
4 a specific failure mode . . . the adjustment to outage rates could be computed by removing the
5 specific failure events from the historical outage data.”¹³⁵ Clearly, this limited exception
6 does not apply here. ICNU’s denunciation of its prior testimony is unpersuasive and the
7 rationale underlying its positions in dockets UE 216 and UM 1355 apply equally to the
8 present case.

9 **D. The Commission Should Reject Noble’s Proposed Changes to the Transition**
10 **Adjustment.**

11 Noble acknowledges that the Commission approved PacifiCorp’s use of GRID to
12 calculate the transition adjustment in 2005, but now claims that the Commission should
13 require PacifiCorp to abandon GRID and use only its forward price curve to calculate the
14 transition adjustment.¹³⁶ Noble claims that the Commission’s decision in the 2013 TAM to
15 apply modified market caps means that GRID fails to calculate the “value of the asset output
16 at projected market prices,” as required by OAR 860-038-0005(42).¹³⁷ Thus, Noble proposes
17 using a blend of market prices instead of GRID to value freed-up energy for the transition
18 adjustment.¹³⁸ Noble also proposes the inclusion of an adder for BPA transmission in the
19 transition adjustment.¹³⁹

20 The Commission has previously considered both of these issues in multiple dockets—
21 including as recently as the Company’s 2013 TAM—and has consistently rejected these

¹³⁵ *In the Matter of Investigation into Forecasting Forced Outage Rates for Electric Generating Units*, Docket No. UM 1355, ICNU/100, Falkenberg/22 (Apr. 7, 2009).

¹³⁶ Noble Americas Energy Solutions LLC Pre-Hearing Memorandum at 3 and 5.

¹³⁷ *Id.* at 7.

¹³⁸ *Id.* at 5.

¹³⁹ Noble Solutions/100, Higgins/5.

arguments.¹⁴⁰ Here, the Commission should again reject Noble’s proposed changes to the calculation of the transition adjustment.

1. The Commission Should Affirm the Use of GRID to Calculate the Transition Adjustment.

Noble argues that the Commission’s approval of GRID is “illegal” because it is inconsistent with OAR 860-038-0005(42).¹⁴¹ This argument is meritless. PacifiCorp has used GRID to calculate the transition adjustment since the beginning of its implementation of direct access in docket UM 1081. In that case, Staff recommended the use of GRID and testified that a GRID-based transition adjustment “offers the most precise and accurate accounting of the impact that direct access is likely to have on PacifiCorp’s operations, costs and revenues[.]”¹⁴² In Order No. 05-1050 the Commission affirmed the use of GRID to calculate the transition adjustment, concluding that it “most closely meets the requirements established in” docket UM 1081.¹⁴³ Since 2005 the Company has used GRID to calculate its transition adjustment in every single TAM filing. The fact that the Commission has consistently authorized PacifiCorp to use GRID to calculate the transition adjustment undercuts Noble’s contention that the use of GRID violates the Commission’s own rules.¹⁴⁴

Relying exclusively on market prices, as Noble recommends, would result in an inflated transition adjustment and illegal cost shifting to non-participating customers. The Commission has expressly noted that the TAM is not intended to promote direct access but

¹⁴⁰ See *In the Matter of Public Utility Commission Staff Investigation into Direct Access Issues for Industrial and Commercial Customers Under SB 1149*, Docket No. UM 1081, Order No. 04-516 at 10 (Sept. 14, 2004); Order No. 05-1050 at 21; Order No. 12-409 at 17, *affirmed on reconsideration*, Order No. 13-008 at 4 (Jan. 15, 2013).

¹⁴¹ Noble Americas Energy Solutions LLC Pre-Hearing Memorandum at 6-7.

¹⁴² Order 04-516 at 5 (Sept. 14, 2004).

¹⁴³ Order No. 05-1050 at 21.

¹⁴⁴ Even if the use of GRID was inconsistent with OAR 860-038-0005(42), the Commission is authorized to waive this rule for good cause. OAR 860-038-0001(4).

1 rather is designed “to prevent unwarranted cost shifting.”¹⁴⁵ This conclusion is consistent
2 with ORS 757.607(1), which states that the “provision of direct access to some retail
3 electricity consumers must not cause the unwarranted shifting of costs to other retail
4 electricity consumers of the electric company.”

5 Noble’s claim that the Commission’s decision in the 2013 TAM has rendered the use
6 of GRID illegal is also meritless and directly contrary to the Commission’s conclusion in that
7 case. In the 2013 TAM, the Commission approved PacifiCorp’s proposal to eliminate the
8 relaxation of GRID’s market caps when calculating the transition adjustment. The
9 Commission found that GRID’s market caps “are designed to approximate liquidity restraints
10 that exist in the markets in which Pacific Power transacts.”¹⁴⁶ The Commission concluded
11 that market caps “should be used in GRID whether estimating net power costs or estimating
12 the value of energy that is freed-up with participation in direct access.”¹⁴⁷ The Commission
13 specifically found that relaxing the market caps “would result in an overestimation of the
14 value of the freed-up energy.”¹⁴⁸ Thus, the Commission specifically concluded that the
15 relaxation of market caps, which Noble argues is required, actually results in illegal cost
16 shifting through an inflated transition adjustment.

17 As a factual matter, Noble’s complaints about a GRID-based approach are also
18 inaccurate. Noble claims that “PacifiCorp’s own testimony demonstrates that its proposal is
19 to derive up to 16% of the value of freed-up generation from costs saved by backing down
20 thermal generation, *not* projected market prices.”¹⁴⁹ This misrepresents PacifiCorp’s
21 testimony. In fact, using the Commission-approved method demonstrates that the modified

¹⁴⁵ Order No. 05-1050 at 21.

¹⁴⁶ Order No. 13-008 at 4.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ Noble Americas Energy Solutions LLC Pre-Hearing Memorandum at 7 (emphasis in original).

1 GRID run used to calculate the transition adjustment is based almost entirely on market
2 prices (99 percent for heavy load hours and 92 percent overall).¹⁵⁰ It is only during the light
3 load hours that 16 percent of the transition adjustment is based on the costs of thermal
4 generation.¹⁵¹

5 **2. The Commission Should Again Reject Noble's BPA Transmission**
6 **Adjustment.**

7 Noble also argues that the transition adjustment should include an adder for freed-up
8 transmission costs as result of the direct access customers.¹⁵² The Commission considered
9 and rejected this proposal for BPA transmission credit just last year in Order No. 12-409 in
10 the 2013 TAM.¹⁵³ In that case, the Commission found that "compelling evidence was not
11 presented that Pacific Power is able to resell BPA transmission rights due to direct access."
12 The Company's reply testimony demonstrates that nothing has changed since that decision
13 that warrants its reconsideration.¹⁵⁴

14 The Commission's rejection of Noble's identical argument in the 2013 TAM is also
15 consistent with prior Commission precedent. In UM 1081, Staff recommended a "market-
16 even" approach to calculating the transition adjustment, assuming that avoided and
17 incremental wheeling costs associated with freed-up direct access load were approximately
18 equal. The Company supported Staff's proposals, but other parties proposed a "market plus"
19 approach, imputing a credit into the transition adjustment for freed-up transmission. In Order
20 No. 04-516, the Commission adopted Staff's "market even" recommendation and ordered
21 PacifiCorp to file a permanent transition adjustment.¹⁵⁵ Thereafter, when the Commission

¹⁵⁰ PAC/500, Duvall/29-30.

¹⁵¹ *Id.*

¹⁵² Noble Solutions/100, Higgins/27-28.

¹⁵³ Order No. 12-409 at 17.

¹⁵⁴ PAC/500, Duvall/31-33.

¹⁵⁵ Order No. 04-516 at 10.

1 approved the Company's TAM in Order No. 05-1050, the Commission again rejected
2 ICNU's renewed "market plus" proposal, reasoning that "[t]he purpose of the TAM is not to
3 promote direct access, as ICNU would have us do."¹⁵⁶

4 **E. Staff No Longer Proposes an Adjustment for Hydro Modeling.**

5 Staff raised concerns that the Company's hydro modeling does not reflect normalized
6 conditions, citing variations for Grant Priest, Wanapum, and Copco 1 and 2.¹⁵⁷ CUB did not
7 develop testimony regarding hydro modeling, but indicated in its Pre-Hearing Memorandum
8 that CUB is supportive of Staff's "recommendation that the Company follow a methodology
9 to create a normalized hydro forecast in a fashion similar to that of Idaho Power and
10 PGE."¹⁵⁸

11 PacifiCorp provided clarification regarding the Company's approach to hydro
12 modeling in its reply testimony. The Company explained that hydro modeling reflects
13 normalized hydro conditions with shaping to the price curve in the test period where
14 applicable.¹⁵⁹ In its Prehearing Brief, Staff stated that it accepts the Company's position and
15 no longer proposes an adjustment for hydro modeling.¹⁶⁰ Nonetheless, "Staff recommends
16 that the Commission require PacifiCorp to organize workshops before the 2014 TAM to
17 allow interested parties to better understand the Company's modeling assumptions.¹⁶¹ The
18 Company does not object to this request and remains open to further discussion with Staff
19 and interested parties regarding hydro modeling in future cases.

¹⁵⁶ Order No. 05-1050 at 21.

¹⁵⁷ Joint Staff/100, Crider-Ordenez/12.

¹⁵⁸ CUB's Pre-Hearing Memorandum at 4.

¹⁵⁹ PAC/500, Duvall/24-27.


¹⁶⁰ Staff's Prehearing Brief at 6.

¹⁶¹ *Id.*

III. CONCLUSION

- 1 For the reasons set forth above, PacifiCorp respectfully requests that the Commission
- 2 approve the rate decrease requested in PacifiCorp's 2014 TAM, subject to the TAM Final
- 3 Update on November 15, 2013.

Respectfully submitted this 6th day of September, 2013.



Katherine McDowell
McDowell Rackner & Gibson PC

Sarah Wallace
PacifiCorp d/b/a/ Pacific Power
Attorneys for PacifiCorp