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December 19, 2011

Via Electronic Mail

Commissioner Susan Ackerman
Commissioner Stephen Bloom
Commissioner John Savage
Oregon Public Utility Commission
550 Capital St. NE Suite 215
Salem, OR 97308-2148

Re: In the Matter of PACIFICORP 2012 Transition Adjustment Mechanism
OPUC Docket No. UE 227

Dear Commissioners:

The Industrial Customers of Northwest Utilities (“ICNU”) is sending this letter to identify a discovery dispute that has prevented ICNU from effectively and adequately reviewing the justness and reasonableness of PacifiCorp’s final transition adjustment mechanism (“TAM”) update. ICNU is very disappointed that the Company has refused to answer ICNU’s discovery requests, and urges the Oregon Public Utility Commission (“OPUC” or the “Commission”) not to approve PacifiCorp’s final TAM update on a final basis until the issue is resolved. Specifically, the Commission should only approve the TAM rates as subject to refund, pending resolution of this discovery dispute and a resolution of any underlying substantive issues. We apologize for the lateness of this letter, but we just learned today that we would not be provided with the requested information.

On December 6, 2011, ICNU provided notice of two potential disputes with PacifiCorp’s final TAM updates. These were: 1) ICNU identified certain contracts that had been signed but not yet finalized; and 2) PacifiCorp changed the forward price curve methodology in its final update. PacifiCorp and ICNU have reached an agreement on how to resolve these two issues, which includes PacifiCorp using the original forward price curve methodology (which reduces Oregon net power costs by about \$308,000) and ICNU being permitted to defer the costs and benefits of any non-final contracts. In ICNU’s notice, we also stated that ICNU has pending discovery requests, and we have not completed our review of PacifiCorp’s final TAM updates,

and that ICNU may raise additional concerns later in this proceeding as a result of this ongoing discovery.

One issue in ICNU's pending discovery requests addressed whether or not PacifiCorp had appropriately included all new or updated contracts in the final updates. Under the TAM guidelines, the final updates are to include all "[n]ew contracts, or updates to existing contracts." Re PacifiCorp, Docket No. UE 199, Order No. 09-274 at 4 (July 16, 2009). This generally includes contracts that were executed before the "contract lockdown" date, which was October 31, 2011. As explained in ICNU's December 6, 2011 Notice, PacifiCorp has acted inconsistently when deciding which contracts to include in the Final TAM updates.

One issue that ICNU sought to review in the discovery process is whether PacifiCorp inappropriately delayed finalizing any new or updated contracts past the date of the contract lock down. ICNU agrees that non-final contracts should generally not be included in the final TAM updates; however, PacifiCorp should not be allowed to delay any contract negotiation simply to ensure that Oregon ratepayers are not passed on the benefits of a favorable contract. The TAM process and guidelines are based on the principle that PacifiCorp is acting in good faith and is fairly negotiating contracts, and parties should be allowed to conduct discovery to guarantee that this is in fact occurring.

Both ICNU and Staff conducted discovery on PacifiCorp's contracts that were entered into after the TAM updates, and PacifiCorp at first provided complete responses. For example, PacifiCorp responded to ICNU's 18th set of data requests on December 9, 2011, which included ICNU data request 18.1 which requested "all wholesale power contracts that the Company executed by December 1, 2011, but were not included in the final GRID update. Please provide a copy of the contract and an explanation regarding why each contract was not included." Attachment 1 at 1. PacifiCorp provided information regarding three contracts and an explanation regarding why the contracts were not entered into. On December 16, 2011, PacifiCorp provided a response to a Staff data request identifying the net power cost impact of not including these three contracts. Id. at 3. Importantly, at no point did PacifiCorp raise any objections to either ICNU's or Staff's discovery requests.

On December 16, 2011, PacifiCorp also refused to respond to ICNU's 19th set of data requests. ICNU data request 19.1 is nearly identical to ICNU's previous data request 18.1, but sought information on all contracts executed by December 15 rather than December 1. ICNU data request 19.1 also asked for the net power cost impact of not including any of the contracts, similar to Staff's earlier request. As is the Company's general practice, PacifiCorp did not provide any advance warning that it intended to object to ICNU's request until the discovery due date. PacifiCorp did not explain its changed position, but simply objected on the grounds that the "information is irrelevant because it is not reasonably calculated to lead to the discovery of admissible evidence in this proceeding." Attachment 1 at 2. PacifiCorp did not explain why some information regarding some contracts executed after the contract lock down date are relevant (those before December 1, 2011), but not others (those before December 15, 2011), or why the Company can respond to Staff's request regarding the net power cost value of contracts but not ICNU's request.

PacifiCorp's actions are an abuse of the discovery process. It is inappropriate for PacifiCorp to wait to raise this objection one business day before the open meeting to consider the final TAM updates, especially when the Company should have raised this objection much earlier. It is not PacifiCorp's role to decide which of its wholesale power contracts are relevant, or to raise objections in such a manner that prevents ICNU from having an opportunity to have any discovery disputes resolved in a timely manner.

ICNU understands that the Commissioners are not customarily asked to resolve discovery disputes, and ICNU is not requesting that the Commission rule on this discovery dispute now. The Administrative Law Judge in this proceeding should be provided an opportunity to properly review and rule on a motion to compel. ICNU has not filed a motion to compel yet, because ICNU did not receive the data responses until Friday, December 16, 2011, and ICNU was negotiating with PacifiCorp regarding this and other TAM issues until the afternoon of Monday, December 19, 2011. ICNU requests that ICNU be provided an opportunity to file a motion to compel on this issue. ICNU requests that the new rates be approved on an interim basis subject to refund, pending resolution of this discovery dispute and a resolution of any underlying substantive issues.

Sincerely yours,

/s/ Irion A. Sanger
Irion A. Sanger

cc: Service List

UE-227/PacifiCorp
December 9, 2011
ICNU Data Request 18.1

ICNU Data Request 18.1

Please identify all wholesale power contracts that the Company executed by December 1, 2011, but were not included in the final GRID update. Please provide a copy of the contract and an explanation regarding why each contract was not included.

Response to ICNU Data Request 18.1

The following contracts, applicable to the 2012 test period, were executed by December 1, 2011:

- Cameron Curtis QF, executed 11/22/2011.
- Blue Mountain Wind I, executed 11/8/2011. This contract has not yet been approved by the Utah Public Service Commission.
- As noted in Stefan Bird's filed Attestation, the C Drop Hydro contract was not processed by the contract lockdown date of October 31, 2011.

Please refer to Confidential Attachment ICNU 18.1 for copies of these contracts. Confidential information is provided subject to the terms and conditions of the protective order in this proceeding.

UE-227/PacifiCorp
December 16, 2011
ICNU Data Request 19.1

ICNU Data Request 19.1

Please identify all wholesale power contracts that the Company executed by December 15, 2011, but were not included in the final GRID update. Please provide a copy of the contract and an explanation regarding why each contract was not included. Please provide the total system and Oregon net power cost impact that would result if the contracts were included in the final GRID update.

Response to ICNU Data Request 19.1

PacifiCorp objects to this request because it seeks information about contracts executed after the October 31, 2011 contract lock down date which were not included in the final GRID update and as such, this information is irrelevant because it is not reasonably calculated to lead to the discovery of admissible evidence in this proceeding.

UE-227/PacifiCorp
December 16, 2011
OPUC Data Request 47

OPUC Data Request 47

Please provide the dollar impacts, both system-wide and Oregon-allocated, for the three contracts which are the subject of ICNU Data Request No. 18.1.

Response to OPUC Data Request 47

Because this request seeks information about contracts executed after the October 31, 2011 lock down date which were not included in the final GRID update, the Company has not performed a formal quantification of the NPC impact as requested. However, given the size and on-line dates of the contracts, their impact on net power cost is estimated to be less than \$0.1m on a total Company basis.