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Via Electronic Filing

Chair Lisa Hardie
Commissioner Stephen Bloom
Commissioner Megan Decker
Public Utility Commission of Oregon
Attn: Filing Center
201 High Street SE, Suite 100
Salem, Oregon 97301-3398

Re: PacifiCorp's 2017 Integrated Resource Plan ("IRP")
Docket No. LC 67

Dear Commissioners:

The Industrial Customers of Northwest Utilities ("ICNU") appreciates the opportunity to submit these comments regarding the Public Utility Commission of Oregon ("OPUC" or the "Commission") Staff's ("Staff") Report on the Public Meeting scheduled for December 5, 2017 ("Staff Report"), concerning PacifiCorp's (or the "Company") 2017 IRP. Just as Staff continues to recommend that the Commission decline to acknowledge certain 2017 IRP Action Items,^{1/} ICNU similarly maintains that the Commission should not acknowledge proposed Action Items 1a, 1b, and 2a. Short of a decision not to acknowledge these Action Items, ICNU continues to support the Staff recommendations for conditions or "Alternative Actions to Non-Acknowledgement," designed to protect and safeguard ratepayers in the future.^{2/}

More specifically, these three Action Items—related to wind repowering, new wind, and a new Aeolus to Bridger/Anticline transmission line, respectively—are associated with the Company's \$3.21 billion Energy Vision 2020 investment plans.^{3/} Yet, for all the many filings and the multiple meetings and workshops held on the Company's 2017 IRP, the fundamental issues associated with Energy Vision 2020 Action Items remain unchanged: 1) whether the Company has a "need" for these investments, appropriate for IRP acknowledgment; and 2) the repercussions of acknowledgment versus non-acknowledgment.

^{1/} Staff Report at 1-2, 27 (Nov. 21, 2017).

^{2/} Staff Report at 25-28.

^{3/} PacifiCorp 2017 IRP Energy Vision 2020 Update at 12, Table 2.2 (July 28, 2017).

ICNU respectfully contends that the facts before the Commission overwhelmingly demonstrate that PacifiCorp has no immediate need of the Energy Vision 2020 resources, as Staff has persuasively shown, in thorough detail, via clear evidence spanning multiple proceedings and jurisdictions.^{4/} Also, ICNU is unaware of any harm that would inhere to the Company if Energy Vision 2020 Action Items are not acknowledged, while serious customer risk potential would be associated with acknowledgment. In sum, this should render a decision to *not* acknowledge the unnecessary investment in Energy Vision 2020 projects as relatively uncontroversial and straightforward.

A. Proper Scope of IRP Process

From the very outset of the Company's docketed 2017 IRP process, ICNU expressed material concerns over PacifiCorp's apparent misuse of that process. With numerous citations and explicit quotation to OPUC rule and precedent, ICNU demonstrated that actual resource "need" is foundational to appropriate consideration of resource acquisition plans in an IRP.^{5/} Notwithstanding, the Company's request for acknowledgment of Action Items 1a, 1b, and 2a was never premised on resource or reliability "needs" until very recently—as Staff has now documented, in such detail, that no reasonable argument can be made to the contrary.^{6/} Indeed, the candid testimony from a Utah Division of Public Utilities ("Division") witness, during a September 2017 hearing on the Company's new wind request for proposal ("RFP"), is remarkably telling as to the original and actual basis for all three Energy Vision 2020 Action Items: "The division had understood ... this RFP and related wind repowering and transmission proposal as strictly economic opportunities. This morning was *the first time* that I'm aware that a company representative has said th[at] it is to satisfy a need."^{7/}

Common sense would indicate that the Company's complete "about-face" as to the ostensible premise for seeking acknowledgment on Energy Vision 2020 Action Items—from promoting "exciting" and "significant economic benefits," as well as "extraordinary economic development benefits to the state of Wyoming,"^{8/} to now claiming actual "need"—is a tacit concession that the IRP is the inappropriate forum for Commission consideration at this time. Like Staff, ICNU "believes accurate understanding of the new wind and transmission projects" is found in "PacifiCorp's original" characterization, i.e., that the acquisition of such resources was

^{4/} Staff Report at 15-21.

^{5/} Opening Comments of ICNU at 6-9 (June 23, 2017).

^{6/} Staff Report at 15-21. See also Opening Comments of ICNU at 3-6; ICNU Comments on Staff's Recommendations at 6-10 (Oct. 30, 2017).

^{7/} Staff Report at 18 (quoting Re: RMP – RFP Solicitation Process for Wind Resources, Utah Public Service Commission ("PSC") Docket No. 17-035-23, Peterson, TR. 217 (Sept. 19, 2017)) (ICNU emphasis). In fact, there seems to be a considerable amount of opposition to Energy Vision 2020 proposals in other jurisdictions, from a variety of parties. See, e.g., Re the Filing of Rocky Mountain Power of its IRP for 2017, Wyoming PSC Docket No. 20000-512-EA-17, Wyoming Industrial Energy Consumers' Comments at 1, 9-10 (July 14, 2017); Re PacifiCorp's 2017 IRP, Utah PSC Docket No. 17-035-16, Division Comments at 1-2 (Oct. 24, 2017); Utah PSC Docket No. 17-035-16, Office of Consumer Services Comments at 1, 7 (Oct. 24, 2017).

^{8/} PacifiCorp 2017 IRP, Vol. I at 2-3.

“‘early’ and not immediately needed.”^{9/} Similarly, ICNU agrees that “[l]ike the new wind and transmission projects, the proposed repowering project does not meet a capacity, energy, regulatory, or reliability need.”^{10/}

When Action Items 1a, 1b, and 2a are viewed in their original and correct light, Staff more than adequately explains why the customer risks associated with such economic opportunity projects are ill-suited for consideration in the current IRP process.^{11/} Moreover, despite worthy recommendations from Staff as to how such projects may be fairly assessed “in a way that protects ratepayers in the context of an economic opportunity,”^{12/} ICNU concurs “that because PacifiCorp presented this economic opportunity at the eleventh hour of this IRP process ... it may not be possible to incorporate all of Staff’s recommendations into the analysis of the *current* proposed process.”^{13/} In fact, with no further process scheduled beyond two Public Meetings, ICNU submits that a considered and reasonable application of Staff’s recommendations to the “current” process is not feasible.

Even if judged on the newly promoted claims of “need,” however, there is another, and perhaps more troubling consequence of accepting the “about-face” PacifiCorp representations within the current IRP process. In short, core OPUC principles of open, transparent, and fair process would be seriously compromised, which ICNU respectfully urged the Commission to keep squarely in view through recent comments.^{14/} That is, an acknowledgment of Energy Vision 2020 Action Items at this stage, based now on wholly different resource acquisition justifications from those originally presented by the Company, would raise significant doubts among non-Company parties about the merit of IRP process. Stated differently, if the Company can freely modify the fundamental premises for resource acquisition strategies late in the process, to deflect non-Company analysis, then there would be little point in non-Company parties bothering to participate in a process that effectively guarantees acknowledgment on any basis asserted by PacifiCorp.

Such concern over fairness and transparency is not unique to ICNU in this proceeding. Crucially, Staff consistently emphasizes the primacy of fair, open, and transparent consideration of the Company’s resource acquisition plans as well, as evinced within the following sampling from the Staff Report:

- “The Commission and stakeholders cannot effectively review a capacity need *if it is not clearly expressed* by PacifiCorp”;
- “Staff recommends that the Commission request *clear and consistent* deficiency dates from PacifiCorp ...”;

^{9/} Staff Report at 16.

^{10/} Staff Report at 20.

^{11/} Staff Report at 21-24.

^{12/} Staff Report at 22.

^{13/} Staff Report at 23 (emphasis added). See also ICNU Comments on Staff’s Recommendations at 2 & n.3 (noting “the eleventh-hour surprise insertion of a \$3.5 billion Energy Vision 2020 investment plan within the 2017 IRP,” with supporting citation to several other comment filings).

^{14/} See ICNU Comments on Staff’s Recommendations at 3-6.

- “If economic opportunities are under consideration in the IRP process, then the Commission *should make clear* that all potential opportunities should be explored”; and
- “In order to complete this review and make a recommendation to the Commission, Staff and stakeholders *must have greater access* to relevant data, models, and alternatives ... to appropriately identify economically viable alternatives.”^{15/}

The foregoing examples from Staff are merely a sampling. Nonetheless, they convey the absolute imperative of ensuring process integrity in the consideration of utility resource acquisition plans, thereby ensuring that the Commission can fulfill “the obligation to make and explain decisions in a visible manner so that the public can have trust that Commission decisions are arrived at in a principled way.”^{16/}

B. Effects of IRP Process

Staff explains the risks to customers associated with Action Items 1a, 1b, and 2a, including the compelling illustration of very recent Congressional proposals to cut and freeze production tax credit values dramatically, which would have massive implications for alleged customer benefit projections for Energy Vision 2020 investment.^{17/} Likewise, ICNU has provided analysis of several critical Company assumptions which, if even minor variation occurs on any individual Energy Vision 2020 assumption, would turn purported customer benefits into unnecessary ratepayer costs.^{18/}

The Staff Report is less explicit, however, as to the effect that an IRP acknowledgment of Energy Vision 2020 Action Items would have on customers. For instance, “... Staff acknowledges that the Commission is unable to adopt ratemaking conditions in this proceeding.”^{19/} But, Staff does not discuss the *presumptive* prudency effect in later ratemaking and cost recovery dockets that unquestionably adheres to a resource acquisition acknowledged through an IRP process, as the Commission affirmed as recently as the Company’s 2015 IRP: “Acknowledgment of an IRP ... is relevant to subsequent examination of whether a utility’s resource investment is prudent and should be recovered from ratepayers.”^{20/} No doubt, the Company’s redoubled efforts to obtain acknowledgment in this proceeding, including a full reversal on why Energy Vision 2020 investments are even being acquired, can only be rationally explained by the expectation of presumptive allowance in later cost recovery proceedings—e.g., “[c]onsistency with the plan may be evidence in support of *favorable rate-making treatment* of the action”^{21/}

^{15/} Staff Report at 24-25, 28 (emphases added).

^{16/} Re OPUC, Internal Operating Guidelines, Docket No. UM 1709, Order No. 14-358, App. A at 1 (Oct. 17, 2014).

^{17/} Staff Report at 21-22.

^{18/} ICNU Comments on Staff’s Recommendations at 10-18.

^{19/} Staff Report at 26.

^{20/} Re PacifiCorp’s 2015 IRP, Docket No. LC 62, Order No. 16-071 at 2 (Feb. 29, 2016).

^{21/} Re PacifiCorp, Docket No. LC 57, Order No. 14-252 at 2 (July 8, 2014) (quoting Re Investigation into Integrated Resource Planning, Docket No. UM 1056, Order No. 07-002 at 24 (Jan. 8, 2007)) (emphasis added).

Conversely, a decision by the Commission not to acknowledge Action Items 1a, 1b, and 2a does not in any way impede or inhibit the Company from going forward with all Energy Vision 2020 investment plans, with full potential to still seek later prudence determinations and cost recovery in subsequent ratemaking process, as the Commission recently affirmed in associated RFP process: “Should PacifiCorp fail to gain acknowledgment of the associated IRP action items, PacifiCorp may proceed with the RFP at its own discretion, outside or partially outside of our competitive bidding process.”^{22/} In this sense, the Company would retain full opportunity to demonstrate the actual merit of the “significant economic benefits” alleged for Energy Vision 2020 investment, while eliminating any potential concerns about whether acknowledgment conditions would be in tension with Staff’s view “... that the Commission is unable to adopt ratemaking conditions in this proceeding.”^{23/} Accordingly, the goal of a level “playing field” sought by Staff, in requiring the Company to “stand behind” its analysis, can be achieved in far more efficient and unimpeachable fashion by a simple non-acknowledgment, rather than by setting acknowledgment conditions, as Staff has proposed: “Staff believes these conditions level the playing field between ratepayers and shareholders by asking PacifiCorp to stand behind the economic opportunity analysis it has presented.”^{24/}

That said, if the Commission should still “choose to consider conditional acknowledgment” for any reason, ICNU supports Staff’s proposal “... that the Commission signal to the Company the consumer protections it anticipates imposing in the appropriate ratemaking proceeding.”^{25/} For reasons explained in recent comments, ICNU fully supports the particulars of Staff’s conditional acknowledgment recommendations.^{26/}

Finally, as the Commission weighs any perceived options on Action Items 1a, 1b, and 2a—e.g., acknowledgment, non-acknowledgment, or conditional acknowledgment—logical consequences regarding OPUC precedent may be worth considering. For example, a potential acknowledgment, justified on the rationale that “any IRP acknowledgment has no bearing on later rate recovery,” would contradict recent Commission affirmations that acknowledgment “... is relevant to subsequent examination of whether a utility’s resource investment is prudent and should be recovered from ratepayers,”^{27/} and that “[c]onsistency with the plan may be evidence in support of favorable rate-making treatment of the action ...”^{28/} Similarly, the Commission

^{22/} Re PacifiCorp Application for Approval of Final Draft 2017R Request for Proposals, Docket No. UM 1845, Order No. 17-345 at 2 (Sept. 14, 2017). See also ICNU Comments on Staff’s Recommendations at 5 & n.13 (citing Re Investigation Regarding Competitive Bidding, Docket No. UM 1182, Order No. 06-446 at 2 (Aug. 10, 2006) (affirming “utility management’s prerogative to acquire new resources”); Docket No. UM 1182, Order No. 06-446 at 2 (“... [W]e are making only slight modifications to those 1991 [competitive bidding] goals. The revised goals are [to]... [n]ot unduly constrain utility management’s prerogative to acquire new resources ...”); Docket No. UM 1845, Order No. 17-279, App. A at 4 (July 20, 2017) (“PacifiCorp is not obligated to proceed with the development of an RFP Whether or not to proceed with the contemplated RFP is a matter for the Company to consider”).

^{23/} Staff Report at 26.

^{24/} Staff Report at 23.

^{25/} Staff Report at 25.

^{26/} See ICNU Comments on Staff’s Recommendations at 18-20.

^{27/} Docket No. LC 62, Order No. 16-071 at 2.

^{28/} Docket No. LC 57, Order No. 14-252 at 2 (July 8, 2014) (quoting Docket No. UM 1056, Order No. 07-002 at 24).

has also declined to acknowledge action items when PacifiCorp has already effectively made its investment decisions *before* including plans within an IRP.^{29/} Acknowledgment of Energy Vision 2020 Action Items would require contradiction with such precedent, however, since the Company had long since executed purchase agreements to implement its plans before filing the 2017 IRP.^{30/}

The current Commission may have the power to contradict an entire body of its own precedent, should it elect to do so. Nevertheless, if the Commission contradicts recent precedent to forge a new acknowledgment regime benefitting the Company, then customers should also be able to benefit from the creation of new precedent. Thus, any inherent “flexibility” which the Commission may cite—as grounds for acknowledgment, despite the natural application of existing precedent—should also allow for flexibility to articulate new precedent in the form of ratepayer protections delivered through acknowledgment conditions. In other words, any potential doubts or concerns on the OPUC’s part, about the propriety of conditioning acknowledgment on definitive ratepayer protections, would become irrelevant because the Commission’s entire treatment of the 2017 IRP would be untethered to precedential constraint.

In closing, ICNU once more notes appreciation for the opportunity to provide written comments on the Staff Report. The multiple rounds for parties to participate in and comment on the IRP process will hopefully assist the Commission in reaching a well-considered decision on the Company’s IRP, and ICNU looks forward to the deliberative process at the upcoming Public Meetings scheduled for this docket.

Sincerely,

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Of Attorneys for the Industrial Customers of
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^{29/} Docket No. LC 57, Order No. 14-252 at 6-9 (declining to acknowledge action items 8b and 8c within the Company’s 2015 IRP).

^{30/} PacifiCorp 2017 IRP, Volume I at 16 (stating such agreements were executed in December 2016).