

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1449**

INTERNATIONAL PAPER COMPANY,	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	
PACIFICORP, dba PACIFIC POWER,	)	INTERNATIONAL PAPER
	)	COMPANY’S REPLY TO
	)	PACIFICORP’S RESPONSE IN
	)	OPPOSITION TO MOTION FOR
Defendant.	)	WAIVER OF RULE AND LEAVE TO
	)	FILE COMPLAINT
<hr/>		

**I. INTRODUCTION**

Pursuant to the ruling of ALJ Grant of September 17, 2009, International Paper Company (“International Paper”) submits the following reply to PacifiCorp’s response in opposition (“Response”) to International Paper’s motion for waiver of OAR § 860-029-0100(5)(a) and leave to file its complaint (“Motion”). In short, PacifiCorp has stated false claims that are graphically refuted by the attached exhibits and explained in the following discussion. Because PacifiCorp willfully violated the terms of Schedule 38, it has mooted the necessity of a 60 day waiting period. The Commission can and should waive the 60 day statement requirement of OAR § 860-029-0100(5)(a), and grant leave to International Paper to file its complaint.

**II. DISCUSSION**

PacifiCorp opposes International Paper’s motion on a disingenuous recitation of facts. First, more than “oral comments” were provided to PacifiCorp in

response to the first draft power purchase agreement (“PPA”) of August 10, 2009. Response at 3. On August 11, 2009, International Paper submitted written commentary via email, in the form of a revised Section 22 of the first draft PPA attached to its email. Exhibit 1. PacifiCorp later acknowledged the sufficiency of this written commentary, in an email response on September 4, 2009, in which it agreed that International Paper first provided written comments on August 11, 2009. Exhibit 2. PacifiCorp then argued that International Paper should wait 60 days from that commentary date before filing a complaint. Tellingly, Schedule 38 provides that a complaint may be filed 60 days after “written notification,” including either commentary or proposals. Sections B.7, B.5. Plainly, therefore, PacifiCorp understood International Paper to have provided written commentary and/or proposals, and not merely oral comments, on August 11, 2009.

Next, PacifiCorp also acknowledges nothing more than oral commentary in response to the second draft PPA of August 13, 2009. Response at 3. As may be irrefutably seen in Exhibit 3, however, further written commentary was provided regarding the second draft PPA by email on August 19, 2009. In this email, International Paper referred to oral commentary previously provided, but the email itself provides additional commentary. Exhibit 3.

Most importantly, however, Exhibit C is a written testament to International Paper’s request, pursuant to the provision of Schedule 38, Section B.6, for a final, executable version of the agreement which PacifiCorp is required to provide within 15 days. On August 19, 2009, International Paper stated, “we understand that a final draft will be sent to us for acknowledgement and acceptance.” Exhibit 3. Hence,

PacifiCorp's contentions that International Paper failed to respond to its third draft PPA are inaccurate. International Paper had already accepted its terms.

The third draft PPA was not even submitted until August 21, 2009. Motion at 2; Response at 3. The third draft PPA was not a final, executable version of the second draft accepted by International Paper, as Schedule 38 required. Rather, the third draft PPA was a radical and unilateral revision of the accepted agreement, as may be immediately seen by comparison of the pricing provisions of the accepted, second draft PPA and the third draft PPA. Compare Exhibit 4 (second draft PPA, Exhibit F), with Exhibit 5 (third draft PPA, Exhibit F). In brief, PacifiCorp completely withdrew pricing provisions that were in accord with then-current Schedule 37 avoided cost purchase rates—*after* International Paper had accepted those terms.

Schedule 38 mandates that in PPA negotiations, PacifiCorp “will not unreasonably delay negotiations and will respond in good faith to” proposals. Section B.5. Pulling the pricing terms from an agreed upon contract does not satisfy these requirements. In this light, PacifiCorp's arguments fail to persuade of equity or even legality. The Commission has unquestionable power and authority under ORS § 756.040 to waive the 60 day waiting period requirement, in order to protect International Paper against PacifiCorp's unjust and unreasonable practices in delaying PPA finalization and in bad faith negotiations. The majority of PacifiCorp's arguments, concerning legally enforceable obligations, should properly be reserved for PacifiCorp's answer.

### **III. CONCLUSION**

For the foregoing reasons, the Response arguments should be rejected.

Dated this 28th day of September, 2009.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Melinda J. Davison

Melinda J. Davison

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jec@dvclaw.com

Of Attorneys for International Paper Company

# EXHIBIT 1



"Schroeder, Jim {Mkt Function}"  
<Jim.Schroeder@PacifiCorp.com>

08/11/2009 01:01 PM

To "Greg Comatas" <Greg.Comatas@ipaper.com>  
cc  
bcc  
Subject RE: International Paper: Updated Section 22

For Follow Up: Urgent Priority  
History: This message has been forwarded.

Thanks Greg

-----Original Message-----

From: Greg Comatas [mailto:Greg.Comatas@ipaper.com]  
Sent: Tuesday, August 11, 2009 10:57 AM  
To: Schroeder, Jim {Mkt Function}  
Subject: International Paper: Updated Section 22

(See attached file: Updated SECTION 22.docx)

Greg Comatas  
Manager - Strategic Sourcing  
International Paper  
901-419-1654 Office  
901-326-2799 Mobile

-----  
This email is confidential and may be legally privileged.

It is intended solely for the addressee. Access to this email by anyone else, unless expressly approved by the sender or an authorized addressee, is unauthorized.

If you are not the intended recipient, any disclosure, copying, distribution or any action omitted or taken in reliance on it, is prohibited and may be unlawful. If you believe that you have received this email in error, please contact the sender, delete this e-mail and destroy all copies.

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# EXHIBIT 2



"Schroeder, Jim {Mkt  
Function}"  
<Jim.Schroeder@PacifiCorp.  
com>

09/04/2009 11:41 AM

To "Greg Comatas" <Greg.Comatas@ipaper.com>  
"Griswold, Bruce {Mkt Function}"  
cc <Bruce.Griswold@PacifiCorp.com>, "Ken Kaufmann"  
<kaufmann@lklaw.com>

bcc

Subject Internatioanal Paper APM QF PPA

For Follow Up: Urgent Priority

History: This message has been forwarded.

Greg

I am in receipt of your letter dated September 3, 2009, giving notice of International Paper's intent to file a complaint with the Oregon PUC today unless PacifiCorp tenders IP a signed PPA today. Although I do not agree with several of the factual conclusions in your letter, I do agree that International Paper first provided comments on a draft PPA on August 11, 2009. PacifiCorp takes the position that International Paper cannot file a complaint with the PUC until 60 days after it first provided comments, or October 10, 2009. See OAR 860-029-0100. PacifiCorp therefore requests that IP not file a complaint before then, but continue to work with PacifiCorp on resolving its outstanding issues with the PPA.

Please contact me at any time to discuss.


Jim Schroeder  
Origination, Commercial & Trading  
PacifiCorp  
voice:(503) 813-5380  
cell: (503) 701-6688  
fax: (503) 813-6260  
jim.schroeder@pacificorp.com




# EXHIBIT 3



Greg Comatas/Global  
Sourcing/IPAPER  
08/19/2009 11:04 AM

To "Schroeder, Jim {Mkt Function}"  
<Jim.Schroeder@PacifiCorp.com>  
cc  
bcc Greg Comatas/Global Sourcing/IPAPER  
Subject Re: International Paper draft QF contract for your review 

For Follow Up:  Urgent Priority

History:  This message has been forwarded.

Jim,

As we discussed by phone, you have our comments on the draft contract of Aug. 12, 2009. We understand that a final draft will be sent to us for acknowledgement and acceptance, PacifiCorp will conduct some internal steps (credit, authorizations, etc) and that a PacifiCorp executed version should be available for our signature by Monday, August 24, 2009 at the latest.

As we discussed, due to travel schedules, we encourage PacifiCorp to use best efforts to provide an executed version by Friday, August 21, 2009.

Please find our credit department contact information below:

International Paper  
Mark A. Wiklund  
Senior Credit Manager  
Memphis Shared Service Center  
(901) 419-1299

International Paper  
Ron Borcky  
Director, Global Credit  
Memphis Shared Service Center  
(901) 419-1295

Please reply to this email message, confirming your receipt and general acceptance of the above.

Thanks,  
Greg

Greg Comatas  
Manager - Strategic Sourcing  
International Paper  
901-419-1654 Office  
901-326-2799 Mobile

# EXHIBIT 4

## EXHIBIT F Table of On-Peak Prices and Examples (2010 Prices)

### International Paper APM 2010 - 2011 QF pricing

- Steps:**
- 1) adjust schedule 37 on and off peak prices downward for non-firm delivery  
 On-Peak price = \$72.10/MWh \* 96.59% = \$69.64/MWh  
 Off-Peak price: \$55.90/MWh \* 97.88% = \$54.71/MWh
  - 2) adjust prices in step 1) upward for transmission loss benefit  
 On-Peak price = \$69.64/MWh \* (1+ 5.77%) = \$73.66/MWh  
 Off-Peak price: \$54.71/MWh \* (1+ 5.77%) = \$57.87/MWh
  - 3) provide a sliding scale to on-peak prices only to reflect actual monthly on-peak availability
  - 4) calculate liquidated damages if applicable

monthly on-pk availability less planned maintenance hours	2010 on-pk	2010 off-pk
%	\$/MWh	\$/MWh
100%	\$ 73.66	\$ 57.87
99%	\$ 73.50	\$ 57.87
98%	\$ 73.34	\$ 57.87
97%	\$ 73.18	\$ 57.87
96%	\$ 73.03	\$ 57.87
95%	\$ 72.87	\$ 57.87
94%	\$ 72.71	\$ 57.87
93%	\$ 72.55	\$ 57.87
92%	\$ 72.39	\$ 57.87
91%	\$ 72.24	\$ 57.87
90%	\$ 72.08	\$ 57.87
89%	\$ 71.92	\$ 57.87
88%	\$ 71.76	\$ 57.87
87%	\$ 71.61	\$ 57.87
86%	\$ 71.45	\$ 57.87
85%	\$ 71.29	\$ 57.87

notes: 1) monthly availability is only calculated for on-peak hours less any planned on-peak maintenance hours

Steps:

- 1) calculate monthly on-peak availability factor
- 2) where monthly availability = actual on-peak net generation (MWh/mn) / ((total on-peak hours minus planned maintenance hours(hrs/mn)) \* 45 MW)
- 3) calculate on-peak price = off-peak price + [(\$73.66/MWh - \$57.87/MWh) \* on-peak availability factor]
- 4) All on-pk net generation (MWh/mn) \* on-pk price (\$/MWh) at corresponding monthly on-pk availability
- 5) All off-pk net generation (MWh/mn) \* off-pk price (\$/MWh) at corresponding monthly off-pk availability
- 6) Shortfall energy (MWh/mn \* (average of hourly on-peak market price - \$71.61/MWh)

Example:		Oct-10
Givens:	total on-pk hours	432 hrs/mn
	total off-pk hours	312 hrs/mn
	planned maintenance on-pk hours	16 hrs/mn
	actual on-pk net generation	16,475 MWh/mn
	actual off-pk net generation	13,350 MWh/mn
2)	Oct 2010 monthly on-peak availability equals 16,475 / (432-16) *45	
	equals 88.0%	
3)	\$57.87/MWh + [(\$73.66/MWh - \$57.87/MWh) * 0.88]	
4)	16,475 MWh/mn * \$71.76/MWh	
	\$1,182,332/mn - on-peak	
5)	13,350 MWh/mn * \$57.87/MWh	
	\$772,564/mn - off-peak	

# EXHIBIT 5

**EXHIBIT F**  
**Table of On-Peak Prices and Examples (2010 Prices)**

| Table and Example will be provided when Contract Price is agreed to

# Davison Van Cleve PC

Attorneys at Law

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

September 28, 2009

*Via Electronic and U.S. Mail*

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

Re: In the Matter of International Paper Company v. PacifiCorp  
**Docket No. UM 1449**

Dear Filing Center:

Enclosed please find the Reply to PacifiCorp's Response in Opposition to Motion for Waiver of Rule and Leave to File Complaint on behalf of the International Paper Company in the above-referenced docket.

Thank you for your assistance.

Sincerely yours,

/s/ Brendan E. Levenick  
Brendan E. Levenick

Enclosures

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day filed the foregoing Reply to PacifiCorp's Response in Opposition to Motion for Waiver of Rule and Leave to File Complaint on behalf of the International Paper Company, upon the parties, on the service list, by causing the same to be deposited in the U.S. Mail, postage-prepaid, and via electronic mail.

Dated at Portland, Oregon, this 28th day of September, 2009.

/s/ Brendan E. Levenick  
Brendan E. Levenick

**(W) LOVINGER KAUFMANN LLP**  
JEFFREY S LOVINGER  
825 NE MULTNOMAH STE 925  
PORTLAND OR 97232-2150  
lovinger@lklaw.com

**(W) PACIFIC POWER & LIGHT**  
JORDAN A WHITE  
825 NE MULTNOMAH STE 1800  
PORTLAND OR 97232  
jordan.white@pacificcorp.com

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