

# LOVINGER | KAUFMANN LLP

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September 11, 2009

***Via Electronic Filing and U.S. Mail***

Oregon Public Utility Commission  
Attention: Filing Center  
PO Box 2148  
Salem, OR 97308-2148

Re: INTERNATIONAL PAPER COMPANY, Complainant, vs.  
PACIFICORP dba PACIFC POWER, Respondent  
OPUC Docket No. UM 1449

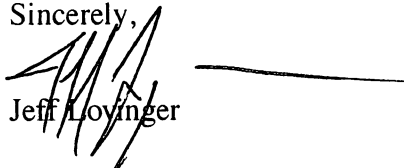
Attention Filing Center:

Enclosed for filing in the above-captioned docket are an original and one copy of *PacifiCorp's Response in Opposition to International Paper's Motion for Expedited Consideration and PacifiCorp's Motion for Clarification or for Extension of Time to Answer*.

An extra copy of this cover letter is enclosed. Please date stamp the extra copy and return it to me in the envelope provided.

Thank you in advance for your assistance.

Sincerely,



Jeff Lovinger

cc: UM 1449 Service List

Enclosures

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1449

INTERNATIONAL PAPER  
COMPANY,

Complainant,

vs.

PACIFICORP dba PACIFIC POWER,

Respondent.

PACIFICORP'S RESPONSE  
IN OPPOSITION TO  
INTERNATIONAL PAPER'S  
MOTION FOR EXPEDITED  
CONSIDERATION and  
PACIFICORP'S MOTION FOR  
CLARIFICATION OR FOR  
EXTENSION OF TIME TO  
ANSWER

1 PacifiCorp d/b/a Pacific Power respectfully requests that the Public Utility  
2 Commission of Oregon ("Commission") deny the September 10, 2009 Motion for  
3 Expedited Consideration filed by International Paper Company ("International Paper").  
4 PacifiCorp also respectfully moves the Commission to clarify that no answer is due until  
5 10 days after the Commission has decided whether to grant International Paper leave to  
6 file its complaint. In the alternative, if the Commission determines that an answer is  
7 presently due, PacifiCorp respectfully moves the Commission to extend the time to  
8 answer in the above-captioned proceeding until at least five business days after the  
9 Commission has ruled on International Paper's pending Motion for Waiver of Rule and  
10 Leave to File Complaint ("waiver motion").

11 **Response in Opposition to Motion to Expedite**

12 On September 8, 2009, International Paper served a complaint and waiver motion  
13 in the above-captioned proceeding. The waiver motion asks the Commission to waive  
14 OAR 860-029-0100(5)(a) which requires a qualifying facility to wait 60 days before

1 filing a complaint regarding the negotiation of a power purchase agreement. On  
2 September 9, 2009, counsel for PacifiCorp conferred with counsel for International Paper  
3 to request additional time to answer. International Paper indicated it opposes an  
4 extension of time to answer. On September 10, 2009, International Paper then moved for  
5 expedited consideration of the waiver motion. International Paper asks the Commission  
6 to require PacifiCorp to respond to the waiver motion on September 14, 2009 – six  
7 calendar days after service of the waiver motion and one business day after any possible  
8 ruling on the motion to expedite.

9 PacifiCorp intends to oppose the waiver motion. PacifiCorp expects that the  
10 substance of its arguments will have the potential to resolve this matter, obviating the  
11 need to answer International Paper’s complaint. PacifiCorp anticipates that some of its  
12 arguments will require considerable research and briefing. PacifiCorp therefore expects  
13 to require up to the full 15 days allotted by rule for its response.

14 PacifiCorp has no desire to delay or prolong the orderly resolution of this  
15 complaint proceeding. However, PacifiCorp is entitled to adequate time to prepare its  
16 response and defense. Proper resolution of International Paper’s waiver motion is a  
17 critical threshold issue in this case and PacifiCorp should be allowed adequate time to  
18 prepare a careful response. PacifiCorp believes there are significant factual and  
19 substantive legal reasons for denying the waiver request and PacifiCorp needs adequate  
20 time to research and brief its arguments.

21 Finally, PacifiCorp disagrees with International Paper’s assertion that  
22 “[r]esolution of this matter has already been delayed well beyond what is warranted.”  
23 Waiver Motion at 2. The complaint proceeding is only three days old and, contrary to

1 International Paper's assertions, the relevant Schedule 38 and OAR 860-029-0100  
2 processes have not yet reached completion. This case has not been the subject of  
3 improper delay and International Paper has failed to identify any good cause for  
4 expediting consideration and depriving PacifiCorp of adequate time to prepare its  
5 response.

6 **Motion for Clarification that Answer is Not Due or, Alternatively,**  
7 **Motion for Extension of Time to File Answer**

8 International Paper has submitted a complaint before the expiration of the 60-day  
9 period required by Commission rule. International Paper has also moved for waiver of  
10 that rule and for leave to file its complaint. Commission staff has indicated on its  
11 electronic docket that an answer to the complaint is due September 18. PacifiCorp  
12 respectfully suggests that no answer should be required until the Commission decides  
13 whether to grant International Paper's motion for leave to file its complaint. PacifiCorp  
14 therefore respectfully moves the Commission for an order clarifying that PacifiCorp is  
15 not required to answer until 10 calendar days after the Commission has ruled on and  
16 granted International Paper's waiver motion and request for leave to file complaint. A 10-  
17 day period to answer is consistent with the requirements of OAR 860-029-0100(7).

18 In the alternative, if the Commission concludes that an answer is presently due,  
19 PacifiCorp respectfully moves for an extension of time to answer until five business days  
20 following resolution of the waiver motion. Good cause exists to grant this extension  
21 because resolution of the waiver motion has the potential to dispose of this case and  
22 obviate the need for PacifiCorp to formulate and file an answer, and because the  
23 preparation of an answer for submission on September 18, 2009 would further and

1 unnecessarily impact PacifiCorp's ability to prepare its response in opposition to the  
2 pending waiver motion.

3 WHEREFORE, PacifiCorp respectfully requests that the Commission deny  
4 International Paper's motion for expedited consideration, and respectfully moves  
5 the Commission to either clarify that PacifiCorp need not answer the complaint  
6 until 10 days after the Commission grants leave to file or, alternatively, that the  
7 Commission extend the time to answer until five business days following the  
8 Commission's ruling on the waiver motion.

Dated this 11<sup>th</sup> day of September 2009.

Respectfully submitted,

By 

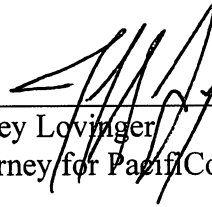
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CERTIFICATE OF SERVICE

I hereby certify that, on September 11, 2009, I served a true and correct copy of the foregoing *PacifiCorp's Response in Opposition to International Paper's Motion for Expedited Consideration and PacifiCorp's Motion for Clarification or for Extension of Time to Answer* on the following named persons/entities by depositing a true copy thereof in the United States Mail at Portland, Oregon

<p>Barb Coughlin Director, Customer &amp; Regulatory Liaison Pacific Power &amp; Light 825 NE Multnomah, Suite 800 Portland, OR 97232</p>	<p>Jesse E. Cowell Davison Van Cleeve PC 333 SW Taylor St., Suite 400 Portland, OR 97204</p> <p>Melinda J. Davison Davison Van Cleeve PC 333 SW Taylor St., Suite 400 Portland, OR 97204</p>
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Jeffrey Lovinger  
Attorney for PacifiCorp