

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 170

In the Matter of)

PACIFIC POWER & LIGHT CO)

Request for a General Rate Increase in the)
Company's Oregon Annual Revenues.)
_____)

REPLY BRIEF

OF THE

CITIZENS' UTILITY BOARD OF OREGON

August 11, 2005

UE 170

Request for a General Rate Increase in the Company's Oregon Annual Revenues.

REPLY BRIEF OF
THE CITIZENS' UTILITY BOARD
OF OREGON

In reviewing PacifiCorp's Opening Posthearing Brief, we discovered no legal arguments concerning CUB's tax adjustment that we did not already address in our Opening Brief. PacifiCorp cast differently some objections they have always had to our proposal to better align costs and rates. We will attempt to clarify PacifiCorp's obfuscations and cure their misrepresentations. We will also briefly address PacifiCorp's new argument against CUB's TAM proposal. The Company now argues that our proposal would result in discriminatory pricing.

II. CUB's Tax Adjustment

PacifiCorp's brief throws everything including the kitchen sink at CUB's tax proposal in a desperate attempt to stop a rational argument. Within the first two pages of its argument, the Company uses words such as "unlawful," "unsupported," "violate," "arbitrarily," "flawed," and "not rationally connected." PacifiCorp Op. Br. at 3-4. Mixed in with all this hyperbole are some mischaracterizations and reliance on cases that do not help the Commission one way or the other. We address some of these issues below.

A. UM 1074 & UCB 13 – Utility Reform Project's Petition

i. URP Proposal Is Not CUB's Proposal

PacifiCorp relies fairly heavily on the Commission's orders *In re Utility Reform Project*, Orders No. 03-214 and No. 03-401. In that case, the Commission rejected URP's 2003 challenge to the Commission's tax treatment, and URP's demand that taxes be treated in a manner set out by that group. It is important to remember that URP's argument and its proposed method of treating taxes are very different from CUB's proposal in this docket. URP argued that the existing tax treatment was illegal (i.e. that PGE violated the law in applying the PUC's tax treatment), demanded a refund to customers of the difference between taxes collected in rates and taxes paid to government entities, and requested a complete true-up on an ongoing basis. Order No. 03-401 at 2-3. CUB's adjustment does none of these. PacifiCorp uses the language and issues that emanated from a case addressing a more extreme tax proposal to inappropriately and ineffectively attack CUB's proposal.

ii. The Definition Of Stand-Alone

In PacifiCorp's attempt to characterize CUB's adjustment as a consolidated approach, PacifiCorp cites the Commission's definition of "stand-alone" in UCB 13. PacifiCorp Op. Br. at 8-9.

For taxes, [the Commission] look[s] at the utility as a stand-alone enterprise. We do not explore the holding company's tax liability, only the regulated utility's liability as though it were operating without the holding company.

In re Utility Reform Project, Order No. 03-401 at 6.

Inconveniently for PacifiCorp, however, CUB accepts that quote as proof that our tax adjustment is, indeed, an adjusted stand-alone calculation.

First, we did not explore the holding company's tax liability, which would be necessary to establish rates on a consolidated basis. To repeat, we did not look at the tax liabilities of the consolidated company. We examined PHI's forecasted interest payments for the 2006 test year and the tax value of those interest payments, which are serviced in substantial part by cash flow from PacifiCorp and ultimately its customers.

Second, the stand-alone calculation as defined by the Commission in *In re Utility Reform Project*, without CUB's adjustment, does not actually look at "the regulated utility's liability as though it were operating without the holding company." This is because the holding company debt is an external drag on the utility and its customers which distorts this utility-in-a-vacuum analysis. CUB Op. Br. at 11-15. The Commission has already found that holding company debt creates potential harms to the utility. *Id.* at 13-14 & UM 1121 Order No. 05-114 at 21. If the Commission were to actually treat the utility as if the holding company did not exist, it would have to somehow account for the holding company's debt load which affects the utility. In fact,

if the Commission's goal is to treat the utility as though the holding company did not exist, CUB's tax treatment, which attempts to correct for this additional drag on the utility, would be an integral part of the stand-alone analysis.

As part of its campaign to mischaracterize CUB's adjustment as consolidated treatment, PacifiCorp paraphrases a CUB response to a PacifiCorp data request. In support of its assertion that the CUB proposal is consolidated tax treatment, PacifiCorp describes its exhibit as: "CUB response to PacifiCorp discovery request 1.13, stating that proposal is designed to align tax expense in rates with federal taxes that are paid by consolidated group." PacifiCorp Op. Br. at 9. However, here is CUB's actual response to PacifiCorp data request 1.13:

CUB's testimony described the basis of Mr. Jenks' adjustment. It was based on making a known and measurable adjustment to the utility's tax expense in a future test year. It was designed to more closely align the taxes that customers pay with the federal taxes that are actually paid, while adhering to the benefit/burden test.

PPL/1804/4.

Not only does our answer not say what PacifiCorp says it says, but we stand by what we actually did say.

B. The Benefit/Burden Test

PacifiCorp flatly states that CUB fails to present compelling evidence that our adjustment meets the benefit/burden test. PacifiCorp Op. Br. at 4. First, as we wrote in our Opening Brief, and as ICNU independently discovered, the Commission is under no obligation to conduct a benefit/burden test to adopt CUB's adjustment. Second, we did supply sufficient evidence, reasoning, and rationale to satisfy the benefit/burden test. These arguments we have already made ad nauseam.

A third point, however, needs to be made concerning the burden of proof. PacifiCorp bears the burden of showing that rates are just and reasonable. ORS 757.210. Rather than prove that the Company's proposed tax treatment is appropriate on its merits, or that CUB's specific adjustment is wrong, PacifiCorp relied on the Commission's historical practice in general. When that practice is questioned, PacifiCorp has the burden of showing that the practice is superior to our adjustment.

The Company has argued a lot of things about taxes, including arguments about cross-subsidization and non-regulated functions, that are not relevant to our adjustment. PacifiCorp Op. Br. at 4-9. Upon close inspection, however, it is clear that the Company has provided very little argument about the specifics of CUB's adjustment. In addition, as part of its burden of proof, the Company should better CUB's argument, not simply tie it; the Company should beat us with the evidence and the rationale that its proposal is superior. The Company needs to provide more convincing evidence that CUB's tax adjustment fails the benefit/burden test, if that is indeed the rational test the Commission chooses to adopt. Apart from a flat statement that ScottishPower's presence benefits PacifiCorp on a net basis, a statement that is not supported by the evidence in the record, the Company adds little else.

PacifiCorp does try to argue that our adjustment fails to allocate any interest deduction to PHI. PacifiCorp Op. Br. at 21. But PHI has no business activity of its own, and thus the obligation to service PHI's debt falls on PacifiCorp and PHI's other subsidiaries. When CUB did try to allocate PHI's interest tax deduction to PacifiCorp based on taxable income, as PacifiCorp suggests, our analysis showed that PacifiCorp's

taxable income is several times that of PHI, and thus an allocation of interest deduction based on taxable income is nonsense. CUB/102/Jenks/1.

III. CUB RVM Proposal Not Discriminatory; It's Ratemaking

PacifiCorp argues that CUB has not made a valid proposal in recommending that the TAM/RVM only be applied to those customers eligible for direct access. PacifiCorp Op. Br. at 24. We beg to differ; not only is our proposal valid, it is a more specifically targeted and rationally applied approach than the Company's. It seems that PacifiCorp inherently understands this, because the Company's next argument is that the result of our proposal would create two different sets of rates, and would, therefore, be discriminatory. *Id.* at 28. Different rates for different customer classes is an inherent part of setting rates. Welcome to the world of ratemaking.

The principles of rational ratemaking have never dictated that all rates must be the same for everybody all the time. In fact, the very statute that PacifiCorp would rely upon to support a charge of discriminatory ratemaking (had the Company relied on any support in its brief) makes very clear that different sets of customers under different sets of circumstances can be treated differently. ORS 757.310 says the Commission shall not establish different rates for a customer for the same service than:

It charges, demands, collects or receives from *any other person for a like and contemporaneous service under substantially similar circumstances*. A difference in rates or charges based upon a difference in classification pursuant to ORS 757.230 shall not constitute a violation of this paragraph.

ORS 757.310(1)(b), emphasis added.

ORS 757.230 allows the Commission to establish classifications of customers based on the amount of commodity used and the purposes of its use. CUB's proposal is

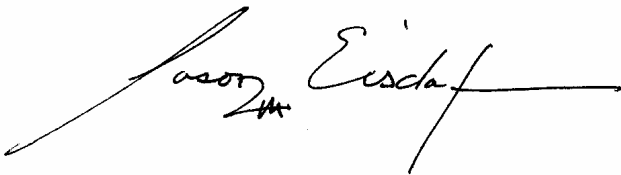
based on the fact that there are legitimate differences between direct-access-eligible customers and residential customers. Far from causing our TAM/RVM proposal to be discriminatory, these differences cause our proposal to be rational and appropriate.

IV. Conclusion

CUB's tax adjustment is actually more consistent with the Commission's stated stand-alone approach as described in Order No. 03-401, than the Company's current tax calculations. PacifiCorp would have the Commission retain a tax treatment that has been discredited by the absurdities of its results: taxes collected from customers that are spectacularly out of line with those paid to government entities. We ask the Commission to adopt CUB's tax proposal.

CUB's proposal to not burden residential customers with a TAM/RVM mechanism that is designed to support direct access is likewise based on sound ratemaking principles, as well as principles of fairness.

Respectfully Submitted,
August 11, 2005,


A handwritten signature in black ink, appearing to read "Jason Eisdorfer", with a long horizontal flourish extending to the right.

Jason Eisdorfer #92292
Attorney for the Citizens' Utility Board of Oregon

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of August, 2005, I served the foregoing Reply Brief of the Citizens' Utility Board of Oregon in docket UE 170 upon each party listed below, by email and U.S. mail, postage prepaid, and upon the Commission by email and by sending 6 copies by U.S. mail, postage prepaid, to the Commission's Salem offices.

Respectfully submitted,



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