

McDowell Rackner & Gibson PC



AMIE JAMIESON
Direct (503) 595-3927
amie@mcd-law.com

November 30, 2010

VIA ELECTRONIC FILING AND FIRST CLASS MAIL

PUC Filing Center
Public Utility Commission of Oregon
PO Box 2148
Salem, OR 97308-2148

Re: Docket UE 219 – In the Matter of PacifiCorp’s Application to Implement Provisions of Senate Bill 76.

Enclosed for filing in the above captioned docket are an original and one copy of PacifiCorp’s Response in Opposition to ICNU’s Application for Reconsideration.

A copy of this filing was served on all parties to this proceeding as indicated on the attached Certificate of Service.

Very truly yours,

Amie Jamieson

Enclosures

cc: Service list

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing document in UE 219 on the following named person(s) on the date indicated below by email and first-class mail addressed to said person(s) at his or her last-known address(es) indicated below.

David B. Hatton
Assistant Attorney General
Department of Justice
1162 Court St. NE
Salem, OR 97301-4096
david.hatton@state.or.us

Melinda Davison
Davison Van Cleve PC
333 SW Taylor – Ste. 400
Portland, OR 97204
mail@dvclaw.com

Glen H. Spain
Pacific Coast Federation of Fishermen’s
Associations (PCFFA) and
Institute for Fisheries Resources (IFR)
fish1ifr@aol.com

Kelcey Brown
Public Utility Commission Of Oregon
PO Box 2148
Salem Or 97301
kelcey.brown@state.or.us

Steve Kirk
Oregon Dept. of Environmental Quality
steve.kirk@state.or.us

Chris Stine
Oregon Dept. of Environmental Quality
chris.stine@state.or.us

Rick Kepler
Oregon Dept. of Fish and Wildlife
rick.j.kepler@state.or.us

Ken Homolka
Oregon Dept. of Fish and Wildlife
ken.homolka@state.or.us

Mary Graine
Oregon Water Resources Dept.
mary.s.graine@wrd.state.or.us

Ron C. Kohanek
Oregon Water Resources Dept.
ron.c.kohanek@wrd.state.or.us

Peter Brucker
Salmon River Restoration Council
ptbp2day@gmail.com

Kurt Burkholder
Oregon Dept. of Justice
kurt.burkholder@doj.state.or.us

Kate Miller
Trout Unlimited
kmilller@tu.org

Charlton H. Bonham
Trout Unlimited
cbonham@tu.org

Richard Lorenz
Cable Huston Benedict
Haagensen & Lloyd LLP
1001 SW Fifth Ave., Suite 200
Portland, OR 97204-1136
rlorenz@cablehuston.com

Laurence Cable
Cable Huston Benedict
Haagensen & Lloyd LLP
1001 SW Fifth Ave., Suite 200
Portland, OR 97204-1136
lcable@cablehuston.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Randal Falkenberg
RFI Consulting
PMB 362
8343 Roswell Road
Sandy Springs, GA 30350
consultrfi@aol.com

John Corbett
Yurok Tribe
jcorbett@yuroktribe.nsn.us

G. Catriona McCracken
Citizens' Utility Board of Oregon
catriona@oregoncub.org

Kevin Elliott Parks
Citizens' Utility Board of Oregon
kevin@oregoncub.org

Raymond Myers
Citizens' Utility Board of Oregon
ray@oregoncub.org

Gordon Feighner
Citizens' Utility Board of Oregon
gordon@oregoncub.org

Bob Jenks
Citizens' Utility Board of Oregon
bob@oregoncub.org

S. Craig Tucker
ctucker@karuk.us

Carl Ullman
Klamath Tribes
Klamath Water Project
bullman3@earthlink.net


Mark C Rockwell
NCFFF
summerhillfarmpv@aol.com

Richard Roos-Collins
Natural Heritage Institute
100 Pine Street, Ste. 1550
San Francisco, CA 94111
rrcollins@n-h-i.org

Brett Swift
American Rivers
320 SW Stark St - Ste 418
Portland, OR 97204
bswift@amrivers.org

Lisa Brown
Waterwatch Of Oregon
Lisa@Waterwatch.Org

DATED: November 30, 2010



Amie Jamieson

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 **UE 219**

4 In the Matter of PacifiCorp's Application to
5 Implement Provisions of Senate Bill 76.

6 **PACIFICORP'S RESPONSE IN**
7 **OPPOSITION TO**
8 **ICNU'S APPLICATION**
9 **FOR RECONSIDERATION**

10 Pursuant to OAR 860-001-0720(4), PacifiCorp (or the Company) files this Response to
11 the Application for Reconsideration (Reconsideration Application) of Order No. 10-364¹
12 (Surcharge Order), as amended by Order No. 10-390,² filed by the Industrial Customers of
13 Northwest Utilities (ICNU). In its Reconsideration Application, ICNU reiterates arguments
14 previously presented to and rejected by the Public Utility Commission of Oregon
15 (Commission) in this proceeding. ICNU presents no basis for reconsideration of the
16 Surcharge Order, and PacifiCorp requests that the Commission reject ICNU's
17 Reconsideration Application.

18 **I. BACKGROUND**

19 PacifiCorp filed an Application to Implement Provisions of Senate Bill 76
20 (Application) on March 18, 2010. Through the Application and the concurrently-filed
21 Schedule 199 in Advice No. 10-008, the Company sought to implement the provisions of
22 SB 76.³ Specifically, the Application and advice filing complied with the requirements that
23 the Company file the Klamath Hydroelectric Settlement Agreement (KHSA) and associated

24 ¹ *Re PacifiCorp's Application to Implement Provisions of Senate Bill 76*, Docket UE 219, Order
25 No. 10-364 (Sept. 16, 2010).

26 ² *Re PacifiCorp's Application to Implement Provisions of Senate Bill 76*, Docket UE 219, Order
No. 10-390 (Oct. 11, 2010).

³ SB 76 is codified at ORS 757.732 through 757.744.

1 analyses, and implement tariffs for the collection of two nonbypassable surcharges to fund
2 costs of removing the Klamath Hydroelectric Project (Project) dams.

3 On September 19, 2010, the Commission issued the Surcharge Order in this
4 proceeding. In that order, the Commission approved the rates PacifiCorp filed in
5 Schedule 199, finding that “[b]ecause the KHSA limits costs and manages risk better than
6 relicensing, . . . the KHSA . . . [is] in the best interest of customers” and “the KHSA surcharges
7 are, therefore, fair, just and reasonable.” Surcharge Order at 13, 29. In reaching this
8 conclusion, the Commission conducted a comprehensive review of the evidence, including
9 “detailed economic studies of the KHSA surcharges,” the “projected costs of both relicensing
10 and decommissioning of the dams,” and the “quantifiable and unquantifiable benefits and
11 risks of the KHSA and relicensing options.” Surcharge Order at 13.

12 In the Surcharge Order, the Commission imposed three specific requirements on the
13 surcharges. First, the Commission required PacifiCorp to file updated surcharge rates each
14 year as necessary according to the review process set forth in the Surcharge Order.
15 Surcharge Order at 29. Second, the Commission required PacifiCorp to modify the tariff
16 language regarding refunds as set forth in the Surcharge Order to ensure that the tariff
17 language fully reflects the provisions of SB 76. Surcharge Order at 25, 29. Finally, the
18 Commission ordered PacifiCorp to track collections under Schedule 199 by customer class.
19 Surcharge Order at 29. On October 11, 2010, the Commission issued Order No. 10-390 in
20 this proceeding to correct minor errors in the Surcharge Order.

21 II. DISCUSSION

22 Under ORS 756.561(1) and OAR 860-001-0720(2)(e), the Commission may grant an
23 application for reconsideration only if the applicant shows that there is (1) new evidence
24 essential to the decision and that was unavailable and not reasonably discoverable before the
25 order was issued; (2) a change in law or policy since the order was issued relating to an

26

1 essential issue to the decision; (3) an error of law or fact in the order that is essential to the
2 decision; or (4) good cause for further examination of an issue essential to the decision.

3 ICNU's Reconsideration Application is not based upon new evidence or a change in
4 law or policy. Instead, ICNU argues that reconsideration is necessary to correct errors of law
5 and fact and "because the decision has significant consequences that create good cause for
6 reconsideration." Reconsideration Application at 3. ICNU has not demonstrated any error of
7 law or fact in the Surcharge Order, nor has it established that the Surcharge Order will have
8 unanticipated consequences.

9 ICNU presents three alleged bases for reconsidering the Surcharge Order. ICNU
10 claims that the Commission erred by finding that KHSA surcharge should be spread among
11 customer classes based on each class' share of generation revenues. ICNU also claims that
12 the Commission committed an error of law when it implemented an annual adjustment to the
13 surcharges to account for sales growth rather than projecting and accounting for load growth
14 in the initial surcharge calculation. Finally, ICNU requests that the Commission reconsider its
15 decision to require PacifiCorp to track contributions on a customer class basis rather than on
16 an individual customer basis for customers on Schedules 47 and 48, or alternatively, that the
17 Commission include language in the tariff stating that individual customers on Schedules 47
18 and 48 are entitled to refunds in the event of over collection of the surcharges.

19 The arguments ICNU presents in support of its Reconsideration Application are
20 virtually identical to the arguments it presented to the Commission in its testimony, opening
21 brief, and reply brief on surcharge issues in this proceeding. The Commission's
22 comprehensive Surcharge Order considered and rejected these arguments. Without the
23 presentation of new evidence or argument, ICNU has provided no basis for reconsideration.

24
25
26

1 **A. There Was No Error of Law or Fact in the Commission’s Rate Spread**
2 **Determination.**

3 ICNU argues that the Commission should have adopted “ICNU’s suggestion to use the
4 equal percentage rate spread that was adopted in the Stipulation in UE 217.” Reconsideration
5 Application at 4. Most fundamentally, ICNU is incorrect that the Commission adopted an
6 equal percentage rate spread in Docket UE 217; the rate spread agreed to by the Docket UE
7 217 parties, including ICNU, does not spread the rate increase equally across customer
8 classes. Company’s Opening Brief at page 20.

9 ICNU criticizes the Commission for allegedly ignoring ICNU’s argument that the
10 Klamath surcharges are not ordinary ratemaking costs and traditional cost of service
11 methodology should not be used in this case. Reconsideration Application at 4. However, the
12 Commission expressly summarized ICNU’s position on page 18 and rejected it at page 20 of
13 the Surcharge Order, finding that because the KHSA provides for continued generation by the
14 dams at least until December 31, 2019, with dam removal thereafter, “KHSA costs are
15 generation-related . . . and should be allocated accordingly.”

16 In any event, ICNU’s argument that the Commission erred as a matter of law in setting
17 the rate spread in this case supports the opposite conclusion. ICNU argues that the
18 Commission operates under a “flexible regulatory scheme” and that it has “great freedom to
19 determine which of many possible methods it will use” to set rates. Reconsideration
20 Application at 4-5. These arguments demonstrate that the Commission acted within its
21 discretion in its rate spread determination and there was no error of law.

22 **B. The Commission Did Not Commit an Error of Law in Accounting for Load**
23 **Growth Through Annual Surcharge Reviews Instead of Ordering Automatic**
24 **Reductions.**

25 ICNU argues that the Commission committed an error of law by failing to implement
26 ICNU’s recommendation for an automatic reduction to the surcharge now to account for
27 projected, long-term load growth. Reconsideration Application at 5. ICNU also claims that the
28 Commission’s decision to annually review and adjust the surcharges as necessary violates

1 ORS 757.736(7), which requires that "[t]o the extent practicable, the commission shall set the
2 surcharges so that total annual collections of the surcharges remain approximately the same
3 during the collection period." *Id.*

4 The Commission's approach to incorporating sales growth into the surcharges during
5 the annual review process is reasonable and consistent with SB 76. The Commission found
6 that PacifiCorp "correctly calculated the surcharges pursuant to the requirements of SB 76" by
7 equally spreading the total surcharge amount over the collection period. Surcharge Order at
8 17. To ensure that the surcharges remained "approximately the same during the collection
9 period" as required by SB 76 and do not result in a significantly larger or smaller surcharge in
10 the final year, the Commission adopted the annual review process proposed by Staff. *Id.* at
11 18. During the review process, the Company will meet with Staff and other interested parties
12 to determine whether it is necessary to file updated surcharge rates based on the most recent
13 forecast of future loads, the history of interest earned, and other transactions affecting trust
14 account balances. *Id.* at 17.

15 There is no error of law in how the Surcharge Order accounts for future load growth.
16 Nothing in SB 76 requires the Commission to adopt ICNU's proposal to include long-term load
17 growth projections in the initial surcharge calculation. To ensure that the surcharges collect
18 only Oregon's share of the target amount as set forth in SB 76 and that the final year's
19 surcharge collection is approximately the same as other years' surcharge collections, the
20 Commission has established the annual review mechanism. The Surcharge Order
21 appropriately balances the requirements under SB 76 that (1) the surcharges do not exceed
22 Oregon's share of the customer contribution and (2) to the extent practicable, the annual
23 surcharge collections should be approximately equal.

24 ICNU's position in its Reconsideration Application that an annual review of the
25 surcharges violates ORS 757.736(7) is undercut by its express support for such an annual
26 review in its testimony and briefing in this case. Surcharge Order at 16, n.108 (noting that

1 ICNU recommends that “the Commission monitor the surcharges on an annual basis,
2 providing both Staff and intervenors with opportunities to review and challenge surcharge
3 inputs.”)

4 **C. The Commission Properly Ordered Tracking Surcharge Collections by Customer**
5 **Class.**

6 ICNU complains that the Surcharge Order fails to guarantee customers a refund in the
7 event of over collection because it does not require PacifiCorp to track surcharge collections
8 on an individual customer basis for customers on Schedules 47 and 48. Reconsideration
9 Application at 6. ICNU seeks reconsideration of this decision or, in the alternative, proposes
10 that the Commission include language in the tariff stating that individual customers on
11 Schedules 47 and 48 are entitled to refunds for over collections. *Id.* at 7. ICNU has not
12 established any error of law or fact with respect to these issues.

13 As the Commission stated in the Surcharge Order, SB 76 does not address the
14 accounting for possible refunds, leaving this issue to the Commission’s discretion. Surcharge
15 Order at 26. In addressing this issue, the Commission sought to “balance fairness to
16 customers with practicality and efficiency.” *Id.* In balancing these interests, the Commission
17 required the Company to track collections on a customer class basis. Because surcharges
18 were already being collected and the accounting of the surcharges must be timely, however,
19 the Commission decided it would not require PacifiCorp to develop new accounting systems
20 to track Schedule 199 collections on an individual customer basis. *Id.*

21 ICNU’s alternative proposal that the Commission require PacifiCorp to include
22 language in the tariff stating that individual customers on Schedules 47 and 48 are entitled to
23 refunds for over collections is an indirect way of requiring the Company to track surcharge
24 collections on a customer basis, a proposal which the Commission reasonably rejected. The
25 Surcharge Order requires that Schedule 199 fully reflect the provisions of SB 76, including
26

1 language applicable to refunds. Surcharge Order at 25. There is no requirement in SB 76
2 that the tariff include the additional language proposed by ICNU.

3 ICNU argues that a result in this case that does not guarantee individual customer
4 refunds (including refunds for former customers) is contrary to Commission precedent.
5 Reconsideration Application at 6-7. This is not the case. As noted in PacifiCorp's Opening
6 Brief, the Commission previously ordered distribution of the Department of Justice's \$1.75
7 million settlement with the Williams Companies to customers through Tariff schedule 180.
8 The tariff applied rate surcredits to bills to then-current customers only and did not guarantee
9 individual refunds. See PacifiCorp Opening Brief at 22-23.

10 **III. CONCLUSION**

11 ICNU has presented no valid basis for reconsidering the Surcharge Order. The
12 Reconsideration Application simply reiterates ICNU's original arguments in this proceeding,
13 which the Commission considered and rejected in the Surcharge Order. Accordingly, the
14 Company respectfully requests that the Commission deny ICNU's Reconsideration
15 Application.

16 */// /// ///*
17 */// /// ///*
18 */// /// ///*
19 */// /// ///*
20 */// /// ///*
21 */// /// ///*
22 */// /// ///*
23 */// /// ///*
24 */// /// ///*
25 */// /// ///*
26 */// /// ///*

1 DATED: November 30, 2010.

Respectfully submitted,

2 McDowell Rackner & Gibson PC

3
4 

5 Katherine McDowell
Amie Jamieson

6 Attorneys for PacifiCorp

7 PACIFICORP

8 Jordan A. White
9 Senior Counsel
Pacific Power
10 1407 W. North Temple, Suite 320
Salt Lake City, Utah 84116
11 Phone: (801) 220-2279
Facsimile: (801) 220-4615