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November 15, 2010

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 PACIFICORP Application to Implement the Provisions of
Senate Bill 76. **Docket No. UE 219**

Dear Filing Center:

Enclosed please find an original and one copy of the Application for
Reconsideration on behalf of the Industrial Customers of Northwest Utilities in the above-
referenced docket.

Thank you for your attention to this matter.

Sincerely yours,

/s/ Sarah A. Kohler
Sarah A. Kohler
Paralegal

Enclosures
cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Application for Reconsideration on behalf of the Industrial Customers of Northwest Utilities 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 where paper service has been waived.

Dated at Portland, Oregon, this 15th day of November, 2010.

/s/ Sarah A. Kohler
Sarah A. Kohler

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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 219

In the Matter of)	
)	
PACIFICORP, dba Pacific Power)	APPLICATION FOR
)	RECONSIDERATION OF THE
Application to Implement the Provisions of)	INDUSTRIAL CUSTOMERS OF
Senate Bill 76.)	NORTHWEST UTILITIES
)	
)	
_____)	

I. INTRODUCTION

On September 16, 2010, the Public Utility Commission of Oregon (“OPUC” or the “Commission”) issued Order No. 10-364, approving the Klamath dam removal surcharges proposed by Pacific Power (“PacifiCorp” or the “Company”). Re PacifiCorp, UE 219, Order No. 10-364 (Sep. 16, 2010) (“Order No. 10-364”). The Commission issued an errata order on October 11, 2010, correcting several errors. Re PacifiCorp, UE 219, Order No. 10-390 (Oct. 11, 2010). The surcharges approved in Order 10-364 will collect \$158.24 million from Oregon customers over the span of ten years to fund the removal of four Klamath dams. The surcharge approved by the Commission is an overall rate increase of 1.6%, with a disproportionately higher 2% increase for industrial customers. Pursuant to ORS § 756.561 and OAR 860-014-0095, the Industrial Customers of Northwest Utilities (“ICNU”) requests that the Commission grant reconsideration of Order No. 10-364, as amended by Order No. 10-390.

The Commission should reconsider its approval of the surcharges, because:

1) PacifiCorp's proposed rate spread will impose a disproportionately higher surcharge on industrial customers through an unequal rate increase; 2) the surcharge fails to account for load growth estimates that are presently available and relied upon by the Company in other cases; and 3) the Commission failed to adequately ensure that refunds will be provided to customers in the event of surcharge over-collection or non-removal of one or more Klamath dams. In addition, the Commission needs to correct and/or clarify its treatment of refunds to ensure that former and current customers receive the refunds to which they are entitled.

II. BACKGROUND

Senate Bill ("SB") 76 provides a framework for PacifiCorp to collect a surcharge from customers to fund the removal of four Klamath hydroelectric dams. SB 76 required PacifiCorp to file tariffs within 30 days of execution of the Klamath Hydroelectric Settlement Agreement ("KHSA"). On February 18, 2010, the KHSA was approved, and on March 18, 2010, PacifiCorp filed tariffs and an application to implement the surcharge provisions of SB 76. The Commission held a Public Meeting and determined that the tariffs proposed by PacifiCorp would remain in effect during the investigation of the reasonableness of the proposed rates.

On May 26, 2010, Staff, ICNU and other parties filed testimony. PacifiCorp filed reply testimony on June 21, 2010. The Commission held a workshop on July 23, 2010, in which several parties made technical presentations. The parties filed opening briefs on August 9, 2010, and reply briefs were filed on August 18, 2010. On September 16, 2010, the Commission issued Order No. 10-364 approving the surcharge, and on October 11, 2010, filed Order No. 10-390 with corrections to the original order.

PAGE 2 – APPLICATION FOR RECONSIDERATION OF ICNU

III. ARGUMENT

A. ICNU Has Satisfied the Legal Standard for Reconsideration

Any party may file for reconsideration of a Commission order within sixty days of the date of service of the order. ORS § 756.561(1); OAR 860-014-0095(1). The Commission may grant an application for reconsideration “if sufficient reason therefor is made to appear.” ORS § 756.561(1). The Commission specifically may grant reconsideration if the applicant shows that there is: 1) new evidence which was unavailable and not reasonably discoverable before issuance of the order; 2) a change in the law or agency policy since the date the order was issued; 3) an error of law or fact in the order that is essential to the decision; or 4) good cause for further examination. OAR 860-014-0095(3).

The Commission should reconsider its approval of PacifiCorp’s Klamath dam removal surcharges to correct errors of law and fact that were essential to the decision and because the decision has significant consequences that create good cause for reconsideration. The Commission misinterpreted its authority under SB 76 and issued a decision that inequitably distributes the burden of dam removal, over collects the surcharge amounts through failure to account for load growth, and fails to ensure adequate refunds to customers if the Klamath dams are not removed.

B. Implementation of the KHSA Is Not a Generation-Related Expense

In Order 10-364, the Commission adopts the Company’s proposed method of rate spread because “KHSA costs are generation-related . . . and should be allocated accordingly.” Order 10-364 at 20. The Commission states that its “general ratemaking function is to determine an overall level of rates that are just, and reasonable, and to do so, we traditionally balance the

competing interests of a utility and its customers.” Id. at 8. The Commission explicitly recognizes that this proceeding is “unique,” and applies to the “Klamath project only.” Id. Despite the unique nature of this proceeding, the Commission does not see fit to adopt a rate spread that addresses the distinct and highly political nature of the Klamath dam removal. The Commission should reconsider its decision and adopt a more equitable, equal percentage rate spread, as the dams are being removed for environmental reasons. The dam removal costs are simply not generation costs, and thus, there is no basis to charge industrial customers a disproportionately higher percentage of the dam removal costs.

The Commission rejected ICNU’s suggestion to use the equal percentage rate spread that was adopted in the stipulation in UE 217, finding that an equal percentage rate would improperly include costs of distribution and transmission. Id. at 19-20. The Commission came to this conclusion because it views the Klamath dam removal in the same way it views removal of any typical generation facility. In so concluding, the Commission ignores the crux of ICNU’s argument, that: “Klamath surcharges are not ordinary ratemaking costs and [the] conventional cost of service reasoning should have little bearing on the rate spread determination.” ICNU Opening Brief at 10.

The Klamath dam removal is, in its essence, an objective motivated by environmental and political forces. ICNU is not aware of any removal of a generation facility that is governed by Oregon legislation. In other words, there is nothing typical about this proceeding or SB 76. The Commission errs by treating dam removal as an exclusively generation-related expense, and should instead take into account the actual factors motivating dam removal. The Commission operates under a “flexible regulatory scheme,” and “has great

freedom to determine which of many possible methods it will use” to set rates in a manner that is fair, just, and reasonable. Re Portland Gen. Elec. Co., Docket Nos. DR 10, UE 88 & UM 989, Order No. 08-487 at 5 (Sept. 30, 2008). The Commission unnecessarily constrained its authority and has failed to set rates consistent with its statutory duty to protect customers from “unjust and unreasonable exactions.” ORS § 756.040(1). Thus, the Commission should reconsider its decision to unfairly burden industrial customers.

C. The Failure to Account for Load Growth Constitutes an Error of Law

The Commission acknowledges that PacifiCorp’s load will not remain static through its adoption of Staff’s proposal that requires PacifiCorp to file annual surcharge updates that reflect the “most recent forecast of future loads” Order 10-364 at 17. Yet, the Commission rejected ICNU’s request to account for PacifiCorp’s most recent load growth forecast used in its integrated resource plan (“IRP”). The Klamath surcharges do not account for any potential increase in load growth, despite the fact that the Company acknowledged in its March 2010 IRP that it anticipates sales growth of slightly over 1% per annum. Re PacifiCorp, UE 219, Direct Testimony of Randall J. Falkenberg, ICNU/100, Falkenberg/7-8 (May 26, 2010). The current load growth forecast is information that is presently available to the Company and the Commission, and it should be reflected in the surcharge. The failure to use the best available data will result in the over collection of surcharge amounts, and as a result, the Commission’s approval of the surcharge will result in unjust and unreasonable rates.

Further, the Commission’s decision to annually review and adjust the surcharge violates the requirement of ORS § 757.736(7) that the surcharge be set so “total annual collections remain approximately the same during the collection period.” The Commission

could have more easily – and in a manner more consistent with the implementing legislation – addressed this problem by adopting ICNU’s recommendation to implement an automatic reduction to the surcharge now to account for load growth. The failure to approve a surcharge in accordance with the implementing legislation is an error of law which the Commission should reconsider and correct.

D. The Refund Provisions Adopted by the Commission Are Inadequate to Ensure Customers Receive a Refund

To address the issue of refunds, the Commission adopted minimal additions to the tariff language to include references to the statutory refund provisions of ORS §§ 757.736(9) and 757.736(10), which provide for a refund in the case of over collection or if one or more of the Klamath dams is not removed. Over collection is highly likely, especially in light of the fact that the tariff relies on faulty assumptions, such as a failure to account for estimated load growth and unreasonably low estimates for interest on the trust account. Further, Klamath dam removal is highly uncertain given the many contingencies that are built into the KHSA. The refund provisions adopted by the Commission leave considerable uncertainty with regard to which customers will receive a refund in the likely event of either over collection or non-removal of Klamath dams.

PacifiCorp has indicated that, if refunds are issued, it believes the appropriate approach to refunds is “through a rate surcredit to existing customers on a going forward basis.” PacifiCorp Opening Brief at 22. PacifiCorp’s proposed method would not ensure that individual customers who are no longer on the PacifiCorp system receive *any* refund for their unnecessary contributions to the trust account. In a previous case in which the Commission has ordered

refunds, both former and/or current customers who had overpaid were eligible for refunds. Re Portland Gen. Elec. Co., Docket Nos. DR 10, UE 88 & UM 989, Order No. 08-487 at 104-105 (Sept. 30, 2008). Thus, although it is implied that the customers who pay the surcharge are the same customers that receive the refund, the language adopted by the Commission does not ensure this result. ICNU's proposed tracking mechanism would correct this problem and ensure that those customers who paid surcharges would receive refunds.

The Commission's order noted that the refund provisions of the statutes are silent with regard to accounting for possible refunds, and has acknowledged that when the statute is silent, the Commission has discretion to determine how to plan for accounting for refunds. Order 10-364 at 26. The Commission's decision to require that contributions are tracked on a customer class basis only, rather than at an individual level, will not ensure that all customers who contributed to the trust account actually receive a refund. ICNU requests that the Commission reconsider its decision not to require PacifiCorp to track the contributions of individual customers on rate schedules 47 and 48. In the alternative, ICNU requests that the Commission, at minimum, include express language in the tariff which states that individual customers on rate schedules 47 and 48 are entitled to a refund for amounts that are over collected or unnecessary for Klamath dam removal.

IV. CONCLUSION

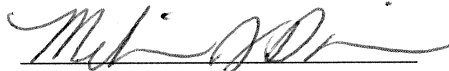
The decision in Order No. 10-364 approving the Klamath dam removal surcharges allows PacifiCorp to over collect the amount required for Klamath dam removal, disproportionately burdens industrial customers, and does not guarantee a refund in the event of over collection of the surcharge or non-removal of Klamath dams. For the reasons stated above,

the Commission should reconsider its decision to authorize the Klamath surcharges in this manner.

Dated this 15th day November, 2010.

Respectfully submitted,

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