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August 18, 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 five copies of the Reply Brief 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

Enclosures
cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Reply Brief 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 18th day of August, 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	)	REPLY BRIEF OF THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES
	)	
Application to Implement the Provisions of Senate Bill 76.	)	
	)	

I. INTRODUCTION

The Industrial Customers of Northwest Utilities ("ICNU") submits the following reply brief regarding surcharge issues. The Oregon Public Utility Commission ("OPUC" or the "Commission") should ensure that customers do not pay rates higher than required by law, and protect customers from overpaying for dam removal costs, especially if the Klamath dams are not removed or their removal is delayed. PacifiCorp, Staff, the Citizens' Utility Board of Oregon ("CUB"), the Oregon Department of Fish and Wildlife, Department of Environmental Quality and Water Resources Department ("Intervenor State Agencies"), and the environmental advocates (American Rivers, California Trout, Institute for Fisheries Resources, Pacific Coast Federation of Fishermen's Associations, Trout Unlimited, and the Klamath Tribes, the "Joint Parties") recommend that the Commission impose higher rates now because future rates can be adjusted, and that the Commission should simply ignore the warning signs that dam removal may not occur in 2020. The Commission should recognize the potential train wreck that the dam removal process represents and ensure that ratepayers are fully protected by terminating the surcharges until it becomes clear that California will fund its portion of dam removal costs, or (in

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the alternative) make reasonable reductions in the surcharges and ensure they can be fully refunded. Finally, the Commission should adopt a fair and equitable rate spread that recognizes that there is no legitimate basis on which to require industrial customers to pay 33% higher than residential customers. The surcharges are caused because of legislative mandates based on environmental considerations, and relying on old policies designed to deter future industrial load is an absurd basis to penalize industrial customers.

II. ARGUMENT

1. The Commission Should Recognize the Importance of California's Decision to Delay the Klamath Water Bond

PacifiCorp, CUB, the Intervenor State Agencies and the Joint Parties argue that California may not delay the water bond, or that a delay is of "no import." PacifiCorp Brief at 15-16; CUB Brief at 11-12; Joint Parties Brief at 8-12; Intervenor State Agencies Brief at 3-4. In addition, the Joint Parties argue that ratepayers will be harmed if the Commission lowers their rates and terminates the Klamath surcharges. Joint Parties Brief at 7. California's decision to delay the water bond is significant, will likely result in a termination or amendment of the Klamath Hydro Settlement Agreement ("KHSA"), and provides the Commission with ample support to place the Klamath surcharges on hold or otherwise adopt reasonable ratepayer protections. Ratepayers will be benefited (not harmed) if they do not have to pay for dam removal costs any earlier than is absolutely necessary, particularly in light of PacifiCorp's large rate increases and the current economy.

PacifiCorp, CUB and the Joint Parties would have the Commission ignore the fact that the California bond, which is an essential cornerstone of dam removal, has been delayed

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almost two years. PacifiCorp states that the bond may not be postponed, and the Joint Parties have over a page of their brief explaining that the "California bond remains on the November ballot." PacifiCorp Brief at 15, n.6; Joint Parties Brief at 11-12. Events have overtaken these arguments, as the California legislature has voted to move the water bond to the 2012 election.[1/] The water bond was always strongly opposed by California environmental organizations, including at least one of the Joint Parties (the Pacific Coast Federation of Fisherman's Associations).[2/] Ratepayers could be harmed if the Commission ignores these unfolding developments regarding California's willingness to contribute to the costs of dam removal.

The delay in the water bond is of "import" because it means that the agreement allowing dam removal (the KHSA) will likely need to be terminated or amended. Contrary to the assertions of the Joint Parties, ICNU's position is not that the California bond is a mandatory precondition or the absence of a bond in 2010 is an absolute bar to the implementation of the KHSA. Joint Parties Brief at 10. The KHSA specifically provides that if dam removal costs more than $200 million, then California must provide the all additional funds by March 2012, or the KHSA will be "terminable." PPL/104 (KHSA §§ 4.1.1.c, 4.1.2, 3.3.4.c, 8.11.1). Due to the delay in the water bond, the KHSA will be "terminable" because it is unrealistic to assume that dam removal will cost less than $200 million or California will find another mechanism to raise the necessary dam removal funds. The reasonable and prudent course of action is to recognize

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1/ Press releases announcing the delay of the water bond has been delayed to 2012 are included with this Reply Brief as Attachment A. The Commission may take judicial notice of the press release pursuant to ORS § 40.065 (facts capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned) and ORS § 40.090 (public acts of the executive and legislative branches of other states).

2/ A list of the environmental and fish advocate opponents of the water bond can be found at: http://nowaterbond.com/endorsers.

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that the events assumed when SB 76 was passed and the KHSA was negotiated have not occurred as planned, and that ratepayers should be protected in the event that dam removal does not occur in 2020. It is inexplicable why Oregon ratepayers should bear the burden of this rate increase until it is absolutely necessary.

2. The Commission Should Adopt an Equal Percentage Rate Spread

PacifiCorp, CUB and Staff all raise a variety of arguments regarding why the Commission should not adopt an equal percentage rate increase, but instead should require industrial customers to pay a higher percentage of dam removal costs than other customers. The justifications range from the theoretical to the factually incorrect, but do not explain why industrial customers should be required to pay for the politically imposed costs based on an arbitrarily modified version of PacifiCorp's flawed rate spread methodology.

Staff, PacifiCorp and CUB all argue that the Klamath surcharges should be allocated based on the Company's cost of service methodology for allocation of generation related costs. Staff Brief at 6-8, PacifiCorp Brief at 19-20; CUB Brief at 8-10. These briefs, however, fail to recognize that the Company did not actually allocate these costs in the same manner that dam removal and replacement power costs would be allocated if the Company's cost of service methodology was used. ICNU/100, Falkenberg/9-11. The cost allocation would be different if demand costs were appropriately included, future costs were properly accounted for, and a different "floor" was used. Id.

Traditional cost of service requirements support an equal percentage rate increase and not the punitive PacifiCorp rate spread. Staff cites a 1998 Commission decision for the standard that cost allocation should pass costs to customers in a manner that leads to more

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efficient price signals and efficient use of electrical service. Staff Brief at 7 citing Re Methods for Estimating Marginal Costs of Serv. for Elec. Utils., Docket No. UM 827, Order No. 98-374 (Sept. 11, 1998). ICNU agrees with the basic premise that costs should be allocated to send efficient price signals and efficient use of electricity, but those goals militate in favor of an equal percentage rate increase. Industrial customer loads have dramatically declined in Oregon, and imposing higher than average rates will not contribute to more efficient use of electricity or efficient price signals, but will instead result in further load loss and the non-use of electricity by those customers who are not causing PacifiCorp to incur dam removal costs. Further, this policy is designed to allocate costs of new generation, not costs for removal of a generating facility.

Staff, PacifiCorp and CUB also fail to recognize that PacifiCorp's cost of service methodology is very controversial and has not been approved by the Commission in any recent proceedings. Rate spread issues in at least the last four PacifiCorp rate cases have been settled. PacifiCorp's rate spread methodology includes significant flaws and is harmful to industrial customers. PacifiCorp's recent general rate case settlements have used the Rate Mitigation Adjustment ("RMA") to adjust the final rates so that they are more fair and equal, and more closely approximate an appropriate rate spread methodology. Contrary to CUB's assertions, the RMA is no longer being used to mitigate rate shock, but is a tool to make necessary adjustments to PacifiCorp's rate spread in lieu of making it more in line with the principles of cost causation and the efficient allocation of electricity usage similar to those made to Portland General Electric Company's rate spread methodology. It is inappropriate to rely upon PacifiCorp's flawed cost of service methodology that has not been vetted or approved in any recent proceedings. PacifiCorp maintains that it mainly used this approach because it was the approach suggested by Staff.

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The parties in support of penalizing industrial customers also ignore that SB 76 is a legislatively mandated surcharge that upsets traditional cost of service analysis. All customers are paying higher rates for dam removal than would be the case if the dam removal costs were recovered through traditional regulation. ICNU/100, Falkenberg/3. There is no one class of customers, and especially not industrial customers, that are causing the SB 76 surcharges to be imposed. The Klamath surcharges are more akin to Senate Bill 1149's 3% public purpose charge or another special purpose legislation which imposes a specific charge without regard to rate spread cost of service principles.

Staff, PacifiCorp and CUB all argue that residential customers are actually paying higher costs because the per kilowatt hour charges are higher for residential customers than industrial customers. E.g., Staff Brief at 7-8; PacifiCorp Brief at 20. PacifiCorp also argues that residential customers pay a larger amount of the overall surcharges. PacifiCorp Brief at 20. Of course residential customers pay more overall than industrial customers because there are far more residential customers, especially in light of the collapse of industrial customer load in PacifiCorp's Oregon system. In addition, parsing out the specific kilowatt charge is a red herring as it ignores other components of customers' bills. The relevant comparison is the percentage increase each customer must pay—not the specific amount of the kilowatt hour charge. Industrial customers will pay disproportionately more than other customer classes, and this inequity will be compounded and increased every year the surcharge is in effect.

Finally, CUB argues that the Commission should not adopt an equal percent rate spread because it will require CUB to reanalyze whether the underlying costs were prudently incurred. CUB Brief at 9-10. CUB's analysis "of the prudency of PacifiCorp's actions"

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regarding dam removal were based on the understanding that industrial customers would pay a higher percentage of those costs. Id. CUB's perspective upsets the traditional Commission approach, which first determines if costs are prudent and then fairly allocates those costs among customer classes. An analysis of whether certain costs were prudently incurred should not be dependent upon knowing which customers will pay for those costs. To argue otherwise is simply absurd.

3. The Commission Should Ensure that Customers that Overpay Klamath Surcharges Are Entitled to Receive Refunds if Dam Removal Fails

PacifiCorp argues that the generic subject to refund provisions should be removed from the Klamath surcharges, and that any refunds (if provided) should be "through a rate surcredit to existing customers on a going forward basis." PacifiCorp Brief at 22, 27. PacifiCorp, however, appears to have finally tactically recognized that SB 76 requires the Commission to retain the ability to refund monies back to customers, and the Company has proposed new alternative language that states: "The surcharges may be refundable only as provided by ORS 757.736(10)." Id. at 28. The Commission should reject PacifiCorp's alternative proposal and retain the full legal authority to refund amounts to those specific customers that overpay Klamath surcharges.

The Commission should reject PacifiCorp's proposal that refunds would only be issued on a prospective basis to future customers. Refunding amounts only to future customers on a going forward basis will not provide effective remedies to those customers who actually overpaid Klamath surcharges. Instead, the Commission should follow the model of refunds that were provided to Portland General Electric Company's customers for the Trojan costs. The

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Commission should facilitate providing refunds to the specific customers that overpaid by requiring PacifiCorp to track Klamath collections for all customers 1 megawatt and larger.

PacifiCorp's proposed language limiting the refunds to those only provided by ORS § 757.736(10) is unnecessarily narrow. ORS § 757.736(10) is the provision of SB 76 which explicitly allows the Commission to issue refunds if the Klamath surcharges overcollect. The Commission should retain the ability to issue refunds by requiring PacifiCorp to include language in the Klamath surcharges stating that amounts will be refunded, but the ability to issue refunds should not be limited to "only" refunds under ORS § 757.736(10). As explained in ICNU's Opening Brief, the Commission has the inherent legal authority to issue refunds, and the Commission should not limit its ability to issue refunds in any way.

4. The Commission Should Modify the Surcharges so that Collections Are Approximately the Same Each Year

PacifiCorp argues the Commission should set the Klamath surcharges so that they will collect divergent amounts each year because the surcharge amounts can be adjusted every year. PacifiCorp Brief at 21. The Company claims that incorporating its own integrated resource planning load growth projections would be "speculating as to load growth." Id. PacifiCorp finally proposes a process to change the Klamath surcharges that would be based on Staff and the Company, without any input from intervenors. Id. The Commission should reject PacifiCorp's proposals, and instead account for expected load growth by scheduling periodic surcharge reductions, monitor the surcharges on an annual basis, and provide intervenors an opportunity to review and challenge the surcharge amounts.

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SB 76 states that, to the extent practicable, the surcharges should be set to "remain approximately the same during the collection period." ORS § 757.736(7). ICNU's proposal to adjust the surcharge amounts for expected load growth is not speculating as to future loads, but relying upon the Company's load growth projections it made in its integrated resource planning process. ICNU/100, Falkenberg/8; ICNU/102, Falkenberg/3-4. If the Company's load growth "speculations" are good enough for the acquisition of multi-million dollar resource acquisition planning, then they should be sufficient to make modifications to the Klamath surcharges to ensure they collect approximately the same amount each year.

The Commission should allow all parties to review the Klamath surcharges on an annual basis. ICNU is not opposed to integrating the review of any Klamath surcharges as part of the Company's annual transition adjustment mechanism filing; however, Staff and the Company should not have exclusive power to determine the correct surcharge amount. PacifiCorp should be required to justify any surcharge amounts, and all interested parties should be provided equal opportunity to review and challenge the surcharges.

5. The Commission Should Impose a More Reasonable Interest Rate

ICNU's testimony and briefing explained why the Commission should use a 6% interest rate rather than 3.5% for any amounts collected under the Klamath surcharges. PacifiCorp argues that the surcharge amounts should not be invested in accounts that put the principal at risk and that there is no evidence that a 3.5% interest rate is unreasonable for these types of accounts. PacifiCorp Brief at 21-22. PacifiCorp flips the burden of proof. PacifiCorp must meet its burden of proof to demonstrate that all aspects of the Klamath surcharges are just and reasonable. ORS § 757.210. The evidence the Company relies upon to support the 3.5%

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interest rate is that it was a negotiated number by a large number of parties, the vast majority of which have no specialized knowledge regarding interest rates or utility rates. Failure to set a proper interest rate will harm ratepayers by overcollecting amounts, and result in only Berkshire Hathaway (which will ultimately make money off managing the trust fund because it owns the trust fund management company (Wells Fargo)) benefitting from collecting the money early.

6. The Commission Should Not Disclaim Jurisdiction Nor Conditionally Approve the Transfer of the Klamath Dams to an Unknown Entity

PacifiCorp argues that SB 76 is in conflict with the property transfer statute, and that the KHSA should govern whether the dams should be removed. PacifiCorp Brief at 23-24. In the alternative, PacifiCorp requests that the Commission approve the transfer of the Klamath dams to an unknown entity based on a number of vague conditions regarding planned events set forth in the KHSA. Id. at 24-25. The Commission should reject PacifiCorp's arguments and require the Company to properly seek approval to transfer the Klamath dams once a decision has been made to transfer them to a specific entity.

PacifiCorp correctly explains that under Oregon law, SB 76 only trumps the property transfer statute if the two laws "are in irreconcilable conflict . . . ." Id. at 24, n.7. PacifiCorp does not identify any provisions of SB 76 that are in irreconcilable conflict with the property transfer statute, but instead points to provisions of the KHSA. Id. at 24. While the legislature envisioned that the Klamath parties would enter into an agreement like the KHSA, there is no indication in SB 76 that the legislature intended the parties to KHSA to impose requirements that would result in the implied repeal or amendment of other Oregon utility laws. Regardless of whether the transfer of the dams is "central" to the KHSA, the Oregon legislature

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cannot and did not provide the KHSA parties with the legal authority to repeal the property transfer statute in this case.

III. CONCLUSION

The Commission can and should exercise its authority to protect ratepayers from unreasonable overcollections of the Klamath surcharges. The Commission should suspend the Klamath surcharges until it becomes clear that dam removal will actually commence in 2020. If allowed, the Klamath surcharges should be designed to collect no more than absolutely necessary. The Commission should reduce the current and future surcharges by assuming an appropriate interest rate and establishing mandatory annual reductions in the surcharge amounts. Finally, the Commission should require that a reasonable rate spread be utilized that will not penalize industrial customers.

Dated this 18th day of August, 2010.

Respectfully submitted,

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ATTACHMENT A

Office of the Governor

ARNOLD SCHWARZENEGGER
THE PEOPLE'S GOVERNOR

PRESS RELEASE

08/10/2010 GAAS:508:10 FOR IMMEDIATE RELEASE

Legislative Update

Governor Arnold Schwarzenegger has signed the following two bills:

AB 1260 by Assemblymember Jean Fuller (R-Bakersfield) - California Water Commission: terms of office.

AB 1265 by Assemblymember Anna Caballero (D-Salinas) - Safe, Clean, and Reliable Drinking Water Supply Act of 2012: surface storage projects: submission to voters.

(Note: Click on bill number for more information on the bill.)

FOR IMMEDIATE RELEASE
August 10, 2010

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Caballero's Legislation Passes to Delay Water Bond to 2012

Sacramento, CA – AB 1265 by Assembly Member Caballero remove the $11.14 billion water bond from the November 2010 ballot to the 2012 general election. The legislation was approved by both the State and Assembly yesterday.

"I'm glad that we were able to come together to approve the delay of the water bond. Given the current economic climate, the lack of a state budget solution and the slow recovery that California is facing, it was a wise move to spend more time preparing for an election," said Caballero who is the author of the water bond. "The public needs to hear and understand the effects of investing in our troubling water system, so that we have a safe, clean and reliable water supply for all."

Last month, Governor Schwarzenegger asked for the bond to be postponed until California's economy recovers. Although, the decision to delay the water bond was difficult and disappointing for many, it is important that the coalition that has worked so hard to put the package together, stays together.

"I took the lead to introduce AB 1265 to make sure that the work that was done to create a comprehensive package of water bills is respected and to ensure that a rewrite of the bond was not part of the deal. I am glad that the Legislature approved the delay," Caballero added. "This bond will take us in the right direction; there are funds for safe drinking water programs, stormwater capture and management; conservation, water use efficiency, dams, recycled water, desalination plants, ground water clean up, delta sustainability and drought relief. We need this bond, it is very important for California."

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