

# McDowell Rackner & Gibson PC



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

August 18, 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 five copies of PacifiCorp’s Reply Brief on Surcharge Issues.

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

Very truly yours,

A handwritten signature in black ink, appearing to read "Amie Jamieson".

Amie Jamieson

Enclosures

cc: Service list

1 **CERTIFICATE OF SERVICE**

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

5

6 David B. Hatton  
7 Assistant Attorney General  
8 Department of Justice  
9 1162 Court St. NE  
10 Salem, OR 97301-4096  
11 david.hatton@state.or.us

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

9 Glen H. Spain  
10 Pacific Coast Federation of Fishermen's  
11 Associations (PCFFA) and  
12 Institute for Fisheries Resources (IFR)  
13 fish1ifr@aol.com

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

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

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

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

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

16 Mary Grainey  
17 Oregon Water Resources Dept.  
18 mary.s.grainey@ wrd.state.or.us

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

18 Peter Brucker  
19 Salmon River Restoration Council  
20 ptbp2day@gmail.com

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

20 Kate Miller  
21 Trout Unlimited  
22 kmiller@tu.org

Charlton H. Bonham  
Trout Unlimited  
cbonham@tu.org

22 Richard Lorenz  
23 Cable Huston Benedict  
24 Haagensen & Lloyd LLP  
25 1001 SW Fifth Ave., Suite 200  
26 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

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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: August 18, 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.

**PACIFICORP'S REPLY BRIEF ON  
SURCHARGE ISSUES**

6  
7 Pursuant to the Prehearing Conference Report issued on April 5, 2010, by  
8 Administrative Law Judges Traci A. G. Kirkpatrick and Shani Pines, PacifiCorp d/b/a Pacific  
9 Power (or the Company) submits this Reply Brief on Surcharge Issues to the Public Utility  
10 Commission of Oregon (Commission) in response to Opening Briefs on Surcharge Issues filed  
11 by Commission Staff (Staff); the Citizens' Utility Board of Oregon (CUB); the Industrial  
12 Customers of Northwest Utilities (ICNU); American Rivers, California Trout, Institute for  
13 Fisheries Resources, Pacific Coast Federation of Fishermen's Associations, Trout Unlimited,  
14 and the Klamath Tribes (collectively, Trout Unlimited); and the Oregon Department of Fish and  
15 Wildlife, Department of Environmental Quality, and Water Resources Department (collectively,  
16 Intervenor State Agencies) on August 9, 2010.

17 **I. ARGUMENT**

18 **A. No Party Has Presented Evidence Contradicting the Substantial Evidence that**  
19 **the Surcharges Result in Fair, Just, and Reasonable Rates.**

20 **1. The Parties Presented Substantial Evidence that the Surcharges Result in**  
21 **Fair, Just, and Reasonable Rates.**

22 Staff "recommends that the Commission determine that the surcharges are fair, just  
23 and reasonable." Staff's Opening Brief at 4. With the exception of ICNU, all parties in this  
24 proceeding agree that the rates resulting from the surcharges are fair, just, and reasonable.  
25 CUB found that the "rate increase associated with the KHSA is prudent and is, therefore, fair,  
26 just and reasonable." CUB's Opening Brief at 7. Trout Unlimited concluded that "[t]here is  
little to no dispute that the Surcharges will result in fair, just and reasonable rates." Trout

1 Unlimited's Joint Opening Brief at 3. The Intervenor State Agencies recommend that "the  
2 Commission should determine that the Surcharges result in rates that meet the 'just and  
3 reasonable' standard set forth in ORS 757.736(4)." Intervenor State Agencies' Opening Brief  
4 at 2.

5 The parties determined that the surcharges result in just and reasonable rates for two  
6 reasons. First, the parties found that both costs and risks to customers are lower under the  
7 Klamath Hydroelectric Settlement Agreement (KHSA) than they would be otherwise.  
8 PacifiCorp's Opening Brief at 17; Staff's Opening Brief at 4; CUB's Opening Brief at 6;  
9 Intervenor State Agencies' Opening Brief at 2; Trout Unlimited's Joint Opening Brief at 3, 7.  
10 The parties that reviewed the Company's economic analyses—Staff and CUB—found that the  
11 costs under the KHSA were lower than the expected costs of relicensing. Staff's Opening  
12 Brief at 4; CUB's Opening Brief at 6.<sup>1</sup>

13 Second, the parties concluded that the surcharges satisfy the requirements of Senate  
14 Bill (SB) 76. PacifiCorp's Opening Brief at 19; Intervenor State Agencies' Opening Brief at 2;  
15 Trout Unlimited's Joint Opening Brief at 3. Specifically, the surcharges: (1) are less than the  
16 statutory cap on Oregon's share of customer contributions set forth in ORS 757.736(3); (2) are  
17 calculated based on a collection schedule ending on December 31, 2019, as required by  
18 ORS 757.736(7); (3) are designed to ensure the surcharges will not exceed more than two  
19 percent of the Company's annual revenue requirement, as required by ORS 757.736(3); and  
20 (4) result in total annual collections that remain approximately the same during the collection

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21 <sup>1</sup> Moreover, Staff, Intervenor State Agencies, and Trout Unlimited discussed additional costs of  
22 relicensing to which the Company and its customers would be exposed if the Company pursued  
23 relicensing that were not included in the Company's economic analyses. Staff's Opening Brief at 4;  
24 Intervenor State Agencies' Brief at 2; Trout Unlimited's Joint Opening Brief at 6. Staff also notes that  
25 the Company's cost comparison does not take into account the significant risk of relicensing cost  
26 escalations. Staff's Opening Brief at 4. These findings confirm the Company's evidence that the  
baseline relicensing case used in PacifiCorp's economic analyses was conservative. PacifiCorp's  
Opening Brief at 7. In addition, CUB found that continuing to operate the dams until 2020 as set forth in  
the KHSA provides customers with substantial benefits, particularly considering future potential carbon  
costs. CUB's Opening Brief at 7.

1 period, as required by ORS 757.736(7). PacifiCorp's Opening Brief at 19; Intervenor State  
2 Agencies' Opening Brief at 2; Trout Unlimited's Joint Opening Brief at 3.

3 In sum, the parties to this proceeding are virtually unanimous in finding that the KHSA  
4 strikes the appropriate balance of cost and risk for customers and that rates resulting from the  
5 surcharges are fair, just, and reasonable.

6

7 **2. ICNU Has Presented No Evidence that Contradicts a Finding that the  
Surcharges Result in Fair, Just, and Reasonable Rates.**

8 ICNU is the only party that did not recommend that the Commission find that the rates  
9 resulting from the surcharges are fair, just, and reasonable. ICNU argues that "recovering the  
10 costs in the manner dictated by SB 76 is more expensive than if the same costs were  
11 recovered through traditional regulation." ICNU's Opening Brief at 4 n.1. ICNU's argument  
12 posits that dam removal costs under traditional regulation would be the same as provided for  
13 under the provisions of the KHSA and SB 76. This is incorrect because the KHSA and SB 76  
14 shift the responsibility for dam removal to a third-party and cap removal costs at \$200 million.

15 Under traditional ratemaking principles, the appropriate basis for analyzing the  
16 revenue requirement impact of the KHSA is to look at the totality of the costs to customers  
17 with and without the KHSA. As required by SB 76, the Company filed this "traditional"  
18 analysis as a part of its initial filing. This evidence, which ICNU inexplicably failed to review,  
19 supports a finding that the surcharges produce fair, just, and reasonable rates.

20

21 **3. ICNU's Proposed Changes to the Calculation of the Surcharges Should  
Be Rejected.**

22 ICNU recommends three changes to the calculation of the surcharges based on  
23 changes to rate spread, interest rate, and load growth. None of ICNU's proposals are  
24 supported by other parties to this proceeding.

25

26

1                   a.       **The Commission Should Adopt the Rate Spread Supported by**  
2                               **PacifiCorp, Staff, and CUB as Consistent with Commission**  
3                               **Precedent and Policy.**

4               First, ICNU recommends that the Commission adopt an equal percentage rate  
5               increase rather than PacifiCorp's, Staff's, and CUB's recommended rate spread, which is  
6               based on each class' share of generation revenues, subject to a two percent cap and  
7               1.5 percent floor for each customer class. PacifiCorp's Opening Brief at 19; Staff's Opening  
8               Brief at 6; CUB's Opening Brief at 10. ICNU's argument that PacifiCorp's rate spread  
9               proposal is based on an "arbitrary methodology" is false. As Staff explained, PacifiCorp's  
10              proposal is based on the Commission's well-established, functional approach to ratemaking,  
11              in which costs are separated according to functions of generation, transmission, distribution,  
12              and customer, prior to being allocated to customer classes. Staff's Opening Brief at 7.  
13              Moreover, PacifiCorp's proposal is consistent with how PacifiCorp has allocated dam  
14              relicensing costs in the past. CUB's Opening Brief at 8. Contrary to ICNU's claims,  
15              PacifiCorp's proposed rate spread methodology is consistent with Commission policy and  
16              precedent.

17              ICNU's theory for implementing an equal percentage rate spread across all customer  
18              classes is that the Commission should consider the SB 76 costs as a "revenue tax" because  
19              the surcharges are political costs rather than ordinary ratemaking costs. ICNU's Opening  
20              Brief at 10-11. ICNU's argument is baseless. The surcharges will be used to fund dam  
21              removal costs, which would be spread on the basis of generation in the absence of SB 76.  
22              ICNU has presented no reason to alter this rate spread.

23              ICNU's argument in favor of an equal percentage rate spread also includes factual  
24              inaccuracies. As CUB pointed out, ICNU's argument that industrial customers will receive the  
25              largest rate increase is simply not the case. CUB's Opening Brief at 9. Under PacifiCorp's  
26              proposal, industrial customers will not pay a disproportionate share of dam removal costs as  
27              ICNU claims. PacifiCorp's Opening Brief at 20.

1 ICNU states in its brief that PacifiCorp supports an equal percentage increase. ICNU's  
2 Opening Brief at 11. ICNU's statement is incorrect. The Company reflected its preferred rate  
3 spread in Schedule 199; PacifiCorp's reply testimony states only that it is not opposed to an  
4 equal percentage rate spread. PPL/203, Kelly/8. No party other than ICNU advocates an  
5 equal percentage rate spread, however, and ICNU has presented little justification in support.  
6 In addition, ICNU supports changing rate spread on a backward-looking basis, a proposal to  
7 which PacifiCorp strongly objects. The Company therefore continues to support spreading the  
8 surcharges based on each class' share of generation revenues (with a floor and a cap), and  
9 requests that the Commission approve the Company's proposed rate spread.

10  
11 **b. ICNU's Proposed Interest Rate Should be Rejected as Inconsistent  
with SB 76.**

12 ICNU's second proposed change asks the Commission to recalculate the surcharges  
13 applying a higher expected interest rate based on single A utility bonds interest rates. ICNU's  
14 Opening Brief at 4. ICNU's proposal is inconsistent with how the Commission has already  
15 determined it should invest the surcharges. As PacifiCorp stated in its Opening Brief,  
16 PacifiCorp understands that the Commission has currently deposited the surcharges into a  
17 money market account.<sup>2</sup> PacifiCorp's Opening Brief at 22; Tr. 76. ICNU presents no  
18 evidence that 3.5 percent is an unreasonable estimate for a money market account interest  
19 rate.

20 ICNU's proposal is also inconsistent with the KHSAs. The KHSAs specify that the  
21 Parties acknowledge that the surcharges will earn approximately \$28 million in interest based

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22 <sup>2</sup> ICNU references the fact that the surcharges are currently deposited with Wells Fargo, an  
23 affiliate of PacifiCorp through Berkshire Hathaway, in support of its argument that the Commission  
24 should assume a higher interest rate than that negotiated in the KHSAs. ICNU's Opening Brief at 14.  
25 ICNU also claims that it is inappropriate "for PacifiCorp to utilize a bank owned by Berkshire Hathaway,"  
26 as trust fund manager. *Id.* at n.6. These points have no merit. Under SB 76, the Commission is  
charged with the duty of establishing the trust accounts, and under its charge, the Commission selected  
Wells Fargo. See ORS 757.738(1). PacifiCorp is not a party to the trust agreement and played no role  
in selecting the trustee.



1 on a 3.5 percent interest rate assumption. PPL/104 at 48; Appendix H. The Parties used this  
2 calculation to determine how to reach the Customer Contribution of \$200 million. PPL/104 at  
3 48. PacifiCorp then used this agreed-upon calculation from the KHSA as the basis of its  
4 surcharge calculations in this proceeding. Under Sections 2.3 and 4.1.1 of the KHSA, the  
5 Parties agreed that the costs of dam removal shall be funded in part through Oregon  
6 surcharges that amount to approximately \$158 million. PPL/104 at 16, 24. If the Oregon  
7 Commission does not adopt the surcharges as specified in the KHSA, the Parties must Meet  
8 and Confer to attempt to find alternatives to cover the costs of dam removal. PPL/104 at 16.  
9 Because the Oregon surcharge amount is a material condition of the KHSA, the KHSA may  
10 be terminated if the parties cannot negotiate alternative funding during the Meet and Confer  
11 process. As a result, changing the interest rate would present a significant threat to the  
12 viability of the KHSA.

13 ICNU's interest rate proposal is another attempt to undermine the KHSA, contrary to  
14 the intent of SB 76. Staff's Opening Brief at 4-5. There is no justification for the Commission  
15 to endorse ICNU's interest rate proposal, especially when it could disrupt implementation of  
16 the KHSA.

17 **c. Staff's and PacifiCorp's Proposal to Update the Surcharges**  
18 **Annually is Reasonable and Obviates ICNU's Proposal to Include**  
19 **Load Growth Estimates in the Surcharges.**

20 ICNU's third proposed change to the calculation of the surcharges is to adjust the  
21 surcharge schedule now to account for projected load growth over the course of the  
22 surcharges. ICNU's Opening Brief at 12. ICNU's proposal is unnecessary and unreasonable  
23 because the parties uniformly support periodic Commission review of the surcharges. There  
24 is no reason to attempt to predict ten years of load growth now when the surcharges will be  
25 reviewed and adjusted regularly to reflect actual collections and forecasted load growth.

26 PacifiCorp and Staff have proposed a specific process for annual review and updating  
the surcharges. Although PacifiCorp's and Staff's proposals for updating the surcharges on

1 an annual basis are very similar, there is one material difference. Staff proposes that the  
2 Company, Staff, and interested parties meet “[n]o less than thirty days prior to the annual TAM  
3 filing” to review the surcharges, including the forecast of future loads,” Staff’s Opening Brief at  
4 5. The Company proposed to conduct the review within 30 days after the TAM filing.  
5 PacifiCorp’s Opening Brief at 21.

6 The purpose of tying the review of the surcharges to the Company’s TAM filing is to  
7 take advantage of the updated load forecast used in the TAM filing. The Company will be in  
8 the process of preparing its complex TAM filing 30 or more days prior to making the filing and  
9 may not have its final load forecast available. Therefore, the Company recommends that the  
10 Commission require an annual review of the surcharges within 30 days after the TAM filing  
11 (not 30 days or more days before the TAM filing).

12  
13 **5. The Commission Should Reject ICNU’s Proposal to Track Surcharges for  
Individual Customers over One Megawatt.**

14 The Company has agreed to track surcharge collections on a customer class basis.  
15 PacifiCorp’s Opening Brief at 22. However, ICNU claims that the Company should also track  
16 surcharges on an individual customer basis for large customers one megawatt and above.  
17 ICNU’s Opening Brief at 8. ICNU claims that the Company’s objections to tracking surcharges  
18 on an individual customer basis do not apply to the tracking of collections for Schedule 47 and  
19 48 customers. ICNU is incorrect. Tracking collections for the hundreds of existing, departing,  
20 and new customers on Schedules 47 and 48 over a ten-year period is not only burdensome,  
21 but also unnecessary given the low likelihood that such tracking would ever be needed to  
22 provide refunds. PacifiCorp’s Opening Brief at 22.

23 As the Company discussed in its Opening Brief, the Commission previously approved  
24 PacifiCorp providing a refund of a settlement through a rate surcredit to existing customers on  
25 a going forward basis. PacifiCorp’s Opening Brief at 23. If the Commission ordered the same  
26 refund process in this case, individual customer tracking of the surcharges would be

1 unnecessary. The Company recommends that the Commission accept its proposal to track  
2 surcharges on a customer class basis and reject ICNU's proposal to implement burdensome  
3 and unnecessary tracking by customer.

4 **B. No Legal or Factual Basis Exists for the Commission to Suspend or Terminate**  
5 **the Surcharges.**

6 **1. SB 76 Does Not Provide Legal Authority to Suspend or Terminate the**  
7 **Surcharges.**

8 ICNU states that the Commission is authorized to terminate the surcharges "until it  
9 becomes clear that there will be sufficient funds from California for dam removal." ICNU's  
10 Opening Brief at 5. No other party agrees with ICNU's legal position. CUB's Opening Brief at  
11 12, Intervenor State Agencies' Opening Brief at 3; Trout Unlimited's Joint Opening Brief at 7.

12 SB 76 does not provide the Commission with the authority to terminate or suspend the  
13 surcharges on the basis of a possible delay in the California bond measure. As the Intervenor  
14 State Agencies point out, SB 76 recognizes a number of contingencies to KHSA  
15 implementation, but nonetheless requires surcharges to be put in place immediately.  
16 Intervenor State Agencies Opening Brief at 3. Indeed, ICNU acknowledges that the  
17 "legislature made a . . . policy decision to allow PacifiCorp to charge customers for Klamath  
18 dam removal costs before it is known whether the dams will be removed or what the removal  
19 costs will actually be." ICNU Opening Brief at 13.

20 The fact that SB 76 acknowledges the conditions precedent with respect to dam  
21 removal, but requires the surcharges to be implemented immediately, shows that ICNU's  
22 proposal is contrary to the policy of SB 76. SB 76 sets a target end date for the dam removal  
23 surcharges of December 2019, but caps the surcharges at two percent. ORS 757.736(7);  
24 757.736(3). SB 76 is designed to accomplish these dual objectives by commencing the  
25  
26

1 surcharges immediately and allowing them to run without interruption. Terminating or  
2 suspending the surcharges now directly thwarts these objectives.<sup>3</sup>

3 In addition, ICNU's argument is contrary to the plain language of the statute. ICNU  
4 states that the Commission may change or eliminate the surcharges "if it is likely that dam  
5 removal will occur after 2020." ICNU's Opening Brief at 5. SB 76 does not provide the  
6 Commission authority to terminate the surcharges on this basis. As discussed in PacifiCorp's  
7 Opening Brief, ORS 757.736(7) requires the Commission to make a finding that the dams "will  
8 not be removed" or "will be removed" in a year other than 2020, in order to terminate the  
9 surcharges; it is insufficient for the Commission to find that a delay in removal is "likely."  
10 PacifiCorp's Opening Brief at 16. The Commission should reject ICNU's argument as  
11 inconsistent with the policy and plain language of SB 76.

12  
13 **2. Even if SB 76 Provided a Legal Basis to Suspend or Terminate the  
Surcharges, ICNU has Provided No Factual Basis to Do So.**

14 ICNU argues that postponement of the California bond measure serves as a basis for  
15 terminating the surcharges because without the bond measure, the Secretary of the Interior  
16 could not make the Secretarial Determination required by the KHSA and the KHSA will be  
17 terminated or delayed. ICNU's Opening Brief at 6. Even if SB 76 could be interpreted to  
18 provide the Commission with the discretion to suspend the surcharges if the Secretarial  
19 Determination may not occur on schedule, ICNU has not presented any factual basis for  
20 making such a finding.

21 First, the only evidentiary basis for ICNU's position is a press release from the  
22 California Governor's Office proposing to work with the legislature to postpone the bond  
23 measure to 2012 to avoid jeopardizing its passage. Opening Brief of ICNU at Attachment A.

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24 <sup>3</sup> Both the Intervenor State Agencies and Trout Unlimited address the myriad problems  
25 associated with a delay in implementation of the surcharge, all of which could adversely affect  
26 PacifiCorp's customers. Intervenor State Agencies' Opening Brief at 3-4; Trout Unlimited Opening Brief  
at 7.

1 ICNU has requested that the Commission take official notice of this press release. Opening  
2 Brief of ICNU at 5. The Commission has discretion to take official notice. See OAR 860-014-  
3 0050(1). The Commission should decline to take official notice here because the press  
4 release does not establish the fact for which it is being provided, (*i.e.*, that it is likely that  
5 California will delay any decision to fund the costs of dam removal until 2012), and it is  
6 irrelevant to whether the surcharges produce fair, just, and reasonable rates. OAR 860-014-  
7 0045(1).<sup>4</sup>

8 Second, as PacifiCorp, CUB, the Intervenor State Agencies, and Trout Unlimited  
9 explained, the KHSA does not make the California bond measure's passage a prerequisite to  
10 the Secretarial Determination. CUB's Opening Brief at 12; Intervenor State Agencies'  
11 Opening Brief at 3; Trout Unlimited's Joint Opening Brief at 8-10. ICNU's argument that any  
12 postponement of the bond measure means that the Secretary cannot make the  
13 determinations required under the KHSA is factually incorrect.

14

15 **C. The Parties' Arguments on the Commission's Jurisdiction under ORS 757.480**  
16 **Show that PacifiCorp's Proposal for Conditional Approval is Reasonable.**

17 As the Company proposed in its Opening Brief, the Commission does not need to  
18 reach the legal question of preemption of ORS 757.480 and can instead consider whether to  
19 approve the transfer of the dams pursuant to ORS 757.480 now, subject to the KHSA  
20 conditions being met and the Company providing the information provided in OAR 860-027-  
21 0025. Staff, CUB, and ICNU responded to the Company's proposal for contingent approval  
22 under ORS 757.480. The parties have not presented any reasonable basis for withholding the  
23 conditional approval requested by the Company.

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26 <sup>4</sup> CUB has objected to the ICNU's request for official notice on procedural grounds. See CUB  
Opening Brief at 11, n. 39. CUB's objection provides an alternative basis for the Commission to decline  
to take official notice of the press release.

1 ICNU argues that the Company cannot yet provide the property transfer information  
2 required by OAR 860-027-0025, so the Commission must wait to review the transfer until the  
3 Company can do so. ICNU's Opening Brief at 15-16. As explained in the Company's  
4 Opening Brief, PacifiCorp's proposal would make approval contingent upon providing the  
5 information in OAR 860-027-0025. Regardless of the information provided, however, once the  
6 conditions precedent in the KHSA have been met, SB 76 does not provide the Commission  
7 with the ability to disallow the transfer. Therefore, there is no logical reason to wait to  
8 consider an application under ORS 757.480 so long as the Commission conditions its  
9 approval on meeting the KHSA conditions.

10 ICNU also argues in favor of considering the transfer some time in the future on the  
11 basis that the Commission cannot yet determine whether the property transfer will be in the  
12 public interest. ICNU's Opening Brief at 16. ICNU is incorrect. The Commission's role in the  
13 removal of the dams is circumscribed by SB 76. SB 76 does not provide the Commission with  
14 the authority to find that the transfer is not in the public interest and to void the transfer once  
15 the KHSA conditions have been fulfilled.

16 Staff states that it questions the timing of the Company's request for conditional  
17 approval given the contingencies that must occur under the KHSA. Staff's Opening Brief at 5.  
18 The Company is, however, requesting approval subject to meeting those conditions.  
19 Therefore, approving the transfer subject to the conditions in the KHSA being met appears to  
20 be consistent with Staff's views on this issue.

21 CUB does not oppose the Company's proposal of conditional approval subject to the  
22 KHSA conditions being met. Nonetheless, CUB states that the time is not ripe to make a  
23 decision on the transfer and that it would not be unduly burdensome for PacifiCorp to file for  
24 transfer of the dam once there is more certainty around dam removal. PacifiCorp has  
25 previously outlined the problems associated with a delay in evaluating the transfer of the dams  
26 to the Dam Removal Entity, demonstrating that this approach would in fact be burdensome to

1 the Company, other stakeholders and the Commission. See PacifiCorp's Opening Brief at 26-  
2 27. The Company requests that the Commission adopt the Company's proposal for  
3 conditional approval under ORS 757.480.

4  
5 **D. Including a Tariff Refund Provision Referencing a Finding of Fair, Just, and  
6 Reasonable Rates Would Not Accurately Reflect How SB 76 Functions.**

7 SB 76 sets forth the circumstances under which the Commission can order refunds of  
8 the surcharges in the future. After the Commission issues an order that the rates resulting  
9 from the surcharges are fair, just, and reasonable and that order is final, there are only two  
10 circumstances under which rates can be refunded: (1) if the Commission finds that amounts  
11 have been collected in excess of those needed or allowed under ORS 757.736(9) and the  
12 Commission directs a refund; or (2) the dams will not be removed under ORS 757.736(10)  
13 and there are excess funds after Oregon's share of relicensing costs is recovered. Contrary to  
14 Staff's assertion, SB 76 does not provide the Commission with the authority to revisit its fair,  
15 just, and reasonable determination in the future. Therefore, any reference in the tariff to rates  
16 being subject to refund if they are found to not be fair, just, and reasonable will not be  
17 accurate once the order in this proceeding is final.

18 While the Company does not believe it is necessary to reference refunds under SB 76  
19 in the tariff, the Company does not object to including such a reference in the tariff. However,  
20 the Company believes that the reference in the tariff should accurately reflect the provisions of  
21 SB 76. For that reason, the Company recommends that the Commission reject the parties'  
22 proposal to include reference to the Commission's fair, just, and reasonable determination in  
23 the tariff in favor of language similar to that proposed in PacifiCorp's Opening Brief at page 28.  
24 (*e.g.*: the surcharges may be refundable only as provided in ORS 757.736(9) and (10)). This  
25 approach appears to be consistent with CUB's statement that "the language in the tariff should  
26 mirror the statutory language." CUB Opening Brief at 17.

1 **II. CONCLUSION**

2 For the reasons stated in the Company's Opening Brief and Reply Brief on Surcharge  
3 Issues, the Company respectfully requests that the Commission find that the surcharges  
4 contained in Schedule 199 result in fair, just, and reasonable rates, approve Schedule 199 as  
5 proposed by the Company, implement the annual review of collections under Schedule 199  
6 proposed by the Company, and conditionally approve the transfer of the Project to the Dam  
7 Removal Entity under ORS 757.480.

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9 DATED: August 18, 2010.

Respectfully submitted,

10 McDowell Rackner & Gibson PC

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Katherine McDowell  
Amie Jamieson

14 Attorneys for PacifiCorp

15 PACIFICORP

16 Jordan A. White  
17 Senior Counsel  
Pacific Power  
18 1407 W. North Temple, Suite 320  
Salt Lake City, Utah 84116  
19 Phone: (801) 220-2279  
Facsimile: (801) 220-4615