

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 219

In the Matter of:

PacifiCorp, dba Pacific Power,

Application to Implement the Provisions
of SB 76

**Joint Reply Brief on
Surcharge Issues**

American Rivers, California Trout, Institute for Fisheries Resources, Pacific Coast Federation of Fishermen's Associations, Trout Unlimited, and the Klamath Tribes submit this Joint Reply Brief on Surcharge Issues to the Oregon Public Utility Commission (Commission) in support of the Oregon Klamath Surcharges as fair, just and reasonable.

I. INTRODUCTION

The scope of this reply brief is limited to the one argument that the Industrial Customers of Northwest Utilities (ICNU) continually repeats regarding the California Water Bond. As of August 9, 2010 when we filed our Opening Brief in this proceeding, the California Legislature had not acted to withdraw the California Water Bond from the November 2010 ballot. We inform the Commission that subsequent to our filing the Legislature did take such action, and now, the California Water Bond will not appear on the November ballot.¹

The Commission should be informed of this new development. However, it does not change the fact that the Oregon Klamath Surcharges are fair, just and reasonable. This outcome does not change no matter how much ICNU may argue the point.

¹ Late on August 9, 2010, the California State Legislature passed Assembly Bill 1265, which was signed by the California Governor the following day on August 10. This bill postpones a ballot vote on the *Safe, Clean and Reliable Drinking Water Supply Act* (known also as Proposition 18, or the California Water Bond).

II. ARGUMENT

A. The California Water Bond Will Not Be on the November Ballot, But the KHSA Anticipates This Situation and Provides Ample Contingency Strategies.

We stipulate that the California Water Bond will not be on the state's November Ballot. But, the Klamath Hydroelectric Settlement Agreement (KHSA) anticipates this situation and provides ample contingency strategies. These strategies are self-evident after reading the plain language of the agreement.

Yet, ICNU repeatedly mischaracterizes the relationship between the KHSA and the bond measure. ICNU asserts in its Opening Brief that: "The Commission should terminate the Klamath surcharge until California decides to contribute its share of the funds necessary to remove the Klamath dams in 2020, *which is a necessary pre-condition for dam removal.*" ICNU Opening Brief at 5 (emphasis added). Then, ICNU takes its argument farther, and states that: "Any postponement of the California bond measure means that *the Secretary of the Interior will be unable to make the determinations required under the KHSA*, which will result in the KHSA's termination, or delay of key KHSA provisions." ICNU Opening Brief at 6 (emphasis added).

The word choices of "pre-condition" and "unable to make the determinations required" perplex us. The KHSA expressly provides for flexibility regarding the California Water Bond. Our Opening Brief lists no less than four express contingency strategies in the KHSA to manage the scenario of a bond not making the November ballot. Joint Opening Brief at 8-10. In sum: (1) Bond funds are "back-up funds" to the ratepayer contribution (*id.* at 8-9); (2) removal may cost less than \$200 million and therefore Bond funds may be unnecessary (*id.* at 9); (3) section 3.3.4 of the KHSA flatly contradicts the "pre-condition" assertion (*id.* at 9-10); and, (4) section 4.1.2 of the KHSA allows other funding sources (*id.* at 10). Suggesting that these actions taken in the California Legislature require the KHSA – and this Commission's independent analysis of the Surcharges – to come to a screeching halt ignores what the KHSA says, skirts the careful drafting of the KHSA parties to manage this scenario, and avoids the real issue in front of the Commission that the Surcharges are fair, just and reasonable.

B. ICNU is Wrong That New Developments with the Bond Warrant Termination of the Surcharges.

ICNU's Opening Brief makes its position regarding the California Water Bond very clear: "The Commission should exercise its discretion to terminate the Klamath surcharges until it becomes clear that the necessary funds will be available and removal will occur on time." ICNU Opening Brief at 16. What ICNU fails to explain is precisely how termination works to the ratepayer interest. No explanation exists, because delay harms the ratepayer interest. As described in our Opening Brief, delay only produces greater customer costs in the long-run. Joint Opening Brief at 7. Moreover, we agree with the Attorney General's Opening Brief on behalf of the Intervenor State Agencies that "[t]he Commission is not given express authority to suspend or postpone the Surcharges." Intervenor State Agencies' Opening Brief at 4.

ICNU is wrong that new developments with the bond measure warrant termination. None of this argument from ICNU, however, changes the conclusion that the Surcharges are fair, just and reasonable. That conclusion remains the same whether the California Water Bond is on the ballot or not. PacifiCorp is correct that ICNU has no factual basis to support a delay, suspension, or termination of the Surcharges. *See* PacifiCorp Opening Brief at 15, n. 5 (discussing ICNU's reliance on press release). So is the Citizens' Utility Board of Oregon (CUB), which points out that ". . . the fact that the California Prop 18 bond measure may not be on the ballot until 2012 is of no import and it certainly does not mean that the dams will not come out in 2020." CUB Opening Brief at 12. There is overwhelming evidence in the record – and much unanimity among the many opening briefs – that the Surcharges before the Commission will result in fair, just and reasonable rates for PacifiCorp's customers. *See e.g.*, Opening Briefs of Intervenor State Agencies' at 2; Staff at 4; CUB at 7. This conclusion is made even clearer when considered against the alternative of relicensing, which is another point consistent through the many briefs. *See e.g.*, Opening Briefs of Intervenor State Agencies' at 2; Staff at 4; CUB at 6. The Commission should not follow ICNU down its California Water Bond path.

III. CONCLUSION

The Commission has an integral role in implementing a comprehensive approach to resolving the many problems in the Klamath Basin. The overwhelming weight of evidence in this proceeding is that the Klamath Surcharges are fair, just and reasonable. This issue is the one before the Commission and no other. We, therefore, respectfully request that the Commission approve the Surcharges as fair, just and reasonable and in accordance with Senate Bill 76 and O.R.S. 757.

Dated August 18, 2010.

Respectfully submitted,

/s/ Kate Miller
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Trout Unlimited

Signed and filed on behalf of:

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TU Celebrates **50 Years** of Protecting Cold, Clean, Fishable Water.

August 18, 2010

Oregon Public Utility Commission
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Re: In the matter of PacifiCorp's Application to Implement Provisions of
Senate Bill 76 (**Docket No. UE 219**).

Dear Filing Center:

Enclosed please find an original plus five copies of the **Joint Reply Brief on Surcharge Issues** of American Rivers, California Trout, Institute for Fisheries Resources, Pacific Coast Federation of Fishermen's Associations, Trout Unlimited and the Klamath Tribes.

Thank you for your attention to this matter. Please contact me with any questions at (503) 827-5700.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kate Miller'.

Kate Miller
Trout Unlimited

Enclosures

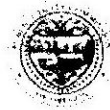
CERTIFICATE OF SERVICE

I hereby certify that I, Kate Miller, have this day served the **Joint Reply Brief on Surcharge Issues** of American Rivers, California Trout, Institute for Fisheries Resources, Pacific Coast Federation of Fishermen's Associations, Trout Unlimited and the Klamath Tribes in Docket #UE 219 upon all parties of record to this proceeding. Service has been made via regular mail or electronic mail as noted in the attached service list.

Dated this 18th day of July, 2010



Kate Miller
Trout Unlimited



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Docket No: UE 219

Docket Name: PACIFIC POWER & LIGHT

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Subject Company: PACIFIC POWER & LIGHT

In the Matter of PACIFICORP, dba PACIFIC POWER Application to Implement the Provisions of Senate Bill 76. Filed by Andrea L. Kelly.

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