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July 21, 2008

Via Electronic and US 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 OREGON PUBLIC UTILITY STAFF Requesting the Commission direct PACIFICORP, dba PACIFIC POWER & LIGHT COMPANY, to file tariffs establishing automatic adjustment clauses under the terms of SB 408
Docket No. UE 177

Dear Filing Center:

Enclosed please find the original and one (1) copy of the Industrial Customers of Northwest Utilities' Response to PacifiCorp's Motion for Clarification Re: Application of UM 1147 Orders in the above-referenced matter.

Thank you for your assistance, and please do not hesitate to give me a call if you have any additional questions.

Sincerely yours,

/s/ Eric G. Shelton
Eric G. Shelton

Enclosure

cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Response to PacifiCorp’s Motion for Clarification Re: Application of UM 1147 Orders on behalf of the Industrial Customers of Northwest Utilities upon the parties, on the official service list shown below for UE 177, via U.S. Mail, and via electronic mail.

Dated at Portland, Oregon, this 21st day of July, 2008.

/s/ Eric G. Shelton
Eric G. Shelton

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(W) = Paper Service Waived

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 177

In the Matter of)	
)	
OREGON PUBLIC UTILITY STAFF)	THE INDUSTRIAL CUSTOMERS
)	OF NORTHWEST UTILITIES'
Requesting the Commission Direct)	RESPONSE TO PACIFICORP'S
)	MOTION FOR CLARIFICATION
PACIFICORP, dba PACIFIC POWER)	RE: APPLICATION OF UM 1147
& LIGHT COMPANY,)	ORDERS
)	
to File Tariffs Establishing Automatic)	
Adjustment Clauses Under the Terms of)	
<u>SB 408.</u>)	

Pursuant to OAR § 860-013-0050(3)(d), the Industrial Customers of Northwest Utilities (“ICNU”) submits this Response to PacifiCorp’s Motion for Clarification Re: Application of UM 1147 Orders to the Oregon Public Utility Commission (“OPUC” or the “Commission”). Unlike other deferred accounts, there is minimal risk that deferrals under SB 408 will be disallowed by the Commission. As a result, ICNU respectfully requests that the Commission apply the Blended Treasury Rate established in Docket No. UM 1147 to the \$13 million balance in PacifiCorp’s SB 408 balancing account.

BACKGROUND

On April 11, 2008, the Commission accepted PacifiCorp’s SB 408 tax report, authorizing PacifiCorp to recover \$34.5 million from ratepayers for additional federal, state, and local income taxes. Re PacifiCorp, Docket No. UE 177, Order No. 08-

201 at 1 (Apr. 11, 2008). Based on PacifiCorp’s proposal, the Commission authorized PacifiCorp to amortize \$27 million and defer the remaining \$7.5 million to PacifiCorp’s SB 408 balancing account. Id. at 7. ICNU objected to the amortization of less than the full amount of the surcharge, arguing that ratepayers would be hurt more by the accrual of interest while the \$7.5 million sits in PacifiCorp’s SB 408 balancing account. Re PacifiCorp, Docket No. UE 177, ICNU Opening Brief at 24 (Mar. 14, 2008). Combined with the \$5.8 million in interest that has accrued on the \$34.5 million surcharge, PacifiCorp’s SB 408 balancing account holds approximately \$13 million that is not currently being amortized.

On May 22, 2008, the Commission determined that, due to the minimal risk of disallowance, the appropriate interest rate applicable to deferred accounts in amortization should be set according to the Blended Treasury Rate Method proposed by Staff. Re Staff Request to Open an Investigation Related to Deferred Accounting, Docket No. UM 1147, Order No. 08-263 at 15 (May 22, 2008) (“Re Deferred Accounting”). On July 16, 2008, PacifiCorp filed a Motion for Clarification, asking the Commission to clarify whether the Blended Treasury Rate adopted by the Commission in Docket No. UM 1147 applies to the balance in PacifiCorp’s SB 408 balancing account. Due to the minimal risk of disallowance of these amounts, the Blended Treasury Rate should be applicable.

ARGUMENT

ORS § 757.268(6) provides that the “automatic adjustment clause *shall* account for *all* taxes paid to units of government” (Emphasis added.) Accordingly,

Oregon law requires that a utility either refund or collect the *entire* amount of the difference between taxes paid to governmental authorities and taxes collected from ratepayers. The SB 408 balancing account was designed to merely hold the difference between taxes paid and taxes collected until amortized through a utility's automatic adjustment clause. OAR § 860-022-0041(8)(a). As a result, there is little risk of non-recovery of any amount in PacifiCorp's SB 408 balancing account.

PacifiCorp argues that the Commission's decision in Docket No. UM 1147 was limited to amounts in amortization only. PacifiCorp Motion at 3-4. PacifiCorp ignores, however, the Commission's reasoning for establishing a different interest rate for deferred accounts in amortization. The Commission stated that amortizations are different because of "the fact that a utility is authorized to actually recover an approved amount of costs." Re Deferred Accounting, Docket No. UM 1147, Order No. 06-507 at 5 (Sep. 6, 2006). Similarly, Oregon law and the Commission's rules authorize a utility to actually recover all differences between taxes paid and taxes collected approved by the Commission. PacifiCorp need not make any further showing to the Commission, such as prudence or an earnings test, in order to amortize these amounts. Therefore, the same rationale equally applies to *all* amounts in PacifiCorp's SB 408 balancing account, whether currently in amortization or not.

Further, PacifiCorp's attempts to illustrate different risks of recovery for the \$27 million in amortization and the remaining \$13 million are not persuasive. PacifiCorp's arguments are flawed in two respects. First, PacifiCorp's alleged risks are not the type of regulatory risk contemplated by the Commission in Docket No. UM 1147.

PAGE 3 – ICNU'S RESPONSE TO PACIFICORP'S MOTION FOR CLARIFICATION

PacifiCorp states that the \$13 million “could be affected by the outcome of the currently pending appeal of the UE 177 Order, legislative changes to SB 408, or other such developments.” PacifiCorp Motion at 4. These events, however, are beyond the Commission’s control. The type of risk evaluated in determining whether a lower interest rate is justified is the risk of Commission disallowance. For example, in describing the type of risk faced by deferred accounts prior to amortization, the Commission pointed to a “prudence review and earnings test.” Re Deferred Accounting, Docket No. UM 1147, Order No. 05-1070 at 14 (Oct. 5, 2005). In addition, as stated previously, the key issue is whether a utility is “*authorized*” by the Commission to recover its costs. Re Deferred Accounting, Docket No. UM 1147, Order No. 06-507 at 5. Once PacifiCorp’s tax report was approved by the Commission, PacifiCorp was authorized to recover the difference between taxes paid and taxes collected on a “dollar-for-dollar basis.” Id. Thus, the risks stated by PacifiCorp are irrelevant.

Second, assuming for the sake of argument that there is any greater risk of regulatory disallowance, PacifiCorp created that risk. PacifiCorp voluntarily chose not to amortize the entire amount of the surcharge at this time, despite the statutory directive that all amounts be amortized through the automatic adjustment clause. ORS § 757.268(6). Allowing PacifiCorp to accrue interest at its authorized rate of return (“AROR”) would allow PacifiCorp to profit from its choice to forego amortization of the entire surcharge. Allowing a utility to choose between collecting interest at the utility’s AROR or immediate amortization would create an opportunity for a utility to game the system, depending on which option provides greater profits for shareholders.

CONCLUSION

For the foregoing reasons, ICNU respectfully requests that the Commission apply the Blended Treasury Rate adopted in Docket No. UM 1147 to PacifiCorp's SB 408 balancing account.

Dated this 21st day of July, 2008.

Respectfully submitted,

/s/ Melinda J. Davison

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