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February 14, 2011

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 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 (4)

Dear Filing Center:

The Industrial Customers of Northwest Utilities hereby files this Reply to PacifiCorp's Motion to Strike in the above referenced docket.

Thank you for your assistance, and please do not hesitate to contact our office if you have any additional questions.

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 to PacifiCorp's Motion to Strike 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, where paper service has not been waived.

Dated at Portland, Oregon, this 14th day of February, 2011.

/s/ Sarah A. Kohler
Sarah A. Kohler

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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 177(4)

In the Matter)	
)	
OREGON PUBLIC UTILITY STAFF)	
)	
Requesting the Commission Direct)	INDUSTRIAL CUSTOMERS OF
)	NORTHWEST UTILITIES' REPLY TO
PACIFICORP, dba PACIFIC POWER &)	PACIFICORP'S MOTION TO STRIKE
LIGHT COMPANY,)	
)	
to File Tariffs Establishing Automatic)	
Adjustment Clauses Under the Terms of)	
SB 408.)	

I. INTRODUCTION

Pursuant to OAR § 860-001-0420(5), and the Administrative Law Judge's ("ALJ") Ruling dated February 11, 2011, the Industrial Customers of Northwest Utilities ("ICNU") files this Reply to PacifiCorp's (or the "Company") Motion to Strike or in the Alternative for Leave to File Responsive Testimony ("Motion to Strike") filed on February 10, 2011. ICNU does not oppose PacifiCorp's request to file responsive testimony and its proposed discovery and hearing schedule; however, ICNU strongly opposes PacifiCorp's request to strike ICNU's testimony and objections ("ICNU's Objections and Testimony"). ICNU's Testimony by Ellen Blumenthal is within the scope of this proceeding and responds to the issues raised in the joint stipulation ("Stipulation") of PacifiCorp, the Oregon Public Utility Commission ("OPUC" or the "Commission") Staff, and the Citizens' Utility Board (jointly, the "Settling Parties"). Specifically, the Settling Parties recommend that the Commission's rules implementing Senate Bill ("SB") 408 be revised, which would allow PacifiCorp's proposed surcharge to be reduced to

approximately \$13.47 million. Stipulation at 4. ICNU's testimony responds to the Stipulation and, among other things, recommends that the surcharge be eliminated and that, if necessary, the Commission's rules be further revised. Surely, the scope of this proceeding cannot be interpreted, as PacifiCorp suggests, as allowing the Settling Parties to recommend whatever changes to the Commission's rules they deem appropriate, but not to allow ICNU to comment on these proposed changes or to propose its own alternative revisions.

II. BACKGROUND

On October 15, 2010, PacifiCorp filed its 2009 tax report as required by SB 408. PacifiCorp claimed that for calendar year 2009, the amount of state, federal and local taxes paid and properly attributed to the regulated operations of the Company was \$29,347,278 more than the amounts of taxes authorized to be collected in rates pursuant to SB 408 and OAR § 860-022-0041. PacifiCorp 2009 SB 408 Filing Letter at 1.

The ALJ initially set a schedule in this proceeding, but prior to the filing of testimony by Staff and intervenors, the Settling Parties entered into the Stipulation. On January 10, 2011, the ALJ set a new schedule, including dates for the filing of the Stipulation, testimony in support of the Stipulation, and a deadline for objections to the Stipulation.

The Settling Parties filed the Stipulation and supporting testimony, which propose to lower PacifiCorp's 2009 tax surcharge from \$29.3 million to approximately \$13.47 million. Joint Testimony/100, Bird-Fuller-Feighner/5. The lower surcharges were the result of three adjustments to the Company's filing, including one based on Staff's argument that the deferred tax floor limitation required by OAR § 860-022-0041(4)(d) is not necessary. Staff is separately proposing to commence a temporary rulemaking process, followed by a permanent rulemaking

to amend OAR § 860-022-0041 to conform to the Settling Parties' view of the rule's proper scope. The rule change would ensure that the deferred tax floor does not apply to taxes determined under the stand alone method. The Stipulation also provides that PacifiCorp will seek a Private Letter Ruling from the Internal Revenue Service regarding whether the revision to OAR § 860-022-0041 will cause a normalization violation, and, pending the rulemaking, PacifiCorp will file a deferral of the difference between the deferred tax floor and the surcharge calculated according to the settling parties' view of the result under the current rule.

On January 5, 2011, the Commission issued an order denying ICNU's request for intervenor funding. The Commission concluded that ICNU's scope of work was outside the scope of the proceeding. Order No. 11-002 at 1. ICNU amended its intervenor funding budget to state that ICNU will seek intervenor funding to address both whether PacifiCorp's tax filing is consistent with OAR § 860-022-0041, and to address the Stipulation.

On February 7, 2011, ICNU filed its written Objections and supporting Testimony of Ellen Blumenthal. ICNU agreed with the Settling Parties that OAR § 860-022-0041 should be amended, but urged the Commission to consider further revisions to the rule because the revision would still allow PacifiCorp to collect a surcharge of \$13.7 million although the Company effectively paid no taxes for its Oregon regulated operations. ICNU also objected to the Stipulation's provisions regarding the filing of a deferral because a Private Letter Ruling is unnecessary to comply with the Internal Revenue Code (the "Code").

PacifiCorp filed its Motion to Strike on February 10, 2011. PacifiCorp seeks to strike the Testimony of Ellen Blumenthal and the Objections of ICNU as being inconsistent with the scope of this proceeding. Since PacifiCorp did not submit a redline indicating which

provisions of ICNU's Objections and Testimony it believes should be stricken, the Company is apparently seeking to strike the entirety of ICNU's Objections and Ms. Blumenthal's Testimony, including those portions that it has not claimed are beyond the scope of the proceeding.

III. REPLY

ICNU's Objections and Testimony should not be stricken because they are not outside the scope of this proceeding. ICNU's Objections and Testimony directly address all aspects of the proposed Stipulation, including provisions that ICNU supports. The Settling Parties should not be allowed to propose changes to OAR § 860-022-0041 and prevent ICNU from responding to those changes, including explaining why those changes are insufficient to comply with the law. The Motion to Strike should also be denied because it is overly broad, does not specifically identify which provisions of the Objections and Testimony should be stricken, and seeks to strike information which PacifiCorp does not even allege is outside the scope of the proceeding.

1. ICNU's Objections and Testimony Should Not Be Stricken

ICNU's Objections and Testimony are within the scope of this proceeding because they directly respond to the Stipulation and PacifiCorp's tax report. PacifiCorp argues that ICNU's testimony "does not address whether the stand-alone calculation underlying the Stipulation complies with OAR 860-022-0041," but that ICNU argues that the stand alone calculation is incorrect. Motion to Strike at 3. PacifiCorp fails to mention, however, that the Settling Parties themselves agree that the stand alone calculation under OAR § 860-022-0041 is incorrect and should be changed. ICNU is simply responding to the Stipulation and agreeing with the Settling Parties that the rule should be changed, but arguing that the Settling Parties'

proposed remedy is insufficient particularly in light of the facts in this case. The scope of the proceeding cannot be limited so that the Settling Parties can propose changes to OAR § 860-022-0041, but that ICNU is barred from responding to those changes or explaining why those changes are insufficient.

The Settling Parties propose that OAR § 860-022-0041 should be changed because the deferred income tax floor in subsection (4)(d) is not necessary for compliance with the normalization requirements of the Code. Joint Testimony/100, Bird-Fuller-Feighner/5 (called the “(4)(d) limitation” by the Settling Parties). The Settling Parties state that the (4)(d) limitation was originally proposed “to ensure compliance with normalization requirements of the [Code] by fully protecting deferred taxes related to depreciation on public utility property.” Joint Testimony/100, Bird-Fuller-Feighner/3. Staff’s review in this case concluded that PacifiCorp properly applied the (4)(d) limitation, but that the limitation is not actually necessary to ensure compliance with the Code which unnecessarily increases PacifiCorp’s surcharge. Joint Testimony/100, Bird-Fuller-Feighner/4-5.

ICNU submitted testimony by Ellen Blumenthal directly responding to the Stipulation, including the proposed rule change. First, Ms. Blumenthal summarizes her recommendations and exhibits. ICNU/100 Blumenthal/1-3. Next, Ms. Blumenthal provides important background information explaining the Code’s normalization provisions as they relate to utility taxes, including addressing the basis for the Staff proposed change to OAR § 860-022-0041. Id. at Blumenthal/4-9. Ms. Blumenthal then explains the scope of what information she reviewed and directly responds to the Stipulation, including Staff’s proposed change, the normalization requirements, and the request to allow PacifiCorp to defer part of the surcharge.

Id. at Blumenthal/9-13. Ultimately, Ms. Blumenthal recommends additional changes to the Stipulation and the rule to better address the (4)(d) limitation and the fact that PacifiCorp paid no taxes in 2009, but has proposed a significant surcharge. Id.

Ms. Blumenthal's Testimony directly responds to the proposed rule change in the Stipulation, the underlying basis for the rule change, and recommends additional necessary changes. Ms. Blumenthal agrees with Staff's position and the Settling Parties' recommendation that the deferred tax floor is unnecessary in the stand alone calculation and that the rule should be changed. Id. at Blumenthal/10. Ms. Blumenthal also believes that the Stipulation proposes inadequate changes to properly "normalize" the taxable income in PacifiCorp's stand alone tax calculation and that other changes to OAR § 860-022-0041 should be made. Id. at Blumenthal/11-13. Under PacifiCorp's view of this proceeding, ICNU must either file in support of the Stipulation or remain silent.

The crux of PacifiCorp's Motion to Strike is the view that it is entirely appropriate for the Settling Parties to propose changes to PacifiCorp's 2009 tax report and surcharge based on changes to OAR § 860-022-0041, but that ICNU may not address their proposed rule changes or propose its own rule changes. PacifiCorp cites no rule, Commission order or legal theory that allows certain parties to propose revisions to the tax rule in this case, and that ICNU alone is barred from commenting on those revisions or proposing its own revisions. Simply put, the Settling Parties put proposed revisions to OAR § 860-022-0041 squarely at issue in this case. The ALJ should deny PacifiCorp's Motion to Strike and allow all parties to address the relevant issues in this proceeding.

2. PacifiCorp's Motion to Strike Should Be Denied Because It Is Overly Broad

PacifiCorp requests that ICNU's Objections and Testimony be stricken based on the claim that ICNU is proposing a change to OAR § 860-022-0041. Motion to Strike at 3. PacifiCorp fails to note that the vast majority of Ms. Blumenthal's Testimony and ICNU's Objections do not address additional revisions to the tax rule. Most of Ms. Blumenthal's Testimony addresses other provisions of the Stipulation, the background for the disputed issues, the scope of her review, and the Settling Parties proposed rule change. PacifiCorp does not explain in its Motion to Strike how any of this testimony is outside the scope of the proceeding. Thus, the Motion to Strike should be denied because PacifiCorp has failed to identify which aspects of Ms. Blumenthal's Testimony and ICNU's Objections should be stricken.

IV. CONCLUSION

PacifiCorp carries the burden to demonstrate that ICNU's Objections and Ms. Blumenthal's Testimony are outside the scope of this proceeding. PacifiCorp has failed to meet its burden and has further failed to identify the specific portions of ICNU's Testimony and Objections it believes should be stricken. For these reasons, ICNU urges the ALJ to deny PacifiCorp's Motion to Strike and, if necessary, allow responsive testimony pursuant to the schedule agreed upon by the parties to this proceeding.

Dated this 14th day of February, 2011.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Melinda J. Davison

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