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February 25, 2009

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 copy of the Written Objections in Opposition to the Stipulation on behalf of the Industrial Customers of Northwest Utilities in the above-referenced matter.

Thank you for your assistance.

Sincerely yours,

/s/ Brendan E. Levenick
Brendan E. Levenick

Enclosure

cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Written Objections in Opposition to the Stipulation on behalf of the Industrial Customers of Northwest Utilities upon the parties, shown below, on the official service list by causing the document to be deposited, postage-prepaid, in the U.S. Mail, where paper service has not been waived, and service via electronic mail.

Dated at Portland, Oregon, this 25th day of February, 2009.

/s/ Brendan E. Levenick
Brendan E. Levenick

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W = Waived Paper Service

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UE 177**

In the Matter of)	
)	
OREGON PUBLIC UTILITY STAFF)	
)	WRITTEN OBJECTIONS OF THE
Requesting the Commission Direct)	INDUSTRIAL CUSTOMERS OF
)	NORTHWEST UTILITIES TO
PACIFICORP)	THE STIPULATION
(dba PACIFIC POWER))	
)	
to File Tariffs Establishing Automatic)	
Adjustment Clauses Under the Terms of)	
SB 408.)	

Pursuant to OAR § 860-014-0085(5), the Industrial Customers of Northwest Utilities (“ICNU”) submits its written objections to the Stipulation filed by PacifiCorp and the Public Utility Commission of Oregon (“OPUC” or “Commission”) Staff on February 5, 2009. ICNU is also submitting the testimony of Ellen Blumenthal addressing issues in the Stipulation.

Senate Bill (“SB”) 408 was enacted “so that ratepayers are not charged for more tax than: (a) The utility pays to units of government” ORS § 757.268(6). In brief, Oregon law requires that utility ratepayers be charged *only* for taxes *actually paid* by a utility. See, e.g., ORS § 757.268(4) (directing the Commission to require that a utility establish an automatic adjustment clause when rates collected “differ[] by \$100,000 or more from the amount of taxes paid); ORS § 757.268(13)(f) (defining “taxes paid” as “amounts received by units of government from the utility”).

Contrary to the express mandates of SB 408, the Commission has promulgated OAR § 860-022-0041. Instead of aligning rates collected with actual taxes paid, this rule aligns rates with hypothetical amounts of taxes paid. See, e.g., OAR § 860-022-0041(3)(b) (calculating taxes according to “stand-alone tax liability”); OAR § 860-022-0041(2)(p) (defining stand-alone tax liability according to hypothetical tax returns—i.e., “the amount of income tax liability calculated using a pro forma tax return”). PacifiCorp and Staff, in basing Stipulation calculations upon the methodologies prescribed by OAR § 860-022-0041, have not based the Stipulation on an actual taxes paid calculation. Consequently, ICNU objects to the Stipulation.

ICNU continues to object to the saferoom designation of the relevant material at issue in this docket as it precludes intervenors like ICNU from a meaningful review of PacifiCorp’s tax report. SB 408 allows intervenors to “obtain and use the information obtained by the commission” in its review of utility tax reports. ORS § 757.268(11).^{1/} Overriding the statute, however, the OPUC approved a protective order in this Docket which prohibits intervenors like ICNU from: 1) possessing “highly confidential” documents; 2) viewing highly confidential information except within a designated safe room, in the presence of a PacifiCorp employee; or 3) making any copies of highly confidential documents or even taking more than

^{1/} SB 408 allows intervenors to obtain and use confidential documents “upon signing a protective order prepared by the commission . . . according to the terms of the protective order.” ORS § 757.268(11). The Commission has misinterpreted this statute as allowing it to *preclude* intervenors from obtaining and using confidential documents through the terms of a protective order. This construction departs from the template for statutory interpretation established in PGE v. BOLI, 317 Or 606 (1993). Properly construed, the plain meaning of “according to” is a *harmonization of* protective order terms with SB 408’s grant—that intervenors may “obtain and use” confidential information. The final clause of ORS § 757.268(11) is not a self-contradictory addendum negating all other provisions. Rather, protective order terms should limit intervenors’ ability to *publicly disclose* confidential information, not prohibit intervenor access altogether. See Citizens’ Util. Bd. v. Oregon Pub. Util. Comm’n, 128 Or App 650 (1994).

“limited notes.” Order No. 06-033 at 2, 4 (January 25, 2006). Ms. Blumenthal, ICNU’s expert, testifies that these prohibitions make meaningful review of utility tax reports impossible.

For the foregoing reasons, ICNU objects to the Stipulation. ICNU respectfully requests that the Commission not adopt any stipulation until the rule and protective order concerns detailed in this filing are addressed and remedied.

Dated this 25th day of February, 2009.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Melinda J. Davison

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Of Attorneys for the Industrial Customers of
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