

# McDowell Rackner & Gibson PC



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November 29, 2010

## VIA ELECTRONIC FILING AND U.S. MAIL

PUC Filing Center  
Public Utility Commission of Oregon  
PO Box 2148  
Salem, OR 97308-2148

**Re: Docket No. UE 177**

Enclosed please find an original and one copy of PacifiCorp's Supplemental Exhibit to Response in Opposition to ICNU's Motion to Modify the Protective Order.

A copy of this filing has been 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

Enclosure

cc: Service List

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**CERTIFICATE OF SERVICE**

I hereby certify that I served a true and correct copy of the foregoing document in Docket UE 177 on the following named person(s) on the date indicated below by email and first-class mail addressed to said person(s) at his or her last-known address(es) indicated below.

Raymond Myers  
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ray@oregoncub.org

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Melinda J. Davison  
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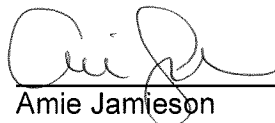
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Regulated & Utility Business Section  
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DATED: November 29, 2010



Amie Jamieson

Of Attorneys for PacifiCorp

1 **BEFORE THE PUBLIC UTILITY COMMISSION**  
2 **OF OREGON**

3 **UE 177**

4 In the Matter of:

5 PACIFICORP, dba PACIFIC POWER & LIGHT  
6 COMPANY

7 Filing of tariffs establishing automatic  
8 adjustment clauses under the terms of SB 408.

**PACIFICORP'S SUPPLEMENTAL  
EXHIBIT TO  
RESPONSE IN OPPOSITION TO  
ICNU'S MOTION TO MODIFY THE  
PROTECTIVE ORDER**

9 Attached for filing with the Public Utility Commission of Oregon (Commission) is a  
10 Supplemental Exhibit to PacifiCorp's Response in Opposition to ICNU's Motion to Modify  
11 Protective Order filed on November 17, 2010 (Response).

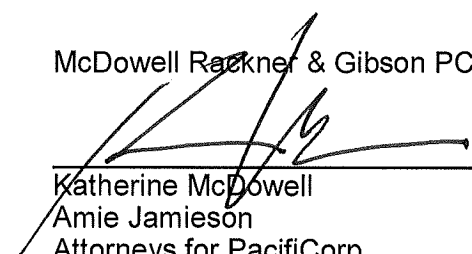
12 The Supplemental Exhibit is a letter sent from Portland General Electric Company  
13 (PGE) to the Industrial Customers of Northwest Utilities (ICNU). PGE sent the letter to ICNU  
14 on November 23, 2010, after PacifiCorp filed its Response.

15 The letter states PGE's position that ICNU has violated the terms of the agreement  
16 under which PGE provided copies of highly confidential tax information to ICNU's consultant,  
17 Ellen Blumenthal. ICNU's Motion to Modify the Protective Order is based in part upon ICNU's  
18 performance under its agreement with PGE. PGE's letter is therefore relevant to  
19 consideration of ICNU's Motion.

20 PacifiCorp respectfully requests that the Commission accept this Supplemental Exhibit  
21 to PacifiCorp's Response in Opposition to ICNU's Motion to Modify Protective Order.

22  
23 DATED: November 29, 2010.

McDowell Rackner & Gibson PC

  
Katherine McDowell  
Amie Jamieson  
Attorneys for PacifiCorp



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November 23, 2010

**VIA E-MAIL**

Ms. Melinda Davison  
Davison Van Cleve, PC  
333 SW Taylor Street, Suite 400  
Portland, OR 97204

Re: UE 178 -- Protective Order and Letter Agreement

Dear Ms. Davison:

Thank you for your November 19, 2010, e-mail message regarding Industrial Customers of Northwest Utilities' ("ICNU") pending motion to amend the protective order in UE 177. After reviewing ICNU's motion we have serious concerns regarding ICNU's compliance with the letter agreements under which PGE has provided highly confidential material to Ms. Blumenthal. As you know, the letter agreements provide that "PGE and ICNU agree and acknowledge that PGE's production of the highly confidential documents shall not be used by ICNU in this proceeding or any other proceeding for any purpose." Just a few months ago you asked about this very provision. In response, I clarified that the intent of the provision is that "ICNU will not use the fact that PGE has made an accommodation in this docket as precedent or use the accommodation as precedent in another proceeding." October 12, 2010 e-mail.

ICNU's motion violates this provision of our letter agreements. The motion's principal argument is based on PGE's production of highly confidential information to Ms. Blumenthal and the claim that Ms. Blumenthal has not mishandled the information. The motion concludes that "the experience with PGE shows that providing Ms. Blumenthal with a copy of the highly confidential material will not create a risk of disclosure." Motion at 4. That type of use of PGE's accommodation is exactly what the letter agreements prohibit.

Your e-mail asked whether we would support your motion given our experience working with Ms. Blumenthal. We cannot agree to your request. Our letter agreements were crafted to avoid this type of erosion of the provisions of the protective order. The protective order reflects the sensitive nature of the tax information involved in SB 408 proceedings. It

Ms. Melinda Davison  
November 23, 2010  
Page 2

strikes an appropriate balance between providing reasonable access to enable parties to participate in the review process and the need to protect highly confidential information.

Our experience in these tax reports suggests that case-by-case accommodations are appropriate but only within the general protections afforded by the protective order. If anything, the pending motion calls into question our willingness to make accommodations, not the terms of the protective order. We do not endorse any changes to the protective order.

Sincerely,



David F. White

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