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January 18, 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 PORTLAND GENERAL ELECTRIC COMPANY to file tariffs establishing automatic adjustment clauses under the terms of SB 408. **Docket No. UE 178**

Dear Filing Center:

Enclosed please find the original and one (1) copy of the Industrial Customers of Northwest Utilities' letter to the Commissioners in response to Staff's Public Meeting Memoranda issued on January 17, 2008 in the above-referenced matter.

Thank you for your assistance.

Sincerely yours,

/s/ Eric G Shelton
Eric G. Shelton

Enclosures

cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing letter on behalf of the Industrial Customers of Northwest Utilities upon the parties, shown below, on the official service list by causing the foregoing document to be deposited, postage-prepaid, in the U.S. Mail, or by service via electronic mail to those parties who waived paper service.

Dated at Portland, Oregon, this 18th day of January, 2008.

/s/ Eric G. Shelton
Eric G. Shelton

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Via Facsimile and U.S. Mail

Chairman Lee Beyer
Commissioner Ray Baum
Commissioner John Savage
Oregon Public Utility Commission
550 Capitol St. NE, Suite 215
Salem, OR 97301-2551

Re: UE 177/Advice No. 07-019 and UE 178/Advice No. 07-24

Dear Commissioners:

The Industrial Customers of Northwest Utilities ("ICNU") submits this letter in response to Staff's Public Meeting Memoranda issued on January 17, 2008, regarding the above referenced Dockets. These Dockets involve the proper calculation of the difference between "taxes paid" and "taxes collected" as required by SB 408.

On January 10, 2008, Judge Paul Lipscomb of the Marion County Circuit Court issued a ruling in Lewis v. Pub. Util. Comm'n of Oregon, Marion County Case No. 07C11429, finding that the Oregon Public Utility Commission ("Commission") failed to timely establish the terms of an automatic adjustment clause ("AAC") pursuant to SB 408. On January 15, 2008, Chief Administrative Law Judge ("ALJ") Michael Grant issued a memorandum notifying parties that at the Commission's January 22, 2008 Public Meeting, in response to Judge Lipscomb's ruling, Staff would be proposing that automatic adjustment clauses be established using proposed numbers derived from the utilities' tax filings made on October 15, 2007, subject to revision when the Commission issues its final orders. Staff reports in these matters were issued on January 17, 2008. We have had one day to put our concerns in writing to you, thus, these comments are not exhaustive.

ICNU is specifically concerned about Staff's recommendation to implement the tariffs as filed by the utilities in October 2007. While we do not oppose establishing an AAC as required by SB 408, we believe this precipitous course of action may have unintended consequences. We have the following concerns: 1) approval of the utilities' proposed dollar figures for the difference between taxes paid and taxes collected is not required to establish the terms of an automatic adjustment clause; 2) inadequate notice was given for implementing the tariffs as filed; 3) Staff makes no mention of whether the interest accruing on the difference

between taxes paid and taxes collected will be derived from the amounts proposed by the utilities or the final amounts approved by the Commission; 4) we oppose the two year amortization contained in PGE's tariff; and 5) we oppose PacifiCorp's suggestion that any surcharge over $27 million be placed in a balancing account and collect interest.

1. Establishing the Terms of an Automatic Adjustment Clause Does Not Require Approval of the Utilities' Proposed Tariffs

Judge Lipscomb's ruling holds that the Commission was required to establish the terms of an automatic adjustment clause no later than 60 days after the utilities' filed their October 15, 2005 tax reports. Such an automatic adjustment clause should be an ongoing tariff that accounts for all differences between taxes paid and taxes collected, beginning January 1, 2006, and remaining in effect until the Commission makes a finding that the automatic adjustment clause "would have a material adverse effect on customers . . . ." ORS §§ 757.268(5) and (9). The establishment of an automatic adjustment clause under SB 408 is not specific to each tax year, and therefore, does not require the approval of a specific dollar amount, as Staff recommends that the Commission do here.

Since the October 2005 tax reports that Judge Lipscomb bases his ruling on do not involve differences between taxes paid and taxes collected after January 1, 2006, actual numbers are obviously immaterial. We believe the correct interpretation of Judge Lipscomb's ruling is to establish a process similar to that recently conducted for the establishment of automatic adjustment clauses pursuant to SB 838 in Docket No. UM 1330. In UM 1330, the terms of automatic adjustment clauses were approved for the utilities to account for the costs of renewable resources, and no specific renewable projects or dollar figures were used in establishing those automatic adjustment clauses. It was simply a tariff designed to capture future costs incurred by the utilities that were authorized to be included in the automatic adjustment clauses.

The establishment of automatic adjustment clauses for SB 408 should follow a similar path—the establishment of the terms of an automatic adjustment clause to account for all future differences between taxes paid and taxes collected. Under Staff's approach, a different automatic adjustment clause would be established for each tax year. Each automatic adjustment clause, however, is required to remain in effect until terminated by the Commission, which requires a hearing. ORS §§ 757.268(5) and (10). Such an approach is not what SB 408 requires.

2. Staff Has Not Given Adequate Notice Regarding the Establishment of the Terms of an Automatic Adjustment Clause

The first notice issued indicating that Staff would address the establishment of an automatic adjustment clause at the Commission's January 22, 2008 Public Meeting was through ALJ Grant's Memorandum dated January 15, 2008. We were unaware of the specific action requiring Commission approval until the issuance of the Staff reports on January 17, 2008. Since January 21 is a state and federal holiday, we have been provided two business days' notice (counting January 17). Such short notice seriously prejudices ICNU's ability to review the terms of the utilities' tariffs, and determine whether the tariffs comply with the law.

A better approach that allows for due process and hopefully a consensus solution would involve requiring the utilities to each submit the terms of an automatic adjustment clause. Approval and implementation of a new tariff requires "reasonable notice" before the Commission conducts a hearing to determine whether the schedule is "fair, just and reasonable." ORS § 757.210(1)(a). This is precisely how the establishment of the automatic adjustment clauses was handled in UM 1330, and the parties' due process rights require no less here.

3. If the Commission Adopts Staff's Recommendation, the Commission Should Clarify that Interest Will Accrue Only on the Amount Determined by the Commission to be the Difference between Taxes Paid and Taxes Collected

If the Commission approves the tariffs as proposed by the utilities, it is unclear whether interest will accrue based on the utilities' proposed amount contained in the October 15, 2007 tax reports or on the final amount approved by the Commission as the difference between taxes paid and taxes collected. According to the plain terms of the utilities' proposed tariffs, the adjustment will be placed in a balancing account and interest will begin to accrue upon implementation of the tariff. This suggests interest would accrue from the date the tariff is approved; which, under Staff's proposal, would be based on the amount proposed by the utilities. This is contrary to the SB 408 rules. Accordingly, the Commission should make clear that interest will only accrue based on the amount approved by the Commission as the difference between taxes paid and taxes collected. Such a method is consistent with the Commission's rules. Under OAR § 860-022-041(8)(e), the amount ultimately approved by the Commission by order "will be deemed to be added to the balancing account on July 1 of the tax year" for purposes of calculating interest.

We understand that the tariffs, if implemented on January 22, 2008, would be placeholders until the final resolution of UE 177 and UE 178. The concern, however, is that while the tariffs do not seek to change rates until June 2008, these tariffs will actually be in effect from January 2008 until the amended tariffs are approved. Without putting carefully crafted protections in place now, implementing the requirements of the SB 408 rules may constitute retroactive ratemaking.

Sincerely yours,

/s/ Melinda J. Davison
Melinda J. Davison

cc: Service List