

McDowell Rackner & Gibson PC



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February 10, 2011

VIA U.S. MAIL

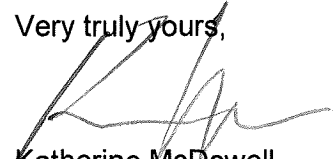
PUC Filing Center
Public Utility Commission of Oregon
PO Box 2148
Salem, OR 97308-2148

Re: Docket No. UE 177(4)

Enclosed for filing in the captioned docket are an original and one copy of PacifiCorp's Motion to Strike or in the Alternative for Leave to File Responsive Testimony. A copy of this filing was served on all parties to this proceeding as indicated on the attached Certificate of Service.

Please contact this office with any questions.

Very truly yours,



Katherine McDowell

Enclosure
cc: Service List

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

3 **UE 177(4)**

4 In the Matter of:

5 PACIFICORP, dba PACIFIC POWER & LIGHT
6 COMPANY

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

**PACIFICORP'S MOTION TO STRIKE,
OR IN THE ALTERNATIVE FOR LEAVE
TO FILE RESPONSIVE TESTIMONY**

Expedited Consideration Requested

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9 Pursuant to OAR 860-001-0420(1), PacifiCorp (or the Company) submits this motion
10 to (1) strike the testimony and objections filed on February 7, 2011 by the Industrial
11 Customers of Northwest Utilities (ICNU); or, in the alternative (2) amend the procedural
12 schedule in this docket to allow PacifiCorp and other settling parties (Settling Parties) to file
13 responsive testimony. Pursuant to OAR 860-001-0420, PacifiCorp made a good faith effort to
14 confer with ICNU about the subject of this motion. ICNU opposes the motion to strike, but has
15 agreed to the filing of responsive testimony, as set forth below.

16 Expedited consideration under OAR 860-001-0420(7) is requested because the
17 hearing in this docket is now scheduled for February 22, 2011, and the Public Utility
18 Commission of Oregon (Commission) must issue its final order by April 13, 2011. Pursuant to
19 OAR 860-001-0420(7)(c) the Company requests that responses to this motion be filed no later
20 than February 15, 2011.

21 ICNU and the Company have agreed to the following proposed schedule, assuming
22 the motion to strike is denied; the Company understands that Staff and CUB also agree to this
23 schedule:

24 February 14, 2011—Data Requests on ICNU's Testimony due

25 February 17, 2011—ICNU responses due

26 February 18, 2011—Responsive Testimony filed

1 February 21, 2011—ICNU Data Requests on Responsive Testimony due

2 February 24, 2011, 12:00 pm—Responses to ICNU discovery due

3 February 25, 2011—Hearing

4 At the hearing, ICNU reserves the right to present live surrebuttal testimony and the
5 Settling Parties reserve the right to present live sur-surrebuttal testimony. Dates for post-
6 hearing briefs will also be set at the hearing.¹

7 **I. ARGUMENT**

8 **A. The Commission Should Strike ICNU’s Testimony and Objections.**

9 **1. ICNU’s Objections and Testimony Are Outside the Scope of this Docket.**

10 The Commission recently made clear that the “[a]ppropriate scope of UE 177(4) . . . is
11 to determine whether the tax reports filed by Pacific Power . . . are in compliance with OAR
12 860-022-0041.” *Re PacifiCorp Annual Tax Filings under ORS 757.268*, Docket UE 177(4),
13 Order No. 11-002 at 1 (Jan. 5, 2011). When ICNU proposed to investigate whether the tax
14 reports are appropriate pursuant to SB 408 (and not OAR 860-022-0041), the Commission
15 concluded that this work was “outside the scope of these proceedings” and denied ICNU’s
16 request for intervenor funding. *Id.* The Commission also specifically noted that ICNU’s
17 argument that OAR 860-022-0041 conflicts with SB 408 was recently rejected by the Court of
18 Appeals. *Id.*

19 In response to the denial of intervenor funding, ICNU filed a Revised Budget that
20 stated explicitly that “ICNU intends to investigate whether PGE’s 2009 tax report is consistent
21 with OAR 860-022-0041, and to respond to the settlement proposed by Staff and PacifiCorp.”
22 *Re PacifiCorp Annual Tax Filings under ORS 757.268*, Docket UE 177(4), Revised Budget for
23 Issue Fund Grant at 2 (Jan. 10, 2011). Based on this representation, the Commission

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25 ¹ ICNU agrees to the February 25, 2011, hearing date provided the hearing on PGE’s 2009 tax
26 report is held on the same day.

1 concluded that the proposed work was within the scope of this docket and approved the
2 proposed budget. *Re PacifiCorp Annual Tax Filings under ORS 757.268*, Docket UE 177(4),
3 Order No. 11-023 (Jan. 19, 2011).

4 On February 7, 2011, ICNU filed its Written Objections (Objections) and Direct
5 Testimony of Ellen Blumenthal (Testimony) in opposition to the Stipulation filed on January 14,
6 2011, by Staff, the Citizens Utility Board or Oregon (CUB), and PacifiCorp. The basis for
7 ICNU's Objection to the Stipulation is its contention that OAR 860-022-0041 incorrectly
8 calculates deferred taxes in the stand-alone calculation. Thus, "ICNU urges the Commission
9 to consider further revisions to the rules implementing SB 408." Objection at 3.

10 ICNU's Testimony argues that "the requirements of OAR 860-022-0041(4)(d) overstate
11 the normalization 'floor' in a stand-alone calculation." ICNU/100, Blumenthal/3, ll. 17-19. Ms.
12 Blumenthal describes her "recommended calculation of PacifiCorp's normalized tax expense,
13 which in [her] opinion, is the amount that should be included" in the Stipulation's Tax Report.
14 ICNU/100, Blumenthal/3, ll. 19-22. Based on this "recommended calculation," which differs
15 from that required by OAR 860-022-0041(4)(d), Ms. Blumenthal concludes that Tax Report is
16 incorrect.

17 ICNU's analysis does not address whether the stand-alone calculation underlying the
18 Stipulation complies with OAR 860-022-0041. Rather, ICNU argues that the stand-alone
19 calculation required by OAR 860-022-0041 is incorrect. ICNU's Objections and Testimony are
20 inconsistent with the Commission Order No. 11-002 and contrary to ICNU's express
21 representations to the Commission in filing its revised intervenor funding budget. On this
22 basis, PacifiCorp requests that the Commission grant the Motion to Strike.

23 **B. If the Objections and Testimony Are Not Stricken, the Commission Should Allow**
24 **Responsive Testimony.**

25 The procedural schedule in this case was modified on January 10, 2011, in response
26 to the settlement between Staff, CUB, and PacifiCorp. *Re PacifiCorp Annual Tax Filings under*

1 ORS 757.268, Docket UE 177(4), Ruling (Jan. 10, 2011). That modification allowed ICNU to file
2 objections to the Stipulation, but did not specify dates for filing testimony—either by ICNU in
3 support of its objections or by the Settling Parties responding thereto.


4 The Company and ICNU have worked out a proposed schedule that allows for full
5 development of the record while avoiding undue delay. The other Settling Parties, Staff and
6 CUB, have agreed to this schedule.

7 **III. CONCLUSION**

8 Because ICNU's Objections and Testimony are outside the scope of this docket,
9 PacifiCorp requests that the Commission strike them from the record. In the alternative,
10 PacifiCorp requests leave to file responsive testimony as set forth in this motion, with dates for
11 post-hearing briefs to be set at the hearing.

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13 DATED: February 10, 2010.

McDowell Rackner & Gibson PC

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Katherine McDowell
Amie Jamieson
16 Attorneys for PacifiCorp

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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.

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DATED: February 10, 2011



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