

1 **BEFORE THE PUBLIC UTILITY COMMISSION**

2 **OF OREGON**

3 UE 177 (4)

4 In the Matter of

5 PACIFICORP, dba PACIFIC POWER,  
6 (UE 177)

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

STAFF'S CLOSING BRIEF

9 **I. INTRODUCTION**

10 The Opening Brief of the Industrial Customers of the Northwest Utilities (ICNU)  
11 attempts to reframe the relevant question to be answered in this proceeding and offers several  
12 arguments in opposition to the stipulation or in support of its alternative proposal.

13 In the final analysis, the Public Utility Commission of Oregon (Commission) must decide  
14 whether or not the joint stipulation filed in this proceeding is consistent with the requirements of  
15 ORS 757.268 (SB 408) and OAR 860-022-0041, as amended by the temporary rule in AR 547.  
16 Even a cursory review of ICNU's opening arguments demonstrates that ICNU has not, in fact,  
17 cited any specific provision of either SB 408 or OAR 860-022-0041, as amended in AR 547, in  
18 support of its arguments.

19 The Commission Staff (Staff) takes the opportunity of this closing brief to demonstrate  
20 that if the Commission focuses on the specific requirements of SB 408 and OAR 860-022-0041,  
21 as amended by the temporary rule in AR 547, then the joint stipulation is fair and reasonable.  
22 Only if the Commission ignores the specific requirements of SB 408 and OAR 860-022-0041  
23 can it adopt ICNU's alternative approach.

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1 **II. DISCUSSION**

2 1. The record demonstrates that PacifiCorp’s tax report and the joint stipulation contain the  
3 deferred taxes that are related to regulated operations. ICNU has not identified any deferred  
4 tax item that is associated with non-regulated activities.

5 In spite of the fact that ICNU does not offer a single example of any deferred tax item  
6 inappropriately included in the balance of deferred taxes related to regulated operations, ICNU  
7 asserts that PacifiCorp has not met its burden of proof to establish that the balance of deferred  
8 taxes are related to regulated operations. To support this logic, ICNU argues that the deferred  
9 tax balance in this proceeding was not reviewed in PacifiCorp’s last general rate case (UE 179),  
10 the rates in effect during the 2009 tax year which are under consideration in this docket.  
11 However, the balance of deferred taxes included in rates was determined by Stipulation in which  
12 ICNU and the other signers concurred that rates were fair, just and reasonable.

13 The record in this docket clearly states that the balance of deferred taxes included in the  
14 joint stipulation under consideration relate only to Oregon regulated operations. ICNU’s witness  
15 states that she does not believe that anyone “other than the Company knows what might have  
16 been included in the last case.” Tr: 52. PacifiCorp’s testimony establishes that all of the included  
17 deferred tax items are related to Oregon regulated operations. Tr: 81. Furthermore, Staff testified  
18 that it had reviewed the deferred tax items and did not identify any non-regulated items. TR: 80-  
19 81.

20 ICNU offers no actual example of any deferred tax items incorrectly included in the  
21 balance of deferred taxes. As stated in its testimony at Tr: 51, ICNU’s witness (Ms.  
22 Blummenthal) states that she...”does not know what is in that balance [the balance of deferred  
23 taxes].” Based upon the record, it is disingenuous to argue that the parties have not met their  
24 burden of persuasion when it is un rebutted by the challenging party; ICNU.

25 2. The joint stipulation is consistent with SB 408 and OAR 860-022-0041, as amended by  
26 the temporary rule in AR 547.

As the opening briefs of PacifiCorp, Staff, and the Citizens’ Utility Board illustrate, the

1 joint stipulation is consistent with SB 408 and OAR 860-022-0041, as amended by the temporary  
2 rule in AR 547. ICNU’s lengthy and detailed opening brief, like its testimony, fails to cite to any  
3 specific statutory or rule provision that the joint stipulation violates. Instead, ICNU offers an  
4 “alternative proposal” that would require further rule changes and that ignore the current  
5 requirements of the statute and rules. Tr: 67-68.

6 While ICNU states its arguments in such a way as to appear to defend its alternative  
7 proposal as consistent with SB 408, the unmistakable thrust of all of ICNU’s arguments against  
8 the joint stipulation and in support of its alternative proposal amount to a request to ignore the  
9 requirements of ORS 757.268 and OAR 860-022-0041, as amended by the temporary rule, and  
10 request that the Commission adopt an ad hoc policy that is inconsistent with the requirements of  
11 the statute and the rule.

12 Rather, ICNU contends that the Commission should ignore the statute and the rules and,  
13 instead, consider that PacifiCorp’s Tax Return shows that it had negative taxable income. *See*  
14 Tr: 88-89.

15 Further, ICNU compares PacifiCorp and Portland General Electric Company (PGE), but  
16 ignores the fact, as outlined in Staff’s testimony (Tr: 88), that the two situations are not  
17 comparable. The rules require that the Commission rely on the lowest result of the three methods  
18 – consolidated, apportionment, and stand-alone– required by the rules. Here, the lowest result is  
19 under stand-alone, whereas for PGE, it was consolidated during this tax period. In fact, *if* the  
20 Commission applied the consolidated results under the rules to PacifiCorp, the surcharge would  
21 be higher than it is under the applicable stand-alone method.

22 3. ICNU’s alterative calculation does not comply with OAR 860-022-0041.

23 While ICNU has not cited to any specific statute or rule that the joint stipulation violates,  
24 the parties in support of the stipulation have outlined in their opening briefs all the deficiencies  
25 that result in ICNU’s alternative calculation being inconsistent with SB 408 and OAR 860-022-  
26 041. Staff reiterates the arguments made in those opening briefs.



1 **CERTIFICATE OF SERVICE**

2 I certify that on March 21, 2011, I served the foregoing Closing Brief upon the parties in  
3 this proceeding by electronic mail and delivering a true, exact and full copy by regular mail,  
4 postage prepaid, or by hand-delivery/shuttle, to the parties accepting paper service.

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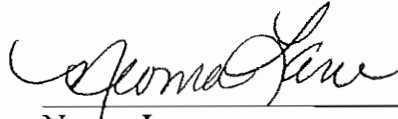
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Legal Secretary  
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