

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UE 177(3)**

In the Matter of )  
 )  
PACIFIC POWER & LIGHT )  
(dba PACIFICORP) )  
 )  
to File Tariffs Establishing Automatic )  
Adjustment Clause Under the Terms of )  
SB 408. )

**DIRECT TESTIMONY OF**

**MICHAEL B. EARLY**

**ON BEHALF OF**

**INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES**

**January 14, 2010**

1 **Q. PLEASE STATE YOUR NAME, POSITION, AND BUSINESS**  
2 **ADDRESS.**

3 **A.** My name is Michael B. Early and I am the Executive Director of Industrial  
4 Customers of Northwest Utilities (“ICNU”). My business address is 333 S.W.  
5 Taylor Street, Suite 400, Portland, Oregon, 97204.

6 **Q. PLEASE STATE YOUR EDUCATIONAL BACKGROUND.**

7 **A.** I received a B.S. from the University of Illinois in 1973, an M.A. from Harvard  
8 University in 1975, and a J.D. from Northwestern University in 1978.

9 **Q. PLEASE SUMMARIZE YOUR PROFESSIONAL EXPERIENCE.**

10 **A.** Early in my professional career I represented investor-owned utilities before the  
11 Federal Energy Regulatory Commission on electric rate matters. Since 1984, I  
12 have represented industrial customers in the Northwest on electric supply,  
13 transmission, and rate matters. I became the Executive Director of ICNU in  
14 September 2005. Attached as Exhibit ICNU/101, please find my detailed  
15 qualification statement.

16 **Q. PLEASE DESCRIBE ICNU AND ITS MEMBERS.**

17 **A.** ICNU is an incorporated, non-profit association of large industrial electric  
18 customers in the Pacific Northwest, with offices in Portland, Oregon. ICNU’s  
19 PacifiCorp members include companies in the pulp and paper, metal  
20 manufacturing, high technology and food processing industries. These industries  
21 have been hit very hard by the current economic recession. Although I am not  
22 familiar with all of the details, I am aware that many of ICNU’s members have  
23 taken dramatic and significant efforts keep their facilities operational during the  
24 difficult economic conditions, including the consolidation of operations and

1 lowering their operational costs. The rate surcharge proposed in PacifiCorp's  
2 2008 tax report will result in additional competitive pressure for our members  
3 with facilities in PacifiCorp's Oregon service territory. Many of these facilities  
4 are already taking difficult steps to reduce costs. The possible closure or reduced  
5 operations of these facilities could have devastating impacts on their local  
6 communities, many of which have unemployment rates above Oregon's average  
7 unemployment rate, which is already one of the worst in the nation.

8 **Q. WHAT IS THE PURPOSE OF THIS TESTIMONY?**

9 **A.** I am presenting ICNU's positions regarding the issues in this case, and expressly  
10 reserving arguments previously made by ICNU before this Commission and  
11 before the Oregon Court of Appeals regarding OAR § 860-022-0041, the  
12 Commission rule implementing Senate Bill ("SB") 408, and the protective order  
13 governing Docket No. UE 177.

14 **Q. WHAT IS ICNU'S POSITION IN UE 177(3)?**

15  
16 **A.** Based upon its review of PacifiCorp's 2008 tax report, ICNU does not agree that  
17 PacifiCorp is entitled to a \$38.5 million pre-interest surcharge pursuant to either  
18 Senate Bill 408 or according to Commission rules. The parties are presently in  
19 settlement negotiations, however, and my understanding is that PacifiCorp may  
20 file a revised tax report supporting a proposed stipulation in conformance with  
21 recommendations delineated in the Staff Issues List, filed on December 18, 2009.  
22 ICNU takes no position on whether Staff's recommended adjustments are  
23 accurate. If a settlement is not reached, ICNU will request permission to file

1 testimony showing errors in PacifiCorp's tax report, which when corrected shows  
2 that little to no surcharge is warranted.

3 **Q. PLEASE EXPLAIN THE ARGUMENTS THAT ICNU IS RESERVING.**

4

5 **A.** ICNU continues to believe that, as presently required under OAR § 860-022-  
6 0041, the methodologies used to calculate the tax "true-up" mandated by SB 408  
7 are in violation of ORS §§ 757.267 and 757.268. Additionally, ICNU also  
8 remains opposed to the protective order governing UE 177 and the safe room  
9 requirements which do not allow ICNU to conduct a full and complete evaluation  
10 of PacifiCorp's tax report. ICNU maintains that it is unable to effectively  
11 participate in these proceedings under the saferoom procedures. These arguments  
12 form the basis of a petition for review which is currently pending before the  
13 Oregon Court of Appeals. In UE 177(3), ICNU reserves all its arguments which  
14 have previously been advanced before the Commission which are currently on  
15 appeal.

16 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

17 **A.** Yes.

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**ICNU/101**

**QUALIFICATION STATEMENT OF  
MICHAEL B. EARLY**

**January 14, 2010**

**Qualifications of Michael B. Early**

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 **A.** Michael B. Early, 333 SW Taylor Street, Suite 400, Portland, Oregon 97204.

3 **Q. PLEASE STATE YOUR OCCUPATION.**

4 **A.** I am the Executive Director of Industrial Customers of Northwest Utilities  
5 (“ICNU”) which is a non-profit trade association representing industrial  
6 customers with facilities in Oregon and Washington on electric power issues.

7 **Q. PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND**  
8 **EXPERIENCE.**

9 **A.** I received a B.S. from the University of Illinois in Physics in 1973, an M.A. in  
10 Physics from Harvard University in 1975, and a J.D. from Northwestern  
11 University School of Law in Chicago in 1978.

12 From 1978 to 1984, I was an attorney with Reid & Priest, New York, N.Y.  
13 and Washington, D.C., representing investor-owned utilities before the Federal  
14 Energy Regulatory Commission. Since mid-1984, I have represented industrial  
15 customers in the Northwest on electric service and rate issues. Prior to becoming  
16 Executive Director of ICNU, I represented the Northwest aluminum industry as a  
17 partner at Heller, Ehrman, White & McAuliffe, and later as a partner at Ball Janik  
18 LLP, and as a sole practitioner.

19 As Executive Director of ICNU, I direct ICNU’s activities before the  
20 Oregon Public Utility Commission and the Washington Utilities and  
21 Transportation Commission and also direct ICNU’s activities before the Oregon  
22 and Washington legislatures on energy issues.

1 **Q. WHERE HAVE YOU TESTIFIED AS A WITNESS REGARDING**  
2 **UTILITY RATE MATTERS?**

3 **A.** I have testified as a policy witness before the Oregon Public Utility Commission  
4 and the Washington Utilities and Transportation Commission. I have testified  
5 before numerous legislative committees in Oregon and Washington on energy  
6 issues.

# Davison Van Cleve PC

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January 14, 2010

*Via Electronic and U.S. 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(3)**

Dear Filing Center:

Enclosed please find the Direct Testimony of Michael Early on behalf of  
Industrial Customers of Northwest Utilities in the above-referenced docket.

Thank you for your assistance.

Sincerely yours,

/s/ Brendan E. Levenick  
Brendan E. Levenick

Enclosures

cc: Service List



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day served the foregoing Direct Testimony of Michael Early behalf of the Industrial Customers of Northwest Utilities upon each affected Participating Public Utility, all precertified organizations, and all parties identified on the service list by causing the same to be deposited in the U.S. Mail, postage-prepaid, where paper service has not been waived.

Dated at Portland, Oregon, this 14th day of January, 2010.

/s/ Brendan E. Levenick  
Brendan E. Levenick

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