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VIA ELECTRONIC FILING AND U.S. MAIL

PUC Filing Center
Public Utility Commission of Oregon
PO Box 2148
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Re: Docket UE 210

Enclosed for filing in the above docket are an original and five copies of the Joint Parties' Reply Brief. 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,

Katherine McDowell

cc: UE 210 Service List

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing document in UE 210 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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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UE 210

In the Matter of PacifiCorp's Filing of Revised Tariff Schedules for Electric Service in Oregon	**JOINT PARTIES' REPLY BRIEF**

Pursuant to Administrative Law Judge ("ALJ") Lisa Hardie's Ruling on October 30, 2009, PacifiCorp d/b/a Pacific Power (or the "Company"), Staff of the Public Utility Commission of Oregon ("Staff"), the Citizens' Utility Board of Oregon ("CUB"), Fred Meyer Food Stores and Quality Food Centers, Divisions of The Kroger Co. ("Kroger"), and Klamath Water Users Association ("KWUA") (collectively, "Joint Parties") submit this Reply Brief to the Public Utility Commission of Oregon ("Commission") in response to the Opening Brief of the Industrial Customers of Northwest Utilities ("ICNU") filed on November 25, 2009.

I. ARGUMENT

A. ICNU's Argument that Poor Economic Conditions Justify Rejection of the Stipulation Lacks Support in the Record and in Commission Precedent.

ICNU's argument against the Stipulation distills to a plea for the Commission to reject it because of poor overall economic conditions. Indeed, in just the first two pages of ICNU's Opening Brief, ICNU makes ten different references to the economic recession and its impacts. However, the only evidence ICNU cites for any of these references is the testimony of Michael Early, offered for the first time in opposition to the Stipulation. Without citation to any corroborating evidence, Mr. Early (testifying as the Executive Director of ICNU, not an expert economist), claims that the economy has worsened, that adjustments beyond those ICNU originally proposed are warranted and that the Stipulation should be rejected on this basis. This testimony cannot be reconciled, however, with the expert testimony of

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Mr. Gorman offered on behalf of ICNU, opining that economic conditions have improved since this case was filed. *See* ICNU/500, Gorman/4, ll. 15-16

ICNU has offered conflicting testimony on the state of the economy and has not provided a witness with established credentials to testify to the worsening state of the economy. ICNU has failed to support its claim of worsening economic conditions and failed to show how such a claim, even if it were based on evidence in the record, materially impacts the reasonableness of the Stipulation. As the Joint Parties testified in support of the Stipulation:

> The Parties recognize that the current economic climate has placed significant financial pressure on the Company's customers. The terms of the Stipulation reflect this reality. Although the Company had not filed a general rate case in three years prior to filing this rate case, it accepted many of the adjustments proposed by Staff, CUB, and ICNU, and lowered its requested rate increase from 9.1 percent to 4.6 percent—nearly one-half of its original request. The compromises reflected in the agreement were made with a full understanding of the current economy.
>
> Joint/200, Garcia *et al.*/4.[1]

In a separate section of the Joint Parties' Reply testimony, CUB even more directly rebutted ICNU's argument that the Stipulation was unreasonable in light of current economic conditions:

> CUB does agree with ICNU that this is a difficult time for customers. In CUB's opening testimony unemployment figures were cited to show that PacifiCorp serves parts of the state that have been hit extremely hard by this recession. CUB/100 Jenks/24. CUB recognizes that raising rates is not helpful to families and businesses that are struggling. At the same time, CUB cannot ask Oregon utilities to stop making investments in their respective service territories without future impacts to service and system performance. CUB understands that making cost-effective investments today will

[1] To distinguish between the joint testimony supporting the Revenue Requirement Stipulation and the Rate Spread and Rate Design Stipulation, the testimony supporting the Revenue Requirement Stipulation was labeled "Joint—Revenue Requirement/100." For ease of reference, the testimony is referred to as "Joint/100" and the reply testimony as "Joint/200" in this brief.

> lead to lower rates in the future. Not making those investments may well lead to higher rates in the future.
>
> Joint/200, Garcia *et al.*/23-24.

In summary, ICNU has not presented evidence demonstrating that the Stipulation is unreasonable in light of current economic conditions.

B. ICNU's Opening Brief is Based Upon Irrelevant, Inaccurate, and Unsupported Statements.

ICNU's Opening Brief attempts to obscure the fundamental weakness of ICNU's evidence against the Joint Parties' Stipulation with arguments that are irrelevant or based upon inaccurate, outside-of-the-record statements. ICNU ignores the clear language in ALJ Hardie's October 30, 2009, Ruling requiring citations to the record when describing the testimony of a witness or position of a party. *Re. PacifiCorp's Filing of Revised Tariff Schedules for Electric Service in Oregon*, Docket UE 210, Notice of Cancellation of Hearing & Ruling (Oct. 30, 2009). For example:

- ICNU states that "PacifiCorp . . . claims to be over earning." Opening Brief of ICNU at 2. PacifiCorp ***never*** claimed to be overearning in this or any recent proceeding. Rather, PacifiCorp's testimony is that at current rate levels, PacifiCorp will likely earn significantly less than its authorized return on equity. PPL/700, Dalley/2-3.
- Without citation to any evidence, ICNU claims that "Mid-American executives promised its customers no annual rate increases during its courtship." Opening Brief of ICNU at 2. MidAmerican executives made no such claim. The stipulation adopted by the Commission in approving the MidAmerican acquisition included more than 80 commitments, none of which limit the Company's ability to request rate increases. *See MidAmerican Energy Holdings Co. Application for Authorization to Acquire Pacific Power & Light, dba PacifiCorp*, Docket UM 1209, Order No. 06-121 (Mar. 14, 2006). In fact, MidAmerican's testimony in that proceeding was the exact opposite of

ICNU's unsupported statement: that PacifiCorp had a preexisting need for rate increases to account for its capital investment needs and to earn its authorized rate of return. Docket UM 1209, PPL/302, Gale/6, 15.

- ICNU accuses PacifiCorp of "relentlessly pushing for higher rates on a near-annual basis." *Id.* at 4. ICNU fails to note, however, that the vast majority of rate increases since Docket UE 179 were as a result of statutory mandates: SB 408, a tax true-up statute which ICNU supported and PacifiCorp opposed, and SB 838, which requires investment in renewable resources.
- ICNU claims that PacifiCorp "historically proposed a rate spread which unfairly burdened industrial customers with rate increases significantly higher than the overall average." Opening Brief of ICNU at 4. ICNU also argues that industrial customers have borne the brunt of PacifiCorp's rate increases. Opening Brief of ICNU at 5. These statements are incorrect and irrelevant. PacifiCorp's rate spread is based upon cost of service studies and has been adjusted by the Company's rate mitigation adjustment to minimize unfair rate impacts. The rate spread in this case is the subject of a separate stipulation to which ICNU is a party. The rate spread results demonstrate that ICNU's members have been the beneficiaries of the Company's rate mitigation adjustment, which has reduced ICNU's members' rate increases from the full amount justified on a cost of service basis, not the opposite.
- ICNU states that while Oregon Staff recommended that PacifiCorp increase its rates, Staff of the Utah Commission recommended a rate reduction. Opening Brief of ICNU at 6. ICNU's statement is meaningless absent a thorough discussion of the differences between the Utah and Oregon filings (notably the test year and the rate base inclusions). The Commission should disregard ICNU's statement as unsupported and irrelevant. In any event, in more recent filings, the Division of Public Utilities in Utah has withdrawn a number of significant adjustments and now

supports a rate increase. Utah Public Service Commission Docket 09-035-23, Surrebuttal Testimony of Thomas Brill, DPU Exh. No, 2.0SR.

- While ICNU acknowledges that Ms. Blumenthal made another error in calculating her labor adjustments in this case—this time removing wages that dated back to the historical period—ICNU argues that PacifiCorp has a "history of overestimating its payroll costs." Opening Brief of ICNU at 26, 24. However, the record shows that ICNU has a history of underestimating PacifiCorp's labor costs, not the opposite. Joint/200, Garcia *et al.*/14.

The Commission should focus on the evidence in the record in this case, which clearly demonstrates the reasonableness of the Stipulation, and disregard the rhetoric in ICNU's brief.

C. ICNU's Proposed Standard for Evaluating Settlements is Contrary to Commission Policy and Precedent.

ICNU proposes that the Commission require parties defending contested stipulations to explain the specific cost components and methodologies used to develop the rate increase. Opening Brief of ICNU at 12. ICNU's proposal is contrary to the Commission's standard for evaluating contested settlements. The Commission previously found that in the context of a contested stipulation, it will adopt the stipulation "if competent evidence supports it." *Re. PacifiCorp*, Docket UE 121, Order No. 02-469 (July 18, 2002). The Commission does not require that settling parties agree on the specific costs or methodologies, as ICNU alleges.

ICNU's proposed standard is also contrary to the Commission's policy of encouraging settlements that are in the public interest. *See, e.g., Re. PacifiCorp's 2010 Transition Adjustment Mechanism*, Docket UE 207, Order No. 09-432 at 6 (Oct. 30, 2009). ICNU's proposal would require stipulating parties to agree on specific cost components and methodologies, but apparently only in the context of contested stipulations. This would create a significant barrier to settlement that would not exist in the case of all-party settlements.

In addition, ICNU's proposal is contrary to the Commission's policy of judging rates by their overall reasonableness. As discussed in the Joint Parties' Opening Brief, the Commission's policy is to judge rates based on their overall reasonableness, not the methodologies or the cost components used to develop the rates. Joint Parties' Opening Brief at 5. Rate case issues are complex and can rarely be reduced to one "right" number in each cost category. *Re Avista Corp. Request for a General Rate Revision*, Docket UG 186, Order No. 09-422 at 8 (Oct. 26, 2009) [hereinafter "Order No. 09-422"]. ICNU's proposal, however, assumes there is one "right" number in each cost category and that the Stipulation is defective if it does not reflect these numbers. ICNU's argument is contrary to the Commission's standard for evaluating rates and should be rejected.

Finally, ICNU takes issue with the Joint Parties' argument that the Commission has accepted settlements with a similar level of detail as the Stipulation, citing the Docket UE 180 settlement as an example of how the Commission did not rely on a "black box" settlement to resolve disputed issues. ICNU's reliance on the settlement in UE 180 is inapt. The disputed issues remaining after the all-party settlement in that docket were not the subject of any settlement, contested or otherwise. *Re. Portland Gen. Elec. Co. Request for a General Rate Revision*, Docket UE 180, Order No. 07-015 at 9 (Jan. 12, 2007). That case does not stand for the proposition that the Commission requires that contested stipulations be supported by an explanation of specific cost components of the rate increase and methodologies, as ICNU implies.

D. The Stipulation Reflects a Level of Rate Base that is Consistent with ORS 757.355.

ICNU argues that the Stipulation is unlawful because it includes rate base items that will not be used and useful for Oregon ratepayers. Opening Brief of ICNU at 29.[2] While the

[2] As the basis for its adjustment, ICNU has adopted Staff's interpretation of ORS 757.355 and the "known and measurable" standard. *See* Staff/100, Garcia/7-8; Opening Brief of ICNU at 8-12.

Joint Parties do not agree on the legal standard to be applied to the rate base items referenced by ICNU, the Joint Parties agree that even if ICNU's proposed legal standard is applied,[3] ICNU's argument is factually incorrect. ICNU incorrectly states that the Stipulation does not reflect Staff's proposed reduction to rate base. Opening Brief of ICNU at 29-30. Staff adjusted its proposed reduction to rate base in response to PacifiCorp's reply testimony to $35.2 million on an Oregon-allocated basis. Joint Reply, Garcia/201. The Stipulation reflects an adjustment to electric plant in service related to the miscellaneous rate base of $35.4 million on an Oregon-allocated basis. Stipulation at Exhibit A. The Stipulation includes a larger adjustment to rate base than Staff believed should be removed under Staff's, and ICNU's, interpretation of ORS 757.355.

In addition, ICNU does not rebut the evidence that the Company's Oregon-allocated net electric plant-in-service as a result of the Stipulation will be almost $50 million lower than the Company's actual net plant in service at the beginning of 2010, one month before rates go into effect. Joint/200, Garcia *et al.*/9, ll. 3-14. ICNU presents no evidence that the Stipulation violates Staff's and ICNU's interpretation of ORS 757.355, or that the Company's rate base will include any items that will not be used and useful at the beginning of the test year. The Commission should therefore reject ICNU's rate base argument on a factual basis and does not need to resolve the rate base legal issues raised by ICNU.

E. ICNU Has Not Refuted the Joint Parties' Evidence that the Level of Labor Costs Included in the Stipulation is Reasonable.

ICNU's objections to the total Company and Oregon-allocated levels of labor costs included in the Stipulation are flawed and do not serve as a basis for adjusting or rejecting the Stipulation. First, ICNU's proposals to remove the non-union wage increase and all bonus

[3] The Joint Parties filed a letter concurrently with this brief stating that the Joint Parties believe that the Commission does not need to address the legal issues related to rate base raised in ICNU's brief. The letter states that the Joint Parties will, however, file briefs on the rate base legal issues should the Commission deem it necessary,

and incentive costs rely solely on Ms. Blumenthal's claim that the state of the economy warrants removal of the referenced costs. Opening Brief of ICNU at 25. As outlined above, a blanket statement about the poor state of the economy, especially one that contradicts ICNU's witness Michael Gorman's statement about the improving state of the economy, is not sufficient to warrant disallowance of costs that are prudently incurred, required to maintain a competent workforce, and fully supported by the record.

As discussed in the Joint Parties' Opening Brief, the Stipulation generally reflects the bonus and incentive compensation adjustment reflected in ICNU's opening testimony. In response to the Joint Parties' discussion, ICNU argues that the Joint Parties should not have entered into a settlement before final round of testimony was due if they wanted an opportunity to consider ICNU's new adjustments during settlement. Opening Brief of ICNU at 26. ICNU's argument ignores the facts that new adjustments are outside the proper scope of surrebuttal testimony and that nothing has changed—either in the facts related to bonus and incentive compensation or in PacifiCorp's reply testimony on this issue—to support ICNU's ability to argue new issues or positions at this phase in the proceeding. As a policy matter, it would be unreasonable for the Commission to reject a settlement on the basis of an inappropriate attempt to submit a new adjustment that is unsupported by any new evidence or changed circumstances.

Moreover, while ICNU's adjustment is generally reflected in the Stipulation, the Commission does not evaluate the reasonableness of rates based on specific adjustments or methodologies. Joint Parties' Opening Brief at 5. Therefore, determining whether the Stipulation reflects ICNU's adjustment is not a prerequisite for approval of the Stipulation.

Additionally, ICNU's argument that Oregon's allocation of labor costs is too high is not supported by the evidence. ICNU claims that "there is no evidence in the record that disputes Ms. Blumenthal's calculation [of Oregon's allocation factor] or the data she relied upon." Opening Brief of ICNU at 28. ICNU is incorrect. Mr. Dalley explained in his reply testimony and in the Joint Parties' reply testimony that Ms. Blumenthal erred in improperly using estimates of Oregon-allocated wages and salaries to calculate her adjustment. Joint/200, Garcia *et al.*/15, LL. 6-14, Exhibit PPL/710; PPL/706, Dalley/41-44. No reasonable basis exists for using an estimate of a subset of labor costs to calculate total labor costs when actual total labor costs are available.

For this same reason the Commission should reject Ms. Blumenthal's calculation of an historical trend of Oregon allocation. Ms. Blumenthal's calculation of her trend relies upon estimates of wages and salaries, rather than actual total labor costs, and ignores the Company's allocation methodology. Ms. Blumenthal's calculation is flawed and should therefore be rejected.

F. The Cost of Capital Reflected in the Stipulation is Reasonable and Supported by Evidence in the Record.

ICNU presents a number of arguments objecting to the overall rate of return ("ROR") proposed in the Stipulation. ICNU does not attack the ROR directly, most likely because the ROR is a decrease from the Company's currently authorized ROR. Joint/200, Garcia *et al.*/19, ll. 6-10. ICNU instead attacks the equity capitalization percentage and return on equity ("ROE") that the Joint Parties did not agree on, but that the Company would use for calculating taxes collected in rates for purposes of Senate Bill 408. The Joint Parties refer to the reply testimony of PacifiCorp witness Bruce Williams for a response to ICNU's arguments relating to the equity capitalization percentage and maintenance of PacifiCorp's current credit ratings. PPL/307, Williams/3-6.

ICNU argues that the Joint Parties have not submitted any cost of capital analysis specifically supporting the 8.08 percent ROR, and the Commission should therefore reject the ROR. ICNU's argument is contradicted by Commission precedent. In evaluating a contested settlement in 2002, the Commission found that a stipulated disallowance that was not specifically supported by evidence in the record was reasonable. *Re PacifiCorp*, Docket UM

995, Order No. 02-469 at 72, 75 (July 18, 2002) ("Parties negotiate settlements for their own reasons. We need not inquire into those reasons if the outcome is reasonable.") In this case, PacifiCorp submitted a cost of capital analysis supporting a higher ROR than is established in the Stipulation. PPL/200, PPL/300, PPL/214, PPL/307. Moreover, the Commission has not required parties supporting a stipulation to develop a cost of capital analysis specifically supporting the stipulated cost of capital components. Order No. 09-422 at 8. Thus, ICNU's criticism is misguided.

In addition, the fact that the ROR is within the range of reasonable results and is very close to the ROR proposed by ICNU in its opening testimony is evidence of the reasonableness of the stipulated ROR. Joint Parties' Opening Brief at 13. Contrary to ICNU's criticism, the Commission recognizes that rate case issues can rarely be reduced to one "right" number in each cost category, especially in the case of ROR. *See* Order No. 09-422; *Re. Portland Gen. Elec. Co. Proposal to Restructure and Reprice its Services in Accordance with the Provisions of SB 1149*, Docket UE 115, Order No. 01-777 at 37 (Aug. 31, 2001) ("The task of determining a reasonable ROE . . . is often one of the most difficult and contentious aspects of a rate case proceeding.") The stipulated ROR in this case is within the reasonable range of results proposed by ICNU and is supported by evidence. Joint Parties' Opening Brief at 13.

Finally, ICNU claims that the ROR is based on an inappropriate ROE. Opening Brief of ICNU at 17-18. First of all, the proposed ROR in the Stipulation is not based on any particular ROE. Second, ICNU's only evidence to support this claim is the broad statement regarding "difficult economic times" and the allegation that capital market costs have dropped since ICNU filed its testimony on ROE. *Id.* at 22. ICNU, however, does not dispute that the ROE notionally used in the Stipulation is within the reasonable range proposed by Mr. Gorman. Thus, ICNU's argument in unavailing. See *Re. Portland General Electric Company*, Order No. 01-988 (Nov. 20, 2001) (change in interest rates did not provide basis for reconsideration because it did not materially impact results of ROE analysis based upon DCF model).

G. ICNU Has Presented No Basis for Requiring Renewable Energy Credit Procedures Beyond those Imposed by Commission Rules.

Finally, ICNU claims that Oregon's administrative rules are not adequate protection against the Company selling Oregon-allocated renewable energy credits ("RECs") and retaining the benefits. Opening Brief of ICNU at 31. As stated in PacifiCorp's opening testimony, PacifiCorp is banking RECs for future compliance with the Oregon Renewable Portfolio Standard. PPL/615 , Duvall/20, ll. 5-12. ICNU's statement that "PacifiCorp is currently selling RECs" is not accurate as applied to Oregon-allocated RECs. ICNU has presented no evidence that PacifiCorp will sell Oregon-allocated RECs in the test year. As a result, there is no basis to reject the Stipulation because it does not include the unnecessary REC requirement proposed by ICNU.

II. CONCLUSION

For the reasons stated in the Joint Parties' Opening Brief and Reply Brief, the Commission should reject ICNU's arguments against the Stipulation and approve the Stipulation as filed.

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