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December 10, 2009

*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 PACIFICORP Request for a General Rate Revision  
**Docket No. UE 210**

Dear Filing Center:

Enclosed please find the original and five (5) copies of the Reply Brief on behalf of the Industrial Customers of Northwest Utilities ("ICNU").

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 Reply Brief on behalf of the Industrial Customers of Northwest Utilities upon the parties, on the service list, by causing the same to be deposited in the U.S. Mail, postage-prepaid, or sent via electronic mail to those parties who have waived paper service in this proceeding.

Dated at Portland, Oregon, this 10th day of December, 2009.

/s/ Brendan E. Levenick  
Brendan E. Levenick

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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UE 210**

In the Matter of	)	
	)	
PACIFICORP	)	REPLY BRIEF OF THE
	)	INDUSTRIAL CUSTOMERS OF
Request for a General Rate Revision	)	NORTHWEST UTILITIES
_____	)	

**I. INTRODUCTION**

The Industrial Customers of Northwest Utilities (“ICNU”) submits this Reply Brief responding to the Joint Parties’ Opening Brief requesting that the Oregon Public Utility Commission (“OPUC” or the “Commission”) allow PacifiCorp (or the “Company”) to increase rates approximately \$46 million (or 5.4% for industrial customers). ICNU is submitting a limited Reply Brief because the Joint Parties submitted a short Opening Brief that primarily consists of a summary of the Joint Parties’ testimony. ICNU, however, is responding to the Joint Parties’ mischaracterization of Mr. Gorman’s cost of capital testimony and ICNU’s overall recommendation regarding the Company’s authorized rate of return (“ROR”). In addition, this Reply Brief addresses the Joint Parties’ arguments regarding the alleged “changes” in ICNU’s litigation position testified to by Mr. Early and Ms. Blumenthal, and the need for additional requirements regarding PacifiCorp’s sale of Oregon allocated renewable energy credits (“RECs”).

Overall, the Joint Parties have not established that an approximate \$46 million rate increase will result in fair, just, and reasonable rates. The Joint Parties failed to demonstrate the reasonableness of either a \$46 million rate increase or the specific

components of the proposed increase, but instead continue to rely upon broad and vague claims that a rate increase is warranted. The justifications provided by the Joint Parties are a particularly insufficient basis to increase rates during the current tough economic conditions, when not all of the major parties have reached agreement on disputed issues, and there are significant concerns about the specific cost elements included in the Company's filing. As explained in ICNU's Opening Brief, the Commission should reject the Settlement, or condition its adoption upon:

- Reducing PacifiCorp's rate increase request by about \$5.5 million to account for Mr. Gorman's 7.99% ROR, which is based upon a 10.0% return on equity ("ROE") and 50.2% equity capitalization.
- Reducing PacifiCorp's wages and salaries, lowering the proposed rate increase by \$21.0 million. Non-union salary wage increases and bonuses should be removed from rates and Oregon should be allocated a more accurate share of the wages and salaries costs.
- Lowering rates by approximately \$10.3 million to remove the costs of property which is not presently used and useful to Oregon ratepayers.
- Preventing PacifiCorp from selling Oregon allocated RECs and retaining the gains for shareholders.

## **II. ARGUMENT**

### **1. ICNU's Recommended 7.99% ROR Is Reasonable**

The Joint Parties allege that ICNU has not "directly challenged" the stipulated ROR of 8.08%, but has only challenged the capital structure and return on equity ("ROE"). Joint Party Brief at 12-13. This is false and the record demonstrates that ICNU has challenged the Joint Parties' proposed 8.08% ROR and proposed a more reasonable 7.99% ROR for PacifiCorp. In addition to disputing the Joint Parties' ROR, Mr. Gorman addressed the specific components of the capital structure (equity

capitalization and ROE) showing that the Joint Parties and ICNU disagree on these issues. Mr. Gorman's focus on these issues was appropriate because the reason for the difference between ICNU's and the Joint Parties' RORs recommendations are the cost of equity and amount of equity that should be included in the Company's capital structure.

Mr. Gorman's response testimony in opposition to the Settlement stated that he opposed the Joint Parties' recommended ROR and that the Commission should not "adopt the rate of return included in the partial settlement . . . ." ICNU/500, Gorman/3, lines 4-7. Mr. Gorman also specifically recommended that the Commission adopt a 7.99% ROR for PacifiCorp instead of the 8.08% ROR recommended by the Joint Parties. ICNU/501, Gorman/1.

ICNU's and the Joint Parties' RORs differ because the Joint Parties recommend increasing PacifiCorp's ROE and the amount of equity capitalization above the Company's currently authorized levels. The Joint Parties' 8.08% ROR is based on a 10.125% ROE and 51% equity capitalization, while Mr. Gorman's 7.99% ROR is based on a 10.0% ROE and 50.2% equity capitalization.<sup>1/</sup> Since the authorized ROE and equity capitalization are the crux of the different ROR recommendations, Mr. Gorman's testimony appropriately focused on these issues. The Joint Parties' assertion that ICNU is opposed to the individual components of the Company's proposed capital structure (e.g., ROE and equity capitalization), but not the resulting overall ROR that flows from those components, is simply not true.

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<sup>1/</sup> The Joint Parties and Mr. Gorman are in agreement regarding the cost of preferred stock and long term debt. ICNU/501, Gorman/1; Revenue Requirement Stipulation ("Settlement") at ¶ 8. Thus, there was no reason for Mr. Gorman to focus on these issues in his supplemental testimony.

## **2. Mr. Gorman's Analysis Does Not Support a 10.4% ROE**

The Joint Parties argue that Mr. Gorman actually recommends a 10.4% ROE, after the Joint Parties modified Mr. Gorman's ROE calculations to remove those calculations that Mr. Gorman defined as unreasonable. Joint Parties Brief at 13. The Joint Parties mischaracterize and cherry pick Mr. Gorman's various ROE estimates to reach their contrived conclusion that Mr. Gorman actually recommends a 10.4% ROE. Mr. Gorman's opening testimony removed the unreasonable results and developed a range of ROEs from 9.6% to 10.4%, based on the reasonable results of the discounted cash flow model, the risk premium model, and the capital asset pricing model. ICNU-CUB/300, Gorman/39. Mr. Gorman recommended a 10.0% ROE based on the totality of his analysis, and the 10.0% ROE recommendation is further supported by changes in the capital markets that have occurred since his opening testimony was filed. ICNU/500, Gorman/2-5. The Commission should disregard the Joint Parties' selective and misleading reading of Mr. Gorman's testimony. Mr. Gorman is a well-known cost of capital expert who is more than capable of performing his own calculations.

## **3. The Commission Should Require PacifiCorp to Place the Gains from REC Sales in a Balancing Account**

The Joint Parties argue that ICNU's recommendation that the Commission require PacifiCorp to record the sales of Oregon allocated RECs in a balancing account is "unnecessary." Joint Parties Brief at 11-12. ICNU's REC recommendation, however, is necessary because there is nothing in Oregon law or the Settlement which would prevent PacifiCorp from selling any Oregon allocated RECs and claiming that the rule against

retroactive ratemaking precludes the Company from returning the gains from these sales to Oregon customers.

The Joint Parties cite the recently adopted Oregon administrative rules and argue that ICNU's recommendation would impose no more requirements than these rules. This is incorrect. As explained by the Joint Parties, the new rule would require "that if the Company plans to sell RECs included in Oregon rates, it must demonstrate that the sale would 'appropriately balance cost and risk.'" Id. at 11. This rule does not adequately protect Oregon ratepayers.

The Settlement does not specify what RECs are "included in Oregon rates," so there is no baseline to review whether the any of the Company's sales of RECs are Oregon RECs. Under the Settlement, there is no way to know if PacifiCorp is selling Oregon RECs or if those Oregon RECs are included in Oregon rates.

The requirement that the Company demonstrate that any REC sales appropriately "balances costs and risks" appears to apply only as to whether the Company can sell the RECs, but not whether the gains of those sales should be passed to shareholders or ratepayers. Essentially, Oregon's new rules do not address the unique situation of the sale of RECs in the context of a black box settlement and the Commission should impose a clear requirement to prevent PacifiCorp from selling Oregon allocated RECs and pocketing the gains. If the Joint Parties believe that the rules allow for any REC sales proceeds to be returned to customers, then there should be no opposition to a ruling from the Commission that makes this clear. In light of recent developments in California regarding its renewable portfolio standard, any such sale could involve significant amounts of money for ratepayers.

**4. The Commission Should Not Penalize ICNU Because the Joint Parties Entered into an Early Settlement**

In responding to ICNU's proposals regarding wages and salaries, protecting Oregon's RECs, and removing from rates all property which is not used and useful, the Joint Parties repeatedly criticize ICNU for changing its position or not raising certain issues until filing supplemental testimony. Joint Parties Brief at 9-11. The Joint Parties did not incorporate ICNU's concerns and issues into the Settlement because they decided to enter into a non-all party settlement before intervenors' responsive testimony was due. The Joint Parties now wish to use their decision to enter into an early settlement to argue that ICNU's final position on disputed issues should be limited to only the positions identified in its original testimony. Under the OPUC's rules and the schedule in this proceeding, ICNU's position should not be limited to its opening testimony. Obviously, responding to the Settlement requires ICNU to raise all issues its witnesses see with the proposed Settlement.

There is nothing inappropriate about Ms. Blumenthal's revised wages and salaries adjustment. Ms. Blumenthal was required to modify her position on wages and salaries because of information provided by PacifiCorp after ICNU filed its opening testimony. For example, Ms. Blumenthal removed an adjustment related to full time employees because of information provided in PacifiCorp's rebuttal testimony, and she also modified her adjustment based on information included in supplemental PacifiCorp data responses that were provided to ICNU about a month after her opening testimony was filed. ICNU/600, Blumenthal/9; ICNU/602, Blumenthal/1. In addition, Ms. Blumenthal increased the size of her wages and salaries and bonuses adjustment in light

of the difficult economic conditions facing Oregon. There is no reason these salary increases and bonuses need to occur to retain employees in the current economy.

ICNU also adopted and modified Staff's arguments regarding used and useful property and RECs in its responsive testimony. While ICNU submits comprehensive testimony on a limited number of issues in rate proceedings, ICNU typically reviews the positions of other parties and adopts certain issues in rebuttal testimony and/or briefing. After reviewing Staff's original proposals regarding used and useful property and RECs, ICNU submitted testimony on these issues at the first opportunity provided in the procedural schedule. The Commission should reject the Joint Parties' attempts to disparage ICNU's recommendations because they have evolved over the natural course of this proceeding.

### **III. CONCLUSION**

For the reasons identified in this Reply Brief and ICNU's Opening Brief, the Commission should reject the Joint Parties' Settlement, or in the alternative, impose reasonable conditions lowering PacifiCorp's proposed rate increase and ensuring that the Company does not keep the gains from the sales of any RECs.

Dated this 10th day of December, 2009.

Respectfully submitted,

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