LAWYERS

Davis Wright Tremaine LLP

ANCHORAGE BELLEVUE LOS ANGELES NEW YORK PORTLAND SAN FRANCISCO SEATTLE SHANGHAI WASHINGTON, D.C.

JOHN A. CAMERON
Direct (503) 778-5206
johncameron@dwt.com

SUITE 2300
1300 SW FIFTH AVENUE
PORTLAND, OR 97201-5682

TEL (503) 241-2300
FAX (503) 778-5299
www.dwt.com

December 21, 2007

VIA EMAIL and US MAIL

Public Utility Commission of Oregon
Attn: Filing Center
550 Capitol St. NE #215
Salem, OR 97308-2148

Re: DR-38

Dear Sir or Madam:

For filing in the above referenced docket, please find **ANSWER OF HCA MANAGEMENT COMPANY, LLC, TO PETITION TO INTERVENE, MOTION TO DISMISS, MOTION FOR RECONSIDERATION OR REHEARING, ETC., OF MYRA LYNNE HOMEOWNERS ASSOCIATION AND GARY WALTERS**. The original plus five copies will be sent via U.S. Mail to the Commission.

Very truly yours,

Davis Wright Tremaine LLP

John A. Cameron

JAC:smp
Attachments

cc: Jason Eisdorfer (w/attach. via email)
Michelle Mishoe (w/attach. via email)
David Hatton (w/attach. via email)
Deborah Garcia (w/attach. via email)
Matthew Sutton (w/attach. via U.S. Mail)

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

DR - 38

In the Matter of PACIFICORP, dba PACIFIC POWER & LIGHT COMPANY, and MYRA LYNNE MANAGEMENT COMPANY, LLC	**ANSWER OF HCA MANAGEMENT COMPANY, LLC, TO PETITION TO INTERVENE, MOTION TO DISMISS, MOTION FOR RECONSIDERATION OR REHEARING, ETC., OF MYRA LYNNE HOMEOWNERS ASSOCIATION AND GARY WALTERS**

INTRODUCTION

Petitioner, HCA Management Company, operator of the Myra Lynne Mobile Home Park ("Myra Lynne"), hereby answers the intervention petition, motion to dismiss, etc. ("Motion"), filed by the Myra Lynne Homeowners Association and Gary Walters (collectively, "Movants") on December 11, 2007 (December 12 service date). The Motion seeks to set aside or modify the final order of the Commission issued on October 22, 2007, Order No. 07-445. The Motion is untimely beyond question, coming nine months after Docket DR 38 was initiated. Movants claim lack of notice, but this pleading will demonstrate that such claim is untrue beyond question. Myra Lynne respectfully requests that the Commission deny all relief requested by Movants, except as set forth in this pleading.

Although unexplained in the Motion, this proceeding was initiated because Movants have made the following demands on Myra Lynne:

1. Movants want the tenants of Myra Lynne Mobile Home Park to pay for their electricity based on the Schedule 48 commercial rate, rather than the Schedule 4 residential rate paid by all other residential end-users in the Pacific Power Service territory. They make this demand without regard to the express requirements to the contrary imposed on Myra Lynne by Pacific Power's Rule 2 and Schedule 48. This demand formed the basis of Stipulated Issue Nos. 1 and 2 in Docket DR 38. These issues were briefed and the Commission decided that Myra Lynne was obligated, at all times, to use Schedule 4 in calculating tenant electric charges.

2. Movants want the tenants of Myra Lynne Mobile Home Park to receive twice the Schedule 98 credit received by all other residential end-users in the Pacific Power Service territory. They want tenants to receive the monthly amount of the Schedule 98 credit applied to each tenant's bill, just as Myra Lynne has always done. *See* Finding of Fact No. 13, Order No. 07-455, p. 4. In addition, they also want the $97,936.77 that Pacific Power reimbursed Myra Lynne, covering the time that Pacific Power forgot to apply the credit in its bills to the Myra Lynne Mobile Park, during which time Myra Lynne still applied the credit to its tenants. *See* Joint Stipulated Fact No. 21 and Exhibit C to the factual stipulation.

Thus, Movants now seek from the Commission, as they have in litigation before the Jackson County Circuit Court, unduly preferential rate treatment not accorded other residential end-users of electricity. Yet the Motion does not even mention -- much less explain away -- the prohibition against undue preference, ORS 757.325, which is the statutory anchor on which the relevant parts of Rule 2 and Schedule 48 ride.

Movants' claims of financial hardship should be viewed in the light of their two demands on Myra Lynne. Movants seek windfalls not enjoyed by any other residential end-users in Pacific Power's service territory. They have not been overcharged. As the Commission found in resolving Stipulated Issue No. 2, the tenants have actually been undercharged for electricity – in relation to all other residential end-users in the Pacific Power Service territory – because Myra Lynne had incorrectly applied the lower Schedule 48 rate after HB 2247 went into effect.[1]

I. Movants Notice and Due Process Claims Are Patently Untrue: They Were Invited To Join In The Petition That Initiated This Case, Invited To Intervene After They Declined To Join The Petition, And Provided Continuous Actual Notice As To The Progress And Outcome Of This Case.

A. Why This Case Was Initiated.

Docket DR 38 would never have been initiated if Movants' counsel, Mr. Sutton, had not sent Myra Lynne a demand letter on November 27, 2006, demanding twice the regular Schedule 98 credit and other preferential rate treatment. **Exhibit A**. In that letter, Movants' counsel demanded "the sum of $500,000 in settlement of these claims."

[1] HB 2247 added ORS 90.532 and 90.536. It was briefed at length by the parties in this case and discussed at length in Order No. 07-455 at pp. 5-9.

Myra Lynne responded to Movants' counsel on January 8, 2007. **Exhibit B**. It is significant that Myra Lynne explained to Mr. Sutton the very issues that were later resolved in Order No. 07-455. The letter explains the significance of Pacific Power Rule 2 and the resultant application of either Pacific Power Rate Schedules 4 or Schedule 48. Myra Lynne's letter also explains the application of the Schedule 98 residential credit: how Pacific Power had reimbursed Myra Lynne $97,936.77 for Schedule 98 credits it neglected to apply on invoices to the mobile home park, and how that check from Pacific Power simply reimbursed Myra Lynne for credits that it had conscientiously applied in calculating tenant bills throughout the time Pacific Power had neglected to credit Myra Lynne.

B. <u>Movants Were Invited To Become Co-Petitioners At The Outset And, After They Declined, Invited And Encouraged To Become Intervenors.</u>

Movants refused to be convinced and continued to threaten a lawsuit. Myra Lynne decided that it had no choice but to bring the issues to the Commission through a petition for declaratory relief. PacifiCorp joined in drafting the petition that initiated Docket No. DR 38. Mr. Sutton was sent a draft of the petition and invited to join his clients as co-petitioners.[2] Instead, he filed the complaint attached to the Motion as an exhibit. All this is recounted in Myra Lynne's letter to Mr. Sutton, dated April 25, 2007. **Exhibit C**.

Thereafter, Movants' counsel was repeatedly encouraged to participate as an intervenor in Docket No. DR 38. *See*, e.g., **Exhibit D**, an email of May 11, 2007 (exactly 7 months before the date of the untimely Motion), which stated:

> Mr. Sutton,
> Here is the PUC report on the prehearing conference held in Docket No. DR 38. The administrative law judge inquired whether you would be participating. None of the parties present were able to answer that question. I do not believe any of the parties would oppose, if you chose to intervene at this time.

[2] All communications referenced in this pleading were made through Movants' counsel, Mr. Sutton, because members of Myra Lynne Homeowners Association and Mr. Walters are parties to litigation against Myra Lynne and Disciplinary Rule 4.2 of the Oregon rules of ethics restrict communications with represented adverse parties.

C. Movants Were Kept Constantly Informed About Case, Provided Copies Of The Briefs and Order and Advised About The Order Over 40 Days Ago.

Movants were subsequently sent copies of the briefs and stipulation of facts filed with the Commission in July 2007. **Exhibit E** recounts an informative colloquy with Movants' counsel. On July 3, 2007 (over 5 months before the date of the untimely Motion), he was informed:

> Via yesterday's mail, you were sent courtesy copies of 3 opening briefs and the stipulation of facts in the PUC proceeding. I would encourage you to review them. Our brief and the stipulation explain what Myra Lynne bills tenants and why. In their respective briefs, the PUC staff and Pacific Power each argue that Myra Lynne should be charging tenants for electricity at a higher rate. The effect of charging at the higher rate can be seen from reviewing Exhibit M to the stipulation. Also, the PUC staff and Pacific Power question whether Myra Lynne should be giving tenants the benefit of the Schedule 98 credit. The effect of removing the credit (at least when BPA is funding this program) can also be seen from Exhibit M. [Emphasis supplied.]
>
> Call if you have any questions.

When the phone call did not come, Myra Lynne did not let the matter rest. On July 5, Movants' counsel was sent this follow-up email, also contained in **Exhibit E**:

> I have not heard back from you about my earlier email and the pleadings from the Oregon PUC case. Perhaps you would like to meet with the parties in the PUC case for a discussion. If so, I think I can arrange that meeting. Please advise.

This follow-up finally solicited a response from Movants' counsel, also contained in **Exhibit E**:

> John, to clarify I am not representing anyone in the PUC proceeding. I am handling the Jackson County Circuit Court case only. I will forward the materials to my client though. Thanks.[3] [Emphasis supplied.]

Movants were also provided copies of the reply briefs filed in Docket DR 38 by Myra Lynne, PacifiCorp and the Commission Staff. **Exhibit F** is the explanatory cover letter of July 17, 2007, enclosing those briefs to Movants. Page 2 of that letter reads in part:

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[3] This assurance conforms to the requirements of CPR 1.4, which provides:

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

> Second, your letter speaks of a hope of reaching some resolution of our differences. I would encourage you to undertake that effort before the PUC decides Docket No. DR-38. Although briefing before the PUC is now complete, there may still be an opportunity for an authorized representative of the tenants to meet with the parties to that case for the purpose of reaching some mutually satisfactory resolution of issues relating to tenant bills. I do not purport to speak either for Pacific Power or the PUC Staff, but I would be prepared to support a request by the tenants for such a meeting assuming they petition the PUC to intervene in the case. (The tenants will be charged at the rates the PUC orders us to charge even if they do not intervene.) You can read our brief to know where we stand on the rate issues now before the PUC.
>
> Recently, you have reminded me that you do not represent the tenants in the PUC proceeding. To paraphrase Mr. Moser's comment to Mr. Coons, if not by you, then the tenants should consider some other representation of their interests in that proceeding. Of course, this is the tenants' decision to make. However, if I were in the situation of the tenants and faced the potential increase in electric charges shown in Exhibit M to the Stipulation of Facts in Docket No. DR-38, I would want to try to do something about it before the PUC decided the case. [Emphasis supplied.]

Movants did nothing. On October 30, 2007, Movants' counsel was told about each of the Commission's decisions in Order No. 07-455. This included a description of the consequences on tenant electric charges that had been forewarned in the email of July 3, 2007. This October 30 letter, attached to the Motion, is included as **Exhibit G** for completeness of this description:

> During the course of the PUC case, I advised you that PacifiCorp had calculated a 30 percent difference between the Schedule 4 rate and the lower Schedule 48 rate. When Myra Lynne complies with Order No. 07-455, as it is required to do under ORS 756.450, your clients and other Myra Lynne tenants will see an approximate 30 percent increase in their monthly charges for electricity. My clients will be sending the appropriate notice to tenants informing them that the PUC order requires that Myra Lynne increase all tenant electric bills by approximately 30 percent. This necessarily means that Order No. 07-455 will have an effect on tenant electric bills even though you declined my advice to participate in Docket No. DR 38.

It then took Movants another 40 days to file their Motion now before the Commission for disposition. Whatever the reason Movants may have had for declining repeated invitations to participate in Docket DR 38 until now, it clearly was not lack of notice to them. However, Movants' tactical decision to remain outside the case until now does not constitute grounds for granting any of Movant's untimely requests.

II. Movants' Remaining "Due Process" Arguments Are Without Merit.

A. "Retroactive" Application Of The Decision On The Second Stipulated Issue.

Movants claim that they were never notified that the Commission's order might have "retroactive" effect.[4] This is most definitely untrue.

This case concerns the application of Pacific Power's rules and rate schedules to Myra Lynne Mobile Home Park, both before and after HB 2247 became effective in 2006. The First Stipulated Issue concerned the application of Pacific Power's rules and rate schedules before HB 2247 became effective. The Second Stipulated Issue concerned the application of those rules and rate schedules from the time the law changed until the present day. These two issues and a third were accepted by the Administrative Law Judge and thoroughly addressed in the opening and reply briefs that were sent to Movants' counsel. *See* p. 4 above.

Movants appear to be especially concerned about one aspect of the Commission's resolution of the Second Stipulated Issue. The Commission held that Myra Lynne should have applied Schedule 4 in calculating tenant electrical charges after HB 2247 took effect, just as it had done before the law changed. Movants' concern relates to the time from the law's effective date in 2006 to the date of Order No. 07-455, fearing that Myra Lynne will now recoup the difference between the Schedule 4 and Schedule 48 rates for that period. Motion, p. 4.

It is true, as Movants claim at p. 5 of their Motion, that the joint petition filed by PacifiCorp and Myra Lynne anticipated this situation and specifically asked the Commission: "petitioners request that the Commission apply its determination on a prospective-only basis, effective for utility billings issued after the date of its order." Petition, p. 10. Note that the request relates only to the implementation date for any increase in charge to tenants.

The very phrasing of this statement as a "request" put the reader on notice that this was not an assured outcome. Requests are not always granted. Moreover, Commission Staff never joined in that request as Movants should have known by reading Staff's briefs that were sent to

[4] This case presents absolutely no issue of retroactive ratemaking. It concerns only the proper application of Commission-approved rules and rate schedules.

them. If Movants had wanted to better ensure that the Commission's decision on the Second Stipulated Issue was applied "on a prospective-only basis," they should have intervened and advocated that outcome -- as they were advised repeatedly by the parties and by the ALJ.

Movants' comment about the expense of participation (Motion, p.4) is ironic. Timely participation need not have been any more costly than the cost of their late Motion -- certainly less costly than bringing their rate-preference claims into Jackson County Circuit Court.

B. Notice To Other, Hypothetical Tenants.

Movants also claim that notice to them was defective merely because some hypothetical, unnamed tenant, not before the Commission, may or may not have known about Docket DR 38. This claim is contradicted by the correspondence quoted above about repeated notice to them.

Moreover, Movants' effort to rely on hypothetical, unnamed tenants, not before the Commission, is just a bootstrap. Essentially, Movants alleged that direct, repeated actual notice to them is somehow invalidated because some non-movant may or may not be aware of this proceeding. This assertion about lack of notice is demonstrably false. Surely, the invitation to join in petitioning the Commission and other, repeated actual notices to Movants are much more than due process requires. Assertions that Order No. 07-455 is void are just empty words.

III. Movants Have Misconstrued A Letter From The Administrative Law Judge To Conclude, Mistakenly, That They Had Worked Out An *Ex Parte* Deal With Her.

On May 11, 2007, the Administrative Law Judge ("ALJ") wrote Messrs. Sutton and Walters (the latter in his capacity as president of Myra Lynne Homeowners Association), inviting their intervention in Docket DR 38. Motion, Exhibit 3. The invitation states in part:

> I invite your participation in this docket to help inform the Commission's decision on the question through filing briefs. The outcome of the declaratory ruling will be binding between the petitioners, HCA Management Company, LLC, and PacifiCorp, and the Commission, *see* ORS 756.450, but would not impact any outstanding litigation in the circuit court system. Your participation, as a party with opposing interests would be helpful in the Commission's evaluation of the statutes and tariffs related to landlord billing for the resale of power.

This invitation merely paraphrases the cited statute, ORS 756.450, which reads in part, "A declaratory ruling is binding between the commission and the petitioner on the state of facts alleged, unless it is modified, remanded or set aside by a court." In other words, Docket DR 38 concerns the rates that Myra Lynne must charge its master-metered tenants under the applicable rules and rate schedules of Pacific Power. The ALJ's statement simply made the obvious point that this Commission is not a court of general jurisdiction.

If Movants wanted more than just a paraphrasing of the statute from the ALJ, they should have participated in the case. The parties developed a stipulated set of issues and submitted them to the ALJ. The parties then prepared stipulations of fact and filed briefs based on the stipulated issues. Movants' supposed "side-deal" with the ALJ never entered into the picture, nor could it without running afoul of the Commission's rule against *ex parte* communications.[5]

Movants are not appearing *pro se*. They have been represented by counsel at least since they sent the $500,000 demand letter to Myra Lynne on November 26, 2006. *See* Exhibit A. They were provided with the petition and informed about the stipulated issues, sent copies of the briefs and advised that positions taken in the case could have a material effect on their electric charges. Under the circumstances, there is no basis for Movants to claim confusion or surprise.

IV. Movants' Assertions About "ORS 68.701" And 63.701 Are Wrong And Misdirected.

Movants seek dismissal of Docket DR 38 because Myra Lynne allegedly does not meet Movants' reading of ORS 68.701. There is no such statute. It appears that Movants mean ORS 63.701. A claim relating to ORS 63.701 has been included in the complaint against Myra Lynne

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[5]The Commission's *ex parte* rule, OAR 860-012-0015(2) relates to "persons," not just "parties":

> Except as provided in this rule, an ex parte communication is any oral or written communication that:
>
> (a) Is made by any person directly to a Commissioner or presiding Administrative Law Judge (ALJ) outside the presence of any or all parties of record in a contested case proceeding, as defined in ORS 183.310(2), without notice to, or opportunity for rebuttal by, all such parties; and
>
> (b) Relates to the merits of an issue in the pending contested case proceeding.

filed by at least some Movants in Jackson County Circuit Court. Of all the claims alleged in that complaint, this is the only one that belongs before the court and not before this Commission. Unlike the rate and utility rule issues raised by PacifiCorp and Myra Lynne in Docket DR 38, the Commission has no jurisdiction to decide issues relating to ORS 63.701.

Movants make an obvious error in misreading ORS 63.701(2)(a), which is an exception, not a prohibition. Motion, p. 6, l. 2-3. Read correctly, ORS 63.701(2)(a) allows anyone to maintain, defend, or settle a proceeding in this state, which is what one would expect regarding activities relating to the First Amendment right to petition a government agency.

Movants' point about ORS Chapter 63 relates only to court proceedings. It belongs, if anywhere, before the circuit court and Myra Lynne will not argue it here. Suffice it to say that Myra Lynne disagrees with Movants and believes it complies with ORS Chapter 63. This is not the time for Movants to raise a new, contested issue of fact. *See PacifiCorp*, Docket UE 111, Order No. 00-424, p.2 (2000) (intervention request, 8 months late, denied because it raised issues "that should have been addressed in discovery, direct testimony and settlement conferences.").

Moreover, this issue is immaterial. There are two petitioners in this case. Co-petitioner PacifiCorp is not affected by any issue under ORS Chapter 63, no matter what contested fact Movants may now try to raise about Myra Lynne. Order No. 07-455 should not be vacated.

V. Every Legal Issue Raised By Movants Has Already Been Briefed and Decided By Order No. 07-455.

Movants do not raise a single issue that has not already been addressed in this case. They merely rehash arguments already made by the parties and decided by the Commission. Also, the Motion lacks any mention of Pacific Power's Rule 2 or Schedule 48, each of which require Myra Lynne to bill tenants at the Schedule 4 rate. This deficiency means that Movants do not even address the actual issues in Docket DR 38. They merely ask the Commission to reach a different result by ignoring the Commission's prior analysis of Myra Lynne's obligations under Rule 2 and Schedule 48 as a Pacific Power customer.

Stipulated Issue No. 1. Movants allege that the Commission did not give proper consideration to the statues in effect before HB 2247 became effective. Motion, p. 6-7. This allegation squarely relates to the First Stipulated Issue. However, they are wrong. Statutes in effect prior to HB 2247 were addressed extensively by Myra Lynne in its opening brief at pp. 5-6 and 9-11. The very statute quoted at p. 7 of the Motion was also quoted by Myra Lynne in its brief at pp. 9-10. The issue raised by Movants – and it is nothing more than an allegation – has already been developed in the record and decided by the Commission.

Also, Movants have neglected to review the record sent to them back in July. They are wrong in alleging that the Commission did not have the standardized form of Myra Lynne rental agreement before it. Motion, p. 7. This agreement was included in the record as Exhibit B to the stipulated facts and explained in Myra Lynne's brief on the very point Movants try to make now:

> Myra Lynne offers electricity, water and sewerage, trash removal and cable access to each tenant pursuant to a standardized rental agreement that, in the case of electricity, specifies landlord submetering as the method for determining charges for each tenant's electric usage. Exhibit B (Myra Lynne's standard form of rental agreement). [Myra Lynne opening brief, p. 4.]

Movants next claim that "there was no record whatsoever of how HCA was billed for utility charges for common areas an how those were passed on to tenants." Motion, p. 7. It is difficult to tell what Movants are talking about because the record includes billing detail. Myra Lynne explained how it billed tenants both before and after HB 2247 became effective. *See* Myra Lynne opening brief, pp. 5-8, and the representative tenant bills in Exhibits A and F.

Myra Lynne believes that it has billed tenants properly and that there is no credible issue about "common areas." Essentially, Movants try to fault the Commission for not proving a negative – show us that Myra Lynne's did not do something improper regarding "common areas" -- as if the Commission had a burden of proof. This is just a game of innuendo.

If Movants had any colorable factual issue about "common areas," they should have raised it during the evidentiary phase when the parties developed their factual stipulation. They might have engaged in discovery and offered written testimony, if they had asked. This is not

the time for Movants to develop a new factual issue, *PacifiCorp*, Docket UE 111, Order No. 00-424, particularly one that is a just red herring. Movants have no valid criticism about a full record, deemed sufficient by the parties, that they and their counsel made no effort to help build.

Stipulated Issue No. 2. Movants allege that the Commission erred in interpreting HB 2247. This, of course, was the Second Stipulated Issue. Movants' position on HB 2247 has already been heard. Myra Lynne advocated the very same interpretation of HB 2247 that Movants belatedly advance in their Motion at p. 5-10. *See* Myra Lynne initial brief of July 2, 2007, at pp. 6-8 and 11-21. Myra Lynne argued that HB 2247 called for it to compute tenant electric bills based on the Schedule 48 commercial rate at which it is charged by Pacific Power, not at the higher Schedule 4 rate. Pacific Power and Commission Staff argued the contrary position. Rather than lurking in the shadows of this case, Movants should have joined Myra Lynne from the inception of the case in advocating the same position. The Commission decided the Second Stipulated Issue in favor of Pacific Power and Staff.

It is incredible that Movants refer to ORS 90.532 only twice, each reference conclusory and lacking analysis. Motion, p. 9, l. 20-22, and p. 10, l. 7. Yet, this provision is key to the Commission's decision on Stipulated Issue No. 2. Movants claim that the Commission is wrong, but do not explain why. However, the unstated reason is clear: they cannot hope to obtain their unduly preferential rate treatment unless the Commission is wrong.

Movants loosely use the phrase "profit center" in asking the Commission to reconsider Stipulated Issue No. 2. Motion, pp. 8-10. Yet, they offer nothing that was not already argued by Myra Lynne in its initial brief at pp. 14-15 and in its reply brief of July 16, 2007, at pp. 3-4. The Commission has already squarely decided this issue at pp. 7-8 of Order No. 07-455:

> We do not share Myra Lynne's concern that its charging of tenants the Schedule 4 rate could be interpreted as "an additional charge" or "profit for the landlord," prohibited under ORS 90.536(3). As we have determined, Myra Lynne's billing of its tenants for utility service must comply with Pacific Power's policies. So long as Myra Lynne does not add an additional charge beyond those obligated by the Schedule 4 tariff, it will not violate the proscription against imposing an additional charge or profit for the resale of utility service under ORS 90.536(3)(a).

In sum, Movants were invited repeatedly to participate in the case, and then timely provided copies of all briefs on each of the three issues being resolved. They sat on their hands while the Commission explicitly resolved all issues. Now, almost two months after issuance of Order No. 07-455, Movants seek to rehash the same issues, but offer nothing that has not already been considered by the Commission. This case is over and should remain so.

VI. Movants' Requests Would Be Ineffective To Resolve Any Issue In This Case.

This case has been about the application of Schedule 48 and Rule 2 to Myra Lynne as a Pacific Power customer. The Commission has ruled that they govern the way in which Myra Lynne must bill its tenants for electricity. Movants do not even mention Schedule 48 or Rule 2. Essentially, Movants just want to return to where the parties were when the joint petition was filed nine months ago, back on March 20, 2007. This would be totally unfair to the co-petitioners. Moreover, going back would not change Schedule 48 or Rule 2.

Given the Commission's decisions in this case, Movants could not achieve their unduly preferential rate objectives unless they first succeeded in eliminating or at least modifying Schedule 48 and Rule 2. So long as Schedule 48 and Rule 2 apply to Myra Lynne, Movants' requests for preferential rate treatment will be ineffective and beside the point. Modification or elimination of Schedule 48 and Rule 2 has never been at issue in this case. That's what Movants really need, but they never even request it.

The Commission noted that Movants have the opportunity to seek relief in a future case:

> We emphasize, however, that this decision does not preclude Myra Lynne or its tenants from challenging Pacific Power's policies in a Commission proceeding. The utility's policies are contained in tariffs approved by and on file with the Commission. Either Myra Lynne or its tenants may ask the Commission to use its authority under ORS 756.515 to investigate the reasonableness of Pacific Power's policies in light of the unusual circumstances presented here.

Order No. 07-455, p. 9 (emphasis supplied). Movants are free to file a complaint or intervene in the next Pacific Power rate proceeding and put Schedule 48 and Rule 2 at issue there. Not here.

VII. Recommended Disposition By The Commission

Movants' pleading and timing fall egregiously below the minimum standards set by the Commission's rules of practice and procedure. Their rehash of issues already briefed and decided is untimely and unexcused. They had ample notice of this proceeding, dating back before its inception. Nothing in the Motion warrants favorable action by the Commission.

Myra Lynne Homeowners Association has no standing to participate in this case, except as the representative of its tenant members. If the Commission were to grant intervention to the Myra Lynne Homeowners Association, it should expressly recognize that entity as the representative in this case of each of its tenant members.

Myra Lynne does not seek rehearing or reconsideration of Order No. 07-455. However, if Myra Lynne Homeowners Association is allowed to intervene as the representative of each of its tenant members, Myra Lynne would not oppose Movants' intervention for the limited purpose of allowing Movants to petition the Commission for a simple amendment to Order No. 07-455, such that Commission resolution of Stipulated Issue No. 2 would be implemented on a prospective-only basis, as of October 22, 2007. This amendment would mean that Myra Lynne would not have to recoup past undercharges back to when HB 2247 became effective, and instead use Schedule 4 prospectively as of the date of the order. In fairness to Myra Lynne, this is the maximum relief that should be granted to Movants.

In all other respects, however, Movants' untimely and unexcused motion, petition, etc., of December 11, 2007, should be denied. Movants will thereby be treated like every other residential end-user of electricity in Pacific Power's service territory.

Respectfully submitted,

John A. Cameron, OSB 92371
DAVIS WRIGHT TREMAINE LLP
1300 SW Fifth Avenue, Suite 2300
Portland, OR 97201
Attorneys for HCA Management Company

DATED this 21st day of December, 2007.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **ANSWER OF HCA MANAGEMENT COMPANY, LLC, TO PETITION TO INTERVENE, MOTION TO DISMISS, MOTION FOR RECONSIDERATION OR REHEARING, ETC., OF MYRA LYNNE HOMEOWNERS ASSOCIATION AND GARY WALTERS** on:

Jason Eisdorfer
The Citizens' Utility Board of Oregon
610 SW Broadway, Suite 308
Portland, OR 97205
jason@OregonCUB.org

David Hatton
Assistant Attorney General
Department of Justice
Regulated Utility & Business Section
1162 Court St. NE
Salem, OR 97301-4096
david.hatton@state.or.us

Michelle Mishoe
Legal Counsel
Pacific Power and Light
825 NE Multnomah, Suite 2000
Portland, OR 97323
michelle.mishoe@pacificorp.com

Deborah Garcia
Public Utility Commission of Oregon
P.O. Box 2148
Salem, OR 97308-2148
deborah.garcia@sate.or.us

☒ by sending a .pdf copy thereof to each person listed above via email; and to

Matthew Sutton
Attorney at Law
220 Laurel Street
P.O. Box 4267
Medford, Or 97501
msutt@uci.net

☒ by sending a copy thereof at his last known mailing address.

Dated this 21st day of December, 2007.

DAVIS WRIGHT TREMAINE LLP

By _____
John A. Cameron, OSB #92371
Francie Cushman, OSB #03301
Of Attorneys for MYRA LYNNE Management Company, LLC
Phone: 503-241-2300
Fax: 503-778-5299
Email: johncameron@dwt.com
Email: franciecushman@dwt.com

Exhibit A

MATTHEW SUTTON
ATTORNEY AT LAW

220 LAUREL STREET
MAILING ADDRESS: P. O. BOX 4267
MEDFORD, OREGON 97501

TELEPHONE
(541) 772-8050
FAX (541) 772-8077

November 27, 2006

BY FAX, FIRST CLASS & CERTIFIED MAIL RRR

Mr. Philip Taylor
Regional Manager
HCA Management Company, LLC
PO Box 7
Novato, CA 94948
Fax (415)897-3825

Myra Lynne Mobile Home Park
1450 Grant Avenue, #201
Novato, CA 94945

RE: Myra Lynne Mobile Home Park

Dear Mr. Taylor & Myra Lynne Mobile Home Park:

I represent the Myra Lynne Homeowners Association regarding the matters set forth herein. Please direct any further communication directly to myself.

1. **PP&L Refund.**

It has come to the attention of my client that on or about 2004 HCA ("HCA") Management and Myra Lynne Mobile Home Park ("Myra Lynne") received a refund from PP&L for electricity overcharges in the approximate amount between $181,000-$187,000. As you know, since HCA passes on the electricity charges to the tenants, this money was owed to the tenants. Rather than passing on the refund to the tenants, HCA has apparently kept the refund for itself and the owners of the mobile home park.

These actions give rise to common law claims against HCA and Myra Lynne for unjust enrichment and money had and received. In addition to restitution, and statutory interest of 9% per annum that is continuing to accrue on the refund pursuant to ORS 82.010, punitive damages are also recoverable under Oregon law. Adams v. Crater Well Drilling, Inc., 276 Or 789, 794-95 (1976).

It is also very clear that HCA and Myra Lynne fraudulently concealed the PP&L refund from the tenants. As such, this is an additional basis for liability and punitive damages. Irrespective of the legal theory employed, the tenants would also be entitled to their reasonable attorney fees under ORS 90.255.

Based upon the forgoing matters, I am writing to demand full documented disclosure of all facts concerning the refund and the reasons for the same. My client is further demanding the sum of

$500,000 in settlement of these claims. The intent of my client is to apportion these funds between the tenants who were residing in Myra Lynne prior to the refund pro-rated according to the number of years in the park.

2. Additional Improper Charges for Electricity.

a. Continued Overcharging of Tenants For Electricity After Refund.

The fact that PP&L issued the refund in 2004 is recognition that the tenants have been overcharged for electricity for a number of years. This is something that, when brought to the attention of HCA, required immediate rectification to prevent continued overcharging of the tenants. Since the Oregon Landlord Tenant Act is very clear that tenants can only be charged for the actual electricity costs, this would have required a change in the charges for electricity being passed along to the tenants.

However, this was not done. Instead, HCA continued to charge the tenants at the same rates until May of 2006. By continuing to do so, Myra Lynne continued to profit at the expense of the tenants.

b. Additional Electric Charges.

Additionally, it appears that the tenants have been charged an inappropriate "basic charge" for electricity of $7.00 per month. Also, an additional "electric surcharge" of $2.71 per month was added to the billings to the tenants commencing in June of 2006. Neither of these charges appear to correspond to any actual cost being billed to HCA or Myra Lynne by PP&L. If this is not the case, please provide a documented explanation at your earliest opportunity. In any event, it appears at this point that these charges are in violation of ORS 90.534(3), ORS 90.534(4) and ORS 90.536(1)-(3).

Accordingly, I am writing to demand a complete documented accounting comparing the following to be received at my office within the next thirty (30) days 1) all PP&L charges to HCA/Myra Lynne after 2004 refund; 2) all electricity charges billed to the tenants after the 2004 refund. Once this is received and compared with the records of my client, we will be demanding a complete refund to the tenants of any and all overcharges.

3. Sewer Charges Without Notice.

It is also my understanding that, commencing in January of 2006, the tenants were billed $12.30 per month for service charges. However, these charges are not specified in the rental agreement and no notice was sent to the tenants advising them that these charges would be billed. This does not comply with ORS 90.532 or ORS 90.534. Accordingly, the manner in which these charges were imposed is invalid and the tenants are entitled to a refund which I am demanding at this time as well. Furthermore, since the tenants have not received any explanation for these charges, it is unclear whether they are allowable under the statutes even if notice were to be provided in the future. As such, I am demanding a full explanation of these charges at your earliest opportunity.

MATTHEW SUTTON
ATTORNEY AT LAW

Please advise as to how you intend to proceed on these matters within the next fourteen (14) days. If I do not receive a timely or reasonable response from you, I will advise my client to inform the tenants that they will need to proceed with their legal remedies.

Very truly yours,

MATTHEW SUTTON

MS:nc
Cc: Client

Exhibit B

Davis Wright Tremaine LLP

ANCHORAGE BELLEVUE LOS ANGELES NEW YORK PORTLAND SAN FRANCISCO SEATTLE SHANGHAI WASHINGTON, D.C.

PHILLIP C. QUERIN
Direct (503) 778-5231
philquerin@dwt.com

SUITE 2300
1300 SW FIFTH AVENUE
PORTLAND, OR 97201-5630

TEL (503) 241-2300
FAX (503) 778-5299
www.dwt.com

January 8, 2007

Via Facsimile and Regular Mail

Matthew Sutton
P.O. Box 4267
Medford, OR 97501

Re: Myra Lynne Mobile Home Park

Dear Mr. Sutton:

This letter responds to yours of November 27, 2006, addressed to HCA Management Company, LLC ("HCA"), and Myra Lynne Mobile Home Park ("Myra Lynne"). Thank you for the courtesy of granting us additional time to investigate this matter more fully before responding.

Myra Lynne submeters its tenants for electricity received from Pacific Power & Light Company. This arrangement is governed by Section O of Pacific Power's Oregon Rule 2, which provides:

> Resale of service shall be limited to Consumer's tenants using such service entirely within property described in the written agreement. Service resold to tenants shall be metered and billed to each tenant at Company's regular tariff rate schedule applicable to the type of service actually furnished the tenant. Consumer shall indemnify Company for any and all liabilities, actions or claims for an injury, loss or damage to persons or property arising from the results of service by Consumer.

Rule 2 has been approved by the Oregon Public Utility Commission for application to all Pacific Power's Oregon customers. As used in Rule 2, the word "Consumer" refers to Myra Lynne. The underscored sentence in this quote requires Myra Lynne to bill each tenant at the rate Pacific Power would utilize if each tenant purchased power directly from that utility. Rule 2 requires Myra Lynne to bill each tenant according to Pacific Power Schedule No. 4 and Schedule No. 98.

Pacific Power Schedule No. 4 sets forth the basic charges for "residential service." It specifies a "basic charge," a "distribution energy charge," a "transmission & ancillary services charge" and other charges. Schedule No. 98, entitled "adjustment associated with the Pacific Northwest Electric Power Planning and Conservation Act," provides a rate credit (reduction) to "qualifying residential customers" from funds made available to Pacific Power by the federal Bonneville Power Administration. It is our understanding that the Schedule No. 98 rate credit only applies to Pacific Power's residential and small-farm customers, so tenants must be billed under the Schedule No. 4 residential rate in order to qualify for the Schedule No. 98 residential rate credit.

Current copies of Schedules 4 and 98 are attached for your reference. Please note that the rates in these schedules have recently been changed by Pacific Power so the actual rate numbers do not correspond to the rates mentioned in your letter.

Myra Lynne uses an outside billing service to compute electric bills for its tenants. Until 2006, Myra Lynne's billing contractor was Park Billing Co., Inc. We are informed that Park Billing has followed Pacific Power Rule 2 by billing Myra Lynne tenants each month according to Schedule No. 4, which includes the rate elements mentioned above. Each tenant's monthly bill was also reduced by an amount equal to that specified by the Schedule No. 98 monthly residential credit.

Around March of 2005, Pacific Power sent Myra Lynne a check for $97,936.77. Pacific Power informed Myra Lynne that a credit was owed because the utility had for several years failed to apply the Schedule No. 98 credit when calculating Myra Lynne's monthly electric bills. In other words, Park Billing had been reducing tenant bills by the amount of the Schedule No. 98 credit even though Pacific Power had not been making any corresponding reduction to Myra Lynne's monthly bills. In reviewing this situation with Park Billing, Myra Lynne was informed by its contractor that it should retain the $97,936.77 Schedule No. 98 credit received from Pacific Power because that amount would simply make Myra Lynne whole for the amounts already credited to tenants.

This is the only lump-sum amount that has been received from Pacific Power. Since March of 2005, it is our understanding that the utility has applied the Schedule No. 98 credit to our monthly bills, just as Myra Lynne's monthly bills to tenants continue to include the Schedule No. 98 credit. We know nothing about the $181,000 - $187,000 figures referred to in your November 27 letter. Allegations in your letter about "overcharging" are incorrect.

Since the time Myra Lynne received the check from Pacific Power, Oregon law was changed during the 2005 legislative session. ORS 90.536(2)(a) now requires that the applicable utility rates passed on to residents be at the average rate billed to the landlord by the utility provider.[1] You should note that this requirement was not present in the 2003 law which existed when the credit was issued.[2]

[1] **90.536 Charges for utilities or services measured by submeter.** (1) If a written rental agreement so provides, a

This new law appears to create an inconsistency between Oregon landlord-tenant law and Rule 2 of the Oregon Public Utility Commission rules. We have sought clarification from Pacific Power on this question. Its response reiterates that Rule 2 should be followed, but invited us to seek an opinion on the issue from the Oregon PUC. Preliminarily, we feel that it would be appropriate to obtain a ruling from the PUC. We do not want to create a situation in which tenants inadvertently cease to qualify for the Schedule No. 98 residential rate credit. We are happy to provide you with information about any request made of the Oregon PUC so that you may participate, as your clients may desire, in any process that may result.

In light of the information HCA has received, we deny the claims in your November 27 letter of unjust enrichment, money had and received, fraud, etc. After review of this information and the enclosure, we would be happy to discuss the matter with you further. In the interim, we do not feel it appropriate or necessary to go to the time and expense of an accounting and respectfully decline to do so.

Very truly yours,

Davis Wright Tremaine LLP

PHILLIP C. QUERIN

PCQ:sz

Cc: Client

---

landlord using the billing method described in ORS 90.532 (1)(c) may require a tenant to pay to the landlord a utility or service charge that has been billed by a utility or service provider to the landlord for utility or service provided directly to the tenant's space as measured by a submeter.

(2) A utility or service charge to be assessed to a tenant under this section may consist of:

(a) The cost of the utility or service provided to the tenant's space and under the tenant's control, as measured by the submeter, at a rate no greater than the average rate billed to the landlord by the utility or service provider, not including any base or service charge;

(b) The cost of any sewer service for stormwater or wastewater as a percentage of the tenant's water charge as measured by a submeter, if the utility or service provider charges the landlord for sewer service as a percentage of water provided; and

(c) A pro rata portion of any base or service charge billed to the landlord by the utility or service provider, including but not limited to any tax passed through by the provider.

(3) A utility or service charge to be assessed to a tenant under this section may not include:

(a) Any additional charge, including any costs of the landlord, for the installation, maintenance or operation of the utility or service system or any profit for the landlord; or

(b) Any costs to provide a utility or service to common areas of the facility. [2005 c.619 §8]

[2] ORS 90.510(8).

Exhibit C

Davis Wright Tremaine LLP

ANCHORAGE BELLEVUE LOS ANGELES NEW YORK PORTLAND SAN FRANCISCO SEATTLE SHANGHAI WASHINGTON, D.C.

PHILLIP C. QUERIN
Direct (503) 778-5231
philquerin@dwt.com

SUITE 2300
1300 SW FIFTH AVENUE
PORTLAND, OR 97201-5630

TEL (503) 241-2300
FAX (503) 778-5299
www.dwt.com

April 25, 2007

Via Facsimile and Overnight Mail

Matthew Sutton
P.O. Box 4267
Medford, OR 97501

Re: Myra Lynne Mobile Home Park

Dear Mr. Sutton:

As you know, on March 20, 2007, PacifiCorp and HCA Management Company ("HCA") filed a Joint Petition for Declaratory Ruling with the Oregon Public Utility Commission ("PUC") requesting that it resolve a potential conflict between PacifiCorp's "General Service" rate schedules and its Rule 2, Section O, and ORS 90.536, which became law on January 1, 2006.

In your earlier letter of November 27, 2006, you accused HCA Management and Myra Lynn of improperly charging its residents for electrical charges. In our response, we explained that we were in compliance with the law, but that there appeared to be a conflict between the Oregon landlord-tenant laws and the public utility regulations and that compliance with one potentially meant violation of the other. We informed you of our intent to file a petition with the PUC for direction, and formally invited your clients to join in that action. Pacific Corp. has voluntarily joined in. However, you declined to participate, and instead, without giving me or my client any advance notice, filed a lawsuit against HCA and Myra Lynn, alleging, among other things, elder abuse.

On April 11, 2007, we received your copy of the complaint you filed in Jackson County Circuit Court on behalf of seventy-eight residents of the Myra Lynne Mobile Home Park. Your accompanying letter, dated April 2, requested that we accept service of the complaint. However, we understand that you also sent copies to the Oregon Attorney General's office in order to effect service of the complaint upon my clients. Given the delay in your getting us the

complaint, and the fact that you already served the Attorney General, we shall assume that your request for our acceptance of service is moot.

Going forward, I expect that you will direct all communications on this matter to me as legal counsel for HCA and Myra Lynne. This includes any notifications under ORCP 69. Please do not apply for any default judgment under the complaint without giving me at least ten (10) days' advance written notice. Given the 9-day delay between the date of your letter requesting acceptance of service and our receipt of it, we ask that in the future, you consider faxing us all time-sensitive material.

On April 6, 2007, the PUC announced its intention to open a rulemaking proceeding to develop a new rule that will address the effect of ORS 90.536 on the rate schedules of utilities across Oregon. We have been informed that the PUC is aware of multiple instances of conflict between the new landlord-tenant statute and its existing tariffs and rate schedules. In a related action, on April 24, 2007, the PUC submitted our petition to an administrative law judge for resolution.

As a result of our petition, we believe that the PUC will reach a determination that will address most of the underlying issues raised in your complaint. Since the PUC has primary jurisdiction on ratemaking issues[1], we believe that this is the proper forum – not the courts. The PUC agrees. On April 24, 2007, the PUC approved our request for a declaratory ruling, based on PUC Staff's recommendation that doing so would grant primary jurisdiction over the dispute to the PUC rather than the courts. I have attached PUC Staff's report on the issue.

Furthermore, we feel that your clients' claim for "elder abuse" has been filed in extreme bad faith. Myra Lynne is a family park, its residents' ages are unknown to my clients, and this is, at most, a financial disagreement. There has never been any suggestion or inference of any financial "abuse." A review of the statutes and legislative history of ORS 124.110, clearly demonstrates that the elder abuse statutes were never intended to be applied in this manner.

Under these circumstances, we believe that voluntary dismissal of your complaint and intervention before the PUC would appear to be the most economical means of protecting your clients' interests. Although it is too late for your clients to become co-petitioners, we would not oppose their intervention in the PUC proceeding as parties. Please let me know by **Monday, April 30**, if you will agree to voluntarily dismiss the complaint without prejudice. Upon your failure to comply, it would be our intention to secure the court's assistance in requiring that you do so.

---

[1] *See Dreyer v. Portland General Electric Company*, 341 Or. 262, 283, 142 P.3d 1010 (2006) (finding Circuit Court had a "legal duty to abate the proceedings" because the PUC was engaged in a proceeding that involved essentially the same controversy, and noting the PUC's specialized expertise gave it primary, if not sole jurisdiction over one of the contemplated remedies).

Very truly yours,

Davis Wright Tremaine LLP

Phillip C. Querin (SP)

PHILLIP C. QUERIN

Enc.
cc: Client
PCQ:sz

ITEM NO. 1

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: April 24, 2007

REGULAR X **CONSENT** ____ **EFFECTIVE DATE** Upon Commission approval

DATE: April 16, 2007

TO: Public Utility Commission

FROM: Deborah Garcia

THROUGH: Lee Sparling, Ed Busch, and Judy Johnson

SUBJECT: PACIFIC POWER & LIGHT AND HCA MANAGEMENT COMPANY: (Docket No. DR 38) Joint Petition for Declaratory Ruling pursuant to ORS 756.450 regarding landlord billing for resale of power.

STAFF RECOMMENDATION:

I recommend that Pacific Power & Light and HCA Management Company's joint petition for a declaratory ruling be granted and that the Commission open an investigation.

DISCUSSION:

Pacific Power & Light (PPL or Company) and HCA Management Company (HCA), operator of the Myra Lynne Mobile Home Park (Myra Lynne) (collectively, Petitioners) have filed a request asking the Commission to resolve a potential conflict between PPL's General Service rate schedules and its Rule 2, Section O, and ORS 90.536, which was recently enacted during the 2005 Legislative session. The Legislative history associated with ORS 90.536 indicates the Commission was involved in the drafting of the statute but because PPL's rates and rules also have force and effect of law once approved by the Commission, the Petitioners seek resolution concerning whether PPL's rate schedule and Rule 2, Section O, or ORS 90.536, controls.

Briefly, the general facts of the apparent conflict are:

1. Service to Myra Lynne is delivered in accordance with Schedule 48 by PPL to HCA, the customer of record, via a master meter. Schedule 48 is a rate schedule designated for commercial service.
2. PPL Rule 2, Section O, requires that resale of service by landlords shall be metered and billed to each tenant at PPL's regular tariff rate schedule applicable to the type

of service actually furnished the tenant. In this case the applicable schedule would be PPL's Residential Rate Schedule 4. Schedule 4 rates exceed Schedule 48 rates.

3. ORS 90.536 is a result of House Bill 2247 which added new provisions to Oregon's landlord/tenant law contained in ORS Chapter 90. Arguably, ORS 90.536 (2)(a) states that a tenant may not be charged a rate for utility service that exceeds the rate paid by the landlord.

Prior to the Commission's receipt of the request for a declaratory ruling, it came to Staff's attention that there appeared to be a discrepancy between the rates paid by landlords and the rates paid by other residential ratepayers, for residential electric and natural gas usage. Staff had decided the best course of action was to open a rulemaking, rather than address the issue on a utility-by-utility basis.

Staff has sent a letter (See Attachment A.) advising interested parties that a rulemaking to address the applicability of residential rates for electric and natural gas service to multi-family buildings served by master meters will be opened. PUC Staff will host and has scheduled two informal workshops to gather information and discuss this matter with interested parties before filing a public notice of rulemaking with the office of the Oregon Secretary of State.

Initially, after Staff notified PPL and HCA of the impending rulemaking, the Petitioners were willing to send to the Commission a request that this petition be held in abeyance until the rulemaking was complete because the final result may effectively deal with some or all of the issues raised by the Petitioners. However, the Petitioners advised Staff's counsel that the tenants of Myra Lynne have filed a suit in Jackson County Circuit Court in which they raise the same legal issue PacifiCorp and HCA raised in their request for a declaratory ruling from the Commission. Staff's attorneys and I believe that the Commission should approve the request for a declaratory ruling, so that the Commission can decide the legal issue first.

Staff's attorneys advised Staff that should the Commission approve the request, the court is likely to wait for the Commission's ruling. When both an agency and a court have jurisdiction to decide the same issue and the agency has expertise, courts typically defer to the agency under a doctrine known as primary jurisdiction. If the court follows that doctrine, then the Commission will be able to decide the issue first.

Staff's attorneys have advised Staff that the rulemaking and the investigation should not interfere with each other. Although they will no doubt run parallel courses, the legal issues raised in the petition should not affect the outcome of the rulemaking.

PROPOSED COMMISSION MOTION:

Approve PPL and HCA's joint petition for a declaratory ruling, Docket No. DR 38, and open an investigation.

April 5, 2007

The purpose of this letter is to advise you that the Public Utility Commission (PUC) will open a rulemaking to address the applicability of residential rates for electric and natural gas service to multi-family buildings served by master meters. PUC Staff will host two informal workshops to gather information and discuss this matter with interested parties before filing a public notice of rulemaking with the office of the Oregon Secretary of State.

It has recently come to Staff's attention that there may be some discrepancy between the rates paid by landlords, and rates paid by other residential ratepayers, for residential usage. Attached to this letter is Staff's list of issues for consideration and discussion at the first workshop. In addition to the content of the rules, this rulemaking must address the estimated fiscal impact created by adoption of the rules, so this issue will be included on the agenda. Staff anticipates that parties will have additional topics that also should be included on the agenda. To make the best use of the workshop participants' time and to facilitate discussion, I invite you to send your list of comments or topics to me by May 1, 2007 so that I may forward it to the others who have received this letter, and add it to the agenda for the first workshop.

Staff's proposed schedule is as follows:

Tuesday, May 8, 2007 at 1:00 PM – 1st informal workshop, Small Hearing Room - 2nd Floor

Tuesday, May 22, 2007 at 1:00 PM -- 2nd informal workshop, Main Hearing Room - 1st Floor

June 15, 2007 -- Notice of rulemaking and proposed rules sent to Secretary of State

July 1, 2007 -- Public notice published in the Secretary of State's Bulletin

Tuesday, July 10, 2007 at 1:00 PM – Workshop, Small Hearing Room - 2nd Floor

Tuesday, July 24, 2007 at 1:00 PM – Workshop, Main Hearing Room - 1st Floor

Tuesday, August 7, 2007 at 1:00 PM -- Public Hearing, Small Hearing Room – 2nd Floor

Tuesday, August 14, 2007 at 5:00 PM-- Deadline for final comments

Commission decision by order

The address for the PUC Hearing Rooms is:
550 Capitol St NE Suite 215
Salem, OR 97308-2148

If you have any questions, please don't hesitate to contact me.

Deborah Garcia
Utility Analyst
Phone 503.378.6688
deborah.garcia@state.or.us

Enc

Staff Topics for 1st Informal Workshop

1. Should energy utilities charge residential rates to master metered buildings where the primary purpose of the usage is residential? (Staff does not propose to amend residential service definitions to include transient service such as hotels, RV parks, etc.)
a. For electric service – How should the rules apply to sites established prior to the 1977 change in Building Code requirements that specify a separate meter for each unit?
b. For natural gas service – How should the rules apply to established sites and new sites? c. For natural gas service – Should natural gas utility tariffs require sub metering at new sites?

Discussion Points:

- At the time of ratemaking, the Commission intent is that all residential usage be charged at residential rates.
- A change in landlord tenant law (ORS 90.536) prohibits a landlord from charging an energy rate to a tenant that exceeds the rate paid by the landlord.

2. Should energy utility tariffs be required to state (in accordance with ORS 90.536) that landlords may not charge tenants a rate that exceeds the utility residential rate or add other charges, for costs a landlord may incur for maintenance or billing, to a tenant's energy bill? (This question is not intended to cover a landlord's right to establish various components of the rent it charges a tenant.)

Discussion Points:

- The definition of "Public Utility" found in ORS 757.005(1)(a).
- A landlord has a choice of incurring a one time cost to establish facilities designed for energy service to be directly delivered by the utility, or recurring costs associated with maintenance and billing.

3. Should energy utility tariffs be amended to establish a per unit monthly charge, consisting of the utility's monthly residential charge, less the incremental cost associated with serving an individual meter such as maintenance, meter reading, and billing?

Discussion Point:

- A utility's fixed costs are collected through monthly customer charges as well as through a portion of usage rates.

Exhibit D

Cameron, John

From: Cameron, John
Sent: Friday, May 11, 2007 4:23 PM
To: 'msutt@uci.net'
Cc: 'Michelle Misou (michelle.mishoe@pacificorp.com)'; Querin, Phil
Subject: FW: Docket Number DR 38--Notice of Filing--Oregon PUC

Mr. Sutton,
Here is the PUC report on the prehearing conference held in Docket No. DR 38. The administrative law judge inquired whether you would be participating. None of the parties present were able to answer that question. I do not believe any of the parties would oppose, if you chose to intervene at this time.

From: TAYLOR Annette [mailto:Annette.M.Taylor@state.or.us]
Sent: Friday, May 11, 2007 3:30 PM
To: Cameron, John; HATTON David; GARCIA Deborah; michelle.mishoe@pacificorp.com; oregondockets@pacificorp.com
Cc: BUSCH Ed; GARCIA Deborah; JOHNSON Judy; HATTON David; HAYES Christina
Subject: Docket Number DR 38--Notice of Filing--Oregon PUC

Notice of new activity for docket: DR 38

Docket Name: PACIFICORP & HCA MANAGEMENT COMPANY

Type of Activity: LAW JUDGE CONFERENCE REPORT, filed on 5/11/2007.

Description: ALJ Christina Hayes' Prehearing Conference Report; DISPOSITION: Schedule Set; Copies served electronically 5/11/07 and via U.S. mail 5/14/07.

To view this document, please click on the below link:

http://edocs.puc.state.or.us/efdocs/HDC/dr38hdc152920.pdf

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Public Utility Commission
Administrative Hearings Division
PO Box 2148
Salem, OR 97308-2148

For more information about eFiling, please visit the eFiling page on the eDockets website at http://www.puc.state.or.us.

Exhibit E

Cameron, John

From: Matthew Sutton [msutt@uci.net]
Sent: Thursday, July 05, 2007 3:07 PM
To: Cameron, John
Subject: Re: Materials from Oregon PUC proceedings

John, to clarify I am not representing anyone in the PUC proceeding. I am handling the Jackson County Circuit Court case only. I will forward the materials to my client though. Thanks

----- Original Message -----
From: Cameron, John
To: msutt@uci.net
Cc: Dean Moser
Sent: Thursday, July 05, 2007 3:01 PM
Subject: RE: Materials from Oregon PUC proceedings

I have not heard back from you about my earlier email and the pleadings from the Oregon PUC case. Perhaps you would like to meet with the parties in the PUC case for a discussion. If so, I think I can arrange that meeting. Please advise.

From: Cameron, John
Sent: Tuesday, July 03, 2007 3:32 PM
To: 'msutt@uci.net'
Cc: 'Dean Moser'
Subject: Materials from Oregon PUC proceedings

Via yesterday's mail, you were sent courtesy copies of 3 opening briefs and the stipulation of facts in the PUC proceeding. I would encourage you to review them. Our brief and the stipulation explain what Myra Lynne bills tenants and why. In their respective briefs, the PUC staff and Pacific Power each argue that Myra Lynne should be charging tenants for electricity at a higher rate. The effect of charging at the higher rate can be seen from reviewing Exhibit M to the stipulation. Also, the PUC staff and Pacific Power question whether Myra Lynne should be giving tenants the benefit of the Schedule 98 credit. The effect of removing the credit (at least when BPA is funding this program) can also be seen from Exhibit M.

Call if you have any questions.

John Cameron | Davis Wright Tremaine LLP
1300 SW Fifth Avenue, Suite 2300 | Portland, OR 97201
Tel: (503) 778-5206 | Fax: (503) 778-5299
Email: johncameron@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Shanghai | Washington, D.C.

Exhibit F

LAWYERS

Davis Wright Tremaine LLP

ANCHORAGE BELLEVUE LOS ANGELES NEW YORK PORTLAND SAN FRANCISCO SEATTLE SHANGHAI WASHINGTON, D.C.

JOHN A. CAMERON
Direct (503) 778-5206
johncameron@dwt.com

SUITE 2300
1300 SW FIFTH AVENUE
PORTLAND, OR 97201-5682

TEL (503) 241-2300
FAX (503) 778-5299
www.dwt.com

July 17, 2007

VIA EMAIL

Matthew Sutton
Attorney at Law
220 Laurel Street
P.O. Box 4267
Medford, Or 97501

Re: *Allen, et al. v. Myra Lynne, et al.,* Jackson County Circuit Court Case No. 071073-L3

Dear Matthew:

This responds to your letter of July 11, 2007. I awaited the filing of reply briefs to the Oregon Public Utility Commission in Docket No. DR-38 before responding. Copies of those briefs are being sent to you concurrent with this response. Your letter reflects a misunderstanding of a conversation that occurred between Dean Moser of HCA Management and Steve Coons. As explained to me by Mr. Moser, his conversation did not concern your clients' lawsuit. Instead, it concerned the PUC proceedings in which your clients are not parties.

As you will recall, I also sent you copies of the opening briefs filed with the PUC by Pacific Power and by the PUC Staff. I emailed you an expression of my concern about the consequences for Myra Lynne tenants if Pacific Power and the PUC Staff were to prevail in that case. Both Pacific Power and the Staff maintain that HCA Management has been significantly undercharging its tenants for electricity. Mr. Moser was copied on my email to you and apparently took the opportunity to relay its contents to Mr. Coons. Mr. Moser encouraged Mr. Coons to take an interest in Docket No. DR-38 and recommend to tenants that they retain counsel to participate in the PUC proceeding. However, Mr. Coons disclaimed any responsibility for making such recommendations to tenants and that is where the conversation ended.

Thus, there was no "intimidation" or "threat" – just the same words of advice I passed along to you in my email. You and Mr. Coons alike are free to follow or disregard this advice as you see fit. However, the fact remains that the Oregon PUC may rule in favor of Pacific Power and its Staff – and against HCA Management – by deciding that HCA Management must bill its tenants at the Schedule 4 residential rate, which is substantially higher than the Schedule 48 commercial rate at which we have been billing tenants. The PUC will decide Docket No. DR-38

regardless of whether or not your lawsuit proceeds. Also, you will note from our answer to your complaint that we have not filed a "countersuit" – although HCA Management is seeking its attorney fees in accordance with the provisions of its rental agreements with tenants. All this leads me to reiterate two points I have tried to make with you before.

First, Pacific Power's rates are complicated. As you will see from our opening brief before the Oregon PUC which I sent to you earlier, there are a number of charges, adders and credits that appear on our bills from Pacific Power. It would not be difficult for tenants to become confused and suspect the worst about the various line-item charges appearing on their own electric bills from HCA Management. However, those line-item charges track what Pacific Power bills HCA Management. Our opening brief to the PUC explained what we charge tenants, what we do not charge, and why. It is unfortunate that the tenants did not seek this explanation from us before filing their lawsuit.

Second, your letter speaks of a hope of reaching some resolution of our differences. I would encourage you to undertake that effort before the PUC decides Docket No. DR-38. Although briefing before the PUC is now complete, there may still be an opportunity for an authorized representative of the tenants to meet with the parties to that case for the purpose of reaching some mutually satisfactory resolution of issues relating to tenant bills. I do not purport to speak either for Pacific Power or the PUC Staff, but I would be prepared to support a request by the tenants for such a meeting assuming they petition the PUC to intervene in the case. (The tenants will be charged at the rates the PUC orders us to charge even if they do not intervene.) You can read our brief to know where we stand on the rate issues now before the PUC.

Recently, you have reminded me that you do not represent the tenants in the PUC proceeding. To paraphrase Mr. Moser's comment to Mr. Coons, if not by you, then the tenants should consider some other representation of their interests in that proceeding. Of course, this is the tenants' decision to make. However, if I were in the situation of the tenants and faced the potential increase in electric charges shown in Exhibit M to the Stipulation of Facts in Docket No. DR-38, I would want to try to do something about it before the PUC decided the case.

If you become aware of any future communications between our respective clients, please let me know. I will do the same. If I don't hear from you sooner, I will be in touch once the PUC decides what electric rates your tenants must be charged.

Very truly yours,

Davis Wright Tremaine LLP

John A. Cameron

JAC:smp
Enclosures: Reply briefs in Docket No. DR 38 (via separate email)
cc: Client

Exhibit G

LAWYERS

Davis Wright Tremaine LLP

ANCHORAGE BELLEVUE LOS ANGELES NEW YORK PORTLAND SAN FRANCISCO SEATTLE SHANGHAI WASHINGTON, D.C.

JOHN A. CAMERON
Direct (503) 778-5206
johncameron@dwt.com

SUITE 2300
1300 SW FIFTH AVENUE
PORTLAND, OR 97201-5682

TEL (503) 241-2300
FAX (503) 778-5299
www.dwt.com

October 30, 2007

VIA FAX and FCM

Matthew Sutton
Attorney at Law
220 Laurel Street
P.O. Box 4267
Medford, Or 97501

Re: *Allen, et al. v. Myra Lynne, et al*
Jackson County Circuit Court Case No. 071073-L3

Dear Mr. Sutton:

I enclose a copy of Order No. 07-455, the declaratory ruling issued by the Oregon Public Utility Commission ("PUC") on October 22, 2007, in Docket No. DR 38, *In the matter of PacifiCorp and HCA Management Company, LLC.* In its order, the PUC has ruled on the obligations of my clients, HCA Management Company, Inc., and Myra Lynne Mobile Home Park ("Myra Lynne"), as customers of PacifiCorp, dba Pacific Power ("Pacific Power"), with regard to the rates, charges and credits for electric service billed to tenants of Myra Lynne. PacifiCorp and HCA Management joined in seeking declaratory relief from the PUC after my clients received a letter from you, last November, demanding $500,000 and after you filed the above-captioned lawsuit against them earlier this year.

Recall from the copies of pleadings sent to you throughout the PUC case that there were three basic issues presented to the PUC for resolution.

PUC Issue 1. The first issue concerned the rate at which Myra Lynne was legally required to bill its tenants, under applicable Pacific Power rules and rate schedules, prior to the 2006 effective date of HB 2247. During that period Myra Lynne billed its tenants at Pacific Power's Schedule 4 rate for residential service, not at the Schedule 48 commercial rate at which it was billed by Pacific Power. The PUC ruled that Myra Lynne's billings were correct because it was legally required to bill tenants at the Schedule 4 rate during that time period. Myra Lynne's bills to tenants conformed to the requirements of the applicable rules and rate schedules that had been approved by the PUC. Order, p. 5.

DR 38
Answer of HCA

The PUC's ordering paragraph regarding this first issue reads as follows:

> Prior to the time HB 2247 became effective, Myra Lynne Mobile Home Park, which was receiving service under Schedule 48 from Pacific Power, was required, as a condition of service, to bill each of its submetered tenants for electricity at the Pacific Power Schedule 4 rate. [Ordering paragraph 1, Order, p. 10.]

PUC Issue 2. The second issue concerned the rate at which Myra Lynne was required to bill its tenants as of the time when HB 2247 became effective in 2006. Myra Lynne has billed its tenants at the lower Schedule 48 commercial rate during that period. However, PacifiCorp and the PUC Staff disagreed with the use of the Schedule 48 rate, arguing that Myra Lynne was still required to bill its tenants at the higher Schedule 4 residential rate. All parties to the PUC case briefed the new relevant statutes, ORS 90.532 and ORS 90.536, and their legislative history.

The PUC decided this issue against HCA Management, ruling that Myra Lynne has been undercharging its tenants for electricity since HB 2247 took effect, because the applicable rules and rate schedules of Pacific Power still govern and because those rules and rate schedules require Myra Lynne to bill its tenants at the higher Schedule 4 rate. The PUC addressed, and rejected, the statutory arguments that could have supported use of the Schedule 48 rate in calculating tenant bills.

During the course of the PUC case, I advised you that PacifiCorp had calculated a 30 percent difference between the Schedule 4 rate and the lower Schedule 48 rate. When Myra Lynne complies with Order No. 07-455, as it is required to do under ORS 756.450, your clients and other Myra Lynne tenants will see an approximate 30 percent increase in their monthly charges for electricity. My clients will be sending the appropriate notice to tenants informing them that the PUC order requires that Myra Lynne increase all tenant electric bills by approximately 30 percent. This necessarily means that Order No. 07-455 will have an effect on tenant electric bills even though you declined my advice to participate in Docket No. DR 38.

Also, recall from the pleadings that PacifiCorp and Myra Lynne repeatedly asked the PUC to make its order prospective only, to avoid the need to recover any possible undercharges from tenants for months dating back to early 2006. Unfortunately, the PUC did not do so in Order No. 07-455. The PUC's ordering paragraph regarding this second issue reads as follows:

> Under ORS 90.532 and ORS 90.536, Myra Lynne Mobile Home Park must bill each of its submetered tenants for electricity at the Pacific Power Schedule 4 rate, as a condition of service under Schedule 48, and Rule 2, Section O. [Order, p. 10.]

By declining to limit the scope of its ruling to prospective-only application, I read the PUC order as requiring Myra Lynne to recoup these undercollections from its tenants who would otherwise receive a windfall in comparison to other residential end-users in Pacific Power's service territory. My clients are discussing how best to proceed in complying with this part of the PUC order.

PUC Issue 3. This issue concerned the Schedule 98 credit, made available by Pacific Power with funds provided by Bonneville Power Administration ("BPA") under the federal Residential Exchange Program ("REP"). This issue arose because of your allegations regarding a reimbursement check received by my clients from Pacific Power. As we have told you, this check reimbursed Myra Lynne for Schedule 98 credits applied to tenant bills during the time Pacific Power forgot to apply the Schedule 98 credit to Myra Lynne's bills. The PUC Order contains the following 13th statement of fact:

> Myra Lynne has applied the Schedule 98 credit from the Residential Exchange Program (REP), administered by the Bonneville Power Administration, both before and after HB 2247 became effective, even during an extended period in which Pacific Power had failed to include that credit in its bills to Myra Lynne. [Order, p. 4.]

The stipulated record of Docket No. DR 38 and the briefs of HCA Management explain exactly how the Schedule 98 credit was applied to tenant bills both before and after HB 2247 went into effect. Thus, I believe it should now be perfectly clear to you and your clients that they have always received the full benefit of the Schedule 98 credit in their electric bills from Myra Lynne and that the PacifiCorp check merely made my clients whole for the amounts they had credited to tenants while Pacific Power forget to apply the credit to Myra Lynne.

My clients believe that the time has now come for your clients to seek voluntary dismissal of their lawsuit, with prejudice. Your clients' lawsuit has now resulted in a 30 percent increase in electric bills for themselves and for all other tenants, as now ordered by the PUC. If you or your clients had questions about their electric bills, they should have asked us for answers, which we provided in great detail in the record of the PUC case. Unfounded demands for $500,000 and allegations of "elder abuse" have been particularly offensive to my clients and left them with no choice but to seek resolution of electric rate and billing issues by the PUC.

My clients do not intend to seek a rehearing of Order No. 07-455. They intend to comply with the PUC order and avoid any future uncertainty about electric bills on the part of any tenant.

My clients' decision not to seek rehearing does not preclude you from doing so in a pleading that also seeks late intervention in Docket No. DR 38 -- even at this late date in the proceeding. Your clients might want to ask the PUC to revisit the issue of whether its ruling should relate back to the time HB 2247 went into effect or whether it should have prospective-only application. I believe the PUC order leaves the door open to possible rehearing. "We emphasize, however, that this decision does not preclude Myra Lynne or its tenants from challenging Pacific Power's policies in a Commission proceeding." Order, p. 9 (emphasis supplied). Just as I repeatedly encouraged you to intervene in Docket No. DR 38 on behalf of your clients so that their interests could be represented before the PUC, my clients would not now oppose your late intervention in Docket No. DR 38 now for this limited purpose.

Should your clients wish to intervene in Docket No. DR 38, the relevant regulation, OAR 860-014-0095, allows 60 days in which to seek rehearing of any PUC order. Any petition to intervene and motion for rehearing must be filed within that period.

Please let me know your intentions at your earliest convenience.

Very truly yours,

Davis Wright Tremaine LLP

John A. Cameron

JAC:smp
Encl. PUC Order No. 07-455

cc: Client

ENTERED 10/22/07

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

DR 38

In the Matter of	)	
	)	ORDER
PACIFICORP, dba PACIFIC POWER & LIGHT COMPANY and HCA MANAGEMENT COMPANY, LLC	)	
	)	
Joint Petition for Declaratory Ruling.	)	

DISPOSITION: DECLARATORY RULING ISSUED

On March 20, 2007, PacifiCorp dba Pacific Power (Pacific Power) and HCA Management Company, LLC (Myra Lynne) filed a Petition for Declaratory Ruling pursuant to ORS 756.450. Petitioners request the Public Utility Commission of Oregon (Commission) address questions relating to Myra Lynne's billing practices to its mobile home park tenants for electric service provided by Pacific Power.

At a public meeting on April 24, 2007, the Commission opened this docket to entertain Petitioners' request. As a matter of courtesy, an Administrative Law Judge invited the tenants of the Myra Lynne Mobile Home Park to participate in this proceeding in correspondence dated May 11, 2007. The tenants declined the offer per a correspondence dated May 25, 2007.

On May 17, 2007, Commission Staff, Pacific Power, and Myra Lynne submitted a Joint Issues List. In addition, on July 2, 2007, the three parties submitted a Joint Stipulation of Facts (Stipulation); the sole intervenor in this proceeding, Citizen's Utility Board of Oregon (CUB), stated that it did not oppose the Stipulation.

Staff, Pacific Power and Myra Lynne each submitted opening briefs on July 2, 2007, and reply briefs on July 16, 2007. CUB filed no briefs.

FACTS

We base our declaratory ruling on the following assumed facts:

1. Pacific Power is an investor-owned utility provider of electricity at retail, regulated by the Commission pursuant to ORS Chapters 756 and 757. Pacific Power provides retail electric service in Medford, Oregon, under a franchise agreement with the City of Medford.

2. Myra Lynne owns and operates the Myra Lynne Mobile Home Park in Medford, Oregon. Myra Lynne's tenants occupy detached, residential dwellings within the park for periods in excess of 30 days. No tenant runs any commercial business in the park.

3. Myra Lynne purchases electricity for the entire mobile home park from Pacific Power under Schedule 48, applicable to commercial customers with demands of 1,000 KW and above. Myra Lynne's electricity usage is measured through a master meter. Myra Lynne's monthly bills from Pacific Power include a charge for energy use, as well as miscellaneous charges and fees.

4. Myra Lynne resells the electricity to tenants for residential usage through landlord-owned submeters, pursuant to each tenant's written rental agreement.

5. Schedule 48 contains the following provision:

> **Special Conditions**
> The Consumer shall not resell electric service received from the Company under provisions of this Schedule to any person, except by written permission of the Company and where the Consumer meters and bills any of his tenants at the Company's regular tariff rate for the type of service which such tenant may actually receive.

6. Section O of Pacific Power's Rule 2 imposes the same requirement on the "Consumer":

> **Resale of Service**
> Resale of service shall be limited to Consumer's tenants using such service entirely within property described in the written agreement. Service resold to tenants shall be metered and billed to each tenant at Company's regular tariff rate schedule applicable to the type of service actually furnished the tenant. Consumer shall indemnify Company for any and all liabilities, actions or claims for an injury, loss or damage to persons or property arising from the results of service by Consumer.

7. Historically, Myra Lynne met the Special Conditions of Schedule 48 and the "Resale of Service" provision of Section O, Rule 2 by billing tenants according to Pacific Power's Schedule 4, applicable to residential customers. Myra Lynne did not add any other charges, costs or adders to its tenant electric bills, and its use of Schedule 4 was consistent with specific instructions Myra Lynne received from Pacific Power.

8. Section "P" of Pacific Power's Rule 2 defines "residential service" as follows:

> Service furnished to Consumers for domestic purposes in single-family dwellings, including rooming houses where not more than four rooms are used as sleeping or living quarters by persons not members of Consumer's family, apartments and flats where each dwelling unit is separately metered and billed, but excluding dwellings where tenancy is typically less than 30 days in length such as hotels, motels, camps, lodges and clubs.

9. During its 2005 legislative session, the Oregon Legislature enacted HB 2247, which added several new provisions to Oregon's landlord/tenant law. As enacted, the bill added provisions to Chapter 90, including ORS 90.532 and ORS 90.536. The new law became effective as of January 2, 2006.

10. ORS 90.532 enumerates the acceptable methods by which a landlord may provide or account for utility or service charges to tenants. ORS 90.532(1)(c)(C) states in relevant part:

> (1) Subject to the policies of the utility or service provider, a landlord may provide for utilities or services to tenants by one or more of the following billing methods:
>
> * * * * *
>
> (c) A relationship between the landlord, tenant and utility or service provider in which:
>
> * * * * *
>
> (C) The landlord uses a submeter to measure the utility or service actually provided to the space and bills the tenant for a utility or service charge for the amount provided.

As applicable here, ORS 90.536 adds:

> (1) If a written rental agreement so provides, a landlord using the billing method described in ORS 90.532(1)(c) may require a tenant to pay to the landlord a utility or service charge that has been billed by a utility or service provider to the landlord for utility or service provided directly to the tenant's space as measured by a submeter.
>
> (2) A utility or service charge to be assessed to a tenant under this section may consist of:
>
> (a) The cost of the utility or service provided to the tenant's space and under the tenant's control, as measured by the

submeter, at a rate no greater than the average rate billed to the landlord by the utility or service provider, not including any base or service charge;

* * * * *; and

(c) A pro rata portion of any base or service charge billed to the landlord by the utility or service provider, including but not limited to any tax passed through by the provider.

(3) A utility or service charge to be assessed to a tenant under this section may not include:

(a) Any additional charge, including any costs of the landlord, for the installation, maintenance or operation of the utility or service system or any profit for the landlord; or

(b) Any costs to provide a utility or service to common areas of the facility.

11. When Myra Lynne became aware of the enactment of HB 2247, it began to bill its tenants in accordance with its understanding of ORS 90.536. Rather than bill tenants according to Schedule 4, each tenant's bill now consists of a pro rata share, according to tenant usage, of Myra Lynne's actual monthly electricity bills based on Pacific Power's Schedule 48 rate. Each month, Myra Lynne bills its tenants for a share of charges for energy use, as well as miscellaneous charges and fees.

12. After HB 2247 became effective, Pacific Power continued to advise Myra Lynne that it was required to apply Schedule 4 in billing tenants for their submetered electric service.

13. Myra Lynne has applied the Schedule 98 credit from the Residential Exchange Program (REP), administered by the Bonneville Power Administration, both before and after HB 2247 became effective, even during an extended period in which Pacific Power had failed to include that credit in its bills to Myra Lynne.

ISSUES

The Petitioners and Staff have identified three issues for Commission declaration. We address each separately.

Issue 1: **Prior to the time HB 2247 became effective, was Myra Lynne Mobile Home Park, which was receiving service under Schedule 48 from Pacific Power, required as a condition of service to bill each of its submetered tenants for electricity at the Pacific Power, Schedule 4 rate, in accordance with Pacific Power's Schedule 48 Special Conditions and Rule 2, Section O?**

Position of Parties

All parties contend that, prior to the enactment of HB 2247, Myra Lynne was required, as a condition of service, to bill each of its submetered tenants for electricity at Pacific Power's Schedule 4 rate for residential service. The parties contend such method of billing was required to comply with Pacific Power's Schedule 48 Special Conditions and Rule 2, Section O.

Resolution

In addressing this issue, we assume that Myra Lynne was properly classified as a Schedule 48 customer under PacifiCorp's tariffs. We also assume that Myra Lynne had Pacific Power's written permission to submeter and bill its tenants.

With those assumptions, we agree that, prior to the time HB 2247 became effective, Myra Lynne was required to bill its tenants for electricity at Pacific Power's Schedule 4 rate. Pacific Power's tariffs place two conditions limiting the resale of service provided under the circumstances presented here. As a condition to resell service provided under Schedule 48, Myra Lynne was obligated to bill its tenants for the type of service the tenant "may actually receive." Similarly, as a general condition to resell service to tenants, Myra Lynne was obligated to bill each tenant at Pacific Power's "regular tariff rate schedule applicable to the type of service actually furnished the tenant." Rule 2, Section O. Because Myra Lynne's tenants received "residential service" within the definition set forth in PacifiCorp's Rule P, Myra Lynne was required to bill its tenants under Pacific Power's Schedule 4 rate for residential service.

Issue 2: **Under amended ORS 90.532 and ORS 90.536, may Myra Lynne bill each of its submetered tenants for electricity at the Schedule 4 Residential Rate, as a condition of service under Schedule 48, and Rule 2, Section O; or at the same Schedule 48 rate it is billed by Pacific Power?**

Position of Parties

Pacific Power and Staff contend that Myra Lynne must continue to bill its tenants at the Schedule 4 rate for residential service. Staff and Pacific Power contend that the opening phrase of ORS 90.532, "Subject to the policies of the utility or service provider,"

requires that a landlord's method of billing tenants for utility service be governed by, and subordinate to, the policies of the utility. According to the parties, ORS 90.532(1)(c)(C), as applied here, requires that Myra Lynne must comply with Pacific Power's policies when submetering its tenants for electrical usage. Because those policies require Myra Lynne to bill its tenants for the end-use service the tenant "may actually receive" or "actually receives," PacifiCorp and Staff maintain that the tenants must be billed under Pacific Power's Schedule 4.

Myra Lynne acknowledges that Pacific Power's and Staff's interpretation of ORS 90.532 is plausible. Myra Lynne, however, is reluctant to accept that construction because of language in ORS 90.536(3)(a). That language provides that a utility charge assessed by a landlord to a tenant may not include "[*a*]*ny additional charge*, including any costs of the landlord, for the installation, maintenance or operation of the utility or service system *or any profit for the landlord*[.]" (Emphasis added). Because the Schedule 4 rate is currently higher than the allocated Schedule 48 rate at which Myra Lynne itself is billed, Myra Lynne is concerned that billing tenants at the Schedule 4 rate might be construed as adding an "additional charge" or "profit for the landlord." Consequently, Myra Lynne is currently billing its tenants based on its Schedule 48 rate.

Resolution

This question requires the interpretation of ORS 90.532 and ORS 90.536. When construing any statutory provision, our duty is to discern the intent of the legislature. ORS 174.040. To accomplish this, we use the analysis set forth in *PGE v. Bureau of Labor and Indus.*, 317 Or 606, 610-12 (1993). We begin with the text and context of the statutes, giving words their plain, natural and ordinary meaning. If the intent of the legislature is not clear from that inquiry, we then examine legislative history. If that too fails, we then turn to general maxims of statutory construction. *See id.*

We begin with ORS 90.532, which enumerates the acceptable methods by which a landlord may bill tenants for utility service. The opening phrase of the statute makes clear that any permissible method is "[s]ubject to the policies of the utility or service provider." ORS 90.532(1). As Staff notes, the noun "subject" means: "one that is placed under the authority, dominion, control, or influence of someone or something." Webster's Third New International Dictionary (unabridged 1993) at 2275. Accordingly, the legislature's use of "subject to the policies of the utility" in ORS 90.532(1) means that it intended that any landlord billing tenants for utility service must comply with the utility provider's policies.

We now turn to ORS 90.536. That statute has three sections. First, ORS 90.536(1) states that, if a landlord provides utility service to tenants under a billing method described in ORS 90.532(1)(c), the landlord:

> *[M]ay* require a tenant to pay to the landlord a utility or service charge that has been billed by a utility or service provider to the landlord for utility or service provided directly to the tenant's space as measured by a submeter.

(Emphasis added.) Next, if a landlord decides to charge its tenants for electricity, ORS 90.532(2) identifies what a utility charge may include the cost of the service at a rate no greater than the average rate billed to the landlord. ORS 90.532(3) then identifies what the charge may not include, among other things, an additional fee or profit for the landlord. ORS 90.536(2) and (3).

Because the Schedule 4 residential rate is currently higher than the Schedule 48 commercial rate, all three parties believe that the clause in ORS 90.536 prohibiting a "profit for the landlord" raises a potential conflict with ORS 90.532. They question whether Myra Lynne, in billing its tenants at a higher rate to meet Pacific Power's policies as required by ORS 90.532, is obtaining a "profit" that is prohibited under ORS 90.536.

Pacific Power and Staff contend that the statutes may be interpreted to avoid any conflict by focusing on the word "may" in ORS 90.536(1). According to both parties, the use of "may" suggested the language is permissive, not mandatory, and conclude that, if ORS 90.536(1) is read as permissive, it would not conflict with the mandatory requirements of ORS 90.532. Thus, Pacific Power and Staff conclude ORS 90.536 affords landlords discretion when calculating tenants' electricity bills. Myra Lynne accepts this interpretation, but remains concerned about the discrepancy between the two tenant rates.

We agree that ORS 90.536(1) is permissive, but not to the extent advocated by Pacific Power and Staff. True, the statute permits, but does not require, a landlord to charge tenants for utility service. Thus, Myra Lynne could decide not to charge its tenants for electricity. Once it opts to charge tenants for utility service, however, it is required to adhere to the statutory provisions and, subject to the provisions of ORS 90.532, may only charge those items permitted in ORS 90.536(2) and (3).

Despite this clarification, we do not find a conflict between the two statutory provisions. By its own terms, ORS 90.536(1) establishes the charges a landlord may require a tenant to pay under "the billing method described in ORS 90.532(1)." When one statute refers to another in this manner, the reference extends to and incorporates the provisions of the statute referenced. ORS 174.060. Thus, the provisions of ORS 90.532(1) necessarily apply to and govern those contained in ORS 90.536(1).

As discussed above, the opening phrase in ORS 90.532(1) requires any billing by landlords to tenants for utility service be "subject to the policies of the utility." This requirement controls not only the remainder of that statute, but also ORS 90.536(1) by operation of the express reference.

Thus, in adding ORS 90.532 and ORS 90.536 to Oregon's landlord-tenant law, the legislature identified approved billing methods for utility service and permissible utility charges, but made both provisions "[s]ubject to the policies of the utility." Any potential conflict between these statutory provisions and utility policy must be resolved in favor of the utility policy. Here, that requires Myra Lynne to bill its tenants as residential customers under Pacific Power's Schedule 4 rate.

We do not share Myra Lynne's concern that its charging of tenants the Schedule 4 rate could be interpreted as "an additional charge" or "profit for the landlord,"

prohibited under ORS 90.536(3). As we have determined, Myra Lynne's billing of its tenants for utility service must comply with Pacific Power's policies. So long as Myra Lynne does not add an additional charge beyond those obligated by the Schedule 4 tariff, it will not violate the proscription against imposing an additional charge or profit for the resale of utility service under ORS 90.536(3)(a).

Because the legislative intent is clear from the plain language of the statute, a resort to legislative history is not necessary. Nonetheless, the legislative history confirms this interpretation. John VanLandingham, an attorney for the Lane County Law and Advocacy Center, led the negotiations for HB 2247 with the Manufactured Housing Landlord/Tenant Coalition. In testimony before the House Judiciary Subcommittee on Civil Law, Mr. VanLandingham noted that the bill was the result of negotiations among a broad array of groups interested in landlord-tenant law. He also noted the involvement of the Commission in making recommendations regarding the language of relevant provisions of the bill.

Mr. Van Landingham provided a section-by-section analysis of the bill. Regarding Section 6, which was later codified as ORS 90.532, Mr. VanLandingham testified:

> *One of the over-riding general principal (sic) is that the landlord must comply with the policies of the utility provider concerned with that utility service.* For regulated utilities, that necessarily implicates state policies as well. *Examples include utility rates* and requirements for utility hook-up procedures.

Testimony, House Judiciary Subcommittee on Civil Law, HB 2247, June 13, 2005, Ex B, page 7 (statement of John VanLandingham) (emphasis added).

As to the purpose of Section 8, which became ORS 90.536, Mr. VanLandingham explained:

> With regard to the cost of service, as a result of PUC recommendations this section refers to the average rate billed to the landlord by the provider, since there may be a range of rates charged, based on the amount of the service consumed. In addition, the "no greater than" phrase reflects *that the utility provider policies might require a landlord to charge the tenant a rate that is lower than the rate the provider uses to bill the landlord -- a residential rate instead of a commercial rate.*

Id. at 8. (emphasis added).

This history clarifies two conclusions. First, that the legislature intended to defer, if necessary, to the policies of the utility provider. Second, that such deference includes the requirement that the landlord charge its tenants a different rate if required by the utility's policies. While the legislature may not have contemplated the situation presented here, where the utility policy requires the landlord to charge a higher rate, this testimony confirms that the landlord must bill its tenants at rates consistent with the utility's policies.

Accordingly, we conclude that, under ORS 90.532 and ORS 90.536, Myra Lynne is obligated to follow Pacific Power's policies in charging its tenants for electric usage. Those policies require Myra Lynne to bill each of its submetered tenants for electricity at the Schedule 4 Residential Rate.

We emphasize, however, that this decision does not preclude Myra Lynne or its tenants from challenging Pacific Power's policies in a Commission proceeding. The utility's policies are contained in tariffs approved by and on file with the Commission. Either Myra Lynne or its tenants may ask the Commission to use its authority under ORS 756.515 to investigate the reasonableness of Pacific Power's policies in light of the unusual circumstances presented here.

Issue 3. If Myra Lynne is required to bill each of its submetered tenants at the Schedule 48 nonresidential rate rather the Schedule 4 residential rate, are the tenants still eligible for the residential credit generally available to residential consumers under Pacific Power's Schedule 98?

Position of Parties

Both Staff and Pacific Power believe that the Commission should not resolve this issue, as they contend that Myra Lynne is required to bill its clients under Schedule 4, not Schedule 48. In addition, they note that Pacific Power's Schedule 98 credit was suspended as of June 1, 2007, after BPA suspended the residential exchange program (REP) following adverse decisions from the Ninth Circuit Court of Appeals. *See Golden Northwest Aluminum, Inc. v. Bonneville Power Administration*, 2007 WL 1289539 (9th Cir. 2007) and *Portland General Electric Company v. Bonneville Power Administration* 2007 WL 1288786 (9th Cir. 2007).

Myra Lynne acknowledges the uncertainty regarding the availability of the residential exchange credit, but asks the Commission to address the eligibility of its tenants to receive the credit.

Resolution

We have determined that Myra Lynne must treat its tenants as residential customers, and bill each of its submetered tenants for electricity, at PacifiCorp's Schedule 4 Rate. Accordingly, that decision has essentially rendered this question moot. Moreover, as the parties note, the REP has been suspended and it is difficult to determine whether and under what terms the Schedule 98 credit will be reestablished in the future. Accordingly, we decline to issue a ruling on this matter. We anticipate, however, that any decision regarding the REP will treat all of Pacific Power's residential customers equally, including the tenants of Myra Lynne.

ORDER

IT IS ORDERED that the Public Utility Commission of Oregon make the following declaratory rulings:

1. Prior to the time HB 2247 became effective, Myra Lynne Mobile Home Park, which was receiving service under Schedule 48 from Pacific Power, was required, as a condition of service, to bill each of its submetered tenants for electricity at the Pacific Power Schedule 4 rate.

2. Under ORS 90.532 and ORS 90.536, Myra Lynne Mobile Home Park must bill each of its submetered tenants for electricity at the Schedule 4 Residential Rate, as a condition of service under Schedule 48, and Rule 2, Section O.

Made, entered, and effective OCT 2 2 2007.

Lee Beyer
Chairman

John Savage
Commissioner

Ray Baum
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.