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November 25, 2009

Via Electronic and US Mail

Public Utility Commission
Attn: Filing Center
550 Capitol St. NE #215
P.O. Box 2148
Salem OR 97308-2148

Re: In the Matter of PACIFICORP Request for a General Rate Revision
Docket No. UE 210

Dear Filing Center:

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

Thank you for your assistance.

Sincerely yours,

/s/ Allison M. Wils
Allison M. Wils

Enclosures
cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Opening Brief on behalf of the Industrial Customers of Northwest Utilities ("ICNU") upon the parties, on the service list, by causing the same to be deposited in the U.S. Mail, postage-prepaid, or sent via electronic mail to those parties who have waived paper service in this proceeding.

Dated at Portland, Oregon, this 25th day of November, 2009.

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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 210

In the Matter of	)
	)
PACIFICORP, dba PACIFIC POWER	)
	)
Request for a General Rate Revision.	)

OPENING BRIEF

ON BEHALF OF

THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES

November 25, 2009

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I. INTRODUCTION

Pursuant to Administrative Law Judge ("ALJ") Hardie's October 30, 2009 Order, the Industrial Customers of Northwest Utilities ("ICNU") submits the following opening brief requesting that the Oregon Public Utility Commission ("OPUC" or the "Commission") reject the Revenue Requirement Settlement ("Settlement"). The joint parties in support of the Settlement ("Joint Parties") have failed to provide adequate support for increasing PacifiCorp's (or the "Company") rates almost $46 million (or 5.4% for industrial customers) during a time when PacifiCorp's customers are reeling from the worst economic conditions since the Great Depression. PacifiCorp's Oregon load continues to decline, yet PacifiCorp is also seeking over $38 million in UE 177 for undercollecting its 2008 income taxes (which suggests higher than projected income for 2008). PacifiCorp should be lowering its costs and rates instead of seeking yet another rate increase after its customers have already been hammered by a steady stream of annual rate increases. The Commission should broadly consider the Company's operations since PacifiCorp is asking the Commission to approve a black box settlement, which is nothing more than a broad, vague claim to increase revenues.

The Commission should reject the Settlement because a classic black box settlement is inappropriate during these economic conditions and when not all of the major parties have reached agreement on disputed issues. ICNU/700, Early/5, 7. Customers in PacifiCorp's service territory are weathering a tough economic recession and the Commission should not provide PacifiCorp a free pass in justifying its rate

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increase, but should instead require the Joint Parties to specifically support every component of this rate increase. Id. at Early/5.

ICNU is not recommending that the Commission reject any prudently incurred costs because of the poor economy, but that the Commission should consider the economic conditions when deciding whether it is prudent for the Company to make certain investments. For example, it may not be prudent for the Company to pay full bonuses and salary increases for non-union employees when business customers are laying off their employees and closing their facilities, governments are furloughing their workers, and record high numbers of residential customers do not have jobs. Similarly, the Commission should consider the economic conditions when evaluating whether to increase PacifiCorp's return on equity ("ROE"). PacifiCorp should be required to fully justify every component of its rate increase before the Commission subjects customers to the financial pain of higher rates, a poor economy, and possibly higher rates associated with the Senate Bill 408 proceeding.

In contrast to the poor economic conditions facing its ratepayers, PacifiCorp is financially healthy and claims to be over earning. Id. at Early/3-4. This is in part because PacifiCorp has been successful in pushing through annual rate increases on its customers. Mid-American executives promised its customers no annual rate increases during its courtship. The honeymoon was indeed very short. While PacifiCorp is proposing to once again increase rates, the Company appears to have over earned in 2008. Id. The Company alleges that it earned more taxable income than it expected when rates were set, "which means that its earnings exceeded expectations (or the

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amounts assumed in rates)." Id. at Early/4. It should not surprise the Commission that PacifiCorp is once again promoting a black box settlement and seeking to preclude a thorough review of its rates when it does not appear to need the higher revenues to cover its costs.

Although ICNU recommends that the Commission simply reject the Settlement in its entirety, in the alternative, the Commission could adopt a revised Settlement based on a number of reasonable conditions. Specifically, ICNU recommends that the Commission condition any approval of the Settlement by:

- Adopting Michael Gorman's recommendations regarding cost of capital, which reduce PacifiCorp's rate increase request by about $5.5 million.[1/] Mr. Gorman's cost of capital recommendations would retain PacifiCorp's current ROE, would best reflect current economic conditions, and are the only recommendations supported by analysis that specifically address each component of the Company's capital structure.

- Adopting Ellen Blumenthal's recommendation regarding wages and salaries, which reduce PacifiCorp's rate increase request by $21.0 million.[2/] Ms. Blumenthal's wages and salaries adjustment corrects PacifiCorp's overstatement of costs by removing non-union salary increases and bonuses which should not be paid during the current economy, and more accurately forecasts Oregon's share of PacifiCorp's costs. Ms. Blumenthal's testimony also demonstrates that PacifiCorp has a history of overstating its wages and salaries expenses and retaining the difference to solely benefit PacifiCorp shareholders.

- Removing all costs not presently used and useful to Oregon ratepayers, which would reduce PacifiCorp's rate increase request by about $10.3 million. These costs must be removed from PacifiCorp's rates as a matter of law.

[1/] Unless otherwise stated, all of the revenue requirement adjustments in ICNU's Opening Brief are stated in Oregon allocated numbers.

[2/] The Oregon revenue requirement impact of the adjustments in Ms. Blumenthal's response testimony is $21.7 million. ICNU/600, Blumenthal/10. As will be fully explained later in this Opening Brief, ICNU agrees to one change proposed by the Joint Parties which reduces the Oregon revenue impact of Ms. Blumenthal's adjustments by $0.7 million, which results in a $21.0 million adjustment.

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- Imposing minimum reporting requirements on PacifiCorp's ability to pocket the gain from the sales of Oregon allocated renewable energy credits ("RECs"). There is no legitimate reason for PacifiCorp not to agree to these conditions, unless the Company wants to retain the discretion to sell Oregon allocated RECs and retain the gains for the benefit of shareholders instead of ratepayers. The issue is even more critical given California's recent revision to its renewable portfolio standards through executive order.

ICNU Recommended Adjustments to the Settlement	
Rate of Return	$5.5 million
Wages and Salaries	$21.0 million
Used and Useful	$10.3 million
Total ICNU Adjustments	$36.8 million

These conditions would reduce PacifiCorp's overall rate increase proposal to about $9 million, and provide important safeguards to better ensure that PacifiCorp's shareholders do not retain the gains associated with the sales of any Oregon allocated RECs.

Finally, ICNU recommends that the Commission approve the all-party rate spread and rate design settlement. PacifiCorp has historically proposed a rate spread which unfairly burdened industrial customers with rate increases significantly higher than the overall average. ICNU witness Donald Schoenbeck submitted detailed and comprehensive testimony which demonstrates that the rate increase for industrial customers should be less, not more, than the average rate increase because industrial customers are not causing PacifiCorp to increase its costs. ICNU/200-208. All the parties entered into a settlement of rate spread and rate design, which more equitably allocates costs among various customer classes than proposed by the Company in its original filing. Although not perfect, ICNU believes the rate spread and rate design

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settlement is a reasonable resolution of those issues, and there is no party which opposes its adoption. See Joint Testimony in support of the Rate Spread and Rate Design Stipulation, Joint Rate Spread and Rate Design/100, Compton, et al./2.

II. BACKGROUND

PacifiCorp has a history of relentlessly pushing for higher rates on a near annual basis in Oregon. Industrial customers have borne the brunt of these increases, including about a 6.8% increase in 2007, a 5.5% increase in 2008, and a 6.8% industrial in 2009. ICNU/700, Early/2. PacifiCorp ignores these annual rate increases and argues that this is the first general rate proceeding since 2006 (UE 179). See Joint Reply-Revenue Requirement/200, Garcia et al./4. Regardless of whether PacifiCorp increases its rates through "general" rate cases, power cost only cases, renewable adjustment clause cases, or other proceedings, customers have been subject to repeated annual rate increases, while at the same time Oregon businesses are facing deflationary pressures for their own products and services, being forced to consolidate or close operations, and required to lower their own operational costs. ICNU/700, Early/1-2.

On April 2, 2009, PacifiCorp filed this general rate case requesting a $92.1 million revenue requirement increase, which results in an average rate increase of 9.1% and an average industrial rate increase of 13.7%. A large portion of PacifiCorp's rate increase request was related to PacifiCorp's higher recommended rate of return ("ROR"), which included an increase in ROE to 11% from 10%. This request was remarkable given the economic situation and the continuing historically low interest rates.

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Staff and intervenors filed responsive testimony on July 24, 2009. Staff submitted testimony recommending an overall rate increase for PacifiCorp of $9.6 million, which was about $82.5 million in reductions. About half of Staff's recommended adjustments were based on a more reasonable ROR, which would have reduced PacifiCorp's rate increase request by about $42.6 million. Staff/102, Garcia/1. ICNU and CUB sponsored joint testimony on cost of capital and wages and salaries, which combined with the Staff adjustments would have resulted in an overall rate decrease. Although they have joined the revenue requirement settlement, the Klamath Water Users Association and Kroger did not submit any testimony on revenue requirement issues. PacifiCorp filed reply testimony on August 31, 2009, slightly reducing its rate increase request to about $87.1 million. PPL/101, Reiten/2.

While the Oregon Staff recommended that PacifiCorp be allowed to increase its rates, the Staff of the Utah Public Service Commission ("UPSC") has recommended that PacifiCorp reduce its Utah rates. Re Rocky Mountain Power, Utah Docket No. 09-035-23, Supplemental Direct Testimony of Thomas Brill, line 82 (Oct. 29, 2009). In addition, the UPSC is planning on conducting an investigation into the Revised Protocol to determine whether Utah should use the rolled-in methodology to further lower rates for Utah customers. Re Rocky Mountain Power, Utah Docket No. 09-035-23, Order Staying October 19, 2009 Order (Nov. 9, 2009). Utah is not content with already having lower rates than Oregon, but appears to be reviewing ways to further increase the rate discrepancy between PacifiCorp's different jurisdictions. This will likely also

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continue to increase the gap between Oregon's and Utah's unemployment rates and industrial activity.

Prior to the filing of Staff and intervenor rebuttal testimony, the Joint Parties entered into the Settlement recommending a nearly $46 million rate increase. The Joint Parties were unable to incorporate some of ICNU's revenue requirement issues in the Settlement because they settled the case before the due date for rebuttal testimony. The Settlement represents a significant abandonment by Staff and CUB of their litigation positions. The Settlement, however, is consistent with PacifiCorp's apparent goal of obtaining about one half of any proposed rate increase.

The general rate increase is not the only rate increase PacifiCorp is seeking to impose on customers. In addition to the 5.4% increase in the Settlement, large general service and partial requirements customers will likely experience an approximately 0.6% rate increase related to PacifiCorp's transition adjustment mechanism proceeding. In addition, PacifiCorp has proposed a 2.7% overall average increase for all customers related to its alleged under recovery of income taxes in 2008. Thus, if the Commission approves the Settlement, industrial customers may experience an about 9% rate increase during the worst economic recession this country has faced in seventy years. The Company, nor the other settling parties, have justified the 5.4% rate increase to industrial customers.

III. LEGAL STANDARD

PacifiCorp has the burden of proof to establish that its proposed rate increase is just and reasonable. ORS § 757.210(1)(2007); Pac. Nw. Bell Tel. Co. v.

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Sabin, 21 Or. App. 200, 213-14 (1975). The Commission also has the independent responsibility to ensure that PacifiCorp's customers are only charged just and reasonable rates. ORS § 756.040(1)(2007); Pac. Nw. Bell Tel. Co., 21 Or. App. at 213. The burden of proof is borne by the Company "throughout the proceeding and does not shift to any other party." Re PacifiCorp, Docket No. UE 116, Order No. 01-787 at 6 (Sept. 7, 2001).

PacifiCorp must demonstrate that its costs are reasonable and prudent before the Commission will allow their inclusion in rates. See Re US West Communications, Inc., Docket Nos. UT 125/UT 80, Order No. 00-191 at 15 (Apr. 14, 2000). Prudence is based on the reasonableness of the action using existing circumstances and what the Company either knew or should have known at the time it was making its decision. Re Northwest Natural Gas Co., Docket No. UG 132, Order No. 99-697 at 53 (Nov. 12, 1999).

Utility rates are typically set based on a test period, which should be representative of the period during which the rates will be in effect. American Can Co. v. Lobdell, 55 Or. App. 451, 454 n.2 rev den 293 Or. 190 (1982). The Oregon Supreme Court has accepted that "[w]hen a future test year is used, the data is drawn from budget figures and financial models of the utility. Abnormal events of the past are therefore excluded and all known future changes are included." Id. When setting rates the Commission has recognized that "standard ratemaking practice uses only known and measurable loads and resources when setting cost-of-service rates." Re Staff's Investigation Relating to Elec. Util. Purchases from Qualifying Facilities, Docket No. UM 1129, Order No. 07-360 at 24 (Aug. 20, 2007).

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PacifiCorp argues, however, that the known and measurable standard is "improper," has been rejected by the Commission, and should not apply to rate base items. PPL/706, Dalley/18-19 citing Re US West Communications, Inc., Docket Nos. UT 125/UT 80, Order No. 00-191 (April 14, 2000). In Re US West Communications, Inc., the Commission did not apply the "known and measurable" standard but the "reasonably certain" standard to evaluate "recurring increases in revenues and expenses." UT 125/UT 80, Order No. 00-191 at 14-15. In deciding to rely upon the "reasonably certain" standard, the Commission rejected US West's argument that the "known and measurable" standard "precludes use of forecasted adjustments." Id. at 14.

While the Commission relied upon the "reasonably certain" standard for certain specified costs in US West, the Commission more recently has frequently relied upon the "known and measurable" standard to evaluate utility rate base items and expenses. For example, the Commission explained in 2001 that "[c]onsistent with established Oregon ratemaking principles, PGE's test year should be based on actual or budgeted expenditures and adjusted to remove abnormalities and to include known and measurable changes that are expected to persist." Re PGE, Docket No. UE 115, Order No. 01-777 at 9 (Aug. 31, 2001) (emphasis added). Over the past decade, the known and measurable standard has been applied to numerous other items, including but not limited to rate base items, utility expenses, power costs and gas costs. See, e.g., Re Idaho Power Company, Docket No. UE 167, Order No. 05-871 at 2 (July 28, 2005).

Oregon law also requires the Commission to exclude the costs of property not presently providing utility service from rate base. ORS § 757.355. Regardless of

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whether the Commission applies a known and measurable or reasonably certain standard, the used and useful statute requires that:

> [A] public utility may not, directly or indirectly, by any device, charge, demand, collect or receive from any customer rates that include the costs of construction, building, installation or real or personal property not presently used for providing utility service to the customer.

Id. The Oregon Supreme Court has explained that the used and useful statute is based on a "basic premise of utility regulation [] that a utility should be permitted to earn a return only on property that is reasonably necessary to and actually providing utility service." Pac. Power & Light Co. v. Dept. of Revenue, 308 Or. 49, 53 (1989) (emphasis added). Essentially, the statute requires that any real or personal property must be presently used to provide utility service before a utility can include the costs in rates.

PacifiCorp argues that the statutory requirement that costs must be presently used and useful does not apply in this case because ORS § 757.355 "was not intended to apply to routine, smaller projects relating to operating plant." PPL/706, Dalley/21 citing Re PGE, Docket No. UM 989, Order No. 02-227 (March 25, 2002). The Commission did conclude that certain "routine construction work in progress attached to an operating plant" is not subject to ORS § 757.355. Re PGE, Docket No. UM 989, Order No. 02-227 at 15. The costs at issue in Order No. 02-227, however, are significantly different from those at issue in this case because they were fuel contracts, not actual physical plant. Id.; Staff/100, Garcia/6-12.

The Oregon Supreme Court has firmly concluded that the general grants of authority provided to the OPUC under law "do not empower" the Commission "to

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approve rates of a kind that are specifically contrary to the limitations in ORS 757.355." Citizens' Util. Bd. v. Pub. Util. Comm'n of Or., 154 Or. App. 702, 716-17 (1998). This decision remains valid law in Oregon. Util. Reform Project v. Pub. Util. Comm'n of Or., 215 Or. App. 360, 365-66, 376 (2007).

The plain language of ORS § 757.355 applies to the "costs of construction, building, installation or real or personal property," and the statute does not create any exceptions for types of property which may be "smaller" or "routine." The Oregon Court of Appeals has previously rejected the Commission's attempt to narrowly construe ORS § 757.355. The Court of Appeals found that the used and useful statute should apply to both property which ceased to be used for providing utility service and property that never has been used for utility service. Citizens' Util. Bd., 154 Or. App. at 708-09. The Court of Appeals explained that "the statute encompass[es] completed structures and facilities and real and personal property of all kinds." Id. at 709 (emphasis added). Similarly, the Oregon Supreme Court explained that the used and useful statute applies to a wide variety of property, including "property held for future use" which is "usually unimproved realty" Pac. Power & Light Co., 308 Or. at 54.

The Oregon Court of Appeals has also rejected the underlying rationale the Commission provided for not applying ORS § 757.355 to "routine" and "small" property in Order No. 02-227. The Commission opined that the intent of the used and useful statute was "to apply to CWIP that reflects preconstruction commercial operating plants, not smaller projects attached to an operating plant." Order No. 02-227 at 15. The Court of Appeals rejected similar arguments when the Commission argued that

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"legislative history" of Measure 9 meant that the statute was concerned "exclusively with CWIP." Citizens Util. Bd., 154 Or. App. at 710-11. The Court held that the law was not limited to CWIP and explained that the ballot measure language focusing on CWIP more than other matters may have been because it was the largest type of property in "the property not in service category." Id. at 711. The Commission should follow the Court's guidance and recognize that it does not have the authority to modify ORS § 757.355 to exclude "small" or "routine" property from the used and useful requirement.

IV. ARGUMENT

1. The Commission Should Reject the "Black Box" Settlement

The Commission should not allow PacifiCorp to increase its rates in this proceeding without justifying all the components of its rate increase request. Despite some broad cost categories and specifics regarding the ROR, the Settlement is largely a classic black box which does not identify the specific costs or methodologies which were utilized to calculate the proposed rate increase. By refusing to identify the specific components of the rate increase, the Joint Parties have put the Commission in the difficult position of being asked to approve rates which have not been fully supported by the evidence and are strongly opposed by its industrial customers.

The Joint Parties claim to disagree with the "characterization" of the Settlement as a black box, but fail to specifically identify the cost elements that would support the rate increase. See Joint Reply–Revenue Requirement/200, Garcia et al./6. The Settlement identified five broad areas that the Joint Parties agreed to adjustments in order to reach their $46 million proposed rate increase. ICNU/700, Early/4; Settlement,

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Exhibit A. While these categories include "a broad description of the types of adjustments that are included . . . [I]t is impossible to ascertain whether the adjustments accept or reject specific adjustments proposed by Staff or intervenors." ICNU/700, Early/4-5. ICNU specifically sought information to determine how the adjustments were calculated or obtained, but Staff and PacifiCorp could not provide any detail stating that the broad level information in the Settlement was the greatest level of detail available. Id. at Early/5; ICNU/701, Early/4-15, 19-30.

The Joint Parties also argue that the Commission has accepted similar stipulations in the past, including PacifiCorp's last general rate case. Joint Reply–Revenue Requirement/200, Garcia et al./6. The stipulations in the UE 180 and UE 179 cases cited by the Joint Parties actually demonstrate why the Commission should not approve the Settlement in this proceeding. In UE 180, the Commission issued an order regarding Portland General Electric Company's ("PGE") general rates. Re PGE, Docket Nos. UE 180/UE181/UE184, Order No. 07-015 (Jan. 12, 2007). The Commission approved an all party settlement of a variety of issues that included more detail than the Settlement in this case, but did not address every specific component of the rate increase. On issues in which all the parties could not reach settlement, however, the Commission resolved the specific contested issues by adopting or rejecting specific proposals raised by the parties. In other words, the Commission did not rely upon a black box settlement to resolve any remaining disputed issues in UE 180.

The Commission should require a greater level of support and detail when the parties addressing specific issues have not entered into a settlement of the issues.

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When all the major parties addressing issues have not settled, a black box settlement is inappropriate because it "is difficult to determine how such 'black box' settlements address the specific remaining concerns of non-settling parties." ICNU/700, Early/7. The Joint Parties have consciously placed the Commission and ICNU "in an untenable position of only having an overall revenue requirement number, but no real idea how the number was obtained." Id.

The Joint Parties have used the black box nature of the settlement to recommend that the Commission adopt the Settlement, without actually identifying whether the Settlement resolves ICNU's issues. Although the Joint Parties make generic claims that they considered ICNU's proposals when entering into the Settlement, "there is no way to verify or quantify those claims because the settlement is largely a 'black box.'" Id. In contrast, if the Joint Parties had actually drafted a transparent settlement that identified the specific adjustments, "then the Commission would have a more complete record to review and evaluate the reasonableness of the Settlement and whether it actually addressed the issues raised by non-settling parties." Id.

Finally, the Joint Parties make the ridiculous claim that providing more detail in settlements could make entering into settlements "much more difficult, if not impossible." Joint Reply–Revenue Requirement/200, Garcia et al./7. It is not impossible to request that the parties to a settlement fully evaluate the issues and enter into a non-black box settlement on any disputed issues. For example, in PGE's recent annual power cost update and renewable energy adjustment clause ("RAC") proceedings, all the parties entered into settlements which identified specific adjustments for the contested issues.

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Re PGE, Docket No. UE 208, Order No. 09-433 at 10-11 (Oct. 30, 2009) (the OPUC relied on the parties' "thorough analysis" which "allows the Commission to have greater confidence in the merits of the Stipulation between the parties"); Re PGE, Docket No. UE 209, Order No. 09-398 at 2-3 (Oct. 5, 2009). In the PGE RAC case, the parties even agreed to a $14,000 adjustment to PGE's revenue requirement. Order No. 09-398 at 2. The Commission should disregard the Joint Parties hyperbole regarding the difficulty in entering to settlements, and require settling parties to fully support their settlements on issues in which all parties have been unable to reach agreement.

2. The Settlement Proposes an Excessive Rate of Return

The Commission should reject the Settlement's proposed 8.08% rate of return ("ROR") because it relies on an inflated and unnecessarily high equity capitalization percentage and return on equity ("ROE"). The Commission should instead adopt ICNU witness Michael Gorman's ROR recommendation, which is based on a more reasonable 10% ROE and a 50.2% equity capitalization. ICNU/501, Gorman/1-2. Mr. Gorman's recommendations are based on sound analysis of the capital markets and PacifiCorp's actual capital needs while the Joint Parties recommendations are simply a mid-point number without any specific analysis or support. Adoption of ICNU's cost of capital recommendations would reduce PacifiCorp's proposed rate increase by approximately $5.5 million. ICNU/500, Gorman/2-3.

A. Cost of Capital Legal Standard

The Commission's standards for determining an appropriate ROR is based on the standards set by the U.S. Supreme Court. Re PGE, Docket No. UE 180, Order No.

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07-015 at 28 (Jan. 12, 2007) (citing Fed. Power Comm'n v. Hope Natural Gas Co., 320 U.S. 591 (1944)); Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm'n of W. Va., 262 U.S. 679 (1923). Under these decisions, a utility's authorized return should: 1) be sufficient to maintain financial integrity; 2) allow the utility to attract capital under reasonable terms; and 3) be commensurate with returns investors could earn by investing in other enterprises of comparable risk. Docket No. UE 180, Order No. 07-015 at 28; Re PGE, OPUC Docket No. UE 115, Order No. 01-777 at 23 (Aug. 31, 2001).

ORS § 756.040 includes language codifying these standards.

The Commission undertakes a multi-step process to determine a utility's rate of return. Docket No. UE 180, Order No. 07-015 at 28. The Commission first identifies the costs and components of the utility's capital structure. The Commission then estimates the cost of each capital component and weighs each component according to its percentage of total capitalization. The Commission combines the weighted costs of capital to calculate the overall cost of capital. This overall cost of capital is the utility's allowed rate of return on rate base. Id. The Commission should also not merely focus on academic studies regarding cost of capital estimates, but should review what has changed in the capital markets since it last set PacifiCorp's cost of capital to justify the changes proposed by the parties. Wa. Utls. and Transp. Commn'n v. Puget Sound Energy, Inc., WUTC Docket Nos. UE-060266/UG-060267, Order No. 08 at 29-30 (Jan. 5, 2007). The Commission does not simply pick a mid-point number.

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B. The Settlement's 8.08% Is Based on Unwarranted Increases in the Company's ROE and Equity Capitalization

The Settlement proposes an 8.08% ROR, which is based on a 10.125% ROE and a common equity capitalization of 51%. Although the Joint Parties claim that they have not agreed on the individual components, the Joint Parties "derive[d] the ROR of 8.08" based on specific costs and capitalization for long term debt, preferred stock and common equity detailed below:

Settlement Capital Structure

Capital Component	Percent Capitalization	Cost
Long-Term Debt	48.70%	5.96%
Preferred Stock	0.30%	5.41%
Common Equity	51.00%	10.125%
Total	100.00%	

Settlement ¶ 8. The Joint Parties also agree that this capital structure will be used for tax purposes and other Oregon regulatory purposes. Id. In addition, Staff will likely view the Settlement capital structure as representing the "authorized" capital structure.[3/]

The Settlement ROR relies upon increases in PacifiCorp's currently authorized ROE and equity capitalization. PacifiCorp's current ROE for regulatory purposes is 10.0% and its equity capitalization is 50%. PacifiCorp, Docket No. UE 179, Order No. 06-530 Appendix at 6 (Sept. 14, 2006); Staff/800, Storm/4. Thus, the Joint

[3/] Similar language conditioned the approved ROR in PacifiCorp's last general rate case. Re PacifiCorp, Docket No. UE 179, Order No. 06-530 Appendix at 8 (Sept. 14, 2006). Staff considered UE 179 as setting PacifiCorp's "authorized" ROR, including the specific capital components like ROE. ICNU/701, Early/1; Staff/800, Storm/4.

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Parties are recommending an increase in the Company's ROE from 10.0% to 10.125%, and equity capitalization from 50% to 51%. The Joint Parties are requesting an increase from its current return on equity and equity capitalization without any justification during these difficult economic times.

The Joint Parties have not submitted any cost of capital analysis specifically supporting the 8.08% ROR, or any of the capital components. Instead, the Joint Parties support the recommended ROR because it is allegedly within the range of reasonable results. Joint Reply–Revenue Requirement/200, Garcia et al./19-20. Thus, the 10.125% ROE in the Settlement is "reasonable" because it is approximately at the mid-point between the Company's original proposed 11% ROE and Staff's 9.4% ROE. Id. This analysis does not specifically support the Settlement, but a wide range of potential RORs, including the recommendation of Mr. Gorman. The only support for the Settlement's ROR is that it is a number the Joint Parties could agree upon, and that it is somewhere between the high and low recommendations in the record. PacifiCorp's ratepayers deserve more thorough analysis and support of the recommended result before rates are increased during these tough economic times.

C. Mr. Gorman's 7.99% ROR Is Based on Reasonable ROE and Equity Capitalization

ICNU recommends that the Commission adopt Mr. Gorman's recommended ROR of 7.99%, which is based on a 50.2% equity capitalization and 10.0% ROE. ICNU/501, Gorman/1. Mr. Gorman and the Joint Parties agree upon PacifiCorp's cost of long-term debt (5.96%) and preferred stock (5.41%), which are very similar to

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Mr. Gorman's recommendation in his opening testimony. Id.; Settlement ¶ 8; ICNU-CUB/302, Gorman/1.[4/] ICNU's proposed capital structure is summarized below:

ICNU Capital Structure

Capital Component	Percent Capitalization	Cost
Long-Term Debt	49.50%	5.96%
Preferred Stock	0.30%	5.41%
Common Equity	50.2%	10.00%
Total	100.00%	

The remaining cost of capital disputes in this proceeding center around the cost of equity and how much equity should be included in the capital structure. The cost of common equity is the return investors expect or require in order to make investments in the utility. ICNU-CUB/300, Gorman/15. Since equity is the most expensive form of capital, small changes in the ROE and equity capitalization can have significant impacts upon customer rates.

D. PacifiCorp's Common Equity Ratio Should Not Exceed 50.2%

Mr. Gorman recommends a 50.2% common equity percentage. Mr. Gorman's equity capitalization percentage is based on PacifiCorp witness Bruce Williams' end-of-year 2008 capital structure adjusted to the end-of-year 2009 capital structure by reflecting changes in equity and debt. ICNU-CUB/300, Gorman/12. Mr. Williams recommended a 51.2% common equity ratio, which was based on an increase to

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[4/] Mr. Gorman originally recommended a cost of long-term debt of 5.98% and a cost of preferred stock of 5.41%. ICNU-CUB/302, Gorman/1. Mr. Gorman now recommends a cost of long-term debt of 5.96%, and preferred stock 5.41%. ICNU/501, Gorman 1.

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the common equity capital to reflect an equity contribution of $200 million planned to be made in December 2009, and added retained earnings based on the retention of all projected 2009 net income. Id.; PPL/300, Williams/3. Mr. Gorman recommends two changes to PacifiCorp's original recommendation: 1) a more accurate estimate of the increase in retained earnings for 2009; and 2) accounting for PacifiCorp's reduction of its planned equity contribution to $125 million in its rebuttal filing from the $200 million included in its direct filing, which will be made by the end of December 2009. ICNU/500, Gorman/8; ICNU-CUB/300, Gorman/12-15. These changes are based on PacifiCorp's actual needs and reduce the equity capitalization to 50.2%. ICNU/500, Gorman/2-3, 8.

The Commission should not allow PacifiCorp to increase its common equity capitalization based on an inflated 2009 net income projection. PacifiCorp proposes to increase the common equity capitalization based on an increase in retained earnings for 2009. ICNU-CUB 300, Gorman/12-13. The Company, however, in estimating its 2009 earnings assumes earnings of 10%, instead of the Company's estimated 6.517% return on equity that the Company claims it will actually earn in 2009. Id. The fundamental problem with PacifiCorp's approach is that if PacifiCorp "would earn the 10% return on equity at current rates as Mr. Williams' capital structure projections imply, then there may be no need for a rate increase in this proceeding." Id. at Gorman/13-14. Either PacifiCorp is actually earning at least a 10% ROE and the Company does not need a rate increase, or the Company is earning less than 10% in 2009 and those actual earnings should be reflected in net income estimates used to set its

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equity capitalization in this proceeding. The Company should not be allowed to claim low earnings in 2009 to justify its rate increase, and then assume that it is earning 10% earnings for the purposes of estimating its net income and retained earnings component of the capital structure.

There is no dispute that PacifiCorp now plans on making a $125 million equity contribution by the end of 2009, instead of the original estimate of $200 million. PacifiCorp's reply testimony explained that the Company now intends to make a lower equity contribution. PPL/307, Williams/5. Although not explained in the Settlement, this likely explains the Settlement's use of a 51.0% equity capitalization instead of PacifiCorp's original filing of 51.2%. The lower equity contribution similarly reduced Mr. Gorman's original equity capitalization from 50.5% to 50.2%. ICNU/500, Gorman/2-3, 8.

Mr. Gorman's capital structure is also supported by the Company's own testimony. PacifiCorp proposed a capital structure in Washington with a common equity ratio of 50.3%, excluding short term debt, which supports Mr. Gorman's recommendations in the case. ICNU-CUB/300 at Gorman/14. Further support that Mr. Gorman's 50.2% common equity ratio is reasonable is that PacifiCorp's proxy group's average common equity ratio is 50.3%. Id.

E. The Commission Should Retain PacifiCorp's Current 10% ROE

Mr. Gorman's recommendation regarding the appropriate ROE and equity capitalization are based upon his analysis of PacifiCorp's actual capital needs. Mr. Gorman relied upon the same proxy group as PacifiCorp. ICNU-CUB/300, Gorman/16.

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Using this proxy group, Mr. Gorman estimated PacifiCorp's 10% ROE based on the discounted cash flow model ("DCF"), the risk premium model, and the capital asset pricing model ("CAPM"). ICNU-CUB/300, Gorman/39. At the time all the parties submitted their testimony, the capital markets were experiencing significant volatility, which impacted the traditional models used by all the cost of capital witnesses. Mr. Gorman accounted for this volatility, and his analysis supports the adoption of a 10% ROE. Id.

In addition, "capital market costs have declined materially since" Mr. Gorman originally recommended a 10% ROE, and Mr. Gorman's recommendation should now be considered "very conservative." ICNU/500, Gorman/3. The actual "market cost of capital for utility debt is lower than it was at the time PacifiCorp was last awarded a 10.0% return on equity in Docket No. UE 179." Id. at 1. PacifiCorp's return on equity should be no higher than it was in UE 179; capital market costs have dropped significantly since Staff and intervenors filed their testimony and are more in line, and even lower, than when PacifiCorp's ROE was last set. Id. at Gorman/4-5. Mr. Gorman's conservative analysis is also supported by the fact that Staff originally proposed an even lower ROE, with witness Steve Storm proposing an ROE of 9.4%. Staff/800, Storm/4.

F. Mr. Gorman's Capital Structure and ROE Should Allow PacifiCorp to Maintain Its Financial Integrity

Mr. Gorman's recommended capital structure and 10% ROE should strongly support maintenance of PacifiCorp's strong financial condition. Mr. Gorman's recommendation is supportive of an "A" utility bond rating. ICNU-CUB/300, Gorman/43. Mr. Gorman's recommendation is "consistent with the overall financial and

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business risk underlying PacifiCorp's current bond rating, will fairly compensate PacifiCorp's investors, and will support the Company's financial integrity." Id. There is no indication that PacifiCorp's current 10% ROE is insufficient, given the significant amount of infrastructure investment PacifiCorp's owners have been, and are proposing to continue, making in the Company.

PacifiCorp is currently owned by Mid-American Energy Holdings Company, but the Company is awarded separate bond ratings from S&P and Moody's. Id. at 9. PacifiCorp has stable, solid bond ratings, with senior secured bond ratings from S&P and Moody's of "A-" and "A3," and corporate credit ratings from S&P and Moody's of "A-" and "Baa1." Id. at 8-9. In addition, the overall utility industry has "exhibited strong return performance and are again characterized as a safe investment." Id. at 4.

Adoption of Mr. Gorman's recommendations will maintain this financial position and should allow PacifiCorp to attract the necessary capital on reasonable terms comparable to other, similar utilities. Mr. Gorman analyzed both S&P's old and recently changed financial benchmarks, and concluded that his recommendations are supportive of an "A" utility bond rating. Id. at 39-43.

3. The Record Does Not Support PacifiCorp's Proposed Increases in Wages and Salaries

The Commission should reduce PacifiCorp's rate increase by approximately $21.0 million to remove the non-union salary increases, bonuses and incentives, and to correctly allocate Oregon's share of PacifiCorp's payroll costs. The Commission should remove all bonus and incentive compensation and non-union salary

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increases because these increases are not necessary to retain employees at a time when Oregon is experiencing over 10% unemployment. It "is simply unconscionable to increase utility rates so that utility employees can receive wage increases at the expense of utility customers" in this current economy. ICNU/600, Blumenthal/8-9. The Commission should also adopt Ms. Blumenthal's calculation of a 27.8% allocation of total PacifiCorp payroll to Oregon instead of the inflated and unjustified 29.5% used by PacifiCorp. Id. at Blumenthal/9. The table below breaks out the Oregon revenue requirement impact of Ms. Blumenthal's proposed adjustments:

Adjustment	**Oregon Revenue Requirement Impact**
Wage Increase Removal	$1.8 million
Oregon Allocation	$9.0 million
Bonus and Incentive Removal	$10.2 million
Total	$21.0 million

ICNU/603, Blumenthal/1.[5/]

In considering Ms. Blumenthal's adjustments, the Commission should be mindful that the Company has a history of overestimating its wages and salaries in rate proceedings. For example, PacifiCorp's "[a]ctual wages and salaries for calendar year 2007 were $493,221,406, approximately $20 million or 4% less than" the Company predicted in Docket No. UE 179. Id. at Blumenthal/3. The Company did not submit any testimony disputing that it has a history of overestimating its payroll costs.

[5/] The "payroll expense" numbers on ICNU/603, Blumenthal/1 are total Company numbers for each of Ms. Blumenthal's adjustments, except the "change allocation to Oregon." The Oregon allocated share of the payroll expense numbers are obtained by multiplying the numbers by Oregon's share (27.8%).

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A. The Commission Should Remove All Non-Union and Incentive Cost Increases

ICNU recommends that the Commission adopt Ms. Blumenthal's $12 million adjustment to remove both the non-union wages and salaries increases ($1.8 million) and all bonus and incentive costs ($10.2 million). ICNU does not recommend that the Commission exclude wage increases for union employees because the Company is contractually obligated to increase these wages. ICNU/600, Blumenthal/8. PacifiCorp, however, "is not obligated to increase the wages and salaries of non-union employees." Id. The current economic conditions–in which many ratepayers are unemployed, working reduced hours or taken salary cuts–provides ample support for the Company to simply hold PacifiCorp's wages and salaries constant. Id. at 2, 8. The Company "should be cutting costs instead of increasing its non-union wages and salaries in the current recession." ICNU/700, Early/8. Oregon's poor economy also warrants the removal of all bonus and incentive compensation from rates. ICNU/600, Blumenthal/9.

The Joint Parties criticize this recommendation because the ailing economy is allegedly insufficient grounds for PacifiCorp to make its own cost cuts. Joint Reply–Revenue Requirement/200, Garcia et al./11-13. ICNU disagrees with the Joint Parties perspective that nearly all Oregon business should take aggressive action to reduce costs in the current economy, except for regulated utilities.

The Joint Parties also criticize Ms. Blumenthal for increasing the size of her adjustment in her rebuttal testimony, and then claim that the Stipulation supposedly already removes one half of bonuses and incentive compensation. Joint Reply–Revenue Requirement/200, Garcia et al./11-13. The Joint Parties complain that they did not

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consider all of Ms. Blumenthal's adjustment because it was changed in rebuttal testimony as further grounds to reject the Settlement. If the Joint Parties had wanted to consider her final testimony, then they should not have entered into a partial settlement before the due date for rebuttal testimony. ICNU should not be penalized because the Joint Parties settled the case early. In addition, there is no way to verify the Joint Parties claims that the Settlement removes half of Ms. Blumenthal's bonus and incentive compensation adjustment because the Settlement is a black box on this issue. ICNU sought to identify whether Ms. Blumenthal's adjustment was included in the Settlement through the discovery process, and both Staff's and PacifiCorp's answers indicate that Ms. Blumenthal's specific adjustments are not included in the Settlement. ICNU/701, Early/4, 19.

Finally, the Joint Parties assert that Ms. Blumenthal removed wages and salaries costs that dated back to the historic base period. Joint Reply–Revenue Requirement/200, Garcia et al./12. ICNU agrees that this change should be made to Ms. Blumenthal's adjustment. The wages and salaries adjustment in Ms. Blumenthal's response testimony was \$2.5 million, but it included both a 3.8% wage increase and a 2.68% wage increase. ICNU/603, Blumenthal/1. The 2.68% wage increase dates back to the historic period and ICNU agrees that it should not be removed from PacifiCorp's rates. This reduces Ms. Blumenthal's wages and salaries adjustment by \$0.7 million. ICNU/603, Blumenthal/1.[6/] Ms. Blumenthal's total wages and salaries adjustment should be \$1.8 million. Id. This change does not impact Ms. Blumenthal's bonus and incentive

[6/] The 2.68% removal is \$2.548 million total Company. ICNU/603, Blumenthal/1. Oregon's allocated share (27.8%) is about \$0.7 million.

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adjustment, which is $10.2 million. Thus, Ms. Blumenthal's total proposal to remove all salary increases and bonus incentives is a $12 million reduction to PacifiCorp's rate increase request.

B. PacifiCorp's Allocation Charges Oregon Too High a Share of the Company's Payroll Costs

PacifiCorp is over charging Oregon for the Company's payroll costs by approximately $9 million. ICNU/603, Blumenthal/1, 6. The Company allocates to 29.5% of its payroll costs to Oregon, when a review of the actual allocation factors demonstrates that Oregon should be allocated no more than 27.8% of payroll costs. ICNU/600, Blumenthal/5-7, 9. Oregon's overall share of PacifiCorp's costs has been declining, and the Company's proposed 29.5% allocated is greater than the actual allocations to Oregon in each of the last five years. Id. at Blumenthal/7-9.

PacifiCorp argues that Oregon should be allocated a higher share of its payroll costs because this is the amount included in the Company's final results of operations, which are not segregated by the type of labor cost. Joint Reply–Revenue Requirement/200, Garcia et al./15-17.[7/] Apparently, the Company believes that the Commission should simply rely upon its budgets and estimates, but that the Company should "not be required to demonstrate that these estimates result in a reasonable and necessary level of payroll costs." ICNU/600, Blumenthal/3.

Ms. Blumenthal reviewed PacifiCorp's actual allocations as classified in the appropriate Federal Energy Regulatory Commission ("FERC") clearing account

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[7/] While all the Joint Parties oppose Ms. Blumenthal's payroll allocation adjustment, only PacifiCorp witness Bryce Dalley sponsored testimony addressing the merits of the adjustment. Joint Reply–Revenue Requirement/200, Garcia et al./14-18.

(FERC 707), and discovered that the Company is over allocating its costs to Oregon. ICNU/600, Blumenthal/4-7. PacifiCorp overestimated the Oregon allocation of costs as compared to the FERC clearing account for 2006, 2007 and 2008. Id. at Blumenthal/4-5. Using information provided by the Company, Ms. Blumenthal reviewed PacifiCorp's payroll costs and assigned them the correct allocation factor. Id. at Blumenthal/6-7. For 2008, the Oregon allocation was 27.8%. Id. Although Mr. Dalley disagreed with Ms. Blumenthal' s overall approach, there is no evidence in the record that disputes Ms. Blumenthal's calculation or the data she relied upon.

PacifiCorp disputes Ms. Blumenthal's recommendation to use the 2008 allocation of 27.8%. Joint Reply–Revenue Requirement/200, Garcia et al./17-18. PacifiCorp claims Ms. Blumenthal inappropriately used a historical trend and should have used the Company's 2010 load forecast. Id. First, Ms. Blumenthal used the most recent data the Company provided to her and not a historical trend. While the five-year historical trend shows that Oregon's share of payroll costs has been consistently declining, Ms. Blumenthal only used the most recent data provided (2008) in making her adjustment. ICNU/600, Blumenthal/7-9. In addition, the use of actual data provided to Ms. Blumenthal instead of the Company's load forecasts is appropriate because Ms. Blumenthal's recommendation will more accurately reflect Oregon's expected share of the Company's costs. The Company's high 29.5% Oregon allocation has not occurred in any of the past five years, and the Company has not provided any evidence that Oregon's share of PacifiCorp's total operations has increased since 2008.

4. All Costs Not Presently Used and Useful Must Be Removed From PacifiCorp's Rates Under Oregon Law

The Commission must remove all the miscellaneous rate base items that are not used and useful for Oregon ratepayers. The Commission should either reject the Settlement for failing to fully address this issue, or approve the Settlement based on the condition that an additional $10.3 million in costs be removed from PacifiCorp's rates.

Staff's opening testimony recommended that certain rate base items be removed from rates. These rate base costs were primarily related to costs that it was not known and measurable that they would be actually used and useful by the time rates go into effect on February 2, 2010. Staff/100, Garcia/6-12.[8/] Staff's opening testimony described this as Staff adjustment "S-8" and estimated the total Oregon revenue requirement impact of the "S-8" miscellaneous rate base adjustments as $13.725 million. Staff/102, Garcia/2. Staff's objections were both factual (that PacifiCorp's forecasted costs were "guesstimates") and based on ORS § 757.355, which prohibits the addition to rate base of costs not presently used for providing utility service to the customer. Staff/100, Garcia/8-9. After review of Staff's adjustments, ICNU's supported the rate base adjustments in the first opportunity to file testimony in response to Staff. ICNU/700, Early/5-6.

The Settlement fails to remove all the costs which are not used and useful from PacifiCorp's rate increase request. ICNU/700, Early/6. The Settlement includes "miscellaneous rate base adjustments" that reduces PacifiCorp's rate increase request by

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[8/] A small portion of the rate base adjustment were for PacifiCorp costs that were improperly categorized as rate base (e.g., PacifiCorp's attempt to include a treadmill in rate base). Staff/100, Garcia/9.

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$8.9 million. Settlement Stipulation, Exhibit A. This settled a number of Staff rate base adjustments (Staff adjustments S-3, S-7, S-8, S-10 and S-11) that totaled $19.165 million in Staff's opening testimony. Id.; Staff/102, Garcia/1-2. All the non-used and useful costs have not been removed from rates since the original Staff adjustment "S-8" has a larger revenue requirement impact ($13.725 million) than the total settled amounts for five different Staff issues, including "S-8" ($8.9 million). ICNU/700, Early/6.

The opaque nature of the Settlement makes it difficult to ascertain exactly how much of these illegal costs remain in PacifiCorp's proposed rate increase. ICNU sought to identify in the discovery process if and how much of the not presently used and useful costs would be included in rates under the Settlement. Id. PacifiCorp and Staff did not provide substantive answers to ICNU's questions. Id.; ICNU/701, Early/4, 14-15, 20, 29-30. Using Staff's original numbers, ICNU estimates the amount to between about $4.8 and $10.3 million.[9/] The Joint Parties have consciously placed the Commission in an untenable position of being asked to include a certain, but an unspecified amount of illegal costs in rates. Since the Joint Parties are responsible for this problem by entering into a largely black box settlement, ICNU recommends that the Commission remove an additional $10.3 million, adjusted to reflect the capital structure that the Commission adopts.[10/]

[9/] If the Commission assumes that the Settlement adjustment removes only the "S-8" adjustment, then the amount would be $4.8 million in non-used and useful costs remaining in PacifiCorp's rate proposal. If the Commission assumes that the Settlement adjustment removes all the costs of S-3, S-7, S-8, S-10 and S-11, then the amount left is approximately $10.325 million.

[10/] The value of Staff's adjustment should be updated based on the cost of capital the Commission adopts. See ICNU/700, Early/6; ICNU/600, Blumenthal/10-11.

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5. The Commission Should Impose Reasonable Requirements on PacifiCorp's Treatment of RECs

ICNU recommends that the Commission require PacifiCorp to place the gain on any sales of any Oregon allocated RECs into a balancing account for refund to customers with interest. Although PacifiCorp is currently selling RECs, the Settlement does not include any provisions which would require that PacifiCorp place the gain from the sales of RECs in a balancing account. See ICNU/701, Early/16-17, 36-37. The Joint Parties claim that such requirements are unnecessary because recently adopted Oregon administrative rules include REC reporting requirements and the Company is allegedly not currently planning on selling any Oregon-allocated RECs. Joint Reply–Revenue Requirement/200, Garcia et al./10-11; ICNU/701, Early/36.

The new Oregon administrative rules require PacifiCorp to provide certain information regarding its RECs, but are not adequate protection against the Company selling Oregon allocated RECs and retaining the benefits. The Oregon administrative rules provide information regarding RECs used to meet Oregon's renewable portfolio standard, including RECs sold since the last compliance period. OAR §§ 860-083-0350, -0400.

The rules, however, do not address PacifiCorp's proposed rates, which (because the Settlement is a black box) do not specify the amount of Oregon allocated RECs that are included in rates. In addition, the rules do not specifically require PacifiCorp to place the gains from any REC sales in a balancing account for the benefit of ratepayers. This may not be merely a theoretical question, as PacifiCorp is currently selling RECs and there may be disputes about whether the Company is selling Oregon

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allocated RECs. Without a requirement that PacifiCorp place any gains associated with the sales of Oregon RECs, PacifiCorp may argue that the principles of retroactive ratemaking would allow it to keep any gains if the Company changes its "current plans." If PacifiCorp is not actually planning to sell any RECs, then it should not be burdensome for PacifiCorp to place them in a balancing account. ICNU recommends that the Commission takes this small action to "protect the interests of Oregon ratepayers and uphold the integrity of Oregon's renewable portfolio standard . . . ." ICNU/700, Early/10.

V. CONCLUSION

ICNU recommends that the Commission reject the Settlement, or if the Commission accepts the Settlement, the following changes should be made to the Settlement:

- Reduce PacifiCorp's rate increase request by about $5.5 million to account for Mr. Gorman's reasonable cost of capital recommendations.
- Reduce PacifiCorp's wages and salaries, which lowers rates by $21.0 million. All non-union salary increases and bonuses should be removed from rates and Oregon should be allocated a more accurate share of these costs. PacifiCorp should not be allowed to continue overstating its wages and salaries expenses and retaining the difference.
- Lower rates by approximately $10.3 million because Oregon law requires that all costs not presently used and useful to Oregon ratepayers be removed from rates.
- Prevent PacifiCorp from being able to pocket the gain from the sales of Oregon allocated RECs.

Dated this 25th day of November, 2009.

Respectfully submitted,

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