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July 13, 2005

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VIA ELECTRONIC FILING

PUC Filing Center
Public Utility Commission of Oregon
PO Box 2148
Salem, OR 97308-2148

Re: PacifiCorp's Motion to Disqualify Daniel W. Meek
Docket UE 170

Enclosed for filing please find PacifiCorp's Motion to Disqualify Daniel W. Meek in the above-referenced docket. A copy of this filing was served on all parties to this proceeding as indicated on the attached service list.

Very truly yours,

A handwritten signature in black ink, appearing to read "KAM", followed by a flourish and the word "for" written in a cursive script.

Katherine A. McDowell

KAM:knp
Enclosure
cc: Service List

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UE 170

In the Matter of PACIFIC POWER &
LIGHT (d/b/a PacifiCorp) Request for a
General Rate Increase in the Company's
Oregon Annual Revenues.

**PACIFICORP'S MOTION TO
DISQUALIFY DANIEL W. MEEK**

PacifiCorp respectfully moves the Public Utility Commission of Oregon (the "Commission") to disqualify Daniel W. Meek as counsel for the Utility Reform Project ("URP") on the basis that Mr. Meek is in violation of Oregon's disciplinary rules by acting as both counsel and witness for URP.

I. BACKGROUND

This case arises from PacifiCorp's November 12, 2004 filing of a revised tariff schedule requesting a general rate increase in the Company's Oregon annual revenues.

URP filed a petition to intervene in this case on May 4, 2005, pursuant to ORS 756.525 and OAR 860-13-021. URP's petition was granted on May 10, 2005.¹ (*In re PacifiCorp*, UE 170, May 10, 2005 Ruling of Kathryn A. Logan.) URP's petition to intervene states that Mr. Meek is the attorney representing URP.

On May 9, 2005, URP filed the opening testimony of Mr. Meek (pending ruling on URP's petition to intervene) in his capacity as expert witness for URP. In his testimony, Mr. Meek states that he is qualified to testify on behalf of URP in PacifiCorp's rate case because he has "appeared as an expert witness in previous [Commission] proceedings and [has] participated in dozens of [Commission] cases and litigation involving [Commission] decisions." Mr. Meek does not provide any explanation in his testimony as to why he is

¹ This was a conditional grant, subject to filing of timely objections. Because no parties timely objected to this grant, URP is an intervenor in this case.

1 qualified to testify on behalf of URP when he is already acting as URP's attorney in this
2 proceeding. No other person has provided testimony on behalf of URP.

3 Evidentiary hearings in this docket are scheduled for July 20-22, 2005.

4 **II. ARGUMENT**

5 **A. Counsel Appearing in Proceedings Before the Commission Must Adhere**
6 **to the Oregon Standards of Ethical Conduct**

7 The Oregon Administrative Rules (the "OARs") provide that all persons appearing in
8 proceedings before the Commission in a representative capacity must conform to the
9 standards of ethical conduct required of attorneys before the courts of Oregon. OAR 860-
10 012-0005(1) (2005). If a person does not conform to such standards, the OARs permit the
11 Commission to decline to permit such person to appear in a representative capacity in any
12 proceeding. OAR 860-012-0005(2). Because Mr. Meek will appear before the Commission
13 in a representative capacity in this docket, Mr. Meek must conform to the Oregon standards
14 of ethical conduct. These standards are set out in the Oregon Rules of Professional Conduct.²

15 **B. The Oregon Rules of Professional Conduct Prohibit Mr. Meek from**
16 **Acting as Counsel for URP When He Is Also Testifying on Behalf of URP**
in the Same Proceeding

17 A fundamental rule of our legal system is that lawyers should not act as both witness
18 and advocate in the same adversarial or contested proceeding. *U.S. v. Prantil*, 764 F2d 548,
19 552-54 (9th Cir 1985) ("[A]dherence to this time-honored rule is more than just an ethical
20 obligation of individual counsel; enforcement of the rule is a matter of institutional concern
21 implicating the basic foundations of our system of justice."); ABA Code of Prof.

22 Responsibility, EC 5-9 ("The roles of an advocate and of a witness are inconsistent; the
23 function of an advocate is to advance or argue the cause of another, while that of a witness is

24

25 ² The Oregon Rules of Professional Conduct ("ORPC") became effective January 1,
26 2005. These rules replaced the Oregon Rules of Professional Responsibility; ORPC 3.7 was
formerly numbered DR 5-102. ORPC 3.7 retained DR 5-102 in its entirety.

1 to state facts objectively.”). Oregon’s “advocate-witness rule” follows this standard by
2 providing that “a lawyer shall not act as an advocate at a trial in which the lawyer is likely to
3 be a witness on behalf of the lawyer’s client.” ORPC 3.7(a).

4 ORPC 3.7 requires an attorney to withdraw as counsel as soon as the attorney should
5 know, or as soon as it becomes obvious to the attorney, that the attorney is likely to be called
6 as a witness on behalf of his or her client. *In Re Lathen*, 294 Or 157, 166-67, 654 P2d 1110,
7 1114-15 (Or 1982). Not only is it “likely” in this case that Mr. Meek will be called as a
8 witness on behalf of his client, Mr. Meek has prefiled testimony in this case and is currently
9 the only witness testifying on behalf of his client. Because Mr. Meek is functioning as
10 URP’s advocate and witness, Mr. Meek is in violation of ORPC 3.7(a). In accordance with
11 OAR 860-012-0005(2), the Commission should therefore disqualify him from further
12 representing URP in this proceeding.

13 **C. No Exceptions to the Advocate-Witness Rule Apply to Mr. Meek’s**
14 **Representation of URP**

15 The Oregon advocate-witness rule recognizes the following four situations in which
16 an attorney may act as an advocate and witness in the same proceeding: “(1) the testimony
17 relates to an uncontested issue; (2) the testimony relates to the nature and value of legal
18 services rendered in the case; (3) disqualification of the lawyer would work a substantial
19 hardship on the client; or (4) the lawyer is appearing pro se.” ORPC 3.7(a)(1)-(4). None of
20 these exceptions apply to Mr. Meek’s representation of URP in this docket.

21 First, Mr. Meek’s testimony does not relate to an uncontested issue. To the contrary,
22 Mr. Meek’s testimony relates to one of the primary issues in this case—the consolidated-tax
23 issue. (*In Re PacifiCorp*, UE 170, Memorandum (Or Pub Util Comm’n June 14, 2005).)

24 Second, Mr. Meek’s testimony relates to PacifiCorp’s tax expense, not the nature and
25 value of legal services rendered in this case.

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1 Third, Mr. Meek cannot invoke the “substantial hardship” exception when he
2 knowingly violated the advocate-witness rule and as such would be the cause of any
3 hardship. Mr. Meek is not the victim of circumstance in which his role as witness became
4 apparent some time after he began the representation of his client in this case. Rather,
5 Mr. Meek’s actions in this case demonstrate that his intention from the very beginning was to
6 act as both advocate and witness for URP. Indeed, he prefiled testimony as a witness in this
7 case before URP’s application to intervene was even granted. These actions are clearly
8 contrary to Oregon’s disciplinary rules. *See, e.g., In Re Lathen*, 294 Or at 165 (applying
9 prior rule, which prohibited a lawyer from acting as advocate when that lawyer or a lawyer in
10 that lawyer’s firm ought to be called as a witness, and holding that the hardship exception
11 does not apply if the lawyer failed to ascertain earlier that his law partner “ought to be
12 called” and therefore failed to withdraw earlier when appropriate). As far as PacifiCorp is
13 aware, URP has other counsel who could represent URP in this proceeding.

14 Fourth, Mr. Meek is not appearing pro se in this case.

15 Because none of the exceptions to ORCP 3.7(a) apply to Mr. Meek’s representation
16 of URP, the Commission should disqualify him from his representation of URP in this
17 proceeding.

18 III. CONCLUSION

19 For the foregoing reasons, PacifiCorp respectfully requests that the Commission
20 disqualify Mr. Meek from representing URP in this proceeding.

21 DATED: July 13, 2005.

STOEL RIVES LLP

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23 

24 Katherine A. McDowell
Sarah J. Adams Lien

25 Attorneys for PacifiCorp

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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing document in Docket UE 170 on the following named person(s) on the date indicated below by email and first-class mail addressed to said person(s) at his or her last-known address(es) indicated below.

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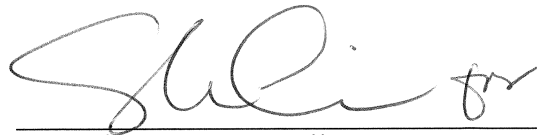
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DATED: July 13, 2005



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