

1                               **BEFORE THE PUBLIC UTILITY COMMISSION**  
2   **OF OREGON**

3   UE 170

4   In the Matter of

5   PACIFIC POWER & LIGHT COMPANY  
6   (dba PacifiCorp)

7   Request for a General Rate Increase in the  
8   Company's Oregon Annual Revenues

STAFF'S POST-HEARING REPLY BRIEF

9               Staff of the Public Utility Commission of Oregon ("Staff") submits its Post-Hearing  
10   Reply Brief.

11   **I. TRANSITION ADJUSTMENT MECHANISM**

12           Staff supports PacifiCorp's GRID power cost model to calculate annual transition  
13   adjustment rates because it believes that PacifiCorp's proposed methodology provides an  
14   accurate accounting of the likely impacts of direct access on PacifiCorp's system operations and  
15   can be expected to result in transition adjustment rates that achieve the goal of preventing  
16   unwarranted cost shifts between direct access customers and utility investors. *See* Staff/700,  
17   Galbraith/16-17. ICNU's "market-plus" approach to calculating transition adjustment rates  
18   would not accurately account for the likely impacts of direct access on PacifiCorp's system  
19   operations. CUB's recommendation to limit the annual NVPC update to direct access eligible  
20   customers would be difficult and unnecessary and would result in two sets of cost-of-service  
21   rates.

22   **II. THIRD PARTIAL STIPULATION**

23           Staff and the company agreed that if the Commission approves a Transition Adjustment  
24   Mechanism (also called RVM) of the type proposed by the company, the final GRID power cost  
25   model run will include all the adjustments proposed by the company in PPL/604-606 and  
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1 PPL/607-608 except the Deferred Maintenance, Thermal Ramping, Station Service, and Planned  
2 Outages adjustments.

3 Staff notes, however, that it does not support an alternative request that PacifiCorp made  
4 in its surrebuttal testimony. The company requested that if the Commission does not adopt a  
5 RVM of the type proposed by the company, then the Thermal Ramping, Station Service and  
6 Deferrable Maintenance adjustments should be included in the general rate case (base rate)  
7 change now proposed to be effective October 4, 2005. *See* PPL/611, Widmer/6); *see also*  
8 PacifiCorp's Opening Prehearing Brief at 28 fn. 5. If the Commission does not approve  
9 PacifiCorp's RVM proposal, Staff does not support including the company's Thermal Ramping,  
10 Station Service and Deferrable Maintenance adjustments in base rates.

11 **1. Waiver of new resource rule.**

12 Staff supports PacifiCorp's requested waiver from application of the New Resource rule  
13 for West Valley CTs, Gadsby CTs, and Current Creek Phase One. PacifiCorp has demonstrated  
14 including these plants in rates at cost provides benefits for customers. The acquisition process,  
15 cost and impact on customers of the West Valley CTs were analyzed in UI 196 and UE 134. The  
16 Commission concluded that the West Valley lease agreement is fair, reasonable, and not contrary  
17 to the public interest in Order 02-361 in UI 196. Staff's analysis in UE 134 concluded the  
18 company was prudent in entering into the West Valley lease agreement (UE 134, Staff/200).

19 The Gadsby CTs were included in rates at the same time as West Valley, June 1, 2002, by  
20 UE 134, Order 02-343. The resource was acquired at the same time and at a similar cost as West  
21 Valley as part of a plan to meet a large summer resource need on the east side of PacifiCorp's  
22 system.

23 Current Creek resulted from RFP 2003A and is coming online this summer. The Utah  
24 PSC issued a Certificate of Public Convenience and Necessity for Current Creek on March 5,  
25 2004. Staff analyzed the economic evaluation conducted by the company supporting the  
26 acquisition of Current Creek in discovery and in a meeting with the company, and concludes that

1 the plant was the least cost option and will provide benefits to customers. Staff supports the  
2 company's application for waiver and the inclusion of West Valley, Gadsby CTs, and Current  
3 Creek at cost in this docket.

4 **2. Allocation of added qualifying facilities contracts.**

5 ICNU argues that the QF contracts are existing contracts and must be assigned situs  
6 under the Revised Protocol because these contracts were entered into prior to the Commission's  
7 approval of the Revised Protocol on January 12, 2005. Existing QF contracts are defined by the  
8 Revised Protocol as contracts entered into prior to the effective date of the Revised Protocol.  
9 Section II of the Revised Protocol provides that "The Protocol will be effective and apply to all  
10 PacifiCorp retail general rate proceedings initiated subsequent to June 1, 2004." Accordingly,  
11 the four QF contracts are "new" contracts under the Revised Protocol because they were entered  
12 into after the Revised Protocol became effective on June 1, 2004.

13 **3. Prudence of the West Valley CT resource.**

14 The initial acquisition of the West Valley resource in 2002 was prudent. In addition,  
15 PacifiCorp's decision not to terminate the West Valley lease was prudent. Staff analyzed the  
16 initial acquisition of West Valley in UE 134 and concluded the company was prudent in entering  
17 into the West Valley lease agreement (UE 134, Staff/200). Staff reviewed the RFP 2004-X  
18 process conducted to solicit alternatives to West Valley from the market. Staff also reviewed the  
19 economic evaluation of alternatives and concluded that the company's decision to retain the  
20 West Valley lease was prudent. Staff recommends the Commission reject ICNU's proposed  
21 adjustment regarding West Valley.

22 **4. Remove cost of terminated CT lease from rate base.**

23 Staff disagrees with ICNU's proposed adjustment to decrease the level of the Gadsby CT  
24 plant in rate base by \$7.5 million. GE's offer, even excluding waiving the remaining \$7.5  
25 million lease obligation which was included in the offer, was better than the competing Pratt &  
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Whitney CT purchase and installation offer that PacifiCorp had been pursuing. Moreover, Staff sees no evidence of a conflict of interest in the PacifiCorp's deal with GE for a CTs at Gadsby.

**5. Updated plant outage and heat rates.**

ICNU objects to the company updating the net variable power costs (NVPC) in this docket using an updated 48-month period of outage and heat rates. Staff's position is that the updated thermal plant outage and heat rates will not be used in the NVPC included in the base rate change, expected in October. But Staff believes the updated rates should be used to develop the NVPC underlying the Transition Adjustment mechanism. Staff's position on updated plant outage and heat rates is consistent with the last several PGE RVM cases.

**6. Plant outages during the UM 995 deferral period.**

ICNU contends that all outages that occurred during the UM 995 deferral period should be excluded in calculating the four-year average outage rates to avoid a double recovery. Staff opposes this adjustment because the purpose for using a recent four-year average of outages in the determination of base rates is to reflect a normal level of outages that can be expected to occur during the period the rates are in effect. To exclude all outages for part of the historical four-year period used would distort the four-year average to something different than what would be expected to occur. The only outage excluded from the four years of historical outage data used in this case, was the five and one-half month Hunter 1 outage. An extensive outage such as that is not expected to occur during the period the rates are in effect, and consequently it is excluded from the historical outage data used.

Nor is there a double recovery. The UM 995 order allows PacifiCorp to recover excess power costs, partly caused by the Hunter 1 outage. All other outages that occurred during the UM 995 deferral period are consistent with the normal four-year average outage level in the NVPC in base rates in effect during that period. Accordingly, there is no double recovery by including all the normal outages that occurred during the UM 995 deferral period.

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1   **III. TAX ADJUSTMENTS**

2           Staff's proposed downward tax adjustment of \$4.6 million best matches the burdens and  
3   benefits of the debt held at PacifiCorp Holdings Inc. ("PHI"). The Company overstates the  
4   requirements of the "benefits/burdens" approach. As the Commission has recently recognized in  
5   UM 1121, leveraged debt is a harm, i.e. burden, to customers. Furthermore, the Company's  
6   reliance on an accounting rule is misplaced in this rate-setting context. Finally, Staff offers an  
7   alternative proposal that considers that circumstances have changed with the passage of SB 408.

8           **1. The Company overstates the "benefits/burdens" test.**

9           The Company asserts that the Commission can order a consolidated tax adjustment only  
10   if the adjustment satisfies the "benefits and burdens" test. *See* PacifiCorp Opening Brief at 11.  
11   Fundamentally, Staff and the Company disagree about what is an appropriate "burden." Staff's  
12   testimony establishes that the PHI debt burdens customers and, therefore, there is a rational  
13   relationship, i.e. a matching, or a causal connection between a burden and benefit. That is  
14   exactly what the "benefits and burden" test requires.

15          Furthermore, the "benefits and burdens" test, as described in DOJ's memorandum, does  
16   not provide that the Commission may order a consolidated tax adjustment only if the adjustment  
17   satisfies the "benefits and burdens" test. *See Id.* Rather, DOJ's memorandum advised that, if the  
18   Commission desired to change its current policy, it would be prudent to follow the "benefits and  
19   burdens" test. *See* DOJ memorandum dated February, 18, 2005, at 7.<sup>1</sup> The fundamental  
20   disputed issue between the Company and Staff is not the "benefits and burdens" approach.  
21   Rather, the parties disagree on what evidence is required to demonstrate that there is, in fact, a

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<sup>1</sup> Indeed, the DOJ memorandum was written to offer the Commission prospective advice on the most legally prudent  
24   means to proceed if it wished to change its stand alone tax calculation policy. While the distinction contains nuance,  
25   it is critical, albeit largely or completely ignored by the other parties. Regardless, for the reasons set forth in the  
26   DOJ memorandum, the most legally prudent approach, absent new law, such as SB 408, for the Commission to  
change its tax policy on a prospective basis would be to follow the "benefits and burdens" approach. The  
disagreement between Staff and the Company is not with the approach, but what is required as evidence to  
demonstrate a "burden." Finally, the DOJ memorandum offers advice on the most legally prudent, prospective  
approach to follow and does not purport to offer the only approach that may be reasonable.

1 “burden.” Staff’s testimony establishes, and the Commission has recently recognized, that debt  
2 is a burden to customers.

3 **2. The Company’s reliance on an accounting administrative rule is misplaced in**  
4 **the context of establishing just and reasonable rates.**

5 The Company relies heavily on OAR 860-027-0048 in asserting that the Commission  
6 cannot waive its own rule. However, Division 27 relates to accounting requirements, not rate-  
7 setting. In fact, Division 27 is titled “Budgets, Finance, Accounting, and Annual Reports for  
8 Gas, Steam Heat, and Large Telecommunication Utilities.” Undoubtedly, the Commission has  
9 authority to require utilities to account and allocate cost in certain ways. However, it is equally  
10 true that the Commission retains the authority to review those accounts and allocations for just  
11 and reasonableness in the context of a general rate case. Simply put, the Company’s reliance on  
12 an accounting cost allocation rule is misplaced in the context of establishing just and reasonable  
13 rates in a general rate case proceeding. Accounting and rate-setting are two separate issues and  
14 accounting rules do not determine the appropriate rate in a rate proceeding.

15 **3. Since testimony was filed in this docket circumstances have changed with the**  
16 **passage of SB 408 and the Commission should consider the alternative of**  
**directing the Company to file for a deferred account.**

17 Staff recognizes that since it proposed its tax adjustment the Oregon Legislature has  
18 passed SB 408 and the Governor has stated his intent to sign the bill into law. Furthermore, ALJ  
19 Logan issued a memorandum on August 8, 2005, that directed the parties to be prepared to  
20 discuss the implications of SB 408 at oral argument.<sup>2</sup> SB 408, however, states its operative date  
21 (at least for the automatic adjustment mechanism outlined in Section 3 of the bill) as January 1,  
22 2006. Additionally, the record in this proceeding does not contain the requisite evidence to  
23 implement a SB 408-type calculation.

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25 <sup>2</sup> While Staff’s deferred accounting proposal has not been raised previously, it is appropriate to raise its proposal in  
26 reply briefs. When Staff prepared its testimony, SB 408 had not been passed. Furthermore, the ALJ has specifically  
directed the parties to be prepared to address the impact of SB 408, if any, in this case at oral argument. By raising  
this proposal in its reply brief, it will allow the parties more time to consider and respond to the proposal at oral  
argument.

1 As a result of these circumstances, an alternative in this proceeding may be to have the  
2 Commission direct the Company to file for a deferred account for its tax expenses. The deferred  
3 account would probably only apply through 2005, because it is likely that SB 408's  
4 establishment of automatic adjustment clauses will kick in for 2006 taxes. The appropriate  
5 calculation of the deferral would also be determined later consistent with the Commission's SB  
6 408 rulemaking decisions. This proposal would allow the Commission to take into account the  
7 possible ramifications of SB 408 in a more orderly manner and it would allow the development  
8 of a record that would enable the Commission to calculate taxes consistent with its SB 408  
9 rulemaking decisions while also recognizing the fact that the passage SB 408 has changed the  
10 legal landscape for calculating tax expenses.

#### 11 **IV. RECOVERY OF RTO-RELATED COSTS**

12 Staff recommends that the Commission accept PacifiCorp's Grid West treatment of those  
13 costs as ongoing costs. Contrary to ICNU's arguments, Oregon ratepayers benefit from the RTO  
14 costs. PacifiCorp's RTO costs should be included in the test year revenue requirement.

#### 15 **V. FUEL HANDLING COSTS**

16 ICNU contends that the Commission should reject PacifiCorp's fuel handling costs  
17 because the company has not shown the charges are reasonable, the charges are "suspicious"  
18 because they were not included in the company's initial filing, and allowing the charges would  
19 encourage utilities to include "forgotten" costs in the middle of future rate cases. If Staff  
20 believed that the company was manipulating the ratemaking process by failing to make an early  
21 disclosure of the fuel handling charges to either limit or preclude the review of the charges by the  
22 other parties it would oppose these charges. But Staff believes the company's failure to include  
23 the fuel handling charges in its initial filing was inadvertent. Moreover, the company discovered

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1 its error and amended its filing at a stage in the proceeding that allowed the other parties to both  
2 obtain discovery and review the charges. Staff reviewed both the fuel handling charges and  
3 supporting documents and supports the inclusion of those charges in this case.

4  
5 DATED this 12<sup>th</sup> day of August 2005.

6 Respectfully submitted,

7 HARDY MYERS  
8 Attorney General

9 /s/Jason W. Jones  
10 David B. Hatton, OSB #75151  
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14 Commission Staff  
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**CERTIFICATE OF SERVICE**

I certify that on August 12, 2005, I served the foregoing upon the parties hereto by sending a copy by electronic mail and by mailing a true, exact and full copy by regular mail, postage prepaid or by shuttle mail delivery:

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