

BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

UE 170

In the Matter of

PACIFIC POWER & LIGHT COMPANY  
(dba PacifiCorp)

Reconsideration of Order No. 05-1050


AFFIDAVIT OF JUDY JOHNSON

I, Judy Johnson, being duly sworn on oath depose and say:

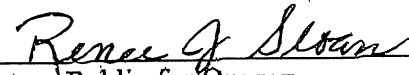
1. I am Program Manager of the Electricity and Natural Gas Division of the Utility  
Division of the Public Utility Commission of Oregon.

2. I am the same Judy Johnson that previously filed testimony on behalf of Staff in this  
matter. (See Staff/1000, 1001, and 1002).

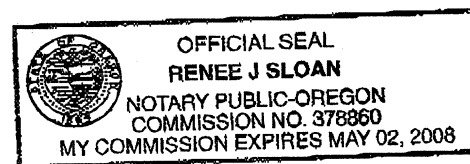
3. I submitted OPUC Data Request 455 to PacifiCorp in this matter. A true and accurate  
copy of that data request and PacifiCorp's response is attached and marked Staff/1003.

  
Judy Johnson

SUBSCRIBED AND SWORN to before me this 12 day of April, 2006.

  
Notary Public for Oregon

My Commission Expires: May 2, 2008



**OPUC Data Request 455**

Referencing PPL/1303, Martin/6, lines 5-10:

1. Please provide the date of passage of the UK Finance Act of 2005.
2. Please provide the tax rate prior to passage of the UK Finance Act of 2005.
3. Please provide all supporting documentation.

**Response to OPUC Data Request 455**

1. The effective date of the Act that applies to the UK taxability of the interest received by ScottishPower from PHI is March 16, 2005. See Section 91G(1) of the UK Finance Act of 2005 (provided as a response to 455.3 below).
2. The interest that ScottishPower was receiving from PHI was not subject to tax in the UK until the new act became effective, so the tax rate was zero. Effective with the passing of the act, the interest became subject to the 30% tax, which is the UK tax rate.
3. See Attachment OPUC 455 on the enclosed CD for a copy of the relevant portion of the UK Finance Act of 2005 that causes the interest income received to be taxable.

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**SHARES TREATED AS LOAN RELATIONSHIPS****History**

Heading inserted by F(No. 2)A 2005, Sch. 7, para. 10(1) in relation to shares held by a company on or after 16 March 2005 (F(No. 2)A 2005, Sch. 7, para. 10(7)).

**91A Shares subject to outstanding third party obligations**

**91A(1)** This section applies for the purposes of corporation tax in relation to a company if at any time in an accounting period—

- (a) that company ("the investing company") holds a share in another company ("the issuing company"),
- (b) the share is subject to outstanding third party obligations (see subsection (5)), and
- (c) the share is an interest-like investment (see subsections (7) and (8)).

**91A(2)** This Chapter shall have effect for the accounting period of the investing company in accordance with subsection (3) below as if—

- (a) the share were rights under a creditor relationship of that company, and
- (b) any distribution in respect of the share were not a distribution falling within section 209(2)(a) or (b) of the Taxes Act 1988.

**91A(3)** The debits and credits to be brought into account by the investing company for the purposes of this Chapter as respects the share must be determined on the basis of fair value accounting.

**91A(4)** No debits are to be brought into account in respect of any transaction (or series of transactions) which (apart from the assumption in subsection (8)(b) below) would have the effect of causing the condition in paragraph (a) or (b) of subsection (7) below not to be satisfied.

**91A(5)** For the purposes of this section, the cases where a share is subject to outstanding third party obligations are those cases where—

- (a) the share is subject to obligations of any description in subsection (6) below,
- (b) the obligations are obligations of a person other than the investing company, and
- (c) the obligations are yet to be discharged,

and where a share is subject to any such obligations, they are for the purposes of this section the "third party obligations" in the case of that share.

**91A(6)** The descriptions of obligation are—

- (a) an obligation to meet unpaid calls on the share;
- (b) an obligation (not falling within paragraph (a) above) to make a

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contribution to the capital of the issuing company that could affect the value of the share.

**91A(7)** In this section “**interest-like investment**” means a share whose nature is such that the fair value of the share—

- (a) is likely to increase at a rate which represents a return on an investment of money at a commercial rate of interest (see section 103(3A)), and
- (b) is unlikely to deviate to a substantial extent from that rate of increase.

Fluctuations in value resulting from changes in exchange rates are to be left out of account for the purposes of paragraph (b) above.

**91A(8)** For the purposes of subsection (7) above, it shall be assumed—

- (a) that any third party obligations will be met in the amounts, and at the time, at which they are due, and
- (b) that no transaction (or series of transactions) intended to cause the condition in paragraph (a) or (b) of that subsection not to be satisfied will be entered into.

**91A(9)** For the purposes of this section, the fair value of a share that is subject to outstanding third party obligations must include the fair value of the obligations.

**91A(10)** For the purposes of this section a company shall be treated as continuing to hold a share notwithstanding that the share has been transferred to another person —

- (a) under a repo or stock lending arrangement, or
- (b) under a transaction which is treated by section 26 of the Taxation of Chargeable Gains Act 1992 as not involving any disposal.

History Cross references

**91B Non-qualifying shares**

**91B(1)** This section applies for the purposes of corporation tax in relation to a company if at any time in an accounting period—

- (a) the company (“the investing company”) holds a share in another company (“the issuing company”),
- (b) the share is not one which, by virtue of paragraph 4 of Schedule 10 to this Act (holdings in unit trusts and offshore funds), falls to be treated for that accounting period as if it were rights under a creditor relationship of the investing company, and
- (c) the share is a non-qualifying share (see subsection (6)),

and at no time in the accounting period does section 91A above apply in relation to the investing company in the case of that share.

**91B(2)** This Chapter shall have effect for that accounting period in accordance

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with subsection (3) below as if—

- (a) the share were rights under a creditor relationship of the investing company, and
- (b) any distribution in respect of the share were not a distribution falling within section 209(2)(a) or (b) of the Taxes Act 1988.

**91B(3)** The debits and credits to be brought into account by the investing company for the purposes of this Chapter as respects the share must be determined on the basis of fair value accounting.

**91B(4)** In any case where Condition 1 in section 91C below is satisfied, no debits are to be brought into account in respect of any transaction (or series of transactions) which (apart from the assumption in subsection (6) of section 91C below) would have the effect of causing the condition in paragraph (a) or (b) of subsection (1) of that section not to be satisfied.

**91B(5)** In any case where Condition 3 in section 91E below is satisfied—

- (a) debits and credits shall be brought into account for the purposes of Schedule 26 to the Finance Act 2002 (derivative contracts) by the investing company in respect of any associated transaction falling within section 91E below as if it were, or were a transaction in respect of, a derivative contract (if that is not in fact the case), and
- (b) those debits and credits shall be determined on the basis of fair value accounting.

**91B(6)** A share is a non-qualifying share for the purposes of this section if—

- (a) it is not one where section 95 of the Taxes Act 1988 (dealers etc) applies in relation to distributions in respect of the share, and
- (b) one or more of the Conditions in sections 91C to 91E below is satisfied.

**91B(7)** Subsection (10) of section 91A above (company treated as holding a share) also applies for the purposes of this section.

History Cross references

**91C Condition 1 for section 91B(6)(b)**

**91C(1)** Condition 1 is that the assets of the issuing company are of such a nature that the fair value of the share—

- (a) is likely to increase at a rate which represents a return on an investment of money at a commercial rate of interest, and
- (b) is unlikely to deviate to a substantial extent from that rate of increase.

Fluctuations in value resulting from changes in exchange rates are to be left out of account for the purposes of paragraph (b) above.

**91C(2)** But Condition 1 is not satisfied if the whole or substantially the whole by

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fair value of the assets of the issuing company are income producing.

**91C(3)** The assets which, for the purposes of this section, are "income producing" are—

- (a) any share as respects which the conditions in section 91A(1) above are satisfied;
- (b) any share as respects which Condition 1 above is satisfied or would, apart from subsection (2) above, be satisfied;
- (c) any share as respects which Condition 2 in section 91D below is satisfied or would, apart from subsection (1)(c) of that section (excepted shares), be satisfied;
- (d) any share as respects which Condition 3 in section 91E below is satisfied;
- (e) any asset of a description specified in any paragraph of paragraph 8(2) of Schedule 10 to this Act (qualifying investments in relation to a unit trust scheme or an offshore fund);
- (f) rights under a repo in relation to which section 730A of the Taxes Act 1988 applies;
- (g) any share in a company the whole or substantially the whole by fair value of whose assets are assets within paragraphs (a) to (f) above.

**91C(4)** The Treasury may by regulations amend this section for the purpose of adding to the assets which are income producing.

**91C(5)** The provision that may be made by regulations under this section includes provision for the regulations to have effect in relation to accounting periods (whenever beginning) which end on or after the day on which the regulations come into force.

**91C(6)** For the purposes of subsection (1) above, it shall be assumed that no transaction (or series of transactions) intended to cause the condition in paragraph (a) or (b) of that subsection not to be satisfied will be entered into by the investing company.

**91C(7)** This section shall be construed as one with section 91B above.

History

**91D Condition 2 for section 91B(6)(b)**

**91D(1)** Condition 2 is that the share—

- (a) is redeemable (see subsection (2)),
- (b) is designed to produce a return which equates, in substance, to the return on an investment of money at a commercial rate of interest, and
- (c) is not an excepted share (see subsection (3)).

**91D(2)** For the purposes of this section, a share is to be regarded as redeemable

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only if it is redeemable as a result of its terms of issue (or any collateral agreements, arrangements or understandings)–

- (a) requiring redemption,
- (b) entitling the holder to require redemption, or
- (c) entitling the issuer to redeem.

**91D(3)** A share is an “**excepted share**” for the purposes of this section if–

- (a) it is a qualifying publicly issued share (see subsections (4) and (5)),
- (b) it is a share that mirrors a public issue (see subsections (6) to (8)), or
- (c) the investing company’s purpose in acquiring the share is not an unallowable purpose (see subsection (9)).

**91D(4)** A share is a “**qualifying publicly issued share**” for the purposes of this section if–

- (a) it was issued by a company as part of an issue of shares to independent persons, and
- (b) less than 10% of the shares in that issue are held by the investing company or persons connected with it.

**91D(5)** But a share is not a qualifying publicly issued share for those purposes if the investing company’s purpose in acquiring the share is an unallowable purpose by virtue of subsection (9)(a) below.

**91D(6)** The cases where a share mirrors a public issue are those set out in subsections (7) and (8) below.

**91D(7)** Case 1 is where–

- (a) a company (company A) issues shares (the public issue) to independent persons,
- (b) within 24 hours of that issue, one or more other companies (companies BB) issue shares (the mirroring shares) to company A on the same, or substantially the same, terms as the public issue,
- (c) company A and companies BB are associated companies (see subsection (11)), and
- (d) the total nominal value of the mirroring shares does not exceed the nominal value of the public issue,

and in any such case the mirroring shares are shares that mirror a public issue.

**91D(8)** Case 2 is where, in the circumstances of Case 1,–

- (a) within 24 hours of the public issue, one or more other companies (companies CC) issue shares (the second-level mirroring shares) to one or more of companies BB on the same, or substantially the same, terms as the public issue,

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- (b) company A, companies BB and companies CC are associated companies, and
- (c) the total nominal value of the second-level mirroring shares does not exceed the nominal value of the public issue,

and in any such case the second-level mirroring shares are also shares that mirror a public issue.

**91D(9)** For the purposes of this section, a share is acquired by the investing company for an unallowable purpose if the purpose, or one of the main purposes, for which the company holds the share is—

- (a) the purpose of circumventing section 95 of the Taxes Act 1988 (see subsection (10)), or
- (b) any other purpose which is a tax avoidance purpose (see subsection (11)).

**91D(10)** The purpose, or one of the main purposes, for which the investing company holds a share shall, in particular, be taken to be the purpose of circumventing section 95 of the Taxes Act 1988 (taxation of dealers in respect of distributions etc) if the investing company was an associated company of a bank (see subsection (11)) at the time when the investing company acquired the share, unless the investing company shows that—

- (a) immediately before that time, some or all of its business consisted in making and holding investments, and
- (b) it acquired the share in the ordinary course of that business.

**91D(11)** In this section—

“**associated company**”, in relation to any other company, means a company which, within the meaning given by section 413(3)(a) of the Taxes Act 1988, is a member of the same group of companies as that other company;

“**bank**” has the meaning given by section 840A of the Taxes Act 1988;

“**independent person**”, in relation to a company, means a person who is not connected with the company;

“**tax advantage**” has the meaning given by section 709(1) of the Taxes Act 1988;

“**tax avoidance purpose**”, in the case of any company, means any purpose that consists in securing a tax advantage (whether for the company or any other person).

**91D(12)** Section 839 of the Taxes Act 1988 (connected persons) applies for the purposes of this section.

**91D(13)** This section is to be construed as one with section 91B above.

History



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**91E Condition 3 for section 91B(6)(b)**

**91E(1)** Condition 3 is that there is a scheme or arrangement under which the share and one or more associated transactions are together designed to produce a return which equates, in substance, to the return on an investment of money at a commercial rate of interest.

**91E(2)** But condition 3 is not satisfied if—

- (a) Condition 1 in section 91C above is satisfied as respects the share or would, apart from subsection (2) of that section (income producing assets), be so satisfied, or
- (b) Condition 2 in section 91D above is satisfied as respects the share or would, apart from subsection (1)(c) of that section (excepted shares), be so satisfied.

**91E(3)** In this section “associated transaction” includes entering into, or acquiring rights or liabilities under, any of the following—

- (a) a derivative contract;
- (b) a contract that would be a derivative contract, apart from paragraph 4(2B) of Schedule 26 to the Finance Act 2002 (trades etc: hedging relationships with shares);
- (c) a contract having a similar effect to—
  - (i) a derivative contract, or
  - (ii) a contract falling within paragraph (b) above;
- (d) a contract of insurance or indemnity.

**91E(4)** This section is to be construed as one with section 91B above.

**History****91F Power to add, vary or remove Conditions for section 91B(6)(b)**

**91F(1)** The Treasury may by regulations amend this Chapter so as to add, vary or remove Conditions for the purposes of section 91B(6)(b) above.

**91F(2)** Where the Treasury so add, vary or remove a Condition, they may also by regulations amend any of the following enactments—

- (a) this Chapter,
- (b) Chapters 1 to 3 of Part 6 of the Taxes Act 1988 (company distributions),
- (c) Part 18 of the Taxes Act 1988 (double taxation relief),
- (d) the Taxation of Chargeable Gains Act 1992,
- (e) Schedule 26 to the Finance Act 2002 (derivative contracts),

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so as to make provision for or in connection with taxation in the case of any asset or transaction that is or was mentioned in the Condition.

**91F(3)** The power to make regulations under this section includes power—

- (a) to make different provision for different cases, and
- (b) to make such consequential, supplementary, incidental or transitional provisions, or savings, as appear to the Treasury to be necessary or expedient (including provision amending any enactment or any instrument made under an enactment).

**History**

**91G** Shares beginning or ceasing to be subject to section 91A or 91B

**91G(1)** Where at any time on or after 16th March 2005 the conditions in section 91A(1) or 91B(1) above become satisfied in the case of any share, otherwise than in the circumstances described in subsection (3) below, the investing company shall be deemed for the purposes of the Taxation of Chargeable Gains Act 1992—

- (a) to have disposed of the share immediately before that time for a consideration of an amount equal to its fair value at that time, and
- (b) to have immediately reacquired it for a consideration of the same amount.

**91G(2)** Where at any time the conditions in section 91A(1) or 91B(1) above cease to be satisfied in the case of any share, the investing company shall be deemed for the purposes of the Taxation of Chargeable Gains Act 1992 and of this Chapter—

- (a) to have disposed of the share immediately before that time for a consideration of an amount equal to its fair value at that time, and
- (b) to have immediately reacquired it for a consideration of the same amount.

**91G(3)** In any case where—

- (a) a share is held by a company both—
  - (i) at the end of 15th March 2005, and
  - (ii) at the beginning of 16th March 2005, and
- (b) the conditions in section 91A(1) or 91B(1) above are satisfied in relation to that share at the beginning of 16th March 2005,

subsection (4) below applies.

**91G(4)** In any such case, section 116 of the Taxation of Chargeable Gains Act 1992 (reorganisations etc involving qualifying corporate bonds) shall have effect in accordance with—

- (a) the assumptions in subsections (5) and (6) below, and
- (b) the provisions of subsections (7) and (8) below.

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**91G(5)** The first of the assumptions is that the share became an asset representing a creditor relationship of the company (and, accordingly, a qualifying corporate bond) in consequence of the occurrence on 16th March 2005 of a transaction such as is mentioned in section 116(1) of the Taxation of Chargeable Gains Act 1992.

**91G(6)** The remaining assumptions are that, in relation to the transaction deemed to have occurred as mentioned in subsection (5) above,—

- (a) the share immediately before 16th March 2005 shall be assumed to be the old asset for the purposes of section 116 of the Taxation of Chargeable Gains Act 1992, and
- (b) the asset representing a creditor relationship immediately after the beginning of 16th March 2005 shall be assumed for those purposes to be the new asset.

**91G(7)** Where—

- (a) subsection (3) above has effect in the case of any share, but
- (b) the conditions in section 91A(1) or 91B(1) above cease to be satisfied in the case of the share at any time on or before 31st December 2005,

subsection (8) below applies.

**91G(8)** In any such case—

- (a) the deemed disposal of the share at that time by virtue of subsection (2)(a) above shall not be regarded as a disposal for the purposes of subsection (10)(b) or (c) of section 116 of the Taxation of Chargeable Gains Act 1992, but
- (b) the share shall continue to be the new asset for the purposes of that section.

History

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 **Reconsideration of Order No. 05-1050**

**AFFIDAVIT OF BRYAN CONWAY**

8 I, Bryan Conway, being duly sworn on oath depose and say:

9 1. I am a Manager of the Economic and Policy Analysis Section in the Economic  
10 Research and Financial Analysis Division of the Public Utility Commission of Oregon.

11 2. I am the same Bryan Conway that previously filed testimony on behalf of Staff in this  
12 matter. (See Staff/1000, 1001, and 1002).

13 3. I submitted OPUC Data Request 457 and OPUC Data Request 462 to PacifiCorp in  
14 this matter. A true and accurate copy of those data requests and PacifiCorp's responses are  
15 attached and marked Staff/1004 and Staff/1005.

16   
17 Bryan Conway

18 SUBSCRIBED AND SWORN to before me this 13<sup>th</sup> day of April, 2006.

19   
20 Notary Public for Oregon

21 My Commission Expires: Jan. 12, 2008



**OPUC Data Request 457**

Regarding PPL/1702, Larson/2, lines 5-6. Does PacifiCorp believe that Fitch Ratings has made any determinations regarding whether PacifiCorp's rates meet the "fair, just and reasonable standard" in Oregon? If yes, please provide copies of all relevant communications between PacifiCorp and Fitch that demonstrates that Fitch has reached this conclusion.

**Response to OPUC Data Request 457**

PacifiCorp does not know whether Fitch Ratings believes that PacifiCorp's Oregon rates meet or fail the "fair, just and reasonable" standard. Fitch does state in their January 31, 2006 publication in which PacifiCorp was downgraded: "However, the Oregon Public Utilities Commission's (OPUC) September 2005 order incorporating recently enacted tax legislation (Senate Bill 408) in PPW's Oregon GRC is a serious matter for concern in Fitch's view." This statement and other observations made by rating agencies since the UE 170 order support PacifiCorp's argument its Oregon rates, lowered to reflect the tax adjustment, are not "fair, just and reasonable."

**OPUC Data Request 462**

Regarding PPL/317, Williams/6, lines 10-15, please provide documentation for all of “more onerous collateral requirements” the company has experienced since August 2005. Please provide analysis that demonstrates the more onerous collateral requirements are a direct result of a) the Commissions treatment of consolidated taxes; b) the most recent PacifiCorp Rate Order; or c) Fitch’s downgrade of PacifiCorp.

**Response to OPUC Data Request 462**

PacifiCorp has not experienced any onerous collateral requirement since August 2005. Mr. Williams’s testimony was referring to potential onerous collateral requirements that could be triggered by credit rating downgrades. Any such requirements would depend on the degree of rating downgrades, the Company’s energy positions at that time, and market prices.

## CERTIFICATE OF SERVICE

I certify that on April 18, 2006, I served the foregoing upon the parties in this proceeding by electronic mail and/or by mailing a true, exact and full copy by regular mail, postage prepaid, or by hand-delivery/shuttle mail.

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Department of Justice  
Regulated Utility & Business Section