

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

**UE 170 – RECON**

In the Matter of )

PACIFIC POWER & LIGHT, )

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

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**RESPONSIVE DIRECT TESTIMONY ON RECONSIDERATION  
OF THE  
CITIZENS' UTILITY BOARD OF OREGON**

March 14, 2006

RESPONSIVE DIRECT  
TESTIMONY ON  
RECONSIDERATION OF THE  
CITIZENS' UTILITY BOARD  
OF OREGON

12 In conclusion, we will grant reconsideration so that the parties to UE 170  
13 will have a more complete opportunity to brief the application of SB 408

1 to general rate cases. We also grant PacifiCorp an opportunity for hearing  
2 to determine whether the UE 170 rates fail to comport with ORS 756.040.

3 OPUC Order No. 05-1254, page 3.

4 As the above described issues are those designated by the Commission for  
5 reconsideration, we address them first.

6 **A. Must The Commission Apply SB 408?**

7 This question, by its very nature, invites discussion of the application of the law to  
8 the UE 170 rate case. As PacifiCorp's testimony includes arguments that blur the line  
9 between fact and law, we feel it is important to address them not only in briefs, but here  
10 as well. PPL/1702/Larson/6, PPL/1303/Martin/2, PPL/317/Williams/1-2. By enacting  
11 Senate Bill 408, the legislature directed the Commission to change the way it calculates  
12 taxes for inclusion in rates. SB 408 directs the Commission to set fair, just, and  
13 reasonable rates as a matter of course, and this direction presumes a change from the  
14 Commission's past tax methodology. In regard to the application of SB 408 to rates  
15 effective in 2005, it is ridiculous to suggest that the legislature intended the Commission  
16 to set fair, just, and reasonable rates in 2006, but not in 2005.

17 Utility rates that include amounts for taxes should reflect the taxes that are  
18 paid to units of government to be considered fair, just and reasonable.

19 Senate Bill 408 Section 2(1)(f).

20 Nowhere in SB 408 is there a suggestion that rates which include taxes not paid to  
21 units of government ARE fair, just, or reasonable in 2005, but not in 2006. PacifiCorp's  
22 argument that "SB 408 expressly applies only to post-2006 tax[es] collected and paid," is  
23 self-serving and without support. PPL/1702/Larson/1. SB 408 expressly applies "taxes  
24 paid and collected on or after January 1, 2006" to the automatic adjustment clause, and,

1 in so doing, makes clear that the rest of the Bill is not subject to that date. There is no  
2 other use of the year 2006 in SB 408.

3 If an automatic adjustment clause is established ... the automatic  
4 adjustment clause shall apply only to taxes paid to units of government  
5 and collected from ratepayers on or after January 1, 2006.

6 Senate Bill 408 Section 4(2).

7 In SB 408, the legislature expressly states that the issue of utility taxes is  
8 essential, it declared an emergency, and dictated that the bill should take effect  
9 immediately upon its passage.

10 The Department of Justice's December 2005 legal opinion reiterates SB 408's  
11 direction to the Commission to apply the fair, just, and reasonable standard generally, and  
12 not simply in 2006 and beyond.

13 Together, section 5 and subsection 3(1) of chapter 845 contain further  
14 expressions of the *general policy* underlying the statute. ... [I]n setting  
15 utility rates, the Commission *generally must strive* to include amounts of  
16 taxes in rates only to the extent that those amounts reflect taxes that are  
17 received by units of government from the regulated utility or from the  
18 affiliated group of which the utility is a member.

19 Department of Justice, Legal Opinion, II.B.4.a., December 27, 2005. Emphasis added.

20 In PacifiCorp's Testimony, Mr. Williams argues that the Department of Justice  
21 Opinion "makes clear that the 'fair, just and reasonable' standard is one that protects  
22 utilities." PPL/317/Williams/2. This is an interesting reading of SB 408, and Mr.  
23 Williams' argument comes across as an attempt to co-opt the phrase "fair, just and  
24 reasonable" for the protection of utilities rather than the protection of ratepayers.  
25 However, Mr. Williams' claim that "fair, just and reasonable" is solely for utilities'  
26 benefit is insupportable. PacifiCorp makes no decent argument that the Commission is  
27 precluded from applying SB 408 immediately after its passage. In fact, the legislature's

1 directive is that the Commission must apply it to rates set after it became law, which  
2 includes the rates set in UE 170.

3 **B. How SB 408 Should Be Applied**

4 The Attorney General's above quote regards setting rates in general; there is no  
5 reference to the automatic adjustment clause. It directs the Commission to reflect the  
6 amount of taxes that will be paid to government when setting rates. It does not suggest  
7 that the Commission should pretend a utility is stand-alone for setting rates, ignore the  
8 tax adjustments that should be made to account for a holding company structure, and wait  
9 for the automatic adjustment clause to remedy the mismatch between taxes collected and  
10 taxes paid.

11 The natural upshot of the statute's policy is that, during a rate case, the  
12 Commission should carefully consider evidence demonstrating that the utility's tax  
13 forecast for its test year overstates the amount paid by the consolidated group on behalf  
14 of the utility. While some tax adjustments that reflect the utility's place in a holding  
15 company may not be easy to forecast, others (such as PHI's tax deduction for interest  
16 payments) can, and by the principles of SB 408 should, be forecast. This is exactly what  
17 the Commission did in UE 170, and exactly what the Commission should do in the  
18 future.

19 ***i. SB 408 Does Not Apply To ScottishPower Taxes in Britain***

20 The application of ScottishPower's tax payments in Britain is one of the more  
21 creative arguments we have had to address in this proceeding.

1     *a.   British Taxes*

2             PacifiCorp's Larry Martin argues that ScottishPower's tax payments under the  
3     British tax code "must be considered under SB 408 or 'its principles.'"       
4     PPL/1303/Martin/6. He asks the Commission to offset PHI's known interest tax  
5     deduction taken on the consolidated group's U.S. tax filing that includes PacifiCorp, by  
6     recognizing a tax the British Government levies on ScottishPower. British taxes are not a  
7     line item in PacifiCorp rates. The British Government does not tax PacifiCorp or PHI.

8     *b.   Federal, State, Or Local*

9             SB 408 clearly and explicitly states that it concerns the federal, state, and local  
10    taxes that are applied to a utility directly or as part of a consolidated tax filing. SB 408  
11    does not incorporate British taxation of ScottishPower, PacifiCorp does not file a  
12    consolidated federal return with ScottishPower, and ScottishPower's tax rate from the  
13    U.S. Finance Act of 2005 does not relate to U.S. federal income tax.

14            "Affiliated group" means an affiliated group of corporations of which the  
15            public utility is a member, and that files a consolidated federal income tax  
16            return.

17    Senate Bill 408, Section 3(13)(a).

18            Tax: Means a federal, state, or local tax or fee...

19    Senate Bill 408, Section 3(13)(d)(A).

20    *c.   The Lower Of Cost Or Market*

21            The inter-company loan, for which PacifiCorp pays the interest and on which  
22    ScottishPower pays British taxes, is an affiliate service. Had PacifiCorp or PHI borrowed  
23    that money from an independent bank, instead of from ScottishPower, PacifiCorp  
24    customers most certainly wouldn't be expected to pay the bank's income taxes on the  
25    interest payments the bank receives. A basic principle of ratemaking is that an affiliate

1 transaction should be priced at the lower of cost or market. A transaction with an affiliate  
2 cannot lead to higher charges than the same transaction with a non-affiliate. Mr. Martin's  
3 suggestion is that customers should pay a higher cost on an inter-company loan, than they  
4 would otherwise pay on the same loan from an independent party.

5 **C. ORS 756.040**

6 PacifiCorp argues that the Commission's Order violates ORS 756.040.  
7 PPL/317/Williams/1-8. This is a question mixed with fact and law, and we attempt to  
8 limit this testimony to the fact and policy at issue in the Commission's Order on  
9 reconsideration.

10 ***i. Separate Issues: Return On Equity & Forecast Costs***

11 The adjustment to PacifiCorp's tax forecast and the Company's return on equity  
12 are two separate issues. The Commission granted PacifiCorp a 10% return on equity at  
13 the same time as it adjusted the Company's tax forecast for rates. The Commission made  
14 the tax adjustment to better reflect the taxes that will be paid to government in the test  
15 year, and it granted PacifiCorp a return on equity to reward the investors for the risk of  
16 their investment. The Commission neither set PacifiCorp's return on equity in light of  
17 the tax adjustment, nor did it make the tax adjustment in light of the return on equity.  
18 The tax adjustment was, quite simply, made to better forecast taxes for inclusion in rates.  
19 A more accurate tax forecast reduces the likelihood that PacifiCorp will earn above its  
20 allowed return on equity.

21 There are a number of costs from a utility's parent company that are paid, at least  
22 in part, by customers: corporate costs, board of director costs, CEO costs, and taxes. The  
23 Commission makes adjustments to reflect those corporate costs it considers unreasonable

1 such as excessive bonuses or imprudence disallowances. These are not adjustments to  
2 the utility's return on equity, but are adjustment to cost components that are part of the  
3 Company's revenue requirement. Neither is PacifiCorp's return on equity lower because  
4 the Commission declines to acknowledge executive bonuses for ratemaking purposes, nor  
5 is it lower because the Commission declines to acknowledge tax payments that are above  
6 the utility's share in a consolidated tax filing. Taxes are like any other cost; PacifiCorp  
7 may not like the Commission's treatment of a cost, but that cost treatment doesn't change  
8 the Company's return on equity.

9 ***ii. The Shareholders Of PacifiCorp & Their Return On Equity***

10 PacifiCorp is not a stand-alone utility, and so there are no shareholders of a stand-  
11 alone PacifiCorp. Instead, there are shareholders of ScottishPower. We expect that a  
12 utility's owner (parent or independent shareholders) will, on average, receive the allowed  
13 return on equity over time. Taxes collected from customers, but not paid to units of  
14 government, are a bonus above and beyond what the owner receives in the rate of return  
15 paid by customers. PacifiCorp's owner has been receiving an allowed rate of return plus  
16 additional tax payments from captive regulated utility customers.

17 ***iii. An 8.4% Return On Equity Is Nowhere Near An ORS 756.040 Violation***

18 While arguing that the Commission's tax adjustment results in rates that violate  
19 ORS 756.040, Bruce Williams claims that PacifiCorp's return on equity is 8.4% because  
20 of that adjustment. PPL/317/Williams/1-2. Above, we address PacifiCorp's confusion of  
21 forecasted costs, such as taxes, with the Company's return on equity.

22 However, even if you mix costs and return for argument's sake, there is no  
23 evidence and little argument that 8.4% so much as begins to approach a range that might



1 be considered confiscatory. Thomas Morgan, of Staff, presented a series of discounted  
2 cash flow models (DCF) to show “the upper and lower ends of Cost of Equity estimates  
3 that Staff believes could reasonably be adopted.” Staff/200/Morgan/5. While 8.4% is  
4 below Staff’s recommended return on equity of 9.5%, it is within the range of reasonable  
5 results for 3 of the 4 DCF models presented by Mr. Morgan. A copy of the table in  
6 Mr. Morgan’s testimony summarizing the results of his analysis follows:

**Table 2:**

	<b>Range of Results</b>
Single-stage DCF	8.3 percent to 9.3 percent
2-stage 5-year DCF	5.2 percent to 8.6 percent
2-stage 150-year DCF	8.4 percent to 9.2 percent
3-stage 40-year DCF	8.6 percent to 9.5 percent

Staff/200/Morgan/5.errata

7 We also note that the Company stipulated to a 10% return on equity as a  
8 reasonable result in this case, while knowing that the tax issue would not be settled, and  
9 that the Commission might accept one of the tax adjustments proposed by CUB, ICNU,  
10 or Staff.

11 ***iv. The Rating Agency Response***

12 Utilities often point to rating agency comments in an attempt to demonstrate their  
13 dire straits, their need for a higher return on equity, their need to keep extra tax payments,  
14 and the devastating effect of SB 408. As customers, we certainly share the utilities’  
15 concern that their ratings be good enough to secure the necessary debt at reasonable  
16 prices. Our interpretation of what this takes, however, tends to diverge significantly from  
17 the utilities’; so much so, in fact, that we draw primarily on PacifiCorp’s exhibits to  
18 demonstrate that the Commission’s tax adjustment is of no consequence when  
19 considering ORS 756.040.

1     *a.     Standard & Poor's On PacifiCorp*

2             The tax adjustment itself is \$16 million (\$26 million when grossed up for taxes);  
3     hardly a sum to drag the Company from the realm of reasonable to indentured servitude,  
4     so ORS 756.040 does not apply. In an article addressing SB 408 and the Commission's  
5     ruling in UE 170, Standard & Poor's writes:

6             ... the pre-tax \$26 million disallowance represents about 1% of  
7             consolidated cash flows. Thus, the immediate consequences of the rate  
8             case are nominal from the consolidated perspective.

9     PPL/322/Williams/4.

10            If there were any question that the Commission's adjustment to better forecast  
11    PacifiCorp's taxes might be material and might violate the Hope standard, the above  
12    quote should put it to rest.

13     *b.     Regulatory Research Associates On PacifiCorp*

14            In its testimony, the Company provided an article by Regulatory Research  
15    Associates in which the group lowered its rating of Oregon's regulatory environment  
16    because of "potential negative ramifications of Senate Bill (SB) 408."  
17    PPL/323/Williams/1. Regulatory Research evaluates state regulatory environments from  
18    an investor perspective, so a good rating signifies a shareholder-friendly environment. In  
19    its article, Regulatory Research lowered Oregon's rating from the upper end of average to  
20    the middle of average.

**State Regulatory Climate From The Investor Perspective**

Good 1	Good 2	Good 3	Average 1	Average 2	Average 3	Bad 1	Bad 2	Bad 3
			WA	CA	ID			
			OR	→ OR	UT			
					WY			

PPL/323/Williams/2. Regulatory Research Associates, State Regulatory Evaluations, January 6, 2006.

1 First, it should be noted that a regulatory environment should balance the interests  
2 of the shareholders with those of the customers, and so an investor opinion that Oregon  
3 regulation is average suggests that Oregon regulators are achieving a good balance.

4 Second, Regulatory Research's adjustment shifted its evaluation of Oregon regulation  
5 from upper-average to middle-average. If Oregon regulation were balanced before, now  
6 it's really balanced. In addition, we note that Oregon is still considered to have a better  
7 regulatory environment for PacifiCorp's shareholder than Idaho, Utah, and Wyoming.

8 *c. Standard & Poor's On NW Natural*

9 On March 7, 2006, Standard & Poor's raised NW Natural's corporate credit rating  
10 to AA- from A+ and its commercial paper rating to A-1+ from A-1. CUB Exhibit 502.

11 While NW Natural serves some customers in Washington, it is primarily an Oregon  
12 utility. PacifiCorp, on the other hand, serves customers in six states, less than one-third  
13 of whom reside in Oregon. If Standard & Poor's were very concerned about SB 408's  
14 impact, its concern should have a greater effect on the credit ratings of NW Natural than  
15 those of PacifiCorp. Clearly, the rating agency does not think that SB 408 will devastate  
16 Oregon utilities.

#### 17 **D. The Appropriate Remedy**

18 Judge Logan's February 3<sup>rd</sup> Ruling asks the parties to address the appropriate  
19 remedy should the Commission choose to modify PacifiCorp's revenue requirement from  
20 the original Order. Though we have demonstrated that no remedy is necessary, we point  
21 out that CUB's testimony in UE 170 did not rely on SB 408, and demonstrates that the  
22 tax adjustment is necessary to balance the benefit of the interest tax deduction at PHI

1 with the burden of debt service, ultimately paid by customers through rates and passed  
2 from PacifiCorp to PHI.

3 The Commission rightly incorporated the principles of SB 408, but it did not need  
4 to. The Commission can, instead, look to CUB's demonstration on the record that the tax  
5 adjustment should be made to balance the benefits and burdens of debt within a  
6 conglomerate, regardless of the passage of SB 408. Indeed, should the Commission  
7 choose not to rely on SB 408, it must return to the record to determine the proper tax  
8 amount for rates. As the Commission did not rule on CUB's rationale for our proposed  
9 tax adjustment, we ask for a full consideration of our arguments and evidence.

### 10 **III. Issues Outside The Commission's Order On Reconsideration**

11 In addition to the Commission's Order on reconsideration, Judge Logan's Ruling  
12 of February 3, 2006, also clearly laid out the issues to be addressed in this  
13 reconsideration. Nevertheless, PacifiCorp's Direct Testimony on Reconsideration  
14 introduced numerous other issues, despite the Commission's Order, Judge Logan's  
15 Ruling, and Oregon Law relating to rehearing and reconsideration at the Commission.

16 If a rehearing is granted, the proceedings thereupon shall conform as  
17 nearly as possible to the proceedings in an original hearing, except as the  
18 commission otherwise may direct.

19 Oregon Revised Statutes 756.561 (3).

20 While the appropriateness of PacifiCorp's Testimony is certainly in question, we  
21 will save that issue for briefing, and instead address PacifiCorp's arguments here, lest we  
22 lose the opportunity to do so.

**A. New Data & Proposed Updates After The Commission's Order**

PacifiCorp's introduction of new arguments and suggested updates in the Company's Direct Testimony on Reconsideration is wholly inappropriate.

***i. Apples, Oranges & Cherry-Picking Cost Updates***

PacifiCorp's suggestion that its UE 170 filing based on ScottishPower costs should be tweaked to account for MidAmerican's impact on only one variable mismatches the proverbial apple and orange. The Company is suggesting that, in the same 2006 test year, some costs should be based on ScottishPower ownership and others should be based on MidAmerican ownership. While deciding when to use apples and when to use oranges, the Company also cherry-picks a single cost to update – a cost in its favor – from the myriad of costs included in the rate case.

***a. ScottishPower Costs Or MidAmerican Costs?***

In its filing, for which the Company picked the timing, PacifiCorp asked for a rate increase based on a 2006 test year using cost estimates based on ScottishPower ownership. Now PacifiCorp would have the Commission use this filing as a base, but update one variable – taxes – based on MidAmerican ownership. This is a decidedly creative approach to ratemaking which would allow the Company to pick and choose, within a single test year, which costs to base upon ScottishPower ownership and which to base upon MidAmerican ownership. While this patchwork may be pretty and profitable, it is not appropriate. It also cannot be made here, as there is no evidence on the record demonstrating the overall impact of MidAmerican ownership on PacifiCorp costs, and MidAmerican is still not an affiliate of PacifiCorp, so the parties did not have the opportunity to conduct discovery.

1     *b.   Known & Measurable*

2             PacifiCorp claims that MidAmerican ownership is a known and measurable  
3     change that the Commission is “required to consider” in making any tax adjustment for  
4     the Company’s 2006 test year. PPL/1702/Larson/3. First, MidAmerican ownership,  
5     though likely, is not known. As we experienced in Sierra Pacific’s Application to acquire  
6     PGE, such transactions can dissolve any time before ink is put to paper.

7             MidAmerican ownership was not known or measurable when the Commission  
8     issued its Order in UE 170. It was not known or measurable when PacifiCorp filed for  
9     this reconsideration. It is not known or measurable as CUB submits this testimony.  
10    Though MidAmerican ownership is likely to be known when the Commission issues its  
11    Order in this reconsideration, PacifiCorp’s suggestion that we should apply that  
12    ownership change to only the PHI interest tax deduction is ridiculous. This tax deduction  
13    may disappear, but others may appear, and there are any number of unknown changes  
14    that accompany MidAmerican ownership. Judy Johansen, PacifiCorp’s CEO, will be  
15    leaving the Company: should her salary be deducted?

16            While MidAmerican’s acquisition may be approaching, it is certainly not  
17    measurable. We know very little, if anything, about PacifiCorp’s costs under  
18    MidAmerican ownership. As PacifiCorp’s filing was based on ScottishPower ownership,  
19    the parties didn’t do any discovery on the Company’s costs under MidAmerican  
20    ownership. While PacifiCorp may feel comfortable knowing and measuring  
21    MidAmerican ownership, we most certainly do not.

22     *c.   Cherry Picking*

23            PacifiCorp would like to update its 2006 rate case test year to account for taxes  
24    under the probable ownership of MidAmerican. That’s nice. We would like to update

1 the Company's 2006 rate case test year to account for electricity and gas prices which  
2 have dropped considerably since September when PacifiCorp's forward price curve  
3 raised net power costs by \$11.3 million. PPL/612/Widmer/4. The record closes in a case  
4 for a reason; things always change. The parties do the best they can when forecasting  
5 costs, but there is always better information the day after the record closes. This is just a  
6 part of the ratemaking process.

7 While cherry-picking which costs to base on ScottishPower ownership and which  
8 to base on MidAmerican ownership, PacifiCorp is also cherry-picking which costs to  
9 update and which costs to leave unchanged. The Company always has better information  
10 about its operations than other parties do, and is always in a better position to call-out  
11 variables that have changed in its favor. This problem is exacerbated here in the  
12 Commission's reconsideration, because many of the Company's costs were settled, and  
13 are not, therefore, open for reconsideration.

14 As a final nail, we note that the Company has filed yet another rate case for 2007,  
15 where it will have ample opportunity to present its costs under MidAmerican ownership,  
16 should that materialize. The parties may conduct discovery at that time, and PacifiCorp's  
17 tax expense may be forecast under the new ownership structure. Even were  
18 MidAmerican's acquisition to close by the end of March as scheduled, in light of the  
19 Company's new rate case, UE 170 rates will be in effect for a time period approximately  
20 half represented by ScottishPower ownership and half by MidAmerican ownership:  
21 October, 2005 through the effective date of rates set in UE 179. PacifiCorp should not be  
22 allowed to reopen the record to update a single variable for the benefit of ScottishPower  
23 and/or MidAmerican shareholders.

1 ***ii. Discouragement Of Partial Settlements***

2       The Commission should not re-open a docket after the record has closed simply to  
3 update one party's variable. Not only would this be unfair, but, because many issues  
4 were settled in this case, the parties will be hurt by having settled those issues, because it  
5 allowed the Company to apply for reconsideration without risking the issues that are  
6 settled. The Company has nothing to lose in this reconsideration, but the result of this  
7 proceeding will affect how the parties will feel about the partial settlements. CUB will be  
8 more wary of signing partial settlements in the future.

9 **B. Method Used To Calculate Tax Adjustment**

10       The discussion, on pages 3-5 of Mr. Martin's testimony, regarding the calculation  
11 of the tax adjustment is not relevant to this reconsideration. The method the Commission  
12 used to calculate the tax adjustment is supported in the record and discussed at length in  
13 the Commission's Order, pages 18-19. Mr. Martin confuses UE 170 with AR 499 when  
14 asserting that "all suggested approaches to allocation of consolidated taxes assume the  
15 use of relative taxable income." PPL/1303/Martin/4. We refer Mr. Martin to  
16 CUB/100/Jenks/8 where Mr. Jenks explicitly uses gross profits for tax attribution in his  
17 testimony in this docket. Neither the applicability of SB 408 nor the fair, just, and  
18 reasonable standard laid out in ORS 756.040 pertain to the method used to calculate the  
19 adjustment.

20 **C. PacifiCorp's Morphing Test Year**

21       In its Testimony, PacifiCorp introduces new figures, misrepresents those figures,  
22 and then misapplies them.



1    ***i. A Forecast Test Year Cannot Be Perfect***

2           In his Testimony, Mr. Martin introduces a change in the PHI debt structure which  
3   occurred on September 22, 2005, two months after the record in UE 170 closed on this  
4   issue, and a whopping six days before the Commission's Order. A future test year is not  
5   a perfect device. The parties get new information every day and circumstances evolve  
6   constantly, but in order to set rates, a forecast for a future test year must be chosen.

7           Mr. Martin also claims that, based on PacifiCorp's fiscal year 2005 tax return,  
8   PacifiCorp contributed only 50% of PHI's taxable income. Though Mr. Martin points  
9   out he didn't have this information earlier, so what? There is a lot of information we  
10   have now that we didn't have earlier. PacifiCorp's request to update information begs  
11   the question: when do we stop?

12          In addition, Mr. Martin fails to show that fiscal year 2005 is representative of  
13   calendar year 2006. When forecasting costs in ratemaking, sometimes data from the  
14   most recent year is used, sometimes a multi-year average is used, and sometimes other  
15   estimates are used. In its argument, the Company puts forth an example year that may  
16   serve its argument, but PacifiCorp doesn't support the use of this year's data as relevant  
17   to the test year in question. Why is calendar year 2004-2005 an appropriate benchmark?

18    ***ii. A 2006 Test Year Measured By 2004 Data***

19          Above we noted Mr. Martin's claim that, based on PacifiCorp's fiscal year 2005  
20   tax return, PacifiCorp contributed only 50% of PHI's taxable income. It is important to  
21   remember that PacifiCorp's 2005 fiscal year runs from April 2004 through March of  
22   2005, so Mr. Martin's claim that PacifiCorp contributed 50% of the consolidated group's  
23   taxable income relates primarily to calendar year 2004, not 2006. Also, while fiscal year

1 2005 may serve PacifiCorp's arguments, we point to Mr. Jenks' testimony in UE 170,  
2 Confidential Exhibit 102, which shows that PacifiCorp's average contribution to PHI's  
3 consolidated income over 2001, 2002, and 2003 is considerably greater than 50%.

4 Mr. Williams, too, relies on 2004 information to demonstrate that the  
5 Commission's order, based on a 2006 test year, will have "significantly negative"  
6 impacts on PacifiCorp. PPL/317/Williams/2.

7 PacifiCorp's semi-annual report for the year ended March 31, 2005  
8 showed its unadjusted Oregon return on equity to be 7.07%, ...  
9 PPL/317/Williams/3.

10 We repeat, the year in question is 2006, and the adjustment in question applies to  
11 a normalized 2006 test year, not to the unadjusted actual results from a 2004-2005 time  
12 period.

13 ***iii. Rounding 101: \$138.9 Becomes \$136***

14 When describing the aforementioned debt structure change as a known and  
15 measurable change, Mr. Martin states that "[t]his change decreased the level of interest  
16 that PHI will pay in calendar year 2006 to \$136 million." PPL/1303/Martin/5. He then  
17 mentions that the interest rate in question only applies to the first 90 days of 2006. In  
18 response to CUB data request 4 on reconsideration, Mr. Martin expands on this  
19 information. CUB Exhibit 503.

20 At the risk of splitting hairs, we note that PHI's quarterly payment amount  
21 (assuming the 4.97688% rate for the entire year) will be \$34,734,751.49. The  
22 \$136 million mentioned in Mr. Martin's testimony is equivalent to four quarterly  
23 payments of \$34 million. Four quarterly payments of \$34.734 million, however, is  
24 \$138.9 million, properly rounded to \$139 million. Rounding for simplicity makes sense,

1 but a \$2.8 million rounding error is a big hair. In any case, this highlights the danger of  
2 altering the test year after the Commission's Order.

#### 3 **IV. Conclusion**

4 This reconsideration is not an exploration of the Commission's authority to make  
5 a tax adjustment, as, clearly, it has such authority. The disagreement is whether SB 408  
6 can be used as a justification for the adjustment. The Attorney General's opinion makes  
7 clear that the Commission's incorporation of the principles of SB 408 was indeed  
8 appropriate.

9 This reconsideration is also not an issue of takings or the Hope standard, as the  
10 Commission's tax adjustment was designed to better reflect the utility's actual tax  
11 expense, as a member of its parent company's tax return. The Commission's tax  
12 adjustment better reflects PacifiCorp's actual tax costs, and does not impact the return  
13 ScottishPower and/or MidAmerican shareholders receive from PacifiCorp customers.

14 Even should the Commission decide that the application of SB 408 was not  
15 appropriate, CUB's benefit/burden argument still stands, and the tax adjustment to reflect  
16 the risks borne by ratepayers as part of a larger corporate conglomerate is not only  
17 appropriate, but essential to balance benefits and burdens.

## WITNESS QUALIFICATION STATEMENT

**NAME:** Lowrey R. Brown

**EMPLOYER:** Citizens' Utility Board of Oregon

**TITLE:** Utility Analyst

**ADDRESS:** 610 SW Broadway, Suite 308  
Portland, OR 97205

**EDUCATION:** Master of Science, Engineering  
Bachelor of Science, Civil Engineering  
Stanford University, Stanford California

**PREVIOUS  
EXPERIENCE:** Provided comments and participated in settlement discussions in OPUC dockets UE 161, UE 165, UE 173, UM 1014, UM 1147, UM 1158, UM 1169, UM 1206, and UM 1209. Presented testimony and engaged in settlement proceedings in UE 167 and UM 1121. Participated in technical subcommittees for the Governor's Advisory Group on Global Warming, and in the Regional Representatives Group for Grid West. Currently involved in the development of PacifiCorp's integrated resource plan.

Prior to this, worked as a consultant with KEMA-Xenergy in Portland from 2002 to 2003 on energy and energy efficiency issues. Between 1997 and 2001, freelanced in Colorado for The Valley Journal, Solar Energy International, Energy Systems Engineering, and Resource Engineering providing writing and technical assistance.



### **Standard & Poor's Raises NW Natural's Credit Rating to AA-**

PORTLAND, Ore.--(BUSINESS WIRE)--March 7, 2006--Standard & Poor's Ratings Services has raised the corporate credit rating of Northwest Natural Gas Co. (NYSE: NWN), dba NW Natural, from A+ to AA-. The commercial paper rating was also raised, from A-1 to A-1+.

Standard & Poor's said the ratings upgrade reflected "an excellent business profile that is among the strongest in the country, and a sustained strong financial performance, even after the completion of a substantial capital expenditure program."

### **About NW Natural**

NW Natural is headquartered in Portland, Ore. and serves more than 617,000 residential and business customers in Oregon and southwest Washington. It is the largest independent natural gas utility in the Pacific Northwest. With customer growth exceeding 3 percent for 19 consecutive years, it is one of the fastest-growing local distribution companies in the nation. The company has more than \$2.0 billion in total assets, including nearly 14 bcf of underground storage capacity in its service territory. The company benefits from rate mechanisms that help to protect revenues from warmer than normal weather and declining consumption. NW Natural has increased its dividends paid on common stock for 50 consecutive years.

CONTACT: Northwest Natural Gas Co.  
Steve Sechrist, 503-226-4211, Ext. 3517 (Media)  
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SOURCE: Northwest Natural Gas Co.

PacifiCorp / UE 170 R  
Attachment UE 170 R CUB 4b -1

**Chart of PacifiCorp Holdings, Inc. debt to Scottish Power Finance 2 Limited.**

All Amounts in US dollars

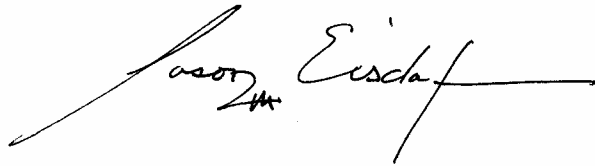
Payment Date	Payment Amount	Remaining Debt Associated w/ Payment	Interest Rate	Party Issuing Debt
3/31/2006	34,734,751.49	2,731,000,000.00	4.97688%	Scottish Power Finance 2 Limited
6/30/2006	34,734,751.49 <b>A</b>	2,731,000,000.00	4.97688% <b>A</b>	Scottish Power Finance 2 Limited
9/30/2006	34,734,751.49 <b>A</b>	2,731,000,000.00	4.97688% <b>A</b>	Scottish Power Finance 2 Limited
12/31/2006	34,734,751.49 <b>A</b>	2,731,000,000.00	4.97688% <b>A</b>	Scottish Power Finance 2 Limited

**Note A:** These amounts are based on the interest rate for the 1st quarter of 2006.  
Future quarterly rates will actually be based upon LIBOR plus 45 basis points  
in effect at the beginning of each quarter. This will affect the payment amount.

## CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of March, 2006, I served the foregoing Responsive Direct Testimony on Reconsideration of the Citizens' Utility Board of Oregon in docket UE 170 upon each party listed below, by email and U.S. mail, postage prepaid, and upon the Commission by email and by sending 6 copies by U.S. mail, postage prepaid, to the Commission's Salem offices.

Respectfully submitted,



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Jason Eisdorfer #92292  
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