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February 18, 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 Reply Comments**  
**Docket UM 1147**

Enclosed for filing are PacifiCorp's Reply Comments in the above-referenced docket. A hard copy 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 be "KAM" followed by a flourish and the word "for" written in a cursive script.

Katherine A. McDowell

KAM:knp

Enclosure

cc: Service List

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BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

UM 1147

In the Matter of PUBLIC UTILITY  
COMMISSION OF OREGON Staff  
Request to Open an Investigation Related to  
Deferred Accounting.

REPLY COMMENTS OF PACIFICORP

PacifiCorp respectfully submits the following Reply Comments.

**I. General Comments**

Deferred accounting in Oregon currently has many checks and balances: statutory filing prerequisites, a limitation on duration, prudency requirements, an earnings test, and a cap on amortization levels. After Order 04-108 in UM 1071, there is now one more check: a threshold discretionary review considering whether the type of event and magnitude of harm are sufficient to justify deferred accounting.

Notwithstanding these many safeguards, some of the Opening Comments assert that deferred accounting has gotten out of hand and needs to be further limited and discouraged through adoption of Staff’s materiality matrix, even stricter construction of the statutory filing requirements and caps on deferral amounts. PacifiCorp urges the Commission to reject this position as unnecessary and ill-advised.

First, the charge that deferred accounting has been abused, has become “almost routine,” and is asymmetrical against customers is without foundation. Exhibit 2 to PGE’s Opening Comments is a list of all utility deferred accounts since 1990. PacifiCorp has had only seven deferred accounts under ORS 757.259 during this period, and with the exception of PacifiCorp’s “Perfect Storm” energy crisis power cost deferral in UM 995, PacifiCorp’s deferrals have resulted in far more savings for customers than costs.

Thus, with respect to PacifiCorp, the source of this concern is clearly lingering unhappiness about the “Perfect Storm” deferred account. There is nothing in the record of

1 UM 995, however, that supports the charge that PacifiCorp took advantage of loopholes in  
2 Oregon deferred accounting, loopholes that now should be closed.

3 The following issues, many of which are on the issues list in this proceeding, were  
4 fully vetted in UM 995: whether the statutory requirements were met, *In re PacifiCorp*,  
5 Order 01-085 (Jan. 2001); whether amortization should be allowed subject to refund, *In re*  
6 *PacifiCorp*, Order 01-186 (Feb. 2001); whether the Commission should allow the deferral  
7 with a sharing/deadband mechanism, *In re PacifiCorp*, Order 01-420 (May 2001); whether  
8 the deferred costs were prudent, *In re PacifiCorp*, Order 02-469 (July 2002); whether the  
9 earnings test was satisfied, *In re PacifiCorp*, Order 02-469 (Aug. 2002); and ultimately,  
10 whether the Commission’s decision was supported by substantial evidence. *ICNU v. OPUC*,  
11 196 Or App 46, 100 P3d 1072 (2004). PacifiCorp’s Perfect Storm deferral demonstrates the  
12 robustness of the checks and balances in the current deferred accounting scheme, not the  
13 contrary. *See In re Portland General Electric Co.*, 04-108 at 8-9, UM 1071 (2004) (UM 995  
14 met Commission’s discretionary review standards).

15 Second, it is counterintuitive for the Commission to react to the increasing volatility  
16 and risk of the energy business by limiting deferred accounting. As Staff points out,  
17 “deferrals in and of themselves reduce the overall riskiness of a company.” Staff Opening  
18 Comments at 3. In the post-energy-crisis environment, where the need for capital investment  
19 is great, rating agency scrutiny of utility risk is high and investors are discouraged by the  
20 perception of higher utility risks and lower returns, the Commission should take the steps  
21 within its power to lower utility risk, not increase it.

## 22 **II. Comments on Specific Issues**

### 23 **Issue 1: Materiality Requirements/UM 1071**

24 In it Opening Comments, PacifiCorp raised many concerns about the adoption of  
25 Staff’s materiality matrix. PacifiCorp will not repeat these here other than to say that its  
26 concerns have been heightened by the review of the parties’ Opening Comments. The

1 Opening Comments suggest the prospect of significant disputes over the proper application  
2 of the materiality matrix, including the definition and application of statistical risk analysis  
3 principles. At this point, there appears to be no uniform definition of stochastic or scenario  
4 risk, substantial or material harm, or the “Commission approved” catch-all exception.

5 PacifiCorp recently filed a deferred accounting application, UM 1193, to address  
6 PacifiCorp’s excess power costs incurred as a result of many consecutive years of low hydro.  
7 See Joe Rojas-Burke, *Scanty Snowpack Boosts Chance of Long, Dry Summer*, The Oregonian  
8 (Feb. 4, 2005), at A15 (“We are probably headed for our sixth-straight year of below average  
9 water.”). PacifiCorp believes that, if the Commission’s discretionary review takes into  
10 account the full range of facts and circumstances, its Application satisfies the UM 1071 test  
11 focusing on the triggering event (the sixth year of low hydro) and the magnitude of the harm  
12 (several hundred million dollars over the last six years). PacifiCorp is concerned, however,  
13 that the materiality matrix could limit the Commission’s discretion and prevent a thoughtful  
14 and considered review of its Application.

15 The contraction of the Commission’s discretion through adoption of the materiality  
16 matrix is a result that, as NWIGU points out, may prove as problematic for customers as  
17 utilities:

18 “[D]eferred accounting, coupled with the earnings review  
19 process and Commission oversight has worked well and to the  
20 benefit of gas consumers. For example, the Commission  
21 currently has discretion to approve settlements in the non-rate  
22 case context—and customers have received significant refunds  
23 from property tax reductions, affiliate transactions and other  
24 events as a result of this Commission passing through deferrals  
25 to customers. The Commission’s discretion in this regard  
26 should not be diminished.” Opening Comments of NWIGU at  
27 2.

24 **Issue 2: Normal Risk Range**

25 CUB asserts that deferred accounting should be available only for events outside the  
26 normal range of variability. CUB Opening Comments at 9. CUB also asserts that all

1 approved deferred accounting applications should go through a parameter negotiation stage  
2 for the consideration of sharing and deadbands. *Id.* at 12. In this manner, CUB improperly  
3 layers the risk-range concept.

4 If a deferral is approved because it involves a risk the utility normally does not  
5 assume, it is unfair to apply sharing and deadbands to this deferral. These are typically  
6 justified as a means to capture the utility's normal risk range. If a deferral is outside the  
7 normal range of business variability by definition, risk-range deadbands and sharing should  
8 not apply.

9 **Issue 4: Interest Rates for Deferrals**

10 In its Opening Comments re: Issues List, Staff agreed that some factual findings  
11 might be required to determine the level of risk associated with the recovery in a deferred  
12 account. Staff Opening Comments re: Issues List at 5 (Oct. 7, 2004). In its Reply Comments  
13 regarding the issues list, PacifiCorp recommended against an evidentiary hearing on this  
14 issue on the basis that the risk of recovery of a particular item was not an appropriate  
15 consideration in setting the interest rate on deferred accounts. Reply Comments of  
16 PacifiCorp at 1-2 (Oct. 21, 2004).

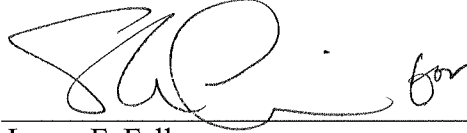
17 Based upon the Opening Comments of Staff—which justify a lower carrying charge  
18 on deferred accounts on the ground that they are low-risk—and the Comments of PGE that  
19 contest this proposition, PacifiCorp now believes that an evidentiary hearing is required to  
20 resolve this issue. PacifiCorp's decision is also informed by factual issues raised by Staff's  
21 position that a one-year Treasury Rate be applied to BPA-related deferrals.

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26 Signature page follows

1 DATED: February 18, 2005.

2 STOEL RIVES LLP

3  for

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6 Katherine A. McDowell

7 Attorneys for PacifiCorp

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## CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing document upon the parties of record in docket UM 1147 by email and first-class mail, addressed to said parties/attorneys' addresses as shown below.

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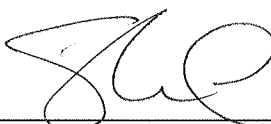
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