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July 2, 2007

VIA EMAIL and US MAIL

Public Utility Commission of Oregon
Attn: Filing Center
550 Capitol St. NE #215
Salem, OR 97308-2148

Re: DR-38

Dear Sir or Madam:

For filing in the above referenced docket, please find **OPENING BRIEF OF HCA MANAGEMENT COMPANY, LLC**, and **JOINT STIPULATION OF FACTS**. The originals will be sent via U.S. Mail to the Commission.

Comment [TIP:1]: To modify the name, select the name and hit Ctrl+Shift+F9. This will convert the field result to text and you can modify it as you wish. Then, if you have a 2nd page, you must go to the second page header, select it and hit Ctrl+Shift+F9 again. Modify the 2nd page header as you wish it to appear.

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Very truly yours,

Davis Wright Tremaine LLP

John A. Cameron

JAC:smp
Attachments

cc: Jason Eisdorfer (w/attach. via email)
Michelle Mishoe (w/attach. via email)
David Hatton (w/attach. via email)
Deborah Garcia (w/attach. via email)
Matthew Sutton (w/attach. via U.S. Mail)

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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

DR - 38

In the Matter of PACIFICORP, dba PACIFIC POWER & LIGHT COMPANY, and HCA MANAGEMENT COMPANY, LLC	**OPENING BRIEF OF HCA MANAGEMENT COMPANY, LLC**

Davis Wright Tremaine LLP

John A. Cameron, OSB 92371
Francie Cushman, OSB 03301
Of Attorneys for HCA Management Company, LLC

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I. INTRODUCTION

Pursuant to the schedule adopted by Administrative Law Judge in her prehearing conference report of May 11, 2007, HCA Management Company, LLC, submits its opening brief in this proceeding. HCA Management Company, LLC, is a California company that manages the Myra Lynne Mobile Home Park ("Myra Lynne") in Medford, Oregon.[1] Myra Lynne purchases electricity at retail from PacifiCorp, dba Pacific Power & Light Company ("Pacific Power") for its consumptive uses and for the residential usage of the tenants of its mobile home park. Myra Lynne is a "Large General Service" customer, purchasing under Pacific Power's Schedule 48 ("Schedule 48"), applicable to customers with demands of 1,000 KW and above.

Pacific Power supplies customers in Medford under a franchise agreement with the City of Medford. Pacific Power is subject to Commission jurisdiction under ORS Chapter 757.

Myra Lynne finds itself caught in a conflict. On the one hand, Pacific Power maintains that Myra Lynne is required to comply with requirements imposed on landlords by Schedule 48 and Section "O" of Pacific Power's Rule 2 by billing tenants for electricity at the Schedule 4 residential rate – without regard to potentially conflicting statutory provisions enacted by the Oregon Legislature in 2005 as part of HB 2247. On the other hand, Myra Lynne's tenants, seemingly confused about rates and ratemaking, have brought a lawsuit alleging that Myra Lynne's efforts to comply with Oregon statutes and Commission-approved rates and rules somehow constitutes "elder abuse" of every tenant aged 65 or older – both before and after passage of HB 2247.[2] A related question has also arisen about whether Myra Lynne's tenants remain eligible for the residential credit under Pacific Power's Schedule 98, if Myra Lynne bills its tenants in accordance with ORS 90.536 (a new landlord/tenant provision added by HB 2247), rather than at the Schedule 4 rate, as Pacific Power insists under Schedule 48 and its Rule 2.

[1] Throughout this brief, HCA Management Company, LLC, and Myra Lynne Mobile Home Park will be referenced collectively as "Myra Lynne."

[2] The elder-abuse statute includes provision for treble-damages and recovery of attorney fees.

Myra Lynne seeks only to fulfill its obligations both as a landlord and as a utility customer by complying with applicable statutes, rules, regulations and rate schedules – some of which appear to conflict. To resolve that conflict, Pacific Power has joined with Myra Lynne in petitioning the Commission in this proceeding for declaratory rulings on the rates and charges that properly apply to tenant bills, both before and after passage of HB 2247. Myra Lynne, Pacific Power and the Commission's Staff are each filing simultaneous opening and reply briefs, supported by a Joint Stipulation of Facts, which includes several exhibits. The Stipulation of Facts is being filed concurrent with the opening briefs.

Citizens Utility Board has intervened. Counsel for the tenants was invited repeatedly to join in the petition that initiated Docket No. DR 38 or to intervene, each time declining to do so. A copy of the tenants' circuit court complaint is Exhibit K to the Stipulation of Facts.

II. STATEMENT OF THE ISSUES

By stipulation of the parties, the three issues to be resolved by the Commission in this proceeding were stated in a letter of May 16, 2007, addressed to the Administrative Law Judge by David B. Hatton, Assistant Attorney General, Regulated Utility & Business Section. This appears to be a case of first impression before the Commission on each of the following issues:

1. Prior to the time HB 2247 became effective, was Myra Lynne Mobile Home Park, which was receiving service under Schedule 48 from Pacific Power, required as a condition of service to bill each of its sub-metered tenants for electricity at the Pacific Power, Schedule 4 rate, in accordance with Pacific Power's Schedule 48 Special Conditions and Rule 2, Section O?

2. In enacting HB 2247, the legislature added ORS 90.532 and ORS 90.536 to the Manufactured Dwelling and Floating Home section, ORS 90.505 to 90.840, of the Residential Landlord Tenant Act. *See* ORS Chapter 90.

    a. Under ORS 90.532 and ORS 90.536, may Myrna Lynne Mobile Home Park, as a Schedule 48 customer of Pacific Power, bill each of its sub-metered tenants for electricity at the Schedule 4 Residential Rate, as a condition of service under Schedule 48, and Rule 2, Section O; or

b. Under ORS 90.532 and ORS 90.536, must Myra Lynne Mobile Home Park, as a Schedule 48 customer of Pacific Power, also bill each of its sub-metered tenants at the same Schedule 48 rate it is billed by Pacific Power?

3. If Myra Lynne Mobile Home Park is required to bill each of its sub-metered tenants at the Schedule 48 nonresidential rate rather the Schedule 4 residential rate, are the Myra Lynne Mobile Home Park tenants still eligible for the residential credit generally available to residential consumers under Pacific Power's Schedule 98?[3]

Some or all of these issues may be addressed in a rulemaking that awaits decision in this case.

Myra Lynne addresses each issue in this pleading. We begin with the relevant facts, then present argument regarding the rates that properly apply to tenant bills -- both before and after passage of HB 2247. Finally, Myra Lynne proposes specific findings and conclusions regarding each issue presented for declaratory ruling. Myra Lynne has attempted to state each requested finding and conclusion clearly and comprehensively in the hope of resolving the issues and eliminating its tenants' confusion and concern.

III. STATEMENT OF FACTS

A. General Description Of Electricity Service to Tenants

Myra Lynne's tenants occupy detached, residential dwellings within the park for periods in excess of 30 days. No tenant runs any commercial business in the park. Stipulation No. 3.

Myra Lynne offers electricity, water and sewerage, trash removal and cable access to each tenant pursuant to a standardized rental agreement that, in the case of electricity, specifies landlord submetering as the method for determining charges for each tenant's electric usage. Exhibit B (Myra Lynne's standard form of rental agreement). Typical of residential-customer meters, tenant submeters record energy consumption (in kWh), but not demand (in kW). Myra Lynne uses these submeter readings as a billing determinant in calculating each tenant's KWh

[3] Myra Lynne appreciates that after the ruling in *Portland General Electric Co. v. Bonneville Power Administration*, Nos. 01-70005, et al. (May 3, 2007), BPA has ceased making payments (at least temporarily) to Pacific Power pursuant 16 U.S.C. §839c(c) with which Pacific Power funds the Schedule 98 credit. However, the issue here concerns each Myra Lynne tenant's continuing eligibility for that credit, not the amount thereof.

charges for electricity and in applying the residential credit under Pacific Power's Schedule 98. Any KW-related charges from Pacific Power are allocated among the tenants.

Because understanding electric rates require specialized expertise, Myra Lynne uses a third-party contractor to review the bills Myra Lynne receives for utility services and to calculate charges to tenants for these services. Prior to June 2006, Myra Lynne's contractor was Park Billing Co., Inc. Thereafter, Myra Lynne has used ManageAmerica Integrated Billing Services, LLC. Stipulation No. 18.

All of Myra Lynne's purchases of electricity have been made under Schedule 48. At all times relevant to this case, continuing to the present day, Schedule 48 has contained the following "Special Conditions" applicable to landlords such as Myra Lynne:

> **Special Conditions**
> The Consumer shall not resell electric service received from the Company under provisions of this Schedule to any person, except by written permission of the Company and where the Consumer meters and bills any of his tenants at the Company's regular tariff rate for the type of service which such tenant may actually receive.

The quoted reference to "the Company's regular tariff rate for the type of service which such tenant may actually receive" is not a reference to *commercial* service under Schedule 48. Instead, it refers to Pacific Power's Schedule 4, which applies to *residential* service. This is because the electrical usage of each Myra Lynne tenant fits the definition of "residential service" found in Section "P" of Pacific Power's Commission-approved Rule 2:

> Service furnished to Consumers for domestic purposes in single-family dwellings, including rooming houses where not more than four rooms are used as sleeping or living quarters by persons not members of Consumer's family, apartments and flats where each dwelling unit is separately metered and billed, but excluding dwellings where tenancy is typically less than 30 days in length such as hotels, motels, camps, lodges and clubs.

Thus, the Special Conditions of Schedule 48 require that the electricity Myra Lynne purchases under commercial Schedule 48 be billed to tenants according to Pacific Power's residential rate.

The language of the Schedule 48 Special Conditions is virtually identical to Section "O" of Pacific Power's Rule 2, which imposes the following requirement generally on customers:

> Resale of service shall be limited to Consumer's tenants using such service entirely within property described in the written agreement. Service resold to tenants shall be metered and billed to each tenant at Company's regular tariff rate schedule applicable to the type of service actually furnished the tenant.

Rule 2 is generally applicable to all service under all Pacific Power rate schedules, not just Schedule 48. Thus, even if Myra Lynne purchased electricity from Pacific Power under a rate other than Schedule 48, this language of Rule 2 would still require Myra Lynne to bill its tenants for sub-metered electricity at Pacific Power's residential rate. At least prior to the effective date of HB 2247 in 2006,[4] Schedule 4 was the only residential rate to which the requirement of Schedule 48 and Rule 2 could apply. Pacific Power's applicable rates and rules unambiguously required that Myra Lynne bill tenants at the Schedule 4 residential rate.

Another Pacific Power retail electric rate is implicated in this case. Because the electric usage of Myra Lynne's tenants fits the definition of "residential service" under Section "P" of Pacific Power's Rule 2, those tenants qualify for the credit to residential and small-farm customers under Pacific Power's Schedule 98. This credit relates to moneys paid to Pacific Power by BPA pursuant to 16 U.S.C. §839c(c). Under this federal statute, "[t]he cost benefits … which are attributable to any electric utility's residential load within a State shall be passed through directly to such utility's residential loads within such State … ." 16 U.S.C. §839c(c)(3).

B. Myra Lynne's Billing Practice Before HB 2247 Became Effective

Before HB 2247 became effective, Myra Lynne's utility billing contractor followed the Special Conditions of Schedule 48 and Section "O" of Pacific Power's Rule 2 by billing tenants at the Schedule 4 residential rate. A representative tenant bill, showing line-item detail, can be found as Exhibit F, page 1. Schedule 4 is based on a single, energy billing determinant (in

[4] This is significant to the discussion below at pp. 17-19 about ORS 90.536, enacted in HB 2247.

KWh). Myra Lynne did not add any other charges, costs or adders onto tenant electric bills. Stipulation No. 14.

Over the years, Myra Lynne and Pacific Power have each recognized that Myra Lynne's tenants receive "residential service" within the meaning of Rule P and, as such, meet the eligibility requirements for the credit payable to residential users under Schedule 98. Myra Lynne's utility billing contractors have always applied the Schedule 98 credit to each tenant's bill. Stipulation No. 21. This was true even during a time when Pacific Power inadvertently failed to apply the credit in bills to Myra Lynne for pass-through to tenants. Exhibit G.[5] Pacific Power confirmed the tenants' eligibility for the Schedule 98 credit in a letter to Myra Lynne that provided a credit of $97,936.77, correcting its failure to apply the credit in bills to Myra Lynne prior to March of 2005. Exhibit H.

C. Myra Lynne's Billing Practice After HB 2247 Became Effective

After HB 2247 became effective in 2006, Myra Lynne ceased billing tenants at the Schedule 4 residential rate. Instead, it began to follow ORS 90.536, newly added to Oregon's landlord/tenant law. Based on its reading of this new statute, it began to calculate tenant electric charges based on what Myra Lynne was charged by Pacific Power under the multi-component Schedule 48 commercial rate.

Under Schedule 48, Myra Lynne's monthly bills from Pacific Power include a "Basic Charge," a "Delivery Service Charge" and applicable demand charges, each of which appear as

[5] This can be readily seem from reviewing and comparing Exhibit F, pages 1 and 3 (explained in Stipulation No. 19). Page 1 is a representative 2005 bill to a Myra Lynne tenant from the time in which Pacific Power was not passing the Schedule 98 credit to Myra Lynne. On the "utility detail" portion of this bill, note the two line items reflecting the following credit:

500 KW-hrs	@-0.015870	7.94CR
748 KW-hrs	@-0.006010	4.50CR

The blocks and the unit amounts of credit correspond exactly to the credits shown on Exhibit F, page 3, which is a copy of Schedule 98 in effect at the time of the bill. Thus, tenants consistently received the Schedule 98 credit prior to enactment of HB 2247.

separate line items on every Pacific Power bill to Myra Lynne. Schedule 48 incorporates by reference the Commission-approved "effective rate adjustments" listed in Pacific Power's Schedule 90. As a Schedule 48 customer, Myra Lynne's monthly bills from Pacific Power include the following adjustments, which also appear as separate line items on each bill:

a. charges for on-peak and off-peak "basic service energy" calculated pursuant to Pacific Power's Schedule 200,

b. a "public purpose charge," applicable under Pacific Power's Schedule 290 to "all bills for electric service calculated under all tariffs and contracts,"

c. a "low income assistance" charge, applicable under Pacific Power's Schedule 91 to "all bills for electric service calculated under all tariffs and contracts," and

d. an "adjustment associated with the Pacific Northwest Electric Power Planning and Conservation Act, applicable to qualifying residential electric loads" under Pacific Power's Schedule 98, shown on bills as the "BPA Energy Discount."

Schedule 48 also incorporates by reference Pacific-Power's Commission-approved rules and regulations, one of which is Rule 16, the tax adjustment. Pursuant to Rule 16, Myra Lynne's monthly bills from Pacific Power include the "Medford City Franchise Fee," imposed on Pacific Power by the City of Medford, Oregon, and shown as a separate line item on utility bills.

Exhibit A is a copy of a representative bill from Pacific Power to Myra Lynne (billing date September 19, 2006), showing line-item details of the rates, charges and credits described in paragraph nos. 4-6 of the Joint Stipulation of Facts. Review of this representative bill shows that Myra Lynne's charges to tenants consist of a number of line-item amounts, each of which correspond to what Myra Lynne is charged by Pacific Power. Charges based on KWh billing determinants are made according to each tenant's submeter readings. Charges based on KW demand billing determinants are allocated among tenants because tenant submeters do not record in kW.

The foregoing completely describes Myra Lynne's electric bills to tenants – including each component of Schedule 48, the applicable adders under Schedule 90, the Medford franchise

tax and the Schedule 98 credit. Exhibit F, page 2, is a redacted bill sent by Myra Lynne to a typical tenant for the month of May 2007, showing the line-item breakdown of Pacific Power charges passed on to each tenant. Review of the representative tenant bill demonstrates that there are no other charges, fees or adders relating to electricity. In particular, it is important to note that Myra Lynne does not recover through electric charges to tenants any of the costs of electricity consumed by Myra Lynne for non-residential purposes associated with its business operations, e.g., office usage, electric signage, common-area lighting. Stipulation No. 19.

IV. ARGUMENT

A. Framing The Legal Conflict Between ORS Chapter 757 and ORS Chapter 90

1. Myra Lynne is obligated as utility customer under ORS Chapter 757 to comply with Pacific Power's rate schedules and rules.

Upon approval by the Commission, utility rates, rules and regulations have the force and effect of law. Pacific Power's Schedule 48, Schedule 4, Schedule 98 and Rule 2, as approved by the PUC, constitute its only lawful rates, rules and regulations for purposes of ORS 757.225:

> No public utility shall charge, demand, collect or receive a greater or less compensation for any service performed by it within the state, or for any service in connection therewith, than is specified in printed rate schedules as may at the time be in force or demand, collect, or receive any rate not specified in such schedule. The rates named therein are the lawful rates until they are changed as provided in ORS 757.210 to 757.220.

Uniform rates for comparable service is a cardinal principle of utility regulation. "A public utility may not charge a customer a rate or an amount for a service that is different from the rate or amount the public utility charges any other customer for a like and contemporaneous service under substantially similar circumstances." ORS 757.310(2). A public utility that makes or gives undue or unreasonable preference or advantage to any particular person or locality, or that subjects any particular person or locality to any undue or unreasonable prejudice or disadvantage is "guilty of unjust discrimination" under ORS 757.325. Violations of ORS 757.325 are subject to significant penalties under ORS 757.990(3).

This regulatory principle has reciprocal implications for the customers of Pacific Power. "No person shall knowingly solicit, accept or receive any rebate, concession or discrimination in respect to any service whereby any such service shall, by any device, be rendered free or at a lesser rate than that named in the published schedules and tariffs in force, or whereby any service or advantage is received other than authorized in this chapter." ORS 757. 330. Customers that fail to comply with Pacific Power's Rule 2 are at risk of losing their electric service under another Pacific Power rule, Rule 11, the first paragraph of which provides:

> Upon a Consumer's failure to pay, when due, all bills rendered for regulated services provided by the Company, or failure to comply with any of Company's rules and regulations, Company may, in addition to all other rights and remedies at law or in equity, cancel or terminate the contract under which service is being supplied or discontinue the furnishing of service, with or without cancellation or termination of such contract; provided Company will provide Consumer notification …

The upshot is that Myra Lynne cannot ignore Oregon utility laws. The Special Conditions of Schedule 48 and Rule 2 are enforceable against landlords to which they apply. It would be imprudent to ignore the risk of service cut-off because Pacific Power maintains that Myra Lynne should continue to bill tenants under Schedule 4 even after HB 2247 became law.

2. ORS Chapter 90 provisions that relate to tenant billing

a. Before HB 2247 became effective, Myra Lynne was unambiguously required to bill its tenants at the Schedule 4 residential rate.

Until the Legislature enacted HB 2247 (discussed in the next section of this brief), ORS Chapter 90 contained only one provision touching on the topic of landlord billing of tenants for utilities. This was ORS 90.510(8) (2003 ed.), enacted in 1997 and repealed by the Legislature during its 2005 session. While in effect, ORS 90.510(8) (2003 ed.) provided in relevant part:

> (a) If a written rental agreement so provides, a landlord may require a tenant to pay to the landlord a utility or service charge that has been billed by a utility or service provider to the landlord for utility or service provided directly to the tenant's dwelling unit or to a common area available to the tenant as part of the tenancy. A utility service or charge that shall be assessed to a tenant for a common area must be described in the written rental agreement

> separately and distinctly from such a charge for the tenant's dwelling unit. A landlord may not increase the utility or service charge to the tenant by adding any costs of the landlord, such as a handling or administrative charge, other than those costs billed to the landlord by the provider for utilities or services as provided by this subsection. [Emphasis supplied.]

Myra Lynne's billing practices were totally consistent with this provision while it remained in effect. The only relevant limitation[6] in ORS 90.510(8) (2003 ed.) is that Myra Lynne "may not increase the utility or service charge to the tenant by adding any costs of the landlord … ." As explained above, tenant bills during this time period were calculated on the basis of Schedule 4, as directed by Schedule 48 and Rule 2, from which the Schedule 98 credit was subtracted. Myra Lynne calculated bills exactly as directed by Pacific Power with no adders or other charges of any sort to recover "any costs of the landlord, such as a handling or administrative charge." Thus, Myra Lynne complied both with the applicable statute and with Schedule 48 and Rule 2.

Moreover, use of the phrase "a landlord may" appears to make ORS 90.510(8) (2003 ed.) elective with the landlord, not mandatory. Had there been any conflict between the statute and Schedule 48 and Rule 2, Myra Lynne would have been perfectly justified in electing not to follow this permissive statute as necessary to comply with Pacific Power's rate and rule.

Legislative history indicates that ORS 90.510(8) (2003 ed.) never applied to Myra Lynne. Instead, it applied only in situations in which the landlord did not install tenant submeters and based tenant billings instead on allocated portions of amounts billed by the utility to the landlord at a "mastermeter," i.e., utility revenue meter. This legislative history is Exhibit D to the Stipulation of Facts. *See* the discussion at p. 16 below about ORS 90.534, added to the statute during the 2005 legislative session.

Thus, regardless of whether ORS 90.510(8) (2003 ed.) applied during the time was in effect, Myra Lynne's billing practices complied both with ORS Chapter 90 and with the Special

[6] The "common area" reference is inapplicable. Myra Lynne does not include electrical usage associated with its common area in tenant electrical bills.

Conditions of Schedule 48 and Section "O" of Pacific Power's Rule 2. By billing tenants at the Schedule 4 residential rate, Myra Lynne fulfilled its legal obligations both as a landlord and as a utility customer of Pacific Power.

b. Enactment of HB 2247 injected ambiguity and internal conflict about utility service billing into ORS Chapter 90.

During its 2005 session, the Legislature took up HB 2247, which repealed ORS 90.510(8) (2003 ed.) and enacted in its place several new provisions added to ORS Chapter 90, including ORS 90.532, ORS 90.534 and ORS 90.536. These new provisions created the confusion that led to this proceeding. The new statutes became effective as of January 2, 2006.

ORS 90.532. Turning first to ORS 90.532, the first subsection of this provision lists the three acceptable methods a landlord may use in billing for utility services to tenants:

> 1) Subject to the policies of the utility or service provider, a landlord may provide for utilities or services to tenants by one or more of the following billing methods:
>
> (a) A relationship between the tenant and the utility or service provider in which:
>
> (A) The provider provides the utility or service directly to the tenant's space, including any utility or service line, and bills the tenant directly; and
>
> (B) The landlord does not act as a provider.
>
> (b) A relationship between the landlord, tenant and utility or service provider in which:
>
> (A) The provider provides the utility or service to the landlord;
>
> (B) The landlord provides the utility or service directly to the tenant's space or to a common area available to the tenant as part of the tenancy; and
>
> (C) The landlord includes the cost of the utility or service in the tenant's rent or bills the tenant for a utility or service charge separately from the rent in an amount determined by apportioning the provider's charge to the landlord as measured by a master meter.
>
> (c) A relationship between the landlord, tenant and utility or service provider in which:

> (A) The provider provides the utility or service to the landlord;
>
> (B) The landlord provides the utility or service directly to the tenant's space; and
>
> (C) The landlord uses a submeter to measure the utility or service actually provided to the space and bills the tenant for a utility or service charge for the amount provided. [Emphasis supplied.]

Observe from the underscored portion of the quote above that ORS 90.532(1)(a), ORS 90.532(1)(b) and ORS 90.532(1)(c) are each made expressly "[s]ubject to the policies of the utility or service provider." In legislative testimony of June 13, 2005, explaining Section 6 of HB 2247, which added ORS 90.532 to the statute, John VanLandingham of the Lane County Law and Advocacy Center explained this linkage before the Oregon House Committee on Judiciary, Subcommittee on Civil Law:

> One over-riding general principal [sic] is that the landlord must comply with the policies of the utility provider concerned with that utility service. For regulated utilities, that necessarily implicates state policies as well. Examples include utility rates and requirements for utility hookup procedures. [Emphasis supplied.]

Exhibit D, legislative testimony of Mr. VanLandingham, p. 6-7. In the context of this case, the language of ORS 90.532(1), as confirmed by its legislative history, creates an over-riding principle that landlords located within Pacific Power's service territory comply with Schedule 48 and Rule 2, Section "O," by billing tenants at the applicable residential rate -- no matter which of the three billing arrangements the landlord uses.

Of the three alternatives enumerated in ORS 90.532, the one that describes Myra Lynne's situation is ORS 90.532(1)(c),[7] which covers the situation in which tenants are billed for

[7] ORS 90.532(1)(a) has no relevance to Myra Lynne. It describes the situation in which Pacific Power or other utility sells directly to the tenant, i.e., the situation in which each tenant is served directly by the utility through a utility meter, not through a landlord submeter.

Neither is the second alternative covered by ORS 90.532(1)(b) relevant. It describes the situation in which the landlord does not use a submeter, but instead bases tenant bills on allocated portions of amounts billed by the utility to the landlord at a "mastermeter." ORS 90.532(1)(b) is cross-referenced to another new provision, ORS 90.534, which incorporates the mastermetering language of ORS 90.510(8) (2003 ed.) – now repealed. This is explained in Mr.

electricity through use of a landlord submeter pursuant to a written rental agreement. ORS 90.532(1)(c) is cross-referenced to new ORS 90.536.

ORS 90.536. If ORS 90.536 applies to Myra Lynne, it conflicts with the "overriding principle" of ORS 90.532(1)(c)(C), applied to customers of Pacific Power. ORS 90.536 states:

> **Charges for utilities or services measured by submeter.** (1) If a written rental agreement so provides, a landlord using the billing method described in ORS 90.532 (1)(c) may require a tenant to pay to the landlord a utility or service charge that has been billed by a utility or service provider to the landlord for utility or service provided directly to the tenant's space as measured by a submeter.
>
> (2) A utility or service charge to be assessed to a tenant under this section may consist of:
>
> (a) The cost of the utility or service provided to the tenant's space and under the tenant's control, as measured by the submeter, at a rate no greater than the average rate billed to the landlord by the utility or service provider, not including any base or service charge;
>
> (b) …; and
>
> (c) A pro rata portion of any base or service charge billed to the landlord by the utility or service provider, including but not limited to any tax passed through by the provider.
>
> (3) A utility or service charge to be assessed to a tenant under this section may not include:
>
> (a) Any additional charge, including any costs of the landlord, for the installation, maintenance or operation of the utility or service system or any profit for the landlord; or
>
> (b) Any costs to provide a utility or service to common areas of the facility. [Emphasis supplied.]

VanLandingham's legislative testimony of June 13, 2005, explaining Section 7 of HB 2247, which added ORS 90.534 to the statute:

> Section 7: Adds a new section, describing and regulating the master meter billing method for utility charges billed by a landlord to a tenant. The majority of this section continues and replaces ORS 90.510(8) regarding utility charges using the master meter billing system, either for service to a tenant's space or to common areas. Section 19 of this bill deletes ORS 90.510(8).

Exhibit D, legislative testimony of Mr. VanLandingham, p. 7.

If ORS 90.536 applies, it would require Myra Lynne to bill its tenants for electricity "at a rate no greater than the average rate billed to the landlord by the utility or service provider," i.e., the Schedule 48 rate at which Myra Lynne is billed by Pacific Power. This directive would contradict ORS 90.532, which requires that Myra Lynne determine tenant electric bills "subject to the policies of the utility or service provider," i.e., billing at the higher Schedule 4 rate as required by Schedule 48 and Pacific Power's Rule 2.

The language of ORS 90.536 is ambiguous because of the use of the word "may" in ORS 90.536(1). As with ORS 90.510(8) (2003 ed.), discussed above at pp. 9-10, the Legislature has a habit of using this permissive verb in describing landlord methods for billing tenants for utility services. If use of the word "may" means that this provision is elective with the landlord, and if the landlord elected not to follow that provision, then the landlord's obligation would flow unambiguously from ORS 90.532 alone. Under this interpretation of ORS 90.536(1) – advocated by Pacific Power in correspondence to Myra Lynne,[8] a landlord would be free to disregard ORS 90.536 and, instead, continue to comply with Schedule 48 and Rule 2 by billing tenants at the Schedule 4 residential rate. Pacific Power's statutory construction is a plausible way to remove the conflict and create harmony between ORS 90.532 and ORS 90.536.

However, Myra Lynne has been unwilling to accept Pacific Power's construction because of a difference between the wording of ORS 90.510(8) (2003 ed.) and the wording of ORS 90.536(3)(a). The former provision, if it even applied to Myra Lynne, would only have prevented a landlord from tacking onto tenant bills "any costs of the landlord," which Myra Lynne never did. In contrast, ORS 90.536(3)(a) states: "A utility or service charge to be assessed to a tenant under this section may not include: … any additional charge, including any costs of the landlord, for the installation, maintenance or operation of the utility or service system or any profit for the landlord" (emphasis supplied). If ORS 90.536 applies to Myra Lynne, the words "additional charge" and "profit for the landlord" raise questions about the

[8] Exhibit E to the Stipulation of Facts.

continued use of Schedule 4 in tenant bills. Neither term is defined in the statute. However, the mere fact that the Schedule 4 rate is higher than the Schedule 48 rate at which Myra Lynne itself is billed, suggests that billing tenants at the Schedule 4 rate might be construed as adding an "additional charge" or "profit for the landlord."

So, Myra Lynne decided to follow ORS 90.536. The result is that Myra Lynne is no longer billing tenants at the Schedule 4 residential rate and is not in compliance with Pacific Power's interpretation ORS 90.532.

None of the standard rules of statutory construction resolve the legal conflict between ORS 90.532 and ORS 90.536. The maxim that "the particular controls over the general" dies not apply because both ORS 90.532 and ORS 90.536 specifically address the situation in which a landlord submeter is used to determine tenant bills. The maxim about "repeal by implication," which is disfavored in any event,[9] does not apply because the two statutes were adopted concurrently, rather than in succession. It also seems implausible to suggest that HB 2247 implicitly repealed the Special Conditions of Schedule 48 or Section "O" of Rule 2 because ORS 90.532(1) explicitly makes tenant electrical service "[s]ubject to the policies of the utility or service provider."

c. ORS 90.536 provides Myra Lynne the right to recover all utility rates, charges and fees imposed on it by Pacific Power.

ORS 90.536 allows Myra Lynne to recover from tenants of all costs imposed by Pacific Power relating to Schedule 48, including a "Basic Charge," a "Delivery Service" charge, a "Reactive Power Charge," all "effective rate adjustments" listed in Pacific Power's Schedule 90 and a Rule 16 tax adjustment. *See* discussion above, at pp. 6-7, regarding Myra Lynne's billing practices since HB 2247 became effective.

Use of the phrase "average rate billed to the landlord" in ORS 90.536(2)(a) recognizes that a landlord may be billed under a multi-component rate such as Schedule 48, with some rate elements determined on the basis of KW readings on a utility revenue-meter and others

[9] *See State v. Langdon*, 330 Or. 72, 81, 999 P.2d 1127 (2000).

determined by KWh. Use of a landlord's "average rate" allows a landlord to allocate the demand-related Schedule 48 components determined on the basis of KW billing determinants among tenants whose submeters lack the capability to record KW.

During hearings on this provision, Mr. VanLandingham of the Lane County Law and Advocacy Center made it clear to the Legislature that utility charges includable in tenant bills under ORS 90.536 are both those determined by submeter reading and "a pro rata portion" of other utility charges to the landlord:

> Unlike the master meter method in section 7 [ORS 90.534], the submeter method is all new. … The charge may include the following: (a) The cost of the utility service provided to the tenant's space and under the tenant's control, as measured by the submeter; … (b) the cost of any sewer service …; and (c) a pro rata portion of any base charge billed by the provider to the landlord, including any taxes that the provider passes through.
>
> With regard to the cost of the service, as a result of PUC recommendations this section refers to the average rate billed to the landlord by the provider, since there may be a range of rates charged, based on the amount of the service consumed. In addition, the "no greater than" phrase reflects that utility provider policies might require a landlord to charge the tenant a rate that is lower than the rate the provider uses to bill the landlord – a residential rate instead of a commercial rate, for example. [Emphasis supplied.]

Exhibit D, legislative testimony of Mr. VanLandingham, p. 8.

All Myra Lynne wants to achieve in billing tenants for electricity is to recover its costs, as ORS 90.536 allows, without thereby violating ORS 90.532 and without being subjected to unfounded tenant allegations about elder abuse. To achieve that objective, Myra Lynne offers two alternative resolutions, both within the Commission's jurisdiction, in the next section of this brief. Either alternative would allow Myra Lynne to follow ORS 90.536 without violating ORS 90.532.

B. The Commission Should Relieve Myra Lynne And Pacific Power From The Adverse Consequences Of The Statutory Ambiguity Created By The Legislature With Either Of Two Rulings – Each Clearly Within The Commission's Jurisdiction.

1. The Commission should avoid rulings that might result in significant rate increases to tenants and inadvertently expose Myra Lynne to liability in the tenants' lawsuit.

Myra Lynne acknowledges that Pacific Power's construction of HB 2247 may avoid the statutory conflict and give effect to both provisions by reading ORS 90.532 as mandatory and ORS 90.536 as elective. Use of the "may" in ORS 90.536(1) seems to allow this conclusion, which would require Myra Lynne to continue billing tenants at the Schedule 4 residential rate. However, there are two materially adverse side-effects to this outcome.

First, the Schedule 4 rate is higher than Schedule 48 rate. If the Commission concludes that Myra Lynne should have been billing tenants at the higher rate since HB 2247 became effective, tenants would be exposed to significantly higher charges. Because the issue is one of rate-application rather than one of rate-making, there may be no regulatory law or principle against retroactivity to exclude recoupment of past "discounts" previously reflected in Myra Lynne's bills to tenants. This would be a harsh result. It is significant in this regard to note that this case does not involve higher charges by Pacific Power, only whether Myra Lynne should impose higher charges on its tenants.

Second, if the Commission were to adopt Pacific Power's construction of HB 2247, Myra Lynne might then face an allegation that it was thereby extracting a "profit" contrary to ORS 90.536(c)(3) equal to the difference between the Schedule 4 rate at which it was required to bill tenants and the lower Schedule 48 rate. This risk would hang over Myra Lynne until the tenants' lawsuit was resolved. If the judge ruled for tenants, Pacific Power's construction of HB 2247 could expose Myra Lynne to liability.

In short, the Commission has been asked by Myra Lynne and Pacific Power to resolve the unintended consequences of the Legislature's actions during its 2005 session. Myra Lynne

respectfully requests that the Commission not compound the Legislature's problem by creating new unintended consequences.

2. Alternative Resolution One: The Commission should construe the relevant requirement of Schedule 48 and Rule 2 to apply also to the new residential tariff rate created for specified tenants by the Legislature in ORS 90.536.

Before HB 2247 became effective, there was only one residential tariff rate that a landlord could apply to tenants in compliance with Pacific Power's Schedule 48 and Rule 2. Now, there are two residential rates to which this rate schedule and rule may apply.

The second residential tariff rate was specially created, not by this Commission, but by the Legislature in ORS 90.536(2) and ORS 90.536(3). As also specified by the Legislature, this new residential rate applies to a newly created subclass of residential service – to tenants whose electric bills are determined by submeter in accordance with ORS 90.532(1)(c).

The Commission is a creature of statute. The Legislature retains omnibus authority under the Constitution to legislate as its sees fit regarding rates and utility regulation. Myra Lynne is not aware of any constitutional limitation that would prohibit the Legislature from adopting a new utility tariff rate, rate methodology or rate subclass as part of ORS Chapter 90, rather than as part of ORS Chapter 757. That is precisely what the Legislature did when it enacted ORS 90.532 and ORS 90.536. 2005 OR. Laws, Ch. 619, §1. The result of this legislation is to create a different residential service rate for a new tenant subclass of residential service.

Legislative history of Section 8 of HB 2247, codified as ORS 90.536, indicates that the Commission assisted in the legislative process that created this new residential rate and subclass:

> With regard to the cost of the service, as a result of PUC recommendations this section refers to the average rate billed to the landlord by the provider, since there may be a range of rates charged, based on the amount of the service consumed.

Exhibit D, legislative testimony of Mr. VanLandingham, p. 8.

The Commission need not decide here whether it can regulate this specially legislated rate and customer subclass, established in ORS Chapter 90 rather than as part of ORS Chapter

757. It is only necessary in this case for the Commission to acknowledge the lawfulness of this rate and customer – especially given its role in helping the Legislature craft them.

The implications of this new residential rate and subclass for this case can be shown by returning to the identical language of Schedule 48 and Rule 2. Schedule 48 provides:

> **Special Conditions**
> The Consumer shall not resell electric service received from the Company under provisions of this Schedule to any person, except by written permission of the Company and where the Consumer meters and bills any of his tenants at the Company's regular tariff rate for the type of service which such tenant may actually receive. [Emphasis supplied.]

Myra Lynne asks the Commission to construe the underscored language above to include, in the case of a landlord/tenant arrangement covered by ORS 90.532 (1)(c), either the Schedule 4 rate or the rate determined by application of the methodology specified in ORS 90.536(2) and ORS 90.536(3). This construction is legally sound. It would avoid hardship to Myra Lynne's tenants. It would avoid any risk of liability that might result from a court's interpretation of the word "profit" in ORS 90.536(3) adversely to Myra Lynne. It would not adversely affect Pacific Power or any other Pacific Power customer. The Commission would be entitled to deference in this interpretation Schedule 48 and Rule 2.

3. Alternative Resolution Two: If the Commission is unwilling to construe the Schedule 48 and Rule 2 as requested above, it should waive their application to landlords in the situation faced by Myra Lynne.

If the Commission is unwilling to reconcile the conflict between ORS 90.536(2) and ORS 90.536(3) as proposed above, then it should waive the application of the Special Conditions Schedule 48 and Section "O," Rule 2 on Myra Lynne. Such waiver is clearly within the Commission's jurisdiction to grant.

Waiver would result in the most narrow of exceptions to Schedule 48 and Rule 2, In effect, Schedule 48 (and Rule 2 as well) would be construed as follows:

> **Special Conditions**
> The Consumer shall not resell electric service received from the Company under provisions of this Schedule to any person, except by written permission of the Company and where the Consumer meters and bills any of his tenants at the Company's regular tariff rate for the type of service which such tenant may actually receive, except as necessary to comply with ORS 90.536. [Underscored language added.]

The underscored language merely indicates the practical effect of the requested waiver. Myra Lynne is not requesting that the rate schedule or rule actually be rewritten as shown.

Myra Lynne maintains that this narrow waiver is well within the Commission's general powers under ORS 756.040, which provides in part:

> (1) In addition to the powers and duties now or hereafter transferred to or vested in the Public Utility Commission, the commission shall represent the customers of any public utility or telecommunications utility and the public generally in all controversies respecting rates, valuations, service and all matters of which the commission has jurisdiction. In respect thereof the commission shall make use of the jurisdiction and powers of the office to protect such customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates. …
>
> (2) The commission is vested with power and jurisdiction to supervise and regulate every public utility and telecommunications utility in this state, and to do all things necessary and convenient in the exercise of such power and jurisdiction. [Emphasis supplied.]

The situation presented by this case calls for the exercise of this broad authority in the narrow, focused way described above. Here, the Legislature has created a conflict between ORS 90.532 and ORS 90.536 and another, related conflict between ORS 90.536 and the requirements of Commission-approved Schedule 48 and Rule 2. Legislative history of HB 2247 indicates that the Legislature was informed that such conflicts might result, and that the Commission itself was involved in recommending statutory language that led to these potential legal conflicts. Waiver would avoid this legal conflict, which inadvertently fell through the cracks of the legislative process. Waiver would avoid the unfairness and demonstrated hardship to persons who played absolutely no role in creating the legal conflict.

If granted, this waiver would not impair the Commission's regulatory authority. The circumstances of waiver are very narrowly drawn to include only the situation presented in this case. Significantly, the waiver would not have any effect, either adverse or otherwise, on Pacific Power or any other Pacific Power customer. Myra Lynne would continue to be billed under Schedule 48 as a large commercial customer. Waiver would simply result in avoiding a very significant increase in the electric bills of Myra Lynne's tenants and the potential adverse consequences for Myra Lynne that turn on the construction of "profit" in ORS 90.536(3).

C. Nothing In HB 2247 Adversely Affects Tenant Eligibility For The Schedule 98 Residential Credit.

Myra Lynne's tenants have been, and continue to be, users of electricity for domestic, residential purposes within the park. Such usage fits the definition of "residential service" under Section "P" of Pacific Power's Rule 2. Prior to the effective date of HB 2247, Pacific Power acknowledged the eligibility of Myra Lynne's tenants for the Schedule 98 residential credit, and included – albeit belatedly – a credit on its bills to Myra Lynne for pass-through to those tenants. Exhibit H to the Joint Stipulation. As explained in Exhibit H, Pacific Power's credit of $97,936.77 simply reimbursed Myra Lynne regarding the period during which Myra Lynne had applied the Schedule 98 credit without a corresponding credit from Pacific Power. Exhibit C is Pacific Power's letter confirming Myra Lynne's understanding about the tenants' eligibility for the Schedule 98 credit; it did not signal any change in eligibility.[10]

Exhibit G to the Joint Stipulation of Facts is a document entitled "Customer Load Eligibility Guidelines for the Investor Owned Utilities' Residential Exchange Program Settlement Agreements." It was issued by BPA in June of 2002 for the guidance of Pacific Power and other utilities in determining which electric loads qualify for payments under the federal program. Two of BPA's guidelines specifically apply to Myra Lynne's tenants:

[10] As part of their elder-abuse lawsuit, the tenants have alleged that Myra Lynne should have passed this reimbursement on to them despite the fact that the tenants had already received the Schedule 98 credit from Myra Lynne during the time covered by Pacific Power's reimbursement.

> Multiple Residential Loads On One Meter
> Eligible – the number of loads associated with a meter is irrelevant to the determination of eligibility as long as the individual loads qualify for REP Settlement benefits.[11]
>
> ***
>
> Trailer Park/Mobile Home Park
> Eligible – if residents stay longer than 30 days, otherwise ineligible.[12]

These eligibility descriptions precisely fit Myra Lynne's tenants – both before and after HB 2247 became effective.

The only possible issue relating to a tenant's continuing eligibility for the Schedule 98 credit arises because of the possibility that ORS 90.536 may require that tenants be billed according to the Schedule 48 commercial rate at which Pacific Power bills Myra Lynne, rather than at the Schedule 4 residential rate. However, that issue has already been resolved in favor of eligibility in analogous decisions by both BPA and this Commission. Exhibit J to the Joint Stipulation of Facts is a copy of the Commission's recent Order No. 07-162 in *Idaho Power Company*, Docket No. UE 190 (April 27, 2007), plus the related Commission Staff report of April 30, 2007. Order No. 07-162 concerned the request of Idaho Power Company ("IPCo") to revise its version of Schedule 98 to make explicit eligibility reference to residents of nursing homes and assisted living facilities. The Commission granted IPCo's request. The Staff Report is particularly instructive:

> The Bonneville Power Administration (BPA) has determined that nursing homes, assisted living facilities, and similar facilities qualify for the Residential Exchange Program (REP) credit. BPA state that the demographics of our society show that an increasing number of people will be living in retirement centers and assisted living facilities. …
>
> … IPCo indicates that within its service territory, the REP credit eligible facilities include those taking electric service under Schedule 7 (Small General Service) and Schedule 9 (Large General Service). Therefore, IPCo is requesting that long-term care facilities taking service under Schedules 7 and 9 be added to applicability language in Schedule 98.

[11] Exhibit G, page 11 of 13. "Meter" refers to a utility revenue meter, not to a landlord submeter.
[12] Exhibit G, page 13 of 13.

The public information available from Docket No. UE 190 makes no mention of any IPCo requirement comparable to Pacific Power's Schedule 48 and Rule 2 requirement that tenants or occupants of nursing homes and assisted living facilities be billed for electricity at the applicable residential rate. Presumably, the monthly rent for occupancy includes recovery of the facilities electric charges under IPCo's Schedule 9 (Large General Service). If nursing home residents who pay for electricity determined according to IPCo's Schedule 9 (Large General Service) are eligible for the residential credit, then so must be Myra Lynne's tenants whether they are billed under Pacific Power's Schedule 4 residential rate or under its Schedule 48 (Large General Service). Clearly, HB 2247 had no unintended side-effect on the eligibility of Myra Lynne's tenants for the Schedule 98 credit.

V. MYRA LYNNE'S REQUESTS FOR SPECIFIC DECLARATORY RELIEF

A. Prior To The Effective Date of HB 2247, Myra Lynne Was Required, as a Pacific Power Customer, To Comply with The Special Conditions of Schedule 48 and Section "O' of Rule 2 By Billing Its Tenants At the Schedule 4 Residential Rate.

Regarding the first issue stipulated by the parties, the only statute of possible relevance in effect prior to the effective date of HB 2247 was ORS 90.510(8) (2003 ed.), which was repealed by HB 2247. To summarize the relevant points established above: legislative history indicates that this provision never applied to Myra Lynne (pp. 9-1); if it applied, use of the phrase "a landlord may" made this provision elective with the landlord, not mandatory (*Id.*); and if the provision applied, Myra Lynne was in compliance because it never "increase[d] the utility or service charge to the tenant by adding any costs of the landlord." *Id*. Myra Lynne asks the Commission to make the following findings and conclusions:

a. Myra Lynne is a Schedule 48 customer of Pacific Power.

b. Myra Lynne utilizes landlord-owned submeters to bill each tenant for electricity based on that tenant's consumption.

c. As a customer of Pacific Power, Myra Lynne was required to comply with the Special Conditions of Schedule 48 and with Section "O" of Pacific Power's Rule 2, each of which specify that Myra Lynne must bill its tenants "at Company's regular tariff rate schedule applicable to the type of service actually furnished the tenant."

d. Prior to the time when HB 2247 became effective, Pacific Power's only applicable rate for the type of service actually furnished each Myra Lynne tenant was the Schedule 4 residential rate.

e. If ORS 90.510(8) (2003 ed.) even applied to Myra Lynne during the period that provision was in effect, it required only that Myra Lynne "may not increase the utility or service charge to the tenant by adding any costs of the landlord."

f. By billing its tenants at the Schedule 4 residential rate in compliance with the Special Conditions of Schedule 48 and with Section "O" of Pacific Power's Rule 2, Myra Lynne did not "increase the utility or service charge to the tenant by adding any costs of the landlord."

B. <u>After The Effective Date of HB 2247, It Was Permissible For Myra Lynne To Bill Its Tenants Either At The Schedule 4 Residential Rate Or At The Rate Derived By Application Of ORS 90.536(2) and ORS 90.536(3).</u>

Regarding the second stipulated issue, the Legislature created a potential conflict between ORS 90.532(1) and ORS 90.536 in enacting HB 2247. It is within the Commission's authority to remove this conflict either through administrative construction of the Special Conditions of Schedule 48 and Section "O" of Rule 2 or by waiving application of those requirements. Myra Lynne asks the Commission to make the following findings and conclusions:

a. ORS 90.532(1) applies to Myra Lynne because Myra Lynne's use of submeters to bill each tenant for electricity based on that tenant's consumption fits the specification stated in ORS 90.532(1)(c).

b. Because Myra Lynne is covered by ORS 90.532(1), its provision of electricity to tenants and its billings for such electricity are explicitly made "[s]ubject to the policies of the utility or service provider," which, in the case of Pacific Power, include the identical requirement under the Special Conditions of Schedule 48 and Section "O" of Pacific Power's Rule 2 that Myra Lynne bill its tenants "at Company's regular tariff rate schedule applicable to the type of service actually furnished the tenant."

c. Prior to the enactment of ORS 90.532(1)(c) and ORS 90.536, Pacific Power's Schedule 4 residential rate was the "Company's regular tariff rate schedule applicable to the type of service actually furnished the tenant" for purposes of the Special Conditions of Schedule 48 and Section "O" of Pacific Power's Rule 2.

d. In enacting ORS 90.532(1)(c) and ORS 90.536, the Legislature established (i) a new subclass of residential user, comprised of tenants whose landlords use submeters to bill each tenant for electricity based on that tenant's consumption, and (ii) a new statutory rate for that subclass determined by application of ORS 90.536(2) and ORS 90.536(3).

e. The new rate established by application of ORS 90.536(2) and ORS 90.536(3) is a valid residential service rate for the new residential subclass established by ORS 90.532(1)(c).

f. After the enactment of ORS 90.532(1)(c) and ORS 90.536, the new statutory rate determined by application of ORS 90.536(2) and ORS 90.536(3) became one of the "Company's regular tariff rate schedule applicable to the type of service actually furnished the tenant" for purposes of the Special Conditions of Schedule 48 and Section "O" of Pacific Power's Rule 2.

g. The rate determined by application of ORS 90.536(2) and ORS 90.536(3) permits Myra Lynne to recover from tenants all charges and costs imposed on it by Pacific Power that relate to Schedule 48, including a Basic Charge," a "Delivery Service" charge, a "Reactive Power Charge," each of the "effective rate adjustments" listed in Pacific Power's Schedule 90, the Rule 16 tax adjustment relating to the Medford franchise fee, minus any Schedule 98 credit actually included in Pacific Power's bill to Myra Lynne. [13]

If the Commission declines to construe the "applicable rate" requirement of Schedule 48 and Section "O" of Rule 2 to include both the Schedule 4 residential rate and the rate determined by application of ORS 90.536(2) and ORS 90.536(3), Myra Lynne asks the Commission to waive their application to Myra Lynne for reasons stated above at pp.19-20. Waiver would avoid the hardship on tenants that would result if Myra Lynne were required to bill tenants at the higher Schedule 4 rate. [14] Although the data are unaudited, Exhibit M shows that tenant bills would increase significantly if the Commission agreed with Pacific Power that tenants should be billed under Schedule 4, rather than under Schedule 48 as Myra Lynne does now.

C. HB 2247 Did Nothing That Would Adversely Affect The Eligibility Of Myra Lynne's Tenants To Receive The Schedule 98 Residential Credit.

Regarding the second stipulated issue, HB 2247 had no effect on the eligibility of Myra Lynne's tenants for the Schedule 98 credit. These tenants were eligible for the credit before HB 2247 became effective and they remain eligible now. Myra Lynne asks the Commission to make the following findings and conclusions:

a. Myra Lynne has applied the Schedule 98 credit on its tenants' electric bills both before and after enactment of HB 2247.

b. The $97,936.77 in Schedule 98 credits applied to Myra Lynne's bill on March 1, 2005, reimbursed Myra Lynne for amounts credited by Myra Lynne to tenants

[13] *See* Exhibit F, p. 2. This conclusion would be helpful in explaining to tenants why their electric bills include each of the elements described above at pp. 6-7.

[14] Counsel for Myra Lynne contacted tenants' counsel about this possibility, but the tenants still did not intervene in this proceeding.

during a period when Pacific Power inadvertently failed to provide the Schedule 98 credit to Myra Lynne for pass-though to tenants. If this amount were paid to tenants, they would receive a double credit for the period in question.[15]

c. The electrical consumption of Myra Lynne's tenants meet the definition of "residential service" under Section "P" of Pacific Power's Rule 2.

d. BPA's "Customer Load Eligibility Guidelines for the Investor Owned Utilities' Residential Exchange Program Settlement Agreements" specifically recognize the eligibility of residents of mobile home parks for residential exchange benefits.

e. Both prior to, and after, the effective date of HB 2247, Myra Lynne's tenants have been eligible for Pacific Power's Schedule 98 residential credit. However, if the Commission determines that tenants are not eligible to receive the Schedule 98 credit, Myra Lynne has no obligation to apply that credit in bills to tenants.

It is Myra Lynne's understanding that the Commission Staff may advocate a different declaratory ruling concerning the eligibility of Myra Lynne's tenants for the Schedule 98 credit. If for any reason the Commission concludes that the tenants are not eligible for the Schedule 98 credit, Myra Lynne asks the Commission to implement such a decision on a prospective-only basis. Otherwise, a significant hardship could befall the tenants. Exhibit M shows that loss of the residential credit to tenants would be significant.

VI. CONCLUSION

Myra Lynne aspires simply to be a conduit between Pacific Power and its tenants. Prior to HB 2247, it followed Schedule 48 and Rule 2 by applying the Schedule 4 residential rate in tenant bills so that the same rate was paid by tenants as by other Pacific Power residential customers. Myra Lynne also provided tenants the Schedule 98 credit, even when Pacific Power inadvertently failed to apply the credit to Myra Lynne for pass-through to tenants. Since HB 2247, Myra Lynne has followed the conflicting directive of ORS 90.536, still giving the Schedule 98 credit to tenants. Pacific Power urges Myra Lynne to revert to Schedule 4 billing, while tenants allege elder-abuse. Myra Lynne, Pacific Power and the tenants need rate certainty.

[15] *See* n. 10 above.

WHEREFORE, Myra Lynne respectfully requests that the Commission issue the specific declarations requested above for the reasons stated in this pleading.

Respectfully submitted,

_____

John A. Cameron, OSB 92371
Francie Cushman, OSB 03301
DAVIS WRIGHT TREMAINE LLP

DATED this 2nd day of July, 2007.

Attorneys for HCA Management Co., LLC

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **OPENING BRIEF OF HCA MANAGEMENT COMPANY, LLC** on:

Jason Eisdorfer The Citizens' Utility Board of Oregon 610 SW Broadway, Suite 308 Portland, OR 97205 jason@OregonCUB.org	David Hatton Assistant Attorney General Department of Justice Regulated Utility & Business Section 1162 Court St. NE Salem, OR 97301-4096 david.hatton@state.or.us
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☒ by sending a .pdf copy thereof to each person listed above via email.

Dated this 2nd day of July, 2007.

DAVIS WRIGHT TREMAINE LLP

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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

DR - 38

In the Matter of PACIFICORP, dba PACIFIC POWER & LIGHT COMPANY, and HCA MANAGEMENT COMPANY, LLC	**OPENING BRIEF OF HCA MANAGEMENT COMPANY, LLC**

Davis Wright Tremaine LLP

John A. Cameron, OSB 92371
Francie Cushman, OSB 03301
Of Attorneys for HCA Management Company, LLC

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I. INTRODUCTION

Pursuant to the schedule adopted by Administrative Law Judge in her prehearing conference report of May 11, 2007, HCA Management Company, LLC, submits its opening brief in this proceeding. HCA Management Company, LLC, is a California company that manages the Myra Lynne Mobile Home Park ("Myra Lynne") in Medford, Oregon.[1] Myra Lynne purchases electricity at retail from PacifiCorp, dba Pacific Power & Light Company ("Pacific Power") for its consumptive uses and for the residential usage of the tenants of its mobile home park. Myra Lynne is a "Large General Service" customer, purchasing under Pacific Power's Schedule 48 ("Schedule 48"), applicable to customers with demands of 1,000 KW and above.

Pacific Power supplies customers in Medford under a franchise agreement with the City of Medford. Pacific Power is subject to Commission jurisdiction under ORS Chapter 757.

Myra Lynne finds itself caught in a conflict. On the one hand, Pacific Power maintains that Myra Lynne is required to comply with requirements imposed on landlords by Schedule 48 and Section "O" of Pacific Power's Rule 2 by billing tenants for electricity at the Schedule 4 residential rate – without regard to potentially conflicting statutory provisions enacted by the Oregon Legislature in 2005 as part of HB 2247. On the other hand, Myra Lynne's tenants, seemingly confused about rates and ratemaking, have brought a lawsuit alleging that Myra Lynne's efforts to comply with Oregon statutes and Commission-approved rates and rules somehow constitutes "elder abuse" of every tenant aged 65 or older – both before and after passage of HB 2247.[2] A related question has also arisen about whether Myra Lynne's tenants remain eligible for the residential credit under Pacific Power's Schedule 98, if Myra Lynne bills its tenants in accordance with ORS 90.536 (a new landlord/tenant provision added by HB 2247), rather than at the Schedule 4 rate, as Pacific Power insists under Schedule 48 and its Rule 2.

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[1] Throughout this brief, HCA Management Company, LLC, and Myra Lynne Mobile Home Park will be referenced collectively as "Myra Lynne."

[2] The elder-abuse statute includes provision for treble-damages and recovery of attorney fees.

Myra Lynne seeks only to fulfill its obligations both as a landlord and as a utility customer by complying with applicable statutes, rules, regulations and rate schedules – some of which appear to conflict. To resolve that conflict, Pacific Power has joined with Myra Lynne in petitioning the Commission in this proceeding for declaratory rulings on the rates and charges that properly apply to tenant bills, both before and after passage of HB 2247. Myra Lynne, Pacific Power and the Commission's Staff are each filing simultaneous opening and reply briefs, supported by a Joint Stipulation of Facts, which includes several exhibits. The Stipulation of Facts is being filed concurrent with the opening briefs.

Citizens Utility Board has intervened. Counsel for the tenants was invited repeatedly to join in the petition that initiated Docket No. DR 38 or to intervene, each time declining to do so. A copy of the tenants' circuit court complaint is Exhibit K to the Stipulation of Facts.

II. STATEMENT OF THE ISSUES

By stipulation of the parties, the three issues to be resolved by the Commission in this proceeding were stated in a letter of May 16, 2007, addressed to the Administrative Law Judge by David B. Hatton, Assistant Attorney General, Regulated Utility & Business Section. This appears to be a case of first impression before the Commission on each of the following issues:

1. Prior to the time HB 2247 became effective, was Myra Lynne Mobile Home Park, which was receiving service under Schedule 48 from Pacific Power, required as a condition of service to bill each of its sub-metered tenants for electricity at the Pacific Power, Schedule 4 rate, in accordance with Pacific Power's Schedule 48 Special Conditions and Rule 2, Section O?

2. In enacting HB 2247, the legislature added ORS 90.532 and ORS 90.536 to the Manufactured Dwelling and Floating Home section, ORS 90.505 to 90.840, of the Residential Landlord Tenant Act. *See* ORS Chapter 90.

    a. Under ORS 90.532 and ORS 90.536, may Myrna Lynne Mobile Home Park, as a Schedule 48 customer of Pacific Power, bill each of its sub-metered tenants for electricity at the Schedule 4 Residential Rate, as a condition of service under Schedule 48, and Rule 2, Section O; or

b. Under ORS 90.532 and ORS 90.536, must Myra Lynne Mobile Home Park, as a Schedule 48 customer of Pacific Power, also bill each of its sub-metered tenants at the same Schedule 48 rate it is billed by Pacific Power?

3. If Myra Lynne Mobile Home Park is required to bill each of its sub-metered tenants at the Schedule 48 nonresidential rate rather the Schedule 4 residential rate, are the Myra Lynne Mobile Home Park tenants still eligible for the residential credit generally available to residential consumers under Pacific Power's Schedule 98?[3]

Some or all of these issues may be addressed in a rulemaking that awaits decision in this case.

Myra Lynne addresses each issue in this pleading. We begin with the relevant facts, then present argument regarding the rates that properly apply to tenant bills -- both before and after passage of HB 2247. Finally, Myra Lynne proposes specific findings and conclusions regarding each issue presented for declaratory ruling. Myra Lynne has attempted to state each requested finding and conclusion clearly and comprehensively in the hope of resolving the issues and eliminating its tenants' confusion and concern.

III. STATEMENT OF FACTS

A. General Description Of Electricity Service to Tenants

Myra Lynne's tenants occupy detached, residential dwellings within the park for periods in excess of 30 days. No tenant runs any commercial business in the park. Stipulation No. 3.

Myra Lynne offers electricity, water and sewerage, trash removal and cable access to each tenant pursuant to a standardized rental agreement that, in the case of electricity, specifies landlord submetering as the method for determining charges for each tenant's electric usage. Exhibit B (Myra Lynne's standard form of rental agreement). Typical of residential-customer meters, tenant submeters record energy consumption (in kWh), but not demand (in kW). Myra Lynne uses these submeter readings as a billing determinant in calculating each tenant's KWh

[3] Myra Lynne appreciates that after the ruling in *Portland General Electric Co. v. Bonneville Power Administration*, Nos. 01-70005, et al. (May 3, 2007), BPA has ceased making payments (at least temporarily) to Pacific Power pursuant 16 U.S.C. §839c(c) with which Pacific Power funds the Schedule 98 credit. However, the issue here concerns each Myra Lynne tenant's continuing eligibility for that credit, not the amount thereof.

charges for electricity and in applying the residential credit under Pacific Power's Schedule 98. Any KW-related charges from Pacific Power are allocated among the tenants.

Because understanding electric rates require specialized expertise, Myra Lynne uses a third-party contractor to review the bills Myra Lynne receives for utility services and to calculate charges to tenants for these services. Prior to June 2006, Myra Lynne's contractor was Park Billing Co., Inc. Thereafter, Myra Lynne has used ManageAmerica Integrated Billing Services, LLC. Stipulation No. 18.

All of Myra Lynne's purchases of electricity have been made under Schedule 48. At all times relevant to this case, continuing to the present day, Schedule 48 has contained the following "Special Conditions" applicable to landlords such as Myra Lynne:

> **Special Conditions**
> The Consumer shall not resell electric service received from the Company under provisions of this Schedule to any person, except by written permission of the Company and where the Consumer meters and bills any of his tenants at the Company's regular tariff rate for the type of service which such tenant may actually receive.

The quoted reference to "the Company's regular tariff rate for the type of service which such tenant may actually receive" is not a reference to *commercial* service under Schedule 48. Instead, it refers to Pacific Power's Schedule 4, which applies to *residential* service. This is because the electrical usage of each Myra Lynne tenant fits the definition of "residential service" found in Section "P" of Pacific Power's Commission-approved Rule 2:

> Service furnished to Consumers for domestic purposes in single-family dwellings, including rooming houses where not more than four rooms are used as sleeping or living quarters by persons not members of Consumer's family, apartments and flats where each dwelling unit is separately metered and billed, but excluding dwellings where tenancy is typically less than 30 days in length such as hotels, motels, camps, lodges and clubs.

Thus, the Special Conditions of Schedule 48 require that the electricity Myra Lynne purchases under commercial Schedule 48 be billed to tenants according to Pacific Power's residential rate.

The language of the Schedule 48 Special Conditions is virtually identical to Section "O" of Pacific Power's Rule 2, which imposes the following requirement generally on customers:

> Resale of service shall be limited to Consumer's tenants using such service entirely within property described in the written agreement. Service resold to tenants shall be metered and billed to each tenant at Company's regular tariff rate schedule applicable to the type of service actually furnished the tenant.

Rule 2 is generally applicable to all service under all Pacific Power rate schedules, not just Schedule 48. Thus, even if Myra Lynne purchased electricity from Pacific Power under a rate other than Schedule 48, this language of Rule 2 would still require Myra Lynne to bill its tenants for sub-metered electricity at Pacific Power's residential rate. At least prior to the effective date of HB 2247 in 2006,[4] Schedule 4 was the only residential rate to which the requirement of Schedule 48 and Rule 2 could apply. Pacific Power's applicable rates and rules unambiguously required that Myra Lynne bill tenants at the Schedule 4 residential rate.

Another Pacific Power retail electric rate is implicated in this case. Because the electric usage of Myra Lynne's tenants fits the definition of "residential service" under Section "P" of Pacific Power's Rule 2, those tenants qualify for the credit to residential and small-farm customers under Pacific Power's Schedule 98. This credit relates to moneys paid to Pacific Power by BPA pursuant to 16 U.S.C. §839c(c). Under this federal statute, "[t]he cost benefits ... which are attributable to any electric utility's residential load within a State shall be passed through directly to such utility's residential loads within such State ... ." 16 U.S.C. §839c(c)(3).

B. Myra Lynne's Billing Practice Before HB 2247 Became Effective

Before HB 2247 became effective, Myra Lynne's utility billing contractor followed the Special Conditions of Schedule 48 and Section "O" of Pacific Power's Rule 2 by billing tenants at the Schedule 4 residential rate. A representative tenant bill, showing line-item detail, can be found as Exhibit F, page 1. Schedule 4 is based on a single, energy billing determinant (in

[4] This is significant to the discussion below at pp. 17-19 about ORS 90.536, enacted in HB 2247.

KWh). Myra Lynne did not add any other charges, costs or adders onto tenant electric bills. Stipulation No. 14.

Over the years, Myra Lynne and Pacific Power have each recognized that Myra Lynne's tenants receive "residential service" within the meaning of Rule P and, as such, meet the eligibility requirements for the credit payable to residential users under Schedule 98. Myra Lynne's utility billing contractors have always applied the Schedule 98 credit to each tenant's bill. Stipulation No. 21. This was true even during a time when Pacific Power inadvertently failed to apply the credit in bills to Myra Lynne for pass-through to tenants. Exhibit G.[5] Pacific Power confirmed the tenants' eligibility for the Schedule 98 credit in a letter to Myra Lynne that provided a credit of $97,936.77, correcting its failure to apply the credit in bills to Myra Lynne prior to March of 2005. Exhibit H.

C. Myra Lynne's Billing Practice After HB 2247 Became Effective

After HB 2247 became effective in 2006, Myra Lynne ceased billing tenants at the Schedule 4 residential rate. Instead, it began to follow ORS 90.536, newly added to Oregon's landlord/tenant law. Based on its reading of this new statute, it began to calculate tenant electric charges based on what Myra Lynne was charged by Pacific Power under the multi-component Schedule 48 commercial rate.

Under Schedule 48, Myra Lynne's monthly bills from Pacific Power include a "Basic Charge," a "Delivery Service Charge" and applicable demand charges, each of which appear as

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[5] This can be readily seem from reviewing and comparing Exhibit F, pages 1 and 3 (explained in Stipulation No. 19). Page 1 is a representative 2005 bill to a Myra Lynne tenant from the time in which Pacific Power was not passing the Schedule 98 credit to Myra Lynne. On the "utility detail" portion of this bill, note the two line items reflecting the following credit:

500 KW-hrs	@-0.015870	7.94CR
748 KW-hrs	@-0.006010	4.50CR

The blocks and the unit amounts of credit correspond exactly to the credits shown on Exhibit F, page 3, which is a copy of Schedule 98 in effect at the time of the bill. Thus, tenants consistently received the Schedule 98 credit prior to enactment of HB 2247.

separate line items on every Pacific Power bill to Myra Lynne. Schedule 48 incorporates by reference the Commission-approved "effective rate adjustments" listed in Pacific Power's Schedule 90. As a Schedule 48 customer, Myra Lynne's monthly bills from Pacific Power include the following adjustments, which also appear as separate line items on each bill:

a. charges for on-peak and off-peak "basic service energy" calculated pursuant to Pacific Power's Schedule 200,

b. a "public purpose charge," applicable under Pacific Power's Schedule 290 to "all bills for electric service calculated under all tariffs and contracts,"

c. a "low income assistance" charge, applicable under Pacific Power's Schedule 91 to "all bills for electric service calculated under all tariffs and contracts," and

d. an "adjustment associated with the Pacific Northwest Electric Power Planning and Conservation Act, applicable to qualifying residential electric loads" under Pacific Power's Schedule 98, shown on bills as the "BPA Energy Discount."

Schedule 48 also incorporates by reference Pacific-Power's Commission-approved rules and regulations, one of which is Rule 16, the tax adjustment. Pursuant to Rule 16, Myra Lynne's monthly bills from Pacific Power include the "Medford City Franchise Fee," imposed on Pacific Power by the City of Medford, Oregon, and shown as a separate line item on utility bills.

Exhibit A is a copy of a representative bill from Pacific Power to Myra Lynne (billing date September 19, 2006), showing line-item details of the rates, charges and credits described in paragraph nos. 4-6 of the Joint Stipulation of Facts. Review of this representative bill shows that Myra Lynne's charges to tenants consist of a number of line-item amounts, each of which correspond to what Myra Lynne is charged by Pacific Power. Charges based on KWh billing determinants are made according to each tenant's submeter readings. Charges based on KW demand billing determinants are allocated among tenants because tenant submeters do not record in kW.

The foregoing completely describes Myra Lynne's electric bills to tenants – including each component of Schedule 48, the applicable adders under Schedule 90, the Medford franchise

tax and the Schedule 98 credit. Exhibit F, page 2, is a redacted bill sent by Myra Lynne to a typical tenant for the month of May 2007, showing the line-item breakdown of Pacific Power charges passed on to each tenant. Review of the representative tenant bill demonstrates that there are no other charges, fees or adders relating to electricity. In particular, it is important to note that Myra Lynne does not recover through electric charges to tenants any of the costs of electricity consumed by Myra Lynne for non-residential purposes associated with its business operations, e.g., office usage, electric signage, common-area lighting. Stipulation No. 19.

IV. ARGUMENT

A. Framing The Legal Conflict Between ORS Chapter 757 and ORS Chapter 90

1. Myra Lynne is obligated as utility customer under ORS Chapter 757 to comply with Pacific Power's rate schedules and rules.

Upon approval by the Commission, utility rates, rules and regulations have the force and effect of law. Pacific Power's Schedule 48, Schedule 4, Schedule 98 and Rule 2, as approved by the PUC, constitute its only lawful rates, rules and regulations for purposes of ORS 757.225:

> No public utility shall charge, demand, collect or receive a greater or less compensation for any service performed by it within the state, or for any service in connection therewith, than is specified in printed rate schedules as may at the time be in force or demand, collect, or receive any rate not specified in such schedule. The rates named therein are the lawful rates until they are changed as provided in ORS 757.210 to 757.220.

Uniform rates for comparable service is a cardinal principle of utility regulation. "A public utility may not charge a customer a rate or an amount for a service that is different from the rate or amount the public utility charges any other customer for a like and contemporaneous service under substantially similar circumstances." ORS 757.310(2). A public utility that makes or gives undue or unreasonable preference or advantage to any particular person or locality, or that subjects any particular person or locality to any undue or unreasonable prejudice or disadvantage is "guilty of unjust discrimination" under ORS 757.325. Violations of ORS 757.325 are subject to significant penalties under ORS 757.990(3).

This regulatory principle has reciprocal implications for the customers of Pacific Power. "No person shall knowingly solicit, accept or receive any rebate, concession or discrimination in respect to any service whereby any such service shall, by any device, be rendered free or at a lesser rate than that named in the published schedules and tariffs in force, or whereby any service or advantage is received other than authorized in this chapter." ORS 757. 330. Customers that fail to comply with Pacific Power's Rule 2 are at risk of losing their electric service under another Pacific Power rule, Rule 11, the first paragraph of which provides:

> Upon a Consumer's failure to pay, when due, all bills rendered for regulated services provided by the Company, or failure to comply with any of Company's rules and regulations, Company may, in addition to all other rights and remedies at law or in equity, cancel or terminate the contract under which service is being supplied or discontinue the furnishing of service, with or without cancellation or termination of such contract; provided Company will provide Consumer notification ...

The upshot is that Myra Lynne cannot ignore Oregon utility laws. The Special Conditions of Schedule 48 and Rule 2 are enforceable against landlords to which they apply. It would be imprudent to ignore the risk of service cut-off because Pacific Power maintains that Myra Lynne should continue to bill tenants under Schedule 4 even after HB 2247 became law.

2. ORS Chapter 90 provisions that relate to tenant billing

a. Before HB 2247 became effective, Myra Lynne was unambiguously required to bill its tenants at the Schedule 4 residential rate.

Until the Legislature enacted HB 2247 (discussed in the next section of this brief), ORS Chapter 90 contained only one provision touching on the topic of landlord billing of tenants for utilities. This was ORS 90.510(8) (2003 ed.), enacted in 1997 and repealed by the Legislature during its 2005 session. While in effect, ORS 90.510(8) (2003 ed.) provided in relevant part:

> (a) If a written rental agreement so provides, a landlord may require a tenant to pay to the landlord a utility or service charge that has been billed by a utility or service provider to the landlord for utility or service provided directly to the tenant's dwelling unit or to a common area available to the tenant as part of the tenancy. A utility service or charge that shall be assessed to a tenant for a common area must be described in the written rental agreement

> separately and distinctly from such a charge for the tenant's dwelling unit. A landlord may not increase the utility or service charge to the tenant by adding any costs of the landlord, such as a handling or administrative charge, other than those costs billed to the landlord by the provider for utilities or services as provided by this subsection. [Emphasis supplied.]

Myra Lynne's billing practices were totally consistent with this provision while it remained in effect. The only relevant limitation[6] in ORS 90.510(8) (2003 ed.) is that Myra Lynne "may not increase the utility or service charge to the tenant by adding any costs of the landlord ... ." As explained above, tenant bills during this time period were calculated on the basis of Schedule 4, as directed by Schedule 48 and Rule 2, from which the Schedule 98 credit was subtracted. Myra Lynne calculated bills exactly as directed by Pacific Power with no adders or other charges of any sort to recover "any costs of the landlord, such as a handling or administrative charge." Thus, Myra Lynne complied both with the applicable statute and with Schedule 48 and Rule 2.

Moreover, use of the phrase "a landlord may" appears to make ORS 90.510(8) (2003 ed.) elective with the landlord, not mandatory. Had there been any conflict between the statute and Schedule 48 and Rule 2, Myra Lynne would have been perfectly justified in electing not to follow this permissive statute as necessary to comply with Pacific Power's rate and rule.

Legislative history indicates that ORS 90.510(8) (2003 ed.) never applied to Myra Lynne. Instead, it applied only in situations in which the landlord did not install tenant submeters and based tenant billings instead on allocated portions of amounts billed by the utility to the landlord at a "mastermeter," i.e., utility revenue meter. This legislative history is Exhibit D to the Stipulation of Facts. *See* the discussion at p. 16 below about ORS 90.534, added to the statute during the 2005 legislative session.

Thus, regardless of whether ORS 90.510(8) (2003 ed.) applied during the time was in effect, Myra Lynne's billing practices complied both with ORS Chapter 90 and with the Special

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[6] The "common area" reference is inapplicable. Myra Lynne does not include electrical usage associated with its common area in tenant electrical bills.

Conditions of Schedule 48 and Section "O" of Pacific Power's Rule 2. By billing tenants at the Schedule 4 residential rate, Myra Lynne fulfilled its legal obligations both as a landlord and as a utility customer of Pacific Power.

b. Enactment of HB 2247 injected ambiguity and internal conflict about utility service billing into ORS Chapter 90.

During its 2005 session, the Legislature took up HB 2247, which repealed ORS 90.510(8) (2003 ed.) and enacted in its place several new provisions added to ORS Chapter 90, including ORS 90.532, ORS 90.534 and ORS 90.536. These new provisions created the confusion that led to this proceeding. The new statutes became effective as of January 2, 2006.

ORS 90.532. Turning first to ORS 90.532, the first subsection of this provision lists the three acceptable methods a landlord may use in billing for utility services to tenants:

> 1) Subject to the policies of the utility or service provider, a landlord may provide for utilities or services to tenants by one or more of the following billing methods:
>
> (a) A relationship between the tenant and the utility or service provider in which:
>
> (A) The provider provides the utility or service directly to the tenant's space, including any utility or service line, and bills the tenant directly; and
>
> (B) The landlord does not act as a provider.
>
> (b) A relationship between the landlord, tenant and utility or service provider in which:
>
> (A) The provider provides the utility or service to the landlord;
>
> (B) The landlord provides the utility or service directly to the tenant's space or to a common area available to the tenant as part of the tenancy; and
>
> (C) The landlord includes the cost of the utility or service in the tenant's rent or bills the tenant for a utility or service charge separately from the rent in an amount determined by apportioning the provider's charge to the landlord as measured by a master meter.
>
> (c) A relationship between the landlord, tenant and utility or service provider in which:

> (A) The provider provides the utility or service to the landlord;
>
> (B) The landlord provides the utility or service directly to the tenant's space; and
>
> (C) The landlord uses a submeter to measure the utility or service actually provided to the space and bills the tenant for a utility or service charge for the amount provided. [Emphasis supplied.]

Observe from the underscored portion of the quote above that ORS 90.532(1)(a), ORS 90.532(1)(b) and ORS 90.532(1)(c) are each made expressly "[s]ubject to the policies of the utility or service provider." In legislative testimony of June 13, 2005, explaining Section 6 of HB 2247, which added ORS 90.532 to the statute, John VanLandingham of the Lane County Law and Advocacy Center explained this linkage before the Oregon House Committee on Judiciary, Subcommittee on Civil Law:

> One over-riding general principal [sic] is that the landlord must comply with the policies of the utility provider concerned with that utility service. For regulated utilities, that necessarily implicates state policies as well. Examples include utility rates and requirements for utility hookup procedures. [Emphasis supplied.]

Exhibit D, legislative testimony of Mr. VanLandingham, p. 6-7. In the context of this case, the language of ORS 90.532(1), as confirmed by its legislative history, creates an over-riding principle that landlords located within Pacific Power's service territory comply with Schedule 48 and Rule 2, Section "O," by billing tenants at the applicable residential rate -- no matter which of the three billing arrangements the landlord uses.

Of the three alternatives enumerated in ORS 90.532, the one that describes Myra Lynne's situation is ORS 90.532(1)(c),[7] which covers the situation in which tenants are billed for

[7] ORS 90.532(1)(a) has no relevance to Myra Lynne. It describes the situation in which Pacific Power or other utility sells directly to the tenant, i.e., the situation in which each tenant is served directly by the utility through a utility meter, not through a landlord submeter.

Neither is the second alternative covered by ORS 90.532(1)(b) relevant. It describes the situation in which the landlord does not use a submeter, but instead bases tenant bills on allocated portions of amounts billed by the utility to the landlord at a "mastermeter." ORS 90.532(1)(b) is cross-referenced to another new provision, ORS 90.534, which incorporates the mastermetering language of ORS 90.510(8) (2003 ed.) – now repealed. This is explained in Mr.

electricity through use of a landlord submeter pursuant to a written rental agreement. ORS 90.532(1)(c) is cross-referenced to new ORS 90.536.

ORS 90.536. If ORS 90.536 applies to Myra Lynne, it conflicts with the "overriding principle" of ORS 90.532(1)(c)(C), applied to customers of Pacific Power. ORS 90.536 states:

> **Charges for utilities or services measured by submeter.** (1) If a written rental agreement so provides, a landlord using the billing method described in ORS 90.532 (1)(c) may require a tenant to pay to the landlord a utility or service charge that has been billed by a utility or service provider to the landlord for utility or service provided directly to the tenant's space as measured by a submeter.
>
> (2) A utility or service charge to be assessed to a tenant under this section may consist of:
>
> (a) The cost of the utility or service provided to the tenant's space and under the tenant's control, as measured by the submeter, at a rate no greater than the average rate billed to the landlord by the utility or service provider, not including any base or service charge;
>
> (b) ...; and
>
> (c) A pro rata portion of any base or service charge billed to the landlord by the utility or service provider, including but not limited to any tax passed through by the provider.
>
> (3) A utility or service charge to be assessed to a tenant under this section may not include:
>
> (a) Any additional charge, including any costs of the landlord, for the installation, maintenance or operation of the utility or service system or any profit for the landlord; or
>
> (b) Any costs to provide a utility or service to common areas of the facility. [Emphasis supplied.]

VanLandingham's legislative testimony of June 13, 2005, explaining Section 7 of HB 2247, which added ORS 90.534 to the statute:

> Section 7: Adds a new section, describing and regulating the master meter billing method for utility charges billed by a landlord to a tenant. The majority of this section continues and replaces ORS 90.510(8) regarding utility charges using the master meter billing system, either for service to a tenant's space or to common areas. Section 19 of this bill deletes ORS 90.510(8).

Exhibit D, legislative testimony of Mr. VanLandingham, p. 7.

If ORS 90.536 applies, it would require Myra Lynne to bill its tenants for electricity "at a rate no greater than the average rate billed to the landlord by the utility or service provider," i.e., the Schedule 48 rate at which Myra Lynne is billed by Pacific Power. This directive would contradict ORS 90.532, which requires that Myra Lynne determine tenant electric bills "subject to the policies of the utility or service provider," i.e., billing at the higher Schedule 4 rate as required by Schedule 48 and Pacific Power's Rule 2.

The language of ORS 90.536 is ambiguous because of the use of the word "may" in ORS 90.536(1). As with ORS 90.510(8) (2003 ed.), discussed above at pp. 9-10, the Legislature has a habit of using this permissive verb in describing landlord methods for billing tenants for utility services. If use of the word "may" means that this provision is elective with the landlord, and if the landlord elected not to follow that provision, then the landlord's obligation would flow unambiguously from ORS 90.532 alone. Under this interpretation of ORS 90.536(1) – advocated by Pacific Power in correspondence to Myra Lynne,[8] a landlord would be free to disregard ORS 90.536 and, instead, continue to comply with Schedule 48 and Rule 2 by billing tenants at the Schedule 4 residential rate. Pacific Power's statutory construction is a plausible way to remove the conflict and create harmony between ORS 90.532 and ORS 90.536.

However, Myra Lynne has been unwilling to accept Pacific Power's construction because of a difference between the wording of ORS 90.510(8) (2003 ed.) and the wording of ORS 90.536(3)(a). The former provision, if it even applied to Myra Lynne, would only have prevented a landlord from tacking onto tenant bills "any costs of the landlord," which Myra Lynne never did. In contrast, ORS 90.536(3)(a) states: "A utility or service charge to be assessed to a tenant under this section may not include: ... any additional charge, including any costs of the landlord, for the installation, maintenance or operation of the utility or service system or any profit for the landlord" (emphasis supplied). If ORS 90.536 applies to Myra Lynne, the words "additional charge" and "profit for the landlord" raise questions about the

[8] Exhibit E to the Stipulation of Facts.

continued use of Schedule 4 in tenant bills. Neither term is defined in the statute. However, the mere fact that the Schedule 4 rate is higher than the Schedule 48 rate at which Myra Lynne itself is billed, suggests that billing tenants at the Schedule 4 rate might be construed as adding an "additional charge" or "profit for the landlord."

So, Myra Lynne decided to follow ORS 90.536. The result is that Myra Lynne is no longer billing tenants at the Schedule 4 residential rate and is not in compliance with Pacific Power's interpretation ORS 90.532.

None of the standard rules of statutory construction resolve the legal conflict between ORS 90.532 and ORS 90.536. The maxim that "the particular controls over the general" dies not apply because both ORS 90.532 and ORS 90.536 specifically address the situation in which a landlord submeter is used to determine tenant bills. The maxim about "repeal by implication," which is disfavored in any event,[9] does not apply because the two statutes were adopted concurrently, rather than in succession. It also seems implausible to suggest that HB 2247 implicitly repealed the Special Conditions of Schedule 48 or Section "O" of Rule 2 because ORS 90.532(1) explicitly makes tenant electrical service "[s]ubject to the policies of the utility or service provider."

c. ORS 90.536 provides Myra Lynne the right to recover all utility rates, charges and fees imposed on it by Pacific Power.

ORS 90.536 allows Myra Lynne to recover from tenants of all costs imposed by Pacific Power relating to Schedule 48, including a "Basic Charge," a "Delivery Service" charge, a "Reactive Power Charge," all "effective rate adjustments" listed in Pacific Power's Schedule 90 and a Rule 16 tax adjustment. *See* discussion above, at pp. 6-7, regarding Myra Lynne's billing practices since HB 2247 became effective.

Use of the phrase "average rate billed to the landlord" in ORS 90.536(2)(a) recognizes that a landlord may be billed under a multi-component rate such as Schedule 48, with some rate elements determined on the basis of KW readings on a utility revenue-meter and others

[9] *See State v. Langdon*, 330 Or. 72, 81, 999 P.2d 1127 (2000).

determined by KWh. Use of a landlord's "average rate" allows a landlord to allocate the demand-related Schedule 48 components determined on the basis of KW billing determinants among tenants whose submeters lack the capability to record KW.

During hearings on this provision, Mr. VanLandingham of the Lane County Law and Advocacy Center made it clear to the Legislature that utility charges includable in tenant bills under ORS 90.536 are both those determined by submeter reading and "a pro rata portion" of other utility charges to the landlord:

> Unlike the master meter method in section 7 [ORS 90.534], the submeter method is all new. ... The charge may include the following: (a) The cost of the utility service provided to the tenant's space and under the tenant's control, as measured by the submeter; ... (b) the cost of any sewer service ...; and (c) a pro rata portion of any base charge billed by the provider to the landlord, including any taxes that the provider passes through.
>
> With regard to the cost of the service, as a result of PUC recommendations this section refers to the average rate billed to the landlord by the provider, since there may be a range of rates charged, based on the amount of the service consumed. In addition, the "no greater than" phrase reflects that utility provider policies might require a landlord to charge the tenant a rate that is lower than the rate the provider uses to bill the landlord – a residential rate instead of a commercial rate, for example. [Emphasis supplied.]

Exhibit D, legislative testimony of Mr. VanLandingham, p. 8.

All Myra Lynne wants to achieve in billing tenants for electricity is to recover its costs, as ORS 90.536 allows, without thereby violating ORS 90.532 and without being subjected to unfounded tenant allegations about elder abuse. To achieve that objective, Myra Lynne offers two alternative resolutions, both within the Commission's jurisdiction, in the next section of this brief. Either alternative would allow Myra Lynne to follow ORS 90.536 without violating ORS 90.532.

B. The Commission Should Relieve Myra Lynne And Pacific Power From The Adverse Consequences Of The Statutory Ambiguity Created By The Legislature With Either Of Two Rulings – Each Clearly Within The Commission's Jurisdiction.

1. The Commission should avoid rulings that might result in significant rate increases to tenants and inadvertently expose Myra Lynne to liability in the tenants' lawsuit.

Myra Lynne acknowledges that Pacific Power's construction of HB 2247 may avoid the statutory conflict and give effect to both provisions by reading ORS 90.532 as mandatory and ORS 90.536 as elective. Use of the "may" in ORS 90.536(1) seems to allow this conclusion, which would require Myra Lynne to continue billing tenants at the Schedule 4 residential rate. However, there are two materially adverse side-effects to this outcome.

First, the Schedule 4 rate is higher than Schedule 48 rate. If the Commission concludes that Myra Lynne should have been billing tenants at the higher rate since HB 2247 became effective, tenants would be exposed to significantly higher charges. Because the issue is one of rate-application rather than one of rate-making, there may be no regulatory law or principle against retroactivity to exclude recoupment of past "discounts" previously reflected in Myra Lynne's bills to tenants. This would be a harsh result. It is significant in this regard to note that this case does not involve higher charges by Pacific Power, only whether Myra Lynne should impose higher charges on its tenants.

Second, if the Commission were to adopt Pacific Power's construction of HB 2247, Myra Lynne might then face an allegation that it was thereby extracting a "profit" contrary to ORS 90.536(c)(3) equal to the difference between the Schedule 4 rate at which it was required to bill tenants and the lower Schedule 48 rate. This risk would hang over Myra Lynne until the tenants' lawsuit was resolved. If the judge ruled for tenants, Pacific Power's construction of HB 2247 could expose Myra Lynne to liability.

In short, the Commission has been asked by Myra Lynne and Pacific Power to resolve the unintended consequences of the Legislature's actions during its 2005 session. Myra Lynne

respectfully requests that the Commission not compound the Legislature's problem by creating new unintended consequences.

2. Alternative Resolution One: The Commission should construe the relevant requirement of Schedule 48 and Rule 2 to apply also to the new residential tariff rate created for specified tenants by the Legislature in ORS 90.536.

Before HB 2247 became effective, there was only one residential tariff rate that a landlord could apply to tenants in compliance with Pacific Power's Schedule 48 and Rule 2. Now, there are two residential rates to which this rate schedule and rule may apply.

The second residential tariff rate was specially created, not by this Commission, but by the Legislature in ORS 90.536(2) and ORS 90.536(3). As also specified by the Legislature, this new residential rate applies to a newly created subclass of residential service – to tenants whose electric bills are determined by submeter in accordance with ORS 90.532(1)(c).

The Commission is a creature of statute. The Legislature retains omnibus authority under the Constitution to legislate as its sees fit regarding rates and utility regulation. Myra Lynne is not aware of any constitutional limitation that would prohibit the Legislature from adopting a new utility tariff rate, rate methodology or rate subclass as part of ORS Chapter 90, rather than as part of ORS Chapter 757. That is precisely what the Legislature did when it enacted ORS 90.532 and ORS 90.536. 2005 OR. Laws, Ch. 619, §1. The result of this legislation is to create a different residential service rate for a new tenant subclass of residential service.

Legislative history of Section 8 of HB 2247, codified as ORS 90.536, indicates that the Commission assisted in the legislative process that created this new residential rate and subclass:

> With regard to the cost of the service, as a result of PUC recommendations this section refers to the average rate billed to the landlord by the provider, since there may be a range of rates charged, based on the amount of the service consumed.

Exhibit D, legislative testimony of Mr. VanLandingham, p. 8.

The Commission need not decide here whether it can regulate this specially legislated rate and customer subclass, established in ORS Chapter 90 rather than as part of ORS Chapter

757. It is only necessary in this case for the Commission to acknowledge the lawfulness of this rate and customer – especially given its role in helping the Legislature craft them.

The implications of this new residential rate and subclass for this case can be shown by returning to the identical language of Schedule 48 and Rule 2. Schedule 48 provides:

> **Special Conditions**
> The Consumer shall not resell electric service received from the Company under provisions of this Schedule to any person, except by written permission of the Company and where the Consumer meters and bills any of his tenants at the Company's regular tariff rate for the type of service which such tenant may actually receive. [Emphasis supplied.]

Myra Lynne asks the Commission to construe the underscored language above to include, in the case of a landlord/tenant arrangement covered by ORS 90.532 (1)(c), either the Schedule 4 rate or the rate determined by application of the methodology specified in ORS 90.536(2) and ORS 90.536(3). This construction is legally sound. It would avoid hardship to Myra Lynne's tenants. It would avoid any risk of liability that might result from a court's interpretation of the word "profit" in ORS 90.536(3) adversely to Myra Lynne. It would not adversely affect Pacific Power or any other Pacific Power customer. The Commission would be entitled to deference in this interpretation Schedule 48 and Rule 2.

3. Alternative Resolution Two: If the Commission is unwilling to construe the Schedule 48 and Rule 2 as requested above, it should waive their application to landlords in the situation faced by Myra Lynne.

If the Commission is unwilling to reconcile the conflict between ORS 90.536(2) and ORS 90.536(3) as proposed above, then it should waive the application of the Special Conditions Schedule 48 and Section "O," Rule 2 on Myra Lynne. Such waiver is clearly within the Commission's jurisdiction to grant.

Waiver would result in the most narrow of exceptions to Schedule 48 and Rule 2, In effect, Schedule 48 (and Rule 2 as well) would be construed as follows:

> **Special Conditions**
> The Consumer shall not resell electric service received from the Company under provisions of this Schedule to any person, except by written permission of the Company and where the Consumer meters and bills any of his tenants at the Company's regular tariff rate for the type of service which such tenant may actually receive, except as necessary to comply with ORS 90.536. [Underscored language added.]

The underscored language merely indicates the practical effect of the requested waiver. Myra Lynne is not requesting that the rate schedule or rule actually be rewritten as shown.

Myra Lynne maintains that this narrow waiver is well within the Commission's general powers under ORS 756.040, which provides in part:

> (1) In addition to the powers and duties now or hereafter transferred to or vested in the Public Utility Commission, the commission shall represent the customers of any public utility or telecommunications utility and the public generally in all controversies respecting rates, valuations, service and all matters of which the commission has jurisdiction. In respect thereof the commission shall make use of the jurisdiction and powers of the office to protect such customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates. ...
>
> (2) The commission is vested with power and jurisdiction to supervise and regulate every public utility and telecommunications utility in this state, and to do all things necessary and convenient in the exercise of such power and jurisdiction. [Emphasis supplied.]

The situation presented by this case calls for the exercise of this broad authority in the narrow, focused way described above. Here, the Legislature has created a conflict between ORS 90.532 and ORS 90.536 and another, related conflict between ORS 90.536 and the requirements of Commission-approved Schedule 48 and Rule 2. Legislative history of HB 2247 indicates that the Legislature was informed that such conflicts might result, and that the Commission itself was involved in recommending statutory language that led to these potential legal conflicts. Waiver would avoid this legal conflict, which inadvertently fell through the cracks of the legislative process. Waiver would avoid the unfairness and demonstrated hardship to persons who played absolutely no role in creating the legal conflict.

If granted, this waiver would not impair the Commission's regulatory authority. The circumstances of waiver are very narrowly drawn to include only the situation presented in this case. Significantly, the waiver would not have any effect, either adverse or otherwise, on Pacific Power or any other Pacific Power customer. Myra Lynne would continue to be billed under Schedule 48 as a large commercial customer. Waiver would simply result in avoiding a very significant increase in the electric bills of Myra Lynne's tenants and the potential adverse consequences for Myra Lynne that turn on the construction of "profit" in ORS 90.536(3).

C. Nothing In HB 2247 Adversely Affects Tenant Eligibility For The Schedule 98 Residential Credit.

Myra Lynne's tenants have been, and continue to be, users of electricity for domestic, residential purposes within the park. Such usage fits the definition of "residential service" under Section "P" of Pacific Power's Rule 2. Prior to the effective date of HB 2247, Pacific Power acknowledged the eligibility of Myra Lynne's tenants for the Schedule 98 residential credit, and included – albeit belatedly – a credit on its bills to Myra Lynne for pass-through to those tenants. Exhibit H to the Joint Stipulation. As explained in Exhibit H, Pacific Power's credit of $97,936.77 simply reimbursed Myra Lynne regarding the period during which Myra Lynne had applied the Schedule 98 credit without a corresponding credit from Pacific Power. Exhibit C is Pacific Power's letter confirming Myra Lynne's understanding about the tenants' eligibility for the Schedule 98 credit; it did not signal any change in eligibility.[10]

Exhibit G to the Joint Stipulation of Facts is a document entitled "Customer Load Eligibility Guidelines for the Investor Owned Utilities' Residential Exchange Program Settlement Agreements." It was issued by BPA in June of 2002 for the guidance of Pacific Power and other utilities in determining which electric loads qualify for payments under the federal program. Two of BPA's guidelines specifically apply to Myra Lynne's tenants:

[10] As part of their elder-abuse lawsuit, the tenants have alleged that Myra Lynne should have passed this reimbursement on to them despite the fact that the tenants had already received the Schedule 98 credit from Myra Lynne during the time covered by Pacific Power's reimbursement.

> Multiple Residential Loads On One Meter
> Eligible – the number of loads associated with a meter is irrelevant to the determination of eligibility as long as the individual loads qualify for REP Settlement benefits.[11]
>
> ***
>
> Trailer Park/Mobile Home Park
> Eligible – if residents stay longer than 30 days, otherwise ineligible.[12]

These eligibility descriptions precisely fit Myra Lynne's tenants – both before and after HB 2247 became effective.

The only possible issue relating to a tenant's continuing eligibility for the Schedule 98 credit arises because of the possibility that ORS 90.536 may require that tenants be billed according to the Schedule 48 commercial rate at which Pacific Power bills Myra Lynne, rather than at the Schedule 4 residential rate. However, that issue has already been resolved in favor of eligibility in analogous decisions by both BPA and this Commission. Exhibit J to the Joint Stipulation of Facts is a copy of the Commission's recent Order No. 07-162 in *Idaho Power Company*, Docket No. UE 190 (April 27, 2007), plus the related Commission Staff report of April 30, 2007. Order No. 07-162 concerned the request of Idaho Power Company ("IPCo") to revise its version of Schedule 98 to make explicit eligibility reference to residents of nursing homes and assisted living facilities. The Commission granted IPCo's request. The Staff Report is particularly instructive:

> The Bonneville Power Administration (BPA) has determined that nursing homes, assisted living facilities, and similar facilities qualify for the Residential Exchange Program (REP) credit. BPA state that the demographics of our society show that an increasing number of people will be living in retirement centers and assisted living facilities. ...
>
> ... IPCo indicates that within its service territory, the REP credit eligible facilities include those taking electric service under Schedule 7 (Small General Service) and Schedule 9 (Large General Service). Therefore, IPCo is requesting that long-term care facilities taking service under Schedules 7 and 9 be added to applicability language in Schedule 98.

[11] Exhibit G, page 11 of 13. "Meter" refers to a utility revenue meter, not to a landlord submeter.
[12] Exhibit G, page 13 of 13.

The public information available from Docket No. UE 190 makes no mention of any IPCo requirement comparable to Pacific Power's Schedule 48 and Rule 2 requirement that tenants or occupants of nursing homes and assisted living facilities be billed for electricity at the applicable residential rate. Presumably, the monthly rent for occupancy includes recovery of the facilities electric charges under IPCo's Schedule 9 (Large General Service). If nursing home residents who pay for electricity determined according to IPCo's Schedule 9 (Large General Service) are eligible for the residential credit, then so must be Myra Lynne's tenants whether they are billed under Pacific Power's Schedule 4 residential rate or under its Schedule 48 (Large General Service). Clearly, HB 2247 had no unintended side-effect on the eligibility of Myra Lynne's tenants for the Schedule 98 credit.

V. MYRA LYNNE'S REQUESTS FOR SPECIFIC DECLARATORY RELIEF

A. Prior To The Effective Date of HB 2247, Myra Lynne Was Required, as a Pacific Power Customer, To Comply with The Special Conditions of Schedule 48 and Section "O' of Rule 2 By Billing Its Tenants At the Schedule 4 Residential Rate.

Regarding the first issue stipulated by the parties, the only statute of possible relevance in effect prior to the effective date of HB 2247 was ORS 90.510(8) (2003 ed.), which was repealed by HB 2247. To summarize the relevant points established above: legislative history indicates that this provision never applied to Myra Lynne (pp. 9-1); if it applied, use of the phrase "a landlord may" made this provision elective with the landlord, not mandatory (*Id.*); and if the provision applied, Myra Lynne was in compliance because it never "increase[d] the utility or service charge to the tenant by adding any costs of the landlord." *Id.* Myra Lynne asks the Commission to make the following findings and conclusions:

a. Myra Lynne is a Schedule 48 customer of Pacific Power.

b. Myra Lynne utilizes landlord-owned submeters to bill each tenant for electricity based on that tenant's consumption.

c. As a customer of Pacific Power, Myra Lynne was required to comply with the Special Conditions of Schedule 48 and with Section "O" of Pacific Power's Rule 2, each of which specify that Myra Lynne must bill its tenants "at Company's regular tariff rate schedule applicable to the type of service actually furnished the tenant."

d. Prior to the time when HB 2247 became effective, Pacific Power's only applicable rate for the type of service actually furnished each Myra Lynne tenant was the Schedule 4 residential rate.

e. If ORS 90.510(8) (2003 ed.) even applied to Myra Lynne during the period that provision was in effect, it required only that Myra Lynne "may not increase the utility or service charge to the tenant by adding any costs of the landlord."

f. By billing its tenants at the Schedule 4 residential rate in compliance with the Special Conditions of Schedule 48 and with Section "O" of Pacific Power's Rule 2, Myra Lynne did not "increase the utility or service charge to the tenant by adding any costs of the landlord."

B. <u>After The Effective Date of HB 2247, It Was Permissible For Myra Lynne To Bill Its Tenants Either At The Schedule 4 Residential Rate Or At The Rate Derived By Application Of ORS 90.536(2) and ORS 90.536(3).</u>

Regarding the second stipulated issue, the Legislature created a potential conflict between ORS 90.532(1) and ORS 90.536 in enacting HB 2247. It is within the Commission's authority to remove this conflict either through administrative construction of the Special Conditions of Schedule 48 and Section "O" of Rule 2 or by waiving application of those requirements. Myra Lynne asks the Commission to make the following findings and conclusions:

a. ORS 90.532(1) applies to Myra Lynne because Myra Lynne's use of submeters to bill each tenant for electricity based on that tenant's consumption fits the specification stated in ORS 90.532(1)(c).

b. Because Myra Lynne is covered by ORS 90.532(1), its provision of electricity to tenants and its billings for such electricity are explicitly made "[s]ubject to the policies of the utility or service provider," which, in the case of Pacific Power, include the identical requirement under the Special Conditions of Schedule 48 and Section "O" of Pacific Power's Rule 2 that Myra Lynne bill its tenants "at Company's regular tariff rate schedule applicable to the type of service actually furnished the tenant."

c. Prior to the enactment of ORS 90.532(1)(c) and ORS 90.536, Pacific Power's Schedule 4 residential rate was the "Company's regular tariff rate schedule applicable to the type of service actually furnished the tenant" for purposes of the Special Conditions of Schedule 48 and Section "O" of Pacific Power's Rule 2.

d. In enacting ORS 90.532(1)(c) and ORS 90.536, the Legislature established (i) a new subclass of residential user, comprised of tenants whose landlords use submeters to bill each tenant for electricity based on that tenant's consumption, and (ii) a new statutory rate for that subclass determined by application of ORS 90.536(2) and ORS 90.536(3).

e. The new rate established by application of ORS 90.536(2) and ORS 90.536(3) is a valid residential service rate for the new residential subclass established by ORS 90.532(1)(c).

f. After the enactment of ORS 90.532(1)(c) and ORS 90.536, the new statutory rate determined by application of ORS 90.536(2) and ORS 90.536(3) became one of the "Company's regular tariff rate schedule applicable to the type of service actually furnished the tenant" for purposes of the Special Conditions of Schedule 48 and Section "O" of Pacific Power's Rule 2.

g. The rate determined by application of ORS 90.536(2) and ORS 90.536(3) permits Myra Lynne to recover from tenants all charges and costs imposed on it by Pacific Power that relate to Schedule 48, including a Basic Charge," a "Delivery Service" charge, a "Reactive Power Charge," each of the "effective rate adjustments" listed in Pacific Power's Schedule 90, the Rule 16 tax adjustment relating to the Medford franchise fee, minus any Schedule 98 credit actually included in Pacific Power's bill to Myra Lynne. [13]

If the Commission declines to construe the "applicable rate" requirement of Schedule 48 and Section "O" of Rule 2 to include both the Schedule 4 residential rate and the rate determined by application of ORS 90.536(2) and ORS 90.536(3), Myra Lynne asks the Commission to waive their application to Myra Lynne for reasons stated above at pp.19-20. Waiver would avoid the hardship on tenants that would result if Myra Lynne were required to bill tenants at the higher Schedule 4 rate. [14] Although the data are unaudited, Exhibit M shows that tenant bills would increase significantly if the Commission agreed with Pacific Power that tenants should be billed under Schedule 4, rather than under Schedule 48 as Myra Lynne does now.

C. HB 2247 Did Nothing That Would Adversely Affect The Eligibility Of Myra Lynne's Tenants To Receive The Schedule 98 Residential Credit.

Regarding the second stipulated issue, HB 2247 had no effect on the eligibility of Myra Lynne's tenants for the Schedule 98 credit. These tenants were eligible for the credit before HB 2247 became effective and they remain eligible now. Myra Lynne asks the Commission to make the following findings and conclusions:

a. Myra Lynne has applied the Schedule 98 credit on its tenants' electric bills both before and after enactment of HB 2247.

b. The $97,936.77 in Schedule 98 credits applied to Myra Lynne's bill on March 1, 2005, reimbursed Myra Lynne for amounts credited by Myra Lynne to tenants

[13] *See* Exhibit F, p. 2. This conclusion would be helpful in explaining to tenants why their electric bills include each of the elements described above at pp. 6-7.

[14] Counsel for Myra Lynne contacted tenants' counsel about this possibility, but the tenants still did not intervene in this proceeding.

during a period when Pacific Power inadvertently failed to provide the Schedule 98 credit to Myra Lynne for pass-though to tenants. If this amount were paid to tenants, they would receive a double credit for the period in question.[15]

c. The electrical consumption of Myra Lynne's tenants meet the definition of "residential service" under Section "P" of Pacific Power's Rule 2.

d. BPA's "Customer Load Eligibility Guidelines for the Investor Owned Utilities' Residential Exchange Program Settlement Agreements" specifically recognize the eligibility of residents of mobile home parks for residential exchange benefits.

e. Both prior to, and after, the effective date of HB 2247, Myra Lynne's tenants have been eligible for Pacific Power's Schedule 98 residential credit. However, if the Commission determines that tenants are not eligible to receive the Schedule 98 credit, Myra Lynne has no obligation to apply that credit in bills to tenants.

It is Myra Lynne's understanding that the Commission Staff may advocate a different declaratory ruling concerning the eligibility of Myra Lynne's tenants for the Schedule 98 credit. If for any reason the Commission concludes that the tenants are not eligible for the Schedule 98 credit, Myra Lynne asks the Commission to implement such a decision on a prospective-only basis. Otherwise, a significant hardship could befall the tenants. Exhibit M shows that loss of the residential credit to tenants would be significant.

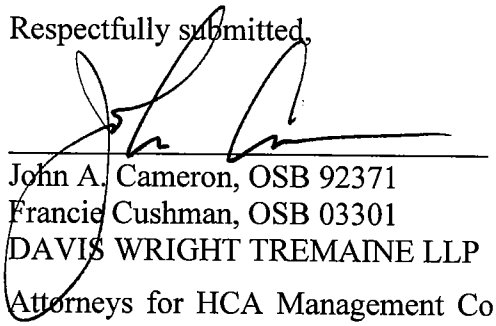
VI. CONCLUSION

Myra Lynne aspires simply to be a conduit between Pacific Power and its tenants. Prior to HB 2247, it followed Schedule 48 and Rule 2 by applying the Schedule 4 residential rate in tenant bills so that the same rate was paid by tenants as by other Pacific Power residential customers. Myra Lynne also provided tenants the Schedule 98 credit, even when Pacific Power inadvertently failed to apply the credit to Myra Lynne for pass-through to tenants. Since HB 2247, Myra Lynne has followed the conflicting directive of ORS 90.536, still giving the Schedule 98 credit to tenants. Pacific Power urges Myra Lynne to revert to Schedule 4 billing, while tenants allege elder-abuse. Myra Lynne, Pacific Power and the tenants need rate certainty.

[15] *See* n. 10 above.

WHEREFORE, Myra Lynne respectfully requests that the Commission issue the specific declarations requested above for the reasons stated in this pleading.

Respectfully submitted,



John A. Cameron, OSB 92371
Francie Cushman, OSB 03301
DAVIS WRIGHT TREMAINE LLP
Attorneys for HCA Management Co., LLC

DATED this 2nd day of July, 2007.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **OPENING BRIEF OF HCA MANAGEMENT COMPANY, LLC** on:

Jason Eisdorfer The Citizens' Utility Board of Oregon 610 SW Broadway, Suite 308 Portland, OR 97205 jason@OregonCUB.org	David Hatton Assistant Attorney General Department of Justice Regulated Utility & Business Section 1162 Court St. NE Salem, OR 97301-4096 david.hatton@state.or.us
Michelle Mishoe Legal Counsel Pacific Power and Light 825 NE Multnomah, Suite 2000 Portland, OR 97323 michelle.mishoe@pacificorp.com	Deborah Garcia Public Utility Commission of Oregon P.O. Box 2148 Salem, OR 97308-2148 deborah.garcia@sate.or.us

☒ by sending a .pdf copy thereof to each person listed above via email.

Dated this 2nd day of July, 2007.

DAVIS WRIGHT TREMAINE LLP

By _____

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BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

DR - 38

In the Matter of PACIFICORP, dba PACIFIC POWER & LIGHT COMPANY, and HCA MANAGEMENT COMPANY, LLC	**JOINT STIPULATION OF FACTS**

1. The parties to this Joint Stipulation of Facts ("Stipulation") are PacifiCorp, dba Pacific Power & Light Company ("Pacific Power"), HCA Management Company, LLC, operator of the Myra Lynne Mobile Home Park ("Myra Lynne") and the Staff of the Oregon Public Utility Commission ("Commission"). The parties hereby stipulate to the admission of each of the following facts and associated exhibits into the record. Intervenor Citizens Utility Board authorized the undersigned to state that it does not oppose this Stipulation.

Stipulated Facts Concerning Electric Service

2. Pacific Power is an investor-owned utility provider of electricity at retail, regulated by the Commission pursuant to ORS Chapters 756 and 757. Pacific Power provides retail electric service in Medford, Oregon, under a franchise agreement with the City of Medford.

3. Myra Lynne owns and operates the Myra Lynne Mobile Home Park in Medford, Oregon. Myra Lynne purchases electricity from Pacific Power under Large General Service Schedule 48. Myra Lynne's purchases are recorded by Pacific Power's meters, at the park, that measure both demand (in kW) and energy consumption (in kWh). Myra Lynne's tenants occupy detached, residential dwellings within the park for periods in excess of 30 days. No tenant runs any commercial business in the park.

4. Under Schedule 48, Myra Lynne's monthly bills from Pacific Power include a Basic Charge," a "Delivery Service" charge and a "Reactive Power Charge," each of which appear as separate line items on every Pacific Power bill to Myra Lynne.

5. Schedule 48 incorporates by reference the applicable adjustments listed in Pacific Power's Schedule 90. As a Schedule 48 customer, Myra Lynne's monthly bills from Pacific Power include the following adjustments, which also appear as separate line items on each bill:

a. charges for on-peak and off-peak "basic service energy" calculated pursuant to Pacific Power's Schedule 200,

b. a "public purpose charge," applicable under Pacific Power's Schedule 290 to "all bills for electric service calculated under all tariffs and contracts,"

c. a "Low Income Assistance" charge, applicable under Pacific Power's Schedule 91 to "all bills for electric service calculated under all tariffs and contracts," and

d. an "adjustment associated with the Pacific Northwest Electric Power Planning and Conservation Act, applicable to qualifying residential electric loads" under Pacific Power's Schedule 98, shown on bills as the "BPA Energy Discount."[1]

6. Schedule 48 incorporates by reference Pacific-Power's General Rules and Regulations, one of which is Rule 16, the tax adjustment. Pursuant to Rule 16, Myra Lynne's monthly bills from Pacific Power include the "Medford City Franchise Fee," imposed on Pacific Power by the City of Medford, Oregon, and shown as a separate line item on utility bills.

7. **Exhibit A** to this Stipulation is a true and correct copy of a bill from Pacific Power to Myra Lynne (billing date September 19, 2006), showing line-item details of the rates, charges, surcharges and credits described in paragraph nos. 4-6 above.

[1] Pacific Power suspended the Schedule 98 credit as of June 1, 2007 due to the recent decision by the Bonneville Power Association ("BPA") to suspend the Residential Exchange Program after a Ninth Circuit Court of Appeals ruling finding that BPA exceeded its authority by entering into settlement agreements related to the Residential Exchange Program. *See, Golden Northwest Aluminum, Inc. v. Bonneville Power Administration* 2007 WL 1289539 (9th Cir. 2007) and *Portland General Electric Company v. Bonneville Power Administration* 2007 WL 1288786 (9th Cir. 2007).

8. Power purchased by Myra Lynne from Pacific Power is submetered to tenants for residential usage in their dwellings within the Myra Lynne Mobile Home Park. Submetering of electricity is done pursuant to each tenant's written rental agreement with Myra Lynne. A true and correct copy of Myra Lynne's standard form or rental agreement is **Exhibit B**.

9. Schedule 48 contains the following provision:

> **Special Conditions**
> The Consumer shall not resell electric service received from the Company under provisions of this Schedule to any person, except by written permission of the Company and where the Consumer meters and bills any of his tenants at the Company's regular tariff rate for the type of service which such tenant may actually receive.

10. Section "O" of Pacific Power's Rule 2 imposes the same requirement on the "Consumer", which is approved and on file with the Commission:

> **Resale of Service**
> Resale of service shall be limited to Consumer's tenants using such service entirely within property described in the written agreement. Service resold to tenants shall be metered and billed to each tenant at Company's regular tariff rate schedule applicable to the type of service actually furnished the tenant. Consumer shall indemnify Company for any and all liabilities, actions or claims for an injury, loss or damage to persons or property arising from the results of service by Consumer.

11. For purposes of calculating tenants' electricity bills, Pacific Power provided Schedule 4, Residential Service—Delivery Service, to satisfy the provisions identified in paragraph nos. 9 and 10, above.

12. Section "P" of Pacific Power's PUC-approved Rule 2 defines "residential service" as follows:

> Service furnished to Consumers for domestic purposes in single-family dwellings, including rooming houses where not more than four rooms are used as sleeping or living quarters by persons not members of Consumer's family, apartments and flats where each dwelling unit is separately metered and billed, but excluding

> dwellings where tenancy is typically less than 30 days in length such as hotels, motels, camps, lodges and clubs.

13. During its 2005 legislative session, the Oregon Legislature enacted HB 2247, which added several new provisions to Oregon's landlord/tenant law. As enacted, the bill added provisions to Chapter 90, including ORS 90.532 and ORS 90.536. The new law became effective as of January 2, 2006.

14. Before HB 2247 became effective, Myra Lynne followed the "Special Conditions" of Schedule 48 and the "Resale of Service" provision of Section "O," Rule 2 by billing tenants according to the Pacific Power's residential Schedule 4. Myra Lynne did not add any other charges, costs or adders onto tenant electric bills. Use of Schedule 4 was consistent with specific instructions Myra Lynne received from Pacific Power. **Exhibit C** to this Stipulation is a true and correct copy of correspondence concerning the application of Schedule 4 sent by Pacific Power to HCA Management Company on March 1, 2005.

15. When Myra Lynne became aware of the enactment of HB 2247, it began to bill its tenants in accordance with its understanding of ORS 90.536. Rather than bill tenants according to Schedule 4, each tenant's bill now consists of a pro rata share, according to tenant usage, of Myra Lynne's actual monthly electricity bills from Pacific Power. Each month, Myra Lynne bills its tenants for a share of Pacific Power's Basic Charge, Delivery Service charge, Reactive Power Charge, energy charges, public purpose charge, low income assistance charge and Medford franchise fee. Myra Lynne's bills to tenants also pass through the BPA energy discount relating to Schedule 98.

16. **Exhibit D** to this Stipulation is a true and correct copy of a document entitled "Comments On House Bill 2247 With The Dash 1 Amendments, Testimony Before the House Judiciary Subcommittee on Civil Law." This legislative history of HB 2247 is the testimony of

John VanLandingham, attorney for the Lane County Law and Advocacy Center, delivered on June 13, 2005, before the Oregon House Committee on Judiciary Subcommittee on Civil Law. The testimony provides a section-by-section analysis of HB 2247, subsequently enacted to amend ORS Chapter 90.

17. After HB 2247 became effective, Pacific Power continued to advise Myra Lynne that it was required to apply Schedule 4 in billing tenants for their submetered electric service. **Exhibit E** to this Stipulation is a true and correct copy of correspondence concerning the application of Schedule 4 sent by Pacific Power's attorney to HCA Management Company's attorney on February 21, 2007.

18. Interpretation of utility rates, rules and regulations requires specialized expertise. Until early 2006, Myra Lynne relied on a contractor, Park Billing Company, Inc., to interpret bills from Pacific Power and to apply the applicable rates, charges and credits to tenants. Thereafter, Myra Lynne has used Manage America Integrated Billing Services, LLC, as its utility billing contractor.

19. **Exhibit F** to this Stipulation is consists of three pages, each containing a redacted Myra Lynne Bill to a tenant. **Page 1 of Exhibit F** is Bill No. 196, prepared by Park Billing Company, Inc., for Myra Lynne showing the line-item breakdown of Pacific Power charges passed on to a representative tenant over the period 11/15/04 through 12/15/04. This redacted bill is representative of bills sent to tenants before enactment of HB 2247. This Bill No. 196 included the Schedule 98 credit to tenants during the time Pacific Power had inadvertently failed to include the credit on bills to Myra Lynne. **Page 2 of Exhibit F** is a redacted bill Manage America prepared for Myra Lynne for a tenant regarding the month of May 2007, also showing the line-item breakdown of Pacific Power charges passed on to a representative tenant. This

redacted bill is representative of bills sent to tenants before enactment of HB 2247. These are actual bills with all customer-specific information redacted. Myra Lynne does not recover through electric charges to tenants any of the costs of electricity consumed by Myra Lynne for non-residential purposes associated with its business operations, e.g., office usage, electric signage, common-area lighting. **Page 3 of Exhibit F** is a copy of Pacific Power's Schedule 98 as it was in effect during 2005.

Stipulated Facts Concerning The Residential Credit

20. **Exhibit G** to this Stipulation is a true and correct copy of a document bearing the date of June 2002 and prepared by the Bonneville Power Administration, entitled "Customer Load Eligibility Guidelines For The Investor Owned Utilities' Residential Exchange Program Settlement Agreements."

21. Myra Lynne has applied the Schedule 98 residential credit on all tenant electric bills, both before and after HB 2247 became effective. **Exhibit H** to this Stipulation is a true and correct copy of a letter from Park Billing Co., Inc., to Myra Lynne, dated April 12, 2005, explaining that, during the time Park Billing served as Myra Lynne's billing contractor, electric bills to tenants had included the Schedule 98 residential credit even during an extended period in which Pacific Power had failed to include that credit in its bills to Myra Lynne. **Exhibit I** is a true and correct copy of a letter dated March 1, 2005 sent to Myra Lynne by Pacific Power that explains a credit to Myra Lynne's account in the amount of $97,936.77 reimbursing Myra Lynne for Schedule 98 credits paid to tenants during a period in which Pacific Power did not include that credit in its bills to Myra Lynne.

22. **Exhibit J** is a true and correct copy of the Commission's recent Order No. 07-162 in *Idaho Power Company*, Docket No. UE 190 (April 27, 2007), plus the related Commission Staff report of April 30, 2007. Exhibit J also includes Exhibit B from the Settlement Agreement between BPA and Idaho Power Company regarding the residential exchange program.

23. **Exhibit K** is a true and correct copy of the complaint tenants filed against Myra Lynne in Oregon Circuit Court.

24. Under the Residential Exchange Settlement Agreement between BPA and Pacific Power, "Residential Load' means the load eligible to receive benefits under this Agreement, as such load is defined in Exhibit B to that agreement. **Exhibit L** to this Stipulation is a true and correct copy of Exhibit B to the Residential Exchange Settlement Agreement between BPA and Pacific Power, which provides that "Residential Load means the sum of the loads within the Pacific Northwest eligible for the Resident Exchange Program under the tariff schedules described below.

25. **Exhibit M** is a document prepared by Pacific Power, showing the total difference in amounts billed to Myra Lynne, over the specified 12-month period, at Schedule 4 versus Schedule 48, with and without the Schedule 98 credits. These data are unaudited by Myra Lynne or the Commission Staff. The data are intended to show order-of-magnitude effects on tenants that could result from Commission decisions in this case.

Respectfully submitted,

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John A. Cameron, OSB # 920371
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Davis Wright Tremaine, LLP
Attorneys for HCA Management Co., LLC

DATED this 2nd day of July, 2007.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **JOINT STIPULATION OF FACTS** on:

Jason Eisdorfer
The Citizens' Utility Board of Oregon
610 SW Broadway, Suite 308
Portland, OR 97205
jason@OregonCUB.org

David Hatton
Assistant Attorney General
Department of Justice
Regulated Utility & Business Section
1162 Court St. NE
Salem, OR 97301-4096
david.hatton@state.or.us

Michelle Mishoe
Legal Counsel
Pacific Power and Light
825 NE Multnomah, Suite 2000
Portland, OR 97323
michelle.mishoe@pacificorp.com

Deborah Garcia
Public Utility Commission of Oregon
P.O. Box 2148
Salem, OR 97308-2148
deborah.garcia@sate.or.us

☒ by sending a .pdf copy thereof to each person listed above via email.

Dated this 2nd day of July, 2007.

DAVIS WRIGHT TREMAINE LLP

By _____
John A. Cameron, OSB #92371
Francie Cushman, OSB #03301
Of Attorneys for HCA Management Company, LLC
Phone: 503-241-2300
Fax: 503-778-5299
Email: johncameron@dwt.com
Email: franciecushman@dwt.com

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

DR - 38

In the Matter of PACIFICORP, dba PACIFIC POWER & LIGHT COMPANY, and HCA MANAGEMENT COMPANY, LLC	**JOINT STIPULATION OF FACTS**

1. The parties to this Joint Stipulation of Facts ("Stipulation") are PacifiCorp, dba Pacific Power & Light Company ("Pacific Power"), HCA Management Company, LLC, operator of the Myra Lynne Mobile Home Park ("Myra Lynne") and the Staff of the Oregon Public Utility Commission ("Commission"). The parties hereby stipulate to the admission of each of the following facts and associated exhibits into the record. Intervenor Citizens Utility Board authorized the undersigned to state that it does not oppose this Stipulation.

Stipulated Facts Concerning Electric Service

2. Pacific Power is an investor-owned utility provider of electricity at retail, regulated by the Commission pursuant to ORS Chapters 756 and 757. Pacific Power provides retail electric service in Medford, Oregon, under a franchise agreement with the City of Medford.

3. Myra Lynne owns and operates the Myra Lynne Mobile Home Park in Medford, Oregon. Myra Lynne purchases electricity from Pacific Power under Large General Service Schedule 48. Myra Lynne's purchases are recorded by Pacific Power's meters, at the park, that measure both demand (in kW) and energy consumption (in kWh). Myra Lynne's tenants occupy detached, residential dwellings within the park for periods in excess of 30 days. No tenant runs any commercial business in the park.

4. Under Schedule 48, Myra Lynne's monthly bills from Pacific Power include a Basic Charge," a "Delivery Service" charge and a "Reactive Power Charge," each of which appear as separate line items on every Pacific Power bill to Myra Lynne.

5. Schedule 48 incorporates by reference the applicable adjustments listed in Pacific Power's Schedule 90. As a Schedule 48 customer, Myra Lynne's monthly bills from Pacific Power include the following adjustments, which also appear as separate line items on each bill:

a. charges for on-peak and off-peak "basic service energy" calculated pursuant to Pacific Power's Schedule 200,

b. a "public purpose charge," applicable under Pacific Power's Schedule 290 to "all bills for electric service calculated under all tariffs and contracts,"

c. a "Low Income Assistance" charge, applicable under Pacific Power's Schedule 91 to "all bills for electric service calculated under all tariffs and contracts," and

d. an "adjustment associated with the Pacific Northwest Electric Power Planning and Conservation Act, applicable to qualifying residential electric loads" under Pacific Power's Schedule 98, shown on bills as the "BPA Energy Discount."[1]

6. Schedule 48 incorporates by reference Pacific-Power's General Rules and Regulations, one of which is Rule 16, the tax adjustment. Pursuant to Rule 16, Myra Lynne's monthly bills from Pacific Power include the "Medford City Franchise Fee," imposed on Pacific Power by the City of Medford, Oregon, and shown as a separate line item on utility bills.

7. **Exhibit A** to this Stipulation is a true and correct copy of a bill from Pacific Power to Myra Lynne (billing date September 19, 2006), showing line-item details of the rates, charges, surcharges and credits described in paragraph nos. 4-6 above.

[1] Pacific Power suspended the Schedule 98 credit as of June 1, 2007 due to the recent decision by the Bonneville Power Association ("BPA") to suspend the Residential Exchange Program after a Ninth Circuit Court of Appeals ruling finding that BPA exceeded its authority by entering into settlement agreements related to the Residential Exchange Program. *See, Golden Northwest Aluminum, Inc. v. Bonneville Power Administration* 2007 WL 1289539 (9th Cir. 2007) and *Portland General Electric Company v. Bonneville Power Administration* 2007 WL 1288786 (9th Cir. 2007).

8. Power purchased by Myra Lynne from Pacific Power is submetered to tenants for residential usage in their dwellings within the Myra Lynne Mobile Home Park. Submetering of electricity is done pursuant to each tenant's written rental agreement with Myra Lynne. A true and correct copy of Myra Lynne's standard form or rental agreement is **Exhibit B**.

9. Schedule 48 contains the following provision:

> **Special Conditions**
> The Consumer shall not resell electric service received from the Company under provisions of this Schedule to any person, except by written permission of the Company and where the Consumer meters and bills any of his tenants at the Company's regular tariff rate for the type of service which such tenant may actually receive.

10. Section "O" of Pacific Power's Rule 2 imposes the same requirement on the "Consumer", which is approved and on file with the Commission:

> **Resale of Service**
> Resale of service shall be limited to Consumer's tenants using such service entirely within property described in the written agreement. Service resold to tenants shall be metered and billed to each tenant at Company's regular tariff rate schedule applicable to the type of service actually furnished the tenant. Consumer shall indemnify Company for any and all liabilities, actions or claims for an injury, loss or damage to persons or property arising from the results of service by Consumer.

11. For purposes of calculating tenants' electricity bills, Pacific Power provided Schedule 4, Residential Service—Delivery Service, to satisfy the provisions identified in paragraph nos. 9 and 10, above.

12. Section "P" of Pacific Power's PUC-approved Rule 2 defines "residential service" as follows:

> Service furnished to Consumers for domestic purposes in single-family dwellings, including rooming houses where not more than four rooms are used as sleeping or living quarters by persons not members of Consumer's family, apartments and flats where each dwelling unit is separately metered and billed, but excluding

dwellings where tenancy is typically less than 30 days in length such as hotels, motels, camps, lodges and clubs.

13. During its 2005 legislative session, the Oregon Legislature enacted HB 2247, which added several new provisions to Oregon's landlord/tenant law. As enacted, the bill added provisions to Chapter 90, including ORS 90.532 and ORS 90.536. The new law became effective as of January 2, 2006.

14. Before HB 2247 became effective, Myra Lynne followed the "Special Conditions" of Schedule 48 and the "Resale of Service" provision of Section "O," Rule 2 by billing tenants according to the Pacific Power's residential Schedule 4. Myra Lynne did not add any other charges, costs or adders onto tenant electric bills. Use of Schedule 4 was consistent with specific instructions Myra Lynne received from Pacific Power. **Exhibit C** to this Stipulation is a true and correct copy of correspondence concerning the application of Schedule 4 sent by Pacific Power to HCA Management Company on March 1, 2005.

15. When Myra Lynne became aware of the enactment of HB 2247, it began to bill its tenants in accordance with its understanding of ORS 90.536. Rather than bill tenants according to Schedule 4, each tenant's bill now consists of a pro rata share, according to tenant usage, of Myra Lynne's actual monthly electricity bills from Pacific Power. Each month, Myra Lynne bills its tenants for a share of Pacific Power's Basic Charge, Delivery Service charge, Reactive Power Charge, energy charges, public purpose charge, low income assistance charge and Medford franchise fee. Myra Lynne's bills to tenants also pass through the BPA energy discount relating to Schedule 98.

16. **Exhibit D** to this Stipulation is a true and correct copy of a document entitled "Comments On House Bill 2247 With The Dash 1 Amendments, Testimony Before the House Judiciary Subcommittee on Civil Law." This legislative history of HB 2247 is the testimony of

John VanLandingham, attorney for the Lane County Law and Advocacy Center, delivered on June 13, 2005, before the Oregon House Committee on Judiciary Subcommittee on Civil Law. The testimony provides a section-by-section analysis of HB 2247, subsequently enacted to amend ORS Chapter 90.

17. After HB 2247 became effective, Pacific Power continued to advise Myra Lynne that it was required to apply Schedule 4 in billing tenants for their submetered electric service. **Exhibit E** to this Stipulation is a true and correct copy of correspondence concerning the application of Schedule 4 sent by Pacific Power's attorney to HCA Management Company's attorney on February 21, 2007.

18. Interpretation of utility rates, rules and regulations requires specialized expertise. Until early 2006, Myra Lynne relied on a contractor, Park Billing Company, Inc., to interpret bills from Pacific Power and to apply the applicable rates, charges and credits to tenants. Thereafter, Myra Lynne has used Manage America Integrated Billing Services, LLC, as its utility billing contractor.

19. **Exhibit F** to this Stipulation is consists of three pages, each containing a redacted Myra Lynne Bill to a tenant. **Page 1 of Exhibit F** is Bill No. 196, prepared by Park Billing Company, Inc., for Myra Lynne showing the line-item breakdown of Pacific Power charges passed on to a representative tenant over the period 11/15/04 through 12/15/04. This redacted bill is representative of bills sent to tenants before enactment of HB 2247. This Bill No. 196 included the Schedule 98 credit to tenants during the time Pacific Power had inadvertently failed to include the credit on bills to Myra Lynne. **Page 2 of Exhibit F** is a redacted bill Manage America prepared for Myra Lynne for a tenant regarding the month of May 2007, also showing the line-item breakdown of Pacific Power charges passed on to a representative tenant. This

redacted bill is representative of bills sent to tenants before enactment of HB 2247. These are actual bills with all customer-specific information redacted. Myra Lynne does not recover through electric charges to tenants any of the costs of electricity consumed by Myra Lynne for non-residential purposes associated with its business operations, e.g., office usage, electric signage, common-area lighting. **Page 3 of Exhibit F** is a copy of Pacific Power's Schedule 98 as it was in effect during 2005.

Stipulated Facts Concerning The Residential Credit

20. **Exhibit G** to this Stipulation is a true and correct copy of a document bearing the date of June 2002 and prepared by the Bonneville Power Administration, entitled "Customer Load Eligibility Guidelines For The Investor Owned Utilities' Residential Exchange Program Settlement Agreements."

21. Myra Lynne has applied the Schedule 98 residential credit on all tenant electric bills, both before and after HB 2247 became effective. **Exhibit H** to this Stipulation is a true and correct copy of a letter from Park Billing Co., Inc., to Myra Lynne, dated April 12, 2005, explaining that, during the time Park Billing served as Myra Lynne's billing contractor, electric bills to tenants had included the Schedule 98 residential credit even during an extended period in which Pacific Power had failed to include that credit in its bills to Myra Lynne. **Exhibit I** is a true and correct copy of a letter dated March 1, 2005 sent to Myra Lynne by Pacific Power that explains a credit to Myra Lynne's account in the amount of $97,936.77 reimbursing Myra Lynne for Schedule 98 credits paid to tenants during a period in which Pacific Power did not include that credit in its bills to Myra Lynne.

22. **Exhibit J** is a true and correct copy of the Commission's recent Order No. 07-162 in *Idaho Power Company*, Docket No. UE 190 (April 27, 2007), plus the related Commission Staff report of April 30, 2007. Exhibit J also includes Exhibit B from the Settlement Agreement between BPA and Idaho Power Company regarding the residential exchange program.

23. **Exhibit K** is a true and correct copy of the complaint tenants filed against Myra Lynne in Oregon Circuit Court.

24. Under the Residential Exchange Settlement Agreement between BPA and Pacific Power, "Residential Load' means the load eligible to receive benefits under this Agreement, as such load is defined in Exhibit B to that agreement. **Exhibit L** to this Stipulation is a true and correct copy of Exhibit B to the Residential Exchange Settlement Agreement between BPA and Pacific Power, which provides that "Residential Load means the sum of the loads within the Pacific Northwest eligible for the Resident Exchange Program under the tariff schedules described below.

25. **Exhibit M** is a document prepared by Pacific Power, showing the total difference in amounts billed to Myra Lynne, over the specified 12-month period, at Schedule 4 versus Schedule 48, with and without the Schedule 98 credits. These data are unaudited by Myra Lynne or the Commission Staff. The data are intended to show order-of-magnitude effects on tenants that could result from Commission decisions in this case.

Respectfully submitted,

Michelle Mishoe, OSB #07242
Legal Counsel
Attorney for PacifiCorp

David B. Hatton, OSB # 751517
Assistant Attorney General, Regulated Utility & Business Section
Attorney for Commission Staff

John A. Cameron, OSB # 920371
Francie Cushman, OSB #03301
Davis Wright Tremaine, LLP
Attorneys for HCA Management Co., LLC

DATED this 2nd day of July, 2007.

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DATED this 2nd day of July, 2007.

PACIFIC POWER

MYRA LYNNE MOBILE PARK
HCA MANAGEMENT COMPANY
PO BOX 7
NOVATO CA 94948-0007

Questions about your bill: 1-888-221-7070
24 hours a day, 7 days a week
www.pacificpower.net

BILLING DATE: **Sep 19, 2006**
ACCOUNT NUMBER: **35629231-001 4**
DATE DUE: **Oct 5, 2006**
AMOUNT DUE: **$6,947.75**

Your Balance With Us

Previous Account Balance	7,438.49
Payments/Credits	-7,438.49
New Charges	+6,947.75
Current Account Balance	**$ 6,947.75**

Payments Received

DATE	DESCRIPTION	AMOUNT
Sep 11, 2006	Payment Received - Thank you	7,438.49
Total Payments		**$ 7,438.49**

Fuel source, environmental impact and price comparison information is available on our Web site at pacificpower.net.

Detailed Account Activity

ITEM 2 - ELECTRIC SERVICE

924 Carol Rae Medford OR
Remote Read-myra Lynn M.h. Prk Oregon Large General Service Schedule 48
Service ID: 965862727-001

METER NUMBER	SERVICE PERIOD From	To	ELAPSED DAYS	METER READINGS Previous	Current	METER MULTIPLIER	AMOUNT USED THIS MONTH
3536266	Aug 17, 2006	Sep 18, 2006	32	3557	3814	600.0	154,200 onkwh
3536266	Aug 17, 2006	Sep 18, 2006	32	2138	2281	600.0	85,800 offkwh
3536266	Demand	Sep 18, 2006			1.286	600.0	772 onkw
3536266	Demand	Sep 18, 2006			1.294	600.0	776 offkw
3536266	Reactive	Sep 18, 2006			0.521	600.0	313 kvar

NEW CHARGES - 09/06	UNITS	COST PER UNIT	CHARGE
Basic Chg, 3P, Pri Deliv, Onkw	1,207 onkw	0.6500000	1,014.55
Delivery Charge	240,000 onkwh	0.0001900	45.60
Reactive Power Charge - Onkw	3 kvar	0.6000000	1.80
On-peak Basic Service Energy	154,200 onkwh	0.0332800	5,131.78
Off-peak Basic Service Energy	85,800 offkwh	0.0322800	2,769.62
Public Purpose		0.0300000	268.90
Low Income Assistance	240,000 onkwh	0.0003300	79.20

See reverse

Late Payment Charge for Oregon
A late payment charge of 1.7% may be charged on any balance not paid in full each month.

Write account number on check & mail to: Pacific Power, 1033 NE 6th Ave, Portland, OR 97256-0001

RETAIN THIS PORTION FOR YOUR RECORDS.
RETURN THIS PORTION WITH YOUR PAYMENT.

Change of Mailing Address or Phone?
Check here & provide information on back.

PACIFIC POWER

PO BOX 25308
SALT LAKE CITY UT 84125

WRITE ACCOUNT NUMBER ON CHECK & MAIL TO:

PACIFIC POWER
1033 NE 6TH AVE
PORTLAND OR
97256-0001

Account Number: **35629231-001 4**
Date Due: **Oct 5, 2006**
AMOUNT DUE: **$6,947.75**

29516 01 AB 0.317 111-1

MYRA LYNNE MOBILE PARK
HCA MANAGEMENT COMPANY
PO BOX 7
NOVATO CA 94948-0007

Please enter the amount enclosed.

Questions about your bill:
1-888-221-7070

H 35629231 001 416 000694775

PACIFIC POWER Questions about your bill: 1-888-221-7070 www.pacificpower.net

BILLING DATE: Sep 19, 2006 ACCOUNT NUMBER: 35629231-001 4 DATE DUE: Oct 5, 2006 AMOUNT DUE: $6,947.75

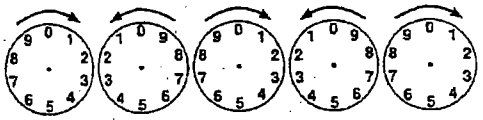
NEW CHARGES - 09/06- CONTINUED	UNITS	COST PER UNITS	CHARGE
B P A Energy Discount	240,000 kwh	-0.0102600	-2,462.40
Medford City Franchise Fee		0.0150000	98.70
Total New Charges			**6,947.75**

When you pay by check, you authorize us to clear your check electronically. If you usually get your checks back with your statement, you will not receive this check back. If you would like to opt out of this program, please call 800-895-0561.

New Mailing Address or Phone?

Please print your new information below and check the box on the reverse side of this Payment Stub. Thank you.

If you feel your meter has been read incorrectly, draw lines representing hands as they appear on your meter now, then call toll free 1-888-221-7070



ACCOUNT NUMBER: 35629231-001 4

LAST FIRST M.I.

NEW STREET ADDRESS

CITY

ST ZIP TELEPHONE NUMBER

Recycled Paper

MYRA LYNNE
MANUFACTURED HOUSING COMMUNITY

MANUFACTURED HOME SPACE
LONG TERM LEASE AGREEMENT

You acknowledge that you are receiving many important benefits from this Agreement and examples of a few of the more important ones are: Peace of mind because of the long-term rent stability and knowledge of how your rent increase will be calculated in the future which this Agreement provides. Your ability to terminate this agreement without any liability to us by selling/transferring your manufactured home and assigning your right to occupy your Homesite to someone approved by us for tenancy who will accept the assignment of this lease or accept whatever lease or rental agreement that may be in effect at that time. You also have the ability to terminate this Agreement by written 30-day notice without any further liability to us by removing your manufactured home from the Community and allowing control of the Homesite to revert to us.

THIS LEASE AGREEMENT (Agreement) is made effective this _____ day of _____, **20**_____, by and between **Myra Lynne Manufactured Housing Community**, hereafter referred to as "Management" and _____, hereafter referred to as "Homeowner(s)", and is as follows:

RECITALS

This Community is classified as an **"all age"** facility under **FEDERAL FAIR-HOUSING** guidelines.

Management and Homeowner(s) agree to the lease of space number # _____ (hereafter referred to sometimes as the "site" or "homesite"), according to the terms and conditions of this Agreement. This space is approximately _____ in size.

AGREEMENT

1. TERM. The initial term of this Agreement shall be for _____ years. The term shall commence on _____, **20**_____, and end on _____, _____, **20**_____.

2. SPACE RENT. The initial monthly rent for space number # _____ payable by Homeowner to Management during the term of this lease, shall be as set forth below. All charges specified in the subsections to this Section 2 which follow shall constitute rent regardless of how calculated:

a. Initial monthly rent. The initial monthly rent shall be $_____. Homeowner shall pay all rent, fees and charges without abatement, reduction or setoff on or before 5:00 PM on the 5th day of the month. The rent is due on the 1st day of each month. All rent paid later than the 5th day of the month will be subject to a $25.00 late fee. Management may issue a 30-day notice for nonpayment of late fees. Management may also issue a 30-day notice for nonpayment of utilities. A handling charge of $30.00 will be required for checks returned by the bank for any reason. All rent shall be paid by check or money order (no cash) at the Clubhouse, or wherever Management may from time to time designate.

b. Annual space rent adjustment. Beginning on **January 1, 20** , and continuing on the same day each year thereafter (the anniversary date), rent may be adjusted upward for the following twelve (12) months in the same percentage proportion that the Consumer Price Index (CPI) of the United States Department of Labor, Bureau of Labor Statistics, U.S. City Average, All Urban Consumers (1982-1984 = 100), increased over the same Consumer Price Index for the preceding twelve (12) months. This annual space rent adjustment shall be added to the current rent and shall be calculated by multiplying the percent change in the CPI by the **average space rent in the Community**, rounded to the nearest dollar, **not the Homeowner's actual space rent.** The average space rent in the Community as of January 1, 20 , is $. The annual space rent adjustment shall not exceed 6.0 %, with a minimum increase set at 4.0 %. Where the CPI increase is between the range of 6.0 % and 4.0 %, the actual CPI increase will be used to calculate the annual space rent adjustment. There will be no additional increase in rent under this subsection unless the CPI increase exceeds 10%. In that case, that increase will be 1% for each 1% that the CPI increase exceeds 10%. In the event the U.S. Department of Labor discontinues the publication of the CPI, or its publication is delayed so as to prevent its use in calculating the annual space rent adjustment, Management may substitute another index or method of calculating changes in price levels which in the opinion of Management, will obtain substantially the same result if the CPI had not been discontinued or revised.

Rent Credits

The owners of Myra Lynne believe that the rents that we charge our residents are very reasonable in the marketplace and while this lease provides for a minimum annual rent adjustment to protect the community from increases in operational costs, we may from time to time defer collection of the full amount of a rent increase in years when costs have not substantially increased. Deferred amounts will be identified as a "rent credit" on your monthly rent billing and are permanently forgiven on a monthly basis.

This lease also provides for a maximum amount by which your rent can be increased and if operating costs have increased significantly, Myra Lynne may need to reduce the amount of the monthly "rent credit" that it has chosen to defer. You will receive advance notice of any increase or decrease to the amount that is to be credited. The amount shown as a credit on your monthly billing statement is not transferable to an assignee of this lease or to a new titleholder of your home and it will be removed concurrent with the termination of your lease unless it is renewed or extended prior to the expiration date.

c. Rent increases due to capital expenditures. In addition to the base space rent increase formula described above, Homeowner agrees to pay upon not less than ninety (90) days notice a prorata share (based on the number of spaces in the Community) of the cost to the Community of capital expenditures as defined in items 1, 2, and 3 below. Such Capital expenditure rent increases are temporary and shall only be given at your rent adjustment date. Capital expenditures include all items estimated to have a useful life of longer than twelve (12) months. All capital expenditure rent increases will be separately itemized on the rent bill and will show the date the capital expenditure rent increase will end. The duration for capital expenditure rent shall be based on the life given such items by the Internal Revenue Service but not longer than 15 years. Rent increases for capital expenditures will not be considered part of the base space rent for the annual space rent adjustment described in Section 2(b) above.

Upon written request from the Homeowners Association Board, Management will meet and discuss the capital expenditure increase with the Board within not less than ten (10) nor more than thirty

(30) days after Management has given the advance written notice provided in this Section 2(c). Management will provide reasonable substantiation of the cost of such capital expenditure for any requesting Homeowner. The cost of these items includes the actual cost of the capital expenditure, legal and engineering fees, interest, points and other borrowing costs incurred to make the capital expenditure. If Management uses its own money instead of borrowing money from someone else to make the capital expenditure, points and other charges normally made for such a loan at the time plus interest equal to the prime rate in effect at the Bank of America at the time the capital expenditure was made plus 2%, calculated over the amortization period given to the capital expenditure, will be added to the cost of the capital expenditure as long as these charges do not exceed the maximum amount permitted by Oregon law.

Capital expenditures, which may be used to increase rent, are divided into three categories:

1. **Capital Improvement**. Capital improvements are the addition of improvements where none existed before (i.e., construction of a new addition to the clubhouse). Management will notify all Homeowners of the intent to make a capital improvement in excess of $10,000. At least fifty-one percent (51%) of the Homeowners (one vote per occupied space) must consent to the improvement in writing, otherwise no pass through will be allowed. Management will absorb the first $10,000 of capital improvements during any one calendar year.

2. **Capital Replacement**. Capital replacements are the major repair, replacement, or renovation of any existing improvement in the Community such as utility systems, streets, and common buildings. It also includes the addition of items like water, gas, or electric meters as well as other types of metering where they are not presently installed at Homesites as well as the addition of sewer, water or other utility installations. Management may make capital replacement expenditures without the consent or vote of the Homeowners. Management shall apply any insurance proceeds received in connection with a capital replacement item before seeking any rent increase from Homeowner.

Management will absorb the first $10,000 of any capital replacements during any one calendar year.

3. **Capital Mandate**. A capital mandate can be either a capital improvement or a capital replacement that is: (a) required by a governmental, quasi-governmental entity, utility company or other service provider such as water, sewer, telephone, cable T.V., or garbage; (b) required due to fire, flood, earthquake, or other similar casualty loss or natural disaster; or (c) required to protect the health and safety of Community residents, or to permit the continued occupancy or operation of the Community in compliance with applicable law Management may make capital mandate expenditures without the consent or vote of the Homeowners. Management shall apply any insurance proceeds received in connection with a capital mandate item before increasing the rent to Homeowner for a capital mandate.

d. **Rent increases due to increase in cost and expenses**. In addition to the rent described in a., b., and / or c. above, Homeowner agrees to pay upon not less than ninety (90) days notice effective on your rent adjustment date a prorata share (based on the number of spaces in the Community) of any increase in Costs and Expenses incurred in connection with the operation of the Community. To compute this increase Management will compare the Costs and Expenses incurred in operating the Community in the calendar year, which ended just before the required rent increase notice with the immediately preceding calendar year. The term "Cost and Expenses" means all costs and expenses paid by Management, ordinary as well as extraordinary, that are reported for Federal Income Tax purposes including any interest paid but excluding depreciation and amortization. Also included in Cost and Expenses but not limited to these items are the costs of additional sewer and/or water or other utility hook-

ups fees, any other Capital expenditure not included in paragraph c. above, and any losses, which are not covered by insurance.

Only costs and expenses in excess of the annual per space C.P.I. adjustment may be allocated as an additional rent adjustment for purposes of this subsection

e. Rent increase due to space turnover. If Homeowner sells or transfers the manufactured home or there is a "turnover" of the space in accordance with Section 16 of this Agreement, the lease shall be deemed assigned. Management may then adjust the rent upward for the new homeowner or assignee to an amount equal to that of the highest space rent in the Community, or ten percent (10%). Homeowner must obtain a new space rent amount from Management and disclose it to any new applicant for residency prior to any assignment of the lease.

3. FACILITIES. The facilities provided by Management for Homeowners are set forth below. These facilities are for the nonexclusive use of Management, Homeowners and their permitted guest in accordance with Community Rules and Regulations.

STREETS, LAUNDRY, CLUBHOUSE, SWIMMING POOL AND DRY SAUNA

4. SERVICES. The services provided by Management for Homeowners are as follows:

COMMUNITY MANAGERS, ELECTRICITY, NATURAL GAS, WATER, SEWER, TRASH, and CABLE TV

5. FEES FOR UTILITIES AND SERVICES.

The utilities and charges for services listed on the chart attached as Exhibit A and incorporated herein must be paid at the time of payment of rent. A statement itemizing all charges will be furnished each Homeowner, no later than the first day of each month. Homeowner shall pay for gas, where applicable, according to individual usage as determined by monthly meter readings taken by employees of the respective serving utility, and electricity according to individual usage as determined by monthly meter readings taken by Management employees. Currently water and sewer are included in the monthly rent. Homeowner shall also pay in advance for trash pick up and cable T.V. according to the then current rate schedule. Any increase in the charges for items, which are submitted or separately billed to Homeowner, shall be immediately passed through and paid by Homeowner on the next monthly billing without any prior notice. Management reserves the right to make a separate charge for any existing utility such as water and sewer or any new utility or service Management provides Homeowner in the future without changing any other term of this Agreement. Homeowner is responsible for making sure that Homeowner's manufactured home and all appliances and equipment in the manufactured home and accessory buildings are compatible with the electric or other utility service and the capacity available with regard to that service.

6. COMMUNITY RULES AND STATE LAWS.

a. Homeowner agrees to comply with all provisions of the Community Rules and Regulations (attached as Exhibit B), and the Oregon Residential Landlord Tenant Law (Oregon Revised Statutes

90.100 et. seq,) which is available for review at the Community office: as they now or in the future may exist. NOTICE: As required by Oregon Residential Landlord Tenant Law, Homeowner is advised that the Community Rules and Regulations contain provisions regarding improvements, which the tenant may or must make to the rental space, including plant materials and landscaping as well as provisions for dealing with improvements to the rental space at the termination of the tenancy. Community Rules and Regulations may be changed from time to time with 60 days' notice unless 51 percent of the tenants file an objection within 30 days.

b. Enforcement of the Community Rules and Regulations shall be performed by Management. However, Homeowner shall first attempt to reach a reasonable resolution of any problems or complaints regarding other Homeowners or residents before Management is asked to take any enforcement action. Any enforcement action requested of management must be in writing using a Resident Incident form or Resident Objection form.

7. MANAGEMENT RESPONSIBILITIES FOR FACILITIES AND SERVICES.

a. It is the responsibility of Management to maintain common facilities in good working order and condition. However, Homeowner rents may be adjusted under section 2, Space Rent, for such maintenance costs.

b. Homeowner acknowledges that services may be interrupted, delayed, or stopped, due to strikes, acts of God, natural disasters, breakage and other such causes beyond the reasonable control of Management. Management shall not be liable for any injury to persons or property caused by such interruptions, delays or stoppage in services, nor shall there be any abatement or reduction in rent.

8. LOT MAINTENANCE. The Homeowner is responsible to maintain their space including mowing, fertilizing, weeding and watering their lawn, pruning any bushes and trees on their space. After written notice to Homeowner, Management may charge a reasonable fee for services relating to the maintenance of the land and site upon which the mobile home is situated in the event Homeowner fails to maintain such land or site in accordance with the Rules and Regulations of the Community. The written notice shall state the specific condition(s) to be corrected and an estimate of charges to be imposed by Management if Management or its agent performs the services. Any charges imposed hereunder shall constitute additional rent. Homeowner hereby consents to allowing Management, it's authorized agents, representatives, and employees reasonable access to the Homesite for the purpose of inspection, maintaining, or making repairs, alterations, or additions to any portion of said space, providing this does not create any unreasonable inconvenience or unnecessary expense to the Homeowner. Homeowner hereby consents to and acknowledges Management's monthly land and site inspection.

9. INSURANCE. Homeowner shall be solely responsible for the maintenance of insurance to protect Homeowner's manufactured home and other property. Where Homeowner has a pet, Homeowner is to provide Management with proof of insurance and Management is to be listed as a co-insured for the purpose of being notified if the insurance policy is canceled.

10. PROHIBITED USES. Homeowner agrees that this Agreement is entered into between Homeowner and Management for the personal and actual residence of Homeowner. The manufactured home and site shall be used only for private residential purposes and no business or commercial activity of any nature shall be conducted thereon. No persons other than those listed in this Agreement, may reside at the site without the prior written consent of Management.

11. INDEMNIFICATION.

a. **Liability indemnification**. Homeowner agrees to indemnify and hold Management harmless from, and on account of, any damage, loss (including a provision of defense and attorney's fees and costs) or injury to any property or any person that (1) arises as a result of the tenancy in the Community by Homeowner, (2) arises from any act or omission of Homeowner resulting in a defect or deterioration in the condition of the manufactured home or leased space, or (3) arises from the negligent or intentional acts or omissions of Homeowner or Homeowner's guests. This indemnification does not cover any injury or damage that is caused by the active negligence or willful misconduct of Management.

b. **Manufactured home value**. Homeowner acknowledges that the variables inherent in a manufactured home investment include the risks of obsolescence, changes in demand, location, manufactured home maintenance, wear and tear, age, technological advances, interest rates and terms, economic climate and development, neighborhood change, and many other factors. Homeowner further acknowledges the existence of such investment risks, and agrees to accept all risks of economic loss or loss in value to the manufactured home. Homeowner understands and agrees that Management shall not be held liable or responsible for any economic loss, diminution in market value, or depreciation of the manufactured home, or its accessory structures or equipment, and other improvements.

12. TERMINATION OF TENANCY BY MANAGEMENT.

a. This Agreement may be terminated by Management if Homeowner:

(1) Fails to pay rent within seven (7) days after it is due, in which case Management may give Homeowner written notice of non-payment and intention to terminate the tenancy if the rent is not paid within seventy-two (72) hours. If not so paid Management may terminate the tenancy and institute eviction proceedings. 72-hour notice is deemed to be served on the day on which it is either hand delivered, mailed by first class mail, or mailed by first class mail and attached in a secure manner to the main entrance of the manufactured home. Notice to Management is deemed served by mailing first class mail and attaching in a secure manner to the main entrance of the clubhouse.

(2) Violates a law or ordinance related to Homeowners conduct as a tenant or violates a rule imposed as a condition of occupancy. In this case, the Notice to Terminate shall set forth the facts sufficiently to notify the Homeowner of the reasons for the termination of the occupancy. The Homeowner may avoid this termination by correcting the violation within thirty (30) days. If substantially the same act or omission occurs again within six (6) months. Management may terminate the tenancy upon giving twenty (20) days notice specifying the violation and date of termination;

(3) Or someone in Homeowner's control or the Homeowner's pet seriously threatens or inflicts personal injury upon the Management or other tenants, intentionally causes substantial damage to the premises or commits an outrageous act; the tenancy may be terminated upon twenty-four (24) hours written notice specifying the cause;

(4) Sells, assigns, subleases or otherwise transfers the manufactured home without the consent of Management in accordance with Section 16, below;

(5) Does not extend the current lease or execute a new long term lease then being offered by Management. Thereafter, either Management or Homeowner may give the other a 30-day

notice to quit tenancy in the Community. Then, the manufactured home must be removed from the Community within 30 days of receipt of said notice; or

(6) If Homeowner has received three (3) 72-hour notices for non payment of rent within a 12 month period, Management may issue a 30-day notice to terminate tenancy. If a 30-day notice is given for three late payments in a 12 month period, Homeowner cannot correct the violation and void the notice.

(7) As otherwise provided by law.

b. If Management intends to cease operation of the Community, Management may terminate the tenancy as provided by Oregon law;

c. Where written notices are given to terminate this Agreement, the tenancy terminates on the day designated in the Notice to Terminate and without regard to the expiration of the period for which rents are to be paid.

d. Management shall have all remedies now or hereafter allowed by law in the event that Homeowner breaches any term or provision of this Agreement. Homeowner will not remove or permit the manufactured home to be removed from the Community until all sums then due to Management have been paid in full.

e. Uninsured damage to Community. In the event of loss or damage to the Community in excess of $250,000 that is not covered by insurance, Management may terminate this Agreement upon sixty (60) days written notice to Homeowner.

13. TERMINATION OF TENANCY BY HOMEOWNER. Homeowner may terminate Homeowner's obligations under this Agreement only in the following ways:

(1) By Homeowner giving Management not less than thirty (30) days written notice prior to the date of the departure from the Community and Homeowner removes the manufactured home and other property from the Community. Upon removal of the manufactured home from the Community, the right of possession and control of the site shall revert to Management;

(2) By expiration of this Agreement without renewal by Management;

(3) Upon the death of Homeowner, or if there is more than one Homeowner, upon the death of the last Homeowner to occupy the manufactured home on the site; or

(4) As otherwise provided by law.

14. RENTING AND SUBLETTING. Homeowner shall not sublease, or otherwise rent all or any portion of Homeowner's manufactured home or the site. Moreover, Homeowner shall not encumber Homeowner's interest in this Agreement or the site.

15. MINOR CHILDREN. As an "ALL AGE" Community it is expected that minor children of the Homeowner may be living in the home. Fair Housing laws allow two occupants per bedroom (as defined) plus one additional occupant to live in the home. This Community follows that standard and you, the Homeowner, agree that violation of that standard is grounds for termination of tenancy under Section 12

of this Agreement. Only minor children of the Homeowner may live in the Community. Only minor children of direct issue of either Homeowner or where the Homeowner(s) are court appointed legal guardians of the minor child may the child be considered as the Homeowners' child for purposes of this Agreement. A minor child is under the age of 21.

Current minor children of Homeowner(s) are:

In the event a child of a Homeowner wishes to become a Homeowner in the Community, the child must comply with the provisions of Section 16 of this Agreement.

16. ASSIGNMENT OF AGREEMENT AND APPROVAL OF PURCHASER OR TRANSFEREE. Homeowner may sell or otherwise transfer the manufactured home at any time in accordance with applicable law. Homeowner must, however immediately notify Management in writing of Homeowner's intent to sell/transfer the manufactured home. If the prospective purchaser/ transferee of the manufactured home intends for the manufactured home to remain in the Community, or if the purchaser/transferee intends to reside in the Community, such person (s) must:

(1) Complete an application for occupancy;

(2) Be accepted by Management (approval must be in writing prior to occupancy);

(3) Accept the assignment of the existing agreement or execute a new long-term rental agreement that is acceptable to Management prior to occupancy of the site; and

(4) Execute and deliver to Management a signed copy of the Community's then effective Rules and Regulations and all other required occupancy documents.

(5) If the Homeowner is allowed to leave their manufactured home in it's present space upon sale to a new Homeowner, the following conditions are required:

(a) The manufactured home shall be brought up to all current Community standards for new homes moving into the Community,

(b) Management may in it's discretion and in cases selected by Management, grant exception to (a), however, any special exception shall be in writing, signed by Management and Homeowner, and shall specify the length of time for which the exception is granted, and

(c) Management reserves the right to require that the new purchaser agree, in writing, that the home will be removed from the Community at the time of it's sale to a subsequent purchaser if in Management's opinion the home is not acceptable based on age, size and/or the home is in deteriorating condition as of the date of the sale.

(d) Failure to immediately enforce any of these conditions shall not be construed to constitute a waiver and shall not prevent later enforcement of these conditions.

No person shall be permitted to become a tenant or resident of the Community unless they comply with requirements (1) through (5) above.

17. TRANSFER OF MANAGEMENT'S INTEREST. In the event Management transfers its interest in the Community or any portion thereof, Management shall be automatically relieved of any obligations

under this Agreement accruing after the date of the transfer. The transferee shall assume such obligations.

18. WAIVER. The Management's waiver of, or failure to take any action in response to, any breach of a provision of this Agreement or the Community Rules and Regulations shall not be deemed to be a waiver of that provision. Management's subsequent acceptance of rent shall not be deemed to be a waiver of any previous breach by Homeowner of this Agreement or the Community Rules and Regulations, or of Homeowner's failure to pay any sum due, regardless of Management's knowledge of the breach or failure to pay.

19. EMINENT DOMAIN. If any portion of the Community is taken under the power of eminent domain, or is sold to any authority having the power of eminent domain, either under threat of condemnation or while condemnation proceedings are pending or the utility systems or other portions of the Community are or will be affected by the condemnation to the point where, in Management's sole opinion it is not economically desirable to continue operations, Management will have the right to terminate this Agreement as of the date the condemning authority takes possession. The entire amount of any award for taking of all or any part of a site or the Community or for any other reason under the power of eminent domain will be management's property whether such award shall be made as compensation for diminution in value of the leasehold or for taking the fee or the taking of any interest Management has with Homeowner or Homeowner's tenancy in the Community. This section does not preclude Homeowner from obtaining any award from the condemning party for any loss of or damage to Homeowner's manufactured home or other removable personal property.

20. ATTORNEY'S FEES AND COSTS. In any action arising out of this Agreement, enforcement of Community rules and regulations or other applicable law, the prevailing party shall be entitled to reasonable attorney's fees and costs. A party shall be deemed the prevailing party if the judgment is rendered in that party's favor or where the litigation is dismissed in that party's favor prior to or during the trial, unless the parties otherwise agree in the settlement or compromise.

21. ARBITRATION OF DISPUTES.

a. Any dispute between the parties hereto involving the construction or application of any of the terms, covenants, or conditions of this Agreement and tenancy in the Community, shall on written request of one party served on the other and shall be submitted to final and binding arbitration conducted under the provisions of ORS 36.300 et Seq. Civil discovery rules to provide full and complete discovery including depositions on oral examination, interrogatories, pre-trial and other motions, which would be permitted if the dispute were tried in the applicable court, are also permitted. The arbitrator's decision shall comply with all legal standards and rules of evidence. A statement of decision shall be included in the final decision unless both parties agree one is not necessary.

b. Management shall not be required to arbitrate disputes relating to the following matters: (1) Community closure; (2) Community sale; (3) Rent, including but not limited to amount, increase and nonpayment; or (4) Matters for which 24-hour notice is permitted under ORS 90.400(3).

c. "Dispute" includes by way of illustration, but is not limited to, disputes, claims or controversies regarding: the maintenance, condition, nature, or extent of the facilities, improvements, services and utilities provided to the site, Community, or the common areas of the Community, enforcement of the Community Rules and Regulations; living condition; injuries or damages to Homeowners, other residents, quests or invitees, or to property of any kind, from Management's

operation, maintenance, or the condition of the Community or its equipment, facilities, improvements or services, whether resulting in part from Management's negligence or intentional conduct; business practices of management; punitive damage and class action claims; and, interpretation of this Agreement. "Dispute" includes not only disputes Homeowner may have with Management but also disputes against any of Management's contractors or agents.

d. Some disputes may be only partially arbitrable. In such cases, arbitration shall be completed as to the arbitrable matters before commencing a judicial action except as to actions for termination of tenancy under Section 12 which shall proceed to judgment even though related to an arbitrable dispute (only by court order shall such actions abate pending arbitration, and only then upon a clear showing that the arbitrated dispute must be resolved as part of the action).

e. Arbitration shall be commenced by service of a written Statement of Claim upon the other party and the Arbitration Service of Portland, Inc. (ASP). The Statement of Claim must provide: (1) a description of the dispute, and (2) the facts giving rise to the dispute including witnesses, days, times and circumstances. The parties shall have thirty (30) days to resolve the dispute informally after service of notice. If the dispute is not resolved to each party's satisfaction within this 30 day period, the dispute shall be resolved by binding arbitration.

f. If these arbitration provisions are held unenforceable for any reason, it is agreed that all arbitrable issues in any related or then pending arbitration or judicial proceeding will be subject to and referred on motion by any party or the court for hearing and decision by a reference to a retired judge who shall decide all of the issues without a jury.

g. Any costs necessary in advance for an arbitration and/or reference shall be advanced equally between the parties and shall be due and payable on demand. The costs of the arbitration and/or reference, including but not limited to, reasonable attorney's fees, shall be borne by the losing party, or in such proportions as the arbitrator shall decide.

NOTICE: BY INITIALING IN THE SPACE BELOW, YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY OREGON LAW.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE ARBITRATION OF DISPUTES PROVISION TO NEUTRAL ARBITRATION OR ALTERNATIVELY TO A "REFERENCE" AS PROVIDED IN PARAGRAPH F ABOVE.

Initials of Homeowner (s): **Manager Initial:**

_____ _____ _____ _____

Initials of assignee Homeowner (s): **Manager Initial:**

_____ _____ _____ _____

22. SUBORDINATION. Homeowner agrees that Homeowner's rights under this lease are and shall remain subordinate to the operation and affect of any mortgage, deed of trust, contract, security agreement or other financing constituting a mortgage or lien on the Community, whether now in existence

or created in the future. Homeowner's acknowledgment and agreement of subordination is self-operative and no further written instrument of subordination shall be required; however, Homeowner shall execute such further assurances as may be requested from time to time by Management or a mortgagee or other lienholder. Alternatively, a mortgagee shall be entitled to elect by notice to Homeowner or by the recording of a unilateral declaration of subordination that this lease and the Homeowner's rights hereunder shall be inferior to the rights of the mortgagee.

23. ESTOPPEL CERTIFICATE. Within ten (10) days after a request by Management, Homeowner agrees to execute and deliver to Management a certificate designed to tell a person not a party to this Agreement whether or not the lease is still in effect and that each party, up to that point in time, has fulfilled their respective obligations under the lease. Any certificate provided by the Management not returned within the ten (10) days by the Homeowner shall be deemed approved.

24. GOVERNING LAW. This Agreement shall be governed by and construed pursuant to the pursuant to the laws of the State of Oregon.

25. TIME OF THE ESSENCE. Time is of the essence of each provision of this Agreement.

26. INTERPRETATIONS AND SEVERABILITY. Each provision of this Agreement is separate, distinct and individually enforceable. In the event any provision is declared to be unlawful or unenforceable, the validity of all other provisions shall not be affected.

27. ENTIRETY OF AGREEMENT. This Agreement contains the entire agreement between the parties regarding tenancy in the Community. This Agreement supersedes any prior written or oral negotiations or agreements, unless they are set forth in writing in this Agreement.

28. NOTICES. Any Notice called for in this agreement shall be served and/or delivered in accordance with the provisions of Oregon Residential Landlord Tenant Law.

29. ACKNOWLEDGMENTS.

a. Inspection of the premises. Homeowner acknowledges that Homeowner has carefully inspected the site to be rented and all Community facilities and has found them to be in every respect as represented by Management to Homeowner, either orally or in writing, and to the extent that they are not exactly as represented, either orally or in writing, accepts them as they are. Homeowner acknowledges that nothing in this Agreement gives the Homeowner an ownership interest in any part of the Community real property or improvements. Management acknowledges that nothing in this Agreement gives Management any property interest in the Homeowner's manufactured home.

b. Review of Agreement. Homeowner acknowledges that Homeowner has had an adequate opportunity to read this Agreement and all documents incorporated herein. By initialing below, I/we acknowledge having read and understood the above acknowledgment provisions,

Initials of Homeowner(s): _____ _____ _____ _____

Initials of assignee Homeowner(s): _____ _____ _____ _____

WITNESS the following signatures:

By _____ Date: _____
(Management)

By _____ Date: _____
(Homeowner)

By _____ Date: _____
(Homeowner)

FIRST ASSIGNMENT OF LEASE:

By _____ Date: _____
(Management)

By _____ Date: _____
(Assignee Homeowner)

By _____ Date: _____
(Assignee Homeowner)

4/29/98, 5/23/01,11/20/01, 12/1/05, 3/1/06

Exhibit A

	PRESENT COSTS	HOMEOWNER PAYS UTILITY COMPANY	MANAGEMENT BILLS HOMEOWNER	INCLUDED IN RENT	OTHER
NATURAL GAS		YES			
ELECTRIC			YES		
WATER				YES **	
TRASH	$ /can		YES		
SEWER				YES **	
CABLE TV	$ /mo.		YES		
CLUBHOUSE				YES	
PETS					BY AGREEMENT
LANDSCAPING				COMMON AREA	HOMESITE MAINTAINED BY HOMEOWNER
RV STORAGE	$ /mo.		YES		Myra Lynne reserves The right to remove The RV Storage upon 90 days notice.
OTHER					

** LANDLORD RESERVES THE RIGHT TO SEPARATELY BILL THIS ITEM SOMETIME IN THE FUTURE.

Exhibit B

This Exhibit is made a part of and attached to that Rental contract / lease revision #Myra Lse 5A rev 3/1/06 entered into on ___, 20____ with the Myra Lynne Manufactured Housing Community for space # _____

By my (our) signature(s) below and prior to entering into a rental contract, I (we) acknowledge, receipt of and understand the meaning and pertinent requirements of, the documents listed below.

In some instances only the signature page or copy of the signature page rather than an actual documents may be required for Community files.

By my (our) signature I (we) acknowledge receipt of the full and complete document

Manager: verify that all signature pages include version and or revision dates/numbers

Please ***initial*** opposite each document indicated.

_____	_____	Community lease
_____	_____	Lot Line Addendum
_____	_____	Straight Talk About Mobile Home Park Living
_____	_____	Community Statement of Policy
_____	_____	Community Rules and Regulations Revision Dated: _____
_____	_____	Community Space Maintenance Agreement
_____	_____	Pool & Spa Agreement
_____	_____	Pet Agreement (if applicable)
_____	_____	RV Storage Agreement (if applicable)
_____	_____	Oregon Landlord Tenant Act 20____ (available in the Community office)
_____	_____	_____

THE PROSPECTIVE HOMEOWNER HAS NO RIGHT TO RESIDENCY UNTIL A RENTAL AGREEMENT OR LEASE HAS BEEN SIGNED AND THE TITLE FOR THE PROSPECTIVE HOME HAS TRANSFERRED.

_____ _____

Resident Signature Resident Signature

_____ _____

Manager Date

1900 SW 4th, Plaza Level
Portland, Oregon 97201
1-800-532-1626

PACIFIC POWER

March 1, 2005

Phil Taylor
Regional Manager
HCA Management Company
P.O. Box 7
Novato, CA 94948-0007

Subject: Myra Lynne Mobile Park

Dear Mr. Taylor,

Recently we discovered that our customer, the Myra Lynne Mobile Park located at 924 Carol Rae in Medford, Oregon 97501, has not been receiving the BPA discount that they qualify for. The resulting credit to the account is $97,936.77 and this amount will be reflected on your next statement. We apologize for any inconvenience this may have caused you.

As you are aware, the Myra Lynne Mobile Park is a master metered account which is billed on a non residential rate schedule and the park is required to rebill the tenants according to the Company's residential rate schedule. The residential rate is computed by using the energy charge and monthly basic charge for each meter. I have enclosed a summary pricing sheet for Residential Rate Schedule 4 for your convenience in calculating the credit. The park management will be responsible for ensuring that the tenants receive the benefits of this credit.

For your convenience, shown below is the reference to the Company's Tariff Rule 2 outlining resale of service provisions:

Resale of Service
Resale of service shall be limited to Consumer's tenants using such service entirely within property described in the written agreement. Service resold to tenants shall be metered and billed to each tenant at Company's regular tariff rate schedule applicable to the type of service actually furnished the tenant. Consumer shall indemnify Company for any and all liabilities, actions or claims for an injury, loss or damage to persons or property arising from the results of service by Consumer.

If you have any questions, please feel free to contact me at 541 776.5438.

Regards, Claudia Steinbroner

Claudia Steinbroner
Corporate Account Manager

MEASURE: HB 2247
EXHIBIT: B
JUDICIARY SUB ON CIVIL LAW
DATE: 6/13/05 PAGES: 15
SUBMITTED BY: John VanLandingham

COMMENTS ON HOUSE BILL 2247 WITH THE DASH 1 AMENDMENTS

Testimony Before the House Committee on Judiciary Subcommittee on Civil Law

73rd Oregon Legislative Assembly

John VanLandingham, Lane County Law and Advocacy Center

June 13, 2005

A. Introduction

The Dash 1 amendments to HB 2247 will substitute into this bill the contents of SB 636A, which is the product of the Manufactured Housing Landlord/Tenant Coalition, as explained below. The coalition intends for HB 2247-1 and SB 636A to be identical.

HB 2247-1 amends the Oregon Residential Landlord and Tenant Act ("ORLTA") and a related statute with regard to manufactured dwelling and floating home tenancies in facilities.

The ORLTA is found at ORS chapter 90. Manufactured dwelling and floating home tenancies (referred to here as "MH") in facilities (four or more spaces for rent in a park or marina) differ from regular rental units such as apartments in that the residents/tenants own their homes and rent spaces in parks or marinas for those homes. There are special statutes as part of the ORLTA for these tenancies, at ORS 90.505 to 90.840.

These amendments were negotiated and drafted by the Manufactured Housing Landlord/Tenant Coalition, in sixteen three-hour meetings between June 2004 and February 2005. Since prior to the 1995 legislative session, this coalition has negotiated and drafted an omnibus bill amending the law regarding MH tenancies each session. This version of the coalition consists of the following landlord, tenant, and other interest groups: Commonwealth Real Estate Services (Sally Harrington), Lane County Law and Advocacy Center (John VanLandingham), Manufactured Housing Communities of Oregon (Troy Brost, Charlie Swan, Chuck Carpenter, and John Brenneman), Multifamily Housing Council of Oregon (Emily Cedarleaf), Oregon Housing and Community Services (Jeanne Arana), Oregon Law Center (Sybil Hebb), Oregon Lodging Association (Kevin Campbell and Charlie Greeff), Oregon Manufactured Housing Association (Don Miner), Oregon Park Owners Association (Paul Brewer, Larry Campbell, and Charlie Greeff), Oregon Rental Housing Association (Sharon Fleming-Barrett and Norton Cabell), and Oregon State Tenants Association/Manufactured Home Owners of Oregon (Patricia Schwoch and Jim

Welsh). Other people occasionally participated, notably Larry Henson, a park manager; Dolores Raymond, on behalf of the Governor's Commission on Senior Services; and Marilyn Odell, from the Department of Justice.

The coalition wishes to recognize the contributions of Sharon Fleming-Barrett, who represented landlords for more than fifteen years, before suddenly dying of cancer in April 2005. We will miss her knowledge of the industry, and her calm and positive manner.

HB 2247-1 primarily addresses three major issues: mandatory education for park managers/landlords, submetering of park utilities and unilateral authority for a landlord to amend a rental agreement to convert to submeters, and occupancy limitations on recreational vehicles in parks.

These comments are meant to explain what HB 2247-1 does, and what the coalition's intentions are in submitting this bill to the legislature. These comments have been drafted by VanLandingham, and have been shared with the members of the coalition in advance of this hearing.

VanLandingham was also the principal drafter for the issues negotiated by the coalition, except that Greeff did the first drafts of the recreational vehicle issue.

B. Section by Section Explanation

Sections 1 and 2: Add a new section to the MH part of the ORLTA, ORS 90.505 to 90.840, relating to mandatory education for MH managers/landlords/owners. Sections 2, 3, 4, 24, 25, and 26 of the bill are all part of this issue.

The mandatory education provisions are modeled after those of Nevada. Renee Diamond, the manager of the Nevada Manufactured Housing Division, met with the coalition and described how the law works in Nevada, to the benefit of both landlords and tenants.

Note that OHCSD has testified that it estimates its cost to administer the mandatory education and registration programs created by sections 2 and 3 of the bill at $17,000 per biennium. This cost does not require an allocation of state General Funds. Rather, this cost will be covered by the existing $6 special assessment that residents have agreed to tax themselves. ORS 446.525. (See the discussion in section 24.)

Section 2 provides the first step in the mandatory education provision – requiring all facility landlords to register their facilities with the Oregon Housing and Community

Services Department. Previously, OHCSD attempted to track facilities in the state, using information from county assessors, but had no authority to require that facilities register. Registration with OHCSD is necessary to allow OHCSD to monitor compliance with the new mandatory education requirement.

The registration information provided to OHCSD is not required to be kept confidential. Partly as a result, a landlord is not required to provide a home address, only a business mailing address, so that the landlord can retain some privacy. And if there is more than one telephone number for a facility, the landlord need only provide one. The registration need not designate who shall be the trainee for that facility. OHCSD may solicit email addresses, and may allow filing of registration information and confirmation electronically, but shall not require it, in recognition that not everyone is enamored with the Age of the Internet.

The coalition expects OHCSD to contact every known facility, after adoption of the bill, to advise them of the obligation to register and to comply with the mandatory education requirement.

Section 3: Adds a new section, requiring mandatory education for facility managers and owners.

There are several rationales for this new requirement. The law in this area is becoming increasingly complex, difficult for anyone to understand and keep up with. Facility residents feel that the quality of facility management makes a huge difference in the quality of their living situations and lives, and one way to ensure that facility management is good is to train the people who do that management. From the landlord perspective, trained managers save their owners money, by following the law and avoiding liability, as well as by attracting more and better tenants because the facilities are well run. In addition, good landlords who know and follow the law want not-so-good landlords to do the same. As noted above, this mandatory education requirement is modeled after the law in Nevada, where both landlords and tenants have found it to be beneficial.

Given that rationale, the goal here is to require one person per facility to be trained, and for that person to be the one most responsible for managing the day to day affairs of the facility, the person most in contact with the residents. The bill does that by saying that the person required to be trained is the person who lives in the facility, be it the manager or the owner or, if there is no such person, an off-site manager. An owner who does not live in the facility may be the trainee if there is no manager, on site or off site; in addition, such an owner, who owns more than one facility, can be the designated trainee for more than one facility, assuming that there is no manager for each of those facilities. What is not allowed is for an office worker of a multi-facility owner with headquarters in Chicago to meet the

training requirement for those several facilities, when those facilities also have local managers.

This provision does not create a requirement that there be an on-site manager. Some smaller facilities do not have on-site managers.

If there is a change in management personnel, such that there is a new person who is the designated trainee, that person has 75 days or until the next class offered somewhere in the state, whichever is more, to meet the training requirement. Residents wanted this period to be short, because they feel that new managers are often most in need of training. Landlords wanted more flexibility, and feared that new managers might be busy with many other pressing duties. Seventy-five days is a compromise.

The training obligation is six hours of training every two years, for the designated trainee for each facility. OHCSD shall monitor facilities for compliance, using registration information required by section 2 of this bill. OHCSD also shall ensure that education classes are offered every six months, by approved persons, and that at least half of each class instruction shall be about landlord-tenant law or some related subject, such as fair housing law. The coalition considered but rejected requiring classes in different regions of the state (as Nevada does) and regulating more closely the cost or content of the classes, preferring instead to let the private market determine those things. Presumably class offerors will offer the classes wherever they can get enough attendees, and will make sure that the topics are attractive to draw the most attendees. For example, the coalition's assumption is that six hours of class on abandoned property law would meet the statutory requirement, but would likely not attract many attendees. And coalition members have learned from experience that people in the far reaches of the state have in some sense become inured to having to drive long distances in order to participate in activities, and that sometimes it is easier to, for example, drive from Ontario to Portland than to drive to Bend.

The new law allows attendance by videoconferencing, for example, at a local community college. Videoconferencing allows live participation by trainees who are not at the training location. This does not include watching a video of a training, later; videos do not allow live participation in the questions and answers, and the coalition felt that monitoring compliance with videos would be complicated.

One of the guiding principles for the coalition in negotiating these new requirements is simplicity. The new law does not require OHCSD to adopt implementing regulations.

The offerors of the classes are required to provide a certificate of completion to

each attendee. Proof of "completion" could be as simple as signing an attendance log. And the offerors are required to provide OHCSD with a record of those who completed the training, which could be as simple as a list of attendees. The coalition assumes that OHCSD will prepare a form for offerors to use. There is no requirement that the offeror notify the owner of completion of the training requirement by the owner's manager.

Finally, although OHCSD will regulate the provision of classes and the qualifications of their instructors, the bill provides that OHCSD, and any sponsoring trade association and its instructor, are not "certifying" the quality of the class, or guaranteeing that the attendees will know the law, or follow it. They are not liable for mistakes made by class attendees.

Section 4: Adds a new section, authorizing OHCSD to assess a civil penalty of up to $500 for landlords who do not comply with the new requirements for registration and mandatory education. The use of the words "may assess" means that OHCSD may use discretion to not impose a penalty for noncompliance, or to impose a penalty of less than the maximum, if OHCSD concludes that the noncompliance is minor or that the landlord made a good faith effort to comply.

Sections 5 through 10 – Overview: Facility landlords are already required to provide utility connections to the rented MH space, so that tenants can connect their homes to the utility service, be it electricity or water or sewer or whatever. See ORS 90.730. For water and sewer utility service, most facilities were built such that there is a main line to the facility with water/sewer lines inside the facility to each space, and the cost of the service is billed by the utility provider to the landlord using what is known as a "master meter" – a meter on that main line that measures the amount of the utility service provided to the whole facility. The landlord recovers the cost of the utility service either by including it in the rent or by dividing the cost among the residents. This latter method of billing is authorized by ORS 90.510 (8). In some newer facilities, landlords built the facility with submeters on those utility lines at the point where the line enters the individual space, to measure the exact amount of the utility service that the tenant consumes.

There are benefits to submetering utilities, for landlords, tenants, and our environment. Submeters allow tenants to control their individual consumption, which encourages conservation. It also avoids the frustration felt by a single, frugal, elderly resident who must, in the master-meter method of billing, pay the same amount as the neighboring family with three teenagers who take long showers. Submeters generally result in tenants noticing leaks in water lines sooner, and also generally in lower overall bills and less consumption. Because the system is fairer, there are fewer unhappy tenants – or at least they're not unhappy about this subject. And the increasing cost of utilities has made landlords want to stop covering the cost in the rent

For these reasons, apartment landlords have recently been switching utility billing methods from inclusion in the rent or master metering, to submetering. But facility landlords cannot make that switch, without the approval of the tenants. ORS 90.510 (4) currently prohibits landlords from unilaterally amending their rental agreements, except in limited circumstances not available here.

These sections of the bill are intended to allow facility landlords to unilaterally amend their rental agreements in order to convert to submeters. And, as part of this change, we seek for the first time to provide a comprehensive overview of how all utilities may be provided and billed for in facility tenancies, including issues such as access to the tenant's space to read a submeter.

While some utilities are provided directly to the tenant's space by the utility provider, including billing for the utility service – such as electricity, commonly – others, such as water, sewer, cable TV, and internet access, generally involve the landlord in the relationship. As a result, these new sections are written to apply to all utility services, as already defined in ORS 90.315.

State and federal regulations sometimes are applied to treat landlords who pass through utility service to the tenants from a utility provider – such as Portland General Electric – as if the landlords were themselves utility providers, with all of the government regulation that follows from such a determination. The coalition has designed these provisions to ensure that a landlord who charges a utility charge while simply passing through utility service from a utility provider to the landlord's tenants, with no added charges or profit and in compliance with these provisions, is not a regulated "public utility," at least under Oregon law. That requires, among other things, not adding to a utility charge any other costs, such as a "handling charge," and excluding landlords who are themselves a utility provider or the source of the utility – such as landlords who provide water from their own wells. (Landlords with wells can always recover their costs as part of the monthly rent.)

There is another policy-based reason for not allowing utility charges by landlords who are themselves the utility provider, and that is that these provisions allow the landlord to pass the utility bill from the provider directly on to the tenant. If the landlord were also the utility provider there would be no way to monitor the utility rates charged.

These provisions have been reviewed with the Oregon Public Utility Commission staff. One of the PUC's recommendations is in section 5, a statement that a landlord who complies with these provisions is not a public utility. Federal law on this point is not clear, and is now the subject of litigation, between the MH landlords' national organization and the Environmental Protection Agency.

Section 5: Adds a new section, defining "submeter" and "utility or service."

Section 6: Adds a new section, generally describing the types of utility billing methods and setting forth some general principles.

One over-riding general principal is that the landlord must comply with the policies of the utility provider concerned with that utility service. For regulated utilities, that necessarily implicates state policies as well. Examples include utility rates and requirements for utility hookup procedures.

As described in the bill, there are several possible billing methods for utilities provided to MH tenants:

a. The utility provider bills the tenant directly; the landlord is not involved.

b. The utility provider bills the landlord through a master meter for the whole facility, and the landlord either recovers the cost in the rent or bills the tenants proportionally with a utility or service charge ("utility charge") as described in section 7 of the bill.

c. The landlord uses a submeter to measure individual consumption by the tenant, and bills the tenant based upon that consumption with a utility charge as described in section 8 of the bill.

Note that a landlord could combine these different methods, for example, using the master meter/apportionment method for common areas such as a playground or swimming pool and using the submeter method for consumption by the tenant at her space.

This section for the first time spells out how a landlord bills the tenant – in writing, specifying the amount of the utility charge owed and a due date for payment, which must be not less than 14 days after the service of this billing notice.

This section continues and replaces part of the current law, from ORS 90.510 (8), that the utility charge is not treated as "rent." The result of this distinction is that a landlord cannot use a 72 or 144 hour nonpayment of rent notice to require payment upon threat of eviction, but instead may use a 30 day notice. On the other hand, the landlord does not have to treat fluctuations in the billing as a rent increase, which would necessitate a 90 day notice.

Section 7: Adds a new section, describing and regulating the master meter billing method for utility charges billed by a landlord to a tenant. The majority of this section continues and replaces ORS 90.510 (8) regarding utility charges using the master meter billing system, either for service to a tenant's space or to common areas. Section 19 of this bill deletes ORS 90.510 (8).

New language here confirms the decision of the Oregon Court of Appeals in Beldt v. Leise (2003), which correctly interpreted ORS 90.510 (8), utilizing the coalition's 1997 legislative comments, to hold that in the master meter billing situation the landlord need not bill for actual usage by the tenant, but instead must bill using some system of fairly apportioning the costs among the tenants facility-wide. The new language here provides some examples of methods of "reasonably" apportioning the costs; there may be others. If the landlord's method of apportionment is to divide the cost equally among the spaces in the facility, the landlord may limit this to include only occupied spaces, since unoccupied spaces wouldn't consume a utility service. The coalition considered, but did not include, a method of allocation based on the number of occupants of each space. Besides being administratively difficult to monitor the number of occupants each month, the coalition feared that this method might violate fair housing law, since families with children would pay more than those without children, and fair housing law prohibits discriminatory treatment based upon familial status.

Section 8: Adds a new section, describing and regulating the submeter billing method for utility charges billed by a landlord to a tenant.

Unlike the master meter method in section 7, the submeter method is all new. But it has some similar themes, in terms of what can be included. As with the master meter method, the landlord can charge a utility charge under this method only if the written rental agreement so provides. The charge may include the following: (a) The cost of the utility service provided to the tenant's space and under the tenant's control, as measured by the submeter; this does not include service to the tenant's space that is under the landlord's control, for example, a sprinkler system set by the landlord to water lawns (although if the rental agreement so provided, the landlord could use the master meter method to bill for this); on the other hand, this does include water that leaks from the tenant's faulty kitchen sink, even though the tenant feels like she didn't "use" that water; (b) the cost of any sewer service (stormwater or wastewater) as a percentage of the water measured by the submeter, if the utility provider bills the landlord in that manner; and (c) a pro rata portion of any base charge billed by the provider to the landlord, including any taxes that the provider passes through.

With regard to the cost of the service, as a result of PUC recommendations this section refers to the average rate billed to the landlord by the provider, since there may be a range of rates charged, based on the amount of the service consumed. In addition, the "no greater than" phrase reflects that utility provider policies might require a landlord to charge the tenant a rate that is lower than the rate the provider uses to bill the landlord -- a residential rate instead of a commercial rate, for example.

The sub meter utility service charge may not include service to a common area

(although the landlord could use the master meter method, if the rental agreement so provides). And it may not include any additional charge, for example, profit, or the landlord's costs to install, maintain, or operate the system, for example, the cost of hiring a company to read the submeters. These costs should be treated as operating expenses, which, as with any operating expense, are normally recovered in the rent.

Finally, the new language in sections 7 and 8 refers to utility service to the tenant's space, not to the dwelling; although there is no legal distinction (see ORS 90.100 (9)), this change helps make clear that the tenant is responsible for all utility service used on the space, not just that used inside the MH – for example, water for the tenant's flowers.

Section 9: Adds a new section, allowing a landlord to unilaterally amend a rental agreement – contrary to existing ORS 90.510 (4), which is amended in section 19 of this bill to allow this – to switch from the master meter method of billing (whether the cost was recovered by the landlord as part of the rent or as a utility charge) to the submeter method, and addressing related issues of the conversion, such as the transition time, access to the space, the cost of the installation, etc.

When a landlord switches to the submeter method, the landlord must give tenants 180 days' written notice before converting. This means 180 days before the landlord starts billing under the submeter method, not before the landlord installs the submeters. A landlord may install the submeters and then wait to check how they're working, before changing the billing method.

In order to enter the tenant's space to install a submeter, or to repair or maintain one, a landlord would have to comply with ORS 90.725 regarding notice before entering. The landlord may contract with someone else to do the submeter installation; the landlord need not do the installation himself or herself.

If a landlord switches from recovering the cost of utility service in the rent to the submeter method with a utility charge, as allowed by this section, the landlord must lower the rent to reflect this change. The rent reduction must reflect the utility cost averaged over the preceding six months; in order for the tenant to assess the amount of the reduction, the landlord must provide the tenant with documentation of the utility bills over the preceding six months. There is no requirement regarding how long this rent reduction lasts, but the coalition notes that ORS 90.600 requires landlords to give 90 days' notice prior to a rent increase.

In addition, a landlord may not charge the tenant for the cost of conversion to submeters. (During an earlier hearing on this bill, a witness reported that the PUC estimated the cost to install a submeter at between $50 and $100.) The landlord may only

recover this cost as part of rent and, during the six months following conversion to submeters, a landlord may not increase the rent to recover the costs of installing, maintaining, or operating the utility system, including the submeters.

Finally, because the installation of a submeter to an already existing utility line and system will typically not lead to an increase in demand on the utility provider's system – to the contrary, the expectation is that submeters will lead to greater conservation and less consumption – this section provides that a local government may not assess a system development charge for that installation, unless the installation causes a system upgrade.

Section 10: Adds a new section, regarding a landlord's right of entry to the tenant's space to read the submeter.

Typically, a landlord's right of entry to the space is regulated by ORS 90.725, which requires, except in certain circumstances, such as an emergency, that a landlord provide 24 hours' notice to the tenant before entering the space, and allows the tenant to deny consent to enter, even for a lawful purpose and after lawful notice. This section creates an exception to the general rule of ORS 90.725 – but only for reading the submeter, whether it be done by the landlord, the facility manager, or an agent of the landlord, such as a meter-reading company employee. The exception means that the landlord need not give notice before entering to read the meter, and that the tenant cannot deny entrance, except as the landlord's right to enter is limited.

The rationale for this exception is that this entrance onto the tenant's space is similar to the entry made by utility provider meter-readers everywhere, that the intrusion is minimal and brief, and that, if a third party does the meter reading, the landlord cannot easily control the timing of the entrance or provide the notice required by ORS 90.725.

Because tenants are concerned about entries without notice and the impact on their privacy, this right to enter without notice/consent is limited – only for reading the meter, only once a month, and only at reasonable times between 8 a.m. and 6 p.m. A landlord who wishes to enter more frequently, or wishes to enter and do more than read the meter, may do so by complying with the notice requirements of ORS 90.725. Not all times between 8 and 6 are reasonable – for example, it would not be reasonable to enter to read the submeter while the tenant is holding a prayer service in the front yard. In many cases, the submeter will be at the edge of the space, so the meter reader will not have to enter the space.

Sections 11 through 14 -- Overview: These four sections address one issue – residential occupancy in recreational vehicles ("RVs") in RV parks, manufactured dwelling parks, and mobile home parks. Some state agencies and local governments limit the length

of occupancy in RVs in these parks to short periods of time, such as 30 days, or 3 or 6 months. The justification for these limits appears to be a health concern. Yet the reality is that Oregonians sometimes live in RVs, both as short term homes and as permanent homes, permanent in that the RV is their only home. And modern RVs are often nicer living spaces than some stick-built, on-site homes, and certainly not worse than motels, for which the government does not limit the length of occupancy. As a result of these government occupancy restrictions, those who choose to live in an RV are violating the law; these violators may include legislators, some of whom live in RVs during the six to eight months of a legislative session. In some cases, park landlords and RV tenants go to extreme lengths to circumvent these limitations, such as requiring all RV tenants to leave the park for a day before returning, or rotating the park space numbers every 30 days to make it appear that these are new occupancies. The coalition believes that Oregonians should be able to occupy RVs in parks for unlimited lengths of time, as long as certain basic safety standards and other protections are observed. RVs are, after all, a significant source of affordable housing for our state.

Section 11: Adds a new section, defining "manufactured dwelling park," "mobile home park," "RV," and "recreational vehicle park." The definitions for the first three are cross-references to existing definitions elsewhere in ORS. The definition of RV park is new, and is modeled after the definition of manufactured dwelling park and mobile home park in ORS 446.003, plus the OAR definition of RV park, minus references to being temporary and excluding campgrounds and picnic areas, as obviously temporary. Section 11 (2) (b) (B) is meant to make clear that the presence of two or more RVs in a manufactured dwelling park or mobile home park does not make those parks into RV parks or, for example, trigger the recreation vehicle park construction standards or regulatory requirements provided for in ORS 446.310 to 446.350.

Section 12: Adds a new section, providing that state agencies and local governments may not prohibit the placement or occupancy of an RV or limit the length of occupancy of an RV – just because the occupancy is in an RV – if all of the following conditions are met:

a. That the RV is located in a manufactured dwelling park, mobile home park, or RV park. This does not change the law with regard to where RVs may be located, in terms of land use planning restrictions. RVs are already allowed generally in these three parks. This does not create an obligation to allow RVs on land outside of these parks.

b. That the RV is occupied as a dwelling, not solely as, say, a subdivision construction office.

c. That the RV is lawfully connected to water and electrical supply systems and a sewer disposal system.

The last condition, the requirement that the RV be properly connected to utility

systems, is an ongoing one. If, at the time of initial occupancy or after the occupancy begins, this condition is not met, or is not being met, a government agency may terminate the occupancy, no matter whether the failure to meet the condition is the fault of the landlord, the tenant, a third party, or an Act of God. This is meant to address any legitimate health concerns about RV occupancies. (Note that this provision does not change current law regarding who has the responsibility to make or maintain these connections.)

Section 12 (2) authorizes state or local governments to impose other conditions on the placement of an RV in a park, such as how an RV is placed on the site or connected to the required utilities, or how the sites are laid out within the park. But these conditions should be similar to conditions imposed on RVs generally, and should not have the effect of preventing occupancies of RVs in these parks, or limiting their lengths. In other words, they cannot be so onerous as to defeat the purpose here.

This provision applies whether the tenant or the landlord owns the RV that the tenant occupies; for example, the tenant could rent both the RV and the space.

This provision is not meant to have any impact on local or state transient occupancy taxes, which typically apply to occupancies of 30 days or less. See, for example, Eugene Code 3.770. In this regard, RV occupancies should be treated similarly to hotel/motel occupancies, where the transient tax is typically charged for the first 30 days of an occupancy.

Finally, a park landlord could utilize this provision by complying with its conditions, immediately after the effective date of this bill. The requirements of section 14 are separate; a park landlord can qualify under this section without meeting the requirements of section 14.

Sections 13 and 14: Add a new section, regulating RV tenancies in manufactured dwelling parks, mobile home parks, and RV parks.

RV occupancies -- inside and outside parks, owned or rented -- are already covered by the ORLTA, and treated similar to apartment tenancies, not MH tenancies. See ORS 90.100 (9) and 90.120 (4).

This section requires landlords of RV tenancies in parks to provide RV tenants with written rental agreements – a requirement not imposed in the ORLTA for apartment tenancies – which describe the requirements of section 12 of this bill, regarding the conditions necessary to avoid occupancy limitations, as well as stating that, unless the rental agreement provides otherwise, the tenancy can be terminated by the landlord with a no-cause notice pursuant to ORS 90.427 and that in that case the tenant may be responsible

for removing any tenant-provided or paid-for structures.

The latter requirement reflects that some park landlords rent spaces to RV tenants only if the RV tenant provides or pays for additional structures, such as a deck. Unlike MH tenants, who are protected from no-cause evictions, RV tenants can generally be evicted for no reason with a 30 day notice. Those tenants then stand to lose any investment they have made in the space. The purpose here of the rental agreement is to warn those RV tenants of that risk.

Similarly, the newly-required rental agreement will warn them of the risk that a government agency may require them to move if the conditions of section 12 of this bill are not met. This section, then, in practice requires that a landlord comply with section 12, regarding the exemption from government placement and occupancy restrictions. The reverse is not true for section 12 itself; a landlord can utilize it without complying with section 14.

A remedy is provided to the tenant if a landlord fails to provide a rental agreement with these warnings and the tenant is evicted for no cause or if the landlord fails to comply with the occupancy requirements of section 12 of this bill and a government agency requires the tenant to move – so long as the tenant did not cause the failure to comply, such as by disconnecting the RV from the required utility connections. These remedies are modeled after ORS 90.310 (2).

This provision applies only to RV tenancies in parks, regardless of whether the tenant owns the RV or rents it and the space.

Section 25 of this bill makes this provision effective with tenancies that begin after the effective date of the bill, January 1, 2006.

Section 15: Amends ORS 90.100, the definitions section of the ORLTA, to amend the definition of "premises" to clarify that it includes "a facility for manufactured dwellings or floating homes," and to correct a cross-reference. The ORLTA already uses the term "facility" in two senses, one meaning MH parks and floating home marinas (each with four or more spaces for rent), and the other meaning structures or parts of the premises such as common bathrooms, play equipment, and pools. The coalition believes that the distinction between the two uses is clear.

Sections 16, 17, and 18: Amend ORS 90.140 and 90.425 (in two versions), solely to correct cross-references as a result of changes made elsewhere by this bill. There are no substantive changes to these sections.

Section 19: Amends ORS 90.510, to allow a landlord to unilaterally amend a MH rental agreement to convert to submeters consistent with section 9 of this bill, and to delete existing subsection (8) regarding utility charges, which has been replaced by sections 5, 6, and 7 of this bill.

Section 20: Amends ORS 90.630, regarding terminations of MH tenancies by landlords, to make clear that a 30-day for-cause termination notice under ORS 90.630 (1) must include a statement that the tenant may avoid termination by correcting the violation, as provided by ORS 90.630 (4). This section also corrects a cross-reference as a result of changes made elsewhere by this bill.

Sections 21 and 22: Amend ORS 90.675 (in two versions), solely to correct cross-references as a result of changes made elsewhere by this bill. There are no substantive changes to these sections.

Section 23: Amends ORS 90.725, regarding access to a MH tenant's space, to cross-reference the new access provision regarding entrances onto tenants' spaces to read submeters, created by section 10 of this bill.

Section 24: Amends ORS 446.515, which sets forth the State's policy to encourage settlement of disputes involving MH tenancies, to include education of park residents, owners, and managers. This amendment is part of the new mandatory education requirement provided in section 3 of the bill.

Although not previously stated in the State's policy, education has always been a significant part of OHCSD's program for MH tenancies, as administered by the Office of Manufactured Dwelling Park Community Relations. Education is viewed as a significant contributor to resolution of disputes. This program is largely funded by a self-imposed $6 annual assessment paid by each park resident as part of the resident's property taxes. ORS 446.525. OHCSD has said that there is enough revenue produced by the resident assessment to cover the agency's costs to administer the new registration and mandatory education requirements imposed by this bill. To be clear about the use of the fee for those purposes, the bill amends the policy statement to include education.

Section 25: Adds a new section, addressing the effective dates of the civil penalty provision for noncompliance with sections 2 and 3 of this bill regarding facility registration and mandatory education, and of the recreational vehicle tenancy provisions of section 14.

Section 26: Adds a new section, imposing a sunset of January 2, 2012, for the new facility registration and mandatory education provisions. The sunset will allow the coalition

to evaluate the effectiveness of these requirements over the next six years.

* * * * *

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PACIFICORP
A MIDAMERICAN ENERGY HOLDINGS COMPANY

Pacific Power | Utah Power
Rocky Mountain Power
825 NE Multnomah, Suite 1800
Portland, Oregon 97232

Please Reply To:

Michelle Mishoe, Legal Counsel
Pacific Power Legal
Suite 1800
Direct Dial (503) 813-5977
Fax (503) 813-7252
email: michelle.mishoe@pacificorp.com

February 21, 2007

Mr. John Cameron
Davis Wright Tremaine, LLP
1300 SW Fifth Avenue, Suite 2300
Portland, OR 97201-5682

Re: Myra Lynne Mobile Home Park Inquiry

Dear John,

Thank you for your letter dated February 5, 2007. I understand your client's concerns about ensuring compliance with Landlord-Tenant statutes and Pacific Power & Light's ("PP&L" or the "Company") Oregon tariffs and schedules applicable to Myra Lynne Mobile Home Park's ("Myra Lynne") electric service. PP&L remains committed to working with Myra Lynne to resolve any perceived conflict.

As you are undoubtedly aware, PP&L must set its rates to meet statutory and regulatory requirements. Oregon's filed rate doctrine, ORS 757.225, requires PP&L to charge according to its printed rate schedules for its service offerings. As you are aware, Rule 2, Section O requires anyone reselling electric service to tenants using submeters must bill the tenants at the regular tariff rate schedule applicable to the type of service actually furnished to the tenant. Pursuant to this rule, PP&L recommends that Myra Lynne use PP&L's residential retail rate (Schedule 4) and apply the credit from Bonneville Power Administration's residential exchange program (Schedule 98). These are the Oregon Public Utility Commission's ("OPUC")-approved schedules applicable to Myra Lynne.

PP&L interprets the Landlord-Tenant statute you refer to as governing the relationship between Myra Lynne and its tenants, including how Myra Lynne may bill its customers for electricity served through submeters. ORS 90.536 (2) describes what a landlord **may** charge a tenant for submetered service (emphasis added), which is ambiguous. While the formula contained in ORS 90.532(2) (a) for calculating utility service to tenants is very specific, the use of the word "may" seems to provide Myra Lynne with some discretion in how it calculates electricity charges for its tenants. PP&L is subject to OPUC's governance for retail rates, which is very clear. For these reasons, PP&L continues to recommend that Myra Lynne follow Oregon Rule 2 §O and Schedule 98 when calculating bills for Myra Lynne tenants.

PP&L suggests that the Company and Myra Lynne work together on the issue by filing a joint petition for declaratory ruling with the OPUC to obtain an opinion. PP&L looks forward to reaching a mutually satisfactory outcome.

Best regards,

Michelle R. Mishoe

cc: Natalie Hocken
Carole Rockney
Matthew Sutton

BILL FOR Jan 2005 No 196

FROM

MYRA LYNNE PARK
924 CAROL RAE
MEDFORD OR 97501

UTILITY READINGS		FROM 11/15	TO 12/15	DIFF	ENERGY UNITS	CHARGE
GAS						
ELE	KWH	29942	31190	1248	1248	[redacted]
WAT						

Rent [redacted]
GARBAGE
CABLE
RENT CR

TO

[redacted]

CE 942

ACCOUNT [redacted]

PLEASE PAY TOTAL [redacted]

Bill due on first - delinquent after 5 pm on fifth.

Paid 1/3/05 Amt= [redacted] Recd by PE

Adj Tot

UTILITY DETAIL

GAS

ELECTRIC

Basic Charge		[redacted]	Customer Charge
1248 KW-hrs	@ 0.039060		
500 KW-hrs	@ 0.025120		
500 KW-hrs	@ 0.030260		
248 KW-hrs	@ 0.037960		
Public Purpose 3%			
Low Income Assistance			
Credit From Merger			
500 KW-hrs	@-0.015870	7.94CR	
748 KW-hrs	@-0.006010	4.50CR	

WATER

BILLING DAYS=30
PARK BILLING CO.
P. O. BOX 910
DIXON, CA, 95620
707-693-0150

Myra Lynne MHC
(541) 773-6972

Account Number	Homesite	Due Date	Amount Due	Amount Paid
[redacted]	[redacted]	~~6/5/2007~~	[redacted]	

JUNE 2007

Myra Lynne MHC
924 Carol Rae
Medford, OR 97501

[redacted]

Please Return This Portion With Your Payment. Make Checks Payable to Myra Lynne MHC

ACCOUNT SUMMARY : Homesite # **Community Office Phone (541) 773-6972**

Service	Amount	Service Dates From	Service Dates To	Meter Readings Previous	Meter Readings Current	Diff	Multiplier	Usage	Units	Previous Month Usage	Previous Month Amount
Electric	[redacted]	4/9/07	5/7/07	19774	20996	1222	1.000	1222	KwH	1480	[redacted]
Base Rent	[redacted]										
Cable	[redacted]										
Check : [redacted]	[redacted]										
Parks Fee	[redacted]										
Public Safety Fee	[redacted]										
Sewer	[redacted]										
Street Fee	[redacted]										
Trash	[redacted]										
Prev Bal	[redacted]										
Total Due	[redacted]										

Note: Redacted "Total" amount equals redacted "Electric" amount.

UTILITY DETAIL

Electric	Usage	Rate	Total
Basic Charge	-	6.28000	[redacted]
Delivery Service	1222	-0.00011	[redacted]
Energy	1222	0.03540	[redacted]
Subtotal	1222	-	[redacted]
Low Income Assistance	1	0.38000	[redacted]
Medford City Franchise Fee	1222	0.00040	[redacted]
Public Purpose 3%	$49.41	0.03000	[redacted]
BPA Energy Discount	1222	-0.00927	[redacted]
Total			[redacted]

REDACTED

The 3% Electric Public Purpose Surcharge is shown as a separate line item on your bill.

PACIFIC POWER & LIGHT COMPANY
ADJUSTMENT ASSOCIATED WITH THE PACIFIC NORTHWEST ELECTRIC POWER PLANNING AND CONSERVATION ACT

OREGON
SCHEDULE 98

All bills to qualifying residential customers shall have deducted an amount equal to the product of all kilowatt-hours of use multiplied by the following cents per kilowatt-hour.

0 – 500 kWh	1.587¢ per kWh
>500 kWh	0.601¢ per kWh

All bills to qualifying nonresidential customers shall have deducted an amount equal to the product of all kilowatt-hours of use multiplied by the following cents per kilowatt-hour.

1.026¢ per kWh

All bills of qualifying agricultural pumping customers on Schedule 33 contained in effective tariff Or. No. 35 shall have deducted an amount equal to the product of all qualifying kilowatt-hours of use multiplied by the following:

0.488¢ per kWh

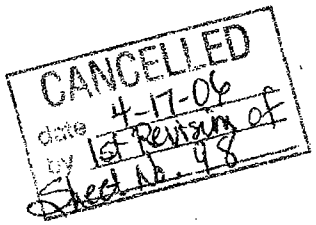
Condition of Service

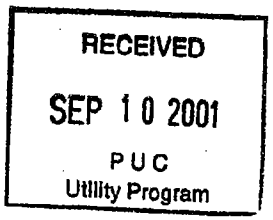
The eligibility of affected Customers for the rate credit specified in this tariff is as provided by the Pacific Northwest electric Power Planning and Conservation Act, Public Law 96-501.

Special Conditions

Any farm's monthly irrigation and pumping load qualifying hereunder for each billing period shall not exceed the amount of the energy determined by the following formula:

7,161.6 kWh x days in billing period, **provided, however,** that this amount shall not exceed that farm's measured energy for the same billing period. In no instance shall any farm's total qualifying irrigation loads for any billing period exceed 222,000 kWh.





BONNEVILLE POWER ADMINISTRATION
COMPLIANCE REVIEW PROGRAM

CUSTOMER LOAD ELIGIBILITY GUIDELINES

FOR THE

Investor Owned Utilities' Residential Exchange Program Settlement Agreements

June 2002

TABLE OF CONTENTS

INTRODUCTION

In 1980 Congress enacted the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). The Northwest Power Act authorizes Northwest utilities to exchange their generally higher-cost power for an equivalent amount of Bonneville Power Administration's (BPA's) lower-cost power. This program is called the Residential Exchange Program (REP). The REP was developed in order to address wholesale rate disparity between the region's investor-owned utilities (IOUs) and public utilities and is based on the utilities' residential and small farm loads. The IOUs and BPA recently negotiated REP Settlement Agreements that establish Settlement Benefits to be passed through to residential and small farm loads.

In anticipation of BPA's REP Settlement Benefit Program Compliance Reviews, IOUs have requested guidelines to assist them in identifying eligible residential and small farm loads. The purpose of this document is to provide a set of guidelines that will assist utilities in determining whether or not a load meets the definition of residential and small farm use under the Northwest Power Act. Customer loads that meet the definition are eligible for REP Settlement Benefits providing the customer is served under a rate schedule listed on Exhibit A to the REP Settlement Agreement. While these guidelines may be helpful in preliminary eligibility determinations, final determinations of eligibility will be made by BPA based on the provisions of the Northwest Power Act and the facts of each case.

BPA ELIGIBILITY GUIDELINES

Section 3(18) of the Northwest Power Act defines "residential use" or "residential load" as "all usual residential, apartment, seasonal dwelling and farm electrical loads or uses, but only the first four hundred horsepower during any monthly billing period of farm irrigation and pumping for any farm." Exhibit A of the Settlement Agreements also helps define eligible residential loads. These definitions of eligible residential exchange loads, however, are quite general. Because of the general nature of these definitions, BPA's customers have asked BPA to develop more specific eligibility guidelines. The guidelines that follow are based on the Northwest Power Act, contract language, and BPA's Compliance Review experience and determinations.

The guidelines are continually evolving. New and unusual loads are found on a regular basis, sometimes necessitating an update to the eligibility guidelines. Nevertheless, the guidelines presented here may be used to make a preliminary determination of the eligibility of the great majority of loads. They may also be useful in a preliminary analysis of unusual loads that have no prior eligibility determination.

In developing these guidelines, BPA has distinguished three general classes of eligible customers -- residential, farm, and irrigation (a special type of farm load). Eligibility guidelines for these three groups are as follows:

1. Residential

A ***residence*** is a structure used by, or restricted to, residents. For purposes of these guidelines, a resident is defined as a person living in a place for some length of time.

Generally, any residence will qualify as exchangeable as long as its purpose is to provide shelter on a non-transient (greater than 30 days) basis. This means that hotels, motels and campsites are not qualified for the residential exchange. Seasonal dwellings, however, are specifically cited in the Northwest Power Act as eligible for REP benefits.

There are three general types of residential usage:

i) Single Family Dwelling Usage -- normal household usage including swimming pools, hot tubs, tool or equipment sheds and outdoor area lighting. This also includes loads related to commercial operations metered through bona fide residences as long as the commercial activity consumes 50% or less of the total load and is not separately metered.

ii) Multi-Family Dwelling Usage -- normal household usage including swimming pools, hot tubs, laundry rooms, parking area lights, maintenance equipment, and tool sheds. This also includes loads related to commercial operations metered through bona fide residences as

long as the commercial activity consumes 50% or less of the total load and is not separately metered.

iii. Seasonal Dwelling Usage -- includes single and multi-family dwellings (as defined above) used seasonally such as beach or mountain cabins, condominiums, and homes. Motor trailers and motor homes used as a permanent or seasonal residence in a fixed location are also eligible.

2. Farm

A ***farm*** consists of a parcel or parcels of land owned or leased by one or more persons (including partnerships, corporations, or any legal entity capable of owning farm land) that is used primarily for ***agriculture***. Agriculture is defined to include the raising and incidental primary processing of crops, pasturage or livestock. For purposes of these guidelines the following definitions apply:

Agriculture is the business of cultivating the soil, producing ***crops*** or ***pasturage***, or raising ***livestock*** for sale in the marketplace. Agriculture also includes, in varying degrees, the ***incidental primary processing*** of these agricultural items.

Crop: a plant or animal, or plant product or animal product that can be grown and harvested for profit.

Pasturage: plants grown for the feeding of grazing animals.

Incidental primary processing: those activities necessarily undertaken to prepare agricultural products for safe and efficient storage or shipment.

Incidental primary processing is limited to activities necessarily undertaken to prepare agriculture products for safe and efficient storage or shipment. It generally does not include activities such as grinding and pelletizing. Comparing the farm's processing operation with that of similar farms will usually distinguish an incidental primary processing operation from a commercial operation.

There is one exception to the general incidental primary processing rule. Processing that goes beyond primary incidental processing is allowed if the resulting product is consumed entirely on the same farm as an intermediate product used in the production of a final agricultural product that is subsequently shipped to the marketplace. For example, consider the farmer who converts alfalfa, grown on his/her farm, to alfalfa pellets, which are then used to feed animals on the farm prior to the animals being shipped to the market. Normally the conversion of alfalfa to pellets would be considered a commercial operation. Alfalfa is not usually pelletized prior to shipment to the market and therefore pelletizing goes beyond the definition of incidental primary processing and is not

exchangeable. However, in this case the pellets are used to feed the farmer's animals. Because the pellets are used on the farm, the pelletizing operation is characterized as a usual farm load eligible for REP Settlement benefits.

3. Irrigation /Pumping

In addition to general farm use, farm ***irrigation*** and ***pumping*** loads may also be eligible for REP Settlement benefits. For purposes of these guidelines the following definitions apply:

> ***Irrigation*** is the process of supplying agricultural land with water by means of ditches, pipes or streams.
>
> Agricultural ***pumping*** involves the transport of surface or ground water for agricultural purposes.

Exchangeable irrigation and pumping loads may be related to a specific farm's facilities or to common pumping facilities shared with others. When more than one farm is supplied from a common pumping installation, the irrigation and pumping load of the common installation shall be allocated among the farms using the installation, based on the method that the farms use to allocate the power costs among themselves (e.g., water shares, acreage).

Small pumps located on farms that have constant rather than seasonal loads are usually classified as general farm loads and not irrigation loads.

Qualified irrigation/pumping loads may receive benefits up to a maximum of 400 horsepower/month (222,000 kWh/month) per farm. The total monthly irrigation/pumping load for any individual farm includes any farm-specific irrigation loads and any allocated loads from common pumping installations. Because of the load limitation, it is necessary to identify farms with common ownership to determine whether the combined farming operation exceeds, in aggregate, the 222,000 kWh/month limitation.

Unused irrigation allocations may not be reallocated to other farms or to another billing period.

Contiguous parcels of land under single-ownership or leasehold shall be considered to be one farm. Noncontiguous parcels of land under single-ownership or leasehold shall be considered as one farm unit unless demonstrated otherwise by the owner or lessee of the parcels, as determined by BPA. In order for a noncontiguous parcel to constitute a separate farm, the farm must not share any equipment or labor with any other parcel and must maintain separate financial statements, accounting records, and tax returns.

The Northwest Power Act allows each eligible farm to receive a credit for irrigation and pumping up to 400 horsepower, or 222,000 kWh. The legislative history of the Northwest Power Act demonstrates that Congress intended this credit to benefit small family farms, as opposed to large

farms and agribusinesses. Each legitimate farm, regardless of size, is entitled to a single credit up to 222,000 kWh. Thus, all farms (including large farms which use over 222,000 kWh) are eligible for a single credit up to the first 222,000 kWh. For this reason, if the owner of a large farm attempted to subdivide the farm into smaller parcels in order to increase the amount of REP Settlement benefits, the farmer would be subverting the intent of Congress. Such subdivision is not permitted. It is clear Congress intended to limit the benefit to 222,000 kWh in order that small farms receive the credit while larger farms do not gain windfall benefits or a competitive advantage over the small family farm.

Farmers may not increase their farms by subdividing them and organizing them to ostensibly satisfy the farm criteria. Farmers must provide a description of existing farm(s) along with any additional information requested in the utility's application form for REP Settlement benefits. All parcels of a farm that have been subdivided to increase REP Settlement benefits will be treated collectively as a single farm. Attempts to improperly increase benefits by characterizing parcels as separate farms will not be recognized. The fact that a separate parcel may satisfy numerous criteria will not necessarily entitle the parcel to an additional credit. No single farm criterion is determinative in and of itself, and all of the farm criteria must be viewed together in making a determination. Parties that improperly characterize parcels as separate farms by attempting to structure the parcels to fit the farm criteria will have their applications denied. BPA reserves the right to carefully review claims for more than a single farm credit by any person, family, corporation or other ownership entity. BPA is willing to assist utilities in making such determinations.

Contiguous Farm Parcels: Farm parcels are considered contiguous if they are touching, either side-by-side or corner-to-corner. Farmland that is separated by a road, canal, fences, and easements are still considered to be contiguous pieces of farmland. A number of factors determine whether contiguous or noncontiguous parcels constitute one or more farms. These factors include but are not limited to:

Size. The largest farm and the smallest farm are each entitled to a single credit. Size alone is therefore not determinative of the existence of a farm. The existence of smaller parcels that previously comprised a single farm militates in favor of a single collective farm.

Use. If parcels have the same uses, this tends to support the existence of a single farm. For example, if two parcels each raise wheat, this establishes the same use for the parcels. Where parcels have different crops raised on them, it does not automatically support a finding of separate farms. It is common for a farmer on a single farm to divide the land and grow a variety of crops, with the crops being rotated from year to year. In this case, however, the farm would be treated as one farm for REP Settlement benefits.

Ownership. Ownership may be true ownership or a leasehold interest held by an entity capable of owning farmland. If the same party owns more than one parcel or leases more than one parcel, this would militate toward a single farm. Leases to relatives or acquaintances for the primary purpose of increasing REP Settlement benefits are not recognized as separate farms.

Control. Control concerns a number of activities. If a person has the authority to make substantive decisions regarding the parcel, this suggests that the person has control. The fact that a manager may be responsible for day-to-day operation of the parcel does not mean that the manager exercises control. The person who determines whether to hire or fire the manager exercises control. Who ultimately pays the bills for the parcels and who receives the revenues or absorbs the losses may also indicate control.

Operating practices. If the same equipment or labor is used to farm a number of parcels, this militates in favor of a single farm. If accounting is done jointly for a number of parcels, this militates in favor of a single farm. If one party receives the profits or absorbs the losses of the farm operation, this militates in favor of a single farm.

Distance between parcels. Generally, the closer the parcels, the more likely the existence of a single farm. The farther apart the parcels, the more likely the existence of more than one farm.

Custom in the trade. If a farm activity is consistent with a custom in the trade, the activity will not be categorically held inconsistent with the existence of more than one farm.

Billing treatment by the utility. The manner in which the utility has previously billed the farmer may simply be based on acceptance at face value of applications filed with the utility. Utilities should carefully review the accuracy of factual representations by the farmers and should carefully review those facts against the farm criteria.

4. Common Customer Types and Eligibility Status

Agricultural Research Station
Ineligible -- government entity operation and primary use is research and not the production of crops or livestock for shipment to market.

Canal Company
See Common Pumping Installation.

Cemetery
Ineligible -- neither farm nor residence.

Church, Cathedral, Temple, Synagogue or Other Religious Meeting Facility
Ineligible -- neither farm nor residence.

Club or Similar Association
Ineligible -- neither farm nor residence.

Commercial Agricultural Operation
Ineligible -- these operations usually consist of the storage or processing of the agricultural productions of others. Factors that distinguish a commercial agricultural operation from a farm include the following:

- A storage facility operated for the benefit of others is part of a commercial agricultural operation. A storage facility operated strictly for the owner's own use is considered general farm use. (Written confirmation from the owner of owner-use should be obtained by the utility.)

- An agricultural process that, while it could be used to prepare agricultural products for sale, results in intermediate products used only on the farm performing the processing is considered general farm use. If the resulting products are not used on the farm, the process is considered a commercial agricultural operation.

Commercial Enterprise
Generally ineligible -- however, commercial enterprises metered through a bona fide residence where the commercial activity consumes 50percent or less of the power and are not separately metered are eligible. All others are ineligible. (See also Repossessed Properties.)

Common Pumping Installation
Ineligible -- when government owned. For example, drainage and pumping districts in Oregon and Washington are subdivisions of the State, comprised of publicly elected boards which hold public meetings, and have the power to pay on warrants and assess taxes for payment of district costs. Even if their loads may incidentally aid agricultural use, as a governmental agency they are ineligible.

Eligible -- when the governmental district load is allocated to individual farmers. REP Settlement benefits are limited to the allocated irrigation load up to the aggregate of the individual member farm's 222,000 kWh/month limitation.

Eligible -- when facility is privately owned and load is allocated to individual farmers. REP Settlement benefits are limited to allocated irrigation load use up to the aggregate of the individual member farm's 222,000 kWh/month limitation.

Culinary Water Pumping Operation
Culinary water is used for household water purposes such as cooking, cleaning, water for heating, pump effluent for sewer septic tank purges, and lawn and yard watering.

Ineligible -- does not meet the definition of a usual residential load

Dairy Farm
Eligible -- meets definition of a farm.

Drainage District
See Common Pumping Installation.

Egg Producer
Eligible -- meets definition of a farm.

Equestrian Facility
Ineligible -- neither farm nor residence.

Experimental Farm
Ineligible -- does not meet definition of a farm. A farm is defined as land that is used to raise crops or livestock for ultimate shipment to market. An experimental farm means that the crops may not necessarily be sent to the market.

Feedlot
Eligible -- when located on and part of livestock-raising operation.

Ineligible -- when it is a separate facility or feeds animals that were purchased for resale, or on contract for others.

Fire Districts
Ineligible -- neither farm nor residence.

Fish Farm (See also Fish Hatchery)
Eligible -- providing crops (e.g., fish, eggs, and smolts) are harvested for shipment to market.

Fish Hatchery (See also Fish Farm)
Ineligible -- normally government owned or contracted to restock dams, lakes and rivers for state, federal, or local governments.

Golf Course
Ineligible -- neither farm nor residence.

Government Agency
Ineligible -- not a residence or farm. An exception is a vacant property repossessed temporarily by the Department of Housing and Urban Development (HUD). (See also Government-Owned Land and Repossessed Property.)

Government-Owned Land -- Leased Farm On
Eligible -- when lessee farmer is financially responsible for the load, receives the REP Settlement benefits and the government has no operating or controlling interest in the farm.

Government-Owned Land -- Residence On
Eligible -- when resident is financially responsible for the load and receives the benefits.

Grain Processing Facility
Ineligible -- the processing of grain into feed for ultimate shipment to the marketplace is a commercial operation.

Eligible -- when the feed represents an intermediate product used entirely on the same farm.

Hospitals
Ineligible -- neither a farm nor a residence.

Irrigation District
See Common Pumping Installation.

Land Association
Eligibility depends on nature and ownership of the association. Generally eligible if association is a farm or farms with benefits restricted to individuals and subject to the 222,000 kWh/month irrigation/pumping limitation.

Latter Day Saints (LDS) Stake Welfare Farm
Eligible -- meets definition of a farm.

LDS stake farms are owned by the church, but operated independently. Profits and losses are not shared between the farms or with the church. The farms are generally not contiguous. Because of the independent nature of the farms, each farm is entitled to up to 222,000 kWh per month of irrigation-load exchange benefits in addition to any general farm-load exchange benefits provided the farms satisfy the farm criteria. (See also Church, Nonprofit Organization and Religious Organization.)

Mission (Religious)
See Religious Organization.

Municipal Corporations
See Government Agency.

Multiple Residential Loads On One Meter
Eligible -- the number of loads associated with a meter is irrelevant to the determination of eligibility as long as the individual loads qualify for REP Settlement benefits.

Nursery (Horticultural)
Ineligible -- when nursery or horticultural operation purchases or converts agricultural/horticultural products for resale.

Eligible -- when primary purpose of nursery or horticultural operation is the growing of plants for ultimate sale in the marketplace.

Nursing Home
Eligible -- when the average length of stay is 30 days or longer and does not provide full medical care similar to the medical facilities, equipment, and staff normally provided by hospitals, clinics, or similar institutions.

Parks and Recreation Area
Ineligible -- neither farm nor residence.

Pellet Mill
Ineligible -- the processing of crops into pellets for ultimate shipment to the marketplace is a commercial agricultural operation.

Eligible -- if the pellets represent an intermediate product used entirely on the same farm.

Police Station
Ineligible -- neither farm nor residence.

Potato Storage Facility
Eligible -- when owner uses facility for own use; otherwise ineligible.

Property Development Company
Ineligible -- commercial activity neither a farm nor a residence.

Pumping District
See Common Pumping Installation.

Recreation Facility
Ineligible -- neither farm nor residence.

Region -- Customers Located Outside of
Ineligible -- the program is limited to those customers located in the Columbia River drainage basin and any contiguous area, not in excess of 75 air miles which are a part of the service area of a rural electric cooperative customer served by BPA on the effective date of the Northwest Power Act which has a distribution system from which it serves both within and without the region.

Religious Organization
Eligibility depends on nature of the operation. Operation or ownership by a religious organization does not necessarily make the associated load eligible or ineligible. (See also Church, LDS Stake Welfare Farm and Nonprofit Organization.)

Repossessed Properties
Eligible -- residences and farms that have been repossessed, but are otherwise considered eligible, continue to be eligible during the period of repossession (regardless of the type of repossessing entity -- bank, insurance company, corporation, partnership, individual, etc.) as long as the repossession is considered temporary. If the repossession is considered to be a permanent acquisition, then the eligibility status of the property must be reexamined in light of the new ownership.

Residential Security Lighting
Eligible -- if metered, or if unmetered but based on an accurate and verifiable engineering study.

Residential Street Lighting
Ineligible -- not considered "usual" residential use even when it is under the auspices of a local utility district. Utilities themselves generally do not consider street lighting to be a usual residential load; they do not include residential street lighting in residential tariff schedules.

Residential Yard Lighting
See Residential Security Lighting.

School and School District
Ineligible -- neither farm nor residence.

Trailer Park/Mobile Home Park
Eligible -- if residents stay longer than 30 days, otherwise ineligible.

Tree Farm
Eligible -- meets definition of a farm.

Water District
See Common Pumping Installation and Culinary Water Pumping.

Wildlife Refuge
Ineligible -- neither farm nor residence.

Park Billing Co., Inc.
PO Box 910 Dixon CA 95620 Phone 707-693-9999 Fax 707-693-9992

April 12, 2005

hil Taylor
lyra Lynne Park
24 Carol Rae
ledford OR 97501

E: Pacific Power Credit

)ear Sir,

I am writing in response to your inquiry regarding a large credit that appeared on our master meter electric bill. We have been in contact with the property's new account nanager at Pacific Power. Her name is Claudia Steinbroner and can be reached at 541-776-5438.

Our understanding of the situation after speaking to Ms. Steinbroner is that a component of the rate that is billed to the property was left out of your original billing. As this component is the Bonneville Power Administrative Adjustment (or BPA) credit, the result is that the property was over-billed over quite a long period of time. When they became aware of the error, they calculated the over-billing and put the credit on the master meter bill.

At Park Billing, we were billing the sub-metered users at Myra Lynne Park the current residential rate as per the tariff sheets provided by Pacific Power. We included the BPA credit as part of that rate. Therefore, it is our belief that the credit that appeared on the master meter bill should not be passed through to the sub-metered users at this time, because it had been previously included in their rate as per the tariff sheets for residential rates.

I hope this helps to clarify any questions you may have. If you need further information, please feel free to contact us at any time.

Sincerely,

Derrinda Gumpy

Derrinda Gumpy
V.P., Operations

1900 SW 4th, Plaza Level
Portland, Oregon 97201
1-800-532-1626

PACIFIC POWER

March 1, 2005

Phil Taylor
Regional Manager
HCA Management Company
P.O. Box 7
Novato, CA 94948-0007

Subject: Myra Lynne Mobile Park

Dear Mr. Taylor,

Recently we discovered that our customer, the Myra Lynne Mobile Park located at 924 Carol Rae in Medford, Oregon 97501, has not been receiving the BPA discount that they qualify for. The resulting credit to the account is $97,936.77 and this amount will be reflected on your next statement. We apologize for any inconvenience this may have caused you.

As you are aware, the Myra Lynne Mobile Park is a master metered account which is billed on a non residential rate schedule and the park is required to rebill the tenants according to the Company's residential rate schedule. The residential rate is computed by using the energy charge and monthly basic charge for each meter. I have enclosed a summary pricing sheet for Residential Rate Schedule 4 for your convenience in calculating the credit. The park management will be responsible for ensuring that the tenants receive the benefits of this credit.

For your convenience, shown below is the reference to the Company's Tariff Rule 2 outlining resale of service provisions:

Resale of Service
Resale of service shall be limited to Consumer's tenants using such service entirely within property described in the written agreement. Service resold to tenants shall be metered and billed to each tenant at Company's regular tariff rate schedule applicable to the type of service actually furnished the tenant. Consumer shall indemnify Company for any and all liabilities, actions or claims for an injury, loss or damage to persons or property arising from the results of service by Consumer.
If you have any questions, please feel free to contact me at 541 776.5438.

Regards, Claudia Steinbroner

Claudia Steinbroner
Corporate Account Manager

ORDER NO. 07-162

ENTERED 04/27/07

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 190

In the Matter of	)	
	)	
IDAHO POWER COMPANY	)	ORDER
	)	
Proposed Tariff for Electric Service.	)	
Advice No. 07-03	)	

DISPOSITION: TARIFF SHEETS ALLOWED; WAIVER GRANTED

On March 16, 2007, IDAHO POWER COMPANY filed tariff sheets in Advice No. 07-03 to be effective April 30, 2007. The terms of the proposed tariff sheets are set forth in the Staff Report dated April 10, 2007, attached as the Appendix to this order.

At its April 24, 2007, public meeting, the Public Utility Commission of Oregon allowed the tariff sheets to go into effect. Pursuant to a waiver of OAR 860-022-0032, the Commission finds that the tariff sheets shall be effective with meter readings on and after April 30, 2007.

IT IS ORDERED that Advice No. 07-03 filed by IDAHO POWER COMPANY, is allowed effective with meter readings on and after April 30, 2007.

Made, entered, and effective APR 27 2007.

BY THE COMMISSION:

Becky L. Beier

Becky Beier
Commission Secretary

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.

UE 190

ITEM NO. CA6

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: April 24, 2007

REGULAR ___ **CONSENT** X **EFFECTIVE DATE** April 30, 2007

DATE: April 10, 2007

TO: Public Utility Commission

FROM: Bill McNamee WM

THROUGH: Lee Sparling, Ed Busch and Bonnie Tatom LM EB bbt

SUBJECT: IDAHO POWER COMPANY: (Docket No. UE 190/Advice No. 07-03) Makes revisions to Schedule 98, Residential and Small Farm Energy Credit.

STAFF RECOMMENDATION:

I recommend that the Commission waive OAR 860-022-0032 and allow Idaho Power Company's Advice No. 07-03 to become effective with meter readings on or after April 30, 2007.

DISCUSSION:

Idaho Power Company (IPCo) filed Advice No. 07-03 with the Oregon Public Utility Commission (OPUC) on March 16, 2007, under ORS 757.205. The purpose of this filing is to revise Schedule 98 (*Residential and Small Farm Energy Credit*). Based on guidelines received from the Bonneville Power Administration, IPCo is requesting that certain long-term care facilities be eligible for the Schedule 98 energy credit. IPCo also requests that the Commission waive OAR 860-022-0032, thereby allowing Advice No. 07-03 to become effective with meter readings on or after April 30, 2007.

The Bonneville Power Administration (BPA) has determined that nursing homes, assisted living facilities, and similar facilities qualify for the Residential Exchange Program (REP) credit. BPA states that the demographics of our society show that an increasing number of people will be living in retirement centers and assisted living facilities. As a policy matter, BPA has concluded that the residents of these facilities should benefit from the lower electric rates derived from the REP credit.

BPA states that eligible long-term care facilities are those that are not providing full medical care to residents and have an average patient stay of 30 days or longer.[1] IPCo indicates that within its service territory, the REP credit eligible facilities include those taking electric service under Schedule 7 (*Small General Service*) and Schedule 9 (*Large General Service*). Therefore, IPCo is requesting that long-term care facilities taking service under Schedules 7 and 9 be added to applicability language in Schedule 98.

PROPOSED COMMISSION MOTION:

Idaho Power Company's request to waive OAR 860-022-0032 be approved and Advice No. 07-03 be allowed to go into effect with meter readings on or after April 30, 2007.

IPCo Advice No. 07-03

[1] Loads associated with hospitals are ineligible to receive the REP credit.

IDAHO POWER.
An IDACORP Company

March 16, 2007

UE 190

Public Utilities Commission of Oregon
Attn: Filing Center
550 Capitol Street NE, Suite 215
P. O. Box 2148
Salem, OR 97308-2148

RECEIVED
MAR 16 2007
PUC
Utility Program

RE: Tariff Advice No. 07-03
Revision to Schedule 98

Dear Sir or Madam:

Idaho Power Company herewith transmits for filing Fourth Revised Sheet No. 98-1. The Company respectfully requests that revised Schedule 98, Residential and Small Farm Energy Credit, become effective April 30, 2007. Idaho Power desires to continue to apply the credit to all Kwh's consumed during the billing month and hereby request the Commission to once again waive Rule 860-022-032.

7 Small Gen Service
9 Large " "
7 3000 Kwh

Pursuant to guidelines received from the Bonneville Power Administration (BPA), Idaho Power is proposing that certain long-term care facilities be eligible to receive the Residential and Small Farm Energy Credit. Qualified long term care facilities would include those taking service under Schedule 7 or 9 who are not providing full medical care to residents and where the average patient stay is 30 days or longer. Attached you will find a copy of the letter from the BPA informing Idaho Power of the eligibility guidelines.

If you have any questions regarding this filing, please call Courtney Waites at (208)388-5612.

Sincerely,

Barton L. Kline
Senior Attorney

BLK:cw
Enclosures
c: Ric Gale
P&RS Files
Legal Files

P.O. Box 70 (83707)
1221 W. Idaho St.
Boise, ID 83702

Ex J
Page 5 of 12

Department of Energy

Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621

POWER SERVICES

December 8, 2006

In reply refer to: PFR-6

John R. Gale, Vice President
Regulatory Affairs
Idaho Power Company
1221 West Idaho Street
Boise, ID 83702

Dear Mr. Gale,

Re: Residential Exchange Program Settlement Agreement, BPA Contract No. 00PB-12158 and 00PB-12158, Recent Determination Decision and Eligibility Guidelines

In recent months Paul A. Brodie of our staff and Phil Obenchain of Idaho Power Company have had a number of exchanges concerning the treatment of nursing home loads qualifying for the Residential Exchange Program (REP) Credit. Phil indicated that since the inception of the REP Settlement Agreements, Idaho Power Company has treated these loads as commercial loads that did not qualify for the REP credit. Paul informed Phil that these loads did in fact qualify for the REP credit. Subsequently, in a separate review of nursing homes receiving the REP credit, PacifiCorp identified an issue regarding instances where nursing homes were part of a joint-use facility that included a non-eligible hospital load. PacifiCorp requested that BPA issue an Eligibility Determination that provided guidance on how to allocate the metered load between the nursing home and hospital functions. Enclosed is a copy of BPA's decision on the treatment of such nursing home loads.

In order to help ensure uniform and consistent treatment, we ask that Idaho Power Company please review its application of the REP credit to nursing homes that are eligible to receive the credit. BPA is sending a copy of BPA's nursing home determination to each investor-owned utility and the state commissions to help ensure consistent nursing home eligibility determinations. In addition to the eligibility decision, we have also included a copy of BPA's *Customer Load Eligibility Guidelines* for your reference to help guide your staff in making decisions concerning eligible loads. In those instances where a fact situation has not been encountered before, or where the policy outlined in the guidelines does not clearly address the facts surrounding an eligibility determination question, please consult BPA in making the eligibility determination. In the event that a retail customer feels that they qualify for the Settlement Benefit Credit after having been denied the credit by an investor-owned utility, they are entitled to a final eligibility determination by BPA.

We look forward to working with you and your staff regarding eligibility determinations in addition to addressing any questions or concerns that you might have on procedures and policies used to account for and distribute REP Settlement benefits. If you have questions concerning BPA's REP Settlement Program, please call Paul Brodie at (503) 230-3414. Thank you for your help in supporting the administration of this important program.

Sincerely,

Mark O. Gendron,
Vice President for Northwest Requirements Marketing

2 Enclosures

cc:
Scott Brattebo, Director Regulatory Affairs, PacifiCorp
Randy Lobb, Administrator Utilities Division, Idaho Public Utilities Commission

December 8, 2006

Residential Exchange Program (REP) Settlement Load Eligibility Determination

Eligibility of Nursing Homes, Long-Term Care Facilities, and Assisted Living Care Facilities to Receive the REP Credit

Section 3(18) of the Northwest Power Act defines "residential use" or "residential load" as "all usual residential, apartment, seasonal dwelling and farm electrical loads or uses, but only the first four hundred horsepower during any monthly billing period of farm irrigation and pumping for any farm." Exhibit A of the REP Settlement Agreements also helps to define eligible residential loads, but is silent regarding nursing homes and hospitals. BPA's Customer Load Eligibility Guidelines, however, provide the following guidance on qualifying loads:

> Nursing Home – The loads associated with nursing homes are eligible to receive the Residential Exchange Program credit. When the average length of stay is 30 days or longer and does not provide full medical care similar to the medical facilities, equipment, and staff normally provided by hospitals, clinics, or similar institutions.
>
> Hospitals – The loads associated with hospitals are ineligible to receive the Residential Exchange Program credit. These loads are neither a farm nor a residence.

The electrical loads for nursing homes, long-term care facilities, and assisted living care facilities generally qualify for the REP credit. A general guideline is that when the average length of stay is 30 days or longer, the dwelling or facility qualifies as a residence. Residences that qualify for the credit can be single family or multi-family dwellings. If the assisted living facility provides full medical care that is similar to the medical facilities, equipment, and staffing of a hospital, then that portion of the facility's electrical loads would be ineligible. Generally, most of the load associated with an assisted living facility would qualify for the credit.

As the demographics of our society change with the "graying of America," more and more people will be choosing to live in retirement centers and assisted living facilities. These facilities are the new residences of an increasing share of the population. The residents of these facilities are intended to receive a benefit from lower electrical rates due to the REP credit. It is also important that there is a level playing field associated with the ownership and operation of the facilities receiving the REP credit to ensure that there is not a competitive advantage or disadvantage due to disparate policies of utilities receiving REP benefits.

In order to ensure that all eligible residential ratepayers who are served by qualifying investor-owned utilities receive REP benefits and to ensure that there is a level playing field for the nursing home industry in the Pacific Northwest, it is important that all utilities participating in the REP Settlements review their regulatory practices surrounding the eligibility of these facilities.

Guidance in Determining the Eligibility of Loads Associated with Joint Use Facilities

There are a number of nursing home and care facilities in the region that are physically connected to hospitals or clinics providing higher levels of medical care. These occur for the most part in smaller rural communities that cannot afford to run separate facilities. Frequently the electric loads associated with the nursing home facility and the hospital are metered through a single meter. The utility administering the REP needs to make a reasonable attempt to separate the metered load associated with the nursing home facility in determining the loads that are eligible to receive the credit. BPA was asked to furnish guidance in developing a method to determine the portion of the metered load that qualifies for the credit.

One simple approach for estimating the portion of metered loads attributed to a nursing home facility is to base it on the square footage of the facility that is connected to nursing home care in relation to the total square footage of the nursing home and hospital areas combined. The first step in this calculation is to determine the square footage of the common areas of the joint facility such as administrative offices, maintenance facilities, food preparation areas, laundry facilities, and similar common areas. This amount should be subtracted from the total square footage of the combined nursing home and hospital facility. The second step is to determine the square footage that is directly used for the nursing home. The third step is to determine the square footage that is used directly for the hospital. The fourth step is to take the ratio of the nursing home square footage to the combined nursing home and hospital areas. The ratio determined by the fourth step is applied to the total facilities metered load (nursing home, hospital and common areas). This determines the REP-eligible load of the nursing home. This allocation approach assumes that the square footage of the direct usage areas (hospital or nursing home) is a reasonable indicator of what function (hospital or nursing home) the power used in the common area is supporting. An example of this allocation approach is presented below:

> Example: A small rural town in southern Idaho has a combined hospital and nursing home facility that has a single electric meter. The total facility comprises 100,000 square feet. A review of the facility by the Investor-Owned Utility customer service representative disclosed that 60,000 square feet were directly used by functions associated with the hospital, 30,000 square feet were directly used in providing nursing home care, and 10,000 square feet were associated with common areas (food preparation areas, maintenance and storage, laundry facilities, and administrative offices). Ninety-percent of the facility (90,000 sq. ft. divided by 100,000 sq. ft.) was associated with direct usage. The nursing home care portion comprised 33 percent (one-third) of the direct use areas (30,000/

(30,000 + 60,000). The customer service representative determined that one-third of the total monthly metered amount would be eligible load qualifying for the RBP credit.

The above allocation method of square footage was chosen for its simplicity and ease of use. For other joint use facilities, the utility administering the REP credit should develop a method for determining the allocation of the metered energy into eligible load qualifying for the REP credit versus ineligible load that does not qualify for the REP credit and apply the methodology on a consistent basis to all joint use facilities.

Determination: Nursing homes, assisted living facilities, and similar facilities qualify for the REP Credit. Nursing homes, assisted living facilities, and similar facilities that are physically connected to a hospital facility also qualify for the REP Credit. Where both the nursing home facility (qualifying load) and the hospital facility (non-qualifying load) have their electrical power requirements metered through a single meter, utilities should use the foregoing allocation method to determine that portion of the metered energy that is attributable to the qualifying load.

Paul A. Brodie

Paul A. Brodie, CPA,
Residential Exchange Settlement –
Benefits Oversight Function

Exhibit B
RESIDENTIAL LOAD DEFINITION

1. IDAHO POWER COMPANY's Residential Load means the sum of the loads within the Pacific Northwest eligible for the Residential Exchange Program under the tariff schedules described below. If BPA determines that any action changes IDAHO POWER COMPANY's general tariffs or service schedules in a manner which would allow loads other than Residential Loads, as defined in the Northwest Power Act, to be included under these tariff schedules, or that the original general tariffs or service schedules include loads other than Residential Loads, such nonresidential loads shall be excluded from this Agreement.

Such tariff schedules as presently effective include:

(a) for all schedules listed below, include the amount, expressed in kilowatthours, of Residential Load supplied by IDAHO POWER COMPANY under:

01 PL RZ

(1) Rate Schedule ~~440~~ 9 – Residential Sales (4,090,453,000 kWh)

(2) Rate Schedule 21 – Interruptible Irrigation (322,000 kWh)

(3) Rate Schedule 24 – Irrigation Pumping (1,465,494,000 kWh)

(b) a portion of the Residential Load as determined pursuant to section 2 of this Exhibit B, supplied by the Utility under the Northwest Power Act, section 5(c).

2. Any farm's monthly irrigation and pumping load qualifying hereunder for each billing period shall not exceed the amount of the energy determined by the following formula:

Irrigation/Pumping Load = 400 × 0.746 × days in billing period × 24

provided, however, that this amount shall not exceed that farm's measured energy for the same billing period.

where:

400 is equal to the horsepower limit defined in the Northwest Power Act,

0.746 is the factor for converting horsepower to kW,

days in billing period is determined in accordance with prudent and normal utility business practices, and

24 is the number of hours in a day.

3. When more than one farm is supplied from a common pumping installation, the irrigation and pumping load of the installation shall be allocated among the farms using the installation, based on the method (e.g., water shares, acreage) that the farms use to allocate the power costs among themselves. These allocated loads shall then be combined with any other irrigation and pumping loads attributed to the farms under section 2 of this exhibit. In no instance shall any farm's total qualifying irrigation loads for any billing month exceed 222,000 kWh.

4. For purposes of this Agreement, a farm is defined as a parcel or parcels of land owned or leased by one or more persons (person includes partnerships, corporations, or any legal entity capable of owning farm land) that is used primarily for agriculture. Agriculture is defined to include the raising and incidental primary processing of crops, pasturage, or livestock. Incidental primary processing means those activities necessarily undertaken to prepare agricultural products for safe and efficient storage or shipment. All electrical loads ordinarily associated with agriculture as defined above shall be considered as usual farm use.

Contiguous parcels of land under single-ownership or leasehold shall be considered to be one farm. Noncontiguous parcels of land under single-ownership or leasehold shall be considered as one farm unit unless demonstrated otherwise by the owner or lessee of the parcels as determined by BPA.

Parcels of land may not be subdivided into a larger number of parcels in order to attempt to increase the number of farms. Ownership or leasehold interests in farms may not be changed in order to attempt to increase the number of farms, for example, by leases to family members or establishment of partnerships, corporations or similar devices. Acquisition of a parcel which was previously a separate farm becomes part of the single farm that acquired the parcel. In order for a noncontiguous parcel to constitute a separate farm, the farm must not share any equipment or labor with any other parcel and must maintain separate financial statements, accounting records, and tax returns as of May 1, 2000. Any new farms created after May 1, 2000, must submit an application for exchange benefits to IDAHO POWER COMPANY which shall then submit such application to BPA and such application must be reviewed and approved by BPA before the new farm is eligible to receive benefits. A number of additional factors may be used by BPA to determine whether noncontiguous parcels constitute one or more farms. These factors include but are not limited to:

- use
- ownership
- control
- operating practices
- distance between parcels

5. Unused irrigation allocations may not be reallocated to other farms or to another billing period.

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF JACKSON

GLEN ALLEN, JANET R. ALLEN, RAY ALLPHIN, DELORES ALLPHIN, ROBERT ALLPHIN, PAMELA ANDERSON, MAXINE L. CENTER, GENE BAKER, CARMEN BAKER, LILA J. COPINGER, JOAN BARRETT, GERALDINE E. BOAZ, ROBERTA BOYD, JIM CABLER, STEPHEN CLAY, SR., STEVE COONS, VICKI COONS, FREDA CURRY, VIOLA A. CURTIS, WILLIAM CURTIS, MICHAEL C. DENNIS, CHARLOTTE DEVLIN, MICHAEL D. DIMON, WANDA FAY, SHERRI GABRIEL, RICHARD GOLL, JOHN A. GRANT, MARJORIE M. GRANT, RITA L. GREB, JERRY GROW, ALLIE E. HANNEN, EARL D. HILL, GAIL C. HILL, BEVERLY KALAMS, LLOYD LAWTON, DEBBIE LAWTON, M. MARIE LITTLEBURY, BARBARA LUCAS, DOROTHY MADEIROS, GARY W. MCCOY, KEITH C. MCLEAN, HOWARD R. NELSON, DONA J. NEWTON, AMY L. PARSONS, TODD J. PETERSON, TAMI PETERSON, MARCHELLE ROGERS, STEVEN C. RENNICK, KATHLEEN D. RICHARDS, VICKIE ROSENBERGER, CALVIN SANDERS, RONALD A. SCHAUFLER, HELGA R. SCHAUFLER, MARGARET (PEGGY) SCHLOTHAN, CHESTER SCULL, SHIRLEE SCULL, NORMA V. SHIELDS, ADDISON SMITH, DEBBIE SMITH, BETTY J. SMITH, MILDRED L. SMITH, DIANNA STRAHL-DORN, JOHN F. SULLIVAN, RUTH SULLIVAN, RUTH TREVINO, CHRISTINA URTON, LOIS URTON, ROSEANN WAGNER, DON WALKER, PATRICIA WALKER, LA DEAN WALKER, CHARLES WALKER, GARY WALTERS, VIRGINIA WALTERS, MARY E. WATKINS, MICHAEL S. WHITE, LAURIE D. WILSON, LETA G. WIGGINS,

Plaintiffs,

Case No. 07-1073-C3

COMPLAINT – Financial Abuse of Elderly Under ORS 124.110; Unjust Enrichment; Business Name Violations

Not Subject to Mandatory Arbitration

Jury Trial Demanded

MATTHEW SUTTON
Attorney at Law
PO BOX 4267, Medford, OR 97501

vs.

MYRA LYNNE MOBILEHOME PARK, a California General Partnership, and HCA MANAGEMENT COMPANY, LLC, a California Limited Liability Company,

Defendants.

Plaintiffs allege as follows:

1.

At all times material herein, each of the above named Plaintiffs have resided in Medford Jackson County, Oregon at the community commonly known as the Myra Lynn Mobile Home Park ("the Park").

2.

At all times material herein, Defendant "Myra Lynne Mobile Home Park, a California General Partnership," ("Myra Lynne") was the deeded owner of the real property forming the Park and was not registered to do business in Oregon.

3.

At all times material herein, Defendant HCA Management Company, LLC, a California Limited Liability Company, ("HCA") has been the company managing the rental of the spaces in the Park, but not registered to do business in Oregon.

FIRST CLAIM FOR RELIEF

COUNT 1

(Financial Abuse of Elderly Under ORS 124.110)

4.

At all times material herein, the vast majority of Plaintiffs were elderly persons as defined by ORS 124.100. These Plaintiffs are specified in Exhibit "1" and incorporated herein by this reference.

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MATTHEW SUTTON
Attorney at Law
PO BOX 4267, Medford, OR 97501

5.

At all times material herein, Defendants or their agents were billed by utility providers for the use of these utilities by the tenants of Myra Lynne. At all said times, Defendants or their agents would then bill the tenants for their use of these utilities and said tenants would then pay these bills to Defendants or their agents.

6.

Upon information and belief, Defendants have engaged in a wrongful taking or appropriation of the funds of Plaintiffs by the following:

(a) Refusing to refund to Plaintiffs their respective shares of a payment from PacifiCorp to Defendants in the approximate amount $181,000 representing previous overcharges to the tenants of Myra Lynne for the use of electricity;

(b) Continuing to overcharge Plaintiffs for the use electricity after said payment by PacifiCorp even though it had been discovered that Plaintiffs were being charged an excessive rate for the use of electricity; and

(c) Charging Plaintiffs for use of electricity in amounts not authorized by ORS 90.536 (2005) and ORS 90.510(8)(a) (2003). This includes, but is not necessarily limited to, purported amounts for reading individual sub meters of the tenants spaces, amounts for profit and overhead, and excessive "basic charges", "surcharges", and "service charges"; and

(d) Charging Plaintiffs for a higher rate of electricity than Defendants were being charged by PacifiCorp.

7.

At all times material herein, said actions by Defendants have been for the improper purpose of excessively charging Plaintiffs for Defendants own financial benefit and or by the improper means of charging Plaintiffs in violation of Oregon statutes.

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MATTHEW SUTTON
Attorney at Law
PO BOX 4267, Medford, OR 97501

8.

As a direct result of said actions, the Plaintiffs have incurred economic damages in the amounts specified in Exhibit "1" and such further amounts to be proven at trial. As a further direct result of said actions, the Plaintiffs have incurred non-economic damages for their stress, concern, worry, annoyance, and inconvenience in the amounts set forth in Exhibit "1".

9.

The specified Plaintiffs are each further entitled to statutory damages pursuant to ORS 124.100(2)(a) for an amount equal to: (1) three times their economic damages or $500, whichever is greater; plus (2) three times their non-economic damages.

10.

The specified Plaintiffs are further entitled to their reasonable attorney fees pursuant to ORS 124.100(2)(c).

COUNT 2

(Unjust Enrichment)

11.

Re-allege paragraphs 1, 2, 3, 5, 6, and 8, incorporated herein by this reference.

12.

Through the forgoing billing practices, Defendants have received a financial benefit at the expense of Plaintiffs. At all times material herein, Defendants have been aware of this financial benefit

13.

At all times material herein, Plaintiffs had a reasonable expectation that they would be charged fairly and that the practices described in paragraph 6 would not occur. At all times material herein, Plaintiffs have had the reasonable expectation that they would be

MATTHEW SUTTON
Attorney at Law
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repaid for any prior overcharges. Despite requests seeking to accomplish this, Defendants have not repaid the overcharges.

14.

Under these circumstances, it would be unjust for Defendants to retain the benefit. Accordingly, Plaintiffs are entitled to restitution of the economic amounts specified in Exhibit "1", in addition to such further amounts to be proven at trial, plus interest thereon at the rate of 9% per annum pursuant to ORS 82.010.

SECOND CLAIM FOR RELIEF

(Failure to Register Business Name)

15.

Re-alleges paragraphs 1, 2, and 3, incorporated herein by this reference.

16.

This case arises out of business activities involving Plaintiffs in which Defendant Myra Lynne has carried out business in Jackson County, Oregon, under names that were not registered as assumed business names or as "real and true" names as required under ORS 648.007 et seq. These names include but are not necessarily limited to Myra Lynne Manufactured Housing Community, Myra Lynne Manufactured Home Community, and the "real and true name of Defendant Myra Lynne as defined by ORS 648.008, none of which were properly registered in Oregon.

17.

Accordingly, under the provisions of ORS 648.135, each of the Plaintiffs are entitled to statutory damages against Defendant Myra Lynne in the amount of $500 plus its reasonable attorney fees incurred herein.

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MATTHEW SUTTON
Attorney at Law
PO BOX 4267. Medford, OR 97501

WHEREFORE, Plaintiffs prays for the judgment against Defendants, as follows:

1) In the amounts of set forth in Exhibit "1" and such additional damages to be proven at trial, plus interest at the rate of 9% per annum on the economic damages.

2) For their costs and disbursements and reasonable attorney fees incurred herein.

Dated this 23rd day of March, 2007.

MATTHEW SUTTON, OSB# 92479
Attorney for Plaintiffs

MATTHEW SUTTON
Attorney at Law
PO BOX 4267, Medford, OR 97501

MYRA LYNNE TENANTS	ADDRESSES	MOVE IN DATE	APPROX. SHARE OF REFUND	EXCES. CHARGE FOR POWER	STAT. DAM. BUS. NAME	ELDERLY OVER 65	NON-ECO. DAMAGE	STAT. DAM. FOR FIN. ABUSE
Allen, Glen & Janet	830 Carol Rae, #5	April, 2004	$878.64	to be determined	$1,000.00	XX	$1,000.00	to be determined
Allphin, Ray & Dolores	609 Hedy Jayne	1989	$878.64	to be determined	$1,000.00	XX	$1,000.00	to be determined
Anderson, Pamela	785 Nita Lynne, #203	August, 1999	$878.64	to be determined	$500.00			
Baker, Gene & Carmen	994 Carol Rae	October, 2000	$878.64	to be determined	$1,000.00	XX	$1,000.00	to be determined
Barrett, Joan	798 Hedy Jayne, #78	1997	$878.64	to be determined	$500.00	X	$500.00	to be determined
Boaz, Geraldine E.	623 Kylee Ann, #83	March, 1989	$878.64	to be determined	$500.00	X	$500.00	to be determined
Boyd, Roberta	660 Hedy Jayne	February, 1998	$878.64	to be determined	$500.00	X	$500.00	to be determined
Cabler, Jim	626 Darla Mae	January, 1992	$878.64	to be determined	$500.00	X	$500.00	to be determined
Center, Maxine L.	852 Carol Rae, #10	August, 1985	$878.64	to be determined	$500.00	X	$500.00	to be determined
Clay, Stephen, Sr.	751 Hedy Jayne	June, 2005		to be determined	$500.00			
Coons, Steve & Vicki	788 Hedy Jayne	August, 2001	$878.64	to be determined	$500.00			
Copinger, Lila J.	799 Mindy Sue, #138	September, 1990	$878.64	to be determined	$500.00	X	$500.00	to be determined
Curry, Freda	841 Carol Rae	January, 2005		to be determined	$500.00			
Curtis, William & Viola A.	620 Hedy Jayne	1995	$878.64	to be determined	$1,000.00	XX	$1,000.00	to be determined
Dennis, Michael C.	830 Krissy Dee	December, 1999	$878.64	to be determined	$500.00			
Devlin, Charlotte	623 Hedy Jayne	December, 1993	$878.64	to be determined	$500.00			
Dimon, Michael D.	769 Hedy Jayne	December, 2004	$878.64	to be determined	$500.00			
Fay, Wanda	790 Hedy Jayne, #75	August, 1989	$878.64	to be determined	$500.00	X	$500.00	to be determined
Gabriel, Sherri	795 Hedy Jayne	August, 2003	$878.64	to be determined	$500.00			
Goll, Richard	613 Hedy Jayne	September, 1994	$878.64	to be determined	$500.00	X	$500.00	to be determined
Grant, John & Marjorie	788 Kala Renee	April, 1998	$878.64	to be determined	$1,000.00	X	$1,000.00	to be determined
Greb, Rita L.	849 Carol Rae	April, 2002	$878.64	to be determined	$500.00	X	$500.00	to be determined
Grow, Jerry	670 Darla Mae	May, 1987	$878.64	to be determined	$500.00	X	$500.00	to be determined
Hannen, Al & Robert Allphin	716 Tawn Cheree, #172	August, 2002	$878.64	to be determined	$1,000.00	XX	$1,000.00	to be determined
Hill, Earl D. & Gail C.	649 Hedy Jayne, #45	June, 2000	$878.64	to be determined	$1,000.00	XX	$1,000.00	to be determined
Kalams, Beverly	825 Carol Rae	August, 1998	$878.64	to be determined	$500.00	X	$500.00	to be determined
Lawton, Lloyd D. & Debbie	880 Krissy Dee	August, 2006		to be determined	$500.00			
Littlebury, M. Marie	982 Mindy Sue	April, 2000	$878.64	to be determined	$500.00	X	$500.00	to be determined
Lucas, Barbara A.	769 Nita Lynne	October, 1992	$878.64	to be determined	$500.00	X	$500.00	to be determined
Madeiros, Dorothy	921 Mindy Sue, #159	July, 1993	$878.64	to be determined	$500.00	X	$500.00	to be determined
McCoy, Gary W.	636 Kylee Ann	August, 2003	$878.64	to be determined	$500.00			
McLean, Keith C.	757 Nita Lynne	March, 1992	$878.64	to be determined	$500.00	X	$500.00	to be determined
Nelson, Howard R.	883 Krissy Dee	July, 1987	$878.64	to be determined	$500.00	X	$500.00	to be determined

MYRA LYNNE TENANTS	ADDRESSES	MOVE IN DATE	APPROX. SHARE OF REFUND	EXCES. CHARGE FOR POWER	STAT. DAM. BUS. NAME	ELDERLY OVER 65	NON-ECO. DAMAGE	STAT. DAM. FOR FIN. ABUSE
Newton, Dona J.	608 Kylee Ann	March, 2003	$878.64	to be determined	$500.00			
Parsons, Amy L.	650 Hedy Jayne	May, 1990	$878.64	to be determined	$500.00			
Peterson, Todd & Tami	644 Kylee Ann, #88	September, 2001	$878.64	to be determined	$500.00			
Rennick, Steven C.	682 Kylee Ann, #94	April, 1999	$878.64	to be determined	$500.00			
Richards, Kathleen D.	878 Carol Rae	August, 1999	$878.64	to be determined	$500.00	X	$500.00	to be determined
Rogers, Marchelle	710 Hedy Jayne	October, 1992	$878.64	to be determined	$500.00			
Rosenberger, Vickie	630 Hedy Jayne	June, 1992	$878.64	to be determined	$500.00	X	$500.00	to be determined
Sanders, Calvin	973 Carol Rae	March, 2005	$878.64	to be determined	$500.00	X	$500.00	to be determined
Schaufler, Helga R.	719 Hedy Jayne, #55	August, 2002	$878.64	to be determined	$500.00	X	$500.00	to be determined
Schaufler, Ronald A.	746 Hedy Jayne, #64	March, 2001	$878.64	to be determined	$500.00	X	$500.00	to be determined
Schlothan, Margaret (Peggy)	715 Nita Lynne, #187	May, 2003	$878.64	to be determined	$500.00	X	$500.00	to be determined
Scull, Chester & Shirlee	793 Nita Lynne	April, 1992	$878.64	to be determined	$1,000.00	XX	$1,000.00	to be determined
Shields, Norma V.	672 Kylee Ann	November, 2001	$878.64	to be determined	$500.00	X	$500.00	to be determined
Smith, Addison & Debbie	740 Tawn Cheree	September, 1993	$878.64	to be determined	$500.00			
Smith, Betty J.	870 Krissy Dee	August, 1993	$878.64	to be determined	$500.00	X	$500.00	to be determined
Smith, Mildred	786 Hedy Jayne, #72	September, 1988	$878.64	to be determined	$500.00	X	$500.00	to be determined
Strahl-Dorn, Dianna	843 Krissy Dee, #99	February, 2005		to be determined	$500.00			
Sullivan, John & Ruth	762 Mindy Sue	June, 1990	$878.64	to be determined	$1,000.00	XX	$1,000.00	to be determined
Trevino, Ruth	821 Mindy Sue	September, 1994	$878.64	to be determined	$500.00	X	$500.00	to be determined
Urton, Christina	899 Mindy Sue	July, 2005		to be determined	$500.00			
Urton, Lois	881 Mindy Sue	June, 2005		to be determined	$500.00	X	$500.00	to be determined
Wagner, Roseann	729 Nita Lynne	October, 2005		to be determined	$500.00	X	$500.00	to be determined
Walker, Don & Patricia	600 Kylee Ann	October, 1996	$878.64	to be determined	$1,000.00	XX	$1,000.00	to be determined
Walker, La Dean	618 Kylee Ann	October, 1999	$878.64	to be determined	$500.00	X	$500.00	to be determined
Walker, Charles	683 Darla Mae	June, 2002	$878.64	to be determined	$500.00	X	$500.00	to be determined
Walters, Gary & Virginia	877 Krissy Dee	June, 1986	$878.64	to be determined	$1,000.00	XX	$1,000.00	to be determined
Watkins, Mary E.	659 Darla Mae, #29	August, 1999	$878.64	to be determined	$500.00	X	$500.00	to be determined
White, Michael Scott	721 Tawn Cheree	September, 2003	$878.64	to be determined	$500.00			
Wiggins, Leta G.	752 Nita Lynne	May, 1997	$878.64	to be determined	$500.00	X	$500.00	to be determined
Wilson, Laurie D.	772 Hedy Jayne, #69	October, 2002	$878.64	to be determined	$500.00			

AUTHENTICATED

Contract No. 01PB-12229
10/23/00

SETTLEMENT AGREEMENT
executed by the
BONNEVILLE POWER ADMINISTRATION
and
PACIFICORP

Table of Contents

This SETTLEMENT AGREEMENT (Agreement) is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA), and PACIFICORP (PACIFICORP). PACIFICORP is a corporation organized under the laws of the State of Oregon. BPA and PACIFICORP are sometimes referred to in the singular as "Party" or in the plural as "Parties."

Exhibit B
RESIDENTIAL LOAD DEFINITION

1. PACIFICORP's Residential Load means the sum of the loads within the Pacific Northwest eligible for the Residential Exchange Program under the tariff schedules described below. If BPA determines that any action changes PACIFICORP's general tariffs or service schedules in a manner which would allow loads other than Residential Loads, as defined in the Northwest Power Act, to be included under these tariff schedules, or that the original general tariffs or service schedules include loads other than Residential Loads, such nonresidential loads shall be excluded from this Agreement.

Such tariff schedules as presently effective include:

(a) for all schedules listed below, include the amount, expressed in kilowatthours, of Residential Load supplied by PACIFICORP under:

(1) Oregon

Schedule 4	Residential
Schedule 14	Outdoor Area Lighting
Schedule 24	General Service
Schedule 26	Large General Service Less Than 1,000 KW
Schedule 41	Agricultural Pumping
Schedule 44T	Large General Service – Agricultural Pumping
Schedule 45T	Large General Service – Domestic and Farm

(2) Washington

Schedule 13	Outdoor Area Lighting
Schedule 16	Residential
Schedule 25	General Service
Schedule 35	Large General Service Less Than 1,000 KW
Schedule 40	Agricultural Pumping
Schedule 42	Controlled General Heating
Schedule 44T	Large General Service – Agricultural Pumping

(3) Idaho

Schedule 1	Residential
Schedule 6A	General Service – Large Power – Residential & Farm
Schedule 7A	Security Area Lighting – Residential and Farm
Schedule 10	Agricultural Pumping
Schedule 23A	General Service – Residential and Farm
Schedule 36	Residential – Optional Time-of-Day
Schedule 36	Residential – Optional Time-of-Day.

(b) a portion of the Residential Load as determined pursuant to section 2 of this Exhibit B, supplied by the utility under the Northwest Power Act, section 5(c):

None.

2. Any farm's monthly irrigation and pumping load qualifying hereunder for each billing period shall not exceed the amount of the energy determined by the following formula:

Irrigation/Pumping Load = 400 × 0.746 × days in billing period × 24,

provided, however, that this amount shall not exceed that farm's measured energy for the same billing period.

where:

400	is equal to the horsepower limit defined in the Northwest Power Act,
0.746	is the factor for converting horsepower to kW,
days in billing period	is determined in accordance with prudent and normal utility business practices, and
24	is the number of hours in a day.

3. When more than one farm is supplied from a common pumping installation, the irrigation and pumping load of the installation shall be allocated among the farms using the installation, based on the method (e.g., water shares, acreage) that the farms use to allocate the power costs among themselves. These allocated loads shall then be combined with any other irrigation and pumping loads attributed to the farms under section 2 of this exhibit. In no instance shall any farm's total qualifying irrigation loads for any billing month exceed 222,000 kWh.

4. For purposes of this Agreement, a farm is defined as a parcel or parcels of land owned or leased by one or more persons (person includes partnerships, corporations, or any legal entity capable of owning farm land) that is used primarily for agriculture. Agriculture is defined to include the raising and incidental primary processing of crops, pasturage, or livestock. Incidental primary processing means those activities necessarily undertaken to prepare agricultural products for safe and efficient storage or shipment. All electrical loads ordinarily associated with agriculture as defined above shall be considered as usual farm use.

   Contiguous parcels of land under single-ownership or leasehold shall be considered to be one farm. Noncontiguous parcels of land under single-ownership or leasehold shall be considered as one farm unit unless demonstrated otherwise by the owner or lessee of the parcels as determined by BPA.

   Parcels of land may not be subdivided into a larger number of parcels in order to attempt to increase the number of farms. Ownership or leasehold interests in farms may not be changed in order to attempt to increase the number of farms, for example, by leases to family members or establishment of partnerships, corporations or similar devices. Acquisition of a parcel which was previously a separate farm becomes part of the single farm that acquired the parcel. In order for a noncontiguous parcel to constitute a separate farm, the farm must not share any equipment or labor with any other parcel and must maintain separate financial statements, accounting records, and tax returns as of May 1, 2000. Any new farms created after May 1, 2000, must submit an application for exchange benefits to PACIFICORP which shall then submit such application to BPA and such application must be reviewed and approved by BPA before the new farm is eligible to receive benefits. A number of additional factors may be used by BPA to

determine whether noncontiguous parcels constitute one or more farms. These factors include but are not limited to:

- use
- ownership
- control
- operating practices
- distance between parcels.

5. Unused irrigation allocations may not be reallocated to other farms or to another billing period.

6. The operator of a farm is required to certify to PACIFICORP all irrigation accounts, including horsepower rating for that farm, including all irrigation accounts commonly shared. The operator of a farm is required to provide PACIFICORP and BPA all documentation requested to assist in the farm determination.

7. This Exhibit B shall be revised to incorporate additional qualifying tariff schedules, subject to BPA's determination that the loads served under these schedules are qualified under the Northwest Power Act.

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Comparison of Schedules 48 and 4

- Based solely on Myra Lynne Mobile Home Park's usage from May 2006 to April 2007 (12 months)
- Not based at all on Myra Lynne Mobile Home Park's tenants' usage. PacifiCorp has no way of knowing tenants' usage.
- Schedule 48
  - Total bill without BPA credit= **$ 175,797.24**
  - Total bill with BPA credit= **$ 144,216.19**
- Schedule 4
  - Total without BPA credit= **$325,116.27**
  - Total with BPA credit= **$305,718.44**
- Diffences
  - Without BPA credit= **$149,319.03**
  - With BPA credit= **$161,502.25**

Prepared by Pacific Power, based on review of its bills to Myra Lynne for the period shown above. Not audited. Not reviewed for accuracy by Myra Lynne or Commission Staff.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **JOINT STIPULATION OF FACTS** on:

Jason Eisdorfer
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☒ by sending a .pdf copy thereof to each person listed above via email.

Dated this 2nd day of July, 2007.

DAVIS WRIGHT TREMAINE LLP

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