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VIA ELECTRONIC FILING AND U.S. MAIL

PUC Filing Center
Public Utility Commission of Oregon
PO Box 2148
Salem, OR 97308-2148

Re: Docket No. UE 177 (4)

Enclosed for filing in Docket UE 177(4) are an original and five copies of PacifiCorp's Closing Brief. A copy of this filing has been served on all parties to this proceeding as indicated on the enclosed service list.

Very truly yours,

Adam Lowney

Enclosure

cc: Service List

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

3 **UE 177(4)**

4 In the Matter of

5 PACIFICORP, dba PACIFIC POWER & LIGHT
6 COMPANY

PACIFICORP'S CLOSING BRIEF

7 Filing of tariffs establishing automatic
8 adjustment clauses under the terms of SB 408.

9 Pursuant to the Joint Prehearing Conference Memorandum issued by Administrative
10 Law Judges Lisa D. Hardie and Sarah K. Wallace, PacifiCorp (the Company) files this Closing
11 Brief in response to the opening briefs filed by the Industrial Customers of Northwest Utilities
12 (ICNU) and the Citizens' Utility Board of Oregon (CUB) on March 11, 2011.

13 **I. DISCUSSION**

14 **A. Response to ICNU's Objections to Part 1 of the Stipulation**

15 **1. Contrary to ICNU's Allegations, PacifiCorp's Calculation of Taxes Paid**
16 **Begins with Negative Taxable Income and Reflects the Benefits of Tax**
17 **Losses.**

18 ICNU asserts that "[the] fundamental issue in this proceeding is how to account for
19 PacifiCorp's negative taxable income when calculating the Company's stand-alone tax
20 liability."¹ ICNU's chief argument against Part 1 of the stipulation is that PacifiCorp's
21 standalone taxes paid calculation does not reflect PacifiCorp's negative taxable income, and
22 the associated tax benefits, for 2009. ICNU's proposed remedy is to use PacifiCorp's
23 negative taxable income as the starting point for the calculation of standalone taxes paid. In
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26 ¹ Opening Brief of ICNU at 6.

1 this way, ICNU argues, standalone taxes paid will recognize PacifiCorp's reported losses in a
2 manner that is consistent with how Portland General Electric (PGE) reported its losses.²

3 As demonstrated by the clear evidence in the record, ICNU's argument is factually
4 inaccurate and therefore devoid of both foundation and merit. PacifiCorp's standalone tax
5 calculation begins with its negative taxable income for 2009; the tax benefits associated with
6 PacifiCorp's 2009 tax loss are therefore directly built into the calculation. As shown on Highly
7 Confidential workpaper TP1, PacifiCorp's standalone calculation starts with a negative
8 federal tax liability which is based on its pro forma tax return.³ ICNU claims that the
9 standalone calculation assumes that the Company had no tax liability rather than a negative
10 tax liability,⁴ but the evidence directly contravenes this claim.⁵

11 In this case, PacifiCorp's standalone calculation results in positive taxes paid because
12 of the impact of the Company's increased levels of deferred income tax expense, which was
13 the result of significant capital investment and bonus depreciation in 2009.⁶ This result is
14 expressly contemplated by SB 408, which requires that the deferred income taxes associated
15 with the regulated operations of the utility be included in the calculation of taxes paid.⁷

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18 ² ICNU's argument with respect to PGE fails to acknowledge that PGE determined its taxes paid
19 under the consolidated method and, had PacifiCorp determined its taxes paid under this method,
20 PacifiCorp's taxes paid would be significantly higher.

21 ³ See Highly Confidential workpaper TP 1, first cell showing "Federal Tax Liability Per Return."
22 Highly Confidential workpaper TP3-4 shows the derivation of PacifiCorp's federal income tax for
23 Oregon regulated operations from the total Company figures which agree without exception to the
24 federal income tax return (Federal Form 1120) provided as Highly Confidential workpaper FED1.

25 ⁴ See ICNU's Opening Brief at 4.

26 ⁵ See Highly Confidential workpaper TP3-4 and TP4, showing a federal taxable loss. Highly
Confidential workpaper TP4 contains cross references to PacifiCorp's pro forma tax return that was
used to calculate the loss.

⁶ Joint Testimony/100, Bird-Fuller-Feighner/3, lines 17-21.

⁷ ORS 757.268(13)(f)(C).

1 A comparison of Ms. Blumenthal's methodology with the standalone methodology
2 used in the Stipulation shows the fallacy of ICNU's argument. First, both calculations begin
3 with negative taxable income. The difference between the two starting points is that
4 PacifiCorp's begins with the taxable income of the regulated operations of the utility only,
5 based on Commission-approved revised protocol allocation factors,⁸ consistent with SB 408
6 and OAR 860-022-0041.⁹ In contrast, ICNU's calculation applies a non-approved, self-
7 designed, allocation factor to an amount of total company taxable income that, among other
8 problems, includes non-utility revenues and expenses and other improper amounts, such as
9 charitable contributions, and excludes the activity of Pacific Minerals, Inc. (PMI).

10 Second, both calculations result in a positive taxes paid amount as a result of adding
11 back deferred taxes.¹⁰ As discussed in PacifiCorp's Opening Brief and below, PacifiCorp's
12 calculation properly reflects all deferred taxes associated with its Oregon regulated utility
13 operations. ICNU's calculation excludes some deferred taxes in direct violation of SB 408
14 and OAR 860-022-0041.

15 In sum, the different results of the two calculations have nothing to do with ICNU's
16 incorrect theory that the standalone calculation in the Stipulation fails to reflect PacifiCorp's
17 tax losses.¹¹ The differences instead reflect the fact that ICNU's calculation violates SB 408
18 and OAR 860-022-0041 in numerous and material ways.

19 ⁸ See Confidential Exhibit Joint Testimony/202. This exhibit shows that correcting ICNU's
20 calculation to use the correct allocation factors results in a surcharge, even using ICNU's own incorrect
21 values in the calculation.

22 ⁹ Joint Testimony/200, Jenks (Part 1 only)/Bird-Fuller/4, lines 8-20.

23 ¹⁰ See Highly Confidential ICNU/104, Highly Confidential workpaper TR1-6, lines 10-18.

24 ¹¹ ICNU also claims that the consolidated method used in the PGE case reflects utility tax losses
25 while the standalone method in this case does not. ICNU's Opening Brief at 8. To be clear, all three of
26 the taxes paid calculations in PacifiCorp's 2009 tax report—standalone, consolidated, and
apportionment—reflect the tax losses of PacifiCorp consistent with OAR 860-022-0041. With respect to
the consolidated and apportionment methods, PacifiCorp's tax losses reduced the tax liability of the
consolidated taxpayer, which is the starting place for those calculations.

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2 **2. ICNU Fails to Explain How the Taxes Paid Calculation in the Stipulation is Inconsistent with SB 408 or OAR 860-022-0041.**

3 As discussed in PacifiCorp’s Opening Brief, Ms. Blumenthal’s pre-filed testimony does
4 not identify any provision in OAR 860-022-0041 that ICNU believed was violated by the
5 calculation of standalone taxes in the Stipulation.¹² Ms. Blumenthal also failed to identify any
6 provision of SB 408 or OAR 860-022-0041 that ICNU believes to be violated by the Stipulation
7 at the hearing, even upon direct questioning by ALJ Hardie.¹³ ICNU’s Opening Brief continues
8 to ignore OAR 860-022-0041 and fails to identify any provision of the rule or SB 408 that is in
9 conflict with the Stipulation.

10 **3. ICNU Concedes that its Calculation Does Not Comply with SB 408 and**
11 **OAR 860-022-0041 and is Incomplete.**

12 ICNU concedes that its own calculation does not comport with SB 408 and OAR 860-
13 022-0041 and is incomplete.¹⁴ Specifically, ICNU acknowledges that Ms. Blumenthal’s
14 calculation does not reflect state income taxes or charitable contributions.¹⁵ As PacifiCorp
15 explained in its Opening Brief, these items must be included in the calculation to comply with
16 SB 408.¹⁶ ICNU attempts to gloss over the fact that its alternative calculation violates Oregon
17 law by claiming that these amounts are “de minimus.”¹⁷ Even if these amounts were “de
18 minimus” (which they are not), there is no “de minimus” exception to SB 408’s statutory

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¹² PacifiCorp’s Opening Brief at 11-12.

20 ¹³ PacifiCorp’s Opening Brief at 12.

21 ¹⁴ Opening Brief of ICNU at 10-11.

22 ¹⁵ Opening Brief of ICNU at 11. ICNU does not specifically acknowledge or address in its
23 Opening Brief other identified errors that cause Ms. Blumenthal’s calculation to be non-compliant with
24 SB 408 and OAR 860-022-0041, such as the failure to calculate interest expense using the interest
synchronization method and the failure to include an adjustment for the iterative tax effect.

25 ¹⁶ PacifiCorp’s Opening Brief at 13.

26 ¹⁷ Opening Brief of ICNU at 11.

1 requirements once there is a difference of \$100,000 or more between taxes collected and
2 taxes paid.

3 ICNU explains that its alternative calculation is incomplete because Ms. Blumenthal
4 did not have sufficient access to the tax report to complete her calculation.¹⁸ As the
5 Commission has already found, ICNU has made “no serious additional effort to work within
6 the terms of the Protective Order.”¹⁹ ICNU also failed to act on PacifiCorp’s offer to discuss
7 reasonable steps to facilitate Ms. Blumenthal’s access to the safe rooms.²⁰ The Commission
8 should disregard ICNU’s arguments relating to the protective order as it has in many previous
9 instances.

10 Finally, ICNU responds to the Settling Parties’ criticism that Ms. Blumenthal’s
11 calculation improperly excludes a portion of the deferred income tax expense for PacifiCorp’s
12 Oregon regulated operations (which she refers to as “non-depreciation deferred taxes”) by
13 claiming that PacifiCorp has not demonstrated that all of its deferred taxes are related to costs
14 that are or should be included in rates.²¹ As discussed in PacifiCorp’s Opening Brief, both
15 Staff and PacifiCorp testified that there are no non-utility deferred income tax balances
16 included in PacifiCorp’s 2009 tax report.²² ICNU has not established any evidence to the
17 contrary. ICNU’s exclusion of a portion of PacifiCorp’s deferred taxes violates the plain
18 language of ORS 757.268(13)(f).

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¹⁸ Opening Brief of ICNU at 11.

22 ¹⁹ *Re PacifiCorp Annual Tax Filings under ORS 757.268*, Docket UE 177(4), Order at 6 (Jan.
23 20, 2011).

24 ²⁰ *Id.*

25 ²¹ Opening Brief of ICNU at 14.

26 ²² TR. 80, line 22-81, line 3; TR. 81, lines 9-15.

1 **4. ICNU's Calculation Violates Normalization Requirements.**

2 In PacifiCorp's Opening Brief, PacifiCorp explained that Ms. Blumenthal's tax
3 calculation violated normalization requirements for three reasons. Her calculation: (1)
4 excludes PMI, a two-thirds owner of Bridger Coal Company, the public utility property of which
5 must be normalized; (2) allocates adjustments for book and tax depreciation at a different ratio
6 than the amounts included in pre-tax book-income and taxable income; and (3) does not
7 normalize basis differences.²³

8 ICNU claims that Ms. Blumenthal's calculation includes PMI and cites to PacifiCorp's
9 workpaper showing the calculation of the 4(d) limitation as evidence of this claim.²⁴ As
10 PacifiCorp witness Ryan Fuller testified, the taxable income used by Ms. Blumenthal in her
11 calculation does not contain the taxable income of PMI, and that exclusion has an impact on
12 normalization.²⁵ As shown in Column C of Highly Confidential workpaper TP4, the taxable
13 income of PacifiCorp in that workpaper is drawn from PacifiCorp's pro forma tax return and is
14 the exact figure used by Ms. Blumenthal as the taxable income in her calculation.²⁶ PMI's
15 taxable income is not included in that figure, as evidenced by the fact that it is listed
16 separately in Column C of Highly Confidential workpaper TP4. Therefore, ICNU's claim that
17 Ms. Blumenthal's calculation includes PMI is incorrect.

18 ICNU does not dispute that Ms. Blumenthal's adjustments for book and tax
19 depreciation²⁷ are allocated to Oregon regulated operations at a different ratio than the
20 amount of book and tax depreciation inherent in Ms. Blumenthal's allocation of taxable income

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22 ²³ PacifiCorp's Opening Brief at 23-25.

23 ²⁴ Opening Brief of ICNU at 12.

24 ²⁵ TR. 79, lines 2-17.

25 ²⁶ See Highly Confidential ICNU/104.

26 ²⁷ Highly Confidential ICNU/104, lines 2 and 3.

1 to Oregon regulated operations²⁸, but instead claims that “matching is not necessary.”²⁹
2 ICNU’s assertion demonstrates its continued disregard of normalization requirements. The
3 Internal Revenue Code (IRC) does in fact require this consistency between the utility’s
4 depreciation expense and the computation of the utility’s tax expense.³⁰ Therefore, the
5 inconsistency in Ms. Blumenthal’s calculation violates the IRC’s normalization requirements.

6 Moreover, ICNU’s justifications for Ms. Blumenthal’s failure to use revised protocol are
7 unpersuasive. ICNU complains that the revised protocol “allocation factors are not designed
8 to allocate income as a single amount.”³¹ The fact that the Commission-approved allocation
9 protocol requires a more detailed and precise undertaking than Ms. Blumenthal finds practical
10 for her self-designed calculation is not a reasonable basis for departing from Commission
11 policy, ORS 757.268, or OAR 860-022-0041. ICNU also claims that the results of operations
12 used by Ms. Blumenthal should reflect the allocation factors from the revised protocol.³² But
13 Ms. Blumenthal herself admits that she developed her own allocation factor to allocate total
14 PacifiCorp taxable income to Oregon.³³

15 Finally, ICNU claims that Ms. Blumenthal’s statement that basis differences are not
16 required to be normalized does not mean that she failed to normalize any basis differences,
17 and that the Settling Parties did not point out where her calculation reflects such a failure.³⁴
18 As discussed in PacifiCorp’s Opening Brief at 24-25, the Company included the basis

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20 ²⁸ Highly Confidential ICNU/104, line 1.

21 ²⁹ Opening Brief of ICNU at 13.

22 ³⁰ 26 U.S.C. § 168(i)(9)(B) (attached).

23 ³¹ Opening Brief of ICNU at 12.

24 ³² Opening Brief of ICNU at 12.

25 ³³ TR. 39, lines 2-10.

26 ³⁴ Opening Brief of ICNU at 14.

1 difference for CIAC in its taxes paid calculation, a step that is nowhere apparent in Ms.
2 Blumenthal's calculation—and one that she incorrectly contended at the hearing has no
3 impact on her calculation or the Company's calculation.³⁵ ICNU also argues that because Ms.
4 Blumenthal used the Company's workpapers for her calculation, her adjustment includes any
5 basis differences already normalized by PacifiCorp. Again, ICNU's position is incorrect. As
6 explained in PacifiCorp's Opening Brief, while Ms. Blumenthal drew certain numbers from the
7 Company's workpapers, she applied them incorrectly, resulting in several elements of her
8 calculation that violate normalization.³⁶

9 **B. Response to ICNU's and CUB's Objections to Part 2 of the Stipulation**

10 **1. ICNU Presents No Basis for Ignoring the Commission's Clear Policy in**
11 **Favor of a Cautious Approach to Protecting Against Normalization**
12 **Violations.**

13 In its Opening Brief, ICNU does not address Part 2 of the Stipulation. ICNU instead
14 presents its response to Part 2 in its Comments in Opposition in Docket UM 1523, the
15 proceeding opened to investigate PacifiCorp's request for deferral filed in compliance with
16 Part 2 of the Stipulation. In the interest of providing the Commission with all information
17 necessary to make a decision in this proceeding, PacifiCorp will respond to ICNU's
18 comments in Docket UM 1523 in this brief.

19 ICNU claims that there is no basis to find that PacifiCorp needs a new private letter
20 ruling (PLR) from the Internal Revenue Service (IRS).³⁷ As PacifiCorp explained in its
21 Opening Brief, SB 408, OAR 860-022-0041, and the Commission's rulings related to PLRs all
22 indicate that filing a PLR request in this case is consistent with law and policy on

23 ³⁵ TR. 46, lines 10-11.

24 ³⁶ PacifiCorp's Opening Brief at 23-25.

25 ³⁷ *Re PacifiCorp Application for Deferred Accounting Order Approving Deferral Costs Relating*
26 *to an Automatic Adjustment Clause Pursuant to Senate Bill 408, Docket UM 1523, Comments in*
Opposition of the Industrial Customers of Northwest Utilities at 4 (Mar. 14, 2011).

1 normalization issues. The temporary rule removes the protection of the deferred tax floor
2 from two methods of calculating taxes paid, which the Commission added to the rule
3 specifically to protect against normalization violations.³⁸ The Commission ordered the utilities
4 to submit revised requests for PLRs from the IRS when it added subsection 4(d) to the rule.³⁹
5 ICNU provides no reason to deviate from the Commission's past practice of requesting PLRs
6 when changes to OAR 860-022-0041 implicate normalization issues, specifically the 4(d)
7 limitation.

8 ICNU also claims that PacifiCorp's tax report is being reviewed under the new Oregon
9 rule and the Commission's opening of a permanent rulemaking to address the 4(d) limitation
10 is irrelevant. ICNU's argument is incorrect and raises an important point for clarification. The
11 Commission must issue a permanent rule incorporating the change in the 4(d) limitation in
12 order for PacifiCorp to obtain a PLR clarifying that the change does not result in a
13 normalization violation. Temporary rules are effective for 180 days only.⁴⁰ Without a
14 permanent rule, there will be no rule amendment in effect when the IRS issues its PLR,
15 making the facts upon which the PLR was issued, and therefore the PLR, inapplicable.⁴¹

16 ICNU also claims that any request for a PLR would be moot because it is likely that the
17 Commission will open a permanent rulemaking to replace OAR 860-022-0041 if the
18 legislature amends or repeals SB 408. SB 408 has not been amended or repealed, and the
19 Commission and parties to this proceeding cannot know when such a change would occur or
20 what form it will ultimately take. The potential for OAR 860-022-0041 to change in the future
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22 ³⁸ *Re Housekeeping and Clarification Changes to OAR 860-022-0041*, Docket AR 517, Order
No. 07-401 at 5-6 (Sept. 18, 2007).

23 ³⁹ *Id.* at 10.

24 ⁴⁰ *Re Adoption of a Temporary Amendment to OAR 860-022-0041*, Docket AR 547, Order No.
25 11-064 at 4 (Feb. 22, 2011).

26 ⁴¹ See PacifiCorp's Opening Brief at 20.

1 does not eliminate the need to ensure that the calculations upon which the Stipulation is
2 based comply with federal tax law.

3 **2. CUB's Concern that Obtaining a PLR Will Require Parties to Expend**
4 **Resources is Outweighed by the Potential Harm that Would Result from a**
5 **Normalization Violation.**

6 CUB's objects to Part 2 of the Stipulation because it contends that obtaining a PLR
7 based on the new deferred tax floor is unnecessary and there is a financial cost to customers
8 for the proposed deferral. CUB argues that requesting a PLR "does nothing to hinder or
9 expedite the IRS coming out with either a positive or negative finding" on the new rule.⁴²
10 CUB's argument appears to be predicated on the assumption that the IRS will evaluate the
11 new rule to determine if it would result in a normalization violation even in the absence of a
12 taxpayer requesting such a determination. Without a request from a taxpayer, it is unlikely
13 that the IRS will independently evaluate the rule for compliance with normalization
14 requirements. The IRS could later find that a normalization violation occurred during an audit
15 of the utility's taxes or through self-reporting by the utility, but by then it would be too late to
16 avoid a violation. PacifiCorp's and Staff's approach avoids this result.

17 CUB also argues that Part 2 will cost customers because the Commission and parties
18 will need to track and process the requested deferral.⁴³ Given the nature of the deferral
19 requested, the resources needed to track and process the deferral should be very limited.
20 The Commission has found in the past that obtaining a PLR was worth the time and cost of
21 doing so. CUB did not previously argue that obtaining the assurance of a PLR was
22 unnecessary in prior OAR 860-022-0041 rulemaking dockets. There is no basis for a
23 different result in this case.

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25 ⁴² Opening Brief of CUB at 11.

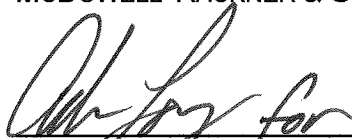
26 ⁴³ Opening Brief of CUB at 11.

1 **II. CONCLUSION**

2 For the reasons described above and in the Company's Opening Brief, PacifiCorp
3 requests that the Commission approve the Stipulation in its entirety.

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5 DATED: March 21, 2011.

MCDOWELL RACKNER & GIBSON PC

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Katherine A. McDowell
Amie Jamieson

9 Attorneys for PacifiCorp
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ATTACHMENT TO PACIFICORP'S CLOSING BRIEF

Internal Revenue Code

§ 168 Accelerated cost recovery system.

(i) Definitions and special rules.

For purposes of this section —

(9) Normalization rules.

(A) In general. In order to use a normalization method of accounting with respect to any public utility property for purposes of subsection (f)(2) —

(i) the taxpayer must, in computing its tax expense for purposes of establishing its cost of service for ratemaking purposes and reflecting operating results in its regulated books of account, use a method of depreciation with respect to such property that is the same as, and a depreciation period for such property that is no shorter than, the method and period used to compute its depreciation expense for such purposes; and

(ii) if the amount allowable as a deduction under this section with respect to such property differs from the amount that would be allowable as a deduction under section 167 using the method (including the period, first and last year convention, and salvage value) used to compute regulated tax expense under clause (i) , the taxpayer must make adjustments to a reserve to reflect the deferral of taxes resulting from such difference.

(B) Use of inconsistent estimates and projections, etc.

(i) In general. One way in which the requirements of subparagraph (A) are not met is if the taxpayer, for ratemaking purposes, uses a procedure or adjustment which is inconsistent with the requirements of subparagraph (A) .

(ii) Use of inconsistent estimates and projections. The procedures and adjustments which are to be treated as inconsistent for purposes of clause (i) shall include any procedure or adjustment for ratemaking purposes which uses an estimate or projection of the taxpayer's tax expense, depreciation expense, or reserve for deferred taxes under subparagraph (A)(ii) unless such estimate or projection is also used, for ratemaking purposes, with

respect to the other 2 such items and with respect to the rate base.

(iii) Regulatory authority. The Secretary may by regulations prescribe procedures and adjustments (in addition to those specified in clause (ii)) which are to be treated as inconsistent for purposes of clause (i) .

(C) Public utility property which does not meet normalization rules. In the case of any public utility property to which this section does not apply by reason of subsection (f)(2) , the allowance for depreciation under section 167(a) shall be an amount computed using the method and period referred to in subparagraph (A)(i) .

(10) Public utility property.

The term "public utility property" means property used predominantly in the trade or business of the furnishing or sale of—

(A) electrical energy, water, or sewage disposal services,

(B) gas or steam through a local distribution system,

(C) telephone services, or other communication services if furnished or sold by the Communications Satellite Corporation for purposes authorized by the Communications Satellite Act of 1962 (47 U.S.C. 701), or

(D) transportation of gas or steam by pipeline,

if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, by any agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof.

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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing document in Docket UE 177 on the following named person(s) on the date indicated below by email and first-class mail addressed to said person(s) at his or her last-known address(es) indicated below.

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DATED: March 21, 2011



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