

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 177(4)

In the Matter of:

PACIFICORP, dba PACIFIC POWER &
LIGHT COMPANY

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

OPENING BRIEF
OF THE CITIZENS' UTILITY BOARD OF OREGON

March 11, 2011

1 **I. INTRODUCTION**

2 The Citizens' Utility Board of Oregon files this Opening Brief pursuant to the docketing
3 schedule set by ALJ Hardie's and ALJ Wallace's Joint Prehearing Conference Memorandum
4 entered on February 15, 2011. CUB respectfully requests that the Oregon Public Utility
5 Commission (OPUC) adopt Part 1 of the Stipulation entered by the Joint Parties in this matter
6 and reject Part 2 of that same Stipulation.

7 **II. PROCEDURAL BACKGROUND**

8 As explained in the Stipulation filed in this matter, SB 408 requires certain Oregon public
9 utilities to file an annual tax report with the OPUC that provides information on: (1) the amount
10 of taxes paid by the utility to units of government or that was paid by affiliated groups and that is
11 properly attributed to the utility's regulated operations; and (2) the amount of taxes authorized to
12 be collected in rates.¹ Under ORS 757.268(13)(f)(C), the OPUC is required to adjust taxes paid
13 "by deferred taxes related to the regulated operations of the utility."²

14 The law further requires the OPUC to review the tax report to determine whether the
15 amount of taxes paid differs from the amount of taxes included in rates by more than \$100,000.³
16 If so, the OPUC must require the public utility to establish an automatic adjustment clause to
17 account for the difference.⁴ The OPUC must complete its review of the tax report and order an
18 automatic adjustment clause (AAC) if necessary within 180 days after the tax report is filed.⁵

19 As required by SB 408, on October 15, 2010, PacifiCorp filed its tax report for calendar
20 Year 2009 (2009 Tax Report). The OPUC held a prehearing conference on November 1, 2010, at
21 which Administrative Law Judge Wallace adopted a full procedural schedule, including

¹ Stipulation at 1, lines 19-25; ORS 757.268(1).

² Stipulation at 1, lines 19-25; ORS 757.268(f)(C).

³ Stipulation at 2 lines 1-7; ORS 757.268(4).

⁴ *Id.*

⁵ *Id.*; OAR 860-022-0041(7).

1 testimony and a hearing. Staff served discovery and convened a workshop on November 17,
2 2010 to review issues raised by the 2009 Tax Report. All parties were invited to participate, and
3 representatives from Staff, PacifiCorp, CUB, ICNU, and Portland General Electric Company
4 (PGE) attended. The parties convened settlement conferences on December 2 and December 9,
5 2010, and on January 6 and January 7, 2011, which the Company, Staff, CUB and ICNU
6 attended. The settlement conferences were noticed to all parties in the docket. As a result of the
7 settlement conferences, the Parties reached a two-part settlement in this case.⁶ The first part of
8 the settlement (Stipulation Part 1) is supported by Staff, PacifiCorp and CUB; the second part of
9 the settlement (Stipulation Part 2) is supported only by Staff and PacifiCorp. CUB wrote in
10 opposition to Stipulation Part 2.⁷

11 Following submission of the Stipulation and supporting (and in the case of CUB
12 opposing testimony – Part 2) ICNU, on February 7, 2011, filed its Objections to the entire
13 Stipulation along with the testimony of Ellen Blumenthal. Shortly thereafter PacifiCorp filed a
14 Motion To Strike and that motion remained pending at the time of Hearing on February 22,
15 2011.

16 III. ARGUMENT

17 A. Legal Standard of Review.

18 The OPUC has established that the purpose of this docket is to determine whether the tax
19 report complies with OAR 860-022-0041.⁸ ICNU’s position is that while it, “agrees with Staff,
20 PacifiCorp and CUB that OAR §860-022-0041(4)(d) should be amended . . . ICNU urges the

⁶ Stipulation at 2 lines 1-20.

⁷ Joint Testimony/100 Bird-Fuller-Feighner/10-11; Joint Testimony/200 Jenks (Part 1 only)/Bird-Fuller/8 lines 10 to 15.

⁸ Order No. 11-002, entered January 5, 2011: “The appropriate scope of UE 177 (4) and UE 178 (4) is to determine whether the tax reports filed by Pacific Power and PGE are in compliance with OAR 860-022-0041 (the rule adopted by the Commission to implement SB 408).”

1 Commission to consider further revisions to the rules implementing SB 408.”⁹ Thus it appears
2 that ICNU agrees that the amendment to OAR 860-022-0041 – revised during the pendency of
3 this case¹⁰ – is in compliance with SB 408. ICNU just wants the OPUC to consider making
4 additional rule amendments as part of this docket.¹¹ As established by the OPUC, and discussed
5 above, the purpose of this docket is to determine whether the tax report filed by PacifiCorp
6 complies with OAR 860-022-0041 as a whole. This is not a rulemaking docket. Joint
7 Testimony by Commission Staff, CUB and PGE demonstrates that the filed Stipulation, entered
8 into under the then proposed, and now temporary rule methodology, complies with the later
9 adopted temporary rule and complies with OAR 860-022-0041 as a whole.¹²

10 **B. The Stipulation Part 1.**

11 **i. The original rule OAR 860-022-0041(4)(d) and the part (4)(d) rule revision.**

12
13 When PacifiCorp originally filed its 2009 Tax Report the version of OAR 860-022-
14 0041(4)(d) that was in place read as follows:

15 (d) The lowest of the amounts in subsections (4)(a), (4)(b), and (4)(c) of this rule,
16 after making adjustments in paragraphs (4)(d)(A), (4)(d)(B), (4)(d)(C), (4)(d)(D),
17 and (4)(d)(E), but no less than the deferred taxes related to depreciation of public
18 utility property for regulated operations of the utility, except the deferred tax
19 amount must be reduced by any tax refunds recognized in the reporting period
20 and allocated to the regulated operations of the utility:

21
22 While Staff concluded that the Company properly applied the deferred tax floor as required
23 by the (4)(d) limitation contained in that version of the rule, Staff also reasoned that the
24 application of the deferred tax floor to the taxes paid result produced by the stand-alone method
25 was not necessary to ensure compliance with the normalization requirements of the Internal
26 Revenue Code (IRC). CUB agreed with Staff. Staff therefore proposed to commence a

⁹ Written Objections of ICNU at 3 part II first paragraph.

¹⁰ See *Infra*. CUB Opening Brief Part B.i.

¹¹ Written Objections of ICNU at 3 part II first paragraph.

¹² Joint Testimony/100 Bird-Fuller-Feighner/1-8.

1 temporary rulemaking process – outside of this docket, followed later by a permanent
2 rulemaking process to amend OAR 860-022-0041(4)(d) to conform the rule to Staff s and CUB's
3 view of its proper scope.¹³

4 In adopting the Temporary Rule, under the Temporary Rulemaking Process, the Commission
5 stated as follows:

6 We conclude that our failure to act promptly will result in serious
7 prejudice to the interests of Oregon ratepayers, and that OAR 860-022-0041(4)(d)
8 should be amended to prevent a surcharge being imposed on ratepayers in June
9 2011 that is significantly larger than that required under the intent of SB 408.
10 Accordingly, we temporarily modify subsection (4)(d) of the rule to read as
11 follows:

12
13 (d) The lowest of the amounts in subsections (4)(a), (4)(b)
14 and (4)(c) of this rule, after making adjustments in
15 paragraphs (4)(d)(A)(4)= ~~(4)(d)(B), (4)(d)(C), (4)(d)(D), and~~
16 ~~(4)(d)(E).~~ **For purposes of this rule, the adjusted amount**
17 **reported under (4)(c) must not be, but no less than the**
18 **deferred taxes related to depreciation of public utility**
19 **property for regulated operations of the utility, ~~except the deferred tax amount~~**
20 **~~must be~~ reduced by any tax refunds recognized in the reporting period and**
21 **allocated to the regulated operations of the utility * * *.**¹⁴
22

23 This is the temporary rule provision now in place, and in reliance upon which the Stipulation
24 was filed.

25 None of the parties in this docket has stated that it disagrees with the adoption of the
26 temporary rule provision.¹⁵ And, it is not the purpose of this docket to determine whether the
27 temporary rule provision, or the rest of the rule, is in compliance with the statute. Rather, as
28 noted above, it is the purpose of this docket to determine whether the Stipulation (Part 1)
29 supported by CUB, Staff and the Company, is in compliance with the OAR 860-022-0041 as a
30 whole. The Standard of Review for this docket requires a determination as to whether

¹³ Joint Testimony/100 Bird-Fuller-Feighner/5, lines 7-13.

¹⁴ Order No. 11-064 entered February 22, 2011.

¹⁵ Written Objections of ICNU at 3 section II paragraph 1.

1 PacifiCorp's 2009 tax report complies with all of the provisions of the current OAR 860-022-
2 0041.

3 **ii. The Stipulation is in Compliance with OAR 860-022-0041.**

4 On January 14, 2011, Staff, CUB, and PacifiCorp entered into a Stipulation largely
5 resolving the Company's 2009 Tax Report. In that Stipulation CUB, Staff and PacifiCorp agree
6 that revising PacifiCorp's tax report to calculate taxes paid under the stand-alone method and
7 adjusting taxes collected for the inclusion of RAC deferrals will result in a tax report that
8 complies with SB 408 and OAR 860-022-0041.¹⁶ The Stipulation Part 1 demonstrates that
9 PacifiCorp's 2009 tax report produces a surcharge of \$13.47 million using the stand-alone
10 method to calculate taxes paid. This Stipulation assumes that two future events will occur: first,
11 that the Commission will adopt an amendment to OAR 860-022-0041(4)(d) so that the deferred
12 tax floor does not apply to the stand-alone method,¹⁷ and second, that the IRS will conclude that
13 OAR 860-022-0041(4)(d) as amended is consistent with the normalization requirements of the
14 IRC.¹⁸ On February 22, 2011, the OPUC did adopt the requested amendment to provision (4)(d)
15 of the rule. This eliminated the deferred tax floor from the stand-alone and consolidated
16 calculations.¹⁹

17 Thereafter, on March 11, 2011, PacifiCorp filed a revised 2009 Tax Report pursuant to
18 the terms of the Stipulation (Revised 2009 Tax Report). The Revised 2009 Tax Report results in
19 an adjusted surcharge for federal and state income taxes of \$13,474,662.²⁰ With interest, the total
20 surcharge will be \$15,769,759, recovered in Schedule 102, PacifiCorp's Income Tax Adjustment

¹⁶ Stipulation at 4-5; Joint Testimony/100, Bird-Fuller-Feighner/6, lines 11-16.

¹⁷ Stipulation at 4; Joint Testimony/100, Bird-Fuller-Feighner/6, lines 2-4.

¹⁸ Stipulation at 4; Joint Testimony/100, Bird-Fuller-Feighner/6, lines 4-6

¹⁹ *Re Adoption of a Temporary Amendment to OAR 860-022-0041*, Docket AR 547, Order No. 11-064 (Feb. 22, 2011).

²⁰ Stipulation at 5; Joint Testimony/100, Bird-Fuller-Feighner/6, lines 17-19.

1 tariff, during the 12-month period beginning June 1, 2011.²¹ The surcharge will be allocated by
2 customer rate schedule on an equal cents per kilowatt-hour basis, as required by OAR 860-022-
3 0041(8)(d).²² The refund for local income taxes is \$86,832.²³ With interest, the local refund will
4 be \$101,739, implemented through Schedule 103, PacifiCorp's Multnomah County Business
5 Income Tax tariff.²⁴

6 Upon approval of the Stipulation, PacifiCorp will make a compliance filing to reflect
7 the surcharge and the local income tax refund, both with an effective date of June 1, 2011.²⁵
8 Both schedules will reflect the 2011 Blended Treasury Rate (BTR) that will apply to the
9 amortization period.²⁶ The resulting rate impact will be an overall increase to net revenues of
10 1.2 percent.²⁷ All of this complies with OAR 860-022-0041.

11
12 **iii. ICNU's criticism of the Stipulation is unjustified.**

13 As discussed above, on February 7, 2011, ICNU filed objections to the Stipulation
14 accompanied by the testimony of ICNU's consultant Ellen Blumenthal.²⁸ In that filing ICNU
15 makes no specific objection to Part 1 of the Stipulation but instead, ICNU "urges the
16 Commission to consider further revisions to the rules implementing SB 408". ICNU, however,
17 does not propose any specific rule changes.²⁹ Since ICNU contests the taxes paid calculation
18 reflected in the Stipulation but supports the Stipulation's revision to taxes collected,³⁰ the only
19 issue in controversy in Stipulation Part 1 seems to be the results from the use of the stand-alone

²¹ Stipulation at 5; Joint Testimony/100, Bird-Fuller-Feighner/7, lines 2-4.

²² Stipulation at 5; Joint Testimony/100, Bird-Fuller-Feighner/7, lines 4-6.

²³ Stipulation at 5; Joint Testimony/100, Bird-Fuller-Feighner/6, lines 17-19.

²⁴ Stipulation at 5; Joint Testimony/100, Bird-Fuller-Feighner/7, lines 6-8.

²⁵ Stipulation at 5-6; Joint Testimony/100, Bird-Fuller-Feighner/7, lines 9-12.

²⁶ Stipulation at 6; Joint Testimony/100, Bird-Fuller-Feighner/7, lines 11-13.

²⁷ Stipulation at 6; Testimony/100, Bird-Fuller-Feighner/8, lines 3-4.

²⁸ *Re PacifiCorp d/b/a Pacific Power SB 408 Tax Report for Calendar Year 2009*, Docket UE 177(4), Written Objections of the Industrial Customers of Northwest Utilities to the Stipulation (Feb. 7, 2011) (ICNU's Objections).

²⁹ ICNU's Objections at 3.

³⁰ ICNU/100, Blumenthal/11, lines 12-15.

1 calculation for taxes paid. On that issue, however, Ms. Blumenthal conceded that the
2 “Stipulation surcharge of \$13.5 million is based on the stand-alone calculation set out in the
3 Commission’s tax report template.”³¹ And, in response to a data request, ICNU could not
4 identify any provision in OAR 860-022-0041 that ICNU believed was violated by the calculation
5 of stand-alone taxes in the Stipulation; instead ICNU referred to the three lines of Ms.
6 Blumenthal’s testimony that state: “I have reviewed the Stipulation, but I have not reviewed the
7 Stipulation tax report.”³² ICNU also failed to identify any provision of OAR 860-022-0041 that
8 it believes to be violated by the Stipulation at the hearing. Indeed when asked in her testimony
9 whether she agreed with Staff’s position that the deferred tax floor does not apply to the stand-
10 alone method in the tax report Ms. Blumenthal responded, “[y]es I do.”³³

11 **iv. Ms. Blumenthal’s recommended calculation of PacifiCorp’s normalized tax**
12 **expense does not comport with the provisions of OAR 860-022-0041.**
13

14 Ms. Blumenthal’s testimony presents a “recommended calculation of PacifiCorp’s
15 normalized tax expense” which, in Ms. Blumenthal’s and ICNU’s opinion, should represent
16 taxes paid in this docket.³⁴ The alternative calculation set forth in Ms. Blumenthal’s testimony
17 is not consistent with SB 408 and OAR 860-022-0041.

18 Ms. Blumenthal’s calculation violates the explicit provisions of SB 408 because it:

- 19 • Is not based on the regulated operations of the utility, contrary to
20 ORS 757.268(6), (13)(c) and (12)(a);
- 21 • Does not include state income taxes in the calculation of taxes paid, but does
22 include them in the calculation of taxes collected, contrary to
23 ORS 757.268(13)(d)(A), which defines “tax” to include federal, state, and local
24 tax; and

³¹ ICNU/100, Blumenthal/12, lines 21-22.
³² Exhibit Joint Testimony/203 at 1; ICNU/100 Blumenthal/3, lines 6-8.
³³ ICNU/100 Blumenthal/10 lines 1-5.
³⁴ ICNU/100, Blumenthal/3, lines 19-22.

- 1 • Does not include adjustments to taxes paid for charitable contributions made by
2 the company or for deferred income taxes related to the regulated operations of
3 the utility, contrary to ORS 757.268(13)(f).³⁵

4 Similarly, Ms. Blumenthal’s calculation also violates OAR 860-022-0041 because it:

- 5 • Does not rely on revenues and expenses from PacifiCorp’s results of
6 operations, contrary to OAR 860-022-0041(2)(p);
- 7 • Does not calculate interest using the interest synchronization method, also
8 contrary to OAR 860-022-0041(2)(p);
- 9 • Does not include all of PacifiCorp’s deferred income tax expense of its Oregon
10 regulated operations, contrary to OAR 860-022-0041(2)(b); and
- 11 • Does not include an adjustment for the iterative tax effect, also contrary to
12 OAR 860-022-0041(2)(b).³⁶

13 These are points upon which CUB, Staff and PacifiCorp agree.

14 Ms. Blumenthal also excludes a portion of the deferred income tax expense for
15 PacifiCorp’s Oregon regulated operations (which she refers to as “non-depreciation deferred
16 taxes”). In addition to directly violating ORS 757.268(13)(f), this exclusion also violates the
17 matching principle because these deferred income taxes are reflected in taxes authorized to be
18 collected in rates.³⁷ Also a point on which CUB, Staff and PacifiCorp agree.

19 The Commission’s historic practice has been to include income taxes in rates on a fully
20 normalized basis, so the taxes collected amount used in Ms. Blumenthal’s calculation includes
21 all current and deferred income taxes generated by the regulated operations of the utility.³⁸ Ms.
22 Blumenthal’s calculation excludes deferred income taxes for PacifiCorp’s Oregon regulated
23 operations from the taxes paid calculation, but does not exclude those same deferred income

³⁵ Joint Testimony/200, Jenks (Part 1 only)-Bird-Fuller/5, line 3-5.

³⁶ Joint Testimony/200, Jenks (Part 1 only)-Bird-Fuller/3, line 23-24, and page 4, lines 1-5.

³⁷ Joint Testimony/200, Jenks (Part 1 only)-Bird-Fuller/6, line 22 and page 7, lines 1-17.

³⁸ Joint Testimony/200 Jenks (Part 1 only)/Bird-Fuller/7, lines 4-7.

1 taxes from the taxes collected calculation.³⁹ Ms. Blumenthal’s approach is not consistent with the
2 Commission’s practice of normalizing income taxes and creates a mismatch between taxes paid
3 and taxes collected.

4 **v. ICNU has failed to present a viable alternative calculation or any rule**
5 **language upon which the OPUC can make a determination in its favor.**

6 ICNU has failed to present a viable alternative calculation or any rule language upon
7 which the OPUC can make a determination in its favor. It has also failed to explain procedurally
8 how the OPUC can disregard multiple aspects of its current rule in order to approve ICNU’s
9 alternative calculation under a different but non-articulated standard.⁴⁰ The purpose of this
10 proceeding is to see if the 2009 tax report filed by PacifiCorp complies with OAR 860-022-0041
11 and to implement an automatic adjustment clause to account for the difference between taxes
12 collected and taxes paid if there is any, as required by SB 408. ICNU’s request that the OPUC
13 consider “further revisions to the rules implementing SB 408” is beyond the scope of this
14 proceeding. The fact that Ms. Blumenthal fails to provide a viable alternative calculation for the
15 OPUC to consider requires the OPUC to disregard the calculation for purposes of determining
16 the difference between taxes collected and taxes paid. Neither can the OPUC consider proposed
17 language which has not been articulated.

18 **C. The Stipulation Part 2: Part 2 is unnecessary and should not be adopted.**

19 In Part 2 of the Stipulation, Staff and PacifiCorp entered into an additional agreement
20 related to the tax report. Staff’s and PacifiCorp’s agreement was intended to account for the
21 possibility that either the OPUC would fail to permanently amend OAR 860-022-0041(4)(d), to
22 make the deferred tax floor inapplicable to taxes paid under the stand-alone method, or the IRS

³⁹ Joint Testimony/200 Jenks (Part 1 only)/Bird-Fuller/7, lines 8-17.

⁴⁰ Joint Testimony/200 Jenks (Part 1 only)/Bird-Fuller/3 lines 8 – 14.
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1 would determine that the amendment to OAR 860-022-0041(4)(d) violates normalization
2 requirements of the Internal Revenue Code (IRC).⁴¹

3 Staff, therefore, agreed to support the application by PacifiCorp to defer the difference
4 between the surcharge produced by the deferred tax floor (\$27.3 million) under the original rule
5 and the 2009 Surcharge (\$13.47 million) determined under the proposed temporary rule.⁴² Staff
6 further agreed to support PacifiCorp's request to amortize the deferral balance of \$13.83 million
7 plus accrued interest.⁴³ PacifiCorp filed its deferral application described in Part 2 of the
8 Stipulation on February 15, 2011.⁴⁴ The Temporary rule was adopted by the OPUC on February
9 22, 2011, and Staff and PacifiCorp agreed to work cooperatively to submit a new PLR request to
10 the IRS expeditiously upon issuance of the permanent amendment to OAR 860-022-
11 0041(4)(d).⁴⁵

12 **i. CUB objects to Part 2 of the Stipulation because the change proposed, and**
13 **already made, to OAR 860-022-0041(4)(d) will not cause a normalization**
14 **violation and obtaining a PLR is unnecessary.**

15 CUB voiced opposition to Part 2 of the Stipulation because the change proposed, and
16 subsequently made, to OAR 860-022-0041(4)(d) will not cause a normalization violation.⁴⁶
17 Given that there is no possibility of the change to the rule causing a normalization violation there
18 is no reason to file for the additional deferral and no reason to apply to the IRS for a PLR. Such
19 actions are simply unnecessary and a waste of taxpayer and ratepayer money. They will also
20 unnecessarily delay appropriate process in this docket.⁴⁷

21 **ii. CUB further objects to the Stipulation Part 2 because it will cause financial**
22 **harm to ratepayers.**
23

⁴¹ Joint Testimony/100, Bird-Fuller-Feighner/8, lines 6-12.

⁴² Joint Testimony/100, Bird-Fuller-Feighner/9, lines 12-14.

⁴³ Joint Testimony/100, Bird-Fuller-Feighner/10, lines 13-17.

⁴⁴ *Re PacifiCorp d/b/a Pacific Power Application for Deferred Accounting*, Application, Docket UM 1523 (Feb. 15, 2011).

⁴⁵ Joint Testimony/100, Bird-Fuller-Feighner/10, lines 9-12.

⁴⁶ Joint Testimony/100 Bird-Fuller-Feighner/10 lines 21 – 24.

⁴⁷ Joint Testimony/100 Bird-Fuller-Feighner/11 lines 1 – 2.

1 PacifiCorp may continue to claim that there is no financial harm to ratepayers caused by
2 the filing of their deferral for the difference between the surcharge produced by the deferred tax
3 floor and the surcharge agree to in Part 1 of the Stipulation but this is not the case.

4 First, CUB does not and never has, since the adoption of the proposed language for the
5 temporary rule, believed that PacifiCorp should be entitled to this surcharge. CUB and Staff
6 disagree on this issue.

7 Second, rate payer monies must be expended for Staff to track and process this deferral,
8 rate payer monies must be expended for CUB to track and oppose this unnecessary deferral and
9 PLR request and rate payer monies will also be expended by ICNU for the same reasons.

10 There is a financial cost to rate payers for this proposed deferral whether or not it actually
11 comes to pass. The OPUC should not adopt this unnecessary deferral process and this
12 unnecessary work to obtain a PLR – both are unjustified expenses.

13
14 **iii. The procedures under Part 2 of the Stipulation do not increase protection**
15 **against an IRS finding of a normalization violation.**

16 PacifiCorp seems to be operating under the assumption that the procedures in Part 2 of
17 the Stipulation increase protection against a normalization violation associated with a change to
18 the deferred tax floor. It is hard for CUB to see how this could possibly be the case. It will
19 likely take upwards of a year to get a PLR from the IRS. That gives the IRS plenty of time to
20 research and make a finding, if it so chooses, that there is a normalization violation. Applying to
21 the IRS for a letter stating that the rule change does not violate the IRC does nothing to hinder or
22 expedite the IRS coming out with either a positive or negative finding. Since CUB does not
23 believe the new rule causes a normalization violation CUB sees no point to this paper exercise.

24
25 **iv. Application of the Blended Treasury Rate to the deferral in Stipulation**
26 **Part 2.**

27 As for PacifiCorp’s projection of itself as doing something wonderful by agreeing to
28 apply only the blended treasury rate to the Stipulation Part 2 deferral, CUB can only ask what the
29 point is of a hollow, meaningless, “magnanimous” act? PacifiCorp is not entitled to the

1 additional deferral in Part 2 so its willingness to accept only the blended treasury rate for interest
2 that it is not entitled to, on a deferral that it is not entitled to, provides dark humor at best.

3
4 **v. ICNU objected to Part 2 of the Stipulation because the change proposed,**
5 **and made, to OAR 860-022-0041(4)(d) will not result in a normalization**
6 **violation, obtaining a PLR is unnecessary and because ICNU does not**
7 **believe that PacifiCorp is entitled to the additional deferral.⁴⁸**

8
9 ICNU objected to Part 2 of the Stipulation in its entirety because the change proposed,
10 and made, to OAR 860-022-0041(4)(d) will not result in a normalization violation and obtaining
11 a PLR from the IRS is therefore unnecessary. ICNU also objected to Part 2 of the Stipulation on
12 the basis that PacifiCorp is not entitled to any surcharge, so there is no basis to request a deferral
13 or apply a blended treasury rate to interest on a deferral to which the Company is not entitled.⁴⁹

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17 (continued on next page)

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⁴⁸ ICNU's Objections at 3.

⁴⁹ ICNU's Objections at 3.

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IV. CONCLUSION

For all of the reasons discussed above, CUB recommends that the OPUC find that Part 1 of the Stipulation is in the public interest and would produce rates that are fair, just, and reasonable. Accordingly, CUB recommends that the OPUC adopt Part 1 of the Stipulation in its entirety.

As for Part 2 of the Stipulation, CUB recommends that the OPUC does not adopt Part 2 of the Stipulation. Part 2 lays the groundwork for provision to PacifiCorp of a windfall which it does not deserve. CUB respectfully requests that the OPUC not encourage such overreaching on the part of any utility. Thus CUB recommends that the OPUC not adopt Part 2 of the Stipulation.

Dated March 11, 2011.

Respectfully submitted,



G. Catriona McCracken, Attorney #933587
Legal Counsel, Regulatory Program Director
Citizens' Utility Board of Oregon
610 SW Broadway Ste 400
Portland, OR 97205
(503) 227-1984
Catriona@oregoncub.org

UE 177(4) – CERTIFICATE OF SERVICE

I hereby certify that, on this 11th day of March, 2011, I served the foregoing **OPENING BRIEF OF THE CITIZENS' UTILITY BOARD OF OREGON** in docket UE 177(4) upon each party listed in the UE 177(4) PUC Service List by email and, where paper service is not waived, by U.S. mail, postage prepaid, and upon the Commission by email and by sending five (5) copies and one (1) original by U.S. mail, postage prepaid, to the Commission's Salem offices.

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C **DAVISON VAN CLEVE PC**
HC MELINDA J DAVISON
333 SW TAYLOR - STE 400
PORTLAND OR 97204
mail@dvclaw.com

C **DANIEL W MEEK**
HC ATTORNEY AT LAW
10949 SW 4TH AVE
PORTLAND OR 97219
dan@meek.net

C **DAVISON VAN CLEVE PC**
JOCELYN C PEASE
333 SW TAYLOR, STE 400
PORTLAND OR 97204
jcp@dvclaw.com

W **DEPARTMENT OF JUSTICE**
C JASON W JONES
HC BUSINESS ACTIVITIES SECTION
1162 COURT ST NE
SALEM OR 97301-4096
jason.w.jones@state.or.us

MCDOWELL RACKNER GIBSON
PORTLAND SAFE ROOM
419 SW 11TH AVE STE 400
PORTLAND OR 97205
lisa@mcd-law.com

C **KAFOURY & MCDOUGAL**
HC LINDA K WILLIAMS
10266 SW LANCASTER RD
PORTLAND OR 97219-6305
linda@lindawilliams.net

C **MCDOWELL RACKNER GIBSON**
HC KATHERINE A MCDOWELL
419 SW 11TH AVE., SUITE 400
PORTLAND OR 97205
katherine@mcd-law.com

W **PUBLIC UTILITY COMMISSION**
C CARLA BIRD
HC PO BOX 2148
SALEM OR 97308-2148
carla.bird@state.or.us

W **PACIFIC POWER**
OREGON DOCKETS
825 NE MULTNOMAH ST, STE 2000
PORTLAND OR 97232
oregondockets@pacificorp.com

W **PUBLIC UTILITY COMMISSION**
C DEBORAH GARCIA
HC PO BOX 2148
SALEM OR 97308-2148
deborah.garcia@state.or.us

W PACIFIC POWER & LIGHT
C JOELLE STEWARD
825 NE MULTNOMAH STE 2000
PORTLAND OR 97232
joelle.steward@pacificorp.com

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'G. C. M.', written in a cursive style.

G. Catriona McCracken, Attorney #933587
Legal Counsel, Regulatory Program Director
Citizens' Utility Board of Oregon
610 SW Broadway Ste 400
Portland, OR 97205
(503) 227-1984
Catriona@oregoncub.org