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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 Opening 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,

A handwritten signature in black ink, appearing to read 'Amie Jamieson', with a long horizontal flourish extending to the right.

Amie Jamieson

Enclosure

cc: Service List

1 In prior years, the only objection to the Company's tax reports has been from the
2 Industrial Customers of Northwest Utilities (ICNU), based on ICNU's claim that the tax reports
3 were filed under OAR 860-022-0041, which itself was inconsistent with SB 408. During the
4 pendency of this proceeding, the Oregon Court of Appeals rejected ICNU's argument that
5 OAR 860-022-0041 violated SB 408.⁴

6 Despite this fact, and despite clear direction from the Commission that the
7 "[a]ppropriate scope of UE 177(4) . . . is to determine whether the tax reports filed by Pacific
8 Power . . . are in compliance with OAR 860-022-0041,"⁵ ICNU has followed the same flawed
9 approach in this case. ICNU does not address the tax report's compliance with OAR 860-022-
10 0041, and instead generally claims that PacifiCorp "effectively" paid no taxes, so it should not
11 collect a surcharge under SB 408. ICNU proposes an alternative calculation of PacifiCorp's
12 taxes paid that disregards numerous provisions of SB 408 and OAR 860-022-0041. Even
13 under ICNU's illegal and unauthorized approach to calculating taxes paid, ICNU reports a
14 significant positive taxes paid result, completely undermining its claim that PacifiCorp paid
15 zero taxes in 2009 for purposes of SB 408.

16 PacifiCorp respectfully requests that the Commission approve both Parts 1 and 2 of
17 the Stipulation. ICNU has not raised any credible arguments against either part of the
18 Stipulation. CUB's objection to Part 2 of the Stipulation fails to recognize that Part 2 increases
19 protection against a normalization violation associated with a change to the deferred tax floor,
20 without added cost to customers as long as the IRS concludes that there is no normalization
21 violation.

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23
24 ⁴ *Indus. Cust. of NW Util. v. Pub. Util. Comm'n of Or. and PacifiCorp*, 240 Or.App. 147 (Dec.
25 29, 2010).

26 ⁵ *Re PacifiCorp Annual Tax Filings under ORS 757.268*, Docket UE 177(4), Order No. 11-002
at 1 (Jan. 5, 2011).

1 **II. BACKGROUND**

2 **A. PacifiCorp's 2009 Tax Report**

3 As required by SB 408, PacifiCorp filed its tax report for calendar year 2009 (2009 Tax
4 Report) on October 15, 2010.⁶ As originally filed, PacifiCorp's 2009 Tax Report reflected
5 \$29.3 million of federal, state, and local taxes paid above taxes authorized to be collected in
6 rates.⁷

7 PacifiCorp's taxes paid were initially calculated under the deferred income tax floor set
8 forth in OAR 860-022-0041(4)(d).⁸ This provision of the rule was added to ensure
9 compliance with normalization requirements of the Internal Revenue Code (IRC) by fully
10 protecting deferred income taxes related to depreciation on public utility property.⁹

11 The IRC requires the inclusion of deferred income taxes associated with accelerated
12 tax depreciation on public utility property in rates in order for public utility property to be
13 eligible for accelerated depreciation for income tax purposes.¹⁰ The inclusion of deferred
14 income taxes associated with the regulated operations of the utility in determining taxes paid
15 is also required by SB 408, specifically ORS 757.268(13)(f)(C).¹¹ The Company reported
16 increased levels of deferred income tax expense during 2009 primarily as the result of the
17 combination of significant capital investment and bonus depreciation.¹²

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19 _____
20 ⁶ *Re PacifiCorp d/b/a Pacific Power SB 408 Tax Report for Calendar Year 2009, Cover Letter to 2009 Tax Report (Oct. 15, 2010).*

21 ⁷ Stipulation at 2; Joint Testimony/100, Bird-Fuller-Feighner/2, lines 21-22.

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

23 ⁹ *Re Housekeeping and Clarification Changes to OAR 860-022-0041, Docket AR 517, Order No. 07-401 at 6 (Sept. 18, 2007).*

24 ¹⁰ Stipulation at 3; Joint Testimony/100, Bird-Fuller-Feighner/3, lines 11-13.

25 ¹¹ Stipulation at 3; Joint Testimony/100, Bird-Fuller-Feighner/3, lines 15-16.

26 ¹² Stipulation at 3; Joint Testimony/100, Bird-Fuller-Feighner/4, lines 19-21.

1 **B. Stipulation Resolving the 2009 Tax Report**

2 **1. The 2009 Surcharge**

3 Staff raised three initial issues during its audit of the 2009 Tax Report: (1) the
4 Company's exclusion of supplemental schedules related to PacifiCorp's Renewable
5 Adjustment Clause (RAC) filings in the calculation of taxes authorized to be collected in rates;
6 (2) the Company's inclusion of the impact of depreciation flow-through in the calculation of
7 the deferred tax floor under OAR 860-022-0041(4)(d); and (3) the Company's methodology
8 for allocating to Oregon the total Company book-tax difference for book and tax
9 depreciation.¹³ The first issue addressed the calculation of taxes collected and decreases
10 taxes collected by \$5.06 million; the second and third issues address the calculation of the
11 deferred tax floor and reduce the floor by \$7.18 million.¹⁴ During settlement discussions, the
12 Company agreed to Staff's adjustments for purposes of settlement, lowering the Company's
13 surcharge to \$27.3 million.¹⁵

14 After Staff's investigation concluded and the parties had engaged in settlement
15 discussions, a final issue emerged related to the application of the deferred tax floor under
16 OAR 860-022-0041(4)(d) as currently written.¹⁶ While the Staff did not dispute that the
17 Company properly applied the deferred tax floor as required by the existing OAR 860-022-
18 0041(4)(d), Staff determined that the application of the deferred tax floor to the taxes paid
19 result produced by the standalone method is not necessary to ensure compliance with the
20 normalization requirements of the IRC.¹⁷ CUB agreed with Staff's conclusion.¹⁸

21 ¹³ Stipulation, Exhibit A.

22 ¹⁴ Stipulation at 3; Joint Testimony/100, Bird-Fuller-Feighner/4, line 23-5, line 3.

23 ¹⁵ Stipulation at 3.

24 ¹⁶ Stipulation at 3-4; Joint Testimony/100, Bird-Fuller-Feighner/5, lines 5-7.

25 ¹⁷ Stipulation at 4; Joint Testimony/100, Bird-Fuller-Feighner/5, lines 7-11.

26 ¹⁸ Stipulation at 4; Joint Testimony/100, Bird-Fuller-Feighner/5, line 11.

1 As applied to PacifiCorp's 2009 Tax Report, Staff's and CUB's approach to the
2 deferred tax floor resulted in the standalone method determining PacifiCorp's taxes paid.¹⁹
3 The use of the standalone method mooted Staff's other adjustments to taxes paid, but Staff's
4 adjustment to taxes collected for supplemental schedules remained applicable.²⁰

5 On January 14, 2011, Staff, CUB, and PacifiCorp (Settling Parties) filed a Stipulation
6 resolving the Company's 2009 Tax Report. As reflected in Part 1 of the Stipulation, the
7 Settling Parties agreed that PacifiCorp's 2009 tax report produced a surcharge of \$13.47
8 million using the standalone method to calculate taxes paid. This agreement was expressly
9 based upon two assumptions: First, that the Commission will permanently amend OAR 860-
10 022-0041(4)(d) so that the deferred tax floor does not apply to the standalone method.²¹
11 Second, that the IRS will conclude that OAR 860-022-0041(4)(d) as amended is consistent
12 with the normalization requirements of the IRC.²²

13 Consistent with the first assumption, at Staff's request, the Commission issued a
14 temporary rule amendment on February 22, 2011 that eliminated the deferred tax floor from
15 the standalone and consolidated calculations.²³

16 The Settling Parties agreed that revising PacifiCorp's tax report to calculate taxes paid
17 under the standalone method and adjust taxes collected for the inclusion of RAC deferrals will
18 result in a tax report that complies with SB 408 and OAR 860-022-0041.²⁴ On March 11,
19 2011, PacifiCorp filed a revised 2009 Tax Report consistent with the terms of the Stipulation
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21 ¹⁹ Stipulation at 4; Joint Testimony/100, Bird-Fuller-Feighner/5, lines 16-18.

22 ²⁰ *Id.*

23 ²¹ Stipulation at 4; Joint Testimony/100, Bird-Fuller-Feighner/6, lines 2-4.

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

25 ²³ *Re Adoption of a Temporary Amendment to OAR 860-022-0041*, Docket AR 547, Order No.
11-064 (Feb. 22, 2011).

26 ²⁴ Stipulation at 4-5; Joint Testimony/100, Bird-Fuller-Feighner/6, lines 11-16.

1 (Revised 2009 Tax Report). The Revised 2009 Tax Report results in an adjusted surcharge
2 for federal and state income taxes of \$13,474,662.²⁵ With interest, the total surcharge will be
3 \$15,769,759, recovered in Schedule 102, PacifiCorp's Income Tax Adjustment tariff, during
4 the 12-month period beginning June 1, 2011.²⁶ The surcharge will be allocated by customer
5 rate schedule on an equal cents per kilowatt-hour basis, as required by OAR 860-022-
6 0041(8)(d).²⁷

7 The refund for local income taxes is \$86,832.²⁸ With interest, the local refund will be
8 \$101,739, implemented through Schedule 103, PacifiCorp's Multnomah County Business
9 Income Tax tariff.²⁹

10 Upon approval of the Stipulation, PacifiCorp will make a compliance filing to reflect the
11 surcharge and the local income tax refund, both with an effective date of June 1, 2011.³⁰ Both
12 schedules will reflect the 2011 Blended Treasury Rate (BTR) that will apply to the amortization
13 period.³¹ The resulting rate impact will be an overall increase to net revenues of 1.2 percent.³²

14 **2. Staff's and PacifiCorp's Additional Agreement**

15 In Part 2 of the Stipulation, Staff and PacifiCorp entered into an additional agreement
16 related to the tax report. Staff's and PacifiCorp's agreement is intended to account for the
17 possibility that one or both of the assumptions upon which Part 1 of the Stipulation is based—
18 that the Commission will permanently amend OAR 860-022-0041(4)(d) to make the deferred

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20 ²⁵ Stipulation at 5; Joint Testimony/100, Bird-Fuller-Feighner/6, lines 17-19.

21 ²⁶ Stipulation at 5; Joint Testimony/100, Bird-Fuller-Feighner/7, lines 2-4.

22 ²⁷ Stipulation at 5; Joint Testimony/100, Bird-Fuller-Feighner/7, lines 4-6.

23 ²⁸ Stipulation at 5; Joint Testimony/100, Bird-Fuller-Feighner/6, lines 17-19.

24 ²⁹ Stipulation at 5; Joint Testimony/100, Bird-Fuller-Feighner/7, lines 6-8.

25 ³⁰ Stipulation at 5-6; Joint Testimony/100, Bird-Fuller-Feighner/7, lines 9-12.

26 ³¹ Stipulation at 6; Joint Testimony/100, Bird-Fuller-Feighner/7, lines 11-13.

³² Stipulation at 6; Testimony/100, Bird-Fuller-Feighner/8, lines 3-4.

1 tax floor inapplicable to taxes paid under the standalone method, and the IRS determines that
2 the amendment to OAR 860-022-0041(4)(d) does not violate normalization requirements of
3 the IRC—may not occur.³³

4 In Part 2 of the Stipulation, Staff agrees to support an application by PacifiCorp to
5 defer the difference between the surcharge produced by the deferred tax floor (\$27.3 million)
6 and the 2009 Surcharge (\$13.47 million).³⁴ If either of the above-described assumptions is
7 not met, Staff agrees to support PacifiCorp's request to amortize the deferral balance of
8 \$13.83 million plus accrued interest.³⁵ PacifiCorp filed its deferral application described in
9 Part 2 of the Stipulation on February 15, 2011.³⁶ Staff and PacifiCorp agree to work
10 cooperatively to submit a new PLR request to the IRS expeditiously upon issuance of a
11 permanent amendment to OAR 860-022-0041(4)(d).³⁷

12 Staff and PacifiCorp agree to limit interest accruing on the deferral in two ways. First,
13 Staff and PacifiCorp agree that interest will accrue during the deferral period at the BTR,
14 rather than at the utility's authorized rate of return as would normally be the case prior to
15 amortization.³⁸ Second, Staff and PacifiCorp agree that the deferral will not accrue interest
16 beyond one year, beginning with the date the Commission adopts a permanent amendment to
17 OAR 860-022-0041(4)(d).³⁹

18
19 ³³ Stipulation at 6; Joint Testimony/100, Bird-Fuller-Feighner/8, lines 6-12.

20 ³⁴ Stipulation at 6; Joint Testimony/100, Bird-Fuller-Feighner/9, lines 12-14.

21 ³⁵ Stipulation at 6-7; Joint Testimony/100, Bird-Fuller-Feighner/10, lines 13-17.

22 ³⁶ *Re PacifiCorp d/b/a Pacific Power Application for Deferred Accounting*, Application, Docket
UM 1523 (Feb. 15, 2011).

23 ³⁷ Stipulation at 7; Joint Testimony/100, Bird-Fuller-Feighner/10, lines 9-12.

24 ³⁸ Stipulation at 7; Joint Testimony/100, Bird-Fuller-Feighner/10, lines 1-3. *See Re Public Utility*
25 *Commission of Oregon Staff Request to Open an Investigation Related to Deferred Accounting*, Docket
UM 1147, Order No. 06-507 at 4-5 (Sept. 6, 2006).

26 ³⁹ Stipulation at 7; Joint Testimony/100, Bird-Fuller-Feighner/10, lines 4-8.

1 CUB does not support Part 2 of the Stipulation.⁴⁰ CUB does not believe the
2 amendment to OAR 860-022-0041(4)(d) will cause a normalization violation.⁴¹ CUB therefore
3 believes that the deferral request and proposed PLR request are unnecessary.⁴²

4 **C. ICNU's Litigation Positions in the Docket**

5 **1. ICNU's Proposed Intervenor Funding Budget**

6 On November 30, 2010, ICNU filed proposed budgets for an Issue Fund Grant in this
7 proceeding.⁴³ The proposed budget stated that ICNU intended to investigate whether
8 PacifiCorp's tax report is appropriate pursuant to SB 408, and not OAR 860-022-0041.⁴⁴ The
9 Commission denied ICNU's proposed budget because it requested funding for activities that
10 are beyond the scope of this docket.⁴⁵ As noted above, the Commission clarified that the
11 "[a]ppropriate scope of UE 177(4) . . . is to determine whether the tax reports filed by Pacific
12 Power . . . are in compliance with OAR 860-022-0041."⁴⁶ The Commission also specifically
13 noted that ICNU's argument that OAR 860-022-0041 conflicts with SB 408 was recently
14 rejected by the Court of Appeals.⁴⁷

15 In response to the rejection of its intervenor funding budget, ICNU filed a Revised
16 Budget that stated explicitly that "ICNU intends to investigate whether [PacifiCorp's] 2009 tax
17 report is consistent with OAR 860-022-0041, and to respond to the settlement proposed by

18 ⁴⁰ Stipulation at 6; Joint Testimony/100, Bird-Fuller-Feighner/10, lines 20-21.

19 ⁴¹ Stipulation at 6-7; Joint Testimony/100, Bird-Fuller-Feighner/10, lines 20-24.

20 ⁴² Joint Testimony/100, Bird-Fuller-Feighner/10, line 24-11, line 2.

21 ⁴³ *Re PacifiCorp d/b/a Pacific Power SB 408 Tax Report for Calendar Year 2009*, Docket UE
22 177(4), ICNU's Proposed Budget for Issue Fund Grant (Nov. 30, 2010).

23 ⁴⁴ *Id.*

24 ⁴⁵ *Re PacifiCorp Annual Tax Filings under ORS 757.268*, Docket UE 177(4), Order No. 11-002
at 1 (Jan. 5, 2011).

25 ⁴⁶ *Id.*

26 ⁴⁷ *Id.*

1 Staff and PacifiCorp.”⁴⁸ Based on this representation, the Commission concluded that the
2 proposed work was within the scope of this docket and approved the proposed budget.⁴⁹

3 **2. ICNU’s Motion to Modify the Protective Order**

4 On November 2, 2010, ICNU filed a motion to modify the protective order. ICNU filed
5 this motion after its consultant, Ellen Blumenthal, spent only one morning in the SB 408 safe
6 room.⁵⁰ ICNU’s motion was its seventh challenge to the protective order in one form or
7 another.⁵¹ On January 20, 2011, the Commission denied ICNU’s motion, noting that ICNU
8 “has appeared to make no serious additional effort to work within the terms of the Protective
9 Order.”⁵²

10 **3. ICNU’s Objections to the Stipulation**

11 On February 7, 2011, ICNU filed objections to the Stipulation accompanied by
12 testimony of ICNU consultant Ellen Blumenthal.⁵³ ICNU made no specific objection to Part 1
13 of the Stipulation. Instead, ICNU “urges the Commission to consider further revisions to the

14 ⁴⁸ *Re PacifiCorp Annual Tax Filings under ORS 757.268*, Docket UE 177(4), Revised Budget
15 for Issue Fund Grant at 2 (Jan. 10, 2011).

16 ⁴⁹ *Re PacifiCorp Annual Tax Filings under ORS 757.268*, Docket UE 177(4), Order No. 11-023
(Jan. 19, 2011).

17 ⁵⁰ *Re PacifiCorp Annual Tax Filings under ORS 757.268*, Docket UE 177(4), PacifiCorp’s
18 Response in Opposition to ICNU’s Motion to Modify the Protective Order at 4 (Nov. 17, 2010).

19 ⁵¹ *Id.* at 1.

20 ⁵² *Re PacifiCorp Annual Tax Filings under ORS 757.268*, Docket UE 177(4), Order at 6 (Jan.
21 20, 2011).

22 ⁵³ *Re PacifiCorp d/b/a Pacific Power SB 408 Tax Report for Calendar Year 2009*, Docket UE
23 177(4), Written Objections of the Industrial Customers of Northwest Utilities to the Stipulation (Feb. 7,
24 2011) (ICNU’s Objections). On February 10, 2011, PacifiCorp filed a Motion to Strike ICNU’s
25 Objections and accompanying testimony. *Re PacifiCorp d/b/a Pacific Power SB 408 Tax Report for
26 Calendar Year 2009*, Docket UE 177(4), PacifiCorp’s Motion to Strike or in the Alternative for Leave to
File Responsive Testimony (Feb. 10, 2011). PacifiCorp argued that ICNU’s Objections and testimony
are beyond the scope of the docket because ICNU does not address whether the calculation included
in the Stipulation complies with OAR 860-022-0041. *Id.* at 3. Instead, ICNU sets forth an alternative
calculation of taxes paid that differs from the calculation required by OAR 860-022-0041. After ICNU
responded to the motion, the Commission took the motion under advisement. *Re PacifiCorp d/b/a
Pacific Power SB 408 Tax Report for Calendar Year 2009*, Docket UE 177(4), Joint Prehearing
Conference Memorandum (Feb. 15, 2011).

1 rules implementing SB 408,” but does not propose any specific rule changes.⁵⁴ ICNU
2 objected to Part 2 of the Stipulation on the basis that the proposed change to OAR 860-022-
3 0041(4)(d) will not result in a normalization violation and obtaining a PLR is unnecessary.⁵⁵
4 ICNU also objected to Part 2 of the Stipulation on the basis that PacifiCorp is not entitled to a
5 surcharge, so there is no basis to request a deferral.⁵⁶

6 In the testimony supporting ICNU’s Objections, Ms. Blumenthal provided a refund
7 calculation based on what she described to be “PacifiCorp’s Oregon stand-alone ‘normalized’
8 taxable income.”⁵⁷ However, at hearing Ms. Blumenthal testified that this calculation “is an
9 example of the methodology more than the bottom line answer.”⁵⁸ She also testified that the
10 calculation “was intended more to open a new dialogue about how we should approach this.”⁵⁹

11 III. ARGUMENT

12 A. The Evidence Demonstrates that PacifiCorp’s 2009 Tax Report, as Revised 13 under Part 1 of the Stipulation, Complies with SB 408 and OAR 860-022-0041.

14 While ICNU contests the taxes paid calculation reflected in the Stipulation, ICNU
15 supports the Stipulation’s revision to taxes collected.⁶⁰ Thus, the only issue in controversy on
16 Part 1 of the Stipulation is the use of the standalone calculation for taxes paid.

17 All of the evidence in the record supports approval of the standalone calculation of taxes
18 paid in PacifiCorp’s revised tax report. The calculation complies with OAR 860-022-0041. The
19 Commission and the Oregon Court of Appeals rejected ICNU’s previous challenge to the

20 ⁵⁴ ICNU’s Objections at 3.

21 ⁵⁵ ICNU’s Objections at 3.

22 ⁵⁶ ICNU’s Objections at 3.

23 ⁵⁷ ICNU/100, Blumenthal/11, lines 1-6.

24 ⁵⁸ TR. 19, line 24-20, line 1.

25 ⁵⁹ TR. 68, lines 10-12.

26 ⁶⁰ ICNU/100, Blumenthal/11, lines 12-15; ICNU/104, line 7.

1 standalone calculation in OAR 860-022-0041, finding that the calculation was consistent with
2 SB 408.⁶¹ PacifiCorp's Revised 2009 Tax Report calculates taxes paid using Staff's tax report
3 template. No party has previously alleged that the template does not comply with OAR 860-
4 022-0041, and no party does so in this case.

5 Both Staff and CUB have stipulated that the Revised 2009 Tax Report complies with
6 SB 408 and OAR 860-022-0041 as amended by Order No. 11-064.⁶² Staff developed this
7 position after a thorough review of each calculation in the tax report and the supporting
8 documentation provided by the Company, including data requests sent by Staff.⁶³

9 Once a utility has presented evidence in support of a proposed rate or tariff, the
10 burden of going forward with evidence that the filing is unreasonable shifts to parties who
11 oppose the filing.⁶⁴ In other words, because PacifiCorp, Staff, and CUB have presented
12 persuasive evidence in support of Part 1 of the Stipulation, ICNU is required to present
13 persuasive evidence in opposition to prevail.⁶⁵

14 ICNU has not presented any evidence that PacifiCorp's revised tax report violates
15 SB 408 or OAR 860-022-0041. Ms. Blumenthal's pre-filed testimony does not object to Part 1
16 of the Stipulation on this basis.⁶⁶ In fact, Ms. Blumenthal conceded that the "Stipulation
17 surcharge of \$13.5 million is based on the stand-alone calculation set out in the Commission's
18

19 ⁶¹ *Indus. Cust. of NW Util. v. Pub. Util. Comm'n of Or. and PacifiCorp*, 240 Or.App. 147 at 159
20 (Dec. 29, 2010); *Re PacifiCorp d/b/a Pacific Power SB 408 Tax Report for Calendar Year 2006*, Docket
UE 177(4), Order No. 09-177 at 16 (May 20, 2009).

21 ⁶² Stipulation at 4-5.

22 ⁶³ Stipulation, Exhibit A at 1, 5.

23 ⁶⁴ *Re NW Natural*, Order No. 99-697, Docket UG 132 (Nov. 12, 1999); *see also Re Idaho*
24 *Power*, Order No. 05-871 at 7, Docket UE 167 (July 28, 2005) (after the utility has submitted evidence
to prove its case, "then the burden of production shifts to parties that oppose the utility's proposal.").

25 ⁶⁵ *See Re Portland Gen. Elec. Co.*, Order No. 01-777 at 6, Docket UE 115 (Aug. 31, 2001); *Re*
26 *Or. Elec. Util. Co., LLC*, Order No. 05-114 at 17 n.12, Docket UM 1121 (Mar. 10, 2005).

⁶⁶ Joint Testimony/200, Jenks (Part 1 only)-Bird-Fuller/2, lines 6-9.

1 tax report template.”⁶⁷ In response to a data request, ICNU could not identify any provision in
2 OAR 860-022-0041 that ICNU believed was violated by the calculation of standalone taxes in
3 the Stipulation; instead ICNU referred to the three lines of Ms. Blumenthal’s testimony that
4 state: “I have reviewed the Stipulation, but I have not reviewed the Stipulation tax report.”⁶⁸

5 ICNU also failed to identify any provision of OAR 860-022-0041 that it believes to be
6 violated by the Stipulation at the hearing. At the hearing, Administrative Law Judge (ALJ) Lisa
7 Hardie asked Ms. Blumenthal a number of questions about her position on the calculation of
8 standalone taxes paid in the Stipulation, including whether she believed that the Stipulation is
9 consistent with OAR 860-022-0041.⁶⁹ Ms. Blumenthal never directly answered the question,
10 and did not reference any provision in OAR 860-022-0041 that is in conflict with the
11 Stipulation.⁷⁰ Similarly, ALJ Hardie asked Ms. Blumenthal whether she believes that the
12 Stipulation calculation is inconsistent with a specific provision in SB 408.⁷¹ Ms. Blumenthal
13 was unable to point to any provision of the law that is violated by the Stipulation calculation.⁷²
14 ALJ Hardie gave Ms. Blumenthal a final opportunity to explain her position by asking her to
15 “point to where [the Stipulation] is inconsistent with the rule as amended or SB 408.”⁷³
16 Ms. Blumenthal’s response was again vague and non-specific; she either could not or would
17 not cite any provision of the rule or SB 408 violated by the Stipulation.⁷⁴

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⁶⁷ ICNU/100, Blumenthal/12, lines 21-22.

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⁶⁸ Exhibit Joint Testimony/203 at 1.

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⁶⁹ TR. 63, line 1-69, line 3.

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⁷⁰ See TR. 63, line 15-64, line 7.

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⁷¹ TR. 65, lines 14-17.

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⁷² TR. 65, line 20-66, line 23.

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⁷³ TR. 66, lines 7-12.

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⁷⁴ TR. 66, lines 13-23.

1 **B. ICNU's Proposed Alternative Methodology for Calculating Taxes Paid is**
2 **Inconsistent with SB 408 and OAR 860-022-0041.**

3 In her testimony, Ms. Blumenthal presents her "recommended calculation of
4 PacifiCorp's normalized tax expense" which, in her opinion, should represent taxes paid in this
5 docket.⁷⁵ During Ms. Blumenthal's surrebuttal testimony at the hearing, she was specifically
6 asked to explain why her approach is consistent with SB 408 and OAR 860-022-0041.⁷⁶
7 Ms. Blumenthal's response did not reference any aspect of the statute or rule at all.⁷⁷ Nor did
8 her pre-filed testimony explain how her calculation is consistent with SB 408 or OAR 860-022-
9 0041.

10 In fact, the alternative calculation set forth in Ms. Blumenthal's testimony is not
11 consistent with SB 408 and OAR 860-022-0041. Ms. Blumenthal's calculation violates the
12 explicit provisions of SB 408 because it:

- 13 • Is not based on the regulated operations of the utility, contrary to
14 ORS 757.268(6), (13)(c) and (12)(a);
- 15 • Does not include state income taxes in the calculation of taxes paid, but does
16 include them in the calculation of taxes collected, contrary to
17 ORS 757.268(13)(d)(A), which defines "tax" to include federal, state, and local
18 tax; and
- 19 • Does not include adjustments to taxes paid for charitable contributions made
20 by the company or for deferred income taxes related to the regulated
21 operations of the utility, contrary to ORS 757.268(13)(f).⁷⁸

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

23 ⁷⁵ ICNU/100, Blumenthal/3, lines 19-22.

24 ⁷⁶ TR. 31, lines 11-12.

25 ⁷⁷ TR. 31, line 13-32, line 24.

26 ⁷⁸ Joint Testimony/200, Jenks (Part 1 only)-Bird-Fuller/5, line 3-5.

- 1 • Does not rely on revenues and expenses from PacifiCorp's results of
2 operations, contrary to OAR 860-022-0041(2)(p);
- 3 • Does not calculate interest using the interest synchronization method, also
4 contrary to OAR 860-022-0041(2)(p);
- 5 • Does not include all of PacifiCorp's deferred income tax expense of its Oregon
6 regulated operations, contrary to OAR 860-022-0041(2)(b); and
- 7 • Does not include an adjustment for the iterative tax effect, also contrary to
8 OAR 860-022-0041(2)(b).⁷⁹

9 Ms. Blumenthal concedes that her calculation contains elements that violate OAR 860-
10 022-0041 and SB 408. For example, Ms. Blumenthal agrees that she did not include in her
11 calculation charitable contributions or state and local income taxes.⁸⁰

12 In addition to the above-described deficiencies, Ms. Blumenthal excludes a portion of
13 the deferred income tax expense for PacifiCorp's Oregon regulated operations (which she
14 refers to as "non-depreciation deferred taxes"). In addition to directly violating
15 ORS 757.268(13)(f), this exclusion also violates the matching principle because these
16 deferred income taxes are reflected in taxes authorized to be collected in rates.⁸¹

17 The Commission's historic practice has been to include income taxes in rates on a fully
18 normalized basis, so the taxes collected amount used in Ms. Blumenthal's calculation includes
19 all current and deferred income taxes generated by the regulated operations of the utility.⁸²
20 Ms. Blumenthal's calculation excludes deferred income taxes for PacifiCorp's Oregon
21 regulated operations from the taxes paid calculation, but does not exclude those same
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23 ⁷⁹ Joint Testimony/200, Jenks (Part 1 only)-Bird-Fuller/3, line 23-4, line 5.

24 ⁸⁰ TR. 38, lines 23-25.

25 ⁸¹ Joint Testimony/200, Jenks (Part 1 only)-Bird-Fuller/6, line 22-7, line 17.

26 ⁸² Joint Testimony/200, Jenks (Part 1 only)-Bird-Fuller/7, lines 4-7.

1 deferred income taxes from the taxes collected calculation.⁸³ While Ms. Blumenthal testified
2 that she does not advocate flow-through accounting for income taxes, she nevertheless uses
3 it on the taxes paid side of her alternate calculation.⁸⁴ Ms. Blumenthal's approach is not
4 consistent with the Commission's practice of normalizing income taxes and creates a
5 mismatch between taxes paid and taxes collected.

6 Ms. Blumenthal argued that deferred income taxes are not thoroughly examined in rate
7 cases and it is impossible to know what deferred income taxes are included in rates.⁸⁵
8 Ms. Blumenthal's claim is unsubstantiated. In her pre-filed testimony, the only specific
9 rationale for excluding these deferred income taxes was that the detail in PacifiCorp's
10 workpapers was "copious."⁸⁶ The fact that PacifiCorp has carefully detailed and substantiated
11 its deferred income tax expense supports the inclusion of these amounts in the SB 408
12 calculation of taxes paid, not the opposite. In addition, PacifiCorp witness Ryan Fuller testified
13 that no non-utility items are included in the Company's calculation of deferred income taxes.⁸⁷
14 Staff's review confirmed this conclusion, as Staff did not identify any non-utility deferred
15 income tax balances in the Company's 2009 Tax Report.⁸⁸

16 At hearing, Ms. Blumenthal provided one example of a deferred income tax item that
17 might not be reflected in rates, which was deferred income taxes related to FASB 143, an
18 asset retirement obligation.⁸⁹ PacifiCorp's tax report does not include any deferred income
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20 ⁸³ Joint Testimony/200, Jenks (Part 1 only)-Bird-Fuller/7, lines 8-17.

21 ⁸⁴ See TR. 52, lines 14-19.

22 ⁸⁵ TR. 51, 4-9.

23 ⁸⁶ ICNU/100, Blumenthal/12, lines 3-4.

24 ⁸⁷ TR. 81, lines 9-15.

25 ⁸⁸ TR. 80, line 22-81, line 3.

26 ⁸⁹ TR. 51, line 18-52, line 13.

1 taxes related to FASB 143.⁹⁰ Ms. Blumenthal's unsubstantiated and incorrect claim that
2 PacifiCorp's 2009 Tax Report may include deferred income taxes that are not attributable to
3 the Company's Oregon regulated operations is in direct conflict with her own alternative
4 calculations, which in fact include income tax expense for items of income and expense that
5 are not attributable to Oregon regulated operations.⁹¹

6 **C. ICNU Presents No Alternative Calculation Upon Which the Commission Could**
7 **Base a Decision.**

8 Even if ICNU's calculation was not in conflict with the relevant law, ICNU presents no
9 evidentiary basis upon which the Commission could base an alternative result. While
10 Ms. Blumenthal presented a calculation in her pre-filed testimony that purported to show the
11 difference between taxes collected and taxes paid, at the hearing Ms. Blumenthal
12 acknowledged that her calculation was merely "an example of the methodology more than the
13 bottom line answer."⁹² She also clarified that the calculation "was intended more to open a
14 new dialogue about how we should approach this."⁹³

15 The purpose of this proceeding is to implement an automatic adjustment clause to
16 account for the difference between taxes collected and taxes paid, as required by SB 408.
17 ICNU's proposal to "open a new dialogue" on how to approach SB 408 is beyond the scope of
18 this proceeding and inconsistent with ICNU's representations upon which intervener funding
19 was granted. The fact that Ms. Blumenthal's calculation does not provide a "bottom-line
20 answer" means that the Commission must disregard the calculation for purposes of
21 determining the difference between taxes collected and taxes paid.

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23 ⁹⁰ PacifiCorp Tax Report, Highly Confidential Workpaper TP 10.

24 ⁹¹ Joint Testimony/200, Jenks (Part 1 only)-Bird-Fuller/4, lines 8-20.

25 ⁹² TR. 19, line 24-20, line 1.

26 ⁹³ TR. 68, lines 10-12.

1 **D. ICNU's Position in PGE's 2009 Tax Report Proceeding is Inconsistent with its**
2 **Position in this Proceeding.**

3 ICNU's vacillating position on Portland General Electric Company's (PGE) 2009 tax
4 report further undermines ICNU's credibility in this proceeding. At the hearing in this
5 proceeding, Ms. Blumenthal testified that the methodology she presented in her testimony is
6 "the same methodology that was used in the stipulation tax report for PGE."⁹⁴ She conceded,
7 however, that the PGE case was resolved under the consolidated method.⁹⁵ The
8 methodology used to calculate taxes paid under the consolidated method is very different from
9 the methodology used to calculate taxes paid under the stand alone method. As Carla Bird of
10 Staff testified, Ms. Blumenthal's calculation is not consistent with the methods used by the
11 parties to the stipulation in the PGE proceeding.⁹⁶

12 Although ICNU now apparently supports the methodology used in the PGE stipulation,
13 Ms. Blumenthal testified in that docket that she recommended "that the Commission reject the
14 [PGE] Stipulation, because it requires ratepayers to reimburse the Company more than the
15 amount of taxes PGE actually paid, even on a normalized basis."⁹⁷ Ms. Blumenthal has not
16 explained why she proposed an alternative calculation in the PGE docket, but now criticizes
17 the calculation used in the PacifiCorp Stipulation for being inconsistent with the calculation
18 used in the PGE stipulation.

19 After the hearing in this proceeding, on February 28, 2011, ICNU filed a letter in PGE's
20 2009 tax report docket stating that ICNU was withdrawing its opposition to the stipulation in
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22 ⁹⁴ TR. 22, lines 12-15.

23 ⁹⁵ TR. 69, lines 11-15.

24 ⁹⁶ TR. 88, lines 19-22.

25 ⁹⁷ *Re. Or. Pub. Util. Comm'n Staff Requesting the Comm'n Direct Portland Gen. Elec. Co. to*
26 *File Tariffs Establishing Automatic Adjustment Clauses under the Terms of SB 408, Docket UE 178(4),*
ICNU/100, Blumenthal/4 (Feb. 7, 2011).

1 that docket.⁹⁸ ICNU clarified that it was not seeking to withdraw the testimony of
2 Ms. Blumenthal in that docket.⁹⁹ ICNU did not explain why it was no longer objecting to the
3 PGE stipulation, but continues to attack the PGE stipulation through Ms. Blumenthal's
4 testimony.

5 ICNU's changing position on the PGE stipulation discredits its arguments in this
6 proceeding. On one hand, ICNU attacks the calculation that forms the basis of PGE's
7 stipulation, but on the other attacks this Stipulation on the basis that it is based on a different
8 calculation than the one used in the PGE case. ICNU's unexplained withdrawal of its
9 objections to the PGE stipulation, which occurred only after Ms. Blumenthal indicated support
10 for the calculation in the PGE stipulation in the hearing of this case, also undermines ICNU's
11 credibility with respect to its objections to the Stipulation in this proceeding.

12 **E. Part 2 of the Stipulation Protects All Parties from the Risk of a Normalization**
13 **Violation.**

14 **1. Background on PacifiCorp's Private Letter Ruling**

15 A chief concern of the parties during the OAR 860-022-0041 rulemaking was the
16 potential for violation of normalization requirements of federal tax law.¹⁰⁰ To mitigate this
17 concern, OAR 860-022-0041(8)(g) required the utilities to seek a PLR from the IRS on
18 whether SB 408 or the Commission's rule would cause the utility to violate federal tax law.¹⁰¹

21 ⁹⁸ *Re. Or. Pub. Util. Comm'n Staff Requesting the Comm'n Direct Portland Gen. Elec. Co. to*
22 *File Tariffs Establishing Automatic Adjustment Clauses under the Terms of SB 408*, Docket UE 178(4),
Letter to Judge Wallace (Feb. 28, 2011).

23 ⁹⁹ *Id.*

24 ¹⁰⁰ *See Re Adoption of Permanent Rules to Implement SB 408 Relating to Utility Taxes*, Docket
AR 499, Order No. 06-532 at 3 (Sept. 14, 2006).

25 ¹⁰¹ OAR 860-022-0041(8)(g); *Re Adoption of Permanent Rules to Implement SB 408 Relating*
26 *to Utility Taxes*, Docket AR 499, Order Adopting Permanent Rules, Order No. 06-532 at 4 (Sept. 14,
2006).

1 PacifiCorp filed its initial request for a PLR with the IRS on December 29, 2006.¹⁰²
2 PacifiCorp's PLR request discussed the adjustment to taxes paid for deferred income taxes
3 related to the regulated operations of the utility as set forth in ORS 757.268(12)(f)(C).¹⁰³ The
4 PLR request specifically referenced the fact that the adjustment to taxes paid under this
5 subsection includes all deferred income taxes, not only those associated with public utility
6 property.¹⁰⁴

7 After PacifiCorp filed its request, the Commission amended OAR 860-022-0041 and
8 ordered the utilities to file an amended PLR request to the IRS based on the changes to the
9 rules.¹⁰⁵ The Commission required the utilities to provide draft amended PLR requests to the
10 Commission and all participants by November 1, 2007, and allowed participants to comment
11 on the amended requests.¹⁰⁶ Pursuant to the Commission's order, PacifiCorp filed its
12 amended PLR request on November 28, 2007.¹⁰⁷

13 PacifiCorp received a favorable determination in the PLR issued by the IRS on
14 January 9, 2008.¹⁰⁸ The IRS stated in its PLR that it did not believe the current form of
15 OAR 860-022-0041 violates normalization requirements or other federal tax laws.¹⁰⁹ The PLR
16 stated that the consolidated and apportionment methods "without the protective isolation of

17 ¹⁰² *Re PacifiCorp d/b/a Pacific Power SB 408 Tax Report for Calendar Year 2009*, Docket UE
18 177(4), Private Letter Ruling at 1 (Feb. 3, 2011).

19 ¹⁰³ *Re Adoption of Permanent Rules to Implement SB 408 Relating to Utility Taxes*, Docket
AR 499, PacifiCorp's Revised Draft Private Letter Ruling Request at 10 (Dec. 20, 2006).

20 ¹⁰⁴ *Id.* at 11.

21 ¹⁰⁵ *Re Housekeeping and Clarification Changes to OAR 860-022-0041*, Docket AR 517, Order
No. 07-401 at 10, (Sept. 18, 2007).

22 ¹⁰⁶ *Id.*

23 ¹⁰⁷ *Re. Housekeeping and Clarification Changes to OAR 860-022-0041*, Docket AR 517, Letter
24 from PacifiCorp to the Commission (Dec. 5, 2007).

25 ¹⁰⁸ *Re PacifiCorp d/b/a Pacific Power SB 408 Tax Report for Calendar Year 2009*, Private
Letter Ruling at 6 (Feb. 3, 2011).

26 ¹⁰⁹ *Id.*

1 the tax benefits from accelerated depreciation and the [investment tax credits], would probably
2 violate normalization requirements because they would result in the possible flow-through of
3 tax benefits to ratepayers more rapidly than under those normalization rules.”¹¹⁰

4 A PLR is a “written statement issued to a [specific] taxpayer or his authorized
5 representative by the National Office [of the Internal Revenue Service] which interprets and
6 applies the tax laws to a specific set of facts.”¹¹¹ The favorable ruling issued January 8, 2008
7 is based on the specific facts presented at that time by PacifiCorp, including the Oregon
8 statute and related rules. Should the statute or rules change in any material manner, the
9 ruling originally issued would no longer apply and a new ruling would be required to assure
10 protection for the utility and its customers.

11 **2. Staff’s and PacifiCorp’s Cautious Approach to Ensuring Compliance with**
12 **Federal Tax Law is Consistent with SB 408, OAR 860-022-0041, and**
13 **Commission Precedent.**

14 In Part 2 of the Stipulation, Staff and PacifiCorp agreed on a process for obtaining a
15 new PLR from the IRS regarding the change to OAR 860-022-0041(4)(d). Staff and
16 PacifiCorp believe that a new PLR request is necessary based on the revision to OAR 860-
17 022-0041.¹¹² Staff also agreed to support PacifiCorp’s request for deferral of the difference
18 between the surcharge produced by the deferred tax floor and the surcharge in the
19 Stipulation, pending the Commission’s adoption of a permanent amendment to OAR 860-022-
20 0041(4)(d) and the IRS’s issuance of a new PLR finding that the revised rule is consistent with
21 normalization requirements of the IRC.¹¹³

23 ¹¹⁰ *Id.*

24 ¹¹¹ 26 C.F.R. § 601.201(a)(2).

25 ¹¹² Joint Testimony/200, Jenks (Part 1 only)-Bird-Fuller/9, lines 16-21.

26 ¹¹³ Stipulation at 6.

1 Part 2 of the Stipulation should be approved because Staff's and PacifiCorp's position
2 is consistent with SB 408, OAR 860-022-0041, and Commission precedent. First, under
3 ORS 757.268(8)(b), the Commission may authorize a utility to include in rates "[t]ax
4 requirements and benefits that are required to be included in order to ensure compliance with
5 the normalization requirements of federal tax law." This subsection indicates that the Oregon
6 legislature recognized the importance of complying with normalization requirements and
7 provided the Commission the discretion to adjust calculations under SB 408 to comply with
8 such requirements.

9 Second, under OAR 860-022-0041(8)(g), the Commission required the utilities subject
10 to SB 408 to seek a PLR from the IRS on whether the utility's compliance with SB 408 or the
11 implementing rule would cause the utility to violate any provision of federal tax law, including
12 normalization requirements. The rule stated that while the PLR requests were pending, no
13 rate adjustment would be implemented.¹¹⁴ The fact that the rule prevented a utility from
14 implementing a rate adjustment while awaiting rulings on the PLR requests indicate that the
15 Commission was concerned that adjusting rates without the reassurance of a PLR was risky.

16 Third, Commission precedent indicates that the Commission takes a cautious
17 approach to ensuring that the SB 408 rule does not run afoul of normalization requirements.
18 In Docket AR 517, the Commission adopted "housekeeping" amendments to OAR 860-022-
19 0041, including an amendment to Subsection 4(d).¹¹⁵ The Commission ordered utilities to file
20 amended PLR requests in light of the rule amendments.¹¹⁶ Filing an amended PLR request to
21 reflect the temporary rule amendment in this case is consistent with the Commission's prior
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23 _____
¹¹⁴ OAR 860-022-0041(8)(g).

24 ¹¹⁵ *Re. Housekeeping and Clarification Changes to OAR 860-022-0041*, Docket AR 517, Order
25 No. 07-401 at 1 (Sept. 18, 2007).

26 ¹¹⁶ *Id.* at 10.

1 finding that an amendment to OAR 860-022-0041, and specifically Subsection 4(d), triggered
2 a need to amend the PLR request.

3 Just as important as the fact that Staff's and PacifiCorp's agreement is consistent with
4 law and Commission precedent is the fact that the agreement will not harm customers. If the
5 IRS finds that the rule amendment does not result in a normalization violation, the deferral will
6 not be amortized and there will be no impact on customers. On the other hand, if the IRS
7 finds that the amendment results in a normalization violation, the deferral will allow PacifiCorp
8 a mechanism to recover the surcharge as calculated under the prior rule and avoid a
9 normalization violation. Staff and PacifiCorp have taken steps to limit the impact on
10 customers should this potential occur by limiting the interest that will accrue on the deferral.¹¹⁷

11 **3. ICNU's Position is Inconsistent with the Commission's Prior Approach to**
12 **PLR Requests.**

13 ICNU objects to Part 2 of the Stipulation on the basis that "[i]t is unnecessary to go to
14 the time and cost of obtaining a private letter ruling."¹¹⁸ Ms. Blumenthal argues that the
15 normalization provisions of the IRC are "clear and straightforward."¹¹⁹ She also states that the
16 IRS has only cited one utility for a normalization violation in the past and allowed the regulator
17 to remedy the problem by issuing a new order and allowed the utility to continue using
18 accelerated depreciation.¹²⁰

19 Ms. Blumenthal's position on the need for a PLR request is inconsistent with the
20 Commission's cautious approach to protecting against normalization violations. If an
21 amended PLR request was necessary when the Commission *added* the deferred tax floor in
22 Docket AR 517, which provided utilities additional protection against potential normalization

23 ¹¹⁷ Stipulation at 6.

24 ¹¹⁸ ICNU/100, Blumenthal/10, lines 10-11.

25 ¹¹⁹ ICNU/100, Blumenthal/10, lines 11-12.

26 ¹²⁰ ICNU/100, Blumenthal/10, lines 19-25.

1 violations, an amended request is certainly necessary to ensure that *removing* the floor from
2 two of the calculations is consistent with federal tax law.

3 Ms. Blumenthal claims that the time and cost associated with an additional PLR
4 request are not necessary in this case. It is indisputable, however, that the time and cost
5 associated with remedying a normalization violation would be significantly higher than filing an
6 amended PLR request in the first place. Moreover, Ms. Blumenthal's indifference to the
7 potential impact of a normalization violation is inconsistent with the Oregon legislature's and
8 the Commission's demonstrated interest in ensuring that SB 408 does not cause Oregon
9 utilities to violate provisions of the federal tax code. While parties may hold different views as
10 to whether a normalization violation could occur under the temporary rule, it is the IRS' opinion
11 that is determinative.

12 Ms. Blumenthal's claims related to normalization should also be discounted because
13 the calculation she presented to the Commission includes elements that violate normalization
14 requirements of the IRC. First, the pre-tax book income and taxable income in ICNU's
15 alternative calculation excludes Pacific Minerals, Inc. (PMI), a two-thirds owner of Bridger Coal
16 Company. The property of Bridger Coal Company is considered public utility property under
17 the normalization rules of the IRC and must be normalized.¹²¹ Ms. Blumenthal claims that her
18 calculation includes PMI.¹²² In fact, the taxable income used by Ms. Blumenthal does not
19 contain the taxable income of PMI.¹²³ PMI's taxable income includes depreciation on public
20 utility property, so excluding it from the calculation of PacifiCorp's taxable income has an
21 impact on normalization.¹²⁴

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23 ¹²¹ Joint Testimony/200, Jenks (Part 1 only)-Bird-Fuller/5, lines 20-22.

24 ¹²² TR. 41, lines 2-5.

25 ¹²³ TR. 79, lines 2-11.

26 ¹²⁴ TR. 79, lines 12-17.

1 Second, Ms. Blumenthal's adjustments for book and tax depreciation are allocated at a
2 different ratio than the amounts included in pre-tax book-income and taxable income.¹²⁵ As a
3 result, Ms. Blumenthal's calculation does not carefully and consistently track PacifiCorp's
4 deferred income taxes.

5 Ms. Blumenthal conceded that she developed her own allocation method to allocate
6 PacifiCorp's operating revenue to Oregon regulated operations, rather than using PacifiCorp's
7 multi-state allocation methodology.¹²⁶ Ms. Blumenthal claimed that her methodology was
8 appropriate because she took taxable income, tax depreciation, and book depreciation from
9 the Company's results of operations.¹²⁷ As Ms. Blumenthal agreed, however, she created her
10 own allocation factor to allocate total PacifiCorp taxable income to Oregon.¹²⁸ Using
11 Ms. Blumenthal's ad hoc allocation factor for taxable income and the revised protocol
12 allocation factor for other aspects of the calculation creates a mismatch, which creates
13 normalization concerns and artificially lowers taxes paid.¹²⁹

14 Third, Ms. Blumenthal wrongly testifies that basis differences are not required to be
15 normalized by the IRC.¹³⁰ The Settling Parties testified that, for example, the IRS requires that
16 the basis difference for Contributions in Aid of Construction (CIAC) must be normalized.¹³¹ At
17 hearing, Ms. Blumenthal responded that CIAC has no impact on her calculation or the
18 Company's calculation.¹³² Ms. Blumenthal provides no support for this statement. In fact, as

19 ¹²⁵ Joint Testimony/200, Jenks (Part 1 only)-Bird-Fuller/6, lines 7-9; TR. 76, line 20-77, line 9.

20 ¹²⁶ TR. 39, lines 2-10.

21 ¹²⁷ TR. 50, lines 13-18.

22 ¹²⁸ TR. 39, lines 2-10.

23 ¹²⁹ TR. 78, lines 9-20; see Confidential Exhibit Joint Testimony/202.

24 ¹³⁰ Joint Testimony/200, Jenks (Part 1 only)-Bird-Fuller/6, lines 15-16.

25 ¹³¹ Joint Testimony/200, Jenks (Part 1 only)-Bird-Fuller/6, lines 16-20.

26 ¹³² TR. 46, lines 6-11.

1 shown in Highly Confidential workpapers TP 3 and TP 10, the basis difference for CIAC is
2 reflected in both the Company's current and deferred income tax calculations.

3 **4. CUB Does Not Present a Basis for Rejecting Part 2 of the Stipulation.**

4 CUB also objects to Part 2 of the Stipulation because CUB does not believe the rule
5 change results in a normalization violation.¹³³ CUB is concerned that the proposed PLR
6 request is unnecessary and will unnecessarily delay process in this docket.¹³⁴ However, there
7 has been no evidence that process in this docket will be delayed as a result of the deferral
8 requested in Part 2 of the Stipulation. The request for deferral is being considered in a
9 separate proceeding and will therefore not affect the procedural timeline in this case. CUB
10 presents no other basis for rejecting Part 2 of the Stipulation.

11 As Staff and PacifiCorp testified, the normalization requirements are "highly technical
12 and complex."¹³⁵ Because of this, no party to this proceeding or the Commission can
13 guarantee that the change to OAR 860-022-0041(4)(b) will not result in a normalization
14 violation. PacifiCorp requests that the Commission take the same prudent approach to
15 ensuring compliance with federal tax law as it has in the past by approving Part 2 of the
16 Stipulation.

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24 ¹³³ Joint Testimony/100, Bird-Fuller-Feighner/10, lines 21-24.

25 ¹³⁴ Joint Testimony/100, Bird-Fuller-Feighner/10, line 24-11, line 2.

26 ¹³⁵ Joint Testimony/200, Jenks (Part 1 only)-Bird-Fuller/9, lines 16-17.

1 **IV. CONCLUSION**

2 PacifiCorp requests that the Commission approve the Stipulation in its entirety,
3 because it will result in just, fair, and reasonable rates and will ensure that the rate change
4 resulting from the Stipulation complies with federal tax law.

5
6 DATED: March 11, 2011.

MCDOWELL RACKNER & GIBSON PC

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8 
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10 Attorneys for PacifiCorp
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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(4) 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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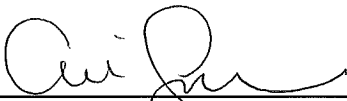
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