PACIFIC POWER
A DIVISION OF PACIFICORP

825 NE Multnomah, Suite 2000
Portland, Oregon 97232

March 20, 2007

VIA ELECTRONIC FILING
AND OVERNIGHT DELIVERY

Oregon Public Utility Commission
550 Capitol Street NE, Suite 215
Salem, OR 97310-2551

Attn: Vikie Bailey-Goggins, Administrator
Regulatory and Technical Support

RE: Joint Petition for Declaratory Ruling

PacifiCorp (d.b.a. Pacific Power & Light Company) hereby submits for filing an original and five copies of the Company's and HCA Management Company's Joint Petition for Declaratory Ruling. Petitioners request that the Oregon Public Utility Commission resolve a potential conflict between the Company's "General Service" rate schedules and its Rule 2, Section O; and ORS 90.536, newly enacted and added to ORS Chapter 90 during the 2005 session of the Legislature.

It is respectfully requested that all formal correspondence and staff requests regarding this matter be addressed to:

By E-mail (preferred):	datarequest@pacificorp.com.
By Fax:	(503) 813-6060
By regular mail:	Data Request Response Center PacifiCorp 825 NE Multnomah, Suite 2000 Portland, OR 97232

Informal inquiries may be directed to Carole Rockney at (503) 331-4390 or John Cameron at (503) 778-5376.

Very truly yours,

Andrea L. Kelly
Vice President, Regulation

Enclosures

Cc: John Cameron
Matthew Sutton
Paul Graham

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

DR - ____

In the Matter of PACIFICORP, dba PACIFIC POWER & LIGHT COMPANY, and HCA MANAGEMENT COMPANY, LLC	JOINT PETITION FOR DECLARATORY RULING

I. INTRODUCTION

Pursuant to ORS 756.450,[1] this petition for a declaratory ruling is submitted jointly by PacifiCorp, dba Pacific Power & Light Company ("Pacific Power") and HCA Management Company, LLC, operator of the Myra Lynne Mobile Home Park ("Myra Lynne") (collectively, "Petitioners"). Petitioners request that the Oregon Public Utility Commission ("Commission") resolve a potential conflict between Pacific Power's General Service rate schedules and its Rule 2, Section O, on the one hand, and ORS 90.536, recently enacted and added to ORS Chapter 90 during the 2005 session of the Legislature. Legislative history of ORS 90.536 indicates that the Commission was involved in its drafting. Because Pacific Power's rates and rules also have the force and effect of law once approved by the Commission, Petitioners seek resolution concerning whether the rate schedule and Rule 2, Section O or ORS 90.536 controls. Petitioners seek a Commission order that will be binding on each of them.

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[1] ORS 756.450 provides:

> Declaratory rulings. On petition of any interested person, the Public Utility Commission may issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by the commission. A declaratory ruling is binding between the commission and the petitioner on the state of facts alleged, unless it is modified, remanded or set aside by a court. However, the commission may review the ruling and modify or set it aside if requested by the petitioner or other party to the proceeding. Binding rulings provided by this section are subject to judicial review as orders in contested cases in the manner provided by ORS 756.610.

II. IDENTIFICATION OF PETITIONERS

Pacific Power is an investor-owned utility provider of electricity at retail, regulated by this Commission pursuant to ORS Chapters 756 and 757. Of significance to this proceeding, Pacific Power provides retail electric service in and about the city of Medford, Oregon.

Myra Lynne owns and operates the Myra Lynne Mobile Home Park in Medford, Oregon. Myra Lynne purchases electricity from Pacific Power under Large General Service Schedule 48. Myra Lynne's power purchases are measured at a master meter located at the park. Power purchased by Myra Lynne is then delivered and submetered to Myra Lynne's residential tenants for their individual consumption.

III. NOTICES

All notices and other communications regarding this petition should be addressed to each of the following authorized representatives:

For Pacific Power:
Michelle Mishoe, Counsel
PacifiCorp
825 NE Multnomah, Suite 1800
Portland, Oregon 97232
Telephone: 503.813.5977
Fax: 503. 813.7252
Email: michelle.mishoe@pacificorp.com

For Pacific Power:
PacifiCorp Oregon Dockets
825 NE Multnomah, Suite 2000
Portland, Oregon 97232
Email: OregonDockets@pacificorp.com

For Myra Lynne:
John A. Cameron
Davis Wright Tremaine LLP
1300 SW Fifth Avenue, Suite 2300
Portland, Oregon 97201
Telephone: 503.778.5206
Fax: 503.778.5299
Email: johncameron@dwt.com

IV. OTHER INTERESTED PERSONS

The Myra Lynne Homeowners Association ("Homeowners Association") is an association of Myra Lynne tenants, who are submetered for electricity used in their homes within the park. This

petition has been shared with counsel for the Homeowners Association, which declined invitations to join as a co-petitioner. Petitioners do not oppose intervention by the Homeowners Association.

V. STATEMENT OF RELEVANT LAW AND FACTS

A. Myra Lynne's Obligation Under The General Service Schedule And Rule 2, Section O

Each of Pacific Power's General Service rate schedules, approved and on file with the Commission, contains the following provision:

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

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

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

These quoted provisions are expressed in mandatory terms, leaving no discretion to the "Consumer." As Petitioners read each of these quoted provisions, they require Myra Lynne, a reseller of service measured through a submeter, to bill its tenants at the Pacific Power Residential Rate, Schedule 4, as a condition of service under the General Service rate. Pacific Power's Residential Rate Schedule 4 is the "Company's regular tariff rate schedule applicable to the type of service actually furnished the tenant."

Customers billed under the Residential Rate Schedule 4 also qualify for Pacific Power's Schedule 98, the credit associated with the residential exchange program of Bonneville Power

Administration. Pacific Power's intent with these tariff and schedule provisions is to ensure that Myra Lynne's submetered tenants receive the same benefits and costs as the customers taking service directly under Residential Rate Schedule 4.

Pacific Power's General Service rate schedules, as approved by the Commission, constitute its filed rates for purposes of ORS 757.225:

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

The language of ORS 757.225 does not contemplate exceptions. It does not state what should occur in the event of a conflict created through adoption of a new Oregon statute, enacted after Commission approval of a rate schedule or rule.

B. Myra Lynne's New Conflicting Obligation Under ORS 90.536

During its 2005 legislative session, the Legislature took up HB 2247, which added several new provisions to Oregon's landlord/tenant law contained in ORS Chapter 90. As enacted, the bill added several new provisions to Chapter 90, including ORS 90.532 and ORS 90.536. The latter provision created the conflict that now besets the Petitioners. The new law became effective as of January 2, 2006.

Turning first to ORS 90.532, this provision enumerates the acceptable methods by which a landlord may provide or account for utility services to tenants. Among methods included in this provision is the one by which Myra Lynne provides electricity to its tenants. ORS 90.532(1)(c)(C) states in relevant part:

> **Billing methods for utility or service charges; system maintenance; restriction on charging for water.** (1) Subject to the policies of the utility or service provider, a landlord may provide for utilities or services to tenants by one or more of the following billing methods:
>
> (c) A relationship between the landlord, tenant and utility or service provider in which:

(C) The landlord uses a submeter to measure the utility or service actually provided to the space and bills the tenant for a utility or service charge for the amount provided.

The underscored phrase in the quote from ORS 90.532(1)(c)(C) incorporates the "policies of the utility" into the service arrangements recognized by the statute. In the context of this case, ORS 90.532(1)(c)(C) would seem to require that, in submetering its tenants for their electrical usage, Myra Lynne comply with Pacific Power's Large General Service Schedule 48 and its Rule 2, Section O, by billing those tenants at the Residential Schedule 4 rate with the Schedule 98 credits.

However, newly enacted ORS 90.536 seems to present a conflict with that interpretation of the general language of ORS 90.532(1)(c)(C). ORS 90.536 states:

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

the facility.

Myra Lynne provides electric utility service, measured by submeter, to its tenants per a written rental agreement and bills its tenants in accordance with ORS 90.532(1)(c). Thus, ORS 90.536 applies to Myra Lynne in accordance with ORS 90.536(1).

ORS 90.536(2)(a) states that the utility or service charge Myra Lynne imposes on its tenants for their individual electric consumption "may," *inter alia*, consist of "[t]he cost of the utility or service provided to the tenant's space and under the tenant's control, as measured by the submeter, at a rate no greater than the average rate billed to the landlord by the utility or service provider ..." Use of the word "may," instead of "shall" creates a question about whether the language is mandatory or permissive. [2]

If ORS 90.536(2)(a) is mandatory, rather than permissive, then it would conflict with the directive of ORS 90.532(1)(c)(C) that Myra Lynne provide electricity to its tenants "[s]ubject to the policies of the utility or service provider." If ORS 90.536(2)(a) is mandatory, Myra Lynne would be required to bill its tenants based on the Schedule 48 rate at which it is billed by Pacific Power -- plus the pro rata adders permitted by ORS 90.536(2)(c),[3] not the Schedule 4 residential rate. This creates a conflict with the requirements imposed on Myra Lynne by the rate schedule and Rule 2, Section O, quoted above. [4]

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[2] See Exhibit A to this petition, which is correspondence from Pacific Power to Myra Lynne explaining Pacific Power's interpretation of the new provisions of ORS Chapter 90.

[3] Use of the phrase "average rate billed to the landlord" in ORS 90.536(2)(a) recognizes that a landlord may be billed under a two-part, demand/energy rate, whereas its tenants often are metered and billed on the basis of energy consumption alone. Use of a landlord's "average rate" would allow that landlord to allocate a portion of its demand charges among its tenants.

[4] However, reading ORS 90.536(2)(a) as permissive, rather than mandatory, potentially conflicts with ORS 90.536(3), which states in mandatory terms that a landlord's utility or service charge "may not include" ... "[a]ny additional charge."

C. **Legislative History of HB 2247 Indicates That The Commission Has Special Knowledge Of The Intent Of Both ORS 90.532 and ORS 90.536.**

Exhibit A to this petition is a document entitled "Comments On House Bill 2247 With The Dash 1 Amendments, Testimony Before the House Judiciary Subcommittee on Civil Law." John VanLandingham, attorney for the Lane County Law and Advocacy Center, prepared the testimony and delivered it on June 13, 2005. The testimony provides a section-by-section analysis of the House bill that was subsequently enacted to amend ORS Chapter 90. At pages 1-2 of the testimony, Mr. VanLandingham noted that the bill was the result of negotiations among a broad array of trade associations and other groups interested in landlord-tenant law. At pages 6, 8 and 9, he notes the involvement of the Commission in making recommendations regarding the language of relevant provisions of the bill.

Commission Staff involvement in the drafting of HB 2247 helped clarify the status of landlords furnishing utilities to their tenants:

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

Exhibit A, p. 6. Petitioners certainly do not want Myra Lynne to be subjected to utility regulation.

Regarding Section 6 of HB 2247, which became ORS 90.532, Mr. VanLandingham provided the following explanation:

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

Exhibit A, pp. 6-7. This language expressly recognizes a landlord's need to comply with utility service provider's policies. Read in isolation, this language indicates that Myra Lynne should

follow the directions in Pacific Power's tariffs and schedules. In this case, Myra Lynne should follow Schedule 48 requirements and Rule 2, Section O, which require Myra Lynne to bill its tenants under Residential Schedule 4 and apply the Schedule 98 credits that Myra Lynne is receiving.

In his testimony on the purpose of Section 8 of HB 2247, which became ORS 90.536, Mr. VanLandingham describes that new statutory provision as follows:

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

Exhibit A, p. 8.

The example provided by Mr. VanLandingham in this quote contemplates a hypothetical in which the utility bills the landlord at a commercial rate higher than its residential rate. However, the testimony does not address the obverse possibility where the rate a utility requires a landlord to use when billing submetered tenants is higher than the rate used to bill the landlord. This represents the situation in which Petitioners find themselves: What should be the result if the commercial rate billed to the landlord is lower than the residential rate applicable to tenants?

VI. REQUEST FOR DECLARATORY RULING

The legal question posed for Commission resolution by these undisputed facts may be stated as follows: What continuing legal effect, if any, does the enactment of ORS 90.536 have on existing Commission-approved public utility tariffs, rate schedules and conditions of service? In other words, which course of action should the Petitioners follow in interpreting the relationship between ORS 90.532, ORS 90.536 and Pacific Power's tariffs applicable to Myra Lynne's billing arrangement with its tenants? Should Myra Lynne follow the directive of ORS 90.536 by billing tenants for electricity usage based on average rates derived from General

Service Schedule 48, the rate at which Pacific Power bills Myra Lynne and, if so, would the Schedule 98 credit apply? Or should Myra Lynne follow the directive of ORS 90.532 by observing the requirements of Pacific Power's rates and rules and billing for electricity usage tenants based on the Residential rate? In this situation Myra Lynne would continue to be billed using Schedule 48 and would then base tenants' electric utility bills on Residential Rate 4 and apply Schedule 98 credits. Or should Myra Lynne simply follow Pacific Power's rates and rules, which have the force and effect of law? In this situation, Myra Lynne would continue to be billed using Schedule 48 and would then base tenants' electric utility bills on Residential Rate 4 and apply Schedule 98 credits.

Petitioners are unable to reconcile the language in Pacific Power's schedules and rules with the new directive of ORS 90.536. Since the new statutory provisions became effective, Myra Lynne has read the explicit billing directive of ORS 90.536(2) as controlling over the general "subject to the policies of the utility" language of ORS 90.532. Accordingly, Myra Lynne has billed its tenants based on its own charges under Schedule 48 and applying the Schedule 98 credit that is being received due to the fact that the tenants are considered "residential" users. The Homeowners Association has threatened litigation against Myra Lynne if it does not calculate tenant electric bills based on the landlord's own bills under Schedule 48 and with the Schedule 98 credit. However, Pacific Power maintains that Myra Lynne should comply with the directive in Schedule 48 and Rule 2, Section O, and bill tenants at the Schedule 4 rate, which maintains the tenant's eligibility for the Schedule 98 credits. *See* Exhibit B.

This impasse leads Petitioners to conclude that the Commission must reconcile ORS 90.536 with Pacific Power's rate schedules and its Rule 2, Section O, especially given its input on relevant provisions of HB 2247. Otherwise, Myra Lynne and other Pacific Power customers like it will be forced to act at their peril in choosing which of these mutually exclusive, legally binding directives to follow. Whatever the Commission decides, Myra Lynne and the

Homeowners Association want to ensure that Myra Lynne's tenants retain their eligibility for residential exchange credits under Schedule 98.

The question presented is a matter of law. The facts are undisputed. Petitioners believe that this case can be decided on the basis of the pleadings and that no hearing is necessary.

Petitioners request that the Commission apply its determination on a prospective-only basis, effective for utility billings issued after the date of its order. No Petitioner should be harmed as the result of this good-faith effort to resolve an uncertainty that arose, without the prior knowledge of any Petitioner, as the result of changes to ORS Chapter 90 that took effect after the last session of the Legislature.

VII. PRAYER FOR RELIEF

For each of the reasons stated above, Petitioners respectfully request the Commission to reconcile ORS 90.536 with the relevant provisions of Pacific Power's General Service rate schedules and Section "O" of its Rule 2 so that:

- Myra Lynne may comply with ORS 90.536 without violating its obligations as a "consumer" under Pacific Power's Commission-approved rate schedules and Rule 2, Section O,
- While at the same time preserving the rights of Myra Lynne's tenants to residential exchange credits under Schedule 98.

Respectfully submitted,

Natalie Hocken OSB# 94409
Vice President and General Counsel
Attorney for PacifiCorp

John A. Cameron OSB# 920371
DAVIS WRIGHT TREMAINE LLP
Attorneys for HCA Management Company, LLC, operator of the Myra Lynne Mobile Home Park

DATED this 20th day of March, 2007.

EXHIBIT A

COMMENTS ON HOUSE BILL 2247 WITH THE DASH 1 AMENDMENTS

Testimony Before the House Committee on Judiciary Subcommittee on Civil Law

73rd Oregon Legislative Assembly

John VanLandingham, Lane County Law and Advocacy Center

June 13, 2005

A. Introduction

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

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

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

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

Henson, a park manager; Dolores Raymond, on behalf of the Governor's Commission on Senior Services; and Marilyn Odell, from the Department of Justice.

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

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

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

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

B. Section by Section Explanation

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

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

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

Section 2 provides the first step in the mandatory education provision – requiring all facility landlords to register their facilities with the Oregon Housing and Community Services Department. Previously, OHCSD attempted to track facilities in the state, using information from county assessors, but had no authority to require that facilities register.

Registration with OHCSD is necessary to allow OHCSD to monitor compliance with the new mandatory education requirement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

requirements for utility hookup procedures.

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

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

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

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

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

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

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

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

New language here confirms the decision of the Oregon Court of Appeals in Beldt v. Leise (2003), which correctly interpreted ORS 90.510 (8), utilizing the coalition's 1997 legislative comments, to hold that in the master meter billing situation the landlord need not bill for actual usage by the tenant, but instead must bill using some system of fairly apportioning the costs among the tenants facility-wide. The new language here provides some examples of methods of "reasonably" apportioning the costs; there may be others. If the landlord's method of apportionment is to divide the cost equally among the spaces in the facility, the landlord may limit this to include only occupied spaces, since unoccupied spaces wouldn't consume a utility service. The coalition considered,

but did not include, a method of allocation based on the number of occupants of each space. Besides being administratively difficult to monitor the number of occupants each month, the coalition feared that this method might violate fair housing law, since families with children would pay more than those without children, and fair housing law prohibits discriminatory treatment based upon familial status.

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

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

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

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

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

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

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

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

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

In addition, a landlord may not charge the tenant for the cost of conversion to submeters. (During an earlier hearing on this bill, a witness reported that the PUC estimated the cost to install a submeter at between $50 and $100.) The landlord may only recover this cost as part of rent and, during the six months following conversion to submeters, a landlord may not increase the rent to recover the costs of installing, maintaining, or operating the utility system, including the submeters.

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

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

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

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

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

Sections 11 through 14 -- Overview: These four sections address one issue – residential occupancy in recreational vehicles ("RVs") in RV parks, manufactured dwelling parks, and mobile home parks. Some state agencies and local governments limit the length of occupancy in RVs in these parks to short periods of time, such as 30 days, or 3 or 6 months. The justification for these limits appears to be a health concern. Yet the reality is that Oregonians sometimes live in RVs, both as short term homes and as permanent homes, permanent in that the RV is their only home. And modern RVs are often nicer living spaces than some stick-built, on-site homes, and certainly not worse than motels, for which the government does not limit the length of occupancy. As a result of these government occupancy restrictions, those who choose to live in an RV are violating the law; these violators may include legislators, some of whom live in RVs during the six to eight months of a legislative session. In some cases, park landlords and RV tenants go to extreme lengths to circumvent these limitations, such as requiring all RV tenants to leave the park for a day before returning, or rotating the park space numbers every 30 days to make it appear that these are new occupancies. The coalition believes that Oregonians should be able to occupy RVs in parks for unlimited lengths of time, as long as certain basic safety standards and other protections are observed. RVs

are, after all, a significant source of affordable housing for our state.

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

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

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

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

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

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

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

This provision applies whether the tenant or the landlord owns the RV that the

tenant occupies; for example, the tenant could rent both the RV and the space.

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

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

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

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

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

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

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

A remedy is provided to the tenant if a landlord fails to provide a rental agreement

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

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

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

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

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

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

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

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

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

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

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

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

Section 26: Adds a new section, imposing a sunset of January 2, 2012, for the new facility registration and mandatory education provisions. The sunset will allow the coalition to evaluate the effectiveness of these requirements over the next six years.

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EXHIBIT B

Exhibit B

PACIFICORP
A MIDAMERICAN ENERGY HOLDINGS COMPANY

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

February 21, 2007

Please Reply To:

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

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

Re: Myra Lynne Mobile Home Park Inquiry

Dear John,

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

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

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

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

Best regards,

Michelle R. Mishoe

cc: Natalie Hocken
Carole Rockney
Matthew Sutton