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April 15, 2010

VIA ELECTRONIC AND U.S. MAIL

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

Re: UE 217 – In the Matter of PACIFICORP, dba Pacific Power’s Request for a General Rate Revision

Attention Filing Center:

Enclosed for filing in the above captioned docket are the original and five copies of the Supplemental Direct Testimony of Samuel C. Hadaway. Please note that Exhibit PPL/209 is confidential and is enclosed in a separate sealed envelope. Also enclosed are the original and five copies of the Supplemental Trial Brief. A copy of this filing was served on all parties to this proceeding as indicated on the attached Certificate of Service.

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

cc: Service List

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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing document in UE 217 on the following named person(s) on the date indicated below by email and first-class mail addressed to said person(s) at his or her last-known address(es) indicated below.

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DATED: April 15, 2010



Amie Jamieson

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

3 **UE 217**

4 In the Matter of:
5 PACIFICORP, dba PACIFIC POWER's
6 Request for a General Rate Revision.

**PACIFICORP'S SUPPLEMENTAL TRIAL
BRIEF ON RETURN ON EQUITY**

7
8 Pursuant to Administrative Law Judge ("ALJ") Lisa Hardie's Prehearing Conference
9 Report issued March 18, 2010, PacifiCorp d/b/a Pacific Power (the "Company") files this
10 Supplemental Trial Brief on Return on Equity ("Supplemental Brief"), accompanied by the
11 Supplemental Direct Testimony of Dr. Samuel C. Hadaway. This Supplemental Brief explains
12 that the Commission's proposal to require evidence of recent changes or other good cause
13 before it will allow parties to litigate return on equity ("ROE") in this proceeding is inconsistent
14 with Commission precedent and policy. Moreover, to the extent that the Commission's order
15 in Docket UE 210 binds the parties with respect to ROE in this case, it should only prevent
16 parties from proposing decreases to the ROE referenced in the UE 210 order. Finally, if the
17 Commission does require good cause to change the Company's existing ROE, Dr. Hadaway's
18 testimony provides such good cause.

19 **I. BACKGROUND**

20 At the prehearing conference on March 16, 2010, ALJ Hardie discussed the
21 Company's request for an increase in ROE. ALJ Hardie noted that the rate of return ("ROR")
22 in UE 210 was the subject of a contested stipulation ("UE 210 Stipulation") that was approved
23 by the Commission about three and a half months before the Company's initial filing in this
24 proceeding. Prehearing Conference Report at 2. While the parties to the UE 210 Stipulation
25 agreed to an ROR, they did not agree to specific cost of capital components. UE 210
26 Stipulation ¶ 8. To indicate that the ROE was not a product of the parties' explicit agreement,

1 they referred to the ROE as “notional.” Prehearing Conference Report at 2. In evaluating the
2 UE 210 Stipulation and the Industrial Customers of Northwest Utilities (“ICNU”) objections to
3 the UE 210 Stipulation, the Commission found that the notional ROE of 10.125 percent was
4 supported by the evidence. *Re PacifiCorp*, Docket UE 210, Order No. 10-022 at 7-8 (Jan. 26,
5 2010).

6 ALJ Hardie stated that because the Company’s last ROR, which included an ROE
7 component, was approved only a few months before the initial filing in this proceeding the
8 Commission would require evidence of “a material change in the markets, a change in
9 circumstances, or some other good cause before it will be inclined to change the Company’s
10 existing 10.125 percent ROE.” Prehearing Conference Report at 1-2. Parties advocating a
11 decline in ROE would also need to show evidence of recent changes or other good cause for
12 the decline. *Id.* at 2.

13 II. DISCUSSION

14 A. The Commission’s Proposed Treatment of ROE in this Case is Inconsistent with 15 Commission Precedent and Policy.

16 The Commission should determine the cost of capital in this case, including ROE,
17 based upon the record developed in this case, not based upon the notional ROE included in
18 the UE 210 Stipulation from the prior case. Basing the ROE in this case on the UE 210
19 Stipulation would be inconsistent with both the Commission’s order approving the UE 210
20 Stipulation and with Commission policy.

21 1. The Commission’s Proposed Treatment of ROE in this Proceeding 22 Conflicts with its Order Approving the UE 210 Stipulation.

23 The Commission’s proposal to rely on the notional ROE from the UE 210 Stipulation
24 conflicts with the specific terms of the UE 210 Stipulation and is therefore inconsistent with the
25 order approving the UE 210 Stipulation. The UE 210 Stipulation stated that “No Party shall be
26 deemed to have agreed that any provision of this Stipulation is appropriate for resolving

1 issues in any other proceeding, except as specifically identified in this Stipulation.” UE 210
2 Stipulation ¶ 18. In addition, the UE 210 Stipulation's conditions are interdependent and
3 should not be viewed separately: “The Parties have negotiated this Stipulation as an
4 integrated document. If the Commission rejects all or any material portion of this Stipulation
5 or imposes additional material conditions in approving this Stipulation, any Party
6 disadvantaged by such action shall have the rights provided in OAR 860-014-0085 and shall
7 entitled to seek reconsideration or appeal of the Commission’s Order.” UE 210 Stipulation
8 ¶ 12.

9 When the Commission approved the UE 210 Stipulation, the terms of the UE 210
10 Stipulation became a part of the Commission’s Order. *See, e.g., Re. Idaho Power Co.,*
11 *Docket UE 195, Order No. 09-373 at 3 (Sept. 18, 2009) (approving parties’ request to amend*
12 *the terms of a Commission-adopted stipulation by amending the order adopting the*
13 *stipulation); Re Cascade Natural Gas Co., Dockets UM 729/DR 13, Order No. 95-857 at 2*
14 *(Aug. 14, 1995) (when adopting a Memorandum of Understanding (“MOU”) among the parties*
15 *“the terms of the MOU became the terms of a Commission deferral order”).* The
16 Commission’s proposal to rely on the notional ROE in the UE 210 Stipulation as presumptive
17 precedent in UE 217 is in conflict with the Commission’s order approving the UE 210
18 Stipulation.

19 Moreover, the parties did not agree on and the Commission did not determine an ROE
20 in UE 210. The UE 210 Stipulation explicitly stated that “[t]he Parties do not agree on the
21 individual capital components that result in the ROR of 8.08 percent.” UE 210 Stipulation ¶ 8.
22 The Commission made a finding with respect to the reasonableness of the stipulated ROR,
23 not the notional ROE. Order No. 10-022 at 8 (finding the “the stipulated ROR of 8.08 percent
24 to be reasonable.”). Although the Commission held that it did not need to address ICNU’s
25 specific arguments against the notional ROE, the Commission examined the issues and found
26 the “notional figures supported by the evidence.” Order No. 10-022 at 8. The Commission,

1 however, made no specific findings with respect to ROE. As a result, there are no baseline
2 findings that the Company can reference to show a change in markets or a change in
3 circumstances to support a change in ROE. It would be inappropriate to rely on a notional
4 ROE from a prior case that the Commission agreed was non-precedential instead of
5 considering evidence presented in this case.

6 **2. The ROE Proposal is Contrary to the Commission's Policy Encouraging**
7 **Settlement.**

8 The ROE proposal is contrary to the Commission's general policy on settlements. The
9 Commission's policy is to encourage settlements that are in the public interest. *See, e.g., Re.*
10 *PacifiCorp's 2010 Transition Adjustment Mechanism*, Docket UE 207, Order No. 09-432 at 6
11 (Oct. 30, 2009). Under the ROE proposal, the parties are presumptively bound to elements of
12 the UE 210 Stipulation in the future, even though the stipulation contains a non-precedent
13 clause approved by the Commission. The ROE proposal could make parties wary of future
14 settlements and chill the ability of parties to agree to anything but a black box settlement.

15 The ROE proposal also undermines the Commission's policy limiting settlements to
16 their specific circumstances. *See, e.g., Re. Avista Corp.*, Docket UG 186, Order No. 09-422
17 at 9 (Oct. 26, 2009). Most basically, the UE 210 Stipulation pertains to a different test period
18 than the test period in this case. Additionally, the parties agreed to the notional ROE as part
19 of a larger settlement that involved trade-offs of different cost elements. As Dr. Hadaway
20 explains, the Company agreed to an ROR consistent with a lower ROE than it proposed in
21 testimony only because of other aspects of the settlement that resulted in a 4.6 percent overall
22 rate increase. It would be unfair to hold one cost component constant while reexamining all
23 other cost components.

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1 **B. To the Extent the Order Approving the UE 210 Stipulation Binds the Parties in**
2 **this Case, It Should Only Prevent Parties from Arguing that the ROE Should Be**
3 **Decreased.**

4 If the Commission decides that the order approving the UE 210 Stipulation should bind
5 the parties in this proceeding absent a showing of good cause, the only finding related to ROE
6 that should bind the parties is the finding that an ROE of 10.125 percent is not unreasonably
7 high. Although the Commission found that it did not need to approve each individual cost
8 component referenced in the UE 210 Stipulation, including an ROE of 10.125 percent, it
9 addressed ICNU's objection that the notional ROE was too high. Order No. 10-022 at 8. The
10 Commission found that the notional ROE was supported by evidence. Order No. 10-022 at 8;
11 Prehearing Conference Report at 2. The Commission did not find, however, that the
12 stipulated ROE was the highest ROE that was supported by the evidence. The Commission
13 never actually evaluated whether a higher ROE would have been reasonable. Therefore, the
14 Commission's order approving the UE 210 Stipulation cannot be used to support a finding that
15 an ROE above 10.125 percent is too high.

16 In fact, the evidence in UE 210 supported an ROE higher than 10.125 percent.
17 PacifiCorp witness Dr. Hadaway presented evidence that an ROE of 11.0 percent was
18 reasonable, with a range of 10.6 to 11.4 percent. UE 210, PPL/214, Hadaway/2, 26.
19 Dr. Hadaway also presented evidence showing that the other parties' recommendations were
20 below the Company's cost of equity. UE 210, PPL/214, Hadaway/2-26. If the Commission
21 relies on its findings in UE 210 as presumptive precedent, the only Commission finding
22 regarding ROE was that the notional ROE of 10.125 percent was not too high and was
23 supported by the evidence. This finding is fully consistent with a finding in this case that a
24 higher ROE is just and reasonable.

25 **C. PacifiCorp Has Presented Good Cause to Relitigate ROE.**

26 If the Commission requires the Company to show good cause for the Commission to
set a higher ROE than 10.125 percent in this case, the Company has presented such good

1 cause in Dr. Hadaway's testimony. Dr. Hadaway testifies that financial conditions have
2 changed materially since the parties executed the UE 210 Stipulation in September 2009.
3 PPL/207, Hadaway/3-4. The relevant financial indicators support a higher ROE than 10.125
4 percent. *Id.* As Dr. Hadaway explains, "A" rated utility bond rates have risen 30 basis points
5 since September 2009. PPL/207, Hadaway/3. In addition, Standard and Poor's is projecting
6 average 30-year Treasury bond rates to be 5 percent in 2010, compared with rates of
7 4.1 percent in 2009. *Id.* The Federal Reserve discount rate used by member banks when
8 borrowing recently increased from 0.50 percent to 0.75 percent—the first change to the
9 discount rate since the financial crisis began. PPL/207, Hadaway/4. Finally, authorized ROEs
10 nationally in 2009 and thus far in 2010 are significantly higher than the notional ROE
11 referenced in the UE 210 Stipulation. *Id.* In summary, key financial indicators evaluated by
12 Dr. Hadaway show that there have been significant market changes since the execution of the
13 UE 210 Stipulation that support an ROE higher than 10.125 percent. PPL/207, Hadaway/4.
14 Dr. Hadaway's testimony provides good cause to reevaluate ROE, to the extent the
15 Commission believes that good cause is required.

16 Additionally, as Dr. Hadaway explains, the Company's cost of equity was fully litigated
17 in a recent Utah rate case, which resulted in a higher ROE than 10.125 percent. The Utah
18 Commission ordered a 10.6 percent ROE for the Company on February 18, 2010. In that
19 case, the Office of Consumer Services ("OCS") argued that the notional ROE included in the
20 UE 210 Stipulation was indicative of a just and reasonable result in Utah. *Re. Application of*
21 *Rocky Mountain Power for Authority to Increase its Retail Electric Utility Service Rates in*
22 *Utah*, Docket No. 09-035-23, Brief for the OCS at 5 (Jan. 11, 2010). In response, the
23 Company argued that it would be inappropriate to look at one cost component of a settlement
24 in isolation and that the Company may agree to an ROR in settlement that includes a notional
25 ROE that is lower than what the record supports in the case. *Re. Application of Rocky*

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1 *Mountain Power for Authority to Increase its Retail Electric Utility Service Rates in Utah,*
2 *Docket No. 09-035-23, Rocky Mountain Power's Post-hearing Brief at 8 (Jan. 11, 2010).*

3 The Utah Commission rejected OCS's proposal to set the ROE based on the notional
4 ROE in the UE 210 Stipulation. The Utah Commission used the financial models it deemed
5 appropriate (primarily DCF model results), with the inputs it believed reasonable, and weighed
6 the expert financial testimony in the record to conclude that a return on equity of 10.6 percent
7 was reasonable. *Re. Application of Rocky Mountain Power for Authority to Increase its Retail*
8 *Electric Utility Service Rates in Utah, Docket No. 09-035-23, Order at 15-16 (Feb. 18, 2010).*
9 In rejecting OCS's proposal to rely on the notional ROE in the UE 210 Stipulation, the Utah
10 Commission properly found that the notional ROE from the UE 210 Stipulation was irrelevant
11 to setting the Company's cost of capital. While Utah Commission's findings are not binding on
12 this Commission, these results indicate that if the parties litigated ROE in UE 210, the
13 Commission may have found a higher ROE to be just and reasonable.

14 **III. CONCLUSION**

15 For the reasons discussed above, the Commission should not rely on the notional
16 ROE referenced in the UE 210 Stipulation as precedent in this case, as this reliance would be
17 inconsistent with the Commission's order on the UE 210 Stipulation and could undermine the
18 ability of parties to reach future settlements. If the Commission decides that its findings
19 related to the notional ROE in UE 210 should bind parties in this case, the only finding that
20 can bind parties is the finding that an ROE of 10.125 percent is not unreasonably high, and
21 parties can therefore argue in favor of higher ROEs in this proceeding. Finally, to the extent
22 that the Commission requires the Company to show good cause to litigate ROE, the Company
23 has presented good cause in the testimony of Dr. Hadaway.

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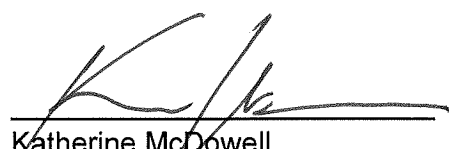
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