

# Davison Van Cleve PC

Attorneys at Law

TEL (503) 241-7242 • FAX (503) 241-8160 • mail@dvclaw.com  
Suite 400  
333 SW Taylor  
Portland, OR 97204

November 29, 2007

***Via Electronic and US Mail***

Public Utility Commission  
Attn: Filing Center  
550 Capitol St. NE #215  
P.O. Box 2148  
Salem OR 97308-2148

Re: In the Matter of PUBLIC UTILITY COMMISSION OF OREGON  
Investigation of Automatic Adjustment Clause pursuant to SB 838.  
**Docket No. UM 1330**

Dear Filing Center:

Enclosed please find an original and five (5) copies of the Testimony of Randall J. Falkenberg in Support of the Stipulation on behalf of the Industrial Customers of Northwest Utilities in the above-referenced docket.

Thank you for your assistance.

Sincerely yours,

/s/ Eric Shelton  
Eric G. Shelton

Enclosures

cc: Service List

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Testimony of Randall J. Falkenberg in Support of the Stipulation on behalf of the Industrial Customers of Northwest Utilities upon the parties on the service list, shown below, by causing the same to be deposited in the U.S. Mail, postage-prepaid, or via electronic mail to those parties who have waived paper service.

Dated at Portland, Oregon, this 29th day of November, 2007.

/s/ Eric Shelton  
Eric G. Shelton

**CITIZENS' UTILITY BOARD OF OREGON (W)**

LOWREY R BROWN  
JASON EISDORFER  
ROBERT JENKS  
610 SW BROADWAY SUITE 308  
PORTLAND OR 97205  
lowrey@oregoncub.org  
jason@oregoncub.org  
bob@oregoncub.org

**DEPARTMENT OF JUSTICE**

MICHAEL T WEIRICH  
REGULATED UTILITY & BUSINESS SECTION  
1162 COURT ST NE  
SALEM OR 97301-4096  
michael.weirich@doj.state.or.us

**ESLER STEPHENS & BUCKLEY (W)**

JOHN W STEPHENS  
888 SW FIFTH AVE STE 700  
PORTLAND OR 97204-2021  
stephens@eslerstephens.com

**MCDOWELL & RACKNER PC**

LISA RACKNER  
520 SW SIXTH AVENUE SUITE 830  
PORTLAND OR 97204  
lisa@mcd-law.com

**PACIFICORP (W)**

NATALIE HOCKEN  
OREGON DOCKETS  
825 NE MULTNOMAH SUITE 2000  
PORTLAND OR 97232  
natalie.hocken@pacificorp.com  
oregondockets@pacificorp.com

**PORTLAND GENERAL ELECTRIC**

CECE L COLEMAN  
PATRICK HAGER  
RATES & REGULATORY AFFAIRS  
121 SW SALMON STREET; 1WTC0702  
PORTLAND OR 97204  
cece.coleman@pgn.com  
pge.opuc.fillings@pgn.com

**PUBLIC UTILITY COMMISSION**

JUDY JOHNSON  
PO BOX 2148  
SALEM OR 97308-2148  
judy.johnson@state.or.us

**RENEWABLE NORTHWEST PROJECT (W)**

ANN ENGLISH GRAVATT  
JESSE JENKINGS  
917 SW OAK STE 303  
PORTLAND OR 97205  
ann@rnp.org  
jesse@rnp.org

**W = Waived Paper Service**

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1330**

In the Matter of )  
 )  
PUBLIC UTILITY COMMISSION OF )  
OREGON )  
 )  
Investigation of Automatic Adjustment Clause )  
pursuant to SB 838. )

**TESTIMONY OF  
RANDALL J. FALKENBERG  
IN SUPPORT OF THE STIPULATION  
ON BEHALF OF  
THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES**

**November 29, 2007**

1 **Q. PLEASE STATE YOUR NAME AND POSITION.**

2 **A.** My name is Randall J. Falkenberg. I am a utility rate and planning consultant  
3 holding the position of President and Principal with the firm of RFI Consulting,  
4 Inc. I previously submitted direct testimony and a complete description of my  
5 qualifications in this docket on behalf of the Industrial Customers of Northwest  
6 Utilities (“ICNU”). My qualifications are shown in Exhibit ICNU/101.

7 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

8 **A.** The purpose of this testimony is to describe and support the Stipulation between  
9 Portland General Electric Company (“PGE”) and PacifiCorp (“Utility,” or jointly  
10 “Utilities”), Staff of the Public Utility Commission of Oregon (“Staff”), the  
11 Citizens’ Utility Board (“CUB”), and ICNU (collectively, the “Parties”) in Docket  
12 UM 1330. The Utilities, ICNU, CUB, and Staff have submitted joint testimony  
13 supporting this Stipulation. ICNU is also submitting this supplemental testimony  
14 in support of the stipulation provisions, to explain additional provisions of the  
15 Stipulation, and to identify issues that are reserved for later debate and resolution.

16 **Q. PLEASE DESCRIBE THE PURPOSE OF THIS STIPULATION.**

17 **A.** Section 13(3) of Senate Bill 838 (“SB 838”) requires the Public Utility  
18 Commission of Oregon (“OPUC”) to establish “an automatic adjustment clause”  
19 or “another method” to allow for the timely recovery of prudently incurred costs  
20 related to eligible renewable resources. The OPUC must do so by January 1,  
21 2008. This docket was established to fulfill the requirements of SB 838 in this  
22 regard.

1           On August 21, 2007, the Utilities filed their proposed tariffs and  
2 supporting testimony. On August 23, 2007, the OPUC held a prehearing  
3 conference setting a full procedural schedule for this docket, including testimony,  
4 a hearing, and briefs. Staff, CUB, and ICNU all submitted direct testimony on  
5 September 28, 2007. The Parties began settlement discussions on October 1,  
6 2007, and had numerous subsequent settlement conferences via telephone. This  
7 Stipulation is the result of these discussions and establishes the terms of a  
8 Renewable Adjustment Clause (“RAC”) for each utility.

9 **Q. PLEASE SUMMARIZE THE AGREEMENT CONTAINED IN THE**  
10 **STIPULATION.**

11 **A.** The Stipulation is intended to resolve the outstanding issues between the Parties.

12 The issues resolved by the Stipulation include:

- 13           1) A December 1 filing update to all cost elements of a new eligible  
14 resource included in a utility’s RAC filing if the costs cannot be  
15 verified by the final round of testimony;
- 16           2) A procedural schedule that requires a RAC filing on April 1 and  
17 allows for a Commission order by November 1, while preserving  
18 the procedural rights guaranteed to the Parties in Section 13(4) of  
19 SB 838;
- 20           3) An annual update to all cost elements of an eligible renewable  
21 resource already included in a Utility’s RAC schedule;
- 22           4) Allocation of the RAC schedule costs utilizing the same rate  
23 design and rate spread approved by the Commission in the Utility’s  
24 most recent general rate case;
- 25           5) A provision conditioning approval of a Utility’s RAC schedule on  
26 the utility making a filing pursuant to ORS § 757.210 under certain  
27 circumstances;
- 28           6) The matching of costs and benefits of the fixed and variable costs  
29 of eligible renewable resources; and

1                   7)     The Utilities providing Parties with their Results of Operations in  
2                             the RAC proceedings.

3     **Q.     PLEASE DESCRIBE THE PROCEDURAL SCHEDULE AGREED UPON**  
4     **IN THE STIPULATION.**

5     **A.**     If the Utilities wish to include new eligible renewable resources in their RAC  
6             Schedules or update the costs of eligible renewable resources already included in  
7             their RAC Schedules, then the Utilities must file their proposed RAC schedules  
8             by April 1 of each year. The Parties agree to support a procedural schedule that  
9             allows for the Commission to issue an order by November 1.

10    **Q.     WHAT PROCEDURAL RIGHTS ARE PARTIES AFFORDED IN THE**  
11    **RAC PROCEEDINGS?**

12    **A.**     Pursuant to Section 13(4) of SB 838, Parties have the right to the procedural  
13             protections described in ORS §§ 756.500 to 756.610. These protections include,  
14             but are not limited to, the right to develop an evidentiary record, conduct  
15             discovery, introduce evidence, conduct cross-examination, and submit written  
16             briefs and oral argument. In addition, Parties have the right to request judicial  
17             review of any Commission order. The procedural schedule must allow sufficient  
18             time to ensure that the Parties are afforded these rights.

19    **Q.     WHAT COST ELEMENTS HAVE THE PARTIES AGREED TO**  
20    **INCLUDE IN THE RAC SCHEDULES?**

21    **A.**     Section 13(1) of SB 838 allows the Utilities to recover all prudently incurred costs  
22             associated with compliance, including transmission and delivery costs.  
23             Accordingly, the RAC Schedules will recover the actual and forecasted revenue  
24             requirement associated with the prudently incurred costs of eligible renewable  
25             resources that are in service as of the date of the proposed RAC Schedule filing.

1 Per terms of Paragraph 6(b) of the Stipulation, the revenue requirement expressly  
2 includes: 1) the return of and grossed up return on capital costs of the renewable  
3 energy source and associated transmission at the Utility's currently authorized  
4 rate of return; 2) forecasted operation and maintenance costs; 3) forecasted  
5 property taxes; and 4) forecasted energy tax credits.

6 In addition, the Parties recognized that other forecasted costs and cost  
7 offsets may arise, such as third party transmission revenues or government fees  
8 and credits, which the Parties cannot accurately predict at this time. As a result,  
9 the Stipulation makes clear that the burden of proving that the cost or cost offset  
10 is properly includable in a RAC Schedule lies with the party proposing the cost or  
11 cost offset.

12 **Q. IS THERE ANY PROVISION FOR UPDATING THE FIXED COSTS OF**  
13 **AN ELIGIBLE RENEWABLE RESOURCE ONCE THAT RESOURCE IS**  
14 **INCLUDED IN A RAC SCHEDULE?**

15 **A.** Yes. As stated in my opening testimony, the fixed costs of a wind resource  
16 decrease dramatically after the first year compared to conventional resources.  
17 ICNU/100, Falkenberg/13-16. If the fixed costs of wind resources included in the  
18 Utilities' RAC Schedules are not updated annually, the Utilities will substantially  
19 over-collect the costs of such resources. Id.

20 To deal with this issue, the Parties have agreed to an update of all the cost  
21 elements of resources included in the Utilities' RAC Schedules. In addition, the  
22 Parties have agreed to update gross revenues, net revenues, and total income tax  
23 expense for the calculation of "taxes authorized to be collected in rates" pursuant  
24 to OAR § 860-022-0041. PacifiCorp, as a multi-state utility, has also agreed to

1 update the forecasted inter-jurisdictional allocation factors based on the same 12-  
2 month period used in PacifiCorp's power cost update filing.

3 **Q. WHICH CUSTOMERS ARE SUBJECT TO THE RAC SCHEDULE**  
4 **CHARGES?**

5 **A.** Non-residential customers that take direct access service who are on a multi-year  
6 cost of service opt-out option are not subject to RAC Schedule charges. In  
7 addition to the exemption for multi-year direct access customers, pursuant to  
8 Section 6(c) of the Stipulation, the Parties agree that after December 31, 2010,  
9 direct access customers and other customers specifically exempted under the  
10 Utilities' RAC schedules will not be subject to the RAC charges.

11 **Q. HOW DOES THE STIPULATION PROVIDE FOR AN UPDATE OF THE**  
12 **FORECASTED COST ELEMENTS AND ACTUAL CAPITAL COSTS**  
13 **BEFORE THOSE COSTS ARE INCLUDED IN RATES?**

14 **A.** The Utilities have agreed to submit an update of all forecasted costs and actual  
15 capital costs under Section 6(b) of the Stipulation if the costs cannot be verified  
16 by the final round of testimony in the RAC Schedule proceeding. Such update  
17 must be submitted by December 1 each year.

18 The Parties will be given full procedural rights regarding the updated  
19 filing, including but not limited to the same rights delineated in Section 13(4) of  
20 SB 838. Under Section 6(e) of the Stipulation, if the updated costs are lower than  
21 originally projected, then proposed RAC charges will be reduced accordingly  
22 before the January 1 effective date. If the updated costs are higher than forecasted  
23 or cannot be verified by December 1, then the difference will be deferred for  
24 proposed inclusion in the next RAC Schedule filing under Section 6(f) of the



1 Stipulation. Parties will be afforded full procedural rights in challenging the  
2 updated costs in the subsequent RAC Schedule filing.

3 The Parties do not waive their rights to challenge the cost update simply  
4 because the updated costs are lower than originally forecasted. Although the  
5 Stipulation provides that cost updates that result in lower costs will reduce the  
6 January 1 rate adjustment, Parties may still challenge the accuracy of these  
7 updated costs. Should the time between December 1 and the January 1 effective  
8 date prove insufficient to resolve the issues, the Parties reserve the right to request  
9 appropriate relief from the Commission, such as deferral of the rate decrease or  
10 approval of the RAC charges subject to refund.

11 **Q. IS THERE ANY OTHER PROVISION REGARDING DEFERRED**  
12 **ACCOUNTING IN THE STIPULATION?**

13 **A.** Yes. SB 838 allows the Utilities to recover all prudently incurred costs associated  
14 with an eligible renewable resource. Accordingly, the Utilities will be allowed to  
15 defer the costs of a new renewable resource in the year the resource is expected to  
16 go online, from the online date until January 1 when the resource enters rates  
17 through the RAC Schedule. The Parties, however, in no way waive their rights to  
18 challenge the prudence or eligibility of these costs under SB 838 and reserve all  
19 arguments and procedural protections when the Utilities seek amortization of  
20 these amounts. The Parties agreed that these deferrals will be exempt from an  
21 earnings test under ORS § 757.259(5). While ICNU believes ORS § 757.259(5)  
22 applies to RAC deferrals, for purposes of settlement, ICNU has agreed to waive  
23 this argument. ICNU does not agree in the Stipulation, however, that these  
24 deferrals are necessarily exempt from any other provision of ORS § 757.259.

1 **Q. DID THE PARTIES AGREE TO THE INTEREST RATE TO BE APPLIED**  
2 **TO DEFERRALS UNDER THE STIPULATION?**

3 **A.** No. The Parties expressly left it to the Commission to determine the interest rate  
4 applicable to deferrals under the Stipulation. Due to the reduced risk that deferred  
5 costs under this Stipulation will be disallowed, the interest rate approved by the  
6 Commission in UM 1147 for deferrals in the amortization phase should be used  
7 for the entire deferral period.

8 In Order No. 06-507, the Commission concluded that an interest rate other  
9 than a utility's Authorized Rate of Return ("AROR") should be applied to  
10 deferrals during amortization due to the reduced risk of disallowance. Re Staff  
11 Request to Open an Investigation Related to Deferred Accounting, Docket No.  
12 UM 1147, Order No. 06-507 at 5 (Sept. 6, 2006). The Commission did not hold  
13 that all amounts during the deferral stage must accrue interest at a utility's AROR.  
14 Rather, the Commission focused on the different levels of risk at each stage.  
15 Following this reasoning, an interest rate lower than a utility's AROR should  
16 apply to all stages of deferrals under this Stipulation for two reasons.

17 First, unlike other deferrals, deferrals under this Stipulation are expressly  
18 exempt from an earnings test under ORS § 757.259(5). Thus, regardless if the  
19 Utilities are exceeding their authorized earnings, they are still allowed recovery of  
20 deferred amounts. Second, the acquisition of eligible renewable resources is  
21 mandated by SB 838. Therefore, Parties are likely to have a heightened standard  
22 of showing that the Utilities' acquisition of eligible renewable resources was  
23 imprudent. Taking these two factors together, the Utilities face significantly less  
24 risk of disallowance than they otherwise would with a typical deferred account.

1 **Q. PLEASE DESCRIBE THE SETTLEMENT PROVISIONS REGARDING**  
2 **RATE SPREAD AND RATE DESIGN.**

3 **A.** The Parties have agreed that costs recovered through the RAC Schedule will be  
4 allocated across customer classes using the applicable RAC Schedule forecasted  
5 energy on the basis of an equal percent of generation revenue applied on a cents  
6 per kWh basis to each applicable rate schedule as determined in the then-most  
7 recent general rate case. Using a Commission-approved method ensures that the  
8 rate change attributable to the RAC Schedule charges is allocated equitably  
9 between customer classes.

10 **Q. IS A UTILITY EVER REQUIRED TO MAKE A FILING UNDER ORS §**  
11 **757.210?**

12 **A.** Yes. Under Section 6(i), the Commission may condition the approval of RAC  
13 Schedule charges upon a Utility making a filing under ORS § 757.210 within six  
14 months of the proposed change. When such a filing is made, all RAC Schedule  
15 charges, or a portion of those charges, will be rolled into rates. Such conditional  
16 approval of RAC Schedule charges must be based on: 1) a finding that costs have  
17 been recovered through the RAC Schedule for a reasonable period of years; or 2)  
18 for good cause.

19 **Q. WHAT TIME PERIOD WOULD BE CONSIDERED REASONABLE?**

20 **A.** Although it is up to the Commission to decide what a “reasonable” time period is,  
21 in my opinion, it would not be reasonable for a Utility to collect the charges for an  
22 eligible renewable resource for more than three years. The use of the RAC results  
23 in an inequitable shifting of costs in favor of the utility. In addition, there is no  
24 incentive for cost control on the part of the Utilities. See ICNU/100,

1 Falkenberg/7-8. Three years is long enough for customers to carry this increased  
2 cost burden.

3 **Q. PLEASE GIVE AN EXAMPLE OF “GOOD CAUSE” AS USED IN**  
4 **SECTION 6(i) OF THE STIPULATION.**

5 **A.** The Commission has substantial discretion in determining what “good cause” is  
6 for conditioning the approval of RAC Schedule charges. One specific  
7 circumstance in which “good cause” may exist is if evidence were presented to  
8 the Commission that a Utility’s earnings may result in rates that are not fair, just,  
9 and reasonable, or, in other words, the Utility is overearning. The Commission  
10 could condition approval of the RAC Schedule charges on the Utility filing a  
11 general rate case within six months, in which the Utility would then have the  
12 burden of proof to show that rates are fair, just, and reasonable pursuant to ORS §  
13 757.210(1)(a). In Section 6(k) of the Stipulation, the Utilities have agreed to  
14 provide the Parties with their Results of Operations and will not object to the  
15 introduction of their Results of Operations into evidence.

16 **Q. DOES THE STIPULATION ENSURE SYMMETRY BETWEEN THE**  
17 **COSTS AND BENEFITS OF THE FIXED AND VARIABLE COSTS OF**  
18 **ELIGIBLE RENEWABLE RESOURCES?**

19 **A.** Yes. The Parties agreed that if a Utility is unable to recover the fixed costs of an  
20 eligible renewable resource through a RAC Schedule, then the variable costs of  
21 the resource will not flow through to customers in a Utility’s annual power cost  
22 adjustment mechanism.

23 **Q. WHEN MAY PARTIES PROPOSE CHANGES TO THE RAC?**

24 **A.** Changes to the RAC agreed to in this Stipulation may not be proposed until after  
25 April 1, 2009. In addition, if material changes are made to the Utilities’ annual

1 power cost update mechanisms, the Parties may propose an alternative design to  
2 the RAC Schedules.

3 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

4 **A.** Yes.