FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 21, 1990

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1990-6

Margaret D. Kirkpatrick
Stoel, Rives, Boley, Jones & Grey
Standard Insurance Center 900 S.W. Fifth Avenue
Suite 2300
Portland, Oregon 97204-1266

Dear Ms. Kirkpatrick:

This responds to your letter dated March 30, 1990, requesting an advisory opinion on behalf of Pacific Power & Light ("PP&L") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to an Oregon statute that may prohibit corporate charitable donations which match political contributions from its employees.

You state that PP&L has established a separate segregated fund for its employees to raise money for use in Federal elections. The company also has a separate committee for contributing to State elections. PP&L wishes to implement a solicitation plan for the Federal committee only to be known as the Pacific Power Community Charitable Contribution Plan ("the Plan"). Under the Plan, the company will allow each contributor to the Federal committee to choose a 501(c)(3) qualified charity[1/] as the recipient of a donation from PP&L equal to that person's contribution to the committee.

You refer to section 260.665 of the Oregon Revised Statutes as the State law applicable to the Plan. It provides in pertinent part:

> (2) No person, acting either alone or with or through any other person, shall directly or indirectly subject any person to undue influence with the intent to induce any person to:
>
> . . . .
>
> (e) Contribute or refrain from contributing to any candidate, political party or political committee.

ORS 260.665(2)(e). According to Oregon law, "undue influence" includes "giving or promising to give money, employment or other thing of value." ORS 260.665(1).

You have enclosed a letter, sent to PP&L by the Director of the Elections Division of the Office of the Secretary of State of Oregon, which indicates that PP&L's donation to a charity would be a thing of value to the employee and could induce the employee to contribute. You note that neither the language of ORS 260.665 nor the determination of the Elections Division limits that section to State and local elections. You ask whether Federal law preempts the Oregon statute with respect to a political committee that is active only in Federal elections.

You state that the charitable matching plan proposed by PP&L is similar to several plans approved by the Commission in recent advisory opinions, citing Advisory Opinions 1989-9, 1989-7, 1988-48, 1987-18, and 1986-44. In those opinions, the Commission has treated the matching charitable donations by a corporation as an expense of soliciting contributions to the company's separate segregated fund and, therefore, as exempt from the definition of "contribution or expenditure." 2 U.S.C. 441b(a) and 441b(b)(2)(C). The Commission has further explained that the regulations forbid a corporation to use this process "as a means of exchanging treasury monies for voluntary contributions." 11 CFR 114.5(b). The Commission noted, in that respect, that a contributor could not be paid for his or her contribution through a bonus, expense account, or other form of direct or indirect compensation. 11 CFR 114.5(b)(1). The Commission concluded that, because the contributors to the plans would not receive a financial, tax, or other tangible benefit from either the company or the recipient charities, it did not appear that an exchange of treasury monies for voluntary contributions would occur.[2/]

Preemption of state laws pertaining to the conduct of Federal elections is addressed directly in the Act and its legislative history, and in Commission regulations. The Act provides that its provisions and the rules prescribed thereunder, "supersede and preempt any provision of State law with respect to election to Federal office." 2 U.S.C. 453. The House committee that drafted this provision intended "to make certain that the Federal law is construed to occupy the field with respect to elections to Federal office and that the Federal law will be the sole authority under which such elections will be regulated." H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. 10 (1974). According to the Conference Committee report on the 1974 Amendments to the Act, "Federal law occupies the field with respect to criminal sanctions relating to limitations on campaign expenditures, the sources of campaign funds used in Federal races, the conduct of Federal campaigns, and similar offenses, but does not affect the States' rights" as to other areas such as voter fraud and ballot theft. H.R. Rep. No. 93-1438, 93d Cong., 2d Sess. 69 (1974).

When the Commission promulgated a regulation at 11 CFR 108.7 on the effect of the Act on state law, it stated that the regulation follows section 453 and that, specifically, Federal law supersedes state law with respect to the organization and registration of political committees supporting Federal candidates, disclosure of receipts and expenditures by Federal candidates and committees, and the limitation on contributions and expenditures regarding Federal candidates and political committees. The Commission stated that the Act does not supersede state laws concerning the manner of qualification of candidates, dates and places of elections, voter registration, voting fraud, or candidates' personal financial disclosure. The Commission

explained that "[t]hese types of electoral matters are interests of the states and are not covered in the act." Federal Election Commission Regulations, Explanation and Justification, House Document No. 95-44, p. 51. See 11 CFR 108.7.

As demonstrated in the advisory opinions cited above, the legality of PP&L's proposed conduct depends upon analysis as to what constitutes a corporate contribution or expenditure and as to the solicitation and acceptance of contributions for use in Federal election activity. Since Federal law occupies the field with respect to limitations and prohibitions of Federal campaign contributions and expenditures, and the sources of funds used in Federal campaigns, the Commission concludes that the Act preempts any State law, or the interpretation of such law, prohibiting the use of a charitable matching plan by a political committee to raise funds for use in Federal elections only. See Advisory Opinion 1982-29. Therefore, if the Plan meets the conditions set out in the Commission advisory opinions permitting such plans, it may be implemented, notwithstanding the cited State law of Oregon or an interpretation of that law.

This response constitutes an advisory opinion concerning application of the Act or regulations prescribed by the Commission to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f.

Sincerely,

(signed)

Lee Ann Elliott
Chairman for the Federal Election Commission

Enclosures (AOs 1989-9, 1989-7, 1988-48, 1987-18, 1986-44, and 1982-29)

1/ See 26 U.S.C. 501(c)(3) (Internal Revenue Code).

2/ The Commission approved the plans subject to the conditions that only employees solicitable for contributions to the separate segregated fund could participate and that the solicitations met the requirements of a proper solicitation. 2 U.S.C. 441b(b)(4)(A)(i); 11 CFR 114.5(g)(1) and 114.5(a).