

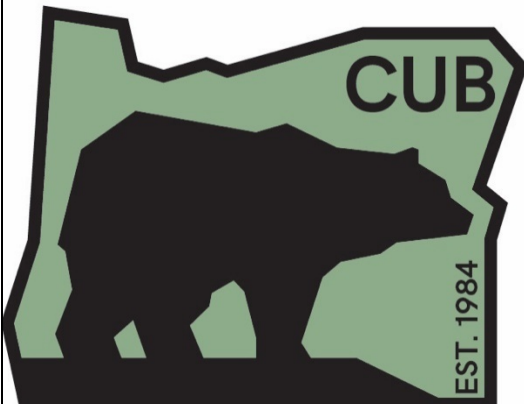
**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UE 374**

In the Matter of )  
 )  
PACIFICORP, dba PACIFIC POWER, )  
 )  
Request for a General Rate Revision. )  
\_\_\_\_\_ )

**OREGON CITIZENS' UTILITY BOARD'S RESPONSE  
IN OPPOSITION TO  
PACIFICORP'S MOTION FOR  
RECONSIDERATION AND CLARIFICATION**

February 16, 2020



**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UE 374**

In the Matter of	)	
	)	OREGON CITIZENS' UTILITY
PACIFICORP, dba PACIFIC POWER,	)	BOARD'S RESPONSE IN
	)	OPPOSITION TO PACIFICORP'S
Request for a General Rate Revision.	)	MOTION FOR RECONSIDERATION
_____	)	AND CLARIFICATION

**I. INTRODUCTION**

Pursuant to OAR 860-001-0720(4), the Oregon Citizens' Utility Board (CUB) responds in opposition to PacifiCorp's (PAC or the Company) Motion for Reconsideration and Clarification (Motion) in the above-captioned proceeding. The Motion cites two issues the Company believes warrant reconsideration. First, in Order No. 20-437, the Public Utility Commission of Oregon (Commission) limited the use of Schedule 272 on an interim basis and allowed Staff of the Public Utility Commission of Oregon (Staff) to open an investigation.<sup>1</sup> Second, the Commission concluded meters that are no longer serving customers—and have been replaced by Advanced Metering Infrastructure (AMI)—are retired assets ineligible to remain in rate base.<sup>2</sup> The Commission directed PAC to amortize the amount removed from rate base over

---

<sup>1</sup> *In re PacifiCorp, dba Pac. Power, Request for a General Rate Revision*, OPUC Docket No. UE 374, Order No. 20-473 at 134 (Dec. 18, 2020).

<sup>2</sup> *Id.* at 91.

a 10-year period at a 3.737 percent interest rate to reflect the time value of money<sup>3</sup> and align with well-established precedent.<sup>4</sup>

CUB respectfully requests that the Commission deny the Company's Motion to reconsider or clarify decisions regarding retired meter cost recovery. CUB takes no position on the Schedule 272 issue. CUB opposes reconsideration of the meter issue because the Commission did not commit an error of law or fact in rendering its Order No. 20-473.<sup>5</sup> Nor is there otherwise good cause for further examination of this issue<sup>6</sup> because the Commission's order is supported by "substantial reason," as its decision follows controlling precedent that "connects the facts in this case to the ultimate conclusion."<sup>7</sup> As such, reconsideration is not warranted under the framework of administrative rules, statutes, or case law. Further, clarification is unnecessary because the Commission's decision is narrowly applied to this specific circumstance.

## II. STANDARD OF REVIEW

After the Commission has made an order in any proceeding, any party thereto may apply for rehearing or reconsideration of the order.<sup>8</sup> The Commission may only grant the request if sufficient reason for reconsideration is shown.<sup>9</sup> The applicant must show one or more of the following specific grounds for reconsideration to be warranted: (a) new evidence that is essential to the decision and that was unavailable and not reasonably discoverable before issuance of the

---

<sup>3</sup> *Id.* at 91-92.

<sup>4</sup> *See, e.g., In re Portland General Electric Company*, OPUC Dockets No. DR 10, UE 88, UM 989, Order No. 08-487 (Sep. 30, 2008).

<sup>5</sup> OAR 860-001-0720(3)(c).

<sup>6</sup> *Id.* at (3)(d).

<sup>7</sup> *Calpine Energy Sols. LLC v. Pub. Util. Comm'n of Or.*, 298 Or App 143, 159 (2019).

<sup>8</sup> ORS 756.561(1).

<sup>9</sup> *Id.*

order; (b) a change in the law or policy since the date the order was issued relating to an issue essential to the decision; (c) an error of law or fact in the order that is essential to the decision; or (d) good cause for further examination of an issue essential to the decision.<sup>10</sup>

The Commission's orders must be "supported by substantial evidence in the record."<sup>11</sup> A final order must also be supported by "substantial reason," which "requires an agency to provide 'some kind of an explanation connecting the facts of the case (which would include the facts found, if any) and the result reached.'"<sup>12</sup>

### III. ARGUMENT

#### A. The Commission Should Deny the Motion

The Commission should deny the Motion because the Company has failed to meet its burden to show that reconsideration is warranted due to an error of law or fact or other good cause.<sup>13</sup> PAC asserts reconsideration is justified because a "subset of [its] group meter account remains used and useful to serve customers."<sup>14</sup> PAC also requests reconsideration of the amortization period and interest rate to apply to any undepreciated meter amounts removed from rate base because "the Commission failed to apply its own precedent and maximize cost recovery while avoiding rate shock."<sup>15</sup> Unfortunately for the Company, Order No. 20-473 carefully followed the footsteps of well-trodden precedent whose facts and ultimate conclusion are substantially similar to those of this case. The order is therefore well-supported by substantial

---

<sup>10</sup> OAR 860-001-0720(3).

<sup>11</sup> UE 374 – Motion at 3 citing ORS 183.482(8)(B)(c); *see also Calpine*, 298 Or App 143, 163.

<sup>12</sup> *Jenkins v. Bd. of Parole & Post-Prison Supervision*, 356 Or. 186, 197, 335 P.3d 828, 835 (2014) (internal citations omitted).

<sup>13</sup> OAR 860-001-0720(3).

<sup>14</sup> UE 374 – Motion at 2.

<sup>15</sup> *Id.*

reason.<sup>16</sup> Since the order follows well-established precedent, the Commission did not commit an error of fact or law.

The Company replaced approximately 627,000 analog meters with AMI technology between 2017 and 2020.<sup>17</sup> Staff and PAC both found this to result in significant customer benefits, and the Commission therefore determined that the analog meter retirement and replacement was in the public interest.<sup>18</sup> Despite the Company's oft-repeated contention that group depreciation should guide cost recovery for the analog meters, none of the meters replaced during the Company's AMI rollout are still in service to customers.<sup>19</sup> Given this fact, the scale of meter replacements—85 percent of the Company's total meters—and applicable precedent governing public interest retirement, the Commission ordered the removal of the estimated net book value of retired meters from rate base.<sup>20</sup> In order to fairly compensate the utility—and fulfill its obligation to ensure just and reasonable rates<sup>21</sup>—the Commission ordered PAC be entitled to amortize the net book value of retired meters over ten years at a blended interest rate reflective of the time value of money.<sup>22</sup>

The Commission's decision was not arbitrary. It applied the strikingly similar fact pattern seen in this case to existing Oregon precedent.<sup>23</sup> The fight over stranded costs from the closure of Portland General Electric Company's (PGE) Trojan Nuclear Plant has a long and circuitous history in Oregon utility regulation and jurisprudence. When a steam generator tube

---

<sup>16</sup> *Calpine*, 298 Or App at 159.

<sup>17</sup> OPUC Order No. 20-473 at 88-89.

<sup>18</sup> *Id.* at 89, 91.

<sup>19</sup> *Id.* at 91.

<sup>20</sup> *Id.*

<sup>21</sup> ORS 757.210(1)(a).

<sup>22</sup> *Id.* at 92 (“In this case, we find that a bended rate, based on the company's authorized cost of debt and the rate of its most recent 10 year debt issuance, or 3.737 percent, reflects the time value of money for the 10-year amortization and does not provide a return on the retired plant.”).

<sup>23</sup> *See* OPUC Order No. 08-487.

leak was discovered in 1992, the decision to shutter the plant was the most economic decision for customers even though it had many years of useful life left.<sup>24</sup> As the dispute over Trojan’s stranded costs wound its way through the Commission and Oregon courts, the Oregon Court of Appeals was tasked with harmonizing two seemingly conflicting statutory standards—the ORS 757.355(1) prohibition on including costs from plant that is no longer “used and useful” in customer rates, and the ORS 757.140(2)(b) provision allowing remaining undepreciated investment in retired utility plant into rates when the Commission finds that retirement is in the public interest.

The Court of Appeals held that the Commission could allow PGE to recover a *return of* its undepreciated investment in Trojan, but could not allow PGE to include the remaining investment in rate base—thereby denying the utility the ability recover a *return on* its investment—since retirement of the asset was determined to be in the public interest.<sup>25</sup> However, this Court of Appeals decision was silent on the question of whether the Commission may require recovery of a remaining investment that was retired in the public interest with interest to compensate for the time value of money.<sup>26</sup> Upon remand, the Commission decided it was appropriate for undepreciated plant to accrue interest with a reflection of the time value of money, and found that the cost of government debt was a “reasonable estimate”<sup>27</sup> of this figure.

---

<sup>24</sup> Craig Wollner, “Trojan Nuclear Power Plant,” Or. Encyclopedia. (Aug. 31, 2018), [https://oregonencyclopedia.org/articles/trojan\\_nuclear\\_power\\_plant/](https://oregonencyclopedia.org/articles/trojan_nuclear_power_plant/). Similarly, here, although PAC’s analog meters still have a remaining useful life, the decision to retire them from service in and replace them with AMI led to customer benefits. The early retirement of both Trojan and PAC’s analog meters here was therefore in the public interest. See OPUC Order No. 20-473 at 92 (“[W]e determined that early retirement of the meters is in the public interest.”).

<sup>25</sup> OPUC Order No. 08-487 at 13 (Sep. 30, 2008) citing *Citizens’ Util. Bd. V. Public Util. Comm’n of Or.*, 154 Or App 702, 716-17 (1998).

<sup>26</sup> OPUC Order No. 08-487 at 69.

<sup>27</sup> *Id.* at 73.

When viewed side by side, the record in this proceeding and Order No. 20-437 are remarkably similar to the fact pattern and logic applied in the *Trojan* lineage. Since PAC’s analog meters were retired in the public interest before the end of their useful life, their cost is barred from recovery in rate base under ORS 757.355 and the precedent discussed above. However, PAC is eligible to recover a *return of* this investment with interest at the time value of money. The Commission therefore did not commit an error of law or fact, and its decision is supported by substantial reason and substantial evidence.

The Commission’s decision to set this interest rate at 3.737 percent is similarly supported by substantial reason, and the Motion’s request for the Commission to reconsider either this amount or the 10-year amortization window should be denied. Under the Company’s proposal, this interest rate would be set at its cost of long-term debt—4.77 percent.<sup>28</sup> However, this interest rate would fail to align with prior Commission direction that the “[t]ime value of money recognizes the basic economic truth that a dollar today is worth more than a dollar tomorrow due to its potential earning capacity.”<sup>29</sup> The long-term embedded cost of debt inherently includes debt that was incurred quite long ago, and is therefore not reflective of the time value of money of *today*. By using a blended rate “based on the company’s authorized cost of debt and the rate of its most recent 10 year debt issuance[,]” the Commission’s decision here is based not upon antiquated values, but more real-time figures that are based in fact and supportable. The Company’s request to accelerate the amortization period or apply a different interest rate should be denied.

---

<sup>28</sup> UE 374 – Motion at 21.

<sup>29</sup> OPUC Order No. 08-487 at 68.

The Commission should also be unpersuaded by PacifiCorp’s attempts to reiterate arguments around group depreciation that have been fully litigated throughout this proceeding. Although group depreciation accounting is a useful ratemaking tool when dealing with assets that are numerous and gradually replaced over time, the Commission’s decision to treat the replacement of 85 percent of existing meters differently here is grounded in substantial reason. PAC made the decision to replace its analog meters to both provide economic benefits to its customers and create a valuable profit stream for the Company’s shareholders. These meters were not gradually replaced, but done in a wholesale fashion between 2017-2020.<sup>30</sup> The Commission’s decision is based in logic, enables the utility to recover a *return on* its AMI investment—an entirely new capital profit stream—and protects customers from paying a profit stream for plant that is no longer serving them.

Further, PacifiCorp has stipulated to similar treatment for the replacement of wind repowering equipment that is typically subject to group depreciation treatment.<sup>31</sup> The Company even notes in its Motion that “the group depreciation account is defined as the generating plant, and the removal of a subsidiary piece of equipment does not impact whether the whole remains used and useful for purposes of ORS 757.355.”<sup>32</sup> Although it takes that contention here, the stipulated effect of the ratemaking conducted in its repowering cases demonstrates greater flexibility regarding the interplay of ORS 757.355, ORS 757.140(2)(b), and group depreciation. Indeed, there, several parties, including CUB, all argued that the retired repowering plant was no

---

<sup>30</sup> OPUC Order No. 20-473 at 89.

<sup>31</sup> See *in re PacifiCorp, dba Pacific Power, 2019 Renewable Adjustment Clause*, OPUC Docket No. UE 352, Order No. 19-304 (Sep. 16, 2019) at Appx. A at 5, paragraph 20 (“The Stipulating Parties agree that PacifiCorp’s RAC filing as modified and recommended to the Commission for approval in this Stipulation complies with the requirements of ORS 757.355 and ORS 757.140(2)(b), to the extent these statutes are applicable.”).

<sup>32</sup> UE 374 – Motion at 16.



longer used and useful and that PAC should therefore not earn a *return on*.<sup>33</sup> The Commission's decision is grounded in well-established precedent and statutory imperative and reconsideration is not warranted.

**B. Clarification of the Final Order is Not Necessary**

Since the Commission's decision applied the precedent of the *Trojan* lineage to a substantially similar fact pattern in this proceeding, CUB does not believe clarification of Order No. 20-437 is necessary. Further, if the Commission were to clarify a threshold for analyzing the subsets in a group depreciation account as PAC requests<sup>34</sup>, it would have the potential to create precedent that would be difficult to apply in other circumstances. The Commission regulates a wide range of investor-owned utilities. Even on the natural gas and electric side, the differences between a utility like PAC and Cascade Natural Gas are immense. The Commission should decline PAC's request for clarification and examine issues related to asset retirement in the public interest on a case-by-case basis.

///

///

///

///

///

///

///

///

---

<sup>33</sup> UE 352 – CUB/100/Gehrke/6; Staff/100/Storm/66-67; AWEC/100/Mullins/13-20.

<sup>34</sup> UE 374 – Motion at 18.

#### IV. CONCLUSION

For the foregoing reasons, CUB respectfully requests that the Commission deny the Motion in regards to reconsideration and clarification of the meter issue.

Dated this 16<sup>th</sup> day of February, 2021.

Respectfully submitted,



Michael P. Goetz, OSB #141465  
General Counsel  
Oregon Citizens' Utility Board  
610 SW Broadway, Ste. 400  
Portland, OR 97205  
T. (503) 227-1984  
E. [mike@oregoncub.org](mailto:mike@oregoncub.org)