

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 374

In the Matter of)	
)	OREGON CITIZENS' UTILITY
PACIFICORP, dba PACIFIC POWER,)	BOARD'S REPLY TO PACIFICORP'S
)	OBJECTION TO CUB'S MOTION TO
Request for a General Rate Revision.)	ADMIT CUB/500
_____)	

I. INTRODUCTION

Pursuant to OAR 860-001-0420(5) and Administrative Law Judge (ALJ) Lackey's September 17, 2020 Ruling, the Oregon Citizens' Utility Board (CUB) hereby files this Reply to PacifiCorp's Objection to CUB's Motion to Admit CUB/500. PacifiCorp (PAC or the Company) raises a number of unavailing procedural and substantive objections to CUB's Motion to Admit CUB/500, a peer-reviewed journal article from a reputable source. The Oregon Public Utility Commission (Commission) should grant CUB's Motion to Admit CUB/500 (CUB's Motion), as the article provides evidence with significant probative value to a central issue in this proceeding. Further, the Commission should ignore Company's attempts to dismiss CUB Motion on procedural grounds because CUB acted in accordance with the direction given in multiple venues—ALJ Lackey's August 31, 2020 memorandum on hearing procedures, direction from the ALJ at the Zoom practice session, and direction from the ALJ at the hearing itself.¹

This Reply will address PAC's procedural and substantive objections to the inclusion of

¹ See *in re PacifiCorp dba Pacific Power Request for a General Rate Revision*, OPUC Docket No. UE 374, Administrative Law Judge Lackey's Memorandum Regarding Updated Remote Hearing Procedures and Filing Requirements (Aug. 31, 2020) ("Additionally, rather than having witness' adopt their testimony at the evidentiary hearings, **affidavits in support of any testimony or exhibits parties seek to offer into evidence, along with motion to admit will be due by 2:00 p.m. on September 17, 2020.**") (emphasis in original).

CUB/500 in the administrative record. The Commission should grant CUB's Motion to ensure a robust evidentiary record upon which to decide the live issues in this proceeding.

II. BACKGROUND

The Company's proposal to eliminate the annual forecast of net power costs (NPC) in its transition adjustment mechanism (TAM) and subsequent true up in its power cost adjustment mechanism (PCAM) proceeding and replace these mechanisms with an annual power cost adjustment (APCA) remains a live issue in this proceeding.² CUB continues to oppose the Company's proposal. In surrebuttal testimony, PAC witness Michael Wilding was asked whether parties had "provided any specific examples or evidence of how PacifiCorp could further optimize operations."³ He responded, "[n]o, Parties' testimony that PacifiCorp is incentivized by the structure of the current PCAM is simply pure speculation."⁴ CUB/500 is a direct response to this testimony.

In order to provide the Commission with a robust evidentiary record, and acting in accordance with the ALJ's memorandum, CUB moved to admit CUB/500 on September 17, 2020. Because CUB was aware of PacifiCorp's plans to object to the inclusion of CUB/500, CUB sought advance acknowledgement from the ALJ that it could file this Reply. As such, the Company's arguments that CUB's Motion does not address the admissibility of CUB/500 should be rejected.⁵ CUB intended to address the substance of CUB/500's admissibility and probative value in this Reply.

CUB/500 is a peer-reviewed article by Massachusetts Institute of Technology professor

² See, e.g., PAC/3600, PAC/3700, and PacifiCorp's Opening Brief at 23-30.

³ UE 374 – PAC/3600/Wilding/10, lines 18-19.

⁴ *Id.* at 20-21.

⁵ UE 374 – PacifiCorp's Objection to CUB's Motion to Admit CUB/500 at 1.

Christopher R. Knittel entitled *Alternative Regulatory Methods and Firm Efficiency: Stochastic Frontier Evidence from the U.S. Electricity Industry*. The article finds that fuel cost programs that “modify traditional fuel cost pass-through programs, to provide a greater incentive to reduce fuel costs, are associated with greater efficiency levels.”⁶ This evidence is provided in direct response to Mr. Wilding’s assertion that parties had not provided evidence that PacifiCorp is not incentivized by the structure of the current PCAM. The core of CUB’s opposition to the Company’s APCA proposal is that if the Company is given an incentive to reduce fuel costs and other variable power costs—such as through the existing deadbands, earnings test, and sharing mechanism—it will more efficiently manage its power costs. CUB/500 provides the Commission with concrete evidence that the current PCAM structure is likely to achieve this purpose.

III. ARGUMENT

The Company’s arguments that CUB/500 should be excluded from the record on both procedural and substantive grounds are unavailing. From a procedural perspective, the Company repeatedly mistakes CUB/500 as a cross-examination exhibit, and argues that it should be excluded from the record because it was not the subject of cross-examination at the hearing.⁷ CUB’s intent was not to use CUB/500 for cross-examination, and CUB was explicit regarding which exhibits it intended to use for cross-examination in its statement and supplement. Rather, CUB/500 was listed in the group of “Cross Examination **and Additional Exhibits**” in its cross-examination statement.⁸ Parties routinely move to add exhibits to the record that were not the

⁶ UE 374 – CUB/500 at 1.

⁷ UE 374 – PacifiCorp’s Objection to CUB’s Motion to Admit CUB/500 at

⁸ UE 374 – CUB’s Cross-Examination Statement, Exhibits, & Active Participant List at 2 (Sep. 2, 2020) (emphasis added).

subject of cross-examination. The majority of the exhibits included in CUB's cross-examination statement were not used for cross-examination. In fact, the ALJ's memorandum on hearing procedures explicitly requested that any "**exhibits parties seek to offer into evidence**" be included in motions to admit.⁹ CUB was simply following instructions. Since no PacifiCorp witness relied on exhibit CUB/500, CUB did not believe cross-examination on this issue would have aided the Commission in reaching a resolution on the APCA issue. Rather, by submitting it into the record as evidence, CUB was directly responding to an assertion made by a Company witness. While PacifiCorp argues that it does not have adequate opportunity to respond to CUB/500, and that offering CUB/500 as supplementary evidence is procedurally improper,¹⁰ a quick look at the procedural schedule reveals that the Company still possessed two rounds of briefing and an oral argument to respond to CUB/500 and bolster its case.

The Company's second procedural objection is centers on its perception that CUB/500 lacks proper foundation to be used as a cross-examination exhibit.¹¹ First, since CUB/500 was never intended to be used as a cross-examination exhibit, the foundation the Company asserts is necessary does not apply. Nevertheless, CUB/500 is self-authenticating under ORS 40.510(f) as it is a periodical. CUB did not choose to include CUB/500 to respond to Mr. Wilding's testimony at random. CUB/500 was discovered after a thorough research and review process indicated the document held significant probative value to aid the Commission in rendering a decision. CUB/500 has been cited by 209 other studies, including an International Energy Agency Report¹² and a Handbook for Regulators prepared for the Western Interstate Energy

⁹ *Supra* note 1.

¹⁰ UE 374 – PacifiCorp's Objection to CUB's Motion to Admit CUB/500 at 3.

¹¹ *Id.*

¹² Macmillan, Steven, Antonyuk, Alexander, and Schwind, Hannah, *Gas to Coal Competition in the U.S. Power Sector*, International Energy Agency Insights Series 2013 at 16 available at (<https://www.osti.gov/etdeweb/servlets/purl/22112400>).

Board.¹³ It was published in Massachusetts Institute of Technology’s Review of Economics and Statistics in February 2002. CUB/500 meets the criteria to be self-authenticating by a wide margin. The Company’s argument is unpersuasive.

Finally, the Company takes a number of shots at the substance of CUB/500, arguing that it may not be relevant because it was published “almost twenty years ago” and “is based upon data collected even further back.”¹⁴ This argument is a red herring. All of the coal plants the Company dispatches across its system and collects NPC recovery for are much older than CUB/500 and the study it relies on. The lessons learned from CUB/500—namely, that this study demonstrates a link between modified fuel cost pass through programs and firm efficiency—are still relevant to PacifiCorp’s system today. Even more important, CUB/500 is directly relevant to the Commission’s decision whether or not to approve the Company’s request to implement the APCA.

IV. CONCLUSION

CUB respectfully urges the Commission to grant CUB’s Motion to Admit CUB/500. CUB/500 is a self-authenticating document that is directly relevant to a live issue in this proceeding, and has significant probative value to aid the Commission in rendering a decision. CUB/500 furthers the Commission’s preference for a robust evidentiary record¹⁵ by responding to a vacancy in the administrative record pointed out by PacifiCorp’s witness. Importantly, the

¹³ Whited, Melissa, Woolf, Tim, and Napoleon, Alice, *Utility Performance Incentive Mechanisms, A Handbook for Regulators*, Synapse Energy Economics at 94 (March 9, 2015) available at https://www.synapse-energy.com/sites/default/files/Utility%20Performance%20Incentive%20Mechanisms%2014-098_0.pdf.

¹⁴ UE 374 – PacifiCorp’s Objection to CUB’s Motion to Admit at 2.

¹⁵ See, e.g., *in re Public Utility Commission of Oregon Investigation to Determine the Resource Value of Solar*, OPUC Docket No. UM 1716, Order No. 16-404 (Oct. 19, 2016) (“[W]e do not believe it to be in the public interest to make findings unless the record is sufficiently robust to inform sound decisions and to provide meaningful guidance and direction.”).

Commission always retains discretion to determine how much weight to give different pieces of evidence.¹⁶ Granting CUB's Motion would enable the Commission to consider CUB/500's probative value and would help the Commission make a decision that is in the public interest.

CUB further urges the Commission to reject PacifiCorp's request to submit the testimony included in its objection to CUB's Motion. CUB does not believe this testimony is necessary, as the Company still retains several procedural arenas to respond to CUB's forthcoming arguments in briefing. Further, the testimony attached to PacifiCorp's objection goes beyond the scope of what is discussed in CUB/500.

Dated this 30th Day of September, 2020.

Respectfully Submitted,



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¹⁶ *In re Application of US West Communications, Inc. for an Increase in Revenues*, OPUC Order No 19-171 at 17 (May 19, 1997) ("The Commission's role is to weigh the evidence presented on each issue in the case and determine where the preponderance lies.").