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February 16, 2021

Via Electronic Filing

Public Utility Commission of Oregon
Attn: Filing Center
201 High St. SE, Suite 100
Salem OR 97301

Re: In the Matter of PACIFICORP, dba PACIFIC POWER,
Request for a General Rate Revision.
Docket No. UE 374

Dear Filing Center:

Please find enclosed the Alliance of Western Energy Consumers' Response to PacifiCorp's Motion for Reconsideration and Clarification in the above-referenced docket.

Thank you for your assistance. If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Jesse O. Gorsuch
Jesse O. Gorsuch

Enclosure

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 374

In the Matter of	)	RESPONSE OF THE ALLIANCE OF
	)	WESTERN ENERGY CONSUMERS TO
PACIFICORP, dba PACIFIC POWER,	)	PACIFICORP'S MOTION FOR
	)	RECONSIDERATION AND
Request for a General Rate Revision.	)	CLARIFICATION
	)	

I. INTRODUCTION

Pursuant to OAR 860-001-0720(4), the Alliance of Western Energy Consumers ("AWEC") files this Response to PacifiCorp's (or "Company") Motion for Reconsideration and Clarification. AWEC limits this response to PacifiCorp's request for reconsideration and clarification of the Oregon Public Utility Commission's ("Commission") order requiring the Company to remove retired meters from rate base.

Because the Commission's final order in the above-referenced docket ("Final Order") is supported by substantial evidence and substantial reason as it relates to the decision to require PacifiCorp to remove meters replaced by alternative metering infrastructure ("AMI") from rate base, AWEC recommends that the Commission deny the Company's Motion for Reconsideration. Additionally, there is no need to grant PacifiCorp's request for clarification with respect to future treatment of plant in group depreciation accounts. The Company's reading of the Final Order substantially expands its impact beyond the circumstance applicable to this case and limited similar circumstances.

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II. ARGUMENT

A. The Commission's decision to require removal of retired meters from rate base is supported by substantial evidence and substantial reason.

PacifiCorp argues that reconsideration of the Commission's Final Order approving the removal of replaced meters from rate base is appropriate because the Final Order lacked "substantial evidence" and is unsupported by "substantial reason." The Company is incorrect on both counts.

The Commission's findings are supported by substantial evidence "'when the record, viewed as a whole, would permit a reasonable person to make that finding.'"[1/] Embedded in the substantial evidence requirement is also a substantial reason requirement.[2/] Substantial reason "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.'"[3/] Said another way, a Commission's order that is supported by substantial reason "contains a sufficient explanation that 'clearly and precisely state[s] what [the Commission] found to be the facts and fully explain[s] why those facts lead it to the decision it makes.'"[4/] The Final Order easily satisfies both the substantial evidence and substantial reason requirements.

1/ Calpine Energy Sols. LLC v. PUC of Or., 298 Or. App. 143, 159, 445 P.3d 308, 317 (2019) (internal citations omitted).

2/ Jenkins v. Bd. of Parole & Post-Prison Supervision, 356 Or. 186, 196, 335 P.3d 828, 834 (2014) citing City of Roseburg v. Roseburg City Firefighters, 292 Ore 266, 271-72, 639 P2d 90 (1981); Calpine Energy Sols. LLC v. PUC of Or., 298 Or. App. 143, 156, 445 P.3d 308, 315 (2019) ("As part of our substantial evidence review, we also review the PUC's order for substantial reason.").

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

4/ O'Connor v. Liberty Nw. Ins. Corp. (In re O'Connor), 232 Or. App. 419, 430, 222 P.3d 1097, 1103 (2009) citing Home Plate, Inc. v. OLCC, 20 Ore. App. 188, 190, 530 P2d 862 (1975); see also Ross v. Springfield School Dist. No. 19, 294 Ore. 357, 370, 657 P2d 188 (1982) ("It is essential that an agency articulate in a contested case the rational connection between the facts and the legal conclusion it draws from them.")

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PacifiCorp complains that the Commission's order is inconsistent with principles of group depreciation.[5/] That issue was fully litigated before the Commission. PacifiCorp's witness, Shelly McCoy, made this precise argument in both her Rebuttal and Surrebuttal testimony.[6/] In response to Ms. McCoy's rebuttal testimony, Dr. Kaufman testified that maintaining retired plant in rate base through group depreciation is appropriate "under normal retirement circumstances involving small incremental retirements," but that the wholesale replacement of meters with AMI was not a normal retirement circumstance.[7/] Indeed, it represents the only example of a time the Company implemented a state-wide replacement of assets within a single depreciation group.[8/] Accordingly, the Final Order rightfully finds that "the scale of replacements, 85 percent of the company's meters, is distinguishable from the gradual replacement and retirements of individual units over time. Additionally, because the company now seeks to include all of the new AMI meters in rate base, it is appropriate to remove the replaced meters in determining rate base in this proceeding."[9/] That decision is firmly grounded in the record evidence, and the Commission clearly identified the legal and factual basis for its decision.

PacifiCorp also argues that the Commission removed only an estimate of the rate base associated with retired meters rather than the precise amount if each retired meter's net

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5/ PacifiCorp Motion for Reconsideration at 13-14.
6/ PAC/3100, McCoy/38:16-39:20; PAC/4400, McCoy/11:18-14:4.
7/ AWEC/500, Kaufman/15:3-5.
8/ Id. at 15:9-11.
9/ Order No. 20-473 at 91.

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book value were separately identified.[10/] Again, the amount the Commission removed is well supported by the record. It is, as the Commission notes, the same amount AWEC calculated as attributable to retired meters – an amount confirmed by Staff.[11/] PacifiCorp had two opportunities, in its Rebuttal and Surrebuttal testimony, to identify an alternative amount and did not do so. Indeed, in its Surrebuttal testimony, PacifiCorp testified that, "[s]hould the Commission determine that an estimated amount of net book value should be placed in a regulatory asset for separate recovery," the Commission should apply interest at the Company's cost of debt.[12/] PacifiCorp made no attempt to identify any alternative amount other than the amount Dr. Kaufman calculated, and its testimony that the Commission could include an estimated amount in a regulatory asset appears to be a tacit concession that identifying an estimated amount in the context of the replacement of thousands of meters is reasonable.

PacifiCorp next argues that the Commission's order is a departure from settled group depreciation practices and would have unintended consequences with respect to group depreciation writ large. The Company analogizes to a replaced plant turbine, arguing that the Final Order would require it to remove the replaced turbine from rate base even though "the plant as a whole remains used and useful …."[13/] This analogy expands the reach of the Final Order far beyond what AWEC understands the Commission intended. The critical distinction between the removal of retired meters from rate base and PacifiCorp's analogy to a replaced

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10/ PacifiCorp Motion for Reconsideration at 14-15.
11/ Order No. 20-473 at 91-92.
12/ PAC/4400, McCoy/14:7-10.
13/ PacifiCorp Motion for Reconsideration at 16.

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turbine is, as PacifiCorp states, that generating plant itself remains used and useful. By contrast, PacifiCorp retired wholesale its metering infrastructure in Oregon and replaced it with an entirely new technology. This was not a matter of simply upgrading or replacing a component of a larger asset; it was a matter of retiring nearly all of a group of assets in order to provide service to PacifiCorp's customers in a new way.

Understood in this manner, a better analogy is to PacifiCorp's repowering of its wind fleet. Through that effort, PacifiCorp replaced the vast majority of the components of its wind resources to create what was, for all practical purposes, new wind resources. The repowered facilities had new blades and turbines with higher capacity factors and they qualified anew for the production tax credit. While parties to PacifiCorp's renewable adjustment clause proceedings agreed through stipulation to offset the net book value of retired plant with benefits from the Tax Cuts and Jobs Act – thereby avoiding the question of whether the Company should be allowed to continue earning a return on this retired plant – Staff, CUB and AWEC all argued in testimony that the retired plant was no longer used and useful and should not earn a full return.[14/]

In other words, the Commission's decision regarding retired meters is not the sweeping policy change PacifiCorp fears. It applies to limited circumstances in which a wholesale retirement or replacement of a group of assets is effectuated to achieve a new economic or service objective. AMI represents the only time PacifiCorp has ever effectuated a

[14/] Docket No. UE 352, Staff/100, Storm/66:16-67:12; CUB/100, Gehrke/6:14-19; AWEC/100, Mullins/13-20.

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state-wide replacement of assets within a single depreciation group in Oregon.[15/] There is no basis for PacifiCorp to conclude that the Final Order will require substantial changes to, or in any way conflicts with, accepted group depreciation practices going forward.[16/]

B. Clarification of the Final Order is unnecessary.

As discussed above, AWEC's interpretation of the Commission's decision to remove retired meters from rate base was due to the unique circumstances of PacifiCorp's meter replacement that are unlikely to recur with much frequency. If AWEC's interpretation is correct, then clarification of the Final Order is unnecessary, as PacifiCorp faces little incremental risk of noncompliance.

However, if the Commission is inclined to grant the Company's request for clarification, AWEC recommends that the Commission clarify that the precedential impact of the Final Order applies with respect to a substantial replacement of assets within a group that occurs close together and is for the purpose of achieving an economic or new service objective. AWEC does not recommend that the Commission establish a threshold amount that would apply to these types of retirements, as it would be difficult to develop a specific threshold applicable to different utilities with widely varying revenue requirements. Additionally, it is likely that a substantial replacement of a group of assets would be financially significant in any event.

15/ AWEC/500, Kaufman/15:9-11.

16/ PacifiCorp also argues that the Final Order's decision on AMI "is inconsistent with the order's simultaneous ratification of group depreciation accounting in the context of Jim Bridger's selective catalytic reduction systems (SCRs)." PacifiCorp Motion for Reconsideration at 17. PacifiCorp does not explain further why it believes the Final Order is inconsistent in this regard, but as discussed above, AWEC does not read the Final Order to effectuate any major policy change regarding group depreciation accounting and limited its treatment of replaced meters to their unique circumstance. Moreover, the SCRs on Jim Bridger represented an *incremental* investment in that plant, rather than the *removal* of plant.

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Under this test, PacifiCorp's examples of a turbine replacement or the reconstruction of numerous distribution poles following a fire would not require removing the replaced assets from rate base.[17/] In both instances, the Company is simply ensuring its ability to perform its service obligations, not fundamentally modifying how it provides that service or investing in a new technology for the purpose of providing that service more economically.

Finally, PacifiCorp's concern about ongoing AMI replacements is a red herring. Incidentally, the Commission's statement that "PacifiCorp has completed its AMI rollout" is understandable, given that the Company itself testified that "implementation of the Oregon AMI project [is] complete …."[18/] Even assuming, however, that there remain "certain mechanical meters" to be replaced with AMI, there is no basis for the Company's concern that it will need to "account for all future replaced mechanical meters separately."[19/] The requirement to remove replaced meters from rate base did not, as noted above, require PacifiCorp to individually account for every meter, and it occurred in the context of a general review of PacifiCorp's rates. The Commission established those rates as just and reasonable effective January 1, 2021 and they will remain in effect until the Company's next general rate case. Nothing in the Final Order suggests that PacifiCorp must individually account for retired meters at all, let alone meters that are retired following the rate-effective date. The Company does not update any other aspect of its rate base between rate cases, so there is no reason to make an exception for retired meters.

17/ PacifiCorp Motion for Reconsideration at 15-16 & 18.
18/ PAC/1100, Lucas/23:22.
19/ PacifiCorp Motion for Reconsideration at 18-19.

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Even if some amount of net plant value associated with retired meters remains in PacifiCorp's rate base in the Company's next rate case, that amount is likely to be *de minimis*.

C. The interest rate approved in the Final Order for removed meters is supported by substantial evidence and substantial reason.

Finally, PacifiCorp objects to the combined interest rate and amortization period the Commission authorized; however, the Company does not appear to claim any specific legal deficiency with the Final Order in this regard, and simply relitigates its prior positions. PacifiCorp, for instance, complains that "the Commission disregarded the Company's testimony" objecting to a ten-year amortization period at 3.737 percent interest. But the substantial evidence standard does not require the Commission "to discuss every reason, issue or bit of evidence produced in the hearing,"[20/] and even the existence of conflicting evidence in the record does not alone mean the Commission's decision lacks substantial evidence or substantial reason.[21/]

The Commission's establishment of an interest rate of 3.737 percent and an amortization period of ten years was based on long-standing precedent in which the Commission identifies a blended rate using the utility's cost of debt and prevailing Treasury bond yields to reasonably determine the time value of money.[22/] The interest rate itself is well supported by record evidence and the methodology is consistent with past practice.

The Company complains that the Commission should have adopted a shorter amortization period to accompany the 3.737 percent interest rate, citing the Commission's

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20/ Publishers Paper Co. v. Davis, 28 Or. App. 189, 200 (1977).
21/ American Can Co. v. Davis, 28 Or. App. 207, 224 (1977).
22/ Order No. 20-473 at 92.

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previous decision when PacifiCorp closed the Deer Creek Mine to amortize the unrecovered balance over a four-year period. The Commission's decision in the Deer Creek Mine case, however, was based on the record of that proceeding, in which PacifiCorp and CUB testified as to the reasonableness of a 3.31 percent interest rate and Staff testified as to the reasonableness of a four-year amortization period.[23/] By contrast, in this case AWEC submitted testimony into the record in support of a ten-year amortization period, and the Commission was well within its discretion to rely on that record evidence.[24/] Moreover, even if the Commission's decision in this case could be characterized as conflicting with past decisions (which it does not), "an agency must at all times be free to take such steps as may be proper in the circumstances, irrespective of its past decisions."[25/] The Commission, in other words, is not irrevocably bound by its prior decisions and may modify its reasoning to the extent it is supported by the law and evidence, as is the case here.

The Commission also should not be persuaded by PacifiCorp's claims that the Final Order's treatment of replaced meters will disincentivize it from making investments similar to AMI in the future. The Final Order authorized the Company to include approximately $112 million in capital investment associated with AMI in its rate base, on which it is earning a return.[26/] PacifiCorp, like any other utility, has an inherent incentive to make these types of investments, an incentive the Final Order does not nullify or mitigate.

23/ Docket No. UM 1712, Order No. 15-161 at 7-8 (May 27, 2015).
24/ AWEC/500, Kaufman/16:2-7.
25/ American Can Co., 28 Or. App at 224 (quoting 2 Davis, Administrative Law Treatise 605, 610 § 18.09 (1958)).
26/ PAC/1100, Lucas/27:3-4.

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III. CONCLUSION

For the foregoing reasons, AWEC recommends that the Commission deny PacifiCorp's Motion for Reconsideration and Clarification as it pertains to the Final Order's requirement to remove meters replaced by AMI from rate base. The Final Order is supported by the evidentiary record and the applicable statutory requirements and, therefore, falls well within the requirements of the substantial evidence and substantial reason tests.

Dated this 16th day of February, 2021.

Respectfully submitted,

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