

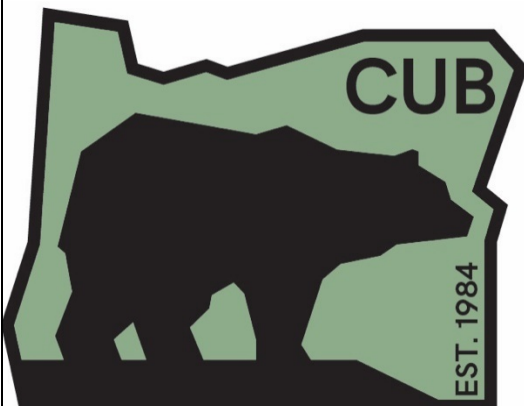
**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UE 374**

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

**PREHEARING BRIEF  
OF THE  
OREGON CITIZENS' UTILITY BOARD**

September 2, 2020



**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

**UE 374**

In the Matter of	)	
	)	
PACIFICORP, dba PACIFIC POWER,	)	PREHEARING BRIEF OF THE
	)	OREGON CITIZENS' UTILITY
Request for a General Rate Revision.	)	BOARD
_____	)	

**I. INTRODUCTION**

*A. Background and Procedural Posture*

Pursuant to Administrative Law Judge (ALJ) Lackey’s August 27, 2020 Prehearing Conference Memorandum, the Oregon Citizens’ Utility Board (CUB) hereby submits its Prehearing Brief in the above-captioned proceeding. In this Brief, CUB identifies and reaffirms its position on the unsettled issues that are subject to ongoing litigation. CUB also responds to arguments raised by PacifiCorp (PAC or the Company) in its Surrebuttal Testimony, filed August 21, 2020.

On February 14, 2020, PacifiCorp filed this request for a general rate revision under ORS 757.205 and ORS 757.220, which was subsequently docketed as Oregon Public Utility Commission (Commission) Docket No. UE 374. The Company’s initial filing requested an increase in rates of approximately \$78.0 million, or 6 percent. It also requested recovery of costs related to the early closure of its Cholla Unit 4, resulting in a \$17.3 million increase. Including a \$24.9 million offset associated with a proposal to amortize deferred tax benefits associated with

the Tax Cuts and Jobs Act (TCJA), the combined effect of the Company's request was an approximately \$70.8 million or 5.4 percent increase in rates.<sup>1</sup>

Since that time, the many parties to this proceeding have met in good faith several times to discuss potential settlement of the wide-ranging issues encompassed in the Company's request. Settlement negotiations related to rate spread and rate design were held on July 14-15, 2020. During July 15, 2020 settlement conference, CUB, PacifiCorp, the Alliance of Western Energy Consumers (AWEC), Staff of the Public Utility Commission of Oregon (Staff), Calpine Energy Solutions, LLC (Calpine), ChargePoint, Inc., Tesla, Inc., Fred Meyer Stores, Inc., Small Business Utility Advocates, Walmart, Inc., Klamath Water Users Association, the Oregon Farm Bureau Federation, and Vitesse, LLC (Stipulating Parties) reached an agreement resolving all issues related to rate spread and rate design. As a signatory to the Partial Settlement Stipulation filed with the Commission on August 17, 2020, CUB respectfully urges the Commission to adopt its terms. This Brief will expand upon CUB's support for the Partial Stipulation later.

Beyond settlement, there have been five rounds of testimony offered by PacifiCorp and other parties, creating a robust evidentiary record for the Commission's consideration. Parties to this proceeding have served and been served a large number of data requests. Issues raised in the Company's initial filing have been modified or clarified throughout the proceeding. In light of the progress made throughout the case, PAC indicated an updated \$47.5 million revenue requirement request in its recent Surrebuttal Testimony filing.<sup>2</sup> Despite the progress made by all parties through settlement and litigation, CUB continues to strongly oppose several of the

---

<sup>1</sup> *In re PacifiCorp's Request for General Rate Revision*, OPUC Docket No. UE 374, PacifiCorp's Executive Summary (Feb. 14, 2020).

<sup>2</sup> UE 374 – PAC/3300/Lockey/3, lines 1-2.

Company's requests and believes the record demonstrates that the PacifiCorp proposals CUB takes issues with herein must be denied to ensure fair, just, and reasonable rates.

B. *Burden of Proof*

In a utility dispute before the Commission, the burden of proof consists of two discrete components—the burden of persuasion and the burden of production.<sup>3</sup> In a utility proceeding, the burden of persuasion and the ultimate burden of producing sufficient evidence to support its claims is always with the utility.<sup>4</sup> Other parties to the proceeding have the burden of producing evidence to support their argument in opposition to the utility's position.<sup>5</sup> In a case in which a utility is requesting a change in rates or a schedule of rates—such as a general rate case—the utility bears the burden of showing that its proposed change will result in rates that are fair, just, and reasonable.<sup>6</sup>

C. *Summary of Issues*

In CUB's view, Prehearing Briefs are an opportunity for parties to frame the unsettled issues that will be addressed at the evidentiary hearing, in post-hearing briefs, and at oral argument. Due to the large number of issues in this proceeding, this Brief will only discuss the issues that CUB has addressed on the record. However, CUB reserves the right to respond—in its October 12, 2020 Opening Brief—to issues raised by parties in Prehearing Briefs, at the hearing, or in the Company's Opening Brief. Further, while this Brief will rebut some of the Company's arguments raised in its Surrebuttal Testimony, CUB views the forthcoming Staff and

---

<sup>3</sup> *In re Portland General Electric Company Application to Amortize the Boardman Deferral*, OPUC Docket No. UE 196, Order No. 09-046 at 7 (Feb. 5, 2009).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 7-8.

<sup>6</sup> ORS 757.210(1)(a).

Intervenor Reply Brief as the primary procedural mechanism to formally submit substantive written arguments.

The issues CUB has addressed on the record thus far in this proceeding are the following:

1. The impact and interplay of the COVID-19 pandemic on the Company's request;<sup>7</sup>
2. PacifiCorp's proposed changes to the Power Cost Adjustment Mechanism (PCAM);<sup>8</sup>
3. PacifiCorp's imprudent decision to install Selective Catalytic Reduction (SCR) investments on Jim Bridger Units 3 and 4;<sup>9</sup>
4. The Company's request to maintain a Return on Equity (ROE) above that of its peer utilities;<sup>10</sup>
5. Aligning the general rate case (GRC) and the concurrent Transition Adjustment Mechanism (TAM) through the inclusion of Wheeling Revenues in the TAM and the movement of legacy Deer Creek pension costs from the TAM to base rates;<sup>11</sup>
6. Other issues associated with PAC's transition away from coal, including decommissioning cost allocation, the proposed regulatory treatment for Cholla Unit 4, Exit Dates and Exit Orders for coal plants, and CUB's proposal for a non-bypassable charge for incremental decommissioning costs;<sup>12</sup> and
7. The Company's Pryor Mountain Wind Project.<sup>13</sup>

---

<sup>7</sup> UE 374 – CUB/400/Jenks/1, line 12.

<sup>8</sup> *Id.* at line 14.

<sup>9</sup> *Id.* at 2, line 1.

<sup>10</sup> *Id.* at 1, line 13.

<sup>11</sup> *Id.* at 2, lines 4-5.

<sup>12</sup> *See id.* at lines 7-10 and UE 374 – CUB/300/Jenks.

<sup>13</sup> UE 374 – CUB/100/Jenks/2, lines 17-18.

CUB also filed testimony on the Company's proposed rate design and time-of-use rate for residential customers.<sup>14</sup> As discussed, issues related to rate spread and rate design were settled by the Stipulating Parties during settlement conferences held on July 14-15, 2020. This Brief will discuss CUB's support for the rate spread and rate design Partial Stipulation before providing an overview of the issues discussed above.

## II. ARGUMENT

### A. *Rate Spread and Rate Design Partial Stipulation*

CUB commends the Stipulating Parties for working in good faith and ultimately agreeing to terms that are in the public interest. CUB respectfully urges the Commission to adopt the Partial Stipulation as it is a reasonable resolution of issues related to rate spread and rate design. The Partial Stipulation provides important protections to PAC's residential customers during this time of economic hardship. In Opening Testimony, CUB expressed concerns about the Company's proposal to increase the residential basic charge from \$9.50 to \$12 per month and simultaneously flatten its tiered rate structure.<sup>15</sup> The Company also proposed to decrease the existing basic charge to \$7 per month for multi-family residential customers. Additionally, CUB recommended an alternative to the Company's proposed residential time of use (TOU) pilot that featured a shorter peak period for residential customers.<sup>16</sup> Through the various rounds of settlement that eventually culminated in the Partial Stipulation, CUB's concerns were alleviated.

---

<sup>14</sup> UE 374 – CUB/100/Jenks/2, lines 23-26.

<sup>15</sup> UE 374 – CUB/200/Pal-Gehrke/1, lines 14-20.

<sup>16</sup> *Id.* at 2, lines 1-6.

First, retaining the \$9.50 residential basic charge was a key component of CUB's support for the Partial Stipulation.<sup>17</sup> The basic charge for multi-family dwellings was set \$8.00 per month.<sup>18</sup> Retaining a low basic charge gives residential customers more control over their energy burden by minimizing the portion of the bill that is not directly associated with monthly usage. This is especially important in the fallout of the COVID-19 pandemic. Second, the agreement on residential tier flattening in the Partial Stipulation represents a reasoned compromise that is linked to the overall revenue requirement outcome of this case.<sup>19</sup> Taken in tandem, this agreement coupled with a low residential customer basic charge will not unduly penalize low usage customers, which was a critical CUB concern.<sup>20</sup> Third, the changes to the residential TOU pilot in the Partial Stipulation create greater value for PAC residential customers while simultaneously expanding the learning opportunities this pilot will provide.<sup>21</sup> The expansion of the pilot from 5,000 to 25,000 customers provides a greater sample size to gauge the pilot's efficacy. Further, the shortened peak pricing period in the Partial Stipulation provides the opportunity for customers to respond to a strong price signal while decreasing the burden on customers who may be unable to shift their electricity use.

Beyond these critical rate design issues, the Partial Stipulation's rate spread strikes a sound balance that moves toward cost of service and furthers the central ratemaking principle of cost causation. Taken as a package, the Partial Stipulation is in the public interest and will result

---

<sup>17</sup> *In re PacifiCorp's Request for a General Rate Revision*, OPUC Docket No. UE 374, Partial Stipulation at 3, Paragraph 11 (Aug. 17, 2020) (hereafter Partial Stipulation).

<sup>18</sup> Partial Stipulation at 3, Paragraph 11.

<sup>19</sup> Partial Stipulation at 3-4, Paragraph 12.

<sup>20</sup> UE 374 – CUB/200/Pal-Gehrke/5, lines 14-21.

<sup>21</sup> Partial Stipulation at 4, Paragraph 13.

in rates that are fair, just, and reasonable. CUB respectfully urges the Commission to adopt the Partial Stipulation as a reasoned compromise of diverse parties.

B. *COVID-19 and the Company's Case*

CUB's Rebuttal Testimony discussed a glaring omission from PAC's filing—at that point, the record was completely devoid of any discussion regarding the economic impact of the COVID-19 pandemic on the Company's customers.<sup>22</sup> While the initial filing occurred before the full effect of the pandemic took hold, PAC did not address CUB's concerns about the economic impact of the its request until the last round of testimony—five months after the virus touched down on U.S. soil.<sup>23</sup> To the Company's credit, it did lay out several key areas in which it is working to help customers during this troubling time. CUB appreciates the Company's efforts in working to minimize the impact on customers. However, we still have many outstanding concerns.

First, the Company continues to propose to eliminate the earnings test and deadbands that are customer protection hallmarks of its current Power Cost Adjustment Mechanism (PCAM). Although this would shift a substantial amount of risk onto customers, the Company continues to dismiss CUB's concerns that the economic effects of the virus dictate that this unreasonable shift not occur.<sup>24</sup> Second, PAC is requesting cost recovery for expensive and arguably unnecessary coal plant retrofits that were never acknowledged in Oregon's Integrated Resource Plan (IRP) process—SCRs installed on its Jim Bridger Units 3 and 4. CUB continues to firmly believe these costs were imprudently incurred. Third, although the Company credits itself for reducing

---

<sup>22</sup> See UE 374 – CUB/400/Jenks/2-4.

<sup>23</sup> See UE 374 – PAC/3300/Lockey/3-5.

<sup>24</sup> UE 374 – CUB/400/Jenks/2 citing UE 374 – PAC/3000/Graves/32-33.



its ROE request to 9.8 percent,<sup>25</sup> all non-Company parties to this proceeding agree that this is too high. If approved, PacifiCorp would have the highest ROE of any other Oregon utility that has had a recent rate case.<sup>26</sup> The middle of a global pandemic and severe economic recession is not the time to be lining the pockets of the Company's shareholders.

Finally, the Company discusses the "modest" nature of its updated \$47.5 million revenue requirement request.<sup>27</sup> Even though the Company's request is now an overall decrease when combined with the impacts of its Transition Adjustment Mechanism (TAM), the fact remains that it is seeking an increase to base rates coupled with several risk-shifting policy requests. The effects of the TAM will fluctuate annually and the benefits promised by the Tax Cuts and Jobs Act (TCJA) will dwindle. What remains in this rate case are several key proposals from the Company that CUB believes are inappropriate for customers to bear under any economic circumstances, let alone during a severe economic recession.

### C. *Proposed PCAM Changes*

Perhaps chief amongst the Company's ill-advised proposals is its unwavering insistence on altering its well-functioning PCAM in a manner that would inappropriately shift risk from shareholders onto customers. CUB continues to vigorously oppose the Company's proposal. According to the Company, "a true-up mechanism without deadbands, sharing bands, or an earnings test is the simplest and most efficient way to provide for the recovery of prudently incurred [Net Power Costs (NPC)]."<sup>28</sup> The Company is wrong. Absent the customer protections provided by the deadbands, earnings test, and sharing mechanism, PacifiCorp's proposed Annual

---

<sup>25</sup> UE 374 – PAC/3300/Lockey/3-4.

<sup>26</sup> UE 374 – CUB/400/Jenks/6, Figure 1.

<sup>27</sup> UE 374 – PAC/3300/Lockey/3-4.

<sup>28</sup> UE 374 – PAC/3600/Wilding/2, lines 8-10.

Power Cost Adjustment (APCA) would give it little incentive to control its power costs. By holding the Company responsible to its TAM NPC forecast, the current PCAM helps ensure prudent utility operations by giving the Company an incentive to keep its costs close to its forecast. Absent this protection, a simple true-up like the Company seeks is very likely to allow it to recover power costs that were not prudently incurred. The process of balancing PacifiCorp's system is complex. Even with Commission oversight, it is highly likely that the Company would be able to recover imprudently incurred costs if its APCA is granted because it would be incredibly difficult to review complex costs—such as those related to system balancing—for prudence.

Staff and AWEC join CUB in opposing the Company's request to implement the APCA mechanism.<sup>29</sup> PacifiCorp is correct that these parties do not dispute that the Company has been under-recovering its power costs.<sup>30</sup> The Company is also correct that CUB believes this is a non-issue. CUB addressed the flaws inherent in the Company's proposal at length in its testimony throughout the record. Several key points bear repeating. Even though PacifiCorp has under-recovered power costs in recent years, it has consistently been earning a reasonable ROE.<sup>31</sup> If the Company is allowed to recover its power costs through a true up mechanism that fails to account for its holistic earnings, its overall rates will be above a just and reasonable level. Enabling the Company to do so would run counter to the Commission's general powers and core mandate.<sup>32</sup> Further, removing the customer protections from the PCAM would warrant a

---

<sup>29</sup> UE 374 – PAC/3600/Wilding/5, lines 4-14.

<sup>30</sup> *Id.* at lines 8-9.

<sup>31</sup> UE 374 – CUB/400/Jenks/17, lines 19-20.

<sup>32</sup> *See* ORS 756.040(1).

reexamination of PacifiCorp’s capital structure and the role of equity in absorbing business risk.<sup>33</sup>

Any proposal to eliminate or otherwise alter the deadbands in PacifiCorp’s PCAM should be considered in a broader context because it would represent a marked shift in Oregon utility regulation that implicates all regulated utilities. If the Commission were to adopt the Company’s APCA, CUB expects Idaho Power and Portland General Electric to seek similar treatment of net variable power costs. For this reason—and the entirety of the CUB’s supporting evidence on the administrative record—CUB cannot support Staff’s proposed “alternative” incremental changes to the PCAM.<sup>34</sup> Nor does CUB believe the Company’s proposed APCA should be adopted. The Company has failed to demonstrate that its under-recovery of NPC has harmed it in a way that renders it unable to earn a reasonable rate of return. The Commission’s role is not to ensure perfect cost recovery of every expense a utility records. Rather, it is to examine the overall rates a utility is given to determine whether they are just and reasonable.<sup>35</sup> Here, PacifiCorp has been earning well within a reasonable range. The Company’s proposal is unjustified and should be denied.

///

///

///

---

<sup>33</sup> UE 374 – CUB/400/Jenks/13-14.

<sup>34</sup> See UE 374 – PAC/3600/Wilding/17.

<sup>35</sup> *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 313-315 (1989) (“The economic judgments required in rate proceedings are often hopelessly complex, and do not admit of a single correct result. The Constitution is not designed to arbitrate these economic niceties. Errors to the detriment of one party may well be canceled out by countervailing errors or allowances in another part of the rate proceeding. The Constitution protects the utility from the net effect of the rate order on its property. Inconsistencies in one aspect of the methodology have no constitutional effect on the utility's property if they are compensated by countervailing factors in some other aspect.”).

D. *Jim Bridger Units 3 and 4 SCRs*

CUB continues to believe the Company acted imprudently when it invested millions of ratepayer dollars in coal plant retrofits that were never acknowledged in Oregon's IRP process. Disallowing recovery of costs related to Jim Bridger Units 3 and 4 SCRs is the correct approach from a legal and policy perspective. The Commission articulated the traditional prudence standard in its Order in PacifiCorp's last GRC:

A prudence review must determine whether the company's actions, based on all that it knew or should have known at the time, were reasonable and prudent in light of the circumstances which then existed . . . . [T]he Commission has confirmed that prudence of an investment is measured from the point of time the utility's actions and decisions without the advance of hindsight, that the standard does not require optimal results, and the review uses an objective standard of reasonableness.<sup>36</sup>

PacifiCorp's decision to install SCRs on its Jim Bridger Units 3 and 4 was imprudent. CUB has been actively engaged in the decision-making process surrounding the Jim Bridger SCRs for nearly a decade. In the 2011 IRP, even though it had already spent more than \$1 billion on similar clean air investments, the Company was insistent that these investments were not an IRP issue.<sup>37</sup> These investments were finally included in the Company's 2013 IRP analysis. After reviewing that analysis, the Commission found that the Company had failed to demonstrate that installing SCRs was the least cost option.<sup>38</sup> The Commission did not acknowledge the Company's decision to move forward with the SCRs.<sup>39</sup>

From a legal perspective, the decision to install SCRs was clearly imprudent because the Company's decision falls squarely within the bounds set by the Commission's own articulation

---

<sup>36</sup> *In re PacifiCorp's Request for a General Rate Revision*, OPUC Docket No. UE 246, Order No. 12-493 at 25 (Dec. 20, 2012).

<sup>37</sup> UE 374 – CUB/400/Jenks/34, lines 7-8.

<sup>38</sup> *Id.* at 36, line 3.

<sup>39</sup> *Id.* at lines 29-30.

of the prudence standard. The Company's analysis leading to the investment was flawed and incomplete, and PAC failed to explore the flexibility that was available to it.<sup>40</sup> Even worse, the Company knew, at the time, that alternative EPA Regional Haze Rule compliance avenues were available to it, but it consciously chose not to pursue them.<sup>41</sup> This decision likely cost Oregon ratepayers millions of dollars. By not pursuing alternative compliance options with EPA—such as potentially operating the plants until 2025 without installing costly SCRs—the Company acted imprudently.

From a policy and ratemaking perspective, an imprudence disallowance is appropriate because the Company is seeking cost recovery for an investment that was never acknowledged in Oregon, and the investment's useful life is longer than both the underlying coal plant and what is legally permissible in Oregon pursuant to SB 1547. At the time the Company moved forward with the decision to install the SCRs, the Oregon depreciable life of the Jim Bridger units was 2025.<sup>42</sup> The SCRs were installed in 2015 and 2016 and had a projected 20-year useful life. Making and installing an investment with a useful life that is ten years longer than the plant it is being added to is not in the interest of Oregon customers. PacifiCorp chose to bypass Oregon's traditional resource procurement process by installing SCRs even though they had never been acknowledged. It then installed them on a plant to buoy the plant's useful life. It now seeks to hamstring regulators and customers into paying for this resource, even though we never needed it in the first place.

CUB urges the Commission to fully disallow the Company's request to move the costs associated with its Jim Bridger Units 3 and 4 SCRs into base rates. AWEC and Sierra Club join

---

<sup>40</sup> UE 374 – CUB/400/Jenks/59.

<sup>41</sup> UE 374 – CUB/400/Jenks/48.

<sup>42</sup> OPUC Order No. 13-347.

CUB in this position.<sup>43</sup> While Staff advocates for a ten percent management disallowance,<sup>44</sup> CUB believes a full disallowance is necessary in this case. If the Company pursued a early shutdown of Jim Bridger Units 3 and 4, it would have not need to finance and install the SCR investment. A full disallowance would hold customer harmless to the Company's decision process. The Company has failed to place adequate evidence on the record that it acted prudently and in customers' best interests when it installed the SCRs.

In addition, CUB recommends that the Commission correct PacifiCorp's calculation of depreciation and regulatory lag by recognizing that the useful life of pollution control added to a coal plant cannot be longer that the coal plant itself. The depreciation and regulatory lag of the Oregon portion of the SCR should be based on a useful life of 2025.

#### E. *ROE*

CUB joins Staff and AWEC in arguing that the Company's ROE request is unreasonably high, despite its attempts to couch its decreased ROE request of 9.8 percent as sensitive to its customers' interests.<sup>45</sup> Although the Company has decreased its request in light of stakeholder concerns, a profit margin of 9.8 percent is still out of line with that of the Company's peer utilities.<sup>46</sup> This is particularly inappropriate in the midst of a global pandemic, but this request would still be inappropriate under different economic circumstances.<sup>47</sup> Further, PacifiCorp's own testimony indicates that its request is out of line with that of utilities across the country.<sup>48</sup> Again, even though the Company has decreased its request, the ROE it seeks remains higher than

---

<sup>43</sup> UE 374 – AWEC/500/Kaufman/1; UE 374 – Sierra Club/100/Fisher/4-6.

<sup>44</sup> UE 374 – Staff/700/Soldavini/

<sup>45</sup> See UE 374 – PAC/3300/Lockey/3-4 and UE 374 – PAC/3500/Bulkley/12, lines 5-7.

<sup>46</sup> UE 374 – CUB/400/Jenks/6, Figure 1.

<sup>47</sup> *Id.* at 4-5.

<sup>48</sup> UE 374 – PAC/2200/Bulkley/11.

the national average.<sup>49</sup> AWEC and Staff report that the average authorized ROE for electric utilities in 2020 has been 9.47 percent, and the average for natural gas utilities is 9.4 percent.<sup>50</sup> Given that a utility's ROE is meant to compensate its shareholders at a level that is comparable to other enterprises with a similar risk, plain reason dictates that the Company's request is out of line with current economic conditions.<sup>51</sup>

For its part, the Company agrees that authorized returns in other jurisdictions are a relevant benchmark considered by investors in setting their return expectations for regulated utilities.<sup>52</sup> However, it attempts to distance its position from that of other utilities across the country by saying that many of the utilities included in the numbers provided by Staff and AWEC are transmission and distribution only utilities.<sup>53</sup> Perhaps a better comparator is examining the vertically integrated utilities that are also regulated by the Commission. CUB provided evidence that PacifiCorp's request is unreasonably high when compared to other Oregon utilities, including those that have had a recent rate case.<sup>54</sup> The Company failed to adequately rebut this evidence in its Surrebuttal Testimony. CUB continues to urge the Commission to grant the Company an authorized ROE that is no higher than 9.4%.<sup>55</sup>

F. *Aligning the GRC and TAM – Wheeling Revenues and Deer Creek Pension Costs*

1. *Wheeling Revenues*

CUB continues to urge the Commission to adopt its proposal to change the TAM Guidelines to require that the Company's annual wheeling revenues be forecast annually

---

<sup>49</sup> UE 374 – CUB/400/Jenks/8.

<sup>50</sup> UE 374 – PAC/3500/Bulkley/9, lines 17-19.

<sup>51</sup> *Bluefield Water Works and Improvement Company v. Public Service Commission*, 262 US 679 (1923).

<sup>52</sup> UE 374 – PAC/3500/Bulkley/10, lines 1-3.

<sup>53</sup> *Id.* at lines 3-5.

<sup>54</sup> UE 374 – CUB/400/Jenks/6-7.

<sup>55</sup> *Id.* at 10, lines 18-19.

alongside other variable costs and benefits. Wheeling *costs* are updated annually in the TAM. Ratemaking principles dictate that the variable wheeling revenues that parallel them should be as well.<sup>56</sup> Currently, wheeling revenues are recovered annually in base rates and the Company files an annual deferral to true up the difference between what is captured in base rates and the actual revenue PAC realizes. This makes little sense, especially given deferred accounting applications are a form of single-issue ratemaking that the Commission has long disfavored.<sup>57</sup> Further, the Commission articulated in the generic deferred accounting investigation that “[i]f deferral is being sought for recovery of costs caused by a recurring triggering event, a deferred account is most likely not the proper mechanism to be used.”<sup>58</sup> A recurring deferral for wheeling revenues is inefficient. The Commission should require the Company to alter the TAM Guidelines and forecast wheeling revenues annually in the TAM, as it does for its attendant wheeling costs.

## 2. *Legacy Deer Creek Pension Costs*

In both the GRC and the TAM, CUB advocated moving legacy pension costs associated with the Deer Creek mine out of the annual TAM forecast and into the GRC.<sup>59</sup> This proposal was included in the settlement in principle of the Company’s 2021 TAM.<sup>60</sup> According to the Company, the \$3 million annual payment resulting from the Company’s withdrawal from the 1974 Pension Trust was removed from the 2021 TAM and included in the Company’s reply filing.<sup>61</sup> This change increase Oregon revenue requirement by \$835,000, with a similar decrease

---

<sup>56</sup> UE 374 – CUB/100/Jenks/3-4.

<sup>57</sup> *In re PGE Request for a General Rate Revision*, OPUC Docket Nos. UE 180/184, Order No. 07-454 at 5 (Oct. 22, 2007); *City of Portland v. PGE*, OPUC Docket No. UM 1262, Order No. 06-636 at 7 (Nov. 17, 2006).

<sup>58</sup> *In re Public Utility Commission of Oregon Staff Request to Open an Investigation Related to Deferred Accounting*, OPUC Docket No. UM 1147, Order No. 05-1070 at 10 (Oct. 5, 2005).

<sup>59</sup> See UE 374 – CUB/100/Jenks/7.

<sup>60</sup> UE 374 – PAC/4400/McCoy/21, lines 21-23.

<sup>61</sup> UE 374 – PAC/4400/McCoy/21-22.



in the TAM. CUB appreciates the Company's consideration of this issue, and believes it to be resolved.

G. *Miscellaneous Coal Issues*

1. *Cholla Unit 4 Regulatory Asset*

In Opening Testimony, CUB raised concerns about the carrying charge in the Company's proposed Cholla Unit 4 regulatory asset.<sup>62</sup> Since early closure of the coal-fired unit was determined to provide benefits to customers, CUB believes its retirement is in the public interest. As such, we believe the regulatory treatment associated with Cholla Unit 4 should follow the well-established precedent of the *Trojan* decision. That is, Oregon law prohibits a utility from receiving a profit on a power plant that is retired from service.<sup>63</sup> Since the time of the Company's initial filing, it has changed its position on the regulatory treatment of Cholla Unit 4, and proposed using TCJA balances to offset Oregon's allocation of the unrecovered plant and closure costs, which total approximately \$64.5 million.<sup>64</sup> Staff supports this approach, as it allows for timely recovery while also removing the costs from customer rates.<sup>65</sup> While CUB did not file Rebuttal Testimony on this issue, we note for the record that we also support the Company's proposal. This approach gets the costs of Cholla Unit 4 out of customer rates without the use of an inappropriate carrying charge that would give PAC a rate of return on retired plant. It therefore aligns with *Trojan* precedent and matches similar regulatory treatment for recently retired plant.<sup>66</sup>

---

<sup>62</sup> UE 374 – CUB/100/Jenks/9-10.

<sup>63</sup> OPUC Order No. 08-487.

<sup>64</sup> UE 374 – PAC/4400/McCoy/22, lines 12-14.

<sup>65</sup> *Id.* at lines 16-18.

<sup>66</sup> *See, e.g., in re PacifiCorp's 2019 Renewable Adjustment Clause*, OPUC Docket No. UE 352, Order No. 19-304 at 6 (Sep. 16, 2019).

## 2. *Coal Plant Exit Dates*

In Opening Testimony, CUB supported establishing Exit Dates through a Commission-approved Exit Order to help guide Oregon's transition away from coal and create certainty around Oregon's position in the Company's Multi-State Process (MSP) negotiations.<sup>67</sup> Since then, Staff has recommended that the Commission not issue Exit Orders for Hunter Units 1, 2, and 3, Huntington Units 1 and 2, and Wyodak in this proceeding.<sup>68</sup> The Company does not oppose Staff's recommendation not to issue Exit Orders for those units at this time.<sup>69</sup> PacifiCorp notes that it will need to make a filing over the course of the next several years to ensure it receives Exit Orders for these units by December 31, 2023.<sup>70</sup> CUB does not oppose this proposal and looks forward to engaging in that process when it is filed with the Commission.

## 3. *Decommissioning Costs*

CUB continues to believe the testimony provided by the independent evaluator (IE) Dr. Ron Sahu is sound, and that the estimate provided by PacifiCorp-commissioned Kiewit does not provide a reasonable basis to determine a prudent level of decommissioning costs to allocate to Oregon under the terms of the MSP.<sup>71</sup> In its Surrebuttal Testimony, PAC seeks Commission approval to allow the decommissioning cost estimates from the Kiewit Report into base rates.<sup>72</sup> CUB joins Staff and AWEC in arguing there is no support for the Kiewit Report, as was detailed in the IE's report. The IE was hired to examine the Kiewit Report, and made it clear that more information was needed. The administrative record on this issue is sparse, and PacifiCorp has

---

<sup>67</sup> UE 374 – CUB/100/Jenks/10.

<sup>68</sup> UE 374 – PAC/3300/Lockey/28, lines 12-15.

<sup>69</sup> *Id.* at lines 18-21.

<sup>70</sup> *Id.* at 28-29.

<sup>71</sup> UE 374 – CUB/300/Jenks/2, lines 14-15.

<sup>72</sup> UE 374 – PAC/3900/Van Engelenhoven/22.

not met its burden of proof to demonstrate that the costs in the Kiewit Report are appropriate for ratemaking. CUB continues to believe decommissioning cost recovery should be based on the numbers provided in PacifiCorp's recent depreciation study, and that a separate investigation to determine appropriate decommissioning costs is likely warranted.<sup>73</sup>

#### 4. *Non-Bypassable Incremental Decommissioning Cost Proposal*

In Opening Testimony, CUB proposed that any incremental increase in decommissioning charges should be recovered through a non-bypassable charge that includes direct access customers.<sup>74</sup> In its Reply Testimony, PacifiCorp indicated that it did not oppose CUB's proposal.<sup>75</sup> In Rebuttal Testimony, both AWEC and Calpine raised concerns regarding CUB's proposal, and indicated that the issue is better suited to be addressed in Docket No. UM 2024, the Commission's ongoing investigation into long-term direct access programs.<sup>76</sup> CUB does not oppose addressing this issue in that proceeding. However, we firmly believe that this proposal could be implemented in the interim without any potential legal or policy barriers. Given that CUB believes additional process is necessary to determine an accurate level of decommissioning cost estimates, CUB is comfortable addressing this proposal in UM 2024.

#### H. *Pryor Mountain Wind Project*

In Opening Testimony, CUB raised concerns about the Company's modeled benefits and decision to move forward with its Pryor Mountain wind project to provide renewable energy credits to Vitesse, LLC. through its Schedule 272 – Renewable Energy Rider Optional Bulk

---

<sup>73</sup> UE 374 – CUB/300/Jenks/7-8.

<sup>74</sup> UE 374 – CUB/100/Jenks/10, lines 9-11.

<sup>75</sup> UE 374 – PAC/Wilding/27, lines 10-20.

<sup>76</sup> UE 374 – AWEC/500/Kaufman/44-45; UE 374 – Calpine/200/Higgins/3-4.

Purchase Option.<sup>77</sup> Throughout the record in this proceeding, CUB’s concerns were alleviated. Staff proposed that the Commission should require PAC to confer with parties regarding Pryor Mountain—and other EV 2020 new wind projects—if the commercial operation date (COD) is after June 30, 2021.<sup>78</sup> If the project is placed in-service on or before June 30, 2021, but after December 31, 2020, Staff recommends allowing a rate effective date following the project’s COD and receipt of a signed declaration from a PacifiCorp Vice President attesting that the project has been placed in service and is in commercial operation.<sup>79</sup> CUB joins PAC in urging the Commission to approve the recovery approach set forth by Staff regarding possible delays in the COD.<sup>80</sup>

### III. CONCLUSION

The foregoing represents the universe of issues that CUB has addressed on the record in this proceeding. CUB will provide additional arguments in support of its above positions throughout the remainder of this proceeding. CUB reserves the right to rebut any arguments raised by other parties at the hearing, in briefs, or in oral argument.

///

///

///

///

///

///

---

<sup>77</sup> UE 374 – CUB/100/Jenks/45.

<sup>78</sup> UE 374 – PAC/3300/Lockey/21

<sup>79</sup> UE 374 – Staff/Storm/2000.

<sup>80</sup> UE 374 – PAC/3300/Lockey/40, lines 32-34.

Dated this 2<sup>nd</sup> day of September, 2020.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Michael P. Goetz". The signature is stylized and cursive.

Michael P. Goetz, OSB #141465  
General Counsel  
Oregon Citizens' Utility Board  
610 SW Broadway, Ste. 400  
Portland, OR 97205  
T. (503) 227-1984 x 16  
F. (503) 224-2596  
E. [mike@oregoncub.org](mailto:mike@oregoncub.org)