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Public Utility Commission of Oregon
PO Box 1088
Salem, OR 97308-2148

**Re: UM 1633 – In the Matter of OREGON PUBLIC UTILITY COMMISSION, Investigation
into Treatment of Pension Costs in Utility Rates**

Attention Filing Center:

On behalf of Avista Utilities, Cascade Natural Gas, NW Natural Gas, PacifiCorp, and Portland General Electric, (Joint Utilities), attached please find an electronic copy of the Joint Utilities' Opening Brief.

A copy of this filing has been served on all parties to this proceeding.

Please contact this office with any questions.

Very truly yours,

A handwritten signature in blue ink that reads "Wendy McIndoo".

Wendy McIndoo
Office Manager

cc: Service List

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 **UM 1633**

4 In the Matter of
5 PUBLIC UTILITY COMMISSION OF
6 OREGON,
7 Investigation into Treatment of Pension Costs
in Utility Rates.

**JOINT UTILITIES’
OPENING BRIEF**

8 **I. INTRODUCTION**

9 The Joint Utilities’¹ proposal in this case is simple—to continue the policy of using FAS
10 87 expense for ratemaking purposes, while also including the prepaid pension asset in rate
11 base to begin recovery—on a prospective basis only—of the costs incurred to finance this
12 investment made on behalf of customers. The Joint Utilities’ testimony demonstrates that the
13 prepaid pension asset is the result of contributions to employee pension funds that are
14 mandated by law to be made before recognition in FAS 87 expense and recovery through
15 rates, and that this timing difference results in real financing costs for the utilities. The utilities
16 have also shown that these contributions benefit customers by lowering FAS 87 expense.²

17 According to Staff’s 2013 survey (Staff Survey), nearly half of all state public utility
18 commissions allow utilities to recover the costs to finance the prepaid pension asset, either by
19 including the prepaid pension asset in rate base or by including it as a component of cash
20 working capital.³ In addition, in their prehearing brief, the Joint Utilities cited to decisions
21 issued since the Staff Survey was published, where state public utility commissions have
22

23 ¹ The Joint Utilities are Avista Corporation (Avista), Cascade Natural Gas Corporation (Cascade),
24 Northwest Natural Gas Company (NW Natural), PacifiCorp d/b/a Pacific Power (PacifiCorp), and
Portland General Electric Company (PGE).

25 ² Joint Testimony/500, Joint Parties/7-8.

26 ³ Joint Testimony/100, Joint Parties/14.

1 adopted new policies to allow a return on a utility's prepaid pension asset.⁴ Importantly, while
2 a very small number of commissions have found otherwise, virtually every commission to
3 address this issue has decided in favor of allowing a return on the prepaid pension asset.

4 The Joint Utilities' proposal is sound public policy that is consistent with the
5 Commission's regulatory framework. The prepaid pension asset is comparable to other utility
6 investments included in rate base, such as cash working capital, prepayments, and materials
7 and supplies. Like these investments, the prepaid pension asset represents a legitimate and
8 very real investment made by shareholders before recovery in rates. And like these
9 investments, the prepaid pension asset reflects investments that are necessary for the
10 provision of utility service. Thus, there is nothing extraordinary or unusual about the prepaid
11 pension asset that supports different treatment.

12 Staff, the Citizens' Utility Board of Oregon (CUB), the Industrial Customers of
13 Northwest Utilities (ICNU), and the Northwest Industrial Gas Users (NWIGU) generally agree
14 that the Joint Utilities may incur financing costs related to their prepaid pension assets.⁵
15 Moreover, parties agree that it is reasonable for a utility to recover financing costs when cash
16 contributions are recovered over time.⁶ Despite the parties' general agreement on the
17 fundamental issues in this case, in their prehearing briefs, the parties raise various legal and
18 policy arguments opposing the Joint Utilities' proposal. This post-hearing brief addresses the
19 parties' legal and policy arguments and demonstrates:

- 20 1. The Joint Utilities' proposal is legal.
- 21

22 ⁴ See Joint Utilities' Prehearing Brief at 11-14.

23 ⁵ Staff/100, Bahr/20; Staff/300, Bahr/2; NWIGU-ICNU/100, Smith/46; NWIGU-ICNU/300, Smith/13;
24 CUB/300, Jenks-McGovern/17-18, 28.

25 ⁶ See e.g. Citizens' Utility Board of Oregon's Pre-hearing Brief at 27 (CUB Brief). CUB agrees that if
26 pension cost recovery is based on cash contributions and the cash contributions are recovered over
time, the unrecovered balance should include a carrying charge.

1 Contrary to parties' claims, allowing recovery of a company's prospective financing
2 costs does not implicate retroactive ratemaking. The Joint Utilities are not attempting
3 to recover financing costs incurred in the past but only those they may incur in the
4 future. Ironically, while the Joint Utilities' request does not implicate retroactive
5 ratemaking, several of the other parties' proposals do. Specifically, parties'
6 recommendation that the recovery of prospective financing costs be limited based on
7 a utility's historical earnings is the very definition of retroactive ratemaking. Similarly,
8 parties' recommendation that the Commission true-up the historical FAS 87
9 expenses recovered in rates as a precondition of financing cost recovery illegally
10 relies on a true-up of historical rates to set prospective rates.

- 11 2. The Joint Utilities' proposal is consistent with the Commission's traditional
12 ratemaking principles.

13 The Commission's policy against single issue ratemaking is inapplicable to the
14 questions raised in this case because the Joint Utilities are not seeking to change
15 rates in this case and the only reason the Commission opened this investigation was
16 because it did not want to address the policy questions in a single utility's rate case.

- 17 3. Allowing recovery of financing costs will not create improper incentives or result in
18 intergenerational inequity.

19 For all of these reasons, the Joint Utilities request that the Commission find that, as a
20 matter of policy, the Joint Utilities may recover the cost to finance the prepaid pension asset,
21 while, recognizing that not all utilities are in the same situation regarding the current regulatory
22 treatment of their FAS 87 expense or prepaid status, reserving ratemaking for utility-specific
23 proceedings.

24 II. ARGUMENT

25 A. The Joint Utilities' Recovery of Prospective Financing Costs is Not Retroactive 26 Ratemaking.

The Joint Utilities' proposal is entirely prospective. The utilities request that the
prepaid pension asset be added to rate base in **future individual rate proceedings** to allow
recovery of **future costs** incurred to finance the prepaid pension asset.⁷ Staff and CUB's

⁷ In the future individual rate proceedings, the Joint Utilities may also seek to recover financing costs that have been deferred pursuant to a Commission order.

1 arguments that the Joint Utilities' proposal constitutes retroactive ratemaking rely on flawed
2 reasoning and should be rejected.

3 Staff claims that the Joint Utilities' historical cash contributions are "considered
4 expenses under the Commission's existing policy" and therefore reasons that the prohibition
5 on retroactive ratemaking forbids their recovery in future rates.⁸ From there, Staff argues that
6 if the Joint Utilities are barred from recovering their historical cash contributions, retroactive
7 ratemaking also prohibits the Joint Utilities from earning a return on the prepaid pension asset
8 resulting from the historical cash contributions. Staff's argument relies on the faulty premise
9 that retroactive ratemaking prohibits recovery of historical cash contributions. Without this
10 premise, Staff's retroactive ratemaking argument collapses.

11 In testimony, Staff explicitly recognized that each utility's historical cash contributions
12 will eventually be recovered through future FAS 87 expense—undermining their new claim
13 that it is illegal to recover these historical cash contributions.⁹ As the parties agree, over the
14 life of the pension plan the cumulative FAS 87 expense will equal the cumulative cash
15 contributions.¹⁰ If a utility recovers all of its pension costs through FAS 87 expense, it will
16 have recovered all of its cash contributions—even those cash contributions that were made
17 before they were recognized through FAS 87 expense.¹¹ Therefore, the recovery of the
18 historical cash contributions is not illegal retroactive ratemaking, but explicitly endorsed by the
19 Commission through the adoption of FAS 87 expense.

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21 ⁸ Staff Prehearing Brief at 7 (Staff Brief).

22 ⁹ Staff/300, Bahr/14 (under FAS 87 the "utilities will eventually recover the [prepaid pension asset]
23 balance"); *id.* (disallowance of rate recovery of historical cash contributions through future FAS 87
24 expense "would very likely have a detrimental effect to the utility's stock value and credit rating. The
company could be severely harmed by this outcome."); *see also* Joint Testimony/500, Joint Parties/9,
11, 15-16.

25 ¹⁰ *See e.g.* Joint Testimony/100, Joint Parties/9.

26 ¹¹ Joint Testimony/500, Joint Parties/9, 11, 15-16.

1 Moreover, Staff’s reliance on the Commission’s description of cash contributions as an
2 expense in Order No. 12-437 is misplaced. In that order, the Commission described cash
3 contributions as “expenses” in the context of whether a utility could include **both** FAS 87
4 expense and prior cash contributions in rates. The Commission correctly concluded that a
5 utility can recover **either** its cash contributions **or** its FAS 87 expense, but not both. This
6 conclusion is irrelevant to the Joint Utilities’ proposal here. In fact, in Order No. 12-437 the
7 Commission explicitly noted that its reference to cash contributions as “expenses” was not
8 determinative of whether a utility could earn a return on its prepaid pension asset.¹² The
9 Commission recognized, as do the parties in this case, that allowing a return on the prepaid
10 pension asset is fundamentally different from allowing a utility to recover its historical cash
11 contributions outside of its FAS 87 expense. Here, the Joint Utilities seek to continue
12 recovery historical cash contributions through FAS 87 expense.

13 The fact that the prepaid pension asset built up over time and is the result of the
14 difference between historical cash contributions and historical FAS 87 expense does not
15 mean that allowing recovery of the prospective financing costs is retroactive ratemaking.
16 Retroactive ratemaking involves the consideration of past profits or losses in setting rates.¹³
17 Simply because an asset built up over time and was not historically included in rate base does
18 not mean that it is retroactive ratemaking to include the asset in rate base at a later date. For
19 example, when traditional generation assets are acquired between rate cases, it is not
20 retroactive ratemaking to include the asset in the utility’s rate base in the next rate case even
21 though the costs to acquire the asset were already incurred.¹⁴ Likewise, when a utility makes

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23 ¹²*Re Northwest Natural Gas Co.*, Docket UG 221, Order No. 12-437 at 22 (Nov. 16, 2012).

24 ¹³ *Gearhart v. Pub. Util. Comm’n of Oregon*, 356 Or. 216, 237. (2014).

25 ¹⁴ *See Re Portland Gen. Elec. Co.*, Dockets UE 180/184, Order No. 07-273 at 3 (June 24, 2007) (“CUB
26 observes that regulatory lag is a basic part of traditional regulation, causing a short period of time
between when a generating asset becomes used and useful and when its costs are included in rates.”).

1 a prepayment (e.g., prepaid insurance or taxes) it is not retroactive ratemaking to allow the
2 utility to recover the financing costs resulting from the prepayment even though the
3 prepayment was made in the past.¹⁵

4 Moreover, the prepaid pension asset is currently included in rates, through the use of
5 FAS 87 to recover each utility's cash contributions.¹⁶ The Joint Utilities are not asking for
6 recovery of a historical cost that was never included in rates; rather, the Joint Utilities are
7 requesting a prospective change in the ratemaking treatment of the prepaid pension asset.
8 Thus, retroactive ratemaking is not implicated by the Joint Utilities' request.

9 CUB argues that the Joint Utilities' request is retroactive ratemaking because when the
10 historical cash contributions were made the "policies in place . . . limited pension ratemaking
11 to FAS 87 expense."¹⁷ CUB claims that the Joint Utilities are now seeking to retroactively
12 change historical pension cost recovery when they seek to earn a future return on
13 contributions made in the past. Yet, the treatment CUB describes is precisely the treatment
14 accorded any other rate base item.

15 **B. The Joint Utilities' Request does not Constitute Single-Issue Ratemaking.**

16 In addition to their claim of retroactive ratemaking, Staff, ICNU/NWIGU, and CUB also
17 argue that the Joint Utilities' request constitutes single-issue ratemaking. Staff agrees that the
18 financing costs are real, but claims that the increasing financing costs associated with the
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20 ¹⁵ James C. Bonbright, Albert L. Danielsen & David R. Kamerschen, *Principles of Public Utility Rates*,
244 (2d ed. Public Utilities Reports 1988).

21 ¹⁶ Joint Testimony/500, Joint Parties/9, 11, 15-16.

22 ¹⁷ CUB Brief at 42. CUB also argues that the filed rate doctrine prohibits the Joint Utilities' request
23 because each utility's historical rates were final and the Commission cannot now revisit the regulatory
24 treatment of those historical rates. CUB Brief at 45-46. Contrary to CUB's claim, the filed rate doctrine
25 is inapplicable here because there is no dispute that the Joint Utilities charged customers consistent
26 with the rates approved by the Commission. See *Portland General Elec. Co.*, Dockets DR 10, UE 88 &
UM 989, Order No. 08-487 at 32 (Sept. 30, 2008) (the filed rate doctrine and prohibition on retroactive
ratemaking "are separate and act independently from each other. . . . The filed rate doctrine provides
that once new rates are established, the utility is obligated to charge only those rates in providing
service to its customers until a change in the rates is approved by the Commission.").

1 prepaid pension asset may be offset by other decreasing costs.¹⁸ ICNU/NWIGU and CUB
2 argue the Joint Utilities' request addresses only one aspect of pensions without reviewing the
3 other elements normally included in rate base during general rate cases.¹⁹ CUB relies on
4 Order No. 08-118, where the Commission rejected CUB's attempt to reopen a PGE rate case
5 to update the taxes included in rates.²⁰ The Commission concluded that CUB's request was
6 improper single-issue ratemaking because CUB requested a change in only one element of
7 PGE's rates while ignoring others.

8 There is no merit at all to these claims. Here, the Joint Utilities' request originated in a
9 rate case where the totality of the utility's revenues and expenses were at issue.²¹ The
10 Commission explicitly opened this docket because it did not want to address this issue in a
11 single utility rate case.²² Nevertheless, while the parties request that the Commission make a
12 policy determination in this docket, they have always advocated that any ratemaking treatment
13 be implemented in a utility-specific ratemaking docket. Accordingly, there is no basis for
14 parties to now argue that the Commission cannot examine this issue in a generic proceeding
15 because it violates the policy against single-issue ratemaking.

16 **C. The Parties' Proposals to Condition Recovery of Future Financing Costs on the**
17 **Utilities' Earnings History Constitutes Improper Retroactive Ratemaking.**

18 While the parties have leveled baseless claims of retroactive ratemaking against the
19 Joint Utilities' proposal, they themselves have made numerous proposals that **do** implicate
20 retroactive ratemaking. Specifically, Staff, CUB, and ICNU/NWIGU all advocate conditioning

21 ¹⁸ Staff Brief at 8-9.

22 ¹⁹ CUB Brief at 31; ICNU/NWIGU Prehearing Memorandum at 9 (ICNU/NWIGU Brief).

23 ²⁰ *Re Portland Gen. Elec. Co.*, Dockets UE180/UE 184, Order No. 08-118. (Feb. 14, 2008).

24 ²¹ See e.g. ICNU/NWIGU Brief at 7 (PacifiCorp, PGE, NW Natural, and Avista all requested financing
cost recovery in a rate case); CUB Brief at 12.

25 ²² *Re Northwest Natural Gas Co.*, Docket UG 221, Order No. 12-408 at 4, 12 (Oct. 26, 2012) ("We will
open a docket to review the treatment of pension expense on a general, non-utility-specific, basis.").

26

1 the addition of the prepaid pension asset to rate base on a “look back” at past earnings. This
2 would unquestionably constitute improper retroactive ratemaking.

3 First, in its prehearing brief, Staff suggests that before the prepaid pension asset can
4 be added to rate base, the Commission must first determine whether the Joint Utilities were
5 able to absorb their historical cash contributions and associated financing costs and still have
6 rates that were just and reasonable.²³ Making the novel argument that the Joint Utilities’
7 proposal is like a request for a deferral, Staff opines that the Commission must perform an
8 earnings test before allowing the utility to recover its future financing costs. Staff’s proposal
9 clearly violates the rule against retroactive ratemaking, which is “uniformly accepted to
10 preclude consideration of past losses and past profits in setting future rates.”²⁴

11 Moreover, the de facto earnings review that Staff implicitly proposes as a precursor to
12 cost recovery constitutes a significant departure from traditional ratemaking and applies to no
13 other rate base items.²⁵ As Staff recognized, earnings tests are applied in exceptional
14 circumstances, such as deferrals, and are not part of the normal course of utility ratemaking.²⁶
15 Staff presented no Commission precedent supporting the idea that the Commission should
16 review a utility’s earnings before including an asset in rate base simply because the asset was
17 acquired during a time when the utility’s rates were just and reasonable.

18 In an argument similar to Staff’s, ICNU/NWIGU claim that if a company’s historical
19 earnings were reasonable without recovery of the historical financing costs, then there is no
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21 ²³ Staff Brief at 9; *see also* CUB Brief at 15 (Joint Utilities must demonstrate that the current method of
22 pension cost recovery has “injured them”).

23 ²⁴ Order No. 08-487 at 37. Staff’s comparison to a deferral is inapt because deferrals are exceptions to
retroactive ratemaking. Order No. 08-487 at 38-39

24 ²⁵ *Re Idaho Power Co.*, Docket UE 233, Order No. 13-416at 5-6 (Nov. 12, 2013) (earnings test applied
25 in extraordinary cases where retroactive ratemaking is authorized); Joint Testimony/100, Joint
Testimony/16-17; Joint Testimony/600, Joint Parties/8.

26 ²⁶ Staff Brief at 9.

1 reason to allow recovery of the future financing costs.²⁷ ICNU/NWIGU rely on a Utah order
2 where the Utah Public Service Commission (Utah PSC) rejected US West's request to include
3 a prepaid pension asset in rate base after concluding that an historical earnings test was
4 necessary to determine if shareholder funds had been used without compensation.²⁸ But the
5 facts of that case make it inapplicable here. Although US West used FAS 87 expense for
6 accounting purposes, US West's rates were not based on FAS 87 expense.²⁹ Therefore, US
7 West had no time lag between making the cash contributions and recovering the contributions
8 in rates.

9 Moreover, unlike here, since US West adopted FAS 87 accounting, the utility had not
10 made any cash contributions to its pension plan and the cash contributions made before the
11 adoption of FAS 87 accounting had been fully recovered in rates.³⁰ Thus, US West was not
12 incurring the financing costs that the Joint Utilities incur due to the timing difference between
13 cash contributions and the eventual recovery in rates through FAS 87 expense.³¹

14 ICNU/NWIGU also rely on a 2003 Connecticut case where the regulator denied the
15 utility's request to include the prepaid pension asset in rate base after concluding that the
16 utility had historically maintained strong financial metrics even while carrying a prepaid
17 pension asset.³² But, like the Utah case, the Connecticut utility made no cash contributions to
18 its pension plan since 1990 and was not projected to make any cash contributions through
19

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22 ²⁷ ICNU/NWIGU Brief at 10, 22 (recommending presumption of no financing cost recovery based on
23 historical earnings).

24 ²⁸ ICNU/NWIGU Brief at 10.

25 ²⁹ *Re U.S. West Communications, Inc.*, 183 P.U.R.4th 382, 1997 WL 875823 at **8-9 (1997)

26 ³⁰ *Id.* at *8.

³¹ ICNU/NWIGU Brief at 4; Joint Testimony/500, Joint Parties/7-8.

³² ICNU/NWIGU Brief at 10.

1 2007.³³ Therefore, the conclusion in that case was based on a factual scenario that does not
2 exist here.

3 ICNU/NWIGU further argue that the Commission should change its policies only if a
4 party can demonstrate that historical rates were unjust and unreasonable. ICNU/NWIGU then
5 contend that parties can *never* make that showing because historical rates resulted from a
6 Commission finding that the rates were just and reasonable.³⁴ This “Catch-22” would
7 effectively prohibit the Commission from ever changing policies, in clear contravention of the
8 broad authority delegated to the Commission by the legislature.³⁵

9 **D. An Historical True-Up of FAS 87 Expense in Rates to Actuals is Illegal**
10 **Retroactive Ratemaking.**

11 Similar to the proposed “earnings review” discussed above, CUB and ICNU/NWIGU
12 argue that before including the prepaid pension asset in rate base, the Commission will need
13 to conduct a historical review of the pension costs included in rates compared to each
14 company’s actual pension costs to determine whether each utility over- or under-recovered its
15 FAS 87 expense.³⁶ Such a true-up violates the prohibition on retroactive ratemaking by
16 “comparing *authorized* revenues with *actual* revenues and then adjusting for unexpected
17 profits or shortfalls.”³⁷ This is clearly prohibited retroactive ratemaking.

20 ³³ *Conn. Light & Power Co.*, Docket No. 03-07-02, Decision at 149 (Dec. 17, 2003).

21 ³⁴ ICNU/NWIGU Brief at 10-11; *see also* CUB Brief at 32 (historical rates were just and reasonable
22 even though rates did not include financing costs). Although ICNU/NWIGU suggest that a party could
23 “contest” the Commission’s determination that rates were just and reasonable, even if a party appealed
the Commission’s rate order, the ultimate rates resulting from the appeal would be just and reasonable
under ICNU/NWIGU’s standard.

24 ³⁵ *See Gearhart*, 216 Or. at 221.

25 ³⁶ ICNU/NWIGU Brief at 20; CUB Brief at 10, 38.

26 ³⁷ *Pacific Northwest Bell Tel. Co. v. Katz*, 116 Or. App. 302, 311 (1992) (emphasis in original).

1 CUB and ICNU/NWIGU's proposed true-up also ignores the fact that in between rate
2 cases, a utility's actual FAS 87 expense will differ from the amount estimated in rates³⁸ and,
3 because rates are set holistically, this difference cannot be isolated from other differences
4 between the cost of service expected at the time of setting rates and the actual cost of
5 service.³⁹

6 Moreover, even if the proposed true-up were legal, it is bad policy for unreasonably
7 singling out the prepaid pension asset for treatment that is not applied to any other rate base
8 item.⁴⁰

9 **E. The Prepaid Pension Asset is Comparable to other Items Included in Rate Base,
10 like Cash Working Capital, Prepayments, and Materials and Supplies.**

11 ICNU/NWIGU argue that the prepaid pension asset is not like other rate base items
12 because it does not depreciate on a straight-line basis.⁴¹ But many items included in rate
13 base can change in value from year to year and do not depreciate in the same way as
14 traditional utility plant. Cash working capital, prepayments, and materials and supplies are all
15 traditionally included in rate base even though these items do not depreciate in the traditional
16 sense, as the balances can fluctuate from year to year.⁴² Moreover, ICNU/NWIGU's claim
17 that the prepaid pension asset does not depreciate is undermined by their own admission that
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19 ³⁸ Order No. 08-487 at 7 ("like all forecasts, the utility's actual costs will vary"); *Hammond Lumber Co. v.*
20 *Pub. Serv. Comm'n*, 96 Or. 595, 609 (1920) (the factors involved in ratemaking are "so many and so
21 variable that it is impossible to fix rates that will be mathematically correct or exactly applicable to all the
new conditions that may arise even in the immediate future").

22 ³⁹ Joint Testimony/300, Joint Parties/9-10; see *also* Order No. 08-487 at 64 (rates are set holistically
and individual components cannot be isolated from one another).

23 ⁴⁰ Joint Testimony/500, Joint Parties/8.

24 ⁴¹ ICNU/NWIGU Brief at 17; CUB Brief at 46.

25 ⁴² See James C. Bonbright, Albert L. Danielsen & David R. Kamerschen, *Principles of Public Utility*
26 *Rates*, 243 (2d ed. Public Utilities Reports 1988) (working capital included in rate based on average, not
point-in-time measurement); Joint Utilities Prehearing Brief at 9-10.

1 over the life of the pension plan, FAS 87 expense and FAS 88 expense will equal cash
2 contributions and the prepaid pension asset “will disappear entirely.”⁴³

3 **F. The Prepaid Pension Asset reflects Investments Essential for Utility Service.**

4 ICNU/NWIGU argue that unlike other utility plant included in rate base, the prepaid
5 pension asset “is not necessary to ensure the Joint Utilities can provide service to
6 customers.”⁴⁴ This position is unfounded. The prepaid pension asset is the result of legally
7 required contributions to pension plans and is a fundamental component of labor costs.⁴⁵
8 Therefore, like all other prudently incurred labor costs, the prepaid pension asset is necessary
9 for the provision of utility service.⁴⁶

10 Similarly, CUB argues that the prepaid pension asset is not “used and useful to the
11 current customers” because it represents “pension contributions for future liability
12 (expense).”⁴⁷ On the contrary, as CUB recognizes,⁴⁸ FAS 87 expense is based on the future
13 amounts that will be paid to employees serving customers today.⁴⁹ Thus, while the employee
14 benefits will be paid out in the future, the Joint Utilities are incurring the expenses today for
15 service provided to customers today.

16 **G. The Timing of the Joint Utilities’ Request is Reasonable.**

17 ICNU/NWIGU argue that there is no reason to include the prepaid pension asset in
18 rate base now because there has been no change in FAS 87 accounting that would trigger

19 ⁴³ ICNU/NWIGU Brief at 3-4.

20 ⁴⁴ ICNU/NWIGU Brief at 16.

21 ⁴⁵ Joint Testimony/100, Joint Parties/4.

22 ⁴⁶ *Re Pub. Serv. Co. of Colo.*, Proceeding No. 12AL-1268G, Decision No. R13-1307 at 72-73 (Oct. 22,
23 2013) (the “prepaid pension asset was a benefit to ratepayers because it allows the Company to attract
and to retain the highly-skilled workforce necessary to provide natural gas service.”).

24 ⁴⁷ CUB Brief at 31.

25 ⁴⁸ CUB Brief at 43.

26 ⁴⁹ Joint Testimony/100, Joint Parties/9; Joint Testimony/200, Vogl/4; Joint Testimony/500, Joint
Parties/15.

1 such a request.⁵⁰ This argument makes little sense. The Joint Utilities' request is not based
2 on a change in FAS 87 accounting, but rather on the combined impact of the Pension
3 Protection Act of 2006 and the 2008 financial crisis, which resulted in the Joint Utilities' larger
4 and more sustained prepaid pension assets.⁵¹

5 ICNU/NWIGU and CUB also claim that the existence of a prepaid pension asset is
6 temporary and that the Joint Utilities are unfairly cherry picking the point in time when their
7 prepaid pension assets are the greatest.⁵² On the contrary, the Joint Utilities demonstrated
8 that growth in prepaid pension assets is not temporary and prepaid pension assets are
9 expected to persist for the foreseeable future even as market conditions return to normal.⁵³

10 ICNU/NWIGU also argue that it is reasonable to include the prepaid pension asset in
11 rate base only to the extent that historical accrued pension liabilities were also included in
12 rates base.⁵⁴ ICNU/NWIGU rely on a recent order from the Public Utilities Commission of
13 Colorado (Colorado PUC) affirming the inclusion of a utility's prepaid pension asset in rate
14 base and finding that there were no changed circumstances that would justify removing the
15 prepaid pension asset from rate base even though what was historically an accrued pension
16 liability had become a prepaid pension asset.⁵⁵ ICNU/NWIGU argue that here there is also no
17 change in circumstances that would justify the inclusion of the prepaid pension asset in rate
18 base. ICNU/NWIGU improperly focus their argument on only one aspect of the Colorado
19 PUC's order, however, and ignore the commission's fundamental conclusion that the "prepaid
20 pension asset consists of shareholder contributions to the Company's pension plan that have

21 ⁵⁰ ICNU/NWIGU Brief at 12.

22 ⁵¹ Joint Testimony/100, Joint Parties/12; Joint Testimony/200, Vogl/8, 10-13.

23 ⁵² ICNU/NWIGU Brief at 18; CUB Brief at 20.

24 ⁵³ Joint Testimony/100, Joint Parties/12.

25 ⁵⁴ ICNU/NWIGU Brief at 14-15.

26 ⁵⁵ *Re Pub. Serv. Co. of Colo.*, Proceeding No. 12AL-1268G, Decision No. R13-1307 at 72-73 (Oct. 22, 2013).

1 not been reimbursed by ratepayers” and that the “prepaid pension asset was a benefit to
2 ratepayers because it allows the Company to attract and to retain the highly-skilled workforce
3 necessary to provide natural gas service.”⁵⁶ It is based on these underlying findings that the
4 Colorado PUC originally included the prepaid pension asset in rate base and continued to
5 allow the utility to earn a return on its prepaid pension asset.

6 **H. Inclusion of the Prepaid Pension Asset in Rate Base will not Create Improper**
7 **Incentives.**

8 ICNU/NWIGU argue that recovery of the financing costs will create an incentive for the
9 Joint Utilities to grow the asset through excessive cash contributions⁵⁷ and that instead,
10 shareholders should bear the financing costs of the prepaid pension asset to encourage
11 prudent management of pension contributions.⁵⁸ This argument should be rejected. The
12 Commission’s policy is to use its normal prudence review and the risk of cost disallowance
13 provides utilities with the incentive to manage utility investment. The Commission has never
14 found—and should not find here—that shareholders should assume the financing costs for
15 utility investments as an incentive for cost control.

16 **I. Recovery of the Financing Costs Associated with the Prepaid Pension Asset**
17 **does not Create Intergenerational Inequity.**

18 CUB argues that the Joint Utilities’ proposal would create intergenerational inequity
19 because it would “reward late in time shareholders and penalize late in time ratepayers[.]”⁵⁹
20 CUB’s argument conflates allowing a return *on* the prepaid pension asset with allowing a
21 return *of* the prepaid pension asset. CUB argues that the prepaid pension asset has built up
22 over time, so if “rate recovery is appropriate then ratepayers from 28, 27 . . . years ago should

23 ⁵⁶ *Id.* at 69, 72.

24 ⁵⁷ ICNU/NWIGU Brief at 17.

25 ⁵⁸ ICNU/NWIGU Brief at 17.

26 ⁵⁹ CUB Brief at 43.

1 have been paying rates related to the recovery *of* the prepaid pension asset and should have
2 been receiving the benefit of negative FAS 87 expense.”⁶⁰ To be clear, the Joint Utilities are
3 not seeking a change in the return *of* the prepaid pension asset, which would continue to be
4 amortized through FAS 87 expense. And even CUB acknowledges that the Joint Utilities will
5 recover their prepaid pension asset over time as the historical cash contributions are
6 expensed through FAS 87 expense.⁶¹ Thus, there is no intergenerational inequity related to
7 the recovery of each company’s prepaid pension asset through FAS 87 expense.

8 Moreover, the fact that historical rates did not include a return *on* the prepaid pension
9 asset is no basis to preclude a return in future rates under the theory of intergenerational
10 inequity. Had the utilities been recovering their financing costs since the beginning, the future
11 financing costs would be the exactly the same.⁶² So the only intergenerational inequity
12 present in this case favors customers because historical customers did not bear the financing
13 costs of the prepaid pension asset.

14 Additionally, the historical treatment of negative FAS 87 expense is also no basis to
15 conclude that the Joint Utilities’ request creates intergenerational inequity. Contrary to CUB’s
16 implications, utilities have credited customers with negative FAS 87 expense, and the prepaid
17 pension asset is overwhelmingly the result of cash contributions—not negative FAS 87
18 expense.⁶³

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21 ⁶⁰ CUB Brief at 43 (emphasis added).

22 ⁶¹ CUB/300, Jenks-McGovern/4.

23 ⁶² See Joint Testimony/600, Joint Parties/13 (utilities have borne historical financing costs).

24 ⁶³ NWN/100, Wilson/9-10 (NW Natural credited negative FAS 87 expense and negative FAS 87
25 expense has not significantly contributed to prepaid pension asset); PAC/100, Stuver/2-3 (PacifiCorp
26 credited negative FAS 87 expense and prepaid pension asset predominantly due to cash contributions);
Staff/102, Bahr/2-5 (Avista and Cascade have never experienced negative FAS 87 expense affecting
Oregon); PGE/100, Hager-Jaramillo/3-4 (PGE’s prepaid pension asset predominantly due to cash
contributions); Joint Testimony/600, Joint Parties/17.

1 **J. The Deferred Taxes Associated with the Prepaid Pension Asset should be**
2 **included in Rates only if the Prepaid Pension Asset is included in Rate Base.**

3 CUB argues that ORS 757.269 requires that the deferred tax benefits associated with
4 the prepaid pension asset be passed through to customers, regardless of whether the prepaid
5 pension asset is included in rate base.⁶⁴ CUB's argument, however, ignores the plain
6 meaning of the statute.

7 ORS 757.269(2)(b) requires rates to include only the accumulated deferred income
8 taxes "that are based on revenues, expenses and the rate base included in rates *and on the*
9 *same basis as included in rates.*"⁶⁵ The plain text of ORS 757.269(2)(b) makes clear that if an
10 expense is not included in rates or an asset is not included in rate base, then the deferred tax
11 benefits resulting from that expense or asset should not be included in rates.⁶⁶ Here, rates
12 are based on FAS 87 expense, not the utility's pension contribution. The prepaid pension
13 asset, which accounts for the utility's cash contribution, is excluded from rate base.
14 Therefore, because the prepaid pension asset is not included in rate base, the text of ORS
15 757.269 does not require that rates include the deferred tax benefits associated with the
16 pension contributions. If customers are not paying the utility's cash contribution or financing
17 the utility's pension contribution through a return on a prepaid pension asset, then it is
18 unreasonable for customers to receive the benefits of the deferred taxes.

19 **K. The Joint Utilities Do Not Have the Burden of Persuasion in this Docket.**

20 The parties argue that the Joint Utilities have the burden of persuasion in this case to
21 demonstrate that their proposal to include the prepaid pension asset in rate base results in
22 just and reasonable rates.⁶⁷ The Joint Utilities disagree. This docket is not a proceeding
23 under ORS 757.210, where the utility bears the "burden of showing that the rate or schedule

24 ⁶⁴ CUB Brief at 43-45.

25 ⁶⁵ ORS 757.269(2)(b) (emphasis added).

26 ⁶⁶ *Portland General Electric.. Co. v. Bureau of Labor and Industries*, 317 Or. 606, 610 (1993).

27 ⁶⁷ CUB Brief at 12-16; ICNU/NWIGU Brief at 6-8.

1 of rates proposed to be established or increased or changed is fair, just and reasonable.” The
2 Commission has clarified that the ORS 757.210 burden of persuasion applies narrowly to only
3 those cases arising under that statute.⁶⁸ Indeed, the Commission has observed that even a
4 compliance tariff filing made by a utility under a stipulation resulting from an ORS 756.515
5 investigation is not a filing under ORS 757.210 where the utility bears the burden if a party
6 chooses to challenge the new tariffs.⁶⁹ Here, the Joint Utilities are not proposing any change
7 to their rates or rate schedules, and there is no dispute that this case does not arise under
8 ORS 757.210. Therefore, the Joint Utilities do not have the burden of persuasion as they
9 would if they were requesting a rate change. That said, the Joint Utilities do not dispute that
10 they will bear the burden of persuasion in a subsequent rate case to implement the
11 Commission’s decision.

12 III. CONCLUSION

13 The Commission should approve the Joint Utilities’ request and allow recovery of the
14 financing costs associated with the prepaid pension asset. If the Joint Utilities’ proposal is
15 rejected, then so should all other proposals in this docket.

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22 ⁶⁸ See e.g. *Re PacifiCorp*, Docket UF 4000, Order No. 88-767, 95 P.U.R.4th 96, 102 (1988) (utility does
23 not have burden to demonstrate reasonableness of rates in merger proceeding under ORS 757.480);
Re Portland Gen. Elec. Co., Docket UM 989, Order No. 01-152 (Feb. 2, 2001) (under ORS 756.500 the
complainant bears the burden of persuasion even when complaint seeks to change utility rates).

24 ⁶⁹ *Re Portland Gen. Elec. Co.*, Docket UE 100, Order No. 96-306, 173 P.U.R.4th 543, 545 (1996) (if
25 any party challenged the stipulation and chose to proceed to a hearing, “that person will have both the
burden of persuasion and the burden of going forward with evidence” because PGE’s compliance filing
26 was not a filing under ORS 757.210 where PGE had the burden of persuasion).

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Respectfully submitted,

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