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March 5, 2015

***VIA ELECTRONIC FILING
AND OVERNIGHT DELIVERY***

Public Utility Commission of Oregon
3930 Fairview Industrial Dr. S.E.
Salem, OR 97302-1166

Attention: Filing Center

RE: Docket UM 1712—Responses to OPUC Bench Request Nos. 1-6

PacifiCorp d/b/a Pacific Power encloses for filing its Responses to Bench Request Nos. 1 through 6. Enclosed on the Confidential CD is Confidential Attachment OPUC Bench Request 2. The confidential attachment is designated as confidential under Order No. 14-431 and may only be disclosed to qualified persons as defined in that order.

As indicated on the attached certificate of service, a copy of this filing is being served on all parties on the service lists.

Please direct any informal inquiries to Natasha Soares, Director of Regulatory Affairs & Revenue Requirement, at (503) 813-6583.

Sincerely,

R. Bryce Dalley
Vice President, Regulation

Enclosures

cc: Service List—UM 1712

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of PacifiCorp's Responses to OPUC Bench Request Nos. 1-6 on the parties listed below via electronic mail in compliance with OAR 860-001-0180.

UM 1712

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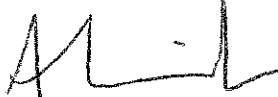
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Dated this 5th of March, 2015.



Amy Eissler
Coordinator, Regulatory Operations

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OPUC Bench Request 1

OPUC Bench Request 1

Please identify the shareholders in Energy West Mining Company.

Response to OPUC Bench Request 1

PacifiCorp is the sole shareholder of Energy West Mining Company's common stock as described in response to Bench Request 2. Energy West Mining Company is thus a wholly owned direct subsidiary of PacifiCorp.

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OPUC Bench Request 2

OPUC Bench Request 2

Please explain the corporate structure of PacifiCorp and Energy West Mining Company, including when and why Energy West was formed as a wholly owned subsidiary to operate the Deer Creek Mine.

Response to OPUC Bench Request 2

PacifiCorp is an Oregon corporation, operating as a regulated electric utility company serving customers in Oregon, California, Idaho, Utah, Washington, and Wyoming. All of PacifiCorp's common stock is held by PPW Holdings LLC, a wholly owned subsidiary of Berkshire Hathaway Energy Company, which is in turn owned by Berkshire Hathaway Inc.

Energy West Mining Company (Energy West) was incorporated in Utah on July 19, 1990. On September 26, 1990, PacifiCorp subscribed for 100 shares of Energy West Mining Company's common stock at a price of \$10.00 per share. This remains the only outstanding stock of the Energy West Mining Company.

PacifiCorp and Energy West Mining Company entered into an operating agreement on October 1, 1990, for Energy West's experienced workforce would provide coal mining services at PacifiCorp's Deer Creek Mine, Cottonwood Mine, and Des-Bee-Dove Mine and related facilities. Under the operating agreement, Energy West assumed responsibility for managing the operation of the mines. Energy West also assumed responsibility for labor relations and the hiring, management, and compensation of employees at the mines. PacifiCorp agreed to reimburse Energy West for actual costs incurred in providing the coal mining services. A copy of the operating agreement is attached as Confidential Attachment OPUC Bench Request 2. Historically, the coal produced by Energy West has been consumed by the Huntington, Hunter, and Carbon coal-fueled generating plants.

The confidential attachment is designated as confidential under Order No. 14-431 and may only be disclosed to qualified persons as defined in that order.

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OPUC Bench Request 3

OPUC Bench Request 3

Please explain how the Public Utility Commission of Oregon has treated PacifiCorp and Energy West for regulatory purposes and the rationale for this treatment.

Response to OPUC Bench Request 3

In Order No. 91-513, the Public Utility Commission of Oregon approved the operating agreement between PacifiCorp and Energy West Mining Company (Energy West or EWMC) beginning on its effective date, October 1, 1990. *In re PacifiCorp*, Docket No. UI 105, Order No. 91-513 (Apr. 12, 1991). The Commission allowed cost-based coal supply from Energy West to PacifiCorp, instead of a price based on the lower of cost or market standard under OAR 860-027-0048, because Energy West's activities were limited to specific contract functions and the operating agreement did not allow Energy West to earn a profit:

The agreement with EWMC will benefit Pacific's customers because it will promote safe and efficient operation of the Cottonwood and Deer Creek mines and a lower overall generation cost at the Hunter and Huntington steam plants. Pacific will reimburse EWMC for all reasonable expenses incurred by EWMC in the performance of its obligations. EWMC shall bill Pacific only actual costs for its services. This cost-based approach and the limitation of EWMC's activities to those arising under the contract minimize the likelihood of cross-subsidization.

The Commission has followed a "general policy" of consolidating PacifiCorp and its affiliate mines for reporting and regulatory purposes. *See In re Pacific Power and Light Co.*, Docket No. UE 21, Order No. 84-898 (Nov. 14, 1984). The rationale is that "no asset used in providing utility service may earn a rate of return greater than that authorized for Pacific, whether owned by the company or its affiliate." *See In re Pacific Power and Light Co.*, Docket No. UF 3779, Order No. 82-606 (Aug. 18, 1982).

Energy West's records and accounts are subject to regulatory review in rate cases, its operations are summarized in PacifiCorp's results of operations, and its results are consolidated with PacifiCorp's for income tax and state ratemaking purposes. In the past, the Commission has approved ratemaking adjustments to the costs of coal supplied by Energy West. *See In the Matter of PacifiCorp, dba Pacific Power, 2014 Transition Adjustment Mechanism*, Docket No. UE 264, Order No. 13-387 (Oct. 28, 2013) (reducing PacifiCorp's net power costs by \$0.5 million of labor adjustments for management overtime and bonuses).

OPUC Bench Request 4

What legal obligations does PacifiCorp have for Energy West Mining Company's pension and retiree medical plan liabilities? Does the fact that Energy West Mining Company and PacifiCorp are separate corporate entities provide a defense to PacifiCorp against these liabilities? Could PacifiCorp have avoided a legal obligation for Energy West Mining Company's pension and retiree medical liabilities if it had adopted a different corporate structure? Does the Employee Retirement Income Security Act (ERISA) provide any defenses to PacifiCorp against Energy West Mining Company's pension and retiree medical plan liabilities?

Response to OPUC Bench Request 4

PacifiCorp has a statutory obligation for Energy West Mining Company's pension and retiree medical liabilities as required by multiple federal laws. The fact that PacifiCorp and Energy West are separate legal entities does not affect this obligation. In fact, there is no corporate structure that would enable PacifiCorp to avoid these liabilities. Moreover, under Employee Retirement Income Security Act (ERISA), transactions undertaken to "evade or avoid" liability for pension withdrawal liability are to be disregarded for purposes of determining liability. *See* ERISA § 4212(c).

ERISA was amended in 1980 by the Multiemployer Pension Plan Amendments Act to create withdrawal liability. Withdrawal liability is an employer's share of the unfunded vested benefits of the multiemployer plan. Under ERISA, all trades or businesses in common control with the withdrawing employer are jointly and severally liable for payment of withdrawal liability. *See* ERISA § 4001(b)(1).

A portion of Energy West Mining Company's retirees are covered by the Coal Industry Health Benefits Act (Coal Act). The Coal Act required Energy West Mining Company to provide retiree health coverage "that is substantially the same as" coverage that was provided in 1992 for all eligible retirees who retired prior to October 1, 1994. *See* IRC § 9711. All "related persons" are jointly and severally liable for the provision of the health care benefits. *Id.* at § 9711(c). Under the Coal Act, a "related person" is any "person" (which includes corporations) in common control on July 20, 1992, with a responsible signatory employer. Energy West Mining Company is a responsible signatory employer, and PacifiCorp is a "related person" to Energy West Mining Company because these entities were in common control on July 20, 1992.

In addition to the mandatory retiree health benefits under the Coal Act, all of Energy West Mining Company's retiree medical obligations are part of and funded through a PacifiCorp Voluntary Employee Beneficiary Association (VEBA). *See* IRC 501(c)(9). A VEBA is one of very few entities to which an employer can contribute for the current and future funding of retiree medical benefits and receive a tax deduction for these contributions. This VEBA can only make payments of life, sick, accident, or other similar-type benefits to the members of the VEBA, which includes the retirees eligible

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OPUC Bench Request 4

for retiree medical benefits from Energy West Mining Company. By law, VEBA's cannot return any contributions to the employer. Rather, all funds in the VEBA must be spent for the allowable specific benefits of its members.

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OPUC Bench Request 5

OPUC Bench Request 5

What factors would a court review in determining whether to pierce the corporate veil between Energy West Mining Company and PacifiCorp in the context of the pension and retiree medical plan liabilities? Can PacifiCorp avoid or mitigate these liabilities if Energy West Mining Company files for bankruptcy? Are there impediments to Energy West Mining Company filing for bankruptcy?

Response to OPUC Bench Request 5

Corporate veil piercing and bankruptcy are inapplicable to the determination of responsibility for the pension and retiree medical benefits. As stated in the response to Bench Request 4, statutory responsibility under ERISA, the federal tax code and the Coal Act supersede any argument that liability can be avoided by upholding the corporate veil or through bankruptcy.

With respect to possible impediments to a bankruptcy filing, there is no provision in the Bankruptcy Code that provides an outright bar to Energy West Mining Company (Energy West) filing for bankruptcy protection. But the Bankruptcy Code limits Energy West's ability to effectively discharge pension or retiree medical plan liabilities by filing bankruptcy. For example, Energy West's pension and medical plan liabilities cannot be avoided *per se* through a bankruptcy filing. If a chapter 11 bankruptcy is filed with the intent to reorganize the company and emerge from bankruptcy, any pension plan withdrawal and retiree medical benefits would have to be restructured through the chapter 11 plan process. If Energy West seeks liquidation under chapter 7, the unfunded portions of the pension or benefits plans would be paid out in accordance with the Bankruptcy Code's priority structure. *See generally*, 11 U.S.C. §§ 502, 507, and 507(a)(5). In a reorganization or liquidation, PacifiCorp would still remain liable as explained in response to Bench Request 4. In addition, a party in interest in the bankruptcy could file a motion to dismiss based on a bad faith filing "for cause" under 11 U.S.C. § 1112(b). The bankruptcy court's review of such a claim is often very fact intensive and its decision on the motion would be based on a review of a totality of the circumstances surrounding the bankruptcy filing.

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OPUC Bench Request 6

OPUC Bench Request 6

Have these issues been addressed in the pending proceedings in other states related to PacifiCorp's proposed closure of the Deer Creek Mine?

Response to OPUC Bench Request 6

No.