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April 21, 2015

Via Electronic Filing

Public Utility Commission of Oregon
Attn: Filing Center
3930 Fairview Industrial Drive SE
Salem OR 97302

Re: PACIFICORP dba PACIFIC POWER
Application for Approval of Deer Creek Mine Transaction
Docket No. UM 1712

Dear Filing Center:

Enclosed for filing in the above-referenced docket, please find the Opening Brief of the Industrial Customers of Northwest Utilities.

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

Sincerely,

/s/ Hannah A. Adams
Hannah A. Adams

Enclosure

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1712

In the Matter of	)
	)
PACIFICORP d/b/a PACIFIC POWER	)
	)
Application for Approval of Deer Creek Mine Transaction.	)
	)
_____	)

OPENING BRIEF OF THE

INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES

April 21, 2015

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I. INTRODUCTION

The Industrial Customers of Northwest Utilities ("ICNU") respectfully requests that the Oregon Public Utility Commission ("OPUC" or the "Commission") reject the stipulation filed by PacifiCorp (or the "Company") and the Citizens' Utility Board of Oregon ("CUB") (collectively, the "Settling Parties") on March 25, 2015 ("Stipulation"). The Stipulation violates the Commission's prohibition against single-issue ratemaking. Accordingly, ICNU maintains that any ratemaking treatment associated with the Transaction is inappropriate in the context of this proceeding.[1/]

Moreover, while party compromise and settlement agreement is a common feature in practice before the Commission, CUB's reversals on critical Transaction elements, including the prohibition against single-issue ratemaking, have significant implications regarding the competency of evidence filed in support of the Stipulation. In light of recent stipulation rejections by the Commission due to similar deficiencies in competent, supporting evidence, ICNU believes the Stipulation should also be rejected.

The Company has presented the various components of the Transaction as an integrated, non-severable package. ICNU takes the position that the Commission should treat Transaction components as severable. Parties are sharply divided over the propriety and permissible treatment of individual Transaction components, with ICNU, Staff, and the Sierra Club all opposing public interest findings for various Transaction components. ICNU does not recommend that the Commission: a) find the Transaction prudent, in its entirety; or b) allow for

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[1/] The Company defines the "Transaction" as the settlement of its Retiree Medical Obligation related to Energy West Mining Company ("Energy West") union participants, combined with four components of the Deer Creek Mine closure: 1) direct closure costs; 2) United Mine Workers of America ("UMWA") 1974 Pension Trust withdrawal liability ; 3) sale of mining assets to Bowie Resource Partners, LLC ("Bowie"); and 4) a replacement Huntington plant coal supply agreement ("CSA") and an amended Hunter plant CSA, both with Bowie. Stipulation at ¶ 3.

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requested accounting treatment, upon a "blanket" finding that the retirement of the Deer Creek Mine is in the public interest, based upon a review of the Transaction as a non-severable whole. Therefore, ICNU recommends that any accounting treatment authorized be only for Transaction components considered to be in the public interest in an individual capacity, with the reservation of all prudency and ratemaking determinations until the Company's next general rate case ("GRC").

If the Commission approves ratemaking treatment in this proceeding, ICNU recommends that the Commission amortize any costs allowed over a nine-year period. This will avoid inter-generational inequity and allow for proper matching of costs and benefits between Transaction components, given that the largest proportion of net ratepayer benefit will not accrue for several years. Moreover, all amortization accounting should be dynamic, adjusted to reflect any future changes to inter-jurisdictional allocations of the Huntington facility. Finally, ICNU recommends several adjustments, in the event that ratemaking treatment is allowed.

II. BACKGROUND

In PacifiCorp's most recent, 2014 GRC, the Commission adopted an unopposed stipulation containing a "General Rate Case Stay-Out" provision.[2/] As the Commission noted, the earliest effective date for the Company's next GRC is January 1, 2016.[3/] The Commission further noted that while "parties may file for deferrals," PacifiCorp and all parties to the stipulation agreed that "their goal is to minimize rate changes during this period."[4/]

On October 31, 2014, Energy West, a wholly-owned subsidiary of PacifiCorp, reached a settlement agreement with UMWA comprised of several Memoranda of

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[2/] Re PacifiCorp, UE 263, Order No. 13-474, App. A at ¶ 15 (Dec. 18, 2013).
[3/] Id. at 6.
[4/] Id.

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Understanding and a 2014 Wage Agreement.[5/] As a result of this settlement, the Company "was successful in transferring its Retiree Medical Obligation ("RMO") associated with Energy West union participants to the UMWA."[6/] Then, on December 12, 2014, PacifiCorp executed the various asset purchase and sale agreements associated with the Transaction and initiated this proceeding by filing its Application.[7/]

Initially, the Company sought a $42.6 million (or 3.4% overall) rate increase through the Application, effective June 1, 2015, to be amortized over a single year.[8/] The Company's initial request sought prudence and public interest findings for the Company's decision to enter into the Transaction,[9/] along with ratemaking treatment for mine closure costs, the accelerated recovery of undepreciated mine investment, loss on mining asset sales, and an RMO settlement loss.[10/] All non-Company parties filed testimony in opposition to Application requests on March 5, 2015.[11/]

Through reply testimony on March 19, 2015, PacifiCorp modified its requested rate increase to $39.2 million over a two-year amortization period, effective June 1, 2015, with interest accruing during the amortization period at 5.25%.[12/] Through this modified proposal, the Company continued to seek special ratemaking treatment for undepreciated investment in the Deer Creek Mine and estimated closure costs, but transferred the collection of certain costs, such as the RMO loss, to a regulatory asset, while also transferring the loss on the sale of mining

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5/ PAC/100, Crane/15; accord Application for Approval of the Deer Creek Mine Transaction ("Application") at 7.

6/ PAC/100, Crane/16.

7/ PAC/101-103. Note that the non-confidential cover page of each exhibit lists the December 12, 2014 date. See also PAC/100, Crane/i.

8/ Application at 2, Att. B.

9/ Id. at 2.

10/ Stipulation at ¶ 4.

11/ Staff also filed cross-answering testimony on March 19, 2015, in continuing opposition to the Application.

12/ PAC/400, Dalley/10-11; PAC/401, Dalley/2.

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assets to the Company's existing property sales balancing account.[13/] The modified proposal also incorporated an "offset" credit for the return on the mine investment currently reflected in rates.[14/]

The Stipulation, filed less than a week after Pacific Power's reply testimony, incorporates many of the modified proposal elements. The Settling Parties changed the proposed rate increase to $31.6 million, effective January 1, 2016, and including interest at a 3.31% rate, beginning June 1, 2015[15/]—but, rather than representing a decrease in overall costs associated with the Transaction, the reduction in the requested rate increase from the modified proposal represents a shift in certain costs to a proposed regulatory asset, including mine closure costs incurred after November 30, 2015.[16/]

The mechanism for the Settling Parties' requested rate increase is a newly proposed tariff, Schedule 198, which would affect all major Pacific Power delivery service rate schedules through application of specified rate multipliers.[17/] In addition to the request for a rate increase, the Settling Parties seek approval for the establishment of regulatory assets for costs not to be collected through the application of Schedule 198, similar to proposals in Company reply testimony.[18/] PacifiCorp continues to seek a Commission determination that the Deer Creek Mine closure is in the public interest, and that the Company's decision to enter into the Transaction is prudent.[19/] Finally, the Company has stated, unequivocally, that its "requests for regulatory approvals are not severable because they are all integral to the Transaction."[20/]

13/ PAC/400, Dalley/10-12.
14/ Id. at 12.
15/ Stipulation at ¶ 11, Exh. A at 3.
16/ See id. at ¶ 15.
17/ Id. at ¶¶ 13-14, Exh. A; PAC/401, Dalley/1.
18/ Stipulation at ¶¶ 15-18.
19/ Id. at ¶¶ 9-10.
20/ PAC/500, Crane/13.

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On April 3, 2015, the Settling Parties filed a Confidential Joint Brief in Support of Stipulation ("Stipulation Brief"). ICNU, along with Staff and the Sierra Club, filed written objections and/or responsive testimony to the Stipulation on April 10, 2015.[21/] In the interests of economy, ICNU refers the Commission to objections raised and explained in the Written Objections of ICNU to the Stipulation ("ICNU Written Objections").

III. STANDARD OF REVIEW

Single-issue ratemaking is prohibited in Oregon. According to the Commission, focusing on "an isolated rate component, without considering whether other factors offset this amount …. [w]ould constitute single-issue ratemaking, which is prohibited."[22/] The exception to the prohibition against single-issue ratemaking is deferred accounting. While single-issue ratemaking does not account for offsets and can lead to an overstated revenue requirement, "Oregon's deferral statute recognizes this issue and mitigates the problem by requiring the Commission to conduct an earnings review of deferred amounts prior to amortization. ORS § 757.259(5)."[23/] Hence, the prohibition against single-issue ratemaking is violated by a large ratemaking request made outside of a general rate case, one which focuses on an isolated component of rates and fails to mitigate potential offsets through a holistic rate review, including an earnings review.

Under OPUC rules, "[a] general rate revision is a filing by a utility that *affects* all or most of the utility's rate schedules."[24/] In other words, classification as a general rate case

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21/ On March 27 and April 14, respectively, ICNU and Sierra Club submitted cross exhibits on previously authorized filing dates, prior to scheduled hearings which were ultimately cancelled.

22/ Re Portland Gen. Elec. Co. ("PGE"), Docket Nos. DR 10, UE 88, and UM 989, Order No. 04-597 at 6 (Oct. 18, 2004). In the same order, the OPUC affirmed a ruling which expressly rejected the contention of some parties that the Commission *could* restrict issues in a ratemaking proceeding, even down to single-issue ratemaking. Id. at 8, App. A at 12, 17.

23/ Re Nw. Natural Gas Co., Docket No. UG 221, Order No. 12-437 at 26 & n. 59 (Nov. 16, 2012).

24/ OAR § 860-022-0019(1) (emphasis added); accord OAR § 860-022-0017(1).

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does not require that a utility directly change all or most rate schedules, but only that all or most rate schedules are affected by a utility filing. Further, among other requirements, a general rate revision filing must contain a utility's requested return on capital and return on equity.[25/]

As with all "requests for agency action, an applicant is initially responsible for both the burden of persuasion and the burden of production."[26/] Moreover, "the burden of persuasion always rests with the applicant."[27/] Accordingly, the burden of persuasion always rests with PacifiCorp in this proceeding, such that the Company's "evidence must be persuasive enough to satisfy all requirements required by" Oregon law,[28/] including a persuasive demonstration that proposed ratemaking treatment outside of a general rate case is permissible.

When issues associated with stipulations "raise significant public policy considerations," the Commission has previously determined "that these issues should not be resolved through a stipulation, but rather through a more thorough examination of the facts and policy standpoints."[29/] Likewise, the Commission will reject a settlement, even through unanimous stipulations, if settling parties do not "fairly and prudently resolve" cost sharing issues between customers and the utility.[30/] To the extent that the Commission engages in ratemaking treatment in this proceeding, the Commission may only accept a stipulation based upon "an independent finding, supported by substantial competent evidence in the record as a whole, that the settlement will establish just and reasonable rates."[31/]

[25/] OAR § 860-022-0019(1)(e).
[26/] Re OPUC, Docket No. UM 1147, Order No. 05-1070 at 5 (Oct. 5, 2005).
[27/] Id.
[28/] Id. at 6.
[29/] Re Nw. Natural Gas Co., Docket No. UM 1635, Order No. 13-424 at 7 (Nov. 18, 2013).
[30/] Id.
[31/] Re PacifiCorp, Docket No. UE 210, Order No. 10-022 at 6 (Jan. 26, 2010).

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IV. ARGUMENT

PacifiCorp has failed to carry its burden of proof that a $31.6 million rate increase is justified outside of a general rate proceeding, based solely on the Transaction. Moreover, the Company has not established that either prudency or public interest "blanket" determinations are warranted for the entire Transaction. Controlling law and factual evidence in this proceeding would, at most, support accounting treatment for a limited set of Transaction components considered in an individual, "severable" capacity. In all instances, ratemaking treatment and prudency determinations should be reserved for the Company's next GRC. Nonetheless, ICNU proposes specific rate adjustments, in the event that ratemaking is allowed in this proceeding.

A. The Settling Parties' Requested Rate Increase Should Not Be Approved Outside of a General Rate Proceeding

By requesting a rate increase via the application of proposed Schedule 198, the Settling Parties have asked the Commission to engage in prohibited single-issue ratemaking. Moreover, given that the Settling Parties' rate increase request falls within the Commission's definition for a general rate proceeding, the Settling Parties have violated OPUC rules by making such a request in a stand-alone rate proceeding. The Settling Parties' cited authority and rationale, as to why the requested rate increase is permissible, is either inapposite or unpersuasive. Accordingly, the Company has failed to carry its burden of proof justifying the application of Schedule 198 to produce a $31.6 million rate increase.

1. The Stipulation Constitutes Single-Issue Ratemaking and Should Be Denied

Oregon law prohibits single-issue ratemaking, or the isolated consideration of rate components without offsetting factors, barring the statutorily authorized deferral mechanism which mitigates the problem of offsetting rate factors by requiring an earnings test review prior

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to the amortization of deferred costs into rates. Hence, the Settling Parties' attempt to isolate the Transaction, without allowing for full consideration of all offsetting factors (including capital and earnings matters reviewed in the normal course of a GRC), is contrary to Oregon law.

Ironically, the Company contends that its flexibility regarding how Transaction costs should be recovered in rates "is limited by Oregon law and precedent associated with the Commission's decision regarding the early retirement of the Trojan nuclear power plant (the Trojan decision)."[32/] Yet, in this same "Trojan decision" recently affirmed by the Oregon Supreme Court, the Commission confirmed its stance against single-issue ratemaking. Specifically, the Commission determined that an "attempt to isolate one rate component" from others in a proceeding "represents a misunderstanding of ratemaking."[33/] The Commission then plainly stated that "ratemaking is holistic."[34/] Still further, this same "Trojan decision" expressly incorporated the findings and conclusions of Order No. 04-597, regarding the permissible scope of the Commission's review in the Trojan proceedings—i.e., the order in which the Commission definitively held that single-issue ratemaking "is prohibited," after certain parties sought to isolate most rate components from the scope of Commission review.[35/]

The Company also fails to recognize an additional irony in that "the Trojan decision," upon which it places such reliance, is an order from a GRC: Docket No. UE 88.[36/] PacifiCorp complains that the opposition of parties as to "how the costs of the Transaction

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32/ PAC/400, Dalley/3-4 (*citing* Re PGE, Docket Nos. DR 10, UE 88, and UM 989, Order No. 08-487 (Sept. 30, 2008), aff'd Gearhart v. Pub. Util. Comm'n of Oregon, 356 Or 216 (2014)).

33/ Re PGE, Docket Nos. DR 10, UE 88, and UM 989, Order No. 08-487 at 64.

34/ Id.

35/ Id. at 52; Order No. 04-597 at 6.

36/ See Docket Nos. DR 10, UE 88, and UM 989, Order No. 04-597 at 6 (noting "the *full blown* UE 88 general rate case") (emphasis added); Re PacifiCorp, Docket Nos. UM 995, UE 121, and UC 578, Order No. 02-469 at 5, n.6 (July 18, 2002) (describing UE 88 as "a PGE general rate case"); and Re PGE, Docket No. UM 989, Order No. 02-227 at 19 (Mar. 25, 2002) (stating that UE 88 was PGE's "first general rate case after the Trojan closure").

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should be recovered in rates" is "punitive" and "contrary to the Trojan decision."[37/] To the contrary, ICNU maintains that the Company, in now urging the Commission to apply ratemaking treatment *outside of a general rate proceeding*—ratemaking treatment originally determined *within* the appropriate context of a GRC, Docket No. UE 88—would exact both a punitive and illegal effect upon ratepayers.

a. Relevant Offsetting Factors Should Be Reviewed and Render Ratemaking Treatment outside a General Rate Case Improper

In response testimony, Mr. Mullins proposed several adjustments to PacifiCorp's rate increase requests amounting to millions of dollars in offsets. Indeed, in recommending a specific $2.6 million adjustment to account for a return on mining assets component of Company base rates that had not been removed in the original Application request, Mr. Mullins testified that this particular offset highlighted the impracticality of attempting to review the Company's ratemaking request outside of a general rate proceeding.[38/]

The Company partially acknowledged its error in reply testimony, proposing an "offsetting" credit of $2.6 million annually for undepreciated mine investment "currently reflected in rates,"[39/] Nonetheless, this concession only serves to emphasize the need for "holistic" ratemaking review in the full, GRC context; as Mr. Mullins explains: "Absent a comprehensive review of the Company's overall earnings—including a detailed review of the many ancillary and offsetting revenue requirement impacts of the Company's various

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[37/] PAC/400, Dalley/3-4.

[38/] ICNU/100, Mullins/23-24.

[39/] PAC/400, Dalley/12. The Stipulation proposal to defer the "return on" component of mining assets, however, rather than remove it entirely, is still improper. Compare ICNU/300, Mullins/16, with Stipulation ¶ 16.

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proposals—I do not think it is practical for the Commission to demonstrate that rates are fair, just, and reasonable …."[40/]

For instance, Mr. Mullins also identified a $3.7 million overstatement of Transaction costs due to the Company's failure to properly account for the Embedded Cost Differential ("ECD") provision of PacifiCorp's 2010 inter-jurisdictional cost allocation methodology ("2010 Protocol").[41/] The Company's reply to both ICNU's and Staff's recommendations for ECD adjustments in accord with the 2010 Protocol perfectly exemplifies the need for comprehensive review of all potentially offsetting rate factors in a general rate proceeding. PacifiCorp contends that "[i]t would be highly unusual and illogical to update the ECD outside of a general rate case, particularly because the vast majority of the elements used in the ECD calculation would not be updated as part of Staff's and ICNU's proposed adjustment."[42/] In short, PacifiCorp asks the Commission to reject any ECD corrections to prevent ratepayer harm on the claim that a comprehensive review within a GRC is necessary. While this is not a persuasive justification for avoiding the Company's ECD miscalculations, it is a very convincing demonstration of why isolated consideration of Transaction costs outside of a GRC is inappropriate. That is, the Company is using the single-issue ratemaking forum—*which it has unilaterally chosen*—as an unpersuasive "defense" against providing the sort of relevant offsetting analysis which would be required in the appropriate GRC context.

In all likelihood, numerous offsets in addition to those just mentioned would probably be uncovered in the context of a general rate proceeding. Not the least of these would include a comprehensive review of the Company's earnings, which, in this continued climate of

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[40/] ICNU/100, Mullins/23. See also ICNU/300, Mullins/3-6 (explaining that ratemaking must be supported by overall earnings).

[41/] ICNU/100, Mullins/20.

[42/] PAC/400, Dalley/17.

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low interest rates, may very well demonstrate that Pacific Power's authorized return rates should be reduced. Indeed, in supplemental responsive testimony, Mr. Mullins testifies that it is *critical* that ratemaking requests be supported by a showing of earnings.[43/]

b. The Settling Parties Rely upon Inapposite Precedent in an Attempt to Justify Single-Issue Ratemaking

i. Authority Cited in Company Testimony Is Unpersuasive

PacifiCorp's reliance upon inapposite precedent is not limited to "the Trojan decision." According to the Company, the lead example of "relevant Commission precedent" is to be found in docket UE 239,[44/] in which the Commission adopted a unanimous stipulation among Idaho Power Company ("Idaho Power"), Staff, and CUB, the only three parties to a case in which Idaho Power sought to establish a tariff to implement a balancing account related to the recovery of costs associated with early closure of the Boardman power plant.[45/] The Company's reliance upon UE 239 is unfounded for at least two crucial reasons.

First, unlike the Stipulation request that would implement Transaction costs through Schedule 198 outside of a GRC *de novo*, the establishment of a Boardman tariff for Idaho Power in UE 239 followed, and was dependent upon, two major Boardman determinations, including an initial GRC involving PGE. In chronological order, the Commission authorized: 1) a Boardman recovery tariff for PGE in GRC docket UE 215;[46/] 2) a change to PGE's previously authorized Boardman recovery tariff in UE 230;[47/] and 3) *then* Idaho Power's tariff to establish a Boardman balancing account and change revenue requirement, based

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43/ ICNU/300, Mullins/3-6.
44/ PAC/400, Dalley/4-5.
45/ Re Idaho Power, Docket No. UE 239, Order No. 12-235 (June 26, 2012).
46/ Re PGE, Docket No. UE 230, Order No. 11-242, App. A at 2 (July 5, 2011).
47/ Id. The Company concedes that "the Commission approved the use of a separate tariff to recover the accelerated depreciation and decommissioning costs in a general rate case" before later approving a change to the tariff in UE 230. PAC/400, Dalley/5, n.6.

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expressly on a reasonableness finding in UE 230.[48/] In other words, the Commission simply applied determinations already made for PGE, the majority owner and operator of Boardman, to Idaho Power, which owned a relatively minor, or 10% share of Boardman.[49/] By no means did the Commission establish groundbreaking precedent through UE 239 to inaugurate a new era of "stand-alone tariff filing[s],"[50/] as the Company effectively contends.

Second, in UE 239, the Commission adopted a settlement stipulation, which, by its very terms, states that there is no agreement "that any provision of this Stipulation is appropriate for resolving issues in any other proceeding."[51/] Reliance upon stipulated resolutions to proceedings is a recurring theme in the "precedent" cited by the Company. Nevertheless, settlements and compromises concerning reasonable outcomes in a proceeding should not be misapplied as controlling precedent. Indeed, the Washington Utilities and Transportation Commission ("WUTC") reproved the Company within the last month for attempting to misuse settlement terms in precisely this manner.[52/]

The Company cites four other "stand-alone tariff filings" portrayed as "precedents," in light of which PacifiCorp claims that "the Commission's general policy against single-issue ratemaking should not preclude the approval of the Company's proposed Deer Creek Mine Closure tariff."[53/] All of these "precedents," however, amount to nothing more than the adoption of settlement stipulations. In fact, three of the four stipulations were unopposed, and

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48/ Docket No. UE 239, Order No. 12-235 at 3 & n.2.
49/ See id., App. A at 1.
50/ PAC/400, Dalley/4-5.
51/ Docket No. UE 239, Order No. 12-235, App. A at 7.
52/ WUTC v. Pacific Power, Dockets UE-140762 *et al.*, Order 08 at ¶ 268 & n.406 (Mar. 25, 2015) (rejecting the Company's reliance on a docket "resolved on the basis of a settlement among the parties that by its own terms, as approved by the Commission, does not establish precedent *in any sense of the word*") (emphasis added).
53/ PAC/400, Dalley/5-6 & nn.10-12.

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the sole opposition to settlement did not concern an objection regarding single-issue ratemaking.[54/]

Looking even closer at these "precedents" renders them even less persuasive. While the Company points to an alleged stand-alone tariff filing "to allow a utility to include a new generating plant in rates,"[55/] the order cited is from docket UE 248, an Idaho Power "General Rate Revision Application" proceeding.[56/] Moreover, in addition to being formally docketed and considered by the Commission as a "general rate" proceeding and not a "stand-alone tariff filing," Idaho Power submitted an executive summary with its application which contained requested capital and equity return rates,[57/] as required under OPUC rules for any general rate revision request that "affects all or most of a utility's rate schedules."[58/]

Likewise, a close examination of docket UE 189—the cited, "stand-alone" filing regarding PGE's accelerated depreciation for advanced metering infrastructure ("AMI")—reveals that the AMI issues considered in that proceeding were expressly reserved holdovers from PGE's prior GRC, docket UE 180. PGE not only included excerpts from UE 180 testimony related to AMI in its initial UE 189 advice filing, but PGE explicitly recounted that it had "delinked AMI from the rate case *with the provision* that previously filed AMI testimony could be included in any subsequent AMI docket."[59/]

Lastly, in affirming the original stipulation approval in dockets UM 1520/ UG 204, the Commission made a statement highly relevant to the present Transaction

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54/ See Re PGE, Docket No. UE 189, Order No. 08-245 at 5-7 (May 5, 2008) (stating the opposing position of the Citizens' Utility Board of Oregon, which essentially focused on the premature retirement of Advanced Metering Infrastructure).

55/ PAC/400, Dalley/5 & n.10.

56/ Re Idaho Power, Docket No. UE 248, Order No. 12-358 (Sept. 20, 2012).

57/ Re Idaho Power, Docket No. UE 248, Advice No. 12-06 at 6 (Mar. 9, 2012)

58/ OAR § 860-022-0019(1)(e).

59/ Re PGE, Docket UE-189, Advice No. 07-08 at 3 (Mar. 7, 2007) (emphasis added).

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consideration. Specifically, although finding utility cost comparisons between a proposed, long-term fuel "Transaction" and other supply alternatives "informative," the Commission stated: "in future cases where long-term transactions are being considered we expect utilities to go beyond transaction level analysis and to provide analysis of *entire resource portfolios*."[60/] Given the strong analog provided by the Company's fuel supply cost comparisons in the present case (e.g., comparison of the "Transaction" case to the "Market" and Keep" cases),[61/] the Commission's stated expectation is directly applicable here. That is, the Company should have filed its Transaction rate request in the context of a review encompassing its "entire" portfolio, best achieved through a GRC and not a "stand-alone" mine closure filing.

ii. Authority Cited in the Stipulation Brief Is also Unconvincing

The Settling Parties cite to various authority in support of ratemaking treatment in the present docket, contending that "the types of costs that are included in the Deer Creek Mine Closure tariff are generally recoverable in rates."[62/] As noted in ICNU Written Objections, however, the Settling Parties fail to recognize critical distinctions as to when and in what manner such costs have been and can be recovered.[63/] As explained in further detail below, the statutory or precedential authority cited by the Settling Parties does not lend support to the proposed rate increase through the Deer Creek Mine closure tariff.

The Settling Parties' citation to ORS § 757.140(2)(b), as "allowing recovery of undepreciated investment," is misplaced.[64/] PacifiCorp originally requested approval for its

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60/ Re Nw. Natural Gas Co., Docket Nos. UM 1520 & UG 204, Order No. 11-176 at 9, n.23 (May 25, 2011) (emphasis added).
61/ Cf. Stipulation Brief at 14 (stating "the costs at issue here relate to a fuel cost").
62/ Id. at 11.
63/ ICNU Written Objections at 3.
64/ Stipulation Brief at 11, n.54.

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proposed tariff pursuant to ORS § 757.210,[65] which allows for a "[h]earing to establish new schedules." Conversely, as an accounting statute and not a statute sufficient for the authorization of new rate schedules, ORS § 757.140 does not, by itself, provide authority for a rate increase via the proposed Deer Creek Mine tariff.[66]

Most of the authority cited by the Settling Parties shares a common trait that, again, demonstrates the complete impropriety of the Stipulation ratemaking request—i.e., an initial approval of accounting treatment *only*, with ratemaking and prudency determinations expressly reserved for later treatment.[67] For instance, PacifiCorp's recovery of costs associated with the early closure of the Trail Mountain Mine was a two-fold process, involving an initial approval of a deferred accounting request followed by the approval of a stipulation that provided for rate treatment in a later, consolidated proceeding.[68]

Likewise, cost treatment of undepreciated investment associated with closure of the Company's Powerdale plant was authorized "in a future ratemaking proceeding," with the Commission only approving a request for an accounting order pursuant to ORS § 757.140(2) in the decision cited by the Company.[69] Citation by the Settling Parties to docket UM 978 also demonstrates nothing more than the Commission's willingness to approve an application for an

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65/ Application at 2.

66/ See, e.g., Re PacifiCorp, Docket No. UM 1298, Order No. 07-375, 2000 WL 1288653 (Aug. 23, 2007) (approving a request for an accounting order pursuant to ORS § 757.140(2) in association with an early plant closure, but expressly reserving treatment of undepreciated investment for "a future ratemaking proceeding").

67/ Stipulation Brief at 11 & nn.54-56.

68/ Compare Re PacifiCorp, Docket No. UM 1047, Order No. 02-224 at 1 (Mar. 29, 2002) (approving, pursuant to ORS § 757.259, "PacifiCorp's request to record unrecovered costs associated with the closure of Trail Mountain Mine *for accounting purposes only*") (emphasis added), with Re PacifiCorp, Docket Nos. UE 234 & UM 1047, Order No. 02-343 at 4-5 (May 20, 2002) (adopting a stipulation providing for recovery of a portion of Trail Mountain Mine closure costs).

69/ Re PacifiCorp, Docket No. UM 1298, Order No. 07-375, 2000 WL 1288653.

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accounting order, based upon Staff's recommendation that PacifiCorp could seek amortization and rate base treatment "in its next general rate proceeding."[70/]

Finally, the Settling Parties' reliance on docket UM 1680 is unconvincing, as well as ironic, given that the Commission adopted a Staff recommendation to approve nothing more than an accounting order related to a pension fund withdrawal liability.[71/] In that case, Staff emphasized that the recommended accounting order would "not determine the *prudency* of the Company's withdrawal from the Fund."[72/] Notwithstanding, the Settling Parties are presently requesting a determination that the Company's decision to enter into the Transaction was prudent, including PacifiCorp's decision regarding the Pension Trust withdrawal liability.[73/]

2. The Proposed Stipulation Rate Increase "Affects" All Major Company Rate Schedules, Rendering Consideration outside a GRC Improper

The Commission's definition of what constitutes a "general rate revision" is plainly and consistently articulated by rule. A general rate revision is: 1) a "filing"; 2) by a "utility"; 3) which "affects all or most of the utility's rate schedules."[74/] As all three rule elements are satisfied by the Stipulation rate increase proposal, the Company should have presented its rate request in the context of a general rate proceeding. Thus, the Company's election to essentially file a single-issue "mine closure rate case" renders the proposed Stipulation rate request improper, in violation of OPUC rules.

The first two elements of the "general rate revision" definition are uncontroverted; the Stipulation is obviously a "filing," and there is no question that the Company is a "utility" subject to OPUC jurisdiction. PacifiCorp does, however, claim that its rate increase

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70/ Re Application of PacifiCorp, Docket No. UM 978, Order No. 00-406, App. A (July 24, 2000).
71/ Re Nw. Natural Gas Co., Docket No. UM 1680, Order No. 14-041 (Feb. 5, 2014).
72/ Id., App. A at 3 (emphasis added).
73/ Stipulation at ¶¶ 3, 9.
74/ Compare OAR § 860-022-0017(1), with OAR § 860-022-0019(1).

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proposals do not satisfy the definition of a general rate revision because: a) "the Company is not proposing a change to 'all or most of' its rate schedules"; and b) "approval of Schedule 198 would," allegedly, "affect only one rate schedule—Schedule 198—and no others."[75/] ICNU submits that these arguments are unconvincing.

The Company's first point is a simple misstatement of Commission rules, implicating statutory and precedential authority prohibiting the insertion of terms into law.[76/] OPUC rules define a general rate revision as a utility filing which "*affects* all or most of a utility's rate schedules."[77/] The Commission very plainly approved the word "affects" in its rules—not "change," or "changes"—meaning that a utility does not have to positively change "all or most of" its schedules in order for a filing to qualify as a "general rate revision." Rather, merely affecting all or most of its rate schedules is sufficient to meet the definition.[78/] Hence, ICNU is not improperly "misreading the Commission's rules," as the Company contends.[79/]

Second, the Company's claim that Schedule 198 would affect only itself is demonstrably false. In the Stipulation filing, the Settling Parties included a spreadsheet detailing the "estimated effect of proposed price change on revenues from electric sales to ultimate consumers *distributed by rate schedules* in Oregon."[80/] The spreadsheet contains a column showing the estimated percentage change in net rates for all thirteen major rate schedules, including residential, commercial, industrial, and street lighting schedules that would be affected

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75/ PAC/400, Dalley/7.

76/ E.g., ORS § 174.010; State v. Hall, 327 Or 568, 580 (1998).

77/ OAR § 860-022-0017(1); OAR § 860-022-0019(1) (emphasis added).

78/ To "affect" means "to produce an effect (as of disease) upon," or "to produce a material influence upon," allowing for an indirect relationship between the catalyst and the thing affected—i.e., Schedule 198 and 'all or most of" the Company's rate schedules. WEBSTER'S NEW INTERNATIONAL DICTIONARY 35 (3d ed. 1993). Conversely, to "change" means "to make different" or "to make over to a radically different form," signifying a much more direct alteration than merely affecting. Id. at 373.

79/ PAC/400, Dalley/7. Indeed, any "misreading" of the rules is accurately attributed to the Company, which substitutes the word "change" into the rules after correctly quoting the term "affects." Id.

80/ Stipulation, Exh. A at 4 (emphasis added).

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by the proposed Schedule 198. In relation to industrial rate schedules, footnote 2 on the same exhibit page states: "Percentages shown for Schedules 48 and 47 reflect the combined *rate change for both schedules*."[81/] This statement, standing alone, would be sufficient to indicate a "change" to other rate schedules, never mind a demonstration that Schedule 198 merely "affects" those schedules.

B. If Allowed, a Rate Increase Should Be Dynamically Amortized over a Nine-Year Period and Include Appropriate Adjustments

ICNU firmly believes that the ratemaking treatment requested in the Stipulation would be inappropriate as a contravention of the prohibition against single-issue ratemaking and OPUC rules defining what constitutes a general rate revision. Given these "significant public policy considerations," not to mention the very significant legal ramifications associated with the single-issue ratemaking standard, ICNU recommends that the Commission should, as it has done in similar circumstances, determine "that these issues should not be resolved through a stipulation, but rather through a more thorough examination of the facts and policy standpoints."[82/]

Nevertheless, in the event that the Commission approves some form of ratemaking for Transaction costs, ICNU recommends the approval of a nine-year dynamic amortization period, with offsetting adjustments to the Settling Parties' rate requests, based upon the testimony of Mr. Mullins.

1. A Nine-Year Dynamic Amortization Period Would Appropriately Balance Company and Customer Interests

If ratemaking is allowed in this proceeding, ICNU's recommendation for a nine-year amortization period would accord with precedent and good regulatory policy by precisely

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81/ Id. (emphasis added).

82/ Docket No. UM 1635, Order No. 13-424 at 7.

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matching expected Transaction costs and benefits between the Company and ratepayers.[83/] As Mr. Mullins points out, the record does not contain any argument by the Settling Parties "that a two-year amortization period is necessary in order to properly match ratepayer costs with benefits. Nor have they disputed the fact that the majority of ratepayer benefits associated with the Transaction will not be recognized until well after the end of the Deer Creek Mine's original useful life."[84/]

Conversely, the record contains ample evidence supplied by ICNU to establish that an attempt to "equitably allocate the benefits and burdens" of PacifiCorp customers associated with the Transaction, in keeping with Trojan precedent relied upon by the Settling Parties,[85/] supports the use of a nine-year amortization period. Specifically, through two testimony filings including graphic illustration and a dedicated exhibit, Mr. Mullins demonstrates that customer costs will far exceed benefits over the two-year amortization period recommended by the Settling Parties.[86/] ICNU supports a nine-year amortization period based upon Mr. Mullins' demonstration that ratepayer benefits are estimated to match ratepayer costs associated with the Transaction near the end of 2024.[87/]

ICNU recommends a "dynamic" amortization methodology because it allows for an appropriate response to any changes that could occur in Oregon's allocation of the Huntington facility over any authorized amortization period.[88/] As Mr. Mullins illustrates through Table 1 of his response testimony, a dynamic amortization methodology would match the allocator assigned

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83/ See ICNU Written Objections at 7-9; ICNU/300, Mullins/6-11.
84/ ICNU/300, Mullins/7.
85/ ICNU Written Objections at 8-9.
86/ See ICNU/300, Mullins/7; ICNU/100, Mullins/10-14; Confidential Exhibit ICNU/302.
87/ ICNU/300, Mullins/11; Confidential Exhibit ICNU/302.
88/ ICNU/300, Mullins/11.

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to Huntington with the amortization reflected in Oregon rates.[89/] Notwithstanding the Company's opposition to dynamic amortization—which includes no substantive critique of the "dynamic" component of ICNU's proposal, focusing only on a complaint that the amortization period "is unreasonably long"[90/]—there should be no rational argument that a dynamic methodology will do anything other than "equitably allocate" Transaction benefits and burdens under any potential Huntington allocation scenario.

2. Several Adjustments Should Be Included in Any Ratemaking Approval

If ratemaking is allowed in this proceeding, ICNU recounts and summarizes the following recommended ratemaking adjustments proposed by Mr. Mullins, on an Oregon-allocated basis:

1) an approximate $3.7 million rate reduction for proper ECD allocation;

2) a $2.6 million reduction to eliminate the return on mining assets component presently included in rates;

3) a $1.3 million reduction to remove prohibited construction work in progress ("CWIP") expenditures;

4) removal of the RMO settlement loss;

5) the approval of a 1.92% amortization interest rate, based on the yield for a ten-year Treasury bond to coincide with ICNU's recommended nine-year amortization period; and

6) an approximate $9.7 million cap on Oregon allocated rates attributable to the Pension Trust withdrawal liability.

a. The Company's Failure to Account for the ECD Provision of the 2010 Protocol Creates an Overstatement of Transaction Costs

As noted in the discussion concerning single-issue ratemaking and the need to account for offsetting factors in rate setting, PacifiCorp's opposition to an ECD adjustment is

89/ ICNU/100, Mullins/15.
90/ PAC/400, Dalley/15.

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unpersuasive. As Mr. Mullins explains, the Settling Parties did not resolve ECD issues, since within the Stipulation "no attempt was made to account for the ECD when allocating the proposed undepreciated investment costs to Oregon customers."[91/] Thus, while the final amount of an ECD credit would need to be adjusted in relation to the amount of any unrecovered investment approved,[92/] the record contains sufficient evidence of base ECD calculations to support Mr. Mullins' recommended adjustment.[93/]

b. The Stipulation Does Not Properly Remove the Return On Mining Assets Component in Rates

The Settling Parties propose only to defer, rather than remove, the return on component in rates attributable to mining assets.[94/] Mr. Mullins testifies that, in light of the Settling Parties' acknowledgement that the Company is presently recovering about $2.6 million in rates for the return on undepreciated mining assets, the Company would be intentionally over-collecting revenues until the conclusion of the next GRC.[95/] Needless to say, the Company should not be afforded such undue collections at ratepayer expense, prompting ICNU to recommend that any rate increase approval be reduced by about $2.6 million to eliminate the mining asset "return on" component in rates.

c. The Company Should Not Be Allowed to Collect CWIP Expenditures

Although the Deer Creek Mine is no longer used and useful, having ceased all coal production on January 7, 2015,[96/] the Settling Parties have included CWIP expenditures in the Stipulation, despite the fact that the Stipulation filing occurred over two months later, on March 25, 2015. As Mr. Mullins demonstrates through testimony and a supporting exhibit, the

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91/ ICNU/300, Mullins/14.
92/ Id. at 15.
93/ See ICNU/100, Mullins/20-21; ICNU/103.
94/ Stipulation at ¶ 16.
95/ ICNU/300, Mullins/16 (*citing* Stipulation Brief at 15).
96/ ICNU/301 (Company response to ICNU Data Request ("DR") 1.25).

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CWIP includes expenditures for items such as mining reserves and equipment that were never ultimately used for utility service.[97/] Consequently, ICNU recommends that CWIP expenditures, amounting to approximately $1.3 million on an Oregon basis ($5.1 million total Company), be excluded from any rate increase approval, as not being used or useful for utility service.[98/]

d. The RMO Settlement Loss Should Not Be Included in Rates

As Mr. Mullins testifies: "The settlement loss appears to be unrelated to the Transaction and was incurred prior to when the Company submitted its application."[99/] Moreover, Mr. Mullins testifies that the RMO loss should not be eligible for rate recovery since it "represent[s] a paper loss, rather than an actual expenditure … incurred in connection with retiring the Deer Creek Mine assets."[100/] Accordingly, ICNU believes it would be appropriate to exclude the RMO loss from any rate recovery allowed in this proceeding.[101/]

e. An Amortization Rate of 1.92% Will Adequately Compensate the Company for the Time Value of Money

If the Commission approves ratemaking treatment, ICNU believes that a 1.92% amortization rate will adequately compensate PacifiCorp for the time value of money, and will also better align with Trojan precedent cited by the Settling Parties.[102/] In fact, ICNU's proposal is actually higher than CUB's primary recommendation of 1.51% in response testimony, although ICNU believes that CUB's rationale and methodology were essentially sound in deriving that figure.[103/] The difference in ICNU's recommendation is attributable to the use of a ten-year U.S. Treasury bond yield, to coincide with ICNU's recommendation for a nine-year

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97/ See ICNU/300, Mullins/14; ICNU/301 (Company response to ICNU DR 7.96).
98/ See ICNU Written Objections at 6 (explaining statutory and precedential authority which prohibits the inclusion of CWIP in rates for plant that is no longer used and useful).
99/ ICNU/100, Mullins/28.
100/ Id. at 28-29.
101/ ICNU's recommended adjustment is a confidential figure. See ICNU/100, Mullins/28.
102/ ICNU Written Objections at 9-10 (*citing* Stipulation Brief at 13, Order No. 08-487 at 73).
103/ Id. (*citing* CUB/100, Jenks-McGovern/8-9).

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dynamic amortization period, whereas CUB's initial calculations were based upon a five-year bond.[104/] Should the Commission approve a shorter amortization period, however, ICNU recommends the use of either a 1.51% or 0.63% rate, respectively, based upon CUB's initial analysis and depending on whether the authorized period is closer to five or two years.[105/]

f. Recovery of the Pension Trust Withdrawal Liability Should Be Capped

Mr. Mullins recommends that a total Company cap of $39.4 million (or, approximately $9.7 million, on Oregon-allocated basis) should be placed on Trust liability amounts recoverable in rates. The record shows the reasonableness of this cap, based upon Mr. Mullins' calculation of the perpetuity value of the pension withdrawal annuity to ratepayers, using the Company's most recently authorized cost of capital (7.62%).[106/] Implementation of such a cap will ensure that ratepayers are protected during pending negotiations related to a lump-sum payment option for the Company's Trust liability.[107/]

IV. CONCLUSION

ICNU respectfully requests that the Commission deny any ratemaking requests in this proceeding as contrary to the prohibition against single-issue ratemaking and OPUC rules concerning "general rate revision" requirements. ICNU recommends that the Commission reject the Stipulation based on a lack of sufficient supporting evidence, including CUB's contradictory positions on single-issue ratemaking and other issues. Moreover, ICNU does not believe it would be appropriate to render single prudency or public interest determinations on the entire Transaction as a non-severable whole, with public interest determinations on each Transaction

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104/ Compare ICNU/300, Mullins/12, with CUB/100, Jenks-McGovern/8-9.

105/ See CUB/100, Jenks-McGovern/8-9.

106/ ICNU/100, Mullins/16-19. Indeed, Mr. Mullins' argument has even greater force based upon the Pension Trust's updated return expectation of 7.8%. Compare ICNU/203 (Company 1st Supp. Response to ICNU DR 1.21), with ICNU/100, Mullins/17-18.

107/ ICNU/100, Mullins/19.

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element presenting a better option. Finally, to the extent ratemaking treatment is allowed, ICNU asks that the Commission approve the rate adjustments detailed herein.

Dated this 21st day of April, 2015.

Respectfully Submitted,

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