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Public Utility Commission of Oregon
3930 Fairview Industrial Dr. S.E.
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Attn: Filing Center

**RE: Docket UM 1712—Application for Approval of Deer Creek Mine Transaction
Confidential Joint Brief in Support of Stipulation**

PacifiCorp d/b/a Pacific Power (Company) encloses for filing the confidential joint brief in support of the stipulation between the Company and the Citizens' Utility Board of Oregon.

Confidential pages are being provided in accordance with Protective Order No. 14-431.

If you have any questions please contact Natasha Siores, Director, Regulatory Affairs & Revenue Requirement, at (503) 813-6583.

Sincerely,

R. Bryce Dalley
Vice President, Regulation

Enclosure

cc: UM 1712 Service List

CERTIFICATE OF SERVICE

I certify that I electronically filed a true and correct copy of PacifiCorp and Citizens' Utility Board of Oregon's Confidential Joint Brief in Support of the Stipulation with the Public Utility Commission of Oregon Filing Center, who will serve the parties listed below via electronic mail in compliance with OAR 860-001-0180. PacifiCorp will provide a Confidential CD to the following parties that can receive confidential information via Overnight Delivery.

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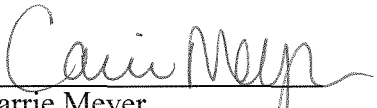
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Dated this 3rd of April, 2015.


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**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.

**CONFIDENTIAL
JOINT BRIEF IN SUPPORT OF
STIPULATION**

I. INTRODUCTION

In accordance with OAR 860-001-0350(7)(a), PacifiCorp d/b/a Pacific Power (PacifiCorp or Company) and the Citizens' Utility Board of Oregon (CUB) (collectively the Settling Parties) submit this joint brief in support of the Stipulation that was filed on March 25, 2015. The Stipulation is fully supported by the record in this case, represents an appropriate resolution of all legal and policy issues presented,¹ and will result in just and reasonable rates.² This brief describes the resolution of the issues in detail; the following points provide a high level overview of the essential components of the agreement:

First, the Stipulation concludes that the Company's decisions to close the Deer Creek mine and to sell the mining assets are in the public interest. The Stipulation also concludes that the Company's related decisions—to close the mine, withdraw from the United Mine Workers of America 1974 Pension Trust, settle its retiree medical obligation, sell the mining assets, and enter into new and amended coal supply agreements for its Huntington and

¹ See, e.g., *In the Matter of PacifiCorp d/b/a Pacific Power 2010 Transition Adjustment Mechanism*, Docket No. UE 207, Order No. 09-432 at 6 (Oct. 30, 2009) ("The Commission concludes that the Stipulation is an appropriate resolution of all primary issues in this docket."); see also *In the Matter of PacifiCorp d/b/a Pacific Power Request for a General Rate Revision*, Docket No. UE 210, Order No. 10-022 at 6 (Jan. 26, 2010) ("When considering a stipulation, we have the statutory duty to make an independent judgment as to whether any given settlement constitutes a reasonable resolution of the issues.").

² See, e.g., *In the Matter of PacifiCorp d/b/a Pacific Power Request for a General Rate*, Docket No. UE 217, Order No. 10-473 at 7 (Dec. 14, 2010) ("We have reviewed the Stipulation, and find that it will result in rates that are fair, just, and reasonable.").

Hunter plants (together, the Transaction)—were prudent. Thus, the Stipulation evinces the Settling Parties’ agreement that the prudently incurred costs of the Transaction meet the Commission’s legal requirements for recovery.

Second, the Stipulation provides for PacifiCorp’s timely recovery through the Deer Creek Mine Closure tariff of the Company’s undepreciated investment in the Deer Creek mine and actual closure costs incurred through November 30, 2015. The proposed tariff moderates the impact on customers by amortizing these costs over two years and, by delaying amortization until January 1, 2016, avoids any conflict with the rate case stay-out agreed to in the Company’s 2013 general rate case. Moreover, the Stipulation allows the Company to earn reasonable interest on these costs, consistent with Commission precedent.

Third, the Stipulation allows the Company to establish a regulatory asset to record the remaining costs associated with the Transaction, thereby preserving the Commission’s and the parties’ ability to consider these costs in future ratemaking proceedings.

The Commission has explained that it may accept a non-unanimous settlement agreement “so long as we make an independent finding, supported by substantial competent evidence in the record as a whole, that the settlement will establish just and reasonable rates.”³ As discussed further below, the Transaction provides an opportunity for PacifiCorp to mitigate the risk of changing environmental regulations and provides substantial customer benefits. The Company and CUB request that the Commission find that the rates proposed in the Stipulation are just and reasonable based on the competent evidence in the record and approve the Stipulation in its entirety.

³ Order No. 10-022 at 6.

II. BACKGROUND

On December 12, 2014, PacifiCorp filed an application for approval of the closure of the Deer Creek mine and related matters.⁴ Located near Huntington, Utah, the mine is operated by Energy West Mining Company (Energy West), a wholly-owned subsidiary, which is consolidated with PacifiCorp for regulatory purposes.⁵ PacifiCorp filed the application on its own behalf and on behalf of Energy West.⁶

The Company's application for approval of the Transaction requested that the Commission issue an order:

- Finding that the Company's decision to close of the mine is in the public interest and the decision to enter into the Transaction, including the withdrawal from the 1974 Pension Trust, the settlement of the retiree medical obligation (Retiree Medical Obligation), and the new and amended coal supply agreements (CSAs) for the Huntington and Hunter plants (respectively), is prudent;⁷
- Approving the Deer Creek Mine Closure tariff, resulting in a one-year rate increase of \$42.6 million or 3.4 percent overall, effective June 1, 2015.⁸ The tariff includes the following:
 - Accelerated recovery of the undepreciated investment in the mine (approximately \$86.0 million total company or \$21.1 million Oregon allocated);⁹
 - Closure costs (approximately \$ [REDACTED] million total company or \$ [REDACTED] million Oregon allocated);¹⁰
 - Net loss on the sale of Mining Assets (approximately \$ [REDACTED] million total company, \$ [REDACTED] million Oregon allocated);¹¹
 - One-time retiree medical settlement loss (approximately \$ [REDACTED] million total company or \$ [REDACTED] million Oregon allocated);¹² and

⁴ Docket No. UM 1712, PacifiCorp's Application for Approval of Deer Creek Mine Transaction (Dec. 12, 2014) (Application).

⁵ See, e.g., *In the Matter of Pacific Power & Light Company, d/b/a PacifiCorp*, Docket No. UI 105, Order No. 91-513 (Apr. 12, 1991).

⁶ Application at 1.

⁷ *Id.* at 2.

⁸ *Id.* at 2, Attachment B at 2.

⁹ Application at 10; PAC/200, Stuver/3-6; Exhibit PAC/201.

¹⁰ Application at 11; PAC/200, Stuver/6-7; Exhibit PAC/201.

¹¹ Application at 10-11; PAC/200, Stuver/8; Exhibit PAC/201.

¹² Application at 12; PAC/200, Stuver/10-11; Exhibit PAC/201.

- A credit (reduction) for the difference between fuel costs from June 1, 2015, through December 31, 2015, included in rates through the 2015 transition adjustment mechanism (TAM) for the Huntington and Hunter plants and fuel costs under the CSAs (approximately \$1.0 million total company or \$0.25 million Oregon allocated).¹³
- Authorizing continued recovery of annual payments (\$3.0 million total company) to the 1974 Pension Trust through net power costs until the payments end, change, or the withdrawal obligation is otherwise satisfied;¹⁴
- Authorizing the creation of regulatory assets associated with the Transaction or deferred accounting if necessary to effectuate the requested regulatory treatment;¹⁵ and
- Approving the sale of the Mining Assets and allowing recovery of the loss through the Deer Creek Mine Closure tariff.¹⁶

The CSAs and the agreement to sell the Mining Assets are contingent upon receiving the necessary regulatory approvals by May 31, 2015. Accordingly, the Company requested that the Commission issue an order by May 27, 2015.¹⁷

CUB, the Industrial Customers of Northwest Utilities (ICNU), and the Sierra Club intervened in this docket. All parties participated in a technical workshop on January 23, 2015, and a Commission workshop on February 12, 2015. All parties also participated in settlement conferences held on February 12, February 23 and March 9, 2015. No settlement was reached during these conferences.

On March 5, 2015, the parties filed response testimony, generally supporting the Transaction, but objecting to aspects of PacifiCorp's ratemaking proposal. On March 19, 2015, the Company filed reply testimony, modifying its ratemaking proposal to address the parties' concerns. Building on the modifications in the Company's reply testimony and the

¹³ PAC/100, Crane/24; PAC/400, Dalley/10.

¹⁴ Application at 3; PAC/200, Stuver/9-10.

¹⁵ Application at 3-4, 10-11, 15; PAC/200, Stuver/5.

¹⁶ Application at 4; PAC/200, Stuver/8; PAC/400, Dalley/12.

¹⁷ Application at 2; PAC/100, Crane/2-3, 11-12.

three settlement negotiations, CUB and PacifiCorp met again on March 23, 2015, and reached a comprehensive settlement of the issues in this case. The settlement agreement, memorialized in the Stipulation filed on March 25, 2015, addresses the Company's requests for a prudence determination, a determination that the closure of the mine is in the public interest, and approval of the sale of Mining Assets. The settlement also addresses the ratemaking treatment of certain Transaction costs while reserving determination of the appropriate ratemaking treatment of other Transaction costs for the Company's next general rate case.

III. DISCUSSION

A. The Transaction Results in Substantial Customer Benefits

To recover the costs of the Transaction, the Company must prove that the decision to enter into the Transaction is prudent and in the public interest.¹⁸ The prudence standard requires the Company to demonstrate that its decision to enter into the Transaction was reasonable based on what the Company knew or should have known at the time the decision was made.¹⁹ There are two public interest standards applicable to the Transaction. For approval of an asset transfer, the public interest standard requires a showing that customers will not be harmed; to satisfy the public interest standard applicable to recovery of undepreciated investment in retired utility plant, the Commission applies a net benefits test.²⁰ Thus, the no harm standard applies to the sale of the Mining Assets, and the net benefits

¹⁸ See ORS 757.140(2)(b); OAR 860-027-0025(1)(1).

¹⁹ See e.g., *In the Matter of Portland Gen. Elec. Co. Application to Amortize the Boardman Deferral*, Docket No. UE 196, Order No. 10-051 at 6 (Feb. 11, 2010) (“In a prudence review, the Commission examines the objective reasonableness of a utility’s actions at the time the utility acted: Prudence is determined by the reasonableness of the actions based on information that was available (or could reasonably have been available) at the time.”) (internal citations and quotations omitted).

²⁰ *In re Portland Gen. Elec. Co.*, Docket Nos. DR 10, UE 88 & UM 989, Order No. 08-487 at 73 (Sept. 30, 2008) (Order No. 08-487), *affirmed Gearhart v. Pub. Util. Comm’n of Or.*, 356 Or 216 (2014).

standard applies to the Company's recovery of the undepreciated investment in the mine.

The Company demonstrates that the Transaction as a whole produces substantial net benefits for customers, and therefore satisfies both the no harm and net benefits public interest standards.²¹ The Settling Parties agree that the Company met these standards by establishing that the Transaction results in substantial net benefits to customers.

1. The Company's Present Value Revenue Requirement Calculations Demonstrate that the Transaction Produces Substantial Customer Benefits

The Commission applies a net benefits test to determine whether early closure of plant is in the public interest. To satisfy the net benefits test in this case, the Company must demonstrate that the estimated allowable long-term costs of continued mine operation are higher than the estimated allowable long-term costs of closing the mine and replacing its output.²² The Commission has previously allowed cost recovery of undepreciated investment and closure costs resulting from the early retirement of utility plant when early retirement produced customer benefits.²³ The Company's analysis, summarized below, demonstrates that customers will benefit from the Transaction.

²¹ Order No. 08-487 at 73 (to allow a utility to recover undepreciated investment in a retired utility plant, the Commission applies a net benefits test to determine whether the retirement is in the public interest, as required by ORS 757.140(2)(b)). A transaction is consistent with the public interest when it will not harm the Company's customers. *See In re Legal Standard for Approval of Mergers*, Docket No. UM 1011, Order No. 01-778 at 10 (Sept. 4, 2001) ("The remainder of the statutory scheme, those statutes governing transfer, sale, affiliated interest transactions, and contracts, either expresses no standard (for instance, ORS 757.480, .485) and has been read to require a no harm standard, or contains a 'not contrary to the public interest' standard (ORS 757.490, .495.)").

²² Order No. 08-487 at 73.

²³ *See, e.g., In re PacifiCorp, d/b/a Pacific Power & Light*, Docket No. UM 1047, Order No. 02-224 (Mar. 29, 2002) (allowing regulatory asset for Trail Mountain mine closure); *In re PacifiCorp, d/b/a Pacific Power & Light*, Docket Nos. UM 1047 & UE 134, Order No. 02-343 (May 20, 2002) (allowing full cost recovery of Trail Mountain mine closure costs). *See also In re PacifiCorp*, Docket No. UE 111, Order No. 00-580, Appendix B at 2 (Sept. 25, 2000) (approving rates that included the closure costs of the Dave Johnston mine); *In re PacifiCorp, d/b/a Pacific Power*, Docket No. UM 1298, Order No. 07-375 (Aug. 23, 2007) (approving request for an accounting order regarding Powerdale closure).

Consistent with the Commission's net benefits test, the Company compared the costs presented in three scenarios: (1) continuing to operate the Deer Creek Mine until depletion of the coal reserves in 2019, retention of the Mining Assets, and procuring third-party supply after 2019 (the Keep Case); (2) closing the Deer Creek Mine now, selling or reclaiming the Mining Assets, and entering into the CSAs described in the application for approval of the Transaction (the Transaction Case); and (3) closing the Deer Creek Mine now, no sale of the Mining Assets, and replacing the supply with market purchases (the Market Case).²⁴

Using these results, the Company developed three present value revenue requirement differentials: (1) the Keep Case versus the Transaction Case; (2) the Keep Case versus the Market Case; and (3) the Market Case versus the Transaction Case.²⁵ The Company also ran sensitivities for market coal pricing and pension withdrawal liabilities. The Company's analysis demonstrates that, under all sensitivities, the Transaction provides benefits over both the Keep and Market cases.²⁶

Importantly, no party except the Sierra Club challenged the Company's net benefit analysis.²⁷ Even accepting all of Sierra Club's adjustments—which the Company rebutted in its reply testimony²⁸—the Transaction still provides substantially greater customer benefits than either the Keep or Market cases.²⁹ The Settling Parties therefore agree that the Company demonstrated that the Transaction satisfies the net benefits standard and is prudent.

²⁴ Application at 14-15; PAC/100, Crane/26. The analysis compares the net present value of the revenue requirement for the three cases through 2029. PAC/100, Crane/26-27; Exhibit PAC/106.

²⁵ Application at 15; PAC/100, Crane/26-27.

²⁶ PAC/100, Crane/30; Exhibit PAC/106.

²⁷ PAC/500, Crane/2-4; Staff/100, Wittekind/15; CUB/100, Jenks-McGovern/3, 14, 19-21; ICNU/100, Mullins/29-30; Sierra Club/100, Fisher/6.

²⁸ PAC/500, Crane/5-11; PAC/700, Schwartz/3-5.

²⁹ PAC/500, Crane/4.

2. The Settling Parties Agree that the Company has Substantially Mitigated the Risk Associated with the Long-Term Huntington CSA

Staff, ICNU, and Sierra Club all raised concerns related to the long-term replacement CSA for the Huntington plant.³⁰ In particular, these parties argue that the long-term CSA commits PacifiCorp to burning coal at Huntington through 2029 and may harm customers if environmental regulations make it uneconomic to burn coal at Huntington during the term of the CSA.³¹ Initially, CUB had similar concerns.³² In reply testimony, the Company addressed the parties' concerns,³³ and the Settling Parties agree that the Company's termination rights under the CSA substantially and adequately mitigate the risk associated with a long-term CSA.

Like virtually all long-term coal supply agreements, the CSA includes a "take or pay" provision generally requiring the Company to purchase a minimum specified amount of coal or pay liquidated damages.³⁴ In this case the Company was able to mitigate the risks associated with the take or pay provision by negotiating a provision that provides the Company with broad termination rights if new environmental laws or regulations, or a settlement agreement, affect the Company's ability to burn coal at Huntington.³⁵ The clause was specifically intended to apply to a broad range of circumstances, allowing the Company to terminate the CSA without penalty if environmental requirements affect the Company's ability to burn the minimum amount of coal specified in the contract, including if the environmental requirements render the continuing to burn coal uneconomic.³⁶ The Settling

³⁰ Staff/100, Wittekind/15; ICNU/100, Mullins/29-30; Sierra Club/100, Fisher/6.

³¹ See Staff/300, Crider/6-7.

³² See CUB/100, Jenks-McGovern/10-14.

³³ PAC/500, Crane/5-11; PAC/700, Schwartz/3-5.

³⁴ PAC/100, Crane/12.

³⁵ Application at 9-10; PAC/100, Crane/13.

³⁶ PAC/500, Crane/5-7.

Parties agree that the provision substantially mitigates the risks otherwise posed to customers by the long-term CSA.

The Settling Parties further acknowledge that the Company committed to conduct its long-term resource planning based on the Company's stated intent in negotiating Article 8 of the CSA.³⁷ This commitment reflects the fact that the Company has no incentive to continue burning coal at Huntington when it is uneconomic to do so given the broad termination provisions in Article 8.³⁸

B. The Settling Parties' Proposed Deer Creek Mine Closure Tariff is Reasonable.

The Settling Parties recommend that the Commission approve the Deer Creek Mine Closure tariff as set forth in the Stipulation. The stipulated tariff would allow recovery of the Company's unrecovered investment in the Deer Creek mine (\$86.0 million total company or \$21.1 million Oregon allocated) and the Company's actual closure costs incurred through November 30, 2015 (estimated at approximately \$■■■ million total company or \$■■■ million Oregon allocated).³⁹

The costs included in the Deer Creek Mine Closure tariff will be amortized over two years, beginning on January 1, 2016.⁴⁰ Interest at the rate of 3.31 percent will accrue on the amounts that will be recovered through the tariff beginning on June 1, 2015, and continuing through the amortization period.⁴¹

³⁷ *Id.* at 7.

³⁸ *Id.*

³⁹ Stipulation at 4, Exhibit A at 2; PAC/400, Dalley/9-10.

⁴⁰ Stipulation at 4; CUB/100, Jenks-McGovern/16-17.

⁴¹ Stipulation at 4; CUB/100, Jenks-McGovern/22.

The Settling Parties also agree that the Company may establish a regulatory asset for amounts included in the tariff.⁴² This regulatory asset will be amortized as amounts are collected from customers through the tariff.⁴³

To implement the Deer Creek Mine Closure tariff, the Settling Parties agree that the Company will file a revised tariff Schedule 198 on December 1, 2015, with a January 1, 2016 effective date.⁴⁴ The revised tariff will include actual closure costs incurred through October 31, 2015, and estimated closure costs for November 2015.⁴⁵ The Company will update the compliance tariff with actual amounts from November 1, 2015, through November 30, 2015, on or before December 15, 2015.⁴⁶

The overall annual rate impact of the Deer Creek Mine Closure tariff is estimated to be \$15.8 million, or 1.3 percent.⁴⁷ The Settling Parties recommend that the rate spread be calculated using the generation allocation factors from the Company's most recent general rate case, docket UE 263.⁴⁸

1. The Rates resulting from the Deer Creek Mine Closure Tariff are Just and Reasonable

The Commission will approve stipulated rates if they are just and reasonable.⁴⁹ When evaluating rates, the Commission examines “the reasonableness of the overall rates.”⁵⁰ “To reach a determination on whether proposed rates are just and reasonable, [the Commission] look[s] at the record as a whole and make[s] a determination based on the preponderance of

⁴² Stipulation at 4; PAC/400, Dalley/11-13.

⁴³ Stipulation at 4; PAC/400, Dalley/11.

⁴⁴ Stipulation at 4.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* at 5.

⁴⁸ *Id.*; Application at 2, n. 2.

⁴⁹ Order No. 10-473 at 7 (“We have reviewed the Stipulation, and find that it will result in rates that are fair, just, and reasonable.”).

⁵⁰ Order No. 08-487 at 7-8.

the evidence.”⁵¹ Here, the record supports the Settling Parties’ recommendation to allow recovery of the undepreciated investment in the mine and estimated closure costs beginning January 1, 2016.⁵²

First, all parties generally agree that the Transaction is prudent and that early closure of the mine produces customer benefits.⁵³ Given these substantial customer benefits, it is reasonable to allow cost recovery of the undepreciated investment and closure costs through the Deer Creek Mine Closure tariff.

Second, the types of costs that are included in the Deer Creek Mine Closure tariff are generally recoverable in rates, which is one reason much of the dispute in this docket has been on the ratemaking treatment.⁵⁴ For example, the Commission allowed PacifiCorp to recover its costs associated with the early closure of the Trail Mountain mine, including \$6.6 million in undepreciated investment on an Oregon-allocated basis.⁵⁵ Similarly, in the closure of the Powerdale hydroelectric generating plant, the Commission granted PacifiCorp’s request to record and ultimately recover the undepreciated investment in the plant, based at least in part on Staff’s finding that plant closure was “the least cost option.”⁵⁶

⁵¹ *In the Matter of Portland Gen. Elec. Co. 2012 Annual Power Cost Update Tariff*, Docket No. UE 228, Order No. 11-432 at 3 (Nov. 2, 2011).

⁵² Stipulation at 3; PAC/400, Dalley/6-7, 12-13.

⁵³ PAC/400, Dalley/2-3; Staff/100, Wittekind/15; Staff/200, Bahr/16-19; Staff/300, Crider/9; CUB/100, Jenks-McGovern/3, 14, 19-21; ICNU/100, Mullins/29-30; Sierra Club/100, Fisher/6.

⁵⁴ ORS 757.140(2)(b) (allowing recovery of undepreciated investment); Order No. 02-343 (allowing full cost recovery of Trail Mountain mine closure costs); Order No. 07-375 (approving request for an accounting order regarding Powerdale closure); *see In re Portland Gen. Elec. Co.*, Docket No. UE 88, Order No. 95-322 at 55-56 (Mar. 29, 1995) (recovery allowed for prudently incurred decommissioning costs, defined as the total costs of removing an asset from service net of any salvage recovery); *In re Application of PacifiCorp*, Docket No. UM 978, Order No. 00-406 (July 24, 2000) (approved an accounting order for PacifiCorp’s 2000 early retirement and severance program); *In re Northwest Natural Gas Co., d/b/a NW Natural*, Docket No. UM 1680, Order No. 14-041 (Feb. 5, 2014) (allowed NW Natural to record a regulatory asset for pension fund withdrawal estimated at \$8 million).

⁵⁵ *See* Order No. 02-224 (Mar. 29, 2002); Order No. 02-343 at 4 (settlement stipulation allowing PacifiCorp to recover closure costs of the Trail Mountain mine).

⁵⁶ Order No. 07-375, Appendix A at 3. Commission Staff observed that without an accounting order the Company would have been required to write off the undepreciated investment in the plant. *Id.*

The Commission also allowed full rate recovery for Portland General Electric Company (PGE) and Idaho Power Company of costs associated with the premature closure of the Boardman plant, including accelerated depreciation of the undepreciated investment and closure and decommissioning costs.⁵⁷

2. The Proposed Two-Year Amortization Period is Reasonable.

Because ORS 757.355 does not allow the utility to earn a return on the undepreciated investment in a plant that has been retired early, the Commission has found that it is reasonable to allow recovery of this undepreciated investment over a shorter time period than the original depreciable life of the plant.⁵⁸ Thus, in the case involving the early closure of the Trojan nuclear generating plant, the Commission determined that amortization over 10 years, rather than original 17-year depreciable life of the plan, was appropriate given the restrictions of ORS 757.355.⁵⁹ Here, the Deer Creek mine's depreciable life currently runs through 2019.⁶⁰ A two-year amortization period beginning on January 1, 2016, will result in full recovery of the undepreciated investment and estimated closure costs two years earlier than if the mine remained in service. Thus, the Settling Parties' two-year amortization period is consistent with the Commission's treatment of the undepreciated investment in Trojan.

Moreover, the Stipulation's two-year amortization period represents a reasonable compromise of the positions presented in this case. The Company's originally proposed Deer Creek Mine Closure tariff included a one-year amortization period.⁶¹ CUB

⁵⁷ See *In re Portland General Elec. Co.*, Docket No. UE 230, Order No. 11-242, Appendix A at 4 (July 5, 2011); *In re Idaho Power Co.*, Docket No. UE 239, Joint Explanatory Brief in Support of Stipulation at 8-9 (May 24, 2012) (the stipulation was approved by the Commission in Order No. 12-235).

⁵⁸ Order No. 08-487 at 72.

⁵⁹ Order No. 08-487.

⁶⁰ PAC/400, Dalley/14.

⁶¹ Application at 3; PAC/200, Stuver/3-4.

recommended an amortization period no more than five years,⁶² while Staff initially recommended a two-year amortization period.⁶³ ICNU is the only party recommending a longer, 14-year amortization period.⁶⁴ With the exception of ICNU's extreme proposal, the Settling Parties' agreement is consistent with the parties' recommendations.

3. The Interest Rate Applied to the Tariff Amounts is a Reasonable Compromise of the Parties' Positions and Appropriately Accounts for the Time Value of Money

Given that the Deer Creek Mine Closure tariff recovers the Company's undepreciated investment in the mine and closure costs over time, it is reasonable to apply an interest rate to the unamortized balance to account for the time value of money.⁶⁵ The Settling Parties agree that the unamortized balance should accrue interest at a rate of 3.31 percent beginning on June 1, 2015.⁶⁶ The 3.31 percent rate was calculated by blending the Company's currently authorized cost of debt and Treasury bond yields, based on the Company's currently authorized capital structure.⁶⁷ The Commission has observed that both rates represent a "reasonable estimate of a utility's time value of money."⁶⁸ Thus, the Settling Parties' proposed interest rate achieves a fair balance, consistent with Commission precedent.

4. The Settling Parties Recommend that the Commission Allow Cost Recovery of the Undepreciated Investment and Closure Costs in this Case

Although Staff agrees that the Transaction is prudent, Staff's primary recommendation is that the Commission defer ratemaking treatment of all aspects of the

⁶² CUB/100, Jenks-McGovern/8.

⁶³ Staff/100, Wittekind/13. Staff originally proposed a two-year amortization if the Commission approves a closure tariff; Staff subsequently changed its position to recommend a five-year amortization period. Staff/400, Wittekind/12.

⁶⁴ ICNU/100, Mullins/9-10.

⁶⁵ *Gearhart v. Pub. Util. Comm'n of Oregon*, 356 Or 216, 250-51 (2014).

⁶⁶ Stipulation at 4.

⁶⁷ CUB/100, Jenks-McGovern/10.

⁶⁸ Order No. 08-487 at 73.

Transaction until the Company's next general rate case.⁶⁹ Staff, CUB, and ICNU all argued that a determination of ratemaking treatment of the undepreciated investment in the mine and closure costs in this case would constitute improper single-issue ratemaking.⁷⁰

The Settling Parties recognize that the Commission generally disfavors single-issue ratemaking. Nevertheless, the Commission has previously approved similar tariff filings related to early retirement of utility plant outside of general rate cases, recognizing that delaying cost recovery is unreasonable when the Company will not earn a return on the undepreciated investment.⁷¹ In addition, the costs at issue here relate to a fuel cost, which has already been removed from general rate cases and recovered through PacifiCorp's Transition Adjustment Mechanism (TAM), an annual update to the Company's net power costs. The costs associated with the CSA are properly dealt with in the TAM. One benefit of having the tariff begin January 1, 2016, is that this is the same date as new rates go into effect for the TAM—this is the time that changes in coal costs affect the rates of customers. This is a unique and complex proposal. Some of the costs at issue here properly fit in the TAM. Some of the costs at issue here properly fall in the property sales account. Some of the costs here are governed by the retired property statute. Given the unique and particular circumstances in this case, and the benefits to customers from the Transaction, CUB was able to overcome concerns about single-issue ratemaking.

Parties also expressed concern that an immediate rate change would be inconsistent with the settlement approved in the Company's last general rate case, which includes a term

⁶⁹ Staff/100, Wittekind/14.

⁷⁰ See, e.g., Staff/100, Wittekind/14; ICNU/100, Mullins/3-4; CUB/100, Jenks-McGovern/14-16. No party challenged the Company's calculation of the undepreciated investment in the mine, the closure costs, or the loss on the sale of the Mining Assets.

⁷¹ Order No. 08-487 at 72.

prohibiting the Company from filing a general rate case with rates effective before January 1, 2016.⁷² The Settling Parties resolve this concern by their agreement that the effective date of the Deer Creek Mine Closure tariff be delayed until January 1, 2016.⁷³

C. The Commission Should Approve a Regulatory Asset to Account for Actual Closure Costs and the Retiree Medical Loss Obligation

The Settling Parties agree that the Commission should allow the Company to establish a regulatory asset, with interest accruing beginning June 1, 2015, at the Company's authorized weighted average cost of capital, that includes the following components for consideration in the Company's next general rate case:

- One-time retiree medical settlement loss (estimated at approximately \$█ million total company or \$█ million Oregon allocated) net of benefits from reduced retiree medical expense;
- Actual closure costs incurred after November 30, 2015 (estimated at approximately \$█ million total company or \$█ million Oregon allocated);
- Any difference between estimates included in the Deer Creek Mine Closure tariff and actual amounts; and
- A credit (reduction) for the difference between fuel costs from June 1, 2015, through December 31, 2015, included in rates through the 2015 TAM for the Huntington and Hunter plants and replacement fuel costs, including the CSAs (approximately \$1.0 million total company or \$0.25 million Oregon allocated).⁷⁴

The Settling Parties further agree that this regulatory asset will be offset by a credit of \$0.22 million per month (or \$2.6 million annually), beginning June 1, 2015, for the "return on" the undepreciated Deer Creek assets currently included in rates.⁷⁵

The Settling Parties' proposal allows the Company an opportunity to recover these additional costs associated with the Transaction, while at the same time preserving all other

⁷² Staff/100, Wittekind/11-12; ICNU/100, Mullins/8-9; CUB/100, Jenks-McGovern/16-17.

⁷³ Stipulation at 4.

⁷⁴ *Id.* at 5; PAC/400, Dalley/11-12.

⁷⁵ Stipulation at 6; PAC/400, Dalley/12.

parties' rights to address the prudence and the appropriate ratemaking treatment in the context of a general rate case.⁷⁶ Furthermore, the proposal ensures that customers pay only for actual closure costs and CSA costs by truing up any difference between the estimated amounts and the actual amounts through the regulatory asset.⁷⁷

Staff and ICNU both disputed the inclusion of the loss associated with the settlement of the Retiree Medical Obligation in a regulatory asset in this case, claiming that it is severable from the overall Transaction.⁷⁸ This position is without merit. First, as discussed in the Company's testimony, this settlement was unlikely to occur without the Transaction.⁷⁹ The Retiree Medical Obligation is therefore reasonably related to the closure of the Deer Creek mine and should be addressed in this docket. Second, all parties except ICNU have agreed that the Company's decision to settle the Retiree Medical Obligation was prudent and results in customer benefits.⁸⁰ There is therefore no reason to exclude the settlement from the regulatory asset.

Staff and ICNU also both claim that the Company's filing in this case was untimely because it occurred after the Retiree Medical Obligation was settled.⁸¹ Consistent with Generally Accepted Accounting Principles (GAAP), however, the loss associated with the Retiree Medical Obligation settlement will not be recorded until June 2015, when the Company actually transfers the funds necessary to implement the settlement.⁸² To determine the timeliness of the Company's application, it is reasonable for the Commission to look to

⁷⁶ Stipulation at 6; PAC/400, Dalley/12-13.

⁷⁷ Stipulation at 4-5; PAC/400, Dalley/13.

⁷⁸ Staff/200, Bahr/7; ICNU/100, Mullins/28.

⁷⁹ PAC/500, Crane/10.

⁸⁰ Staff/200, Bahr/18.

⁸¹ *Id.* at 7-8; ICNU/100, Mullins/28-29.

⁸² PAC/600, Stuver/5-7.

the recording of the settlement.⁸³ Because the Company's application precedes Company's incurrence of the loss, retroactive ratemaking is not implicated.

D. The Commission Should Approve a Regulatory Asset to Account for the Pension Withdrawal Liability

The Settling Parties agree to continue recovery of annual payments (\$3.0 million total company) to the 1974 Pension Trust through net power costs in the TAM until the payments end, change, or the withdrawal obligation is otherwise satisfied. The Settling Parties also agree to creation of a regulatory asset for the pension withdrawal liability.⁸⁴

Staff expresses concern that the creation of a regulatory asset and continued collection of the annual installment payment may result in "double-dipping." The Company rebutted this assertion in reply testimony.⁸⁵ And, as Staff acknowledged, "this issue can be appropriately addressed at the time the Company requests recovery of the regulatory asset."⁸⁶ The Settling Parties agree that this concern is best addressed when rate recovery of the regulatory asset is considered.

ICNU recommends that if the Company negotiates a lump sum withdrawal payment, the amount in rates should be capped at \$39.4 million (total company).⁸⁷ Because the Company has not negotiated a lump-sum withdrawal payment, and because such a lump-sum withdrawal payment would undergo regulatory review, it is premature to consider whether this should be subject to a disallowance. In the circumstances where the Company negotiated a lump-sum payment that was more than \$39.4 million, ICNU would have an

⁸³ *In re Pacific Power & Light Co., Portland Gen. Elec. Co., Idaho Power Co.*, Docket Nos. UM 1256, UM 1257, & UM 1259, Order No. 06-483 at 3 n. 1 (Aug. 22, 2006) (Commission relied on GAAP to determine timeliness of deferral application).

⁸⁴ Stipulation at 6.

⁸⁵ PAC/600, Stuver/3-4.

⁸⁶ Staff/200, Bahr/5.

⁸⁷ ICNU/100, Mullins/16.

opportunity to propose disallowing amounts over \$39.4 million. That circumstance does not exist today.⁸⁸

The Stipulation's treatment of the pension withdrawal liability provides a reasonable resolution of the issue and is consistent with Staff's recommendation for the creation of a regulatory asset.⁸⁹

E. The Sale of Mining Assets Should Be Recorded through the Company's Existing Property Sales Balancing Account

The Settling Parties recommend that the Commission approve the sale of the Mining Assets and allow recovery of the loss through the Company's existing property sales balancing account (Schedule 96).⁹⁰ As agreed by Staff, the sale of the Mining Assets is an integral part of the overall Transaction, which results in substantial customer benefits.⁹¹ Because the Transaction meets the net benefits standard, the Company has met the standard for recovery of the loss on the sale of the Mining Assets.

The Settling Parties' agreement to recover the loss through the Company's existing property transaction balancing account is reasonable because it applies the same ratemaking treatment to the Mining Assets that is afforded to all other property transactions.

F. Costs associated with the CSAs Should Be Included in the 2016 TAM

The Settling Parties agree that the CSAs should be included in base rates through the Company's 2016 TAM.⁹² While parties voiced concerns about certain aspects of the CSAs, no party specifically objected to the Company's proposal to include the CSAs in base rates

⁸⁸ PAC/600, Stuver/4-5.

⁸⁹ Staff/200, Bahr/19.

⁹⁰ Stipulation at 6.

⁹¹ Staff/300, Crider/9.

⁹² Stipulation at 6.

through the Company's 2016 TAM. Fuel costs are typically addressed in the Company's TAM proceeding and the Stipulation reasonably maintains this practice.⁹³

G. The Commission Should Provide the Necessary Regulatory Approvals by May 27, 2015

The Settling Parties recommend that the Commission issue an order approving the Stipulation in its entirety and thereby provide the Company with the regulatory approvals necessary to execute the Transaction. As described in the Company's testimony, several essential components of the Transaction are contingent upon the Company receiving timely regulatory approval sufficient to satisfy both the Company and Bowie.⁹⁴ Although the Commission does not generally provide prudence determinations before a utility enters into a particular transaction, the Commission "does recognize that under unique conditions some advance Commission expression regarding certain activities might be helpful and therefore leave that option open."⁹⁵ The Commission has used its discretion to provide approval of certain utility investments when unique circumstances so require, such as when a particular transaction is contingent upon receipt of the necessary regulatory approvals.⁹⁶

Staff recommends that the Commission defer its prudence determination until the Company's next rate case.⁹⁷ The Settling Parties do not agree that the delay is necessary, particularly given that the record is fully developed in this case and there is little disagreement that the Company's actions were prudent. As discussed above, Staff agrees

⁹³ Order No. 09-432 at 1 (the purpose of the TAM is to update the Company's annual net power costs, which include fuel costs).

⁹⁴ Application at 2, 9; PAC/100, Crane/2-3, 11-12.

⁹⁵ *In re Requirements of Section 712 of the 1992 Energy Policy Act*, Docket No. UM 573, Order No. 93-1491 at 6 (October 15, 1993).

⁹⁶ See, e.g., *In re Northwest Natural Gas Co.* Docket Nos. UM 1520, UG 1520 & UG 204, Order No. 11-140 (Apr. 28, 2011) (affirmed by Order No. 11-176) (pre-approving a gas reserve contract, in part, because the contract required regulatory approval as a condition precedent).

⁹⁷ Staff/100, Wittekind/14.

that the Transaction provides net benefits to customers, so long as the long-term CSA risks can be substantially mitigated,⁹⁸ that the decision to withdraw from the 1974 Pension Trust was prudent,⁹⁹ that the decision to settle the Retiree Medical Obligation was prudent,¹⁰⁰ and that the sale of the Mining Assets is in the public interest.¹⁰¹ Moreover, Staff concedes that the Commission will necessarily need to establish prudence in this proceeding in order to approve the necessary regulatory assets.¹⁰² Given Staff's and the parties' general agreement that the Transaction is prudent and in the public interest, there is no reason for the Commission to defer its prudence determinations for a later docket. Because the Transaction depends on the Company receiving timely regulatory approval, PacifiCorp and CUB request that the Commission issue an order approving the Stipulation by May 27, 2015.

IV. CONCLUSION

In this case, the Company and CUB have negotiated an outcome that produces substantial customer benefits and protects customers from risks associated with the uncertainty of new and changing environmental regulations. The recommendations provided in the Stipulation represent a reasonable resolution of the issues in this proceeding and produce overall just and reasonable rates. The Stipulation is supported by substantial competent evidence in the record, and the Settling Parties request that the Commission approve the Stipulation in its entirety.

⁹⁸ *Id.* at 15.

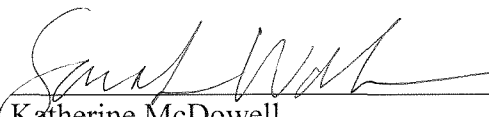
⁹⁹ Staff/200, Bahr/16-17.


¹⁰⁰ *Id.* at 18-19.

¹⁰¹ Staff/300, Crider/9.

¹⁰² Staff/100, Wittekind/15, n. 16.

Respectfully submitted this 3rd day of April, 2015.

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