

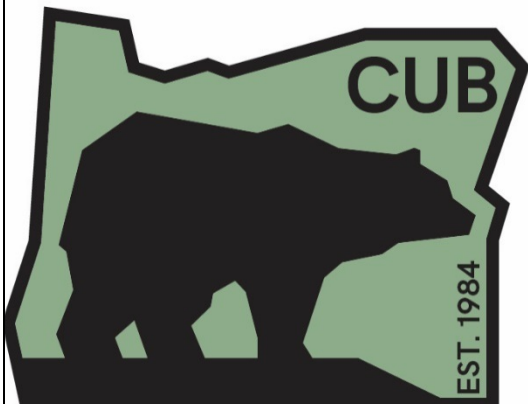
**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 339

In the Matter of)
)
PACIFICORP, dba, PACIFIC POWER,)
)
2019 Transition Adjustment Mechanism)
(TAM).)
_____)

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

August 21, 2018



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OF OREGON**

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I. INTRODUCTION

Pursuant to Administrative Law Judge (ALJ) Rowe's August 3, 2018 Ruling, the Oregon Citizens' Utility Board (CUB) hereby submits its Rebuttal Brief in docket UE 339.

On March 30, 2018, PacifiCorp (PAC or the Company) submitted its 2019 Transition Adjustment Mechanism (TAM) filing, the Company's annual filing to update its net power costs in rates and to set transition adjustments for its direct access customers.¹ CUB did not sponsor Opening Testimony in this proceeding. However, as an intervenor and an annual party to the TAM, CUB participated in the June 20, 2018 settlement conference that led to the resolution of all but one remaining issue. That issue is whether the Commission should allow PAC to recover capital costs associated with Energy Imbalance Market (EIM) participation in this variable power cost proceeding.

¹ UE 339 – PAC/100/Wilding/2, lines 21-22.

The issue was raised by the Alliance of Western Energy Consumers (“AWEC”), and the Company is correct in asserting that no other party has formally joined AWEC in challenging the recovery of EIM costs in the TAM to date.²

CUB’s intent in submitting this Brief is to put into context its historical view regarding the inclusion of capital costs in the TAM. CUB also respectfully cautions the Public Utility Commission of Oregon (Commission) against creating *de facto* precedent by continuing to approve the inclusion of capital costs in a variable power cost proceeding when the initial basis arose from a non-precedential agreement that was not expected to continue in perpetuity. Parties to UM 1689 and the 2015 TAM (UE 287) agreed to a stipulation to include the Company’s EIM participation costs in the TAM that matched an assumed level of benefits.³ Although parties only agreed to this principle as an interim approach,⁴ it has remained Commission practice to include EIM capital costs in the TAM ever since.

II. ARGUMENT

CUB does not dispute nor take issue with the fact that it was a party to that stipulation and that it agreed to include EIM capital costs in the TAM. Indeed, CUB was a signatory to a stipulation just this year that enabled Idaho Power Company to include

² UE 339 – PacifiCorp’s Opening Brief at 1.

³ *In re PacifiCorp, dba Pacific Power 2015 Transition Adjustment Mechanism and Application for Deferred Accounting and Prudence Determination Associated with the Energy Imbalance Market*, OPUC Docket Nos. UM 1689 & UE 287, Order No. 14-331, Appx. A at 14 (Oct. 1, 2014).

⁴ *Id.*, Settling Parties/100 at 8 (“*As an interim approach*, the Settling Parties agree that it is reasonable to offset EIM costs and benefits in 2015 NPC. The agreement in the Stipulation resolves the issue of EIM costs and benefits *only* through December 31, 2015.”) (emphasis added).

EIM capital costs in its 2018 Annual Power Cost Update.⁵ However, CUB recognizes the Commission has broad authority to establish just and reasonable rates, and ratemaking itself is nuanced and tasks the Commission to act more in its legislative capacity than in its judicial capacity. This means that in recommending ratemaking treatment to the Commission, stakeholders must at times balance a principled approach with a healthy dose of pragmatism.

From a principled perspective, capital costs incurred by a utility are traditionally—and most appropriately—brought forth in a general rate case and are subject to regulatory lag.⁶ The Commission has defined regulatory lag as “the delay between rate cases and within a rate proceeding where rates remain frozen until a new rate is approved.”⁷ Because utilities are in complete control of when they come in for a rate case, the Commission has noted that “utilities typically bear the risk of increased costs between rate cases.”⁸ When utilities outlay capital for various investments, they will typically come in for a rate case to capture those expenditures in base rates going forward. The inclusion of capital costs in a general rate case proceeding helps to balance out the risk of regulatory lag to the utility with the risk to customers who are paying a set cost (established in the last rate case) for an asset that is continuously depreciating.

Customers continue to pay this set amount until the utility comes in for another rate case

⁵ *In re Idaho Power Company 2018 Annual Power Cost Update*, OPUC Docket No. UE 333, Order No. 18-170 at 6 (May 21, 2018).

⁶ *In re Public Utility Commission of Oregon Investigation of the Scope of the Commission’s Authority to Defer Capital Costs*, OPUC Docket No. UM 1909, Joint Opening Brief of the Oregon Citizens’ Utility Board, the Industrial Customers of Northwest Utilities, and Northwest Industrial Gas Users at 7 (Mar. 16, 2018).

⁷ *In re PacifiCorp, dba Pacific Power Request for a General Rate Revision*, OPUC Docket No. UE 246, Order No. 12-493 at 15 (Dec. 20, 2012), citing Leonard Saul Goodman, *The Process of Ratemaking* (Vol. I), 44 (Pub. Util. Rpts., Inc. 1998).

⁸ OPUC Order No. 12-493 at 17.

in which base rates are set to account for ongoing depreciation of capital investments. This is a traditional and principled approach to utility ratemaking.

However, from a pragmatic perspective, stakeholders like CUB must sometimes balance these core principles with creative ratemaking solutions to help push utilities to act in a manner that will ultimately benefit customers down the road. The decision to include EIM capital costs in the 2015 TAM is the perfect example. CUB and stakeholders recognized that participation in a regional EIM could bring great benefits to customers, even though it had large up-front costs. To encourage PAC to enter into the EIM when it had no plans to come in for a general rate case, CUB and stipulating parties to the 2015 TAM decided to enable the utility to recover capital costs in the TAM for a limited duration.⁹ Because the benefits of EIM participation would flow through the TAM, PAC's variable power cost mechanism was a logical—if not overtly principled—mechanism to enable the Company to recover these costs. Had PAC filed a general rate case concurrently with its decision to enter the EIM, the rate case would have been the logical, principled mechanism for rate recovery. However, recent cost allocation iterations reached through the Company's multi-state process ("MSP") contained rate case stay out provisions.

III. CONCLUSION

As mentioned, the expectation was for EIM capital cost recovery in the TAM to continue for a limited duration. However, PAC has continued to recover these costs in the TAM since. CUB agrees with AWEC that, in principle, capital costs such as these

⁹ *Supra* note 4.

are not appropriate for the TAM and should be brought forth in a general rate case.¹⁰ Due to CUB's support to include these costs in variable power cost proceedings in the past, we realize it is a complex issue with many factors to be balanced. However, we do not believe that capital costs should be recoverable in the TAM in an ongoing manner without limit. Therefore, CUB respectfully urges the Commission to include language in its Order in this proceeding that places limits on a utility's ability to recover capital costs in a variable power cost proceeding. To continue to allow capital costs to be recovered in variable power cost proceedings has the potential to set an unwieldy precedent that does not comport with traditional ratemaking norms.

Dated this 21st day of August, 2018.

Respectfully submitted,



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¹⁰ UE 339 – AWEC/100/Mullins/22-23.