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August 21, 2018

Via Electronic Filing

Public Utility Commission of Oregon
Attn: Filing Center
201 High St. SE, Suite 100
Salem OR 97301

Re: In the Matter of PACIFICORP, dba PACIFIC POWER
2019 Transition Adjustment Mechanism
Docket No. UE 339

Dear Filing Center:

Please find enclosed the Rebuttal Brief of the Alliance of Western Energy Consumers in the above-referenced docket.

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

Sincerely,

/s/ Jesse O. Gorsuch
Jesse O. Gorsuch

Enclosure

**BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON**

UE 339

In the Matter of)	
)	
PACIFICORP, dba PACIFIC POWER)	REBUTTAL BRIEF OF THE
)	ALLIANCE OF WESTERN ENERGY
2019 Transition Adjustment Mechanism.)	CONSUMERS
_____)	

I. INTRODUCTION

Pursuant to the Administrative Law Judge’s August 3, 2018 Ruling in the above-referenced docket, the Alliance of Western Energy Consumers (“AWEC”) files this Rebuttal Brief on the issue of whether PacifiCorp (or the “Company”) should be allowed to continue recovering costs associated with its participation in the Energy Imbalance Market (“EIM”) through the Transition Adjustment Mechanism (“TAM”).

PacifiCorp’s Opening Brief relies primarily on the matching principle to argue that it should be entitled to recover EIM costs through the TAM. Because EIM benefits are included in the TAM, it would be unfair, the Company claims, to remove EIM costs. PacifiCorp’s argument, however, ignores the crucial point: the TAM violates the matching principle. The TAM carves out a subset of the Company’s total costs and revenues for annual updating while leaving rates for all other aspects of the Company’s service (like depreciation expense, fixed operations and maintenance, and labor and benefits) untouched. Because it violates the matching principle, the TAM updates only a narrow set of costs and only for a specific purpose. The costs it updates – net power costs (“NPC”) – are collectively significant

and variable, being subject to “changes in market conditions.”^{1/} Thus, it is not unfair to the Company – nor is it a violation of the matching principle – to remove costs that fall outside of the scope of the TAM. It is, in fact, unfair to customers to include such costs in the TAM. This allows PacifiCorp to avoid any regulatory lag associated with these costs while simultaneously receiving the benefit of rates that, among other things, reflect capital investments that have significantly depreciated since those rates were last set. The Commission should uphold the “narrow” scope of the TAM and exclude EIM costs. PacifiCorp is free to include these costs in a general rate case when it decides its earnings *overall* are insufficient.

II. BACKGROUND

A. Historical treatment of EIM costs

EIM costs have been included in the TAM since 2015 not because they fall within the scope of costs recoverable through the TAM but because of a stipulation. On April 18, 2014, PacifiCorp filed an application to defer for later recovery the costs necessary for it to begin participating in the EIM.^{2/} PacifiCorp had not yet joined the EIM (it would join on November 1, 2014), nor had any other utility, so the benefits to expect from this untested market were uncertain. For that reason, in its application, the Company proposed to “convene a collaborative process ... to explore the development of a balancing account to reflect the variable costs and benefits of EIM in rates.”^{3/} Through settlement negotiations in UM 1689 and the 2015 TAM, Docket UE 287, parties to both proceedings agreed to a stipulation that allowed PacifiCorp to

^{1/} Docket No. UE 199, Order No. 09-274 at 2 (July 16, 2009).

^{2/} Docket No. UM 1689.

^{3/} Id., PacifiCorp Application at 2 (Apr. 18, 2014).

recover \$1.7 million of EIM costs through the TAM and included an assumed level of benefits it would realize through its participation in the EIM that exactly matched the costs.^{4/} In testimony supporting this stipulation, parties made clear that it was not intended to be precedential with respect to how EIM costs would be recovered going forward and was only agreeable because:

[A]t this time, the costs and benefits associated with the EIM are difficult to predict with certainty. *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.^{5/}

As to the subsequent treatment of EIM costs and benefits, PacifiCorp agreed to hold workshops and address its proposed treatment in the 2016 TAM.^{6/}

PacifiCorp held two workshops on EIM costs and benefits prior to the 2016 TAM, though these workshops were dedicated almost exclusively to exploring how to value EIM benefits.^{7/} With respect to costs, the Company proposed to include them in the 2016 TAM, but only if it did not file a general rate case.^{8/} PacifiCorp acknowledged that it would exclude EIM costs from the TAM if it did file a general rate case.^{9/} No party agreed to the treatment of either EIM benefits or costs as a result of these workshops, and the magnitude of benefits from the EIM was a highly contested issue in the 2016, 2017, and 2018 TAMs.^{10/}

^{4/} Docket Nos. UM 1689 & UE 287, Order No. 14-331, Appen. A at 5, 14 (Oct. 1, 2014).

^{5/} Docket Nos. UM 1689 & UE 287, Joint Testimony in Support of Stipulation, Settling Parties/100 at 8:15-19 (Aug. 14, 2014) (emphasis added).

^{6/} Order No. 14-331, Appen. A at 6.

^{7/} Exh. AWEC/201, AWEC/202

^{8/} Exh. AWEC/201 at 18.

^{9/} Id.

^{10/} Docket No. UE 296, Order No. 15-394 at 7-9 (Dec. 11, 2015); Docket No. UE 307, Order No. 16-482 at 14-17 (Dec. 20, 2016); Docket No. UE 323, Order No. 17-444 at 14-16 (Nov. 1, 2017).

PacifiCorp has not filed a rate case since the 2015 TAM and has recovered EIM costs through the TAM ever since. Other than in approving the stipulation in the 2015 TAM, however, the Commission has never explicitly found that EIM costs are should be recovered through the TAM. The EIM is now a mature market, and the calculation of benefits from it has been refined through litigation in three consecutive TAMs.^{11/} Consequently, the uncertainty associated with EIM costs and benefits that provided the basis for the 2015 stipulation has now largely been resolved. Given this, and because EIM costs are not within the scope of costs intended to be updated in the TAM, AWEC’s witness, Bradley Mullins, recommended that they be removed from NPC in this case.^{12/} Mr. Mullins’ recommendation is consistent with a general understanding of what EIM costs represent. PacifiCorp concedes EIM costs are appropriately included in base rates.^{13/} Moreover, while the Company testifies that EIM costs have been included in Portland General Electric Company’s (“PGE”) NPC,^{14/} that is incorrect. PGE’s costs of participating in the EIM are not, and never have been, included in its NPC.^{15/}

B. Utilities have many opportunities to recover costs outside of a rate case.

The central goal of ratemaking has been in place for nearly a century and has not changed. It is to establish an overall revenue requirement for the utility that provides it with the opportunity to recover its prudently incurred costs of utility service and earn a reasonable

^{11/}

Id.

^{12/}

Exh. AWEC/100, Mullins/24:9-15.

^{13/}

Exh. PAC/400, Wilding/14:20-21; Exh. AWEC/201 at 18.

^{14/}

Id. at 15:15-16.

^{15/}

Docket No. UE 319, Exh. PGE/300, Niman-Peschka-Rodehorst/9 (Table 1) (“The costs shown under ‘Western EIM Costs in 2018 Test Year’ are not part of PGE’s initial 2018 NVPC forecast. They are included in other parts of PGE’s 2018 test year revenue requirement”). Pursuant to OAR 860-001-0460(1)(d), AWEC requests that the Commission take official notice of this exhibit.

return.^{16/} To accomplish this goal, the Commission examines the totality of a utility’s revenues and expenses, its capital investment (rate base), and establishes a return that is commensurate with the return received by enterprises of corresponding risk.^{17/} Establishing a revenue requirement that meets the objective of ratemaking is done in a general rate case where all of the utility’s costs and revenues may be examined at the same time and under the same circumstances. At one time, filing a general rate case was the only way a utility could increase its rates. In the period between rate cases, the utility then assumed the risk – and reaped the benefit – of costs and/or revenues being higher or lower than projected in the rate case. Utilities would incur “regulatory lag” associated with plant they put in service before they filed a new rate case, but would also benefit from rates that, for example, reflected a level of rate base that did not account for incremental accumulated depreciation.^{18/}

Today, utilities have many opportunities to increase their rates in addition to a general rate case, which has eroded the traditional regulatory framework that ensures fair and reasonable rates for customers. ORS 757.259 allows utilities to defer for later recovery from (or refund to) customers, among other things, “identifiable utility expenses or revenues, the recovery or refund of which the commission finds should be deferred in order to minimize the frequency of rate changes or the fluctuation of rate levels or to match appropriately the costs borne by and

^{16/} Bluefield Water Works & Improvement Co. v. Public Service Comm’n, 262 U.S. 679, 692-93 (1923); Federal Power Comm’n v. Hope Natural Gas Co., 320 U.S. 591, 603 (1944).

^{17/} Gearhart v. Pub. Util. Comm’n of Or., 356 Or. 216, 219-20 (2014). This exercise is typically summarized by the ratemaking formula, $R = E + (V-d)r$, where “R” is the revenue requirement, “E” is operating expenses, “V” is the rate base, “d” is accumulated depreciation, and “r” is the rate of return applied to the net rate base.

^{18/} Docket Nos. DR 10, UE 88 & UM 989, Order No. 08-487 at 7 (Sept. 30, 2008); see also, Docket UM 1909, Joint Opening Brief of the Oregon Citizens’ Utility Board, the Industrial Customers of Northwest Utilities, and Northwest Industrial Gas Users at 6-9 (Mar. 16, 2018).

benefits received by ratepayers.”^{19/} ORS 757.210 also allows utilities to implement “automatic adjustment clauses,” which “provide[] for rate increases or decreases or both, without prior hearing, reflecting increases or decreases or both in costs incurred”^{20/}

Utilities have also requested and received, under the Commission’s more general ratemaking authority, tariff riders that allow them to include capital investments in rates that come into service after new rates become effective following a general rate case. In its two most recent general rate cases, in 2012 and 2013, PacifiCorp sought and was granted two tariff riders, one to include the costs of the Mona-to-Oquirrh transmission line in rates when it came online five months after the rate-effective date,^{21/} and one to include the costs of the Lake Side 2 generating facility in rates when it came online six months after the rate-effective date.^{22/}

And PacifiCorp has the TAM. While the TAM was originally developed to establish transition adjustments for direct access customers following passage of Senate Bill 1149, it also allows the Company to update its forecast of net power costs on an annual basis, without it needing to file a general rate case to update the non-NPC-related expenses and revenues that correspond to the Company’s variable power costs (for instance, accumulated depreciation and fixed O&M costs associated with its generation resources).^{23/} As the Commission has recognized, “[t]he TAM effectively removes regulatory lag for the Company because the forecasts are used to adjust rates.”^{24/} PacifiCorp also has a power cost adjustment

^{19/} ORS 757.259(2)(e).

^{20/} ORS 757.210(1)(b).

^{21/} Docket No. UE 246, Order No. 12-493 at 7-8 (Dec. 20, 2012).

^{22/} Docket No. UE 263, Order No. 13-474 at 4 (Dec. 18, 2013).

^{23/} Docket No. UE 307, Order No. 16-482 at 2 (Dec. 20, 2016).

^{24/} Id.

mechanism (“PCAM”) that further insulates it from the risk of actual power costs diverging significantly from forecasted. Any costs and benefits incurred in excess of a dead band are shared with customers.^{25/} Thus, like deferrals, automatic adjustment clauses, and other rate mechanisms, the TAM allows for recovery of a subset of costs independent of a comprehensive review of all of PacifiCorp’s costs and revenues.

III. ARGUMENT

A. Excluding EIM costs from the TAM does not violate the matching principle.

As the discussion above reveals, there are numerous mechanisms in place today that violate the matching principle. The vast majority do so in a manner that advantages utility cost recovery by minimizing regulatory lag to the maximum extent possible. Contrary to PacifiCorp’s allegations, AWEC is not asking the Commission to depart from long-established ratemaking principles by proposing to exclude EIM costs from the TAM. It is simply asking for adherence to the scope of a mechanism that itself violates long-established ratemaking principles – to the benefit of the Company. Alternatively, AWEC would support a matching of EIM costs and benefits through a Commission investigation into whether to eliminate the TAM altogether.^{26/}

1. The matching principle exists to promote rates that are just and reasonable overall.

PacifiCorp’s argument that the matching principle requires it to include EIM costs in the TAM reveals a fundamental misunderstanding of what that principle is really about. It is

^{25/} Docket No. UE 327, Order No. 17-524 at 1-2 (Dec. 27, 2017).

^{26/} Because the TAM also establishes transition charges for direct access customers, eliminating it entirely would likely require creating an alternative mechanism to establish these charges, or revising how these charges are set.

not about matching a single discrete cost with a single discrete benefit. Rather, like any number of other regulatory policies, such as the preference against single-issue ratemaking, it is about effectuating the overall goal of ratemaking to ensure a total revenue requirement for the utility that is fair and reasonable.^{27/} As the Washington Utilities and Transportation Commission (“WUTC”) has stated:

Costs and revenues are carefully balanced or “matched” in a general rate case. If a company is largely assured recovery of fixed costs and most variable costs are routinely passed through to customers (*e.g.*, via purchased gas adjustment mechanisms and the like), then there is less reason for the company to file a general rate case. In this context, any cost savings achieved by the company are not shared with customers. The result risks over-earning by the company and over-paying by the customers.^{28/}

The authority PacifiCorp cites also supports this view of the matching principle: “The inclusion of revenues without the matching costs *will deny the utility reasonable rates.*”^{29/} PacifiCorp’s most recent results of operations report shows that it is earning above its currently authorized rate of return. Thus, it is indisputable that the Company is earning reasonable rates, and would continue to do so if EIM costs are removed from the TAM. It is for this reason that the Company is wrong to claim that, by removing EIM costs from the TAM, it will not recover these costs. Removing EIM costs from the TAM does not mean they will not be recovered; if the Company is earning its authorized return, then these costs are, by definition, being recovered.^{30/}

^{27/} Docket No. UM 1712, Order No. 15-161 at 6 (May 27, 2015).

^{28/} WUTC v. Puget Sound Energy, Inc., Docket Nos. UE-060266/UG-060267, Order 08 ¶ 63 (Jan. 5, 2007).
^{29/} PacifiCorp Opening Brief at 4 (citing Re Interstate Power and Light Co., 225 P.U.R.4th 227 (Iowa Util. Bd. 2003)) (emphasis added).

^{30/} Order No. 08-487 at 7 (Sept. 30, 2008) (“The ratemaking formula allows the Commission to set just and reasonable rates based on a forecast of the utility’s revenue needs. It does not, however, render a precise result For these reasons, the validity of the determined rates rests on the reasonableness of the overall rates, not the theories or methodologies used or individual decisions made”).

PacifiCorp calls this reasoning an “earnings test” in its testimony and briefing,^{31/} but that is only true if ratemaking itself is considered an earnings test. If all the matching principle means is that a single cost must be matched with the benefits associated with that cost, regardless of the justness and reasonableness of the utility’s overall revenue requirement, then it fails as a ratemaking principle.

2. Rather than violate the matching principle, excluding EIM costs from the TAM will further its purpose and scope.

Isolating EIM costs and benefits from all other costs and revenues is precisely what PacifiCorp’s argument relying on the matching principle depends on. “It is fundamentally unfair for customers to receive EIM benefits,” PacifiCorp states, “without paying the costs.”^{32/} The Company’s statistics on EIM benefits, however, illustrates why it is inappropriate to separately consider EIM costs and benefits as opposed to viewing them as simply another component of PacifiCorp’s overall cost of service. It notes that EIM benefits have increased over 350 percent in the last three years, from \$10.1 million to \$35.7 million.^{33/} To be clear, AWEC supports the Company’s decision to participate in the EIM. Yet, despite this growth in benefits, NPC has *increased* overall since the Company joined this market by \$0.52/MWh.^{34/} In other words, if the TAM did not exist, and PacifiCorp had retained every dollar of EIM benefits received to date for its shareholders, customer rates would be lower than they are today. That is

^{31/} Exh. PAC/400, Wilding/15:3-10; PacifiCorp Opening Brief at 7.

^{32/} PacifiCorp Opening Brief at 1.

^{33/} PacifiCorp Opening Brief at 3.

^{34/} Compare, Docket No. UE 287, PacifiCorp Compliance Filing, Attachment 2 (Nov. 17, 2014) (showing Oregon-allocated NPC of \$24.69/MWh) with Docket No. UE 323, PacifiCorp Compliance Filing, Attachment 1 (Nov. 15, 2017) (showing Oregon-allocated NPC of \$25.21/MWh). The Partial Stipulation resolving all issues except EIM costs in this TAM shows an indicative NPC of \$25.13/MWh.

why EIM costs and benefits cannot and should not be viewed in isolation from the Company's other costs and benefits. Doing so obscures the fact that EIM benefits are merely one component of overall NPC, which the Company is already allowed to update annually without matching the updated NPC with other costs of service.

Moreover, the Commission allows this annual update, despite it violating the matching principle, for a very specific reason: "it is important to update the forecast of power costs included in rates to account for new information, *e.g.*, on expected market prices for electricity and natural gas, and for new ... purchase power contracts."^{35/} It is the variability of these external forces, coupled with the fact that a significant percentage of a utility's overall cost of service is tied to these variable power costs, that makes annual updates appropriate: "If the forecast is not updated each year, then [the utility] will be exposed to more than normal business risk"^{36/} Thus, the TAM's purpose is to "updat[e] the Company's forecast net power costs to account for *changes in market conditions*"^{37/}

In other words, to account for the fact that the TAM violates the matching principle, it has a purposely narrow focus to achieve a very specific goal that the Commission has explicitly recognized and authorized. Removing EIM costs from the TAM maintains the integrity and narrow scope of this mechanism. EIM costs are not variable, are not NPC, and are not subject to changes in market conditions. They should be recovered in a general rate case with all other similar costs. The matching principle is irrelevant to the analysis.

^{35/} Docket No. UE 180, Order No. 07-015 at 18 (Jan. 12, 2007).

^{36/} Stipulating Parties/100 at 2:13-20 (citing Docket No. UE 180, Order No. 07-015 at 8).

^{37/} Docket No. UE 199, Order No. 09-274 at 2 (July 16, 2009) (emphasis added).

3. AWEC's prior positions on the matching principle are consistent with its position in this case.

PacifiCorp argues that AWEC's witness, Bradley Mullins, is taking a position inconsistent with his prior positions in recommending that EIM costs be removed from the TAM.^{38/} In fact, Mr. Mullins' prior support for the matching principle is entirely consistent with his recommendation in this case. PacifiCorp, for instance, cites Mr. Mullins' testimony in UM 1689, in which PacifiCorp sought to defer its costs of participating in the EIM. In that case, PacifiCorp was seeking to track for later recovery a single discrete cost outside of a general rate case. Mr. Mullins' recommendation to match EIM benefits with the costs in UM 1689 (a deferral docket, not the TAM) furthered the goal of the matching principle because only those costs and benefits were at issue. Moreover, because PacifiCorp originally sought to recover EIM costs through a deferral, a matching of the benefits was required by statute.^{39/} By contrast, the issue here is what costs and revenues should be recovered through an annual power cost update. As noted above, to the extent the matching principle is relevant to this inquiry, it is to ensure that the scope of this power cost update is narrowly tailored to updating only those costs and revenues that are sufficiently significant and variable so as to justify a departure from the matching principle for PacifiCorp's costs *overall*, not just EIM costs and benefits. Removing EIM costs from the TAM furthers this narrow scope.

PacifiCorp also cites Mr. Mullins' testimony before the WUTC in the Company's 2015 general rate case when it sought to include EIM costs and benefits in rates. In that case,

^{38/} PAC/400, Wilding/12-13; PacifiCorp Opening Brief at 5.

^{39/} ORS 757.259(2)(e).

however, PacifiCorp sought to include both the costs and benefits in rates, but in different ways. Costs would be included in base rates, but EIM benefits would *not* be included in the Company's base net power costs. Instead they would flow through its PCAM. Like in Oregon, PacifiCorp's PCAM in Washington has dead bands. Thus, by not reflecting benefits in base net power costs, it was likely that at least some of these benefits would be absorbed by the dead band. Mr. Mullins' testimony in this case was simply to treat both the costs and benefits in the same manner *in a rate case*, regardless of the method. As he testified, "I recommend that [EIM costs] be removed from base rates and recovered through the PCAM mechanism In the alternative, I would support a reduction to base net power costs ... to reflect [EIM] benefits."^{40/}

Again, that circumstance is materially different from the issue here. This is not a general rate case where all of PacifiCorp's costs and revenues are subject to review. This a docket dedicated exclusively to updating the Company's variable net power costs for "changes in market conditions" to ensure PacifiCorp is not "exposed to more than normal business risk."^{41/} Mr. Mullins' recommendation to remove EIM costs from the TAM reflects the purpose of this mechanism.

B. Including EIM costs in the TAM violates the TAM Guidelines.

To reflect the fact that the TAM carves out a subset of PacifiCorp's costs and revenues for annual updating, the TAM is subject to a detailed set of guidelines (the "Guidelines"), most of which were developed in a settlement of PacifiCorp's 2009 TAM.^{42/} The

^{40/} Exh. AWEC/203 at 5.

^{41/} Order No. 09-274 at 2; Order No. 07-015 at 18; Stipulating Parties/100 at 2:13-20.

^{42/} Order No. 09-274, Appen. A at 9.

Guidelines note that, when a TAM is filed without an accompanying general rate case, as the current TAM was, it “is intended to be narrower and more streamlined ...”^{43/} The Guidelines specify precisely what costs and benefits PacifiCorp is to include in the TAM, by FERC Account number.^{44/} All of these – sales for resale (Account 447), fuel expense for steam generation (Account 501), steam from other sources (Account 503), fuel expense for other generation (Account 547), purchased power (Account 555), and wheeling expense (account 565) – are costs and revenues that are variable year-to-year.^{45/} This is opposed to fixed costs like capital investments, fixed O&M, labor, and benefits that are more predictable and are recovered through general rates.

PacifiCorp does not dispute that EIM costs are not included in the FERC accounts allowed to be updated in the TAM.^{46/} Rather, PacifiCorp argues that the TAM Guidelines that identified the relevant FERC accounts predated the Company’s entry into the EIM.^{47/} That is a red herring. None of the EIM costs are fundamentally different from other Company costs. Those costs include capital investment, depreciation expense, and O&M – the same types of costs the Company recovers from customers through general rates.^{48/} They are tracked in FERC accounts that long predate the EIM.^{49/} PacifiCorp identifies no new FERC accounts that were created specifically to account for EIM-related costs.

^{43/} Id., Appen. A at 9.

^{44/} Id., Appen. A at 9, 14.

^{45/} Pursuant to a stipulation in the 2011 TAM, PacifiCorp also updates Other Revenue for items that have a direct relation to NPC and, thus, are also variable. Docket No. UE 216, Order No. 10-363, Appen. A at 4 ¶ 9 (Sept. 16, 2010).

^{46/} Exh. PAC/400, Wilding/14:5-17.

^{47/} Id. at 14:9-10.

^{48/} Exh. AWEC/200.

^{49/} Id.

PacifiCorp has insisted on strict adherence to the TAM Guidelines in the past, even at the FERC account level. In the 2012 TAM, AWEC (then ICNU) proposed a reduction to NPC to reflect additional expected load levels. PacifiCorp responded that this was a “non-NPC revenue adjustment ... and is outside the scope of the TAM.”^{50/} The Company went on to identify the “complete list of the FERC NPC accounts which can be updated through the TAM.”^{51/} It also noted that, in the 2010 TAM, the Guidelines were expanded to include FERC Account 456 for Other Electric Revenue. It explained that “[t]his update is for revenues which are not NPC but are NPC-related. This is the *only exception* allowed by the Guidelines.”^{52/} The Company then went on to explain that non-NPC items “are updated through a general rate case rather than through this proceeding. *TAM proceedings are specifically designed to update NPC revenues and costs.*”^{53/}

Other examples of PacifiCorp’s strict interpretation of the TAM Guidelines exist. In the 2010 TAM, AWEC proposed that the Company update NPC to reflect reduced purchase power volumes from the Georgia-Pacific Camas Mill cogeneration facility and an upgrade to the capacity for Cholla Unit 4. On rebuttal, PacifiCorp disputed both adjustments on the grounds that they were inconsistent with the TAM Guidelines because they were not a contract update, or a correction or omission.^{54/}

In that same case, both AWEC and Staff argued that PacifiCorp’s NPC was overstated because it identified higher total-Company power costs than its concurrent general

^{50/} Docket No. UE 227, Exh. PPL/600, Griffith/3:19-20.

^{51/} Id. at 4:3-4.

^{52/} Id. at 4: 8-9 (emphasis added).

^{53/} Id. at 5:2-3 (emphasis added).

^{54/} Docket No. UE 207, Exh. PPL/104, Duvall/34:19-35:7, 43:7-11.

rate case filing in Utah, both of which included the first six months of 2010 in their test years. PacifiCorp responded that the difference reflected a change in coal extraction at its Deer Creek mine, and that the “TAM Guidelines do not allow the Company to make adjustments in the Rebuttal Update for the Company’s captive coal operations”^{55/}

Also in the 2010 TAM, PacifiCorp refused to update NPC to include a contract with the Biomass Project because it was not what PacifiCorp interpreted to be a “known contract”: “The Company interprets ‘known contracts’ as those it expects to have entered into by the time of the Final Update If the Commission were to adopt this adjustment, it will make the definition of ‘known contract’ under the TAM guidelines nebulous at best. The Company believes that defining ‘known contracts’ to be ‘executed contracts’ was the intent of the TAM Guidelines.”^{56/}

Again, in the 2010 TAM, PacifiCorp disputed Staff’s proposal to include other revenue in NPC. Staff noted that, had the Company not filed a concurrent general rate case, “transmission revenue associated with the Pleasant Valley wind farm would not have been recognized in rates, but the costs of providing transmission services would be included in rates through the TAM.”^{57/} Without disputing this, the Company nevertheless used the TAM Guidelines as a shield: “Staff recently agreed in the TAM Guidelines to explicitly include the steam revenues associated with Little Mountain steam sales in stand-alone TAM filings. No other revenue items were included in the TAM Guidelines.”^{58/}

^{55/} Id., Exh. PPL/111, Duval/4:7-19.
^{56/} Id., Exh. PPL/104, Duvall/31:2-11.
^{57/} Id. at 46:13-21.
^{58/} Id. at 46:23-47:2.

If PacifiCorp is allowed to strictly enforce the TAM Guidelines to dispute adjustments raised by other parties, it should not now be allowed to depart from those same Guidelines to accomplish the same result.

PacifiCorp also claims that AWEC too narrowly focuses on the FERC accounts allowed to be included in the TAM, noting that “non-NPC benefits, like production tax credits and other revenues, are included in the TAM as an offset to NPC” despite not being booked to those same FERC accounts.^{59/} But the “other revenues” PacifiCorp references are included in the TAM because of a settlement in the 2011 TAM that specifically authorized their inclusion.^{60/} Meanwhile, production tax credits (“PTCs”) flow through the TAM because a statute, passed as Section 18 of Senate Bill (“SB”) 1547, specifically requires that treatment.^{61/} By contrast, no settlement and no law authorizes inclusion of EIM costs in the TAM other than on a one-time basis in 2015.

In fact, it is particularly disingenuous for PacifiCorp to cite PTCs as an “offset” to NPC as this represents yet another method the Company has managed to secure to recover *increased* costs without requiring a full review of its costs and revenues in a general rate case. The truth is that customer rates are significantly higher as a direct consequence of the Company’s ability to include PTCs in the TAM. Prior to SB 1547, PTCs were included in general rates. In Docket UM 1662, PacifiCorp and PGE sought permission to establish a “renewable resources tracking mechanism” (“RRTM”) that would allow the utilities to carve out

^{59/} PacifiCorp Opening Brief at 7.

^{60/} Supra n. 45.

^{61/} ORS 757.264.

the costs and benefits of their renewable resources for a dollar-for-dollar true-up.^{62/} One of the consequences of this mechanism would have been that the utilities could have recovered increased costs of their renewable resources when PTCs began expiring (PTCs only last for the first 10 years of a resource's life) without filing a general rate case.^{63/} The Commission rejected the RRTM on December 18, 2015 in Order No. 15-408. Less than three months later, SB 1547 – drafted with significant input from PacifiCorp – was enacted into law, including Section 18, which effectively overturns Order No. 15-408 with respect to PTCs. This provision will allow PacifiCorp to collect an additional \$14.6 million from Oregon customers in 2019 associated with reduced PTCs, consisting of PTC-related increases of \$4.9 million in 2017,^{64/} \$5.1 million in 2018,^{65/} and another \$4.6 million next year,^{66/} all without filing a rate case.

C. The Commission should not establish a precedent that interprets a party's failure to challenge costs in a prior proceeding as a waiver of that party's ability to challenge such costs in a later proceeding.

PacifiCorp notes that EIM costs have been included in each TAM filing since the Company joined this market and AWEC has not until now challenged their inclusion.^{67/} That is true, but it should be irrelevant to the Commission's decision in this case. Most importantly, if the Commission were to rely on this fact as the basis for its decision, it would set a precedent that would put Staff and intervenors in an impossible position. These parties rely on an investigation of complex models and voluminous workpapers to audit a utility's costs and revenues. It is

^{62/} Docket No. UM 1662, Exh. PGE-PAC/100, Tinker-Dickman/1:8-17 (Mar. 16, 2015).

^{63/} Docket No. UM 1662, Reply Brief of ICNU at 9-14 (Nov. 2, 2015).

^{64/} Docket No. UE 307, Advice No. 16-015 (Nov. 15, 2016), Attachment 3 at 2.

^{65/} Docket No. UE 323, Advice No. 17-006 (Nov. 15, 2017), Attachment 3 at 2.

^{66/} PAC/401, Wilding/1 (line 41, calculated by taking difference between columns "UE 323 CY 2018 – Final Update" and "TAM CY 2019 – Reply Update").

^{67/} PacifiCorp Opening Brief at 7.

inevitable that some things will get overlooked that may be discovered in a later proceeding. If utilities are allowed to argue that such costs should be recoverable simply because they were allowed in prior proceedings, it would put unsustainable pressure on other parties to identify issues and would not contribute to fair and reasonable rates.

Of course, EIM costs have not been buried in a workpaper only to be discovered now, but that should not change the analysis. Parties lack the bandwidth to challenge every conceivable issue in every case. By necessity, then, parties focus their attention on the most significant issues. Since PacifiCorp joined the EIM, the TAM has been the subject of highly contentious litigation over substantial and complex issues. This includes the calculation of EIM benefits, the Company's Day-Ahead and Real Time (DA/RT) adjustment to the GRID model, the prudence of costs associated with the Bridger Coal Company mine, and PacifiCorp's long-term fuel plan for its coal resources.^{68/} That EIM costs did not make the cut of issues to raise until now should not be particularly surprising, and it should not preclude parties from raising it. Only a Commission order or explicit agreement embodied in a stipulation should do that.

The passage of time, in fact, is a factor that weighs in favor of excluding EIM costs now. The 2015 stipulation allowed PacifiCorp to recover EIM costs through the TAM to recognize the uncertainty of the EIM.^{69/} Now that such uncertainty has faded, the rationale for including EIM costs in the TAM has likewise faded. PacifiCorp's statement that the settlement in the 2015 TAM that authorized the inclusion of EIM costs and benefits in NPC for that case

^{68/} Docket No. UE 296, Order No. 15-394 (Dec. 11, 2015); Docket No. UE 307, Order No. 16-482 (Dec. 20, 2016); Docket No. UE 323, Order No. 17-444 (Nov. 1, 2017).

^{69/} Docket Nos. UM 1689 & UE 287, Settling Parties/100 at 8:15-19.

“was intended to last until EIM costs are included in base rates,”^{70/} reflects only *PacifiCorp’s* intention – no party, nor the Commission, has ever explicitly agreed to or adopted that treatment. Indeed, as already noted, the joint testimony supporting the stipulation in the 2015 TAM specifies precisely the opposite – that this was “an interim approach” that applied only to the 2015 TAM.^{71/} That is in stark contrast to other stipulations that have established the TAM Guidelines covering what is to be included in NPC in each TAM. The stipulation resolving the 2011 TAM, for instance, specifies that PacifiCorp will include Other Revenue that has a direct relation to NPC “[i]n future stand-alone TAM filings.”^{72/}

PacifiCorp’s position does not recognize that the Company is the one that selects the timing of rate cases. That it has chosen not to file one since it joined the EIM is simply evidence that its rates have been sufficient. As noted above, the TAM has a very specific purpose to forecast very specific costs. It is not a mechanism to avoid regulatory lag associated with any cost until it suits the Company to file a rate case.

D. Removing EIM costs from the TAM will not result in an inaccurate NPC forecast.

PacifiCorp notes that the purpose of the TAM “is to achieve an accurate forecast of PacifiCorp’s power costs for the upcoming year” and argues that removing EIM costs from the TAM will frustrate this purpose.^{73/} That is only true if EIM costs are considered a component of NPC. Presumably, PacifiCorp’s concern is that, if EIM costs are removed from the TAM, then the calculation of actual NPC performed in the PCAM will be inaccurate if EIM

^{70/} PacifiCorp Opening Brief at 6.

^{71/} Docket Nos. UM 1689 & UE 287, Settling Parties/100 at 8:15-19.

^{72/} Docket No. UE 216, Order No. 10-363, Appen. A at 4 ¶ 9.

^{73/} PacifiCorp Opening Brief at 5.

costs are included in that calculation. Suffice it to say that AWEC agrees that if its recommendation to remove EIM costs from the TAM is adopted, those same costs should also be removed from the calculation of actual NPC in the PCAM. That will resolve PacifiCorp's concerns regarding the accuracy of the NPC forecast.

IV. CONCLUSION

For the foregoing reasons, AWEC requests that the Commission order PacifiCorp to remove EIM costs from the NPC forecast in the TAM.

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Respectfully submitted,

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