BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1633

In the Matter of PUBLIC UTILITY COMMISSION OF OREGON, Investigation into Treatment of Pension Costs in Utility Rates.	)))))))))	CITIZENS' UTILITY BOARD OF OREGON'S PRE-HEARING BRIEF – **TABLE OF CONTENTS**

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1633

In the Matter of PUBLIC UTILITY COMMISSION OF OREGON, Investigation into Treatment of Pension Costs in Utility Rates.	)	CITIZENS' UTILITY BOARD OF OREGON'S PRE-HEARING BRIEF

I. INTRODUCTION

In compliance with the Ruling issued by Chief ALJ Grant on January 5, 2015, the Citizens' Utility Board of Oregon (CUB) hereby submits its Pre-hearing Brief. CUB will use this brief to identify any settled issues, and to frame important unsettled issues that may be raised in cross-examination, in oral argument, and/or in post hearing briefing.

II. PROCEDURAL HISTORY

This docket grew out of NW Natural's request in Docket UG 221 to change how it recovered pension expense. On October 26, 2012, the Commission issued its preliminary order in the UG 221 docket, which stated in part:

> 4. Pension Costs.
>
> b. Resolution.
>
> As Staff and others have noted, the Commission has used the same methodology for calculating a utility's pension costs since 1986. That method, which allows the utility to collect its FAS 87 expense in rates, treats pension costs as ordinary,

> recurring expenses, rather than assets to be included in rate base. NW Natural, like all regulated utilities in Oregon, recovers its pension expenses using this FAS 87 methodology. In addition to recovering FAS 87 expense in rates, NW Natural also uses a Commission-approved balancing account to track differences between its FAS 87 expense and the amount recovered through rates.
>
> *We agree with Staff and intervenors that, so long as the Commission continues treating pension costs as expenses, there is a retroactive ratemaking problem with respect to the company's attempt to recover its out-of-period pension contributions that occurred prior to an application for deferral or accounting order. The cash contributions the company was required to make were not technically "FAS 87" expenses, as they were not calculated under the FAS methodology. They were, however, properly considered "expenses" under existing Commission policy. To the extent NW Natural believed these expenses should have been recognized in rates, the company could have filed for a deferral order coincident with the timing of expense incurrence. If the application had been granted, the company could have begun deferring its expenses on the date of the deferral application. Having failed to do so, the company waived the opportunity to collect these pre-application amounts as expenses and amortize them in rates.*
>
> NW Natural asks the Commission to take a different tack with respect to pension costs, by allowing the company to include prepaid pension costs in rate base, thus avoiding the retroactive ratemaking problem. We decline to adopt a new methodology for the ratemaking treatment of pension costs in this docket.
>
> Since we adopted our existing policy, there have been a number of changes to federal law and in the markets that make it appropriate to revisit our policies on the ratemaking treatment of pension costs. We are not, however, willing to adopt a specific policy change in this docket. While we are willing to explore the possibility of new methodologies, we are not yet convinced that a change to the Commission's existing policy is warranted. Moreover, even if we were convinced a change was warranted, there are a number of potentially appropriate ways to treat pension costs *(including the policy we currently have in place),* and we are not persuaded that NW Natural's proposal is the most appropriate. Because any policy change would affect all utilities, we believe a generic docket is the appropriate place to address such a far -ranging policy issue.[1]

A generic docket was opened and numbered UM 1633. It is CUB's understanding that the purpose of this "generic" docket was, and is, to determine whether the existing method of

[1] UG 221, Order No. 12-437 at 21-22 (internal citations omitted)*(emphasis added).*

recovery, based on FAS 87 expense, is a reasonable recovery method on a going-forward basis, and if not whether the current policy should be revised on a generic basis for all utilities.[2]

On December 21, 2012, a pre-hearing conference was held. During the conference, the parties agreed to hold two workshops before a full procedural schedule was adopted. The first was a parties-only workshop scheduled for January 23, 2013. The second was a parties and Commissioners workshop schedule for January 30, 2013.[3] On January 25, 2013 a Notice of Workshop issued setting an additional workshop with the Commissioners for March 11, 2013. Thereafter a Notice of Prehearing Conference memo issued, dated March 27, 2013, stating that the Commission was considering splitting the docket into two phases. The first phase would have addressed how the Commission should treat pension costs when setting rates on a going-forward basis. The second phase would have addressed how the Commission should resolve requests by utilities to recover pension costs incurred in the past.[4] NW Natural submitted a letter:

> To be clear, NW Natural's proposal (and we believe the proposals of other utilities) is entirely related to how the Commission should treat pension costs on a going-forward basis. Specifically, NW Natural will be asking to recover on a prospective basis (a) ***future*** pension expense through FAS 87; and (b) ***future*** costs to finance the Company's prepaid pension asset. Given that this request comprises the core of NW Natural's proposal, the Company would, by necessity, make this proposal in "Phase One."[5]

At the Prehearing Conference on April 8, 2013, the decision was made that the parties would first brief the potential bifurcation of the docket. On April 9, 2013, parties were ordered

---

[2] UG 221 Order No. 12-437 at 23.
[3] UM 1633 Prehearing Conference Memorandum December 24, 2012.
[4] Notice of Prehearing Conference issued March 27, 2013.
[5] Letter from Lisa Rackner, Attorney for NW Natural, to Judge Grant dated April 5, 2013 ***(emphasis in the original)***.

to submit briefs on the issue of whether the generic investigation should be bifurcated into two phases.

IPCO sought, in its brief, to be excused from the remainder of the proceeding stating that it did not, and does not, have a prepaid pension asset, is not incurring any financing costs to be recovered, and "does not believe that it can materially contribute going forward in this docket."[6] The Joint Utilities' brief, while more extensive, did not demonstrate to CUB that the Joint Utilities are in fact seeking *only* ratemaking treatment on a "going forward" basis. The Joint Utilities stated that they are asking, in addition to FAS 87 expense recovery, that:

> ***the prepaid pension asset be added to rate base,*** so that they will be allowed to recover prospective financing costs from contributions in excess of FAS 87 expense made to comply with federal mandates.[7]

In CUB's brief, CUB stated that it had no objection to considering alternative methods for dealing with pension funds – including basing recovery on contributions rather than expense -- in the future. CUB objected, however, to attempts by the Joint Utilities to embroil the Commission in retroactive ratemaking related to historic contributions. In CUB's opinion, changes in policy could only apply to future contributions. CUB noted its concern that a non-bifurcated UM 1633 docket, having to deal with policy changes and past contributions, would necessarily require review of seven different issues: First, the forward-looking policy question; Second, NW Natural's prior payments into the fund; Third, PacifiCorp's prior payments into the fund; Fourth, Cascade's, prior payments into the fund; Fifth, Avista's prior payments into the fund; Sixth, IPCO's prior payments into the fund, and Seventh, PGE's prior payments into the

[6] UM 1633 Idaho Power's Opening Brief on Bifurcation Proposal at 2 lines 25-26.
[7] UM 1633 Joint Utilities' Opening Brief at 4 lines 15-17 ***(emphasis added)***.

fund.[8]

In his July 8, 2013 Ruling, Chief ALJ Michael Grant first noted that the utilities opposed the proposal and contended that bifurcation would prejudice their ability to present and defend their recommendation in this investigation. He then noted that although the utilities sought prospective relief to recover costs to finance prepaid pension assets by adding the prepaid pension assets to rate base, the relief they sought did in fact include "a return on and of past contributions in excess of FAS 87 expense."[9] Because what the utilities sought included the return on and of past contributions, Staff also opposed bifurcation feeling that all arguments should be considered together in one phase.[10] ALJ Grant stated that the Commission had yet to determine whether prepaid pension assets should continue to be treated as an expense or whether they should be treated as an asset to be included in rate base and that this was the primary legal and policy issue to be determined in the investigation. He closed by advising that parties would be able to propose all arguments in support of either result, including arguments that the recovery of prepaid pension assets previously accrued constitutes retroactive ratemaking.[11]

A Pre-hearing Conference was held on July 24, 2013 from which a Ruling issued on July 25, 2013 setting the date for Utility Opening Testimony as September 30, 2013. On October 14, 2013, following the filing of the Joint Utilities' and Idaho Power's testimony, another Conference Report issued setting the remaining schedule. Staff and Intervenors filed reply testimony on December 19, 2013, and on January 21, 2014, the Joint Utilities moved to suspend the schedule and their motion was granted. Thereafter, on February 5, 2014, Staff moved to

---

[8] UM 1633 Citizens' Utility Board of Oregon's Answering Brief (Issue Bifurcation)/6.
[9] UM 1633 Ruling/1 (July 8, 2013).
[10] UM 1633 Staff Opening Brief (Bifurcation)/2 lines 16-20.
[11] UM 1633 Ruling dated July 8, 2013.

adopt a new schedule and that schedule was granted.[12] The new schedule required parties to file cross-answering testimony on March 12, 2014 and Pre-hearing Briefs on May 16, 2014. In a May 8, 2014 Ruling and Notice of Prehearing Conference, the procedural schedule was again suspended – the Commissioners wanted more information on accrual accounting and alternatively on cash accounting. The cash accounting questions to be addressed were:

- What are the risks and benefits of allowing utilities to account for pension expense on a cash basis?
- How should the Commission address the prepaid pension assets if it decided to transition to the use of cash contributions to account for pension expense on a going forward basis?

Another workshop and scheduling conference were schedule for July 10, 2014. The July scheduling conference resulted in a new schedule being set. The parties followed that schedule and filed testimony. The Commission delayed briefing *sua sponte* on October 31, 2014 to allow all Commissioners to participate in further proceedings. On January 5, 2015, another Pre-hearing conference was held at which a new schedule was adopted. CUB files its pre-hearing brief in accordance with that new schedule.

III. THE SETTLED ISSUES

There are no “settled” issues in this docket. The two areas of party agreement appear to be (1) that there is value in retaining the FAS 87 recovery method and all parties wish for the Commission to order that, and (2) if, the Commission determines instead to order that all the utilities transfer to using cash based accounting, then the parties agree that NW Natural’s existing balancing account should be amortized at the time of transition to cash accounting. The parties all agree that transitioning to cash based accounting would be problematic.

[12] UM 1633 Ruling dated February 6, 2014.

IV. THE UNSETTLED ISSUES

All the other issues raised in this docket remain unsettled. This is because facts matter. The actual contributions made by the utilities matter. The actual contributions made by customers matter. The actual, not just forecasted, FAS 87 recoverable by the utilities matters. The actual prepaid pension asset/accrued pension liability accrued prior to the great recession and implementation of the Pension Protection Act matters. The failure to pass through any or all of the benefits associated with negative FAS 87 to customers matters. All of these things matter when determining whether the Commission should revise Oregon's current pension policy. They matter when determining whether the Commission should, if it decides to revise the policy, set a one-size fits all pension policy for Oregon. They matter in determining, whichever policy is selected, how that policy should be applied to utilities on an individual basis. Contrary to what the Joint Utilities have argued throughout this proceeding, facts do matter.

V. ARGUMENTS

1. Pension Plans 101-Terminology

In this docket the Commission is attempting to determine future pension policy for Oregon – one can only change policy going forward. Once the Commission determines the right policy for going forward (which should include a determination of how to address hold over issues from the past), then it will have to apply the new policy going forward and deal with the hold over issues from the past with each individual utility. In order to carry out this task, a quick review of the basics is likely necessary.

Under defined benefit plans, employees accrue benefits during their years of service and receive specified benefits in the form of an annuity or lump sum after they retired.[13] In those types of plans, the employer bears the risk of all investment market fluctuations.[14] The entry of new employees into the plan has the effect of maintaining upward pressure on current FAS 87 estimates because of the current service provided by those eligible employees. Those plans operated under FAS 87 accounting rules. FAS 87 is a means of valuing the current service that the company and ratepayers receive from employees and appraising the current cost of the retirement benefits to be provided in compensation for that service at the future deliverable date of retirement. As time went by, all the utilities except Idaho Power began closing their defined benefit pension plans and opening defined contribution plans (401(k)) plans instead.[15] Under those plans, employers continue to make contributions but employees now bear the risk of investment market fluctuations in the value of their investments.[16] When the utilities closed their defined benefit plans and transitioned to defined contribution plans, there were no longer new employees entering the defined benefit plans to help maintain the relatively high FAS 87 expense recoverable, under existing regulatory structure, by ratepayers. Although ratepayers pay the full cost of new employee retirement (funded via defined contribution plans), it is not included in current FAS 87 expense, and therefore can contribute toward the widening gap between contributions and FAS 87 expense, resulting in an escalation of the prepaid pension asset.

2. What is the appropriate scope of this docket – should all the utilities questions be addressed in this docket?

The Joint Utilities argue that the central question in this docket is whether a prepaid

[13] NWIGU-ICNU/100 Smith/4 line 23 and /5 lines 1-2.
[14] NWIGU-ICNU/100 Smith/5 lines 3-4.
[15] UM 1633 – NWIGU-ICNU/100/Smith/12, lines 12-14, lines 18-32 and /13, lines 1-21; Exhibit NWIGU-ICNU 102.
[16] NWIGU-ICNU/100 Smith/5 lines 4-7.

pension asset should be included in rate base.[17] On the one hand, they state that arguments as to how much of the prepaid pension asset was actually or prudently financed by a utility should only occur in separate regulatory dockets.[18] And on the other hand they argue that:

> Regardless of whether pension cost recovery is based on cash contributions or FAS 87 expense, the historical cash contributions, FAS 87 expense, and the resulting prepaid pension asset (which is the difference between the two) need not be subject to additional prudence reviews in the future. Because pension costs have consistently been included in rates using FAS 87 expense, and because FAS 87 expense is based, in part, on cash contributions, the prudence of those contributions has already been subject to review in past rate-setting proceedings.[19]

CUB strongly disagrees that historic contributions were reviewed for prudence, but such a review would be necessary if pension contributions contribute to rate base. For example, some utilities made contributions well in excess of the minimum contribution during the height of the recent recession, when the return on the pension funds was negative or at risk of being negative.[20] In terms of future prudence reviews of each utility's individual prepaid pension asset, as succinctly stated by NWIGU-ICNU expert Smith:

> The prepaid pension asset represents amounts that have historically not been included in utility rate base and not included in rates and, therefore, has by definition not been deemed prudent. Consequently, the utility's prepaid pension assets should not be presumed to be prudent, and reviewing the prudence of management decisions that have impacted the size of the cost being requested in the utility's rate case will become increasingly important if a new element – rate base return - is being added to the regulatory recognition of utility pension costs prospectively.
>
> Moreover, in the past, because FAS 87 was applied to operating expenses but not to rate base balances (i.e., not to accrued pension liabilities or to pension assets), the prudence of funding decisions has not been a focus of past rate cases. In

[17] Joint Utilities/300 Joint Parties/5 lines 9-10.
[18] UM 1633 Joint Testimony/300 Joint Parties/5 lines 18-21. ("[a]rguments about how much of a utility's prepaid asset was actually or prudently financed by shareholders is an issue for the subsequent, utility specific, ratemaking procedures and not relevant to the broader policy issue raised in this docket.")
[19] UM 1633 Joint testimony/500 Joint Parties/4 lines 19-24 and at /5 lines 1-2; Joint Testimony/500 Joint Parties/17 lines 16-19.
[20] CUB Exhibit 106; CUB Confidential Exhibit 102.

instances where utility costs are being addressed in future cases, the exercise of management discretion in the management of retirement benefits and how they have been and are proposed to be funded, including prudence issues, may become very important. Consequently, utility past funding and related exercise of management discretion should not be exempted from prudence review.[21]

CUB agrees with Mr. Smith. The point is that the Joint Utilities would like the Commission to alter the current methodology for pension recovery, adding the prepaid pension asset to rate base and to earn a carrying cost. This means that the Joint Utilities should carry the burden of proof in this docket to show that the current pension recovery methodology does not work and that what they are proposing does in fact work or, more to the point, works better, for all companies, without causing harm to ratepayers. In order to show that the current process does not work and that the Joint Utilities' proposal would work (better), the Joint Utilities need to subject their individual prior pension recoveries to review at this time.

As part of that review, the Commission needs to determine what contributions to the pension plan were made by the utilities' shareholders versus ratepayers, whether those contributions were in fact prudent, whether management of the pension fund was prudent, whether the utilities passed deferred tax credits to ratepayers, whether the utilities passed all of the negative FAS 87 through to customers, whether utilities appropriately accounted for FAS 88 as well as FAS 87, and were all cash contributions actually made with cash or were other financing instruments such as life insurance or credit balances used instead. The list will in fact require an extremely intense review. After this complex review is complete, the Commission will have a better idea of whether the current FAS 87 methodology has left the Joint Utilities absorbing costs associated with prudently incurred investments. The Commission will also have a better understanding of whether the claimed prepaid pension assets really exist and whether it

[21] NWIGU-ICNU/400 Smith/5 lines 11-23 and Smith/6 lines 1-3.

is possible, without violating retroactive ratemaking prohibitions to go through past ratemaking to determine whether shareholders are financing the prepaid pension asset.

In the future, when the issue is ripe, the Commission can address the Joint Utilities' other question of the recoverability of expenses that may occur in the future if a utility prudently chooses to freeze or exit a pension plan.[22] The utilities themselves have stated that right now that issue should not be addressed. *See* NW Natural and PacifiCorp's written responses to CUB's request for an Informal Discovery Conference to resolve discovery disputes related to closure of plans in the future and the effect of FAS 88 - submitted to ALJ Grant on April 18, 2014 – where NWN stated:

> This docket is not intended to be a utility-specific factual inquiry into the facts and circumstances underlying the development of each utility's prepaid pension asset. *Nor is it intended to address the prudence of a particular utility's decision to offer a pension plan or a utility's decision to close, freeze, or keep open a pension plan*.[23]

And PacifiCorp stated:

> This is a generic policy docket into the treatment of pension costs in rates. *Whether a particular utility's decision to modify the form of retirement benefits offered to employees was prudent* and an understanding of the overall level of retirement and non-retirement employee benefits provided are *entirely outside the scope of this docket*.[24]

Given the above, it is CUB's position that the Commission cannot answer all of the questions raised by the Joint Utilities in this docket because not all of the issues are ripe for review. Instead, CUB respectfully requests that the Commission address the questions set forth by CUB in this Pre-hearing Brief.

---

[22]UM 1633 - Joint Testimony/100 Joint Parties/3 lines 2-4.

[23] Letter dated April 23, 2014 from Lisa Rackner to ALJ Grant, first page *(emphasis added) edocs.puc.state.or.us/efdocs/HAC/um1633hac10257.pdf.*

[24] Email dated April 23, 2014 from Attorney Sarah Wallace to ALJ Grant, page one. *Edocs.puc.state.or.us/efdocs/HAC/um1633hac102921.pdf*

3. What is the applicable standard of review for questions which can and should be answered in this docket? Who should carry the burden of proof?

This docket grew out of NW Natural's General Rate Case (UG 221) wherein the Commission in Order 12-408 denied NW Natural's pension proposal and stated that it would "open a docket to review the treatment of pension expense on a general, non-utility-specific, basis."[25] And Order 12-437, wherein it stated: "[b]ecause any policy change would affect all utilities, we believe a generic docket is the appropriate place to address such a far-ranging policy issue. * * * * * We will open a docket to review the treatment of pension expense on a general, non-utility specific basis."[26] Thereafter, PacifiCorp, PGE and Avista all asked for similar treatment in their later in time filed rate cases and in settlement of the pension issue in those dockets all parties agreed to a reduction in rate base and the removal of the prepaid pension asset to allow for resolution of the investigatory docket.[27] CUB would not have agreed to all of these stipulations, which took the prepaid pension issue out of utility-filed general rate cases, if it believed that the Joint Utilities would not continue to have the burden of proof on the utility requested pension methodology change issue. Each utility had the burden of proof in its rate case. Taking the issue from each utility's rate case and placing it in a generic docket should not change which party (in this docket – the Joint Utilities) has to carry the burden of proof,

---

[25] UG 221, Order No. 12-408 at 4.
[26] UG 221, Order No. 12-437 at 22.
[27] UE 283, Order No. 14-422 at 7 (2. Other Revenue Requirement Issues, *d. Issue S-12 Pension Costs: "*In its initial filing, PGE requested recovery of 2015 pension expense and a return on the average 2015 prepaid pension asset, net of deferred taxes, through its inclusion in the rate base. The stipulating parties agree for settlement purposes to remove the prepaid pension asset and reduce the rate base by $45.5 million."); UG 284 Stipulation at 7(5. Revenue Requirement – t. Pension Expense & Prepaid Pension Asset - (-$282,000) This adjustment removes the rate base treatment of the Company's prepaid pension asset from this Docket, reducing rate base by $4,318,000, and revises the Company's pension expense to an agreed-upon level; UG 263 Stipulation App. A to Order 13-474 at 5 (14. Prepaid Pension Asset. The Stipulating Parties agree that the Company will remove its request for recovery of its prepaid pension asset from the Company's filing in this case, which reduces the revenue requirement by $5.352 million as shown on page 1 of Exhibit A, and will address this issue in docket UM 1633.

especially when any change, in an almost 30 year old pension methodology, would result in each utility then filing a rate case in which they would once again have the burden of proof. It simply makes no logical sense for the burden of proof in complex investigatory dockets, arising from utility initiated rate cases, to shift to Staff and Intervenors especially when the utilities are driving the requested changes. Moreover, with more and more complex issues bouncing out of rate cases for later review (so that those cases can be settled and orders issued) it makes no sense to permit a utility to divest itself of the burden of proof by requesting, or agreeing, to participate in an investigatory docket outside of its general rate case when the issues in question came from the rate case(s) and could dramatically affect rates.[28]

As noted above, this docket was opened for the specific purpose of conducting an investigation into the treatment of pension costs in utility rates. The process for review in such a docket is set forth in ORS 756.515.[29] Based on the origins of this generic review docket, it is

[28] *But see, Pacific Northwest Bell Tel. Co. v. Eachus,* 320 Ore. 557 (1995)(case related to question of where jurisdiction lay for OPUC initiated rate case. The Court stated that the statutes (including ORS 756.515) were silent as to whether the regulated party was to be considered a defendant. Ultimately they decided the utility was a defendant in a case brought by the Commission under ORS 756.515 for jurisdictional purposes of appeal. The case did not discuss burden of proof in the underlying docket.); UW 54/UM 587 Order No. 97-240 at 16 ("Because jurisdiction expired in the rate case, docket UW 54, the utility no longer has the burden of proof. That burden passes on to staff in the UM 857 investigation . . .) and UM 918 Order No. 99-616 at 49-50 ("This is in contrast to an overearnings investigation, where the burden of proof would rest on the Commission Staff or any party initiating the investigation.") CUB believes the Commission may choose to refine its interpretation of the statutes regarding investigations and recommends that it does so. *Qwest Corp. v. PUC,* 205 Ore. App. 370, 380 (2006) *citing to J.R. Simplot Co. v. Dept. of Agriculture,* 340 Ore. 188, 197(2006)("[I]f the legislature granted authority to the agency to complete the meaning of a delegative term, [the Court] will defer to the agency's interpretation so long as it is consistent with the legislature's purpose.") CUB understands that the Commission's delegated authority is not without limits. UE 88 & UM 989, Order No. 08-487 at 12-13. However, the UW 54 and UM 918 dockets discussed above dealt with limited issues they did not deal with massive, utility-proposed policy shifts affecting 30 years of policy. In this docket the utilities requested and received sequential briefing - a schedule designed to protect them should the Commission determine that they do in fact have the burden of proof. The Joint Utilities due process rights will not be impinged by having to carry the burden of proof.

[29] ORS 756.515 states:

> (1) *Whenever the Public Utility Commission believes* that any rate may be unreasonable or unjustly discriminatory, or that any service is unsafe or inadequate, or is not afforded, or *that an investigation of any matter relating to any public utility* or telecommunications utility or other

CUB's position that the standard of review in such a docket should be similar to that in a contested rate case challenge, or a deferral amortization,[30] wherein the Company carries the burden of persuasion throughout the proceeding to prove that the position it argues for will result in rates that are fair, just and reasonable.[31] From CUB's point of view, for purposes of this investigatory docket, this means that the burden of persuasion remains with the Joint Utilities throughout the proceeding. And what the Joint Utilities must prove is that there is something wrong with the current pension methodology in use by the Commission (that it does not produce rates that are fair just and reasonable) and that the pension methodology the Joint Utilities are now proposing to be adopted will result in rates that are fair, just and reasonable. To prove that there is something wrong with the current methodology, the Joint Utilities must produce evidence showing that the current methodology has injured each utility and will not make each

---

> person *should be made*, or relating to any person to determine if such person is subject to the commission's regulatory jurisdiction*, the commission may on motion summarily investigate any such matter*, with or without notice.
> * * * *
> (3) *Thereafter proceedings shall be had* and conducted in reference to the matters investigated in like manner *as though complaint had been filed with the commission relative thereto, and the same orders may be made in reference thereto as if such investigation had been made on complaint.*
> (4) The commission may, after making an investigation on the commission's motion, but without notice or hearing, make such findings and orders as the commission deems justified or required by the results of such investigation. Except as provided in subsections (5) and (6) of this section such findings and orders have the same legal force and effect as any other finding or order of the commission.
> * * * *

[30] As provided in OAR 860-001-0010(4) "Contested case" has the meaning provided in ORS 183.310(2). . ." ORS 183.310(2)(a) provides that a "Contested case" means a proceeding before an agency: (A) In which the individual legal rights, duties or privileges of specific parties are required by statute or Constitution to be determined only after an agency hearing at which such specific parties are entitled to appear and be heard; . . . (D) Where the agency by rule or order provides for hearings substantially of the character required by ORS 183.415, 183.417, 183.425, 183.450, 183.460 and 183.470."

[31] ORS 757.210(1); *Pacific Northwest Bell Tel. Co. v. Sabin*, 21 Or App 200, 213-214 (1975) ("Any increase in rates must be preceded by the submission of 'revised schedules,' and is dependent upon a showing by the utility that the proposed rates are 'just and reasonable.'" *citing to* ORS 757.210); UE 115 Order No. 01-777 at 6 (Aug. 31, 2001); UE 196 Order No. 09-046 at 7-8 *(emphasis added);* UE 228 Order No. 11-432 (Nov 2, 2011)*(emphasis added). See also In Re Northwest Natural Gas Company,* Docket No. UG 132, Order No. 99-697 at 3 (Nov 12 1999) *In Re PGE, Application to Amortize the Boardman Deferral,* Docket No. UE 196, Order No. 09-046 at 7-8. Although the burden of production shifts, the burden of persuasion is always with the utility.

utility whole again. To prove this, the Joint Utilities must demonstrate that the failure to be made whole is not the result of bad decision-making on their part during the process. Thus, the Joint Utilities' thought processes and actions in making the decisions they made under the current methodology will all be relevant when reviewing the recoveries they achieved and the recoveries they claim they should have achieved (the return on prepaid pension assets). In other words, what the utilities knew or should have known when they made their pension plan decisions are now, in the future, be relevant. If the Joint Utilities cannot produce evidence now in this docket to show how the process worked on each of them individually and injured them, then how will the Joint Utilities produce that evidence later in the individual pension asset review dockets if such dockets are opened as the result of the Commission's decision in this docket?[32] It is CUB's position that if the Joint Utilities cannot prove harm now, then there is no point in the Commission's changing the methodology for the future. If, however, the Commission determines that a new methodology is needed for the future, then the Joint Utilities must prove that the new methodology will, going forward, make each utility whole without unduly enriching each utility at the expense of its customers.[33] In this docket, as discussed above, the Joint Utilities are arguing for changes that will dramatically affect the rates of

[32] *UE 246 PacifiCorp Request for a General Rate Revision, Order 12-493 p 25. "*The prudence standard is traditionally used to address the proper valuation of utility investment in rate base." *And at 26"*Contrary to any implication from the language in docket UM 995, the process used by the utility to make a decision to invest in a plant is highly valuable in determining whether the utility's actions were reasonable and prudent in light of the circumstances which then existed. The prudence standard examines all actions of the utility – including the process that the utility used to make a decision. Although there may be unique circumstances where a utility is able to overcome the inability to explain its internal decision-making processes, a utility's actions are generally a primary consideration in a prudence review."

[33] CUB finds it at odds with the alleged purpose of this docket that the Joint Utilities want the Commission to look at what would happen if they "prudently" (which pre-supposes the question) close plans in the future but yet that the Joint Utilities do not want anyone to review whether closing plans in the past was prudent. They do not want anyone to look at the effect on FAS 87 (pension expense) of any utility having historically closed plans. CUB was denied the right to gather information to shed light on what happened when plans were closed in the past and monies transferred to defined contribution plans. That information would have shed light on how the Commission should deal with possible plan closures in the future and subsequent requests for recovery.

consumers. CUB and others are arguing against those changes. Even if the Commission does not hold that the burden rests with the Joint Utilities, CUB believes that it has, nonetheless, demonstrated that change should not be made. And CUB notes that: a deviation from prior Commission policy will not survive judicial scrutiny without "…a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored" [34] and without "clearly set[ting] forth the ground for its departure from prior norms."[35]

4. What is a prepaid pension asset/accrued pension liability (ppa/apl)? And What Are The "Multiplicity Of Interrelated Factors That Contribute To The Balance Of The Net Pension Asset Or Liability"[36] And Make Its Review So Complex?

There is disagreement both as to the origins of the ppa/apl, its elements, and as to whether it can continue to grow indefinitely. CUB believes that the "prepaid pension asset is a mix of accrual and cash accounting and not suitable for rate making."[37] NWIGU-ICNU states that the prepaid pension asset "merely represents a financial accounting difference that is not, and should not be equated with any ratepayer benefits."[38] CUB also believes that the placement of the prepaid pension asset in rate base could result in the creation of a continuous money-making machine for the utilities – if the pension plans become overfunded, it could lead to a circumstance where the FAS 87 expense is negative each year causing the prepaid pension asset to grow annually.[39] The Joint Utilities state that the prepaid pension asset is created as follows:

> When a utility makes a cash contribution to its pension plan in a particular year, the entirety of that cash contribution is not "expensed", i.e., the entire cash contribution is not subtracted from revenues for purposes of determining a

[34] *Greater Boston Television Corp. v.* FCC, 444 F.2d 841, 852 (D.C. Cir. 1970)(affirmed in *NW Environmental Defense Center v. Bonneville Power Admin.*, 477 F.3d 668, 687 (9th Cir. 2007)).
[35] *W. States Petroleum Ass'n v. EPA*, 87 F.3d 280, 284 (9th Cir. 1996)(affirmed in *NW Environmental Defense Center v. Bonneville Power Admin.*, 477 F.3d 668, 688 (9th Cir. 2007).
[36] Idaho Power/100 MacMahon/10 lines 14-17.
[37] CUB/400 Jenks-McGovern/15 lines 20-21.
[38] NWIGU-ICNU/100 Smith/17 lines 10-11.
[39] CUB/100 Jenks-McGovern/21-23.

utility's earnings in the year the contribution is made. Rather, only the amount calculated pursuant to FAS 87 is expensed. The remaining difference between the cash contribution and the FAS 87 expense is accounted for as either an accrued liability (when FAS 87 expense exceeds contributions) or as a prepaid pension asset (when contributions exceed FAS 87 expense). In this way, the prepaid pension asset represents each company's contribution to its pension plan that have yet to be expensed through FAS 87. Or conversely, the accrued liability represents the amount of FAS 87 expense in excess of each company's contributions.[40]

The Joint Utilities further state that they financed the contributions to the plan through a mixture of equity (put up by shareholders) and debt (in the form of bonds).[41] And they claim that the cost of financing is determined by the debt cost and shareholder ROE.[42] The Joint Utilities further state that the prepaid pension asset cannot grow indefinitely and that it is directly reduced or amortized through FAS 87 expense.[43] They claim that when the "[Pension Protection Act] decreased the period for amortizing the unfunded liability to seven years, [it] significantly accelerated and front-loaded required contributions in order to satisfy the funding rules."[44] And additionally they claim that "[w]ith the market crash occurring in the same year PPA funding rules were effective, plan sponsors were immediately faced with underfunded plans and large required pension contributions due to the accelerated recognition of the investment losses under PPA."[45] They also throw in the negative effect of decreasing interest rates,[46] and the fact that they believe they should be compensated for above market performance of their pension plans.[47]

CUB and NWIGU-ICNU disagree with the Joint Utilities' assessment because it

[40] UM 1633 - Joint Testimony/500 Joint Parties/7 lines 12-23.
[41] UM 1633 Joint Testimony/500 Joint Parties/5 lines 21-22 and /6 line 1.
[42] UM 1633 - Joint Utilities/500 Joint Parties/6 lines 1-3.
[43] UM 1633 - Joint Utilities/500 Joint Parties/5 lines 10-12.
[44] UM 1633 - Joint Testimony/200 Vogl/8 lines 10-12.
[45] UM 1633 - Joint Testimony/200 Vogl/9 lines5-8.
[46] UM 1633 - Joint Testimony/200 Vogl/9 lines 12-13.
[47] UM 1633 - PGE/100 Hager-Jaramillo/16 lines 1-10; CUB/100 Jenks-McGovern/18 lines 12-20.

mischaracterizes the effects of both the PPA and the Recession,[48] mischaracterizes the effect of amortization on the prepaid pension asset, completely ignores factors such as the failure to consistently credit *all* negative FAS 87 to customers,[49] lack of record keeping/missing records,[50] the effects of multiple black box settlements which failed to define the elements of pension that were included within them,[51] the effects of mergers and acquisitions on pension plans,[52] and which contributions were investor contributions or ratepayer contributions. All of these elements should be appropriately included in the prepaid asset calculations to determine the make-up of the prepaid pension asset.

NWIGU-ICNU states it this way: "[t]he Joint Utilities do not appear to distinguish between (1) pension trust asset returns that have realized pension expense that was reflected for rate making purposes and (2) pension trust asset returns that produced pension income that was <u>not</u> reflected for ratemaking purposes. This is an important distinction, and can have a direct impact on whether a utility's prepaid pension asset had been funded by investors or from other sources, such as ratepayers ... no portion of a utility's prepaid pension asset should be included in rate base if it cannot be demonstrated by the utilities to have been funded by investors."[53] For example: NW Natural under-forecasted negative FAS between 1996 and 2002, and customers

---

[48] "[O]ver 50 percent of the current balances of Cascade, NW Natural, and PGE accumulated prior to 2008, the time at which the two events occurred (the Pension Protection act and the financial crisis) that the Joint Utilities claim caused the recent significant increase in ppa/apl balances." UM 1633 - Staff/100 Bahr/7.

[49] Some utilities seem to believe that it is appropriate to charge customers for FAS 87 expense when it is positive but do not believe that customers should receive a benefit when it is negative. CUB/100 Jenks-McGovern/15 lines 3-5. This is grossly unfair because if FAS 87 ratemaking is not applied symmetrically, customers are overpaying. CUB/100 Jenks-McGovern/15 lines 12-13; Staff/100 Bahr/10 lines 17-21.

[50] Even when trying to show real numbers NW Natural starts out by noting that it doesn't have "exact information" for the years 1986 to 1998 – a period of twelve years. NW Natural then goes on to make conclusions based on incomplete information. NW Natural/100 Wilson/5 line 19. And in the case of PacifiCorp it failed to provide any pension data prior to 1998. CUB/100 Jenks-McGovern/35 lines 19-20. And review of utility information demonstrates that some information was recorded in the wrong accounts. CUB/100 Jenks-McGovern/36 lines 1-2.

[51] UM 1633 - CUB/100 Jenks-McGovern/37 lines 9-16.

[52] UM 1633 - CUB/100 Jenks-McGovern/36 lines 3-11.

[53] UM 1633 - NWIGU-ICNU/400 Smith/6 lines 12-19 (emphasis in original).

were short changed by $6.2 million.[54] If $6.2 million in negative FAS 87 was not passed through to customers, NW Natural did not finance that portion of the prepaid pension asset.[55] Or take PGE. PGE has a policy of not passing through negative FAS 87 to customers.[56] There is, therefore, no financing cost but PGE wants shareholder return anyway, not for financing purposes because there is no financing cost, as a reward for their "skillful" management of the pension plan. This makes little sense. Adding an element to rate base (negative FAS 87) that the utility did not finance is inappropriate, even as a form of incentive regulation. In addition, PGE claimed that the Pension Protection Act (PPA) and the Recession of 2008 played into the growth of its prepaid pension asset but PGE's prepaid pension in 2013 was less than it was before the PPA and Recession. It is shrinking, not growing.[57]

As for amortization and the prepaid pension asset, CUB's position is as follows. "CUB has challenged (and still continues to challenge) the idea that FAS 87 amortizes down the prepaid pension asset, as if it had a fixed value and would be reduced over time and at a predictable rate. Instead, FAS 88 represents the difference between the total collection of FAS 87 and the total pension contributions over the life of the pension."[58] In other words, the prepaid pension asset is not the difference between pension contributions and FAS 87, but also includes FAS 88. The Joint Utilities want the Commission to believe that FAS 88 is not important but it is. Over one third of all of PacifiCorp's net pension expense is FAS 88 and special charges.[59] "CUB now understands through conversations with the Companies, and through discovery, that

[54] UM 1633 - CUB/100 Jenks-McGovern/19 lines 1-4.
[55] UM 1633 - CUB/400 Jenks-McGovern/16 lines 18-21.
[56] UM 1633 - CUB/100 Jenks-McGovern/15 lines 3-5.
[57] UM 1633 - Staff/200/Bahr/10.
[58] UM 1633 - CUB/400 Jenks-McGovern/6 lines 18-21.
[59] UM 1633 - CUB/400 Jenks-McGovern/7 lines 8-15; CUB Exhibit 402.

FAS 88 charges are incurred throughout the life of the pension plan," and not just at the end of the pension plan. Therefore, the accurately calculated prepaid pension asset will be smaller with the incurrence of FAS 88 expense."[60] But tracking FAS 88 has not been easy. PacifiCorp's FAS 88 expense has been collected in rates but not as pension expense:

> FAS 88 and special charges prior to 2008 were generally deferred and amortized over future periods to operating expenses other than pension expense.[61]

PacifiCorp later advised that FAS 88 charges "were deferred as regulatory asset and subsequently amortized to operations and maintenance accounts outside of pension expense. These amounts were recovered in rates."[62] So PacifiCorp's FAS 87 expenses were recovered in rates via pension expense and PacifiCorp's FAS 88 expenses were recovered in rates via O & M charges.[63] Using CUB's Net Cash Method[64] to calculate how much customers have contributed to its pension, including both FAS 87 and FAS 88, CUB demonstrated that PacifiCorp has collected all but $41 million ($196.2 million total company) of its total contributions. PacifiCorp is, however, seeking a return on its prepaid asset of $89.4 million.

Moreover, the more time that passes, and the more that markets recover, the smaller the prepaid pension assets will get without any methodological changes being made – FAS 87 appears to work over time. Towers Watson has released a report dated January 2, 2014 that indicates that pension funding levels have increased "sharply" in 2013, and were expected to continue to trend in the future. They noted "the causes of this increase in funding levels are

[60] UM 1633 - CUB/400 Jenks-McGovern/8 lines 8-9 and at /9 lines 1-2.
[61] UM 1633 - CUB/400 Jenks-McGovern/9 lines 14-20; CUB Exhibit 402.
[62] UM 1633 - CUB/400 Jenks-McGovern/9 lines 21-24; CUB Exhibit/404.
[63] UM 1633 - CUB/400 Jenks- McGovern/10 lines 1-3.
[64] UM 1633 - CUB/300/Jenks-McGovern/17-18.

rising interest rates and a strong stock market."[65]

Staff reports that many news outlets are reporting similar results: "pension costs are falling due to rising interest rates and surging stocks." In this scenario, regulatory lag will start benefiting companies.[66] In point of fact, of the six utilities involved in this docket, half had prepaid pension asset/accrual liability balance decreases over the past year.[67] Even the Joint Utilities have been forced to agree that conditions causing growth of the prepaid pension assets will reverse.[68] Should they be compensated for above market performance? No. The utilities can be expected to beat the projected return in most years.[69]

5. Should cost recovery of the ppa/apl be based on cash or accrual accounting?

FAS 87 and FAS 88 represent the cost of the pension when accounted for on an accrual basis. Pension Contributions represent the cost of the pension when accounted for on a cash basis. For ratemaking purposes, either method could be used and over the life of the pension shareholder would be fully compensated for the cost of the pension.

6. What is cash accounting?

Cash accounting and accrual accounting are two different accounting methodologies for tracking costs. The utilities previously used cash accounting where they recovered their actual contributions to the pension plans. However, with their pensions well funded, the utilities did not need to make cash contributions and so they sought permission to change to recovery based on accrual accounting. Accrual accounting tracks the costs and the benefits as they relate to a specific year. While cash accounting was lumpy, accrual accounting allowed annual charges to

[65] UM 1633 - Staff/200 Bahr/9 lines 5-11.
[66] UM 1633 - Staff/200 Bahr/9 lines 12-19; Staff Exhibit/201, Bahr/1.
[67] UM 1633 - Staff/200 Bahr/10 lines 3-10.
[68] UM 1633 - Joint Utilities Bifurcation Brief/3 lines 7-9.
[69] UM 1633 - CUB/100 Jenks-McGovern/17 lines 23-24.

customers of the pension costs attributable to that year portion of the pension plan.

6.1 Do any Oregon utilities currently have cash based accounting recovery?

Only Idaho Power (IPCO) has cash accounting and only in Idaho. Interestingly, IPCO has not paid out more in cash on a cumulative basis toward its pension than it has recorded as expense.[70] We note with interest that Idaho Power states that it deferred funding under relief provisions of the Worker, Retiree and Employer Recovery Act of 2008, and The Pension Relief Act of 2010. Idaho Power thinks that doing so helped it, as did the fact that its plan was still open.[71] Idaho Power likes FAS 87 in Oregon and is not interested in change. Idaho Power "does not believe embedding a prepaid asset or an accrued liability in ratebase is appropriate . . ." for Idaho Power.[72] CUB notes that Idaho Power is the only utility that would be required to provide a credit to customers if the ppa/apl was symmetrically implemented in rate base. Idaho Power believes that "[b]ased on the recovery of the market and the increase in discount rates . . . its current pension liability will begin to trend toward a prepaid asset, but does not anticipate balances to be significant, whether a net liability or a prepaid asset during the next five years."[73] "For purposes of expense recovery, Idaho Power agrees with Staff, CUB, and NWIGU-ICNU that the existing regulatory treatment – the recovery of FAS 87 pension expenses – is adequate, at least in Idaho Power's circumstances."[74,75]

> Using a FAS 87 approach without rate base adjustments for Idaho Power's Oregon jurisdiction pension costs results in a clear, predictable and consistent method of cost recovery.

[70] UM 1633 - Idaho Power/100 MacMahon/6 lines 12-14; Idaho Power/200 MacMahon/2 lines 7-9.
[71] UM 1633 - Idaho Power/100 MacMahon/7 lines 2-26 and /8 lines 1-3.
[72] UM 1633 - Idaho Power/100 MacMahon/9 lines 21-23.
[73] UM 1633 - Idaho Power/100 MacMahon/9 lines 6-9.
[74] UM 1633 - Idaho Power/100 MacMahon/10 lines 6-8; Idaho Power/200 MacMahon/2 lines 17-20.
[75] We note, however, that if the Commission were to find that customers should pay a return to the Joint Utilities on their prepaid asset, CUB would, based on that policy change, seek a change in the regulatory treatment for Idaho Power and request a return on Idaho Power's Accrued Pension Liability.

* * * * *

Idaho Power requests that if the Commission wishes to consider a different regulatory treatment for pension cost recovery going forward, that it assess the merits of applying such treatment individually to each utility.[76,77]

Idaho Power provides the following warnings to anyone considering switching from accrual to cash accounting:

a. Cash contributions tend to be more volatile – some years require large payments and others little or no payment. To protect ratepayers from this volatility you would require a balancing account or other deferral mechanism.[78]
b. "legal requirements governing the minimum required cash contributions are subject to frequent change which can further contribute to the volatility of cash contributions. FAS 87 based methodology, on the other hand, has been consistent for nearly 30 years."[79]
c. "funding requirements and actual contributions are not synonymous. Because factors other than pension funding laws and regulations determine how much a company contributes, a cash basis of accounting should be based on actual contributions, and not solely on minimum required funding. For example, a company's actual contribution may exceed the minimum level to reduce required Pension Benefit Guarantee Corporation Premiums."[80]
d. A change in methodology will need a "transition plan to account for the differences between methods."[81]

Idaho Power completes its warnings by noting that: "In the case where a prepaid pension asset exists, a change from FAS 87 to a cash method converts these future allowable costs into historic costs. That is, if future rates are based on future cash contributions then historic contributions that were made by the utilities but not yet expensed and recoverable in rates would then become historic costs which are generally ineligible for recovery in rates."[82] CUB agrees. Under the

---

[76] UM 1633 - Idaho Power/100 MacMahon/11 lines 7-9 and 13-16.
[77] UM 1633 - Idaho Power also notes if there is a change to cash accounting it would like all the same balancing accounts etc. that it has in Idaho. Idaho Power/200 McMahon/4 lines 8-25 and at /5 lines 1-9. NWIGU-ICNU oppose such a suggestion. NWIGU-ICNU/400 Smith/9 lines 21-23 and at /10 lines 1-6.
[78] UM 1633 - Idaho Power Company/200 MacMahon/3 lines 1-9.
[79] UM 1633 - Idaho Power Company/200 MacMahon/3 lines 10-13.
[80] UM 1633 - Idaho Power Company/200 MacMahon/3 lines14-19.
[81] UM 1633 - Idaho Power Company/200 MacMahon/3 lines 20-22.
[82] UM 1633 - Idaho Power Company/200 MacMahon/3 lines 20-26 and /4 lines 1-4; see also Joint Testimony/500 Joint Parties/9 lines 5-7 and Joint Testimony/500 Joint Parties/10 lines 4-6.

current system for pension recovery, unrecovered historic pension contributions will be recovered sometime in the future through FAS 87. But, if Oregon converts to a contribution-based system, then ratemaking through FAS 87 expense is eliminated and those historic contributions become stranded with no mechanism to recover them. This is why CUB can only support switching to cash contributions if the utilities do not receive a return on or of the prepaid pension asset.

6.2 If the Commission orders a transition to cash accounting what procedures would need to be implemented as part of the transition if any?

> If required to transition from the current FAS 87 accrual recovery mechanism to cash based recovery, what is a fair and appropriate way to ensure that affected utilities are treated fairly and also to ensure customers do not end up unfairly bearing costs?[83]

CUB sees a decision tree that contains three branches for the Commission to consider in transitioning to cash based pension recovery. Only the third option is feasible in CUB's opinion.

Option 1: Allow recovery of all of the prepaid pension asset. The Joint Utilities offer in their testimony that if the Commission orders cash based accounting that the prepaid pension asset could be amortized over five years so there is less harm to customers.[84] CUB does not support this option. Since utilities proposed moving to FAS 87 accounting, customers have been paying the annual cost to the utility for its pension plan. And since customers have been covering pension expense for 20 years,[85] it is hard to understand how customers owe the utilities millions for their pensions. Moreover, ratepayers should not be required to pay for historical decisions related to each utility's pension without regard to the prudency or an examination of

[83] UM 1633 - CUB/300 Jenks-McGovern/12 lines 14-17.
[84] UM 1633 - Joint Testimony/500 Joint Parties/11 lines 11-15.
[85] There is no dispute that pension expense has been the basis of ratemaking. However, there are questions as to the consistency and accuracy of our forecasting of FAS 87.

historic ratemaking treatment.[86] Allowing a return of would create all of the same issues as allowing a return on the prepaid pension asset.[87]

Allowing return of the prepaid pension asset is of particular concern with regard to PGE, which had [redacted] in negative FAS 87 added to its prepaid pension asset[88] which, as previously discussed, the Company had a policy of not passing through to customers. But in a year when FAS 87 is negative and the company makes no pension contributions, the negative FAS 87 is added to the prepaid pension asset. Under pension expense accounting, negative FAS 87 should be passed through to customers as a credit to revenue requirement. If the Commission were to allow PGE to fully recover its prepaid pension asset as a means to transition to a cash-based methodology, it would mean that customers who should have received a rate credit for the negative FAS 87 will instead be paying the negative FAS 87 directly to PGE. This doubles the harm to customers from not receiving the negative FAS 87 in the first place from [redacted] to [redacted].

Option 2: Allow recovery of some of the prepaid pension asset. This would require going back in time and identifying where ratemaking was consistent with FAS 87, and then adjusting the prepaid pension asset to a level that fairly reflects what the Company has financed. CUB calls this the Net Cash Method.[89]

CUB does not support this option either because utilities should not automatically be allowed to earn a return of contributions above the minimum which may not have been prudent; of monies that may not have been financed by the utility's shareholders; of contributions, or net

[86] UM 1633 - CUB/300 Jenks-McGovern/12 lines 21-23.
[87] UM 1633 - CUB/300 Jenks-McGovern/13 lines 1-2.
[88] UM 1633 - CUB/100 Jenks-McGovern/15 line 2; CUB Confidential Exhibit 107.
[89] UM 1633 - CUB/300/Jenks-McGovern/15 line 9 to/23 line 5.

prepaid pension accumulations, before the PPA of 2006 and financial collapse of 2008 occurred.[90] However, this option would at least allow a review to determine what shareholders have actually financed and enable the Commission to prevent utility recovery of negative FAS 87 which was not shared with customers.

And Option 3: Allow recovery of none of the prepaid pension asset. CUB would support Option 3, if the Commission required the utilities to convert to cash accounting. CUB could support this option because it would not reward the utilities with a wind fall. This docket was born of opportunism – the utilities should not get to pick the timing of any recovery.[91]

But what of the utilities cries that they would have to do write-offs? As noted by CUB, write-offs are not uncommon. And PGE has had to make write-offs, such as those related to Boardman and Trojan.[92] The utilities, in explaining the write-offs from this pension docket, could note that the change in regulatory practice would cause a one-time write-off but would result in dollar for dollar recovery of all pension contributions going forward.[93] And there would also be tax benefits for the Company associated with writes-offs – again news investors should like.[94]

So those are the options for dealing with the claimed legacy amount if transitioning to a cash based system. What would the cash based system look like after the transition was complete? What mechanisms would be required to implement the switch?

CUB believes that there would need to be three parts to a recovery mechanism. The first

---

[90] UM 1633 - CUB/300 Jenks-McGovern lines/15lines 12-20.
[91] UM 1633 - CUB/300 Jenks-McGovern/23 lines 1-5 including CUB CONFIDENTIAL Figure 7 and /23 lines 12-14.
[92] UM 1633 - CUB/300 Jenks-McGovern/24 lines 18-19.
[93] UM 1633 - CUB/300 Jenks-McGovern /24 lines 19-21 and /25 lines 1-6.
[94] UM 1633 - CUB/300 Jenks-McGovern/25 lines 7-12.

part would review the contribution when it is made, the second part would determine the prudence, and then the third part would determine ratemaking treatment in Oregon. This would require some standards to be put in place by which parties could draw conclusions – particularly when utilities are making contributions that are above the minimum required contribution.

The prudence review, in part two, would in the case of an in-state only utility, lead to an agreement on the amount that the utility could recover. However, for multistate utilities, it would be necessary to allocate a share of the pension contribution to Oregon.

It would then be necessary, in part three, to determine a relationship between the pension contribution and the time frame of the pension liability associated with the contribution. Determining Oregon's share of a pension contribution will be different depending on whether Oregon's share relates to the current year's pension liability or to the liability associated with the pension over the entire life of the pension plan.[95]

So the third part of the mechanism would be needed to decide the time period of recovery and the interest rate used on that recovery.[96] Because pension contributions are lumpy, it would be inappropriate to simply add the entire pension contribution to the revenue requirement during an individual test year. Such a request would likely be rejected because it is unlikely the pension contribution would reoccur the following year. Therefore, it makes sense to spread the pension contribution over a period of time, such as 5 years. Doing this would then require choosing an appropriate interest rate. Taking all this into account, CUB finds that if starting from scratch/zero, the contribution method would be best and CUB would support the transition to cash if the utilities were not rewarded with the windfall of recovery of the prepaid pension asset.

[95] UM 1633 - CUB/300 Jenks-McGovern/27 lines 18-23.
[96] UM 1633 - CUB/300 Jenks-McGovern/28 line 1 - 22.

But because Oregon is not starting from a financially neutral position, it is likely the transition costs would be too high and it would be better to stick with the current accrual (FAS 87 and FAS 88) methodology so long as going forward it is applied to both positive and negative FAS 87.

6.3 Do the Parties think that cash accounting would solve the Joint Utilities perceived problems?

CUB has not advocated for shifting to cash-based accounting since the filing of its PGE testimony in docket UE 262 and does not advocate for use of cash based accounting now in this docket unless the utilities are not to be awarded recovery of the prepaid pension asset.[97]

"Reimbursements on a cash basis, or on an accrual basis, are both reasonable approaches to making the Company whole. They both have strengths and weaknesses and neither system is perfect. Maintaining consistently the current method of recovery, based on FAS 87 expenses, would, over time, accurately and effectively make the utility whole for the [full pension cost]."[98] "Switching in mid stream as the Commission is currently considering, runs the risk of creating over or under compensation of the prepaid pension asset."[99] Timing in CUB's opinion is everything. CUB provided an example in its testimony to demonstrate the effect of timing during the switch from accrual to cash accounting. That example follows:

> [I]f the Commission had decided to award PGE $108 million in 2012 (the full value of the prepaid pension asset) and the Commission had then required PGE to switch to cash recovery going forward, the amount recovered would have been $31.4 million more than if the Commission had made the award of the full value of the prepaid pension asset in 2013 when it would have been only $76.4 million. PGE did not make a contribution to its pension plan in 2013, so on a going forward basis, PGE would have recovered cash contributions in an identical manner. If the transition analysis was done in 2012 and the new policy was

[97] It is true that CUB thinks that overall cash-based accounting is a cleaner way of accounting for pensions but CUB believes this is only true if starting from a clean page and in Oregon we are not doing that – pensions have a long history.
[98] UM 1633 - CUB/300 Jenks-McGovern/4 lines 15-19.
[99] UM 1633 - CUB/300 Jenks-McGovern/5 lines 4-7.

> implemented in 2013, customers would have over compensated PGE by more than $30 million.[100]

CUB notes also that even the Joint Utilities and Idaho Power (which has cash accounting in its Idaho jurisdiction – see below) do not think that switching to cash accounting will resolve the Joint Utilities perceived pension recovery timing problems – which are of course different timing problems than those perceived by CUB. As Idaho Power Company stated: "[i]f the Commission sees value in maintaining rate stability through a balancing account, it is likely that asset or liability balances will accumulate over time, representing the difference between cash contributed to the pension plan and revenue recovered from customers. In other words, utilities may be faced with the same problem of untimely recovery of cash contributed to the plan, except for different reasons."[101] So the switch to cash accounting from accrual accounting presents at least two types of timing problems 1) windfalls, and 2) delays in recovery. Neither type of timing problem makes a switch appealing.

There are, however, potential benefits to making the switch such as the fact that allowing for deferrals would potentially reduce regulatory lag but the detriments include, and are not limited to, the shift of risk to customers, the total write off of prepaid pension assets, more fluctuation in contribution size and additional costs to pay for the transition.[102] Moreover, any switch between accounting methodologies could lead to additional requests for accounts to be set up to account for "costs associated with discrepancies in how [ ] pension costs are reported and recovered."[103] And dealing with prepaid pension assets under the transition to cash accounting has many of the same problems as raised as the Joint Utilities' proposal to earn a return on their

---

[100] UM 1633 - CUB/300 Jenks-McGovern/6 lines 6-14 (internal citations omitted).
[101] UM 1633 - Idaho Power Company/200 MacMahon/6 lines 7-12.
[102] UM 1633 - NWIGU-ICNU/300 Smith/11 lines 1-13.
[103] UM 1633 - NWIGU-ICNU/300 Smith/10 lines 1-22.

pension assets.[104]

Staff's primary recommendation is also to stick with FAS 87.[105] Staff states that "[t]he only Commission decision in this docket that will not affect a Company's financial statements is to maintain FAS 87 and grant no return on the [prepaid pension asset] balances."[106] Staff does not think a balancing account to deal with regulatory lag is appropriate[107] but if the Commission were to order such a balancing account following transition to a cash-based methodology, then Staff believes the interest rate should be lower than rate of return.[108] NWIGU-ICNU recommends against using cash accounting and instead recommends the continuation of basing recovery on pension expense: "cost of utility defined benefit pensions continue to be recognized for regulatory purposes as an expense that is recovered pursuant to traditional rate making principals. The Commission should not authorize deferrals, trackers, surcharges, or other similar mechanisms to true up any differences between forecasted pension costs and those actually incurred in any given year."[109] Moreover, "[t]he pension cost recognition should be recognized in a manner that is done in conjunction with other utility costs, some of which may be increasing while others are decreasing. A general rate case assures that a wide range of utility costs are reviewed. Pension costs should not be singled out for special rider treatment on a piecemeal

---

[104] UM 1633 - NWIGU-ICNU/300 Smith/12 lines 9-23.
[105] UM 1633 - Staff/300 Bahr/11 lines 10-18 ("Most importantly, FAS 87 is less volatile than cash contributions, thus posing less generational inequity risk to customers. Additionally, as all cash contributions would need to be reviewed for prudence and FAS 87 is generally determined by third party actuaries, FAS 87 expense actually represents less administrative burden on the Commission, Staff and Intervenors. Finally, remaining with FAS 87 rather than adopting cash avoids unnecessary issues relating to transitioning to cash basis after years of using FAS 87.").
[106] UM 1633 - Staff/300 Bahr/17 lines 6-8.
[107] UM 1633 - Staff/300 Bahr/24 lines 2-7.
[108] UM 1633 - Staff/200 Bahr/11 line 5.
[109] UM 1633 - NWIGU-ICNU/300 Smith/13 lines 22-23 and /14 lines 1-3.

ratemaking basis."[110] The Joint Utilities note that: "If rates continue to be based on FAS 87 expenses, then all of the Joint Utilities cash contributions made to date will ultimately end up in FAS 87 expense and be fully recovered over time."[111] They go on to state that switching to cash accounting is not a good idea.[112]

6.4 What is accrual (FAS 87 and FAS 88) accounting?

> FAS 87 is a comprehensive methodology for measuring and spreading pension costs and is made up of several interrelated components. Modifying one element of FAS 87 in isolation and without addressing the effects of that change on other components would disrupt the purpose of FAS 87 and have unintended consequences.[113]

The sum of FAS 87 represents year by year pension expense. It involves a variety of elements that look at the additional pension earned in the year by employees, and the year's proportional share of gains and losses to the pension fund. It could be considered the pension cost that is attributable to that year. Prepaid pension assets represent pension contributions for future liability (expense). Allowing a return would, to make an analogy to the used and useful doctrine, be inappropriate because the prepaid pension asset is not used and useful to the current customers. Rate base is reviewed every time utilities file rate cases. Many of the contributions that contribute to the prepaid pension asset were made many years ago and several rate cases have concluded, setting rates as just and reasonable without any mention of prepaid pension assets. The Joint Utilities want the Commission to now engage in single-issue ratemaking to include one aspect of pensions in rates without reviewing the other aspects of pensions and other elements normally included in rate base review during general rate cases. CUB notes, in

[110] UM 1633 - NWIGU-ICNU/300 Smith/14 lines 9-13.
[111] UM 1633 - Joint Testimony/500 Joint Parties/9 lines 19-22.
[112] UM 1633 - Joint Testimony/500 Joint Parties/14 lines 1-5.
[113] UM 1633 - Joint Testimony/500 Joint Parties/19 lines 5-10.

emphasis, that: "[f]or much of the life of FAS 87 ratemaking in Oregon, utilities were recovering in rates FAS 87 costs that were in excess of their pension contributions (usually 0)."[114] And again, as noted above, the Joint Utilities did each individually, in the past, agree that the rates being set, *which included pensions*, allowed for fair just and reasonable rates. CUB closes this section by reminding the Commission that the theory behind ratemaking is not the dollar for dollar recovery being sought by the utilities today but is "reasonable revenue requirement."[115]

6.5 Which utilities currently operate in Oregon under accrual accounting?

All of the utilities operating in Oregon currently recover Oregon allocated pension expenses under the accrual accounting (FAS 87 and FAS 88) accounting methodology.

Oregon used to have a cash-based system for pension recovery, but each of the utilities requested a change in recovery methodology. At the time, most of the utilities were in a position where they were not making pension contributions, but had positive pension expense. This meant the change added millions of dollars in rate recovery, since rate recovery under the cash method without cash contributions was zero, and recovery under FAS 87 was positive. But the utilities knew that they might still have to make cash contributions in the future. And it is important to recognize that the timing of cash contributions is fully under the control of the utility with the exception of minimum and maximum contribution levels. When the utilities made the switch to expense based recovery, they were taking a risk that there would be a timing difference between making the cash contribution and the recovery of FAS 87 expense. Utilities that had FAS 87 expense, had the option of reinvesting the FAS 87 expense into their pension, rather than retaining the expense after customers paid it. Because of nearly 3 decades of

---

[114] *See* UM 1633 CUB Exhibits 102-107; See also CUB Exhibit 301.
[115] UM 1633 - Staff/400 Bahr 4 lines 2-3.

compound interest, these modest contributions would have had a significant effect in reducing the prepaid pension asset. But the utilities did not reinvest their FAS 87 expenses.

CUB notes that for stakeholders, it made no difference whether the utility retained FAS 87 expense or reinvested it since the timing difference between contributions and expense was a risk that the Companies had accepted on behalf of their shareholders. But now, decades later, the Joint Utilities are proposing to reassign this risk to customers.

6.6 Which utilities hope to change the current pension recovery system and why?

The Joint Utilities all have prepaid pension assets and can raise customers' rates if the Commission changes policy in the manner they request. They all, therefore, support changing the policy to enable them to raise rates. Idaho Power, on the other hand, has an accrued pension liability and would, therefore, be required to reduce rates if the Commission changes policy in the manner requested by the Joint Utilities. Idaho Power opposes changing the policy.

The Joint Utilities wish to move to a hybrid system that will include accrual and cash based accounting. In CUB's opinion, the proposed system will result in single issue retroactive ratemaking and is not legally feasible.

Staff does not support a carve-out for pension costs either but does provide suggestions for what the Commission might do if it decides to take that route.[116] Both of the suggestions ignore doctrines such as that of generational equity, single-issue ratemaking, and retroactive ratemaking. CUB has spent many months reviewing many years of pension records and is not convinced that it is actually possible to determine what portion of the prepaid pension asset was

[116] Staff suggests two options to the Commission should it decide to remove regulatory lag, 1) under cash based accounting a company could file for deferrals when a cash contribution is made to the fund and assuming the contribution was found to be prudent the company would get dollar for dollar recovery; and 2) under FAS 87 accounting there could be a balancing account to true up the forecasted and actual costs. Staff/300 Bahr/24 lines 2-7.

really financed by shareholders. CUB does not recommend a regulatory carve out for prepaid pension assets.

If the Commission were to grant a regulatory carve out, and allow for a return on pension contributions in excess of FAS 87, CUB recommends that the Commission apply that policy only to future contributions.

7. Have the utilities proven that their existing prepaid pension assets were funded by investors – if so why does that require a pension recovery methodology change now?

The Joint Utilities claim that they "have absorbed the costs of financing these ppa/apl assets."[117] Of course, as previously discussed, they have also retained the financing revenues from the apl when positive. While CUB agrees that, individually, the companies may have absorbed the financing costs for some of the ppa (which is consistent with how they have treated the apl) CUB notes that (1) the companies do not finance negative pension expense when that expense is retained by the utility even though it is included in the calculation of the ppa/apl; (2) the amounts that the companies have financed can be better calculated by the net cash method that CUB proposed in Opening testimony (CUB/300 Jenks-McGovern/3); (3) that because of black box settlements, misallocated pension expense, any historical tabulation method will be imperfect, and (4) that ratepayers have also at times borne the cost of financing the accured pension liability.[118]

But regardless of whether the Joint Utilities have proven that their prepaid pension assets have been partially financed by investors (and CUB does not believe that they have) why should that require a change in methodology now when the Joint Utilities have also admitted that: "If rates continue to be based on FAS 87 expenses, then all of the Joint Utilities cash contributions

[117] UM 1633 - Joint Utilities/500 Joint Parties/2 lines 1-2.
[118] UM 1633 - CUB/400 Jenks-McGovern/14 lines 3-5.

made to date will ultimately end up in FAS 87 expense and be fully recovered over time"?[119]

8. What are the legal issues that must be addressed in order to make determinations in this docket?

CUB next addresses the legal issues that must be addressed in order to make determinations in this docket.

8.1 Whether the Joint Utilities are requesting single-issue ratemaking – the carving out of pensions from other ratemaking elements.

"The prepaid pension asset is the sum of decades of decisions related to pensions that have flowed through several rate cases. The utilities proposal is to isolate the pension expense that has historically (at least when it is a positive number) been used as the basis of rate setting, and treat the culmination (sum) of those expenses as a reduction against the sum total of pension contributions with the difference being used as ratebase and earning a return."[120] This violates the prohibition on single-issue ratemaking because it would single out one element of historic rates and alter treatment of it without determining whether that change had any effect on rates previously determined to be fair, just and reasonable.[121]

Some of the best sources for discussion of single-issue ratemaking come from orders denying CUB's requests to update the rates approved in Order No. 07-015 to reflect a reduction in Portland General Electric Company's state income tax rate. In those dockets, the tables were turned 180 degrees from where they are today with PGE arguing "that it is a basic principle of utility ratemaking that the Commission must consider all revenues and costs in setting rates, and cannot consider one rate element in isolation."[122] Back then, the Commission found that CUB

---

[119] UM 1633 - Joint Testimony/500 Joint Parties/9 lines 19-22.
[120] UM 1633 - CUB/100 Jenks-McGovern/27 lines 10-15.
[121] UM 1633 - CUB/100 Jenks-McGovern/27 lines 16-18.
[122] *In the Matters of Portland General Electric Company Request for General Rate Revision (UE 180) and Request*

"ignored an essential basis for our decision in Order No. 07-454." "By advocating that the Commission should adjust the forecast of state income taxes used in setting PGE's rates in Order No. 07-01 to reflect PGE's reduced state income tax rate, CUB is asking us to consider a single rate element in isolation." The Commission went on to state that: "We therefore applied traditional ratemaking principles, including the general policy against single issue ratemaking which discourages focusing on one cost element while ignoring others."

Another example of prior Commission thoughts on the subject of single-issue ratemaking can be found at *In the Matter of QWEST CORPORATION, fka US West Communications, Inc.* where in the Commission stated at footnote 19: "We also find that Qwest's rate rebalancing proposal is flawed to the extent that it proposes resetting only residential Caller ID rates. Even if we agreed that rate rebalancing were required, it would be inappropriate to single out only one of Qwest's rates for review. Indeed, Qwest's proposal to limit rebalancing to Caller ID rates would entail the same "single issue ratemaking" it accuses the Staff of endorsing."[123]

So why does PGE, who has been so firm in the past as to its wielding of the single-issue ratemaking doctrine, now suddenly feel that it is not applicable to pensions? Why does NWIGU-ICNU not feel the same way? NWIGU-ICNU notes that if "any difference between each company's actual cash contributions and the amount included in rates [is] included in a balancing account for later recovery or refund subject to a carrying charge equal to each utilities cost of

---

for General Rate Revision relating to Port Westward Plant (UE184) Order No. 08-118 at 7, February 14, 2008. See also PGE statements during the Trojan dockets *In the Matters of the Application of Portland General Electric Company for an Investigation into Least Cost Plan Plant Retirement (DR 10), Revised Tariffs Schedules for Electric service in Oregon filed by Portland General Electric Company (UE 88), Portland General Electric Company's Application for an Accounting Order and for Order Approving Tariff Sheets Implementing Rate Reduction (UM 989)* Order No. 05-091 at 15.

[123] *In the Matter of QWEST CORPORATION, fka US West Communications, Inc.* (UT 125) Order 06-515 at 24 fn. 19, September 11, 2006; *City of Portland v. Portland Genearl Electic Company* Order No. 06-636 at 18, November 17, 2006 ("The Commission does not engage in signle issue ratemaking.")

capital" that this would result in "basically guaranteeing recovery of utility pension costs, and this would shift risk of fluctuations in pension costs between rate cases from investors to rate payers. Additionally it would constitute piecemeal ratemaking that singles out only one cost – pensions- and ignores other potentially offsetting items."[124]

CUB respectfully requests that the Commission find that it cannot grant what the Joint Utilities are asking for because to do so would be an exercise in single-issue ratemaking and would be detrimental to both the ratemaking methodology under which Oregon operates, and to all Oregon customers.

8.2 Whether the Joint Utilities' request violates the rule against retroactive ratemaking?

The Joint Utilities claim that because they are asking for a rate of return on the prepaid pension asset on a going-forward basis and carrying costs on a going-forward basis that their request does not fall foul of the prohibition against retroactive ratemaking doctrine.[125] They state, however, that "reevaluating historical pension cost recovery to determine the amount of future pension cost recovery implicates illegal retroactive ratemaking. Therefore, in addition to bad policy such an approach is arguably illegal."[126] The Joint Utilities may be going to claim that CUB is the one asking the Commission to engage in illegal retroactive ratemaking because CUB is asking the Commission to review the prepaid pension asset to determine how much of it has actually been financed by shareholders, before it rubber stamps the Joint Utilities request for a new ratemaking methodology.

That argument, however, would be without merit. The Commission can only grant a

[124] UM 1633 - NWIGU-ICNU/400 Smith/4 lines 4-13.
[125] UM 1633 - Joint Testimony/100 Joint Parties/2 lines 18-23 and /3 lines 1-2; Joint Testimony/100 Joint Parties/16 lines 9-15.
[126] UM 1633 - Joint Testimony/600 Joint Parties/8 lines 16-20.

return if it determines that the costs were financed by utilities. The Commission cannot grant the utility a rate of return on costs that were financed by customers, and some of the negative FAS 87 was clearly financed by customers. The Commission can only determine the amount of the prepaid pension asset that was financed by the utilities by revisiting every rate case since the adoption of FAS 87 accounting. CUB agrees that this would be retroactive ratemaking. CUB has stated throughout that what the Joint Utilities are asking for will require retroactive ratemaking. CUB has encouraged the Joint Utilities to drop their request to rate base the prepaid pension asset for that very reason. But the Joint Utilities have persisted with their demand for rate-basing of the prepaid pension asset and this requires a complex in-depth Commission review of what has occurred to date to form the claimed prepaid pension assets.

The rule against retroactive ratemaking has been said to serve two basic functions. First, "it protects the public by ensuring that present consumers will not be required to pay for past deficits of the company in their future payments."[127] And second, "[t]he rule also prevents the company from employing future rates as a means of ensuring the investments of its stockholders. (citation omitted) If a utility's income were guaranteed, the company would lose all incentive to operate in an efficient cost-effective manner, thereby leading to higher operating costs and eventual rate increases."[128] More recently, the Oregon Supreme Court stated as follows: "[a]lthough the rule against retroactive ratemaking has been defined and applied in many different ways, the rule can be described generally as 'prohibit[ing] a public utility commission from setting future rates to allow a utility to recoup past losses or to refund to consumers excess

[127] *In the Matter of US West Communications, Inc. for Interconnection Cost Adjustment Mechanism (ICAM) Advice No. 1664* (UT 135) Order No. 97-180 at 7-8 (May 22, 1997).
[128] *In the Matter of US West Communications, Inc. for Interconnection Cost Adjustment Mechanism (ICAM) Advice No. 1664* (UT 135) Order No. 97-180 at 7-8 (May 22, 1997).

utility profits.'"[129] The Court then stated that it has "never expressly decided whether Oregon accepts some form of the rule against retroactive ratemaking. (citation omitted)."[130] The Court elaborated stating that for the purposes of the Trojan case it did not need to define the contours of the rule or decide whether Oregon accepts that rule in all circumstances.[131] It did not need to do that because "[t]he PUC was not reexamining past rates because ratepayers were seeking to benefit from PGE's excess profits, or because PGE was asking ratepayers to make up for a year of particularly bad losses. The PUC was reexamining past rates because the Court of Appeals concluded that the PUC had made a legal error in setting those rates."[132] "Because the PUC in this case reexamined past rates following judicial review and reversal of prior rate orders, we conclude that reexamination was permissible and did not violate the rule against retroactive ratemaking."[133]That is not the case in this pension investigation docket.

In the pension investigation docket, the Joint Utilities are claiming that they have failed to recover their due under the current FAS 87 pension methodology and they want it changed. They want it to include the rate-basing of the prepaid pension asset which they claim has accumulated because FAS 87 is not imminently enough reimbursing them for their pension contributions and they also want carrying costs on the prepaid pension asset. They want dollar for dollar recovery but they do not want anyone to actually review what their shareholders have contributed and when, what they have actually recovered and when, what if anything they have passed through to customers in negative FAS 87 etc. "Dollar for dollar recovery of past costs is

---

[129] *Gearhart v. PUC,* 356 Or 216, 237 (2014) citing to Krieger, 1991 U Ill L Rev at 984; see also *Dryer,* 341 Or at 270 n 10 (explaining that, under the rule, "approved utility rates may be modified only prospectively" and "utilities cannot provide retrospective relief from such rates").
[130] *Gearhart v. PUC,* 356 Or 216, 237 (2014).
[131] *Id.*
[132] *Gearhart v. PUC,* 356 Or 216, 241 (2014).
[133] *Gearhart v. PUC,* 356 Or 216, 243 (2014).

retroactive and must be approved by the Legislature to be valid."[134]

> The Joint Utilities do not agree that it is necessary or appropriate for the Commission to look back at a utility's historical recovery of pension expense before adding the prepaid asset to rate base.[135]

The Joint Utilities are trying to have their cake and eat it too.

The Joint Utilities want the Commission to rate base an item never rate based before and potentially containing decades old elements, to agree to this rate-basing without looking at the elements that make up the claimed prepaid pension asset of today to see if those elements have been recovered before or are the type of costs that are in fact recoverable in rates at all. They claim that the Commission cannot look back at the elements making up the prepaid pension asset because that would constitute retroactive ratemaking yet fail to note that the "asset" they are claiming future recovery on was created in the past and their actions in the past affected its creation and size today. Staff takes the position that "[w]hile it is correct that the utilities are only requesting prospective relief, the prospective relief they seek includes a return on past contributions in excess of cumulative FAS 87 expense. If those past contributions were considered expenses, retroactive ratemaking would preclude them being included in prospective rates and in the NW Natural Order that began this docket, the Commission found that under the policy at the time of these contributions, they were considered expense. However, if the past contributions were considered more akin to investments than expenses, retroactive ratemaking would not be a bar to recovery on a prospective basis."[136] Take PGE for example. PGE proposes a return on costs in excess of expenses but historically PGE has applied inconsistent ratemaking

---

[134] *In The Matter of Idaho Power Company,* (UE 195 Application for Authority to Implement a Power Cost Adjustment Mechanism) Order No. 08-491 at 8 (October 6, 2008).
[135] UM 1633 - Joint Testimony/300 Joint Parties/3 lines 1-3.
[136] Staff Opening Brief June 5, 2013/2 lines 1-6; See CUB Opening Brief/5 lines 1-9.

treatment to expenses. As previously discussed, in the past PGE has chosen to pass through expenses when positive but to retain expenses when they are negative.

The Joint Utilities attempt to walk a fine line, they attempt to define the contents of the so called "prepaid pension asset" as contributions akin to investments as opposed to expenses which are recoverable in rates, but their arguments are nonetheless circular and ignore the fact that historic rates were set based on an entire set of assumptions related to pension recovery and the proposed change in treatment of only one element within the entire set of assumptions will affect the relative equity of historic rate decisions.[137]

Also worthy of consideration is the fact that in the past, the utilities settled many rate cases with black box settlements a part of which required them to state that they agreed that the rates they were entering into covered the cost of maintaining their pensions and were fair, just and reasonable. What portion of those rates provided a return for pensions – and for what element of pensions did they provide a return? How much of the return related to investor contributions?[138]

But most intriguing, is the fact that the Joint Utilities are also requesting carrying costs on the prepaid pension asset amount. In terms of accrual accounting to determine the level of pension contributions for which the utility truly bears carrying costs, because the utility was not previously compensated, would require a labor intensive foray into retroactive ratemaking so as to true up the prepaid pension asset to reflect that the utility did not bear the full carrying costs for the prepaid pension asset.[139] Thus there is no way for the Commission to grant what the Joint Utilities are asking for without abdicating their duties under ORS 756.040 to protect customers

---

[137] UM 1633 - CUB/100 Jenks-McGovern/27 lines 19-21.
[138] UM 1633 - CUB/100 Jenks-McGovern/29 lines 1-4; CUB/100 Jenks-McGovern/37 lines 9-16.
[139] UM 1633 - CUB/100 Jenks-McGovern/29 lines 5-9.

and ensure fair, just and reasonable rates:

> **756.040 General powers.** (1) . . . *the commission shall represent the customers* of any public utility or telecommunications utility and the public generally *in all controversies respecting rates, valuations, service and all matters of which the commission has jurisdiction.* In respect thereof the commission shall make use of the jurisdiction and powers of the office *to protect such customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates.* The commission shall balance the interests of the utility investor and the consumer in establishing fair and reasonable rates. . . .

Part of the Joint Utilities' argument is that the fact that the contributions were made "in the past" does not negate the fact that the money in question was banked for "use in the future."[140] But this ignores the fact that statutes, rules, and policies in effect during the time period in which those payments were made are the only statutes, rules and policies that may be applied in regard to those payments; to do otherwise would constitute retroactive ratemaking on behalf of the utilities. The policies in place at the time of those contributions limited pension ratemaking to FAS 87 expense.

Today, the Joint Utilities are seeking to go back in time and change policy to allow them to earn a return on pension contributions that were made, in some cases, many, many years ago.

A Commission policy change should be forward-looking, and should not go back and change the policies and rules related to actions the utilities took in previous decades. Commission action, in regard to the "prepaid pension asset" now accrued, would constitute retroactive ratemaking. Allowing retroactive recovery for previously incurred contributions is not beneficial to consumers and it takes away any incentive for the utility managers to properly manage their utilities – this is because it gives the impression that ratepayers can always be tapped to cover expenses for past mismanagement.

[140] UM 1633 - Joint Testimony/100 Joint Parties/6 lines 9-15.

8.3 Whether the Joint Utilities' request harms generational equity?

Granting prepaid pension asset rate base status now would reward late in time shareholders and penalize late in time ratepayers – there is a generational equity problem.

The prepaid pension asset which suddenly materialized as an issue in NW Natural's UG 221 rate case, if it truly exists, has been created over a great many years – at least from the time that each utility adopted the use of FAS 87/FAS 88 methodology to recover pensions in rates. So to pick a year – let's say 1987 - that is essentially twenty-eight years of accumulation of all elements that make up a prepaid pension asset including negative FAS 87. Thus if rate recovery is appropriate then ratepayers from 28, 27…..years ago should have been paying rates related to the recovery of the prepaid pension asset and should have been receiving the benefit of negative FAS 87. FAS 87 is supposed to match current year ratepayer dollars to current employee services. This benefit of FAS 87 accrual accounting recovery would be removed if the Commission were to permit a mix of cash/accrual accounting as requested by the Joint Utilities. As CUB notes, the outcome of earlier utility rate cases would have been very different if it had been disclosed to those ratepayers that negative FAS 87 was not being passed through to them and that the Joint Utilities' plan was to later request that it be added to each utilities' rate base and then that the utility be provided a return on it charged to future ratepayers.[141]

8.4 Whether the Joint Utilities are violating the tax laws?

SB 408 and later ORS 757.269 require that deferred tax benefits should be passed through to ratepayers. The Joint Utilities state that in relation to pensions they only have to pass through deferred taxes that are in proportion to the prepaid pension balance that is allowed into rates. The Joint Utilities state that this is because customers do not provide recovery for cash

[141] UM 1633 - CUB/100 Jenks-McGovern/28 lines 8-15.

contributions only for FAS 87 and therefore customers should receive income tax benefits associate only with FAS 87 expense.[142] CUB does not agree.

> **ORS 757.269 Setting of rates based upon income taxes paid by utility; limitation on use of tax information; rules.** (1) When establishing schedules and rates under ORS 757.210 for an electricity or natural gas utility, the Public Utility Commission shall act to balance the interests of the customers of the utility and the utility's investors by setting fair, just and reasonable rates that include amounts for income taxes. Subject to subsections (2) and (3) of this section, amounts for income taxes included in rates are fair, just and reasonable if the rates include current and deferred income taxes and other related tax items that are based on estimated revenues derived from the regulated operations of the utility.
>
> (2) During ratemaking proceedings conducted pursuant to ORS 757.210, the Public Utility Commission must ensure that the income taxes included in the electricity or natural gas utility's rates:
>
> (a) Include all expected current and deferred tax balances and tax credits made in providing regulated utility service to the utility's customers in this state;
>
> (b) Include only the current provision for deferred income taxes, accumulated deferred income taxes and other tax related items that are based on revenues, expenses and the rate base included in rates and on the same basis as included in rates;
>
> (c) Reflect all known changes to tax and accounting laws or policy that would affect the calculated taxes;
>
> (d) Are reduced by tax benefits generated by expenditures made in providing regulated utility service to the utility's customers in this state, regardless of whether the taxes are paid by the utility or an affiliated group;
>
> (e) Contain all adjustments necessary in order to ensure compliance with the normalization requirements of federal tax law; and
>
> (f) Reflect other considerations the commission deems relevant to protect the public interest.

Through this docket and simultaneous rate cases, CUB has discovered that neither Avista nor

[142] UM 1633 - Joint Testimony/300 Joint Parties/12 lines 1-3.

PacifiCorp are passing deferred tax benefits through to customers.[143] Because pension contributions create a deferred tax benefit, ORS 757.269(2)(a) requires that the OPUC ensure that the income taxes included in the utility's rates include all expected current and deferred tax balances and tax credits made in providing regulated utility service to the utility's customers in Oregon.

Staff argues that ORS 757.269(2)(b) would allow that "any accumulated deferred tax liability associated with a utility's [prepaid pension asset] be retained by the utility, but only to the extent the utility demonstrates that the [prepaid pension asset] was funded prudently with investor monies. An accumulated deferred tax asset should also be passed on to customers as a credit to rate base, except to the extent that the utility can prove that shareholders provided the funding that created the tax credit in a general rate case."[144] Thus, Staff leaves open the door if the utilities can ultimately prove that the prepaid pension asset was prudently funded with investor money. To date, however, the Joint Utilities have been unable to prove this.

8.5 Whether the Joint Utilities' Request Implicates the Filed Rate Doctrine?

In *Dreyer*, the Oregon Supreme Court rejected PGE's argument that ORS 757.225 embodied a strict version of the "filed rate doctrine" that would treat all PUC rates as conclusively lawful until changed.[145] But this does not mean that the filed rate doctrine is not applicable in this docket. In this docket, no party appealed any of the just, fair and reasonable rates relevant to this docket, and entered into since the inception of FAS 87. Those rates are final.[146] Until the 2012 NW Natural rate case, no utility sought to rate base pension contributions.

---

[143] UM 1633 - CUB/100 Jenks-McGovern/31 lines 15-23. See also, Staff/400 Bahr/5 lines 5-8.
[144] UM 1633 - Staff/400 Bahr/6 lines 19-22 and /7 lines 1-2.
[145] *Gearhart v. PUC*, 356 Or 216, 226 (2014)
[146] *In the Matter of Utility Reform Project,* Order No. 09-316 at 130 (August 18, 2009)("We emphasize, however,

Utilities made contributions, the Commission recognized FAS 87 expense in rates, and all parties agreed that rates were fair and reasonable. It is inappropriate to revisit the regulatory treatment of those contributions today.

It should be noted that in the NW Natural rate case (UG 221) which began this pension review, the Commission found that for ratemaking purposes, the Oregon PUC considered pension contributions to be expenses. While we did not use them as the basis of setting rates – we used FAS 87 expense – the Commission nevertheless stated that the policy in Oregon was to consider them expenses. Those rate cases are long settled and it is simply too late to review those contributions a second time to consider a different treatment.

9. Do any of the Joint Utilities' comparisons of FAS 87 to depreciation and pensions to transmission assets hold any water?

The Joint Utilities compare FAS 87 to depreciation and the prepaid pension asset to transmission assets.[147] They also claim that allowing recovery of costs to finance the prepaid pension asset is consistent with Commission policy allowing utilities to add rate base cash contributions made on customers' behalf for materials and supplies before recognition in expense.[148] Contrary to the argument made by the Joint Utilities, depreciation is different for fuel stock and pensions[149] and allowing recovery of costs to finance the prepaid asset is <u>not</u> consistent with Commission policy if it were consistent with that policy, there would be no point to the Commission opening this docket.

---

that this remedial authority is limited and must be exercised carefully. The rule against retroactive ratemaking and legal constraints on collateral attacks of final orders prohibit the Commission from reconsidering and adjusting past rates that were lawfully established and either were not appealed or were upheld on appeal. Thus our conclusion is limited to the circumstances where a Commission rate order is determined to be unlawful upon judicial review, and we determine upon remand that a refund is required to remedy the error identified by the reviewing court.") Affirmed by *Utility Reform Project v. PUC of Or.*, 261 Ore.App. 388 (2014).

[147] UM 1633 - Joint Testimony/500 Joint Parties/8 lines 5-11.

[148] UM 1633 - Joint Utilities Bifurcation Brief/3 lines 23-25.

[149] UM 1633 - Staff/100 Bahr/11 lines 11-13.

In CUB's opinion, the prepaid pension asset is not like most utility investments. Investments typically amortize down in a predictable manner. FAS 87 does not depreciate the prepaid pension asset in a predictable manner. Instead, it represents that year's pension expense based on accrual accounting.

The mere fact that pension expenses may be considered "pre-paid" does not mean that they should be included in rate base. As stated by the West Virginia Public Service Commission:

> The Companies proposed that the amounts placed in their Pension Funds as prepayments be included in rate base. Staff and CAD proposed that the so-called Prepaid Pension Asset not be included in rate base.
>
> *The Commission will not include the amounts recorded by the Companies as Prepaid Pension Assets in Rate Base. We do not agree with the Companies' arguments that these Pension Assets represent payments by the Companies upon which they are entitled to earn a return in the same manner as we provide a return on Utility Plant in Service that is used and useful for the provision of utility service.* We recognize that pension accounting is a complex area and that providing funds to build up pension assets that will provide for future pension benefits that have been promised to employees is an important and prudent thing to do. *We cannot presume, however, that because pension costs are "prepaid" in the sense that money is deposited into a separate pension fund, the pension assets represent prepaid expenses that either require or deserve rate base treatment. We must be careful of including any and all prepayments in rate base.*
>
> Prepayments should be subject to the same review as any other investment or expense of a utility. Inclusion of prepayments in rate base should not be used for a utility to find a convenient place to deposit funds and then expect to earn a return on those funds. (emphasis added).[150]

The Joint Utilities contributions were to fund ordinary and recurring expenses that are, in fact, subject to the rule against retroactive ratemaking.

Contrary to what the Joint Utilities are arguing, Commissions have been unwilling to allow such contributions into rates due to violation of the rule against retroactive ratemaking.

[150] Appalachian Power Company and Wheeling Power Company, Both dba American Electric Power Case No. 10-0699-E-42T, Commission Order on the Application for a Rate Increase at 38-39 (Mar. 30, 2011).

For further examples please see CUB's UG 221 Opening Testimony.

10. Should the Prepaid Pension Asset be Included In Rate base? Put Another Way Have the Joint Utilities Adequately Supported Their Case?

No, the prepaid pension asset should not be included in rate base. CUB believes that the "companies have failed to demonstrate that the [prepaid pension asset/accrual liability] is prudent and eligible for a rate of return, and if it were eligible for a rate of return, then how much should be eligible for a rate of return."[151]

Although the prepaid pension asset/accrued pension liability was impacted to some extent by the Pension Protection Act and the recession, the utilities already had significant accumulated prepaid pension asset/accrued pension liabilities prior to the occurrence of both. In fact several of the companies' prepaid pension assets/accrued pension liabilities peaked prior to both the passage and implementation of the Pension Protection Act and the happening of the recession and have decreased since that time. The Joint Utilities have also failed to show that the prepaid pension asset is entirely constructed from rate base eligible elements. "It is not possible to precisely quantify the 'exact' amount of cumulative net pension recoveries from or benefits provided to rate payers, particularly over decades following the adoption of FAS 87 for financial accounting purposes and for purposes of determining the pension expense amounts that have been included in the Joint Utilities rates."[152] Portions of the prepaid pension asset were funded by ratepayers via negative FAS 87 expense. Negative FAS 87 expense was not systematically passed through to customers.[153] Also of note, negative FAS 87 increases the prepaid pension

---

[152] UM 1633 - NWIGU-ICNU/100 Smith/26 lines 18-22.
[153] PacifiCorp claims that it had only two years of negative FAS 87 and that this was passed through to customers. PacifiCorp/100 Stuver/2 *but see* UM 1633-CUB/301 Jenks-McGovern/1: "The accrued pension liability was not included in rate base and accordingly, no return was paid to customers on the accrued pension liability." *See also*

asset without the utility making a contribution.[154] And pensions were sometimes funded with non-cash items. In addition, the Joint Utilities' attempt to claim that half of all Commissions allow some form of recognition for pension financing amounts to exaggeration at best.[155] NW Natural states that CUB should not worry it's all just part of the fact that ratemaking isn't perfect,[156] but CUB is worried. There is simply no precedent in Oregon for the addition of the prepaid pension asset to Oregon rate base.

An additional failing on the part of the utilities was to not come forward with information. In response to CUB DR 5, several companies have cited lack of information in regards to the origin of FAS 87 expenses, accrual ppa/apl amounts and transitional expenses. If the companies cannot produce anything to prove there is a problem with the current FAS 87/88 methodology then how will they prove their individual right to recover on their individual prepaid pension assets at later regulatory proceedings. Some would have to prove prudency of pension termination, prudency of decisions to fund above the minimum requirements, prudency of plan management or the elements of black box settlements.

Staff also states its belief that the utilities have failed to meet their burden of proof: "It is the burden of the utilities to demonstrate that the costs on which they seek a return are indeed prudent and represent costs solely to shareholders. However, to date, and after nearly two years of investigation in this docket, the utilities have not met that burden and have indicated that the

---

CONFIDENTIAL CUB/100 Jenks McGovern/10 lines 5-20 and at /11 lines 1-17.

[154] UM 1633 - CUB/100 Jenks-McGovern/11 lines 18-23 and at /12 lines 1-12; "There is no ambiguity in the formula. The prepaid pension asset grows, dollar for dollar from negative FAS 87 pension expense even when the Company does not make a contribution. The Company, even though not out of pocket, records pension income, and now proposes to earn a return. There is something very wrong with this picture." CUB/100 Jenks-McGovern/14 lines 6-9; CUB/100 Jenks-McGovern/14 lines 11-13. The Company disputes this reasoning. Joint Testimony/600 Joint Parties/17 lines 1-21.

[155] UM 1633 - Joint Utilities Bifurcation Brief/4 lines 1-2. See also ICNU Opening Brief/4.

[156] UM 1633 - NW Natural/100 Wilson/8 lines 13-20.

degree of complexity to do so makes it very difficult, if not impossible."[157]

11. Whether the Joint Utilities' request for carrying costs should be granted?

The Joint Utilities state:

> To date the Joint Utilities have absorbed the costs of financing these prepaid pension assets. However, in response to the increasing financing costs, the Joint Utilities requested a change in Commission policy that would allow them to recover financing costs.[158]

The argument made by the Joint Utilities is that:

> [C]urrent recovery policy, based only on the expense determined under FASB Financial Accounting Standard 87 ("FAS 87 expense"), does not recognize significant financing costs incurred by the utilities in carrying out their legal obligations to fund their pension plans.[159]

The Joint Utilities are, therefore, also requesting:

> [t]hat the Commission allow for the recovery in rates the financing costs that the Joint Utilities incur as a result of timing differences between cash contributions to their pension plans and the recognition of expense.[160]

The issue of carrying costs need only be addressed if the Commission determines that the prepaid pension asset should in fact be rate-based to some extent. In terms of accrual accounting, to determine the level of pension contributions for which the utility truly bears carrying costs, because the utility was not previously compensated, would require a labor intensive foray into retroactive ratemaking so as to true up the prepaid pension asset to reflect that the utility did not bear the full carrying costs for the prepaid pension asset.[161] CUB believes that the Joint Utilities are asking for financing of costs that they cannot prove they actually expended.

---

[157] UM 1633 - Staff/300 Bahr/18 lines 14-19.
[158] UM 1633 - Joint Testimony/500 Joint Parties/2 lines 1-4..
[159] UM 1633 - Joint Testimony/100 Joint Parties/1 lines 21 to /2 lines 1-3.
[160] UM 1633 - Joint Testimony/100 Joint Parties/2 lines 19-22.
[161] UM 1633 - CUB/100 Jenks-McGovern/29 lines 5-9.

In terms of a Commission ordered transition to cash accounting, what the Joint Utilities are proposing is "that any difference between each company's actual cash contributions and the amount included in rates be included in a balancing account for later recovery or refund and be subject to a carrying charge equal to each utility's cost of capital."[162] NWIGU-ICNU notes that the Joint Utilities recommendation "would result in basically guaranteeing recovery of utility pension costs, and thus would shift the risk of fluctuations in pension costs between rate cases from investors to ratepayers. Additionally it would constitute piecemeal ratemaking that singles out only one cost –pension—and ignores other potentially offsetting items."[163] NWIGU-ICNU goes on to state that "with respect to their proposal to earn interest on the account at their authorized cost of capital, the Joint Utilities have failed to demonstrate that any "tracking account" balances that might result from this recommendation would be long-term in nature that would justify this rate. More economical sources of financing, such as lower cost, shorter-term based financing could be used finance short-term fluctuations in asset (or liability) accounts. Consequently, the Commission should not pre-approve any carrying charges based on any presumption that long-term capital sources, such as a utility's authorized cost of capital, were being used to finance them. The Joint Utilities' recommendation for balancing account tracking should be rejected in full."[164] CUB agrees.

12. What should be done about the NW Natural pre-existing balancing account if the Commission orders utilities to switch to cash accounting?

In 2010, NW Natural filed for deferral of its "excess pension expenses." Parties to the docket did not agree to NW Natural's request to rate base its prepaid pension asset but they did

[162] UM 1633 - Joint Testimony/500 Joint Parties/4 lines 15-18.
[163] UM 1633 - NWIGU-ICNU/400 Smith/4 lines 9-13.
[164] UM 1633 - NWIGU-ICNU/400 Smith 4 lines 14-22.

agree to stipulate to NW Natural's establishment of a balancing account to track the differences between actual FAS 87 pension expenses experienced by NW Natural and the amount included in rates. The Commission adopted the stipulation in Order No. 11-051. Under that NW "Natural continues to collect FAS 87 expense at the same level as that set in its 2003 rate case. . . . NW Natural books pension expenses and recoveries to the balancing account, and the balancing account accrues interest at NW Natural's currently authorized rate of return. NW Natural is to continue booking expenses to the balancing account until the balance is a negative number, after which amounts booked to the account will be subject to an earnings test. Then after the next general rate case after the account has become negative, the stipulation calls for the termination of the balancing account. At that point, the Company may request that the balance be amortized."[165]

The question that arises is, if the Commission orders the utilities to switch to cash accounting then what should become of the balancing account? NW Natural states that it should be amortized at the time of the transition. Staff, CUB and NWIGU-ICNU agree.[166]

13. Should any new methodology ordered in this docket apply also to Idaho Power?

Yes, any new methodology arising from this docket should be applied to each utility having Oregon customers. This would provide for the most judicial efficiency.

VI. CONCLUSION

The current system is, at a minimum, a very adequate system for the Utilities. In fact, the Joint Utilities state, "FAS 87 is a time-tested methodology for the recovery of pension expense that has worked well historically and, with the additional recovery of financing costs, provides reasonable pension cost recovery." But the Joint Utilities would like to see more revenue, so they proposed earning a return on

[165] UM 1633 - NWN/200 Wilson/2 lines 21-26 and at Wilson/3 lines 1-5.
[166] UM 1633 - Staff/400 Bahr/7 lines 14-19; CUB/400 Jenks-McGovern/2 lines 17-21; and NWIGU-ICNU/400 Smith/8 lines 8-16.

> the prepaid asset. The basis for this request was the tremendous effects of the Great Recession and the Pension Protection Act. These combined events pushed up the need for contributions, and therefore the prepaid pension asset. But as the need for new contributions has diminished and higher FAS 87 expenses reduce the prepaid pension asset, we approach the point of where we were before the Great Recession and the Pension Protection Act. And at that time, a return on the prepaid pension asset was not required, needed, or requested.[167]

Given the above, CUB does not support any of the requests being made by the Joint Utilities other than that FAS 87 should be retained. This is because allowing a return on the prepaid pension asset would be unfair to customers:

1. Accrual Accounting and Cash Accounting both account for the same thing but with different timing. Full payment under either is still full payment.[168]
2. Over the years, utilities have filed and settled rate cases which included recovery of pensions and those same utilities have signed off on those stipulations stating that the resultant rates were fair just and reasonable. If those rates were fair just and reasonable then why are we here?
3. Going back over old cases to figure out the elements and then to act on one element is single-issue, retroactive ratemaking and will lead to additional generational inequities.
4. What the utilities are requesting will recover all costs and then some – it will lead to over-recovery.
5. Oregon ratepayers have already overpaid for pension expense because the utilities have not returned all of either negative FAS 87 or deferred tax benefits.

[167] UM 1633 - CUB/400 Jenks-McGovern/21 lines 2-13; citing to Joint testimony/500/Joint Parties/3.
[168] UM 1633 - CUB/100 Jenks-McGovern/39 lines 14-15.

6. Oregon ratepayers who have already overpaid, should not be charged with funding a perpetual money making machine.
7. If the OPUC sticks with FAS 87/FAS 88 accounting, the Joint Utilities will ultimately recover their prepaid pension balances and there will be no need for write-offs.[169]
8. The alternative proposals while interesting do not lead to better results than use of FAS.
9. The conditions stated by Staff for both accrual and cash accounting are insufficient to protect customers.

As a result of the above determinations:

- FAS 87/FAS 88 should continue to be used as the primary basis for setting rates to recover pension costs.[170]
- Utilities should not be allowed to earn a return on their prepaid pension assets.
- Any true-up process would violate the rules against single issue and retroactive ratemaking.
- All FAS 88 expense should be subject to prudence review.
- All utilities without exception should have to follow the same pension recovery rules in Oregon.
- If the Commission does make a change to the pension recovery methodology it should apply only to contributions made in the future.

[169] UM 1633 - Staff/300 Bahr/19 lines 1-5.
[170] *See also* UM 1633 - NWIGU-ICNU/200 Smith/4 lines 3-8; NWIGU-ICNU/300 Smith/4 lines 22-24.

Final Recommendations.

CUB respectfully recommends that the Commission determine that the current methodology for recovery of pension expense in Oregon not be changed – FAS 87 should continue to be the methodology used in Oregon. If, however, the methodology is changed, then any changes should apply only on a going forward basis and only to new contributions. If the Commission determines the utility should get a return of some parts of its pension contributions, then that policy should only apply to future contributions. If the Commission decides to move to a cash-based system, that policy should only apply going forward and utilities should be required to write-off any previous contributions that have not been fully recovered.

Dated this 30th day of January 2015.

Respectfully submitted,

G. Catriona McCracken, OSB #933587
General Counsel, Regulatory Program Director
Citizens' Utility Board of Oregon
610 SW Broadway, Suite 400
Portland OR 97205
(503) 227-1984 ph
(503) 274-2956 fax
Catriona@oregoncub.org

UM 1633 – CERTIFICATE OF SERVICE

I hereby certify that, on this 30th day of January, 2015, I served the foregoing **PREHEARING BRIEF OF THE CITIZENS' UTILITY BOARD OF OREGON** in docket UM 1633 upon each party listed in the UM 1633 PUC Service List by email and, where paper service is not waived, by U.S. mail, postage prepaid, and upon the Commission by email and by sending one original and five copies by U.S. mail, postage prepaid, to the Commission's Salem offices.

W=Waive Paper service	**C=Confidential HC=Highly Confidential**	Sort by Last Name Sort by Company Name
W	EDWARD FINKLEA **(C)** EXECUTIVE DIRECTOR	326 FIFTH ST LAKE OSWEGO OR 97034 efinklea@nwigu.org
W	**AVISTA CORPORATION**	
	DAVID J MEYER **(C)** VICE PRESIDENT & CHIEF COUNSEL	PO BOX 3727 SPOKANE WA 99220-3727 david.meyer@avistacorp.com
W	**AVISTA UTILITIES**	
	ELIZABETH ANDREWS **(C)**	PO BOX 3727 SPOKANE WA 99220-3727 liz.andrews@avistacorp.com
	PATRICK EHRBAR **(C)** MANAGER, RATES & TARIFFS	PO BOX 3727 SPOKANE WA 99220-3727 pat.ehrbar@avistacorp.com
W	**CABLE HUSTON BENEDICT HAAGENSEN & LLOYD**	
	TOMMY A BROOKS **(C)**	1001 SW FIFTH AVE, STE 2000 PORTLAND OR 97204-1136 tbrooks@cablehuston.com
W	**CABLE HUSTON BENEDICT HAAGENSEN & LLOYD LLP**	
	CHAD M STOKES **(C)**	1001 SW 5TH - STE 2000 PORTLAND OR 97204-1136 cstokes@cablehuston.com

W	**CASCADE NATURAL GAS**	
	PAMELA ARCHER **(C)** SUPERVISOR-REGULATORY ANALYSIS	8113 W. GRANDRIDGE BLVD. KENNEWICK WA 99336 pamela.archer@cngc.com
	MICHAEL PARVINEN **(C)** DIRECTOR - REGULATORY AFFAIRS	8113 W GRANDRIDGE BLVD KENNEWICK WA 99336-7166 michael.parvinen@cngc.com
	MARYALICE ROSALES **(C)** REGUALTORY ANALYST I	8113 W GRANDRIDGE BLVD KENNEWICK WA 99336 maryalice.rosales@cngc.com
W	**CITIZENS' UTILITY BOARD OF OREGON**	
	OPUC DOCKETS	610 SW BROADWAY, STE 400 PORTLAND OR 97205 dockets@oregoncub.org
	ROBERT JENKS **(C)**	610 SW BROADWAY, STE 400 PORTLAND OR 97205 bob@oregoncub.org
	G. CATRIONA MCCRACKEN **(C)**	610 SW BROADWAY, STE 400 PORTLAND OR 97205 catriona@oregoncub.org
W	**DAVISON VAN CLEVE PC**	
	S BRADLEY VAN CLEVE **(C)**	333 SW TAYLOR - STE 400 PORTLAND OR 97204 bvc@dvclaw.com
W	**DAVISON VAN CLEVE, PC**	
	TYLER C PEPPLE **(C)**	333 SW TAYLOR SUITE 400 PORTLAND OR 97204 tcp@dvclaw.com
W	**IDAHO POWER**	

	COMPANY	
	REGULATORY DOCKETS	PO BOX 70 BOISE ID 83707-0070 dockets@idahopower.com
	LISA D NORDSTROM **(C)**	PO BOX 70 BOISE ID 83707-0070 lnordstrom@idahopower.com
W	**LARKIN & ASSOCIATES PLLC**	
	RALPH SMITH **(C)**	15728 FARMINGTON RD LIVONIA MI 48154 rsmithla@aol.com
W	**MCDOWELL RACKNER & GIBSON PC**	
	LISA F RACKNER **(C)**	419 SW 11TH AVE., SUITE 400 PORTLAND OR 97205 dockets@mcd-law.com
W	**NORTHWEST NATURAL**	
	E-FILING	220 NW 2ND AVE PORTLAND OR 97209 efiling@nwnatural.com
	MARK R THOMPSON **(C)**	220 NW 2ND AVE PORTLAND OR 97209 mark.thompson@nwnatural.com
W	**PACIFIC POWER**	
	R. BRYCE DALLEY **(C)**	825 NE MULTNOMAH ST., STE 2000 PORTLAND OR 97232 bryce.dalley@pacificorp.com
	SARAH WALLACE **(C)**	825 NE MULTNOMAH ST STE 1800 PORTLAND OR 97232 sarah.wallace@pacificorp.com

W	**PACIFICORP, DBA**	

	PACIFIC POWER	
	OREGON DOCKETS	825 NE MULTNOMAH ST, STE 2000 PORTLAND OR 97232 oregondockets@pacificorp.com
W	**PORTLAND GENERAL ELECTRIC**	
	DOUGLAS C TINGEY **(C)**	121 SW SALMON 1WTC1301 PORTLAND OR 97204 doug.tingey@pgn.com
	JAY TINKER **(C)**	121 SW SALMON ST 1WTC-0702 PORTLAND OR 97204 pge.opuc.filings@pgn.com
W	**PUBLIC UTILITY COMMISSION OF OREGON**	
	BRIAN BAHR **(C)**	PO BOX 1088 SALEM OR 97308-1088 brian.bahr@state.or.us
W	**PUC STAFF--DEPARTMENT OF JUSTICE**	
	JASON W JONES **(C)**	BUSINESS ACTIVITIES SECTION 1162 COURT ST NE SALEM OR 97301-4096 jason.w.jones@state.or.us

Respectfully submitted,

G. Catriona McCracken, #933587
General Counsel/Reg. Program Dir.
Citizens' Utility Board of Oregon
610 SW Broadway, Ste. 400
Portland, OR 97205
(503) 227-1984 phone
(503) 274-2596 fax
Catriona@oregoncub.org