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VIA ELECTRONIC AND U.S. MAIL

PUC Filing Center
Public Utility Commission of Oregon
PO Box 2148
Salem, OR 97308-2148

**Re: UM 1633 – In the Matter of OREGON PUBLIC UTILITY COMMISSION, Investigation
into Treatment of Pension Costs in Utility Rates**

Attention Filing Center:

Enclosed for filing in docket UM 1633 are an original and five copies of the Joint Utilities' Reply Brief on Bifurcation Proposal. A copy of this filing has been served on all parties to this proceeding as indicated on the attached certificate of service.

Very truly yours,

A handwritten signature in blue ink that reads "Wendy McIndoo". The signature is fluid and cursive.

Wendy McIndoo
Office Manager

Enclosures

cc: Service List

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 **UM 1633**

4 In the Matter of

5 PUBLIC UTILITY COMMISSION OF
6 OREGON,

7 Investigation into Treatment of Pension Costs
in Utility Rates.

**JOINT UTILITIES’
OPENING BRIEF ON
BIFURCATION PROPOSAL**

8
9 **I. INTRODUCTION**

10 Pursuant to Chief Administrative Law Judge (“ALJ”) Michael Grant’s Prehearing
11 Conference Memorandum dated April 9, 2013, Avista Corporation, Cascade Natural Gas
12 Corporation, Northwest Natural Gas Company (“NW Natural”), PacifiCorp d/b/a Pacific Power,
13 and Portland General Electric Company (collectively, “Joint Utilities”) file this Reply Brief on
14 the Public Utility Commission of Oregon’s (Commission”) proposal to bifurcate the docket.

15 In its Opening Brief, the Joint Utilities opposed bifurcation, explaining that it will not
16 promote administrative efficiency and will deprive the utilities of due process by prohibiting
17 them from presenting their position in a straightforward and coherent fashion. Staff agrees
18 with the Joint Utilities in opposing bifurcation. In particular, Staff points out that the utilities will
19 be requesting prospective treatment of prepaid pension assets, which “include the effects of
20 past contributions in excess of cumulative FAS 87 expense on current and prospective FASB
21 expense.” As a result, Staff concludes that it would be more efficient for the Commission to
22 consider all proposals for pension recovery in one phase.

23 The Citizens’ Utility Board (“CUB”), the Industrial Customers of Northwest Utilities
24 (“ICNU”), and the Northwest Industrial Gas Users (“NWIGU”) (collectively, “Intervenors”) all
25 support bifurcation, arguing that it is the most efficient approach. The Intervenors’ arguments,
26 however, are based on three flawed assumptions:

1 proposal will require the Commission to evaluate the prudence of the utilities' past pension-
2 related decisions.³ It appears that Intervenors seek to persuade the Commission that such
3 issues are too unwieldy for a generic docket and are best left to some future second phase, or
4 alternatively, as CUB proposes, individual rate-making dockets of the individual utilities.⁴
5 There is, however, no basis for this line of argument.

6 Determining whether it is appropriate **as a policy matter** to include financing costs on
7 prepaid pension assets in future rates does not require such detailed analyses. On this point,
8 it is worth noting that in NW Natural's most recent general rate case, the Commission had
9 before it the very detailed factual information referenced by the Intervenors. However, rather
10 than addressing the specifics of NW Natural's circumstances, the Commission chose to open
11 a generic docket to review the treatment of pension expense on a general, non-utility-specific
12 basis.⁵ In so doing, the Commission specifically stated that it may conclude in the general
13 policy proceeding that including prepaid pension assets in rate base is an appropriate policy to
14 apply to all utilities on a prospective basis.⁶ Thus, arguments about the details of individual
15 utility pension financing and the prudence of individual contributions are simply not relevant.

16 In considering the Joint Utilities' proposal, the Commission will need to decide whether
17 prepaid pension assets should be included in rate base and, if yes, whether there is merit to
18 the Intervenors' arguments that including assets resulting from contributions made in the past
19 would constitute retroactive ratemaking. While requiring thoughtful consideration of legal and
20

21 ³ ICNU Brief at 5.

22 ⁴ CUB Brief at 5-6.

23 ⁵ Order No. 12-408 at 4.

24 ⁶ NWIGU incorrectly claims that the Commission already determined that NW Natural's prepaid pension
25 assets existing at the time of the rate case should not be included in rate base. NWIGU's brief at 3.
26 More precisely, the Commission declined to add NW Natural's prepaid pension asset to rate base in
UG 221. However, the Commission specifically left open the possibility that it might determine in this
generic investigation that including prepaid pension assets in rate base is an appropriate policy. Order
No. 12-437 at 23.

1 policy issues, answering these questions does not require an in-depth analysis of the utilities'
2 specific contributions and circumstances. If the Commission determines that as a policy
3 matter it is appropriate to include the existing prepaid pension assets in rate base, the
4 evaluation of individual utilities' actions and decisions with respect to pension costs will be
5 conducted in utility-specific ratemaking proceedings.

6 **B. The Proposed Bifurcation Will Inappropriately and Incorrectly Prejudge the Joint**
7 **Utilities' Proposal as Requesting the Recovery of Past Costs.**

8 The Intervenors also suggest that bifurcation is appropriate based on their
9 characterization of the Joint Utilities' Proposal as retroactive ratemaking,⁷ or more generally,
10 an attempt to recover "past pension costs."⁸ In particular CUB cites several cases in arguing
11 that the weight of legal and regulatory authority indicates that it is inappropriate to add the
12 prepaid pension to rate base.⁹ In making these arguments, the Intervenors seem to suggest
13 that the Commission should address their own "meritorious" approaches to pension recovery
14 first in a phase one of the docket, while scuttling the Joint Utilities' "objectionable" approach to
15 a phase two, where it can be dealt with summarily. This position wrongly asks the
16 Commission to prejudge the Joint Utilities' proposal as illegal or otherwise inappropriate—a
17 position that is incorrect on the facts, and more importantly for the purposes of this procedural
18 dispute, *premature*.

19 Despite the arguments advanced by the Intervenors, there is significant support for the
20 Joint Utilities' position that: (a) their prepaid pension assets can and should be added to rate
21 base; and (b) that the addition of their prepaid pension assets to rate base does not constitute
22 retroactive ratemaking or otherwise constitute an attempt to recover past costs. The Joint
23

24 ⁷ See CUB Brief, footnotes 18 through 22.

25 ⁸ ICNU Brief at 3-4. See also CUB's Brief at 5

26 ⁹ CUB Brief at 5.

1 Utilities will not argue the merits of the case here, but it is worth noting that CUB is misreading
2 and mischaracterizing the applicable precedent. In fact, many courts and commissions have
3 supported the addition of the prepaid asset to rate base in addition to FAS 87 recovery, and
4 the Joint Utilities have found only a few cases on point to the contrary.

5 Regardless, CUB's and the other intervenors' arguments relate to the merits of the Joint
6 Utilities' proposal and should not be decided at this early stage of the docket. The bottom line
7 is quite simple: the Joint Utilities' proposal for prospective pension recovery is the very
8 proposal that the Intervenor's claim must be reserved for a second phase on the argument that
9 it relates to past costs. Therefore, a decision to bifurcate the docket would constitute an
10 implicit adoption of that reasoning and an inappropriate prejudgment of the merits.

11 **C. The Joint Utilities Will be Harmed by a Decision to Bifurcate.**

12 In their Opening Brief, the Joint Utilities explained that that they could suffer real harm if
13 the Commission bifurcates the docket as proposed. *First*, the Joint Utilities explained that
14 they would be unfairly harmed if a decision in the first phase were to preclude the proposal
15 they were required to wait until the second phase to present.¹⁰ *Second*, they pointed out that
16 if they are required to change recovery methodologies in the first phase—before a decision is
17 made on how to address their prepaid assets—they could be forced to write-off those
18 investments before a final decision is made.¹¹ None of the Intervenor's adequately address
19 these points.

20 Regarding the injustice of requiring the Joint Utilities to present their recovery proposal in
21 a second phase, the different intervenors make two conflicting claims. ICNU simply argues
22

23 ¹⁰ Joint Utilities' Brief at 5. In addition, it is worth noting here that Staff's Summary Report of its
24 "Pension Treatment in Ratemaking Survey" shows that 24 public utility commissions report that utility
prepaid pension assets are included in rate base.

25 ¹¹ Joint Utilities' Brief at 6.
26

1 that the Joint Utilities can address “their proposals to recover past pension costs in a second
2 Phase II of this proceeding,”¹² ignoring the harm that would be created by prohibiting the Joint
3 Utilities from presenting their proposal for prospective recovery at the outset. On the other
4 hand, NWIGU argues that the Joint Utilities’ due process rights will not be violated, because
5 the Joint Utilities will not be prevented from making any arguments in *either* phase of the
6 proceeding.¹³ These inconsistent positions prove the truth expressed in the Joint Utilities’
7 Opening Brief: Bifurcation will either have no impact on the case (because the Joint Utilities
8 will present their proposal in the first phase, and the parties who wish to raise the “past cost”
9 arguments will need to do so at that point, obviating the need for a second phase) or will
10 deprive the Joint Utilities of their ability to present their entire proposal and respond to
11 arguments against their proposal (because the proposal is deemed to relate to “past costs”
12 and cannot be raised until phase two).¹⁴

13 CUB is the only party that addressed the Joint Utilities’ concern that if the Commission
14 adopts a policy change with respect to pension contributions and does not address the
15 currently existing prepaid pension assets, the utilities could be forced to write off regulatory
16 assets associated with the prepaid pension assets. CUB claims that write-offs do not
17 automatically harm a utility’s credit and that if bifurcation requires a write-off, the utilities
18 should have been explaining that potential result to the financial community and minimizing
19 the impact.¹⁵ The Joint Utilities disagree with CUB’s points, but more importantly, CUB does
20 not explain why it is reasonable to potentially subject the Joint Utilities to write-offs when there
21 is no benefit to be gained from bifurcation.

22

23 ¹² ICNU Brief at 6.

24 ¹³ NWIGU Brief at 4.

25 ¹⁴ Joint Utilities’ Brief at 6.

26 ¹⁵ CUB’s Brief at 7.

1 **III. CONCLUSION**

2 For all of the above reasons, the Commission should decline to bifurcate the issues
3 presented in this docket.

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5 DATED: June 21, 2013.

Respectfully submitted,

6 **MCDOWELL RACKNER & GIBSON PC**

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served a true and correct copy of the foregoing document in Docket UM
3 1633 on the following named person(s) on the date indicated below by email addressed to said
4 person(s) at his or her last-known address(es) indicated below.


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