

1 **BEFORE THE PUBLIC UTILITY COMMISSION**

2 **OF OREGON**

3 UM 1633

4 In the Matter of

5 PUBLIC UTILITY COMMISSION OF
6 OREGON

STAFF'S CROSS-ANSWERING BRIEF

7 INVESTIGATION INTO TREATMENT OF
8 PENSION COSTS IN UTILITY RATES

9 **I. Introduction**

10 The Public Utility Commission of Oregon Staff (Staff) continues to recommend that the
11 Commission affirm its long-standing policy on pension cost recovery. Although Staff opposes the
12 Joint Utilities' proposal to include past pension costs in future rate base, Staff does recommend that
13 in future rate proceedings a utility should be allowed to request recovery of the financing costs of a
14 prepaid pension asset/liability balance accruing prospectively to the extent it is not associated with
15 a return on the pension investment above the amount that is used to calculate FAS 87 expense. If
16 the Commission is inclined to consider inclusion of the current prepaid pension asset balance in
17 future rate base, Staff recommends reasonable parameters to determine the appropriate balance to
18 be included.

19 On April 24, 2015, Staff, the Citizens' Utility Board of Oregon (CUB) and the Industrial
20 Customers of the Northwest Utilities and Northwest Industrial Gas Users (ICNU/NWIGU) filed
21 response briefs. Consistent with the schedule in this proceeding, Staff submits this cross-
22 answering brief.

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1 **II. DISCUSSION**

2 1. Staff, CUB, ICNU, and NWIGU all recommend that the Commission should affirm its long-
3 standing policy of pension cost recovery.

4 Staff and the consumer groups all recommend that the Commission continue its long-
5 standing policy of pension cost recovery and deny the Joint Utilities' request to add the prepaid
6 pension asset balance to utility rate base. For example, CUB argues that the Commission's long-
7 standing policy of pension cost recovery is not broken and recommends the Commission affirm the
8 current method.¹ INCU/NWIGU argue that the Joint Utilities' proposal to include the current
9 prepaid pension asset balance in future rate base should be rejected and the Commission should
10 continue its current policy of allowing only FAS 87 expense in rates.²

11 Staff and CUB argue that the Joint Utilities' proposal would violate the rule against
12 retroactive ratemaking.³ ICNU/NWIGU do not specifically argue that the Joint Utilities' proposal
13 is retroactive ratemaking, but they do argue, along with Staff and CUB, that the prepaid pension
14 asset is not a traditional rate base item.⁴ As Staff has argued, the Commission currently treats
15 pension costs as expenses and if pension costs are more akin to expenses than a rate base item, the
16 rule against retroactive ratemaking would prohibit inclusion of the current prepaid pension asset
17 balance in future rate base.⁵

18 Staff, CUB, ICNU, and NWIGU agree that the Joint Utilities' proposal constitutes single-
19 issue ratemaking and Staff argues that it ignores the holistic nature of the end result of just and
20 reasonable rates.⁶ ICNU/NWIGU argue that a Commission order that categorically allows the
21 Joint Utilities to include their prepaid pension assets in rate base, without any independent showing
22 that the treatment is necessary for just and reasonable rates in a subsequent rate case, would
23 constitute single-issue ratemaking.⁷ In the manner in which the Joint Utilities have framed their

24 ¹ See CUB Response Brief at 17.

25 ² See ICNU/NWIGU Response Brief at 8.

³ See Staff Prehearing Brief at 7-8; Staff Response Brief at 2-4; see also CUB Response Brief at 10-11.

⁴ See ICNU/NWIGU Response Brief at 6-7.

26 ⁵ See Staff Prehearing Brief at 7-8.

⁶ See Staff Prehearing Brief at 8-9; Staff Response Brief at 4-5.

⁷ See INCU/NWIGU Response Brief at 8.

1 proposal, Staff understands ICNU/NWIGU's argument. However, Staff's argument is different.
2 Specifically, Staff's concerns related to single-issue ratemaking and the holistic nature of
3 ratemaking are not related to the fact that the Joint Utilities' proposal is not considered in a
4 subsequent rate case, but rather that the Joint Utilities are requesting the Commission to take a
5 single issue – pension costs that were incurred in the past – and ignore every other aspect of the
6 overall rates that were in effect when the past pension costs were incurred. By only looking at one
7 historic cost and not overall rates, the Joint Utilities' proposal is focused on a single issue while
8 completely ignoring every other cost and the overall rates at the time the costs were incurred.⁸

9 2. Staff's alternative recommendation could mitigate some of CUB's, ICNU's and NWIGU's
10 concerns.

11 CUB argues that five arguments that the Joint Utilities make in support of their proposal
12 are myths.⁹ Specifically, CUB argues that the prepaid pension asset is not created solely by cash
13 invested by the utility, that the current policy of rate recovery based upon FAS 87 is working, that
14 shareholders will not necessarily have to make contributions for the next several years, that all
15 parties do not agree that financing costs of the prepaid pension asset are reasonable, and that FAS
16 87 alone does not fully amortize the prepaid pension asset.¹⁰ CUB also argues that the record does
17 not demonstrate that the cash contributions were prudently made¹¹ INCU/NWIGU's primary
18 objection to the Joint Utilities' request to include the current prepaid pension asset balance in
19 future rate base is one of timing and, after years in which those assets and liabilities were not
20 included in rate base and fluctuated between positive and negative amounts, is unfair and fails to
21 recognize the long-term effects of pension accounting in which these balances will, by definition,
22 reduce to zero.¹²

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25 ⁸ See Staff's Prehearing Brief at 8-9; Staff's Response Brief at 4-5.

⁹ See CUB Response Brief at 2.

26 ¹⁰ See Id. 2-10.

¹¹ See Id. at 12-13.

¹² See ICNU/NWIGU at 2-3.

1 Staff argues that the Commission should affirm its long-standing pension cost recovery
2 policy. However, Staff does offer the Commission an alternative recommendation if it is inclined
3 to consider inclusion of the current prepaid pension balance in future rate base. For example, Staff
4 argues that: ratepayers should not pay twice, so the current prepaid pension asset balance should
5 be netted against the difference between pension costs collected in rates and the actual FAS 87
6 expense; the utility should not be able to collect a rate of return on the portions of the prepaid
7 pension asset balance that are associated with a return on the pension investment above the amount
8 that is used to calculate FAS 87 expense; the amounts accumulated before the Pension Protection
9 Act and market downturn (amounts prior to 2008) should be excluded; ratepayers should receive
10 the tax benefits associated with the prepaid pension asset balance that they have funded; and the
11 Commission should apply an interest rate similar to the interest rate applied to a balancing account
12 because the prepaid pension asset balance is more akin to a balancing account than a utility rate
13 base investment.¹³

14 If the Joint Utilities were able to deem the prepaid pension asset balance an investment in
15 order to avoid the application of holistic and retroactive ratemaking constraints and also avoid
16 Commission oversight of the appropriate amount of prepaid pension asset balance to be included in
17 future rate base, by arguing that it would be retroactive ratemaking to determine the appropriate
18 and prudent balance that would be reason enough to deny the Joint Utilities' request to change
19 long-standing Commission policy.¹⁴ In its alternative recommendation, Staff proposes reasonable
20 parameters to use in calculating the appropriate prepaid pension balance to be included in future
21 rate base that could mitigate some of CUB's, INCU/NWIGU's concerns related to the Joint
22 Utilities' requested change to long-standing Commission policy.

23 III. Conclusion

24 Staff, CUB, ICNU, and NWIGU are in agreement that the Commission should not change
25 its policy on pension cost recovery. Staff, however, does recommend that in future rate

26 ¹³ See Staff's Prehearing Brief at 10-11.

¹⁴ See Id. at 11.

1 proceedings that a utility should be allowed to request recovery of the financing costs of a prepaid
2 pension asset/liability account balance accruing prospectively to the extent it is not associated with
3 a return on the pension investment above the amount that is used to calculate FAS 87 expense.
4 Staff offers an alternative recommendation, if the Commission is inclined to consider the current
5 prepaid pension asset balance, which establishes reasonable parameters for determining the
6 appropriate amount of the prepaid pension asset balance to be included in future rate base.

7 For the foregoing reasons, Staff respectfully urges the Commission to affirm its current
8 pension cost recovery policy. Alternatively, Staff requests that the Commission adopt reasonable
9 parameters to determine the amount of the prepaid pension asset balance appropriately included in
10 future rate base.

11 DATED this 15th day of May 2015.

12 Respectfully submitted,

13 ELLEN F. ROSENBLUM
14 Attorney General

15 *Mike* _____ *for*
16 Jason W. Jones, #00059
17 Assistant Attorney General
18 Of Attorneys for Staff of the Public Utility
19 Commission of Oregon
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