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	)

RESPONSE BRIEF OF THE

CITIZENS' UTILITY BOARD OF OREGON

April 24, 2014

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I. Introduction

Pursuant to Chief Administrative Law Judge ("ALJ") Michael Grant's Prehearing Conference Memorandum issued January 5, 2015, the Citizens' Utility Board of Oregon ("CUB") submits this Response Brief.

From the beginning of this docket, the Joint Utilities[1] have argued that the Commission's Investigation into Treatment of Pension Costs in Utility Rates is a simple, straight-forward policy docket that should be decided without consideration of the utility-specific facts that would demonstrate the implications of their request to include a utility's prepaid pension asset in rate base.[2] CUB agrees that the policy determined in this docket should apply to all utilities, and that individualized determinations for each utility should be addressed in utility-specific ratemaking proceedings. As CUB has stated

[1] Northwest Natural ("NW Natural"), PacifiCorp, Portland General Electric ("PGE"), Avista Utilities ("Avista") and Cascade Natural Gas ("Cascade").
[2] UM 1633 – Joint Utilities' Prehearing Brief at 1-2.

from the beginning, however, facts matter in this generic docket—and go far to debunk several myths perpetuated by the Joint Utilities. There are always real-world consequences in the implementation of any policy. In this case, the utility-specific facts do not support the Joint Utilities' simple story or request to earn a return on their respective prepaid pension assets. The Commission should understand the implications of the Joint Utilities' proposal in setting a generic policy for the recovery of pension-related costs.

II. Argument

A. The Myths

The Joint Utilities make several arguments in support of their request to earn a return on their respective prepaid pension assets: (1) that the prepaid pension asset is created solely by cash invested by the utility, (2) that rate recovery based on FAS 87 is broken, (3) that shareholders have, and will continue, to make contributions for the next several years, (4) that all parties agree that recovery of financing costs is reasonable, and (5) that FAS 87 alone fully amortizes the prepaid pension asset. The record in this case, however, demonstrates that these arguments are unsupported. Furthermore, the Joint Utilities' proposal would violate the prohibition against retroactive ratemaking and the policy against single-issue ratemaking. Allowing utilities to earn a return on their respective prepaid pension assets would not create sound policy in Oregon.

i. Myth #1: The prepaid pension asset is created solely by cash invested by the utility

The Joint Utilities have consistently argued that "the prepaid pension asset represents a legitimate and very real investment ***made by shareholders*** before recovery in rates."[3] They explain that "[t]he amount and timing of the cash contributions is ***largely*** driven by the requirements of federal law and each utility's financial and credit metrics."[4] CUB, however, has demonstrated that the prepaid pension asset is not ***solely*** due to cash contributions by shareholders and that other factors, aside from federal law and financial metrics, can drive the amount and timing of cash contributions.[5] As conceded by Idaho Power:

> [a] prepaid pension asset can also be increased by negative SFAS 87 expense, which results in the contribution and negative SFAS 87 expense being added together to determine the increase in the prepaid pension asset. This might occur, for instance, when the expected return on plan assets more than offsets the other components of SFAS 87 expense, causing the net periodic pension cost to become a net periodic pension benefit for the period (or negative SFAS 87 expense).[6]

Similarly, PGE admits:

> [t]he buildup of the prepaid pension asset is a complicated, iterative process that includes the interplay of many factors, including differences between actuarial estimates and actual plan experience that arise due to participant mortality, plan demographics, financial markets and changes in IRS statutes.[7]

Further complicating matters, the Joint Utilities have not consistently credited all negative FAS 87 expense to customers, which means that for at least some of the utilities, the prepaid pension asset has unquestionably been funded by other sources, such as ratepayers. [8] The Joint Utilities attempt to gloss over this argument by claiming that "[c]ontrary to CUB's implications, utilities have credited customers with negative FAS

[3] UM 1633 – Joint Utilities' Opening Brief at 2 (emphasis added). *See also* Joint Utilities' Prehearing Brief at 6 ("Because Oregon utilities currently recover their pension costs based on FAS 87 expense, the prepaid pension asset represents the cash contributions that were made by each company but not yet recovered in rates.").
[4] UM 1633 – Joint Utilities' Prehearing Brief at 5 (emphasis added).
[5] UM 1633 – CUB's Pre-hearing Brief at 16-21.
[6] UM 1633 – CUB/500/Jenks-McGovern/1.
[7] UM 1633 – Staff/103/Bahr/37.
[8] UM 1633 – CUB/100/Jenks-McGovern/15.

87 expense, and the prepaid pension asset is overwhelmingly the result of cash contributions – not FAS 87 expense."[9] Notably, the Joint Utilities are careful not to claim that *all* utilities have credited customers with negative FAS 87 expense.[10] As the record demonstrates, PGE has not credited customers with negative FAS 87 expense in the past;[11] the fact that its prepaid pension asset may be largely the result of cash contributions is immaterial to this argument. At least in PGE's case, the negative FAS 87 that was not credited to customers is greater than the current prepaid pension asset – this means that PGE's prepaid pension asset was entirely the result of negative FAS 87 expense.[12] Despite this, PGE is still advocating for a policy that would allow it to include its prepaid pension asset in rate base, thereby earning a return, even though it incurred no financing costs on the negative FAS 87 not credited to customers.[13]

The record in this case is clear. While cash contributions by shareholders may improve the funded status of pension plans, thereby reducing future FAS 87 expense, they are not the ***only*** drivers that reduce future FAS 87 expense. This is important to determining the amount of the prepaid pension asset, if any, that would appropriately be included in rate base. The implications of this fact are discussed more fully below.

ii. Myth #2: Rate recovery based solely on FAS 87 is broken

The Joint Utilities would also have the Commission believe that ratemaking for pension costs based solely on FAS 87 is no longer appropriate given the impacts on the prepaid pension asset from recent federal funding requirements and the 2008 financial

[9] UM 1633 – Joint Utilities' Opening Brief at 15.
[10] UM 1633 – Joint Utilities' Opening Brief at 15 and n. 63.
[11] UM 1633 - CUB/100/Jenks-McGovern/15.
[12] UM 1633 – CUB/100/Jenks-McGovern/18.
[13] *Id*.

crisis.[14] Recovering financing costs in addition to FAS 87 expense, they argue, would allow a "reasonable opportunity to recover all of their pension costs."[15] The Joint Utilities' argument is simply not persuasive.

First, as demonstrated by Staff, "[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."[16] In addition, NW Natural's prepaid pension asset peaked in 2005 before the Pension Protection Act and the 2008 financial crisis.[17] PGE's prepaid pension asset [redacted].[18] Idaho Power's accrued pension liability[19] [redacted].[20] This clearly indicates that in general, a utility's prepaid pension asset was not necessarily disproportionately affected by either the financial crisis of 2008 or the Pension Protection Act.

Second, the evolution of the utilities' respective prepaid pension assets over the course of this case demonstrates that the situation for the utilities is not nearly as dire as they claimed in the beginning of this case. As shown by the chart below, the prepaid pension asset has drastically improved for [redacted] and [redacted].[21]

[14] UM 1633 – Joint Utilities' Opening Brief at 13.
[15] UM 1633 – Joint Utilities' Prehearing Brief at 28.
[16] UM 1633 – Staff/100/Bahr/7.
[17] UM 1633 - CUB/100/Jenks-McGovern/9.
[18] UM 1633 - CUB/100/Jenks-McGovern/10.
[19] UM 1633 – Idaho Power Company's Prehearing Brief at 2.
[20] UM 1633 - CUB/100/Jenks-McGovern/9.
[21] Idaho Power's negative prepaid pension asset is an accrued pension liability and the [redacted] is reflective of the fact that even more FAS 87 has been accounted for in rates than cash contributed by the Company (as evidenced by the [redacted]).

Prepaid Pension Asset in Millions of Dollars		
Company	*Year End 2012*	*Year End 2014*
PGE	[redacted][22]	[redacted][23]
PacifiCorp	$282.4[24]	$304.8[25]
Idaho Power	[redacted][26]	[redacted][27]
Avista	[redacted][28]	$100.0[29]
Cascade	$14.0[30]	$19.7[31]
NW Natural	[redacted][32]	[redacted][33]

Finally, the timing of the Joint Utilities' request appears opportunistic.[34] The Joint Utilities do not dispute that rate recovery based on FAS 87 and FAS 88 will ultimately allow them to recover all of their pension costs,[35] yet now, when prepaid pension assets are relatively higher for some utilities than in the past, the Joint Utilities request different ratemaking treatment.

As CUB testified, both Standard & Poor's and Moody's have issued reports on utility pensions since the Pension Protection Act and neither recommends allowing a

[22] UM 1633 - CUB Exhibit 107.
[23] UM 1633 - OPUC Exhibit 505.
[24] UM 1633 - CUB Exhibit 106.
[25] UM 1633 - OPUC Exhibit 504.
[26] UM 1633 - CUB Exhibit 104.
[27] UM 1633 - OPUC Exhibit 502.
[28] UM 1633 - CUB Exhibit 102.
[29] UM 1633 - OPUC Exhibit 500.
[30] UM 1633 - CUB Exhibit 103.
[31] UM 1633 - OPUC Exhibit 501.
[32] UM 1633 - CUB Exhibit 105.
[33] UM 1633 - OPUC Exhibit 503.
[34] *See* UM 1633 – ICNU/NWIGU Prehearing Memorandum at 13-14; CUB/300/Jenks/McGovern/13-14.
[35] *See* UM 1633 – Joint Testimony/500/Joint Parties/9 ("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."). CUB notes that FAS 88 is also required for this statement to be true, as discussed below.

return on prepaid pension assets. Moody's cites to pension expense balancing accounts as helpful.[36] Standard & Poor's references balancing accounts in Maine and Michigan for tracking the difference between forecasted pension expense and actual pension expense.[37] Because FAS 87 is difficult to forecast accurately, CUB is open to the idea of pension expense balancing accounts.[38]

iii. Myth #3: Shareholders have, and will continue, to make cash contributions for the next several years

Contrary to CUB's and NWIGU/ICNU's claims, the Joint Utilities argue that "growth in the prepaid pension assets is not temporary and prepaid pension assets are expected to persist for the foreseeable future even as market conditions return to normal."[39] This argument has no merit.

First, as discussed above, the Pension Protection Act of 2006 and the financial crisis of 2008 do not necessarily correlate with an increase in the prepaid pension asset for each utility. As made clear by the chart above, despite the Joint Utilities' promises that their prepaid pension assets would continue to grow, three of the utilities are already seeing significant declines in their prepaid pension assets. This leads CUB to believe that these two events are not dispositive drivers of the prepaid pension asset/accrued pension liability, and therefore do not necessarily mean that in the long-term, shareholders will be forced to make cash contributions. As evidenced by the evolution of each utility's

[36]UM 1633 - CUB Exhibit 114, pg. 1.
[37] UM 1633 - CUB Exhibit 115, pg. 3.
[38] UM 1633 - CUB/100/Jenks-McGovern/41.
[39] UM 1633 – Joint Utilities' Opening Brief at 13.

prepaid pension asset *during the pendency of this case*, things can change relatively quickly with or without shareholder contributions.[40]

Even assuming that the Pension Protection Act and the 2008 financial crisis were significant drivers in a more substantial prepaid pension asset, the financial markets, and interest rates have improved.[41] Now, the utilities can reasonably expect that the projected annual return on pension assets will exceed actuarial projections,[42] thereby reducing the prepaid pension asset. In addition, future pension obligations are heavily influenced by discount rates, which are lower due to the Federal Reserve keeping interest rates artificially low in an effort to stimulate the economy.[43] As the economy improves, interest rates will be allowed to increase, which will reduce future pension obligation.[44] In most years, the actual returns are greater than actuarial projections, and according to Towers Watson"[t]ypically, the actual return on investments is the main driver in the change of a pension plan's assets."[45] Because actuarial projects are long-term forecasts, not short-term forecasts, when returns are above actuarial forecasts, the prepaid pension asset is reduced, thereby reducing the need for cash contributions.[46] For this reason, each utility's short-term forecasts of its need to make cash contributions will nearly always be overstated.[47]

[40] *See* chart above.
[41] UM 1633 – Staff/200/Bahr/9.
[42] UM 1633 – Staff/200/Bahr/9-10; CUB/100/Jenks-McGovern/17.
[43] UM 1633 - CUB Exhibit 115, page 4.
[44] According to Standard and Poor's a 100 basis point increase in interest rates will decrease pension obligation by 10%. CUB Exhibit 115, pg. 4.
[45] UM 1633 – CUB/100/Jenks-McGovern/25.
[46] UM 1633 – CUB/100/Jenks-McGovern/17.
[47] *Id.*

iv. Myth #4: All parties agree that recovery of financing costs is reasonable

The Joint Utilities claim that "parties agree that it is reasonable for a utility to recover financing costs when cash contributions are recovered over time."[48] This is an over-generalized statement that misrepresents CUB's position. To be clear, there are two methods to account for pensions in ratemaking: the accrual system used in Oregon (based on FAS 87 and FAS 88) and the cash system used in Idaho (contributions).[49] Pension recovery under FAS 87 has a smoothing effect, whereas pension recovery under a contribution system is extremely lumpy.[50] Because of this, CUB acknowledged that if the Commission were to go to a cash-based system, it would need to spread that contribution over a period of time, making the recovery of financing costs more appropriate.[51] It is in this context that CUB could agree that recovering financing costs for cash contributions recovered over time would be appropriate.

v. Myth #5: FAS 87 alone fully amortizes the prepaid pension asset.

The Joint Utilities also argue that "[a]s the parties agree, over the life of the pension plan the cumulative FAS 87 expense will equal the cumulative cash contributions."[52] This is simply not true. As CUB testified, FAS 87 does not directly amortize the prepaid pension asset and at the end of the life of the pension. [53] There is nearly always a remaining balance (positive or negative) that becomes FAS 88.[54] FAS 88 expenses also occur when changes are made to the pension plan.[55] The Joint Utilities' attempt to over-simplify the interconnection between FAS 87 and cumulative cash

[48] UM 1633 – Joint Utilities' Opening Brief at 2.
[49] UM 1633 – CUB/300/Jenks-McGovern/11.
[50] *Id*.
[51] UM 1633 – CUB/300/Jenks-McGovern/28.
[52] UM 1633 – Joint Utilities' Opening Brief at 4.
[53] UM 1633 - CUB/100/Jenks-McGovern/8; UM 1633 - CUB/200/Jenks-McGovern/11.
[54] *Id.*
[55] UM 1633 – CUB/100/Jenks-McGovern/6.

contributions is a disingenuous attempt to make the prepaid pension asset sound like traditional rate base. As discussed below, it is not.

B. Allowing each utility to include its current prepaid pension asset in rate base would violate the rule against retroactive ratemaking.

The Joint Utilities claim that their proposal in this case would not run afoul of the prohibition against retroactive ratemaking because any utility request would be in a future rate proceeding and would involve the recovery of future costs incurred to finance the prepaid pension asset.[56] They go on to argue that "[t]he fact that the prepaid pension asset built up over time and is the result of the difference between historical cash contributions and historical FAS 87 expense does not mean that allowing recovery of the prospective financing costs is retroactive ratemaking."[57]

The Joint Utilities' argument rests on the premise that the prepaid pension asset is similar to other assets typically included in a utility's rate base. This, however, is a faulty premise. CUB, Staff and ICNU/NWIGU have made extensive arguments about why the prepaid pension asset is not like other assets included in rate base.[58] Fundamentally, the prepaid pension asset is different in three important ways—first, as discussed above, it is not always solely funded by shareholders; second, determining the prudence of the asset is incredibly difficult, if not impossible;[59] and third, determining the appropriate amount to be included in rate base is incredibly difficult, if not impossible.[60] Determining the prudence of the prepaid pension asset and determining whether contributions have been paid by shareholders would be necessary before the Commission could rightfully include

[56] UM 1633 – Joint Utilities' Opening Brief at 3.
[57] UM 1622 – Joint Utilities' Opening Brief at 5.
[58] UM 1633 – ICNU/NWIGU Prehearing Brief at 17; CUB Pre-hearing Brief at 46-48.
[59] UM 1633 – CUB/200/Jenks-McGovern/5-7.
[60] *Id.*

any amount of the prepaid pension asset in rate base.[61] Even if this were logistically possible, as rightfully acknowledged by the Joint Utilities, it would constitute illegal retroactive ratemaking.[62] This is the catch-22 of the Joint Utilities' proposal—there is no way for the Commission to make a prudence determination and identify the portion of the prepaid pension asset that would appropriately be included in rate base without engaging in retroactive ratemaking. For this reason, the Joint Utilities' proposal fails.

The Commission may determine that it is appropriate to include the prepaid pension asset in rate base, but should only do so for new contributions going forward.

C. Allowing each utility to include its current prepaid pension asset in rate base would violate the rule against single-issue ratemaking.

The Joint Utilities argue that their request to include the prepaid pension asset in rate base is not a violation of the policy against single-issue ratemaking because the "request originated in a rate case where the totality of the utility's revenues and expenses were at issue" and because this is not a ratemaking proceeding.[63] These are not persuasive arguments.

The fact that the request for a return on the prepaid pension asset occurred for the first time before this Commission in a general rate case is immaterial. As previously discussed, the prepaid pension asset is not like other assets coming into rate base for the first time. Rather, the prepaid pension asset accrued over time—it is "the sum of decades of decisions related to pensions that have flowed through several cases."[64] To single out this one element of historic rates and change ratemaking treatment, without examining

[61] UM 1633 - .CUB's Pre-hearing Brief at 9-11.
[62] UM 1633 – Joint Utilities' Opening Brief at 10-11.
[63] UM 1633 – Joint Utilities' Opening Brief at 7.
[64] UM 1633 – CUB/100/Jenks-McGovern/27.

whether historic rates have fully compensated shareholders for the portion of the prepaid pension asset that came from shareholder contributions, is plainly single-issue ratemaking. Accordingly, the Joint Utilities' argument that they would only seek a return on the prepaid pension asset in rates on a going-forward basis in a future rate case does not assuage concerns about single-issue ratemaking. Although the Commission has recognized in the past that single-issue ratemaking may be appropriate in limited circumstances,[65] the Joint Utilities have not demonstrated that such circumstances are present in this case.

D. There is no evidence in the record that unequivocally supports the argument that cash contributions were prudently made.

To the extent that shareholders did make cash contributions, there is no concrete evidence in the record that the utilities have the ability to demonstrate that such contributions were prudent. Although this is not a utility-specific docket, the fact that no utility has been able to provide this information seems telling, and may go to inform the Commission about the limitations of the policy decision it makes in this docket.

Additionally, CUB still has concerns that including the prepaid pension asset in rate base will create improper incentives for the utilities.[66] It seems reasonable to infer that the Idaho Public Utility Commission has similar concerns as demonstrated by its

[65] *See In re NW Natural*, OPUC Docket No. UG 221, Order No. 12-437 at 26 (Nov. 16, 2012) ("Concerns about single-issue ratemaking are grounded in the idea that the ratemaking formula is designed to determine a company's revenue requirement based on the aggregate costs and demands of the utility. Except in limited circumstances, it is improper to consider changes to components of the revenue requirement in isolation.").

[66] UM 1633 – CUB/100/Jenks-McGovern/22.

requirement that Idaho Power prove the prudence of any cash contribution greater than the legally required minimum before they can be recovered in rates.[67]

CUB has stated the many pitfalls of a return on the existing prepaid pension asset. Moreover, a return on the forward-looking prepaid pension asset, which allows the utility to control not only the amount of the prepaid pension asset in rates, but the timing, creates a moral hazard for the companies, as they are insured against the risk of ill-timed funding.[68]

E. Rate recovery for the prepaid pension asset in other jurisdictions should not drive the policy in Oregon

The Joint Utilities argue that the Commission should include the prepaid pension asset in rate base because several other state commissions have allowed utilities to earn a return on their prepaid pension asset.[69] This argument is not compelling for several reasons.

First, the fact that other state commissions may have found including the prepaid pension asset in rate base to be good policy does not mean that this Commission should do the same; other regulators have not reached the same conclusion.[70]

Second, some of the case law cited by the Joint Utilities does not support their request in this docket. Again, as CUB has demonstrated, for at least some utilities, the prepaid pension asset is comprised in part by shareholder contributions above minimum

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[67] UM 1633 – Idaho Power Company's Prehearing Brief at 5-6.
[68] UM 1633 – CUB/100/Jenks-McGovern/22.
[69] UM 1633 – Joint Utilities' Prehearing Brief at 11-14.
[70] *See e.g. In re Appalachian Power Co. et al.*, 288 P.U.R.4th 185, 2011 W.Va. PUC LEXIS 704, *89-90 (W.V.P.S.C.) (declining to include the prepaid pension asset in the same manner that it would for other utility plant in service); *In re North Shore Gas et al.*, 2015 Ill. PUC LEXIS 50 *130-131 (Il.I.C.C.) (consistent with prior orders, excluding Peoples Gas' pension asset from rate base and excluding North Shore's pension liability from rate base.); *In re Northern Indiana Public Service Co.*, 284 P.U.R.4th 369, 2010 Ind. PUC LEXIS 294, *28 (Ind. U.R.C.) (declining NIPSCO's request to include its prepaid pension asset in rate base).

federal funding requirements.[71] The reasoning behind the Colorado Public Utilities Commission case cited by the Joint Utilities is to recover "the greater expenses [contributions] ***mandated by [federal law]***."[72] Notably, the Joint Utilities' proposal to include the prepaid pension asset in rate base does not contain a carve-out for those contributions *above* federal law requirements.

The Joint Utilities also rely on two decisions by the Public Service Commission of Missouri to bolster their argument that more than half of state commissions allow utilities to earn a return on their prepaid pension asset.[73] CUB does not disagree that the 1987 case appears to support the Joint Utilities' proposal in this case,[74] but notes that the Missouri Commission's more contemporary decision does not. Specifically, in *Re Missouri Gas Energy*, Missouri Gas Energy's prepaid pension asset reflects the difference between the forecasted ERISA minimum contribution and the actual ERISA minimum contribution–which is all based on cash accounting. [75] Rates for Missouri Gas Energy are explicitly *not* based upon a FAS 87 pension expense calculation.[76] In other words, Missouri, like Idaho, is using cash accounting for ratemaking and the prepaid pension asset is a true-up mechanism. This is clearly distinct from the Joint Utilities'

[71] UM 1633 – CUB/300/Jenks-McGovern/16.
[72] UM 1633 – Joint Utilities' Prehearing Brief at 11, citing *In re Public Service Co. of Colo.*, 148 P.U.R.4th 1, 1993 WL 494141, 19 (Colo.P.U.C.) (emphasis added).
[73] UM 1633 – Joint Utilities' Prehearing Brief at n.49.
[74] *See* UM 1633 – Joint Utilities' Prehearing Brief at n. 49 (citing to *Staff of the Mo. Pub. Serv. Comm'n v. Union Elec. Co.*, 90 P.U.R.4th 400, 1987 WL 258074).
[75] *In re Missouri Gas Energy*, 280 P.U.R.4th 107, 2010 Mo. PSC LEXIS 156, *112 (Mo.P.S.C.) (The Commission's decision refers to Files Nos. GR-2004-0209 and GR-2006-0422 as the cases that created the prepaid pension asset. The Commission's order in File No. GR-2004-0209 approves a Partial Stipulation and Agreement, which addresses pension expenses. *In re Missouri Gas Energy*, 235 P.U.R.4th 507, 2004 Mo. PSC LEXIS 1446, *5-6 (Mo.P.S.C.). The Partial Stipulation and Agreement approved by that Order is not attached to the Commission's decision, but is accessible on the Missouri PSC's website: https://www.efis.psc.mo.gov/mpsc/commoncomponents/viewdocument.asp?DocId=3874628.).
[76] Stipulation and Agreement from *In re Missouri Gas Energy*, 235 P.U.R.4th 507, 2004 Mo. PSC LEXIS 1446 (Mo.P.S.C.), at accessed at: https://www.efis.psc.mo.gov/mpsc/commoncomponents/viewdocument.asp?DocId=3874628.

proposal, which mixes accrual accounting (FAS 87) and cash accounting (contributions). The discrepancy between the Missouri cases also demonstrates that there is not necessarily a consistent policy within any given state—simply because one utility was granted the ability to earn a return on its prepaid pension asset does not necessarily mean that is the universal policy within the state.

Indiana and Michigan are other examples where regulators do not appear to have adopted a single policy with regard to a return on prepaid pension assets. The Joint Utilities cite to a 2013 Indiana Utility Regulatory Commission order that allowed Indiana Michigan Power Company to include its prepaid pension asset in rate base.[77] Yet in 2010, the Indiana Commission denied a similar request from Northern Indiana Public Service Company.[78] And in 2015, the Commission approved a settlement that excluded the prepaid pension asset from Indiana American Water Company's rates base.[79]

The Joint Utilities also claim that regulators in Michigan have allowed utilities to include the prepaid pension asset in rate base, which may be true,[80] but it appears that Michigan regulators have also "granted cost-recovery trackers for pension and OPEB costs in which the difference between pension and OPEB expenses that companies include in current rates is compared with the actual expenses incurred in that year."[81]

The discrepancies within the states regarding the inclusion of the prepaid pension asset in rate base underscore the argument that facts matter when determining whether utilities should be allowed to earn a return on their prepaid pension assets.

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[77] UM 1633 – Joint Utilities Prehearing Brief at 12.
[78] *In re Northern Indiana Public Service Co.*, 284 P.U.R.4th 369, 2010 Ind. PUC LEXIS 294, *28 (Ind. U.R.C.) (declining NIPSCO's request to include its prepaid pension asset in rate base).
[79] *In re Indiana Water Co., Inc.,* 2015 Ind. PUC LEXIS 29 (Ind.U.R.C.).
[80] UM 1633 – Joint Utilities' Prehearing Brief at 13. CUB notes that the citation provided for this claim (Joint Testimony/100/Joint Parties/13-14) does not provide any details about which case(s) in Michigan the Joint Parties are referring to.
[81] UM 1633 – CUB/115/Jenks-McGovern/3.

Finally, the Joint Utilities gloss over the difference between including the prepaid pension asset in rate base, as they propose in this case, and earning a return on the prepaid pension asset, which can occur outside of including the asset in rate base. A review of the cases cited by the Joint Utilities demonstrates that at least some commissions, while allowing a return on the prepaid pension asset, have not done so by including the prepaid pension asset in rate base for various policy reasons.[82]

This docket has clearly demonstrated the complexity and integrated nature of the prepaid pension asset—as discussed above, not only can it exist independent of shareholder contributions (calling into question the amount of the prepaid pension asset that would appropriately be included in rate base), it can also be impacted by shareholder contributions above minimum contribution requirements, which begs the question of prudence. The fact that other commissions may have found that, given the facts specific to their utilities, allowing a return on the prepaid pension asset was appropriate, this should not inform a generic policy determination in Oregon. Fundamentally, the cases cited by the Joint Utilities merely demonstrate that many commissions have grappled with rate recovery of pension costs, but the insinuation that a majority of commissions have reached a consensus on the exact mechanism for rate recovery is overly broad.

F. Any change in pension cost recovery should apply equally to Idaho Power

If the Commission decides to change its policy in this docket, the new policy should apply equally to Idaho Power. In the future, any of the other utilities could have

[82] *See e.g. In re Public Service Co. of Oklahoma*, 270 P.U.R.4th 205, 2009 Okla. PUC LEXIS 20, *11-12 (Okla.O.C.C.) (PSO authorized to earn its cost of debt on the balance of its prepaid pension asset); *WUTC v. PacifiCorp*, 2013 WL 6384505, *72 (Wash.U.T.C.) (PacifiCorp permitted to include the prepaid pension asset in its calculation of cash working capital).

an accrued pension liability, as is the case with Idaho Power currently.[83] In fact, several of them have been there in the past.[84] Any policy that is forged in this docket must treat ratepayers symmetrically, affording them equal opportunity to earn a return on the accrued pension liability, if that is what the Commission decides. In addition, the ability to choose the timing of this judgment or financial evaluation should no longer be up to the individual utility, but be open to all parties deserving of financial consideration.

III. Conclusion

Rate recovery for pension expense based solely on FAS 87 is not broken. The prepaid pension asset is not the result of a flaw in Oregon's regulatory approach to pensions. Rather, it is due to a bookkeeping entry that represents the difference between accrual accounting and cash accounting. CUB therefore recommends that the Commission affirm the current method for recovery of pension expense in Oregon. Should the Commission determine that a change in methodology is warranted, and approves rate recovery based on cash contributions, it should only apply this change on a going-forward basis, and should not allow return of the current prepaid pension asset to shareholders.

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[83] UM 1633 – Idaho Power Company's Prehearing Brief at 2.
[84] UM 1633 - CUB Exhibits 102, 105, 106, and 107.

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Respectfully submitted,

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