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September 16, 2015

Via Electronic Filing

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

Re: PORTLAND GENERAL ELECTRIC and PACIFICORP dba PACIFIC POWER
Request for a Generic Power Cost Adjustment Mechanism Investigation
Docket No. UM 1662

Dear Filing Center:

Enclosed for filing in the above-referenced docket, please find the Prehearing Brief of the Industrial Customers of Northwest Utilities.

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

Sincerely,

/s/ Jesse O. Gorsuch
Jesse O. Gorsuch

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1662

In the Matter of)	
)	
PORTLAND GENERAL ELECTRIC)	
COMPANY and PACIFICORP d/b/a)	PREHEARING BRIEF OF THE
PACIFIC POWER)	INDUSTRIAL CUSTOMERS OF
)	NORTHWEST UTILITIES
Request for Generic Power Cost Adjustment)	
Mechanism Investigation.)	
_____)	

I. INTRODUCTION

In accordance with the Administrative Law Judge’s July 9, 2015 Ruling in this docket, the Industrial Customers of Northwest Utilities (“ICNU”) respectfully submits this Prehearing Brief. The Public Utility Commission of Oregon (“Commission”) should reject the Joint Utilities’^{1/} proposed renewable resources tracking mechanism (“RRTM”) in its entirety and maintain the current recovery structure for *all* variable power costs, including those associated with compliance with Oregon’s renewable portfolio standard.

In this docket, the Joint Utilities propose that the Commission adopt an RRTM, enabling dollar-for-dollar recovery of the variable costs of compliance with the RPS. While the Joint Utilities argue that their proposal is based on the RPS statute (“SB 838”), in fact, the RRTM represents nothing more than their latest attempt to collaterally attack their current power cost adjustment mechanisms (“PCAMs”). The RRTM is an effort to whittle away at the important customer protections in the PCAM – the dead bands, sharing bands, and earnings test

^{1/} The Joint Utilities are Portland General Electric Company (“PGE”) and PacifiCorp.

– that ensure normal business risk stays with the utility. Adoption of the RRTM would threaten the future viability of the PCAM by setting a precedent that power costs are eligible for dollar-for-dollar recovery.

SB 838 does not, as the Joint Utilities claim, compel the RRTM. The current PCAM structure allows for recovery of all prudently incurred net power costs (“NPC”), including those associated with RPS compliance. Nor is the RRTM warranted for policy reasons. The Joint Utilities’ RPS-related power costs are no more variable than their hydro power costs, and while both of the Joint Utilities have added significant renewable generation to their portfolios, the differential between their forecasted and actual power costs has actually declined since the RPS was implemented. Finally, the RRTM contains significant design flaws that will likely lead to inaccurate power cost recovery to the detriment of customers.

II. BACKGROUND

The Joint Utilities’ current PCAMs include asymmetrical dead bands (\$15 million for negative variances and \$30 million for positive variances); a 90/10 sharing mechanism; and an earnings test that applies within 100 basis points of the utility’s allowed return on equity.^{2/} This structure effectuates the following design principles to which the Commission has adhered since at least 2005: (1) recovery should be limited to unusual events; (2) no adjustment if overall earnings are reasonable; (3) it should be revenue neutral; (4) it should have long-term operation; and implicitly, (5) it should provide an incentive to the utility to manage its costs effectively.^{3/}

^{2/} Re PacifiCorp 2014 Power Cost Adjustment Mechanism, Docket No. UE 298, Pacific Power Initial Filing at 1 (May 15, 2015); Re PGE 2014 Power Cost Adjustment Mechanism, Docket No. UE 299, PGE/100 at 1:15-21 (June 29, 2015).

^{3/} Docket Nos. UE 165/UM 1157, Order No. 05-1261 at 8 (Dec. 21, 2005); Docket No. UE 246, Order No. 12-493 at 13 (Dec. 20, 2012).

The Commission articulated its PCAM design principles in ruling on a PGE request to establish a hydro-only PCAM.^{4/} In that case, the Commission noted that it had previously found that “deferred accounting is not justified for a *stochastic risk* like hydro availability unless the event (*e.g.*, actual hydro realized) is extraordinary and the financial impact is substantial.”^{5/} With respect to PGE’s hydro-only PCAM proposal, the Commission stated:

[W]e believe that a hydro-related [PCAM] should include separate standards for the unusual nature of the event and its financial impact. A hydro-related [PCAM] should be designed so that recovery or refund occurs only if the hydro event is unusual The inclusion of a deadband around expected power costs is a reasonable way to identify whether an event is unusual In addition to a deadband around power costs to limit operation of the mechanism to unusual events, a hydro-related [PCAM] should include an earnings deadband around the company’s allowed ROE.^{6/}

Since the Commission articulated its PCAM design principles in Order No. 05-1261, both PGE and PacifiCorp have proposed PCAMs for all of their power costs that significantly diverged from these principles, and the Commission has rejected them to the extent of their divergence.

In PGE’s 2006 general rate case, the utility “argue[d] vigorously against any imposition of a deadband” in its proposed PCAM.^{7/} Nevertheless, the PCAM the Commission adopted included a dead band, as well as sharing bands and an earnings test.^{8/} Citing Order No. 05-1261, the Commission stated that the guiding principle of its PCAM design criteria was that it “capture power cost variations that exceed those considered part of normal business risk. In this

^{4/} Re PGE Application for a Hydro Generation Power Cost Adjustment Mechanism, Docket Nos. UE 165/UM1187, Order No. 05-1261 at 8 (Dec. 21, 2005).

^{5/} Id. at 8-9 (emphasis added).

^{6/} Id. at 9.

^{7/} Re PGE Request for a General Rate Revision, Docket Nos. UE 180/UE 181/UE 184, Order No. 07-015 at 19 (Jan. 12, 2007).

^{8/} Id. at 26-27.

case, normal business risk for PGE includes *all of the circumstances to which it is exposed*, such as hydro variability.”^{9/}

Similarly for PacifiCorp, in Docket No. UE 246, the utility requested a PCAM with dollar-for-dollar recovery for all of its power costs.^{10/} Citing SB 838, the utility alleged that its compliance with the RPS was causing it to under-recover its net power costs in Oregon. PacifiCorp argued that it was entitled to dollar-for-dollar cost recovery because ORS 469A.120(1) states that “all prudently incurred costs associated with compliance with a renewable portfolio standard are recoverable in the rates of an electric company.”^{11/} Again, however, the Commission adhered to the PCAM design principles it articulated in Order No. 05-1261 and extended in designing PGE’s PCAM.^{12/} The Commission concluded “that our reasoning used to establish a PCAM for PGE remains sound and applies equally with respect to establishing a PCAM for PacifiCorp.”^{13/} With respect to PacifiCorp’s argument that SB 838 compelled dollar-for-dollar recovery, the Commission stated:

While we acknowledge that ORS 469A.120(1) provides for recovery of prudently incurred SB 838 compliance costs, we find it unreasonable to adopt a straight dollar-for-dollar PCAM for the totality of Pacific Power’s NPC to address appropriate recovery for costs that may amount to far less than 2 percent of the total – particularly when those costs may be difficult to quantify precisely. We find that the most prudent way to accomplish proper recovery is through a well-designed PCAM that complies with the [PCAM design] principles.^{14/}

^{9/} Id. at 26 (emphasis added).

^{10/} Re PacifiCorp Request for a General Rate Revision, Docket No. UE 246, Order No. 12-493 at 9 (Dec. 20, 2012).

^{11/} Id.

^{12/} Id. at 13.

^{13/} Id. at 14.

^{14/} Id.

In the current docket, the Joint Utilities attempt another line of attack on the PCAM design principles through a variation on PacifiCorp’s argument in UE 246. As PacifiCorp did in that case, they assert that SB 838 requires dollar-for-dollar recovery of prudently incurred RPS-related variable costs.^{15/} Their current PCAMs do not “allow” them this recovery, they claim.^{16/} Rather than requesting dollar-for-dollar recovery of all NPC, however, the Joint Utilities propose to remove from their PCAMs the variable costs of RPS compliance and true these costs up annually.^{17/} All power costs would continue to be forecast in PGE’s Annual Update Tariff (“AUT”) and PacifiCorp’s Transition Adjustment Mechanism (“TAM”).^{18/} The forecasted and actual renewable power costs would then be removed from the PCAM calculation.^{19/} RPS-related variable costs are determined in the RRTM by comparing the forecasted generation level at a forecasted market price with the actual generation level at the actual market price.^{20/} The Joint Utilities’ current PCAMs would remain in place for all other power costs.^{21/} The RRTM also would true-up variances in production tax credits (“PTCs”).^{22/}

ICNU, Commission Staff, and the Citizens’ Utility Board (“CUB”) all oppose the RRTM on legal, policy, and structural grounds.^{23/} ICNU and CUB categorically oppose any special recovery mechanism for RPS-related power costs.^{24/} While Staff’s primary

^{15/} PGE-PAC/200 at 1:17-19.

^{16/} PGE-PAC/100 at 6:3-4.

^{17/} Id. at 7:18-23.

^{18/} Id. at 9:5-7.

^{19/} Id. at 12:1-2.

^{20/} Id. at 10:8-9.

^{21/} Id. at 12:4-6.

^{22/} Id. at 8:6-8.

^{23/} ICNU/100; Staff/100; CUB/100.

^{24/} ICNU/100 at 1-2; CUB/100 at 16:6-15.

recommendation is rejection of the RRTM as well,^{25/} its testimony presents an alternative RRTM in the event the Commission determines not to reject the Joint Utilities’ proposal outright.^{26/}

III. ARGUMENT

A. The Joint Utilities’ Current PCAMs Comply with SB 838.

The Joint Utilities’ primary justification for the RRTM is that SB 838 provides for recovery of all prudently incurred costs associated with Oregon’s RPS, and their current PCAMs do not “allow” for such recovery due to the dead bands, sharing bands, and earnings test.^{27/} In fact, the PCAM “allows” for recovery of *all* net power costs, including RPS-related power costs, and therefore, is consistent with SB 838’s requirements.

ORS 469A.120(1) provides that “all prudently incurred costs associated with compliance with a renewable portfolio standard are recoverable in the rates of an electric company” The Joint Utilities’ position is that any time their actual power costs associated with RPS compliance exceed the forecasted amount included in rates, the PCAM’s dead bands, sharing bands, and earnings test deny them full recovery of the difference.^{28/} Thus, they claim these costs are not “recoverable” as required by law.^{29/} A reading that “recoverable” compels dollar-for-dollar recovery, however, does not reflect the language of the statute and is illogical.

^{25/} Staff/100 at 4:9-11.

^{26/} Id. at 12:1-18:12.

^{27/} PGE-PAC/100 at 4:4-7, 7:12-15.

^{28/} PGE-PAC/200 at 8:4-7.

^{29/} Id. at 2:3-8.

1. Neither the language of ORS 469A.120 nor its legislative history compel dollar-for-dollar recovery of RPS-related variable costs.

The purpose of statutory construction is to discern the legislature’s intent.^{30/} As the Oregon Supreme Court has stated, “there is no more persuasive evidence of the intent of the legislature than the words by which the legislature undertook to give expression to its wishes.”^{31/} “In construing a statute, we do not look at one subsection of a statute in a vacuum; rather, we construe each part together with the other parts in an attempt to produce a harmonious whole.”^{32/} It is presumed that the legislature “intends different meanings when it uses different terms in a statute.”^{33/}

Subsection (1) of ORS 469A.120 contains the language on which the Joint Utilities rely for their position that SB 838 compels dollar-for-dollar recovery of RPS-related variable costs. Subsection (2) of ORS 469A.120, however, provides for precisely this type of recovery for a discrete set of costs: “The [Commission] shall establish an automatic adjustment clause ... or another method that allows timely recovery of costs prudently incurred by an electric company to construct or otherwise acquire facilities that generate electricity from renewable energy sources and for associated electricity transmission.”^{34/} By “constru[ing] each part together with the other parts” of ORS 469A.120, rather than looking at subsection (1) “in a vacuum,” it is apparent that, by using “different terms” in each subsection, the legislature meant to provide for a different type of cost recovery for different RPS-related costs.^{35/} A utility’s capital investment costs are entitled to “timely recovery” through an automatic adjustment clause

^{30/} ORS 174.020; State v. Gaines, 346 Or. 160, 165 (2009)

^{31/} Gaines, 346 Or. at 171 (citation and internal quotations omitted).

^{32/} State ex rel. Dept. of Transp. v. Stallcup, 341 Or. 93, 99 (2006) (citation and internal quotations omitted).

^{33/} Id. at 101 (citing State v. Keeney, 323 Or. 309, 316 (1996)).

^{34/} ORS 469A.120(2).

^{35/} Stallcup, 341 Or. at 99, 101.

or similar mechanism; a utility's other prudently incurred costs of compliance are "recoverable." Reading "recoverable" to require dollar-for-dollar recovery of RPS-related NPC is inconsistent with established rules of statutory interpretation because it ignores the fact that the legislature explicitly provided such recovery in the statute for only a specific subset of RPS-related costs.

A more logical and natural reading of the word "recoverable" in ORS 469A.120(1) is that it provides the Joint Utilities the *opportunity* to recover their RPS-related power costs, rather than a guarantee. "Recoverable" means "capable of being recovered."^{36/} This is the language of opportunity, not certainty. If the legislature wished to provide certainty of recovery, it could have easily done so by using the phrase "shall be recovered" or similar language, or by applying the statute's provision for an automatic adjustment clause or similar recovery method to power costs. Furthermore, an interpretation of "recoverable" as providing an opportunity, rather than a guarantee, of recovery is consistent with other aspects of ratemaking. A utility's revenue requirement provides it with the opportunity to recover its costs of service and earn a reasonable rate of return.^{37/} It does not guarantee this result. The current PCAM structure mirrors this construct by ensuring the Joint Utilities receive full recovery of their forecasted power costs, but does not guarantee they will recover excess power costs. On the other hand, if the Joint Utilities over-forecast their power costs, as PGE has done in four of the last five years,^{38/} they can also retain most, if not all, of the excess. The risks and benefits of variances from the forecast fall primarily on the utility, as the risks and benefits of variances in projected costs and revenues used to establish the overall revenue requirement also fall primarily

^{36/} Webster's 3d New Int'l Dictionary (unabridged) at 1898 (1993)

^{37/} Utility Reform Project v. Pub. Util. Comm'n of Or., 261 Or. App. 388, 400 (2014).

^{38/} See PGE's 2010-2014 PCAM filings, Docket Nos. UE 232, UE 256, UE 274, UE 291, and UE 299.

on the utility. A reading that the word “recoverable” provides the Joint Utilities the opportunity, rather than a guarantee, of recovery best accords with a plain reading of the term and with the way this term is typically understood for ratemaking purposes. It also recognizes the explicit distinction the legislature made between costs that are eligible to be “timely recovered” through an automatic adjustment clause and those that are not.

In fact, the Joint Utilities’ reliance on statute to justify the RRTM was recently rejected by the Washington Utilities and Transportation Commission (“WUTC”) in PacifiCorp’s most recent rate case in that state.^{39/} In that case, PacifiCorp proposed a renewable resources tracking mechanism that was nearly identical to the RRTM it advances here.^{40/} The only difference between the proposals is that, in Washington, PacifiCorp did not have a PCAM, so the RRTM would have constituted its only power cost tracker, while in Oregon, the Joint Utilities propose that the RRTM be “carved out” of their existing PCAMs. For its proposal in Washington, PacifiCorp relied on the state’s RPS statute, which, similar to Oregon’s, holds that an “investor-owned utility is entitled to recover all prudently incurred costs associated with compliance with [the RPS].”^{41/} The WUTC, however, rejected PacifiCorp’s argument, finding it to be “far wide of the mark.”^{42/} “There is nothing in the Act that requires approval of a power cost tracker to ensure that a company recovers its prudently incurred costs of complying with the

^{39/} WUTC v. PacifiCorp d/b/a Pacific Power & Light Co., Docket No. UE-140762, *et al.*, Order 08 ¶¶ 128-135 (Mar. 25, 2015). In its order rejecting the RRTM, the WUTC also chastised PacifiCorp for repeatedly refusing to propose a power cost adjustment mechanism that complied with the WUTC’s requirements for dead bands and sharing, and directed the parties to the docket to mutually craft a mechanism for PacifiCorp that met these requirements. *Id.* ¶ 121.

^{40/} ICNU/100 at 6.

^{41/} RCW § 19.285.050(2). In fact, the phrase “entitled to recover” is arguably more supportive of the Joint Utilities’ statutory argument than the Oregon statute’s use of the word “recoverable.”

^{42/} WUTC Docket No. UE-140762, Order 08 ¶ 134.

RPS,” the WUTC determined.^{43/} SB 838 does not by its terms establish a higher standard than the Washington statute.

The Joint Utilities also attempt to invoke legislative history to support their interpretation of SB 838.^{44/} However, “a party seeking to overcome seemingly plain and unambiguous text with legislative history has a difficult task before it.”^{45/} Indeed, “[w]hen the text of a statute is truly capable of only one meaning, no weight can be given to legislative history that suggests – or even confirms – that legislators intended something different.”^{46/} A statute that specifically provides for an automatic adjustment clause for some costs and not for others should be interpreted unambiguously not to require dollar-for-dollar recovery of these other costs. Therefore, the Joint Utilities cannot use legislative history to support a different conclusion.

Moreover, even if the Joint Utilities could plausibly argue that the language of SB 838 is ambiguous, the legislative history does not support their interpretation. The Joint Utilities testify that the legislative history indicates that “stakeholders did not recognize the magnitude of the potential variable costs or the inadequacy of utilities’ current variable costs [*sic*] recovery mechanisms.”^{47/} They reach this conclusion by noting that stakeholders “did not specifically address cost recovery mechanisms for the variable costs of RPS.”^{48/} The Joint Utilities’ attempt to discern, through negative inference, an unstated legislative purpose behind ORS 469A.120(1) is hardly convincing evidence that the legislature meant to provide for dollar-for-dollar recovery

^{43/}

Id.

^{44/}

PGE-PAC/200 at 4:9-5:9.

^{45/}

Gaines, 246 Or. at 172.

^{46/}

Id. at 173.

^{47/}

PGE-PAC/200 at 4:11-13.

^{48/}

Id. at 4:14-15.

of the variable costs of RPS compliance. ICNU’s review of the legislative history has not revealed any statement that such dollar-for-dollar recovery was intended.^{49/} Thus, rather than, as the Joint Utilities claim, failing to “specifically address cost recovery mechanisms for the variable costs of RPS,”^{50/} the most reasonable conclusion is that the legislature *did* address these costs by stating that they “are recoverable in the rates of an electric company.”^{51/} Without some evidence of a different legislative intent, the Commission should not presume an outcome that is not in accordance with the statutory language and the Supreme Court’s principles of statutory construction.

2. The Joint Utilities’ reading of ORS 469A.120(1) is illogical.

Reading into SB 838 a mandate for dollar-for-dollar recovery of RPS-related NPC also would directly conflict with the way other power costs are recovered. The statute’s statement that “all prudently incurred costs associated with compliance with a renewable portfolio standard are recoverable” in rates is nothing more than an explicit statement of standard utility ratemaking principles. It is equally true that all *power costs* that are prudently incurred to serve customers are recoverable in the rates of an electric company. Thus, if the Commission adopts the Joint Utilities’ reading of the statute, then it is unclear how that reading could be consistent with the framework under which they recover their other power costs, which the Joint Utilities propose to continue recovering subject to the PCAM’s design criteria. If the Joint

^{49/} See, e.g., Testimony of Jason Eisdorfer for the Citizens’ Utility Board, Senate Environment & Natural Resources Committee, Exh. D at 1-2 (Mar. 5, 2007) (referring only to the provision for an automatic adjustment clause for utility capital costs); Testimony of Scott Bolton for PacifiCorp, Senate Environment & Natural Resources Committee, Exh. Z at 4 (Mar. 5, 2007) (also referring to automatic adjustment clause provision for utility investment costs); Testimony of Commission Chairman Lee Beyer, House Committee on Energy and the Environment, Exh. F at 4 (Apr. 16, 2007) (letter to Reps. Dingfelder and Bruun referring to costs that are recoverable under the bill’s automatic adjustment clause provision).

^{50/} PGE-PAC/200 at 4:14-15.

^{51/} ORS 469A.120(1).

Utilities under-forecast their *non*-RPS-related power costs, then, according to their argument, the actual costs that are incremental to the forecasted amount are not “recoverable,” regardless of whether they are deemed to be prudently incurred or not. The Commission has never authorized dollar-for-dollar recovery of all net power costs – indeed, it has explicitly rejected such requests^{52/} – yet the Joint Utilities do not claim that this policy does not allow them to recover their prudently incurred costs. There is no rational basis for the conclusion that the PCAM allows for recovery of prudently incurred non-RPS-related power costs, but does not allow for recovery of prudently incurred RPS-related power costs.

A plain reading of ORS 469A.120(1)’s requirement that RPS-related costs be “recoverable in the rates of an electric company” indicates that its provisions are satisfied if the utility is provided an opportunity to recover such costs. The current design of the PCAM, by ensuring the Joint Utilities recover at least their forecasted power costs, allows for such an opportunity.

B. The Joint Utilities have not shown that a special mechanism for variable RPS-related costs is warranted.

Not only is the RRTM not required by law, it is also unnecessary from a policy perspective. The Joint Utilities argue that “there are consistent variances between the variable RPS compliance costs used to set rates and the actual variable costs of RPS compliance.”^{53/} However, it has always been true that there are variances between forecasted and actual costs, and compliance with the RPS has not shifted this dynamic against the utilities in any demonstrable way.

^{52/} Docket No. UE 246, Order No. 12-493 at 14.
^{53/} PGE-PAC/200 at 8:4-5.

The Commission has consistently adhered to a PCAM structure that ensures “normal business risk” stays with the utility.^{54/} Such risk “includes all of the circumstances to which [the utility] is exposed,”^{55/} and includes stochastic risks like hydro variability.^{56/} The current dead bands are in place to ensure the Joint Utilities “absorb some normal variation of power costs.”^{57/} In this case, the Joint Utilities claim that their forecasts of RPS-compliant generation “often vary significantly from actuals due to uncontrollable circumstances such as weather conditions.”^{58/} This is strikingly similar to PGE’s previous argument in advocating for a hydro-only PCAM that “the risk of [hydro] variability is hard to model because weather assumptions are difficult to make.”^{59/} Nevertheless, in that case, the Commission found that a hydro-only PCAM should be “limited to unusual events” and that “[t]he inclusion of a deadband around expected power costs is a reasonable way to identify whether an event is unusual.”^{60/} The evidence in this case shows that Joint Utilities’ wind resource output has been *no more variable* than that of their hydro resources.^{61/} Thus, there is no reason to apply a special recovery mechanism to this stochastic risk when the Commission has previously applied the established PCAM design criteria to similar risks.

Furthermore, the addition of variable RPS resources into the Joint Utilities’ generation portfolios does not appear to have impaired their ability to forecast their power costs. Despite the Joint Utilities’ complaints about the variability of their RPS-compliant resources, and

^{54/} Docket Nos. UE 180/UE 182/UE 184, Order No. 07-015 at 26.

^{55/} Id.

^{56/} Docket Nos. UE 165/UM 1187, Order No. 05-1261 at 8-9.

^{57/} Id.

^{58/} PGE-PAC/100 at 5:13-14.

^{59/} Docket Nos. UE 165/UM 1187, Order No. 05-1261 at 3 (Dec. 21, 2005).

^{60/} Id. at 8-9.

^{61/} Compare ICNU/100 at 13 (Figure 1) with ICNU/100 at 14 (Figure 2).

their claim that this problem “will only become worse” as the RPS requirements increase,^{62/} the fact is that the Joint Utilities’ variance in overall power costs from forecasted to actual actually *decreased* between 2008 and 2013, despite both utilities adding significant RPS-compliant resources in this period.^{63/}

Nor has the inclusion of RPS resources shifted the assumption of risk under the PCAM against the Joint Utilities. Since 2008, the variance between PGE’s actual and forecasted net power costs has exceeded the dead bands three times.^{64/} In each of those cases, the exceedance was negative, meaning that PGE significantly *over*-forecasted its power costs in rates and, therefore, over-collected its power costs. PacifiCorp has made two annual filings since its PCAM was implemented, and in both years its earnings were sufficient to withstand its under-recovery.^{65/} Thus, to the extent the Joint Utilities argue that the variability of their RPS-compliant resources is increasing their variable power cost risk and negatively impacting them financially, the facts do not support that contention.

The Joint Utilities have provided no convincing rationale, legal- or policy-related, to apply special treatment to their RPS-related variable costs. The true policy consequence of adopting the RRTM will be to undermine the design criteria to which the Commission has consistently adhered when considering power cost trackers for the Joint Utilities. For these reasons alone, the RRTM should be rejected.

^{62/} PGE-PAC/100 at 7:14-15.

^{63/} ICNU/100 at 16 (Figure 3).

^{64/} Docket No. UE 201, PGE 2008 PCAM Filing, PGE/100 at 8 (July 1, 2009); Docket No. UE 256, PGE 2011 PCAM Filing, PGE/100 at 7 (June 29, 2012); Docket No. UE 274, PGE 2012 PCAM Filing, PGE/100 at 8 (June 24, 2013).

^{65/} Docket No. UE 290, Pacific Power 2013 PCAM Filing at 1 (May 15, 2014); Docket No. UE 298, Pacific Power 2014 PCAM Filing at 1 (May 15, 2015).

C. The RRTM Contains Significant Design Flaws That Would Harm Customers.

In addition to their failure to justify the RRTM on legal or policy grounds, the Joint Utilities' RRTM proposal: (1) inaccurately values the power costs attributable to RPS-compliant resources; (2) helps insulate the Joint Utilities from market price risk; and (3) trues-up production tax credits without making corresponding changes to accumulated deferred income taxes.^{66/}

1. The RRTM does not accurately value the variable costs attributable to RPS-compliant resources.

The Joint Utilities operate their systems as an integrated whole. Increased renewable output offsets thermal resource output and impacts market sales and purchases. Reduced renewable output results in increasing thermal resource output and also impacts market sales and purchases. "The costs associated with varying levels of renewable resource generation are the result of complex, offsetting interactions between various types of resources in [a utility's] portfolio."^{67/}

It is for this reason that PacifiCorp has previously testified that it "is *not possible* to isolate and quantify the precise cost of wind variability and the related cost of shaping, firming or integration."^{68/} The Joint Utilities' testimony does not provide any basis for concluding that

^{66/} In testimony, ICNU also pointed out that the RRTM could create a double-recovery problem whenever the Joint Utilities over-forecast their power costs, as PGE has done in four of the last five years. In this situation, the Joint Utilities could true-up claimed deficiencies in RPS-related power costs, while being insulated, due to the dead bands and sharing bands, from refunding any over-collection of other power costs to customers, thereby gaining additional power cost recovery despite their overall power costs being lower than the amount forecasted in rates. In response, the Joint Utilities propose to cap the RRTM "to preclude recovery or refund of costs above or below actual NPC." PGE-PAC/200 at 11:21-12:2.

^{67/} ICNU/100 at 9.

^{68/} Docket No. UE 246, PAC/2200 at 17:10-13 (emphasis added). PacifiCorp's Prehearing Brief in Docket No. UE 246 repeats this assertion on page 37, that it "is impossible to isolate and quantify the full NPC impacts associated with the Company's new fleet of renewable resources." ICNU requests that the

PacifiCorp’s statement is no longer applicable. In fact, the WUTC reiterated this point in rejecting PacifiCorp’s RRTM proposal in Washington less than six months ago: “[w]ithout considering the financial performance of Pacific Power’s entire generation portfolio it is not possible to determine whether the Company under-recovers or over-recovers its power costs during any given period.”^{69/} Attempting to “carve out” a discrete segment of the Joint Utilities’ integrated resource portfolio by simply comparing the generation of this segment to market prices inevitably ignores the costs and benefits obtained through the interaction of all of the resources in the Joint Utilities’ portfolio, and therefore, will result in an inaccurate assessment of the Joint Utilities’ RPS-related power costs.

Moreover, the RRTM ignores the diversity benefit the Joint Utilities enjoy by having many different types of resources in their portfolio. Such diversity is “[o]ne of the most common forms of hedging with respect to portfolio construction and management”^{70/} In his testimony, ICNU’s witness, Bradley Mullins, compares this diversification benefit to a portfolio of stocks to show that the RRTM is akin to truing up the gains or losses associated with one stock in the portfolio, regardless of how the overall portfolio performs.^{71/} The Joint Utilities criticize this analogy because, they argue, the RPS requires them to add resources that they may not otherwise include in their resource portfolio.^{72/} However accurate this distinction is, it is immaterial to the analogy. Even if an investor were required to hold a stock that he or she did not otherwise want to own, it would still be inappropriate to isolate the impact on the investor of

Commission take official notice in this docket of PacifiCorp’s testimony and briefing in UE 246, pursuant to OAR 860-001-0460(1)(d).

^{69/} WUTC Docket No. UE-140762 *et al.*, Order 08 ¶ 135.

^{70/} In re PGE 2013 Integrated Resource Plan, Docket No. LC 56, 2013 Integrated Resource Plan at 100 (Mar. 27, 2014).

^{71/} ICNU/100 at 11.

^{72/} PGE-PAC/200 at 16:3-10.

only that stock. It is the performance of the portfolio as a whole that matters. Isolating for separate recovery the performance of a discrete portion of the Joint Utilities' integrated resource portfolio represents bad policy because it inaccurately assesses the performance of the overall portfolio.

2. The RRTM inappropriately true-up market price differential.

Under the RRTM, the Joint Utilities propose to true-up the difference between the forecasted amount of RPS-compliant generation at a forecasted market price and the actual amount of RPS-compliant generation at the actual market price.^{73/} This construct not only true-up the RPS generation differential, but also market price differential. The Joint Utilities argue that this is appropriate because the cost of compliance with the RPS includes market price differential.^{74/} It is, however, also the case that market price differential is a factor in the variability of all power costs. Thus, granting the Joint Utilities dollar-for-dollar recovery of a portion of the difference between forecasted and actual market prices insulates them from a risk that is not strictly related to RPS compliance.^{75/}

Additionally, allowing the Joint Utilities to true-up market price differential will likely create perverse results in which the Joint Utilities will receive enhanced recovery under the RRTM when power costs are lower than forecast. Generally, when market prices are lower than forecast, overall power costs are also lower than forecast, leading to a lower cost to serve customers.^{76/} Under the RRTM, however, this scenario likely would result in additional recovery for the Joint Utilities because they would be able to true-up the market price differential

^{73/} PGE-PAC/100 at 10:8-9.

^{74/} PGE-PAC/200 at 10:6-19.

^{75/} ICNU/100 at 11.

^{76/} Id. at 12-13.

associated with their RPS-compliant resources.^{77/} Thus, customers would pay the Joint Utilities more when the cost to serve them is lower. The Joint Utilities argue that this position is based on a “generalization” that will not always bear out.^{78/} That the Joint Utilities can show that there may be limited exceptions to this general rule, however, does little to diminish the significance of this flaw in the RRTM design.

3. A true-up of production tax credits creates asymmetrical recovery.

In addition to RPS generation differential and market price differential, the RRTM also would true-up the difference between forecasted and actual production tax credits (“PTCs”).^{79/} The Joint Utilities argue that this is appropriate because PTCs are a variable cost of compliance with the RPS.^{80/} True-up of only PTCs, however, will result in asymmetrical recovery because the Joint Utilities do not propose also to adjust accumulated deferred income taxes (“ADIT”) to reflect the true-up of PTCs.

The level of PTCs that a utility is able to use in any given year depends on its overall tax liability.^{81/} To the extent a utility cannot use PTCs generated in the tax year, those PTCs are carried forward as a tax asset that reduces ADIT.^{82/} A reduction to ADIT reduces the utility’s revenue requirement in a rate case.^{83/} Thus, if the Joint Utilities under-forecast PTCs in a general rate case, which impacts the ADIT calculation, a true-up of PTCs under the RRTM will not reflect the additional PTC carry-forwards as an ADIT adjustment because ADIT is only

^{77/}

Id.

^{78/}

PGE-PAC/200 at 12:12-17.

^{79/}

PGE-PAC/100 at 12:8-12.

^{80/}

PGE-PAC/200 at 16:13-16.

^{81/}

ICNU/100 at 17.

^{82/}

Id.

^{83/}

Id.

figured in a general rate case.^{84/} This creates asymmetrical recovery. The Joint Utilities note that only a portion of the PTC variance gets reflected in ADIT,^{85/} but this does not impact the conclusion that the RRTM does not appropriately match costs and benefits, and therefore, is structurally flawed.

D. Staff's Alternative RRTM Design is Unnecessary and Inferior to the Joint Utilities' Current PCAMs.

Like ICNU and CUB, Staff's testimony opposes the RRTM and recommends no change to the current PCAM design.^{86/} In the event the Commission determines to change the PCAM, however, Staff puts forth a modification to the RRTM that allegedly removes the impact of market prices and accounts for the load forecast error.^{87/} Staff's alternative proposal does not, however, resolve the other design flaws in the RRTM. Specifically, it does not resolve what PacifiCorp has called the impossibility of accurately separating the costs of RPS-compliant resources from all other power costs; and it does not address the RRTM's asymmetrical recovery of PTCs without reflecting a corresponding adjustment to ADIT.^{88/} Additionally, Staff's alternative proposal is no more compelled by SB 838 or by policy than the RRTM. Simply put, the Joint Utilities' current PCAMs represent a superior method of ensuring the recoverability of all of the Joint Utilities' net power costs, while continuing to ensure they bear normal business risk, than either the RRTM or Staff's alternative proposal.

^{84/}

Id.

^{85/} PGE-PAC/200 at 16:13-22.

^{86/} Staff/100 at 4:9-14.

^{87/} Id. at 12:1-15:17.

^{88/} ICNU/200 at 4:3-5:3.

IV. CONCLUSION

For the foregoing reasons, ICNU recommends that the Commission reject the Joint Utilities' RRTM proposal and retain the current PCAM design for all net power costs, including those related to RPS-compliant resources.

Dated this 16th day of September, 2015.

Respectfully submitted,

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