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Re: UM 1712 – In the Matter of PACIFICORP d/b/a PACIFIC POWER Application for Approval of Deer Creek Mine Transaction

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Attached for filing in the above-captioned docket is the Joint Opening Brief of PacifiCorp and CUB. Please contact this office with any questions.

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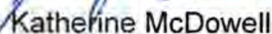

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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

In the Matter of PACIFICORP d/b/a PACIFIC POWER Application for Approval of Deer Creek Mine Transaction.	**UM 1712**

JOINT OPENING BRIEF OF PACIFICORP AND CUB

April 21, 2015

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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1712

In the Matter of PACIFICORP d/b/a PACIFIC POWER Application for Approval of Deer Creek Mine Transaction.	**JOINT OPENING BRIEF OF PACIFICORP AND CUB**

I. INTRODUCTION

PacifiCorp d/b/a Pacific Power (PacifiCorp or Company) and the Citizens' Utility Board of Oregon (CUB) (together the Settling Parties) submit this joint opening brief supporting Public Utility Commission of Oregon (Commission) approval of the Company's decision to close the Deer Creek mine, withdraw from the United Mine Workers of America 1974 Pension Trust (which is the multi-employer plan covering the mine's union employees), settle the retiree medical obligation, sell certain mining assets, and enter into new and amended coal supply agreements (CSA) for its Huntington and Hunter generating plants (together, the Transaction) as prudent and in the public interest. The Settling Parties support regulatory approval of the Transaction under the terms and conditions set forth in the PacifiCorp-CUB stipulation, filed March 25, 2015. In addition to this joint brief, CUB is also filing an individual brief addressing single-issue ratemaking.

The Transaction directly advances the public interest policy underlying ORS 757.140(2)(b), which is designed to encourage utilities "to make the decision to retire a plant early when it is the least-cost option for customers."[1] The Transaction is the culmination of

[1] *In re Portland Gen. Elec. Co.*, Docket Nos. DR 10, UE 88 & UM 989, Order No. 08-487 at 78 (Sept. 30, 2008, *affirmed Gearhart v. Pub. Util. Comm'n of Or.*, 356 Or 216 (2014) ("Allowing PGE to recover its remaining Trojan investment, even after the plant was retired, is consistent with encouraging least-cost resource

the Company's multi-year effort to protect customers from rising costs and risks associated with the Deer Creek mine, while ensuring a reliable supply of coal to the Company's Huntington plant. The Transaction saves hundreds of millions of dollars for customers by capping pension liabilities, selling unneeded mining assets, executing a replacement CSA with favorable pricing and risk mitigation provisions, and negotiating a significant reduction in the Company's retiree medical obligation related to the mine.[2]

The Transaction also promotes the Commission's policy requiring utilities to plan for and manage the environmental risks of coal-fired generation.[3] The Transaction mitigates environmental risks through early retirement of a coal mine and execution of a CSA that is terminable if new or existing environmental requirements affect the ability to burn coal at the Huntington plant.

Staff, the Industrial Customers of Northwest Utilities (ICNU), and Sierra Club generally concur that the Transaction is in the public interest and provides customer benefits. The primary disputes are over the appropriate regulatory treatment of the Transaction costs

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investments. Not only are utilities encouraged to make the investment in the first instance because they are confident that they can recover their prudently-incurred investment even if unexpected considerations result in early retirement, but utilities are also encouraged to make the decision to retire a plant early when it is the least-cost option for customers."); *id.* at 71 ("Not providing full recovery of prudently-incurred investments when a plant is retired early might give utilities the incentive to continue operating plants until investment is fully depreciated, even when continued operation is more expensive for customers.").

[2] PAC/100, Crane/30; Exhibit PAC/106.

[3] *See e.g. In the Matter of PacifiCorp, d/b/a Pacific Power, 2013 Integrated Resource Plan*, Docket No. LC 57, Order No. 14-252 at 5 (July 8, 2014) (directing PacifiCorp to perform additional coal analysis prospectively through the IRP process), Order No. 14-296, App. A at 3 (Aug. 19, 2014) (directing the Company to perform specific modeling and analysis for coal-fired plants in the 2015 IRP); *In the Matter of Portland General Electric Company, 2009 Integrated Resource Plan*, Docket No. LC 48, Order No. 10-457 at 15 (Nov. 23, 2010) (acknowledging PGE's Boardman plant closure proposal as the best option, in part because it "mitigates the risk of future carbon regulation"); *In the Matter of PacifiCorp, d/b/a Pacific Power, Request for a General Rate Revision*, Docket No. UE 246, Order No. 12-493 at 28 (Dec. 20, 2012) (acknowledging that PacifiCorp's "initial development of a coordinated and forward-looking response" regarding the Company's major emissions sources was reasonable, and "declin[ing] to find that a prudent utility faced with these state and federal regulations would have simply done nothing and waited to see what additional requirements emerged"); *In the Matter of the Investigation into Integrated Resource Planning*, Docket No. UM 1056, Order No. 07-002 at 17-19 (Jan. 8, 2007) (utilities should include external environmental costs when considering long-term resource commitments).

and potential risk related to the Huntington CSA. Through various proposals, the parties recommend cost disallowances, delay in determining the prudence of the Transaction, and a blanket shifting of risk related to the Huntington CSA. These proposals effectively allow customers to receive the benefits of the Transaction, while not allowing the Company to recover the prudently incurred costs associated with those benefits. By shifting costs and risks to the Company, the parties' proposals threaten to undermine the Transaction and discourage similar transactions in the future.

The stipulation takes a more balanced approach, supporting timely recovery of the mine's undepreciated investment and near-term closure costs. The stipulation provides fair cost recovery to the Company, recognizing that the Company pursued the least-cost option of early mine closure despite the regulatory risks involved. The stipulation does not pre-judge allocation of risk under the Huntington CSA, effectively reserving the rights of all parties to address that issue in the future if necessary. Approval of the Transaction under the terms of the stipulation ensures that the Transaction will move forward, captures the associated benefits for customers while moderating the rate impact of the costs, and effectuates the Commission's resource planning policies related to coal resources.

II. BACKGROUND

A. Closure of the Deer Creek Mine.

The Deer Creek mine is located in Utah and is the primary source of coal for the Company's Huntington plant, which annually consumes on average 2.8 to 2.9 million tons of coal.[4] The mine is currently operated by Energy West Mining Company (Energy West), a

[4] PAC/100, Crane/5.

wholly-owned subsidiary consolidated with PacifiCorp for regulatory purposes.[5] The mine also supplies some coal to the Hunter plant.[6] The mine's current depreciable life ends in 2019, at which time the mine was scheduled to close.[7]

Over the last several years, however, the mine's labor costs and liabilities related to pension and welfare obligations have dramatically increased.[8] Most importantly, the Company's 1974 Pension Trust withdrawal liability (which is triggered when the mine closes) has increased significantly in recent years due to the underfunded status of the plan, among other factors.[9] In fact, the estimated withdrawal liability increased 46.5 percent between 2010 and 2014.[10] Because this liability is triggered when the Company withdraws from the pension plan, the earlier the Company withdraws, the lower its expected liability will be. Given the nature of this withdrawal liability, the Company sought a way to cap the liability and eliminate future risk.

The mine has been producing lower volumes due to lower quality coal.[11] At the same time, the coal market in Utah has changed, reducing the advantages of owning coal assets in the state.[12] Together, these factors further undermined the economics of continued operation of the Deer Creek mine.[13]

In response to the deteriorating economics of the Deer Creek mine, the Company analyzed its options. Because PacifiCorp has a statutory obligation for the pension and

[5] PacifiCorp's Response to OPUC Bench Request 3 (Mar. 5, 2015).
[6] PAC/100, Crane/5.
[7] *Id.*
[8] *Id.* at 14-16.
[9] *Id.* at 17; PAC/300, Schwartz/7, 9-12.
[10] PAC/100, Crane/18; PAC/300, Schwartz/13; Exhibit PAC/306. The estimated withdrawal liability decreased from $125.7 million to $96.7 million for the year ending June 30, 2015. PAC/600, Stuver/2. Despite this decrease, the liability is still expected to be substantially greater in 2019 as compared to today.
[11] PAC/100, Crane/21-22.
[12] *Id.* at 14-15.
[13] *Id.*; PAC/300, Schwartz/4.

retiree medical liabilities under multiple federal laws, PacifiCorp could not avoid these obligations through bankruptcy or a corporate restructuring.[14] Therefore, the Company had two options—sell or close the mine.[15]

After reaching out to several potential buyers, the Company concluded that a sale was not in customers' interests because any buyer would have required the Company to retain the retiree medical and pension liabilities. This would defeat the Company's goal of capping its future liabilities related to the mine's workforce.[16]

After considerable effort, the Company successfully negotiated the Transaction—an innovative deal that would allow closure of the mine, cap the Company's liability under the 1974 Pension Trust, and eliminate the significant risk associated with continued operation of the mine.[17] In addition to capping the pension withdrawal liability, closing the mine now avoids other increasing labor costs, such as health-care benefits, which are disproportionately high compared to the rest of the union labor force at the Company.[18]

Given that the Company could no longer rely on coal from the Deer Creek mine for its Huntington plant, as part of the Transaction, the Company also entered into a long-term CSA with Bowie Resource Partners LLC (Bowie) to fuel the Huntington plant. The Huntington CSA is beneficial to customers compared to the ongoing costs of operating the mine, especially in light of the declining quality of the reserves in the mine.[19] The Huntington CSA provides the plant with a firm supply of coal through 2029 at favorable

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[14] PacifiCorp's Response to OPUC Bench Requests 4 and 5 (Mar. 5, 2015).
[15] PAC/100, Crane/19-20.
[16] *Id.* at 20.
[17] *Id.* at 17; PAC/300, Schwartz/5, 13-14.
[18] PAC/100, Crane/24-25.
[19] *Id.* at 9.

pricing,[20] protecting customers from the potentially significant price and supply risk that would otherwise exist if the Company were relying only on the short-term or spot markets to replace the mine's coal.[21]

The Company's expert witness testifies that a long-term CSA is prudent due to limited Utah coal supplies and the likelihood of significantly higher prices in the short-term and spot markets.[22] In fact, the Company's analysis (which was not disputed by any party) indicates that it could not reliably fuel the Huntington plant without a long-term CSA.[23]

Like virtually all long-term contracts, the CSA includes a "take-or-pay" provision that requires the Company to purchase a minimum specified amount of coal.[24] Unlike most long-term CSAs, however, the Company was able to mitigate the risk associated with the take-or-pay provision. The Company successfully negotiated a first-of-its-kind provision that provides the Company with the broad termination rights if new or existing environmental laws, regulations, or a settlement agreement affect the Company's ability to burn coal at the Huntington plant.[25]

The Company negotiated the CSA in recognition of the uncertainty now inherent in the environmental regulation of coal generation.[26] The Company's intent was to secure broad flexibility in responding to the impacts of changing environmental regulations or settlements on the Huntington plant, including the ability to terminate the CSA without

[20] *Id.* at 12-13; PAC/300, Schwartz/25 (waiting until mine closure to seek CSA would result in higher pricing), 27-28 (CSA pricing favorable).
[21] PAC/300, Schwartz/22 (post-2019 Utah coal supply could be significantly smaller, increasing prices), 24 (Utah coal prices expected to increase).
[22] PAC/300, Schwartz/25-26.
[23] PAC/700, Schwartz/3-4.
[24] PAC/500, Crane/4-8.
[25] *Id.*
[26] *Id.* at 6.

liquidated damages.[27] The Company can trigger its termination rights if environmental requirements affect the ability to burn coal at the plant, including if a requirement makes burning coal uneconomic compared to available alternatives.[28] Thus, the Huntington CSA allows the Company to remain nimble as it responds to new and changing environmental regulations, while protecting customers from the significant price and supply risk associated with Utah's short-term coal market.

The Company has committed to conduct its future resource planning based on the understanding that the Company can terminate the Huntington CSA without penalty if environmental regulations make the plant uneconomic. [29] This commitment will ensure that the Company has no incentive to continue burning coal at the Huntington plant because of the long-term CSA.

As part of the Transaction, the Company was also able to sell certain mining assets, which maximizes their value for customers and shifts the costs of inventory and blending to Bowie.[30] The most significant asset sold was the Preparation Plant, which performed coal blending for the Huntington plant.[31] To trigger the ability to withdraw from the 1974 Pension Trust, the Company would have had to close the Preparation Plant. Thus, absent the sale of the Preparation Plant, the Company would have been required close the Preparation Plant and shift all of the blending costs to the Huntington plant in order to trigger the Company's pension withdrawal. By selling the Preparation Plant, along with the other mining assets, the Company was able to provide direct benefits from the sale itself, avoid

[27] *Id.*
[28] *Id.* at 6-7.
[29] *Id.* at 7.
[30] *Id.* at 10, 15, 23, 25.
[31] *Id.* at 10.

operating costs to blend coal for the Huntington plant, and withdraw from the 1974 Pension Trust.

Once the Company was able to secure the Transaction and make clear to the union that the mine would be closed, the Company was also able to successfully negotiate a reduction in its overall liability related to its retiree medical obligations.[32] The Company agreed to make a one-time transfer to the union's medical plan that resulted in significant customer benefits.[33] This settlement effectively exempts the Company from any further obligations associated with retiree medical benefits for the Deer Creek union employees and retirees and creates a benefit for customers in the form of reduced future expense.[34]

When deciding whether to proceed with the Transaction, the Company conducted a net benefits analysis, consistent with the Commission's approach in past cases.[35] As described in more detail in the Settling Parties' Joint Brief in Support of stipulation, filed on April 3, 2015, the Company thoroughly analyzed its options and compared the costs presented in three scenarios: (1) continuing to operate the Deer Creek mine until depletion of the coal reserves in 2019, retention of the mining assets, and procuring third-party supply after 2019 (the Keep Case); (2) closing the Deer Creek mine now, selling or reclaiming the mining assets, and entering into the CSAs described in the application for approval of the Transaction (the Transaction Case); and (3) closing the Deer Creek mine now, no mining asset sale, and replacing the supply with market purchases (the Market Case).[36] The

[32] PAC/500, Crane/10.
[33] PAC/100, Crane/16, 28; PAC/200, Stuver/11.
[34] PAC/100, Crane/16.
[35] Deer Creek Application at 12-15.
[36] Joint Brief in Support of Application at 6-7; *see also* PAC/100, Crane/26-27; Exhibit PAC/106.

Company's analysis demonstrates that the Transaction case overwhelmingly provides the greatest customers benefits.[37]

B. Procedural History of Docket UM 1712.

On December 12, 2014, PacifiCorp filed an application seeking Commission review and approval of the Transaction. Because the Bowie Transaction must close by May 31, 2015, the Company requested that the Commission issue an order in this proceeding by May 27, 2015. In recognition of the timing constraints in this proceeding, the Commission set an expedited schedule, with three rounds of testimony.

CUB, ICNU, and the Sierra Club intervened in this docket. To informally address questions on the filing, the Company convened a technical workshop on January 23, 2015, and participated in a Commission workshop on February 12, 2015. The parties also gathered for settlement discussions on three different occasions—February 12, February 23, and March 9, 2015.

On March 5, 2015, the parties filed response testimony, generally supporting the Transaction, but objecting to aspects of PacifiCorp's ratemaking proposal. On March 19, 2015, the Company filed reply testimony, modifying its ratemaking proposal to address the parties' concerns.

Building on the modifications in the Company's reply testimony and the three settlement negotiations, CUB and the Company reached a comprehensive settlement of the issues in this case on March 23, 2015. The Company filed the PacifiCorp-CUB stipulation March 25, 2015, indicating that CUB and the Company planned to file a brief in support of the stipulation by April 3, 2015.

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[37] PAC/100, Crane/30; Exhibit PAC/106.

The stipulation is straightforward and based entirely on the testimony on file in this docket. The stipulation takes the Company's modified ratemaking proposal from its reply testimony[38] and makes three changes to it, all based on CUB's response testimony.

First, the Company proposed a June 1, 2015, tariff effective date.[39] CUB asserted that the earliest effective date should be January 1, 2016.[40] The stipulation reflects a January 1, 2016 tariff effective date.[41]

Second, the Company proposed an interest rate of 5.25 percent on the amounts in the Deer Creek Mine Closure tariff.[42] CUB recommended an interest rate of no more than 3.31 percent.[43] The stipulation adopts CUB's recommended interest rate.[44]

Third, the Company proposed to recover all of its estimated closure costs through the Deer Creek Mine Closure tariff.[45] CUB proposed that all closure costs be tracked to a deferral for later ratemaking treatment.[46] Under the stipulation, only actual closure costs incurred through November 30, 2015, are included in the tariff (with the balance recorded to a regulatory asset).[47]

In response to the stipulation, Staff, ICNU, and Sierra Club invoked their right to a hearing on the stipulation and a hearing was scheduled for April 17, 2015. Staff, ICNU, and Sierra Club then filed testimony and objections to the stipulation on April 10, 2015. Ultimately, all parties waived cross examination and the Commission cancelled the hearing.

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[38] PAC/400, Dalley/10-12.
[39] *Id.* at 11.
[40] CUB/100, Jenks-McGovern/14-16, 22.
[41] Stipulation at 4.
[42] PAC/400, Dalley/11
[43] CUB/100, Jenks-McGovern/19.
[44] Stipulation at 4.
[45] PAC/400, Dalley/11-12.
[46] CUB/100, Jenks-McGovern/22.
[47] Stipulation at 4.

III. DISCUSSION

A. The Transaction is in the Public Interest and Prudent.

The Settling Parties seek two key determinations from the Commission: (1) that the Transaction, as a whole, is in the public interest and provides substantial customer benefits;[48] and (2) that the Company's decision to enter into the Transaction, as a whole, is prudent.[49] The evidence in the record supports these findings, which are necessary for the Company to move forward with the Transaction.[50] Contrary to ICNU's claim,[51] the Company is not waiving the application of ORS 757.140(2) to any aspect of the Transaction.

Although the public interest and prudence standards are distinct,[52] the Company's net benefits analysis supports both findings. This analysis was largely unchallenged in this case.[53] Even accepting the limited recommended adjustments to the net benefits analysis, the Transaction still provides far more customer benefits than any other alternative.[54] Based on the substantial customer benefits, the Commission should conclude that the Transaction is in the public interest and prudent.

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[48] *Id.* at 3-4.
[49] *Id.*
[50] PAC/500, Crane/12-13.
[51] ICNU/300, Mullins/6-7 ("The Settling Parties agreed to exclude from the undepreciated investment balance all costs other than the net book value of the mining assets and closure incurred through November 30, 2016, apparently waiving application of ORS 757.140(2).").
[52] *See e.g., In re Portland Gen. Elec. Co. Application to Amortize the Boardman Deferral*, Docket No. UE 196, Order No. 10-051 at 6 (Feb. 11, 2010) ("In a prudence review, the Commission examines the objective reasonableness of a utility's actions at the time the utility acted: 'Prudence is determined by the reasonableness of the actions 'based on information that was available (or could reasonably have been available) at the time.''") (internal citations omitted); Order No. 08-487 at 73 (to allow a utility to recover undepreciated investment in a retired utility plant, the Commission applies a net benefits test to determine whether the retirement is in the public interest, as required by ORS 757.140(2)(b)). *In re Legal Standard for Approval of Mergers*, Docket No. UM 1011, Order No. 01-778 at 10 (Sept. 4, 2001) ("The remainder of the statutory scheme, those statutes governing transfer, sale, affiliated interest transactions, and contracts, either expresses no standard (for instance, ORS 757.480, .485) and has been read to require a no harm standard, or contains a 'not contrary to the public interest' standard (ORS 757.490, .495.)").
[53] PAC/500, Crane/2-4; Staff/100, Wittekind/15; CUB/100, Jenks-McGovern/3, 14, 19-21; ICNU/100, Mullins/29-30; Sierra Club/100, Fisher/6.
[54] PAC/500, Crane/4. The Company also rebutted all of Sierra Club's criticisms. PAC/500, Crane/5-11; PAC/700, Schwartz/3-5.

B. There is No Reason to Delay a Prudence Determination, Which Could Negatively Impact the Transaction.

The Transaction presents a unique opportunity for PacifiCorp to close the Deer Creek mine in a manner beneficial to customers. Given the significance of the Transaction to PacifiCorp's customers, the key components of the Transaction require approval of the Company's regulators, necessitating a prudence determination from the Commission. The circumstances here are similar to those in docket UM 1689, where the Commission approved an all-party stipulation that included a specific finding that the Company's decision to join the Energy Imbalance Market (EIM) was prudent.[55] In that case, the Company sought a prudence determination before joining the EIM due to the unique nature of the market, and Staff testified explicitly in support of a prudence determination.[56]

Here, Staff requests that the Commission delay a prudence determination until the Company's next general rate case.[57] This delay could undermine the Transaction and is inconsistent with the broad scope of Staff's investigation and its conclusions that: (1) the Transaction provides net benefits to customers, so long as the long-term CSA risks can be substantially mitigated;[58] (2) the decision to withdraw from the 1974 Pension Trust was prudent;[59] (3) the decision to settle the retiree medical obligation was prudent;[60] (4) the sale of the mining assets is in the public interest;[61] and (5) the Commission will necessarily need

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[55] *In re PacifiCorp*, Docket Nos. UE 287 & UM 1689, Order No. 14-331 at 5 (Oct. 1, 2014).
[56] *In re PacifiCorp*, Docket No. UM 1689, Staff/100, Andrus/9 (June 23, 2014). Under OAR 860-001-0460(1)(d) the Settling Parties request that the Commission take official notice of Staff's testimony in docket UM 1689, which qualifies as "documents and records in the files of the Commission that have been made a part of the files in the regular course of performing the Commission's duties."
[57] Staff/100, Wittekind/14.
[58] *Id.* at 15.
[59] Staff/200, Bahr/16-17.
[60] *Id.* at 18-19.
[61] Staff/300, Crider/9.

to establish prudence in this proceeding in order to approve the necessary regulatory assets.[62] Given that the record is fully developed and Staff's analysis generally supports a finding of prudence, Staff's proposal to delay a prudence determination is unwarranted.

Like Staff, ICNU also objects to the Commission making a prudence determination in this docket.[63] ICNU argues that the Commission should address only the public interest standard here and reserve the prudence determination for the Company's next general rate case.[64] ICNU has not cited any precedent supporting its proposal to split the public interest and prudence determinations required in the context of a plant retirement, and its proposal is inefficient given that the same evidence supports both determinations—a fact that ICNU does not contest. ICNU also does not dispute that customers will receive substantial benefits as a result of the Transaction.[65] Given these positions, it is not clear how or why ICNU would challenge the prudence of the Transaction in a future docket.

C. The Company's Decision to Enter into the Huntington CSA is Prudent.

The Company's analysis demonstrated that the least-cost, least-risk option was the execution of the Huntington CSA, particularly with the inclusion of the environmental termination provision.[66] Staff, ICNU, and Sierra Club continue to object to the Company's decision to enter into the Huntington CSA unless the Company agrees to hold customers harmless from potential damages if the Huntington plant retires before 2029. Staff recommends that a prudence determination include a condition that customers be held harmless from any take-or-pay obligations or damages unless PacifiCorp can demonstrate by

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[62] Staff/100, Wittekind/15, n. 16.
[63] Written Objections of the Industrial Customers of Northwest Utilities to the Stipulation (ICNU Objections) at 4.
[64] *Id.*
[65] *See e.g.* ICNU/100, Mullins/9.
[66] Deer Creek Application at 9-10; PAC/100, Crane/13.

clear and convincing evidence that the damages arose from circumstances that were unforeseeable today.[67] Sierra Club "acknowledges that if the contract ultimately operates as Ms. Crane has testified, then customers should be adequately protected from long-term contract costs in the event it becomes preferable to retire Huntington early."[68] But Sierra Club asserts that the CSA is only prudent if customers bear no risk of penalties or damages relating to the CSA's take-or-pay provision. ICNU makes a similar recommendation to Sierra Club's.[69]

The "hold harmless" conditions proposed by Staff, Sierra Club, and ICNU are unreasonable. No party has challenged the Company's evidence that: (1) take-or-pay provisions are generally required to obtain a long-term CSA; and (2) a long-term CSA is the least-cost, least-risk option for fueling the Huntington plant.[70] The Huntington CSA's termination provision for adverse environmental requirements mitigated the risks associated with the CSA to the greatest extent possible.

The Company's independent expert witness, Seth Schwartz, testifies explicitly that the "Company would not be able to replace the coal supply from the Deer Creek mine exclusively with short-term contracts and spot purchases."[71] Mr. Schwartz, who has analyzed the Utah coal market for over 25 years, testified that the Utah market's lack of liquidity and limited supply require a long-term CSA to reliably meet the needs of the Huntington plant.[72] No party challenged Mr. Schwartz's analysis or conclusions. Thus, the

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[67] Staff/700, Wittekind/10-11.
[68] Sierra Club's Objections to PacifiCorp and Citizens' Utility Board's Stipulation (Sierra Club Objections) at 4.
[69] ICNU/100, Mullins/29-30.
[70] PAC/500, Crane/4 ("Such 'take or pay' provisions are an essential component of virtually all long-term coal supply agreements and constitute the consideration required to obtain favorable pricing.").
[71] PAC/700, Schwartz/3.
[72] *Id.* at 3-4.

undisputed evidence is that PacifiCorp must have a long-term CSA to reliably fuel the Huntington plant and long-term CSAs typically contain take-or-pay provisions.

To accept the parties' arguments that the Company was imprudent to enter into a long-term CSA with a take-or-pay provision would require the Commission to conclude that the Company could have used short-term contracts or spot market purchases to fuel the Huntington plant. This conclusion lacks any support in the record.

Even if the Company could have relied on short-term contracts or spot market purchases, those prices would have been significantly higher and the limited supply would have introduced substantial customer risk.[73] No party presented evidence suggesting that the price and supply risk associated with short-term or spot markets was less than the risk of the long-term Huntington CSA. There is no evidence that customers would be exposed to less risk without the long-term Huntington CSA.

The parties' recommended conditions are also unnecessary, given that the Settling Parties agree that the Commission may include the following condition in its approval order: If the Company is unable to successfully exercise its termination rights and is required to pay costs or damages related to the Huntington CSA for coal that it is unable to use at Huntington or another facility, then the prudence of any costs or damages will be subject to future Commission review, taking into account the overall benefits to customers. Parties are free to take any position they choose in a future review.

The Settling Parties' stipulation does not restrict parties' rights on this issue in any way. CUB clarified this in responding to Sierra Club Data Request 1-1(c). While the Company does not agree with CUB's position that the fact of damages would support an

[73] *Id.* at 4.

imprudence finding, it does agree that CUB is free to make such arguments in the future if the situation arises:

> **Since filing its Response Testimony, has CUB determined that customers will be protected from paying for take or pay charges if the plant is shut down or converted to gas for economic reasons that are caused by environmental regulations? If yes, please explain how CUB arrived at this determination?**
>
> Response: CUB has determined that customers will be adequately protected from paying for take-or-pay charges if the plant is shut down or converted to gas for economic reasons that are caused by environmental regulations. Specifically, PacifiCorp's Reply Testimony (PAC/500/Crane/6-7) makes clear that the provision is intended to cover the circumstance where an environmental regulation caused burning coal at Huntington to become uneconomic. PacifiCorp's statements regarding the intent of Article 8 offer CUB assurance that customers would not ultimately be charged take-or-pay costs if the plant is shut-down for economic reasons that are caused by environmental regulations.
>
> If Huntington is closed due to economic reasons caused by environmental regulations, and the Company subsequently requests recovery of take-or-pay charges from customers, CUB will likely oppose ratepayers bearing the burden of such charges. In CUB's view, in these circumstances, it is likely that PacifiCorp failed to effectively negotiate the clause (the clause failed to serve the purpose that PacifiCorp intended) or the clause was negotiated properly, but the Company failed to properly enforce it. In either case, CUB would likely recommend that the cost be found to be imprudent and not recoverable from customers.[74]

D. The Company's Retiree Medical Obligation Settlement is Reasonable.

Regarding the retiree medical settlement loss, ICNU argues that it is severable from the overall Transaction and that the loss pre-dated the Company's filing.[75] Staff also argues that the loss should not be considered in this docket because it is severable.[76]

To be clear, the Company is requesting the creation of a regulatory asset for the retiree medical loss, net of benefits from reduced retiree medical expense, and is not seeking immediate rate recovery of the loss. The Company's approach to this issue already addresses Staff's and ICNU's position that ratemaking for this item should occur in a subsequent

[74] ICNU/301, Mullins/8 (Sierra Club Data Request 1-1 to CUB) (boldface type in original).
[75] ICNU/100, Mullins/28-29.
[76] Staff/800, Bahr/3.

proceeding. Because Staff agrees that the Company's settlement was prudent,[77] and ICNU does not argue that the Company was unreasonable to settle the retiree medical obligation as it did, there is no basis for rejecting approval of the regulatory asset.

In addition, the Company demonstrated that it is appropriate to include the retiree medical settlement as part of the Transaction because without the leverage provided by the Transaction, the Company could not have achieved the favorable settlement.[78] The Company also demonstrated clearly that its application was timely because it will not book the loss until June 2015.[79]

E. The Commission should Approve the Deer Creek Mine Closure Tariff in this Docket.

The Settling Parties recognize that the Commission engages in single-issue ratemaking only in limited circumstances; because of the importance of this principal to CUB, it is addressing this issue in a separate brief. But this case presents unique and particular circumstances, including an underlying Transaction that is indisputably beneficial to customers. For this reason, the Settling Parties support immediate implementation of the Deer Creek Mine Closure tariff.

ICNU suggests that single-issue ratemaking is absolutely prohibited by stating that the Settling Parties claim that it is simply disfavored was "misleading."[80] ICNU is wrong. The Commission engaged in single-issue ratemaking to allow Idaho Power Company to recover accelerated depreciation and decommissioning costs associated with the early closure of the Boardman plant.[81] The Commission also approved stand-alone tariff filings to allow a

[77] Staff/200, Bahr/18.
[78] PAC/500, Crane/10.
[79] PAC/600, Stuver/7.
[80] ICNU Objections at 2-3.
[81] *In re Idaho Power Co.*, Docket No. UE 239, Order No. 12-235 (June 26, 2012).

utility to include a new generating plant in rates,[82] to accelerate the depreciation of metering equipment to facilitate the implementation of advanced metering infrastructure,[83] and to allow a utility to begin recovering the costs of a gas reserves contract.[84] ICNU failed to acknowledge all of these instances of stand-alone tariff filings, despite the fact that they were described in the Company's testimony and several were discussed in the Settling Parties' brief.[85]

ICNU also argues that the Commission should not approve the Deer Creek Mine Closure tariff unless the Company demonstrates that it is not over-earning.[86] ICNU cites no legal authority for an earnings test in this context, and the cases discussed above do not reflect such a requirement.

F. The Stipulation's Two-Year Amortization Period for the Undepreciated Investment and Immediate Closure Costs is Reasonable.

The Settling Parties agree that the costs included in the Deer Creek Mine Closure tariff will be amortized over two years, beginning January 1, 2016.[87] ICNU objects to this two-year amortization period, replacing its original 14-year amortization proposal with a new, nine-year proposal.[88] ICNU argues that this period will equalize the costs and benefits of the Transaction—without citing any legal authority that ORS 757.140 (or any other

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[82] *In re Idaho Power Co.*, Docket No. UE 248, Order No. 12-358 (Sept. 20, 2012) (approving rate adjustment for Langley Gulch plant).

[83] *In re Portland General Electric Co.*, Docket No. UE 189, Order No. 08-245 (May 5, 2008) (approving accelerated depreciation of PGE's meters); *In re Idaho Power Co.*, Docket No. UE 202, Order No. 08-614 (Dec. 30, 2008); (approving accelerated depreciation of Idaho Power's meters).

[84] *In re Northwest Natural Gas Co.*, Docket Nos. UM 1520 & UG 204, Order No. 11-140 (Apr. 28, 2011), *aff'd* Order No. 11-176.

[85] *See* PAC/400, Dalley/5.

[86] ICNU/300, Mullins/3-4.

[87] Stipulation at 4; CUB/100, Jenks-McGovern/16-17.

[88] ICNU/300, Mullins/10.

statute) requires such equalization.[89] ICNU's analysis is flawed and discourages early plant retirements, in conflict with the public interest policy underlying ORS 757.140.

The Commission's final decision on the closure of the Trojan nuclear plant, Order No. 08-487, supports the Settling Parties' proposal for a two-year amortization period. The Commission originally allowed Portland General Electric Company (PGE) to earn a return on the undepreciated investment and authorized amortization of the investment over the useful life of the plant, or 17 years. After the court made clear that PGE could not earn a return on the undepreciated investment,[90] the Commission "reexamine[d] the length of the amortization period to maintain an appropriate balance between the utility and customer interests."[91] The Commission observed that "it is reasonable to allow quicker recovery of PGE's remaining Trojan investment" because the "applicable interest rate will be lower than the utility's rate of return."[92] The Commission specifically found that allowing recovery over the original amortization period, *i.e.*, over the remaining useful life of the plant, "would likely increase PGE's risk profile, because PGE would have less than the full value of its Trojan investment returned to it and available to make new investments in rate base assets and earn a return on those assets."[93] The Commission ultimately approved a 10-year amortization period to "equitably allocate the benefits and burdens *while allowing quicker recovery to offset any increase in PGE's risk profile*."[94]

[89] ICNU/300, Mullins/10.
[90] Order No. 08-487 at 71.
[91] *Id.* at 68; *id.* at 92 ("Oregon law gives the Commission authority to determine the appropriate amortization period for utility assets and, in making that determination, to balance the interests of customers and the utility.")
[92] *Id.* at 71-72.
[93] *Id.* at 72; *id.* at 91 ("Requiring PGE to recover that investment over time without interest, as URP would have us do, would cause PGE to lose a significant portion of the value of that investment over time.").
[94] *Id.* at 72 (emphasis added).

Applying the Commission's reasoning here supports an amortization period of less than four years, which is the current depreciable life of the mine. The stipulation includes an amortization period that would allow the Company to fully recover its undepreciated investment by the end of 2018, or one year earlier than the Keep Case.[95] This amortization period appropriately balances customer and utility interests by allowing accelerated depreciation to offset the lack of return, while mitigating the rate impact of the more accelerated depreciation originally proposed by the Company.

ICNU tries to distinguish the Trojan decision by arguing that the customer benefits here will accrue largely after the mine would have already closed in 2019.[96] But the timing of customer benefits was not a factor the Commission considered in setting the amortization period in Trojan. Instead, the Commission focused on the effective cost disallowance from a lack of a return on the undepreciated investment over an extended amortization period. Such a disallowance is poor policy because it "might give utilities the incentive to continue operating plants until investment is fully depreciated, even when continued operation is more expensive for customers."[97]

ICNU also conflates the recovery of undepreciated investments under ORS 757.140 and the amortization of deferrals under ORS 757.259, concluding that both statutes require matching costs and benefits.[98] But unlike ORS 757.259, ORS 757.140 has no explicit reference to matching costs and benefits.[99] There is no precedent applying the deferral standard of matching costs and benefits to the recovery of undepreciated investment. In fact,

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[95] Stipulation at 4.
[96] ICNU/300, Mullins/9.
[97] Order No. 08-487 at 71.
[98] ICNU/300, Mullins/7-8.
[99] ORS 757.259(2)(e) (deferrals authorized to "match appropriately the costs borne by and benefits received by ratepayers").

in the Trojan case, while customer benefits were expected to accrue during the remaining 17-year depreciable life of the plant, the Commission approved a shorter, 10-year amortization period.[100]

Staff recommends a four-year amortization period for the undepreciated investment, beginning on January 1, 2016.[101] This recommendation would result in the investment being recovered over the same time period that would have occurred without the Transaction. Staff's recommendation, although far more reasonable than ICNU's, suffers from the same basic flaw—it fails to reasonably accelerate recovery of the undepreciated investment and is contrary to the Commission's approach in the Trojan case.

G. The Stipulation Reasonably Blends the Company's Cost of Debt and Treasury Rates to Determine the Interest Rate Applied to the Undepreciated Investment.

The stipulation allows the unamortized balance of the Deer Creek mine investment to accrue interest at a rate of 3.31 percent, beginning on June 1, 2015.[102] The interest rate is a blend of the Company's cost of debt and Treasury bond yields and represents a reasonable time value of money that is consistent with Commission precedent.[103] ICNU testifies that the Settling Parties "provided no evidence to support" their recommended interest rate.[104] But ICNU acknowledged that the stipulation's interest rate was originally proposed by CUB and described in CUB's testimony.[105] In addition, CUB provided the following additional support in response to Staff Data Request 1:

> **Please provide the basis and reasoning for the 3.31 percent interest rate as agreed upon on page 4, line 7 in the UM 1712 Partial Stipulation filed March 25, 2015.**

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[100] Order No. 08-487 at 72-73.
[101] Staff/700, Wittekind/6.
[102] Stipulation at 4.
[103] CUB/100, Jenks-McGovern/10; Order No. 08-487 at 73.
[104] ICNU/300, Mullins/12.
[105] *Id.* at 11.

Response: This interest rate is consistent with CUB's Response Testimony. From our conclusion: "CUB recommends that an interest rate of up to 1.51 percent be used to compensate the Company for the time value of money based on the Trojan methodology. CUB can also support an alternative methodology that produces an interest rate of between 2.85 percent and 3.31 percent." UM 1712/CUB/100/Jenks-McGovern/1. The basis for this alternative recommendation is explained on pages 9 and 10 of CUB's Response testimony. Specifically, the 3.31% interest rate was calculated by applying the Company's current authorized cost of debt to the 48% of its capital structure that is debt, and then applying the federal "profit-free" treasury rates to the remaining 52% of the Company's capital structure that represents return on equity. Using 2 and 5 year treasuries allowed CUB to calculate the range of between 2.85% and 3.31%. CUB believes that this is a reasonable range for the time value of money. While it could be argued that because we are proposing a two year amortization period (1/1/16-12/31/17), the lower end of this range which represents two year treasuries should apply. However, the interest begins June 1, 2015 when the stipulation removes the current Rate of Return on the undepreciated investment. This means that we are actually dealing with a 2.5 year period. In addition, returns on treasuries are constantly changing. CUB's testimony was based on applying a certain methodology when the testimony was written. If CUB was to recalculate using today's Treasury rates, we would get a different result and if we were to recalculate it on June 1, 2015, we would get a different number. Therefore CUB believes that applying this alternative methodology using both a 2 and a 5 year Treasury from the day that we wrote our testimony produces a range that is reasonable.[106]

1. The Company's Cost of Debt Does Not include a Profit.

ICNU further argues that the stipulation's interest rate will allow the Company to earn a profit on the undepreciated investment, in contravention of ORS 757.355.[107] ICNU reasons that the interest paid to PacifiCorp's bondholders is profit to the bondholder. Therefore, if the interest rate applied to the undepreciated investment is based on PacifiCorp's cost of debt, then the Company will be earning a profit on the undepreciated

[106] Settling Parties/400 (boldface type in original).
[107] ICNU/300, Mullins/12-13.

investment. The Commission expressly rejected this argument in the Trojan decision, a fact that ICNU fails to note.[108] PacifiCorp's cost of debt includes no profit.

ORS 757.355 prohibits utilities from earning a profit on undepreciated investment on plant that is no longer used and useful. The undepreciated investment can, however, accrue interest if the utility recovers the investment over time. "Interest is often used to compensate for the time value of money," which "recognizes the basic economic truth that a dollar today is worth more than a dollar tomorrow due to its potential earning capacity."[109] In Order No. 08-487, the Commission concluded that, "[t]o allow PGE the ability to fully recover [its undepreciated investment] over time, we need to include some form of interest—not profit—to compensate the utility for the delayed recovery of the investment."[110] The Commission then concluded that a utility's cost of debt "represents the amount a utility must pay for borrowed funds, which [the Commission] believes is a reasonable estimate of a utility's time value of money."[111] On appeal, the Supreme Court affirmed the Commission's conclusion that compensation for the time value of money is legal under ORS 757.355 because it does not allow the utility to earn a profit on the undepreciated investment.[112]

2. Treasury Rates Alone are Insufficient in Today's Economic Environment with Historically Low Interest Rates.

ICNU recommends an interest rate of 1.92 percent, which is the yield on a 10-year Treasury bond.[113] Staff also recommends an interest rate also based exclusively on Treasury bonds, unless the Commission approves a four-year amortization period.[114] In Order No. 08-

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[108] Order No. 08-487 at 73.
[109] *Id.* at 68.
[110] *Id.* at 71.
[111] *Id.* at 73.
[112] *Gearhart*, 356 Or. at 247-51.
[113] ICNU/300, Mullins/12.
[114] Staff/700, Wittekind/7.

487, however, the Commission found that the use of an inadequate interest rate resulted in an effective disallowance of prudently incurred investment of utility plant, which fails to "appropriately balance the interests of the utility and its customers."[115] Here, interest based exclusively on Treasury yields are insufficient given today's historically low rates. The Settling Parties' compromise using a blended rate that includes the Company's cost of debt reasonably accounts for the current interest rate environment.

ICNU's recommended interest rate is particularly unreasonable given ICNU's recommended nine-year amortization period. Even Staff agrees that the stipulation's 3.31 percent interest rate is reasonable if the amortization period is four years.[116]

ICNU defends its recommended interest rate by relying on CUB's analysis comparing today's Treasury rates to those used by the Commission in the Trojan case.[117] CUB's testimony compared five-year Treasury yields today and in 1994 and, after accounting for inflation, concluded that the rates were within 100 basis points.[118] ICNU agrees with CUB's analysis and reasoning and claims that it supports ICNU's recommended use of a 10-year Treasury rate.[119] But comparing 10-year Treasury rates in 1994 and today, using CUB's analysis, demonstrates that the spread is 246 basis points, not less than 100. Therefore, the reasoning and analysis that ICNU supports actually demonstrates the unreasonableness of ICNU's proposed interest rate.

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[115] Order No. 08-487 at 70.
[116] Staff/700, Wittekind/7.
[117] ICNU Objections at 9-10.
[118] CUB/100, Jenks-McGovern/8-9.
[119]ICNU Objections at 9-10.

Staff also recommends that the interest rate change as treasury rates change,[120] but there is nothing in the record indicating that the Company could finance an investment of this magnitude using short-term debt, as is implied by Staff's recommendation.

H. Staff's Recommended Disallowance Based on the Settlement in Docket UE 263 is Poor Regulatory Policy, Inconsistent with the Terms of the Settlement, and a Disincentive for Future Settlements.

The settlement approved in the Company's last general rate case, docket UE 263, includes a term prohibiting the Company from filing a general rate case with rates effective before January 1, 2016.[121] To respond to concerns raised by the parties,[122] the Settling Parties agreed that the effective date of the Deer Creek Mine Closure tariff be delayed until January 1, 2016.[123]

Before the stipulation was filed, Staff testified that the UE 263 settlement prohibited the Company from implementing the tariff before January 1, 2016.[124] Although Staff recommended that the undepreciated investment and closure costs begin amortization on June 1, 2015, Staff recommended that the Commission defer ratemaking treatment of all other regulatory assets requested by the Company.[125] In response to the stipulation, however, Staff broadened its interpretation of the UE 263 settlement significantly and now claims that, "[t]o show that the stay-out provision is met, for <u>any</u> regulatory assets created prior to January 1, 2016, amortization should commence with their inception[.]"[126] Staff's recommendation for immediate amortization applies to only the accounting treatment of the regulatory asset; Staff does not support immediate amortization in rates. This means that by

[120] Staff/700, Wittekind/7.
[121] Staff/100, Wittekind/12.
[122] *Id.* at 11-12; ICNU/100, Mullins/8-9; CUB/100, Jenks-McGovern/16-17.
[123] Stipulation at 4.
[124] *See* Staff/400, Wittekind/11.
[125] Staff/100, Wittekind/12-13, 16.
[126] Staff/700, Wittekind/9 (emphasis added); Staff/800, Bahr/4-5.

the time rates reflect the regulatory asset's amortization, the asset's value will have already decreased, resulting in an effective disallowance. Staff now claims that the stipulation violates the stay-out provision in the UE 263 settlement because all of the regulatory assets created by the stipulation will not immediately begin amortization as Staff recommends. Staff is the only party in this case that has interpreted the UE 263 settlement in this way, and Staff's testimony provided no explanation for this major change in position.

Staff's novel interpretation of the UE 263 settlement is poor regulatory policy because it will result in a disallowance of the Company's prudently incurred investments.[127] Staff's proposed disallowance is also inconsistent with "encouraging least-cost resource investments."[128] By denying recovery of costs that Staff concedes are in the public interest, Staff effectively discourages the Company from making the "decision to retire a plant early when it is the least-cost option for customers."[129]

Staff's novel interpretation of the UE 263 settlement is also at odds with the express language of the UE 263 settlement. By its terms, the UE 263 settlement allows parties to seek deferrals before January 1, 2016, and does not state that the deferrals must begin amortization immediately, as Staff now argues.[130] Given that deferrals do not generally amortize immediately upon the creation of the regulatory asset, it is unreasonable to read this requirement into the UE 263 settlement without specific language in the stay-out provision making clear that this unusual treatment was intended.

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[127] *See* Staff/100, Wittekind/13 (describing how immediate amortization results in a disallowance).
[128] Order No. 08-487 at 78 ("Not only are utilities encouraged to make the investment in the first instance because they are confident that they can recover their prudently-incurred investment even if unexpected considerations result in early retirement, but utilities are also encouraged to make the decision to retire a plant early when it is the least-cost option for customers.").
[129] *Id.*
[130] *See* Staff/100, Wittekind/12.

Staff's interpretation of the UE 263 settlement in this case is also inconsistent with Staff's interpretation of the settlement in docket UM 1689. In that case, the Company requested a deferral of costs associated with the EIM. In testimony, Staff supported the Company's deferral.[131] Importantly, Staff never testified that UE 263 settlement required immediate amortization of the deferral.[132]

Moreover, the fact that Staff is the only party that has interpreted the UE 263 settlement in such an extreme way indicates that the parties to the settlement never understood the stay-out provision to require immediate amortization of regulatory assets created during the stay-out period.

Finally, Staff's recommendation that the Commission require *all* regulatory assets created by the stipulation to begin amortization immediately is unreasonable, particularly given that Staff is now asking the Commission to make substantially more ratemaking decisions in this case than the Settling Parties. Rather than deferring ratemaking treatment of the regulatory assets until the next general rate case, as Staff originally recommended,[133] Staff now recommends that the Commission decide the ratemaking treatment of all the regulatory assets based on the limited record provided by Staff in its final round of testimony. The record on this is entirely insufficient to support Staff's new recommended ratemaking treatment for the regulatory assets created by the stipulation.

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[131] *In re PacifiCorp*, Docket No. UM 1689, Staff/200, Garcia/1 (June 23, 2014).
[132] *In re PacifiCorp*, Docket No. UM 1689, Staff/100, Andrus/5 (June 23, 2014).
[133] Staff/100, Wittekind/15.

I. Construction Work in Progress (CWIP) Can Be Recovered as Part of the Undepreciated Investment.

ICNU argues that Oregon law prohibits the recovery of CWIP as part of the undepreciated investment because the mine is no longer used and useful.[134] The Commission has specifically addressed and rejected ICNU's argument. In Order No. 02-227, the Utility Reform Project (URP) argued that ORS 757.355 prohibited recovery of all CWIP associated with Trojan.[135] The Commission firmly rejected URP's arguments, noting that, "ORS 757.355 does not apply to routine construction work in progress attached to an operating plant."[136] Thus, the Commission concluded that, "URP's claim that the CWIP should be disallowed in this docket is unfounded" and that, "[a]llowing CWIP expenses in this case does not violate ORS 757.355."[137] In Order No. 08-487, the Commission affirmed its conclusion in Order No. 02-227 "that ORS 757.355 bars return on CWIP, but not return of CWIP if the CWIP is for projects associated with a plant in service (as opposed to a new project.)."[138] Notably, ICNU's written objections failed altogether to address this legal authority.[139]

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[134] ICNU/300, Mullins/13.

[135] *In re of Portland Gen. Elec. Co.'s Application for an Accounting Order Approving Tariff Sheets Implementing Rate Reduction*, Docket No. UM 989, Order No. 02-227 at 15-16 (Mar. 25, 2002) (allowing CWIP for $4.2 million in fuel contracts and $6.1 million in projects that would have been transferred to a plant in service account as the projects were completed).

[136] *Id.* at 15.

[137] *Id.* at 17.

[138] Order No. 08-487 n. 338. In 2013, when the Oregon Court of Appeals affirmed Order No. 08-487, the Court noted the challenge to rate elements including CWIP and said the following: "The exact methodology that the PUC chose to determine which rates to approve, within a just and reasonable range, is consistent with the PUC's statutory authority, and we will not attempt to engage in . . . an item-by-item examination of rate elements in the analysis that the PUC used. It is apparent from . . . Order No. 08-487 and the record on remand that the PUC considered briefing and materials from all parties and PUC staff and that the PUC fully considered URP's arguments on remand and rejected them. We reject without discussion URP's remaining assignments." *Gearhart v. Pub. Util. Comm'n of Oregon*, 255 Or App 58, 104, 299 P3d 533, 560 (2013). The Oregon Supreme Court affirmed without directly referencing CWIP. *Gearhart*, 356 Or at 216.

[139] *See* Settling Parties/100; Settling Parties/200; Settling Parties/300.

J. The Stipulation's Treatment of the Return On the Undepreciated Investment is Reasonable.

The stipulation provides that the regulatory asset created to account for the mine's actual closure costs and the retiree medical settlement loss will be offset by a credit of $0.22 million per month (or $2.6 million annually), beginning June 1, 2015, for the "return on" the undepreciated Deer Creek assets currently included in rates.[140]

ICNU argues that if the Commission addresses ratemaking in this docket, it should immediately remove the return on the mine assets from rates, rather than using it as an offset to the regulatory asset.[141] ICNU argues that it is poor policy to allow the Company to collect the return on in rates and then subsequently refund that amount to customers through the amortization of the regulatory asset.[142] ICNU's argument is undermined, however, by its primary recommendation, which is to allow the Company to continue to earn a return on the mine assets until the next general rate case without any refund to customers.[143] ICNU's contradictory recommendations should be rejected. The stipulation's compromise approach ensures that customers do not pay a return on the mine assets after they are no longer used and useful, while also delaying a rate change until January 1, 2016. Furthermore, the "return on" the mine assets will be applied as an offset to the regulatory asset that will earn interest at the Company's authorized weighted average cost of capital and the offset to the regulatory asset will continue until base rates are reset and the mine's undepreciated investment is removed from rate base.

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[140] Stipulation at 6; PAC/400, Dalley/12.
[141] ICNU 300/, Mullins/16.
[142] *Id.* at 16.
[143] *Id.* at 4.

K. The Company will Update the Embedded Cost Differential (ECD) in its next General Rate Case.

Both Staff and ICNU point out that the stipulation did not resolve the issue of the proper accounting for the ECD for purposes of allocating the undepreciated investment amounts to Oregon customers under the 2010 Protocol.[144] The ECD is updated only in the context of a general rate case, and the Company testified that it should not be adjusted as part of this proceeding based on the limited evidence in the record.[145] To address Staff's concerns, the Company expressly agrees that it will update the ECD in its next general rate case to account for the impact of the Transaction.

IV. CONCLUSION

The Commission should find that the Transaction is prudent and in the public interest under the terms and conditions set forth in the stipulation between the Company and CUB. The stipulation provides substantial customer benefits, moderates rate impacts, protects customers from the risks of new environmental regulations, and allows the Company to

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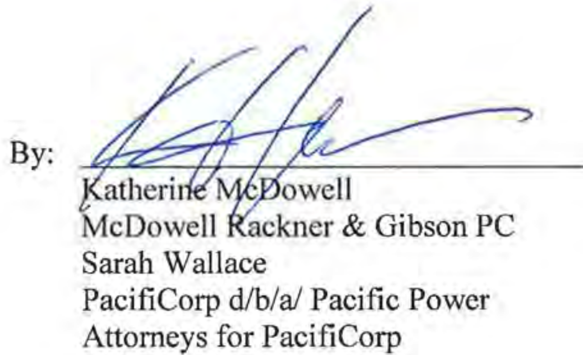
[144] *Id.* at 14-15; Staff/700, Wittekind/7-8.

[145] *See* PAC/400, Dalley/17.

recover its prudently incurred expenses in a timely manner. Approval of the Transaction advances important policy interests of the Commission and encourages future innovation in managing the risks of coal-fired generation.

Respectfully submitted this 21st day of April, 2015.



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