

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1712

In the Matter of)	
)	OPENING BRIEF OF THE
PACIFICORP, dba PACIFIC POWER)	CITIZENS' UTILITY BOARD
)	OF OREGON
Application for Approval of Deer Creek)	
Mine Transaction)	
_____)	

1 **I. Introduction**

2 Pursuant to Administrative Law Judge (“ALJ”) Arlow’s Procedural Conference
3 Memorandum of April 16, 2015, the Citizens’ Utility Board of Oregon (“CUB”) submits
4 its Opening Brief. The sole purpose of this brief is to address CUB’s perspective of
5 single-issue ratemaking as it relates to the Deer Creek Mine Transaction (“Transaction”).
6 CUB’s positions on the other legal issues in this docket are contained in its joint opening
7 brief with PacifiCorp.

8 **II. Discussion**

9 Whether the Transaction constitutes single-issue ratemaking, and what effect that
10 should have on ratemaking, has been contested in this case. In its Opening Testimony,
11 CUB argued “[p]roviding PacifiCorp the ratemaking treatment it seeks violates the
12 prohibition on single-issue ratemaking.”¹ Similarly, the Industrial Customers of

¹ UM 1712 – CUB/100/Jenks-McGovern/16, lines 9-12.

1 Northwest Utilities (“ICNU”) argued “[t]he Company’s request for a 3.4% rate increase
2 outside of a general rate case proceeding constitutes single-issue rate making and should
3 not be permitted.”² Staff expressed a concern that “PacifiCorp is requesting rate recovery
4 of these costs outside of a general rate proceeding, which results in a review of some
5 isolated costs without conducting a review of overall rates through a general rate
6 proceeding, or a review of earnings, if costs were deferred.”³ In contrast, PacifiCorp has
7 argued “[t]he Company’s proposal does not constitute improper single-issue
8 ratemaking.”⁴ Sierra Club took no position on this issue in testimony.

9 The Stipulation between PacifiCorp and CUB was silent on the issue of single-
10 issue ratemaking.⁵ In the Joint Brief in Support of Stipulation (“Joint Brief”), CUB and
11 PacifiCorp did not address whether the transaction constitutes single-issue ratemaking,
12 but acknowledged the Commission generally disfavors the practice.⁶

13 Consistent with its testimony position, CUB believes the Transaction constitutes
14 single-issue ratemaking, but also believes the unique circumstances of the Transaction,
15 coupled with the benefits to customers, weigh in favor of setting the policy aside for this
16 case.

17 The Commission’s general policy against single-issue ratemaking is well-
18 founded. It is premised on concerns that customers do not receive the benefit of changes
19 in other components of costs, which may serve to off-set the increase, that they would
20 otherwise receive in the context of a general rate case where there is a holistic

² UM 1712 – ICNU/100/Mullins/2, lines 5-7.

³ UM 1712 – Staff/100/Wittekind/5, lines 10-13.

⁴ UM 1712 – PAC/400/Dalley/4, line 15.

⁵ See UM 1712 – Stipulation.

⁶ UM 1712 – Joint Brief in Support of Stipulation at 14.

1 examination of rates.⁷ This notwithstanding, the Commission has recognized certain
2 circumstances may weigh in favor of setting aside the general policy against single-issue
3 ratemaking.⁸

4 Northwest Natural Gas Company's ("NW Natural") transaction with Encana was
5 a single-issue ratemaking docket. In that case, NW Natural sought approval to enter into
6 a transaction which would allow the Company to recover costs, outside of a general rate
7 case, related to the physical hedge of gas supply.⁹ Similar to the current case, NW
8 Natural requested an order finding its decision was prudent prior to the closing date of the
9 transaction. This put the docket on an aggressive timeline.¹⁰ NW Natural also sought
10 deferred accounting to track related expenses for later inclusion in its annual purchased
11 gas adjustment.¹¹ Ultimately, the Commission approved a stipulation and found the
12 transaction was "likely to produce benefits for NW Natural's customers, that the risk of
13 the transaction [had] been reasonably mitigated, and that the remaining risk [was]
14 appropriately shared between shareholders and ratepayers under the terms of the
15 stipulation."¹²

16 In other unique circumstances, the Commission has approved tariff filings outside
17 of a general rate case for the recovery of unamortized plant balances and

⁷ See *In re Northwest Natural Gas Co.*, OPUC Docket Nos. UM 1635 Phase II & UM 1706, Order No. 15-049 at 12 (Feb. 20, 2015).

⁸ *In re NW Natural*, OPUC Docket No. UG 221, Order No. 12-437 at 26 (Nov. 16, 2012) ("Concerns about single-issue ratemaking are grounded in the idea that the ratemaking formula is designed to determine a company's revenue requirement based on the aggregate costs and demands of the utility. Except in limited circumstances, it is improper to consider changes to components of the revenue requirement in isolation.").

⁹ *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.

¹⁰ *Id.* at 1.

¹¹ *Id.*

¹² *Id.* at 3.

1 decommissioning costs for retired plant¹³ and for the revenue requirement associated with
2 including a new generating asset in rate base.¹⁴

3 As evidenced by the Commission’s approval of the Encana transaction and other
4 cases that constitute single-issue ratemaking, the regulatory framework in Oregon is
5 clearly flexible enough to allow rate recovery outside of a general rate case when unique
6 circumstances warrant such treatment. Of course, any deviation from traditional
7 ratemaking deserves careful consideration. From CUB’s perspective, however, single-
8 issue ratemaking may be appropriate when the specific circumstances of the case are
9 *truly* unusual, the request cannot otherwise be accommodated by a general rate case, and
10 there are substantial customer benefits. Allowing rate recovery in these circumstances,
11 despite single-issue ratemaking, encourages utilities to take novel approaches to reduce
12 costs and provide customer benefits. Conversely, not allowing the Company to fully
13 recover its prudently incurred costs creates a disincentive for utilities to seek out new
14 approaches to reducing costs.

15 The Deer Creek Mine Transaction meets all of these criteria—the proposed
16 Transaction is unique and solves a number of issues related to growing costs with
17 pensions, declining coal quality, and retiree medical obligations; the timeline for
18 regulatory approval is driven by a contractual closing date, which would not have been
19 timely if pushed into a general rate case; and there are substantial customer benefits.¹⁵

20 **III. Conclusion**

21 In this case, customers are better served if the Company receives the regulatory
22 approval sought and moves forward with the Transaction as proposed in the Stipulation.

¹³ *E.g. In re Idaho Power Co.*, OPUC Docket No. UE 239, Order No. 12-235 (June 26, 2012).

¹⁴ *In re Idaho Power Co.*, OPUC Docket No. UE 248, Order No. 12-358 (Sept. 20, 2012).

¹⁵ UM 1712 – CUB/100/Jenks-McGovern/3-4.

1 The alternatives are to either (1) not approve the Transaction, which would result in no
2 customer benefit, or (2) approve the Transaction but reduce the Company's rate recovery,
3 perhaps in line with the proposals of Staff and ICNU. With the latter, PacifiCorp and
4 other utilities will have little incentive going forward to pursue these types of
5 transactions. As discussed above, the regulatory framework in Oregon is flexible enough
6 to overcome concerns with single-issue ratemaking when unique circumstances mean that
7 customers will be better served by granting special rate treatment. The Commission
8 should find that the circumstances in this case warrant such treatment and approve the
9 Transaction as proposed in the Stipulation.

Respectfully submitted,



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