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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

Attention Filing Center:

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

Very truly yours,

Katherine McDowell

cc: Service List

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 REPLY BRIEF OF PACIFICORP AND CUB

April 28, 2015

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UM 1712

In the Matter of PACIFICORP d/b/a PACIFIC POWER Application for Approval of Deer Creek Mine Transaction.	**JOINT REPLY 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 reply brief supporting Public Utility Commission of Oregon (Commission) approval of the Deer Creek mine closure Transaction[1] as prudent and in the public interest.

As the parties' opening briefs make clear, the key question in dispute is not whether the Commission should approve the Transaction, but the nature and timing of the approval. The Settling Parties contend that it is fair, efficient, and important for the Commission to resolve all essential issues now by concluding that the Transaction is prudent and in the public interest, approving a two-year amortization of Deer Creek mine undepreciated investment and known closure costs, and allowing creation of other regulatory assets. To address parties' concerns related to the Huntington coal supply agreement's take-or-pay provision, the Commission should also approve the condition volunteered in the Settling

[1] As in previous briefs, the "Transaction" includes the Company's decision to close the Deer Creek mine, withdraw from the United Mine Workers of America 1974 Pension Trust, settle the retiree medical obligation, sell certain mining assets, and enter into new and amended coal supply agreements for its Huntington and Hunter generating plants.

Parties' Opening Brief that ensures if liquidated damages are incurred at some point in the future, no party is precluded from arguing that customers should be held harmless.

This case included technical conferences, multiple rounds of testimony, settlement conferences, extensive briefing, and a two-party stipulation. After this extensive process, there is little dispute over key factual issues, most notably the existence of substantial net benefits to customers. And there is no compelling justification for delaying approvals, extending the amortization schedule, or adding unnecessary approval conditions. Instead, to encourage PacifiCorp and other utilities to actively pursue opportunities like the Transaction in the future, the Commission should take the positive, decisive action requested by the Settling Parties.

II. DISCUSSION

A. The PacifiCorp-CUB Stipulation is in the Public Interest and Amply Supported by the Record.

The Commission's policy is to support settlements and encourage "parties to voluntarily resolve issues to the extent that settlement is in the public interest."[2] Settlements provide "value in terms of administrative efficiency by narrowing the range of positions on issues and further developing the record."[3] The PacifiCorp-CUB stipulation presents a meaningful and comprehensive compromise between the positions of these formerly adverse parties, in furtherance of the Commission's policy.[4]

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[2] *In re PacifiCorp*, Docket No. UE 207, Order No. 09-432 at 6 (Oct. 30, 2009); *In re PacifiCorp*, Docket No. UE 267, Order No. 15-060 at 4 (Feb. 24, 2015) ("Although we encourage parties to resolve disputes informally, we must review the terms of any stipulation for reasonableness and accord with the public interest."); *In re Portland Gen. Elec. Co.*, Docket No. UE 161, Order No. 04-573 at 4 (Oct. 5, 2004) ("The Commission encourages parties to a proceeding to voluntarily resolve issues to the extent that settlement is in the public interest.").

[3] Order No. 15-060 at 3.

[4] CUB initially filed testimony opposing PacifiCorp's proposed ratemaking treatment of the Transaction. *See* CUB/100.

ICNU argues that when stipulations raise important policy questions, the Commission should reject the stipulations out-of-hand.[5] To support this position, ICNU relies on an overly expansive reading of Order No. 13-424, in which the Commission rejected stipulations in docket UM 1635. In that case, the Commission ordered additional proceedings[6] to more fully develop the record because it found that the "stipulations do not fairly and prudently resolve" the issues in the case, and "a more thorough examination of the facts and policy standpoints" was required.[7] The rejection of the stipulations was based on the Commission's conclusion that the record in the case was inadequate to support the public policy considerations that the stipulation attempted to resolve. Such is not the case here.

Here the record is fully developed, "ensure[ing] an adequate record for review."[8] The settlement was reached after three rounds of testimony.[9] Every aspect of the stipulation is supported by testimony from the Company or CUB, as outlined in the Joint Parties' Brief in Support of the Stipulation.[10] The stipulation was informed by two technical workshops, including one with the Commission, and three all-party settlement conferences. The parties had two opportunities for hearings, including a second hearing in response to the stipulation.

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[5] Opening Brief of the Industrial Customers of Northwest Utilities (ICNU Brief) at 6.
[6] *See In re Northwest Natural Gas Co.*, Docket No. UM 1635, Memorandum (Dec. 5, 2013) (identifying the specific issues for the parties' additional testimony).
[7] *In re Northwest Natural Gas Co.*, Docket No. UM 1635, Order No. 13-424 at 7 (Nov. 18, 2013).
[8] *In re Avista Corp.*, Docket No. UG 284, Order No. 15-109 at 6 (Apr. 9, 2015) ("To ensure an adequate record for review in future general rate proceeding—for Avista and other utilities—we encourage the parties to either provide a detailed explanation in joint or individual party testimony that explains why the stipulation is just and reasonable, or delay the filing of any stipulation until after Staff and intervenors have had the opportunity to file testimony responding to the utility's initially filed testimony."); *In re PacifiCorp*, Docket No. UE 210, Order No. 10-022 at 6 (Jan. 26, 2010) (the Commission "may accept a non-unanimous settlement agreement so long as [it] make[s] an independent finding, supported by substantial competent evidence in the record as a whole, that the settlement will establish just and reasonable rates.").
[9] Order No. 15-109 at 6 (to ensure adequate record, the Commission encourages parties to settle after response testimony is filed).
[10] *See also* Joint Opening Brief of PacifiCorp and CUB at 10.

On this robust record, the stipulation clearly satisfies the Commission's evidentiary requirements.[11]

B. The Commission should Approve the Deer Creek Closure Tariff.

1. Single-Issue Ratemaking is Not Illegal.

ICNU argues unequivocally that "Oregon law prohibits single-issue ratemaking[.]"[12] ICNU relies on the Commission's final order in the docket addressing the ratemaking treatment of the undepreciated investment in the Trojan nuclear generating plant, Order No. 08-487 (the Trojan order), arguing that the Commission concluded rates must be set holistically and that single-issue ratemaking was "prohibited."[13] ICNU's legal conclusion is wrong for two reasons.

First, in several decisions issued after the Trojan order, the Commission clarified that it will allow single-issue ratemaking in appropriate circumstances.[14] While the Commission generally does not engage in single-issue ratemaking, it is not legally prohibited from doing so as ICNU alleges.

Second, the Commission discussed holistic ratemaking in the Trojan order when explaining the scope of its review on remand from the Court of Appeals. The Commission's review on remand addressed whether past rates were unjust and unreasonable.[15] In conducting this review, the Commission focused only on those aspects of rates that were affected by the determination that Portland General Electric Company (PGE) could not earn

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[11] Order No. 10-022 at 6; *In re PacifiCorp*, Docket No. UE 217, Order No. 10-473 at 7 (Dec. 14, 2010).
[12] ICNU Brief at 7.
[13] *Id.* at 8.
[14] *In re Northwest Natural Gas Co.*, Docket No. UG 221, Order No. 12-437 at 26 (Nov. 16, 2012) ("Except in limited circumstances, it is improper to consider changes to components of the revenue requirement in isolation."); Staff's Opening Brief (Staff Brief) at n. 17 (acknowledging that single-issue ratemaking is not illegal).
[15] *In re Portland Gen. Elec. Co.,* Docket Nos. DR 10, UE 88 & UM 989, Order No. 08-487 at 64 (Sept. 30, 2008, *affirmed Gearhart v. Pub. Util. Comm'n of Or.,* 356 Or 216 (2014).

a return on the undepreciated investment.[16] Thus, the Commission's holistic examination of PGE's rates focused on essentially the same issues as here, *i.e.*, the amortization period and interest rate applied to the undepreciated investment. In summary, the Trojan order does not stand for the proposition that single-issue ratemaking is illegal, and the scope of the ratemaking in that case was comparable to the ratemaking requested here.

2. The Commission has Shown Flexibility when Evaluating Single-Issue Rate Filings and has Approved Stand-Alone Tariff Filings.

The Settling Parties have provided numerous examples where the Commission approved a stand-alone tariff filing outside of a general rate case.[17] The most analogous example of single-issue ratemaking involved NW Natural's request for pre-approval of a significant and unique transaction to acquire natural gas reserves.[18] In that case, the utility required regulatory approval, including a prudence determination, before closing the transaction. Like here, the request for single-issue ratemaking was driven in part by the timing of the transaction. The Commission made a prudence determination and authorized NW Natural to reflect the transaction in rates because it was projected to provide substantial customer benefits through low and stable natural gas costs, while also protecting customers through contractual risk-mitigation provisions.

In another case, the Commission approved a new Idaho Power Company tariff outside of a general rate case to allow Idaho Power to recover accelerated depreciation and

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[16] Order No. 08-487 at 66 ("We believe that the only way to determine whether the rates in effect from 1995 through 2000 were just and reasonable is to: (1) reexamine those elements of PGE's revenue requirement during that period that should be adjusted in light of the Court of Appeals' determination in *Trojan I* that the Commission cannot allow PGE to earn a return on its remaining undepreciated investment in Trojan; and (2) compare the revenue requirement resulting from that reexamination with PGE's authorized revenue requirement during the April 1995 through September 2000 period.").

[17] *See, e.g.*, Joint Opening Brief of PacifiCorp and CUB at 17-18; PAC/400, Dalley/5.

[18] *In re Northwest Natural Gas Co.*, Docket Nos. UM 1520 & UG 204, Order No. 11-176 (May 25, 2011).

decommissioning costs related to the early closure of the Boardman plant.[19] The Commission allowed single-issue ratemaking in that case after previously concluding that the retirement of Boardman was the least-cost option for customers and mitigated the risk of future carbon regulation.[20] The Commission has also allowed both Idaho Power and PGE to update their Boardman closure tariffs outside general rate cases.[21]

These examples demonstrate that the Commission has approved rate changes outside of a general rate case in limited, appropriate circumstances, including where the rate change is the result of a time-sensitive, beneficial transaction requiring regulatory approval or where the rate change is the result of a least-cost investment decision to mitigate the risk of coal-fired generation. In contrast, the Commission has rejected single-issue ratemaking when a party sought to update a single cost element in rates because actual costs differed from the forecast costs used to set rates.[22]

This case is analogous to the past cases in which the Commission has allowed single-issue ratemaking. To be clear, the Company is not singling-out one cost element already in rates and attempting to update it based on changes from the forecast. Instead, the costs included in the Deer Creek Mine Closure tariff are directly related to the Transaction, which will provide significant benefits to customers.

Staff acknowledges that the Commission has engaged in single-issue ratemaking in the past, yet argues that the Commission should not do so here.[23] Staff fails to distinguish

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[19] *E.g., In re Idaho Power Co.*, Docket No. UE 239, Order No. 12-235 (June 26, 2012).
[20] *In re Portland Gen. Elec. Co.*, Docket No. LC 48, Order No. 10-457 at 15 (Nov. 23, 2010).
[21] *See* Idaho Power Company, Advice No. 14-03 (Mar. 7, 2014); Portland General Electric Company, Advice No. 14-18 (Sept. 18, 2014).
[22] *In re Portland Gen. Elec. Co.*, Docket Nos. UE 180 & UE 184, Order No. 08-118 at 3-4 (Feb. 14, 2008); *see also* Order No. 12-437 at 26 (rejecting single-issue ratemaking that would have allowed special rate treatment for only one element of a utility's overall taxes).
[23] Staff Brief at 5.

this case from instances where the Commission has approved rate changes outside general rate cases, often with Staff's express support.[24] Without a reasoned basis to preclude ratemaking in this case, Staff's argument is unpersuasive.

ICNU argues that any rate change must involve a holistic examination of PacifiCorp's rates, account for potentially offsetting factors, and include an examination of the Company's earnings.[25] ICNU attempts to distinguish the single-issue ratemaking examples cited by the Settling Parties, but ICNU's arguments fall short:

- ICNU argues that approval of Idaho Power's Boardman closure tariff was not single-issue ratemaking because the Commission had already approved PGE's Boardman tariff in a PGE rate case.[26] But the PGE rate case did not include a holistic review of Idaho Power's rates, account for Idaho Power's potentially offsetting factors, or include a review of Idaho Power's earnings.

- ICNU claims that Idaho Power's request to include a new generating plant in its rates was not single-issue ratemaking because Idaho Power filed the case as if it were a general rate case.[27] In fact, Idaho Power acknowledged in its filing that it was a single-issue rate case and that only the costs of the new generating plant were at issue.[28] No party sought a change in any other aspect of Idaho Power's rates. The Commission did not require a full examination of Idaho Power's costs and revenues before it approved a rate increase of approximately seven percent.[29]

- ICNU claims that the approval of PGE's stand-alone advanced metering infrastructure tariff was not single-issue ratemaking because PGE originally raised the issue in its rate case before asking that the Commission address it in a single-issue docket.[30] ICNU does not dispute, however, that the tariff was approved without a holistic review of all of PGE's costs and revenues.

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[24] *See, e.g.*, Order No. 11-176.
[25] ICNU Brief at 9-11.
[26] *Id.* at 11.
[27] *Id.* at 13.
[28] *In re Idaho Power Co.*, Docket No. UE 248, Idaho Power/100, Said/8-11 (Mar. 9, 2012). In that case Idaho Power requested changes to most of its rate schedules, thus necessitating the filing of a "general rate case," even though the case involved no examination of any other costs or revenues. *See* Idaho Power Company, Advice No. 12-06 (Mar. 9, 2012).
[29] *In re Idaho Power Co.*, Docket No. UE 248, Order No. 12-358 at 1 (Sept. 20, 2012).
[30] ICNU Brief at 13.

- ICNU claims that in the NW Natural gas reserves case, the Commission directed utilities in the future to make similar filings only in rate cases.[31] The Commission actually directed utilities to analyze similar long-term hedges in the context of their "resource portfolios" used for resource planning.[32] The Commission never directed utilities to seek approval of long-term hedging transactions only in the context of general rate cases.

- ICNU further contends that several of the Settling Parties' examples of single-issue ratemaking are non-precedential because they were the result of stipulations.[33] In each such case, however, the Commission adopted the stipulation only after concluding that that the stipulated single-issue rate change resulted in just and reasonable rates.[34]

ICNU's attempt to distinguish these cases falters because, in every case, the Commission allowed a rate change without conducting the holistic review ICNU now claims is legally required.

3. ORS 757.140(2)(b) Allows Rate Recovery of Undepreciated Investments in this Case.

ICNU argues that ORS 757.140(2)(b) does not allow recovery of undepreciated investment because it is only an "accounting statute and not a statute sufficient for the authorization of new rate schedules."[35] The language of ORS 757.140(2)(b) clearly states that if the Commission concludes that early retirement is in the public interest, the Commission "may allow in rates . . . undepreciated investment in a utility plant." By its plain terms, the statute allows rate recovery of the mine's undepreciated investment.

Based on its interpretation of ORS 757.140(2)(b), ICNU further claims that rate recovery for retired plant is a two-step process: (1) a proceeding where the Commission first determines that the retirement is in the public interest under ORS 757.140(2)(b); and (2) a

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[31] *Id.* at 14.
[32] Order No. 11-176 at n. 23.
[33] ICNU Brief at 12-13.
[34] *See, e.g.,* Order No. 12-235 at 3 ("[W]e find that the proposed balancing account to track and recover the incremental costs and benefits associated with the early shutdown of Boardman to be reasonable and should be approved. We further find that the rates resulting from the terms of the stipulation are just and reasonable. . .").
[35] ICNU Brief at 14-15.

subsequent general rate case where the Commission addresses rate recovery.[36] Without any direct precedent to support this position, ICNU points to the Company's closure of the Trail Mountain mine. ICNU claims that this case "demonstrates the complete impropriety of the Stipulation['s] ratemaking request" because the Company first received approval of its requested accounting treatment and then subsequently received rate recovery.[37] ICNU's description of that case fails to note, however, that the accounting and ratemaking dockets were consolidated and that the parties in that case resolved both issues simultaneously.[38] This precedent supports the Settling Parties' request for concurrent resolution of the public interest and ratemaking issues associated with the retirement of the Deer Creek mine, not ICNU's proposal to bifurcate these issues.

4. The Company's Filing is Not a General Rate Case under the Commission's Rules.

ICNU argues that the Company's application is a general rate case under the Commission's rules, which define a "general rate revision" as a "filing by a utility that affects all or most of the utility's rate schedules."[39] ICNU reasons that approval of the Deer Creek Mine Closure tariff, Schedule 198, would "affect" all or most of the Company's rate schedules even though it would change only Schedule 198.[40] Therefore, ICNU contends that the filing must conform to the Commission's requirements for general rate cases.

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[36] *Id.* at 15.
[37] *Id.*
[38] *In re PacifiCorp*, Docket No. UM 1047, Order No. 02-224 App. A at 2 (Mar. 29, 2002). ICNU also points to other cases where a utility requested accounting treatment first as further evidence of the "impropriety" of the stipulation. ICNU Brief at 15-16. In these cases, the utility requested an accounting order only, so the Commission never addressed the propriety of ratemaking as ICNU implies. *In re PacifiCorp*, Docket No. UM 1298, Order No. 07-375 (Aug. 23, 2007) (PacifiCorp did not request ratemaking treatment); *In re PacifiCorp*, Docket No. UM 978, Order No. 00-406 (July 24, 2000) (PacifiCorp did not request ratemaking treatment); *In re Northwest Natural Gas Co.*, Docket No. UM 1680, Order No. 14-041 (Feb. 5, 2014) (NW Natural did not seek ratemaking treatment).
[39] OAR 860-022-0017(1); OAR 860-022-0019(1).
[40] ICNU Brief at 16.

ICNU ignores OAR 860-022-0017(1), which states that "changes in one rate schedule, such as for an amortization, that affects other rate schedules" are not general rate cases.[41] Consistent with this rule, the Commission has approved tariff filings similar to Schedule 198 outside of a general rate case even though the single schedule change "affected" numerous other rate schedules.[42] In fact, the Company's annual Transition Adjustment Mechanism filing has never been considered a general rate case, even though the filing changes rates for nearly all customers.

C. A Prudence Determination is Appropriate in this Docket.

The parties' opening briefs confirm that there is little dispute that the Transaction is prudent. Staff's brief does not argue that any aspect of the Transaction is imprudent, except for Staff's concerns about the Huntington CSA. Sierra Club likewise argues that only the Huntington CSA is imprudent without hold harmless provisions for customers. While ICNU implies that other aspects of the Transaction may be imprudent,[43] ICNU failed to provide any specific evidence or argument on this point, so the Commission should disregard it.[44]

Although Staff does not dispute the general prudence of the Transaction, Staff argues that the only regulatory approvals the Company immediately requires are a determination that the mine closure and the sale of the mining assets are in the public interest.[45] Staff claims that the Company "does not need to receive all desired or wished for regulatory

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[41] OAR 860-022-0017(1). The exception set forth in OAR 860-022-0017(1) is also incorporated into the definition of a general rate case in OAR 860-022-0019(1) ("The term 'general rate revision' does not include the exclusions in OAR 860-022-0017(1).").
[42] *See, e.g.*, Idaho Power Company, Advice Filing 12-12 (June 26, 2012).
[43] ICNU Brief at 1 (ICNU "does not recommend that the Commission . . . find the Transaction prudent, in its entirety").
[44] *In re PacifiCorp*, Docket No. UE 264, Order No. 13-387 at 10 (Oct. 28, 2013) ("Parties must clearly present all proposed adjustments in their briefs.").
[45] Staff Brief at 3.

approvals."[46] Because the Transaction includes conditions precedent requiring regulatory approval acceptable to the parties, however, there is no question that deferring approval will impede the Transaction.[47] The Commission has previously determined prudence when a transaction was conditioned on regulatory approval and should also do so here.[48]

Staff also expressed a concern that providing a prudence determination will result in future utility requests for prudence determinations outside of general rate cases.[49] The extraordinary nature of the Transaction militates against this risk. The greater risk arises from unnecessarily delaying ratemaking determinations in this case and deterring utilities from pursuing early plant retirement when it is in the public interest.

D. The Huntington CSA is Prudent and the Company's Commitments Address the Parties' Concerns.

Staff and the Sierra Club continue to argue for a condition holding customers harmless from the take-or-pay provision in the Huntington CSA.[50] Sierra Club argues that the downside risk of the take-or-pay provision "substantially outweighs" the favorable pricing as compared to "flexibly buying coal on the open market."[51] But Staff and Sierra Club failed to produce any evidence assessing the risks associated with "flexibly buying coal on the open market." In contrast, the Company provided substantial evidence that the least-cost, least-risk option for fueling the Huntington plant is a long-term CSA.[52]

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[46] *Id.*
[47] *See* Exhibit PAC/102, Crane/15. PacifiCorp can waive this requirement, but Bowie must also agree to the waiver. PAC/500, Crane/12.
[48] Order No. 11-176 (providing NW Natural with necessary regulatory approval to enter into gas reserves transaction); *see also In re PacifiCorp*, Docket Nos. UE 287 & UM 1689, Order No. 14-331 (Oct. 1, 2014) (providing PacifiCorp with prudence determination related to participation in the energy imbalance market).
[49] Staff Brief at 3.
[50] *Id.* at 4; *see also* Sierra Club's Initial Brief (Sierra Club Brief) at 8-9.
[51] Sierra Club Brief at 5.
[52] PAC/700, Schwartz/3-4.

Sierra Club also contends that the Commission cannot determine the prudence of the Huntington CSA "in circumstances where the ultimate costs to ratepayers are not yet known."[53] Sierra Club speculates that the Company might incur damages in the future and appears to argue that the Commission cannot determine the prudence of the CSA until 2029, when it will be known whether the Company has actually incurred these costs.

Sierra Club's argument incorrectly implies that the Commission reviews prudence on an after-the-fact basis.[54] When the Commission approved NW Natural's gas reserves transaction, it did so based on the utility's expected costs and the customer protections built into the agreement.[55] In that case, the prudence finding applied to the decision to enter into the contract, not to subsequent decisions made by the utility in managing the contract.[56]

Contrary to Sierra Club's claims,[57] the Company is not seeking a blanket prudence determination of all of the potential decisions it may or may not make over the life of the CSA. The Company agrees that if liquidated damages are incurred, then the prudence of any costs or damages will be subject to future Commission review, taking into account the overall benefits to customers. And during those future proceedings, parties are free to take

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[53] Sierra Club Brief at 5. Sierra Club relies on a Commission order granting PacifiCorp a waiver of the competitive bidding guidelines for the purchase of the Chehalis plant. *In re PacifiCorp*, Docket No. UM 1374, Order No. 08-376 App. A at 8 (July 17, 2008). When granting the waiver, the Commission indicated that when it determined the prudence of the Company's decision to purchase the plant in a future proceeding, it would conduct a thorough review of the purchase and sales agreement for the plant to determine of the agreement adequately protected customers. This is the same scenario as here—the Company is requesting a prudence determination and the Commission and parties are analyzing the underlying contracts to determine if customers are protected. Contrary to Sierra Club's claim, Order No. 08-376 does not stand for the proposition that the Commission will not undertake a prudence determination until all of the costs of an underlying transaction are known.

[54] *In re Portland Gen. Elec. Co.*, 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).

[55] Order No. 11-176 at 9-11.

[56] *Id.* at 3 ("The Parties also clarify that the prudence finding applies only to NW Natural's decisions to enter into the Proposed Transaction, and not any subsequent decisions the Company might make in terms of exercising its discretion to manage the underlying contracts.").

[57] Sierra Club Brief at 9.

any position they choose. This is directly responsive to the parties' concerns and preserves the right to argue that customers should not pay liquidated damages if this scenario occurs.

Sierra Club further requests that the Commission condition approval of the Transaction on a requirement that PacifiCorp "conduct its forward looking planning under the assumption that it will not incur take-or-pay costs related to the Huntington CSA if a unit or units at Huntington close prior to 2029."[58] Sierra Club's proposal is unnecessary because the Company already made this commitment in its testimony and the Settling Parties reaffirmed it in their opening brief.[59]

E. The Parties' Proposed Adjustments to the Deer Creek Mine Closure Tariff are without Merit.

1. Staff Fails to Support Its Recommended Amortization Period and Interest Rate or Justify the Higher Rates Resulting from Its Recommendation.

Staff continues to recommend a four-year amortization period for the undepreciated investment and closure costs.[60] Staff argues that the Commission should not allow more expedited cost recovery because ORS 757.140(2)(b) and the Trojan order do not *require* accelerated depreciation. But Staff does not dispute that the Commission's stated policy in the Trojan order was to accelerate depreciation to mitigate the impact of early plant closure.[61] Staff fails to articulate a reasonable basis for the Commission to apply a different policy here.

As to interest rates, Staff recommends an interest rate based exclusively on Treasury bond yields for a two-year amortization, without addressing why this is reasonable in today's historically low interest rate environment.[62] Staff's alternative proposal for a four-year

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[58] Sierra Club Brief at 7.
[59] Joint Opening Brief of PacifiCorp and CUB at 7.
[60] Staff Brief at 8.
[61] Order No. 08-487 at 71-72.
[62] Staff Brief at 9.

amortization period with 3.31 percent interest would ultimately result in customers paying more interest over the longer amortization period, a result that Staff does not explain or attempt to justify.

2. ICNU's Recommended Adjustments are Meritless.

ICNU argues that if the Commission addresses ratemaking in this docket, it should adjust the ratemaking requested in the PacifiCorp-CUB stipulation.[63] ICNU's adjustments are without merit, as previously addressed in testimony and briefs:

- ICNU recommends against any ratemaking treatment for the retiree medical obligation settlement loss and the pension withdrawal liability. The Settling Parties have agreed to reserve ratemaking treatment of both these items for a future rate case.

- ICNU recommends a cap on the pension withdrawal liability, which is premature and could potentially harm the Company's negotiating position in settling the liability.[64]

- ICNU supports a nine-year amortization period for the undepreciated mine investment, but never acknowledges the resulting increase in interest charges.[65]

- ICNU supports "dynamic" amortization, which ICNU argues is necessary because of its prolonged amortization period.[66] Use of a more reasonable amortization period eliminates this issue. If dynamic amortization is approved, however, it must account for both the costs and the benefits.

3. The Proposed Embedded Cost Differential (ECD) Adjustment should be Rejected.

Staff and ICNU continue to recommend an adjustment to the Deer Creek Mine Closure tariff to account for the ECD impact of the Transaction.[67] As described in the Settling Parties' Opening Brief, the Company will update the ECD to reflect the impact of

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[63] ICNU Brief at 20.
[64] PAC/600, Stuver/4-5.
[65] ICNU Brief at 18-19.
[66] ICNU Brief at 19; PAC/400, Dalley/15.
[67] Staff Brief at 9-10; ICNU Brief at 20-21.

the Transaction in its next general rate case.[68] There is no basis to adopt an adjustment to the Deer Creek Mine Closure tariff based on a speculative change in the ECD. Moreover, Staff testifies only that the Transaction "perhaps" affects the value of the ECD and does not quantify its adjustment.[69] ICNU vastly overstates its adjustment ($3.7 million) by including all Transaction costs in its calculation, irrespective of whether they are in the Deer Creek Mine Closure Tariff, and by assuming a one-year amortization of these costs.[70]

III. CONCLUSION

The record in this case demonstrates that the Transaction provides substantial benefits for customers and advances important Commission policies. The stipulation appropriately captures these customer benefits, while allowing timely rate recovery for the Company. The Commission should approve the stipulation between the Company and CUB and find that the Transaction is prudent and in the public interest.

Respectfully submitted this 28th day of April, 2015.

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[68] Joint Opening Brief of PacifiCorp and CUB at 30.
[69] Staff/100, Wittekind/10; Staff/700/, Wittekind/8-9.
[70] ICNU/103, Mullins/1.