

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1689

In the Matter of)
)
)
PACIFICORP, dba PACIFIC POWER)
)
Application for Deferred Accounting and)
Prudence Determination Associated with the)
Energy Imbalance Market)
_____)

**OPENING TESTIMONY OF THE
CITIZENS' UTILITY BOARD OF OREGON**

June 23, 2014



BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 1689

In the Matter of)
PACIFICORP, dba PACIFIC POWER)
Application for Deferred Accounting and)
Prudence Determination Associated with the)
Energy Imbalance Market)
_____)

OPENING TESTIMONY OF THE
CITIZENS' UTILITY BOARD
OF OREGON

1 My name is Bob Jenks, and my qualifications are listed in CUB Exhibit 101.

2 **I. Introduction**

3 On April 18, 2014, PacifiCorp filed its Application for Deferred Accounting and
4 Prudence Determination associated with its decision to enter into an energy imbalance
5 market (“EIM”) with the California Independent System Operator Corporation
6 (“CAISO”). In its filing, the Company seeks to defer start-up costs and annual O&M
7 costs from the date of its application until the costs are incorporated in base rates in the
8 Company’s next general rate case, as well as a determination that its decision to
9 participate in the EIM is prudent. The Company has also committed to work with the

1 Oregon stakeholders to determine the appropriate process to reflect the variable costs and
2 benefits of EIM in rates.¹

3 CUB does not oppose PacifiCorp's request for a deferral in this case, but is
4 concerned that the deferral filed by PacifiCorp is one-sided, and does not capture the
5 benefits that should flow to customers. CUB also believes that PacifiCorp's request for a
6 prudence determination for its decision to enter into the EIM is premature. Finally,
7 regarding the process that should be used to reflect the variable cost and benefits of EIM
8 into rates, CUB believes that previously established, normal ratemaking processes should
9 be utilized, as discussed more fully below.

10 **II. PacifiCorp's Request for a Deferral**

11 PacifiCorp is seeking to defer the start-up costs and annual O&M costs related to
12 EIM "to match appropriately the costs borne by and benefits received by customers."²
13 Start-up costs are expected to be approximately \$20 million on a total-company basis (\$5
14 million on an Oregon-allocated basis), which includes approximately \$16 million in
15 capital costs and \$4 million in O&M costs.³ Annual O&M costs are expected to be
16 approximately \$1.7 million on a total-company basis (\$425,000 on an Oregon-allocated
17 basis).⁴

18 While CUB does not oppose PacifiCorp's request for a deferral in this case, we
19 believe that the deferral is incomplete and one-sided. Despite the Company's assertion
20 that it seeks "to match appropriately the costs borne by and benefits received by

¹ In its Application Regarding Energy Imbalance Market, PacifiCorp proposed the development of a balancing account to address the costs and benefits of EIM in customer rates. However, at the May 28, 2014 special public meeting, the Company indicated that it was open to other ways to address this issue.

² UM 1689 – PacifiCorp's Application Regarding Energy Imbalance Market, at pg. 5, line 9.

³ UM 1689 – PacifiCorp's Application Regarding Energy Imbalance Market, at pg. 5, lines 16-21.

⁴ UM 1689 – PacifiCorp's Application Regarding Energy Imbalance Market, at pg. 6, line 22.

1 customers,” the Company is only seeking to defer *costs*—not benefits that should also
2 flow to customers. CUB understands that the benefits associated with PacifiCorp’s
3 participation in the EIM are difficult to forecast and quantify at this point, which is not
4 the case with start-up costs and annual O&M costs. However, if the Commission
5 approves a deferral that would allow the Company to capture and pass on these costs to
6 customers, it should only allow those costs to be amortized *after* it has approved the
7 mechanism through which customers will receive the benefits associated with EIM.
8 Costs and benefits must flow together.

9 At the workshop, CUB suggested that one option would be to allow the Company
10 to absorb both costs and benefits until there is some experience and both can be captured
11 in normal ratemaking. CUB recognizes that such a proposal would be risky for the
12 Company, because a party could attempt to capture the benefits through the TAM and the
13 PCAM and leave the Company stuck with the costs. But the Company’s proposal at the
14 moment is equally one-sided. Costs and benefits should flow together. Neither the
15 Company nor its customers should have to absorb the costs without receiving the
16 benefits.

17 **III. PacifiCorp’s Request for a Prudence Review**

18 In addition to a deferral for start-up costs and annual O&M costs for PacifiCorp’s
19 participation in the EIM, the Company is also seeking a determination that its decision to
20 enter into the EIM was prudent. At the May 28, 2014 special public meeting held to
21 discuss this docket with Commissioners Ackerman, Savage and Bloom, the Company
22 clarified that the date from which it seeks a prudence review for its decision to participate

1 in the EIM is April 30, 2013—the date that it signed the Energy Imbalance Market
2 Implementation Agreement with CAISO.⁵

3 As affirmed by the Commission in OPUC Order 12-493:

4 A prudence review must determine whether the company’s actions, based
5 on all that it knew or should have known at the time, were reasonable and
6 prudent in light of the circumstances which then existed. It is clear that
7 such a determination may not properly be made on the basis of hindsight
8 judgments, nor is it appropriate for the [commission] to merely substitute
9 its best judgment for the judgment made by the company’s managers. The
10 company’s conduct should be judged by asking whether the conduct was
11 reasonable at the time, under all the circumstances, considering that the
12 company had to solve its problems prospectively rather than in reliance on
13 hindsight. In effect, our responsibility is to determine how reasonable
14 people would have performed the task that confronted the company.⁶

15 In short, the Commission must look at what the utility knew or should have known at the
16 time that it made its decision. PacifiCorp argues that the date from which it made its
17 decision in this case was April 30, 2013.

18 Although CUB has not found evidence to date that the Company has thus far
19 acted imprudently, according to the terms of the April 30, 2013 Implementation
20 Agreement⁷ and the Amendment to the Implementation Agreement (“Amendment”)
21 (filed with FERC on February 21, 2014 and made effective on April 23, 2014),⁸ the
22 Company “has the unilateral right to terminate its participation in the EIM upon notice of
23 termination to the CAISO” without an exit fee.⁹ As restated by PacifiCorp witness Mr.
24 Bird “the principles and supporting market rules allow for easy entry and exit from the

⁵ May 28, 2014 special public meeting, audio file 7 at 12:00. Accessed at <http://apps.puc.state.or.us/audio/052814um1689/7.mp3>. CUB notes that the Company distinguished between a prudence review for its decision to enter into the EIM, which it argues occurred on April 30, 2013 pursuant to the Implementation Agreement, and the prudence of the EIM in general.

⁶ OPUC Order No. 12-493 at 25 (internal citation omitted).

⁷ UM 1689 – PAC/102/Bird.

⁸ UM 1689 – PAC/103/Bird.

⁹ UM 1689 – PAC/100/Bird/6, lines 10-12.

1 Energy Imbalance Market with minimal risk if the expected benefits do not materialize
2 for participants.”¹⁰

3 It is CUB’s position that April 30, 2013 is not the appropriate date from which to
4 consider the prudence of PacifiCorp’s decision to enter into and participate in the EIM.
5 Because there is no financial penalty or fee for terminating the Implementation
6 Agreement and Amendment, nor is there a financial penalty or fee for pulling out of the
7 EIM once it goes live, PacifiCorp can, risk free, choose not to continue its participation in
8 the EIM at any time. Therefore, the Company remakes its decision to participate in the
9 EIM every day that its participation continues. For this reason, CUB believes that a
10 prudence determination at this time would be premature because the Company is actively
11 deciding every day, without the risk of an exit fee or other financial penalty, to continue
12 participating in the development of the EIM.

13 CUB believes that the Company must continue to monitor the market and
14 development of the EIM, reevaluating its decision to participate routinely. If there is a
15 change in market conditions that would eliminate all or much of the benefit of the EIM,
16 CUB would expect PacifiCorp to act promptly on that information.

17 CUB believes that the prudence review should happen at the time that costs are
18 amortized, which, as discussed below, should only take place after a mechanism to
19 capture benefits is approved by the Commission. CUB’s position that a prudence review
20 should be conducted at the time of amortization is consistent with ORS 757.259(5) and
21 current Commission policy.¹¹ However, even were a prudence review conducted today

¹⁰ UM 1689 – PAC/100/Bird/6, lines 14-17 (quoting the CAISO’s FERC filing letter).

¹¹ ORS 757.259(5)(...The commission’s final determination on the amount of deferrals allowable in rates of the utility is subject to a finding by the commission that the amount was prudently incurred by the utility.”). See e.g. OPUC Order No. 12-437 at 31.

1 (based on the April 30th decision), a further prudence review would be required to
2 determine if the Company acted prudently between April 30th and the start of
3 PacifiCorp's trading in the EIM because, as already noted, the Company has the
4 opportunity to pull out of the EIM without penalty.

5 **IV. Appropriate Mechanism to Capture Customer Benefits Going**

6 **Forward**

7 CUB understands that the Company wishes to engage stakeholders in a discussion
8 about the variable costs and benefits of EIM in rates, including variable O&M costs,
9 within 30 days of the Federal Energy Regulatory Commission's ("FERC") issue of an
10 order authorizing revisions to the Company's Open Access Transmission Tariff
11 ("OATT") and the CAISO's tariff implementing the EIM.¹²

12 CUB looks forward to participating in that process, but wants to make clear that
13 the costs and benefits associated with PacifiCorp's participation in the EIM should be
14 incorporated through normal, existing ratemaking processes. Capital costs should be
15 addressed in general rate cases, with the Company managing the fluctuations in costs
16 between general rate cases. Once quantified, variable costs and benefits should be
17 forecast in the TAM and trued-up in the PCAM.

18 As stated above, CUB understands that at this time, the Company does not have
19 the ability to accurately forecast benefits through the TAM and the Company does not
20 want to take the risk of an inaccurate forecast. Ultimately, CUB accepts that this might
21 create the need for an interim mechanism to deal with the costs and benefits, and this
22 deferral may be part of that mechanism. However, CUB will insist that any mechanism

¹² UM 1689 – PacifiCorp's Application Regarding Energy Imbalance Market, at pg. 2, lines 8-15.

1 be limited to a defined and short time period with the expectation that these costs will be
2 handled by the existing power cost mechanisms – the TAM and the PCAM.

3 **V. Conclusion**

4 In conclusion, CUB does not oppose PacifiCorp’s request for a deferral of start-up
5 costs and annual O&M costs, but urges the Commission not to allow amortization of the
6 deferral until a mechanism that captures customer benefits is in place. CUB believes that
7 the appropriate on-going mechanisms to capture the ongoing costs and benefits
8 associated with EIM are the TAM and PCAM, and to the degree an interim mechanism is
9 needed that it be clearly defined as an interim mechanism. Finally, because the Company
10 is continuously deciding to participate in the development of the EIM, and can terminate
11 its participation under the Implementation Agreement and Amendment at any time
12 without incurring a financial penalty, or terminate its participation anytime thereafter
13 without an exit fee, the prudence of PacifiCorp’s decision to enter into the EIM is not yet
14 ripe. The Commission should reserve making a prudence determination for a proceeding
15 in which PacifiCorp is seeking to amortize any costs approved for deferral, and only after
16 a mechanism to capture customer benefits is in place.

UM 1689 – CERTIFICATE OF SERVICE

I hereby certify that, on this 23rd day of June, 2014, I served the foregoing **OPENING TESTIMONY OF THE CITIZENS' UTILITY BOARD OF OREGON** in docket UM 1689 upon each party listed in the UM 1689 PUC Service List by email and, where paper service is not waived, by U.S. mail, postage prepaid, and upon the Commission by email and by sending one original and five copies by U.S. mail, postage prepaid, to the Commission's Salem offices.

(W denotes waiver of paper service)

(C denotes service of Confidential material authorized)

W **DAVISON VAN CLEVE PC**
C S BRADLEY VAN CLEVE
333 SW TAYLOR - STE 400
PORTLAND OR 97204
bvc@dvclaw.com

W **DAVISON VAN CLEVE PC**
C TYLER C PEPPLER
333 SW TAYLOR SUITE 400
PORTLAND OR 97204
tcp@dvclaw.com

W **MCDOWELL RACKNER &
GIBSON PC**
C KATHERINE A MCDOWELL
419 SW 11TH AVE., SUITE 400
PORTLAND OR 97205
katherine@mcd-law.com

W **MOUNTAIN WEST ANALYTICS**
C BRADLEY MULLINS
333 SW TAYLOR STE 400
PORTLAND OR 97204
brmullins@mwanalytics.com

W **PACIFIC POWER**
OREGON DOCKETS
825 NE MULTNOMAH ST, STE 2000
PORTLAND OR 97232
oregondockets@pacificorp.com

W **PACIFIC POWER**
C SARAH WALLACE
825 NE MULTNOMAH ST STE 1800
PORTLAND OR 97232
sarah.wallace@pacificorp.com

W **PORTLAND GENERAL ELECTRIC**
DONALD LIGHT
121 SW SALMON ST - 1WTC1711
PORTLAND OR 97204
donald.light@pgn.com

W **PORTLAND GENERAL ELECTRIC**
JAY TINKER
121 SW SALMON ST 1WTC-0702
PORTLAND OR 97204
pge.opuc.filings@pgn.com

W **PUC STAFF**
C DEBORAH GARCIA
PO BOX 1088
SALEM OR 97308-1088
deborah.garcia@state.or.us

W **PUC STAFF**
C JOHN CRIDER
PO BOX 1088
SALEM OR 97308-1088
john.crider@state.or.us

W PUC STAFF—DOJ
MICHAEL T WEIRICH
1162 COURT ST NE
SALEM OR 97301-4096
michael.weirich@state.or.us

Respectfully submitted,



G. Catriona McCracken, Attorney
#933587
General Counsel/Regulatory Program Dir.
Citizens' Utility Board of Oregon
610 SW Broadway, Ste. 400
Portland, OR 97205
(503) 227-1984 phone
(503) 274-2596 fax
Catriona@oregoncub.org