CASE: UM 1712
WITNESS: LINNEA WITTEKIND

PUBLIC UTILITY COMMISSION
OF
OREGON

STAFF EXHIBIT 700

OBJECTIONS AND RESPONSIVE TESTIMONY

April 10, 2015

Q. Please state your name, occupation, and business address.

A. My name is Linnea Wittekind. My business address is 3930 Fairview Industrial Dr. SE, Salem, Oregon 97308-1088.

Q. Have you previously provided testimony in this proceeding?

A. Yes, I have previously provided testimony marked as Staff Exhibit 100 and Staff Exhibit 400.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to respond to the partial stipulation filed by PacifiCorp and the Citizens' Utility Board (CUB) on March 25, 2015.

Q. How is your testimony organized?

A. My testimony is organized as follows:

I. Summary of Staff Recommendations

II. Objections to Stipulation
1. Ammortiztion period
2. Interest rate
3. Embedded cost differiental
4. Bonus Depreciation
5. Stay-out provision
6. Coal Supply Agreements (CSAs)

I. SUMMARY OF STAFF RECOMMENDATIONS

Q. Will you please outline Staff's recommendations as stated in its previously filed testimony?

A. The PacifiCorp and CUB filed stipulation (PAC/CUB Stipulation) does not alter Staff's primary recommendations as filed in this proceeding. The PAC/CUB Stipulation is inconsistent with Staff's recommendations; therefore, Staff recommends that the Commission reject the agreement made by the two parties.

Staff's primary recommendation remains that, if the risk of the new long term Coal Supply Agreements (CSAs) is eliminated, the transaction, including the decisions to close the Deer Creek Mine, withdrawal from the Pension Trust, and the sale of the mining asserts, are in the public interest, but Staff recommends that for the ratemaking aspects of the transaction, the specific costs be recoverable in a future rate filing or general rate case with service on or after January 1, 2016.[1] In the alternative, Staff proposed adjustments to the proposed surcharge tariff, including consideration of the Embedded Cost Differential (ECD), removal of the return "on" the undepreciated plant investment in the Deer Creek Mine, a five-year amortization period on the surcharge tariff, and interest established at the effective blended treasury rate.

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[1] *See* Staff/400; Wittekind/20, lines 2-21.

Q. What is Staff's recommendation on the recently filed partial party stipulation?

A. In the event that the Commission is inclined to consider certain aspects of the PAC/CUB Stipulation, Staff recommends that the following revisions be made to the PAC/CUB Stipulation. First, the amortization period should be increased from two to four years in order to better match the life of relevant assets and better match the cost savings and benefits from the transaction. Second, the costs associated with this transaction should be included in calculating the ECD component of costs of other resources. Third, the Commission should require PacifiCorp to hold customers harmless for any liquidated damages costs or take and pay obligations associated with the CSAs should operation of the plant become uneconomic, or be shut down or converted. Fourth, for any regulatory asset established the amortization period should begin with the creation of that asset. For more information on this fourth issue, please see Staff/800, testimony of Staff witness Brian Bahr.

II. OBJECTIONS TO THE STIPULATION

Q. Who are the parties in the Stipulation?

A. The stipulating parties are CUB and PacifiCorp, herein collectively referred to as the "Settling Parties."

Q. Can you please provide a reminder of PacifiCorp's requested regulatory actions in UM 1712?

A. Yes. As stated in Staff's response testimony, PacifiCorp requests a Commission determination that the closure of the Deer Creek Mine is in the public interest, the sale of Mining Assets is appropriate, and that its decision to enter into the Transaction (plus the Medical Benefits Settlement) is prudent. Specifically, PacifiCorp requests:

1. Approval of its proposed Deer Creek Mine closure tariff, which is designed to be effective June 1, 2015, and recover closure costs in 2015 and 2016, which would be trued up once actual closure is complete in 2016.
2. An accounting order authorizing PacifiCorp to transfer the remaining plant balance for the Deer Creek Mine from electric plant in service, establish a regulatory asset, and accelerate the recovery of the asset through the Deer Creek Mine closure tariff, with an offset for Deer Creek costs now in rates, so that its investment in the mine is fully amortized before mine closure is complete in 2016;
3. An accounting order authorizing it to establish a regulatory asset for the 1974 Pension Trust withdrawal liability, an accounting order for the loss

associated with the Medical Benefits Settlement, and a determination that both of these decisions are prudent;

4. Approval of the sale of the Mining Assets, adding the loss of the sale to the Deer Creek Mine closure tariff for immediate amortization, with an offset for costs now in rates, so that the loss on the Mining Assets is fully amortized before mine closure is completed in 2016;
5. Approval of an accounting order reflecting costs associated with the coal supply agreements (CSAs) in 2015 in a regulatory asset for unrecovered investment. In addition, it seeks approval to: 1) recover the costs of the CSAs and other replacement fuel supply until such time that base net power costs are reset in the 2016 TAM through the Deer Creek Mine closure tariff; and, 2) inclusion of the CSAs in the 2016 TAM.
6. An order authorizing the Company to defer costs associated with the transaction to the extent necessary to effectuate the regulatory treatment requested.

Q. What issues were addressed by the Settling Parties?

A. The Settling Parties addressed the amortization period, interest rate, and ratemaking treatment of the proposed transaction and Settlement Loss.

Q. Does Staff have specific objections to the agreements reached between the Settling Parties?

A. Yes.

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Q. Please summarize the Settling Parties' position regarding the amortization period.

A. In the Stipulation, the Settling Parties agree to a two-year amortization period for the Deer Creek Mine Closure tariff, beginning January 1, 2016.

Q. What is Staff's recommendation on the appropriate amortization period?

A. The Deer Creek Mine plant in rate base, absent sale or closure, would be collected in rates at PacifiCorp's rate of return through 2019.[2] The benefits of the transaction, however, exist until 2029.[3] While Staff would normally desire to match the benefits and burdens over the same time period, it understands that the existing plant, absent sale or closure, would be fully depreciated in 2019. As a result, Staff supports a four-year amortization period that begins on January 1, 2016 and ends on December 31, 2019. Therefore, Staff recommends that the amortization period in the PAC/CUB Stipulation be extended from two years to four years.

Q. Please summarize the Settling Parties' position regarding an appropriate interest rate.

A. The Settling Parties agree to an interest rate of 3.31 percent accruing beginning June 1, 2015, and continuing through the two year amortization period, which begins January 1, 2016.[4]

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[2] *See* PAC/200; Stuver/5.
[3] *See* ICNU/100, Mullins/9 -10.
[4] *See* UM 1712 Stipulation, page 4, at 6 – 7.

Q. What was Staff's recommendation in regards to an appropriate interest rate?

A. Staff recommended using the then effective blended treasury rate, during the Staff recommended amortization period, to reflect a proper discount rate. This would mean that the applicable blended treasury rate would change each year over the course of the five-year period 2015 through 2019.

Q. What is Staff's response to the interest rate agreed upon in the Stipulation?

A. If the Commission agreed that the amortization period be extended to four years, Staff could then support an interest rate of 3.31 percent. Although this is a higher interest rate than the effective blended treasury rate, a longer amortization period would make the higher interest rate more reasonable as interest rates are projected to increase over time. While Staff expects the blended Treasury rate to increase as well, fixing the interest rate at 3.31 percent is reasonable in the context of a four-year amortization period.

Q. Does the Stipulation address Embedded Cost Differential?

A. No.

Q. What is Staff's recommendation regarding the ECD?

A. Staff continues to recommend that, in order to ensure that Oregon's value of the ECD is not diminished through this transaction, the costs associated with this transaction should be included in calculating the ECD component of costs of other resources. PacifiCorp argues that the ECD is only reset during a general rate revision so it would be inappropriate to update in this proceeding.[5] However, as discussed in Staff's previous testimony, Staff's primary recommendation is that these costs should be considered in PacifiCorp's next general rate case. In Staff's view, PacifiCorp should not be able to get special ratemaking treatment for these discrete costs outside of a general rate and also be able to avoid the implications of ratemaking if it was appropriately considered in relation to overall rates in a general rate case. In essence, PacifiCorp would be getting the benefit of treatment of these costs outside of a general rate case and also avoiding including the costs of this transaction, for the benefit of Oregon in the ECD, which would save ratepayers money and more appropriately reflect how these costs would typically be considered in a general rate case when the ECD is updated. Under the proposed Stipulation, PacifiCorp is able to avoid the implications of including the costs of this transaction in the ECD.

Furthermore, it is unclear as to whether or not PacifiCorp could posit that in a subsequent rate proceeding the costs of this transaction should not be incorporated in the ECD by reason of this stipulation being the resolution of this transaction and accompanying actions. Therefore, the Stipulation raises risk of harm to Oregon customers. For Oregon, the ECD provides protection of roughly 15 percent of cost increases associated with pre-2005 resources and these agreements are with regard to pre-2005 resources. Staff recommends that the Commission direct PacifiCorp to adjust the net costs to Oregon

[5] *See* PAC/400, Daley/17, at 9 – 10.

consistent with updating the ECD with respect to the change in costs associated with this filing.

Q. Does the Stipulation address Bonus Depreciation?

A. No.

Q. What is Staff's recommendation regarding Bonus Depreciation?

A. Upon further review of the Company's testimony and data request responses, PacifiCorp has satisfactorily addressed the Bonus Depreciation issue and Staff does not recommend an adjustment for this issue.

Q. Does the Stipulation address the stay-out provision?

A. No.

Q. What is Staff's recommendation regarding the stay-out provision?

A. To show that the stay-out provision is met, for any regulatory assets created prior to January 1, 2016, amortization should commence with their inception and be amortized over roughly a four-year period such that the amortization ends on December 31, 2019, to match the depreciable life, unless a longer time period is warranted for some regulatory assets. However, the costs would not be recovered in rates until January 1, 2016. The latter is captured in the Stipulation, but the former is not. As such, the Stipulation agreed upon by the Settling Parties is in violation of the stay-out provision.

Q. What is Staff's recommendation regarding the CSAs?

A. The PAC/CUB Stipulation states that the costs of the CSAs would be included in revenue requirements. The Stipulation is silent with regards to the treatment of the take or pay obligation or the risks associated with liquidated damages in the event that a plant is determined to be uneconomic, is shut down or converted.

Q. What does PacifiCorp state with regards to the CSAs?

A. The PAC/CUB Stipulation appears to stand on the Company's representation of the CSAs. As it appears in PAC/500, Crane/2, the testimony states that, "the intent of this provision [Article 8] is to allow the Company to terminate its purchase obligation when an environmental requirement makes it uneconomic to burn coal at Huntington…" In PAC/500, Crane/9, lines 17 through 22, it is clear that the CSA is an integral part of the transaction and results in achieving below market coal prices. Staff agrees, given PacifiCorp's assumptions in its analysis.

Q. Why does Staff think that there remain risks associated with the CSAs?

A. Staff still perceives a risk given the take or pay obligations and liquidated damages provisions. With respect to this risk, PacifiCorp states that the intent of Article 8 of the CSA is to allow PacifiCorp to terminate its purchase obligations, with no liquidated damages, when a new or existing environmental regulatory action affects PacifiCorp's ability to burn coal at the plant.[6] However, Article 8 applies only to laws and regulations that are enacted and promulgated, and there could be instances where prudent planning dictates that the most prudent action is closure or conversion of the plant, even though this decision is based upon potential future actions and not existing regulatory action.

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[6] *See* PAC/500; Crane/4-7; *see also* Exhibit PAC/104; Crane/20.

To illustrate, please consider the following example: Assume that a boiler fails at the Huntington plant and as such significant additional investment is required. In determining whether or not it is economic to repair or replace the boiler, the expected remaining life is relevant. Assume that in analyzing the expected future life, a range of scenarios is examined including the likelihood of environmental requirements. In such scenarios, it could be that the most prudent decision is to shut the plant down because the projected cost of future environmental compliance, in addition to the boiler repair, makes the investment uneconomic. In this scenario, PacifiCorp ceases plant operations due to expected regulatory mandates but still might be challenged under the terms of the contract. To provide assurances that the new CSA does reasonably protect customers from the take and pay obligations or liquidated damages, Staff recommends that the order include a condition of approval that PacifiCorp will hold customers harmless from any take and pay obligations or liquidated damages incurred, unless PacifiCorp can demonstrate by clear and convincing evidence that such damages arose from circumstances that were unforeseeable at the time they entered into the contract.

Q. Does this conclude your testimony?

A. Yes.

CASE: UM 1712
WITNESS: BRIAN BAHR

PUBLIC UTILITY COMMISSION
OF
OREGON

STAFF EXHIBIT 800

OBJECTIONS AND RESPONSIVE TESTIMONY

April 10, 2015

Q. Please state your name, occupation, and business address.

A. My name is Brian Bahr. My business address is 3930 Fairview Industrial Dr. SE, Salem, Oregon 97308-1088.

Q. Are you the same Brian Bahr that filed testimony previously in this proceeding?

A. Yes, I previously filed testimony in this proceeding, marked as Exhibits Staff/200-202 and Staff/500.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to provide objections to the stipulation between the Citizens' Utility Board (CUB) and PacifiCorp (Company) filed on March 25, 2015 (Stipulation). Specifically, my testimony responds to the inclusion of the settlement loss related to the Energy West Retiree Medical Obligation Settlement (Energy West Settlement Loss) and the timing of the amortization of the regulatory assets.

Q. How is your testimony organized?

A. The testimony is organized as follows:

1. Background of the Stipulation
2. Staff's Response to the Stipulation
3. Summary of Recommendations

1. BACKGROUND OF THE SETTLEMENT

Q. What did the Company propose in its application?

A. The Company originally requested authorization to record regulatory assets for the 1974 Pension Trust Withdrawal Liability (Pension Withdrawal Liability) and the loss resulting from the settlement of Energy West's Retiree Medical Obligation, as well as determinations of prudence for each action individually or as a whole of the Deer Creek Mine closure transaction. The Company proposed to include the Energy West Settlement Loss in a new tariff, to be amortized over one year beginning June 1, 2015.[1]

Q. What were the responses to the Company's proposal by the other parties?

A. The parties were generally favorable to the Company's proposal to account for its Pension Withdrawal Liability as a regulatory asset, but Staff and Industrial Customers of Northwest Utilities (ICNU) both recommended not addressing in this docket the Energy West Settlement Loss due to its severability from the overall transaction.[2]

Q. What did the Company propose in its reply testimony?

A. The Company revised its proposal slightly in its reply testimony, requesting the Energy West Settlement Loss be accounted for as a regulatory asset and addressed at the time of PacifiCorp's next general rate case rather than being included in the proposed tariff.[3]

Q. What does the Stipulation propose?

A. CUB and the Company agreed to a Stipulation in which regulatory assets are authorized for both the pension withdrawal and the Energy West Settlement

[1] *See* second paragraph of page 3 of Company's application.
[2] *See* Staff/200, Bahr/7, at line 16, and ICNU/100, Mullins/28, at line 11.
[3] *See* PAC/400, Dalley/10, at line 19. Note that the Company also modified its proposal by changing the amortization period from one year to two and accruing interest at the Company's authorized cost of debt for the regulatory asset recording the undepreciated investment in the Deer Creek Mine and the estimated closure costs. However, the regulatory asset in which the Energy West Settlement Loss would still accrue interest at the Company's authorized weighted cost of capital.

Loss, with interest accruing on the latter beginning on June 1, 2015, at the Company's authorized weighted average cost of capital.[4]

2. STAFF'S RESPONSE TO THE SETTLEMENT

Q. Does Staff object to the Stipulation?

A. Yes.

Q. What is the basis for Staff's objection to the Stipulation?

A. Staff recommends that the Commission reject the Stipulation based on its inappropriate inclusion of the Energy West Settlement Loss. If the Energy West Settlement Loss is included, Staff objects to the fact that amortization does not begin at the time the regulatory assets are recorded.

Q. Should the Energy West Settlement Loss be included for consideration in this docket?

A. No, as Staff has addressed in previous rounds of testimony, the Energy West Settlement Loss should not be considered in this docket because it is severable to the overall transaction and would ordinarily fall to regulatory lag.[5] The Company contends that the negotiated settlement would not have been reached absent the overall transaction;[6] however, Staff's position is supported by the fact the Company cannot back out of the Energy West settlement negotiation, but still has the option to not proceed with the other elements of the Deer Creek Mine transaction. Therefore, the Energy West Settlement Loss is not dependent on the overall transaction.

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[4] *See* UM 1712-Stipulation, page 5, at line 6.
[5] *See* Staff/200, Bahr/ 7, at line 12, and Staff/500, Bahr/3, at line 16.
[6] *See* PAC/500, Crane/10, at line 7.

Q. If the Commission were inclined to consider the Energy West Settlement Loss, would authorizing a regulatory asset for it be appropriate in this docket?

A. Maybe. The Company's reply testimony clarifies that while the Memorandum of Understanding was reached prior to the Company's application, the actual expense will not be incurred until June 2015.[7] Staff continues to recommend that the Settlement Loss is severable to the transaction and does not need to be addressed in this docket. However, if the Settlement Loss is addressed in this docket, Staff agrees that recording the loss as a regulatory asset is reasonable.

Q. Is it appropriate for the regulatory asset to begin amortizing on June 1, 2015, as proposed in the Stipulation?

A. Amortization of the regulatory assets should begin at the time the regulatory assets are recorded on the Company's books. If June 1, 2015, is the date the Energy West Settlement Loss is incurred, and the Company records on its books at that time a regulatory asset, then the regulatory asset should begin amortizing on that date as well.

The parties have also brought up the issue of the stay out clause, negotiated in the Company's last general rate case, which precludes the Company from

[7] *See* PAC/600, Stuver/7, at line 8.

requesting a general rate case effective prior to January 1, 2016.[8] The stipulation that was approved by the Commission in that case states:[9]

> *Pacific Power agrees to forego a general rate case filing in Oregon in 2014. Following the January 1, 2014 implementation of rates in this case and the potential June 1, 2014 implementation of the Lake Side 2 tariff rider, the earliest effective date for Pacific Power's next general rate case will be January 1, 2016. The parties may file for deferrals, but agree their goal is to minimize rate changes during this period.*

Though the overall transaction represents a significant event, Staff asserts that the stay out clause would be violated if amortization of the regulatory assets does not begin until they are put into rates.

3. <u>SUMMARY OF STAFF'S RECOMMENDATIONS</u>

Q. Please restate Staff's recommendations regarding the Pension Withdrawal Liability and Energy West Settlement Loss.

A. Staff's primary recommendation is that the Commission approve the Company's request to record a regulatory asset for its Pension Withdrawal Liability and determine the Company's decision to withdraw prudent. The Commission should not address the Energy West Settlement Loss in this docket; however, should the Commission consider it, amortization should begin at the time the regulatory asset is recorded on the Company's books.

Q. Does this conclude your testimony?

A. Yes.

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[8] See Staff/100, Wittekind/5, at line 15, ICNU/100, Mullins/8, at line 3, and CUB/100, Jenks-McGovern/16, at line 14.
[9] *See* Commission Order No. 13-474, Appendix A, page 5, at paragraph 15.