



# Oregon

Kate Brown, Governor

## Public Utility Commission

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March 19, 2015

### ***Via Electronic Filing***

OREGON PUBLIC UTILITY COMMISSION  
ATTENTION: FILING CENTER  
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### **RE: Docket No. UM 1712 - In the Matter of PACIFICORP, dba PACIFIC POWER, Application for Approval of Deer Creek Mine Transaction.**

This filing is to correct Linnea Wittekind's Exhibit number to read as 400 instead of Exhibit 100 (Staff/400).

Staff has added footnote 7 to Exhibit Staff/500, Bahr/4. Staff has also added two sentences to Staff/500, Bahr/1, see line 10 (Q) and line 11 (A).

Staff is including Exhibit 501 with this filing.

*/s/ Kay Barnes*

Kay Barnes

Filing on Behalf of Public Utility Commission Staff

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Email: kay.barnes@state.or.us

c: UM 1712 Service List (parties)

CASE: UM 1712  
WITNESS: LINNEA WITTEKIND

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**ERRATA  
STAFF EXHIBIT 400**

**Cross Answering Testimony**

**March 19, 2015**

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

2 A. My name is Linnea Wittekind. I am a Senior Financial Analyst in the Energy –  
3 Rates, Finance and Audit Section of the Oregon Public Utility Commission. My  
4 business address is 3930 Fairview Industrial Dr. SE, Salem, Oregon 97302.

5 **Q. Please describe your educational background and work experience.**

6 A. My Witness Qualification Statement is found in Exhibit Staff/101.

7 **Q. What is the purpose of your testimony?**

8 A. The purpose of my testimony is to summarize the response testimony of the  
9 intervening parties and to offer Staff recommendations in response that  
10 testimony.

11 **Q. How is your testimony organized?**

12 A. My testimony is organized as follows:  
13 1. Summary of Parties' Positions  
14 2. Staff's Response to Parties' Positions  
15 3. Summary of Recommendations

1                                   1.     **SUMMARY OF THE PARTIES' POSITIONS**

2     **Q. Who are the intervening parties in this proceeding?**

3     A. The intervening parties are the Sierra Club, Industrial Customers of Northwest  
4         Utilities (ICNU), and Citizens' Utility Board (CUB) herein collectively referred to  
5         as the "Parties."

6     **Q. Can you please provide a reminder of PacifiCorp's requested regulatory**  
7         **requests?**

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

12         Specifically, PacifiCorp requests:

13         1. Approval of its proposed Deer Creek Mine closure tariff, which is designed to  
14         be effective June 1, 2015, and recover closure costs in 2015 and 2016, which  
15         would be trued up once actual closure is complete in 2016.

16         2. An accounting order authorizing PacifiCorp to transfer the remaining plant  
17         balance for the Deer Creek mine from electric plant in service, establish a  
18         regulatory asset, and accelerate the recovery of the asset through the Deer  
19         Creek Mine closure tariff, with an offset for Deer Creek costs now in rates, so  
20         that its investment in the mine is fully amortized before mine closure is  
21         complete in 2016;

22         3. An accounting order authorizing it to establish a regulatory asset for the 1974  
23         Pension Trust withdrawal liability, an accounting order for the loss associated

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

3 4. Approval of the sale of the Mining Assets, adding the loss of the sale to the  
4 Deer Creek Mine closure tariff for immediate amortization, with an offset for  
5 costs now in rates, so that the loss on the Mining Assets is fully amortized  
6 before mine closure is completed in 2016;

7 5. Approval of an accounting order reflecting costs associated with the coal supply  
8 agreements (CSAs) in 2015 in a regulatory asset for unrecovered investment.

9 In addition, it seeks approval to: 1) recover the costs of the CSAs and other  
10 replacement fuel supply until such time that base net power costs are reset in  
11 the 2016 TAM through the Deer Creek Mine closure tariff; and, 2) inclusion of  
12 the CSAs in the 2016 TAM.

13 6. An order authorizing it to defer costs associated with the transaction to the  
14 extent necessary to effectuate the regulatory treatment requested.

15 **Q. Please provide a brief summary of the parties' positions.**

16 A. Overall the Parties' are not supportive of the Deer Creek Mine Closure tariff  
17 made in Request No. 1 or the accounting order requested in Request No. 2.

18 The Parties' do, however, support the accounting order requested in Request

19 No. 3, establishing a regulatory asset for the 1974 Pension Trust withdrawal

20 liability. As for the second part of Request No. 3, an accounting order for the

21 loss associated with the Medical Benefits Settlement, it is most of the Parties'

22 opinion and that this piece is severable and should not be included in the

23 transaction. Staff is of a similar opinion. Regarding Request No. 4, approval of

1 the mining assets Parties' do not support this request. Parties' are also  
 2 unresponsive of Request No. 5, an accounting order reflecting costs associated  
 3 with the CSAs in 2015 in a regulatory asset for unrecovered investment. As for  
 4 Request No. 6, an order authorizing it to defer costs associated with the  
 5 transaction to the extent necessary to effectuate the regulatory treatment  
 6 requested, CUB supports this request while other parties do not.

7 **Q. Are the Parties in agreement with PacifiCorp's requested regulatory**  
 8 **requests?**

9 A. The following table outlines the Parties' response testimony positions:

10 Table 1 – Parties' and Staff Position by PacifiCorp's Application Request

	CUB	ICNU	Sierra Club	OPUC Staff
Request No. 1	Opposed	Opposed	Not Addressed	Opposed
Request No. 2	Opposed	Opposed	Not Addressed	Opposed
Request No. 3	Supported	Supported	Not Addressed	Supported
Request No. 4	Supported	Not Addressed	Not Addressed	Supported
Request No. 5	Opposed	Opposed	Opposed	Opposed
Request No. 6	Supported	Opposed	Opposed	Opposed

11  
 12 **Q. Please summarize the Parties' positions on PacifiCorp's Request No. 1 -**  
 13 **the Deer Creek Mine Closure tariff.**

14 A. CUB states that it cannot support PacifiCorp's proposed rate recovery, which  
 15 includes approval of the proposed Deer Creek Mine closure tariff effective June

1 1, 2015.<sup>1</sup> ICNU argues that the Commission should reject PacifiCorp's  
2 ratemaking proposal and evaluate it in a future general rate proceeding.<sup>2</sup>  
3 Sierra Club's testimony did not directly address PacifiCorp's request for  
4 approval of the Deer Creek Mine closure tariff. Generally, the Parties seem  
5 concerned with, and are opposed to, single issue ratemaking through this  
6 proceeding.

7 **Q. Please summarize the Parties' positions on Request No. 2 – approval for**  
8 **an accounting order and regulatory asset to accelerate the recovery of**  
9 **the Deer Creek mine plant, with an offset for costs currently in rates.**

10 A. As previously stated, CUB does not support PacifiCorp's proposed rate  
11 recovery in this proceeding. PacifiCorp's last rate case was in 2013 and set  
12 rates for 2014 based upon a forecast 2014 test year.<sup>3</sup> While CUB agrees that  
13 there are costs associated with this transaction that were not forecast in the  
14 2014 test year, there may also be costs that were forecast into 2014 that are no  
15 longer occurring today.<sup>4</sup> CUB further states that there is a general prohibition  
16 on single-issue ratemaking.<sup>5</sup> As stated in ICNU's testimony, focusing on an  
17 isolated group of costs – the costs associated with the transaction outside of a  
18 general rate revision would constitute a form of single issue ratemaking.<sup>6</sup>  
19 Sierra Club does not specifically address this issue.

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<sup>1</sup> See CUB/100, Jenks-McGovern/14, at 18 and 19.

<sup>2</sup> See ICNU/100, Mullins/3, line 26 through Mullins/4, line 4.

<sup>3</sup> See Docket No. UE 263 Order No. 13-474, Appendix A, ¶ 15, at 5-6.

<sup>4</sup> See CUB/100; Jenks-McGovern/15, lines 24-26.

<sup>5</sup> See CUB/100; Jenks-McGovern/15, lines 19-20.

<sup>6</sup> See ICNU/100; Mullins/4, lines 8-10.

1 **Q. Please summarize the Parties' positions on Request No. 3 – approval for**  
2 **an accounting order authorizing PacifiCorp to establish a regulatory asset**  
3 **for the 1974 Pension Trust withdrawal liability and Medical Benefits**  
4 **Settlement, as well as a determination that both of these decisions are**  
5 **prudent.**

6 A. CUB agrees that the decisions to withdraw from the 1974 Pension Trust and to  
7 settle the Retiree Medical Obligation were prudent and recommends that the  
8 settlement loss should be included in a deferral, with the other transaction  
9 costs. However, if an accounting order to create a regulatory asset were  
10 deemed necessary, CUB has no objection.<sup>7</sup> Without specifically addressing  
11 the 1974 Pension Trust withdrawal, Sierra Club agrees with Staff that the  
12 settlement loss should not be considered in this proceeding. ICNU's position  
13 with regard to the settlement loss is consistent with Staff's and Sierra Club's,  
14 but also proposes that the amount of the regulatory asset for the pension  
15 withdrawal liability be capped at \$39.4 million. For further discussion and the  
16 Parties' positions see Staff/500; Bahr/1 at line 1 through Bahr/5 at line 6.

17 **Q. Please summarize the Parties' positions on Request No. 4 - approval of**  
18 **the sale of mining assets.**

19 A. CUB supports approval of the sale, with a position that the loss on the sale  
20 should be included in a deferral with an offset for costs currently in rates.<sup>8</sup> ICNU  
21 does not specifically endorse or reject the sale of assets. However, ICNU  
22 claims that the Company did not remove a value representing the return on the

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<sup>7</sup> See CUB/100; Jenks-McGovern/20, line 13.

<sup>8</sup> CUB/100; Jenks-McGovern/21



1 mining assets already in rates from its calculation. ICNU proposes an  
2 adjustment to account for this portion of return earned by the Company. Sierra  
3 Club does not object to the conclusion that closure of Deer Creek mine is in the  
4 best interest of customers,<sup>9</sup> but remains silent on the Sale of Mining Assets  
5 specifically. See Staff testimony Staff/600; Crider/3 lines 2 through 15 for a  
6 summary of Parties' positions with regards to Request No. 4.

7 **Q. Please summarize the Parties' positions on Request No. 5 – request for**  
8 **an accounting order to create a regulatory asset reflecting costs**  
9 **associated with CSAs in 2015.**

10 A. The primary concern among all Parties regarding the CSA is the risk to  
11 ratepayers from being locked into a long-term coal supply contract in the event  
12 that either Hunter or Huntington generation plant becomes uneconomic to  
13 operate for any reason. Parties want assurance that ratepayers will not pay for  
14 unused coal in the event that the cost of the plant's environmental compliance  
15 becomes too great or if conversion to natural gas becomes a more economical  
16 alternative when compared to continued coal operation. The terms of the CSA  
17 require the Company to purchase a minimum amount of coal regardless of  
18 plant need. The Company has negotiated an exit clause in the contract which  
19 allows exit without damages in the case that new regulations affect the plant's  
20 ability to operate economically. It is unclear among parties exactly which  
21 events would trigger the clause, and which would not. It is the uncertainty  
22 about the applicability of the clause, and the potential cost of litigation

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<sup>9</sup> Sierra Club/100; Fisher/6

1 surrounding its interpretation, that represents business risk. See Staff  
2 testimony Staff/Crider; 600/4 at line 3 through Crider/6 at line 5, for a detailed  
3 summarization of Parties' positions with regards to Request No. 5.

4 **Q. Please summarize the Parties' positions on Request No. 6 - an order**  
5 **authorizing it to defer costs associated with the transaction.**

6 A. CUB supports deferring the costs at issue in this proceeding for later  
7 recovery.<sup>10</sup> ICNU did not specifically comment on the request of for a deferral  
8 because it recommends that the Commission reject PacifiCorp's proposed  
9 ratemaking and evaluate it in a future general rate proceeding instead. Sierra  
10 Club did not address this issue in its testimony.

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<sup>10</sup> See CUB/100; Jenks-McGovern/18, line 13.

1                   **2. STAFF'S RESPONSE TO PARTIES' POSITIONS**

2           **Q. Please summarize ICNU's proposal to account for the Embedded Cost**  
3           **Differential (ECD).**

4           A. ICNU argues that PacifiCorp did not account for the ECD provision of the 2010  
5           Protocol when it performed the inter-jurisdictional cost allocation for the  
6           expense and investment associated with the transaction.<sup>11</sup> Accordingly, ICNU  
7           recommends that the Commission apply this additional credit to any amount  
8           collected, or included in a regulatory asset, associated with the transaction in  
9           this proceeding.<sup>12</sup> According to ICNU, if the ECD approved in Docket No. UE  
10          263 had reflected the one-year amortization that the Company proposed in this  
11          proceeding, the ECD credit amount would increase by approximately \$3.7  
12          million.<sup>13</sup> CUB and Sierra Club did not address the ECD provision.

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

14          A. Staff supports ICNU's proposal in concept but has not yet verified the  
15          calculation of the \$3.7 million ECD credit. Staff continues to recommend that, in  
16          order to ensure Oregon's value of the ECD is not diminished through this  
17          transaction, the costs associated with this transaction should be included in  
18          calculating the ECD component of costs of "other resources."

19          **Q. What is Staff's position regarding ICNU's proposal to cap the 1974**  
20          **Pension Trust withdrawal liability at \$39.4 million?**

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<sup>11</sup> See ICNU/100; Mullins/20, lines 4-6.

<sup>12</sup> See ICNU/100; Mullins/21, lines 18-20.

<sup>13</sup> See ICNU/100; Mullins/21, lines 16 – 18.

- 1 A. Staff does not support ICNU's proposed cap. Staff recommends that the  
2 Commission approve an accounting order to establish a regulatory asset and  
3 reserve for a future ratemaking docket the right to determine what amount of  
4 the asset should actually be included in rates.

5 **Q. What is the stay-out provision?**

- 6 A. In Order No. 13-474, the Commission adopted a stipulation that stated:

7 The Company agrees to forego a general rate filing in Oregon in 2014.  
8 Following the implementation of rates on January 1, 2014, in this case  
9 and the implementation of Lake Side 2 tariff rider on approximately  
10 June 1, 2014, the earliest proposed rate effective date for the  
11 Company's next general rate case filing will be January 1, 2016. The  
12 Stipulating Parties may file for deferrals during the general rate case  
13 stay-out period, but such filings will be subject to the Commission's  
14 guidelines for deferrals set forth in Docket UM 1147, unless otherwise  
15 authorized by the Commission. The Stipulating Parties agree that their  
16 goal is to minimize rate changes during the general rate case stay-out  
17 period.

18  
19 **Q. Please address the Parties' positions on the stay-out provision.**

- 20 A. As stated in CUB's testimony, PacifiCorp's proposed ratemaking treatment in  
21 this proceeding ignores that PacifiCorp agreed that it would forego general rate  
22 changes until January 1, 2016.<sup>14</sup> CUB also argues that PacifiCorp made this  
23 filing under the general rate making statute.<sup>15</sup> ICNU agrees that the proposed  
24 rate increase in this proceeding is inconsistent with the stipulation and argues  
25 that PacifiCorp's proposal for a 3.4 percent rate increase, on June 1, 2015, is  
26 clearly inconsistent with the intent of parties "to minimize rate changes during  
27 the general rate case stay-out period."<sup>16</sup>

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<sup>14</sup> See CUB/100; Jenks-McGovern/16, lines 14-16.

<sup>15</sup> See CUB/100; Jenks-McGovern/17, line 14 (ORS 757.210).

<sup>16</sup> See ICNU/100; Mullins/8, lines 19-21.

1 **Q. What is Staff's recommendation on the stay-out provision?**

2 A. Staff argues that a tariff surcharge in 2015 through a tariff filing under  
3 ORS 757.210 is inconsistent with the plain meaning and the intent of the  
4 negotiated and Commission-approved stay-out provision.

5 **Q. What impact would the stay-out provision have on PacifiCorp's tariff**  
6 **surcharge proposal?**

7 A. Application of the stay-out provision would result in PacifiCorp absorbing  
8 through regulatory lag approximately 58 percent of the tariff closure costs and  
9 charging ratepayers for approximately 42 percent of the tariff closure costs,  
10 assuming a one-year amortization period.<sup>17</sup>

11 **Q. Staff's alternative recommendation suggested a two-year amortization**  
12 **period for a tariff surcharge, does any party propose a different**  
13 **amortization period?**

14 A. Yes. In order to properly match costs with benefits, ICNU recommends that the  
15 Commission should amortize any regulatory account approved in this  
16 proceeding over the same period.<sup>18</sup> ICNU states that based on PacifiCorp's  
17 analysis, the net benefits of the transaction will accrue to ratepayers over a  
18 period ending December 2029.<sup>19</sup> Therefore, ICNU recommends that the  
19 transaction be amortized over the same period.<sup>20</sup>

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<sup>17</sup> 7/12<sup>th</sup> of the tariff surcharge costs would be absorbed through regulatory lag in 2015 and 5/12<sup>th</sup> would be charged to ratepayers in 2016, respectively.

<sup>18</sup> See ICNU/100; Mullins/2, lines 11-13.

<sup>19</sup> See ICNU/100; Mullins/9, lines 17-18.

<sup>20</sup> See ICNU/100; Mullins/9, lines 20-21.

1 CUB recommends a recovery period that is no longer than five years.<sup>21</sup>

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

3 A. In its response testimony, Staff had an alternative recommendation that  
4 proposed a two-year amortization period. The Deer Creek mine plant in rate  
5 base, absent sale or closure, would be collected in rates at PacifiCorp's rate of  
6 return through 2019.<sup>22</sup> Because PacifiCorp is not allowed to earn a rate of  
7 return on plant that is no longer used and useful, PacifiCorp prefers a short,  
8 one-year amortization schedule. However, the shorter the amortization period  
9 the less the ratepayer benefits match the ratepayer costs. In viewing the  
10 testimonies to date, Staff agrees that a longer time period matches costs and  
11 benefits better. In recognizing the Company's interest in a shorter amortization  
12 time period, and the 2019 date mentioned above, Staff has adjusted its  
13 recommendation and supports a five-year amortization period.

14 **Q. What interest rate should apply during this amortization time period?**

15 A. Staff supports using the then effective blended treasury rate, during the  
16 coincident amortization, be used to reflect a proper discount rate while not  
17 allowing the company a return as consistent with the ratemaking treatment for  
18 Trojan. This would mean that the applicable blended treasury rate would  
19 change each year over the course of the five-year period.

20 **Q. What is ICNU's position on bonus depreciation?**

21 A. ICNU recommends that the Commission require the Company to recalculate  
22 the revenue requirement approved in Docket No. UE 263, assuming bonus

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<sup>21</sup> See CUB/100; Jenks-McGovern/8, line 5.

<sup>22</sup> See PAC/200; Stuver/5.

1 depreciation was extended until 2014. Furthermore, ICNU recommends that  
2 the revenue requirement benefit associated with bonus depreciation in 2014 be  
3 included in the regulatory asset sought in this proceeding.<sup>23</sup> Based on ICNU's  
4 calculation the bonus depreciation benefit associated with Lake Side II, would  
5 result in a \$2.8 million Oregon allocated reduction to the Company's proposed  
6 recovery under Schedule No. 198.<sup>24</sup>

7 **Q. What is Staff's recommendation with regards to bonus depreciation?**

8 A. Staff has not reached a final position on this issue and is awaiting the  
9 Company's response to take that into consideration.

10 **Q. What is ICNU's position on whether or not the mine closure is in the  
11 public interest test under ORS 757.140?**

12 A. ICNU's testimony states that given the high degree of uncertainty surrounding  
13 the future operation of the Huntington facility; it may not be in the public interest  
14 for PacifiCorp to execute a long-term coal supply agreement at this time.<sup>25</sup>

15 **Q. What are CUB and Sierra Club's positions on whether or not the mine  
16 closure is in the public interest under ORS 757.140?**

17 A. CUB's and Sierra Club's position on whether the mine closure is in the public  
18 interest is dependent on the interpretation of the environmental provision of the  
19 coal supply contract. If the contract protects customers from take or pay costs  
20 when environmental regulations make a plant uneconomic, then CUB believes

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<sup>23</sup> See ICNU/100; Mullins/27, lines 19 - 22.

<sup>24</sup> See ICNU/100; Mullins/28, lines 1 - 3.

<sup>25</sup> See ICNU/100; Mullins/3, lines 7-9.

1 that the transaction is in the public interest.<sup>26</sup> Sierra Club states that the  
2 Commission may approve the request to close the Deer Creek mine and  
3 conditionally reject the Company's request to approve the Huntington CSA.<sup>27</sup>

4 **Q. What is Staff's recommendation on whether or not the closure of the mine**  
5 **is in the public interest under ORS 757.140?**

6 A. Staff supports the sale of Mining Assets if given the proper ratemaking  
7 treatment as discussed in Staff's Response Testimony.<sup>28</sup> Staff concurs with  
8 CUB and ICNU that any amount currently collected in rates based on the  
9 Mining Assets should be removed from rates. ICNU estimates this value based  
10 on the Company's calculation. The Company's calculation is included in Exhibit  
11 Staff 601.

12 **Q. What is Sierra Club's position on the Huntington CSA?**

13 A. Sierra Club argues that the Commission should reject PacifiCorp's request to  
14 approve the Huntington CSA.<sup>29</sup> Sierra Club further states that a CSA would be  
15 acceptable under the following conditions:<sup>30</sup>

- 16 1. PacifiCorp commits to review the forward-looking economics of  
17 Huntington as if the CSA could be exited at its discretion;
- 18 2. PacifiCorp commits to hold ratepayers harmless for any and all coal  
19 liquidated damages and/or take-or-pay penalties resulting from an early

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<sup>26</sup> See CUB/100; Jenks-McGovern/22, lines 7 - 10.

<sup>27</sup> See Sierra Club/100; Fisher/30, lines 9 - 11.

<sup>28</sup> Staff/300; Crider/8

<sup>29</sup> See Sierra Club/100; Fisher/30, line 9-11.

<sup>30</sup> See Sierra Club/100; Fisher/30, line 12-21; Sierra Club/100; Fisher/31, lines 1-3.



- 1 exit from the CSA if a forward-looking assessment of Huntington shows  
2 that either one or both of the units at the plant are non-economic;
- 3 3. PacifiCorp commits to modeling the operations of Huntington with a  
4 variable cost of fuel for the Huntington CSA;
- 5 4. PacifiCorp commits to assess the forward-looking economics of the  
6 Huntington units, separately, for any capital costs expected to be  
7 incurred at the units in excess of \$25 million, when such requirements  
8 are known.

9 **Q. What is Staff's position on the Huntington CSA?**

- 10 A. Staff shares the concern raised by CUB and Sierra Club that the exit clause  
11 might not be broad enough to adequately protect ratepayers.

12 **Q. What does CUB propose for regulatory treatment of the costs of the  
13 proposed transaction?**

- 14 A. CUB recommends that the costs of the transaction through a deferral, as  
15 appropriate, for ratemaking treatment in a later proceeding.<sup>31</sup> CUB's proposed  
16 deferral is not a standard request for a deferral. Instead it proposes that no  
17 accelerated depreciation be included. CUB also does not believe there needs  
18 to be any change in amortization. However, because current rates include both  
19 return of and return on the investment in Deer Creek, CUB believes that a  
20 deferral should include a credit representing the difference between the  
21 Company's authorized rate of return and the time value of money. Because the  
22 amortization period for the deferral has not been chosen, CUB believes the

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<sup>31</sup> See CUB/100; Jenks-McGovern/19, lines 16-18.

1 interest rate in this calculation should be no more than 3.31 percent.<sup>32</sup> Beyond  
2 accelerated depreciation, CUB believes that most or all of these costs and  
3 revenues should fit within a traditional deferral.<sup>33</sup> One of such costs CUB  
4 includes in its proposed deferral is the settlement loss resulting from the  
5 Medical Benefits Settlement between Energy West and the UMWA.<sup>34</sup>

6 **Q. What is Staff's position on CUB's proposed deferral?**

7 A. Staff does not support CUB's proposed deferral. The deferral as proposed has  
8 a higher interest rate than what is recommended by Staff and in Staff's opinion  
9 does not properly honor the stay-out provision. In its response testimony, Staff  
10 primary recommendation was to find the transaction in the public interest under  
11 ORS 757.140 and wait until the next general rate proceeding to consider  
12 closure costs. With regards to the inclusion of the settlement loss from the  
13 Medical Benefits Settlement, Staff's primary recommendation is that the  
14 Commission should not address the settlement loss in this docket because it  
15 occurred prior to the Company's Application and the transaction is not  
16 conditioned on the approval of the prudence of the Medical Benefit Settlement  
17 or the creation of a regulatory asset for the settlement loss.

18 Staff's alternative recommendation was a tariff surcharge under certain  
19 parameters. Although Staff recognizes that the Commission has authority to  
20 order the costs of the transaction deferred, a better approach is to wait until a  
21 future rate case or establish a tariff surcharge in this proceeding. If the

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<sup>32</sup> See CUB/100; Jenks-McGovern/19, lines 1 – 7.

<sup>33</sup> See CUB/100; Jenks-McGovern/19, lines 11 – 12.

<sup>34</sup> See Exhibit CUB/100; Jenks-McGovern/18, line 13; Jenks-McGovern/19, line 11; Jenks-McGovern/20, line 14.

1 Commission adopts Staff's alternative recommendation, which is to approve an  
2 accounting order for the creation of a regulatory asset for the settlement loss  
3 and determine the Company's settlement of the Retiree Medical Obligation  
4 prudent, Staff does not support inclusion of the settlement loss amount in a  
5 deferral but instead recommends using a regulatory asset.

6 **Q. What is CUB's position on an interest rate to be applied to the**  
7 **undepreciated investment in plant being retired?**

8 A. CUB proposes that the methodology used match the interest rate to the  
9 recovery period and proposes using a 5-year Treasury rate of 1.51 percent.<sup>35</sup>

10 As an alternative, CUB proposes that the interest rate be based on applying  
11 PacifiCorp's cost of debt to 48 percent of the return and applying the  
12 appropriate Treasury to the remaining 52 percent. Using the two and five year  
13 Treasury bonds this gives an interest rate between 2.85 and 3.31.<sup>36</sup>

14 **Q. Does Staff's position agree with CUB's proposed range for interest rates?**

15 A. Staff supports using the Blended Treasure Rate.

16 **Q. What is CUB's overall recommendation?**

17 A. CUB recommends the Commission find that the early closure of the mine is in  
18 the public interest. CUB recommends that an interest rate of up to 1.51 percent  
19 be used to compensate the Company for the time value of money. CUB also  
20 supports alternative methodology that produces an interest rate between 2.85  
21 and 3.31 percent.

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<sup>35</sup> See CUB/100; Jenks-McGovern/8, lines 7-9.

<sup>36</sup> See CUB/100; Jenks-McGovern/10, lines 9-12.

1 With regards to prudence of the overall transaction, CUB's recommendation is  
2 dependent on the interpretation of the environmental provision of the coal  
3 supply contract. If it protects customers from take or pay costs when  
4 environmental regulations make a plant uneconomical, the CUB believes the  
5 transaction is prudent.

6 CUB does not support the Company's proposed ratemaking treatment for this  
7 transaction due to the fact that CUB believes such a rate change violates the  
8 prohibition on single issue ratemaking and the stay out provision. CUB instead  
9 supports the Company's request for a deferral filed as part of the transaction  
10 allowing the Company to recover prudently incurred costs associated with this  
11 transaction.<sup>37</sup>

12 **Q. What is ICNU's overall recommendation?**

13 A. ICNU recommends that the Commission find that the transaction is the not in  
14 the public interest, unless the Company agreed that it would exclude any long-  
15 term coal contract liabilities or costs related to the Huntington CSA in any future  
16 analysis evaluating the retirement of the Huntington facility.<sup>38</sup>

17 ICNU also recommends that the UMWA retiree medical settlement be  
18 eliminated from the Transaction costs eligible for accounting under  
19 ORS 757.140(2).<sup>39</sup>

20 As for Bonus Depreciation ICNU, recommends that the Commission require the  
21 Company to recalculate the revenue requirement approved in Docket No. UE

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<sup>37</sup> See CUB/100; Jenks-McGovern/21 lines 20 - 22, CUB/100; Jenks-McGovern/22 lines 1 - 17.

<sup>38</sup> See ICNU/100; Mullins/30 lines 1 - 4.

<sup>39</sup> See ICNU/100; Mullins/29 lines 12 -13.

1 263, assuming bonus depreciation was extended until the end of 2014. In  
2 addition, ICNU proposes that the benefit associated with the bonus  
3 depreciation be included in the regulatory asset sought in this proceeding.<sup>40</sup>

4 ICNU recommends that if any ratemaking is approved in this proceeding, the  
5 return on mining assets currently reflected in rates must be removed from any  
6 amounts the Company collects or accrues to a regulatory asset.

7 With regards to ECD, ICNU recommends the Commission apply the additional  
8 credit to any amount collected, or included in a regulatory asset, associated  
9 with the transaction in this proceeding.<sup>41</sup>

10 **Q. What is Sierra Club's overall recommendation?**

11 A. While Sierra Club does not comment or speak to issues raised by other  
12 parties', they do however have specific recommendations regarding the  
13 Huntington CSA. Sierra Club recommends the Commission should  
14 conditionally reject the Company's request to approve the Huntington CSA.<sup>42</sup>  
15 Sierra Club also outlines four conditions under which the CSA could be  
16 acceptable which Staff has outlined earlier testimony. Sierra Club's testimony  
17 also states the Commission may approve the request to close the Deer Creek  
18 Mine.<sup>43</sup>

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<sup>40</sup> See ICNU/100; Mullins/27 lines 19 -22.

<sup>41</sup> See ICNU/100; Mullins/21 lines 19 – 20.

<sup>42</sup> See Sierra Club/100; Fisher/30 lines 10 – 11.

<sup>43</sup> See Sierra Club/100; Fisher/30 line 9.

1 **3. SUMMARY OF RECOMMENDATIONS**

2 **Q. Does Staff recommend that the Commission should make prudence**  
3 **determinations in this proceeding?**

4 A. Staff agrees that the decisions to enter into the Deer Creek Mine closure,  
5 withdraw from the Pension Trust, and the sale of mining assets are prudent.  
6 Staff does not believe it is appropriate at this time to address the prudence of  
7 the Medical Benefits Settlement. Staff supports the CSA contracts assuming  
8 the business risk to ratepayers is eliminated with respect to the termination of  
9 the CSA in the event a forward-looking assessment of Huntington shows that  
10 either one or both of the units at the plant are non-economic. Staff supports  
11 reserving for future ratemaking, the specific costs to be recoverable in a future  
12 tariff filing or general rate case effective with service on and after January 1,  
13 2016.

14 **Q. Does Staff recommend approval of the closure tariff costs outside of a**  
15 **general rate proceeding?**

16 A. No. The consideration of closure costs outside of a general rate proceeding  
17 amounts to a form of single issue ratemaking, which is generally disfavored. In  
18 addition, the used and useful requirement does not require that these costs be  
19 collected before the closure of the mine so there is no compelling reason to  
20 violate general ratemaking principles and create special ratemaking treatment  
21 for the costs associated with this transaction.

22 **Q. Is Staff concerned about the risk of being bound to long-term CSAs?**

1 A. Yes. PacifiCorp negotiated what appears to be a favorable provision to avoid  
2 liquidated damages if it can longer burn coal at the plants. However, there  
3 could be substantial harm to Oregon ratepayers if the provision does not work  
4 as PacifiCorp claims it will. Therefore we support in concept the provisions as  
5 stated by the Sierra Club. In order to eliminate the risk of being contractually  
6 bound to a long-term CSA, Staff recommends that the Commission condition  
7 approval upon PacifiCorp assuming the risk of damages should operation of the  
8 coal plants become uneconomical and are shut down or converted.

9 **Q. Do you have any other recommendations?**

10 A. Yes. For the regulatory assets Staff offers as alternatives for handling various  
11 components of PacifiCorp's filing, amortization of such assets should begin  
12 upon implementation of each respective component, while recovery in rates  
13 would occur at the earliest on January 1, 2016, consistent with the stay-out  
14 provision.<sup>44</sup>

15 **Q. Does this conclude your testimony?**

16 A. Yes.

17

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<sup>44</sup> See Staff/500, Bahr/9, line 16 and Bahr/9, line 19.

CASE: UM 1712  
WITNESS: BRIAN BAHR

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**ERRATA  
STAFF EXHIBIT 500**

**Cross-Answering Testimony**

**March 19, 2015**



1 **Q. Please state your name, present position with the Oregon Public Utility**  
2 **Commission, and business address.**

3 A. My name is Brian Bahr. I am employed as a Senior Utility Analyst in the  
4 Energy - Rates, Finance, and Audit Division of the Utility Program. My  
5 business address is 3930 Fairview Industrial Dr. SE, Salem, Oregon 97308.

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

8 A. Yes, I previously filed testimony in this proceeding, marked as Exhibit  
9 Staff/200-202.

10 **Q. Did you prepare an exhibit to accompany your testimony?**

11 A. Yes, Staff prepared Exhibit Staff/501, consisting of one page.

12 **Q. What is the purpose of your testimony in this proceeding?**

13 A. The purpose of my testimony is to summarize and address issues associated  
14 with aspects of PacifiCorp's (Company) Application for Approval of Deer Creek  
15 Mine Transaction (Application) relating to pensions and medical benefits.

16 **Q. How is your testimony organized?**

17 A. The testimony is organized as follows:

- 18 1. Summary of Parties' Positions  
19 2. Staff's Response to Parties' Positions  
20 3. Summary of Recommendations

**1. SUMMARY OF PARTIES' POSITIONS**

1 **Q. Please summarize the parties' positions with regard to the Company's**  
2 **withdrawal from the 1974 pension trust.**

3 A. One of the primary benefits of the transaction is the withdrawal from the 1974  
4 Pension Trust (Trust). The parties to the docket appear to have a generally  
5 favorable position in regard to the Company's proposed decision to withdraw  
6 from the Trust, while not necessarily agreeing on the ratemaking treatment of  
7 the withdrawal liability. The Company is requesting the Commission determine  
8 the Company's decision to withdraw from the Trust is prudent and to approve  
9 an accounting order to establish a regulatory asset for the associated  
10 withdrawal liability amount.

11 Staff continues to recommend that the Commission find the Company's  
12 decision to withdraw from the Trust prudent and approve an accounting order  
13 to create a regulatory asset, but reserve the Commission's decision on the  
14 ratemaking treatment for a future ratemaking proceeding.<sup>1</sup> This approach is  
15 consistent with the Company's request and with Commission precedent, and  
16 recognizes the benefit of the transaction without including related costs until  
17 such time as they can be appropriately reviewed and addressed.

18 CUB stated that, subject to interpretation of the environmental provision of the  
19 coal supply contract, the overall transaction is prudent, and that the Company's  
20 request for an accounting order to establish a regulatory asset for the

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<sup>1</sup> See Exhibit Staff/200; Bahr/19, line 4.

1 withdrawal liability is reasonable.<sup>2</sup> Sierra Club's testimony did not directly  
2 address the prudence or accounting treatment related to withdrawal from the  
3 Trust. Industrial Customers of the Northwest Utilities (ICNU) proposes that the  
4 regulatory asset for the withdrawal liability be capped at the present value of  
5 annual withdrawal payments in perpetuity, using a discount rate of the cost of  
6 capital stipulated to in Docket No. UE 263, 7.62 percent.<sup>3</sup> This proposal would  
7 ostensibly protect customers from paying more than the withdrawal liability's  
8 current value should the Company negotiate a lump-sum withdrawal payment.

9 **Q. Please summarize the Parties' positions with regard to the UMWA Retiree**  
10 **Medical Obligation settlement.**

11 A. PacifiCorp states that a benefit of the overall transaction is that the Company  
12 was able to negotiate a lump-sum payment to UMWA for its Retiree Medical  
13 Obligation.<sup>4</sup> Accounting standards require the acceleration of unrecognized  
14 losses, which PacifiCorp requests approval of an accounting order to record as  
15 a regulatory asset.

16 Because the actual cost creating event (the settlement) occurred in the past,  
17 prior to the Application, and the overall transaction is not dependent on the  
18 Medical Benefits Settlement, Staff recommended that the settlement loss be  
19 subject to regulatory lag and not addressed in this docket. Alternatively, Staff  
20 stated that if the Commission were inclined to address it in this docket, the  
21 decision to settle the Retiree Medical Obligation should be found prudent and

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<sup>2</sup> See Exhibit CUB/100; Jenks-McGovern/22, line 7, and Jenks-McGovern/20, line 8.

<sup>3</sup> See Exhibit ICNU/100; Mullins/16, line 7.

<sup>4</sup> See Exhibit PAC/100; Crane/16, line 18.

1 the Commission should approve an accounting order to create a regulatory  
2 asset for the settlement loss.<sup>5</sup>

3 CUB agreed with the Company that the decision to settle the Retiree Medical  
4 Obligation was prudent and recommended that, in addition to the transaction's  
5 other costs (except for the undepreciated investment in the mine), the  
6 settlement loss should be included in a deferral. CUB would have no  
7 objections to the creation of a regulatory asset through an accounting order,  
8 though, if that were found necessary.<sup>6</sup> Alternatively, Sierra Club and ICNU  
9 both agreed with Staff that it is inappropriate for the settlement loss to be  
10 included in this docket.

11 Sierra Club testified that the Company's analysis of the transaction case is  
12 significantly overstated relative to the market case, in part because the market  
13 case incorrectly excludes the full benefit of the Medical Benefits Settlement.  
14 Assuming the Medical Benefits Settlement was reached because the Company  
15 intended to close or sell the mine, the Company could expect the UMWA to  
16 sue if the mine were not closed or sold. However, because the mine was  
17 closed already in December 2014, the UMWA would have no recourse to sue if  
18 the transaction is not approved.<sup>7</sup> Therefore, the Medical Benefits Settlement is  
19 not conditioned on regulatory approval of the CSAs.<sup>8</sup>

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<sup>5</sup> See Exhibit Staff/200; Bahr/18, line 8.

<sup>6</sup> See Exhibit CUB/100; Jenks-McGovern/20, line 13.

<sup>7</sup> According to an SNL article published March 18, 2015 "Berkshire Hathaway coal unit pushes back on legal challenge from labor", the mine is apparently not yet closed. See Exhibit Staff/501, Bahr/1.

<sup>8</sup> See Exhibit Sierra Club/100; Fisher/20, line 8.

1 ICNU concludes that the settlement loss should not be considered in this  
2 docket for three reasons. First, the Medical Benefits Settlement could have  
3 been entered into regardless of the rest of the overall transaction and is not  
4 intrinsically linked to the closure of the mine. Second, the Medical Benefits  
5 Obligation was settled prior to the Company's Application, which would  
6 constitute retroactive ratemaking and preclude the Company from recovering  
7 its costs under ORS 757.140(2). Third, the settlement loss represents a "paper  
8 loss" rather than an actual expenditure incurred.<sup>9</sup>

## 2. STAFF'S RESPONSE TO PARTIES' POSITIONS

9 **Q. Please address ICNU's proposal to cap the 1974 Pension Trust**  
10 **withdrawal liability at \$39.4 million.**

11 A. ICNU proposes that the regulatory asset for the withdrawal liability be capped  
12 at \$39.4 million. This is the present value of annual withdrawal payments in  
13 perpetuity, using a discount rate of 7.62 percent, which is the overall cost of  
14 capital stipulated to in Docket No. UE 263.<sup>10</sup> However, consistent with Staff's  
15 recommendation to approve prudence of the Company's decisions without  
16 addressing ratemaking treatment at this time, Staff concludes that it is not  
17 appropriate to address ICNU's proposal until such time as ratemaking  
18 treatment for the regulatory asset is determined.

19 Should the Commission be inclined to address ratemaking treatment in this  
20 docket for the regulatory asset associated with the withdrawal liability, Staff

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<sup>9</sup> See Exhibit ICNU/100; Mullins/28, line 7.

<sup>10</sup> See Exhibit ICNU/100; Mullins/16, line 7.

1 does not support ICNU's proposed cap. As noted in the Company's testimony,  
2 accounting standards require the Company to record the present value of the  
3 liability using a risk free rate.<sup>11</sup> Recording a regulatory asset for an amount  
4 discounted using a higher rate would not allow the Company to completely  
5 offset the withdrawal liability, even were the Commission to determine the cost  
6 to be prudent. Again, Staff recommends that the Commission approve an  
7 accounting order to establish a regulatory asset and reserve for a future  
8 ratemaking docket the right to determine what amount of the asset should  
9 actually be included in rates.

10 **Q. Please address CUB's proposal to include the UMWA Retiree Medical**  
11 **Obligation settlement loss in a deferral.**

12 A. CUB proposes that certain costs of the transaction be included in a deferral,  
13 including the settlement loss resulting from the Medical Benefits Settlement  
14 between Energy West and the UMWA.<sup>12</sup> Staff witness Wittekind addresses  
15 CUB's overall proposal, but specifically with regard to the inclusion of the  
16 settlement loss in a deferral, Staff does not support this position. As stated  
17 previously, Staff's primary recommendation is that the Commission should not  
18 address the settlement loss in this docket because it occurred prior to the  
19 Company's Application and the transaction is not conditioned on the approval  
20 of the prudence of the Medical Benefit Settlement or the creation of a  
21 regulatory asset for the settlement loss.

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<sup>11</sup> See Exhibit PAC/200; Stuver/9, line 19.

<sup>12</sup> See Exhibit CUB/100; Jenks-McGovern/18, line 13; Jenks-McGovern/19, line 11; Jenks-McGovern/20, line 14.

1 Even if the Commission adopts Staff's alternative recommendation, which is  
2 to approve an accounting order for the creation of a regulatory asset for the  
3 settlement loss and determine the Company's settlement of the Retiree  
4 Medical Obligation prudent, Staff does not support inclusion of the settlement  
5 loss amount in a deferral rather than a regulatory asset. Because the  
6 settlement loss was incurred prior to the Company's application, the prohibition  
7 on retroactive ratemaking would preclude the cost from being included in a  
8 deferral. However, an accounting order approving the creation of a regulatory  
9 asset would allow the costs to be reserved until a future ratemaking  
10 proceeding, at which time they could be analyzed and addressed. Should an  
11 accounting order to establish a regulatory asset be approved, Staff  
12 recommends the Commission note that the amount allowed in rates at the time  
13 of the appropriate ratemaking docket should reflect an amortization period  
14 beginning at the time the cost is incurred. This recognizes the stay-out clause  
15 stipulated to in the Company's last general rate case.

16 **Q. Please address Sierra Club's assertion that the Company's analysis of**  
17 **the transaction case is overstated relative to the market case, in part,**  
18 **because of the inappropriate exclusion of the Retiree Medical Obligation**  
19 **settlement benefits from the market case.**

20 A. Staff agrees with Sierra Club's conclusion and supporting facts that the  
21 benefits of the Medical Benefits Settlement should have been included in the  
22 Company's market case. The Company has already announced the mine

1 closure and stated it will be closed by mid-year 2015.<sup>13</sup> Therefore, regardless  
2 of whether the Company proceeds with the other elements of the transaction or  
3 Commission approval is granted, there appears little reason to conclude that  
4 the Medical Benefits Settlement is conditioned on the other elements of the  
5 transaction. Sierra Club's overall recommendation that the reduced benefit of  
6 the transaction case relative to the market case is not worth the risk involved  
7 will be addressed by Staff witness Wittekind.

8 **Q. Please address ICNU's reasons for recommending that the UMWA Retiree**  
9 **Medical Obligation settlement loss should not be addressed in this**  
10 **docket.**

11 A. ICNU first states that its understanding is that the Company could have entered  
12 into the Medical Benefits Settlement regardless of whether it entered into the  
13 other components of the transaction.<sup>14</sup> This is contrary to the Company's claim  
14 that the Medical Benefits Settlement was reached only because of the  
15 understanding that the Company was seeking to close or sell the mine.<sup>15</sup> Staff  
16 accepts that the Medical Benefit Settlement was likely reached based on good  
17 faith that Energy West intended to consummate the overall transaction.  
18 However, the Medical Benefits Settlement is neither dependent on regulatory  
19 approval of other parts of the transaction, nor is the overall transaction  
20 dependent on the outcome of the Medical Benefits Settlement. The settlement

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<sup>13</sup> See SNL article published March 18, 2015 "Berkshire Hathaway coal unit pushes back on legal challenge from labor" included as Exhibit Staff/501, Bahr/1.

<sup>14</sup> See Exhibit ICNU/100; Mullins/29, line 5.

<sup>15</sup> See Exhibit PAC/100; Crane/20, line 10.



1 loss would typically fall to regulatory lag, absent a deferral application from the  
2 Company.

3 ICNU asserts that, in addition to the overall transaction not being conditional  
4 on the Medical Benefit Settlement, including the settlement loss in rates would  
5 constitute retroactive ratemaking.<sup>16</sup> Staff agrees that for these costs to be  
6 included in future rates, the Company would need to be granted an accounting  
7 order to create a regulatory asset or a deferral. However, as discussed  
8 previously, a deferral would capture costs only back to when it was filed, and  
9 the Medical Benefits Settlement occurred prior to the Company's Application,  
10 thereby making a deferral inappropriate under these circumstances.

11 ICNU's third contention is that, as acceleration of an unrecognized loss, the  
12 settlement loss does not actually represent costs incurred by the utility.<sup>17</sup>  
13 Because the Company is only requesting approval of an accounting order to  
14 establish a regulatory asset, and not requesting at this time to include the  
15 settlement loss in rates, Staff advises that this issue should be addressed in a  
16 ratemaking docket, rather than at the time the Company requests a regulatory  
17 asset.

### **3. SUMMARY OF RECOMMENDATIONS**

18 **Q. Please summarize Staff's recommendations regarding the 1974**  
19 **Pension Trust withdrawal and Retiree Medical Obligation settlement.**

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<sup>16</sup> See Exhibit ICNU/100; Mullins/29, line 8.

<sup>17</sup> See Exhibit ICNU/100; Mullins/28, line 19.

1 A. Staff recommends that the Commission approve the Company's request for an  
2 accounting order to create a regulatory asset for the 1974 Pension Trust  
3 withdrawal liability. The Medical Benefits Settlement is severable from the  
4 transaction so need not be considered in this proceeding. However, Staff  
5 would not oppose approval of an accounting order to create a regulatory asset  
6 for the settlement loss. Additionally, Staff recommends that the Commission  
7 determine that the Company's decision to withdraw from the Trust, as part of  
8 the overall transaction, is a prudent decision at this time given the information  
9 currently known. Nevertheless, the Commission should reserve the right to  
10 address the ratemaking treatment of costs associated with these portions of  
11 the transaction to a future ratemaking proceeding.

12 **Q. Does this conclude your cross-answering testimony?**

13 A. Yes.

CASE: UM 1712  
WITNESS: BRIAN BAHR

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 501**

**Exhibits in Support  
Of Cross-Answering Testimony**

**March 19, 2015**



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## Berkshire Hathaway coal unit pushes back on legal challenge from labor

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By Christopher Coats

A [Berkshire Hathaway Inc.](#) subsidiary has appealed to a federal court to dismiss a labor grievance related to the use of contract workers during the closure of the Deer Creek mine in Utah.

Filed by Energy West Mining Co. on March 16, the suit asked the U.S. District Court for the District of Utah, Central Division, to dismiss a grievance from the United Mine Workers of America regarding the use of contract workers who were used to complete tasks associated with the final closure of the mine.

The mine [closure](#) was announced Dec. 15, 2014, with the Berkshire subsidiary, [PacifiCorp](#), stating that it would close the facility by mid-2015 and lay off 182 workers. Energy West is a subsidiary of PacifiCorp.

According to the company, the closure came after 18 months of attempting to sell the mine, during which time the facility's operating costs had become too costly.

Since the closure announcement, all hourly employees have been allowed to work full-time and offered "unlimited opportunities to work overtime," though all mining operations at the site ceased Jan. 7, the complaint said.

According to the filing, the UMWA filed a grievance Jan. 26, accusing the company of violating an earlier agreement by using contract workers to complete tasks associated with the closure of the mine. In the March 16 filing, Energy West asked the District Court to dismiss the earlier grievance on the basis that all mine employees have remained in place.

Energy West claims that contract workers were used to meet "specific requirements" under the Mine Safety and Health Act, including the construction of "seals" at appropriate areas throughout the deactivated mine. "These contractors are not mining coal and do not perform work that is the exclusive jurisdiction of Energy West UMWA miners. Rather, they perform certain services, including the construction of seals, as required to close the Deer Creek Mine pursuant to the rules and regulations under [the act]," it said. "No contractor has operated any equipment in the process of mining coal and no contractor has mined any portion of coal."

Energy West also challenged the suggestion that the use of contract workers had resulted in lost wages for any current Deer Creek employees.

"Because no hourly employees have been laid-off but rather are working full-time and may avail themselves of as much overtime as they desire, no employee can claim that he or she has lost any wages or benefits as a result of the contracting out of certain work at the Deer Creek Mine," Energy West wrote.

The Deer Creek mine produced 2.1 million tons of coal in 2014, according to U.S. Mine Safety and Health Administration data.

The UMWA declined to comment on the case, while Energy West did not respond to a request to comment.

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