DAVISON VAN CLEVE

Davison Van Cleve PC
Attorneys at Law
TEL (503) 241-7242 ● FAX (503) 241-8160 ● jog@dvclaw.com
Suite 400
333 SW Taylor
Portland, OR 97204

October 19, 2015

Via Electronic Filing

Public Utility Commission of Oregon
Attn: Filing Center
201 High St. SE, Suite 100
Salem OR 97301

Re: PORTLAND GENERAL ELECTRIC and PACIFICORP dba PACIFIC POWER
Request for a Generic Power Cost Adjustment Mechanism Investigation
Docket No. UM 1662

Dear Filing Center:

Enclosed for filing in the above-referenced docket, please find the Opening Brief of the Industrial Customers of Northwest Utilities.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Sincerely,

/s/ Jesse O. Gorsuch
Jesse O. Gorsuch

Enclosure

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1662

In the Matter of PORTLAND GENERAL ELECTRIC COMPANY and PACIFICORP d/b/a PACIFIC POWER Request for Generic Power Cost Adjustment Mechanism Investigation.	)	OPENING BRIEF OF THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES

I. INTRODUCTION

Pursuant to the Administrative Law Judge's September 23, 2015 ruling in the above-referenced matter, the Industrial Customers of Northwest Utilities ("ICNU") files this Opening Brief.

As the prehearing briefs in this docket demonstrate, this case can be resolved on the basis of the Oregon Public Utility Commission's ("Commission") interpretation of a single statutory word: what is the meaning of "recoverable" in ORS 469A.120(1)? Portland General Electric Company and PacifiCorp (collectively, the "Joint Utilities") argue that "recoverable" means that they are entitled to dollar-for-dollar recovery of their prudently incurred variable costs of compliance with Oregon's renewable portfolio standard ("RPS"). ICNU, Commission Staff, and the Citizens' Utility Board ("CUB") all argue that "recoverable" means that the statute ensures the Joint Utilities are provided the opportunity to recover their RPS-related variable costs, but does not compel dollar-for-dollar recovery.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

There are no persuasive policy reasons for the Commission to treat RPS-related variable costs any differently than it currently treats the Joint Utilities' total net power costs ("NPC"), which are subject to the dead bands, sharing bands, and earnings tests in both utilities' power cost adjustment mechanisms ("PCAM"). Furthermore, there are serious structural flaws with the Joint Utilities' proposed renewable resources tracking mechanism ("RRTM") that would shift unwarranted risk to customers. Nothing in the Joint Utilities' prehearing brief undermines these conclusions. The Joint Utilities are left, then, only with the argument that, despite the problems with the RRTM and the lack of any compelling policy justification for it, the Commission is without discretion to reject it because it is compelled by law. This position is misguided and rests on an erroneous interpretation of the statute. The Commission should reject the RRTM in its entirety.

II. ARGUMENT

A. ORS 469A.120(1) Does Not Require Dollar-For-Dollar Recovery of the Variable Costs of RPS Compliance.

The Joint Utilities propose a reading of SB 838 that is inconsistent with the statutory framework of SB 838. PacifiCorp has previously testified that it "is impossible to isolate and quantify the exact NPC impacts associated with renewable generation mandated by SB 838."[1/] This is because "[r]enewable resources operate as an integrated part of the Joint Utilities' overall supply portfolio" and the "costs associated with varying levels of renewable resource generation are the result of complex, offsetting interactions between various types of resources …."[2/] The Joint Utilities do not now dispute these statements. Rather, they argue that

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1/ PGE-PAC/301 at 2:15-16.
2/ ICNU/100 at 8-9.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

the complexities of "identifying and isolating all variable RPS compliance costs" do not justify disregard of SB 838's supposed statutory mandate.[3/] The Commission should be wary of a statutory interpretation that the Joint Utilities themselves admit cannot accurately be complied with. Such an interpretation is not compelled by the statutory language, is contradicted by the legislative history, and would lead to illogical results that are at odds with the policy goals of ratemaking generally.

1. Standard principles of statutory interpretation demonstrate that SB 838 does not mandate dollar-for-dollar recovery of RPS-related NPC.

ORS 469A.120(1) states that "all prudently incurred costs associated with compliance with a renewable portfolio standard are recoverable in the rates of an electric company …." The statute lists examples of such costs, including those incurred to firm or shape renewable energy resources.[4/] The Joint Utilities state that the "plain language of the statute differentiates RPS compliance costs from other utility costs to assure 100 percent recovery."[5/] They argue that there "would be no reason for this detailed categorization of costs if … the legislature intended these costs to be lumped with all other costs in the general rate making process …."[6/]

In fact, the intent of this statutory provision was not to ensure 100 percent recovery, but to ensure that costs the Joint Utilities incurred in complying with the RPS would not be disallowed merely because they may not necessarily be consistent with traditional least-cost utility planning. As Staff's Prehearing Brief notes, the Commission's order approving with exceptions PacifiCorp's 2009 Renewable Adjustment Clause ("RAC") filing confirms that ORS

[3/] Joint Utilities' Prehearing Br. at 17.
[4/] ORS 469A.120(1).
[5/] Joint Utilities' Prehearing Br. at 9.
[6/] Id.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

469A.120(1) "does not make 'new' law. Prudently incurred costs have always been recoverable in rates."[7/] The provision, therefore, is simply a safeguard to ensure the Joint Utilities would not be denied recovery of costs that are prudently incurred to comply with a law, even if a lower cost alternative existed.

The explicit provision in ORS 469A.120(2) for an automatic adjustment clause or similar mechanism to recover the utility's RPS-related capital investment costs indicates that the legislature meant to provide for dollar-for-dollar recovery only for a specified subset of RPS-related costs, which do not include variable costs.[8/] This is consistent with accepted rules of statutory interpretation, which presume that the legislature "intends different meanings when it uses different terms in a statute" and that courts "do not look at one subsection of a statute in a vacuum; rather, [they] construe each part together with the other parts in an attempt to produce a harmonious whole."[9/]

The Joint Utilities argue that the distinction between subsections (1) and (2) of ORS 469A.120 is that subsection (2) "specified a mechanism for recovery of capital costs, an automatic adjustment clause," whereas subsection (1) merely "specified the result required – 100 percent cost recovery – but" did not specify the mechanism to achieve this result.[10/] To the contrary, subsection (2) of ORS 469A.120 does *not* specify a mechanism for achieving full cost recovery of investment costs. It authorizes the Commission to "establish an automatic adjustment clause … *or another method* that allows timely recovery of costs prudently incurred

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7/ Staff Prehearing Br. at 3 (citing In re PacifiCorp d/b/a Pacific Power 2009 Renewable Adjustment Clause Schedule 202, Docket No. UE 200, Order No. 08-548 at 18 (Nov. 14, 2008)).

8/ ICNU Prehearing Br. at 7-8.

9/ State ex rel. Dept. of Transp. v. Stallcup, 341 Or. 93, 99 & 101 (2006).

10/ Joint Utilities' Prehearing Br. at 9.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

…."[11/] It is subsection (2) of ORS 469A.120 that is concerned with the result required, not subsection (1). Subsection (1) gives the Commission full discretion over the recovery of RPS-related variable costs, so long as costs that are prudently incurred to comply with the statute are "recoverable."

Furthermore, as ICNU noted in its prehearing brief, the Joint Utilities' position that their current PCAMs are inconsistent with SB 838's cost recovery mandate is illogical. SB 838 specifies that prudently incurred RPS-related costs are recoverable in rates. The same can be said for any other prudently incurred cost to serve customers.[12/] Yet, the Joint Utilities propose to continue to apply the PCAM to their non-RPS-related NPC, even as they claim that the PCAM does not "allow" them to recover all prudently incurred RPS-related variable costs.[13/] If the PCAM allows for recovery of prudently incurred NPC that is unrelated to RPS compliance, then it is nonsensical to conclude that it does not allow for recovery of all prudently incurred NPC.

2. <u>The legislative history of SB 838 confirms that dollar-for-dollar recovery of NPC is not required.</u>

The Joint Utilities argue that that the "dearth of testimony" on Section 13(1) of SB 838, which became ORS 469A.120(1), indicates only that the legislature did not focus on the mechanism for recovery of RPS-related variable costs, not that dollar-for-dollar recovery was not intended.[14/] To the contrary, the lack of testimony on this issue is itself evidence that the legislature did not intend to mandate dollar-for-dollar recovery of the variable costs of RPS compliance. If there had been such intent, one would expect to have seen at least some

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[11/] ORS 469A.120(2) (emphasis added).
[12/] Docket No. UE 200, Order No. 08-548 at 18.
[13/] PGE-PAC/100 at 6:3-4.
[14/] Joint Utilities' Prehearing Br. at 11.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

testimony on this issue. ICNU, for one, certainly would have testified against it, as the legislative history shows. At the April 18, 2007 hearing before the House Committee on Energy and the Environment, ICNU's lobbyist testified:

> [O]ur understanding was the only thing that was going to be included in the automatic adjustment clause were those costs prudently incurred … to construct or otherwise acquire facilities that generate electricity and, or, for associated electricity transmission …. [W]hat I believe, I hope, is a typographical error all the costs … including interconnection costs, costs associated with using physical or financial assets to integrate, firm or shape renewable energy sources on a firm annual basis. We believe that that also is going to be included by error under [an] automatic adjustment clause. The error is in line 36 with a reference to 13(1). We believe that should be a reference to 13(3) tying back to the capital cost, not all costs related to renewables. That was our understanding of what the agreement was. If I'm wrong, then we need to know that. But, to add all those other costs to an automatic adjustment clause, without an evidentiary process, hearing, just turns the whole PUC process, we believe, on its head.[15/]

In responding to ICNU's concerns, Representative Burley asked PacifiCorp's representative if the reference tying the automatic adjustment clause to Section 13(1) (ORS 469A.120(1)) were changed to Section 13(3) (ORS 469A.120(2)), "would that be a problem?"[16/] PacifiCorp's representative responded, "If the reference to Section 13(1) in Section 13a was changed, and that's the only change in 13a, to Section 13(3), that probably doesn't have a material impact on our ability to support the bill."[17/] Thus, the dollar-for-dollar recovery authorized under the statute's automatic adjustment clause was specifically limited to the utility's capital investment costs, and was not intended to cover the costs identified in ORS 469A.120(1).

15/ Docket No. UE 283, Staff/1102 at 1.
16/ Id. at 3.
17/ Id.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

CUB's understanding appears to have been the same. In written testimony before the Senate Environment and Natural Resources Committee, Jason Eisdorfer testified in support of the automatic adjustment clause, noting that it allowed a utility to:

> [A]pply for and get timely recovery of prudently incurred investment in renewable resources without the need for a rate case. This makes policy sense …. [A]s a renewable resource comes on line, the utility's variable costs, or costs of fuel, go down and those savings will be passed on to the customer through annual rate adjustment[s] that are currently in place. It is not warranted to allow cost reductions to flow through to customers from this RES and not allow for reasonably contemporaneous recovery of the fixed costs of the resource.[18/]

Mr. Eisdorfer's testimony shows that the understanding was to make no change to the way in which a utility's variable costs were being recovered prior to SB 838 – whether those costs were associated with RPS compliance or not – and that the provision for an automatic adjustment clause was intended to provide the Joint Utilities with the ability to receive cost recovery of their investment in renewable resources without filing a rate case.

Finally, the Commission itself appears to have had the same understanding as ICNU and CUB. In a letter to Representatives Dingfelder and Bruun, which was attached to testimony before the House Committee on Energy and the Environment, former Commission Chairman Lee Beyer addressed these Representatives' questions on the scope and operation of the automatic adjustment clause: "Once the automatic adjustment clause is established, the utility may request cost recovery under its terms. The main issues at this [] stage will be whether the costs actually qualify for recovery (e.g., whether the costs are associated with building or

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[18/] ICNU/300 at 1-2.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

acquiring renewable energy sources or associated transmission) and were prudently incurred."[19/] Chairman Beyer further noted that "[t]he utility will have to file a general rate case under ORS 757.210 to seek recovery of costs that do not qualify for recovery under an automatic adjustment clause."[20/] Thus, the Commission's testimony on this issue also indicates that dollar-for-dollar recovery was limited to those costs expressly covered under the automatic adjustment clause, and that all other costs were subject to recovery under the traditional ratemaking construct in which a utility is provided an opportunity to recover its prudently incurred costs, but not a guarantee.

3. The current cost recovery framework effectuates the RPS's policy goals.

The Joint Utilities further argue that the RRTM supports the RPS's policy goals, which are that "utilities should increase the use of renewable energy and utility customers should pay for those costs."[21/] If this is indeed the policy behind the RPS, then it is currently being fulfilled. The RPS has statutorily authorized the Joint Utilities to include hundreds of millions of dollars in rate base through an automatic adjustment clause, resulting in minimal risk of disallowance and no risk of regulatory lag. Customers, therefore, are paying for the costs of renewable energy.

The notion that customers are not paying for renewable energy simply because the PCAM does not authorize dollar-for-dollar recovery is unsupported. The Joint Utilities claim they are systematically under-recovering their RPS-related variable costs, but as noted above, this is an empty statement because they cannot accurately isolate and quantify these costs.[22/] The variable costs of RPS compliance are part of, and inextricably intertwined with, the Joint

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[19/] ICNU/301 at 4.
[20/] Id.
[21/] Joint Utilities' Prehearing Br. at 11.
[22/] Supra, 2-3.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

Utilities' overall NPC.[23/] Consequently, the policy questions that should be at issue here are whether the Joint Utilities are offered a fair and reasonable opportunity to recover their total power costs and whether their cost recovery overall is fair and reasonable.[24/] PGE has over-recovered its total power costs in four of the last five years, so the idea that it is systematically under-recovering RPS-related power costs is simply not true.[25/] Meanwhile, PacifiCorp has had sufficient earnings to withstand its under-recovery of total power costs (of which it is not knowable precisely how much of this consists of RPS-related variable costs),[26/] indicating that recovery of its overall costs of doing business, including power costs, continues to be reasonable. The Commission should not allow the Joint Utilities' RPS policy arguments to contradict and override the important policies that have always supported the process of ratemaking generally.

B. The RRTM Is Unnecessary and Unsupported

The Joint Utilities have taken the position in their prehearing brief that the negative policy implications and structural flaws with the RRTM are irrelevant because SB 838 allegedly mandates dollar-for-dollar recovery of RPS-related variable costs. They argue, for instance, that the PCAM's design principles, to which the Commission has long adhered when implementing power cost trackers to ensure normal business risk stays with the utility, are "inapplicable to RPS variable compliance costs."[27/] Similarly, they state that the complexity of accurately isolating variable RPS compliance costs from other NPC "does not justify disregard

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23/ ICNU/100 at 8-9.
24/ ORS 756.040(1).
25/ ICNU/100 at 8; see also, PGE 2010-2014 PCAM filings in Docket Nos. UE 232, UE 256, UE 274, UE 291, and UE 299.
26/ See PacifiCorp 2013-2014 PCAM filings in Docket Nos. UE 290 and UE 298.
27/ Joint Utilities' Prehearing Br. at 13.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

of ORS 469A.120(1),"[28/] and that the variability of renewable resource output is irrelevant to its recoverability.[29/] If, however, the Commission agrees with ICNU, Staff, and CUB that SB 838 does not mandate dollar-for-dollar recovery of variable RPS compliance costs, then the structure of the RRTM becomes critical to an evaluation of its consistency with the public interest.

1. The RRTM's inability to accurately isolate and quantify RPS-related variable costs will often result in a true-up of all power costs.

The Commission has found that dead bands ensure a utility "absorb[s] some normal variation of power costs;" that a sharing mechanism incentivizes a utility to "manage its costs effectively;" and an earnings test "protect[s] customers from paying higher-than-expected power costs when the utility's earnings are reasonable."[30/] It has, therefore, rejected previous requests for dollar-for-dollar recovery of all power costs.[31/] The inability of the RRTM to accurately isolate RPS-related variable costs is evident, however, in the fact that it frequently would provide for precisely this type of recovery.

PacifiCorp testifies that "the net market value of [its] wind generation reflected in the TAM has exceeded actuals by an average of $31.6 million per year" between 2007 and 2013.[32/] Yet, this is more than PacifiCorp's average Oregon-allocated under-recovery of *total* NPC during this period.[33/] Meanwhile, the RRTM would show an under-recovery of RPS-

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28/ Id. at 17.

29/ Id. at 18.

30/ Re PacifiCorp Request for a General Rate Revision, Docket No. UE 246, Order No. 12-493 at 15 (Dec. 20, 2012).

31/ Id. at 14.

32/ PGE-PAC/100 at 6:22-7:2.

33/ PGE-PAC/301 at 3 shows an average under-recovery of total Oregon-allocated NPC of $26.8 million between 2007 and 2011. PacifiCorp's 2013 PCAM filing shows an under-recovery of $33.6 million, bringing the average up to $27.9 million. Docket No. UE 290, PacifiCorp 2013 PCAM Filing at 1 (May 15, 2014). As Figure 3 in ICNU/100 at 16 shows, PacifiCorp's under-recovery of total NPC in 2012 was well below average, demonstrating that PacifiCorp has under-recovered Oregon-allocated total NPC by less than $30 million per year between 2007 and 2013.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

related NPC for PGE every year between 2009 and 2013 – up to a $24 million deficit[34/] – despite the fact that the utility over-recovered its total NPC in all but two of those years.[35/] The RRTM's calculation of RPS-related power cost recovery, in other words, bears no relation to the Joint Utilities' total power cost recovery. This makes no sense and provides tangible evidence that the RRTM does not accurately isolate and value one type of cost within the Joint Utilities' total portfolio.

One reason why the RRTM would likely lead to a *de facto* true-up of total NPC in many years is because the RRTM includes market price differentials.[36/] The Joint Utilities forecast the value of renewable generation by assigning it a projected market price.[37/] If the actual market price differs at the time the generation occurs, the RRTM trues up this difference.[38/] When market prices are lower than forecast, utilities tend to have a lower-than-projected cost to serve customers, which ultimately leads to under-recovery of total NPC through the PCAM.[39/] The opposite, of course, is also true. Under the RRTM, however, if market prices are lower than forecast, the Joint Utilities would receive greater recovery despite likely having a lower cost to serve customers overall; if they are higher than forecast, the Joint Utilities would need to provide larger refunds despite likely having a higher cost to serve customers.[40/] Thus, the enhanced recovery the Joint Utilities would realize under the RRTM with lower-than-forecast market prices can be used to offset the lower overall cost to serve customers, which would currently be captured within the PCAM's dead bands as a normal business risk.

34/ PGE-PAC/100 at 7:5-6.
35/ ICNU/100 at 8; PGE 2009-2013 PCAM filings in Docket Nos. UE 221, UE 232, UE 256, UE 274, and 291.
36/ PGE-PAC/100 at 10 (table 2).
37/ Id.
38/ Id.
39/ ICNU/100 at 12-13.
40/ Id.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

The Joint Utilities claim that "ICNU is wrong" in these assumptions.[41/] They state that "[i]ncluding market price in the RRTM does not cause the RRTM to have an inverse relationship with NPC, because NPC does not *always* move in the same direction as market prices, in *some cases* (for example, greater than anticipated generation), lower market prices *may* still operate to create a refund to customers."[42/] ICNU does not dispute that the Joint Utilities will sometimes still have a higher cost to serve customers when market prices are lower than forecast. There are many factors that ultimately dictate actual NPC. Any true-up mechanism for power costs, however, should bear some rational relationship to the total NPC the utility incurs to serve customers. The data in the record of this case shows that the RRTM, by including market price differential, will allow the Joint Utilities to use this true-up mechanism to insulate themselves almost completely from the risks associated with their entire portfolio despite the fact that RPS resources constitute only a portion of that portfolio.

The fact that the RRTM in many years would provide the Joint Utilities with dollar-for-dollar recovery of their total NPC, or close to it, demonstrates that the RRTM is structurally flawed. The RRTM is a back door to dollar-for-dollar power cost recovery and is, therefore, not fair and reasonable.[43/]

2. The PCAM design principles should apply to all power costs, including those associated with the RPS.

The Commission has consistently adhered to the following PCAM design principles, and has applied them to all power costs: (1) recovery should be limited to unusual events; (2) no adjustment if overall earnings are reasonable; (3) it should be revenue neutral; (4)

41/ Joint Utilities' Prehearing Br. at 15.
42/ Id. (emphasis added).
43/ ORS 756.040(1); see also, Docket No. UE 246, Order No. 12-493 at 15.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

it should have long-term operation; and implicitly, (5) it should provide an incentive to the utility to manage its costs effectively.[44/] The Joint Utilities argue that these principles are irrelevant to the RRTM.[45/] Their only support for this argument, however, is their position that the RRTM is compelled by law.[46/] If, as ICNU, Staff, and CUB have all demonstrated, this statutory argument is erroneous, then the Joint Utilities offer no justification for exempting RPS-related variable costs from these design principles. As the Commission has previously stated, these design criteria are intended to ensure that the PCAM captures power cost variations "that exceed those considered part of normal business risk. In this case, normal business risk … includes all of the circumstances to which [the utility] is exposed …."[47/] Today, this includes Oregon's RPS.

The Joint Utilities also argue that applying an earnings test to the RRTM is unnecessary and inappropriate.[48/] They note that they have agreed to cap recovery under the RRTM at their actual NPC.[49/] But an earnings test is not related to a particular level of power cost recovery, it is related to the utility's overall cost recovery: "An earnings test serves to protect customers from paying for higher-than-expected power costs when the utility's earnings are reasonable, while it protects the [utility] from refunding power cost savings when it is underearning."[50/] If power costs are higher than forecast, but the utility is still earning a reasonable return, then it is recovering its costs overall and there is no justification for it to recover additional costs from customers. Likewise, if it is under-earning even though its power

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44/ Docket Nos. UE 165/UM 1157, Order No. 05-1261 at 8 (Dec. 21, 2005); Docket No. UE 246, Order No. 12-493 at 13.
45/ Joint Utilities' Prehearing Br. at 13.
46/ Id.
47/ Docket Nos. UE 180/UE 181/UE 184, Order No. 07-015 at 26 (Jan 12, 2007).
48/ Joint Utilities' Prehearing Br. at 16-17.
49/ Id. at 16.
50/ Docket Nos. UE 180/UE 181/UE 184, Order No. 07-015 at 26.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

costs are lower than forecast, then requiring the utility to reduce its earnings further by refunding power costs to customers could result in an adverse financial impact for the utility.

Furthermore, the Joint Utilities' argument that the Commission should not impose an earnings test on the RRTM because it did not impose an earnings test on their RAC tariffs in fact further demonstrates that the Commission *should* impose an earnings test on the RRTM.[51/] The RAC is the means through which the utilities obtain recovery for their renewable investment costs pursuant to the automatic adjustment clause required by ORS 469A.120(2). An automatic adjustment clause is specifically exempted from the deferral statute's requirement to impose an earnings test before authorizing recovery of deferred costs or revenues.[52/] That ORS 469A.120(1) specifically does *not* authorize an automatic adjustment clause for RPS-related variable costs demonstrates that an earnings test should apply to power costs that would be subject to the RRTM.

Finally, the Joint Utilities also argue that the Commission has not previously considered a proposal like the RRTM.[53/] The Commission has, however, considered the application of power cost trackers to stochastic risks like hydro variability and has found that the PCAM's design principles, including dead bands, should apply to such risks.[54/] The evidence in this case shows that the Joint Utilities' renewable resources are no more variable than their hydro resources.[55/] Thus, while the Commission may not have considered the precise proposal the Joint Utilities make in this docket, it has considered proposals that present the Joint Utilities with

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51/ Joint Utilities' Prehearing Br. at 16-17.
52/ ORS 757.259(5).
53/ Joint Utilities' Prehearing Br. at 18-19.
54/ Docket Nos. UE 165/UM 1157, Order No. 05-1261 at 8-10.
55/ ICNU/100 at 13-14.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

equivalent risks and has concluded the PCAM's design criteria should apply to such risks to ensure that they are not inappropriately shifted in full to customers.

3. The Joint Utilities have not justified their proposal to true-up production tax credits.

The Joint Utilities acknowledge that the inclusion of production tax credits ("PTCs") in the RRTM would result in asymmetrical recovery from customers due to the fact that the Joint Utilities would not make corresponding adjustments to accumulated deferred income taxes.[56/] Nevertheless, they assert that "variances in PTCs are particularly critical to track in the RRTM because changes in PTC values are not captured in the Joint Utilities' annual power cost updates or PCAMs."[57/] The Joint Utilities, however, have offered no evidence into the record of this case to demonstrate the existence or magnitude of the discrepancy between forecasted and actual PTCs. Thus, their statement that truing these tax credits up is "particularly critical" is unsupported and should not outweigh the fact that including PTCs in the RRTM would not appropriately match costs and benefits.

C. The Commission Should Not Adopt the Joint Utilities' Proposed Three-Year Trial Period for the RRTM.

In their prehearing brief, "the Joint Utilities offer a suggestion for Commission evaluation of the RRTM after a three-year implementation period to allow an opportunity for changes or improvements …."[58/] This is a Trojan horse. Allowing the RRTM to be implemented even for a trial period will have the effect of shifting the burden of proof to undo the RRTM to other parties after this trial period expires. It will also subject customers to a

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[56/] Joint Utilities' Prehearing Br. at 13.
[57/] Id. at 7.
[58/] Id. at 2.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

flawed and inequitable power cost tracker for the length of that trial period. If the Commission does not believe the Joint Utilities have met their burden to justify the RRTM on either legal or policy grounds, then there is no reason to authorize its implementation on a permanent or trial basis.

III. CONCLUSION

The RRTM is not compelled by law, is unnecessary, represents bad policy, and would shift power cost recovery risk to customers. The Commission should reject the RRTM and continue to apply the PCAM to all of the Joint Utilities' power costs.

Dated this 19th day of October, 2015.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Tyler C. Pepple
S. Bradley Van Cleve
Tyler C. Pepple
Davison Van Cleve, P.C.
333 S.W. Taylor, Suite 400
Portland, Oregon 97204
(503) 241-7242 phone
(503) 241-8160 facsimile
bvc@dvclaw.com
tcp@dvclaw.com
Of Attorneys for the Industrial Customers
of Northwest Utilities