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January 26, 2016

VIA ELECTRONIC FILING

Public Utility Commission of Oregon
201 High Street SE, Suite 100
Salem, OR 97301-1166

Attn: Filing Center

RE: UM 1744—PacifiCorp's Post-Hearing Brief

PacifiCorp d/b/a Pacific Power (PacifiCorp) encloses for filing in the above-referenced docket its Post-Hearing Brief.

If you have questions about this filing, please contact Erin Apperson, Manager of Regulatory Affairs, at (503) 813-6642.

Sincerely,

A handwritten signature in black ink that reads "R. Bryce Dalley" with a stylized flourish at the end.

R. Bryce Dalley
Vice President, Regulation

Enclosures

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1744

In the Matter of

NORTHWEST NATURAL GAS
COMPANY, dba NW NATURAL,

Application for Approval of an Emission
Reduction Program.

PACIFICORP'S POST-HEARING
BRIEF

I. INTRODUCTION

PacifiCorp, d/b/a Pacific Power (PacifiCorp or the Company) respectfully submits this Post-Hearing Brief to the Public Utility Commission of Oregon (Commission), in accordance with Administrative Law Judge Sarah Rowe's ruling issued on November 24, 2015.

Northwest Natural Gas Company (NW Natural) filed an application in June 2015 seeking approval of a greenhouse gas emissions reduction program under Senate Bill (SB) 844, the first application of its kind to be filed under SB 844. NW Natural requests approval of a Combined Heat and Power (CHP) Solicitation Program (the Program) to incentivize customer installations of CHP, which reduces electricity use and increases natural gas use. In addition to incentivizing customers to install CHP, the Program is designed to provide an incentive to NW Natural for administering the Program. For both the customer and NW Natural, the level of incentive is, according to NW Natural, directly tied to the level of emissions reduction.

Despite some movement from NW Natural regarding return of increased margin revenue and the use of eGrid, PacifiCorp continues to have concerns with the Program as proposed by NW Natural. PacifiCorp asks the Commission to consider whether NW Natural has met the standard in ORS 757.539 and to consider whether the Program is, in fact, designed to accurately calculate emissions reductions.

II. DISCUSSION

a. NW Natural has not met the “ordinary course of business” threshold

ORS 757.539(3)(d) requires NW Natural to show that “without the emission reduction program, [NW Natural] would not invest in the project in the ordinary course of business.”

Acknowledging that interpretation of this statutory requirement is a matter of first impression for the Commission, PacifiCorp interprets this requirement to mean that the legislature intended to incentivize new and novel behavior. In contrast, NW Natural has taken the position that use of incentives authorized by the same law that requires action beyond the ordinary course of business is, in and of itself, not the ordinary course of business. PacifiCorp has argued that this argument is circular and would nullify the requirement that a project be outside of the ordinary course of business. NW Natural also contends that PacifiCorp’s interpretation of ORS 757.539(3)(d) would disqualify any proposal that results in increased margin revenue.

PacifiCorp continues to object to NW Natural’s interpretation of ORS 757.539(3)(d). SB 844, as codified in ORS 757.539, authorizes the use of incentives as part of a greenhouse gas emissions program.¹ That same law also requires that investment in the program not be business as usual for the investing utility. NW Natural posits that because the Program contains incentives which are not otherwise authorized but for ORS 757.539(2), NW Natural would not invest in the Program in the ordinary course of business. If, however, the legislature intended for the use of incentives to be sufficient to justify utility investment, the requirement for the utility investment to be outside of the ordinary course of business is unnecessary and redundant. When interpreting statutes, language should not be read in such a way that renders other parts of the statute meaningless and all provisions should be given effect.²

¹ See ORS 757.539(2). PacifiCorp notes that the law does not *require* the use of incentives.

² See *State v. Clemente-Perez*, 357 Or. 745, 755 (2015) (citations omitted). (“As a general rule, we also assume that the legislature did not intend any portion of its enactments to be meaningless surplusage.”) See also ORS 174.010 (instructing courts to construe statutes so as to “give effect to all” provisions); *Arken v. City of Portland*, 351 Or. 113, 156, (2011) (noting “cardinal rule of statutory construction to give significance and effect to every part of a statute” and “well-established principle to avoid interpretations of statutes that render portions of them redundant”).

A far more reasonable reading of ORS 757.539 allows the authorization for incentives contained in ORS 757.539(2) to be read in harmony with ORS 757.539(3)(d). Simply put, a proposal for an emissions reduction program under ORS 757.539 may contain incentives but it must also demonstrate some other aspect, other than the presence of incentives, to show that the company would not otherwise invest in the program as part of the ordinary course of business. Contrary to NW Natural's assertion, it is not the case that all emissions reduction programs that increase margin revenue would be disqualified under PacifiCorp's interpretation of ORS 757.539. Under PacifiCorp's interpretation of the statute, if a utility can show that, in addition to incentives (to customers or the utility) and increasing margin there are still barriers that prevent the utility from ordinary course of business investment, and if the program addresses those barriers, the statutory requirement could be met. However, if a program increases utility margin revenue, the utility has an ordinary course of business interest in pursuing the program and careful consideration should be given to the appropriate level of additional incentive given to the utility and whether any additional incentive is necessary at all.

NW Natural, in oral testimony and its Post-Hearing Brief, has proposed a change to the Program that PacifiCorp believes could go beyond the ordinary course of business in order to satisfy the statutory requirement of ORS 757.539(3)(d). NW Natural proposes to return *all* margin³ back to customers. Return of all margins is beyond the ordinary course of business. Although PacifiCorp agrees that this change in the Program design is consistent with ORS 757.539, PacifiCorp remains skeptical that it was the intent of the legislature in passing SB 844 to incentivize a company to forgo ordinary-course-of-business margin revenue in exchange for a much larger incentive payment.⁴ Ultimately, the question comes down to establishing the

³ PacifiCorp assumes this means all margin, less the cost of service. This clarification was made in oral testimony but not specified in NW Natural's Post-Hearing Brief.

⁴ In addition, PacifiCorp notes that to the extent increased margin revenues already flow back to customers through, for example, a decoupling mechanism, the return of increased margin revenues may, in fact, be the ordinary course of business.

correct level of incentive and whether it is sufficient to incentivize the utility to invest in the program or engage in certain behavior that it would not otherwise invest or engage in.

b. eGrid

Accurate calculation of emissions reductions is a critical component to any emissions reduction program. As part of the Program, NW Natural initially proposed using the U.S. Environmental Protection Agency's (EPA) Emissions & Generation Resource Integrated Database (eGrid), specifically the 2012 eGrid.⁵ Although NW Natural continues to advocate for the use of the eGrid number to calculate emissions reductions, NW Natural appears willing to accept the use of the Northwest Power and Conservation Council's (NWPC) AURORA model.⁶

NW Natural also proposes updating either the eGrid or NWPC at the time new customers join the Program, but locking in that number for the entire duration of the customer's participation.⁷ To account for the potential inaccuracy in calculating emissions reductions this locking-in would create, NW Natural proposes to use updated eGrid or NWPC numbers when reporting emissions reduction to the Commission. It is unclear whether this proposal encompasses the use of updated eGrid or NWPC numbers for calculating emissions reductions for purposes of determining NW Natural's incentive.⁸ NW Natural has made clear that the amount of emission reduction is not relevant so long as the amount of the incentive provided to the CHP customer is ultimately sufficient.⁹ PacifiCorp understands the importance of certainty for customers' ability to invest in this program. However, as PacifiCorp has noted, locking in an eGrid number for ten years is likely to result in an overstatement of emission reductions. In

⁵ NWN/100, Summers/12-13.

⁶ NW Natural's Post-Hearing Brief at 14.

⁷ *Id.* at 20.

⁸ *Id.* ("Finally, NW Natural is willing to update the estimated emissions reductions for reporting purposes, as long as the actual the [*sic*] customer payment does not change.")

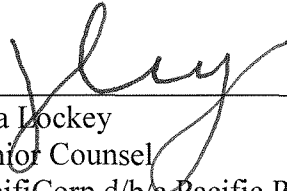
⁹ *Id.* at 19, l. 15-18. (Explaining that 2010 or 2012 eGrid or the NWPC number can be used "as long as the incentive is adjusted to be reasonably equal to the same total annual incentive to the customer.")

addition, PacifiCorp questions whether the program should be designed in such a manner where the objective is to calculate emissions reductions as accurately as possible rather than as a metric to calculate the appropriate level of incentive.

III. CONCLUSION

PacifiCorp respectfully requests that the Commission consider the proposals contained herein.

Respectfully submitted this 26th day of January, 2016.

By: 

Etta Lockey
Senior Counsel
PacifiCorp d/b/a Pacific Power

Attorney for PacifiCorp