

April 14, 2023

***VIA ELECTRONIC FILING***

Public Utility Commission of Oregon  
Attn: Filing Center  
201 High Street SE, Suite 100  
Salem, OR 97301-3398

**RE: UM 2013—PacifiCorp’s Comments on Staff’s April 13, 2023 Report**

PacifiCorp d/b/a Pacific Power (PacifiCorp on the Company) appreciates the ability to provide these comments, and Staff’s outreach prior to this public meeting. While PacifiCorp disagrees with Staff’s proposed recommendation and contends that this recommendation is inconsistent with Commission precedent and policy, PacifiCorp does appreciate the ability to continue to have frank discussions regarding these issues with Staff.

PacifiCorp recommends that the Commission approve the request identified in the application and the request for reauthorization to defer of the wildfire mitigation costs that were incurred in 2019 and 2020. These costs are within the Commission’s discretion to approve for deferral, and were proactive expenses incurred to mitigate a rapidly increasing risk for all utilities in the Western United States. Staff’s overly strict application of the Commission’s deferral standard does not take into consideration the Commission’s elevation of wildfire risks in many subsequent proceedings and would disincentivize utilities from proactive risk mitigation activities.

**Background**

On January 30, 2019, Governor Kate Brown issued Executive Order 19-01, establishing the Governor’s Council on Wildfire Response, based on the increased intensity and severity of wildfires.<sup>1</sup> By the spring of 2019, PacifiCorp had been evaluating the risk that wildfires posed in the Company’s service territory, and retained a third-party expert to identify Fire High Consequence Areas in Oregon and started incremental wildfire mitigation activities. The Company filed an application requesting deferral of an estimated \$4.8 million in mitigation activities to occur in 2019 and \$27.4 million of mitigation activities, both capital and expense, to occur in 2020.<sup>2</sup> In its application to defer these costs, PacifiCorp noted that these were “immediate steps” that could “be taken in the current year to reduce wildfire risk.”<sup>3</sup> PacifiCorp was proactively identifying and engaging in activities to mitigate wildfire risk, and based on the scope of these activities sought to defer these expenses.

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<sup>1</sup> Executive Order No. 19-01, Office of the Governor (Jan. 30, 2019).

<sup>2</sup> Application at 3 (May 14, 2019); Application for Reauthorization at 3 (May 14, 2020).

<sup>3</sup> Application at 2 (May 14, 2019).

## The Commission's Standard for Deferrals

Oregon law sets out a very specific set of criteria for the approval of deferred accounting for costs and revenues of utilities. Deferrals without specific statutory authorization for cost recovery, generally fall under the category of "identifiable utility expenses and revenues" that are deferred to "minimize the frequency of rate changes...or to match appropriately the costs borne by and benefits received by ratepayers."<sup>4</sup> Absent another specific statute allowing for cost recovery, the Commission has identified that their review process for deferrals occurs in two steps. First, the Commission "consider[s] the type of event that caused the request for deferral and the magnitude of that event's effect on the utility."<sup>5</sup> Next, the Commission determines whether the deferral is legally authorized under ORS 757.259.<sup>6</sup>

For the first step, the Commission has set two standards for assessing the magnitude of the event underlying the deferral request.<sup>7</sup> If the event is foreseeable without extenuating circumstances, it is a stochastic event, and the magnitude must be substantial.<sup>8</sup> If the event was neither modeled nor foreseen, or if there are extenuating circumstances that were not foreseeable (a "scenario event"), then the magnitude must be material.<sup>9</sup>

For the second step, it must meet the requirements under ORS 757.259(e) in which it must either minimize the frequency or fluctuations of rate changes or match the costs and benefits received by ratepayers.<sup>10</sup> However, Commission precedent has acknowledged that the statutory language allows for "a flexible, fact-specific approach that acknowledges the wide range of reasons why deferred accounting might be beneficial to customers" and how the assessment of the event is an exercise of Commission discretion.<sup>11</sup>

This flexible approach has also been taken by Staff, notably in UM 2201 and the Staff memo attached to Staff's GRC testimony.<sup>12</sup> PacifiCorp opposed AWEC's application to defer fly ash costs on the grounds it did not meet the Commission's standards for deferral as either a stochastic or scenario event, and Staff did not address this concern in its memo supporting the deferral, and these costs were then approved by the Commission and deferred and amortized in

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<sup>4</sup> ORS 757.259(2)(e).

<sup>5</sup> *In the Matter of Portland General Electric Company, Application for the Deferral of Storm-Related Restoration Costs*, Docket No. UM 1817, Order No. 19-274 at 2 (Aug. 19, 2019).

<sup>6</sup> *Id.*

<sup>7</sup> *In the Matter of PacifiCorp d/b/a Pacific Power, Application for Approval of Deferred Accounting and Accounting Order Related to Non-Contributory Defined Benefit Pension Plans*, Docket No. UM 1992, Order No. 20-004 at 6 (Jan. 8, 2020).

<sup>8</sup> *Id.*

<sup>9</sup> Order No. 20-004 at 7.

<sup>10</sup> Order No. 19-274 at 2.

<sup>11</sup> *In the Matter of Public Utility Commission of Oregon, Staff Request to Open an Investigation Related to Deferred Accounting*, Docket No. UM 1147, Order No. 05-1070 at 5-7 (Oct. 5, 2005).

<sup>12</sup> *In the Matter of PacifiCorp d/b/a Pacific Power, Request for a General Rate Revision*, Docket No. UE 399, Staff/209, Fox-Bain/2-4 (June 22, 2022).

the PacifiCorp 2022 general rate case (UE 399).<sup>13</sup> This is additionally true in UM 2167 in which PacifiCorp sought to defer revenues related to REC sales from the Pryor Mountain wind facility. Staff supported that deferral, and no arguments were raised regarding whether that was a scenario or stochastic event.<sup>14</sup> This deferral was also authorized and amortized through UE 399. This past precedent depicts how Staff has not always applied the scenario and stochastic event analysis in all deferral scenarios. In fact, Staff originally filed a memorandum on January 5, 2023 recommending the approval of this deferral, and noted that it “meets the requirements of ORS 757.259 and OAR 860-027-0300 and is an appropriate use of the deferral statute.”<sup>15</sup> This original conclusion is, as of the date of these comments, still posted in the docket, yet Staff has not discussed the original position and why, specifically, it now comes to an opposite conclusion.

### **This Deferral Meets the Risk Requirements of the Commission's Standard**

The Commission best articulated the need for the recovery of these costs in between rate cases in PacifiCorp's 2020 general rate case, when it was noted:

Here, in an environment where wildfire risk mitigation is of utmost concern to our state, we find that the recovery of the incremental costs of vegetation management and wildfire mitigation between rate cases will ensure the company has both the obligation and the incentive to complete those investments and improve its vegetation management practices in an appropriate timeframe.<sup>16</sup>

The deferral at issue in this case predate the costs that were included in that general rate case (which sought rates effective January 1, 2021) by nearly two years. Since that order, the Commission has continued to identify wildfire risk as an extraordinary risk that was facing utilities:

Since the devastating wildfires in California in 2017 and 2018, wildfire has emerged as an increasingly important issue for utilities and utility regulators in the West. The PUC began engaging regulated utilities on their wildfire-related planning efforts early in 2019, and on March 10, 2020, Governor Brown issued Executive Order No. 20-04. Among other things, this order directs the PUC to “evaluate electric companies' risk-based wildfire protection plans and planned activities to protect public safety, reduce risks to utility customers, and promote

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<sup>13</sup> *Id.*

<sup>14</sup> *In the Matter of PacifiCorp d/b/a Pacific Power, Request for a General Rate Revision*, Docket No. UE 399, Staff/207, Fox-Bolton/2-4 (June 22, 2022).

<sup>15</sup> Staff Report dated Dec. 21, 2022 at 3 (filed Jan. 5, 2023).

<sup>16</sup> *In the Matter of PacifiCorp d/b/a Pacific Power, Request for a General Rate Revision*, Docket No. UE 374, Order No. 20-473 at 120 (Dec. 18, 2020).

energy system resilience in the face of increased wildfire frequency and severity[.]”<sup>17</sup>

PacifiCorp's wildfire mitigation activities do not fall into either a stochastic or scenario risk, these activities are proactive expenses and investments to minimize the opportunities for a wildfire event occurring in the first place. In 2020, and in subsequent proceedings, the Commission would articulate that these events required special considerations of risk outside the normal risk parameters, and therefore it should be outside the stochastic and scenario risk parameters. Commissioners have specifically articulated that “Much of the risk, the second thing that this evolving and changing risk means for the electric sector is that there is a lot of risk outside the utility's control.”<sup>18</sup>

It is notable that at the time the deferrals were filed, PacifiCorp had estimated significant investments in the tens of millions of dollars. Staff's analysis now, nearly four years later, is based on actuals, not forecasts, which is typically the basis for reviewing deferral requests. While the actual costs incurred during the time frame of the specific deferrals reflect lower amounts than those estimated, the continued scope of wildfire mitigation activities still represent tens of millions of dollars now.

The Commission should not disincentivize investments in this type of proactive risk mitigation by rejecting these deferrals. PacifiCorp recommends that the Commission approve these deferrals and allow them to be considered for later prudence review and amortization in a future cost recovery proceeding.

Sincerely,



Matthew McVee  
Vice President, Regulatory Policy and Operations

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<sup>17</sup> *In the Matter of Risk Based Wildfire Protection Plans and Planned Activities Consistent with Executive Order 20-04, Temporary Rulemaking Regarding Public Safety Power Shut-off (PSPS)*, Docket No. AR 638, Order No. 21-167 at 1-2 (May 27, 2021).

<sup>18</sup> Commissioner Tawney's Introductory Remarks on the nature of wildfire risk and PSPS events at the PSPS Utility and Emergency Response Partner 'Lessons Learned' Discussion (Nov. 2, 2022) available at <https://www.oregon.gov/puc/news-events/Pages/default.aspx>.