

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UE 246**

In the Matter of

PACIFICORP

Request for a General Rate Revision

Joint Post-Hearing Brief of Renewable  
Northwest Project and NW Energy Coalition

Renewable Northwest Project (“RNP”) and NW Energy Coalition (“NVEC”) submit this Joint Post-Hearing Brief regarding the capital expenditures that PacifiCorp (or “the Company”) made at several of its coal plants. This Brief focuses on the Company’s pollution-control investments made with respect to sulfur dioxide (“SO<sub>2</sub>”) emissions that were the subject of much discussion at the Oregon Public Utility Commission’s (“Commission”) October 15, 2012 hearing in this proceeding (the “Hearing”). Challenges to the Company’s investments in non-SO<sub>2</sub>-related pollution controls have been discussed extensively throughout this proceeding, and we will not repeat that discussion here. *See, e.g.*, RNP and NVEC Joint Prehearing Brief at Section II; Sierra Club Prehearing Brief at 4-9, 20-23, 25-27; Citizens’ Utility Board of Oregon Prehearing Brief at 25, 32-34.

In this Brief, RNP and NVEC argue that (1) PacifiCorp has failed to demonstrate that it was required to comply with legally enforceable SO<sub>2</sub> emissions limits or install unit-specific SO<sub>2</sub> pollution controls at certain of its coal plants at issue in this proceeding; (2) PacifiCorp’s coal plants were instead subject to a regional SO<sub>2</sub> emissions regime that gave the Company flexibility in determining how best to participate and did not require unit-specific controls; and (3) the pollution-control investments installed at PacifiCorp’s coal plants—and alternatives to installing the pollution controls—should have been analyzed as part of PacifiCorp’s Integrated Resource

Plan (“IRP”) process. In light of the foregoing, PacifiCorp has failed to produce enough evidence to demonstrate that its pollution-control investments made at certain coal plants were prudent. Because these costs were imprudently incurred, they should not be included in customers’ rates.

I. PacifiCorp Has Not Demonstrated That It Was Required to Comply with Legally Enforceable Emissions Limits or Install Unit-Specific Pollution Controls.

At issue in this proceeding are \$661 million in pollution control investments that PacifiCorp made to certain of its coal facilities that the Company now seeks to include in customer rates. UE 246/CUB 100, Jenks-Feighner/59. PacifiCorp asserts that these investments were necessary in order for the Company to comply with certain federal and state regulatory requirements. At the Hearing, the Company’s witness, Ms. Cathy Woollums, was asked repeatedly by Sierra Club’s counsel and by the Commissioners to identify the specific legal requirement—either in the form of legally enforceable regional or source-specific emissions limits, or specific technology requirements—that obligated PacifiCorp to invest in pollution controls for SO<sub>2</sub> emissions. Hearing Transcript at 28-68. The witness could not point to a definitive technology requirement or source-specific SO<sub>2</sub> emissions limit, nor could the witness identify evidence in the record to support the Company’s claim that there was a legally enforceable unit-specific compliance requirement that necessitated the pollution control investments. *Id.* Instead, the witness pointed to “presumptive BART limits” and regional compliance regimes that still have not been triggered in order to justify the investments. *Id.* at 30-31, 59-60. These compliance regimes are discussed in Section II below.

As noted in RNP’s and NWECC’s Joint Prehearing Brief, PacifiCorp bears the burden of showing that its proposed rates are fair, just and reasonable. Joint Prehearing Brief at 2-3 (citing ORS 757.210(1)(a); Docket Nos. UE 34/UM1047, Order No. 02-820 at 5 (Nov. 20, 2002)).

Thus, it is up to PacifiCorp to identify the legally enforceable emissions limits or unit-specific pollution controls that it was required to comply with or install. *See* Docket No. UE 246, Briefing Memorandum at 1 (Nov. 1, 2012). Even if the Company is able to point to legally enforceable emissions limits or unit-specific pollution controls in its Post-Hearing Brief, its evidentiary burden does not stop there. PacifiCorp must also demonstrate that it adequately analyzed whether to invest in pollution controls at aging coal facilities or pursue other alternatives, as well as whether its ultimate decision to make costly investments in its coal fleet was reasonable. *See* RNP and NWECA Joint Prehearing Brief at 2-3. As discussed in this Brief, the Company has not met its evidentiary burden.

II. PacifiCorp Should Have Analyzed and Pursued a Range of Alternatives to Comply with Regional Regulatory Requirements.

While PacifiCorp was not required to comply with any legally enforceable emissions limits or install any unit-specific pollution controls, it was required to participate in certain regional emissions regimes, including the Regional SO<sub>2</sub> Milestone and Backstop Trading Program. *See* Hearing Transcript at 33-34. Under this program, there are region-wide emissions caps (referred to as “milestones”) for SO<sub>2</sub>, and sources must monitor and report their SO<sub>2</sub> emissions. *See, e.g.*, Sierra Club Prehearing Brief at 13. The trading portion of the program is only triggered if a milestone is not met. Hearing Transcript at 37-38. To date, the states involved in the program have not exceeded the regional milestones. *Id.* at 37. In part because of the increased costs associated with the trading portion of the program, participants have incentive to take voluntary steps to ensure that the regional milestones are not exceeded. *See, e.g., id.* at 54.

By not setting any source-specific emissions limits but instead looking regionally, this program affords the participants flexibility in determining how best to stay below the SO<sub>2</sub> milestones. Of the program participants, PacifiCorp is admittedly the largest. *Id.* at 38. This

makes PacifiCorp the participant with the most power to affect regional outcomes through alternative compliance strategies. At the Hearing, the Company's witness indicated that PacifiCorp's flexibility in establishing a schedule for taking action to stay under the milestones was constrained by its need to coordinate outage schedules among its many generating units. *Id.* at 119-21. To the contrary, as the largest participant in the program, PacifiCorp was uniquely positioned to take advantage of the program's flexible structure and think creatively about alternatives to simply installing pollution controls at certain units. For example, the Company could have shut down, converted or mothballed certain coal-fired generating units and continued operating others without adding costly controls. *Id.* at 162. Had PacifiCorp pursued early closure, natural gas conversion or mothballing, it could have used the opportunity to diversify its generating portfolio with other resources that would have been less costly and less risky for customers. Instead of looking regionally and thinking creatively about alternatives, the Company focused on installing controls. *Id.* at 56. In so doing, PacifiCorp hit the "easy" button.

III. PacifiCorp Should Have Analyzed its Pollution Control Investments and Alternatives to Those Investments in the IRP Process.

As PacifiCorp's witness, Mr. Chad Teply, acknowledged at the Hearing, pollution control investments are a type of resource decision. *Id.* at 162. Resource decisions should be analyzed in connection with a utility's IRP process. Substantively, the Commission requires that energy utilities: (1) evaluate resources on a consistent and comparable basis; (2) consider risk and uncertainty; (3) make the primary goal of the process selecting a portfolio of resources with the best combination of expected costs and associated risks and uncertainties for the utility and its customers; and (4) create a plan that is consistent with the long-run public interest as expressed in Oregon and federal energy policies. *See Investigation Into Integrated Resource Planning*, Docket No. UM 1056, Order No. 07-002 at 1-2 & Appendix A (Jan. 8, 2007). In addition, as

part of the IRP process, IRP Guideline 8 requires utilities to develop and analyze different portfolios with sensitivity analyses on a range of regulatory futures for carbon dioxide, nitrogen oxides, sulfur oxides and mercury. *Investigation into the Treatment of CO<sub>2</sub> Risk in the Integrated Resource Planning Process*, Docket No. UM 1302, Order No. 08-339 at Appendix C (June 30, 2008). Thus, the IRP process is the appropriate place to let stakeholders know of major spending decisions related to a given resource and to analyze alternatives to those decisions with input from stakeholders.

PacifiCorp's decision to make long-term investments in pollution controls at its aging coal plants was done outside of the IRP process and without the analysis required by Guideline 8. Hearing Transcript at 163-64, 169-70. Along with Citizens' Utility Board of Oregon, RNP and NWECA have actively participated in the Company's IRP processes for several years. During the time that the Company was considering these investments outside of the IRP process, we repeatedly urged PacifiCorp in the IRP process to analyze coal facility closures as a means of meeting emissions targets. *PacifiCorp 2007 Integrated Resource Plan*, Docket No. LC-42, Order No. 08-232 at 10, 22 (Apr. 24, 2008); *PacifiCorp 2008 Integrated Resource Plan*, Docket No. LC-47, Order No. 10-066 at 5 (Feb. 24, 2010); *PacifiCorp 2011 Integrated Resource Plan*, Docket No. LC-52, Order No. 12-082 at 4 (Mar. 9, 2012). As indicated above, the closure of certain coal facilities was a viable alternative to installing expensive pollution controls; however, in this proceeding, the Company has failed to demonstrate that it analyzed this option prior to investing in the pollution controls either in the IRP process or anywhere else. Hearing Transcript at 169-70.

Moreover, neither the 2008 IRP nor the 2011 IRP included the requisite sensitivity analysis on a range of regulatory futures for emissions other than carbon dioxide, in violation of

IRP Guideline 8. *Id.* at 163-64. By failing to conduct this analysis in the IRP, stakeholders were not given the opportunity to weigh in on the decision to make long-term investments in the Company's aging coal plants or to suggest alternatives for the Company to consider. In order to have a meaningful IRP process, stakeholders must be a part of the utility's conversation on resource decisions—especially decisions of this magnitude—and such conversation must have a place in the IRP process.

IV. PacifiCorp Has Failed to Meet its Burden of Showing That its Investments in Costly Pollution Controls Were Prudent.

In this proceeding, the Commission must decide whether to allow PacifiCorp to charge its customers for \$661 million in pollution control investments at certain of its coal facilities. This is no small amount of money, but in thinking about whether it is a reasonable amount to include in customers' rates, we cannot lose sight of the broader issues. This proceeding is about utility investments made without adequate stakeholder input, without a thorough analysis of alternatives, and without a specific legal requirement driving the expenditures. It is about prematurely tumbling toward the easy choice instead of doing the more complex analysis and looking for creative solutions. It is about remaining complacent with prior analysis rather than revisiting the numbers and regulatory climate to ensure that a previous decision still makes sense for you and your customers. It is about simply going through the motions versus using the IRP process as an opportunity for meaningful stakeholder and regulatory input on resource decisions.

PacifiCorp is beginning to do the type of analysis in its IRPs that it should have done before it elected to go forward with the \$661 million in unnecessary and expensive pollution controls at issue in this proceeding. We appreciate the Company's efforts to be more responsive to stakeholder concerns. But the steps it is taking now are not enough to undo its past pollution control investments. And the evidence in the record in this proceeding is insufficient to pass on

those imprudently incurred costs to ratepayers. Accordingly, RNP and NWECA request that the Commission reject PacifiCorp's request to include those imprudently incurred costs in customers' rates. Going forward, the Commission should ensure that a utility's resource investments are thoroughly and transparently analyzed through a least-cost/least-risk lens, with opportunity for stakeholder and regulator input before the expenditures are made.

RESPECTFULLY SUBMITTED this 7th day of November, 2012.

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I hereby certify that I served the foregoing **JOINT POST-HEARING BRIEF OF RENEWABLE NORTHWEST PROJECT AND NW ENERGY COALITION** on the following persons on November 7, 2012:

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