

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UE 246**

In the Matter of

PACIFICORP

Request for a General Rate Revision

Joint Prehearing Brief of Renewable  
Northwest Project and NW Energy  
Coalition

Renewable Northwest Project (“RNP”) and NW Energy Coalition (“NWE”) submit this Joint Prehearing Brief to support the positions of Citizens’ Utility Board of Oregon (“CUB”) and Sierra Club that PacifiCorp made imprudent capital expenditures at coal plants. RNP and NWE learned during PacifiCorp’s 2011 Integrated Resource Plan (“IRP”) process of the large sums already invested, without advance regulatory review, in continued operation of coal facilities. RNP and NWE have not sponsored witnesses in this case, nor do we intend to conduct cross-examination at the hearing, but we have monitored the case, reviewed the evidence of unnecessary capital investments on marginal coal units, and we now urge the Oregon Public Utility Commission (“Commission”) to hold PacifiCorp accountable.

We also recommend that the Commission set a high bar for analysis of alternatives to coal investments going forward. Without question, the Commission should demand creative analysis of options for cost-effectively avoiding life-extending investments in PacifiCorp’s aging coal units. On its own, however, a “do better next time” message from the Commission is not enough. Real consequences are appropriate when hundreds of millions of dollars have been spent without clear economic benefits or acceptable consideration of alternatives to doubling down on aging, polluting generators.

## **I. Legal Standard**

The Commission has broad authority to protect customers and the broader public from unjust and unreasonable exactions and practices and ensure adequate service at fair and reasonable rates. *Pacific Northwest Bell Tel. Co. v. Sabin*, 21 Or App 200, 214, *rev den* (1975); *see also* ORS 756.040(1). Rates must be fair, just and reasonable. ORS 757.210(1)(a). Just and reasonable rates “do not include costs that are imprudent, are not used and useful, or are not consistent with sound and economical management of the utility.” (Sierra Club/200 Steinhurst/7.)

In determining whether a utility’s costs were prudently incurred, the Commission analyzes the objective reasonableness of the utility’s actions based on the information that was available—or could reasonably have been available—at the time the action was taken. Docket Nos. UM 995/UE 121/UC 578, Order No. 02-469 at 4 (July 18, 2002) (citing *In re PGE*, Docket No. UE 102, Order No. 99-033 at 36-37); Docket Nos. UE 34/UM 1047, Order No. 02-820 at 5 (Nov. 20, 2002). If the actions were reasonable, then the costs were prudently incurred. Docket Nos. UE 34/UM1047, Order No. 02-820 at 5 (Nov. 20, 2002). If the utility’s actions were unreasonable, then the costs were not prudently incurred. *Id.* The consequence of an expense not being prudent is that the Commission does not include the expense in the calculation of the utility’s rates. *Id.*

The utility bears the burden of showing that its proposed rates are fair, just and reasonable. ORS 757.210(1)(a); Docket Nos. UE 34/UM1047, Order No. 02-820 at 5 (Nov. 20, 2002). The utility sustains this burden throughout the proceeding—not just at the outset. Docket No. UE 228, Order No. 11-432 at 3 (Nov. 2, 2011); Docket No. UE 115, Order

No. 01-777 at 6 (Aug. 31, 2001). Thus, in this proceeding, PacifiCorp must establish that it adequately studied the question of whether to invest further in the resources at issue and made a reasonable decision, using the data and methods that reasonable company management would have used at the time the decisions were made.

## **II. Analysis of Imprudence**

Evidence submitted by CUB and Sierra Club demonstrates that PacifiCorp spent a great deal of customer money without adequately analyzing (1) whether investments were necessary to satisfy environmental regulations; and (2) whether making the investments and continuing to operate the units was in customers' economic best interests when compared with alternatives. More specifically, their primary evidence shows that:

- PacifiCorp was motivated by an internal capital investment strategy. (CUB/100 Jenks-Feighner 12-14; Sierra Club/100 Fisher/23-25.)
- At relevant times, PacifiCorp should have known about opportunities for flexibility in the Regional Haze/BART regime and considered cost-saving, life-shortening alternatives to pollution control investments. (CUB/200 Jenks-Feighner/11-24.)
- Some pollution control upgrades were analyzed and performed in a piecemeal fashion, obscuring the likely total cost of bringing the units into full compliance for their extended lives. (CUB/100 Jenks-Feighner/18-20; Sierra Club/100 Fisher/50-51, 54.)
- No regulatory program mandated \$279 million in SO<sub>2</sub> controls at Naughton or the \$77 million SO<sub>2</sub> controls at Hunter, which should have given PacifiCorp time to consider alternatives. (Sierra Club/100 Fisher/4, 6-7, 10, 14-23; Sierra Club/105 Fisher/11; Sierra Club/111 Fisher/52-53; Sierra Club/300 Fisher/3-9.)
- PacifiCorp jumped ahead of regulatory requirements for low-NO<sub>x</sub> burners at Naughton, rather than waiting to consider final requirements and alternatives. (Sierra Club/100 Fisher/4-7, 19-20; Sierra Club/300 Fisher/1-3.)
- Updates to cost-effectiveness studies could have been, but were not, regularly performed. (CUB/100 Jenks-Feighner/27; CUB/200 Jenks-Feighner/4, 32-33, 36, 38; Sierra Club/300 Fisher/10, 20-21.)
- PacifiCorp's conclusion that the Naughton investments had positive value to customers was flawed, principally because it modeled immediate plant shutdown

rather than operation to the date permitted by environmental regulations, and that corrected modeling results in negative or, at best, marginal investment value for Naughton upgrades. (CUB/100 Jenks-Feighner 26-28, 41; CUB/200 Jenks-Feighner/5-6, 27, 31-41; Sierra Club/100 Fisher/28-50; Sierra Club/200 Steinhurst/16-17; Sierra Club/300 Fisher/13-21.)

- Negative and even marginally positive values were a red flag that should have prompted PacifiCorp to consider alternatives to the coal investment. (Sierra Club/300 Fisher 21-22.)
- Better, more frequent analysis and consideration of alternatives, including BART flexibility and deferral of investments, would have led to better economic outcomes for customers. (CUB/200 Jenks-Feighner/27-28, 33, 36; Sierra Club/100 Fisher/59; Sierra Club/300 Fisher/2.)

CUB and Sierra Club's evidence, in essence, shows that PacifiCorp did not diligently look for least-cost, least-risk alternatives to investing vast sums of customer money in its coal fleet and that the Company ignored red flags that should have caused them to question whether particular investments were economic. For some particular units at issue in this docket, as indicated above, CUB and Sierra Club show that expenditures were not in customers' best economic interests.

In addition, significant long-term commitments to these generating resources should have been analyzed in prior IRPs, where alternative resource strategies could have been developed and evaluated by stakeholders and regulators. Oregon's IRP Guideline 8 "requires utilities, when considering long-term resource commitments, to take into account the risks that external costs may be internalized in the future." *Investigation into Integrated Resource Planning*, Docket No. UM 1056, Order No. 07-002 at 17 (Jan. 8, 2007). It requires utilities to develop and analyze a set of portfolios that cover a range of potential environmental compliance scenarios to address present and future carbon dioxide, nitrogen oxide, sulfur oxide and mercury emission regulations. *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). Guideline 8 also directs utilities to modify the projected lifetime of a resource as needed in order to be consistent with the compliance scenario being analyzed. *Id.* Moreover, IRPs must be performed regularly—approximately every two years, with annual updates to the analysis in between IRP cycles—in recognition that policy, regulatory and economic changes will affect resource strategies. *See* OAR 860-027-0400. PacifiCorp pursued a coordinated program to reinvest in its coal fleet, and that resource strategy deserved advance IRP review and regular updating consistent with IRP requirements.

Among PacifiCorp's answers to these challenges is that it is complicated to manage the environmental compliance of a large coal fleet in a fluid regulatory environment, and that a just-in-time approach to securing and installing pollution control technology could also have subjected customers to risk as well. (*See, e.g.,* PAC/1500 Teply/8, 38)

Undoubtedly, PacifiCorp has become a large and complex utility that is owned by an even larger and more complex company, with a variety of competing interests that indeed must be difficult to manage. This business structure means that PacifiCorp has to do (and does do) many things well, but not that PacifiCorp should be excused from diligently, repeatedly examining customers' interests and looking for creative, cost-effective alternatives when faced with resource strategy decisions and investments in particular units. In fact, considering the magnitude of PacifiCorp's coal legacy, it should be particularly interested in examining ways to divert its billions of "Comprehensive Air Initiative" dollars in a less risky, less costly, and more diverse direction, as PGE did with the Boardman Coal Plant. Instead,

PacifiCorp went forward with investments, some shown to be of negative to marginal value, without prudent examination of alternatives.

The appropriate consequence for not meeting the minimum standards of prudence is disallowance. CUB's testimony engages with some of the complication about how to disallow the cost of upgrading a plant already in rates and has offered a variety of alternatives that create real consequences for missteps without magnifying the harm to customers. Surely, with its broad statutory authority, the Commission can fashion an appropriate ratemaking treatment.

#### **IV. Going Forward**

This practical ratemaking challenge does highlight the importance of avoiding bad decisions in the first place, which the Commission can help do by being clear about what PacifiCorp must do before making future expenditures on coal plants. The \$661 million in investments at issue in this case are just a fraction of the overall capital expenditures PacifiCorp is expected to make to its aging coal fleet (CUB/100, Jenks-Feighner/59). In fact, through 2010, PacifiCorp spent more than \$1.2 billion on its coal-fired generating units. (Exhibit Sierra Club/112, Fisher/1.) This amount represents less than half of the expenditures PacifiCorp is expected to make over the next two decades, with estimates for total investments in coal fleet upgrades of \$4.2 billion. (Exhibit Sierra Club/112, Fisher/1.) With several billions of dollars left to be invested, it is imperative that the Commission clarify expectations for how and where these investments should be analyzed and considered to ensure that utility investment decisions represent the least cost/least risk approach for Oregon ratepayers going forward.

The proper venue for review of a complete, transparent analysis of capital expenditures to existing units is through the IRP process. (UE 246 CUB/200 Jenks-Feighner/11 lines 16-18.) The IRP should examine a utility's major investments before those investments are made. PacifiCorp has invested over \$1 billion in its coal fleet without conducting a complete analysis through an IRP process. We urge the Commission to clarify that clean air compliance costs, as well as other coal fleet upgrade costs, are indeed expenses that must be thoroughly examined in its IRP prior to incurring those costs.

Investments to comply with a particular federal or state environmental regulation should be analyzed in a holistic fashion, on a unit-by-unit basis in a utility IRP filing. This unit-by-unit analysis should allow parties to analyze all potential compliance costs associated with current and future regulation. This analysis should include information regarding:

- unit efficiency;
- unit coal costs;
- known costs of environmental compliance;
- the year investments are expected;
- risk and range of additional environmental compliance costs that are not firm;
- specific deadlines for environmental compliance;
- costs and risks of future carbon regulation;
- regulatory flexibility; and
- any other information necessary for a thorough analysis.

(See CUB/200 Jenks-Feighner/22; Sierra Club/200 Steinhurst/19-20.)

The recent EPA decision not to accept the Wyoming SIP provides the Company an opportunity and additional time to review its prior decisions regarding installation of SCRs and other future environmental controls at its Wyoming units. (*See* PAC/1400 Wollums/29; CUB/200 Jenks-Feighner/20-21.) It provides the Company an opportunity to conduct a thorough coal fleet analysis, incorporating regulatory flexibility, and determine what is and is not least-cost/least risk for customers.

We acknowledge and appreciate the advancements in this direction made in PacifiCorp's 2012 IRP update and, currently, in development of the 2013 IRP. However, we are not persuaded that this process will produce a sufficiently detailed, transparent, regularly updated unit-by-unit analysis that considers possibilities for regulatory flexibility unless there is a definitive statement from the Commission. RNP and NWECA respectfully request that the Commission make clear that PacifiCorp must conduct, on an ongoing and regularly updated basis, the detailed analytical, company-wide reviews suggested here and outlined by CUB and Sierra Club in this docket. (CUB/200 Jenks-Feighner/11; Sierra Club/100 Fisher/48-50; Sierra Club/200 Steinhurst/16-17.)

## **V. Conclusion**

As CUB and Sierra Club have demonstrated, PacifiCorp failed to meet its burden of showing that expenditures made at certain of its coal facilities were prudently incurred. Because these costs were not prudently incurred, the costs should not be included in customers' rates. The Commission has broad authority to determine the appropriate regulatory treatment for the imprudently incurred costs, and should exercise its authority to hold PacifiCorp accountable for past mistakes and also ensure that future IRPs will include comprehensive planning and analysis. Robust, transparent advance analysis is



critical to making an informed decision about whether investing in decades of future coal generation is the least-cost/least-risk strategy for customers.

RESPECTFULLY SUBMITTED this 4<sup>th</sup> day of October, 2012.

**RENEWABLE NORTHWEST PROJECT  
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*/s/ Megan Decker*

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## CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **JOINT PREHEARING BRIEF OF RENEWABLE NORTHWEST PROJECT AND NW ENERGY COALITION** on the following persons on October 4, 2012:

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