

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UE 246**

In the Matter of	)	
	)	CITIZENS' UTILITY BOARD
PACIFICORP, dba PACIFIC POWER	)	OF OREGON'S PRE-HEARING BRIEF
Request for a General Rate Revision	)	

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**I. CUB AND ICNU ARE FILING A JOINT PRE-HEARING BRIEF RELATED TO ALL ISSUES EXCEPT CLEAN AIR INVESTMENTS—CUB ADDRESSES THE CLEAN AIR INVESTMENTS BELOW**

In compliance with the “Joint Pre-hearing Conference Memorandum” issued by ALJ Pines on September 12, 2012, and for the sake of judicial economy, the Citizens’ Utility Board of Oregon, (“CUB”) and the Industrial Customers of Northwest Utilities (“ICNU”) have decided to file a Joint Prehearing Brief related to the issues of the PCAM, TAM, and Mona to Oquirrh. This Prehearing Brief, filed solely by CUB, will focus on the issue of PacifiCorp’s pollution control investments.

**II. INTRODUCTION**

On March 1, 2012, pursuant to ORS 757.205 and ORS 757.220, PacifiCorp filed revised tariff sheets to be effective March 31, 2012, seeking a base rate increase of approximately \$38.4 million, or 3.2 percent.<sup>1</sup> As a result of resetting Schedule 299, the Rate Mitigation Adjustment, to reflect forecast customer loads by rate schedule, the proposed increase to net rates was \$41.2 million, or 3.5 percent.<sup>2</sup> In its filing, PacifiCorp used an historical base period of the 12 months

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<sup>1</sup> UE 246/PAC/100/Reitan/3 at 1.

<sup>2</sup> UE 246/PAC/100/Reitan/3 footnote 1.

1 ended June 2011, with normalizing and pro forma adjustments to calculate a 2013 calendar year  
2 future test period.<sup>3</sup> The Company also included the Mona to Oquirrh transmission line in its filing.  
3 Because the transmission line is not projected to be in service until second quarter 2013, the  
4 Company proposes to delay implementation of the revenue requirement increase related to the  
5 Mona to Oquirrh transmission line (\$13.1 million, or 1.1 percent on an overall basis), until the plant  
6 is in service, and to then begin recovery of its costs through a separate tariff rider. In Order No. 12-  
7 093, issued March 14, 2012, the Public Utility Commission of Oregon (Commission) suspended the  
8 Company's application for a general rate revision for an additional nine months from the original  
9 effective date of the revised tariff sheets. Due to the suspension, the effective date of the revised  
10 tariff sheets is now January 1, 2013.<sup>4</sup> A Partial Stipulation was filed July 12, 2012 and resolves most  
11 issues in UE 246 with the exception of the TAM, PCAM, Mona to Oquirrh and the coal pollution  
12 control investment issues. CUB now writes on the pollution control investment issues.

13 The Company states that its need for this rate increase is driven by ongoing new investments  
14 in the system.<sup>5</sup> It lists out investments that include environmental improvements at Naughton Units  
15 1 and 2, Dave Johnston Unit 4, Hunter Units 1 and 2, Wyodak, and Jim Bridger Unit 3 ("Bridger 3").  
16 The Company claims that these investments are necessary to comply with environmental  
17 regulations.<sup>6</sup> But CUB notes that PacifiCorp's rates have increased by 60% since PacifiCorp was  
18 bought by MEHC—a rate of increase that is more than double the level at which PGE's rates are  
19 rising. The primary driver for these higher rates has been non-stop capital investments, including

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<sup>3</sup> UE 246/PAC/1100/Dalley/5 lines 20-21.

<sup>4</sup> UE 246/PAC/1100/Dalley/6 lines 1-3; OPUC Docket No. 246, Order No. 12-093 dated March 14, 2012.

<sup>5</sup> UE 246/PAC/100/Reiten/4 lines 1-3.

<sup>6</sup> UE 246/PAC/100/Reiten/4 lines 13-17; PAC/1400 Woollums/3 lines 12-18; UE 246 Staff/1500 Colville/7 lines 20 – 22 and Colville/8 lines 1-8 discussing pre 2012 costs as sunk.

1 pollution control investments.<sup>7</sup>

2 Major investments in utility generation need to be subject to least cost/least risk analysis in  
3 IRPs.<sup>8</sup> And while CUB acknowledges that PacifiCorp's March IRP Update provided a much more  
4 detailed analysis of pollution control investments at a limited number of coal units, it still failed to  
5 consider alternative closure dates for these units and assumed that any investments that are subject  
6 to this docket were sunk and not avoidable. This came after PacifiCorp had already invested  
7 hundreds of millions of dollars in its coal units, including those at issue in this docket.<sup>9</sup> "Capital  
8 investment is important to the Company because it allows MEHC to increase shareholder equity,  
9 and therefore the return on that equity."<sup>10</sup> "It would be helpful if the Company saw capital  
10 investments as costs that can be avoided, rather than opportunities to increase its shareholder  
11 equity."<sup>11</sup> It is, therefore, CUB's position that:

12 Because of the risks associated with future carbon regulation, the Commission  
13 should scrutinize investments in coal plants and only make such investments when  
14 they are cost effective. Each time a utility is required to make a significant investment  
15 in a coal plant, that utility should take the opportunity to reexamine all of its  
16 investment plans in that coal plant to ensure that the necessary investment, when  
17 combined with future expected investments and regulatory costs, is prudent and  
18 reasonable. The Commission must then review the utility's decision on whether its  
19 investment was prudent and reasonable.<sup>12</sup>

20 And, put another way, when as in this case, "[I]t is cheaper to close a plant or convert it to a lower-  
21 carbon resource, utilities and the Commission should take the opportunity to reduce carbon

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<sup>7</sup> UE 246/CUB/100/Jenks-Feighner/12 lines 6-14.

<sup>8</sup> UE 246/CUB/100/Jenks-Feighner/11 lines 16-18.

<sup>9</sup> UE 246/CUB/100/Jenks-Feighner/11 lines 22-23 and Jenks-Feighner/12 lines 1-4.

<sup>10</sup> UE 246/CUB/100/Jenks-Feighner/13 lines 3-4; *See also* UE 246/CUB/100/Jenks-Feighner/13, Figures 1 and 2 and UE 246/CUB/100/Jenks-Feighner/14, Figure 3.

<sup>11</sup> UE 246/CUB/100/Jenks-Feighner/14 lines 8-10.

<sup>12</sup> UE 246/CUB/100/Jenks-Feighner/10 lines 20-21 and Jenks-Feighner/11 lines 1-6.

1 emissions and to reduce costs to consumers.”<sup>13</sup> In response to this testimony, the Company  
2 criticized CUB for “applying integrated resource planning principles to a rate case prudence  
3 determination.”<sup>14</sup> But, the investments at issue in this docket were never considered in an IRP. For  
4 this very reason, CUB hopes that the Commission will take this opportunity to remind the Company  
5 why detailed analysis during an IRP is an essential step that can help a company avoid imprudent  
6 investments and related disallowances.

7 In regard to the clean air investments at issue in this docket, PacifiCorp’s analysis did not  
8 adequately consider alternatives to the investments which could have proven to be least cost/least  
9 risk - the evidence shows that in at least three instances consideration would have proven that an  
10 alternative existed that was in fact the least-cost/least-risk option. CUB therefore believes that the  
11 Company was imprudent in deciding in 2008 and 2009<sup>15</sup> to go ahead with the investments without a  
12 robust analysis that took into consideration the cost of the investment, alternative investments paths  
13 to meet the federal Regional Haze Rule (RHR) and Best Available Retrofit Technologies (BART)  
14 requirements,<sup>16</sup> a range of alternatives to the investments, and sensitivities relating to fuel costs,  
15 carbon regulation, and additional coal regulation, as well as whether there were options available that  
16 would have lower costs. In addition, CUB believes that even with the Company’s poor analytical  
17 tools (the PVRR studies) that the Company should have recognized that investments in three of its  
18 units—Naughton 1 and 2 and Bridger 3—were not cost-effective or prudent. CUB offers the  
19 Commission three options to respond to this imprudence: to disallow investments that are not  
20 prudent, to assess a financial penalty on the Company, or to find that the investments cannot be

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<sup>13</sup> UE 246/CUB/100/Jenks-Feighner/11 lines 7-9.

<sup>14</sup> UE 246/PAC/1900/Woollums/1 lines 17-19.

<sup>15</sup> UE 246/PAC/1900/Woollums/2 lines 3-4.

<sup>16</sup> The Regional Haze Rule refers to federal Clean Air Act Section 169 requirements use BART to reduce haze in national parks and wilderness areas.

1 considered used and useful without examining the entire Regional Haze Rule investment at each  
2 plant.<sup>17</sup> It is CUB's considered opinion, that these three options provide the Commission with an  
3 appropriate range of actions with which to address PacifiCorp's lack of rigorous clean air investment  
4 analysis.

### 5 **III. STANDARD OF REVIEW**

6 With the issues remaining to be addressed now identified, it is appropriate to consider the  
7 Standard of Review applicable to a General Rate Case filing. That Standard is discussed below.

#### 8 **A. PacifiCorp Bears the Burden to Show That Its Rates Are Fair, Just, and Reasonable**

9 A review of ORS 756.040(1), ORS 757.210(1) (a) and UE 115, Order No. 01-777<sup>18</sup>  
10 demonstrates that PacifiCorp has the burden to show that its proposed rates are fair, just, and  
11 reasonable.<sup>19</sup> That means that the utility must show that the components that make up the costs in  
12 the proposed test year are reasonably certain to occur and are prudent.<sup>20</sup> "Just and reasonable rates  
13 do not include costs that are imprudent, are not used and useful, or are not consistent with sound  
14 and economical management of the utility."<sup>21</sup>

#### 15 **B. PacifiCorp Bears the Burden of Persuasion Throughout the Proceeding**

16 PacifiCorp bears the burden of persuasion throughout this docket to show that its requested  
17 rate increase is reasonable. The Commission has directly addressed this issue, saying:

18 We . . . affirm that, under ORS 757.210, the burden of showing that the proposed  
19 rate is just and reasonable is borne by the utility throughout the proceeding. Thus, if

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<sup>17</sup> UE 246/CUB/100 Jenks-Feighner/16-18

<sup>18</sup> UE 115, Order No. 01-777 at 4- 6.

<sup>19</sup> ORS 757.210(1); *Pacific Northwest Bell Tel. Co. v. Sabin*, 21 Or. App. 200,213-214 (1975). "Any increase in rates must be preceded by the submission of 'revised schedules,' and is dependent upon a showing by the utility that the proposed rates are 'just and reasonable.' *citing to* ORS 757.210.

<sup>20</sup> UT 125/UT 80 Order No. 00-191 at 9 (quoting Order No. 97-171).

<sup>21</sup> UE 246/Sierra Club/200/Steinhurst/7 lines 24-26.

1 PGE makes a proposed change that is disputed by another party, PGE still has the  
2 burden to show, by a preponderance of the evidence, that the change is just and  
3 reasonable. If it fails to meet that burden, either because the opposing party  
4 presented compelling evidence in opposition to the proposal, or because PGE failed  
5 to present compelling information in the first place, then PGE does not prevail.<sup>22</sup>

6 OPUC Order No. 09-046, then clarified that there are two aspects to the burden of proof—the  
7 burden of persuasion and the burden of production<sup>23</sup> distributed as follows:

8 The burden of *persuasion* in a deferral amortization case is always with the utility. The  
9 ultimate burden of *producing* enough evidence to support its claims is also with the  
10 utility. Other parties in the case, however, have the burden of *producing* evidence to  
11 support their argument in opposition to the utility's position.<sup>24</sup>

12 This application of the standard was further clarified in UE 228, when the Commission advised:

13 To reach a determination on whether proposed rates are just and reasonable, we look  
14 at the record as a whole and make a determination based on the preponderance of  
15 the evidence. Once a utility has met the initial burden of presenting evidence to  
16 support its request, “the burden of going forward then shifts to the party or parties  
17 who oppose including the costs in the utility’s revenue requirement.” Although the  
18 burden of *production* shifts, the burden of *persuasion* is always on the utility.<sup>25</sup>

19 Given the above, it is clear that it is not CUB’s role to prove that the proposed cost is  
20 unreasonable or imprudent. Rather, it is PacifiCorp’s role to prove that the proposed cost increase is  
21 reasonable and prudent. Bob Jenks and Gordon Feighner’s testimony, on behalf of CUB, provides  
22 evidence as to why PacifiCorp has failed to meet its burden of proof with regard to the outstanding  
23 issues. While the Commission may take CUB’s testimony and weigh it against the testimony  
24 presented by PacifiCorp, ultimately the Commission must be convinced that PacifiCorp has carried  
25 the burden of persuasion, of proving that its proposals are reasonable and prudent. And, as stated in  
26 the Direct Testimony of Dr. William Steinhurst:

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<sup>22</sup> UE 115 Order No. 01-777 at 6 (Aug. 31, 2001)

<sup>23</sup> UE 196 Order No. 09-046 at 7.

<sup>24</sup> UE 196 Order No. 09-046 at 7-8 (*emphasis added*).

<sup>25</sup> UE 228 Order No. 11-432 (Nov 2, 2011) (*emphasis added*). See also *In Re Northwest Natural Gas Company*, Docket No. UG 132, Order No. 99-697 at 3 (Nov 12 1999) *In Re PGE, Application to Amortize the Boardman Deferral*, Docket No. UE 196, Order No. 09-046 at 7-8. Although the burden of production shifts, the burden of persuasion is always with the utility;

1 It is my understanding that only prudently incurred expenses, including recovery of  
2 and on prudently incurred investments used and useful for the provision of utility  
3 service, may be recovered in retail rates. In addition, only prudent investments used  
4 and useful for the provision of utility service may be included in rate base.  
5 Conversely, imprudently incurred expenditures are traditionally disallowed. Finally,  
6 costs must also be reasonable, necessary and verifiable in order to be recoverable.<sup>26</sup>

7 **C. Reasonableness Is Based on Overall Rates, Not Each Adjustment**

8 The Commission is responsible for ensuring that PacifiCorp's customers are charged just  
9 and reasonable rates.<sup>27</sup> As the PUC has noted previously:

10 [T]he validity of the determined rates rests on the reasonableness of the overall rates,  
11 not the theories or methodologies used or individual decisions made. As the United  
12 States Supreme Court explained in *Hope*, if the total effect of the rate order is not  
13 unjust and unreasonable, "[t]he fact that the method employed to reach that result  
14 may contain infirmities is not then important."<sup>28</sup>

15 In short, as the courts have previously noted, ratemaking is, and should be, a holistic process.<sup>29</sup>

16 **D. Objective Reasonableness Does Not Require the Commission to Dispense With the**  
17 **Application of Common Sense**

18 CUB anticipates that the Company will commence its brief with a dissertation on the "objective  
19 reasonableness standard:"

20 [I]f the record demonstrates that a challenged business decision was objectively  
21 reasonable, taking into account established historical facts and circumstances, the  
22 utility's decision must be upheld as prudent even if the record lacks detail on the  
23 utility's actual subjective decision making process.<sup>30</sup>

24 CUB has no quibble with this standard. CUB's only quibble relates to how the Company and Staff  
25 would have the Commission apply the standard in these dockets. As stated in CUB's "Response

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<sup>26</sup> UE 246/Sierra Club/200/Steinhurst/7 lines 1-9.

<sup>27</sup> ORS 756.040(1); *Pacific Northwest Bell Tel. Co.*, 21 Or. App. At 213.

<sup>28</sup> DR 10. UE 88 & UM 989 at p. 7-8 citing to *Hope*, 320 US at 602. *See also* Morgan Stanley Capital Group, Inc. v. Public Util. Dst. No. 1 of Snohomish County, 554 US \_\_\_, 128 S Ct 2733, 2738, 171 L.Ed 2d 607 (2008) ("We have repeatedly emphasized that the Commission is not bound to any one ratemaking formula.").

<sup>29</sup> DR 10. UE 88 & 989 at p. 64.

<sup>30</sup> Order No. 09 -501 at 5.

1    Testimony” filed June 20, 2012, in this docket:

2           It is CUB’s position that PacifiCorp’s clean air investments in its coal plants were not  
3           prudent because PacifiCorp failed to take a least cost approach to those investments,  
4           including consideration of whether there were alternatives to those investments that  
5           could provide lower costs to customers.<sup>31</sup>

6    Sierra Club is of a similar general opinion.<sup>32</sup>

7           With respect to Naughton 1 and 2 and Bridger 3, CUB believes that these investments are  
8           imprudent and that the consequence of imprudence can be demonstrated. With respect to the other  
9           plants, however, it is difficult to say what the Company would have found if it had prudently  
10          analyzed the investments. While the March IRP updates show that the Company can analyze coal  
11          investments and their alternatives in a reasonable manner—though CUB is critical of the March  
12          update for not considering BART flexibility—still the March update only considered the costs at  
13          issue in this docket to be sunk and did not look at PacifiCorp’s fleet of coal units in its entirety  
14          leaving out some of the plants at issue in this docket. But, just because it is difficult to determine  
15          what to do about PacifiCorp’s imprudence in this docket does not mean that the Commission  
16          should do nothing at all.

17    **IV. APPLICATION OF THE STANDARD OF REVIEW TO THE UNSETTLED**  
18    **ISSUES IN THIS DOCKET**

19          PacifiCorp has invested a great deal of customer-backed money in coal plants over  
20          the past decade without a close examination of whether there are cheaper alternatives for  
21          generation. If a utility does not examine its alternatives, it will never find opportunities to  
22          reduce costs and carbon emissions by moving away from coal.<sup>33</sup>

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<sup>31</sup> UE 246/CUB/200/Jenks-Feighner/1 lines 9-12.

<sup>32</sup> UE 246/Sierra Club/200/Steinhurst/3 lines 4-7; Steinhurst/3 lines 14-28 to Steinhurst./6 line 9 and Sierra Club/100/Fisher/4.

<sup>33</sup> UE 246/CUB/100/Jenks-Feighner/11 lines 12-15.



1    **A. Coal—The Central Themes**

2    1.   *The Coal Units That Received the Clean Air Investments at Issue in This Docket Constitute Nearly*  
3       *30 Percent of the Fleet Operated by PacifiCorp; These Investments Are Huge and Growing*

4           PacifiCorp states in its Initial Application that the purpose of the Company’s testimony “is  
5   to provide the Commission with information supporting the prudence of capital investments in  
6   emissions control equipment being placed in service during the test period at five of the 19 coal  
7   fueled generation units that the Company *operates*.”<sup>34</sup> There are in fact seven individual units at five  
8   different plants at issue in this docket.<sup>35</sup> Those units are Naughton Units 1 and 2, Dave Johnston  
9   Unit 4, Hunter Units 1 and 2, Wyodak, and Bridger 3.<sup>36</sup> These units equate to seven of PacifiCorp’s  
10   fourteen “BART-eligible units.”<sup>37</sup> This means that this test year includes part of a program that is  
11   designed to spend a total of \$4.2 billion on the PacifiCorp coal fleet.<sup>38</sup> These numbers are important  
12   because they evidence the enormity of the investments the Company is making and may need to  
13   make in the future at the other coal plants it operates unless it is willing to consider additional  
14   alternative investments.

15   2.   *Federal and State Clean Air Regulations Are Not the Limiting Factors Here—PacifiCorp’s Lack of*  
16       *Creativity and Devotion to Its Shareholders Are the Limiting Factors*

17           PacifiCorp goes to great lengths to spell out the names of all of the clean air and other  
18   environmental regulations with which it has to comply, as well as the names of the chemicals and

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<sup>34</sup> UE 246/PAC/500/Teply/2 lines 7-10 (*emphasis added*).

<sup>35</sup> PacifiCorp is inconsistent with regards to how to count coal units. On PAC/500/Teply/2 it states that this case is about “5 of the 19 coal fueled generating units the Company operates.” On PAC/500/Teply/4 it discusses “26 units” that the Company owns or has a partial share. To get to 26 units, Naughton 1 and 2 and Hunter 1 and 2 have to be counted as separate units. For the purposes of this brief, CUB considers the Company’s fleet of coal generation to include 26 units and believes this case is considering investment in 7 of those 26 units.

<sup>36</sup> UE 246/PAC/500/Teply/2 lines 10-12.

<sup>37</sup> UE 246/PAC/500/Teply/6 lines 5-6; UE 246/PAC/500/Teply/7 lines 16-19.

<sup>38</sup> Testimony of Cathy S. Woollums, Senior Vice President and Chief Environmental Counsel, MidAmerican Energy Holdings Company, Committee on Environment and Public Works, United States Senate, June 15, 2011.

1 other pollutants that they are intended to curtail.<sup>39</sup> Unfortunately, it does not take such pains with the  
2 compliance flexibility built into those laws.<sup>40</sup> PacifiCorp makes broad brush statements such as:

3 The BART permits and construction permits issued by the respective state agencies  
4 for the emissions control investments contemplated in this case include stand-alone  
5 requirements enforceable by the laws of the respective states. These requirements are  
6 enforceable independent of whether EPA has approved the respective state  
7 implementation plans.<sup>41</sup>

8 But both PacifiCorp and Staff ignore the flexibility within the state and federal laws that was  
9 clearly demonstrated in the PGE Boardman case<sup>42</sup> and also evident in the EPA Mercury and Air  
10 Toxics Standards (MATS) rules.<sup>43</sup> CUB therefore strongly disagrees with PacifiCorp, and also with  
11 Staff, that no one could have anticipated that changing the useful life of a plant would reduce  
12 required pollution control before PGE considered this concept in 2012.<sup>44</sup> Clearly PGE was able to  
13 anticipate that changing the useful life of a plant would reduce required pollution control.<sup>45</sup> And  
14 CUB was able to figure that out too.<sup>46</sup> The historical facts show that the ability to adjust the  
15 expected life of the plant, to gain different pollution control requirements, is not new and, was not  
16 invented by PGE in 2010.<sup>47</sup> Historical facts also show that there was a great deal of public discussion

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<sup>39</sup> UE 246/PAC/500/Teply/3 lines 9-22; UE 246/PAC/500 Teply/31 lines 19-22 and Teply/32 lines 1-14; UE 246/PAC/500/Teply/80 lines 16-21 and Teply/81 lines 1-6; PAC/1400/Woollums/8 lines 4-23..

<sup>40</sup> UE 246/PAC/1400/Woollums/16 lines 8-20 – completely missing her own statement, “Without commitments for an early shut down of an electric generating unit...” There is flexibility, but the Company has to ask for it and commit to it.

<sup>41</sup> UE 246 PAC/500/Teply/14 lines 11-15.

<sup>42</sup> UE 246/PAC/2000 Teply/3 lines 6-8 – “[T]here is no “one-size-fits-all” approach to analyzing investment decisions at coal-fueled plants, and unique circumstances surrounded the Boardman negotiations and settlement reached by Oregon stakeholders. In addition, the negotiations and settlement of the Boardman plant occurred *after* the Company’s investment decisions at issue in this case.” (*emphasis in original*)

<sup>43</sup> Presidential Memorandum—Flexible Implementation of the Mercury and Air Toxics Standards Rule. December 21, 2011. <http://www.whitehouse.gov/the-press-office/2011/12/21/presidential-memorandum-flexible-implementation-mercury-and-air-toxics-s>.

<sup>44</sup> UE 246/CUB/200/Jenks-Feighner/11 lines 11-31 to Jenks-Feighner/22 line 13.

<sup>45</sup> UE 246/CUB/200/Jenks-Feighner/12 lines 5-6.

<sup>46</sup> UE 246/CUB/200/Jenks-Feighner/13 lines 5-10.

<sup>47</sup> UE 246/CUB/200/Jenks-Feighner/13 lines 11-14.

1 about which PacifiCorp should have been aware.<sup>48</sup> And, historical facts show that Idaho Power is  
2 the co-owner of Boardman with PGE, and the co-owner of Bridger 3 with PacifiCorp.<sup>49</sup>

3 Staff is simply wrongheaded to believe that PacifiCorp could not have been aware, of the  
4 effect that changing the life of a plant could have, before 2010. PacifiCorp knew or should have  
5 known about PGE's consideration of alternative shutdown dates in 2008<sup>50</sup> and knew or should have  
6 known of DEQ's decision to invite PGE to reapply issued in 2009. PacifiCorp also should have  
7 known about PGE's IRP study, which demonstrated early closure to be the least cost/least risk  
8 approach to future clean air investment. Furthermore, PacifiCorp should have known about the  
9 DEQ order approving a 2020 *phase-out* and, that the Oregon State Implementation Plan (SIP)  
10 including Boardman was accepted by the EPA.<sup>51</sup>

11 Clearly, had PacifiCorp spent more time analyzing the actual content of the laws, it would be  
12 clear to the Commission that the Federal and State clean air regulations are not the limiting factors  
13 here—PacifiCorp's lack of creativity and devotion to its shareholders' pocket books are the true  
14 limiting factors. As long as the Company is determined to use large, poorly analyzed investments as  
15 the vehicle for earning shareholders its profits, at the expense of its customers, PacifiCorp will not  
16 want to spell out the content of those laws to the Commission. The federal rules associated with  
17 BART clearly establish the relationship between the life of the plant and the pollution controls.<sup>52</sup>

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<sup>48</sup> UE 246/CUB/200/Jenks-Feighner/21 lines 16-25 and Jenks-Feighner/22 lines 1-13.

<sup>49</sup> UE 246/CUB/200/Jenks-Feighner/22 lines 3-8.

<sup>50</sup> UE 246/CUB/200/Jenks-Feighner/22 lines 15-16.

<sup>51</sup> UE 246/CUB/200/Jenks-Feighner/22 lines 16 - 23.

<sup>52</sup> UE 246/CUB/200/Jenks-Feighner/13 citing to 70 Fed. Reg.39127 (July 6, 2005); *see also* Jenks-Feighner/23 line 4 to Jenks-Feighner/24 line 9 where CUB discusses the EPA examples related to modeling the useful life of a plant:

4. Remaining Useful Life of the Source. The remaining useful life of the source is usually considered as a quantitative factor in estimating the cost of compliance. With the exception of Apache Generating Station Unit 1, ADEQ used the default 20-year amortization period in the EPA Cost Control Manual as the remaining useful life of the facilities in its RH SIP. Without commitments for an early shut down of an EGU,

1 State enforcement of the federal Clean Air Act also provide flexibility in regard to the life of the  
2 plant,<sup>53</sup> as evidenced by comments submitted in the PGE case in Oregon.<sup>54</sup>

3 3. *PacifiCorp Is Investing Billions of Dollars in Its Coal Plants Without Considering Whether a Lower-*  
4 *Cost Alternative Exists*

5 As CUB stated previously:

6 A company's major investments in demand-side or supply-side resources are  
7 supposed to be vetted in an IRP before those investments are made. But PacifiCorp  
8 has now invested more than \$1 billion in its coal fleet without bringing those  
9 investments to the IRP process. Instead the Company has claimed that clean air  
10 compliance costs are not an IRP issue. CUB strongly disagrees with PacifiCorp's  
11 position and continues to argue that the existing regulatory framework in Oregon  
12 requires that significant investments in generating resources be examined in an IRP  
13 before those investments can be made.<sup>55</sup>

14 PacifiCorp also states that "Oregon's existing regulatory framework does not support continued  
15 reanalysis and abandonment of projects that are in process."<sup>56</sup> CUB strongly disagrees. CUB believes  
16 that utilities have a responsibility to reevaluate their decision-making as conditions change in order  
17 to ensure that resource decisions are consistent with a least-cost/least-risk approach. This is why  
18 IRPs require updates.<sup>57</sup> It is also why IRPs have to be filed every two years<sup>58</sup> and is one of the  
19 reasons that IRPs "acknowledge" utility resources rather than pre-approving them. There is clearly  
20 an expectation in Oregon that utilities are continuing to reexamine these decisions to ensure that  
21 they are following a least cost/least risk path.<sup>59</sup>

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it is not appropriate to consider a shorter amortization period in a BART analysis.

<http://www.gpo.gov/fdsys/pkg/FR-2012-07-20/pdf/2012-17659.pdf>.

<sup>53</sup> UE 246/CUB/200/Jenks-Feighner/14 lines 12-14 and lines 15-25; Jenks-Feighner/15 lines 1-7.

<sup>54</sup> UE 246/CUB/200/Jenks-Feighner/15 lines 8 – 31 through Jenks-Feighner 22 line 13.

<sup>55</sup> UE 246/CUB/200/Jenks-Feighner/3 lines 14-21 citing to testimony of Cathy S. Woollums, Senior Vice President and Chief Environmental Counsel, Mid American Energy Holdings Company, Committee on Environment and Public Works, United States Senate, June 15, 2011; LC 52 CUB Comments, page 5.

<sup>56</sup> UE 233/PAC/1400/Woollums/27.

<sup>57</sup> OAR 860-027-0400(8),(9) and (10).

<sup>58</sup> OAR 860-027-0400(3).

<sup>59</sup> UE 246/CUB/200/Jenks-Feighner/4 lines 1-9.

1 4. *The Company's Modeling Was Flawed : Installing And Operating The Emissions Control*  
2 *Equipment At Issue In This Docket Was Not The Least Cost Least Risk Investment.*<sup>60</sup>  
3

4 In its Opening Testimony in this docket, PacifiCorp cites to the PVRR study that it used to  
5 guide its original decision to invest in pollution control at plants such as Naughton 1.<sup>61</sup> Even fully  
6 accepting PacifiCorp's modeling tool, and the timing of its analysis and investment, by making only  
7 one correction to the modeling—based on what the Company knew at the time it was conducting  
8 the analysis to decide whether to invest in pollution control<sup>62</sup>—CUB showed that the investment at  
9 Naughton 1 was not cost effective.<sup>63</sup> CUB demonstrated that PacifiCorp had incorrectly assumed  
10 that the only alternative to investing in pollution control was immediate shut down of the plant in  
11 2009.<sup>64</sup> In its Initial Testimony<sup>65</sup> and in its Reply Testimony,<sup>66</sup> the Company stated even though it did  
12 not include the date in its study, it believed at the time of conducting its analysis, that the “primary  
13 environmental compliance planning deadline was 2013 under the states’ SIPs”<sup>67</sup> and that for  
14 modeling purposes in the PVRR(d) studies a retirement date of 1/1/2014 should be used.<sup>68</sup> By  
15 rerunning PacifiCorp's model with no changes other than to assume this later 1/1/2014 date as the  
16 alternative retirement, CUB was able to show that even at the time PacifiCorp made its decision to

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<sup>60</sup> Because space is limited, and Staff's first round of analysis was so lacking—see CUB/200/Jenks-Feighner/5-22—CUB will not respond to Staff's first round arguments in this brief other than to note that in Staff's first round, even Staff found room for improvement in the Company's analysis in this docket and in the IRP – see UE 246/Staff/400/Colville/2 lines 8-12 and Colville/12 lines 11-16; Colville/17 lines 12-23 and Colville/18 lines 1-9. CUB will focus instead on Staff's second round of testimony and the Company's, CUB's, and the Sierra Club's overall testimony.

<sup>61</sup> UE 246/PAC/500/Tepley/21 lines 14-22; CUB notes that this study was not updated in the ways claimed by Staff. UE 246/CUB/200/Jenks-Feighner/6 lines 13-30 and Jenks-Feighner/7 lines 1-27 and Jenks-Feighner/8 lines 1-8; *See also* UE 246 Sierra Club/300 Fisher/10 lines 10-26.

<sup>62</sup> UE 246/PAC/502/Tepley/1 lines 11 and 12.

<sup>63</sup> UE 246/CUB/200/Jenks-Feighner/5 lines 18-22 and Jenks-Feighner lines 1-12.

<sup>64</sup> UE 246/PAC/500/Tepley/21 lines 5-10.

<sup>65</sup> UE 246/PAC/500/Tepley/32 lines 15-18 and Tepley/33 line 1.

<sup>66</sup> UE 246/PAC/1500/Tepley/11 lines 4-6 “[A]t the time of decision-making for the major environmental retrofit projects contemplated in this case, the primary environmental compliance planning deadline was 2013 under the states’ SIPs.”

<sup>67</sup> UE 246/PAC/1500/Tepley/11 lines 4-6.

<sup>68</sup> UE 246/PAC/1500/Tepley/18 lines 1-5.

1 invest in pollution controls, the investment it was choosing to make was not cost effective.<sup>69</sup> This  
2 evidences that just fixing one error in the analysis prior to proceeding, and prior to construction,  
3 would have revealed a very different set of outcomes to PacifiCorp.<sup>70</sup> And as for PacifiCorp's  
4 arguments that it was required to install BART controls "as expeditiously as possible,"<sup>71</sup> CUB  
5 responds that even if the Company did need to comply with BART, it still needed to first do a least-  
6 cost/least-risk analysis. And, if that least-cost/least-risk analysis then showed that the least-  
7 cost/least-risk was to shut down a plant, the Company would not then need to do BART  
8 compliance at all, let alone "expeditiously."<sup>72</sup>

9 In its Reply Testimony, PacifiCorp also utilizes 1/1/2014 as the alternate closure date,<sup>73</sup>  
10 however, for Naughton 1 the Company combined the 1/1/2014 closure date change with the  
11 updating of its forward price curve to 3/31/2009 rather than the previously used 12/31/2008. This  
12 was done under the theory that the contract was not signed until May 2009—so the March forward  
13 price curve would have been available to the signers—thus PacifiCorp altered the date on which it  
14 claimed to have made the decision to invest in pollution controls so as to capture a short-term  
15 increase in the forecasted prices, which did not represent the general direction of the market.<sup>74</sup> We

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<sup>69</sup> CUB Confidential Exhibit 211.

<sup>70</sup> UE 246/Sierra Club/200/Steinhurst/16 lines 28-31 and Steinhurst/17 lines 1-2; *see also* Steinhurst/16 lines 23-28.

<sup>71</sup> UE 246/PAC/1400/Woollums/12 line 12; UE 246/PAC/1500/Tepley/3 lines 15-16; UE 246/PAC/1900/Woollums/6 lines 21-23.

<sup>72</sup> UE 246/PAC/1903/Woollums/4 Section 9. Best available retrofit technology (BART). (b) Definitions. "**BART alternative** means an alternative measure to the installation, operation, and maintenance of BART that will achieve greater reasonable progress toward national visibility goals than would have resulted from the installation, operation and maintenance of BART at BART-eligible sources within industry source categories subject to BART requirements." *See also*, (f) BART Alternative. (i) The Administrator may implement or require participation in an emissions trading program **or other alternative measures** developed in accordance with 40 CFR 51.308(e) rather than to require sources subject to BART to install, operate and maintain BART. (emphasis added).

<sup>73</sup> UE 246/PAC/1500/Tepley/17 line 23 to Tepley/18 line 5 – it does not, however, alter the Company's analysis; *see also* UE 246/PAC/2000/Tepley/5 lines 10-13 – noting that the Company did not concede that there were errors in its original analyses but used the date to respond to the "parties' preferred assumption scenarios."

<sup>74</sup> UE 246/CUB/200/Jenks-Feighner/33 lines 22-24 and Jenks-Feighner 34 lines 1-4; *see also* UE 246/PAC/1500/Tepley/1-5.; UE 246/PAC/1500/Tepley/18 lines 12-15 and Tepley/19 Table.

1 know this because the forward price curves used in the various PVRR analyses of clean air  
2 investments in this docket show that once the recession hit in 2008, the general trend was down.  
3 The exception is the 3/31/09 curve.<sup>75</sup> It increased and was above either the 12/31/08 curve<sup>76</sup> or the  
4 9/30/09 curve.<sup>77</sup> This is the curve that PacifiCorp is trying to use by moving the “decision date” to  
5 the contract signing date. And this is important because it changes the outcomes of the analysis.

6 Also important to note is that PacifiCorp did not update any of the other PVRR studies to  
7 move them to coincide with the signing of contracts. The contract date is the analysis date argument  
8 is reserved only for Naughton 1. But if the information known on the contract signing date is “what  
9 a prudent utility should have known when it made the decision,” then PacifiCorp has failed to meet  
10 its burden of proof for its other coal units because there is nothing in the record for those contracts  
11 to show what the Company should have known when it signed them; CUB will expand on this  
12 below. CUB will also expand on the fact that there must obviously be a period of time between  
13 doing a study, making a decision, requesting bids, and negotiating a contract. Thus, it seems unlikely,  
14 that all these things could have happened subsequent to the March price curve and before the May  
15 contract signing discussed above. CUB also notes that PacifiCorp critiqued its own analysis by  
16 claiming that if it had compared the planned investment to a new generation unit, and not to market  
17 purchases, that the investment would actually have been more favorable.<sup>78, 79</sup> And PacifiCorp  
18 additionally claimed that even if the investment did not show itself to be cost effective in the  
19 modeling, that the Company was still right in selecting it.<sup>80</sup> PacifiCorp is wrong on both counts.

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<sup>75</sup> See CUB Confidential Exhibit 114.

<sup>76</sup> See CUB Confidential Exhibit 109.

<sup>77</sup> See CUB Confidential Exhibit 113.

<sup>78</sup> UE 246/PAC/2000/Teply/4 lines 22-23 and UE 246/PAC/2000/Teply/5 lines 1-5.

<sup>79</sup> UE 246/PAC/1500/Teply/17-18 lines 23, lines 1-5.

<sup>80</sup> UE 246/PAC/2000/Teply/5 lines 16-21.

1           What PacifiCorp was hoping to set up by making these modeling adjustments, and by  
2     tweaking its arguments, was the Commission application of a different prudence analysis to the  
3     Naughton 1 unit investments than to its other unit investments at issue in this case. While the PVRR  
4     tool is the analytical tool that PacifiCorp used to demonstrate prudence for all of its pollution  
5     control investments at issue in this docket, the Company is still trying to change the way that its tool  
6     is applied to Naughton 1. This is because correct application of its PVRR tool to the Naughton 1  
7     demonstrates that the Naughton 1 investments were imprudent because of the historical facts that  
8     the Company knew at the time, and the tools and assumptions that it used at the time.

9     5. *PacifiCorp Did Not Have to Proceed*— [REDACTED]

10           PacifiCorp has stated that “[e]mission reduction projects of the number and size described in  
11     this testimony take many years to engineer, plan, and build. . . In other words, it is not practical, and  
12     is unduly expensive for customers, to expect to build these emission reduction projects all at once or  
13     even in a compressed time period.”<sup>81</sup> It would seem to CUB that the Company is talking out of both  
14     sides of its mouth when it suggests that the May date, discussed above, was the point of its decision  
15     on this project. While May 2009 was the date to give the contractor the notice to proceed, May 2009  
16     was clearly several months after the Company had actually made the decision to construct the  
17     project. What the contract date/decision for the contractor to proceed can provide is a chance to  
18     revisit a prior decision.<sup>82</sup> But PacifiCorp did not actually reconsider any of these projects before  
19     signing the contracts.

20           In its Initial Application testimony, the Company states that “[t]he Company’s scrubber and  
21     baghouse projects have typically been contracted under lump-sum, turnkey, engineer, procure, and

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<sup>81</sup> UE 246/PAC/500/Teply/26 lines 13-14 and 22 and Teply/27 lines 1-2; see also PAC/1500 Teply/4 lines 7-10.

<sup>82</sup> UE 246/Sierra Club/300/Fisher/20 lines 22-29 and Fisher/21 lines 1-5.



1 construct (“EPC”) contract terms . . . .”<sup>83</sup> It then states that its “low NO<sub>x</sub> burners (“LNB”) projects  
2 have typically been contracted (1) under multiple lump-sum contracts . . .or (2) job-specific work  
3 releases under established service level agreement rate structures.”<sup>84</sup> It is CUB’s position that, “A  
4 company seeking to make a clean air investment – before final regulatory rules are in place – should  
5 be able to cancel contracts if regulations or other conditions change without incurring undue  
6 costs.”<sup>85</sup> Mr. Teply, however, argues that “[o]nly under the impracticable scenarios of mid-project re-  
7 assessments proposed by Sierra club and CUB could updated planning assumptions have been  
8 considered by the Company. In each instance, binding legal obligations were in place and the  
9 projects were well underway at these theoretically proposed re-evaluation points.”<sup>86</sup> Mr. Teply is  
10 apparently talking about the Company’s construction contracts.<sup>87</sup>

11 CUB, unlike Staff, reviewed those contracts [REDACTED]

12 [REDACTED]

13 [REDACTED]. And, [REDACTED]

14 [REDACTED].<sup>88</sup>

15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]

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<sup>83</sup> UE 246/PAC/500/Teply/11 lines 21-23.

<sup>84</sup> UE 246/PAC/500/Teply/12 lines 1-4.

<sup>85</sup> UE 246/CUB/200/Jenks-Feighner/9 lines 19-21.

<sup>86</sup> UE 246/PAC/1500/Teply/8 line 23 to Teply/9 line 4; UE 246 PAC/2000 Teply/13 lines 4-17 “Over-using such clauses will impact the Company’s ability to negotiate these clauses, impact the proposal pricing for major procurement contracts, and potentially expose the Company to litigation.” CUB wonders why the Company bothers to negotiate the clauses if it is not going to ever use them. It is CUB’s position that it was imprudent for the Company not to invoke these clauses in the contract as issue in this docket.

<sup>87</sup> UE 246/PAC/1500/Teply/13 line 22 through Teply/14 line 9 discussing contract dates.

<sup>88</sup> UE 246/CUB/200/Jenks-Feighner/32 lines 14-21.

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 PacifiCorp should not be permitted to avoid its IRP responsibilities or to hide behind well crafted  
6 contracts, [REDACTED]

7 [REDACTED].  
8 Something else, in addition to analysis reevaluation and [REDACTED], that also  
9 provides an opportunity for pause and reflection is the rejection of a SIP. Thanks to the EPA's  
10 rejection of its plan, PacifiCorp now has that very chance for reflection in Utah and Wyoming.<sup>89</sup> It is  
11 CUB's position that "the Company must be required to revisit its analysis of the costs necessary to  
12 comply with the Regional Haze Rules, as those costs may increase."<sup>91</sup> And, as part of revisiting that  
13 analysis, PacifiCorp must be required to review the closure date for early retirement possibilities, and  
14 consider [REDACTED], that could save customers millions of dollars.<sup>92</sup>

15 *6. SCRs Are Needed to Make Some of These Plants Used and Useful*

16 In its Initial Application the Company argues that the pollution controls installed on these  
17 plants are used and useful.<sup>93</sup> It states further that it "also anticipates completing installation of five  
18 selective catalytic reduction systems ("SCRs") (or otherwise reducing NO<sub>x</sub> emissions) at its owned  
19 and operated facilities by 2022."<sup>94</sup> CUB sees this plan as resulting in piecemeal construction and  
20 review of these projects. And, it is important to realize that in addition to the prudence issue,  
21 PacifiCorp's piecemeal approach to pollution control investments, as evidenced by these SCRs, also

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<sup>89</sup> UE 246 CUB/200 Jenks-Feighner/33 lines 1-10.

<sup>90</sup> UE 246/CUB/100/Jenks-Feighner/20 lines 19-21.

<sup>91</sup> UE 246/CUB/100/Jenks-Feighner/21 lines 6-8.

<sup>92</sup> UE 246/CUB/100/Jenks-Feighner/21 lines 9-15; *But see* UE 246/PAC/1500/Teply/19 lines 1-11.

<sup>93</sup> UE 246/PAC/500/Teply/27 lines 3-8.

<sup>94</sup> UE 246/PAC/500/Teply/9 lines 5-8.

1 leads to an issue of whether the investments are used and useful.<sup>95</sup> The scrubber upgrade at Bridger 3  
2 that is at issue in this case is a prime example. PacifiCorp made the scrubber upgrade investment in  
3 order to comply with Regional Haze Rules (RHR). The Wyoming State Implementation Plan has not  
4 been finalized but requires the Company to invest in additional pollution controls, including adding  
5 a SCR<sup>96</sup> hence the question - is the scrubber upgrade used and useful? It has been added to the plant,  
6 and the plant is operating with it meaning it is used, but is it useful without the SCR? By itself, the  
7 scrubber does not allow the plant to meet the requirements of the RHR.<sup>97</sup>

8       Based on the IRP Update in March 2012, CUB believes that there is a very good chance that  
9 when the Company updates its analysis of the Bridger 3 and Hunter 1 units, it will conclude that it  
10 should convert them to natural gas because that March Update shows the investment in the SCR  
11 was not cost effective in scenarios with low natural gas prices.<sup>98</sup> At that point, while the scrubber  
12 upgrade may still be attached to the plant, it will no longer be needed, it will no longer be used and  
13 useful, and it will therefore be a stranded cost.<sup>99</sup> And, as a stranded cost, the scrubber upgrade is not  
14 eligible for recovery unless the Commission finds its retirement is in the public interest. At this  
15 point, the Company would no longer be allowed to earn a return on its scrubber upgrade  
16 investment.<sup>100</sup> The big problem here is that “[e]lements of the investment were made years before  
17 the requirements were finalized and come into rate cases as they occur in test years, but the Regional  
18 Haze Rule investments never come before the Commission as a total project.”<sup>101</sup> This is a problem

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<sup>95</sup> UE 246/CUB/100/Jenks-Feighner/18 lines 12-14.

<sup>96</sup> UE 246/CUB/100/Jenks-Feighner/18 lines 14-17.

<sup>97</sup> UE 246/CUB/100/Jenks-Feighner/18 lines 18-22 and Jenks-Feighner/19 lines 1-5.

<sup>98</sup> UE 246/CUB/100/Jenks-Feighner/28 lines 12-24.

<sup>99</sup> UE 246/CUB/100/Jenks-Feighner/19 lines 1-6.

<sup>100</sup> UE 246/CUB/100/Jenks-Feighner/19 lines 6-8.

<sup>101</sup> UE 246/CUB/100/Jenks-Feighner/19 lines 10-12.

1 because the investments are only are used and useful when combined as a project.<sup>102</sup>

2 In its Reply and Surrebuttal Testimony, the Company is now stating that Naughton 1 and 2  
3 will not need SCRs, but that it may still install them at Bridger 3 and at Hunter 1 and 2.<sup>103</sup> The  
4 Company's financial analyses completed in November 2009 did not include costs for potential  
5 future SCR installation at Hunter 1, but did include proxy installation costs for Hunter 2 and costs  
6 for potential future SCR installation on Bridger 3.<sup>104</sup> According to the Company, the "Jim Bridger  
7 Unit 3 SCR is a separate and distinct project that when installed will meet the BART requirement  
8 established for that equipment as it pertains to NO<sub>x</sub>."<sup>105</sup> Since the NO<sub>x</sub> and SO<sub>2</sub> standards must both  
9 be met two separate projects are actually required to meet BART at the Bridger 3. Once again the  
10 evidence shows that the scrubber is not used and useful until the SCR is in place.

11 7. *The Company Is Unwilling to Consider a Boardman-Like Phase-Out of Any Coal Unit*

12 The Commission needs to understand that what PacifiCorp is doing with its Carbon plant is  
13 not a *phase-out* under BART/RHR. Carbon is being forced to *shut down* due to the Mercury and Air  
14 Toxics Standards (MATS). Carbon is an old coal plant and is exempt from BART/RHR. Because of  
15 its age and physical limitations, any pollution control expense will make it uneconomic, so the  
16 Company is simply running it up to the deadline for additional pollution controls and then shutting  
17 it down.<sup>106</sup> This is different than the Boardman style *phase-out*. A Boardman style *phase-out* is what  
18 CUB has shown to be the economic outcome for Naughton 1 and 2 and Bridger 3. These are newer  
19 plants that are not exempt from BART/RHR, and it is the flexibility of BART/RHR that allows for

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<sup>102</sup> UE 246/CUB/100/Jenks-Feighner/19 lines 13-14.

<sup>103</sup> UE 246/PAC/1500/Teply/14 line 16 to Teply/15 line 12; UE 246 PAC/2000 Teply/17 lines 17-19.

<sup>104</sup> UE 246/PAC/1500/Teply/28 lines 1-5; UE 246 PAC/2000 Teply/21 lines 1-5.

<sup>105</sup> UE 246/PAC/1500/Teply 29 line 22 to Teply/30 line 3.

<sup>106</sup>In Comments of PacifiCorp Docket ID No. EPA- R08-OAR-2012-0026 Page 7 of 23, July 12, 2012, PacifiCorp stated that it had not made a final determination concerning the closure of Carbon

1 a *phase-out* as a pollution control technique, just like at Boardman. CUB therefore uses *phase-out* to  
2 describe the Boardman example, where part of the pollution control plan is to *phase the plant out* over  
3 a certain number of years, because that *phase-out* will reduce the required pollution control  
4 investment. CUB uses the term *shutdown* to apply to plants like Carbon. With that in mind, CUB is  
5 dumbfounded at the bald face way in which PacifiCorp states that it:

6 [W]ill continue to review all CAI projects prior to execution to ensure that they  
7 remain economically justified given any environmental, regulatory or policy changes  
8 that may occur going forward.<sup>107</sup>

9 CUB is dumbfounded, because that is exactly what PacifiCorp has failed to do<sup>108</sup> and continues to  
10 refuse to do at this time. Not only did the Company fail to consider a Boardman-like *phase-out* of  
11 these plants before making these investments, it still refuses to consider such an analysis of any of its  
12 BART/RHR investments today.<sup>109</sup> PGE found it could save \$200 million by phasing out Boardman  
13 under BART/RHR. PacifiCorp refuses to even entertain such an analysis, calling it “artificial”<sup>110</sup> and  
14 claiming that it would put the Company in non-compliance of BART.<sup>111</sup> CUB has never seen a  
15 utility flatly refuse to consider alternatives that have the potential to reduce its costs before. When a  
16 utility is refusing to consider least-cost options, customers have to rely on regulators to hold that

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<sup>107</sup> UE 246/PAC/500/Teply/11 lines 16-19; *see also*, “Company management continues to provide oversight of the projects and closely manages any project execution plan changes or potential contract scope changes.” UE 246/PAC/500/Teply/12 lines 4-6.

<sup>108</sup> UE 246/PAC/1900/Woollums/3 lines 14-16 “regarding the Boardman facility (which was not found to be reasonable until 2010, after the Company’s investment decisions and well after the preparation of the Company’s BART analyses. . .”

<sup>109</sup> UE 246/PAC/1400/Woollums/37 lines 13-23 and Woollums/38 lines 1-2. This makes CUB wonder if bigger is actually less efficient. CUB accepts that Boardman’s costs were significantly higher than the Company’s, but the decision on Boardman was made before gas costs fell significantly and before additional regulations were finalized. CUB’s analysis on PacifiCorp’s plants was done as part of this docket, well after the Boardman decision was made. CUB’s analysis shows that early closure would have been the least-cost/least-risk option for several PacifiCorp plants as well. CUB also notes that, contrary to PacifiCorp’s position, were the Commission to adopt CUB’s position, the amount of coal fired generation supplying Oregon would not change for seven years—not until the end of 2020—and that it would change at only three of PacifiCorp’s 26 units. Far from “reinvent[ing] its entire fleet,” CUB’s position is very moderate. *See also* UE 246/PAC/1400/Woollums/5 lines 4-6; UE 246/PAC/2000/Teply/18 lines 11-23 and Teply/19 lines 1-8.

<sup>110</sup> CUB Exhibit 103 – IPCO Response to CUB DR 11.

<sup>111</sup> UE 246/PAC/2000/Teply/18 lines 15-16.

1 utility accountable. PacifiCorp has failed to show that any of its investments were prudent.

2 8. *PacifiCorp Relies on the “Objective Reasonableness Standard” to Avoid Considering the Least-*  
3 *Cost/Least Risk Approach*

4 PacifiCorp takes the position in its testimony concerning the prudence standard that the  
5 scenarios the Company chose to consider, or not consider, are irrelevant. According to PacifiCorp,  
6 the only thing that is relevant is what the objectively prudent Company would have done in terms of  
7 making the clean air investments at issue in this docket.<sup>112</sup> PacifiCorp is hoping that by refusing to  
8 consider modeling coal plant *phase-outs*, it is creating a lack of objective evidence for the  
9 Commission to review.<sup>113</sup> It is doing this because the cost-effectiveness of BART is determined on  
10 the basis of the cost-per-ton of pollution removed. Changing the closure date means there is less  
11 time for pollution to be removed, so much of the capital investment is no longer necessary. CUB  
12 believes—and we think PacifiCorp suspects—that within those cost-per-ton cost-effectiveness  
13 limits, other controls, such as dry sorbent injection, might be cost effective.<sup>114</sup> PacifiCorp of course  
14 argues that all of its currently planned investments are necessary to meet MATS compliance, but the  
15 Company has not performed any technical analysis to determine the full range of options to meet  
16 BART and MATS and has not subjected those options to least-cost/least-risk modeling.<sup>115</sup>

17 Without the Company having performed the appropriate least-cost/least-risk BART and  
18 MATS analyses, it could be very hard to know what the cost of the alternative investment choices  
19 would have been. It could, therefore, be difficult to prove that the Company would have  
20 “objectively” chosen one of these alternatives. PacifiCorp forgets that it is not CUB’s job to prove  
21 this. Rather, it is the Company that has to meet the burden of proof to show that what it did was

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<sup>112</sup> UE 246/CUB/200/Jenks-Feighner/25 lines 5-9.

<sup>113</sup> UE 246/CUB/200/Jenks-Feighner/25 lines 12-18.

<sup>114</sup> UE 246/CUB/200/Jenks-Feighner 25 to 26 citing to OPUC Order No. 10-457 at 16-17.

<sup>115</sup> UE 246/CUB/200/Jenks-Feighner/26 lines 3-9.

1 objectively prudent.

2 9. *CUB Used PacifiCorp’s Model to Demonstrate What A Least-Cost/Least-Risk Analysis Would*  
3 *Have Shown*

4 PacifiCorp criticizes the modeling done by CUB, stating, “[b]oth CUB and Sierra Club also  
5 continue to make selective adjustments to the Company’s economic analyses, often based on  
6 hindsight and incorporating arguments about emerging environmental regulations and after-the-fact  
7 market trends to reach results that support their positions.”<sup>116</sup> CUB’s response is that people who  
8 live in glass houses should not throw stones. If any party in this docket can be accused of trying to  
9 manipulate the numbers after the fact, or using hindsight to come up with the answer it wants, —so  
10 that a decision will be found to have been prudent—it is PacifiCorp.

11 CUB’s modeling effort used PacifiCorp’s model, and numbers, changing only the potential  
12 closure date to the date that PacifiCorp says should have been used. CUB stated plainly that it had  
13 changed the date and why it had changed the date. CUB then ran a Boardman style *phase-out*  
14 scenario. PacifiCorp reran its original PVRP for Naughton 1, but also changed the forward price  
15 curves (by, as previously discussed) changing the decision date to the date the contract was signed.<sup>117</sup>  
16 CUB has been honest about its model throughout, noting its methodology, its findings, and its  
17 limitations. PacifiCorp should think twice before claiming anyone made “selective adjustments.” As  
18 noted previously, CUB’s modeling shows what would have happened had PacifiCorp done the  
19 correct modeling at the correct time.

20 **B. The Naughton 1 Investments Are Not Prudent**

21 Because the historical facts demonstrate that PacifiCorp knew or should have known of 1)

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<sup>116</sup> UE 246/PAC/2000/Teply/3 lines 11-14; see also Teply/5 lines 20-22; and UE 246/PAC/2000/Teply/9 lines 8-12.

<sup>117</sup> UE 246/PAC/1500/Teply/18, lines 1-5

1 the potential cumulative effect on its coal plants of the then current and emerging environmental  
2 regulations,<sup>118</sup> 2) that it had all the tools and information to conduct a simple least-cost/least-risk  
3 analysis available to it at the time it made its decision to make the environmental control investments  
4 at Naughton 1, 3) that it could also have updated its initial analysis at any time,<sup>119</sup> and 4) [REDACTED]  
5 [REDACTED],<sup>120</sup> CUB thinks the Naughton 1 investments  
6 were not prudent.<sup>121</sup> The Commission should not include these environmental investments in rates.  
7 The Company should have considered alternative compliance scenarios such as a Boardman-like  
8 phase-out. The Commission should, find this investment to have been imprudent.<sup>122</sup>

9 1. *PacifiCorp Failed to Realize That Its Investment in Naughton 1 Was Not Cost-Effective Based On*  
10 *Its Own PVRR Modeling Tool*

11 The Naughton Plant consists of three coal-fueled units that are 100 percent owned and  
12 operated by PacifiCorp.<sup>123</sup> Earlier this year PacifiCorp announced that Naughton 3 would be  
13 converted to natural gas – it was cheaper than investing in a SCR.<sup>124</sup>

14 Naughton Unit 1, which began commercial operation in 1963,<sup>125</sup> was not subject to the same  
15 analysis as Naughton 3 and PacifiCorp has not, therefore, considered converting it to natural gas.<sup>126</sup>  
16 It is unknown whether that option, which is least-cost for Naughton 3, would be least-cost for  
17 Naughton 1. The capital investment for the scrubber project being placed in service during the test

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<sup>118</sup> UE 246/Sierra Club/200/Steinhurst/9 lines 10-30 to Steinhurst/10 line 29; UE 246/Sierra Club/100/Fisher/26 lines 3-18.

<sup>119</sup> UE 246/CUB/200 Jenks-Feighner/36 lines 6-8.

<sup>120</sup> UE 246/CUB/200 Jenks-Feighner/35 lines 19-20.

<sup>121</sup> See also Sierra Club/100/Fisher/6 lines 17-29 and Fisher/7 lines 1-17; also Fisher/27 to 28 lines 19.

<sup>122</sup> See also, UE 246/Sierra Club/200/Steinhurst/8 lines 1-30 to Steinhurst/9 line 9 and Sierra Club/100 Fisher/5 to 6 line 5; But see Staff/1500 Colville/5 lines 18-23 and Colville/6 lines 1-18.

<sup>123</sup> UE/246/PAC/500/Teply/28 lines 11-12.

<sup>124</sup> UE/246/CUB/100/Jenks-Feighner/38 lines 14-15 citing to

[http://www.pacificorp.com/content/dam/pacificorp/doc/Energy\\_Sources/EnergyGeneration\\_FactSheets/RMP\\_GFS\\_Naughton.pdf](http://www.pacificorp.com/content/dam/pacificorp/doc/Energy_Sources/EnergyGeneration_FactSheets/RMP_GFS_Naughton.pdf); see also UE 246 CUB/100 Jenks-Feighner/42 lines 6-8; UE 246 CUB/103 Feighner-Jenks/1.

<sup>125</sup> UE/246 PAC/500/Teply/28 line 17.

<sup>126</sup> UE/246 CUB/100/Jenks-Feighner/38 lines 16-17.



1 period is approximately \$121 million for the scrubber and associated equipment.<sup>127</sup> The UE 246  
2 docket costs include “the cost of common facilities that are required to be placed in service to allow  
3 prudent operation of either unit’s new emission control equipment, although the majority of  
4 common facilities were placed in service when the Naughton Unit 2 scrubber addition came online  
5 in 2011.”<sup>128</sup> The capital investment for the NO<sub>x</sub> project being placed in service during the test  
6 period is approximately \$9 million.<sup>129</sup> The Company claims to have completed three technical studies  
7 that informed its opinion.<sup>130</sup> It states that it considered technology alternatives,<sup>131</sup> but it did not  
8 consider alternative shut down dates—other than immediate closure.<sup>132</sup> It did this even though the  
9 Company knew that it was not required to demonstrate compliance with BART permit conditions  
10 until December 31, 2012.<sup>133</sup> The Naughton 1 study was conducted in 2009.<sup>134</sup> This is the BART  
11 analysis for Naughton Units 1, 2, and 3 that was considered in the State of Wyoming’s BART  
12 determination, permit requirements, and SIP.<sup>135</sup>

13 PacifiCorp argues that even the IRP Coal Replacement Study (“IRP Supplement”) filed in  
14 Docket LC 52 did not identify an accelerated retirement date for Naughton 1,<sup>136</sup> but that study did  
15 not include the costs at issue here as avoidable.<sup>137</sup> The IRP Supplement was the discredited coal  
16 replacement study that was filed last fall as part of the IRP, that assumed that all costs incurred

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<sup>127</sup> UE/246 PAC/500/Teply/29 lines 13-18.

<sup>128</sup> UE 246/PAC/500/Teply/30 lines 16-19.

<sup>129</sup> UE 246/PAC/500/Teply/31 lines 12-13.

<sup>130</sup> UE 246/PAC/500/Teply/35 line 19 and Teply/36 lines 1-5.

<sup>131</sup> UE 246/PAC/500/Teply/36 lines 16-18.

<sup>132</sup> UE 246/PAC/500/Teply/37 lines 1-13 – discussion of least-cost alternative analysis..

<sup>133</sup> UE 246/PAC/500/Teply/32 lines 15-18 and Teply/33 line 1; *see also* Sierra Club/100/Fisher/14 lines 2-7..

<sup>134</sup> UE 246/CUB/100/Jenks-Feighner/39 lines 2-4.

<sup>135</sup> UE 246/PAC/500/Teply/36 lines 18-20.

<sup>136</sup> UE 246/PAC/500/Teply/39 lines 2-8.

<sup>137</sup> UE 246/CUB/100/Jenks-Feighner/25 lines 18-21. “Unfortunately, none of the costs at issue in this docket were evaluated in that March IRP Update. Only two of the units at issue here (Hunter 1 and Bridger 3) were considered in that update, but the update looked only at future costs and made no attempt to evaluate the investments that are at issue in this docket.”

1 before 2015 were sunk, including all costs necessary to meet 2015 clean air compliance. The IRP  
2 Supplement looked at whether it made economic sense to close each unit in 2015. That study  
3 demonstrated that it did not make economic sense to upgrade plants to meet clean air requirements  
4 and then shut them down anyway. (It needs to be noted that the IRP Supplement is not the same as  
5 the IRP Update, which was completed last March and, while not perfect, was a credible analysis.)  
6 However, because both the IRP Supplement and the IRP Update assumed that all the investments  
7 that are at issue in this case had already been made, the studies tell us little about the investments at  
8 issue here.<sup>138</sup> The primary evidence in this case is, therefore, a collection of individual studies that  
9 PacifiCorp conducted largely in 2008-2009.<sup>139</sup> CUB's analysis and concerns related to those studies  
10 are set forth in detail at UE 246/CUB/100/Jenks-Feighner/ 26-27.

11 For Naughton 1, when the Company modeled the investment, as compared to immediate  
12 2009 shutdown, it found that it had a positive net present value of \$ [REDACTED].<sup>140,141</sup> CUB found in its  
13 Response Testimony that if the Company had used its assumed compliance deadline as the  
14 alternative retirement date (1/1/14), PacifiCorp's model would have shown that Naughton 1 was  
15 not cost effective.<sup>142</sup> In other words, changing the PVRR model by only this single variable results in  
16 a negative net present value of \$ [REDACTED]. The Company's PVRR analysis was flawed.<sup>143</sup> Instead

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<sup>138</sup> Before addressing the Company's studies in detail, it is necessary to point out that the Company has taken the position in its Surrebuttal Testimony that IRP Guideline 8 does not require individual unit-specific environmental investments to be analyzed.<sup>138</sup> CUB respectfully requests that the Commission take this opportunity to re-educate the Company as to the purpose of an IRP and what is required by its Guidelines; *See* UM 1056 Investigation into Integrated Resource Planning: Order No. 07-002 at 17-19.

<sup>139</sup> UE 246/CUB/100/Jenks-Feighner/25 lines 22-23.

<sup>140</sup> UE 246/PAC/500/Teply/37 lines 18-19.

<sup>141</sup> Staff states that the result of the assumed idling in 2009 is to overstate the PVRR(d) benefit for each coal plant unit of making environmental compliance investments. UE 246/Staff/1500/Colville/9 lines 20-22.

<sup>142</sup> UE 246/CUB/100/Jenks-Feighner/41 lines 13-15.

<sup>143</sup> UE 246/Sierra Club/100/Fisher/28 line 20 to Fisher/50 line 9; UE 246/Staff/1500/Colville/8 lines 12-15 – Staff acknowledges that the PVRR(d) analysis was flawed. We note that the Company in UE 246/PAC/1500/Teply/20 lines 13-17 tries to argue that it did not know about the 2015 compliance deadline at the time it made its decision, but that has

1 of proceeding with an investment that had a positive net present value of \$ [REDACTED], PacifiCorp  
2 went forward with a project that had a negative net present value of \$ [REDACTED]. The investment  
3 was not prudent.

4 In its Reply and Surrebuttal Testimony, the Company argued that updating its PVRR studies  
5 before signing the contracts in May 2009 would only have strengthened the Company's position in  
6 this docket because it would have shown that capital expenditures were significantly reduced from  
7 the amounts included in its economic analyses.<sup>144</sup> This differential does not change CUB's analysis in  
8 any way because the prudence standard relates to what the Company expected at the time it made  
9 the decision to invest in pollution controls, not the actual costs that were incurred after it made the  
10 decisions. Put another way, this is irrelevant because the contract date is not the date when the  
11 decision to invest was made, it was merely the date on which the Company acted upon that decision.  
12 As discussed above, PacifiCorp is only arguing the contract signing date for Naughton 1. If that  
13 really is the basis for the objective prudence standard, then that must be the objective prudence  
14 standard for all seven units at issue in this docket, yet PacifiCorp has only entered evidence about  
15 the contract into the docket for this one unit—Naughton 1. If an objective prudence standard is to  
16 be truly objective, PacifiCorp cannot be allowed to interpret the standard differently for each of the  
17 units at issue in this, or any other, docket.

18 The capital investment proposed in this case for Naughton Unit 1 is \$130 million. The  
19 Company should have realized that it did not make economic sense to move forward with this  
20 project. Realizing that pollution control was not cost effective should have led the Company to

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no effect on CUB's analysis, as even applying the 2013 date that the Company admits knowing about it can be seen that the project was not cost-effective.

<sup>144</sup> UE 246/PAC/2000/Teply/11 lines 1-10.

1 examine a wide range of alternatives, including whether an alternative closure date would have  
2 reduced the costs.<sup>145</sup>

3 2. *PacifiCorp Should Have Considered A Boardman Style Phase-Out*

4 If PacifiCorp had realized that its investment in Naughton 1 was not cost effective, it should  
5 have begun consideration of what its options were for the plant and it should have considered a  
6 Boardman-style *phase-out* approach to RHR/BART.<sup>146</sup> Under RHR/BART, the federal deadline for  
7 compliance is 5 years after federal approval of a State Implementation Plan (SIP). For PGE and the  
8 Boardman plant, this made the compliance deadline 2016, but PGE gets to run the plant until 2020  
9 without significant new investment because the investments are analyzed over the life of the plant,  
10 which is the life of the pollution control on a dollars-per-ton of pollution removed basis. PacifiCorp  
11 could do this with its plants, too - under this analysis, if the useful life of the pollution controls is  
12 only a few years, expensive equipment such as SCRs are no longer justified.

13 CUB emphasizes that this does not mean that no pollution control is justified. With  
14 Boardman, PGE still had to go to a system of dry sorbent injection (DSI), which also will allow it to  
15 meet the MATS requirements. The cost of the DSI investment was somewhere around \$10  
16 million,<sup>147</sup> rather than the \$500 million for the whole set of pollution controls that would have been  
17 required to run Boardman until 2040.<sup>148</sup> But perhaps the strangest part of this docket is PacifiCorp's  
18 statements that, contrary to everything that was in the papers about the Boardman closure, and  
19 hearings at DEQ and the OPUC, it was not aware of the closure of Boardman and the federal and  
20 states laws utilized to facilitate that closure; in other words, the possibility of an accelerated

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<sup>145</sup> UE 246/Sierra Club/300/Fisher/9 lines 21-24.

<sup>146</sup> UE 246/Sierra Club/300/Fisher/10 lines 6-9.

<sup>147</sup> UE 246/CUB/200/Jenks-Feighner/19 lines 12-13.

<sup>148</sup> LC 48, CUB Comments on Staff's Draft Order, page 2.

1 closure.<sup>149</sup> As CUB discussed in its testimony, anyone who read newspapers in Oregon at the time  
2 was aware of the Boardman process. It is simply not credible that PacifiCorp did not know about  
3 the process.<sup>150</sup> However, even if it was not aware at the time, the Company should have known that  
4 the investment in Naughton 1 was not cost-effective as compared to a 1/1/14 retirement, and  
5 before that 1/1/14 retirement it would have been aware of the Boardman example. In other words,  
6 if it had gotten its original analysis right, and avoided the uneconomic investment in Naughton 1,  
7 PacifiCorp would have learned about the Boardman option before making its decisions.

8 CUB adjusted PacifiCorp's PVRr model to examine a 2020 Boardman-style *phase-out* and  
9 found that this was the preferable option. To do this CUB removed the clean air investment costs  
10 and generation after 2020. This showed a positive NPV of \$[REDACTED].<sup>151</sup> This does not include  
11 costs associated with alternative compliance such as dry sorbent injection, because CUB does not  
12 have a basis for determining those costs. CUB notes, however, that with PGE that additional cost  
13 was approximately \$10 million.<sup>152,153</sup> PGE began looking at early *phase-out* alternatives to large BART  
14 investments in 2008 and 2009; PacifiCorp should have done the same thing. These early *phase-out*  
15 alternatives are clearly allowed under the Clean Air Act. "While the states' approaches to  
16 administering the Clean Air Act differ, the Act itself does not. The State of Wyoming recognizes  
17 that the life of the plant is one of the fundamental building blocks of BART determination . . ."<sup>154</sup> As  
18 the operator, PacifiCorp can change the life of the plant by committing to closing it early. The EPA

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<sup>149</sup> UE 246/PAC/1500/Teply/20 lines 18 to 24 and Teply/21 lines 1-2.

<sup>150</sup> UE 246/CUB/200/Jenks-Feighner/15 line 8 to Jenks-Feighner/22 line 13.

<sup>151</sup> UE 246 / CUB / 200 Jenks-Feighner / 35, lines 10-11.

<sup>152</sup> OPUC Order 10-457 at 16-17.

<sup>153</sup> UE 246/CUB/200/Jenks-Feighner/35, lines 9-14

<sup>154</sup> UE 246/CUB/100/Jenks-Feighner/24 lines 1-13 citing to Wyoming DEQ, PacifiCorp Jim Bridger Power Plant AP-6040 BART Application Analysis Page 5.

[http://deq.state.wy.us/aqd/308%20SIP/BART%20Applications%20and%20AQD%20Analyses/AQD%20Analyses/6040ana\\_BART.pdf](http://deq.state.wy.us/aqd/308%20SIP/BART%20Applications%20and%20AQD%20Analyses/AQD%20Analyses/6040ana_BART.pdf).

1 requires a real commitment, and real commitments are achieved by placing the early *phase-out* date  
2 into State permits.

3 Nevertheless, PacifiCorp fails to consider early *phase-out* of any of its plants and it continues  
4 to refuse to consider these options even today.<sup>155</sup> The only option it considers is to *shut down* or  
5 repower a plant just before *shut-down* (Carbon, Naughton 3). If PacifiCorp had considered the option  
6 of early *phase-out* in regard to the plants in this docket, it would have realized that a 2020 closure  
7 could save customers millions – it would have saved more than \$ [REDACTED]<sup>156</sup> for Naughton 1 alone.  
8 Early *phase out* was the prudent plan that the Company should have followed.

9 *3. PacifiCorp Claims Its PVRR Modeling Was Not Valid for Naughton 1*

10 In its Surrebuttal Testimony, PacifiCorp responded by acknowledging that its PVRR model  
11 was not sufficient to drive decisions on its own,<sup>157</sup> which is what CUB had argued in Opening  
12 Testimony. PacifiCorp claims that it should have considered new generation instead of market  
13 purchases,<sup>158</sup> but it did not consider that as an alternative at the time it made its decision and it did  
14 not demonstrate how that would change its flawed analysis. Just as importantly, PacifiCorp did not  
15 explain why the other investments in this case were prudent when there is no evidence on the record  
16 related to how those investments compared to investments in new generation. If comparing its  
17 plants to new generation was the correct analysis for a finding of prudence in the Naughton 1 case,  
18 then it would also be the correct standard for all the coal investments in this case, not just Naughton  
19 1. Since PacifiCorp did not do this analysis for the other coal plants, then those coal plants cannot

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<sup>155</sup> Notwithstanding PacifiCorp's attempts to confuse this issue UE 246/PAC/2000/Teply/7 lines 16-23 as explained in this brief, PacifiCorp has not, and continues to refuse to, consider *phase outs* it only engages in shut downs or repowerings.

<sup>156</sup> \$ [REDACTED] NPV benefit of phase out compared to negative \$ [REDACTED] NPV for investment.

<sup>157</sup> UE 246/PAC/2000/Teply/4 lines 16-21.

<sup>158</sup> UE 246/PAC/2000/Teply/5 lines 2-7.

1 be found to be prudent, either.

2 In the Surrebuttal PacifiCorp states that, “[t]he PVRR(d) analysis is one part of a complex  
3 decision-making process . . . the Company’s decision-making process is also influenced by the  
4 realities and challenges of forecasting policy-making outcomes and litigation results that recognizably  
5 change the decision-,making landscape over multi-year implementation timelines for major  
6 projects.”<sup>159</sup> It further states that, “To rely solely on PVRR(d) results to determine prudence is overly  
7 simplistic. These results are one element of the analysis, but the Company has shown that it is a far  
8 more complex decision-making process.”<sup>160</sup> PacifiCorp has relied entirely on its PVVR analyses to  
9 prove the cost effectiveness of each plant throughout this docket. If the Commission is not to rely  
10 on the results of those studies, then what is it to rely on? PacifiCorp has not provided any evidence  
11 in addition to the PVRR(d) studies. CUB would remind the Commission that PacifiCorp retains the  
12 burden of persuasion throughout this docket.

13 Sierra Club’s summary says it all:

14 The screening analysis should have raised flags for any analyst that the retrofits  
15 would result in a net liability at Naughton units 1 and 2. Even if experienced  
16 Company analysts failed to notice that the PVRR(d) analysis was constructed  
17 incorrectly, was biased in favor of the retrofit, did not account for risk appropriately .  
18 . . the outcome of the original analysis should have alerted both analysts and  
19 executives that the retrofit was marginal and high risk. . .

20 At best, the concerns raised by the original analysis, or the red flags raised by a  
21 correctly executed original analysis should have led to a much more comprehensive  
22 effort to evaluate if it was appropriate to retrofit the Naughton units. The Company  
23 should have used the System Optimizer model to determine if better build-out  
24 options were available, and at what cost. The Company should have explored the  
25 range of risk associated with the retrofits. . . And of course, the Company should  
26 have started reviewing options to retire the Naughton facility as one feasible

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<sup>159</sup> UE 246/PAC/2000/Teply/4 line 3 and lines 10-13.

<sup>160</sup> UE 246/PAC/2000/Teply/4 lines 18-21.

mechanism of meeting environmental compliance obligations.<sup>161</sup>

4. *CUB Requests a Disallowance of PacifiCorp's Investments in Naughton 1.*

As an alternative to our prior recommendation of a 25% penalty for not operating under a least-cost/least-risk analysis, CUB also suggests that the Commission could consider denying recovery of all of the costs associated with Naughton 1 pollution control. Because this case uses a 2013 test year, there is no need for the Commission to go any further than denying recovery of these costs.<sup>162</sup> In addition, as CUB has demonstrated, the outcome that models the best results for customers is the 2020 *phase-out*. CUB recommends that the Commission consider the 2020 *phase-out* model to be the prudent alternative. This would mean that the plant would stay in rates without the imprudent costs until the end of 2020, when the entire plant would then be removed from rates.<sup>163</sup>

**C. The Naughton 2 Investments Are Not Prudent**

1. *CUB's Naughton 2 Analysis*

Naughton Unit 2 began commercial operation in 1968<sup>164</sup> and was not subject to the same analysis as Naughton 3. PacifiCorp has not, therefore, considered converting it to natural gas.<sup>165</sup> The scrubber addition project on Naughton Unit 2 was constructed concurrently with the Naughton Unit 1 scrubber project, but on an earlier completion schedule.<sup>166</sup> The project was placed in service in November 2011.<sup>167</sup> Costs associated with ancillary projects are included in this docket.<sup>168</sup> The

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<sup>161</sup> UE 246/Sierra Club/300/Fisher/21 line 17 to Fisher/22 line 10 – discussing what a reasonable Company would have done in regards to the retrofits at Naughton 1 and 2 if in possession of the same information.

<sup>162</sup> UE 246/CUB/200/Jenks-Feighner/36 lines 20 -23 and 37 lines 1-6.

<sup>163</sup> UE 246/CUB/200/Jenks-Feighner/37 lines 7-11 and FN 57: CUB is willing to look at accelerated depreciation so the Company does not lose its early prudent investment in the plant.

<sup>164</sup> UE 246/PAC/500/Teply/28 line 23.

<sup>165</sup> UE 246/CUB/100/Jenks-Feighner/38 lines 16-17.

<sup>166</sup> UE 246/PAC/500/Teply/39 lines 21-22.

<sup>167</sup> UE 246/PAC/500/Teply/40 lines 3-4.

<sup>168</sup> UE 246/PAC/500/Teply/40 lines 21-23 and Teply/41 lines 1-3.



1 capital investment for the scrubber portion of the project is approximately \$155 million<sup>169</sup> and the  
2 NO<sub>x</sub> portion of the project is \$9 million.<sup>170</sup> The Company claims to have completed three technical  
3 studies that informed its opinion.<sup>171</sup> It states that it considered technology alternatives<sup>172</sup> but it did  
4 not consider alternative closure dates other than immediate closure,<sup>173</sup> even though the planning  
5 assumption at the time was that these investments would not be required until 1/1/14.<sup>174</sup>

6 PacifiCorp argues that even the IRP Coal Replacement Study (“IRP Supplement”) filed in  
7 Docket LC 52 did not identify an accelerated retirement date for Naughton 2.<sup>175</sup> As discussed above,  
8 the IRP Supplement was the discredited coal replacement study that was filed last fall as part of the  
9 IRP that assumed all costs incurred before 2015 were sunk, including all costs necessary to meet  
10 2015 clean air compliance. The IRP Supplement then looked at whether it made economic sense to  
11 close each unit in 2015. That study demonstrated that it did not make economic sense to upgrade  
12 plants to meet clean air requirements and then *shut them down* anyway. The IRP Coal Replacement  
13 Study reveals nothing about the current investment that is at issue in this docket, because it was not  
14 designed to test the cost effectiveness of this investment.

15 The Naughton 2 PVRr study was conducted in 2009.<sup>176</sup> For Naughton 2, when the  
16 Company modeled the investment as compared to immediate 2009 shut down, it found that it had a  
17 positive net present value of \$ [REDACTED].<sup>177</sup> CUB also updated its analysis for Naughton 2 to use the

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<sup>169</sup> UE 246/PAC/500/Teply/40 lines 1-2.

<sup>170</sup> UE 246/PAC/500/Teply/41 lines 8-9.

<sup>171</sup> UE 246/PAC/500/Teply/45 line 1-5.

<sup>172</sup> UE 246/PAC/500/Teply/45 lines 1-5.

<sup>173</sup> UE 246/PAC/500/Teply/45 lines 10-12 – discussion of least-cost alternative analysis.

<sup>174</sup> UE 246/PAC/500/Teply/42 lines 11-13; UE 246/PAC/502/Teply/1 lines 15 and 16.

<sup>175</sup> UE 246/PAC/500/Teply/46 lines 13-16.

<sup>176</sup> UE 246/CUB/100/Jenks-Feighner/39 lines 2-4.

<sup>177</sup> UE 246/PAC/500/Teply/45 line 23.

1 expected compliance date of 1/1/14 used by the Company in its Reply Testimony.<sup>178</sup> [REDACTED]  
2 [REDACTED]. While still positive, this suggests that the case for the  
3 investment was extremely small to begin with<sup>179</sup> and demonstrated that the investment in clean air  
4 equipment was marginal at best. CUB also looked at updating the forward price curve along the way,  
5 since the [REDACTED]. Using the forward price curve from the Hunter  
6 plant analysis in late 2009, CUB found the investment had a negative NPVRR of \$ [REDACTED]  
7 [REDACTED].<sup>180</sup> Thus, even if the Company had  
8 gone forward based on the marginal economics of its original study, within a year it would have  
9 found that the investment was no longer economic and, under the terms of the contract, [REDACTED]  
10 [REDACTED]. CUB then  
11 modeled phasing out the plant by the end of 2020. This showed a positive NPVRR of \$ [REDACTED],  
12 which was greater than the Company's original filing of \$ [REDACTED].<sup>181</sup> It seems to CUB that this  
13 was clearly the most economic choice for customers.

14 Because the historical facts demonstrate that PacifiCorp had all the tools and information to  
15 conduct this simple least-cost/least-risk analysis available to it at the time it made its decision to  
16 make the environmental control investments at Naughton 2, and because PacifiCorp could also have  
17 updated its initial analysis at any time, [REDACTED]  
18 [REDACTED],<sup>182</sup> CUB thinks the Naughton 2 investments were not prudent. The  
19 Naughton 2 environmental investments cannot be included in rates.

20 *2. Disallowance Requested for Naughton 2*

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<sup>178</sup> UE 246/CUB/200/Jenks-Feighner/37 lines 15-17.

<sup>179</sup> UE 246/CUB/200/Jenks-Feighner/37 lines 17-19.

<sup>180</sup> UE 246/CUB/200/Jenks-Feighner/38 lines 5-8.

<sup>181</sup> UE 246/CUB/200/Jenks-Feighner/38 lines 1-3; UE 246/CUB/200/Jenks-Feighner/37 line 18.

<sup>182</sup> UE 246/CUB/200/Jenks-Feighner/38 lines 8-11.

1 As an alternative to CUB's 25% disallowance recommendation, CUB suggests that the  
2 Commission could find this investment imprudent and deny the Company cost recovery. While the  
3 2013 test year at issue here does not require the Commission to go beyond this step, CUB again  
4 recommends that the Commission find that a 2020 *phase-out* would have been the prudent path and  
5 that ratemaking treatment in Oregon must follow this assumed prudent path.<sup>183</sup>

#### 6 **D. The Bridger 3 Investments Are Not Prudent**

##### 7 *1. CUB's Bridger 3 Analysis*

8 The Jim Bridger plant is a four unit coal-fired power plant.<sup>184</sup> PacifiCorp and Idaho Power  
9 Company are co-owners of this plant, with PacifiCorp being the majority owner and Idaho Power  
10 owning the remaining one-third (33.3 percent).<sup>185</sup> The capital investment for the scrubber project  
11 placed in service at Bridger unit 3 in June 2011 is approximately \$17 million.<sup>186</sup> Approximately \$1  
12 million of that capital investment is associated with project closeout and is included in the plant  
13 additions adjustment also included in this docket.<sup>187</sup> Also, "the operation of the new emissions  
14 control equipment results in increased operation and maintenance costs associated with reagent,  
15 waste disposal, and equipment maintenance."<sup>188</sup>

16 PacifiCorp argues that the IRP Coal Replacement Study ("IRP Supplement") filed in Docket  
17 No. LC 52 did not identify an accelerated retirement date for Bridger 3.<sup>189</sup> As we have said before,  
18 this is a discredited study that looked at paying the full cost of complying with pollution control  
19 rules and shutting the plant down anyway. The Company also claims to have considered technology

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<sup>183</sup> UE 246/CUB/200/Jenks-Feighner/38 lines 13-22.

<sup>184</sup> UE 246/PAC/500/Teply/78 line 18.

<sup>185</sup> UE 246/PAC/500/Teply/79 lines 1-2.

<sup>186</sup> UE 246/PAC/500/Teply/80 lines 8-10; UE 246/CUB/104/Feighner-Jenks/1—CUB Data Request and Response 4.

<sup>187</sup> UE 246/PAC/500/Teply/80 lines 10-11.

<sup>188</sup> UE 246/PAC/500/Teply/8 lines 7-9.

<sup>189</sup> UE 246/PAC/500/Teply/86 lines 14-16.

1 alternatives in three technical studies that informed its opinion,<sup>190</sup> but those studies did not consider  
2 alternative closure dates, and in fact recommended a BART compliance plan that was different than  
3 what was approved by the State of Wyoming. The studies also did not consider alternative closure  
4 dates, other than immediate closure in 2008,<sup>191</sup> even though the Company believed that it was not  
5 required to demonstrate compliance with BART permit conditions until 1/1/14. While CUB  
6 believes that the IRP Supplement has no value in this proceeding (or any proceeding for that  
7 matter), there are two studies that do inform this docket. The first was the PVRR study conducted  
8 in 2008, before the Company made the investment in the scrubber upgrades and before Wyoming  
9 adopted the requirement for scrubber upgrades. The second was the IRP update in March 2012,<sup>192</sup>  
10 which considered the costs at issue in this case as sunk and avoidable and focused on future costs  
11 associated with SCR installation, and found that in scenarios with low gas prices that the unit should  
12 be converted to gas. CUB notes that construction on the scrubber upgrade began in July 2010, with  
13 installation completed in 2011.<sup>193,194</sup> Thus, the actual timing of the investment was midway between  
14 the two studies.<sup>195</sup> The 2008 PVRR study assumed immediate closure as the alternative to the  
15 pollution control, even though that had no relationship to the completion date for the project<sup>196</sup> or  
16 the actual or anticipated compliance deadlines. So, for Bridger 3, when the Company modeled the  
17 investment as compared to immediate 2008 closure, it found that it had a positive net present value

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<sup>190</sup> UE 246/PAC/500/Teply/83 line 19 -22 and Teply/84 lines 1-16.

<sup>191</sup> UE 246/PAC/500 Teply/84 lines 17-23 and Teply/85 lines 1-2; CUB/100/Jenks-Feighner/35 lines 20-21.

<sup>192</sup> UE 246/CUB/105/Feighner-Jenks 1-92. It also showed that in three of the six scenarios studied (low gas, high CO<sub>2</sub>, or both) it would be cost effective to convert the plant to natural gas. UE 246/CUB/100/Jenks-Feighner/28 lines 12-13 citing to CUB Exhibit 104 – IPCO Response to CUB DRs 4 & 7. CUB thinks there is a very good chance that when PacifiCorp updates its forward price curve before making the decision to proceed with the SCR, low gas prices will lead to a decision that Bridger 3 should be converted to gas. UE 246/CUB/100/Jenks-Feighner/29 lines 21-22.

<sup>193</sup> UE 246/PAC /500 Teply/80.

<sup>194</sup> UE 246/CUB/100/Jenks-Feighner/31 citing to PAC/500/Teply/81.

<sup>195</sup> UE 246/CUB/100/Jenks-Feighner/28 lines 4-10.

<sup>196</sup> UE 246/CUB/100/Jenks-Feighner/31 lines 14-16.

1 of \$ [REDACTED].<sup>197</sup> So this plant went from a \$ [REDACTED] positive benefit from clean air investments  
2 in 2008—in the analysis that included the SCR—to a plant that is, in CUB’s opinion, on the margin  
3 and could have the SCR installed or could be converted to natural gas. If PacifiCorp had been  
4 updating its studies between 2008 and 2012, it might have discovered that the economics of the  
5 plant were changing. Because the investment was not installed until 2011, the Company had  
6 flexibility. In addition, under the terms of the contract, [REDACTED]  
7 [REDACTED]. The lack of interest the Company has shown in even updating its studies  
8 is troubling, because it suggests that PacifiCorp is not being diligent in looking for the least-cost  
9 options.<sup>198</sup>

10 As reported in its Rebuttal Testimony, CUB changed the PVRR model to remove the  
11 assumption that the alternative to the investments was an immediate closure of the plant. This  
12 reduced the NPVRR to \$ [REDACTED],<sup>199</sup> which PacifiCorp is happy to point out does not make the  
13 plant uneconomic.<sup>200</sup> CUB looked at the forward price curve from the fall of 2009 and found that  
14 this reduced the net present value down to \$ [REDACTED]. By the end of 2009, this project, rather than  
15 having a benefit of \$ [REDACTED], had a benefit of \$ [REDACTED]. CUB then looked at alternatives to the  
16 investment in clean air technology. CUB modeled the effects of *phasing out* the plant by 2020. This  
17 reduced the NPVRR again, down to \$ [REDACTED]. *Phasing out* the plant in 2022 had a net present  
18 value of \$ [REDACTED] and *phasing out* the plant in 2025 had a net present value of \$ [REDACTED].<sup>201</sup> All  
19 of this shows that if the Company had been updating its analysis in the fall of 2009, it would have

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<sup>197</sup> UE 246/PAC/500/Teply/85 lines 10-11.

<sup>198</sup> UE 246/CUB/100/Jenks-Feighner/36 lines 4-7.

<sup>199</sup> UE 246/CUB/200/Jenks-Feighner/39 lines 17-19.

<sup>200</sup> UE 246/PAC/1500/Teply/24 line 18 to 23 and Teply/25 lines 1-2.

<sup>201</sup> UE 246/CUB/200/Jenks-Feighner/40 lines 1-4.

1 seen that *phasing the plant out* in 2022 or 2025 would have been preferable.<sup>202</sup>

2 This means that even though its contract for Bridger 3 [REDACTED]

3 [REDACTED]

4 [REDACTED].<sup>203</sup> The Company  
5 complains that CUB's modeling is faulty.<sup>204</sup> Since CUB's modeling included only numbers from  
6 PacifiCorp's model—for the explicit reason that it did not want the Company to try to claim that it  
7 had used other numbers—PacifiCorp's complaint is both humorous and baseless. If CUB's  
8 modeling is faulty, then the modeling that is the basis for PacifiCorp's entire case, its claims that  
9 every other coal investment in this docket is economic, is also faulty. PacifiCorp's model is flawed.<sup>205</sup>

10 The Company again argues for Bridger 3 that it did not know about PGE and accelerated  
11 closure;<sup>206</sup> CUB has already argued this topic extensively above. As CUB has already shown, this  
12 argument is simply not credible. The Company refuses to consider a Boardman-like *phase-out* for this  
13 plant.<sup>207</sup> Because the historical facts demonstrate that all the tools and information to conduct this  
14 simple least-cost/least-risk analysis were available to PacifiCorp at the time it made its decision to  
15 make the environmental control investments at Bridger 3, and because PacifiCorp could also have  
16 updated its initial analysis at any time,<sup>208</sup> and because PacifiCorp [REDACTED]

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<sup>202</sup> UE 246/CUB/200/Jenks-Feighner/40 lines 6-9.

<sup>203</sup> UE 246/CUB/200/Jenks-Feighner/40 lines 10-22.

<sup>204</sup> UE 246/PAC/1500/Teply/25 lines 10 – 19 and Teply/26 line 5; UE 246/PAC/1900/Woollums 15-17 – just because Ms. Woollums and the Company refuse to entertain alternative analyses does not make CUB's model an irrelevant hypothetical. CUB encourages the Commission to review CUB's alternative model carefully – see CUB Exhibit 211.

<sup>205</sup> UE 246/PAC/1500/Teply 26, lines 10-11

<sup>206</sup> UE 246/PAC/1500/Teply/30 lines 14 – 21.

<sup>207</sup> UE 246/PAC/2000/Teply/21 lines 10-17. The Company's complaints about CUB's modeling are baseless. UE 246/CUB/200/Jenks-Feighner/27 lines 19-22.

<sup>208</sup> UE 246/CUB/200/Jenks-Feighner/40 lines 6-9.

1 [REDACTED],<sup>209</sup> CUB believes that the Bridger 3 investments were not prudent and cannot be included  
2 in rates. The Company should have reevaluated this project and considered a *phase out* between 2020  
3 and 2025 since this would likely be the least cost option for customers.

4 2. *Disallowance Requested for Bridger 3*

5 As an alternative to CUB's 25% disallowance recommendation, CUB suggests that the  
6 Commission could find this investment imprudent and deny the Company recovery of it. While the  
7 2013 test year at issue here does not require the Commission to go beyond this step, CUB  
8 recommends that the Commission find that a 2022 *phase-out* would have been the prudent path and  
9 that ratemaking treatment in Oregon must follow this assumed prudent path.<sup>210</sup>

10 **E. Just Because CUB Did Not Raise Any Issues About Dave Johnston 3 in the UE 217**  
11 **Docket Does Not Mean That Dave Johnston 4 or Any Other Plant at Issue in This**  
12 **Docket Should Automatically Be Assumed To Be Prudent**

13 As described by the Company, “[t]he Dave Johnston plant is a four unit, coal fueled plant . .  
14 . . [t]he Company owns 100 percent of the Dave Johnston plant . . .”<sup>211</sup> The Company states that,  
15 “[d]ue to utilization of once-through cooling water systems the Dave Johnston plant is the most  
16 likely to be impacted by emerging 316(b) regulations.”<sup>212</sup> Dave Johnston Unit 4 began commercial  
17 operation in 1972.<sup>213</sup>

18 CUB is a small non-profit and therefore has to pick and choose which issues to fight in each  
19 docket—it simply does not have the manpower or financial resources to support the review of all  
20 issues in all dockets. For this reason CUB had to select which issues to argue in the UE 217 docket.

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<sup>209</sup> UE 246/CUB/200/Jenks-Feighner/40 lines 10-13.

<sup>210</sup> UE 246/CUB/200/Jenks-Feighner/41 lines 6-12..

<sup>211</sup> UE 246/PAC/500/Teply/47 lines 7-9.

<sup>212</sup> UE 246/PAC/500/Teply/48 lines 1-3.

<sup>213</sup> UE 246/PAC/500/Teply/47 lines 13-14.

1 The fact that CUB did not choose to argue over, for example, the Dave Johnston 3 costs at issue in  
2 the UE 217 docket does not, contrary to what PacifiCorp argues,<sup>214</sup> preclude review of the costs  
3 associated with Dave Johnson 4, or any of the other plants, at issue in this docket.<sup>215</sup> Neither does  
4 the fact that the Wyoming BART processes allowed for public participation,<sup>216</sup> or that the Company  
5 may have provided copies of its annual reports to the Commission on the status of emission  
6 reduction controls from 2007 through 2010, prevent CUB from arguing those issues in the current  
7 docket.<sup>217</sup> The fact that reports were written does not serve as evidence that good analysis was done  
8 and has no effect whatsoever on whether CUB might someday mount a challenge in regard to that  
9 bad analysis. Clearly no challenge can be mounted until the costs of a project are submitted to the  
10 Commission for review.

11 During the IRP process last year, CUB realized that the PacifiCorp was not correctly  
12 modeling and considering closure of coal plants as an alternative to making pollution control  
13 investments, so CUB asked the Commission to explicitly “not acknowledge” the Company’s  
14 investments in coal plants. This concern is also reflected in the Commission’s IRP Order:

15 Staff, CUB, ODOE, the Sierra Club, RNP, and NWECC criticized the lack of a  
16 comprehensive analysis of the costs to upgrade PacifiCorp's coal plants for  
17 environmental compliance compared to the costs to retire the coal plants and invest  
18 in other resources. These parties emphasized the financial risks associated with  
19 investing in aging coal plants and the uncertainties about the scope of potential  
20 environmental regulations. Although PacifiCorp filed a Supplemental Coal  
21 Replacement Study, Staff and parties continued to have concerns about the  
22 sufficiency of the analysis supporting the conclusion that the continued operation of  
23 the company's coal fleet, with planned incremental investments, contributes to a  
24 resource strategy with the best combination of cost and risk for the utility and its

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<sup>214</sup> UE 246/PAC/500/Teply/27 lines 10-23 and Teply/28 lines 1-7; UE 246/PAC/1400/Woollums/5 lines 20-21 and  
Woollums/6 line 1; UE 246/PAC/1500/Teply/9 lines 9-29 .

<sup>215</sup> UE 246/Sierra Club/200/Steinhurst/18 lines 11-24.

<sup>216</sup> UE 246/PAC/1900/Woollums/8 lines 14-21.

<sup>217</sup> UE 246/PAC/1400/Woollums/35 lines 4-7.



1 customers.<sup>218</sup>

2 One of the action items that was acknowledged as part of the IRP acknowledgement directed  
3 PacifiCorp to make specific improvements in its modeling of coal investments at a workshop to be  
4 held in 2012 (the 2012 IRP Update). From CUB's perspective, the 2011 IRP was informative. If the  
5 Company's tools for analyzing its coal investments were flawed, then the analysis that the Company  
6 had been doing on the investments that came before that IRP was also flawed. In UE 217 CUB had  
7 taken the Company's analysis of the Dave Johnston 3 at face value, without doing too much digging  
8 and without submitting many data requests to identify the underlying assumptions.<sup>219</sup> As a result of  
9 the 2011 IRP, CUB knows that it made a mistake. We recognize that CUB's analysis in this docket  
10 now calls into question whether the Dave Johnston 3 investment was properly analyzed in UE 217  
11 and, of course, whether it was prudent. CUB will not ask for a new review of that investment—that  
12 would be retroactive ratemaking—unless it is later shown that that investment is not used and  
13 useful.

14 CUB learns from its mistakes. In this docket CUB is reviewing PacifiCorp's pollution  
15 control investment costs carefully. As with all dockets, however, CUB's personnel and financial  
16 resources are constrained, so in this docket we are focusing on the plants that, in CUB's estimation,  
17 are not cost-effective beyond any reasonable doubt. So for this docket CUB's focus is trained on  
18 Naughton 1 and 2 and Bridger 3.<sup>220</sup> CUB does note, however, that:

19 The Dave Johnston 4 study from this period has the same flaws as the other studies:  
20 closing the plant several years before such closure is necessary; using a forward price

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<sup>218</sup> OPUC Order No. 12-082, page 4.

<sup>219</sup> See UE 246/PAC/1500/Teply/9 citing to Joint testimony in support of the Stipulation in UE 217, wherein CUB accepted the investment in pollution control at Dave Johnston 3 as prudent. But in that docket there was evidence elicited that Dave Johnston 3 was imprudent; in this docket, there is evidence that Naughton 1 and 2 and Bridger 3 are imprudent.

<sup>220</sup> In the case of Dave Johnston Unit 4, the benefit of clean air investment over 2020 phase out was less than \$ [REDACTED].

1 curve from 2007 to evaluate an investment that is not used and useful until 2012; not  
2 studying alternative resources to market purchases; and not allowing any alternative  
3 closure date except 2008.<sup>221</sup>

4 In terms of the other plants, Hunter 1 and 2 and Wyodak, CUB's examination of these investments  
5 supports our concerns about PacifiCorp's approach, its unwillingness to look for a least-cost/least-  
6 risk solution, and its failure to update its analysis as conditions change. The fact that CUB is not  
7 introducing modeling results that demonstrate imprudence for each of PacifiCorp's other units does  
8 not suggest that CUB believes the approach taken by the Company in analyzing whether to make  
9 the clean air investments in those units was prudent or reasonable.<sup>222</sup>

#### 10 **F. Debunking the Company's Kitchen Sink Arguments**

11 PacifiCorp argued in its Initial Application testimony that it could not wait to make these  
12 pollution control investments because there would be a rush for equipment and contractors as the  
13 deadline drew near that would stymie its ability to complete the necessary pollution controls before  
14 the compliance deadline.<sup>223</sup> It made the same argument in its Reply Testimony, stating that it could  
15 not operate under a "just-in-time plan,"<sup>224</sup> and also in its Surrebuttal Testimony.<sup>225</sup> But this misses  
16 the point. Regardless of when an analysis starts, it must include a least-cost/least-risk component  
17 and the Company has to keep revisiting that analysis to ensure that it holds true. For example,  
18 PacifiCorp originally thought it had until January 1, 2014, but in reality it had until December 31,  
19 2015,<sup>226</sup> to add pollution controls at Bridger 3.<sup>227</sup> But the federal law had flexibility, and PacifiCorp's

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<sup>221</sup> UE 246/CUB/100/Jenks-Feighner/44 lines 17-21; and see also 45 – 47 line 16.

<sup>222</sup> UE 246/CUB/200/Jenks-Feighner/41 lines 14-20; *See also* UE 246/Sierra Club/200/Steinhurst/11 lines 1-16; Steinhurst/17 lines 3-15 and Sierra Club/100/Fisher/6 lines 6-16 and Fisher/7 lines 18-31; Fisher/50 line 10 to 57 line 10; Fisher/59 line 10 to Fisher/60 line 4; *But see* Staff/1500/Colville/5 lines 6-16.

<sup>223</sup> UE 246/PAC/500/Teply/26 lines 1-10.

<sup>224</sup> UE 246/PAC/1400/Woollums/18 lines 4-7.

<sup>225</sup> UE 246/PAC/1900/Woollums/3 lines 10-12.

<sup>226</sup> UE 246/PAC/1400/Woollums/19 FN 13 – extensions were also possible.

1 [REDACTED]. The Company should not be allowed to make after-the-fact justifications  
2 for its failure to act in the best interests of customers.

3 The Company also argues that CUB's approach fails to consider the challenges of managing  
4 multiple projects at multiple units.<sup>228</sup> The Company forgets that CUB has been reviewing its cases for  
5 nearly 30 years. CUB is well aware of the dynamics of utility project balancing, as well as of this  
6 particular utility's frequent failure to take into consideration anything other than the project as an  
7 investment vehicle for its shareholders' profits. This is also why CUB was the party trying to get the  
8 Company to bring its coal investment analysis into the IRP, where the challenge of managing  
9 multiple projects and considering multiple alternative investments could properly be analyzed. In  
10 addition, CUB has been arguing for years that the utility has a responsibility to manage its capital  
11 investments so as to avoid rate shock.<sup>229</sup> Managing its investments does not mean doing all projects  
12 at the last minute, it means conducting appropriate in-depth analyses—exactly what CUB has been  
13 arguing for throughout this UE 246 and the LC 52 dockets.

14 The Company also claims that CUB is arguing for it to be in non-compliance with  
15 environmental laws.<sup>230</sup> As the Commission knows, nothing could be further from the truth. CUB  
16 worked diligently with PGE, the Commission, and other stakeholders to work out a process  
17 whereby PGE would be in compliance with the law while *phasing out* its Boardman plant without the  
18 need for significant expensive pollution controls. CUB is only arguing that PacifiCorp should show  
19 the same creativity and conduct similar in-depth analyses and explore the flexibility in those laws so  
20 as to provide the best results for its customers. And CUB is intrigued by the Company's arguments

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<sup>227</sup> UE 246/PAC/1400/Woollums/30 lines 12-16.

<sup>228</sup> UE 246/PAC/1400/Woollums/25 lines 2-3; UE 246 PAC/1500 Teply/10 lines 13-17.

<sup>229</sup> UE 246/PAC/1400/Woollums/25 lines 12-19 citing to CUB position in the UE 217 Joint Testimony in Support of Stipulation. There is no disconnect here.

<sup>230</sup> UE 246/PAC/1400/Woollums/25 line 25 to 26 line 2.

1 related to its inability to keep re-analyzing projects to make sure they are still appropriate,<sup>231</sup> That is  
2 exactly what the IRP is for. In CUB's view, the Company is at risk of disallowance if it refuses to  
3 reevaluate its projects.<sup>232</sup>

4 CUB also finds the arguments about Oregon's used and useful law amusing.<sup>233</sup> As PacifiCorp  
5 well knows—as evidenced by the stipulation related to Carbon in this very docket, or the  
6 Commission orders approving decommissioning of the Klamath<sup>234</sup> and Condit<sup>235</sup> dams—an orderly  
7 *phase-out* of a plant gives utilities time to plan for and recover their costs prior to closure. Oregon  
8 stakeholders, including CUB, are willing to adjust depreciation lives to ensure that a utility has the  
9 opportunity to recover its investment while a plant is used and useful.<sup>236</sup>

10 Another argument made by the Company is that CUB is attempting to use the existing  
11 regulatory framework in Oregon for environmental reasons.<sup>237</sup> Even if that were CUB's goal, it  
12 would be silly to try and promote such an agenda at the PUC, which has no environmental  
13 regulatory authority. The PUC can, however, require least-cost/least-risk planning of its utilities—  
14 for renewables, coal plants, or any other resource—and that is what CUB is at the PUC arguing for  
15 every day. Its CUB's opinion that the sole purpose of the Company's used and useful arguments is  
16 to allow the Company itself to advocate for a change to Oregon's used and useful law<sup>238</sup>—something  
17 CUB does not support.

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<sup>231</sup> UE 246/PAC/1400/Woollums/26 lines 22-23 through Woollums/27 line 3; UE 246/PAC/2000/Teply/12 lines 9-23 and Teply/13 lines 1-3..

<sup>232</sup> OAR 860-027-0400(3).

<sup>233</sup> UE 246/PAC/1400/Woollums/27 lines 3-10.

<sup>234</sup> OPUC Order No. 10-364.

<sup>235</sup> OPUC Order No. 11-435.

<sup>236</sup> UE 246/PAC/1400/Woollums/35 lines 18-20.

<sup>237</sup> UE 246/PAC/1400/Woollums/27 lines 11-13; UE 246/PAC/1500/Teply/12 lines 3-5; UE 246/PAC/2000/Teply/3 lines 1-2.

<sup>238</sup> UE 246/PAC/1400/Woollums/27 17-20.

1           PacifiCorp argues that conversion to gas is not always the least-cost/least-risk option.<sup>239</sup> This  
2   is rich, given that the Company did not even evaluate that option as an alternative to any of the  
3   investments at issue in this docket. It is doubly rich that it was not CUB that advocated for  
4   Naughton 3 to be converted to gas. CUB itself is skeptical that the Naughton 3 gas conversion is the  
5   least-cost/least-risk option for Naughton 3. CUB would like to see how gas conversion compares to  
6   *phasing out* Naughton 3 in 2020, as was done with Boardman.

7           The Company argues that EPA did not “reject” SIPs in Wyoming and Utah and that it  
8   instead merely did not “approve” them.<sup>240</sup> This semantic argument is so inane it seems strange to  
9   even address it. The bottom line is, however, that PacifiCorp now has additional time to review its  
10   prior decisions regarding installation of SCRs and other future environmental controls, time to  
11   experiment with different closure deadlines, and time to determine what is and is not least-  
12   cost/least-risk. The Company can resubmit its BART pollution plan with different plant lives and  
13   different pollution controls. CUB thinks the Company should make judicious use of this additional  
14   time to review its prior decisions—including those in Utah,<sup>241</sup> where not all costs may have been  
15   included—and avoid thereby avoid future disallowances. The arguments on page 30 of Cathy  
16   Woollums Rebuttal Testimony do nothing to change the fact that the historical facts show that the  
17   Company failed to do the appropriate analysis for all of those units. The fact that the EPA may be  
18   willing to accept those units does not prove that they were the least-cost/least-risk means of dealing  
19   with the issue.<sup>242</sup>

20           An additional argument made by PacifiCorp is that it could not have predicted the changes

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<sup>239</sup> UE 246/PAC/1400/Woollums/28 lines 6-20.

<sup>240</sup> UE 246 PAC/1400 Woollums/29 lines 14-16.

<sup>241</sup> UE 246 PAC/1400 Woollums/29 lines 16-22.

<sup>242</sup> UE 246/PAC/1400/Woollums/30 lines 1-19.

1 in the gas market or load growth that have occurred.<sup>243</sup> CUB has not asked the Company to predict  
2 anything; CUB has simply pointed out that the Company's imprudent failure to reevaluate its  
3 projects over time caused it to be unable to react to the changes in the market that occurred.

#### 4 **V. ADDITIONAL RECOMMENDATIONS**

5 As explained by Sierra Club witness Dr. Steinhurst when asked whether PacifiCorp should  
6 consider costs outside of those proposed for recovery in the this docket, when conducting the  
7 future detailed analytical company-wide reviews being requested by CUB and Sierra Club:

8 Determination of the prudence of the company's investment and the most  
9 economically efficient resource choices requires a comprehensive and detailed  
10 assessment of the costs associated with a variety of options. This assessment must  
11 include a full understanding of all of the known costs associated with specific  
12 options, as well as an understanding and evaluation of costs that can reasonably be  
13 anticipated for specific options. While the company is not seeking cost recovery for  
14 all of the upcoming costs in this docket, evaluating these expenditures in isolation  
15 from known and likely upcoming expenditures biases the review in favor of the  
16 Environmental Retrofits.<sup>244</sup>

17 CUB respectfully requests that the Commission require PacifiCorp to conduct the detailed analytical,  
18 company-wide reviews outlined by CUB and Sierra Club in this docket (and taking into  
19 consideration all of the concerns of both parties<sup>245</sup>) on a going-forward basis so that future dockets  
20 dealing with these and other pollution control regulations are not burdened with the same "did they  
21 or didn't they know" issues as this docket has been, and so that customers pay only the appropriate  
22 share of the prudent costs of the Company's doing business. We do not want a repeat of, "the  
23 company's planning decision process for the Environmental Retrofits [in this docket which was]  
24 shortsightedly based on the assumption that existing units must continue to operate regardless of

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<sup>243</sup> UE 246/PAC/1500/Teply/12 line 18 to Teply/13 line 19.

<sup>244</sup> UE 246 Sierra Club/200 Steinhurst/11 lines 26-29 to Steinhurst/12 line 7.

<sup>245</sup> UE 246/Sierra Club/100/Fisher/48 line 16 to Fisher/50 line 9.

likely costs, with ratepayers bearing the burden.”<sup>246</sup> CUB does not want more piecemeal reviews.<sup>247</sup>

## VI. CONCLUSION

CUB, having read Sierra Club’s testimony, and having researched and written its own, finds this Sierra Club summary statement hard to argue with:

If the Company had worked through the regulatory process as intended and expected by the EPA and state regulatory mechanisms, negotiated openly, and had then invested in appropriate controls after rigorously (and preferably transparently) scrutinizing their own actions, this case would likely be uncontested. Instead, the Company made a series of ill-timed and unsupported investments that are ultimately insufficient to mitigate the harm caused by pollution at their plants. At worst, the Company worked to preempt proper regulatory authority, invested just enough to meet only the most immediate regulatory requirements, and made piecemeal investments across the entire fleet.<sup>248</sup>

In CUB’s case, CUB is unable to reconcile Staff’s comments in this docket, about infirmities in the logic, with Staff’s decision that the “decision making process for all these coal plant units was ‘more good than bad.’”<sup>249</sup> CUB does, however, appreciate that Staff in later testimony acknowledged the problems with its earlier testimony<sup>250</sup> and also that it recommends to the Commission that it clarify in this docket its “going forward expectations regarding analyses prior [to] a utility making environmental compliance investments at existing resource units.”<sup>251</sup> But this is largely where CUB’s appreciation ends. CUB draws the line at Staff’s recommendation that imprudent pollution control devices should be allowed into rates as interim subject to refund.<sup>252</sup> Costs that have been found to be imprudent should never be allowed into rates.

CUB acknowledges, however, that the remainder of Staff’s disallowance options do bear

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<sup>246</sup> UE 246/Sierra Club/200/Steinhurst/13 lines 23-26.

<sup>247</sup> UE 246/Sierra Club/200/Steinhurst/15 lines 3-10.

<sup>248</sup> UE 246/Sierra Club/300/Fisher/2 line 25 to Fisher/3 line 3.

<sup>249</sup> UE 246/Staff/1500/Colville/15 lines 5-7.

<sup>250</sup> UE 246/Staff/1500/Colville/23-26 line 5.

<sup>251</sup> UE 246/Staff/1500/Colville/19 lines 22-23 and Colville/20 line 1.

<sup>252</sup> UE 246/Staff/1500/Colville/20 lines 10-13.

1 consideration.<sup>253</sup> CUB understands Staff's concern that finding an incremental investment imprudent  
2 when that investment is being added to a plant whose underlying investment is prudent raises  
3 questions and issues. However, most of those findings relate to future ratemaking associated with  
4 the underlying prudently-incurred costs associated with the plant, not the new, incremental  
5 imprudent costs. For example, how long does the overall plant stay in rates (2015, 2020, 2025), and  
6 what assumptions should be used in future rate cases? CUB is open to an additional phase in this  
7 docket designed to consider the implications of imprudence on future ratemaking. However, the  
8 imprudent costs in this docket must not be allowed into current rates for as CUB and the Sierra  
9 Club have demonstrated, PacifiCorp's chosen approach was imprudent and is leading to higher rates  
10 for customers. And CUB's position does not change regardless of whether construction has already  
11 commenced or reached completion at any of the plants in question.<sup>254</sup> It is CUB's position that a  
12 25% disallowance would offset some of those higher costs for ratepayers.<sup>255</sup>

13 Staff's suggestion that CUB's 25% disallowance would somehow be "retroactive  
14 ratemaking" makes little sense. The Commission can disallow the clean air investments in this case if  
15 it finds the Company has failed to prove these costs are imprudent. If disallowing 100% of the costs  
16 is not retroactive ratemaking, then disallowing 25% of the costs is also not retroactive ratemaking.

17 The following table lists the amount of a 25% disallowance for the investments at each coal  
18 plant, on both a systemwide and Oregon basis, using an Oregon allocation factor of 25.78%.<sup>256</sup>

19 While the 25% disallowance requested is likely to not be enough to fairly compensate customers for  
20 the Company's past imprudence, CUB still holds out hope that this amount is enough to encourage

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<sup>253</sup> UE 246/Staff/1500/Colville/20 lines 17-21 and Colville/21 lines 1-3.

<sup>254</sup> UE 246/Sierra Club/200/Steinhurst/18 lines 4-10.

<sup>255</sup> UE 246/CUB/200/Jenks-Feighner/28 lines 17-20.

<sup>256</sup> UE 246/CUB/100/Jenks-Feighner/58 lines 16-23 and 59 including Table 11 shown below.



1 PacifiCorp to act prudently and in the best interest of its customers in the future.<sup>257</sup>

2 **Table 11: CUB's Proposed Prudence Disallowance**

Plant	PAC Request (Total)	25% Disallowance	Disallowed Oregon Share
Bridger Unit 3	\$17 million <sup>258</sup>	\$4.25 million	\$1.10 million
Naughton Unit 1	\$130 million <sup>259</sup>	\$32.5 million	\$8.38 million
Naughton Unit 2	\$164 million <sup>260</sup>	\$41 million	\$10.56 million
Dave Johnston Unit 4	\$104 million <sup>261</sup>	\$26 million	\$6.70 million
Hunter Unit 1	\$52 million <sup>262</sup>	\$13 million	\$3.35 million
Hunter Unit 2	\$80 million <sup>263</sup>	\$20 million	\$5.16 million
Wyodak	\$114 million <sup>264</sup>	\$28.5 million	\$7.35 million
Total	\$661 million	\$165.25 million	\$42.6 million

3 The primary disadvantage with the 25% disallowance is not that it is unfair in any way to PacifiCorp;  
4 it is that it may be seen as unfair to customers.<sup>265</sup>

5 As an alternative to the 25% disallowance, the Commission also has the option for more  
6 traditional prudence disallowance.<sup>266</sup> The Commission could just disallow the clean air investments  
7 made at Naughton 1 and 2 and Bridger 3. If the Commission accepts this option, it is not necessary  
8 to take up future ratemaking for the plants. CUB recommends, however, that the Commission order  
9 that ratemaking assume that the Company is prudently pursuing a path of *phasing out* the plants  
10 between 2020 and 2025.

11 As a third alternative, the Commission could find that the Company has failed to show that  
12 the investments at issue here are “used and useful” because these investments are not sufficient to

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<sup>257</sup> UE 246/CUB/200/Jenks-Feighner/30 lines 21-24.

<sup>258</sup> UE 246/PAC/500/Teply/80.

<sup>259</sup> UE 246/PAC/500/Teply/29; PAC/500/Teply/31.

<sup>260</sup> UE 246/PAC/500/Teply/40; PAC/500/Teply/41.

<sup>261</sup> UE 246/PAC/500/Teply /8.

<sup>262</sup> UE 246/PAC/500/Teply/60.

<sup>263</sup> UE 246/PAC/500/Teply/61; PAC/500 Teply/62; PAC/500/Teply/62-63.

<sup>264</sup> UE 246/PAC/500/Teply/71; PAC/500/Teply/72.

<sup>265</sup> UE 246/CUB/200/Jenks-Feighner/30 line 24 and Jenks-Feighner/31 line 1.

<sup>266</sup> UE 246/CUB/200/Jenks-Feighner/28 line 6.

- 1 demonstrate compliance with RHR/BART. Under this option, the Commission would be directing
- 2 the Company to file for rate recovery when it can demonstrate that the investments are part of an
- 3 overall plan to meet RHR/BART in a least cost/least risk manner.

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

Respectfully submitted,



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## UE 246 – CERTIFICATE OF SERVICE

I hereby certify that, on this 4<sup>th</sup> day of October, 2012, I served the foregoing **CITIZENS' UTILITY BOARD OF OREGON'S PRE-HEARING BRIEF** in docket UE 246 upon each party listed in the UE 246 PUC Service List by email and, where paper service is not waived, by U.S. mail, postage prepaid, and upon the Commission by email and by sending one original and five copies by U.S. mail, postage prepaid, to the Commission's Salem offices.

(W denotes waiver of paper service)

(C denotes service of Confidential material authorized)

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sommer Templet". The signature is fluid and cursive, with the first name "Sommer" being more prominent than the last name "Templet".

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