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October 12, 2020

Via Electronic Filing

Public Utility Commission of Oregon
Attn: Filing Center
201 High St. SE, Suite 100
Salem OR 97301

Re: In the Matter of PACIFICORP, dba PACIFIC POWER
Request for a General Rate Revision.
Docket No. UE 374

Dear Filing Center:

Please find enclosed the Confidential Reply Brief of the Alliance of Western Energy Consumers ("AWEC") in the above-referenced docket.

Please note that AWEC's brief contains Protected Information that is being handled in accordance with Order No. 20-040. The confidential version of AWEC's brief has been encrypted with 7-zip software and is being transmitted electronically to the Commission, per Order No. 20-088.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Sincerely,

/s/ Jesse O. Gorsuch
Jesse O. Gorsuch

Enclosure

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the **Confidential Reply Brief of the Alliance of Western Energy Consumers** upon the parties shown below by electronic mail, per Order No. 20-088.

Dated this 12th day of October, 2020.

Sincerely,

/s/ Jesse O. Gorsuch
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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 374

In the Matter of	)
	)
PACIFICORP, dba PACIFIC POWER	)
	)
Request for a General Rate Revision.	)
	)

REPLY BRIEF ON BEHALF OF THE

ALLIANCE OF WESTERN ENERGY CONSUMERS

(REDACTED VERSION)

October 12, 2020

TABLE OF CONTENTS

I. INTRODUCTION 1
II. ARGUMENT 2
A. Cost of Capital 2
1. A capital structure with 51.86% equity is sufficient to maintain PacifiCorp's current credit metrics. 2
2. In the current market, a 9.20% return on equity is commensurate with the returns of enterprises having corresponding risk. 6
a. The Commission should reject outright PacifiCorp's expected earnings and ECAPM models. 6
b. AWEC's recommended ROE accounts for both the current market volatility and low interest rates, whereas PacifiCorp's recommended ROE ignores the existing low interest rate environment. 7
c. Mr. Gorman's analysis is sufficiently contemporary to identify an accurate ROE for PacifiCorp 10
d. AWEC's criticisms of pacificorp's modeling are accurate 10
e. Mr. Gorman's recommended 9.20% ROE is based on sound analysis and consensus market expectations. 11
III. ANNUAL POWER COST ADJUSTMENT 12
IV. WILDFIRE MITIGATION COST RECOVERY MECHANISM 15
V. EMISSIONS CONTROL INVESTMENTS 16
A. The Commission should disallow PacifiCorp's investment in selective catalytic reduction ("SCR") at Jim Bridger Units 3 And 4. 16
B. Hunter Environmental Controls. 18
VI. CHOLLA 4 PROPERTY TAX 18
VII. COAL PLANT EXIT DATES AND EXIT ORDERS 19
VIII. DECOMMISSIONING 20
IX. EV 2020 PROJECTS 23
X. DEER CREEK MINE CLOSURE 26
A. The Commission should deny recovery of incremental mine closure costs. 26
B. The Commission should not allow recovery of unknown royalty payments in this case. 28
XI. ADVANCED METERING INFRASTRUCTURE 29
XII. CONCLUSION 30

I. INTRODUCTION

Pursuant to the Administrative Law Judge's August 27, 2020 Ruling in the above-referenced docket, the Alliance of Western Energy Consumers ("AWEC") files this Reply Brief with the Oregon Public Utility Commission ("Commission").

Several major issues remain disputed in this case, issues that either have a substantial impact on the rates PacifiCorp (or the "Company") will be allowed to charge its customers going forward, have significant consequences for Commission ratemaking policy, or both. These include the Company's return on equity, its power cost recovery, its assumed decommissioning costs for coal plants, and its investments in environmental controls at those same plants. If the disputed issues are resolved in favor of the Company, PacifiCorp will face substantially lower risk while earning a return well above a just and reasonable level.

PacifiCorp emphasizes in its Opening Brief that its rate request, as modified in its Surrebuttal filing, results in a modest rate decrease for customers.[1/] This masks the $47.5 million base rate increase the Company's filing requests, which will be permanent, whereas the offsetting revenues that result in an overall rate decrease will be temporary. These include remaining savings PacifiCorp will pass back from the Tax Cuts and Jobs Act ("TCJA") and the benefits of Production Tax Credits ("PTCs") from new and repowered wind resources, which will expire after ten years.

[1/] PacifiCorp Opening Brief at 1.

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While there is no doubt that the Company has made substantial investments since its last rate case in 2014, it is also now operating in an environment in which its tax obligations are substantially lower and the cost of capital is at an historically low level. These facts must be accounted for in establishing just and reasonable rates for PacifiCorp overall. Moreover, as AWEC has argued over the course of this proceeding and argues further below, some of the investments the Company requests recovery of in this case were the result of imprudent action, and these investments should not be considered in the determination of just and reasonable rates for PacifiCorp.

II. ARGUMENT

A. Cost of Capital

1. A capital structure with 51.86% equity is sufficient to maintain PacifiCorp's current credit metrics.

PacifiCorp continues to advocate for a capital structure with 53.52% equity, an increase of 1.42% from the equity level in its currently authorized capital structure. In its Opening Brief, the Company makes four arguments in support of its position: (1) a higher equity ratio offsets negative cash flow impacts from the TCJA; (2) a higher equity ratio is necessary to maintain credit metrics during a period of high capital expenditures; (3) the Company's proposed equity ratio is consistent with the proxy group's; and (4) the equity ratio advocated for by AWEC and Staff "relies on flawed and outdated analysis."[2/]

[2/] PacifiCorp Opening Brief at 4-7.

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Regarding the impacts of the TCJA, PacifiCorp claims that the Commission "has acknowledged the negative effect of the TCJA on utility cash flows and credit ratings."[3/] The Company cites to two Staff reports on other utility debt issuances in support of this statement, but identifies no evidence that the TCJA threatens *PacifiCorp's* credit metrics. As Mr. Gorman shows, the effects of the TCJA, a law passed nearly three years ago, "are now fully reflected in observable market data including bond ratings, bond yields, and stock prices."[4/] Mr. Gorman further shows that the TCJA has not impeded utilities' ability to access capital to fund increased capital investments.[5/] Moreover, Mr. Gorman shows that, regardless of any impacts of the TCJA, PacifiCorp's current funds from operations ("FFO") to debt ratio is sufficient to support its bond rating, which ultimately is "the relevant factor."[6/]

Similarly, PacifiCorp's assertion that a higher equity level is necessary to support its credit metrics as it makes substantial capital investments in renewable resources in the coming years is largely unsubstantiated. The Company provides no evidence that a 53.52% equity level is necessary to maintain its current credit rating, it simply asserts that it is.[7/] Mr. Gorman, by contrast, provides affirmative evidence that a 51.86% equity level will maintain PacifiCorp's current rating.[8/]

There are several problems with PacifiCorp's attempt to justify its proposed equity level by looking to the equity levels of the utilities in the proxy group. First, the range of

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3/ Id. at 5.
4/ AWEC/200, Gorman/5:10-11.
5/ Id. at 7:1-10.
6/ AWEC/600, Gorman/3:12-20.
7/ PacifiCorp Opening Brief at 6.
8/ AWEC/600, Gorman/5:5-13; AWEC/602.

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equity levels – between 39.98% and 61.54% - is extremely broad, so simply comparing the proposed equity level to the average of the proxy group is arbitrary. Second, as PacifiCorp notes, a reasonable equity level in the capital structure is related to the utility's ROE and cost of debt because all three are necessary to determine the utility's overall rate of return ("ROR"). Consequently, a utility in the proxy group with a low equity level may have a relatively higher ROE, and vice versa. Setting PacifiCorp's capital structure by reference to other utilities' capital structures is inappropriate at baseline, and it is particularly inappropriate to do so in a vacuum without reference to the other components of the ROR. PacifiCorp itself makes this point when it notes that this Commission has previously "refused to rely on a Washington Utilities and Transportation Commission (Washington Commission) capital structure decision as a reasonableness check because Washington considers short-term debt in its calculations."[9/] Furthermore, even if the Commission were inclined to look at the average equity level of the proxy group, the average the Company cites is incorrect. PacifiCorp identifies 52.87% as the average, which it appears to have taken from Ms. Bulkley's testimony.[10/] The number cited in Ms. Bulkley's testimony, however, appears to be a typo, because the actual average shown in her Exhibit 413 is 52.43%.[11/] This percentage is actually closer to AWEC's and Staff's recommended equity level of 51.86% than it is to PacifiCorp's recommended equity level of 53.52%.

9/ PacifiCorp Opening Brief at 7.

10/ Id. at 6 (citing PAC/400, Bulkley/7).

11/ PAC/413, Bulkley/1.

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Finally, PacifiCorp criticizes Mr. Gorman's analysis, calling it "fundamentally backward looking" and "outdated."[12] Mr. Gorman rebutted the first claim in his Rebuttal Testimony, noting that:

> [M]y capital structure analysis did not conclude with a review of only historical data. Instead, I looked at the trend in credit rating benchmarks over time, and tested whether or not a continuation of that credit rating would be adequate to support PacifiCorp's bond rating in the prospective future test year. This was done making projections using the Company's forecasted capital structure mix with off-balance debt equivalents, and short-term debt balances to project PacifiCorp's core Standard & Poor's ("S&P") credit metric coverage of debt.[13]

The Company does not address this testimony in its Opening Brief. Regarding its claim that Mr. Gorman's analysis is "outdated," PacifiCorp appears to be following its line of cross-examination at the hearing in which it attempted to get Mr. Gorman to admit that a lower rate base would result in lower credit metrics.[14] As Mr. Gorman testified at the hearing, it is not possible to modify one input without modifying the others.[15] However, even if the Company's premise were correct, the level of rate base identified in its surrebuttal testimony is actually *higher* than what was identified in its opening testimony.[16] Thus, if anything, an update to Mr. Gorman's credit metric analysis should increase those metrics.

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[12] PacifiCorp Opening Brief at 6-7.
[13] AWEC/600, Gorman/2:27-3:5.
[14] Tr. at 42:18-21 (Gorman).
[15] Id. at 42:22-43:12 (Gorman).
[16] Compare PAC/1302, McCoy/6 (showing net rate base of $4,194,704,290) with PAC/4402, McCoy/7 (showing net rate base of $4,199,662,927). This occurs due to an updated load forecast, which impacts the allocation of rate base and other items to Oregon.

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2. In the current market, a 9.20% return on equity is commensurate with the returns of enterprises having corresponding risk.

a. *The Commission should reject outright PacifiCorp's Expected Earnings and ECAPM models.*

PacifiCorp simultaneously states that "the Commission should evaluate all available estimation models to inform the selection of a reasonable ROE for PacifiCorp" and that "there are four generally accepted ROE estimation methodologies: DCF, Risk Premium, [] CAPM … and Expected Earnings …."[17/] PacifiCorp's cite for this latter statement is to Dr. Morin, an expert witness who testifies on behalf of utilities.[18/] As AWEC showed in its Prehearing Brief,[19/] far from being "generally accepted," the Expected Earnings model was explicitly rejected by the Federal Energy Regulatory Commission ("FERC"), which found that "the flaws of the Expected Earnings model are significant enough to render the model inappropriate for ROE calculations."[20/]

Nor has this Commission used the Expected Earnings model to inform a utility's ROE. Indeed, this Commission has only explicitly accepted the multi-stage discounted cash flow ("DCF") and capital asset pricing model ("CAPM") as "a viable method for determining cost of equity."[21/]

The Commission also should not understand PacifiCorp's statement that the CAPM model is generally accepted (which it is) to mean that the *Empirical* CAPM model, a

17/ PacifiCorp Opening Brief at 8-9.
18/ See, e.g., Washington Utils. & Transp. Comm'n v. Puget Sound Energy, WUTC Docket Nos. UE-190529/UG-190530, Exh. No. RAM-1T.
19/ AWEC Prehearing Brief at 7-8.
20/ Assoc. of Businesses Advocating Tariff Equity v. MidContinent Indep. Sys. Operator, Inc., 171 F.E.R.C. ¶ 61,154 at P. 62,188 (May 21, 2020) ("Opinion 569-A").
21/ Docket No. UE 115, Order No. 01-777 at 27, 32 (Aug. 31, 2001).

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variant of the traditional CAPM model, is generally accepted (which it is not). This variant, in fact, "is relied upon by no more than a few 'financial scholars'" and has never been accepted by FERC or this Commission.[22/] As this Commission has stated, "[w]hen advocating a new approach [to estimating a reasonable ROE], or one previously rejected by the Commission, a witness should explain why the Commission should adopt the proposed methodology in the present docket."[23/] PacifiCorp has failed to meet this burden with respect to both the Expected Earnings and ECAPM models.

Therefore, if the Commission is to expand its acceptance of models to evaluate a reasonable ROE beyond the DCF and traditional CAPM models, it should include only the Risk Premium model. These are the three models FERC now relies on and they are truly the only "generally accepted" models in use today.[24/] The Commission should disregard Ms. Bulkley's Expected Earnings and ECAPM results.

b. AWEC's recommended ROE accounts for both the current market volatility and low interest rates, whereas PacifiCorp's recommended ROE ignores the existing low interest rate environment.

PacifiCorp argues that recent volatility in equity markets due to the COVID-19 pandemic has increased equity costs, and appears to suggest that this volatility is more important to the determination of a reasonable ROE for PacifiCorp than the historically low interest rates that prevail currently and are likely to continue for the foreseeable future.[25/] Indeed, PacifiCorp's

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22/ Assoc. of Businesses Advocating Tariff Equity v. MidContinent Indep. Sys. Operator, Inc., 153 F.E.R.C. ¶ 63,027 at P. 66,140 (Dec. 29, 2015).

23/ Order No. 01-777, Appen. A.

24/ Opinion 569-A at P. 62,188.

25/ PacifiCorp Opening Brief at 11-12 & 17-18; AWEC/708.

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Opening Brief appears to dismiss the importance of interest rates entirely as a factor in establishing the Company's ROE.[26/]

But PacifiCorp's position contradicts the testimony of its own expert witness. In her Opening Testimony in this case, Ms. Bulkley testified that "leading economists surveyed by Blue Chip are expecting an increase in long-term interest rates on government and corporate bonds over the next five years. *This is an important consideration for equity investors as they assess their return requirements*."[27/] When the pandemic hit and the Federal Reserve reduced interest rates to historically low levels, Ms. Bulkley pivoted to emphasizing market volatility over current interest rates.[28/]

The important relationship between interest rates and the cost of equity has been repeatedly recognized, however. FERC recently noted the "general financial logic that *lower interest rates make it easier to raise capital* based on the reduced opportunity cost of bonds and greater availability of revenue to invest due to the opportunity for carry trades where borrowing low-cost debt is used to finance equity purchases."[29/] This "general financial logic" is directly relevant to PacifiCorp, which has emphasized its need to raise capital to finance future investments, capital that will be easier to raise in a low interest rate environment.[30/]

Moreover, while the Federal Reserve has signaled an intention to keep interest rates low for the foreseeable future,[31/] even if market volatility increases equity costs, there is far less

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[26/] Id. at 17-18.
[27/] PAC/400, Bulkley/53:18-21 (emphasis added).
[28/] PAC/2200, Bulkley/17-37.
[29/] 169 F.E.R.C. ¶ 61,129 at P. 61,796 (Nov. 21, 2019) ("Opinion 569") (emphasis added).
[30/] PAC/400, Bulkley/64-67.
[31/] AWEC/708.

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certainty over how long such volatility will last, including whether it will last into the test year when PacifiCorp's rates will be in effect.

Finally, PacifiCorp's argument that Mr. Gorman's analysis had a "singular focus" on interest rates and did not account for "broader market conditions" is demonstrably false.[32/] Mr. Gorman testified that "I observed that market evidence does support above average risk premiums in the current marketplace" and that "utility beta estimates were low by historical standards."[33/] He continued:

> In a period where utility stocks are having relatively stable investment outlooks, and the general market is much more volatile as a result of uncertain futures, that non-normal variation of utility stock returns versus market stock returns is producing obscure beta estimates. Because the current published betas are below historical standards, I thought it was more accurate, and produced a more reasonable result, to use historical average betas in my Capital Asset Pricing Model ("CAPM") study.[34/]

Mr. Gorman's Opening Testimony also recognized that the "global economy has faced extraordinary challenges of the novel Coronavirus" and that this "unprecedented event has impacted all sectors and capital markets."[35/] He also, however, noted the impact rating agencies expected these conditions to have on utilities. S&P, for instance, found that "the majority of North American regulated utilities are well positioned to handle the immediate impact of COVID-19" and that the pandemic only "could negatively affect a few outliers …."[36/]

32/ PacifiCorp Opening Brief at 17-18.
33/ AWEC/600, Gorman/8:1, 8:8.
34/ Id. at 8:8-18.
35/ AWEC/200, Gorman/8:20-22.
36/ Id. at 9:5-9.

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In short, Mr. Gorman's recommended 9.2% ROE for PacifiCorp accounts for *both* the current uncertain and volatile equity markets and the historically low interest rates that are expected to prevail for the foreseeable future. PacifiCorp, by contrast, attempts to ignore interest rates entirely.

c. Mr. Gorman's analysis is sufficiently contemporary to identify an accurate ROE for PacifiCorp

PacifiCorp repeatedly criticizes Mr. Gorman for failing to update the ROE analysis presented in his Opening Testimony.[37/] Mr. Gorman's analysis, however, was performed in June, when the COVD-19 pandemic and its effects on equity markets were already several months old. Clearly Ms. Bulkley needed to update her initial analysis as it was performed prior to the pandemic, but Mr. Gorman was not in the same position. Circumstances did not change so significantly between June and July (when Mr. Gorman's Rebuttal Testimony was filed) to make the results meaningfully different. Strangely, PacifiCorp cites several reports from Duff & Phelps noting the financial impacts of the pandemic, apparently suggesting that Mr. Gorman did not incorporate these impacts.[38/] These reports, however, *were contained in Mr. Gorman's workpapers supporting his initial testimony*. Thus, Mr. Gorman was clearly aware of, and relied on, these reports to inform his ROE recommendations for PacifiCorp.

d. AWEC's criticisms of PacifiCorp's modeling are accurate

PacifiCorp claims that it is reasonable for Ms. Bulkley to remove DCF results below 7.0% from consideration, which AWEC criticized in its Prehearing Brief.[39/] AWEC's

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37/ PacifiCorp Opening Brief at 15, 18.
38/ Id. at 15.
39/ Id. at 22.

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criticism, however, is not that Ms. Bulkley removed results below 7.0%, it is that she *only* removed results below 7.0%, without similarly removing unrealistically high results.[40/] This plainly biases the average results of her model upward. PacifiCorp does not address this deficiency.

Additionally, Ms. Bulkley's long-term growth rate for her Multi-Stage DCF analysis plainly is based on a personal forecast. While it is certainly true that Ms. Bulkley used data from published sources, she compiled and averaged them to arrive at a growth rate that is not a published rate relied on by investors.[41/] With respect to one variant of her traditional CAPM model, in which the growth rate was calculated using a constant growth DCF model, Ms. Bulkley admitted that this growth rate calculation is her own personal calculation, "a calculation that we do in our office."[42/]

e. Mr. Gorman's recommended 9.20% ROE is based on sound analysis and consensus market expectations.

This Commission has previously validated "Mr. Gorman's framework to be a suitable starting point for our discussion of ROE."[43/] Unlike Ms. Bulkley, Mr. Gorman's analysis is based exclusively on the three financial models that are generally accepted and now validated by FERC – DCF (including both the constant growth and multi-stage variants), traditional CAPM, and Risk Premium – and do not cherry pick results by excluding low-end or high-end data points. As noted above, Mr. Gorman's recommended 9.20% ROE is also

40/ AWEC Prehearing Brief at 4.
41/ PAC/400, Bulkley/48:13-20; PAC/406.
42/ Tr. at 15:19-16:3 (Bulkley).
43/ Docket Nos. UE 180/UE 181/UE 184, Order No. 07-105 at 47 (Jan. 12, 2007).

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reflective of current capital markets, as impacted by the COVID-19 pandemic, and PacifiCorp's own specific circumstances within these capital markets.[44/]

While Mr. Gorman's recommendation also reflects the declining trend of awarded ROEs for electric utilities generally,[45/] as Mr. Gorman testified at the hearing, "whether or not [] authorized return[s] on equity truly reflect a balance between fair compensation to utility and retail rates that are just and reasonable, is a determination that should be made by the Oregon Commission in support of the public interest in Oregon. They should not defer that determination to the findings of other commissions and other jurisdictions."[46/] The record in this case establishes that 9.2% meets these criteria and should be the ROE set for PacifiCorp going forward.

III. ANNUAL POWER COST ADJUSTMENT

PacifiCorp's Annual Power Cost Adjustment ("APCA") is uniformly opposed by the parties to this case. The primary reason for this is simple: it shifts all power cost risk to customers and removes an important incentive the Company has to minimize its power costs. In its Opening Brief, PacifiCorp argues that a reverse incentive exists, namely an incentive not to invest in intermittent renewable resources, supposedly because these resources are the driver of the Company's alleged chronic under-recovery.[47/] This argument is simply not credible, though, given the massive renewable investments PacifiCorp has proposed, and is following through on, in its two most recent Integrated Resource Plans despite the existence of the PCAM.

44/ AWEC/200, Gorman/3-20.
45/ AWEC/200, Gorman/4 (Figure 1).
46/ Tr. at 60:5-9 (Gorman).
47/ PacifiCorp Opening Brief at 25.

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It also directly contradicts the Company's previous position that it is "not possible" to isolate the power cost impacts of renewable resources from the portfolio as a whole.[48/] This is borne out by the fact that PacifiCorp's power cost forecasts have become more accurate recently, not less.[49/] The Company attributes this to "improvements in long-term average cost predictions," but the fact is that this increased accuracy has come as PacifiCorp is adding more renewables to its portfolio.[50/] This should not happen if PacifiCorp is correct that more renewables equates to greater power cost under-recovery. The Company does not explain this discrepancy, and it raises serious doubts about PacifiCorp's prediction that its under-recoveries will worsen as it continues to add more renewables in the future. The fact is that PacifiCorp dispatches its system as an integrated whole and no single input or resource type can be isolated as the cause of forecast differences.

That is why, if a chronic under-recovery problem exists, it is due to PacifiCorp's modeling, not inherent and inescapable market forces. On this point, it is notable that PacifiCorp distinguishes itself from Idaho Power by claiming that Idaho Power "uses a version of modeling that relies on a traditional heuristic approach, as compared to PacifiCorp's optimization model."[51/] PacifiCorp does not explain why it cannot take the same approach as Idaho Power. Furthermore, while the Company continues to argue that its resource mix differentiates it from Portland General Electric and Avista in a manner that meaningfully impacts its ability to accurately forecast NPC, Avista in Washington has not been accurately forecasting its NPC for

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48/ Docket No. UE 246, PAC/2200, Duval/17:10-13.
49/ AWEC/500, Kaufman/25:4-21.
50/ PacifiCorp Opening Brief at 26.
51/ Id. at 29.

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the past several years either. The difference is that Avista's inaccuracies have resulted in substantial over-recovery for the utility, rather than under-recovery. Avista's "greater access to flexible, load-following resources" has not resulted in a more accurate forecast for that utility either, so the resource mix does not appear to be the issue.

Therefore, if the Commission is inclined to make any changes to the current PCAM, it should wait until parties have experience with PacifiCorp's new dispatch model, which it will begin using next year. This will provide evidence on whether PacifiCorp truly is different from other utilities in a way that makes it incapable of forecasting NPC with reasonable accuracy.

Finally, AWEC agrees with Staff's position that the APCA would undermine the stipulation in the 2020 TAM, which requires PacifiCorp to use specific capacity factors for its owned wind resources.[52/] The purpose of this provision is to share the risk between customers and shareholders that these resources will under-perform relative to the assumptions the Company made when it selected the resources, and to effectuate the Commission's order in the Company's 2017 Integrated Resource Plan that, for new wind resources, "recovery may be structured to hold PacifiCorp to the cost and benefit projections in its analysis."[53/] If PacifiCorp is allowed dollar-for-dollar recovery of power costs, then the forecasted capacity factors in the TAM are irrelevant and this provision in the stipulation, including the customer protections it provides, becomes meaningless.[54/]

52/ Docket No. UE 356, Order No. 19-351, Appen. A at 8 (Oct. 30, 2019).

53/ Order No. 19-351 at 6 (quoting Docket No. LC 67, Order No. 18-138 (Apr. 27, 2018)).

54/ PacifiCorp's Opening Brief addresses AWEC's recommendation to modify the TAM Guidelines to require the production of all workpapers that can be provided with the initial filing. The Company's Opening Brief

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IV. WILDFIRE MITIGATION COST RECOVERY MECHANISM

AWEC continues to oppose PacifiCorp's wildfire cost recovery mechanism. The bases for this opposition have been fully articulated in its testimony and Prehearing Brief. PacifiCorp offers nothing new to rebut in its Opening Brief. Nevertheless, AWEC would be remiss if it did not acknowledge that the recent wildfires in Oregon provide a stark demonstration of the need for all utilities to take all reasonable and prudent measures to mitigate the risks of these types of fires in the future. AWEC has not argued in this case that the expenditures the Company proposes do not meet these criteria. But the prospect of lawsuits over these fires bearing down on PacifiCorp and other utilities demonstrates the validity of one of AWEC's arguments in opposition to the Company's proposed cost recovery mechanism, which is that the exposure these wildfires present to PacifiCorp's shareholders fully incentivizes the Company to make these investments without a special recovery mechanism.

PacifiCorp also admits that these costs "are, to an extent, foreseeable."[55/] Its justification for the mechanism is that these "are dynamic and substantial costs necessary to ensure the safety of the Company's system."[56/] PacifiCorp does not explain what a "dynamic" cost is, nor does it explain how these costs are distinguishable in character from other "substantial costs" the utility incurs to ensure the safety of its system unrelated to wildfire mitigation.

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does not raise any new arguments or raise additional issues on this point, so AWEC refers the Commission to its Prehearing Brief on this issue.

55/ PacifiCorp Opening Brief at 35.

56/ Id.

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Thus, if the Commission is to grant the Company a special recovery mechanism for wildfire mitigation costs, it should articulate the basis for such a mechanism given that: (1) it is not needed to ensure PacifiCorp makes the investments; (2) it is not needed to ensure the recoverability of these costs (as the Company is always free to file a rate case when needed to ensure just, reasonable, and sufficient rates overall); and (3) PacifiCorp has not shown how these costs are fundamentally different from other costs it incurs to provide safe and reliable service.

V. EMISSIONS CONTROL INVESTMENTS

A. The Commission should disallow PacifiCorp's investment in selective catalytic reduction ("SCR") at Jim Bridger Units 3 and 4.

PacifiCorp refutes AWEC's and CUB's position that a retirement date for Bridger Units 3 and 4 at the end of Oregon's 2025 depreciable life would have rendered the SCRs uneconomic. The Company advances two arguments. First, it states that it "applied a 20-year depreciable life for SCRs as mandated by EPA."[57] This is irrelevant for two reasons. One, the appropriate economic life of the *SCRs* is not the question. The question is whether the SCRs would have been economic if *Bridger* retires in 2025, the depreciable life in Oregon that was in place when PacifiCorp made the decision to install the SCRs (and remains in place today for these units). Two, the issue before the Commission is whether the SCRs were a prudent investment, which is an issue for the Commission to decide, not the EPA. What the EPA considers or does not consider has no bearing on the economic analysis the Company made to justify installing SCRs at Bridger.

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[57] Id. at 47, citing PAC/4004.

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Second, PacifiCorp states that "applying Oregon's 2025 depreciable life for Units 3 and 4 did not change the outcome of the Company's economic analysis—SCRs remained favorable by a significant margin."[58/] This is a highly misleading statement. Mr. Link's testimony, on which PacifiCorp's Opening Brief relies for this claim, states that "[i]n 2013, the Company analyzed the SCR investment assuming a 2025 depreciable life and found that the PVRR(d) remained favorable to the SCRs. *The Company's analysis did not assume that the Jim Bridger plant retired in 2025*."[59/] Thus, an assumed 2025 depreciable life does not address the issue AWEC and CUB have raised, which that the SCRs were uneconomic if Bridger is assumed to retire (or, at a minimum, Oregon ceases to receive the benefits from this plant) at the end of 2025. The Company does not, and cannot, dispute this fact.

The Company also argues that it would have been unreasonable to forecast a value for water rights that the Company can monetize once Bridger retires, claiming that the value of such rights is difficult to forecast and speculative.[60/] But speculative or not, PacifiCorp did assign a value to these water rights when analyzing the SCRs – it assigned a value of $0. Given that PacifiCorp does not dispute that it has water rights associated with Bridger,[61/] the question is not whether the value of these rights is difficult to forecast; the question is whether it was reasonable for PacifiCorp to assume they had no value at all.

Finally, as AWEC argued in testimony and its Prehearing Brief, the SCRs were uneconomic in any one of several reasonably foreseeable scenarios, including low gas prices,

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58/ Id. at 47, citing PAC/3800, Link/2.
59/ PAC/3800, Link/18:18-20 (emphasis added).
60/ PacifiCorp Opening Brief at 48.
61/ PAC/2600, Ralston/20:4-12; 25:21-26:1.

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low market prices, high coal costs, early retirement, and the resale of water rights.[62] PacifiCorp's Opening Brief does not refute the fact that the Company proceeding with the SCRs in the face of the possibility that any one of these scenarios occurring would have rendered the investments uneconomic.

B. Hunter environmental controls.

PacifiCorp also opposes disallowance of environmental controls at Hunter Unit 1.[63] AWEC has already addressed all of the Company's arguments against Dr. Kaufman's economic analysis in its Prehearing Brief and will not repeat those here.[64] Additionally, PacifiCorp argues that it is unreasonable to assume it could have run Hunter until 2029 without environmental controls.[65] If this is true, that only increases the validity of AWEC's argument that installing these environmental controls was uneconomic relative to an earlier shut down date.

VI. CHOLLA 4 PROPERTY TAX

PacifiCorp continues to argue that 2021 property tax associated with Cholla Unit 4 should be included in rates even though this generating unit will no longer be in service. AWEC continues to recommend that property tax associated with property longer used and useful be excluded from customer rates, regardless of when the tax is assessed.

PacifiCorp also opposes AWEC's alternative recommendation that the Company only be allowed to recover Cholla 4 property tax in 2021, and not in future years (which would

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[62] AWEC Prehearing Brief at 33; AWEC/300, Kaufman/44:1-13.
[63] PacifiCorp Opening Brief at 57-59.
[64] AWEC Prehearing Brief at 36.
[65] PacifiCorp Opening Brief at 58.

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occur if it is included in base rates). The Company asserts that this proposal "cherry-picks a single prudent test year expense for removal, without considering corresponding offsetting cost increases that the Company may incur in subsequent years."[66/] PacifiCorp does not identify any "corresponding offsetting cost increase" that could possibly arise from no longer needing to pay property taxes associated with Cholla 4. Nevertheless, if the Commission rejects PacifiCorp's wildfire cost recovery mechanism, which "cherry-picks" costs that will be incurred outside of the test year for inclusion in rates outside of a rate case, then for consistency's sake, AWEC would agree to withdraw its recommendation to exclude Cholla 4 property tax after 2021.

VII. COAL PLANT EXIT DATES AND EXIT ORDERS

AWEC agrees with, and supports, PacifiCorp's requested Exit Dates and Exit Orders for the coal-fired plants identified on pages 64 and 65 of its Opening Brief. These dates are consistent with the 2020 Protocol. AWEC opposes Sierra Club's attempt to renegotiate the 2020 Protocol outside of the Multi-State Protocol Workgroup ("MSP") process and after the Commission has already approved the 2020 Protocol by proposing earlier Exit Dates than those explicitly identified in the 2020 Protocol. The 2020 Protocol is the product of years of careful and painstaking negotiation among all of PacifiCorp's states, which have widely divergent views of the role coal generation may play in the future of the electric grid. Each provision is important and was necessary to secure the agreement of all MSP stakeholders, which was by no means assured. Moreover, the 2020 Protocol is an unfinished document – it contains several "Framework Issues" that remain to be negotiated. Retroactively modifying a provision in the

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[66/] PacifiCorp Opening Brief at 64.

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2020 Protocol, as Sierra Club's recommendation would do, would threaten negotiations over the remaining Framework Issues. If Sierra Club was dissatisfied with the Exit Dates identified in the 2020 Protocol, it should not have signed this agreement and it should have voiced its concerns in UM 1050 when the Commission was considering whether to adopt the 2020 Protocol for use in Oregon. It took neither of those actions.

VIII. DECOMMISSIONING

PacifiCorp argues that substantial evidence exists for the Commission to adopt the decommissioning estimates in the Kiewit Report. It distinguishes the Court of Appeals' decision in *Calpine Energy Sols., LLC v. Public Utility Comm'n*, 298 Ore. App. 143 (2019). In that decision, PacifiCorp claims, the Court "concluded that *no testimony* supported the Commission's factual finding …" whereas with the decommissioning costs at issue here, "PacifiCorp has supported its proposed decommissioning cost estimates with both a rigorous third-party report and the expert testimony of a PacifiCorp witness …."[67]

The Court's finding in *Calpine*, however, was not that no testimony supported the Commission's findings, it was that *only* testimony supported the Commission's findings:

> We conclude that the ultimate finding of the PUC, that it was 'reasonable to assume that fixed generation costs will increase at the rate of inflation after year 5,' is not supported by substantial evidence in the record. The only evidence pertaining to that finding came from PacifiCorp's witness, Dickman. He testified that escalating the fixed generation costs at the rate of inflation was a 'conservative assumption' and a 'conservative calculation.' … The parties have pointed to nothing in the record, and we have found nothing, that provides any context to Dickman's bare assertions ….[68]

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[67] Id. at 69-70 (emphasis in original).
[68] Calpine Energy Sols., LLC v. Public Utility Comm'n, 298 Ore. App. 143, at 160-161 (2019).

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While in this case it is true that the Commission has both a third-party report and testimony, the testimony is from a PacifiCorp employee, not a witness that prepared the Kiewit Report and can testify to the reasonableness of its assumptions and conclusions. Thus, the Commission is left with a report, the conclusions and assumptions of which cannot be reviewed or tested, and testimony from a witness who has no knowledge of how Kiewit calculated its estimates.[69/] This is no better than the evidence the Court of Appeals overturned in *Calpine*.

PacifiCorp states that, regardless, the Kiewit Report represents a "Class 3" estimate and, therefore, is necessarily the most accurate estimate of decommissioning costs.[70/] But the Independent Evaluator found that [71/]

The Company also claims that there is no need to provide Kiewit's workpapers because "[a]s a general matter, the details sought by parties are *already in Kiewit's report*."[72/] A review of the report indicates that this is plainly not true. Taking Jim Bridger as an example, Kiewit identifies $."[73/] The report then states that this cost "

[69/] Tr. at 185:23-186:15 (Van Engelenhoven).
[70/] PacifiCorp Opening Brief at 67.
[71/] Independent Evaluation Report for PacifiCorp's Decommissioning Costs Study Reports dated January 15, 2020 and March 13, 2030 at 5-6 (June 21, 2020) ("IE Report").
[72/] PacifiCorp Opening Brief at 70 (emphasis in original).
[73/] Kiewit Report at 73.

."[74] Subsections 5.1 and 5.2, and the other subsections in Section 5 of the Kiewit Report, however, only describe cost categories at the highest possible level. Subsection 5.2.1, for instance, describes the " ."[75] That is the entire description of this cost category. Other categories are no more detailed.[76] For Jim Bridger, Kiewit assigns a cost for this category of $,[77] and the *only* explanation for this estimate is the high-level description from Section 5.2.1 quoted in full above.

Thus, AWEC's opposition to the decommissioning estimates in the Kiewit Report is not, as PacifiCorp represents, that they are "unreliable because [they] include[] estimates out to a specific dollar amount."[78] Despite the fact that the Kiewit estimates are nearly times higher than the decommissioning estimates provided in PacifiCorp's depreciation study,[79] it is of course possible that the Kiewit estimates are the most reliable estimates available today. AWEC's opposition is based on the fact that there is no way to know whether they are or not. The precision of the estimates does not mean that they are necessarily unreliable; it means that they were calculated using mathematical models and very specific assumptions, and no party, including PacifiCorp, knows what those models and assumptions are. This fact is fatal to the

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[74] Id. at 73-74.
[75] Id. at 20.
[76] Id. at 20-25.
[77] Id. at 74.
[78] PacifiCorp Opening Brief at 70-71 (citing AWEC's Prehearing Brief at 15).
[79] AWEC/300, Kaufman/26 (Figure 3).

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Company's ability to satisfy its burden to provide substantial evidence in support of these cost estimates.

That is why AWEC also opposes further proceedings on the decommissioning costs, because AWEC has yet to hear from any party what purpose further proceedings would serve. PacifiCorp could not commit to providing Kiewit's workpapers in a future proceeding, or indeed, providing any additional information that has not been produced in this proceeding.[80/] The Commission should not hold additional process without an understanding of what incremental benefit it would serve.

AWEC continues to recommend that the Commission adopt the decommissioning estimates from UM 1968, which were supported by a full depreciation study, expert testimony by a witness who sponsored this depreciation study, and expert testimony by PacifiCorp employees who had knowledge of how those decommissioning estimates were developed.

IX. EV 2020 PROJECTS

PacifiCorp opposes AWEC recommended conditions on cost recovery for the EV 2020 Projects (identified on page 24 of AWEC's Prehearing Brief). The Company first claims that it demonstrated the EV 2020 Projects were intended to meet an energy and capacity need and that "AWEC did not rebut the Company's evidence."[81/] That is not the case. As Dr. Kaufman testified in his Rebuttal Testimony:

> The Company's position that the EV 2020 projects meet an energy and capacity need elides what distinguishes these projects from a more traditional resource acquisition. PacifiCorp is simply saying that the EV 2020 projects are lower cost and lower risk resources than market transactions. That is the same thing as

80/ Tr. at 172:5-13 (Lockey); 186:19-187:17 (Van Engelenhoven).
81/ PacifiCorp Opening Brief at 83.

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> saying that PacifiCorp has acquired these resources for economic purposes – its analysis is based on forecasts of market prices, the ultimate accuracy of which will either justify or not justify its acquisition of the EV 2020 projects. PacifiCorp's own IRP justifies its decision to pursue these projects because they will provide "significant economic benefits for PacifiCorp's customers …." That is not the same thing as acquiring a resource to meet an identified capacity deficit.[82]

The Commission recently affirmed this position in its order resolving contested issues over Portland General Electric's ("PGE") Wheatridge project.[83] Despite PGE's repeated insistence that Wheatridge was a traditional resource pursued to meet traditional energy and capacity needs,[84] the Commission determined that:

> The acquisition of the Wheatridge project was timed such that it would come online earlier than capacity needs or RPS requirements demanded, and it was justified at least in part on the basis that acting early to pursue a lower cost, tax-advantaged renewable resource would benefit customers over the long term ….
>
> The acquisition reflects a recent trend. Since PGE's 2016 IRP, utility IRPs have continued to present early additions of tax-advantaged renewable resources as a way to supply near-term capacity and energy at the lowest long-term portfolio cost. Relying on long-term projections of energy and federal PTC value and market conditions, *IRPs have increasingly presented new renewable resources to supplant short-term resource strategies, such as front-office transactions, that may otherwise be available to meet demonstrated capacity needs* ….
>
> This trend has significant impacts on our regulation of electric utilities …. *Customers pay for resources whose ultimate value depends to a much greater degree on whether the fixed price customers pay for the resource will be lower than the future price of serving load with market power in the hours the resource can generate* ….
>
> This fact puts new pressure on our processes by forcing the Commission to review resource acquisitions *where the ultimate economic value and cost of the resources is unclear, and dependent on future market prices and the resource's*

82/ AWEC/500, Kaufman/30:5-14 (internal citation omitted).
83/ Docket Nos. UE 370/UE 372, Order No. 20-321 (Sept. 29, 2020).
84/ See, e.g., Docket Nos. UE 370/UE 372, PGE/600, Armstrong-Batzler/16:17-17:17.

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> *specific performance profile that are difficult, if not impossible, to precisely predict*.[85]

As Dr. Kaufman stated, "PacifiCorp can argue all it wants that the EV 2020 resources represent a traditional resource procurement, but that is simply not how anyone has ever understood this procurement."[86]

PacifiCorp also argues that AWEC's proposed caps are "unnecessarily punitive" because they cap costs that are higher than projected, but pass through the benefits of costs that are lower than projected.[87] That may be the result, but AWEC disagrees that this is unnecessarily punitive. It is simply a consequence of the objective – articulated by both the IE and the Commission – of ensuring that the benefits customers receive from the EV 2020 projects "remain at least as favorable as IRP planning assumptions."[88] Nor will AWEC's recommendations "create a disincentive for future investment in renewable resources," as PacifiCorp alleges.[89] It will simply disincentivize future investment in renewable resources that are unfavorable for customers.

AWEC has already addressed PacifiCorp's arguments regarding the IRP and RFP processes and will not repeat its arguments here.[90] AWEC does agree with PacifiCorp that the 2020 TAM stipulation addresses AWEC's recommended conditions regarding minimum capacity factors and PTC benefits;[91] however, that is only the case if the Commission rejects the

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85/ Order No. 20-321 at 8 (Sept. 29, 2020) (emphasis added).
86/ AWEC/500, Kaufman/30:19-21.
87/ PacifiCorp Opening Brief at 84.
88/ Docket No. LC 67, Order No. 18-138 at 8 (Apr. 27, 2018); see also, Oregon IE Report at 4-5.
89/ PacifiCorp Opening Brief at 84.
90/ Id. at 84-85.
91/ Id. at 85.

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APCA. If the Commission approves the APCA, then these conditions would still be required to protect customers, as the Company will then be allowed to true-up the difference between forecasted and actual power costs.

X. DEER CREEK MINE CLOSURE

A. The Commission should deny recovery of incremental mine closure costs.

In its Prehearing Brief, AWEC showed that the delay in closing the Deer Creek Mine, which resulted in $24 million in increased closure costs, was the result of PacifiCorp's imprudent actions. Specifically, [redacted]

[redacted].[92]

The Company claims that the first denial did not result in substantial delay because it resubmitted its application two months later.[93] That may be true, but it ignores the substantial delay that resulted from the other denials of the Company's mine plan. It was not until May 2017 – more than two years after it submitted its initial plan, and over a year after the mine was originally anticipated to close – that PacifiCorp submitted a new plan that could be approved.[94]

The Company also persists in blaming the Gold King mine spill for this delay,[95] despite the lack of any reference to this incident in any of the documents repeatedly rejecting PacifiCorp's mine closure plan.[96] PacifiCorp's testimony on this issue is that the "Gold King mine dam breach impacted the acceptable de-watering methods allowed by oversight agencies.

92/ AWEC Prehearing Brief at 38-39; Confidential AWEC/705.
93/ PacifiCorp Opening Brief at 92.
94/ PAC/4100, Ralston/19.
95/ PacifiCorp Opening Brief at 92.
96/ Confidential AWEC/705.

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As a result, the Company's mine closure proposals needed to be substantially modified, which in turn caused the Deer Creek mine portals to be sealed 21 months later than planned."[97] But the second denial by the Mine Safety and Health Administration ("MSHA") on August 21, 2015 says nothing about the Gold King mine spill and, contrary to PacifiCorp's representations, shows that, rather than "substantially modif[ying]" its mine closure plan, [REDACTED] .[98] [REDACTED] [99] This is not a response one would receive to a "substantially modified" plan.

PacifiCorp also represents that "AWEC stubbornly refuses to accept" that East Mountain Energy, which received the vast majority of the payments that represent the incremental closure costs at issue here, is unaffiliated with PacifiCorp.[100] In fact, AWEC took no position in its Prehearing Brief on whether East Mountain Energy is an affiliate or not because it is irrelevant.[101] What is relevant is that nearly all of the incremental $24 million in closure costs for the Deer Creek Mine were labor costs, including bonuses and incentives,[102] and these costs are a direct result of PacifiCorp's own "stubborn" behavior in [REDACTED]

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[97] PAC/4100, Ralson/19:3-6.
[98] AWEC/705 at 6-10.
[99] Id. at 10.
[100] PacifiCorp Opening Brief at 92.
[101] AWEC Prehearing Brief at 40.
[102] AWEC/500, Kaufman/23:3-5.

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[REDACTED] and persisting to blame [REDACTED] on an unrelated mine spill.

B. The Commission should not allow recovery of unknown royalty payments in this case.

PacifiCorp argues for inclusion of royalty payments in base rates, claiming that "mine royalties are a necessary part of mine closure costs" and that "AWEC does not specifically object to the *amount* of the Company's forecast, merely to the fact that the costs [are] based on a forecast."[103] PacifiCorp states that, because they are a forecast, they are includable under the "reasonably certain" standard articulated in Commission Order 00-191.[104] That order, however, does not stand for the position that any forecasted cost is includable in rates. Rather, "*recurring* increases in revenues and expenses *that are reasonably certain to occur* are added to the test year."[105] Here, contrary to PacifiCorp's claims, AWEC *does* specifically object to the amount of the Company's forecast because, by PacifiCorp's own admission, this forecasted amount is "preliminary" and the Company does not know "when actual royalty obligations will be settled."[106] This is not a "recurring" cost that is "reasonably certain to occur" in the test year. PacifiCorp should continue to defer these costs and recover them after they are paid, assuming they are found to be prudently incurred.

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[103] PacifiCorp Opening Brief at 93.
[104] Id.
[105] Docket Nos. UT 125/UT 80, Order No. 00-191 at 14-15 (Apr. 14, 2000) (quoting Pacific Northwest Bell, Docket No. UT 43, Order No. 87-406 at 11) (emphasis added).
[106] PAC/3100, McCoy/45:17-18, 46:14-15.

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XI. ADVANCED METERING INFRASTRUCTURE

PacifiCorp opposes AWEC's recommendation to remove the net book value of retired meters from rate base and recover this amount through a regulatory asset over a ten-year period. The Company claims that "AWEC's adjustment fundamentally misunderstands group accounting and is contrary to this long-standing methodology" in which many assets of the same type are grouped together and assigned an average service life for depreciation purposes.[107/] The Company goes on to concede, however, that AWEC's adjustment is based on a distinction between typical service retirements that occur incrementally over time and the wholesale replacement of the vast majority of a group of assets.[108/]

That is what occurred here – PacifiCorp replaced over 85% of its meters at once, something the Company admits never having done before.[109/] This is fundamentally at odds with the average service life concept for a depreciation group because, rather than some meters being retired earlier than the average and some later, nearly all meters were retired together at the same time, leaving a substantial unrecovered balance on the Company's books and remaining in rate base, despite ORS 757.355's prohibition against a utility earning a return on property that is no longer used and useful. The Commission should remove this unrecovered investment to a regulatory asset and authorize recovery over a 10-year period at a rate that reflects the time-value of money or, at most, the rate equal to PacifiCorp's most recent debt issuance.

[107/] PacifiCorp Opening Brief at 96.
[108/] Id. at 96-97.
[109/] AWEC/500, Kaufman/12:17-19; AWEC/501, Kaufman/30.

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XII. CONCLUSION

AWEC respectfully requests that the Commission accept the adjustments identified in this Reply Brief, and further explained in AWEC's testimony and Prehearing Brief.

Dated this 12th day of October, 2020.

Respectfully submitted,

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