**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

**UE 374**

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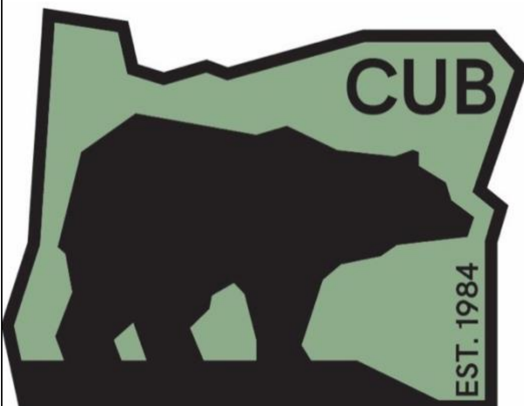
| PACIFICORP, dba PACIFIC POWER, | ) |
| | ) |
| Request for a General Rate Revision. | ) |
| | ) |

REPLY BRIEF

OF THE

OREGON CITIZENS' UTILITY BOARD

October 12, 2020



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# I. INTRODUCTION

## A. *Background*

Pursuant to Administrative Law Judge (ALJ) Lackey's August 27, 2020 Prehearing Conference Memorandum, the Oregon Citizens' Utility Board (CUB) hereby submits its Reply Brief in the above-captioned proceeding. In this Brief, CUB responds to issues raised by PacifiCorp (PAC or the Company) in its Opening Brief, filed September 28, 2020. CUB also addresses issues and arguments raised by the Staff of the Oregon Public Utility Commission (Staff), the Alliance of Western Energy Consumers (AWEC), and Sierra Club.

The Company is proposing to change base rates by $47.5 million, or approximately 4 percent.[1] When the offsetting impacts of the 2021 Transition Adjustment Mechanism (TAM) stipulation and tax savings under the Tax Cuts and Jobs Act of 2017 (TCJA) are considered, the result is a proposed overall rate decrease of $8.8 million, or 0.7 percent.[2] While the customer benefits flowing from time-limited federal production tax credits in the TAM and the tax benefits

[1] UE 374 – PacifiCorp's Opening Brief at 1.
[2] *Id.*

contained in the TCJA offer customers some relief during a troubling time, these temporary offsets are no substitute for proper, principled, and legally sound ratemaking.

The Company argues the combined impact of the adjustments proposed by Staff and intervenors, if approved, would fail to satisfy the "just and reasonable" standard articulated in ORS § 756.040. According to PAC, this is especially true because its Oregon rates are already some of the lowest in the nation.[3] It is true that the Oregon Public Utility Commission (Commission) must balance the interests of the utility investor and consumer in setting "just and reasonable" rates. However, the Commission must also disallow costs that were imprudently incurred[4] and cannot allow cost recovery for utility plant not "presently used for providing utility service to the customer."[5] CUB's proposed adjustments and policy positions are both principled and defensible. The Company's argument that the Commission should consider its already low rates in determining "just and reasonable" rates is both incorrect and a red herring. The Commission must determine the rates that are reasonable to charge Oregon customers based upon the Company's cost of service in the state.

CUB's primary disallowance recommendation pertains to the Selective Catalytic Reduction Systems (SCRs) the Company installed on its Jim Bridger Units 3 and 4 in 2015 and 2016. This is the Company's first Oregon general rate case (GRC) since that time. Therefore, the costs associated with the SCRs have never been in rates. The Company cannot reasonably argue that an SCR disallowance would impact its earnings. Further, the Company has earned on average more than 50 basis points above its authorized ROE since 2014, and the impact of the

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[3] *Id*. at 3.
[4] *In re PacifiCorp's Request for a General Rate Revision*, OPUC Docket No. UE 246, Order No. 12-493 at 25 (Dec. 20, 2012) ("Any investment found to be unreasonable is deemed imprudent and subject partial or full disallowance.").
[5] ORS § 757.355(1).

SCRs has been out of rates throughout.[6] CUB has met its burden to produce sufficient evidence to demonstrate the Company acted imprudently when decided to install the SCRs.

CUB's second revenue requirement impact adjustment relates to the Company's requested Return on Equity (ROE). CUB and other parties provided evidence that the Company's request is out of line with both prevailing market conditions and PAC's peer utilities.[7] Given the Commission's mandate to establish fair and reasonable rates involves setting an ROE that is "[c]ommensurate with the return on investments in other enterprises having corresponding risks[,]"[8] the Commission should set an ROE based upon the market that enables the utility to earn within a reasonable range, rather than considering the impact this case will have on PAC and its customers in the short run. The net power cost (NPC) benefits from the TAM and the tax benefits of the TCJA will dwindle. The shareholder profit provided by a utility's ROE will remain in place until it is set in a new GRC. CUB's proposed 9.4 percent ROE upper limit is well supported by the record in this proceeding and will enable the Company to earn within a range of reasonableness.[9]

CUB's recommendations contained herein are grounded in ratemaking principles articulated by the Commission, the Oregon Legislature, and state and federal courts. Based upon the following, CUB respectfully requests the Commission:

- Deny the Company cost recovery for costs associated with its imprudent decision to install SCRs on Jim Bridger Units 3 and 4;

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[6] UE 374 – CUB/400/Jenks/18, lines 2-4.
[7] *See, e.g.,* UE 374 – AWEC's Prehearing Brief at 2 and Staff's Prehearing Brief at 4 and CUB's Prehearing Brief at 5.
[8] ORS § 756.010(1).
[9] UE 374 – Staff's Prehearing Brief at 5-6.

- Reject the Company's proposal to alter the well-functioning Power Cost Adjustment Mechanism (PCAM);
- Set the Company's ROE no higher than 9.4 percent;
- Alter the TAM Guidelines to require the Company to include wheeling revenues in its annual NPC forecast and include all workpapers as part of its initial TAM filing;
- Approve the Wildfire Mitigation and Vegetation Management Cost Recovery Mechanism with Staff's proposed conditions;
- Establish coal plant decommissioning costs based upon PacifiCorp's Docket No. UM 1968 depreciation study and allow the Company to make a filing to determine whether the decommissioning costs should be adjusted; and
- Approve PacifiCorp's proposal to offset all remaining Cholla Unit 4 costs with TCJA benefits.

**B. *Burden of Proof***

In a utility dispute before the Commission, the burden of proof consists of two discrete components—the burden of persuasion and the burden of production.[10] The burden of persuasion and the ultimate burden of producing sufficient evidence to support its claims is always with the utility.[11] Other parties to the proceeding have the burden of producing evidence to support their argument in opposition to the utility's position.[12] In a case in which a utility is

[10] *In re Portland General Electric Company Application to Amortize the Boardman Deferral*, OPUC Docket No. UE 196, Order No. 09-046 at 7 (Feb. 5, 2009).
[11] *Id.*
[12] *Id.* at 7-8.

requesting a change in rates or a schedule of rates—such as a GRC—the utility bears the burden to demonstrate its proposed change will result in rates that are fair, just, and reasonable.[13]

## II. ARGUMENT

### A. *Jim Bridger Units 3 and 4 Selective Catalytic Reduction (SCR) Investments*

The balance of evidence demonstrates the Company's decision to install SCRs on Jim Bridger Units 3 and 4 was imprudent. AWEC and Sierra Club join CUB's position, and no non-Company party believes PAC should be eligible for full cost recovery.[14] In 2013, when PAC made the decision to install the SCRs,[15] it knew alternative Regional Haze Rule compliance avenues were available, and it chose not to explore them.[16] During a time many utilities and regulators throughout the West were eschewing coal plant investments due to unjustifiably high risk, PacifiCorp chose to double down on coal.[17] The Commission has been clear for over a decade that PacifiCorp's decision to continue to operate its coal-fired fleet at the risk of customers would be scrutinized.[18] PacifiCorp disregarded this clear warning. Instead, it

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[13] ORS § 757.210(1)(a).

[14] *See* UE 374 – AWEC's Prehearing Brief at 33, Sierra Club's Prehearing Brief at 3, and Staff's Prehearing Brief at 36.

[15] UE 374 – PacifiCorp's Opening Brief at 37-38.

[16] UE 374 – CUB/400/Jenks/48.

[17] UE 374 – CUB/100/Jenks/11, line 1.

[1818] *In re PacifiCorp, dba Pacific Power's Petition to File Preliminary Depreciation Study*, OPUC Docket No. UM 1329, Order No. 08-327 at 3-4 (June 17, 2008) ("Pacific Power assumes that coal-fired generating plants will continue to be an economic source of power "well into the foreseeable future" and will stay in service as long as the plants are operational. Pacific Power also assumes that any increased capital expenditures resulting from environmental regulations will be recoverable in rates because the expenditures will be "for the benefit of the customer." . . . [The Commission] believe[s] it is probable that future environmental regulations will significantly increase the costs of maintaining and operating a coal-fired generating plant. This raises the possibility that continued operation of one or more of Pacific Power's coal-fired generating plants would no longer be consistent with integrated resource planning principles or the long-run public interest. In that case, questions could arise regarding Pacific Power's ability to recover the costs of carbon emission controls in customer rates if the early retirement of a coal-fired plant is in the public interest. In other words, continued operation of a coal-fired generating plant could become uneconomic, leading to early retirement of the facility. **Pacific Power ignores this possibility by assuming both that coal-fired generating plants will remain economic and that all capital expenditures associated with these plants will be recoverable in rates**.") (emphasis added).

assumed Jim Bridger would run until 2037 even though the Commission had rejected that date.[19] PAC went on to invest millions of dollars in a resource that was never acknowledged in Oregon's Integrated Resource Plan (IRP) process. Oregon customers should not have to pay for the Company's imprudence.

CUB's imprudence determination is based upon a fundamental principle—before making a capital investment in an SCR, the Company should have explored whether environmental regulators would have allowed it to phase out the plant instead of adding costly and potentially unnecessary retrofits. CUB has provided uncontroverted evidence that the Company did not explore such alternatives. Indeed, PacifiCorp's own witness acknowledges that the Wyoming Environmental Quality Council (WY EQC) did not consider deferred early retirement among the suite of Regional Haze Rule Best Available Retrofit Technology (BART) compliance pathways.[20] This is because the decision to consider whether to pursue a "better than BART" outcome that retired the plant at a future date as an alternative to installing costly SCRs cannot be imposed by environmental regulators. Instead, it must be requested by the regulated entity, as PacifiCorp did in October 2013 with Dave Johnston Unit 3.[21] Here, instead of requesting exploration of a "better than BART" alternative, PAC decided to install SCRs with a 20-year useful life after the Commission refused to extend Jim Bridger's useful life beyond 2025.

Since no "better than BART" alternative was requested, WY EQC was limited to analyzing actual retrofits as BART compliance pathways.[22] WY EQC could not impose deferred early retirement, which is a non-retrofit alternative that is considered "better than BART."

[19] *Id*. at 4-5.
[20] Sep. 10, 2020, Tr. Part 1, 2:37:06-2:37:23.
[21] UE 374 – CUB/100/Jenks/13, lines 5-16.
[22] Sep. 10, 2020, Tr. Part 1, 2:35:48-2:36:24.

Therefore, the considerable amount of ink the Company spends waxing poetic on how SCRs were "the best compliance option for customers"[23] should be afforded no weight. PAC failed to explore an available alternative by not engaging with state environmental regulators and the federal Environmental Protection Agency (EPA) to pursue a "better than BART" outcome that retired the plant at a future date.[24] Further, the Company cannot reasonably argue that negotiating with state environmental regulars and EPA to explore non-SCR compliance pathways was not "a realistic alternative"[25] because it successfully negotiated "better than BART" compliance flexibility with both Naughton Unit 3 and Dave Johnston Unit 3.[26] If the Company's hands were indeed tied here, they should have been in those instances as well.

1. *The Company acted imprudently by failing to engage with environmental regulators to explore BART compliance alternatives.*

According to the Company, installing SCRs on Jim Bridger Units 3 and 4 was both the most stringent BART compliance strategy and the best economic compliance option of the options considered.[27] While this may be true, it is misleading. An additional option existed that the Company never considered or pursued. It would have avoided unnecessary capital investments and been a more cost-effective solution that reduced emissions.[28] This option was to negotiate with state environmental regulators and EPA to determine whether a deferred early retirement alternative that was "better than BART" was feasible. By limiting the scope of the BART compliance options considered, the Company acted imprudently and put the profits of its shareholders above the interests of its customers. Indeed, as PacifiCorp witness James Owen

[23] *See, e.g.,* UE 374 – PacifiCorp's Opening Brief at 37-38.
[24] UE 374 – CUB/400/Jenks/46, lines 6-9.
[25] UE 374 – PAC/4000/Owen/7, lines 3-7.
[26] UE 374 – CUB/100/Jenks/13 and CUB/400/Jenks/41.
[27] Sep. 10, 2020 Tr. 2:33:00-2:33:09.
[28] UE 374 – CUB/400/Jenks/38 and CUB/400/Jenks/45.

acknowledged at hearing, it is prudent for every regulated entity to initiate compliance conversations with environmental regulators.[29] Specifically, since power suppliers have such a large role in society, there could be "a lot of negative impacts" not only to the Company, but to customers as well, if PacifiCorp did not initiate these conversations.[30] Here, they did not initiate compliance conversations with environmental regulators by failing to request consideration of various "better than BART" compliance pathways. By the Company's own logic, it acted imprudently. Now is the time to ensure customers are protected from this imprudent decision.

There is a fundamental terminology distinction that must be made to clear the record. The Company states many times that it challenged WY EQC's decision to require SCR installation in 2015 and 2016 at the two Bridger units, but WY EQC rejected that challenge.[31] The Company also states SCR analysis examined multiple early retirement dates, none of which were immediate, and that early retirement was not an economically feasible option.[32] To be abundantly clear, the Company never pursued a deferred early retirement scenario as a "better than BART" alternative. To avoid confusion, CUB will refer to its proposal as either deferred early retirement or "better than BART."

PAC's own Exhibit 2506 detailing the interplay between the Wyoming State Implementation Plan (SIP) and the Federal Implementation Plan (FIP) proves the Company

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[29] Sep. 11, 2020, Tr. Part 1, 2:47:46-2:48:30 ("Q (Ms. McDowell): In your opinion, is it standard industry practice in the utility industry to initiate compliance conversations on environmental issues with your environmental regulators? A (Mr. Owen): Yes, it is. It is something that is prudent for every regulated entity and because power suppliers have such a critical role in society it certainly is something that if they weren't doing, it would have a lot of negative impacts on not only the Company, but customers. My understanding is that it is industry practice to have that type of engagement, at least for utilities that I've engaged with and have had the opportunity to work with. That is the case."). Although this Q&A occurred during a confidential portion of the hearing, CUB confirmed with PacifiCorp counsel that it is not confidential in nature.
[30] *Id.*
[31] UE 374 – PAC/2500/Owen/4 lines 6-13.
[32] *See, e.g.,* UE 374 – PacifiCorp's Opening Brief at 41 and PacifiCorp's Opening Brief at 43.

never proposed considering shortening the useful life of the units.[33] The Company never offered to commit to a deferred future retirement date as an alternative to an SCR. Instead, the Company modeled arbitrary future closure dates while claiming the WY EQC would not agree to these dates. The Company's claims that early retirement did not pencil out against the SCR alternatives should be given no weight, as they tell only part of the story.

Although the Company analyzed early retirement of Jim Bridger Units 3 and 4 in 2020 and 2021 and in 2022 and 2023, respectively,[34] these analyses did not fully explore the flexibility available under the Regional Haze Rule. The basis of a deferred early retirement compliance pathway is recognition that a particular retrofit may not be considered cost effective under a shortened useful life. The Company never analyzed how long it could run the plant before an SCR became a cost effective retrofit.[35] Further, the Company never negotiated with environmental regulators to determine which retirement dates would be acceptable as "better than BART."[36]

The Commission-approved useful life of the two units was 2025.[37] The BART compliance deadline was 2019.[38] The Wyoming Long Term Strategy (LTS) deadline was 2015 and 2016 for units 3 and 4, respectively.[39] At the time PacifiCorp decided to move forward with SCR installation at Jim Bridger Units 3 and 4, it was requesting that environmental regulators allow it to close Dave Johnston 3 in 2027 as a "better than BART" alternative to a 2019 SCR

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[33] UE 374 – PAC/2506/Owen/17, *State of Wyoming; Regional Haze State Implementation Plan; Federal Implementation Plan for Regional Haze*, 78 Fed. Reg. 34,738 (June 10, 2013) ("The State did not identify any energy or non-air quality environmental impacts that would preclude the selection of any of the controls evaluated, **nor are there any remaining-useful-life issues for this source**.") (emphasis added).
[34] UE 374 – PacifiCorp's Opening Brief at 43.
[35] UE 374 – CUB/400/Jenks/39.
[36] *Id*. at 31.
[37] *In re PacifiCorp,* OPUC Docket Nos. UM 1647 and UM 1329, Order Nos. 13-347 and 08-327.
[38] UE 374 – CUB/400/Jenks/42.
[39] UE 374 – PAC/2500/Owen/4, lines 1-2.

installation.[40] The Company attempts to distinguish Dave Johnston 3 because 2027 was the expected end of its depreciable life,[41] but fails to explain why pursuing a 2025 "better than BART" date for the Jim Bridger units—which would have aligned with the Oregon useful life—was not considered. The Company had demonstrable knowledge that flexibility under the Regional Haze Rule was available to it, but it chose not to pursue that flexibility.

At the time PAC was running its version of early retirement scenarios that favored SCRs at Jim Bridger, the Company had already engaged in negotiations to allow for a 9-year "better than BART" phase out of Dave Johnston 3. PAC would soon request that environmental regulators allow Naughton Unit 3 to continue as a coal unit beyond its BART-determined SCR deadline. These "better than BART" alternatives were approved by environmental regulators.[42] In 2013, when the Company made the decision to install SCRs on Jim Bridger Units 3 and 4, it knew that it could engage in negotiations with state regulators and the EPA to potentially push out state-mandated retrofit deadlines by committing to close the units at a future date.[43] Despite this flexibility, the Company erroneously asserts the WY EQC required it to install SCRs on Jim Bridger.[44] However, this requirement—like the requirement to install an SCR at Naughton 3 in 2015—was not absolute.[45] Had the Company engaged in negotiations with WY EQC and EPA, it could have explored the feasibility of a "better than BART" alternative that would have saved money and emissions. The Company acted imprudently when it did not explore this possibility.

[40] UE 374 – CUB/100/Jenks/13, lines 5-16.
[41] UE 374 – PAC/4000/Owen/12, lines 3-9.
[42] UE 374 – CUB/400/Jenks/44.
[43] UE 374 – CUB/100/Jenks/16.
[44] UE 374 – PacifiCorp's Opening Brief at 37-38.
[45] UE 374 – CUB/505/20, lines 12-13.

The Company has not met its burden of proof to sufficiently rebut the imprudence arguments CUB has put on the record. While it insists that the WY SIP was binding and required it to install SCRs in 2015 and 2016, the Company's compliance avenues for Naughton 3 and Dave Johnston Unit 3 plainly indicate this is untrue.

2. *PAC had ulterior motives to keep Jim Bridger Units 3 and 4 in operation.*

PacifiCorp knew flexibility existed under the Regional Haze Rule, but chose not to pursue it. Why would the Company act in this manner? The first answer is obvious—over the last fifteen years, PAC has viewed capital expenditures to install pollution controls as a significant means to buoy shareholder returns.[46] By avoiding negotiations that could have led to a conclusion that phasing out these units was in the best interest of customers, the Company was able to spend millions of dollars to capture profits for its shareholders. The other reason? Because the Company believed the Jim Bridger Units 3 and 4 played such a central role in providing reliability and other benefits to its system, CUB believes the Company may have willfully avoided a candid conversation with environmental regulators about closing the units down early. The Company did not seriously consider various compliance alternatives because it could not have imagined operating its system without Jim Bridger Units 3 and 4.

For example, in its California GRC, PacifiCorp witness Chad Teply testified that Jim Bridger Units 3 and 4 "are critical to providing reliable and affordable electric services to California customers."[47] When asked about this statement at hearing, PacifiCorp witness James Owen expanded, noting he understood that Jim Bridger "played a very significant part in the entire fleet for reliability."[48] The Company notes in its Opening Brief that, in 2013, the "Jim

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[46] UE 374 – CUB/400/Jenks/32-34.
[47] UE 374 – CUB/504/11, lines 19-20.
[48] Sep. 10, 2020, Tr. Part 1, 2:25:50-2:26:22.

Bridger plant was an integral resource for PacifiCorp, representing approximately 20 percent of baseload capacity and providing critical ancillary services such as voltage regulation, frequency regulation and response, energy imbalance correction, and operating reserves."[49] Further, directly preceding the time PacifiCorp made the SCR installation decision, the Company testified that it planned to move approximately one million tons of coal from Naughton 3 to Jim Bridger in order to avoid take-or-pay contract penalties.[50] According to PacifiCorp witness Rick Link, moving coal from Naughton 3 to Jim Bridger would have been a lower cost outcome than incurring take-or-pay contract penalties and would have provided a benefit to the Company's system.[51] With the benefit of hindsight, we now know the Company did not need Jim Bridger to take Naughton Unit 3 coal because it pursued a "better than BART" alternative that allowed Naughton 3 to operate as a coal unit until 2019.[52]

When PacifiCorp made the decision to install SCRs at Jim Bridger Units 3 and 4 in May 2013,[53] it was trying to determine what to do with a resource that it believed was critical to its system and would help it avoid take-or-pay contract penalties. Jim Bridger had tremendous value to the Company. At the time, PAC could not imagine closing any of the Jim Bridger units. It stands to reason the Company would try to parse pollution control investment requirements in a manner that could keep the plant running and provide a tremendous profit incentive for its shareholders. Instead of truly exploring Regional Haze Rule flexibility, the Company

[49] UE 374 – PacifiCorp's Opening Brief at 38.
[50] UE 374 – CUB/505/9, lines 17-22.
[51] Sep. 10, 2020, Tr. 1:50:00-1:51:43.
[52] UE 374 – PAC/700/Link/77, line 12 and Sep. 10, 2020 Tr. 2:41:35-2:41:47.
[53] UE 374 – PacifiCorp's Opening Brief at 38.

manufactured an analysis to inaccurately demonstrate that it faced a binary choice—either install SCRs or convert the units to gas.[54]

At no point in the record has the Company demonstrated—or even suggested—that it discussed a "better than BART" phase out option with state or federal regulators. The Company modeled retirement scenarios in the 2020-2023 timeframe[55] in a lackluster manner in order to appease CUB, who has been asking it engage with environmental regulators to examine "better than BART" phase out alternatives since the 2013 IRP. CUB still firmly believes that a deal could have been made. By not exploring all potential compliance alternatives, the Company acted imprudently.

3. *The Company's Opening Brief arguments lack merit and skirt the substantive issue in CUB's imprudence determination.*

The Company's Opening Brief largely reiterates prior testimony and fails to further the Company's burden to prove the decision to install SCRs was prudent. Even worse, it contains several glaring inaccuracies that threaten to muddy the administrative record in this proceeding. First, as stated, the Company's continued regurgitation that its analysis demonstrated SCRs were the most cost-effective compliance alternative is meaningless.[56] Because PacifiCorp did not consider the full suite of available compliance alternatives, it cannot demonstrate that it made the best decision for customers. A t-shirt is the best article of clothing for a ski trip if it is all you have.

Second, the Company claims that Oregon customers "have already received the benefits of the investments in NPC for many years at no cost, due to the Company's long rate case stay

[54] UE 374 – PacifiCorp's Opening Brief at 38-39.
[55] *Supra,* note 30.
[56] *See, e.g., supra*, notes 23 and 27.

out."[57] CUB acknowledges this statement is broad. The Company is referring to capital additions at Hayden Units 1 and 2, Craig Unit 2, and Hunter Unit 1 in addition to the SCRs at Jim Bridger Units 3 and 4.[58] However, this argument merits clarification. Under CUB's "better than BART" proposal, Jim Bridger Units 3 and 4 would have continued to run, but the Company would not have made additional capital investment in the units. Customers have not realized an NPC benefit from the SCRs, nor do SCRs actually produce an NPC benefit. Further, the Company has agreed to adjust NPC to remove the effects of the SCRs if they are disallowed from rates because SCRs actually raise NPC.[59]

Third, PacifiCorp misstates CUB's imprudence determination. According to PAC, "CUB claims that the Commission's failure to acknowledge the investments means that the Company's decision to install SCRs was imprudent."[60] The Company's decision to install SCRs was imprudent because it knew less expensive "better than BART" compliance pathways were available, yet it consciously chose not to pursue them. This falls squarely in line with the Commission's articulation of the traditional prudence standard in its Order in PacifiCorp's last GRC:

> A prudence review must determine whether the company's actions, based on all that it knew or should have known at the time, were reasonable and prudent in light of the circumstances which then existed . . . . [T]he Commission has confirmed that prudence of an investment is measured from the point of time the utility's actions and decisions without the advance of hindsight, that the standard does not require optimal results, and the review uses an objective standard of reasonableness.[61]

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[57] UE 374 – PacifiCorp's Opening Brief at 37.
[58] *Id.* at 36.
[59] *In re PacifiCorp, dba Pacific Power's 2021 Transition Adjustment Mechanism*, OPUC Docket No. UE 375, Stipulation at 8 (Aug. 18, 2020).
[60] UE 374 – PacifiCorp's Opening Brief at 42 citing CUB's Prehearing Brief at 13 ("PacifiCorp chose to bypass Oregon's traditional resource procurement process by installing the SCRs even though they had never been acknowledged.").
[61] OPUC Order No. 12-493 at 25 (Dec. 20, 2012).

The Company's resource decision was not imprudent merely because it was not acknowledged in Oregon's IRP. Rather, it is imprudent because its actions were not reasonable in light of the circumstances that existed when it made the decision to invest in SCRs. Even so, declining to acknowledge an investment is, at the very least, incremental evidence for a party to use to further an imprudence determination.[62] The fact that PAC side-stepped Oregon's traditional process furthers CUB's imprudence argument. Perhaps the Company is attempting to undercut CUB's argument in a misleading manner because it still has yet to substantively address the conclusions the Commission reached in its 2013 IRP Order.[63] The Company failed to demonstrate that SCRs were the least cost option there,[64] and it has failed to do so here.

4. *The Company's calculation of depreciation and regulatory lag is incorrect and should be based on Oregon's useful life.*

CUB recommends that the Commission correct PacifiCorp's calculation of depreciation and regulatory lag by recognizing that the useful life of pollution control added to a coal plant cannot be longer that the coal plant itself. AWEC joins CUB in arguing the Company should have evaluated SCRs based on the 2025 depreciable life then in effect for the Jim Bridger plant.[65] The Company is seeking cost recovery for an investment that was never acknowledged

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[62] *In re PacifiCorp, dba Pacific Power's 2013 Integrated Resource Plan*, OPUC Docket No. LC 57, Order No. 14-252 at 1-2 (Jul. 8, 2014) citing Order No. 07-002 at 24, quoting Order No. 89-507 at 7 ("Decisions whether to allow a utility to recover from its customers the costs associated with new resources may only be made in a rate case proceeding. Acknowledgment of an IRP, however, is relevant to subsequent examination of whether a utility's resource investment is prudent and should be recovered from ratepayers. As we have previously stated, 'Consistency of resource investments with least-cost planning principles will be an additional factor the Commission will consider in judging prudence. When a plan is acknowledged by the Commission, it will become a working document for use by the utility, the Commission, and any other interested party in a rate case or other proceeding before the Commission[.] Consistency with the plan may be evidence in support of favorable rate-making treatment of the action, although it is not a guarantee of favorable treatment.'").
[63] UE 374 – CUB/400/Jenks/37.
[64] OPUC Order No. 14-252 at 8-9.
[65] UE 374 – AWEC's Prehearing Brief at 33.

in Oregon. The investment's useful life is longer than both the underlying coal plant and what is legally permissible.

The Company asserts EPA does not consider the existing depreciable life of the underlying plant as a relevant metric for determining the useful life of the emissions control equipment.[66] This is not true. Environmental regulators will consider a plant's useful life when the plant owner commits to closure at the end of its useful life as part of a "better than BART" alternative. PAC Exhibit 2506 makes clear that the useful life of the plant was not considered here[67] because PacifiCorp did not offer an alternative based on a shortened useful life. In contrast, EPA did consider the 2027 depreciable life of Dave Johnston 3 when the Company offered it as a closure date.[68] If the underlying plant has a shorter useful life, it is more likely that expensive retrofit technology would not be cost effective. This is because EPA considers the effect of an investment's useful life in determining the cost effectiveness of the investment.[69] If an expensive investment such as an SCR is amortized over a shorter time horizon, it may "cast[] doubt on the veracity of the EPA's conclusion that the [implementation plan] is cost effective."[70]

The Company also asserts it accurately applied the Commission-approved depreciation rate to the Jim Bridger SCRs.[71] According to PAC, Staff and CUB's approach to align the depreciable lives of the SCRs to the underlying generating assets is incorrect.[72] CUB disagrees.

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[66] UE 374 – PacifiCorp's Opening Brief at 47.
[67] UE 374 – PAC/2506/Owen/17, *State of Wyoming; Regional Haze State Implementation Plan; Federal Implementation Plan for Regional Haze*, 78 Fed. Reg. 34,738 (June 10, 2013)
[68] UE 374 – PAC/4000/Owen/12, lines 3-9
[69] UE 374 – PAC/2509/Owen/135.
[70] *Id.*
[71] UE 374 – PacifiCorp's Opening Brief at 60.
[72] *Id.*

The Company is correct that the group depreciation rates for Jim Bridger and other investments were approved in Commission Order No. 13-347 and that PacifiCorp must depreciate its assets using approved depreciation rates pursuant to ORS § 757.140.[73] However, the Company is incorrect that the Jim Bridger Units 3 and 4 SCRs have a depreciable life that ends in 2037 in Oregon. In Order No. 13-347, all Jim Bridger accounts were set to have a depreciable life ending in 2025.[74]

Parties stipulated to these dates in Docket No. UM 1647. The Company is obligated to follow them under ORS § 757.140. Further, extending the depreciable life of these investments beyond this 2025 is illegal. The investment will no longer be presently used and useful to serve customers in Oregon, so the Company is barred from recovery beyond 2025 pursuant to ORS § 757.355. Beyond these insurmountable legal hurdles, plain reason dictates that the SCRs' depreciation be set based upon a useful life ending in 2025. Oregon never extended Jim Bridger's operating life beyond 2025 even though Utah extended it to 2037. It makes no sense for pollution controls to last longer than the plant they are attached to. CUB respectfully urges the Commission to adopt its proposal to correct PacifiCorp's calculation of depreciation and regulatory lag by recognizing that the useful life of pollution controls added to a coal plant cannot be longer that the coal plant itself.

### B. *Proposed PCAM Changes*

The Company's request to alter its well-functioning PCAM is inappropriate, would result in an unreasonable risk shift to customers, and is inconsistent with the Commission's established

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[73] *Id*. at 59-60.

[74] *In re PacifiCorp, dba Pacific Power's Application for Authority to Implement Revised Depreciation Rates,* OPUC Docket No. UM 1647, Order No. 13-347 at Appx. A, p. 11 of 18 (Sep. 25, 2013).

principles governing power cost adjustments.[75] PAC has not met its burden of proof to demonstrate that changes are warranted, nor has it sufficiently rebutted CUB's demonstration that it has earned on average more than 50 basis points above its authorized ROE since 2014.[76] AWEC, CUB, Staff, and Klamath Water Users Association oppose the Company's Annual Power Cost Adjustment (APCA) mechanism.[77] The Commission should deny the Company's request to implement an APCA as PAC cannot articulate a rational basis for why the change is necessary. The PCAM has enabled the Company to earn just and reasonable returns, the Company's recycled arguments regarding the volatility associated with renewable generation are well-rebutted in the record, and any potential changes should be contemplated as part of a wider investigation.

1. *The current PCAM structure provides a strong incentive for PAC to control NPC and provides necessary customer protections.*

The current structure—in which NPC are forecast annually through the Company's transition adjustment mechanism (TAM) and subject to later true-up through the PCAM—provides PacifiCorp a strong incentive to manage costs.[78] Further, PacifiCorp's APCA proposal is contrary to longstanding policy and disregards the Commission's prior rulings rejecting proposed alterations to the deadbands, earnings test, and sharing mechanism.[79] These PCAM components offer extensive customer protections and fairly allocate risk between the Company and its customers. The Commission approved the current PCAM structure in Order No. 07-015,

[75] OPUC Order No. 12-493 at 13 (Dec. 30, 2012).
[76] UE 374 – CUB/400/Jenks/18, lines 2-4.
[77] UE 374 – Staff's Prehearing Brief at 29.
[78] UE 374 – CUB/100/Jenks/39, lines 6-10.
[79] UE 374 – Staff's Prehearing Brief at 29.

based on principles articulated in Order No. 05-1261.[80] Under these principles, a power cost adjustment should be: (1) limited to unusual events, (2) no adjustment if overall earnings are reasonable, (3) revenue neutrality, and (4) long-term operation.[81] The Commission also found that the PCAM should provide an incentive for the utility to manage costs effectively.[82] If the Company's proposal is adopted, each of these principles would be violated.[83]

According to the Company, it would still have an incentive to manage its system prudently and efficiently if the APCA is granted.[84] However, the Company provides no evidence to further this bald assertion,[85] and this argument directly contradicts the PCAM principles listed above. According to the Commission, the PCAM should *provide* an incentive to the utility to manage its costs effectively.[86] Under the current structure the deadbands, earnings test, and sharing mechanism provide important incentives for the Company to manage its costs. If the Company were given a complete NPC true-up, as the APCA contemplates, there would be no incentive to control costs provided by the power cost mechanism. By holding the Company responsible to its TAM NPC forecast, the current PCAM helps ensure prudent utility operations by giving the Company an incentive to keep its costs close to its forecast.[87]

This premise is corroborated by evidence CUB placed onto the administrative record.[88] According to an oft-cited, peer-reviewed article by a Massachusetts Institute of Technology

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[80] *In re Portland General Electric Company*, OPUC Docket Nos. UE 180, UE 181 & UE 184, Order No. 07-015 at 26-27 (Jan. 12, 2007).
[81] *In re Portland General Electric Company*, OPUC Docket Nos. UE 165, UM 1187, Order No. 05-1261 (Dec. 21, 2005).
[82] OPUC Order No. 07-015 at 26.
[83] UE 374 – CUB/100/Jenks/41, lines 2-3 and CUB/400/18.
[84] UE 374 – PacifiCorp's Opening Brief at 25.
[85] UE 374 – Staff's Prehearing Brief at 34.
[86] OPUC Order No. 07-015 at 26.
[87] UE 374 – CUB/100/43, lines 10-20.
[88] CUB/500 is the subject of an ongoing admissibility dispute. Should the Commission deny CUB's Motion to Admit CUB/500, CUB will file an errata to this Brief with any references to CUB/500 removed.

professor, modified traditional fuel cost pass-through programs that provide a greater incentive for a utility control and reduce fuel costs are associated with greater efficiency levels.[89] The article goes on to say that "modifying fuel cost pass-through programs such that there is both some accountability for the firm for fuel cost overruns and some incentive mechanism that allows the firm to capture a portion of the rents from keeping costs in check is superior to retaining traditional fuel cost programs."[90] The current PCAM structure provides a strong incentive for PacifiCorp to control its NPC to its forecasted TAM rates. This structure aligns with and furthers the PCAM principles articulated by the Commission and should be retained.

2. *The current PCAM has enabled the Company to earn rates that are just and reasonable rendering NPC under-recovery a non-issue.*

The current PCAM structure furthers the second principle articulated by the Commission because the earnings test does not allow for NPC recovery if the Company is earning at a reasonable level. PacifiCorp's APCA proposal would adjust rates regardless of earnings. It contains no elements that would prevent adjustment when earnings are reasonable, thereby running afoul of this principle.[91] PacifiCorp is correct that CUB does not dispute the Company has been under-recovering its NPC.[92] The Company is also correct that CUB believes this is a non-issue because PAC has consistently been earning a reasonable ROE.[93] The Company argues CUB's position "ignores a central tenet of the regulatory compact whereby a regulated utility must be 'allowed the opportunity to recover its prudently incurred costs[.]'"[94] It insists that its

[89] UE 374 – CUB/500, Knittel, Christopher R., *Alternative Regulatory Methods and Firm Efficiency: Stochastic Frontier Evidence from the U.S. Electricity Industry*, The Review of Economics and Statistics, August 2002, 84(3): 530-540.
[90] UE 374 – CUB/500 at 11.
[91] UE 374 – CUB/100/Jenks/42, lines 9-13.
[92] UE 374 – PAC/3600/Wilding/5, lines 8-9.
[93] UE 374 – PacifiCorp's Opening Brief at 26.
[94] *Id.* citing *in re Portland General Electric Company's Proposal to Restructure and Reprice its Services in Accordance with the Provisions of SB 1149,* OPUC Docket No. UE 115, Order No. 01-988 at 6 (Nov. 20, 2001).

APCA mechanism is necessary because it has under-recovered approximately $282 million in Oregon NPC over the last twelve years.[95] CUB agrees that a utility should be allowed to recover its prudently incurred costs. However, PacifiCorp's overly narrow view of cost recovery ignores foundational utility regulation principles and would run counter to Commission and U.S. Supreme Court precedent.

At the core of the Commission's mandate is its responsibility to "balance the interests of the utility investor and the consumer in establishing fair and reasonable rates."[96] "Fair and reasonable" or "just and reasonable" rates are terms of art that describe how the Commission must set rates that establish a balance between the interests of the utility customer and the utility investor.[97] In seeking to find this balance, the focus is reasonable *overall* rates, not cost recovery of individual rate elements.[98] The Supreme Court found that "under the statutory standard of "just and reasonable," it is the result reached, not the method employed, that is controlling."[99] This allows regulators tremendous flexibility to employ a variety of ratemaking tools, as long as a just and reasonable result is reached.[100] According to the Commission, its "ultimate goal is to set rates that provide the utility the *opportunity* to collect enough revenue to recover reasonable operating expenses and to earn a reasonable return on investments it has made to provide

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[95] UE 374 – PacifiCorp's Opening Brief at 24.
[96] ORS § 756.040(1).
[97] *Federal Power Comm'n v. Hope Natural Gas Co*., 320 U.S. 591, 603 (1944) (hereinafter *Hope*).
[98] *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 313-315 (1989) ("The economic judgments required in rate proceedings are often hopelessly complex, and do not admit of a single correct result. The Constitution is not designed to arbitrate these economic niceties. Errors to the detriment of one party may well be canceled out by countervailing errors or allowances in another part of the rate proceeding. The Constitution protects the utility from the net effect of the rate order on its property. Inconsistencies in one aspect of the methodology have no constitutional effect on the utility's property if they are compensated by countervailing factors in some other aspect.").
[99] *Hope* at 602.
[100] *Id.*

service."[101] The Commission goes on to say that the "rate of return established in rates represents the utility's *opportunity* to earn a profit, but utilities are not guaranteed a fair rate of return."[102]

Here, the Company cannot demonstrate that it has not had the opportunity to earn enough revenue to recover reasonable operating expenses and earn a reasonable return. CUB has provided uncontroverted evidence that PacifiCorp has been earning, on average, more than 50 basis points above its authorized ROE since 2014.[103] Even with the consistent NPC under-recovery the Company continues to harp on, *it has still recovered all of its prudently incurred costs and more over the last seven years.* As the Supreme Court articulated in *Duquesne Light Co.*, errors to the detriment of one party may be canceled out by allowances in another part of a rate proceeding, and the Constitution only protects the utility from the net effect of the rates.[104] Here, the Company cannot demonstrate articulable injury that is capable of being redressed by a favorable Commission ruling because the net effect of its rates are reasonable overall. PAC's recent NPC under-recovery is irrelevant from a holistic ratemaking perspective.

In fact, if the Company's APCA proposal were accepted, it would likely be over-earning by a substantial margin. Consider PacifiCorp's 2019 PCAM, in which it under-recovered NPC by $45.1 million.[105] This amount is greater than the deadbands, so a portion of it was eligible for recovery. However, because the earnings test demonstrated PacifiCorp's earnings were considered reasonable overall, there was no basis to provide the Company with additional

[101] *In re Portland General Electric Company*, OPUC Docket Nos. DR 10, UE 88, and UM 989, Order No. 08-487 at 7 (Sep. 30, 2008) (emphasis added).
[102] *Id*. (emphasis in original).
[103] UE 374 – CUB/400/Jenks/18, lines 2-4.
[104] *Supra*, note 88.
[105] UE 374 – CUB/100/Jenks/38, lines 5-6.

revenue.[106] Under the Company's APCA proposal, this $45.1 million would have been added to customers' rates with no consideration of the Company's earnings.[107] Customers in 2021—many of whom are going through the most difficult financial period of their lives—would have had to pay Berkshire Hathaway shareholders an additional $45.1 million to retroactively true-up 2019 NPC.[108]

Absent the PCAM's customer protection conditions that further the Commission's own power cost principles, this type of inequity would be likely to play out many times in the future under the Company's APCA proposal. While the Company complains that it has never triggered a rate change through the PCAM,[109] the deadbands were tripped last year and the earnings test provided valuable customer protection.

Finally, CUB notes PacifiCorp attributes a quote to CUB that was never placed on the record in this proceeding. According to PAC, CUB argued "PacifiCorp should 'just settle for somewhat low returns that are close enough" and forego recovery of prudently incurred costs."[110] Unlike the Company's proposal to eliminate the PCAM, CUB does not make ratemaking proposals that are not based upon sound principles. CUB does not believe the Company should settle for "close enough." However, CUB does believe the Company should not be able to bolster its shareholder returns at the expense of customers when it is already earning within a reasonable range. This notion is based upon bedrock ratemaking principles enumerated by the Commission and the Supreme Court.[111] Further, as discussed, PacifiCorp is not forgoing

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[106] *Id*. at lines 6-9.
[107] *Id*. at 13-15.
[108] *Id*. at 15-17.
[109] UE 374 – PacifiCorp's Opening Brief at 24.
[110] UE 374 – PacifiCorp's Opening Brief at 27.
[111] *Supra,* notes 79, 80, 94, and 95.

recovery of prudently incurred costs. It has earned on average more than 50 basis points above its authorized ROE since 2014.[112] The Company's proposal to supplant the PCAM with the APCA should be denied. The current PCAM is functioning as intended, and the Company's proposed changes are unwarranted.

### C. *Cost of Capital – ROE*

The Company's request to maintain its currently authorized 9.8 percent ROE would be inappropriate under any economic circumstances, but is especially so in the midst of a global pandemic and severe economic recession in Oregon.[113] Under the Commission's mandate, it must set rates—including an authorized ROE—that are fair and reasonable.[114] Under ORS § 756.040(1), "rates are fair and reasonable . . . if the rates provide adequate revenue both for operating expenses of the public utility . . . and for capital costs of the utility, with a return to the equity holder that is: (a) Commensurate with the return on investments in other enterprises having corresponding risks; and (b) Sufficient to ensure confidence in the financial integrity of the utility, allowing the utility to maintain its credit and attract capital." Importantly, a utility's fair rate of return can change along with economic conditions and capital markets.[115]

The fundamental ratemaking principle articulated in *Hope* that a utility's ROE should be commensurate with enterprises with corresponding risks was discussed in a recent Federal Energy Regulatory Commission (FERC) opinion.[116] There, FERC found, in part, that it must analyze the returns that are earned on "investments in other enterprises having corresponding

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[112] UE 374 – CUB/400/Jenks/18, lines 2-4.
[113] UE 374 – CUB's Prehearing Brief at 14.
[114] *See* ORS § 756.040.
[115] UE 374 – Staff's Prehearing Brief at 3 citing *Bluefield Waterworks & Imp. Co. v. Public Service Comm'n of West Virginia*, 43 S Ct 675, 679 (1923).
[116] UE 374 – AWEC's Prehearing Brief at 7-8 citing Opinion No. 569 at p. 61,767.

risks," and investors must pay the prevailing market price for an enterprise's equity.[117] Based upon uncontroverted evidence that PacifiCorp's request is out of line with its peer utilities and ROEs have been declining nationally and in Oregon, CUB continues to urge the Commission to grant PAC an authorized ROE that is no higher than 9.4%.[118] AWEC and Staff's ROE recommendations are in a similar range, with AWEC recommending a ceiling of 9.2 percent and Staff recommending 9.0 percent and a ceiling of reasonableness of 9.42 percent.[119]

The Company has failed to adequately rebut CUB' evidence that its 9.8 percent ROE request is out of line with enterprises with a similar business risk.[120] Indeed, PacifiCorp's own testimony indicates that its request is out of line with that of utilities across the country.[121] While the Commission does not fully rely on ROE comparators from other jurisdictions, it does use those decisions to gauge the reasonableness of its cost of capital decisions.[122] During the time since PacifiCorp's last GRC, authorized ROEs have been declining both nationally and in Oregon.[123] The evidence placed on the record by every party supports this conclusion. Given the regulatory and risk structure in Oregon that includes a forward test year, modified fuel cost pass through mechanisms, and single-issue cost recovery for Renewable Portfolio Standard eligible resources, CUB believes examining the Commission-established ROE for other Oregon utilities is the best comparator. PacifiCorp's request is unreasonably high when compared to

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[117] *Id.*
[118] UE 374 – CUB/400/Jenks/10, lines 18-19.
[119] UE 374 – Staff's Prehearing Brief at 6.
[120] UE 374 – CUB/400/Jenks/6-9.
[121] UE 374 – PAC/2200/Bulkley/11.
[122] *In re Portland General Electric Company*, OPUC Docket No. UE 115, Order No. 01-777 at 34 (Aug. 31, 2001) ("We affirm the position taken by the Commission in docket UE 115, that the Commission will not rely on rates authorized in other jurisdictions to determine ROE but will use those decisions to gauge the reasonableness of our decision.").
[123] UE 374 – CUB/400/Jenks/6-9.

other Oregon utilities, including those that have had a recent GRC.[124] The Company has not sufficiently rebutted this evidence. Beyond examining utilities around the state and nationally, PacifiCorp's ROE in other jurisdictions that have had a rate case since the onset of the COVID-19 pandemic is also a relevant comparator. PacifiCorp's ROE was recently set at 9.5 percent by the Washington Utilities and Transportation Commission.[125]

The Commission should consider the impact of COVID-19 when setting PAC's ROE.[126] Setting a utility's ROE is normally a two-step process. The first step is to identify a reasonable range for earnings. The second step is to consider what point along this reasonable range should be selected for the targeted, authorized earnings level.[127] After determining a reasonable range, the Commission has the authority to set it anywhere within that range.[128] CUB recommends the Commission select a targeted earnings level that is in the lower half of the reasonable range, recognizing the Company's customers are in a difficult financial situation.[129] In light of the effects of COVID-19 on utility customers, CUB recommends the Commission grant the Company an ROE no higher than 9.4%.[130]

CUB joins Staff and AWEC in arguing that the Company's ROE request is unreasonably high, despite its attempts to couch its decreased ROE request of 9.8 percent as sensitive to its customers' interests.[131] Although the Company has decreased its request in light of stakeholder concerns, a profit margin of 9.8 percent is still out of line with that of the Company's peer

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[124] *Id*. at 6-7.
[125] Sep. 9, 2020, Tr. 39:57-40:11.
[126] UE 374 – CUB/400/Jenks/9, line 5.
[127] *Id.* at lines 6-8.
[128] *Id*. at 17-19.
[129] *Id*. at 10, lines 8-12
[130] UE 374 – CUB/400/Jenks/10, lines 18-19.
[131] *See* UE 374 – PAC/3300/Lockey/3-4 *and* UE 374 – PAC/3500/Bulkley/12, lines 5-7.

utilities.[132] Again, even though the Company has decreased its request, the ROE it seeks remains higher than the national average.[133] AWEC and Staff report that the average authorized ROE for electric utilities in 2020 has been 9.47 percent, and the average for natural gas utilities is 9.4 percent.[134] Given that a utility's ROE is meant to compensate its shareholders at a level that is comparable to other enterprises with a similar risk, plain reason indicates the Company's request is out of line with current economic conditions.[135] CUB continues to urge the Commission to grant the Company an authorized ROE that is no higher than 9.4%.[136]

### D. *TAM Guideline Changes – Wheeling Revenues and NPC Workpapers*

In an apparent effort to conflate issues related to the Company's APCA with discrete issues related to TAM Guideline changes, PacifiCorp included AWEC's workpapers proposal and CUB's wheeling revenues proposal in the APCA section of its Opening Brief.[137] To be clear, both of these proposals are suggested alterations to the TAM Guidelines—neither AWEC nor CUB address the APCA in their respective proposals.[138] CUB supports AWEC's recommendation that PacifiCorp be required to provide all workpapers concurrently with the Company's initial filing.[139] Because Staff and intervenors must review PacifiCorp's power costs on an expedited basis annually, requiring concurrently filed workpapers will aid parties in their audit of the Company's filing.[140]

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[132] UE 374 – CUB/400/Jenks/6, Figure 1.
[133] UE 374 – CUB/400/Jenks/8.
[134] UE 374 – PAC/3500/Bulkley/9, lines 17-19.
[135] *Bluefield Water Works and Improvement Company v. Public Service Commission*, 262 US 679 (1923).
[136] *Id.* at 10, lines 18-19.
[137] UE 374 – PacifiCorp's Opening Brief at 31-32.
[138] UE 374 – AWEC's Prehearing Brief at 46-47 and CUB's Prehearing Brief at 15-16.
[139] UE 374 – AWEC's Prehearing Brief at 46.
[140] *Id.* at 47.

CUB continues to urge the Commission to adopt its proposal to change the TAM Guidelines to require annual wheeling revenues be forecast annually alongside other variable costs and benefits. PacifiCorp's only apparent argument in opposition is CUB's proposal fails to adhere to the matching principle because wheeling revenues "are associated with the capital investment in PacifiCorp's transmission system—the cost of which is included in base rates."[141] CUB disagrees. Under this logic, a utility could also claim that power purchases and sales be considered in a GRC because they offset the capital cost of generation, which is included in base rates. This would be inappropriate, however, because these costs and benefits are variable. Therefore, they are more appropriately included in an annual variable NPC proceeding like the TAM.

Further, the Utah Public Service Commission (UT PSC) already requires PAC to include wheeling revenues as an offset to NPC in its annual power cost tracker.[142] The UT PSC determined "wheeling revenues have a relationship with NPC in that they form an offset to wheeling expenses."[143] CUB believes the proper matching principle to follow is to enable wheeling revenues to offset wheeling expenses, since they are both variable.

Currently, wheeling revenues are recovered annually in base rates and the Company files an annual deferral to true-up the difference between what is captured in base rates and the actual revenue PAC realizes. However, after this GRC's rate effective date, the Company will no longer file an annual deferral to true-up wheeling revenue. CUB would like to move away from using deferred accounting for this expense, especially given deferred accounting applications are

[141] UE 374 – PacifiCorp's Opening Brief at 32.
[142] UE 374 – CUB/100/Jenks/6, lines 7-8.
[143] UE 374 – CUB/100/Jenks/6, lines 9-12.

a form of single-issue ratemaking that the Commission has long disfavored.[144] The Commission articulated in the generic deferred accounting investigation that "[i]f deferral is being sought for recovery of costs caused by a recurring triggering event, a deferred account is most likely not the proper mechanism to be used."[145] Since the Company's last GRC, Docket No. UE 263, $19,021,281 has been incorporated in base rates on an Oregon-allocated basis.[146] Since the last rate case, the Company has deferred a total of $41,879,047.86, averaging almost $6 million on an annual basis.[147] In the TAM process, the Company annually updates its NPC forecast, which includes wheeling expenses. Using the TAM to also provide a credit for wheeling revenue from PacifiCorp's transmission would avoid having to reinstitute an annual deferral.

The Commission should require the Company to alter the TAM Guidelines and forecast wheeling revenues annually in the TAM, as it does for its attendant wheeling costs. It is important to update wheeling revenue forecast in rates to account for new information. The annual forecast of the wheeling revenues in the TAM will help smooth customer rates and more accurately follows the matching principle to offset wheeling costs.

### E. *Wildfire Mitigation and Vegetation Management Cost Recovery Mechanism*

CUB supports the Wildfire Mitigation and Vegetation Management Cost Recovery Mechanism (Wildfire Recovery Mechanism) with Staff's proposed conditions.[148] While PacifiCorp and Staff largely agree on the contours of the Wildfire Recovery Mechanism, the

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[144] *In re PGE Request for a General Rate Revision*, OPUC Docket Nos. UE 180/184, Order No. 07-454 at 5 (Oct. 22, 2007); *City of Portland v. PGE*, OPUC Docket No. UM 1262, Order No. 06-636 at 7 (Nov. 17, 2006).
[145] *In re Public Utility Commission of Oregon Staff Request to Open an Investigation Related to Deferred Accounting,* OPUC Docket No. UM 1147, Order No. 05-1070 at 10 (Oct. 5, 2005).
[146] UE 374 – CUB/502, PacifiCorp Response to CUB Data Request 19.
[147] UE 374 – CUB/501, PacifiCorp Response to CUB Data Request 18.
[148] UE 374 – Staff's Prehearing Brief at 7-9.

parties diverge on a few key points.[149] First, Staff, proposes to apply performance metrics and an earnings test to $6.645 million of PAC's baseline expenses.[150] A separate set of earnings tests and performance metrics would be applied for costs incurred in excess of the Company's total $33.225 million test year expenses.[151] Second, Staff objects to waiting for resolution of the wildfire rulemaking proceeding before establishing the criteria, scope, budget, and selection of an independent evaluator (IE), given the time needed to complete that proceeding.[152] Third, Staff finds that the record in this proceeding is too sparse to recommend the Commission approve PacifiCorp's proposal to normalize violation levels on a per audit mile basis with an error rate of .3 percent.[153]

CUB finds Staff's proposal to be reasonable. Since the Company's performance with vegetation management has been in decline for some time,[154] CUB believes the application of performance metrics will help ensure customers are receiving adequate vegetation management practices. CUB also supports Staff's position that the application of an earnings test does not mean the utility is not recovering prudently incurred costs.[155] As discussed, the under or over-recovery of individual costs is irrelevant in ratemaking.[156] The application of an earnings test and performance metrics will ensure that the Company's wildfire mitigation efforts are effective and that the Company is not using the mechanism to inflate shareholder returns.

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[149] UE 374 – PacifiCorp's Opening Brief at 32-35.
[150] *Id.* at 33.
[151] UE 374 – Staff's Prehearing Brief at 8.
[152] *Id.* at 11.
[153] *Id.*
[154] *Id.* at 10
[155] *Id.*
[156] *Supra,* note 88.

The Wildfire Recovery Mechanism is necessary to enable the Company to act quickly to harden its system to protect Oregonians from dangerous wildfires. Staff's proposed mechanism not only addresses cost recovery, but it holds the utility accountable and encourages them to engage in prudent risk management. As recent events have demonstrated, the risk of wildfires in our state is real. CUB believes dollars need to be spent to help mitigate this risk for all Oregonians. We must hold the utilities accountable to harden their systems while simultaneously making real strides to protect our communities. CUB respectfully urges the Commission to adopt Staff's proposed Wildfire Recovery Mechanism.

### F. *Decommissioning Costs*

CUB respectfully requests that the Commission establish coal plant decommissioning costs based upon PacifiCorp's Docket No. UM 1968, at least on an interim basis. The decommissioning cost estimates contained in the Kiewit Report do not provide a reasonable foundation to determine a reasonable level of decommissioning costs to allocate to Oregon under the terms of the Multi-State Process (MSP).[157] AWEC, Staff, and CUB all agree that PacifiCorp has failed to carry its burden of proof to demonstrate these costs should be allowed into base rates.[158] It is incredibly important to get the decommissioning cost estimates right.[159] CUB, Staff, and AWEC are all signatories to the MSP's 2020 Protocol. Under its terms, Oregon customers pay their allocated share of actual prudently incurred decommissioning costs for coal plants that are closed on or before they are fully depreciated in Oregon.[160] For coal plants that are expected to continue running beyond Oregon's depreciable life, other states have the option

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[157] UE 374 – CUB/300/Jenks/2, lines 14-15.
[158] UE 374 – AWEC's Prehearing Brief at 16 and Staff's Prehearing Brief at 13-16.
[159] UE 374 – CUB/300/Jenks/7, lines 4-6.
[160] UE 374 – AWEC's Prehearing Brief at 12 citing 2020 Protocol § 4.3.1.4.

to acquire Oregon's share of the resource.[161] For these plants, the Commission-approved decommissioning estimates from this—or a subsequent—proceeding will form the limit of Oregon customers' decommissioning liability. It is paramount that the decommissioning cost estimates be as unbiased and as accurate as possible.

The evidentiary record in this proceeding fails to demonstrate that the estimates in the Kiewit Report are unbiased and reasonably accurate. This is because there is insufficient evidence to confirm the estimates. PacifiCorp and Kiewit have been unable to provide workpapers and data to substantiate the estimates. Without access to this data, the IE retained to review the Kiewit Report concluded, "[t]here is no basis to conclude that the estimated costs in the study reports are consistent with AACE Class 3 level of accuracy.[162] Staff commissioned the IE to assess the accuracy of the Kiewit Report to determine whether its estimates should be eligible for inclusion in rates. The IE's report makes it clear that more information is needed in order to make an accurate determination.[163]

CUB joins Staff and AWEC in arguing there is no support for the Kiewit Report, a conclusion detailed in the IE's report. The IE was hired to examine the Kiewit Report and made it clear that more information was needed. The administrative record on this issue is sparse, and PacifiCorp has not met its burden of proof to demonstrate that the costs in the Kiewit Report are appropriate for ratemaking. CUB continues to believe decommissioning cost recovery should be based on the numbers provided in PacifiCorp's recent depreciation study, and that a separate investigation to determine appropriate decommissioning costs is likely warranted.[164]

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[161] UE 374 – AWEC's Prehearing Brief at 12-13 citing 2020 Protocol § 4.3.1.4.
[162] Confidential Independent Evaluation Report for PacifiCorp's Decommissioning Costs Study Reports dated January 15, 2020 and March 13, 2020 at 5 (June 21, 2020).
[163] UE 374 – CUB/300/Jenks/8, lines 5-7.
[164] UE 374 – CUB/300/Jenks/7-8.

The Company argues the IE's report misunderstood the Kiewit Report and that the Kiewit Report is more accurate than previous cost estimates.[165] Even if these premises were true, the dearth of evidence on the record in this proceeding renders these conclusions unsupportable. CUB supports AWEC's conclusion that the Kiewit Report cannot be supported by substantial evidence because, without access to Kiewit's underlying workpapers, the Commission cannot fairly evaluate it.[166]

For its part, the Company argues the conclusions of the Kiewit Report are supported by substantial evidence.[167] PAC's apparent justification for this finding is the fact that its own witness testified so.[168] At this point, the record upon which PacifiCorp expects the Commission make a decision is little more than "he said, she said." The IE concluded there is insufficient evidence that demonstrates the Kiewit Report is reasonable.[169] PAC's witness says the opposite. Given the substantial importance of the decommissioning cost estimate, there is simply inadequate evidence in this proceeding to allow the costs estimated in the Kiewit Report into rates.

The balance of evidence placed on the record demonstrates there is not a sufficient evidentiary basis to support using the Kiewit studies to set rates in Oregon at this time.[170] CUB is disappointed in the level of information before the Commission on this issue.[171] The expectation was that the independent study and IE report would provide the necessary

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[165] UE 374 – PacifiCorp's Opening Brief at 67-72.
[166] UE 374 – AWEC's Opening Brief at 15 citing AWEC/300/Kaufman/23, lines 6-12.
[167] UE 374 – PacifiCorp's Opening Brief at 69.
[168] *Id.* at 70 ("PacifiCorp witness Mr. Bob Van Engelenhoven . . . explains that Kiewit's Decommissioning Studies are consistent with industry standard and provide a reliable basis for estimating actual decommissioning costs.").
[169] UE 374 – Staff's Prehearing Brief at 14.
[170] UE 374 – Staff's Prehearing Brief at 16.
[171] UE 374 – CUB/300/Jenks/6, lines 14-15.

information to identify the decommissioning costs that should be assigned to Oregon customers as one step in implementing SB 1547 and the 2020 Protocol.[172] Given the requisite information to make a determination is not on the record in this proceeding, CUB continues to urge the Commission to utilize the estimated decommissioning costs in UM 1968 and allow PacifiCorp to make a filing to determine whether the decommissioning costs set in this proceeding should be adjusted.

### G. *Cholla Unit 4 and TCJA*

CUB supports PacifiCorp's primary recommendation to offset the Cholla Unit 4 undepreciated balance and closure costs using the TCJA benefits and to defer any consideration of a generation plant recovery mechanism to a future proceeding.[173] Cholla Unit 4 will be retired by December 31, 2020.[174] After the Cholla Unit 4 buy down, PacifiCorp proposes to return the remaining TCJA benefits—estimated to be $13.3 million—to customers over two years, resulting in a $6.9 million annual credit.[175] PacifiCorp notes Staff opposed offsetting closure costs on the basis that the Commission must have "an opportunity to review the reasonableness of [closure] costs[.]"[176] However, since the Company has represented that Commission retains the ability to review the prudency of these costs and because they will be trued up, CUB believes this issue is resolved.[177] CUB encourages the Commission to approve PacifiCorp's proposal to offset all remaining Cholla Unit 4 costs with TCJA benefits. CUB looks forward to engaging in

[172] *Id.* at lines 17-21.
[173] UE 374 – PacifiCorp's Opening Brief at 62-63.
[174] *Id.* at 61.
[175] *Id.*
[176] *Id.*
[177] *Id.*

the future ratemaking proceeding to address the prudency of the unit's closure costs, along with any potential true-up.

## III. CONCLUSION

Based upon the foregoing, CUB respectfully requests the Commission:

- Deny the Company cost recovery for costs associated with its imprudent decision to install SCRs on Jim Bridger Units 3 and 4;
- Reject the Company's proposal to alter the well-functioning Power Cost Adjustment Mechanism (PCAM);
- Set the Company's ROE no higher than 9.4 percent;
- Alter the TAM Guidelines to require the Company to include wheeling revenues in its annual NPC forecast and include all workpapers as part of its initial TAM filing;
- Approve the Wildfire Recovery Mechanism with Staff's proposed conditions;
- Establish coal plant decommissioning costs based upon PacifiCorp's Docket No. UM 1968 depreciation study and allow the Company to make a filing to determine whether the decommissioning costs should be adjusted; and
- Approve PacifiCorp's proposal to offset all remaining Cholla Unit 4 costs with TCJA benefits.

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Dated this 12th day of October, 2020.

Respectfully submitted,

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