1 **BEFORE THE PUBLIC UTILITY COMMISSION**

2 **OF OREGON**

3 UE 374

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| 4 In the Matter of | |
| 5 PACIFICORP, dba PACIFIC POWER, | STAFF'S REPLY BRIEF |
| 6 Request for a General Rate Revision. | |

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8 **I. INTRODUCTION**

9 Staff of the Public Utility Commission of Oregon (Staff) hereby submits its Reply Brief
10 in the above-captioned proceeding. Staff's Prehearing Brief included a list of litigated issues in
11 this proceeding as well as a list of issues that have agreement through testimony in this case.[1]
12 Staff's Prehearing Brief also set forth a substantive discussion on its positions, in response to
13 PacifiCorp and other parties to this proceeding, which are not repeated here. This brief focuses
14 on responding to the arguments set forth in PacifiCorp's Prehearing Brief and Opening Brief, as
15 well as arguments in Intervenors' Prehearing Briefs, related to issues raised in Staff's testimony
16 in this case.

17 PacifiCorp argues that its requested revenue requirement increase in this case - $47.5
18 million, or approximately 4 percent – would result in rates that are fair, just and reasonable.[2] The
19 Company also notes that when netted with the anticipated decrease in the 2021 Transition
20 Adjustment Mechanism (TAM), the result is an overall rate decrease of $8.8 million, or 0.7
21 percent.[3] In support of its position, PacifiCorp argues that its proposed revenue requirement
22 reflects its need to recover "prudent and necessary investments made on behalf of customers
23 since its last general rate case seven years ago, as well as the need for ongoing investments for a

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25 [1] Staff's Prehearing Brief at fn. 4.

26 [2] PacifiCorp's Opening Brief at 1.

[3] PacifiCorp's Opening Brief at 1.


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resilient energy future."[4] The Company further argues that these needs are balanced with ensuring that the net impact on January 1, 2021 will be a rate decrease.[5] In an attempt to discredit the adjustments from other parties, the Company states that they are unreasonable due to the overall impact to the Company's proposed revenue requirement in this case and relative to its currently approved rates.[6]

The Commission is charged with establishing fair and reasonable rates for services provided by public utilities in Oregon.[7] In doing so, the Commission must balance the interests of the utility investor and the consumer.[8] As explained by the Oregon Supreme Court:

> The statutes direct the [Commission] to examine three key components in ratemaking. First, the PUC determines the utility's operating expenses, such as wages, fuel, maintenance and taxes. Second, the statute provides that rates should provide adequate revenue 'for capital costs of the utility'…Third, the PUC must determine the appropriate return on the utility's capital investment. The rate of return should 'be fair to investors so as to avoid the confiscation of their property' and 'preserve the credit standing of the utility to enable it to attract new capital to maintain, improve, and expand its services.[9]

Despite the above, PacifiCorp seems to rely on the notion that the Commission should emphasize the overall effect of its proposed rate increase in this case, and the short-term effect on customer rates of the 2021 TAM and amortization of Tax Cuts and Jobs Act (TCJA) benefits, rather than thoroughly considering the components of those rates and the resulting return on capital consistent with ORS 756.040(1). While it is true that ultimately the Commission is approving an overall revenue requirement in this case, the Commission must still ensure that rates reflect only prudent capital investments, reasonably incurred costs, and are reflective of rates anticipated to be fair, just and reasonable in the Test Year (in this case, 2021). PacifiCorp's

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[4] PacifiCorp's Opening Brief at 1.

[5] PacifiCorp's Opening Brief at 1.

[6] PacifiCorp's Opening Brief at 2-3.

[7] ORS 756.040; ORS 757.210.

[8] ORS 756.040.

[9] *Gearhart v. Public Utility Com'n of Oregon*, 356 Or 216, 220 (2014).


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1 arguments that the Commission should set rates based on its capital spending plans and
2 effectively ignore imprudent investment and unreasonable expenses are unsupported.

3 As demonstrated by the record in this proceeding, PacifiCorp's proposed revenue
4 requirement, despite being a modest increase to base rates, nevertheless remains overstated.
5 Staff recommends that the Commission adopt its adjustments and recommendations in this case,
6 as set forth in its testimony and discussed in its Prehearing Brief and this Reply Brief.

## 7 II. ARGUMENT

### 8 (A) Cost of Capital.

9 ORS 756.040(1) provides, in part, that "rates are fair and reasonable for the purposes of
10 this subsection if the rates provide adequate revenue both for operating expenses of the public
11 utility or telecommunications utility and for capital costs of the utility, with a return to the equity
12 holder that is: (a) Commensurate with the return on investments in other enterprises having
13 corresponding risks; and (b) Sufficient to ensure confidence in the financial integrity of the
14 utility, allowing the utility to maintain its credit and attract capital." A utility's fair return can
15 change along with economic conditions and capital markets.[10] It is the end result that is
16 important and not the methods used to arrive at the rates,[11] which must be "measured as much by
17 the success with which they protect those (broad public) interests as by the effectiveness with
18 which they maintain credit…and…attract capital."[12]

19 PacifiCorp argues that its proposed cost of capital in this case is necessary to overcome
20 several challenges, including the "unprecedented volatility of the capital markets, cash flow
21 restrictions from the Tax Cuts and Jobs Act (TCJA), major investments identified in the 2019
22 Integrated Resource Plan (IRP) and required by Oregon's energy and wildfire policy directives,
23 and increased rate agency scrutiny and downgrades."[13] Adopting its proposed cost of capital, the

24 [10] *Bluefield Waterworks & Imp. Co. v. Public Service Comm'n of West Virginia*, 43 S Ct 675, 679 (1923).
25 [11] *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944).
26 [12] *In re Permian Basin Area Rate Cases*, 88 S Ct 1344, 1372-1371 (1968).
[13] PacifiCorp's Reply Brief at 3-4.


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1 Company argues, will strike the appropriate balance between the public interest and maintaining
2 its credit ratings. As Staff's testimony demonstrates, however, PacifiCorp's proposal is
3 unsupported and does not strike the appropriate balance between customers and shareholders.

4 Capital Structure

5 For capital structure, Staff's primary recommendation is to adopt AWEC's proposed
6 equity ratio of 51.86 percent. Alternatively, Staff continues to support a notional 50 percent
7 capital structure in the context of an overall Rate of Return (ROR) above 7.0 percent.[14] The
8 average electric utility capital structure decided in each of the last three full years and also to
9 date in 2020 is at or below 50 percent equity.[15] Of the Oregon investor-owned utilities, Avista,
10 Cascade Natural Gas, NW Natural and PGE all have a Commission authorized 50 percent equity
11 capital structure.[16]

12 PacifiCorp recommends that the Commission approve its 2021 Test Year forecast equity
13 ratio of 53.52 percent.[17] This does not reflect the April 2020 bond issuance and new 2021 bond
14 dividend projections, which it argues would increase the equity component of the capital
15 structure as measured on a five-quarter average to 53.55 percent.[18] PacifiCorp continues to argue
16 that this equity ratio is "necessary for PacifiCorp to retain its current credit rating, which will
17 ensure continued access to capital markets and low-cost debt financing, particularly during the
18 current economic turmoil and increased capital spending."[19] PacifiCorp makes a number of
19 unpersuasive arguments in support of its position.

20 First, the Company argues that its equity ratio offsets the adverse impact of the TCJA on
21 cash flows.[20] However, during the pendency of this case, Moody's and S&P reaffirmed

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[14] Staff/1900, Muldoon – Enright – Dlouhy/3, Table 3.
23 [15] Staff/1911, Muldoon – Enright – Dlouhy/469.
24 [16] Staff/1900, Muldoon – Enright – Dlouhy/26.
[17] PacifiCorp's Opening Brief at 4.
25 [18] PAC/3400, Kobliha/2.
26 [19] PacifiCorp's Opening Brief at 4.
[20] PacifiCorp's Opening Brief at 5.


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PacifiCorp's positive credit ratings based on its 2019 financial data, so the risk is not still an "unknown."[21] In addition, PacifiCorp was labeled as "Stable" by both S&P and Moody's, indicating each agency's confidence in the given rating going forward.[22]

Second, the Company argues that increased investment in new renewable resources requires a strong credit rating supported by the Company's actual equity ratio.[23] As discussed above, PacifiCorp's credit rating was just reaffirmed by Moody's and S&P. Staff's testimony also points out a recent surge in demand for green bonds that has allowed issuers to borrow more cheaply than through the broader bond market.[24] Further, PacifiCorp fails to account for more recent industry trends, which demonstrate that the average authorized equity ratios for electric utilities fell in cases decided during the first half of 2020.[25] As customers pay both the cost of equity and the cost of debt, it is unclear how paying a higher percentage of equity today will translate into sufficient savings for future additions.

Finally, the Company argues that Staff's and AWEC's proposed equity ratio relies on flawed and outdated analysis, because it is based on historical data and was not updated during the proceeding.[26] However, Mr. Gorman's analysis is sound. As explained by Mr. Gorman, his "capital structure analysis did consider historical debt ratios...but importantly…did not conclude with a review of only historical data."[27] Rather, Mr. Gorman "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"[28] and he concluded that PacifiCorp's proposal and rationale do not address the reasonable cost standard of

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[21] Staff/1900, Muldoon – Enright – Dlouhy/28.
[22] *Id.*
[23] PacifiCorp's Opening Brief at 6.
[24] Staff/1900, Muldoon – Enright – Dlouhy/43.
[25] Staff/1911, Muldoon – Enright – Dlouhy/468.
[26] PacifiCorp's Opening Brief at 6-7.
[27] AWEC/600, Gorman/2.
[28] AWEC/600, Gorman/2-3.


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1 establishing an overall fair rate of return.[29] Moreover, the fact that Mr. Gorman did not update
2 his credit metric analysis as inputs changed in the case is not a flaw, nor is his reference to other
3 Commission decisions.[30] The Commission has previously found that using the rates authorized
4 in other jurisdictions, though not dispositive, may be used to gauge the reasonableness of its
5 decision.[31]

6 PacifiCorp's arguments are easily rebutted and should be rejected. The record in this
7 case supports Staff's primary recommendation of a 51.86 percent equity ratio, or in the
8 alternative, a notional 50 percent capital structure in the context of an overall Rate of Return
9 (ROR) above 7.0 percent.

10 <u>Return on Equity</u>

11 The Commission has previously stated that "determination of the cost of equity is not an
12 exact science. As shown by the numerous theories put forth by the parties, and the various
13 ranges calculated by the parties using those theories, there is no one single coast of equity that is
14 the 'right' number. Our job is to sift through the information presented, and determine
15 reasonable cost of equity…"[32]

16 Maintaining PacifiCorp's currently authorized 9.8 percent Return on Equity (ROE) is
17 unreasonable and unsupported by the evidence in this case. Staff's analysis demonstrates that
18 PacifiCorp's request is well outside of the range of reasonable ROEs, which it has identified fall
19 between 8.57 and 9.42 percent.[33] Staff's analysis of the peer utilities[34] and three-stage
20 discounted cash flow (DCF) models[35] with a Hamada adjustment[36] support its recommended the

21 [29] AWEC/600, Gorman/3.
22 [30] *See* PacifiCorp's Opening Brief at 7.
23 [31] *In re Portland General Electric*, OPUC Docket Nos. UE 180, UE 181 & UE 184, Order No. 07-015 (Apr. 2, 2007).
24 [32] *In re PacifiCorp*, OPUC Docket No. UE 116, Order No. 01-787 (Sept. 7, 2001).
25 [33] Staff/1900, Muldoon – Enright – Dlouhy/38.
[34] Staff/200, Muldoon – Enright/12-13; Staff/1900, Muldoon – Enright – Dlouhy/30.
26 [35] Staff/1900, Muldoon – Enright – Dlouhy/32.
[36] Staff/1900, Muldoon – Enright – Dlouhy/31.


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1 Commission adopt a 9.0 ROE, with a ceiling of reasonableness of 9.42 percent.[37] Staff's
2 analysis using a single-stage DCF model and CAPM point to the upper end of Staff's range;[38]
3 however, as Staff explains, its analyses point to 9.0 ROE as being enough of a return to reward
4 investors and is reflective of PacifiCorp's risk profile.[39] Both AWEC's and CUB's
5 recommended ROEs are also within this range – at a ceiling of 9.2 percent, and 9.4 percent,
6 respectively.[40]

7 In support of its proposed 9.8 percent ROE, the Company argues that the Commission
8 should abandon Oregon's long-standing practice of relying primarily on two variants of Three-
9 Stage Discounted Cash Flow (DCF) methodology to estimate the range of allowable ROE, while
10 using a Capital Asset Pricing Model (CAPM), and a Single-Stage DCF to check modeling results
11 and inform the selection of a point ROE within a range of reasonable ROEs.[41] Rather, the
12 Company recommends that the Commission "consider all ROE estimation models."[42] The
13 Company fails to account for the fact that the Commission has a well-established framework for
14 determining cost of equity[43] and has previously rejected the Risk Premium Model.[44] The
15 Company also advocates the use of its Empirical CAPM (ECAPM) to determine ROE, which
16 Staff points out as being atheoretical and easily misused and manipulated.[45]
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20 [37] Staff/1900, Muldoon – Enright – Dlouhy/38-39.
21 [38] Staff/1900, Muldoon – Enright – Dlouhy/38.
22 [39] Staff/1900, Muldoon – Enright – Dlouhy/38-39.
23 [40] AWEC/200, Gorman/2; CUB/300, Jenks/10.
24 [41] *See* Order No. 07-015 at 33 (Finding reasonable Mr. Gorman's framework, which used a group of proxy companies, and a DCF model with results cross-checked against several other methods.).
25 [42] PacifiCorp's Opening Brief at 8.
26 [43] *E.g.* Order No. 01-787; *In re Portland General Electric*, OPUC Docket No. UE 115, Order No. 01-777 (Aug. 31, 2001).

[44] Order No. 07-015.

[45] Staff/1900, Muldoon – Enright – Dlouhy/106-108.


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1 Restricting PacifiCorp's modeling to single-stage DCF, multi-stage DCF and CAPM
2 yields a 9.19 percent recommended average point ROE.[46] Consideration of all of the Company's
3 ROE modeling results, including PacifiCorp's new fringe models generating a 10.19 percent
4 result, pushes the aggregated average to 9.55 percent. So without fringe modeling, PacifiCorp
5 would be recommending roughly a 9.2 percent point ROE. The heavy reliance on fringe
6 modeling distorts PacifiCorp's results upward and out of the range of reasonableness. This is a
7 key driver of why PacifiCorp's requested ROE is so excessive. Staff and AWEC testimony also
8 detail myriad other ways in which the Company inflates its findings.
9 Further, the market turmoil caused by the COVID-19 pandemic has not increased equity
10 costs, contrary to PacifiCorp's assertions otherwise.[47] In response to this assertion, Staff notes
11 that while the COVID-19 pandemic has caused an uptick in volatility in financial markets, this
12 has not led to higher returns in the utility sector.[48]
13 Finally, PacifiCorp's recommended ROE is overstated relative to other similarly situated
14 utilities. Through the first half of 2020, the average authorized ROE for electric utilities is 9.47
15 percent.[49]
16 <u>Cost of Long-term Debt</u>
17 For cost of long-term (LT) debt, PacifiCorp recommends the Commission adopt a 4.774
18 percent cost of LT debt.[50] Staff continues to recommend the more updated 4.824 percent,[51] as it
19 is supportive of an overall reasonable Rate of Return (ROR) because it removes the current
20 portion of LT debt as bonds mature, conforming to Oregon Staff's definition of LT Debt as
21 having maturities over one year.[52] Staff does not agree with the Company that a lower cost of
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[46] PAC/400, Buckley/86 – 87; PAC/2201, Buckley/1.
[47] PacifiCorp's Opening Brief at 11-15.
[48] Staff/1900, Muldoon – Enright – Dlouhy/18.
[49] Staff/1911, Muldoon – Enright – Dlouhy/467.
[50] PAC/2100, Kobliha/10.
[51] Staff/1900, Muldoon – Enright – Dlouhy/109.
[52] *Id.*


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debt, balanced with a higher ROE, is an optimal balance for customers and shareholders in the current financial climate.

**(B) Wildfire Mitigation and Vegetation Management Cost Recovery Mechanism**

Staff and PacifiCorp generally agree that the Commission should adopt a combined cost recovery mechanism for wildfire mitigation and vegetation management that is performance-based, subject to earnings tests with additional consequences for violations in High Consequence Fire Areas (HCFAs) and relies on the use of an independent evaluator (IE).[53]

Staff proposes to include $26.580 million of PacifiCorp's requested $33.225 million Test Year vegetation management and wildfire mitigation expenses in base rates, with the remaining $6.645 million subject to a deferral and earnings test that varies based on PacifiCorp's performance with its vegetation management program, and taking into account violations that occur in HCFAs. Amounts incremental to PacifiCorp's requested Test Year expenses – meaning prudently incurred expenses above $33.225 – would also be recoverable subject to an earnings test set at the Company's UE 374 authorized ROE assuming, except in the event that violations occur at or above Level II and at least one violation occurs in a HCFA zone, the earnings test would use the UE 374 Commission-adopted ROE minus 50 basis points.[54]

Staff proposed its comprehensive vegetation management and wildfire cost recovery mechanism because the Company's vegetation management in recent years has been generally declining, particularly for the period beginning in 2012, and in light of increasing wildfire risk across the West.[55] PacifiCorp agrees that a comprehensive approach is appropriate and that an incentive-based mechanism is acceptable, yet the Company lodges a number of criticisms of Staff's proposed mechanism in justification of its three proposed changes.

[53] PacifiCorp's Opening Brief at 33; Sept. 9, 2020 Hearing Tr. at 161, lines 13-23.
[54] Staff/2700, Moore/10.
[55] PacifiCorp's Opening Brief at 33.


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1 First, the Company proposes to include its entire anticipated Test Year expenses ($33.225
2 million) in base rates, not subject to performance metrics for recovery.[56] Second, PacifiCorp
3 proposes that the first incremental $6.645 million above what is included in base rates be subject
4 to recovery based on the Company's performance.[57] Third, the Company proposes a new
5 methodology for calculating performance thresholds based on normalizing violations based on a
6 per-audit mile, as opposed to counting the number of violations as Staff proposes.[58]

7 AWEC opposes a separate cost recovery mechanism for wildfire mitigation investments
8 on legal and policy grounds,[59] but argues that if the Commission adopts one, it should adopt an
9 earnings test at 100 basis points below the Company's authorized ROE.[60] The following table
10 provides a summary of the differences between the Company's proposal and Staff's proposal:

11 **Table 1.**

| Item | PacifiCorp | Staff |
|---|---|---|
| Amount of Expense included in base rates | $33.225 million | $26.58 million |
| Amounts Subject to Violation Thresholds | First incremental $6.645 million of expense above what is included in base rates. | $6.645 million of the Company's proposed $33.225 million in 2021 expense |
| Level 1 Threshold | 0.15% (equals 125 violations/84,239 Oregon 2019 Tax Report Miles)[61] | 75 |
| Level 2 Threshold | 0.24% (equals 200 violations/84,239 Oregon 2019 Tax Report Miles)[62] | 150 |
| Level 3 Threshold | 0.30% (equals 250violations/84,239 Oregon 2019 Tax Report Miles)[63] | 200 |
| Measurement of Threshold | Percentage of Spans (average 300 feet)[64] | Instances of Violations |

12 13 14 15 16 17 18 19 20 21 22 23 24 25 26

[56] PacifiCorp's Opening Brief at 33-34.

[57] PacifiCorp's Opening Brief at 34-35.

[58] Sept. 9, 2020, Hearing Tr. at 143, lines 6-11 (Ms. Lockey making an errata correction to her Surrebuttal Testimony, adding in an additional two error rates which serve as the basis for the Company's proposed performance thresholds).

[59] AWEC's Prehearing Brief at 29-31.

[60] AWEC's Prehearing Brief at 29.

[61] Staff/3700, Cross-Exhibit/4-5.

[62] *Id.*

[63] *Id.*


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1 The Company's criticisms are unsupported and unpersuasive and would serve to dilute
2 incentives for improved performance and reduce transparency for vegetation management
3 violations. Similarly, AWEC's arguments that the Commission lacks the legal authority to
4 approve such a mechanism, or that it should deny one as a matter of policy, should be rejected.
5 The Commission should adopt Staff's proposed Vegetation Management and Wildfire Mitigation
6 Cost Recovery Mechanism as proposed. Staff's proposal provides an attainable, appropriate
7 incentive for improved vegetation management and wildfire mitigation performance.
8
9 *1. Staff's proposal to include $26.580 million of PacifiCorp's requested $33.225 million Test Year vegetation management and wildfire mitigation expenses in base rates is reasonable.*
10
11 PacifiCorp argues that Staff's proposal to subject $6.645 million to its proposed cost
12 recovery mechanism, rather than embedding in base rates, is unreasonable because "despite the
13 Company's clear demonstration of prudence in this case, application of an earnings test could
14 prevent full recovery of these prudently incurred costs."[65] PacifiCorp's criticism misses the
15 rationale for Staff's proposal and fails to recognize that Staff's proposed mechanism represents a
16 balanced approach to cost recovery.
17 Staff proposed the mechanism because the Company needs to improve its performance.
18 Staff specifically chose to have the last $6.645 portion of its 2021 projected expenses subject to
19 the earnings test to provide an incentive to the Company to improve its performance. Under the
20 Company's proposal, it could continue its poor performance and still recover in full its 2021
21 projected vegetation and wildfire expenses and earn above its authorized rate of return. This
22 outcome does not create a ratemaking incentive for the Company to conduct vegetation
23 management to protect life and property. Staff's proposal provides the Company with a greater
24 incentive to improve its performance.
25
26 [64] Sept. 9, 2020, Hearing Tr. at 149, line 25 to 150, line 9.
[65] PacifiCorp's Opening Brief at 33.


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1 *2. Staff's proposed violation threshold levels are appropriate and should not be normalized as PacifiCorp proposes.*
2
3 PacifiCorp argues that Staff's proposed violation levels are effectively unattainable
4 based on the Company's historic vegetation management performance, which it argues renders
5 financial incentives effectively meaningless.[66] This is unpersuasive for several reasons.
6 First, PacifiCorp fails to account for the fact that Staff's proposal allows for cost recovery
7 of prudently incurred vegetation management expenses without the budgetary constraint of costs
8 embedded in base rates, unlike prior years. In prior years, if the budget was met and violations
9 the remained, the Company had a disincentive to expend additional funds to bring the number of
10 violations down because there was no mechanism for cost recovery for the additional spend. As
11 the record demonstrates, the Company generally spent to budgeted amounts but nevertheless had
12 increasing levels of violations. Under Staff's proposed mechanism, the Company has the
13 flexibility to spend amounts necessary in order to reduce the number of vegetation management
14 violations on its system, without the burden of managing these costs in conjunction with other
15 costs in order to maintain a reasonable rate of return. It is factually irrelevant and unsupported to
16 use the number of violations in years where the Company was subject to budgetary constraints as
17 a basis to justify the level of violations that are reasonable when that constraint has been
18 removed.
19 Second, the mechanism is intended to incent the Company's behavior to reduce the
20 number of violations to a more acceptable level. The point of the violation levels is to identify
21 performance that reasonably reflects prudent and sound business practices to manage risk to the
22 public, not to match historical performance. As demonstrated by Table 2, below, the number of
23 violations for vegetation have increased significantly since 2012.
24 / / /
25 / / /
26

[66] Sept. 9, 2020, Hearing Tr. at 148, lines 4-16.


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**Table 2.**[67]

| Violation History: | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 |
|---|---|---|---|---|---|---|---|---|---|
| Vegetation Violations found during staff audit | 58 | 177 | 93 | 34 | 42 | 73 | 122 | 87 | 90 |
| Error Rate using Normalized Spans Method (using 2019 mileage/spans) | 0.07% | 0.21% | 0.11% | 0.04% | 0.05% | 0.09% | 0.14% | 0.10% | 0.11% |
| | | | | | | | | | |
| | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 |
| | 101 | 280 | 383 | 364 | 191 | 322 | 195 | 502 | 373 |
| | 0.12% | 0.33% | 0.45% | 0.43% | 0.23% | 0.38% | 0.23% | 0.60% | 0.44% |

Sorting the number of violations from low to high also displays this trend by noting earlier years are associated with lower violations and later years with higher violations. The lowest four years of violations, which are below the 75 violations threshold recommended by Staff for Level 1 violations, all occur before the year 2009. PacifiCorp provides no reasoning or basis as to why what was attainable for four out of six consecutive years is no longer attainable. In comparing the proposed violation levels, Staff Level 1 was met by PacifiCorp in four of the 18 years. The PacifiCorp proposed Violation Level 1 is met in 9 of the 18 years or 50 percent; and was last met in 2012.

The meaningful question is whether the violation levels should be set according to levels that reflect safe and prudent vegetation management service or whether they should be set such that PacifiCorp can reasonably meet the targets. Staff posits that the former approach is appropriate; PacifiCorp posits the latter. It may be difficult, given PacifiCorp's recent performance, for the Company to wholly avoid the violation levels as recommended by Staff. However, the mechanism is an extraordinary ratemaking mechanism and is intended to act as an incentive for improved performance. Staff finds that a violation level of 75 represents a reasonably safe environment such that the Company should not be subject to an earnings test set below its authorized return on equity assuming no HCFA violations.

Third, the Company has not provided a compelling policy basis for normalizing violations (i.e. taking a rate approach, rather than a total number approach). The Company's testimony in this case explains how the rate of violation should be calculated and provides

[67] Staff/3700, Cross-Exhibit/5.


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1 examples of how those would be different in different scenarios,[68] but stops short of articulating
2 *why* normalizing provides a better incentive for PacifiCorp to improve performance or how it
3 better serves the public interest. In fact, when asked why the Company was proposing to utilize
4 normalized audit miles rather than number of violations, PacifiCorp provided two reasons—(1)
5 that it "avoid[s] a situation where Staff is auditing just to the violation level"[69] which the
6 Company worries may create "an incentive to try and just get to that next violation without
7 scaling it relative to the number of miles audited"[70] and (2) that its approach is consistent with its
8 understanding of the Commission's historic practice to be auditing "about a third of [its] system
9 at any given time."[71] PacifiCorp, however, provides no evidentiary basis or rationale for why it
10 is concerned that the Commission's Safety Staff would simply audit the Company's system only
11 to the point of reaching a threshold of violations (a ratemaking construct), rather than acting in
12 accordance with applicable statutes,[72] administrative rules,[73] prior (acknowledged) Commission
13 practice[74] and the Governor's EO 20-04.[75] While it is now clear *how* PacifiCorp's proposed
14 methodology would be utilized to determine violation levels, this does little to address *why* this is
15 an appropriate approach.

16 *3. PacifiCorp's proposed normalization approach is late-breaking and lacks the benefit*
17 *of review from key Commission Staff.*

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19 [68] PacifiCorp's Opening Brief at 34-35.

[69] Sept. 9, 2020, Hearing Tr. at 146, lines 1-2.

20 [70] Sept. 9, 2020, Hearing Tr. at 146, lines 6-9; The Company further clarified that it "[doesn't]
21 want to imply that Staff has an incentive to try and bump PacifiCorp from level one to level two, but only that if you are looking at a flat violation rate and let's say you're at 75 in level one, Staff
22 might say well let's go look at ten more spans and see if we can get PacifiCorp into that level two violation rate to apply the earnings test and bring down the overall amount that PacifiCorp
23 could seek to recover." Sept. 9, 2020, Hearing Tr. at 146, line 25 through 147, line 8.

[71] Sept. 9, 2020, Hearing Tr. at 146, lines 14-17.

24 [72] *See e.g.* ORS 756.040, 757.035, 757.039, 757.649, 758.215, 759.005 & 759.045.

25 [73] *See e.g.* OPUC Division 24 Rules.

[74] Sept. 9, 2020, Hearing Tr. at 146, lines 10-19.

26 [75] Directs the Commission to "promote energy system resilience in the face of increased wildfire frequency and severity[.]" *See also* PacifiCorp's Opening Brief at 33.


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1 PacifiCorp's Surrebuttal Testimony in this case was the first time that the Company set
2 forth its proposed normalization approach, which was scant. The entirety of its normalization
3 proposal is contained in a single paragraph,[76] and contained an error such that the tiers of
4 violation levels were not revealed until the hearing in this case.[77] Similarly, the mechanics of the
5 mechanism and how normalization would function were also not explained until the hearing in
6 this case.[78] Due to the timing of PacifiCorp's proposal, Staff's response and substantive
7 concerns were not included in the record in this case. As stated in Staff's Prehearing Brief, in the
8 very least, this leaves several questions to be addressed that are not included in the record in this
9 case. The Company's description at the hearing does not negate the concern that the
10 Commission's Safety Staff has not had the ability to review the Company's proposed
11 methodology and provide insight on concerns or how it would work with its anticipated audit
12 process going forward.
13 The Company proposal also creates a new avenue of challenge. Not only are the number
14 of violations in question but also the number of spans audited. Details concerning who is
15 keeping track and verifying the number of spans viewed are also lacking. How would the
16 number of spans audited be confirmed or denied? If performance is near a threshold trigger, then
17 challenging the number of spans audited could allow either Staff or PacifiCorp to raise or lower
18 the percentage performance—which undercuts the Company's argument about Staff's
19 "incentive" to audit to the violation level. Further, the Company provides no persuasive
20 evidence that the number of violations are less important, practically speaking, than their
21 frequency. For example, if Commission Safety Staff audit the same number of span miles in
22 Southern Oregon as on the Oregon Coast, and the Southern Oregon violation rate is .267% while
23 the Oregon Coast violation rate is 0%, the overall violation rates is 0.134% and therefore below
24
25
26

[76] PAC/3300, Lockey/6, lines 11-17.

[77] Sept. 9, 2020, Hearing Tr. at 143, lines 6-11. The Company did include the additional threshold percentages in its response to Staff DR 792, Attachment OPUC 792 (Staff/3700, Cross-Exhibit/5), but did not explain the relevance of function of these calculated amounts.

[78] *See* Sept. 9, 2020, Hearing Tr. at 144-155; 155-167.


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1 PacifiCorp's proposed Level 1 threshold of 0.15%. Do the residents of Southern Oregon benefit
2 as minimized because the rate of violation for PacifiCorp's system is lower based on which
3 geographical region(s) were audited that year? Staff's proposal avoids results skewed by
4 geographical differences and incents the Company to bring its entire system into a more
5 appropriate level of compliance.

6 *4. The Commission has the legal authority to approve Staff's proposed vegetation*
7 *management and wildfire mitigation cost recovery mechanism and should exercise its authority under the circumstances in this case.*

8 AWEC argues that the Commission lacks the legal authority to approve a deferral for
9 vegetation management and wildfire mitigation costs. Specifically, it argues that the mechanism
10 fails to meet the statutory criteria that deferred amounts must either minimize the frequency of
11 rate changes or match appropriately the costs borne by and benefits received by ratepayers.[79]

12 AWEC is mistaken that deferral of amounts subject to the mechanism would not match
13 appropriately the costs borne by and benefits received by ratepayers. While true that
14 PacifiCorp's shareholders will also benefit from extraordinary ratemaking between cases, it does
15 not detract from or change the fact that customers will also benefit in that risk for wildfire and
16 other safety incidents will be reduced, which allows the Company to continue to provide safe and
17 reliable service with potentially fewer interruptions. The statute requires that customers benefit
18 from the costs deferred – there is no evidence on the record that customers will not benefit from
19 PacifiCorp's prudent management of vegetation and wildfire risk which is enabled by the cost
20 recovery mechanism. Further, parties retain the ability to argue whether costs are reasonable and
21 prudently incurred, and the Commission retains the authority to determine which amounts are
22 appropriately amortized.

23 AWEC also argues that the cost recovery mechanism fails to meet the Commission's
24 discretionary criteria for approving deferrals, in that the costs subject to the mechanism are
25 predictable and insubstantial, and that the consequence of the special cost recovery mechanism is
26

[79] AWEC's Prehearing Brief at 30.


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1 simply "regulatory lag" and will not result in them becoming "entirely unrecoverable."[80]
2 However, AWEC is mistaken on this point as well. The costs subject to the mechanism include
3 additional O&M costs, not simply wildfire mitigation capital costs beginning in 2021. By
4 definition, absent a deferral, these costs would not be recoverable by the Company or simply
5 subject to regulatory lag. Staff does not seek to diminish the Commission's long-standing and
6 well-reasoned policy on the criteria necessary for deferrals to be approved, most recently
7 affirmed in OPUC Order No. 19-274.[81] However, as discussed at length in Staff's testimony in
8 this case, wildfire mitigation and vegetation management costs represent an exceptional area of
9 costs that are in flux and the risks of violations and non-compliance are increasingly realized. As
10 such, Staff finds that the Commission should exercise its discretion to approve extraordinary
11 ratemaking treatment for these costs, and approve its proposed mechanism without modification.
12 Staff continues to recommend the Commission adopt the following recovery mechanism
13 for wildfire mitigation and vegetation management costs:

14 • Include in base rates $26.58 million in revenue requirement of the $33.35 million
15 PacifiCorp requests for vegetation management and wildfire mitigation O&M
16 expense projected for the 2021 test period.[82] This assumes that 2020 wildfire
17 mitigation capital expenditures are prudent and included in base rates.
18 • Each year, beginning with 2021, all expenses for vegetation management and
19 wildfire mitigation above the amount included in base rates ($26.58 million), as
20 well as expenses for an Independent Evaluator (IE) would be subject to an annual
21 deferral. The annual revenue requirement effects of vegetation management and
22 wildfire mitigation capital expenditures would also be included in the deferral.
23

24 [80] AWEC's Opening Brief at 30-31.
25 [81] *See In re Portland General Electric*, OPUC Docket No. UM 1817, Order No. 19-274 (Aug. 19, 2019).
26 [82] Staff clarifies that forecast 2021 capital costs should not be included in base rates in this case, and would be subject to the Vegetation Management and Wildfire Mitigation Cost Recovery Mechanism as described.


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- Amortization of deferred amounts would occur on the schedule proposed by PacifiCorp in its reply testimony (PAC/2000, Wilding/47) and be subject to the following:
    - Vegetation management performance metrics:
        - Violation level I (when violations exceed 75)
        - Violation level II (when violations exceed 150); and
        - Violation level III (when violations exceed 200).
    - Each year, beginning in 2021, for prudently incurred expenses of more than $26.58 million and up to $33.225 million (for a total of $6.645 million) of deferred amounts, except for deferred costs for the IE, would be subject to the following earnings test:
        - No earnings test applicable if vegetation management violations are below Violation Level I.
        - An earnings test of UE 374 authorized ROE minus 100 basis points is applicable if vegetation management violations are at or above Violation Level I and less than Violation Level II.
        - An earnings test of UE 374 authorized ROE minus 150 basis points is applicable if vegetation management violations are at or above Violation Level II and less than Violation Level III.
        - An earnings test of UE 374 authorized ROE minus 200 basis points is applicable if vegetation management violations are at or above Violation Level III.
        - Each of the above earnings tests will be adjusted to add an additional 50 basis points if any of the vegetation management clearance violations occur in a Fire High Consequence Area (FHCA).


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1 ○ Each year, beginning in 2021, for prudently incurred expenses of $33.25
2 million or greater, deferred amounts (except for deferred costs for the IE)
3 would be subject to the following earnings test:
4 ▪ At UE 374 authorized ROE, except in the circumstance where
5 vegetation management violations are at or above Level II and at
6 least one of the violations occurs in a FHCA zone. In that case, the
7 earnings test applied would be equal to UE 374 authorized ROE
8 minus 50 basis points.
9 ○ No earnings test would apply to the deferred costs related to the IE.
10 ○ Expenses found to be prudently incurred in a year, but nevertheless not
11 amortized into rates due to the application of an earnings test, would not
12 roll-over for cost recovery in a future year.
13
14 **(C) Decommissioning Costs.**
15 *1. Decommissioning cost estimates included in rates should be based on PacifiCorp's*
16 *2018 Decommissioning Cost Estimates, rather than the Kiewit Decommissioning Studies.*
17 The Commission should set rates in this case based on PacifiCorp's initial UM 1968
18 filing (2018 Decommissioning Cost Estimates), equaling $474 million (total- Company and for
19 the coal plants included in Kiewit's report filed January 16, 2020).[83] The evidentiary basis for
20 these studies is stronger than for the estimates in the Kiewit Engineering Group, Inc. (Kiewit)
21 Decommissioning Studies. Conversely, PacifiCorp argues that the Commission should set rates
22 in this case based on the Kiewit Decommissioning Studies because these studies are "more
23 accurate than previous cost estimates"[84] and supported by substantial evidence.[85] PacifiCorp
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[83] Staff's Prehearing Brief at 12-16.
[84] PacifiCorp's Opening Brief at 67-69.
[85] PacifiCorp's Opening Brief at 69-71.


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criticizes the process and substance of the Independent Evaluator's review of these studies, arguing that he "misunderstood" them.[86]

Despite PacifiCorp's claims to the contrary, the evidence is inconclusive as to whether the Kiewit Studies are "more accurate" than the 2018 decommissioning cost estimates. PacifiCorp relies on the fact that the Kiewit studies "were conducted to an Association for the Advancement of Cost Engineering (AACE) Class 3 estimate."[87] But as PacifiCorp also acknowledges, the studies' cost estimate "has an expected accuracy of minus 20 percent to plus 30 percent,"[88] for 10 to 40 percent of the project scope.[89] And further, inputs to the study for a substantial portion of the project costs – 39 percent of "base" costs and 62 percent of "other items to consider" costs for a total of 48 percent of the total costs – were provided directly from PacifiCorp and not independently determined by Kiewit.[90]

Further complicating matters, PacifiCorp failed to provide the parties to this case with the information it provided to Kiewit, despite discovery requests that should have elicited this information and its requested support, until after it had filed its Surrebuttal Testimony in this case on August 14, 2020,[91] and even then it was not completely responsive.[92] On August 19, 2020, more than three months after its initial response, the Company supplemented discovery responses to include the information it provided to Kiewit.[93] Because of this, information

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[86] PacifiCorp's Opening Brief at 71-72.

[87] PacifiCorp's Opening Brief at 67.

[88] *Id.*

[89] *Id.*

[90] Staff/1700, Storm/31.

[91] Sept. 9, 2020, Hearing Tr. at 178, line 3 to 182, line 21.

[92] Staff/3400, Cross-Exhibit/6 (PacifiCorp's response to Staff DR 725 regarding "Decommissioning Owner Scope" costs includes that this cost "was [sic] based on the actual owner costs incurred for decommissioning and demolition of the Carbon generating facility adjusted for the size of the generating facility and economics of scale." This response still fails to fully respond as it does not include how these costs are adjusted; rather the response lists two characteristics for which they made adjustments.).

[93] Staff/3400, Cross-Exhibit/2 and 4; *see also* Staff/1704 (AWEC DR 0057 that should have elicited the information provided in supplemental materials within PacifiCorp's initial response, due within 14 days of the request).


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supporting 48 percent of the Decommissioning Costs was not provided to the parties or the IE. PacifiCorp dismisses this, seemingly arguing that the numbers speak for themselves, because they appear in the Kiewit report.[94] In sum, a substantial portion of the costs provided to Kiewit were not able to be reviewed or verified for reasonableness or accuracy on the record in this proceeding. Further, because Kiewit has declined to provide its underlying analysis,[95] no party – including PacifiCorp – is able to fully review and analyze the inputs and methodologies used.

Despite the fact that the information contained in the Kiewit decommissioning studies was not independently verifiable by either the parties to this case (including PacifiCorp for the estimates developed by Kiewit) and the IE, the Company nevertheless argues that the decommissioning costs contained therein are supported by substantial evidence and should be used as the basis to set rates in this case. Even if the Commission concludes that the Kiewit studies provide substantial evidence to approve PacifiCorp's requested decommissioning costs in this case, it should decline to reach a final determination based on the record in this case. Staff recognizes and takes seriously the obligation to determine appropriate decommissioning costs, particularly for the coal-fired generating units for which Oregon is responsible solely for estimated costs.[96] However, given the magnitude of costs for Oregon ratepayers, determining these costs should be met with rigor and scrutiny, not merely delegated to the conclusions of one entity that cannot be verified by parties to this proceeding or an IE.

*2. Staff does not oppose PacifiCorp's proposal to open a separate proceeding to allow further review of estimated decommissioning costs included in Oregon rates.*

Staff and PacifiCorp agree that in light of the concerns raised by Staff, CUB and AWEC, the Commission should open a separate proceeding to allow further review of the Decommissioning Studies and determine whether additional rate changes are necessary.[97] The

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[94] Sept. 9, 2020, Hearing Tr. at 185, lines 1-5.

[95] Sept. 9, 2020, Hearing Tr. at 183, lines 15-16.

[96] Staff's Prehearing Brief at 12-13.

[97] PacifiCorp's Opening Brief at 67.


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Company also proposes that the Commission "establish a tracking mechanism to allow final decommissioning cost estimates to be trued-up to the amounts included in rates in this case."[98] Staff does not oppose a deferral that would track this variance to allow true-up of decommissioning cost estimates to those included in rates in this case, should such a true-up be necessary given the particular circumstances in this case.

**(D) Transmission.**

Staff recommends excluding from rate base the costs of most of PacifiCorp's "pro forma" projects[99] because PacifiCorp failed to provide sufficient evidence, including evidence that the projects are properly classified as transmission, to show costs of the projects are appropriately included in Oregon rates. Excluding the costs from rate base in this case would not prevent PacifiCorp from seeking to include the projects in Oregon rate base in a subsequent proceeding. Staff also recommends disallowing cost overruns at three major transmission projects and one pro forma transmission project.

*1. PacifiCorp did not establish certain transmission investment is appropriately included in rates.*

With the exception of two pro forma projects discussed by Mr. Vail, PacifiCorp addressed none of the pro forma projects in its initial testimony. Instead, PacifiCorp merely noted the inclusion of the pro forma projects in rate base with a Confidential workpaper included as an exhibit to PacifiCorp witness Shirley McCoy's testimony. The exhibit included no detail on the specifics of the projects.[100]

As Staff explained, Staff asked for one-line diagrams of pro forma projects and project contracts to verify that the projects are transmission projects. The Company's response to these requests was not sufficient to allow Staff to verify the pro forma projects are appropriately

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[98] *Id.*

[99] Pro forma are projects built, or scheduled to be built, after the date PacifiCorp filed its rate case but prior to the rate effective date.

[100] PAC/1309, McCoy/16.


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1 treated as transmission, whether the projects are prudent, whether the Company prudently
2 managed the projects, or whether the actual costs of the projects match what PacifiCorp proposes
3 to include in rate base.[101]

4 PacifiCorp disagrees that it has failed to provide sufficient information to verify that the
5 challenged projects are transmission assets. With respect to Staff's proposed exclusion of the
6 pro forma projects, PacifiCorp states that it "significantly expanded its evidence supporting these
7 smaller projects on surrebuttal."[102] PacifiCorp explains that it prepared PAC/4202, a confidential
8 exhibit that (1) provided details regarding the nature and benefit of each project; (2) identified
9 where project information was provided to Staff in discovery; (3) updated the project's in-service
10 date, where necessary; and (4) provided a narrative explanation for each project over $500,000
11 on a system-wide basis.[103]

12 The descriptions of the Pro Forma investments in Exhibit 4202 are very high-level and
13 are not sufficient to show the projects are properly classified as transmission. For example,
14 entries include descriptions such as **[BEGIN CONFIDENTIAL]**
15
16
17 **[END CONFIDENTIAL]**.[104] In other
18 words, the exhibit does not verify the projects are transmission projects, but simply states that
19 they are.

20 PacifiCorp argues Staff's proposal to exclude plant from rate base because of insufficient
21 evidence is contrary to the 2020 Inter-Jurisdictional Allocation Protocol (2020 Protocol) adopted
22 by the Commission in Order No. 20-024. PacifiCorp states that the 2020 Protocol relies on
23 PacifiCorp's OATT to determine the appropriate classification of assets. PacifiCorp asserts that
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[101] Staff's Prehearing Brief at 23.
[102] PacifiCorp's Opening Brief at 82.
[103] PacifiCorp's Opening Brief at 82.
[104] PAC/4202, Vail.


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1 its "OATT defines its 'Transmission System' as all facilities 'generally operated at a voltage
2 greater than 34.5 kV' that PacifiCorp uses to provide FERC-jurisdictional transmission service
3 and that are included in PacifiCorp's FERC-jurisdictional transmission revenue requirement."[105]
4 And, PacifiCorp argues that "[a]ll the assets subject to Staff's proposed disallowance operate
5 above 34.5 kV, are used to provide FERC-jurisdictional transmission service, and are, or will
6 soon be, included in PacifiCorp's FERC-jurisdictional transmission rates[,]" and therefore cannot
7 be excluded from rate base under the 2020 Protocol.[106]

8 PacifiCorp's argument fails for at least two reasons. First, the representation of the
9 OATT's definition of "Transmission System" is not accurate. The actual definition does not say
10 "**all** facilities," but "**the** facilities." And, PacifiCorp leaves out relevant language related to the
11 34.5 kV reference. The exact words are as follows:

12 The facilities (for PacifiCorp that are generally operated at a voltage greater than 34.5
13 kV) that are owned, controlled or operated by the Transmission Provider; that are used to provide Transmission Service under Part II and Part III of the Tariff; and that are
14 included in the Transmission Provider's transmission revenue requirement periodically filed with the Commission.[107]

15 The OATT's definition of Transmission System is quite circular: The facilities owned,
16 controlled or operated by PacifiCorp that are used to provide Transmission Service. The
17 addition of the qualifier to "facilities," "(for PacifiCorp that are generally operated at a voltage
18 greater than 34.5 kV)," does not alter the circular nature of the definition or otherwise limit it.
19 Meaning, the definition does not say that all PacifiCorp's facilities greater than 34.5 kV are
20 transmission facilities or, alternatively, that PacifiCorp's transmission system consists only of
21 facilities 34.5 kV and above. Rather, the definition simply describes the classification of assets
22 *once included in the OATT*. And that classification depends on the qualification that the assets
23

24 [105] PacifiCorp's Opening Brief at 74.
25 [106] PacifiCorp's Opening Brief at 74.
26 [107] PAC/4500 at 2. It does not appear that PacifiCorp has included an updated PAC/4500 exhibit to reflect the inclusion of its entire OATT into the record in this case. The Company's current OATT, which was updated September 22, 2020, may be accessed here: http://www.oasis.oati.com/woa/docs/PPW/PPWdocs/PacifiCorp_OV11_Tariff.pdf.


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are "used to provide Transmission Service under Part II and Part III of the Tariff." Part II of the tariff refers to Point-to-Point Transmission Service; Part III refers to Network Integration Transmission Service.

PacifiCorp appears to assert that all of its facilities operated at a voltage of over 34.5 kV are transmission facilities.[108] There is no evidence in the record to support this assertion. In fact, such an assertion is directly contradicted in the record because PacifiCorp reclassified a 34.5 kV asset, originally categorized as transmission and allocated to Oregon, as distribution which resulted in its removal from Oregon rate base.[109] The Company determined that the projects were "distribution plant" despite their sizes.[110] PacifiCorp attempts to convince the Commission of a bright-line rule with regard to its assets that simply does not exist either in its OATT or under Federal Energy Regulatory Commission (FERC) policy. FERC has announced a Seven-Factor Test to determine whether assets that transmit electricity are transmission or distribution assets.[111] The voltage at which the facility operates or is capable of operating is one of the seven factors.[112] But the appropriate classification turns on analysis of all seven factors, with no one factor being dispositive.[113]

As Staff explains in its Prehearing Brief, Staff does not disagree that the costs of facilities that PacifiCorp uses to provide transmission service and that satisfy the other criteria of the

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[108] Sept. 9, 2020 Hearing Tr. at 103, lines 17-21 (Question from PacifiCorp Counsel to Staff Witnesses, "Well, Mr. Muldoon, there's nothing uncertain about the OATT, is there? It says everything above 34.5 kilovolts is a transmission asset subject to FERC's jurisdiction. There's nothing uncertain about that, is there?"). *See also* Sept. 9, 2020, Hearing Tr. at 101, lines 18-20 (Question from PacifiCorp Counsel to Staff Witnesses, "Now, isn't it true that for PacifiCorp, according to the OATT, FERC has classified everything at or above 34.5 kV as transmission assets?"); Sept. 9, 2020, Hearing Tr. at 102, lines 12-15 (Question from PacifiCorp Counsel to Staff Witnesses, "Well, wouldn't you agree then that because the OATT defines transmission assets as everything above 34.5 kV, under the 2020 protocol, all of those assets must be allocated on a system basis. Isn't that true?").

[109] Staff/3500, Cross-Exhibit/11-13.

[110] Staff/3500, Cross-Exhibit/12.

[111] Staff's Prehearing Brief at 24.

[112] *Id.*

[113] *Id.*


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1 definition are appropriately allocated to Oregon customers as transmission assets. Staff does
2 disagree, however, with PacifiCorp's assertion that all the pro forma facilities at issue are used to
3 provide transmission service. In fact, this is precisely what Staff cannot discern from the
4 information provided by the Company.

5 Second, PacifiCorp also failed to establish that the second criteria in the definition of
6 "Transmission System" is satisfied by the investment at issue. Under this definition, the facility
7 has to be used to provide transmission service *and* be included in PacifiCorp's revenue
8 requirement periodically filed with FERC. PacifiCorp did not verify that the facilities at issue
9 are in PacifiCorp's revenue requirement filed with FERC.

10 Importantly, Staff does not seek to reclassify the assets at issue in this case and does not
11 recommend that the Commission issue an order permanently excluding the projects at issue from
12 Oregon rate base. But, as discussed above, Staff could not determine the prudence of the
13 challenged investments, verify the costs, or determine whether the investments are appropriately
14 allocated as a system resource due to the lack of evidence provided by PacifiCorp. Accordingly,
15 Staff proposes to exclude the challenged projects from rate base for purposes of this rate case.[114]

16 PacifiCorp also argues that Staff's proposed adjustment is one-sided because Staff failed
17 to challenge the system allocation of assets sited in Oregon.[115] PacifiCorp does not expressly
18 argue that the Commission should reject Staff's proposed adjustments because of its "one-sided"
19 nature and such an argument would be absurd. To the extent PacifiCorp believes Staff's
20 proposal is one-sided, it is up to PacifiCorp to identify which assets sited in Oregon should be
21 assigned directly to Oregon and propose an adjustment. PacifiCorp is correct that Staff's focus
22 was primarily on investment in other states. This does not mean Staff would have opposed a
23 proposal by PacifiCorp to change the allocation of facilities sited in Oregon that was based on
24 the same reasoning used by Staff.

25

26 [114] Staff/2100, Hanhan-Rashid-Muldoon/10-18 and 43-47.

[115] PacifiCorp's Opening Brief at 76-77.


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1 *2. Under the circumstances in this case, additional investigation into transmission-related costs is appropriate.*

2

3 Staff recommends that the Commission open an investigation into the classification of
4 PacifiCorp's facilities used to transmit electricity. Staff believes the information gained in such
5 an investigation may serve as a basis for a request to FERC regarding assets PacifiCorp has
6 classified as Transmission, or as the basis for a challenge at FERC to inclusion of certain assets
7 in PacifiCorp's Transmission Revenue Requirement. This is a process contemplated by and
8 consistent with the 2020 Protocol.[116] PacifiCorp attempts to reframe Staff's position by
9 opposing Staff's proposed investigation, asserting that any potential reclassification of
10 transmission assets should be addressed through the MSP process, rather than in an Oregon-only
11 investigation.[117]

12 Staff disagrees with PacifiCorp. Staff recognizes that changes to how costs for
13 PacifiCorp's assets are allocated is a matter for the MSP process, but that is not the purpose of
14 the investigation. The issue is not how transmission costs are allocated among the states, but
15 rather, whether certain assets qualify as transmission in the first place. Staff believes important
16 information that may inform the classification process can be obtained through an investigation
17 and is appropriately initiated by this Commission. In fact, it may be used to begin the process
18 included in Section 3.1.3 of the 2020 Protocol, which provides that PacifiCorp must submit
19 filings seeing review and authorization of any such reclassifications with the Commissions prior
20 to making such a filing with FERC. Further, nothing in the 2020 Protocol precludes a state from
21 challenging the inclusion of any individual assets in PacifiCorp's OATT revenue requirement.

22 Staff clearly stated at hearing that it is not seeking to substitute its judgement for that of
23 any current or future Commission. Rather Staff recommends an investigation to inform the

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26 [116] Staff's Prehearing Brief at 21-22.

[117] PacifiCorp's Opening Brief at 77.


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1 Commission, so that the Commission can then better consider next actions and appropriate
2 venues. Waiting for the MSP process would serve no purpose other than delay.

3 *3. Staff's proposals to disallow all or part of cost overruns related to certain projects*
4 *are well supported and should be adopted.*

5 PacifiCorp's arguments against Staff's proposed disallowances for cost overruns at four
6 projects also fail to truly comprehend the rationale for the disallowances. Staff recognizes that
7 costs for construction will vary from estimates but expects the Company to be proactive to
8 manage the risk of costs not included in the original budget. Staff believes that PacifiCorp has
9 more accountability for the costs of the projects than it appears to require for itself. The
10 Company could have been more proactive with respect to the projects at issue to manage the
11 costs. Accordingly, to the extent the Company failed to anticipate certain costs and mitigate
12 them, the Company should bear them, not ratepayers.

13 Further, PacifiCorp's suggestion that Staff's adjustments are based only on a comparison
14 of PacifiCorp's original budget for the projects and actual costs, PacifiCorp is mistaken. In its
15 Opening Brief, PacifiCorp states that "[f]or its Threemile Canyon Farms adjustment, Staff
16 simply compared a preliminary estimate that was prepared with a +/- 50 percent accuracy to the
17 actual costs based on competitive bids."[118] This is not correct. Staff's adjustment is based on
18 information regarding the construction of the project gleaned through discovery. Staff Exhibit
19 1405 includes the following information regarding the Threemile Canyon Farm project:

20 **[BEGIN CONFIDENTIAL]**
21
22
23 **[END**
24 **CONFIDENTIAL]**[119]
25
26

[118] PacifiCorp's Opening Brief at 80.

[119] Staff/2100, Hanhan-Rashid-Muldoon/20; Staff/1405 and 2105 (Confidential).


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Notably, Staff's adjustment does not disallow the entire amount identified in this Change Order, only a portion. Staff does not believe it is appropriate ratepayers should bear the entire amount of costs related to **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL].**

Similarly, Staff's adjustment for the Wallula to McNary Project does not encompass the entire amount of cost increases experienced during the project, only an amount representing what Staff believes the Company should have anticipated and minimized. PacifiCorp stated that the actual costs for the project changed from the budgeted amounts were several and included,

> **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL].**[120]

For the Vantage to Pomona Heights project, Staff recommends capping PacifiCorp's cost recovery at the original budgeted amount plus a 10 percent contingency. **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**[121] Staff's proposal to require PacifiCorp to absorb part of the costs of the Vantage to Pomona Heights project is intended to incent PacifiCorp to proactively manage its project costs.

/ / /

[120] Staff/2100, Hanhan-Rashid-Muldoon/27-28; Staff/1405 (Confidential).

[121] Staff/2100, Hanhan-Rashid-Muldoon/29-30.


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**(E) Annual Power Cost Adjustment Mechanism.**

PacifiCorp argues that significant changes in Northwest power production and supply necessitate abandonment of its current power cost recovery structure – an annual forecast in the Transition Adjustment Mechanism (TAM) and an annual true-up in the Power Cost Adjustment Mechanism (PCAM) – in favor of a single annual mechanism: the Annual Power Cost Adjustment (APCA).[122] This mechanism would retain an annual forecast using, currently the Company's Generation and Regulation Initiative Decision (GRID) model, and a true-up for the prior year in a single filing.[123] The biggest issue among the parties being the APCA's elimination of customer protections contained in PacifiCorp's current PCAM, which include deadbands, sharing bands and an earnings test.

PacifiCorp argues that the current PCAM structure "is premised on a series of assumptions that are not well suited for [Net Power Cost] recovery and [are] not consistent with 'the many complex policy initiatives that Oregon is pursuing or considering for the upcoming several years.'"[124] The Company attempts to discredit the PCAM by noting that it was initially created for PGE between 2005 and 2008, based on a time where renewables were a much smaller portion of the Western energy market and PacifiCorp's portfolio, changes in weather were less extreme, and system balancing transactions were less significant.[125] The culmination of these factors, PacifiCorp argues, result in a NPC recovery mechanism that does not allow the Company to recover its prudently incurred costs and creates a disincentive for increased investment in renewables.[126] The basis for PacifiCorp's APCA proposal is that it must have a fair opportunity to recover prudently incurred costs, which is impossible with the customer protections in the PCAM.[127] As discussed in Staff's Prehearing Brief, PacifiCorp's proposal is

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[122] PacifiCorp's Opening Brief at 23.

[123] PacifiCorp's Opening Brief at 24.

[124] PacifiCorp's Opening Brief at 24 (internal citations omitted).

[125] PacifiCorp's Opening Brief at 25.

[126] *Id.*

[127] PacifiCorp's Opening Brief at 26-27.


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1 counter to long-established, sound ratemaking policy and lacks support from empirical
2 evidence.[128]
3 First, PacifiCorp's position that it does not currently have a fair opportunity to recover
4 prudently incurred costs is based in part on its misinterpretation of the Commission's rationale
5 for adopting the current PCAM structure. In its Prehearing Brief, the Company argues that the
6 Commission's intent was that deviations from annual NPC forecasts would offset each other
7 over time as evidenced by its discussion in Order No. 12-493.[129] There is no discussion in the
8 referenced Commission order that supports this statement. However, in Order No. 15-408, the
9 Commission commented that *forecast* errors for all generation resources, including intermittent
10 resources, "should balance out over time and that if there was a persistent forecast error in one
11 direction, the solution is to refine models and improve forecasting model inputs, not to adopt
12 different ratemaking treatment outside the PCAM for one component of net variable power
13 costs."[130] Additionally, the arguments raised in this case are strikingly similar to those raised in
14 OPUC Docket No. UM 1662, and subsequently dismissed by the Commission.[131]
15 Second, PacifiCorp has not demonstrated that it cannot make modeling changes to
16 improve its GRID NPC forecast.[132] Further, PacifiCorp cannot definitively demonstrate at this
17 time that the soon-to-be-utilized AURORA model would be incapable of reasonably forecasting
18 annual NPC.[133] Given that the AURORA model will be used imminently to forecast
19 PacifiCorp's NPC, stakeholders and the Commission should have the opportunity to review the
20 model, once adopted by PacifiCorp, prior to making preemptive changes.
21

22 [128] Staff's Prehearing Brief at 29-30.
23 [129] PacifiCorp's Prehearing Brief at 18; *In re PacifiCorp*, OPUC Docket No. UE 246, Order No. 12-493 (Dec. 20, 2012).
24 [130] *In re Portland General Electric Co. and PacifiCorp*, OPUC Docket No. UM 1662, Order No. 15-408 at 7 (Dec. 18, 2015).
25 [131] Staff's Prehearing Brief at 30-31.
26 [132] Staff's Prehearing Brief at 31-32.
[133] *Id*.


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1 Third, PacifiCorp has provided no empirical evidence supporting its argument that
2 reliance on intermittent renewable energy means that the Company inevitably experiences a large
3 volume of balancing costs to account for real-time deviations from forecasts.[134]
4 Fourth, PacifiCorp's argument that the PCAM's current structure incents investment in
5 "highly predictable generation" rather than pursuing "dynamic resource plans and operational
6 activities[135] is unsupported by evidence, and is contradicted by the Company's recent, significant
7 investment in its Energy Vision 2020 new and repowered wind resources. For those projects, the
8 impetus was economic opportunity rather than near-term resource need, compliance with a legal
9 requirement or the Governor's EO 20-04,[136] despite the "disincentives" of the PCAM to pursue
10 more "predictable" generation. In fact, the Company went forward with the projects on notice
11 that the Commission would likely adopt customer protections that ensured benefits would inure
12 to ratepayers, and apparently still found the risks to be outweighed by financial benefits.[137]
13 Finally, despite PacifiCorp's claims to the contrary,[138] the APCA would dilute customer
14 benefits negotiated in the 2020 TAM settlement by allowing actual wind generation to flow
15 through the true-up portion of the mechanism, rather than holding them fixed consistent with the
16 NPC forecast. Should the Commission adopt PacifiCorp's proposed APCA in this case, it should
17 direct PacifiCorp to use the forecast wind capacity factors in the true-up portion of the APCA so
18 that customers are ensured the full benefits of the EV 2020 wind projects.[139]
19 **(F) Emissions Control Investments.**
20 <u>Jim Bridger Units 3 and 4</u>
21
22
23 [134] Staff's Prehearing Brief at 33.
24 [135] PacifiCorp's Opening Brief at 25.
[136] *In re PacifiCorp*, OPUC Docket No. LC 67, Order No. 18-138 at 7-10 (Apr. 27, 2018).
25 [137] *Id.* at 7-9.
26 [138] PacifiCorp's Opening Brief at 30-31.
[139] Staff's Prehearing Brief at 35-36.


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1 PacifiCorp argues that it made the prudent and necessary decision to install Selective
2 Catalytic Reduction (SCR) systems on Jim Bridger Units 3 and 4 in November 2015 and
3 November 2016, respectively.[140] The Company argues that its economic analysis was sound,
4 and that its actions were necessary in order to comply with applicable regional haze
5 requirements.

6 As PacifiCorp acknowledges, the prudence of a utility's investment decisions "is
7 measured from the point of time of the utility's actions and decisions without the advantage of
8 hindsight, that the standard does not require optimal results, and the review uses an objective
9 standard of reasonableness."[141] The Commission also considers the utility's decision-making
10 process when considering whether a utility's decision was prudent, finding that it is "highly
11 valuable in determining whether a utility's actions were reasonable and prudent in light of the
12 circumstances which then existed."[142]

13 Staff, CUB, AWEC and Sierra Club all take issue with the Company's analysis in support
14 of its decision to move forward with the Bridger SCRs. Because the Company's analysis and
15 decision-making process were lacking, Staff recommends the Commission impose a 10 percent
16 management disallowance to the Oregon-allocated gross-book value, equal to approximately
17 **[BEGIN CONFIDENTIAL]** ████████ **[ END CONFIDENTIAL]** or in the alternative, to
18 allow the full Oregon-allocated undepreciated cost of the investment into rates, but not allow the
19 Company to earn a rate of return on its **[BEGIN CONFIDENTIAL]** ████████ **[END**
20 **CONFIDENTIAL]** investment.[143] Additionally, Staff recommends the Commission direct
21 PacifiCorp to use the Oregon depreciable life for Jim Bridger (2025) when calculating the
22 remaining balance subject to rate recovery in Oregon.[144]
23

24 [140] PAC/800, Teply/32.
25 [141] PacifiCorp's Opening Brief at 36, citing to Order No. 12-493 at 31.
[142] PacifiCorp's Opening Brief at 26.
26 [143] Staff's Prehearing Brief at 15.
[144] *Id*.


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1 PacifiCorp argues that its decision to install SCRs at Jim Bridger Units 3 and 4 was
2 prudent because SCRs were the best compliance option for customers.[145] PacifiCorp relies on
3 the fact that prior to executing the Engineering, Procurement and Construction (EPC) contract in
4 May 2013, it conducted extensive economic analysis that considered the lead time necessary to
5 meet compliance obligations and construction during planned outages (reducing compliance
6 costs), and after extensive litigation and negotiation with environmental regulators.[146]
7 PacifiCorp's 2012 analysis utilized the System Optimizer (SO) Model, which the Company used
8 to analyze various compliance options with sensitivities around gas prices and carbon prices.[147]
9 The Company then updated its 2012 analysis in January 2013 using its long-term fueling plan for
10 Jim Bridger, resulting in confirmation that the SCRs remained the least-cost option for
11 customers.[148]
12 Staff concludes that the Company's decision to move forward with the SCRs was
13 ultimately prudent as a compliance measure to meet state and federal regulations, measured from
14 the time the Company issued the FNTP in December 2013.[149] However, the Company's decision
15 was based on inadequate analysis as PacifiCorp did not explore a sufficient number of alternative
16 courses of action both in compliance actions and in timing, and the Company failed to perform
17 appropriate analysis to determine the cost-effectiveness of the investments.[150] Specifically,
18 Staff's review revealed that the Company did not consider transmission benefits associated with
19 retiring Jim Bridger Units 3 and 4,[151] did not consider a sufficient number of alternatives,[152] did
20 not undertake additional analysis accounting for the decrease in natural gas prices between the
21
22 [145] PacifiCorp's Opening Brief at 37-38.
[146] PacifiCorp's Opening Brief at 27-38.
23 [147] PacifiCorp's Opening Brief at 38.
24 [148] PacifiCorp's Opening Brief at 39.
25 [149] Staff's Prehearing Brief at 37.
[150] Staff/700, Soldavini/24.
26 [151] Staff/2300, Soldavini/13.
[152] Staff/2300, Soldavini/14.


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1 time it issued the Limited Notice to Proceed (LNTP) and the FNTP and relied on a potentially
2 over-simplified breakeven analysis for an investment of this magnitude.[153]
3 While Staff finds the Company's action was reasonable as a compliance measure for state
4 and federal regulation, Staff also finds that the Company's decision-making process put
5 customers at risk, and a disallowance is therefore appropriate. Any disallowance should be equal
6 to the amount of the unreasonable investment, to the extent possible to identify.[154] Though some
7 parties argue for a full disallowance, Staff's recommended disallowance accounts for the fact
8 that a prudence disallowance should account for the fact that some type of action was likely to be
9 required. PacifiCorp's analysis is insufficient to show that the installation of SCRs was the least
10 cost option, but also does not sufficiently detail replacement costs as additional analysis was not
11 performed at the time of the investments in question.
12 PacifiCorp also argues that Oregon customers "have already received the benefits of
13 investments in NPC for many years at no cost, due to the Company's long rate case stay-out."[155]
14 However, in general rate cases the Commission approves a revenue requirement and does not
15 track dollars between rate cases. Because the Company's earnings were apparently within a
16 reasonable range, with some costs increasing and some decreasing over time, and with
17 depreciation accumulating on plant included in rate base beyond the amount assumed in rates, it
18 is not accurate to state that customers have received the benefits "at no cost." Second, it is
19 unclear what PacifiCorp means by "benefits" in this instance. Installing SCRs at coal units
20 affects their performance and, generally, increases NVPC through an increase in the unit's
21 minimum operating levels.[156] For at least some years since their installation, the NPC effects of
22 the Jim Bridger SCRs have been explicitly excluded from TAM rates.[157] For those years, NPC
23
24 [153] Staff/2300, Soldavini/27.
25 [154] Order No. 12-493 at 31.
26 [155] PacifiCorp's Opening Brief at 37.

[156] UE 323 - PAC/100, Wilding/13.

[157] UE 307 - PAC/403, Dickman/1; UE 323 - PAC/400, Wilding/10; UE 339 - PAC/100, Wilding/14; UE 356 - PAC/100, Wilding/16.


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1 actually decreased because minimum operating levels were not affected in the modeling of TAM
2 rates, but this cannot be said to be because of the SCR installations. Additionally, this argument
3 is only potentially relevant to PacifiCorp's investments at Jim Bridger. Staff is unaware of any
4 challenges to the incorporation of minimum operational levels at Hayden, Hunter, or Craig as a
5 result of the environmental compliance investments in any TAM since their installation,
6 therefore Staff is unsure what the Company could perceive as NPC benefits in these instances,
7 given that for these other plants, NPC may be higher due to the installation of emissions control
8 investments.

9 Oregon-Allocated Costs for Prudent Plant

10 For the emissions control investments subject to cost recovery in this case, Staff finds
11 that an adjustment should be made to Oregon's allocated net book value to comport with the
12 Oregon depreciable life of the plant.[158] For the Craig Unit 2 SCR, Staff again proposes that the
13 Oregon-allocated amount be adjusted to reflect the Oregon life of the asset, rather than the
14 extended life.[159]

15 PacifiCorp argues that is "accurately applied the Commission-approved depreciation rate
16 to the Company's generating plant investments"[160] because ORS 757.140 dictates that the
17 Company depreciate assets using rates of depreciation approved by the Commission, and that
18 due to the fact that the Company utilizes group depreciation, the assets must depreciate at the
19 approved percentage rate.[161]

20 Staff has not argued that PacifiCorp is generally applying incorrect depreciation rates, nor
21 has it asserted that the Company does not utilize group depreciation rates for plant additions.
22 Staff is arguing that the Company's proposed ratemaking treatment of its environmental
23 compliance investments inherently assumes that the useful life of the affected coal units extends

24
25
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[158] Staff's Prehearing Brief at 38-39.
[159] Staff/2300, Soldavini/83-84.
[160] PacifiCorp's Opening Brief at 59.
[161] PacifiCorp's Opening Brief at 59.


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beyond the useful life that the Commission has determined for Oregon. Using the SCRs at Jim Bridger Units 3 and 4 as an example, the Company's addition of SCRs with a 20-year useful life implies a useful life for Jim Bridger of 2035. However, the Commission rejected the extension of the depreciable life for Jim Bridger in Order No. 08-327, and reiterated that the depreciable life for Jim Bridger was to remain 2025. Therefore, adding plant and assuming a depreciable life in Oregon of 2035 for a coal plant that has a depreciable life of 2025 ignores the Commission's decision in Order No. 08-327.

PacifiCorp acknowledges that "[w]hile the intent under this approach [group depreciation] is for an asset to be fully depreciated by its end of life, it is possible for a residual unrecovered net book value to remain upon retirement due to timing of additions, depreciation studies, and other factors."[162] Though this may be true, in this case, PacifiCorp's assumption that the SCRs extend the useful life of Jim Bridger means that under PacifiCorp's proposed treatment, the SCRs would not be fully depreciated until 2035.[163] This results in Oregon ratepayers paying for the SCRs at Jim Bridger for 10 years longer than the coal plant's Oregon end of life. This is not the result of minor timing issues as the Company implies, but an assumption that is intended to reduce the amount subject to regulatory lag, which Staff finds wholly inconsistent with standard ratemaking in Oregon.

Therefore, Staff recommends the Commission have the plant associated with the Company's environmental compliance investments depreciate according to each coal plant's Oregon depreciable lives and subject to the used and useful principle. Again, taking Jim Bridger as an example, the SCRs will only be used and useful in Oregon from the time of their installation in 2015 and 2016 through 2025, meaning the amount subject to regulatory lag will be approximately 50 percent as of the requested rate effective date in this proceeding, as opposed to approximately 25 percent as proposed by PacifiCorp.[164] The effect of this recommendation, is a

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[162] PAC/4499, McCoy/17.

[163] Staff/2300, Soldavini/55.

[164] Staff/2300, Soldavini/57.


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reduction to Oregon's net book allocation of **[BEGIN CONFIDENTIAL]** ██████ **[END CONFIDENTIAL]**.[165]

Staff recognizes, and agrees with CUB, that even this adjustment is not perfect in that it asks Oregon to pay for 20 years of the investment over a 10 year period,[166] and an argument could be made that Oregon's share of the investment should be further reduced to account for the fact that the SCRs extend the useful life to the benefit of PacifiCorp's other state jurisdictions.

**(G) Compensation.**

*1. Staff recommends the Commission accept the results of Staff's Three-Year Wage and Salary Model.*

Staff recommends a $5.9 million downward adjustment to PacifiCorp's Test Year expense for wages and salaries and a $3.39 million decrease to wages and salaries included in PacifiCorp's rate base, which combined reduce PacifiCorp's revenue requirement by approximately $6.407 million. PacifiCorp takes issue with Staff's use of its Three-Year Wage and Salary Model to determine Staff's recommended wages and salaries for PacifiCorp's Test Year. PacifiCorp argues its own estimate for non-union wages based on actual base period data escalated with a wage- and utility-specific benchmarking study provides more reliable results that Staff's model, which escalates with the All-Urban CPI.[167] PacifiCorp argues its determination of union wages is more accurate than Staff's because PacifiCorp escalated wages of each union separately by the percentage increases applicable to each union to arrive at the total wages whereas Staff escalated union wages based on an average of all the unions' wage increases.

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[165] Staff/2300, Soldavini/56.

[166] CUB/400, Jenks/57.

[167] PacifiCorp's Opening Brief at 86.


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1 PacifiCorp supports use of its own estimates of Test Year expense for wages and salaries
2 by noting that the Commission has modified the Staff Three-Year Model if there is evidence the
3 modification would provide more reliable estimates.[168]

4 PacifiCorp's assertion the Commission has modified Staff's Three-Year Model to obtain
5 more reliable results is true – the Commission did so in 2001 by adopting Staff's
6 recommendation to substitute a Two-Year Model for the Three-Year Model given that the using
7 three years would incorporate data from a year that "was not stable year for treatment of wages
8 and salaries."[169] However, Staff is not aware of the Commission substituting an entirely
9 different method as PacifiCorp proposes in this case.

10 PacifiCorp's concern that Staff's estimate does not adequately capture market data has
11 been rejected by the Commission. The Commission explained why it relies on the Three-Year
12 Wage and Salary Model in a 1999 order in NW Natural Gas Company's General Rate Case
13 (GRC). The Commission explained it has relied on the Three-Year Model for several years for
14 non-union wages because it incorporates actual market-based data by using actual historic wages
15 as a starting point, but also ensures the utilities are incented to minimize labor costs by using the
16 All Urban CPI to escalate historic wages to the Test Year.[170] The Commission also declared that
17 local economic conditions are captured by the All-Urban CPI as Oregon prices are included in
18 the Bureau of Labor Statistics survey.[171] In addition, the Commission noted that the sharing
19 required by the model of the difference between payroll projections between ratepayers and
20 shareholders also allows the utility "some ability to increase wages above the rate of inflation in
21 response to changes in market conditions without allowing unchecked escalation."[172]

22

23 [168] *Id.*

24 [169] Order No. 01-787 at 40.

25 [170] *In re Northwest Natural Gas Company*, OPUC Docket No. UG 132, Order No. 99-697 at 43 (Nov. 12, 1999).

26 [171] *Id.*

[172] *Id.*


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Similarly, when PGE faulted Staff in PGE's 1995 GRC for not using a market-based model, one which also used annual surveys from multiple sources to determine competitive base pay, the Commission found "the three-year wage and salary formula more reasonable than PGE's approach."[173] In 2001, the Commission rejected PacifiCorp's objections to the model and expressly approved use of a consumer-price index to escalate the Base Year wages and the sharing between the Model's forecast and the Company forecast.[174] In 2009, the Commission rejected PGE's objections to use of the All-Urban CPI to inflate non-union wages to arrive the Test Year forecast.[175]

PacifiCorp does not explain why its own study is more reliable than the model on which the Commission has relied on for years or address whether the benchmarking study would also meet the Commission's goal of preventing unchecked escalation and incenting utilities to minimize labor costs. Furthermore, PacifiCorp's estimate impacted Staff's final recommendations. The final step of the Three Year Model is the sharing step, where the Staff adjusts its estimate by the lesser of 50 percent of the difference between the Company's and Staff's projections, or of a 10 percent band around Staff's calculated projection, Staff increased its estimate by half of the variance between the two estimates. Including half the variance takes into account the results of the benchmarking study while achieving the Commission's goals of minimizing labor costs.

For its union wages, PacifiCorp objects to the fact Staff used an average of the various unions' rate increases to escalate union wages rather than escalating the wages of each union separately. And, PacifiCorp takes issue with Staff's proposal to split the difference between PacifiCorp's estimate and the Staff's estimate to arrive at the Test Year amount of union wages. PacifiCorp's objections are not well taken.

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[173] *See In re Portland General Electric*, OPUC Docket No. UE 88, Order No. 95-322 at 10 (March 29, 1995).

[174] Order No. 01-787 at 40.

[175] *In re Portland General Electric Company*, UE 197, Order No. 90-020 at 9-10. (Jan. 22, 2009).


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Staff asked PacifiCorp to provide information showing the negotiated union wage increases for Oregon. The Company responded that it did not "maintain wages and full time equivalent information by employee groups such as (NEO, Exempt, Non-Exempt, Non-Union and Union)" and acknowledged "costs associated with wages, salaries and payroll taxes are charged to numerous accounts and to acquire such data on an Oregon basis would result in copious time."[176] When Staff asked for union contracts for Oregon unions, Company responded that also was not possible since "labor costs are system allocated" and responded with information for all PacifiCorp unions, not just those that represent Oregon-based employees.[177] Finally, when Staff asked for Oregon union increases per year for 2017 through 2020, the Company maintained it could not do so and again provided information for all PacifiCorp unions. In preparation for its rebuttal testimony, Staff asked once again for union increases for Oregon jurisdiction and PacifiCorp failed to provide the information.[178] Staff's adjustment was therefore based on the calendar year average of the nine included unions.[179]

PacifiCorp's objection to Staff's proposal to use an estimate of union wages that splits the difference between Staff's and PacifiCorp's estimates reflects PacifiCorp's failure to understand how the Staff Three-Year Wage and Salary Model works. The final step in the Model is to compare Staff's estimate based on Base Year wages escalated to the Test Year to the Company's proposed Test Year wages. Because of the sharing principle, half of the difference between the Staff estimate and Company estimate was reduced. That is, an initial difference of $1.3 million in Union wages was lowered to $648 thousand (Total Company), to the Company's benefit. As noted in Order No. 99-697, this step is an additional opportunity to incorporate current market conditions into the Test Year Wages and Salaries.[180]

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[176] Staff/2500, Cohen/4-5.

[177] Staff/2500, Cohen/5.

[178] *Id.*

[179] *Id.*

[180] Order No. 99-697 at 43. ("Staffs method of sharing the difference between payroll projections equally between ratepayers and shareholders also allows NW Natural some ability to


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1 In fact, the difference between the Company's estimate and Staff's has been made even
2 smaller by a mistake in calculation the Company has admitted to. The Company admitted in its
3 own testimony to "mistakenly using incorrect percentages for the increases for the IBEW 57
4 union groups" and included a correction which reduced its Oregon-allocated amounts by $875
5 thousand.[181] When compared to Staff's adjustment of $184 thousand for Overtime and $1.1
6 million for Wages, the Company's own reduction amounts to two/thirds of Staff's adjustment for
7 Union wages and Overtime.[182]

8 **Table 3.**

9–15

| | Total Company | | Oregon (28.3%) | |
|---|---|---|---|---|
| | Wages and Salary Test Year | OT Test Year | Wages and Salary Test Year | OT Test Year |
| Union | 239,912,359 | 81,796,192 | 67,895,198 | 23,148,322 |
| | | | | |
| Staff Adjustment | 648,469 | 4,026,521 | 184,003 | 1,142,525 |
| | | | | |
| Adjustment as % of Test Year | | | 0.271% | 4.936% |

16

17 *2. The Commission should accept Staff's recommended adjustments to PacifiCorp's at-risk pay.*

18

19 The Company seeks full recovery of $9.5 million of pay-at-risk (its Annual Incentive
20 Plan ("AIP)) on an Oregon jurisdictional basis. Staff recommends disallowing 100 percent of
21 officer incentives and 50 percent of non-officer incentives, resulting in reductions in the
22 Company's Oregon test year incentives of ($4.7) million, allocated as ($3 million) O&M and
23
24

25 increase wages above the rate of inflation in response to changes in market conditions without allowing unchecked escalation."

26 [181] PAC/3100, McCoy/20.

[182] Staff/2500, Cohen/6.


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1 ($1.7 million) capital.[183] As explained in testimony, Staff's adjustments are based on

2 Commission precedent.[184]

3 PacifiCorp objects to Staff's adjustments, relying primarily on the argument its pay-at-

4 risk for all employees including named executives is "based on the same six customer benefit

5 goals" that ultimately benefit ratepayers.[185] PacifiCorp also asserts that Staff's adjustments will

6 result in below-market compensation.

7 PacifiCorp's argument that adjustments to pay-at-risk will result in below-market

8 compensation fails to apprehend the purpose of the adjustment. The adjustment does not require

9 that the utility decline to provide pay-at-risk. The purpose is to share the cost of such pay with

10 shareholders given that both shareholders and ratepayers may benefit from the program.

11 Similarly, PacifiCorp's argument its AIP benefits ratepayers and ratepayers should therefore bear

12 the cost also fails to apprehend that the purpose of Staff's adjustment is not to require

13 shareholders to bear all the costs of AIP but to require that they bear an appropriate share.

14 PacifiCorp also argues that Staff's adjustment does not make sense because it disallows

15 100 percent of executives' AIP, 75 percent of an unidentified amount of non-officer's AIP, and

16 50 percent of the remaining non-officer AIP, whereas all its incentive compensation is based on

17 the same six customer benefit goals: (1) customer service; (2) employee commitment; (3)

18 environmental respect; (4) regulatory integrity; (5) operational excellence; and (6) financial

19 strength. PacifiCorp's belief that Staff adjusted non-officer AIP using both a 75 company/25

20 ratepayer sharing and 50 company/50 ratepayer sharing is mistaken. Staff determined its

21 adjustment based on a 50/50 sharing between shareholders and ratepayers of non-officers' AIP.

22

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23 [183] Staff/2500, Cohen/12.

24 [184] See e.g., *In re Portland General Electric Company*, OPUC Docket No. UE 102, Order No. 99-033 at 43-44 (Jan. 27, 1999) (Removing 100 percent of officers' incentive pay and 50 percent

25 of non-officer incentive pay); Order No. 09-020 at 13 ("We agree with Staff, ICNU, and CUB that ratepayers benefit only in part from non-officer incentives. Accordingly, we conclude that

26 an allowance of 50 percent of such costs into the revenue requirement is a fair approximation of the benefit to ratepayers.").

[185] PacifiCorp's Opening Brief at 88.


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1 Any argument that the six goals underlying PacifiCorp's AIP do not benefit shareholders at least
2 as much as ratepayers is absurd.
3 Further, PacifiCorp's assertion that the Commission should reject Staff's disallowance of
4 100 percent of executives AIP because they are also based on the six goals listed is not supported
5 in the record. In its 2019 10-K, PacifiCorp reports "[u]nder PacifiCorp's Annual Incentive Plan,
6 or AIP, all [Named Executive Officers] other than the Chairman and CEO, are eligible to earn an
7 annual discretionary cash incentive award, which is determined on a subjective basis at the
8 Chairman and CEO's sole discretion and is not based on a specific formula or cap. The
9 Chairman and CEO considers a variety of factors in determining each NEO's annual incentive
10 award including the NEO's performance, PacifiCorp's overall performance and each NEO's
11 contribution to that overall performance."[186] While the six listed goals may play a role in the
12 evaluation, this is not sufficient for the Commission to depart from its precedent of disallowing
13 100 percent of officer incentives given their nexus to financial performance.

14 **(H) Attestations for Capital Projects other than EV 2020 Wind and Transmission.**

15 In its Opening Brief, PacifiCorp fails to address Staff's proposed requirement for
16 attestations for non-wind, non-transmission plant in excess of $1 million that is anticipated to
17 close subsequent to the hearing in this proceeding. Similarly, the Company does not address
18 Staff's recommendation for officer attestations for Klamath hydroelectric investments that are
19 slated to be complete in November and December of 2020, in order to ensure they are used and
20 useful prior to inclusion in rates on January 1, 2021. Attestations help to alleviate concerns that
21 material changes in the scope of projects, after the close of the evidentiary record in the case,
22 would lead to plant assumed in rates that is not used and useful, and to ensure that costs have not
23 exceeded projections.[187] Staff appreciates PacifiCorp's agreement for officer attestations, but
24 continues to disagree that the threshold should be applied to projects greater than $5 million, as
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26 [186] Staff/3300, Cross-Exhibit/5, fn 1.
[187] Staff's Prehearing Brief at 44-45.


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opposed to the $1 million threshold advocated by Staff. Staff is unpersuaded that the relatively low dollar impact to Oregon customers is a relevant basis to remove customer protections that ensure rates are reflective of prudent, used and useful plant that has been reviewed in this case. A threshold of $1 million dollars for non-wind, non-transmission plant, and for the $540 thousand in Klamath hydroelectric facilities strikes an appropriate balance between customers interests and burden to the Company, and should be adopted in this case. This amounts to attestations for a total of 19 projects.

/ / /

**(I) Pension Settlement Losses.**

PacifiCorp continues to advocate for the inclusion of projected pension settlement losses in base rates, which it argues are "costs associated with administering employee pensions."[188] Alternatively, PacifiCorp suggests that the Commission could reconsider its decision to deny a deferral or balancing account for prospective pension costs, including settlement costs.[189]

Staff continues to find, in accordance with the Commission's decision in UM 1633, that these costs are not subject to true-up and that the Company's request in this case is one-sided.[190]

PacifiCorp criticizes Staff for objecting to both its previous deferral request and now a forecast of settlement losses in the Test Year in this case.[191] It argues that Staff both misunderstands Commission precedent in UM 1633 and ignores that the Commission denied PacifiCorp's UM 1992 deferral request because they were capable of being forecast.[192] In OPUC Docket No. UM 1633, the Commission investigated the ratemaking treatment of pension-related costs and to determine policy for how utilities should recover these costs on a going

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[188] PacifiCorp's Opening Brief at 89.
[189] PacifiCorp's Opening Brief at 91.
[190] Staff's Prehearing Brief at 47-48.
[191] PacifiCorp's Opening Brief at 89-90.
[192] PacifiCorp's Opening Brief at 90.


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forward basis.[193] Although the impetus for the docket was cost recovery related to costs incurred by utilities to finance the required contributions to their pension plans,[194] the Commission concluded that "FAS 87 has been used successfully for almost 30 years as part of th[e] Commission's overall ratemaking formula to appropriately balance the interests of the utilities and customers and establish overall rates that were just and reasonable."[195]

Regarding the Commission's decision in UM 1992, the issue in that case was whether the costs at issue met the criteria for deferral. To infer from that decision that simply because a cost is forecastable means that it is automatically subject to rate recovery in a general rate case proceeding is inappropriate. Costs subject to rate recovery in a general rate case must be reasonable and consistent with Commission policy. In this case, Commission policy dictates that pension-related costs are recovered via FAS 87 expense in base rates.

In UM 1633, the Commission also noted concerns with the utilities proposed approach—concerns that are also present in this case. Namely, that the requested policy change appears opportunistic and does not fairly reflect the history of pension recovery under FAS 87.[196] PacifiCorp fails to address the fact that a deferral or balancing account is unbalanced and inequitable at this point in pension cost recovery, particularly because the plan is frozen.[197] Since its last general rate case proceeding, PacifiCorp has collected more in rates based on FAS 87 than its actual pension expense,[198] and has not sought to defer or otherwise pass back to curtailment gains between general rate cases, or to include them in its forecast in past general

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[193] *In re Public Utility Comm'n of Oregon*, OPUC Docket No. UM 1633, Order No. 15-226 at 1 (Aug. 3, 2015).

[194] *Id.* at 1.

[195] Order No. 15-226 at 10.

[196] Order No. 15-226 at 9.

[197] Staff's Prehearing Brief at 48.

[198] Staff/1000, Fox/28.


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rate cases.[199] The Commission should affirm its long-standing policy of including net periodic benefit cost (FAS 87) in base rates as the mechanism to recover pension-related costs.

**(J) Cholla 4 Undepreciated Investment, Tax Cuts & Jobs Act Deferred Amounts.**

Staff, CUB and AWEC support the buy-down of Cholla Unit 4's undepreciated plant balance and closure costs using the TCJA benefits. Staff's position is subject to PacifiCorp's clarification that the Commission retains the ability to review the prudence of the Company's costs and that these costs will be trued-up.[200] Additionally, Staff supports the amortization of the remaining tax balance - $13.3 million – over two years.

If the Commission does not approve the buy-down of Cholla Unit 4, then Staff and PacifiCorp remain at odds for the ratemaking treatment of Cholla Unit 4, and for the removal of future coal-fired generating resources from rates once they are no longer allocated benefits to Oregon customers. Staff continues to recommend that the Commission approve a regulatory asset for unrecovered costs of Cholla Unit 4 to be amortized over four years at the time value of money, consistent with prior Commission precedent and Oregon case law.[201]

Recovery through PacifiCorp's proposed GPRA would keep Cholla Unit 4 in rate base with an off-setting credit to customers equal to the amount included in revenue requirement once remaining costs have been recovered.[202] This is unlawful. Oregon courts have long held that utility property not presently used in the provision of utility service cannot recovered in rates through rate base.[203] Cholla Unit 4 will no longer be used and useful in providing utility service as of January 1, 2021, the rate-effective date in this case. As such, the Commission is prohibited from approving rates that include Cholla 4 in PacifiCorp's rate base, even as a means to amortize undepreciated plant balance and closure costs.

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[199] Staff/1800, Fox/17.

[200] PacifiCorp's Opening Brief at 61.

[201] Staff's Prehearing Brief at 51.

[202] PacifiCorp's Opening Brief at 62.

[203] *See e.g. Citizens' Utility Board of Oregon v. Public Utility Comm'n of Oregon*, 154 Or App 702 (1998).


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Furthermore, ORS 757.140(2) prevents a utility from earning a return *on* plant that is not presently used in providing utility service.[204] So even if PacifiCorp's GPRA "function[s] like an automatic adjustment clause,"[205] its rates cannot include return on undepreciated plant at the Company's authorized rate of return. Rather, upon a finding that plant is retired in the public interest, as the Commission may do in this case, a utility is lawfully permitted to earn the time value of money on its investment.[206] The Oregon Supreme Court specifically found that a return on investment is distinct from interest.[207] A regulatory asset approach, if a buy-down is not possible, is consistent with Commission precedent and Oregon law.

**(K) Automatic Adjustment Clause cost recovery mechanism for coal-fired generation costs.**

Staff continues to recommend that the Commission adopt an Automatic Adjustment Clause (AAC) to recover costs for the Company's undepreciated plant balances for its coal-generating units, regardless of cost recovery for Cholla Unit 4. PacifiCorp opposes Staff's AAC approach, but offers no substantive testimony on the record as to why this approach is unnecessary or unsupported. Rather, the Company makes general statements that "adopting an alternative regulatory mechanism is unnecessary and inappropriate"[208] assuming the Commission approves the buy-down of Cholla Unit 4.

PacifiCorp's position on a cost recovery mechanism in this case is inconsistent and illogical. The Company argues that its proposed GPRA mechanism, which would be on-going in

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[204] *Id.* at 716.

[205] PacifiCorp's Opening Brief at 62. PacifiCorp does not elaborate on how the GPRA functions "like an automatic adjustment clause." ORS 757.210(1)(b) defines "automatic adjustment clause" as "a provision of a rate schedule that provides for rate increase or decreases or both, without prior hearing, reflecting increases or decreases or both in costs incurred, taxes paid to units of government or revenues earned by a utility and that is subject to review by the commission at least once every two years."

[206] *Gearhart*, 356 Or at 218.

[207] *Id.* at 219.

[208] PacifiCorp's Opening Brief at 63.


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nature, is appropriate if the Commission denies the buy-down of Cholla Unit 4.[209] But the Company then also states that an on-going cost recovery mechanism does not "need[] to be addressed in this already complex case."[210] At hearing, the Company testifies that there is time to develop such a mechanism.[211] And, inexplicably, the Company does not substantively address the merits of Staff's proposed AAC mechanism despite the fact that it would also be an on-going mechanism. Either this is the appropriate time to address an on-going mechanism for coal cost recovery, or it is not—this should not be contingent on the Commission's decision on Cholla Unit 4. The Company quashed its opportunity to provide testimony and evidence on Staff's proposed AAC in this case, and now seeks to make a cost recovery mechanism an issue for a future case. However, as the Company acknowledged at hearing, the 2020 Protocol contemplates that the results of an IRP or other proceeding can accelerate the closure of certain plants.[212] The Company provides no rationale for why the Commission cannot make a final determination on a mechanism in this case, which may benefit customers by avoiding sharper interim rate increases if closure timelines change, given that previous work-arounds, such as the buy-down of plant with deferred TCJA dollars, will have been exhausted.

**(L) Coal Exit Orders and Exit Dates.**

Staff is supportive of PacifiCorp's revised position to seek Exit Orders for Cholla Unit 4, Jim Bridger Units 1-4, Craig Units 1-2, Naughton Units 1-2, Colstrip Units 3-4 and Dave Johnston Units 1-4.[213] Staff also generally agrees that the Commission should deny Sierra Club's proposal to issue Exit Orders for all coal-fired facilities that are no later than the end of 2025.[214]

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[209] *Id.*

[210] *Id.*

[211] Sept. 9, 2020, Hearing Tr. at 155, line 20 to 156, line 23.

[212] Sept. 9, 2020, Hearing Tr. at 157, line 19 to 158, line 3.

[213] PacifiCorp's Opening Brief at 64-65.

[214] PacifiCorp's Opening Brief at 65-66.


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1 **(M) EV 2020 New Wind and Repowered Wind and Pryor Mountain Cost Recovery.**

2 PacifiCorp agrees with Staff's recommendation that the Commission approve rate
3 recovery for the Company's EV 2020 New Wind and Repowered Wind projects, as well as Pryor
4 Mountain, subject to the following conditions:

5 - Find PacifiCorp's decision to invest in each of the EV 2020 new wind and
6 repowered wind projects, and Pryor Mountain new wind project, prudent,
7 assuming the projects qualify for 100 percent of PTCs;
8 - Cap the investment for each project at the level specified in Staff's opening
9 testimony, which reflects amounts previously provided by PacifiCorp, for
10 purposes of this proceeding;
11 - Require signed declarations from a Vice President of either Pacific Power or
12 Rocky Mountain Power attesting to each new or repowered wind project having
13 been placed in service and in commercial operation prior to January 1, 2021, with
14 rates reflective of the investment effective on January 1, 2021 regardless of actual
15 in-service date; and
16 - For those projects with commercial online dates between January 1, 2021 and
17 June 30, 2021, allow rates to reflect the project following receipt of a signed
18 declaration from a Vice President of Pacific Power or Rocky Mountain Power that
19 the project is online and in commercial operation. For those projects with a
20 commercial online date after June 30, 2021, require PacifiCorp to confer with the
21 parties regarding their support for rate recovery.[215]

22 AWEC proposes to subject EV 2020 rate recovery to the following conditions: (1) a hard
23 cap on capital and O&M costs at the level assumed in the RFP bids; (2) a hard cap on costs for
24

25 [215] Staff's Prehearing Brief at 54-55; PacifiCorp's Opening Brief at 82-83. PacifiCorp's Opening Brief states that it agrees with Staff's proposal, and then summarizes some points of agreement.
26 Staff assumes that PacifiCorp understands and agrees that an attestation is necessary for each project coming online *before* January 1, 2021, as well as each project with a commercial operation date between January 1, 2021 and June 30, 2021.


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the D.2. segment of the Energy Gateway transmission project based on projections used in the RFP; (3) a guarantee of full PTC and energy benefits from the EV 2020 projects, regardless of the in-service date and regardless of delays resulting from contractors; and (4) a minimum capacity factor for each resource at the level modeled in the RFP bids.[216] Staff's Prehearing Brief concluded that AWEC's recommendations were either explicitly or effectively moot in this proceeding, given the Company's self-imposed cost caps for these projects for purposes of this proceeding,[217] PTCs are available at 100 percent in 2021,[218] and capacity factors have been settled in the TAM proceeding.[219] However, the Company's position on the energy benefits being settled in the TAM, but subject to true-up in the PCAM, has raised an additional issue as to whether customers receive the full benefits anticipated from the projects. Staff anticipates addressing this issue in the 2020 PCAM proceeding.

**(N) Investigation into PacifiCorp's Schedule 272.**

Staff's review of the Company's Schedule 272 illuminated a concern that its Schedule 272 may be a Voluntary Renewable Energy Tariff (VRET) – regardless of whether the underlying resource is utility-owned – because the RECs sold appear to meet the definition of a bundled REC.[220] Staff continues to recommend that the Commission open an investigation into PacifiCorp's Schedule 272 and, during the pendency of the investigation, direct PacifiCorp to refrain from entering into contracts with Schedule 272 customers that include supplying RECs from utility-owned resources.

PacifiCorp argues that Staff's proposal is unnecessary, as the Company "does not anticipate entering into another Schedule 272 agreement involving a utility-owned facility in the

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[216] AWEC/500, Kaufman/29.

[217] Staff/2000, Storm/12-13.

[218] Staff/2000, Storm/14.

[219] PAC/2000, Wilding/68. Staff notes that it raised concerned about the consistency of the Company's proposed APCA with the TAM settlement.

[220] Staff's Prehearing Brief at 48-50.


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foreseeable future"[221] and that an investigation is "an issue that has no near-term consequence to customers."[222] PacifiCorp's response again misses the point of Staff's recommendation, which is to ensure that the Company's Schedule 272, regardless of utility ownership, is not a VRET that should be subject to the Commission's VRET conditions.[223]

**(O) Miscellaneous O&M Expenses.**

*1. The Commission should reject PacifiCorp's attempt to update the Base Year with an additional six months of 2019 actuals in order to adjust Test Year Expenses.*

For several categories of O&M expenses, the Company's proposed Test Year expenses are developed based on an inappropriate update to the Base Year. The Commission has adopted Standard Data Requests (SDRs) that energy utilities must answer in the course of general rate case proceedings.[224] Within the definitions section of the SDRs, "Base Year" is defined as "the most recent *twelve-month period* of historical actual adjusted results of operations from which the Company's case will be built."[225] Staff's and other parties' review and analysis of the case relies on the Base Year in order to recommend adjustments. Continually updating the Base Year deprives Staff and other parties of the opportunity to review costs and develop a full evidentiary record based on those costs. As discussed in the sections below, the Company's selective attempts to update the Base Year, and subsequently the Test Year based on a rolling, 18-month Base Year, is inappropriate and should be rejected.

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[221] PacifiCorp's Prehearing Brief at 85-86.

[222] PacifiCorp's Prehearing Brief 86.

[223] Staff's Prehearing Brief at 50.

[224] Standard Data Requests (SDRs) are accessed at https://www.oregon.gov/puc/forms/Forms%20and%20Reports/RateFiling-StandardDataRequest.pdf.

[225] SDRs at 2.


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1 2. *The Commission should adopt Staff's recommended adjustments to PacifiCorp's insurance premiums forecast.*

2

3 PacifiCorp seeks to recover an increase in insurance premiums forecast to occur in the
4 Test Year, which equals $1.088 million on an Oregon-allocated basis.[226] Staff has been critical
5 of the Company's proposed increase, as PacifiCorp failed to provide additional evidence to
6 support the increase, which occurred in the Company's reply testimony in an attempt to
7 continually, and inappropriately, update Best Year expenses in order to adjust Test Year
8 expenses.[227] PacifiCorp's update of the Base Year to include actuals on a rolling basis, and
9 particularly on a selective basis, is contrary to Commission policy as discussed above. The
10 Company argues that it was incumbent on Staff to issue data requests for increased insurance
11 premiums.[228] PacifiCorp's criticism fails to account for the fact that PacifiCorp retains the
12 burden of proving that its requested increase for insurance premiums is reasonable and requires
13 evidentiary support. Because PacifiCorp has not provided evidence in the record as to the basis
14 for increased insurance premiums, even if accurately forecast, its proposed increase should be
15 denied.

16 Regarding the low claims bonus, PacifiCorp attempts to discredit Staff's proposed
17 adjustment as staff "double-counting" because the adjustment is included in the Company's
18 surrebuttal revenue requirement.[229] However, PacifiCorp's argument is unresponsive to Staff's
19 issue. Staff's concern is that it is not possible to verify PacifiCorp's assertion because the table
20 provided by PacifiCorp to demonstrate that the low claims insurance premium bonus was
21 included also reflects increased insurance premiums, which Staff opposes as discussed above.

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25 [226] PacifiCorp's Opening Brief at 97.
[227] Staff's Prehearing Brief at 55-56.
26 [228] PacifiCorp's Opening Brief at 97.
[229] PacifiCorp's Opening Brief at 97-98.


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1 *3. The Commission should adopt Staff's adjustments to Franchise Fees and the Oregon Department of Energy Supplier Fee.*
2
3 PacifiCorp proposes to calculate Test Year costs for franchise fees and the Oregon
4 Department of Energy (ODOE) based on the calendar years 2017 through 2019.[230] The
5 Company misunderstands Staff's position, which is not necessarily to use calendar years 2016
6 through 2018. Staff was willing to use a three year average from June 30, 2016 through June 30,
7 2019, which is consistent with the Company's Base Year in this case. However, PacifiCorp
8 again seeks to update its Base Year period mid-way through this case by seeking to use full 2019
9 calendar year data. Further, the Company's responses to Staff Data Requests 324 and 325
10 clearly indicate that it provided data from 2016 to 2018, and that calendar year 2019 data would
11 be provided after the completion of the 2019 Results of Operations. No such update was
12 provided to these responses.[231] Based on the evidence PacifiCorp actually provided pursuant to
13 discovery in this case, Staff calculated the Franchise Fee factor, using a three year average
14 methodology for the 2016 to 2018 period, to be 2.337 percent.[232] Staff calculated the appropriate
15 ODOE Supplier Fee factor to be 0.1271 percent.[233]
16 4. *The Commission should adopt Staff's recommended adjustments to Dues and Memberships.*
17
18 PacifiCorp objects to Staff's proposed ($34, 270) adjustment for dues, licenses,
19 memberships, and subscriptions, arguing Staff mistakenly based part of the adjustment on
20 system-related costs rather than Oregon-allocated and proposed an adjustment that is inconsistent
21 with Staff's treatment of dues for civic organizations in Cascade Natural Gas's (CNG) 2016
22 General Rate Case.[234] Staff recommends the Commission reject these arguments.
23
24 [230] PacifiCorp's Opening Brief at 98.
25 [231] Staff/305, Fjeldheim/1-2.
[232] Staff/300, Fjeldheim/13 at 9-20.
26 [233] Staff/300, Fjeldheim/15 at 9-17.
[234] PacifiCorp's Opening Brief at 98.


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1 First, Staff is unable to detect any adjustment that was inappropriately based on system
2 amounts. The adjustment Staff made for NERC certificates was actually approximately
3 ($4,700.00), not approximately ($15,000), as Ms. McCoy testifies.[235]
4 Second, Staff's adjustment removing 100 percent of dues for memberships to civic
5 organizations is appropriate, notwithstanding that Staff has made different recommendations in
6 past cases. In CNG's 1974 General Rate Case, the Commission adopted Staff's recommendation
7 to remove 50 percent of dues to Chambers of Commerce.[236] However, three years later in
8 CNG's 1977 GRC, the Commission adopted Staff's recommendation to disallow all fees paid by
9 utilities to local chambers. The Commission noted that "[p]revious orders of the Commission
10 have allowed fees paid by utilities to local chambers of commerce. Expenses of the type
11 described above have never been routinely approved. They are disallowed here. Staff's
12 adjustment is adopted."[237]
13 In 1982, the Commission adopted Staff's proposed adjustment removing 100 percent of
14 dues and memberships from PacifiCorp's Test Year expense "based upon the commissioner's
15 policy that unless convincing evidence is offered, contributions, memberships, and dues will be
16 disallowed for rate-making purposes."[238] In 1987, the Commissioner explained his rationale for
17 not allowing utilities to recover contributions to community organizations such as chambers of
18 commerce in rates:

19
20
21
22

> In resolving [whether to allow the utility to recover expense for dues and contributions to community organizations in rates] it is useful to first resolve whether community affairs contributions made by unregulated businesses are made by owners or customers. PNB asserts that the customers pay. Its rationale is that the cost of community activities is factored into unregulated prices. This argument has a superficial appeal. However, it overlooks the discretionary nature

23 [235] See PAC/4400, McCoy/41.

24 [236] *In re Cascade Natural Gas Corp.*, OPUC Docket Nos. UF 3094 & UF 3129, Order No. 74-898 (Nov. 21, 1974).

25 [237] *In re Cascade Natural Gas Corp.*, OPUC Docket No. UF 3246, Order No. 77-125 (Feb. 22, 1977).

26 [238] *In re Pacific Power and Light Company*, OPUC Docket No. UF 3779, Order No. 82-606 (Aug. 18, 1982).


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1 of community affairs expenditures: They are not necessary to bring an unrelated product or service to market.

2 Since community affairs expenditures are discretionary, the funds could be retained by the business's owners. Regardless of the source of the funds, the impact of a decision to spend money on community activities is to reduce owner wealth. Owners of unregulated businesses, rather than their customers, make community affairs contributions.[239]

5 In summary, the Commission generally does not allow utilities to recover dues paid to civic
6 organizations from ratepayers because membership in such organizations is not necessary to
7 provide utility service. Staff's support of CNG's recovery of 50 percent of dues to Chambers of
8 Commerce in CNG's 2016 GRC was anomalous and its rationale not in this record.

9 In any event, economic conditions have deteriorated since 2016 when Staff recommended
10 that the Commission authorize Cascade to share the costs of memberships in chambers of
11 commerce with ratepayers. Staff does not believe it is appropriate at this time to require
12 ratepayers to fund PacifiCorp's participation in non-energy-related organizations and therefore
13 recommends maintaining the Commission's most-often used policy on this issue.

14 *5. The Commission should adopt Staff's recommended adjustments to Meals and Entertainment expense.*

15

16 PacifiCorp opposes Staff's downward adjustment of $594,533 to the Company's Test
17 Year expense for meals, entertainment, awards, miscellaneous, donations, airfare, travel, and
18 lodging.[240] PacifiCorp argues Staff's "itemized meals and entertainment adjustments are
19 arbitrary as they are based on key words without considering the actual basis for the expense."[241]
20 PacifiCorp also asserts Staff's adjustment is unnecessary "because PacifiCorp proactively limits
21 meals and entertainment expenses to those costs clearly associated with a business purpose."[242]

22 PacifiCorp misunderstands Staff's use of key words to review PacifiCorp's Test Year

23

24 [239] *In re Pacific Northwest Bell Telephone Company, et al.*, OPUC Docket No. UT 43, Order No. 87-406 (Mar. 31, 1987).

25 [240] PacifiCorp's Opening Brief at 98-99.

26 [241] PacifiCorp's Opening Brief at 99.

[242] PacifiCorp's Opening Brief at 99.


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1 expense. To find pertinent FERC Account data, Staff performs a key word search on the
2 Company's FERC Account information for the Base Year to find entries related to the expense at
3 issue in this adjustment. Staff then reviews the entries to ascertain whether the expense was for a
4 legitimate business purpose, ultimately using this information regarding PacifiCorp's
5 expenditures to determine an adjustment to PacifiCorp's Test Year expense.[243]

6 PacifiCorp's assertion that Staff cannot ascertain the actual basis for the expenditure from
7 FERC Account data is at odds with the requirements imposed for PacifiCorp's FERC Accounts.
8 Relevant sections of the FERC Uniform System of Accounts for Public Utilities and Licensees
9 Subject to the Federal Power Act includes the following general instructions:

10
> (a) *Records.*
11
> (1) Each utility shall keep its books of account, and all other books, records, and memoranda which support the entries in such books of account so as to be able to furnish readily full information as to any item included in any account.
12
> (2) Each entry shall be supported by such detailed information as will permit ready identification, analysis, and verification of all facts relevant thereto.[244]
13

14 Pursuant to FERC requirements, Staff should be able to ascertain the purpose of the
15 expenditure from FERC accounting data and did so to determine an adjustment to PacifiCorp's
16 Test Year expense for meals, entertainment, awards, airfare, lodging, and travel. With respect to
17 PacifiCorp's assertion that Staff's adjustment is unnecessary because PacifiCorp proactively
18 limits meals and entertainment expense to those with a business purpose, Staff's review showed
19 otherwise.

20
*6. The Commission should adopt Staff's recommended adjustments to miscellaneous non-labor expense.*
21

22 In its testimony, Staff proposed a downward adjustment of approximately $3.6 million to
23 PacifiCorp's Test Year O&M non-labor expense for FERC Accounts 570 (maintenance of
24 station equip), 583 (overhead line expenses),587 (customer installation expenses), 592
25

26 [243] Staff/2800, Rossow/9-10.

[244] 7 C.F.R. §1767.15(a).


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1 (maintenance of station equipment) and 594 (maintenance of underground lines) and A&G
2 expense for FERC Accounts (924) Property Insurance and (928) Regulatory Commission
3 expense.[245] As Staff explained in testimony, Staff determined that PacifiCorp's Test Year non-
4 labor expense exceeded the Base Year amounts for the FERC accounts listed above by more than
5 the Urban Growth CPI, but the reasons for the increase were not sufficiently justified.[246] In its
6 surrebuttal testimony, PacifiCorp provided additional explanation of the increases to FERC
7 Accounts 924 and 928, which led Staff to withdraw these adjustments in its Prehearing Brief.[247]
8 The resulting adjustment for the remaining expenses is a downward adjustment $2,720,541.
9 In its Opening Brief, PacifiCorp challenges Staff's adjustment to miscellaneous O&M
10 costs, stating that it "explained the nature of the cost increases and provided an exhibit that broke
11 down each adjustment impacting the relevant FERC accounts, while further noting that each
12 adjustment was supported by Ms. McCoy's workpapers."[248] The exhibit PacifiCorp refers to is a
13 one-page document that indicates the expenses in the FERC accounts at issue increased due to
14 PacifiCorp's "O&M Expense Escalation."[249] As Staff has said previously, this information is not
15 sufficient to explain why PacifiCorp believes it is necessary to increase the forecasted spending
16 in these categories by more than the All-Urban CPI. Without this explanation, Staff continues to
17 propose a disallowance of ($2,720,541).
18 **(P) Advanced Metering Infrastructure (AMI) cost recovery.**
19 Regarding on-going O&M savings to customers, Staff accepts the Company's position
20 that there is nothing to remove in order to reflect the AMI project's capital savings.[250] However,
21 Staff continues to advocate for an additional $1.2 million return to customers resulting in a total
22

23 [245] Staff's Prehearing Brief at 59.
24 [246] Staff/3000, Beitzel/4-5.
[247] *Id.*
25 [248] PacifiCorp's Opening Brief at 99, citing PAC/4408, McCoy/1.
26 [249] PAC/4408.
[250] PacifiCorp's Prehearing Brief at 77.


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1 benefit of $7.7 million rather than the Company's figure of $6.5 million. Specifically,
2 PacifiCorp's benefit estimate continues to include a reduction of ($3.7) million[251] for "New AMI
3 operating costs" which ought to be ($2.5) million per the Company's initial application and
4 subsequent Staff discovery.[252]

5 Regarding retired meters in rate base, AWEC raised legal concerns with the Company's
6 continued inclusion of these assets in rate base and proposed to remove the net book value of
7 retired meters from rate base by moving them to a regulatory asset for recovery over a 10 year
8 period, subject to an interest rate at the time value of money.[253] Although Staff's testimony did
9 not address this issue, PacifiCorp's insistence on keeping retired meters in rate base is unlawful,
10 and should be rejected. As such, this brief addresses the legal restrictions on PacifiCorp's
11 proposal.

12 As described above in the discussion about Cholla Unit 4 and cost recovery pursuant to
13 the GPRA, Oregon courts have settled that retired plant, no longer used and useful in the
14 provision of service, may not be included in rate base. Recovery *of* the utility's investment may
15 occur, with interest at the time value of money if retiring the plant is in the public interest, but
16 not a return *on* investment at the utility's authorized rate of return. These legal restrictions hold
17 true for retired meters. AWEC's proposal to find the retirement in the public interest, with
18 recovery of the utility's undepreciated investment at the time value of money, is legally
19 supportable. Alternatively, the Commission could conclude that retirement was not in the public
20 interest, and all undepreciated plant balances would be unrecoverable in Oregon rates.

21 PacifiCorp argues that these assets should remain in its Oregon rate base because
22 "PacifiCorp accounts for asset retirements through group depreciation, meaning that Oregon's
23 distribution assets depreciate collectively."[254] The Company explains that it is not possible to

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[251] Staff/1802, Fox/1 and PAC/3012, McCoy/74.
[252] PAC/1100, Lucas/27 and Staff/1802, Fox/4.
[253] AWEC's Prehearing Brief at 42-43.
[254] PacifiCorp's Opening Brief at 96.


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1 identify the undepreciated investment for *each* meter, because a single average life is applied to
2 an entire group of assets and "there is no assurance that any of the property items in the group is
3 average."[255] The Company's reliance on its depreciation methodology is a red herring for at least
4 three reasons, and should be rejected.[256]

5 First, the Company provides no legal authority supporting its position that despite the
6 restrictions in ORS 757.355, utilizing group somehow provides a basis for including otherwise
7 unlawful amounts in rates.

8 Second, PacifiCorp provides no points of authority for its assertion that it must be able to
9 identify the specific undepreciated plant balance on a meter by meter basis in order to remove the
10 assets from rate base. AWEC calculated the appropriate amount to be removed from rate base as
11 $16,126,628. There are other examples of utilities instituting appropriate ratemaking treatment
12 for retired or soon-to-be-retired meters. For example, Idaho Power was able to identify
13 undepreciated plant balances in order to accelerate depreciation for meters to be retired in
14 anticipation of installing AMI.[257] Though not for the purpose of removing retired plant, this
15 demonstrates it is possible to isolate undepreciated plant balances for purposes of calculating
16 depreciation rates. In its 2006 depreciation study, PGE sought bifurcation of its metering
17 account, account 37000, into AMI and existing metering, each with different depreciable lives.[258]
18 These examples suggest that it is possible to identify sub-groups of assets within a single FERC
19 account in order to determine ratemaking treatment for undepreciated plant balances.

20 Third, PacifiCorp's approach would insulate the Company from its potentially imprudent
21 decision not to accelerate depreciation for these meters ahead of their retirement if it hoped to
22 earn its rate of return on undepreciated plant balances, as other Oregon utilities have done. For
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[255] PacifiCorp's Opening Brief at 96 (internal citations omitted).

[256] PacifiCorp also argues that there is a factual distinction between replacement and retirement, which is similarly unsupported. *See* AWEC's Prehearing Brief at 43-44.

[257] *In re Idaho Power Company*, OPUC Docket No. UE 202, Order No. 08-614 (Dec. 30, 2008).

[258] *In re Portland General Electric Co.*, OPUC Docket No. UM 1233, Order No. 06-581 (Oct. 13, 2006).


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1 example, Idaho Power was able to identify undepreciated plant balances in order to accelerate
2 depreciation for meters to be retired in anticipation of installing AMI.[259] Though not for the
3 purpose of removing retired plant, this demonstrates it is possible to isolate undepreciated plant
4 balances for purposes of calculating depreciation rates. In its 2006 depreciation study, PGE
5 sought bifurcation of its metering account, account 37000, into AMI and existing metering, each
6 with different depreciable lives.[260] These examples demonstrate that it is possible to identify sub-
7 groups of assets within a single FERC account in order to determine ratemaking treatment for
8 undepreciated plant balances. Had PacifiCorp undertaken a similar course of action, earning a
9 return on its investment would have been legally supportable because return *of* and return *on*
10 investment would have occurred while the meters were still in service.

11 The Commission should ensure ratemaking in this docket consistent with the restrictions
12 in ORS 757.355. It could do so through adopting AWEC's proposed $16,126,628 reduction to
13 rate base to reflect removal of retired meters,[261] or through requiring PacifiCorp to remove
14 retired meters from rate base without creation of a regulatory asset, which would result in a
15 write-off for the undepreciated plant balance.

16 **(Q) Oregon Corporate Activities Tax (OCAT).**

17 The OCAT was passed by the 2019 Oregon Legislative Assembly, to be effective on
18 January 1, 2020. This tax is imposed for the privilege of doing business in Oregon and is in
19 addition to any other taxes and fees imposed. It is imposed at a rate of $250 plus .57 percent of
20 taxable commercial activity in excess of $1 million each year.

21 PacifiCorp seeks to continue the balancing account currently in place because it finds that
22 "implementation of the OCAT is still in progress and the degree of certainty has not changed
23 significantly since the Commission approved the OCAT balancing account earlier this year."[262]

24 [259] *In re Idaho Power Company*, OPUC Docket No. UE 202, Order No. 08-614 (Dec. 30, 2008).

25 [260] *In re Portland General Electric Co.*, OPUC Docket No. UM 1233, Order No. 06-581 (Oct. 13, 2006).

26 [261] AWEC's Prehearing Brief at 42.

[262] PacifiCorp's Opening Brief at 95.


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1 PacifiCorp argues that the Department of Revenue (DOR) "has not yet finalized the form of the
2 tax return and technical corrections are still anticipated to be presented to the legislature for
3 consideration."[263] However, the bulk of the Oregon Department of Revenue's administrative
4 rules implementing the tax are permanent and have been adopted as of June 28, 2020.[264] While
5 the Company's assertion that the tax return form has yet to be finalized and there may be
6 pending technical corrections are factual, nearly all the rules governing the OCAT are final. For
7 this reason, inclusion in base rates at this time is appropriate and consistent with recent
8 stipulations in other general rate case proceedings before the Commission.[265]

9 The Company fails to convincingly demonstrate why the OCAT is not appropriately
10 included in base rates when there is enough certainty for other utilities to include the OCAT in
11 their rates, and its request to continue the current deferral and balancing account mechanism, or
12 alternatively, to allow for a true-up of any variances until the Company's next general rate case,
13 should be rejected. Staff continues to urge the Commission to direct PacifiCorp to include
14 estimated OCAT expense in base rates, without an annual true-up mechanism.

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24 [263] PacifiCorp's Opening Brief at 94.

25 [264] Permanent rules providing guidance related to the Corporate Activity Tax Chapter 317A, effective date June 28, 2020, accessed at https://secure.sos.state.or.us/oard/viewReceiptTRIM.action?ptId=7604720.

26 [265] UG 388 – Stipulation at 7, filed July 31, 2020; UG 389 – Avista/500, Brandon/34; UG 390 – Cascade-Staff-CUB-AWEC/300; Meckelson – Fjeldheim – Gehrke – Kaufman/9.


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## IV. CONCLUSION

Staff urges the Commission to adopt its recommendations as set forth herein and to the extent not addressed in this brief, in its Prehearing Brief.

DATED this 12th day of October, 2020.

Respectfully submitted,

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