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March 2, 2023

VIA ELECTRONIC FILING

Attention: Filing Center
Public Utility Commission of Oregon
201 High Street SE, Suite 100
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Salem, Oregon 97308-1088

**Re: Docket UE 407 – In the Matter of PACIFICORP, dba PACIFIC POWER,
Application for Approval of an Automatic Adjustment Clause for Recovery of
Costs Associated with the Company’s Wildfire Protection Plan.**

Attention Filing Center:

Attached for filing in the above-referenced docket is the Stipulating Parties’ Joint Opening Brief in Support of the Stipulation.

Please contact this office with any questions.

Sincerely,

Katherine McDowell

Attachment

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UE 407**

In the Matter of
PACIFICORP d/b/a PACIFIC POWER'S
Request for a General Rate Revision.

**JOINT OPENING BRIEF IN SUPPORT OF STIPULATION
OF
PACIFICORP, STAFF OF THE PUBLIC UTILITY COMMISSION OF OREGON,
AND ALLIANCE OF WESTERN ENERGY CONSUMERS**

March 2, 2023

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1 **I. INTRODUCTION**

2 PacifiCorp d/b/a Pacific Power (PacifiCorp or the Company), Staff of the Public
3 Utility Commission of Oregon (Staff), and the Alliance of Western Energy Consumers
4 (AWEC) (together, the Stipulating Parties) submit this Joint Opening Brief in Support of the
5 Stipulation resolving all issues related to PacifiCorp’s application for an automatic
6 adjustment clause (AAC) for cost recovery associated with the Company’s Wildfire
7 Protection Plan (WPP).

8 The Public Utility Commission of Oregon (Commission) should approve the
9 Stipulation and implement the proposed WPP AAC (WPP Adjustment) without modification
10 because it is fair, just, reasonable, in the public interest, and the result of a settlement process
11 that brought together key stakeholders. The Stipulation implements the cost recovery
12 mandate of Senate Bill (SB) 762, codified at ORS 757.963(8), in a fair and balanced manner.
13 The Commission’s policy is to encourage voluntary resolution of issues “to the extent that
14 settlement is in the public interest.”¹ The Commission should therefore approve the
15 Stipulation as a “compromise of different positions” that represents “a reasonable resolution”
16 of the issues.²

17 No party has questioned the importance of supporting PacifiCorp’s wildfire
18 prevention efforts or the implementation of ORS 757.963(8) through an AAC. Only one
19 party to this case, the Oregon Citizens’ Utility Board (CUB), has raised an objection to the
20 Stipulation. CUB seeks to modify the WPP Adjustment to include an earnings test. Because
21 an earnings test is unnecessary to ensure fair and reasonable rates, could impede PacifiCorp’s

¹ *In re PacifiCorp, dba Pac. Power, 2010 Transition Adjustment Mechanism*, Docket No. UE 207, Order No. 09-432 at 6 (Oct. 30, 2009).

² *In re PacifiCorp, dba Pac. Power, Request for a Gen. Rate Revision*, Docket No. UE 210, Order No. 10-022 at 5 (Jan. 26, 2010).

1 wildfire mitigation spending contrary to the policy goals of SB 762, and would ultimately
2 undo the Stipulation, the Commission should reject CUB’s proposed modification.

3 Through Bench Requests and at hearing, the Commission has explored how it would
4 conduct prudence reviews of PacifiCorp’s expenditures and investments in conjunction with
5 the WPP Adjustment. The record demonstrates that the Commission can ensure a thorough
6 prudence review of these costs given their derivation in the WPP—which is subject to
7 Commission review, assisted by an independent evaluator (IE), over a 180-day period. In
8 addition, the Company has agreed to submit key data supporting the prudence of its actual
9 costs with its annual WPP Adjustment filing. This begins a 120-day prudence review
10 process. Lastly, the Commission retains the ability to suspend and investigate PacifiCorp’s
11 annual WPP Adjustment filings under ORS 757.215(1), which could add up to 270 days to
12 the 120-day basic review period for the annual filing.

13 II. GENERAL BACKGROUND

14 During Oregon’s 2020 wildfire season, fires burned almost one million acres of land.³
15 Based on the Commission’s “observation that wildfire risk was rapidly evolving and
16 necessitated rules” for safety and planning, and in response to the provisions in Executive
17 Order 20-04 which ordered the development of WPPs, the Commission opened a rulemaking,
18 docket AR 638, on August 25, 2020. The Commission issued temporary rules in Order No.
19 21-167 to address the 2021 wildfire season, noting that “wildfire has emerged as an
20 increasingly important issue for utilities and utility regulators in the West.”⁴ The
21 Commission issued final rules in Division 24 (safety) and Division 300 (wildfire) in Order

³ *In re Rulemaking Regarding Elec. Util. Wildfire Mitigation Plan*, Docket No. AR 638, Order No. 22-159 at 1 (May 10, 2022).

⁴ Docket No. AR 638, Order No. 21-167 at 1 (May 27, 2021).

1 No. 22-159 (Public Safety Power Shut-offs)⁵ and in Order No. 22-335 (other issues,
2 including WPPs).⁶

3 On December 18, 2020 in docket UE 374, the Commission adopted a Wildfire
4 Mitigation and Vegetation Management mechanism (WMVM), designed to address
5 PacifiCorp’s recovery of incremental wildfire costs.⁷ In adopting the WMVM, the
6 Commission noted that “in an environment where wildfire risk mitigation is of utmost
7 concern to our state, we find that the recovery of incremental costs of vegetation
8 management and wildfire mitigation between rate cases will ensure that the company has
9 both the obligation and the incentive to complete these investments and improve its
10 vegetation management practices in an appropriate timeframe.”⁸ Through a stipulation
11 adopted in docket UE 399, the Commission modified the WMVM to apply only to non-WPP
12 costs, with the understanding that the Commission would consider a separate cost recovery
13 mechanism for WPP costs in this docket.⁹

14 In 2021, the Oregon Legislature enacted SB 762. This bill took “several actions to
15 promote wildfire risk reduction, response, and recovery,” including new mandates for electric
16 utilities. Specifically, sections 2 and 3 of SB 762 (codified at ORS 757.960 and 757.963,
17 respectively) “address[] the potential risks of fire from electrical utilities by requiring utilities
18 to operate with a risk-based wildfire protection plan filed with the Public Utility
19 Commission. The Commission is required to facilitate a process for public utilities to adopt

⁵ Order No. 22-159.

⁶ Docket No. AR 638, Order No. 22-335 (Sept. 8, 2022).

⁷ *In re of PacifiCorp, dba Pac. Power, Request for a Gen. Rate Revision*, Docket No. UE 374, Order No. 20-473 (Dec. 18, 2020).

⁸ *Id.* at 120.

⁹ *In re of PacifiCorp, dba Pac. Power Request for a Gen. Rate Revision*, Docket No. UE 399, Order No. 22-491 (Dec. 16, 2022).

1 best practices regarding wildfires and to evaluate a public utility’s wildfire protection plan
2 and plan updates through a public process.”¹⁰

3 SB 762 contains detailed requirements for WPPs, which the Commission has
4 described as follows:

5 SB 762 requires that Oregon's investor-owned electric utilities create and
6 update risk-based wildfire protection plans on a schedule created by the
7 Commission. These plans must include the identification of areas of
8 heightened wildfire risk, the means for mitigating wildfires, balancing costs,
9 and reducing risk. Plans must also include identification of preventative
10 actions and programs the utility will carry out to minimize risk of facility-
11 caused wildfires. Utilities must identify a protocol for de-energizing power
12 lines and adjusting their power systems. Plans must also contain
13 descriptions of procedures, standards, and time frames used to inspect
14 infrastructure and manage vegetation. Plans must identify costs and
15 describe community outreach and public awareness efforts.

16
17 Consistent with the legislation, not more than 180 days after receipt of a
18 plan or update the Commission will approve a plan or approve a plan with
19 conditions as appropriate. Costs associated with wildfire mitigation are
20 recoverable in rates from all customers.¹¹

21 On recovery of WPP costs, SB 762 provides that a utility may recover through rates
22 “[a]ll reasonable operating costs incurred by, and prudent investments made by, a public
23 utility to develop, implement or operate a wildfire protection plan under this
24 section[.]”¹² Additionally, the Commission “shall establish an automatic adjustment clause,
25 as defined in ORS 757.210, or another method to allow timely recovery of the costs.”¹³

26 The Commission opened a rulemaking to implement SB 762, docket AR 648, on
27 August 31, 2021, and issued rules in Order No. 21-440.¹⁴ The Commission expedited this

¹⁰ Joint Capital Construction Subcommittee Recommendation re SB 762 at 1 (June 22, 2021), *available at* <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/CommitteeMeetingDocument/246194>.

¹¹ *In re Rulemaking for Phase I Wildfire Mitigation*, Docket No. AR 648, Order No. 21-440 at 2-3 (Nov. 30, 2021).

¹² ORS 757.963(8).

¹³ *Id.*

¹⁴ Order No. 21-440.

1 rulemaking to permit utilities to submit their initial WPPs by December 31, 2021, as required
2 by SB 762.¹⁵ The Commission continued its more in-depth rulemaking process in docket AR
3 638, culminating in Order No. 22-335.

4 On December 30, 2021, PacifiCorp filed its 2022 WPP in docket UM 2207.¹⁶ The
5 2022 WPP describes the Company’s comprehensive plan for wildfire mitigation in
6 compliance with ORS 757.963 and OAR 860-300-0020. Commission Staff retained Bureau
7 Veritas North America, Inc. (BVNA) as an IE to assist in its review of PacifiCorp’s 2022
8 WPP.¹⁷ Staff observed that BVNA’s assessment criteria were more rigorous than the
9 requirements of OAR 860-300-0020.¹⁸ In addition to reviewing compliance with
10 Commission rules, Staff also “provided recommendations that will enhance the Company’s
11 future Plans and provide more evidence that the Company’s Plan is risk based.”¹⁹

12 The Commission approved PacifiCorp’s WPP on April 28, 2022, and ordered
13 PacifiCorp to hold a workshop for consideration of Staff’s recommendations for the
14 Company’s 2023 WPP.²⁰ PacifiCorp held this workshop in August 2022. PacifiCorp filed its
15 2023 WPP on December 29, 2022, reflecting the Company’s “2022 experience as well as
16 feedback and recommendations from Commission staff, stakeholders, and communities.”²¹

17 Under OAR 860-300-0020(3), approval of a WPP “means the Commission finds that
18 the Wildfire Mitigation Plan or Update is based on reasonable and prudent practices
19 including those the Public Utility identified through Commission workshops identified in SB

¹⁵ *Id.* at 1.

¹⁶ *In re PacifiCorp, dba Pac. Power, 2022 Wildfire Mitigation Plan*, Docket No. UM 2207, Wildfire Protection Plan (Dec. 30, 2021).

¹⁷ Docket No. UM 2207, Order No. 22-131, App. A at 2 (Apr. 28, 2022).

¹⁸ *Id.*, App. A at 3.

¹⁹ *Id.*

²⁰ *Id.* at 1.

²¹ Docket No. UM 2207, PacifiCorp’s 2023 Wildfire Mitigation Plan at 7 (Dec. 29, 2022).

1 762, Section 2, and designed to meet all applicable rules and standards adopted by the
2 Commission.”

3 On January 5, 2022, PacifiCorp filed an application for deferred accounting to track
4 the incremental operating expenses and capital investments made to implement and operate
5 PacifiCorp’s WPP filed in accordance with SB 762.²² PacifiCorp indicated the Company
6 would make a subsequent filing in 2022 for approval of a rate schedule and AAC to begin
7 recovery of these costs, resulting in the application in this docket.

8 III. PROCEDURAL BACKGROUND

9 On July 12, 2022, PacifiCorp initiated docket UE 407 through an application
10 requesting that the Commission approve a new rate tariff Schedule 190, balancing account,
11 and AAC for the incremental operating expenses and capital investments associated with the
12 Company’s WPP. PacifiCorp also asked the Commission to find that the costs contained
13 within the 2022 WPP are reasonable and appropriate, and approve a revenue requirement
14 increase of approximately \$19.9 million for the incremental expense associated with the 2022
15 WPP.

16 On July 21, 2022, the Commission issued an Order suspending the application for a
17 period not exceeding nine months. On August 18, 2022, the Commission issued a procedural
18 conference memorandum adopting a procedural schedule. On September 27, 2022,
19 PacifiCorp filed opening testimony and exhibits to this docket in support of the Company’s
20 application.

²² *In re PacifiCorp d/b/a Pac. Power, Application for Approval of Deferred Accounting for Operating Costs and Capital Investments Made to Implement and Operate the Company’s Or. Wildfire Protection Plan*, Docket No. UM 2221, Application (Jan. 5, 2022).

1 On November 10, 2022, PacifiCorp, Staff, AWEC, and CUB convened a settlement
2 conference. As a result of this conference and subsequent communications, the Stipulating
3 Parties reached a settlement agreement resolving all issues in this docket. The Stipulating
4 Parties filed the Stipulation and Joint Testimony of Matthew McVee, Bret Stevens, and
5 Bradley Mullins in Support of the Stipulation on December 29, 2022.

6 CUB did not join the settlement agreement reached by the Stipulating Parties. CUB
7 filed its objections in opposition to the Stipulation, along with the testimony of Bob Jenks in
8 opposition to the Stipulation, on January 20, 2023.

9 The Stipulating Parties filed reply testimony on February 7, 2023, contesting CUB's
10 proposed modification to the Stipulation. On the same date, PacifiCorp filed separate reply
11 testimony from Matthew McVee, raising additional points in response to CUB's objections.

12 The Commission held an evidentiary hearing on February 16, 2023, and heard
13 testimony from the Stipulating Parties' witnesses.

14 **IV. LEGAL STANDARD FOR STIPULATION APPROVAL**

15 The Commission will approve stipulations that are supported by competent evidence
16 in the record and appropriately resolve the issues in a case.²³ Settlements provide "value in
17 terms of administrative efficiency by narrowing the range of positions on issues and further
18 developing the record."²⁴ The Commission reviews "settlements to determine whether, on a
19 holistic basis, they serve the public interest and result in just and reasonable rates."²⁵ The

²³ See Order No. 20-473 at 140 ("We find that the stipulation as a whole represents a reasonable resolution of the identified issues . . . and contributes to an overall settlement in the public interest."); Order No. 09-432 at 6 ("The Commission concludes that the Stipulation is an appropriate resolution of all primary issues in this docket."); Order No. 10-022 at 6 ("When considering a stipulation, we have the statutory duty to make an independent judgment as to whether any given settlement constitutes a reasonable resolution of the issues.")

²⁴ *In re PacifiCorp, dba Pac. Power, Transition Adjustment, Five-Year Cost of Serv. Opt-Out*, Docket No. UE 267, Order No. 15-060 at 3 (Feb. 24, 2015).

²⁵ *In re Portland Gen. Elec. Co., Request for a Gen. Rate Revision*, Docket No. UE 394, Order No. 22-129 at 16 (Apr. 25, 2022).

1 Commission’s policy is to support settlements and encourage “parties to voluntarily resolve
2 issues to the extent that settlement is in the public interest.”²⁶ When a party opposes a
3 settlement, the Commission should “review the issues pursued by that party, and consider
4 whether the information and argument submitted by the party . . . suggests that the settlement
5 is not in the public interest . . . or otherwise is not in accordance with the law.”²⁷ Here, the
6 Stipulation meets the Commission’s standards for approval of settlements.

7 V. ARGUMENT

8 A. The Stipulation Appropriately Implements ORS 757.963.

9 As proposed in the application and revised by the Stipulation, the WPP Adjustment
10 includes the following key components:

- 11 • PacifiCorp will make an advice filing to adjust Schedule 190 rates on or about
12 July 1 of each year. The filing will reflect the Company’s forecast for the
13 incremental WPP expense for the upcoming year and used and useful WPP
14 capital investments. It will also incorporate any variances from the previous
15 year between projected and actual WPP expense, which are tracked through a
16 balancing account.²⁸
- 17 • The annual forecast WPP expense will be based on the Company’s approved
18 WPP. The residual amounts in the balancing account may result in an
19 increase or a decrease in the amounts to be collected through the adjustment

²⁶ Order No. 09-432 at 6; Order No. 15-060 at 4 (“Although we encourage parties to resolve disputes informally, we must review the terms of any stipulation for reasonableness and accord with the public interest.”); *In re Portland Gen. Elec. Co., 2005 Resource Valuation Mechanism*, Docket No. UE 161, Order No. 04-573 at 4 (Oct. 5, 2004) (“The Commission encourages parties to a proceeding to voluntarily resolve issues to the extent that settlement is in the public interest.”).

²⁷ *In re Nw. Nat. Gas Co., dba NW Nat., Request for a Gen. Rate Revision*, Docket No. UG 435, Order No. 22-388 at 6 (Oct. 24, 2022).

²⁸ Joint Stipulating Parties/100, McVee-Stevens-Mullins/4:8-16.

1 schedule. The combined forecast expense, prudent in-service capital costs,
2 and residual amounts in the balancing account for prudent expenses will be
3 the total amount to be collected through Schedule 190 rates for the upcoming
4 year.²⁹

- 5 • In its annual WPP Adjustment filing, the Company will provide detailed
6 information to demonstrate that the costs included are incremental to costs
7 already in rates. To demonstrate that its actual WPP costs are reasonable and
8 prudent, the Company will also provide, at a minimum: a detailed accounting
9 comparing the amounts spent relative to its WPP budget; invoice level data
10 detailing non-labor O&M using the same format as Staff Standard Data
11 Request 57; a project-level itemized budget of WPP investments and costs in
12 each annual filing; and a detailed reconciliation between the budget and actual
13 expenditures, by project.³⁰
- 14 • The WPP Adjustment operates separately from general revenue requirement,
15 and the Company will update depreciation on WPP investments as a part of
16 the annual filing.³¹
- 17 • The WPP Adjustment will include WPP capital investments placed in service
18 in the prior year. PacifiCorp will not track the revenue requirement between
19 the in-service date of new plant and the effective date of rates through a
20 capital deferral and will instead absorb the costs of this regulatory lag.³²

²⁹ Joint Stipulating Parties/100, McVee-Stevens-Mullins/4:11-16.

³⁰ Stipulation at 6, ¶ 21 (Dec. 29, 2022).

³¹ *Id.* at 4, ¶ 15; Joint Stipulating Parties/100, McVee-Stevens-Mullins/7:13-21.

³² Joint Stipulating Parties/100, McVee-Stevens-Mullins/7:7-12.

- 1 • Rates for the WPP Adjustment will be effective approximately 120 days after
2 PacifiCorp submits its annual filing, including all relevant supporting
3 materials.³³ If this period is insufficient for parties to complete their review of
4 the filing, they may seek a suspension of the filing for up to 270 days.³⁴
- 5 • PacifiCorp will include \$19.9 million in forecast expense from the 2022 WPP
6 in Schedule 190.³⁵ The Company will reflect its actual 2022 WPP
7 expenditures in its 2024 WPP Adjustment annual filing, filed in July 2023,
8 and these amounts will be subject to review by Staff and interested parties,
9 including a prudence review. PacifiCorp will include the capital investments
10 from the 2022 WPP in its 2024 WPP Adjustment annual filing, and these costs
11 will also be subject to a prudence review.³⁶ If the Commission approves the
12 Stipulation, the new Schedule 190 rates will be effective after May 10, 2023,
13 the target date for the Commission’s final order.³⁷
- 14 • The Company will collect the proposed revenue requirement through non-
15 bypassable, per kilowatt-hour rates calculated on a distribution rate
16 spread. The calculation of the Schedule 190 WPP Adjustment rate spread and
17 rates is in Attachment 2 of the application.³⁸

18 The WPP Adjustment resulting from the Stipulation satisfies the specific
19 requirements of ORS 757.963 regarding WPP cost recovery, as well as the general

³³ Joint Stipulating Parties/200, McVee-Stevens-Mullins/4:23-25.

³⁴ Joint Stipulating Parties/200, McVee-Stevens-Mullins/4:25-5:4; Special Public Meeting Transcript 12:19 (Feb. 16, 2023) [hereinafter Tr.].

³⁵ Joint Stipulating Parties/100, McVee-Stevens-Mullins/5:19-22.

³⁶ Tr. 34:19-35:20.

³⁷ Docket No. UE 407, Ruling: Procedural Schedule Modified (Dec. 7, 2022)

³⁸ Joint Stipulating Parties/100, McVee-Stevens-Mullins/4:16-19.

1 requirements of ORS 756.040 regarding fair and reasonable rates. The stipulated WPP
2 Adjustment strikes a reasonable balance between complying with the requirements of ORS
3 757.963, allowing for an administratively efficient process and timely prudence review, and
4 establishing provisions that benefit customers as compared to standard regulation.³⁹ These
5 provisions include: (1) PacifiCorp’s agreement to forego a capital deferral on WPP
6 investments and accept regulatory lag between in-service and rate effective dates; and (2) the
7 requirement to separate WPP investments from other rate base and annually update
8 accumulated depreciation on these investments.⁴⁰

9 **B. Under the Stipulation, the WPP Adjustment Will Produce Fair and Reasonable**
10 **Rates Without an Earnings Test.**

11 CUB contends that the Stipulation cannot be guaranteed to result in rates that will be
12 just and reasonable because it does not include an earnings test.⁴¹ CUB recommends that the
13 Commission modify the Stipulation to include an earnings test in the WPP Adjustment that
14 would be set at PacifiCorp’s authorized return on equity (ROE).⁴² CUB does not provide any
15 detail on how the earnings test would operate, nor does CUB propose changes to the WPP
16 Adjustment’s design separating its operation from general revenue requirement (such as the
17 annual update for depreciation). We first note that the impact of any earnings test may be
18 limited, given the few times PacifiCorp’s earned ROE exceeded its authorized ROE by any
19 measure in recent years.⁴³

³⁹ Joint Stipulating Parties/200, McVee-Stevens-Mullins/2:3-12.

⁴⁰ Joint Stipulating Parties/200, McVee-Stevens-Mullins/2:14-3:9.

⁴¹ CUB/100, Jenks/3:8-9.

⁴² CUB/100, Jenks/3:14-17.

⁴³ *In re PacifiCorp, dba Pac. Power, 2013 Power Cost Adjustment Mechanism*, Docket No. UE 290, Order No. 14-357 at 2 (Oct. 16, 2014); *In re PacifiCorp, dba Pac. Power, 2014 Power Cost Adjustment Mechanism*, Docket No. UE 298, Order No. 15-380 at 2 (Nov. 25, 2015); *In re PacifiCorp, dba Pac. Power, 2015 Power Cost Adjustment Mechanism*, Docket No. UE 309, Order No. 16-459 at 2 (Nov. 30, 2016); *In re PacifiCorp, dba Pac. Power, 2016 Power Cost Adjustment Mechanism*, Docket No. UE 327, Order No. 17-524 at 2 (Dec. 27, 2017); *In*

1 There are several reasons to reject CUB’s proposal as unwarranted. First, the
2 Commission has previously approved deferrals and AACs without an earnings test and
3 without any suggestion that the lack of earnings test is problematic.⁴⁴ A recent example is
4 PacifiCorp’s deferral of certain costs and revenues associated with the Energy Affordability
5 Act, HB 2475.⁴⁵ Another example that presents circumstances similar to this case is the
6 Commission’s approval of the stipulation that created the renewable adjustment clause
7 (RAC), which stated that the RAC would not be subject to an earnings review.⁴⁶ This
8 Commission precedent makes clear that an earnings test is not required to produce just and
9 reasonable rates, contrary to CUB’s novel argument.

10 Second, the Stipulation creates a mechanism designed to allow PacifiCorp to recover
11 its WPP costs while limiting the risk of over or under recovery. PacifiCorp will adjust the
12 depreciation expense for PacifiCorp’s capital investment under its WPP each year. To the
13 extent PacifiCorp’s actual WPP expense varies from what is forecasted in rates, the variance
14 will be carried over to the next year. This eliminates the possibility that PacifiCorp will over
15 recover for WPP expense and allows cost savings to be passed on to customers. The
16 Stipulating Parties believe these measures will benefit customers year after year with rates
17 reflecting actual spend on costs associated with the WPP.⁴⁷

re PacifiCorp, dba Pac. Power, 2017 Power Cost Adjustment Mechanism, Docket No. UE 344, Order No. 18-449 at 2 (Nov. 30, 2018); *In re PacifiCorp, dba Pac. Power, 2018 Power Cost Adjustment Mechanism*, Docket No. UE 361, Order No. 19-415 at 2 (Nov. 25, 2019); *In re PacifiCorp, dba Pac. Power, 2019 Power Cost Adjustment Mechanism*, Docket No. UE 379, Order No. 20-489 at 2 (Dec. 29, 2020); *In re PacifiCorp, dba Pac. Power, 2020 Power Cost Adjustment Mechanism*, Docket No. UE 392, Order No. 21-481, App. A at 9 (Dec. 21, 2021); *In re PacifiCorp, dba Pac. Power, 2021 Power Cost Adjustment Mechanism*, Docket No. UE 404, Order No. 22-469, App. A at 12 (Dec. 2, 2022).

⁴⁴ Joint Stipulating Parties/200, McVee-Stevens-Mullins/5:14-17.

⁴⁵ Joint Stipulating Parties/200, McVee-Stevens-Mullins/5:17-20.

⁴⁶ Joint Stipulating Parties/200, McVee-Stevens-Mullins/6:1-4.

⁴⁷ Joint Stipulating Parties/200, McVee-Stevens-Mullins/6:18-7:6.

1 Third, an earnings test that operates to disallow some portion of PacifiCorp’s WPP
2 costs raises legal and policy questions under SB 762. The Stipulation avoids a potentially
3 protracted debate over these issues by designing the WPP Adjustment to protect customers
4 without relying on an earnings test, while fully supporting PacifiCorp’s wildfire mitigation
5 efforts.⁴⁸ By adopting the Stipulation as meeting the applicable standards discussed in Section
6 IV above, the Commission would not be required to resolve in this case the legal and policy
7 questions related to an earnings test.

8 **C. The Stipulated WPP Adjustment Provides a Reasonable Process for Reviewing**
9 **the Prudence of PacifiCorp’s WPP Costs.**

10 Under the Stipulation, PacifiCorp’s annual update to Schedule 190 will include a rate
11 effective date 120 days from the date of filing, rather than the 30-day rate effective date
12 included in typical advice filings.⁴⁹ The Stipulating Parties believe this 120-day timeframe
13 should be sufficient to determine the prudence of the costs in the WPP Adjustment in most
14 circumstances.

15 The costs in the WPP Adjustment will be derived from PacifiCorp’s approved WPP.
16 The review of PacifiCorp’s WPP will occur over a 180-day time period and will be supported
17 by an IE.⁵⁰ As demonstrated by the review process for PacifiCorp’s 2022 WPP, the IE will
18 ensure an enhanced and thorough review of the WPP.⁵¹ In addition, Staff included multiple
19 recommendations for PacifiCorp’s 2023 WPP in Staff’s report on the 2022 WPP, indicating
20 that the WPP process will become more robust and WPPs will become more specific as all
21 parties gain experience.⁵² Under OAR 860-300-0020(3), approval of a WPP means the

⁴⁸ Joint Stipulating Parties/100, McVee-Stevens-Mullins/8:3-9.

⁴⁹ Response to ALJ Bench Request 2 (Feb. 10, 2023).

⁵⁰ Response to ALJ Bench Request 1 (Feb. 10, 2023); Tr. 26:12-13.

⁵¹ Order No. 22-131.

⁵² *Id.*, App. A at 16-19; *see also* Tr. 19:22-20:8.

1 Commission has determined that it is “based on reasonable and prudent practices” and meets
2 “all applicable rules and standards adopted by the Commission.” Because the costs included
3 within the WPP will have already been subject to this initial review and approval process,
4 this should streamline the prudence review required for the WPP Adjustment.

5 In addition, under the Stipulation, PacifiCorp has agreed to submit with its annual
6 filing the key data necessary for a prudence review.⁵³ As Staff explained at hearing, in the
7 WPP Adjustment prudence review, Staff will be focused on the Company’s implementation
8 of the WPP and material deviations from the WPP.⁵⁴ At hearing, PacifiCorp agreed that it
9 would need to justify deviations from the WPP as a part of demonstrating the prudence of its
10 wildfire expenditures and investments.⁵⁵

11 If the 120-day process proves insufficient because, for example, there are major
12 deviations from the approved WPP, parties can seek to suspend the Schedule 190 tariff filing
13 under ORS 757.215 for up to nine months.⁵⁶ In summary, the 120-day timeframe for
14 consideration of annual WPP Adjustment filings is reasonable given the comprehensive
15 review of WPP costs in the WPP approval process, the Company’s agreement to submit key
16 data with its annual WPP Adjustment filing, and the Commission’s ability to suspend the
17 filing if the prudence review proves unusually complex or time-consuming.

18 VI. CONCLUSION

19 The Commission should approve the Stipulation without CUB’s proposal to include
20 an earnings test in the WPP Adjustment. The Stipulation is supported in the record, produces
21 a WPP AAC that meets the requirements of SB 762, and is responsive to customer needs.

⁵³ Stipulation at 6, ¶ 21.

⁵⁴ Tr. 16:10-24.

⁵⁵ Tr. 46:22-47:3.

⁵⁶ Joint Stipulating Parties/200, McVee-Stevens-Mullins/6:18-7:6.

1 CUB's modification to the Stipulation is unnecessary and unreasonable and, if adopted,
2 would compromise the Stipulating Parties' settlement agreement, undermine support for
3 PacifiCorp's wildfire mitigation efforts, and place at risk the customer benefits inherent in
4 the Stipulation. In addition, the 120-day review period for the annual WPP Adjustment
5 filings is reasonable under the circumstances and should not impede the requisite prudence
6 review, especially given the flexibility to extend the 120-day review period if warranted.

Dated this 2nd day of March 2023.



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