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October 20, 2023

VIA ELECTRONIC FILING

Public Utility Commission of Oregon
Filing Center
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**Re: Docket UE 420 - In the Matter of PACIFICORP, dba PACIFIC POWER,
2024 Transition Adjustment Mechanism.**

Attention Filing Center:

Attached for filing in the above-captioned docket are the Stipulating Parties' Closing Brief.

Please contact this office with any questions.

Sincerely,

/s/ Cole Albee

Cole Albee
Paralegal
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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UE 420**

In the Matter of
PACIFICORP d/b/a PACIFIC POWER,
2024 Transition Adjustment Mechanism.

STIPULATING PARTIES' CLOSING BRIEF

October 20, 2023

I. INTRODUCTION

In accordance with the Scheduling Memorandum issued by Administrative Law Judge Katharine Mapes on September 8, 2023, PacifiCorp (PacifiCorp or the Company), Staff of the Public Utility Commission of Oregon (Staff), the Oregon Citizens' Utility Board (CUB), Calpine Energy Solutions, LLC (Calpine Solutions), Vitesse, LLC (Vitesse), and Klamath Water Users Association (KWUA) (collectively, the Stipulating Parties) submit this Closing Brief in support of the Stipulation in the 2024 Transition Adjustment Mechanism (TAM). The Stipulation resolves all issues in the 2024 TAM proceeding among the Stipulating Parties except the appropriate ratemaking treatment of the costs associated with the Washington Cap and Invest Program.¹ This brief responds to the Alliance of Western Energy Consumers' (AWEC) objections to the Stipulation.

The Public Utility Commission of Oregon (Commission) should approve the Stipulation without modification. The rates resulting from the Stipulation, including the resolution of the remaining unsettled issue, are just and reasonable; the Stipulation is in accord with the public interest, and it is supported by the evidence in the record.² The Stipulation is the result of the Stipulating Parties' extensive efforts investigating and analyzing every major issue in the Company's case and concluding that the agreed upon revenue requirement is reasonable and will result in rates that are just and reasonable.³ The Stipulation is supported by the robust and fully developed evidentiary record, including the Stipulating Parties' testimony directly addressing the reasonableness of the Stipulation.⁴ The Stipulation satisfies the Commission's standard for approval of settlements, and the Commission should therefore approve the Stipulation.

¹ This Stipulation does not resolve the issues raised by Sierra Club, although the non-PacifiCorp Stipulating Parties agree as part of the Stipulation to take no position on Sierra Club's recommendations.

² See, e.g., *In the Matter of Pacific Power & Light Co. (dba PacifiCorp) Request for a General Rate Increase*, Docket No. UE 170, Order No. 05-1050 at 7 and 29 (Sept. 28, 2005); *In the Matter of Northwest Natural Gas Company, dba NW Natural, Request for a General Rate Revision*, Docket No. UG 435 et. al, Order No. 22-388 at 6 (Oct. 24, 2022).

³ Joint Stipulating Parties/100, McVee, Mitchell, Kim, Jenks, Higgins, Johnson/7.

⁴ See Joint Stipulating Parties/100.

Of the parties participating in the 2024 TAM, only AWEC objects to the Stipulation. AWEC's objections, however, are solely evidentiary, and they largely rehash arguments the Commission has not adopted in the past and the Stipulating Parties have agreed are better to address in the future. These objections provide no basis to reject or modify the Stipulation. AWEC maintains that the Stipulating Parties failed to present evidence supporting the Stipulation or demonstrating that the rates resulting from the Stipulation are just and reasonable.⁵ AWEC misunderstands the Commission's standard for evidence supporting stipulations, looking for specific reference to methodologies where the Commission takes a holistic approach to assess "the reasonableness of the overall rates, recognizing that a stipulation may represent a compromise of different positions."⁶ AWEC's evidentiary argument also fails because the Stipulation is supported by the fully developed evidentiary record and the Stipulating Parties' testimony expressly addressing the Stipulation and demonstrating that the resulting rates, including the resolution of the remaining unsettled issue, are just and reasonable. As a result, AWEC fails to identify any valid reason for the Commission to reject the Stipulation.

II. ARGUMENT

A. **The overall rates are just and reasonable even though the Stipulating Parties have not agreed to a specific methodology to determine those rates.**

When evaluating a stipulation, the Commission "need not evaluate each individual adjustment, theory, or methodology proposed by the parties[.]"⁷ Rather, the Commission must make "an independent finding, supported by substantial competent evidence in the record as a whole, that the settlement will result in just and reasonable rates."⁸ Stated differently, the Commission does not require that the Stipulating Parties explain their calculations behind the

⁵ AWEC's Response to Stipulating Parties' Joint Brief in Support of Stipulation at 1 [hereinafter AWEC's Response Brief].

⁶ *In the Matter of PacifiCorp, dba Pacific Power, 2012 Transition Adjustment Mechanism*, Docket No. UE 227, Order No. 11-435 at 3 (Nov. 4, 2011) (internal citations omitted).

⁷ Order No. 11-435 at 3.

⁸ Order No. 11-435 at 3.

agreed-upon revenue requirement to establish that the resulting rates are just and reasonable. “Parties negotiate settlements for their own reasons,” and the Commission “need not inquire into those reasons if the outcome is reasonable.”⁹ Accordingly, the Commission looks at the “end result” of the rates arising from the Stipulation and “not the processes by which the [parties] reached the result.”¹⁰

Here, the Stipulating Parties agreed to an unspecified adjustment of \$13 million.¹¹ As is inherent to an unspecified adjustment, the Stipulating Parties have not agreed on a specific methodology to calculate the adjustment.¹² However, the Stipulating Parties agree that regardless of the methodology, the Stipulation’s \$13 million adjustment creates just and reasonable rates.¹³ This approach is consistent with many prior TAM stipulations¹⁴ and the Stipulating Parties need not provide the “reasons” behind the adjustment as long as the adjustment creates a reasonable outcome.¹⁵

⁹ *In the Matter of the Application of PacifiCorp for an Accounting Order Regarding Excess Net Power Costs*, Docket No. UM 995, *et al.*, Order No. 02-469 at 75 (July 18, 2002) (internal citations omitted).

¹⁰ *In the Matter of the Application of Portland General Electric Co. for an Investigation into Least Cost Plant Retirement*, Docket No. DR 10 *et al.*, Order No. 08-487 at 7-8 (Sept. 30, 2008) (internal quotations and citations omitted).

¹¹ Stipulation at 4. Importantly, the Stipulating Parties also agreed that the Stipulation “allows for the settlement of this case without agreement of parties on the methodology for issues raised by the Stipulating Parties, including but not limited to market caps, and the day-ahead/real-time price adder. Approval of the Stipulation does not represent the Commission adopting any parties’ methodologies for those adjustments.” Stipulation at 7-8. To the extent AWEC objects to the unspecified adjustment on the basis of how AWEC is modeling any issue, “including but not limited to market caps, and the day-ahead/real-time price adder,” that objection also fails because the Stipulation does not resolve the modeling. To the contrary, the Stipulation “is intended to be non-precedential so that the parties can continue discussions regarding [many contested issues] in workshops ... [and, if need be] in a future TAM.” Joint Stipulating Parties/100, McVee, Mitchell, Kim, Jenks, Higgins, Johnson/8.

¹² Stipulation at 7-8.

¹³ Joint Stipulating Parties/100, McVee, Mitchell, Kim, Jenks, Higgins, Johnson/2.

¹⁴ *See In the Matter of PacifiCorp, dba Pacific Power, 2023 Transition Adjustment Mechanism*, Docket No. UE 400, Order No. 22-389 at 3 (Oct. 25, 2022) (adopting an unspecified Oregon-allocated adjustment); *In the Matter of PacifiCorp, dba Pacific Power, 2021 Transition Adjustment Mechanism*, Docket No. UE 375, Order No. 20-392 at 2 (Oct. 30, 2020) (same); *In the Matter of PacifiCorp, dba Pacific Power, 2015 Transition Adjustment Mechanism*, Docket No. UE 287, Order No. 14-331 at 5-6 (Oct. 1, 2014) (same).

¹⁵ Order No. 02-469 at 75.

Despite Commission precedent, AWEC’s primary—if not only—objection to the Stipulation is AWEC’s claim that the Stipulating Parties have not provided an explanation for how the unspecified \$13 million adjustment was calculated and that the number should be higher.¹⁶ AWEC argues that without explanation of the methodology used to calculate the adjustment, there is “no evidence to demonstrate the reasonableness” of the adjustment or whether the resulting rates are just and reasonable.¹⁷ AWEC’s argument here is substantively identical to an argument the Commission soundly rejected when it was previously raised by AWEC’s predecessor, the Industrial Customers of Northwest Utilities (ICNU).

In the PacifiCorp’s 2009 rate case, docket UE 210, all parties to the case except for ICNU, entered a revenue requirement stipulation that included an unspecified monetary adjustment.¹⁸ In that case, ICNU complained that the stipulation was “not sufficiently detailed to allow ICNU to determine whether the parties to the Stipulation accepted or rejected specific adjustments proposed by Staff or intervenors,”¹⁹ which is essentially the same argument AWEC makes here that the Stipulating Parties “have not attempted to reconcile [the] differences” between positions taken in opening testimony and the Stipulation.²⁰ In docket UE 210, ICNU also complained that without an explanation of the methodology behind the stipulation, the Commission had “no real idea how the [settlement] number was obtained,”²¹ which is essentially the same argument AWEC makes here that without explanation of the methodology used to calculate the \$13 million adjustment, the “Commission is left to speculate.”²²

¹⁶ AWEC’s Response Brief at 9-10.

¹⁷ AWEC’s Response Brief at 11.

¹⁸ *In the Matter of PacifiCorp, dba Pacific Power, Request for a General Rate Revision*, Docket No. UE 210, Order No. 10-022 at 5 (Jan. 26, 2010) (internal citations omitted).

¹⁹ Order No. 10-022 at 5.

²⁰ AWEC’s Response Brief at 8.

²¹ Order No. 10-022 at 5.

²² AWEC’s Response Brief at 11.

In docket UE 210, the Commission rejected ICNU’s argument and approved the Stipulation.²³ The Commission reasoned that stipulations “reflect judgments along a continuum of outcomes and can rarely be reduced to one ‘right’ number in any cost category.”²⁴ The Commission concluded that when considering a stipulation, it “evaluate[s] the validity of the rates based on ‘the reasonableness of the overall rates, not the theories or methodologies used or individual decisions made.’”²⁵ Just as the Commission rejected ICNU’s similar argument in docket UE 210, the Commission should reject AWEC’s argument here.

B. The evidentiary record supports the Stipulation.

The Commission will approve a stipulation when it is supported by “substantial, competent evidence in the record as a whole.”²⁶ Here, the Stipulation is supported by a fully developed evidentiary record. That record includes PacifiCorp’s initial, reply, and surrebuttal testimony, which included evidence in support of its recommended revenue requirement.²⁷ The record also includes opening and rebuttal testimony from Staff, which includes Staff’s proposed adjustments totaling roughly \$31 million for the issues resolved by the unspecified adjustment in the Stipulation.²⁸ The record also includes opening and rebuttal testimony from CUB, Calpine Solutions, and Vitesse addressing various rate implementation, transition adjustment, and revenue requirement issues.²⁹ The \$13 million value of the unspecified adjustment falls squarely within the middle of the range of outcomes recommended by the Stipulating Parties and supported by their testimony and therefore the \$13 million adjustment is both reasonable and

²³ Order No. 10-022 at 6.

²⁴ Order No. 10-022 at 6.

²⁵ Order No. 10-022 at 6 (quoting Order No. 08-487 at 7-8).

²⁶ Order No. 11-435 at 3.

²⁷ Joint Stipulating Parties/100, McVee, Mitchell, Kim, Jenks, Higgins, Johnson/5, 10.

²⁸ Joint Stipulating Parties/100, McVee, Mitchell, Kim, Jenks, Higgins, Johnson/5.

²⁹ Joint Stipulating Parties/100, McVee, Mitchell, Kim, Jenks, Higgins, Johnson/5.

supported by substantial evidence existing in the record.³⁰ To remove any doubt regarding the sufficiency of the record, the Stipulating Parties also submitted joint testimony specifically addressing the reasonableness of the Stipulation and the \$13 million adjustment.³¹

AWEC argues the Stipulating Parties filed a brief in support of the Stipulation and therefore “failed to present evidence to the Commission demonstrating as a factual matter that the rates resulting from the Stipulation would be just and reasonable.”³² AWEC’s objection is without merit because the Commission’s rules specifically allow parties to submit explanatory briefs in support of stipulations and do not require that parties submit testimony.³³ Moreover, the Commission has approved stipulations without testimony filed in support when the stipulation is supported by the fully developed evidentiary record.³⁴ In response to AWEC’s argument, the Stipulating Parties also filed joint testimony in support of the Stipulation, making AWEC’s specific objection moot.³⁵

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³⁰ Joint Stipulating Parties/100, McVee, Mitchell, Kim, Jenks, Higgins, Johnson/9; *In the Matter of PacifiCorp, dba Pacific Power, 2009 Transition Adjustment Mechanism*, Docket No. UE 199, Order No. 08-543 at 5 (Nov. 12, 2008).

³¹ See generally Stipulating Parties’ Joint Reply Testimony in Support of Stipulation.

³² AWEC Response Brief at 1.

³³ OAR 860-001-350(7)(a).

³⁴ See Order No. 11-435 at 1 (analyzing and adopting the parties’ stipulation); see also Docket No. UE 227, Ruling at 3 (Sept. 22, 2011). (accepting joint testimony in support of stipulation as a brief because testimony added no new facts to the record and stipulating parties agreed that the stipulation was supported by the fully developed evidentiary record because the stipulation was entered after the evidentiary hearing).

³⁵ See Stipulating Parties’ Joint Reply Testimony in Support of Stipulation.

III. CONCLUSION

The Stipulating Parties respectfully request the Commission approve the Stipulation in full. The Stipulation will result in just and reasonable rates and is fully supported by the record.

Dated this 20th day of October 2023.

/s/ Adam Lowney

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