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October 20, 2023

Via Electronic Filing

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

Re: In the Matter of PACIFICORP, dba PACIFIC POWER,
2024 Transition Adjustment Mechanism
Docket No. UE 420

Dear Filing Center:

Please find enclosed the Alliance of Western Energy Consumers' Brief in Opposition to Non-Unanimous Stipulation in the above-referenced docket.

Thank you for your assistance. Please do not hesitate to contact me if you have any questions.

Sincerely,

/s/ Jesse O. Gorsuch
Jesse O. Gorsuch

Enclosure

**BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON**

UE 420

In the Matter of)	ALLIANCE OF WESTERN ENERGY
)	CONSUMERS' BRIEF IN
PacifiCorp, dba Pacific Power,)	OPPOSITION TO NON-UNANIMOUS
)	STIPULATION
2024 Transition Adjustment Mechanism.)	
_____)	

I. INTRODUCTION

Pursuant to Oregon Administrative Rule (“OAR”) 860-001-0650 and the Scheduling Memorandum issued September 8, 2023, by Administrative Law Judge (“ALJ”) Mapes, the Alliance of Western Energy Consumers (“AWEC”) hereby submits this Brief in Opposition to the Stipulation presented by PacifiCorp d/b/a/ Pacific Power (“PacifiCorp” or “Company”), Staff of the Public Utility Commission of Oregon (“Staff”), the Oregon Citizens’ Utility Board (“CUB”), Calpine Energy Solutions, LLC (“Calpine”), Klamath Water Users Association (“KWUA”), and Vitesse, LLC (“Vitesse”) (collectively “Stipulating Parties”).

While the open issues in this case include complex power cost modeling and analysis, AWEC’s challenge to the Stipulation also presents the Commission with a simple binary choice. Either it can accept the Stipulation and disregard the TAM Guidelines – guidelines that are themselves the product of a stipulation approved by the Commission agreed to by PacifiCorp, Staff, CUB, and AWEC – or it can reject the Stipulation and uphold the TAM Guidelines. As previously demonstrated, PacifiCorp’s modeling change to the Day-Ahead/Real-Time (“DA/RT”) adjustment alone increases power costs by more than the black box value of the Stipulation. This type of modeling change is not allowed by the TAM Guidelines. The Stipulating Parties do not

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dispute any of this. Only PacifiCorp in earlier testimony in this docket indicated that its change to the DA/RT method was a “correction” and not a modeling change even though, as shown below, it very clearly is a modeling change.

Furthermore, the Stipulation accepts PacifiCorp’s input of market caps within the AURORA model using the “average of averages” method, rather than the Commission-approved “third quartile of averages” over the challenges of AWEC and Staff in written testimony and without reconciliation.

Evidence in the record demonstrates these two issues alone, discarded and unaddressed by the Stipulating Parties, result in rates designed to collect at least \$28.7 million in excess revenue compared with the Commission-approved modeling frameworks. The Commission should reject the Stipulation and modify the proposed rates based upon evidence in the record and Commission-approved modeling methods.

II. ARGUMENT

1. THE STIPULATION VIOLATES THE TAM GUIDELINES AND RESULTS IN UNJUST AND UNREASONABLE RATES.

In *AWEC’s Response to the Stipulating Parties’ Joint Brief* (“Response Brief”), AWEC noted that both it and Staff had objected to a modeling change PacifiCorp made to the DA/RT adjustment in its Reply Testimony.¹ This modeling change alone increases Oregon’s NPC by \$17.5 million, more than the entire black box adjustment in the Stipulation.² Under the TAM Guidelines, PacifiCorp is only allowed to propose modeling changes with its opening testimony

¹ Response Brief at 8-10 (Sept. 26, 2023)

² *Id.* at 8.

so that other parties have sufficient time to review and respond.³ AWEC witness Mr. Mullins testified that “[i]n its July Update, PacifiCorp added an entirely new modeling adjustment to the DA/RT method” that “was another spreadsheet adjustment performed outside of the AURORA model [resulting] in an additional DA/RT cost of \$60,740,729 on a total-Company basis.”⁴ Importantly, in Rebuttal Testimony, Staff shared AWEC’s concern regarding the Company’s modeling change, with Staff witness Jent testifying that “Staff is skeptical that this is a correction. Instead, Staff believes this is a *change* to the modeling that should not have been labeled as a correction.”⁵ Indeed, witness Jent further testified that:

As Staff currently understands, the Company used to go back and look at historical DA/RT adjustments and make a corresponding adjustment in its NPC report spreadsheets to tie back to historical values. Staff assumes that the Company was not in agreement with what the historical values were showing so the Company’s “correction” takes out that portion of the adjustment.⁶

PacifiCorp did not dispute any of this. Instead, it argued that its change to the volume component of the DA/RT adjustment was merely a “correction” because it was “producing an erroneous result” by reducing power costs instead of increasing them.⁷

The TAM Guidelines do not specify what constitutes a “modeling change” and what constitutes a “correction,” but while there may be instances in which the distinction is unclear, this is not such a case. PacifiCorp did not fix an erroneous number or cell in a spreadsheet; instead, it

³ Docket No. UE 207, Order No. 09-432, Appen. A ¶ 13 (Oct. 30, 2009).

⁴ AWEC/200, Mullins/27:10-14.

⁵ Staff/800, Jent/8 (emphasis in original).

⁶ Staff/800, Jent/8 (emphasis in original; internal citations omitted).

⁷ PAC/800, Mitchell/22:15-16.

did not like how the DA/RT adjustment was functioning as previously approved by the Commission and introduced “an entirely new, third DA/RT adjustment” to change it.⁸ That is a modeling change introduced in Rebuttal Testimony in clear and undisputed violation of the TAM Guidelines.

In the past, PacifiCorp has insisted on strict adherence to the TAM Guidelines. In UE 390, PacifiCorp objected to AWEC’s recommendation to include fly ash revenues in the TAM on the basis that they were not allowed under the TAM Guidelines, and also objected to coal-related recommendations by Sierra Club and CUB on the basis that they were outside of the scope of the TAM as defined by the TAM Guidelines.⁹ Similarly, in UE 356 PacifiCorp objected to Staff’s recommendation related to new resources, and in UE 307 it objected to CUB’s recommendations related to QF contracts, both on the basis that these recommendations were contrary to the TAM Guidelines.¹⁰

Furthermore, this is not simply a matter of improper process, in which the modeling change is appropriate but introduced at the wrong time. Both AWEC and Staff disputed the substance of PacifiCorp’s modeling change.¹¹ As Mr. Mullins notes, PacifiCorp’s concerns about the volume component of the DA/RT adjustment are “entirely fictional.”¹² Mr. Mullins goes on to explain that:

The volumes added in the DA/RT adjustment are added in by the Company, not due to some sort of optimization in the DA/RT adjustment. They are set at equal

⁸ AWEC/200, Mullins/27:12.

⁹ UE 390, PAC/400, Staples/93:10-15; UE 390, PAC/400 Staples/17:1-15; UE 390, PAC/1000, Staples/26.

¹⁰ UE 356, PAC/400, Wilding/20:9-14;21:4-5; UE 307, PAC/400, Dickman/84:13-16; 86:3-6; 89:5-9.

¹¹ AWEC/200, Mullins/27-29; Staff/800, Jent/8.

¹² AWEC/200, Mullins/28:17-18

and offsetting levels. There is no buying at low prices and selling at high prices assumed in these volumes applied in the historical adjustment. Other than the impact of tying the DA/RT price impacts back to the historical values, the perfunctory offsetting volumes and their associated revenues are equal and offsetting¹³

In their Joint Reply Testimony in Support of Stipulation, none of the Stipulating Parties dispute that PacifiCorp’s modification of the DA/RT method constitutes an improper modeling change, nor do they dispute that this issue alone overwhelms the black box in the Stipulation. Instead, they simply argue that the Stipulation is “within the range of reasonable outcomes.”¹⁴ Staff specifically justifies its apparent reversal on the issue of the propriety of PacifiCorp’s modeling change on the basis that this issue is a “subjective question[] of interpretation the Commission would have discretion to resolve either way.”¹⁵ Both statements, however, are untrue. The issue of whether PacifiCorp introduced a modeling change to the DA/RT adjustment is neither subjective nor ambiguous. No party disputes that PacifiCorp cannot introduce modeling changes on rebuttal under the TAM Guidelines. The record also clearly demonstrates that PacifiCorp’s adjustment constitutes a modeling change and not a “correction.” Thus, this issue requires only that the Commission apply the TAM Guidelines, to which both PacifiCorp and Staff have agreed. If it does that, then the black box amount in the Stipulation is, by definition, not within the range of reasonable outcomes because it is less than the value of PacifiCorp’s improper modeling change.

AWEC maintains its contention that PacifiCorp failed to comply with the requirements of the TAM Guidelines regarding the modeling change and maintains its assertion that the evidentiary record stands in contrast to the proposed resolution of the DA/RT modeling change controversy.

¹³ *Id.* at 28:18-29:3.

¹⁴ Joint Stipulating Parties/100 at 9:5-6.

¹⁵ *Id.* at 12:1-10.

Because this adjustment alone is worth more than the black box amount in the Stipulation, it should be rejected on this basis alone.

2. THE EVIDENTIARY RECORD DOES NOT SUPPORT THE STIPULATING PARTIES' TREATMENT OF PACIFICORP'S MODELING OF MARKET CAPS.

In Opening Testimony, AWEC contested PacifiCorp's modeling of market caps using the "average of averages" approach, rather than the third-quartile of averages most recently approved by the Commission.¹⁶ AWEC reiterated this opposition in Rebuttal Testimony, detailing how "using an average to set a maximum level of sales will result in a level of sales that is less than the historical average."¹⁷

Similarly, Staff witness Dlouhy opposed the Company's use of the "average of averages" modeling approach and testified that "[t]he third quartile of averages' approach better aligns with the operational realities of transacting on the open market" and that there "is still insufficient evidence to show that the 'average of averages' approach produces a more accurate forecast than the 'third quartile of averages' approach in AURORA."¹⁸ In Rebuttal Testimony, witness Dlouhy maintained his opposition to the "average of averages" method and expanded his position to state that "Staff is also *convinced* that [the third quartile of averages] method captures benefits that are currently unmodeled from the Company's outboard adjustment to model [energy imbalance market] benefits."¹⁹

¹⁶ See AWEC/100, Mullins/4-7.

¹⁷ AWEC/200, Mullins/21:3-4.

¹⁸ Staff/300, Dlouhy/6:11-22.

¹⁹ Staff/900, Dlouhy/5:3-5 (emphasis added).

Again, the Stipulating Parties elected not to present the Commission with an evidentiary record that attempts to reconcile these divergent positions. Indeed, the *Stipulating Parties' Joint Brief in Support of Stipulation* (“Stipulation Brief”) makes no reference to the modeling of market caps. Staff’s independent section of the *Stipulating Parties' Joint Reply Testimony in Support of Stipulation* (“Stipulation Reply Testimony”), presenting the first evidence in the record regarding the Stipulation after AWEC identified the existing deficiency, merely states that the proposed resolution is “within the scale of what Staff proposed is a reasonable outcome” and that ultimate resolution of both the market cap and DA/RT modeling change issues would hinge on Commission discretion “to resolve either way.”²⁰ While this discussion outlines Staff’s analysis of litigation risks, it does not present the Commission with substantive evidence of why it should not use a modeling approach that the Commission has adopted in the past and that Staff itself is “convinced” captures unmodeled EIM benefits and “better aligns with the operational realities of transacting on the open market”.

Again, the Stipulating Parties have failed to carry their burden to present evidence in support of the Stipulation. Indeed, the evidentiary record relied upon by the Stipulating Parties demonstrates an alternate modeling approach, most recently approved by the Commission, is more accurate and would result in just and reasonable rates. The Stipulating Parties’ general reference to the evidentiary record as a whole fails to reconcile this discrepancy and more strongly supports the use of the “third quartile of averages” approach. As such, the Stipulation should be rejected.

²⁰ See Joint Stipulating Parties/100 at 11:20 – 12:10.

3. THE STIPULATING PARTIES FAILED TO CARRY THEIR BURDEN OF PROOF.

In its Response Brief, AWEC detailed its argument that, while the Commission’s Rules do permit parties to submit a brief in support of a stipulation,²¹ the Stipulating Parties are not relieved of their responsibility of presenting evidence to demonstrate that the proposed rates resulting from the Stipulation will result in just and reasonable rates. In Reply, the Stipulating Parties cite OAR 860-001-350(7)(a) and assert that “[t]he Commission’s rules...do not require that parties submit testimony” in support of a stipulation.²² Rather, the Stipulating Parties assert that “the voluminous and fully developed evidentiary record provided sufficient support for the terms of the Stipulation.”²³ The Stipulating Parties are mistaken.

AWEC does not dispute the language of OAR 860-001-350. The Commission’s Rules are clear. Parties offering a stipulation for Commission consideration have the choice to file either “[a]n explanatory brief or written testimony in support of the stipulation....”²⁴ However, this optionality does not relieve the sponsor(s) of a stipulation from the obligation to demonstrate, with specific evidence, “that the stipulation is in accord with the public interest, and results in just and reasonable rates.”²⁵ Indeed, the Commission is obligated “to protect...customers, and the public generally, from unjust and unreasonable exactions...and to obtain for them adequate service at fair and reasonable rates.”²⁶ Accordingly, the sponsor(s) of a stipulation elect(s), at its/their own peril, to present a contested stipulation to the Commission without sufficient and specific evidence to

²¹ O.A.R. 860-001-0350(7).
²² Joint Stipulating Parties/100 at 4:17-18; fn. 9.
²³ Joint Stipulating Parties/100 at 4:19-21.
²⁴ OAR 860-001-0350(7)(a).
²⁵ UE 394, Order No. 22-129 at 17 (Apr. 25, 2022).
²⁶ O.R.S. §756.040(1).

allow the Commission to make its statutorily obligated determination that the resulting rates will be “fair and reasonable.”²⁷ If the Stipulation resolved purely legal or policy issues, a supporting brief may have been appropriate; but it does not – it resolves factual issues and the Commission must have a record on which to determine that the resolution is just and reasonable.²⁸

The fact that the Stipulating Parties submitted “Reply Testimony” after AWEC pointed out the evidentiary defects underlying the Stipulation does not change the analysis. This testimony does little more than reiterate the blanket statements of the Stipulating Parties’ supporting brief that the Stipulation is reasonable given the “range of outcomes.”²⁹ AWEC agrees with the Stipulating Parties that parties should be able to compromise their litigation positions and need not present a specific factual basis for every dollar that is different between a stipulation and their litigation position. But where, as here, the result of the Stipulation directly contradicts the requirements of a different stipulation to which a majority of the Stipulating Parties have agreed to adhere and that the Commission adopted (i.e., PacifiCorp’s change to the DA/RT method in violation of the TAM Guidelines), vague statements about the holistic nature of the Stipulation are not sufficient. There should at least be some evidence and explanation as to why the Stipulation does not deviate from the TAM Guidelines or why such a deviation is appropriate. Such explanation and evidence is wholly lacking from the record.

The Commission’s standard is clear: “To support the adoption of a settlement, **the stipulating parties must present evidence that the stipulation is in accord with the public interest**, and

²⁷ O.R.S. §756.040(1).

²⁸ O.R.S. § 756.558.

²⁹ Joint Stipulating Parties/100 at 5:10-13.

results in just and reasonable rates.”³⁰ The Stipulating Parties elected not to attempt to meet this standard. Rather, the Stipulating Parties exercised their option to forgo a demonstration of specific evidence in support of the Stipulation and present only “an explanatory brief”³¹ and rely upon the contested evidence already in the record. This decision resulted in the presentation of no evidence related to specific terms and conditions of the Stipulation and the resulting proposed rates to assist the Commission in a determination of fairness and reasonableness. Rather, the decision improperly encumbers the Commission, and non-settling stakeholders, to determine where within the spectrum of competing assertions, claims, testimony and analytical evidence presented in this matter any justification for the Stipulation can be found. This necessary speculation demonstrates that the Stipulating Parties have failed to carry their burden of proof. Accordingly, the Commission should reject the Stipulation.

III. CONCLUSION

For the reasons outlined above, the Commission should reject the Stipulation as it has not been demonstrated to result in just and reasonable rates. Specifically, the Commission should reject the proposed treatment of PacifiCorp’s DA/RT modeling modification, as it is unsupported by evidence in the record, contravenes the Commission-approved TAM Guidelines and results in unjust and unreasonable rates. Further, the Commission should reject the proposed treatment of PacifiCorp’s modeling of market caps, as it is contrary to the evidentiary record, is inconsistent,

³⁰ Order No. 22-129 at 17 (emphases added).

³¹ OAR 860-001-0350(7)(a).

without explanation, with the Commission's most recently approved modeling method, and results in unjust and unreasonable rates.

Dated this 20th day of October, 2023.

Respectfully submitted,

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