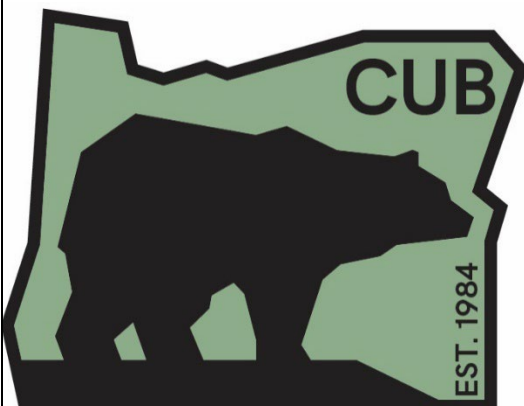


BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UE 407

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.)
_____)

TESTIMONY IN OPPOSITION TO SETTLEMENT
OF THE
OREGON CITIZENS' UTILITY BOARD

January 20, 2023



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I. INTRODUCTION

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Q. Please state your name, occupation, and business address.

A. My name is Bob Jenks. I am the Executive Director of the Oregon Citizens' Utility Board (CUB). My business address is 610 SW Broadway, Ste. 400, Portland, Oregon 97205.

Q. Please describe your educational background and work experience.

A. My witness qualification statement is found in exhibit CUB/101.

Q. What is the purpose of your testimony?

A. To be clear, the purpose of my testimony is not to oppose cost-recovery associated with PacifiCorp's Wildfire Protection Plan (WPP). Further, CUB recognizes the importance of WPP-related investments, especially in light of increased wildfire activity due to climate change. My testimony details CUB's limited opposition to the Joint Stipulation entered into by PacifiCorp (PAC or

1 the Company), Staff of the Public Utility Commission of Oregon (Staff), and the
2 Alliance of Western Energy Consumers (AWEC) (Stipulating Parties) and filed
3 with the Public Utility Commission of Oregon (Commission) on December 29,
4 2022. CUB's opposition centers solely on the lack of an earnings test in the
5 WPP automatic adjustment clause contained in the Joint Stipulation.¹ This
6 testimony will explain why, absent an earnings test, the proposed WPP
7 automatic adjustment clause is fundamentally imbalanced, will likely lead to
8 customers over-paying for WPP-related investments, and contains no adequate
9 safeguards to ensure that costs flowing through the mechanism will result in just
10 and reasonable rates.² Accordingly, CUB respectfully requests that the
11 Commission modify the Stipulation to include an earnings test set at
12 PacifiCorp's authorized return on equity (ROE).

13 II. DISCUSSION

14 **Q. Please summarize your testimony**

15 **A.** CUB believes the Stipulation as filed cannot ensure that costs flowing through
16 the WPP automatic adjustment clause will result in just and reasonable rates.
17 This is because the automatic adjustment clause contains no earnings test to with
18 which to verify the reasonableness of the Company's rates. Absent a holistic
19 review of costs in a general rate case, an earnings test is a core tool used by the
20 Commission to determine whether rates are just and reasonable. When operating
21 outside of a general rate case, in order to ensure that rates are set at a reasonable

¹ UE 407 Stipulation, ¶ 13 (Dec. 29, 2022).

² ORS 757.040(1) ("[T]he commission shall make use of the jurisdiction and powers of the office to protect such customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates.").

1 level, the Commission applies an earnings test to various automatic adjustment
2 clause mechanisms and deferrals. Indeed, for deferred accounting applications,
3 an earnings test is required at the time deferred costs are moved into rates to
4 ensure the utility is not systematically over-earning.³ CUB believes an earnings
5 test should be applied to the costs that flow through the WPP automatic
6 adjustment clause for the same reason.

7
8 Counter to the Stipulating Parties' assertion, the Joint Stipulation as filed cannot
9 guarantee that future rates will be just and reasonable.⁴ Absent an earnings test,
10 PacifiCorp may be able to over-recover costs in excess of authorized levels. This
11 is especially problematic because future WPP-related costs are speculative and
12 uncertain. PacifiCorp may incur substantial future operations and maintenance
13 (O&M) and capital costs to restore and harden its system before and after
14 wildfire events. In order to protect customers and fulfill its mandate to establish
15 just and reasonable rates, CUB respectfully requests that the Commission modify
16 the Stipulation to include an earnings test in the WPP automatic adjustment
17 clause set at PacifiCorp's authorized ROE. An earnings test at authorized ROE
18 represents a reasonable compromise that will allow PAC to fully recover WPP
19 costs in a consistent manner to how they would be recovered in a general rate
20 case proceeding. CUB's request both aligns with traditional ratemaking
21 principles and recent Commission decisions implementing similar legislative

³ ORS 757.259(5).

⁴ UE 407 Stipulation, ¶ 23 (Dec. 29, 2022) ("The Stipulating Parties agree that this Stipulation will result in rates that meet the standard in ORS 756.040.").

directives to those found in the SB 762 (2021) wildfire legislation that gave rise to utility WPPs and this proceeding.

Q. What is the Commission's mission and mandate?

A. According to the Commission's website, its mission is "[t]o ensure Oregon utility customers have access to safe, reliable, and high quality utility services at just and reasonable rates."⁵ Further, ORS 756.040 delineates the general powers vested in the Commission. It states, in part, that "[t]he commission shall balance the interests of the utility investor and the consumer in establishing fair and reasonable rates."⁶ In seeking the balance the interests of the utility customer and investor, the Commission's focus is on reasonable overall rates, not cost recovery of individual rate elements.⁷ Examining costs is essential, but at the end of the day, the focus is on whether the rates charged are just and reasonable and whether the rates charged allow the utility a reasonable return for its shareholders. Therefore, the Commission should not focus its inquiry in this proceeding solely on cost recovery of individual WPP-related costs but should examine whether the utility's rates are reasonable overall. To CUB, if the Company's rates are already reasonable overall, then it is being adequately compensated for WPP-related costs that will flow through the proposed

⁵ Oregon Public Utility Commission, *About Us*, available at <https://www.oregon.gov/puc/aboutus/Pages/default.aspx>

⁶ ORS 756.040(1).

⁷ *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 313-315 (1989) ("The economic judgments required in rate proceedings are often hopelessly complex, and do not admit of a single correct result. The Constitution is not designed to arbitrate these economic niceties. Errors to the detriment of one party may well be canceled out by countervailing errors or allowances in another part of the rate proceeding. The Constitution protects the utility from the net effect of the rate order on its property. Inconsistencies in one aspect of the methodology have no constitutional effect on the utility's property if they are compensated by countervailing factors in some other aspect.").

1 mechanism. CUB's request balances the interests of the utility's shareholders
2 and its customers and treats the utility fairly.

3 **Q. What is the origin of "just and reasonable rates"?**

4 **A.** The "just and reasonable" standard was articulated in a landmark U.S. Supreme
5 Court case entitled *Federal Power Commission v. Hope Natural Gas Co.*⁸ As
6 described by the Court, this standard generally requires that the Commission
7 balance the interests of the customer and investor. This means Commission-
8 approved rates must not overcharge the customer to the extent that the rates
9 qualify as an unreasonable exaction; but the rates must also provide the utility
10 with sufficient revenue for both operating expenses and to cover the capital costs
11 of the business so as not to be considered a taking of shareholder property.⁹ The
12 Commission has acknowledged this balance:

13 The Commission sets rates within a reasonable range that protects the
14 competing interests of the utility and its customers. To protect
15 customers, the rates must be set at a level sufficiently low to avoid
16 unjust and unreasonable exactions. To protect the utility investor, the
17 rates must provide sufficient revenue not only for operating expenses,
18 but also for the capital costs of the business.¹⁰

19 **Q. How does the Commission establish just and reasonable rates?**

20 **A.** According to the Commission in Order No. 08-487:

21 The Commission sets rates under a comprehensive and flexible
22 regulatory scheme. The legislature has expressed no specific process or
23 method the Commission must use to determine the level of just and
24 reasonable rates, and the Commission has great freedom to determine
25 which of the many possible methods it will use.¹¹

⁸ *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) (hereinafter *Hope*).

⁹ *Id.*

¹⁰ OPUC Order No. 08-487 at 5.

¹¹ *Id.*

1 Establishing just and reasonable rates is the core responsibility of the
2 Commission, and there is no set process that it must use to accomplish this. The
3 legislature has provided the Commission with “the broadest authority—
4 commensurate with that of the legislature itself—for the exercise of [this]
5 regulatory function.”¹² Therefore, the Commission has tremendous authority—
6 and discretion—to set just and reasonable rates and is bound by no specific
7 method, nor is any single element dispositive.

8
9 In a general rate case, the Commission has an established formula for how it sets
10 the revenue requirement used to determine the rates charged to customers:¹³

11 **REVENUE REQUIREMENT** – Revenues determined to be necessary to
12 allow the company to recover reasonable expenses and the opportunity to earn
13 a reasonable rate of return on its prudent rate base.

14
15 **REVENUE REQUIREMENT FORMULA** $R = E + (v - d) r$

16 R – Total revenue required

17 E – Operating expenses

18 v – Original cost of utility assets (value of rate base)

19 d – Accumulated depreciation of utility assets (plant depreciation)

r – Rate of return

20 The Commission uses this formula to identify the revenue needed to
21 compensate the utility for its operating costs and for a return on its rate base.
22 Importantly, if the utility is fully recovering its revenue requirement, it is being
23 fairly compensated for its operating costs and a return on its rate base.

24
25 But this formula is not limited to new costs. The formula is not:

¹² *Id.* at 4.

¹³ OPUC, Guide For Filing a Water Utility Rate Case, page 2, available at <https://www.oregon.gov/puc/forms/Forms%20and%20Reports/Application-for-Utility-Rate-Increase-Decrease.docx>. This same formula is used for electric and natural gas rate case proceedings.

1 $R = \text{old } R + \text{new } E + (\text{new } V - \text{new } d)r$

2 The formula looks at the total costs to the utility and sets a revenue
3 requirement adequate to recover those costs while allowing the utility a
4 reasonable return on its capital investment. This formula should produce just
5 and reasonable rates.¹⁴

6
7 Unfortunately, there has been an increase in the amount of costs that are placed
8 in rates through tracking mechanisms and other single-issue ratemaking
9 mechanisms rather than through general rate cases. However, using trackers,
10 like the WPP automatic adjustment clause at issue in this proceeding, doesn't
11 alleviate the Commission's mandate to ensure that rates are just and
12 reasonable.

13 **Q. Please explain.**

14 **A.** On January 1, 2023, PacifiCorp customers saw a large increase in their bills.
15 The typical customer saw a 21% increase:

16 A typical residential customer using 900 kilowatt hours per
17 month can expect monthly bills to increase from \$91.89 to
18 \$111.34.¹⁵

19 Included in this increase was a general rate case increase of 5.35% for
20 residential customers.¹⁶ While rate design changes affected the increase in
21 bills of the "typical customer," it is clear that the majority of this rate increase

¹⁴ The Commission also looks at affordability when establishing rates and has stated that due to large increases that cause rate shock it can set revenue requirement at the lowest level that is reasonable or adjust the timing of rate recovery.

¹⁵ OPUC News Release, *available at* <https://www.oregon.gov/puc/news-events/Documents/PR-202226.pdf>.

¹⁶ OPUC Order No. 22-491 at 2.

1 came through various trackers. In addition, PAC's customers are scheduled to
2 receive an additional increase later this year as a limited set of costs from
3 trackers are scheduled to be added after the winter heating season.

4 The Company's stated reason for these cost increases included general
5 inflation and global supply chain problems that are raising the cost of products.
6 However, the annual inflation rate has been falling for 6 months and the
7 monthly inflation rate from November 2022 to December 2022 was negative
8 for the first time since May 2020.¹⁷ The cost of gasoline, which is an expense
9 item in utility ratemaking, has declined.¹⁸ The cost of steel has also declined.¹⁹

10
11 Just and reasonable ratemaking requires us to account for costs that decline,
12 efficiencies that remove cost items, and other things that put downward
13 pressure on rates when we are setting rates. The formula used in general rate
14 cases takes into consideration items that place both downward pressure on rates
15 and items that place upward pressure on rates. Absent an earnings test,
16 trackers like the WPP automatic adjustment clause do not.

17
18 One challenge for regulators is, if trackers are available, utilities don't file for
19 general rate cases when costs that are not considered in the trackers are
20 generally declining. PacifiCorp had a general rate case (UE 263) in 2013 for
21 rates effective in 2014 but did not file another rate case until 2020 (UE 374).

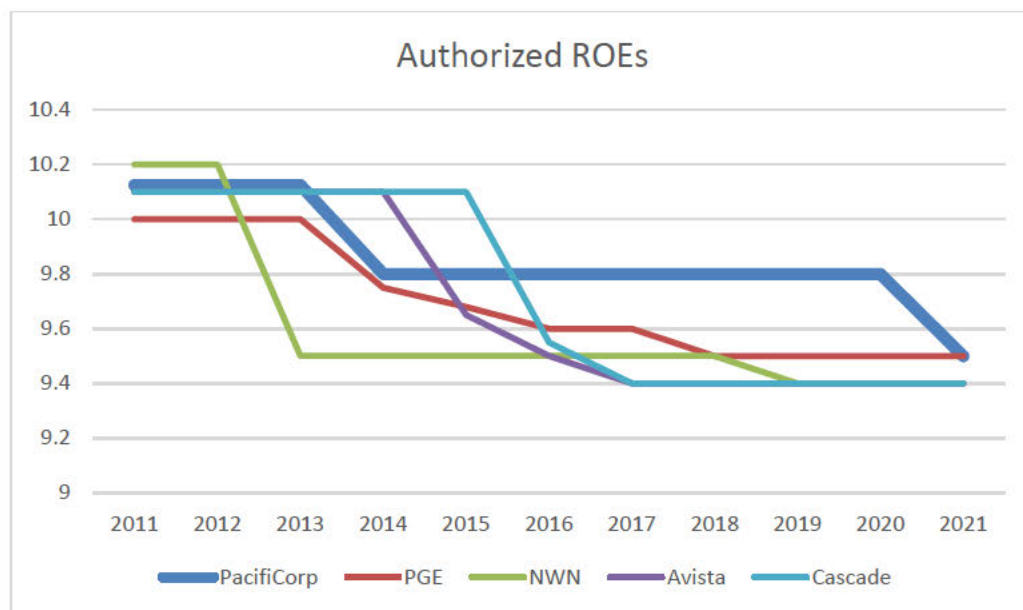
¹⁷ <https://apnews.com/article/december-2022-inflation-report-72bb938a443ab0500bd72d23f62214ad>

¹⁸ <https://apnews.com/article/december-2022-inflation-report-72bb938a443ab0500bd72d23f62214ad>

¹⁹ <https://tradingeconomics.com/commodity/steel>

During this period of time, PAC's cost of capital declined, but by using trackers like the RAC and the TAM, PacifiCorp was able to avoid its ROE being updated. CUB's Figure 1 shows how PacifiCorp was able to maintain a ROE in excess of peer utilities by avoiding a general rate case.²⁰

CUB Figure 1



Trackers and adjustment mechanisms that allow a utility to add new costs to its revenue requirement but avoid updating the revenue requirement for savings can cause customers to overpay. This is fundamentally imbalanced and is likely to lead to rates that are not just and reasonable.

While the use of trackers has increased over time, regulation should not encourage trackers by making them more attractive than a general rate case.

²⁰ UE 374, CUB Rebuttal Testimony, page 6, CUB/300/6. This chart has been adapted from CUB's testimony in that proceeding to remove the Company's request to increase its authorized ROE in UE 374.

1 Including an earning test in trackers addresses that issue. An earnings test is an
2 incredibly important consumer protection item, which will provide the utility
3 with the same result it would get if it was trying to recover the cost through a
4 general rate case. Absent an earnings test, the Commission cannot ensure rates
5 are just and reasonable overall.

6 **Q. What is the purpose of an earnings test?**

7 **A.** Before increasing rates to track in a new cost item, an earnings test checks to see
8 how much rates need to increase to allow full recovery of the new cost item. In a
9 general rate case, rates only increase by enough to allow a utility to recover its
10 prudent costs and earn its authorized earnings. An earning test set at authorized
11 ROE, as CUB is recommending here, does the same thing. CUB's proposal
12 ensures rates are set to allow the utility to fully recover its costs but not earn
13 above its authorized earnings. An earnings test at authorized ROE does not
14 disallow recovery of costs, does not require sharing of costs, but simply looks to
15 see what level of increase is necessary to allow the utility to recover its prudently
16 incurred costs (including the new WPP-related costs) and provide reasonable
17 return to its shareholders. It is a test designed to see if the rates that are being
18 proposed are just and reasonable under the Supreme Court's *Hope* standard.

19 **Q. If an earnings test cuts a rate increase, how is that not a disallowance?**

20 **A.** As discussed, the role of the Commission is to set rates at a just and reasonable
21 level. If we are engaged in a rate setting process and the rates established both
22 allow for full cost recovery of the utility's costs, including the costs associated
23 with the automatic adjustment clause —and allow for a reasonable return for

1 shareholders—then the utility is fully recovering their costs. To be abundantly
2 clear, WPP-related cost recovery that occurs after the application of an earnings
3 test *is* full cost recovery.

4
5 Applying an earnings test at authorized ROE will determine which costs, if any,
6 in the WPP automatic adjustment clause need to be added onto the current rates
7 in order to allow full recovery. If the earnings test precludes a pass through of
8 WPP automatic adjustment clause costs into rates, it is because the utility is
9 already getting full recovery of WPP-related costs. With costs generally
10 increasing as they current are, applying an earnings test will probably have little
11 effect. However, just because costs are generally rising at the moment does not
12 mean that costs are always rising. Just because it may be appropriate to add the
13 full amount of an automatic adjustment clause into rates in most cases, does not
14 mean that it is fair and reasonable to do so in all cases.

15 **Q. Why is an earnings test necessary in this instance?**

16 **A.** It is a necessary and important customer protection measure that will ensure rates
17 collected after costs flow through the WPP automatic adjustment clause are just
18 and reasonable. The costs that will flow through the WPP automatic adjustment
19 clause are uncertain, as are the Company's future earnings, when prudent WPP-
20 related costs are eligible for potential recovery. Absent an earnings test, the
21 Commission cannot guarantee that costs that flow through this mechanism will
22 result in just and reasonable rates. WPP-related costs have the potential to be
23 extremely high, especially for a utility like PacifiCorp with a diverse service

1 territory spanning various forested regions of the state. If there is no earnings
2 test, a possible future scenario could be one where WPP-related costs are
3 extremely high in a given year, PAC is earning above authorized levels in that
4 year, and, yet, all WPP-related costs are passed onto customers. Such a result
5 would not comply with the Commission's mandate to establish just and
6 reasonable rates. CUB's proposal results in a durable WPP automatic adjustment
7 clause that fairly balances the interests of the utility and its customers, which
8 aligns with the Commission's mandate and statutory responsibility.

9 **Q. Why is CUB recommending an earnings test at authorized ROE?**

10 **A.** We recognize that there is some urgency when it comes to investments to harden
11 utility systems. While CUB would normally support mechanisms that are
12 designed to provide an incentive to control costs, that is not what we are
13 proposing in relationship to wildfire expenses. Our proposal does not limit a
14 utility's ability to recover its costs. After the application of an earnings test, the
15 utility will be able to recover all of its WPP-related costs. All we are proposing
16 is a mechanism to protect customers from excessive rates, being charged rates
17 that are greater than the utility's cost of service plus a reasonable return.

18 **Q. Does CUB support utility wildfire investments?**

19 **A.** Yes, climate change is an existential threat. Climate change is exacerbating
20 wildfire risk, which is creating risk for Oregonians' health and safety, as well as
21 creating new costs for utility consumers. We are simply trying to be sure that
22 utility consumers are not over-paying for wildfire investments.

23 **Q. Does SB 762 require an automatic adjustment clause?**

1 **A.** No, SB 762 directs the Commission to “establish an automatic adjustment
2 clause, as defined in ORS 757.210, **or another method** to allow timely recovery
3 of the costs.”²¹ However, CUB is willing to allow an automatic adjustment
4 clause to help facilitate a reasonable outcome in this proceeding. We commend
5 the Stipulating Parties for bringing forth a relatively sound mechanism, but the
6 lack of an earnings test renders the automatic adjustment clause incapable of
7 ensuring rates will be just and reasonable. However, if there is going to be an
8 automatic adjustment clause, then it should include the basic customer protection
9 represented by an earnings test.

10 **Q. Does SB 762 preclude the inclusion of an earnings test?**

11 **A.** No. CUB will reserve legal arguments related to SB 762’s legislative history and
12 statutory interpretation for briefing. However, it is worth noting that the
13 Commission recently rendered a decision regarding cost recovery associated
14 with SB 98 (2019), a natural gas bill that similarly directed the Commission to
15 establish a mechanism to allow recovery of renewable natural gas-related costs.
16 In establishing a balanced mechanism that included an earnings test at 50 basis
17 points above and below authorized ROE, the Commission rejected NW Natural’s
18 assertion that its automatic adjustment clause must remove all shareholder risk
19 related to renewable natural gas cost recovery. In rejecting this argument, the
20 Commission said,

21 That interpretation, taken to its logical extent, would reach deep into the
22 Commission's ratemaking function and prevent us from achieving
23 balanced outcomes and establishing just and reasonable rates, radically
24 and fundamentally changing the Commission's ratemaking task.²²

²¹ ORS 757.963(8) (emphasis added).

²² OPUC Order No. 22-388 at 80.

1 Similarly, here, the Commission should reject any arguments that insinuate that
2 SB 762's requirements somehow absolve it of its core ratemaking function and
3 mandate to establish just and reasonable rates. CUB looks forward to expanding
4 on this argument at hearing, in legal briefing, and at oral argument.

5 **Q. Is an earnings test the only adjustment to the terms of the automatic**
6 **adjustment clause that CUB is seeking?**

7 **A.** Yes. We believe this represents a modest adjustment to the mechanism, but an
8 adjustment that adds an essential consumer protection element. This is
9 especially important as more trackers are added to elements of utility revenue
10 requirement.

11 **Q. Does this conclude your testimony?**

12 **A.** Yes.

WITNESS QUALIFICATION STATEMENT

NAME: Bob Jenks

EMPLOYER: Oregon Citizens' Utility Board of Oregon

TITLE: Executive Director

ADDRESS: 610 SW Broadway, Suite 400
Portland, OR 97205

EDUCATION: Bachelor of Science, Economics
Willamette University, Salem, OR

EXPERIENCE: Provided testimony or comments in a variety of OPUC dockets, including UE 88, UE 92, UM 903, UM 918, UE 102, UP 168, UT 125, UT 141, UE 115, UE 116, UE 137, UE 139, UE 161, UE 165, UE 167, UE 170, UE 172, UE 173, UE 207, UE 208, UE 210, UE 233, UE 246, UE 283, UG 152, UM 995, UM 1050, UM 1071, UM 1147, UM 1121, UM 1206, UM 1209, UM 1355, UM 1635, UM 1633, and UM 1654. Participated in the development of a variety of Least Cost Plans and PUC Settlement Conferences. Provided testimony to Oregon Legislative Committees on consumer issues relating to energy and telecommunications. Lobbied the Oregon Congressional delegation on behalf of CUB and the National Association of State Utility Consumer Advocates.

Between 1982 and 1991, worked for the Oregon State Public Interest Research Group, the Massachusetts Public Interest Research Group, and the Fund for Public Interest Research on a variety of public policy issues.

MEMBERSHIP: National Association of State Utility Consumer Advocates
Board of Directors, OSPIRG Citizen Lobby
Telecommunications Policy Committee, Consumer Federation of America
Electricity Policy Committee, Consumer Federation of America
Board of Directors (Public Interest Representative), NEEA