

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

In the Matter of the Application of  
PACIFICORP (U 901 E) for  
Authority to Sell Certain Mining  
Assets in Accordance with Public  
Utilities Code Section 851.

Application 15-09-007  
(Filed Sep. 18, 2015)

**Direct Testimony of  
Jeremy I. Fisher, PhD**

**On Behalf of  
Sierra Club**

**REDACTED**

**July 11, 2016**

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Dated: July 11, 2016

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## **Exhibit List**

- Exhibit JIF-1 Curriculum vitae of Jeremy I. Fisher, PhD
- Exhibit JIF-2 Coal Supply Agreement for Huntington Power Plant, provided as Confidential Attachment to Sierra Club 1.3 1<sup>st</sup> Supplemental in Oregon Docket UM 1712
- Exhibit JIF-3 United States Securities and Exchange Commission Bowie Resource Partners LP Form S-1 (excerpt)
- Exhibit JIF-4 United States Securities and Exchange Commission Bowie Resource Partners LP Form S-1, Exhibit 2.2
- Exhibit JIF-5 Direct Confidential Testimony of Cindy A. Crane in Oregon Docket UM 1712
- Exhibit JIF-6 2015 Strategic Asset Plan for Huntington, provided as Confidential Attachment to Sierra Club 3.3
- Exhibit JIF-7 2014 Strategic Asset Plan for Huntington, provided as Confidential Attachment to Sierra Club 3.3
- Exhibit JIF-8 PacifiCorp's Motion to Withdraw in Wyoming Docket 20000-400-EA-11
- Exhibit JIF-9 Exhibit RMP\_\_\_\_(CAT-9) Accompanying Direct Testimony of Chad A. Teply in Utah Docket 13-035-184
- Exhibit JIF-10 Memorandum of Understanding Related to Provisions of Medical and Pharmaceutical Benefits to Eligible Retirees, December 8, 2014, provided as Attachment to ICNU 1.16 in Oregon Docket UM 1712
- Exhibit JIF-11 Response to ICNU Data Request 1.16 in Oregon Docket UM 1712
- Exhibit JIF-12 Response to Sierra Club Data Request 2.6 in Oregon Docket UM 1712

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**Direct Testimony of Jeremy I. Fisher, PhD On Behalf of Sierra Club**

1    **1.    INTRODUCTION AND PURPOSE OF TESTIMONY**

2    **Q    Please state your name, business address, and position.**

3    **A** My name is Jeremy Fisher. I am a Principal Associate with Synapse Energy  
4           Economics, Inc. (“Synapse”), which is located at 485 Massachusetts Avenue,  
5           Suite 2, in Cambridge, Massachusetts.

6    **Q    Please describe Synapse Energy Economics.**

7    **A** Synapse Energy Economics is a research and consulting firm specializing in  
8           energy and environmental issues and policies for electricity sector issues,  
9           including fossil generation, efficiency, renewable energy, ratemaking and rate  
10          design, restructuring and market power issues, and environmental regulations.

11   **Q    Please summarize your work experience and educational background.**

12   **A** I’ve worked in electricity system energy planning for a decade, evaluating and  
13          helping to shape integrated resource plans, performing planning on behalf of  
14          states and municipalities, and helping regulators navigate environmental rules.

15          I have provided consulting services for a wide variety of public sector and public  
16          interest clients, including the U.S. Environmental Protection Agency (“EPA”), the  
17          National Association of Regulatory Utility Commissioners (“NARUC”), the

1 National Association of State Utility Consumer Advocates (“NASUCA”),  
2 National Rural Electric Cooperative Association (“NRECA”), the states of  
3 Alaska, Arkansas, Michigan, and Utah, the Commonwealth of Puerto Rico, the  
4 California Energy Commission (“CEC”), the California Division of Ratepayer  
5 Advocates (“CADRA”), Tennessee Valley Authority Office of Inspector General  
6 (“TVA OIG”), the Regulatory Assistance Project (“RAP”), the Western Grid  
7 Group, the Union of Concerned Scientists (“UCS”), Sierra Club, Earthjustice,  
8 Natural Resources Defense Council (“NRDC”), and other organizations.

9 I have provided testimony in electricity planning and general rate case dockets in  
10 Georgia, Indiana, Louisiana, Kansas, Kentucky, Oklahoma, Oregon, Nevada,  
11 New Mexico, Utah, Washington, Wisconsin, and Wyoming.

12 I hold a doctorate in Geological Sciences from Brown University, and I received  
13 my bachelor degrees from University of Maryland in Geology and Geography.

14 My full curriculum vitae is attached as Exhibit JIF-1.

15 **Q On whose behalf are you testifying in this case?**

16 **A** I am testifying on behalf of Sierra Club.

17 **Q Have you testified in front of the California Public Utilities Commission**  
18 **previously?**

19 **A** No, I have not.

20 **Q Have you testified in other states with regards to planning by PacifiCorp?**

21 **A** Yes. I submitted testimony in PacifiCorp 2011 general rate case (“GRC”) in  
22 Oregon UE-246.

23 I have provided testimony in PacifiCorp (d.b.a Pacific Power in California, or the  
24 “Company”) rate cases in Wyoming, Utah, Oregon, and Washington,<sup>1</sup> as well as

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<sup>1</sup> WY 20000-384-ER-10, UT 10-035-124, OR UE-246, WY 20000-446-ER-14, and UT 13-035-184, WA UE-152253

1 planning cases in Wyoming and Utah.<sup>2</sup> I have also submitted comments in  
2 multiple PacifiCorp states on behalf of Sierra Club in the Company's 2011, 2013,  
3 and 2015 Integrated Resource Plans ("IRP").

4 Relevant to this case, in mid-2015, I submitted testimony on this same case as  
5 presented before the utility commissions of Oregon and Utah,<sup>3</sup> in which the  
6 Company requested that those respective commissions find in the public interest  
7 the closure of the Deer Creek mine, withdrawal from a union pension trust, sale of  
8 a preparation plant, a warehouse facility, and the Trail Mountain Mine  
9 (collectively, the "Mining Assets") in Utah, the acquisition of a replacement coal  
10 supply agreement (CSA) for Huntington power plant, and modification of their  
11 existing CSA for Hunter power plant.

12 **Q How did those cases differ from the case presented by the Company before**  
13 **the California Public Utilities Commission ("Commission") today?**

14 **A** There are two important distinguishing characteristics of this application that  
15 differ from the Deer Creek closure applications presented in Utah and Oregon last  
16 year. First, the Company closed the transaction in June of 2015 and filed for  
17 regulatory approval in the other relevant states; thus, this application post-dates  
18 the transaction. Second, in the other states the Company sought approval of the  
19 full transaction, not just individual elements. In this case, the Company only seeks  
20 approval of the sale of the Mining Assets. As I will discuss, the sale of these  
21 assets is part-and-parcel with the overall Transaction, and are not separable.

22 **Q The scoping memo in this docket asks whether the Commission should**  
23 **consider the full agreement between PacifiCorp and Bowie Resources or just**  
24 **the Mining Assets identified by PacifiCorp. What is the relationship between**  
25 **the full agreement and the Mining Assets?**

26 **A** In cases before the other states' commissions, the Company considered the full  
27 agreement a single whole (the "Transaction"). While PacifiCorp assessed the

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<sup>2</sup> WY 20000-418-EA-12 and UT 12-035-92

<sup>3</sup> Dockets UM 1712 and 14-035-147, respectively.

1 benefits of various components of the Transaction in its applications before other  
2 states' commissions, the Company did not request consideration of individual  
3 components.

4 Many of the elements of the Transaction are tied together contractually. For  
5 example, [REDACTED]

6 [REDACTED].<sup>4</sup> Other elements, such as  
7 the withdrawal from the union pension trust, are independent but were considered  
8 as part of the whole action of exiting the Deer Creek Mine. I will explain some of  
9 these elements in more detail later. However, the important component here is  
10 that PacifiCorp entered into a series of agreements with another party – Bowie  
11 Resource Partners, LLC (“Bowie”) – who both purchased various assets as  
12 described in the testimony of Ms. Crane, and who agreed to an extended coal  
13 supply contract. At the time the transaction was considered and executed, the  
14 Company considered the Transaction a single whole.

15 In Advice Letter 513-E, PacifiCorp sought to establish that the Transaction, as a  
16 whole, was in the public interest. The Company affirmed the importance of the  
17 Transaction evaluated as a whole in its reply to Sierra Club’s protest of the  
18 Advice Letter, stating that many of the benefits of the Transaction are realized  
19 through elements other than the sale of the Mining Assets.<sup>5</sup>

20 Therefore, my analysis includes an assessment of the testimony and analysis  
21 presented by the Company in December 2014 before the Oregon Public Service  
22 Commission, and provided in various Sierra Club discovery responses.

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<sup>4</sup> See Exhibit JIF-2. Coal Supply Agreement for Huntington Power Plant, Section 10.1. Provided as SC 1.3 1st Supp CONF/PAC Info\OR UM-1712 Deer Creek CONF (12-12-14).pdf. PDF pages 251-296.

<sup>5</sup> Application 15-09-007, Reply of PacifiCorp (U 901 E) to Protest of Sierra Club. November 2, 2015. Page 4, Paragraph III(A). “The Transaction is in the Public Interest: The closure of the Deer Creek mine contributed to a decrease in rates for PacifiCorp’s retail customers in California.<sup>6</sup> The reduction in PacifiCorp’s 2016 Energy Cost Adjustment Clause (ECAC) application was due in part to lower-than-projected coal costs and lower purchased power expense than previously anticipated. The lower-than-projected coal costs are **due primarily to the Deer Creek mine closure and the coal supply agreement (CSA) with Bowie Resource Partners** at PacifiCorp’s Hunter generating plant.” (emphasis added)



1    **Q     What is the purpose of your testimony?**

2    **A**    My testimony reviews the analyses conducted by PacifiCorp to determine if the  
3           Transaction, including the sale of the assets contemplated in the application, the  
4           closure of Deer Creek mine, and acquisition of a fifteen-year coal supply  
5           agreement (“CSA”) for coal at Huntington Power Station (“Huntington”) was in  
6           the public interest.

7           First, I discuss why the benefits of the Transaction (as a whole) are overstated,  
8           and likely a higher risk prospect than indicated by the Company and likely not in  
9           the public interest. I assess several significant errors and misrepresentations in the  
10          Company’s analysis, and elaborate on risks not sufficiently addressed by the  
11          Company in either the analysis or applications before this or other states’  
12          commissions.

13          Second, I explain my adjustments made to the Company’s analysis of the  
14          Transaction.

15          Finally, I provide recommendations of how the Commission should treat this  
16          application and PacifiCorp’s management of the application process.

17    **2.     BACKGROUND**

18    **Q     Please describe your understanding of the Company’s request in this docket,**  
19           **and the Transaction as a whole.**

20    **A**    In this docket the Company requests *post-hoc* approval of the sale of various coal  
21           mining assets at the closure of coal mining operations from Energy West Mining  
22           Company (“Energy West”), a wholly owned subsidiary of PacifiCorp. Following  
23           the closure of the Deer Creek mine in Emery County, Utah, the Company chose to  
24           liquidate the regulated subsidiary which mined coal at the site. In doing so, the  
25           Company sold the Mining Assets contemplated in this docket. The Company  
26           requests approval of these three sales.

1 The Transaction, of which these sales are only one component, is a much larger  
2 maneuver, and entails four “major components” as described by the Company in  
3 Advice Letter 513-E (December 15, 2014):

4 The closure consists of four major components: (1) the Company  
5 will permanently close the Deer Creek Mine and incur direct closure  
6 costs; (2) Energy West will withdraw from the United Mine  
7 Workers of America (UMWA) 1974 Pension Trust, incurring a  
8 withdrawal liability; (3) the Company will sell certain mining  
9 assets (Mining Assets); and ( 4) the Company will execute a  
10 replacement coal supply agreement (CSA) for the Huntington  
11 generating plant and an amended CSA for the Hunter generating  
12 plant. Energy West has also settled its retiree medical obligation  
13 related to Energy West union participants (Retiree Medical  
14 Obligation). **Together, the components of the closure and**  
15 **settlement of the Retiree Medical Obligation constitute the**  
16 **transaction to close the Deer Creek Mine (Transaction).**  
17 (emphasis added)

18 The Components make up the entire Transaction and were part of the bargained-  
19 for agreement between PacifiCorp and Bowie.

20 **Q Why should the Commission consider the entire Transaction rather than just**  
21 **the sale of the Mining Assets?**

22 **A** PacifiCorp holds the burden to demonstrate that the sale of the Mining Assets,  
23 which are ratepayer assets, was in the public interest. The Commission must  
24 therefore consider what the Company received in exchange for those assets. In  
25 other words, what was the bargained-for agreement that was tied to the sale of  
26 those assets?

27 The sale of mining assets contemplated in the application before this Commission  
28 is relatively small compared to the overall commitment of the larger Transaction,  
29 but both PacifiCorp and Bowie described that component as a critical part of a

1 single bargained-for agreement.<sup>6</sup> Therefore, these elements need to be considered  
2 as part of a singular Transaction, and the Commission must judge the sale of the  
3 Mining Assets in the context of the overall Transaction.

4 The Company's Advice Letter 513-E did attempt to establish that the overall  
5 Transaction was in the public interest; this letter was rejected by this Commission  
6 on July 24 2015. The application before the Commission today specifically pulls  
7 out a much smaller subcomponent of the Transaction – the sale of the Mining  
8 Assets – and attempts to justify these as in the public interest. In no forum has the  
9 Company established that (a) the sale of the Mining Assets is separable from the  
10 other components or (b) that the sale of the Mining Assets alone are in the public  
11 interest.

12 Therefore, the Commission should consider the Transaction as a whole, as  
13 assessed by the Company, and not in its separate parts.

14 **Q Do you agree with the Company's assertion that the Coal Supply Agreements**  
15 **are not relevant to this proceeding?**

16 **A** No. As discussed above, PacifiCorp and Bowie expressly contracted to make the  
17 sale of the Mining Assets and the Coal Supply Agreements conditional upon each  
18 other. PacifiCorp may have been able to pursue a sale of the Mining Assets  
19 separately by selling those assets to Bowie before completing the overall  
20 Transaction, or by retaining those assets and selling them to Bowie at a later date.  
21 There is no evidence that the Company assessed this separation, and it chose not  
22 to pursue this line of action, despite the distinct lack of an order from this  
23 Commission authorizing the sale. This further supports that conclusion that the  
24 Mining Assets were an integral part of the overall bargained-for agreement.

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<sup>6</sup> Exhibit JIF-3 (Bowie S-1); Exhibit JIF-5, Direct Testimony of Cindy Crane in OR UM 1712. PAC/100, Crane/2 lines 3-14

1 **Q Please explain the contractual relationship between the elements of the**  
2 **Transaction.**

3 **A** Each of the elements of the Transaction are contractually bound [REDACTED]

4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]

9 1. [REDACTED]<sup>8</sup>

10 2. [REDACTED]  
11 [REDACTED]<sup>9</sup>

12 3. [REDACTED]<sup>10</sup>

13 In addition, the Huntington Coal Supply Agreement contains [REDACTED]  
14 [REDACTED]  
15 [REDACTED]<sup>11</sup>

16 By virtue of these contractual ties, the Transaction is effectively a singular  
17 agreement between PacifiCorp and Bowie.

18 **Q What is the basis of the Transaction in the first place?**

19 **A** In December 2014, the Company decided, through its subsidiary Energy West, to  
20 close the Deer Creek mine, based on the degradation of the fuel supply and  
21 rapidly escalating employee pension obligations for unionized mine workers. To  
22 supply Huntington, the Company executed the new CSA with Bowie, and sold the  
23 mining assets described above to Bowie.

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<sup>7</sup> Preparation Plant Purchase and Sale (P&S), Central Warehouse P&S, Trail Mountain P&S, Fossil Rock P&S, paragraph 7.2(f) (in each)

<sup>8</sup> Huntington Coal Supply Agreement, paragraph 10.01(a)

<sup>9</sup> Huntington Coal Supply Agreement, paragraph 10.01(b)

<sup>10</sup> Huntington Coal Supply Agreement, paragraph 10.01(d)

<sup>11</sup> Huntington Coal Supply Agreement, paragraph 10.01(c)

1     **Q     Is the Transaction valid?**

2     **A**     I am not an attorney, but my reading of the plain language of both the CSA and  
3             the mining asset sale documents suggests that while the Transaction may have  
4             been completed, PacifiCorp may have failed to uphold its contractual obligations  
5             under [REDACTED] contracts that comprised the Transaction. The [REDACTED]  
6             [REDACTED] required that PacifiCorp obtain all  
7             necessary regulatory approvals prior to closure. As the approval is still pending  
8             before this Commission, and the condition of this approval has not been waived  
9             by Bowie (as I'll describe later), PacifiCorp may be vulnerable under both the  
10            CSA and mining asset sale.

11    **Q     Was PacifiCorp aware that it was taking a risk in closing the contracts**  
12            **without California Public Utility Commission approval?**

13    **A**     Yes. On June 5, 2015, PacifiCorp executed an "Omnibus Amended Agreement"  
14            that modified various provisions in the sale agreements for the Mining Assets, the  
15            Fossil Rock Reserves, and the Coal Supply Agreements.<sup>12</sup> In that Omnibus  
16            Amendment Agreement, PacifiCorp expressly agreed to waive the conditions  
17            precedent in the various agreements that required this Commission's approval.  
18            However, Bowie did not waive its rights, but nevertheless agreed to close the  
19            contract. "[Bowie] agree[s] to close the transactions contemplated by the Asset  
20            Purchase Agreements and Huntington CSA without waiving the conditions  
21            precedent under Section 7.2(a) of the Asset Purchase Agreements or Section  
22            10.02(e) of the Huntington CSA as they pertain to any regulatory approvals  
23            required from the California Public Utilities Commission, or waiving any rights  
24            related thereto."<sup>13</sup> This express agreement contemplating the failure of PacifiCorp  
25            to obtain this Commission's approval shows that the Company knew it was taking  
26            a risk by proceeding with the contract, but did so anyway.

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<sup>12</sup> Exhibit JIF-4. (Bowie S-1, Ex. 2\_2.)

<sup>13</sup> Id. at § 8.1.

1     **3.     PACIFICORP'S ANALYSIS OF THE TRANSACTION**

2     **Q     How did the Company support its application for the Transaction?**

3     **A**     In testimony prepared for proceedings in Utah and Oregon, Rocky Mountain  
4             Power CEO Ms. Cindy Crane presented an economic analysis of three cases  
5             prepared by the Company; that testimony is attached as Exhibit JIF-5.

6             Ms. Crane's analysis in those proceedings contemplates three cases, called the  
7             "Transaction," "Keep" and "Market" cases. Ms. Crane describes that the elements  
8             of each case are as follows:

9                 1.   **Transaction:** Deer Creek mine is closed in 2015 and replaced with a 15-  
10                 year fuel supply agreement with Bowie. Mining assets are sold.

11                2.   **Keep:** Continue to operate Deer Creek through 2019 and procure third-  
12                party supply after 2019. Mining assets are not sold.<sup>14</sup>

13                3.   **Market:** Deer Creek mine is closed in 2015 and replaced with spot market  
14                purchases. Mining assets are not sold.

15             In each case, the Company assumed that Huntington would continue operations  
16             through 2036 at identical levels of generation and availability. Ms. Crane's  
17             analysis suggests that, through the Transaction, customers would see a benefit of  
18             [REDACTED] above having retained Deer Creek through 2019 (NPV 2015-2029),  
19             and a benefit of [REDACTED] above obtaining coal from the Utah spot market  
20             (NPV 2015-2029).

21             In general, when I refer to the analyses conducted by the Company or Ms. Crane,  
22             I will be referring to the analysis of the Transaction, as a whole – including the  
23             Coal Supply Agreement – that supported Ms. Crane's testimony in Utah and

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<sup>14</sup> It is not clear that this description, provided by Ms. Crane, is actually correct. The Preparation Plant is the only Mining Asset with a financial implication in the Company's analysis, and each of the analysis cases conducted by PacifiCorp assume that the Company ceases paying Preparation Plant fees in 2015, an assumption consistent with the sale of the Mining Assets.

1 Oregon proceedings on the Deer Creek Closure, Coal Supply Agreement, and sale  
2 of coal mining assets.

3 **Q Please provide an overview of the Bowie Coal Supply Agreement with Bowie**  
4 **for the Huntington Plant.**

5 **A** The Huntington Coal Supply Agreement or “CSA” extends from mid-2015 to  
6 December 31, 2029, and will supply the [REDACTED] of coal required at  
7 Huntington. The Coal Supply Agreement provides a fixed delivered price, and is a  
8 “take or pay” agreement for a minimum of [REDACTED] tons of coal annually. The  
9 Company asserts that the “Huntington CSA contains a broad termination right in  
10 favor of the Company in the event existing or new environmental obligations  
11 adversely affect the Company’s ability to burn coal at the Huntington power  
12 plant.”<sup>15</sup>

13 **Q At the time that the Transaction was presented before the Utah and Oregon**  
14 **Commissions, did you support the Company’s request to proceed with the**  
15 **whole Transaction?**

16 **A** No. I have three primary concerns with the Company’s analysis. First, I was  
17 concerned that there was a high risk that the terms in the 15-year Huntington Coal  
18 Supply Agreement could commit customers to maintaining Huntington through  
19 2029, even if continued operation of the plant would otherwise not be in the best  
20 interests of ratepayers. Second, the Company’s economic justification of the  
21 Transaction Case compared to the Market Case contained several errors because it  
22 assigned costs to the Market Case that would not have reasonably occurred. Third,  
23 the Company’s analysis made assumptions about carbon price forecasts and  
24 operations at the Hunter Power Plant that were internally inconsistent. Finally, I  
25 had raised concerns at the time that Huntington could face expensive  
26 environmental retrofits, rendering the coal unit non-economic on a going-forward  
27 basis, depending on EPA findings in the Regional Haze Rule.

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<sup>15</sup> Ex. JIF-5, Direct Testimony of Cindy Crane in OR UM 1712. PAC/100, Crane/13 lines 8-10

1    **Q     In retrospect, do you believe the Company's Transaction application as filed**  
2    **before the Utah and Oregon Commissions was reasonable?**

3    **A**    No. The flaws that I identified in testimony a year ago are still problems and were  
4           unresolved by those cases. In addition, recent developments have cast doubt on  
5           whether Huntington will operate economically through the life of the Coal Supply  
6           Agreement. EPA's findings in the Regional Haze Rule have recently been  
7           finalized, and will require substantial investments by 2021 if the plant is to  
8           continue operating.

9    **Q     Is it appropriate to consider current economic trends and recent**  
10   **developments in judging the Company's decision to close the Transaction?**

11   **A**    Yes. This proceeding is not like a rate case where a utility is typically judged  
12           based on the information available to it at the time it made the decision. Section  
13           851 required PacifiCorp to get approval for the sale of the assets before it  
14           occurred, and the Company violated that requirement when it moved ahead with  
15           the Transaction without Commission approval. Emergent facts since the Company  
16           executed the Transaction are relevant issues that the Commission should take into  
17           consideration in deciding if the Transaction is in the public interest.

18   **Q     Please summarize your conclusions from your analysis of the Transaction.**

19   **A**    Overall, the Company failed to demonstrate that the long-term Huntington Coal  
20           Supply Agreement with Bowie is a better choice for ratepayers compared to  
21           acquiring coal from the market on a spot basis. The risks to ratepayers from the  
22           Company's plan to enter into a 15-year take-or-pay coal contract for Huntington  
23           far exceed the relatively small price benefits compared to acquiring coal on the  
24           market. Therefore, the Transaction as executed, is not in the public interest.

25           Given the economic uncertainty of the continued coal-fired operations of  
26           Huntington, which has grown substantially following recent developments  
27           discussed below, the Company should not have agreed to a long-term  
28           commitment to purchase coal for Huntington at that time. Instead, the Company  
29           could have opted to utilize spot market purchases as a bridge or over the long-



1 term, or sought a coal supply agreement that allowed the Company more market  
2 leverage – including an “economic out” provision.

3 PacifiCorp has not shown that the sale of the Mining Assets alone, without the  
4 Huntington Coal Supply Agreement, is even possible or whether such a sale  
5 would be in the public interest. The Company has provided no analysis of the  
6 benefit of this component absent the whole Transaction, and has not indicated that  
7 the sale of the Mining Assets would have been feasible without the rest of the  
8 Transaction.

9 **Q How did you arrive at this conclusion?**

10 **A** I based my conclusion on several findings. First and foremost, the Company  
11 neglected to test whether maintaining Huntington power station through the end  
12 of the Coal Supply Agreement in 2029 is in the best interests of customers.  
13 Indeed, it is quite feasible that the plant may not be economically viable through  
14 that time period, particularly in light of a recent ruling from EPA requiring  
15 substantial new investment if the plant is to remain operational past 2021.

16 Second, the Coal Supply Agreement does not contain sufficient flexibility to  
17 protect customers if it emerges that the plant is non-economic. The Company has  
18 asserted that an “environmental-out” provision would allow some flexibility to  
19 avoid take-or-pay liabilities in the Coal Supply Agreement,<sup>16</sup> but the Company  
20 has not definitively shown that the Huntington Coal Supply Agreement would  
21 protect customers if the plant becomes non-economic to operate before the close  
22 of the contract, [REDACTED]

23 [REDACTED].<sup>17</sup>

24 Second, the Company’s characterization of the Retiree Medical Obligation is  
25 inconsistent with its analysis. The benefits achieved by the Company’s  
26 renegotiation of its union contract is based on the assumption that the Deer Creek  
27 mine closes, and therefore it should apply to both the Transaction Case and the

<sup>16</sup> Ex. JIF-5, Direct Testimony of Cindy Crane in OR UM 1712. PAC/100, Crane/13 lines 8-10

<sup>17</sup> Huntington Coal Supply Agreement, Section 8.01.

1 Market Case. After this adjustment, the benefit of the transaction is reduced by  
2 [REDACTED], to [REDACTED] (NPV 2015-2029).

3 Third, the coal spot market price used by the Company in the Market Case  
4 assessment assumed no carbon dioxide (CO<sub>2</sub>) regulations, even though the market  
5 coal price forecast provided to the Company had options both with and without  
6 CO<sub>2</sub> regulations. The Company has consistently maintained a position that CO<sub>2</sub>  
7 reductions will be required under some form of federal regulation, and thus was  
8 inconsistent in these approaches. Adjusting to use the correct market coal prices  
9 further reduces the benefit of the Transaction over the Market Case by [REDACTED]  
10 [REDACTED] to [REDACTED]

11 Forth, the analysis of the Transaction uses coal prices which are inconsistent with  
12 the Company's long-standing practice of assuming future carbon regulations.  
13 Viewed from today's standpoint, the analysis uses coal prices that are outdated  
14 and higher than current market expectations. The adjustment to the benefit of the  
15 Transaction is similar from either standpoint. Accounting for this decline in the  
16 market price of coal would entail a downward adjustment of [REDACTED].<sup>18</sup>

17 Finally, the Company has used internally inconsistent assumptions about which  
18 party will pay to maintain the correct quality specifications at Hunter as an  
19 outcome of the sale of the Preparation Plant. In the Transaction Case (only), the  
20 Company assumes that Bowie will assume responsibility for blending and  
21 stockpiling costs from 2015 through the end of the analysis period – even though  
22 [REDACTED]

23 Correcting the assumption that stockpiling services would be provided free of  
24 charge further reduces the benefit of the transaction over the Market Case by  
25 another [REDACTED], to just [REDACTED]. Table 1, below, summarizes each of these  
26 adjustments.

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<sup>18</sup> This price update adjustment is not additive to the CO<sub>2</sub> price adjustment. The adjustments are mutually exclusive, but both show a reduction in benefit relative to the Company's assessment.

1 **Table 1. Present Value of Revenue Requirements difference (“PVRR(d)”) between**  
2 **Transaction and Market cases (millions 2015\$, NPV 2015-2029).**

Adjustment	Change in PVRR(d)	Benefit of Transaction (PVRR(d))
Company Case		
Retiree Med. Obligation		
CO <sub>2</sub> Effect on Coal Price		
Stockpiling Costs at Hunter		
<b>Total</b>		

3  
4 Overall, I find that the Company has overstated the value of the transaction  
5 compared to the Market Case by [REDACTED], or 70%. These adjustments leave  
6 an estimated benefit to customers of only [REDACTED] in exchange for committing  
7 customers to 15 years of burning coal at Huntington. Even in the absence of my  
8 concern that the long-term contract reduces the Company’s optionality and binds  
9 the operations of Huntington, it is not clear that the Transaction would  
10 substantially outperform the Market. As recent history has shown, coal markets  
11 are in serious distress, and it is possible, if not likely, that the price of market coal  
12 may continue to decline.

13 The Coal Supply Agreement is one of the largest single investments of the  
14 Company in the last decade, worth about [REDACTED].<sup>19</sup> This is a huge bet to  
15 make on coal over the next 15-years. The relatively small benefit realized from  
16 the Transaction (about 7% of the value of the CSA) is strongly outweighed by the  
17 risk of take-or-pay penalties if the Company closes Huntington prior to the end of  
18 the Coal Supply Agreement term. For example, if the unit were closed for  
19 economic reasons in 2021 and PacifiCorp was unsuccessful in using the  
20 “economic out” provision the Company could incur [REDACTED] in penalties  
21 (NPV 2015\$).<sup>20</sup>

<sup>19</sup> Net present value of CSA at [REDACTED] prices with [REDACTED] from 2016-2029 ([REDACTED] in 2015), 2015\$.

Assumes Huntington is closed in 2021, and CSA penalties are realized from 2022-2029, 2015\$.

1   **Q     What is your recommendation to the Commission in this matter?**

2   **A**The Commission should consider the Company's application tied specifically to  
3     the long-term Coal Supply Agreement, as these were considered by the Company  
4     and Bowie as a singular Transaction. The long-term Huntington Coal Supply  
5     Agreement take-or-pay obligations substantially reduce the options for the  
6     Company to exit Huntington. Should the plant become non-economic on a  
7     forward-looking basis, the Coal Supply Agreement may prove to be a substantial  
8     liability to ratepayers for very little benefit.

9     In the first place, the Company failed to assess if maintaining Huntington over the  
10    period of the Coal Supply Agreement was a least cost solution for ratepayers, and  
11    did not bring any such analysis before the California Commission, or any other  
12    state commission. Prior to committing to a [REDACTED] Transaction, the  
13    Company should have reviewed the forward-looking economics of operating  
14    Huntington and sought to ensure that a contract, if signed, had ample  
15    opportunities to exit under non-economic circumstances. The Coal Supply  
16    Agreement, as signed, fails to provide such optionality, locking PacifiCorp into  
17    this resource through 2029.

18    The overall Transaction, which the sale of Mining Assets requested in this case is  
19    a part of, is not in the public interest. The Company has not demonstrated that  
20    these components are separable, and thus the Commission should only accept the  
21    application to sell these assets with serious conditions on the Transaction, and  
22    possible managerial penalties.

23    The Commission should ensure that ratepayers are held harmless for any and all  
24    coal liquidated damages and/or take-or-pay penalties resulting from an early exit  
25    from the Huntington Coal Supply Agreement if a forward-looking assessment of  
26    Huntington shows that either one or both of the units at the plant are non-  
27    economic. In addition, the Commission should guarantee that all forward-looking  
28    assessments of the Huntington plant consider all coal costs at the plant fully  
29    avoidable (i.e. liquidated damages are not considered). If the Company finds that

1 the unit(s) should be retired, any and all damages from this contract will be  
2 absorbed by the Company, and not ratepayers.

3 The failure to assess the economics of maintaining Huntington in light of the  
4 substantial commitment made in the Coal Supply Agreement represents  
5 significant mismanagement on the part of the Company, and an imprudent  
6 decision making process. In addition, the risk incurred in the Coal Supply  
7 Agreement's structure and lack of optionality provided to ratepayers further  
8 represents a management oversight and failure to protect ratepayers. The  
9 Commission should issue a penalty against the Company for its failure to obtain  
10 approval and poor management discretion in this contract.

11 The following sections describe the flaws in the Company's assessment of the  
12 Transaction as a whole.

13 **4. THE COMPANY FAILED TO ASSESS POTENTIAL CLOSURE OF HUNTINGTON**  
14 **PRIOR TO COAL CONTRACT'S END DATE**

15 **Q What options were available with regards to the Huntington plant once the**  
16 **Company decided that Deer Creek mine could not be operated economically?**

17 **A** The Company had at least three choices with regard to Huntington in the wake of  
18 the Deer Creek closure. First, the Company could sign a mid- to long-term  
19 agreement for a coal supply for the plant, which is what it opted to do in this case.  
20 Second, the Company could procure coal from the spot market as a long term  
21 measure. Finally, the Company could have chosen to procure coal from the spot  
22 market as a bridging measure until additional information was known about the  
23 future of the plant.

24 **Q Did the Company assess the benefit of maintaining Huntington through the**  
25 **length of the Coal Supply Agreement?**

26 **A** No. The analyses conducted by Ms. Crane reviewed the costs of obtaining coal at  
27 Huntington under different circumstances, but the Company did not entertain the

1 probability, or even remote possibility, that Huntington may not remain economic  
2 through 2029.

3 It is appropriate to examine large, long-term contracts and commitments with the  
4 same level of scrutiny applied to large capital investments. In order to  
5 demonstrate that a long-term fuel contract is prudent, the utility must consider  
6 whether potential future investments and/or long-term contract liabilities could be  
7 avoided through a timely retirement and replacement of the existing unit at issue.  
8 Over the last six years, vertically integrated utilities with coal-fired generators  
9 have increasingly relied on “retire/retrofit” assessments to determine if existing  
10 coal-fired units were economic on a forward-going basis before committing to  
11 large capital expenditures. This type of analysis became commonplace under the  
12 Mercury and Air Toxics Standard (MATS) across the industry, and has been  
13 exercised by PacifiCorp in examining capital investments at several coal-fired  
14 units, including litigated cases at Naughton and Jim Bridger plants in Wyoming,  
15 and as part of the last two IRPs for Wyodak and Dave Johnston (WY), and Cholla  
16 (AZ).

17 In PacifiCorp’s 2012 Oregon General Rate Case UE 246, the Oregon Commission  
18 found that retire/retrofit analyses formed a critical basis of making forward  
19 looking decisions in the face of large commitments.<sup>21</sup> Consideration of a long-  
20 term coal supply agreement is fundamentally the same: to the extent that the coal  
21 contract binds PacifiCorp to a minimum annual cost for a specified period of time,  
22 it represents a commitment made on behalf of ratepayers commensurate with that  
23 of a capital investment.

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<sup>21</sup> Order 12-493 (December 20, 2012) in UE 246. C.3.d. “We expect a utility to fully evaluate all major investments that have implications for the utility’s resource mix-including those where the investment will extend the useful life of an asset and where a plant shutdown is an option-in its IRP. Although the IRP process is not a legal prerequisite for a utility to seek recovery of investments in rates, we have repeatedly stated that the IRP process serves as a complement to the rate-making process and reduces the uncertainty of recovery. We give considerable weight to actions that are consistent with an acknowledged IRP, and consistency with the plan is evidence to support favorable rate-making treatment of the action. If a utility seeks rate recovery of a significant investment that has not been included in an IRP, we will hold the utility to the same level of rigorous review required by the IRP to demonstrate the prudence of the project.”

1     **Q     Under what circumstances might Huntington cease to be economic prior to**  
2     **the end of the Coal Supply Agreement?**

3     **A**There are two circumstances that can lead to a non-economic plant on a going-  
4     forward basis.

5             First, like other coal units in both PacifiCorp's fleet, and throughout the United  
6             States, Huntington is facing environmental obligations that will require capital  
7             retrofits and increased operating costs. Both Huntington and Hunter plants will  
8             now face additional costs to comply with the Regional Haze Rule. On July 5,  
9             2016, EPA finalized a Regional Haze Federal Implementation Plan ("FIP") for  
10            Utah requiring that the best available retrofit technology ("BART") is the  
11            implementation of Selective Catalytic Reduction ("SCR") plus burner controls<sup>22</sup>  
12            for an emissions limit of 0.07 lbs/MMBtu<sup>23</sup> – a nearly 70% reduction in the  
13            emissions rate of the plant.<sup>24</sup> Compliance will be required within five years,<sup>25</sup> or  
14            by July 7, 2021.

15            The implementation of SCR is a costly endeavor, and with low gas and market  
16            energy prices, relatively flat load, and significant renewable energy potential  
17            throughout the service territory, it could easily be more economic to retire or  
18            repower Huntington than continue to operate it as a coal-fired resource. Indeed,  
19            the Company has assessed other generating units, such as Naughton 3, to be non-  
20            economic in the face of new environmental control requirements. If this were the  
21            case, the Company would likely choose to retire the unit prior to the 2021  
22            deadline rather than incur the capital expenses of SCR – penalties from the early  
23            cessation of the coal contract notwithstanding.

24            Second, coal plants may also just cease to be a least cost source of energy for  
25            PacifiCorp customers if gas prices remain low and renewable energy continues to  
26            decline in cost. Some of PacifiCorp's plants are increasingly close to the

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<sup>22</sup> Low NOx Burners (LNB) and Separated Overfire Air (SOFA)

<sup>23</sup> 81 FR 43907

<sup>24</sup> Based on simple average emissions rate for Huntington 1 & 2 from 2013 Q1 - 2016 Q1. Data from EPA Clean Air Markets Division (CAMD) Air Markets Program Data (AMPD).

<sup>25</sup> 81 FR 43907

1 operating margin, indicating that they are not making revenues relative to other  
2 low variable cost options. It would not be surprising to see Huntington begin to  
3 operate at lower capacity factors if prices remain at their current low levels.

4 **Q Is there reason to believe that the Company would view damages or penalties**  
5 **from the early cessation of a take-or-pay coal contract as a disincentive to**  
6 **retire an otherwise non-economic coal plant?**

7 **A** Yes. The Company considers coal contract damages as a disincentive for  
8 retirement.

9 **Q Has the Company contemplated early retirement of the Huntington unit as**  
10 **an economic pathway?**

11 **A** Yes. The Company produces internal planning documents for their generating  
12 plants on a semi-regular basis, known Strategic Asset Plans (SAP). [REDACTED]

13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]

18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED] 26

<sup>26</sup> 2015 Strategic Asset Plan for Huntington. Page 5. Attached as Exhibit JIF-6. Note: 2036 is the end of the unit's depreciable life in most of PacifiCorp's service territory.



1 It is unclear why the 2015 SAP for Huntington contemplates a 2026 SCR  
2 installation. The 2014 SAP for Huntington contemplated a 2021 or 2022 SCR,  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]<sup>27</sup>

6 In addition, in the 2015 IRP, two of the Company's alternate regional haze  
7 compliance scenarios in the IRP assumed the retirement of one or both of the  
8 units in the early 2020s.

9 **Q Did the Company consider the possibility that Huntington might retire in the**  
10 **early 2020's when it analyzed the Deer Creek Transaction?**

11 **A** No. In each of the three cases is analyzed, the Company assumed Huntington  
12 would operate through its depreciable life in 2036. It ignored the very real  
13 possibility, if not probability, that a requirement to install SCR at Huntington  
14 could make the plant non-economic.

15 Even without an SCR requirement, extended low electricity market prices could  
16 keep Huntington out of the money and render it a poor option for ratepayers.  
17 Indeed, the cost energy from coal at Huntington in 2014 was approximately at  
18 parity with the cost of energy from a new combined cycle gas unit (in \$/MWh,  
19 without O&M costs).<sup>28</sup> It would not be out of the question to imagine that  
20 Huntington could become non-economic in the next fourteen years.

21 **Q What type of penalties or damages would the Company face if it retired**  
22 **Huntington before the end of the CSA term?**

23 **A** Ms. Crane describes that "the Huntington CSA is a 'take or pay' agreement,  
24 meaning that PacifiCorp has the obligation to take or pay for a minimum of

<sup>27</sup> 2014 Strategic Asset Plan for Huntington. Page 5. Attached as Exhibit JIF-7.

<sup>28</sup> Huntington 2014 fuel cost: \$1.81/MMBtu average fuel cost at Huntington in 2014 (from EIA Form 923) and 10.1 heat rate MMBtu/MWh (from EIA Form 923) = **\$18.3/MWh**. Gas 2015 fuel cost: \$2.82/MMBtu (from December 2014 Official Forward Price Curve) and 6.667 heat rate (from Gas CCCT Dry "G/H" 2x1 in 2015 IRP Public Input Meeting #3, slide 15) = **\$18.8/MWh**

1        [REDACTED] tons of coal annually.”<sup>29</sup> The Company asserts that the “CSA contains a  
2        broad termination right in favor of the Company in the event existing or new  
3        environmental obligations adversely affect the Company’s ability to burn coal at  
4        the Huntington power plant.”<sup>30</sup> While I am not an attorney, I disagree with the  
5        Company’s broad interpretation of this clause and believe that the early closure of  
6        Huntington, in 2021 for example, could result in substantial contract liabilities  
7        under the CSA.

8        **Q        Is the Company protected should environmental obligations render**  
9        **Huntington non-economic?**

10      **A** Maybe, depending on how the “broad termination right” is interpreted. I believe  
11      that the provision does not go far enough to protect ratepayers from the risk that  
12      the Huntington plant may become non-economic within the term of the CSA.

13      It is not clear, for example, that the language “affect the Company’s ability to  
14      burn coal” would cover scenarios where environmental regulations or law simply  
15      made burning coal more expensive, but did not create an outright prohibition or  
16      restriction on burning coal.

17      **Q        Did you review the “environmental out” clause in the Huntington Coal**  
18      **Supply Agreement?**

19      **A** Yes. The Huntington Coal Supply Agreement with Bowie<sup>31</sup> contains a section  
20      [REDACTED] I am not an attorney, and therefore I would  
21      recommend that the Commission rely on legal briefing or its own counsel’s  
22      analysis of this provision. Nevertheless, absent a clear indication from the  
23      Company on the record that ratepayers would not be on the hook for any long-  
24      term contract costs if Huntington closes early, I had no choice but to rely on the  
25      contract language itself to determine the risk to ratepayers. [REDACTED]  
26      [REDACTED]

<sup>29</sup> Ex. JIF-5, Direct Testimony of Cindy Crane in OR UM 1712. PAC/100, Crane/12 lines 14-15.

<sup>30</sup> Ex. JIF-5, Direct Testimony of Cindy Crane in OR UM 1712. PAC/100, Crane/13 lines 8-10.

<sup>31</sup> Attached as Exhibit JIF-2.

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]

12 **Q Do environmental regulations or laws typically compel a utility to cease**  
13 **burning coal at an existing unit?**

14 **A** Generally not. Most environmental laws and regulations impacting coal plants in  
15 the west require the plant to meet specific pollution limits, which typically  
16 requires the installation of a specific pollution control technology.<sup>33</sup> These  
17 requirements can be very costly, and in many instances lead to the conclusion that  
18 it would be more economical to shutter the plant than incur the required costs to  
19 install pollution controls. While numerous utilities have claimed that  
20 environmental regulations render their coal operations non-viable, the choice to  
21 continue operations or cease burning coal is generally an economic decision. This  
22 means that multiple factors, including gas and power prices, demand forecasts,  
23 CO<sub>2</sub> cost estimates and other risk calculations, all play a part in deciding whether  
24 or not to continue to operate a plant. While a specific regulation may be the straw

<sup>32</sup> Ex. JIF-2, PAC/104, Crane/20.

<sup>33</sup> Environmental control requirements for regional haze and the Mercury and Air Toxics Standard (MATS) drive the majority of retrofit requirements in the west, while the Cross-State Air Pollution Rule, MATS, and the sulfur dioxide (SO<sub>2</sub>) National Ambient Air Quality Standards (NAAQS) drive air-based retrofit requirements in the east.

1 that breaks the camel's back, it is often hard to say that an environmental  
2 regulation by itself "adversely affects the Company's ability to burn coal."<sup>34</sup>

3 The Company's choice, for example, to convert Naughton 3 to a natural gas  
4 burning steam unit is based on PacifiCorp's economic modeling, which indicated  
5 that ratepayers would see a benefit if the Company did not retrofit the coal unit.<sup>35</sup>  
6 PacifiCorp then applied to Wyoming Department of Environmental Quality (WY  
7 DEQ) to alter their permit conditions,<sup>36</sup> but even in EPA's final rule for  
8 Wyoming, the agency indicated that, while the conversion was supported, the  
9 agency could not require PacifiCorp to convert the unit to natural gas.<sup>37</sup>

10 Similarly, the final rule under Section 111(d) of the Clean Air Act regulating  
11 carbon dioxide CO<sub>2</sub> mitigation from existing sources – the Clean Power Plan –  
12 does not require the cessation of coal burning operations, unless a state plan  
13 specifically mandates it (an unlikely option, in my opinion).

14 Similarly, I know of no settlement yet entered into by PacifiCorp to cease burning  
15 coal at any unit in response to an environmental law or regulation. At Naughton,  
16 PacifiCorp found to its own satisfaction that the unit was more economic  
17 converted than retrofit. Similarly, the Company's decision to retire Carbon was

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<sup>34</sup> See Ex. JIF-5, PAC/100, Crane/13.

<sup>35</sup> Wyoming Docket 20000-400-EA-11. See specifically Company's Motion to Withdraw (May 11, 2012). Paragraph 1. "The Company's rebuttal testimony and updated data, based on the analysis undertaken in response to testimony filed by intervenors, showed that the planned environmental upgrades to the Naughton Unit 3 generating facility are no longer cost-effective, and that the interests of the Company and its ratepayers would best be served by converting the Naughton Unit 3 generating facility to a natural gas peaking facility." Attached as Exhibit JIF-8.

<sup>36</sup> Explained by PacifiCorp Vice President of Resource Development and Construction, Mr. Chad Teply in Utah Docket 13-035-184. Exhibit RMP\_\_\_(CAT-9). Attached as Exhibit JIF-9.

<sup>37</sup> See 79 FedReg 5032. Page 5045: "EPA supports PacifiCorp's conversion of Naughton Unit 3 to natural gas. However, we have the authority and obligation to take action on the SIP as submitted by the State, and there is no basis to disapprove the SIP. Since we are approving the SIP, we do not have authority to impose FIP limits even if independently requested by a source. Therefore, we cannot use the FIP to relieve Naughton Unit 3 of the obligation to achieve the 0.07 lb/MMBtu NOX emission limit in the SIP nor to impose emission limits for SO<sub>2</sub> and PM that reflect the planned conversion to natural gas."

1 unilateral, and the impending decision to convert Cholla 4 to natural gas in 2025  
2 is also based on a Company proposition,<sup>38</sup> rather than a settlement.

3 **Q Could the Company trigger the “environmental-out” if it determined that**  
4 **installing a pollution control on Huntington was non-economic?**

5 **A** [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]

17 **Q Are there other reasons why PacifiCorp might otherwise elect to cease or**  
18 **reduce burning coal at Huntington prior to the end of the CSA in the absence**  
19 **of a specific environmental rule or regulation?**

20 **A** Yes. Simply stated, coal operations at Huntington could become non-economic  
21 based on low gas or market prices, reduced demand, expanded renewable energy,  
22 increased demand for more flexible resources, or reduced coal quality supplied by  
23 the Bowie CSA. [REDACTED]  
24 [REDACTED].<sup>39</sup> If there came a time that the  
25 continued operation of Huntington became non-economic, or even if Huntington

<sup>38</sup> Oregon Docket LC 57. PacifiCorp’s Confidential Cholla 4 Special IRP Update. September 29, 2014. Redacted Version, page 4. “PacifiCorp will pursue a compliance strategy that avoids installation of SCR with a firm commitment to cease operating Cholla Unit 4 as a coal-fired unit in early 2025.”

<sup>39</sup> Ex. JIF-2, PAC/104. [REDACTED]  
[REDACTED]

1 dispatch falls below the minimum level required by the Coal Supply Agreement,<sup>40</sup>

2

3

4 **Q Are there steps the Commission could take to protect ratepayers from the**  
5 **risk of long-term coal contract liabilities in this case?**

6 **A** Yes. Assuming that the Commission leaves the agreement intact, the Commission  
7 could require that any and all damages or mandatory payments incurred through  
8 the cancelation of this contract be absorbed by PacifiCorp, and not by ratepayers.  
9 If PacifiCorp reduces or ceases coal operation at the Huntington coal plant prior  
10 to the expiration of the Huntington Coal Supply Agreement in 2029, due directly  
11 or indirectly to any requirement related to any existing or future environmental  
12 rules or regulations, then PacifiCorp would not be permitted to recover from  
13 ratepayers any coal contract liabilities related to the Huntington Coal Supply  
14 Agreement.

15 The Commission should also make clear that all of the Company's planning  
16 assumptions in its decision making related to environmental retrofits at  
17 Huntington should assume that the coal contract liabilities are avoidable.

18 **5. RETIREE MEDICAL OBLIGATION IS SETTLED AND A SUNK COST**

19 **Q Please explain the benefit to customers derived from the transfer of the**  
20 **Company's Retiree Medical Obligation from Energy West to the United**  
21 **Mine Workers of America.**

22 **A** Ms. Crane describes that in October 2014, the Company settled a protracted labor  
23 dispute with the UMWA.<sup>41</sup> As part of this settlement, the Company negotiated the  
24 transfer of its Retiree Medical Obligation ("RMO") to the Union in exchange for

40

Ex. JIF-5, PAC/100. Page 15 at 17-19.

1 a one-time lump-sum payment of \$150 million.<sup>42</sup> [REDACTED]  
2 [REDACTED]  
3 [REDACTED]

4 **Q Please explain why the settlement of the RMO is pertinent to this case and**  
5 **assessment.**

6 **A** The Company's assessment of the overall Transaction assesses all of the  
7 components of the Transaction as a single cost or benefit. In assessing the costs  
8 and benefits of the Transaction, the Company bundled the savings associated with  
9 the settlement of the RMO specifically with the Transaction.

10 The settlement of the RMO reduces future expenses that would have been  
11 incurred by the Company and passed on to customers and thus is treated as a  
12 benefit to customers. A Memorandum of Understanding memorializing this  
13 settlement was signed by the Company and UMWA on December 8, 2014.<sup>45</sup>

14 The Company required this settlement to close the Deer Creek mine, but did not  
15 require the remainder of the Transaction to settle with UMWA. [REDACTED]  
16 [REDACTED], the  
17 settlement of the dispute was in no way contingent on the CSA, and pre-dated  
18 both the remainder of the Transaction and even the Company's application before  
19 any state utility commission.

20 **Q Is the benefit from the transfer of the RMO reflected in the Company's**  
21 **analysis of its Keep, Market, and Transaction Cases?**

22 **A** No. The benefit from the transfer is reflected **only** in the Company's preferred  
23 Transaction Case. In the (now irrelevant) Keep Case, the Company assumes the

<sup>42</sup> Response to ICNU Data Request 1.16, Attachment ICNU 1.16, Exhibit B, Memorandum of Understanding Related to Provisions of Medical and Pharmaceutical Benefits to Eligible Retirees, December 8, 2014, at ¶ 4. Attached as Exhibit JIF-10.

<sup>43</sup> Company Workpapers, UM1712 SC 1-1 EW Fin Model 12-15-14, EW FRF Pro Forma Closure Sale.xlsx, tab PRW Settlement, cell B5.

<sup>44</sup> See Attach ORA 1.9 CONF\EW Fin Model 12-15-14\ Mine Revenue Requirement Calculator.xlsx, tab Summary, cell M76 ("Reduction in Retiree Medical (FAS 106) Regulatory Asset")

<sup>45</sup> See Response to ICNU 1.16. Attached as Exhibit JIF-11.

1 Deer Creek Mine remains open and the Company retains all of its UMWA  
2 liabilities, including the full book value of the RMO. In the Market Case,  
3 however, the mine is assumed to close at the beginning of 2015 and the Company  
4 terminates its relationship with UMWA—just as in the Transaction Case. Yet in  
5 the Market Case, the Company **still** includes the full book value of the RMO as a  
6 liability in the analysis.

7 **Q Is the MOU with UMWA conditional on the approval of the CSA with**  
8 **Bowie?**

9 **A** No. There is no condition in the MOU that the Retiree Medical Obligation will  
10 only be transferred upon Commission approval of the Transaction Case.

11 **Q What is the Company’s explanation for why the RMO is inconsistent**  
12 **between the Transaction and Market cases?**

13 **A** In a discovery response issued in the Oregon version of this case, the Company  
14 confirmed that the agreement with the United Mine Workers of America  
15 (UMWA) to settle the RMO is binding, and the transfer of funds to UMWA was  
16 scheduled to occur on June 1, 2015.<sup>46</sup> The Company explained that should the  
17 Company fail to “close or sell the Deer Creek Mine, it fully expects the UMWA  
18 to file a grievance or lawsuit against the Company since it was relying on the  
19 Company’s intent to sell to close the mine in reaching the settlement agreement.”  
20 In addition, “as a result, the RMO settlement is truly a benefit to customers  
21 resulting from its proposed early closure of the Deer Creek mine and the  
22 Company’s present value revenue requirements modeling is appropriate.”<sup>47</sup>

23 **Q Has the Deer Creek mine already been closed?**

24 Yes. Deer Creek mine was closed in December of 2014. By the time the analysis  
25 of the Transaction was put before the commissions of the other states, Deer Creek  
26 had ceased operations. Regardless of if the Company pursued a CSA with Bowie

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<sup>46</sup> Response to Sierra Club Data Request 2.6. Attached as Exhibit JIF-12.

<sup>47</sup> *Id.*



1 or not, the Deer Creek mine was closed and the RMO was settled. Therefore there  
2 should be no difference between the Company's Market and Transaction (i.e.  
3 CSA) assessment cases.

4 Correcting for this error reduces the relative value of the Bowie Transaction by  
5 [REDACTED], to [REDACTED]

6 **6. MARKET COAL COSTS INAPPROPRIATELY ASSUME NO CARBON REGULATION**  
7 **OR LEGISLATION**

8 **Q What coal price forecasts were presented by the Company in this filing?**

9 **A** The Company relied upon forecasts of coal market prices for coal types and  
10 regions developed by Energy Ventures Analysis (EVA).<sup>48</sup> According to the EVA  
11 witness supporting those coal prices, Mr. Seth Schwartz, the carbon forecast was  
12 intended to "model the impacts of the EPA's proposed rules on coal markets"—  
13 referring to the Clean Power Plan.<sup>49</sup>

14 Mr. Schwartz further describes that "EVA projects that the principal impact [of  
15 the Clean Power Plan] will be the acceleration of the projected retirement of the  
16 Intermountain power plant from 2027 to 2020," and that "EVA forecasts that this  
17 would result in a lower market price for Utah coal during this time period, but that  
18 the impacts will disappear by 2026."<sup>50</sup>

19 **Q Did the Company account for the impact of carbon regulation on coal prices**  
20 **in estimating the benefits of the Transaction?**

21 **A** No. The Company estimated benefits of the Transaction using the "No Carbon"  
22 forecast. Therefore, the value of the Transaction is based on the premise that there  
23 is no carbon regulation.

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<sup>48</sup> The forecasts available for use in Ms. Crane's workpapers supporting the Transaction are entitled "Oct 14 – WVA Carbon" and "Oct 14 – EVA Carbon".

<sup>49</sup> Direct Testimony of Seth Schwartz in OR UM 1712. PPL/300, Schwartz/24 lines 19-20.

<sup>50</sup> Direct Testimony of Seth Schwartz, p.25, lines 2-5.

1 This is inconsistent with the Company's treatment of carbon regulation in forward  
2 planning over the last six years at least, and through the most recent IRP process  
3 and update. For example:

- 4 1. In 2011 the Wyoming Certificate for Public Convenience and Necessity  
5 (CPCN) docket for the Naughton 3 SCR, the Company's base case  
6 assumed a "medium" carbon price, reflecting the potential for impending  
7 carbon regulations.<sup>51</sup>
- 8 2. In the Utah resource decision docket to construct SCR at Jim Bridger 3 &  
9 4, the Company's base case assumed a CO<sub>2</sub> price of \$16/ton in 2021,  
10 escalating at 3% thereafter.<sup>52</sup>
- 11 3. In the recent Special Update to the 2013 IRP with regards to Cholla Unit  
12 4, the Company's March 2013 official forward price curve "included a  
13 CO<sub>2</sub> price beginning 2022 at \$16/ton and escalating to over \$25/ton by  
14 2032."<sup>53</sup>
- 15 4. The 2015 IRP update (March 2016) states that "PacifiCorp developed its  
16 updated resource portfolio assuming system mass cap emission rate targets  
17 consistent with EPA's proposed mass-based FIP to limit CO<sub>2</sub> emissions  
18 from its existing affected generation facilities."<sup>54</sup>

19 Based on these public statements and filings, I believe that the Company's  
20 reference position is that CO<sub>2</sub> regulations will be enacted. It is not clear why the  
21 Company used a "no carbon" case to assess the benefits of the Transaction.

22 The price of coal is approximately [REDACTED] ton (2014\$) lower in the carbon case from  
23 2020 to 2025, inclusive.

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<sup>51</sup> Direct Testimony of Mr. Rick Link. Wyoming Docket 20000-400-EA-11, page 12, lines 10-12. "The base case represents the Company's most current official forward price curve ("FPC") and most current expectations for CO<sub>2</sub> price levels and timing."

<sup>52</sup> Direct Testimony of Mr. Rick Link. Utah Docket 12-035-92, page 11, Table 1.

<sup>53</sup> Oregon Docket LC 57. September 29, 2014. Confidential Special 2013 IRP Update (redacted version) on Cholla Unit 4. Page 8.

<sup>54</sup> PacifiCorp 2015 IRP Update, March 2015. Page 63.

1     **Q     Have market prices been updated since the Company’s analysis?**

2     **A**     Yes. The Company subscribes to a service from EVA called “COALCAST,” an  
3             outlook on various coal basins, expected demand, and prices. According to EVA,  
4             the volume is published in the Fall and provides forecasts for a twenty year  
5             period. PacifiCorp provided the 2015 COALCAST forecast in response to  
6             discovery. This forecast included a slightly lower cost market assessment than in  
7             2014 as utilized by the Company in their assessment of the transaction.

8             The price of coal is approximately [REDACTED] ton (2014\$) lower in the carbon case from  
9             2020 to 2025, inclusive, and slightly higher thereafter.

10            The market coal prices provided by EVA to PacifiCorp are shown in [REDACTED]  
11            [REDACTED] below.

12

13

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<sup>55</sup> Company Workpapers, UM1712 SC 1-1 EW Fin Model 12-15-14, Market Price Projections.xlsx

1 **Q How did the use of the No Carbon coal price forecast bias the estimate of**  
2 **benefits from the Transaction?**

3 **A** The use of a No Carbon (i.e. higher) market price forecast biased the estimate of  
4 benefits in favor of the Transaction by making the coal spot market appear less  
5 competitive with the pricing in the Huntington CSA. Correcting for this error  
6 reduced the relative value of the Bowie Transaction by [REDACTED]. Combined  
7 with the correction for the RMO, the value of the Transaction compared to the  
8 Market Case after this correction is only [REDACTED].

9 The updated fuel price forecast from EVA shows that the benefit of the  
10 Transaction declined in the months following the closure of the contract by  
11 [REDACTED]

12 **7. TRANSACTION CASE ASSUMES THAT MARKET COAL AT HUNTER IS**  
13 **STOCKPILED FOR FREE**

14 **Q What is the Preparation Plant, and why does it matter to this assessment?**

15 **A** The Company currently owns and operates, under agreement, the Coal  
16 Preparation Plant which is used to blend and stockpile coal burned at the Hunter  
17 plant.<sup>56</sup> This preparation plant ensures that delivered coal meets specifications.

18 The Preparation Plant is one of the Mining Assets which the Company seeks  
19 permission to sell in the instant case.

20 According to Ms. Crane, the Preparation Plant had a net book value of \$20  
21 million at the end of 2014. Under the Transaction, PacifiCorp agreed to sell the  
22 Preparation Plant to Bowie for [REDACTED]. In return Bowie agreed to amend the  
23 existing Hunter Coal Supply Agreement (“Hunter CSA”) such that Bowie would  
24 incur the blending and stockpiling expenses. Ms. Crane notes that “once the Deer  
25 Creek Mine was closed and the CSA went into effect, the burden of stockpiling  
26 and blending at current levels to achieve compatible coal blends for the plants was

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<sup>56</sup> Ex. JIF-5, Direct Testimony of Ms. Cindy Crane. PAC/100, Crane/10 lines 21-22.

1 shifted almost entirely to Bowie.”<sup>57</sup> This burden is not without value. Ms. Crane  
2 notes that the blending and stockpiling avoids an operational cost of nearly [REDACTED]  
3 [REDACTED] per year (levelized).<sup>58</sup>

4 The assessment of the Transaction should account for both the stockpiling and  
5 blending benefits, but only the stockpiling benefit can be traced, circuitously,  
6 through the Company’s workbooks as a component of the coal cost of Hunter  
7 Plant.<sup>59</sup> It is not clear if or how the blending benefit is incorporated into the  
8 assessment.

9 The stockpiling benefit in the Transaction is accounted for by incurring an  
10 expense in the Market case. The cost is excluded in the Transaction case (i.e. the  
11 lack of a cost is a benefit to the Transaction). The Market case assesses a cost for  
12 the stockpiling fee on an annual basis from 2015 through 2042. The Transaction  
13 case, on the other hand, assesses no cost for stockpiling in any year, 2015 through  
14 2042. The difference between these two assumptions is a benefit of [REDACTED] in  
15 the Transaction case.

16 **Q Is it reasonable to assume that the Transaction case avoids the stockpiling fee**  
17 **every year?**

18 **A** No. The stockpiling (and blending) benefits are specifically tied to the Hunter  
19 Coal Supply Agreement Amendment, which extends to December 31, 2020.<sup>60</sup>  
20 Bowie would be under no obligation to take on stockpiling costs in any year  
21 thereafter. By neglecting to include the fees for stockpiling into the Transaction  
22 Case after 2020, PacifiCorp overvalues the Transaction benefit – effectively  
23 assuming that Bowie will blend and stockpile coal at Hunter for free.

<sup>57</sup> Ex. JIF-5, Direct Testimony of Ms. Cindy Crane. PAC/100, Crane/12 lines 19-21.

<sup>58</sup> Ex. JIF-5, Direct Testimony of Ms. Cindy Crane. PAC/100, Crane/8 lines 16-19. “As a result of the sale to Bowie, the Company will avoid the operating cost of blending coal for the Hunter power plant (a levelized savings of approximately [REDACTED] per year), and will benefit from reduced inventory costs (a levelized savings of approximately [REDACTED] per year).”

<sup>59</sup> See Attach ORA 1.9 CONF\EW Fin Model 12-15-14\11-5-14 Bowie Evaluation - Perfect Regulation\Market Pricing\Fuel Cons Master.xlsx, tab Hunter-Base, line 139 (“Stockpile Coal Handling Costs (O&M)”).

<sup>60</sup> Ex. JIF-5, Direct Testimony of Ms. Cindy Crane in OR UM 1712. PAC/100, Crane/13 lines 14-15.

1 **Q How has the Company accounted for the blending benefit at Hunter?**

2 **A** It is not clear that the Company did account for the blending benefit incorporated  
3 into the amended Hunter Coal Supply Agreement. Indeed, all costs associated  
4 with the preparation plant simply cease to exist in mid-2015 in both the  
5 Transaction and Market cases.<sup>61</sup> There are no other clear line items for the  
6 operations and maintenance costs or benefits of the preparation plant, and no  
7 values that corroborate Ms. Crane's valuation of the blending benefit.

8 **Q You stated that the Company overvalued the Transaction benefit by**  
9 **assuming that the stockpiling costs are paid by Bowie indefinitely. Were you**  
10 **able to correct this error?**

11 **A** Yes. The Company assigns a stockpiling cost of [REDACTED]<sup>62</sup> to the Market case  
12 (NPV 2015-2029), and zero to the Transaction. The differential should, in fact, be  
13 [REDACTED] (NPV 2015-2020), an adjustment downwards of [REDACTED] to the  
14 Company's assessed value of the Transaction.

15 Correcting for this error reduces the relative value of the Bowie Transaction by  
16 [REDACTED]. Combined with the correction for the RMO and using the correct cost  
17 of coal with a carbon assumption, the value of the Transaction after this correction  
18 is only [REDACTED] compared to the Market Case, indicating an error of nearly  
19 [REDACTED] and reduction of 70% relative to the assumed benefit in this  
20 application. I conclude that the remaining [REDACTED] value in the CSA is tenuous  
21 at best, and substantially reduced the Company's optionality.

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<sup>61</sup> See Attach ORA 1.9 CONF\EW Fin Model 12-15-14\11-5-14 Bowie Evaluation - Perfect Regulation\Market Pricing\Fuel Cons Master.xlsx, tab Prep Plant-Base. In market case, costs for the Preparation Plant simply cease to exist after May 15, 2015, which is inconsistent with the Company's stated assumption.

<sup>62</sup> See Attach ORA 1.9 CONF\EW Fin Model 12-15-14\11-5-14 Bowie Evaluation - Perfect Regulation\Market Pricing\Fuel Cons Master.xlsx, tab Hunter-Base, line 139 ("Stockpile Coal Handling Costs (O&M)"). NPV 2015-2029 at [REDACTED] discount rate.

1     **8.     CONCLUSIONS AND RECOMMENDATIONS**

2     **Q     What do you conclude from your analysis?**

3     The Company's analysis severely overstated the value of the Transaction Case  
4     compared to the Market Case. Although there remains some estimated value  
5     between the Transaction Case and the Market Case, that relatively small value is  
6     substantially outweighed by the risk associated with the 15-year take-or-pay  
7     requirements in the Huntington CSA. This CSA will commit ratepayers to a [REDACTED]  
8     [REDACTED] investment (2015\$). The calculated [REDACTED] benefit of the transaction  
9     is tenuous, hinges on long-run estimates of market prices, and is a small fraction  
10    of the overall cost of the investment.

11    I believe that the CSA may inadvertently commit PacifiCorp to operating  
12    Huntington through 2029, even if the unit becomes non-economic prior to that  
13    time. This contract appears to significantly reduce the Company's optionality, and  
14    puts ratepayers at risk.

15    **Q     What is your recommendation to the Commission in this matter?**

16    **A**The Commission should consider the Company's application tied specifically to  
17    the long-term Coal Supply Agreement, as these were considered by the Company  
18    and Bowie as a singular Transaction. The long-term Huntington Coal Supply  
19    Agreement take-or-pay obligations substantially reduce the options for the  
20    Company to exit Huntington. Should the plant become non-economic on a  
21    forward-looking basis, the Coal Supply Agreement may prove to be a substantial  
22    liability to ratepayers for very little benefit.

23    In executing the Transaction both in the absence of this Commission's express  
24    approval and in committing extensive errors in the analysis, the Company  
25    exercised poor management and accounting and biased their assessment towards a  
26    desired outcome. The Company failed to review possible requirements to close  
27    the plant economically, and failed to take into account emerging environmental  
28    regulations of which they were fully aware and which will certainly impact the

1 long-term economics of their coal-fired units. In rushing to close this deal rapidly,  
2 the Company signed an agreement with non-favorable exit terms and thus  
3 severely reduced optionality – and may have inadvertently committed to running  
4 Huntington far longer than necessary.

5 The Commission should:

- 6 • Find that the Transaction as a whole is inseparable from the sale of the  
7 Mining Assets;
- 8 • Find that the Transaction as a whole is not in the public interest, and  
9 accept the sale of the Mining Assets only with conditions;
- 10 • Ensure that ratepayers are held harmless for any and all coal liquidated  
11 damages and/or take-or-pay penalties resulting from an early exit from the  
12 Coal Supply Agreement;
- 13 • Order that all forward-looking assessments of the Huntington plant  
14 consider all coal costs at the plant fully avoidable; and
- 15 • Consider a penalty against the company for its failure to obtain approval  
16 from this Commission and its mismanagement of a critical contract.

17 **Q Does this conclude your testimony?**

18 **A** It does.



Dated: July 11, 2016

Respectfully submitted,

/s/ Travis Ritchie

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