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February 22, 2022

***VIA ELECTRONIC FILING***

Public Utility Commission of Oregon  
Attn: Filing Center  
201 High Street SE, Suite 100  
Salem, OR 97301-3398

**RE: UE 390—PacifiCorp's Reply to Sierra Club's Response to the Motion to Amend Order No. 21-379**

PacifiCorp d/b/a Pacific Power encloses for filing PacifiCorp's Reply to Sierra Club's Response to the Motion to Amend Order No. 21-379 in the above-referenced docket.

Informal inquiries may be directed to Cathie Allen, Regulatory Affairs Manager, at (503) 813-5934.

Sincerely,

Shelley McCoy  
Director, Regulation

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UE 390**

In the Matter of  
PACIFICORP d/b/a PACIFIC POWER,  
2022 Transition Adjustment Mechanism

**PACIFICORP’S REPLY TO SIERRA  
CLUB’S RESPONSE TO THE  
MOTION TO AMEND  
ORDER NO. 21-379**

**INTRODUCTION**

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2           PacifiCorp d/b/a Pacific Power (PacifiCorp or Company) respectfully requests the Public  
3 Utility Commission of Oregon (Commission) grant PacifiCorp’s motion to amend  
4 Order No. 21-379 and reject Sierra Club’s arguments in opposition. Sierra Club’s opposition is  
5 premised on a flawed characterization of the regional haze process, overlooks the existing  
6 information and review that is provided in the TAM, and attempts to create an inappropriate  
7 pre-approval prior to PacifiCorp’s decision-making process. As PacifiCorp stated in its original  
8 motion, this delay is necessary to provide the analysis requested by the Commission through a  
9 thorough and useful Long Term Fuel Plan for the Jim Bridger facility.

**BACKGROUND**

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11           Order No. 21-379 directed PacifiCorp to update the Jim Bridger Long Term Fuel Plan for  
12 the 2023 Transition Adjustment Mechanism (TAM) to reflect “the changing future of Jim  
13 Bridger.”<sup>1</sup> The Commission further requested that PacifiCorp review “scenarios that may involve  
14 significant change in its management of the resources, such as, for example, the consequences of  
15 fueling Jim Bridger solely from [Bridger Coal Company] or Black Butte.”<sup>2</sup> PacifiCorp’s motion

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<sup>1</sup> *In the Matter of PacifiCorp d/b/a Pacific Power, 2022 Transition Adjustment Mechanism*, Docket No. UE 390, Order No. 21-379 at 14 (Nov. 1, 2021).

<sup>2</sup> *Id.*

1 requests that the Commission modify this order to change the deadline of this filing from the  
2 2023 TAM to the 2024 TAM. Recent events have created significant uncertainty around Jim  
3 Bridger’s fuel plans, and PacifiCorp has requested this modification to provide an opportunity  
4 for PacifiCorp to provide a robust and useful long-term fuel plan that is relevant to the  
5 Commission and thoroughly examines the requested issues.

6 **PACIFICORP’S REPLY**

7 Sierra Club mischaracterizes the regional haze process, overlooks the current process for  
8 reviewing coal supply agreements (CSA), and attempts to seek inappropriate pre-approval of  
9 PacifiCorp’s fueling strategy. In reality, PacifiCorp is striving to provide the Commission and  
10 stakeholders with the transparency necessary to review the prudence of the Company’s decisions  
11 in ratemaking proceedings, and as a result this delay is necessary in order to provide the robust  
12 and thorough analysis that was requested. Therefore, PacifiCorp’s motion should be granted.

13 **A. Sierra Club mischaracterizes the regional haze process and the impacts, which**  
14 **still presents significant uncertainty for the Company.**

15 In its response Sierra Club attempts to paint a picture that PacifiCorp willfully ignored  
16 Clean Air Act regional haze obligations at Jim Bridger 1 and 2 and created this uncertainty for  
17 customers.<sup>3</sup> Not only is this narrative fundamentally inaccurate, it minimizes the very real  
18 uncertainty around the long term fueling strategy that currently exists at the Bridger facility that  
19 results from the confluence of regional haze events, Idaho Power’s Integrated Resource Plan  
20 (IRP), and the decision to convert Jim Bridger units 1 and 2 to natural gas.

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<sup>3</sup> Sierra Club’s Opposition to PacifiCorp’s Motion to Amend Order No. 21-379 at 4 (Feb. 15, 2022) (“PacifiCorp’s primary argument for why it cannot present a fueling strategy for Jim Bridger is centered on the Company’s decision to ignore Clean Air Act regional obligations at units 1 and 2.”).

1                   **1. Sierra Club inaccurately portrays the regional haze process.**

2                   Sierra Club mischaracterizes the regional haze processes and negotiations for Jim Bridger  
3 units 1 and 2. PacifiCorp began working with Wyoming Department of Environmental Quality  
4 (WDEQ) in 2017, and involved U.S. Environmental Protection Agency (EPA) starting in July of  
5 2018, to develop an alternative to the installation of SCR at Jim Bridger Units 1 and 2.  
6 PacifiCorp worked directly with both WDEQ and the EPA to develop an acceptable  
7 alternative; however, it did not involve conversion to natural gas at that time. PacifiCorp  
8 submitted a request to WDEQ in February 2019 to modify its state air permit to adopt the  
9 alternative in place of the Selective Catalytic Reduction (SCR) requirement. The state approved  
10 the alternative on May 5, 2020, and issued Wyoming Air Permit P0025809, which eliminated the  
11 SCR requirements and made the alternative enforceable under state law. PacifiCorp also  
12 submitted a regional haze state implementation plan (SIP) Revision with the alternative to  
13 WDEQ in February 2019, and it was later submitted to EPA for review and approval. Following  
14 its receipt and review of the SIP Revision, on November 20, 2020, EPA Region 8 signed an  
15 approval of the SIP Revision and notified WDEQ of its approval. But the approval was never  
16 finalized through publication in the Federal Register due to the change in administrations. Since  
17 that time, EPA took no formal action on the SIP Revision until January 18, 2022. EPA remains  
18 in breach of its obligation to review and act on Wyoming’s SIP Revision because no final action  
19 has yet been taken. Sierra Club attempts to confuse the issue by stating that there is no  
20 disconnect between state and federal regional haze requirements for Jim Bridger because  
21 “Wyoming has no authority to unilaterally amend a federally enforceable SIP[.]”<sup>4</sup> PacifiCorp has  
22 never claimed Wyoming has that authority.

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<sup>4</sup> Sierra Club’s Opposition to PacifiCorp’s Motion to Amend Order No. 21-379 at 5.

1 The disconnect is that Jim Bridger has a WDEQ-approved air permit that does not require an  
2 SCR and an EPA-approved SIP that does require SCR. This disconnect remains unresolved and  
3 continues to create uncertainty.

4 PacifiCorp has continued to engage in negotiations with EPA and Wyoming on the Jim  
5 Bridger proposed SIP Revision. However, EPA's change of direction so late in the SIP Revision  
6 process and the on-going negotiations without EPA taking final action on the SIP Revision  
7 created a high level of uncertainty for Jim Bridger Units 1 and 2. In the midst of these  
8 negotiations, PacifiCorp's 2021 IRP selected conversion of Units 1 and 2 to natural gas as the  
9 least cost/least risk option for PacifiCorp customers. PacifiCorp continued to negotiate with both  
10 Wyoming and EPA, taking the changed plan for the units into account.

11 Just days ago, Wyoming and PacifiCorp finalized a consent decree that ensures  
12 PacifiCorp's compliance with the Regional Haze requirements and that the parties will work to  
13 amend the company's permits and the regional haze SIP to reflect the conversion to natural gas.  
14 PacifiCorp continues to work with EPA to further reduce the level of uncertainty for continued  
15 operation until a conversion SIP Revision is finalized and the planned conversion to natural gas  
16 takes place. Given the lengthy and complex process for the Jim Bridger regional haze  
17 obligations, Sierra Club's statement that PacifiCorp "ignore[d] Clean Air Act regional haze  
18 obligations at units 1 and 2" is simply not true. Instead, PacifiCorp has continuously acted in  
19 good faith to represent and achieve a compliance option in the best interest of our customers  
20 given the lengthy process, substantial uncertainties and political shifts it has faced throughout the  
21 process. It should also be noted that as a requirement under the regional haze consent decree,  
22 PacifiCorp must seek proposals for carbon capture technology retrofits on Jim Bridger

1 Units 3 and/or 4 before January 1, 2023. PacifiCorp has not yet evaluated whether this could  
2 impact the Long-Term Fuel Plan.

3 **2. Sierra Club inappropriately minimizes the impact of these events.**

4 PacifiCorp is facing a unique confluence of events that makes even the assumptions  
5 around the Long-Term Fuel Plan difficult to determine. The continued uncertainty on regional  
6 haze compliance, Idaho Power’s recent IRP, and PacifiCorp’s own decision to convert the units  
7 to natural gas. A single one of these events could constitute a significant change to Bridger’s  
8 fueling strategy; however, all three events occurring in short succession creates fundamental  
9 difficulties in preparing a Long-Term Fuel Plan. Sierra Club claims that Idaho Power’s revised  
10 exit dates do not necessitate a delay by arguing that “it does not excuse PacifiCorp for evaluating  
11 the fueling needs at the plant.”<sup>5</sup> PacifiCorp agrees that it must evaluate the fueling needs of  
12 Bridger; however, the Company cannot provide analysis based on assumptions for this new date  
13 before the analysis has been completed. Additionally, Sierra Club fails to recognize that it is not  
14 a single event, but multiple events that have occurred in close proximity that makes defining the  
15 assumptions for the Long-Term Fuel Plan difficult right now. PacifiCorp expects that unresolved  
16 issues will be resolved, and additional certainty will exist, and an updated Long-Term Fuel Plan  
17 can be provided in next year’s TAM.

18 If PacifiCorp were required to provide a Long-Term Fuel Plan now, it would have to be  
19 based on obsolete information, which would not be useful to the Commission or stakeholders.  
20 PacifiCorp understands that this is an especially critical point in determining the next steps in  
21 Jim Bridger’s fueling strategy, and simply requests enough time to ensure that we can provide a

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<sup>5</sup> Sierra Club’s Opposition to PacifiCorp’s Motion to Amend Order No. 21-379 at 7.

1 thorough, robust, and appropriate plan detailing PacifiCorp’s long term fueling strategy at the  
2 plant.

3 **B. PacifiCorp will comply with the Commission’s directives to provide information**  
4 **on the prudence of a possible new Black Butte CSA if and when it is reached.**

5 PacifiCorp understands the keen interest that stakeholders have placed in PacifiCorp’s  
6 execution of new CSAs. This interest has been reflected in clear guidance from the Commission  
7 in the 2021 TAM and 2022 TAM on how these reviews would occur. The 2021 TAM stipulation  
8 identifies that if a new CSA is entered into following the Company’s initial testimony filing, the  
9 Company “work with Parties to identify the appropriate review timeline, regulatory process and  
10 rate implementation.”<sup>6</sup> Additionally, in the 2022 TAM, the Commission identified a series of  
11 expectations regarding PacifiCorp’s analysis regarding contested CSAs which include providing  
12 an explanation on “how it is allowing for an orderly sequence towards retirement and ensuring  
13 flexibility...and how it will manage the contract in the event that circumstances change from  
14 those expected when it was signed.”<sup>7</sup>

15 These two TAM orders set the expectations for PacifiCorp in the event a new Black Butte  
16 CSA is signed during the pendency of this proceeding, and PacifiCorp will provide the requested  
17 information to stakeholders in this proceeding. In their response, Sierra Club states that the  
18 Long-Term Fuel Plan could “impact contract negotiations and final contract terms, including  
19 whether signing a new contract, for any amount, is prudent.”<sup>8</sup> However, it is important to  
20 emphasize that no new agreement has yet been reached, and in the absence of an agreement, it is  
21 premature to assess prudence. As noted above, PacifiCorp understands the Commission’s

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<sup>6</sup> *In the Matter of PacifiCorp d/b/a Pacific Power, 2021 Transition Adjustment Mechanism*, Docket No. UE 375, Order No. 20-392, Appendix A at 6 (Oct. 30, 2020).

<sup>7</sup> Order No. 21-379 at 7.

<sup>8</sup> Sierra Club’s Opposition to PacifiCorp’s Motion to Amend Order No. 21-379 at 2-3 (Feb. 15, 2022).

1 expectations for a new CSA, and will strive to meet those expectations with the appropriate  
2 analysis. However, Sierra Club should not be able to use the TAM proceeding as a venue to  
3 attempt to insert itself as a party in PacifiCorp’s ongoing CSA negotiations.

4 **C. Sierra Club is seeking pre-approval of PacifiCorp’s fueling strategy at Jim**  
5 **Bridger**

6 PacifiCorp’s Long Term Fuel Plan is fundamentally a document with a planning horizon  
7 that stretches beyond the current TAM proceeding to potentially cover the useful life of the plant,  
8 and PacifiCorp provides significant information in every TAM proceeding on the prudence of  
9 NPC for the rate year. However, Sierra Club is seeking to relitigate their concerns around  
10 PacifiCorp’s planning from the IRP proceeding in the TAM, which is a comparatively short-term  
11 annual ratemaking proceeding.<sup>9</sup>

12 In any ratemaking proceeding, PacifiCorp has the burden of showing that the actions it  
13 has taken are prudent. The Commission has clearly articulated this prudence standard:

14 In a prudence review, we look at the objective reasonableness of a decision at the time it  
15 was made, considering the information then available to the utility. We examine all  
16 actions of the utility—including the process that the utility used to make a decision.<sup>10</sup>

17 Additionally, the Commission has articulated that “it does not necessarily provide regulatory  
18 approval before a utility enters into a particular transaction.”<sup>11</sup> Commission precedent is  
19 well-defined, and it is incumbent upon the utility to make the decisions and support the prudence  
20 of those actions.

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<sup>9</sup> See *Id.* at 3-4 (claiming that “PacifiCorp failed to evaluate optimal output from the Bridger mine...during its 2021 IRP”).

<sup>10</sup> *In the Matter of PacifiCorp d/b/a Pacific Power, 2017 Transition Adjustment Mechanism*, Docket No. UE 307, Order No. 16-482 at 6 (Dec. 20, 2016).

<sup>11</sup> *In the Matter of PacifiCorp d/b/a Pacific Power, Application for Approval of Deer Creek Mine Transaction*, Docket No. UM 1712, Order No. 15-161 at 11 (May 27, 2015).

1           PacifiCorp provides significant information on the prudence of the Jim Bridger’s costs  
2 during the rate year. Jim Bridger is fueled by the Bridger Coal Company (BCC) and the Black  
3 Butte Mine (Black Butte). As discussed above, in the event that PacifiCorp signs a new  
4 agreement with Black Butte that should be incorporated into the TAM, PacifiCorp will provide  
5 information on the prudence of that agreement. Additionally, PacifiCorp provides significant  
6 information on operations at BCC as well. PacifiCorp still prepares annual mine plans which  
7 “examine a range of different volume scenarios to determine the optimal plan for the relevant  
8 planning period... the Company regularly assesses different mine plans for BCC that examine a  
9 range of different production levels.”<sup>12</sup> These mine plans have been regularly provided to TAM  
10 parties in the past.

11           However, the Long-Term Fuel Plan is a key decision document in PacifiCorp’s fueling  
12 strategy for the Jim Bridger Plant. PacifiCorp simply cannot produce this document because the  
13 analysis has not been completed and decisions have yet to be made due to the uncertainty around  
14 the events discussed above. Sierra Club presents the option of PacifiCorp filing a fuel plan and  
15 then updating it as more information becomes available.<sup>13</sup> However, filing multiple Long-Term  
16 Fuel Plans within such proximity with significantly disparate possible outcomes presents  
17 significant difficulties. By attempting to force PacifiCorp to provide this document or multiple  
18 documents, and then opine on PacifiCorp’s actions before PacifiCorp has made a decision on  
19 these issues, Sierra Club is attempting to engage in a pre-approval prudence review that is  
20 inconsistent with Commission precedent. PacifiCorp already has a power cost adjustment

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<sup>12</sup> *In the Matter of PacifiCorp d/b/a Pacific Power, 2022 Transition Adjustment Mechanism*, Docket No. UE 390, PAC/1200, Ralston/37.

<sup>13</sup> Sierra Club’s Opposition to PacifiCorp’s Motion to Amend Order No. 21-379 at 6.

1 mechanism (PCAM) that permits parties to review PacifiCorp’s historical power costs.<sup>14</sup>  
2 Additionally, filing a fuel plan based on incomplete or with multiple versions of analysis would  
3 be harmful to the flexibility that is necessary for PacifiCorp to make appropriate business  
4 decisions and the analysis could create concerns with regulators, stakeholders, and the workforce  
5 in other jurisdictions.

6 **CONCLUSION**

7 Sierra Club’s opposition has failed to present any compelling reasons why it is necessary  
8 for PacifiCorp to file a Long-Term Fuel Plan now. Instead, Sierra Club misconstrues the regional  
9 haze process and ignores the significant information that is already provided in the TAM  
10 proceeding in an attempt to impose a pre-approval process on PacifiCorp’s decision-making.  
11 For the reasons described in this response, PacifiCorp respectfully requests the Commission  
12 reject Sierra Club’s opposition and adopt the modifications to Order No. 21-379 proposed by  
13 PacifiCorp to provide the Commission with a Jim Bridger Long Term Fuel Plan in the  
14 2024 TAM.

Respectfully submitted this 22<sup>nd</sup> day of February 2022.



By: \_\_\_\_\_

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<sup>14</sup> *In the Matter of PacifiCorp d/b/a Pacific Power, Request for a General Rate Revision, Docket No. UE 246, Order No. 12-493 at 8-15 (Dec. 20, 2012).*