

Davison Van Cleve PC

Attorneys at Law

TEL (503) 241-7242 • jlb@dvclaw.com
107 SE Washington St., Suite 430
Portland, OR 97214

August 12, 2025

Via Electronic Filing

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

Re: In the Matter of PUBLIC UTILITY COMMISSION OF OREGON,
Investigation into House Bill 2021 Implementation Issues.
Docket No. UM 2273

Dear Filing Center:

Please find enclosed the Alliance of Western Energy Consumers' Opening
Comments on the Commission's Draft Order in the above-referenced docket.

Please do not hesitate to contact me if you have any questions.

Sincerely,

/s/ Julitta Brannon
Julitta Brannon
Paralegal

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2273

In the Matter of)	
)	
PUBLIC UTILITY COMMISSION OF)	OPENING COMMENTS OF THE
OREGON,)	ALLIANCE OF WESTERN ENERGY
)	CONSUMERS
)	
Investigation into House Bill 2021)	
Implementation Issues.)	
_____)	

I. INTRODUCTION

Pursuant to the Administrative Law Judge’s May 27, 2025, Notice and Memorandum and subsequent June 13, 2025, and August 6, 2025 Rulings, the Alliance of Western Energy Consumers (“AWEC”) files these comments on the Oregon Public Utility Commission’s (“Commission”) Draft Order and the attached hypothetical scenario. AWEC appreciates the time and effort the Commission has put into consideration of how to implement the House Bill (“HB”) 2021 cost cap, which is a complex undertaking. However, as set forth herein, AWEC recommends that the Commission deviate substantially from the Draft Order and instead rely primarily on information provided in a utility’s Integrated Resource Plan (“IRP”) and Clean Energy Plan (“CEP”) to determine to open an investigation into whether the utility will exceed the cost cap in HB 2021. AWEC’s recommendation is meant to meet the Commission’s stated need “to ensure that the approach ultimately adopted by the Commission is consistent with statutory requirements and administratively feasible.”¹

¹ Docket No. UM 2273, Draft Order (May 27, 2025) (“Draft Order”).

II. COMMENTS

In the Draft Order, the Commission makes a number of provisional decisions on how to implement the HB 2021 cost cap. To make a cost cap determination in accordance with the Draft Order, it must be determined that compliance with HB 2021 was a “significant driver” in the action associated with the cost.² For forecasted costs to be considered, the utility must formally commit to the project.³ Procedurally under the Draft Order “[a] pause in compliance obligations can only come at the end of a section 10 cost cap proceeding. It cannot be provided in the midst of an IRP proceeding.”⁴ However, “while costs and resources at the RFP shortlist stage are known...the timing of the RFP process does not allow for a parallel section 10 proceeding.”⁵ The Draft Order further recognizes that waiting for a general rate case to perform a cost cap determination is too late.⁶ Accordingly, under the Draft Order, a Section 10 proceeding would take place after the final RFP and before a general rate case and only consider costs that the utility has formally committed to and that are a significant driver of HB 2021 compliance.

To prove up the validity and effectiveness of the Draft Order, the Commission included a hypothetical scenario and requested comment from parties on how the HB 2021 cost cap would be implemented under this scenario. The hypothetical scenario,⁷ which spans a five-

² Draft Order, Appendix A at 1.

³ *Id.*

⁴ *Id.* at 10.

⁵ *Id.*

⁶ *Id.*

⁷ Notably, the hypothetical scenario includes “simplifying assumptions,” wherein the following are not at issue in the hypothetical example, “a) Prudence of the utility’s actions; b) Reliability-based exemptions pursuant to ORS 469A.440; [and] c) Multi-state cost allocation.” Appendix B at 1-2. As AWEC explains in these comments, the hypothetical is anything but simple and the reality is that prudence, ORS 469A.440, and PacifiCorp’s recently filed 2026 Multi-State Protocol, may be issues in the application of HB 2021 cost cap analysis, thereby exacerbating the difficulty of applying the Draft Order.

year period, begins with Commission acknowledgement of a utility's 2029 IRP/CEP which identifies a need to procure a variety of resources and includes the utility's counterfactual IRP portfolio. Following the 2029 IRP/CEP, the utility would engage in a complete RFP proceeding including contract negotiations, and finally, a utility-initiated section 10 filing in which the utility requests an exemption from HB 2021 compliance for 2033 through 2035. In 2031, the Commission grants the exemption and then in the utility submits its 2031 IRP in which it identifies a need for new capacity and non-emitting capacity for when the utility is once again subject to HB 2021 compliance beyond 2035. An intervenor challenges the IRP as not least cost, least risk. Subsequently, the utility files a general rate case, which results in a rate increase in 2032. Based on the general rate case, an entity with section 10 filing rights files a petition to determine whether the exemption should be extended beyond 2035 through 2037. Finally, in 2033, the utility files a Renewable Resources Adjustment Clause request to recover the costs of all of the contracted resources from the 2030 RFP and submits its 2033 RPS update in which it indicates its cost of RPS compliance.

Unfortunately, AWEC's review of the Commission's hypothetical scenario suggests that applying the HB 2021 cost cap in the manner proposed in the Draft Order will render the cost cap effectively meaningless. It will simply be too complicated to determine whether the cost cap has been reached and to administer ongoing compliance if the Commission ever did find that a utility has exceeded the cost cap.

As AWEC understands how the process would unfold in the Draft Order, a utility would commit to one or more projects and the cost of these projects would, in theory, cause the utility to exceed the 6% cost cap. As a practical matter, and as the Commission recognizes,⁸ this

⁸ Appendix A at 11.

means only the utility would have the information necessary to open the required investigation into whether it actually will exceed the cap. At that point, parties will have the ability to argue about numerous issues, including whether the projects at issue “contribute to compliance” with HB 2021, the appropriate proportional allocation of the cost or investment for application against the cost cap, whether the utility is properly forecasting its revenue requirement, and whether project costs are being appropriately estimated. And all of this will presumably occur before the Commission has even determined whether the projects at issue are prudent and can be included in customer rates at all.

Moreover, as the Commission is aware, utility investments are lumpy. The Commission’s Draft Order applies the cost cap once there is “a utility commitment to a project” and applies the cost cap “only in individual years, based on the relevant costs experienced in a single year as a percentage of that same year’s revenue requirement.”⁹ This creates a very likely scenario where a utility will commit to a number of projects at the same time through an RFP, which will increase revenue requirement by more than 6%, but the next year add little or no HB-2021 compliant resources. In the meantime, other changes to revenue requirement, including, most prominently, annual power cost updates or temporary surcharges through power cost adjustment mechanisms or amortization of deferrals, may result in the utility falling back below the 6% cost cap. At this point the utility will have a new obligation to start adding additional resources that causes the utility to exceed the cost cap again. In this scenario, customers would rarely be protected from the cost impacts because the cost cap will need to be revoked and then reestablished multiple times over the compliance period, all while the projects that cause an exceedance of the cost cap will still be recoverable in rates.

⁹ *Id.* at 11, 14.

This scenario is evident from Portland General Electric’s (“PGE”) 2023 CEP/IRP Update. There, the utility notes that, to meet its 2030 non-emitting obligations, its total generating capacity will need to increase by 150% between 2025 and 2030 and that “most of these resources are added in the model in 2029.”¹⁰ PacifiCorp’s 2025 CEP also demonstrates the problem. Its CEP forecasts an average annual compliance cost as a percentage of revenue requirement of 10% or more between 2025 and 2045, indicating that the utility is likely to exceed the cost cap.¹¹ The actual rate impacts to customers, however, will not occur in this ratable fashion over the compliance period; they will occur in sporadic large chunks and only after the utility “commits to a project.”

This likely never-ending cycle is further evidenced by the hypothetical scenario contained in the Draft Order, which not only procedurally spans a three-year period but is also associated with a single Section 10 filing for the two subsequent years. However, included in the hypothetical scenario is actually two Section 10 filings, the first being initiated by the utility for 2033-2035, and the second initiated by an entity with Section 10 filing rights for 2036-2037.¹² The infeasibility of applying the cost cap in the manner proposed in the Draft Order is further evidenced by the administrative burden that would be required on behalf of the Commission and parties alike for the duration of the hypothetical scenario set forth in the Draft Order, which appears to be continuous in nature.

This outcome is clearly at odds with the Legislature’s intent to protect customers from excessive costs associated with HB 2021 compliance. It also is the antithesis of administrative efficiency. The amount of time and effort the Commission will need to spend

¹⁰ Docket No. LC 80, PGE 2023 CEP/IRP Update at 12 (June 18, 2025).

¹¹ Docket No. LC 85, PacifiCorp 2025 CEP at 98 (Table 23) (June 30, 2025).

¹² Appendix B at 4, 5.

simply monitoring a utility’s position within the 6% cost cap – and resolving disputes among parties associated with the cap – will divert its attention from the numerous other important issues it has before it.

For these reasons, the Commission should dramatically simplify the application of the cost cap and should rely primarily on data provided in the utilities’ IRPs and CEPs. The Draft Order concludes that, “[a]t the IRP stage, the generic projections available to us are insufficient to support a cost cap determination,”¹³ but AWEC questions whether this is really true. AWEC does not dispute that costs forecast in the IRP and CEP are uncertain, but so is any forecast, and the Commission’s application of the cost cap does not need to be perfect, it just needs to be defensible.¹⁴

The utilities use the IRP and CEP to develop a portfolio of resources that best allows them to comply with their various obligations, which are based at least in part on forecasts of resource costs. PGE, for instance, is pursuing additional solar and wind resources in lieu of carbon capture due to the assumed costs of these options.¹⁵ This is a concrete plan dictated by the assumptions and analyses in the IRP. It is not unreasonable, therefore, also to use these documents to determine that these cost forecasts will require the utilities to incur an unreasonable level of cost to comply with HB 2021 on an annualized basis. To be clear, AWEC does not advocate that the Commission should relieve a utility from HB 2021 compliance simply

¹³ Appendix A at 10.

¹⁴ See *SAIF Corp. v. Coria (In re Coria)*, 371 Or. 1, 12, 528 P.3d 785, 791 (2023) (internal citations omitted) (Supreme Court of Oregon explaining that “[w]e review [agency] orders for substantial evidence and errors of law...Implicit in the requirement that orders be supported by substantial evidence is an additional requirement that they be supported by ‘substantial reason.’...An order is supported by substantial reason when it ‘articulate[s] a rational connection between the facts and the legal conclusions it draws from them.’”).

¹⁵ Docket No. LC 80, PGE 2023 CEP/IRP Update at 14 (June 18, 2025) (“Informed by least-cost and least-risk planning, the current Preferred Portfolio relies on new non-emitting resources rather than changes at existing thermal plants to reduce emissions”).

because its IRP/CEP shows a likely exceedance of the cost cap. Rather, this information should be the starting point of the investigation required under Section 10 of HB 2021. At that point, the Section 10 investigation would proceed in tandem with the IRP/CEP docket and consider the utility's assumptions in arriving at its conclusion in the IRP/CEP that it would exceed the cost cap. The Commission would then make a determination in the Section 10 investigation of whether those assumptions were reasonable or whether a revision of those assumptions is necessary and would impact the result.

In addition, the cost cap analysis must be compared against the utility's revenue requirement. Rather than engaging in a "fact-intensive" analysis of what a utility's future revenue requirement may be that the Commission admits is "unavoidably imprecise,"¹⁶ the Commission should simply escalate the utility's revenue requirement by an agreed-upon inflation factor. This approach would dramatically simplify this piece of the analysis and there is no reason to believe it would be any more or less accurate than a "fact-intensive" forecast of revenue requirement.

Staff's most recent draft of proposed IRP/CEP rules in Docket No. AR 669 would support AWEC's proposal. Those rules include proposed OAR 860-090-0060(11), which requires electric utilities subject to HB 2021 to develop and evaluate a counterfactual portfolio in their IRPs "as though the requirements of ORS 469A.400 to ORS 469A.475 did not apply, holding equal all other constraints and assumptions used to develop the Preferred Portfolio."¹⁷ This counterfactual portfolio will be in addition to the utility's portfolio analysis reference case

¹⁶ Appendix A at 12.

¹⁷ Docket No. AR 669, Second Draft Proposed Rule Changes Resource Planning, at 11 (July 2, 2025). AWEC acknowledges that Docket No. AR 669 is ongoing and therefore OAR 860-090-0060(11) is subject to change.

included in its IRP that complies with HB 2021 and “represents current expectations for future conditions.”¹⁸

The outcome of a Section 10 investigation under AWEC’s proposal would be a determination of whether a utility is forecasted to exceed the 6% cost cap, in what year, and for how long. The Commission would then exempt the utility from future HB 2021 compliance for this period of time; provided, however, that the utility would update the cost cap analysis (using the methodology and assumptions established by the Commission in the Section 10 investigation) with each subsequent IRP/CEP. If these updates change the result, the Commission can modify its order accordingly. This approach represents a reasonable, defensible, and easy-to-administer implementation of the cost cap that complies both with HB 2021 and the Commission’s other statutory requirements.

AWEC does not suggest that this process will be seamless and without controversy. It may be that parties dispute a utility’s assumptions of resource costs in each iteration of the IRP/CEP, which the Commission will need to resolve. But the Commission has seen these disputes in IRPs for years – they are not incremental to the work the Commission already does. Moreover, such disputes are likely only to matter at the margins. If a utility is right at the 6% cost cap, a change in resource cost assumptions could make a difference. But if the utility is forecasting annualized rate increases of 10% or more, as PacifiCorp is, it is unlikely that resource costs could be revised downward enough to bring the utility below the cost cap and still represent a reasonable projection. Moreover, many other potentially more consequential controversies, like what resources should qualify toward the cost cap, can be addressed in the

¹⁸ Docket No. AR 669, Workshop #1: Staff and DOJ Presentation of IRP/CEP and RFP Rules, at 8 (May 7, 2025).

initial Section 10 investigation which would resolve them on a precedential basis for future IRPs so they do not recur repeatedly.

AWEC's recommendation that the Commission rely primarily on data provided in the utilities' IRP/CEPs for purposes of determining whether a utility is likely to hit the HB 2021 cost cap provides a solution that is consistent with statutory requirements, is administratively feasible, and therefore reasonable path forward.

III. CONCLUSION

AWEC appreciates the opportunity to provide these comments and looks forward to working with the Commission and parties to this proceeding to find a workable solution to applying the HB 2021 cost cap provisions.

Dated this 12th day of August 2025.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Tyler C. Pepple

Tyler C. Pepple

107 SE Washington Street, Suite 430

Portland, Oregon 97214

(503) 241-7242

tcp@dvclaw.com

Of Attorneys for the

Alliance of Western Energy Consumers