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September 29, 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' Reply Comments on the Commission's September 2, 2025 Memorandum 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)	REPLY 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 September 5, 2025, Ruling, the Alliance of Western Energy Consumers (“AWEC”) files these Reply Comments addressing the questions set forth in the Oregon Public Utility Commission’s (“Commission”) September 2, 2025, Memorandum. AWEC acknowledges and appreciates the Commission’s continuing efforts to engage in the hard work necessary to determine a workable solution to the cost cap issues associated with House Bill (“HB”) 2021.

AWEC further appreciates the conversations during the August 28, 2025, Special Public Meeting and the questions in the subsequent September 2nd Memorandum that evidence a desire on the part of the Commission to adopt an approach to the HB 2021 cost cap that is not only administratively feasible but, also, ensures that customers are protected from excessive costs associated with HB 2021 compliance.

II. COMMENTS

- 1. Does ORS 469A.445 call for the Commission to issue an exemption that prevents a utility’s projected obligatory compliance costs from reaching 6% of its projected revenue requirement for a year, or that relieves the utility from further compliance obligations once its projected compliance costs have reached or exceeded 6% of its projected revenue requirement for that year?**

When construing statutory terms, Oregon courts first begin with the text and context of the statute.¹ Principles of statutory interpretation dictate that the Commission should give effect to every word the Legislature used, if possible,² and “[i]f the legislature's intent is obvious from that first level of analysis, ‘further inquiry is unnecessary.’”³

ORS 469A.445(1) states that for the purpose of HB 2021 compliance, an investigation may be opened “to provide accounting for investments made, costs incurred *or* forecasted costs estimated by the electric company” (emphasis added). ORS 469A.445(3) states that the Commission shall use “the actual *or* anticipated rate impact of each investment or cost to calculate the cumulative rate impact” (emphasis added). Based on the plain language of the statute, the Commission has discretion to interpret the cost cap as applying to *either* actual costs incurred or forecasted costs.

As explained in AWEC’s Opening Brief, AWEC recommends the Commission prioritize using forecasted costs and anticipated rate impacts for a cost cap determination to avoid a no-win situation whereby customers or the utility are financially responsible for investments that exceed the cost cap. Using cost incurred and actual rate impacts will result in one of two consequences – either customers will bear any costs above the six percent cost cap, thereby nullifying the customer protection intended by the Legislature, or the utility would bear the cost of exceeding the cost cap, thereby failing to recover the full prudently incurred cost of the resource. Accordingly, while AWEC acknowledges that the Commission has the discretion to apply the cost cap to either forecasted or actual costs, the public interest is better served by applying the cost cap to forecasted costs.

¹ *State v. Gaines*, 346 Or. 160, 164-65, 206 P.3d 1042, 1046 (2009) (internal citations omitted).

² ORS 174.010.

³ *State v. Gaines*, 346 Or. 160, 164-65, 206 P.3d 1042, 1046 (2009) (internal citations omitted).

2. Recognizing that no forecast is perfect and that any increase in the level of detail required to support a section 10 determination comes at the expense of more lengthy proceedings, what evidence would be appropriate in a section 10 proceeding with respect to (a) costs that have already been incurred and (b) new expenditures?

For costs that have already been incurred, AWEC recommends that the Commission consider the net book value of the resource, as well as any associated operating costs. For new expenditures, AWEC continues to recommend that the Commission base a section 10 investigation on costs forecasted in a utility's IRP/CEP, as modified to reflect power costs as described in response to Question 3 below. As an alternative, however, AWEC would be open to PacifiCorp's recommendation that the Commission base a section 10 investigation using forecasted costs on the cost of resources that have bid into an RFP.⁴

3. How should the Commission address power costs, which often represent roughly 50% of the annual revenue requirement, in developing projected annual revenue requirements for use as the denominator of the cost cap calculation?

AWEC appreciates the Commission's specific recognition of this issue, and appreciates the complexity underlying any effort to factor power costs into an analysis of the HB 2021 cost cap. Utility power costs are driven primarily by market prices. It is reasonable to conclude that regional clean energy policies, such as HB 2021, have increased market prices in recent years as they have driven the replacement of dispatchable capacity with largely intermittent capacity. The extent to which market prices are tied to these policies, however, is difficult to estimate, and it would be even more difficult to estimate the precise impact of HB 2021 alone on regional energy prices. Nevertheless, failing to assign any power cost impact to HB 2021 is the same as determining that it has no cost impact at all, which appears unreasonable. AWEC, therefore,

⁴ PacifiCorp Opening Phase 2 Comments at 1-2 (Aug. 12, 2025).

proposes a proxy method for assigning a power cost impact to HB 2021 as part of a cost cap investigation.

AWEC's understanding of how utility resources are modeled both in the IRP and RFP contexts is that they are assigned a net cost. This is done by determining the capital and operating costs of a resource and netting those costs against the expected value the resource provides in the market. Since carbon-free resources typically have no fuel cost, the "power cost" of these resources is almost always negative – they reduce a utility's overall power costs when viewed solely within the utility's portfolio and not in the broader context of what drives regional energy prices. As a proxy for the regional energy price impact of HB 2021, AWEC proposes that the energy value of resources pursued for HB 2021 compliance be removed so that only the capital and operating costs are considered in a section 10 investigation.

AWEC acknowledges that this proposal is unvetted and believes it could benefit from feedback from other stakeholders as well as modeling from the utilities to understand whether the proposal could serve as a useful measure of the power cost impacts of HB 2021. AWEC will also review proposals from other parties.

4. In light of the opportunity for significant complexity when determining the numerator and denominator, should the Commission adopt simplifying assumptions to make timely section 10 determinations more feasible? Which elements of the calculation could benefit from simplifying assumptions while allowing the Commission to effectively achieve the balance between climate goals and affordability articulated in the legislation?

AWEC agrees with the Commission that there is "opportunity for significant complexity when determining the numerator and denominator"⁵ of an HB 2021 cost cap calculation. To avoid this complexity to the extent possible, AWEC suggests that the Commission adopt

⁵ Memorandum at 1.

simplifying assumptions for both the numerator and the denominator. Specifically, regarding the denominator, AWEC continues to recommend that the Commission escalate the utility’s revenue requirement by an agreed-upon inflation factor. AWEC is flexible regarding the specific process for determining the inflation factor and offers an example in response to question 5, below.

Regarding the numerator, AWEC continues to recommend that the costs forecast in a utility’s IRP/CEP be used as a starting point for a section 10 proceeding, in the sense that if a cost forecast in the IRP/CEP shows a forecasted exceedance of the cost cap, the Commission would initiate a section 10 proceeding to further investigate the reasonableness of that cost forecast.

AWEC is open to considering other parties’ and the Commission’s perspectives on elements that can be simplified to ensure HB 2021’s cost cap is effectuated while maintaining a reasonable forecast of costs.

5. Parties have proposed starting section 10 proceedings at various points in the planning and procurement process. Please provide an illustrative timeline for how an IRP/CEP, RFP, and section 10 proceeding would best align.

As set forth in AWEC’s Opening Comments, AWEC continues to recommend that the Commission rely primarily on data provided in the utilities’ IRPs/CEPs for a section 10 proceeding. An illustrative timeline is as follows:

Event	Date
Utility files IRP/CEP which: a) identifies a need to procure resources to meet the utility’s reliability needs, HB 2021 emission reductions targets by 2035, other HB 2021 compliance obligations, and RPS compliance obligations; and b) includes a counterfactual portfolio that uses the same constraints and assumptions as the utility’s preferred portfolio, except, it does not include resources procured for HB 2021 emissions reductions targets and HB 2021 compliance obligations	May 31
If, based on the utility’s counterfactual portfolio, the utility is forecasting costs that	Second Public Meeting in June

exceed the cost cap, the Commission would initiate a section 10 investigation at a Public Meeting. This investigation could be initiated on the Commission’s own motion, or by the utility or “an organization that represents broad customer interests and that has a written agreement with an electric company pursuant to ORS 757.072.” ⁶	
All parties file opening testimony	July 31
All parties file reply testimony	August 31
Hearing	September 15
Opening briefs	September 30
Closing briefs	October 15

The dates provided in the timeline above are illustrative in nature. Parties to a section 10 proceeding would be free to determine how many rounds of testimony would be necessary, whether settlement conferences were warranted, etc. The timing of AWEC’s proposal assumes that the section 10 proceeding concludes prior to the Commission’s acknowledgement of the IRP/CEP. This ensures that a determination on the cost cap can be factored into the Commission’s IRP/CEP acknowledgment order.

As noted above and as an alternative to AWEC’s main recommendation that a utility’s IRP/CEP be the starting point for a section 10 proceeding, AWEC does not oppose PacifiCorp’s recommendation that “the Commission establish a fast-track cost cap proceeding that can be resolved within 90–120 days that would occur while the company seeks approval of the final shortlist during a request for proposals (RFP) process.”⁷ AWEC agrees that a section 10 proceeding in tandem with an RFP process would require a shorter investigation. This is for two reasons. First, regardless of whether the Commission uses IRP/CEP cost projections as the basis for a cost cap determination, it should determine as part of the IRP/CEP process whether an

⁶ ORS 469A.445(1).

⁷ PacifiCorp Opening Phase 2 Comments at 1-2 (Aug. 12, 2025).

investment contributes to HB 2021 compliance. Therefore, by the time a utility reaches the RFP stage, the Commission will have already determined whether the cost of the resources the utility seeks will count toward the cost cap because a utility will have established a need, provided a counterfactual portfolio, and acknowledged the utility’s preferred portfolio. Second, unlike in a section 10 proceeding that proceeds in parallel with the IRP/CEP, there will be no need to determine whether a utility’s cost assumptions in the IRP/CEP are reasonable because the Commission will be reviewing actual costs of resources that have bid into an RFP.

Consequently, the two likely most significant and controversial items of a cost cap investigation – whether a resource contributes to HB 2021 compliance and what the resource’s cost is likely to be – will have already been determined. Accordingly, AWEC provides the following illustrative timeline:

Event	Date
Utility identifies initial shortlist	November 13
Best and final price update	November 27
Staff and Intervenors file opening comments	December 11
All parties file reply comments	January 8
Utility submits request for acknowledgement of final shortlist to OPUC	February 11

Again, the dates provided in the timeline above are illustrative in nature, and a specific process would be up to the parties and the Commission to determine for each case.

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III. CONCLUSION

AWEC appreciates the opportunity to provide these Reply Comments and acknowledges the Commission's continuing efforts to engage in the hard work necessary to determine a workable solution to the HB 2021 cost cap issues.

Dated this 29th day of September 2025.

Respectfully submitted,

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/s/ Corinne O. Olson

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