

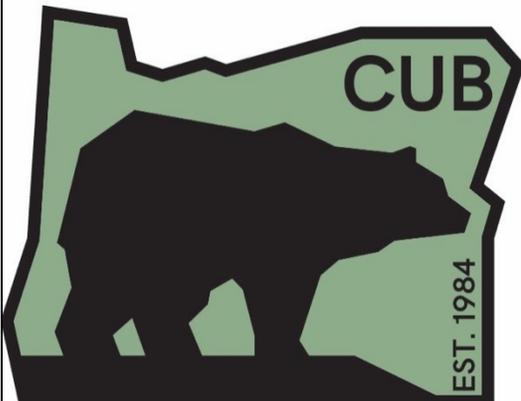
**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 390

In the Matter of)
)
PACIFICORP, dba PACIFIC POWER,)
)
2022 Transition Adjustment Mechanism.)
_____)

REDACTED REPLY BRIEF
OF THE
OREGON CITIZENS' UTILITY BOARD

September 28, 2021



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I. INTRODUCTION

A. Background

Pursuant to Administrative Law Judge (ALJ) Rowe’s May 10, 2021 Prehearing Conference Memorandum, the Oregon Citizens’ Utility Board (CUB) submits its Reply Brief in the above-captioned proceeding. In this Brief, CUB responds to issues raised by PacifiCorp (PAC or the Company) in its Opening Brief, filed September 15, 2021. CUB also addresses issues and arguments raised by the Staff of the Oregon Public Utility Commission (Staff), Alliance of Western Energy Consumers (AWEC), Calpine Energy Solutions, LLC. (Calpine) and Sierra Club.

On April 1, 2021, the Company filed its 2022 Transition Adjustment Mechanism (TAM) to update net power costs (NPC) and set transition credits for its direct access customers.¹ In the TAM, forecasts are used to adjust the Company’s rates, which makes forecast accuracy significantly important in setting fair, just, and reasonable rates.² The Public Utility Commission

¹ UE 390 – PacifiCorp’s Initial Filing at 1 (Apr. 1, 2021).

² *In re PacifiCorp, dba Pacific Power, 2017 Transition Adjustment Mechanism*, OPUC Docket No. UE 307, Order No. 16-482 at 2 (Dec. 20, 2016).

of Oregon’s (Commission) stated TAM goal is to achieve as accurate a forecast of PAC’s NPC as possible for the upcoming year.³ CUB agrees that ensuring as accurate an NPC forecast as possible is paramount to establishing just and reasonable rates for the Company’s captive customers. To CUB, this means the Company must use the best information available to create its forecast, which it must support with evidence sufficient to meet its burden of proof.

CUB also recognizes that the TAM’s weather normalized forecast will not perfectly forecast costs or revenues in real world conditions. When a summer is warmer than normal, both costs to meet load and attendant revenues will be higher than expected. Similarly, when a winter is warmer than normal, costs and revenues will be lower than expected. Since a weather normalized NPC forecast will never perfectly match actuals, CUB believes the Company must use all available information in order to meet its burden of proving its NPC forecast will most accurately match actuals and result in just and reasonable rates. For example, if PAC’s Integrated Resource Plan (IRP) demonstrates that economics may lead to a resource being curtailed or closed earlier than anticipated, the Company must consider the impact of shifting economics in its TAM forecast.⁴ This is consistent with Commission guidance, in which “the characteristics and availability of generation facilities” are considered among the necessary annual Generation and Regulation Initiative Decision Tool (GRID) input assumptions.⁵

Based upon the following, CUB respectfully requests that the Commission:

- Deny the Company’s request to employ the Commission-rejected average-of-averages approach to calculate market caps. Instead, the Commission should

³ *Id.* at 2.

⁴ *See, e.g.*, UE 390 – CUB/200/Jenks/12-15.

⁵ *In re PacifiCorp, dba Pacific Power, 2018 Transition Adjustment Mechanism*, OPUC Docket No. UE 323, Order No. 17-444 at 2-3 (Nov. 1, 2017) (“The company updates all input assumptions to produce the TAM, including system load, wholesale sales and purchase contracts for electricity, natural gas and wheeling, market prices for electricity and natural gas (using an official forward price curve), fuel expenses, and the characteristics and availability of generation facilities.”).

employ CUB's approach and direct the Company to set the market cap for each hub at the mid-point between the average-of-averages and the maximum-of-averages approach for this year's TAM;⁶

- Require the Company to allow GRID to economically cycle Jim Bridger, Unit 1.⁷ In addition, CUB requests Commission guidance on process for examining the viability coal units with questionable economics in future proceedings;
- Require the Company to continue to monitor whether the Huntington CSA is leading to uneconomic dispatch;⁸
- Adopt the Company's proposal to set the floor of the Consumer Opt-out Charge (COOC) at zero in this proceeding, and enable parties to more fully examine the implications of the COOC in UM 2024;⁹
- Require the Company to file the 2023 TAM on March 1, 2022;¹⁰ and
- Require the Company to file all coal supply agreements (CSAs) and affiliate mine plans in future TAM filings, a position articulated by Sierra Club and supported by Staff.¹¹

B. *Burden of Proof*

In a utility dispute before the Commission, the burden of proof consists of two discrete components—the burden of persuasion and the burden of production.¹² The burden of persuasion and the ultimate burden of producing sufficient evidence to support its claims is

⁶ UE 390 – CUB/200/29, lines 18-20.

⁷ *Id.* at 16.

⁸ UE 390 – CUB/100/Jenks/14.

⁹ UE 390 – CUB/200/Jenks/30, lines 16-18.

¹⁰ *Id.* at 22.

¹¹ UE 390 – Sierra Club/100/Burgess/3-4; Staff/1400/Anderson/6-7.

¹² *In re Portland General Electric Company Application to Amortize the Boardman Deferral*, OPUC Docket No. UE 196, Order No. 09-046 at 7 (Feb. 5, 2009).

always with the utility.¹³ Other parties to the proceeding have the burden of producing evidence to support their argument in opposition to the utility’s position.¹⁴ In a case in which a utility is requesting a change in rates or a schedule of rates—such as in the TAM—the utility bears the burden to demonstrate its proposed change will result in rates that are fair, just, and reasonable.¹⁵

II. ARGUMENT

A. *The Commission should deny PAC’s request to use average-of-averages market caps in the 2022 TAM.*

The Company failed to demonstrate that using a previously Commission-rejected methodology would result in a more accurate NPC forecast. Rather than providing a fulsome analysis with various alternatives to address the deficiency highlighted by the Commission in the last TAM,¹⁶ the Company chose to recycle arguments accompanied by a dearth of evidence.¹⁷ In addition to failing to provide support for its position, the Company has not adequately rebutted arguments from CUB, AWEC, and Staff—all of whom oppose PAC’s proposed change.¹⁸ The Company has not met its burden of proof to demonstrate that its proposed change is reasonable.¹⁹ The Commission should adopt CUB’s proposed methodology and require PAC to set the market cap at the mid-point between the average-of-averages approach and the maximum-of-averages

¹³ *Id.*

¹⁴ *Id.* at 7-8.

¹⁵ ORS 757.210(1)(a).

¹⁶ *In re PacifiCorp, dba Pacific Power, Request for a General Rate Revision*, OPUC Docket No. UE 374, Order No. 20-473 at 130 (Dec. 18, 2020) (“PacifiCorp does not necessarily need to develop a complex new adjustment, but may be able to improve its forecast accuracy with straightforward **inputs or limits.**”) emphasis added. The Commission invited the Company to come forward with various inputs or limits (plural) intended to increase forecast accuracy. Instead, PAC dusted off a singular, previously rejected methodology that it has not demonstrated will lead to an improved NPC forecast.

¹⁷ *See, e.g.* UE 390 – Staff/1200/Dlouhy/5, lines 11-12 (“[T]he Company’s reply testimony lack the quantitative analysis necessary to justify reverting back to the ‘average of averages’ approach.”).

¹⁸ UE 390 – PacifiCorp’s Opening Brief at 6, line 14.

¹⁹ UE 390 – CUB/100/Jenks/8, lines 2-4.

approach.²⁰ As an alternative, CUB believes Staff's third quartile of averages approach is reasonable.²¹

The Company continues to assert that its approach will most effectively mitigate sales over-estimation, arguing with little evidence that it will not overstate the problem.²² According to the Company, using the average-of-averages approach "is likely to make only a modest dent in the Company's gross over-estimation of sales."²³ The Company attempts to buoy its position by arguing that employing the average-of-averages approach will result in a change sufficiently small that it will not drive a major change in NPC.²⁴ PAC goes on to attack creative alternatives by CUB, Staff, and AWEC, arguing that none of the alternatives proposed will meaningfully address the issue.²⁵ PAC asserts CUB's proposal will not effectively end the issue of sales over-estimations, and even argues that its preferred approach will not fully solve the problem.²⁶

The Company's arguments are unavailing. PAC has failed to both sufficiently rebut positions articulated by CUB and other intervenors and to provide sufficient evidence to support its position. CUB placed extensive evidence on the record that the sales overstatement is actually much smaller than the Company is suggesting.²⁷ While the Company would prefer to pin the problem on GRID's inability to adequately express market depth in its forecast, there are actually several other variables at play.²⁸ For example, GRID forecasts NPC based on weather-normalized conditions, but weather-related events that happen in real time have a significant

²⁰ UE 390 – CUB/200/Jenks/11-12.

²¹ UE 390 – Staff/1200/Dlouhy/14, lines 10-18.

²² UE 390 – PacifiCorp's Opening Brief at 10.

²³ *Id.* at 11.

²⁴ *Id.*

²⁵ *Id.* at 14.

²⁶ *Id.*

²⁷ UE 390 – CUB/200/Jenks/10.

²⁸ *Id.* at 3.

effect on PAC’s market sales.²⁹ In materials prepared for its UM 2059 Request for Proposals, PAC admits that market sales dipped in recent years since “[m]arket prices and volumes were low in 2019 due to weather and in 2020 due to COVID-19[,]” but such a discussion is conspicuously absent from PAC’s record in this proceeding.³⁰

Further, PAC’s simplistic view of looking only at sales volumes and revenues overstates the forecast error because sales revenues are offset by the cost of generation—most of which is not included in the NPC forecast.³¹ The expansion of the Energy Imbalance Market (EIM) creates trade-offs with short term market sales, because resources scheduled in the day-ahead for delivery to the EIM cannot be sold in real-time market hubs.³² Therefore, EIM expansion will continue to limit PAC’s ability to sell resources into markets. Also, the Company’s reliance on 2020 data in articulating its position is unpersuasive since the pandemic reduced electric demand—and therefore sales—across nearly all markets.³³ PAC fails to adequately rebut or even reconcile any of these compounding factors. Rather than adopting the Company’s proposal to address the issue through one exaggerated adjustment, the Commission should adopt CUB’s more reasonable approach that mitigates the issue while retaining flexibility for ongoing review.

The Company parses Commission language in a manner that sheds a favorable light upon its position. However, a plain language review indicates PAC would have been better suited to offer various alternatives instead of putting all of its eggs in a basket that was previously rejected by the Commission.³⁴ In last year’s rate case, the Commission noted that PAC may be able to “improve its forecast accuracy with straightforward inputs or limits” adding that addressing the

²⁹ *Id.*

³⁰ UE 390 – CUB/300/26.

³¹ UE 390 – CUB/200/Jenks/3.

³² *Id.*

³³ *Id. see also supra*, note 30.

³⁴ *In re PacifiCorp, dba Pacific Power, 2013 Transition Adjustment Mechanism*, OPUC Docket No. UE 245, Order No. 12-409 at 7-8 (Oct. 29, 2012).

“feasibility of reducing [the sales over-estimation component] of its forecast . . . is something that may be considered in the TAM.”³⁵ Nowhere does the Commission refer to market caps as the only means to solve the issue. Although PAC continues to assert this proposal is brought forward in the spirit of compliance with Commission guidance, the Company did not bring forward any alternatives for the Commission to review. Rather, it cherry-picked a previously rejected methodology that it thought could offer the most promise for its shareholders. PAC did not seek to address the feasibility of reducing the sales-overestimation through various pathways—it brought a blunt tool to try to rectify a multi-faceted and nuanced issue. The Commission has been clear since market caps were first instituted that they are only a patch to cover inadequacies of the GRID model, and the real question should be whether the GRID model itself should be fixed.³⁶ Rather than proposing various alternatives to fix the GRID model, the Company decided to pick up an old patch that had been discarded to see if it still has utility. It does not.

CUB continues to respectfully urge the Commission to reject the Company’s proposal to use an average-of-averages approach to calculating market caps. PAC did not sufficiently rebut parties’ positions, and it did not bring produce evidence sufficient to meet its burden of proof. PAC’s analysis did not address many of the issues CUB raised that impact the overstatement of market sales. Its analysis was therefore incomplete. The Company could have provided alternatives. However, CUB does acknowledge that short-term firm and system balancing sales have been under-forecast.³⁷ At the same time, the Company’s preferred methodology may

³⁵ OPUC Docket No. UE 323, Order No. 17-444 at 2-3

³⁶ OPUC Order No. 12-409 at 7 (“Because GRID is a forecasting model that is only as good as its constructs and inputs, the real question presented is not whether market caps should be used as a patch to address certain limitations of the GRID model, but whether the GRID model itself should be fixed.”).

³⁷ UE 390 – CUB/200/Jenks/11, lines 19-20.

under-forecast market sales, given the wide range of factors influencing market sales the Company has failed to address.³⁸

This leaves the Commission with a classic Goldilocks dilemma—the current method has led to sales overstatement, and the Company’s proposal will likely under-forecast market sales. CUB respectfully requests that the Commission adopt its proposal to direct the Company to set the market cap for each hub at the mid-point between the average-of-averages and the maximum-of-averages approach for this year’s TAM. In the alternative, CUB supports Staff’s “third quartile of averages” approach as a reasonable middle ground. Adopting either methodology in this case will still allow flexibility for parties to continue to examine the issue in next year’s TAM using a different forecasting model, as the Commission anticipates.³⁹ Given Aurora’s capabilities, it is likely the model will be able to capture market depth more accurately.

B. *The Company should enable Jim Bridger Unit 1 to economically cycle.*

The Company has not met its burden of proof to demonstrate that enabling Jim Bridger Unit 1 to economically cycle and conducting a GRID run with the unit [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] will not result in customer benefits. Meanwhile, both CUB and Staff have produced sufficient evidence to demonstrate that benefits may accrue from such studies.⁴⁰ Therefore, CUB agrees with Staff that a study looking at the potential to cycle Jim Bridger Unit 1 would be helpful in determining whether a forecast that includes economic cycling is a requirement for setting just and reasonable rates in the TAM.⁴¹ As Staff witness Rose Anderson astutely noted at hearing, the burden of

³⁸ UE 390 – CUB/100/Jenks/3.

³⁹ OPUC Order No. 20-473 at 130 (“With PacifiCorp’s upcoming transition to a new power forecast model (AURORA) there may be other options for improving PacifiCorp’s forecast that will emerge once parties begin training with the model.”).

⁴⁰ See, e.g., UE 390 – CUB/100/Jenks/14-17.

⁴¹ UE 390 – Staff/1400/Anderson/17-18.

CONFIDENTIAL]. The Commission should not take the Company at its word. If PAC believes such a study would not change Jim Bridger’s status, it bears the burden of proof to demonstrate that is the case. It must conduct the study.

Third, PAC continues to assert CUB’s request to allow Jim Bridger 1 to economically cycle is outside the scope of the TAM.⁴⁵ As explained, CUB is not making a proposal related to the actual operations of the plant.⁴⁶ The Company’s most recent IRP demonstrated that it is not economic to continue running Jim Bridger Unit 1 as a coal plant. However, the IRP does not give direction as to how this uneconomic plant should operate during this interim period until it is either closed or converted to gas. During this interim period, the TAM sets power costs for plants like Jim Bridger Unit 1. It is reasonable to examine the effects of changing coal plant economics in the power cost proceeding for that coal plant. This fits with the purpose of the TAM—to set as accurate an NPC forecast as possible for the following year based on prudent operations of its various plants under normalized conditions.⁴⁷ CUB believes that it may be prudent to close this uneconomic unit under circumstances where it is needed to maintain load/resource balance. Creating a TAM forecast that dispatches its generating plants in a prudent manner is imperative in setting rates that are just and reasonable in this proceeding. CUB’s request falls squarely within the bounds of this proceeding because it is asking the Company to model prudent dispatch of Jim Bridger Unit 1 under normalized conditions.

CUB continues to urge the Commission to require the Company to allow GRID to economically cycle Jim Bridger Unit 1 and believes that there is value in examining a GRID run with **[BEGIN CONFIDENTIAL]** [REDACTED] **[END]**

⁴⁵ *Id.*

⁴⁶ UE 390 – CUB/200/Jenks/15, lines 22-23.

⁴⁷ UE 390 – PAC/1000/Staples/21, lines 10-12 (“The TAM must be an accurate assessment of NPC for the forthcoming year.”).

CONFIDENTIAL].⁴⁸ In addition, CUB requests Commission guidance on process for examining coal units with questionable economics in future proceedings, including what model runs the Commission believes would be appropriate to determine fair and reasonable rates in the TAM.

C. *The Company must continue to monitor the Huntington CSA's termination provision.*

Changing environmental regulations and the attendant proliferation of renewable resources affect the economics of the Company's resource portfolio.⁴⁹ These changes require an ongoing examination of whether it is in the public interest to invoke the Huntington CSA termination clause. The Company has "broad termination rights if new environmental laws or regulations . . . adversely affect the Company's ability to consume coal at the Huntington power plant."⁵⁰ In its Brief, PAC committed to "continue to monitor market and regulatory conditions to assess whether there is an opportunity to invoke the termination clause[,]" but noted that such conditions do not exist at this time.⁵¹ CUB appreciates the Company's willingness to analyze the merits of invoking the termination clause and is willing to accept that conditions that warrant termination may not yet be ripe. However, CUB continues to believe that environmental regulations may already be contributing to uneconomic dispatch.

CUB acknowledges that terminating a contract is a serious undertaking that will expose the Company and its customers to some level of risk.⁵² However, as PAC admitted at hearing, contract provisions that reduce minimum take obligations—such as the Huntington CSA's termination provision—are intended to minimize risk to ratepayers.⁵³ In order to invoke the

⁴⁸ UE 390 – CUB/200/Jenks/16, lines 15-18.

⁴⁹ See, e.g., UE 390 – CUB/100/Jenks/14.

⁵⁰ UE 390 – CUB/100/Jenks/13, lines 9-12 citing UM 1712 – PacifiCorp's Application for Approval at 9-10.

⁵¹ UE 390 – PacifiCorp's Opening Brief at 47.

⁵² UE 390 – CUB/200/Jenks/20.

⁵³ Hearing Tr. 2:18:14 – 2:18:33.

termination clause, CUB acknowledges PAC must be able to demonstrate that uneconomic dispatch would not be occurring but for increased environmental regulations.⁵⁴ To justify pursuing the termination clause, the benefits must outweigh the risks. New, sweeping environmental regulations, such as Oregon's SB 1547 and HB 2021, or Washington and California's 100% clean energy standards will continue to affect resource procurement.⁵⁵ Markets in the western grid would not be selling at current prices but for renewable energy policies. Although the renewable resources on PAC's system to date have been identified as least cost, least risk in the IRP process, the Company exists in a market that reflects the impact of environmental laws and regulations. In addition, future resources may be added that can be directly attributed to environmental regulations.

CUB respectfully urges the Commission to require the Company to determine whether the Huntington CSA is leading to uneconomic dispatch.⁵⁶ If it is, the Company must determine whether it is due to environmental regulations. The Company must determine whether it is in customers' interest to invoke contract termination by weighing the value of contract termination against any risks. Given that the value of removing minimum take provisions is already **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]**, it appears the contract may be eligible for termination in the near term. CUB anticipates that this analysis will take place in future TAM proceedings, as PAC admitted at hearing this is the appropriate venue.⁵⁸

⁵⁴ UE 390 – PacifiCorp's Opening Brief at 47-48.

⁵⁵ UE 390 – CUB/100/Jenks/14.

⁵⁶ UE 390 – CUB/100/Jenks/14.

⁵⁷ UE 390 – PAC/400/Staples/44.

⁵⁸ Hearing Tr. at 2:19:33 – 2:20:10.

D. *The COOC should not be permitted to swing negative, and its function should be examined in UM 2024.*

Direct access customers are already shifting costs to captive cost-of-service customers in the implementation of PacifiCorp’s direct access program.⁵⁹ The extent and implications of this subsidization will be examined in the ongoing direct access investigation—Commission Docket No. UM 2024.⁶⁰ CUB, PAC, and Staff all agree that the issue of whether the COOC should be allowed to swing negative should be addressed in that proceeding.⁶¹ Since the COOC’s inception, the Commission has held that this charge is necessary to implement the state’s direct access laws to protect nonparticipating customers from cost-shifting in the direct access program.⁶² Retaining the COOC as a charge is critical to ensure the Commission meets its legal obligation to prevent the unwarranted shifting of costs in the direct access program.⁶³ If the COOC is allowed to swing negative in this proceeding, the credit to direct access customers will exacerbate the cost-shifting that is already occurring.⁶⁴ In order to fulfill its obligations to establish just and reasonable rates that protect captive cost-of-service customers⁶⁵ and ensure direct access does not result in unwarranted cost-shifting,⁶⁶ the Commission should adopt PAC’s proposal to set the COOC to zero if its value becomes negative and address the issue in UM 2024.

⁵⁹ See, e.g., UE 390 – CUB/200/Jenks/26-27 and PacifiCorp’s Opening Brief at 61.

⁶⁰ UE 390 – CUB/200/Jenks/26.

⁶¹ UE 390 – CUB/200/Jenks/29; PacifiCorp’s Opening Brief at 62; Staff/1300/Gibbens/9-10. Staff’s position diverges from CUB’s and PAC’s. “Staff recommends that the Commission make a recommendation on how to proceed with the issue in this docket, but note that it will consider the issue again, in the context of all other issues and potential changes to Direct Access in UM 2024.”

⁶² *In re PacifiCorp, dba Pacific Power, Transition Adjustment, Five-Year Cost of Service Opt-out*, OPUC Docket No. UE 267, Order No. 15-060 at 6 (Feb. 24, 2015).

⁶³ ORS 757.607(1). “The provision of direct access to some retail electricity consumers must not cause the unwarranted shifting of costs

⁶⁴ UE 390 – CUB/200/Jenks/27; PacifiCorp’s Opening Brief at 61.

⁶⁵ ORS 756.404(1).

⁶⁶ UE 390 – PacifiCorp’s Opening Brief at 47.

The Commission’s decision on this issue should be based on sound policy that furthers its legal mandates. As CUB has demonstrated, cost-shifting is already occurring in a variety of settings in the direct access program, notably in the subsidization of renewable resources which are then procured by direct access customers at their marginal cost and by the requirements on utility to implement state policies.⁶⁷ The extent of cost-shifting is a core issue that will be addressed in UM 2024. Comments from both PAC and Portland General Electric Company in that proceeding both indicate that cost-shifting may be occurring in a wide range of venues—adding credence to CUB’s position.⁶⁸ Due to the understanding that cost-shifting is already occurring and there is uncertainty around its extent until UM 2024’s review is complete, enabling the COOC to go negative at this time would be poor policy.⁶⁹

Calpine and AWEC disagree with CUB and PAC, and urge the Commission to enable the COOC to swing negative in this proceeding. The Commission should deny their request. Calpine argues that “costs are not shifted to non-direct access customers if the [COOC] is negative because the calculation recognizes the [NPC] savings that will be realized by the non-direct access customers as a result of the departure of the opt-out load.”⁷⁰ If examining the COOC in a vacuum, Calpine’s assertion may make sense. However, we are not in a vacuum—we are in a paradigm in which costs are already being shifted. Therefore, the relevant inquiry is not whether enabling the COOC to go negative would result in cost-shifting. Rather, the Commission should consider whether the COOC should be allowed to swing negative as a matter of policy given that doing so would exacerbate the costs that are currently being shifted. In order

⁶⁷ UE 390 – CUB/200/Jenks/26-27.

⁶⁸ UE 390 – CUB/301/6-7; CUB/302/29-34. CUB notes that CUB/301-302 are the subject of an ongoing admissibility dispute. Should the Commission rule that CUB/301-302 are inadmissible, CUB will file an errata to this Brief with reference to those exhibits removed.

⁶⁹ UE 390 – CUB/200/Jenks/28-29.

⁷⁰ UE 390 – Calpine Solutions/200/Higgins/4 (emphasis in original).

to protect cost-of-service customers and to meet its legal obligations under ORS 757.607(1) and ORS 756.404(1), the Commission should deny AWEC and Calpine's request.

At the core of the Commission's mandate is its responsibility to "balance the interests of the utility investor and the consumer in establishing fair and reasonable rates."⁷¹ "Fair and reasonable" or "just and reasonable" rates are terms of art that describe how the Commission must set rates that establish a balance between the interests of the utility customer and the utility investor.⁷² The Supreme Court found that "under the statutory standard of "just and reasonable," it is the result reached, not the method employed, that is controlling."⁷³ This allows regulators tremendous flexibility to employ a variety of ratemaking tools, as long as a just and reasonable result is reached.⁷⁴ If the level of cost shifting is greater than the COOC and the Commission enables the COOC to swing negative, exacerbating the existing cost-shifting, the rates set in the TAM will move further away from the just and reasonable standard. Under its broad authority, the Commission has the ability to set rates based on what it believes is just and reasonable and is not constrained by the language of any individual tariff.

In order to protect captive cost-of-service customers, CUB respectfully urges the Commission to adopt PAC's proposal to set the floor of the COOC at zero in this proceeding, and enable parties to more fully examine the implications of the COOC in UM 2024. Once Oregon's direct access program captures the full suite of costs that are currently being shifted, changes to the calculation of the COOC may be considered.⁷⁵

⁷¹ ORS 756.404(1).

⁷² *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) (hereinafter *Hope*).

⁷³ *Hope* at 602.

⁷⁴ *Id.*

⁷⁵ UE 390 – CUB/200/Jenks/29.

E. *The 2023 TAM should be filed on March 1, 2022.*

Given the shift to Aurora to forecast NPC in next year's TAM, CUB continues to urge the Commission to require the Company to file the TAM on March 1, 2022.⁷⁶ PAC is amenable to an earlier filing date.⁷⁷ In order to help parties move quickly in reviewing the 2023 TAM, the docket and protective order should be pre-established, and parties should have access to and training on how to use Aurora with PacifiCorp's Aurora database before the filing is made.⁷⁸ CUB questions the utility of workshops that present illustrative figures, rather than real figures that more accurately reflect what will be analyzed in the Company's filing.

F. *The Company should file copies of its CSAs and affiliate mine plans in future TAMs.*

CUB joins Staff and Sierra Club in recommending the Commission require PacifiCorp to provide copies of its CSAs and affiliate mine plans in future TAM proceedings.⁷⁹ As the economics of coal plants continue to be scrutinized in future proceedings, ensuring a thorough examination of these materials will be essential for a full and adequate TAM review. The Company's concerns around commercial sensitivity and confidentiality are outweighed by the evidentiary needs of this complex and important proceeding. Staff and intervenors will continue to comply with all applicable Modified Protective Order requirements, and this information will contribute to a robust evidentiary record.

⁷⁶ *Id.* at 22.

⁷⁷ UE 390 – PacifiCorp's Opening Brief at 63.

⁷⁸ UE 390 – CUB/200/Jenks/22.

⁷⁹ UE 390 – Sierra Club/100/Burgess/3-4; Staff/1400/Anderson/6-7.

III. CONCLUSION

Based upon the foregoing, CUB respectfully requests the Commission accept its recommendations in this matter.

Dated this 28th day of September, 2021.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Michael P. Goetz".

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UE 390– CERTIFICATE OF SERVICE

I hereby certify that, on this 28th day of September, 2021, I served the **Confidential Reply Brief of the Oregon Citizens' Utility Board** in docket UE 390 upon the Commission and each party designated to receive confidential information pursuant to Order 20-243 through a secure, encrypted attachment to an e-mail.

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