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June 20, 2024

***VIA ELECTRONIC FILING***

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

**Re: UM 2273—Investigation into House Bill 2021 Implementation Issues**

Attached for filing is Portland General Electric Company and PacifiCorp d/b/a Pacific Power Joint Initial Cost Cap Response Brief in the above listed matter.

If you have questions about this filing, please contact Cathie Allen, Manager, Regulatory Affairs, at (503) 813-5934.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew McVee".

Matthew McVee  
Vice President, Regulatory Policy and Operations

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 2273**

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In the Matter of  PUBLIC UTILITY COMMISSION OF OREGON,  Investigation Into House Bill 2021 Implementation Issues.	Portland General Electric Company and PacifiCorp d/b/a Pacific Power Joint Cost Cap Response Brief
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**I. INTRODUCTION**

Portland General Electric Company (PGE) and PacifiCorp d/b/a Pacific Power (PacifiCorp) (the Joint Utilities) respectfully submit this response brief on select questions of law and policy related to House Bill (HB) 2021’s cost cap provisions.<sup>1</sup>

**II. COMMENTS**

Party comments highlight two distinct issues within the broader topic of which costs are eligible for HB 2021’s cost cap. Each brief argued that the cost cap should be the difference between costs incurred to meet utilities’ basic reliability obligations, including serving new load (which all agree should be outside the cost cap scope, even when strategies rely on non-emitting resources), versus costs incurred to meet HB 2021 compliance.<sup>2</sup>

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<sup>1</sup> *In re Commission HB 2021 Investigation*, Docket No. UM 2273, Memorandum (Apr. 15, 2024).

<sup>2</sup> *See, e.g.*, Oregon Citizens’ Utility Board (CUB) Phase II opening brief at 12 (the plain language “shows the Legislature intended to capture only those actions that the petitioner can prove the utility would not have taken,

But the briefs have differing interpretations of the appropriate treatment of costs and expenses from emissions-reducing actions. CUB and NWEA/RNW apply a but-for screen as a condition for cost cap eligibility of a particular action.<sup>3</sup> AWEC argues that the cost cap should encompass calculated incremental costs of any emission-reducing action relative to a least-cost least-risk alternative to serve load reliably in the absence of HB 2021 or other policies.<sup>4</sup> And NewSun states that ordinary costs should be excluded, and that cost cap eligible investments should be linked to HB 2021’s policy goals.<sup>5</sup>

Yet the parties do not propose a distinct methodology to determine the gap between what is done and what would have been done without HB 2021—that is, how would a petitioner show that the investment or cost was one driven by HB 2021. The Joint Utilities maintain that the two-step process in its opening brief offers a practical path forward on both points, and provides the Commission with adequate flexibility when reviewing specific investments that contribute to compliance but that are required by separate regulatory schemes.<sup>6</sup>

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except to meet the requirements of HB 2021”); Joint Utilities Initial Cost Cap Brief at 6 (recommending a process to compare integrated resource plan (IRP) portfolios as if HB 2021 did not exist); NewSun Energy LLC’s (NewSun) Phase 2 Opening Brief at 1 (“Utilities should be prohibited from counting ordinary course costs”); Northwest Energy Coalition (NWEA) and Renewable Northwest (RNW) Opening Brief at 6 (“The cost cap applies only to investments or costs that would not have been incurred but for the substantive requirements of HB 2021”); Alliance of Western Energy Consumers (AWEC) at 6 (“The cost cap should be applied in a manner that demonstrates that HB 2021 compliance is driving additional costs beyond what utilities would already incur to meet their other obligations.”).

<sup>3</sup> CUB Opening Brief at 13 (“The intent . . . is to engage in this ‘but for HB 2021’ analysis.”); NWEA/RNW at 6.

<sup>4</sup> AWEC Opening Brief at 5 (“it is imperative that utilities evaluate all available technologies for meeting reliability requirements so that a cost differential can be established.” And “costs . . . to meet other legal requirements, but that also contribute to compliance with HB 2021, should be considered under the cost cap to the extent they are higher in cost than alternative available technologies for meeting load.”).

<sup>5</sup> NewSun Opening Brief at 1–2.

<sup>6</sup> Joint Utilities Initial Brief at 6.

Next, the parties agree that a significant amount of resources are necessary to meet increased load, and to the extent that non-emitting resources and enabling transmission are the least cost, least risk option to serve growing customer loads, the Joint Utilities agree with those parties that these costs should not be within scope of the cost cap.<sup>7</sup> The Joint Utilities’ proposed two-step process accomplishes this by modeling separate IRP portfolios, both of which are developed to serve load growth reliably in compliance with applicable policies, but one with HB 2021 compliance layered in. To the extent a particular non-emitting resource action is included in both optimized portfolios, that is an action that fails the “*for the purpose of compliance*” test, and costs associated with that action would not be considered under the cost cap.<sup>8</sup>

Implementing the cost cap solely at a project-level (resulting in a review of the incremental costs of a project), may be difficult to accomplish without the support of the Joint Utility’s two-step process which would assess incrementality from a portfolio perspective.<sup>9</sup> A portfolio approach overcomes potential problematic aspects of an incrementality screen applied at the project level—which for most cost types (except for certain directly required HB 2021-related costs described in the Joint Utilities’ opening

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<sup>7</sup> AWEC Opening Brief at 7 (“if the cost cap applies to any action that ‘contributes to compliance’ then virtually any resource action the utility takes would fall under the cost cap.”); CUB Opening Brief at 12–13 (“The fact that clean energy resources are the marginal resource that a utility would select to meet load undermines the idea of including those costs in the cost cap calculation” and “If a utility invests in new least cost/least risk clean energy resources to meet new load, that investment does not contribute to compliance because it does nothing to reduce GHG emissions.”);

<sup>8</sup> Parties recognized that some projects might straddle the line. *E.g.*, NWEC/RNW Opening Brief at 6 (describing a renewable resource that effectuates more than one policy, including HB 2021); Joint Utilities Opening Brief at 6 (describing resources for which compliance was “at least partly the reason for the investment.”).

<sup>9</sup> *Compare* AWEC Opening Brief at 4–5 (describing a project level assessment regarding a hydro contract), and NewSun Opening Brief at 1 (describing a large transmission project), *with* CUB Opening Brief at 14 (analyzing implementation of energy efficiency at a programmatic level).

brief)<sup>10</sup> is non-binary, where many projects will both assist in reducing greenhouse gases and meet load.<sup>11</sup> A portfolio approach also avoids potentially contentious project-by-project counterfactual power production and financial calculations to satisfy any “but for” test, and the potentially lengthy investigations that could result from this approach. Finally, a portfolio approach may inform a scenario where the pursuit of one particular project that straddles two policies and how that specific project may contribute to compliance and to a separate regulatory requirement.<sup>12</sup>

Regarding forecasted costs themselves, the Joint Utilities agree with other parties that IRP forecasted costs are not reliable enough to generate cost cap figures for rate impacts, if not for the specific reason that mere acknowledgement of an action does not mean that the investment or cost is certain.<sup>13, 14</sup>

Next, the Joint Utilities disagree with NewSun that the cost cap should exclude costs that reasonably could have been avoided, or that savings should be deducted from the cost cap.<sup>15</sup> This argument conflates the roles of the Commission’s ratemaking and cost cap

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<sup>10</sup> *E.g.*, Joint Utilities Initial Brief at 5 (describing some investments, like acquiring Community Based Renewable Energy, as being directed by HB 2021).

<sup>11</sup> The Joint Utilities agree with parties that noted that some investments or costs may be split between compliance with HB 2021 and compliance with a separate requirement, Joint Utilities Initial Brief at 5–6; NWEK/RNW Opening Brief, at 6 (“Consider a renewable resource that straddles two policies” and proposing a sharing of resource costs); AWEC Opening Brief, at 5–6 discussing certain resources that if they are higher in cost than alternative strategies for meeting load should be considered under the cost cap;

<sup>12</sup> CUB argues that “[a]ny costs made to satisfy Oregon’s RPS requirements cannot be considered for the HB 2021 cap.” However; the Joint Utilities can foresee a scenario where a qualifying renewable portfolio standard (RPS) resource is built in advance of need and thus, for a period of time, could operate to reduce emissions.

<sup>13</sup> Joint Utilities Opening Brief at 7; *see also*, NWEK/RNW Opening Brief at 11 (“Not only to IRPs bear no direct relationship to customer rates, but they are also based on broadly characterized needs to be met by proxy resources, which themselves may bear little relationship to the resources actually acquired.”); AWEC Opening Brief, at 8–9 (discussing that the commission “could use the cost data assumed by the utilities in their IRP/CEP” but also noting the disadvantage of doing so due to the difference between assumed and actual costs); CUB Opening Brief, at 18 (“IRPs are plans built on forecasted costs. IPR analyses do not provide [the] anticipated rate impact of each investment.”)

<sup>14</sup> PGE notes that unforeseen global factors affected its 2019 IRP significantly: COVID-19 and the Ukraine-Russia conflict which directly affected natural gas prices and the supply chain for renewable resources.

<sup>15</sup> NewSun Opening Brief, at 1.

powers. The cost cap statute does not include language that would allow the Commission to engage in this kind of counterfactual analysis of specific utility costs or expenses. Rather if a petitioner can demonstrate that a cost is “for the purpose of compliance,” and those investments or costs “contribute to compliance,” then the Joint Utilities believe the cost cap investigation becomes an straight-forward accounting question: Do these costs exceed six percent of the utilities annual revenue requirement?<sup>16</sup> This statutory language does not include the well-worn statutory powers that allows the Commission to approve “just and reasonable” costs or expenses for ratemaking purposes. The Joint Utilities suggest that NewSun’s arguments would be better raised in a subsequent rate proceeding to recover specific costs or expenses that were subject to a cost cap investigation.

Finally, the parties generally agree that the HB 2021 and RPS cost caps do not interact.<sup>17</sup> However, the rationale used for that position varies from party to party. CUB and NWEA/RNW use a but-for test to strike the costs of an RPS project from the HB 2021 cost cap; AWEC argues that RPS-eligible resources “could be considered under the HB 2021 cost cap either if the utility does not otherwise need the resource for load service obligations or if the resource is higher cost than alternative resources that are available to meet load service obligations.”<sup>18</sup>

The Joint Utilities continue to suggest that the cost caps were structured differently, and that costs could be shared between the two. A but-for tests strikes too firm of a line. In

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<sup>16</sup> ORS 469A.445(1), (4).

<sup>17</sup> AWEC Opening Brief, at 11 (“The Commission should not interpret the HB 2021 cost cap in relation to the RPS cost cap.”); NWEA/RNW Opening Brief, at 12 (“HB 2021 and the RPS do not interact.”); CUB Opening Brief, at 19 (“Investments that satisfy the RPS would have been made without HB 2021 and in accordance with the but for analysis above should be excluded from consideration in a HB 2021 cost cap.”); *but see* Joint Utilities Initial Brief, at 8, discussing the need for flexibility based on the overlapping costs.

<sup>18</sup> AWEC Opening Brief, at 11.

the Joint Utilities’ view, it is not that the RPS requires qualifying renewables and thus HB 2021 did not drive the investment. The relevant question is whether the RPS investment also drives greenhouse gas reductions. In a scenario where there was no utility load growth, and still a need for additional RPS resources driven by ORS 469A.052, the acquisition of those RPS-eligible resources would also reduce emissions by reducing the need for other forms of energy, including marginal gas or unspecified market purchases which by reporting rules contains some level of emissions. If that were the case, the Joint Utilities find it difficult to justify the blanket exclusion of these RPS resource costs from the HB 2021 cost cap.

This conclusion is supported by statute, which provides that cost cap determinations for purposes of HB 2021 may not be used as collateral or presumptive evidence in subsequent ratemaking proceedings, “including in a general rate case *or in a proceeding under ORS 469A.120.*”<sup>19</sup> ORS 269A.120 is Oregon’s RPS cost recovery statute. If the costs of those facilities were separated by a but-for test, there would have been no need for the legislature to reference the RPS statute. This statutory provision supports the Joint Utilities’ view that costs can be shared between both the RPS and HB2021, but that the cost cap relies on different mechanisms.

### **III. CONCLUSION**

The Joint Utilities continue to appreciate the Commission and Commission Staff’s diligent efforts with HB 2021-related issues, and respectfully request the Commission consider the response comments provided above.

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<sup>19</sup> ORS 469A.445(5) (emphasis added).

Respectfully submitted June 20, 2024,

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