BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 323

In the Matter of	)
	)
PACIFICORP, dba, PACIFIC POWER,	)
	)
2018 Transition Adjustment Mechanism	)
(TAM).	)
	)

REDACTED

RESPONSE BRIEF

OF THE

OREGON CITIZENS' UTILITY BOARD

September 26, 2017

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 323

In the Matter of PACIFICORP, dba, PACIFIC POWER, 2018 Transition Adjustment Mechanism (TAM).	)))))))	RESPONSE BRIEF OF THE OREGON CITIZENS' UTILITY BOARD

I. INTRODUCTION

Pursuant to Administrative Law Judge ("ALJ") Rowe's April 26, 2017 Prehearing Conference Memorandum, the Oregon Citizens' Utility Board ("CUB") hereby submits its Response Brief in docket UE 323.

On March 31, 2017, PacifiCorp ("PAC" or "the Company") submitted its 2018 Transition Adjustment Mechanism ("TAM") filing, the Company's annual filing to update its net power costs ("NPC") in rates and to set transition adjustments 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 for all customers.[2] The Public Utility Commission of Oregon's ("the Commission") stated goal in the TAM is to achieve as accurate a forecast of PAC's NPC as possible for

[1] UE 323 – PAC/100/Wilding/2, lines 16-17.
[2] *In re PacifiCorp d/b/a/ Pacific Power's 2017 Transition Adjustment Mechanism*, OPUC Docket No. UE 307, Order No. 16-482 at 2 (Dec. 20, 2016).

the upcoming year.[3] As will be discussed throughout this Brief, 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 forecasts, which it must support with sufficient evidence to meet its burden of proof.

The Company has failed to meet its burden regarding the issues addressed herein. When reviewing the TAM, the Company "bear[s] the burden of showing that its proposal will result in rates that are fair, just, and reasonable."[4] PAC bears both the burden of persuasion and production to support its claims.[5] This includes both the burden of persuasion and the ultimate burden of producing enough evidence to support its claims.[6] Other parties in the case have the burden of producing evidence to support their argument in opposition to the utility's position.[7]

CUB continues to take issue with the fact that the Company is unable to accurately forecast the Commercial Operation Dates ("COD") of its PURPA Qualifying Facilities ("QFs"), resulting in over-recovery to the detriment of ratepayers.[8] Throughout the record in this docket, CUB produced ample evidence to support its claim that the Company has historically over-recovered QF costs, is currently over-recovering QF costs, and will likely continue to do so until an adjustment is made to how the Company models

[3] Order No. 16-482 at 2.
[4] *In re PacifiCorp d/b/a/ Pacific Power's 2016 Transition Adjustment Mechanism*, Docket UE 296, Order No. 15-353 at 2 (Oct. 26, 2015); *see* ORS 757.210(1); *see also In re Portland General Electric Company's 2012 Annual Power Cost Update Tariff (Schedule 125)*, Docket No. UE 228, Order No. 11-432 at 3 (Nov. 2, 2011) (citing *In re PGE Application to Amortize the Boardman Deferral*, Docket No. UE 196, Order No. 09-046 at 7-8 (Feb. 5, 2009).
[5] Order No. 15-353 at 2.
[6] Order No. 15-353 at 2.
[7] Order No. 15-353 at 7-8.
[8] UE 323 – CUB/200/Jenks/1.

new QFs.[9] PacifiCorp continues to assert that its proposed contract delay rate ("CDR") for new QFs is reasonable,[10] but has produced no persuasive evidence that it will result in rates that are fair, just, and reasonable. Instead, the Company erroneously states that it has responded to CUB and the Staff of the Public Utility Commission of Oregon's ("Staff") concerns regarding QF forecasting.[11] In short, the Company's QF forecast methodology is demonstrably flawed, and, CUB urges the Commission to order the Company to adopt CUB's proposed changes to its QF forecasting methodology.

Finally, we note that there seemed to be some confusion concerning CUB's position at the hearing and in the Company's Opening Brief. CUB has proposed an adjustment to QF methodology—the CDR—which builds on the base of the current attestation method. CUB never proposed eliminating the attestation method.

II. ARGUMENT

A. *PacifiCorp's Claims that it has Under-Recovered QF Costs are Unfounded*

The Company's claims that it has under-recovered QF contract costs lack evidentiary support in the record. Both Staff and CUB have scrutinized the Company's purported under-recovery of QF contract costs, contending that the Company's currently employed methodology has resulted in over-forecasts of new QF generation due to delays in the expected CODs.[12] The Company refutes this statement by merely asserting that its

[9] *See* UE 323 – CUB/200/Jenks/2-16; *see also, e.g.* Public Session Transcript ("PS TR.") pp. 62-71 (Wilding) *and* Executive Session Transcript ("ES TR.") pp. 72-85 (Wilding).
[10] UE 323 – PacifiCorp's Opening Brief at 44-45.
[11] UE 323 – PacifiCorp's Opening Brief at 44, lines 15-16.
[12] UE 323 – PAC/400/Wilding/38, lines 14-16.

NPC forecasts have understated actual NPC over the years.[13] This argument is unavailing.

CUB, on the other hand, has provided sufficient evidence to demonstrate that the Company has been systematically over-recovering QF contract costs. In the three-year span that the attestation methodology that currently governs how the Company forecasts QF contract costs has been in place, PAC has over-recovered by [redacted], [redacted], and [redacted] in 2015, 2016, and 2017 (through May), respectively.[14] If the 2017 over-recovery numbers are extrapolated over an entire year, the Company has consistently overestimated QF contract costs by greater than [redacted] under the current methodology.[15] Since 2008, the Company's QF cost forecasts have been greater than actual cost by more than [redacted].[16] In short, customers are being [redacted] every year.[17]

The Company argues that because the overall NPC forecasts have understated power costs, CUB is precluded from arguing that one element of power costs is actually overcharging customers.[18] This argument is in direct contravention of the Commission's stated TAM goal of achieving as accurate a NPC forecast as possible.[19] That goal can only be achieved if each discrete component of the Company's NPC forecast is calculated as accurately as possible. By ignoring its own over-recovery of QF contract costs and refuting CUB's arguments simply by asserting that it has under-recovered NPC

[13] UE 323 – PAC/400/Wilding/41, lines 14-16.
[14] UE 323 – CUB/200/Jenks/6.
[15] UE 323 – CUB/200/Jenks/6, lines 3-4.
[16] UE 323 – CUB/200/Jenks/5/, lines 23-24.
[17] UE 323 – CUB/200/Jenks/6, lines 7-9.
[18] UE 323 – CUB/200/Jenks/7, lines 8-10.
[19] Order No. 16-482 at 2.

in recent years, the Company fails to address the issue. CUB acknowledges that the Company has historically under-recovered other elements of NPC,[20] and those elements are being addressed with modeling changes such as the DA-RT. That is not the issue. Customers are being systematically over-charged for QF contract costs, and the evidentiary record supports a Commission determination that this no longer be the case.

B. *Evidence Demonstrates that the Attestation Methodology is Flawed*

The evidentiary record demonstrates that the Company's current methodology to forecast QF contracts and costs—the attestation methodology—is flawed because PacifiCorp officers attest to expected CODs that are inaccurate based on the evidence the Company is given. The attestation methodology grew out of UE 287, the 2015 TAM, and provides, in pertinent part, that the Company must "confirm that it has a commercially reasonable good faith belief that new QFs included in the TAM will reach commercial operation during the rate effective period."[21] This approach was affirmed by the Commission in the 2017 TAM,[22] and the Company concurs that it is the method employed by PAC in the initial TAM filing in this docket.[23] Importantly, the actual

---

[20] UE 323 – CUB/200/Jenks/7, lines 14-15.

[21] *In re PacifiCorp d/b/a Pacific Power's 2015 Transition Adjustment Mechanism*, OPUC Docket No. UE 287, Order No. 14-331 at 5 (Oct. 1, 2014) ("To address ICNU's concern that certain QF contracts are included in the TAM that will not achieve commercial operation during the rate effective period, the settlement provides for an attestation by PacifiCorp. As part of its November indicative update in this, and future TAM proceedings, PacifiCorp will confirm that it has a commercially reasonable good faith belief that new QFs included in the TAM will reach commercial operation during the rate effective period.").

[22] UE 323 – PAC/400/Wilding/37, lines 8-9 *citing* Order No. 16-482 at 18.

[23] PS TR. at 66 (Wilding) ("Yes. This accurately describes the attestation method, which the initial filing is." [sic]); *see also* UE 323 – PAC/400/Wilding/37, lines 4-8 ("If the company reasonably expects the QF to reach commercial operation during the test period and attests to this fact, then the Company includes the costs of the QF contract in the NPC calculation . . . .").

attestation is based on the "information known to PacifiCorp as of the contract lockdown date[,]" which, for 2017, was October 31, 2016.[24]

CUB disagrees with PAC's misguided claims that the "merits of the attestation methodology are no longer in dispute."[25] The attestation methodology was put in place to ensure that the Company is using its best forecast for QFs. The fact that CUB and PAC have agreed that that initial forecast should be adjusted with a CDR does not change the need for the Company to use its best initial forecast. The Company appears to forget that the Commission rendered an order in the 2017 TAM announcing it would "further consider this issue when additional data is available to evaluate PacifiCorp's use of the attestation method."[26] The attestation method has now been in place for three years, and sufficient additional data has been made available that makes it reasonable for the Commission to revisit the issue.[27]

At hearing, the Company asserted that there is no dispute between CUB and PAC on replacing the attestation method with a contract delay method.[28] To be clear, nowhere in the record did CUB make a suggestion to replace the attestation methodology. We do, however, believe that it can be refined. In comporting with the Commission's stated TAM goal,[29] CUB believes that the attestation methodology to forecast QF contract costs should be made as accurate as possible. Evidence brought to light in this proceeding

---

[24] PS TR. at 69, lines 5-17 (Wilding); *see also* CUB Cross Examination Exhibit 306 at 10.
[25] UE 323 – PacifiCorp's Opening Brief at 44, fn. 289.
[26] OPUC Order No. 16-482 at 18.
[27] *See, e.g.,* UE 323 – CUB/200/Jenks/6-7; *see also* ES TR. at 72-85 (Wilding).
[28] PS TR. at 136, lines 4-8 (Wilding).
[29] OPUC Order No. 16-482 at 2, *supra*, notes 3, 19.

casts doubt on whether the Company is using the best information known to it as of the contract lockdown date.[30]

1. *The Company is attesting to expected QF CODs based on information that is either false or incomplete.*

CUB initially agreed to the attestation method on the premise that the Company was using the best available information in its initial forecast. In this docket, that premise is unsupported by the evidence. The Company lists several sources of information that it uses to support the expected QF COD that it then attests to in its November Indicative filing.[31] First, the scheduled COD is set forth in the power purchase agreement ("PPA") for each project.[32] Second, the Company claims that counterparties provide project status updates on a monthly basis that document progress toward milestones and the COD.[33] Third, the Company monitors the status of the generator interconnection process.[34]

Through discovery and subsequently at hearing, CUB was able to expose several notable cracks in the Company's foundation of information that it uses in the attestation methodology. In response to a data request, the Company revealed that it does not, in fact, receive monthly status updates from QF counterparties—contrary to what it indicated in testimony and swore to at the hearing.[35] In fact, for the eighteen QF projects that were identified as delayed since the attestation in last year's TAM, the Company only provided [redacted].[36] In its Opening Brief, the Company attempted to downplay this large discrepancy between the monthly status updates it

30 PS TR. at 69, lines 5-17 (Wilding); *see also* CUB Cross Examination Exhibit 306 at 10.
31 UE 323 – PAC/400/Wilding/37-38; *see also* PS TR. at 66-67 (Wilding).
32 UE 323 – PAC/400/Wilding/37, lines 13-14.
33 UE 323 – PAC/400/Wilding/37, lines 17-18; *see also* PS TR. at 66-67 (Wilding).
34 UE 323 – PAC/400/Wilding/37, lines 19-20.
35 UE 323 – CUB/305 at 1 (PacifiCorp response to CUB DR 11); *see also* ES TR. at 85, lines 1-12.
36 CONF UE 323 – CUB/305 at 1-70.

referenced in testimony and the meager number of emails that it provided CUB by saying "[t]he email exchanges explicitly acknowledge additional communications."[37] Even if the hypothetical additional communications exist, there is no record of them. The Company's witness admitted at hearing that [redacted][38]

Further, the attestation methodology warrants re-examination by the Commission because the evidence in the record shows that the Company had information that QF CODs were delayed, but still had a senior executive attest to inaccurate CODs that were earlier than counterparties indicated.[39] The Company's attestation at the end of last year's TAM was based on the information known to it as of October 31, 2016,[40] [redacted][41] Through discovery, CUB was able to ascertain that the Company had knowledge prior to October 31, 2016 that several QF CODs were experiencing substantial delays, but failed to properly update the CODs prior to the date of the attestation. The following table provides a summary.

///

///

///

///

[37] UE 323 – PacifiCorp's Opening Brief at 44, fn. 289.

[38] ES TR. at 81, lines 14-16; *see also* ES TR. at 78, lines 9-10 [redacted]. Mr. Griswold is employed by PacifiCorp, ES TR. at 76, lines 14-18.

[39] *See* UE 323 – CUB/306 at 11-12 for Attestation of Joseph P. Hoerner, Vice President, Energy Supply Management.

[40] UE 323 – CUB/306 at 12, lines 1-5; *see also* PS TR. at 69, lines 5-17.

[41] ES TR. at 73, lines 1-12.

[redacted]	[redacted]	[redacted]
[redacted]	[redacted][42]	[redacted][43]
[redacted]	[redacted][44]	[redacted][45]
[redacted]	[redacted][46]	[redacted][47]
[redacted]	[redacted][48]	[redacted][49]
[redacted]	[redacted][50]	[redacted][51]

As can be seen, the Company received email correspondences from QF counterparties in the weeks approaching October 31, 2016 that updated the expected CODs. The expected CODs that PAC attested to are [redacted] off. Even if additional communications occurred outside these emails like the Company asserts,[52] CUB finds it incredibly hard to believe that a phone call or similar correspondence from a QF counterparty between [redacted][53] CUB asked about this discrepancy at hearing, and the Company's witness side-stepped the question.[54] QF expected CODs simply do not fluctuate that extensively over that short a time. The balance of the evidence on the

[42] UE 323 – CUB/305 at 13.
[43] UE 323 – CUB/303 at 1 (*see* spreadsheet row "COD in Docket UE-307 (2017 TAM)").
[44] UE 323 – CUB/305 at 15.
[45] UE 323 – CUB/303 at 1 (*see* spreadsheet row "COD in Docket UE-307 (2017 TAM)").
[46] UE 323 – CUB/305 at 19.
[47] UE 323 – CUB/303 at 1 (*see* spreadsheet row "COD in Docket UE-307 (2017 TAM)").
[48] UE 323 – CUB/305 at 37.
[49] UE 323 – CUB/303 at 1 (*see* spreadsheet row "COD in Docket UE-307 (2017 TAM)").
[50] UE 323 – CUB/305 at 37.
[51] UE 323 – CUB/303 at 1 (*see* spreadsheet row "COD in Docket UE-307 (2017 TAM)").
[52] UE 323 – PacifiCorp's Opening Brief at 44, fn 289.
[53] *Supra* notes 47, 48.
[54] ES TR. at 82, lines 2-17 (Wilding).

record demonstrates flaws in the Company's current attestation methodology that warrant re-examination by the Commission.

2. *CUB's recommendation: a change is needed.*

When CUB stipulated to the attestation methodology in the 2015 TAM,[55] we assumed that the Company would be forecasting the most accurate CODs possible using the best available information. CUB's initial CDR proposal in this docket was based on a foundation that is now fundamentally flawed.[56] It is clear now that the Company does not use the best dates available to it when forecasting a QF COD, that it deletes emails from its system after 100 days,[57] and that an unknown amount of correspondences with QF counterparties are conducted via phone or other medium,[58] rendering it impossible for stakeholders to track and for the Company to accurately forecast.

CUB's first recommendation is that the Commission consider, in an appropriate docket dealing with Oregon QFs, requiring QF project developers to submit monthly updates to more accurately track delays. Even quarterly updates would be an improvement over the existing structure. Second, the Commission could require the Company to maintain a reasonable paper trail related to QF contract delays. When the Company is notified of a change to a QF COD, whether by email, phone call, or other form of communication, that information should be logged and be available to support the Company's QF forecast. Third, the Commission should consider increasing the accountability associated with the attestations. It is troubling to CUB that the Company

---

[55] Order No. 14-331 at 5.
[56] UE 323 – CUB/100/Jenks/10.
[57] UE 323 – CUB/305 at 1 ("[E]xternal and internal emails are not routinely saved but are automatically deleted in the normal course of business after 100 days unless deliberately saved by a user.").
[58] *Supra*, note 39.

has a Vice President attest to inaccurate and incomplete information. The entire purpose of the attestation methodology seemed to be that a senior executive would not attest to information unless he or she knew that it was entirely accurate. That clearly has not occurred. Although we expect that the Company will be more diligent and accurate in the wake of this proceeding, additional safeguards would help restore CUB's faith in the process. The Commission should consider bringing the attesting PAC executive to a public meeting and have him or her testify in person regarding the accuracy of the forecast methodology.

C. *Any CDR Applied Should Use Data that Leads to the Most Accurate Forecast*

CUB acknowledges and appreciates that the Company decided to adopt the proposed CDR between its Reply and Surrebuttal Testimony.[59] However, in order to be an effective complementary[60] piece to the currently employed attestation methodology, the Company should be using the most thorough and best data available to create the most accurate QF cost forecast possible.[61] CUB did not propose the CDR as a replacement or substitute for the attestation methodology, but was building on the attestation methodology, so the starting point for the CDR is the most accurate forecast the Company can make in the final update. CUB does not agree that the Company's

[59] *See* UE 323 – PAC/400/Wilding/40, line 15 ("PacifiCorp objects to the proposed CDR.") *and* PAC/800/Wilding/48, lines 16-21 ("Yes, PacifiCorp accepts CUB's and Staff's recommendation for a CDR . . . .").

[60] Importantly, CUB does not view a CDR as a replacement for the attestation methodology. Rather, CUB believes that a CDR that uses actual historical data of average QF COD delays during the three years that the attestation methodology has been in place, in addition to a refined attestation methodology, will hopefully lead to a more accurate QF cost forecast. CUB felt it necessary to clarify its position because PAC's witness appeared to insinuate that a CDR would replace the current method ("[T]he initial filing . . . of the TAM included this attestation method, but upon reviewing parties' testimony, we have adopted a . . . contract delay rate to address QFs not reaching their commercial operation date expected." PS TR. at 66, lines 1-7.).

[61] UE 323 – CUB/200/Jenks/15, lines 6-7 ("The purpose of the CDR is to more accurately reflect when a contract will go online.").

proposal to weight the CDR by the nameplate capacity of each QF, or to base the CDR on the number of days in the TAM year will necessarily lead to a more accurate forecast.[62] CUB continues to believe that using a three year rolling average of historical QF COD delays, and then applying that delay rate in an unbiased way—without considering capacity or number of days in the TAM year—will produce the most accurate forecast.[63]

PacifiCorp's proposed CDR would similarly be based on a three year rolling average, but would be weighted by QF capacity and would be counted based on the number of days in the TAM year.[64] The Company proposes to apply its proposed delay rate on January 1 of the TAM year if the QF in question is before the TAM year (i.e. prior to January 1, but after the Company's November Indicative and attestation).[65] According to the Company, its proposal is designed "so that a delay that does not affect rates is not considered when setting rates."[66] It states that this "clean break" allows for "delays that span more than one TAM year to be clearly accounted for in the TAM year in which costs are included in rates."[67] Regarding weighting the CDR by QF capacity, the Company argues that its approach creates a more accurate forecast because QF costs are volumetric, and "not every QF has the same impact."[68]

Outside of these assertions, the Company offers little or no evidence that its proposal would result in a more accurate forecast, despite CUB raising this concern in

[62] UE 323 – PacifiCorp's Opening Brief at 44-45.
[63] UE 323 – CUB/200/Jenks/15-16.
[64] UE 323 – PacifiCorp's Opening Brief at 44-45.
[65] UE 323 – PacifiCorp's Opening Brief at 45, lines 4-10.
[66] UE 323 – PacifiCorp's Opening Brief at 45, lines 4-5; UE 323 – PAC/800/Wilding/48, lines 16-19.
[67] UE 323 – PAC/800/Wilding/50, lines 17-20.
[68] UE 323 – PAC/800/Wilding/49, lines 12-13; UE 323 – PacifiCorp's Opening Brief at 45, lines 1-3.

Rebuttal Testimony.[69] The Company's proposal results in a smaller NPC reduction ($204,000) compared to CUB's ($353,000) in this year's TAM,[70] but it remains unclear whether this reduction is the result of random incidence or if there will be an articulable correlation going forward (i.e. QFs with larger capacity are less likely to be delayed). There is simply insufficient evidence in the record. Whether the Company's proposal to weight QFs by size is more accurate remains to be seen. CUB does not necessarily oppose this method, but, again, desires a method that results in the most accurate forecast possible. CUB continues to believe that the most accurate, simplest, and least biased means to approach this issue is to use a three year rolling average of delays to produce a CDR, and to apply this CDR to the TAM forecast.[71]

In calculating the three-year rolling average of delays to produce the CDR, CUB believes that the first step is that Company should include QF delays beginning after its November Indicative filing, rather than January 1 of the next year.[72] This takes into account contracts that come online after the November Indicative filing, but before the start of the TAM year.[73] The goal of this step is identify the average length that contacts are delayed. A contract that is delayed from November 15 to January 15 is delayed two months, not fifteen days. Similarly, near the end of the TAM year, a contract that is delayed from December 15 to February 15 is delayed two months, not sixteen days. This first step is only concerned with improving the accuracy of the forecast.

[69] UE 323 – CUB/200/Jenks/13, lines 9-10.
[70] UE 323 – PAC/800/Wilding/49, lines 4-8.
[71] UE 323 – CUB/200/Jenks/15-16.
[72] UE 323 – CUB/200/Jenks/14.
[73] UE 323 – CUB/200/Jenks/14, lines 17-18.

It is in the second step where the TAM ratemaking year is considered. QF contracts will only be adjusted to the extent that they fall within the TAM year. A CDR adjustment to a contract that was forecast to begin on November 15, (before the TAM year) would only affect rates if the CDR was greater than 45 days, The delay rate would have to be great enough to include some days of the TAM year. Similarly, a CDR adjustment to a contract that was scheduled to have a COD on December 15 (during the TAM year) could only affect the first 16 days of operation, because those are the only days included in the TAM.

CUB's QF proposal has three elements:

1. Make and attest to the best initial forecast possible;
2. Adjust that initial forecast based on historical results; and
3. Apply the adjusted forecast to the QFs that are in the TAM year.

Because there is insufficient evidence to demonstrate that either weighting QF delays by capacity or dividing delays that happen before or after the beginning of the TAM year creates a more accurate forecast, any and all QF delays should be considered when calculating a CDR. The purpose of the CDR is to more accurately reflect when a contract will go online.[74] This should reflect the actual delays, regardless of whether a delay falls outside of the TAM year.[75]

III. CONCLUSION

For the foregoing reasons, CUB respectfully urges the Commission to address the flaws apparent in the attestation methodology, and to order the Company to produce a

---

[74] UE 323 – CUB/200/Jenks/15, lines 6-7.
[75] UE 323 – CUB/200/Jenks/15, lines 7-8.

CDR based on a three-year historical average to apply to the TAM forecast, using the approach delineated above. The evidence in the record clearly demonstrates that the Company's current method of forecasting QF contract costs is fundamentally inaccurate, and relies upon inaccurate and incomplete information. The result is that ratepayers have been systematically over-charged for QF costs.

Dated this 26th day of September, 2017.

Respectfully submitted,

Michael P. Goetz, OSB #141465
Staff Attorney
Oregon Citizens' Utility Board
610 SW Broadway, Ste. 400
Portland, OR 97205
(503) 227-1984 phone
(503) 224-2596 fax
mike@oregoncub.org