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October 5, 2017

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 PACIFICORP's 2018 Transition Adjustment Mechanism
Docket No. UE 323

Dear Filing Center:

Please find enclosed the redacted version of the Cross-Answering Brief of the Industrial Customers of Northwest Utilities ("ICNU") in the above-referenced docket.

The confidential portions of ICNU's brief are being handled pursuant to Order No. 16-128 and will follow to the Commission via Federal Express.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Sincerely,

/s/ Haley M. Thomas
Haley M. Thomas

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the confidential portions of the **Cross-Answering Brief of the Industrial Customers of Northwest Utilities** upon the parties shown below by mailing a copy via First Class U.S. Mail, postage prepaid.

Dated at Portland, Oregon, this 5th day of October, 2017

Sincerely,

/s/ Haley M. Thomas
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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 323

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

CROSS-ANSWERING BRIEF

OF THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES

October 5, 2017

(REDACTED VERSION)

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I. INTRODUCTION

The Industrial Customers of Northwest Utilities ("ICNU") respectfully submits this Cross-Answering Brief to the Public Utility Commission of Oregon ("OPUC" or the "Commission"), per the procedural schedule adopted by Administrative Law Judge ("ALJ") Rowe on April 26, 2017. In reviewing the Response Briefs of other parties, ICNU found several striking similarities to the positions taken and points made by ICNU, which form the primary basis of this brief. These similarities include:

- **Burden of Persuasion**. OPUC Staff ("Staff") and the Citizens' Utility Board of Oregon ("CUB") raise issues regarding PacifiCorp's (or the "Company") evidentiary burden of persuasion that elucidate the Company's failure to carry its burden on the day-ahead and real-time ("DA/RT") adjustment.

- **Forecasting Standards**. Staff, CUB, and Sierra Club discuss and demonstrate the importance of using data that is normative and anticipated to reflect future market conditions, when forecasting net power costs ("NPC").

- **Company Approach**. Numerous synergies emerge upon review of the simultaneous briefing of non-Company parties, reflecting a telling identification of less than salutary approaches that PacifiCorp takes to prove the fair, just, and reasonable outcome of Transition Adjustment Mechanism ("TAM") process, such as:

    - *Double-standards* – Staff points out numerous instances in which the alleged flaws in non-Company evidence and advocacy are equally (if not more) attributable to the Company;

    - *Excluding customer benefits* – On a variety of NPC issues, one theme consistently emerges—PacifiCorp routinely excludes customer benefits from TAM calculations and shifts risk to ratepayers; and

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- *Questionable advocacy tactics* – No fair-minded reader can conclude that ICNU is the only party to attribute mischaracterization, modeling inflexibility, and diversionary tactics to the Company, which are used by PacifiCorp as inappropriate or unavailing means to demonstrate the propriety of TAM proposals.

ICNU also focuses on two particular issues in this Cross-Answering Brief. First, Staff's specific briefing on the need for a backcast or similar model validation process is discussed, as a better solution to improve the TAM process, in comparison to the Company's proposal to simply conduct more workshops. Second, ICNU provides perspective on the arguments of Calpine Energy Solutions LLC ("Calpine Solutions"), on issues concerning direct access customers (or prospective customers).

II. ARGUMENT

A. A Simple Preponderance of Evidence Showing that PacifiCorp Has Not Carried the Burden of Persuasion Will Invalidate any Company Proposal

As stated succinctly by Staff, "… PacifiCorp *retains* the burden of proving that each element of its NPC forecast is just and reasonable."[1/] Likewise, CUB asserts that "… 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."[2/] In sum, the fact that the Company has a positive duty to meet its burden of proof with the best available information is critical in *this* proceeding.

Since PacifiCorp "retains" the burden of proof in the 2018 TAM, the Company cannot simply reference prior Commission determinations, in hopes of maintaining the status

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1/ Staff's Response Brief at 3 (citing Re PacifiCorp, Docket No. UE 116, Order No. 01-787 at 6 (Sept. 7, 2001)) (emphasis added).

2/ CUB's Response Brief at 3 (emphasis added).

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quo on any element of NPC forecasting. That is, if the "best information available" for NPC forecasting in this proceeding is shown by a non-Company party to justify a different result than in a prior TAM proceeding, the Company has not carried its burden of proof by effectively doing nothing at all—except, perhaps, vociferously insisting that a different determination has been approved in the past, and should be sustained based on evidence relevant to that prior determination.

Lest there be any doubt about the need for a utility to affirmatively produce evidence in each proceeding, in the first instance, followed by a continual retention of the burden of persuasion, PacifiCorp attests to the same standard on brief: "Once a utility has met the *initial burden* of presenting evidence to support its request, the burden of going forward then shifts to the party or parties who oppose …. Although the burden of production shifts, *the burden of persuasion is always with the utility*."[3/]

Yet, as much of the Response Brief of ICNU was devoted to explaining, the Company is attempting to seek reaffirmation of the DA/RT adjustment status quo while meeting neither: 1) its initial burden of production, based on the best, updated Energy Imbalance Market ("EIM") information available, including non-filtered workpaper calculations; nor 2) its continuing burden of persuasion, which is not satisfied by substantively doing little else but criticizing both Staff and ICNU for allegedly not conforming to past Commission decisions, or charging that non-Company parties must bring forth evidence, in the first instance, to overturn a DA/RT status quo founded on stale data. Thus, PacifiCorp would effectively flip the burden of

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[3/] PacifiCorp's Opening Brief at 7 n.23 (quoting Re Portland General Electric Company 2012 Annual Power Cost Update Tariff (Schedule 125), Docket No. UE 228, Order No. 11-432 at 3 (Nov. 2, 2011)) (emphasis added).

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proof to non-Company parties, by insisting that the incumbent DA/RT adjustment be retained *unless* other parties first supply evidence disproving its accuracy.

1. CUB Provides a Perfect Illustration for Fixing the TAM

As CUB relates, ICNU fully agrees that "… ensuring as accurate an NPC forecast as possible is *paramount* to establishing just and reasonable rates for the Company's captive customers."[4/] This statement is profoundly relevant to the concerns expressed previously by CUB and ICNU, regarding the perception among ratepayer advocates "that the TAM is fundamentally broken."[5/]

PacifiCorp customers in Oregon are quite literally "captive," given both Oregon's exclusive service territory statute and the lack of a viable direct access alternative.[6/] Accordingly, accurate NPC forecasting truly is "paramount" to ensure that customers are only paying rates that are just and reasonable, because PacifiCorp customers have no feasible recourse to avoid Company rates—e.g., to simply walk away. To this end, the Company's captive customers must rely completely on the Commission to ensure the TAM process is being fairly administered and producing accurate NPC forecasts. But, considering the recent trend of summary, preliminary orders determining all matters in the last two TAM proceedings,[7/] there

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4/ CUB's Response Brief at 3 (emphasis added).

5/ Response Brief of ICNU at 3 (quoting Re PacifiCorp, 2017 TAM, Docket No. UE 307, CUB's Comments from January 23, 2017, regarding Pacific Power TAM Workshops ("CUB's Comments") at 1 (Jan. 23, 2017)).

6/ See, e.g., ORS §§ 758.400-.475 (containing exclusive service territory allocation law); Calpine Solutions' Response Brief at 1 (noting "an economic barrier to direct access" created by PacifiCorp, leading to the "extremely low" direct access participation level of a mere 3.5% of eligible load in Oregon).

7/ See Response Brief of ICNU at 4-6. This recent trend directly coincides with the approval (and virtually unmodified affirmation) of the current DA/RT adjustment, amidst the rejection of 28 of 29 non-Company TAM proposals over that span. CUB's Comments at 1.

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are grave concerns that a "fundamentally broken" TAM process has left PacifiCorp's captive customers helpless to defend against unjust and unreasonable rate results.

ICNU is after solutions, however, not merely the identification of problems. Thus, ICNU suggests that a major component of the solution to a broken TAM process can be distilled into two plain, understandable, and easily applied principles. First, as CUB explains on brief, the Commission's "… stated goal in the TAM is to achieve as accurate a forecast of PAC's NPC as possible *for the upcoming year*."[8/] Crucially, the Commission's acknowledged aim of seeking NPC accuracy is in "the upcoming year." If the Commission simply focuses upon data relevant to expected Company operations in the upcoming year, then NPC accuracy can be optimized in the 2018 TAM. Standing in the way of this end, however, is the Company's insistence on using obsolete, pre-EIM operational data to dilute the full customer benefits of NPC forecasting, as apparent in PacifiCorp's continued opposition to the expanded DA/RT adjustment recommended by ICNU.[9/]

Second, the Commission need only consider that the appropriate standard is a mere preponderance of the evidence, when considering whether to approve and apply the forward-thinking TAM improvements to NPC forecasting accuracy recommended by non-Company parties. Practically speaking, the rejection of 28 of 29 non-Company TAM proposals over the last two years means that, in all rational likelihood, a much higher burden of proof is *actually* being applied to non-Company parties—thereby effectively preventing them from

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8/ CUB's Response Brief at 2-3 (citing Re PacifiCorp, 2016 TAM, Docket No. 307, Order No. 16-482 at 2 (Dec. 20, 2016)) (emphasis added).

9/ A simple litmus test, to prove the Company's strident resistance against relying on forward-looking data, would be to candidly assess the volume of PacifiCorp arguments in opposition to ICNU's recommendation that are focused *backwards*, and which are centered upon academic points concerning purported positions taken two years ago, before any of the present EIM operational data had been assessed.

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prevailing on virtually any TAM recommendations, especially as these lopsided results in recent years have all been delivered in summary fashion, through preliminary orders.

But, if Commission precedent is followed, then non-Company parties do not need to demonstrate that a TAM adjustment should be proven "beyond a reasonable doubt" in order to succeed. Rather, as the Company itself acknowledges, the Commission standard applicable to this proceeding is as follows: "To reach a determination on whether proposed rates are just and reasonable, we look at the record as a whole and make a determination *based on the preponderance of the evidence*."[10/] Thus, if new EIM operational data implicates that customer benefits are accruing, but not being reflected accurately in now-stale Company modeling, then the Commission can and should make a TAM adjustment—even if some doubts remain, or the Company makes certain points that still resonate toward maintenance of the status quo. In other words, to use purely hypothetical and illustrative figures, the good accomplished by a Commission decisively acting upon a 55% finding of need for an expanded DA/RT adjustment, including fair offsets reflecting customer benefits, outweighs the negatives of even a significant 45% finding of doubt, which favors inertia by default.

In fact, CUB specifically illustrates how and why these principles of using the most accurate, forward-looking data should be decisively applied to effect real change, based on the preponderance of newly presented evidence. That is, CUB states that "a change is needed" to PacifiCorp's attestation methodology, which is the Company's current methodology to forecast Qualifying Facility ("QF") contracts and costs, based on expected commercial operation dates

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10/ PacifiCorp's Opening Brief at 7 n.23 (quoting Docket No. UE 228, Order No. 11-432 at 3) (emphasis added).

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("CODs").[11] On brief, CUB explains that new QF evidence reveals that CUB's initial "proposal in this docket was based on a foundation that is now fundamentally flawed,"[12] although by no fault of CUB. Rather, in a bold declaration—if unsurprising, given just how "fundamentally broken" the TAM has apparently become—CUB explains that the attestation methodology is "flawed because *PacifiCorp officers attest to expected CODs that are inaccurate* based on the evidence the Company is given."[13] More specifically, CUB states:

> 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, and that an unknown amount of correspondences with QF counterparties are conducted via phone or other medium, rendering it impossible for stakeholders to track and for the Company to accurately forecast.[14]

Taking these points together, CUB has demonstrated that new evidence compels a change in how a discrete element of TAM forecasting is performed. Notably, the evidence CUB refers to is so fresh that the data only came to light within the course of this proceeding, prompting CUB to revise its position taken earlier in *this* docket. By comparison, the provenance of new EIM data that ICNU relies upon is considerably more "historic."

Nevertheless, whether it be CUB, seeking modified QF attestation methodology, or ICNU, seeking expansion of the DA/RT adjustment, non-Company parties have put forth a preponderance of new evidence, indicative of how NPC may be more accurately forecasted "for the upcoming year." This potent and easily understood combination of evidence would justify significant 2018 TAM adjustments, beneficial to ratepayers, under core Commission principles. Indeed, the Commission would seem hard pressed not to find something *far more* than a "bare"

[11] CUB's Response Brief at 6, 11.
[12] CUB's Response Brief at 11.
[13] CUB's Response Brief at 6 (emphasis added).
[14] CUB's Response Brief at 11 (internal citations omitted).

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preponderance of evidence that justifies customer-beneficial TAM modifications in this proceeding, given that the Company attempts to support status quo positions by: 1) having a "Vice President attest to inaccurate and incomplete information," as CUB points out;[15/] and 2) purposely filtering out exponentially rising customer benefits, in the DA/RT adjustment.[16/]

2. Staff and CUB Highlight the Import of Discrete Issue Consideration

Colloquially phrased, the Company would have the Commission maintain what might be characterized as an "it's all good" standard, in which rough overall TAM results that "seem about right" continue to be approved in a virtual "rubber-stamp" fashion. Staff explains that "PacifiCorp consistently justifies its NPC forecast in this proceeding on the accuracy of its forecast *overall*, thus downplaying the individual elements that comprise its NPC forecast."[17/] Likewise, as CUB notes, the Company wrongly "… 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/]

By arguing in this manner, however, Staff correctly points out that the Company "… seeks Commission validation of an inappropriate standard."[19/] This is because, as Staff goes on to explain, "… the Commission is tasked with weighing the evidence presented on *each* issue, and PacifiCorp retains the burden of proving that *each* element of its NPC forecast is just and reasonable."[20/] In short, the Company's "it's all good" approach has no place in Commission process. As Staff logically counters: "Without demonstrating that each element of its NPC

15/ CUB's Response Brief at 12 (internal citations omitted).
16/ See Response Brief of ICNU at 9-11.
17/ Staff's Response Brief at 2.
18/ CUB's Response Brief at 5 (emphasis added).
19/ Staff's Response Brief at 3.
20/ Staff's Response Brief at 3 (citing Re PacifiCorp, OPUC Docket No. UE 116, Order No. 01-787 at 6 (Sept. 7, 2001)) (emphasis added).

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forecast is reasonable, the Commission cannot conclude that the overall NPC forecast will produce just and reasonable rates."[21/] And, as CUB rightly points out, "[t]hat goal can only be achieved if each discrete component of the Company's NPC forecast is calculated as accurately as possible."[22/]

The import of this unquestionable need to focus on the accuracy of each discrete element of NPC forecasting should be apparent, relevant to ICNU's primary recommendation in the 2018 TAM. Specifically, the costs and benefits associated with system balancing transactions and the DA/RT adjustment must be carefully reviewed as a discrete consideration in *this* proceeding. The Company's full-scale assault upon alleged inconsistencies in ICNU's 2016 TAM positions are, at root, nothing more than a variation of an improper PacifiCorp paradigm that CUB identified—i.e., the Company argument that, "because the overall NPC forecasts have understated power costs," a non-Company party is somehow "… precluded from arguing that one element of power costs is actually overcharging customers."[23/] In other words, PacifiCorp would have the Commission believe that *prior* approval of the DA/RT adjustment, to purportedly correct an historic understatement or "systematic under-forecast of the system balancing costs,"[24/] thereby precludes ICNU from demonstrating that PacifiCorp is actually overcharging customers through the *present* DA/RT adjustment (e.g., by filtering out and averaging out customer benefits that are manifest in the form of new EIM operational data).

21/ Staff's Response Brief at 3.
22/ CUB's Response Brief at 5.
23/ CUB's Response Brief at 5.
24/ PAC/800, Wilding/25:5-7.

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3. Staff and CUB Expose a Comparative Lack of Supporting Evidence from the Company

After review of Staff and CUB briefing, ICNU respectfully posits that another "clean sweep" for PacifiCorp—i.e., for the Company to once again prevail on every substantive TAM issue contested in this proceeding—would be impossible to square with the Company's evidentiary burdens of production and persuasion. Instead, Staff and CUB expose a paucity of credible evidentiary production on PacifiCorp's part, relative to multiple issues on which the Company has the initial burden of production and the continuing burden of persuasion.

For instance, regarding the Company's bid to maintain the status quo on the DA/RT adjustment, Staff points out that "PacifiCorp's argument suggests that once the Commission has approved a modeling adjustment, the Company believes that questioning, validating and improving the adjustment is not an appropriate undertaking. Staff disagrees."[25/] As a threshold matter, ICNU also disagrees with the Company. Moreover, Staff's accurate characterization of the Company's foundational approach to the DA/RT adjustment probably explains why PacifiCorp has not attempted to effectively meet burdens of production and persuasion in this proceeding—namely, because the Company believes it has no real burden to meet.

Further, regarding the comparative quality of evidence on the DA/RT adjustment, Staff notes "… that the CUB collar proposal supported by PacifiCorp is not a proposal grounded in analysis of DART data," based on the frank admission of CUB's own witness.[26/] But, in

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25/ Staff's Response Brief at 8.

26/ Staff's Response Brief at 14 (citing CUB/100, Jenks/12-13). The DA/RT adjustment collar supported by PacifiCorp would not have any actual effect on the 2018 TAM: "The collar does not impact the DA/RT adjustment in this case." PacifiCorp's Opening Brief at 6. Thus, the Company should be understood as seeking a continuation of the DA/RT adjustment status quo—as further affirmed by the Company's

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marked contrast, Staff then explains: "On the other hand, ICNU's proposal is grounded in data and evaluates whether historic transactions are representative of future transactions."[27/] Staff also effectively refutes the Company's outcry against ICNU's reliance on two years' worth of EIM operation data, by affirming that "[t]his type of analysis does not require a long history of data, because it is simply comparing recent history to future expectations."[28/] And, as relevant especially to the Company's ultimate burden of persuasion to justify an unyielding confirmation of a DA/RT adjustment status quo, "Staff has presented new evidence in this proceeding that *the Company makes substantially more profit off of market transactions than what is modeled in GRID with DART*."[29/]

Also, the dearth of PacifiCorp evidence supporting 2018 TAM proposals is not limited to the DA/RT adjustment. As previously discussed, CUB explained that the accuracy of PacifiCorp's QF attestation methodology was "… fundamentally flawed," because "the Company does not use the best dates available to it when forecasting a QF COD."[30/] More "troubling to CUB," however—and troubling to ICNU, for that matter—is the fact that the lack of credible PacifiCorp evidence is not attributable to a mere absence of purported supporting evidence, but to the Company's active attempt to meet its burden of proof by having "a Vice President attest to inaccurate and incomplete information."[31/]

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argument on brief, rendered after the Company had agreed to the CUB collar proposal, that "PacifiCorp's DA/RT adjustment in the 2018 TAM is *virtually identical* to the DA/RT adjustment the Commission approved in the 2016 and 2017 TAMs." Id. at 5 (emphasis added).

27/ Staff's Response Brief at 14.
28/ Staff's Response Brief at 14.
29/ Staff's Response Brief at 15 (emphasis added).
30/ CUB's Response Brief at 11.
31/ CUB's Response Brief at 12.

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As CUB explains: "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*."[32/] While not charging that a PacifiCorp officer has just attested to facts known to be false, CUB is still claiming something very serious which, based upon the evidence in this proceeding, is not too far removed from a conscious falsification on PacifiCorp's part—i.e., that a senior Company executive has attested to something *as if* it were true and accurate, for purposes of convincing the Commission to affirm a TAM adjustment status quo which consistently overestimates QF contract costs by more than [redacted][33/] all without actually having the requisite knowledge to make such an attestation.

If CUB was being flippant—or, if CUB was not making a deliberate statement about the verities of PacifiCorp attestations, after confidently claiming to have "expose[d] several notable cracks in the Company's foundation of information"[34/]—then CUB would have no legitimate basis to suggest that "[t]he 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."[35/] Plainly, there would be grave implications about the essential fairness of OPUC process, should the PacifiCorp attestation at issue be accepted without further remark from the Commission. And, although taking no certain position on CUB's suggestion of a public testimony process, ICNU does agree that the evidence of improper attestation, as thoroughly demonstrated in CUB's brief and based on plain evidence in this case, should not be ignored by

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32/ CUB's Response Brief at 12 (emphasis added).
33/ CUB's Response Brief at 5.
34/ CUB's Response Brief at 8.
35/ CUB's Response Brief at 12.

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the Commission. Otherwise, complete OPUC passivity, in the face of such evidence, would mean that captive customers truly are helpless to defend against improper Company actions.

From ICNU's perspective, the Commission would probably be doing enough to demonstrate that the TAM is no longer "fundamentally broken" by simply taking a close look at the actual evidence in this case, and expressly noting that the Company cannot meet its burden of production or persuasion by submitting uninformed attestations. From a purely practical standpoint, the Company's action is a cleverly calculated maneuver that would succeed, if the representation of a PacifiCorp officer is taken at face value, and the Company is found to have "justified" all its proposals, as in the last two TAM proceedings, by simply submitting some form of ostensible evidence, regardless of the quality. ICNU trusts, however, that the Commission does not take lightly its duty to find that rate results are "just," such that senior Company executives will not be immune from any ethical conduct expectations, merely by dint of title or status, on the assumption that Commission standards presumably require more than purely practical calculations that employ any means available to achieve an end.

Finally, Staff exposes an acute lack of Company evidence produced in support of at least two other contested TAM issues. First, PacifiCorp argues against Staff's call for more accurate forecasting of EIM inter-regional benefits by claiming "that there is 'a point of saturation relative to the additional benefits that the company can achieve due to resource limitations.'"[36/] Yet, as Staff points out, PacifiCorp does not support this argument with any credible evidence: "… the Company has not seen a decrease in the EIM benefits, holistically,

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[36/] Staff's Response Brief at 17 (quoting PAC/500, Brown/7).

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due to new participants thus far, and has not commissioned any studies or other types of analysis to quantify its claim."[37]

Second, the Company "argues that there is no basis for Staff's proposal to model the economic shut-down of coal plants because … PacifiCorp has only shut-down coal plants in actual operations for limited purposes," and Staff's proposal is purportedly "too narrowly focused on market prices."[38] Staff counters, however, that "Staff's proposal does not ignore actual operations or market conditions"[39]—which, stated another way, effectively means that PacifiCorp *does* "ignore" such evidence. That is, "… Staff has demonstrated that coal shutdowns are economical and therefor likely to be the new normal," meaning that the Company's position is not supported with actual evidence expected to reflect accurate conditions "for the upcoming year," which is the entire "stated goal in the TAM."[40] Likewise, Staff shows that PacifiCorp ignores the fact that "[t]he EIM market is a new market" relevant to how market conditions affect the economic modeling of coal plant shut-downs, thereby exposing, as without persuasive evidentiary value, the Company's argument "… that coal operations *prior to 2016* are representative of normal operations on a going forward basis."[41]

B. Multiple Parties Demonstrate that Improved NPC Forecasting Accuracy Depends on the Use of Normal and Anticipated Conditions

ICNU has already suggested that solving a "fundamentally broken" TAM problem involves a proper emphasis upon forward-looking data, which more accurately reflects conditions expected during the upcoming year. But, the importance of using data that is

[37] Staff's Response Brief at 17 (citing Brown, TR. 158-59).
[38] Staff's Response Brief at 25.
[39] Staff's Response Brief at 25.
[40] CUB's Response Brief at 2-3 (citing Docket No. 307, Order No. 16-482 at 2).
[41] Staff's Response Brief at 25 (emphasis added).

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normative and anticipated to reflect future market conditions, when forecasting NPC, is worthy of additional discussion, since this twofold principle receives so much explicit support through the briefing of Staff, Sierra Club, and CUB.

1. Staff Relies on "Anticipated, Normal" Operational Data to Guide NPC Forecasting on Several Discrete Issues

The crux of all relevant inquiry in this proceeding may well be contained within a single Staff briefing statement: "NPC rates are forecast using a future test year based on *anticipated*, *normal* utility operations."[42/] Going no further, the natural corollary here is that, if historic operational data can no longer be reasonably said to reflect either "anticipated" operations or a future "normal" operational paradigm, such historic data has no place in forecasting methodology used to calculate just and reasonable NPC rates. Accordingly, consistent with ICNU's recommendation, faithful application of this principle would exclude usage of pre-EIM operational data in DA/RT adjustment calculations, since the Company's own workpapers—once freed of unfair and biased filtering, which excludes customer benefits—plainly show that the EIM represents a "new normal" of anticipated operational results, relative to system balancing transactions.

In fact, specific to the DA/RT adjustment, Staff asserts that a party "recommendation is appropriate because it is rational, forward looking, and more representative of market prices."[43/] While Staff presents this rubric in the context of its own DA/RT adjustment recommendation, ICNU's recommendation would also satisfy each Staff metric, given ICNU's focus on EIM data to produce forward-looking transactional representations. Staff effectively

42/ Staff's Response Brief at 3 (emphasis added).
43/ Staff's Response Brief at 9.

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acknowledges this, when noting that ICNU has proposed "… to normalize the historic data underlying the DART adjustment," which Staff finds to be "critical."[44/] Likewise, ICNU's "… alternate approach[,] of considering how future DART costs will likely differ from historic DART costs," receives tacit sanction by Staff's own proposal, in the sense that Staff proposes "a remedy to the fact" that historic system balancing transactional costs "are high," while future costs "are likely low."[45/] Indeed, as already noted, Staff expressly affirms that "… ICNU's proposal is grounded in data and evaluates whether historic transactions are representative of future transactions."[46/]

Staff's concern with using "anticipated, normal" operational data for NPC forecasting extends to other issues, as well. As to the modeling of economic coal shut-downs, Staff emphasizes that "[t]he TAM is a *forward-looking* proceeding, and on a *forward-looking* basis, Staff has demonstrated that coal shutdowns are economical and therefor likely to be the *new normal*."[47/] Similarly, Staff found it reasonable "to apply the average … delay from UE 307 results" for purposes of QF cost forecasting.[48/] The relevance here is that, while later revising its QF proposal, Staff initially deemed it reasonable to use a single proceeding's worth of operational data to forecast future costs, based on the implicit expectation that, whatever complaints might be raised against this limited data set, UE 307 results were deemed to reflect, standing alone, the "anticipated, normal results." Given PacifiCorp's complaint that two years' of EIM operation data is too short a period for purposes of the DA/RT adjustment, allegedly

44/ Staff's Response Brief at 11.
45/ Staff's Response Brief at 12-13.
46/ Staff's Response Brief at 14.
47/ Staff's Response Brief at 25 (emphasis added).
48/ Staff's Response Brief at 32.

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based on *Staff's* position in this proceeding,[49/] Staff's actual support for a much shorter data span in a QF context is telling.

2. Sierra Club Reinforces the Propriety of Reflecting Fundamental Changes Anticipated in Newly Normative Market Conditions

Sierra Club has informed the Commission of "concerns about the dispatch of coal units in PacifiCorp's fleet."[50/] In particular, Sierra Club explains that "… utility practices related to long-term coal contracts may result in customers not receiving the *market benefits* that are possible from the *increasingly* high penetration of low or zero marginal cost renewable energy."[51/] At the core of Sierra Club's position, therefore, is an understanding that "market benefits" are "increasingly" available for customers, but that the Company may not be forecasting such benefits accurately, based on an unjustified reliance on historic operational practices.

In this manner, like ICNU and Staff, Sierra Club also appears to promote the usage of "anticipated" or forward-looking operational practice to accurately forecast the "new normal" of emerging market conditions. As proof, Sierra Club goes on to detail its concerns with the Company's apparent inability to be adaptive or nimble in conforming coal plant operations to new market conditions: "This level of inflexibility to reduce coal dispatch is a growing concern as more and more low or even negative marginal cost renewables come on line in the region."[52/] In fact, Sierra Club notes that PacifiCorp has acknowledged that "fundamental changes to the operation of its coal units" are being made "in response to increased

49/ See Response Brief of ICNU at 37-38.
50/ Sierra Club's Response Brief at 1.
51/ Sierra Club's Response Brief at 2.
52/ Sierra Club's Response Brief at 3.

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renewables,"[53/] while the EIM has also prompted the Company "to take greater advantage of lower priced renewable energy available in the market."[54/] In sum, the running theme from non-Company parties—of the EIM creating "fundamental changes" in Company practices, which should be reflected in TAM forecasting improvements—receives only further reinforcement through Sierra Club briefing.

3. CUB Eschews Flawed Assumptions in Preference of Actually Anticipated Results, Based on Evidence of Demonstratively Normative Results

Much like ICNU's concentrated emphasis on DA/RT adjustment accuracy, CUB's primary focus on improving QF cost estimation appears to have paid significant dividends in this proceeding. As noted, CUB's thorough review of the evidence has culminated in a finding that "… the Company has consistently overestimated QF contract costs by greater than [redacted] under the current methodology," i.e., the attestation methodology.[55/] Of note here is that CUB reached this conclusion after having "initially agreed to the attestation method on the premise that the Company was using the best available information," which premise CUB ultimately found "… unsupported by the evidence."[56/]

If CUB were held to the draconian approach favored by the Company, as when PacifiCorp insists that two years' worth of operational data produces "abnormally low" DA/RT adjustment results,[57/] then CUB's mid-proceeding shift, to rely on new evidence to support more accurate QF cost forecasting, would be rejected out of hand. But, to penalize CUB for a mid-proceeding shift would be to simultaneously reward the Company for improper conduct, given

53/ Sierra Club's Response Brief at 3-4.
54/ Sierra Club's Response Brief at 4 (quoting PAC/500, Brown/6).
55/ CUB's Response Brief at 5.
56/ CUB's Response Brief at 8.
57/ See Response Brief of ICNU at 37.

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CUB's exposition of PacifiCorp's inaccurate attestation evidence, as discussed in some detail already. Instead, CUB should be rewarded for presenting newly discovered evidence demonstrating what QF costs are actually anticipated to be, after proving that PacifiCorp normally overestimates QF contract costs by a massive margin.

As CUB explains, "… the Company should be using the *most thorough* and *best data available* to create the most accurate QF cost forecast possible."[58/] ICNU finds a ready application of this rubric to the DA/RT adjustment, too, in that: 1) "the most thorough" data requires inclusion of >7 Day Transactions, which PacifiCorp presently filters out; and 2) "best available data" means proper reliance on EIM operational data, as reflective of "anticipated, normal" system balancing operative conditions, as opposed to "averaging out" customer benefits through continued factoring of anachronistic, pre-EIM data.

Likewise, a close parallel emerges through CUB's proposal for usage of "a three year rolling average of historical QF COD delays, and then applying that delay rate in an unbiased way" to "produce the most accurate forecast."[59/] That is, if ICNU's recommendation to focus DA/RT calculations on EIM data is approved, the 2019 TAM will also feature a three-year average of operational results. Also, ICNU's recommendation to stop the unfair exclusion of >7 Day Transaction benefits will ensure that future DA/RT calculations are made "in an unbiased way." Putting the two together, future DA/RT adjustment results should "produce the most accurate forecast" possible, based on current information available. Thus, ICNU agrees with CUB "that the most accurate, simplest, and least biased means to approach" NPC forecasting is to follow these recommendations.[60/]

58/ CUB's Response Brief at 12.
59/ CUB's Response Brief at 13.
60/ CUB's Response Brief at 14.

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C. There is Widespread Agreement Among Non-Company Parties that PacifiCorp Attempts to Support TAM Proposals by Improper Means

Ultimately, ICNU hopes for a fair and transparent review of the evidence and arguments in this 2018 TAM proceeding. Ideally, ICNU would find it unnecessary to point out the double-standards, mischaracterizations, and similarly questionable practices of the Company in significant detail, as demonstrated in the briefing of other non-Company parties. But, concerns over the "broken" nature of TAM process, based on summary findings almost entirely in PacifiCorp's favor in recent years, have given rise to a customer belief that the Company has not been fairly called to account for advocacy which, if examined carefully, could not reasonably support another "clean sweep" of PacifiCorp issues on every contested issue in this case. Moreover, since the Company *always* bears the burden of persuasion, material shortcomings in evidence and advocacy should bear directly upon the Commission's eventual findings.

1. The Company Would Have the Commission Apply a Double-Standard that Benefits only PacifiCorp on Multiple Issues

In each of the last two TAM proceedings, the Commission issued preliminary findings that "PacifiCorp has justified" proposed NPC "with evidence in the record that was not adequately rebutted by the parties."[61/] At the very least, a similar, preliminary finding in the 2018 TAM proceeding would be unjustified, after consideration of the double-standards the Company applies to support numerous positions in this case. Put differently, a full approval of all Company proposals in this proceeding cannot be reasonably supported by PacifiCorp's sharp criticism of non-Company parties, for purportedly failing to maintain higher standards than the Company applies to itself.

61/ See, e.g., Re PacifiCorp, 2016 TAM, Docket No. UE 296, Order No. 15-353 at 2 (Oct. 26, 2015); Docket No. UE 307, Order No. 16-418 at 3 (Oct. 27, 2016).

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To begin, one of the Company's primary arguments against reliance on EIM data for purposes of the DA/RT adjustment is that two years' worth of operational data is too short a span.[62/] Yet, as Staff explains, the Company's fundamental position in this entire proceeding "relies on only a single year of results"—i.e., justifying "its NPC forecast … on the accuracy of its forecast *overall*," maintaining "the whole to be *greater* than the sum of its parts," and thereby arguing against non-Company party recommendations to investigate whether "… each element of its NPC forecast is just and reasonable."[63/] There would be nothing "just" about finding that the Company had "justified" its NPC forecast, based on a standard more favorable to PacifiCorp.

Likewise, PacifiCorp spends considerable time discussing alleged inconsistencies between ICNU's position on the DA/RT adjustment in this proceeding and the 2016 TAM.[64/] Yet, Staff provides a detailed exposition of how the Company's present position, on the alleged purpose of the DA/RT adjustment, is entirely inconsistent with PacifiCorp testimony on the same issue during the 2016 TAM.[65/] At the end of the day, the Company simply cannot hope to rationally persuade the Commission to reject ICNU's DA/RT adjustment recommendations for alleged inconsistencies during the 2016 TAM, when PacifiCorp affords itself a license to be inconsistent on the same issue and as between the same proceedings.

Staff also questions how the Company can reasonably argue against Staff proposals to improve the DA/RT adjustment, on the purported basis that Staff's proposals are arbitrary "because 'each method identifies different years as outliers.'"[66/] Staff has good cause to raise such questions, since the Company's criticism of Staff is founded upon the application of

62/ See Response Brief of ICNU at 37-38.
63/ Staff's Response Brief at 2-3.
64/ See Response Brief of ICNU at 23-24, 34-36.
65/ Staff's Response Brief at 7.
66/ Staff's Response Brief at 14 (quoting PacifiCorp's Opening Brief at 14).

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a double-standard favoring PacifiCorp. Specifically, Staff notes that the Company's "argument is undercut by its agreement to include CUB's proposed collar in this case," prompting Staff to ask: "if the Commission has 'already found that including the supposedly outlier years in the DA/RT calculation produces normalized results,' what is the basis to accept its recommendation on CUB's collar?"[67/]

Another Company double-standard appears when considering the proper calculation of EIM inter-regional benefits. Staff notes that PacifiCorp criticizes Staff for relying on six months of data that allegedly "does not account for the seasonality of EIM benefits," while simultaneously promoting a Company methodology that is *equally* based on only six months of data, and which "also fails to account for seasonal effects."[68/] But, PacifiCorp would have the Commission find Staff's proposal "unrealistic and inaccurate," despite Staff's reliance upon a more recent "six months of 2017 actuals," while the Company asserts that 2018 forecasts should begin with data reaching further back to "October 2016."[69/]

On yet another issue, concerning liquidated damages at PacifiCorp's Cholla plant, Staff plainly reveals the Company's inconsistencies on reasonable coal drawdowns and stockpile levels. For instance, PacifiCorp now argues that Staff's proposal, that the Company refrain from a 2018 drawdown, would result in "… an unreasonably high stockpile," notwithstanding "the fact that [PacifiCorp] has previously planned to operate at the current inventory level in the past without any substantial drawdown."[70/] In fact, Staff's proposal for a [redacted] ton pile is manifestly below the [redacted] tons the Company recommended in the 2017 TAM, just one year

[67/] Staff's Response Brief at 14.
[68/] Staff's Response Brief at 17.
[69/] Staff's Response Brief at 17.
[70/] Staff's Response Brief at 22.

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ago.[71] As should now be apparent, however, this sort of double-standard reasoning typifies PacifiCorp's advocacy in the TAM, and has, unfortunately, gone without notice in recent proceedings.

Finally, Staff uncovers a further PacifiCorp double-standard on the issue of coal plant dispatch and economic shut-down modeling. In particular, the Company takes issue with Staff's shut-down modeling and coal screening process, but Staff demonstrates that "PacifiCorp's modeling concerns are not valid because they *apply equally* to the gas screening process as Staff's coal screening process."[72] As this and the many other non-Company briefing positions reveal, there is a persistent theme of a good-for-the Company, bad-for-everyone-else style of advocacy from PacifiCorp that works decidedly against a continued finding that the Company has "justified" all its positions, while non-Company parties are deemed to have "not adequately rebutted" the Company.

2. Staff and CUB Illustrate Repeated Instances in which PacifiCorp Excludes Customer Benefits from TAM Calculations and Shifts Risks to Ratepayers

The routine exclusion of customer benefits by PacifiCorp, and the correlated shift of cost risk onto ratepayers, is another deeply troubling theme confirmed through non-Company party briefing. ICNU demonstrated that the Company's DA/RT adjustment both filters out and "averages out" customer benefits that are starkly apparent in system balancing transactions, thereby allowing the Company to withhold millions in appropriate NPC benefits from ratepayers.[73] Similarly, any reasonable review of Staff and CUB briefing reveals that ICNU is

[71] Staff's Response Brief at 22-23.
[72] Staff's Response Brief at 29 (emphasis added); accord id. at 27-28 ("… PacifiCorp's concern with Staff's process is equally applicable to PacifiCorp's gas screening process").
[73] See Response Brief of ICNU at 7-12.

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far from alone in attributing similar benefit-exclusion and risk-shifting practices to the Company in the 2018 TAM.

a. Staff Shows that the Company Excludes Customer Benefits from DA/RT Adjustment and EIM Modeling and Would Shift Risks to Customers for Coal Plant Operations

Regarding the DA/RT adjustment, "Staff has presented new evidence in this proceeding that the Company makes *substantially more profit* off of market transactions than what is modeled in GRID with DART."[74/] While the purposeful filtering of >7 Day Transactions in the DA/RT adjustment would indicate that the Company is knowingly excluding customer benefits from the TAM, significant DA/RT adjustment modifications would still be justified, even if the Company were oblivious to any benefits exclusion in its modeling—i.e., simply via Staff's confirmation that PacifiCorp is making "substantially more profit" than current modeling reflects.

Further, the problem of benefits exclusion, and the lack of sufficient Company modeling adjustments to rectify the problem, extends to EIM inter-regional benefits. As Staff explains, "the Company has *chronically* under-forecast its inter-regional benefits," and PacifiCorp now "acknowledges its past forecasts for inter-regional benefits have been 'understated.'"[75/] Yet, the Company's argument that such historic under-forecasting "'informed the company's decision to significantly increase its forecast of EIM benefits,'" when subjected to actual scrutiny, "does not bear out."[76/]

74/ Staff's Response Brief at 15 (emphasis added).
75/ Staff's Response Brief at 15-16 (quoting PacifiCorp's Opening Brief at 29).
76/ Staff's Response Brief at 16 (quoting PacifiCorp's Opening Brief at 29).

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Specifically, PacifiCorp attempts to continue a practice of limiting customer benefits by arguing "that there is 'a point of saturation relative to the additional benefits that the company can achieve due to resource limitations.'"[77/] Nevertheless, the Company provides zero evidence to support this theory. Rather, Staff points out that "… the Company has not seen a decrease in EIM benefits … and has not commissioned any studies or other types of analysis to quantify its claim."[78/] Indeed, "Staff further notes that the Company made a similar claim in response to ICNU in UE 296, but … under-estimated EIM benefits by [redacted] in 2016."[79/] Needless to say, given the emphasis PacifiCorp places upon alleged flaws in ICNU positions taken in UE 296 (the 2016 TAM), the Company's continued practice of justifying the exclusion of massive EIM customer benefits from TAM forecasting is more than a little ironic and thoroughly unpersuasive—especially considering that PacifiCorp *always* bears the burden of persuasion in this proceeding.

Lastly, Staff explains that, regarding contractual liquidated damages associated with operations at the Cholla coal plant, "… PacifiCorp is amplifying the risks associated with liquidated damages by drawing down the coal pile during a period of low coal use."[80/] Of course, from the Company's point of view, increasing liquidated damages in this fashion poses no threat to shareholders, so long as the Commission allows all cost risk to be borne by ratepayers. But, ICNU fully agrees with Staff in concluding that "… PacifiCorp should *not* be permitted to shift the risk associated with these contracts from the Company to customers."[81/]

77/ Staff's Response Brief at 17 (quoting PAC/500, Brown/7).
78/ Staff's Response Brief at 17.
79/ Staff's Response Brief at 17 n. 101.
80/ Staff's Response Brief at 22.
81/ Staff's Response Brief at 22 (emphasis added).

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b. CUB also Shows that Ratepayer Benefits Are Being Excluded in TAM Calculations

Bluntly, CUB affirms "… that ratepayers have been systematically overcharged for QF costs."[82/] ICNU finds this straightforward presentation to be entirely appropriate, given the alarming evidence demonstrating that "… the Company has consistently overestimated QF contract costs by greater than [redacted] under the current methodology."[83/] Worse, ratepayers have been deprived of tens of millions in NPC benefits in this fashion, because "[t]he expected [QF] CODs that PAC attested to are [redacted] *off*."[84/]

Like ICNU, however, CUB presents the Commission with solutions, and not the mere identification of problems. CUB emphasizes that historical QF COD delay rates must be applied "in an unbiased way," going forward[85/]—i.e., not merely taking unsupported Company attestations as evidence that PacifiCorp has "justified" NPC proposals, despite actual evidence to the contrary. To this end, CUB maps out an alternative presented as the "least biased means to approach this issue,"[86/] thereby ensuring that customer benefits are no longer swallowed up by the Company's systematic overcharging of QF costs.

3. Multiple Parties Point to Other Questionable Advocacy Tactics Used by PacifiCorp

If the one-sided nature of recent TAM results did not support reasonable concerns "that the TAM is fundamentally broken,"[87/] then there would be no need to dwell upon less than salutary advocacy practices from the Company—such as mischaracterization, modeling inflexibility, and diversionary (if not straightly misrepresentational) tactics. But, to ward against

82/ CUB's Response Brief at 16.
83/ CUB's Response Brief at 5.
84/ CUB's Response Brief at 10 (emphasis added).
85/ CUB's Response Brief at 13.
86/ CUB's Response Brief at 14.
87/ CUB's Comments at 1.

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summary findings that PacifiCorp has once again "justified" all its NPC proposals, without further explanation in yet another preliminary order, ICNU reviews the many and varied instances of dubious Company advocacy tactics which other non-Company parties have pointed out on brief, similar to what ICNU has also noted.

That said, ICNU hopes that the statements made by other parties are sufficiently self-explanatory, such that little added commentary will be necessary to demonstrate that the Company cannot be reasonably held to have met both the initial burden of production and the continual burden of persuasion via such practices. To this end, the following are noted:

- "PacifiCorp mischaracterizes Staff's testimony."[88/]
- "PacifiCorp also *falsely claims* that Staff's proposal did not consider 'non-economic operational issues.'"[89/]
- "PacifiCorp attempts to redirect attention away from this fact …."[90/]
- Similar to ICNU's observation that Mr. Wilding continually attempted to refute Mr. Mullins' analysis by the Company's inflexible modeling reliance on only <7 Day Transactions within the DA/RT adjustment,[91/] Sierra Club notes: "In both Mr. Ralston's Reply and Surrebuttal testimony, he attempted to refute Dr. Vitolo's analysis *by simply re-introducing* contract damages into the equation."[92/]
- "… [T]he 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."[93/]

88/ Staff's Response Brief at 7.
89/ Staff's Response Brief at 26 (quoting PacifiCorp's Opening Brief at 36) (emphasis added).
90/ Staff's Response Brief at 28.
91/ E.g., Response Brief of ICNU at 30, 37.
92/ Sierra Club's Response Brief at 5-6 (emphasis added).
93/ CUB's Response Brief at 9.

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- "CUB asked about this discrepancy at hearing, and the Company's witness side-stepped the question."[94/]

- In what may be *the* understatement of this entire case, assuming the Commission's conception of what is "just" hews closer to that of ratepayer advocates than what PacifiCorp follows in practice: "It is troubling to CUB that the Company has a Vice President attest to inaccurate and incomplete information."[95/]

D. Staff Provides Compelling Arguments for Model Validation

Just as ICNU had explained on brief,[96/] Staff confirms that "… the Company's concerns that ICNU and Staff would require different model validation methodologies, thereby complicating the process, are unfounded."[97/] Moreover, ICNU agrees that PacifiCorp's proposal "to address model validation through a workshop process," rather than by actually conducting a model validation, would be inadequate for the same reason identified by Staff: "… informal workshops alone are insufficient to make concrete progress and address [] concerns."[98/] Indeed, the "validation-through-workshop" route was already attempted, without ultimate success—e.g., "Staff's request for a backcast analysis … went unfulfilled … in Commission-ordered workshops."[99/]

As a general matter, ICNU would concur that workshops between TAM proceedings can provide certain benefits, but workshop process alone is often insufficient to resolve important contested issues. For instance, regarding long-term coal contracts, Staff found "the workshop process following UE 307 generally useful," but noted that "discussion at those

94/ CUB's Response Brief at 10.
95/ CUB's Response Brief at 11-12.
96/ E.g., Response Brief of ICNU at 2, 41.
97/ Staff's Response Brief at 5.
98/ Staff's Response Brief at 6.
99/ Staff's Response Brief at 6.

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workshops was not sufficient to address" all coal contract concerns.[100/] Likewise, after noting how "complex" a modeling change could be to address variable Operations and Maintenance ("O&M") costs, Staff recommended "… that the Commission direct the Company to include variable O&M costs in its NPC forecast in the next TAM proceeding, and *not leave this issue up to the parties to resolve in a workshop*."[101/]

For these reasons, rather than punting the issue of model validation to a potentially interminable series of workshop discussions, ICNU supports Staff's recommendation that the Commission take positive action to "[o]rder PacifiCorp to produce model validation analysis agreed to by Staff and ICNU."[102/] Similar to ICNU's own recommendation,[103/] Staff has also reasonably proposed that the Commission "order PacifiCorp to use best efforts to finish the requested analysis prior to the filing of its 2019 TAM proceeding."[104/]

E. Calpine Solutions Has Persuasively Supported Several TAM Changes Affecting Direct Access Customers and Provided Further Demonstration of Flaws in Company Positions

ICNU has reserved discussion on the briefing of Calpine Solutions because, as accurately noted by Calpine Solutions, while "other intervenors primarily focus on net power costs for cost-of-service customers …, Calpine Solutions actively participates in the TAM to address the rates PacifiCorp may charge direct access customers."[105/] Accordingly, there is something of a natural separation between the NPC issues primarily affecting cost-of-service

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100/ Staff's Response Brief at 30-31.
101/ Staff's Response Brief at 32 (emphasis added).
102/ Staff's Response Brief at 6, 35.
103/ E.g., Response Brief of ICNU at 1, 45.
104/ Staff's Response Brief at 6, 35.
105/ Calpine Solutions' Response Brief at 1.

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customers, and the transition adjustment issues central to direct access (or prospective direct access) customers.

Notwithstanding, the direct access concerns raised by Calpine Solutions, though addressed "last" in this brief, should not be considered "least," by any means. ICNU expressly addressed Calpine Solutions' proposals in testimony,[106/] precisely because fair and viable direct access programs are of keen interest to the large customer base comprising ICNU's membership. Moreover, Calpine Solutions' logical, detailed, and thoroughly considered briefing provides further support for many of the points ICNU and other non-Company parties have made concerning the overarching infirmities in the Company's evidentiary case and advocacy methods.

1. Proposals to Account for Direct Access Customer Benefits Are Grounded in Sound Evidence and Analysis

In this proceeding, ICNU has recommended that the valuation of freed-up renewable energy certificates ("RECs") credited to direct access customers should be based on "… the current market value for RECs[, which] is the best indication available of future REC values."[107/] In other words, "… future value would be best established by using current market prices."[108/] Similarly, Calpine Solutions notes that "[t]he record contains ample evidence of today's value of freed-up RECs."[109/] Most notably:

> … [T]he record contains detailed evidence that PacifiCorp has sold RECs allocated to other states that have no need for RECs for compliance purposes, such as Utah and Wyoming. These RECs are essentially "freed up" for sale due to the fact that customers in those states pay for PacifiCorp's renewable resources but PacifiCorp has no RPS obligation for those customers, *which is analogous to the situation for*

106/ ICNU/200, Mullins/14:14-15:23.
107/ ICNU/200, Mullins/15:17-18
108/ ICNU/200, Mullins/15:19.
109/ Calpine Solutions' Response Brief at 10.

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> *Oregon direct access customers*. Instead of banking those RECs, PacifiCorp sells them in today's market at today's value and credits that value back to the Utah and Wyoming customers.[110]

Nonetheless, ICNU is alarmed that PacifiCorp's proposed valuation, to credit Oregon direct access customers for freed-up RECs, appears to bear no credible resemblance to the reasonable value of current REC market prices, based on the Company's own reporting data. As Calpine Solutions reveals, PacifiCorp's own recent REC pricing in Utah, at an average value of [redacted] per MWh, [redacted] for Oregon customers.[111] Suffice to say, the Company is attempting to exclude significant customer benefits through present TAM calculations, just as multiple non-Company parties have illustrated on various NPC issues.

Likewise, ICNU finds persuasive merit in Calpine Solutions' alternative proposal to develop a mechanism allowing PacifiCorp "to directly transfer the REC to the ESS or the customer."[112] As Calpine Solutions explains, this approach: 1) would allow "… direct access customers to get their fair share of the value from RPS-compliant resources"; 2) "… avoids any controversy over REC valuations"; and 3) as another concrete means to fix a "fundamentally broken" TAM process, "[t]he parties and the Commission would have no need to debate REC valuation every year."[113]

This proposal, and the supporting rationale from Calpine Solutions, align with ICNU's own position, as expressed in testimony. Specifically, Mr. Mullins has explained:

> … [T]he most straightforward path around this controversy is to simply transfer the Freed-up RECs to the departing customer, either through a direct transfer or by

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110/ Calpine Solutions' Response Brief at 10 (internal citation omitted) (emphasis added).
111/ Calpine Solutions' Response Brief at 10.
112/ Calpine Solutions' Response Brief at 13.
113/ Calpine Solutions' Response Brief at 13.

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allowing the utility to retire RECs on behalf of the departing customer's energy service supplier. This sort of approach avoids any question as to valuation, and …. I have not seen any credible evidence that the complexity would impose an undue burden on the utilities or parties.[114/]

Thus, ICNU continues to "… recommend that the Commission begin to develop rules that will allow for such a REC transfer."[115/]

2. Company Shortcomings in Carrying the Burden of Proof Are also Highlighted by Calpine Solutions

Many of the material flaws in the Company's presentation of evidence and advocacy in this proceeding, as explored in some detail already through the briefing of ICNU and other non-Company parties in an NPC context, receive further confirmation from Calpine Solutions, in the context of direct access issues. Since Calpine Solutions articulated these issues quite well, ICNU need only offer the following sampling, to further confirm the rational impossibility of finding that the Company has summarily "justified" all its proposals in this case, despite the significant flaws identified:

- In a clear analog to the Company's continued exclusion of customer benefits in the DA/RT adjustment, Calpine Solutions explains: "The transition adjustment calculation includes an assumed value of the freed-up energy produced from PacifiCorp's RPS portfolio, but in past years it has overlooked that the resources also generate valuable RECs that are ignored in the calculation made through GRID modeling."[116/]

114/ ICNU/200, Mullins/15:5-11.

115/ ICNU/200, Mullins/15:11-12.

116/ Calpine Solutions' Response Brief at 7. While the Company "agrees for the first time this year that a REC credit is warranted," PacifiCorp's response is still inadequate to properly and fully reflect customer benefits, much as Staff explained in an EIM inter-regional benefits context, in that the Company's "… proposed REC credit *undervalues* the stranded benefit that should be returned to the direct access customers." Id. (emphasis added).

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- Under "the current regime" and current Company proposal providing insufficient "… credit for the value of freed-up RECs …. [D]irect access customers must pay their ESS for the RECs necessary to meet the RPS obligation tied to those customers' load, effectively resulting in a double payment for RPS compliance as a condition of participating in direct access."[117/]

- Similar to points made by other non-Company parties, to the effect that PacifiCorp improperly relies on prior decisions to support the status quo in *this* proceeding, despite the preponderance of newly presented evidence, "Calpine Solutions acknowledges that PacifiCorp's argument has some basis in the Commission's order in last year's TAM, but *the record in this case demonstrates* that the RECs do in fact have value prior to 2028."[118/]

- Like the multiple instances in which other non-Company parties demonstrated the Company's failure to support positions with actual evidence, or to rely on "anticipated, normal results, Calpine Solutions explains: "Normal stranded plant revenue requirements therefore have a downward sloping shape …. PacifiCorp has *never provided any reason* why its existing investments and obligations are different from normal stranded plant revenue requirements."[119/]

- Also on the issue of "anticipated, normal" results: "In contrast to PacifiCorp's proposal, Calpine Solutions has again demonstrated that the effect of normal growth in accumulated depreciation … is a significant decline in revenue requirement in the consumer opt-out charge for years six through 10."[120/]

- Reminiscent of 1) the repeated identifications by other non-Company parties of PacifiCorp inconsistencies between current and former TAM proceedings—and, especially, in relation to the 2016 TAM, which the Company takes such umbrage over, when casting fault at ICNU; and 2) unfounded Company assertions, as discussed extensively by CUB, in the QF attestation methodology context, Calpine

117/ Calpine Solutions' Response Brief at 8.
118/ Calpine Solutions' Response Brief at 11 (emphasis added).
119/ Calpine Solutions' Response Brief at 17 (emphasis added).
120/ Calpine Solutions' Response Brief at 18.

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Solutions notes that, "[i]n past years, the Commission has relied upon PacifiCorp's assertion that incremental generation is not added to the consumer opt-out charge after year five, but PacifiCorp now contradicts its past assertion – undercutting the basis for past years' orders on this issue."[121/]

- Once more, on the Company's failure to provide credible evidence: "Nor is there any basis to *arbitrarily* hold costs constant in 'real' terms with a 2.5 percent increase in costs, absent some basis to assume the *existing* pool of investments will increase in cost."[122/]

- Just as ICNU noted that the Commission positively directed parties to work toward DA/RT adjustment improvement, despite affirming the DA/RT adjustment for a second year in the 2017 TAM, Calpine Solutions points out that, "[a]lthough the Commission ruled in PacifiCorp's favor on this issue … last year's TAM order also directed … a check on the reasonableness of its forecasts."[123/]

- Again, on Company deficiencies in carrying the burden of persuasion, in addition to less than salutary advocacy tactics being employed by PacifiCorp on brief, "… the calculations and suggestions in PacifiCorp's brief are both incomplete and procedurally improper …. PacifiCorp simply reproduced the material provided in its voluntarily stricken testimony into its brief."[124/]

Calpine Solutions closes its briefing with a few citations to precedent and authority that are so crucially relevant to fixing and improving the TAM process, which has seemingly devolved into a summary approval process for all Company proposals, that ICNU implores the Commission to carefully consider application of these principles in the entire TAM context. For example, Calpine Solutions notes that "… the Commission has an ongoing

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121/ Calpine Solutions' Response Brief at 19 (citing Docket No. UE 296, Order No. 15-394 at 12).
122/ Calpine Solutions' Response Brief at 20 (first emphasis added).
123/ Calpine Solutions' Response Brief at 20 (quoting Docket No. UE 307, Order No. 16-482 at 23).
124/ Calpine Solutions' Response Brief at 25.

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obligation to evaluate rates *anew* based upon the record developed in each rate case."[125/] For this reason, ICNU fully agrees with the conclusion that the OPUC "can address the evidence and arguments presented to ensure that the rates that go into effect … are fair, just, and reasonable to customers," even assuming that "conditions remain the same" between TAM cases,[126/] or that the Commission would need to revise a determination based on the preponderance of new evidence.

III. CONCLUSION

For the reasons stated in briefing, in addition to further testimonial evidence and arguments presented by Mr. Mullins in this proceeding, ICNU continues to request that the Commission adopt ICNU's briefing recommendations, and approve: 1) a $6.3 million Oregon-allocated reduction to the DA/RT adjustment, based on a determination that the adjustment should be recalculated to focus upon EIM operational data and the inclusion of >7 Day Transactions; and 2) the performance of a backcast or similar modeling process to validate GRID accuracy, including all exogenous adjustments, to be conducted in conjunction with interested parties prior to the 2019 TAM. Additionally, ICNU requests that the Commission consider making substantive TAM modifications on both NPC and direct access issues, as supported by the many non-Company party recommendations discussed in this brief.

Dated this 5th day of October, 2017.

125/ Calpine Solutions' Response Brief at 27 (citing American Can Co. v. Davis, 28 Or App 207, 224 (1977)) (emphasis added).

126/ Calpine Solutions' Response Brief at 27 (citing Or. Atty. Gen. Opin. No. 6454, 1992 WL 526799 at *9 (June 8, 1992)).

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Respectfully submitted,

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