BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PACIFICORP D/B/A PACIFIC POWER & LIGHT COMPANY, Respondent.	)	DOCKET NOS. UE-140762 and UE-140617 *(consolidated)* MOTION TO STRIKE CERTAIN TESTIMONY FILED BY PACIFICORP ON BEHALF OF BOISE WHITE PAPER, L.L.C.
In the Matter of the Petition of PACIFIC POWER & LIGHT COMPANY, For an Order Approving Deferral of Costs Related to Colstrip Outage	)	DOCKET NO. UE-131384 *(consolidated)*
In the Matter of the Petition of PACIFIC POWER & LIGHT COMPANY, For an Order Approving Deferral of Costs Related to Declining Hydro Generation	)	DOCKET NO. UE-140094 *(consolidated)*

1 Pursuant to WAC 480-07-375(1)(d), Boise White Paper, L.L.C. ("Boise") respectfully moves to strike certain rebuttal testimony filed by Pacific Power & Light Company ("PacifiCorp" or the "Company") pertaining to coal expense revisions in the Company's net power costs ("NPC"). In short, PacifiCorp has intentionally prejudiced other parties by withholding coal expense revisions until the filing of rebuttal testimony, thereby, preventing

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other parties a reasonable opportunity to fairly analyze and respond to known, significant NPC adjustments.

I. INTRODUCTION

2 Specifically, for reasons stated herein Boise moves the Washington Utilities and Transportation Commission ("WUTC" or the "Commission") to strike all portions of the Confidential Rebuttal Testimony of Cindy A. Crane reflecting updated fuel prices and volumes associated with the coal supplied by the Black Butte mine ("Black Butte") and the Bridger Coal Company ("BCC") to fuel the Jim Bridger coal-fired generating plant ("Bridger"). Revised prices and volumes associated with Black Butte and BCC have been known to the Company for several months, as evinced by the testimony of Ms. Crane. The Company's decision to withhold such information until a month prior to the hearing date, during the final round of scheduled testimony, appears to demonstrate an intent to disadvantage other parties in their ability to respond.

II. BACKGROUND

3 PacifiCorp filed direct testimony in this general rate case ("GRC") on May 1, 2014. While Ms. Crane did not submit testimony in this initial filing, Company testimony on coal expense was included in the Direct Testimony of Gregory N. Duvall.[1/] As of November 14, 2014, Ms. Crane states that she will be the Company's witness on coal expense, and has adopted relevant portions of Mr. Duvall's testimony.[2/] Ms. Crane has worked for PacifiCorp for 24 years, and currently holds the position of President of Rocky Mountain Power.[3/] For the past five

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1/ Exh. No.___(CAC-1CT) at 1:6-10; Exh. No. __ (GND-1CT) at 2:19-23 and 18:1-21:16.
2/ Exh. No.___(CAC-1CT) at 1:9-10.
3/ Id. at 1:13-2:2.

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years, Ms. Crane has been responsible for BCC operations and overall coal supply and fuel management for all of PacifiCorp's coal fleet.[4/]

4 According to Ms. Crane, pro forma coal expense in PacifiCorp's rebuttal NPC has increased by about $25 million on a west control area basis.[5/] Ms. Crane testifies that Black Butte price and volume increases are the result of a June 2014 request for proposals ("RFP").[6/] Ms. Crane testifies that BCC price increases and reduced volumes reflect an updated mine plan prepared one month later, in July 2014.[7/] In direct testimony, Mr. Duvall—who included a lengthy discussion about why coal cost amounts included in the initial filing were reasonable—neither discussed nor reserved the right to address on rebuttal any cost updates associated with either the Black Butte RFP or the new BCC mine plan.

5 Although price increases attributable to Black Butte and BCC resulted from events occurring in the two months following PacifiCorp's GRC filing, the Company did not file revised direct testimony reflecting these NPC revisions. Rather, PacifiCorp revised these coal expenses only in Ms. Crane's November 2014 rebuttal testimony, at the same time increased coal supply prices for the Colstrip coal-fired generating plant ("Colstrip") were also revised. Unlike Black Butte and BCC increases, however, which resulted from events occurring 4-5 months prior to rebuttal testimony, Colstrip increases were based on a mine operating plan updated only one month before, in October 2014.[8/]

4/ Id.
5/ Id. at 2:13-14.
6/ Id. at 4:11-5:16.
7/ Id. at 5:17-20.
8/ Id. at 11:6-13.
9/ WUTC v. Harbor Water Co., Inc., Docket No. U-87-1054-T, 3rd Suppl. Order, 1988 Wash. UTC LEXIS 68 at *36 (May 7, 1988).

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III. COMMISSION STANDARDS

6 Proposed rebuttal testimony may be "properly excluded as an untimely attempt to revise the company's figures."[9/] The Commission has affirmed the observation "that, at some point, the company's positions must be made clear in order for the other parties to respond to those positions. *That point is prior to rebuttal.* The parties in a rate case should not have to constantly respond to a moving target."[10/]

7 Likewise, it is "inappropriate to provide the necessary support … upon which the Commission ordinarily evaluates major transfers of property in rebuttal testimony because the other parties … would not have had an opportunity to address that information in their responsive testimony."[11/] Much more, it is inappropriate for a company to provide the necessary support upon which the Commission ordinarily relies upon in a GRC only in rebuttal, thereby, depriving other parties of a fair opportunity to address such information in responsive testimony. Instead, a company that would "provide further support for [its] prefiled direct testimony … must do so sufficiently in advance of the deadline for filing responsive testimony to afford all other parties … a reasonable opportunity to address any supplemental filings or testimony in discovery practice and in responsive testimony."[12/]

8 The Commission allows new evidence to be presented in rebuttal testimony only in very limited circumstances: "Presentation of new evidence on rebuttal should be allowed where extraordinary circumstances lead to a need …."[13/] Conversely, the Commission "could

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10/ Id. at *37 (emphasis added); accord WUTC v. PSE, Docket Nos. UE-090704 and UG-090705 (*consolidated*), Order 08 at ¶ 10 (Oct. 20, 2009) ("There comes a point in every proceeding when the evidence upon which a party wishes to rely must be fixed and certain").

11/ Re Verizon Commc'ns Inc. and Frontier Commc'ns Corp., Docket No. UT-090842, Order 02 at ¶ 18 (July 28, 2009).

12/ Id. at ¶ 19.

13/ Docket No. U-87-1054-T, 3rd Suppl. Order, 1988 Wash. UTC LEXIS 68 at *37.

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easily" decide to grant a motion to strike "if we perceive an intentional effort by a party to prejudice others by raising for the first time" matters that are the subject of a complaint.[14/]

IV. DISCUSSION

9 Based on Commission precedent, the Company's rebuttal testimony regarding Black Butte and BCC coal expense increases should be struck from Ms. Crane's testimony. No extraordinary circumstances justify a $25 million coal expense adjustment newly presented in rebuttal testimony; rather, the fact that Ms. Crane has testified that the Company knew of these NPC revisions for several months demonstrates a failure to comply with Commission precedent on updates during a rate case.

10 The imputation of intent to the Company is well-supported by the facts in this proceeding. First, the Company had no difficulty in providing Colstrip price increases on rebuttal, notwithstanding that such revisions were attributable to a mine plan update finalized only one month prior. Yet, Ms. Crane offers no explanation as to why the Company withheld Black Butte and BCC price increases for several months. These long delays in updated coal expense, which were manifestly unnecessary given the very short turn around required for Colstrip updates, can only be explained rationally as an intentional withholding of information. Second, Ms. Crane is a pillar of the entire PacifiCorp hierarchy, having served the Company for well over twenty years and now entrusted with the office of President for Rocky Mountain Power. Surely, PacifiCorp's legal counsel along with Ms. Crane should appreciate the prejudice to parties to spring such a large "update" on parties at the last minute.

14/ WUTC v. PSE, Docket Nos. UE-072300 and UG-072301 (*consolidated*), Order 13 at ¶ 24 (Jan. 15, 2009).

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11 The Commission has stricken portions of rebuttal testimony in similar circumstances. For example, when parties have knowledge for several months about an issue in a case—yet choose not to establish certain facts in opening testimony, thereby, forcing another party to prepare and base its case on the original filing—the Commission has held that, "to avoid prejudice," such parties may be "precluded from relying on these alleged" new facts "in their rebuttal testimony or at the hearing of this matter."[15/] This is precisely the scenario now, regarding Black Butte and BCC price increases. PacifiCorp has known of these increases for at least several months, but has chosen not to revise its opening testimony accordingly. Consequently, parties have prepared their case without such information and would be prejudiced by the inclusion of such information so late in the proceeding.

12 In contrast to PacifiCorp's actions, the Commission has approved and commended Puget Sound Energy, Inc. ("PSE") for filing supplemental testimony that "updates various adjustments based on more recent data than … available … when [PSE] prepared its original filing."[16/] According to the Commission, such a course "results in a more orderly process and promotes fairness."[17/] The Commission explained: "PSE timed its submission of supplemental testimony so that the other parties will have an opportunity to address the updated information in their *response testimonies*, *which would not be possible if PSE first provided this information in rebuttal testimony*."[18/] Obviously, PacifiCorp has done the opposite, timing its submission of Black Butte and BCC price increase testimony in rebuttal testimony, despite

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15/ Re Douglas and Jessica Rupp, *et al.* v. Verizon Nw. Inc.,UT-050778, Order 05 at ¶¶ 15-16 (Mar. 29, 2006).

16/ Docket Nos. UE-072300 and UG-072301 (*consolidated*), Order 08 at ¶ 9 (May 5, 2008).

17/ Id.

18/ Id. (emphasis added); accord WUTC v. PSE, Docket No. UE-070565, Order 05 at ¶ 4 (June 4, 2007).

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knowing of such information for months, so that other parties now have no opportunity to address the updated information in testimony.

13 Finally, Boise is of the understanding that the Company has never before updated entire budgets, including associated production volumes, for affiliated coal mining operations on rebuttal, and it should not be allowed to do so now. Ms. Crane's update in this proceeding is based on an entirely different set of costs than what the Company included in its initial filing (i.e., updated labor expenses, operations and maintenance, plant depreciation, etc.), and it is beyond the scope of the routine modeling updates that have typically been included on rebuttal in the past.

V. CONCLUSION

14 The Commission has shown a consistent willingness to strike information newly submitted in rebuttal testimony, when extraordinary circumstances do not justify such a late submission and when such timing prejudices other parties by affording no opportunity to prepare responsive testimony. PacifiCorp has filed coal expense updates on rebuttal for Black Butte and BCC which have long been known to the Company and, based on the foregoing Commission precedent, Boise respectfully requests the Commission to strike such portions of Ms. Crane's testimony to avoid prejudicing Boise Cascade and other parties.

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Dated in Portland, Oregon, this 19th day of November, 2014.

Respectfully submitted,

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