

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PACIFIC POWER & LIGHT COMPANY,

Respondent.

In the Matter of the Petition of

PACIFIC POWER & LIGHT
COMPANY,

For an Order Approving Deferral of
Costs Related to Colstrip Outage.

In the Matter of the Petition of

PACIFIC POWER & LIGHT
COMPANY,

For an Order Approving Deferral of
Costs Related to Declining Hydro
Generation.

DOCKETS UE-140762 and UE-140617
(consolidated)

**PACIFIC POWER'S RESPONSE IN
OPPOSITION TO MOTION TO
STRIKE**

DOCKET UE-131384
(consolidated)

DOCKET UE-140094
(consolidated)

1 In accordance with WAC 480-07-375(4), Pacific Power & Light Company (Pacific Power or Company), a division of PacifiCorp, respectfully submits this Response in Opposition to the Motion to Strike Certain Testimony (Motion to Strike) filed by Boise White Paper, L.L.C. (Boise) in these dockets. Pacific Power requests that the Washington Utilities and Transportation Commission (Commission) deny Boise's Motion to Strike.

I. INTRODUCTION

2 In its Motion to Strike, Boise moves to strike the rebuttal testimony of Ms. Cindy A. Crane supporting the Company's net power costs (NPC) rebuttal update for coal supply costs to the Jim Bridger plant (Bridger). Boise alleges that the Company acted with intent to prejudice parties by including an update to its Bridger coal supply costs in the NPC rebuttal update. Boise does not object to any other aspect of the Company's NPC rebuttal update, including the coal cost update for the Colstrip plant.

3 Boise's motion is unsupported by the law and the facts and does not reflect an appropriate balancing of the interests involved. First, Pacific Power's proposed NPC rebuttal update, including updated coal costs, is procedurally proper. Boise fails to acknowledge that the Commission has encouraged updates to NPC to increase the accuracy of the rate forecast. The Company has included coal costs in its NPC updates in its rebuttal testimony, without objection from any party, in its last two litigated rate cases.

4 Second, the Company did not act with intent to prejudice the parties in proposing a rebuttal update to its coal costs. As described in the Declaration of Cindy A. Crane, which accompanies this filing, the Company's updated prices and volumes for its Bridger coal costs in 2015 were finalized just before filing its rebuttal testimony.¹ The Company's update gives the Commission the most accurate information available for setting Pacific Power's NPC in this case. Anticipating the parties' interest in responding to the NPC update, the Company proposed that parties be allowed an additional opportunity to testify in response to it.² The Company's approach appropriately balances the interests involved.

¹ See Declaration of Cindy A. Crane in Support of Pacific Power's Response in Opposition to Motion to Strike.

² Duvall, Exh. No. GND-4T at 12:8-10.

II. DISCUSSION

A. Pacific Power's NPC Update is Procedurally Proper.

5 The Commission has stated that “power costs determined in general rate proceedings . . . should be set as closely as possible to costs that are reasonably expected to be actually incurred during short and intermediate periods following the conclusion of such proceedings.”³ To this end, the Commission “generally allows power costs to be updated during general rate cases to reflect new forecasted gas and electric market prices, new firm contracts, or budget updates from third party owners of resources such as Mid-C projects.”⁴

6 As stated in the rebuttal testimony of Mr. Gregory N. Duvall, the Company has updated NPC, including coal prices and volumes, in its rebuttal testimony in its most recent Washington rate cases.⁵ The Commission accepted these updates in the Company's last two litigated cases in 2010 and 2013, without objection from Boise or Boise's trade association, the Industrial Customers of Northwest Utilities (ICNU) (before the Company's 2013 rate case, Boise participated in all of Company's rate cases as a member of ICNU).⁶ The NPC rebuttal update in Pacific Power's 2010 rate case included updates to third-party coal contracts and fuel volumes, and resulted in an increase to NPC.⁷ A similar update in the Company's 2013 rate case resulted in a west control area NPC decrease of approximately \$2 million.⁸

³ *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc.*, Docket UE-060266, Order 08 at ¶102 (January 5, 2007).

⁴ *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc.*, Docket UE-111048, Order 08 at ¶220 (May 7, 2012) (where gas prices were falling during the pendency of the rate case, the Commission also required a further update of power costs through a bench request; note also that Boise participated in Docket UE-111048 as member of the Industrial Customers of Northwest Utilities, and the Commission reports that “the parties support [the] practice” of updating power costs).

⁵ Duvall, Exh. No. GND-4T at 10:7-12.

⁶ *Id.* at 10:12-13.

⁷ *Id.* at 10:7-9.

⁸ *Id.* at 10:10-12.

7 Boise's Motion to Strike fails to cite this directly applicable precedent and instead selectively quotes from cases that have little to do with this one.⁹ For example, Boise relies on a case in which the Commission denied Staff and Puget Sound Energy's motion to strike a proposal from ICNU presented for the first time in its post-hearing brief.¹⁰ Boise also cites a case denying leave to add 14 new parties two weeks before the hearing.¹¹ The only case cited in Boise's motion that even addresses new rebuttal evidence did not involve an issue such as NPC or cost of capital where the Commission's practice is to consider updated forecasts or models on rebuttal.¹²

B. The Company Acted Reasonably in Updating its Coal Costs in Rebuttal, and Allowing Parties to Respond to the Update Balances the Interests Involved.

8 The Commission has evaluated proposed updates to NPC by weighing the Commission's interest in having a full record with the best available evidence against the parties' interest in having an adequate opportunity for discovery and testimony development.¹³ In each case, the Commission strikes a balance, weighing the importance of including updated information against the potential prejudice to parties.

9 Contrary to Boise's assertions, Pacific Power acted in good faith in updating its Bridger coal costs in its rebuttal testimony. Boise alleges that, because Pacific Power issued a request for

⁹ See, e.g., *Re Verizon Commun. Inc. and Frontier Commun. Corp.*, Docket UT-090842, Order 02 at ¶18-19 (July 28, 2009) (where joint applicants had filed minimal evidence in direct testimony, Commission discouraged joint applicants from making their case-in-chief in rebuttal testimony).

¹⁰ *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc.*, Docket UE-072300, Order 13 at ¶24 (Jan. 15, 2009) (addressing ICNU proposal first raised in briefs and cautioning that the Commission may strike a proposal provided for the first time in briefs if the Commission "perceive[s] an intentional effort by a party to prejudice others by raising [a proposal] for the first time on brief.>").

¹¹ *Re Rupp, et al. v. Verizon Nw. Inc.*, UT-050778, Order 05 at ¶¶15-16 (Mar. 29, 2006) (where parties sought to add 14 new petitioners to proceeding two weeks before evidentiary hearing, Commission denied motion to add new petitioners and precluded parties from relying on evidence regarding excluded petitioners in parties' rebuttal testimony).

¹² See *Wash. Utils. & Transp. Comm'n v. Harbor Water Co.*, Docket U-87-1054-T, Order at 14 (May 13, 1988) (excluding evidence provided in rebuttal regarding increased rate case expenses where Company had not demonstrated need for late update and did not demonstrate hardship if evidence excluded).

¹³ *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc.*, Docket UE-072300, Order 08 at ¶10 (May 5, 2008).

proposals (RFP) in June 2014 for third-party Bridger coal supply, it could have updated its coal costs at that time through supplemental testimony. In fact, as explained in the declaration of Ms. Crane, the results of the Bridger coal supply RFP that produced a new coal supply agreement from Black Butte mine, and the related Union Pacific transportation agreement, were finalized in early November 2014.¹⁴ While the new mine plan for the Bridger mine was completed in July 2014, that plan reflected new third-party supply volumes to be sourced through the RFP.¹⁵ The Company needed the RFP results to present a complete Bridger coal cost update in this case. In addition, the RFP results provide current market data corroborating the reasonableness of the increase in costs from the Bridger mine.¹⁶

10 Boise's Motion to Strike is limited to the Bridger coal cost update, apparently conceding that the Colstrip coal cost update is reasonable because it resulted from a mine plan update in October 2014.¹⁷ Because the Bridger coal cost update was not final until after the Colstrip coal cost update, under the logic of Boise's Motion to Strike, the Commission should permit the Bridger update.

11 In cases like this, the Commission balances its paramount interest in having a full and complete record with the interests of the parties in having a chance to complete discovery and respond to evidence in the record.¹⁸ Despite Boise's claims of prejudice, Boise has already

¹⁴ Declaration of Cindy A. Crane in Support of Pacific Power's Response in Opposition to Motion to Strike at ¶¶5-6.

¹⁵ *Id.* at ¶8.

¹⁶ Crane, Exh. No. CAC-1CT at 10:8-19.

¹⁷ Boise Motion to Strike at 3, 5.

¹⁸ *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc.*, Docket UE-072300, Order 08 at ¶10 (May 5, 2008) (when granting a motion to supplement the record over objections from other parties, the Commission has observed that its "paramount interest is in having a full record with the best available evidence upon which to base its decisions"); *see also Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Docket UE-080416, Order 04 at ¶¶7-8 (Aug. 8, 2008) (applying the same balancing test); *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc.*, Docket UE-111048, Order 07 at ¶5 (Jan. 27, 2012) (granting motion to supplement record to include recently identified customer "given the importance of a full and complete record"); *Re Verizon Commun. Inc. and Frontier Commun. Corp.*, Docket UT-090842, Order 03 at ¶4 (Aug. 18, 2009) ("The supplemental testimony and exhibits filed with Verizon and Frontier's motion promote the Commission's interest in having a full record on which to base its decision.").

initiated discovery on the updates to NPC, propounding 24 data requests on issues raised in the Company's rebuttal testimony. The Company is responding to these data requests concurrently with the filing of this response. Further, the Company does not object to the parties filing testimony responding to the Company's NPC update or providing oral testimony at the hearing, as long as the Company has a reasonable ability to respond. Boise has not demonstrated that it will experience prejudice through inclusion of updated Bridger coal costs in the NPC update.

12 The Company acknowledges that the increase to NPC associated with the updated coal costs is substantial. Yet, the size of the increase is commensurate with the potential impact to the Company and highlights why excluding updated coal cost evidence and requiring the Commission to make a decision based on stale information will create a significant hardship for the Company.¹⁹ Pacific Power under-recovered its NPC in 2013 by \$33.2 million on a west control area basis; since 2007, it has under recovered its NPC by an average of nine percent annually.²⁰ Excluding evidence regarding increased coal costs could prolong and increase the Company's NPC under-recovery. It will also send customers an inaccurate price signal regarding the actual cost to serve customers.

III. CONCLUSION

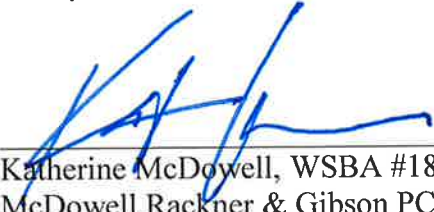
13 Boise's Motion to Strike relies on cases that are inapplicable and factual assertions that are untrue. Pacific Power's proposed update to Bridger coal costs is procedurally proper and reasonable under the circumstances of this case. Pacific Power respectfully requests that the Commission deny Boise's Motion to Strike and allow the Company to provide evidence regarding updated coal prices and volumes for the Bridger plant.

¹⁹ *Wash. Utils. & Transp. Comm'n v. Harbor Water Co.*, Docket U-87-1054-T Order at 14 (May 13, 1988) (“Presentation of new evidence on rebuttal should be allowed where extraordinary circumstances lead to a need, and where a refusal will result in severe hardship for the moving party.”).

²⁰ Duvall, Exh. No. GND-4T at 10:1-4; 5:2-3.

Respectfully submitted this 25th day of November, 2014.

By:



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WASHINGTON UTILITIES AND
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PACIFIC POWER & LIGHT COMPANY,

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DOCKETS UE-140762 and UE-140617
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**DECLARATION OF CINDY A.
CRANE IN SUPPORT OF PACIFIC
POWER'S RESPONSE IN
OPPOSITION TO MOTION TO
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In the Matter of the Petition of

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DOCKET UE-131384
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Costs Related to Declining Hydro
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DOCKET UE-140094
(consolidated)

I, Cindy A. Crane, declare and state as follows:

1 My full name is Cindy A. Crane. My present position is President and Chief Executive Officer, Rocky Mountain Power, a division of PacifiCorp. My prior position was Vice President, Interwest Mining Company and Fuel Resources for PacifiCorp Energy. I make this declaration in support of Pacific Power & Light Company's (Pacific Power or Company), a division of

PacifiCorp, Response in Opposition to the Motion to Strike Certain Testimony (Motion to Strike) filed by Boise White Paper, L.L.C. (Boise) in the above-referenced dockets.

2 The Jim Bridger plant (Bridger plant) is supplied by coal from third-party suppliers and from the Bridger Coal Company (BCC). PacifiCorp (through its wholly-owned subsidiary Pacific Minerals, Inc.) owns a two-thirds interest in BCC, and Idaho Power Company (through its wholly-owned subsidiary Idaho Energy Resources Co.) owns a one-third interest. The Company's main source of third-party coal supply to the Bridger plant is the Black Butte Coal Company (Black Butte).

3 The existing Black Butte coal supply agreement for the Bridger plant is scheduled to expire in the first quarter of 2015. PacifiCorp initiated a Request for Proposals (RFP) solicitation for replacement coal supply on June 9, 2014. The RFP required all proposals be received by July 11, 2014. Five coal suppliers responded to the RFP, and over the course of late July and early August 2014, PacifiCorp evaluated RFP responses and developed a short list.

4 In late August 2014, PacifiCorp entered into negotiations with Black Butte to develop mutually agreeable contract terms. The negotiation process lasted for several months and culminated in the development of a term sheet (Black Butte Term Sheet), which contains the essential terms regarding prices, volumes, and optionality.

5 The Black Butte Term Sheet was finalized on November 4, 2014, and fully executed on November 12, 2014. The prices, volumes, and optionality agreed to in the Black Butte Term Sheet are materially different from the terms proposed in Black Butte's initial proposal in response to the RFP solicitation. The Company is currently finalizing its coal supply contract with Black Butte consistent with the Black Butte Term Sheet.

6 PacifiCorp negotiated the terms for transportation of Black Butte Coal by Union Pacific
concurrently with negotiation of the Black Butte Term Sheet. The terms for transportation of
Black Butte coal were agreed upon in early November 2014.

7 The Company did not know the final prices and volumes for Black Butte coal until the
Term Sheet was finalized in November 2014. The Company did not know the final
transportation costs for Black Butte coal until late October 2014.

8 The BCC updated mine plan was prepared in July 2014. The mine plan called for
additional third-party supply volume, which the Company sourced through the RFP.

9 The Company's coal cost update to Bridger plant coal costs reflects the costs and
volumes in the Black Butte Term Sheet, the new Union Pacific transportation agreement, and the
July 2014 BCC mine plan. My rebuttal testimony in this case provides additional detail on each
of these items.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 25th day of November, 2014.


Cindy A. Crane