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February 14, 2025

**SENT VIA E-SERVICE**

Jeff Killip  
Executive Director and Secretary  
Washington Utilities and Transportation Commission  
621 Woodland Square Loop SE  
Lacey, WA 98503

**Re: *Wash. Utils. & Transp. Comm'n v. PacifiCorp d/b/a Pacific Power & Light Co.,*  
Docket UE-230172**

Dear Director Killip:

On March 19, 2024, the Washington Utilities and Transportation Commission (the Commission) entered Final Order 08/06 approving a settlement in PacifiCorp's (the Company) multiyear rate plan (MYRP). The Order required PacifiCorp to file an annual report of the Company's actual 2023 investments compared to what was used to set rates for the first year of the MYRP.

The Partial Multiparty Settlement Agreement (Settlement) contemplates how the provisional pro-forma capital review will be conducted:

The Parties agree that the annual provisional pro-forma capital reviews will be performed at the portfolio level [fn15], with the exception of Gateway South, Gateway West, and new wind resources.<sup>1</sup>

The language of the Settlement is simple: PacifiCorp's capital review will be conducted on a portfolio level, with three discrete exceptions, including new wind resources. Footnote 15 defines "portfolio level" review as "when determining whether refunds are warranted, comparing

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<sup>1</sup> Settlement Stipulation, ¶ 29 (filed Dec. 15, 2023).

the actual, overall [level] of used and useful plant placed in service to the overall level of plant included in rates on a provisional basis.” By its plain language, the exclusion of Gateway South, Gateway West, and new wind resources means exclusion from portfolio review for the purposes of calculating a refund.

On July 15, 2024, PacifiCorp filed its capital report in accordance with the Order, coming in under budget by \$484,165 on the Foote Creek II-IV Repower project, which the Company admits is a new wind resource.<sup>2</sup> Nevertheless, PacifiCorp states “there is no refund identified in this provisional review” in its capital review filing.<sup>3</sup>

### **Public Counsel's Recommendation**

The Commission should order PacifiCorp to issue a refund to customers equal to \$484,165 in the rate base for the Foote Creek II-IV Repower project.

PacifiCorp attempts to rewrite the Settlement Agreement, Despite the clear language, PacifiCorp reads the carveout to apply only to the *review* portion of the capital review process and concludes that *refunds* will be determined at the portfolio level in all cases.<sup>4</sup> Here, PacifiCorp is reading in a self-serving term that is entirely absent in the Settlement Agreement and that conflicts with its intent. PacifiCorp's treatment of “portfolio level” is too broad. Footnote 15 merely defines what the settling parties mean by portfolio-level capital review; it is not a substantive term altering the meaning of the exclusion. PacifiCorp, however, expands that definition to capture the entire capital review process, including for calculating refunds for projects explicitly excluded from portfolio-level review.

PacifiCorp's reading reduces the Settlement's carveout to a nullity. PacifiCorp justifies its expansive reading by proposing a counterfactual where it underspends in its entire portfolio.<sup>5</sup> According to PacifiCorp, projects reviewed at a project level would be double counted when calculating a refund. This is not the case. Under the plain terms of the Settlement Agreement, refunds for portfolio-level projects are calculated at a portfolio level. The remaining refunds are calculated at a project level. Were it otherwise, the carveout for discrete projects would be entirely meaningless.

PacifiCorp's interpretation is also inconsistent with Order 08/06. The Order clearly states that “Gateway South and other projects [including new wind projects] are not subject to portfolio level review[.]” This strikes a balance between the wishes of the Company and the concerns of the other parties, including Public Counsel, who were concerned portfolio-level review would

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<sup>2</sup> Multi-Year Rate Plan Annual Report, at 4 (filed Jul. 15, 2024); Attachment 1 (PacifiCorp Response to Staff Informal Data Request No. 17).

<sup>3</sup> Multi-Year Rate Plan Annual Report, at 6.

<sup>4</sup> Attachment 1 (PacifiCorp Response to Staff Informal Data Request No. 17).

<sup>5</sup> *Id.*

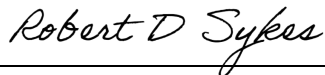
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strip the Commission of its ability to impose disallowances for discrete projects if there were significant variations between actual project costs and those authorized in the MYRP.

Customers are owed a refund for the Foote Creek wind project under plain terms of the Settlement Agreement and Order 08/06. The Commission should enter an order to that effect.

Should you have any issues or questions about this letter, please contact the undersigned or Stefan de Villiers at [Stefan.deVilliers@ATG.WA.GOV](mailto:Stefan.deVilliers@ATG.WA.GOV) or (206) 464-6215.

Sincerely,



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RDS;sdv

Enclosures

cc: ALJ  
Service List (via E-mail)