

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PACIFIC POWER & LIGHT COMPANY, a
division of PacifiCorp,

Respondent.

In the Matter of

PACIFIC POWER & LIGHT COMPANY

Petition for an Order Approving Deferral of the
Washington-Allocated Revenue Requirement
Associated with the Merwin Fish Collector.

In the Matter of

PACIFICORP d/b/a PACIFIC POWER & LIGHT
COMPANY

Petition for an Order Approving Deferral of costs
Related to Colstrip Outage.

In the Matter of

PACIFICORP d/b/a PACIFIC POWER & LIGHT
COMPANY

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

DOCKET UE-140762 and UE-140617
(consolidated)

DOCKET UE-131384

DOCKET UE-140094

REPLY BRIEF ON BEHALF OF COMMISSION STAFF

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I. INTRODUCTION

1 Staff's Reply Brief responds to the arguments of PacifiCorp d/b/a Pacific Power & Light Company ("PacifiCorp" or "Company") challenging Staff's rational and equitable cost of capital analysis, and Staff's continued support for the WCA's exclusion of Oregon and California QFs from Washington rates. Staff's brief also addresses insurance expenses and why removal of the Company's \$30.8 million insurance expense for 2012 from its six year rolling average reflects correct ratemaking principles and protects the ratepayers from one-time expense outliers.

II. COST OF CAPITAL

A. Return on Equity

1. **The interest rate environment indicates that the Company's return on equity should be reduced.**

2 PacifiCorp argues that its return on equity (ROE) should be raised because "[i]nterest rates are similar to the 2013 level when the Commission set [the Company's] ROE at 9.5 percent, . . . and the risk associated with future interest rates has increased."¹ Current interest rates, however, are not similar to 2013 rates. Even if they were, there is no basis for the Company's suggestion that similar interest rates create an "interest rate environment [that] supports a higher ROE."² Furthermore, the Company's theory that interest rate risk has increased should be given little weight. The specter of increased risk that the Company raises is no more substantial than the Company's prior prediction of interest rate increases that never materialized.

¹ Pacific Power's Opening Brief ("Company Brief") at 10:¶ 26.

² Company Brief at 10.

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Interest rates in 2014 were not merely dissimilar to 2013 rates; rates in 2014 were unmistakably different in that they experienced a distinct decline. In December 2013, when the Commission entered its decision in the 2013 general rate case (GRC), the average bond yield of single-A rated public utilities was 4.81 percent.³ The yields continued to decline steadily throughout 2014. The average yield as of November 2014 for single-A rated utilities was 4.09 percent.⁴

4

PacifiCorp has not demonstrated that investors will think the interest rate environment makes the Company a riskier investment. The Company argues that the conclusion of the Federal Reserve’s quantitative easing program has led investors to expect higher interest rates and that, therefore, there is now more risk that interest rates will increase.⁵ This is the same kind of speculative argument regarding interest rate risk that the Company made in the 2013 GRC.⁶ Despite the Company’s assertions in the prior GRC that interest rates would rise, rates actually declined. As Mr. Parcell points out, due to the fact that interest rates have remained low, “it cannot be maintained that low interest rates . . . are temporary and do not reflect investor expectations.”⁷ PacifiCorp should not receive a higher ROE in this case based merely on speculation that the cost of debt might increase before the completion of the Company’s next rate case.

³ See Strunk, Exh. No. KGS-39CX (Mergent Corporate Bond Yield Averages).

⁴ *Id.*

⁵ Company Brief at 10:¶ 28.

⁶ Docket UE-130043, PacifiCorp’s Opening Brief at 5-6, ¶ 13 (“The Federal Reserve’s prior policies have held interest rates artificially low and, in anticipation and response to the Federal Reserve’s June announcement, interest rates have increased dramatically” and “[a]s of the hearing, the single “A” utility bond yield was 4.87 percent, the highest level in over two years”); at 8:¶ 18 (“interest rates are increasing so dramatically—and are expected to continue to increase”).

⁷ Parcell, Exh. No. DCP-1T at 39:13-21.

2. The Company has high debt ratings and, therefore, low risk in comparison to the proxy groups as well as to the whole industry.

5 PacifiCorp argues that the Company's risk profile does not support a lower ROE, in part because the Company's risk profile is similar to those of the proxy group companies. Although it is true that one of Mr. Parcell's criteria for selecting companies for his proxy group was a Moody's or S&P rating of "A," PacifiCorp still has top ratings when compared with the proxy group.⁸ PacifiCorp has a higher S&P bond rating than any of the companies of Mr. Parcell's proxy group, and only one of the other proxy group companies has the same Moody's rating as PacifiCorp.⁹ Even in Mr. Strunk's proxy group all of the companies save two have a rating that is lower than PacifiCorp's.¹⁰ In addition, Mr. Parcell demonstrates that PacifiCorp's bond ratings are above the industry average.¹¹ Due to its high debt ratings, PacifiCorp carries relatively low risk, which translates into a lower required return.

3. PacifiCorp is not entitled to the same ROE as PSE.

6 The Company appears to argue that Mr. Parcell should recommend at least the same ROE for PacifiCorp in 2015 that he recommends for Puget Sound Energy, Inc. (PSE) as of early 2013.¹² This fails to take into account, however, the companies' respective credit ratings and the interest rate environment during the last two years. As Mr. Parcell explained,

PSE has lower bond ratings than PacifiCorp. And also PSE's return on equity was as of early 2013, whereas PacifiCorp's is in the . . . fourth quarter of 2014. It's a different time period, different proxy companies. And most of my recommendations are lower today than they were two years ago because the cost of

⁸ Parcell, Exh. No. DCP-8.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Parcell, Exh. No. DCP-1T at 16:25-17:12.

¹² Company Brief at 12-14:¶¶ 34-39.

equity has declined over the last two years, as indicated by the lower authorized returns by utility commissions.¹³

The Company latches on to Mr. Parcell's application of his Comparable Earnings (CE) analysis to the two companies to imply discriminatory treatment.¹⁴ The fact is, however, that Mr. Parcell's conclusions regarding the two companies are not that different. First of all, Mr. Parcell recommends a reduction in the ROE of both PacifiCorp and PSE. Moreover, his midpoints for the two companies are relatively close: 9.3 percent (PacifiCorp)¹⁵ and 9.5 percent (PSE)¹⁶ respectively. The differences in Mr. Parcell's recommendations reflect the differences in the interest rate environment and the companies' risk profiles. In keeping with the decline in interest rates during the last two years, Mr. Parcell's midpoint for PacifiCorp is lower than for PSE. The larger difference between Mr. Parcell's recommended equity returns for the two companies (9.0 for PacifiCorp and 9.5 for PSE) is consistent with the stronger debt ratings of PacifiCorp.¹⁷

4. Mr. Strunk's analysis inappropriately minimizes the results from the most widely accepted methodology, Discounted Cash Flow.

7 The Commission regularly relies on the Discounted Cash Flow (DCF) model.¹⁸

Although the Commission typically considers multiple methodologies and does not base its

¹³ Parcell, TR. at 294:4.

¹⁴ See Company Brief at 12-14:¶¶34-39.

¹⁵ Parcell, Exh. No. DCP-1T at 4:1-2.

¹⁶ Parcell, Exh. No. DCP-26CX at 4:3-4.

¹⁷ See Parcell, Exh. No. DCP-26CX at 33 (PSE security ratings).

¹⁸ See, e.g., *Utilities and Transp. Comm'n v. PacifiCorp*, Docket UE-050684, Order 04, Order Rejecting Tariffs as Filed; Rejecting Stipulation on Net Power Costs; Rejecting, in Part, and Accepting, in Part, Stipulation on Temperature Normalization Adjustment; Determining Cost of Capital, at 94:¶¶ 261-63 (April 17, 2006); *Utilities and Transp. Comm'n v. PacifiCorp*, Docket No. UE-100749, Order 06, Final Order Rejecting Tariff Sheets; Authorizing Increased Rates; and Requiring Compliance Filing, at 33-35:¶¶79-85 (March 25, 2011); *Utilities and Transp. Comm'n v. PacifiCorp*, Docket UE-130043, Order 05, Final Order Rejecting Tariff Sheets; Resolving Contested Issues; Authorizing and Requiring Compliance Filing, at 25, ¶ 64 (December 4, 2013).

decision on the evidence of only one model,¹⁹ the Commission consistently accords significant weight to the DCF model. The Commission has described DCF as “one of the oldest and widely accepted methods to estimate the cost of equity”²⁰ and, citing the Company’s cost of capital witness in the last general rate case, the “most widely accepted approach.”²¹

8 Notwithstanding the Commission’s reliance on the DCF methodology, PacifiCorp’s ROE request minimizes its DCF results. Citing the “current risks associated with interest rates and the volatility of capital markets,” the Company argues that the Commission should place greater reliance on all of its methodologies except traditional DCF.²² As discussed above, however, the risks cited by the Company are no greater now than at the time of the last general rate case. Accordingly, it is not appropriate to accord DCF results less weight. Mr. Strunk’s DCF analysis results in a cost of equity of 9.00 percent,²³ yet his recommended ROE is 10.0 percent, a recommendation that discounts his traditional DCF analysis entirely and inappropriately. It is worth noting that Mr. Parcell’s midpoint under his DCF analysis is exactly the same as Mr. Strunk’s DCF result.²⁴ Mr. Gorman, too, accords, concluding that “a DCF return for PacifiCorp of 8.95%, rounded to 9.00%, is a reasonable return in this case.”²⁵

¹⁹ Docket UE-100749, Order 06 at 37:¶ 91.

²⁰ Docket UE-100749, Order 06 at 23:¶ 46.

²¹ Docket UE-130043, Order 05, at 16:¶ 44.

²² Company Brief at 6:¶ 14.

²³ Strunk, Exh. No. KGS-18 (Summary of Cost of Equity Estimates).

²⁴ See Parcell, Exh. No. DCP-1T at 3:23.

²⁵ Gorman, MPG-1Tr at 34:2-3.

B. Capital Structure

9 The standard in setting a capital structure for the purpose of ratemaking is to balance safety and economy so that the return is sufficient for the Company to access capital on attractive terms while avoiding excessive rate increases to customers.²⁶ Awarding a return that is too low may jeopardize the Company's ability to issue bonds at reasonable rates; awarding a return that is too high saddles the customers with higher rates than necessary. PacifiCorp fails to show that its proposed capital structure achieves this balance.

1. The Company has not demonstrated that using its actual capital structure rather than the existing hypothetical capital structure balances safety and economy.

10 Since 2011, PacifiCorp has operated in Washington with a hypothetical capital structure and a 49.1 percent equity level.²⁷ Using a hypothetical capital structure is well established and has worked. The Company attempts to discredit Staff's recommendation to continue using a hypothetical structure by mischaracterizing a discovery response to the Company from Mr. Parcell.²⁸ The Company states that Mr. Parcell was "unable to identify a single other case where he recommended a hypothetical capital structure"²⁹ when, in actuality, he responded that he *had*, to the best of his recollection, but did not maintain a list of such instances and that the Company could conduct such a study with a compact disk containing all of his previous testimonies if PacifiCorp so desired. Apparently, the Company did not so desire because it never requested the testimonies.

²⁶ Docket No. UE-100749, Order 06 at 20:¶ 39.

²⁷ Docket. UE-100749, Order 06 at 22:¶ 43 ("In summary, we adopt a hypothetical capital structure for ratemaking purposes with 49.1 percent common equity, 0.3 percent preferred stock, and 50.60 percent long-term debt"); Docket UE-130043, Order 05, at 16:¶ 42 ("In summary, adjusting only to account for a slight reduction in PacifiCorp's preferred stock ratio, we again approve a hypothetical capital structure for ratemaking purposes with 49.1 percent common equity ratio").

²⁸ See Parcell, Exh. No. DCP-17CX.

²⁹ Company Brief at 18:¶49.

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PacifiCorp argues that the Company's actual equity level of 51.73 percent is safe and economical.³⁰ The reasons that the Company cites in support of safety at an equity level of 51.73 percent, however, are just as valid for 49.1 percent equity. The 49.1 percent equity level has "maintain[ed] the Company's credit rating and ensure[d] continued access to low-cost capital,"³¹ which Mr. Parcell shows in his list of the Company's credit ratings since 2006³² and is evident from the Company's declining debt costs. PacifiCorp's low risk profile indicates that increasing the Company's equity level above its current level is not necessary to access capital on attractive terms. In other words, it would not be economical.

2. PacifiCorp's argument that, if the Commission adopts a hypothetical capital structure, it should also adopt hypothetical debt costs, is not credible.

12

PacifiCorp posits that capitalizing the Company at 49.1 percent would cause a credit rating downgrade. According to the Company, the downgrade would increase debt costs, and, therefore, PacifiCorp should be awarded a higher return based on hypothetical debt costs.³³ While imputing the percentage of debt in a capital structure is well established, imputing the *cost* of debt is another matter entirely. Debt costs generally are what they are. Using a hypothetical cost of debt is unreasonable in this case and would artificially and unnecessarily inflate the rate of return. Since 2006, the Commission has adopted a hypothetical capital structure for PacifiCorp in every GRC in which cost of capital was litigated, but the Commission has not approved hypothetical debt costs. PacifiCorp has demonstrated that it has maintained its excellent credit ratings with a capital structure

³⁰ Company Brief at 16-17:¶46.

³¹ See Company Brief at 16-17:¶46.

³² See Parcell, Exh. No. DCP-5.

³³ Company Brief at 20:¶55.

composed of 49.1 percent equity. Accordingly maintaining the existing hypothetical capital structure is reasonable but awarding PacifiCorp a higher ROE based on that structure is not.

III. THE COSTS OF OREGON AND CALIFORNIA QFs ARE PROPERLY ALLOCATED BY THE WCA

A. PacifiCorp presents no Compelling Reason to Modify the WCA to Include the high costs of Oregon and California QFs.

13 Under the current WCA cost allocation methodology, the cost of purchased power contracts with QFs located in Oregon and California are not included in Washington rates. PacifiCorp proposes to revise the WCA to include the costs of QFs approved by the Oregon and California regulators. The Company alone bears the burden of proof to show that the WCA should be modified to include these QFs.

14 The fundamental argument presented by PacifiCorp is that these QF contracts benefit Washington customers.³⁴ The Company attempts to meet its burden of proof by offering high-level assertions about the service provided by these resources. However, these representations are merely generalized statements that largely refer to these resources' impact on the WCA or its *system* - presumably the Company's entire six-state portfolio.³⁵ The Company presents no evidence that effectively details the *specific* benefits provided Washington ratepayers by these QF resources. To prove its case, the Company needs more than just generalized statements of system-wide service.

15 Critically, the Company's argument entirely misses the point. The issue is not whether Washington customers benefit from the contracts with the Oregon and California QFs. The issue is whether the Company should be allowed to shift the costs of those

³⁴ Company Brief at ¶¶62-64.

³⁵ Duvall, Exh. No. GND-4T at 16:10-12 and 18:22-23.

contracts to Washington when the costs are the direct result of the those state's PURPA policy decisions.³⁶

16 As Staff has shown, PURPA allows Oregon and California to implement the Act according to their own policies and methodologies.³⁷ As a result, the WCA's three states have promulgated materially different policies for the purpose of implementing PURPA. These divergent policies and methodologies have created costs for PURPA resources in Oregon and California that are significantly higher than those located in Washington.³⁸ The Commission can be assured that nothing in PURPA compels it to relinquish its duty to protect Washington ratepayers by accepting the cost consequences of the PURPA decisions made in those states.³⁹ As Staff advocates, the Commission should not modify the WCA to accept the costs of the Oregon and California QFs. This would ensure that Washington ratepayers are not harmed by the PURPA policy decisions made by Oregon and California. The Company has provided no reason to change this fundamental precept now.

B. The Exclusion of Oregon and California QFs from the WCA complies with the Commerce Clause

17 First, PacifiCorp misrepresents Staff's QF position in this case. It claims Staff (and parties) are recommending disallowance of the Oregon and California QFs simply because the "QFs are located outside of Washington."⁴⁰ Of course, this is not true. Staff's recommendation to exclude these QFs from Washington rates is founded upon the real and substantial policy differences of Oregon, California and Washington affecting the

³⁶ PacifiCorp could have addressed these critical policy differences in this case, but it failed to do so.

³⁷ Staff Initial Brief at ¶47.

³⁸ Staff Initial Brief at ¶39.

³⁹ Staff Initial Brief at ¶48. Without question, the consequences of accepting any of the Company's QF proposals are significant, and would require Washington ratepayers to pay up to \$10 million more in additional rates.

⁴⁰ Company Brief at ¶78.

development and cost of such renewable resources. These policy differences result in the significantly higher QF prices the Company seeks to recover in this case.⁴¹ Thus, the Commission reasoned in UE-130043 that Oregon and California should bear the costs of their decisions and not Washington ratepayers.⁴² These factors formed the basis of Staff's QF position—not the simple fact that these facilities are located in another state.

18 Based on its misstatement of the parties' QF position, PacifiCorp raises the specter of a Commerce Clause violation should the Commission exclude these QF resources from the WCA.⁴³ It argues that disallowing the costs of "these out-of-state QFs" is "[f]acially discriminatory" and therefore, "*per se* invalid" under the Commerce Clause.⁴⁴ The Company's argument has no merit. Staff's QF position does not discriminate between in-state and out-of-state economic interests and comports with the Commerce Clause.

19 Commerce Clause jurisprudence is driven by concerns about economic protectionism - that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors.⁴⁵ Furthermore, statutes and regulations do not become vulnerable to invalidation simply because they influence interstate commerce - however indirectly.⁴⁶ To the contrary, PacifiCorp must show a "*substantial burden on interstate commerce.*"⁴⁷ It has failed to do so.

20 A law or regulation "can discriminate against out-of-state interests in three different ways: (1) facially; (2) purposefully, or (3) in practical effect."⁴⁸ In its brief, the Company

⁴¹ Staff Initial Brief at ¶39

⁴² Docket UE-130043, Order 05, at ¶111.

⁴³ Company Brief at ¶78.

⁴⁴ *Id.*, citing U.S. Const. art I, §8, cl. 3.

⁴⁵ *Nat'l Ass'n of Optometrists & Opticians v. Harris*, 682 F.3d 1144, 1148 (9th Cir. 2012) (quoting *Dep't of Revenue of Ky. v. Davis*, 553 U.S. 328, 337-38, 128 S. Ct. 1801, 170 L. Ed. 2d 685 (2008)).

⁴⁶ *Nat'l Ass'n of Optometrists*, 682 F.3d at 1148.

⁴⁷ *Id.* (Emphasis in original).

⁴⁸ *Nat'l Ass'n of Optometrists & Opticians LensCrafters, Inc. v. Brown*, 567 F.3d 521, 525 (9th Cir. 2009).

argues that Staff's position is facially discriminatory. It offers no facts to support its argument.

21 Discrimination requires “differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter.”⁴⁹ Facial discrimination requires *express* differential treatment. An example of facial discrimination is set forth below.

22 The United States Supreme Court's decision in *Wyoming v. Oklahoma* dealt directly with facial discrimination. Here, Wyoming challenged an Oklahoma statute that required Oklahoma coal-fired generators to burn a mixture containing at least 10% Oklahoma-mined coal. The Court held that the law violated the Commerce Clause “on its face,” since it “expressly reserve[d] a segment of the Oklahoma coal market for Oklahoma-mined coal, to the exclusion of coal mined in other States.”⁵⁰ Unlike the Oklahoma statute, Staff position expresses no preference for locally-produced energy.

23 The Company's citation to *New England Power I* fails to support its constitutional argument. In that case, the United States Supreme Court invalidated a New Hampshire regulatory order prohibiting an in-state power plant from exporting some of its output to out-of-state retail utilities in an effort to reduce prices for in-state consumers.⁵¹ The Court concluded that the order violated the commerce clause on its face because it overtly banned the export of power beyond the state's border.⁵² Here, Staff's position would have no effect on out-of-state access to Washington's power resources. Nor, has it in any way “banned” out-of-state QFs from seeking to sell its power in Washington.

⁴⁹ *Or. Waste Sys., Inc. v. Dep't of Envtl. Quality of State of Or.*, 511 U.S. 93, 99, 114 S. Ct. 1345, 128 L. Ed. 2d 13 (1994) (invalidating state surcharge on the disposal of solid waste generated out of state)

⁵⁰ *Wyoming v. Oklahoma*, 502 U.S. 437, 455, 112 S. Ct. 789, 117 L. Ed. 2d 1 (1992).

⁵¹ *New England Power Co. v. New Hampshire*, 455 U.S. 331, 344, 102 S. Ct. 1096, 71 L. Ed. 2d 188 (1982).

⁵² *Id.* See also, *Entergy Nuclear Vt. Yankee, LLC v. Shumlin*, 733 F.3d 393, 430 (2d Cir. 2013).

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The Company's citation to *Middle South Energy* is likewise unhelpful. In that case, the Eighth Circuit found discriminatory an Arkansas agency's plan to cancel an in-state utility's financing and purchasing contracts with an affiliated out-of-state producer.⁵³ Staff's position here would have no effect on the Company's private contracts with out-of-state QFs. As a result, these contracts are not threatened by Staff's recommendations in this case. In other words, the QFs in question have entered into PPA's with PacifiCorp consistent with terms and conditions established by the Oregon and California regulators. A Commission decision here consistent with Staff's position would not alter the contractual relationship between the QFs and the Company.

25

At its most basic level, the Company's argument fails because the Company never identifies the "in-state and out-of-state economic interests" that would allegedly receive differential treatment under Staff's recommendation.⁵⁴ This failure stems from the fact that Staff's position would only impact a *single* economic interest - i.e., PacifiCorp. Any complaint steeped in discrimination would assume a "comparison of substantially similar entities."⁵⁵ The Company here offers nothing to compare.

26

Finally, the Company's constitutional claim cites no controlling authority demonstrating contravention of the "central rationale for the rule against discrimination"- that is, prohibition of "state or municipal laws whose object is local economic protectionism, laws that would excite those jealousies and retaliatory measures the Constitution was

⁵³ *Middle S. Energy, Inc. v. Ark. Pub. Serv. Comm'n*, 772 F.2d 404, 417 (8th Cir. 1985).

⁵⁴ *Or. Waste Sys., Inc. v. Dep't of Env'tl. Quality of State of Or.*, 511 U.S. 93, 99, 114 S. Ct. 1345, 128 L. Ed. 2d 13 (1994).

⁵⁵ *Gen. Motors Corp. v. Tracy*, 519 U.S. 278, 298, 117 S. Ct. 811, 824, 136 L. Ed. 2d 761 (1997).

designed to prevent.”⁵⁶ In the absence of such authority, the Company’s “per se invalidity” theory fails.

27 In sum, the Commerce Clause does not require states to set identical avoided costs. Nor does it mandate that Washington set rates based upon another state’s determination of avoided costs. If this were the case, PURPA’s entire avoided cost construct would be unconstitutional. Further, the Commerce Clause does not prevent a Commission from regulating “a local public utility for the protection of local . . . ratepayers.”⁵⁷ Staff’s QF position presents no constitutional barriers that would prevent its adoption. It allows QF owners to offer their products in Washington at the Company’s current avoided cost, and does not impair QF owners from doing business in Oregon and California at the avoided costs established by those states. Importantly, it would not alter the existing contractual relationships between the Company and its QF suppliers. There is no Commerce Clause violation emanating from a Commission decision upholding the WCA.

C. The WCA is Fair, Equitable and is not Discriminatory

28 PacifiCorp claims the Commission has engaged in discriminatory behavior by treating the Company’s QFs differently than that of Avista Corporation.⁵⁸ This is a patently false statement that ignores the history of the WCA and the significant policy differences between the three WCA states.

29 The Company’s memory on the WCA is short. Less than ten years ago, it presented the WCA to the Commission as PacifiCorp’s *designated* inter-jurisdictional allocation

⁵⁶ *C & A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383, 390, 114 S.Ct. 1677, 128 L.Ed.2d 399 (1994).

⁵⁷ *Public S. Union Co. v. Missouri Pub. Serv. Comm’n*, 289 F.3d 503, 508 (8th Cir. 2002)

⁵⁸ Company Brief at ¶76.

methodology.⁵⁹ Staff proposed two adjustments to the Company's WCA.⁶⁰ Importantly, the situs allocation of QF costs was not one of them. With the support of the Company and Staff, the Commission concluded that adopting the methodology was "in the public interest" and that the rates affected by it were "fair, just, reasonable and sufficient."⁶¹ The WCA was then used by PacifiCorp to allocate costs in numerous rate cases since its adoption. In sum, the WCA was proposed by the Company for its use in Washington. It cannot make a plausible claim now that its own methodology discriminates against its interests.

30

As to supporting its discrimination claim, PacifiCorp simply states that the Commission has allowed Avista to recover the costs of some Idaho QFs in rates that were priced higher than Washington's avoided costs.⁶² As noted in Section C above, a discrimination claim must be founded upon proof of disparate treatment when two *similarly situated* entities are compared.⁶³ Here, PacifiCorp makes no attempt to compare Avista's regulatory environment with its own. It also fails to compare the amount of energy or capacity supplied by Avista's QFs and the duration of those agreements. Finally, it skips over any comparison of the circumstances that lead to the Commission's acceptance of certain Idaho PPAs with those at issue in this rate case.⁶⁴ These are critical issues that the Company ignores, even though it bears the burden to prove them. In the end, it is not enough to claim discrimination. It must be proven with actual facts - not allegations.

⁵⁹ *Utilities & Transp. Comm'n v. PacifiCorp*, Dockets UE-061546 and UE-060817 (consolidated), Order 08 at ¶43.

⁶⁰ Dockets UE-061546 and UE-060817, Order 08 at ¶45.

⁶¹ Dockets UE-061546 and UE-060817, Order 08 at ¶57 and ¶225.

⁶² Company Brief at ¶76.

⁶³ See Staff Reply Brief, Section C, ¶24.

⁶⁴ Mr. Gomez agreed that Avista has never sought to apply out-of-date avoided costs to projects it has brought to the Commission for approval. Further, he agreed that Avista has never before brought all its out-of-state QFs of various vintages to the Commission for approval in one proceeding - as the Company is attempting to do here. See Gomez, TR. at 599: 16-22.

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The Company also fails to acknowledge the cause of its QF cost recovery difficulties - assuming they exist. The crux of its complaint is that it is not fully recovering the full QF PPA costs in Oregon and California. This has nothing to do with Washington and everything to do with the Company's renegotiation of its Revised Protocol to system-allocate its QF PPA costs.⁶⁵ Through this renegotiation, the Company voluntarily gave up full recovery of its PPA costs for QF facilities located in Oregon and California.⁶⁶ In doing so, it must have known that the WCA did not include cost recovery of these resources. It should not blame the Commission for its QF cost recovery woes. It needs to look no farther than its own actions.

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The Company points to *Washington Water Power* to support its discrimination claim. It does not help it. In that case, Washington Water Power sought to include in rates over \$6 million in power costs associated with the Potlatch Corporation's cogeneration facility - an Idaho QF. The Commission rejected the inclusion of the proposed Potlatch PPA in rates, concluding that the contract costs were based on an "incorrect [avoided cost] methodology" used by the company.⁶⁷ The import of this case is that the Commission properly exercised its authority to apply Washington's avoided cost rules to an out-of-state PPA. Thus, the Commission's decision is consistent with the principle that it is not bound to accept the avoided cost decisions of another jurisdiction. Since the Commission rejected Washington Water Power's QF PPA, it also undermines PacifiCorp's allegation that the

⁶⁵ Gomez, TR. at 593: 2-5.

⁶⁶ Gomez, TR. at 593: 6-15.

⁶⁷ *Utilities & Transp. Comm'n v. Washington Water Power Company*, Cause No. UE-83-14, Second Supplemental Order Rejecting Tariff Filing (November 9, 1983), at pg. 11. The Company's avoided cost calculation was based on a facility that had not yet been built and would have included capacity charges. Given the utility's resources needs, the Commission concluded that PPAs with Bonneville Power Administration would have determined the Company's appropriate avoided cost.

Commission treats it differently than other utilities when it come to the rate treatment of out-of-state QFs.

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Interestingly, following this Commission's order, Potlatch and Washington Water Power continued to negotiate a PPA. The parties apparently reached a deal that would have directly designated a certain portion of the plant's output to Washington priced at Washington's avoided costs.⁶⁸ This proposal was however rejected by the Idaho Public Utilities Commission. It concluded that the rates proposed for Idaho were based on the company's historical avoided costs and were not based on avoided cost rates currently in effect.⁶⁹ To this point, the Idaho Commission stated: "[w]e find that it is not in the public interest to approve a contract based on pre-190 rates and conditions of sale when they differ so substantially from 190 rates now in effect."⁷⁰ Later in its order, the Idaho Commission made very clear its disregard for company attempts to bring PPAs to it for approval based on historic avoided costs no longer in effect.⁷¹ This case argues directly against the Company's attempt here to re-price its Oregon and California QFs based on Washington's historical avoided costs. Contemporary ratepayers have a right to QFs priced at Washington's present-day avoided costs - not the historical avoided costs sought by the Company. Such a practice is deservedly inequitable and would result in patently unfair and unreasonable rates.

⁶⁸ *In the Matter of the Application of the Washington Water Power Company for an Order Approving Third Revision Sheet 55 Applicable to Electric Service in the State of Idaho*, Cause No. U-1008-189, 1984 WL 1015943 (Idaho P.U.C.) (October 1984), at 2.

⁶⁹ *In the Matter of the Application of the Washington Water Power Company for an Order Approving Third Revision Sheet 55 Applicable to Electric Service in the State of Idaho*, Cause No. U-1008-189, 1984 WL 1015943 (Idaho P.U.C.) (October 1984), at 2-3.

⁷⁰ *Id.*, at 3. The term "190" refers to a previous case setting Idaho's initial avoided costs following the enactment of PURPA.

⁷¹ *Id.* at 3.

IV. INSURANCE EXPENSE

34 PacifiCorp proposes to adjust its insurance expense to reflect a six-year rolling average.⁷² The Company includes its \$30.8 million 2012 insurance expense in its averaging calculation.⁷³ Staff supports the use of the six-year average but replaces the anomalous 2012 expense in the averaging calculation.⁷⁴

35 PacifiCorp's initial brief argues that historical averages should include anomalous events and points to Staff witness Mr. Gomez's testimony relating to the proposed hydro deferral for support.⁷⁵ The Company conspicuously fails to mention that the hydro forecasting models discussed by Mr. Gomez as a "long-term average" include several decades of data.⁷⁶ Conversely, the insurance expense in this case derives from a six-year rolling average. Basic arithmetic reveals that an average based on decades of data can and should include events that would be statistical outliers over a much shorter period, such as a six-year average. The same basic arithmetic requires that a six-year average should generally contain terms likely to reoccur in the rate year or approximately every six years. Therefore, a six-year perspective would obviously be inappropriate for an average based on several decades of data, and the Company's argument that the Commission adopt a decades-long perspective for purposes of a six-year averaging is equally inappropriate. The Commission should reject PacifiCorp's proposal and adopt Staff's recommendation as outlined in the testimony of Mr. Jason L. Ball.

⁷² Siores, Exh. No. NCS-1T at 18:1.

⁷³ Siores, Exh. No. NCS-3 at 4.7.1.

⁷⁴ Ball, Exh. No. JLB-1T at 14:1-3.

⁷⁵ Company Brief at 52-53; ¶139.

⁷⁶ *Pacific Power*, Docket UE-140094, Petition for an Order Approving Deferral of Costs Related to Declining Hydro Generation, ¶5 ("the Company uses a single-year median water year developed based on the available history of the Company's major hydro facilities, which range from 40 years to over 90 years."). *See also* Gomez, Exh. No. DCG-1CT at 18 (describing the Company's petition in Docket UE-140094 and providing Staff's position).

V. CONCLUSION

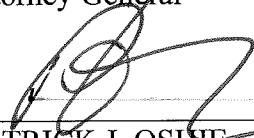
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For the reasons stated above, PacifiCorp has failed to meet its burden on a number of issues, including its proposed cost of capital, allocation of QF costs, and the insurance expense adjustment addressed herein. As discussed both in this Reply as well as in Staff's Initial Brief, PacifiCorp has failed to show that it is entitled to the rate increase and associated rate treatments it proposes, and the Commission should adopt Staff's reasonable, alternative proposals.

Dated this 3rd day of February 2015.

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