

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION
COMMISSION,

Complainant,

v.

PACIFIC POWER & LIGHT
COMPANY,

Respondent.

DOCKET UE-152253

ORDER 08

ORDER GRANTING STAFF'S
MOTION FOR LEAVE TO FILE
SUPPLEMENTAL TESTIMONY
AND EXHIBITS; NOTICE OF
TELEPHONIC SCHEDULING
CONFERENCE
(Friday, April 29, 2016, at 11 a.m.)

- 1 **PROCEEDING:** On November 25, 2015, Pacific Power & Light Company (Pacific Power or Company) filed with the Washington Utilities and Transportation Commission (Commission) revisions to its currently effective Tariff WN U-75. The Company seeks authority to increase charges and rates for electric service in a two-year rate plan. Pacific Power's filing, if approved, would increase electric rates by approximately \$10 million, or 2.99 percent, effective May 1, 2016. The Company requests a second year increase in the multi-year rate plan of approximately \$10.3 million, or 2.99 percent, effective May 1, 2017. Pacific Power has also filed a proposed decoupling mechanism which includes a request to record accounting entries associated with the mechanism. The Company seeks expedited treatment of its requests.
- 2 In Order 03, Prehearing Conference Order and Notice of Hearing, the Commission noted Pacific Power's request meets the regulatory definition of a general rate case in which the Commission has until October 25, 2016, to enter a final order. The Commission also stated that the narrow issues involved in the case should allow a full record to be developed on an abbreviated schedule, as requested by the Company. An evidentiary hearing was set for May 2 and 3, 2016, with the Commission's goal being to enter an order in time for rates to become effective on July 1, 2016.
- 3 **Staff's Motion for Leave to File Supplemental Testimony and Exhibits.** On April 25, 2016, after the opportunity for filing rebuttal and cross-answering testimony had passed,

the Commission's regulatory staff (Staff) filed a Motion for Leave to File Supplemental Testimony and Exhibits (Staff's Motion). Staff stated that, in Pacific Power's last general rate case, Docket UE-140762, Jeremy B. Twitchell, Staff's analyst, became aware of the Company's October 2013 Mine Plan.¹ During discovery in the instant proceeding, Staff decided it needed to obtain a copy of the October 2013 Mine Plan for its analysis of the prudence of the Company's installation of the selective catalytic reduction (SCR) at the Jim Bridger plant's Units 3 and 4.² On January 27, 2016, Staff provided the Company with Staff Data Request No. 99 (WUTC No. 99), which stated:

Re: Bridger Selective Catalytic Reduction

Please provide the Jim Bridger Mine's 2013 Mine Plan, as well as forward-looking costs for the mine's output that were identified in that plan.³

4 Before the Company replied to WUTC No. 99, Mr. Twitchell visited Pacific Power's offices in Portland, Oregon, to review the engineer, procure, and construct contract for the installation of the SCR.⁴ While there, Mr. Twitchell conversed with Rick T. Link, a witness for the Company in this proceeding, who told Mr. Twitchell that Pacific Power "generally only updates its mine plan every few years, but updates coal price projections every two years as part of the [integrated resource plan] cycle."⁵ Mr. Twitchell understood this to mean Mr. Link was confirming Staff's assumption that there was only one mine plan from 2013, the October 2013 plan, and Pacific Power's response to WUTC No. 99 would produce the October 2013 plan.⁶

5 On February 10, 2016, Pacific Power responded:

Please refer to the Company's response to Sierra Club Data Request 1.8 subpart (a), and the associated Confidential Attachment Sierra Club 1.8-1 (BCC Production – Operating Cost Schedules (2 unit) and (4 unit) files) for the 2013

¹ Staff's Motion, ¶ 4.

² *Id.*

³ *See*, Attachment to Declaration of Jeremy B. Twitchell (Pacific Power's Response to WUTC No. 99).

⁴ Declaration of Jeremy B. Twitchell, ¶ 14 (April 25, 2016).

⁵ *Id.*, ¶ 15.

⁶ *Id.*

Mine Plan. Amounts shown are the 100 percent share; multiply by two-thirds for the PacifiCorp share.⁷

Pacific Power's response to WUTC No. 99 directed Staff to a mine plan prepared in January 2013. The Company did not clarify that there were two mine plans prepared in 2013 or ask Mr. Twitchell which of the two mine plans prepared in 2013 Staff sought.⁸ As a result, Staff asserts that Mr. Twitchell "conducted extensive analysis and wrote testimony based on this document, which [he] believed to be the same mine plan from October 2013 that the Company had discussed in the 2014 rate case."⁹

6 Staff filed Mr. Twitchell's response testimony and exhibits on March 17, 2016, which "supported a sizeable adjustment to the Company's SCR analysis that was integral to Staff's position in this case."¹⁰ Pacific Power filed rebuttal testimony and exhibits on April 7, 2016, in which the Company criticized for "not recogniz[ing] the differences in BCC capital between the SCR analysis and the October 2013 mine plan."¹¹ Pacific Power witness Dana Ralston states, "Staff performed its calculations of coal adjustments using the same vintage forecast as in the SCR analysis."¹²

7 Staff argues that it relied upon the incomplete and incorrect information it was given in response to WUTC No. 99 and in conversation with Mr. Link. At no time between March 17, 2016, when Staff filed its response testimony utilizing the January 2013 Mine Plan, and April 7, 2016, when Pacific Power filed rebuttal testimony criticizing Staff's use of the January 2013 Mine Plan, did the Company alert Staff to this mistake.¹³ Further, Pacific Power did not direct Staff to the October 2013 Mine Plan until April 16, 2016, when Staff learned that Pacific Power had already provided the information in response

⁷ *Id.*, ¶ 16 (citation omitted).

⁸ *Id.*, ¶ 23.

⁹ *Id.*, ¶ 18.

¹⁰ *Id.*

¹¹ Ralston, Exh. No. DR-1CT at 5:2-3.

¹² *Id.* at 5:11-12. Emphasis added.

¹³ Declaration of Jeremy B. Twitchell, ¶ 23.

to Sierra Club Data Request No. 1.6(a) on January 27, 2016.¹⁴ This data request response contained 56 electronic documents, none of which were labeled “mine plan.”¹⁵

8 With the appropriate plan identified, Staff contends that “the newly available information materially affects Staff’s case.”¹⁶ Thus, Staff requests that the Commission grant it leave to file supplemental testimony and exhibits for the new information that was not made available to Staff until after the Company filed its rebuttal case.”¹⁷

9 **Pacific Power’s Opposition to Staff’s Motion.**¹⁸ On April 28, 2016, Pacific Power filed its Response to Staff’s Motion for Leave to File Supplemental Testimony and Exhibits (Pacific Power’s Response). The Company recommended that the Commission deny Staff’s Motion, arguing that it is incomplete as filed since it did not include the supplemental testimony and exhibits in question.¹⁹ In addition, Pacific Power stated that granting Staff’s Motion would “[undermine] the Commission’s ability to conduct an orderly hearing” and prejudice the Company.²⁰

10 Pacific Power argued that Staff had the October 2013 Mine Plan in its possession when the Company copied Staff on Pacific Power’s supplemental response to Sierra Data Request No. 1.6.²¹ The Company provided the plan in an electronic folder marked “BCC Budget 10-4-2013” and the October 2013 Mine Plan was labeled “01 OpsCostSchedule.”²²

11 **Discussion and Decision.** Based on the discovery rules referenced below and the Company’s lack of good faith in responding to WUTC No. 99, we grant Staff’s Motion.

¹⁴ *Id.*, ¶¶ 24-26.

¹⁵ Staff’s Motion, ¶ 7.

¹⁶ Declaration of Jeremy B. Twitchell, ¶ 29.

¹⁷ *Id.*, ¶ 30.

¹⁸ The only other party to respond to Staff’s Motion was Public Counsel who indicated it had no objection to Staff’s request. Public Counsel Response, ¶ 1 (April 27, 2016).

¹⁹ Pacific Power’s Response, ¶ 1.

²⁰ *Id.*, ¶ 18.

²¹ *Id.*, ¶ 7.

²² Pacific Power’s Response, Declaration of Sarah E. Kamman, ¶ 11.

12 In Order 03, Prehearing Conference Order and Notice of Hearing, the Commission urged the parties to work cooperatively during discovery to promote expediency. Order 03 cites WAC 480-07-400-425, which contain our rules for an orderly discovery process in adjudicated cases. Several of the Commission rules are pertinent to deciding Staff's Motion, including:

- WAC 480-07-405(5): If a party to whom a data request is submitted finds the meaning or scope of a request unclear, the responding party must immediately contact the requesting party for clarification.²³
- WAC 480-07-405(7)(b): A party to whom a data request is directed must provide a full response within ten business days after the request is received.²⁴
- WAC 480-07-405(8): Parties must immediately supplement any response to a data request, record requisition, or bench request upon learning that the prior response was incorrect or incomplete when made or upon learning that a response, correct and complete when made, is no longer correct or complete.²⁵
- WAC 480-07-425(1): Parties must make good faith efforts to resolve informally all discovery disputes.²⁶

13 Frankly, it tests the bounds of reason to argue, as Pacific Power did here, that the Company provided a complete and correct response to WUTC No. 99. When confronted with a data request referring only to the production of a 2013 mine plan and knowing that there are, in fact, two 2013 mine plans, common sense dictates that Pacific Power should have acted in good faith and sought to clarify with Staff which plan(s) it was seeking. If common sense weren't persuasive enough, the Company was also legally obligated to seek clarification of WUTC No. 99 since the scope of Staff's request could produce two possible responses.

²³ Emphasis added.

²⁴ Emphasis added.

²⁵ Emphasis added.

²⁶ Emphasis added.

- 14 The Company did not show good judgment or good faith, and instead responded by pointing Staff to the January 2013 Mine Plan while ignoring the existence of the October 2013 Mine Plan until it could, on rebuttal, chastise Staff's use of the "vintage" January 2013 Mine Plan forecast employed in the SCR analysis. Such conduct proves duplicitous when the Company knew by March 17, 2016, the date Staff filed its response testimony, that Staff was relying on "vintage" information that was supplied by, but never supplemented by, Pacific Power. The Company provided the October 2013 Mine Plan in response to a data request from Sierra Club on January 27, 2016, buried in a folder of 56 electronic documents, with neither the folder nor the October 2013 Mine Plan bearing any label closely resembling something responsive to WUTC No. 99. Pacific Power, with its obvious and extensive knowledge of the October 2013 Mine Plan and its naming convention, did not rename the folder or document to convey that information to Staff, whom could not reasonably be expected to find an October 2013 Mine Plan in either a folder marked "BCC Budget 10-4-2013" or the responsive document labeled "01 OpsCostSchedule."
- 15 The Commission and the parties have endeavored to accommodate Pacific Power's request to conduct discovery and review of the Company's filing on an extremely expedited schedule. The Company is correct in stating that granting Staff's Motion disrupts the Commission's ability to conduct an orderly hearing, but such cannot be helped given the Company's conduct. Pacific Power had several key opportunities to prevent this additional process from being necessary. The supplemental testimony and exhibits Staff has proposed will provide the Commission with a full and complete record, albeit on a slightly longer time frame. The Commission finds good cause to grant Staff's Motion for Leave to File Supplemental Testimony and Exhibits.
- 16 The Commission will convene a telephonic scheduling conference at 11:00 a.m., Friday, April 29, 2016, to discuss possible alternative hearing dates for the SCR prudence issue. Parties who wish to participate must call into the conference bridge and are not expected to appear in-person. The remaining contested issues will be addressed as planned in the evidentiary hearing next week.

ORDER

17 **THE COMMISSION ORDERS That:**

18 (1) The Motion for Leave to File Supplemental Testimony and Exhibits, filed by
the Commission's regulatory staff, is **GRANTED**.

19 (2) The Commission will convene a telephonic scheduling conference at 11:00
a.m., Friday, April 29, 2016.

Dated at Olympia, Washington, and effective April 29, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. FRIEDLANDER
Administrative Law Judge

NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to WAC 480-07-810.