

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKET UE-152253
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	
)	MOTION TO DISMISS OF
v.)	BOISE WHITE PAPER, L.L.C.;
)	ALTERNATIVE MOTION TO TREAT
PACIFIC POWER & LIGHT COMPANY,)	AS A GENERAL RATE CASE FILING
)	
Respondent.)	
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I. MOTION TO DISMISS

1 Pursuant to WAC § 480-07-380(1), Boise White Paper, L.L.C. (“Boise”) files this motion to dismiss (“Motion”), requesting that the Washington Utilities and Transportation Commission (“WUTC” or the “Commission”) dismiss Pacific Power & Light Company’s (“Pacific Power” or the “Company”) petition for approval of an expedited rate filing (“ERF”) and two-year rate plan. Boise asserts that Pacific Power has failed to state a claim within its prefiled direct case upon which the Commission may grant relief, at least as to the Company’s petition for approval of an ERF and two-year rate plan. Boise does not contest the Company’s petition for approval of a decoupling mechanism.

2 On November 25, 2015, Pacific Power filed Advice 15-06 (later docketed as UE-152253), which included Pacific Power’s petition (“Petition”) to the WUTC for approval of an ERF, two-year rate plan, and a decoupling mechanism. The Company states that it “is not

requesting a change to its cost of capital established earlier this year,”^{1/} as supported by testimony that the Company is providing “[n]o updates or changes to the authorized rate of return.”^{2/} Pacific Power also asserts: “The combination of the ERF with a two-year rate plan ... *does not require the Commission to conduct a full cost of capital hearing.*”^{3/} Boise believes this assertion to be inaccurate and sufficient to justify a dismissal in light of: 1) the Thurston County Superior Court’s (the “Court”) 2014 order reversing the Commission’s determination on Puget Sound Energy, Inc.’s (“PSE”) multi-year rate plan in the context of PSE’s ERF proceeding; and 2) the Commission’s own statements acknowledging and affirming the Court’s reversal order during remand proceedings on PSE’s ERF and multi-year rate plan.

3 The Company itself quotes the Commission’s recent acknowledgment in the PSE remand proceedings, that the “Court determined that the Commission should have required the evidence necessary and *should have undertaken a full analysis of return on equity in the ERF proceeding considering that updated rates were being set in connection with a multi-year rate plan.*”^{4/} While Pacific Power then emphasizes footnoted statements from the Commission, which may be interpreted as explaining the basis for the Commission’s disagreement with the Court’s ruling,^{5/} the Company’s reliance upon such statements is improper. The relied upon statements are dicta, and the Commission appropriately placed them in a footnote while dutifully following the Court’s remand instructions.

^{1/} Petition at ¶ 24.

^{2/} Exh. No. SEM-1T at 4:13.

^{3/} Petition at ¶ 25 (emphasis added).

^{4/} Id. at ¶ 26 (quoting WUTC v. Puget Sound Energy (“PSE”), Dockets UE-130137 *et al.*, Order 15/14 at ¶ 21, n.18 (June 29, 2015)) (emphasis added).

^{5/} Id.

That the Commission both understood and affirmed the controlling force of the Court’s reversal order is very apparent in the initial PSE remand order. As the Commission acknowledged, the Court “did not fully endorse the Expedited Rate Filing process as an alternative to a general rate case in the context of approving a multi-year rate plan.”^{6/} More particularly, the Commission recognized that the Court had found:

[T]he Commission’s findings of fact with respect to the return on equity component of Puget Sound Energy, Inc.’s cost of capital in the context of a multi-year rate plan are unsupported by substantial evidence and the Commission improperly shifted the burden of proof on this issue from Puget Sound Energy, Inc. to the other parties in the proceeding below, contrary to RCW 34.05.461(4) and RCW 80.04.130(4).^{7/}

Accordingly, the Commission then dutifully and appropriately affirmed the general applicability of the Court’s order in the context of any future ERF and multi-year rate plan proceeding, independent of whether the Commission fully agreed with the Court’s judgment:

The Court said, in effect, that while the Commission need not in every instance hold a general rate case to adjust rates, with all the special requirements for such cases established by Subpart B of the Commission’s procedural rules, *the Commission cannot adjust rates in the context of considering a multi-year rate plan without undertaking a thoroughgoing analysis of return on equity with the Company bearing the burden of proof*, as is typically required, if at all, only in general rate proceedings.^{8/}

The fact that Pacific Power has petitioned for approval of an ERF and multi-year rate plan while providing “[n]o updates” to its rate of return, of which return on equity is a major component, is contrary to the Commission-affirmed holding of the Court that “the Commission *cannot* adjust rates in the context of considering a multi-year rate plan without undertaking a

^{6/} Dockets UE-130137 *et al.*, Order 10 at ¶ 1 (Oct. 8, 2014).

^{7/} *Id.* at ¶ 2.

^{8/} *Id.* at ¶ 3 (emphasis added).

thoroughgoing analysis of return on equity with the Company bearing the burden of proof.”^{9/} In short, the Company has asked the Commission to approve ERF and multi-year rate increases without any update whatsoever to its return on equity, never mind the “thoroughgoing analysis” required by the Court. Pacific Power’s requests would, therefore, unlawfully shift the burden of proof to other parties, in violation of statute. The Company’s claim, that “[t]he combination of the ERF with a two-year rate plan ... does not require the Commission to conduct a full cost of capital hearing,” cannot be reconciled with the Court’s order and the Commission’s dutiful observance of that order.

6 Since the Commission cannot approve the Company’s ERF and multi-year rate plan requests in the form presented by the Company in its direct case—i.e., on the assertion that a thoroughgoing analysis of return on equity is not required, and with no update to the rate of return—Boise respectfully submits that the Commission should dismiss Pacific Power’s ERF and two-year rate plan petition. That is, the Company has not stated an ERF and multi-year rate plan claim upon which the Commission may grant relief.^{10/} As the Commission affirmed in 2014, when granting a motion to dismiss and rejecting a tariff filing to increase rates: “In Commission proceedings, prefiled evidence *is* a party’s evidence supporting its case.”^{11/} Consequently, a “Company’s failure to file a direct case that provides full support for its rate request necessarily results in dismissal of that case and rejection of the tariff filing.”^{12/}

7 Pacific Power’s failure to file a direct case providing full support for its ERF and multi-year rate plan rate increase requests should lead to dismissal and rejection of associated

^{9/} Id. (emphasis added).

^{10/} WAC § 480-07-380(1)(a).

^{11/} WUTC v. Waste Control, Inc., Docket TG-131794, Order 05 at ¶ 14 (Mar. 25, 2014) (quoting WUTC v. PSE, Dockets UE-011163 and UE-011170, Sixth Suppl. Order at ¶ 15 (Oct. 4, 2001)).

^{12/} Id. at ¶ 18.

tariff filings. The Commission has recently rejected arguments against dismissal on the basis that a company “will develop its full case at hearing,” or “that dismissal would waste resources.”^{13/} Notwithstanding, Boise would not oppose treatment of the Company’s Advice 15-06 filing as a general rate case, as an alternative to outright dismissal of Pacific Power’s ERF and two-year rate plan petition.

II. ALTERNATIVE MOTION TO TREAT AS A GENERAL RATE CASE FILING

8 On its public website, the Commission states that Pacific Power’s Advice 15-06 is a “[g]eneral rate case” filing.^{14/} Pursuant to this designation and WAC § 480-07-375(1)(b), Boise moves that, as an alternative to dismissing Pacific Power’s ERF and two-year rate plan requests, the Commission treat Advice 15-06, procedurally, as a general rate case (“Alternative Motion”).

9 In fact, the Company contemplates that the Commission may elect to treat this docket as a general rate case,^{15/} prompting Pacific Power to, among other things: 1) file testimony and exhibits from witness Kurt G. Strunk supporting a higher return on equity (“ROE”) level; and 2) explicitly “reserve[] its right to seek *the higher ROE supported by Mr. Strunk’s testimony.*”^{16/} Given that the Company has chosen to take this affirmative step of filing testimony supporting a potential change in Pacific Power’s authorized ROE, treating this proceeding as a general rate case appears to be a prudent and proper course. Moreover, no prejudice or disadvantage should ensue as a result of general rate proceeding treatment, based on

^{13/} *Id.* at ¶¶ 14, 18.

^{14/} WUTC Online Records Center, available at: <http://www.utc.wa.gov/docs/Pages/DocketLookup.aspx?FilingID=152253> (last visited Dec. 10, 2015).

^{15/} *E.g.*, Petition at ¶ 8; *id.* at ¶ 24, n.41.

^{16/} *Id.* at ¶ 24, n.41 (emphasis added).

the claim that “Pacific Power supports its filing with the documentation normally required for a general rate case.”^{17/}

A. The Commission Cannot Practically Avoid Consideration of the Company’s Cost of Capital Case, as Would Be Customary to a General Rate Proceeding

10 The Company has filed testimony and exhibits from Mr. Strunk that purportedly “demonstrate[] that an ROE of 10.0 percent continues to be appropriate for Pacific Power,”^{18/} above the currently authorized equity return of 9.5%. But, based on the Court’s mandate that the Commission undertake a “*thoroughgoing* analysis of return on equity,”^{19/} the Commission cannot reasonably hope to conduct such a “thoroughgoing analysis” without simultaneously considering the allegedly “appropriate” and “higher” return on equity level supported by Mr. Strunk’s filed testimony.

11 Such unavoidable consideration of filed Pacific Power evidence, in support of a higher return on equity, has the same practical effect as if the Company were to have overtly requested an express change to its authorized ROE, in the context of its ERF and multi-year rate plan petition. This is important because while the Company testifies that, for purposes of its ERF and two-year rate plan, it is requesting “[n]o updates or changes to the authorized rate of return,” the Commission will have no reasonable alternative under the Court’s directive but to conduct its analysis of the ERF and multi-year rate plan petition just as if the Company *had* requested a change in its authorized rate of return on common equity.

^{17/} *Id.* at ¶ 9.

^{18/} Exh. No. KGS-1T at 3:17-18.

^{19/} Dockets UE-130137 *et al.*, Order 10 at ¶ 3 (emphasis added).

12 Since a general rate proceeding is defined by Commission rule as a filing in which a “company requests a change in its authorized rate of return on common equity,”^{20/} the inevitable consideration of “the higher ROE supported by Mr. Strunk’s testimony” would be well suited to a general rate proceeding. Moreover, treating this docket as a general rate proceeding may also allow the Commission to avoid future legal challenges, as there would inevitably be difficulties attendant upon any effort by the Commission to explain how it undertook the “thoroughgoing” analysis required by the Court, if the WUTC were to simultaneously limit consideration of evidence concerning ROE. Indeed, insufficient consideration of ROE evidence was the very issue which led the Court to reverse the Commission’s order approving PSE’s multi-year rate plan in the context of an ERF proceeding.

13 In any event, the Company’s rate filing is substantively equivalent to what the Commission normally defines and considers as a “general rate proceeding”—i.e., “[t]he amount requested would increase gross annual revenue of the company from activities regulated by the commission by three percent or more.”^{21/} Cumulatively, the Company is seeking a rate increase of about six percent through one filing. But, even if rate requests are considered individually, the Company’s second-year rate increase request of \$10.3 million is about 3.1% higher than current rates.

14 In other words, the Company’s attempt to employ a hyper-technical metric in designing 2.99% rate increases *just* under the 3.00% definitional threshold does not hold under scrutiny, once a similarly hyper-technical application of the rule text is also fairly applied to the actual second-year rate increase in relation to rates at the time of the Company’s filing. Boise

^{20/} WAC § 480-07-505(1)(c).

^{21/} WAC § 480-07-505(1)(a).

raises this point not to advocate for such hyper-technical analysis, but simply to illustrate that there is little substantive basis to distinguish the Company's filing from a typical general rate proceeding *only* upon the bare margin of nominal 2.99% rate increases requests.

B. The Public Interest Would Not Be Well Served by Treating Pacific Power's Filing in Expedited Fashion

15 In asking the Commission to consider this Alternative Motion, Boise fully appreciates that the Commission may waive its own procedural rules, as the Commission pointed out in the PSE ERF and multi-year rate plan dockets, after parties had contended that PSE's requests should be treated as a general rate proceeding.^{22/} There, the Commission reiterated "a key underlying purpose" behind "the Commission's invitation for parties to present innovative approaches to ratemaking that would avoid the complex process of a general rate case":^{23/}

This pattern of one general rate case filing following quickly after the resolution of another is overtaxing the resources of all participants and is wearying to the ratepayers who are confronted with increase after increase. This situation does not well serve the public interest and we encourage the development of thoughtful solutions.^{24/}

The Company quotes this same statement in support of its ERF and two-year rate plan petition requests, in addition to claiming that these proposals "benefit the public interest" in keeping with the Commission's goals.^{25/}

16 In this proceeding, however, Boise maintains that the public interest would not be well served by waiver of the Commission's general rate case rules, or by treatment of the Company's filing as anything other than a general rate proceeding. In requesting that the

^{22/} Dockets UE-130137 *et al.*, Order 07 at ¶ 188 (June 25, 2013).

^{23/} *Id.* at ¶ 187.

^{24/} *Id.* at ¶ 186 (quoting *WUTC v. PSE*, Dockets UE-111048 and UG-111049 (*consolidated*), Order 08 at ¶ 507 (May 7, 2012)).

^{25/} Petition at ¶ 2.

Commission grant this Alternative Motion, Boise relies upon the same rationale articulated by the Commission when evaluating viable alternatives to “break the current pattern of almost continual rate cases.”^{26/}

1. The Company’s “Alternative” Rate Mechanism Proposal Does Not Provide Benefits Sufficient to Justify a Departure from General Rate Case Process

17 Simply put, the Company’s ERF and multi-year rate plan requests are neither “innovative” nor “thoughtful solutions” that produce any effective alternative to the “wearying” circumstances in which Pacific Power customers have been “confronted with increase after increase.” The Company seeks consecutive annual 2.99% rate increases, effective May 1, 2016, and May 1, 2017,^{27/} respectively, which follow the Company’s last effective general rate increase of 3.0% on March 31, 2015^{28/}—and which could be followed, in turn, by another general rate increase effective April 1, 2018.^{29/} Under the Company’s proposals, Boise and other Pacific Power customers will find no relief from the “wearying” prospect of rate “increase after increase” on an annual basis. While Pacific Power shareholders may stand to benefit from “locking in” this sequence of annual rate increases, no rational argument can be entertained from a ratepayer perspective that the “public interest” will be better served by this alternative.

18 This is especially true, given that ratepayers are often able to obtain considerably better outcomes through the full process afforded through general rate cases than through the far less procedurally intensive sort of rate increase mechanism proposed by the Company. For example, in the Company’s most recent general rate case, Boise and other parties challenged

^{26/} Dockets UE-130137 *et al.*, Order 07 at ¶ 186.

^{27/} Petition at ¶ 1.

^{28/} *WUTC v. Pacific Power*, Dockets UE-140762 *et al.*, Order 08 at p.ii (Mar. 25, 2015); Dockets UE-140762 *et al.*, Errata Correcting Order 08 (Mar. 26, 2015).

^{29/} Petition at ¶ 1.

Pacific Power’s initial request for an 8.5%, or \$27.2 million rate increase, culminating in the Commission’s authorization of just a \$9.6 million, or 3.0% rate increase.^{30/} Similarly, Avista Utilities’ pending electric general rate request has gone from a \$33.2 million increase to a *decrease* of \$72,000—with further rate reductions possible if the Commission accepts any of the myriad of adjustments submitted by parties to that proceeding. These excellent customer outcomes were achieved through the diligent effort of parties who challenged inflated utility rate increase requests, but only in the context of the full process afforded by a general rate proceeding.

19 Conversely, the Company proposes to condense two general rate cases into a single ERF and multi-year rate plan proceeding with an “abbreviated schedule,”^{31/} asserting a “public benefit” because rate increase requests would be reduced by about \$0.5 million a year. As Pacific Power witness R. Bryce Dalley explains: “Rather than file two additional general rate cases to cover cost increases over the next two years, the Company decided to pursue this petition as an alternative.”^{32/} More specifically, rather than seeking rate increases of \$10.7 and \$10.6 million over the next two years, the Company states that it is requesting “only” \$10.0 and \$10.3 million, respectively, over those same two years.^{33/} As Mr. Strunk testifies: “The ERF is a limited-issue rate proceeding that seeks smaller rate increases within a shorter timeframe than a general rate case.”^{34/}

20 Thus, from the Company’s vantage point, this net reduction of \$1.0 million in rate increase requests over the next two years apparently justifies a five-month ERF proceeding in

^{30/} Dockets UE-140762 *et al.*, Order 08 at p.ii, ¶¶ 1 and 6.

^{31/} Petition at ¶ 9.

^{32/} Exh. No. RBD-1T at 3:11-13.

^{33/} Exh. No. SEM-1T at 6:10-14, 30:14-20.

^{34/} Exh. No. KGS-1T at 16:8-9.

favor of the twenty-two months which would normally be afforded through general rate case filings.^{35/} Yet, the Company is “limiting” its requested rate increases by an average of just \$0.5 million per year.^{36/} This is almost equivalent to the \$0.4 million revenue requirement impact which Pacific Power witness Shelley E. McCoy describes as “nominal.”^{37/} Boise strongly contends that the public interest is not well served by securing a “nominal” decrease in the Company’s annual rate increase requests in exchange for an extremely “abbreviated schedule.”

21 In asking the Commission to grant this Alternative Motion, Boise does not dispute the “key underlying” purposes behind the Commission’s efforts to develop thoughtful solutions to break the pattern of almost continual annual rate case filings. Instead, granting the Alternative Motion would affirm the need for the development of truly “thoughtful” and “innovative” alternatives that benefit ratepayers in equitable proportion to shareholders.

2. The Diversity and Complexity of Issues in this Proceeding Goes well beyond the “Simple and Straight-Forward Process” Intent of an ERF

22 The breadth and complexity of issues to be considered under the Company’s proposed ERF is more appropriate for consideration within a general rate proceeding. Earlier this year, the Commission found that PSE’s ERF rates “were developed consistent with a proposal by Staff in PSE’s 2011/2012 GRC”—an ERF concept which the Commission itself described as “[a]n expedited form of general rate relief using a *simple and straight-forward* process to update the test period relationships between rate base and net operating income.”^{38/} In

^{35/} See, e.g., Dockets UE-140762 *et al.* (spanning nearly eleven months between initial tariff filing and final order); WUTC v. PacifiCorp, Docket UE-130043 (spanning nearly eleven months between initial tariff filing and final order).

^{36/} Exh. No. SEM-1T at 6:12, 30:17.

^{37/} Id. at 10:7-8.

^{38/} Dockets UE-130137 *et al.*, Order 15/14 at ¶ 10 (quoting Dockets UE-111048 and UG-111049 (*consolidated*), Order 08 at ¶ 496) (emphasis added).

contrast, the degree of issue breadth and complexity associated with Pacific Power’s ERF and multi-year rate plan proposals cannot be fairly associated with a “simple and straight-forward process.”

23 In PSE’s ERF, the Commission provided a detailed overview of the “complex issues” considered in PSE’s prior general rate case.^{39/} In contrast to PSE’s ERF, that prior PSE general rate case had presented the Commission with a combination of “contested ... pro forma adjustments,” a “full cost of capital” case, “additional issues related to ... rate design,” and “several prudence issues.”^{40/} Yet, in terms of the breadth and complexity of issues which must be considered by the Commission now, Pacific Power’s ERF cannot be sufficiently distinguished from either PSE’s or the Company’s own prior general rate case.

24 For instance, cost of capital will inevitably be a consideration in this case, as previously explained, given the Court’s mandate of a “thoroughgoing analysis of return on equity” that will necessitate review of the cost of capital case sponsored by Mr. Strunk. Likewise, pro forma adjustments will prominently feature in this proceeding, since Mr. Dalley explicitly testifies that such adjustments are the “primary” and “significant” cost drivers behind the Company’s proposed rate increases.^{41/}

25 In fact, the Commission rejected 25 of the Company’s 30 proposed pro forma adjustments as “insufficiently supported by the evidence” in Pacific Power’s most recent general rate case,^{42/} so it seems very likely that such a primary and significant element of this proceeding will also be subject to significant evidentiary contest. Further, the Sierra Club has petitioned to

^{39/} Dockets UE-130137 *et al.*, Order 07 at ¶¶ 185-86.

^{40/} *Id.* at ¶ 186.

^{41/} Exh. No. RBD-1T at 9:8-9; 16:11-17:1.

^{42/} Dockets UE-140762 *et al.*, Order 08 at ¶ 171.

intervene in this proceeding, and as a party would bring “specific experience with the particular capital expenditures at issue in this proceeding,” including “the prudence of PacifiCorp’s expenditures to install selective catalytic reduction (“SCR”) on Jim Bridger units 3 and 4.”^{43/} As Sierra Club expects to take the position that the Company’s SCR expenditures were imprudent,^{44/} in all likelihood the Commission will be presented with thorough evidence on complex issues regarding pro forma and prudence determinations in this case.

26 Also, the Company has proposed rate design changes,^{45/} which further renders this proceeding more like recent general rate cases. Moreover, as the Company’s proposal would have a material impact on Boise, in particular, this may well be another contested issue that would differentiate the Company’s ERF from the far more simplified ERF concept which the Commission originally envisioned as an alternative to general rate proceedings. Boise also points out that, while the Company portrays its proposal to use end-of-period (“EOP”) rate base as consistent with PSE’s ERF, the Commission rejected Pacific Power’s evidence in support of EOP rate base in the Company’s last general rate case as “woefully inadequate.”^{46/} Thus, the Company’s renewed EOP request is likely to be yet another thoroughly examined and contested issue, adding to the overall rationality of *not* treating this proceeding under a needlessly rushed, “expedited” schedule.

27 Finally, the Company’s request for rate increases based on the highly contentious subject of earnings attrition adds even more complexity to this case.^{47/} With the Commission explicitly suggesting a “loss of perspective on the Company’s responsibility to manage its power

^{43/} Sierra Club Petition to Intervene at ¶ 8.

^{44/} Id.

^{45/} Exh. No. JRS-1T at 7:17-23.

^{46/} Dockets UE-140762 *et al.*, Order 08 at ¶ 150.

^{47/} E.g., Petition at ¶¶ 32, 38; Exh. No. RBD-1T at 8:14.

costs” in 2013,^{48/} and then finding that Pacific Power “did not present persuasive evidence that it is suffering attrition in earnings” in 2015,^{49/} significant controversy is likely to surround the Company’s present claim that its entire \$10.3 million, “second-year increase is based on Pacific Power’s *10-year trend of earnings attrition.*”^{50/}

28

In sum, the Commission recognized that PSE’s ERF and multi-year rate plan package was “somewhat of an experiment in new and innovative ratemaking mechanisms.”^{51/} The Company’s attempt to mimic PSE’s approach does not provide the Commission with an innovative or thoughtful improvement upon the PSE “experiment,” especially as the Company has added layers of complexity to an ERF concept intended to feature simplicity and forthrightness. Accordingly, Boise respectfully requests that the Commission approve this Alternative Motion and treat the Company’s filing as a general rate proceeding, including the establishment of a customary ten-to-eleven-month schedule process to ensure full and adequate opportunity for all interested persons to thoroughly investigate the Company’s proposals.

Dated this 10th day of December, 2015.

Respectfully submitted,

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^{48/} Docket UE-130043, Order 05 at ¶ 172 (Dec. 4, 2013).

^{49/} Dockets UE-140762 *et al.*, Order 08 at ¶ 146.

^{50/} Petition at ¶ 32 (emphasis added).

^{51/} Dockets UE-130137 *et al.*, Order 07 at ¶ 189.