

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of

PACIFIC POWER & LIGHT  
COMPANY,

Petition For a Rate Increase Based on a  
Modified Commission Basis Report,  
Two-Year Rate Plan, and Decoupling  
Mechanism

DOCKET UE-152253

COMMISSION STAFF'S  
OPPOSITION TO PACIFIC POWER  
& LIGHT COMPANY'S MOTION  
TO STRIKE SECTION III OF  
SIERRA CLUB'S CROSS-  
ANSWERING TESTIMONY OR  
ALTERNATIVE MOTION FOR  
LIVE REBUTTAL

**I. INTRODUCTION AND RELIEF REQUESTED**

1 Commission Staff of the Washington Utilities and Transportation Commission (Commission) submits this Opposition to Pacific Power & Light Company's Motion to Strike Section III of Sierra Club's Cross-Answering Testimony or Alternative Motion for Live Rebuttal (Motion) pursuant to WAC 480-07-375(4) and the Commission's Notice of Opportunity to File Written Comments served May 25, 2016.

2 Commission Staff (Staff) believes that the Commission should deny the Motion. The Sierra Club cross-answering testimony at issue is squarely within the scope of the Staff supplemental testimony that the Sierra Club testimony answers, and striking this testimony would leave a gap in the record. Further, Staff is greatly concerned that granting the alternative request to present live direct testimony on the issue of calculating coal costs for the scenario in which units 3 and 4 of the Jim Bridger plant ("Bridger") are converted to run on natural gas would be both impractical and unfair. The Commission should deny both the Company's motion to strike and the alternative request for live rebuttal.

## II. COUNTER-STATEMENT OF FACTS

3           On April 29, 2016, the Commission granted Staff's request to file supplemental testimony based on a discovery dispute regarding the Bridger Coal Company (BCC) October 2013 mine plan.<sup>1</sup> In the Commission's subsequent scheduling order, the Commission specifically provided parties other than Pacific Power & Light Company ("Pacific Power" or "Company") with the opportunity to respond to Staff's supplemental testimony by filing cross-answering testimony.<sup>2</sup> Sierra Club timely filed cross-answering testimony on May 13, 2016.

4           The October 2013 mine plan is important because BCC coal fuels the Jim Bridger plant, and the October 2013 mine plan represents the most current information regarding future coal costs that was available when the Company committed itself to the installation of selective catalytic reduction (SCR).<sup>3</sup> The October 2013 mine plan projects higher coal costs for BCC coal, and fuel costs play an integral role in the analysis of the cost effectiveness of continuing to operate the Bridger plant as a coal-fired resource with selective catalytic reduction.<sup>4</sup>

5           The Bridger plant includes four units. The instant case addresses the prudence of the installation of SCR at only units 3 and 4, but units 1 and 2 will have environmental compliance obligations that will require the Company to install SCR, convert to natural gas, or close the units by 2022 and 2021, respectively.<sup>5</sup> Pacific Power developed a long-term fueling plan, which includes a mine plan, in January 2013 that considered two different

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<sup>1</sup> Order 08.

<sup>2</sup> Order 09, 2, ¶ 7 ("Other parties would also be permitted to file cross-answering testimony and exhibits on May 13, 2016, regarding Staff's supplemental testimony and exhibits"); Appendix A (procedural schedule).

<sup>3</sup> Twitchell, Exh. No. JBT-19HCT 7:15-17.

<sup>4</sup> See Twitchell, Exh. No. JBT-19HCT 6:1-19.

<sup>5</sup> Twitchell, Exh. No. JBT-1CT 17:21 – 18:3.

scenarios: one that provided for the installation of SCR on units 3 and 4, thereby maintaining coal-fueled operation at all four units of Bridger (the SCR scenario); and one which reflected conversion of two of the units to gas, thereby maintaining coal-fueled operations at only two units (gas conversion scenario).<sup>6</sup> The Company's October 2013 mine plan, however, only evaluated the costs of all four units of Bridger operating on coal (the SCR scenario).<sup>7</sup>

6           Jeremy Twitchell filed supplemental testimony on behalf of Staff regarding SCR at Jim Bridger on May 6, 2016. In his supplemental testimony, Mr. Twitchell provides detailed analysis on the projected fueling costs at Bridger. Mr. Twitchell's analysis is based on the SCR scenario, in which all four units continue to operate on coal, because that is the scenario that Pacific Power used in developing both its January and October 2013 mine plans. In his supplemental testimony, Mr. Twitchell explains that the Company did not evaluate how the significant changes made to the mine plan in October 2013 would affect the gas conversion scenario.<sup>8</sup>

7           Mr. Twitchell discusses the missing two-unit gas conversion analysis over approximately five pages in his supplemental testimony.<sup>9</sup> While he ultimately concludes that he is not able to construct a full two-unit scenario analysis based on the October 2013 mine plan, and that only the Company has sufficient information to model that scenario, he is able to determine that, "on a levelized basis, coal costs for a two-unit scenario in October 2013

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<sup>6</sup> Twitchell, Exh. No. JBT-28HCT 20:15-18.

<sup>7</sup> Twitchell, Exh. No. JBT-28HCT 20:18-21.

<sup>8</sup> Twitchell, Exh. No. JBT-19HCT 20:15-21.

<sup>9</sup> Twitchell, Exh. No. JBT-19HCT 20:9 – 26:2.

would likely have been lower than coal costs for the two-unit January 2013 plan that the Company used in its SCR analysis.”<sup>10</sup>

8           On behalf of Sierra Club, Dr. Jeremy Fisher responds in cross-answering testimony to Staff’s analysis of coal costs based on the October 2013 mine plan. Dr. Fisher testifies that, in contrast to Staff, he believes there is sufficient information available to non-Company parties to construct a gas conversion scenario based on the October 2013 mine plan,<sup>11</sup> and his testimony in Section III explains his conclusions.

9           Dr. Fisher also testifies about problems Sierra Club encountered in obtaining discovery and locating documents from Pacific Power. Specifically, he testifies that, despite targeted discovery in March of this year and earlier, he first received access to the Company’s capital spending for the BCC mine on the day of the first hearing, May 3rd.<sup>12</sup> And Dr. Fisher testified that he first learned from Mr. Twitchell’s supplemental testimony that capital spending schedules relating to the October 2013 mine plan were accessible in a particular workbook that was available to the parties.<sup>13</sup> Dr. Fisher’s supplemental cross-answering testimony, therefore, responds to newly available information.

10          Dr. Fisher based his initial analysis in his response testimony on a July 2014 fueling plan because he believed that was a reasonable proxy for the October 2013 mine plan.<sup>14</sup> In his cross-answering testimony, Dr. Fisher explains, however, that when he wrote his response testimony, he had not known that the Company had projected capital costs in plans beyond the January 2013 plan, and he had not known that capital costs associated with the October

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<sup>10</sup> Twitchell, Exh. No. JBT-19HCT 24:10-13.

<sup>11</sup> Fisher, Exh. No. JIF-24CT 9:8-19.

<sup>12</sup> Fisher, Exh. No. JIF-24CT 10:15 – 11:18.

<sup>13</sup> Fisher, Exh. No. JIF-24CT 10:8-14; 11:19 – 12:2.

<sup>14</sup> See Fisher, Exh. No. JIF-24CT 5:14-17.

2013 mine plan were available.<sup>15</sup> Dr. Fisher's cross-answering testimony in Section II draws on this additional information and responds directly to Staff's supplemental testimony concerning both the SCR and gas conversion scenarios. In Section III of his cross-answering testimony, Dr. Fisher transparently walks the reader through the analysis and calculations supporting his testimony from Section II. The two sections are integrally related.

11 Section III contains detailed information pertaining to the October 2013 mine plan. As Dr. Fisher testifies, "[m]ine plans are comprised of approximately twenty different workbooks."<sup>16</sup> Some of the discussion references costs. For example, in explaining the capital costs that he used in his analysis, Dr. Fisher cites an Excel file titled "*14 Depr Exp 10YP*", tab "*SUM*" starting in cell S60. Source: *Attach Sierra Club 1.6 1st SUPP CONF\C.8.f ConfBCC Budget 10-4-2013\OPEX-CAPEX\14 Depr Exp 10YP.xlsx*.<sup>17</sup>

12 Pacific Power witness Ms. Cindy Crane also responds to Staff's supplemental testimony concerning the absence of a gas conversion scenario in the October 2013 mine plan. Like Dr. Fisher, Ms. Crane discusses Mr. Twitchell's analysis and conclusions concerning the gas conversion scenario and the implications for the cost of BCC coal.<sup>18</sup> Ms. Crane, similar to Dr. Fisher, also quantifies her estimate of the gas conversion scenario costs associated with the October 2013 mine plan.<sup>19</sup>

### III. STATEMENT OF ISSUES

13 Whether the Commission should strike Section III of Sierra Club's cross-answering testimony, which merely supports Section II and responds directly to Staff's supplemental

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<sup>15</sup> Fisher, Exh. No. JIF-24CT 10:1-14.

<sup>16</sup> Fisher, Exh. No. JIF-24CT 10:19.

<sup>17</sup> Fisher, Exh. No. JIF-24CT 13, n.30.

<sup>18</sup> Crane, Exh. No. CAC-1CT 11:7 – 13:16.

<sup>19</sup> See Crane, Exh. No. CAC-3C.

testimony, or, in the alternative, allow Pacific Power to rebut this highly complex testimony, which can only be substantiated and challenged with reference to and review of Excel worksheets, through live testimony at hearing.

#### IV. EVIDENCE RELIED UPON

14 Staff primarily relies on the prefiled supplemental testimony of Mr. Twitchell, Exhibit No. JBT-19HCT, the prefiled supplemental cross-answering testimony of Dr. Fisher, Exhibit No. JIF-24CT, and the prefiled supplemental rebuttal of Ms. Crane, Exhibit No. CAC-1CT and Exhibit No. CAC-3C.

#### V. ARGUMENT

##### A. **The Commission Should Deny Pacific Power's Motion to Strike Section III of Dr. Fisher's Supplemental Cross-Answering Testimony.**

15 Section III of Dr. Fisher's supplemental cross-answering testimony properly responds to Staff's supplemental testimony and adds value to the record. Dr. Fisher's supplemental testimony on the SCR and gas conversion scenarios is not improper as Pacific Power claims<sup>20</sup> because it answers Staff's supplemental testimony. The bulk of Staff's analysis rests on the SCR scenario, in which all four Bridger units continue to operate on coal, but Staff witness Mr. Twitchell spends five pages in supplemental testimony testifying about the two-unit scenario alone. Mr. Twitchell's analysis in Staff's supplemental testimony is based on the October 2013 mine plan. Accordingly, Dr. Fisher's testimony analyzing coal costs under both the SCR and gas conversion scenarios and based on the October 2013 mine plan falls squarely within the scope of Mr. Twitchell's testimony. Because Section III contains the detailed analysis and assumptions underlying the more

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<sup>20</sup> Motion at ¶ 6.

narrative testimony in Section II, the Section III analysis is integral to understanding Section II. Because the Section III testimony covers the same subjects as Section II, it does not make sense to strike Section III.

16 Nor should Dr. Fisher’s testimony be stricken because, as Pacific Power argues, it is “all-new.”<sup>21</sup> When Staff presented its updated analysis based on the October 2013 mine plan in supplemental testimony, it was entirely appropriate that this would elicit updated analyses in response based on the October 2013 mine plan—which it did. Not only Sierra Club but also Pacific Power filed testimony that provides new analysis that is directly responsive to Staff’s analysis and conclusions based on the October 2013 mine plan.

17 While Staff and Sierra Club have pursued different analytical paths and have reached some conflicting conclusions, Staff believes that Dr. Fisher’s supplemental cross-answering testimony in Section III adds value to the record and, therefore, should stand. Section III provides necessary transparent and detailed support for Section II, in which Dr. Fisher analyzes Staff’s conclusions and discusses his own conclusions concerning coal costs under the two-unit versus the four-unit scenarios. Striking Section III is akin to deleting workpapers supporting Dr. Fisher’s conclusions.

18 Finally, it is not only valuable but appropriate to have Dr. Fisher’s supplemental analysis in the record. Based on Dr. Fisher’s testimony, Sierra Club apparently faced some of the same problems obtaining timely and complete discovery from Pacific Power that Staff described in its motion for leave to file supplemental testimony. It appears that the Company doled out discovery piecemeal, which required Sierra Club to perform analytical work-arounds. Sierra Club should not be penalized for the way in which Pacific Power managed

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<sup>21</sup> Motion at ¶ 6.

the discovery process, and Dr. Fisher's analysis incorporating all of the information Sierra Club now has should remain in the record.

**B. The Commission Should Also Deny Pacific Power's Alternative Motion for Live Rebuttal Testimony.**

19 Live direct testimony on coal costs under different scenarios is impractical, unfair to other parties, and will not add value to the record. Mine plans are incredibly complex documents that require rigorous time-intensive review. The score of workbooks that comprise a mine plan translates into hundreds of worksheets and thousands of cells. Testimony that rebuts Section III of Dr. Fisher's cross-answering testimony would require the support of calculations and references to Excel worksheets in order to be effective. To analyze the testimony on coal costs that the Company proposes providing live at hearing and to cross examine on this testimony, the other parties would need to have access to the calculations and workpapers supporting the Company's testimony, which of course is completely impractical for hearing. Without the opportunity to review supporting documents, however, it would be impossible to cross examine Ms. Crane on assertions she likely would make about the Company's calculations and mine plan inputs. And it would therefore be unfair to the other parties to have to cross examine a witness on such testimony—especially without an opportunity to review her analysis or time to prepare for cross examination. Such unsupported live testimony, which could not be appropriately vetted by review, data requests, or cross examination, would only expend hearing time without contributing credible testimony to the record.

20 Importantly, Ms. Crane has already addressed the topic of coal costs under a two-unit scenario based on the October 2013 mine plan. Like Dr. Fisher, Ms. Crane responded to Staff's assumptions about how coal costs would change under a two-unit scenario based on



the October 2013 mine plan.<sup>22</sup> And, like Dr. Fisher, Ms. Crane performed the analysis that Staff acknowledged it could not do—she quantified the impact of the October 2013 mine plan on Bridger operating under a two-unit scenario.<sup>23</sup> Ms. Crane, therefore, has already responded to the issue in question. In addition, Pacific Power has already conducted discovery on Dr. Fisher’s cross-answering testimony and has had the opportunity to prepare cross examination in advance of hearing. If Ms. Crane is granted leave to provide live supplemental testimony, none of the other parties will have these same opportunities. Under a typical rate case procedural schedule, the company addresses any cross-answering testimony through cross examination and on brief.

21           If Pacific Power wishes to supplement its testimony, and the Commission believes such testimony would facilitate its review, Staff would not object to allowing Ms. Crane to file brief written testimony. Procedural due process to the other parties and the practical realities of the issue in question, however, would require an opportunity for the other parties to review the additional testimony, for one round of discovery, and for time to prepare cross-examination to properly vet the Company’s additional supplemental testimony. There is a reason why the Commission does not typically allow direct testimony in complex rate proceedings—prewritten testimony, discovery, and cross-examination provide important procedural safeguards that are necessary to properly vet the technical testimony of expert witnesses. Without these procedural safeguards, additional testimony from the Company could not be deemed as credible as the rest of the testimony in this case. Therefore, the Company’s alternative request for live direct testimony would not benefit the record or aid the Commission’s review.

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<sup>22</sup> Crane, Exh. No. CAC-1CT 11:7-12:5.

<sup>23</sup> Crane, Exh. No. CAC-1CT 12:6-13:1; Exh. No. CAC-3C.

## VI. CONCLUSION


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The Commission should deny both of Pacific Power's motions. The Sierra Club cross-answering testimony in Section III is within the scope of Staff's supplemental testimony and adds value to the record, and the Commission should not strike it. Live testimony on the detailed and mine-plan based analysis in Section III would be impossible to rebut on cross and, without supporting documents, would be of limited usefulness to the Commission. To the extent that supplemental testimony by the Company is necessary, procedural due process requires that testimony to be in writing.

Dated this 26th day of May 2016.

Respectfully submitted,

ROBERT W. FERGUSON  
Attorney General

  
JENNIFER CAMERON-RULKOWSKI  
Assistant Attorney General  
Counsel for Washington Utilities and  
Transportation Commission Staff