

**BEFORE THE WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION**

In the Matter of

PACIFICORP D/B/A 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

SIERRA CLUB  
RESPONSE TO PACIFICORP'S  
MOTION TO STRIKE SIERRA CLUB'S  
TESTIMONY AND CROSS-MOTION  
TO STRIKE PACIFICORP'S  
TESTIMONY

In accordance with WAC 480-07-375(1)(d) and (4), Sierra Club hereby files this response to PacifiCorp's motion to strike Sierra Club's cross-answering testimony and alternative motion for live direct. Sierra Club objects to both motions. Sierra Club further moves to strike portions of PacifiCorp's supplemental rebuttal testimony of Cindy A. Crane (Ex. No. CAC-1CT) and rebuttal testimony of Dana Ralston (Ex. No. DR-1CT) and related exhibits.

**I. PACIFICORP'S MOTION TO STRIKE IS BASELESS**

PacifiCorp's motion to strike the supplemental cross-answering testimony of Dr. Jeremy's Fisher (Exhibit No. JIF-24CT) is baseless and should be denied. Sierra Club complied with all aspects of Order 09, which provided Sierra Club and other parties permission "to file cross-answering testimony and exhibits on May 13, 2016, regarding Staff's supplemental testimony and exhibits."<sup>1</sup> Dr. Fisher's testimony fits squarely within the scope of issues addressed by Staff's supplemental testimony (Exhibit No. JBT-28HT), and in fact Section III of Dr. Fisher's testimony was a direct response to Staff's claim that "Pacific Power is the only party to this case with sufficient information to prepare [a 2-unit mine] plan."<sup>2</sup> Contrary to Staff's assertion, Dr. Fisher's testimony

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<sup>1</sup> Order 09 at ¶ 7.

<sup>2</sup> Ex. No. JIF-24CT at p.8 line 26 to p.9 line 1 (quoting Ex. No. JBT-28HCT, page 20, lines 21-23).

demonstrated that it was possible to develop an analysis that included a 2-unit mine plan based on the data and information relied on by Staff in its supplemental testimony.

PacifiCorp's assertion that Dr. Fisher's testimony went beyond the scope of Staff's supplemental testimony is patently false. Section III of Dr. Fisher's testimony "concern[ed] the Company's installation of the selective catalytic reduction (SCR) at the Jim Bridger Plant's Units 3 and 4"<sup>3</sup> and was based on the October 2013 mine plan that PacifiCorp "ignor[ed] the existence of ... until it could, on rebuttal, chastise Staff's [analysis]."<sup>4</sup>

Staff asserted in its testimony that Mr. Twitchell did not analyze the impact of the October 2013 mine plan on the gas conversion case for Jim Bridger because "[t]here was not enough information in this case for Staff to determine how the coal cost increases identified in the October 2013 Mine Plan would affect the gas conversion case."<sup>5</sup> **This omission in Staff's testimony leaves a critical gap because it is precisely the comparison between the SCR case and the gas conversion case that informs whether or not PacifiCorp acted prudently.** Dr. Fisher's testimony filled that gap by providing the analysis of "how the coal cost increases identified in the October 2013 Mine Plan would affect the gas conversion case."<sup>6</sup> To claim, as PacifiCorp does, that Dr. Fisher's testimony is therefore outside the scope of the issues raised by Staff's supplemental testimony is incorrect.

## **II. TO THE EXTENT THE COMMISSION PROHIBITS SIERRA CLUB FROM INTRODUCING NEW INFORMATION IN SUPPLEMENTAL TESTIMONY, IT MUST APPLY THE SAME STANDARD TO PACIFICORP**

Rather than relying on the scope of issues Dr. Fisher's testimony addressed, PacifiCorp instead objects to Sierra Club's testimony because it provided an "all-new" SCR analysis.<sup>7</sup> However, PacifiCorp conveniently ignored the fact that it also provided

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<sup>3</sup> Order 09 at ¶ 3

<sup>4</sup> Order 08 at ¶ 14.

<sup>5</sup> JBT-28HCT at p. 20, line9-14.

<sup>6</sup> *Id.*

<sup>7</sup> Motion to Strike at p.3.

an “all-new” 2-unit mine plan analysis in Mr. Ralston’s rebuttal testimony (Exhibit No. DR-1CT)<sup>8</sup> as well as yet another “all-new” 2-unit mine plan analysis in Ms. Crane’s supplemental rebuttal testimony (Ex. No. CAC-1CT).<sup>9</sup> Under PacifiCorp’s logic, both of these new analyses must be excluded from the record.

PacifiCorp cites as the sole legal basis for its motion to strike a footnote in an interlocutory procedural order from the Commission in a different proceeding, *Wash Utils. Trans. Comm. v. Avista Corp. d/b/a Avista Utils.*, Docket Nos. UE-100467 and UG-100468.<sup>10</sup> PacifiCorp’s reliance on this citation is perplexing. The footnote addressed a paragraph in a prehearing conference order that discussed the deadline for discovery cutoff. It is a stretch to construe that footnote in an interlocutory order as persuasive authority on the Commission’s interpretation regarding the limits on cross-answering testimony.

In any case, even if the Commission does rely on that footnote, it is important to read the whole footnote:

The Commission expects that discovery into rebuttal and cross-answering cases should be less extensive than earlier stages of the proceeding. Interjection of new information to the case is not permitted **through rebuttal** or cross-answering testimony. If necessary, parties may seek relief from the discovery cut-off. In the alternative, parties may ask the Commission to **strike rebuttal** or cross-answering testimony that inappropriately attempts to expand the scope of the case.<sup>11</sup>

Even if PacifiCorp’s argument that the Commission prohibits introducing “new” information in cross-answering testimony was valid, which it is not, then that same prohibition must also be applied to PacifiCorp’s **rebuttal** testimonies.

Parties have made it abundantly clear in this proceeding that, prior to this proceeding, PacifiCorp failed to conduct an analysis based on the October 2013 mine

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<sup>8</sup> Ex. No. DR-1CT, p.7 line 14 to p.14 line 5.

<sup>9</sup> Ex. No. CAC-1CT, p.4, line 7 to p.5 line 4; *Id.* at p.12, line 6 to p.13, line 16.

<sup>10</sup> Motion to Strike at p.1, n.2.

<sup>11</sup> *Wash Utils. Trans. Comm. v. Avista Corp. d/b/a Avista Utils.*, Docket Nos. UE-100467 and UG-100468 Order 04 n.3 (Apr. 22, 2010) (emphasis added).

plan that considered the most recently available information on the cost of coal as it related to the decision to install SCR on Jim Bridger units 3 and 4. However, the Company did include a new analysis of a 2-unit scenario in both Mr. Ralston's rebuttal testimony and Ms. Crane's supplemental testimony.

Mr. Ralston described on page 12 of his rebuttal testimony how he used "a comparative ratio between the SCR and the 2015 IRP analyses" to conduct a new analysis that "adjusted" Sierra Club's analysis from Dr. Fisher's response testimony.<sup>12</sup> Ms. Crane went even further with a new analysis in her supplemental rebuttal testimony, despite the Company already having had an opportunity to introduce a "new analysis" in Mr. Ralston's rebuttal. Ms. Crane described her new analysis as follows:

To quantify the impact of this change using information available in fall 2013, the Company compared BCC surface mine cash costs, BCC surface mine capital costs expressed on a revenue requirement basis, and external coal prices to costs in the January 2013 two-unit scenario. Based on this analysis, the Company estimates that two-unit scenario coal costs would have increased by approximately [REDACTED] during [REDACTED] based on changes in the October 2013 mine plan.<sup>13</sup>

If the Commission determines that Dr. Fisher's analysis of the 2-unit mine plan scenario somehow violated a prohibition on providing new information in cross-answering testimony, then it must also find that PacifiCorp violated the same standard.

Sierra Club therefore moves to strike the following portions of PacifiCorp's testimony and exhibits:

Exhibit No. DR-1CT, page 7, line 14 to page 14, line 5  
Exhibit No. DR-2C (all)  
Exhibit No. DR-3C (all)  
Exhibit No. CAC-1CT, page 4, line 7 to page 5, line 4  
Exhibit No. CAC-1CT, page 12, line 6 to page 13, line 16  
Exhibit No. CAC-2C (all)  
Exhibit No. CAC-3C (all)

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<sup>12</sup> Ex. No. DR-1CT at p.12, lines 11-12. *See, also*, Ex. No. DR-2C and DR-3C.

<sup>13</sup> Ex. No. CAC-1CT. *See, also*, Ex. No. CAC-2C and CAC-3C.

### **III. SIERRA CLUB OBJECTS TO PACIFICORP'S REQUEST TO PROVIDE LIVE REBUTTAL TESTIMONY**

Sierra Club objects to PacificCorp's request to provide live direct testimony. PacificCorp has not provided any explanation as to why it cannot effectively deal with any concerns in Dr. Fisher's testimony through cross-examination other than to state that the testimony is "broad and technical."<sup>14</sup> All of the SCR testimony in this proceeding from every party is "broad and technical." Unless the Commission provides the same opportunity to all parties to present direct oral testimony on the stand, then it should deny PacificCorp's request.<sup>15</sup> Furthermore, direct testimony would prejudice other parties' ability to conduct cross examination because parties will not be able to review and prepare for Ms. Crane's new testimony. As a result, counsel for Sierra Club would expect a much longer cross-examination time in order to investigate and rebut claims made by Ms. Crane on the stand. The inefficiency of this type of live direct testimony and the resulting extensive cross examination that it triggers is one of the reasons the administrative proceedings rely instead on the more streamlined and efficient requirement to submit pre-filed written testimony, particularly on technical issues.

In addition, if for no other reason, the Commission should deny PacificCorp's request to provide direct oral testimony because, based on parties estimates of cross time, it will be difficult to complete the hearings in a single day as it is currently scheduled. Any purported substantive value alleged by the Company of adding live direct testimony at this stage of the case is clearly outweighed by the administrative disruption of the entire SCR phase of the proceeding.

### **IV. CONCLUSION**

The most appropriate and efficient manner to deal with the rebuttal and cross-answering testimonies filed in this proceeding is to allow the testimony into the record. The Commission may then use its considered judgement to weigh all of the facts on the

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<sup>14</sup> Motion to Strike at p.4.

<sup>15</sup> Sierra Club is not suggesting that all parties should be given this opportunity. Completing cross examination of the witnesses in a single day will be challenging enough without allowing the additional time for direct oral testimony.

record to make an informed decision. However, if the Commission grants PacifiCorp's motion to strike, it must also grant Sierra Club's cross-motion to strike because PacifiCorp provided the same type of "new information" in rebuttal testimony as Sierra Club provided in cross-answering testimony.

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Respectfully submitted,



Travis Ritchie  
Sierra Club Environmental Law Program  
2101 Webster Street, Suite 1300  
Oakland, CA 94612  
(415) 977-5727  
[travis.ritchie@sierraclub.org](mailto:travis.ritchie@sierraclub.org)