

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

PACIFIC POWER & LIGHT  
COMPANY,

Respondent.

DOCKET UE-152253

ORDER 11

ORDER DENYING PACIFIC POWER'S  
MOTION TO STRIKE SECTION III OF  
SIERRA CLUB'S CROSS-ANSWERING  
TESTIMONY AND DENYING PACIFIC  
POWER'S ALTERNATIVE MOTION FOR  
LIVE REBUTTAL

- 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*     On May 5, 2016, the Commission entered Order 09 which, among other things, set a deadline for the Commission's regulatory staff to file supplemental testimony on May 6, 2016, and a deadline for the Company and any other parties to file cross-answering testimony on May 13, 2016, to address Pacific Power's October 2013 mine plan and the Company's requested recovery of costs associated with the installation of selective catalytic reduction (SCR) at Units 3 and 4 of the Jim Bridger plant.
- 3*     **Pacific Power's Motion to Strike, or Alternative Motion for Live Rebuttal.** On May 24, 2016, Pacific Power filed a Motion to Strike Section III of Sierra Club's Cross-Answering Testimony or Alternative Motion for Live Rebuttal (Motion to Strike). Pacific

Power alleges Sierra Club “sponsored an all-new ‘alternative’ SCR analysis,”<sup>1</sup> which is based on the October 2013 mine plan and that differs significantly “in all material respects” from its original analysis that was based on Pacific Power’s 2015 integrated resource plan long-term fueling plan.<sup>2</sup> The Company moves, alternatively, that the Commission allow it the opportunity to respond to Section III of Dr. Jeremy Fisher’s supplemental testimony with oral rebuttal testimony from Ms. Cindy Crane at the evidentiary hearing on June 1, 2016.

- 4 In support of its request to strike, Pacific Power states that, “Sierra Club never requested nor received permission to file supplemental testimony... [I]t is improper for Sierra Club to unilaterally expand the scope of its cross-answering testimony to include an entirely new analytical framework at this stage of the case.”<sup>3</sup> With regard to its alternative motion, the Company asserts that:

[g]iven the broad and technical scope of Section III and the myriad problems in Dr. Fisher’s analysis, live rebuttal is the only effective way for the Company to respond to it. Without live rebuttal from the Company, the record in this case will be incomplete and inaccurate.”<sup>4</sup>

- 5 **Staff’s Opposition to the Motion to Strike.** On May 26, 2016, Staff filed its Opposition to Pacific Power’s Motion to Strike (Staff’s Opposition), arguing that Sierra Club’s witness, Dr. Fisher, did not expand the scope beyond answering Staff’s supplemental testimony. Staff’s witness, Mr. Jeremy Twitchell, provided supplemental testimony on May 6, 2016, featuring a four-unit SCR analysis “because that is the scenario that Pacific Power used in developing its January and October 2013 mine plans.”<sup>5</sup> Staff states that Mr. Twitchell’s testimony “explains that the Company did not evaluate how the significant changes made to the mine plan in October 2013 would affect the gas

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<sup>1</sup> Motion to Strike, ¶ 6.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*, ¶ 7.

<sup>4</sup> *Id.*, ¶ 9.

<sup>5</sup> Staff’s Opposition, ¶ 6.

conversion scenario.”<sup>6</sup> Mr. Twitchell also concludes in his supplemental testimony that “only the Company has sufficient information to model that scenario.”<sup>7</sup>

6 Staff asserts that Dr. Fisher, in his supplemental cross-answering, disagrees with Mr. Twitchell’s assertion and “believes there is sufficient information available to non-Company parties to construct a gas conversion scenario based on the October 2013 mine plan.”<sup>8</sup> This analysis by Dr. Fisher explaining his disagreement with Mr. Twitchell’s statement is contained within Section III.<sup>9</sup>

7 Dr. Fisher’s response testimony, utilizing the July 2014 fueling plan, was drafted before he became aware, in his reading of Mr. Twitchell’s supplemental testimony, “that capital spending schedules relating to the October 2013 mine plan were accessible in a particular workbook.”<sup>10</sup> Staff asserts that Dr. Fisher incorporates this newly-discovered information in direct response to Mr. Twitchell.<sup>11</sup> According to Staff:

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.<sup>12</sup>

8 Staff also opposes Pacific Power’s request for live rebuttal of Dr. Fisher’s supplemental cross-answering testimony. It would be “impractical, unfair to other parties, and will not add value to the record” as mine plans contain numerous workbooks which require lengthy review.<sup>13</sup> Staff argues:

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

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

<sup>7</sup> *Id.*, ¶ 7. Staff’s Opposition quoting supplemental testimony of Mr. Jeremy Twitchell.

<sup>8</sup> *Id.*, ¶ 8.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*, ¶¶ 8, 10.

<sup>11</sup> *Id.*, ¶ 10.

<sup>12</sup> *Id.*, ¶ 12. Ms. Cindy Crane, on behalf of Pacific Power, also responds to Mr. Twitchell’s testimony regarding “the absence of a gas conversion scenario in the October 2013 mine plan” in her supplemental rebuttal testimony filed on May 13, 2016. *Id.*, ¶ 12.

<sup>13</sup> *Id.*, ¶ 19.

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.<sup>14</sup>

9 Finally, Staff argues that “[u]nder a typical rate case procedural schedule, the company addresses any cross-answering testimony through cross examination and on brief.”<sup>15</sup> If, contrary to Commission past practice, Pacific Power is allowed to present live rebuttal testimony in response to cross-answering testimony, Staff maintains that the procedural due process for all intervenors “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.”<sup>16</sup> Staff recommends that the Commission deny both Pacific Power's Motion to Strike and the Company's alternative Motion for Live Rebuttal.

10 **Sierra Club's Opposition to Pacific Power's Motion to Strike.** On May 26, 2016, Sierra Club filed its Response to PacifiCorp's Motion to Strike Sierra Club's Testimony and Cross-Motion to Strike PacifiCorp's Testimony (Sierra Club's Opposition). Sierra Club, like Staff, recommends that the Commission deny both the Company's Motion to Strike Section III of Dr. Fisher's supplemental testimony and Pacific Power's request to proffer the oral rebuttal testimony of Ms. Crane at the June 1, 2016, evidentiary hearing. It argues that Dr. Fisher's supplemental cross-answering testimony “fits squarely within the scope of issues addressed by Staff's supplemental testimony.”<sup>17</sup> In Section III, Dr. Fisher directly responds to Mr. Twitchell's contention that the Company is the only party that has sufficient information to conduct an analysis of a two-unit scenario based on the October 2013 mine plan.<sup>18</sup> Sierra Club asserts that Dr. Fisher's testimony contradicts this hypothesis by performing the analysis Staff stated only Pacific Power could do.<sup>19</sup>

11 Sierra Club points to the testimony of Pacific Power witness, Dana Ralston, on rebuttal as well as Ms. Crane's supplemental rebuttal as containing “all-new” analyses for a two-unit

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*, ¶ 20.

<sup>16</sup> *Id.*, ¶ 21.

<sup>17</sup> Sierra Club's Opposition at 1.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 2.

mine plan similar to Dr. Fisher's contested analysis.<sup>20</sup> It argues, in a cross-motion against Pacific Power, that if "all-new" analyses are not allowed based on the Company's logic, these pieces of testimony should also be excluded from consideration.<sup>21</sup> Sierra Club enumerates the pages and lines of both Mr. Ralston's and Ms. Crane's rebuttal testimonies that offer two-unit analyses which was not included in previous iterations of the Company's case.<sup>22</sup>

12 Finally, Sierra Club argues that oral rebuttal testimony from Ms. Crane in response to Dr. Fisher's testimony is unnecessary. As Sierra Club asserts, "PacifiCorp 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>23</sup> According to Sierra Club, "[a]ll of the SCR testimony in this proceeding from every party is 'broad and technical.'"<sup>24</sup> Sierra Club recommends that the Commission deny in its entirety Pacific Power's Motion to Strike, or alternatively, Motion for Live Rebuttal Testimony.

13 **Discussion and Decision.** A thorough examination of Mr. Twitchell's supplemental testimony and the analysis performed by Dr. Fisher reveal that Dr. Fisher's testimony is properly-filed cross-answering testimony pursuant to Order 09. Mr. Twitchell makes the argument that the only party with the ability and the information necessary to perform a two-unit analysis using the October 2013 mine plan is the Company. In Section II of his supplemental cross-answering, Dr. Fisher disagrees with this assertion, and it is in Section III, the section Pacific Power recommends striking as an all-new analysis outside the scope of Staff's supplemental testimony, that Dr. Fisher responds with how he, as a non-Company individual, performed such an analysis. The parties may argue the merits of the analysis, but it is in direct response to Mr. Twitchell's contention. In addition, we find the cross-motion filed by Sierra Club to strike various portions of Mr. Ralston's and Ms. Crane's testimony moot.

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<sup>20</sup> *Id.* at 3.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 4.

<sup>23</sup> *Id.* at 5.

<sup>24</sup> *Id.*

14 As Dr. Fisher's testimony is permissible cross-answering, the Company's request for oral rebuttal, if granted, would be procedurally unprecedented and gratuitous. Pacific Power has offered only the barest explanation, that Dr. Fisher's testimony is 'broad and technical' in scope, in supporting of its request for oral rebuttal. As Staff states, oral rebuttal is not traditionally a procedural option in response to cross-answering testimony, and Pacific Power has not offered a valid explanation of any infirmities present in the cross-examination process. For that matter, the Company has filed supplemental cross-examination exhibits for Dr. Fisher and indicated it has planned approximately an hour of cross-examination questions for him. This challenges Pacific Power's claim that the only effective way for the Company to respond to his testimony is through live rebuttal. Pacific Power's alternative Motion for Live Rebuttal is denied.

**ORDER**

15 **THE COMMISSION ORDERS That** the Motion to Strike Section III of Sierra Club's Cross-Answering Testimony or Alternative Motion for Live Rebuttal, filed by Pacific Power & Light Company, is **DENIED**.

Dated at Olympia, Washington, and effective May 27, 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.**