

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 RESPONSE
TO BOISE WHITE PAPER'S
MOTION TO DISMISS

1 Pursuant to WAC 480-07-380(1)(c), Staff of the Washington Utilities and Transportation Commission (Commission) submits this response to Boise White Paper, L.L.C.'s Motion to Dismiss and Alternative Motion (Motion), filed December 10, 2015. Commission Staff (Staff) believes that the filing of Pacific Power & Light Company (Pacific Power) is sufficient to initiate an expedited rate filing and need not be dismissed. However, the absence of comprehensive cost of capital evidence poses a risk to the Commission in light of the Superior Court's ruling in the Puget Sound Energy Inc. (PSE) case.¹ The Commission could mitigate this risk by soliciting additional cost of capital evidence from Pacific Power.

2 This response relies on the Declaration of Jason Ball and the Declaration of Betsy DeMarco, which are attached, as well as the rate filing by Pacific Power of November 25, 2015.

¹ *Industrial Customers of Northwest Utils. v. Wash. Utils. & Transp. Comm'n*, Thurston County Superior Court Case Nos. 13-2-01576-2 and 13-2-01582-7 (consolidated), Order Granting in Part and Denying in Part Petitions for Judicial Review (July 25, 2014) ("Superior Court Order"). The Superior Court order and letter ruling are included in this filing as attachments to the Declaration of Betsy DeMarco.

I. BACKGROUND

3 Boise's Motion asks that Pacific Power's filing be dismissed or, in the alternative, treated as a general rate case. The foundation of Boise's motion for dismissal is the Superior Court decision on the petition for judicial review of the Commission's final order in Dockets UE-130137 and UE-121697. The Superior Court reversed the Commission's determination of rates to be charged by PSE during a rate plan, finding that "the Commission's findings of fact with respect to the return on equity component of [PSE'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 [PSE] to the other parties."² PSE had filed an "expedited rate filing" (ERF) in Docket UE-130137. PSE's filing followed a proposal by Staff, which the Commission discussed favorably in Docket UE-111048 as a possible way to address the burdens of back-to-back general rate case filings.³ In accord with the intent of the ERF as a limited-issue proceeding, PSE did not seek a change to its cost of capital and did not file traditional cost of capital testimony.

4 Pacific Power's ERF filing is presented as a similar limited-issue rate case based on a modified Commission Basis Report. Pacific Power's case does not include power costs. It also does not include a comprehensive cost of capital presentation. However, Pacific Power does not seek a change to its return on equity or capital structure.

5 Here, the Company presents the testimony of a cost of capital expert, Mr. Strunk, who discusses market conditions and provides his analysis of the appropriate return on equity (ROE) for Pacific Power under various established methodologies for deriving ROE.

² Superior Court Order.

³ *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc.*, Dockets UE-111048 and UG-111049 (consolidated), Order 08 (May 7, 2012), 183-87, ¶¶ 496-507.

Mr. Strunk testifies that an increase to Pacific Power's ROE would be appropriate,⁴ but accepts the company's decision to maintain the latest accepted allowed return on equity.⁵ Pacific Power does not challenge the hypothetical capital structure that the Commission set in 2011 and approved again in 2013.⁶ In Pacific Power's last general rate case, although the parties filed full cost of capital cases, the Commission declined to re-hear the company's case on cost of capital. Therefore, present rates are based on the ROE and capital structure that the Commission had approved in 2013.⁷

6 Staff examined Pacific Power's testimony and supporting documents in the context of an ERF filing. Upon review, Staff determined that the filing was sufficient in terms of complying with Commission rules governing rate filings and in terms of presenting a case that Staff could analyze to formulate a recommendation for the Commission.⁸

II. DISCUSSION

A. Motion to Dismiss

7 Under RCW 80.04.130(4), the burden of proof is on the public service company to show that a rate increase is just and reasonable. This means that "[a] company seeking a rate increase has the burden of coming forward with sufficient evidence to support its request."⁹ Pursuant to its rules for general rate proceedings, the Commission considers the company's prefiled evidence to be its full direct case in support of its rate filing for purposes

⁴ Exh. No. KGS-1T 3:17 – 4:1.

⁵ Exh. No. KGS-1T 3:3-10.

⁶ *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-130043, Order 05 (Dec. 4, 2013), 14, ¶ 39.

⁷ *Wash. Utils. & Transp. Comm'n v. Pacific Power & Light*, Docket UE-140762, Order 08 (March 25, 2015), 3, ¶ 7.

⁸ Declaration of Jason Ball, ¶¶ 5-6.

⁹ *Wash. Utils. & Transp. Comm'n v. PSE*, Dockets UE-011163 and UE-011170, Sixth Supplemental Order – Order Granting Motions; Dismissing Dockets (October 4, 2001), ¶ 14.

of deciding any prehearing motion to dismiss under WAC 480-07-380.¹⁰ Although the Pacific Power filing is structured in such a way as to fall outside the Commission's definition of a general rate case,¹¹ it would be inappropriate to elevate form over substance and decline to apply the burden of proof set forth in WAC 480-07-540. Pacific Power's filing should be subject to WAC 480-07-540 for purposes of deciding this Motion.

8 Pacific Power's filing provides sufficient evidence to support its request. It may or may not ultimately meet its burden of persuasion, but its filing meets the company's burden of going forward with its request for relief in a limited-issue rate proceeding. Not only has it provided all of the traditional testimony to support the issues for which it seeks relief but it provides testimony on return on equity, an element for which the company proposes no change. Staff appreciates this effort. The lack of a traditional presentation of cost of capital is not grounds for dismissal under Commission rules or rate setting principles. As the Commission itself noted, due to settlements, for example, the cost of capital may remain embedded and unchanged for a period of years. The Commission has made rules explicitly authorizing certain limited issue rate filings¹² but this does not mean that the Commission cannot adjudicate other types of limited issue rate filings, such as the Pacific Power filing here.

9 While Staff believes that Pacific Power's filing is sufficient and should not be dismissed, supplementing the company's cost of capital testimony would provide a more

¹⁰ WAC 480-07-540.

Public service companies bear the burden of proof in general rate proceedings that propose changes that would increase any rate, charge, rental, or toll, as provided in RCW 80.04.130 or 81.04.130. The burden of proof includes the burden of going forward with evidence and the burden of persuasion. The commission will consider the company's prefiled evidence to be its full direct case in support of its rate filing for purposes of deciding any prehearing motion to dismiss under WAC 480-07-380.

¹¹ See WAC 480-07-505.

¹² WAC 480-07-505(2).

robust record and would facilitate review of Pacific Power's overall rate of return. Staff suggests that supplemental evidence include at least the company's current credit rating and the company's current cost of long-term debt. The basis for Staff's proposal is the finding in Superior Court that it was a procedural error to approve PSE's multi-year rate plan without considering traditional cost of capital evidence. While this ruling is necessarily confined to the particular facts and circumstances of the PSE case, and while a Superior Court ruling does not create binding legal precedent, the multi-year rate plan that Pacific Power proposes in conjunction with its limited-issue expedited rate filing presents a context that is very similar to the PSE case. In fact, the staleness of the cost of capital is even more pronounced with Pacific Power. Because the Commission elected not to rehear cost of capital in Pacific Power's last general rate case, Pacific Power's cost of capital has not been re-set since December 2013. If the Commission approved Pacific Power's filing under these circumstances, its rate order could be challenged with the same arguments made before the Superior Court in the PSE case.

10 The Commission could avoid this potential procedural pitfall by not approving a rate plan, but that would be cutting off its nose to spite its face. Indeed, the original purpose of an ERF, as discussed by the Commission in its 2012 order in PSE's general rate case, is to ameliorate the constant press of general rate case filings. Excising the rate plan would do away with the rate case stay out provision of Pacific Power's proposal, which is the element that best addresses the issue of serial rate cases. To provide the Commission with the most options for a decision in this filing, Staff suggests that the Commission solicit additional cost of capital evidence from Pacific Power.

B. Alternative Motion

11 Boise requests, as an alternative to dismissing Pacific Power's filing, that the Commission treat the filing as a general rate proceeding. Staff believes this is unnecessary. The Commission can conduct rate proceedings as it deems fit and when consistent with the public interest. It is not constrained by the rate case definition rule. As the Superior Court recently recognized, the Commission has the discretion to dispense with a general rate proceeding, even where a case may fit the definition of one.¹³ Accordingly, this filing's designation does not necessarily determine the Commission's procedure in adjudicating it.

12 The primary purpose of requesting that the Commission label this filing as a general rate proceeding may be to buy time. Even if true, the Commission is not required to extend this case to its statutory deadline.¹⁴ The Commission can set a procedural schedule that enables it to reach an informed decision, so long as the due process requirements of the Administrative Procedure Act are met. While Staff believes that Pacific Power's proposed order deadline of May 1, 2016, is overly optimistic, Staff is confident that it can provide a recommendation on this filing to the Commission on a shorter timeframe than it would typically need for a general rate proceeding.

III. CONCLUSION

13 The Commission should deny Boise's Motion. Staff believes Pacific Power has supported its limited issue rate filing with evidence sufficient to initiate such a proceeding. There is no need to convert Pacific Power's filing to a general rate case. Staff cautions, however, that without evidence addressing the traditional breadth of cost of capital, Pacific

¹³ See Superior Court Order, attached letter ruling, p. 2.

¹⁴ RCW 80.04.130(1) allows the Commission to suspend a tariff revision "for a period not exceeding ten months from the time the same would otherwise go into effect." By its plain language, this provision does not require the Commission to suspend every tariff revision for a full ten months.

Power's proposed multi-year rate plan may limit the Commission's options, given the attendant risk of procedural error. To mitigate this risk and provide the Commission with a full range of decision options, the Commission could solicit a supplemented cost of capital presentation from Pacific Power.

DATED December 21, 2015.

Respectfully submitted,

ROBERT W. FERGUSON
Attorney General

A handwritten signature in black ink, appearing to be 'RWF', written over the printed name of Robert W. Ferguson.

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