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September 28, 2021

SENT VIA WEB PORTAL

Amanda Maxwell
 Executive Secretary
 Washington Utilities & Transportation Commission
 621 Woodland Square Loop SE
 Lacey, WA 98503

Re: *In the Matter of PacifiCorp d/b/a Pacific Power and Light Company*
2020 Power Cost Adjustment Mechanism, Docket UE-210447
 Comments of Public Counsel on Power Cost Adjustment Mechanism

Dear Amanda Maxwell:

The Public Counsel Unit of the Washington State Attorney General's Office ("Public Counsel") respectfully submits these comments in advance of the September 30, 2021, Open Meeting. These comments are in response to the June 15, 2021, filing of PacifiCorp d/b/a Pacific Power and Light Company ("PacifiCorp" or "Company") regarding its 2020 Power Cost Adjustment Mechanism (PCAM). Public Counsel appreciates the opportunity to file comments in this matter and has engaged the services of Dr. Robert Earle of Alea IE, LLC to assist in our participation in this Docket. Dr. Earle is an expert in utility economics, regulation, power markets, gas markets, and power supply who has over two decades of experience. A copy of Dr. Earle's Curriculum Vitae is attached as Attachment A.

Public Counsel has reviewed the filing, the Company's responses to Public Counsel's informal data requests, comments submitted in this Docket by the Alliance of Western Energy Consumers (AWEC), and the Open Meeting memo filed by the Staff of the Washington Utilities and Transportation Commission ("UTC" or "Commission"). Public Counsel has also discussed the matter with Commission Staff and AWEC. Based on the comments below, Public Counsel submits three recommendations concerning PacifiCorp's 2020 PCAM filing: (1) that the 2020 end-of-year PCAM balance should be returned to the ratepayers over a two-year schedule consistent with AWEC's recommendation regarding refund; (2) that the Commission consider ordering an independent evaluation/audit of the prudence of PacifiCorp's Actual Net Power Cost

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(NPC) for the next PCAM; and (3) that the Commission should not permit recovery of PacifiCorp's costs associated with the Aurora power cost model in the 2021 PCAM because those costs are pending prudence review in the power cost only rate case (PCORC) proceeding in Docket UE-210402.

Public Counsel's Recommendations:

1. The 2020 end-of-year PCAM balance should be returned to the ratepayers over a two-year schedule;
2. The Commission should consider ordering an independent evaluation/audit of the prudence of PacifiCorp's Actual NPC for the next PCAM; and
3. The Commission should not permit recovery of PacifiCorp's costs associated with the Aurora power cost model in the 2021 PCAM because those costs are pending prudence review in the PCORC proceeding in Docket UE-210402.

I. BACKGROUND

The Commission approved PacifiCorp's PCAM in Order 09 in Docket UE-140762 to track variations in power costs in the PCAM's deferral account. The positive or negative difference between Actual NPC and forecasted NPC collected in base rates is tracked in the PCAM. A positive difference first must pass through a "dead band" before it is distributed back to ratepayers in the "sharing band." The Commission-approved Settlement Agreement in Docket UE-140762 established that once the deferral account reaches a positive or negative \$17 million, a refund to or surcharge to be collected from customers is "triggered" and should be refunded or collected over a 12-month period.¹

In the Company's last general rate case (GRC) in Docket UE-191024, the parties agreed to update the NPC Baseline in October 2020. An increase in Baseline NPC from the October update was intended to be offset by the 2020 PCAM deferral account balance. The October 2020 update indicated that the Baseline NPC should increase from \$102 million by an additional \$17.5 million. However, the 2020 PCAM deferral account balance was only \$9.5 million, which was not enough to offset all of the \$17.5 million increase to the NPC Baseline.

To avoid a rate increase, the parties proposed and the Commission approved a deferred NPC baseline adjustment ("DNBA"), which added a step to the PCAM deferral balance to include the deferred portion of the NPC Baseline, calculated into the PCAM balance monthly. At the end of

¹ *WUTC v. PacifiCorp*, Docket UE-140762 et al., Order 09 Final Order Approving and Adopting Settlement Agreement; Authorizing and Requiring Tariff Filing, ¶ 33 (May 26, 2015) (hereinafter "Order 09").

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2020, the balance in the PCAM deferral account was a positive \$23.1 million, which is above the \$17 million trigger for a refund to customers over a 12-month period.

II. RECOMMENDATIONS OF PUBLIC COUNSEL REGARDING PACIFICORP'S 2020 PCAM

A. The 2020 End-Of-Year PCAM Balance Should Be Returned to the Ratepayers Over a Two-Year Schedule.

PacifiCorp provides in its Initial Filing that the PCAM deferred balancing account at the end of 2020 held \$23.1 million in favor of Washington ratepayers.² The Commission established in Docket UE-140762 Order 09 that if the PCAM deferred balancing account reaches a positive or negative \$17 million, a refund or surcharge is triggered. This amount is to be refunded to, or collected from, customers over a 12-month period.³

PacifiCorp opposes this refund based on the Settlement Agreement approved in its last GRC in Docket UE-191024, which involved an October 2020 update to Baseline NPC. Based on the October 2020 update, the parties proposed and the Commission approved a \$17.5 million DNBA to be taken from the PCAM in 2021 to cover the excess power costs from the October 2020 update.⁴ PacifiCorp now argues that refunding the \$23.1 million end-of-year balance in addition to the \$17.5 million DNBA could result in a potential rate instability with a surcharge based on what will be the end-of-year PCAM balance for 2021.⁵ However, when asked by Public Counsel to explain variances between actual and Baseline NPC greater than 30 percent in any month in 2021, PacifiCorp declined, stating, "PacifiCorp's 2021 PCAM filing, anticipated to be filed in June 2022, will review Actual NPC from calendar year 2021."⁶

PacifiCorp seems to want to have it both ways. On the one hand, it argues that what might happen in 2021 entitles it to retain the ratepayers' money. On the other hand, PacifiCorp argues that what happens in 2021 is irrelevant to considerations in the 2020 PCAM.

A reasonable compromise between refunding all the \$23.1 million to ratepayers in one year per Order 09 and having no refund at all would be to refund the \$23.1 million over two years as recommended by AWEC in comments filed in this Docket.⁷ As suggested by AWEC, this would mitigate the potential for rate instability with a surcharge in 2022.⁸

² Direct Testimony of Jack Painter, Exh. JP-1T at 4:18–19.

³ Docket UE-140762, Order 09, ¶ 18.

⁴ *WUTC v. PacifiCorp*, Docket UE-191024 et al., Final Order 09 / 07 / 12 ¶¶ 73–89 (Dec. 14, 2020).

⁵ Painter, Exh. JP-1T at 5:1–9.

⁶ Attachment B, PacifiCorp Response to Public Counsel Informal Data Request 4.

⁷ Comments on behalf of The Alliance of Western Energy Consumers, at 3 (Sept. 24, 2021).

⁸ *Id.*

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B. The Commission Should Consider Ordering PacifiCorp to Undergo at Its Own Expense an Independent Evaluation/Audit of the Prudence of Pacificorp's Actual NPC for the Next PCAM.

PacifiCorp's annual PCAM filing presents the one clear opportunity for stakeholders to examine and challenge PacifiCorp's Actual NPC. The level of Actual NPC is important because it determines, after processing through the PCAM dead band and sharing bands, any refund to or surcharge on ratepayers based on the difference between Actual NPC and the Baseline NPC collected in rates. Discovering the actual costs incurred and whether they are prudently incurred is a central problem of the regulation of utilities. An information asymmetry characterizes this problem; the utility knows much more about its operations and costs than the regulator or other stakeholders. As a classic paper on this topic states:

the major goal of public utility regulation is price-setting. One of the most common causes of disputes in determining these prices is over the regulated firm's true minimum-cost of production. The regulated firm has private information, not known by the regulator, concerning its true production technology. In most instances, the utility also has very little incentive to reveal this private information to the regulator. Moreover, because it is a privately-owned company that must answer to its shareholders, the utility should use this private information to maximize its profits subject to the constraints imposed on it by the regulatory process.⁹

PacifiCorp plays off this information asymmetry by suggesting a "catch-me-if-you-can" approach to its Actual NPC. In response to an informal data request asking PacifiCorp to "explain and provide an analysis addressing the variance in net power costs from the base year (set in Docket UE-152253) to the year ended December 31, 2020," PacifiCorp states: "With a test period over five years old, it is nearly impossible to provide a detailed explanation of individual changes that would drive the deviation from base NPC ... WUTC staff may request specific information about the items identified in that work paper or testimony to seek additional information."¹⁰ In other words, it is either beyond PacifiCorp's abilities to provide such an analysis, or it has no such analysis, or has one but is unwilling to provide it. However, PacifiCorp welcomes the WUTC to guess at questions to ask PacifiCorp to develop such an analysis.

In another informal data request, when asked for any supporting studies, memos, benchmarks, or other analyses that indicate, for the year 2020, PacifiCorp's Actual NPC was prudent, efficient, or in the public interest, PacifiCorp declined to provide any support for the notion that its 2020 Actual NPC was prudent, efficient, or in the public interest beyond the workpaper for the Direct Testimony

⁹ Frank A. Wolak, *An Econometric Analysis of the Asymmetric Information, Regulatory-Utility Interaction*, Annales D'Economie et de Statistique, No. 34, 1994 (enclosed as Attachment C).

¹⁰ Attachment D, PacifiCorp Response to WUTC Informal Data Request 17.

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of Jack Painter.¹¹ The workpaper, however, does not show prudence, efficiency, or that the actions were in the public interest. The workpaper provides “a breakdown of PacifiCorp’s West Control Area Inter-Jurisdictional Allocation Methodology (WCA) NPC for calendar year 2020, by month and by resource.” PacifiCorp then similarly invites Public Counsel to a game of “catch-me-if-you-can,” stating, “Public Counsel may request specific information about an element of that report in order to seek additional information.”¹² In another informal data request from Public Counsel asking whether or not PacifiCorp had any studies, memos, benchmarks or other analyses that analyze, for the year 2020, whether PacifiCorp’s Actual NPC was prudent, efficient, or in the public interest, Pacificorp’s response was that

PacifiCorp’s analysis on whether actual Washington allocated net power costs are prudent, efficient, or in the public interest is provided in the various power cost adjustment mechanism (PCAM) proceedings. The actual prudence of PacifiCorp’s Washington allocated net power costs is determined by the Commission in those proceedings. Please refer to the company’s response to PC Informal Data Request 2 for a list of those proceedings.¹³

It is unclear whether PacifiCorp has actually conducted any efficiency or prudence analysis of its 2020 Actual NPC. But, if it has not, that should disquiet both its shareholders and its stakeholders alike. If it has conducted such analyses, PacifiCorp’s unwillingness to provide them to stakeholders is also disturbing.

Going forward, the Commission should consider mandating that PacifiCorp undergo at its own expense an independent evaluator or auditor review of PacifiCorp’s Actual NPC, particularly if their claimed Actual NPC exceeds the Baseline NPC. This step would help stakeholders in Washington and all of PacifiCorp’s service territories know whether the Actual NPCs were prudently incurred.

C. The Commission Should Not Permit Recovery of PacifiCorp’s Costs Associated with the Aurora Power Cost Model in the 2021 PCAM Because Those Costs are Pending Prudence Review in the PCORC Proceeding in Docket UE-210402.

Pacificorp proposes including charges in rates associated with the Aurora power cost model for intervenor licenses in the 2021 PCAM.¹⁴ The prudence of these costs is currently under review in the PCORC, Docket UE-210402. It is premature at this time to plan to include these charges in the 2021 PCAM balance.

¹¹ Attachment E, PacifiCorp Response to Public Counsel Informal Data Request 3.

¹² *Id.*

¹³ Attachment F, PacifiCorp Response to Public Counsel Informal Data Request 6.

¹⁴ Painter, Exh. JP-1T at 15:14–22.

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III. CONCLUSION

Public Counsel appreciates the opportunity to submit these comments. We will be present at the September 30, 2021, Open Meeting and will be available to answer any questions the Commission may have regarding these comments.

Sincerely,

/s/ *Ann Paisner*

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