

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of

PACIFIC POWER & LIGHT  
COMPANY,

2016 Power Cost Adjustment Mechanism  
Report.

DOCKET UE-170717

ORDER 03

APPROVING SETTLEMENT  
STIPULATION WITHOUT  
CONDITIONS

**BACKGROUND**

- 1 A power cost adjustment mechanism (PCAM) enables an electric power utility to address extraordinary variability in its net power costs and to recover or refund to customers significant variations in those costs between general rate cases. On March 25, 2015, in Order 08 in Dockets UE-140762, *et al.*, the Washington Utilities and Transportation Commission (Commission), among other determinations, initiated an expedited proceeding to develop and implement a PCAM for Pacific Power & Light Company (Pacific Power or Company).
- 2 The Commission adopted a settlement agreement among the parties in those dockets on May 26, 2015, in Order 09, providing the design details and parameters necessary to implement the PCAM the Commission required. Pursuant to that Order, Pacific Power must make annual filings to report the variance between its net power costs (NPC) embedded in rates and the Company’s actual NPC. “Annually, the total of any credit or surcharge for the accrued NPC variances is determined after application of a dead band and tiered sharing bands. When accruals in the PCAM balancing account reach a certain positive or negative level, this triggers amortization of the balance in rates.”<sup>1</sup>

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<sup>1</sup> Dockets UE-140762, *et al.*, Order 09, Attachment A ¶ 9. A “dead band” is a range, positive or negative, in which amounts will not be charged or credited to customers through the PCAM. That range for Pacific Power is \$4 million measured on a Washington basis. *Id.* ¶ 14. A “sharing band” is the range within which the Company and its customers share the variance. In this case, that range is between \$4 million and \$10 million. For positive variances (actual NPC greater than the NPC in rates), the sharing is 50/50 between the Company and customers, while for negative variances, the split is 75/25 in favor of customers. *Id.* ¶ 15. Annual NPC variances in excess of \$10 million, whether positive or negative, are allocated 90 percent to customers and 10 percent to the Company. *Id.* ¶ 16.

- 3 On June 1, 2017, Pacific Power filed its 2016 PCAM Report for Commission approval in this docket. The Company reported that the annual NPC variance for 2016 was approximately \$5.6 million, which would result in a credit to customers of approximately \$1.2 million, including interest, after applying the dead band and sharing bands. Because Order 09 in Dockets UE-140762, *et al.*, requires Pacific Power to adjust its rates only when the cumulative variance exceeds \$17 million, the Company would place the \$1.2 million customer credit in a deferral account.
- 4 The Company's filing included the prefiled direct testimony of Michael G. Wilding in support of its report. Mr. Wilding testified that the lower actual power costs were driven by a \$30 million reduction in purchased power expense and a \$23 million reduction in natural gas fuel expense,<sup>2</sup> which were partially offset by a \$38 million decrease in wholesale sales revenues and a \$2 million increase in wheeling and other expenses.<sup>3</sup> Mr. Wilding also described offsetting power cost increases the Company proposed to recover attributable to the undepreciated book value of the abandoned Joy Longwall mining system (Joy Longwall), the costs of the attempt to recover the Joy Longwall from the mine, and the actual costs of mining coal at the Rosebud mine operated by the Bridger Coal Company (BCC).<sup>4</sup>
- 5 On October 2, 2017, Commission regulatory staff (Staff)<sup>5</sup> and Boise White Paper, L.L.C. (Boise) submitted letters requesting that the Commission initiate an adjudication to consider the Company's filing. The Commission granted that request and convened a prehearing conference on October 23, 2017. On October 26, 2017, the Commission entered Order 01, Prehearing Conference Order, establishing the procedural schedule for this proceeding.

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<sup>2</sup> Wilding, Exh. WGW-1T at 10:6-8. Mr. Wilding testified that the coal fuel expense at the Jim Bridger generation plant was \$29.42/MWh on average in the deferral period compared to an average cost of natural gas generation of \$26.97/MWh. *Id.* at 11:22-12:2 and 11:17-19. The driver of the increase in generation costs at Jim Bridger was the Bridger Coal Company mine costs that increased by \$13.82 per ton in the deferral period compared to the per unit cost in the base NPC. *Id.* at 12:7-12. Mr. Wilding also observed that decreases in long-term purchase power contracts partially offset by higher market purchases contributed to the reduction in purchase power expense. *Id.* at 11:5-14.

<sup>3</sup> *Id.* at 10:8-10.

<sup>4</sup> *Id.* at 13-16.

<sup>5</sup> In formal proceedings such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do

- 6 On January 25, 2018, Staff and Boise filed testimony in response to Pacific Power's filing.<sup>6</sup> Both of these parties opposed allowing the Company to recover from ratepayers the costs associated with the Joy Longwall and the additional coal mining costs they claim were incurred due to the loss of the Joy Longwall.
- 7 Staff filed the testimony of Jason L. Ball, a Regulatory Analyst employed by the Commission. Mr. Ball testified that the Company failed to prudently manage the operational risk of the Joy Longwall. Based on that failure to meet Commission prudence standards, Mr. Ball recommended that the Commission disallow, and adjust the Company's actual NPC to remove, the costs of the Joy Longwall and the resulting increased coal production costs. According to his calculations, Pacific Power's over collection of Washington-allocated NPC would be \$11.2 million higher than the \$5.6 million the Company claimed. The total over collection thus would be \$16.8 million, \$10,487,318 of which would be credited to ratepayers in a deferral account after applying the sharing bands.<sup>7</sup> Mr. Ball further recommended that the Commission require the Company to change its email retention policy to better preserve important communications in the future.<sup>8</sup>
- 8 Boise filed the testimony of Bradley G. Mullins, an independent consultant who represents large energy consumers. Mr. Mullins testified that the Commission has not previously considered the question of whether the Joy Longwall is used and useful utility plant necessary to provide services to the Company's Washington customers, and costs associated with the Joy Longwall were not included in the portion of Pacific Power's rate base used to determine the BCC coal costs when the Commission established the Company's current rates. Moreover, according to Mr. Mullins, the failure and abandonment of the Joy Longwall resulted from a pattern of inadequate management and mining controls at the BCC mine. Under these circumstances, Mr. Mullins claimed that it was improper for Pacific Power to seek recovery of the costs associated with the Joy Longwall and recommended that the Commission require the Company to remove the costs from the PCAM deferral balance calculation.<sup>9</sup> He calculates that doing so would

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not discuss the merits of this proceeding with regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

<sup>6</sup> The Public Counsel Unit of the Washington Attorney General's office (Public Counsel) filed a letter stating that it would not file responsive testimony but would participate in the evidentiary hearing and briefing.

<sup>7</sup> Ball, Exh. JLB-1CT at 4:1-10.

<sup>8</sup> *Id.* at 3:21-22.

<sup>9</sup> Mullins, Exh. BGM-1CT at 3:14 – 4:6.

reduce Pacific Power's Washington-allocated NPC by \$9,790,835.<sup>10</sup> Mr. Mullins also proposed an adjustment for coal production costs of \$5,296,120 prior to the application of the PCAM bands that he contends result directly from the lost use of the Joy Longwall.<sup>11</sup>

- 9 On March 8, 2018, Pacific Power filed the rebuttal testimony of Mr. Wilding, Dana M. Ralston, and Rob Thomas. Mr. Wilding defended the Company's email retention policy, which he did not see as a legitimate issue in this proceeding. He also summarized the disposition of the Joy Longwall abandonment and recovery costs in PCAM proceedings in other jurisdictions. He testified that Staff's and Boise's adjustments to the BCC's production costs fail to consider supply and demand factors and the interrelationship between the surface and underground mines, both of which, rather than the Joy Longwall, were responsible for the variation of the Company's coal costs. Finally, he explained that the Joy Longwall is not in Washington rate base and that BCC's purchase of the Joy Longwall was a prudent business decision and was not influenced by cost allocation methodologies.<sup>12</sup>
- 10 Mr. Ralston is PacifiCorp's Senior Vice President of Thermal Generation and Mining and is responsible for operating and maintaining PacifiCorp's coal and gas-fired generation facilities, coal fuel supply, and mining. He explained why the Company believes that the purchase of the Joy Longwall was prudent and describes the unexpected and complex geologic conditions that contributed to the Joy Longwall event and subsequent recovery efforts. He also refuted Staff's and Boise's allegations that Company management was imprudent and contested the other parties' coal production cost adjustments.<sup>13</sup>
- 11 Dr. Thomas is a Principal Engineer and CEO for the RDP Consulting Group with a PhD in coal mine mechanics and 30 years of experience in the underground coal mining industry. He testified that it was a prudent decision to use the Joy Longwall in the BCC mine. He further testified that the ground conditions were properly addressed both prior to the Joy Longwall's use and when those conditions began to deteriorate, and the appropriate actions were taken when it was no longer possible to remove the Joy Longwall from the mine.<sup>14</sup>

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<sup>10</sup> *Id.* at 3:23-24.

<sup>11</sup> *Id.* at 6:4, Table One.

<sup>12</sup> Wilding, Exh. WGW-4CT.

<sup>13</sup> Ralston, Exh. DMR-1CT.

<sup>14</sup> Thomas, Exh. RT-1CT.

- 12 On April 10, 2018, Staff counsel informed the presiding administrative law judge on behalf of the parties that they had reached a settlement agreement in principle and requested that the Commission suspend the procedural schedule. The Commission granted the request and subsequently issued a notice requiring the parties to file the settlement and supporting documentation by May 4, 2018. The Commission scheduled an evidentiary hearing on that settlement for June 19, 2018.
- 13 On May 4, 2018, the parties filed a Settlement Stipulation among Pacific Power, Staff, and Boise. The settling parties represent that Public Counsel is not a signatory to the Settlement Stipulation but does not oppose it. The Commission conducted an evidentiary hearing on the Settlement Stipulation on June 19, 2018, at which the Commission heard additional testimony from Mr. Wilding, Mr. Ball, and Mr. Mullins in support of the Settlement Stipulation.
- 14 Matthew McVee and Ajay Kumar, in house counsel, Portland, Oregon, represent Pacific Power. Patrick Oshie, Zillah, Washington, and Tyler Pepple, Portland, Oregon, Davison Van Cleve, P.C., represent Boise. Lisa W. Gafken and Nina Suetake, Assistant Attorneys General, Seattle, Washington, represent Public Counsel. Jennifer Cameron-Rulkowski, Assistant Attorney General, Olympia, Washington, represents Staff.

### SETTLEMENT STIPULATION

- 15 The Settlement Stipulation is a full settlement of the disputed issues among Pacific Power, Staff, and Boise. It has three components:
- A. **Credit to Customers.** “The Parties agree to a black box adjustment that will result in the deferral of an additional \$3.5 million, for a total credit to customers of \$4,708,218.”<sup>15</sup> The customer credit will be recorded in the PCAM deferral account and will only effect rates at the time the balancing account exceeds \$17 million.<sup>16</sup>
  - B. **Documentation of Decision-Making Analysis.** Pacific Power should retain for three years official company records that provide decision-making analysis used by Company officers in decisions subject to Commission prudence review, including emails if they provide evidence of an action taken and a record of

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<sup>15</sup> Settlement Stipulation ¶ 8.

<sup>16</sup> Wilding, Exh. MGW-1T at 4:7-9.

decision-making analysis that does not exist elsewhere.<sup>17</sup> “Decision-making analysis in this case means, at a minimum, a record of when a decision is made, the executives involved, and a summary of the pertinent information under consideration at the time of that decision.”<sup>18</sup> Pacific Power will provide these records to Staff and other parties upon request in proceedings to determine the prudence of specific Company actions.<sup>19</sup>

C. **Update on Actions at the Jim Bridger Coal Mine.** Six months from the date the Commission approves the settlement, Pacific Power will provide Staff with an update on the Company’s progress in implementing the corrective action items for the BCC underground mine listed on pages 10-11 in Confidential Attachment A to the Settlement Stipulation. Pacific Power will provide additional annual updates until all non-recurring action items have been implemented or completed.<sup>20</sup>

16 Staff supports the Settlement Stipulation as serving the public interest by providing an equitable balance among the competing objectives. Staff contends that increasing the deferral amount by \$3.5 million insulates ratepayers from the direct expenses related to the Joy Longwall, is a reasonable compromise, and provides needed certainty. The records retention and review of management decisions requirement, in Staff’s view, provides greater transparency of information and serves the interests of all parties by providing clear expectations for future cases and methods to prevent the circumstances in this case from reoccurring. Staff asserts that the post action reporting requirements reflect the Company’s commitment to improving its operations and reducing the chances of a repeat incident.<sup>21</sup>

17 “Pacific Power believes that the Stipulation appropriately balances the interests of the company’s ability to efficiently and effectively run its business while providing for the type of regulatory review necessary to determine the prudence of Pacific Power’s operations.”<sup>22</sup> The Company states that the Settlement Stipulation is in the public interest

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<sup>17</sup> Settlement Stipulation ¶ 9.

<sup>18</sup> *Id.* ¶ 10.

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

<sup>20</sup> *Id.* ¶ 11.

<sup>21</sup> Joint Narrative ¶ 15.

<sup>22</sup> *Id.* ¶ 18.

by resolving all of the disputed issues and passing the benefits of that resolution on to customers.<sup>23</sup>

- 18 Boise agrees that the Settlement Stipulation is a reasonable compromise of the disputed issues in this docket. Boise has determined that the \$4.7 million total credit to customers that would result is a reasonable portion of the funds Boise originally testified should be credited in light of the avoided expense and uncertainty of litigation.<sup>24</sup>

### DISCUSSION AND DECISION

- 19 “The commission will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission.”<sup>25</sup> The Commission may approve the Settlement Stipulation, with or without conditions, or reject it.

- 20 We approve the Settlement Stipulation without conditions. We conclude that the Settlement Stipulation as a whole is lawful, supported by an appropriate record, and consistent with the public interest. We nevertheless have concerns and clarifications related to individual provisions, which we address here.

- 21 Our primary concern is the lack of detail regarding the amount of the credit the parties have agreed the Company will provide to its customers. The first component of the Settlement Stipulation identifies the \$3.5 million in increased deferral credit as a “black box adjustment,” meaning that the parties have provided no explanation of how that amount was calculated or otherwise devised. Pacific Power originally advocated a credit of \$1.2 million after applying the dead band and sharing bands, while Staff and Boise recommended credits of \$10.5 million and approximately \$9.3 million, respectively. The Settlement Stipulation provides no information about the relationship between those proposals and the \$4.7 million credit to which the settling parties agreed and offers no explanation for why that result is acceptable to them.

- 22 The Commission encourages settlement of disputes, but we ultimately have an independent obligation to ensure that any resolution of issues presented to us is consistent with the public interest. A bare dollar amount, without more, gives us very little information on which to make that determination, and the parties’ advocacy that preceded

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<sup>23</sup> *Id.* ¶ 19.

<sup>24</sup> *Id.* ¶ 20.

<sup>25</sup> WAC 480-07-750(1).

the settlement provides little insight into the basis of their agreement. At the settlement hearing, however, witnesses for Staff and Boise testified about some of the considerations that underlay each of those parties' participation in the Settlement Stipulation.<sup>26</sup> We agree with Pacific Power that those explanations are not attributable to the Company or indicative of the Settlement Stipulation itself. We recognize that these witnesses were describing only the approach and calculus of the parties they represent. At the same time, the testimony helps us better understand the development of the parties' agreement and provides a more solid basis on which we determine that the credit amount to which the parties agreed is fair, just, reasonable, and sufficient.

23 The Settlement Stipulation is also silent on the issue of the prudence of the Joy Longwall and the extent to which the costs the Company incurred with respect to the Joy Longwall's acquisition, recovery efforts, and ultimate abandonment should be included among Pacific Power's power costs. Staff and Boise challenged Pacific Power's inclusion of those costs in the PCAM, contending, in part, that the Company's actions giving rise to them were not prudent. The Settlement Stipulation does not directly resolve this issue. Instead, the parties simply agreed on a dollar amount that would be credited to Pacific Power's customers as a result of changes to the Company's NPC. The settling parties' witnesses, however, agreed at the hearing that the Settlement Stipulation makes no modification to the Commission's prudence standards, and no party seeks a prudence finding or any other Commission determination concerning the Joy Longwall in this docket.<sup>27</sup>

24 We accept the parties' interpretation of the Settlement Stipulation. Accordingly, we make no finding on the prudence of the Company's actions with respect to the Joy Longwall, and we make no determination on whether the associated costs are included in Pacific Power's rate base. We conclude only that the approximately \$4.7 million credit to customers as a result of changes to the Company's NPC is fair, just, reasonable, and sufficient.

25 The second settlement component requires the Company to retain email communications as official Company records if no other document contains the same decision-making analysis used by Company officers in actions they take that are subject to Commission prudence review. Pacific Power's witness testified at the hearing that retention of such emails will be the default, and that Company executives will be trained not to delete or otherwise destroy such emails unless the Company possesses and retains other official

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<sup>26</sup> Ball, TR 28:8 – 30:7 & 38:5 – 39:20; Mullins, TR 36:19 – 37:15.

<sup>27</sup> Ball, Wilding & Mullins, TR 26:2 – 27:10.



records that contain the same information.<sup>28</sup> He also testified that the Company would be willing to provide information to Staff about this training.<sup>29</sup> The parties' witnesses further confirmed that this commitment does not in any way relieve the Company of its obligation to produce sufficient evidence to prove the prudence of any actions for which it seeks to recover the costs.<sup>30</sup>

26 We appreciate this clarification of the Settlement Stipulation, and as so clarified, we agree that this component will enhance Pacific Power's ability to demonstrate the prudence of its actions and will provide Staff and other parties with greater visibility into the Company's operations for ratemaking purposes. We do not condition our approval of the Settlement Stipulation on Pacific Power's implementation of the email retention training program, but we expect the Company to do so as it may be germane in future proceedings.

27 Finally, the third settlement component requires Pacific Power to provide periodic updates to Staff on the Company's progress in implementing the corrective action items for the BCC underground mine listed in Confidential Attachment A to the Settlement Stipulation. At the hearing, the Company's witness confirmed the Commission's understanding that Pacific Power has committed in the Settlement Stipulation to implement those corrective action items, not simply provide Staff with status updates.<sup>31</sup> We accept that interpretation of the Settlement Stipulation and do not condition our approval on any revision of the Settlement Stipulation to expressly state the Company's interpretation. We expect Pacific Power to honor this commitment and to seek Commission approval, if necessary, to make material modifications to those corrective action items.

28 We agree with the settling parties that the Settlement Stipulation, as presented, minimizes the likelihood of a recurrence of the issues raised in this proceeding and provides an acceptable credit to Pacific Power's customers. Accordingly, we approve the Settlement Stipulation without conditions.

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<sup>28</sup> Wilding, TR 20:9-17.

<sup>29</sup> *Id.* 20:22 – 21:1.

<sup>30</sup> Wilding, Ball & Mullins, TR 21:7 – 22:1.

<sup>31</sup> Wilding, TR 23:1-5.

**FINDINGS OF FACT**

- 29 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including investor-owned electric companies.
- 30 (2) Pacific Power is a public service company regulated by the Commission, providing service as an electric company.
- 31 (3) Pacific Power, Staff, and Boise entered into a Settlement Stipulation to resolve the disputed issues among them, which they filed with the Commission on May 4, 2018.
- 32 (4) The Commission makes no determination on the prudence of the costs the Company incurred in connection with the Joy Longwall or the extent to which these costs are, or should be, included in the Company's NPC.
- 33 (5) Pacific Power will implement a program to train its executives to retain emails that provide evidence of an action the Company has taken subject to a Commission prudence review and a record of the Company's decision-making analysis unless one or more other official company records contain the same information.
- 34 (6) Pacific Power will implement the corrective action items for the BCC underground mine listed on pages 10-11 of Confidential Attachment A to the Settlement Stipulation and will seek Commission approval of any material changes to those action items.

**CONCLUSIONS OF LAW**

- 35 (1) The Commission has jurisdiction over the subject matter of, and parties to, this proceeding.
- 36 (2) The Commission has an independent obligation to determine whether the Settlement Stipulation is lawful and consistent with the public interest.
- 37 (3) The \$4,708,218 credit to customers as a result of changes to the Company's NPC is fair, just, reasonable, and sufficient.
- 38 (4) The Settlement Stipulation considered as a whole is lawful, supported by an adequate record, and consistent with the public interest.

**ORDER**

39 THE COMMISSION ORDERS:

- 40 (1) The Commission approves and adopts the Settlement Agreement among Pacific  
Power & Light Company, Commission Staff, and Boise White Paper, L.L.C.,  
attached to this Order as Appendix A.
- 41 (2) The Commission delegates to the Secretary the authority to approve parties'  
submissions in compliance with this Order.
- 42 (3) The Commission retains jurisdiction to enforce this Order.

Dated at Olympia, Washington, and effective July 23, 2018.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner

**NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.**

# **APPENDIX A**