

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PACIFICORP d/b/a PACIFIC POWER &
LIGHT COMPANY,

Respondent.

Docket No. UE-230172

PACIFICORP’S RESPONSE TO
STAFF’S MOTION TO REVISE
TESTIMONY AND PETITION FOR
EXEMPTION FROM WAC 480-07-
460(1)(a)(i)

1 In accordance with WAC 480-07-375(4), PacifiCorp dba Pacific Power & Light Company (PacifiCorp or the Company) responds to the Motion to Revise Testimony and Petition for Exemption filed by Staff of the Washington Utilities and Transportation Commission (Staff) in this docket on October 27, 2023. With the limited exception of the request to file corrected Exhibit JDW-11Cr,¹ PacifiCorp opposes Staff’s motion. Though framed as a request to revise cross-answering testimony, Staff in fact seeks to file an entirely new round of testimony with new analysis. If granted, Staff’s request would upend the procedural schedule in this case and impair the Company’s ability to prepare for the evidentiary hearing. The Company therefore respectfully requests that the Washington Utilities and Transportation Commission (Commission) deny Staff’s Motion.

I. Statement of Facts

2 Staff served data requests (DRs) 150-157 on the Company on September 22, 2023. The Company objected to DRs 152 and 154-157, asserting that these DRs sought

¹ PacifiCorp does not oppose Staff’s request to revise Exhibit JDW-11C, and replace it with Exhibit JDW-11Cr and accordingly does not further discuss that request further in this response.

information that the Company had planned to include in rebuttal testimony and/or requested analysis the Company had not prepared. On October 4, 2023, Staff filed a motion to compel discovery. The Company responded on October 11, 2023, indicating that portions of the requested information were burdensome to prepare and could not be prepared in advance of the rebuttal testimony deadline, or in the case of DR 155, would require the creation of an entirely new net power cost (NPC) model to forecast NPC for the calendar year 2025, and could not be accomplished before mid-December 2023 to early January 2024.

3 On October 12, 2023, Administrative Law Judge (ALJ) Howard granted Staff's motion to compel and specified the timing for responding to Staff's DRs. Relevant to Staff's DRs addressing NPC modeling, specifically DR 155, ALJ Howard directed the Company to provide partial responses by the rebuttal testimony deadline of October 27, 2023, and complete responses including NPC modeling for 2025 by November 30, 2023.² While not directly at issue in the motion to compel, Staff served additional DRs, 158-160, that presented related NPC questions and timing issues, and the Company and Staff conferred regarding the timing of the Company's response and agreed that the response to these DRs would be provided on the same timeline as directed by ALJ Howard for DR 155.

4 Relevant to the DRs at issue in Staff's motion to revise testimony, the Company provided a partial response to DR 155 on October 27, 2023, and is working to provide the remaining portion of the response on November 30, 2023. The Company provided a partial response to DR 158 on October 16, 2023, and a supplemental response on October

² Transcript of Hearing on Motion to Compel – Vol. II at 46:17-47:6 (Oct. 12, 2023).

27, 2023. The Company provided a response to DR 160 on October 18, 2023, indicating that it would provide its response on November 30, 2023.

5 On October 27, 2023, the Company also filed its rebuttal testimony, including a detailed explanation of NPC updates in the testimony of Ramon Mitchell, Exhibit RJM-3CT, and explained the potential impact of a mismatch in the NPC forecast and base year in the testimony of Sherona Cheung, Exhibit SLC-8T.

6 On October 27, 2023, Staff filed its cross-answering testimony and motion to revise testimony. Apparently anticipating that its motion to revise would be granted, Staff included placeholders in the cross-answering testimony of Joanna Huang, and referenced exhibits that were not filed. Similarly, the testimony of John Wilson previewed Staff's intent to update its testimony. In its motion to revise testimony, Staff states it intends to provide revised testimony "in early December," but does not specify any particular deadline.³

II. Legal Standard

7 In accordance with WAC 480-07-460, a party may correct minor typographical or printing errors or other non-substantive changes in its filed testimony without seeking leave from the Commission.⁴ However, if the party wishes to make "substantive changes" to its testimony or exhibits, the party must seek leave from the ALJ before filing such revisions.⁵ The party must file its motion to revise as soon as practicable after discovering the need to make the substantive changes.⁶

³ Staff's Motion to Revise Testimony at ¶ 2.

⁴ WAC 480-07-460(1)(a)(ii).

⁵ WAC 480-07-460(1)(a)(i).

⁶ WAC 480-07-460(1)(b).

8 When evaluating a motion for leave to revise testimony, the Commission has emphasized consideration of the timing of the party’s motion compared to the overall procedural schedule. In particular, the Commission considers whether there is sufficient time for other parties to review the revised testimony and exhibits and provide a response as necessary.⁷

9 In addition, though beyond the scope of the substantive revisions provided for in WAC 480-07-460(1)(a)(i), the Commission may consider a party’s motion to supplement the record. In evaluating such a request, the Commission will balance the interests of parties to the proceeding, including consideration of: (1) the timing of the request relative to the remainder of the procedural schedule, and whether the time available for party resources is adequate to preserve an orderly hearing process;⁸ (2) whether allowing the motion will ensure due process for other parties;⁹ and (3) the proposed content of the supplemental material, including the significance of the information relative to the movant’s overall case.¹⁰ Taken together, the Commission’s standard for granting leave to file supplemental testimony requires consideration of whether other parties will have sufficient time to review and respond to the testimony, the significance of the material at

⁷ See *WUTC v. Cascade Natural Gas Corp.*, Docket No. UG-210755, Order 04 at ¶ 7 (Dec. 17, 2021) (granting Cascade’s motion for leave to file revised testimony because the motion was filed well in advance of the deadline for other parties to file responsive testimony).

⁸ See *WUTC v. Puget Sound Energy, Inc.*, Docket No. UE-090704 et al., Order 08 at ¶ 9 (Oct. 20, 2009) (granting PSE’s motion to file supplemental testimony, which was filed seven weeks before the due date for response testimony, but adjusting the DR response time requirements to ensure parties had adequate time). See also *WUTC v. Puget Sound Pilots*, Docket No. TP-220513, Order 04 at ¶ 13 (Oct. 18, 2022). In this proceeding, Puget Sound Pilots filed its motion to revise its direct testimony, and the motion was granted nearly seven months before the evidentiary hearing in the docket. The Commission extended the entire procedural schedule by six weeks “to assure this supplemental testimony does not hinder the Commission’s review of this case.” *Id.*

⁹ See *WUTC v. Puget Sound Pilots*, Docket No. TP-220513, Order 04 at ¶ 13 (Oct. 18, 2022).

¹⁰ See *WUTC v. Puget Sound Energy, Inc.*, Docket No. UE-090704 et al., Order 09 at ¶ 8 (Dec. 28, 2009) (granting Staff’s Motion where Staff’s proposed revisions had a minor impact on Staff’s recommended revenue requirement).

issue, and whether the filing of supplemental testimony will prejudice parties' participation in the docket.¹¹ The Commission has denied motions for leave to supplement the record when the testimony provided a new and complex argument several weeks prior to the evidentiary hearing.¹²

III. Argument

10 As detailed below, Staff's motion seeks leave to file an entirely new round of testimony only a matter of days before the evidentiary hearing, does not afford the Company an opportunity to respond, and would prejudice the Company and parties in their preparations for the evidentiary hearing. Additionally, Staff's request is rooted in a disputed legal issue, which is properly addressed in briefing and not testimony. Staff's motion would disrupt the existing procedural schedule, and is untimely. For all of these reasons, Staff's motion should be rejected. However, in the event that the Commission nonetheless grants Staff's motion, procedural due process requires that the Company also be afforded an opportunity to respond prior to the evidentiary hearing.

A. Staff is Seeking to File an Entirely New Round of Testimony Under the Guise of Revised Cross-Answering Testimony.

11 Staff's motion requests leave to file revised cross-answering testimony, however, the "revisions" Staff proposes are improper for two reasons.

¹¹ See *WUTC v Puget Sound Energy, Inc.*, Docket No. UE-090704 et al., Order 08 at ¶ 9 (Oct. 20, 2009) (noting that an important interest for the Commission to consider is the "potential prejudice to parties who are conducting discovery, undertaking analysis and preparing response testimony."); see *WUTC v. Puget Sound Energy, Inc.*, Docket No. UE-060266 et al., Order 05 at ¶ 7 (July 13, 2006) (granting PSE's Motion for Leave to File Supplemental Testimony and Exhibits and delaying the filing date for the subsequent round of testimony to ensure no parties would be prejudiced by the utility's revised testimony).

¹² *WUTC v. Puget Sound Energy, Inc.*, Docket No. UE-190529 et al., Order 05/02 at ¶ 9 (Dec. 10, 2019) (finding that Staff's proposed supplemental testimony, including power costs updates, would introduce a new, complex issue six weeks before the hearing date and thus denying the motion).

First, Staff’s proposal is substantively more properly characterized as late-filed *response testimony* rather than *cross-answering testimony*. The proper scope of cross-answering testimony is to allow the noncompany parties to address the response testimony of other noncompany parties.¹³ Thus, if Staff wanted to address proposals raised by other parties, it was free to do so independent of the Company’s responses to Staff’s DRs. Staff’s motion, however, instead aims to substantively respond to the Company’s analysis concerning NPC included with the Company’s *direct filing*. These are arguments that Staff should have identified in its compliance review—and indeed, Staff counsel noted as much during the hearing on the motion to compel.¹⁴ The fact that Staff identified additional arguments it now seeks to raise late in the proceeding does not warrant an additional round of testimony. Staff fails to cite any Commission precedent for this request, and indeed the Commission has rejected a similar late request for additional testimony by Staff in the past.¹⁵ Additionally, to the extent Staff seeks to respond to the Company’s NPC update included with its rebuttal filing, is also procedurally improper and contrary to the agreed upon procedural schedule, which does

¹³ See *In the Matter of the Petition of City of Spokane Valley to Modify Warning Devices at a Highway-Railroad Grade Crossing of Union Pacific Railroad Co.*, Docket No. TR-210809 et al., Order 02 at ¶ 11 (May 5, 2022) (specifying that the scope of cross-answering testimony is to respond to testimony filed by noncompany parties); see also *WUTC v. Pacific Power & Light Co.*, Docket No. UE-152253, Order 11 at ¶ 13 (May 27, 2016) (finding that Sierra Club’s testimony which provided a new analysis in response to arguments raised by Staff was proper cross-answering testimony because it was responding directly to another intervenor’s testimony).

¹⁴ Transcript of Hearing on Motion to Compel – Vol. II at 32:11-16 (Oct. 12, 2023).

¹⁵ See e.g., *WUTC v. Puget Sound Energy, Inc.*, Docket No. UE-190529 et al., Order 05/02 at ¶ 8-9 (Dec. 10, 2019) (“We deny the Motion. While parties may move to add to the evidentiary record in a proceeding under WAC 480-07-375(d), Staff’s proposed testimony would be a late addition to a proceeding in which the issues raised by the testimony could not be resolved.”).

not provide for surrebuttal testimony. The Commission does not ordinarily allow surrebuttal testimony, and should not do so here.¹⁶

13 Second, Staff does not seek to revise its previously filed testimony and exhibits to account for a correction. Instead, Staff proposes a wholesale update based on analysis to be provided in the Company’s forthcoming responses to data requests. Indeed, Staff did not even bother to file three exhibits,¹⁷ instead explaining that those exhibits will be provided in early December.¹⁸ Staff also claims that it was revising its recommended revenue requirement based on recommendations provided by noncompany parties, but did not provide any revenue requirement values in the testimony of witness Huang.¹⁹ In other words, Staff did not provide cross-answering testimony that would later be revised—Staff instead withheld its analysis entirely.

14 Though the Commission’s rules do not provide a specific definition of “revised testimony,” the language in WAC 480-07-460(1)(a)(i) and Commission orders on motions under this rule indicate that revised testimony may be permitted to correct errors or omissions in previously filed testimony.²⁰ Here, the testimony that Staff proposes to revise does not include any preliminary analysis that will be subject to later revision, but

¹⁶ See *AT&T Communications of the Pacific Northwest, Inc., Complainant, v. Verizon Northwest, Inc., Respondent*, Docket No. UT-020406, Seventh Supplemental Order at ¶¶ 43-45 (Apr. 8, 2003) (“The Commission does not lightly grant the opportunity for surrebuttal. In a complaint hearing, the last word procedurally should be with the complainant, except in rare circumstances. . . . Rebuttal is recognized procedurally as a method to allow the complaining party a chance to refute the response to the complaint. It stands in a different posture than surrebuttal, which is not commonly permitted.”).

¹⁷ The three exhibits not filed by Staff were Huang, Exhs. JH-6 (Results of Operations and Revenue Requirement Analysis for Rate Year 1), JH-7 (Results of Operations and Revenue Requirement Analysis for Rate Year 2), and JH-8 (Production Factor, Adjustments 9.1).

¹⁸ Staff’s Motion to Revise Testimony at ¶ 2.

¹⁹ Huang, Exh. JH-6T at 3:6-22.

²⁰ See, e.g., *WUTC v. Puget Sound Energy*, Docket No. UE-220066 et al., Order 17/03 at ¶ 3 (Jul. 8, 2022) (granting PSE’s motion to file revised testimony where the revisions corrected certain errors in the company’s testimony and exhibits); *WUTC v. Cascade Natural Gas Corp.*, Docket No. UG-210755, Order 04 at ¶ 3 (Dec. 17, 2021) (granting Cascade’s motion to file revised testimony where the revisions corrected certain errors in the company’s testimony and exhibits).

instead discusses Staff's intention to "update" blank testimony once it receives the Company's responses to DRs 155 and 160.²¹ In other words, the DR responses that will serve as the basis of an update involve an *entirely* new analysis, rather than a revision of a prior analysis. Because Staff proposes to address a new analysis—which the Company itself has not addressed in testimony—Staff's testimony is necessarily supplemental testimony (or late-filed response testimony) rather than revised cross-answering testimony.

15 Considering Staff's motion as a request for leave to file supplemental testimony, the Commission should balance the interests of the parties and decline Staff's request. In particular, Staff claims that the data resulting from the Company's DR responses "may have a substantial impact on Staff's power cost opinions and recommendations."²² Staff also asserts that it would not be able to revise its testimony until early December.²³ Yet, because the Company and other parties would not have sufficient time prior to the evidentiary hearing on December 11 to analyze Staff's supplemental testimony and prepare a response, the filing would contravene the Company's due process rights to fully evaluate all responses to its proposals in this rate case.²⁴ Not only would granting this request violate due process, but it would likely result in Commissioners and ALJs only having a few days to review the supplemental testimony prior to the hearing. Indeed, the Commission has previously declined a late proposal for supplemental testimony to update

²¹ See Huang, Exh. JH-6T at 1:17-2:2 (describing the witness' intent to provide "updated" versions of exhibits filed as part of the witness' response testimony, but not actually providing those exhibits as part of the cross-answering testimony).

²² Staff's Motion to Revise Testimony at ¶ 9.

²³ *Id.*, ¶ 2.

²⁴ See *WUTC v. PacifiCorp dba Pacific Power & Light Co.*, Docket No. UE-100749, Order 07 at ¶ 52 (May 12, 2011) (noting that due process requires allowing parties the opportunity to evaluate and respond to assertions made by other parties).

net power costs, finding that the proposed testimony would introduce a new, complex issue six weeks before the hearing date and thus denying the motion.²⁵ The timing is even more constrained in this proceeding, and the balancing of interests weighs in favor of denying Staff's request.

B. Staff's Claim that it Needs to File Revised Testimony is Unsupported and Unnecessary.

16 Staff has not justified a need to file additional testimony. Staff may include the DR responses in the evidentiary record by designating them as cross-examination exhibits, and Staff may cross examine PacifiCorp's NPC witness at the evidentiary hearing. Staff's position in witness testimony, however, is based upon an interpretation of a legal requirement.²⁶ Accordingly, Staff may argue its position in briefing. In short, Staff can make its case without burdening this proceeding with additional testimony that would deny the Company due process as explained above.

17 Staff argues that it should be permitted the opportunity to file revised testimony because the responses to Staff's DRs 155 and 160 may impact Staff's recommendations regarding power cost adjustments and revenue requirement.²⁷ Staff's argument is unsupported, and contradicted by its own testimony. Based on the cross-answering testimony of Staff witness John D. Wilson, it appears that Staff is taking a position that the Commission should reject the Company's proposal to use a calendar year NPC forecast "as a matter of law."²⁸ If Staff is basing its position on a legal argument, it should matter not what the results of the NPC forecast ultimately will be. That is, if

²⁵ *WUTC v. Puget Sound Energy, Inc.*, Docket No. UE-190529 et al., Order 05/02 at ¶ 9 (Dec. 10, 2019).

²⁶ Wilson, Exh. JDW-24T at 5:8-6:11.

²⁷ Staff's Motion to Revise Testimony at ¶ 9.

²⁸ Wilson, Exh. JDW-24T at 5:8-6:11.

Staff's position is based on legal principles, its position would remain the same whether NPC increases or decreases under the Company's new analysis.

18 Moreover, Staff is simply wrong in its assertion that use of calendar year NPC values is legally incorrect. While PacifiCorp does not aim to fully address Staff's legal argument in this response, the Company nonetheless provides additional context for the ALJ's consideration of Staff's request, because this is not a legal sufficiency or legal compliance issue. The Company disputes the merits of Staff's legal argument, and provided information concerning the flaws associated with this argument in its rebuttal testimony. Specifically, Company witness Cheung explained that the Company's use of a calendar year NPC forecast is consistent with the Commission's determination in the Company's last power cost only rate case (2022 PCORC) that the mismatch between the NPC baseline year and the rate year in the Company's NPC forecast did not cause any issues and was not a departure from Commission precedent.²⁹

19 Staff recently supported the 2022 PCORC settlement, which included a NPC baseline based on a 12-month period (January to December 2022) that did not precisely align with the rate year (May 2022 to April 2023).³⁰ The Alliance of Western Energy Consumers (AWEC) opposed the settlement. As the Commission determined in approving the contested settlement in that case, the proposal to align the NPC baseline with a 12-month calendar year period rather than the rate year did not render the model unreliable, unpredictable, depart from Commission precedent, or otherwise warrant

²⁹ *WUTC v. PacifiCorp, dba Pacific Power & Light Co.*, Docket No. UE-210402, Order 06 at ¶¶ 137-138 (Mar. 29, 2022); Cheung, Exh. SLC-8T at 69:10-22.

³⁰ *WUTC v. PacifiCorp, dba Pacific Power & Light Co.*, Docket No. UE-210402, Order 06 at ¶¶ 137-138 (Mar. 29, 2022) (“The Settling Parties have chosen to set the NPC baseline based on a 12-month period (January to December 2022) that does not precisely align with the rate year (May 2022 to April 2023).”).

rejection of the settlement.³¹ Consequently, Staff's legal position on this issue contradicts its own recent support and the Commission's approval of a similar calendar year NPC forecast that does not exactly align with the rate year within the Company's last rate case. It is important to note that these rates approved by the Commission are *currently* in effect, which Staff fails to acknowledge in its argument.

20 The Company's proposal is consistent with recent precedent and properly matches the costs and benefits within the rate forecast period and avoids an issue where other parts of the forecast, such as major capital projects, become misaligned or, if realigned with the revised NPC forecast period, result in a higher rate base to be reflected in rates in the Company's request.³² As such, Staff's proposal to shift the NPC forecast forward will result in a misalignment with other components of revenue requirement, resulting in a critical mismatch that undermines the integrity of the overall analysis. Staff's proposal is concerning because it does not properly match costs and benefits as NPC forecasts necessarily rely on underlying capital investments assumptions because capital investments inform and influence the availability of resources over a forecast period. Additionally, as described in the Company's rebuttal testimony, the updated NPC analysis is likely to result in an *increase* to NPC.³³

21 Finally, at core, Staff's proposed supplemental testimony concerns a disputed legal issue that is best suited for briefing rather than testimony. This Commission has already set an agreed-to procedural schedule that accounts for briefing from parties' legal counsel. If the Commission ultimately agrees with Staff after briefing, it may direct the

³¹ *Id.*

³² Cheung, Exh. SLC-8T at 70:11-71:8.

³³ Mitchell, Exh. RJM-3CT at 6:14-7:2.

Company to recalculate NPC and revenue requirement as part of a compliance filing— however, it bears noting that while technically possible, this approach would result in rates with a built-in disconnect between NPC forecast and the multi-year rate plan capital forecasts in rate base. Staff’s request to provide additional testimony on this topic presupposes that the Commission will set aside its recent decision in the 2022 PCORC and adopt Staff’s proposal, notwithstanding the flaws described above. Instead, the Commission can and should allow the resolution of this issue to unfold in accordance with the existing procedural schedule, and without further burdening the parties in advance of the hearing.

C. Staff’s Proposal Would Upend the Procedural Schedule.

22

The Commission has granted motions to revise testimony where there are still several months left until the evidentiary hearing or the next round of testimony, and granted motions where only several weeks remain until the hearing with the caveat that other parties will have the opportunity and time to file a rebuttal to the revision if necessary.³⁴ Here, Staff does not propose any specific deadline for filing revised testimony, and instead indicates that it would be filed at some point in early December.

³⁴ See, e.g., *WUTC v. Cascade Natural Gas Corp.*, Docket No. UG-210755, Order 04 (Dec. 17, 2021) (granting Cascade’s motion for leave to file revised testimony when there was still four months until the next round of testimony and more than five months before the hearing); *WUTC v. Puget Sound Energy*, Docket No. UE-220066, Order 17/03 (July 8, 2022) (granting PSE’s motion when there were still three months until the hearing); *WUTC v. Cascade Natural Gas Corp.*, Docket No. UG-170929, Order 04 (Mar. 9, 2018) (granting Cascade’s motion when there were still more than three months until the hearing); *WUTC v. Puget Sound Energy, Inc.*, Docket No. UE-060266 et al., Order 05 (July 13, 2006) (granting PSE’s motion for leave to file revised direct testimony, and extending the deadline for Staff and intervenors’ response testimony by one week to allow parties two weeks to respond to PSE’s revisions); *WUTC v. Puget Sound Energy, Inc.*, Docket No. UE-060266 et al., Order 06 (Aug. 30, 2006) (granting PSE’s motion for leave to file revised rebuttal testimony when there were still three weeks until the evidentiary hearing). *WUTC v. Puget Sound Energy, Inc.*, Docket No. UE-090704, Order 07 (Sept. 10, 2009) (granting PSE’s motion to file revised and supplemental direct testimony when there were still four months until the evidentiary hearing).

This ambiguity in Staff’s proposal highlights the fact that there is simply not time to include additional testimony in this proceeding without substantially interfering with parties’ ability to prepare for hearing, scheduled to begin on December 11, 2023. Staff’s proposed early December timing is untenable because it would impair the parties’ ability to prepare for hearing and would not allow adequate time for the Company to provide responsive testimony.

23 In prior cases, the Commission has been circumspect about allowing revisions to testimony that would disrupt the procedural schedule.³⁵ For instance, in Puget Sound Energy’s (PSE) 2009 general rate case, the Commission granted PSE’s motion for leave to file supplemental and revised direct testimony.³⁶ In granting the motion, even with seven weeks remaining before the next round of testimony was due, the Commission expressed concern that parties may not have sufficient time to evaluate and respond to supplemental arguments.³⁷

24 In the same docket, the Commission granted Staff’s motion for leave to file revised response testimony and exhibits, which Staff noted only resulted in a minor

³⁵ *WUTC v Puget Sound Energy, Inc.*, Docket No. UE-090704 et al., Order 08 at ¶ 10 (Oct. 20, 2009); *cf. WUTC v. Puget Sound Pilots*, Docket No. TP-220513, Order 04 at ¶ 14 (Oct. 18, 2022) (“[A] motion to supplement the record may simply be denied as departing from Commission practice and rules.”).

³⁶ In that case, Public Counsel asserted that it would be prejudiced by the short time between PSE’s filing and the deadline for response testimony. The motion was filed on September 28, 2009, response testimony was due seven weeks later on November 17, 2009, and the evidentiary hearing was held on January 19, 2010. The Commission granted the motion but also extended the response period for DRs to ensure that there was sufficient time for parties to evaluate PSE’s supplemental arguments and respond. Further, the Commission included a caveat in the order that PSE’s direct case in the docket should be fixed and certain at this time, and further requests for leave to file supplemental testimony would be considered with a “very skeptical eye.” *WUTC v Puget Sound Energy, Inc.*, Docket No. UE-090704 et al., Order 08 at ¶¶ 8-10 (Oct. 20, 2009).

³⁷ *See also WUTC v. Puget Sound Pilots*, Docket No. TP-220513, Order 04 at ¶ 13 (Oct. 18, 2022) (granting the motion for leave to revise testimony, and extending the entire timeline for the proceeding by six weeks to “provide for appropriate due process for all the parties; to prevent prejudice resulting from [Puget Sound Pilots] developing its case in a supplemental filing; and to assure this supplemental testimony does not hinder the Commission’s review of this case.”).

impact on the overall revenue requirement recommendations in the rate case.³⁸ PSE did not oppose the motion, but reserved the right to file supplemental testimony if necessary.³⁹ In granting the motion, the Commission emphasized that Staff had provided PSE with advanced notice of its intentions and that PSE would have sufficient time to make a motion for leave to file supplemental testimony if necessary.⁴⁰ The evidentiary hearing in this docket was held more than five weeks after Staff filed its revised response testimony.

25 These orders indicate that the Commission will carefully consider whether there is sufficient time for other parties to respond to the revised testimony. In this proceeding, PacifiCorp will have only a matter of days to review and respond to Staff's revised testimony prior to the evidentiary hearing. Importantly, Staff's proposed update is not just a minor revision or correction, but instead is an entirely new analysis, and there simply is not adequate time for the Company and parties to fully address it in advance of the evidentiary hearing.

D. Staff's Motion is Untimely.

26 Accepting for the sake of argument that Staff's Motion is properly considered a motion to revise its testimony, the pertinent rule, WAC 480-07-460(1)(b), provides that Staff must file its motion as soon as practicable after discovering the need to make the substantive changes. On October 12, 2023, ALJ Howard issued a ruling on Staff's motion to compel and specified the deadlines for the Company to provide the DR responses. Following the ruling on the motion to compel, ALJ Howard provided an opportunity for

³⁸ *WUTC v. Puget Sound Energy, Inc.*, Docket No. UE-090704 et al., Order 09 at ¶ 8 (Dec. 28, 2009).

³⁹ *Id.*, ¶ 10.

⁴⁰ *Id.*, ¶ 11.

counsel to ask any follow up questions.⁴¹ At that time, Staff did not preview any concern regarding the timing of the DR responses relative to the filing of cross-answering testimony, or that it would seek to update its testimony after receiving the DR responses. Staff then waited more than two full weeks before filing the motion to revise testimony, and did not confer with the Company before doing so. In addition to the defects in Staff's motion listed above, Staff's motion is also untimely.

E. If the Commission Grants Staff's Motion, the Company Must be Afforded an Opportunity to Respond.

27 If the Commission nonetheless grants Staff's motion, the Commission must provide the same opportunity to the Company. The Company bears the burden of proof in this proceeding, and thus procedural due process requires that the Company be afforded the opportunity to respond to the substantive changes Staff proposes.

28 With it being unclear as to precisely how Staff will substantively revise its response testimony position, it is difficult to determine the extent to which the Company will have to respond. Delaying the hearing until later in December, however, would be fundamentally unfair to all parties' witnesses, counsel, and the Commission given the impact to holiday plans and end of year business requirements. This could result in a highly condensed procedural schedule in January, with the need to conduct a hearing, briefing, and drafting an order while allowing for the compliance filing preparation and review before the effective date.

29 Though Staff offers no specific proposal—and does not contemplate providing the Company an opportunity to respond—if the Commission is inclined to grant Staff's

⁴¹ Transcript of Hearing on Motion to Compel – Vol. II at 47:7-8 (Oct. 12, 2023).

motion and prefers to keep the existing dates for the evidentiary hearing, the Company would suggest the following deadlines:

| Activity | Date |
|--|--------------------------------|
| Cross Examination Exhibits / Cross Statements (For all issues other than Supplemental Testimony) | December 4, 2023 |
| Staff's Supplemental Response Testimony | December 4, 2023 |
| PacifiCorp's Response to Staff's Supplemental Testimony | December 7, 2023 ⁴² |
| Cross Examination Exhibits / Cross Statements Related to Supplemental Testimony | December 8, 2023 |

30 Undoubtedly, these deadlines will not allow Staff or the Company adequate time to develop testimony that will meaningfully contribute to the record. Moreover, the preparation of testimony will overlap with and interfere with the Company's hearing preparations and will not provide the Commissioners, ALJ, and parties much time to review in advance of the December 11 evidentiary hearing. Staff explicitly acknowledges that its late-filed revised testimony may have a "substantial impact" on its recommendations.⁴³ This not only prejudices the parties but also puts pressure on the Commissioners, ALJs, and other internal Commission employees who may only have a few days to review significant changes in Staff's recommendations just before the hearing. And yet, short of setting a new hearing date or another dramatic revision to the procedural schedule that would impinge on the Commission's time to review the case and issue its order, it appears this approach would best accommodate Staff's request while also balancing procedural fairness for the Company.

⁴² Subject to the level of "substantial" impact to Staff's recommendations, PacifiCorp may need to request additional time to respond.


⁴³ Staff's Motion to Revise Testimony at ¶ 9.

IV. Conclusion

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For the foregoing reasons, the Company respectfully asked that the Commission deny Staff's motion, except with respect to Staff's proposal to revise JDW-11Cr. Even without filing revised testimony, Staff may still designate the November 30, 2023 DR responses as cross-examination exhibits, perform cross-examination of the Company's NPC witness in the evidentiary hearing, and raise its legal issues in briefing. If the Commission ultimately agrees with Staff on its disputed legal arguments after briefing, it may direct the Company to recalculate NPC as part of a compliance filing. Rejecting Staff's motion will avoid significant prejudice to the Company and ensure that all parties and the Commission have sufficient time to prepare for the hearing and maintain the existing procedural schedule.

Dated November 3, 2023



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