

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

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

Respondent.

DOCKET UE-230172

BRIEF OF PUBLIC COUNSEL

January 12, 2024

Shaded Information is Designated as Confidential per WAC 480-07-160

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I. INTRODUCTION

1. Power costs remain a contested issue in the multi-year general rate case filed by PacifiCorp d/b/a Pacific Power & Light Company (PacifiCorp or the Company).¹ In testimony, the Public Counsel Unit of the Washington Attorney General's Office (Public Counsel) addressed PacifiCorp's proposal to modify its Power Cost Adjustment Mechanism (PCAM), certain costs that should be disallowed, and PacifiCorp's proposal to update power costs throughout its proposed two year multi-year rate plan.² Public Counsel recommends that the Washington Utilities and Transportation Commission (Commission) retain PacifiCorp's existing PCAM dead band and sharing bands. Public Counsel also recommends that the Commission address PacifiCorp's proposed net power cost (NPC) updates to allow for more equitable review and appropriately timed prudence determinations.

II. THE COMMISSION SHOULD REJECT PROPOSALS TO MODIFY PACIFICORP'S PCAM.

2. PacifiCorp asks the Commission to modify its PCAM by eliminating the dead band and sharing bands. PacifiCorp's request is contrary to the Commission's longstanding approach to power costs, in contrast to the power cost adjustment mechanisms in place in other PacifiCorp jurisdictions, and is remarkably similar to the proposal in its 2013 rate case.³ The Commission rejected PacifiCorp's proposal for a PCAM devoid of dead bands and sharing bands in the 2013

¹ PacifiCorp and parties to this proceeding other than Public Counsel reached a partial settlement agreement addressing all other issues in the case. The Commission will consider the settlement at the settlement hearing scheduled for January 12, 2024, and subsequent briefing. This brief is limited to power cost issues.

² Response and Cross Answering Testimonies of Robert L. Earle, Exh. RLE-1CT and Exh. RLE-7T.

³ Earle, RLE-7T at 2:1-23.

rate case.⁴ In describing dead bands and sharing bands, the Commission said, “These are critically important elements that provide an incentive for the Company to manage carefully its power costs and that protect ratepayers in the event of extraordinary power cost excursions that are beyond the Company’s ability to control.”⁵

3. The dead band is designed to capture PacifiCorp's normal NPC variability, while the sharing bands assign how extraordinary cost variances are shared between PacifiCorp and ratepayers. Dead bands and sharing bands remain important tools through which to appropriately share power cost variances between PacifiCorp and its ratepayers. PacifiCorp’s proposal to eliminate the dead band and sharing bands would inappropriately place 100 percent of power cost variance risk on ratepayers and should be rejected.⁶

A. PacifiCorp Offers Insufficient Rationale for Eliminating the Dead Band and Sharing Bands.

4. PacifiCorp offers two reasons to eliminate the dead band and sharing bands of its PCAM. First, PacifiCorp states that it is difficult to accurately forecast net power costs. Second, PacifiCorp points to its participation in organized energy markets, including the Energy Imbalance Market (EIM) and the Extended Day Ahead Market (EDAM). Neither reason offers sufficient basis to eliminate the PCAM dead band and sharing bands.⁷

⁴ *Wash. Utils. & Transp. Comm’n v. PacifiCorp d/b/a Pacific Power & Light*, Docket UE-130043, Order 05: Final Order, ¶ 9.

⁵ *Id.* ¶ 170.

⁶ Earle, Exh. RLE-7T at 2:16–21, citing Direct Test. of Chris R. McGuire, Exh. CRM-1T at 60:2.

⁷ Earle, Exh. RLE-1CT at 3:15–25.

1. Variances between NPC forecasting and actual NPC are standard risks faced by utilities.

5. Variances between forecasted NPC and actual NPC are expected and normal. The PCAM is specifically designed to address variances and appropriately distribute risk between the utility and customers. Indeed, PacifiCorp creates a red herring in how it frames the issue.⁸ Forecasting inputs such as power cost, gas price, and weather are difficult, and it is a basic part of a utility's function to address volatile NPC inputs.⁹ Current levels of natural gas price and volatility have occurred historically, so PacifiCorp should be well-equipped to address it.¹⁰

6. Instead of focusing on inherent variability, the relevant inquiry is whether PacifiCorp is adequately addressing the volatility.¹¹ PacifiCorp uses two approaches to address volatility, and neither strategy optimizes operations for Washington ratepayers. PacifiCorp relies on long-term contracts and hedging. PacifiCorp optimizes both practices on a system-wide basis across its six-state service territory without regard to Washington-specific consequences.¹² The only state that concerns the Commission, however, is Washington.¹³ The question before the Commission is whether PacifiCorp's practices are in the best interest of Washington ratepayers.¹⁴ PacifiCorp does not optimize either its hedging practices or long-term contracts on behalf of Washington

⁸ Earle, Exh. RLE-1CT at 6:15–17.

⁹ *Id.* at 6:17–7:2.

¹⁰ *Id.* at 7:1–8, incl. Figure 1: Henry Hub Natural Gas Prices from 1997 to 2023, showing similar variability and price levels over time.

¹¹ *Id.* at 7:9–10.

¹² *Id.* at 7:13–8:1.

¹³ See *Wash. Utils. Transp. Comm'n v. PacifiCorp d/b/a Pacific Power & Light*, Docket UE-050684, Order 04: Final Order, ¶ 54. Commission considering cost allocation methodology states that Washington law requires PacifiCorp to demonstrate state specific benefit rather than system benefit. Commission also states that it “cannot delegate our statutory responsibilities for determining prudence and protecting the interests of Washington ratepayers to other states or to a cost allocation formula that does not comport with the requirements of our governing statutes.” ¶ 55.

¹⁴ Earle, Exh. RLE-1CT at 8:1–3; *Wash. Utils. Transp. Comm'n v. PacifiCorp d/b/a Pacific Power & Light*, Docket UE-050684, Order 04: Final Order, ¶ 55.

ratepayers, so it is not able to establish whether its practices are in the best interest of Washington.¹⁵

7. The Commission expressed its concern about PacifiCorp power costs in PacifiCorp's last power cost only rate case stating:¹⁶

After considering all of this evidence, our past orders, and our past IRP acknowledgment letters, we are concerned that PacifiCorp has not prudently managed its power costs and that this has exposed Washington customers to significant price increases. ... The Commission has warned the Company over a 10-year period of the need to fully evaluate the risks of its reliance on market transactions to recover power costs. Despite these clear indications from the Commission, the Company continues to rely heavily on market purchases to meet Washington customers' load. The Company also hedges for its system as a whole and does not separately hedge for its Washington-allocated resources and Washington load. The cumulative effect of all of these choices – surrounding both the Company's long-term portfolio strategy and the application of its risk management program to Washington customers' loads and resources – raise significant concerns regarding the prudence of its power costs for Washington customers.

8. In this case, PacifiCorp essentially argues that it is incapable of managing NPC input volatility on behalf of Washington. PacifiCorp fails to address the specific concerns raised by the Commission and parties regarding whether it is appropriately managing its power costs for Washington customers. The need to appropriately incentivize the Company continues to exist. The Commission should reject PacifiCorp's argument as a reason to eliminate the dead band and sharing bands.

¹⁵ Earle, Exh. RLE-1CT at 8:3–4.

¹⁶ *Wash. Utils. & Transp. Comm'n v. PacifiCorp d/b/a Pacific Power & Light*, Docket UE-210402, Order 06, ¶ 147.

2. PacifiCorp’s participation in organized energy markets does not eliminate the need for PCAM dead bands and sharing bands.

9. Public Counsel believes that PacifiCorp references its anticipated participation in the EDAM and its continued participation in the EIM when it refers to its participation in organized energy markets.¹⁷ Specifically, PacifiCorp claims that its participation in the EDAM will drive the majority of its NPC as low as the EDAM can achieve and will take the NPC out of PacifiCorp’s control.¹⁸ In discovery, PacifiCorp’s calculation shows that [REDACTED]
[REDACTED]
[REDACTED], the reasons that dead bands and sharing bands are established remain applicable.

10. Moreover, even for the portion of NPC that would go through the EDAM, PacifiCorp is still required to optimize its performance by how it chooses to bid into the EDAM. PacifiCorp’s bids into the EDAM will be informed by [REDACTED]
[REDACTED]
[REDACTED]¹⁹ The Company also has the opportunity to optimize in the areas of scheduling and maintenance.²⁰ Eliminating the dead band and sharing bands would destroy PacifiCorp’s incentive in all of these areas.

11. PacifiCorp claims without presenting any evidence that it already performs such optimization in some of the areas mentioned.²¹ The evidence in this proceeding demonstrates

¹⁷ Earle, Exh. RLE-1CT at 4:4–7, citing Direct Test. of Jack Painter, Exh. JP-1T at 25:4–30:15.

¹⁸ *Id.* 4:7–11, citing Painter, Exh. JP-1T at 27:21–22 and 28:18–20.

¹⁹ Earle, Exh. RLE-1CT at 5:1–16.

²⁰ *Id.* at 6:4–7.

²¹ Painter, Exh. JP-2T at 12:3–21.

that there is room for PacifiCorp to further optimize its operations. Both Dr. Earle and Staff witness, Mr. Wilson, found significant issues with the Company's calculation and handling of O&M costs.²² In fact, PacifiCorp acknowledged some of these errors.²³ PacifiCorp's claims that it already optimizes the system are false and should be dismissed.

12. Additionally, it seems that PacifiCorp intends to maintain its day-ahead and real-time trading desks, even though it claims that such optimization is out of its control.²⁴ This seems to contradict the argument that PacifiCorp will have no control over optimization based on its participation in organized energy markets. In any event, PacifiCorp will continue to control maintenance outage schedules, other maintenance activities, and improving heat rates on plants that burn fuel.²⁵ Incentives for PacifiCorp to actively optimize its resources continue, even with participation in organized energy markets, making it important that the Commission maintain the PCAM dead band and sharing bands.²⁶

13. In all of this, the Company's stance is rather astounding. It seems that PacifiCorp argues it does not need or want any incentives to optimize its system, as if from the goodness of its heart it will "do the right thing," making elimination of the PCAM sharing band and dead bands acceptable. The Company claims that prudence reviews are sufficient to ensure that actual power costs are prudent.²⁷ Mischaracterizing Public Counsel's position, PacifiCorp states, "prudence reviews are a crucial aspect of the ratemaking process."²⁸ Public Counsel never said otherwise.

²² Earle, Exh. RLE-1CT at 9:19–10:22. Wilson, JDW-24T at 20:12–13.

²³ Wilson, Exh. JDW-24T at 20:12–13.

²⁴ *Id.* at 5:17–6:3.

²⁵ *Id.* at 6:4–7.

²⁶ *Id.* at 6:8–14.

²⁷ Painter, Exh. JP-2T at 13:17–14:14.

²⁸ *Id.* at 13:18–19.

Prudency reviews are an important part of the ratemaking process, however as Dr. Earle discusses, prudency reviews are costly and burdensome for the Commission and intervenors. Incentives do not supplant the need for prudency reviews, however, they do lessen the regulatory burden.²⁹

14. PacifiCorp rejects the National Association of Regulatory Utility Commissioners' findings on informational asymmetry claiming that there is no informational asymmetry concerning backwards-looking reviews.³⁰ The discovery process belies this claim, which simply ignores the reality that regulated utilities have always had an information advantage over their regulators and the non-company parties engaging in the regulatory process.

15. Finally, PacifiCorp points to a \$457,000 disallowance from 2018 to show that the prudency review process is sufficient justification to eliminate incentives provided through the sharing band and dead bands.³¹ To put this number in perspective, \$457,000 is less than *one-hundredth of a percent* of the actual NPC incurred in just the three years 2020-2022.³² Either PacifiCorp is perfect in its performance, or prudency review can only effectively root out extremely small amounts of disallowances. The Company's evidence about the effectiveness of prudency reviews demonstrate the opposite of what it claims.

²⁹ Earle, Exh. RLE-1CT at 8:10–9:4.

³⁰ Painter, Exh. JP-2T at 14:20–15:4.

³¹ Painter, Exh. JP-2T at 14:9–11.

³² Wilson, Exh. JDW-1CT at 29, Table 4 has the actual NPC for 2020–2022.

3. Commission Staff’s proposal to eliminate the dead band and apply a straight 90/10 sharing band also fails to appropriately assign risk between PacifiCorp and its ratepayers.

16. While PacifiCorp maintains its primary request to eliminate the dead band and sharing bands, it offers an alternative of adopting Commission Staff’s proposal in its rebuttal testimony. Staff proposes that the Commission eliminate the PCAM dead band and apply only a 90/10 sharing band. Staff contends that the PCAM is structurally complicated, the dead band could result in a “windfall” for either PacifiCorp or ratepayers, and that PacifiCorp’s risk should be reduced.³³ None of these arguments merit eliminating the dead band. Rather, the Commission should leave PacifiCorp’s PCAM structure unchanged because it provides the appropriate incentives to manage costs and appropriately assigns risk.

17. PacifiCorp’s PCAM structure is, as Public Counsel witness Dr. Earle describes, “hardly complicated with five levels of sharing (the dead band and two sharing bands on either side).”³⁴ Calculating forecasted NPC is inherently challenging, but those challenges would not be diminished by altering the PCAM structure. PacifiCorp would still need to calculate NPC through complicated and sophisticated modeling; the difference would be that the incentive to optimize would be diminished because the risk would be substantially on ratepayers. The PCAM structure is quite straightforward and easily implemented and should remain unchanged.³⁵

18. With respect to Staff’s concerns about “windfall,” the dead band does not produce windfalls for either Company shareholders or ratepayers. The dead band is designed to capture

³³ Earle, Exh. RLE-7T at 3:6–14, citing John D. Wilson, Exh. JDW-1CT at 35:13–15 and 36:16–19.

³⁴ Earle, Exh. RLE-7T at 3:16–18.

³⁵ *Id.* 3:15–4:2.

normal variances between forecasted and actual NPC.³⁶ Variability is normal and expected and captured within the dead band, as the Commission’s longstanding policy on power costs recognizes.³⁷

19. Staff believes that PacifiCorp’s risk should be decreased due to increased renewables and participation in EDAM, but the corollary is to increase ratepayer risk.³⁸ Under Staff’s proposal, ratepayers would bear 90 percent of the risk, leaving a scant 10 percent of risk to be borne by the Company. This is inequitable and would eviscerate the incentive for PacifiCorp to carefully manage its costs.³⁹

20. PacifiCorp’s argument that it is difficult to manage its power costs is not a new argument, but rather one that is repackaged for the current case. Indeed, PacifiCorp has claimed that it is unable to manage its power costs going back at least 10 years.⁴⁰ PacifiCorp’s current argument is simply another attempt to shift risk from itself to ratepayers, and Staff’s proposal shifts an inequitable amount of risk to customers.

21. Moreover, the Commission previously recognized that establishing a 90/10 sharing band with no dead band fails to adequately balance risk and benefit between company shareholders and ratepayers.⁴¹ In that same case, Staff also rejected a 90/10 sharing band with no dead band. The Commission summarized Staff’s position that “the PCAM should not be used to protect

³⁶ Joint Narrative in Supp. of Settlement Stip., ¶ 19, *Wash. Utils. & Transp. Comm’n v. Pacific Power & Light*, Docket UE-140762 (filed May 8, 2015).

³⁷ Earle, Exh. RLE-7T at 4:3–11.

³⁸ *Id.* at 4:12–16.

³⁹ *Id.* at 4:16–17.

⁴⁰ *Id.* at 4:17–5:3, citing Direct Test. of Gregory N. Duvall, Exh. GND-1CT at 15–17, *Wash. Utils. & Transp. Comm’n v. PacifiCorp d/b/a Pacific Power & Light*, Docket UE-130043 (filed Jan. 11, 2013).

⁴¹ *Wash. Utils. & Transp. Comm’n v. PacifiCorp d/b/a Pacific Power & Light*, Docket UE-050684, Order 04: Final Order, ¶ 99 (Apr. 17, 2006).

shareholders from volatile power costs due to load growth or participation in the wholesale market.”⁴² Staff recognized in that case that a 90/10 sharing band with no dead band “would not provide incentives to minimize power costs.”⁴³ Staff has not explained or justified why the Commission should change its longstanding policy now.

22. Rather, Staff recognizes that ratepayers would likely face repeated surcharges under its proposal. Staff states, “There is a strong probability that in future years Actual NPC will exceed Forecasted NPC, resulting in rate surcharges.”⁴⁴ Public Counsel witness Dr. Earle testifies, “Without a dead band, if Staff is correct, ratepayers will face surcharges continuously.”⁴⁵ The result would be a PCAM design that is imbalanced and unfair to customers. The Commission should maintain PacifiCorp’s PCAM structure unchanged.

III. NET POWER COST UPDATES UNDER PACIFICORP’S MULTI-YEAR RATE PLAN

23. PacifiCorp proposes three NPC updates during the two-year multi-year rate plan (MYRP).⁴⁶ PacifiCorp’s NPC update proposal, along with its proposal to update capital projects, results in six rate changes during the MYRP, creating a complicated and confusing rate experience for customers. PacifiCorp’s proposal is contrary to the policy motivation of reducing Commission case load, as expressed in Washington Engrossed Substitute Senate Bill 5295 (SB

⁴² *PacifiCorp* Docket UE-050684, Order 04, ¶ 84.

⁴³ *Id.*

⁴⁴ Wilson, Exh. JDW-1CT at 33:9–10. *See also*, Wilson, Exh. JDW-1CT at 27:3–7.

⁴⁵ Earle, Exh. RLW-7T at 5:15–16.

⁴⁶ Earle, Exh. RLE-1CT at 13:2–4, incl. Table MD-2: PacifiCorp Proposed NPC Updates, citing Direct Test. of Ramon J. Mitchell, Exh. RJM-1Tr at 38. PacifiCorp also proposes three capital project updates during the MYRP. Those updates are subject to the partial settlement agreement and are not addressed in this brief.

5295). The Senate Bill Analysis stated, “This bill makes work load more predictable and provides more certainty for customer rates.”⁴⁷

24. Not only does the proposal require several additional proceedings during a relatively short MYRP, it also raises equity concerns. Intervenors representing disadvantaged communities may not be able to engage as often as these additional proceedings would require, resulting in intervenors losing the ability to guard the rights of their represented communities.⁴⁸ This is particularly true when prudence is to be determined because it requires quick reaction times and sufficient resources to analyze and file comments in response to the company’s updates.⁴⁹ Prudence should be reviewed in PacifiCorp’s next rate case, with any necessary true-up adjustments being made at that time.⁵⁰

25. The time allowed between filing and effective dates under PacifiCorp’s proposed NPC updates is too short. For example, the first NPC update only allows nine business days for review. The second update allows for a month to review. It is unclear why the first NPC update does not have a similar one-month review period.⁵¹

26. PacifiCorp appears to misunderstand Public Counsel’s proposal, claiming that it is “confusing” to establish the prudence of power cost updates and capital additions in the next GRC.⁵² However, the proposal is straightforward and simple: power cost updates (and capital

⁴⁷ Engrossed Substitute S.B. Rep. 5295 at 6, 67th Leg. Reg. Sess. (Wash. 2021), <https://app.leg.wa.gov/billsummary?billnumber=5295&year=2021> (click on ‘Engrossed Substitute Senate Bill Report’ under ‘Available Documents’).

⁴⁸ Earle, Exh. RLE-1CT at 14:13–18.

⁴⁹ *Id.* at 14:18–21.

⁵⁰ *Id.* at 14:22–15:5.

⁵¹ *Id.* at 15:13–18.

⁵² McVee, Exh. MDM-2T at 24:11–14.

additions) can be put into rates through a filing approved by the Commission, but their prudence review is consolidated in the next GRC. It is hardly confusing to perform a backward looking review in a GRC as PacifiCorp claims. Most, if not all, GRCs have a backward looking element to them.

27. PacifiCorp further expresses concern that there will be over-collection and delay of associated refunds.⁵³ Public Counsel is concerned that the Company anticipates over-collection. As such, PacifiCorp's concern strengthens the need for adequate and consolidated review in the next GRC. Given the Company's anticipation of over-collection, an alternative would be to establish a balancing account on which collection is started once a prudence determination is made in the next GRC. On balance, consolidating prudence reviews in the next GRC while allowing collection in the meantime balances the PacifiCorp's needs for financing as well as the needs of intervenors and the Commission for an opportunity to conduct a prudence review in an efficient manner.

28. Finally, PacifiCorp argues that Public Counsel's proposal is "in direct contradiction to the Policy Statement on Property that Becomes Used and Useful After the Rate Effective Date, where the Commission explains that the review of provisional pro-forma plant adjustments includes a prudence review by Staff and other parties."⁵⁴ Public Counsel's proposal is not in direct or implied contradiction to the Policy statement. In fact, Public Counsel's proposal is in complete concert with the Policy Statement. The Policy Statement explicitly gives as an

⁵³ *Id.* at 24:14–17.

⁵⁴ *Id.* at 24:18–21.

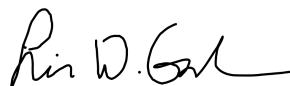
alternative that the review could occur at the “next GRC.”⁵⁵ The Company’s claim that Public Counsel’s proposal violates the policy statement is without merit.

IV. CONCLUSION

29. Public Counsel recommends that the Commission reject PacifiCorp’s and Staff’s proposals to modify the PCAM. Instead, the Commission should leave PacifiCorp’s PCAM structure unchanged. Additionally, the Commission should address PacifiCorp’s proposed NPC updates during the MYRP to allow for more time to review and for prudence to be reviewed in PacifiCorp’s next rate case.

DATED this 12th day of January, 2024.

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⁵⁵ *In re the Comm’n Inquiry into the Valuation of Pub. S. Co. Property that Becomes Used and Useful after the Rate Effective Date*, Docket U-190531, Policy Statement, ¶ 42 (Jan 31, 2020).