

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of

PACIFIC POWER & LIGHT COMPANY

2022 Power Cost Adjustment Mechanism  
Annual Report.

DOCKET UE-230482

STAFF’S MOTION IN LIMINE TO  
EXCLUDE THE REBUTTAL  
TESTIMONY OF DOUGLAS R.  
STAPLES

**I. INTRODUCTION**

1 Commission Staff (“Staff”) of the Washington Utilities and Transportation Commission (“Commission”) moves in limine to exclude the rebuttal testimony of Douglas R. Staples filed by Pacific Power and Light (“Company” or “PacifiCorp”) on May 2, 2024. Sections of Mr. Staples’ testimony is impermissible as it seeks to offer new, foundational evidence on rebuttal as opposed to rebutting evidence offered by a party’s response testimony, essentially robbing other parties of the opportunity to respond to the witness’s testimony and opinions.

**II. RELIEF REQUESTED**

2 Staff requests that the Commission grant Staff’s motion in limine, excluding from the record specific excerpts from sections IV, VI, and VIII of the testimony of Douglas R. Staples, Exh. DRS-1CT.

**III. STATEMENT OF FACTS**

3 On June 15, 2023, PacifiCorp filed with the Commission a Petition to Extend the Amortization of the PCAM Surcharge.<sup>1</sup> With its petition, PacifiCorp filed opening testimony from witnesses Ramon Mitchell and Jack Painter.<sup>2</sup> This filing was intended to provide the

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<sup>1</sup> *In the Matter of PacifiCorp d/b/a Pac. Power & Light Co. 2022 Power Cost Adjustment Mechanism Annual Report*, Docket UE-230482, PacifiCorp’s Petition to Extend the Amortization of the PCAM Surcharge (June 15, 2023).

<sup>2</sup> *Id.*

Commission and interested parties the opportunity to audit and review deferred power costs under the PCAM for surcharge or rebate. The June 2023 filing addressed deferred power costs from 2022; PacifiCorp sought to amortize these costs over 24, rather than 12, months to account for costs that were significantly higher than the baseline set for power costs.<sup>3</sup>

4           On October 10, 2023, the Alliance for Western Energy Consumers (AWEC) filed a Petition for Adjudication of Docket UE-230482, raising concerns about PacifiCorp’s hedging practices. The matter came before the regularly scheduled open meeting on November 22, 2023. The Commission granted AWEC’s Petition, suspending the tariff revisions filed by PacifiCorp on June 15, 2023.<sup>4</sup>

5           Pursuant to the procedural schedule adopted by the Commission to govern the adjudication launched by the granting of AWEC’s petition, the non-company parties filed response testimony on March 28, 2024.<sup>5</sup> Those filings included testimony from Staff witnesses John Wilson and Wes Yeomans, Public Counsel witness Robert Earle, and AWEC witness Bradley Mullins.

6           On May 2, 2024, PacifiCorp filed rebuttal testimony from several witnesses including Douglas R. Staples. Section IV of this testimony addresses “The History of PacifiCorp’s Hedging Program”; Section VI addresses “How PacifiCorp Hedges”; and Section VIII addressed “AWEC’s Testimony”.<sup>6</sup> Specifically, the following excerpts offer new opinions and conclusions not previously disclosed:

1. Section IV, page 5 line 6 though page 7 line 10 which discusses the history and creation of PacifiCorp’s hedging program. This section specifically addresses

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<sup>3</sup> *Id.* at 1 ¶ 2.

<sup>4</sup> *In the Matter of the Petition of PacifiCorp d/b/a Pac. Power & Light Co.*, Order 01 at 6 ¶ 2-3 (Nov. 27, 2023).

<sup>5</sup> *In the Matter of the Petition of PacifiCorp d/b/a Pac. Power & Light Co.*, Order 03 at 7 (Jan. 23, 2024).

<sup>6</sup> *In the Matter of the Petition of PacifiCorp d/b/a Pac. Power & Light Co.*, Exh. DRS-1CT (May 2, 2024).

how the gas hedging limits were created, collaboratives that led to revisions in the hedging policy, and why hedging policies were changed;<sup>7</sup>

2. Section VI, page 14 line 7 through page 15 line 18 provides a reasoning for why hedging limits are structured in the way they are. This section also discusses the reasoning behind use of certain hedging instruments and how and why limits are defined;<sup>8</sup>
3. Section VI, page 17 line 14 through page 18 discusses the change in hedging activities as a result of changes in policy. These changes are discussed during specific, relevant time periods;<sup>9</sup> and
4. Section VIII, page 34 line 10 through page 35 line 13 addresses the reasons the Company believes it used more fuel than anticipated in 2022, the time period at issue in this PCAM proceeding.<sup>10</sup>

#### **IV. STATEMENT OF ISSUES**

7           Should the Commission exclude from the record excerpts from the rebuttal testimony of PacifiCorp witness Douglas R. Staples to the extent it seeks to enter direct, foundational testimony rather than testimony rebutting the evidence presented by the responses of other parties?

#### **V. EVIDENCE RELIED UPON**

8           Staffs relies upon the record in this matter, including the rebuttal testimony of Douglas R. Staples, and the authority and argument cited herein, to support its motion in limine.

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

## VI. ARGUMENT

9           The Commission is authorized pursuant to chapter 34.05 RCW (the Administrative Procedure Act, or “APA”), and its own procedural rules, chapter 480-07 WAC, to exclude testimony from the record of a proceeding. A presiding officer in a Commission proceeding is authorized to “exclude evidence that is irrelevant, repetitive, or inadmissible” to the matter at bar.<sup>11</sup> A presiding officer should do so where a party seeks to introduce in rebuttal evidence more properly presented in the company’s initial testimony,<sup>12</sup> treating prehearing objections to such evidence as a motion in limine that forecloses the admission of such evidence.<sup>13</sup>

10           For instance, during Puget Sound Energy’s 2017 General Rate Case, the Commission sustained Staff’s objection<sup>14</sup> to the admission of the testimony of a Montana Attorney General who sought to offer cross-answering testimony, but declined to file any direct testimony.<sup>15</sup> Similarly, in *City of Spokane Valley v. Union Pacific Railroad Company*, the Commission granted the City’s motion to strike the testimony of two Union Pacific witnesses when Union Pacific essentially filed two rounds of response testimony.<sup>16</sup> Since Staff in *Union Pacific* did not file response testimony, the Administrative Law Judge held that the provision of the procedural schedule permitting cross-answering testimony became

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<sup>11</sup> WAC 480-07-495.

<sup>12</sup> *E.g., In re Petition of Union Pac. R.R. Co.*, Docket TR-210814, Order 02, 3 ¶¶ 11-13 (May 5, 2022).

<sup>13</sup> *E.g., Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Dockets UE-170033 & UG-170034, Order 07 at 5 ¶ 14 (Aug. 25, 2017).

<sup>14</sup> It should be noted Staff’s motion in that matter was filed as a motion to strike testimony. Administrative Law Judge Moss stated that a motion to strike would be premature as the testimony had not actually been admitted at that time, and instead construed Staff’s motion as an objection to the admission of the witness’s testimony. *Puget Sound Energy*, Dockets UE-170033 & UG-170034, Order 07, at 5 ¶ 14 (Aug. 25, 2017).

<sup>15</sup> *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Dockets UE-170033 & UG-170034, Order 07 (Aug. 25, 2017).

<sup>16</sup> Dockets TR-210809 & TR-210814, Order 02 at 3 ¶ 11, 13 (May 5, 2022).

moot because the cross-answering testimony essentially became an impermissible second set of response testimony.<sup>17</sup>

11 In this case, PacifiCorp is attempting to impermissibly submit new, foundational testimony in the rebuttal testimony of Douglas R. Staples. Specifically, the following excerpts contain new information not previously addressed in testimony:

1. Section IV, page 5 line 6 through page 7 line 10 which discusses the history and creation of PacifiCorp's hedging program. This section specifically addresses how the gas hedging limits were created, collaboratives that led to revisions in the hedging policy, and why hedging policies were changed. This section contains foundational background information that provides important context on the creation and functioning of PacifiCorp's hedging program. PacifiCorp did not offer a witness to testify to these issues in its initial filing. This information is important for understanding and assessing the prudence of the program. There are no opportunities for Staff to incorporate this or provide opinions on this information, and as such, it should be excluded.
2. Section VI, page 14 line 7 through page 15 line 18 provides a reasoning for why hedging limits are structured in the way they are. This section also discusses the reasoning behind use of certain hedging instruments and how and why limits are defined. PacifiCorp did not offer this testimony in its initial filing. The structure of the hedging program and basis for it are key details in the analysis associated with assessing the program. PacifiCorp should have included this information in its initial filing to support its burden in this proceeding. It did not.
3. Section VI, page 17 line 14 through page 18 discusses the change in hedging activities as a result of changes in policy. These changes are discussed during

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<sup>17</sup> *Id.* at 3 ¶ 13.

specific, relevant time periods. The actual result and impact of a hedging policy change is foundational to the issue at the heart of AWEC's petition, which is the allegation of imprudent hedging practices. No PacifiCorp witness spoke to these details during initial testimony. It was relevant to PacifiCorp's burden of proof, and not disclosed until after the ability of the parties to respond was foreclosed.

4. Section VIII, page 34 line 10 through page 35 line 13 addresses the reasons the Company believes it used more fuel than anticipated in 2022, the time period at issue in this PCAM proceeding. The facts presented in this section were not part of PacifiCorp's initial testimony. The utilization of fuels impacting power costs during 2022, and the reasons for the higher than expected PCAM amount, are central issues in this case, and should have been clearly identified in initial testimony.

12 Staff generally takes the position that more information is better. However, the need for information needs to be balanced against parties' ability to review evidence offered by other witnesses and present counterarguments. PacifiCorp's attempt to introduce new evidence at this stage has left Staff (and the other parties) without the ability to respond or present any counterarguments Staff may have. Staff attempted to discover PacifiCorp's opinions and positions in this case through multiple DRs. PacifiCorp had numerous opportunities to supplement the record through those responses; however, it failed to do so. Mr. Staples is an expert witness; Staff's limited opportunities to investigate and respond to Mr. Staples' opinion testimony is through DRs, response testimony, and cross-examination at the hearing. At this juncture, DRs and cross-examination at a hearing have only limited value, as they do not give Staff the opportunity respond or provide expert critique on Mr. Staples' opinions. Rather, DRs and cross-examination just allow Staff further opportunity to investigate those opinions.

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The Commission should exercise its authority and exclude the above referenced testimony. The testimony's late introduction in the form of rebuttal testimony has closed the door on Staff's (or any party's) ability to respond to these new opinions and assertions. Similar to *Union Pacific*, PacifiCorp is essentially trying to take two bites at the apple, by submitting initial testimony twice. Foundational issues should be raised in an initial filing, not in rebuttal testimony which is filed concurrently with non-company party cross-answering testimony and essentially cuts-off response ability by other parties. The Commission should not decide this matter based on evidence that has not, and cannot, be tested through the adversarial process.

## VI. CONCLUSION

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Staff requests that the Commission grant its motion in limine, excluding:

1. Section IV, page 5 line 6 through page 7 line 10;
2. Section VI, page 14 line 7 through page 15 line 18;
3. Section VI, page 17 line 14 through page 18;
4. Section VIII, page 34 line 10 through page 35 line 13.

of the testimony offered by PacifiCorp witness Douglas R. Staples.

DATED this 17th day of May 2024.

Respectfully submitted,

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