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## *Via Electronic Filing*

Jeff Killip  
Executive Director and Secretary  
Washington Utilities & Transportation Commission  
621 Woodland Square Loop SE  
Lacey, WA 98503

Re: *In the Matter of UE-230172 – PacifiCorp’s Annual Provisional Capital Review Report  
Comments of the Alliance of Western Energy Consumers*

Dear Executive Director Killip:

The Alliance of Western Energy Consumers (“AWEC”) submits these comments in response to PacifiCorp d/b/a Pacific Power and Light Company’s (“PacifiCorp” or “Company”) Annual Provisional Capital Review Report (“Report”) related to capital investments over the period from January 1, 2023 through December 31, 2023. Based on the contents of the Report and in accordance with the terms of the Settlement Agreement in this proceeding, PacifiCorp should be ordered to issue a refund to customers for the difference between plant forecast in rates for the Foote Creek Wind II-IV Repower Project (“Foote Creek” or “Project”) and the Project’s actual costs. This amounts to a reduction in PacifiCorp’s rate base of \$484,165.

PacifiCorp’s 2023 General Rate Case proceeding resulted in a settlement among several parties in the proceeding that included a capital review process for PacifiCorp’s provisional pro-forma capital additions as memorialized in the Settlement Agreement filed in this proceeding. In Final Order 08/06, the Washington Utilities and Transportation Commission (“Commission”) approved the Settlement Agreement without conditions or other alterations on the parties’ agreement related to review of provisional pro-forma capital additions included in rates.<sup>1</sup> In the Settlement Agreement, PacifiCorp, AWEC and other settling parties agreed that the capital review process in this proceeding would be “performed at the portfolio level, with the exception of Gateway South, Gateway West, and new wind resources.”<sup>2</sup> In response to this settlement

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<sup>1</sup> Final Order 08/06 at ¶¶ 244-247 (March 19, 2024) (“Final Order 08/06”).

<sup>2</sup> Settlement Stipulation at ¶ 29 (Dec. 15, 2023) (internal citations omitted).

term, the Commission stated that “[t]he Settlement also makes clear that Gateway South and other projects are not subject to portfolio level review, which ameliorates any possible concerns with portfolio level review.”<sup>3</sup>

On July 15, 2024, PacifiCorp filed the Report, in which the Company identified that Foote Creek came in under budget by \$484,165, but without a proposal to refund over-collected amounts to customers.<sup>4</sup> There does not appear to be any dispute among the parties as to whether Foote Creek is considered a “new wind resource.”<sup>5</sup> Rather, PacifiCorp’s has now adopted a novel reading of the Settlement Agreement, disputing that the Settlement Agreement contemplated or requires refunds for the large, discrete capital projects specifically excepted from the portfolio level review discussed in the stipulation. Instead, the Company argues that the excepted discrete projects were only separately identified for transparency reasons.<sup>6</sup> Instead, PacifiCorp argues that refunds were intended to take place at the portfolio level.

PacifiCorp’s interpretation should be rejected for three reasons. First, PacifiCorp’s interpretation is directly contradicted by the record supporting the Settlement Agreement. The settling parties drafted and filed Joint Testimony in support of the Settlement Agreement, which includes a statement from each settling party as to why they support the Settlement Agreement as consistent with the public interest.<sup>7</sup> AWEC’s statement – which PacifiCorp reviewed prior to filing – provides that:

To address the significant capital investments included in this case, the Stipulation also adopts a capital review process that carves out the discrete large capital additions for individual review. ***Thus, to the extent that these major capital projects are not placed in service as forecast in the revenue requirement in this docket, a refund will be provided to customers, inclusive of interest at the FERC interest rate.***<sup>8</sup>

At no point in the negotiation and finalization of the settlement documents did PacifiCorp (or any other party) raise a concern that the parties did not have a meeting of the minds on how the carve out for listed discrete capital investments would function under the Settlement Agreement. AWEC only recently became aware of PacifiCorp’s interpretation during the course of the parties’ review of its Report. If the Settlement Agreement was intended to function as PacifiCorp now claims, then the Company could and should have raised this issue when it became apparent prior to filing the Settlement Agreement that there was not agreement among the parties.

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<sup>3</sup> Final Order 08/06 at ¶ 246 (internal citations omitted).

<sup>4</sup> PacifiCorp Multi-Year Rate Plan Annual Report at 4 (July 15, 2024).

<sup>5</sup> Public Counsel Comments, at Attachment 1 (Feb. 14, 2025) (PacifiCorp Response to Staff Informal Data Request No. 17).

<sup>6</sup> *Id.*

<sup>7</sup> Joint Testimony in Support of the Settlement Stipulation at 21:2-17; 24:2-8; 28:14-30:3; 30:7-12; 33:5-22; 37:11-14 (Dec. 15, 2023).

<sup>8</sup> *Id.* at 29:15-20 (emphasis added).

PacifiCorp did not – which in and of itself should sway the Commission to reject PacifiCorp’s arguments.

Second, PacifiCorp’s interpretation of the Settlement Agreement would render the exclusion of “new wind resources” from the portfolio review utterly meaningless. Even if the Commission determines that there is ambiguity in the plain language of the Settlement Agreement related to carving out discrete large projects from the portfolio review, it should interpret each Settlement Agreement terms as serving a distinct and intentional purpose. Doing so means that PacifiCorp’s interpretation must fail for two reasons. First, as Public Counsel’s comments point out, if PacifiCorp’s interpretation prevails, it would “reduce[] the Settlement’s carveout to a nullity.”<sup>9</sup> The Settlement Agreement clearly provides that refunds for portfolio-level projects are determined at the portfolio level, and discrete projects are individually reviewed and refunded at the project level. Without recognition of this distinction for purposes of calculated refunds, AWEC agrees with Public Counsel that the carveout for discrete large projects serves no purpose. Second, there is no meaningful additional transparency gained from calling out discrete large projects in narrative. Under the capital review process, parties can request information from PacifiCorp such that a full review of costs can be undertaken.<sup>10</sup> PacifiCorp is not under a reduced obligation to provide supporting documentation for portfolio-level projects as opposed to the discrete capital projects that were carved out of portfolio review.<sup>11</sup> If the carveout’s purpose is attributed to transparency alone, it would similarly render the carveout meaningless.

Finally, in Final Order 08/06, the Commission did not include discussion of its intent to change the terms of the Settlement Agreement related to review of plant provisionally included in rates. The Commission also had the benefit of reading the Joint Testimony in support of the Settlement Agreement, which again, includes testimony from AWEC as to how the carveout for discrete large projects would be handled in the capital review. If the Commission perceived an ambiguity in this term, it could have requested clarification from the parties at that point and addressed any potential concerns with implementation at that time. If the Commission was interested in changing the term, it could have adopted explicit conditions in Final Order 08/06, but it did not. This again suggests that the Commission understood the agreement among the parties to allow for refunds for discrete capital projects called out in the Settlement Agreement if those projects came in under budget when making its determination that the Settlement Agreement was in the public interest.

Because Foote Creek came in under budget by \$484,165 relative to the forecast that was included in rate base, the clear terms of the Settlement Agreement require that these amounts be refunded to customers. Accordingly, AWEC requests that the Commission order PacifiCorp to

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<sup>9</sup> Public Counsel’s Comments at 2 (Feb. 14, 2025).

<sup>10</sup> Final Order 08/06 at ¶ 244.

<sup>11</sup> *Id.*

issue a refund to customers, with interest at the Federal Energy Regulatory Commission rate, \$484,165 in rate base resulting from Foote Creek coming in under budget.

Dated this 25<sup>th</sup> day of February, 2025.

Respectfully submitted,

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