

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-230482

PACIFICORP'S RESPONSE TO  
STAFF'S MOTION IN LIMINE TO  
EXCLUDE THE REBUTTAL  
TESTIMONY OF DOUGLAS R.  
STAPLES

Pursuant to WAC 480-07-375(4), PacifiCorp d/b/a Pacific Power & Light Company (PacifiCorp or the Company) submits this response to Staff's Motion *in Limine* to Exclude the Rebuttal Testimony of Douglas R. Staples (Motion). The Washington Utilities and Transportation Commission (Commission) should deny the Motion because the testimony that Staff seeks to exclude is directly responsive to testimony filed by Staff and intervenors and largely reiterates material provided to parties through discovery. The Company's testimony is therefore highly relevant to resolution of the issues in this docket and its admission will not prejudice any party. Due process requires the opportunity to respond to Staff and intervenor testimony and develop a robust and comprehensive record for the Commission. Excluding relevant evidence simply because it was presented in response to party testimony is unprecedented and will hamstring the Commission's ability to resolve the issues in this case. Therefore, Staff's Motion must be denied.

## I. BACKGROUND

1 In the Company’s last Power Cost Only Rate Case (PCORC), the Commission directed PacifiCorp to address in the next Power Cost Adjustment Mechanism (PCAM) proceeding “the issue of the prudence of its power costs, specifically the prudence of its risk management practices for hedging for its Washington-allocated resources over calendar year 2022 and its choice of market exposure for its Washington-allocated portfolio[.]”<sup>1</sup>

2 In response to that direction, the Company’s direct filing submitted in June 2023 included a *prima facie* demonstration that its overall net power costs (NPC) and hedging activities were prudent. Specifically, PacifiCorp provided an explanation of the Company’s hedges, explaining that the Company hedges on a system-wide basis to protect customers against energy price volatility.<sup>2</sup> PacifiCorp explained how those policies result in economic benefits for PacifiCorp’s Washington customers.<sup>3</sup>

3 The Company also provided a synopsis of PacifiCorp’s history of updating the Commission as the Company’s hedging practices have evolved over time,<sup>4</sup> including providing presentations whenever the Company changes its hedging policy.<sup>5</sup> PacifiCorp explained that the Company presented its most recent hedging policy to Commission Staff on April 19, 2021.<sup>6</sup>

4 Other parties in this case, including Staff, then engaged in substantial discovery before preparing response testimony. In their response testimony, multiple parties—

---

<sup>1</sup> *Wash. Utils. & Trans. Comm’n v. PacifiCorp d/b/a Pac. Power & Light Co.*, Docket UE-210402, Order 06 at ¶ 154 (Mar. 29, 2022).

<sup>2</sup> Mitchell, Exh. RJM-1T at 3:19-22.

<sup>3</sup> *Id.* at 5:16-6:11.

<sup>4</sup> *Id.* at 4:16-19.

<sup>5</sup> *Id.* at 4:20-5:1.

<sup>6</sup> *Id.* at 5:1-2.

including the Alliance of Western Energy Consumers (AWEC) and Public Counsel—  
raised specific concerns about the Company’s hedging policy.<sup>7</sup>

5 Consistent with the procedural schedule, the Company submitted Rebuttal  
Testimony, including the Rebuttal Testimony of Douglas R. Staples, on May 2, 2024. To  
respond to parties’ testimony, the Company included in its rebuttal filing detailed  
discussions of its hedging policies and implementation of those policies as well as  
specific evidence responding to parties’ response testimony.<sup>8</sup>

6 On May 17, 2024, Staff filed the Motion seeking to exclude four specific sections  
of witness Staples’ testimony because, according to Staff, those sections sought to enter  
“direct, foundational testimony rather than testimony rebutting the evidence presented by  
the responses of other parties[.]”<sup>9</sup>

## II. LEGAL STANDARD

7 The Commission has broad discretion to admit any relevant evidence. In  
Commission proceedings, “[a]ll relevant evidence is admissible if the presiding officer  
believes it is the best evidence reasonably obtainable, considering its necessity,  
availability, and trustworthiness.”<sup>10</sup> A hearing officer may exclude evidence if it is  
“irrelevant, repetitive, or inadmissible[.]”<sup>11</sup>

---

<sup>7</sup> See, e.g., Mullins, Exh. BGM-1CT at 17:1-3 (“Either PacifiCorp executed its hedging policy in a way that was wrong (and thus, imprudent) or its accounting method is wrong.”).

<sup>8</sup> See Staples, Exh. DRS-1CT at 5:5-8:4 (summarizing history of PacifiCorp’s hedging policy).

<sup>9</sup> Motion at 2-3 (May 17, 2024).

<sup>10</sup> WAC 480-07-495(1).

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

### III. ARGUMENT

#### A. Witness Staples' rebuttal testimony directly responds to claims made by parties in their response testimony.

8 Staff seeks to exclude four excerpts from the Rebuttal Testimony of  
Witness Staples. However, each excerpt to which Staff objects responds to AWEC's  
and/or Public Counsel's testimony and is relevant to resolution of the issues in this  
proceeding. Depriving the Commission of relevant evidence is therefore unreasonable  
and contrary to the Commission's evidentiary rules.

##### 1. Section IV, page 5 line 6 through page 7 line 10

9 Staff first objects to testimony included on pages five through seven of  
witness Staples' testimony, which Staff summarizes as "discuss[ing] the history and  
creation of PacifiCorp's hedging program" and "specifically address[ing] how the gas  
hedging limits were created, collaboratives that led to revisions in the hedging policy, and  
why hedging policies were changed[.]"<sup>12</sup>

10 Staff is correct that witness Staples discusses the evolution of the Company's  
hedging policy, including the hedging limits within that policy.<sup>13</sup> However,  
witness Staples' testimony was directly responsive to AWEC's specific challenges to the  
Company's hedging program.<sup>14</sup> In particular, AWEC's testimony discusses the current  
policy, explains that the current policy became effective on July 1, 2021, and that the  
prior hedging policy was therefore in effect when certain hedges impacting 2022 were  
executed.<sup>15</sup> AWEC's testimony discusses the prior policy at length and discusses how

---

<sup>12</sup> Motion at 2-3.

<sup>13</sup> See Staples, Exh. DRS-1CT at 6:4-16 (discussing the Company's revisions to its hedging policy in 2021).

<sup>14</sup> Mullins, Exh. BGM-1CT at 42:6-16.

<sup>15</sup> *Id.* at 17:5-18:1.

the current hedging limits were established.<sup>16</sup> Due process requires that the Company have an opportunity to respond to AWEC’s testimony on the evolution of the Company’s hedging policy, which is exactly what witness Staples’ testimony does.

11           Moreover, the history and evolution of the hedging policy discussed by witness Staples is also described in the Company’s Energy Risk Management Policy, including the 2012 collaboratives that lead to the current hedging limits.<sup>17</sup> PacifiCorp provided that hedging policy to parties through discovery in October 2023 and Staff included it as an exhibit to Staff’s response testimony.<sup>18</sup> The evolution of the Company’s hedging policy was also discussed with the Commission in April 2021 during a presentation on the Company’s current hedging policy.<sup>19</sup> The presentation was provided to parties through discovery on October 24, 2023, and included in the record as an exhibit to AWEC’s testimony.<sup>20</sup> Witness Staples’ testimony that Staff seeks to exclude largely tracks the Energy Risk Management Policy and information provided in the April 2021 presentation and is therefore both responsive to claims raised by AWEC and consistent with materials provided to Staff before Staff filed its testimony.

**2.       Section VI, page 14 line 7 through page 15 line 18**

12           Staff next objects to testimony on page 14 line 7 through page 15 line 18 of witness Staples’ testimony, which Staff summarizes as “provid[ing] a reasoning for why

---

<sup>16</sup> *Id.* at 18:9-20:4. For example, AWEC witness Mullins testifies that the gas hedging percentages “

” *Id.* at 19:5-8.

<sup>17</sup> Yeomans, Exh. WY-3C at 42 (Appendix H: Policy Revision Log).

<sup>18</sup> Yeomans, Exh. WY-3C.

<sup>19</sup> Mullins, Exh. BGM-8C (Hedging Presentation to Commission).

<sup>20</sup> Mullins, Exh. BGM-8C.

hedging limits are structured in the way they are” and “discuss[ing] the reasoning behind use of certain hedging instruments and how and why limits are defined[.]”<sup>21</sup>

In this section of witness Staples’ testimony, the witness explains why the Company’s natural gas hedging limits are structured as they are and the current power hedging limits. The majority of the testimony Staff seeks to exclude is either quoting or paraphrasing the Energy Risk Management Policy—a policy Staff addressed at length in its own testimony.<sup>22</sup> For example, witness Staples testifies that the gas hedging percentages are in place to [REDACTED], testimony taken directly from the Energy Risk Management Policy.<sup>23</sup> Witness Staples testifies that the power hedging limits are designed to [REDACTED] [REDACTED], testimony taken directly from the Energy Risk Management Policy.<sup>24</sup> Witness Staples testifies that the [REDACTED] [REDACTED], again testimony taken directly from the Energy Risk Management Policy.<sup>25</sup> Witness Staples’ testimony responds directly to arguments that the Company’s hedging policy is imprudent<sup>26</sup> and incorporates material provided to Staff before Staff filed its testimony.

---

<sup>21</sup> Motion at 5.

<sup>22</sup> Yeomans, Exh. WY-1CT at 7:12-10:19.

<sup>23</sup> Yeomans, Exh. WY-3C at 34 [REDACTED]

<sup>24</sup> *Id.* at 35 [REDACTED]

<sup>25</sup> *Id.* [REDACTED]

<sup>26</sup> *See, e.g.*, Staples, Exh. DRS-CT at 40:13-15 (addressing AWEC argument “that the Company’s hedge program does not protect Washington customers from spot price volatility”).

13           Witness Staples also explained that the Company hedges natural gas holistically—meaning that the Company does not separately hedge for its natural gas plants in the west and east balancing authority areas—and that the Company hedges its gas sales using [REDACTED] hedges, rather than [REDACTED]

[REDACTED]<sup>27</sup> Contrary to Staff’s assertion that the Company raised this for the first time in its rebuttal testimony, Company witness Ramon Mitchell discussed the Company’s holistic hedging policy in direct testimony.<sup>28</sup> While witness Mitchell did not specifically discuss the use of [REDACTED] gas hedges, AWEC discussed this issue in its response testimony.<sup>29</sup> AWEC’s testimony necessitated that the Company provide additional explanation for its gas hedges and required that the Company expand upon the discussion provided in direct testimony. Witness Staples appropriately provided this response in his rebuttal testimony.

**3.       Section VI, page 17 line 14 through page 18**

14           Staff next objects to testimony on page 17 line 14 through page 18 of witness Staples’ testimony, which Staff summarizes as “discuss[ing] the change in hedging activities as a result of changes in policy” which are “discussed during specific, relevant time periods[.]”<sup>30</sup>

15           In this testimony, witness Staples provides a comparison of PacifiCorp’s hedging since the 2020 PCORC and in response to the change in hedging policy discussed by AWEC in its response testimony and demonstrates that [REDACTED]

---

<sup>27</sup> *Id.* at 14:17-15:8.

<sup>28</sup> Mitchell, Exh. RJM-1T at 5:4-13.

<sup>29</sup> Mullins, Exh. BGM-1CT at 14:14-16.

<sup>30</sup> Motion at 5-6.

[REDACTED]

[REDACTED]<sup>31</sup> Witness Staples explains that these actions are consistent with the direction provided by the Commission after the Company's last PCORC.

16 As witness Staples states in his testimony,<sup>32</sup> the Company provided this comparison to rebut testimony from AWEC, who asserted that the Company was uninterested in hedging for Washington.<sup>33</sup> Public Counsel similarly submitted testimony asserting that PacifiCorp was leaving Washington customers overexposed to market forces without taking adequate actions for those customers' rates.<sup>34</sup> Witness Staples' testimony was necessary to rebut this AWEC and Public Counsel testimony and is relevant to resolving the issues those parties raised.

17 Witness Staples' testimony describing the Company's cumulative power hedging position is also directly responsive to AWEC's testimony purporting to provide the same information, albeit in an incorrect way.<sup>35</sup> Providing correct and accurate information on the Company's power hedging position is directly responsive and relevant to the issues raised by AWEC and Public Counsel and is critical to ensuring the Commission has an accurate record.

18 Staff's allegation that the Company should have provided its cumulative power hedging positions earlier in this proceeding is also undercut by the extensive discovery provided by PacifiCorp, including the Company's physical position reports and position

---

<sup>31</sup> Staples, Exh. DRS-1CT at 18:15-20.

<sup>32</sup> *Id.* at 18:1-7.

<sup>33</sup> Mullins, Exh. BGM-1CT at 42:14-16 ("PacifiCorp's practice of focusing only on the system gas hedging limits, without also considering the impact of that practice on Washington customers, was also imprudent.").

<sup>34</sup> Earle, Exh. RLE-1T at 12:7-10 ("[PacifiCorp] failed to consider Washington's disproportionate market exposure in its procurement of long-term resources. It lumped Washington's exposure into the exposure of the system as a whole, willfully disregarding the impacts on its Washington customers.").

<sup>35</sup> Mullins, Exh. BGM-1CT at 51:1-6.



calculators for each quarter-end beginning in the third quarter of 2021 through the second quarter of 2022, which was provided to Staff in October 2023.<sup>36</sup>

**4. Section VIII, page 34 line 10 through page 35 line 13**

19 Finally, Staff objects to page 34 line 10 through page 35 line 13 of witness Staples’ testimony, which Staff summarizes as “address[ing] the reasons the Company believes it used more fuel than anticipated in 2022, the time period at issue in this PCAM proceeding.”<sup>37</sup>

20 Staff is correct that the Company provided an explanation for its higher than anticipated natural gas consumption in 2022. However, witness Staples provided this comparison in direct response to AWEC’s testimony, which asserted that the Company had “materially [REDACTED]” its gas consumption during the deferral period.<sup>38</sup> PacifiCorp was not aware of the specific challenges AWEC would raise at the time the Company prepared its direct filing, and Staff’s motion would exclude evidence that is necessary and relevant to rebutting AWEC’s testimony.

21 Moreover, the explanation provided in witness Staples’ testimony expands upon a discovery response provided to Staff before Staff filed its testimony. That response, included as an exhibit to AWEC’s testimony, explained, “[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]”<sup>39</sup>

<sup>36</sup> Mullins, Exh. BGM-4 at 6 (response to AWEC 008 provided on October 23, 2023).

<sup>37</sup> Motion at 6.

<sup>38</sup> Mullins, Exh. BGM-1CT at 28:5-7.

<sup>39</sup> Mullins, Exh. BGM-5C at 7 (response to AWEC 043 provided on March 19, 2024).

**B. Admitting witness Staples’ testimony would not prejudice any party.**

22 During a case, the party with the burden of proof typically files rebuttal testimony, to which no other party has an opportunity to respond through pre-filed written testimony. The fact that parties are unable to respond, however, does not render rebuttal testimony prejudicial, which is effectively the argument advanced by Staff. If rebuttal testimony appropriately responds to claims made by other parties in response testimony, the fact that the rebuttal includes new evidence and analysis does not make it inadmissible.

23 Most of the sections of witness Staples’ testimony that Staff seeks to exclude relate to the Company’s discussion of its current hedging policy, including: (1) the “history and creation” of that policy; (2) the reason for the hedge limits included in that policy; and (3) changes in hedging activities as a result of that policy.<sup>40</sup> Staff argues in the Motion that “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.”<sup>41</sup> However, any suggestion that Staff was prejudiced by an inability to respond to the Company’s testimony discussing its new hedging policy is incorrect.

24 First, because the Company’s testimony is directly responsive to evidence submitted by other parties (as discussed above), it is not prejudicial even though the procedural schedule does not afford Staff an opportunity to respond.

25 Second, Staff had much of the information to which it objects before it submitted its response testimony, including PacifiCorp’s hedging policy and the April 2021

---

<sup>40</sup> See Motion at 5-6.

<sup>41</sup> *Id.* at 6.

Commission presentation on the transition to the current hedging policy.<sup>42</sup> That presentation included discussion of many of the topics witness Staples addressed in the testimony to which Staff objects, including the challenges of the Company's previous To-Expiry Value-at-Risk limits,<sup>43</sup> a summary of the changes in the updated hedging policy,<sup>44</sup> and effects the new limits would have on hedging activities.<sup>45</sup> Indeed, Staff witness Wesley Yeomans testified that, "Based on my review of Pacif[i]Corp's energy risk management policies, energy management procedures, filings from PacifiCorp, and responses to data requests, I believe PacifiCorp's energy risk management program is prudent, reasonable, and effective."<sup>46</sup> Witness Yeomans further concluded that, "Based on my review of the quarterly Physical Power Position Reports, Physical Position Calculator, and review of the Semi-Annual Hedge Reports it certainly appears that the requirements of PacifiCorp's hedging program are prudently executed in daily operations."<sup>47</sup> Any assertion that Staff was unable to address the history and evolution of the Company's hedging policy, including discussion of the limits in that policy and the Company's hedges made in accordance with that policy, is inconsistent with the record.

26 To the extent Staff objects to the description of the Company's hedging policy in the disputed sections of witness Staples' testimony, Staff can cross-examine witness Staples at hearing and submit briefing on the disputed issues.

---

<sup>42</sup> See Yeomans, Exh. WY-1CT at 16:10-11 (discussing PacifiCorp's presentation); see also Mullins, Exh. BGM-8C (providing a copy of the Company's presentation).

<sup>43</sup> Mullins, Exh. BGM-8C at 7.

<sup>44</sup> *Id.* at 8.

<sup>45</sup> *Id.* at 14 ("[REDACTED]").

<sup>46</sup> Yeomans, Exh. WY-1CT at 5:4-7.

<sup>47</sup> *Id.* at 14:2-5.

27 Staff's claims of prejudice also ring hollow considering that its own witness, John D. Wilson, adopted an entirely new adjustment for the first time in his cross-answering testimony, which deprived PacifiCorp of the opportunity to provide responsive testimony.<sup>48</sup>

28 While Staff is not prejudiced by the excerpts identified in the Motion, excluding witness Staples' testimony would substantially prejudice the Company. The excerpts to which Staff objects were offered in response to testimony from other parties asserting that the Company's hedging activities are imprudent. Excluding the Company's responses to other parties' challenges violates basic due process and would significantly limit PacifiCorp's ability to satisfy its burden of proof.

**C. Witness Staples' testimony was offered in accordance with the procedural schedule.**

29 In the Motion, Staff cites two cases to support its argument that the Commission should exclude evidence "where a party seeks to introduce in rebuttal evidence more properly presented in the company's initial testimony[.]"<sup>49</sup> However, neither of the cases Staff cites is analogous to Staff's request to exclude statements from witness Staples' testimony. In the first case, *Petition of City of Spokane Valley*, the Commission concluded that the provision in a scheduling order allowing cross-answering testimony was rendered moot when other parties chose not to file response testimony, and a party

---

<sup>48</sup> Wilson, Exh. JDW-15CT at 6:6-12. Indeed, rather than seeking to limit the record available to the Commission, the Company filed a motion accompanied by supplemental rebuttal within a week to respond to new allegations that were raised by Public Counsel in cross-answering testimony.

<sup>49</sup> Motion at 4.

could not file purported rebuttal testimony that was effectively a second round of response testimony addressing the applicant's direct filing.<sup>50</sup>

30 Similarly, in *Puget Sound Energy* an intervenor failed to file response testimony and then sought to submit rebuttal and cross-answering testimony addressing the applicant's direct testimony.<sup>51</sup> The Commission denied admission of that testimony after determining that it was untimely and prejudicial.<sup>52</sup>

31 Unlike the parties in those cases, PacifiCorp's rebuttal testimony was timely filed and properly addressed the other parties' response testimony. Therefore, neither case is applicable here.

///

///

///

---

<sup>50</sup> *In re the Petition of City of Spokane Valley To Modify Warning Devices at a Highway-R.R. Grade Crossing of Union Pac. R.R. Co.*, Dockets TR-210809 and TR-210814, Order 02 at ¶¶ 10-12 (May 5, 2022).

<sup>51</sup> *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Dockets UE-170033 & UG-170034, Order 07 at ¶¶ 2, 6 (Aug. 25, 2017).

<sup>52</sup> *Id.* at ¶ 6.

#### IV. CONCLUSION

32 PacifiCorp respectfully requests that the Commission reject Staff's Motion and admit witness Staples' testimony into the record.

Dated: May 24, 2024.



---

Adam Lowney, WSBA No. 50505  
McDowell Rackner Gibson PC  
419 SW 11th Avenue, Suite 400  
Portland, OR 97205  
Telephone: (503) 595-3925  
[adam@mrg-law.com](mailto:adam@mrg-law.com)

Ajay Kumar  
Daniel J. Teimouri  
PacifiCorp  
825 NE Multnomah Street, Suite 2000  
Portland, OR 97232  
Telephone: (503) 813-5817 (Teimouri)  
(503) 813-5161 (Kumar)  
[ajay.kumar@pacificorp.com](mailto:ajay.kumar@pacificorp.com)  
[daniel.teimouri@pacificorp.com](mailto:daniel.teimouri@pacificorp.com)  
*Attorneys for PacifiCorp*