

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

PACIFIC POWER & LIGHT COMPANY,

Respondent.

DOCKET UE-210402

**POST-HEARING BRIEF ON BEHALF OF COMMISSION STAFF**

February 11, 2022

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## I. INTRODUCTION

1 The question presented in this brief is whether the Washington Utilities and Transportation Commission (“Commission”) should approve the multiparty settlement stipulation (“Stipulation”) that was filed in this proceeding on November 5, 2021. The Commission will approve a settlement that is “lawful, supported by an appropriate record, and consistent with the public interest . . . .” (“public interest standard”).<sup>1</sup> The Stipulation meets the public interest standard because its terms support a more accurate forecast of rate year power costs based on the most up-to-date information. Using the most up-to-date information to forecast power costs is not only consistent with past Commission practice but also with good modeling practice. Because the record in this proceeding is sufficient to satisfy the public interest standard, the Commission should approve the Stipulation.

## II. BACKGROUND

2 On June 1, 2021, PacifiCorp d/b/a Pacific Power and Light Company (“PacifiCorp” or “Company”) initiated this proceeding by filing with the Commission revisions to its currently effective tariff WN U-76. In its initial filing, PacifiCorp characterized this proceeding as a Power Cost Only Rate Case (“PCORC”).<sup>2</sup> PacifiCorp was required to file this PCORC in accordance with a settlement approved by the Commission in the Company’s 2020 general rate case (“GRC”).<sup>3</sup> The Commission has stated that the goal of a PCORC is to

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<sup>1</sup> WAC 480-07-750(2).

<sup>2</sup> Initial Filing, Cover Letter at 1.

<sup>3</sup> *WUTC v. PacifiCorp d/b/a Pacific Power & Light Company*, Dockets UE-191024, UE-190750, UE-191029, UE-190981 & UE-180778, Order 09 ¶ 64 (Dec. 14, 2020) (hereinafter “2020 PacifiCorp GRC Order”).

set a company’s net power cost (“NPC”) baseline<sup>4</sup> as close as possible to forecasted rate year power costs—based on the *most up-to-date* information.<sup>5</sup>

3           On November 5, 2021, PacifiCorp, Commission Regulatory Staff (“Staff”), The Energy Project, and Walmart, Inc. (collectively “Settling Parties,” individually, “Settling Party”) filed the Stipulation in this proceeding. The Alliance of Western Energy Consumers (“AWEC”) did not join and instead opposed the Stipulation.<sup>6</sup> The Public Counsel Unit of the Washington State Office of the Attorney General (“Public Counsel”) neither joined nor opposed the Stipulation.<sup>7</sup> To ensure that the NPC baseline would be forecasted using the *most up-to-date* information, the Stipulation included a term requiring PacifiCorp to update input data in its model used to forecast rate year power costs (“proposed update”).<sup>8</sup> The proposed update would occur in the compliance stage of this proceeding and use the same methodology as in the initial filing.<sup>9</sup> The input data utilized in the proposed update would be the most recent Official Forward Price Curve (“OFPC”) and electric/gas hedge and contract positions as of the time of the compliance filing.<sup>10</sup> The proposed update is the only term AWEC opposes in the Stipulation.<sup>11</sup>

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<sup>4</sup> The NPC baseline establishes both the level of power costs embedded in electric rates and the level of power costs from which the dead and sharing bands operate in the Power Cost Adjustment Mechanism. (“PCAM”). See Gomez, Exh. DCG-1CT at 25:1-5.

<sup>5</sup> *WUTC v. Puget Sound Energy*, Docket UE-200980, Order 05 ¶ 13 (June 1, 2021) (“The goal of a PCORC proceeding is to set the Company’s power cost baseline as close to the forecasted power costs during the rate year, based on the most up-to-date information.”) (hereinafter “2021 PSE PCORC Order”).

<sup>6</sup> Mullins, Exh. BGM-1CT.

<sup>7</sup> Dahl, Exh. CJD-1T.

<sup>8</sup> Stipulation at ¶ 12.

<sup>9</sup> Stipulation at ¶ 12-13. No party has contested the methodology provided in the initial filing. Mullins, Exh. BGM-1CT at 5:15-17.

<sup>10</sup> *Id.* at ¶ 12-13. At the time of the compliance filing, the proposed update would use the most recent OFPC and electric and gas hedge positions, which include the following contracts: (1) wholesale electric sale and purchase contracts that are for long-term firm sales and purchases; (2) short-term firm sales and purchases; and (3) natural gas sales and purchase contracts. Gomez, Exh. DCG-1CT at 5-11. *The proposed update is similar in scope to updates that occur in Oregon PUC TAM proceedings.* Compare with *infra* footnote 76. However, The proposed update would also not include any new long-term Purchase Power Agreements (PPA) not included in PacifiCorp’s initial filing. See Joint Response to Bench Request No. 2.2.

<sup>11</sup> This brief will not discuss the other terms of the Stipulation as they are not opposed.

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On November 22, 2021, AWEC filed opposition testimony to the Stipulation.<sup>12</sup> AWEC’s opposition to the Stipulation centered around the proposed update.<sup>13</sup> In particular, AWEC opposed the practice of updating a company’s NPC baseline in the compliance stage of a rate proceeding.<sup>14</sup> AWEC recommended that the Commission forecast the NPC baseline in this proceeding utilizing the model and input data PacifiCorp provided in its initial filing—the most *out-of-date* information in the record.<sup>15</sup> On December 13, 2021, both PacifiCorp and Staff filed rebuttal testimony responding to the opposition testimony of AWEC.<sup>16</sup> Staff’s rebuttal testimony focused on responding to AWEC’s opposition to the proposed update.<sup>17</sup>

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On January 14, 2022, the Commission held an evidentiary hearing in this proceeding.<sup>18</sup> At the evidentiary hearing, AWEC conducted cross-examination of multiple witnesses.<sup>19</sup> AWEC’s cross-examination primarily focused on PacifiCorp’s hedging policy<sup>20</sup>

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<sup>12</sup> Mullins, Exh. BGM-1CT.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Mullins, Exh. BGM-1CT at 5:9-17 (“AWEC recommends that the NPC baseline be based on the NPC included in PacifiCorp’s filing of \$114,802,054 subject to the adjustments in the stipulation and further adjustments discussed below.”). AWEC also provided testimony that advocated for the Commission to adopt three additional adjustments. These adjustments included: (1) An adjustment to decrease the base rates established in the PacifiCorp 2020 GRC to include an additional \$3 million in incremental fly ash revenues; (2) An adjustment to decrease the NPC baseline by \$45,104 to revise PacifiCorp’s allocation of rate-year transmission wheeling expense (“Wheeling Expense Adjustment”); and (3) An adjustment to disallow costs associated with PacifiCorp’s Nodal Price Model (“NPM”) or alternatively to impute a \$312,000 level of NPM benefits into the NPC baseline. Mullins, Exh. BGM-1CT at 23:12-25:14. Staff will respond to AWEC’s position on these three adjustments in the reply brief of Staff.

<sup>16</sup> Wilding, Exh. MGW-6T; Gomez, Exh. DCG-1CT.

<sup>17</sup> Gomez, Exh. DCG-1CT at 3:11-27:19. Staff’s rebuttal testimony also represented that the Settling Parties had no opposition to the Wheeling Expense Adjustment and that Staff opposed the other two adjustments as proposed by AWEC. Gomez, Exh. DCG-1CT at 28:1-31-19. At the evidentiary hearing, Commissioner Ann Rendall asked each Settling Party whether they would have any opposition to the Commission accepting the Stipulation subject to AWEC’s Wheeling Expense Adjustment—no Settling Party communicated any opposition. TR. 155:2-156:12.

<sup>17</sup> Bench Requests 02-04 (Jan. 19, 2022).

<sup>18</sup> TR. 1.

<sup>19</sup> *See generally id.*

<sup>20</sup> Wilding, TR. 71:15-85:14 (PacifiCorp).

and the allocation of PacifiCorp’s power costs assigned to its Washington jurisdiction.<sup>21</sup> The method to allocate costs to Washington (in relation to PacifiCorp’s five other service jurisdictions) was established in the Washington Inter-Jurisdictional Allocation Methodology (“WIJAM”). The WIJAM was approved by the Commission through its adoption of the settlement agreement in the 2020 PacifiCorp GRC.<sup>22</sup>

6           The Commissioners also elicited testimony from witnesses of the Settling Parties and Public Counsel at the evidentiary hearing.<sup>23</sup> After the evidentiary hearing, the Commission issued Bench Requests 2–4 to the Settling Parties on January 19, 2021.<sup>24</sup> The Settling Parties provided responses to the Bench Requests on January 26, 2021.<sup>25</sup> The transcript of the evidentiary hearing and admitted exhibits (including cross-examination exhibits and responses to Bench Requests) are part of the evidentiary record in this proceeding.

### III. GENERAL PRINCIPALS

7           The Commission must establish rates that are fair, just, reasonable, and sufficient.<sup>26</sup> “The Commission will approve a settlement when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the Commission.”<sup>27</sup> “The Commission may approve a settlement without conditions, approve it with conditions, or reject it.”<sup>28</sup> “The goal of a PCORC proceeding is to set the Company’s power cost baseline as close as

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<sup>21</sup> Wilding, TR. 61:4-67-12 (PacifiCorp); Gomez, TR. 103:14-116:11 (Staff); Collins, TR. 131:18-133:1 (Energy Project); Dahl, TR. 136:4-137:6 (Public Counsel).

<sup>22</sup> 2020 PacifiCorp GRC Order at ¶ 65.

<sup>23</sup> TR. 137:17-166:16.

<sup>24</sup> Bench Requests 02-04.

<sup>25</sup> Joint Responses to Bench Requests 2-4.

<sup>26</sup> RCW 80.28.020; *WUTC v. Avista Corporation d/b/a Avista Utilities*, Dockets UE-160228 & UG-160229, Order 06 ¶ 79 (Dec. 15, 2016) (explaining the fair, just, reasonable, and sufficient standard).

<sup>27</sup> 2021 PSE PCORC Order¶¶ at ¶ 12 (citing WAC 480-07-750(2)).

<sup>28</sup> *Id. Supra* footnote 17.



possible to the forecasted power costs during the rate year, based on the most up-to-date information.”<sup>29</sup>

#### IV. ARGUMENT

8           There is sufficient evidence in the record to establish that the proposed update meets the public interest standard.<sup>30</sup> The proposed update will forecast the NPC baseline based on the most up-to-date information available to the Commission—the stated goal of a PCORC. Forecasting power costs based on the most up-to-date information is consistent with past Commission practice—as well as good modeling practice. AWEC’s concerns about interjurisdictional allocation of power costs are outside the scope of this proceeding and its legal arguments presented so far lack compelling analysis. Consequently, the Commission should approve the proposed update as meeting the public interest standard because: (A) the proposed update accomplishes the goal of a PCORC; (B) the proposed update is consistent with past Commission practice; (C) the proposed update is consistent with good modeling practice; (D) AWEC’s concerns about interjurisdictional cost allocation are outside the scope of this proceeding; and (E) AWEC’s legal arguments provided in opposition testimony lack compelling analysis.

**A.     The proposed update meets the public interest standard because it accomplishes the goal of a PCORC**

9           The goal of a PCORC is to forecast rate year power costs based on the “*most up-to-date information*.”<sup>31</sup> The proposed update accomplishes this goal. This is because the proposed update occurs within a compliance filing after the final order—the timing of which allows the forecast to utilize the *most up-to-date information* just prior to the rate effective

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<sup>29</sup> 2021 PSE PCORC Order at ¶ 13.

<sup>30</sup> WAC 480-07-750(2)(a).

<sup>31</sup> 2021 PSE PCORC Order at ¶ 13 (emphasis added).

date.<sup>32</sup> Utilizing the *most up-to-date information* just prior to the rate effective date allows the rate year forecast to more accurately reflect current market conditions.<sup>33</sup> In other words, the proposed update facilitates setting the NPC baseline “as close as practicable to what is likely to be experienced during the rate year.”<sup>34</sup>

10           The Commission has expressed its reluctance to accept a settlement on power costs that failed to use the *most up-to-date information* in a rate year forecast.<sup>35</sup> In the 2007 Avista GRC, the Commission considered a settlement that reduced power costs by \$15 million.<sup>36</sup> However, upon Commission inquiry, the parties confirmed that forward commodity prices had fallen even further in the intervening months since the settlement was filed—with gas forwards falling from \$5.13 to \$4.24/dekatherm and electric forwards from \$41.32 to \$34.19/MWh.<sup>37</sup> The Commission expressed reluctance to accept this settlement because the *most up-to-date information* was not used in the forecast of rate year power costs. In particular, the Commission stated: “We have concerns with this approach . . . because the continued trend in lower gas prices could have further reduced the Company’s overall power

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<sup>32</sup> Stipulation at ¶ 12-13;

<sup>33</sup> See Gomez, Exh. DCG-2 at 55 (“Incorporating such a “data refresh”—after the rate case has already been concluded—would allow for costs to be more reflective of the current market information, which generally improves as the forward period approaches.”).

<sup>34</sup> *WUTC v. Puget Sound Energy*, Dockets UE-060266 & UG-060267, Order 08 ¶ 22 (Jan. 5, 2007) (“The Commission’s goal has been to set the baseline as close as practicable to what is likely to be experienced during the rate year. We expect this practice to continue and we also expect the parties to continue to refine the method and *improve the data upon which we act.*”) (emphasis added); see also *WUTC v. Puget Sound Energy*, Dockets UG-040640, UE-040640, UE-040641, UE-031471 & UE-032043, Order 06 ¶ 108 (Feb. 18, 2005) (“We resolve the philosophical question raised by INCU in favor of the practical conclusion that power costs determined in general rate proceedings and in PCORC proceedings should be set as close as possible to costs that are reasonably expected to be actually incurred during short and intermediate periods following the conclusion of such proceeding.”) (emphasis added).

<sup>35</sup> *WUTC v. Avista Corporation d/b/a Avista Utilities*, Dockets UE-100467 & UG-100468, Order 07 (Nov. 19, 2010).

<sup>36</sup> *Id.* at ¶ 20.

<sup>37</sup> *Id.*

costs, with a potential reduction in resulting rates.”<sup>38</sup> The Commission further discussed the importance of using the “*most current energy pricing information*” in a power cost forecast:

To provide the most accurate forecast at the time of setting rates, companies have incorporated the *most current energy pricing information* into their forecast. We do this to ensure that rates are set using the most accurate projection of future market conditions. We believe that ratepayers and the Company are best served by this practice . . .<sup>39</sup>

11 Similar to the 2007 Avista GRC, evidence in the record shows that utilizing the input data from the initial filing would not result in “*the most current energy pricing information*” being used in the forecast.<sup>40</sup> While we will learn more from the proposed update, the expectation is that the forward market information provided in the initial filing would not best reflect the commodity prices that PacifiCorp will incur during the rate year.<sup>41</sup> The proposed update resolves this problem by refreshing the input data to reflect the *most up-to-date information* in the forecast.<sup>42</sup> On the other hand, the Commission should reject the position of AWEC. AWEC advocates for this Commission to forecast rate year power costs

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<sup>38</sup> *Id.* at ¶ 22.

<sup>39</sup> *Id.* at ¶ 21 (emphasis added).

<sup>40</sup> During the pendency of this case, Staff became aware that the forecast input data provided by PacifiCorp in its initial filing would no longer result in an accurate forecast of rate year power costs. Staff observed that forward market prices for both power and gas at various trading hubs had increased from what was represented in the initial filing. *See* Gomez Exh. DCG-1CT at 14:20-15:20 (“If the stated goal of this PCORC is to set the NPC baseline as close as possible to forecasted power costs during the rate year (based on the most up-to-date information), then not updating power costs in the face of overwhelming evidence of increasing market prices for gas and power in the forward markets will certainly thwart this goal.”) (emphasis added). Staff also testified to the following at the evidentiary hearing: “Well, as Mr. Wilding has indicated, he talked about dramatic increase in power and gas market prices as reflected in the forwards, which occurred after the company had filed its initial filing. Staff was tracking those numbers independently, and as they stand as of yesterday when I checked, we’re looking at numbers from the as filed in terms of power and gas, both, at a level 60 percent higher than the initial filing. So Staff has independently confirmed what Mr. Wilding has said, which is the movement of market – power prices.” Gomez, TR. 107:12-108:1 (emphasis added).

<sup>41</sup> *See* Wilding, Exh. MGW-6T at 4:1-10 (“Put simply, market participants will know more and have more reasonable expectations regarding physical conditions in the western energy markets at the end of 2021 or the beginning of 2022 than they did in March 2021 . . . . The decrease in uncertainty regarding expected hydro conditions, anticipated weather patterns, natural gas storage inventories, and resources availabilities means that the use of more recent prices should produce a more accurate NPC baseline. While the direction and magnitude of any NPC update is difficult to predict, I strenuously support the use of the most recent data available in pursuit of producing an accurate and reasonable forecast.”) (emphasis added).

<sup>42</sup> Stipulation at ¶ 12.

using the input data provided by PacifiCorp in its initial filing—the most *out-of-date* information available in this proceeding.<sup>43</sup> Instead, the Commission should approve the proposed update because it accomplishes the goal of a PCORC by forecasting rate year power costs utilizing the *most up-to-date* forward market information available.

**B. The proposed update meets the public interest standard because it is consistent with past commission practice**

12 The proposed update is consistent with past Commission practice. The Commission has stated that it has “*routinely*” ordered power cost updates late in GRC proceedings in the past—“*even at the compliance stage.*”<sup>44</sup> The Commission has also ordered power cost updates late in prior Puget Sound Energy (“PSE”) PCORC proceedings.<sup>45</sup> For instance, in the 2021 PSE PCORC, the Commission ordered a power cost update to occur during the compliance stage of that proceeding.<sup>46</sup> This power cost update was approved by the Commission as part of a multiparty settlement—which AWEC supported.<sup>47</sup> Like the update in the 2021 PSE PCORC, the proposed update is also a term in a multiparty settlement that updates power costs during the compliance stage of this proceeding.<sup>48</sup> As it did in its 2021

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<sup>43</sup> Mullins, Exh. BGM-1CT at 5:9-17.

<sup>44</sup> See, e.g., *WUTC v. Pacific Power & Light Co.*, Dockets UE-140762, UE-140617 & UE-131384, Order 07 ¶ 4 (Dec. 5, 2014) (“The Commission has *routinely* during the past decade allowed, and even required, power cost updates related to changes in fuel supply costs late in general rate proceedings, *even at the compliance stage.*”) (emphasis added); *WUTC v. Puget Sound Energy*, Dockets UE-111048 & UG-111049, Order 08 ¶ 220 (May 7, 2012) (“*The Commission generally allows power costs to be updated* during general rate cases to reflect new forecasted gas and electric market prices, new firm contracts . . . .”) (emphasis added) (hereinafter “2012 PSE GRC Order”).

<sup>45</sup> The proposed update is consistent with how the Commission approaches updates for natural gas prices in PSE PCORCs. The Commission has explicitly stated that it “*may order a second update at the compliance stage [of a PCORC] if power costs have increased or decreased due to changes in natural gas prices.*” *WUTC v. Puget Sound Energy*, Docket UE-072300, Order 13 ¶ 41, 45-46 (Jan. 15, 2009) (emphasis added). In this case, there is ample evidence in the record that power costs have increased or decreased due to changes in both forward natural gas and electric prices. See *supra* footnote 40.

<sup>46</sup> 2021 PSE PCORC Order. The proposed update in this proceeding would be similar to the compliance filing update in the 2021 PSE PCORC. Gomez, Exh. DCG-1CT at 6:13-7:13.

<sup>47</sup> 2021 PSE PCORC Order at ¶ 3.

<sup>48</sup> Stipulation at ¶ 12.

PSE PCORC final order (entered on June 1, 2021), the Commission should also approve the proposed update in this proceeding.

13           The Commission has also recognized that power costs should be updated due to a change in market conditions in a PCORC.<sup>49</sup> For instance, in the 2005 PSE PCORC, the Commission approved a settlement that increased PSE’s NPC baseline by \$55.6 million.<sup>50</sup> In discussing the settlement, the Commission noted that “[t]he record shows that in August 2005, natural gas costs *were significantly higher than they had been at the time PSE filed its case in June 2005.*”<sup>51</sup> In approving the settlement, the Commission determined that: “Rapidly escalating natural gas prices and other factors largely beyond the Company’s ability to control have caused PSE to incur increased power costs. In order that PSE’s rates remain fair, just, reasonable, and sufficient, *it is necessary to reflect these costs in rates.*”<sup>52</sup>

14           Similar to the 2005 PSE PCORC, the record in this proceeding shows that forward market prices are “*significantly higher than they had been at the time [PacifiCorp] filed its case in June [2021].*”<sup>53</sup> For instance, David Gomez testified that forward prices were at a level 60 percent higher from the initial filing—as of January 13, 2022.<sup>54</sup> Accordingly, “[i]n order that [PacifiCorp’s] rates remain fair, just, reasonable, and sufficient, *it is necessary to reflect these costs in rates.*”<sup>55</sup> As further explained by David Gomez, not updating power costs to reflect known changes in forward market conditions would not only undermine the purposes of the PCAM (incentives for PacifiCorp to operate efficiently and equitable

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<sup>49</sup> See *supra* footnote 45.

<sup>50</sup> *WUTC v. Puget Sound Energy*, Docket UE-050870, Order 04 ¶ 11, 20 (Oct. 20, 2005).

<sup>51</sup> *Id.* ¶ 20.

<sup>52</sup> *Id.* ¶ 4.

<sup>53</sup> See *supra* footnote 40.

<sup>54</sup> *Id.*

<sup>55</sup> See also generally *WUTC v. Pacific Power & Light Co.*, Dockets UE-140762, UE-140617, UE-131384 & UE-140094, Order 07 ¶ 4 (Dec. 5, 2014) (“Indeed, the Commission should not ignore evidence that a significant increase in the Company’s power costs during the rate year will result from increased fuel supply costs . . .”).

sharing of extra-ordinary power cost variances)—but also would promote rate instability<sup>56</sup> (that is, PCAM surcharges/credits to ratepayers).<sup>57</sup> Consequently, the proposed update not only supports rates that are fair, just, reasonable, and sufficient but also a properly functioning PCAM.

15 Even AWEC has recognized that power costs should be updated due to a change in market conditions. In the 2012 PSE GRC, ICNU (the predecessor to AWEC)<sup>58</sup> advocated for “PSE to update its power costs to include current forward gas prices and short-term sales and purchases.”<sup>59</sup> ICNU claimed that this update would result in a “substantial reduction to projected power costs.”<sup>60</sup> ICNU requested that this update occur “*just prior to rates going into effect,*” as it would “*result in more accurate power costs.*”<sup>61</sup>

16 Like the update ICNU advocated for then, the proposed update in this proceeding also updates forward market information and PacifiCorp’s contract positions “*just prior to rates going into effect.*”<sup>62</sup> And the proposed update should likewise “*result in more accurate power costs.*” Due to the prior inconsistent position of AWEC, the Commission should not

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<sup>56</sup> The deferral balance as of September 2021 is only \$7.8 million from hitting the \$17 million PCAM surcharge trigger. Gomez, TR. 127:8-12.

<sup>57</sup> Gomez, Exh. DCG-1CT at 25:7-15.

<sup>58</sup> The Industrial Customers of Northwest Utilities (“ICNU”) (the electric industrial ratepayer advocacy group) and Northwest Industrial Gas Users (“NWIGU”) (the gas industrial ratepayer advocacy group) merged to become AWEC.

<sup>59</sup> ICNU argued: “The Commission should require PSE to update its power costs to include current forward gas prices and short-term sales and purchases because it will result in a substantial reduction in projected power costs. Gas prices have dropped considerably, and ICNU and PSE agree that projected rate year power costs should be updated to reflect more recent gas prices, just prior to rates going into effect and in the manner with which they have been updated in the past and in this proceeding. Therefore, the Commission should require PSE to make a power cost update because it will result in more accurate power costs and could significantly lower costs.” Wilding, Exh. MGW-6T at 4 (citing *WUTC v. Puget Sound Energy*, Dockets UE-111048 and UG-111049, ICNU Post-Hearing Brief at 40 (Mar. 16, 2021)).

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* (emphasis added).

<sup>62</sup> *Supra* footnote 10.

give much weight to its opposition to the proposed update in this proceeding.<sup>63</sup> Instead, the Commission should reaffirm its prior practice of setting the NPC baseline based on “the most up-to-date information” available—regardless of whether the regulated utility finds itself in an increasing or decreasing power cost market.

**C. The proposed update meets the public interest standard because it is consistent with good modeling practice**

17 The Commission should adopt the proposed update because it is consistent with good modeling practice. Exhibit DCG-2 contains a report authored by Energy and Environmental Economics (“E3”). E3 was hired as part of a Commission-mandated power cost workshop involving the modeling practices of Avista Corporation (“Avista”).<sup>64</sup> As part of its final report, E3 provided a series of recommendations that were informed by its survey of several regulated electric utility companies and the cost tracking and sharing mechanisms employed by other regulatory commissions.<sup>65</sup> One of E3’s listed recommendations related to standardizing the practice of updating forward electric and natural gas inputs close to the rate effective date—as done in “compliance runs.” The block quote below contains E3’s recommendation:

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<sup>63</sup> AWEC also advocated for a gas price update due to a change in market conditions in the 2006 PSE GRC. *WUTC v. Puget Sound Energy*, Dockets UE-060266 & UG-060267, Order 08 ¶ 102-104 (Jan. 5, 2007) (“The Joint Parties contend that the Company should be required to file a gas price update. . . . They point to the Commission’s prior statement: ‘power costs should be determined in general rate proceedings and in PCORC proceedings should be set as closely as possible to costs that are reasonably expected to be actually incurred during the short and intermediate periods following the conclusion of such proceeding. . . .’ We determined that PSE should be required to update gas costs . . . in support of its compliance filing in this proceeding.”).

<sup>64</sup> Gomez, Exh. DCG-1 at 11:1-5.

<sup>65</sup> *Id.* at 11:7-14.

Due to the reliance on market forwards, there may be value in **standardizing the practice of updating forward electricity and natural gas inputs close to the rate implementation date**, as is done in “compliance runs.” Incorporating such a “data refresh” – after the rate case has already been concluded – would allow for costs to be more reflective of the current market information, which generally improves as the forward period approaches. (bolding in original).<sup>66 67</sup>

18 It is important to note that E3’s recommendation included updating both forward electric and natural gas inputs close to the rate effective date.<sup>68</sup> In particular, E3 found that the update of these inputs (or “data refresh”) after the final order in a rate case would allow for costs to be more reflective of current market conditions, “which generally improves as the forward period approaches.”<sup>69</sup> The accuracy improves as the forward period approaches because forward prices are largely informed over time by broker transactions occurring in the forward market.<sup>70</sup> In other words, updating forward market information (like in the proposed update) “allows the forecast to be based on the most recent market feedback.”<sup>71</sup>

19 The use of electric and gas forwards in forecasting rate year power costs is well established before this Commission. In fact, this Commission has explicitly stated: “. . . [T]he use of forward prices in modeling net power costs for the rate year has become standard practice in general rate cases . . . .”<sup>72</sup> E3 also found in its report that “[m]ost

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<sup>66</sup> Gomez, Exh. DCG-2 at 55; *see also supra* footnote 41 (“I strenuously support the use of the most recent data available in pursuit of producing an accurate and reasonable forecast.”); *WUTC v. Puget Sound Energy*, UG-040640, UE-040641, UE-031471 & UE-032043, Order 06 ¶ 116 (Feb. 18, 2005) (“. . . [W]e must determine the question based on our judgment of what data are the most indicative of the costs that PSE will incur during the rate year. But for the suggestion of market inefficiency, which would require more detailed and rigorous quantitative and qualitative analyses to confirm, the parties agree that more recent data predicts the near and perhaps even intermediate term better than older data.”) (emphasis added).

<sup>67</sup> AWEC participated in the Commission-mandated power cost workshop and Staff does not recall AWEC having any objection to E3’s recommendation on updating power costs. Gomez, TR. 123:20-124:1. Staff believes that the E3 recommendation on updating power costs should be applicable to PacifiCorp in this proceeding. Gomez, Exh. DCG-1CT at 12:15-21.

<sup>68</sup> *See also infra* footnote 86.

<sup>69</sup> Gomez, Exh. DCG-2 at 55.

<sup>70</sup> Gomez, Exh. DCG-1CT at 12:7-13.

<sup>71</sup> Wilding, Exh. MGW-6CT at 3:19-20.

<sup>72</sup> *WUTC v. PacifiCorp d/b/a Pacific Power & Light Co.*, Docket UE-130043, Order 05 ¶ 144 (Dec. 4, 2013) (“. . . [T]he use of forward prices in modeling net power costs for the rate year has become standard practice in general rate cases . . . .”) (emphasis added).



utilities utilizing forward prices *incorporate them directly as an input into their modeling*, as the external market price for electricity.”<sup>73</sup> This is no surprise because forward market prices take near-term circumstances into account and reflect actual prices at which a regulated utility (like PacifiCorp) can purchase power and gas, and provides the current market consensus of future market prices.<sup>74</sup>

20           The Oregon Public Utility Commission (“PUC”) also requires PacifiCorp to file a power cost update in the Transition Adjustment Mechanism (“TAM”).<sup>75</sup> After the Oregon PUC issues a final order in the TAM, PacifiCorp is required to utilize the latest OFPC and update any new or existing contracts in forecasting NPC.<sup>76</sup> PacifiCorp has stated that AWEC has a long history of reviewing these types of updates in the TAM.<sup>77</sup> Similar to the update in the TAM, the proposed update also forecasts NPC utilizing the latest OFPC and hedge/contract positions after the final order in this proceeding.<sup>78</sup> Accordingly, not only is the proposed update consistent with the recommendation of E3—but it is also similar to the final power cost update in the Oregon TAM proceedings.

21           On the other hand, AWEC takes issue with the method of the proposed update. In particular, AWEC infers that because PacifiCorp uses electric forwards as an input in its

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<sup>73</sup> Gomez, Exh. DCG-2 at 19.

<sup>74</sup> See generally Wilding, Exh. MGW-6T at 3:19-4:10.

<sup>75</sup> Mullins, Exh. BGM-7X at 18-19 (Oregon TAM power cost update guidelines); Wilding, Exh. MGW-6T at 5:1-13; (“After the Public Utility Commission of Oregon (OPUC) issues its final order in the TAM, PacifiCorp is required to update the NPC forecast based on the latest OFPC and executed contracts, just like the update that is included in the settlement here. In the TAM, the update occurs over the course of two weeks following the order . . . Prompt review of NPC updates in compliance filings is a necessary part of the proceeding. . .”).

<sup>76</sup> *The proposed update is similar in scope to the TAM update. Compare supra* footnote 10 *with* Mullins, Exh. BGM-7X at 18-19 (“Filing an update to net power costs, incorporating the following: (i) Commission ordered adjustments; (ii) Forward Price Curve . . . (iii) New contracts, or updates to existing contracts. These contracts include (a) wholesale electric and purchase that are for long term firm sales and purchases, short term firm sales and purchases, or exchanges and storage with and without energy or capacity prices; and (b) natural gas sales and purchases. . .”).

<sup>77</sup> *Id.* (“AWEC has a long history of reviewing compliance filing updates in the TAM that are substantively the same as the updates included in the Stipulation.”).

<sup>78</sup> *Supra* footnote 10.

model (as opposed to deterministically deriving electric prices as an output of the model itself—like PSE), it is inappropriate for PacifiCorp to update data in its model.<sup>79</sup> As explained by David Gomez, modeling differences do not alleviate the need for data to be updated in a model.<sup>80</sup> AWEC goes on to make unsubstantiated claims that PacifiCorp’s use of electric forwards is more complex and unpredictable than PSE’s modeling practices.<sup>81</sup> As further explained by David Gomez, the models are not better than one another—each method produces a reasonable result.<sup>82</sup> AWEC provides no compelling data or analysis in support of its positions, nor does it rebut the recommendation of E3 or the established practices of the Oregon PUC.<sup>83</sup> Rather, AWEC advocates for an NPC baseline utilizing the model and input data provided in PacifiCorp’s initial filing—yet illogically questions the employment of the very same model for the purposes of the proposed update.<sup>84</sup>

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Given the record in this proceeding, the Commission should find that the proposed update meets the public interest standard because it is consistent with good modeling practice. This is because AWEC has failed to provide sufficient evidence that the Commission’s *standard practice*<sup>85</sup> of utilizing forward market information (both electric and gas) in forecasting rate year power costs is inappropriate. AWEC has also failed to provide

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<sup>79</sup> Gomez, TR. 144:3-6; Mullins, Exh. BGM-1CT at 7:1-7 (“The NPC calculations of PacifiCorp rely on both forward gas and electric prices (not just gas prices) from numerous market points, which produce rate impacts that are unpredictable.”).

<sup>79</sup> Mullins, Exh. BGM-1CT at 7:1-7.

<sup>80</sup> See Gomez, TR. 114:14-19 (“[B]oth methodologies require update because the input assumptions of market prices must be refreshed. Otherwise, the solution is wrong.”); Gomez, TR. 124:2-8 (“But from a practical manner and based on my experience, both methodologies, Puget’s, which is deterministic, and Pacific Power and Avista, which uses market prices as an input, both require update because both rely on power --- or on gas market forwards. And the gas market forwards is an important variable in the determination of power costs.”).

<sup>81</sup> Mullins, Exh. BGM-1CT at 7:1-7; Gomez, TR. 144:3-6.

<sup>82</sup> Gomez, TR. 114:7-19 (“[I]f I took you back to the extensive work that we did as part of the Avista collaborative . . . each method produces reasonable results. . . [I]t’s not that one method is better than the other. It’s just that the assumptions and the methodologies are slightly different.”).

<sup>83</sup> Mullins, Exh. BGM-1CT at 5:9-17; Gomez, Exh. DCG-1CT at footnote 25.

<sup>84</sup> *Id.*

<sup>85</sup> *Supra* footnote 72.

sufficient evidence that the Commission’s *routine practice*<sup>86</sup> of updating forward market information in a rate proceeding is inappropriate. Accordingly, the Commission should not reverse these established practices. Instead, the Commission should approve the proposed update because it utilizes these practices and is consistent with the independent recommendation of E3 and the established practices of the Oregon PUC.

**D. AWEC’s concerns about interjurisdictional cost allocation are outside the scope of this proceeding<sup>87</sup>**

23

AWEC spends a significant portion of its cross-examination time focused on Washington’s allocation of PacifiCorp’s total system power costs.<sup>88</sup> In particular, AWEC asked every party on the settlement panel (except Walmart) if they had any concern that Washington’s allocation of power costs had increased given that PacifiCorp’s total system power costs had decreased.<sup>89</sup> Michael Wilding explained that Washington’s power costs are expected to increase because the WIJAM allocates Washington a larger percentage of PacifiCorp’s market transactions on its system, which have recently increased in price relative to other resources.<sup>90</sup> Michael Wilding further explained that PacifiCorp hedges on a

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<sup>86</sup> *Supra* footnote 44. The Commission has stated that it generally allows updates to both forecasted gas and electric market prices. 2012 PSE GRC Order at ¶ 220 (“The Commission generally allows power costs to be updated during general rate cases to reflect new forecasted gas and electric market prices . . . .”) (emphasis added); *see also* Gomez, Exh. DCG-2 at 55 (E3 stating: “Due to the reliance on market forwards, there may be value in standardizing the practice of updating forward electricity and natural gas inputs close to the rate implementation date.”) (emphasis added).

<sup>87</sup> This section of the post-hearing brief contains references to the confidential portion of the evidentiary hearing transcript. TR. 57-101. On February 8, 2022, PacifiCorp communicated to Staff that the portions of the transcript cited in this section of the post-hearing brief do not contain confidential information and may be cited without redaction.

<sup>88</sup> Wilding, TR. 61:4-67-12 (PacifiCorp); Gomez, TR. 103:14-116:11(Staff); Collins, TR. 131:18-133:1 (Energy Project); Dahl, TR. 136:4-137:6 (Public Counsel).

<sup>89</sup> *Id.*

<sup>90</sup> Wilding, TR. 62:18-23; 63:9-12 (“Washington customers don’t participate and don’t pay the costs of all the resources on PacifiCorp’s system, they are allocated a greater share of market transactions and purchases in order to meet to serve their load, which means that they are more susceptible to market price increase. . . . [B]ecause Washington customers don’t participate in those, don’t pay for those in rates, they are allocated a greater share of market purchases, which are now at a higher price.”).

system-wide basis<sup>91</sup> and Washington is allocated a larger percentage of system-wide hedge contracts in accordance with the WIJAM.<sup>92</sup>

24           The WIJAM was approved by the Commission through its adoption of the settlement agreement in the 2020 PacifiCorp GRC.<sup>93</sup> AWEC was a party to this settlement.<sup>94</sup> The predecessor to the WIJAM was the West Control Area (“WCA”) methodology.<sup>95</sup> Both the WCA and the WIJAM allocate Washington a higher percentage of PacifiCorp’s market transactions on its system.<sup>96</sup> This is because both the WCA and WIJAM allocate Washington a less-than-system share of certain resources—such as coal-fired generation.<sup>97</sup> Due to the lower allocation of certain resources, a higher percentage of market transactions are required to balance load and resources for Washington.<sup>98</sup>

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<sup>91</sup>AWEC spent a significant portion of its cross-examination time questioning PacifiCorp about its hedging policy. Wilding, TR. 71:15-85:14. During cross-examination, Mr. Wilding provided the following testimony about the purposes of PacifiCorp’s hedging policy: “Our company hedging practices are prudent. They’re doing exactly what they’re supposed to do which is to reduce the volatility and also to ensure that we have electric power, firm electric energy to serve our customers.” Wilding, TR. 72:23-73-4. Accordingly, PacifiCorp’s approach to its hedging policy is to reduce volatility and ensure the Company has enough power to meet load—as opposed to trying to *beat the market*. PacifiCorp’s approach to its hedging policy is consistent with a finding of E3. As stated earlier, E3 was the independent consultant hired as part of a Commission-mandated power cost collaborative. E3 stated the following in its final report filed to the Commission: “E3 notes that companies do not engage in hedging for the purpose of minimizing energy costs; rather the purpose of hedging programs is to manage energy cost *variability*. Due to transaction costs, hedging, like other forms of insurance, result in *higher* expected costs over time but lower variances in expected costs.” Gomez, Exh. DCG-2 at 4 (emphasis added).

<sup>92</sup>Wilding, TR. 85:3-6 (“[W]e continued to hedge for the system, and then Washington is allocated a larger percentage of those . . . hedges.”).

<sup>93</sup> 2020 PacifiCorp GRC Order at ¶ 92, 97.

<sup>94</sup> *Id.*

<sup>95</sup> Settling Parties Response to Bench Request 4 (“Both the [] WCA and the [] WIJAM are uniquely vulnerable to market purchases, and PacifiCorp noted that when the WCA was approved, ‘WCA must meet a higher proportion of its retail load with market purchases than is the case in the east control area.’ This is because both the WCA and WIJAM have allocated a less than a system share of resources such as coal, and higher market purchases are required to balance loads and resources for Washington.”).

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

The WIJAM cannot be modified in this PCORC. This is because the Commission limited the scope of this proceeding.<sup>99</sup> In particular, the Commission stated that this proceeding “will affect customer rates only by the update to the NPC baseline. . . .”<sup>100</sup> The limited scope of this proceeding is reflected in the following exchange between counsel for AWEC and Staff witness David Gomez at the evidentiary hearing:

Q. Is it fair that Washington customers should pay materially higher power costs when the company is projecting that system net power costs will decline?

A. Well, that would [] be a question if we were debating the allocations. But we’re not debating the allocations here, In fact, AWEC, I believe, agreed to the allocation methodology in another case. So, I find it strange here that we’re talking about allocations when it really wasn’t a subject of the power cost only rate case.<sup>101</sup>

In other words, the underlying method to allocate Washington’s share of PacifiCorp’s system power costs (in relation to the Company’s five other service jurisdictions) is outside the scope of this proceeding. A more appropriate proceeding to examine the allocation of PacifiCorp’s system-wide power costs would have been the last GRC (in which the WIJAM was agreed to by all parties) or in a future PacifiCorp GRC. No party to this proceeding has requested that the Commission modify the WIJAM. Consequently, the Commission should consider concerns about the interjurisdictional allocation of system-wide power costs under the WIJAM as outside the scope of this PCORC.

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<sup>99</sup> The Commission limited the scope of this proceeding to: (1) resetting the NPC baseline; (2) incorporating the NPC baseline change into base rates; and (3) reviewing deferred accounting treatment for major maintenance expense at Colstrip Unit 4. 2020 PacifiCorp GRC Order at ¶ 66.

<sup>100</sup> *Id.* at ¶ 64.

<sup>101</sup> Gomez, TR. 116:5-11 (emphasis added).

**E. AWEC’s legal arguments provided in opposition testimony lack compelling analysis<sup>102</sup>**

26 The Commission should give no weight to the legal arguments provided in AWEC’s opposition testimony. AWEC provides at least three arguments to suggest that it is unlawful for the Commission to adopt the proposed update: (1) the proposed update would violate RCW 80.04.130 and 80.04.150;<sup>103</sup> (2) the proposed update would violate the United States Supreme Court case of *Federal Power Commission v. Hope Natural Gas Co.*;<sup>104</sup> and (3) the proposed update would violate the Commission precedent of the 2006 PSE GRC.<sup>105</sup> The Commission should give no weight to these three arguments because AWEC has yet to provide any compelling analysis in support of these arguments.

27 First, AWEC claims the proposed update would violate RCW 80.04.130<sup>106</sup> and 80.04.150.<sup>107</sup> This argument infers that the result of the proposed update will not be reviewed and cannot be disputed by parties to this proceeding or the Commission.<sup>108</sup> This inference is completely incorrect. As explained by David Gomez, because the proposed update would occur after the final order in this proceeding any issues involving the NPC

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<sup>102</sup> In its rebuttal testimony, Staff stated that it would respond to the legal arguments provided in the opposition testimony of AWEC in briefing. Gomez, DCG-1CT at 21:4-6, 21:20-22:2.

<sup>103</sup> Mullins, Exh. BGM-1CT at 13:20-14:4.

<sup>104</sup> *Id.* at 11:19-12:2 (citing *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944)).

<sup>105</sup> *Id.* at 10-11.

<sup>106</sup> RCW 80.04.130(1) (“Except as provided in subsection (2) of this section, whenever any public service company shall file with the commission any schedule, classification, rule, or regulation, the effect of which is to change any rate, charge, rental, or toll theretofore charged, the commission shall have power, either upon its own motion or upon complaint, upon notice, to enter upon a hearing concerning such proposed change and the reasonableness and justness thereof. . . .”).

<sup>107</sup> RCW 80.04.150 (“Whenever the commission shall find, after hearing had upon its own motion or upon complaint as herein provided, that any rate, toll, rental or charge which has been the subject of complaint and inquiry is sufficiently remunerative to the public service company affected thereby, it may order that such rate, toll, rental or charge shall not be changed, altered, abrogated or discontinued, nor shall there be any change in the classification which will change or alter such rate, toll, rental or charge without first obtaining the consent of the commission authorizing such change to be made.”).

<sup>108</sup> *See* Mullins, Exh. BGM-1CT 13:21-22 (“If the final rates at issue are not present until the utility makes its compliance filing, no such complaint or inquiry could be possible.”).

methodology would be resolved.<sup>109</sup> Therefore, the proposed update would only refresh input data in the forecast model from what was provided in the initial filing.<sup>110</sup> During the proposed two-week review period, Staff would thoroughly review and verify the proposed update to ensure that all inputs in the model were properly updated.<sup>111</sup> If Staff (or any other party) wanted to dispute the results of the proposed update, it could inform the Commission and request rejection of the filing or ask for additional process pursuant to WAC 480-07-880.<sup>112</sup> Thereafter, the prudence of any power cost input can be further reviewed at the 2022 PCAM annual review (in June 2023) once actual power costs compared to forecasted values for the 2022 calendar year are known.<sup>113</sup> This review process would be very similar to that of the compliance filing update in the recent 2021 PSE PCORC—which AWEC supported.<sup>114</sup> Accordingly, the inference that the proposed update will not be reviewed and scrutinized by the parties (at least by Staff) and the Commission is incorrect.

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Second, AWEC infers that the proposed update would violate the United States Supreme Court case of *Federal Power Commission v. Hope Natural Gas Co.*<sup>115</sup> Like its last argument, this argument also infers that there would be no process to review the result of the proposed update.<sup>116</sup> This inference is incorrect for the same reasons just explained in the last

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<sup>109</sup> *Supra* footnote 10; Gomez, Exh. DCG-1CT at 27:14-18.

<sup>110</sup> *See* Gomez, Exh. DCG-1CT at 6:1-4.

<sup>111</sup> *Id.* at 8:11-15.

<sup>112</sup> WAC 480-07-880(6) (“If a party disputes the filing’s compliance with the final order, the commission will provide an opportunity to respond. The commission may then enter an order: (a) Approving the filing; (b) Rejecting the filing, in whole or in part, for failure to comply with the final order and requiring a revised compliance filing; or (c) Establishing additional process for commission consideration of the filing.”). WAC 480-07-880 further states: “If the commission allows a compliance filing to become effective but later discovers that the filing does not fully comply with the order authorizing or requiring the filing, the commission may take any necessary and lawful steps to secure full compliance with that order. The commission’s erroneous acceptance of a compliance filing does not validate the noncompliant elements of the filing or modify the final order requiring that filing.”

<sup>113</sup> Gomez, Exh. BCM-1CT at 9:14-10:2.

<sup>114</sup> 2021 PSE PCORC Order at ¶ 3.

<sup>115</sup> *Supra* footnote 104

<sup>116</sup> Mullins, Exh. BGM-1CT at 12:1-2 (“Thus, if the Commission does not know the results reached, it cannot determine whether the rates are just and reasonable.”).

paragraph. If AWEC provides a more detailed analysis of both these arguments in its post-hearing brief, a more detailed response will be provided in the reply brief of Staff. With that being said, if AWEC indeed believes the Commission would be acting unlawfully by ordering a power cost update that occurs in a compliance filing—the Commission should seriously question why AWEC supported a similar power cost update in the recent 2021 PSE PCORC.<sup>117</sup>

29           Third, AWEC states that “[c]onsistent with the precedent in the PSE 2006 GRC, new contracts and other costs items are not appropriate to be considered in a compliance filing.”<sup>118</sup> This statement does not accurately represent the “precedent” of the 2006 PSE GRC. In the 2006 PSE GRC, the Commission required PSE to file a gas price update in its compliance filing.<sup>119</sup> However, the Commission did not include other costs in the update due to a lack of an evidentiary record.<sup>120</sup> This is because these other costs were “not identified except by reference to brief redirect examination of [a] Company witness.”<sup>121</sup> Accordingly, the Commission stated that, “there is simply no record to support such update even were we otherwise inclined to authorize it.”<sup>122</sup>

30           Unlike in the 2006 PSE GRC, there is a formal settlement with supporting testimony before the Commission to update power costs in this proceeding. In this settlement, the Settling Parties propose to update power costs utilizing PacifiCorp’s most recent OFPC and

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<sup>117</sup> Gomez, Exh. DCG-1CT at 6:6-11.

<sup>118</sup> Mullins, Exh. BGM-1CT at 12:10-11.

<sup>119</sup> *WUTC v. Puget Sound Energy*, Dockets UE-060266 & UG-060267, Order 08 ¶ 104 (Jan. 5, 2007) (“We determine that PSE should be required to update gas costs . . . in support of its compliance filing in this proceeding”).

<sup>120</sup> *Id.* at ¶ 105 (“As to the other costs PSE proposes be updated, cost it does not identify except by reference to brief redirect examination of Company witness David Mills, there is simply no record to support such update even were we otherwise inclined to authorize it.”).

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*



electric/gas hedge and contract positions as of the time of the compliance filing.<sup>123</sup> This settlement has been subject to discovery, opposition testimony, an evidentiary hearing, cross-examination of supporting witnesses, bench requests, and briefing. The record supporting the proposed update is robust, unlike in the 2006 PSE GRC—where certain cost inputs were only identified in a “brief redirect examination of a Company witness.” Accordingly, the Commission should give no weight to AWEC’s representation as to the “precedent” of the 2006 PSE GRC.

## V. CONCLUSION

31 The record establishes that a more accurate forecast of rate year power costs can be obtained from utilizing the *most up-to-date* information. Using the *most up-to-date* information to forecast power costs is not only consistent with past Commission practice but also with good modeling practice. AWEC’s concerns about interjurisdictional allocation of power costs are outside the scope of this proceeding, and its legal arguments presented so far lack compelling analysis. Because the record in this proceeding is sufficient to satisfy the public interest standard, the Commission should approve the Stipulation.

Respectfully submitted this 11<sup>th</sup> day of February, 2022.

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<sup>123</sup> *Supra* footnote 10.