

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

PACIFIC POWER & LIGHT COMPANY,

Respondent.

DOCKET UE-210402

**REPLY BRIEF ON BEHALF OF COMMISSION STAFF**

February 25, 2022

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## I. INTRODUCTION

1           On February 11, 2022, the Washington Utilities and Transportation Commission (“Commission”) received post hearing briefs from the Commission’s regulatory staff (“Staff”), PacifiCorp d/b/a Pacific Power and Light Company (“PacifiCorp”), and the Alliance of Western Energy Consumers (“AWEC”). Staff and PacifiCorp support the multi-party settlement stipulation (“Stipulation”) filed in this proceeding on November 5, 2021. In their briefing, both Staff and PacifiCorp demonstrate that the Stipulation is “lawful, supported by an appropriate record, and consistent with the public interest”—in short, that it meets the “public interest standard.”<sup>1</sup> AWEC expresses its dislike for the Stipulation in its post-hearing brief but provides no valid legal reason to reject it. Because the record in this proceeding is sufficient to meet the public interest standard, and AWEC has failed to provide any credible criticism of the Stipulation, the Commission should approve the Stipulation without delay.

## II. ARGUMENT

2           The dispute continues to center around a term in the Stipulation that provides for updating input data in the model used to forecast rate year power costs (“proposed update”).<sup>2</sup> AWEC advances several different arguments to contest this term but none of them are convincing. First, AWEC prematurely concludes that PacifiCorp’s hedge positions for the

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<sup>1</sup> See WAC 480-07-750(2) (hereinafter “public interest standard”).

<sup>2</sup> AWEC Post-Hearing Brief at ¶ 4. AWEC also advocates for the Commission to decrease the NPC baseline by \$45,104 to revise PacifiCorp’s allocation of rate year transmission wheeling expense (“Wheeling Expense Adjustment”). AWEC Post-Hearing Brief at ¶ 51-52. Staff has no objection to the Wheeling Expense Adjustment. TR. 155:2-156:12. AWEC also seeks an adjustment related to costs associated with PacifiCorp’s Nodal Price Modeling (“NPM Adjustment”). AWEC Post-Hearing Brief at ¶ 46-49. Staff has provided testimony opposing the NPM Adjustment. Gomez, Exh. DCG-1CT at 30:10-31-19. AWEC also opposes PacifiCorp’s proposal to use both actual and forecasted input data in the proposed update. AWEC Post-Hearing Brief at ¶ 33-40. Staff has no concerns with PacifiCorp’s proposal. Gomez, Exh. DCG-1CT at 17:9-18:5; Gomez, TR. 115:5-17. In the alternative, Staff would also support utilizing the December 31, 2021 OFPC within the proposed update. Gomez, Exh. DCG-1CT at 18:1-5. However, the December 31, 2021 OFPC would not be the most recent information available to the Commission prior to the requested rate effective date. *Id.*

forecasted rate year are imprudent, but the premise of its argument is misguided.<sup>3</sup> Next, AWEC wastes time in a specious argument about the allocation of net power costs (“NPC”) under the Washington Inter-Jurisdictional Cost Allocation Methodology (“WIJAM”), a topic that is completely outside the scope of this proceeding.<sup>4</sup> Further, AWEC asserts that the proposed update would violate due process because it would occur at the compliance stage of the proceeding.<sup>5</sup> This argument can be dismissed because the Stipulation provides for sufficient process. Lastly, AWEC argues that because the proposed update occurs at the compliance stage it would violate Commission procedural rules.<sup>6</sup> In actuality, however, the proposed update is consistent with and even supported by the procedural rules.

**A. AWEC prematurely concludes that PacifiCorp’s rate year hedge positions are imprudent**

3 AWEC concludes that PacifiCorp’s hedge positions in the forecasted rate year (January 1, 2022 – December 31, 2022) are imprudent.<sup>7</sup> AWEC fails to appropriately make this conclusion. This is because AWEC bases its conclusion on data in the initial filing.<sup>8</sup> The data in the initial filing is from March 31, 2021, which does not represent PacifiCorp’s current hedge positions for the forecasted rate year. As explained by PacifiCorp, the Company most actively hedges on a 12-month planning window.<sup>9</sup> Consequently, AWEC bases its conclusion on only three months of the forecasted rate year reflected within the most active planning window.<sup>10</sup> As explained by David Gomez: “[A]t the time of the initial

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<sup>3</sup> AWEC Post-Hearing Brief at ¶ 10-15.

<sup>4</sup> *Id.* at ¶ 23-25.

<sup>5</sup> *Id.* at ¶ 41-45.

<sup>6</sup> *Id.* at ¶ 16-22; 26-32.

<sup>7</sup> *Id.* at ¶ 15.

<sup>8</sup> *Id.* at ¶ 12.

<sup>9</sup> Wilding, Exh. MGW-6T at 7:22-8:1.

<sup>10</sup> Michael Wilding disputed the accuracy of AWEC’s analysis of PacifiCorp’s hedge positions in Exhibit BGM-3C at the evidentiary hearing. Wilding, TR. 80:24-82:7. Glaringly, the post-hearing brief of AWEC does not address this portion of Michael Wilding’s testimony.

filing, the Company had not yet completed its hedge position for the upcoming rate year. The Company’s hedging position continuously evolves during the pendency of the rate setting process. . . .”<sup>11</sup> In other words, PacifiCorp’s hedge positions for the forecasted rate year were not finalized at the time of the initial filing. Accordingly, AWEC’s prudence conclusion is premature given the current record in this proceeding.

4           AWEC’s argument is perplexing. On one hand, AWEC claims PacifiCorp is imprudent because it does not have enough hedge contracts in the forecasted rate year.<sup>12</sup> But on the other hand, AWEC opposes updating the forecast model to include PacifiCorp’s latest hedge contracts.<sup>13</sup> The Commission should not accept the misguided argument of AWEC. Instead, the Commission should approve the proposed update because it utilizes the *most up-to-date* information in the rate year forecast, including PacifiCorp’s latest hedge contracts.<sup>14</sup>

**B.     AWEC’s concerns about interjurisdictional cost allocation are outside the scope of this proceeding**

5           Staff’s post-hearing brief explains why AWEC’s concerns about the WIJAM are outside the scope of this proceeding.<sup>15</sup> AWEC unnecessarily voices additional concerns about the WIJAM in its post-hearing brief. First, AWEC claims that the WIJAM is “highly volatile” and “unpredictable.”<sup>16</sup> AWEC cites no evidence in the record that would support

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<sup>11</sup> Gomez, Exh. DCG-1CT at 18:14-19:7.

<sup>12</sup> AWEC Post-Hearing Brief at ¶ 13.

<sup>13</sup> *Id.* at ¶ 4. Furthermore, on one hand, AWEC claims that PacifiCorp’s hedge positions for the forecasted rate year are imprudent. But on the other hand, *AWEC does not request any disallowance of costs*. The proper remedy for imprudently incurred power costs is a disallowance of those costs. The purpose of this proceeding is to forecast power costs that are likely to be incurred by PacifiCorp during the rate year. Once actual costs compared to forecasted values are known for the 2022 rate year, the actual costs can be reviewed for prudence during the 2022 Power Cost Adjustment Mechanism (“PCAM”) annual review (in June 2023). Accordingly, the Commission can examine the prudence of the forecasted rate year power costs in this proceeding (if/once they have been incurred) at the PCAM annual review. *See* Gomez, Exh. DCG-1CT at 9:14-10:10.

<sup>14</sup> AWEC Post-Hearing Brief at ¶ 37 (NPC should be set “on a forward basis using data and cost projections that are *nearly contemporaneous as practical with the effective date of new rates*.”) (emphasis added).

<sup>15</sup> Staff Post-Hearing Brief at ¶ 23-25.

<sup>16</sup> AWEC Post-Hearing Brief at ¶ 20. AWEC also provides unsubstantiated claims that PacifiCorp’s use of electric forwards as an input in its model is more complex than PSE’s modeling practices—that derives electric

this claim.<sup>17</sup> The Commission should question why AWEC recently supported the WIJAM, if AWEC believes the WIJAM is highly volatile and unpredictable.<sup>18</sup> Next, AWEC infers that the WIJAM does not allocate Washington hedge contracts.<sup>19</sup> This is incorrect. A hedge contract is a short-term market transaction that is allocated pursuant to the WIJAM.<sup>20</sup> With that being said, if AWEC indeed believes the WIJAM should be modified, then its position in this proceeding would not provide an adequate remedy. For instance, if the Commission agrees with AWEC's position and does not approve the proposed update—the WIJAM would still be in operation. Accordingly, the same allocation of power costs under the WIJAM would flow through the PCAM sharing/dead bands and be booked into the PCAM deferral account. In any event, the Commission should consider any concerns about the WIJAM to be outside the scope of this PCORC.

**C. AWEC's argument that approving the proposed update would violate due process fails because sufficient process is available for parties to review and contest the update**

6 AWEC argues that the proposed update would violate due process because it occurs at the compliance stage.<sup>21</sup> This argument is unconvincing. The Commission is permitted to order compliance filings to implement the specific terms of a final order.<sup>22</sup> A compliance filing can revise a tariff.<sup>23</sup> A revised tariff in a compliance filing must include workpapers.<sup>24</sup>

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prices as an output of the model. *Id.* at ¶ 30. As explained by David Gomez, the three primary modeling methods to forecast rate year electric prices were examined in a Commission-mandated power cost collaborative. Gomez, TR. 114:7-19. As a result of this collaborative, Staff believes that each method produces a reasonable result. *See id.* Exhibit DCG-2 also provides a description of the three primary methods used by utilities to forecast rate year electric prices. Gomez, Exh. DCG-2 at 18-20.

<sup>17</sup> AWEC Post-Hearing Brief at ¶ 20 (citing Wilding, Exh. MGW-1CT at 7:18-10:23).

<sup>18</sup> *WUTC v. PacifiCorp d/b/a Pacific Power & Light Co.*, Dockets UE-191024, UE-190750, UE-191029, UE-190981 & UE-180778, Order 09, ¶ 92, 97 (Dec. 14, 2020).

<sup>19</sup> AWEC Post-Hearing Brief at ¶ 25.

<sup>20</sup> Wilding, TR. 162:2-15.

<sup>21</sup> *See* AWEC Post-Hearing Brief ¶ 41-45.

<sup>22</sup> WAC 480-07-880.

<sup>23</sup> WAC 480-07-880(1).

<sup>24</sup> WAC 480-07-880(2).

After a compliance filing is made, Staff must review it.<sup>25</sup> Other parties may also review a compliance filing.<sup>26</sup> Parties typically have only five business days to review a compliance filing.<sup>27</sup> In contrast, the proposed update provides for a two-week review period.<sup>28</sup> As explained by David Gomez, the two-week review period is sufficient because the proposed update consists primarily of data that is easily verifiable.<sup>29</sup> Indeed, the Commission has stated that it “generally is more lenient with respect to power cost updates because these most often result from changes in the fuel markets that are readily verifiable from various public sources.”<sup>30</sup>

7           The Commission has opined that “[t]he update should be a straightforward, mechanical and non-controversial process.”<sup>31</sup> As explained by David Gomez, the proposed update should be non-controversial because it occurs after the final order and any issues involving the NPC methodology would be resolved.<sup>32</sup> Consequently, the compliance filing would only refresh input data in the forecast model in conformance with the final order.<sup>33</sup> If Staff (or any other party) wanted to dispute the compliance filing’s conformance with the final order, it could inform the Commission and request rejection of the filing or additional time pursuant to WAC 408-07-880(6). Once the review process is complete, the compliance filing would only become effective once approved by the Commission.<sup>34</sup> Afterwards, the

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Gomez, Exh. DCG-1CT at 9:1-9; Exh. JT-1CT at 10:3-10.

<sup>28</sup> *Id.*

<sup>29</sup> Gomez, Exh. DCG-1CT at 8:1-15.

<sup>30</sup> See e.g., *WUTC v. Pacific Power & Light Co.*, Dockets UE-140762, UE-140617 & UE-131384, Order 08 ¶ 79 (Dec. 5, 2014).

<sup>31</sup> *WUTC v. Puget Sound Energy*, Dockets UE-060266 & UG-060267, Order 08, ¶ 104 (Jan. 5, 2007); Gomez, Exh. DCG-1CT at 16:1-2 (“[T]he update is usually the most uncontroversial part of the case.”).

<sup>32</sup> Gomez, Exh. DCG-1CT at 16:1-5. AWEC claims that the proposed update would be controversial. It is important to understand that the question of whether the proposed update should occur would be resolved by the Commission approving the Stipulation. The compliance filing would then simply implement the terms of the final order—which would include the proposed update.

<sup>33</sup> *Id.* at 8:11-15.

<sup>34</sup> WAC 480-07-880(2).



prudence of any power cost input can be further reviewed at the 2022 PCAM annual review (in June 2023) once actual power costs for the 2022 calendar year are known and can be compared to forecasted values.<sup>35</sup> This review process would be very similar to that of the compliance filing update in the recent 2021 Puget Sound Energy (“PSE”) PCORC—which AWEC supported.<sup>36</sup> Accordingly, the proposed update is consistent with Commission procedural rules and does not violate due process.

**D. AWEC’s argument that approving the proposed update would violate Commission procedural rules is unconvincing**

8 AWEC argues that the Commission would violate its procedural rules by ordering a power cost update that occurs at the compliance stage.<sup>37</sup> This argument is unconvincing. The Commission has stated it “may order a second update at the compliance stage if power costs have increased or decreased due to changes in natural gas prices.”<sup>38</sup> The Commission has further stated that it has “routinely” ordered power cost updates in prior rate proceedings—“even at the compliance stage.”<sup>39</sup> The Commission’s interpretation that a power cost update can occur at compliance is reasonable and would be afforded substantial discretion by a reviewing court.<sup>40</sup> This is because such interpretation is consistent with WAC 480-07-880,

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<sup>35</sup> Gomez, Exh. DCG-1CT at 9:14-10:2.

<sup>36</sup> See Gomez, Exh. DCG-1CT at 6:6-8:9; *WUTC v. Puget Sound Energy*, Docket UE-200980, Order 05, ¶ 3 (June 1, 2021).

<sup>37</sup> AWEC Post-Hearing Brief at ¶ 16-22; 26-32 (“The Post-Order NPC Update is Not Permissible to be Considered in a Compliance Filing”).

<sup>38</sup> This proceeding represents the first PCORC ever filed by PacifiCorp. The proposed update is consistent with how the Commission approaches updates for natural gas prices in PSE PCORCs. *WUTC v. Puget Sound Energy*, Docket UE-072300, Order 13, ¶ 41, 45-46 (Jan. 15, 2009); Staff Post-Hearing Brief at footnote 45.

<sup>39</sup> *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).

<sup>40</sup> See *Port of Seattle v. Pollution Control Hearings Bd.*, 151 Wn.2d 568, 593, 90 P.3d 659 (2004) ([W]here a statute is within [an] agency’s special expertise, the agency’s interpretation is accorded great weight, provided that the statute is ambiguous. . . . Finally, deference to an agency’s interpretation of its own regulations is also appropriate.”) (internal citations and quotation marks omitted). See also *Inland Empire Distrib. Sys., Inc. v. Utils. & Transp. Comm’n*, 112 Wn.2d 278, 770 P.2d 624, 626 (1989) (Washington Supreme Court upholding and deferring to the Commission’s interpretation of a statute.).

which permits compliance filings to implement the term of a final order. This procedural rule specifically allows a tariff to be revised (with supporting workpapers) in a compliance filing.<sup>41</sup> In other words, rates do not necessarily need to be calculated at the time of the final order. This is because rates can also be calculated through an approved compliance filing, which implements the term of the final order (e.g., an NPC update). And in fact, the compliance filing is typically where approved rates in a litigated rate proceeding are first calculated, in conformance with the final order.

9           AWEC conversely argues that the proposed update could only occur within a subsequent filing.<sup>42</sup> This argument can be easily dismissed as the proposed update is not akin to “filing a new or revised tariff other than the tariff that initiated the proceeding.”<sup>43</sup> The proposed update will strictly implement the term of the final order and only revise the tariff that initiated this proceeding.<sup>44</sup> In other words, the proposed update will conform with the compliance filing rule.<sup>45</sup> AWEC then argues that there is no record to support the proposed update.<sup>46</sup> The record supporting the proposed update is robust and meets the standard for the Commission to approve it, irrespective that rates will be calculated in conformance with the final order at the compliance stage.<sup>47</sup>

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<sup>41</sup> WAC 480-07-880(1).

<sup>42</sup> AWEC Post-Hearing Brief at ¶ 27-28.

<sup>43</sup> WAC 480-07-880(1).

<sup>44</sup> WAC 480-07-880 (“A party must strictly limit the scope of its compliance filings to the requirements of the final order to which it relates.”).

<sup>45</sup> WAC 480-07-880(6) (“If a party disputes the filing’s compliance with the filing order, the commission will provide an opportunity to respond.”).

<sup>46</sup> AWEC Post-Hearing Brief at ¶ 16-22.

<sup>47</sup> WAC 480-07-750(2). The process, model, and specific inputs in the model that would be refreshed in the proposed update have been identified within the Stipulation and supporting testimony and further have been subject to discovery, opposition testimony, rebuttal testimony, an evidentiary hearing, cross-examination of supporting witnesses, bench requests, and multiple rounds of briefing in this proceeding. *See* Staff Post-Hearing Brief at ¶ 30.

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The Commission should be concerned with AWEC’s position. AWEC acknowledges its history of supporting power cost updates, but unabashedly still claims it is unlawful for the Commission to approve the update in this proceeding.<sup>48</sup> In the 2021 PSE PCORC, AWEC supported a power cost update that occurred within a compliance filing.<sup>49</sup> This update utilized the “most up-to-date” gas forwards and hedge positions as of the time of the compliance filing.<sup>50</sup> In supporting the 2021 PSE PCORC update, AWEC represented that it was lawful for the Commission to approve.<sup>51</sup> Now (just a few months later) AWEC argues the Commission would be acting unlawfully by approving a nearly identical update in this proceeding because it occurs within a compliance filing.<sup>52</sup>

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AWEC responds by arguing that there are many reasons (all of which are stated in the hypothetical) as to why it could take an inconsistent position on the issue of power cost updates in settlement.<sup>53</sup> While this may be true, it should nonetheless be concerning to the Commission. This is because AWEC supported the practice of updating power costs through a compliance filing as lawful in one case, and in the very next case argues that this very same practice is now somehow unlawful. The Commission should encourage parties to only support settlements that they view as lawful for the Commission to approve—to avoid

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<sup>48</sup> AWEC Post-Hearing Brief at ¶ 44 (“It is true that AWEC has in the past stipulated to allowing for late-stage NPC updates, with a limited review process.”).

<sup>49</sup> *WUTC v. Puget Sound Energy*, Docket UE-200980, Order 05, ¶ 3 (June 1, 2021).

<sup>50</sup> Gomez, Exh. DCG-1CT at 6:13-7:13 (emphasis added):

**2021 PSE PCORC:** “The Settling Parties agree to an electric revenue increase of approximately \$65.3 million, or 3.07 percent, which will be updated through a power cost update at the compliance filing to reflect the most up-to-date natural gas prices as well as the most up-to-date electric and gas hedging positions. . . .”

**Proposed Update:** “Parties agree that the NPC baseline will be set using the methodology identified in PacifiCorp’s testimony and updated in the compliance filing after a Commission order to reflect the latest power and gas forward prices as well as electric and gas hedging positions at the time. . . .”

<sup>51</sup> WAC 480-07-740(3) (“When submitting a settlement agreement for commission approval, the settling parties must include supporting documentation sufficient to demonstrate that the settlement is consistent with the law and the public interest.”) (emphasis added).

<sup>52</sup> AWEC Post-Hearing Brief at ¶ 25 (“The Post-Order NPC Update is Not Permissible to be Considered in a Compliance Filing”).

<sup>53</sup> *Id.* at ¶ 45.

inconsistent positions on legality in future proceedings. In any event, the proposed update is consistent with prior Commission practice and is lawful for the Commission to adopt in this proceeding.<sup>54</sup>

### III. CONCLUSION

12 Evidence in the record establishes that the Stipulation meets the public interest standard. Because the record in this proceeding is sufficient to meet the public interest standard, and AWEC has failed to provide any credible criticism of the Stipulation, the Commission should approve the Stipulation.

Respectfully submitted this 25<sup>th</sup> day of February, 2022.

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<sup>54</sup> The Commission’s decision in this case could affect the current PSE and Avista Corporation general rate cases—as both companies request an NPC update prior to rates going into effect. *WUTC v. Avista Corporation d/b/a Avista Utilities*, Dockets UE-220053 & UG-220054, Kalich, Exh. CGK-1T at 12:2-14; *WUTC v. Puget Sound Energy*, Dockets UE-220066 & UG-220067, Wetherbee, Exh. PKW-1CT at 16:14-21:8 (section titled “Power Costs Need to be Updated Regularly”).