

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

PACIFICORP d/b/a PACIFIC POWER  
& LIGHT COMPANY,

Respondent.

DOCKET UE-210402

ORDER 08

GRANTING LEAVE TO RESPOND;  
DENYING MOTION TO STRIKE;  
GRANTING MOTION FOR  
CLARIFICATION

- 1 On March 29, 2022, the Washington Utilities and Transportation Commission (Commission) issued Order 06, Final Order Approving and Adopting Settlement Agreement (Order 06). The Commission approved a settlement agreement (Settlement) subject to conditions, which resolved the disputed issues in a power cost only rate case (PCORC) filed by PacifiCorp d/b/a Pacific Power & Light Company (PacifiCorp or Company). The Commission provided PacifiCorp, Commission staff (Staff), The Energy Project, and Walmart, Inc., (Settling Parties) three business days to accept or reject the conditions imposed by the Commission.
- 2 On March 31, 2022, PacifiCorp filed a Motion for Clarification of Order 06 and to Extend the Timeline to Accept or Reject the Conditions in the Order (Motion for Clarification). PacifiCorp requests clarification of the conditions placed on the Settlement by the Commission. These conditions pertain to the prudence of the Company's net power costs (NPC), demonstrated in a subsequent Power Cost Adjustment Mechanism (PCAM) filing, and the benefits of the Nodal Pricing Model (NPM).
- 3 First, PacifiCorp seeks to clarify the Commission's instructions to the Company. The Commission conditioned its acceptance of the Settlement on addressing the prudence of its power costs in its "next PCAM filing."<sup>1</sup> PacifiCorp seeks to clarify whether the Commission, by this phrase, intended to refer to the Company's PCAM filing due by

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<sup>1</sup> Order 06 ¶ 154.

June 15, 2022, which provides for review of 2021 actual NPC, or the PCAM filing due by June 15, 2023, which provides for review of 2022 actual NPC.<sup>2</sup>

- 4 The Commission also instructed the Company to provide evidence “as to whether the use of Aurora with NPM resulted in more accurate NPC forecasts.”<sup>3</sup> PacifiCorp also seeks to clarify whether the Commission’s instruction pertains to the 2022 PCAM filing, which is due by June 15, 2023. PacifiCorp notes that the 2021 PCAM filing, due by June 15, 2022, would be based on the Company’s previous modeling software, the Generation and Regulation Initiative Decision (GRID) tool.
- 5 Second, PacifiCorp seeks to clarify the possible remedies for imprudence set forth in Order 06 and how this is intended to operate in conjunction with the PCAM mechanism. The Commission indicated, “PacifiCorp will perform the power cost update as set forth in the Settlement, but the Company’s recovery of the difference between NPC baseline based on the March OFPC and the NPC baseline set forth in the Company’s initial filing will be subject to later review and possible refund.”<sup>4</sup> The Company observes that the remedy for imprudence identified in Order 06 is a possible refund of the difference between two forecasted NPC values, rather than actual power costs. However, the Company notes that, in the past, the Commission has reduced actual NPC to reflect the disallowance of imprudent costs. If the Commission intends for a finding of imprudence to result in a refund between two forecasted baselines, the Company is concerned about how to implement this process and would require additional guidance.
- 6 Third, PacifiCorp requests to extend the deadline to accept or reject the conditions imposed by the Commission to two business days after the Commission issues an order clarifying Order 06. The Commission addressed this request for a continuance in Order 07 in this Docket, entered on April 1, 2022.

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<sup>2</sup> While the Company refers to an annual PCAM filing deadline of June 15, the underlying settlement agreement providing for these filings sets forth a filing deadline of June 1. We refer to the correct June 1 date in our discussion below. *See WUTC v. PacifiCorp d/b/a Pacific Power & Light Company*, Docket UE-190458 Final Order 06 ¶ 1 (May 29, 2020) (citing *WUTC v. Pacific Power & Light Company*, Docket UE-140762 Order 09, Appendix A, Settlement Stipulation ¶ 19 (May 26, 2015) (PacifiCorp PCAM Settlement)).

<sup>3</sup> *Id.* ¶ 163.

<sup>4</sup> *Id.* ¶ 154.

- 7 PacifiCorp notes that it has conferred with the Settling Parties and that its Motion for Clarification is supported by Staff and Walmart, Inc. The Energy Project supports clarifying Order 06 and does not oppose the Motion for Clarification.
- 8 On April 4, 2022, the Alliance of Western Energy Consumers (AWEC) filed a Motion for Leave to Respond to PacifiCorp's Motion for Clarification (Motion for Leave to Respond). AWEC submits that PacifiCorp's Motion for Clarification could prejudice the amount of any refund owed to customers and that the clarification PacifiCorp seeks is unnecessary for the Company to complete its compliance filing.
- 9 That same day, AWEC submitted a proposed Response to PacifiCorp's Motion for Clarification (Response). AWEC notes that it does not oppose PacifiCorp's request for clarification that the prudence review of power costs—as discussed in Order 06—would occur in the Company's 2022 PCAM. AWEC does not oppose PacifiCorp's request for clarification that the remedy for imprudence would be the disallowance of actual NPC rather than a forecasted NPC baseline. However, insofar as PacifiCorp seeks to clarify that a disallowance of actual NPC would be reflected in the adjusted cumulative PCAM deferral balance, AWEC argues that the Commission should not prejudice this issue in this proceeding. AWEC also argues that the requested clarification of the functioning of a future refund is unnecessary and should be addressed in the Company's 2022 PCAM filing.
- 10 On April 5, 2022, Staff filed a Motion to Strike (Motion to Strike). Staff argues that the Commission did not request a response to the Motion for Clarification pursuant to WAC 480-07-835 and that not striking AWEC's response would be unfair to the other parties, such as Staff, who did not file a response. Staff argues that AWEC did not properly seek an exemption from this rule.
- 11 On April 6, 2022, AWEC filed a Response to Staff's Motion to Strike. AWEC argues that Staff sets forth an overly rigid interpretation of the rules and that WAC 480-07-110 allows for the relief AWEC requested with its Motion for Leave. AWEC submits that Staff admits a party may be granted leave to respond to a motion for clarification through a motion. AWEC also argues that Staff's remedy of striking AWEC's response is overly draconian and that AWEC proceeded in an administratively efficient manner.

## DISCUSSION

- 12 **AWEC's Motion for Leave to Respond and Staff's Motion to Strike.** We grant AWEC's Motion for Leave to Respond and accept AWEC's Response. Pursuant to WAC 480-07-835(3), no party may respond to a motion for clarification unless the Commission requests a response. The Commission did not request a response to PacifiCorp's Motion

for Clarification. Under the circumstances, though, we find it appropriate to grant AWEC an exemption from this rule.<sup>5</sup> Granting AWEC's Motion for Leave will not further delay the resolution of the Motion for Clarification. It is also appropriate to consider AWEC's position on this issue as the party opposing the underlying Settlement. We also note that PacifiCorp's Motion for Clarification did not indicate whether the Company obtained AWEC's position before filing the Motion for Clarification. While this was not required, it is appropriate in this case for the Commission to consider AWEC's position given AWEC's opposition to the underlying Settlement.

13 For the essentially the same reasons, we deny Staff's Motion to Strike. AWEC requested leave for its response. It is appropriate and consistent with the public interest for the Commission to consider AWEC's response while granting clarification of our final order. Staff has not demonstrated actual prejudice resulting from AWEC's Motion for Leave.

14 **PacifiCorp's Motion for Clarification.** We grant PacifiCorp's Motion for Clarification. It is appropriate to clarify Order 06 and, by way of our earlier Order 07, we have allowed the Company additional time to accept or reject the conditions imposed by the Commission.

15 Pursuant to WAC 480-07-835(1), any party may seek clarification of a final order. An appropriate motion for clarification requests that the Commission modify the final order or take other action to clarify the meaning of the final order, make technical changes, or correct errors.

16 We first address PacifiCorp's requests for clarification of paragraph 154 of Order 06. This paragraph states:

We therefore condition our acceptance of the Settlement as follows:  
PacifiCorp will perform the power cost update as set forth in the Settlement, but the Company's recovery of the difference between NPC baseline based on the March OFPC and the NPC baseline set forth in the Company's initial filing will be subject to later review and possible refund. In its next PCAM filing, the Company must address 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

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<sup>5</sup> Pursuant to WAC 480-07-110, the Commission may, in response to a request or on its own motion, grant an exemption from its own rules when "consistent with the public interest, the purposes underlying regulation, and applicable statutes."

Washington-allocated portfolio given the concerns raised by the Commission over a number of years.

- 17 The Company seeks to clarify the Commission’s reference to the “next PCAM filing.” This term, by itself, may have been ambiguous, and it is thus appropriate to clarify Order 06.
- 18 The broader context of Order 06 and paragraph 154 make clear that the Commission was placing a condition on the Settlement that instructed the Company to address certain issues in its PCAM filing due by June 1, 2023. As we noted, this case involved an NPC baseline based on a 12-month period from January to December 2022.<sup>6</sup> In paragraph 154, we accordingly required the Company to address the prudence of its power costs “over calendar year 2022.” The reference to PacifiCorp’s “next PCAM filing” intended to refer to the PCAM filing due by June 1, 2023, which provides for review of calendar year 2022 actual NPC.
- 19 PacifiCorp raises similar concerns with our instructions for the Company to “provide evidence as to whether the use of Aurora with NPM resulted in more accurate NPC forecasts.”<sup>7</sup> In paragraph 163 of Order 06, we stated:
- We therefore find that it is appropriate to require PacifiCorp to address the issue of NPM benefits in its next PCAM filing. PacifiCorp should present evidence as to whether the use of Aurora with NPM resulted in more accurate NPC forecasts. The Company should then address whether the Commission should make an adjustment to the NPC baseline to account for NPM benefits. Because this is merely an instruction to the Company and not a modification of the Settlement’s terms, we do not construe this requirement as placing an additional condition on the Settlement.
- 20 As we have explained,<sup>8</sup> although the term “next PCAM filing” may have been ambiguous, the broader context of Order 06 makes clear that the Commission was referring to the Company’s PCAM filing due by June 1, 2023, which provides for review of calendar year 2022 actual NPC. We find it appropriate to clarify this instruction to the Company even if there is no need to amend Order 06.

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<sup>6</sup> See Order 06 ¶ 137.

<sup>7</sup> Motion for Clarification ¶ 5 (citing Order 06 ¶ 163).

<sup>8</sup> See supra ¶ 12.

- 21 PacifiCorp also seeks to clarify the possible remedies for a determination of imprudence set forth in Order 06 and how this is intended to operate in conjunction with the PCAM mechanism. As we indicated in Order 06, “the Company’s recovery of the difference between NPC baseline based on the March OFPC and the NPC baseline set forth in the Company’s initial filing will be subject to later review and possible refund.”<sup>9</sup>
- 22 As a general matter, a PCORC proceeding is an expeditious means for the utility to include new resources in rates.<sup>10</sup> The annual PCAM filing is an opportunity to review actual NPC and to address extreme imbalances between power cost recoveries and actual power costs.<sup>11</sup> The PCORC “works in conjunction with the [PCAM] by providing one means to adjust the power cost baseline around which the [PCAM] operates.”<sup>12</sup>
- 23 In Order 06, we found it appropriate to set the Company’s recovery of its NPC baseline subject to later review and possible refund. The specific amount at risk is “the difference between NPC baseline based on the March OFPC and the NPC baseline set forth in the Company’s initial filing.”<sup>13</sup> PacifiCorp seeks guidance on how this is intended to operate in conjunction with the PCAM mechanism.<sup>14</sup>
- 24 As a result of the condition placed on the Settlement in Order 06, the Commission has placed the Company on notice that a certain amount of its power cost recovery is “at risk,” and the Commission has provided itself with two different means to disallow imprudent power costs when it reviews the Company’s June 1, 2023, PCAM filing. The Commission may disallow actual NPC, or the Commission may choose to refund all or a portion of the difference between two NPC baselines. The Commission’s choice of remedy would depend on the evidence presented in the PCAM filing. The latter remedy, refunding the difference between two NPC baselines, may be more appropriate if the Commission finds that the Company has failed to prudently acquire sufficient resources to serve Washington loads or that the Company has failed to engage in sufficient

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<sup>9</sup> Order 06 ¶ 154.

<sup>10</sup> *WUTC v. Puget Sound Energy*, Docket UE-072300 and UG-072301 (consolidated) Order 13 ¶ 8 (January 15, 2009)

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

<sup>12</sup> *Id.*

<sup>13</sup> Order 06 ¶ 154.

<sup>14</sup> Motion for Clarification ¶ 6.

hedging. Nonetheless, we reserve this determination until the Commission reviews the Company's June 1, 2023, PCAM filing.

- 25 PacifiCorp also raises concerns about how the Company would implement a refund of the difference between two forecasted NPC baselines.<sup>15</sup> These concerns may be legitimate, but they may also be outside of the scope of Order 06 and unnecessary to address at this juncture. If the Commission were to choose to disallow actual NPC or the difference between two forecasted NPC baselines, the Commission may determine whether the remedy requires recalculating the PCAM deferral balance to reflect the application of the dead band and tiered sharing bands.<sup>16</sup> The Commission may also need to consider the appropriate disposition of any PCAM deferral balance depending on the circumstances at the time. Regardless, the Commission will hear evidence and argument as to these issues when reviewing the Company's June 1, 2023, PCAM filing. We have considered AWEC's Response while arriving at the decision, but it was already the Commission's intent to reserve these issues for consideration until we review the Company's June 1, 2023, PCAM filing.

### **ORDER**

#### THE COMMISSION ORDERS:

- 26 (1) The Motion for Leave to Respond filed by the Alliance of Western Energy Consumers is GRANTED.
- 27 (2) The Motion to Strike filed by Commission Staff is DENIED.

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<sup>15</sup> Motion for Clarification ¶ 7.

<sup>16</sup> PacifiCorp PCAM Settlement ¶¶ 9-11.

- 28 (3) The Motion for Clarification filed by PacifiCorp d/b/a Pacific Power and Light Company is GRANTED, as discussed in paragraphs 14-25 of this Order.

Dated at Lacey, Washington, and effective April 7, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chair

ANN E. RENDAHL, Commissioner