

**BEFORE THE WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

vs.

PACIFIC POWER & LIGHT COMPANY,

Respondent.

Docket No. UE-161204

**MOTION TO STRIKE PORTIONS OF  
BOISE’S REPLY BRIEF**

**I. INTRODUCTION**

1 Pacific Power & Light Company (Pacific Power or Company), a division of PacifiCorp, move to strike portions of the Reply Brief of Boise White Paper, LLC (Boise) in accordance with WAC 480-07-375 and RCW 34.05.452. In its Reply Brief, Boise makes irrelevant, inflammatory, and false allegations that have no foundation in the record in this case. Boise also attempts to introduce new evidence—months after the record closed and with no opportunity for parties to respond or rebut that evidence—through a request for official notice.

**II. RELIEF REQUESTED**

2 Pacific Power respectfully requests an order striking those portions of Boise’s Reply Brief that are unsupported by the record, irrelevant, and false. Pacific Power identifies these portions in the attached redlined copy of Boise’s Reply Brief.

**III. ARGUMENT**

**A. Boise’s statements about the management approach of Berkshire Hathaway and Berkshire Hathaway Energy are unfounded, inflammatory, and false and should be stricken.**

3 In its Reply Brief, Boise includes unfounded and inflammatory assumptions regarding Berkshire Hathaway, Berkshire Hathaway Energy (f/k/a MidAmerican Energy Holdings Company), and Pacific Power’s management approach after its acquisition by Berkshire

Hathaway Energy. There is absolutely no evidence in the record to support Boise’s conjecture about changes in Pacific Power’s management approach after the acquisition. And there is zero evidence in the record supporting Boise’s wild accusations about Berkshire Hathaway or Berkshire Hathaway Energy. In fact, there is zero evidence in the record related to Berkshire Hathaway or Berkshire Hathaway Energy in any way. Boise’s speculation and conjecture are not evidence and are inappropriate for the final filing in a docket. Pacific Power has no opportunity to rebut these unfounded and inflammatory accusations. If Boise believed that Berkshire Hathaway Energy’s ownership of Pacific Power was at all relevant in this proceeding (which it is not), then Boise should have presented evidence in testimony or at the hearing.

4            Boise attempts to use two alleged “facts” to support its new theory about Berkshire Hathaway Energy management approaches. First, Boise relies on an unrelated statement by Public Counsel witness Ms. Kathleen Kelly as support for its assertion that Pacific Power’s management approach changed after its acquisition by Berkshire Hathaway Energy. Boise perverts Ms. Kelly’s statement that Pacific Power allegedly did not respond to two letters from Columbia REA in 2013 and 2015 into proof that Pacific Power has refused to even communicate with Columbia REA or negotiate with the Yakama Tribe. Boise’s assertions, which were raised for the first time in its Reply Brief, are false and should be stricken.

5            Ms. Kelly’s statement was based on information she received from her client in preparing testimony. Ms. Kelly did not speak to Pacific Power about its interactions with Columbia REA, and she did not have any personal knowledge of whether or not Pacific Power responded, as confirmed by Ms. Kelly during cross-examination.<sup>1</sup> Although Boise cross-examined Ms. Kelly

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<sup>1</sup> Kelly, TR. 362:2-5.

about the Columbia REA letters,<sup>2</sup> Boise did not cross-examine the company's witness, Mr. Scott Bolton, regarding these letters.

6           Because the question of whether Pacific Power responded to Columbia REA's letters is not relevant to the issues in this case, Pacific Power did not provide evidence rebutting Ms. Kelly's testimony. Pacific Power had no reason to foresee that Boise would use this so-called "evidence" in such a tortured manner. But the lack of evidence in this record on this point does not mean—as Boise would have this Commission believe—that no evidence *exists* that rebuts this alleged "fact."<sup>3</sup>

7           Second, Boise cites its own cross-exhibit (exhibit RW-4X), consisting of Yakama Power's response to a Staff data request, to support inflammatory, irrelevant, and unfounded allegations that Pacific Power—and by extension Berkshire Hathaway—is mistreating Yakama Power. Boise even implies mistreatment of Native Americans generally. Boise's reprehensible contentions are contrary to Yakama Power's own testimony, which demonstrates Pacific Power's willingness and history of negotiating settlements for the transfer of facilities to Yakama Power.<sup>4</sup>

8           Pacific Power respectfully requests that the Commission strike those portions of Boise's Reply Brief that make unsubstantiated and speculative assertions about Pacific Power's alleged change in management approach and the relationship of Pacific Power's management to its acquisition by Berkshire Hathaway Energy. Pacific Power further requests that the Commission strike Boise's unfounded and inflammatory contentions about Pacific Power's and Berkshire Hathaway's relationships with Yakama Power and Native Americans generally.

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<sup>2</sup> Kelly, TR. 330:3-9.

<sup>3</sup> If it would assist the Commission, Pacific Power is prepared to submit, via declaration, responsive letters it sent to Columbia REA in 2013 and 2015.

<sup>4</sup> See Wiseman RW-1T 5:9- 23; 6:8-10; RW-4X (complete text of Yakama Power's Response to UTC Staff DR 2) (Pacific Power and Yakama Power have negotiated transfers of facilities through settlements in condemnation proceedings).

**B. Boise’s reliance on evidence that is not in this record is procedurally improper.**

9 For the first time in its Reply Brief, Boise improperly attempts to resurrect issues addressed by the Commission in Docket No. UE-121680 regarding service reliability at Boise’s Wallula mill. The resolved contentions regarding service issues are wholly irrelevant to the present proceeding and certainly are not part of the record. If Boise considered reliability at the Wallula mill relevant to the present docket, then it should have properly offered evidence during the hearing and given Pacific Power an opportunity to respond.<sup>5</sup>

10 Boise similarly attempts to introduce (for the first time in its Reply Brief) a filing made by Pacific Power in the Public Utility Commission of Oregon docket addressing Pacific Power’s 2017 Integrated Resource Plan (2017 IRP), claiming that the Commission should take “official notice.” Like the attempt to incorporate Docket No. UE-012180 into this proceeding through a reply brief, Boise’s attempt to include the 2017 IRP materials is untimely and procedurally improper.

11 As set forth in RCW 34.05.452, official notice can only be taken when the parties are notified *before or during the hearing* of the intent to take official notice and thereby afforded an opportunity to contest the facts and materials noticed. Similarly, WAC 480-07-495(2)(c) provides that parties must be afforded an opportunity to contest the facts and material of which the Commission will take official notice. Pacific Power was certainly not afforded an opportunity to contest Boise’s attempt to undermine the testimony of one of the company’s witnesses, Mr. Robert Meredith, through a misleading interpretation of both Pacific Power’s 2017 IRP comments and Mr. Meredith’s testimony on cross-examination.<sup>6</sup>

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<sup>5</sup> See, e.g., *In the Matter of the Petition of Frontier Communications Northwest, Inc.*, Order No. 4, Docket No. UT-121994 (March 29, 2013) (allowing supplemental briefing for issues raised for first time in reply brief).

<sup>6</sup> Boise’s interpretation is misleading because it does not distinguish the various types of “wind investments” presented in Pacific Power’s 2017 IRP, which include repowering of facilities currently in rates and new wind facilities that are not currently in rates.

12 Both the substance and the timing of Boise's attempt to interject the issues addressed in closed Docket No. UE-121680 and to incorporate filings in unrelated dockets in Oregon into the present proceeding are procedurally improper, and those portions of Boise Reply Brief relying on these materials should be stricken.

#### IV. CONCLUSION

13 Boise's attempt to introduce new evidence and arguments in its Reply Brief, particularly arguments that have no basis in the record and involve spurious and reckless allegations against Pacific Power and its owner, should be rejected by this Commission. The record was closed at the conclusion of the hearing and should not be reopened. Pacific Power respectfully requests that the Commission strike the portions of Boise's Reply Brief identified in the attached redlined copy of the Reply Brief so the focus of this docket can remain upon the appropriately balanced tariff revisions proposed by Pacific Power and supported by both Public Counsel and The Energy Project.

Respectfully submitted this 25th day of August, 2017.

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