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May 2, 2023

VIA ELECTRONIC FILING

Public Utility Commission of Oregon
Attn: Filing Center
201 High Street SE, Suite 100
Salem, OR 97301-3398

RE: PCN 5—PacifiCorp's Objection to Certain Motions to Admit

PacifiCorp, dba Pacific Power submits the attached Objection to Certain Motions to Admit in the above captioned proceeding.

Informal questions concerning this filing may be directed to Cathie Allen, Regulatory Affairs Manager, at (503) 813-5934.

Sincerely,

Matthew McVee
Vice President, Regulatory Policy and Operations

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

PCN 5

In the Matter of

IDAHO POWER COMPANY'S

Petition for Certificate of Public Convenience and
Necessity.

**PACIFICORP'S OBJECTIONS TO
CERTAIN MOTIONS TO ADMIT**

I. INTRODUCTION

Pursuant to Administrative Law Judge Mellgren's April 21, 2023 Memorandum, PacifiCorp d/b/a Pacific Power (PacifiCorp or the Company) submits to the Public Utility Commission of Oregon (Commission) its objection to certain exhibits that Mr. Greg Larkin, Ms. Irene Gilbert, and Mr. Sam Myers have moved to admit to the record. Specifically, PacifiCorp objects to:

<u>Party</u>	<u>Date of motion to Admit</u>	<u>Description of Exhibit/Extraneous Statements</u>	<u>Basis of Objection</u>
Larkin	04/25/2023 and 04/28/2023	Cross-Examination Exhibit Greg Larkin/1104, Commission Order No. 20-393, Docket No. UF 4318	Foundation and Relevance
Larkin	04/25/2023	Cross-Examination Exhibit Greg Larkin/1106, Record Searchlight News Article dated August 17, 2022, <i>Electric utility PacifiCorp sued, accused of causing deadly McKinney Fire in Siskiyou County</i>	Foundation and Relevance
Larkin	04/25/2023	Cross-Examination Exhibit Larkin/1110, OPB News Article dated April 11, 2023, <i>PacifiCorp's Labor Day fires through newly found texts, plaintiffs' attorneys allege</i>	Foundation and Relevance
Larkin	04/25/2023	Cross-Examination Exhibit Larkin/1117, Statesman Journal News Article dated March 1, 2023, <i>As Labor Day fires exploded, Pacific Power employees worried power lines were at fault</i>	Foundation and Relevance

Larkin	04/25/2023 and 04/28/2023	Cross-Examination Exhibit 1207, PacifiCorp responses to Greg Larkin data requests 2 through 7. ¹	Foundation
Larkin	04/25/2023	Unnumbered exhibits on pages 9 and 10, which list Cross-Examination Exhibits Greg Larkin/1104 and 1106 by document name twice.	Foundation and Relevance
Larkin	04/25/2023	To the extent Mr. Larkin is offering his Cross-Examination Statement filed on April 12, 2023, Subpart D on page 3.	Foundation and Relevance
Myers	04/25/2023	Myers Cross-Examination Statement filed April 12, 2023, PacifiCorp 2013 Major Event Report and extraneous statements concerning the report.	Foundation

In their motions to admit, Mr. Greg Larkin, Ms. Irene Gilbert, and Mr. Sam Myers seek to admit Cross-Examination Exhibits on which they offered no cross-examination and did not lay the appropriate foundation for admission. PacifiCorp appreciates that the evidentiary proceeding process can be complicated for individuals who typically do not appear before the Commission. However, allowing a party to offer new evidence, which amounts to additional testimony, without providing other parties an opportunity to respond, impacts the due process rights of those parties. PacifiCorp further objects to certain of the Cross-Examination Exhibits, such as news articles regarding wildfires for which no causation has been determined, as not relevant to this proceeding. For these reasons, the Commission should deny the admission of the above listed exhibits.

In Section III of this response, the Company addresses certain of Stop B2H's offered exhibits. Even though these exhibits also were not used during Stop B2H's cross-examination of PacifiCorp witness Mr. Rick T. Link, the exhibits are sufficiently related to

¹ PacifiCorp is not objecting to the admission of data requests Greg Larkin 1, 8, and 9.

Mr. Link’s cross-examination that they would aid in completing the record. PacifiCorp does offer two corrections to the Stop B2H cross-examination exhibits to ensure completeness of the record.

II. ARGUMENT

A. No Foundation for Cross-Examination Exhibits That Were Not Used in Cross-Examination of Witnesses in the Evidentiary Hearing

Cross-examination is an opportunity to question an opposing party’s witness about that witness’s own testimony, or matters affecting that witness’s credibility.² It is not an opportunity to supplement a party’s own direct case.³

For cross-examination exhibits to be admissible, a party must lay the necessary foundation to authenticate the document and demonstrate that it is within the proper scope of cross-examination.⁴ For all documents listed in Section I above, Mr. Larkin, Ms. Gilbert, and Mr. Myers did not establish this foundation. PacifiCorp’s witness Mr. Link’s opening and rebuttal testimony did not address wildfires,⁵ Order 20-393,⁶ which approved PacifiCorp’s 2020 application to issue and sell debt and enter into a credit agreement, or the PacifiCorp’s 2013 Major Event Report.⁷ Nor did Mr. Larkin or Ms. Gilbert lay the foundation that Mr. Link was the appropriate witness to testify concerning the Company’s responses to data requests (DR) Greg Larkin 2 through 7,⁸ which included questions concerning noise, visual

² ORS 40.370(2) (“Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness.”); *see also Peters v. Consol. Freight Lines, Inc.*, 157 Or 605, 610 (1937) (“It is a general principle that a witness cannot be cross-examined as to collateral or irrelevant matters, merely for the purpose of contradicting him by other evidence[.]”).

³ *Ah Doon v. Smith*, 25 Or 89, 93-94 (1893) (“It is true the party against whom a witness is called cannot, on cross-examination, go into an independent or affirmative case on his part, but must confine his examination to such facts connected with the direct examination[.]”).

⁴ ORS 40.505(2).

⁵ Cross-Examination Exhibits Greg Larkin/1106, 1110, and 1117.

⁶ Cross-Examination Exhibit Greg Larkin/1104.

⁷ Mr. Myers Cross-Examination Statement at 9, filed April 12, 2023.

⁸ Cross-Examination Exhibit Greg Larkin/1207.

impacts, availability of alternate routes and mitigation for impacts to historic, cultural and archaeological resources in Oregon (DR Larkin 2), information required under OAR 860-025-0030 for certificates of public convenience and necessity (CPCNs) (DR Larkin 3), wildfire and CPCN litigation (DRs Larkin 4-5), depreciation (DR Larkin 6), and customer bill impacts (DR Larkin 7). Even though Ms. Gilbert did not lay the appropriate foundation, PacifiCorp is not objecting to the admission of DRs Larkin 1, 8, and 9 as they relate to Ms. Gilbert's cross-examination of PacifiCorp witness Mr. Link and would aid in completing the record.

By not asking Mr. Link cross-examination questions on the above listed documents, it is apparent that Mr. Larkin, Ms. Gilbert, and Mr. Myers are actually offering the above listed exhibits as supplementary exhibits to their pre-filed testimony, not as cross-examination exhibits. This is procedurally improper. If these documents are admitted, PacifiCorp does not have the opportunity to respond, which not only is wholly unfair but also inconsistent with due process rights.⁹

B. Cross-Examination Exhibits Offered Are Not Relevant and Should Not be Admitted to the Record

Relevant evidence is defined as “evidence having the tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”¹⁰ Commission Rules also provide that relevant evidence is admissible if it is of the type commonly relied upon by reasonably

⁹ ORS 40.370(2) (“Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness.”); *see also Penn v. State*, 574 So 2d 1079, 1082 (Fla. 1991) (“If the defendant seeks to elicit testimony from an adverse witness which goes beyond the scope encompassed by the testimony of the witness on direct examination, other than matters going to credibility, he must make the witness his own.”).

¹⁰ ORS 40.150, OAR 860-001-0450.

prudent persons in the conduct of serious business.¹¹ Evidence is relevant so long as the inference desired is reasonable.¹² However, evidence is not relevant if it is not probative of the fact or proposition at which it is directed.¹³

Before approving a CPCN application, the Commission must investigate and determine, in part, the safety of the proposed transmission line.¹⁴ In testimony with respect to safety, Mr. Larkin argues that the proposed Boardman to Hemmingway Transmission Line creates an increased risk of wildfire.¹⁵ Notably, Mr. Larkin did not allege improper wildfire mitigation practices of PacifiCorp. Even though not addressed in pre-filed testimony, Mr. Larkin and Ms. Gilbert appear to offer Cross-Examination Exhibits Greg Larkin/1106, 1110, and 1117 to demonstrate an “historic record of safety results based upon PacifiCorp and to a lesser extent, Idaho Power ... to provide adequate management of increased fire risks that ... existing transmission lines have created in the past.”¹⁶ The articles submitted as Cross-Examination Exhibits Greg Larkin/1106, 1110, and 1117 do not establish causation for any wildfire, including whether it was related to a transmission line. Thus, these exhibits do not create a reasonable inference regarding the safety of transmission lines or PacifiCorp’s wildfire mitigation efforts and are not probative or offer any fact that transmission lines increase the probability of wildfires. Cross-Examination Exhibits Greg Larkin/1106, 1110, and 1117 are highly prejudicial and offer no probative value. Therefore, Cross-Examination Exhibits Greg Larkin/1106, 1110, and 1117 and the extraneous statement in Subpart D of the

¹¹ OAR 860-001-0450.

¹² *State v. Titus*, 328 Or. 475, 480-481, 982 P.2d 1133, 1136-1137 (1999), citing *State v. Hampton*, 317 Or.251, 255, 855 P.2d 621 (1993).

¹³ *Rugemer v. Rhea*, 153 Or.App. 400, 404 (1998), citing *Holger v. Irish*, 316 Or. 402, 419, 851 P.2d 1122 (1993)

¹⁴ ORS 758.015(2).

¹⁵ See, for example, Greg Larkin/100, 15-16.

¹⁶ Greg Larkin Cross Examination Statement, Subpart D, filed April 12, 2023.

Larkin/Gilbert Cross-Examination Statement should also not be admitted to the record as they are not relevant to any determination being made in this proceeding.

Furthermore, Cross-Examination Exhibit Greg Larkin/1104 is Commission Order 20-393 which approved PacifiCorp's 2020 application to issue and sell debt and enter into a credit agreement. This Order, which concerns a PacifiCorp debt issuance, does not go to supporting any element required for approval of CPCN and as such is not relevant.

III. STOP B2H EXHIBITS

Stop B2H's Motion to Admit moves to admit certain documents into the record including:

- Kreider 300, PacifiCorp's responses to Commission Staff's (OPUC) DRs 2 (original and supplemental), 3, 5, and 13 (original and supplemental);
- Kreider 301, the opening and rebuttal testimony of PacifiCorp witness Rick T. Link;
- Kreider 308, PacifiCorp's 2021 Integrated Resource Plan (IRP); and
- Kreider 309, PacifiCorp's 2023 IRP.


Even though these documents were not used during Stop B2H's cross-examination of PacifiCorp witness Mr. Link, PacifiCorp is not objecting to their admission because they are reasonably related to the questions asked to and responses made by Mr. Link. However, for completeness purposes, the Company offers two corrections. First, with respect to Exhibit Kreider/301, PacifiCorp filed an errata to PAC/202 to Mr. Link's rebuttal testimony in this proceeding. This same errata was filed to Mr. Link's direct testimony submitted in the Company's Idaho and Wyoming CPCN proceedings. The original filed testimony of Mr. Link for the Company's Wyoming and Idaho CPCN applications were provided in the first supplemental response to DR OPUC 13, which is included in Exhibit Kreider/300. Second,

there was a first supplemental response to DR OPUC 3, which also should be added to Stop B2H/300 for completeness purposes.

IV. CONCLUSION

The Commission should decline to admit cross-examination exhibits Greg Larkin/1104, 1106, 1110, 1117, 1207, the extraneous statements in the Greg Larkin Cross-Examination Statement¹⁷ and page 9 of Mr. Myers Cross-Examination Statement with PacifiCorp's 2013 Major Event Report and the related extraneous statements as they are inadmissible. These documents were presented without adequate foundation and without sufficient opportunity for PacifiCorp to respond. Further, the Commission should also decline to admit cross-examination exhibits Greg Larkin/1104, 1106, 1110, and 1117 as they are not relevant. Finally, the Commission should correct the references contained in Stop B2H's motion to admit as noted above to ensure the record is complete.

Respectfully Submitted on this 2nd day of May 2023,


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¹⁷ Including any duplicative references to these cross-examination exhibits.

CERTIFICATE OF SERVICE

I certify that I delivered a true and correct copy of **PacifiCorp's Objection to Certain Motions** on the parties listed below via electronic mail in compliance with OAR 860-001-0180.

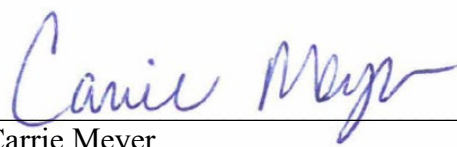
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Dated this 2nd day of May 2023.



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