

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION
COMMISSION,

Complainant,

v.

PACIFICORP D/B/A PACIFIC
POWER & LIGHT COMPANY,

Respondent.

DOCKET NO. UE-100749

PUBLIC COUNSEL'S ANSWER TO
PACIFICORP'S AND COMMISSION
STAFF'S PETITIONS FOR
RECONSIDERATION

I. INTRODUCTION

1. Pursuant to the Commission's Notice of Opportunity to File Answer (dated April 5, 2011), the Public Counsel Section of the Washington Attorney General's Office (Public Counsel) offers this Answer to the Petitions of Reconsideration filed by PacifiCorp and Commission Staff. Since Public Counsel did not previously address all of the issues raised by the Petitions, this Answer is limited in scope.

II. RESPONSE TO PACIFICORP'S PETITION FOR RECONSIDERATION

2. PacifiCorp's Petition should be denied because it does not present sufficient grounds for reconsideration. It appears that the vast majority of the issues and arguments raised by PacifiCorp in its Petition were previously argued by the Company and considered by the Commission.¹ A review of PacifiCorp's Petition alongside the Company's pre-filed testimony,

¹ *In re the Matter of the Application of Avista Corp. for Authority to Sell Its Interest in the Coal-Fired Centralia Power Plant*, Docket No. UE-991255 et al., Fourth Supp. Order, ¶ 40 (Apr. 21, 2000) (stating, "[a] petition that cites no evidence that the Commission has not considered, and merely restates arguments the Commission thoroughly considered in its final order, states no basis for relief. A petition for reconsideration is not a

exhibits, and post-hearing briefs suggests that the Company is simply re-arguing issues that it already raised and that the Commission considered.² The fact that PacifiCorp disagrees with portions of the Final Order is not sufficient grounds for reconsideration.³

III. RESPONSE TO STAFF'S PETITION FOR RECONSIDERATION

Public Counsel supports Staff's Petition for Reconsideration.⁴ Staff properly identifies potential errors of law and/or fact in the Final Order and its Petition is not merely a restatement of Staff's earlier arguments. Specifically, Staff properly raises issues regarding the Final Order's application of the standard for evaluating capital structure, i.e., that "the appropriate capital

second opportunity to litigate issues which were fully developed prior to entry of the final order and which were discussed and decided in the final order. The mere fact that a party disagrees with a final order does not state a basis for reconsideration"). See also *WUTC v. Olympic Pipe Line Co.*, Docket No. TO-011472, Eighth Supp. Order ¶¶ 13 and 15; and *WUTC v. Puget Sound Energy, Inc.*, Docket No. UE-011163, Seventh Supp. Order, ¶¶ 18 and 22-23.

² Examples of issues that were previously argued by the Company are as follows:

- Uncertainty regarding flow-through versus normalization was addressed in testimony (Exh. No. RF-1T, pp. 6-8, and Exh. No. RF-8T, p. 6:12-17), and the Initial (¶ 100) and Reply Briefs (¶¶ 73-74).
- Whether PacifiCorp met its burden of quantifying the impact of full normalization was addressed in the Company's Reply Brief (¶ 77), and the quantification/monetary impact was discussed generally in testimony (Exh. No. RF-8T, p. 4:8-19) and the Initial brief (¶ 101).
- The sufficiency of PacifiCorp's evidence regarding whether the DC Intertie would be used and useful was addressed in the Initial (¶ 79) and Reply Briefs (¶ 58).
- Whether the Commission is pre-empted from disallowing non-owned, intra-hour wind integration costs was directly addressed in the Initial Brief (¶¶ 81-85).
- ICNU's Minimum Loading and Deration adjustments were discussed in testimony (Exh. No. GND-5T, pp. 53-55), and the Initial (¶ 94) and Reply Briefs (¶ 66).
- Whether reduction in the Company's ROE is proper, specifically with regard to interest rates and utility ROE national averages, was raised in the Initial Brief (¶¶ 10-13).
- The Company discussed weighting of CAPM in setting ROEs in light of the Commission precedent in its Initial Brief (¶¶ 32-34).

³ Public Counsel also observes that PacifiCorp has improperly sought to offer in support of its Petition new evidence on interest rates in March 2011. See PacifiCorp's Petition for Reconsideration, ¶ 51 and n.84. The Commission should reject this evidence. See *WUTC v. PSE*, Docket No. UE-090704, ¶¶ 16-17. See also *WUTC v. Olympic Pipe Line Co.*, Docket No. TO-011472, Eighth Supp. Order, ¶¶ 11-12, and 34 (rejecting petitioner's offer of an affidavit in support of a petition for reconsideration, stating "the Commission will consider new evidence after a record is closed only when the late submission was proposed and approved before the record was closed, or in conjunction with a motion to reopen stating reasons and subject to answer by other parties").

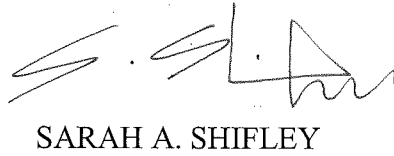
structure for ratemaking purposes is one that *balances economy with safety*.⁵ Staff also properly raises the issue of the Final Order's interpretation and application of the precedent established by the Final Order in Docket No. UE-050684.⁶

IV. CONCLUSION

3. For the reasons set forth above, Public Counsel respectfully requests that the Commission deny the Petition for Reconsideration of PacifiCorp. Public Counsel supports Staff's Petition for Reconsideration and requests that it be granted.

4. DATED this 14th day of April, 2011.

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⁴ On brief, Public Counsel supported the capital structure proposed by Commission Staff. *See Confidential Post-Hearing Brief of Public Counsel*, ¶ 9. ICNU did not object to Commission Staff's capital structure proposal. *See Post-Hearing Brief on Behalf of the Industrial Customers of Northwest Utilities*, ¶ 31.

⁵ Staff Petition for Reconsideration, ¶¶ 3-11 and n.4 (citing *WUTC v. PacifiCorp*, Docket No. UE-050684, Order 04, ¶ 224). Staff also rightly points out that MEHC's inflation of PacifiCorp's level of equity calls into question Commitment 21 from the MEHC Merger. *See id.* at n.7 (citing *In re Application of MEHC and PacifiCorp*, Docket No. UE-051090, Order 07, Appendix A, p. 5).

⁶ *Id.* at ¶¶ 12-17.