

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKET UE-080220
TRANSPORTATION)	
COMMISSION,)	ORDER 02
)	
Complainant,)	GRANTING MOTION FOR
)	EXPEDITED CONSIDERATION OF
v.)	ICNU’S PETITION TO
)	INTERVENE; GRANTING
PACIFICORP D/B/A PACIFIC)	PETITION TO INTERVENE;
POWER & LIGHT COMPANY,)	REQUIRING RESPONSES TO
)	DATA REQUESTS
Respondent.)	
.....)	

MEMORANDUM

1 On February 6, 2008, PacifiCorp d/b/a Pacific Power & Light Company (PacifiCorp) filed with the Washington Utilities and Transportation Commission (Commission) revisions to its currently effective Tariff WN U-74. By its filing PacifiCorp proposed to increase rates and charges for electric service provided to customers in the state of Washington by \$34.9 million, or 14.6 percent.

2 The Commission suspended the filing on February 14, 2008, PSE having waived its right to have the matter considered at the Commission’s regular open public meeting. In its suspension order, the Commission invoked its discovery rules, stating in ¶ 12: “Discovery in this proceeding will be conducted pursuant to the Commission’s discovery rules in WAC 480-07-400 – 425.”

3 The Industrial Customers of Northwest Utilities (ICNU), a trade group that regularly participates in PacifiCorp’s general rate proceedings in Washington, filed its notice of appearance and petition to intervene on February 19, 2008. On February 22, 2008, ICNU filed a motion requesting expedited consideration of its Petition to Intervene so that it might obtain party status, which would entitle ICNU to formal discovery.

4 According to ICNU’s motion:

On February 5, 2008, immediately prior to filing its general rate case,

PacifiCorp turned down a request that it provide ICNU with informal discovery responses. . .

On February 20, 2008, ICNU submitted its first set of data requests to PacifiCorp. ICNU requested that PacifiCorp provide its responses in ten (10) business days (Tuesday, March 4, 2008), the standard time for data responses under the Commission's rules. WAC 480-07-405. On February 20, 2008, counsel for PacifiCorp asked for an additional six (6) business days to respond to the discovery, giving PacifiCorp until March 12, 2008 to respond. ICNU's legal counsel agreed to the additional time. On February 22, 2008, counsel for PacifiCorp contacted ICNU's counsel and stated that PacifiCorp will not respond until ten (10) days after ICNU is granted party status. If ICNU is granted party status at the prehearing conference on March 6, 2008, then PacifiCorp would not be required to respond to ICNU's data requests until March 20, 2008.

- 5 ICNU states that it needs to commence discovery because of the complex nature of the power cost issues in this proceeding and the press of business ICNU faces in other proceedings.
- 6 PacifiCorp filed its response to ICNU's motion on February 25, 2008. PacifiCorp states that it does not oppose ICNU's intervention. PacifiCorp argues, however, that "ICNU has not adequately explained why expedited consideration of ICNU's Motion is necessary at this time." PacifiCorp argues that:

ICNU will not be prejudiced or otherwise harmed if its petition for leave to intervene is not granted until March 6, 2008, and it is required to wait ten business days from that date (until March 20, 2008) to receive responses to its 138 data requests. Conversely, PacifiCorp asserts that it will be unduly burdened if discovery is accelerated in the manner requested by ICNU. PacifiCorp's regulatory staff is managing significant workloads as a result of its responsibilities in other regulatory proceedings. It will take considerable time and resources for PacifiCorp to respond to all of ICNU's 138 data requests.

PacifiCorp notes that it currently is processing between five and six hundred data requests in various proceedings.

- 7 In conducting adjudicative proceedings, the Commission relies not only on its procedural rules to maintain good order, but also on the cooperative spirit that generally characterizes the conduct of litigation among parties who appear regularly before us. While the procedural rules set forth the standards for formal engagement

and govern our adjudicative processes, informal agreements among parties concerning discovery, scheduling and other matters often, in practice, facilitate our efficient conduct of cases. Unfortunately, we see the opposite result here. Because PacifiCorp has declined the opportunity to work cooperatively in the early stages of this case to exchange information that is routinely sought in the discovery process, ICNU has had to expend its resources filing a motion seeking to obtain formal party status. PacifiCorp, in turn, has had to expend its resources filing a response. Finally, the Commission must expend its resources accepting these filings, considering them on an expedited basis, and disposing of them in a formal order.

- 8 PacifiCorp's asserted reasons for reversing its initial inclination to work cooperatively with ICNU are not persuasive. The company essentially says that it faces a significant workload in responding to 138 data requests from ICNU at a time when it has pending another 400 or so data requests in this and other proceedings. While that is no doubt true, the situation would be no different if the Commission initiated the discovery process on the date of the prehearing conference when ICNU and, presumably, several other organizations, businesses or public interest groups will obtain the status of parties in this proceeding. ICNU could then file its 138 data requests along with all other parties and expect responses within 10 business days. PacifiCorp's rationale for refusing to cooperate in the commonplace practice of informal discovery prior to a first prehearing conference seem particularly misplaced in light of ICNU's willingness to be reasonable by readily agreeing to PacifiCorp's request for additional time to respond.
- 9 As to PacifiCorp's asserted concerns that a protective order will be needed to facilitate the exchange of confidential information, there is no reason the company could not already have sought such an order by motion. PacifiCorp is familiar with the Commission's practice in this regard, including the use of a standard form of protective order that the parties may propose to modify to meet the needs of an individual case. Instead of using the absence of a protective order as an excuse for not responding to early discovery requests, PacifiCorp could have worked informally with the parties to ensure the terms of such an order are agreed, presented a proposed form of order, and had it approved by now.
- 10 When one party exhibits uncooperative behavior, it is at least more likely that other parties will behave similarly toward the initially uncooperative party. Civility can be quickly lost and our proceeding will be burdened by unnecessary contentiousness that can inhibit efficiency in the dispute resolution process and limit the opportunities for informal solutions in the public interest that otherwise might be achieved via good faith efforts by the parties.

11 It is disappointing to observe a failure of cooperative spirit at this early stage of this docket. PacifiCorp's waiver of its right to have its filing considered at an open meeting suggests the company's interest in having this case get underway as soon as possible. Indeed, PacifiCorp states in its response to ICNU's motion that the company "is encouraged that ICNU wishes to proceed expeditiously in the processing of this rate case." ICNU has, and others who will participate in this docket no doubt share an interest in expeditiously moving things along, too. The Commission will promote efficient process in this instance by granting ICNU's motion for expedited consideration of its petition to intervene and by granting the petition. PacifiCorp will be required to respond to ICNU's initial discovery requests no later than the close of business on March 11, 2008.

ORDER

THE COMMISSION ORDERS THAT:

- 12 (1) The Industrial Customers of Northwest Utilities' motion for expedited consideration of its Petition To Intervene is granted.
- 13 (2) The Industrial Customers of Northwest Utilities is granted party status as an intervenor in this docket as of the date of this order.
- 14 (3) PacifiCorp is required to respond to data requests previously propounded by the Industrial Customers of Northwest Utilities in this proceeding no later than 5:00 p.m. on March 11, 2008.

DATED at Olympia, Washington, and effective February 26, 2008.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS
Administrative Law Judge