

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Application of PacifiCorp d/b/a Pacific
Power & Light Company to Adjust Prices by
an Amount Not to Exceed 2.99 Percent for
Each Customer Class

DOCKET NO. UE-060669

COMMENTS ON BEHALF OF
COMMISSION STAFF
REGARDING PACIFICORP'S 2.99
PERCENT TARIFF FILING

Recommendation

1 Staff recommends that the Commission issue a complaint and order suspending the
tariff filing by PacifiCorp in Docket UE-060669.

Description of the Filing

2 This filing is a 2.99 percent tariff rider or surcharge, which PacifiCorp filed on April
27, 2006, with an effective date of May 27, 2006. On May 12, 2006, the Company revised
the tariff's effective date to July 1, 2006. The filing is designed to generate an additional
\$7.009 million annually.

3 The surcharge applies to all PacifiCorp rate classes, before application of the BPA
credit (Schedule 93), the Low Income Charge (Schedule 91) and any applicable taxes or
franchise fees.

4 The Company states that the purpose of the filing is “to provide a portion of the [rate] increase PacifiCorp has justified in [Dockets UE-050684 and UE-050412].”¹

PacifiCorp contends that the 2.99 percent increase is justified by the evidence in the general rate case docket. The Company offers no additional evidence supporting the increase.

5 Staff understands that in proposing an increase of 2.99 percent, PacifiCorp intends to avoid the application of the extensive filing requirements in WAC 480-07-505 that apply to a “general rate case,” in which rates to any class of customers increase by 3 percent or more.

6 PacifiCorp states in its transmittal letter that the 2.99 percent tariff rider is intended to increase rates “until such time as reconsideration and appeals have determined the final amount by which base rates should be increased.” However, this time limit is not stated on the tariff itself, which states only the effective date of July 1, 2006.

Context

7 This is not a typical Commission open meeting agenda item because as PacifiCorp has mentioned, this filing is related to two consolidated adjudications: Docket UE-050684 (a PacifiCorp rate case) and Docket UE-050412 (a PacifiCorp cost deferral petition). The Commission issued a final order in those dockets on April 17, 2006, denying rate relief.² PacifiCorp’s petition for reconsideration of that order is pending before the Commission.³

8 Also pending for resolution is PacifiCorp’s Motion for Consolidation, in which the Company is seeking to consolidate this rate filing (Docket UE-060669) with Dockets UE-050684 and UE-050412.

¹ PacifiCorp’s “Application” in Docket UE-060669 at 2, ¶ 4.

² Order 04 in Dockets UE-050684 and UE-050412 (April 17, 2006), entitled “Order Rejecting Tariffs as Filed; Rejecting Stipulation of Net Power Costs; Rejecting in Part, and Accepting in Part, Stipulation on Temperature Normalization Adjustment; Determining Cost of Capital.”

³ On April 27, 2006, PacifiCorp filed its Petition for Reconsideration in Dockets UE-050684 and UE-050412, the same day it filed the 2.99 percent rate increase filing. Responses to that petition were filed June 16, 2006.

Discussion

9 The Commission has three options in responding to PacifiCorp's filing:

- 1) Reject the tariff if it is facially unlawful (*i.e.*, it violates a statute, order or rule);
- 2) Do nothing, and the tariff will go into effect by operation of law; or
- 3) Suspend the tariff (RCW 80.04.130(2)).

10 Rejection of the tariff – Staff believes that the Commission should not reject the tariff at this time, because on its face it violates no statute, order or rule. The tariff is inappropriate and should never become effective, as will be discussed later, but Staff is aware of no basis to reject it without consolidation or a hearing.

11 Taking no action on the tariff – Staff believes the Commission should not allow the tariff to take effect by operation of law, by failing to timely suspend the effect of tariff. The Company has not justified the proposed increase as being reasonable; indeed, its only evidence in support of an increase is the very evidence that led the Commission in the general rate case to deny the Company any rate increase.

12 The Company's suggestion that the 2.99 percent should be allowed during reconsideration and appeals is without merit. The Company already conceded its request was not an emergency when it voluntarily extended the effective date of this filing.

13 The Commission expects to make its decision on reconsideration in the general rate case within about two weeks of the revised effective date of the tariff filing. If the reconsideration decision is adverse to the Company and is appealed by the Company, the 2.99 percent tariff filing would yet again be inappropriate. Any request by the Company for higher rates during the appeal would properly be analyzed under the supersedeas statute (RCW 80.04.180), and the decision would be made by the court rather than by the

Commission. Should the court supersede the Commission's general rate case order, it would likely provide for refunds to customers should the Company ultimately lose its appeal.

PacifiCorp had made no provision for refunds in its 2.99 percent tariff filing.

14 Suspension of the tariff – The remaining option, and the one that Staff recommends, is that the Commission suspend this tariff filing. Suspension of the tariff will prevent it from taking effect automatically and will provide the Commission with a process for disposing of the tariff filing in a way that is consistent with its decision on reconsideration of the general rate case.

15 Staff has considered a variety of scenarios involving both positive and negative reconsideration decisions and appeals of that decision, and it has not identified any circumstance in which the 2.99 percent tariff filing is either necessary or appropriate. Whatever decision it makes on reconsideration, the Commission will be able to effect that decision by ordering PacifiCorp to file tariffs consistent with that decision (or no tariffs at all, if the Commission denies reconsideration).

16 Even if the Commission were to decide on reconsideration that it should authorize an increase of precisely 2.99 percent, the tariff filing in this docket is an inappropriate method of effecting that outcome, because it imposes a surcharge rather than directly changing rates. Moreover, this tariff filing uses a rate design – equal percentage increase – that even PacifiCorp has not proposed outside of this filing.

Conclusion

17 Staff believes that PacifiCorp's 2.99 percent tariff filing in Docket UE-060669 is unsupported, unnecessary, and inappropriate. The filing should not, however, be rejected without a hearing or consolidation with the general rate case. Consequently, the

Commission should suspend the 2.99 percent tariff filing. This gives the Commission necessary flexibility, and it protects ratepayers. It is also consistent with the Company's goal of having the 2.99 percent tariff filing reflect the Commission's decision on reconsideration.⁴

DATED June 21, 2006.

Respectfully Submitted,

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⁴ In its May 12, 2006 letter to the Commission changing the tariff's effective date, PacifiCorp stated that it was important to "link the timing of the decision on this filing with the expected timing of the Commission's decision on reconsideration ..." While the timing on the Commission's resolution of reconsideration has been delayed somewhat from what was anticipated on May 12, the importance of linking resolution of this filing to the decision on reconsideration remains.