

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

WASHINGTON UTILITIES AND)	DOCKET UE-111190
TRANSPORTATION)	
COMMISSION,)	ORDER 05
)	
Complainant,)	
)	ORDER GRANTING PETITION TO
v.)	INTERVENE, SUBJECT TO
)	CONDITION, REVISING PUBLIC
PACIFICORP D/B/A PACIFIC)	NOTICE DATE, ESTABLISHING
POWER & LIGHT COMPANY,)	PUBLIC COMMENT HEARING
)	LOCATIONS, AND REVISING
Respondent.)	SERVICE LIST
.....)	

MEMORANDUM

1 **BACKGROUND.** On July 1, 2011, PacifiCorp d/b/a Pacific Power & Light Company (PacifiCorp or Company) filed with the Washington Utilities and Transportation Commission (Commission) revisions to its currently effective Tariff WN U-75. The stated effective date is July 31, 2011. The purpose of the filing is to increase rates and charges for electric service provided to customers in the state of Washington. With this filing, the Company requests an electric rate increase of \$12.9 million, or 4.3 percent.

2 By Order 01 entered in this proceeding on July 28, 2011, the Commission suspended operation of the tariff revisions until May 31, 2012. The Commission held a prehearing conference in this matter on August 23, 2011.

- 3 **PETITION TO INTERVENE.** On August 29, 2011, the International Brotherhood of Electrical Workers (IBEW Local 125) filed a petition to intervene. In its petition, IBEW Local 125 asserts that it is a labor union representing nearly 3,600 members throughout the Pacific Northwest and that many of its members work for PacifiCorp in Oregon and Washington. It contends that it protects the interests of its membership through discussion of wages, hours, and working conditions and that although membership is its priority, it considers the impact to ratepayers. IBEW Local 125 states that many members are employed by PacifiCorp and receive their electrical service through the Company and that changes to electric service rates impacts their members. IBEW Local 125 asserts that it will not unreasonably broaden the issues, burden the record, or delay the proceeding. Finally, IBEW Local 125 states that it will not be represented during this proceeding.
- 4 By Notice issued August 31, 2011, the Commission provided all parties the opportunity to file a response to the petition. No party opposed the petition to intervene.
- 5 According to WAC 480-07-355, petitions to intervene should be filed at least three business days before the initial prehearing conference. The initial prehearing conference was held on August 23, 2011, so the petition was not timely filed. However, by Notice, all parties were afforded the opportunity to respond to the petition and it was not opposed. Accordingly, the Commission considers the merits of the petition in light of the precedent involving the IBEW in recent proceedings.
- 6 In Docket UT-082119,¹ the IBEW was initially granted intervention. After reaching a side agreement with the Applicants, it sought leave to withdraw. The Commission denied the IBEW's request for leave to withdraw voluntarily and dismissed the IBEW as a party finding that it misrepresented its interest in its petition to intervene and concluding that its participation was not in the public interest.

¹ *In the Matter of the Joint Application of Embarq and CenturyTel*, Docket UT-082119, Order 05 ¶¶ 64 – 69, 77 (May 28, 2009).

7 In Docket UT-090842,² the Commission initially denied the IBEW's petition to intervene finding that the Commission does not concern itself with labor relations issues which are the *sine qua non* of the IBEW's existence. The Commission concluded that the IBEW failed to state a substantial interest in the outcome of the proceeding and that, coupled with the union's participation and conduct in Docket UT-082119, led the Commission to believe that the IBEW's participation was not in the public interest. By Order 05³ entered in the same proceeding, the Commission granted the IBEW's petition for interlocutory review and concluded that for the purpose of analyzing whether a party has a substantial interest in the proceeding, it would apply a "zone of interest" test which required the IBEW to demonstrate a nexus between the *purpose* of its organization and an *interest* protected by a Washington statute within the Commission's jurisdiction.⁴ Applying the public interest test, the Commission concluded it had more latitude to grant intervention when doing so would enhance the Commission's understanding and analysis of the issues in the case. Using the substantial interest test, the Commission concluded that it would deny intervention based on this test alone. Therefore, it went on to consider the public interest test and concluded that the union could bring a different perspective to the issues at hand. Accordingly, the Commission granted the IBEW limited intervention to specifically address certain issues and required the union to coordinate any discovery, cross-examination or presentation of evidence with the Commission Staff and the Public Counsel Section of the office of the Attorney General (Public Counsel).

8 In this case, the IBEW Local 125 states that the union protects the interests of its membership through discussion of wages, hours, and working conditions. It acknowledges that membership is its priority but that it also considers the impact to ratepayers and notes that many of its members receive electrical service from PacifiCorp. Strictly applying the substantial interest test, the Commission would deny the petition.

² *In the Matter of the Joint Application of Verizon and Frontier*, Docket UT-090842, Order 02, ¶¶ 12 -14 (July 28, 2009).

³ *Id.* Order 05 ¶¶ 11 - 20 (September 10, 2009).

⁴ *Id.* ¶ 14.

9 However, applying the public interest test mentioned earlier, the Commission grants the petition to intervene filed by IBEW Local 125, subject to condition. The union's participation in this case is limited to those issues raised in its petition to intervene. That is, the impact to the ratepayers. IBEW Local 125 shall not raise, nor will the Commission consider, "labor relations" matters, which the Commission has previously defined as those subjects of bargaining covered by the union's collective bargaining agreement, including but not limited to the terms, tenure, wages, hours, benefits, and conditions of employment.⁵ Finally, to ensure that the intervention will "not impair the orderly and prompt conduct of the proceedings,"⁶ the Commission requires IBEW Local 125 to coordinate its participation with the Commission Staff and Public Counsel. These parties are charged with protecting the interests of consumers and coordination of the union's participation with these parties will ensure that IBEW Local 125 does not offer duplicative evidence or cross-examination.

10 IBEW Local 125 will not be represented during this proceeding. In order to appear and practice before the Commission, a person must meet the standard in WAC 480-07-345. Generally speaking, a representative must be an attorney in good standing with a State Bar Association.⁷ The presiding officer may allow representation by an officer or employee of a party. WAC 480-07-345(1)(c). In this case, IBEW Local 125 provides the name and business address of the union's Political Affairs and Communications Representative as its contact.⁸ The Commission believes that allowing the Political Affairs and Communications Representative to represent the union in this proceeding will not impair the orderly and prompt conduct of the proceedings because the union's participation must be coordinated with two parties, Commission Staff and Public Counsel, who are represented by counsel.

⁵ *Id.* ¶ 17.

⁶ RCW 34.05.443(1).

⁷ The rule allows attorneys to be members in good standing of the Washington State Bar Association, be admitted to practice before the highest court of another state, or hold status as a legal intern admitted to limited practice.

⁸ In a telephone conversation initiated by the presiding officer to obtain an e-mail address, IBEW Local 125 indicated that the Political Affairs and Communications Representative, not the Business Manager, should be the contact for this case.

- 11 **PUBLIC NOTICE.** By Order 04, entered August 31, 2011, Public Counsel was required to file a report on the status of individual customer notices by October 14, 2011. On October 14, 2011, Public Counsel filed a status report indicating that discussions regarding the notice are not yet complete and requesting that a second date, October 28, 2011, be established for the filing a status report. The request is reasonable and should be granted.
- 12 **PUBLIC COMMENT HEARINGS.** During the prehearing conference, Public Counsel requested that the Commission conduct public comment hearings in two locations, Walla Walla and Yakima, Washington. The Commission concludes that it will conduct two public comment hearings in this proceeding on consecutive dates. The Commission will conduct a public comment hearing in Walla Walla, Washington, the evening of January 24, 2012, and a noon hearing in Yakima, Washington, on January 25, 2012. The Commission will issue a separate notice of these hearings closer to the actual hearing dates.
- 13 **REVISED SERVICE LIST.** On September 29, 2011, the Commission revised its policy regarding the service of orders and notices. After receiving informal input from parties via electronic mail, the Commission issues a revised list of party contacts and their representatives in the attached Appendix A.
- 14 **CROSS-EXAMINATION EXHIBITS.** According to WAC 480-07-460(1), the Commission may require the parties to predistribute their cross-examination exhibits. It has been the Commission's practice to require the predistribution of cross-examination exhibits and to establish a deadline for that predistribution. The Commission continues this practice for this proceeding. However, the parties will *not* be required to prefile cross-examination exhibits in both hard copy and electronic format prior to the hearing.⁹ Instead, the parties will be required to predistribute to the parties and submit, by **March 1, 2012**, to the Commission's Record Center, **six (6) copies** of all cross-examination exhibits. At the conclusion of the hearing, the

⁹ Order 04, ¶ 13 entered in this proceeding on August 21, 2011, provides that the parties will *file* cross-examination exhibits on March 1, 2012. The Commission no longer requires the parties to file these exhibits; they are predistributed on the deadline established by the Commission.

Commission will establish a deadline for the parties to file both hard copies and electronic copies of the predistributed cross-examination exhibits.

DATED at Olympia, Washington, and effective October 28, 2011.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

PATRICIA CLARK
Administrative Law Judge

APPENDIX A

PARTIES' REPRESENTATIVES/CONTACTS

DOCKET UE-111190

PARTY	REPRESENTATIVE/ CONTACT	PHONE	FACSIMILE	E-MAIL
PacifiCorp	Katherine A. McDowell McDowell Rackner & Gibson 520 SW 6 th Avenue, Suite 830 Portland, OR 97204	503-595-3924	503-595-3928	katherine@mcd-law.com
	Andrea Kelly Vice President, Regulation PacifiCorp 825 NE Multnomah St., Ste 2000 Portland, Oregon 97231-2135	503-813-6043		andrea.kelly@pacificorp.com
	Natalie Hocken			natalie.hocken@pacificorp.com
	Ezra Richards			ezra.richards@pacificorp.com
Commission Staff	Gregory Trautman Assistant Attorney General 1400 S. Evergreen Park Dr. SW P.O. Box 40128 Olympia, WA 98504-0128	360-664-1187	360-586-5522	gtrautma@utc.wa.gov
Public Counsel	Sarah Shifley Public Counsel Section Office of Attorney General 800 Fifth Avenue, Suite 2000 Seattle, WA 98104-3188	206-464-6595	206-464-6451	sarah.shifley@atg.wa.gov
	Lea Daeschel			lead@atg.wa.gov
	Carol Williams			Carolw@atg.wa.gov
Industrial Customers of Northwest Utilities (ICNU)	Melinda Davison Davison Van Cleve, P.C. 333 S.W. Taylor, Suite 400 Portland, OR 97204	503-241-7242	503-241-8160	mjd@dvclaw.com
	Irion Sanger			ias@dvclaw.com
	Donald W. Schoenbeck			dws@r-c-s-inc.com
The Energy Project	Brad M.Purdy Attorney At Law 2019 N. 17 th Street Boise, ID 83702	208-384-1299	208-384-8511	bmpurdy@hotmail.com
	Charles Eberdt			chuck_eberdt@oppco.org
IBEW Local 125	Marcia L. Putman Political Affairs and Communications Representative IBEW Local 125 17200 NE Sacramento Street Portland, OR 97230	503-804-3401	503-262-9947	marcy@ibew125.com