BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re the Matter of the Petition of	)	
	)	
PACIFICORP d/b/a PACIFIC POWER	)	
& LIGHT COMPANY	)	DOCKET NO. UE-020417
	)	
for an Accounting Order Authorizing	)	
Deferral of Excess Net Power Costs	)	
	)	

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POST-HEARING BRIEF
OF THE INDUSTRIAL CUSTOMERS
OF NORTHWEST UTILITIES

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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

COMMISSION

In re the Matter of the Petition of PACIFICORP d/b/a PACIFIC POWER & LIGHT COMPANY for an Accounting Order Authorizing Deferral of Excess Net Power Costs	))))))))	DOCKET NO. UE-020417 POST-HEARING BRIEF OF THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES

INTRODUCTION

The Industrial Customers of Northwest Utilities ("ICNU") submits this Post-Hearing Brief requesting that the Washington Utilities and Transportation Commission ("WUTC" or the "Commission") reject PacifiCorp's (or the "Company") request for an accounting order authorizing the deferral of excess net power costs and the implementation of a proposed recovery mechanism ("Petition"). The Petition should be denied because it does not meet: 1) the requirements for rate relief pursuant to the five-year rate plan ("Rate Plan") approved by the Commission in Docket No. UE-991832; 2) the legal requirements for establishing deferred accounts; and 3) the legal standard for interim or extraordinary rate relief.

BACKGROUND

On November 24, 1999, PacifiCorp filed certain tariff revisions in Docket No. UE-991832, which were designed to increase general rates for electric service by approximately $25.8 million over two years. On June 20, 2000, PacifiCorp, ICNU, Public Counsel and the other parties to the proceeding submitted a stipulation ("Stipulation") to the Commission resolving the contested issues in Docket No. UE-991832. The Stipulation proposed a five-year

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Rate Plan designed to provide rate stability for customers and allow PacifiCorp to increase rates each year during the first three years of the Rate Plan. The Rate Plan allows PacifiCorp to retain significant cost savings, including savings from the ScottishPower/PacifiCorp merger as implemented through the Company's Transition Plan. PacifiCorp also agreed to pay customers credits related to the Centralia sale and the ScottishPower/PacifiCorp merger. The Commission approved the Stipulation on August 9, 2000. WUTC v. PacifiCorp, Docket No. UE-991832, Third Suppl. Order (Aug. 9, 2000).

PacifiCorp has increased rates three times pursuant to the terms of the Rate Plan (3% on January 1, 2001, 3% on January 1, 2002, and 1% on January 1, 2003). WUTC v. PacifiCorp, Docket No. UE-991832, Fourth Suppl. Order (Dec. 27, 2000); WUTC v. PacifiCorp, Docket No. UE-991832, Sixth Suppl. Order (Dec. 21, 2001); WUTC v. PacifiCorp, Docket No. UE-991832, Seventh Suppl. Order (Dec. 10, 2002).

PacifiCorp filed its Petition in this case on April 5, 2002. The Company proposed to defer its excess net power costs from June 1, 2002, until the earlier of May 31, 2003, or until the Commission ordered a power cost adjustment mechanism or other rate relief. Petition at 1. The Petition claimed that PacifiCorp's system-wide power costs that were "assumed" to be in rates are $486 million and that system-wide power costs were expected to be $674 million over the deferral period. Petition at 4, 7. The Company proposed to defer the difference between the power costs "assumed" to be in rates and its actual power costs. According to the Petition, the deferral was expected to result in a deferred account of approximately $12.7 million for the twelve months ending May 2003. Petition at 8. While the Petition specifically avoided the issue of the recovery or amortization of deferred amounts, the Company stated that it would accept

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"less than full recovery of any deferred amounts, in recognition that the Company, through the Rate Plan, committed to bear the risks associated with normal variations in power costs between rate cases." Petition at 12. The Company also stated in the Petition that any future filings regarding amortization of the deferral "would take into account the restrictions imposed on the Company under the Rate Plan." Id.

The Commission found that it should immediately resolve the legal question of whether PacifiCorp could establish a deferred account prior to a Commission order authorizing such deferrals. WUTC v. PacifiCorp, Docket No. UE-020417, Second Suppl. Order (Aug. 21, 2002). After briefing by the parties, and over the objections of Staff, Public Counsel, and ICNU, the Commission concluded that the rule against retroactive ratemaking did not prevent the Commission from authorizing deferrals for costs incurred during periods that pre-date a Commission order authorizing deferrals. WUTC v. PacifiCorp, Docket No. UE-020417, Third Suppl. Order at 2 (Sept. 27, 2002).

The Third Supplemental Order also addressed the scope of the proceeding. WUTC v. PacifiCorp, Third Suppl. Order at 1-2, 4-6. The scope of the proceeding is limited to whether or not PacifiCorp met:

> [I]ts burden to establish that, due to factors beyond the Company's control, it has incurred and is incurring during the relevant period (*i.e.* after May 31, 2002) such extraordinary levels of power costs that it should be permitted to track those costs in a separate deferral account for possible recovery through rates during some future period.

Id. at 2. The Commission stated that issues regarding whether the Petition is consistent with the Rate Plan, whether the Company's power costs are extraordinary, and whether the Company's

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power costs should be offset with ScottishPower merger savings should be considered after PacifiCorp proposes a means to recover any power cost deferrals. Id. at 6, n.1.

On October 18, 2002, PacifiCorp filed its direct testimony, including a specific recovery mechanism. On February 5, 2003, ICNU and Staff filed their direct testimony and exhibits. ICNU's witness, Randall Falkenberg, and Staff sponsored witnesses, Kenneth Elgin, Alan Buckley, and Roland Martin, all recommended denial of the application for deferred accounting. Mr. Falkenberg testified that the Company is not facing a financial emergency, that the proposed rate recovery was inconsistent with the Rate Plan, and that the Company is using inflated power costs to justify the proposed deferral. Specifically, Mr. Falkenberg testified that:

- PacifiCorp's Petition and direct testimony did not meet the requirements in Section 11 necessary to reopen the Rate Plan;
- PacifiCorp is not facing a financial emergency and the Company's earnings do not differ substantially from the financial results that should have been expected under the Rate Plan;
- PacifiCorp's actual normalized power costs are much lower than the Company claims and are similar to the amounts that were assumed in setting PacifiCorp's current rates;
- The majority of the increases in net power costs for the deferral period are related to load growth, not the 2000 power crisis, and, when correct load levels are used, the power costs in rates for Oregon, Utah and Washington are comparable;
- PacifiCorp's future projections regarding power costs and earnings are based on inaccurate budgetary information;
- PacifiCorp misrepresents the rate relief it has obtained in other jurisdictions and fails to recognize that the rate increases granted in UE-991832 were proportionally larger than the contemporaneous rate increases the Company received in other states;

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- The deferral mechanism is an implicit request for a "blank check," because it includes a potentially unlimited range of costs;
- PacifiCorp's proposal to recover deferred amounts by eliminating the Centralia sale and ScottishPower merger credits violates the Rate Plan; and
- Alternatively, the Commission allows any deferrals, then it should narrow the definition of deferrable costs to exclude inappropriate costs and adopt a sharing mechanism.

SUMMARY OF THE CASE

PacifiCorp seeks to defer and recover approximately $15.9 million in excess net power costs due to: 1) the power crisis of 2000; 2) the failure of Hunter 1 in 2001; and 3) abnormally poor hydro conditions. Petition at 3; Hearing Transcript ("Tr.") at 320:23-321:1. These conditions, however, are not primary drivers of PacifiCorp's power costs during the deferral period. Other than the summer 2002 peaking contracts, there are no costs that would be included in the deferred account associated with the 2000 power crisis. Exhibit ("Ex.") 140 at 23:12-24:13.

PacifiCorp has failed to demonstrate that the legal criteria warranting the establishment of a deferred account are present. PacifiCorp has failed to identify a "single" event that justifies the recovery of the estimated $15.9 million in deferred power costs. Rather, the Company's argument seems to center around its view that the Company made a bad deal in the Rate Plan, since it claims to have absorbed $98 million in costs because of the power crisis. Ex. 8 at 6:10-12. Setting future rates on past loses clearly violates the rule against retroactive ratemaking. Illinois Bell Telephone Co. v. Federal Communications Com'n, 966 F.2d 1478, 1482 (D.C. Cir. 1992). Accordingly, PacifiCorp maintains that "[a]ll costs that contribute to the

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Company's poor Washington earnings should be recoverable." Ex. 62 at 16:14-15. At hearing, Mr. Larsen echoed this sentiment by claiming that the power cost deferral and recovery proposals are merely flexible mechanisms "for the Commission to find solutions to help the company in its financial situation." Tr. at 129:3-17, 137:18-138:9.

The Company does not seek to reopen or break the Rate Plan. According to Mr. Larsen, the Commission does not need to amend the Rate Plan to grant PacifiCorp rate relief. Tr. at 125:23-126:6. The Company apparently interprets Section 9 of the Rate Plan Stipulation, which allows for appropriate deferred accounts, as a method to eventually recover these "costs that contribute to the Company's poor Washington earnings" through deferred accounting. The parties to the Stipulation did not intend for deferrals to be established for the purpose of improving earnings. There is no reasonable interpretation of the Rate Plan Stipulation that would allow the Commission to grant PacifiCorp the relief it seeks.

In order for the Commission to grant PacifiCorp the relief the Company requests, it must reach the following conclusions:

1. Deferred accounting is permissible for the purpose of improving earnings;

2. The parties to the Stipulation intended that deferred accounting be used as a tool for improving earnings during the term of the Stipulation; and

3. PacifiCorp may raise customer's rates during the Rate Plan by taking away the merger credit and the Centralia credit and applying those credits against the deferred account balance.

If the Commission does not reach the above conclusions, it can only grant the Company's request if it finds that PacifiCorp meets the legal requirements for interim rate relief

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set forth in Section 11(a) of the Stipulation. PacifiCorp has admitted that it cannot meet this requirement on a Company-wide basis. Tr. at 155:18-156:21.

PacifiCorp's request is inconsistent with the terms of the Rate Plan. Sections 2, 9 and 13 allow for certain explicit rate increases during the term of the Rate Plan Stipulation. Amortization of deferred accounts may not occur until January 1, 2006. The Rate Plan defines "general base rates" as any rate change, except those specifically carved out in another section of the Rate Plan. Ex. 2 § 1, n.2. The limited circumstances in which the Company may file rate changes, new tariffs or surcharges under Sections 9 or 13 do not include amortization of deferred power costs. Ex. 2 §§ 9, 13. PacifiCorp admits that its request does not fall under any of the rate increases specifically authorized under Sections 2, 9 or 13. Tr. at 153:2-4, 154:16-20. Finally, the Commission may not take away customers' Centralia and merger credits without amending three orders: 1) the order approving the Centralia credit; 2) the order approving the merger and establishing the merger credit; and 3) the order approving the Rate Plan, which further defines and confirms the payment of the credits during the Rate Plan period.

The Commission has broad discretion to amend or repeal its orders if circumstances are so extraordinary that relief is mandated to protect the public interest. However, PacifiCorp has a high burden of proof in these circumstances. There is simply no evidence in this record to support such extraordinary relief. PacifiCorp's own witness admits that its rate of return in Washington is currently above the Company's system average rate of return. Tr. at 168:24-169:1-2, 176:1-4.

PacifiCorp attempts to make its case for current rate relief based on speculative budget projections that predict poor earnings during the last two years of the Rate Plan. Ex. 140

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at 10-15. If these low earnings materialize, then PacifiCorp may seek relief at that time based on the interim rate relief standard set forth in Section 11(a) of the Stipulation.

Finally, this case is complicated by PacifiCorp's approach to its costs and revenues. PacifiCorp seeks to compare its system-wide costs to its Washington revenues. This is not the appropriate comparison. The testimony of Mr. Falkenberg shows that, if you analyze Washington costs and Washington revenues, the Company's earnings are consistent with expectations. Ex. 140 at 7-9, 15-20. Additionally, if you examine system-wide costs and system-wide revenues, PacifiCorp's earnings are in line with or better than those of other utilities in the region. The only way PacifiCorp can project poor earnings is by using the mismatch of system-wide costs and Washington revenues. Ex. 140 at 10-18. As Staff points out, this comparison is inappropriate because Washington has not adopted an allocation methodology for PacifiCorp. Ex. 101 at 10:17-12:2; Ex. 125 at 3:1-10. The Commission will undoubtedly have another opportunity to revisit this issue when PacifiCorp makes its filing associated with the multi-state process. This is not the correct case to reach any conclusions about allocation methodologies.

ARGUMENT

A. PacifiCorp Has Not Submitted Sufficient Evidence to Meet Its Burden of Proof

As the proponent of the power cost deferral, PacifiCorp has the burden of proof to demonstrate that it has met all legal requirements for establishing the deferral. WUTC v. PacifiCorp, UE-0204017, Fifth Suppl. Order at 4 (Dec. 9, 2002). In addition, PacifiCorp must show that amortization of the deferred account produces just and reasonable rates. RCW § 80.04.130(2); WUTC v. Washington Exchange Carrier Ass'n, Docket No. UT-971140, Fifth

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Suppl. Order at 24 (Oct. 30, 1998). The Company retains this burden throughout the proceeding and must establish "by a preponderance of the evidence that the rate" change is just and reasonable. WUTC v. Pacific Power & Light Co., Cause No. U-84-65, Fourth Suppl. Order at 17 (Aug. 2, 1985). A utility that does not submit sufficient support or evidence for a tariff revision cannot demonstrate that the rate change is just and reasonable. *See* WUTC v. Avista, Docket Nos. UE-991606, UG-991607 Third Suppl. Order (Sept. 29, 2000); Re Puget Sound Power & Light Co., ("PSP&L") Docket Nos. UE-920433, UE-920499, UE-921262, Eleventh Suppl. Order (Sept. 21, 1993).

PacifiCorp has presented insufficient evidence to meet its burden of proof. As the proponent of the rate change, the Company must clearly identify the elements of its prima facie case and present evidence that meets that burden. GTE Northwest Inc. v. Whidbey Telephone Co., Docket No. UT-950277, Fifth Suppl. Order (April 2, 1996). PacifiCorp has never clearly identified the legal and factual basis upon which it is requesting rate relief. The Company first requested a power cost deferral and a power cost adjustment mechanism, but did not propose a method to recover its power cost deferrals. Petition at 4, 7-8. Next, the Company's direct and rebuttal testimony claimed it was not requesting interim rate relief, but that it intended to recover its power cost deferrals by eliminating the ScottishPower merger and Centralia sale credits. Ex. 1 at 7:6-16; Ex. 90 at 1:20-2:19. At hearing, PacifiCorp changed its proposal again by formally requesting interim rate relief and a surcharge to recover its deferred power costs. Tr. at 134:4-12. The Company has not clarified whether it is requesting interim rate relief based on a hypothetical, Washington-only operations financial "emergency" or because other jurisdictions have provided the Company with rate increases.

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During the hearing, the PacifiCorp witnesses seemed willing to settle for rate relief on any basis, provided they received some relief. *E.g.* Tr. at 212:23-24 ("what the company is asking for is relief, and we'll take it in whatever form possible"). The problem with PacifiCorp's approach is that it is incumbent upon the Company to clearly set forth the relief it is requesting and the evidence that supports such relief. GTE Northwest Inc. v. Whidbey, Fifth Suppl. Order at 7. The requirement to meet the burden of proof dictates that before filing a rate case, a utility must "evaluate its responsibilities and have a strategy for fulfilling them . . . ." Id. Only after presenting adequate evidence and articulating a legal basis for relief can opposing parties rebut the Company's theories for relief and submit contrary evidence. Id.; WUTC v. American Water Resources Inc., Docket No. UW-000405, Final Order (March 30, 2001). If the theories and evidence evolve during the hearing process, it is impossible for the parties to have an adequate opportunity to rebut this proverbial moving target. The Petition should be denied because PacifiCorp has not yet clearly articulated the legal and factual basis for the proposed rate change.

PacifiCorp has also failed to present sufficient evidence that would allow the Commission to authorize a power cost deferral or immediate rate relief. PacifiCorp has not made an initial showing that its current power costs are related to extraordinary or unusual events or any other grounds upon which the Commission could authorize a deferral. Similarly, PacifiCorp has not presented evidence that the Company is suffering from a financial emergency, is facing a pending disaster, or otherwise meets the interim or extraordinary rate relief standard. The evidence presented by PacifiCorp demonstrates that it is requesting a power cost deferral because of alleged poor earnings and the fact that other jurisdictions, without rate plans, increased

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PacifiCorp's rates in 2001 and 2002. Such a deferral would violate Washington law, Commission precedent, and the Rate Plan.

Finally, PacifiCorp must demonstrate that there are extraordinary circumstances to warrant reopening of the Rate Plan. Providing PacifiCorp with immediate rate relief is not consistent with the plain language of Section 2 of the Stipulation, which establishes the appropriate rate increases. Further, Section 9 allows for the creation of certain deferred accounts, but it does not allow for the amortization or collection of these amounts during the pendency of the Rate Plan. ICNU does not believe there is any ambiguity in the Rate Plan Stipulation on this point. However, if the Commission finds there is an ambiguity, it must be construed against PacifiCorp, as the party who drafted the Stipulation. Tr. at 531:18-532:4; Lynott v. National Union Fire Ins. Co., 123 Wash. 2d 678, 690 (1994). In addition, if the Commission believes an ambiguity is present, it must ascertain the intent of the parties. Riss v. Angel, 80 Wash. App. 553, 556-57 (1996). PacifiCorp presented no testimony on this point. In contrast, Staff witness Mr. Elgin testified that such rate relief was not contemplated by the parties during the pendency of the Rate Plan. Ex. 101 at 5:4-17.

B. The Company's Requested Relief Violates the Rate Plan

PacifiCorp's request for immediate rate relief violates the Rate Plan. Section 11(a) of the Rate Plan authorizes PacifiCorp to reopen the rate plan to seek rate relief if the Company: 1) files a general rate case; 2) is making a contemporaneous interim rate request in Oregon and Utah; and 3) meets the PNB standard for interim rate relief. The Company's request for rate relief should be denied, because it has not satisfied any of the requirements of Section 11(a).

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At the hearing regarding the adoption of the Rate Plan, Mr. Elgin agreed with Judge Moss' statement that Section 11(a) would require "a filing that would include both a request for interim, that is to say, essentially, temporary rate relief, and a permanent rate increase on a prospective basis." Ex. 44 at 910:11-14. PacifiCorp witness Andrea Kelly did not disagree. One indication that the parties intended that PacifiCorp be required to file a general rate case in order to obtain rate relief during the Rate Plan is that it is impossible to evaluate the Company's need for money based on only "a one-sided 'partial' rate case . . . ." Ex. 140 at 13:9-17. A general rate case would allow the Commission the opportunity to review other declining costs and/or increasing revenues when evaluating the Company's overall financial condition. Ex. 140 at 21:12-22:2.

To receive rate relief under Section 11(a), the Company also must make contemporaneous interim rate filings in Oregon and Utah. Ex. 2 § 11(a); Ex. 101 at 10-11; Ex. 140 at 3-4. The requirement that PacifiCorp concurrently request similar rate relief in its two largest jurisdictions (Oregon and Utah) was intended to ensure that the Company would only receive rate relief if it were facing an actual, company-wide emergency. Ex. 140 at 4.

PacifiCorp is not currently and has never requested similar rate relief in Oregon and Utah. Ex. 101 at 10-11; Ex. 140 at 4-5. The Oregon case that PacifiCorp claims was a request for similar rate relief was a power cost adjustment proceeding in which the Company did not file a general rate case and did not "make any showing or allege financial hardship . . . ." Tr. at 152:17-20, 223:4-6; Ex. 22. In addition, the costs the Company is now requesting recovery of are substantially different and were incurred at much different times and for very different

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reasons than those associated with previous rate case filings in Oregon and Utah. Ex. 140 at 5:12-14.

PacifiCorp's request that the Commission review the Company's Washington operations on a stand-alone basis is also inconsistent with the Rate Plan. Ex. 101 at 10-12. The parties to the Rate Plan Stipulation, including PacifiCorp, contemplated that interim rate relief would only be granted only if the Company was facing an actual, company-wide emergency. In Docket No. UE-991832, in response to a Commission bench request regarding Section 11, PacifiCorp specifically stated that the Company should receive rate relief if "the Company has immediate and short-term demands for new financing and is unable to obtain such financing at reasonable costs based on existing and actual conditions (including all financial indicators for the Company) and short range projections at the time." Ex. 11 at 2. Similarly, at the Rate Plan hearing, Mr. Elgin, in response to a statement by Judge Moss regarding the standard for whether PacifiCorp could receive rate relief under Section 11(a), explained that it would be "a situation where the Company can no longer function economically or in a financial [sic] sound way . . . ." Ex. 44 at 867:14-16. Mr. Elgin elaborated that the Company would have to establish that its "coverages were such that it would not be able to access and sell any debt . . . ." Id. at 868:14-16. Ms. Kelly did not disagree with Judge Moss' or Mr. Elgin's statements or suggest that PacifiCorp could meet the PNB standard based on Washington-only data.

C. The Commission Should Not Amend the Rate Plan to Allow PacifiCorp to Eliminate Bill Credits or Impose a Surcharge

The Rate Plan approved by the Commission in Docket No. UE-991832 does not permit the Company to raise rates through a surcharge or the elimination of bill credits. In order

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to increase rates in this proceeding, the Commission must take the extraordinary step of amending the Rate Plan Stipulation, the Commission order approving the Rate Plan, and the Commission orders creating the bill credits. PacifiCorp has not provided evidence that would warrant such extraordinary relief.

The Petition proposes to recover the deferred excess net power costs by netting them against the Centralia sale credit and the ScottishPower merger credit. Ex. 90 at 1:21-2:19. PacifiCorp's proposal would essentially eliminate the effect of these credits by increasing rates by 4.6%. Ex. 90 at 3:1-2. In the event that that this does not provide the Company with sufficient rate relief, or that the Commission does not accept elimination of the credits, PacifiCorp proposes to recover the deferred amounts through a separate surcharge. Id. at 4:3-3; Tr. at 138:21-139:4. At hearing, Mr. Larsen admitted that the Company's recovery request was essentially a request to impose a surcharge that increases customers' bills. Tr. at 231:16-21. Neither the elimination of the bill credits, nor the amortization of deferred amounts through a surcharge, is permissible under the Rate Plan.

The Rate Plan requires PacifiCorp to return the Centralia sale and ScottishPower merger credits to customers until the amounts have been fully paid to customers. Section 4 of the Rate Plan states that PacifiCorp "will return to customers, as a separate credit on customers' bills, the gain from the sale of the Company's share of the Centralia plant. Such credit shall be paid . . . until such time as the gain has been fully returned to customers." Ex. 2 § 4. Similarly, the Rate Plan states that the "amount of the merger credit is $3.0 million per year, or approximately 1.7%, and will be passed through as a separate credit on the bill." Ex. 2 § 2. Full repayment of the credits was also required by the Commission orders approving the Centralia

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sale and the ScottishPower merger. Re Avista Corp. et al., Docket Nos. UE-991255, UE-991262, UE-991409, Second Suppl. Order (March 6, 2000); Re PacifiCorp and Scottish Power PLC, UE-981627, Fifth Suppl. Order (Oct. 14, 1999).

PacifiCorp's pre-filed testimony failed to explain how its proposal to eliminate the credits was consistent with the requirement that the credits be fully refunded to customers. Ex. 1 at 20-21; Ex. 8 at 19. In rebuttal testimony, Mr. Larsen did not disagree with the testimony by ICNU and Staff witnesses that PacifiCorp's bill credit elimination proposal violated the Rate Plan, but instead stated that "[i]f recovery via elimination of bill credits is not deemed a reasonable manner of recovery, the Company is open to additional methods of recovery, including adding an additional line on customers' billing statements." Ex. 8 at 19:9-12.

Absent a determination that PacifiCorp meets the standard for interim or extraordinary rate relief, the Commission would have to revoke or amend the Rate Plan to permit the Company to recover any deferred amounts prior to January 1, 2006. Tr. at 215:15-216:9. However, the Commission may not amend a prior order without a demonstration that there is sufficient reason or that it will further the public interest. Re Sure-Way Incinerator, WUTC Docket No. GA-868, Order (Feb. 12, 1992).

The public interest in this proceeding would be best served by abiding by the terms of the Rate Plan. The Commission would be amending a six-party settlement upon the request of only one party. Amending the Rate Plan immediately after PacifiCorp has received all of its scheduled rate increases, but before customers benefit from their promised two-year rate freeze, would "have a chilling affect on the entire regulatory process and make it much harder to reach settlements in future cases." Ex. 140 at 9:21-25.

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While PacifiCorp has presented a case for rate relief largely premised on the notion that "we need the money to improve our earnings," customers can certainly argue that they should be able to get the benefit of their bargain. In fact, customers need the rate stability they bargained for in order to remain economically viable. PacifiCorp's service territory is in the midst of a serious economic recession with high unemployment. In contrast to PacifiCorp, which is planning on increasing its workforce and doubling its profits, PacifiCorp's largest industrial customer, Boise Cascade, has announced reduced earnings and a reduced work week in Washington. Ex. 24; Ex. 25; Ex. 27 at 4; Tr. at 145:12-147:1. Essentially, PacifiCorp's customers are facing worse financial conditions than the Company, and granting PacifiCorp's Petition would harm those customers further. PacifiCorp has not demonstrated that it is in the public interest to amend the Rate Plan.

D. PacifiCorp's Proposed Deferred Account is Inconsistent with the Commission's Deferred Accounting Standards

1. Given the Lack of Statutory Authority to Establish and Approve Deferred Accounting, the Commission Must Limit its Use to Truly Extraordinary Events

PacifiCorp's request for a power cost deferred account is inconsistent with the Commission's standard for deferrals because the Petition is unrelated to extraordinary or abnormal events and is simply a request to defer costs due to allegedly low earnings from its Washington operations. Ex. 62 at 6:1-8, 12; Tr. at 318:13-21. The Commission does not have explicit statutory authority to authorize deferred accounting and has historically approved deferred accounts in limited, discrete circumstances, including the deferral of costs associated with extraordinary events, the deferral of costs that could not be anticipated, or in order to match

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costs borne by and benefits received by ratepayers. Re Avista, Docket No. UG-001980, Order (Dec. 27, 2000); Re Puget Sound Energy, ("PSE") Docket No. UE-980877, Order Authorizing Accounting Treatment (July 8, 1998).

The limited application of deferred accounting is consistent with Washington law that requires the Commission to establish rates prospectively. RCW § 80.28.020. This statutory mandate has been interpreted by the Washington courts and the Commission to prohibit retroactive ratemaking. Standard Oil Co. of Cal. v. Dep't of Pub. Works, 185 Wash. 235, 238 (1936); Re PSE, Docket No. UE-010410, Order Denying Petition at 2 (Nov. 9, 2001). Washington courts have identified only one instance in which retroactive ratemaking may be allowed—when it is necessary as an exercise of the police power to "safeguard a vital interest of the people." Hearde v. City of Seattle, 26 Wash. App. 219, 222 (1980).

In contrast to the specific mandate to set rates prospectively, there is no direct Washington law that allows the Commission to permit utilities to establish deferred accounts. The Commission has based its authority to issue deferrals on the Commission's generic authority to "regulate 'in the public interest' and to only authorize rates which are 'fair, just, reasonable, and sufficient.'" WUTC v. PSP&L, Cause No. U-81-41, Order (March 12, 1982). However, the rule against retroactive ratemaking and the lack of specific authority to authorize deferred accounting suggests that, if deferred accounting is legal, it should be applied in limited circumstances. *See*, *e.g.* Philadelphia Elec. Co. v. Pa. Pub. Util. Com'n, 502 A.2d 722 (Pa. 1985) (deferrals illegal as retroactive ratemaking unless the costs are extraordinary); Or. Op. Att'y Gen. No. OP-6076 (March 18, 1987) (deferred accounting is illegal without specific statutory authority).

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Deferred accounting has most commonly been authorized by the Commission in limited circumstances to address abnormal, unknowable or extraordinary circumstances. Re Avista, Docket No. UG-001980, Order (extraordinary market gas prices); Re PSP&L, Docket Nos. UE-951270, UE-960195, Fourteenth Suppl. Order (Feb. 5, 1997) (extraordinary storm damage). Deferred accounting also has been allowed to ensure that the ratepayers who benefit from certain costs are responsible for paying the costs. Re PSE, Docket No. UE-980877, Order (deferral authorized when costs were incurred in first five years and benefits realized over 15-20 years).

2. PacifiCorp Fails to Identify Any Extraordinary Event Warranting Deferred Accounting

PacifiCorp's Petition is not related to events or circumstances that warrant a deferral. PacifiCorp has not alleged that the power cost deferral will match costs and benefits. More importantly for this proceeding, the majority of the power costs PacifiCorp is seeking to defer are not related to unforeseen, abnormal, or extraordinary circumstances. Ex. 115 at 4; Ex. 140 at 23; Tr. at 320:5-8. Mr. Larsen admits that deferred accounting should only be authorized to address "unusual circumstances" and "not normal ongoing operation costs or normal events . . . ." Tr. at 124:20-125:5. Mr. Widmer, however, stated that the deferral the Company requests was not prompted by an unusual, single power cost related event. Tr. at 319:23-320:8. PacifiCorp's power costs do not even significantly exceed the amounts assumed in PacifiCorp's current rates. *See* Section E2. Therefore, the Petition does not fit within the narrow grounds the WUTC has established for authorizing deferred accounting.

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3. The Petition is Unrelated to Power Cost Increases but is Actually a Request to Boost the Company's Earnings and Shift the Risk of Power Cost Changes to Ratepayers

PacifiCorp does not hide the fact that the purpose of its Petition is to boost the Company's earnings—not because power costs are dramatically exceeding the amounts assumed in rates. Mr. Widmer explained that "[t]he whole purpose of the company's filing in this case is to quantify some additional costs that the company's currently not recovering to help ameliorate the company's poor earnings" in Washington. Tr. at 318:13-21; Ex. 62 at 6:2-18, 16:13-17. The proposed deferral also is extremely broad and non-specific, and is essentially the same as allowing PacifiCorp to defer costs to recover a return on equity ("ROE") shortfall. Ex. 115 at 4; Ex. 140 at 25. Under PacifiCorp's deferral, the Company will be able to defer a wide variety of costs. Ex. 140 at 24-27. A broad deferral to reduce an ROE shortfall is not a legitimate basis for deferred accounting. Id.

The Company's deferral also should be rejected because it does not include a sharing mechanism. PacifiCorp's Petition would shift all of the risk in power cost changes from the Company to ratepayers during the deferral period. Ex. 115 at 4:3-9; Tr. at 555:19-556:4. PacifiCorp's recovery proposal failed to include a sharing mechanism, and the Company's witnesses now claim that the Commission should not include a sharing mechanism. Tr. at 358:5-9. The Company argued that the Commission should decline to adopt a sharing mechanism for the deferral period because "the company has already, you know, shared a significant amount of costs that would have normally been borne by Washington customers through the $98 million of unexpected excess power costs that occurred during the power crisis." Tr. at 358:5-17, 144:10-145:11. However, any consideration of these past losses in setting the Company's rates

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or deferred amounts would violate the most basic tenets of the rule against retroactive ratemaking. Arkansas Louisiana Gas Co. v. Hall, 453 U.S. 571, 578 (1981); Illinois Bell Telephone Co. v. Federal Communications Com'n, 966 F.2d at 1482 (the cardinal rule of retroactive ratemaking is that "a utility may not set rates to recoup past losses, nor may the Commission prescribe rates on that principle").

The Company's current position contradicts its original statements, in which it agreed to accept "less than full recovery of any deferred amounts, in recognition that the Company, through the Rate Plan, committed to bear the risks associated with normal variations in power costs between rate cases." Petition at 12. The Company's current position also contrasts with the sharing mechanisms the Company proposed in the Oregon and Wyoming power cost deferral proceedings. The sharing mechanism in the Oregon proceeding significantly reduced PacifiCorp's deferred power costs to reflect the risk the Company would normally bear between rate cases. Ex. 20 at 4-6, 29; Tr. at 144:5-9. If the Commission authorizes any power cost deferrals, it should subject them to a sharing mechanism that accounts for the normal risks the Company would incur between rate cases and compensate customers for the benefits they should have received under the Rate Plan. Ex. 140 at 2-3; Ex. 20 at 4-6, 29. To do otherwise would compensate PacifiCorp for risks it has not taken. It is unlikely that PacifiCorp would seek a deferral in customers' favor if its earnings exceeded those assumed in the Rate Plan. Thus, approval of deferred accounting in this case would result in a one-sided shift in the risk of earnings deviation.

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4. The Rate Plan Stipulation Does Not Allow PacifiCorp to File Power Cost Deferrals

The Company's deferral request also contradicts the intent and terms of the Rate Plan. Section 9 of the Rate Plan was intended to provide the Company with the limited right to request "appropriate" deferred accounting applications. The only deferrals that are appropriate under the Rate Plan are requests to capture the benefits associated with regulatory assets in other jurisdictions at the time the Rate Plan was approved. Ex. 101 at 7:16-9:2; Ex. 2 § 9. The parties to the Rate Plan never envisioned that the Company would request deferrals of large scale costs, including an ROE shortfall or power costs which are already covered under the Rate Plan.

E. PacifiCorp's Rates Adequately Recover the Company's Power Costs

PacifiCorp's Petition justifies its large power cost deferral based on improper comparisons of total Company-wide power costs with revenues from its Washington operations. For the purposes of a Washington power cost deferral, it is more appropriate to compare Washington's power costs with Washington operations revenues. Such a comparison establishes that PacifiCorp's Washington power costs only slightly exceed the amount the Company "assumes" are in rates. Similarly, PacifiCorp also has grossly inflated its system-wide power costs in an attempt to justify larger deferrals. The Commission should recognize that, for the time period in which the Company is seeking a deferred account, the Company's power costs are not sufficiently different from the power costs assumed in rates to warrant a power cost deferral, interim rate relief or amendment of the Rate Plan.

PacifiCorp proposes to calculate its excess net power costs by reducing the Company's actual system-wide net power costs in dollars per megawatt hour ("MWh") by the

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system-wide net power cost baseline in dollars per MWh. Ex. 57 at 2:2-17. PacifiCorp proposes that the power cost baseline would be $486 million. Id. The Company currently estimates that its final actual net power costs for the deferral period will be $[redacted] million. Confidential Ex. 59C; Ex. 60; Confidential Ex. 140C at 14:10. The Company would then multiply these excess system-wide net power costs by the percentage of Washington load the Company deems to be in rates. Ex. 57 at 2:2-17. The total Washington excess net power costs would be approximately $15.9 million. Tr. at 320:23-321:1.

PacifiCorp has inflated its Washington allocated and total system-wide power costs. The $746 million estimate is a significant increase over the $674 million net power cost estimate in the Company's original Petition. Petition at 7. PacifiCorp also claims that its power costs will be $[redacted] million in 2004 and $[redacted] million in 2006. Confidential Ex. 57C at 8:4-6; Confidential Tr. at 314:5-315:7. As explained below, these numbers substantially exceed properly normalized power costs, the power costs the Company is currently receiving recovery of in its Oregon and Utah rates, and the power costs the Company is currently requesting to recover in its recently filed Oregon rate case, Oregon Public Utility Commission Docket No. UE 147.

1. PacifiCorp's Methodology Ignores the Effects of Load Growth

The Company's proposal should be rejected because it is not reasonable to assume that increased power costs at the system-wide level would necessarily translate into higher Washington power costs. It is inappropriate to simply multiply PacifiCorp's system-wide excess net power costs by Washington's current loads because it does not address the issue that the growth in system-wide power costs is not related to serving Washington's retail load.

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Washington has historically been and continues to be a winter peaking state, while Utah has historically been and continues to be a summer peaking state. Tr. at 501:7-12. The majority of PacifiCorp's power cost deferrals in this proceeding occurred in the summer of 2002. Ex. 160. Therefore, it is unlikely that these increased power costs were incurred to serve Washington ratepayers. Ex. 115 at 17:16-17; Tr. at 560:18-561:4, 584:14-22.

Since 1998, Washington loads have actually decreased by approximately 75,000 megawatt hours. Tr. at 172:11-173:9; Ex. 9. In contrast, Utah and Wyoming loads have grown and the Company has acquired new resources and contracts to serve this load growth and associated summer peaking needs. Ex. 9; Ex. 115 at 16-22. Significant portions of the Company's estimated excess net power costs in this proceeding are related to this load growth, including the Gadsby and West Valley peaking units, increased fuel costs related to load growth, and the summer 2002 peaking contracts. Ex. 115 at 16-22; Ex. 140 at 24:4-13; Ex. 143; Ex. 144. In addition, some of these costs, including the summer 2002 contracts, are not being recovered in Utah. Tr. at 323:10-13.

At the time PacifiCorp entered into the Rate Plan, the Company was aware that it would need to acquire new resources to meet load growth in other jurisdictions. Ex. 77; Ex. 78. PacifiCorp also was aware that load growth in other states would cause the Company's system-wide power costs to increase over the Rate Plan period.

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2. PacifiCorp Already Recovers the Majority of its Excess Power Costs in Rates

PacifiCorp's weather normalized and annualized actual loads for January 2002 to October 2002 also demonstrate that PacifiCorp's Washington power costs do not significantly exceed the amounts the Company assumes are in rates. Mr. Falkenberg performed a series of non-exhaustive, illustrative normalized adjustments to the Company's power costs that matched sales to the load levels in UE-991832, adjusted to normal hydro conditions, and removed or imputed other nonrecurring or imprudent costs. Ex. 140 at 15:7-17:10. This analysis resulted in normalized power costs of $499 million, or only 2.5% higher than the amount PacifiCorp assumes are in rates.[1/] Id. at 17:6-8. This analysis demonstrates that PacifiCorp's normalized power costs are consistent with what PacifiCorp could have expected during the Rate Plan.

PacifiCorp's forecasted power costs for the deferral period also significantly exceed the amount the Company recently has been awarded in Oregon and Utah. In Oregon, for a test year ending June 2003, PacifiCorp agreed to a settlement on a net power cost baseline of $589 million. Ex. 140 at 17:22-23. The Company's current Utah power costs in rates are also

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[1/] Messers. Falkenberg's and Buckley's power costs analyses are non-exhaustive and do not quantify all of the adjustments that would be necessary to establish an appropriate level of recovery. *See* Ex. 140 at 15-17, 29; Ex. 115 at 9-10. If the Commission authorizes PacifiCorp to defer its excess net power costs, then it should perform a comprehensive review of deferred amounts prior to amortization or other recovery. Id. The sixty or ninety-day review process proposed at hearing by Mr. Widmer is inadequate to address the complexity of the issues. Tr. at 322:5-22, 559:12-561:4. In a separate proceeding, the Commission should conduct a review that includes, but is not limited to, the appropriate sharing mechanism, removal of the costs associated with one-time events, uncertified new plants and imprudence, imputed revenues, load growth adjustments, and an appropriate cost allocation methodology. Ex. 140 at 15-17; Ex. 115 at 9-21.

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$589 million. Id. at 17:23-18:1. The majority of the difference between the $589 million Oregon and Utah power costs and Mr. Falkenberg's $499 million Washington normalized power costs is load growth. Id. at 18:1-3. The test year loads in Oregon and Utah exceed the Washington UE-991832 test year loads by 5.7% and about 5% respectively. Id. at 18:6-9. Once adjusted for Washington loads, the current Oregon power costs are $524 million and the current Utah power costs are $489 million. Id. at 18:11-12. Again, while these numbers are slightly higher than the $486 million PacifiCorp assumes is currently in rates, they do not represent a significant increase that justifies a power cost deferral (i.e., they reflect normal, acceptable deviations from normalized projections of costs). Tr. at 425:10-426:14.

PacifiCorp's projected power costs for the years following the deferral period are even more inflated. Based on budgetary information, PacifiCorp provides forecasts of future power costs of $█ million in 2004 to $█ million in 2006. Confidential Ex. 57C at 8:5-6; Confidential Tr. at 314:5-315:17. PacifiCorp has not utilized budgetary power cost forecasts in any of its recent cases in California, Oregon, Utah or Wyoming. Ex. 140 at 12:3-5. This may be because budgetary data is not equal to rate case quality and produces highly inaccurate estimates. Id. at 12:5-6. Mr. McDougal admitted that the Company's cost forecasts are not the type of data that is suitable for ratemaking. Tr. at 289:6-11. For example, PacifiCorp's recently-filed Oregon rate case estimates that the Company's 2004 power costs will be $611 million, while the budgetary estimates in this proceeding are $█ million. Confidential Ex. 57C at 8; Confidential Tr. at 314:5-315:17, 324:3-8. The Commission should give no weight to this inaccurate budgetary information.

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F. PacifiCorp Does Not Meet the Standard for Interim or Extraordinary Rate Relief

PacifiCorp has not met the standard for obtaining extraordinary rate relief.[2/] Rate relief outside of a general rate case is an extraordinary remedy that is only granted when a utility can demonstrate that the entire utility, not a hypothetical Washington-only utility, is experiencing a financial emergency or other extreme need. Re Avista, Docket No. UE-010395, Sixth Suppl. Order at 8 (Sept. 24, 2001). PacifiCorp has not presented evidence proving that the Company's overall financial situation warrants interim or extraordinary rate relief, and has essentially admitted the opposite. Tr. at 156:18-21. Furthermore, while not relevant in an extraordinary rate relief proceeding, the Company's Washington-only financial conditions and earnings demonstrate that PacifiCorp's Washington operations are not experiencing hardship or likely to lead to an impending disaster. Therefore, the Commission should deny PacifiCorp's request for extraordinary rate relief.

1. The Commission Does Not Provide Extraordinary Rate Relief Absent Truly Extraordinary Financial Conditions

When considering whether to grant extraordinary relief, the Commission will consider whether the utility has demonstrated "it is in dire, or emergency, or extraordinary, need of rate or accounting relief." WUTC v. PSE, Docket Nos. UE-011163, UE-011170, Sixth Suppl.

[2/] At hearing, PacifiCorp claimed that it was seeking "interim rate relief" in this proceeding. PacifiCorp's request is more accurately described as a request for "extraordinary rate relief." Under Commission precedent, "interim rate relief" refers to a request for immediate rate relief pending the final outcome of a utility's general rate case, while "extraordinary rate relief" refers to a request for immediate rate relief outside of a general rate case. WUTC v. PSE, UE-011163, UE-011170, Seventh Suppl. Order at 7 (Oct. 24, 2001). PacifiCorp has not filed, nor has it promised to file, a general rate case; thus, the Company must be requesting extraordinary rate relief, since it cannot meet the most basic requirement for interim rate relief.

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Order at 8 (Oct. 24, 2001). The Commission will first review the standards for interim rate relief. Id. at 12; WUTC v. Pacific Northwest Bell Telephone Co., Cause No. U-72-30, Second Suppl. Order (Oct. 10, 1972) ("PNB"). In PNB, the Commission denied a request for emergency rate relief because the Commission concluded that there was "no significant evidence of service impairment." PNB at 14. In denying interim rate relief, the Commission drew six conclusions regarding interim rate relief. These conclusions have come to make up the PNB standard, and have been consistently reaffirmed in subsequent Commission decisions. *See* WUTC v. Alderton-Mc Millan Water System, Inc., Docket No. UW-911041, First Suppl. Order (June 3, 1992); WUTC v. Cascade Natural Gas Corp., Cause No. U-74-20, Second Suppl. Order (July 23, 1974).

Essentially, the PNB standard dictates that interim rate relief may be granted, but only when it will "prevent gross hardship or gross inequity" or "impending disaster," or upon a determination that "denial of interim relief would cause clear jeopardy to the utility and detriment to its ratepayers and its stockholders." Id. Furthermore, in interim rate cases, the Commission only considers actual, existing conditions, and short-range projections at the time of the application, not extended projections or speculation. WUTC v. Washington Water Power Co., Cause No. U-80-13, Second Suppl. Order (June 2, 1980).

In considering extraordinary rate relief, the Commission should remain focused on whether the utility has proven that it is facing dire, emergency, or extraordinary conditions that warrant immediate rate relief. WUTC v. PSE, Docket Nos. UE-011163, UE-011170, Sixth Suppl. Order at 8. The Commission explained that:

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> [A] company seeking such relief must show a clear and present extraordinary need, beyond the needs inherent in any situation that may prove a need for general rate relief. A request for extraordinary relief must provide a clear showing of the adverse consequences that will reasonably flow from the lack of relief requested, and must demonstrate why relief in a general rate case, or in an interim request associated with a general rate increase, would be inadequate to protect the Company and its ratepayers from severe financial consequences.

Id. In addition, the Commission is generally less willing to grant extraordinary rate relief than interim rate relief because extraordinary rate relief does not provide the Commission with a comprehensive review of all the utility's operations. Id. at 10. Thus, the standard for granting extraordinary rate relief is even more stringent than that applied in interim rate cases.

2. PacifiCorp Is Not Experiencing A Financial Emergency, a Financial Disaster or Gross Inequity

PacifiCorp has failed to present evidence that the Company is experiencing a financial emergency or extraordinary conditions that will harm the Company's ability to provide adequate electric service at reasonable rates. There is no evidence that PacifiCorp will suffer irreparable harm if its Petition is denied, because the Company is not threatened with an impending disaster or experiencing an actual emergency, gross hardship or gross inequity. The Company did not present evidence on its financial indices and did not present testimony from its Chief Financial Officer or any other witness with similar expertise to demonstrate it has met the standard for interim rate relief.

The Company admits that it is not facing a Company-wide financial emergency and has made no decisions to cut costs or defer expenditures "purely as a result of the financial condition of the company." Tr. at 146:19-21, 156:18-21. PacifiCorp has not deferred purchases

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of new equipment or other non-necessary capital expenditures. Ex. 101 at 13:9-18; Tr. at 146:2-147:1. PacifiCorp has not "laid off any employees in response to [the Company's] current financial condition." Tr. at 145:12-19. Instead of cutting costs, deferring expenditures or postponing projects, the Company is engaged in a "strong campaign to hire" new employees and increase earnings. Tr. at 145:12-146:1; Ex. 13.

ScottishPower, PacifiCorp's parent company, recently issued a financial report that does not portray the Company as suffering a financial crisis and states that, "despite the mild, dry weather and the slow recovery from the recession in the US, PacifiCorp's underlying profit continued to improve and PacifiCorp remains on track to achieve its profit targets for the year." Ex. 27 at 4. The profit targets that the Company is "firmly on track to achieve" is the <u>doubling</u> of PacifiCorp's "operating profit to $1 billion over the next three years." Ex. 13; Ex. 27 at 4. The Company's own financial information is confirmed by a recent Federal Energy Regulatory Commission ("FERC") ruling that PacifiCorp is "[n]ot exactly . . . a utility that is feeling the pinch of financial adversity." Ex. 18 at 14. Similarly, the Wyoming Public Service Commission recently found that "the 2000-2001 'power crisis' has abated, wholesale power costs have returned to more normal levels, and PacifiCorp itself has emerged from this period without facing a disabling financial emergency going forward." Ex. 17 at 25.

PacifiCorp has not demonstrated that it is experiencing any difficulty in accessing capital markets, or that its ability to finance will be harmed by a denial of its Petition. Tr. at 156:1-21. Interim rate relief can be granted "only upon a reasonable showing that an emergency condition exists and . . . without affirmative relief the financial integrity and ability of the company to continue to obtain financing at reasonable costs will be compromised and placed in

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jeopardy." WUTC v. Washington Water Power, Cause No. U-80-13, Second Suppl. Order at 11. The Commission has rejected petitions for interim rate relief based on speculation about potential downgrading of an investment rating because the situation did not pose a "clear jeopardy" to the utility. WUTC v. Pacific Northwest Bell Tele. Co., Docket No. U-75-40, Second Suppl. Order at 6 (Sept. 26, 1975); WUTC v. PSE, Docket Nos. UE-011163, UE-011170, Sixth Suppl. Order at 8.

The Company maintains an excellent A2 bond rating from Moody's. Ex. 21. PacifiCorp failed to present any evidence regarding its interest or earnings coverage, or other evidence regarding its financing or capital needs. Ex. 101 at 14:1-14; Tr. at 156:1-12. FERC also recently concluded that "PacifiCorp should have no more difficulty raising new capital than other utilities in the same sector of the country." Ex. 18 at 14. There is no danger that the Company's current financial situation will jeopardize its ability to access the capital markets, or that granting the requested rate relief would improve that access.

Failure to earn PacifiCorp's authorized earnings is not sufficient, by itself, to justify an interim rate increase. PNB at 13. In rejecting PSE's recent extraordinary rate relief request, the Commission found that a rate of return that was positive, but beneath the authorized level, did not support immediate rate relief. PacifiCorp presented no prefiled testimony regarding its Company-wide rate of return. Tr. at 155:18-25. At hearing, the Company alleged that its current overall earnings are 6.3%. Tr. at 176:1-4. PacifiCorp is not arguing in its recently filed Oregon rate case that its earnings warrant interim rate relief. In addition, PacifiCorp's earnings should only improve and the Company achieves the announced additional

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$100 million in annual cost savings related to the ScottishPower merger over the next two years. Ex. 10; Ex 27 at 4; Tr. at 427:17-429:16.

The PNB standard also requires that immediate rate relief only be granted after an "adequate hearing." PNB at 13. The Commission has not held an adequate hearing regarding PacifiCorp's request for extraordinary rate relief. First, the parties were not aware that the Company was even requesting immediate rate relief based on its financial condition until the hearing on March 20, 2002. Tr. at 134:4-12. PacifiCorp's direct testimony specifically stated that the Company was not requesting interim rate relief. Ex. 1 at 7. PacifiCorp's testimony claimed that it could meet the PNB standard, but was declining to request interim relief. Id. Changing the type of relief requested in the middle of a proceeding undermines the "adequate hearing" that must be provided to warrant interim relief. In addition, the information filed by the Company regarding its future financial condition and power costs is not rate case quality and is insufficient to warrant an immediate rate increase. Ex. 140 at 6; Tr. at 289:6-11, 424:17-23, 594:20-23.

In 2001, the Commission ruled on its first two extraordinary rate cases. In denying extraordinary rate relief for PSE, the Commission compared PSE's filing with the information presented by Avista, which had been granted rate relief. WUTC v. PSE, Docket Nos. UE-011163, UE-011170 at 7-8. A similar comparison of PacifiCorp's financial situation demonstrates that the Company has not demonstrated a clear and present extraordinary need for immediate rate relief. Both PacifiCorp and PSE failed to present detailed documentation of actual financial indices that demonstrates the urgency for rate relief. Id.; Ex. 101 at 11:14-16:3; Ex. 8 at 7:9-8:6. Unlike the measures taken by Avista, the Company has not stated that it is

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taking <u>any</u> extraordinary steps to preserve its financial integrity other than filing for a rate increase. Tr. at 145:12-147:1. PacifiCorp has also not claimed that failure to grant relief will have any impact on its ability to finance or attract capital. Ex. 101 at 14:1-14. Unlike Avista, PacifiCorp's earnings are positive and are only slightly below its "authorized" ROE. Ex. 140 at 7-8. Finally, similar to PSE, PacifiCorp has complicated the filing with a power cost filing that is unrelated to whether the Company's financial condition is facing extraordinary or emergency conditions.

Finally, the purpose of extraordinary or interim rate relief is to provide the utility with short-term rate relief to avoid a current financial emergency or an impending disaster. Rate relief granted on an interim or extraordinary basis is the minimum rate relief necessary to allow the utility to avoid the financial catastrophe that would occur without such rate relief. <u>WUTC v. Washington Water Power</u>, Cause No. U-80-13, Second Suppl. Order at 5-6; <u>WUTC v. PSE</u>, Docket Nos. UE-011163, UE-011170, Sixth Suppl. Order at 8. The Commission must reject an interim rate request that fails to connect the amount of requested relief with the emergency conditions. <u>WUTC v. Richardson Water Cos.</u>, Docket No. U-88-2294-T, Second Suppl. Order (Nov. 10, 1988).

PacifiCorp has provided no evidence regarding how the rate relief requested in this proceeding will allow the Company to avert any pressing or immediate harm to the Company. Tr. at 490:10-491:24. PacifiCorp's financial indicators, its own actions, and the ratings reports describe a utility that will not face any financial problems should the requested rate relief not be granted. Therefore, the Company's request for immediate rate relief should be denied.

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G. The Commission Should Consider PacifiCorp's Actual, Overall Financial Condition, Not Its Washington-Only Operations

PacifiCorp's Petition is based on the faulty premise that, for purposes of immediate rate relief, the Commission should treat the Company's Washington operations on a stand-alone basis. Ex. 1 at 9-11. The Commission has never granted interim or emergency rate relief for a multi-jurisdictional utility based on its Washington stand-alone financial conditions. *E.g.* WUTC v. PNB, Cause No. U-75-40, Second Suppl. Order at 5 (interim rate relief denied and rate relief obtained in Oregon improved the Company's overall financial situation); Re Avista, Docket No. UE-010395, Sixth Suppl. Order at 8 (reviewed company-wide financial problems).

This proceeding is not a general rate case in which the Commission performs a detailed jurisdictional allocation of costs or determines the Company's authorized ROE. Immediate rate relief is an unusual remedy which is granted to fashion a short-term remedy for "existing and actual conditions." WUTC v. Washington Water Power, Cause No. U-80-13, Second Suppl. Order at 3, 5-6; *see also* Re Avista, Docket No. UE-010395, Sixth Suppl. Order. In other words, there must be a connection between the amount of interim rate relief requested and the actual financing needs or other emergency facing the utility. Tr. at 490:6-20. There is no amount of interim or extraordinary rate relief that will allow the Company to avoid a hypothetical emergency because PacifiCorp is financed and operated on system-wide basis. Tr. at 488:15-489:11. The Company can only receive rate relief if it can establish that its alleged financial crisis is real rather than imagined.

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1. PacifiCorp's Washington-Only Operations are Not Experiencing a Financial Emergency

PacifiCorp claims that, if the Commission reviewed PacifiCorp's Washington operations as a stand-alone company, the financial data for its Washington-only operations meet the PNB standard for granting interim rate relief. Ex. 1 at 11-15. In addition to being inappropriately based on a non-existent, hypothetical utility, the financial data provided by PacifiCorp is based on highly speculative budgetary data that is unacceptable for interim or extraordinary rate proceedings. Ex. 140 at 12:1-8; Tr. at 289:6-11, 399:4-401:14. The current, Washington-only financial information establishes that PacifiCorp's Washington operations are not facing a financial emergency and, in fact, are experiencing earnings slightly higher than the total Company earnings. At worst, the financial performance of its Washington operations demonstrates a [redacted]

[redacted]

Confidential Ex. 140C at 7-9.

PacifiCorp's current Washington earnings establish that the Company's financial performance is not significantly different from the Company's current "authorized" return on equity. Ex. 140 at 7-9. While the Rate Plan did not make any specific findings regarding the Company's authorized ROE, Mr. Larsen admitted that the Company accepted an "implicit return" of 7 or 8%. Tr. at 238:21-239:17. This implicit ROE is based on the fact that in Docket No. UE-991832 the Company requested a $25 million rate increase and an 11% ROE, but received a rate increase of about half the requested amount. Id. Based on the rate increase approved under the Rate Plan, the Company should have expected to earn an ROE of

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approximately 7.9% in 2002. Ex. 140 at 7-8. The implicit return accepted by the Company is similar to the adjusted ROE of 6.9% in 2002. Tr. at 168:24-169:1-2. An ROE that is one percent lower than that previously agreed to by the Company does not constitute an emergency. Ex. 140 at 8:11-12. PacifiCorp's request would increase its Washington earnings by approximately 200 basis points to provide the Company with an ROE greater than what it agreed to under the Rate Plan. Tr. at 242:7-22.

A comparison of the Company's current Washington earnings to its past earnings also demonstrates that the Company is not facing an emergency or financial hardship. In 1999, the Company filed a general—not interim—rate case when its adjusted earnings were only 5.6%. Ex. 140 at 8. If a 5.6% ROE did not constitute an emergency in 1999, then a 6.9% ROE should not constitute an emergency now. Id.

2. PacifiCorp is Not Experiencing Gross Inequity or Unfairness

PacifiCorp claims that this proceeding is more a matter of fairness than crisis and that the Company is currently experiencing gross inequity or gross unfairness in its Washington operations. Tr. at 157:7-17. According to PacifiCorp, the Company's Washington operations are being subsidized because other jurisdictions have provided the Company with rate increases. Ex. 1 at 16-17; Tr. at 168:20-169:22. PacifiCorp also appears to argue that the Commission should consider the Company's past power cost losses in this proceeding. PacifiCorp's simplistic arguments violate Washington law and are contradicted by evidence that demonstrates that the Company's rates adequately compensate it for the services it provides in Washington. Tr. at 420:3-423:1, 456:15-457:1, 488:20-489:11.

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PacifiCorp's gross inequity argument ignores basic ratemaking principles. Rates in Washington are established to be just, reasonable, non-discriminatory and sufficient. RCW § 80.28.020. Rates are based on the utility's costs to provide adequate electric service for its Washington customers and to provide the utility with an opportunity, but no guarantee, to earn a reasonable rate of return. Charles F. Phillips, Jr., The Regulation of Public Utilities 182 (1984). It would violate Washington law for the Commission to increase a utility's rates merely because utility commissions in other states have provided it with rate increases.

The fact that PacifiCorp has received rate increases in other jurisdictions does not demonstrate that the Company's Washington rates are not comparable or are grossly inequitable. The Company has not submitted sufficient information for the Commission or parties to compare PacifiCorp's rates in its various jurisdictions in order to determine if its Washington rates are fair or equitable. Even if such a review were appropriate, it should occur only after PacifiCorp has submitted rate case quality information regarding the Company's costs in Washington, its costs and rates in its other jurisdictions, and a proposed inter-jurisdictional cost allocation methodology. The issues regarding inequity and cross subsidization should be reviewed only in a full rate case that provides the Commission the opportunity to review all of the Company's costs.

The evidence presented in this proceeding also contradicts PacifiCorp's gross inequity and cross subsidization claims. First, PacifiCorp's argument ignores the fact that in 1999 the Company received proportionally larger rate increases in Washington than in Oregon and Utah. Ex. 140 at 19-22. Much of the subsequent rate increases in Utah and Oregon simply matched the rate increases already allowed in UE-991832. Id. Second, the power costs at issue

in this proceeding do not establish that Washington is being subsidized by any other jurisdiction because the normalized and load-adjusted baseline power costs for Oregon, Utah and Washington are roughly comparable. Ex. 140 at 10-19; Tr. at 417:9-19, 421:23-423:1. While the power costs in Washington rates may be slightly lower than in Utah and Oregon, the difference does not suggest any inequity or that Washington is being subsidized by other jurisdictions. Id. In addition, a comprehensive review of all the Company's costs and appropriate cost allocation methodologies suggests that Washington may actually be subsidizing the Company's other jurisdictions. Tr. at 456:15-457:1, 478:24-479:9, 488:20-489:11. If PacifiCorp seriously believes that its Washington operations are being subsidized by its other jurisdictions, then the Company should support its gross inequity claim when it makes its multi-state filing with the Commission later this year.

CONCLUSION

PacifiCorp's Petition violates the Rate Plan and takes from customers the benefits they expected to receive under the Rate Plan, the ScottishPower merger, and the sale of the Centralia plant. PacifiCorp has also failed to show it is suffering from any financial distress or unusually high power costs. PacifiCorp's power cost deferral also violates Washington law because it is not related to a single, extraordinary event. PacifiCorp is a financially strong utility that maintains excellent access to capital markets, is not experiencing any cash flow problems and does not meet the Commission standard for granting interim or extraordinary rate relief. The Commission should deny the Petition because PacifiCorp has not carried its burden of proof showing such extraordinary relief is warranted in this case.

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WHEREFORE, ICNU respectfully requests that the Commission issue an order rejecting PacifiCorp's Petition.

Dated this 11th day of April, 2003.

Respectfully submitted,

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