

June 23, 2006

*Via Electronic Mail and Federal Express*

Chairman Mark Sidran  
Commissioner Patrick Oshie  
Commissioner Philip Jones  
Washington Utilities and Transportation Commission  
PO Box 47250  
1300 S Evergreen Park Drive, SW  
Olympia WA 98504-7250

Re: PacifiCorp's Application for Deferral of Grid West Loans  
**Docket No. UE-060703**

Dear Commissioners:

The Industrial Customers of Northwest Utilities ("ICNU") submits this letter urging the Washington Utilities and Transportation Commission ("Commission" or "WUTC") to deny PacifiCorp's (or the "Company") Application for Deferred Accounting ("Application") filed on May 1, 2006. PacifiCorp is seeking to defer costs related to loans associated with funding Grid West, a failed attempt at establishing a Regional Transmission Organization ("RTO").<sup>1/</sup> PacifiCorp first incurred costs associated with Grid West in 2002, when Grid West was in its "start-up phase."<sup>2/</sup> The Commission should reject the Application because PacifiCorp is attempting to defer costs incurred without prior Commission approval, violating the prohibition against retroactive ratemaking.<sup>3/</sup>

It is a "longstanding principle that the Commission absolutely requires a company that wishes to book costs to a deferral account for treatment as a regulatory

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<sup>1/</sup> Re PacifiCorp, Docket No. UE-060703, Application for Accounting Order at ¶ 6 (May 1, 2006) ("Application").

<sup>2/</sup> Application at ¶ 6.

<sup>3/</sup> It is the Commission's practice to address separately the questions of accounting treatment and recovery in rates. WUTC v. PacifiCorp, Docket Nos. UE-050684 and UE-050412, Order No. 04 at ¶ 303 (Apr. 17, 2006). Because the question of recovery in rates requires a detailed record not present at this point in the proceeding, ICNU only addresses why PacifiCorp's Application fails to qualify for deferred accounting. ICNU reserves the right, however, to raise additional objections if PacifiCorp attempts to recover these costs in rates at a future date.

asset to first apply for and obtain express authority to do so.”<sup>4/</sup> The reasons for advance approval of a deferred account are not novel; advance approval is required because the Commission is prohibited from retroactive ratemaking. Pursuant to RCW § 80.28.020, the Commission is only allowed to set rates on a prospective basis, and not allowed to set current or future rates based on past expenses that a utility has failed to recover.<sup>5/</sup> Retroactive ratemaking has been deemed “evil” and “extremely poor public policy” because “the consumer has no opportunity prior to receiving or consuming the service to learn what the rate is or to participate in a proceeding by which the rate is set.”<sup>6/</sup>

The Grid West costs that PacifiCorp seeks to defer violate the foregoing principles. PacifiCorp admits that it incurred these costs beginning in 2002, some four years before its Application. The Company has never obtained prior approval to defer these costs. If the Commission were to approve the Application, the approval would violate the prohibition against retroactive ratemaking. Such an action would go beyond the powers granted to the Commission by the legislature.

PacifiCorp attempts to explain the Company’s situation with accounting principles. Specifically, PacifiCorp argues that the loans are a “capital expenditure” that does not become a cost until the loans become unrecoverable and are written off.<sup>7/</sup> That explanation is contrary to past Commission decisions regarding treatment of costs related to RTO development. The Commission has already ruled that costs related to RTO development are “ordinary, necessary and reasonable so long as the expenses are incurred to fulfill the utility’s obligation to operate and invest in facilities necessary to serve the public.”<sup>8/</sup> There is no question that the costs PacifiCorp seeks to defer are ordinary RTO-related costs. It follows that PacifiCorp should have sought to recover these expenses in the Company’s general rate proceedings when these costs were incurred, not four years after the fact. Moreover, deferred accounting is warranted only under “extraordinary circumstances.”<sup>9/</sup> There is nothing “extraordinary” about costs incurred for RTO development.

Moreover, if PacifiCorp’s Application were granted, it would set a poor precedent and create a “slippery slope” capable of abuse by utility companies trying to evade the prohibition against retroactive ratemaking. The test for determining whether costs qualify for deferred accounting would become dependent on how the costs were financed, not when they were actually incurred and spent. Utilities could take advantage of this by disguising costs as “loans” and seeking deferral of these “loans” that they would otherwise not be entitled to recover. The unacceptable result of such a “slippery

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<sup>4/</sup> WUTC v. Puget Sound Energy, Docket Nos. UG-040640, UE-040641, UE-031471, and UE-032043, Order No. 06 at ¶ 170 (Feb. 18, 2005).

<sup>5/</sup> Re Puget Sound Energy, Docket No. UE-010410, Order Denying Petition to Amend Accounting Order at ¶ 7 (Nov. 9, 2001).

<sup>6/</sup> WUTC v. Puget Sound Power & Light Company, Docket No. U-81-41, Sixth Suppl. Order at 17-18 (Dec. 19, 1988).

<sup>7/</sup> Application at ¶¶ 5-6.

<sup>8/</sup> WUTC Docket Nos. UE-050684 and UE-050412, Order No. 04 at ¶ 136.

<sup>9/</sup> Id. at ¶ 305.

slope” is that future customers will end up footing the bill for costs in which there is no possibility of deriving a customer benefit.

In fact, those costs are start-up costs for a defunct organization from which no customer will receive any benefit. The Federal Energy Regulatory Commission is no longer actively promoting a Northwest RTO or its RTO-related standard market design.<sup>10/</sup> In addition, without the participation of the Bonneville Power Administration, a Northwest RTO will never be feasible. Simply put, there are no customer benefits associated with these costs because Grid West will not exist in the future.

In conclusion, ICNU requests that the Commission deny PacifiCorp’s Application because the Company seeks to defer costs incurred without prior approval from the Commission. To allow PacifiCorp to defer these costs would not only be contrary to fundamental ratemaking principles, but would create a dangerous precedent and uncertainty regarding the future regulatory landscape. PacifiCorp’s Application must be denied on the basis that actual recovery of these costs would violate the prohibition against retroactive ratemaking.

Sincerely yours,

Melinda J. Davison

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<sup>10/</sup> See Bonneville Power Admin. et al., 112 FERC ¶ 61,012 (July 1, 2005).