

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND	)	
TRANSPORTATION COMMISSION,	)	
	)	
Complainant,	)	
	)	
v.	)	DOCKET NO. UE-991832
	)	
PACIFICORP d/b/a PACIFIC POWER	)	
& LIGHT COMPANY,	)	
	)	
Respondent.	)	
.....	)	
	)	
In re the Petition of	)	
	)	DOCKET NO. UE-020417
PACIFICORP d/b/a PACIFIC POWER	)	
& LIGHT COMPANY	)	
	)	
For an Accounting Order Authorizing	)	SECOND SUPPLEMENTAL
Deferral of Excess Net Power Costs.	)	ORDER: PREHEARING
	)	CONFERENCE ORDER
.....	)	

*1* **PREHEARING CONFERENCE:** On April 5, 2002, PacifiCorp, d/b/a Pacific Power and Light Company (“PacifiCorp” or the “Company”) filed with the Commission in Docket No. UE-020417 a petition “for an order authorizing deferral of excess net power costs incurred by the Company in serving its Washington customers.” PacifiCorp refers in its Petition for an accounting order to the fact that it is currently subject to a Rate Plan in Washington that limits the availability of general rate increases through 2005. The Commission approved the Rate Plan on August 9, 2000, in its Third Supplemental Order Approving and Adopting Settlement Agreements; Rejecting Tariff Sheets; Authorizing and Requiring Compliance Filing in Docket No. UE-991832.<sup>1</sup>

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<sup>1</sup>Docket No. UE-991832, a general rate proceeding by which PacifiCorp sought increases to its electric rates to Washington customers, was initiated by the Company’s filing on November 24, 1999.

- 2 On May 13, 2002, Commission Staff, Industrial Customers of Northwest Utilities (ICNU), Public Counsel, Northwest Energy Coalition (NWECC), and the Energy Project filed with the Commission in Docket Nos. UE-991832 and UE-020417 their Joint Motion to Consolidate and Petition to Rehear or Reopen Docket No. UE-991832. PacifiCorp filed an answer to the motion on May 30, 2002.
- 3 On July 12, 2002, the Commission entered its order consolidating Docket Nos. UE-991832 and UE-020417 for the limited purpose of considering the Joint Motion in the context of the PacifiCorp's request for an accounting order. The Commission conducted a duly noticed prehearing conference before Administrative Law Judge Dennis J. Moss on August 6, 2002.
- 4 **PETITION TO INTERVENE:** On May 10, 2002, the Industrial Customers of Northwest Utilities (ICNU) filed a timely Petition For Leave To Intervene and demonstrated by their motion a substantial interest in the proceeding. The motion was unopposed at prehearing. ICNU's petition to intervene is granted.
- 5 **PARTIES:** James M. Van Nostrand, Stoel Rives, Seattle, Washington, represents PacifiCorp. Melinda Davison, Davison VanCleve, Portland, Oregon, represents ICNU. Robert Cromwell, Assistant Attorney General, Seattle, Washington, represents the Washington State Attorney General's Office of Public Counsel. Robert Cedarbaum, Assistant Attorney General, Olympia, Washington, represents the Commission's regulatory Staff.
- 6 **DISCOVERY / PROTECTIVE ORDER:** The Commission's discovery rule, WAC 480-09-480, is invoked as requested by the parties. The parties' request for a protective order to facilitate discovery is granted. The Commission has by separate order entered its standard form of protective order.
- 7 **ISSUES, PROCESS AND SCHEDULE:** The purpose of the prehearing conference on August 6, 2002, in part, was to discuss and formulate the issues in the proceeding and to determine other matters to aid in its disposition, as specified in WAC 480-09-460. PacifiCorp seeks by its Petition the limited relief of an accounting order that would authorize the Company to defer asserted "excess net power costs incurred by the Company in serving its Washington customers" beginning as of June 1, 2002. The Company proposes to continue the deferrals until the earlier of "twelve months (through May 31, 2003)," or until "such time as the Commission approves a Power Cost Adjustment Mechanism, or PCAM, for the Company's Washington customers, or some similar form of relief to address extraordinary power costs." In other words, PacifiCorp does not at this juncture seek to recover any of the asserted excess power costs. As previously stated, PacifiCorp refers in its Petition to the fact that it is currently subject to a Rate Plan in Washington that imposes certain restrictions on its rights to file for rate changes through 2005.

- 8 PacifiCorp's Petition is unsupported by affidavits or other evidence that might support its request for an accounting order. The matter has been set for hearing to afford PacifiCorp and opportunity to present evidence and argument. We raised at prehearing the suggestion that an early filing date for dispositive motions could be set to permit the Company to file a motion for summary determination supported by appropriate affidavits and exhibits pursuant to WAC 480-09-426(2), if the Company can assert in good faith that there are no material issues of fact in controversy and that it is entitled to judgment on its Petition as a matter of law. PacifiCorp did not urge such process and no procedural date was established. Instead, PacifiCorp proposed that it be permitted to prefile testimony on October 18, 2002.
- 9 PacifiCorp bears the burden of going forward and the ultimate burden of proof. Whatever facts PacifiCorp believes support the Company's filing will be disclosed through its prefiled direct testimony. The scope of the Company's prefiled testimony will shape, in part, the scope and need for responsive testimony; other parties may or may not contest the facts asserted by PacifiCorp. Because certainty regarding what discovery and preparation time may be necessary for Commission Staff and other parties to prepare responsive testimony cannot be achieved until PacifiCorp files its direct case, Commission Staff and the other parties urged that further procedural dates be held in abeyance until after October 18, 2002. PacifiCorp did not object to this proposal. We require that the parties attempt to agree to a proposed schedule and submit their proposal in writing during the week of October 21, 2002. If the parties cannot agree to a schedule, they may submit alternative proposals. A second prehearing conference is scheduled for October 29, 2002, at which time we will consider a proposed schedule for further process. Parties may participate in the second prehearing conference via the Commission's teleconference bridge line and will not be expected to appear in person.
- 10 Public Counsel, Commission Staff, and ICNU argue that the Commission's consideration of PacifiCorp's Petition should include consideration of whether PacifiCorp's Petition is consistent with the letter and intent of the Rate Plan, whether there are currently extraordinary circumstances warranting "revisiting" PacifiCorp's power costs considering the Company's actual power supply situation, and whether PacifiCorp's proposed power cost deferral should be offset by revenue requirement reductions, including any company-wide cost savings resulting from the ScottishPower merger. In addition, these parties argue that the amount of PacifiCorp's power costs that are currently "in rates" may be a significant point of dispute.
- 11 Another issue discussed at prehearing is whether the Commission lawfully can authorize PacifiCorp to establish a deferred account that will include entries from June 1, 2002, forward. Commission Staff argued its view that this would run afoul of principles that generally preclude retroactive rates. PacifiCorp did not take a firm position on the question at prehearing, but would support a June 1, 2002, effective

date, if that lawfully can be allowed. This legal question was set for early briefing. Parties are required to file initial briefs on the issue on August 23, 2002. Reply briefs are required to be filed by August 30, 2002.

- 12 **MOTION TO REOPEN OR REHEAR:** A motion to reopen a proceeding may be filed “any time after the close of the record and before entry of the final order.” WAC 480-09-820(2). The Commission entered its final order in Docket No. UE-991832 more than two years ago, on August 9, 2000. The Joint Motion To Reopen is untimely.
- 13 The parties do not dispute that Commission action on the Joint Motion To Rehear is a matter entirely within the Commission’s discretion. Although there may be circumstances that would necessitate rehearing a general rate proceeding, it is premature, at this stage of this proceeding, to make such a determination. The parties may renew the motion at a later stage. The Commission denies the Joint Motion to Reopen or Rehear Docket No. UE-991832.
- 14 This ruling on the Joint Motion does not preclude the parties from seeking to have relevant portions of the record in Docket No. UE-991832 incorporated by reference as part of the record in our proceedings in Docket No. UE-020417, nor does it preclude advocating that the Commission should modify or amend its Third Supplemental Order Approving and Adopting Settlement Agreements; Rejecting Tariff Sheets; Authorizing and Requiring Compliance Filing in Docket No. UE-991832.
- 15 **FILING; COPIES OF MATERIALS:** Parties must submit an original and twelve (12) copies of all documents filed. All filings should be directed to the Commission Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive, S.W. Olympia, Washington 98504-7250, or by hand delivery to the Commission Secretary at the Commission’s records center at the Washington Utilities and Transportation Commission, 1300 S. Evergreen Park Drive, S.W., Olympia, Washington, 98504. Both the post office box and street address are required to expedite deliveries by U.S. Postal Service.
- 16 **An electronic copy of all filings should be provided by e-mail delivery to <[records.wutc.wa.gov](mailto:records.wutc.wa.gov)>.** Alternatively, Parties may furnish an electronic copy by delivering with each filing a 3.5 inch IBM formatted high-density diskette including the filed document(s) in .pdf format, MS Word 97 (or later), or WordPerfect 5.1 (or later) format.
- 17 All paper copies of testimony, exhibits, and briefs are required to conform to the publication guidelines attached to this Order. Any filing that fails to conform to these standards may be required to be refiled.

18 **NOTICE TO PARTIES:** Any objection to the provisions of this Order must be filed within ten (10) days after the date of mailing of this statement, pursuant to WAC 480-09-460(2). Absent such objections, this prehearing conference order will control further proceedings in this matter, subject to Commission review.

DATED at Olympia, Washington and effective this 21<sup>st</sup> day of August, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS  
Administrative Law Judge

## Appendix B

### I. Requirements for ALL paper copies of testimony, exhibits, and briefs

The following requirements are restated from and clarify the Commission's rules relating to adjudications.

A. All paper copies of briefs, prefiled testimony, and original text in exhibits must be

- On 8-1/2x11 paper, punched for insertion in a 3-ring binder,
- Punched with **OVERSIZED HOLES** to allow easy handling.
- Double-spaced
- 12-point or larger text and footnotes, Times New Roman or equivalent serif font.
- Minimum one-inch margins from all edges.

Other exhibit materials need not be double-spaced or 12-point type, but must be printed or copied for optimum legibility.

B. All electronic and paper copies must be

- **SEQUENTIALLY NUMBERED** (all pages). **THIS INCLUDES EXHIBITS**. It is not reasonable to expect other counsel or the bench to keep track of where we are among several hundred (or sometimes even just several) unnumbered pages.
- **DATED ON THE FIRST PAGE OF EACH ITEM** and on the label of every diskette. If the item is a revision of a document previously submitted, it must be clearly labeled (**REVISED**), with the same title, and with the date it is filed clearly shown. Electronic files must be designated **R** for revision, when applicable, with an ordinal number showing the revision number.

**II. Identifying exhibit numbers; Exhibits on cross examination.**

A. **Identifying exhibits.** It is essential to mark documents so you, opposing counsel, and the Commission can find them. We ask you to comply with this clarification of prior practice, based on recent experience:

- **Use the witness's initials and add an ordinal number for each exhibit.** Identify testimony with a T and confidential exhibits with a C. Example: Witness Jane Quintessentia Public. Her original testimony would be JQP-1T or JQP-1TC, her first attached exhibit would be JQP-2, etc. NEVER identify the attachments merely with a single ordinal number, as that will provide the maximum confusion to everyone, including your witness.

B. Prepare a list of your exhibits with their title and (JQP) designation in digital form and in a format specified by the Commission. Send it to the presiding officer before the appropriate prehearing conference. That will simplify identification and ease administrative burdens.

**NOTE: Be prepared to submit all of your possible exhibits on cross examination several days prior to the hearing.** We will attempt to schedule a prehearing conference to deal with the exhibits as close as possible to the hearing itself, but we have administrative needs that require prefiling.