

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

PUBLIC COUNSEL AND THE  
INDUSTRIAL CUSTOMERS OF  
NORTHWEST UTILITIES,

Joint Complainants,

vs.

PACIFICORP d.b.a. PACIFIC POWER &  
LIGHT CORP.,

Respondent.

DOCKET UE-110070

PACIFICORP'S ANSWER AND  
AFFIRMATIVE DEFENSES TO JOINT  
COMPLAINT

**I. SUMMARY STATEMENT**

1 Pursuant to WAC 480-07-370(1)(c) PacifiCorp (PacifiCorp or the Company) hereby files its Answer to the Joint Complaint filed by the Public Counsel Section of the Washington Attorney General's Office (Public Counsel) and the Industrial Customers of Northwest Utilities (ICNU) (collectively, Complainants). Concurrent with this filing, PacifiCorp is also filing a Motion to Dismiss the Joint Complaint pursuant to WAC 480-07-380(1).

2 This case involves an allegation by Complainants that PacifiCorp violated certain statutes and Washington Utilities and Transportation Commission (Commission) rules and, as a result, Complainants entered into a settlement in the Company's 2009 rate case, Docket UE-090205 (2009 GRC), that they would not have entered into but for the alleged violations. At its heart, ICNU and Public Counsel allege that PacifiCorp (1) disclosed through discovery information that called into question the validity of the pro forma renewable energy credit (REC) sales price

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included in its filed case and (2) failed to include in its response to data requests certain REC sales contracts that Complainants allege should have been disclosed.

3 As this Answer demonstrates, the first allegation on its face is without merit. Complainants cannot claim that the Company violated Washington law because the Company calculated a pro forma adjustment in a manner that they dispute. This is especially true when, by their own admission, both ICNU and Public Counsel had the information they now claim undercuts the Company's adjustment when they entered into the rate case settlement.

4 Complainants' second basic allegation is also wrong on the facts because by the clear and unambiguous text of the data requests served on the Company, the Company provided full and complete responses. Complainants' claims rest on their erroneous allegation that because the Company did not provide information that they did not request, it somehow concealed the information. This is simply untrue as a matter of law.

5 And finally, as described more fully in the Motion to Dismiss, the Joint Complaint's claims under the reparations statute are time-barred, and its claims under the overcharges statute are deficient, as are its claims seeking amendment of the 2009 GRC Final Order.

## II. ANSWER

6 Respondent PacifiCorp answers the Joint Complaint as follows:

7 Paragraph 1 of the Joint Complaint describes the parties to this action. PacifiCorp admits that it is a "public service company" and an "electrical company" as those terms are defined in RCW 80.04.010. PacifiCorp admits that it is subject to the jurisdiction of the Commission. PacifiCorp admits that both Complainants were intervenors in the Company's 2009 GRC and in Docket UE-

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100749, the Company's 2010 rate case (2010 GRC). The remainder of Paragraph 1 describes Public Counsel and ICNU and requires no response.

8 Paragraph 2 identifies the statutes and rules that may be at issue in this proceeding and requires no response.

9 Paragraph 3 alleges the legal basis upon which the Complainants have filed this Complaint and the relief requested. To the extent that this paragraph includes legal conclusions no response is required; however, should an answer be required, PacifiCorp denies the same.

10 The Company denies the allegations in Paragraph 4.

11 Paragraph 5 states that the Joint Complaint is supported by information and belief and that specific data will be provided through discovery. This allegation does not require a response, but to the extent that it does, the Company denies it.

12 Paragraph 6 describes the legal basis for Commission jurisdiction over the Joint Complaint. Because this paragraph represents legal conclusions it does not require a response.

13 Answering Paragraph 7, PacifiCorp admits that it filed its 2009 GRC on February 9, 2009 and that the rate effective period was 2010. PacifiCorp denies that the test period was calendar year 2008—it was the twelve months ended June 30, 2008. The Company admits the remaining allegations in Paragraph 7 describing the pro forma REC-revenue adjustment included in its filed case.

14 PacifiCorp admits the allegations in Paragraph 8.

15 Answering Paragraph 9, PacifiCorp admits that it sent an initial response to ICNU Data Request 2.1 (ICNU 2.1) on March 10, 2009. The response speaks for itself and PacifiCorp disputes the Joint Complaint's characterization of the response. PacifiCorp also denies the allegation that

PacifiCorp understood ICNU 2.1 as a request for information regarding all *executed sales contracts*.

16 Answering Paragraph 10, the Company's response to ICNU 2.1 speaks for itself and the Company denies the characterization of the response.

17 Answering Paragraph 11, PacifiCorp admits that it provided an update to its response to ICNU 2.1 on July 2, 2009. The Company's response to ICNU 2.1 speaks for itself and the Company denies the characterization of the response. PacifiCorp also denies the allegation that PacifiCorp understood ICNU 2.1 as a request for information regarding all *executed sales contracts*.

18 PacifiCorp denies the allegations in Paragraph 12.

19 PacifiCorp admits the allegations in Paragraph 13.

20 Answering Paragraph 14, PacifiCorp admits that it received ICNU 2.2 and that Paragraph 14 correctly quotes its language. The Company admits that it sent an initial response on March 10, 2009, and a revised response on March 19, 2009. The Company's responses to ICNU 2.2 speak for themselves and the Company denies the characterization of the responses.

21 Answering Paragraph 15, the Company admits the parties began settlement discussions on August 3, 2009, reached a settlement in principle on August 5, 2009, filed an all-party stipulation on August 25, 2009, and that the stipulation included \$657,755 in Washington-allocated REC revenue for the 2010 rate effective period. The Company has insufficient knowledge to either admit or deny the allegations in the second sentence of Paragraph 15 because it does not know what informed other parties' settlement discussions. The Company acknowledges that neither ICNU nor Public Counsel requested any additional information regarding 2009 or 2010 REC sales prices or revenues.

22 The Company admits the allegations in Paragraph 16 and 17.

23 Answering Paragraph 18, PacifiCorp admits that ICNU and Public Counsel obtained the actual California Contracts and admits that the information is highly confidential. PacifiCorp also admits that those contracts were not produced during the 2009 GRC because they remained contingent until *after* the discovery process was suspended and the stipulation filed. PacifiCorp denies the remainder of the allegations in Paragraph 18.

A. **First Cause of Action—Violation of RCW 34.05.452 and 80.04.130 and WAC 480-07-540—PacifiCorp’s Proposed Pro Forma Revenue Adjustment was Inconsistent with Known and Measurable Rate Effective Period Revenues.**

24 The allegations in Paragraphs 19 and the first Paragraph 20 are legal conclusions that require no response.<sup>1</sup>

25 Answering the allegations in the *second* Paragraph 20, PacifiCorp admits that the pro forma sales price included in Exhibit No. RBD-3 in the 2009 GRC was \$3.50 per REC. PacifiCorp denies the remainder of the allegations in the second Paragraph 20.

B. **Second Cause of Action—Violation of WAC 480-07-405(7) and RCW 80.28.010—Failure to Present Accurate and Complete Evidence Resulted in Settlement Approving Unjust, Unreasonable, and Unfair Rates.**

26 The first and third sentences of Paragraph 21 are legal conclusions and require no response. PacifiCorp denies that it failed to provide accurate and complete responses to ICNU 2.1 and 2.2. PacifiCorp denies that the settlement in the 2009 GRC allowed the Company to charge and collect unjust, unreasonable, and unfair rates.

27 Answering Paragraph 22, the Company admits that the paragraph correctly describes the terms of ICNU 2.2. PacifiCorp denies the remainder of the allegations in Paragraph 22.

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<sup>1</sup> The Joint Complaint has an unnumbered paragraph between Paragraphs 20 and 21. For purposes of this answer the Company refers to the unnumbered paragraph as “the second Paragraph 20.”

28 Answering Paragraph 23, the Company denies that Complainants correctly state the terms of  
ICNU 2.1. With respect to the fourth and fifth sentences of Paragraph 23, the Company lacks the  
knowledge to respond. PacifiCorp denies the remainder of the allegations in Paragraph 23.

C. **Third Cause of Action—Violation of WAC 480-07-405(8)—Failure to Supplement  
Data Responses.**

29 Answering Paragraph 24, the first two sentences are legal conclusions that require no response.  
PacifiCorp denies the third sentence to the extent that it fails to properly characterize the terms of  
ICNU 2.1 and 2.2. PacifiCorp denies the remainder of the allegations in Paragraph 24.

**III. AFFIRMATIVE DEFENSES**

30 Complainants' Joint Complaint is barred by the statute of limitations, as set forth in PacifiCorp's  
Motion to Dismiss, which was filed concurrently with this Answer.

31 Complainants' Joint Complaint fails to state a claim upon which relief can be granted, as set  
forth in PacifiCorp's Motion to Dismiss, which was filed concurrently with this Answer.

32 Complainants' Joint Complaint constitutes an improper collateral attack on the Commission's  
Final Order in the 2009 GRC, as set forth in PacifiCorp's Motion to Dismiss, which was filed  
concurrently with this Answer.

33 Complainants' Joint Complaint constitutes a request for illegal retroactive ratemaking, as set as  
set forth in PacifiCorp's Motion to Dismiss, which was filed concurrently with this Answer.

34 Complainants' Joint Complaint constitutes an improper single-issue ratemaking, as set forth in  
PacifiCorp's Motion to Dismiss, which was filed concurrently with this Answer.

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**IV. PRAYER FOR RELIEF**

WHEREFORE, PacifiCorp asks the Commission to dismiss the Joint Complaint with prejudice.

DATED: February 7, 2011.

Respectfully Submitted,



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