

BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	
)	Docket No. UE-050684
Complainant,)	
)	
v.)	
)	
PACIFICORP d/b/a PACIFIC POWER &)	
LIGHT COMPANY)	
)	
Respondent.)	
)	
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In the Matter of the Petition of)	
)	
PACIFICORP, D/B/A PACIFIC POWER &)	Docket No. UE-050412
LIGHT COMPANY)	
)	
For an Order Approving Deferral of Costs)	
Related to Declining Hydro Generation)	
)	
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WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	
)	Docket No. UE-060669
Complainant,)	
)	
v.)	
)	
PACIFICORP d/b/a PACIFIC POWER &)	
LIGHT COMPANY)	
)	
Respondent.)	
)	
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ICNU'S RESPONSE TO PACIFICORP'S MOTION TO CONSOLIDATE

June 16, 2006

1 Pursuant to WAC § 480-07-375(4) and the Commission’s May 12, 2006 Revised Notice, the Industrial Customers of Northwest Utilities (“ICNU”) submits this response in opposition (“Response”) to PacifiCorp’s (or the “Company”) motion to consolidate its general rate case, Docket Nos. UE-050684 and UE-050412 (“Rate Case Dockets”), with its recently filed request to immediately increase rates by 2.99%, Docket No. UE-060669 (“Immediate Rate Increase Docket”) (“Motion to Consolidate”). The Washington Utilities and Transportation Commission (“WUTC” or the “Commission”) should deny the Motion to Consolidate because the two separate proceedings do not have sufficiently related facts or principles of law as to warrant consolidation, and consolidation would cause undue confusion and substantial prejudice to the rights of customers and harm administrative efficiency.

2 PacifiCorp is requesting consolidation for the sole purpose of supporting its unique claim that it is entitled to an immediate 2.99% rate increase.^{1/} PacifiCorp’s request for immediate relief should be considered on its own merits and the Company should not be permitted to avoid the procedural and substantive requirements for obtaining general rate relief by improperly relying upon the record in the Rate Case Dockets. Furthermore, PacifiCorp seeks to rely on an evidentiary record from which the Commission concluded that the Company had failed to make a showing justifying *any rate increase at all.*^{2/} Additionally, PacifiCorp’s request would prevent the final

^{1/} Motion to Consolidate at ¶ 2.

^{2/} Re PacifiCorp, Docket Nos. UE-050684 and UE-050412, Order No. 04 at ¶ 7 (Apr. 17, 2006) (“Final Order”).

resolution of the Rate Case Dockets after those cases have been fully litigated. To grant PacifiCorp's consolidation request would harm the efficient administration of those cases, and substantially prejudice the rights of customers in having those cases resolved in a timely fashion. Finally, PacifiCorp's request to consolidate should also be rejected as premature because it is based on the erroneous assumption that its request to reconsider the Commission's Final Order in the Rate Case Dockets will be granted.

I. BACKGROUND

3 On April 17, 2006, the Commission issued its order rejecting PacifiCorp's proposed \$39.2 million rate increase on the grounds that, among other things, the Company did not meet its burden of proof to establish that its proposed allocation methodology would assign to Washington the costs of resources that are actually used and useful for service in Washington.^{3/} The Commission also reviewed the Company's current rates, and considered the end results and overall impact of its Final Order concluding that the Company's "existing rates [are] . . . fair, just, reasonable and sufficient"^{4/}

4 PacifiCorp is challenging the Final Order with a shotgun approach with three separate filings in an effort to convince the Commission to provide it with some rate relief, regardless of whether there is any evidence to support such an increase. On April

^{3/} Id.

^{4/} Id.

27, 2006, PacifiCorp filed a petition requesting that the Commission reconsider its Final Order, arguing that it was entitled to a minimum of an \$11 million rate increase.^{5/}

5 On the same day, PacifiCorp also filed a request for immediate rate relief requesting that the Commission increase rates \$7 million, or an average of slightly less than 3%, within thirty days, which has since been extended to July 1, 2006.^{6/} PacifiCorp is seeking this immediate rate relief to obtain additional revenues while the Company challenges the Final Order through reconsideration and its subsequent appeal of the Final Order.^{7/} Although PacifiCorp is requesting a significant amount of additional revenues,^{8/} PacifiCorp has provided no independent support for its proposal. PacifiCorp did not file any testimony in support of its rate increase request, instead stating that the Company generally relies upon the testimony in the Rate Case Dockets.^{9/}

6 PacifiCorp also filed its Motion to Consolidate on April 27, 2006. The Motion to Consolidate contains only three paragraphs, despite the fact that PacifiCorp's request is an unprecedented and highly unusual attempt to use the record in a completed proceeding as the sole basis upon which to obtain immediate rate relief in another proceeding. PacifiCorp did not refer to or cite any cases from any jurisdiction that would support its request that these proceedings should be consolidated or to support its novel

^{5/} ICNU will respond separately to PacifiCorp's reconsideration request.

^{6/} WUTC v. PacifiCorp, Docket No. UE-060669, Application for Immediate Rate Relief at ¶ 5 (Apr. 27, 2006).

^{7/} WUTC v. PacifiCorp, Docket Nos. UE-050684 and UE-050412, PacifiCorp Petition for Reconsideration at ¶ 41 (Apr. 27, 2006).

^{8/} PacifiCorp's last authorized rate increase was \$15.5 million, which the Company received after a highly contested eleven-month rate proceeding. WUTC v. PacifiCorp, Docket No. UE-032065, Order No. 07 (Nov. 10, 2004).

^{9/} WUTC Docket No. UE-060669, Application for Immediate Rate Relief at ¶ 4. ICNU will respond separately to PacifiCorp's request for immediate relief.

theory that the Commission should rely upon the record in a rejected rate proceeding in order to grant the Company rate relief in a separate, unrelated proceeding.

II. ARGUMENT

7 The Commission should reject the Motion to Consolidate because the Rate Case Dockets are not significantly related to the Immediate Rate Increase Docket. Under the Commission’s rules, the Commission may, but is not required to, “consolidate two or more proceedings in which the facts or principles of law are related.”^{10/} Regardless of whether the proceedings are related, consolidation may be denied if it does not promote administrative efficiency, or causes undue delay, prejudice or confusion.^{11/} The proceedings PacifiCorp seeks to consolidate are not sufficiently related as to merit consolidation because PacifiCorp must be required to submit evidence supporting its request for immediate rate relief without relying upon, or confusing the record with, evidence in the Rate Case Dockets. In addition, such a request would harm administrative efficiency, cause both undue delay and prejudice, and is currently unripe for consideration.

A. Standard of Review

8 The Commission may, in its discretion, consolidate two or more proceedings “in which the facts or principles of law are related.”^{12/} In exercising that discretion, “the Commission will consider the facts and circumstances presented in the

^{10/} WAC § 480-07-320.

^{11/} See, e.g., Pac-West Telecomm, Inc. v. Qwest Corp., Docket No. UT-053036, Order No. 04 at ¶ 23 (Oct. 7, 2005).

^{12/} WAC § 480-07-320; WUTC Docket No. UT-053036, Order No. 04 at ¶ 23.

proceedings at issue and balance the benefits of consolidation . . . with whether consolidation . . . might substantially prejudice the rights of any party or delay resolution of the issues for one or more parties.”^{13/}

B. PacifiCorp Should Not Be Permitted to Support Its Request for Immediate Rate Relief with the Record in the Rate Case Dockets

9 PacifiCorp’s proposal to increase rates almost 3% should stand or fall based on its own merits. The Company requests consolidation because it will provide the Commission “with one means of providing PacifiCorp with a portion of the rate relief it has justified in” the Rate Case Dockets.^{14/} The Commission must require PacifiCorp to fully support its proposed immediate rate increase and must not permit PacifiCorp to evade its obligations to meet its burden of proof by relying upon a record in a separate proceeding for a different test year.

10 PacifiCorp is attempting to create an artificial connection between two separate proceedings. PacifiCorp’s new rate filing should be independently reviewed from the Rate Case Dockets based upon the evidence in each proceeding. Contrary to PacifiCorp’s claims, the Company has not justified any rate relief in the Rate Case Dockets. The Commission specifically concluded that no rate relief was justified by the record in those cases due to a failure of proof on the part of PacifiCorp.^{15/} It follows that, because the evidence PacifiCorp is seeking to rely upon has already been rejected, PacifiCorp cannot rely upon the same evidence in a later proceeding.

^{13/} WUTC Docket No. UT-053036, Order No. 04 at ¶ 23.

^{14/} Motion to Consolidate at ¶ 2.

^{15/} WUTC Docket Nos. UE-050684 and UE-050412, Order No. 04 at ¶¶ 7, 61, 65.

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Furthermore, the Immediate Rate Increase Docket presents issues that were not present in, much less resolved by, the Rate Case Dockets. For example, PacifiCorp is requesting that the Commission immediately increase rates at the end of the statutory notice period under RCW § 80.28.060.^{16/} In order to obtain a rate increase on an immediate basis without a Commission suspension, PacifiCorp must meet the Commission's standards for interim or extraordinary rate relief.^{17/} If PacifiCorp believes it is entitled to rate relief, it should submit new evidence specifically supporting its rate increase proposal, its proposed rate spread, and the cost allocation methodology that supports its claim for an immediate rate increase. The record in the Rate Case Dockets will not assist the Commission on these and other issues, and the Company should not be permitted to increase rates through reliance on evidence that has already been rejected.

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Moreover, the evidence from the Rate Case Dockets is stale and outdated, to say the least. PacifiCorp's application for a rate increase in the Rate Case Dockets was filed over a year ago on May 5, 2005. Needless to say, circumstances have changed since that date. Normally, a utility's rates are set by examining revenue and expected sales for a test year.^{18/} The evidence in the Rate Case Dockets, for most costs, is based on an historic test year beginning September 30, 2004, that cannot be considered in PacifiCorp's new filing.^{19/} That evidence is based on the Company's ownership under

^{16/} WUTC Docket No. UE-060669, Application for Immediate Rate Relief at ¶ 5.

^{17/} E.g., WUTC v. Verizon Northwest, Inc., Docket No. UT-040788, Order No. 11 at ¶ 43 (Oct. 15, 2004); WUTC v. Puget Sound Energy, Inc., Docket Nos. UE-011163 and UE-011170, Sixth Suppl. Order at ¶ 17 (Oct. 4, 2001).

^{18/} WUTC Docket Nos. UE-050684 and UE-050412, Order No. 04 at ¶ 101.

^{19/} E.g., WUTC Docket Nos. UE-050684 and UE-050412, Initial Brief of ICNU at ¶ 85.

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ScottishPower. MidAmerican's acquisition of PacifiCorp, however, was finalized on March 21, 2006,^{20/} before the date PacifiCorp filed its application in the Immediate Rate Increase Docket. The acquisition of PacifiCorp by MidAmerican has many implications for any new application for a rate increase.

13 To illustrate, in the Rate Case Dockets, ICNU argued that rates should be adjusted to reflect actual taxes paid by PacifiCorp's parent company. ICNU's calculations, however, were based on ownership under ScottishPower. The Commission rejected ICNU's argument, concluding that the adjustment was moot due to the change in corporate ownership.^{21/} In addition, with regard to other issues in the Rate Case Dockets, the Commission declined to make assumptions about the implications that the change in ownership would make to the cost structure because the record in the case closed before the sale had been finalized.^{22/} The sale has now been finalized, therefore, the parties no longer have to make such assumptions. New rates cannot be supported based on a stale 2004 test year date, particularly when many aspects of the Company's cost structure have changed.

14 In sum, there is absolutely no connection between the facts or principles of law in these proceedings. PacifiCorp's application for immediate relief presents new

^{20/} WUTC Docket Nos. UE-050684 and UE-050412, Order No. 04 at ¶ 159.

^{21/} Id.

^{22/} E.g., id. at ¶ 282 (discussing double leveraging).

factual and legal issues that were not, and could not have been, decided in the Rate Case Dockets. PacifiCorp must be required to submit new evidence to support its case.^{23/}

C. Consolidation Would Cause Undue Confusion, Harm Administrative Efficiency, and Substantially Prejudice the Rights of ICNU

15 PacifiCorp argues that its Motion to Consolidate should be granted to promote administrative efficiency.^{24/} Specifically, the Company argues that all issues related to its Immediate Rate Increase filing “have been fully litigated, and have either been resolved or are ripe for resolution” in the Rate Case Dockets.^{25/} Nothing could be further from the truth.

16 The Immediate Rate Increase filing, as discussed in the previous section, presents different issues that were not addressed by the Rate Case Dockets; therefore, PacifiCorp’s assertion that all the issues have been fully litigated is inaccurate. The request is procedurally and substantively suspect for numerous reasons, including, but not limited to, the fact that it requests immediate rate relief without a demonstrated need, requests a significant rate increase without any supporting evidence, and relies upon inaccurate facts and assumptions. If the Commission does not reject the Immediate Rate Increase filing out right, then the Commission should suspend the filing and set a

^{23/} Of course, if any evidence from the Rate Case Dockets has any bearing on the Immediate Rate Case Dockets, PacifiCorp may always incorporate that evidence by reference. Consolidation is unnecessary to do so. See, e.g., WUTC v. PacifiCorp, Docket Nos. UE-991832 and UE-020417, Second Suppl. Order at ¶ 14 (Aug. 21, 2002); WUTC v. AT&T, Cause No. U-85-26, Third Suppl. Order, 1985 Wash. UTC LEXIS *10 at *1-2 (Nov. 8, 1985).

^{24/} Motion to Consolidate at ¶ 2.

^{25/} Id.

prehearing conference to schedule the filing of testimony, discovery, hearing, briefing and other issues.

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The Rate Case Dockets have already been fully litigated and the Commission has already issued a final order. Whether the Commission grants PacifiCorp's Motion for Reconsideration or not, because of the time and resources expended in those cases, granting PacifiCorp's consolidation request would unreasonably delay a final resolution in the Rate Case Dockets.^{26/} Such a result would not only be inefficient, but also substantially prejudice the rights of the parties in having the case resolved in a timely fashion. Customers must be able to plan and rely on the Commission's findings in the Rate Case Dockets without having to relitigate those issues a second time. Seemingly, PacifiCorp believes that because it is asking for a smaller rate increase it must be held to a lesser standard. That belief is incorrect.

D. PacifiCorp's Request to Consolidate and Immediately Increase Rates Is Premature

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Finally, even if consolidation was warranted, PacifiCorp's request to consolidate should be denied as premature. PacifiCorp is requesting consolidation to support an immediate rate increase to which the Company believes it is entitled if the Commission elects to reconsider its Final Order. Under PacifiCorp's theory, the granting of any rate relief in the Immediate Rate Increase Docket is contingent upon the Commission agreeing that the Company is entitled to at least \$7 million after reconsideration. Thus, according to PacifiCorp, its Motion to Consolidate and Immediate

^{26/} See, e.g., WUTC Docket No. UT-053036, Order No. 04 at ¶ 24.

Rate Increase filing will become moot if the Commission rejects its request for reconsideration. Since the filings may soon become moot, the Commission should deny the Motion to Consolidate or at a minimum defer resolution of these issues until after it has resolved PacifiCorp's reconsideration request.

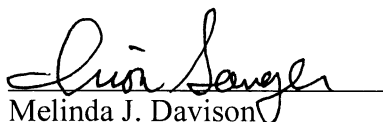
III. CONCLUSION

19 There is no factual or legal basis justifying consolidation of these proceedings. The record in the Rate Case Dockets will not assist PacifiCorp in justifying its request for immediate rate relief. Moreover, the benefits, if any, that would flow from granting PacifiCorp's request are grossly outweighed by the burdens it would create. Granting PacifiCorp's motion would unduly delay resolution of the Rate Case Dockets and substantially prejudice the rights of ICNU's members. Accordingly, PacifiCorp's Motion to Consolidate should be denied.

Dated this 16th day of June, 2006.

Respectfully submitted,

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