

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of

PACIFICORP d/b/a PACIFIC
POWER & LIGHT COMPANY

For a \$7.009 Million (2.99 Percent)
Increase in Revenues for Each
Customer Class

DOCKET NO. UE-060669

PUBLIC COUNSEL'S RESPONSE
TO THE COMMISSION'S NOTICE
OF OPPORTUNITY TO SUBMIT
COMMENTS REGARDING TARIFF
SUSPENSION

I. INTRODUCTION

1. The Public Counsel Section of the Washington State Attorney General's Office (Public Counsel) requests that the Washington Utilities and Transportation Commission (Commission) reject PacifiCorp's application to increase its tariffed rates by 2.99 percent. PacifiCorp's proposed tariff should be rejected because the Commission has already ruled on the merits of the request, the Company has moved for reconsideration in consolidated Docket No. UE-050684 and the outcome of that reconsideration motion precludes consideration of PacifiCorp's application in the instant docket, Docket No. UE-060669.

II. BACKGROUND

2. On May 5, 2005, the Company filed Docket No. UE-050684,¹ a general rate case seeking additional revenues of approximately \$39.2 Million² (17.9 percent). (Hereinafter, PacifiCorp

¹ Docket No. UE-050684 was consolidated with Docket No. UE-050412, PacifiCorp's petition for an order approving deferral of costs related to declining hydro generation. The final order in UE-05684 was issued as Order No. 04. PacifiCorp has moved only for reconsideration of Order No. 04.

² In its rebuttal testimony filed on December 7, 2005, the Company lowered its proposed revenue increase to \$31.6 million (14.4 percent).

2005 GRC). On April 17, 2006, the Commission issued its final order in that case. The Commission rejected PacifiCorp's requested revenue increase in its entirety, finding, *inter alia*, that the Company failed to carry its burden of showing that its proposed cost allocation methodology is consistent with Washington law. *WUTC v PacifiCorp*, Order No. 04, Docket No. UE-050684 (April 17, 2006), ¶ 1. (Hereinafter, Order No. 04). Additionally, the Commission found that PacifiCorp's existing rates, which were increased by \$15.1 million in October, 2004,³ are fair, just, reasonable and sufficient. Order No. 04, ¶ 2.

3. PacifiCorp filed for reconsideration of Order No. 04 on April 27, 2006. On that same day, PacifiCorp also filed proposed tariff requesting a 2.99 percent rate increase (\$7.009 million).⁴ Without suspension, the new tariff would go into effect on May 27, 2006.⁵ On May 12, 2006, PacifiCorp changed the requested effective date of the tariff until July 1, 2006. These are Public Counsel's comments in response to the Commission's May 12 notice.

III. COMMENTS

5. Pursuant to RCW 80.04.130 and RCW 80.28.060, the Commission may suspend PacifiCorp's proposed rate increase and set the matter over for hearing to determine whether the

³ The Commission issued its final order on October 27, 2004. *WUTC v. PacifiCorp*, Sixth Order, Docket No. UE-032065 (October 2004).

⁴ PacifiCorp appears to believe that its filing is not a general rate case since it is not subject to the requirements of WAC 480-07-510. However, WAC 480-07-505(4) allows the Commission in its discretion to require that any rate increase filing be subject to the procedures and protections of Subpart B. The Commission has generally considered any permanent across-the-board rate increase predicated on a full review of the company's operations to be a general rate case. This is what clearly distinguishes a general rate case from interim rate relief and single-issue ratemaking. *See e.g., MCI Telecommunications Corporation v. GTE Northwest, Inc.*, Second Supplemental Order, UT-970653 (October 1997); *WUTC v. Pac. Northwest Bell Tel. Co.*, Second Supplemental Order, Cause No. U-72-30 (October 1972).

⁵ PacifiCorp also moved to consolidate the 2005 GRC with the 2.99 percent request.

proposed tariff is fair, just, reasonable and sufficient.⁶ However, where as here, the proposed tariff is so similar to a tariff already rejected by the Commission and/or within the process of being reconsidered, the proposed tariff should be rejected. The 2.99 percent tariff filing may be rejected as facially unlawful because (1) it is contrary to the Commission’s order in the 2005 GRC docket; (2) it violates the doctrines of preclusion discussed below; and (3) it violates the Commission’s rule prescribing the proper procedure for challenging an order through reconsideration. WAC 480-07-850.

6. The 2.99 percent request seeks relitigation of questions resolved by the Commission in the 2005 GRC final order, issued only days earlier, and prior to the Commission’s resolution of the Company’s motion for reconsideration of that final order. Indeed, the Company’s cover letter filed with its proposed tariff admits that this filing is premised on its prevailing on its motion for reconsideration. Application, UE-060669, ¶¶ 2-3.

7. Under Washington law, decisions of administrative tribunals have preclusive effect on subsequent litigation. *Christensen v. Grant County Hosp. Dist. No. 1*, 152 Wn.2d 299, 307 (2004); *Reninger v. State Dept. of Corrections*, 134 Wn.2d 437, 449 (1998). In fact, one of the earliest cases on this question involved the Washington Utilities and Transportation Commission. *See, Luisi Truck Lines, Inc. v. Washington Util. & Transp. Comm'n*, 72 Wn.2d 887, 894 (1967).

8. Such a preclusive effect, flowing from the doctrines of res judicata and collateral estoppel, promotes judicial economy and prevents inconvenience and harassment of parties. In short, “res judicata is intended to prevent relitigation of an entire cause of action and collateral

⁶ The Commission may suspend for a period not to exceed ten months from the date the tariff would have taken effect. RCW 80.04.130.

estoppel is intended to prevent retrial of one or more of the crucial issues or determinative facts determined in previous litigation.” *Luisi Truck Lines*, 72 Wn.2d at 894.

9. It is undisputed that the PacifiCorp’s 2.99 percent request merely relitigates the same questions, on the same record, as those already resolved by the final order in PacifiCorp’s 2005 GRC. Application, ¶¶ 2-3. Thus, the Commission’s decision with regard to the motion for reconsideration of its final order in that case will preclude consideration of PacifiCorp’s 2.99 percent request and also renders it moot. The Commission should, therefore, reject PacifiCorp’s filing and proceed with resolving the Company’s currently pending motion for reconsideration.

In the alternative, if the Commission decides not to reject the 2.99 percent filing at this time, the Commission should suspend the filing, as recommended by Staff in its June 21 comments.

IV. CONCLUSION

10 For the reasons stated, the Commission should reject PacifiCorp’s tariff in Docket No. UE-060669, or in the alternative, suspend the tariff.

Dated this 22nd day of June, 2006.

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