

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

2 Petition of

3 PACIFICORP dba PACIFIC POWER &
4 LIGHT COMPANY

5 For an Accounting Order Authorizing Deferral
6 of Excess Net Power Costs

DOCKET NO. UE-020417

**PACIFICORP'S BRIEF REGARDING
COMMISSION AUTHORITY TO
ESTABLISH A PRIOR EFFECTIVE
DATE FOR DEFERRED
ACCOUNTING**

7
8 **I. INTRODUCTION**

9 On April 5, 2002, PacifiCorp doing business as Pacific Power & Light Company
10 ("PacifiCorp" or "the Company") petitioned the Commission for an order authorizing deferral of
11 excess net power costs incurred by the Company in serving its Washington customers beginning
12 as of June 1, 2002 ("Petition"). The Company filed its Petition well in advance of the requested
13 June 1, 2002 effective date, anticipating that the Commission would take action prior to the
14 proposed effective date, either granting or denying the request for deferral. The Company
15 proposed to continue such deferrals until the earlier to occur of (i) twelve months (through May
16 31, 2003), or (ii) such time as the Commission approves a Power Cost Adjustment Mechanism
17 for the Company's Washington customers, or some form of limited rate relief to address
18 extraordinary power costs.

19 The Commission has not yet taken action on the Company's request for deferred
20 accounting. At the August 6, 2002 prehearing conference, the issue arose as to the
21 Commission's authority to establish a deferred account effective as of June 1, 2002. PacifiCorp
22 files this brief in response to Administrative Law Judge Dennis J. Moss's request for briefing on
23 that issue.

1 **II. SUMMARY OF ARGUMENT**

2 The prohibition against retroactive ratemaking does not bar the Commission from
3 implementing a prior effective date for the requested accounting deferral. Deferred accounting
4 itself is a ratemaking tool designed to permit rates to reflect actual costs or revenues without
5 violating the general rule that rates must be set prospectively and may not retroactively account
6 for past costs or revenues. The Commission’s authority to authorize deferred accounting
7 procedures is necessarily implied, including its authority to issue an order approving accounting
8 treatment with an effective date *earlier than* the order (but subsequent to the date of the Petition).
9 Commission approval of a deferred account in this proceeding to include entries from June 1,
10 2002 forward thus would not run afoul of principles that generally preclude retroactive
11 ratemaking. Pursuant to general ratemaking principles, a Commission order that takes effect any
12 time on or after the date the Petition is filed would not be “retroactive” but, rather “prospective”
13 from the date the Petition was filed. Finally, even in the event the Commission finds that a
14 retroactive effective date for deferred accounting would generally violate the prohibition against
15 retroactive ratemaking, in this particular case the Commission could, in the interests of fairness
16 and sound public policy, exercise its discretion to authorize the prior effective date for deferred
17 accounting treatment.

18 **III. ARGUMENT**

19 **A. Deferred Accounting Does Not Violate the Rule Against Retroactive**
20 **Ratemaking.**

21 Deferred accounting permits a utility to record and capture current actual costs or
22 revenues in a balancing account for later inclusion in rates. Once approved, the deferred
23 amounts are generally amortized in utility rate schedules until the balance is extinguished.¹ As

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25 ¹ See *Re Avista Corporation dba Avista Utilities* (“Avista”), Docket No. 010395, Sixth
26 Supplemental Order (Sept. 24, 2001) (authorizing surcharge to allow utility to begin recovering
its Commission-approved deferred power costs).

1 discussed in detail below, deferred accounting is a ratemaking tool that permits rates to reflect
2 actual costs or revenues without violating the general rule that rates must be set prospectively
3 and may not retroactively account for past costs or revenues. By using actual rather than
4 projected costs to set rates, deferred accounting can eliminate the risk to customers and utilities
5 of setting fluctuating costs too high or too low.

6 Ratemaking is prospective and not retroactive.² Impermissible retroactive ratemaking
7 occurs when “surcharges or ordered refunds [are] applied to rates which had previously been
8 paid, constituting an additional charge applied after the service was provided or consumed.”³
9 According to this Commission, “the evil in retroactive ratemaking * * * is that the consumer has
10 no opportunity prior to receiving or consuming the service to learn what the rate is or to
11 participate in a proceeding by which the rate is set.”⁴ Thus, “a rate applied to a service without
12 prior notice and review” is illegal and contrary to the public interest.⁵

13 The Commission’s precedent is clear, however, that neither deferred accounting nor
14 recovery of deferred amounts constitutes retroactive ratemaking. During the 1980s, for example,
15 Commission Staff took the position that the Energy Cost Adjustment Clause (“ECAC”) then in
16 effect for Puget Sound Power & Light Company “may involve retroactive ratemaking.” In
17 response, the Commission stated as follows:

18 [T]he “true-up” [*i.e.*, recovery of amounts deferred]
19 involves a rate which is to be applied only prospectively and only
20 after hearing. A cost adjustment clause is prospective and not
retroactive. It authorizes a fixed mathematical formula and is valid
against a charge of retroactivity. That an element of the rate

21 ² See, e.g., *Re Puget Sound Energy* (“PSE”), Docket No. UE-981238, Fourth
22 Supplemental Order (Apr. 5, 1999) (“So long as a final, nonprovisional rate is in place it can be
changed only prospectively.”); RCW 80.28.080; WAC 480-80-300.

23 ³ *Re Puget Sound Power & Light Company* (“Puget Power”), Docket No. U-81-41
24 (Reopened), Sixth Supplemental Order (Dec. 19, 1988).

25 ⁴ *Id.*

26 ⁵ *Id.*

1 involves a factor for actual historical performance does not make
2 the rate retroactive. The potential evil in such a rate is not that it is
3 retroactive, which technically speaking it is not, but that as an
adjustment to reflect actual performance it might move the
company toward a guaranteed achieved financial performance.

4 All ratesetting involves a review of historical performance,
5 whether it is an overall review of complete company operations or
6 whether it is a single- or few-item analysis of the sort here
involved. A general rate case involves the same sort of “true-up”
7 to rates, except that it considers the full panoply of relevant factors.
8 Other expense items are routinely authorized in rate making, such
as unusual weather-related expense adjustments and rate case
9 expenses. *Analytically, the term “retroactive” is not properly
applied. The Commission should review other relevant factors
than the pejorative “retroactive” label in order to determine
whether ECAC procedure is lawful.*⁶

10 The Commission went on to note that recovery of past expenses may be appropriate when
11 consistent with the public interest: *“The test for such treatment is not whether it constitutes
12 retroactive ratemaking – it does not – but whether there are sound policy and evidentiary
13 reasons for exercising the Commission’s judgment to do so.”*⁷

14 In a subsequent order involving Puget Power, the Commission adhered to the preceding
15 analysis to support its conclusion that the utility’s proposed periodic rate adjustment mechanism,
16 which included deferred accounting, was not illegal:

17 The decoupling mechanism does not involve retroactive
18 ratemaking. It is similar to the prior ECAC mechanism in that it
sets up a deferred account allowing a reconciliation of revenue and
19 expenses that would be subject to hearing and review. For the
reasons set forth in detail in the Sixth Supplemental Order in
20 Docket No. U-81-41, the Commission rejects [Staff’s] argument.⁸

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⁶ *Id.* (footnotes omitted; emphasis added).

22 ⁷ *Id.* (emphasis added).

23 ⁸ *Re Puget Sound Power & Light Company*, Docket Nos. UE-901183-T, UE-901184-P,
24 Third Supplemental Order (Apr. 1, 1991). *See also Re Avista Corporation*, Docket No. UE-
25 011597, Order Granting Accounting Petition (Dec. 28, 2001) (approving requested deferral of
excess power costs; emphasizing that authorization is for accounting purposes only and does not
26 constitute a determination that costs will be recovered).

Similarly, Goodman observes that deferred accounting is a “common” and “fundamental” regulatory tool, commission authorization of which is “equivalent to a managerial decision affecting only the financial affairs of the company.”⁹ According to Goodman, when an agency approves recovery of prior deferred expenses in rates, “there is no retroactive ratemaking but only a shift in the timing of the collection of the expense from future ratepayers.”¹⁰ Likewise, the majority of jurisdictions that have considered this issue have reached the same conclusion.¹¹ Moreover, courts reviewing those decisions generally uphold them on appeal.¹²

⁹ Leonard Saul Goodman, *The Process of Ratemaking*, 322-23 (1998).

¹⁰ *Id.* at 322.

¹¹ See, e.g., *Re Detroit Edison Co.*, Case No. U-11588 (Mich. P.S.C. June 21, 2001) (deferred accounting does not alter rates; it is “well established that rate recovery of amortization is permissible and is not retroactive ratemaking”); *Re Washington Water Power Co.*, Case No. WWP-E-98-11, Order No. 28097 (Id. P.U.C. July 29, 1999) (prohibition against retroactive ratemaking means costs related to extraordinary, non-recurring event are not recoverable in future rates unless preserved for that purpose by deferral); *In the Matter of a Request by Interstate Power Company for Deferral of Expenses Associated with Former Manufactured Gas Plants*, Docket No. G-001/M-94-633 (Minn. P.U.C. Apr. 13, 1995) (approving deferral of costs related to investigation and cleanup of five former manufactured gas plant sites; finding that deferral of costs for future ratemaking consideration is not retroactive ratemaking); *Re Iowa-Illinois Gas and Electric Company*, Case Nos. 92-0292, 92-0357 (Ill. C.C. Jan. 12, 1994) (recovery of costs deferred pursuant to “cost riders” does not result in retroactive change of pre-existing rate); *Re Southern Cal Water*, Decision (D.) 92-03-094 (Cal. P.U.C. Mar. 31, 1992) (retroactive ratemaking problems are avoided if Commission authorizes utility to book expenses into a memorandum or balancing account for possible future recovery in rates); *Re Missouri Public Service*, Case Nos. EO-91-358, EO-91-360 (Mo. P.S.C. Dec. 20, 1991) (order authorizing deferral of depreciation expenses and carrying costs is not equivalent to retroactive ratemaking).

¹² See, e.g., *Public Advocate v. Public Utilities Commission et al.*, 718 A.2d 201, 207-08 (Me. 1998) (not impermissible retroactive ratemaking for commission to authorize surcharge pursuant to commission rule requiring that utilities adopt deferred accounting mechanism to track specific costs associated with expansion to basic service calling areas); *Popowski v. Pennsylvania Pub Util Comm’n*, 695 A.2d 448, 452-53 (Pa. Commw. 1997) (recovery of costs arising from compliance with change in accounting standards not impermissible retroactive ratemaking); *State v. Pub Util Comm’n of Texas et al.*, 883 S.W.2d 190 (Tex. 1994) (commission approval of deferred accounting treatment for certain costs did not violate prohibition against retroactive ratemaking); *Utilities Comm’n v. Nantahala Power & Light Co.*, 388 S.E.2d 118, 127 (N.C. 1990) (order authorizing deferral of savings from federal tax decrease to be refunded to ratepayers was not retroactive ratemaking); *City of Chicago v. Ill. Commerce Comm’n*, 150 N.E.2d 776 (Ill. 1958) (affirming commission’s discretion to authorize “cost tracking rider”);

(continued...)

1 Thus, pursuant to the analysis of this and other commissions, the prohibition against
2 retroactive ratemaking is not implicated by the Company’s Petition in the instant proceeding. As
3 indicated in the Petition, the Company’s deferred accounting request is intended as a means “to
4 retain the ability to seek recovery of extraordinary power costs.”¹³ Commission approval of that
5 request would not fix rates retroactively, but rather would “simply authorize[] a fixed
6 mathematical formula to be inserted in the schedule of the company for determining future
7 rates.”¹⁴ Accordingly, the Company submits that deferred accounting treatment is a legal,
8 appropriate, just and reasonable means of providing it an opportunity to seek recovery of the
9 extraordinary excess purchased power costs being incurred by the Company.¹⁵

10 **B. The Commission Has the Authority to Authorize Deferral Beginning on the**
11 **Effective Date Requested in the Company’s Petition.**

12 The Commission has only those powers expressly conferred to it by the Legislature and
13 those necessary to accomplish its duties.¹⁶ As discussed further below, when the Commission
14 authorizes deferred accounting procedures, it exercises powers necessarily implied from its
15 statutory authority to prescribe specific accounting practices for public service companies subject
16 to its jurisdiction. At the very least, the Commission has recognized in the past that nothing in

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18 (...continued)
19 *Ford Motor Co. v. Pub. Serv. Comm’n*, 562 N W 2d 224 (Mich. App. 1997) (deferral and
20 recovery of deferred amounts is not retroactive ratemaking).

19 ¹³ Petition at 2.

20 ¹⁴ *United Gas Corp. v. Mississippi Public Service Commission*, 127 So.2d 404, 421-22
21 (Miss. 1961).

22 ¹⁵ See also *Re Avista Corporation*, Docket No. UE-011597 (Dec. 28, 2001) (approving
23 Avista’s request to defer certain types of power costs that are “highly variable, unpredictable,
24 and beyond its control”); *Re Puget Sound Energy*, Docket No. UE-011600 (Dec. 28, 2001)
(approving PSE’s request to defer its “unrecovered power costs” related to “unprecedented
25 events in the wholesale power market”).

26 ¹⁶ See *People’s Organization for Washington Energy Resources v. Washington Utilities
and Transp Comm’n*, 711 P.2d 319, 325 (Wash. 1985).

1 the relevant statutes precludes it from authorizing deferred accounting when appropriate.
2 Moreover, PacifiCorp submits that included within the Commission’s implied power to authorize
3 deferred accounting procedures is the power to approve PacifiCorp’s request for deferral of its
4 excess power costs beginning on the effective date requested in the Company’s Petition (June 1,
5 2002).

6 RCW 80.04.090 grants the Commission broad authority in setting and defining a utility’s
7 system of accounts.¹⁷ Specifically, under RCW Section 80.04.090, the Commission has the
8 power, in its discretion, to

9 prescribe the forms of any and all accounts * * * to be kept by
10 public service companies, including the accounts * * * of the
11 movement of traffic, sales of its product, the receipts and
12 expenditures of money.

12 In addition, RCW 80.01.040 mandates that the Commission regulate “in the public interest” and
13 authorizes the Commission to “[m]ake such rules and regulations as may be necessary” to carry
14 out its powers and duties. Together, RCW 80.04.090 and RCW 80.01.040 provide authority for
15 the Commission to determine the manner in which specific expenditures or revenues are to be
16 recorded in carrying out its statutory mandate to set “just, fair, reasonable and sufficient rates.”¹⁸

17 By allowing deferred accounting in certain circumstances, the Commission has provided a
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21 ¹⁷ Cf. *U.S. West Communications, Inc. v. Washington Utilities and Transp Comm’n*, 949
22 P.2d 1337, 1348 (Wash. 1997) (noting Commission’s broad authority to regulate practices of
23 Washington public utilities).

24 ¹⁸ RCW 80.28.010(1). The “just and reasonable” standard provided by this statutory
25 provision has been interpreted by the Washington Supreme Court to require not only fair prices
26 and services to customers, but also that regulated utilities earn enough to remain in business.
State ex rel. Puget Sound Power & Light Co. v. Department of Pub Works, 38 P.2d 350 (Wash.
1934).

1 mechanism, through accounting procedures under RCW 80.04.090 and RCW 80.01.040, to
2 ensure that the requirements of RCW 80.28.010 are met.¹⁹

3 The Commission has previously reached the same conclusion—that its power to approve
4 deferred accounting is necessarily implied—based on the absence of legal authority to the
5 contrary.²⁰ Viewed in contrast to its obligation to regulate “in the public interest” and to
6 authorize only rates that are “just, fair, reasonable and sufficient,” the Commission has reasoned
7 that absent legal impediment it has the authority to authorize, “in a proper case and with
8 appropriate monitoring, a deferred accounting procedure.”²¹

9 **C. Commission Approval of a Deferred Account to Include Entries from June 1,**
10 **2002, Forward Would Not Run Afoul of Principles that Generally Preclude**
Retroactive Ratemaking.

11 The Commission’s authority to approve deferred accounting procedures in appropriate
12 cases includes the authority to approve such procedures with an effective date *prior to* the
13 Commission’s order (and subsequent to the filing date of the request for deferrals). Like the
14 power to authorize deferred accounting generally, such power does not conflict with the
15 Commission’s governing statutes and is arguably necessarily implied from its general powers to
16 regulate in the public interest and set just and reasonable rates. In addition, as discussed *infra*,
17 the power to authorize deferrals *prospectively* from the date of an application forward is
18 consistent with the general policies that underlie another policy-based ratemaking doctrine, the
19 filed rate doctrine.

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22 ¹⁹ *Cf. Rios v. Washington Dept of Labor and Industries*, 39 P.3d 961, 979 (Wash. 2002)
23 (courts defer to agency discretion when agency determines practice that is most appropriate to
enable it to carry out a statutory mandate).

24 ²⁰ *Washington Util and Transp Comm’n v. Puget Sound Power & Light Company*, Case
25 No. U-81-41 (Mar. 12, 1982).

26 ²¹ *Id.*

1 It should be noted that PacifiCorp, in so arguing, does **not** dispute that Commission
2 approval is required before costs may actually be deferred. However, as explained below,
3 Commission approval of deferred accounting treatment that will involve application of the
4 deferral “formula” to costs incurred before the Commission’s order approving deferral but **after**
5 the utility requests permission to defer those costs, is distinguishable from a utility’s attempt to
6 create a deferred account without Commission approval. Contrary to Commission Staff’s
7 assertions at the prehearing conference, authorization of accounting treatment *prospective* from
8 the date of an application—but “retroactive” from the date of the Commission approval—would
9 not run afoul of the prohibition against retroactive ratemaking.

10 The prohibition against retroactive ratemaking, also referred to as the retroactive
11 ratemaking doctrine, is an outgrowth of another policy-based ratemaking doctrine, the filed rate
12 doctrine. Under the filed rate doctrine, if a statute requires that a utility file its tariffs, no
13 deviations from those tariffs are permitted without further filing with the agency.²² A violation
14 of the filed rate doctrine occurs when a utility attempts retroactively to charge something other
15 than the tariff rate that was in effect during the relevant past period.²³ Among the rationales
16 supporting the filed rate doctrine is that of sufficient notice; the filed rate doctrine ensures that
17 the relevant audience receives advance notice that its rates are provisional in nature and subject
18 to modification or revision, thereby maintaining predictability in the rates that will be charged.²⁴
19 For that reason, the doctrine normally does not apply where parties enter into preexisting

20 ²² See, e.g., *State ex rel. Standard Oil Co. of California v. Department of Public Works et*
21 *al.*, 53 P.2d 318 (Wash. 1936) (rates specified in schedules filed and in effect constitute the only
22 lawful rates and remain so until challenged or refiled); *Texas Eastern Transmission Corp. v.*
23 *F.E.R.C.*, 102 F.3d 174, 183 (5th Cir. 1996) (filed rate doctrine generally holds that “once a rate
is in place with ostensibly full legal effect and is not made provisional, it can then be changed
only prospectively”) (internal citation and quotation marks omitted).

24 ²³ *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 577 (1981).

25 ²⁴ See *Texas Eastern Transmission Corp.*, 102 F.3d at 182 (listing various policies in
26 support of filed rate doctrine).

1 agreements on proposed rates,²⁵ or where new tariffs are filed with the requisite regulatory
2 agency and the prescribed notice period has been satisfied.²⁶ “Notice does not relieve the
3 Commission from the prohibition against retroactive ratemaking. Instead, it changes what would
4 be purely retroactive ratemaking into a functionally prospective process.”²⁷

5 Although this proceeding involves a request for deferred accounting treatment and not a
6 request for a change in utility rates,²⁸ the general ratemaking principles that underlie the filed rate
7 doctrine are instructive to the analysis of the legal issue in dispute. In its Petition, filed April 5,
8 2002, PacifiCorp requested that deferrals begin to accrue as of June 1, 2002. At the time it filed
9 that Petition, PacifiCorp thought that a Commission order on its Petition would precede the
10 effective date specified therein. Nevertheless, as with applications for tariff changes, the time of
11 filing the Petition is the key, or trigger, for legality of a Commission order.²⁹ Pursuant to the
12 general ratemaking principles described above, a Commission order authorizing deferral that
13 takes effect any time **on or after** the date the Petition is filed would not be “retroactive” but,
14 rather “prospective” from the date the Petition was filed.

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16 ²⁵ *Id.* See also *Re Arkansas Power and Light Co.*, Docket No. 96-243-TF, Order No. 9
17 (Ark. P.S.C. Apr. 13, 1987) (rate changes created by consensual agreement may be applied
retroactively when effective date part of agreement).

18 ²⁶ See RCW 80.04.130, 80.28.060 (rate changes initiated by filing tariffs may take effect
19 after prescribed notice periods, unless suspended by Commission for period up to ten months);
20 see also *Gulf States Utilities v. F.E.R.C.*, 1 F.3d 288, 292 (5th Cir. 1993) (principle purpose of
Federal Energy Regulatory Commission filing requirements is to give advance notice of
proposed rate changes).

21 ²⁷ *Columbia Gas Transmission Corp. v. F.E.R.C.*, 895 F.2d 791, 797 (D.C.Cir. 1990).

22 ²⁸ See Petition at 12-13 (“By this filing, the Company is making no proposal regarding
23 the amortization in rates of any amounts that would be deferred under this requested accounting
treatment. Any requested amortization in rates, or recovery through a power cost adjustment
mechanism, would be the subject of a future filing with the Commission.”).

24 ²⁹ See *Pacific Coast Elevator Co. v. Department of Public Works*, 228 P. 1022, 1029
25 (Wash. 1924) (upholding Department decision when effective date of the order, although prior to
26 the date of the entry of the order, was subsequent to the time the Department acquired
jurisdiction, *i.e.*, when the complaint was filed).

1 For the same reasons, neither does post-petition/pre-order approval of deferred
2 accounting run afoul of the principles that generally preclude retroactive rates. In addition, as
3 discussed in Section A of this brief, approval of the Company’s Petition effective June 1, 2002
4 would simply “authorize a fixed mathematical formula valid against a charge of retroactive
5 ratemaking” in that it would not constitute “a rate applied to a service without prior notice and
6 review.” The Company expects that any request it makes for recovery of deferred amounts in
7 rates will only take place after the development of a detailed record.³⁰

8 Although to date the Commission has not expressly undertaken a legal analysis of this
9 issue, its deferred accounting precedent is consistent with the conclusion that the Commission
10 legally may issue an order authorizing a *prior* effective date for deferred accounting. A recent
11 Avista case is particularly illustrative. On June 23, 2000, Avista filed an Accounting Petition
12 seeking authority to defer certain power costs related to wholesale power market prices. The
13 petition sought an Accounting Order authorizing deferral of those power supply costs
14 commencing as of July 1, 2000. On August 9, 2000, the Commission approved Avista’s request
15 for a deferred accounting mechanism that allowed Avista to defer certain increased costs related

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19 ³⁰ In the recent Avista and PSE December 2001 deferral orders, the Commission
20 emphasized the distinction between the authority to defer and the authority to recover deferred
21 amounts:

22 We emphasize that the question of accounting treatment and the
23 question of recovery in rates are separate and distinct questions.
24 The first question – accounting treatment – can be answered
25 without the necessity for a detailed record because there is no
26 inherent risk to ratepayers in doing so. That risk is not present
precisely because the second question – rate treatment – will be
answered only after the development of a detailed record. *Re*
Avista, Docket No. UE-011600; *Re PSE*, Docket No. UE-011579.

to power supply beginning July 1, *i.e.*, *subsequent to* the utility's petition but *prior to* the date of the order.³¹

Subsequently, on December 21, 2000, Avista filed a request for modification of the deferral mechanism approved in Docket No. UE-000972. Specifically, Avista requested an amendment to the manner in which power cost deferrals were calculated. The company proposed that the deferral mechanism be amended effective as of December 1, 2000, with the first deferral under the amended mechanism made in January 2001 to record the estimate for the month of December 2000. In an order dated January 24, 2001, the Commission authorized Avista to amend the power cost deferral mechanism as proposed in its filing, *i.e.*, beginning December 1, 2000.³²

Other state commissions likewise have approved post-petition/pre-order deferrals, some expressly finding that approval of deferred accounting with an effective date *prior to* the date of the Commission order does not violate the rule against retroactive ratemaking.³³

³¹ *Re Avista Corporation dba Avista Utilities*, Docket No. UE-000972, Order Granting Deferral of Power Cost Expenses Pending Demonstration of Prudence (Aug. 9, 2000). Interestingly, the Commission Staff Memorandum regarding Avista's petition recommended granting Avista's request to defer its increased power costs beginning July 1.

Similarly, Commission Staff also has previously supported "retroactive" adjustment to the purchased gas adjustment rate of a natural gas local distribution company. *Washington Util and Transp Comm'n v. Washington Natural Gas Co.*, Docket Nos. UG-911236, UG-911270 (Sept. 28, 1992). In that proceeding, Staff argued that "it is not retroactive to adjust the unamortized balances [in a deferred account]." *Id.* The Commission agreed with Staff, finding that the adjustment did not constitute retroactive ratemaking. *Id.*

³² *Re Avista Corporation*, Docket No. UE-000972, Memorandum (Jan. 24, 2001).

³³ *See, e.g., Re Carolina Power & Light Company*, Docket No. E-2, Sub 769 (N.C. U.C. Jan. 18, 2001) (approving deferred accounting for emission allowance costs beginning post-petition but pre-order date); *Re Southwestern Public Service Company*, Docket No. 14174 (Tex. P.U.C. Mar. 14, 1996) (in "fuel reconciliation proceeding," Commission has discretion to change formula for sharing margins from off-system sales retroactively without running afoul of retroactive ratemaking); *In the Matter of a Request by Interstate Power Company for Deferral of Expenses Associated with Former Manufactured Gas Plants*, Docket No. G-001/M-94-633, Order Approving Request for Authority to Defer Costs and Requiring Filings (Minn. P.U.C. Apr.

(continued...)

1 Finally, PacifiCorp notes the Commission’s prior rulings that its approval is necessary
2 before costs may be deferred.³⁴ PacifiCorp does not dispute that “advance” Commission
3 approval is necessary before actual deferral may begin. However, the requirement that
4 Commission approval be obtained in “advance” does not preclude Commission approval of
5 deferred accounting treatment “retroactive” to the date of the Commission’s order authorizing
6 deferral. Commission approval of deferred accounting treatment that will involve application of
7 the deferral “formula” to costs incurred before the Commission’s order approving deferral but
8 **after** the utility requests permission to defer those costs, is distinguishable from a utility’s
9 attempt to create a deferred account without Commission approval.

10 **IV. Even If the Commission Finds that a Prior Effective Date Would Generally Violate**
11 **the Prohibition Against Retroactive Ratemaking, the Commission Has Discretion to**
12 **Grant the Requested Relief, in the Interests of Fairness and Sound Public Policy.**

13 In the event the Commission agrees with the position taken by Commission Staff at the
14 prehearing conference, *i.e.*, that establishing a deferred account from June 1, 2002, forward
15 would violate the prohibition against retroactive ratemaking, PacifiCorp argues in the alternative
16 that interests of fairness and sound public policy warrant Commission exercise of discretion to
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19 (...continued)
20 13, 1995) (deferral of post-petition case expenditures for future ratemaking consideration is not
21 retroactive ratemaking); *Re Accounting and Ratemaking Treatment for Pensions and*
22 *Postretirement Benefits Other Than Pensions*, Case No. 91-M-0890 (N.Y. P.S.C. Sept. 7, 1993)
23 (approving retroactive modification of accounting standards); *Re Pacific Power & Light*
24 *Company et al.*, Docket Nos. UM 171, 221, 222, Order No. 89-1700 (Or. P.U.C. Dec. 8, 1989)
25 (approving accounting treatment for utilities’ conservation program costs outside Oregon’s
26 deferred accounting statute; finding “no legal prohibition against allowing the proposed
accounting treatment to become effective prior to the date of the Commission’s order”).

34 *Re Puget Sound Power & Light Company*, Docket Nos. UE-920433, 920499, 921262
(Dec. 16, 1994) (“The Commission has the authority to approve deferral; without such approval
the company has no authority to defer.”).

1 authorize “retroactive” approval of deferred accounting treatment in this case.³⁵ PacifiCorp filed
2 its Petition in this proceeding with the reasonable expectation that the Commission would act
3 upon it within the nearly two-month period preceding the effective date specified therein.³⁶ The
4 Company respectfully submits that it should not suffer the economic consequences arising from
5 any delay in acting on the Company’s Petition. In the Company’s view, the Petition contained
6 sufficient information upon which to grant the limited relief requested, particularly in light of the
7 Commission’s prior ruling that questions regarding accounting treatment “can be answered
8 without the necessity for a detailed record” given that a request for deferral does not alter or
9 amend rates.³⁷ Moreover, the Commission previously recognized that the test for recovery of
10 past expenses is not necessarily a strict and inflexible standard, but considers “whether there are
11 sound policy and evidentiary reasons for exercising the Commission’s judgment.”³⁸ The
12 Company submits that the circumstances of this deferral request present an instance in which
13 sound policy reasons support granting the deferrals as of the requested effective date, June 1,
14 2002.

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³⁵ See *Re Puget Power*, Docket No. U-81-41 (Reopened), Sixth Supplemental Order (Commission may authorize recovery of past costs when there are sound policy and evidentiary reasons for exercising the Commission’s judgment to do so).

³⁶ See, e.g., *Re Avista*, Docket No. UE-011600 (petition for accounting order filed December 3, 2001; Commission order approving request for deferred accounting issued December 28, 2001); *Re PSE*, Docket No. UE-011579 (same).

³⁷ *Id.*

³⁸ *Re Puget Power*, Docket No. U-81-41 (Reopened), Sixth Supplemental Order.

1 **V. CONCLUSION**

2 For the foregoing reasons, PacifiCorp requests that the Commission find it has the
3 authority to authorize deferred accounting treatment beginning June 1, 2002.

4 DATED: August 28, 2002.

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