

June 23, 2006

***Via Electronic Mail and Federal Express***

Chairman Mark Sidran  
Commissioner Patrick Oshie  
Commissioner Philip Jones  
Washington Utilities and Transportation Commission  
PO Box 47250  
1300 S Evergreen Park Drive, SW  
Olympia, WA 98504-7250

Re: In the Matter of the Application of PacifiCorp dba Pacific Power & Light  
**Docket No. UE-060669**

Dear Commissioners:

The Industrial Customers of Northwest Utilities (“ICNU”) submits this letter urging the Washington Utilities and Transportation Commission (“Commission” or “WUTC”) to reject PacifiCorp’s (or “the Company”) proposed \$7.009 million, or 2.99%, rate increase. The rate increase should be rejected because PacifiCorp has not provided any evidence to support an immediate rate increase. In the event that the Commission does not simply reject PacifiCorp’s proposed rate increase, ICNU requests that the Commission suspend the filing and schedule a prehearing conference to establish a procedural schedule to address the merits of the filing.

On April 27, 2006, PacifiCorp made three separate filings challenging the Commission’s final order in PacifiCorp’s general rate case and hydro deferral proceedings (“Final Order”). PacifiCorp petitioned for reconsideration of the Final Order, arguing that the Company is entitled to a minimum of \$11 million rate increase.<sup>1/</sup> The Company filed a motion to consolidate the general rate case proceedings with this proceeding,<sup>2/</sup> in which it seeks to increase rates by 2.99%.

The Company has not supported its request to increase rates with any new evidence, and it has only filed a cover letter, a two-page application, and new tariffs. The Company instead states that it generally relies upon the testimony and exhibits in its previous

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<sup>1/</sup> WUTC v. PacifiCorp, Docket Nos. UE-050684 and UE-050412, PacifiCorp Petition for Reconsideration at ¶ 3 (Apr. 27, 2006) (“Petition for Reconsideration”).

<sup>2/</sup> Pursuant to the Commission’s notice, ICNU filed separate, formal responses to the petition for reconsideration and motion to consolidate on June 16, 2006.

general rate case to support its request.<sup>3/</sup> Simply put, PacifiCorp has failed to carry its burden of demonstrating why this extraordinary remedy of an immediate 2.99% rate increase is warranted and how this unexpected rate increase would result in fair, just, and reasonable rates.

### **1. PacifiCorp's Immediate Rate Increase Request Is an Illegal Collateral Attack on the Commission's Lawful Final Order**

PacifiCorp is clear that it is seeking this immediate rate increase in order to obtain additional revenues while the Company challenges the Final Order through the reconsideration process and, if reconsideration is denied, a subsequent appeal.<sup>4/</sup> In its Final Order, the Commission found, after an over 11-month, fully litigated proceeding, that PacifiCorp is not entitled to any increase in rates, and that the Company's current rates are fair, just, reasonable, and sufficient.<sup>5/</sup> There is no basis for allowing the Company the unusual remedy of permanently increasing rates during the pendency of a reconsideration and appeal of an order denying a rate increase.

The rate increase should be rejected because the sole basis upon which PacifiCorp supports its request is with the claim that the Commission erred in the Final Order and the Company is entitled to an \$11 million rate increase.<sup>6/</sup> As addressed in ICNU's response to the petition for reconsideration, ICNU strongly disagrees with PacifiCorp's assertion that it is entitled to an \$11 million rate increase from the previous general rate case. The issue of whether the Final Order should be changed to increase PacifiCorp's rates will be determined if the Commission decides to grant reconsideration (which ICNU does not believe is justified).

PacifiCorp must be required to follow the appropriate procedures for challenging a Commission decision, and not be allowed to raise rates with little or no notice to customers and little opportunity for public participation. The Washington legislature has established a statutory process for how parties should seek to modify Commission decisions. Washington law first presumes that the Commission's conclusions are prima facie correct.<sup>7/</sup> Unless a motion to stay is granted, a final order is effective even if a petition for reconsideration or appeal is filed.<sup>8/</sup> The law does not contemplate that an order denying a rate increase should be challenged by filing new tariffs based on the old evidence that was rejected by the Commission.

In addition, before increasing rates, PacifiCorp must meet its burden of proof to establish that its proposed rates are fair, just, reasonable, and sufficient.<sup>9/</sup> The Commission has already ruled that the Company failed to meet this burden that it is not entitled to any rate relief, and that the Commission could not establish whether PacifiCorp's proposed rates are just and

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<sup>3/</sup> WUTC v. PacifiCorp, Docket No. UE-060669, Application for Immediate Rate Relief at ¶ 4 (Apr. 27, 2006).

<sup>4/</sup> Petition for Reconsideration at ¶ 41.

<sup>5/</sup> WUTC v. PacifiCorp, Docket Nos. UE-050684 and UE-050412, Order No. 4 at ¶¶ 7, 61, 65 (Apr. 17, 2006) ("Final Order").

<sup>6/</sup> WUTC Docket No. UE-060669, Application for Immediate Rate Relief at ¶ 4.

<sup>7/</sup> RCW § 80.04.430.

<sup>8/</sup> RCW §§ 34.05.470(2), 34.05.473(1).

<sup>9/</sup> RCW §§ 34.05.570(1)(a), 80.04.130(4); WAC § 480-07-540.

reasonable without a method to allocate costs.<sup>10/</sup> It follows that, because PacifiCorp has not cited any evidence or made any arguments that have not already been thoroughly considered and rejected by the Commission, the Company's application states no basis for relief and must be denied.<sup>11/</sup>

## **2. PacifiCorp Has Not Established That the Company Is Entitled to a \$7 Million Rate Increase**

PacifiCorp's claim that it is entitled to a rate increase is based on fundamentally unsound reasoning, faulty math, and ultimately, outdated evidence.<sup>12/</sup> PacifiCorp argues that averaging the overall revenue requirement positions of PacifiCorp, Staff, Public Counsel, and ICNU would result in an average rate increase of \$11 million.<sup>13/</sup> PacifiCorp's argument should be rejected because rates are not set by averaging the parties' revenue requirement proposals. PacifiCorp must support its rate increase with current, reliable evidence that its prudently incurred Washington costs have increased by that amount. PacifiCorp failed to present any evidence that would allow the Commission to conclude that the Company's prudently incurred costs have increased, or that any of these costs are properly allocable to Washington customers.

PacifiCorp also mischaracterizes the positions of the parties. For example, in calculating its estimate of each party's revenue requirement "case," PacifiCorp includes the adjustment related to each party's cost allocation proposal, but excludes the net power cost stipulation. There is no reason to assume that the Commission would have rejected the uncontested net power cost stipulation if it had adopted a cost allocation methodology. The Company also assumes that it would have received favorable rulings on other issues, including the incentive and bonus adjustments. PacifiCorp also fails to recognize that ICNU's and Public Counsel's overall positions incorporated many of the revenue requirement reductions proposed by other parties. Including only the net power cost stipulation and incentive/bonus adjustments would result in a nearly zero rate increase for PacifiCorp's version of Staff's "case," and an over \$7 million revenue requirement reduction for PacifiCorp's version of ICNU's "case."

In any event, regardless of how PacifiCorp attempts to manipulate the evidence, this evidence from the general rate case proceeding is stale and outdated. The initial filing in that case was on May 5, 2005, before PacifiCorp was acquired by MidAmerican. That acquisition was finalized before PacifiCorp filed its application in this case and will have many implications on the issues involved.<sup>14/</sup> In addition, PacifiCorp used a historic September 30, 2004 test year period for most rate base, revenue, expense, billing unit, and allocation factor items except net

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<sup>10/</sup> Final Order at ¶¶ 7, 64.

<sup>11/</sup> E.g., Re Avista Corp., Docket Nos. UE-991255, UE-991262, and UE-991409, Fourth Suppl. Order at ¶ 40 (Apr. 21, 2000).

<sup>12/</sup> ICNU has submitted a more detailed response to PacifiCorp's claim that the record in the general rate case supports an \$11 million rate increase in its Answer to the Petition for Reconsideration.

<sup>13/</sup> Petition for Reconsideration at ¶ 25.

<sup>14/</sup> E.g., Docket Nos. UE-050684 and UE-050412, Order No. 4 at ¶¶ 159, 282 (discussing the acquisition's implications in the context of taxes and double leveraging).

variable power costs.<sup>15/</sup> Accordingly, new evidence must be submitted that reflects how these changed circumstances will affect the issues in the case.

### **3. PacifiCorp's Request for an Immediate Rate Increase Is Inconsistent with the Commission's Standards for Interim or Extraordinary Rate Relief**

PacifiCorp's request to immediately increase rates on a permanent basis is an extraordinary remedy that the Commission should not grant without a clearly demonstrated need that the Company is entitled to the revenues and that it will suffer grave financial harm without the rate increase. PacifiCorp has not established any need for the additional revenues, and it has only supported its request on the grounds that the Company disagrees with the Commission's Final Order. This does not warrant the extreme and extraordinary remedy of an immediate, permanent rate increase.

The Commission has established rigorous standards to review utility requests to increase rates outside of the established statutory process. For example, the Commission has authorized the "extraordinary remedy" of an interim rate increase only after a hearing in which the utility can demonstrate that "an actual emergency exists or where [it is] necessary to prevent gross hardship or gross inequity," that rate relief is needed to "fend off an impending disaster," and that failure to grant relief "will have such an effect on financing demands as to substantially affect the public interest."<sup>16/</sup> This is a very high, fact-specific standard that requires the utility to demonstrate that it has a dire emergency or extraordinary need for a rate increase.<sup>17/</sup>

PacifiCorp has submitted no evidence and has not even attempted to make an argument regarding the foregoing standards for immediate rate relief. PacifiCorp's reliance on the record from the previous general rate case will not assist the Company in proving emergency or extraordinary need because those were not issues in the general rate case.

Moreover, PacifiCorp is proposing an even more extreme and unusual request than that of an ordinary request for immediate rate relief. In the usual case, interim or extraordinary rate relief is collected and may be refunded after the completion of a full hearing to review the reasonableness of the rate increase request.<sup>18/</sup> PacifiCorp is not asking the Commission for a specific amount of revenues that will be subject to a refund after a full hearing. Instead, the Company is requesting that the Commission grant a permanent rate increase without the submission of any new evidence, hearings, or the typical suspension period.

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<sup>15/</sup> WUTC Docket Nos. UE-050684 and UE-050412, Exh. No. 491TC at 7:17-20 (Falkenberg Direct); WUTC Docket Nos. UE-050684 and UE-050412, Exh. No. 191T at 3:8-13 (Wrigley Direct).

<sup>16/</sup> E.g., WUTC v. Verizon Northwest, Inc., Docket No. UT-040788, Order No. 11 at ¶¶ 45, 113, 129, 136 (Oct. 15, 2004); WUTC v. Pac. N.W. Bell Tel. Co., Cause No. U-72-30, Second Suppl. Order at 14-15 (Oct. 10, 1972).

<sup>17/</sup> WUTC v. Puget Sound Energy, Inc., Docket Nos. UE-011163 and UE-011170, Sixth Suppl. Order at ¶ 21 (Oct. 4, 2001).

<sup>18/</sup> E.g., WUTC Docket No. UT-040788, Order No. 11 at ¶ 77 n.50; WUTC Cause No. U-72-30, Second Suppl. Order at 3.

#### 4. The Rate Increase Request Should Be Treated As a General Rate Case

PacifiCorp's proposed immediate rate increase and request to consolidate this proceeding with the general rate case are simply procedural gimmicks intended to allow the Company to quickly increase rates without meeting the requirements for a general rate case. If the Commission does not outright reject the filing, PacifiCorp should not be permitted to avoid the procedural requirements regarding general rate cases because it "limited" its rate increase to 2.99%.

PacifiCorp filed its request seeking a 2.99% rate increase because of the Commission rule defining a "general rate proceeding" as a filing to increase rates 3% or more.<sup>19/</sup> If a rate increase is considered a general rate case, then the utility must meet specific requirements regarding the filing of testimony, exhibits, workpapers, cost studies, and other documents.<sup>20/</sup> The rule appears to be designed for minor, non-controversial filings that do not need to be as fully supported as a general rate case. Regardless of the procedural filing requirements, the rule does not waive the statutory suspension period or the Company's obligation to demonstrate that its proposed rates are fair, just, and reasonable.

PacifiCorp's 2.99% rate increase should be considered a general rate increase, notwithstanding the Company's attempt to characterize it differently.<sup>21/</sup> There is no basis to treat form over substance, and allow PacifiCorp to avoid the filing requirements for a general rate increase simply by requesting an increase of less than 3%. If the Commission does not reject the 2.99% rate increase outright, then PacifiCorp's request should be treated as a general rate increase, suspended, and fully reviewed as a general rate case.

In sum, PacifiCorp has not demonstrated that it is entitled to any rate relief, or that the Commission should depart from its established standards to provide the Company with the extraordinary rate relief that it is requesting in this proceeding. The Commission should reject PacifiCorp's novel request to increase rates while the Company challenges the Final Order and limit its review to PacifiCorp's substantive allegations in the petition for reconsideration. In the alternative, the rate increase filing should be suspended and fully investigated. While PacifiCorp may consider a 2.99% rate increase minor, its customers do not.

Sincerely yours,

Melinda J. Davison

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<sup>19/</sup> See WAC § 480-07-505(1)(a) (general rate case includes any request to increase rates by 3% of more).

<sup>20/</sup> See WAC § 480-07-510 (requirements for general rate proceedings).

<sup>21/</sup> The Commission can "require that any filing or proposal by a regulated company to increase rates for any customer class, or to restructure rates, is subject to the protections and procedures" for general rate cases). WAC § 480-07-505(4).