



900 S.W. Fifth Avenue, Suite 2600
Portland, Oregon 97204
main 503.224.3380
fax 503.220.2480
www.stoel.com

JAMES M. VAN NOSTRAND
Direct 503.294.9679
jmvannostrand@stoel.com

July 16, 2004

VIA ELECTRONIC AND OVERNIGHT MAIL
<records@wutc.wa.gov>

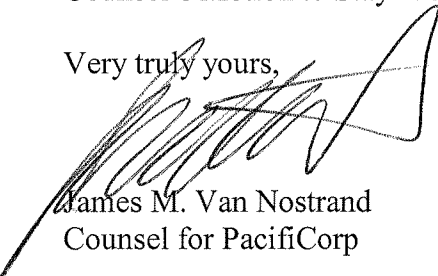
Carole J. Washburn
Executive Secretary
Washington Utilities and
Transportation Commission
1300 S Evergreen Park Drive SW
Olympia, WA 98504-7250

Re: PacifiCorp
Docket No. UE-032065

Dear Ms. Washburn:

Enclosed for filing are an original and sixteen (16) copies of PacifiCorp's response to Public Counsel's Motion to Stay Procedural Schedule in this matter.

Very truly yours,



James M. Van Nostrand
Counsel for PacifiCorp

JMV:jlf
cc: Service List

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

Complainant,

v.

PacifiCorp dba PACIFIC POWER & LIGHT
COMPANY

Respondent

Docket No. UE-032065

**PACIFICORP'S REPLY TO PUBLIC
COUNSEL'S MOTION TO STAY
PROCEDURAL SCHEDULE**

1 On July 13, 2004, Public Counsel filed a Motion to Stay Procedural Schedule (“Motion”) in this proceeding. The Motion seeks to stay the schedule “pending a decision by the court of appeals.” The only basis cited in the Motion for the request is the appeal filed in the Washington Court of Appeals regarding the Commission’s final order in Docket No. UE-020417 which, according to the Motion, “permitted this general rate case proceeding to be filed with the Commission.” PacifiCorp dba Pacific Power and Light Company (“PacifiCorp” or “the Company”) hereby responds to the Motion.

2 The Motion is utterly without foundation or merit, and should be denied for several reasons, including the following.

- The Motion is filed in the wrong forum. The Commission’s Order in Docket No. UE-020417 is valid until determined otherwise, and the Company’s filing is pursuant to that Order. A court, not the Commission, must grant the relief requested by Public Counsel.

- The Motion is premised upon a successful appeal, which is belied by the adverse ruling against the appeal in Thurston County Superior Court.
- The Motion asks the Commission to exceed its statutory authority, inasmuch as the Commission must render a decision on the Company's rate filing within the statutory suspension period.
- The Motion is untimely. The only basis for the motion is that an appeal of the Order has been taken, a circumstance which has existed since August 2003, when Public Counsel appealed the Order to Thurston County Superior Court.

BACKGROUND

3 On July 15, 2003, the Commission issued its Sixth Supplemental Order in Docket No. UE-020417 and Eighth Supplemental Order in Docket No. UE-991832 ("the Order") finding that the five-year Rate Plan approved in Docket No. UE-991832 was "contrary to the public interest." (Order, ¶ 49) The Order amended the Third Supplemental Order in Docket No. UE-991832 to the extent necessary to authorize PacifiCorp to file a general rate later in 2003. (*Id.*, ¶ 54)

4 Public Counsel appealed the Order to Thurston County Superior Court on August 14, 2003. (Thurston County Superior Court Cause No. 03-2-01614-1.)

5 As permitted by the Order, the Company on December 16, 2003 commenced this proceeding by submitting tariff revisions seeking to increase general rates by \$26.7 million, or 13.5%. The Company's tariff filing was accompanied by its direct testimony and exhibits. In accordance with the Prehearing Conference Order, Staff and Intervenors filed opposing testimony on July 2, 2004. The Company's rebuttal testimony is due on July 28, 2004, with hearings scheduled for August 30 through September 17, 2004. The suspension period expires on November 16, 2004.

6 In a Judgment and Order entered on May 27, 2004, Thurston County Superior Court dismissed Public Counsel's appeal of the Order, and affirmed the Commission's decision. (Attachment A) On June 1 and 17, 2004, respectively, the Industrial Customers of Northwest Utilities ("ICNU") and Public Counsel appealed that decision to Division II of the Washington State Court of Appeals, Case No. 31826-1-II. (Attachment B) Under the scheduling notice issued by the Court of Appeals, Appellants' Opening Briefs will be filed in mid-August 2004, followed by Respondents' Briefs 30 days later (or mid-September 2004), and Appellants' Reply Briefs 30 days thereafter (or mid-October 2004). (Attachment C) Oral argument will be scheduled upon the filing of all briefs, and likely will not occur until spring 2005, with a decision likely issued no earlier than mid-2005.

ARGUMENT

A. The Motion Is Premised Upon the Invalidity of the Order, Which Is Valid Until Determined Otherwise.

7 As noted above, the Company's filing in this proceeding was pursuant to the relief authorized by the Order. Although Public Counsel has sought judicial review of the Order, it remains in full force and effect until determined otherwise by a court of competent jurisdiction. Under RCW 80.04.180, the effectiveness and validity of the Order is not affected by seeking judicial review. Rather, a party seeking judicial review must take affirmative action to request that the reviewing court stay the operation of a Commission order. According to RCW 80.04.180(1):

The pendency of any writ of review shall not of itself stay or suspend the operation of the order of the commission, but the superior court may restrain or suspend, in whole or in part, the operation of the commission's order pending the final hearing and determination of the suit.

RCW 80.04.180(2) prescribes the procedure to be followed to obtain a court order restraining or suspending the operation of a Commission order, and requires a showing of great or irreparable damage to petitioner.

8 Notably, Public Counsel has failed to take advantage of this procedure. Had Public Counsel been able to demonstrate “irreparable damage” from the filing of the Company’s case in this proceeding, presumably Public Counsel would have availed itself of the remedy provided by RCW 80.04.180. Its failure to do so evinces its inability to demonstrate “irreparable damage.” Its Motion in this case is nothing more than an ill-conceived end-around of the requirements imposed by statute. For the reasons discussed in this Response, the relief sought by Public Counsel cannot be granted by the Commission and should be considered only in connection with the judicial review of the Order, under the standards prescribed for such judicial review.

B. The Motion Assumes a Successful Appeal, when in Fact Thurston County Superior Court has Determined Otherwise.

9 The Motion implicitly is based upon a successful outcome of Public Counsel’s appeal of the Order. The facts which underlie the Motion – a Petition for Judicial Review of the Order – have existed for nearly a year. Curiously, however, Public Counsel waited to file its Motion when the available evidence suggests that its appeal will be *unsuccessful*: Thurston County Superior Court dismissed Public Counsel’s appeal, and affirmed the Commission decision. (See Judgment and Order included as Attachment A) Thus, the only development that has occurred since Public Counsel could have filed this Motion (i.e., immediately upon the Company making its general rate case filing in December 2003) was an unfavorable one: Public Counsel failed to prevail in Thurston County Superior Court, and therefore is forced to continue its appeal. This development is further evidence of the Motion’s utter lack of merit.

C. Any Stay Cannot Extend Beyond the Statutory Suspension Period in this Proceeding.

10 Under RCW 80.28.060 and RCW 80.04.110, tariffs can be suspended for up to ten (10) months beyond the thirty-day notice period required for a tariff change. In its Order No. 01 in this proceeding – Complaint and Order Suspending Tariff Revisions – issued by the Commission on January 14, 2004, the Commission suspended the Company’s tariff revisions implementing the \$26.7 million increase. As indicated in the Prehearing Conference Order, that suspension will be lifted on November 16, 2004. To the extent the case is not concluded by that date, the tariffs implementing the 13.5% increase requested by the Company will be allowed to become effective.

11 The schedule adopted in the Prehearing Conference Order will permit the case to be concluded prior to the statutory suspension date. Hearings are scheduled for August 30 through September 17, followed by briefing which concludes on October 15. This schedule permits approximately 30 days for the Commission to deliberate and render its decision. Plainly, there is no ability to stay the schedule indefinitely, as requested by the Motion, and still conclude the case within the statutory suspension period.

12 Moreover, given the schedule of proceedings at the Court of Appeals, this case will need to be concluded long before a decision is rendered in Public Counsel’s appeal of the Order. The request to stay the procedural schedule “pending a decision by the court of appeals,” as sought by Public Counsel’s Motion, cannot be squared with the Commission’s statutory obligation to render a decision prior to November 16, 2004.

D, The Motion Is Untimely, as the Fact of the Order’s Appeal has been True Since August 2004.

13 The only basis cited in the Motion is the fact that the Order has been appealed. However, this fact has been true since August 14, 2003, when Public Counsel filed its Petition for Judicial Review in Thurston County Superior Court. No explanation is

offered in the Motion for Public Counsel's delay in seeking to alter the procedural schedule in this case. The underlying basis for the Motion could have been asserted in December 2003, in response to the Company's general rate case filing. It could have been asserted at the prehearing conference on January 26, 2004. It could have been asserted prior to the extensive discovery which has occurred in this case, and prior to the preparation and filing of opposing testimony by Staff and Intervenors on July 2, 2004. No development has occurred that would explain the delay in Public Counsel bringing its Motion. In fact, the only intervening event bearing on these issues was the ruling by Thurston County Superior Court that was *adverse* to Public counsel's appeal. Thus, not only is the passage of time inexplicable – and inexcusable – that passage of time has worked against Public Counsel's favor by permitting the Superior Court's dismissal of Public Counsel's appeal to be considered in evaluating the merits, if any, of Public Counsel's Motion.

14

It should also be noted that Public Counsel's Motion appears to be contrary to the positions taken in its prefiled testimony in this case. According to the testimony and exhibits filed by its expert witness, James R. Dittmer, Public Counsel is recommending that the Company be required to *reduce* its rates by \$25.3 million. (Prefiled Public Counsel Exhibit No. __ (JRD-2), Schedule A, page 1.) To the extent Public Counsel seeks to stay the procedural schedule to preclude the case from being concluded by the statutory suspension period, the Company would be permitted to continue to charge rates that, in Public Counsel's view, are excessive. If Public Counsel's testimony is to be given any weight, its interests are best served by allowing this case to go forward, and forcing the Company's rates to be reduced as quickly as possible. While this is technically not an argument for denying the Motion, this apparent inconsistency sheds

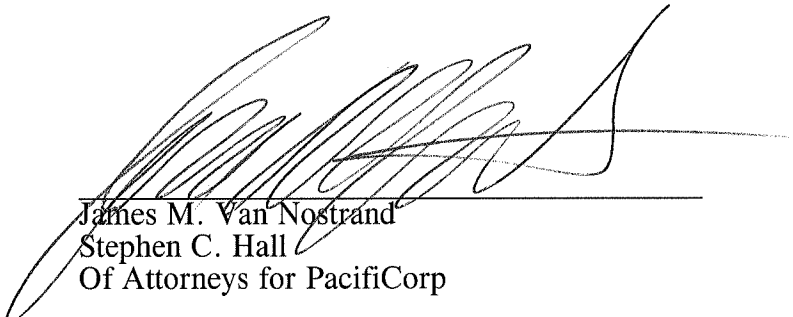
some light on the weight Public Counsel itself would place on the testimony it has filed in this proceeding.

CONCLUSION

15

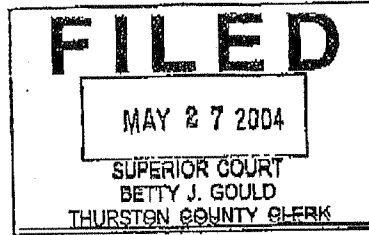
For the reasons stated herein, Public Counsel's Motion for Stay of Procedural Schedule is without merit, and should be denied. This case should proceed under the existing procedural schedule, which will permit the case to be concluded by November 16, 2004, the end of the statutory suspension period.

DATED: July 16, 2004.



James M. Van Nostrand
Stephen C. Hall
Of Attorneys for PacifiCorp

Seattle-3229120.1 0020011-00139



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT**

THE WASHINGTON STATE
ATTORNEY GENERAL'S OFFICE,
PUBLIC COUNSEL SECTION,

Petitioner,

v.

WASHINGTON UTILITIES AND
TRANSPORTATION
COMMISSION,

Respondent.

CASE NO. 03-2-01614-1

ORDER AFFIRMING
WASHINGTON UTILITIES
AND TRANSPORTATION
COMMISSION AND
DISMISSING PETITION FOR
JUDICIAL REVIEW OF
FINAL AGENCY ACTION

[PROPOSED]

THIS MATTER came before the Court pursuant to RCW 34.05.570(3) on the Petition for Judicial Review of the Washington State Attorney General's Office, Public Counsel Section. The Court, having considered the written submissions of the parties, namely, the Washington State Attorney General's Office, Public Counsel Section, the Washington Utilities and Transportation Commission, PacifiCorp, d/b/a Pacific Power & Light Company, and the Industrial Customers of Northwest Utilities, and of *amicus curiae* Northwest Energy Coalition, and having also considered the

[PROPOSED] ORDER AFFIRMING
WUTC AND DISMISSING PETITION
FOR JUDICIAL REVIEW

ATTORNEY GENERAL OF WASHINGTON
Utilities and Transportation Division
1400 S Evergreen Park Drive SW
PO Box 40128 Olympia, WA 98504-0128
(360) 664-1183

1 administrative record and the argument of counsel; now, therefore, it is
2 hereby

3 ORDERED, ADJUDGED AND DECREED THAT:

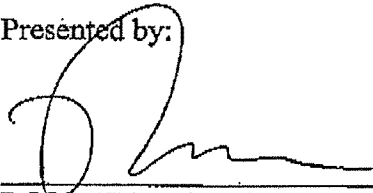
4 1. The Sixth Supplemental Order: Denying Petition for
5 Accounting Order; Rejecting Tariff Filing; Authorizing Subsequent Filing in
6 Docket No. UE-020417 and Eighth Supplemental Order: Amending Third
7 Supplemental Order in Docket No. UE-991832, rendered by the Washington
8 Utilities and Transportation Commission on July 15, 2004, are AFFIRMED.
9
10

11 2. The Petition for Judicial Review of Final Agency Action is
12 DISMISSED.

13 DONE IN OPEN COURT this 27 day of May, 2004.
14

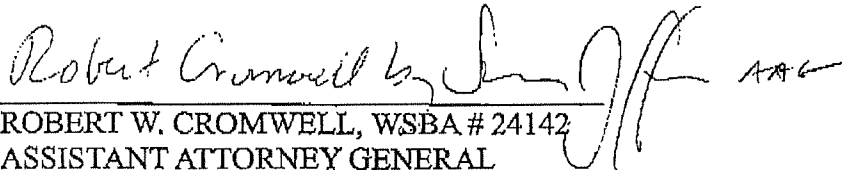
15 RICHARD D. HICKS
16 HONORABLE RICHARD D. HICKS

17 Presented by:

18 
19
20

21 ROBERT D. CEDARBAUM, WSBA # 11770
22 Assistant Attorney General
23 Counsel for the Washington Utilities
24 and Transportation Commission
25
26

1 Approved as to form
2 Notice of presentation waived:

3
4  AAG
5 ROBERT W. CROMWELL, WSBA # 24142
6 ASSISTANT ATTORNEY GENERAL
7 Washington State Attorney General's Office,
8 Public Counsel Section

9
10
11 JAMES M. VAN NOSTRAND, WSBA # 15897
12 STOEL RIVES LLP
13 Attorneys for PacificCorp, d/b/a Pacific
14 Power & Light Company

15
16 MELINDA DAVISON, WSBA # 31182
17 Davison Van Cleve PC
18 Attorneys for the Industrial Customers
19 Of Northwest Utilities
20
21
22
23
24
25
26

1 Approved as to form
2 Notice of presentation waived:
3
4

5 _____
6 ROBERT W. CROMWELL, WSBA # 24142
7 ASSISTANT ATTORNEY GENERAL
8 Washington State Attorney General's Office,
9 Public Counsel Section
10

11 _____
12 JAMES M. VAN NOSTRAND, WSBA # 15897
13 STOEL RIVES LLP
14 Attorneys for PacifiCorp, d/b/a Pacific
15 Power & Light Company
16

17 _____
18 MELINDA DAVISON, WSBA # 31182
19 Davison Van Cleve PC
20 Attorneys for the Industrial Customers
21 Of Northwest Utilities
22
23
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Approved as to form
Notice of presentation waived;

ROBERT W. CROMWELL, WSBA # 24142
ASSISTANT ATTORNEY GENERAL
Washington State Attorney General's Office,
Public Counsel Section

JAMES M. VAN NOSTRAND, WSBA # 15897
STOEL RIVES LLP
Attorneys for PacifiCorp, d/b/a Pacific
Power & Light Company



MELINDA DAWISON, WSBA # 31182
Davison Van Cleve PC
Attorneys for the Industrial Customers
Of Northwest Utilities

**THURSTON COUNTY SUPERIOR COURT
STATE OF WASHINGTON**

THE WASHINGTON STATE
ATTORNEY GENERAL'S OFFICE,
PUBLIC COUNSEL SECTION,

Appellant,

v.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Respondent.

NO. 03-2-01614-1

NOTICE OF APPEAL
TO COURT OF
APPEALS

Pursuant to RAP 4.1(a), appellant, the Public Counsel Section of the Washington State Attorney General's Office ("Public Counsel") seeks review by the designated appellate court of the Order of The Honorable Richard D. Hicks dated May 27, 2004, affirming the "Sixth Supplemental Order; Denying Petition for Accounting Order; Rejecting Tariff Filing; Authorizing Subsequent Filing" in Commission Docket No. UE-020417 which is also identified as the "Eighth Supplemental Order; Amending Third Supplemental Order" in Commission Docket No. UE-991832, rendered by the Washington Utilities and Transportation Commission and dismissing Public Counsel's Petition for Judicial Review of Final Agency Action. A copy of the Order is attached to this notice.

STOEL RIVES LLP

JUN 21 2004

RECEIVED

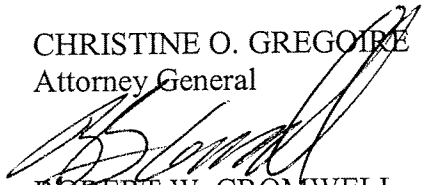
Appellant is represented by Robert Cromwell Jr., Assistant Attorney General, and Simon ffitch, Assistant Attorney General, Washington State Attorney General's Office, Public Counsel Section, 900 4th Avenue, Suite 2000, Seattle, WA 98164-1012.

Respondent is represented by Robert D. Cedarbaum, Assistant Attorney General, Washington State Attorney General's Office, Utilities and Transportation Division, 1400 S. Evergreen Park Drive SW, Olympia, WA 98504-0128.

Please note – A parallel Notice of Appeal was filed by The Industrial Customers of Northwest Utilities on June 1, 2004. It has been assigned **Court of Appeals No. 31826-1-II** by Division Two of the Court of Appeals and the case manager is Prue.

RESPECTFULLY SUBMITTED this 17th day of June, 2004.

CHRISTINE O. GREGOIRE
Attorney General



ROBERT W. CROMWELL, JR.
WSBA# 24142
Assistant Attorney General
Public Counsel

List of Parties

Melinda J. Davison, WSB #31182
Davison Van Cleve, PC
1000 SW Broadway #2460
Portland, OR 97205
Telephone: (503) 531-8885

Marilyn Showalter
Washington Utilities &
Transportation Commission
P.O. Box 47250
Olympia, WA 98504
Telephone: (360) 664-1160

Robert Cedarbaum
Washington Utilities & Transportation
Commission
1400 S. Evergreen Park Drive SW
Olympia, WA 98504

James N. Van Nostrand
Stoel Rives LLP
600 University Street #3600
Seattle, WA 98101
Telephone: (206) 386-7665

Chuck Eberdt
The Energy Project
1701 Ellis Street
Bellingham, WA 98225
Telephone: (360) 733-6559

Michael Rossotto
Attorney at Law
4053 NE 92nd Street
Seattle, WA 98115

Danielle Dixon
NW Energy Coalition
219 First Ave. South #100
Seattle, WA 98104
Telephone: (206) 621-0094

Robert W. Cromwell, Jr.
Assistant Attorney General
Public Counsel Section
900 4th Ave., #2000
Seattle, WA 98164

FILED
MAY 27 2004
SUPERIOR COURT
BETTY J. GOULD
THURSTON COUNTY CLERK

STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT

THE WASHINGTON STATE
ATTORNEY GENERAL'S OFFICE,
PUBLIC COUNSEL SECTION,

Petitioner,

v.

WASHINGTON UTILITIES AND
TRANSPORTATION
COMMISSION,

Respondent.

CASE NO. 03-2-01614-1

ORDER AFFIRMING
WASHINGTON UTILITIES
AND TRANSPORTATION
COMMISSION AND
DISMISSING PETITION FOR
JUDICIAL REVIEW OF
FINAL AGENCY ACTION

[PROPOSED]

THIS MATTER came before the Court pursuant to RCW 34.05.570(3) on the Petition for Judicial Review of the Washington State Attorney General's Office, Public Counsel Section. The Court, having considered the written submissions of the parties, namely, the Washington State Attorney General's Office, Public Counsel Section, the Washington Utilities and Transportation Commission, PacifiCorp, d/b/a Pacific Power & Light Company, and the Industrial Customers of Northwest Utilities, and of *amicus curiae* Northwest Energy Coalition, and having also considered the

[PROPOSED] ORDER AFFIRMING
WUTC AND DISMISSING PETITION
FOR JUDICIAL REVIEW

ATTORNEY GENERAL OF WASHINGTON
Utilities and Transportation Division
1400 S Evergreen Park Drive SW
PO Box 40128 Olympia, WA 98504-0128
(360) 664-1183

1 administrative record and the argument of counsel; now, therefore, it is
2 hereby

3 ORDERED, ADJUDGED AND DECREED THAT:

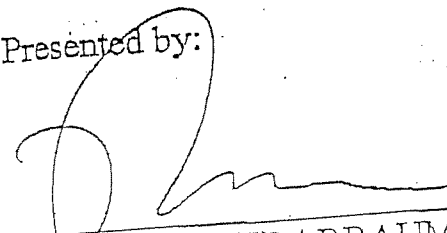
4 1. The Sixth Supplemental Order: Denying Petition for
5 Accounting Order; Rejecting Tariff Filing; Authorizing Subsequent Filing in
6 Docket No. UE-020417 and Eighth Supplemental Order: Amending Third
7 Supplemental Order in Docket No. UE-991832, rendered by the Washington
8 Utilities and Transportation Commission on July 15, 2004, are AFFIRMED.

9
10 2. The Petition for Judicial Review of Final Agency Action is
11 DISMISSED.

12
13 DONE IN OPEN COURT this 21 day of May, 2004.

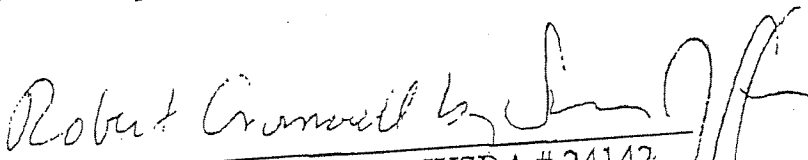
14
15 RICHARD D. HICKS
16 HONORABLE RICHARD D. HICKS

17 Presented by:

18
19
20 

21 ROBERT D. CEDARBAUM, WSBA # 11770
22 Assistant Attorney General
23 Counsel for the Washington Utilities
24 and Transportation Commission
25
26

1 Approved as form
2 Notice of presentation waived:

3
4  AAC

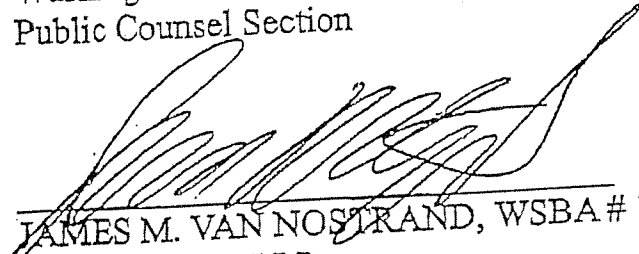
5 ROBERT W. CROMWELL, WSBA # 24142
6 ASSISTANT ATTORNEY GENERAL
7 Washington State Attorney General's Office,
8 Public Counsel Section
9

10 JAMES M. VAN NOSTRAND, WSBA # 15897
11 STOEL RIVES LLP
12 Attorneys for PacifiCorp, d/b/a Pacific
13 Power & Light Company
14

15 MELINDA DAVISON, WSBA # 31182
16 Davison Van Cleve PC
17 Attorneys for the Industrial Customers
18 Of Northwest Utilities
19
20
21
22
23
24
25
26

1 Approved as to form
2 Notice of presentation waived:
3
4

5 ROBERT W. CROMWELL, WSBA # 24142
6 ASSISTANT ATTORNEY GENERAL
7 Washington State Attorney General's Office,
8 Public Counsel Section
9


10 
11 JAMES M. VAN NOSTRAND, WSBA # 15897
12 STOEL RIVES LLP
13 Attorneys for PacifiCorp, d/b/a Pacific
14 Power & Light Company
15

16 MELINDA DAVISON, WSBA # 31182
17 Davison Van Cleve PC
18 Attorneys for the Industrial Customers
19 Of Northwest Utilities
20
21
22
23
24
25
26

1 Approved as to form
2 Notice of presentation waived:
3
4

5 ROBERT W. CROMWELL, WSBA # 24142
6 ASSISTANT ATTORNEY GENERAL
7 Washington State Attorney General's Office,
8 Public Counsel Section
9

10 JAMES M. VAN NOSTRAND, WSBA # 15897
11 STOEL RIVES LLP
12 Attorneys for PacifiCorp, d/b/a Pacific
13 Power & Light Company
14

15 
16 MELINDA DAVISON, WSBA # 31182
17 Davison Van Cleve PC
18 Attorneys for the Industrial Customers
19 Of Northwest Utilities
20
21
22
23
24
25
26



Washington State Court of Appeals
Division Two

ATTACHMENT C
Page 1 of 2

JUN 11 2004

RECEIVED

950 Broadway, Suite 300, Tacoma, Washington 98402-4454
David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, Issue Summaries, and General Information at <http://www.courts.wa.gov/courts>

June 8, 2004

James M. Van Nostrand
Stoel Rives LLP
One Union Square
600 University St Ste 3600
Seattle, WA 98101-3197

Melinda J. Davison
Attorney at Law
1000 SW Broadway Ste 2460
Portland, OR 97205-3034

Robert William Cromwell
Office of the Attorney General
M/S TB-14
900 4th Ave Ste 2000
Seattle, WA 98164-1012

Robert Daniel Cedarbaum
Office of Attorney General
PO Box 40128
Olympia, WA 98504-0128

Re: Court of Appeals No. 31826-1-II.
(USE THIS NUMBER ON ALL FILINGS)
Case Title: Washington State Attorney General's Office, Public Counsel
Section, Appellant v. Washington Utilities and Transportatio Commission,
Respondent
Thurston County Cause No. 03-2-01614-1

Case Manager: Prue

THIS WILL BE THE ONLY NOTICE THAT YOU WILL RECEIVE CONCERNING DUE DATES. A DOCUMENT FILED PRIOR TO OR AFTER ITS DUE DATE MAY AFFECT ALL SUBSEQUENT DUE DATES. THE PARTIES ARE RESPONSIBLE FOR DETERMINING ADJUSTED DUE DATES BY REVIEWING THE APPROPRIATE RULES OF APPELLATE PROCEDURE.

Counsel:

We have received a Notice of Appeal filed **June 1, 2004**. The time periods for compliance with the Rules of Appellate Procedure are as follows:

1. The designation of clerks papers should be filed with the trial court by **July 1, 2004**. A copy of the designation should be served and must be filed with the appellate court. RAP 9.6(a).
2. The statement of arrangements should be filed in this court by **July 1, 2004** and a copy served on all parties and all named court reporters. **The statement should include the name of each court reporter, the hearing dates, and the trial court judge. Revised RAP 9.2(a)**. If counsel does not intend to file a verbatim report of proceedings, counsel should so notify this court, in writing, by that date. RAP 9.2(a).

CC: Doc

Appeal No. 31826-1-II

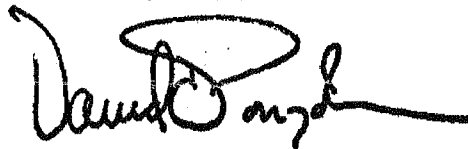
3. The verbatim report of proceedings must be filed with the trial court clerk within 60 days after the statement of arrangements is filed. Revised RAP 9.5(a).
4. Appellant's opening brief, accompanied by proof of service, should be filed in this court 45 days after the filing of the report of proceedings with the trial court clerk. RAP 10.2(a) & (h). Pursuant to RAP 10.2(a), if the record on review does not include a report of proceedings, the brief of appellant should be filed within 45 days after the party seeking review has filed the designation of clerks papers and exhibits at the trial court.
5. Respondent's opening brief, accompanied by proof of service, should be filed in this court 30 days after service of the appellant's brief to all parties. RAP 10.2(b) or (c).

In the Court of Appeals, Division Two, a party may file a Motion on the Merits in lieu of the respondent's brief. The motion is due, however, the same date as the respondent's brief. If the motion is denied, respondent's brief is due 30 days after the date of the order. See RAP 18.14 for motion procedure.

6. A reply brief, if any, is due 30 days after service of respondent's brief. RAP 10.2(d). Failure to timely file the brief will result in the brief being placed in the case file without action. The court will give it whatever consideration it wishes.

Counsel's failure to timely comply with the rules of Appellate Procedure may result in the imposition of sanctions pursuant to RAP 18.9. any request for an extension of time must be made by way of written motion and affidavit showing good cause accompanied by proof of service. The request for additional time should specify a definite date. The granting of an extension request will change all subsequent due dates.

Very truly yours,



David C. Ponzoha,
Court Clerk

DCP:pfg

cc: Thurston County Clerk

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing document upon the parties of record in this proceeding by first-class mail, addressed to said parties/attorneys' addresses as shown below:

Melinda J. Davison
Davison Van Cleve, PC
1000 SW Broadway, Suite 2460
Portland, OR 97205

John O'Rourke
Citizens' Utility Alliance of Washington
212 W Second Avenue, Suite 100
Spokane, WA 99201

Ralph Cavanagh
Northwest Project Director
Natural Resources Defense Council
74 Stevenson Street, Suite 1825
San Francisco, CA 94105

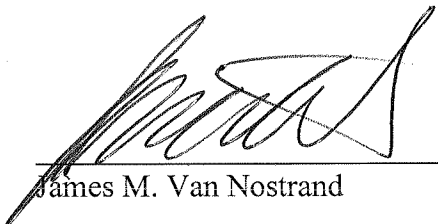
Robert Cromwell
Public Counsel Section
900 Fourth Avenue, Suite 2000
Seattle, WA 98164-1012

Robert Cedarbaum
Washington Utilities & Transportation Commission
1400 S Evergreen Park Drive SW
Olympia, WA 98504

Chuck Eberdt
The Energy Project
1701 Ellis Street
Bellingham, WA 98225

Shannon E. Smith
Assistant Attorney General
1400 S Evergreen Park Drive SW
Olympia, WA 98504-0128

DATED: July 16, 2004.



James M. Van Nostrand