

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND	)	
TRANSPORTATION COMMISSION,	)	
	)	DOCKET NO. UE-032065
Complainant,	)	
	)	
v.	)	ORDER NO. 04
	)	
PACIFICORP d/b/a PACIFIC POWER	)	
& LIGHT COMPANY	)	DENYING MOTION TO STAY
	)	PROCEDURAL SCHEDULE
Respondent.	)	
.....	)	

**MEMORANDUM**

1 **PROCEEDINGS:** On December 16, 2003, PacifiCorp d/b/a Pacific Power & Light Company (“PacifiCorp” or the “Company”) filed with the Commission revisions to its currently effective Tariff WN U-74, designated as set forth in paragraph 1 of the Commission’s Complaint and Order No. 01 in this proceeding. The stated effective date is January 16, 2004. PacifiCorp requests an increase in annual revenues from Washington operations of \$26.7 million, resulting in a proposed uniform increase in rates of 13.5 percent. The filing is based on a test period consisting of the twelve months ending March 31, 2003. The Commission entered its Complaint and Order Suspending Tariff Revisions on January 14, 2004. Following a prehearing conference on January 26, 2004, before Administrative Law Judge Dennis J. Moss, the Commission entered Order No. 02, which, among other things, established a procedural schedule.

2     **MOTION TO STAY PROCEDURAL SCHEDULE:** On July 15, 2004, Public Counsel filed its Motion To Stay Procedural Schedule. Public Counsel's Motion states as grounds its pending appeal of "the Commission's final order in Docket UE-020417 which permitted this general rate case proceeding to be filed with the Commission." More precisely, Public Counsel's Motion is predicated on its June 17, 2004, appeal to Division Two of the Court of Appeals of the Superior Court's May 27, 2004, Order Affirming Washington Utilities and Transportation Commission and Dismissing Petition for Judicial Review of Final Agency Action.

3     **RESPONSE:** On July 19, 2004, PacifiCorp filed its response to Public Counsel's Motion. PacifiCorp argues that the Motion should be denied for four reasons:

- The Motion should have been filed with the Court, not with the Commission. This argument is based on RCW 80.04.180(1), which provides:

The pendency of any writ for 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.

- The Motion is impliedly premised on Public Counsel's likelihood of success on the merits, which is belied by Public Counsel's unsuccessful appeal to the Superior Court.
- The Motion asks for an indefinite stay of a procedural schedule that cannot be indefinitely stayed if the Commission is to complete these proceedings and enter a final order on or before the statutory suspension date, November 16, 2004.

- The Motion is untimely given that its basis, appeal of the Commission's Order that authorized PacifiCorp's general rate case filing, has been present since August 14, 2003, four months prior even to PacifiCorp's filing in this Docket. PacifiCorp describes as "inexplicable—and inexcusable" Public Counsel's failure to file its Motion prior to the completion of extensive discovery, the filing of response testimony and the passage of more than one-half of the ten-month statutory period allowed for completion of general rate proceedings.

4 **COMMISSION DISCUSSION AND DECISION:** Public Counsel did not seek to stay the effectiveness of the Commission's final order in Docket UE-020417, which permitted this general rate case proceeding to be filed, either by motion to the Commission following entry of that Order or, when it took its appeal, by motion to the Superior Court. Such a motion would have allowed for timely consideration of any arguments Public Counsel might have wished to put forward in support of a stay. Now, with only four months remaining prior to the date on which PacifiCorp's rates, as-filed in this proceeding, will automatically go into effect absent final Commission action, we find and conclude that Public Counsel's Motion should be rejected as untimely and contrary to the public interest.<sup>1</sup>

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<sup>1</sup>Public Counsel's motion also appears contrary to its advocacy in this proceeding. Considering Public Counsel's position that the Commission should order a rate decrease, it is puzzling that Public Counsel would have us take action that could mean the rate increase PacifiCorp seeks in this proceeding will go into effect on November 16, 2004, absent Commission action by that date.

**ORDER**

5 THE COMMISSION ORDERS That Public Counsel's Motion To Stay Procedural Schedule is DENIED.

DATED at Olympia, Washington, and effective this 27th day of July 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner