

MEMORANDUM

August 14, 2003

TO: Chairwoman Showalter
Commissioner Hemstad
Commissioner Oshie
Bob Wallis (w/attachments)
Sally Johnston (w/attachments)
Dixie Linnenbrink (w/attachments)
Marilyn Meehan
Staff Lead
AD for the Industry

FROM: Mike Sommerville, Records Center

SUBJECT: The Washington State Attorney General's Office, Public Counsel
Section v. Washington Utilities and Transportation Commission
(UE-020417 / UE-991832)
Petition for Judicial Review of Final Agency Order
No. 03 2 01614 1

A petition for review has been filed in Thurston County Superior Court, on August 14, 2003, by Robert W. Cromwell, Jr., Assistant Attorney General, representing Petitioner listed above. The petition was received by the Commission on August 14, 2003.

Please contact the Records Center if you would like copies of the attachments.

RMS



Christine O. Gregoire

ATTORNEY GENERAL OF WASHINGTON

900 Fourth Avenue #2000 • Seattle WA 98164-1012

August 14, 2003

VIA: Personal Service

Carole Washburn
Executive Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Pk. Dr. S.W.
PO Box 47250
Olympia, WA 98504-7250

RE: Pacificorp
Docket Nos. UE-020417 and UE-991832

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08 AUG 14 PM 2:24
STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

Dear Secretary Washburn:

Please be advised that the Public Counsel Section of the Washington State Attorney General's Office has sought judicial review of the Washington Utilities and Transportation Commission's *Sixth Supplemental Order; Denying Petition for Accounting Order; Rejecting Tariff Filing;; Authorizing Subsequent Filing in In re the Petition of PACIFICORP d/b/a PACIFIC POWER & LIGHT COMPANY For an Accounting Order Authorizing Deferral of Excess Net Power Costs*, Docket No. UE-020417 which is also identified as the *Eighth Supplemental Order; Amending Third Supplemental Order in WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION v. PACIFICORP d/b/a PACIFIC POWER & LIGHT COMPANY*, Docket No. UE-991832. Attached is a copy of Public Counsel's Petition for Judicial Review. This service is being provided upon you in accordance with RCW 34.05.542(4).

Please be advised that pursuant to RCW 34.05.566 a certified copy of the records in UE-020417 and UE-991832 must be transmitted to the court within thirty days. Please let me know at your earliest convenience the charge for copying and transmittal of the records and I will have a voucher prepared and sent to you for those costs in accordance with RCW 34.05.566(3).

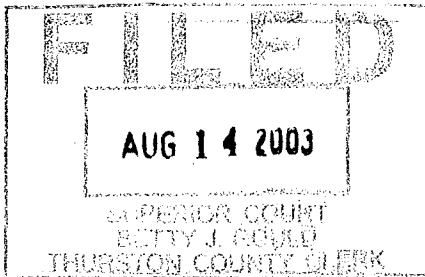
Please feel free to call me directly at (206) 919-1437 if you have any questions.

Sincerely,

Robert W. Cromwell, Jr.
Assistant Attorney General
Public Counsel Section
(206) 464-6595

RWC:dkc
Enclosures
cc: Service List





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STATE OF WASH.
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STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT

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

Petitioner,

v.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Respondent.

NO. 03 2 01614 1
PETITION FOR JUDICIAL REVIEW
OF FINAL AGENCY ORDER

COMES NOW the petitioner, the Public Counsel Section of the Washington State Attorney General's Office ("Public Counsel"), by and through Assistant Attorney General, Robert W. Cromwell, Jr., and petitions pursuant to Chapter 34.05 RCW for judicial review of agency action by the respondent, the Washington Utilities and Transportation Commission ("Commission").

In support of this petition, the petitioner respectfully shows pursuant to RCW 34.05.546 as follows:

- (1) NAME AND MAILING ADDRESS OF PETITIONER:
CHRISTINE O. GREGOIRE, Attorney General
Simon J. ffitich AAG, Section Chief
Public Counsel Section
Washington State Office of the Attorney General
900 4th Avenue, Suite 2000
Seattle, WA 98164-1012

COPY

1 (2) **NAME AND MAILING ADDRESS OF PETITIONER'S ATTORNEYS:**

2 Robert W. Cromwell, Jr. AAG
3 Public Counsel Section
4 Washington State Attorney General's Office
5 900 4th Avenue, Suite 2000
6 Seattle, WA 98164-1012

7 (3) **NAME AND MAILING ADDRESS OF AGENCY WHOSE ACTION IS AT ISSUE:**

8 Washington Utilities and Transportation Commission
9 1300 S. Evergreen Park Dr. SW
10 P.O. Box 47250
11 Olympia, WA 98504-7250

12 (4) **IDENTIFICATION OF THE AGENCY ACTION AT ISSUE:**

13 Issuance of the "Sixth Supplemental Order; Denying Petition for Accounting Order; Rejecting
14 Tariff Filing; Authorizing Subsequent Filing" in Commission Docket No. UE-020417 which is
15 also identified as the "Eighth Supplemental Order; Amending Third Supplemental Order" in
16 Commission Docket No. UE-991832 ("Sixth/Eighth Order"). Service of the Sixth/Eighth
17 Order on Public Counsel was made on July 15, 2003. A copy of this order is attached to this
18 petition.

19 (5) **IDENTIFICATION OF PARTIES IN ADJUDICATED PROCEEDINGS THAT LEAD TO AGENCY ACTION:**

20 Pacificorp d/b/a Pacific Power & Light Company

21 Washington Utilities and Transportation Commission Staff ("Staff")

22 The Public Counsel Section of the Washington State Attorney General's Office

23 The Industrial Customers of Northwest Utilities ("ICNU")

24 Also party to the 1999 rate case, Docket No. UE-991832 in which the Eighth
25 Supplemental Order referenced above was issued, but not parties to Docket No. UE-020417
26 were:

The Northwest Energy Coalition ("NWEK")

The Energy Project

1 **(6) JURISDICTION AND VENUE**

2 (a) This is an action seeking judicial review of a final order of the Commission. This
3 court has jurisdiction pursuant to Part V of the Washington Administrative Procedure Act,
4 RCW 34.05.510 *et seq.*

5 (b) Venue is appropriate in Thurston County pursuant to RCW 34.05.514(1)(a).

6 **(7) FACTS THAT DEMONSTRATE THAT THE PETITIONER IS ENTITLED TO OBTAIN JUDICIAL**
7 **REVIEW:**

8 (a) Petitioner Public Counsel is a section of the Washington State Attorney General's
9 Office which represents the interests of the people of the state of Washington (in this case
10 electricity customers of PacifiCorp) before the Commission. RCW 80.01.100 and 80.04.510.
11 Public Counsel participated in both PacifiCorp's 1999 general rate case (Docket No. UE-
12 991832) and PacifiCorp's recent petition for deferred accounting (Docket No. UE-020417)
13 which resulted in the Sixth/Eighth Order.

14 (b) Respondent Commission is an administrative agency of the state of Washington,
15 established under RCW 80.01.010. Among the Commission's duties is the duty to regulate in
16 the public interest, as provided by the public service laws, the rates, services, facilities and
17 practices of all persons engaged within the state of Washington in the business of supplying
18 any utility service or commodity to the public for compensation, including, but not limited to,
19 electric power companies. RCW 80.01.040.

20 (c) PacifiCorp is a wholly owned subsidiary of United Kingdom-based Scottish Power,
21 with its principal place of business in the United States in Portland, Oregon. PacifiCorp does
22 business in Washington as Pacific Power & Light Company ("PP&L") and is an electric
23 company subject to regulation by the Commission. PP&L provides service to approximately
24 120,000 customers in Washington including the residents of Yakima and Walla Walla.

25 (d) On November 24, 1999, PacifiCorp filed tariff revisions with the Commission
26 seeking general rate increases of \$25.8 million per year. Testimony was received by the

1 Commission and evidentiary hearings were held on April 25 and 26, and June 5, 6, and 7,
2 2000. In early June, the parties were successful in reaching a negotiated settlement. On June
3 20, 2000, the parties settled the rate case by presenting the Commission with a final stipulation
4 which resolved all matters in dispute before the Commission. The Settlement established a
5 five year "rate plan" for Pacificorp. Pursuant to the terms of the settlement, Pacificorp would
6 receive a rate increase in each of the first three years of the rate plan, but there would be no
7 increases in the fourth and fifth years (January 1, 2001-3%, 2002-3%, 2003-1%, 2004-0%, &
8 2005-0%). Under the terms of the settlement, Pacificorp agreed that it would not file a general
9 rate case during the five year period of the rate plan.

10 (e) The Settlement made express provision for the eventuality that Pacificorp's
11 circumstances could change in some respects during the term of the rate plan: Section 11
12 ("Rate Plan Reopeners") permitted the company to make a general rate case filing during the
13 rate plan if (1) it could show sufficient financial hardship to warrant interim rate relief under
14 the Commission's standards set forth in *WUTC v. Pacific Northwest Bell Telephone Company*,
15 Cause No. U-72-30, or (2) if industry or corporate restructuring occurred which changed
16 Pacificorp's structure. In addition, Section 9 ("Regulatory Actions During The Rate Plan")
17 expressly exempted from the rate case moratorium company rate changes based on
18 governmental or legislative action, systems benefit charges, low-income assistance programs,
19 changes in transmission costs, revenue neutral filings to implement rate design changes
20 between customer classes to accommodate market conditions, and a variety of ongoing
21 regulatory activities including tax and surcharge pass-throughs. Pacificorp was also permitted
22 to file petitions for accounting orders, as appropriate, for treatment of revenues, investments, or
23 expenditures during the rate plan period.

24 (f) The Commission held an evidentiary hearing to review the settlement and examined
25 witnesses from the settling parties. The Commission then entered its order approving and
26 instituting the settlement. *Third Supplemental Order Approving and Adopting Settlement*

1 *Agreements; Rejecting Tariff Sheets; Authorizing and Requiring Compliance Filing.* (August
2 9, 2000)("Third Supplemental Order" or "2000 Settlement Order").

3 (g) On April 5, 2002, PacifiCorp filed with the Commission a request for an
4 accounting order that would allow it to establish a deferred cost account to track alleged excess
5 net power costs from June 1, 2002 through May 31, 2003 or "some form of limited rate relief
6 to address extraordinary power costs." As part of its case-in-chief, PacifiCorp filed a proposal
7 to recover power costs alleged to be excessive. PacifiCorp claimed these costs were in excess
8 of baseline costs and arose from a variety of sources including the energy crisis. PacifiCorp
9 claimed its Petition was consistent with Section 9 of the settlement which allowed for
10 accounting orders.

11 (h) On September 27, 2002, the Commission issued its Third Supplemental Order
12 Regarding Scope of the Proceeding and Threshold Legal Issues. The Commission ordered
13 that:

14 (1) The scope of this proceeding is limited to consideration of whether
15 PacifiCorp should be authorized to establish and maintain a deferred account for
16 asserted extraordinary power costs so that it will not lose [sic] the opportunity
17 to seek recovery of such costs through a subsequent filing for rate recovery.

18 (2) Any authority granted to PacifiCorp in this proceeding will be for
19 accounting purposes only and will not alter or amend PacifiCorp's rates.

20 *Third Supplemental Order*, ¶¶ 28, 29. In the order, the Commission reiterated its earlier ruling
21 that it was not appropriate to reopen the previous rate case settlement docket to consider
22 whether the petition for deferral for excess power costs was consistent with the letter and intent
23 of the rate plan or reflected extraordinary circumstances which warranted revisiting the plan.
24 *Id.*, ¶19 n.1. The Commission also ruled that no additional notice was required to ratepayers
25 regarding the petition for deferral, since "[m]erely granting the Company's Petition for an
26 accounting order has no impact on current rates or current ratepayers." *Id.* ¶ 26. Subsequent to
the Third Supplemental Order, the Commission did not provide notice to UE-991832 parties

1 (i.e. parties to the 2000 settlement) that it would review the issue of whether to reopen the rate
2 settlement docket to provide for a new general rate case during the term of the rate plan.

3 (i) Prefiled responsive testimony was filed on February 5, 2003, by Staff and ICNU,
4 evidentiary hearings were held by the Commission on March 20, 21, and 24, 2003, and post-
5 hearing briefs were filed on April 11, 2003. The Commission issued its final order
6 (Sixth/Eighth Order) on July 15, 2003, concluding that Pacificorp had failed to adequately
7 support its Petition to recover excess power costs through a deferral account, or to establish a
8 need for interim rate relief. Subsequent to the issuance of the Third Supplemental Order
9 limiting the scope of the proceeding to consideration of deferred accounting, the Commission
10 did not provide notice to ratepayers or parties that it was considering abrogating the settlement
11 to allow a general rate case filing in 2003.

12 (j) Notwithstanding its conclusion that Pacificorp had failed to support its Petition, the
13 Commission nonetheless ordered an amendment of the 2000 Settlement Order, rescinding the
14 bar to a Pacificorp rate case filing to increase rates in 2004 or 2005, and authorizing the
15 company to file a general rate case by year end 2003, two years earlier than the settlement
16 would have permitted. The Commission's amendment of the settlement agreement order has
17 the effect of rescinding the final two years of the agreed rate plan which had provided a two
18 year "rate freeze" to Pacificorp customers. *Sixth/Eighth Order* ¶¶ 22, 23, 55-57.

19 **(8) PETITIONER'S REASONS FOR BELIEVING THAT RELIEF SHOULD BE GRANTED:**

20 Public Counsel and the Pacificorp ratepayers it represents are and will continue to be
21 adversely affected by the Commission's Sixth Supplemental Order in UE-020417 / Eighth
22 Supplemental Order in Docket No. UE-991832.

23 The Sixth/Eighth Order violates the procedural and substantive requirements of the
24 Washington Administrative Procedure Act, RCW 34.05.570(3), in the following respects:

1 **Arguments:**

2 a. The Commission's decision that Pacificorp should be authorized to file a
3 general rate case is arbitrary and capricious and is therefore in violation of RCW
4 34.05.570(3)(i). The challenged order was arbitrary and capricious in the following respects:

5 The Sixth/Eighth Order rescinded the settlement provisions benefiting Pacificorp
6 customers (the 2004-2005 "rate freeze") after the provisions benefiting Pacificorp (the first
7 three years of rate increases) had already taken effect, depriving Pacificorp customers of the
8 benefit of the settlement, to their potential financial detriment.

9 The Sixth/Eighth Order disregarded the provisions of the 2000 Settlement Order,
10 approved by the Commission, which provided the opportunity for relief for Pacificorp from
11 the rate plan in the event the company experienced a serious change in financial circumstances.
12 Having rejected Pacificorp's request for accounting for alleged excess power costs, and finding
13 that it was not entitled to interim rate relief, the Commission substituted a new basis for
14 "reopening" the settlement without adequate justification, substantial evidence, or adequate
15 notice to affected rate case settlement parties.

16 The Sixth/Eighth Order did not provide Pacificorp's ratepayers and parties to the
17 Settlement with notice and an opportunity to be heard when it determined that it would
18 exercise its authority under RCW 80.04.210 to amend and rescind portions of the 2000
19 Settlement Order. This constitutes a violation of Pacificorp's ratepayers' right to due process.

20 The Sixth/Eighth Order failed to adequately articulate and apply a defined standard for
21 the exercise of the Commission's authority under RCW 80.04.210 to revise a prior order,
22 specifically a prior order approving and adopting a settlement agreement.

23 The Sixth/Eighth Order does not take into account that the settlement agreement by its
24 terms allocated the risk of earning a reasonable return during the five year rate plan settlement
25 to Pacificorp, subject to the exceptions noted in Sections 9 and 11 regarding permitted rate
26 changes. *Sixth/Eighth Order* ¶ 41.

1 **b. The Commission's finding that Pacificorp should be authorized to file a general**
2 **rate case was not supported by substantial evidence and is therefore in violation of RCW**
3 **34.05.570(3)(e).**

4 The failure of the Commission to clearly articulate facts constituting substantial
5 evidence in support of its decision renders the abrogation of the settlement agreement a
6 violation of RCW 34.05.570(3)(e). The Commission failed to identify and articulate
7 substantial evidence supporting its decision to amend the Settlement. *Sixth/Eighth Order*
8 ¶¶34-43 and 49.

9 **(9) PETITIONER'S REQUEST FOR RELIEF:**

10 Having stated the basis for its petition for review, Public Counsel respectfully requests
11 relief as follows:

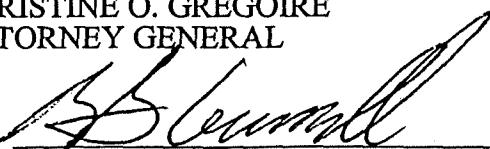
12 1. For an entry of judgment pursuant to RCW 34.05.570 and RCW 34.05.574
13 vacating Section C. of the Sixth/Eighth Order, Finding of Fact Number Five, and Conclusion
14 of Law Number Four and directing that the 2000 Settlement Order be reinstated in full force
15 and effect;

16 2. In the alternative, for an order vacating the above-reference provisions of the
17 Sixth/Eighth Order and remanding the matter to the Commission to provide ratepayers and
18 parties an opportunity to be heard on the issues presented and to develop a standard to apply
19 when considering an exercise of its authority under RCW 80.04.210 to modify and review a
20 prior order of the Commission when that prior order approved a settlement; and

21 3. For such other relief as the Court deems just and appropriate.

22 RESPECTFULLY SUBMITTED this 14th day of August, 2003.

23 CHRISTINE O. GREGOIRE
24 ATTORNEY GENERAL

25 By: 
26 ROBERT W. CROMWELL, JR.
 WSBA #24142
 Assistant Attorney General

1 **PROOF OF SERVICE**

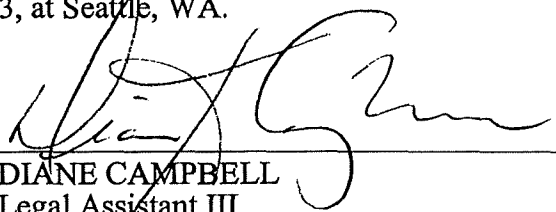
2 I certify that I served a copy of this document on all parties or their counsel of record
3 on the date below as follows:

- 4 US Mail Postage Prepaid via Consolidated Mail Service
5 ABC/Legal Messenger
6 State Campus Delivery
7 Copies to Washington Utilities and Transportation Commission and Attorney

8 General's Office personally served by Robert W. Cromwell, Jr.

9 I certify under penalty of perjury under the laws of the state of Washington that the
10 foregoing is true and correct.

11 DATED this 14th day of August, 2003, at Seattle, WA.

12 
13 _____
14 DIANE CAMPBELL
15 Legal Assistant III
16
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26

RECEIVED
JUL 16 2003
ATTORNEY GENERAL OFFICE

SERVICE DATE

JUL 15 2003

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

JUL 16 2003
AGC PC DIVISION
SEATTLE

In re the Petition of)	
	)	DOCKET NO. UE-020417
PACIFICORP d/b/a PACIFIC)	
POWER & LIGHT COMPANY	)	SIXTH SUPPLEMENTAL ORDER:
	)	DENYING PETITION FOR
For an Accounting Order	)	ACCOUNTING ORDER; REJECTING
Authorizing Deferral of Excess Net	)	TARIFF FILING; AUTHORIZING
Power Costs.	)	SUBSEQUENT FILING
)	
.....)
)	
WASHINGTON UTILITIES AND)	
TRANSPORTATION)	
COMMISSION,	)	DOCKET NO. UE-991832
)	
Complainant,	)	EIGHTH SUPPLEMENTAL ORDER:
	)	AMENDING THIRD
v.	)	SUPPLEMENTAL ORDER
)	
PACIFICORP d/b/a PACIFIC)	
POWER & LIGHT COMPANY,)	
)	
Respondent.)	
.....)

SYNOPSIS: The Commission denies PacifiCorp's petition for authority to establish a deferral account for certain asserted excess power costs and denies recovery of those costs through proposed changes to the Company's tariff. However, the Commission amends its prior order approving a five-year Rate Plan in order to permit the Company to file a general rate case later this year.

SUMMARY

- 1 **PROCEEDINGS:** This proceeding concerns a Petition filed by PacifiCorp, d/b/a Pacific Power and Light Company ("PacifiCorp" or the "Company") on April 5, 2002. The Company requests an accounting order that would authorize it to establish a deferred cost account to track asserted excess power costs from June 1, 2002, through May 31, 2003, or earlier, if the Commission approves a Power Cost Adjustment Mechanism ("PCAM"), or some similar form of limited rate relief to address power costs. PacifiCorp filed as part of its case-in-chief on October 18, 2002, its proposal to recover the power costs it would defer. PacifiCorp's recovery proposal did not include a PCAM. The Commission conducted hearings on March 20, 21, and 24, 2003. The parties filed briefs on April 11, 2003.
- 2 **PARTIES:** James M. Van Nostrand, Stoel Rives, Seattle, Washington, represents PacifiCorp. Melinda Davison, Davison VanCleve, Portland, Oregon, represents the Industrial Customers of Northwest Utilities ("ICNU"). Robert Cromwell, Assistant Attorney General, Seattle, Washington, represents the Washington State Attorney General's Office of Public Counsel. Robert Cedarbaum, Assistant Attorney General, Olympia, Washington, represents the Commission's regulatory Staff ("Staff" or "Commission Staff").¹
- 3 **COMMISSION:** The Commission denies PacifiCorp's Petition and its request for immediate rate relief. The Company has failed to carry its burden of proof to show that such relief is warranted. The Commission concludes, however, that the public interest requires a thorough and detailed examination of PacifiCorp's financial condition and Washington rates at an early date. The Commission

¹ In formal proceedings, such as this case, the Commission's regulatory staff (Staff) functions as an independent party with the same rights, privileges, and responsibilities as any other party to the proceeding. There is an "ex parte wall" separating the Commissioners, the presiding ALJ, and the Commissioners' policy and accounting advisors from all parties, including Staff. RCW 34.05.455.

amends its Third Supplemental Order in Docket No. UE-991832 to provide that PacifiCorp is authorized to file a general rate case prior to December 31, 2003, instead of July 1, 2005.²

MEMORANDUM

I. Background and Procedural History.

4 On April 5, 2002, PacifiCorp, d/b/a Pacific Power and Light Company ("PacifiCorp" or the "Company") filed with the Commission in Docket No. UE-020417 a petition for an order authorizing deferral of excess net power costs incurred by the Company in serving its Washington customers ("Petition"). PacifiCorp's Petition refers to the fact that it is currently subject to a Rate Plan in Washington that limits the availability of general rate increases through 2005. The Commission approved the Rate Plan on August 9, 2000, in its Third Supplemental Order Approving and Adopting Settlement Agreements; Rejecting Tariff Sheets; Authorizing and Requiring Compliance Filing in Docket No. UE-991832.³

5 On May 13, 2002, Commission Staff, ICNU, Public Counsel, Northwest Energy Coalition, and the Energy Project filed with the Commission in Docket Nos. UE-991832 and UE-020417 their Joint Motion to Consolidate and Petition to Rehear

² This is the date under the Rate Plan on which the moratorium generally barring PacifiCorp from filing for general rate increases is lifted and on which the Company is required to file a general rate case, or its equivalent. The Rate Plan provides that the effective date for any such filing will be no earlier than January 1, 2006.

³ Docket No. UE-991832, a general rate proceeding by which PacifiCorp sought increases to its electric rates to Washington customers, was initiated by the Company's filing on November 24, 1999.

or Reopen Docket No. UE-991832.⁴ PacifiCorp filed an answer to the motion on May 30, 2002.

6 On July 12, 2002, the Commission entered its order consolidating Docket Nos. UE-991832 and UE-020417 for the limited purpose of considering the Joint Motion in the context of the PacifiCorp's request for an accounting order. The Commission conducted a duly noticed prehearing conference before Administrative Law Judge Dennis J. Moss on August 6, 2002.

7 On August 21, 2002, the Commission entered its Second Supplemental Order in Docket No. UE-020417 denying the Joint Motion. Although the motion to reopen was denied as untimely under WAC 480-09-820, the Commission noted the parties' agreement that the motion to rehear Docket No. UE-991832 "is a matter entirely within the Commission's discretion." The Commission stated further that:

Although there may be circumstances that would necessitate rehearing a general rate proceeding, it is premature, at this stage of this proceeding, to make such a determination. The parties may renew the motion at a later stage. The Commission denies the Joint Motion to Reopen or Rehear Docket No. UE-991832.

This ruling on the Joint Motion does not preclude the parties from seeking to have relevant portions of the record in Docket No. UE-991832 incorporated by reference as part of the record in our proceedings in Docket No. UE-020417, nor does it preclude advocating that the Commission should modify or amend its Third Supplemental Order Approving and Adopting Settlement

⁴ Northwest Energy Coalition and the Energy Project were parties in Docket No. UE-991832, but elected not to become parties in Docket No. UE-020417.

Agreements; Rejecting Tariff Sheets; Authorizing and Requiring Compliance Filing in Docket No. UE-991832.

8 The Commission also required by its Second Supplemental Order that the parties file briefs to address their dispute over whether the Commission could lawfully authorize PacifiCorp to establish a deferred account that the Company proposed would include entries between June 1, 2002, the date it filed its Petition, and the subsequent date of a Commission order ruling on the Petition. The parties' briefs argued not only the timing issue, but also argued generally concerning the scope of this proceeding.

9 We addressed both issues in our Third Supplemental Order, entered on September 27, 2002. We held with respect to the timing issue that if the Commission subsequently authorized PacifiCorp to establish a deferral account for certain power costs, the Company could include entries for costs incurred on and after June 1, 2002, without violating the general prohibition against retroactive ratemaking.

10 Focusing on the scope of the proceeding, we stated our view that the central intent of PacifiCorp's filing appeared to be to establish the requested accounting mechanism as a nexus to which the Company could tie a subsequent filing for substantive rate relief. We noted PacifiCorp's commitment to file a proposed recovery mechanism by September 30, 2002, and emphasized our expectation that the Company would file a rate recovery plan "in the very near future." In that connection, we also noted the October 18, 2002, deadline for PacifiCorp's direct testimony on its Petition. We suggested that a filing proposing a mechanism for recovery of any power costs that might be approved for deferral accounting could be consolidated for consideration with the issues raised by the Petition.

11 On September 30, 2002, PacifiCorp filed a letter referring to our Third Supplemental Order and to certain discussion at the prehearing conference on

August 6, 2002. PacifiCorp stated that it proposed to address rate recovery issues as part of its October 18, 2002, evidentiary filing in this proceeding, as discussed at the prehearing conference. PacifiCorp asked that the Commission advise the Company if its proposal was unacceptable. On October 2, 2002, Staff filed a letter stating that it did not object to PacifiCorp's proposal to include in its October 18, 2002, submission a rate recovery proposal, assuming the Company also would include "a specific tariff filing to implement the proposal."

- 12 On October 18, 2002, PacifiCorp filed its direct case. The filing included tariff sheet revisions that would implement the Company's proposed cost recovery mechanism, at least in part. Specifically, PacifiCorp proposed to modify its rate Schedule 97, Adjustment Associated with the Sale of Centralia (Centralia Credit), and rate Schedule 99, Credit from ScottishPower (Merger Credit), to suspend payment of the credits to customers.⁵ Under PacifiCorp's proposal, the credits that otherwise would be reflected on customers' bills would instead be retained by PacifiCorp and amortized against any excess power costs authorized for deferral. The Commission suspended the tariff filing by its Fifth Supplemental Order, entered on December 9, 2002.
- 13 On February 5, 2003, Staff and ICNU filed their response testimony and exhibits. Public Counsel filed a letter on February 7, 2003, stating that it generally concurred with the testimony filed by ICNU's witness. PacifiCorp filed its rebuttal case on February 26, 2003.

⁵ The Centralia Credit is required by *In re Avista Corp., et al.*, Second Supplemental Order, Docket Nos. UE-991255, UE991262, and UE-991409 (March 6, 2000). The Merger Credit is required by *In re PacifiCorp and ScottishPower PLC*, Fifth Supplemental Order, Docket No. UE-981627 (October 14, 1999). The credits were implemented through currently effective rate Schedules 97 and 99 as part of the Commission's resolution of PacifiCorp's last general rate proceeding, which included approval of the Rate Plan Agreement. *WUTC v. PacifiCorp*, Third Supplemental Order, Docket No. UE-991832 (August 9, 2000).

14 The Commission conducted evidentiary hearings in Olympia, Washington, on March 20, 21, and 24, 2003, before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, Commissioner Patrick J. Oshie, and Administrative Law Judge Moss. The parties filed post-hearing briefs on April 11, 2003.

II. Discussion and Decisions.

A. Introduction.

15 PacifiCorp describes this proceeding in its brief as one that "involves a modest request for rate relief . . . within the context of a 5-year Rate Plan agreed upon in June 2000 and adopted by the Commission in August 2000." The Rate Plan resolved the Company's general rate proceeding in Docket No. UE-991832, in which the Company requested a revenue increase of \$25.8 million, or 13.8 percent, to be implemented in two phases separated by a twelve-month interval.⁶ PacifiCorp agreed in settlement to accept an increase of 7.15%, or approximately \$13.4 million, implemented in three phases over twenty-nine months.⁷ PacifiCorp and all other parties to the stipulation supported its adoption as a resolution of the Company's request that would produce fair, just, reasonable, and sufficient rates, and that would be in the public interest.

16 PacifiCorp, however, now contends "the Rate Plan has resulted in dismal financial statistics for the Company's Washington operations." *PacifiCorp Brief at 1*. The root cause for this, PacifiCorp argues, is the "Western energy crisis of

⁶ This is exclusive of \$2.8 million in requested revenue for a "system benefit charge" that was part of the Company's initial filing in Docket No. UE-991832. Including that amount, the requested increase amounted to \$28.6 million, or 15.29%.

⁷ The Rate Plan provides for a 3% increase on January 1, 2001, a 3% increase on January 1, 2002, and a 1% increase on January 1, 2003. Compounded, this is 7.15%. The revenue amount is calculated by the ratio $(7.15/13.8 = X/25.8; X = 13.4)$. Cf. *Tr. 239 (Larsen)* ("about \$12 million over the rate plan").

2000-2001." *Id.* PacifiCorp states that during the period June 2000 to June 2002, when deferral is proposed to commence, the Company incurred \$98 million more in power costs to serve Washington customers than it recovered through rates. *Exhibit No. 1C (Larsen) at 9; PacifiCorp Brief at 1.* PacifiCorp elected not to file for authority to defer these costs at the time they were being incurred, or for any other relief, both in an effort to "live up to the terms of the Rate Plan" and because the Company needed "to seek relief *first* in the Company's largest states, where the magnitude of the rate relief would have the greatest impact in preserving Total Company financial integrity." *PacifiCorp Brief at 1, 31.*⁸

According to PacifiCorp, the important consequence of having borne both the increased power costs in earlier periods, and during the period for which it seeks relief, is that the Company has been "stripped . . . of its ability to absorb the normal, more routine cost increases in the months and years remaining in the Rate Plan." *PacifiCorp Brief at 2.*

- 17 Although the significant effects of the Western energy crisis on PacifiCorp's power costs largely abated by early 2002, PacifiCorp nevertheless filed its Petition in this proceeding in April 2002. PacifiCorp's Petition was initially limited to a plea for deferral accounting authority as a stopgap measure. The Company sought to preserve its opportunity to recover approximately \$12.7 million in projected power costs, described as "excess net power costs," that it anticipated would be incurred over a twelve-month period commencing in June 2002. PacifiCorp's Petition stated that the Company later would file a proposal for recovering all or a portion of these costs in a manner consistent with the Rate Plan.

⁸ We note that PacifiCorp's Brief at 31 cites no testimony from its witnesses that directly supports this second rationale for not filing earlier in Washington. Instead, PacifiCorp cites to Chairwoman Showalter's question to Mr. Falkenberg at Tr. 414:21,22 that raised the suggestion that "it seems rational for a company to go to the big states first." Mr. Falkenberg's response includes the point that PacifiCorp, in fact, did file for rate relief in California during this period, a jurisdiction even smaller than Washington in terms of total company operations.

- 18 PacifiCorp also suggested in its Petition that its filing for recovery would address the underlying cause of its asserted distress—power market volatility. PacifiCorp's Petition focused on its intention to file for "a Power Cost Adjustment Mechanism, or PCAM, for the Company's Washington customers, or some similar form of limited rate relief" that would address "extraordinary power costs" at a fundamental level. *Petition at 1, 14*. PacifiCorp committed to filing for recovery of any deferred costs by September 30, 2002, which the Company anticipated would allow time for it to craft a proposal "informed by the outcome of the Avista and PSE proceedings" that involved, among other things, those companies' proposals for the treatment of extraordinary power costs via power cost adjustment mechanisms.
- 19 The nature of the proceeding changed as it progressed. Although we anticipated a dynamic process, and established our procedural schedule accordingly, the case did not develop in the direction anticipated. PacifiCorp did not seek a PCAM or similar form of relief. Instead, PacifiCorp's limited its effort to a request for immediate rate relief "to ameliorate the Company's poor Washington jurisdictional earnings" for the duration of the Rate Plan period. *Exhibit No. 62 (Widmer rebuttal testimony) at 6:4*. Mr. Widmer testified further that: "The net power cost deferral in this case is simply a mechanism to quantify and support recovery of additional costs to help soften the impact of poor Washington earnings." *Id.*
- 20 PacifiCorp's current request is that it be authorized to "defer about \$15.9 million in excess net power costs and recover them by offsets against existing credits on customers' bills over the next two years." *PacifiCorp Brief at 2*. This apparently is PacifiCorp's preferred option for relief, among the several it outlines in its brief, as discussed below. The net effect would be an increase in annual revenue of approximately \$8.6 million, a 4.6 percent increase in rates to customers. *Exhibit 90 (Griffith direct testimony) at 3:2; PacifiCorp Brief at 2*. Overall, considering previous rate increases under the Rate Plan, this means PacifiCorp would realize during the Rate Plan's five-year term approximately \$22 million in increased

annual revenue, or about 12 percent, implemented in four phases over thirty-four months. PacifiCorp would achieve by the middle of the Rate Plan period rates and revenue just slightly lower than the \$25.8 million, or 13.8 percent, increase the Company proposed in its initial filing in Docket No. UE-991832.

21 PacifiCorp identifies three other forms of relief that "would address the immediate cash flow needs of the Company because the Company would receive some form of relief prior to the end of the Rate Plan." *Id at 36*. These three alternatives are found at pages 35 and 36 of the Company's brief:

- The Commission could grant the deferral request, and address the recovery of deferred amounts in a general rate proceeding that the Commission would authorize PacifiCorp to file by the end of 2003;
- The Commission could deny the deferral request, and determine that the Company's sole means of obtaining rate relief is through a general rate proceeding that the Commission would authorize PacifiCorp to file by the end of 2003; or
- The Commission could, "without going through the deferral and review process, . . . authorize the Company to apply the Centralia and Merger Credits in the manner proposed."⁹

22 On balance, considering all the evidence, we determine that PacifiCorp has not borne its burden to demonstrate entitlement to deferral accounting or immediate rate relief.

23 We do, however, conclude that the record, considered as a whole, demonstrates that the Rate Plan has been so overtaken by events that it no longer is in the public interest for the Company's rates to remain unexamined through the Rate

⁹ We reject this alternative without the need for extended discussion. PacifiCorp offers absolutely no rationale that would support such extraordinary relief and we see no basis for it in our record. To grant this alternative would be to act arbitrarily and capriciously and that is an alternative we will not seriously entertain.

Plan Period. We emphasize that the record in this proceeding is not an adequate one upon which to conclude that PacifiCorp's current rates are not fair, just, reasonable, and sufficient. The record here, however, is adequate to bring into question whether that standard will be satisfied when considered in light of a current test year with properly restated, normalized, and pro forma results. PacifiCorp's Washington operations have not been thoroughly reviewed on a full general rate case record in 17 years. Such an examination is long overdue and seems absolutely imperative in the wake of the recent power market crisis. It would be contrary to the public interest for us to bar this important matter from full consideration at an early date. Accordingly, we conclude that we should amend our Third Supplemental Order in Docket No. UE-991832 to the extent necessary to authorize PacifiCorp to file a general rate case prior to the end of this year as the Company has committed to do, if permitted.¹⁰

24 We discuss the bases for our determinations below.

B. PacifiCorp should not be authorized to defer power costs:

25 PacifiCorp proposes to defer what it calls "excess power costs" incurred during the period June 1, 2002, through May 31, 2003. The Company would have us consider as excess power costs the difference between its actual power costs incurred during the deferral period and the amount of "base net power costs" as proposed in PacifiCorp's 1999 general rate case filing in Washington in Docket No. UE-991832.¹¹ PacifiCorp's 1999 rate case, however, was resolved on the basis of a settlement agreement (*i.e.*, the five-year Rate Plan) and "there was no specific

¹⁰ The so-called multi-state process is expected to be finalized by the middle of this year. The outcome of that process should inform PacifiCorp's filing with respect to the important question of inter-jurisdictional cost allocation issues.

¹¹ The Company's calculation of excess power costs are shown on Appendix A to PacifiCorp's Petition, updated by Exhibit No. 60, and again updated by Exhibit No. 160, to reflect, in part, actual data instead of forecasts.

finding regarding the level of net power supply costs reflected in base rates." *Exhibit No. 57C at 2:8-11 (Widmer)*. The Commission expressly recognized in its order approving the settlement that it did "not establish benchmarks against which to measure financial performance."¹² In other words, there is no basis to find that the unexamined power supply expense level filed by PacifiCorp in its 1999 rate case is an appropriate baseline for deferral. There simply has been no determination that this proposed starting point for analysis is in any way meaningful.

26 Indeed, as Staff argues in its brief, a number of significant power supply issues remained unresolved under the terms of the settlement agreement that the Commission accepted in Docket No. UE-991832. *Staff Brief at 5*. These issues include: the appropriate power supply model; the appropriate water record for normalizing hydro-power availability; the appropriate levels of normalized thermal generation; fuel price issues; and power price issues. Prudence issues associated with resources PacifiCorp had acquired since its preceding general rate case also were left for future analysis and determination. All of these issues have implications vis-à-vis the amount of power costs that should be considered embedded in PacifiCorp's rates. With none of these issues resolved, we cannot know what level of power costs might have resulted if the issue had been definitively determined in Docket No. UE-991832.

27 PacifiCorp argues that its proposed baseline is reasonable, even conservative, because the rate increases it accepted under the settlement agreement are less than half of what the Company requested in its rate filing. The number may be conservative in that sense, but from a ratemaking perspective it is also arbitrary—it has neither been tested in the crucible of a fully litigated case, nor accepted by the Commission on the basis of a stipulation and supporting evidence submitted by the parties. Such a number is not a sound basis upon which to make decisions affecting rates, or even just deferred accounting.

¹² *WUTC v. PacifiCorp*, Third Supplemental Order at ¶58, Docket No. UE-991832 (August 2000).

28 In terms of measuring power costs, and evaluating whether they are in some sense "excess power costs," we also are concerned that PacifiCorp's actual and projected-actual power costs during the deferral period are based on the expiration of wholesale power contracts, increased retail load (principally in Utah), the Company's failure to secure approval for the sale of its California distribution property, and contractual cost increases. *Exhibit No. 57C at 8-10 (Widmer)*. As Staff argues, these are factors that PacifiCorp should have considered when it agreed to enter into the five-year Rate Plan. *Staff Brief at 7*. To the extent the Company's request derives from events that should have been anticipated (as distinct, for example, from price margins that could not have been anticipated), the request is unpersuasive. Moreover, as noted by Staff, the Company ignored the revenue side of the equation:

As wholesale sales contracts expire, they are replaced by increased retail load at higher margins than the expiring wholesale sale. (Ex. 115 at 27: 16 through 28: 10.) Indeed, the Company states that the power was used to serve increased retail load. (Ex. 57C at 8: 18-20.)

The Company's explanation regarding increased retail loads is also unconvincing. The Company prepared a load forecast contemporaneously with the 1999 Rate Case. (Ex. 77.) It included various projections of retail load growth. Clearly, the Company was well aware of its future retail load growth responsibilities prior to entering the Rate Plan Stipulation. (Ex. 115 at 28: 13-18.)

Staff Brief at 7, fn. 2. Thus, the Company failed in its presentation to separate ordinary factors from extraordinary ones, and failed to offset asserted increased costs with increased revenues.

29 As Staff argues, although PacifiCorp's request for relief is ostensibly tied to the lingering effects of the 2000-2001 Western markets power crisis, the costs it proposes to defer and recover as "excess power costs" are not, by and large, a consequence of that crisis. ICNU also provides evidence that the costs to which

the Company would have us tie a grant of immediate rate relief are not clearly tied to the power market crisis. *Exhibit 140C (Falkenberg) at 23:12-24:13*. Yet, PacifiCorp proposes to defer changes in its net power costs using actual expenses, including *all* long-term firm purchases, short-term purchases, wheeling expenses, and thermal fuel expenses. *Exhibit No. 115 at 11:18-20 (Buckley)*. The only power cost increases PacifiCorp identifies that are directly tied to the power crisis are hedging contracts the Company entered into prior to June 2001 "to cover the usually high resource requirements of the 2002 summer peak period." *Exhibit No. 57C at 5:6-11(Widmer); Exhibit No. 74*. Although these costs might be considered extraordinary or exceptional, thus arguably providing a rationale for deferral, the evidence in the record is insufficient to support allocation of a portion of these costs to Washington ratepayers.

30 This brings us to another key problem—the fact that the appropriate basis for inter-jurisdictional allocation of power costs has not been satisfactorily resolved. Neither PacifiCorp's use of the so-called Modified Accord methodology in reports it files with the Commission, nor the Company's adoption of that methodology for purposes of its filing in Docket No. UE-991832, justifies our simply adopting the methodology for purposes of this proceeding.

31 We can neither resolve the inter-jurisdictional cost allocation issues on the current record, nor simply ignore these issues and arbitrarily accept PacifiCorp's use of Modified Accord. We recognize that PacifiCorp has made attempts in its several states to resolve the allocation issue, and is not itself wholly responsible for a failure to reach resolution. But resolving the allocation issue is not the only obstacle. As we have earlier discussed, PacifiCorp failed to meet its burden in other significant respects, which an allocation methodology cannot cure. The absence of an allocation methodology, however, is one reason, as we discuss later, that a general rate case is desirable.

32 In summary, we find that the Company fails to establish a well-supported basis for measuring excess power costs. It would be arbitrary for us to simply accept

the untested level of base power costs the Company proposes. In addition, looking at the actual power costs side of the equation, the Company includes all variations in power costs that it has experienced since its rate proceeding in 1999 without regard to whether the increases are within the ordinary increases the Company should have anticipated when it entered into the Rate Plan, or are extraordinary costs incurred as a result of the Western markets power crisis in 2000-2001. Even if we accept that certain summer peak hedging contracts represent extraordinary costs that might justify deferral, PacifiCorp has failed to show that any of the costs arising from those contracts should be allocated to Washington rates. Accordingly, we find that the record does not support deferred accounting treatment for any portion of PacifiCorp's power costs incurred during the requested deferral period. We conclude that PacifiCorp's Petition for an accounting order should be denied.

33 We are left, then, with the question whether we should reopen the Rate Plan and amend or modify our Third Supplemental Order in Docket No. UE-991832 to permit PacifiCorp to file a general rate case. We consider that question in the next section of this Order.

C. PacifiCorp should be authorized to file a general rate case.

34 With reference to increased power costs it has incurred over the past several years PacifiCorp states that:

As a result of these dramatically higher power costs, the Company's expected financial returns for the remainder of the Rate Plan Period are grossly inadequate. These unexpected expenditures have stripped the Company of its ability to absorb additional cost increases.

35 *PacifiCorp Brief at 7.* PacifiCorp argues that:

The Western energy crisis of 2000-2001 was the single largest cause of the deterioration in the Company's financial position—the Company's actual power costs during the crisis were \$1 billion¹³ higher than the level recovered in rates, resulting in downgrades for the Company and significant requests for rate relief in the other jurisdictions.

Id. at 1. PacifiCorp also states that “the Company received approval to recover roughly one-quarter of that amount from its other jurisdictions.” *Id. at 7.* PacifiCorp claims that its shareholders absorbed \$98 million in asserted excess power costs in Washington during periods prior to June 1, 2002.¹⁴

36 PacifiCorp did not seek to defer or recover any of the \$98 million in excess power costs it claims to have incurred in Washington during this period and into mid-2002. PacifiCorp argues that it could have filed for relief with respect to these costs under Section 11.a. of the Rate Plan, but that it chose not to do so in favor of focusing on obtaining relief in other jurisdictions and to honor its commitments under the Rate Plan. Nor can relief in this proceeding be granted on the basis that this will somehow “make up” for some part of the \$98 million ostensibly absorbed by PacifiCorp's shareholders during periods before June 1, 2002. That undeniably would violate the general prohibition against retroactive ratemaking and thus is not a legally sustainable result.

37 More to the point, PacifiCorp focuses on its forecasts of Washington earnings and relates that:

¹³ There is no evidence that shows the derivation of this number. We accept it only as being illustrative of the order of magnitude of increased power costs that PacifiCorp incurred during the period when wholesale prices were extraordinarily high during 2000 and 2001.

¹⁴ There is no detailed support in the record for this asserted cost. We accept it only for illustrative purposes.

The most recent actual results of operation show a return on equity of 1.31%, after normalizing and restating adjustments. Ex. 46. After annualizing and pro forma adjustments, this figure rises to 6.9%, which reflects the support provided by the 3%, 3% and 1% increases through the first three years of the Rate Plan. This figure also excludes the impact of the excess power costs for which shareholders have borne the full burden. Without annual ongoing increases in the later years of the Rate Plan, however, "the returns deteriorate significantly." Larsen, Ex. 1C at 10.

PacifiCorp Brief at 9-10.

38 There is evidence that PacifiCorp might not achieve the results it should over the next several years, even relative to the fairly modest returns it agreed to accept under the Rate Plan.¹⁵ Given its projected returns during future periods, the Company's financial performance in Washington through the Rate Plan period bears on our consideration of whether PacifiCorp should remain subject to the Rate Plan's rate moratorium through 2005.

39 PacifiCorp acknowledges that wholesale power market prices have returned to more normal levels, by historical standards, during 2002 and 2003. *PacifiCorp Brief at 1.* Yet, there are undoubtedly continuing financial effects for PacifiCorp from the extreme market volatility it faced during 2000 and 2001. The Company's "ability to absorb the normal, more routine cost increases in the months and years remaining in the Rate Plan Period" is a matter that must concern us looking forward. This is a subject that should be taken up in the context of a general rate proceeding.

¹⁵ Mr. Larsen testified that the Company agreed to an implicit return of between 7% and 8% under the Rate Plan. *Tr. 239:10-17.* Mr. Falkenberg testified the Company should have expected to earn 7.9% during 2002 under the Rate Plan. *Exhibit No. 140C at 8.*

- 40 We are mindful in this connection that the Rate Plan was designed and implemented as a balance of interests to achieve several objectives. From a ratepayer perspective, the goals were to avoid rate shock and to establish relatively stable rates over a reasonable period. From a Company perspective, the goals were to allow for recovery of sufficient revenue to maintain PacifiCorp's financial strength through a transition period when rate setting was acknowledged by all parties to be a difficult undertaking. From the Commission's perspective, the goal was to regulate rates in the public interest and to ensure accountability going forward.
- 41 It is fairly obvious that from a customer perspective, the goals of avoiding rate shock and maintaining relatively stable rates through incremental increases of moderate size, offset in part by defined credits, are preserved under our order here. Allowing for a general rate case filing before July 1, 2005, of course, may mean that rates will increase again, and sooner than expected. Balanced against that, however, is the need to provide PacifiCorp an opportunity to earn a reasonable return over the next several years; that is, maintaining sufficient rates. PacifiCorp has provided evidence that during the final two years of the Rate Plan it may not achieve a reasonable return on its Washington operations due in part to the lingering effects of the power market crisis.
- 42 The third principal goal of the Rate Plan is accountability. This is critically important from the Commission's perspective. Indeed, we expressed our concerns in our order approving the Rate Plan over the fact that PacifiCorp had not been fully examined from a regulatory ratemaking perspective for a very long period of time.¹⁶ Given the record in this proceeding, our concerns over the

¹⁶ Specifically, the Order relates, at ¶58, that:

The Bench also posed questions concerning the continuing oversight of PacifiCorp's rates generally, a matter of heightened concern given that the Company's rates had not been reviewed in a general rate proceeding for fourteen years, and would not be reviewed again for another five years under the Comprehensive Stipulation. Since the settlement would not establish benchmarks against which to measure financial performance—that is, no definite

Commission's ability to achieve a thorough and comprehensive understanding of PacifiCorp's financial circumstances, both overall and with respect to its Washington operations, are renewed and heightened.

- 43 We reiterate the concern we expressed in our final order in Docket No. UE-991832—that this company has not been closely scrutinized in a general rate proceeding for nearly two decades. Such an examination is long overdue. Without such an examination, we can only approximate, even guess at, the important baselines against which claims of excessive power costs and their impact on the Company's operations must be measured if we are to reach meaningful results. We place no particular fault on PacifiCorp for this state of affairs, yet it is the state of affairs we, and the Company, face. The appropriate solution, we conclude, is to authorize PacifiCorp to file a general rate case.

FINDINGS OF FACT

- 44 Having discussed above all matters material to our decision, and having stated general findings, the Commission now makes the following summary findings of fact. Those portions of the preceding discussion that include findings pertaining to the Commission's ultimate decisions are incorporated by this reference.

⌘

capital structure, rate base, or rate of return is established via the settlement—the prospect that PacifiCorp might simply file a restatement of the settlement rates could allow PacifiCorp to avoid the burden of proving its rates are justified, shifting the burden to Staff or others to assert and prove the rates are not just and reasonable if there is to be any change going forward from that point in time. Mr. Elgin, however, testified that under the Comprehensive Stipulation, PacifiCorp would be required to justify its rates, whether restated, or proposed to be increased. TR. 891-894. Counsel for PacifiCorp confirmed PacifiCorp's understanding that under the Comprehensive Stipulation, PacifiCorp would have the burden of proof to justify even a restatement of the settlement rates as of January 1, 2006. *WUTC v. PacifiCorp, Third Supplemental Order, Docket No. UE-991832 (August 9, 2000)*.

- 45 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including electric companies.
- 46 (2) PacifiCorp is a "public service company" and an "electrical company" as those terms are defined in RCW 80.04.010, and as those terms otherwise may be used in Title 80 RCW. PacifiCorp is engaged in Washington State in the business of supplying utility services and commodities to the public for compensation.
- 47 (3) PacifiCorp filed on April 5, 2002, its Petition seeking an accounting order that would authorize the Company to create a deferral account for certain power costs it expected to incur during the period June 1, 2002 through May 31, 2003. On October 18, 2002, PacifiCorp filed tariff sheets to implement the recovery of the costs it had proposed for deferral treatment by eliminating certain credits otherwise would be paid to customers under the Company's rate Schedules 97 and 99. The Commission suspended the tariff filing by its Fifth Supplemental Order, entered on December 9, 2002.
- 48 (4) PacifiCorp has not carried its burden to prove facts that show the Company should be authorized to defer and recover the costs at issue in this proceeding. PacifiCorp has not shown that the Company requires or is entitled to immediate rate relief.
- 49 (5) The Rate Plan requirement limiting the Company's ability to file a general rate case before July 1, 2005, is contrary to the public interest because it does not permit adequate oversight by the Commission to ensure that the Company's rates will remain fair, just, reasonable, and sufficient through the end of the Rate Plan Period.

CONCLUSIONS OF LAW

50 Having discussed above in detail all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary conclusions of law. Those portions of the preceding detailed discussion that state conclusions pertaining to the Commission's ultimate decisions are incorporated by this reference.

51 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings. *Title 80 RCW.*

52 (2) The changes to rate Schedules 97 and 99 proposed by tariff revisions filed by PacifiCorp on October 18, 2002, and suspended by prior Commission order, do not produce results that are not just, fair, or reasonable. The tariff sheets, which are in the record of this proceeding as Exhibit No. 93, should be rejected. *RCW 80.28.010.*

53 (3) The Commission should not authorize PacifiCorp to defer and recover the costs at issue in this proceeding. PacifiCorp's Petition and its request for immediate rate relief should be denied.

54 (4) The Commission should amend its Third Supplemental Order in Docket No. UE-991832, entered on August 9, 2000, to the extent necessary to authorize PacifiCorp to file a general rate case later this year, as the Company has committed to do, rather than on July 1, 2005, as currently required under the Rate Plan.

ORDER

THE COMMISSION ORDERS That:

- 55 (1) PacifiCorp's Petition for an accounting order, filed in this proceeding on April 5, 2000, is denied.
- 56 (2) PacifiCorp's request for immediate rate relief is denied. The Commission suspension of proposed changes to rate Schedules 97 and 99 as filed on October 18, 2002, is lifted and the tariff sheets are rejected.
- 57 (3) The Commission's Third Supplemental Order in Docket No. UE-991832 is amended to provide that PacifiCorp is authorized to file a general rate proceeding after the date of this Order and before July 1, 2005, as otherwise required under paragraph 3 of the Rate Plan.

DATED at Olympia, Washington and effective this 15th day of July 2003.

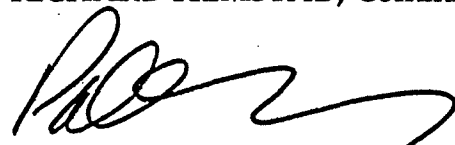
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



MARILYN SHOWALTER, Chairwoman



RICHARD HEMSTAD, Commissioner



PATRICK J. OSHIE, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission with respect to certain issues resolved. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).