

1 **THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

2 WASHINGTON UTILITIES AND
3 TRANSPORTATION COMMISSION,

4 Complainant,

5 v.

6 PacifiCorp, d/b/a/ Pacific Power &
7 Light,

8 Respondent.

DOCKET NO. UE-001734

REPLY TO PACIFICORP'S REPLY
AND WUTC STAFF'S RESPONSE TO
PUBLIC COUNSEL AND
INDUSTRIAL CUSTOMERS OF
NORTHWEST UTILITIES' MOTION
TO DISMISS

9 **REPLY**

10 The Public Counsel section of the Washington State Attorney General's Office
11 ("Public Counsel") and the Industrial Customers of Northwest Utilities ("ICNU") respond to
12 the Response of the Staff of the Washington Utilities and Transportation Commission
13 ("WUTC" or "Commission") dated May 31, 2001 and the Reply of PacifiCorp, dated May 31,
14 2001. For the reasons contained in the original Motion to Dismiss and stated below, the
15 Commission should grant the Motion and dismiss PacifiCorp's Application for Electric Service
16 ("Application") with prejudice.
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18 Public Counsel and ICNU disagree with PacifiCorp and Commission Staff
19 regarding the proper interpretation of the Stipulation entered and approved in docket UE-
20 991832 ("Stipulation"). The unprecedented type of charge proposed by PacifiCorp in this
21 Docket was not contemplated by the parties to the Stipulation, and the Stipulation does not
22 permit such a filing prior to December 31, 2005.
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1 **1. The Application Filed by PacifiCorp Directly Conflicts with the Prohibition on**
2 **Increases to General Base Rates**

3 In response to the Motion to Dismiss both PacifiCorp and Staff suggest a
4 narrow definition of “general base rates” that would allow PacifiCorp to, on a piecemeal basis,
5 eviscerate the Stipulation’s rate moratorium. While PacifiCorp and Staff admit that the
6 Stipulation does not define general base rate, PacifiCorp argues that the new charge for net
7 removal costs does not increase any existing PacifiCorp rates, and that none of PacifiCorp’s
8 current rates authorize the Company to impose additional charges for property removals.
9 *PacifiCorp Reply* at 2-3; *Staff Response* at 2. Likewise, Staff argues that the net removal
10 charge is not explicitly included in the charges that make up PacifiCorp’s general base rates
11 and, therefore, these charges are not included in general base rates. *Staff Response* at 3.

13 PacifiCorp and Staff’s analysis is erroneous and should be rejected. PacifiCorp’s
14 general base rates include charges designed to recover the costs of providing electric service to
15 the Company’s customers. Costs that are nonrecurring or did not exist prior to the Company’s
16 last general rate case are not specifically included in PacifiCorp’s general base rates. However,
17 if they continue, are prudent and recur, then the Company has the opportunity to propose their
18 inclusion in future rates. The net removal charge is one such cost that has never been
19 specifically enumerated in rates but, in the past, has been the responsibility of PacifiCorp. If
20 these costs recur and are prudently incurred, the Company will have the opportunity to ask the
21 Commission to include them in its general base rates after December 31, 2005. Therefore, the
22 fact that the net removal *charge* itself is new and has not been a separate rate militates in favor
23 of the charge being part of a general base rate.
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1 In addition to violating the plain meaning of general base rates, PacifiCorp and
2 Staff's definition would provide the Company with an incentive to propose further piecemeal
3 modification of its rates. It is no secret that PacifiCorp is analyzing the Stipulation in an
4 attempt to find an opportunity to escape the five-year rate moratorium. Interpreting the
5 Stipulation as to only bar those charges specifically enumerated therein will allow PacifiCorp
6 to scour its operations for new and existing costs that it can claim are not included in its
7 general base rates. In fact, ICNU and Public Counsel believe that the Commission should
8 interpret the Stipulation in just the opposite manner – the Company should be barred from
9 imposing any new rate increases unless explicitly permitted in the Stipulation. The
10 Commission should not permit the Company to avoid its obligations under the Stipulation and
11 should dismiss PacifiCorp's Tariff Revision because it violates the express terms of Sections 1
12 and 2 of the Stipulation.

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15 **2. PacifiCorp's Net Removal Charge Violates Section 9(f)**

16 PacifiCorp and Staff claim that the Company's net removal charge is permitted
17 under Section 9(f) as an "ongoing regulatory activity." *Staff Response* at 4, *PacifiCorp Reply*
18 at 3. PacifiCorp and Staff propose a definition of "ongoing regulatory activity" that would
19 allow the Company to increase its rates in response to competitive pressures that PacifiCorp
20 has historically been, and continues to be, exposed to under Washington law.

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22 There is no "ongoing regulatory activity" that PacifiCorp can identify as the cause of its
23 Application. Section 9(f) of the Stipulation does not permit this type of Application, a type
24 that has never before been proposed by this Company. *PacifiCorp Response to Public Counsel*
25 *Data Request No. 2*. This is not a compliance filing or something required by the WUTC or

1 the Federal Energy Regulatory Commission (“FERC”). This is a new and unprecedented
2 charge. At the time of the Stipulation, PacifiCorp could have easily requested inclusion of this
3 charge as an example of the type of charge permitted under Section 9(f). The Company chose
4 not to do so and should not now be allowed to do so *post facto*.

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6 PacifiCorp claims that its net removal charge is a “new service offering.”
7 *PacifiCorp Reply* at 5. This Application is not a “new customer service” as the phrase would
8 be interpreted by a reasonable person. First, this “service” is one that PacifiCorp alleges it is
9 currently obligated to provide—regardless of who pays its costs. PacifiCorp Response to
10 ICNU Data Request No. 6. Therefore, PacifiCorp is not offering a “new customer service” but
11 merely attempting to shift its costs to customers. Second, no customers would voluntarily
12 request this type of “service.” The Company’s filed testimony claims the reason for meter
13 removal is not customer requests to remove meters, but vague “safety and operational”
14 concerns. Direct Testimony of William Clemens at 3. Additionally, meter removal is not a
15 new tax or other “pass-through” that the Company might reasonably expect its customers to
16 bear. This is a new and unprecedented customer charge, never before proposed by this
17 Company. It could not have been reasonably foreseen by the parties to the Stipulation (other
18 than the Company) and is not contemplated within the plain meaning of the language of
19 Section 9(f).
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22 Staff and PacifiCorp’s interpretation of Section 9(f) would create a broad
23 exception to the Stipulation that potentially swallows the whole. Staff alleges that
24 “[c]ompetition in the electric industry has been an ongoing regulatory issue for quite some
25 time.” *Staff Response* at 5. Staff argues that a 1995 policy statement on electric regulation that

1 “recognized the need for flexibility in a changing environment” constitutes “ongoing
2 regulatory activity.” *Staff Response* at 5. Although PacifiCorp’s customers have always had
3 the option of leaving PacifiCorp for a competitive utility supplier, Staff would allow
4 PacifiCorp to claim that this longstanding competition is an “ongoing regulatory activity”
5 which allows the Company to file any and all charges that are remotely related to “competition
6 in the electric industry.” *Id.* PacifiCorp claims that “ongoing regulatory activities” should be
7 more broadly construed and include “Commission consideration of new circumstances faced
8 by PacifiCorp in the conduct of its day-to-day regulated business activities over which the
9 Commission has jurisdiction.” *PacifiCorp Reply* at 5. In essence, PacifiCorp could assert that
10 anything within the Commission’s jurisdiction constitutes an exception to the Stipulation.
11 PacifiCorp and Staff’s excessively broad interpretations undermines the Stipulation because
12 the Company could identify any new circumstance, whether it be a meter removal charge or
13 unreasonably high purchased power costs, and state that it is a consequence of “ongoing
14 regulatory activity” or “competition in the electric industry,” and pass such charges to
15 customers.
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18 The Commission must give the words of the Stipulation their plain meaning.
19 “Ongoing regulatory activity” clearly reflects those actions the Company must take to comply
20 with the ongoing regulatory directives of the state and federal agencies that have jurisdiction
21 over the Company. Neither this Commission nor FERC has required PacifiCorp to file a meter
22 removal tariff or otherwise address issues related to its stranded costs or benefits. The
23 Commission should not allow the Company to proceed under the guise that it is a consequence
24 of “ongoing regulatory activity” rather than a circumstance that was both foreseeable by the
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1 Company at the time of the Stipulation, and within the ambit of risk the Company agreed to
2 assume pursuant to the risks and benefits associated with settling its 1999 rate case.

3 **3. PacifiCorp’s Proposed Meter Removal Charge is not a Schedule 300 Charge and**
4 **is not Permitted by the Stipulation.**

5 PacifiCorp’s claim that its new, unprecedented meter removal charge is
6 “appropriately located in Schedule 300 . . .” should also be rejected. *PacifiCorp Reply* at 6.
7 As Commission Staff, Public Counsel and ICNU all correctly point out, Section 13 of the
8 Stipulation allows only two types of changes to Schedule 300: (1) those proposed by the
9 Company’s filings in the 1999 rate case; and (2) those necessary to “update cost elements
10 included in the Schedule 300 miscellaneous charges.” *Stipulation* at § 13. The proposed meter
11 removal charge is, by the Company’s own admission, “not currently contained in PacifiCorp’s
12 Schedule 300.” *PacifiCorp Reply* at 6. It is not permissible for the Commission to consider an
13 addition to Schedule 300 prior to the expiration of the rate plan because the Stipulation only
14 provided for what was contemplated at the time of the Stipulation or necessary updates to the
15 same. Section 13 of the Stipulation does not permit this type of filing.
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18 **CONCLUSION**

19 Public Counsel and ICNU respectfully assert that the 1999 rate plan settlement
20 Stipulation the Commission adopted does not permit this new, unprecedented type of customer
21 charge during the pendency of the rate plan period. PacifiCorp must continue to accept the
22 small costs, if any, associated with customer loss and meter removal until the end of the rate
23 plan period when it may then propose that such charges be included in customer rates.
24 “Lightly” breaking the Stipulation will create a tremendous disincentive for future settlements
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1 because of uncertainty regarding the ability to enforce promises contained therein. For these
2 reasons and the arguments set forth above and in the Motion to Dismiss, Public Counsel and
3 ICNU respectfully request that their Motion to Dismiss be granted and that PacifiCorp's
4 Application be dismissed with prejudice.

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6 DATED this 7th day of June, 2001.

7 Respectfully submitted,

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9 Attorney General

10 /S/

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