

0001

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 WASHINGTON UTILITIES AND )  
 4 TRANSPORTATION COMMISSION, )  
 5 Complainant, )  
 6 vs. ) DOCKET NO. UE-090205  
 7 ) Volume I  
 8 PACIFICORP, d/b/a PACIFIC ) Pages 1 - 21  
 9 POWER & LIGHT COMPANY, )  
 10 Respondent. )

-----

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

A prehearing conference in the above matter was held on March 23, 2009, at 1:30 p.m., at 1300 South Evergreen Park Drive Southwest, Olympia, Washington, before Administrative Law Judge PATRICIA CLARK.

The parties were present as follows:

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, by DONALD T. TROTTER and JENNIFER CAMERON-RULKOWSKI, Assistant Attorneys General, 1400 South Evergreen Park Drive Southwest, Post Office Box 40128, Olympia, Washington 98504; telephone (Trotter), (360) 664-1189.

PACIFICORP, by KATHERINE A. MCDOWELL, Attorney at Law, McDowell & Rackner, 520 Southwest Sixth Avenue, Suite 830, Portland, Oregon 97204; telephone, (503) 595-3922.

PACIFICORP, by MICHELLE MISHOE, Attorney at Law, 825 Northeast Multnomah, Suite 1800, Portland, Oregon 97232; telephone, (503) 813-6840.

Kathryn T. Wilson, CCR

0002

1                   THE ENERGY PROJECT, by BRAD M. PURDY (via  
2 bridge line), Attorney at Law, 2019 North 17th Street,  
3 Boise, Idaho 83702; telephone, (208) 384-1299.

4                   INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES,  
5 by IRION A. SANGER, Attorney at Law, Davison Van Cleve,  
6 333 Southwest Taylor, Suite 400, Portland, Oregon  
7 97204; telephone, (503) 241-7242.

8                   PUBLIC COUNSEL, by SARAH A. SHIFLEY,  
9 Assistant Attorney General, 800 Fifth Avenue, Suite  
10 2000, Seattle, Washington 98104; telephone, (206)  
11 464-6595.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

0003

1 P R O C E E D I N G S

2 JUDGE CLARK: It's approximately 1:30 p.m.,  
3 March 23rd, 2009, in the Commission's hearing room in  
4 Olympia, Washington. This is the time and the place  
5 set for a prehearing conference in the matter of  
6 Washington Utilities and Transportation Commission,  
7 Complainant, versus PacifiCorp, doing business as  
8 Pacific Power and Light Company, Respondent, given  
9 Docket UE-090205, Patricia Clark, administrative law  
10 judge for the Commission presiding.

11 This matter came before the Commission on  
12 February 9th, 2009, when PacifiCorp requested revision  
13 to its currently effective tariff for electric service.  
14 The tariff revisions, if granted, would result in a  
15 15.1 percent rate increase for electric service. On  
16 February 26th, 2009, at the Commission's regularly  
17 scheduled open meeting, the Commission suspended the  
18 tariff and set this matter for hearing. On March 2nd,  
19 2009, the Commission issued a notice of prehearing  
20 conference scheduling the prehearing conference for  
21 this date and time.

22 On March 10th, 2009, PacifiCorp filed  
23 revisions to portions of its prefiled direct testimony  
24 and exhibits. These revisions do not affect the  
25 requested rate increase. On March 13th, 2009, The

0004

1 Energy Project filed a petition to intervene in these  
2 proceedings. Although, I have not yet acted on the  
3 outstanding petition to intervene, I'm going to take  
4 appearances from everyone at this juncture, and we will  
5 address the petition to intervene as our initial  
6 preliminary matter.

7 I think I have current phone numbers and  
8 addresses for everyone that I have heavily plagiarized  
9 from the attachment to the prehearing conference order  
10 in Docket UE-080220, so you needn't give a full  
11 appearance this morning unless something has changed,  
12 and if that's the case, please bring that matter to my  
13 attention. I'll take appearances now, and I'll start  
14 with the Company.

15 MS. MCDOWELL: Appearing on behalf of  
16 PacifiCorp, Katherine McDowell from the law firm  
17 McDowell and Rackner.

18 MS. MISHOE: Michelle Mishoe here on behalf  
19 of PacifiCorp.

20 JUDGE CLARK: Appearing on behalf of  
21 Commission staff?

22 MR. TROTTER: Donald T. Trotter, assistant  
23 attorney general, appearing for Commission staff, and  
24 one change, additional counsel to my right is Jennifer  
25 Cameron-Rulkowski, and we have the same address and fax

0005

1 number. Her phone number is 664-1186, and I'll let her  
2 tell you what her e-mail is.

3 MS. CAMERON-RULKOWSKI: My e-mail is  
4 jcameron@utc.wa.gov.

5 JUDGE CLARK: Thank you. Appearing on behalf  
6 of Public Counsel?

7 MS. SHIFLEY: Sarah Shifley, assistant  
8 attorney general for Public Counsel, and I believe you  
9 have all of my correct and updated contact information.

10 JUDGE CLARK: Thank you, Ms. Shifley.  
11 Appearing on behalf of Industrial Customers of  
12 Northwest Utilities?

13 MR. SANGER: Irion Sanger with the law firm  
14 of Davison Van Cleve, and none of my contact  
15 information has changed.

16 JUDGE CLARK: Thank you, Mr. Sanger, and  
17 appearing on our bridge line, I believe we have an  
18 appearance from The Energy Project?

19 MR. PURDY: Brad Purdy, attorney at law on  
20 behalf of The Energy Project, and nothing has changed  
21 in the last three minutes.

22 JUDGE CLARK: Thank you, Mr. Purdy. The  
23 first item I have on my very limited prehearing  
24 conference agenda this afternoon is the outstanding  
25 petition to intervene filed by The Energy Project on

0006

1 March 13th. Is there any objection to the intervention  
2 by The Energy Project?

3 MS. MCDOWELL: No, Your Honor.

4 JUDGE CLARK: Hearing none, the petition to  
5 intervene filed by The Energy Project is granted and  
6 will be so reflected in the prehearing conference  
7 order.

8 The second matter I have is a little break  
9 from the way we normally do business, and that is we  
10 are going to rather than issue Bench requests to the  
11 parties going to request that the Company submit a  
12 supplemental filing. We are not requesting any new or  
13 additional information. This information is that which  
14 was requested last year in Docket UE-080220, Bench  
15 Requests 1 and 2, and I happen to have a copy of that  
16 with me, but I encourage you to look at that.

17 The only thing that has really changed in  
18 this proceeding is the exhibit number for which we need  
19 additional data, and that is the direct testimony,  
20 which is designated Exhibit RBD 3, and we need that in  
21 separate electronic spreadsheet files, an Excel format,  
22 and including all linked files with formulas and  
23 formatting in every spreadsheet intact with the  
24 formulas not converted, and we need those files on a  
25 CD. I'm abbreviating the information we needed and

0007

1 refer you again to those Bench requests.

2           Bench Request 2 last year was an electronic  
3 spreadsheet filed for any other exhibits that flow into  
4 the results of operation, and again, Excel format on a  
5 CD with formula intact, and we are hoping by requesting  
6 this information in the context of the prehearing  
7 conference that we can somewhat expedite getting that  
8 information. I did note that last year, the Company  
9 was given seven days to respond to Bench Request Nos. 1  
10 and 2, so I am going to ask if it would create a burden  
11 to the Company to produce that information within 10  
12 days, which would make it April 2nd.

13           MS. MCDOWELL: That will be fine, Your Honor.

14           JUDGE CLARK: Then the deadline for  
15 submitting that information will be ten days, or April  
16 2nd, 2009. The second thing I want to address is the  
17 prefiled testimony and exhibits that will be filed by  
18 other parties to these proceedings, and in order to  
19 insure that the Commission is reviewing the exhibits  
20 and testimony starting at a consistent base point, the  
21 Commission would like the parties to start with the  
22 results of operation that show the test year, actual  
23 results or per books, and then secondly, state whether  
24 the Company's restating and pro forma adjustments are  
25 contested or uncontested. If those adjustments are

0008

1 contested, state the basis for your disagreement and  
2 how you would modify the adjustment.

3           Generally speaking, those requirements are  
4 set forth for the Company only, and they are set forth  
5 in the Commission's regulations, so if you have  
6 questions regarding that, I encourage you to refer to  
7 the Commission's regulations if you need further  
8 guidance, or as a procedural matter, you can always  
9 inquire of me. I can't discuss anything substantive,  
10 but I am happy to answer procedural questions. The  
11 purpose for requesting that the parties set forth their  
12 testimony in this matter is to insure that we are  
13 looking at consistent starting points from all parties  
14 regarding where we are going in the case.

15           The second piece of that is when you are  
16 rounding numbers, we want to insure, again, some  
17 consistency in how we address certain issues. For the  
18 rate of return, if you could round to two decimal  
19 points, and for the conversion factor, six digits. Are  
20 there any questions about anything I've discussed thus  
21 far; Mr. Sanger?

22           MR. SANGER: Will all of this be in your  
23 prehearing conference order?

24           JUDGE CLARK: Yes, including citations to the  
25 applicable rules.

0009

1           MR. SANGER: I have a second question. You  
2 mentioned restating whether the adjustments are  
3 contested or uncontested, and my question goes to the  
4 fact that when we file our initial testimony, we would  
5 not review the testimony of the parties at that point  
6 in time, so we may not know whether certain adjustments  
7 are contested or uncontested.

8           JUDGE CLARK: It's your responsive testimony  
9 to the Company's direct case.

10          MR. SANGER: But at that point in time, we  
11 may not know whether there are certain adjustments  
12 which we may decide to adopt the testimony of another  
13 party, so I think we can clearly identify the ones in  
14 our testimony that we are contesting if that's what you  
15 are asking.

16          JUDGE CLARK: What I would like you to do is  
17 indicate whether or not you are contesting what the  
18 Company has done, and I'm hoping that before you submit  
19 your responsive testimony, if you attempt to work  
20 cooperatively with another party, perhaps, to jointly  
21 sponsor testimony or something of that nature, that  
22 that position would be known before you file the  
23 testimony.

24          MR. TROTTER: Your Honor, could I comment  
25 quickly?

0010

1 JUDGE CLARK: Please.

2 MR. TROTTER: There is an opportunity in the  
3 schedule for cross-answering testimony, so would it be  
4 acceptable -- say Staff finds out it may be in  
5 agreement with an adjustment or ICNU for example.  
6 Would we identify that in the cross-answering?

7 JUDGE CLARK: Yes. That's exactly spot on.  
8 I understand that at the time you file your responsive  
9 testimony you have not viewed all of the testimony of  
10 the other parties, and perhaps you are not working  
11 cooperatively. You do, of course, have the opportunity  
12 to file cross-answering, and at that point, you would  
13 indicate whether you agree or disagree with other  
14 party's adjustments, but hopefully, you will have  
15 formulated some opinion regarding the Company's  
16 adjustments at the time of the response. Mr. Trotter?

17 MR. TROTTER: Regarding the conversion  
18 factor, you said you want that out to six digits. Is  
19 that six digits to the right of the decimal point?

20 JUDGE CLARK: Yes, and rounding the rate of  
21 return is two digits to the right of the decimal point.

22 MR. TROTTER: Thank you.

23 JUDGE CLARK: Mr. Sanger, you are still  
24 looking troubled.

25 MR. SANGER: Yes. Situations may arise where

0011

1 we know that Staff or Public Counsel have hired  
2 consultants looking at specific issues, but we may not  
3 be working cooperatively. At that point in time, I  
4 think it would be premature for us to say that our  
5 position is not contesting or not adopting the position  
6 of another party.

7 JUDGE CLARK: I'm not asking you to do that  
8 for other parties. You will do that at the  
9 cross-answering phase, but the purpose of responsive  
10 testimony is to respond to the Company's requested  
11 revisions to its tariff, so hopefully, you can indicate  
12 whether you contest or do not contest those  
13 adjustments, and then once you've had the opportunity  
14 to review the responsive testimony of the other parties  
15 that address your position regarding those adjustments  
16 in your cross-answering. Any other questions?

17 I want to also briefly discuss  
18 cross-examination exhibits. WAC 480-07-461 provides  
19 that the Commission may require the predistribution of  
20 cross-examination exhibits. That's nothing novel. The  
21 Commission routinely requires the predistribution of  
22 cross-examination exhibits, and we ordinarily do that  
23 somewhat informally in an e-mail message shortly before  
24 the conclusion of the proceeding.

25 In some recent cases, we haven't had exhibits

0012

1 received after the deadline for submitting  
2 cross-examination exhibits. That has placed a burden  
3 on the Commission and on other parties, and so I'm  
4 going to establish a deadline in this proceeding for  
5 the parties to submit their cross-examination exhibits  
6 and follow the reg which provides that the Commission  
7 may exclude cross-examination exhibits which are  
8 distributed after the deadline absent a showing of good  
9 cause for that delay, and I would like input from the  
10 parties on what they think is a reasonable deadline for  
11 the submission of cross-examination exhibits.

12           This is, of course, the perfect segue into  
13 thanking the parties for taking the time to work  
14 cooperatively on a procedural schedule in advance of  
15 this afternoon's prehearing conference. Honestly, if  
16 we had received notice that the parties had reached  
17 agreement on that only slightly earlier, I probably  
18 would have vacated this afternoon's prehearing  
19 conference, because the primary purpose, as you all  
20 know, is that we address during the conference is that  
21 schedule.

22           The Commission is able to adopt the  
23 procedural schedule proposed by the parties with one  
24 exception at this juncture. The hearing would be  
25 October 27 through 30, 2009. All of the other

0013

1 deadlines appear reasonable. The only deadline I  
2 cannot confirm at this juncture is whether or not we do  
3 have all commissioners available for a public comment  
4 hearing on October 12th, 13th, or 14th. We will  
5 certainly make the best efforts to accommodate one of  
6 those dates for a public comment hearing, and the  
7 commissioners have indicated that the location of  
8 Yakima, Washington, is an acceptable location for that  
9 public comment hearing. So with that one exception  
10 that I simply can't confirm yet, the Commission adopts  
11 the procedural schedule.

12           So looking at a hearing commencing on October  
13 27th, do the parties have input on a reasonable  
14 deadline for submitting cross-examination exhibits?

15           MS. SHIFLEY: Your Honor, very quickly, I  
16 would just want to go on record and state that we would  
17 request that the public comment hearing start at 6:30.  
18 I know there has been some variation in the start time  
19 for public comment hearings, but we have requested it  
20 start at six or 6:30 to allow people time to arrive.

21           JUDGE CLARK: Thank you, Ms. Shifley, and the  
22 Commission will also take that into consideration when  
23 it's trying to obtain a location in Yakima for that  
24 public comment hearing, and six p.m. would be the  
25 earliest; is that correct?

0014

1 MS. SHIFLEY: We would just request that it  
2 start at six or 6:30, if possible. Thank you.

3 MR. TROTTER: Your Honor, to your question, I  
4 think typically the deadlines have been set in prior  
5 cases approximately -- well, usually toward the end of  
6 the week prior to the hearings, which would be  
7 Wednesday or Thursday of the prior week, which I  
8 believe is the 21st or 22nd, so throw those dates out  
9 for parties to comment on for the deadline for  
10 providing cross-exam exhibits.

11 JUDGE CLARK: Does anyone have any input on  
12 that?

13 MS. MCDOWELL: That seems reasonable to us.  
14 I think as close to the hearing as possible still  
15 allowing the Commission adequate time to review would  
16 be our preference.

17 JUDGE CLARK: Mr. Sanger?

18 MR. SANGER: I would echo what Ms. McDowell  
19 said, as close as possible to the hearing while giving  
20 the Commission time to prepare the cross-examination  
21 sheets and numbering all the exhibits and that sort of  
22 stuff.

23 I would like to ask a little bit of  
24 clarification on the submission of cross-examination  
25 exhibits after the prehearing conference before the

0015

1 hearing. In my experience, our office endeavors to  
2 provide all of our exhibits by the time of the  
3 prehearing conference before the hearing, and we do  
4 provide the vast majority of them, but our preparation  
5 for the hearing usually is done immediately prior to  
6 the hearing, so there often are some exhibits that we  
7 identify before the hearing after the submission of our  
8 cross-examination exhibits. So I wanted to inquire as  
9 what the Bench means by "good cause" in terms of  
10 submitting cross-examination exhibits after the date of  
11 the prehearing conference.

12 JUDGE CLARK: That will be a case-by-case  
13 determination of what is or is not good cause in a  
14 particular instance. It does, however, create a burden  
15 on the Commission and the other parties when those  
16 cross-examination exhibits are submitted after the  
17 deadline. It doesn't give the commissioners and the  
18 other parties an adequate opportunity to review those  
19 documents. It doesn't give the Commission and perhaps  
20 other parties an adequate opportunity to include those  
21 exhibits in Commission binders in a timely manner, so  
22 some cutoff, and if you have a good reason why you  
23 can't meet that deadline, that's understandable, but I  
24 would say that the routine preparation of your case is  
25 probably not sufficient since every single party will

0016

1 be doing that, and the commissioners will certainly be  
2 doing that, and I will be doing that as well, so it  
3 would have to be something exceptional, something  
4 unusual. I do want to give the parties the maximum  
5 amount of time to submit your cross-examination  
6 exhibits, so I'm going to adopt the latter of the two  
7 dates proposed by Mr. Trotter, which is October 22nd,  
8 unless someone else wants to be heard on that  
9 particular issue.

10           The only other piece that I did not see in  
11 the excellent procedural schedule proposed by the  
12 parties is a prehearing conference to mark exhibits and  
13 take care of any other procedural matters that may  
14 arise before the hearing. If possible, any exhibits  
15 can be marked in advance of the hearing, this  
16 prehearing conference can be and frequently is vacated  
17 if it's no longer necessary. Do the parties have a  
18 date that they would prefer for a prehearing conference  
19 to mark exhibits and address other procedural matters?

20           MR. TROTTER: I would recommend the 23rd.

21           JUDGE CLARK: Does anyone else want to be  
22 heard on that?

23           MR. TROTTER: That would be the 23rd of  
24 October.

25           JUDGE CLARK: I don't see any conflict on the

0017

1 Commission's calendar for that date. Since no one else  
2 is jumping up and down, I'm going to schedule a  
3 prehearing conference for October 23rd, and if the  
4 exhibits can be marked in advance of the hearing, we  
5 can do this electronically, I will endeavor to do that  
6 so we can vacate the prehearing conference.

7           We only have two other procedural  
8 matters that are on my list, and that is to let you  
9 know how many copies we need you to file on this  
10 proceeding, and we are going to need an original and  
11 20. The Commission already invoked the discovery rules  
12 in Order No. 1, and we have already issued an order  
13 granting PacifiCorp's request for a protective order,  
14 so that was already issued. Are there any other  
15 matters that the parties would like to have addressed  
16 at this afternoon's prehearing conference?

17 Mr. Trotter.

18           MR. TROTTER: Just as a formality, Your  
19 Honor, this was the time and place for taking  
20 interventions. Could you ask if there is anyone  
21 present or on the bridge who would like to intervene  
22 and has not made a motion to intervene?

23           JUDGE CLARK: I will, and thank you for that  
24 reminder. Is there anyone present in the hearing room  
25 or available on the bridge line who has not filed a

0018

1 petition to intervene in this matter who wishes to  
2 intervene? Silence is golden.

3 MR. TROTTER: Then my second item, Your  
4 Honor, do we wish to assign exhibit numbers to the  
5 parties for their direct cases?

6 JUDGE CLARK: No, we are not going to do  
7 that, and again, thank you for the reminder. I did  
8 draft an exhibit list that includes the prefiled direct  
9 testimony and exhibits that were filed by PacifiCorp,  
10 and thanks to some sharp eyes from counsel of  
11 PacifiCorp, there were several typographical errors  
12 that were caught as well as one or two substantive  
13 errors in the pagination of documents, and you will  
14 notes if you look at that that there is a new process  
15 by the Commission we are still using on a trial basis,  
16 and that is rather than assigning specific numbers to  
17 parties or numbering exhibits sequentially, we are  
18 actually using the designation that the Commission's  
19 rules require for parties to mark for identification  
20 purposes their exhibits; that is, we use the three  
21 initials of the individual, and then the exhibits are  
22 numbered sequentially after that with the individual's  
23 initials.

24 The only time we encounter difficulty is if  
25 two individuals have the same initials, and then, for

0019

1 example, we would end up with too many JES-1 exhibits,  
2 or if we have the situation where a witness presents  
3 testimony on behalf of more than one party, and again,  
4 we would have to renumber those exhibits, probably  
5 taking the witness numbers sequentially for the first  
6 time that witness appeared on behalf of a party and  
7 then picking up that numbering for the second time, but  
8 the trial that we are using for numbering exhibits is  
9 exactly the same as the way you mark them, which has  
10 both its benefits and problems. Ms. Shifley?

11 MS. SHIFLEY: Yes, Your Honor. Just a couple  
12 of clarification questions. The number of copies you  
13 need, is that for all things that are filed for highly  
14 confidential, confidential, or do you have different  
15 requirements for each of those?

16 JUDGE CLARK: There are different filing  
17 requirements for confidential and redacted, and those  
18 are in the regulation. For all public documents, it is  
19 an original and 20.

20 MS. SHIFLEY: Then also, I was wondering  
21 if -- I know in other cases, electronic submission has  
22 been considered at this time. Is that --

23 JUDGE CLARK: We don't need to do that  
24 anymore because the Commission modified its rule  
25 regarding electronic submissions, and the ancient

0020

1 history is you used to have to get permission from the  
2 presiding officer to file copies electronically and the  
3 date they were due and then submit a paper copy the  
4 following business day. The Commission has now changed  
5 that rule, and you are automatically permitted to  
6 submit documents electronically; of course, following  
7 it with paper copy the next day.

8 I would bring to your attention it would be a  
9 good idea to review that rule as it's revised because  
10 there are time constraints on that. I'm not going to  
11 rely on my memory, but I believe it requires you to  
12 file by three p.m. the day the filing is due if you are  
13 filing electronically, and I believe the hard copy has  
14 to be received at the Commission by noon the following  
15 day, but please check the rule and do not rely on my  
16 memory.

17 MS. SHIFLEY: Then one final question, the  
18 electronic service list, how would Your Honor like us  
19 to provide information regarding an electronic service  
20 list?

21 JUDGE CLARK: Of course, all the e-mail  
22 addresses of all the individuals who have entered an  
23 appearance this afternoon will be on an appendix that  
24 is attached to the prehearing conference order. If you  
25 have individuals that you would like to have receive

0021

1 copies of documents electronically, which is frequently  
2 the case for perhaps an expert witness that you have  
3 retained in a particular proceeding, if you will  
4 provide the Commission with the information of the  
5 individuals you would like placed on the interested  
6 person's list we are happy to compile an exhibit and  
7 provide that to everyone. Mr. Sanger?

8 MR. SANGER: Will we provide that to you, or  
9 how would we provide that information?

10 JUDGE CLARK: If you would provide it to me,  
11 I would be happy to compile an appendix to issue to all  
12 of the parties. As a matter of fact, unless there is  
13 substantial differences between what everyone requested  
14 in UE-080220, I can start such a list off that  
15 document, so you might want to take a look at, it's  
16 probably Appendix either A-1 or B that was attached to  
17 the prehearing conference order in that docket and see  
18 how you would like to have that revised or updated.

19 Are there any other matters you would like to  
20 have addressed at this afternoon's conference? Hearing  
21 nothing, we are adjourned.

22 (Prehearing adjourned at 1:58 p.m.)

23

24

25