

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of  
  
PACIFIC POWER & LIGHT COMPANY  
  
For an Accounting Order Approving  
Deferral of Certain Costs Related to the  
MidAmerican Energy Holdings Company  
Transition.

DOCKET NO. UE-060817

WASHINGTON UTILITIES &  
TRANSPORTATION COMMISSION,

DOCKET NO. UE-061546

Complainant,

PUBLIC COUNSEL  
DECLARATION IN RESPONSE  
TO ORDER TO SHOW CAUSE

v.

PACIFICORP d/b/a PACIFIC POWER &  
LIGHT COMPANY,

Respondent.

Public Counsel makes the following declaration in response to Order No. 05 in this proceeding.

I, Simon J. ffitch, under penalty of perjury under the laws of the state of Washington, declare as follows:

1. I am over 18 years of age, a citizen of the United States, a resident of the state of Washington, and competent to be a witness.
2. I am employed by the Washington Attorney General as an Assistant Attorney General. I am the Section Chief of the Public Counsel Section.
3. I am the attorney of record for Public Counsel in the above-captioned Pacific Power & Light Company consolidated dockets (PacifiCorp rate case).

4. I am also the attorney of record for Public Counsel in the docket titled *In the Matter of the Petition of Qwest Corporation To Be Regulated Under an Alternative Form of Regulation Pursuant to RCW 80.36.135, Docket No. UT-061625* (Qwest AFOR).
5. The schedule for the Qwest AFOR case provided for evidentiary hearings to begin on March 12, 2007. Designation, filing and exchange of cross-examination exhibits, estimates of cross-examination, scheduling of witnesses, and other procedural matters were scheduled for 9:30 a.m., Wednesday, March 7.
6. Settlement discussions in the Qwest AFOR docket were ongoing, with parties meeting on multiple occasions in January and February, 2007. At a settlement conference on February 28, the parties agreed to continue meetings on Friday morning, March 2, at approximately 9:30 a.m.
7. On Friday morning, March 2, I participated by telephone in the Qwest AFOR settlement conference, which began as scheduled at approximately 9:30 a.m. Qwest was represented by Lisa Anderl and Commission Staff by Gregory Trautman.
8. At about 11 a.m on March 2, I began driving to Olympia Airport in order to catch the Washington State Patrol charter flight to Walla Walla for the PacifiCorp rate case public hearing. I continued to participate in the Qwest AFOR settlement conference by phone as I drove to Olympia.
9. The settlement negotiations reached a critical stage late in the morning of March 2. Staff and Qwest stated during the call that they had reached agreement and were willing to enter into a settlement. Public Counsel was asked to identify terms which would enable it to join the settlement.
10. After the end of the settlement conference call, I consulted with Public Counsel staff and outside consultants by telephone, while continuing to drive to Olympia. I decided that Public Counsel should respond to the request by the settling parties to identify terms and that we should prepare and present a best and final offer. Because of the state of negotiations, the need to prepare for hearing, and the imminence of the prehearing deadlines on March 7, time was of the essence and it was my judgment that an offer needed to be presented by the close of business that Friday afternoon. No other Public Counsel staff was able to draft the settlement proposal.
11. Shortly before the appointed time for passengers to meet at the Olympia airport, I telephoned the Administrative Law Division, Staff Counsel Don Trotter, and Commission Executive Secretary Nancy Moen to inform them that I would not be able to attend the Walla Walla hearing. I explained the reason in general terms without violating the settlement privilege. I was unable to speak directly to Administrative Law Judge (ALJ) Patricia Clark or the Commissioners but requested that they be informed of my absence.

12. By the time the need for a substitute became apparent, there was not adequate time for me to assign another employee to attend the Walla Walla hearing in the PacifiCorp rate case.
13. During the afternoon of March 2, 2007, I again conferred with Public Counsel staff and consultants and drafted a best and final settlement offer which was transmitted in writing (via email) to Qwest and Staff late that afternoon.
14. On March 6, 2007, a public comment hearing was held in Tacoma, Washington, in the Qwest AFOR docket. At the hearing I spoke with ALJ Clark and Commissioner Jones regarding the Walla Walla hearing and explained why I had not been able to attend.
15. At any given time, pursuant to RCW 80.04.100 and 80.04.510, Public Counsel has a range of obligations as a consumer representative in a variety of cases before the Commission. Public Counsel exercises its professional judgment, within the bounds of statutory and ethical requirements, in deciding which actions to take in those cases, and where best to devote its resources, as it did here.
16. The competing demands of the PacifiCorp rate case and the Qwest AFOR case required me to choose between preparing a final offer in the Qwest case, or attending the public hearing in Walla Walla. My judgment was that continued participation in the Qwest AFOR negotiations was very important for the interests of Qwest customers given the broad issues at stake and the long term implications of the docket. The potential resolution of the case on favorable terms was a significant and material matter to be pursued if it could be achieved. As noted above, time was of the essence in the Qwest matter and negotiations were at a critical stage
17. While the Walla Walla public comment hearing convened by the Commission was an important opportunity for public input in the case, the chief purpose of the hearing was for the Commission to receive oral and written comment from members of public who are not parties to the proceeding. The decision to miss the hearing was a difficult decision as we highly value the opportunity to hear customer comments in person and be available to talk with attendees. I regret that we were not able to be present. However, I considered that the central purpose of the hearing, as well as the conduct of proceedings, would not be materially affected by Public Counsel's absence. Under the Commission rules and practice, counsel for the parties have only a minimal formal role at comment hearings and are not permitted to make evidentiary presentations. Public comments made at Walla Walla are available for review in the transcript and are part of the case record. Public Counsel staff could contact any persons in attendance who had questions for us. Additionally, all PacifiCorp customers, by means of the company's "bill stuffer" notice of the proposed increase, have been advised of Public Counsel's participation and provided with our contact information. I could not identify any actual prejudice to PacifiCorp

customer interests in this case that would result from Public Counsel's failure to attend the hearing, nor have I subsequently learned of any.

18. My absence from the public comment hearing in this matter does not violate and was consistent with RCW 80.01.100, 80.04.510, and my obligations under the Rules of Professional Conduct.
19. I apologize for any inconvenience that was caused to the Commissioners, their staff, or others involved in the hearing. Public Counsel is committed to assisting the Commission in its public participation processes, including public comment hearings, and in finding ways to make the public more aware of and able to participate in Commission proceedings.

Dated this 21<sup>st</sup> day of March, 2007.

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Simon J. ffitch  
Assistant Attorney General  
Public Counsel