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May 27, 2014

Via Email and U.S. Mail

Chair David Danner
Commissioner Jeffrey Goltz
Commissioner Philip Jones
Washington Utilities and Transportation Commission
PO Box 47250
1300 S Evergreen Park Drive SW
Olympia, WA 98504-7250

Re: Hydro Investment Adjustment and Petition of PacifiCorp for a Deferred
Accounting Mechanism
Docket No. UE-140617

Dear Commissioners:

The Industrial Customers of Northwest Utilities (“ICNU”) requests that the Washington Utilities and Transportation Commission (“WUTC” or the “Commission”) reject the filings of both the Advice No. 14-03 and the alternative Petition for an Accounting Order filed by PacifiCorp (or the “Company”) on April 14, 2014.^{1/} As ICNU and Public Counsel both noted in their initial comments in this docket, PacifiCorp’s double filing asks the Commission to abandon fundamental ratemaking principles because the Company does not believe that it should have to wait a mere matter of months to begin recovery of its investment in the Merwin Fish Collector (“Merwin Project”).

Commission Staff’s Open Meeting Memorandum (“Staff Memorandum”) properly recognizes that PacifiCorp’s request for a tariff rider implicitly requests the Commission to perform a prudence review outside of the rate-setting process. This would

^{1/} In Advice No. 14-03 PacifiCorp filed a tariff rider that would immediately begin recovery of the costs of the Merwin Project. Concurrently, as Attachment G to its filing, PacifiCorp submitted a Petition for Accounting Order, which requests authorization for to begin tracking the costs of the Merwin Project in a deferred account for later recovery in rates. PacifiCorp requests that the Commission grant the Petition only if it rejects the tariff rider.

amount to single-issue ratemaking, and would have the Commission abandon sound regulatory policy without any compelling justification. ICNU respectfully requests that the Commission review the more comprehensive analysis of single-issue ratemaking presented in ICNU's Petition to Intervene and Opposition filed in this docket on April 25, 2014. Consistent with its previous comments, ICNU supports Staff's recommendation that the proposed tariff rider, Advice No. 14-03, be suspended and consolidated with PacifiCorp's general rate case ("GRC") filing in Docket No. UE-140762 if it is not voluntarily withdrawn by the Company. Ironically, the Company has already proposed recovery of these same costs in UE-140762, meaning that such consolidation will not introduce any new issues or unduly broaden the record in that case.

The Commission should also reject PacifiCorp's alternative Petition for an Accounting Order. Infrequently, and in unique circumstances, the Commission has in the past authorized extraordinary expenses to be tracked with deferred accounting mechanisms. Now, PacifiCorp requests that a deferred accounting be used to permit the addition of an entirely routine plant investment into ratebase outside of the ratemaking process. The Commission should not permit this aggressive and illegal expansion of the use of deferred accounts.

Staff notes that "out-of-period deferrals of additions to rate base should be requested and allowed on an infrequent and unusual basis."^{2/} ICNU believes that this statement is consistent with Commission precedent. Nonetheless, it does not completely articulate the standard that the Commission has consistently applied to deferred accounting petitions. A request for deferred accounting is no ordinary ratemaking request, but, rather, authorizes retroactive ratemaking.^{3/} The Commission has stated that "[i]t requires extraordinary circumstances to support a departure from fundamental ratemaking principles . . .," including a clear and convincing showing that the Company will be denied any reasonable opportunity to achieve its authorized rate of return.^{4/} The Commission has stated that costs that are extraordinary or exceptional might "arguably provid[e] a rationale for deferral . . ."^{5/} Thus, even extraordinary or exceptional expenses do not automatically qualify for deferred accounting; rather, it takes an extraordinary or exceptional expense even to consider invoking such an exception to the rule against retroactive ratemaking. The Commission confirmed this standard when it granted PacifiCorp a deferred accounting mechanism based on evidence that the company had experienced cumulative losses of over \$500 million during several years of drought conditions.^{6/} In that case, the Commission explained that it had considered "persuasive evidence and analysis that the hydroelectric conditions affecting the Company's power costs through most of 2005 were indeed extraordinary."^{7/} Thus, the Commission requires persuasive evidence and analysis that the expenses in question are of an extraordinary or exceptional nature to justify an exception to the rule against retroactive ratemaking and fundamental ratemaking principles.

^{2/} Staff Memorandum at 3.

^{3/} This remedy is so extraordinary that the legislature has seen fit to authorize it by statute for certain expenses, not of the sort at issue in this case. See RCW § 80.80.060(6).

^{4/} WUTC v. PSE, Docket No. UE-060266, Order 08 at P. 39 (Jan. 5, 2007).

^{5/} WUTC v. PacifiCorp, Docket No. UE-020417, 6th Supp. Order at 23 (July 15, 2003).

^{6/} WUTC v. PacifiCorp, Docket No. UE-050684, Order 04 at 291 (Apr. 17, 2006).

^{7/} Id. at 305.

In its petition, PacifiCorp presents no evidence whatsoever that there is anything extraordinary or exceptional about the Merwin Project costs. Rather, PacifiCorp merely notes that it requested to place the project into rate base during the Company's 2013 GRC, before it was used and useful, and this request was denied.^{8/} The fact is, particularly in the Northwest, there is nothing exceptional or extraordinary about investments that are required for dam relicensing. In fact, the Merwin project was only one of four relicensing upgrades included in the Company's last rate case – three of which were accepted by the Commission as pro-forma adjustments in order to reduce regulatory lag.^{9/} Further, PacifiCorp's 2011 rate case included costs related to the decommissioning of the Condit Dam in lieu of relicensing. In the past few years alone, ICNU has participated in multiple dockets in Washington and Oregon in which PacifiCorp and other Northwest utilities have sought to recover the costs of many investments related to dam relicensing, or in some cases, dam decommissioning. Essentially all of these projects were subject to FERC regulation and requirements; therefore, federal regulation and approval of the design of the Merwin Project is in no way extraordinary or exceptional. PacifiCorp admits that the Merwin relicensing process has been ongoing since 1999, and the basic requirements, including the Merwin Fish Collector, were approved in 2008.^{10/} PacifiCorp cannot claim that the Merwin Project represents extraordinary or exceptional expenses, and, in fact, ICNU has found no instance in the present filing in which the Company makes such a claim, let alone presents clear and convincing evidence that a departure from fundamental ratemaking principles is needed in order for the Company to have any reasonable opportunity to achieve its rate of return.^{11/}

While PacifiCorp makes no representation that extraordinary or exceptional costs are involved in its Petition, Staff's memorandum suggests that the timing of the investment, the circumstances of the requirements imposed by the federal government, and the size of the project make this an "unusual case."^{12/} However, most, if not all hydroelectric facilities require unique federal relicensing conditions, and while the cost of these projects varies, there is nothing extraordinary or exceptional about the costs involved here.^{13/} In addition, given that PacifiCorp has been filing for rate increases on either a yearly basis, or within days of the expiration of its stay-out agreements, every investment it makes is done immediately before, immediately after, or during a rate case. ICNU believes that approval of this deferred accounting petition in the absence of evidence or analysis that it is recovering an exceptional or extraordinary cost would

^{8/} Petition of PacifiCorp at P. 7.

^{9/} WUTC v. PacifiCorp, Docket No. UE-130043, Order 05 at PP. 186-87 (Dec. 4, 2013).

^{10/} Testimony of Mark Tallman, Exh. No. __ (MRT-1T) at 2.

^{11/} The Company was granted extraordinary relief in its 2013 GRC, including several pro-forma additions to rate base and use of end-of-period accounting. The current filing contains no evidence – nor even a claim – that the Company cannot achieve its permitted rate of return following the adoption of such measures. The Company has included the costs of the Merwin Project in that filing, where they can properly be evaluated in context of the balance of the Company's Washington operations.

^{12/} Staff Memorandum at 3.

^{13/} For example, in 2013, the costs of the four hydroelectric upgrades proposed by PacifiCorp as pro-forma adjustments ranged from \$10 million to \$73 million. The Merwin Project was neither the costliest nor the least expensive of these investments. Docket No UE-130043, Order 05 at P. 187.

provide a rationale for Washington utilities to file deferred accounting petitions for virtually any cost related to hydroelectric facilities, and perhaps other investments as well.

This would be extremely harmful precedent, given the recent wave of requests for deferred accounting treatment filed by PacifiCorp and other utilities. PacifiCorp, in particular, has taxed the resources of the Commission and the parties with a storm of accounting petitions designed to ensure instantaneous, dollar-for-dollar recovery of its expenses. In less than five months' time between the Commission's order resolving PacifiCorp's 2013 GRC (which the Company is appealing), and the filing of PacifiCorp's current GRC in Docket No. UE-140762, the Company has filed three major deferred accounting requests and the instant request for a tariff rider to raise rates between rate cases for this routine plant investment.^{14/} The Company appears unwilling to bear any risk of delayed recovery for costs accrued during the brief windows between its rate cases.

In addition, PacifiCorp, not its customers, controls the timing and the contents of its rate filings, and any supposed "need" for extraordinary relief since the last rate case rests solely on the Company's management. The Company has known for many years when the Merwin Fish Collector and other capital additions would likely become used and useful. If the Company had waited only a few months to file its 2013 GRC, it may well have already begun recovering these costs following the conclusion of that case. Customers do not control the timing of rate cases, nor do they have the information or the resources to file petitions requesting deferred accounting of *benefits* the Company receives between rate cases. Rather, customers rely on the regulatory compact and the oversight of the Commission's rate case process to capture and balance both the costs and the benefits the Company realizes between rate cases. It would be unfair to allow the PacifiCorp to shift responsibility for all of its expenses to customers through deferred accounting, while allowing the Company to enjoy the benefits it receives until such a time as it chooses to file a rate case.

ICNU requests that the Commission reject both PacifiCorp's proposed tariff rider and the Petition for an Accounting Order. PacifiCorp has filed for recovery of the Merwin Dam costs in its current general rate case, and this is the appropriate forum for determining the prudence of these expenditures. If the Commission were to authorize deferred accounting treatment for these costs, ICNU fully agrees with Staff that the company should not be permitted to accrue interest during any deferral period. Thank you for your consideration of ICNU's comments.

Sincerely yours,



Melinda J. Davison

^{14/} See Docket Nos. UE-131384, UE-140094, and UE-140617.