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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 II
 8 PACIFICORP, d/b/a PACIFIC) Pages 22 - 48
 9 POWER & LIGHT COMPANY,)
 10 Respondent.)

11 A prehearing conference in the above matter
 12 was held on July 10, 2009, at 10:00 a.m., at 1300 South
 13 Evergreen Park Drive Southwest, Olympia, Washington,
 14 before Administrative Law Judge PATRICIA CLARK.

15 The parties were present as follows:

16 WASHINGTON UTILITIES AND TRANSPORTATION
 17 COMMISSION, by DONALD T. TROTTER, Assistant Attorney
 18 General, 1400 South Evergreen Park Drive Southwest,
 19 Post Office Box 40128, Olympia, Washington 98504;
 telephone, (360) 664-1189.

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

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

24 Kathryn T. Wilson, CCR

25 Court Reporter

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1 PUBLIC COUNSEL, by SARAH A. SHIFLEY (via
2 bridge line), Assistant Attorney General, 800 Fifth
3 Avenue, Suite 2000, Seattle, Washington 98104;
4 telephone, (206) 464-6595.

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

2 JUDGE CLARK: Good morning. It's
3 approximately ten a.m., July 10th, 2009 in the
4 Commission's hearing room in Olympia, Washington. This
5 is the time and the place set for a telephonic motion
6 conference in the matter of Washington Utilities and
7 Transportation Commission versus PacifiCorp, doing
8 business as Pacific Power and Light Company, Patricia
9 Clark, administrative law judge for the Commission
10 presiding.

11 This matter came before the Commission on
12 June 22nd, 2009, when Public Counsel filed a motion
13 requesting that the Commission require PacifiCorp to
14 issue an individual customer notice in the form
15 attached to their motion and excluding specifically a
16 chart entitled, quote, "US average residential monthly
17 electric bills for one-thousand kilowatt hours," end
18 quote. Both PacifiCorp and the Commission staff timely
19 filed responses to that motion.

20 At this juncture, I will take appearances on
21 behalf of the parties, and I'm going to start with the
22 movant. Appearing on behalf of Public Counsel?

23 MS. SHIFLEY: This is Sarah Shifley,
24 assistant attorney general for Public Counsel.

25 JUDGE CLARK: Appearing on behalf of

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1 PacifiCorp?

2 MS. MCDOWELL: This is Katherine McDowell
3 here on behalf of PacifiCorp.

4 JUDGE CLARK: Appearing on behalf of the
5 Commission staff?

6 MR. TROTTER: Donald T. Trotter, assistant
7 attorney general for Commission staff.

8 JUDGE CLARK: We also have appearing on the
9 bridge line this morning The Energy Project.
10 Mr. Purdy?

11 MR. PURDY: Yes, Your Honor. I didn't hear
12 you to say that we filed a response as well.

13 JUDGE CLARK: I'm sorry. I misspoke. I do
14 have the timely-filed response of The Energy Project as
15 well.

16 MR. PURDY: Thank you. Brad Purdy here on
17 behalf of The Energy Project.

18 JUDGE CLARK: Are there any other individuals
19 appearing on the bridge line this morning who wish to
20 enter an appearance? Hearing no one, I think that
21 takes care of the appearances.

22 Just a minor housekeeping, if you have a cell
23 phone with you this morning, this would be an
24 appropriate time for you to place it on mute or
25 otherwise disengage it, and because we do have

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1 individuals appearing on the bridge line, it is
2 important that you speak perhaps a little louder than
3 you would normally speak and slightly slower than you
4 would normally speak.

5 Are there any preliminary matters the parties
6 would like me to address before we proceed to argument
7 on the motion? Hearing nothing, we will go straight to
8 argument. Ms. Shifley?

9 MS. SHIFLEY: Thank you, Your Honor. Good
10 morning. It is not disputed, as Staff acknowledges,
11 that the Commission may rightfully be concerned about
12 utility notices that are misleading, including the EEI
13 state rate comparison chart in this notice is
14 misleading for a number of reasons. It suggests rate
15 comparisons are relevant to rate setting when they are
16 not. It uses information that is not easily verifiable
17 and is not from a public neutral source, and it lacks
18 context to explain why different states and companies
19 have different rates.

20 The alternatives offered by Staff and
21 PacifiCorp would not correct the problems identified.
22 Adding a disclaimer simply confirms that the chart is
23 misleading; otherwise, no disclaimer would be needed.
24 This is likely to leave customers more confused. The
25 pie chart proposed by PacifiCorp is possibly more

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1 problematic than the EEI chart. The percentages in the
2 pie chart calculated by PacifiCorp are based on 2007
3 data. It is unclear whether PacifiCorp has used its
4 current rates, proposed rates, or 2007 rates.

5 The chart also contains no explanation of
6 what utilities are included, what classes of customers
7 are included, what definition of average rates is being
8 used, how such averages are calculated, or what factors
9 may impact varying rates. When I took a look at the
10 information that PacifiCorp said the pie chart was
11 based on, it appeared that the average rates for
12 Washington customers overall and for Washington
13 residential customers were lower than both PacifiCorp's
14 current and proposed rates, which is not what the pie
15 chart shows.

16 Moreover, including this chart in a rate case
17 notice would still mislead customers as to the
18 relevance of comparisons to rate-making and whether
19 PacifiCorp's request is justified. Rather than
20 providing any information regarding the current rate
21 case, the chart only makes the vague suggestion that
22 PacifiCorp may need to catch up with other Washington
23 utilities and therefore should be granted a rate
24 increase.

25 As Public Counsel argues in its motion, the

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1 Commission should prohibit PacifiCorp from including
2 the EEI chart in its customer notice, or at a minimum,
3 order it to include the Commission's publicly available
4 Washington rate chart along with disclaimer language.
5 The first amendment does not prohibit the Commission
6 from ordering PacifiCorp to remove the chart from the
7 notice. As the Company acknowledges, misleading
8 commercial speech is not subject to any constitutional
9 protection, and as discussed previously --

10 JUDGE CLARK: I'm sorry, Ms. Shifley.
11 Someone connected to the bridge line, which cut you
12 off, so if you would commence with that sentence again.

13 MS. SHIFLEY: Certainly, Your Honor. As the
14 Company acknowledges, misleading commercial speech is
15 not subject to any constitutional protection, and as
16 discussed previously in our motion, rate case and rate
17 comparisons are commercial speech, and the comparison
18 in this notice renders it misleading.

19 I would like to take this opportunity to
20 respond to some of the points made by my colleagues in
21 their responses. First, PacifiCorp argues that Public
22 Counsel's only basis for challenging the notice is to
23 demonstrate that it is sufficient under the rule. The
24 ALJ decision in Verizon, MCI states differently saying
25 that Public Counsel has just as much, if not a greater

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1 interest, as any other party in seeing that the notice
2 is clear, accurate, and effective. Staff takes issue
3 with Public Counsel's reference to consumer protection
4 law. This point is a red herring. Public Counsel does
5 not contend that the CPA applies here. Instead, we
6 offered various definitions of "misleading" for
7 illustrative purposes.

8 Staff and PacifiCorp also argues that the
9 fact that Public Counsel did not formally object to
10 inclusion of a similar chart in the recent Avista
11 notice somehow precluded our raising the issue here.
12 This is not the case. Public Counsel did not object to
13 the Avista notice as a matter of negotiation.
14 Candidly, Public Counsel was focused on other aspects
15 of the Avista notice, but on greater reflection when we
16 saw a second appearance of comparison charts in this
17 case, we felt it was important for us to raise this
18 misleading practice. We do not believe that the Avista
19 negotiation precludes Public Counsel or the Commission
20 from addressing inclusion of misleading comparisons in
21 this notice or future rate case notices.

22 Moreover, it is inappropriate for Staff and
23 PacifiCorp to make a collateral estoppel-like argument
24 that this issue may not be raised in this or future
25 cases. Staff contends that the misleading nature of

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1 the comparison chart is merely speculative. However,
2 when reviewing rate case notices, the UTC must use its
3 considered judgment in advance as to how customers may
4 perceive a notice, and it does exactly that each time
5 it reviews and approves rate case notices.

6 Thank you, and I would be happy to answer any
7 questions you may have.

8 JUDGE CLARK: Thank you. I'm going to
9 reserve any inquiry I might have until the conclusion
10 of argument. Mr. Purdy, I'm going to ask for your
11 argument next and that is because it appears that the
12 position of The Energy Project is most closely aligned
13 with that of Public Counsel.

14 MR. PURDY: Yes, I believe, it is. Thank
15 you. The Energy Project submits that the overriding
16 objectives of the administrative rules at play here
17 from a legal and public policy standpoint are primarily
18 to inform the public and solicit and encourage
19 participation. The Company and Staff seem to posit
20 that so long as the notice contains nothing misleading,
21 then apparently it can contain anything. This ignores
22 the principles of clarity and undermines the policy
23 identified.

24 Company and Staff have downplayed the
25 significance of the chart and the effect it might have

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1 on public involvement. If the Company remains
2 steadfast in its insistence to include the chart bill
3 comparison in its notice, the only logical rationale
4 for the Company's strong desire is that the state
5 selectively chosen by PacifiCorp placed the state of
6 Washington and particularly the Company roughly second
7 to lowest in terms of average monthly bills of all the
8 utilities studied.

9 Assuming that any customer who reads this
10 believes the data it contains and accepts the obvious
11 innuendo that it is intended, and the only logical
12 impact of the notice is to leave customers with the
13 belief that they have nothing to fight about when it
14 comes to power bills. What the customers are not being
15 told is that the rates of any regulated utility are set
16 at a level sufficient to recover basic costs, expenses,
17 and return on investment; in other words, their
18 earnings of that particular utility and that utility
19 only. The fact that Washington rates are relatively
20 low is not germane to anything and leads only to
21 confusion.

22 The one everyone seems to agree upon is the
23 fact that rates are not set based on comparisons with
24 other states or utilities. Staff's argument that the
25 Edison chart won't discourage participation because

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1 Public Counsel is aware that rates are not set by
2 comparison because the rate does not have to accept
3 PacifiCorp's proposed rates are thin arguments. The
4 fact that the Commission is not obligated to do these
5 things and that Public Counsel may be aware of the law
6 does not mean that the general public is.

7 I just want to touch briefly on specific --
8 Edison chart to contain. Obviously, the public utility
9 rates are not set by comparison to comparison are
10 irrelevant and dangerously misleading. This chart in
11 particular is troublesome because more about what it
12 doesn't say than what it does. It purports to be a US
13 average comparison of monthly bills that only covers a
14 select 11 states. There is no references, footnotes,
15 or anything to support any data or calculations or
16 information relied upon and so forth.

17 What the chart purports to do is to show that
18 PacifiCorp Washington customers pay much less for their
19 electricity than customers of other utilities in other
20 states. But when you look at the chart, many questions
21 arise. First, in the 11 states shown, were the bills
22 paid to all utilities in that state included or just
23 investment utilities or municipal and nonprofit systems
24 as well? Are the monthly bill amounts averages of all
25 utilities in any given state and combined by the number

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1 of utilities, or were the utilities weighted based on
2 the number of customers they served, for instance, or
3 some other factor? Over what period of time were the
4 monthly bills calculated; one month, ten years? The
5 term doesn't give any of this information.

6 The states assume that the rate of increase
7 of overall electric bills in each of the 11 states
8 shown in this study have not been identical over the
9 last five or ten years. Another question, were the
10 bills normalized for extraordinary events, such as
11 drought? Finally, there is the undeniable inference
12 created by the chart that PacifiCorp Washington rates
13 are among the lowest in the region, but there is no
14 explanation of why that might be the case.

15 With respect to Public Counsel's actions in
16 the Avista case, I join in with what Public Counsel
17 says, and I think it's also dangerous to try to create
18 some kind of binding precedent out of actions taken by
19 one party to one case or actions not taken. Public
20 Counsel gave you the reason it did not raise this
21 issue. That should be good enough, and that certainly
22 shouldn't prohibit other parties, the Commission,
23 anybody involved in the rate case from raising concerns
24 about public notices in that case.

25 To summarize, I think it's fair to say that

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1 people don't like to be perceived -- and certainly,
2 PacifiCorp's customers don't receive special treatment,
3 and anything that causes them to believe that they
4 might be receiving special treatment could very well
5 have a chilling effect on whether they weigh in in any
6 given case and to what extent, and I think that in and
7 of itself is the reason to not put before them data
8 that Utility and Staff admit is really irrelevant
9 anyway because rates are not set using comparisons to
10 other utilities. So with that, I respectfully urge
11 that the chart be left out of the public notice.

12 JUDGE CLARK: Thank you, Mr. Purdy.

13 Ms. McDowell?

14 MS. MCDOWELL: Thank you, Judge Clark. Let
15 me first say that PacifiCorp greatly appreciates the
16 work of Public Counsel and Staff and The Energy Project
17 in helping PacifiCorp assure that its proposed customer
18 notice meets the requirements of WAC 480-100-197. That
19 is the pertinent rule with respect to the contents of
20 the customer notices in the state of Washington.

21 No party here disputes that PacifiCorp's
22 customer notice as presented does comply with that
23 particular rule. Instead, the dispute is whether on
24 other grounds, on the grounds that the chart is
25 misleading, the Commission can exclude the chart from

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1 the customer notice. The rule itself does not preclude
2 additional material in a customer notice, and it
3 certainly doesn't expressly preclude the inclusion of
4 some kind of background information on comparative rate
5 levels.

6 PacifiCorp believes that the chart, the rate
7 chart it has proposed to include in the customer notice
8 is helpful and educational background information for
9 customers, and that is why PacifiCorp has proposed to
10 include it in the notice. The arguments of Public
11 Counsel and The Energy Project against that inclusion
12 of the rate comparison chart really go to one singular
13 argument, which is that the chart is misleading.

14 To address Public Counsel's concern, the
15 Company took a number of steps in modifying the chart
16 from the chart that was previously included in the
17 Avista customer notice, and those steps are outlined in
18 our response to the motion. Most notably, PacifiCorp
19 agreed to disclaimer language suggested by Staff
20 counsel that, quote, "The UTC does not consider
21 electric rates charged by other utilities in setting
22 rates," unquote. Public Counsel never directly
23 addresses in its motion how the rate comparison chart
24 can be misleading with such language attached to it.

25 Today, Public Counsel in a conclusory

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1 statement simply says that that caption confirms the
2 misleading nature of the chart. We think the opposite
3 conclusion is the correct one to reach; that with that
4 language attached to it, any potential confusion that
5 the chart might create is dissipated. Public Counsel
6 also fails to address how the Commission can lawfully
7 regulate the notice and remove the chart when it
8 contains such language, language that is designed to
9 insure that the chart is not misleading. And finally,
10 while Public Counsel attempts to explain the
11 inconsistencies of its positions on the rate chart in
12 the Avista customer notice and in PacifiCorp's as a
13 function of negotiation, it never directly addresses
14 how this commission can find that PacifiCorp's customer
15 notice is unlawful with the inclusion of the chart but
16 yet permits circulation of Avista's with a similar
17 chart in it.

18 Now, both Ms. Shifley and Mr. Purdy raise
19 specific concerns about the rates charged and about the
20 alternative pie chart that PacifiCorp proposed as a
21 compromise. With respect to the rate chart, Mr. Purdy
22 said that it purports to show the US average but does
23 not actually contain the US averages, and in fact,
24 there is a line on the chart that does contain the US
25 average. Rather than put all 50 states, the Company

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1 just selected the states in the western region that we
2 presumed would be of greatest interest to the customers
3 who would receive this notice.

4 Mr. Purdy also complained that there were no
5 source footnotes appended to the chart, and that is not
6 correct. It clearly indicates that the source is the
7 Edison Electric survey, and finally, Mr. Purdy says
8 that it doesn't show what's behind the data, what might
9 be the differences in the data collected and how that
10 would be reflected in the rates that are demonstrated
11 here, and as we indicated in our response to the
12 motion, the chart demonstrates only the final end
13 result prices the customer pays. That's what it
14 purports to show, and that's what it shows.

15 It does not purport to show comparisons
16 between utilities that have certain rate designs and
17 others that don't or utilities with PCAM'S and those
18 without, so we think that the chart quite clearly is
19 labeled as to what it is and that's what it shows.
20 With respect to the pie chart, to the extent that there
21 are questions about it, if the Commission is interested
22 in hearing about that, Mr. Griffith, who has prepared
23 the chart, is here and could respond to those in
24 greater detail.

25 So in conclusion, we would ask the Commission

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1 to reject Public Counsel's motion and approve the
2 notice as submitted and attached as Exhibit A to
3 PacifiCorp's response to which PacifiCorp agrees to add
4 the statement to insure against any misleading fact of
5 the chart, a statement that quote, " The UTC does not
6 consider electric rates charged by other utilities in
7 setting rates." Thank you.

8 JUDGE CLARK: Thank you, Ms. McDowell.
9 Mr. Trotter?

10 MR. TROTTER: Thank you, Your Honor. I'm not
11 going to repeat the arguments made in the pleading. I
12 know you've read it carefully and are well prepared
13 today. I did want the Commission to understand that in
14 preparing to respond to Public Counsel's motion, I did,
15 of course, talk to the Commission's consumer protection
16 staff people who deal with these notices day in, day
17 out, year in, and year out. The unanimous considered
18 judgment of those individuals was that the rate
19 comparison table was simply not misleading and did
20 provide useful background information for customers.

21 An analogy might be, for example, a company
22 that wished to put in a table of the last decade's rate
23 changes for that utility in base rates. That would
24 also potentially be useful for customers to understand
25 how their rates have changed over time, and it's also

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1 not relevant to a determination of the current rates or
2 the rate case of the utility, but again, it would be
3 useful for customers to understand, and that was the
4 context in which the Staff reviewed it.

5 They were also frankly surprised that this
6 issue came up given the experience in the Avista case
7 where the notice did contain the table without coming
8 to the Commission in a formal way and form an
9 objection. I believe our motion makes clear, argument
10 or not, that Public Counsel is estopped or precluded
11 from raising it, but those words do not appear in the
12 motion, and you can read that to discern what we are
13 saying about the impact of Public Counsel's role in
14 that prior table.

15 No one has yet made the point that I think
16 the Commission needs to keep in mind, and that is to
17 read the customer notice as a whole, and I think when
18 the Commission does that, which I think we can expect
19 the customer to do, that provides full context for the
20 information contained in the notice. The notice
21 specifically sets forth a percentage increases for the
22 average across the scheduled rate schedules. It states
23 the dollar amount, the major reasons for the increase
24 by category. It states that the Commission can grant a
25 rate increase higher than what the Company has filed

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1 for or lower, and so on and so on, so I think in
2 context, this whole issue basically disappears.

3 If Staff had thought that customers would be
4 dissuaded by this table from participating, it would
5 have opposed the table, but if you take a look at it,
6 you can make the same argument for almost any part of
7 this notice. For example, one of the entries is 20
8 million of the increased revenue is due to new
9 generation resources. Some customers might say, Well,
10 we need new generation resources, so this looks
11 reasonable. I won't participate.

12 One can speculate, and I submit that there is
13 an awful lot of speculation about what customers will
14 or will not do. The standard I think the Commission
15 should adopt is not based on speculation but based on
16 judgment based on reading of the notice and all the
17 information it contains as a whole. I believe if the
18 Commission does that, it will not find the problem
19 here.

20 Turning briefly to the legal argument, as I
21 read the first amendment case law, a disclaimer
22 resolves any first amendment problem, even under the
23 standard articulated by Public Counsel, which we are
24 contesting, and finally, I think it is important to
25 understand that I think all parties here have

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1 acknowledged that the Company does have first amendment
2 rights here, and commissions need to be careful when
3 they go about regulating in those rights.

4 So we think that the disclaimer solves the
5 problem. We think in context, the table is not
6 objectionable, and so we urge the Commission to deny
7 the motion.

8 JUDGE CLARK: Thank You, Mr. Trotter. Is
9 there any rebuttal, Ms. Shifley?

10 MS. SHIFLEY: Thank you, Your Honor. I would
11 just like to clarify what both Ms. McDowell and
12 Mr. Trotter have made at some point, which is that
13 Public Counsel is arguing that including the comparison
14 chart in the rate case leaves it unlawful, and that is
15 actually not an argument that we made. We don't think
16 that the first amendment requires that the chart be
17 removed or that inclusion of the chart renders the
18 notice unlawful.

19 Rather, we are saying that the first
20 amendment does not preclude the Commission from
21 ordering that the chart be removed and that including
22 the chart in the notice does leave it misleading, which
23 it doesn't in itself make the notice unlawful but just
24 allows for regulation by the Commission. Thank you.

25 JUDGE CLARK: All right. Thank you,

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1 Ms. Shifley. I have just a couple of questions for
2 you. The first is in your initial argument where you
3 were contending that the ALJ in another proceeding had
4 addressed the scope of the customer notice, do you have
5 a citation for that case?

6 MS. SHIFLEY: Certainly, Your Honor.

7 JUDGE CLARK: I'm looking --

8 MS. SHIFLEY: That is Order Number 06 from
9 Docket UT-050814, in the matter of the joint
10 application of Verizon Communications and MCI for
11 approval under agreement and plan of merger, and the
12 portion that I was referring to appears in Paragraph 7.

13 JUDGE CLARK: Thank you. In that proceeding,
14 did the Commission schedule a public comment hearing
15 regarding the merger?

16 MS. SHIFLEY: I don't believe that the notice
17 at issue in that case referred or was referring to a
18 public comment hearing, but I'm not certain.

19 JUDGE CLARK: The other question I have
20 really relates to sort of a comparison between the
21 notice that was issued in the Avista proceeding and the
22 notice that is proposed in this proceeding, and please
23 correct me if I misspeak here, but it appears to me
24 that if I take a look at the notice that was submitted
25 for the Avista proceeding, it seems to be extremely

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1 comparable to the one proposed in this case with the
2 exception of the inclusion of the state of Hawaii, and
3 I don't believe that's proposed in the PacifiCorp case;
4 is that correct?

5 MS. SHIFLEY: That's correct, Your Honor.

6 JUDGE CLARK: And the copy I have that is
7 attached to PacifiCorp's response does not indicate
8 that there is a footnote demonstrating the source of
9 the information in that chart; is that correct?

10 MS. SHIFLEY: There is no footnote, but on
11 the Avista notice, it does say, "Source: Edison
12 Electric Institute."

13 JUDGE CLARK: So it would have a comparable
14 footnote in the Avista notice?

15 MS. SHIFLEY: If I'm understanding your
16 question, the Avista notice does refer to the EEI as
17 the source.

18 JUDGE CLARK: Thank you. I'm just having a
19 little difficulty understanding the argument that the
20 Avista notice is distinguishable from the PacifiCorp
21 notice because that was a matter of negotiation in the
22 Avista proceeding. I can certainly understand why
23 there might be differences between the action the
24 Commission might take, for example, on the rate of
25 return of a utility that is dependent on that utility's

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1 operations to where that might be a bargaining chip,
2 for lack of a better term, but I'm having difficulty
3 understanding why it's unacceptable in this case to
4 have a chart; whereas it appears to have been
5 acceptable in Avista. Can you help me with that,
6 please?

7 MS. SHIFLEY: I hope that I made clear in my
8 opening argument that not objecting to that chart in
9 the Avista case was possibly an oversight on Public
10 Counsel's part because we were very much focused on
11 other factors and other portions of that notice. In
12 hindsight, we do think that the inclusion of comparison
13 charts in any rate case notice is very troublesome,
14 whether it be this notice or the Avista notice. We
15 didn't at the time we were working on the Avista case
16 believe that this would become a regular practice of
17 utilities to include this in rate case notices. We do
18 think that inclusion of misleading rate comparisons in
19 rate case notices is a problem and shouldn't be
20 allowed.

21 JUDGE CLARK: And are you familiar with any
22 other proceedings other than Avista in which the
23 Commission has allowed such a chart or comparison?

24 MS. SHIFLEY: No, I'm not.

25 JUDGE CLARK: In response to the last

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1 question, does either PacifiCorp, Commission staff or
2 The Energy Project know if there are other general rate
3 proceedings in which the Commission has allowed such a
4 chart or comparison?

5 MS. MCDOWELL: The Company is unaware of a
6 customer notice that has such a chart. There is a rate
7 comparison chart on the Commission's Web site that has
8 been referenced in the motion and response.

9 JUDGE CLARK: That is the comparison of the
10 rates of utilities within the state of Washington.
11 Mr. Trotter?

12 MR. TROTTER: I'm racking my brain here. I
13 do have a recollection of rate comparisons being used
14 probably in the late '70's, early '80's, but I cannot
15 be sure of that, and I'm not sure if it was in a
16 customer notice or if it was in a handout at a public
17 comment hearing or documents of that sort. I have seen
18 this sort of information in the past. I can't recall
19 the context right off the top.

20 MS. MCDOWELL: I would say generally that
21 while we can't point you to a specific case in
22 Washington where a similar notice was issued, in the
23 Company's experience in being involved in rate cases in
24 many jurisdictions and many public notice-type
25 hearings, it's often the kind of information that

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1 commissions ask us to provide or ask us to be available
2 to respond to because it's the kind of question that
3 typically comes up in those kind of public notice
4 hearings.

5 JUDGE CLARK: Does anyone have anything
6 further that they would like to add?

7 MS. MCDOWELL: Your Honor, there was one
8 other comparison I wanted to note between the Avista
9 chart and the PacifiCorp chart, and I wanted to note it
10 because I think it is significant. The Avista notice
11 is also scheduled to go out this year, but I think
12 probably just because of the timing of the preparation
13 of their chart, it's based on 2008 data, and PacifiCorp
14 was able to use the 2009 rate data, and then that
15 permitted it to both put current rates for 2009 and the
16 proposed rates in a way that very clearly demonstrates
17 what its current rate is and what its proposed rate
18 would be coming out of this case, so we were pleased to
19 be able to do that. We thought that made the chart
20 more informative both because it was more up-to-date
21 and permitted both the current rate to be included, the
22 current average rate and the proposed rate, so it's a
23 subtle difference, but I think it's a significant one.

24 JUDGE CLARK: Well, there is one other
25 question I have regarding that, and maybe I'm just not

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1 looking at it, but is there a portion on the Avista
2 notice that has a disclaimer that indicates that the
3 Commission does not use the comparison of the rates of
4 other utilities in establishing the rates for the
5 affected utility?

6 MS. MCDOWELL: No, that was not included in
7 the Avista notice. Just to be clear, it's not included
8 in the notice, the copy of the notice that we submitted
9 as Exhibit A to our response. We have agreed to
10 include it and have included the language in our
11 response that we would propose to include. That
12 suggestion came from Staff counsel. We thought it was
13 a good one because we thought it did squarely address
14 the concerns of Public Counsel and The Energy Project.

15 JUDGE CLARK: I've considered the written and
16 oral arguments of all the parties in this proceeding,
17 and I have concluded that Public Counsel's motion
18 should be denied. The notice fully complies with
19 WAC 480-100-197. Secondly, I'm concerned about these
20 arguments in light of the pending Avista rate case and
21 somehow treating Avista ratepayers differently than the
22 ratepayers would be treated in the PacifiCorp rate
23 case, and the Commission has approved a similar table
24 in the Avista rate case, which is actually slightly
25 more expansive in terms of the number of utilities

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1 involved.

2 I think that any argument that the notice is
3 misleading can be corrected with the inclusion of the
4 disclaimer language proposed by Commission staff and
5 agreed to by PacifiCorp; specifically, the language
6 indicating that the Commission does not use the rate
7 comparisons of other utilities in order to establish
8 rates for PacifiCorp, or any other utilities for that
9 matter.

10 All right. A written order will memorialize
11 my decision in this matter. Is there anything further
12 to be heard on this morning's record? Hearing nothing,
13 we are adjourned.

14 (Prehearing adjourned at 10:37 a.m.)

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