

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKET UE-090205
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	ORDER 06
)	
v.)	
)	
PACIFICORP d/b/a PACIFIC POWER)	ORDER DENYING MOTION
& LIGHT COMPANY,)	REGARDING CUSTOMER NOTICE
)	
Respondent.)	
)	
.....)	

1 **BACKGROUND.** This proceeding involves PacifiCorp d/b/a Pacific Power & Light Company’s (PacifiCorp) request for a general rate increase filed on February 9, 2009, with the Washington Utilities and Transportation Commission (Commission). By Order 01 entered in this docket following the February 26, 2009, open meeting, the Commission suspended operation of the tariffs designed to effect a general rate increase for electric service. By Order 04 entered on March 24, 2009, the Commission, among other things, established a procedural schedule including a deadline for the Public Counsel Section of the Office of the Attorney General (Public Counsel) to file a report on the public notice that PacifiCorp must send to its customers.

2 **APPEARANCES:** Katherine McDowell, McDowell & Rackner, Portland, Oregon, represents PacifiCorp. Donald T. Trotter, Assistant Attorney General, Olympia, Washington, represents the Commission’s regulatory staff (Commission Staff or Staff).¹ Sarah Shifley, Assistant Attorney, Seattle, Washington, represents Public Counsel. Brad Purdy, Boise, Idaho, represents The Energy Project.²

¹ In formal proceedings, such as this, the Commission’s regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as other parties to the proceeding. There is an “*ex parte* wall” separating the Commissioners, the presiding Administrative Law Judge, and the Commissioners’ policy and accounting advisors from all parties, including regulatory staff. *RCW 34.05.455*.

3 **MOTION FOR ORDER REGARDING CUSTOMER NOTICE.** On June 22, 2009, Public Counsel filed a motion requesting that the Commission require PacifiCorp to issue an individual customer notice in the form attached to the motion but excluding the chart entitled “US Average Residential Monthly Electric Bills for 1,000 kWh.” In the alternative, Public Counsel requested that the Commission require PacifiCorp to replace the chart with the rate comparison that is publicly available on the Commission website and provide explanatory language. Public Counsel requested that the Commission consider this motion during a telephone hearing. By Notice of Telephonic Motion Conference entered June 24, 2009, the Commission scheduled oral argument on the motion for July 10, 2009, and established June 30, 2009, as the deadline for filing a response to the motion.³

4 On June 30, 2009, PacifiCorp and Commission Staff timely filed responses opposing the motion. On July 1, 2009, The Energy Project filed a response supporting the motion.⁴

5 **DISCUSSION AND DECISION.** Public Counsel argued that the chart including a comparison of electric utility rates for other utilities in the western United States, and the US average rates for electric service, is unlawful, misleading, and may discourage public participation in this matter. Public Counsel requested that the chart be deleted or replaced with the rate comparison on the Commission’s website together with explanatory language that states that the Commission does not set rates based on the rates of other utilities. The Energy Project concurred with Public Counsel.

6 PacifiCorp argued that the proposed customer notice complies with the requirements of WAC 480-100-197 and any argument that the chart is misleading should be dispelled by including disclaimer language that indicates that the Commission does not consider the electric rates of other utilities in setting rates. PacifiCorp noted that a

² Although provided notice of the opportunity to do so, no other party filed a response to Public Counsel’s motion.

³ Due to scheduling conflicts, the Commission was unable to conduct the motion conference on the date requested.

⁴ According to WAC 480-07-395(4), the Commission will liberally construe pleadings and disregard defects that do not affect the substantial rights of parties. While the response of The Energy Project was not timely filed, other parties’ rights should not be substantially affected because they were afforded the opportunity to orally respond during the motion conference and they had an adequate opportunity to prepare that response.

comparable chart was included in the customer notice for Avista's current general rate case so it is difficult to understand how PacifiCorp's notice is unlawful.⁵

- 7 Commission Staff also opposed the motion arguing that, according to Consumer Protection Section Staff, the notice is not misleading and provides useful background information for customers. Staff further argued that the Commission should consider the customer notice as a whole before determining if the chart is misleading or would deter public comment. Finally, Staff contended that including a disclaimer resolves renders any concerns with the customer notice.
- 8 The Commission denies Public Counsel's motion regarding PacifiCorp's customer notice. All parties concur that the notice complies with WAC 480-100-197. The issue is whether inclusion of the chart in the notice renders its otherwise unlawful or misleading. The Commission concludes that it does not, provided the chart listing other utilities' electric rates includes a disclaimer that the Commission does not consider the rates of other utilities in setting rates.
- 9 The Commission concurs with Staff that Public Counsel's argument that the notice is unlawful and lacks credibility because Public Counsel negotiated a customer notice in the Avista general rate case in Dockets UE-090134/UG-090135 (consolidated)⁶ containing a similar chart. The Commission must either believe that Public Counsel negotiated an unlawful notice in the Avista rate case or that inclusion of a similar chart in PacifiCorp's notice does not render it unlawful. The Commission concludes that the latter assumption is reasonable.
- 10 In addition, the Commission concurs with Staff that it is important to review the proposed notice in its entirety. The notice clearly states the dollar amount of the requested rate increase, the percentage increases for each rate schedule, and the basis for the requested rate relief. It further provides notice that the Commission may approve a rate increase that is either higher or lower than the amount requested. The notice provides customers with specific information regarding how to participate in this case. The chart comparing the electric rates of other utilities in western states, as well as U.S. average rates for electric service, simply provides additional information to customers. It is difficult to ascertain how the inclusion of that information could be misleading to customers when Public Counsel's alternate proposal is to include a

⁵ *Washington Utilities and Transportation Commission, Complainant vs. AVISTA CORPORATION, d/b/a AVISTA UTILITIES, Respondent, Docket Nos. UE-090134/UG-090135 (Consolidated).*

⁶ *Id.*

comparison of the electric rates of Washington utilities.⁷ Either a comparison of the rates of other utilities is inherently misleading or it is not. The Commission concludes it is not. Nonetheless, any concern that the chart could be misleading is dispelled with the inclusion of the disclaimer that “The UTC does not consider electric rates charged by other utilities in setting rates.” With the inclusion of this disclaimer, the form of notice appended to PacifiCorp’s response is approved for issuance to customers.⁸

DATED at Olympia, Washington, and effective July 30, 2009.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

PATRICIA CLARK
Administrative Law Judge

NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to WAC 480-07-810.

⁷ The Commission uses that comparison chart on its website.

⁸ As PacifiCorp notes in its response, the corrected notice appended to its response includes the comparison of current and proposed rates required by WAC 480-100-194(4)(d). *PacifiCorp Response at 2, n. 2.*