

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON STATE ATTORNEY
GENERAL'S OFFICE AND THE
INDUSTRIAL CUSTOMERS OF
NORTHWEST UTILITIES,

Joint Complainants,

v.

PACIFICORP, d/b/a PACIFIC POWER &
LIGHT CORP.

Respondent.

Docket No. UE-110070

ICNU AND PUBLIC COUNSEL'S
MOTION FOR LEAVE TO REPLY TO
STAFF'S RESPONSE TO
PACIFICORP'S MOTION TO DISMISS

1 Pursuant to WAC 480-07-370(1)(d)(ii), the Industrial Customers of Northwest
Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's
Office ("Public Counsel") hereby move for leave to file a reply to Staff's Response to
PacifiCorp's Motion to Dismiss ("Staff Response").

2 The Staff Response is, in essence, an answer to PacifiCorp's Motion to Dismiss.
Under WAC 480-07-370(1)(d)(i), no party may file a reply to an answer without first requesting
leave to do so. ICNU and Public Counsel request leave to reply, and submit their proposed
Reply with this Motion.

3 In accordance with WAC 480-07-370(1)(d)(ii), it is necessary for ICNU and
Public Counsel to reply to the Staff Response, because it raises issues that were not raised in

PacifiCorp's Motion to Dismiss. In particular, the Staff Response raises the issue of the relevance of certain evidence. As evidentiary relevance was not addressed in the Motion to Dismiss, ICNU and Public Counsel should be allowed an opportunity to reply to this issue. Additionally, the Staff Response makes general observations and assertions that were not made in the Motion to Dismiss, and that are based on a misreading of the claims alleged and relief requested in the Joint Complaint. ICNU and Public Counsel should also be granted an opportunity to correct the misstatements made by Staff.

4 ICNU and Public Counsel's request for leave to reply is further justified because portions of the Staff Response may be impermissible under Commission rules. WAC 480-07-380(1)(c) expressly provides that a party may file a response in *opposition* to a motion to dismiss. This rule does not create an opportunity for parties to file pleadings supporting a motion to dismiss, or to present new arguments in favor of dismissal. Sections A and D of the Staff Response do not oppose the Motion the Dismiss and therefore may not be in accordance with WAC 480-07-380(1)(c). The arguments in support of the Motion to Dismiss should have been made in an independent motion to dismiss, rather than in a "response." The arguably improper inclusion of these arguments in the Staff Response further justifies allowing ICNU and Public Counsel an opportunity to reply to the Staff Response.

5 Staff has indicated to ICNU and Public Counsel that it will not oppose a Reply to the Staff Response.

6 For the foregoing reasons, ICNU and Public Counsel respectfully request leave to file a Reply to the Staff Response.

Respectfully submitted,

DATED this 7th day of March, 2011.

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