

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

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	
)	DOCKET NO. UE-032065
Complainant,)	
)	
v.)	ORDER NO. 05
)	
PACIFICORP d/b/a PACIFIC POWER)	DENYING MOTION TO STRIKE;
& LIGHT COMPANY)	ESTABLISHING PROCESS AND
)	REVISED PROCEDURAL
Respondent.)	SCHEDULE
.....)	

1 **PROCEEDINGS:** On December 16, 2003, PacifiCorp d/b/a Pacific Power & Light Company (“PacifiCorp” or the “Company”) filed with the Commission revisions to its currently effective Tariff WN U-74, designated as set forth in paragraph 1 of the Commission’s Complaint and Order No. 01 in this proceeding. The tariff sheets included a stated effective date of January 16, 2004. PacifiCorp requested an increase in annual revenues from Washington operations of \$26.7 million, resulting in a proposed uniform increase in rates of 13.5 percent. Prefiled testimony and exhibits accompanied the Company’s filing.

2 The parties filed response testimony on July 2, 2004. The Company filed rebuttal testimony on July 28, 2004. The procedural schedule established August 30 as the date to begin evidentiary proceedings.

3 PacifiCorp and the Commission’s regulatory staff (“Commission Staff” or “Staff”)¹ filed a multi-party Settlement Agreement on August 24, 2004. Staff filed

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

a revised Settlement Agreement, in which the Natural Resources Defense Council joined, on August 27, 2004. The Commission conducted a prehearing conference on August 30, 2004, before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, Commissioner Patrick J. Oshie, and Administrative Law Judge Dennis J. Moss.

4 **PARTY REPRESENTATIVES:** James M. Van Nostrand and Stephen C. Hall, Stoel Rives LLP, Seattle, Washington, and Portland Oregon, respectively, represent PacifiCorp. Melinda Davison, S. Bradley Van Cleve, and Irion Sanger, Davison Van Cleve PC, Portland, Oregon, represent the Industrial Customers of Northwest Utilities (“ICNU”). John O’Rourke, Program Director, Spokane, Washington, represents the Citizens’ Utility Alliance of Washington (“Alliance”). Ralph Cavanagh, Northwest Project Director, San Francisco, California, represents the Natural Resources Defense Council (“NRDC”). Chuck Ebert, Bellingham, Washington, represents the Energy Project, Opportunity Council, Northwest Community Action Center, and Industrialization Center of Washington (collectively “Energy Project”). Robert Cromwell, Assistant Attorney General, Seattle, Washington, represents the Public Counsel Section of the Washington Office of Attorney General. Shannon Smith, Assistant Attorney General, Olympia, Washington, represents the Commission’s regulatory staff (“Commission Staff” or “Staff”).²

5 **MOTION TO STRIKE:** On August 19, 2004, Staff filed its Motion To Strike certain prefiled rebuttal testimony and exhibits filed by PacifiCorp on July 28, 2004. The subject testimony and exhibits concern the so-called MSP Revised Protocol. The Settlement Agreement states that “the Parties agree for purposes of this settlement that the Motion should be granted,” and that the Company will

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not offer the subject testimony, except that certain portions of it “shall be admitted for the limited purpose of defining the Revised Protocol” for purposes of implementing another part of the Settlement Agreement that provides future regulatory filings by PacifiCorp will be on the basis of the MSP Revised Protocol.

6 On August 26, 2004, ICNU and Public Counsel filed a joint Response to Motion To Strike. They oppose Staff’s original Motion to the extent of the relief it requests, and recommend that the Commission receive and consider the evidence, subject to ICNU and Public Counsel being afforded an opportunity to offer surrebuttal testimony on the MSP Revised Protocol. The Commission heard some further discussion of this matter during its prehearing conference on August 30, 2004.

7 Because future use of the MSP Revised Protocol by the Company for purposes of regulatory filings in Washington is a feature of the proposed settlement, it is appropriate for the Commission to hear evidence concerning it and to afford those opposing the settlement an opportunity to develop their cases concerning it. On this basis, we deny Staff’s Motion To Strike. In addition, as discussed and resolved at our prehearing conference, we provide below for process that permits supplemental testimony to be heard. The MSP Revised Protocol, as a feature of the proposed Settlement Agreement, is within the scope of proper supplemental testimony.

8 **PROCESS; PROCEDURAL SCHEDULE:** The current procedural schedule, as published in Order No. 02, and subsequently modified by Notice dated June 22, 2004, is cancelled.

9 PacifiCorp, Staff, and NRDC filed supplemental testimony in support of their Settlement Agreement on August 27, 2004. The non-settling parties may pre-file testimony concerning the proposed settlement by 5:00 p.m. on Tuesday, September 7, 2004, or may offer supplemental live testimony through their

witnesses who are scheduled to appear as set forth in Appendix 1, attached to this Order.

- 10 The Commission will conduct hearing proceedings on September 9, 10, 16, and 17, 2004. Parties who intend to conduct cross-examination of the witnesses will submit to the Bench, and exchange with other parties, all proposed cross-examination exhibits by noon on September 7, 2004, according to the process described in prior informal communications from the Presiding Officer. Earlier submission of proposed cross-examination exhibits is encouraged.
- 11 The parties have agreed to cooperate in any discovery concerning the proposed settlement by providing responses to data requests within three days after they are served.
- 12 The Commission will establish such additional process and procedural dates as are appropriate in light of the hearing proceedings, the Commission's order accepting, accepting with conditions, or rejecting the Settlement Agreement, and any other matters that bear on the final disposition of these proceedings.
- 13 **NOTICE TO PARTIES: Any objection to the provisions of this Order must be filed within three (3) days after the date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810, as modified by shortening the filing time to accommodate the needs of this proceeding. Absent such objection, this prehearing conference order will control further proceedings in this matter, subject to Commission review.**

DATED at Olympia, Washington, and effective this 31st day of August, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS
Administrative Law Judge

APPENDIX 1

ORDER OF PRESENTATION

Witness	Date Anticipated	Cross-Examination Estimate (Total)
Don Schoenbeck (ICNU)	September 9	
Company Witnesses as time permits (see below)	September 9	
PANEL (Braden, Steward, Schooley, Kelley, Widmer, Omohundro)	September 10	
Jim Lazar (Public Counsel)	September 10	
Sam Hadaway	September 10	
Stephen Hill (Staff, Public Counsel)	September 10	
Company Witnesses as time permits (see below)	September 10	
Randy Falkenberg (ICNU)	September 16	
Alan Buckley (Staff)	September 16	
Company Witnesses as time permits (see below)	September 16	
Ralph Cavanagh (NRDC)	September 17	
Judi Johansen	September 17	
James Dittmer (Public Counsel)	September 17	
Company Witnesses as time permits (see below)	September 17	

The Witnesses below will available to be cross-examined in the order indicated as time permits on September 9, 10, 16, or 17.		
Don Furman	TBD	
Greg Duvall	TBD	
Dave Taylor	TBD	
Mark Tallman	TBD	
Rich Woolley	TBD	
Chris Mumm	TBD	
Larry Martin	TBD	
Erich Wilson	TBD	
Reed Davis	TBD	
Karl Anderberg	TBD	
Ted Weston	TBD	
The witnesses below are not scheduled to appear. Their testimony will be admitted by stipulation (<i>i.e.</i> , cross-examination is waived by all parties).		
Andy MacRitchie	No Cross Planned	
John Fryer	No Cross Planned	
Bill Eaquinto	No Cross Planned	
Bruce Williams	No Cross Planned	
Bill Griffith	No Cross Planned	
Dan Rosborough	No Cross Planned	
Chuck Ebert (Energy Project)	No Cross Planned	
Schoenbeck, Lazar, and Joelle Steward panel	No Cross Planned	
Joanna Huang (Staff)	No Cross Planned	
Danny Kermode (Staff)	No Cross Planned	
Johannes Mariam (Staff)	No Cross Planned	