BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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| WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,  Complainant,  v.  PACIFICORP d/b/a PACIFIC POWER & LIGHT COMPANY,  Respondent. | DOCKET UE-090205  COMMISSION STAFF REPLY TO ICNU RESPONSE TO COMMISSION STAFF MOTION FOR PREHEARING CONFERENCE |

1. Staff offers this brief reply to ICNU’s Response to Staff’s Motion. That Motion was filed and dated September 9, 2009. The parties are seeking guidance on the sort of testimony needed to support the revenue change and cost of service/rate design elements of the Settlement Stipulation.
2. **The common goal is to provide the Commission what it needs.** Staff is encouraged that ICNU shares Staff’s goal of providing the Commission the record it needs in support of a Settlement Stipulation such as this, or, as ICNU puts it, what the Commission “would appreciate being apprised of in reviewing the Settlement Stipulation…”.[[1]](#footnote-1) It is also helpful that ICNU shares Staff’s need to have clarification on this issue.[[2]](#footnote-2) Right now, the parties need that guidance and clarification, so they may fulfill the Settlement Stipulation’s “cooperation” mandate.
3. **Commission rules do not require ICNU’s approach.** Because of these shared goals, application of Commission settlement rules is not the issue. But, ICNU is simply wrong to argue that Commission rules require a party to identify its litigation positions, provide alternative analyses, or litigate its issues. As the Commission has doubtless observed already, the rules ICNU cites are worded in general terms that would support a broad range of presentations.[[3]](#footnote-3)
4. For example, we offer for the Commission’s review the testimony ICNU filed in support of the settlement in the last PacifiCorp rate case, Docket UE-080220. Set forth below is the entirety of that testimony (by Mr. Early):

**Q. Please explain why the Stipulation satisfies the interests of ICNU.**

A. ICNU believes that this “black box” settlement is a reasonable compromise of the position of the Parties. It is in the interests of ICNU's members to avoid litigation when possible and to ensure no further rate related filings until February 2009. It is especially important to ICNU's members to avoid another dispute over a power cost recovery mechanism in this case as well as the next general rate case. While this settlement represents a significant rate increase, it is hoped that perhaps customers could see a period of some rate stability as a result of this settlement.[[4]](#footnote-4)

1. Note that in the prior rate case, ICNU’s testimony did not identify even a single error or omission in PacifiCorp’s direct case, or offer a single ICNU litigation position, nor did ICNU offer any alternative analyses. Because the rules ICNU now cites have not changed since that case, ICNU cannot credibly argue that such rules require ICNU to do so in this case, in order to demonstrate there is a “compromise.”[[5]](#footnote-5)
2. **The Settlement Stipulation supports Staff’s recommended approach, not ICNU’s.** Nor is ICNU’s novel approach in this case required by the Settlement Stipulation, which is patterned off the one the Commission approved in Docket UE-080200. As we pointed out in our Motion, the Settlement Stipulation states that it resolves all issues between the parties in a manner that establishes no precedent, and this protects all parties from having to attack PacifiCorp’s direct case.[[6]](#footnote-6) ICNU does not contest the point.
3. **The guidance of ALJ Moss supports Staff’s recommended approach, not ICNU’s.** ICNU says its approach is consistent with the guidance provided by ALJ Dennis Moss in the recent Puget Sound Energy rate case prehearing conference. We quoted that guidance in footnote 2 of Staff’s Motion. ICNU explains: “None of the proposed supporting testimony is focused upon the specific results of such expert analysis …”.[[7]](#footnote-7)
4. Not so. For example, ICNU plans to offer testimony of an expert who will challenge PacifiCorp’s cost of service study. He plans to identify three specific “significant areas” where he differs from the Company’s approach. He plans to explain one such area in detail, and present alternative ideas for power cost allocations. He plans to present the impact of at least one of these differences on the cost of service study. This is a clear example of testimony “focused on the specific results of such expert analysis.”
5. Another ICNU witness plans to itemize over 20 specific alleged errors, omissions and other problems he found with PacifiCorp’s power supply figures. While these items are not quantified, they certainly qualify as “results of such expert analysis.”
6. **ICNU’s approach fosters increased adversity among the parties.** If ICNU files the sort of testimony we have seen, Staff will need an opportunity to reply, and may need discovery. This was not necessary under the procedures ICNU and other parties followed in the last case, and it should not be necessary now. Such a reply will further litigious and adversarial conduct, all under the guise of “supporting” a settlement. As we indicated in our Motion, that is oxymoronic, and nothing ICNU has offered challenges that description.
7. **Staff does not believe it should draft ICNU’s testimony.** An example of the increased adversity is ICNU’s unsupported allegation that Staff believes it should draft ICNU’s testimony.[[8]](#footnote-8) In fact, Staff has no such desire. However, if ICNU chooses to pursue its novel approach, that choice will have consequences. A short-term consequence could be a potential breach of the Settlement Stipulation’s agreement to cooperate. A longer term consequence is that Staff will be highly reluctant to engage in future settlements under ICNU’s approach.
8. **Conclusion.** Staff is dismayed that it must bring this issue to the Commission. The parties have spent more time sparring on this issue than they spent reaching a settlement that all parties agree is a worthy one.
9. Staff asks the Commission for guidance that there is no need for the parties to itemize the errors they have found, or to offer alternative analyses in testimony which purportedly supports the revenue change and cost of service/rate design elements of the Settlement Stipulation. With that guidance, the parties can achieve their common goal we identified at the outset, and that should allow this settlement to proceed. Upon review of the supporting testimony that is to be filed, if the Commission decides additional information is needed, it need only ask.
10. Staff appreciates the Commission’s attention to this important matter.

DATED this 11th day of September, 2009.

Respectfully submitted,

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1. ICNU Response at 3, ¶ 6. [↑](#footnote-ref-1)
2. ICNU Response at 1, ¶ 1. [↑](#footnote-ref-2)
3. For example, ICNU states: “According to WAC 480-07-740(2)(a), documentation in support of a settlement ‘should include a narrative outlining the scope of the underlying dispute.’”  ICNU Response at 3, ¶ 6.  Simply put, a description of the “scope of the underlying dispute” can be accomplished without specifying a party’s litigation position on each issue. [↑](#footnote-ref-3)
4. Exhibit \_\_\_ (JT-1T), Prefiled Joint Testimony of Thomas E. Schooley, Michael B. Early, Glenn A. Watkins, Charles Eberdt, and Andrea Kelly Supporting Settlement Stipulation at 13:2-9 (ICNU’s separate statement section). [↑](#footnote-ref-4)
5. ICNU Response at 5, ¶ 11. [↑](#footnote-ref-5)
6. Staff Motion at 2-3, ¶ 5. [↑](#footnote-ref-6)
7. ICNU Response at 4-5, ¶ 10. [↑](#footnote-ref-7)
8. ICNU Response at 4, ¶ 8. [↑](#footnote-ref-8)